STATE OF ILLINOIS
BEFORE THE ILLINOIS COMMERCE COMMISSION

ILLINOIS CENTRAL RAILROAD COMPANY, CITY OF LINCOLN, AND THE STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION	)	
Stipulated Agreement regarding improving public safety at the Nicholson Street highway-rail grade crossing of the Company's track in Lincoln, Logan County, Illinois, designated as crossing AAR/DOT #292 764X, railroad milepost 43.85-B.	)	No. T09-0050

HEARING
Springfield, Illinois
January 15, 2014

BEFORE:

Timothy E. Duggan, Administrative Law Judge

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Nicholson Street highway-rail
grade crossing of the Company's
track in Lincoln, Logan County,
Illinois, designated as crossing
AAR/DOT #292 764X, railroad
milepost 43.85-B.

A hearing was held regarding the above-captioned matter on the 15th day of January, 2014, between the hours of 10:00 o'clock in the forenoon and 11:00 o'clock in the forenoon, at the offices of Illinois Commerce Commission, 527 East Capitol Avenue, in Springfield, Illinois, before Pamela K. Needham, CCR, CSR (MO, IL).

APPEARANCES:

Ms. Jennifer R. Kuntz
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Office of Chief Counsel
Illinois Department of Transportation
2300 South Dirksen Parkway
Springfield, IL 62764
(217) 782-3215
(Appearing on behalf of the Illinois Department of Transportation)

Ms. Barbara Myers
Rabin & Myers
1300 South Eighth Street
Springfield, IL 62703
(217) 541-5003
(Appearing on behalf of the City of Lincoln.)

Mr. Michael J. Barron, Jr.
Fletcher & Sippel, LLC
29 North Wacker Drive, Suite 920
Chicago, IL 60606
(312) 252-1500
(Appearing on behalf of the Illinois Central Railroad Company via video conference.)

Mr. Joe Von De Bur
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
(217) 557-1286
(Appearing on behalf of Staff of the Illinois Commerce Commission.)

ALSO PRESENT: Jason L. Johnson
Illinois Department of Transportation
Rail Safety & Project Engineer

William D. Winberg, CPA, CFE
Illinois Department of Transportation
Chief Financial Auditor

The Court Reporter:

Pamela K. Needham, IL CSR, MO CCR
Midwest Litigation Services
711 North 11th Street
St. Louis, MO 63101
314-644-2191

P R O C E E D I N G S

JUDGE DUGGAN: Pursuant to the authority vested in me by the State of Illinois and the Illinois Commerce Commission, I now call a list of dockets that I will read off for a hearing that are going to be consolidated for hearing purposes only, and that is Docket T08-0166. Docket T09-0013, T09-0014, T09-0019, T09-0049, T09-0050, T09-0132, T09-0138, T10-0093, and I believe that is all the dockets.

May we have the appearances for the record, starting with Petitioner?

MR. BARRON: For the Petitioner, this is Michael J. Barron, B-A-R-R-O-N. I'm with the law firm of Fletcher & Sippel, F-L-E-T-C-H-E-R, ampersand, Sippel, and that address is located at 29 North Wacker Drive, Suite 920, Chicago, Illinois, 60606-2832. The phone number there is 312-252-1500, and I'm here on behalf of Illinois Central Railroad Company -- strike that.

I'm here on behalf of Chicago Central Pacific Railroad Company in Docket Number T09-0014. And for the balance of the dockets that Judge Duggan has called the order to order, I am here on behalf of Illinois Central Railroad Company.

JUDGE DUGGAN: Very good. IDOT.

MS. KUNTZ: On behalf of the Illinois Department of Transportation, Jennifer Kuntz, K-U-N-T-Z, 2300 South Dirksen Parkway, Springfield, Illinois, 62764. Telephone number 217-782-0665.

JUDGE DUGGAN: Okay. Ms. Myers, which dockets are you here on?

MS. MYERS: I am here on T08-166 and T09-0050.

JUDGE DUGGAN: Okay. And you're representing the City of Lincoln in both of those dockets?

MS. MYERS: Yes, sir.

JUDGE DUGGAN: Okay, do you want to give us your -- your correct spelling is M-E-Y-E-R-S?

MS. MYERS: M-Y-E-R-S.

JUDGE DUGGAN: Okay, no E, it's just M-Y-E-R-S, and your full name is -- first name is Barbara?

MS. MYERS: Yes, sir.

JUDGE DUGGAN: Okay, you want to give us your office location --

MS. MYERS: Sure.

JUDGE DUGGAN: -- and address?

MS. MYERS: The firm --

JUDGE DUGGAN: Or excuse me, phone number.

MS. MYERS: The firm is Rabin and Myers, PC, the address is 1300 South 8th Street, Springfield, Illinois, 62703. The phone number is 217-544-5003.

JUDGE DUGGAN: Very good. For Commission Staff?

MR. VON DE BUR: Joe Von De Bur, Rail Safety Specialist with the Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, Illinois. Phone is 217-557-1286.

JUDGE DUGGAN: Very good. Okay, and let the record show that we've had a discussion off the record today attempting to streamline the presentation of evidence and to, and the explanation of the evidence. And that that included a remarking of the exhibits, which, in each docket that has been recited, there is attached to the original petition an Exhibit A, and an Exhibit B. That in each docket that Exhibit A is going to be renumbered as Exhibit A-1, the B will remain as B. That in each docket there is a Supplement to the Petition with an Exhibit attached there also designated, labeled as A, and that document will be relabeled as A-2, and

that in each docket there is a late filed exhibit that has been filed in each case attached thereto, being a document labeled Exhibit A, which will be relabeled and introduced as Exhibit A-3.

