

COPY

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Village of Fox River Grove, Illinois,)
)
 Petitioner,)
)
 V.)
)
 Union Pacific Railroad Company (UP),)
 and the State of Illinois, Department)
 of Transportation (IDOT),)
)
 Respondents.)
)
 Petition to 1) interconnect traffic)
 signals to be installed at the)
 intersection of U.S. Route 14)
 Northwest Highway) and Foxmoor Road)
 with the railroad warning devices at the)
 Foxmoor Road at-grade crossing of the)
 UP double mainline tracks in the Village)
 of Fox River Grove; 2) establish the)
 amount of minimum preemption time)
 provided by the UP to IDOT for the)
 traffic signal preemption sequence at)
 said intersection; 3) provide a 6' wide)
 sidewalk platform across the tracks;)
 4) install the southeast side traffic)
 presignals on a railroad signal)
 cantilever.)

RECEIVED
 AUG 24 2001
 Illinois Commerce Commission
 RAIL SAFETY SECTION

No. T01-0016

RESPONSE TO INTERIM ORDER

RECITALS :

On or about February 28, 2001, the Village of Fox River
 Grove, Illinois ("Village") filed its petition in the above
 referenced matter before the Illinois Commerce Commission
 ("Commission"). The Commission assigned this matter Docket No.

DOCKETED

T01-0016. The Hearing Examiner issued a proposed Order on or about June 18, 2000, a copy of which was received by the Respondent, Union Pacific Railroad Company ("Union Pacific"), on June 21, 2001. The Chief Hearing Officer for the Commission requested that all briefs in this matter be submitted on or before July 20, 2001. In response to the Hearing Examiner's request, the Union Pacific filed a document reaffirming the position stated in Union Pacific's Response to Hearing Examiner's Proposed Order filed on June 29, 2001. On August 15, 2001, the Union Pacific received a copy of the Interim Order entered by the Commission in the above matter on August 8, 2001. Upon review of the Interim Order the Union Pacific contacted Mr. Daniel Powers representing the staff of the Commission to review discrepancies in the Interim Order and the Union Pacific's response to the Proposed Order. During the discussion with Mr. Powers it was determined that the most efficient way to present the discrepancies was to take the Interim Order entered by the Hearing Examiner on August 8, 2001 and detail proposed inserts on the Interim Order itself.

NOW, THEREFORE, in accordance with Title 83 § 200.830 of the Illinois Administrative Code, Respondent, Union Pacific, respectfully submits the following as exceptions and/or additions to the Interim Order. As previously referenced, Union Pacific is merely seeking similar treatment to that afforded Norfolk

Southern Corporation in the Order issued by the Commission in Docket No. T98-0033 on October 18, 2000 in a substantially identical matter before the Commission. A copy of the Order issued by the Commission in Docket No. T98-0033 is attached hereto as Exhibit 1 and hereby made a part hereof. Attached hereto as Exhibit 2 and hereby made a part hereof is a modified copy of the Interim Order entered by the Commission in this matter on August 8, 2001. This modified copy of the Interim Order has been typed so as to indicate proposed additions, changes and exhibits requested by Union Pacific that mirror the treatment afforded Norfolk Southern Corporation in the Order issued by the Commission in Docket No. T98-0033.

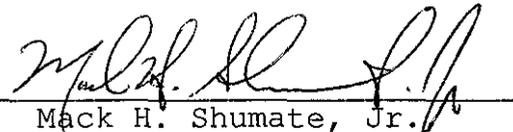
The Union Pacific respectfully requests that the Right of Entry Agreement attached hereto as Exhibit 3 and hereby made a part hereof as referenced in the modification to the Interim Order be included and made a part of the Commission's Final Order in this matter.

The Union Pacific respectfully requests that the Fixture Easement attached hereto as Exhibit 4 and hereby made a part

hereof as referenced in the modification to the Interim Order be included and made a part of the Commission's Final Order in this matter.

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY

By: 
Mack H. Shumate, Jr.
Senior General Attorney

Mack H. Shumate, Jr.
Union Pacific Railroad Company
101 North Wacker Drive, Suite 1920
Chicago, Illinois 60606
312/853-8455
312/853-8465FAX

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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Village of Fox River Grove, Illinois,)
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 Petitioner,)
)
 v.)
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 Union Pacific Railroad Company (UP),)
 and the State of Illinois, Department)
 of Transportation (IDOT),)
)
 Respondents.)

