

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

3 BEFORE THE
4 ILLINOIS COMMERCE COMMISSION

5 City of McHenry, Illinois,)
6 a municipal corporation,)
)
7 Petitioner,)
)
8 vs.) No. T14-0010
)
9 Union Pacific Railroad)
10 Company,)
)
11 Respondent.)

12 Petition for an order of the Illinois Commerce
13 Commission to permit the construction and maintenance of
14 a pedestrian crossing on the south side of McCullom
15 Lake Road, AAR/DOT #178 815V, railroad milepost 67.29
16 located in the City of McHenry, McHenry County, Illinois.

17 APPEARANCES:

18 ZUKOWSKI, ROGERS, FLOOD & McARDLE, by
19 MR. MICHAEL J. SMORON
20 On behalf of the Petitioner;

21 UNION PACIFIC RAILROAD COMPANY, by
22 MR. MACK H. SHUMATE, JR.
23 On behalf of the Respondent;

24 ILLINOIS COMMERCE COMMISSION, by
MR. DANIEL POWERS
On behalf of the Staff.

ALSO PRESENT: Mr. Chad Piper
Mr. John Schmitt
Ms. Claire Anderson

23

24

1 ADMINISTRATIVE LAW JUDGE DUGGAN: Pursuant to the
2 authority vested in me by the State of Illinois,
3 Illinois Commerce Commission, I now call Docket T14-0010
4 for a hearing.

5 May I have the appearances, starting with the
6 City, your name, address, phone number, and who do you
7 represent?

8 MR. SMORON: Your Honor, Michael Smoron, counsel
9 for the City of McHenry, at 50 North Virginia Avenue,
10 Crystal Lake, Illinois 60014. And the City has two
11 witnesses today. The first one is Chad Piper.

12 MR. PIPER: Chad Piper with HR Green, consultant
13 for the City of McHenry. Address is 420 North
14 Front Street, McHenry, Illinois, 60050.

15 MR. SCHMITT: And I'm John Schmitt. I'm the
16 Director of Public Works for the City of McHenry, and my
17 address is 1415 Industrial Drive, McHenry, Illinois
18 60050.

19 ADMINISTRATIVE LAW JUDGE DUGGAN: Very good.
20 Mr. Shumate?

21 MR. SHUMATE: Thank you, your Honor. My name is
22 Mack Shumate. That's M A C K, S H U M A T E. I'm an
23 attorney for the Union Pacific Railroad Company. We
24 have offices at 101 North Wacker Drive, Suite 1920,

1 Chicago, Illinois 60606. My phone number is
2 (312) 777-2055. And I'll have one witness today, and
3 she is an engineer with the Union Pacific Railroad and
4 her name is Claire Anderson.

5 ADMINISTRATIVE LAW JUDGE DUGGAN: Spell her first
6 name, please.

7 MR. SHUMATE: Claire, would you spell your name for
8 the judge, please?

9 MS. ANDERSON: C L A I R E.

10 ADMINISTRATIVE LAW JUDGE DUGGAN: Very good.
11 Mr. Powers?

12 MR. POWERS: Daniel Powers, Illinois Commerce
13 Commission Staff, 527 East Capitol Avenue, Springfield,
14 Illinois 62701. Phone number is (847) 516-0733.

15 ADMINISTRATIVE LAW JUDGE DUGGAN: Very good. Why
16 don't we go ahead and have the three witnesses all raise
17 your right hand.

18 (Witnesses sworn.)

19 ADMINISTRATIVE LAW JUDGE DUGGAN: Very good. Thank
20 you. Let's note before we take any evidence that
21 Mr. Vercruysse along with somebody, either Mr. Smoron or
22 the other City attorney, posted a document entitled
23 Proposed Stipulation on the e-Docket and that the
24 Petitioner and Staff at Union Pacific all filed

1 statements stating that they stipulate to the facts,
2 findings, conclusions in paragraphs in that document so
3 identified. I'll note that the City's stipulation,
4 unfortunately, referred to themselves as Staff, so the
5 City might want to refile that and correctly state that
6 it's intended to refer to the City of McHenry does
7 hereby stipulate. But seeing that, we have this to work
8 with, and we can modify some things that I think -- or
9 clarify some things that I think need to be modified or
10 clarified by stipulation here today. And the first
11 thing on that would be a definition of the multiuse.
12 That, I'm not aware of another definition, so I'll put
13 it out there that that means -- it's meant to mean
14 including walking, running, bicycles, skating, things of
15 that nature.

16 Is that correct, Mr. Smoron?

17 MR. SMORON: Yes, your Honor.

18 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. And you
19 all stipulate to that, Mr. Shumate and Mr. Powers?

20 MR. SHUMATE: Yes, your Honor.

21 MR. POWERS: Yes, your Honor.

22 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. That the
23 stipulation for the document entitled Proposed
24 Stipulation refers to -- It states additional warning

1 signs will be added at the crossing. Now, we didn't
2 discuss that before we went on the record, but it's my
3 understanding that there's a document that is going to
4 be introduced as Exhibit E that has some warning signs.
5 Is that correct, Mr. Smoron?

6 MR. SMORON: Yes, your Honor.

7 ADMINISTRATIVE LAW JUDGE DUGGAN: So you'll address
8 that when we get to it. Okay? All right?

9 MR. SMORON: Yes, your Honor.

10 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. Now, in
11 addition to warning signs, in this proposed stipulation,
12 a section for the Respondent's position -- meaning Union
13 Pacific -- Union Pacific refers to a -- that in addition
14 to the existing automatic flashing light signals, which
15 has a bell on the north side of McCullom -- that's M
16 small C capital C U L L O M -- McCullom Lake Road that
17 another warning bell is required. And, in fact, it's
18 the position of the Railroad that that -- that that is
19 proposed, is that would go on the side of the tracks in
20 which this new pedestrian path will be installed, which
21 is proposed, and that would be the south side of the
22 track. Is that correct, Mr. Shumate?

23 MR. SHUMATE: Yes, it is, your Honor.

24 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay.

1 MR. SHUMATE: And we have one other
2 qualification -- or clarification, excuse me, in the
3 Respondent Railroad's position on the stipulation. In
4 the second line where it says City will be responsible
5 for all installation costs, it really should say City
6 will be responsible for all installation and project
7 costs, paren, as it's in there now, design, labor, and
8 material.

