

STATE OF ILLINOIS



**ILLINOIS COMMERCE COMMISSION  
TRANSPORTATION DIVISION / RAIL SAFETY SECTION**

*Michael E. Stead*

*Rail Safety Program Administrator*

(Filed in E-Docket and e-mailed to Judge Kirkland-Montaque and cc'd)

February 15, 2011

Latrice Kirkland-Montaque  
Chief Administrative Law Judge  
Review and Examination  
Illinois Commerce Commission  
160 N. LaSalle Street  
Chicago, IL

RE: T10-0080

Dear Judge Kirkland-Montaque:

The attached Agreed Order was filed on e-Docket today. A Word copy of the Agreed Order is also provided.

Subsequent to the July 27, 2010, Hearing the City identified delays in right-of-way acquisition that would move the construction schedule to 2012. This is acceptable to all parties as indicated in the attached e-mail correspondence.

If you have any questions, or require additional information, please contact me at (312) 636-7760 or [bvercruy@icc.illinois.gov](mailto:bvercruy@icc.illinois.gov).

Very truly yours,

A handwritten signature in cursive script that reads "Brian Vercruysse".

Brian Vercruysse  
Senior Rail Safety Specialist

cc: Mack Shumate, UP  
Tom Andryuk, UP  
John Cowlin  
Victor Ramirez, City

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

City of Crystal Lake, :  
Petitioner, :  
 :  
v. : T10-0080  
 :  
The Union Pacific Railroad Company, :  
Respondent. :  
 :  
 :  
Petition for an Order to construct an 8-foot wide pedestrian :  
crossing on the west side of Pingree Road, AAR/DOT #176 :  
969Y, railroad milepost 41.59, located in the City of Crystal :  
Lake, McHenry County, Illinois. :

**DRAFT AGREED ORDER**

By Order of the Commission:

On May 5, 2010, the City of Crystal Lake (“City” or “Petitioner”) filed the above-captioned verified Petition with the Illinois Commerce Commission (“Commission”) naming as Respondent the Union Pacific Railroad Company (“Company” or “UP”) seeking authority to construct an 8-foot wide pedestrian crossing on the west side of Pingree Road (AAR/DOT #176 969Y, railroad milepost 41.59) located in the City of Crystal Lake, McHenry County.

Pursuant to notice, the matter came on for hearing before a duly authorized Administrative Law Judge (“ALJ”) of the Commission at the Commission’s Chicago office on July 27, 2010. Petitioner and Respondent were represented by counsel. An appearance was also entered by Brian Vercruysse, Senior Railroad Safety Specialist, representing the Commission's Transportation Bureau, Railroad Section (“Staff”). At the conclusion of the hearing, the record was marked "Heard and Taken."

**PROCEDURAL HISTORY**

Subsequent to the hearing on July 27, 2010, on February 15, 2011, Staff filed an Agreed Order, the terms of which have been agreed to by all the parties. This filing included updated project schedule information due to delays in right-of-way acquisition.

## **PETITIONER'S EVIDENCE**

Within its Petition, the City is seeking authority to construct an 8-foot wide pedestrian crossing on the west side of Pingree Road in accordance with the plan exhibits included within the Petition and provided at the July 27, 2010 Hearing. In conjunction with the new sidewalk, the warning devices will be upgraded to include pedestrian gates.

The Petitioner provided the testimony of City Engineer, Mr. Victor Ramirez. Mr. Ramirez testified that the Pingree Road crossing with the UP's tracks is adjacent to the Metra Station. Currently, sidewalks exist north and south of the crossing on the west side of Pingree Road, but there is an approximate gap of 100 feet at the crossing itself. With residential areas to the north, and commercial destinations and train station access to the south of the tracks, there is a need to provide a sidewalk connection. Currently pedestrians use the roadway lanes to cross the tracks.

Mr. Ramirez further testified that the City intends on constructing the sidewalk connection in 2011, and the City is coordinating the installation of pedestrian gates with the UP. The City will be responsible for all costs associated with the project. The City will also be responsible for the maintenance of the sidewalk, and the maintenance costs associated with the pedestrian gates. The City will enter into a Construction Agreement with the UP.

Subsequent to the July 27, 2010, Hearing and during the preparation of an Agreed Order, the City revisited the work schedule. With right-of-way acquisition delays, the City must move construction of the project to 2012.

## **RESPONDENT RAILROAD'S POSITION**

The Company provided the testimony of Mr. Thomas Andryuk, UP Manager of Field Engineering, and Dan Corcoran, UP Manager of Signal Projects.