In each case, the -- the A-1 is identical in each case, being a copy of a letter from the Illinois Department of Transportation to Canadian National, and Mr. Barron, do you want to tell us the relationship between Illinois Central and Canadian National?

MR. BARRON: I actually will, and Ms. Hanna will testify, as well. Canadian National Railway Company is a large Canadian-based railroad. It also owns, through some US subsidiaries, United States Rail Carriers, among whom are Illinois Central Railroad Company and Chicago Central and Pacific Railroad Company, who are the Petitioners before you today. And Canadian National Railway Company acts as accounting agents and performs accounting functions for the benefit of those US railroads.

And Ms. Hanna, as an employee of Canadian National Railway Company, also performs services for the Petitioners.

JUDGE DUGGAN: Okay. So this, this

letter, this Exhibit A-1 being regarding Canadian National Railway Company's United States operation, are you stating that, in fact, Illinois Central accepts it as applying to Illinois Central and the Chicago Central and Pacific Railroad Company, is that correct?

MR. BARRON: That is correct.

JUDGE DUGGAN: Okay. And are the other parties willing to stipulate that that is correct? Ms. Kuntz?

MS. KUNTZ: Yes, Your Honor.

JUDGE DUGGAN: And Ms. Myers?

MS. MYERS: Yes.

JUDGE DUGGAN: And Mr. Von De Bur?

MR. VON DE BUR: Yes, Your Honor.

JUDGE DUGGAN: Okay, very good. And then further show that Exhibit A-1 apparently forwards a letter from the Federal Highway Administration, and that it includes a second letter from Illinois Department of Transportation, and then that is also followed by a report on additive rates for engineering activities, which is apparently a Canadian National Railway Company document, is that correct, Mr. Barron?

MR. BARRON: That is correct, but we

1 would stipulate that that letter and authority
2 applies to all the United States operations of
3 Canadian National Railway Company, including all of
4 its subsidiaries and affiliates that operate in the
5 US.
6 JUDGE DUGGAN: You said something of
7 KNOH. What was that? Something that sounds like
8 KNOH.
9 MR. BARRON: Oh, I meant to say
10 including subsidiaries and affiliates of Canadian
11 National Railway Company.
12 JUDGE DUGGAN: Okay. Is the, is this
13 document that is a part of, of A-1 that is entitled
14 Canadian National Railway Company, United States
15 Operations Report on Additive Rates For Engineering
16 Activities, is that a Canadian National Railway
17 Company prepared document?
18 MR. BARRON: Oh, no, in A-1? The --
19 yes, I, that -- yes, that was, that was prepared by
20 persons in Ms. Hanna's shop in Montreal for the
21 benefit of Canadian National Railway Company's US
22 properties, and that would include Illinois Central
23 Railroad Company and Chicago Central and Pacific
24 Railroad Company.
25 JUDGE DUGGAN: Okay. And the purpose of

Exhibit A-1 is what?

MR. BARRON: The purpose of Exhibit A-1 is to demonstrate that we received authority from the Federal Highway Administration and, both to us and to IDOT, to go ahead and increase our additive rates for engineering projects for work done on and after January 1st, 2010.

JUDGE DUGGAN: Okay. And are you offering -- and once again, and that A-1 is to be identical in each of the dockets, correct?

MR. BARRON: It is an identical document in each of the dockets here today, that is correct.

JUDGE DUGGAN: Okay. And are you asking that it be admitted into evidence in each of the documents for the purposes or -- to establish as you represented.

MR. BARRON: That is correct, we'd be looking to move to Exhibit A-1 in all nine dockets today.

JUDGE DUGGAN: Very good.

MR. BARRON: For the purposes of showing the authority.

JUDGE DUGGAN: Okay. Ms. Kuntz, do you have any objection to the admission of A-1, and do you stipulate that it establishes the authority to

charge additive rates as represented by Mr. Barron?

MS. KUNTZ: We have no objection, and we do so stipulate.

JUDGE DUGGAN: Ms. Myers?

MS. MYERS: We have no objection, and we do so stipulate.

JUDGE DUGGAN: Mr. Von De Bur?

MR. VON DE BUR: We have no objection, and we do so stipulate also, Your Honor.

JUDGE DUGGAN: All right. Very good. Let's go off the record for a second.

(Discussion off the record.)

(Exhibit A-1 was admitted into evidence in all nine dockets at this time.)

JUDGE DUGGAN: Okay, then, and A-3 in each case, again, the document originally was A to the late filed exhibit -- or the prefiled exhibit in each case; is it true that that is identical in each case, Mr. Barron?

MR. BARRON: That is correct, it is identical in each of the nine dockets.

JUDGE DUGGAN: Okay, and who prepared this?

MR. BARRON: This was prepared by Ms.

Hanna.

JUDGE DUGGAN: Okay. And it's your understanding that the intent of it is to show both the federally approved rate, and the Illinois approved rate, because Illinois is not required to necessarily approve all the rates approved by the FHWA, is that correct?

MR. BARRON: That is correct.

JUDGE DUGGAN: Okay. And when we previously approved -- when I previously referred to federally approved rates in reference to Exhibit A-1, that meant they were approved by Federal Highway Administration, correct?

MR. BARRON: That is correct.