9 ADMINISTRATIVE LAW JUDGE DUGGAN: Well, let's
10 address that separately because --

11 MR. SHUMATE: Okay.

12 ADMINISTRATIVE LAW JUDGE DUGGAN: -- I have a
13 concern about even that phrasing --

14 MR. SHUMATE: Yeah. Yeah.

15 ADMINISTRATIVE LAW JUDGE DUGGAN: -- so we don't
16 get sidetracked.

17 MR. SHUMATE: Uh-huh.

18 ADMINISTRATIVE LAW JUDGE DUGGAN: So we don't get
19 sidetracked, let's stick with this right now.

20 In addition to the warning bell, what is not
21 addressed in this stipulation is that the Railroad is
22 going to install two new additional concrete panels on
23 the south side of the existing crossing concrete panels
24 to accommodate this proposed pedestrian path. Is that

1 correct, Mr. Shumate?

2 MR. SHUMATE: I'll let Claire answer that, because
3 I'm not sure it's just two panels. It might be more
4 panels.

5 Would you answer that?

6 MS. ANDERSON: We're saying the length of two
7 panels. Which means in order for us to get the seven
8 feet that's required for the path, there has to be two
9 additional panels, which that would include the center
10 panel in between the rails and the two panels on the
11 outside. So it's actually six panels altogether, but we
12 say two panel lengths.

13 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. Two panel
14 lengths. And, in this case, that's ...

15 MS. ANDERSON: Six total panels.

16 ADMINISTRATIVE LAW JUDGE DUGGAN: With three
17 different sections being the outer side of each track
18 and in -- inner track, correct?

19 MS. ANDERSON: Yes, sir.

20 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. And, in
21 addition, the Railroad is going to have to move an
22 insulated joint, which is part of the circuitry of the
23 signal, so that it is outside of the concrete panels,
24 correct?

1 MS. ANDERSON: Yes.

2 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. And the
3 Railroad is also going to have to substitute a different
4 type of ties to an extent because -- once, again, to
5 accommodate the concrete panels.

6 Is that correct, Ms. Anderson?

7 MS. ANDERSON: Yes.

8 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. And do
9 those items, the installation of the bell, the
10 additional concrete panels, the additional ties, and
11 insulated joint, constitute all of the work, to your
12 knowledge, at this time to be done within the Railroad
13 right-of-way other than building the asphalt pedestrian
14 path up to the concrete panels?

15 MS. ANDERSON: Yes, at this time.

16 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. And any
17 additional work that might be required, that work and
18 any additional work within the right-of-way other than
19 building the asphalt connected to concrete panels would
20 be done by the Railroad. Is that correct?

21 MS. ANDERSON: Yes.

22 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. And it is
23 the Railroad's position that the Railroad be reimbursed
24 for all of this work from the City, correct?

1 MS. ANDERSON: Yes.

2 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. Now, is
3 that stipulated, that that is the work to be done by the
4 Railroad and that the City will reimburse for that work
5 and any other work the City has to be done -- that the
6 Railroad has to do to accommodate this pedestrian path?

7 Is that your position, Mr. Shumate?

8 MR. SHUMATE: Yes, your Honor, with some
9 modification to the language. As you pointed out, it
10 basically refers to the path, and the language would
11 have to be modified that the City would be responsible
12 for all installation and project costs.

13 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. Well, you
14 keep getting back to the language right now.

15 MR. SHUMATE: Well, I'm just -- Let me finish. For
16 the path and the crossing surface track structure and
17 grade crossing warning devices. We would include it
18 all. So we would add something to that effect.

19 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. Well,
20 you're talking about specific language right now. I'm
21 talking about trying to get in the record here things
22 that are not in this proposed stipulation so we're --
23 could be --

24 MR. SHUMATE: Right. Conceptionally --

1 ADMINISTRATIVE LAW JUDGE DUGGAN: -- comprehensive
2 about what was intended here was stipulation only refers
3 to a bell. And so that's why I specified the things
4 that I specified, and I asked if --

5 MR. SHUMATE: That is correct, your Honor. You are
6 correct.

7 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. Actually,
8 I'm trying to do this, but some people wanted to do this
9 by stipulation. I'm trying to do it by stipulation, but
10 what we have is not sufficient, so I'm trying to put
11 some things on the record and then ask if people
12 stipulate to those things. So the question is, when you
13 change paths, people don't know what the stipulation is
14 anymore. Okay?

15 MR. SHUMATE: Yes, sir.

16 ADMINISTRATIVE LAW JUDGE DUGGAN: So I'm going to
17 try it again, and I'm going to ask you if you stipulate
18 to the following, that the Railroad will be installing
19 the bell on the south side of its tracks, that it will
20 add the additional concrete panels as necessary on both
21 sides of the tracks and in between the tracks to
22 accommodate this path, it will install additional ties
23 to accommodate this path, and it will move the location
24 of insulated joint, and that that is the work to be done

1 by the Railroad which is to be reimbursed by the City
2 plus any other work necessary by the Railroad to
3 accommodate this path.

4 Now, do you stipulate to that, Mr. Shumate?

5 MR. SHUMATE: Yes. On behalf of Union Pacific, we
6 do.

7 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay.

8 Mr. Smoron?

9 MR. SMORON: Yes. On behalf of the City of
10 McHenry, we so stipulate as well.

11 ADMINISTRATIVE LAW JUDGE DUGGAN: Mr. Powers?

12 MR. POWERS: On behalf of ICC, yes, we stipulate to
13 that.

14 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. Very good.
15 Now, again, as far as language, since Mack, you want to
16 drag me back here, we'll go ahead and do it. As I said
17 before we went on the record, I noted that this proposed
18 stipulation states the City will be responsible for all
19 installation costs associated with the path. To me, the
20 City is going to be responsible for all costs of the
21 project, and I believe that that's the intention of the
22 parties and that includes reimbursement to the Railroad
23 for work done by the Railroad. So rather than muck it
24 up with unnecessary qualifiers and explainers like

1 installation costs and associate it with path, it's all
2 costs of the project including reimbursement to the
3 Railroad. So does anybody have a problem with that
4 language?

