

1 STATE OF ILLINOIS
2 ILLINOIS COMMERCE COMMISSION

3 CITY OF CHICAGO,)
4)
5 Petitioner,)
6)
7 vs.) No. T07-0096
8)
9 CSX TRANSPORTATION, INC.,)
10 NORFOLK SOUTHERN RAILWAY)
11 COMPANY, and BALTIMORE &)
12 OHIO TERMINAL RAILROAD)
13 COMPANY,)
14 Respondents.)

15 Chicago, Illinois
16 February 11, 2014

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

18 BEFORE:

19 MS. LATRICE KIRKLAND MONTAQUE, Administrative Law Judge

20 APPEARANCES:

21 ILLINOIS COMMERCE COMMISSION, RAILROAD SECTION, by
22 MR. BRIAN VERCRUYSSÉ
23 527 East Capitol Avenue
24 Springfield, Illinois 62701
25 Phone: (312) 636-7760
E-mail: bvercruy@icc.illinois.gov

On behalf of the Illinois Commerce Commission;

26 CITY OF CHICAGO, DEPARTMENT OF LAW, by
27 MR. ORIJIT K. GHOSHAL
28 30 North LaSalle Street
29 Suite 1400
30 Chicago, Illinois 60602
31 Phone: (312) 744-6936
32 E-mail: orijit.ghoshal@cityofchicago.org

On behalf of the Petitioner City of Chicago;

1 APPEARANCES: (Continued)

2 MacCABE & McGUIRE, by
3 MR. DAVID R. SCHMIDT
4 77 West Wacker Drive
5 Suite 3333
6 Chicago, Illinois 60601
7 Phone: (312) 357-2600
8 E-mail: dschmidt@maccabe-mcquire.com

9 On behalf of the Respondent CSX
10 Transportation, Inc., and Baltimore & Ohio
11 Terminal Railroad Company;

12 ROCK, FUSCO & CONNELLY, LLC, by
13 MR. PAUL D. STREICHER
14 321 North Clark Street
15 Suite 2200
16 Chicago, Illinois 60654
17 Phone: (312) 494-1000
18 E-mail: pstreicher@rockfuscoconnelly.com

19 On behalf of the Respondent CSX
20 Transportation, Inc., and Baltimore & Ohio
21 Terminal Railroad Company;

22 NEIL F. FLYNN & ASSOCIATES, by
23 MR. DANIEL FLYNN (Via Telephone)
24 600 South Second Street
25 Suite 102
Springfield, Illinois 62704
Phone: (217) 544-0261
E-mail: dflynn@neilflynnlaw.com

On behalf of the Respondent Norfolk Southern
Railway Company.

20

21

22

23

24

25

1 JUDGE KIRKLAND MONTAQUE: By the power vested in me
2 by the State of Illinois and the Illinois Commerce
3 Commission, I now call Docket No. T07-0096. This is in
4 the matter of the City of Chicago, Petitioner, vs. The
5 CSX Transportation, Inc., Norfolk Southern Railway
6 Company and Baltimore & Ohio Chicago Terminal Railway --
7 Railroad Company as respondents.

8 May I have appearances, please? Let's start
9 with the City of Chicago.

10 MR. GHOSHAL: On behalf of the City of Chicago,
11 Orijit Ghoshal, G H O S H A L, 30 North LaSalle Street,
12 Suite 1400, Chicago, Illinois, 60602, phone number
13 (312) 744-6936.

14 JUDGE KIRKLAND MONTAQUE: Thank you.

15 CSX?

16 MR. SCHMIDT: David Schmidt from MacCabe & McGuire,
17 77 West Wacker, Suite 3333, Chicago, 60601. The phone
18 number is (312) 357-2600.

19 JUDGE KIRKLAND MONTAQUE: Okay.

20 MR. STREICHER: Good morning, your Honor. My name
21 is Paul Streicher, S T R E I C H E R. My office address
22 is 321 North Clark Street, Suite 2200, Chicago,
23 Illinois, 60654. My telephone number is area code
24 (312) 970-3467. I represent CSX Transportation, Inc.,
25 as well as the Baltimore & Ohio Chicago Terminal

1 Railroad Company.

2 JUDGE KIRKLAND MONTAQUE: Thank you.

3 Mr. Flynn?

4 MR. FLYNN: Yes. Good morning, your Honor. Daniel
5 Flynn appearing on behalf of Norfolk Southern Railway
6 Company. The firm is Neil F. Flynn & Associates. Our
7 address is 600 South Second Street, Suite 102,
8 Springfield, Illinois, 62704.

