

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

3 BEFORE THE
4 ILLINOIS COMMERCE COMMISSION

5 COUNTY OF LAKE,)
)
6 vs.) No. T14-0041
)

7 WISCONSIN CENTRAL LTD., a)
 Delaware Corporation;)
8 VILLAGE OF GRAYSLAKE; and)
 THE STATE OF ILLINOIS)
9 DEPARTMENT OF)
 TRANSPORTATION,)

10)
11 Petition for the)
 construction of a new grade)
12 separation to replace the)
 existing Washington Street)
 (Lake County Highway 45))
13 highway-rail grade crossing)
 of the Wisconsin Central)
14 Limited tracks located in)
 Grayslake, Lake County,)
15 Illinois, designated as)
 AARDOT # 689 726P, railroad)
16 milepost 46.47; and)
 assigning project costs to)
17 the petitioner and)
 respondents, and authorizing)
18 the Grade Crossing)
 Protection Fund to pay a)
19 portion of the costs)
 thereof.)
20)

21 Hearing in Chicago, Illinois

22 Met pursuant to notice on July 2, 2014, before the
23 ADMINISTRATIVE LAW JUDGE LATRICE KIRKLAND-MONTAQUE.

24

1 APPEARANCES:

2 LAKE COUNTY STATE'S ATTORNEY, by
3 MR. GUNNAR GUNNARSSON
4 On behalf of the County of Lake;

5 MR. THOMAS J. HEALEY
6 On behalf of Wisconsin Central Limited;

7 ILLINOIS COMMERCE COMMISSION, by
8 MR. STAN MILEWSKI
9 On behalf of Staff.

10

11 ALSO PRESENT: Mr. Al Giertych
12 Mr. Michael J. Pine
13 Mr. Steve Heath

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1 ADMINISTRATIVE LAW JUDGE MONTAQUE: By the power
2 vested in me by the State of Illinois and the Illinois
3 Commerce Commission, I now call Docket No. T14-0041 for
4 hearing. This is in the matter of the County of Lake,
5 Petitioner, vs. The Wisconsin Central Limited and the
6 Village of Grayslake and also the Illinois Department of
7 Transportation.

8 May I have appearances, please, starting with
9 the County.

10 MR. GUNNARSSON: Good morning, your Honor. Gunnar
11 Gunnarsson, G U N N A R is the first name, last name is
12 G U N N A R S S O N, with Lake County State's Attorney
13 office appearing for the County of Lake. Also here
14 is -- My address is 18 North County Street in Waukegan,
15 Illinois 60085. Telephone number is (847) 377-3050.

16 With me this morning is Mr. Al Giertych,
17 Assistant County Engineer with the County of Lake
18 Department of Transportation, and two representatives of
19 the County's project, engineer of Patrick Engineering,
20 Mr. Mike Pine and Mr. Steve Heath.

21 ADMINISTRATIVE LAW JUDGE MONTAQUE: Thank you.

22 And Wisconsin Central.

23 MR. HEALEY: Good morning, your Honor. Thomas
24 Healey, H E A L E Y, in-house counsel with Wisconsin

1 Central. My office address is 17641 South Ashland
2 Avenue in Homewood, Illinois 60430. My office number
3 is (708) 332-4381.

4 ADMINISTRATIVE LAW JUDGE MONTAQUE: Thank you.
5 Staff.

6 MR. MILEWSKI: On behalf of Rail Safety, Stan
7 Milewski, M I L E W S K I.

8 ADMINISTRATIVE LAW JUDGE MONTAQUE: Okay. Thank
9 you.

10 Did we have a discussion -- Let me ask: First
11 of all, do we have anyone representing the Village of
12 Grayslake or IDOT? Have we discussed the project with
13 them?

14 MR. GUNNARSSON: We don't have anyone here from
15 either, but I believe they both approved the project,
16 but I don't have something in writing. I think I have
17 an e-mail actually from IDOT, but I don't have something
18 in writing here today for them.

19 ADMINISTRATIVE LAW JUDGE MONTAQUE: Okay. You just
20 want to make sure that that's on record when you get
21 your draft order in. Okay. So, Mr. Gunnarsson, I'll
22 give you the floor to present the petition.

23 MR. GUNNARSSON: Thank you, Judge. Just briefly
24 again this is a petition by the County of Lake for the

1 construction of new grade separation of Washington
2 Street at County Highway. The Wisconsin Central track
3 is located at railroad -- mile post 46.47. I'm seeking
4 authorization from the Commission for the project and
5 the grade separation and approval of the petition and
6 assignment of project cost and authorizing grade
7 protection crossing funds for the project.

8 I have as my first witness, Mr. Al Giertych,
9 G I E R T Y C H, the Assistant County Engineer, to first
10 testify for the County about the overview of the project
11 and also Mike Pine with Patrick Engineering, the County
12 Engineer, to testify more particularly about the
13 project.

14 ADMINISTRATIVE LAW JUDGE MONTAQUE: Okay.

15 MR. GUNNARSSON: Those are my two witnesses today,
16 your Honor.

17 ADMINISTRATIVE LAW JUDGE MONTAQUE: Why don't you
18 have them stand and raise their right hand.

19 (Witnesses sworn.)

20 MR. GUNNARSSON: And, Judge, do you want the first
21 witness to go in the witness box?

22 ADMINISTRATIVE LAW JUDGE MONTAQUE: You're fine
23 right there.

24 MR. GUNNARSSON: I'd like to give you just

1 exhibits -- copies of exhibits that we're going to be
2 talking about.

3 Starting with Mr. Giertych.

4 WHEREUPON:

5 AL GIERTYCH,
6 called as a witness herein, having been first duly
7 sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. GUNNARSSON:

10 Q. Could you please state your name for the
11 record.

12 A. Al Giertych, G I E R T Y C H.

13 Q. And, Mr. Giertych, who is your employer?

14 A. Lake County Division of Transportation.

15 Q. And what is your position with Lake County?

16 A. I'm the assistant county engineer.

17 Q. What is your engineering education?

18 A. I have a bachelor's in science in civil
19 engineering from the University of Illinois.

20 Q. Are you licensed?

21 A. Yes, I am. I'm a licensed professional
22 engineer in Illinois and Wisconsin.

23 Q. And what are your duties in your current
24 position as assistant engineer?

1 A. My primary duties in my present position is
2 management of the county's capital improvement program
3 for transportation.

4 Q. And how long have you been in that position?

5 A. Since 2000, about 14 years.

6 Q. Mr. Giertych, are you familiar with the
7 Washington Street grade crossing project?

8 A. Yes, I am.

9 Q. Just generally, what does that project entail?

10 A. It involves Washington Street, one of our
11 east/west county highways, and at the existing at-grade
12 crossing with the CN railroad, the project will lower
13 the profile -- the vertical profile of Washington Street
14 approximately 20 feet to provide a grade separation
15 between the roadway and the railroad. And the project
16 will involve or include all of the necessary bridge
17 work, excavation work, retaining walls, bridge
18 abutments, to accomplish that in associated drainage
19 work and things like that.

20 Q. And why is the County undertaking this
21 project?

22 A. The County is undertaking this project to
23 address specific needs associated with safety and
24 capacity for the roadway.

1 Q. In particular, what are the safety issues?

2 A. The safety issues or the safety improvements
3 that we can realize with the project are by creating the
4 grade separation -- providing the grade separation we
5 remove the potential for any sort of accident between a
6 train and either vehicles using the roadway or
7 pedestrians or bicyclists along the way.

8 Q. Is Washington Street a major county highway?

9 A. Yes, it is. It's a major arterial. It runs
10 through the center of the county, east/west arterial and
11 it carries over 16,000 cars a day -- vehicles a day.

12 Q. Is that traffic increasing?

13 A. Yes, it is. And we have -- the roadway is
14 designed -- the improvements are designed to accommodate
15 the future 2030 projection for traffic on that roadway.

16 Q. And you also mentioned the project is also
17 designed to address traffic related issues; is that
18 right?

19 A. Yes. We are adding a lane of through traffic
20 in each direction so we'll widen the roadway to provide
21 one additional travel lane in each direction. And that
22 will add capacity of the roadway and also by providing
23 the grade separation, we will improve traffic delay due
24 to cars currently having -- particularly during the a.m.