5 Mr. Shumate?

6 MR. SHUMATE: No, sir.

7 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay.

8 Mr. Powers?

9 MR. POWERS: No, your Honor.

10 ADMINISTRATIVE LAW JUDGE DUGGAN: Mr. Smoron?

11 MR. SMORON: No, your Honor.

12 ADMINISTRATIVE LAW JUDGE DUGGAN: Very good.

13 Then, off the record we discussed the
14 dimension of the track is supposed to be seven-foot wide
15 and made of asphalt for the length of the railroad
16 crossing.

17 Also, Mr. Smoron, how long is the -- Well, I
18 guess it's intended it will be asphalt up to the
19 concrete panels and the concrete panels will then
20 suffice for the path and then asphalt after that.

21 Is that correct, Mr. Smoron?

22 MR. SMORON: It is correct, your Honor.

23 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. And we're
24 also intending that the concrete panels are sufficient

1 to accommodate a seven-foot wide path, correct?

2 MR. SMORON: Your Honor -- I'm sorry. Go ahead.

3 MS. ANDERSON: Is that me?

4 Yes.

5 ADMINISTRATIVE LAW JUDGE DUGGAN: And Mr. Smoron?

6 MR. SMORON: Correct. We concur.

7 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. And is it
8 correct that the City would be doing the work up to the
9 concrete panels, Ms. Anderson?

10 MS. ANDERSON: Yes. We would do three feet outside
11 of our panels to ensure that it's the right, you know,
12 application of the asphalt to hold the panels in place.
13 But beyond that, it would be the City's.

14 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. So, in
15 fact -- Okay. The Railroad is going to do three feet on
16 either side of the concrete panels and install in
17 asphalt, correct?

18 MS. ANDERSON: Yes.

19 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. So that
20 would be work and materials also to be reimbursed by the
21 City, correct, Ms. Anderson?

22 MS. ANDERSON: Yes.

23 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. So that's
24 correct, that the path, to the extent -- the subject of

1 this hearing, is going to be seven-foot wide made of
2 asphalt and that it will extend up to the concrete
3 panels at the crossing with the Railroad constructing
4 the first three feet on either side of the concrete
5 panels -- or the first three feet of the seven-foot wide
6 asphalt pedestrian path -- or the multiuse path and the
7 City will then be responsible for installing the
8 remaining length of the seven-foot path on either side.

9 Is that correct, Mr. Smoron?

10 MR. SMORON: Yes, your Honor.

11 ADMINISTRATIVE LAW JUDGE DUGGAN: And you stipulate
12 to that?

13 MR. SMORON: Yes.

14 ADMINISTRATIVE LAW JUDGE DUGGAN: Mr. Shumate, do
15 you stipulate to that?

16 MR. SHUMATE: Yes.

17 ADMINISTRATIVE LAW JUDGE DUGGAN: And Mr. Powers,
18 you stipulate?

19 MR. POWERS: Yes, your Honor.

20 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. And I
21 forgot. Then, once again, the City will be responsible
22 for reimbursing the City [sic] for that labor and
23 installation of the asphalt, correct, Mr. Smoron?

24 MR. SMORON: Correct.

1 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. And I
2 apologize. One more thing that Ms. Anderson said is
3 there's also some drainage issues associated with
4 putting in these additional panels. You made that
5 statement off the record, Ms. Anderson -- or you made
6 that statement at some point, correct?

7 MS. ANDERSON: Yes.

8 ADMINISTRATIVE LAW JUDGE DUGGAN: And those are
9 also issues to be done either by the Railroad or under
10 its control and direction to be reimbursed by the City,
11 correct?

12 MS. ANDERSON: Yes.

13 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. So with
14 those two additional costs, the cost of addressing the
15 drainage issue and the additional asphalt construction
16 by the Railroad, those items are also to be done by the
17 Railroad and reimbursed by the City. Is that
18 stipulated, Mr. Smoron?

19 MR. SMORON: Yes, your Honor.

20 ADMINISTRATIVE LAW JUDGE DUGGAN: Mr. Shumate?

21 MR. SHUMATE: Yes, your Honor.

22 ADMINISTRATIVE LAW JUDGE DUGGAN: And Mr. Powers?

23 MR. SMORON: Yes, your Honor.

24 ADMINISTRATIVE LAW JUDGE DUGGAN: Very good. All

1 right. And then I think the last thing from me, this
2 pedestrian path is supposed to be constructed on the
3 south side of the tracks at the crossing with McCullom
4 Road and in compliance -- or at the locations in
5 compliance with exhibits that are going to be introduced
6 as Exhibits A, B, C, D, and E.

7 Is that correct, Mr. Smoron?

8 MR. SMORON: Correct.

9 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. And you
10 stipulate to that?

11 MR. SMORON: Yes, your Honor.

12 ADMINISTRATIVE LAW JUDGE DUGGAN: And, Mr. Shumate,
13 you stipulate to that?

14 MR. SHUMATE: Yes, your Honor.

15 ADMINISTRATIVE LAW JUDGE DUGGAN: Mr. Powers,
16 stipulate to that?

17 MR. POWERS: Yes, your Honor.

18 ADMINISTRATIVE LAW JUDGE DUGGAN: Very good. Okay.
19 Go ahead and call your witnesses and put on your
20 evidence then.

21 MR. SMORON: Sure. On behalf of the City of
22 McHenry, I wish to present Chad Piper.

23 ADMINISTRATIVE LAW JUDGE DUGGAN: He's been sworn.
24 Go ahead.

1 WHEREUPON:

2 CHAD PIPER,

3 called as a witness herein, having been first duly
4 sworn, was examined and testified as follows:

5 EXAMINATION

6 BY MR. SMORON:

7 Q. Mr. Piper, can you state your occupation and
8 relationship with the City of McHenry?

9 A. I'm a civil engineer. My relationship with
10 the City is that HR Green, the firm I work for, is the
11 appointed city engineering representatives for the City
12 of McHenry and I am the main contact for the City of
13 McHenry.