9 JUDGE KIRKLAND MONTAQUE: Thank you.

10 Staff?

11 MR. VERCRUYSSSE: Thanks, your Honor. Brian
12 Vercruysse, V E R C R U Y S S E, representing Commerce
13 Commission staff, phone number (312) 636-7760.

14 Thank you.

15 JUDGE KIRKLAND MONTAQUE: Okay. Thank you all.

16 I think last time we met there was some
17 discussion about communications with local aldermen and
18 things being tied up. So why don't -- I don't know who
19 can give us the update.

20 Mr. Ghoshal?

21 MR. GHOSHAL: Sure. I can't speak to the meeting
22 with the local aldermen, but one other thing we
23 discussed was the City filing a petition for a
24 supplemental order. Since the last status hearing the
25 parties agreed that it would not be a joint petition,

1 that the City would just file a petition on its own and
2 the parties would have a chance to respond. So even
3 though we did not want to file a joint petition, the
4 City sought to get as much agreement as possible on the
5 subject matter of the petition before it was filed.

6 So we've circulated the petition and received
7 comments back from Norfolk Southern and CSX. We've
8 actually received two rounds of comments. So we're
9 still responding to the last round of comments given by
10 counsel, and I appreciate those comments. We seek to
11 have the petition finalized soon, hopefully in a week or
12 two weeks.

13 There was also a change in the client
14 department's commissioner. There's a new commissioner
15 of the Chicago Department of Transportation. So she has
16 to authorize the petition that we are seeking. So once
17 it is finalized in the next two weeks, I can then
18 circulate it to staff, Mr. Vercruysse. I think he has
19 21 days before I actually file in order to review the
20 petition, and then at that point we would seek to file a
21 petition still seeking a change in the final date. The
22 end of the termination would be December 2014 --
23 December 31st, 2014.

24 JUDGE KIRKLAND MONTAQUE: Okay. Any -- So just to
25 say -- It was just -- It was just to extend the time, no

1 changes in plans or anything?

2 MR. GHOSHAL: That is correct. It was just to
3 extend the date and any associated deadlines with the
4 date but no change in the plans.

5 JUDGE KIRKLAND MONTAQUE: Mr. Vercruysse?

6 MR. VERCRUYSSSE: Yeah. If I might, just a few
7 questions as far as project coordination.

8 When this first started in 2007, the City's
9 project was put on hold pending the development of the
10 CREATE project and the structures that were to be
11 reconstructed. It's now the City's intention to have
12 the roadway project with the pavement lowering happening
13 this construction season with a completion date of
14 December 31st of this year, 2014.

15 MR. GHOSHAL: That's correct. That's the current
16 plan, although no bids have been put out or anything.

17 MR. VERCRUYSSSE: Right, right. And I'm just trying
18 to get an assessment versus what the construction
19 schedule is for the bridges with Baltimore & Ohio
20 Chicago Terminal and the other work with the CREATE
21 project. Do we know where that might stand? Is that
22 still not funded?

23 MR. STREICHER: I have a better understanding of
24 how the funding is going to work. I believe that there
25 are preliminary design plans that are just beginning to

1 be underway.

2 MR. VERCRUYSSSE: Okay.

3 MR. STREICHER: The CREATE project would proceed
4 independently --

5 MR. VERCRUYSSSE: Right.

6 MR. STREICHER: -- of the project, the subject of
7 this case.

8 And by history, Judge, there have been a lot
9 of discussions early on about potentially the City not
10 proceeding with this project and the CREATE project
11 proceeding on its own, and that was the issue with the
12 aldermen; but we reported last time before you that the
13 railroads had determined not to jointly proceed, at
14 which time the City indicated it would proceed with its
15 original project, and that resulted in the City
16 indicating to the Court that it would file its petition
17 seeking a new completion date.

18 JUDGE KIRKLAND MONTAQUE: Okay. Anything further,
19 Mr. Vercruysse?

20 MR. VERCRUYSSSE: I guess just as far as the
21 petition, it's requesting additional time at this point.
22 Is there any other evidence or any other items within
23 the petition? I know that you'll provide the time for
24 my review, but --

25 MR. GHOSHAL: Sure. It will include a description

1 of the status reports that occurred since the last --

2 MR. VERCRUYSSSE: Okay.

3 MR. GHOSHAL: -- filing that the City made.

4 MR. VERCRUYSSSE: Okay.

5 MR. GHOSHAL: So -- And it would be based entirely
6 off the reports that were filed on e-Docket --

7 MR. VERCRUYSSSE: Okay.

8 MR. GHOSHAL: -- based on those meetings.

9 MR. VERCRUYSSSE: I guess my question is: After the
10 petition is filed, what is our procedure? Is there any
11 opposition to an order being entered for the extension
12 of time then? I mean, staff's position is that we've
13 just been waiting to see which direction this will go.
14 We're fine with whichever way it proceeds.