1 and p.m. rush hour periods having to wait for trains to
2 clear the crossing at the at-grade crossing, by adding a
3 grade separation, there will be a free flow of traffic
4 during the train crossings.

5 Q. So lowering the grade or separating the grade
6 between the highway and the crossing will both alleviate
7 any sort of safety issue in terms of intersection
8 accidents and also the bottlenecks caused by that
9 intersection as well?

10 A. It provides us with clear operational and
11 safety benefits.

12 Q. I'd like to show you the petition that has
13 been filed in this case.

14 (Witness viewing document.)

15 BY MR. GUNNARSSON:

16 Q. Do you see that document, Mr. Giertych?

17 A. Yes, I do.

18 Q. And have you read through it?

19 A. Yes, I have.

20 Q. Are the statements in the petition, to your
21 knowledge, true and correct?

22 A. Yes, they are.

23 Q. The petition references various exhibits that
24 are attached with -- that particular copy does not have

1 exhibits, but I have the exhibits out here, and I'd like
2 to go through them briefly with Mr. Giertych, your
3 Honor, just to get these exhibits in the record.

4 So I'd like to first give you what's been
5 marked A1, and it's also one of the exhibits from the
6 petition. Mr. Giertych, can you identify that document?

7 A. Yes. This is a general location map for the
8 project.

9 Q. So it shows Washington Street there in the
10 middle?

11 A. Yes. It shows Washington Street and the
12 circled location is the general location of the project.

13 Q. And where the railroad tracks cross Washington
14 Street?

15 A. That's right.

16 Q. Showing you Exhibit A2, can you identify that
17 exhibit, Mr. Giertych?

18 A. These are photographs of the existing at-grade
19 crossing of Washington Street and the Wisconsin Central.

20 Q. Showing you A3 and we actually have A3 as a
21 blowup, your Honor. We have a smaller copy that I've
22 given to yourself, but it might be easier if
23 Mr. Giertych could reference this exhibit.

24 So this is Exhibit A3, the blowup of that?

1 A. Yes, it is.

2 Q. Does this obviously show the location for the
3 project, correct?

4 A. Yes, it does.

5 Q. Where is indicated here the limits on this
6 grade crossing project?

7 A. The limits of the grade crossing project are
8 identified as just being east of Haryan Way and station
9 104 plus 75, and then the eastern limits are generally
10 identified at station 124 plus 69.47.

11 Q. And, Mr. Giertych, how are those limits
12 identified? What is meant by the --

13 A. Generally, they're determined by the limits
14 that are necessary to transition the vertical profile of
15 the roadway below the tracks and then back up again.

16 Q. Okay. So that's when, under the project, the
17 road is going to decline from its current elevation; is
18 that a fair statement?

19 A. We refer to it as the touchdown points of the
20 roadway.

21 Q. Okay. And from end to end, from the west end
22 to the east end of the project, how -- what is the
23 distance for that?

24 A. Just a little bit under 2,000 feet.

1 Q. Thank you, Mr. Giertych.

2 Showing you what's been marked Exhibit B, can
3 you identify that document?

4 A. These are the proposed highway plans, the
5 pre-final set.

6 Q. So those are the plans for this particular
7 project; is that right?

8 A. That's correct.

9 Q. Showing you what's been marked as Exhibit C,
10 can you identify this document, Mr. Giertych?

11 A. This is the most recent estimate of the cost
12 for the project.

13 Q. And I'd just like to go over a couple of the
14 items here in this exhibit. The phase one and phase two
15 engineering, are those actual figures?

16 A. Yes, they are.

17 Q. Are those reports? And that engineering has
18 already been done; is that right?

19 A. For the most part, we are reaching the very
20 end of the phase two engineering right now as we're
21 preparing for the bid line.

22 Q. And the rest of the items, they're estimates
23 based on anticipated project costs?

24 A. The right-of-way acquisition is the actual

1 number.

2 Q. Okay.

3 A. And the other costs are all estimates.

4 Q. Okay. And in particular we have what's marked
5 the CNRR; do you see that?

6 A. Yes, I do.

7 Q. What is that in reference to?

8 A. That's in reference to the railroad's
9 participation in the project from cost standpoint total
10 participation.

11 Q. Okay. And, Mr. Giertych, that has a note
12 three there below that. Do you see what the note three
13 references?

14 A. Yes.

15 Q. And it references that includes 1.5 million
16 that the railroad is already committing to the
17 substructure cost to accommodate a second track?

18 A. That's correct.

19 Q. So they're paying -- that's the estimate it
20 costs for doing that; is that correct?

21 A. That's correct.

22 Q. They're paying that entirely. And in
23 addition, the railroad costs include 5 percent of the
24 overall project cost; do you see that?

1 A. Yes.

2 Q. And does that include engineering,
3 construction and right-of-way acquisition cost?

4 A. Yes, it does.

5 Q. But it says in parentheses, with exception of
6 cost associated with roadway widening and substructure
7 widening for the future track -- for the second track?

8 A. That's correct. So we did not include the
9 1.5 million that was previously mentioned for the
10 additional abutments for future bridge, and also we took
11 away the roadway widening cost in accordance with the
12 federal regulation.

13 MR. GUNNARSSON: Judge, can I ask for your
14 indulgence? There's a couple copies of exhibits that I
15 gave to yourself. I'd like to reference that to
16 Mr. Giertych.

17 (Documents tendered to Mr. Gunnarsson.)

18 BY MR. GUNNARSSON:

19 Q. Mr. Giertych, handing you what's marked
20 Exhibit J, you referenced that the -- in Exhibit C the
21 CN's contribution is 5 percent of the project cost less
22 than 1.5 million and the cost associated with the
23 roadway widening?

24 A. Yes.

1 Q. And is the cost associated with the roadway
2 widening in Exhibit C, is that identified here in this
3 Exhibit J?

4 A. Yes, it is.

5 Q. And do you know who prepared that exhibit?

6 A. This was prepared by our consultant, Patrick
7 Engineering.

8 Q. So that figure is the bottom line figure, is
9 that the cost associated -- incremental cost associated
10 with the roadway widening; is that correct?

11 A. Yes, it is.

12 Q. And that was subtracted out of the total
13 project cost against which the 5 percent is applied?

14 A. That's correct.

15 Q. I'd like to show you the next exhibit,
16 Mr. Giertych. It's been marked Exhibit D. Has the
17 County authorized this project?

18 A. Yes, they have.

19 Q. And is -- Can you identify that Exhibit D
20 then?

21 A. This is a certified copy of the ordinance
22 passed by the county board authorizing the issuance of
23 bonds for the capital improvements associated with the
24 challenge bond program for which this project is a part.

1 Q. And going back to Exhibit C, Mr. Giertych,
2 there is an item that's estimated force account work by
3 the CN; do you see that number?

4 A. Yes, I do.

5 Q. Where is this estimate derived from?

6 A. I believe that is derived from an estimate
7 that our consultant also prepared based on their
8 knowledge of what they believe the force account work
9 will involve.

10 Q. So that's not the CN's estimate but Patrick
11 Engineering estimate of the CN force account work?

12 A. That's correct.

13 Q. And under the -- this project as anticipated
14 with the agreement with the railroad, the railroad is
15 going to do some of the work, but most of the work is
16 going to be done by the County contractors; is that
17 right?

18 A. I'm sorry, can you ask that again?

19 Q. Under the understanding with the agreement
20 with the County and the railroad, the railroad is doing
21 some of the work for the project, but most of the work
22 is being done by the County; is that right?

23 A. That's correct.

24 Q. And the work that's being done by the

1 railroad, that's going to be charged as forced account?

2 A. That's correct.

3 Q. So the -- Going back to Exhibit C, the total
4 project costs are 33,821,419; is that right?

5 A. That's correct.

6 Q. Also included within this is an item for Grade
7 Crossing Protection Funds?

8 A. Yes.

9 Q. And is that figure four two six one five four
10 nine?

11 A. Yes, it is.

12 Q. And is it your understanding that that is
13 going to be allocated through the Grade Crossing
14 Protection Fund?

15 A. Yes, it is.

16 Q. Now, with respect to the limits to the project
17 that you already testified to, the touchdown to
18 touchdown point, does this total project cost figure
19 reflect the preliminary engineering cost, right-of-way
20 acquisition cost and construction cost for that project
21 between those two points?