14 Q. You're familiar with the petition that was
15 filed in this matter?

16 A. Yes.

17 Q. Can you briefly describe the release request
18 and the petition filed with the Illinois Commerce
19 Commission?

20 A. This is for granting the City permission for
21 the construction and maintenance of the pedestrian
22 crossing at the location designated in the City's
23 petition and on the attached exhibits.

24 Q. And by pedestrian path, you mean including but

1 not limited to uses such as biking, skating, walking,
2 and so on?

3 A. Yes.

4 Q. Can you describe what is depicted in Exhibit A
5 attached to the petition filed by the City of McHenry?

6 ADMINISTRATIVE LAW JUDGE DUGGAN: Let me do this,
7 because I don't want to confuse exhibits attached to the
8 petition with exhibits at the hearing. So why don't you
9 just refer to Exhibit A that you're going to offer into
10 evidence.

11 MR. SMORON: I'll be glad to do so, your Honor.

12 BY MR. SMORON:

13 Q. Chad, with respect to what we previously
14 marked as Exhibit A, for purposes of clarifying the
15 record, can you explain what Exhibit A is in terms of
16 perhaps reading the caption, describing briefly in a
17 sentence the exhibit, what it purports to depict, and
18 perhaps if there's a date or a revision date at the
19 bottom of it?

20 A. Exhibit A contains two sheets. Sheet 1 is
21 entitled Location Map, McCullom Lake Road, City of
22 McHenry, Proposed Pedestrian Crossing of Union Pacific
23 Railroad Tracks. This is a general aerial view of the
24 roadways and track locations that indicates the location

1 for the proposed crossing.

2 Q. Next, Chad, would you be able to take us
3 through what we've previously marked as Exhibit B for
4 purposes of this proceeding today?

5 A. Exhibit B is some line work overlayed on an
6 aerial. It's entitled McCullom Lake Road Union Pacific
7 Rail Crossing. At the bottom it is Sheet 1 of 1.
8 This depicts some line work showing the proposed
9 pedestrian path to be installed and the location of the
10 crossing over the UP's railroad tracks. It is labeled
11 indicating widths of the path -- of the proposed path
12 and material types.

13 ADMINISTRATIVE LAW JUDGE DUGGAN: What did you call
14 the document?

15 MR. PIPER: Exhibit B. It says McCullom Lake Road
16 Union Pacific Rail Crossing.

17 ADMINISTRATIVE LAW JUDGE DUGGAN: What happened to
18 page 2 of Exhibit 1 -- or Exhibit A? Did we not do
19 anything with it?

20 MR. PIPER: We did pass over that. I can explain
21 that one.

22 BY MR. SMORON:

23 Q. Chad, yeah, just for the purposes of the
24 record, this also constitutes as Exhibit A and --

1 MR. SMORON: Your Honor, do you want us to clarify
2 by saying, like, A-2?

3 ADMINISTRATIVE LAW JUDGE DUGGAN: No. He already
4 said there was two sheets in Exhibit A, so this would be
5 Sheet 2 of Exhibit A. That's fine.

6 BY MR. SMORON:

7 Q. Okay. Then, Chad, if you could proceed to
8 describe what that is.

9 A. Yeah. This is a black-and-white aerial image
10 that also shows the existing location of McCullom Lake
11 Road, the existing Prairie Trail labeled as a bike path,
12 and gives dimensions and locations of the existing
13 roadway, the angle to the tracks, and the location of
14 the existing signal equipment for this crossing.

15 ADMINISTRATIVE LAW JUDGE DUGGAN: What is the angle
16 of that crossing or the proposed path to the tracks?

17 MR. PIPER: The two centerlines are shown on here
18 as 25 degrees.

19 ADMINISTRATIVE LAW JUDGE DUGGAN: And how long is
20 the pedestrian path over the crossing area?

21 MR. PIPER: That is not on this exhibit.

22 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. And the
23 aerial view in Sheet 2 is a closer-up shot aerial view
24 than Exhibit A, correct?

1 MR. PIPER: Yes, your Honor.

2 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. Go ahead.

3 BY MR. SMORON:

4 Q. Chad, unless your Honor has any more
5 questions, let's proceed with Exhibit C. And can you
6 describe for purposes of the record what that is and
7 what it purports to depict?

8 A. I apologize. They were out of order.
9 Exhibit C is a plan sheet out of the proposed plan set.
10 It is marked as Railroad Crossing Details. It is
11 labeled as Sheet No. 52 of 81. This one depicts a
12 detail of the dimensions at the crossing, the estimated
13 length for extending the concrete panels, with station
14 and offset relating to McCullom Lake Road centerline.

15 Q. And, Chad, for Exhibit C, in the lower
16 right-hand corner, does that indicate this is Sheet
17 No. 52 of 81 total sheets?

18 A. Yes.

19 ADMINISTRATIVE LAW JUDGE DUGGAN: Did you finish up
20 with Exhibit B? I mean, I know I took you out of
21 Exhibit B to go back to Sheet 2 of Exhibit A, but did
22 you finish up with Exhibit B?

23 MR. SMORON: Unless there were any questions by
24 yourself, your Honor.

1 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. The
2 identity of it, I guess, you -- Okay. So it was
3 identified?

4 MR. SMORON: Correct. Thank you.

5 ADMINISTRATIVE LAW JUDGE DUGGAN: All right.

6 BY MR. SMORON:

7 Q. Chad, let's move on to what we previously
8 marked as Exhibit D. Can you briefly describe what that
9 purports to depict?

10 A. This is another sheet from the proposed plan
11 set. It's titled Pavement Marking, Signing, and
12 Landscape Plan, McCullom Lake Road. It's marked as
13 Sheet No. 31 of 81. This shows the proposed striping
14 along McCullom Lake Road and the proposed signage
15 locations relative to both the roadway and the
16 pedestrian crossing.

17 Q. Unless there's any questions, we will proceed
18 to Exhibit E. And can you briefly describe what
19 Exhibit E is?

20 A. Exhibit E is another sheet from the proposed
21 engineering plan set. It's entitled Sign Legend,
22 McCullom Lake Road. It's labeled as Sheet No. 36 of 81.
23 This shows details of the proposed signage for the
24 project including roadway signs and the pedestrian

1 crossing signs.

