

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

BNSF Railway Company, LaSalle County Highway Department, :
Osage Township Road District, and the Illinois Department of :
Transportation :

Stipulated Agreement regarding improving public safety at the : T10-0033
East 7th Road (AAR/DOT #004 515B; railroad milepost 104.30- :
LS7000), East 8th Road (AAR/DOT #004 513M; railroad milepost :
103.28-LS7000), and East 10th Road (AAR/DOT #004 511Y; :
railroad milepost 101.23-LS7000) highway-rail grade crossings of :
BNSF Railway Company’s track located near Rutland, LaSalle :
County. :

SECOND SUPPLEMENTAL ORDER

By the Commission:

PROCEDURAL HISTORY

On April 7, 2010, the Illinois Commerce Commission entered its original Order in this case directing, among other things, the Osage Township Road District (“Road District”) to reconstruct the highway approaches at the E. 7th Road highway-rail grade crossing of BNSF Railway Company’s (“Company”) track located near Rutland, LaSalle County. All work was to be completed within twelve months (12) of the Order date.

On September 29, 2010, the Road District filed its First Petition for Supplemental Costs stating that, after construction of the approaches at E. 7th Road, an additional 98 tons of aggregate and 73 cubic yards of earth excavation were needed. The Road District requests an increase in assistance from the Grade Crossing Protection Fund, from \$87,050 to \$90,616.11. On October 20, 2010, the Commission entered its First Supplemental Order, granting the Road District an increase in assistance from the Grade Crossing Protection Fund, from \$87,050 to \$90,616.11.

PETITIONER’S EVIDENCE

On January 6, 2011, the County, on behalf of the Road District, filed a Second Petition for Supplemental Costs stating that an error had been made in the First Petition for Supplemental Costs asking for an additional \$3,566.11. The actual final cost for the project was \$4,039.83 over the original estimated project costs. Therefore, the Road District is requesting an additional \$473.72 in assistance from the GCPF.

STAFF'S POSITION

Staff of the Rail Safety Section has reviewed the Road District's Petition for Second Supplemental Order and believes the request for an increase of \$473.72 in assistance from the Grade Crossing Protection Fund, from \$90,616.11 to \$91,089.83, is reasonable and should be approved without hearing. However, Staff believes that Grade Crossing Protection Fund assistance should be limited to no more than \$91,089.83. The Road District should be responsible for all highway approach grade improvement costs above the amount of \$91,089.83.

FINDINGS AND ORDERING PARAGRAPHS

The Commission, having given due consideration to the record in this case and the Petition for Supplemental Order, finds that:

- (1) The Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (2) The recitals of fact as set forth in the prefatory portion of this Supplemental Order are supported by the Petition for Supplemental Order and are hereby adopted as findings of fact;
- (3) The Osage Township Road District's request for additional assistance from the Grade Crossing Protection Fund, from \$90,616.11 to \$91,089.83, is fair and reasonable and should be granted;
- (4) The original Order, entered April 7, 2010, and the First Supplemental Order entered October 20, 2010, in this case, should be amended to reflect the following cost division:

- COST DIVISION TABLE -

IMPROVEMENT	EST. COST	GCPF	ROAD DISTRICT	COMPANY	IDOT
Install Automatic Flashing Light Signals and Gates, controlled by CWT Circuitry at the E. 7 th Rd. crossing.	\$270,430	\$0	\$0	\$0 ³	100% ² \$270,430
Modify Existing Highway Approaches at E. 7 th Rd.	\$91,089.83	100% \$91,089.83 ¹	\$0 ⁵	\$0	\$0
Install temporary STOP Signs at the E. 7 th Rd., if Ordered.	No Estimate Required	\$0	\$0	100% ⁴	\$0
Widen Crossing Surface at E. 7 th Rd.	\$16,419	\$0	100% \$16,419	\$0	\$0
Vacate E. 8 th and E. 10 th Rd. by Local Ordinance; Erect Permanent Barricades.	No Estimate Required	\$0	100% ⁶	\$0	\$0
Remove Existing Surfaces, Warning Devices and Highway Approaches at E. 8 th and E. 10 th Rd.	No Estimate Required	\$0	\$0	100%	\$0
Install Temporary Barricades at the E. 8 th and E. 10 th Rd. grade crossings.	No Estimate Required	\$0	\$0	100% ⁷	\$0
Provide Grade Crossing Protection Fund Incentive Payment for Voluntary Closure of E. 8 th Rd. grade crossing.	\$50,000	100% ⁸ (\$50,000)	\$0	\$0	\$0
Provide Matching Federal Closure Incentive Payment for Voluntary Closure of E. 8 th Rd. grade crossing.	\$7,500	\$0	\$0	\$0	100% ⁹ (\$7,500)
Provide Incentive Payment for Voluntary Closure of E. 8 th and E. 10 th Rd. grade crossing.	\$100,000	\$0	\$0	100% (\$100,000)	\$0
Provide Grade Crossing Protection Fund Incentive Payment for Voluntary Closure of E. 10 th Rd. grade crossing.	\$50,000	100% ⁸ (\$50,000)	\$0	\$0	\$0
Provide Matching Federal Closure Incentive Payment for Voluntary Closure of E. 10 th Rd. grade crossing.	\$7,500	\$0	\$0	\$0	100% ⁹ (\$7,500)
TOTALS	\$592,938.83	\$191,089.83	\$16,419	\$100,000	\$285,430

