

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

The Department of Transportation of the State of Illinois, for and on behalf of the People of the State of Illinois, Petitioner,	:	T10-0104
	:	
v.	:	consolidated w/
	:	
Burlington Northern & Santa Fe Railroad Company, which acquired title as the Chicago, Santa Fe and California Railway Company; and Unknown Owners, Respondents.	:	T10-0136
	:	
Petition for approval of the taking or damaging of certain property owned by a common transportation carrier in Cook County, Illinois by exercising the right of eminent domain. Job No. R-90- 011-01; Parcel No. OPE3005TE and OPE3006TE.	:	

ORDER

By the Commission:

On June 10, 2010, the Department of Transportation of the State of Illinois ("the Petitioner" or "the Department") filed its verified Petition with the Illinois Commerce Commission ("the Commission") to approve the taking of certain real estate identified as Parcels OPE3007TE and OPE3009TE (temporary construction easements) owned by the Burlington Northern & Santa Fe Railroad Company, a/k/a Burlington Northern & Santa Fe Railway Company, a Delaware Corporation ("the Railroad") through the exercise of the power of eminent domain.

On September 7, 2010, the Petitioner filed its verified Petition with the Commission to approve the taking of certain real estate identified as Parcels OPE3005TE and OPE3006TE (temporary construction easements) owned by the Railroad through the exercise of the power of eminent domain.

On September 14, 2010, Petitioner filed a Motion to Consolidate the two dockets, which was granted by a duly authorized Administrative Law Judge ("ALJ").

PROCEDURAL HISTORY

Pursuant to notice given in accordance with the Law and the rules and regulations of the Commission, a hearing on the Petitions was held on September 27, 2010 at the Commission's office in Chicago, Illinois before an ALJ. The Department and Railroad were represented by counsel. Staff of the Commission Rail Safety Section did not appear at the hearing. At the conclusion of the September 27, 2010 hearing, the record was marked "Heard" and Taken."

PETITIONER'S EVIDENCE

At the hearing on September 27, 2010, the Department presented its engineer, Lin Li, P.E., as a witness. Ms. Li testified that the Department is engaged in an improvement to widen, improve and/or reconstruct I-55 at Central Avenue in Cook County, Illinois (the "improvement project"). The land legally described in Exhibits A and Exhibits B attached to the Petitions filed by the Department herein and designated as Parcel No. 0PE3007TE, Parcel No. 0PE3009TE, Parcel No. 0PE3005TE and Parcel No. 0PE3006TE (the "property") is temporarily required as part of the project to widen, improve and/or reconstruct I-55 at Central Avenue. The property is depicted in Petitioner's Exhibits 1. The work and improvement project is a public work, is for public use, and constitutes a public purpose, namely a public highway; it is necessary to the public convenience and necessity that Petitioner have and acquire for the use of the People of the State of Illinois for highway purposes the temporary easements in and to the property now sought by the Department to be acquired as a temporary easement interest for the period of five (5) years or upon completion of construction, whichever first occurs. The improvement project will be constructed under the supervision of the Department and construction activities on the Railroad's property shall be performed in accordance with the Department's policies and procedures for construction projects involving railroads. The letting for this improvement project is currently scheduled for January 2010 and the Department seeks to award the construction contract thereafter as soon as possible. The Department has been unable to acquire from the Railroad the interests in the property it needs at this time for the construction of the improvement project, the Department seeks an Order from the Commission at this time approving the use of the Department's eminent domain powers. The Petitioner's Exhibits 1 were admitted into evidence without objection.

THE RAILROADS' POSITION

The Department and the Railroad have reached an agreement as to the terms for a voluntary conveyance of the property needed from the Railroad for the construction of this improvement project. On the Railroad's examination, Ms. Li testified that the Department would agree to the following terms for the taking of the property requested herein before the Commission:

- (1) That the purposes of the temporary easements being sought herein are limited to the grading of and construction access over the property;
- (2) That said grading will not affect the drainage of any adjoining parcels or the Railroad's right of way; or that the existing drainage of the Railroad's right of way shall be maintained or restored by the Department;
- (3) That the Department will bear the sole cost of any removal, relocation, or reconstruction of any and all fences, communication or utility poles, lines and/or other facilities located on the Railroad's property which may be necessary as part of the Department's use of the property;

- (4) That the Department will maintain adequate liability insurance, including railroad protective liability insurance, naming the Railroad as an additional insured, and will require all contractors to do the same;
- (5) That the Department is asking the Commission for permission to condemn the property under the terms previously negotiated by the Parties.

