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BEFORE THE
ILLINOIS COMMERCE COMMISSION

THE DEPARTMENT OF TRANSPORTATION) DOCKET NO.
OF THE STATE OF ILLINOIS, for and on) T13-0061
behalf of the People of the State of)
Illinois,)

Petitioner,)

-vs-)

UNION PACIFIC RAILROAD COMPANY,)
successor to The Chicago and)
Northwestern Railroad Company;)
and UNKNOWN OWNERS,)

Respondents.)

Petition for approval of the taking)
or damaging owned by a common)
transportation carrier in Lake)
County, Illinois by exercising the)
right of eminent domain of certain)
properties Parcel No. 1EU0049PE)
Job No. R91-021-02)

Springfield, Illinois
January 22, 2014

Met, pursuant to notice, at 10:00 a.m.

BEFORE:

Timothy Duggan, Administrative Law Judge

MIDWEST LITIGATION SERVICES
by: Dorothy J. Hart, RPR, CSR
CSR #084-001390

1 APPEARANCES:

2 Douglas G. Felder
3 Special Assistant Attorney General
4 Douglas G. Felder, P.C.
5 203 North LaSalle Street, Suite 2300
6 Chicago, Illinois 60601

7 (Appearing via videoconference on
8 behalf of the Petitioner)

9 Brian Vercruysse
10 Illinois Commerce Commission
11 527 East Capitol Avenue
12 Springfield, Illinois 62701

13 (Appearing via videoconference on
14 behalf of the Staff of the
15 Illinois Commerce Commission.)

16 Mack H. Shumate, Jr.
17 Union Pacific Railroad Company
18 101 North Wacker Drive, Suite 1920
19 Chicago, Illinois 60606

20 (Appearing via teleconference on
21 behalf of the Union Pacific
22 Railroad Company.)
23
24

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PROCEEDINGS

JUDGE DUGGAN: Pursuant to the authority vested in me by the State of Illinois and the Illinois Commerce Commission, I now call Docket T13-0061 for a hearing.

May we have the appearances, starting with the Department of Transportation?

MR. FELDER: Good morning, Your Honor. Doug Felder, F-e-l-d-e-r, appearing on behalf of the Petitioner, Department of Transportation. My address is 203 North LaSalle Street, Suite 2300, Chicago 60601. My phone number's 312-634-3509.

And with me is Ms. Lin Li, an engineer from the Department of Transportation. Spelling of her name is Lin, L-i-n, Li, L-i. And she's an engineer and has knowledge of the project and the property that's sought in this eminent domain approval proceeding.

JUDGE DUGGAN: Okay. Union Pacific?

MR. SHUMATE: Yes, thank you, Your Honor. Good morning. My name is Mack, M-a-c-k, Shumate, S-h-u-m-a-t-e. I'm an attorney for the Union Pacific Railroad Company. Our offices are at 101 North Wacker, Suite 1920, Chicago, Illinois

1 60606, telephone number area code 312-777-2055.

2 I have with me today John Venice,
3 that's V-e-n-i-c-e. He's with the engineering
4 department for the Union Pacific Railroad Company
5 and will be available to testify and answer any
6 questions concerning this matter.

7 JUDGE DUGGAN: Okay. Mr. Vercruysse?

8 MR. VERCRUYSSSE: Thank you, Your Honor.
9 Brian Vercruysse, V- as in Victor
10 -e-r-c-r-u-y-s-s-e, representing the Illinois
11 Commerce Commission Staff of the Rail Safety
12 Section, address 527 East Capitol Avenue,
13 Springfield 62701, and phone number 312-636-7706.
14 Thank you.

15 JUDGE DUGGAN: Thank you. All right,
16 Ms. Lin and Mr. Venice, do you want to raise your
17 right hand?

18 (Whereupon the witnesses were duly
19 sworn.)

20 JUDGE DUGGAN: Thank you very much.

21 Mr. Felder, do you want to proceed?

22 MR. FELDER: Yes. Thank you, Judge.

23 I guess at the outset I'd just like to
24 clarify or for the record discuss the fact that we

1 filed a petition to acquire certain property -- get
2 the approval of the Commerce Commission to acquire
3 certain property from the Union Pacific Railroad in
4 Lake County, Illinois. This is one of several
5 petitions that have been filed with regard to this
6 project. And my understanding from counsel for the
7 Railroad is that the Railroad has no objection to
8 the allegations stated in our petition that's
9 ultimately seeking approval for the -- from the
10 Commerce Commission for this acquisition. And I
11 just want to confirm that at the outset if I could.

12 JUDGE DUGGAN: Okay. So, Mr. -- I
13 think he's representing, Mr. Shumate, that you have
14 no objection to an Order from the Commission
15 granting the relief sought in the petition?

16 MR. SHUMATE: That's correct, Your
17 Honor. The use of the property, even though it is
18 Railroad operating property, is acceptable to the
19 Union Pacific Railroad, and we specifically request
20 that the Illinois Commerce Commission grant the
21 taking of this property and the transfer to the
22 State of Illinois as requested in the petition.