22 A. Yes, it does.

23 Q. And as far as the preliminary engineering,
24 what items in Exhibit C are, in your view, referenced as

1 preliminary engineering?

2 A. That would be the combination of phase one
3 engineering and phase two engineering, which is all the
4 engineering necessary to bring the project to a letting.

5 Q. And what is phase three engineering?

6 A. Phase three engineering is construction
7 engineering, quality assurance that takes place during
8 the construction phase, resident engineer.

9 Q. And is that something that's normally
10 undertaken with the project that does construction
11 engineering, quality --

12 A. We have phase three engineering on every one
13 of our projects, yes.

14 Q. Now, currently Washington Street is in the
15 area of the crossing of two land roads; is that right?

16 A. That's correct.

17 Q. And you've already testified that the proposal
18 from the -- for the project is to add an additional lane
19 in either direction; is that correct?

20 A. That's correct.

21 Q. And you've already talked about the force
22 account work for Patrick. I'd like to show you another
23 exhibit. It was previously marked as Exhibit J. That
24 describes the incremental cost of the project from going

1 from two to four lanes from touchdown to touchdown
2 point; is that right?

3 A. That's correct.

4 Q. And what is that figure?

5 A. 1,111,415.

6 Q. And this exhibit again you've already
7 testified was prepared by Patrick Engineering?

8 A. That's correct.

9 Q. When the County -- When do you anticipate the
10 County letting out the project?

11 A. We're anticipating taking it to a letting on
12 September 19, 2014.

13 Q. And to meet that September 19th letting date,
14 when would we need a Commission order approving this
15 project?

16 A. In our view, that would be August 1st.

17 Q. By August 1st. And as far as having an
18 agreement with the CN that's been executed, when will we
19 need to have that agreement?

20 A. That will also be August 1st.

21 Q. Have the County and the CN or Wisconsin
22 Central negotiated an agreement -- a construction
23 maintenance agreement?

24 A. We have worked on negotiating an agreement.

1 It is not final, but we have worked to negotiate.

2 Q. And what is left yet to determine?

3 A. The final allocation cost between the County
4 and Wisconsin Central.

5 Q. Does the County anticipate having an agreement
6 on that cost allocation with the railroad?

7 A. Yes, we do.

8 Q. If the County does not get that agreement, is
9 County requesting the Commission to determine what the
10 allocation should be?

11 A. Yes, we are.

12 Q. If we looked at Exhibit C, we have this figure
13 for the CN's contribution of \$3,059,730; do you see
14 that?

15 A. Yes.

16 Q. To the extent we would not be able to get an
17 agreement with the CN for that full amount as being
18 their allocated share, and it's either we undertake it
19 ourselves or it's ordered by the Commission, some sort
20 of division on that, any differential from that, is the
21 County committed to making up that difference?

22 A. Yes, we are.

23 Q. So if the CN doesn't pay that full amount
24 either by agreement or by the Commission's direction,

1 will the County make up the difference of that full
2 amount?

3 A. Yes, we will.

4 Q. Okay. Going back again to this Exhibit C, we
5 have the CN force account estimate. In order to
6 finalize an agreement, do you need the CN itself's force
7 account estimate?

8 A. Yes, we do.

9 Q. And that's an exhibit -- it would be an
10 exhibit to the agreement; is that right?

11 A. That's correct. To the final agreement we
12 need that also.

13 Q. So in order to meet the August 1st date for
14 having an agreement and a Commission order, when would
15 the County want to see that -- at least have that force
16 account estimate?

17 A. By about July 15th.

18 Q. And do you need that force account estimate
19 before finalizing the agreement?

20 A. Yes, we do.

21 Q. And is the County requesting that the
22 Commission issue an interim order approving its project
23 and approving the allocation of funds as indicated in
24 Exhibit C, except for the railroads contribution, which

1 is yet to be determined either by agreement or by the
2 Commission?

3 A. Yes.

4 MR. GUNNARSSON: I have nothing further, your
5 Honor.

6 ADMINISTRATIVE LAW JUDGE MONTAQUE: Thank you.

7 MR. GUNNARSSON: I would ask that we admit into the
8 record the exhibits that we've identified.

9 MR. HEALEY: No objection.

10 ADMINISTRATIVE LAW JUDGE MONTAQUE: Can you go over
11 the letters for me, A1, A2, Mr. Gunnarsson?

12 MR. GUNNARSSON: A1 and A2?

13 ADMINISTRATIVE LAW JUDGE MONTAQUE: I'm saying go
14 over the letters of the exhibits that you want admitted.

15 MR. GUNNARSSON: Oh. Very good, Judge. A1, A2,
16 A3, we had B, we had Exhibit C, your Honor, D and
17 Exhibit J. So those exhibits we've moved to be
18 admitted.

19 ADMINISTRATIVE LAW JUDGE MONTAQUE: Okay.
20 Petitioner Exhibits A1, A2, A3, B, C, D and J are
21 admitted.

22 MR. GUNNARSSON: Thank you, Judge.

23 ADMINISTRATIVE LAW JUDGE MONTAQUE: Mr. Healey, do
24 you have any question for the witness?

1 MR. HEALEY: I do.

2 First, just a clarification for the record.
3 We've been referring to the railroad as CN. The
4 railroad is Wisconsin Central Limited. It's
5 appropriately named in the petition. We sometimes use
6 the abbreviation of CN because the company is owned by
7 Canadian National Railroad Company, but they are not an
8 owner of the railroad and they don't operate the trains.
9 They don't employ the people.

10 We're fine with calling it CN, but just so the
11 record is clear, it's actually Wisconsin Central Limited
12 is the entity out there.

13 CROSS-EXAMINATION

14 BY MR. HEALEY:

15 Q. Mr. Giertych, does the project involve raising
16 the current height of the railing?

17 A. I believe that it does.

18 Q. And how high is that supposed to be raised
19 relative --

20 A. I'm not sure of the exact amount, but I think
21 it's about a foot or so.

22 Q. All right. And that's reflected in Exhibit B,
23 or where would that be reflected in the exhibit?

24 A. I'm not sure.

1 Q. Okay. If you -- You discussed at some length
2 the Exhibit C, so if you want to get that in front of
3 you, I have a variety of questions on that.

4 A. Okay.

5 Q. Right-of-way acquisition was I believe a cost
6 you indicated had not yet been incurred, but that was an
7 estimate? I may have that wrong. It may have actually
8 been incurred.

9 A. The right-of-away acquisition that has been
10 incurred.

11 Q. Okay. So all the property necessary for the
12 project has been acquired?

13 A. Well, I apologize. There is one small fill
14 that needs to be acquired for the maintenance that we're
15 providing for the railroad, and that's in the final
16 stages right now.

17 Q. We don't really have any breakdown here of
18 what went into the roughly two and a half million
19 dollars of property acquisitions, so can you describe
20 that for us, please?

21 A. We can certainly make that available to you.
22 There's several parcels on the north side of the
23 property adjacent to the Metra property, and between the
24 corner there will be a Parker property. There's

1 permanent acquisitions. There's permanent easements and
2 there's temporary easements associated with that, and
3 those are fairly large takes that were quite expensive.

4 Q. Okay. And I guess that's really -- I mean, I
5 wish we had a little bit more exhibits or detail.
6 That's what I'm trying to figure out. Two and a half
7 million is a lot of money for right-of-way acquisition
8 for a project like this. Why were such large parcels
9 acquired?

10 A. One of the reasons was so that on the north
11 side, the property is being graded back, and we're not
12 providing the vertical retaining wall so that we can
13 keep an open view from one side of the project to
14 traffic. That was one of the things that came up in our
15 public involvement process. That was one of the things
16 the public was asking for, and it makes sense for
17 something to pursue.

18 Q. Okay. Did the County find itself in a
19 position to have to acquire more land than they needed,
20 to acquire entire parcels from current landowners?