The Railroad has no objection to granting the Department the temporary easements needed to construct the project under the terms previously negotiated between the Parties.

STAFF'S POSITION

Staff has no objection to the Commission granting its approval for the exercise of the power of eminent domain by the Department to acquire the property needed from the Railroad at this time to construct this improvement project.

COMMISSION ANALYSIS AND CONCLUSION

The Commission is of the opinion that it is fair and reasonable to grant the Department's Petitions for approval and authority to exercise the power of eminent domain to acquire the temporary easements described in the Petitions as Parcel No. OPE3007TE, Parcel No. OPE3009TE, Parcel No. OPE3005TE and Parcel No. OPE3006TE situated in Cook County, Illinois.

PROPOSED ORDER

A Proposed Order granting the Petition was filed and served upon all Parties and Staff on or about January 25, 2011. No Briefs on Exception were filed.

FINDINGS AND ORDERING PARAGRAPHS

The Commission, having been advised of the entire record herein, finds that:

- (1) the Department of Transportation of the State of Illinois exists by virtue of the laws of the State of Illinois;
- (2) the Railroad is engaged in the transportation for-hire of persons and/or property by rail in the State of Illinois and is a rail carrier as defined by the Illinois Commercial Transportation Law;
- (3) the Commission has jurisdiction of the Parties hereto and the subject matter hereof;

- (4) under and by virtue of the Illinois Highway Code, Chapter 605 ILCS 5/4-501, the Department is engaged in a project to widen, improve and/or reconstruct I-55 at Central Avenue in Cook County, Illinois;
- (5) the land legally described in Exhibits A attached to each Petition filed by the Department herein is required as part of a project to widen, improve and/or reconstruct I-55 at Central Avenue in Cook County, Illinois;
- (6) the subject land, rights, and other property are private property and the Railroad has an interest in or claims to have some interest therein;
- (7) the work and improvement project is a public work, is for public use, and constitutes a public purpose, namely a public highway; it is necessary to the public convenience and safety that Petitioner have and acquire for the use of the People of the State of Illinois the temporary easements for construction purposes for a period of five (5) years of upon completion of construction, whichever first occurs, in and to the property described in Exhibits A attached to each Petition;
- (8) the construction of the improvement project on the Railroad's property shall be undertaken in accordance with the Petitioner's Departmental Policies and Procedures;
- (9) the Petitioner has the power to condemn the Railroad's property, and the Petitioner is therefore authorized, with the approval of the Commission, to proceed in the Circuit Court of Cook County to acquire said land, rights, or other property through the exercise of the right of eminent domain under the eminent domain laws of this State, 735 ILCS 30/10-5-10; and
- (10) the approval of the Commission may reasonably be given for the taking of real property and impressment of the temporary easement upon real estate owned by Railroad as legally described in Exhibits A by the exercise of the power of eminent domain.

IT IS THEREFORE ORDERED that the approval of the Illinois Commerce Commission be, and it is hereby, granted to the Department of Transportation of the State of Illinois to exercise the power of eminent domain for the taking of real property and the impressment of a temporary easement in and to the property now sought by the Department, Parcel No. 0PE3007TE, Parcel No. 0PE3009TE, Parcel No. 0PE3005TE and Parcel No. 0PE3006TE, situated in Cook County, Illinois, respectively, to be acquired as temporary easements for construction purposes for the period of five (5) years or upon completion of construction, whichever first occurs, upon, over and under certain real property owned by the Railroad legally described in Exhibits A attached to each Petition.

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

By Order of the Commission this 9th day of March 2011.

Handwritten signature of Douglas P. Scott in black ink, with a small '2' written below the name.

DOUGLAS P. SCOTT
ACTING CHAIRMAN

JUDGE
SECTION CHIEF
ORDERS SUPERVISOR