23 JUDGE DUGGAN: Very good. And as long
24 as we're taking positions, Mr. Vercruysse, do you

1 know your position?

2 MR. VERCRUYSSSE: Yes, Your Honor.

3 Thank you very much. Staff concurs with the
4 Department's petition, has no objection, and looks
5 forward to providing an Order -- or, coordinating
6 an Order with the parties. Thank you.

7 JUDGE DUGGAN: Very good. Thank you.

8 And, Mr. Felder, do you want to make
9 your legal representation as to why you nonetheless
10 need to pursue the Commission's authority to pursue
11 eminent domain even though the Railroad has no
12 objection to the petition?

13 MR. FELDER: Yes, Your Honor. Thank
14 you.

15 The Department is proceeding or seeking
16 authority to proceed with its eminent domain powers
17 in this matter because it has attempted but been
18 unable to conclude a transfer of title through a
19 normal execution of conveyance documents. And a
20 part of that reason has to do with the nature of
21 the conveyance documents that the Department has
22 requested from the Railroad and the form and
23 content of the conveyance documents that the
24 Railroad has been willing or indicates that it is

1 willing to execute and deliver to the Department.

2 Specifically, Your Honor, there are
3 issues with regard to potential claimants of
4 unknown owners or nonrecord claimants where the
5 Department requires a certain level of
6 representation as to the status of the title that
7 the owner has or claims to have or appears to have,
8 and absent -- absent receiving documents to satisfy
9 those requirements, the Department's policy has
10 been to proceed with eminent domain proceedings in
11 the circuit court of the county in which the
12 property lies in order to complete to the extent it
13 can by operation of law the acquisition of title
14 and clear up the title by unknown owners or
15 nonrecord claimants. That is the issue we've
16 encountered primarily with some of the owners or
17 utilities. We're working to resolve those issues.

18 Given that situation, although we
19 appear to be in agreement with regards to the fact
20 that we can acquire the property, and I believe in
21 this one we're in agreement as to the amount to be
22 paid to acquire the property, it is nonetheless
23 incumbent upon the Department at this time to get
24 the quality of title that its policy requires, and

1 the only way to do that is to proceed with an
2 eminent domain action, with a court order, with a
3 publication, and ultimately a default of unknown
4 owners and nonrecord claimants in the event that
5 they do not appear or choose to appear in the court
6 proceeding.

7 JUDGE DUGGAN: Okay. And for my
8 clarification then, it's also my understanding that
9 what you seek to accomplish through a circuit court
10 order will not require Union Pacific to do anything
11 that it is not now offering to do. It is simply
12 that through the court order you accomplish certain
13 -- you clear up certain potential defects which UP
14 does not have the ability to do in any event;
15 correct?

16 MR. FELDER: That's entirely correct,
17 Your Honor, at least as it relates to the court
18 order. The court proceeding requires the Railroad
19 to do absolutely nothing if that's what they choose
20 to do. And given that we've been in agreement and
21 done this before in terms of how to proceed, how to
22 get the money paid, and how to get it deposited,
23 they don't have to sign any documents. They're not
24 compelled to do anything other than if they want to

1 appear and petition the court for the money at the
2 appropriate time.

3 JUDGE DUGGAN: Okay. In addition, you
4 have what you're going to introduce as an exhibit,
5 a title commitment; correct?

6 MR. FELDER: That's correct, Exhibit C.

7 JUDGE DUGGAN: In that title commitment
8 does it show that Union Pacific is the sole owner
9 or does it indicate that there are potential
10 unknown owners?

11 MR. FELDER: Both, Your Honor. The
12 title commitment makes a finding that the owner of
13 the property is the Union Pacific Railroad Company.
14 It also raises as a possible exception the rights
15 and claims of potential unknown owners. It does
16 not identify -- of course, it identifies those
17 matters of record which appear and it also raises
18 as a general matter or a generic matter the rights
19 of unknown owners or nonrecord claimants that may
20 not have made or filed interests of record.
21 Typically, those appear in the nature of, you know,
22 unrecorded mechanic lien claimants, tenants who
23 have unrecorded leases that may be in possession.
24 That's not likely the case here, but that's the --

1 that's the general form of that type of a possible
2 interest in title that the Department seeks to
3 clean up or to extinguish, in other words, when it
4 acquires property. It either does that by getting
5 sufficient documentation from the title holder or
6 it does it through a court proceeding.

7 JUDGE DUGGAN: Okay. Let's go off the
8 record a second.

9 (Discussion off the record.)

10 JUDGE DUGGAN: Back on the record.

11 Okay. So you want to proceed with your
12 evidence and your witness?

13 MR. FELDER: Yes, sir. The Department
14 would call Ms. Lin Li to testify in its behalf.

15 LIN LI,

16 of lawful age, produced, sworn, and examined on
17 behalf of the Petitioner, testifies and says:

18 DIRECT EXAMINATION

19 QUESTIONS BY MR. FELDER:

20 Q. Ms. Li, please state your name and
21 spell it for the court reporter.

22 A. My first name's spelled L-i-n and my
23 last's name's spelled L-i.

24 Q. And, Ms. Li, is it correct that you are

1 an engineer licensed in the State of Illinois?

