

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

3
4 BEFORE THE
ILLINOIS COMMERCE COMMISSION

5 ILLINOIS DEPARTMENT OF)
6 TRANSPORTATION,)
)
7 Claimant,)
)
8 vs.) Docket No. T13-0110
)
9 BNSF RAILWAY COMPANY,)
)
10 Respondent.)

11 Petition for approval of eminent domain.
12 Met pursuant to notice on February 13, 2014.
13 Before the HONORABLE LATRICE KIRKLAND MONTAQUE,

14
15 APPEARANCES:

16 DOUGLAS G. FELDER, P.C., by
17 MR. DOUGLAS G. FELDER
On behalf of the Petitioner;

18 DALEY, MOHAN & GROBLE, P.C., by
19 MR. ROBERT J. PRENDERGAST
On behalf of the Respondent;

20 ILLINOIS COMMERCE COMMISSION, by
21 MR. JOHN SALADINO (via teleconference)
On behalf of the staff of Illinois Commerce
22 Commission.

23 ALSO PRESENT: Mr. Jon Estrem
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1 THE COURT: By the power vested in me by the State
2 of Illinois and the Illinois Commerce Commission, I now
3 call Docket No. T 13-0110. This is in the matter of the
4 Department of Transportation of the State of Illinois,
5 petitioner versus the BNSF Railway Company as
6 respondent. We're here to -- on a petition for approval
7 of eminent domain of certain property owned by a common
8 transportation carrier in Carroll County, Illinois.

9 May I have appearances, please, starting with
10 IDOT.

11 MR. FELDER: Thank you, your Honor. Good
12 afternoon. For the petitioner Department of
13 Transportation my name is Doug Felder, F E L D E R. My
14 address is 203 North LaSalle Street, Suite 2300, Chicago
15 60601. My phone number is (312) 634-3509. With me from
16 the Department's District 2 offices in Dixon, Illinois
17 is Mr. Jon Estrem, J O N, Estrem, E S T R E M.

18 THE COURT: Thank you. BNSF.

19 MR. PRENDERGAST: Good afternoon, your Honor. Bob
20 Prendergast, P R E N D E R G A S T, with the Law Firm of
21 Daley, Mohan & Groble, Suite 1600, 55 West Monroe
22 Street, Chicago 60603. My phone is (312) 422-0799.

23 THE COURT: Staff.

24 MR. SALADINO: Thank you, your Honor. Representing
25 the staff of the Illinois Commerce Commission, John

1 Saladino, S A L A D I N O, 527 East Capitol Avenue,
2 Springfield, Illinois 62701. And the phone number is
3 (217) 785-8423.

4 THE COURT: Thank you. Mr. Felder, are you going
5 to present a witness today to testify?

6 MR. FELDER: Yes, your Honor. Mr. Estrem is here
7 and ready to testify.

8 THE COURT: Please raise your right hand.

9 (Witness sworn.)

10 THE COURT: I will give you the floor, Mr. Felder.

11 MR. FELDER: Thank you, your Honor. The Department
12 filed a petition with the Illinois Commerce Commission
13 seeking approval for initiating an eminent domain action
14 with regard to a project it is undertaking in Carroll
15 County on Illinois Route 40. And at this time the
16 Department needs to acquire from the railroad, the BNSF
17 railroad, certain property described in our petition.
18 The property we're seeking is a temporary easement. The
19 temporary easement has a term of three years. There is
20 no need nor is there an attempt in this matter to
21 acquire any permanent -- any property permanently from
22 the railroad.

23 Just as a general background, Mr. Estrem will
24 testify to this, the highway, Illinois 40, runs parallel
25 along the BNSF Railroad right of way at this location.

1 There's a creek that both the highway and the railroad
2 span by bridge structures. The improvement at this
3 location is on the Department's -- on the highway,
4 Illinois 40, and it's a reconstruction of the existing
5 bridge at that location. To do that work the Department
6 needs to be temporarily in a portion and stage some of
7 that construction temporarily in portions of the BNSF
8 right of way. That is the situation we're in now. So
9 with that, if I could call Mr. Estrem.