Mr. Andryuk provided that the Pingree Road crossing consists of two mainline tracks with daily train counts of approximately 4 freight trains with a maximum speed of 60 MPH, and 56 commuter trains with a maximum speed of 70 MPH. Mr. Andryuk further noted that to accommodate the sidewalk proposed by the City, the crossing surface would need to be widened. The UP will provide cost estimates for the widened crossing surface and installation of pedestrian gates.

Mr. Corcoran testified that the pedestrian gates could cost approximately \$80,000, and that a pedestrian bell will be provided on the west side of the crossing, if not already in place.

## **COMMISSION STAFF ANALYSIS AND CONCLUSION**

Staff has no objection to the City's petition.

### **COMMISSION FINDINGS AND CONCLUSIONS**

The Commission, having considered the entire record, finds that:

- (1) The recitals of fact in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (2) Petitioner City of Crystal Lake, Illinois, is a body politic and corporate organized and existing under and by virtue of the laws of the State of Illinois;
- (3) Respondent Union Pacific Railroad Company is a rail carrier engaged in the transportation of persons and property by rail in the State of Illinois;
- (4) The Petitioner has filed a Petition for an Order authorizing it to construct and maintain an 8-foot wide pedestrian crossing on the west side of the Pingree Road/UP crossing designated as AAR/DOT #176 969Y, railroad milepost 41.59;
- (5) The Commission has jurisdiction over the Petitioner and the Respondent and the subject-matter of this proceeding;
- (6) The improvements to the Pingree Road highway-rail grade crossing of the UP's track, requested by the Petitioner, are necessary to promote safety and the convenience of the public, in accordance with the Illinois Commercial Transportation Law, 625 ILCS 5/18c-7401(3);
- (7) The recitals of fact and conclusions of law contained in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law;
- (8) The City should install and maintain the sidewalk connection at the Pingree Road crossing in accordance with the design plans included with the Petition and presented at the July 27, 2010, Hearing;
- (9) The UP should install pedestrian gates for the new sidewalk connection;
- (10) The City should be responsible for all costs associated with the project;
- (11) The parties should proceed immediately to take the actions they are directed to perform by this Order; all work required of the parties under this Order should be completed by December 31, 2012;

- (12) Any person making a Request for an Extension of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request;
- (13) Any person making a Request for an Extension of Time that exceeds 30 days must file a Petition for Supplemental Order with the Director of Processing and Information no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders;
- (14) Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the Project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the Project within the ordered timeframe;
- (15) The Commission or its Administrative Law Judge reserves the right to deny Petitions for Supplemental Orders and Requests for Extension of Time, if the reason(s) supporting the request is (are) insufficient or where it appears the person has not made a good faith effort to complete the Project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the City of Crystal Lake is authorized to, in accordance with the plans incorporated into the Petition, construct the sidewalk connection on the west side of the Pingree Road highway-rail grade crossing of the Union Pacific Railroad Company's tracks. All work shall be completed by the City of Crystal Lake in accordance with Findings (7) through (15).

IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall complete the widening of the crossing surface, and installation of the pedestrian gates at the Pingree Road highway-rail grade crossing of its tracks, in conjunction with the Petitioners work, and in accordance with Findings (7) through (15).

IT IS FURTHER ORDERED that prior to construction, the Union Pacific Railroad Company shall file Form 3 of Section 1535 of Title 92 of the Illinois Administrative Code showing details of the automatic warning devices required under this order, and shall receive approval by resolution of the Commission Transportation Bureau Rail Safety Program Administrator before installing the devices;

IT IS FURTHER ORDERED that the City shall, at six-month intervals from the date of this order until the project has been completed, submit written reports to the Director of Processing in the Commission's Transportation Bureau ("Director of Processing"), describing the progress that has been made toward completing the project. If the project is behind schedule, the report shall include a brief explanation of the reason for the delay. Each progress report shall include the Commission Order number; the date the Order was entered; the deadline for completion of the project established by the Order; the type of improvement; and project manager information (name, title, mailing address, telephone number, and facsimile number) of the employee responsible for the management of the project.

IT IS FURTHER ORDERED that the City shall, within five days of the completion of the project, file with the Director of Processing a letter advising the Commission of the completion date.

IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall, within five days of the completion of the work herein required, submit a completely updated United States Department of Transportation Inventory Form to the Federal Railroad Administration, the Chief of Data Services at the Illinois Department of Transportation, and the Director of Processing and Information, Transportation Bureau of the Illinois Commerce Commission.