2 A. Yes.

3 Q. And are you currently employed by the
4 Department of Transportation as a condemnation
5 engineer?

6 A. Yes.

7 Q. In that capacity do you coordinate the
8 acquisition of real estate in conjunction with the
9 letting of construction projects for the
10 Department's road construction annual project?

11 A. Yes.

12 Q. And are you familiar with the road
13 construction project that the Department is
14 undertaking at Illinois 132, that's Grand Avenue,
15 in Lake County where it intersects with U.S. 41?

16 A. Yes.

17 Q. Let me show you what has been marked as
18 Exhibit A to the petition that was filed herein.
19 This is a separate page. And I ask you if you
20 recognize that document?

21 A. Yes.

22 Q. And is Exhibit A the legal description
23 for the property that the Department seeks approval
24 to acquire in this proceeding?

1 A. Yes.

2 Q. Let me show you what has been marked as
3 Exhibit B and is attached to the petition that was
4 filed in this matter, and this particular version
5 of Exhibit B also shows a highlighted area in pink,
6 and I ask you if you recognize that document?

7 A. Yes.

8 Q. Does Exhibit B -- was Exhibit B a plat
9 of highways prepared by or under the direction of
10 the Department of Transportation?

11 A. Yes.

12 Q. And does Exhibit B fairly and
13 accurately depict, and particularly that point
14 that's highlighted in pink on this exhibit you're
15 looking at, does that depict the area that the
16 Department seeks approval to acquire in this
17 proceeding?

18 A. Yes.

19 Q. And let me show you what I've marked as
20 Exhibit C with regard to this proceeding today and
21 ask you if you recognize that document?

22 A. Yes.

23 Q. And is Exhibit C a true and correct
24 copy of the Wheatland Title Guaranty Company

1 commitment for title insurance that was issued with
2 regard to this acquisition?

3 A. Yes.

4 Q. And who -- who is the -- indicated as
5 the owner of the property that the Department is
6 seeking to acquire in this proceeding?

7 A. Union Pacific Railroad Company.

8 MR. FELDER: Okay. Thank you. And if
9 there's no objection, so I don't forget it, I'd
10 like to offer Exhibits A, B, and C into evidence.

11 MR. SHUMATE: I have no objection on
12 behalf of the Railroad.

13 MR. VERCRUYSSSE: Staff has no
14 objection, Your Honor.

15 JUDGE DUGGAN: All right. Exhibits A,
16 B, and C are admitted.

17 (Petitioner's Exhibits A, B, and C
18 admitted.)

19 JUDGE DUGGAN: And let me point this
20 out, Doug. I don't see anywhere in the petition
21 where it states the relationship of the railroad to
22 the improvement of this U.S. 41 at Illinois 132.

23 MR. FELDER: Okay. Would you like me
24 to proceed with the witness or would you like an

1 answer from me?

2 JUDGE DUGGAN: Well, I mean I think the
3 witness should be testifying to it. It's evidence
4 that shows why you need this property for this
5 project.

6 MR. FELDER: Okay.

7 JUDGE DUGGAN: So the first point is
8 where in the world is the railroad in relation to
9 this project?

10 MR. FELDER: Okay. I was going to get
11 to that, Judge. I just wanted to make sure I
12 offered those in evidence.

13 JUDGE DUGGAN: All right.

14 MR. FELDER: I wasn't resting.

15 Q. Ms. Li, could you look at Exhibit B,
16 the plat of highways, and briefly describe the
17 property that the Department seeks to acquire --
18 or, seeks approval to acquire in this proceeding?

19 A. The Department seeks to acquire
20 approximately a ten-foot strip on the north side of
21 Grand Avenue, which is Illinois Route 132, for the
22 widening of Grand Avenue and the construction of
23 the railroad bridge.

24 JUDGE DUGGAN: Okay. Now, two things.

1 Number one, I'm having a hard time understanding
2 you because of the accent. And two, I heard
3 something about an avenue, and I don't have this
4 plat, so I don't know what you're talking about.

5 MR. FELDER: Do you have the petition?

6 JUDGE DUGGAN: Yep.

7 MR. FELDER: Is the plat attached --
8 the plat should be Exhibit B to the petition.

9 JUDGE DUGGAN: Okay. I do have that.

10 MR. FELDER: Okay.

11 JUDGE DUGGAN: Did she make reference
12 to an avenue?

13 MR. FELDER: Grand Avenue, Your Honor.
14 That's -- Illinois 132 is known as Grand Avenue in
15 that area.

16 JUDGE DUGGAN: Okay. Well, we need to
17 make that kind of thing clear here. So I see U.S.
18 41 and I see Grandview Avenue.

19 MR. FELDER: Yes. We're not speaking
20 -- she was referencing Grand Avenue, which is -- if
21 you're looking at Grandview, to the left, near the
22 left side of the page, if you look at the far left,
23 you can see 132 Grand Avenue along the left border.