JUDGE DUGGAN: Okay. And this document, A-3, shows on the right hand the Illinois approved rate, and I note that it appears to add up percentages to equal 159.61 percent, is that correct?

MR. BARRON: That is correct.

JUDGE DUGGAN: Okay, and even though various components which add up to the 159.61 are reimbursable at different rates, such as small tools, comma, supplies and materials is reimbursable -- or has a approval rate of 20.72

percent, other components are reimbursable at 74.11 percent, yet is it your understanding that these are allowed to be all combined into one composite engineering surcharge rate which is --

MR. BARRON: Yes, that's our under --

JUDGE DUGGAN: -- which is arrived at --

MR. BARRON: That is our understanding.

JUDGE DUGGAN: Which is arrived at by totaling the component rates, is that correct?

MR. BARRON: That is correct, that is our understanding.

JUDGE DUGGAN: Okay, and by that, based upon that, you have been, you are going to submit expenses for approval at a, at the rate 159.61 percent, which is going to translate into 1.5961, correct?

MR. BARRON: That is correct.

JUDGE DUGGAN: Okay. And also on Exhibit A-3, I note that it has an additional surcharge for projects using work trains of 9.71 percent, but you are not asking that expenses be reimbursed at the rate that that would produce, but without that additional surcharge, correct?

MR. BARRON: That is correct.

JUDGE DUGGAN: And is that because the

projects upon, which are, the projects upon which you are asking contributions for at these rates did not involve using work trains.

MR. BARRON: That is my understanding, and we would be willing to stipulate to that.

JUDGE DUGGAN: Very good.

MR. BARRON: For all dockets.

JUDGE DUGGAN: And so are then, are you asking that A-3 be admitted into evidence in each docket with the understanding that that is what it represents?

MR. BARRON: Yes, we are moving to admit document A-3 in all dockets.

JUDGE DUGGAN: Okay. Ms. Kuntz, do you have any objection to the admission of A-3 and for its admission for the purpose of documenting with -- as represented by Mr. Barron?

MS. KUNTZ: No objection.

JUDGE DUGGAN: Ms. Myers?

MS. MYERS: No objection, Your Honor.

JUDGE DUGGAN: Okay. Mr. Von De Bur?

MR. VON DE BUR: No objection.

JUDGE DUGGAN: Okay. And again, you'd stipulate that, that the other representations he made are also correct?

MS. KUNTZ: That is correct, we would stipulate.

JUDGE DUGGAN: Ms. Myers?

MS. MYERS: That's correct.

JUDGE DUGGAN: Mr. Von De Bur?

MR. VON DE BUR: That's correct, Your Honor.

JUDGE DUGGAN: Very good. Okay.

(Exhibit A-3 was admitted into evidence in all nine dockets at this time.)

JUDGE DUGGAN: Now the other two exhibits in each case are unique to each case, is that correct, Mr. Barron?

MR. BARRON: That is correct.

JUDGE DUGGAN: Okay. So in each case, Exhibit B, which remains labeled as Exhibit B, which was attached to the petition to reopening each case, basically summarily states the total additional amount claimed, is that correct?

MR. BARRON: That is correct.

JUDGE DUGGAN: Okay. And then Exhibit A-2, which is attached to the supplement to the petition in each case, or which was initially labeled A and now is labeled A-2, is a breakdown of

the previously submitted invoices at the adjusted rate, which is retroactive to January 1, 2010, is that correct?

MR. BARRON: That is correct.

JUDGE DUGGAN: Very good. And so are you offering Exhibits B and A-2 as B being the statement of the amount that you're asking to be approved, and A-2 being, in each case being the breakdown of the amounts stated in B in each case?

MR. BARRON: That is correct. Exhibit B is just the amount we're seeking to get approved, and then A -- and then A-2 is the breakdown showing how we arrived at that figure, applying the additive rate to the, to previously submitted invoices just -- and it's really more meant to be an illustration of Ms. Hanna's testimony.

JUDGE DUGGAN: Okay. And for my clarification, in each case A-2 has a labor column on the left, followed by an old rate column, followed by a labor overhead column, is that correct?

MR. BARRON: That is correct.

JUDGE DUGGAN: And in each case there is a, the top breakdown is under original invoices, and the bottom breakdown is under new invoices, correct?

MR. BARRON: Correct.

JUDGE DUGGAN: Okay. And in fact, it is intended that the first column under labor, the amount under labor be multiplied by the rate column, resulting in the amount under the labor overhead column, is that correct?

MR. BARRON: That is correct.

JUDGE DUGGAN: And in at least one case, that being T09-0050, there is an amount under the new invoice breakdown which is less than the amount in the original invoice column, and that means that you are no longer requesting the reimbursement where, for the greater amount in the original invoice breakdown, and that you are netting out that adjusted request for reimbursement in the total net reimbursement column, is that correct?

MR. BARRON: That is correct, but Ms. Hanna just whispered something to me which I think is relevant to my previous answer, so I think I may need to clarify something. What did I need to clarify?

JUDGE DUGGAN: Let's go off the record. Go off the record. Go ahead.

(Discussion off the record.)

JUDGE DUGGAN: Back on the record. And

off the record the witness has discussed, who hasn't been sworn yet, but I'll tell you what we will do here -- well, let me just try it this way.

It's my understanding that the reason that the equipment amount in T09-0050, which was an example of a reduced amount, in other words, the new invoice is zero, the original invoice is three thousand six six -- $3,660.00 for that item, it was explained that that is because the equipment is now rolled into --

THE WITNESS: The overhead rate.