15 Grade Crossing Protection Funds are still
16 there, and we're fine with it going through. Do we need
17 to have another hearing after this petition is filed, or
18 can we work towards an agreed order with the parties at
19 a similar time as the filing of the petition? I guess
20 this --

21 JUDGE KIRKLAND MONTAQUE: Well, from my point of
22 view, are we -- I don't necessarily -- we don't have to
23 have a hearing if everyone is in agreement. So once the
24 petition is filed, if all the parties could make a
25 filing with their response saying they have no objection

1 to the extension of time, then I could go forward with
2 an order to the bench extending the time.

3 MR. VERCRUYSSSE: Thank you.

4 MR. SCHMIDT: My only question is: Is that a
5 realistic time now? I mean --

6 MR. VERCRUYSSSE: The end of December?

7 MR. SCHMIDT: -- here we are -- we're almost in the
8 middle of February already.

9 MR. VERCRUYSSSE: Right.

10 MR. SCHMIDT: And we were talking about getting
11 this petition filed back before the end of 2013.

12 MR. VERCRUYSSSE: Right.

13 MR. SCHMIDT: That's just a question for whether
14 everybody thinks they have sufficient time to do what
15 they need to do by the end of this year, which even
16 though we don't think winter is ever going to end --

17 JUDGE KIRKLAND MONTAQUE: It'll be winter next
18 time.

19 MR. SCHMIDT: It'll be winter again before we know
20 it. That's a -- That's a bad thought. I'm sorry. I
21 retract that statement.

22 So that was just my question.

23 MR. VERCRUYSSSE: No, that's a good point.

24 I guess, Mr. Ghoshal, it's up to you. It's
25 your client. If they have any provision, I'm -- staff

1 is fine with a date that extends further into 2015, but
2 it is a good consideration.

3 MR. GHOSHAL: Okay. I have to take that back to
4 the client.

5 MR. VERCRUYSSSE: Right.

6 MR. GHOSHAL: Yeah. We --

7 JUDGE KIRKLAND MONTAQUE: I don't --

8 MR. GHOSHAL: If it makes it easier to agree to the
9 petition beforehand if we change the date to 2015 --

10 MR. VERCRUYSSSE: Right. With the caveat that we --
11 that the target letting dates -- that the City is
12 looking to a spring or summer letting, and the bids will
13 be then provided for July. I think we've all -- we've
14 finally come to a point where we know the direction and
15 scope of work. Now it's just --

16 MR. GHOSHAL: Yeah.

17 MR. VERCRUYSSSE: -- honing in on the schedule and
18 as much information as you can provide.

19 MR. SCHMIDT: Two separate processes.

20 MR. VERCRUYSSSE: Right.

21 JUDGE KIRKLAND MONTAQUE: Yeah. I mean, it's your
22 project. But, I mean, at the end of this year -- I
23 don't know. And then you're just going to have to come
24 back and petition for another extension by the end of
25 the year. So --

1 MR. GHOSHAL: I know. I saw it was filed in 2007.
2 So this happened a few times.

3 JUDGE KIRKLAND MONTAQUE: Make it easier on
4 yourself. Give it maybe 18 months. I don't know.

5 MR. SCHMIDT: And that was just in a reflection to
6 you saying, Do we need another hearing.

7 JUDGE KIRKLAND MONTAQUE: Okay.

8 MR. SCHMIDT: Because if for some reason things get
9 backed up --

10 JUDGE KIRKLAND MONTAQUE: Right.

11 MR. SCHMIDT: -- and it doesn't look realistic that
12 it's going to be finished by the end of '14, then there
13 wouldn't be a status hearing to say, Oh, by the way,
14 this really isn't going to work, and we need to kick it
15 further. So --

16 MR. GHOSHAL: Well, if we can agree on a -- on a
17 date certain by which responses to the petition have to
18 be filed, then I guess we don't need a hearing.

19 MR. VERCRUYSSSE: Well, we --

20 JUDGE KIRKLAND MONTAQUE: We shouldn't need a
21 hearing.

22 MR. VERCRUYSSSE: Right.

23 JUDGE KIRKLAND MONTAQUE: I'm just -- Assuming
24 everyone agrees, I don't think we need a hearing. If
25 anything -- you know, any glitches occur then, you know,

1 there's always -- someone can file a motion for a
2 hearing.