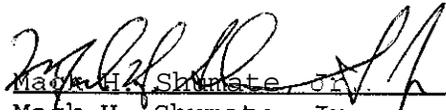
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 4) install the southeast side traffic)
 presignals on a railroad signal)
 cantilever.)

No. T01-0016

NOTICE OF FILING

TO: See Service List Attached

PLEASE TAKE NOTICE that I have this 23rd day of August, 2001, forwarded to the Chief Clerk of the Illinois Commerce Commission, Springfield, Illinois, for filing in the above matter, **RESPONSE TO HEARING EXAMINER'S INTERIM ORDER**, a copy of which is attached hereto and hereby served upon you.


Mack H. Shumate, Jr.
Mack H. Shumate, Jr.

~~Attorney for Respondent~~
Union Pacific Railroad Company

Mack H. Shumate, Jr.
Attorney for Respondent
Union Pacific Railroad Company
101 North Wacker Drive, Room 1920
Chicago, IL 60606
312/853-8455

Village of Fox River Grove, Illinois
V.
Union Pacific Railroad Company, et al.
T01-0016
Service List

Peter M. Rosenthal
Kelly Cleland
ROSENTHAL, MURPHEY, COBLENTZ
& JANEGA
30 North LaSalle Street
Suite 1624
Chicago, Illinois 60602

David W. McKernan
Industry & Public Projects
Union Pacific Railroad Company
210 North 13th Street, Rm 1612
St. Louis, Missouri 63103

Joseph H. O'Brien,
Review & Examination
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701

Ms. June B. Tate
Illinois Commerce Commission
State of Illinois Building
160 North LaSalle Street
Suite 800
Chicago, Illinois 60601

Mr. Daniel Powers
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701

Mr. John Blair
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Village of Fox River Grove, Illinois,)
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) Petitioner,)
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v.)
)
Union Pacific Railroad Company (UP),)
and the State of Illinois, Department)
of Transportation (IDOT),)
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) Respondents.)
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Petition to 1) interconnect traffic) No. T01-0016
signals to be installed at the)
intersection of U.S. Route 14)
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traffic signal preemption sequence at)
said intersection; 3) provide a 6' wide)
sidewalk platform across the tracks;)
4) install the southeast side traffic)
presignals on a railroad signal)
cantilever.)

CERTIFICATE OF SERVICE

TO: Donna Caton, Chief Clerk
Illinois Commerce Commission
521 East Capitol Avenue
Springfield, Illinois 62701

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that he served true and correct copies of the foregoing **RESPONSE TO HEARING EXAMINER'S INTERIM ORDER** on the following named individuals:

Peter M. Rosenthal
Kelly Cleland
ROSENTHAL, MURPHEY, COBLENTZ
& JANEGA
30 North LaSalle Street
Suite 1624
Chicago, Illinois 60602

David W. McKernan
Industry & Public Projects
Union Pacific Railroad Company
210 North 13th Street, Rm 1612
St. Louis, Missouri 63103

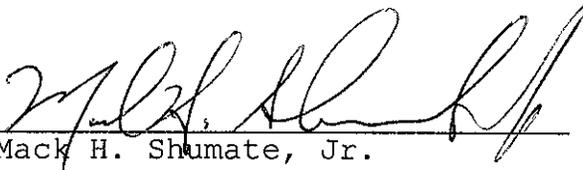
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Review & Examination
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701

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Illinois Commerce Commission
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160 North LaSalle Street
Suite 800
Chicago, Illinois 60601

Mr. Daniel Powers
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701

Mr. John Blair
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701

with proper postage prepaid, and depositing same in the U.S. Mail
Chute located at 101 North Wacker Drive, Chicago, Illinois,
before 5:00 p.m. on August 24, 2001.


Mack H. Shumate, Jr.

Mack H. Shumate, Jr.
Union Pacific Railroad Company
101 North Wacker Drive
Suite 1920
Chicago, Illinois 60606

STATE OF ILLINOIS

EXHIBIT 1



ILLINOIS COMMERCE COMMISSION

10/20/2000 11:12

October 20, 2000

State of Illinois, Department of Transportation,
Petitioner,

VS.

Norfolk Southern Corporation,
Respondent.

T98-0631

Petition for Interim Order to install onto the
railroad's existing cantilever far side overhead
traffic signal indicators for northbound traffic
signal indicators for northbound traffic on IL 159
(DOT 724 592N) near the at-grade crossing of
tracks located in the City of Belleville, St.
Clair County, Illinois.