JUDGE DUGGAN: The rate which may be applied to the overhead, even though the overhead -- excuse me. The rate which may be applied to labor, even though the labor amount has not increased.

Now is that a correct statement, Mr. Barron?

MR. BARRON: Yes, that is correct.

JUDGE DUGGAN: Okay. And you stipulate to that, Ms. Kuntz?

MS. KUNTZ: Yes, Your Honor.

JUDGE DUGGAN: Ms. Myers?

MS. MYERS: Yes, Your Honor.

JUDGE DUGGAN: Mr. Von de Bur?

MR. VON DE BUR: Yes, Your Honor.

JUDGE DUGGAN: Very good. With that understanding of what -- I forgot where we were at, hang on. We didn't do either B or A yet.

(Discussion off the record.)

JUDGE DUGGAN: Back on the record. Okay. With that understanding as to the description of what B is submitted for as the total amount claimed in A-2 in each case being the breakdown of the amount claimed in each case, are you offering B and A-2 into evidence in each case, Mr. Barron?

MR. BARRON: Yes, we are offering those into evidence in all dockets.

JUDGE DUGGAN: Okay. And without any prejudice to, to cross examining or challenging these documents, but simply noting that they are being offered for the purpose of stating the claim of Petitioner in each case, do you have any objection to the admission of B and A-2, Ms. Kuntz?

MS. KUNTZ: No, Your Honor.

JUDGE DUGGAN: Ms. Myers?

MS. MYERS: No, Your Honor.

JUDGE DUGGAN: Mr. Von de Bur?

MR. VON DE BUR: No objection, Your Honor.

JUDGE DUGGAN: Very good. Okay, then

Exhibits A-1, A-2, A-3 and B in each case are admitted into evidence.

(Exhibits A-2 and B were admitted into evidence in all nine dockets at this time.)

JUDGE DUGGAN: All right. Now let the record show that in Docket T09-0013, that the Township of Freeburg filed a Statement of No Objection, that there are no other road authorities appearing here today, except for the City of Lincoln by Ms. Myers, and Ms. Myers, you wanted to make clear that nothing here today would result in any greater costs or obligations upon the City of Lincoln with regard to the projects in each petition, is that correct?

MS. MYERS: That's correct, Your Honor.

JUDGE DUGGAN: Okay. And I believe that it was suggested that possibly we could make that clear for every case, that even though a municipality or a road authority did not appear, that in each case, the Petitioner is not asking that any greater obligations be put on the road authority, and neither IDOT nor Staff is suggesting that, and this is purely to approve, as stated in the Petition the, either the increased amount or

reobligation of, of previously approved amounts in each case, and that the, it is not intended that the Commission intends to, to impose an obligation on the, any greater obligation than in the original order on the municipalities.

Is that your request, and you stipulate that that's the case, Mr. Barron?

MR. BARRON: Yes, I can stipulate to that.

JUDGE DUGGAN: Okay. Ms. Kuntz?

MS. KUNTZ: Yes, Your Honor.

JUDGE DUGGAN: And Mr. Von De Bur?

MR. VON DE BUR: Yes, Your Honor.

JUDGE DUGGAN: Okay. And is that sufficient, or do you want to -- anything else you want to do to make sure that you're covered?

MS. MYERS: I think that's all I need to know.

JUDGE DUGGAN: Okay.

MS. MYERS: Thank you.

JUDGE DUGGAN: Okay.

MS. MYERS: Well, actually, now that I'm thinking about it, maybe this is just, you know, wearing a belt and suspenders, but just as long as we're all clear that there won't be any additional

obligations or Lincoln or any of the other communities, and that all of the increases we're talking about would be coming out of the Grade Crossing Protection Fund.

JUDGE DUGGAN: Correct.

MS. MYERS: Is that -- is that fair to say?

MR. BARRON: That is correct.

MS. MYERS: Okay. That's all I need; thank you.

JUDGE DUGGAN: And that you will get a proposed order that you can -- that allows you to file exceptions and, you know, and file briefs and complain to the Commission, but there's going to be no evidence nor presentation today in support of that, that's for sure, okay?

MS. MYERS: Okay.

JUDGE DUGGAN: Or in support of any obligations --

MS. MYERS: Sure.

JUDGE DUGGAN: -- on behalf of Lincoln.

MS. MYERS: Yeah.

JUDGE DUGGAN: But you will have a chance to review an order and to object to it and file your exceptions and arguments as you see fit,

so somehow the order will come out differently, okay?

MS. MYERS: Thank you, Your Honor, I appreciate it.

JUDGE DUGGAN: All right. Okay, Mr. Barron, you want Mrs. -- Ms. Hanna to testify?

MR. BARRON: Yes. Just some questions for her today that I think would definitely help explain and make the record clear.

JUDGE DUGGAN: Very good. Okay, Ms. Hanna, do you want to waive your right hand?

Oh, no, off the record.

(Discussion off the record.)

JUDGE DUGGAN: Okay, back on the record, Mr. Barron. Ms. Hanna, do you want to waive your right hand?

NANCY HANNA,

of lawful age, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth in the case aforesaid, deposes and says in reply to oral interrogatories propounded as follows, to-wit:

JUDGE DUGGAN: Thank you very much. Do you want call your witness, Mr. Barron?

MR. BARRON: I call Ms. Hanna to the

stand.