IT IS FURTHER ORDERED that the Commission shall retain jurisdiction for the purpose of issuing any supplemental order or orders as it may deem necessary.

IT IS FURTHER ORDERED that in accordance with Chapter 625 ILCS 5/18c-2201 and 5/18c-2206 of the Illinois Commercial Transportation Law, this is a final Order subject to the Administrative Review Law.

By Order of the Commission this \_\_\_\_ day of March 2011.

MANUEL FLORES  
ACTING CHAIRMAN

## Vercruysse, Brian

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**From:** Tom N. Andryuk [TNANDRYU@up.com]  
**Sent:** Monday, February 14, 2011 2:18 PM  
**To:** Vercruysse, Brian  
**Cc:** Erik Morimoto; jcowlin@cllaw.com; MACKSHUMATE@UP.COM; Victor Ramirez  
**Subject:** RE: T10-0080 Pingree Road Order  
**Attachments:** pic09741.gif

Brian,

The UP takes no exception to the proposed completion date.

▼ "Vercruysse, Brian" <[bvercruy@icc.illinois.gov](mailto:bvercruy@icc.illinois.gov)>

"Vercruysse, Brian"  
<[bvercruy@icc.illinois.gov](mailto:bvercruy@icc.illinois.gov)>

02/08/2011 12:08 PM

To Victor Ramirez <[vramirez@crystallake.org](mailto:vramirez@crystallake.org)>, "jcowlin@cllaw.com" <[jcowlin@cllaw.com](mailto:jcowlin@cllaw.com)>, "Tom N. Andryuk" <[TNANDRYU@up.com](mailto:TNANDRYU@up.com)>, "MACKSHUMATE@UP.COM" <[MACKSHUMATE@UP.COM](mailto:MACKSHUMATE@UP.COM)>

cc Erik Morimoto <[emorimoto@crystallake.org](mailto:emorimoto@crystallake.org)>

Subject RE: T10-0080 Pingree Road Order

Victor,

Thank you very much. I am fine with the proposed completion date.

Tom or Mack, is the UP ok with the modified completion date?

Thanks,  
Brian

Brian Vercruysse  
Illinois Commerce Commission  
527 E. Capitol Avenue  
Springfield, IL 62701  
M 312-636-7760  
[bvercruy@icc.illinois.gov](mailto:bvercruy@icc.illinois.gov)

**From:** Victor Ramirez [<mailto:vramirez@crystallake.org>]  
**Sent:** Monday, February 07, 2011 4:48 PM  
**To:** Vercruysse, Brian; [jcowlin@cllaw.com](mailto:jcowlin@cllaw.com)  
**Cc:** Erik Morimoto  
**Subject:** RE: T10-0080 Pingree Road Order

Hi Brian,

It appears everything is in order except that page 3 item 11 changing the date to December 31, 2012. Is there a problem doing this and finalizing the order?

Victor

**From:** Victor Ramirez  
**Sent:** Thursday, January 13, 2011 5:12 PM  
**To:** Vercruysse, Brian; [jcowlin@cllaw.com](mailto:jcowlin@cllaw.com)  
**Cc:** Erik Morimoto  
**Subject:** RE: T10-0080 Pingree Road Order

Hi Brian,

Nice to hear from you. I will review one final time with John Cowlin.

I do know that page 3 item 11 needs to be changed to December 31, 2012.

There are ROW acquisition delays that will push our construction off to most likely 2012. Let me confirm with

John Cowlin if there are any other matters.

Thank you,  
Victor

**From:** Vercruysse, Brian [<mailto:bvercruy@icc.illinois.gov>]  
**Sent:** Thursday, January 13, 2011 11:33 AM  
**To:** [jcowlin@cllaw.com](mailto:jcowlin@cllaw.com)  
**Cc:** Victor Ramirez  
**Subject:** T10-0080 Pingree Road Order

Hi John and Victor,

Could you please review the attached e-mail and draft Agreed Order? I do not have a concurrence reply from the City, and I would like to file the Agreed Order so that this may be placed on the Commission's bench agenda.

Thank you,  
Brian

Brian Vercruysse  
Illinois Commerce Commission  
527 E. Capitol Avenue  
Springfield, IL 62701  
M 312-636-7760  
[bvercruy@icc.illinois.gov](mailto:bvercruy@icc.illinois.gov)

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