

**Docket No.:** T14-0026  
**Bench Date:** 06/11/2014  
**Deadline:** N/A

**MEMORANDUM**

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**TO:** The Commission  
**FROM:** Latrice Kirkland-Montaque, Chief Administrative Law Judge  
**DATE:** May 30, 2014  
**SUBJECT:** The Department of Transportation of the State of Illinois,  
for and on behalf of the People of Illinois,  
Petitioner,

v.

Wisconsin Central Ltd., a successor to Elgin, Joliet, and Eastern Railway Company as successor to EJ&E West Company, an Illinois corporation, a wholly owned subsidiary of Canadian National Railway Company, Respondent.

Petition for an Order authorizing construction of a new grade separation over existing Wisconsin Central Ltd. tracks at its intersection FAP Route 311/U.S. Route 34 (Ogden Avenue) designated as DOT/AAR #260 560 X, Mile Post 19.05 in the City of Aurora, DuPage County, Illinois.

**RECOMMENDATION:** Enter Order authorizing construction of a new grade separation.

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On February 28, 2014, the Illinois Department of Transportation filed a Petition with the Commission naming as Respondent, the Wisconsin Central Ltd. (WCL) seeking authority to construct a new grade separation structure over an existing WCL track at its intersection with FAP Route 311/US 34 (Ogden Avenue) located in the City of Aurora, DuPage County, Illinois. On March 7, 2014, the Department filed an Amended Petition with the Commission.

On December 24, 2008, the Surface Transportation Board (STB) approved the acquisition of control by Canadian National Railway Company (CN) of WCL's predecessor subject to the fulfillment by CN of various specified conditions. One of said conditions provided that CN shall pay 67% of certain costs of a grade separation of the WCL crossing at U.S. 34 (Ogden Avenue).

The Department and WCL have executed a "Funding Agreement" in which each party agrees to pay a percentage of certain project costs (WCL – 67%; Department 33%) subject to fulfillment of certain specified conditions as stated in the Funding Agreement. The estimated overall cost of the Project is \$42,909,853. No GCPF funding is requested.

The contract plans, the land acquisition and agreements for this project have been completed. The Petitioner requests that the Commission approve a completion date of December 31, 2016. The Department shall be the lead agency on this project and the specific roles of the parties are set forth in the "Construction and Maintenance Agreement" ("C&M Agreement") executed by the parties as well as the "Funding Agreement" also executed by the parties. In the event of a conflict between the terms of the Funding Agreement and the C&M Agreement the terms of the Funding Agreement shall govern.

I recommend entry of the attached Order authorizing construction of a new grade separation.