21 A. No.

22 Q. Okay. So you only took what was necessary for
23 the grading?

24 A. That's correct. And there's also some other

1 things like (indiscernible) tension.

2 Q. Were there any active businesses relocated?

3 A. No.

4 Q. Were there any homes relocated?

5 A. I believe that there was one old farmhouse
6 that was being rented that was acquired and destroyed.

7 Q. The visibility issue you mentioned just a few
8 questions ago, that wasn't necessary for building a
9 bridge at the railroad grade crossing, was it?

10 A. Well, it was necessary within context of the
11 project. In order to move forward, the public
12 involvement is an important part of the process, and we
13 have to satisfy the public involvement in order for the
14 project to be viable.

15 Q. Okay. But again, and I'm sort of steering
16 back to the federal regulation regarding the 5 percent
17 contribution, it wouldn't be necessary to be building a
18 grade separation there from a purely physics standpoint,
19 let's put it that way. You can build the grade
20 separation without having acquired that land for the
21 slope to save the money for the retaining wall?

22 A. The slope was one issue. There's also
23 utilities that are being located -- relocated from
24 underneath the existing roadway out into some of the

1 area. There is storm water appurtenances there being
2 installed in that area. There's a storm water detention
3 basin that's being built on that property, so there's a
4 number of simultaneous needs being met.

5 Q. Again, I guess I'm looking back to the federal
6 regulation, which talks about building a theoretical
7 structure to separate the grade crossing without the
8 involvement of any third-party issues, things like
9 utility relocation, those storm water construction.
10 Those are in the costs that you've presented for
11 construction, and there had to be engineering work done
12 for that, et cetera, correct?

13 A. That's correct.

14 Q. Okay. Exhibit C mentions wetland banking at
15 the top. It's a relatively small item, 15,000. I
16 assume that was a purchase from an existing wetland bank
17 to compensate for wetlands that were being eliminated as
18 a result --

19 A. To mitigate force of impacts from the project.

20 Q. Were those wetlands on railroad property?

21 A. I don't know.

22 Q. Okay. Do you know -- There's an item list on
23 Exhibit C, force account work by Metra. Do you know
24 what's involved for Metra's part of the project?

1 A. Not real specifically. I know generally
2 there's some work being done at the station, but
3 temporary and permanent, but I don't know enough about
4 the details to speak to it.

5 Q. Okay. If you can pull out Exhibit B, and I
6 understand this was prepared by Patrick, so some of
7 these questions may be appropriately addressed to the
8 next witness, just to give him a preview of what's here.
9 If you can turn to sheet 5 of 23.

10 A. Okay.

11 Q. The upper diagram, which I think is P3 here,
12 indicates some distance for the bridge of a median, and
13 I apologize; my copy isn't that great so I can't tell
14 what that distance is. Let's talk about the roadway
15 currently. It's a two-lane road, and if I understand
16 correctly, there's double yellow striping in the middle,
17 right?

18 A. That's correct.

19 Q. There's no raised median or anything of that
20 sort out there currently, right?

21 A. That's correct.

22 Q. Is the distance of that median between the
23 lanes going to be increased as a result of the project?

24 A. It's shown here as two feet.

1 Q. Okay. Do you know what the current width is
2 out there on the roadway today?

3 A. There currently is not a median at that
4 location.

5 Q. The two feet of median also has to be bridged
6 as part of the project then, correct, and the bridge
7 overhead -- the railroad bridge has to be lengthened two
8 feet to accommodate the median below?

9 A. That's correct.

10 Q. Okay. And then if you look on the sides of
11 either of these -- of that diagram, we see some areas
12 that are I think listed as on the right-hand side, five
13 foot of distance, eight foot of distance, two foot of
14 distance. Can you tell us what those distances are?

15 A. That is depicting a bike path. There's an
16 existing bike path that exists on the south side of
17 Washington Street that also crosses the railroad at
18 grade. And that bike path is being reconstructed and
19 rebuilt at the new profile of Washington Street so that
20 we can provide grade separation for users of the bike
21 path also.

22 Q. What's the width of the current bike path?

23 A. I don't know.

24 Q. It's probably not 15 feet, is it? I've got

1 eight and two and five here. It's 15 feet of total
2 distance there?

3 A. Well, the path itself is eight feet, and those
4 other distances are required clearances.

5 Q. Okay. But you don't know the width of the
6 current path?

7 A. No, I don't.

8 Q. And you would agree with me that any design
9 work that has accommodated more than the current width
10 of the bike path is going to require a longer bridge
11 over the railroad, correct; that is to say -- let's just
12 as an example, if the current bike path is five feet and
13 the bridge is going to come at eight feet, you need
14 three more feet of bridge to accommodate the widened
15 bike path?

16 A. Without knowing what the current distance is,
17 I can't really answer that.

18 Q. But using the example I gave you, if the
19 current path were five feet -- I'm not saying it is. I
20 haven't been out there, but if it were, and the design
21 is accommodating eight feet, that would be three extra
22 feet of bridge to accommodate the widened path?

23 A. That's correct.

24 MR. HEALEY: I point out for the record again that

1 the regulation governing our 5 percent talks about a
2 theoretical bridge going over the current lanes of
3 traffic. It doesn't discuss cost for bridging over any
4 of the paths, much less the widened path.

5 ADMINISTRATIVE LAW JUDGE MONTAQUE: Mr. Healey, can
6 you give me that citation?

7 MR. HEALEY: Yes.

8 MR. GUNNARSSON: It's 23CFR646.210.

9 ADMINISTRATIVE LAW JUDGE MONTAQUE: Say the last
10 part again.

11 MR. GUNNARSSON: 646.210, your Honor.

12 MR. HEALEY: Can we go off the record for just a
13 second?

14 ADMINISTRATIVE LAW JUDGE MONTAQUE: Yeah.

15 (Discussion off the record.)

16 BY MR. HEALEY:

17 Q. Mr. Giertych, there's no current pathway on
18 the north side of the existing roadway; is that correct?

19 A. That's correct.

20 Q. Okay. Again, turning to sheet 5 of Exhibit B,
21 the upper diagram appears to have five and four, being
22 nine feet of distance behind the curb; is that a fair
23 way to phrase it?

24 A. The five feet is a proposed new sidewalk, and

1 the four feet is the required clearance from the backup
2 curb to that sidewalk. And that's been provided for
3 pedestrian access to the Metra station from both east
4 and the west. That's another issue that came up in the
5 public involvement process.

6 Q. Okay. And again, building a bridge over --
7 the theoretical bridge over the current two lanes
8 wouldn't be accommodating the sidewalk -- the sidewalk
9 is new, right?

10 A. Right.

11 Q. And if the sidewalk weren't going in, you
12 would save on the span both the five feet for the
13 sidewalk as well as the four feet of buffer?

14 A. I don't know what the required clear distance
15 would be from the roadway to the retaining wall.

16 Q. Okay. Fair enough. There is a reference on
17 sheet 5 of Exhibit B on the legend part. It's under
18 No. 14, proposed ornamental fence. Do you know where
19 that's being located?

20 A. That's being located along the top of the
21 retaining wall on the south side.

22 Q. Okay. Since it's described as ornamental, is
23 it fair to assume that that's an architectural
24 enhancement that is not necessary to the structural

1 functioning of the retaining wall?

2 A. It's necessary for safety, but there's an
3 aesthetic component to that.

4 Q. Do you have any idea for the cost built into
5 the project for the ornamental fence?

6 A. No, I don't.

7 Q. You mentioned briefly in your discussions
8 utility work. Can you describe what utilities have to
9 be relocated for the project?

10 A. Well, I don't think I can give a detailed
11 description of all of them, but some of the major ones
12 that I can cover, I know Lake County Public Works has
13 some facilities that need to be relocated. The Central
14 Lake County Joint Action Water Agency, that's a major
15 facility that's going to require some relocation. The
16 Village of Grayslake has utilities, and I believe --
17 well, I really can't speak to AT&T, the gas company and
18 ComEd, but I believe they also have relocations
19 involved.

20 Q. Are all of the costs for those utility
21 relocations included within Exhibit C?

22 A. Only the ones that are depicted, Lake County
23 Public Works, the CLCJAWA, and Grayslake portion, those
24 are their shares that they're contributing towards the

1 project for those relocations, which will be included
2 within the contract.