EXAMINATION

QUESTIONS BY MR. BARRON

Q. Ms. Hanna, please state and spell your name for the record.

A. Nancy Hanna. N-A-N-C-Y, H-A-N-N-A.

Q. And this is a little bit unusual that the court reporter is in Springfield, so we want to make sure we're talking slower than a normal conversational tone to make sure all is picked up on the record.

Could you go ahead and tell me who your current employer is?

A. Canadian National Railway.

Q. And could you give me your educational background?

A. I have a Bachelor's Degree in business administration, and I have a graduate diploma in accounting, and I am also a Canadian CPA.

Q. And how many years have you been employed by Canadian National Railway Company?

A. I have been employed at CN sixteen years.

Q. And starting from the beginning, could you briefly describe the positions you have had at

Canadian National Railway Company?

A. Yes, I started in Treasury, eight years in Treasury as Chief Accountant of Treasury. I then moved to Accounting under Nonfreight Management, first as a regional partner for two years, and then as manager of Project Invoicing for I guess about six years, and just recently promoted to Senior Manager of Nonfreight Invoicing and Optimization.

Q. And in your current role, could you describe what you do?

A. Yes. I am responsible for all of the nonfreight billing areas, which would include construction projects, flagging, recoverable services, maintenance, and joint facilities.

Q. And do you perform these services on behalf of Canadian National Railway Company and all of its affiliates, including Illinois Central Railroad Company, and Chicago Central and Pacific Railroad Company?

A. I do.

Q. And please describe what the railroads are seeking here today.

A. Today our, our goal is to seek reimbursement for the differences in the revised overhead rates for all charges incurred as of

January 1st, 2010.

Q. And Ms. Hanna, the Administrative Law Judge has already admitted the exhibits into evidence, and we've stipulated to what those exhibits are. What I'm going to ask you to do is to go ahead, and we're going to take two of the dockets that are currently up for hearing. They both involve the City of Lincoln, that's T09-0050, and T08-0166. And taking 09-0050 first, and then following up with T08-0166, could you go ahead and describe how the additive rates that were approved by the Federal Highway Administration and adopted by IDOT manifested themselves into the bill which is Exhibit B on all the dockets, and in particular, use Exhibit A-2 to show how those rates were applied to the invoices. And again, start with T09-0050.

A. Okay. I will -- I'll walk through the exhibit through all of the column.

Q. And that's Exhibit A-2.

A. A-2. I will walk through the column. So what, especially what we did was to look at, on a project-by-project basis, all the invoices that we submitted to IDOT, the original invoices, and we went through to break them out into their different components so we could identify which ones were

affected by the increase in the additive rates.

The first column the original, the invoice numbers, and the top second is the original invoices calculated at the original rate, and the bottom section is, in essence, the same invoices, but calculated at the new rate.

So the first column is labor, so that would be all of the direct labor charges incurred on each invoice. The next column is the rate column, so under original invoice, we have the original rate that we would have charged, the 89.34, and under the new invoices we would have the new approved rates at the 1.5961.

The third column is the labor overhead column, and that is basically a product of labor times rate. So this would be, this would be the direct charges times the rate to give you the overhead component. The next column after that is materials. There is, there was no change in the material overhead rate, so there's no adjustment there.

Equipment is the following column. So equipment is, in the old rate was billed as a separate charge, a direct charge, but in the new rate it is incorporated as one of the components.

So in order to avoid double billing, we removed any equipment charges, as they would be calculated as part of the 1.5961.

After that we have outsourced services, which again, there is no additive rate that applies to that, so that would be the same. Business expenses is the next category, that would be anything like, you know, expense accounts or, or expenses incurred by employees, which also do not have any overhead components. And other would be other services that we might have contracted or other charges that again, would not change from the old -- original to the new, since there is no overhead component.

So we took the total of the charges, plus any overheads, multiplied it by the portion, so the portion is actually the recoverable portion from IDOT, so in this case it's 95 percent, to come up with the net due that we would be claiming from the State.

So originally on this, this project, we would have claimed $160,465.87. If we were to bill at the new additive rate, it would be at, the total would be 123,843.56 -- $123,843.56. The difference between the original invoices and the new invoices

is the $7,377.69, which is Exhibit B, Invoice 90542286, which we submitted from payment from IDOT.

Q. And Ms. Hanna, one of the items that has been raised is that the additive rates only apply to costs incurred after January 1st, 2010. Could you go ahead and take Exhibit A-2 for T08 dot 0166, and go to A-2 and show how the railroad in its figuring accounted for the fact that it was only allowed to apply this additive rate for bills -- or for costs incurred after January 1st, 2010?

A. Yes.

Q. And again, now we're referring to Exhibit A-2 at T08-0166.

A. Yes, so if you look at the Exhibit A-2 from T08-0166, there was, when you look at the original invoice, there are the same number, 90501297, was broken out by the costs, the year that the costs were incurred. So the 2009 labor at $9,521.41, if you look at the same thing under the new invoice is, you know, when we do our calculation, we consider that we would still bill it at the old rate of .8934.

So we backed out any 2009 charges, as the rates were not in effect as of that date. So our calculation takes this into consideration.

MR. BARRON: And at this point, the rest of the testimony I prepared for Ms. Hanna, or the rest of the questions were focused on what the exhibits are. At the -- when you called the hearing to order, we went ahead and described the exhibits and stipulated to what they were and admitted them, so unless folks want me to, I was not going to go ahead and have her actually describe the exhibits. I certainly can, but I just don't want to waste time unnecessarily.