24 JUDGE DUGGAN: Hold on.

1 MR. SHUMATE: Tell him it's at the
2 bottom of the exhibit.

3 JUDGE DUGGAN: Well, like I say, I've
4 got an eight and a half by eleven sheet here. It's
5 black and white.

6 MR. FELDER: Okay. Can you see U.S.
7 Route 41 Skokie Highway moving from left to right
8 across the top center?

9 JUDGE DUGGAN: Well, if Exhibit B is
10 the top, then the left is when I'm holding it as a
11 normal sheet of paper.

12 MR. FELDER: Yeah.

13 JUDGE DUGGAN: Are you asking me to
14 hold it landscape?

15 MR. FELDER: Yeah. Hold Exhibit B on
16 the right-hand side.

17 JUDGE DUGGAN: Okay. So we're looking
18 at it as landscape. Okay.

19 MR. FELDER: Yeah. All right. And if
20 you look all the way to the left-hand side.

21 JUDGE DUGGAN: Okay. I now see Grand
22 Avenue, okay.

23 MR. FELDER: You see Grand Avenue.
24 That runs in a fashion in that area -- actually,

1 that's east and west in that area. That's Grand
2 Avenue. And then 41 you can see running in a
3 north-south orientation.

4 JUDGE DUGGAN: All right. So go ahead.
5 Where's the tracks? And you can have -- why don't
6 you tell me and then have the witness tell me? Do
7 you know where the tracks are, Doug?

8 Are we there? Did we lose connection?
9 (Whereupon the videoconference
10 was reconnected.)

11 JUDGE DUGGAN: Are you back?

12 MR. VERCRUYSSSE: Yeah, Your Honor,
13 that's my fault. We're having a terrible audio
14 issue and I was trying to resolve it as we were
15 speaking. It's my fault.

16 JUDGE DUGGAN: What I had asked and I
17 think this much got on the record was: Where are
18 the Union Pacific -- well, now I see Union Pacific
19 which appears to be running parallel to U.S. Route
20 41 and then presumably -- I don't know if it's
21 under or at grade on 132.

22 MR. FELDER: Union Pacific goes over
23 Grand Avenue, 132.

24 JUDGE DUGGAN: Okay. And, Union

1 Pacific, how many tracks have you got there?

2 MR. FELDER: Two.

3 JUDGE DUGGAN: All right. So it runs
4 parallel to Route 41 and over 132; is that correct?

5 MR. FELDER: Yep.

6 JUDGE DUGGAN: Okay. Now we need to
7 put that into evidence. So why don't you have your
8 witness testify to that?

9 MR. FELDER: Okay.

10 JUDGE DUGGAN: Unless everyone wants to
11 stipulate to it. We can stipulate to it. Do you
12 want to stipulate to that, Mack?

13 MR. SHUMATE: We can stipulate to that,
14 Your Honor. Grand Avenue is Illinois Route 132.

15 JUDGE DUGGAN: All right. Somebody's
16 got to quit moving the speaker or pushing papers
17 against it.

18 MR. SHUMATE: I did that. I apologize.

19 JUDGE DUGGAN: All right.

20 Mr. Vercruysse, do you want to stipulate that two
21 UP tracks run parallel and south of U.S. Route 41
22 and over Illinois Route 132?

23 MR. VERCRUYSSSE: Staff so stipulates,
24 Your Honor.

1 JUDGE DUGGAN: Okay.

2 MR. SHUMATE: And the Railroad so
3 stipulates, Your Honor.

4 JUDGE DUGGAN: Very good. Thank you.
5 And you stipulate to that, Mr. Felder;
6 correct?

7 MR. FELDER: Yes, sir.

8 JUDGE DUGGAN: All right. Very good.
9 Now I need to know exactly what's the
10 nature of the project. So I guess, Mr. Felder, you
11 could tell me what it is again and we could
12 stipulate. I just have a hard time understanding
13 the witness.

14 MR. FELDER: Yeah. The project is
15 basically a reconstruction of a bridge that goes
16 over route -- or, goes over Grand Avenue or
17 Illinois 132. The bridge was part of the overall
18 project that is currently underway. We're now at
19 the stage of reconstructing the bridge, and because
20 there's a widening of 132, of Grand Avenue, that
21 bridge has to be essentially demolished and
22 reconstructed. This acquisition is part of the
23 property that's needed from the Railroad in order
24 to accomplish that reconstruction project.

1 JUDGE DUGGAN: Okay. And do you
2 stipulate to that representation, Mr. Shumate?

3 MR. SHUMATE: Yes, I do, Your Honor.

4 JUDGE DUGGAN: Mr. Vercruysse?

5 MR. VERCRUYSSSE: Yes, Your Honor.

6 JUDGE DUGGAN: Okay. And do you also
7 represent that this will not cause any significant
8 interference with Railroad operations, Mr. Felder?

9 MR. FELDER: Yes. This is being
10 undertaken so as not to substantially interfere
11 with Railroad operations.

12 JUDGE DUGGAN: And I guess by that I
13 meant the taking won't interfere and apparently the
14 -- yeah, the taking, as opposed to the
15 construction, the taking will not significantly
16 interfere with Railroad operations. Is that
17 correct, Mr. Felder?