10 THE COURT: Okay.

11 WHEREUPON:

12 JON ESTREM,
13 called as a witness herein, having been first duly
14 sworn, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. FELDER:

17 Q. Mr. Estrem, you understand you have been sworn
18 and are under oath?

19 A. Yes, I understand.

20 Q. So this is -- So the court reporter gets it
21 from you, can you state your name and spell it.

22 A. Sure. It's Jon, J O N, Estrem, E S T R E M.

23 Q. What's your current occupation, sir?

24 A. I'm a professional civil engineer working with
25 the Illinois Department of Transportation in the Dixon

1 office.

2 Q. What are your duties and responsibilities with
3 the Illinois Department of Transportation in District 2?

4 A. I'm responsible for the Staff that goes out
5 and makes the offers on land we need to buy for highway
6 improvements, as well as the Staff that accomplishes the
7 relocation of systems when needed on parcels. I'm also
8 the guy that coordinates the eminent domain parcels with
9 the attorneys and I'll go to court to testify for those
10 parcels.

11 Q. In connection with your duties and your
12 responsibilities as an engineer with the Department's
13 District 2 office, are you familiar with the project the
14 Department is undertaking to improve and reconstruct a
15 bridge on Illinois 40 in Carroll County?

16 A. I am.

17 Q. Can you just briefly describe the nature of
18 that project as you understand it?

19 A. Sure. The primary reason for the project is
20 to reconstruct the bridge carrying Illinois 40 over
21 Otter Creek. It's about a mile and a half west of
22 Milledgeville or so. The bridge itself will actually be
23 raised up to increase the size of the waterway opening
24 and because of that, the roadway on either side of it
25 for a given length at either end will be reconstructed

1 as well.

2 Q. Does the Department need to acquire property
3 interest from the BNSF Railroad in order to construct
4 this particular posed improvement?

5 A. It does. It needs temporary easement --
6 temporary construction easement from BNSF.

7 Q. Does -- The land on which the temporary
8 easement is sought, is that described in what has been
9 presented as Exhibit A that was filed -- that was
10 attached to with the petition filed in this matter?

11 A. Yes.

12 Q. Also in exhibit -- I believe it was Exhibit B
13 that was a plat of highways and I want to show you what,
14 if I could, we're going to mark as Exhibit B-1 and ask
15 you if you recognize that document.

16 A. I do.

17 Q. Can you describe what it is?

18 A. Sure. It's the temporary easement plat that
19 shows the land that is to be acquired for the project.
20 It shows highlighted in green the land we need from
21 Burlington Northern to build the project as planned.

22 Q. So the green shading in that area is the area
23 that's -- the area that's legally described on
24 Exhibit A?

25 A. That's correct.

1 Q. Was that plat prepared by or under the
2 direction of the Department of Transportation?

3 A. Yes, it was.

4 Q. Does it fairly and accurately depict the
5 property the Department is seeking to impress or impose
6 a three-year temporary easement?

7 A. Yes, it does.

8 Q. Has the Department attempted to acquire the
9 temporary easement from the BNSF Railroad prior to this
10 time?

11 A. Yes, it has.

12 Q. What's your understanding of the status of
13 those discussions and negotiations?

14 A. Well, as far as the temporary easement itself
15 is concerned, everything -- everybody is in agreement
16 for it. The only thing we're really waiting on is the
17 execution of the construction maintenance agreement for
18 the project as a whole.

19 Q. When you say the temporary easement everybody
20 is essentially in agreement on that, is it your
21 understanding the language for the document or documents
22 that are needed to conclude a voluntary conveyance of
23 this property have been agreed to at this time?

24 A. Yes. For the temporary easement document
25 itself, yes.

1 Q. Is it your understanding there's also at this
2 time discussions relating to concluding and finalizing
3 what's referred to as a construction and maintenance
4 agreement?