JUDGE DUGGAN: I don't see any need to do so. So -- and they're already admitted, so unless somebody else wants them, speak up.

(No response.)

JUDGE DUGGAN: I don't hear anything.

MR. BARRON: Now if I were to have Ms. Hanna testify to all the dockets, she would say the same thing, the procedure and the formulas were the same, and the process used was the same. Obviously there's different numbers for different projects, but her testimony would be identical on all nine dockets.

At this point, Ms. Hanna has delivered the testimony that we felt I needed to testify today. I tender her for any cross examination, but,

and if any redirect is necessary I'll do it, but at this point I open it up for questioning before Staff, other parties, and Judge Duggan.

JUDGE DUGGAN: Well, let's do this, I think you said you were also going to have her do the same with T08-0166, correct?

MR. BARRON: Well, she, yeah, I can have her go ahead and do that same process again. She, she just talked about that to describe how we backed out the '09 rates, but I can have her walk through the process for T08-0166.

JUDGE DUGGAN: Okay. So you're saying her testimony would essentially be the same with the different numbers on the other docket, correct?

MR. BARRON: That is correct.

JUDGE DUGGAN: Okay. The only thing I have before I turn it over to others for, for questioning is where is the documentation that shows that this is just 2010 expenses? Incurred expenses?

THE WITNESS: Well, that, that would be all the, we went through all the original invoices and looked at the date of the charges incurred.

MR. BARRON: Now we did not, those, of course those invoices were all previously submitted to IDOT. I did not make them part of this record, I

do have copies of them here today if people might want to, me to look at them. I did not -- and I could file them as late exhibits if people want to, but just given the volume of it, at this point I was holding off to see if folks wanted me to actually file all the exhibits, or file all the old invoices as exhibits.

JUDGE DUGGAN: Okay. Well, once again, before we go through more, does IDOT know what its position is at this point?

MS. KUNTZ: Yes.

JUDGE DUGGAN: Okay, IDOT does.

MS. KUNTZ: Yes.

JUDGE DUGGAN: Okay. Has IDOT reviewed the prior invoices to know that this is only those from January 1, 2010?

MS. KUNTZ: No, we have not.

JUDGE DUGGAN: Is IDOT nonetheless satisfied?

MR. BARRON: And I guess --

JUDGE DUGGAN: Okay. Off the record.

(Discussion off the record.)

JUDGE DUGGAN: Okay, back on the record.

Okay, so Ms. Kuntz, you were going to state whether proof of, that this was only post

January 1, 2010, expenses, or that that made a difference to your position here today, or whether you've, it's been reviewed by your staff?

MS. KUNTZ: Yes, it has been reviewed by staff, and their submittal of the invoices will be subject to the date after January 1st, 2010.

JUDGE DUGGAN: Okay. You said the submittal.

MS. KUNTZ: That's correct.

JUDGE DUGGAN: Okay. So there's going to be a further IDOT review before any reimbursements will be made to insure that those number are correct.

MS. KUNTZ: That is correct.

JUDGE DUGGAN: Okay. Mr. Von De Bur, do you have something to add to that, or is that it?

MR. VON DE BUR: The statement made that the invoices were reviewed and only those invoices for expenses incurred after January 1, 2010, is -- we find satisfactory.

JUDGE DUGGAN: Okay. Okay, any questions, Ms. Kuntz?

MS. KUNTZ: No, Your Honor.

JUDGE DUGGAN: Okay. Ms. Myers?

MS. MYERS: No, Your Honor.

JUDGE DUGGAN: Mr. Von De Bur.

MR. VON DE BUR: No, Your Honor.

JUDGE DUGGAN: Okay. So the amounts that are being requested for approval in the Exhibit B of each case, then actual payment of those amounts are still subject to a further review to determine they were actually incurred, that they were incurred after January 1st, and they otherwise meet the requirements of the Commission, is that correct, Mr. Von De Bur?

MR. VON DE BUR: That is correct, they will be reviewed by IDOT, who is the, the billing authority and has the authority to make the payment.

JUDGE DUGGAN: And that's your understanding, Ms. Kuntz?

MS. KUNTZ: Yes, Your Honor.

JUDGE DUGGAN: Very good. Okay. So if Mr. Barron has presented his evidence, and there's been no further cross examination, I think the only other things I wanted to do was to review what we did off the record, and I assume that these, and this is, which of these are purely reobligations of GCPF funding previously approved but deobligated, and now they're asked to be reobligated in the amounts that include the new, the new rates. There

are some cases that fit that category only, and there is other cases that fit other categories, so I believe that these would be a matter of Commission record upon which an order could be drafted, but nonetheless, I'd like to determine that, that, in fact, it's true a part of the Commission record, and secondly, get the clarification of everybody that this is, that -- of which category these cases fall into.

So it's my understanding the following cases, the Petitioner is merely asking for a reobligation of GCPF funding previously deobligated, but now in an amount which is calculated at the additional rate for expenses incurred after January 1, 2010. And that would be Dockets T dash -- excuse me, T09 13, 14, 19, 49, and 50. Is that correct, to your understanding, Mr. Barron?

MR. BARRON: I believe, could you go ahead and get that, and read those numbers again?

JUDGE DUGGAN: Sure.

MR. BARRON: Just to make sure I got it?

JUDGE DUGGAN: Yeah, they're all the T09 cases -- all T09 cases, which are 13, 14, 19, 49 and 50.