18 MR. FELDER: Yes, sir.

19 JUDGE DUGGAN: Mr. Shumate?

20 MR. SHUMATE: I'm going to have
21 Mr. Venice testify to that.

22 JUDGE DUGGAN: Okay. I was going to
23 try to short-circuit here because he's putting on a
24 -- once again, I can't understand the witness

1 and --

2 MR. SHUMATE: Okay. Well, let me do
3 this, let me ask him --

4 JUDGE DUGGAN: Don't be going asking
5 your witness questions. I mean we'll do that in
6 order.

7 MR. SHUMATE: Okay.

8 JUDGE DUGGAN: But you're not willing
9 to stipulate at this point to that, Mr. Shumate?

10 MR. SHUMATE: Yeah, I can stipulate. I
11 will stipulate it will not interfere with Railroad
12 operations.

13 JUDGE DUGGAN: Mr. Vercruysse, do you
14 stipulate to that?

15 MR. VERCRUYSSSE: Staff so stipulates,
16 Your Honor.

17 JUDGE DUGGAN: Very good. Now let me
18 ask you this: But there are active Railroad
19 operations at this point because those two tracks
20 are active and presently pass over and after the
21 taking and the construction will continue to pass
22 over Route 132. Is that correct, Mr. Felder?

23 MR. FELDER: Yes, sir.

24 JUDGE DUGGAN: Very good. Okay. And

1 again, that's correct, Mr. Shumate?

2 MR. SHUMATE: Yes, it is, Your Honor.

3 JUDGE DUGGAN: And Mr. Vercruysse?

4 MR. VERCRUYSSSE: Yes, Your Honor.

5 JUDGE DUGGAN: Okay. What else do you
6 think you need to put on here? I guess the point
7 that attempts have been made to --

8 MR. FELDER: Yes, sir.

9 JUDGE DUGGAN: -- to acquire this
10 property, but they've been unsuccessful because, as
11 alleged in the petition, the Railroad is -- does
12 not feel that it's able to provide the clear title
13 documentation that IDOT would like. Is that
14 correct?

15 MR. FELDER: That's our position, Your
16 Honor, yes.

17 JUDGE DUGGAN: Well, is that a factual
18 position? Isn't that correct as a fact?

19 MR. FELDER: Yes, sir.

20 JUDGE DUGGAN: Okay. Mr. Shumate, do
21 you stipulate to that?

22 MR. SHUMATE: Yes, Your Honor. We're
23 not in a position to give a warranty deed or the
24 affidavit of title that the Illinois Department of

1 Transportation is requesting.

2 JUDGE DUGGAN: Okay. Mr. Vercruysse,
3 is that your understanding also? Are you willing
4 to stipulate to that, that that's the
5 representation of IDOT that they are unable to
6 obtain the title desired -- the clear title desired
7 from the Railroad due to limitations represented by
8 the Railroad?

9 MR. VERCRUYSSSE: That is Staff's
10 understanding and Staff so stipulates --

11 JUDGE DUGGAN: Very good.

12 MR. VERCRUYSSSE: -- to what the
13 Department and Railroad has stated.

14 JUDGE DUGGAN: Thank you. And then,
15 Mr. Shumate, with the exception of the -- have you
16 got the petition in front of you, Mr. Shumate and
17 Mr. Vercruysse?

18 MR. SHUMATE: Yes, I do.

19 MR. VERCRUYSSSE: Yes, Your Honor.

20 JUDGE DUGGAN: I note that paragraph 9
21 of the petition states the terms of compensation
22 cannot be agreed upon and also that IDOT is unable
23 to acquire the title it needs from the Railroad.
24 And once again, we've just covered the issue of the

1 title IDOT needs.

2 Have you agreed upon compensation,
3 Mr. Shumate?

4 MR. SHUMATE: I -- would you repeat the
5 question, please?

6 JUDGE DUGGAN: Have you agreed upon the
7 terms of compensation to be paid by IDOT for this
8 property?

9 MR. SHUMATE: No. That is still being
10 negotiated.

11 JUDGE DUGGAN: Okay. So then if you
12 would review the allegations of the petition and
13 tell me when you're ready to state whether you can
14 or cannot stipulate to the representation -- the
15 allegations made in the petition.

16 MR. SHUMATE: Let me look at it and I
17 will tell you that.

18 JUDGE DUGGAN: Very good.

19 MR. SHUMATE: We can stipulate to
20 allegation 1, number 2, number 3, number 4, number
21 5, number 6, number 7, number 8 based on the
22 exhibits that we have and the plans, number 9,
23 number 10.

24 JUDGE DUGGAN: Very good. Okay. And

1 then also can you stipulate that the Exhibit A
2 referred to in the petition as attached to the
3 petition is the -- is identical to the Exhibit A
4 introduced into evidence today?