3 Q. So those entities which have -- those three
4 entities you've identified in Exhibit C that have
5 utilities within the footprint of the project are paying
6 the full cost for whatever is necessary to modify those
7 utilities for the project?

8 A. Yes. I believe so.

9 Q. And there's no extra project cost associated
10 with any of those three that isn't already covered by
11 the contribution of those three entities?

12 A. That's correct. Those contributions cover
13 those costs.

14 Q. Okay. And there were some other utilities you
15 mentioned. ComEd -- I know I remember. ComEd is not
16 making a contribution to relocate its facilities?

17 A. Those relocations are not included within the
18 contracts, so they're not part of the total construction
19 cost. They're being done at the utility's expense.

20 Q. So -- Okay. So if I understand what you're
21 saying, all of the utility work is being covered by the
22 owner of the utility?

23 A. Yes.

24 Q. I mean, you've got --

1 A. Yes. Some of those are in this project cost
2 and are shown what their contribution would be. Others
3 are outside the contract and paid by utility directly.

4 Q. What was the decision point for whether those
5 utility relocation costs would be included in this
6 Exhibit C or not included in Exhibit C?

7 A. Whether or not they're included in the
8 construction contract and then these represent the
9 reimbursements.

10 Q. And there is agreement with all the utilities
11 that are not listed on Exhibit C as to the relocation or
12 modification necessary?

13 A. Those would be required by our facility
14 placement ordinance and by permit, so we have a process
15 that regulates the public utilities.

16 Q. I guess what I'm trying to cover off is
17 there's no possibility that the County is going to come
18 back for additional funding because of the relocation of
19 any of those utilities not mentioned on Exhibit C?

20 A. That's correct.

21 MR. HEALEY: Okay. I think that's it for me, your
22 Honor. I thank the witness for his time.

23 ADMINISTRATIVE LAW JUDGE MONTAQUE: Mr. Milewski,
24 do you have any questions?

1 MR. MILEWSKI: No questions, your Honor.

2 ADMINISTRATIVE LAW JUDGE MONTAQUE: Mr. Gunnarsson?

3 MR. GUNNARSSON: Just a brief follow-up, Judge.

4 I'd like to present something we've made reference to,
5 the regulation. I'm not going to ask Mr. Giertych to
6 give any sort of legal opinion.

7 REDIRECT EXAMINATION

8 BY MR. GUNNARSSON:

9 Q. Showing you what I've marked Exhibit E, again,
10 I won't ask to admit it into evidence, but this is the
11 regulation that was referenced earlier. And my question
12 to you, Mr. Giertych, looking at B3 references project
13 for the elimination of existing grade crossings, is that
14 the sort of project that we're talking about this
15 morning, the Washington Street grade crossing project?

16 A. Yes, it is.

17 Q. And it says the railroad share of the project
18 cost shall be 5 percent; do you see that?

19 A. Yes.

20 Q. And then we see C, and then one, the required
21 railroad share of the cost under that B3 shall be based
22 on cost of preliminary engineering, right-of-way and
23 construction within the limits described below; do you
24 see that?

1 A. I'm sorry, no. Under C, yes.

2 Q. Do you see that?

3 A. Yes.

4 Q. If the limits refers to the geographical
5 limits of the project that is said the touchdown to
6 touchdown points that you've described earlier, the
7 figure that is put on Exhibit C, the total project cost,
8 would that figure be the cost for preliminary
9 engineering right-of way and construction within those
10 limits?

11 A. Yes.

12 MR. GUNNARSSON: I have nothing further.

13 ADMINISTRATIVE LAW JUDGE MONTAQUE: Okay. You may
14 be excused.

15 You're going to call another witness?

16 MR. GUNNARSSON: I will call Mr. Mike Pine.

17 WHEREUPON:

18 MICHAEL PINE,
19 called as a witness herein, having been first duly
20 sworn, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. GUNNARSSON:

23 Q. Please state your name for the record and
24 spell your last name.

1 A. Michael Pine, P I N E.
2 Q. And who is your employer, Mr. Pine?
3 A. Patrick Engineering.
4 Q. What is your position with Patrick
5 Engineering?
6 A. Project manager.
7 Q. What is your engineering education?
8 A. I have a bachelor's of science degree in civil
9 engineering from University of Illinois.
10 Q. Are you licensed?
11 A. I am.
12 Q. And what are you licensed in?
13 A. Professional engineering in the state of
14 Illinois.
15 Q. What are your duties as project engineer,
16 generally?
17 A. My responsibilities is the overall management
18 of the project on behalf of Patrick Engineering, which
19 includes coordination with the various engineers that
20 are involved, overseeing the design and the estimates.
21 Q. And you've -- have you been the project
22 engineer for a number of projects with Patrick?
23 A. I have.
24 Q. How long have you been in the position of

1 project engineer for Patrick?

2 A. I've been project manager for one year and
3 with Patrick Engineering for eight years.

4 Q. Before the one year as project manager, the
5 other seven years with Patrick, what were your duties?
6 What were your positions?

7 A. Project engineer for four years and staff
8 engineer for three years.

9 Q. Now, are you familiar, Mr. Pine, with the
10 County Lake Washington Street separation project?

11 A. I am.

12 Q. And what is your role in this project?

13 A. I am the project manager at this point, and in
14 previous years, I was the project engineer.

15 Q. Is Patrick Engineering the project engineer
16 for this Washington Street grade crossing separation
17 project?

18 A. Yes.

19 Q. Can you just briefly describe what your duties
20 as project manager for this project are?

21 A. It's the oversight of our engineering team and
22 the preparation of the plan specification and the
23 estimates for the deliverables that will be put out to
24 bid.

1 Q. And you testified that you've been the project
2 manager for this project for about a year; is that
3 right?

4 A. Correct.

5 Q. And before that you were a project engineer on
6 this project; is that right?

7 A. Yes.

8 Q. How long were you the project engineer on this
9 project?

10 A. I believe I started on the project in 2009 so
11 four years.

12 Q. So you've been working on this project a total
13 of five years; is that right?

14 A. Correct.

15 Q. I'd like to direct your attention to Exhibit C
16 that's already been admitted.

17 (Witness viewing document.)

18 BY MR. GUNNARSSON:

19 Q. Mr. Pine, do you see that document?

20 A. I do.

21 Q. Are you familiar with it?

22 A. Yes.

23 Q. Did you participate in estimating the costs
24 that are described in this exhibit?

1 A. Yes. In particular the construction cost.

2 Q. All right. Did you have any involvement in
3 describing the 5 percent total cost -- project cost
4 figure for the railroad share that's indicated in the
5 fourth column there, the CNRR?

6 A. I did not directly provide this figure, but I
7 have an understanding of what went into it.

8 Q. Can you describe what went into that figure,
9 Mr. Pine?

10 A. I believe that -- what's listed as a total
11 project cost in this exhibit minus the 1.5 million
12 agreed to for the substructure for a second track and
13 then also subtracting the incremental cost we estimated
14 for adding two additional lanes under the bridge and
15 taking 5 percent of that number.

16 Q. And in particular, I'd like to direct your
17 attention to what was previously marked as Exhibit J; do
18 you see that document?

19 A. Yes.

20 Q. And were you involved in the preparation of
21 that document?

22 A. Yes.

23 Q. And is that your calculation on the
24 incremental cost of the road widening from two to four

1 lanes for this project?

2 A. Yes.

3 Q. And that bottom line figure of little more
4 than a million dollars, is that one of the figures that
5 was subtracted from the project -- total project cost to
6 apply the 5 percent against?

7 A. Yes. It should be.

8 Q. And just briefly going through the items here,
9 you've broken it out into earth excavation, roadway
10 pavement, bridge and retaining wall; do you see that?

11 A. Yes.

12 Q. Can you describe for earth excavation how you
13 arrived at that figure?

14 A. We calculated the area, I should say, the
15 volume between the existing roadway elevation where it's
16 at today and where it will be in the future and then
17 subtracted that by the width of what two additional
18 lanes would be, which is two 12-foot lanes and
19 multiplied that by our estimating cost per volume for
20 excavating that material.