2 ADMINISTRATIVE LAW JUDGE DUGGAN: Why don't you
3 tell me what signs you're going to put up?

4 MR. PIPER: At the crossing, there is a sign
5 that -- It's labeled as 24-by-30 inches. It has a stop
6 sign on one half of the sign. The other side has the
7 words "look for trains" with an arrow that shows looking
8 to either side.

9 ADMINISTRATIVE LAW JUDGE DUGGAN: And what else?

10 MR. PIPER: There's a stop sign detail. It's
11 standard sign R 1, dash, 1, a bike sign -- standard
12 sign.

13 ADMINISTRATIVE LAW JUDGE DUGGAN: Wait. Wait.
14 Wait. Let's go back for a bit.

15 MR. PIPER: Yes, sir.

16 ADMINISTRATIVE LAW JUDGE DUGGAN: You've got a
17 rectangular sign that has a stop sign image on it along
18 with "look for trains." That was the first one, right?

19 MR. PIPER: Yes, sir. That's the --

20 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. And then
21 you made reference -- when I said what else, you said a
22 stop sign, and I didn't understand that you had a
23 separate stop sign, where it was going, what you meant.

24 MR. PIPER: Sorry. The first sign that I mentioned

1 with the "look for trains" and the stop sign image on it
2 would go on the pedestrian path on either side of the
3 train tracks.

4 ADMINISTRATIVE LAW JUDGE DUGGAN: Right. But then
5 you made reference -- I said --

6 MR. PIPER: Yes, sir. The second stop sign is a
7 standard roadway stop sign that will be used throughout
8 the project where we have side street connections.

9 ADMINISTRATIVE LAW JUDGE DUGGAN: We have what
10 connections?

11 MR. PIPER: Side streets. There's some side
12 streets --

13 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. They're
14 not necessarily associated with the crossing --

15 MR. PIPER: Correct.

16 ADMINISTRATIVE LAW JUDGE DUGGAN: -- they're
17 associated with the path at other points?

18 MR. PIPER: Correct.

19 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. Go ahead.

20 MR. PIPER: Yeah, the -- There's a sign --

21 ADMINISTRATIVE LAW JUDGE DUGGAN: I'll tell you
22 what, if the rest of them aren't associated with the
23 crossing, I'm okay.

24 MR. PIPER: There is one other sign associated with

1 the crossing. It's the circular railroad crossing with
2 the X through the center and the two Rs on it labeled as
3 Sign W10-1. It's a 36-inch diameter sign.

4 ADMINISTRATIVE LAW JUDGE DUGGAN: And where will
5 that go?

6 MR. PIPER: That will go along McCullom Lake
7 Roadway on either side of the crossing.

8 ADMINISTRATIVE LAW JUDGE DUGGAN: Where in relation
9 to the image of the stop sign with the language "look
10 for trains"?

11 MR. PIPER: It would be further away from the
12 tracks. The purpose of this sign would be for the
13 motoring public where the sign with the "look for
14 trains" would be for the pedestrian traffic.

15 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. And that
16 sign should be there already then?

17 MR. PIPER: Which sign?

18 ADMINISTRATIVE LAW JUDGE DUGGAN: The circular sign
19 with the railroad, isn't that a standard sign that's
20 supposed to be up there already?

21 MR. PIPER: Yes. It's there. I'm assuming this is
22 just going to be a new sign.

23 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. So the
24 only thing new related to the pedestrian path is the

1 rectangular with the image of the stop sign "look for
2 trains," right?

3 MR. PIPER: Yes, sir.

4 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay.

5 BY MR. SMORON:

6 Q. And, Chad, with respect to the exhibits that
7 were labeled as A through E, each of those were prepared
8 by your office and they are accurate. Is that correct?

9 A. Yes.

10 Q. In those instances where the exhibits depict
11 existing conditions, are those accurate as of the date
12 of today's hearing?

13 A. Yes.

14 Q. And with respect to the depiction of proposed
15 improvements, is that accurate as to what the City is
16 requesting here today?

17 A. Yes.

18 MR. SMORON: And, your Honor, at this time, what
19 we'd like to do is submit the Exhibits A through E
20 inclusive into evidence, into the record, for today's
21 proceeding.

22 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. Any
23 objection, Mr. Shumate?

24 MR. SHUMATE: No objection, your Honor.

1 ADMINISTRATIVE LAW JUDGE DUGGAN: Mr. Powers?

2 MR. POWERS: No objection, your Honor.

3 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. Exhibits A
4 through E as described are admitted into evidence.

5 BY MR. SMORON:

6 Q. Chad, does a highway rail crossing exist
7 within the corporate limits of the City of McHenry
8 located at McCullom Lake Road at its intersection with
9 the tracks of the Union Pacific designated as AAR/DOT
10 No. 178 815V Road Mile Post 67.29 depicted on Exhibit A?

11 A. Yes.

12 Q. Has the City of McHenry determined that it's
13 necessary to promote the public safety and convenience
14 to the public that the existing crossing located at said
15 intersection be altered by the addition of a multiuse
16 pedestrian path at the south side of McCullom Lake Road
17 as shown in the plats attached as Exhibit B?

18 A. Yes. The improvements to McCullom Lake Road
19 highway rail grade crossing requested by the Petitioner
20 are necessary to promote the safety and convenience of
21 the public in accordance with the Illinois Commercial
22 Transportation Law 625 ILCS 5/18C-74013.

23 Q. Chad, do you agree that the project will
24 provide a connection for the existing pedestrian

1 facility south of the crossing and that Prairie Trail,
2 which is currently south of the crossing, serving
3 various residential areas and parks?

4 A. Yes.

5 Q. Has the City of McHenry coordinated this
6 project with Union Pacific and the Illinois Commerce
7 Commission Staff?

8 A. Yes.

9 Q. When is construction proposed to begin?

10 A. Later 2015 -- Excuse me. I misspoke. It is
11 scheduled for fall of 2014.

12 Q. Thank you. If the project is approved by the
13 Commission and constructed, will McHenry at its sole
14 cost and expense pay for the cost of the pedestrian path
15 project approaching the rail crossing?

16 A. Yes, they will.

17 Q. If the project is approved by the Illinois
18 Commerce Commission and constructed, will McHenry at its
19 sole cost and expense install the additional crossing
20 service panels and bell to accommodate the path?