5 MR. SHUMATE: Yes, Your Honor, I can so
6 stipulate.

7 JUDGE DUGGAN: Okay. Mr. Vercruysse,
8 are you able to make the same stipulations with
9 regard to the correctness of the allegations, the
10 representations made in the allegations of the
11 petition?

12 MR. VERCRUYSSSE: Yes, Your Honor.
13 Staff so stipulates to items 1 through 10 and the
14 other provisions that Mr. Shumate had identified.

15 JUDGE DUGGAN: Okay. And you also
16 stipulate that the Exhibit A referenced in the
17 petition is identical to the Exhibit A introduced
18 into evidence today?

19 MR. VERCRUYSSSE: Yes, Your Honor, Staff
20 so stipulates.

21 JUDGE DUGGAN: Okay. And, Mr. Felder,
22 since these are your representations, I assume that
23 you stipulate to the same; is that correct?

24 MR. FELDER: Yes, sir.

1 JUDGE DUGGAN: Very good. Okay. As a
2 supplement to those stipulations, do you have
3 further evidence, Mr. Felder?

4 MR. FELDER: Only one other question I
5 was going to ask if you would indulge us.

6 Q. Ms. Li, is the acquisition of the
7 property that the Department seeks approval to
8 acquire in this proceeding and the construction of
9 the project that's been described in the best
10 interests of public convenience and necessity?

11 A. Yes.

12 MR. FELDER: That's all I have, Judge.

13 JUDGE DUGGAN: Okay. Mr. Shumate, do
14 you have any cross-examination of Ms. Li?

15 MR. SHUMATE: Yes, I do, Your Honor.
16 Thank you.

17 CROSS-EXAMINATION

18 QUESTIONS BY MR. SHUMATE:

19 Q. Ms. Li, I direct your attention to
20 Exhibit A, and that's been represented as a legal
21 description of the property that is necessary to be
22 acquired; is that right?

23 A. That's correct.

24 Q. And the interest that the Illinois

1 Department of Transportation is going to take is in
2 the form of a permanent easement for highway
3 purposes; is that correct?

4 A. That's correct.

5 Q. And on Exhibit B there is an area
6 marked in pink or on the one that was attached to
7 the petition it was near what we've referenced as
8 Grand Avenue. Is that the same property that is
9 covered by the legal description?

10 A. Yes.

11 Q. Okay. And then I want to also direct
12 your attention to Exhibit C, which is the prepared
13 -- it's a title report prepared for this particular
14 project. To your knowledge, is the real property
15 covered by the ALTA commitment form the same
16 property that is covered by Exhibits A and B?

17 A. Exhibit A only covered the area of the
18 taking and the ALTA commitment form covers the area
19 of the whole Railroad property in this section.

20 Q. So the legal description on the title
21 commitment is for more property than is actually
22 covered under Exhibit A and B?

23 A. Yes.

24 Q. Okay. But what's covered by Exhibits A

1 and B is included within the legal description
2 that's covered in Exhibit C?

3 A. Yes.

4 Q. Okay. And two more -- two more
5 questions. One, just to reaffirm, the interest
6 that's going to be acquired by the Illinois
7 Department of Transportation is a permanent
8 easement for highway purposes; is that correct?

9 A. That's correct.

10 Q. And as part of the entire project, when
11 it goes into construction, there will be a
12 Construction and Maintenance Agreement to cover the
13 actual construction of the project?

14 A. Yes.

15 Q. Okay. And that will be between the
16 Illinois Department of Transportation and the Union
17 Pacific Railroad Company?

18 A. That's correct.

19 MR. SHUMATE: Okay. Your Honor, no
20 further questions.

21 JUDGE DUGGAN: Okay. Let me clarify.
22 Mr. Shumate, what you elicited from the witness as
23 I understood it was that the legal description
24 covered by the title commitment encompasses more --

1 more property than is described in the legal
2 description in Exhibit A. Is that correct?

3 MR. SHUMATE: Yes, that was the answer
4 that I received.

5 JUDGE DUGGAN: Okay. Now, let me get
6 something else clear with Mr. Felder. Again, I'm
7 working with an eight and a half by eleven black
8 and white sheet here and trying to find the parcels
9 referenced in the petition, and I cannot figure out
10 which ones are which here. So can you point to me
11 the -- I see you have a PE parcel. Which one is
12 that? Tell me where it's at on this exhibit.

13 MR. FELDER: If you go -- you've got it
14 in the landscape orientation, Judge?

15 JUDGE DUGGAN: Right. And frankly, I
16 see one thing called permanent easement here. I
17 only see one permanent easement. Is that right?

18 MR. FELDER: Yeah. The rest are all
19 temporary easements.

20 JUDGE DUGGAN: Okay. So the one called
21 permanent easement is the one PE referred to in the
22 -- you're going to have to keep away from the
23 microphone and the speaker. Okay?

24 MR. SHUMATE: I apologize. I touched

1 it again.

2 JUDGE DUGGAN: All right. And that is
3 the sole area sought in this proceeding; correct?

4 MR. FELDER: Yes, sir.

5 JUDGE DUGGAN: Okay.

6 MR. FELDER: There's a little box
7 around it and the number 1EU0049PE.

8 JUDGE DUGGAN: Okay. What again I
9 understood from Mr. Shumate's questioning was that
10 the legal description A describes what is depicted
11 on Exhibit B as a permanent easement; correct?