21 Q. And you heard earlier the testimony about the
22 touchdown to touchdown point, and that's the west end of
23 the project and the east end, correct?

24 A. Yes.

1 Q. And that's when the roadway under the project
2 would depart from its current elevation to the ultimate
3 elevation as it descends underneath the railroad tracks;
4 is that correct?

5 A. Yes.

6 Q. And about how long is that distance from one
7 end to the other?

8 A. It's 1,995 feet.

9 Q. So this first item, the earth excavation, is
10 for those earth excavation costs that you've -- the
11 incremental excavation cost over that distance?

12 A. Yes.

13 Q. For the roadway pavement figure, can you
14 briefly describe how you arrived at that figure?

15 A. The roadway pavement consists of concrete and
16 air base subgrade, so I took the unit prices for those
17 items because they're the roadway pavement. I then took
18 the area of what the two additional through lanes would
19 be times the length of the project to arrive at that
20 cost.

21 Q. And the item for bridge, what does that
22 reference? What's the incremental cost with the bridge?

23 A. The incremental cost was identified as the
24 reduction in the weight of steel that would be needed if

1 the span was 24 feet shorter.

2 Q. And how do you get the 24 feet shorter?

3 A. That's the length consistent with two through
4 lanes of traffic.

5 Q. All right. So 12 feet either lane?

6 A. Yes.

7 Q. And finally the retaining wall, which is --
8 what does that calculation represent?

9 A. Well, the retaining wall on the south side,
10 theoretically if there was one fewer lane could be
11 shifted to the north by 12 feet, which would result in a
12 lower wall height of four feet. So when carrying that
13 cost through, we arrived at what the reduced cost of the
14 retaining wall would be for shorter wall.

15 Q. So did you then add up the earth excavation --
16 incremental earth excavation, roadway pavement bridge
17 and retaining wall cost to get the bottom line total?

18 A. Incremental cost, yes.

19 Q. And again, to your knowledge, we'll subtract
20 and offer the project cost figure to arrive at the
21 reduced project cost against which the 5 percent would
22 be applied to?

23 A. Yes.

24 Q. There's also a figure on Exhibit C, Mr. Pine,

1 for force account work by CNRR, which you know that's
2 referencing CN, but certainly that's Wisconsin Central
3 railroad that we're dealing with?

4 A. Correct.

5 Q. Did you calculate that force account estimate?

6 A. I did not personally calculate it.

7 Q. Did Patrick Engineering do that?

8 A. Yes.

9 Q. And is that based on an understanding of what
10 work the railroad will do on the project versus what
11 work the County's contractor will do?

12 A. Yes.

13 Q. I'd like to show you what's been marked
14 Exhibit H.

15 If I can hand a copy to, your Honor.

16 Do you see that exhibit, Mr. Pine?

17 A. Yes.

18 Q. Can you identify it?

19 A. This is a summary of tasks that will be
20 performed by the Wisconsin Central Limited forces as
21 part of the force account and accordingly there will be
22 work that will not be performed by the contractor.

23 Q. And is this the work that went into making the
24 force account estimate then?

1 A. Yes.

2 Q. I'd like to show you what's marked as
3 Exhibit I. Can you identify that document?

4 A. This is Patrick Engineering's estimate for the
5 Wisconsin Central Limited force account.

6 Q. And is that based on the division of work
7 identified in Exhibit H?

8 A. Yes.

9 Q. And was the bottom line figure -- and what
10 does the bottom line figure in force account estimate?

11 A. The estimate is \$1,072,000.

12 Q. And is that the figure that was put in
13 Exhibit C for the force account estimate?

14 A. Yes.

15 Q. All right. Did you do a benefit analysis for
16 this project, Mr. Pine?

17 A. Yes, I did.

18 Q. I'd like to show you what's been marked as
19 Exhibit F. Is that the benefit analysis that you just
20 identified?

21 A. Yes, it is.

22 Q. And you yourself prepared this exhibit?

23 A. I did.

24 Q. It was done -- it looks like it was done from

1 December 2009 to January 2010; is that correct?

2 A. Mm-hmm, yes.

3 Q. Do you know why this document was prepared?

4 A. I believe we prepared it as part of the
5 overall analysis of different alternatives. This was
6 early in the design phase when there was still
7 discussions of different alternates and we were still
8 going through the public involvement. At that time I'm
9 not sure even if we knew there was going to be an
10 underpass or overpass.

11 Q. So it's part of the foundation for doing this
12 project -- doing the project to have a grade separation;
13 is that right?

14 A. Yes.

15 Q. It's in an effort to quantify or identify the
16 cost or the benefit from having a grade separation?

17 A. Yes.

18 Q. I'd like to just briefly work through the
19 calculation here. Can you describe the formula that you
20 used and what factors you used in that formula?

21 A. Yes. To determine the -- what we call the
22 crash benefit, the formula used was from the Bureau of
23 Local Roads Manual and that formula calculates -- it
24 starts with calculating the estimated or the expected

1 crash frequency given the current condition of the
2 crossing and then comparing that with a future expected
3 crash frequency, which in this case would be none. We
4 then have our differential in the expected crash
5 frequency between the existing and future condition, and
6 below that we have an estimate for the different injury
7 types associated with the various highway-rail crashes
8 in Illinois and beyond that the comprehensive cost based
9 on injury severity for each crash type. And working to
10 the bottom, we arrived at a figure that's assigned for a
11 typical crash given that data if it were to occur at
12 this particular crossing, and then we take that benefit
13 and multiply it out by the design life of the bridge.
14 And that's how we arrived at the overall crash benefit
15 figure.

16 Q. The data that's indicated here for the
17 highway-rail crashes in Illinois, that's over a couple
18 years prior to the creation of this document; is that
19 right?

20 A. Yes.

21 Q. And the source is the Federal Railroad
22 Administration Office of Safety analysis?

23 A. Yes.

24 Q. And then you have figures for average

1 comprehensive cost by injury severity just underneath
2 that?

3 A. Yes.

4 Q. And the source on this data is the National
5 Safety Council?

6 A. Correct.

7 Q. So that leads to this calculation of the
8 benefit per year; do you see that?

9 A. Yes.

10 Q. So that's a little over \$56,000?

11 A. Yes. And that figure is the expected crash
12 frequency multiplied by the estimated cost of what a
13 crash would be in any given year.

14 Q. That's an estimation of the likelihood of a
15 crash at the rail crossing given the traffic and the
16 experience of highway-rail crashes in Illinois; is that
17 a fair statement?

18 A. Yes.

19 Q. And then quantifying it by just what the
20 average -- according to the National Safety Council, the
21 average cost for a highway-rail collision; is that
22 right?

23 A. Correct.

24 Q. So you get to the bottom line crash benefit;

1 what is that figure?

2 A. 5,648,925.

3 Q. And what does that, in your opinion,
4 represent?

5 A. That represents the -- from strictly a crash
6 standpoint, the benefit of the product over the design.

7 Q. Design life is 100 year?

8 A. Yes.

9 Q. Also, I'd like to direct your attention to the
10 second page of your benefit analysis. What is the
11 analysis that you're doing here on the second page?

12 A. This analysis is estimating the benefit for
13 the roadway user in terms of the delay benefit that
14 would be the delay benefit from having -- not having to
15 stop at the tracks basically, the benefit that they
16 would realize from the separation.

17 Q. Would it be a fair statement, that's an
18 attempt to quantify the cost that would be avoided in
19 terms of time due to traffic being stopped when there's
20 a train crossing; is that a fair statement?

21 A. Yes.

22 Q. One of the items you have here is the number
23 of trains. Is that a daily figure?

24 A. Yes.

1 Q. And so, for Metra, 180 seconds; CN,
2 180 seconds, where do you get that figure from, that
3 average delay?

4 A. That's the average delay for when the gates
5 would be down.

6 Q. And that's also the number of trains based on
7 the average number of trains per day?

8 A. Yes.

9 Q. What is the estimated -- after you do your
10 calculations here, the estimated delay benefit then from
11 the grade separation?

12 A. The delay benefit is 15,274,566.

13 Q. And that's based on using this formula that
14 you've used for a total delay per year, delay benefit
15 per year; is that right, 152,746?

