

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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

Petitioner,)

vs.)

No. T14-0049

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. R91-018-13)

**UNION PACIFIC RAILROAD COMPANY'S
RESPONSE AND AGREED ORDER TO IDOT'S PETITION**

NOW COMES the Petitioner, Union Pacific Railroad Company (UP), by and through its attorney, Mack H. Shumate, Jr., and in Response to the Illinois Department of Transportation's (IDOT) Petition, states as follows:

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

UNION PACIFIC RAILROAD COMPANY



Senior General Attorney

Mack H. Shumate, Jr.
Union Pacific Railroad Company
101 North Wacker Drive, Room 1920
Chicago, IL 60606
Tel: 312/777-2055
Fax: 312/777-2065
mackshumate@up.com

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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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, |) | |
| |) | |
| vs. |) | No. T14-0049 |
| |) | |
| 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. R91-018-13 |) | |

NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on June 27, 2014, I filed via U.S. Mail, postage prepaid, with the Illinois Commerce Commission, the attached Concurrence and Agreed Order to IDOT's Petition, a copy of which is hereby served upon you.

UNION PACIFIC RAILROAD COMPANY



Mack H. Shumate, Jr., #2595532
Senior General Attorney
Union Pacific Railroad Company
101 N. Wacker Drive, Suite 1920
Chicago, Illinois 60606
Tel: 312.777.2055
Fax: 877.213.4433
mackshumate@up.com

Attorney for Respondent

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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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

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the foregoing instruments were served upon the addresses listed below by U.S. Mail, or the email address provided this June 27, 2014.

David Lazarides
Director of Processing
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
dlazarid@icc.illinois.gov

Douglas G. Felder
Douglas G. Felder, P.C.
Special Assistant Attorney General
203 North LaSalle Street, Suite 2300
Chicago, IL 60601
dougfelder@aol.com

Michael Forti, Chief Counsel
Illinois Department of Transportation
2300 South Dirksen Parkway
Springfield, IL 62764
michael.forti@illinois.gov

Claire E. Anderson
Manager of Field Engineering
Union Pacific Railroad
Two North Riverside Plaza, Suite 1700
Chicago, IL 60661
ceanders@up.com

Brian Vercruysse
Senior Rail Safety Specialist
Illinois Commerce Commission
527 E. Capitol Avenue
Springfield, IL 62701
bvercruy@icc.illinois.gov

Omer Osman
Director of Highways – IDOT
Attn: Jason Johnson
2300 South Dirksen Parkway, Room 205
Springfield, IL 62764
jason.johnson@illinois.gov

Jennifer Kuntz, Assistant Chief Counsel
Illinois Department of Transportation
2300 South Dirksen Parkway, Room 313
Springfield, IL 62764
jennifer.kuntz@illinois.gov

Lance Kippen
Union Pacific Railroad Company
100 North Broadway, Suite 1500
St. Louis, MO 63102
lkippen@up.com



Mack H. Shumate, Jr.