5 A. Yes.

6 Q. Is it your understanding that there are some
7 minor issues that are being addressed and hopefully can
8 and will be resolved very soon?

9 A. Yes, it's my understanding that certain
10 language within that agreement needed clarification for
11 Burlington Northern to be happy with it.

12 Q. Is it your understanding the Burlington
13 Northern has requested certain changes and that the
14 Department has reviewed those changes and in principle
15 agreed to them at this time?

16 A. In principle, yes. And they are in the
17 process of putting that language together to provide to
18 Burlington Northern to be able to get the agreement out
19 for execution.

20 Q. Why does the Department need the temporary
21 easement from the railroad at this time?

22 A. We actually need to be able to get onto the
23 Burlington Northern's land to be able to essentially
24 grade off of the raised highway and create a ditch slope
25 that's flat enough that will be, you know, a safe slope

1 if a vehicle does go off the roadway. It will actually
2 raise the ditch slightly and tie in directly to the
3 railroad's embankment.

4 Q. Is it your understanding the plans for this
5 construction project have all been reviewed and approved
6 by the engineers for the railroad?

7 A. Yes.

8 Q. What's the letting schedule for this project?

9 A. This project was actually let on January 17th
10 of this year.

11 Q. So is it especially important that the
12 Department acquires this property as soon as it can in
13 order to award a contract on that letting?

14 A. Yes, it is. We will not award it until we
15 have the parcel in hand.

16 Q. Is it the Department's intention to continue
17 to pursue and hopefully conclude an acquisition of this
18 property through a voluntary transfer with a temporary
19 easement and whatever attended documents accompany that?

20 A. Yes, it is.

21 Q. As well as is it the Department's intention to
22 continue to pursue concluding and finalizing and
23 executing a construction and maintenance agreement with
24 the railroad?

25 A. Yes, it is.

1 Q. If the Department acquires a temporary
2 easement from the railroad, is it your understanding
3 that the practice and the policy of the Department is
4 not to actually commence any construction activity on
5 the railroad property until it has concluded a
6 construction and maintenance agreement with the
7 railroad?

8 A. Yes.

9 Q. That would be the case -- That will be the
10 case for this project as well; is that right?

11 A. That's correct.

12 Q. So that if the Department acquired the
13 temporary easements, that wouldn't be the trigger for
14 starting construction activities, it would be once the
15 contract is fully let and once the construction and
16 maintenance agreement is approved and signed, then you
17 would be able to commence construction activities?

18 A. Correct, we would be able to award the
19 contractor and get that process started.

20 Q. I may have asked this. Let me ask it a little
21 different way. After this hearing the Department is
22 going to try to vigorously conclude this matter outside
23 of an eminent domain action?

24 A. Yes, we are.

25 MR. FELDER: I do not have any other questions on

1 direct.

2 THE COURT: Okay. Mr. Prendergast, any cross?

3 MR. PRENDERGAST: Yes, I do.

4 CROSS-EXAMINATION

5 BY MR. PRENDERGAST:

6 Q. Good afternoon. I represent the BNSF. As I
7 understand your role in this, you kind of oversee the
8 construction phase or the property acquisition or both?
9 I'm sorry.

10 A. Not the construction but the acquisition of
11 the land for the construction.

12 Q. Have you been involved in negotiating the
13 temporary easement?

14 A. For this particular parcel?

15 Q. Right.

16 A. I have had discussions with, I believe the
17 name is Roger Schwinghammer.

18 Q. What discussions have you had with
19 Mr. Schwinghammer?

20 A. Minimal, really. It was simply a matter of
21 talking to him about getting the -- you know, the
22 process rolling and to be able to move forward with the
23 temporary easement document.

24 Q. Do you know what Mr. Schwinghammer's
25 involvement is in this?

1 A. Well, vaguely. I believe his role is as -- if
2 I understand it correctly, as a consultant to BNSF and
3 to be able to manage their properties.