16 A. Correct.

17 Q. And then times that by 100 years, right?

18 A. Yes.

19 Q. So at the very bottom you have a total benefit
20 of 20,923,490; is that right?

21 A. Yes.

22 Q. And is that just simply an addition of the
23 delay benefit and crash benefit?

24 A. It is.

1 Q. So that figure, would that be a fair statement
2 that that represents, in your opinion, what the benefit
3 of the total benefit if you quantify it from the grade
4 separation over the life of the structure?

5 A. Yes. At least.

6 Q. There was some testimony with Mr. Giertych
7 about the bridge and that there was a decorative fence.
8 Do you remember hearing that?

9 A. Yes.

10 Q. What is that fence? Does it have any sort of
11 safety aspect to it?

12 A. It does.

13 Q. So even though it's described as decorative,
14 does it also have a purpose other than aesthetics?

15 A. Yes, it does.

16 Q. What is that purpose?

17 A. The purpose is to protect against the -- to
18 provide fall protection from the drop-off of the top of
19 the retaining wall to the ground below.

20 MR. GUNNARSSON: I have nothing further, Judge. I
21 would move for the admission of those Exhibits F, G, H
22 and I. Oh, I'm sorry, forgive me. There's one other
23 thing because I just mentioned G.

24

1 BY MR. GUNNARSSON:

2 Q. And just for identification, showing you
3 what's been marked as Exhibit G, you mentioned the
4 Bureau of Local Roads and Streets?

5 A. Yes.

6 Q. That you consulted for the formula that you
7 used in Exhibit F; is that right, or the crash benefit
8 analysis?

9 A. Yes.

10 Q. Is that the bureau publication that you used?

11 A. This is the basis of methodology, yes.

12 MR. GUNNARSSON: With that, I have no further
13 questions, your Honor, and I move for E, F, G, H and I.

14 MR. HEALEY: I could be wrong about this, but I
15 think a number of the exhibits we've seen today weren't
16 filed with the Commission previously. I know the
17 Commission has a rule about prefiling exhibits before a
18 hearing. I know counsel filed some of the exhibits,
19 although they're updated. Some of the exhibits were
20 originally filed with the petition, but not all of them
21 were filed. I'm at a bit of a loss particularly without
22 a client to object or not object to exhibits, but I
23 think I can work through the concerns I have with the
24 exhibits with the witness. So just making note of the

1 fact that the exhibits weren't prefiled and we're okay
2 with the Commission.

3 ADMINISTRATIVE LAW JUDGE MONTAQUE: Okay. Thank
4 you. You may proceed, Mr. Healey.

5 MR. HEALEY: Thank you.

6 CROSS EXAMINATION

7 BY MR. HEALEY:

8 Q. Mr. Pine, you were present for all of
9 Mr. Giertych's testimony; is that correct?

10 A. Yes.

11 Q. Okay. Was there anything he said in response
12 to either Mr. Gunnarsson's questions or my questions
13 that you disagree with?

14 A. We may need to revisit the discussion for the
15 utility cost participation for the three utilities on
16 Exhibit C.

17 Q. Is there a possibility that some of the
18 utility relocation cost is included in Exhibit C but not
19 covered by LCPW, CLCJAWA or Grayslake?

20 A. I believe that these costs for Lake County
21 Public Works CLC job on Grayslake, I believe they
22 represent 20 percent of the cost for the associated
23 work. That is their share of the cost.

24 Q. Okay. And then 80 percent of the cost would

1 be still included on Exhibit C?

2 A. Yes.

3 Q. Okay. Was there anything else Mr. Giertych
4 said that you disagree with?

5 A. No.

6 Q. Okay. If I can direct your attention to
7 Exhibit I, you may still have it in front of you.

8 A. Okay.

9 Q. This is the CN force account estimate prepared
10 by the County in conjunction with Patrick?

11 A. Yes.

12 Q. And I understand frankly that the County is a
13 bit handicapped because of the railroad's manpower
14 shortage and we are responsible for generating and we
15 haven't done yet, but the question I have for you is a
16 bit different than that: Do you know if the railroad
17 has agreed to perform all of the functions that are
18 listed on Exhibit I as part of the project?

19 A. I believe that they find that the task we have
20 described to be consistent with the tasks that they
21 understand to be completed by their forces.

22 MR. HEALEY: Could we go off the record for a
23 second?

24 ADMINISTRATIVE LAW JUDGE MONTAQUE: Okay. Off the

1 record.

2 (Discussion off the record.)

3 BY MR. HEALEY:

4 Q. If we can turn your attention to Exhibit J, if
5 I understand, this was a document prepared by Patrick
6 Engineering?

7 A. Yes.

8 Q. And you were involved in the preparation of
9 the document?

10 A. Correct.

11 Q. And the direction to prepare the document, do
12 you recall when that was received by Patrick?

13 A. We had previously identified the roadway
14 pavement and received direction yesterday to include
15 additional items that we felt were part of the
16 incremental cost beyond the roadway pavement as
17 necessary.

18 Q. And again, the general direction was to try to
19 determine what costs wouldn't be incurred if the bridge
20 wasn't spanning two additional lanes for the roadway,
21 correct?

22 A. Yes.

23 Q. But there was no direction given to Patrick to
24 back out any cost for additional width of the existing

1 bike path or the addition of the new sidewalk? Those
2 costs have not been backed out as part of this document,
3 right?

4 A. They have not.

5 Q. You discussed the ornamental fence on the
6 retaining wall. At the risk of beating a dead horse,
7 can you describe for me where the retaining wall is
8 located?

9 A. It's located on the south side of the road,
10 and it's adjacent to the bridge. And I believe it's
11 600 feet in one direction and 540 feet in the other
12 direction.

13 Q. And is it parallel to the road?

14 A. Yes.

15 Q. So it would be outside of the path? It would
16 be south of the path is a better way to put it?

17 A. Immediately adjacent to the path.

18 Q. We've talked about the safety aspect of the
19 fence. Who owns the land on the other side of the
20 retaining wall?

21 A. Lake County.

22 Q. Do you know what the property is to be used
23 for?

24 A. The property will be used -- there will be a

1 sidewalk behind the wall to connect a cul-de-sac south
2 of the project to Washington Street.

3 Q. I'm trying to figure out maybe if you can
4 refer to A3? Maybe that will --

5 A. Is this the same thing as A3 (indicating)?

6 Q. Yeah. If I can ask the witness to identify on
7 A3 the location of the retaining wall?

8 A. The retaining wall spans along the south side
9 here (indicating).

10 Q. I guess the real focus of my question, I'm
11 trying to figure out whether the public has any reason
12 to be walking adjacent to the retaining wall so at risk
13 of falling?

14 A. There's a sidewalk here behind the wall. It's
15 only feet away from the wall and the fence.

16 Q. Okay. Again, so I understand, if we were
17 going from south to north, is the sidewalk first and
18 then the wall?

19 A. Yes.

20 Q. And then you get into the curb for the roadway
21 if we were going south to north?

22 A. Sidewalk and the wall, then the bike path,
23 then the curb for the roadway.

24 Q. So there will be a sidewalk outside the

1 retaining wall and the bike path located between the
2 retaining wall and the road and are parallel to each
3 other?

4 A. They're going to be at different grades.

5 Q. Would the sidewalk which is --

6 A. The sidewalk will be --

7 Q. -- outside, stay at grade generally?

8 A. Yes.

9 Q. And the path will be dropping down with the
10 grade of the road to pass underneath the railroad?

11 A. Yes.

12 Q. What's the height of the retaining wall, do
13 you know?

14 A. Well, it varies and probably reaches
15 approximately 20 feet at the highest elevation.

16 Q. Okay. The sidewalk, does it continue on --
17 and this is more of a safety question than anything
18 else, but it's not going to actually be on the railroad
19 right-of-way? We're not putting in an at-grade sidewalk
20 crossing as part of this project, right?

21 A. The sidewalk will terminate at Highland Road,
22 and it will not extend to the crossing.

23 Q. Okay. And then on the west side of the
24 railroad tracks and south of the road, is there a

1 sidewalk south of the retaining wall on that side?