TO ALL PARTIES OF RECORD:

Dear Sir/Madam:

Enclosed please find a copy of the Order entered by the Commission in the
above entitled matter on October 18, 2000.

Very truly yours,

Kevin L. Sharpe
Director of Processing
and Information

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Rick Korte, Hearing Examiner
John Blair, Railroad Section Staff

527 East Capitol Avenue, P.O. Box 19280, Springfield, Illinois 62794-9280, (TDD) # (217) 782-7434

T98-0033

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

State of Illinois, Department Of Transportation
Petitioner,

vs.

Norfolk Southern Railway Company,
Respondent.

T98-0033

Petition for Interim Order to install onto the railroad's
existing cantilever far side overhead traffic signal indicators :
for northbound traffic on IL159 (DOT 724 592N) near the :
at-grade crossing of tracks located in the City of Belleville, .
St. Clair county, IL.

ORDER

By the Commission:

On April 3, 1998, the Illinois Department of Transportation ("Department") filed its Petition with the Illinois Commerce Commission ("Commission") naming therein the Norfolk Southern Railway Company ("Company") as a Respondent. The Petitioner requested an Interim Order of the Commission requiring the installation of traffic signals on the same cantilever as the railroad flashing light signals at the IL159 grade crossing (DOT 724 592N) located in the City of Belleville ("City"), St. Clair County, Illinois. This was the only issue presented in the Department's petition.

On April 29, 1998, notice of a June 2, 1998, Hearing date was served upon the Parties.

On May 22, 1998, a motion for continuance was filed by the Company. The case was continued until July 7, 1998.

On June 17, 1998, a motion for a second continuance was filed by the Company.

On June 29, 1998, a Hearing on the Company's motion for a second continuance was held by a duly authorized Hearing Examiner who took the matter under advisement.

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On June 30, 1998, the Hearing Examiner issued a denial of the Company's motion for a second continuance.

On July 7 and 8, 1998, pursuant to the rules of the Commission, the Department's Petition came on for hearing before a duly authorized Hearing Examiner at the Commission's Office in Springfield, Illinois. At the hearing the Department and Company were represented by counsel. A member of the Commission's Railroad Section ("Staff") entered an appearance as a witness. The Department presented oral and documentary evidence in support of its Petition and the Company presented oral and documentary evidence in opposition of the Petition. Staff testified in support of the Petition. The record was marked "Heard and Taken" on July 8, 1998.

On July 27, 1998, pursuant to the Commission's Rules of Practice, 83 Ill. Adm. Code 200.820, a Hearing Examiner's Proposed Interim Order was served on the Parties.

On July 30, 1998, the Company filed a Request for Extension of Time to file a brief on exceptions to the Hearing Examiner's Proposed Interim Order.

On August 1, 1998, a Hearing Examiner's Ruling was issued granting the Company Request for Extension of Time for filing of exceptions and replies.

On August 17, 1998, the Department filed an exception to the Hearing Examiner's Proposed Interim Order which requested an eighteen (18) month time period be used in the Interim Order for the Department and Company to complete their required work.

On August 21, 1998, the Company filed its Motion for Oral Argument and statement in Support of the Motion and its Brief on Exceptions to the Hearing Examiner's Proposed Interim Order.

On August 27, 1998, the Department filed its reply to the Company's Motion for Oral Argument and statement in Support of that Motion and its reply to the Company's Brief on Exceptions.

The Hearing Examiner considered the Parties' exceptions and replies and recommended the Commission deny the Company's Motion for Oral Argument. The Hearing Examiner stated that the Company's positions in its Motion and Brief revisited the arguments previously made on the record before the Hearing Examiner.

On October 5, 1098, the Commission entered its Interim Order.

that

- (1) the Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (2) the recitals of fact as set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (3) that within the City a public highway known as IL159 crosses at-grade the mainline track of the Company; IL159 extends in a general north-south direction; the IL159 grade crossing is identified as DOT 724 592N; immediately south of the crossing IL159 intersects with a public highway known as Douglas Avenue; Douglas Avenue extends in a general east-west direction; the intersection of IL159 and Douglas Avenue is equipped with highway traffic signals; IL159 and the highway traffic signals are both under

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the jurisdiction of the Department, Douglas Avenue is under the jurisdiction of the City;