4 Q. Have you seen any of the negotiation documents
5 with regard to the temporary easement?

6 A. Yes.

7 Q. What documents have you reviewed?

8 A. Well, the original version of the temporary
9 easement, as well as the revised version that was
10 hammered out between Springfield and BNSF.

11 Q. Do you have that with you?

12 A. I should. I believe I will.

13 MR. FELDER: Do you want him to look for it,
14 Counsel?

15 MR. PRENDERGAST: Sure.

16 BY MR. PRENDERGAST:

17 Q. Let me ask you, do you have a signed version
18 of it?

19 A. No, we do not.

20 Q. It has not been signed by IDOT to your
21 knowledge?

22 A. I'm sorry. I thought you meant by the
23 railroad.

24 Q. The easement?

25 A. No. To my knowledge, it actually has been

1 signed.

2 Q. Do you have that?

3 A. I'm looking.

4 Q. Let me ask you this --

5 A. I do.

6 Q. Who is it that signed by on behalf of IDOT?

7 A. Paul Lodi.

8 Q. Are you aware of the time and effort that went
9 into negotiating that temporary easement?

10 A. In a vague sort of sense, yes.

11 Q. You realize there was substantial work
12 performed by the BNSF and IDOT in order to reach an
13 acceptable agreement with regard to the temporary
14 easement?

15 A. Temporary easement and the construction and
16 maintenance agreement, both. Sure.

17 Q. The construction and maintenance agreement,
18 that's not done, right?

19 A. No, it is not signed.

20 Q. In the course of setting up these
21 negotiations, was it your understanding that IDOT and
22 the BNSF were working towards a process that would avoid
23 hearings like this and avoid filings out in Carroll
24 County where we've got to go out there to defend these
25 proceedings?

1 A. Yes. That was the intent of the temporary
2 easement agreement as prepared, yes.

3 Q. With regard to the -- Strike that.

4 Would you agree if someone was going to agree
5 to a temporary easement, they would want to know what
6 the construction activity and the terms of the people
7 being on their property would be in the course of
8 utilizing this temporary easement?

9 A. Absolutely.

10 Q. Could you consider that someone who goes
11 through the efforts to negotiate a temporary easement
12 may not want to sign it until they know for sure what
13 the construction activities and what the terms of people
14 being on their property are going to be?

15 A. I can understand it, I guess.

16 Q. In the course of preparing these documents, do
17 you know how long the negotiation period was on the
18 construction and maintenance agreement?

19 A. I don't.

20 MR. FELDER: Objection to relevance.

21 THE COURT: Overruled.

22 BY MR. PRENDERGAST:

23 Q. Do you know how much effort went into trying
24 to get an agreement together so we that could avoid
25 being here and having this hearing and going out to

1 Carroll County?

2 A. Again, in a vague sense I do but a lot of the
3 effort was actually accomplished in Springfield or by
4 the railroad, so I wouldn't have had direct contact with
5 them on that.

6 Q. Your understanding is that the status of the
7 terms of what's going to happen with regard to this
8 temporary easement and the -- and what the terms of
9 people being on the temporary easement are up in the air
10 at this point because there's not a signed agreement?

11 A. Sorry. What is up in the air?

12 Q. What people are going to be doing out there on
13 BNSF's property you want to take.

14 A. No. I think the actual work that is to take
15 place within the temporary easement has been
16 established. I believe that --

17 Q. What is that?

18 A. It's basically placing fill to be able to make
19 those ditch pore slopes traversable to the extent if
20 somebody leaves the roadway, they don't turn over, they
21 don't go to the bottom of the ditch. The ditch bottom
22 will actually be raised as well. The fill that is
23 placed will actually just tie into the existing railroad
24 embankment.

25 Q. Is IDOT planning on putting some type of

1 materials on this temporary easement area?