MR. BARRON: I believe that is my

understanding.

JUDGE DUGGAN: Well, let me ask this of Mr. Von De Bur in the meantime. Mr. Von De Bur, would that, would it show by Commission records which are, which are reobligations, which have been deobligated, et cetera?

MR. BARRON: It, it should, because I, when I went ahead and did the petitions, I made it very clear in the pleadings, that was based on the actual record of what had been deobligated in the docket, and I will, of course, reflect all that in the, in the drafts that I propose.

JUDGE DUGGAN: Okay. I'm just trying to make sure that whatever we need on the record is on the record.

MR. BARRON: Right.

JUDGE DUGGAN: And Mr. Von De Bur?

MR. VON DE BUR: Yes, I, I have a list here that shows which ones, if reobligated, would cover the requested amounts, and I show those as T09-19, T09-14, T09-49, T09-13, and T10-93.

JUDGE DUGGAN: And so in other words, you're saying that even with the amounts requested as total requested shown in Exhibit B in each case as calculated with the new rate for expenses

incurred since January 1st, 2010, they would still fall under the amount previously obligated by the original order. Or supplemental order.

MR. VON DE BUR: Either under or at that amount, yes. Reobligation of the original -- all or some part of the original amount.

JUDGE DUGGAN: Okay.

MR. VON DE BUR: Would cover the requested amount.

JUDGE DUGGAN: Okay. So it's a reobligation of the previously approved amount rather than a, an increased amount, correct?

MR. VON DE BUR: A reobligation of all or part of the original amount.

JUDGE DUGGAN: But not more.

MR. VON DE BUR: In these instances, yes.

JUDGE DUGGAN: Okay. Then what about T09-50?

MR. VON DE BUR: Additional funds would have to be obligated.

MR. BARRON: Just hang on one second, I'm checking that. Let's see. Oh, yeah, yeah, you're right, there, in T090 we're asking for an additional obligation of, of roughly 3000 -- or

actually 3,606 dot 56.

JUDGE DUGGAN: Okay. So there -- and the reference you just made, Mr. Barron, was to T09-50, correct?

MR. BARRON: Correct.

JUDGE DUGGAN: Okay. So in fact, there is a reobligation plus an increase based upon the new adjusted rate, correct?

MR. BARRON: Correct.

JUDGE DUGGAN: Okay. Then my statement that there is just a reobligation of the previously approved amounts, even with the new adjusted rate, would mean that that would be T09-13, 14, 19 and 49, would all fall into a reobligation of the previously approved amount, is that correct, Mr. Barron?

MR. BARRON: I believe -- yes, that is correct. I'm going through here, yes.

JUDGE DUGGAN: Okay. And does that sound right to you, Mr. Von De Bur?

MR. VON DE BUR: That is correct; I would also add T10-93 to that list.

JUDGE DUGGAN: Okay, so T10-93 would also fit that list. Would you agree with that, Mr. Barron?

MR. BARRON: Yes.

JUDGE DUGGAN: Okay. And then the cases where there would not be a reobligation in T09 -- excuse me, T09-138 and T08-166 do not require reobligations, but are actually, acts -- asking for an increased amount based upon actual costs over estimated costs, so that they are asking for an increase from the original order, is that correct, Mr. Barron?

MR. BARRON: That is correct.

JUDGE DUGGAN: And is that your understanding, Mr. Von De Bur?

MR. VON DE BUR: Could you give me that list one more time, please?

JUDGE DUGGAN: It's just two cases that fall under that category, T09-138 and T08 dash 166.

MR. VON DE BUR: I believe T09-132 also falls into that category, Your Honor.

JUDGE DUGGAN: Okay, it's my understanding that T09-132 was not -- did not involve actual -- an increase based upon actual costs over estimates.

MR. BARRON: Oh, you know what? You know, I might have gotten confused, I think that's, T09-0132, that's the one -- let me check that. Bear with me here.

JUDGE DUGGAN: Yeah, it was my understanding --

MR. BARRON: I was mistaken.

JUDGE DUGGAN: It was my understanding that that increase, it did not involve reobligation, but the increase was not based upon actual cost over estimates, it was simply based upon the new rate.

MR. BARRON: You are correct, that is correct on T09-0132.

JUDGE DUGGAN: Okay.

MR. BARRON: I was, I was mistaken in my description there.

JUDGE DUGGAN: Okay. And I think that covers all the cases and puts them in one of those categories, which we've agreed, as I say, that I think that that could be done with looking at old orders and numbers, so there should be sufficient there for the record and to write that order, but is anybody -- Mr. Von De Bur has agreed to the categorization, Mr. Barron has agreed with the categorization; do you have any reason to disagree with those categories, Ms. Kuntz?

MS. KUNTZ: No, Your Honor.

JUDGE DUGGAN: Ms. Myers?

MS. MYERS: No, Your Honor.

JUDGE DUGGAN: Very good. Okay. Off the record.

(Discussion off the record.)

JUDGE DUGGAN: Okay, off the record Ms. Kuntz for IDOT asked for the following clarification, that in the next to last column of Exhibit A-2 in each case where it states: A portion which is representative -- which is intended to represent the portion of contributions for the Grade Crossing Protection Fund, that we want to clarify that that is not intended to be conclusive by admission of the exhibit or testimony from the exhibit, but, in fact, that the correct percentage is to be determined by reference to the operative and controlling commission order, and that the Exhibit A-2 should be read and interpreted accordingly, and that the IDOT would, IDOT and Commission would, of course, apply it according to the operative orders. Is that your understanding for clarification, Ms. Kuntz?