2 A. There is not.

3 Q. Okay. Is the ornamental fence going to be on
4 top of the retaining wall on that side?

5 A. Yes.

6 MR. HEALEY: I think I have everything I need from
7 the witness. Thank you for your time.

8 ADMINISTRATIVE LAW JUDGE: Mr. Milewski?

9 CROSS-EXAMINATION

10 BY MR. MILEWSKI:

11 Q. Referring to the benefit cost analysis, did
12 that include any direct benefits related to the
13 railroad, such as maintenance of the existing grade
14 crossing warning devices or maintenance of the surface
15 or any potential improvements to train operations
16 through the crossing once the grade separation is built?

17 A. No. It only includes the crash and delay.
18 There are other benefits, such as those you listed. You
19 know, an additional benefit would be, you know, improve
20 emergency vehicle response time. We didn't put a cost
21 to that.

22 MR. MILEWSKI: I have no further questions.

23 ADMINISTRATIVE LAW JUDGE MONTAQUE: I just have one
24 question. I don't think I heard clearly the answer to

1 the safety benefit of the ornamental fence, and was that
2 you who -- could you tell me again what was the benefit
3 for the safety?

4 THE WITNESS: It's to provide fall protection
5 because the retaining wall meets the existing ground
6 south -- the existing ground today, and then as the road
7 dips down, you've got dro- offs varying anywhere from
8 zero to 20 feet that you need to protect somebody from
9 falling from the existing grade to the proposed
10 underpass.

11 ADMINISTRATIVE LAW JUDGE MONTAQUE: All right.
12 Thank you.

13 MR. GUNNARSSON: Judge, very brief follow-up, too.

14 REDIRECT EXAMINATION

15 BY MR. GUNNARSSON:

16 Q. You were asked about the benefit more direct
17 to the railroad. Can you elaborate on what you
18 referenced?

19 A. Can you clarify?

20 Q. The maintenance of the gate, et cetera?

21 A. That was not part of the benefit, but I
22 recognize that there are benefits. I don't have -- I
23 have not prepared an estimate.

24 Q. You haven't quantified it?

1 A. I have not.

2 Q. But to the extent the estimate on the safety
3 benefit doing the grade separation now eliminates, would
4 you say, the risk of any train/auto collision at this
5 intersection?

6 A. Yes.

7 Q. And would it be your opinion that that's also
8 a benefit to the railroad?

9 A. Yes.

10 MR. GUNNARSSON: I have nothing further.

11 ADMINISTRATIVE LAW JUDGE MONTAQUE: Okay.

12 MR. GUNNARSSON: That's it for the testimony, your
13 Honor.

14 ADMINISTRATIVE LAW JUDGE MONTAQUE: All right. I
15 don't think I admitted on the --

16 MR. GUNNARSSON: Yes. I move for the admission of
17 those exhibits.

18 MR. HEALEY: With the caveat of what I mentioned
19 earlier, we have no other objections, your Honor.

20 ADMINISTRATIVE LAW JUDGE MONTAQUE: Okay.
21 Petitioner's Exhibits F, G, H and I are admitted.

22 And is that all of the evidence?

23 MR. GUNNARSSON: That's all the testimony, your
24 Honor, yes.

1 ADMINISTRATIVE LAW JUDGE MONTAQUE: Okay.

2 Mr. Healey, you don't have a witness obviously, do you?

3 MR. HEALEY: No. That's one of the reasons we
4 don't have a force account estimate because I don't have
5 a witness.

6 ADMINISTRATIVE LAW JUDGE MONTAQUE: Okay. Did you
7 want to make any statements on the record?

8 MR. HEALEY: I don't other than we have worked well
9 with the County despite our current disagreement on the
10 funding, and I think Gunnar and I are going to find a
11 way to get through this.

12 ADMINISTRATIVE LAW JUDGE MONTAQUE: Okay. That's
13 good.

14 For the record, Mr. Milewski -- and I'm sorry
15 if I'm not pronouncing that correctly.

16 MR. MILEWSKI: That's correct.

17 ADMINISTRATIVE LAW JUDGE MONTAQUE: Can you give me
18 Staff's position on the project?

19 MR. MILEWSKI: Staff concurs with the petitioner's
20 request to construct a grade separation or replace the
21 existing at-grade crossing at the Wisconsin Central
22 tracks on Washington Street located within Grayslake.
23 Staff recommends a portion of the project costs be
24 allocated to the Grade Crossing Protection Fund.

1 Furthermore, past practice has been for
2 Commission Staff to recommend that a railroad be
3 required to contribute toward the cost of the project to
4 replace an existing highway-rail crossing with a bridge.
5 The amount of the contribution should be based on how
6 much a new bridge will benefit a railroad because
7 federal funds are to be part of the petitioner's funding
8 plan. Federal statutes limit the railroad's
9 contribution to 5 percent of the cost unless a railroad
10 chooses to provide a larger amount.

11 ADMINISTRATIVE LAW JUDGE MONTAQUE: Okay. Thank
12 you.

13 MR. HEALEY: If I can just say for the record, we
14 haven't chosen to provide a larger amount.

15 ADMINISTRATIVE LAW JUDGE MONTAQUE: Okay. I think
16 we can mark the record heard and taken and with the
17 understanding that the parties will work to provide a
18 draft agreed interim order.

19 MR. GUNNARSSON: Yes, your Honor.

20 ADMINISTRATIVE LAW JUDGE MONTAQUE: Perhaps a final
21 order if you can get all of your issues addressed. And
22 again, I would need that by July 18th to get you on
23 the --

24 MR. GUNNARSSON: And, your Honor, could I ask along

1 those lines, and I know Mr. Healey is using his best
2 efforts on this, but since we need that July 18th date,
3 could we have July 15th as a deadline to get the force
4 account estimate from the Wisconsin Central and then
5 status date after that?

6 ADMINISTRATIVE LAW JUDGE MONTAQUE: You want a
7 status date after --

8 MR. GUNNARSSON: Yeah. After July 15, and I would
9 also ask --

10 ADMINISTRATIVE LAW JUDGE MONTAQUE: Before the
11 18th, is that what you're saying?

12 MR. HEALEY: Between 15 and 18.

13 MR. GUNNARSSON: Yes, if we could, your Honor. I
14 would also ask if the Commission is willing to also
15 direct that we get an agreement completed by August 1st
16 just so that we stay on schedule.

17 ADMINISTRATIVE LAW JUDGE MONTAQUE: Okay.
18 Regarding the status date, should I leave the record
19 open then just in case there's something because I just
20 marked it heard and taken, but I could leave it open for
21 the status.

22 MR. HEALEY: You may have to leave it open. I
23 suspect we'll be able to work through our issues, but --

24 ADMINISTRATIVE LAW JUDGE MONTAQUE: I'm going to

1 leave the record open and set a status date. How is
2 July 16th at -- the only time I have available is in the
3 afternoon.

4 MR. GUNNARSSON: Anytime in the afternoon on the
5 16th is fine for me, your Honor.

6 MR. HEALEY: Me too as well, your Honor.

7 ADMINISTRATIVE LAW JUDGE MONTAQUE: All right. Why
8 don't we do 1:30. This matter will be continued for a
9 status hearing on Wednesday, July 16th, at 1:30 p.m. in
10 the afternoon here in Chicago.

11 And if you have any filings before that, if
12 you come to agreement and you don't need the status,
13 please let me know. Also, I would encourage the parties
14 to continue working together to reach all of the
15 necessary agreements by the dates that would be most
16 helpful to the County in getting things started.

17 Thank you.

18 MR. GUNNARSSON: Very good, Judge. Thank you.

19 MR. HEALEY: Thank you.

20 (The above-entitled cause was adjourned
21 until 1:30 p.m., July 16th, 2014.)

22

23

24

1 STATE OF ILLINOIS)
2 COUNTY OF COOK) SS.
3

4 Alexandra Szajna, 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 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

ALEXANDRA SZAJNA, CSR, RPR

18

CSR No. 084-004778

19

20 SUBSCRIBED AND SWORN TO
21 before me this 17th day of
22 July, A.D., 2014.

22

23

24 NOTARY PUBLIC