2 A. Materials to -- for -- It will be soil.

3 Q. You said filling?

4 A. Correct.

5 Q. What's going to comprise the fill?

6 A. It will be dirt and that will be seeded or
7 mulched.

8 Q. Is it that just for a temporary time period?

9 A. No, it's not.

10 Q. With regard to the right of way there, how
11 many sets of tracks are there, do you know?

12 A. I believe it's one set of tracks.

13 Q. Where is this ditching going to take place and
14 filling with regard to the railroad tracks?

15 A. The temporary easement itself, the closest it
16 gets to the center of the tracks is 27 feet. The
17 grading activity itself where the proposed dirt ties
18 into the existing embankment is 10 to 15 foot further
19 away from the tracks than that.

20 Q. Are there going to be people working within
21 25 feet of the center of the track?

22 A. No, they shouldn't be because, again, they
23 would be leaving the temporary easement if they did so.

24 Q. You're saying the boundary of the temporary
25 easement is how far from the center tie?

1 A. At the closest it's 27 feet.

2 Q. So it varies; is that correct?

3 A. That's correct.

4 Q. Is there going to be any equipment there
5 that's going to be within 25 feet of the track?

6 A. No. The temporary easement is the limit of
7 where the contractor has the ability once we have
8 temporary easement to take its equipment, materials, and
9 to do work. No, they will not be any closer than
10 27 feet and probably will be farther away than that.

11 Q. How is this expressed by agreement that these
12 are the terms of the use of the right of way?

13 A. Are we talking about the temporary easement?

14 Q. I don't know. I'm trying to determine where
15 these representations you're making are in writing and
16 signed and agreed to.

17 A. Well, as far as the temporary easement itself
18 is concerned, the temporary easement agreement is what
19 spells out what land is to be used on a temporary basis
20 as to whether it goes into -- I don't recall whether it
21 goes into the description of what will take place on
22 that but we have provided the plans to the railroad to
23 show them what we're going to do --

24 Q. What about -- Go ahead. I'm sorry.

25 A. I was just going to say the construction and

1 maintenance agreement also has, you know, a purpose in
2 that and they will describe what is going to be done and
3 if for some reason there was a right of entry given to
4 come and work closer than 25 feet to the tracks, then
5 the flaggers are required and that type of thing.

6 Q. Is that a possibility with this project?

7 A. No, it should not be. Because, again, all the
8 work that we need to do as part of the highway project
9 is contained within the temporary easement.

10 Q. The representations that you made about what's
11 spelled out in the construction and maintenance
12 agreement, that's not agreed to; is that correct?

13 A. Not by the BNSF, no.

14 Q. It's agreed to by IDOT. Has IDOT signed the
15 agreement?

16 A. Yes, Paul Lodi is the Department
17 representative.

18 Q. The C and M? The construction and maintenance
19 agreement?

20 A. No. I'm sorry. The temporary easement
21 agreement is what I was talking about.

22 Q. You also said, as I understood it, is what's
23 to transpire out there is contained in the construction
24 and maintenance agreement?

25 A. Correct.

1 Q. That's not agreed to; is that correct?

2 A. That's correct.

3 Q. That could be changed; is that correct?

4 A. I don't anticipate -- Anything can happen. I
5 don't anticipate IDOT would make any changes at this
6 point unless BNSF requested them. I guess just to
7 finish that thought, BNSF has requested some changes and
8 Springfield is in the process of trying to accomplish
9 those changes so that BNSF will be happy with the
10 agreement.

11 Q. When is that supposed to take place?

12 A. The last word I got was that it should be
13 ready and sent out in the next day or two to BNSF.

14 Q. Do you know how long it's been sitting in
15 Springfield waiting for review and signature?

16 A. I know there's been a lot of back and forth.
17 As far as how long has it been, I don't know.

18 Q. Until the agreement is signed, the terms
19 aren't set and IDOT is certainly not bound by them; is
20 that fair to say?

21 MR. FELDER: I just have an objection to agreement.
22 Which agreement?

23 MR. PRENDERGAST: The C and M agreement.

24 BY THE WITNESS:

25 A. Nobody is bound by anything in the C and M

1 agreement because it's not executed yet.

