

The Department of Transportation of the State of Illinois, for and  
on behalf of the People of the State of Illinois,  
Petitioner,

v.

Union Pacific Railroad Company, a Delaware Corporation, and  
Unknown Owners,  
Respondents.

Petition for approval of the taking or damaging owned by a  
common transportation carrier in DuPage County, Illinois by  
exercising the right of eminent domain of certain properties  
Parcel Nos. 1KF0001 & TE; Job No. R91-018-3.

T14-0049

**STAFF RESPONSE AND AGREED ORDER**

Now comes Staff of the Commission (Staff), and in response to the Petition filed  
by the Illinois Department of Transportation (Department), respectfully states:

1. Staff has no objection to the Department's Petition;
2. Staff has completed an Agreed Order with the parties, which is attached herein;
3. Staff requests that the hearing scheduled for July 1, 2014, be cancelled, and that the  
Agreed Order be submitted for Commission approval.

Respectfully Submitted,

June 27, 2014,



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The Department of Transportation of the State of Illinois, for and on	:	
behalf of the People of the State of Illinois,	:	
Petitioner,	:	
	:	
v.	:	T14-0049
	:	
Union Pacific Railroad Company, a Delaware Corporation, and	:	
Unknown Owners,	:	
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Petition for approval of the taking or damaging owned by a common	:	
transportation carrier in DuPage County, Illinois by exercising the right	:	
of eminent domain of certain properties Parcel Nos. 1KF0001 & TE;	:	
Job No. R91-018-3.	:	

**AGREED ORDER**

By the Commission:

On April 11, 2014, the Department of Transportation of the State of Illinois (Petitioner or Department) filed its verified petition with the Illinois Commerce Commission (Commission) to approve the taking of certain real estate owned by the Union Pacific Railroad Company, a Delaware Corporation (Respondent or Railroad) through the exercise of the power of eminent domain.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, a hearing on the Petition was scheduled for May 29, 2014 before a duly authorized Administrative Law Judge (ALJ). The matter was continued and the parties and Staff subsequently filed an Agreed Order. On July 1, 2014, the record was marked "HEARD and TAKEN."

**PETITIONER'S EVIDENCE**

At the hearing, the Department and the Railroad presented evidence and stipulations that the Department is engaged in a project to improve County Highway 21 (Fabyan Parkway) at IL 38 (Roosevelt Road) in DuPage County (the "Improvement Project"). The land legally described in Exhibit A and Exhibit B attached to the Petition filed by the Department herein (the "Property") is required for the Improvement Project. The work and Improvement Project is a public work, is for public use, and constitutes a public purpose, namely a public highway; it is necessary to the public convenience and necessity that Petitioner have and acquire for the use of the People of the State of Illinois the full fee simple absolute title to the property designated as Parcel No. 1KF0001 and legally described in Exhibit A attached to the Petition, and to further acquire Parcel No. KF0001TE as a temporary easement for construction purposes for a period not to exceed five (5) years or upon completion of construction in over and across the real property legally described in Exhibit B attached to the Petition. The Department has been unable through negotiations to acquire from the Railroad the interest(s) in the Property it needs at this time for the construction of the Improvement Project.

## **RESPONDENT POSITION**

The Respondent indicated that the Property is not part of the Railroad's operating track property and that its rail operations would not be affected by the Department's acquisition. Therefore, the Railroad has no objection to the acquisition of the Property by the Department.

## **STAFF POSITION**

Staff supports the Department's Petition.

## **FINDINGS AND ORDERS**

The Commission having considered the evidence, stipulations and recommendation of staff presented at the hearing or by affidavit, and being fully advised in the premises, is of the opinion and finds that:

- (1) The Department of Transportation of the State of Illinois exists by virtue of the laws of the State of Illinois;
- (2) The Railroad is engaged in the transportation for-hire of persons and/or property by rail in the State of Illinois and is a rail carrier as defined by the Illinois Commercial Transportation Law ("Law");
- (3) The Commission has jurisdiction of the parties hereto and the subject matter hereof;
- (4) Under and by virtue of the Illinois Highway Code, Chapter 605 ILCS 5/4-501, the Department is engaged in a project to improve County Highway 21 (Fabyan Parkway) at IL 38 (Roosevelt Road) in DuPage County, Illinois;
- (5) The land legally described in Exhibit A and Exhibit B attached to the Petition filed by the Department herein is required as part of a project to improve County Highway 21 (Fabyan Parkway) at IL 38 (Roosevelt Road) in DuPage County, Illinois;
- (6) The subject land, rights, and other property are private property and the Railroad has an interest in or claims to have some interest therein;
- (7) The work and improvement project is a public work, is for public use, and constitutes a public purpose, namely a public highway; it is necessary to the public convenience and necessity that Petitioner have and acquire for the use of the People of the State of Illinois the full fee simple absolute title

to the real property legally described in Exhibit A attached to the Petition, and it is necessary to the public convenience and necessity that Petitioner have and acquire for the use of the People of the State of Illinois a temporary easement for construction purposes for a period not to exceed five (5) years in, over and across the property legally described in Exhibit B attached to the Petition, which parcels are designated as Parcel No. 1KF0001 and Parcel No. 1KF0001TE, respectively;

- (8) The Petitioner has the right to condemn the Railroad's Property, and that just compensation for the taking shall be determined by the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois and the Petitioner is therefore authorized, and the Commission hereby approves the Department, to proceed to acquire said land, rights, or other property through the exercise of the right of eminent domain under the eminent domain laws of this State;
- (9) The approval of the Commission may reasonably be given for the taking of real property and impressment of the easements upon real estate owned by Railroad as legally described in Exhibit A and Exhibit B by the exercise of the power of eminent domain;
- (10) The acquisition of the Railroad's Property will not unreasonably interfere with the Railroad's rail operations.

IT IS THEREFORE ORDERED that in light of Findings (4) through (10) above, the approval of the Illinois Commerce Commission be, and it is hereby, granted to the Department of Transportation of the State of Illinois to exercise the power of eminent domain for the taking of real property and the full fee simple absolute title to the property designated as Parcel No. 1KF0001 and legally described in Exhibit A attached to the Petition; and further to acquire a temporary easement for construction purposes for a period not to exceed five (5) years or upon completion of construction, whichever first occurs, over, across and upon the property designated as Parcel No. KF0001TE and legally described in Exhibit B attached to the Petition.

IT IS FURTHER ORDERED that in accordance with Chapter 625 ILCS 5/18c-2201 and 5/18c-2206 of the Illinois Commercial Transportation Law, this is a final order subject to the Administrative Review Law.

By Order of the Commission this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

DOUGLAS P. SCOTT  
CHAIRMAN