12 MR. FELDER: Yes, sir. That's the
13 legal description of the underlying property.

14 JUDGE DUGGAN: Okay. Yet, Exhibit C,
15 the title commitment legal description would
16 encompass more than is depicted as the permanent
17 easement on Exhibit B; correct?

18 MR. FELDER: Yes, sir.

19 JUDGE DUGGAN: Very good. Okay.

20 Mr. Vercurysse, any cross-examination?

21 MR. VERCRUYSSSE: Yes, Your Honor, just
22 a couple of questions.

23 CROSS-EXAMINATION

24 QUESTIONS BY MR. VERCRUYSSSE:

1 Q. Ms. Li, in terms of the schedule, when
2 is the target letting for the project?

3 A. This project is scheduled for November
4 2014 letting.

5 Q. November 2014 letting. Relative to the
6 land acquisition phase, when would you need a
7 Commission Order to accomplish that?

8 A. As soon as possible.

9 MR. VERCRUYSSSE: Okay. Thank you.
10 Thanks, Ms. Li. Thank you, Your Honor.

11 JUDGE DUGGAN: Okay. Any further
12 evidence, Mr. Felder?

13 MR. FELDER: No, sir.

14 JUDGE DUGGAN: Mr. Shumate, did you
15 want to put in any evidence?

16 MR. SHUMATE: I'd like to call John
17 Venice if I may, please.

18 JUDGE DUGGAN: Okay. He's been sworn.
19 Go ahead and call him.

20 JOHN VENICE,
21 of lawful age, produced, sworn, and examined on
22 behalf of the Union Pacific Railroad Company,
23 testifies and says:

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DIRECT EXAMINATION

QUESTIONS BY MR. SHUMATE:

Q. Mr. Venice, you've been sworn, and would you please state your name for the record?

A. Sure. First name is John, J-o-h-n. Last name is Venice, V-e-n-i-c-e.

Q. Mr. Venice, by whom are you currently employed?

A. Union Pacific Railroad Company.

Q. And in what department do you work?

A. I'm in the Engineering Design Department.

Q. And what is your current position within the Engineering Design Department?

A. I'm a manager of special projects.

Q. Are you familiar with the project which is the subject of today's hearing?

A. Yes, sir.

Q. Have you had an opportunity to visit the site?

A. Yes, we have.

Q. Have you had internal discussions at the Railroad with regard to this project?

A. Yes, we have.

1 Q. Okay. Is the property which is the
2 subject of today's hearing currently Railroad
3 operating property?

4 A. Yes, it is.

5 Q. And the proposed permanent easement
6 that IDOT is -- needs, is that acceptable to the
7 Union Pacific Railroad?

8 A. It is acceptable to the Railroad.

9 Q. Okay. Is the project -- overall
10 project acceptable to the Railroad?

11 A. The overall project is in the design
12 phase and it is acceptable.

13 Q. And as I mentioned before, as is the
14 normal course, would you have a Construction and
15 Maintenance Agreement for bridge projects of this
16 nature?

17 A. Yes, we would.

18 Q. And do you expect to have one of those
19 with the Illinois Department of Transportation as
20 the road authority for this particular matter?

21 A. Yes, we do.

22 Q. Okay. Is there anything I've failed to
23 ask you that you think would be helpful to the
24 judge in this matter in understanding the overall

1 petition?

2 A. No, sir.

3 MR. SHUMATE: Your Honor, I have no
4 further questions.

5 JUDGE DUGGAN: Thank you.

6 Mr. Felder, does this U.S. Route 41
7 also pass over Illinois Route 132?

8 MR. FELDER: Yes, sir.

9 JUDGE DUGGAN: And since there is
10 already an existing bridge carrying Union Pacific
11 tracks over U.S. -- over Illinois Route 132, what
12 is the additional need for a permanent easement for
13 IDOT with regard to the -- presumably the -- I
14 think you talked about the widening of 132.

15 MR. FELDER: Yes. The bridge structure
16 itself will be widened because the road is being
17 widened and it'll require the construction of new
18 piers. And the construction of that bridge and the
19 placement of the piers is the reason for the need
20 for this property.

21 JUDGE DUGGAN: Is it going to be
22 widened on both sides of 132?

23 MR. FELDER: I believe so, yes. Yes,
24 it is.

1 JUDGE DUGGAN: But this permanent
2 easement is only on the east side?

3 MR. FELDER: Yes.

4 JUDGE DUGGAN: Or, excuse me, the north
5 side.

6 MR. FELDER: It's on the north side,
7 that's correct. That's where the widening is
8 occurring.

9 JUDGE DUGGAN: Okay. So the widening
10 is only going to be to the north and that's why the
11 permanent easement needs to be there; is that
12 right?

13 MR. FELDER: Well, there's a need to
14 acquire that property to accomplish the widening.
15 There may be widening on the south that's occurring
16 within the existing right of way where no
17 additional property is needed.