2 Q. It's in IDOT's court to get that done; is that
3 correct?

4 A. Yes, sir.

5 Q. Would you believe we have been hearing this is
6 going to take place for a while now, that Springfield is
7 going to review it and get back to the BNSF?

8 A. Well, yes, I would believe that. I know it
9 actually has gone back and forth at least a couple of
10 times.

11 Q. Were you involved in the drafting of the
12 construction and maintenance agreement?

13 A. No.

14 Q. Who is involved in that with IDOT, is that a
15 separate part of IDOT?

16 A. There is a standard agreement they start from
17 as I understand it. Again, this is something I don't
18 get involved in, so I'm not real up on the process.

19 Q. Would it be fair to say you are not involved
20 in the negotiation and the terms of the construction and
21 maintenance agreement?

22 A. That would be fair.

23 Q. So whatever representations you would make
24 about that would not be based upon your own firsthand
25 knowledge but would be based upon what other information

1 others have provided to you?

2 A. That's correct.

3 Q. Is it standard to let a project before there's
4 a property right involved or secured?

5 A. No. Typically we would prefer to have the
6 parcels in hand before letting the project. Does it
7 happen, yes.

8 Q. It did happen in this time period; is that
9 correct?

10 A. It happened for this project, yes.

11 Q. How long is this temporary easement IDOT is
12 seeking?

13 A. The length from one end to the other is
14 approximately 1200 feet or close to a quarter mile.

15 Q. How much of that is going to have the new fill
16 material in there?

17 A. Well, again, we'll be 10 to 15 feet away
18 from -- As far as the length is concerned, just about
19 the entire length.

20 Q. Just so I'm clear, the terms of what people
21 are going to be doing out there as far as safety and
22 insurance and rights of entry and things of that nature,
23 that's not signed and agreed to at this point?

24 A. I'm not sure I understand your question.

25 Q. The terms of what's contained in the

1 construction and maintenance agreement, that's not
2 signed and sealed and agreed to at this point?

3 A. That's correct, the agreement is not.

4 MR. PRENDERGAST: That's all I have. Thank you.

5 THE COURT: Mr. Saladino, do you have any questions
6 for the witness?

7 MR. SALADINO: I do. Thank you, your Honor.

8 CROSS-EXAMINATION

9 BY MR. SALADINO:

10 Q. Mr. Estrem, the project that was just let
11 January 17th of this year, does it pertain or have a
12 provision in it for railroad liability insurance?

13 A. Yes, I'm sure it does.

14 Q. Does it have a provision for a railroad
15 flagger?

16 A. That, I don't know about. I'm sure that the
17 construction and maintenance agreement will if a flagger
18 is, in fact, required by the policies. Again, I'm not
19 familiar specifically with that agreement.

20 Q. Do you know if all the other parcels
21 associated with this project have been procured other
22 than this one?

23 A. Yes, they have.

24 Q. Do you know the overall cost of the project?

25 A. I have it available to me, I believe, if I can

1 steal this just for a second. The program amount -- I
2 don't have the bid amounts that are in but the program
3 amount was 1.3 million for construction.

4 Q. Are you aware if the Department was seeking
5 any funding from the Illinois Commerce Commission
6 through the Grade Crossing Protection Fund?

7 A. I'm not aware of that.

8 Q. Do you know the parcel number for this section
9 that you're seeking eminent domain on?

10 A. The parcel number is Parcel 5. Do you want
11 the full seven digit number, though?

12 Q. Yes. What I was looking at was the petition
13 that was filed references a Parcel No. 2210905?

14 A. That's correct.

15 Q. When I look at Exhibit A, I believe it
16 references a Parcel No. 005/E21A?

17 A. That's correct.

18 Q. Are these two the same parcel?

19 A. They are. The full seven digit number is a
20 combination of both the right of way job number as well
21 as the parcel number. The numbers that are behind the
22 slash that you described, describe the plat sheet that
23 parcel is shown on.