See Notes on Page 4

Notes:

- ¹ Total Grade Crossing Protection Fund (GCPF) assistance for reconstruction of the highway approach grades not to exceed \$91,089.83; the Road District is responsible for all highway approach grade improvement costs above the amount of \$91,089.83.
- ² Total IDOT assistance, utilizing federal funds, for the installation of new automatic warning devices not to exceed \$270,430.
- ³ Company responsible for all future operating and maintenance costs associated with the new automatic warning devices.
- ⁴ Company responsible for all future maintenance costs associated with the temporary STOP Signs, if Ordered.
- ⁵ Road District responsible for all future maintenance costs associated with the highway approaches.
- ⁶ The Road District shall be responsible for all costs associated with erecting and maintaining the permanent barricades.
- ⁷ The Company shall be responsible for all costs associated with erecting and maintaining the temporary barricades.
- ⁸ Total GCPF payment not to exceed \$50,000 each for voluntary closures of E. 8th and E. 10th Road.
- ⁹ Upon closure of the E. 8th and E. 10th Road crossings, the Road District shall submit a notification of closure and a request for the \$7,500 each federal voluntary crossing incentive payment to the Department. Subsequent to the execution of this agreement and issuance of an ICC Order (see Section 7 of this Agreement) and within 60 days of the notification and request, the Department shall issue a check in the amount of \$7,500 each to the Road District.

- (5) All other terms and conditions of the original Order dated April 7, 2010, and First Supplemental Order dated October 20, 2010, should remain in full force and effect, except as modified herein.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Osage Township Road District's Request for Supplemental Order requesting \$473.72 in additional assistance from the Grade Crossing Protection Fund, from \$90,616.11 to \$91,089.83, for reconstruction of the highway approaches at the E. 7th Road highway-rail grade crossing of BNSF Railway Company's track, located near Rutland, LaSalle County, is hereby granted. All costs for all highway approach grade improvement costs above the amount of \$91,089.83 shall be the responsibility of Osage Township Road District.

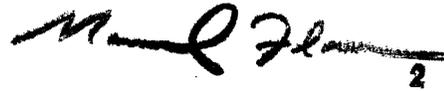
IT IS FURTHER ORDERED that the original Order, entered April 7, 2010 and the First Supplemental Order entered October 20, 2010, are hereby modified to reflect the increased costs submitted by the Osage Township Road District as part of its Request for Supplemental Order.

IT IS FURTHER ORDERED that the cost division/allocation in the original Order, entered April 7, 2010 and First Supplemental Order entered October 20, 2010, are hereby modified as outlined in Finding (4) above.

IT IS FURTHER ORDERED that all terms and conditions of the original Order dated April 7, 2010 and First Supplemental Order dated October 20, 2010, in this case shall remain in full force and effect, except as modified herein.

IT IS FURTHER ORDERED that subject to Sections 18c-2201 and 18c-2206 of the Illinois Commercial Transportation Law, this is a final decision subject to the Illinois Administrative Review Law.

By Order of the Commission this 20th day of January 2011.



MANUEL FLORES
ACTING CHAIRMAN

JUDGE
SECTION CHIEF <i>mes</i>
ORDERS SUPERVISOR