21 A. Yes, they will.

22 Q. If the project is approved by the Commission
23 here today, when will the work be completed, do you
24 estimate?

1 A. It is estimated that all work will be
2 completed at the latest of October of 2015.

3 MR. SMORON: And, your Honor, that's our
4 presentation with respect to Mr. Piper, unless your
5 Honor has any questions or if there's any further
6 questions by the ICC or Union Pacific.

7 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. Well, I
8 want to ask about some of the stuff we talked about off
9 the record before, so I don't know who's the best person
10 to ask about the existing paths and the proposed paths
11 and the maintenance and the costs. So I don't know
12 who's going to be in charge of that.

13 MR. SMORON: Let's present Mr. Piper as well, and I
14 suspect that Ms. Anderson may provide some supplementary
15 testimony.

16 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. Well,
17 let's do this then. We'll figure out who's in charge --
18 or who's got the answer. Is the City going to maintain
19 all of the -- Actually, before I do this, Ms. Anderson
20 stated they were going to build three feet out from the
21 panels whereas the Commission rules require that the
22 Railroad be responsible for the maintenance two feet out
23 from the track and that usually at that point it's the
24 road authority's jurisdiction to maintain. So why don't

1 we hash that out, Mr. Shumate and Ms. Anderson and
2 Mr. Power, and get that straight.

3 Let's go off the record.

4 (Discussion off the record.)

5 ADMINISTRATIVE LAW JUDGE DUGGAN: Let's go back on
6 the record. Off the record we discussed the maintenance
7 responsibilities and costs, and I believe that it was
8 clarified that the intent was that even though the
9 Railroad will be installing the asphalt portion of the
10 path to a distance of three feet out on each side of the
11 stretch from the concrete panels, that for future
12 maintenance, the City will be responsible for all the
13 asking portion of this path and up to the concrete
14 panels and be responsible for the maintenance and the
15 costs thereof and that the Railroad will go ahead and
16 maintain and be responsible for the cost thereof of the
17 concrete panel portion of the path.

18 Is that your understanding, Mr. Smoron?

19 MR. SMORON: Yes, your Honor.

20 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. Do you
21 stipulate to that?

22 MR. SMORON: Yes.

23 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. Is that
24 your understanding and do you stipulate to that, Mr.

1 Shumate?

2 MR. SHUMATE: Yes, your Honor.

3 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay.

4 Mr. Powers, do you stipulate to that?

5 MR. POWERS: Yes, your Honor.

6 ADMINISTRATIVE LAW JUDGE DUGGAN: Very good. Okay.

7 Go ahead, Mr. Smoron.

8 MR. SMORON: We don't have anything further unless
9 your Honor has any questions for either of our
10 witnesses.

11 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. Yeah, I
12 wanted to put on the record what we discussed off the
13 record, so whoever can answer -- if your witnesses can
14 answer, that, in fact, parallel to the track
15 is presently a multiuse path called Prairie Trail Bike
16 Path, which extends north and south of McCullom Lake
17 Road for a distance of several miles and that the
18 proposed pedestrian path here will be not a
19 perpendicular 90 degrees to the Prairie Bike Path but
20 will -- Let me get my north and south straight here --
21 but this pedestrian path will connect with the Prairie
22 Bike Path on the east side of the tracks and then it
23 will travel from that Prairie Bike Path in a
24 northwesterly direction across the tracks and then it is

1 intended that there will be a new multiuse path which
2 will extend out from the pedestrian path crossing over
3 the tracks and will extend both northwest and southeast
4 somewhat parallel to McCullom Lake Road, and, again, the
5 pedestrian path is to be -- is proposed to be installed
6 on the south side of the existing tracks. Is that
7 all -- Can someone either -- Is that all correct,
8 Mr. Smoron?

9 MR. SMORON: Yes, it is, your Honor.

10 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. So you
11 stipulate to all that, correct?

12 MR. SMORON: Each of those items, yes.

13 ADMINISTRATIVE LAW JUDGE DUGGAN: And, Mr. Shumate,
14 stipulate to that?

15 MR. SHUMATE: Yes, I do, your Honor.

16 ADMINISTRATIVE LAW JUDGE DUGGAN: Mr. Smoron --
17 Excuse me, Mr. Powers? Pardon me.

18 MR. POWERS: Yes, your Honor.

19 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. And that
20 on the -- west of the tracks and on the south side along
21 McCullom Road there's some residential areas which
22 people are expected to do, or already do, cross the
23 crossing on McCullom Lake Road to access the Prairie
24 Bike Path. And also, on the east side of the crossing,

1 there's other parks and recreation areas which will be
2 accessed either by the Prairie Path or the new
3 constructed path.

4 Is that correct, Mr. Smoron?

5 MR. SMORON: Yes, your Honor.

6 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. So you
7 stipulate to that?

8 MR. SMORON: Yes.

9 ADMINISTRATIVE LAW JUDGE DUGGAN: And, Mr. Shumate,
10 stipulate to that?

11 MR. SHUMATE: Yes, your Honor.

12 ADMINISTRATIVE LAW JUDGE DUGGAN: And, Mr. Powers,
13 stipulate to that?

14 MR. POWERS: Yes, your Honor.

15 ADMINISTRATIVE LAW JUDGE DUGGAN: Very good.

16 Okay. Do you have any other witnesses,
17 Mr. Smoron?

18 MR. SMORON: Not at this time.

19 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay.

20 Mr. Shumate, do you have any witnesses?

21 MR. SHUMATE: Yes, but I would like to ask a couple
22 questions of Mr. Piper, if I could.

23 ADMINISTRATIVE LAW JUDGE DUGGAN: Yeah, I
24 apologize. I forgot to allow your additional stuff.

1 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. And, also,
2 in the proposed stipulation, there's a representation
3 that the installation of the bell by the Railroad will
4 cost about \$2,000. But is it your understanding that
5 that is not intended to be the estimate either of the
6 entire project nor of only the Railroad's portion,
7 because the Railroad has to do more than simply install
8 a bell? So is it your understanding that 2,000 is not
9 reflective of the total costs to be reimbursed to the
10 Railroad nor the total cost of the project?