18 JUDGE DUGGAN: Okay. So this is more
19 than just a -- a need for access. This is you're
20 actually going to place piers on this property?

21 MR. FELDER: That's correct in part.

22 JUDGE DUGGAN: Very good. Okay.
23 Anything else, Mr. Felder?

24 MR. FELDER: No, sir.

1 JUDGE DUGGAN: Anything else,
2 Mr. Shumate?

3 MR. SHUMATE: No, sir.

4 JUDGE DUGGAN: Anything else,
5 Mr. Vercruysse?

6 MR. VERCRUYSSSE: No, Your Honor.

7 JUDGE DUGGAN: Okay. Then as we
8 discussed before going on the record, I think we'd
9 like to ask for ex parte waivers on the part of
10 everybody so that Mr. Vercruysse and I may
11 communicate and that also that when the parties --
12 that any draft orders submitted could also be
13 submitted to me in Word form as well as filed on
14 e-Docket and also that the parties can talk with
15 Mr. Vercruysse. So we can all talk amongst each
16 other as long as everybody communicates equally by
17 e-mail.

18 So for those purposes, Mr. Felder, do
19 you waive the ex parte prohibition?

20 MR. FELDER: So waived.

21 JUDGE DUGGAN: Mr. Shumate?

22 MR. SHUMATE: Yes, Your Honor, on
23 behalf of the Railroad we so waive.

24 JUDGE DUGGAN: Mr. Vercruysse?

1 MR. VERCRUYSSSE: Staff waives the ex
2 parte communications. Thank you.

3 JUDGE DUGGAN: Thank you.

4 Also, as we discussed before going on
5 the record, that since we believe the parties can
6 come to terms on what a proper Order should be,
7 that to me the most efficient way to accomplish
8 that within the rules is that Mr. Felder draft an
9 Order, circulate with Mr. Vercruysse and
10 Mr. Shumate, and presume -- and if they are able to
11 come to agreement, or whether they are or not, that
12 Mr. Felder will file as a Draft Order as provided
13 in the rules -- not as a Proposed Order because
14 that's a different thing under the rules, but a
15 Draft Order, an entitled Draft Order, file it with
16 e-Docket, copy me and all the parties with a Word
17 copy, and to do so at least seven days prior to the
18 end of the time we'll set for that so that if any
19 of the parties -- other parties do have a problem
20 with what is filed that they may file their own
21 Draft Orders.

22 And this does not contemplate a back
23 and forth briefing process. This is simply each
24 party can file a Draft Order. Presumably, if the

1 one filed by Mr. Felder is sufficient, the other
2 parties will see no need to file their separate
3 Draft Orders.

4 Following that, if there are no other
5 Draft Orders submitted, I will issue the Draft
6 Order of Mr. Felder following any review or changes
7 I may make as the Administrative Law Judge's
8 Proposed Order, and if we believe that there is
9 agreement, then we can circulate a form for each
10 party to file no exceptions, no objections, and
11 expedite the Proposed Order process.

12 So I think the only thing we need to do
13 is find out if that is agreeable with everybody and
14 then set a date for the Draft Orders to be filed.

15 Mr. Felder, is that process as outlined
16 agreeable with you?

17 MR. FELDER: It is, Your Honor, and
18 whatever date Your Honor sets we will comply with.

19 JUDGE DUGGAN: Okay. Mr. Shumate, is
20 that process agreeable with you?

21 MR. SHUMATE: Yes, the process is
22 acceptable to the Union Pacific Railroad.

23 JUDGE DUGGAN: And Mr. Vercruysse?

24 MR. VERCRUYSSSE: Yes. Thank you.

1 JUDGE DUGGAN: Okay. So tell me how
2 much time you need and add seven days there,
3 Mr. Felder.

4 MR. FELDER: 14 days.

5 JUDGE DUGGAN: Okay. Everybody's going
6 to be around to be able to communicate and get back
7 with him, Mr. Shumate and Mr. Vercruysse?

8 MR. SHUMATE: Yes.

9 MR. VERCRUYSSSE: Yes.

10 JUDGE DUGGAN: And the 14 includes the
11 seven; is that right?

12 MR. FELDER: Yes, sir.

13 JUDGE DUGGAN: Okay. Good deal. Then
14 that day is -- I don't know if anybody's got a
15 calendar. Is that the 6th or the 5th of February?

16 MR. FELDER: 5th. February 5th.

17 JUDGE DUGGAN: Okay. So as long as
18 it's filed on e-Docket on February 5th, then that
19 will be sufficient. If not, I guess you'll send me
20 a motion of some sort for an extension. And I
21 don't think that -- again, that contemplates that
22 you'll actually have it done and filed by seven
23 days so that Mr. Shumate and Mr. Vercruysse can
24 have a chance to file their own versions if they

1 have a concern with it.

2 MR. FELDER: Correct.

3 JUDGE DUGGAN: Okay. Then that being
4 the case, we're going conclude this matter and the
5 record is marked heard and taken. Thank you very
6 much.

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