MS. KUNTZ: Yes, Your Honor.

JUDGE DUGGAN: Okay. Is that your understanding of how this should be interpreted, Mr. Barron?

MR. BARRON: Yes.

JUDGE DUGGAN: And Ms. Myers?

MS. MYERS: Yes, Your Honor.

JUDGE DUGGAN: And Mr. Von De Bur.

MR. VON DE BUR: Yes, Your Honor.

JUDGE DUGGAN: Very good. Off the record again.

(Discussion off the record.)

JUDGE DUGGAN: Okay, back on the record. Again, prior to going on the record, we discussed that because we don't have, we only have one of the road authorities represented here today, that we can't really get an ex parte waiver; however, I am going to request that Petitioner submit a draft order pursuant to the Commission rules. Any other party desiring to submit a draft order may do so. I would hope and request that you are able to communicate with each other prior to Mr. Barron submitting that draft order that he circulated so that IDOT and the City of Lincoln may have some input into that so that when a draft order is filed, it will hopefully represent the concerns of those parties who have participated to the extent that it is able to do, and, of course, to the extent that any other party chooses to state an objection thereto, just file your own draft order.

But let's see. And then hopefully it will be in such a format that, that I can work with that, and then, then I will issue a proposed order in each case.

Mr. Barron, are there certain time lines involved here? Are we up against any deadlines?

MR. BARRON: Well, I will go ahead and prepare the draft orders as quickly as possible. I will work with Counsel for Lincoln and Counsel for the State to get their approval on the drafts, so that way when I do submit them as proposed orders, I at least have the approval of all the parties that have appeared here today.

With regard to the Word version, I'm going to get a copy of the Word version, shall I send it to Mr. Von De Bur who will submit it to you, or should I send it to you directly, Judge?

JUDGE DUGGAN: Do whatever you feel works for you. You can send it to the, to the service list.

MR. BARRON: Okay.

JUDGE DUGGAN: But if you can send a courtesy copy to me, that's fine.

MR. BARRON: What is your email, Judge? That's a key thing, because I will send it by --

JUDGE DUGGAN: Probably call --

MR. VON DE BUR: Send it by mail.

JUDGE DUGGAN: What's that?

MR. VON DE BUR: I can see that you receive those documents, Your Honor.

JUDGE DUGGAN: Let's go off the record.

(Discussion off the record.)

JUDGE DUGGAN: Very good, back on the record.

Okay, off the record I believe you've informed me, Mr. Barron, that you have no looming deadlines that you're concerned about losing funding here, and that you would like 30 days to submit your draft order, correct?

MR. BARRON: Yes.

JUDGE DUGGAN: Okay. And you'll also, I think you referred to prior orders approving increased funding that you've been involved in to help guide you in some respects, correct?

MR. BARRON: Yes. And what I'll do with that, just to make sure I'm clear, besides going to the service list and a copy to Joe all at the same time, and a copy to the Judge when I file it, is I also then just file it as an actual proposed -- or as a draft order on the actual E Filing System, so

then I make sure I'm following the protocol correctly.

JUDGE DUGGAN: Absolutely, absolutely. In each case you're going to file it as a draft order, and you're going to call it a draft order, not a proposed order, because the Commission rules provide that the ALJ issues a proposed order --

MR. BARRON: Okay.

JUDGE DUGGAN: -- but there is provision for parties to submit draft orders, so those, those are designations for documents that are provided for by rule, and if you call it a proposed rule -- or a proposed draft, it screws things up.

MR. BARRON: Very good.

JUDGE DUGGAN: So just call it what it is, a draft, draft order, not even a suggested order -- or just call it draft order, because that's what the rule says.

MR. BARRON: Sure.

JUDGE DUGGAN: Okay. I think that takes care of the hearing today. Nothing else, mark the record heard and taken. Very good, thanks. All righty.

(Discussion off the record.)

JUDGE DUGGAN: Back on the record.

We're reopening for the purpose of taking IDOT's position and Staff's position. IDOT's position?

MS. KUNTZ: We have no objection, Your Honor.

JUDGE DUGGAN: On any of the cases, correct?

MS. KUNTZ: That is correct.

JUDGE DUGGAN: Staff's position?

MR. VON DE BUR: Staff has no objection to any of the petitions as filed.

JUDGE DUGGAN: Okay. Ms. Myers, do you want to state your position?

MS. MYERS: Based on our stipulation earlier, we have no objection.

JUDGE DUGGAN: Very good. Okay, thank you.

MS. MYERS: Thank you.

JUDGE DUGGAN: But we'll still send a proposed order in your case.

Okay. All right. Anything else? I think, and obviously Staff is, Staff is free to file a draft order stating their position as you will, and same for Ms. Kuntz. Anything you feel that you need to be, that otherwise is not on the record that you feel needs to be included that -- of course,

evidence has been taken, but --

MR. VON DE BUR: Right.

JUDGE DUGGAN: -- other things that, you know, your position on anything if you have an attitude about it, you can let us know.

All right. Now the record is marked heard and taken. Thank you.

MR. BARRON: Okay, thank you.

(Hearing adjourned.)

CERTIFICATE OF REPORTER

I, Pamela K. Needham, Certified Court Reporter, Notary Public within and for the State of Missouri, do certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

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