24 Q. Thank you.

25 A. You're welcome.

1 Q. Will the work of the contractor on this
2 temporary easement, to your knowledge, in any way effect
3 the railroad's operation of trains on their track?

4 A. No, I don't anticipate that at all.

5 Q. Do you know what type of equipment would be
6 typical that the contractor would use in order to place
7 this fill?

8 A. That would simply be a typical grader they
9 would place out there. You're talking the grading
10 itself, correct?

11 Q. Correct. So would you believe there will not
12 be a potential for any of the contractor's equipment to
13 potentially foul the track of the BNSF Railway?

14 A. I don't see any potential for that at all.

15 Q. Mr. Estrem, this project, how is it in the
16 best interest of the taxpayers in Illinois?

17 A. The bridge itself has deteriorated to the
18 extent it has to be replaced. In order to keep the
19 traveling public on this highway we need to be able to
20 reconstruct it and in so doing we actually do need to
21 raise it so the waterway opening that is large enough to
22 prevent the bridge itself from backing up water or,
23 worse yet, overtopping the highway itself.

24 Q. Mr. Estrem, do you happen to know how many
25 trains operate on this track in this general vicinity on

1 a daily basis?

2 A. I really don't.

3 MR. SALADINO: That's all the questions I have,
4 your Honor. Thank you.

5 THE COURT: Mr. Felder, do you have any follow up?

6 MR. FELDER: No redirect.

7 THE COURT: Anything further you wish to present?

8 MR. FELDER: No, other than to offer exhibits. I
9 guess I just marked B-1, didn't I?

10 THE COURT: Right. Any objection to the admission
11 of Exhibit B-1?

12 MR. PRENDERGAST: I have no objection for
13 demonstrative reasons but I have an objection to the
14 lack of showing there is any type of agreement to that.
15 Maybe they don't need it but I think in the absence of
16 it, it's vague as to what they are actually going to be
17 doing out there, so I guess I object on those grounds.

18 THE COURT: Okay. I'm going to admit the exhibit
19 over the objection, Exhibit B-1.

20 Anything further you wish to present on the
21 petition, Mr. Felder?

22 MR. FELDER: No, your Honor.

23 THE COURT: Mr. Prendergast, do you have anything
24 you want to present?

25 MR. PRENDERGAST: No, your Honor.

1 THE COURT: Mr. Saladino, do you have anything
2 you'd like to present or state on the record?

3 MR. SALADINO: No, your Honor.

4 THE COURT: Well, I think that's it. We can mark
5 the record heard taken. I guess let me make sure I'm
6 clear on something.

7 So the construction and maintenance agreement
8 is, according to your sources, about to be delivered
9 back to BNSF for their signature?

10 THE WITNESS: Yes.

11 THE COURT: Everything else has been agreed upon
12 the temporary easement, so that's just the final piece
13 which, as Mr. Prendergast pointed out, has more of the
14 detail for the railroad in terms of what type of
15 activity is actually going to occur during this work?

16 THE WITNESS: The thing that really describes the
17 activity that is going to take place on the temporary
18 easement is the plan set that has been provided to the
19 railroad. The agreements themselves supplement that and
20 provide for basic demonstration of agreement on each
21 side and acceptance.

22 THE COURT: I guess I can mark the record heard and
23 taken. Mr. Felder, were you planning on presenting a
24 draft agreed order or --

25 MR. FELDER: I did draft an order and I did

1 circulate it to both Mr. Prendergast and to
2 Mr. Saladino. I believe Mr. Saladino gave me a
3 response. I haven't communicated yet with
4 Mr. Prendergast regarding the proposed draft order.

5 THE COURT: Okay. We're off the record.

6 (Which were all the proceedings had
7 in the above-entitled cause.)

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

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4 Kristi Landolina, being first duly sworn, on
5 oath says that she is a Certified Shorthand Reporter and
6 Registered Professional Reporter doing business in the
7 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 motion;

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.

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KRISTI LANDOLINA, CSR, RPR

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20 CSR No. 084-004611

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

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NOTARY PUBLIC