3 MR. VERCRUYSSSE: Right.

4 JUDGE KIRKLAND MONTAQUE: So I guess the point is
5 just that date.

6 MR. VERCRUYSSSE: Right.

7 JUDGE KIRKLAND MONTAQUE: You know, see how
8 realistic it is, December '14.

9 MR. VERCRUYSSSE: If you wanted to send an advance
10 copy to me of the petition, I can start drafting an
11 agreed order so that you don't have to go back to the
12 same personnel possibly for reviews of --

13 MR. GHOSHAL: Right.

14 MR. VERCRUYSSSE: -- a separate time --

15 MR. GHOSHAL: Yeah.

16 MR. VERCRUYSSSE: -- if you still have both
17 documents in hand.

18 MR. GHOSHAL: Okay.

19 MR. STREICHER: The only potential issue as to a
20 date is that right now I don't know the status of when
21 the CREATE project would begin construction. My guess
22 is it would not be at least until 2015 and beyond that.
23 If -- And my concern would just be coordination of time,
24 but I think that's something that the City and the
25 railroads ought to be able to work out if that becomes

1 an issue. What I would ask is just that the railroad --
2 railroads, my clients, be given leave to respond to the
3 petition either by saying we have no objection or
4 raising an issue, and that can kind of --

5 JUDGE KIRKLAND MONTAQUE: Sure.

6 MR. STREICHER: -- form where we go.

7 JUDGE KIRKLAND MONTAQUE: Yeah. And I would want
8 all of the petitioners -- I'm sorry -- respondents to
9 file something on the e-Docket on record saying whether
10 or not you have an objection.

11 MR. SCHMIDT: (Indicating.)

12 JUDGE KIRKLAND MONTAQUE: Right. And then I could
13 move forward based on that alone if there are no
14 objections.

15 MR. VERCRUYSSSE: I agree.

16 JUDGE KIRKLAND MONTAQUE: So is there anything --
17 Mr. Flynn, do you have anything to add?

18 MR. FLYNN: No, I really don't. I think
19 Mr. Streicher kind of summed up the same questions and
20 issues that we would have. And so -- But I think we
21 seem to all be of the same mind, so I'm not going to
22 reiterate those questions.

23 JUDGE KIRKLAND MONTAQUE: Okay.

24 MR. STREICHER: Do we need another status date
25 until the petition is filed just to make sure we move

1 ahead?

2 JUDGE KIRKLAND MONTAQUE: Would you like that?

3 MR. STREICHER: Yes.

4 JUDGE KIRKLAND MONTAQUE: Okay.

5 MR. SCHMIDT: For tracking purposes.

6 MR. STREICHER: It keeps me on track with the
7 project.

8 JUDGE KIRKLAND MONTAQUE: I gotcha.

9 Well, let's go off the record.

10 (Discussion off the record.)

11 JUDGE KIRKLAND MONTAQUE: Back on the record.

12 This matter will be continued to Tuesday,
13 March 11, 2014, 10:00 a.m. in Chicago, and I'll grant
14 Mr. Flynn leave to call in to that status hearing if it
15 is not canceled prior to that.

16 So thank you, and I'll look forward to getting
17 the filings.

18 MR. VERCRUYSSSE: Thanks, your Honor.

19 MR. GHOSHAL: Thanks.

20 MR. STREICHER: Thank you, Judge.

21 MR. FLYNN: Thank you, your Honor.

22 MR. SCHMIDT: Thanks, Judge.

23 (Which were all the proceedings had
24 in the above-entitled cause.)

25

1 STATE OF ILLINOIS)
2 COUNTY OF COOK) SS.

3

4 Karen J. Bottenhagen, being first duly sworn,
5 on oath says that she is a Certified Shorthand Reporter
6 and Registered Professional Reporter, doing business in
7 the City of Chicago, County of Cook and the State of
8 Illinois;

9 That she reported in shorthand the proceedings
10 had at the foregoing hearing;

11 And that the foregoing is a true and correct
12 transcript of her shorthand notes so taken as aforesaid
13 and contains all the proceedings had at the said
14 hearing.

15

16

17

KAREN J. BOTTENHAGEN, CSR, RPR

18

CSR No. 084-003806

19

20 SUBSCRIBED AND SWORN TO
21 before me this 17th day of
22 February, A.D., 2014.

22

23

24

NOTARY PUBLIC

25