11 MR. PIPER: Yes, that's my understanding.

12 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. If there's
13 no other questions -- Any further follow-up on this
14 witness, Mr. Shumate?

15 MR. SHUMATE: No, sir.

16 ADMINISTRATIVE LAW JUDGE DUGGAN: Mr. Powers?

17 MR. POWERS: No, your Honor.

18 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay.

19 Mr. Smoron, you said you have no other witnesses.

20 Mr. Shumate, do you have any witnesses to
21 call?

22 MR. SHUMATE: I can call Claire Anderson if she's
23 needed to clarify anything. And I will ask her one
24 question.

1 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. Go ahead.

2 WHEREUPON:

3 CLAIRE ANDERSON,
4 called as a witness herein, having been first duly
5 sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MR. SHUMATE:

8 Q. Okay. Claire Anderson, would you state your
9 name for the record, please.

10 A. Claire Anderson.

11 Q. Would you spell it?

12 A. C L A I R E, A N D E R S O N.

13 Q. And, Ms. Anderson, by whom are you currently
14 employed?

15 A. Union Pacific Railroad.

16 Q. And in what capacity?

17 A. I'm a manager of field engineering.

18 Q. Are you familiar with the subject matter of
19 today's hearing?

20 A. Yes.

21 Q. Are you a representative for the Union Pacific
22 with regard to this particular project that is being
23 proposed?

24 A. Yes.

1 Q. You've heard some stipulations that have been
2 placed on the record here. From an engineering
3 standpoint, do you concur with those stipulations?

4 A. Yes.

5 Q. And is it your understanding that in the
6 written stipulation that's called a Proposed Stipulation
7 that some modification will be necessary to that to meet
8 the stipulations that were referenced in today's
9 hearing?

10 A. Yes.

11 Q. Is there anything that you believe should be
12 added to this particular project, from the Railroad's
13 perspective, with regard to grade crossing, public
14 safety, and convenience?

15 A. No.

16 MR. SHUMATE: I have no further questions, your
17 Honor.

18 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay.
19 Ms. Anderson, do you have any idea how long that -- the
20 crossing portion of the path would be?

21 MS. ANDERSON: How long it would be? Which way?
22 Do you mean along the track, or do you mean just
23 straight across?

24 ADMINISTRATIVE LAW JUDGE DUGGAN: Well, it crosses

1 at a 25-degree angle.

2 MS. ANDERSON: I actually ...

3 ADMINISTRATIVE LAW JUDGE DUGGAN: So ...

4 MS. ANDERSON: I don't know the -- He's actually
5 measuring it right now.

6 MR. PIPER: About 60 feet.

7 MS. ANDERSON: About 60 feet.

8 ADMINISTRATIVE LAW JUDGE DUGGAN: About 60 feet,
9 you're saying?

10 MS. ANDERSON: Uh-huh.

11 ADMINISTRATIVE LAW JUDGE DUGGAN: And that's over
12 the concrete panels, or what, or is that through to the
13 asphalt?

14 MS. ANDERSON: Is that from tactile to tactile?

15 MR. PIPER: That's from -- Yeah, from the warning
16 detection.

17 MS. ANDERSON: From the warning detection panels
18 that are in there. I don't know if you can see those,
19 but that's for if anyone's blind coming up to the track
20 or ADA. Those warning detection panels, that's in
21 between those two.

22 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. Well, I
23 don't know what that means.

24 MR. SHUMATE: Why don't you explain --

1 MS. ANDERSON: If you look at the exhibit that's on
2 the screen, you can see there's --

3 ADMINISTRATIVE LAW JUDGE DUGGAN: That exhibit on
4 the screen ain't going to tell me anything.

5 MR. SHUMATE: No. I want you to -- Claire, if I
6 may, would you please explain to the judge what this
7 warning strip is that you referenced?

8 ADMINISTRATIVE LAW JUDGE DUGGAN: Well, no, no.
9 How about this: Is it more or less than the distance
10 over the concrete panels? Is it 60 feet more or less
11 than the distance from the concrete panels?

12 MS. ANDERSON: More.

13 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. So it's
14 the concrete panels and to extend beyond the concrete
15 panels?

16 MS. ANDERSON: Yes.

17 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. And then,
18 how far off from the concrete panels?

19 MS. ANDERSON: I'm not certain. I can't answer
20 that.

21 MR. PIPER: They're approximately 20 feet --

22 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. You're
23 talking about -- You're measuring that distance to
24 the -- to some warning detection, correct?

1 MS. ANDERSON: Yes. The only reason I'm saying I
2 don't know what that distance will be is because of the
3 angle.

4 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. Well, and
5 that's why I'm asking it. But okay. Good enough.
6 That's fine. Because I don't know that the warning
7 detection is a significant boundary anyway. Okay.

8 MR. SHUMATE: Your Honor, Mack Shumate. I'm sorry
9 to interrupt, but there are a couple other questions
10 that I'd like to ask Ms. Anderson --

11 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay.

12 MR. SHUMATE: -- because we had talked about it off
13 the record, I believe, and it was not part of one -- any
14 of the stipulations.

15 ADMINISTRATIVE LAW JUDGE DUGGAN: Go ahead.

16 BY MR. SHUMATE:

17 Q. Ms. Anderson, I'd like to ask you a couple
18 more questions. How many tracks are on this particular
19 railroad right-of-way at this time?

20 A. One.

21 Q. Are there any proposals to put any additional
22 tracks?

23 A. No.

24 Q. And speak up. What is the train speed on this

1 particular line of railroad?

2 A. I have to look.

3 Q. Is it FRA Class 1?

4 A. Yes.

5 Q. And is that 10 miles an hour?

6 A. Yes.

7 Q. And do you know how many trains -- or how
8 often trains cross this particular crossing?

9 A. It would be one actual train job, or one
10 switching engine, per day; but it would be two times
11 that it would cross over this area.

12 Q. Is that because it would go once to the job
13 and then once on the back returning?

14 A. Yes.

15 Q. Okay. And do you know if there's any
16 significant accident history at this particular
17 crossing?

18 A. No, there is not.

19 Q. Do any commuter trains operate over this
20 particular crossing?

21 A. No, they do not.

22 Q. To your knowledge, are there any plans to put
23 commuter trains over this crossing in the future?

24 A. No, there is not.

1 Q. If commuter trains were to be proposed in the
2 future for this particular crossing, would you expect
3 that the crossing warning devices at this location would
4 be reinvestigated by the Illinois Commerce Commission?

5 A. Yes.

6 MR. SHUMATE: No further questions.

7 ADMINISTRATIVE LAW JUDGE DUGGAN: All right.

8 Mr. Shumate, is there a right to access the railroad
9 right-of-way to install this asphalt to maintain it?
10 Where do they have the right-of-way?

11 MR. SHUMATE: It's my understanding that the width
12 of the highway right-of-way will accommodate the path.

13 ADMINISTRATIVE LAW JUDGE DUGGAN: And the easement
14 will also accommodate a nonvehicle path?

15 MR. SHUMATE: Yes.

16 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. And,
17 otherwise, the Railroad will cooperate to allow them the
18 access, correct?

19 MR. SHUMATE: That's correct. Our real estate
20 department has informed me that the City has the
21 necessary property interest to install the path within
22 the right-of-way which they currently enjoy as a public
23 right-of-way across the tracks.

24 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. All right.

1 So Railroad's position? Any objection to this project?

2 MR. SHUMATE: No, your Honor. We have no objection
3 to the project as it has been designed other than we do
4 have to review it at our design offices in Omaha and
5 then we will also prepare estimates for the work that
6 would be necessary to complete the project as we've
7 discussed in the stipulations.

8 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. And what
9 about entering that bill, do you have to run that by the
10 Commission?

11 MR. SHUMATE: No.

12 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. You agree
13 with that, Mr. Powers?

14 MR. POWERS: Possibly we'd get a Form 2, which
15 would be just a minor modification, so that would be --

16 ADMINISTRATIVE LAW JUDGE DUGGAN: A form what?

17 MR. POWERS: Form 2 for -- or Form 1 modification
18 instead of the Form 3.

19 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay.

20 MR. POWERS: So yeah.

21 ADMINISTRATIVE LAW JUDGE DUGGAN: But they don't
22 have to wait for approval?

23 MR. POWERS: No. Exactly. Correct.

24 ADMINISTRATIVE LAW JUDGE DUGGAN: Yeah. Okay.

1 Mr. Powers, Staff's position?

2 MR. POWERS: We're not opposed to the project. I
3 just have one clarifying question to ask Ms. Anderson
4 though. And that was the number of trains.

5 I think -- Can you repeat what the number of
6 trains are? Is it ...

7 MS. ANDERSON: Two.

8 ADMINISTRATIVE LAW JUDGE DUGGAN: They've already
9 said it's two trains a day -- Well, one train crosses it
10 twice a day.

11 MR. SMORON: Is it a day or a week?

12 ADMINISTRATIVE LAW JUDGE DUGGAN: Oh. I'm sorry.
13 Very good. Thank you.

14 MS. ANDERSON: It's a day.

15 MR. SHUMATE: No, no.

16 MS. ANDERSON: It's a week?

17 MR. POWERS: I just want to be clear on the record.

18 MS. ANDERSON: Okay. Two trains a week.

19 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. I
20 appreciate that, because I was confused.

21 MS. ANDERSON: Thank you.

22 MR. POWERS: Uh-huh.

23 ADMINISTRATIVE LAW JUDGE DUGGAN: All right.

24 Anything else?

1 MR. POWERS: Nothing else, your Honor.

2 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay.

3 Mr. Smoron, anything else?

4 MR. SMORON: No, your Honor.

5 ADMINISTRATIVE LAW JUDGE DUGGAN: Very good. Now,

6 we have everybody here, so we can waive ex parte rule.

7 So talk to each other. I'm going to certainly make a

8 number of modifications to this proposed stipulation.

9 But, as I say, the City, Mr. Smoron, you guys
10 should file a revised stipulation stating that it's the
11 City stipulating, not the Staff. Do you understand what
12 I'm saying?

13 MR. SMORON: Yes, your Honor.

14 ADMINISTRATIVE LAW JUDGE DUGGAN: Okay. And you
15 know how to do that?

16 MR. SMORON: I will learn to do so, yes.

17 ADMINISTRATIVE LAW JUDGE DUGGAN: Or Dan will help
18 you. And then let's go ahead and do an ex parte waiver
19 in case we do need to talk, probably -- I think what
20 I'll do is I'll go ahead and make my modifications to
21 the order, then we'll circulate informally, and once we
22 get it all agreed -- It looks like everybody has already
23 waived the proposed order, but I don't want to -- I
24 think I'd rather circulate it first. So -- I mean, the

1 Commission has got to rule, just like -- Mr. Smoron,
2 just like you can't go talk to a judge without the other
3 side being present, the ex parte rule, and that applies
4 to me and Railroad Staff, so that -- and I can't even
5 talk to Staff. So we will ask that you waive that
6 ex parte prohibition so that I can talk to Staff and we
7 can all talk to everybody and get an order that
8 everybody's agreed upon. So would you waive that
9 ex parte prohibition, Mr. Smoron?

10 MR. SMORON: Absolutely.

11 ADMINISTRATIVE LAW JUDGE DUGGAN: Mr. Shumate?

12 MR. SHUMATE: Yes, we so waive.

13 ADMINISTRATIVE LAW JUDGE DUGGAN: Mr. Powers?

14 MR. POWERS: Yes, your Honor.

15 ADMINISTRATIVE LAW JUDGE DUGGAN: Very good. I'd
16 like to say that I will draft something and circulate it
17 until we all say informally it's okay. Okay? So that
18 concludes the hearing. Thanks very much.

19 MR. SHUMATE: Thank you, your Honor.

20 MR. SMORON: Thank you, your Honor.

21 MR. POWERS: Thank you.

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

24

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

3

4 Angela DiNino, being first duly sworn, on oath
5 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 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

ANGELA DiNINO, CSR, RPR

18

CSR No. 084-004685

19

20 SUBSCRIBED AND SWORN TO
21 before me this 11th day of
22 April, A.D., 2014.

22

23

24

NOTARY PUBLIC