- (4) the IL159 grade crossing is equipped with cantilevered automatic flashing light signals and gates; the Company is responsible for maintenance of the railroad warning devices; the operation of the railroad warning devices are interconnected with the operation of the aforesaid highway traffic signals; the highway rail grade crossing warning system is currently designed to provide for a minimum of 20 seconds simultaneous preemption time for the normal operation of through trains at the subject crossing; this design and the minimum warning time are consistent with the results of the Department's engineering study conducted at this location; a chart of the proposed railroad preemption sequence is marked as Exhibit B and attached hereto;
- (5) the Department proposes to replace the two existing far side overhead traffic signals for northbound traffic on IL159, which are mounted on a separate cantilever approximately four feet in front of an existing railroad cantilever, with two overhead traffic signals mounted on the same cantilever as the railroad flashing lights; in addition the Department proposes that one set of railroad flashing lights be retained on the cantilever arm and two sets of railroad flashing lights be retained on the supporting post of the cantilever;
- (6) The Department proposes to program the traffic signals at the intersection of IL 169 and Douglas Avenue to enter the yellow clearance interval of the railroad preemption sequence of operation after the minimum 1 second delay, if the traffic signals for IL 159 have been in the green phase for less than 1 second at the time the railroad flashing light signals are activated, and/or the 1 second programmed delay, which is utilized to verify the signal received from the railroad equipment. The yellow indication is the clearance interval that is required by the MUTCD before a movement can be terminated with a red indication. The Department further proposes that the yellow clearance interval at this location be programmed in the traffic signal controller to be four (4) seconds. The Commission finds that these sequencing and signalization modifications are in the interest of public safety and convenience;
- (7) highway traffic signals and railroad flashing lights provide different traffic control indications to motorists: highway traffic signals indicate a motorist's right-of-way through an intersection and railroad flashing lights indicate

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when a motorist should yield for an approaching train at a grade crossing; both types of traffic control devices are required at the subject location due to the close proximity of the IL 159 and Douglas Avenue intersection to the Company's grade crossing; the highway traffic signals and railroad flashing lights have isolated power sources;

- (8) the view of the existing railroad flashing light signals directed at motorists westbound on Douglas Avenue is obstructed by the existing highway traffic signal cantilever. in addition, visual clutter caused by the existing highway traffic signal cantilever located in front of the railroad cantilever exists on the south side of the IL 159 grade crossing;
- (9) the aforesaid sight obstruction for motorists westbound on Douglas Avenue and visual clutter caused by the existing highway and railroad cantilevers located within close proximity of each other will be eliminated if the two far side overhead traffic signals and the railroad flashing lights, for motorists northbound on IL 159, are installed on the same cantilever.
- (10) the Department agrees to pay 100% of the cost to replace the existing railroad cantilever located on the south side of the IL 159 grade crossing with a new cantilever that will accommodate the installation of two traffic signal heads and one set of railroad flashing lights on the same cantilever arm; the Department agrees to have the two traffic signal heads maintained from a bucket truck; the Department will prohibit its employees or contractor(s) from climbing onto the cantilevered structure as currently done by the Company's employees;
- (11) the Department agrees to contract with a private company or companies to perform the installation, maintenance and repair work for the M signals and traffic signal circuitry on the new railroad cantilever structure;
- (12) The Department agrees to require its contractor(s) and subcontractors performing the work described in this Order to execute and deliver to Company prior to entering onto Company's property a Right of Entry in the form as that attached to and made a part of this Order as Exhibit A
- (13) The Department and Company have executed a written agreement, dated April 14, 1998, which provides for, inter alii, improvements to the railroad warning devices, to the IL 159 at-grade crossing surface end to the traffic control devices, which are all part of an overall highway widening and

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improvement project. This agreement further provides for a division of work and expenses for the proposed improvements;

- (14) the Commission finds the improvement requested in this petition is part of an overall highway widening and improvement project planned by the Department in the interest of public safety and convenience and should be approved;
- (15) Federal Railroad Administration Rule 49 CFR Part 234.225 provides that a highway-rail grade crossing warning system shall be maintained to activate in accordance with the design of the warning system, but in no event shall it provide less than 20 seconds warning time for the normal operation of through trains before the at-grade crossing is occupied by rail traffic;
- (16) The Commission's 81 IL Adm. Code 1535.350 provides that automatic flashing light signals shall be arranged to indicate the approach of trains on all main and auxiliary tracks included between the signals where the speed of trains approaching the at-grade crossing exceeds 5 miles per hour, for not less than 20 seconds before the arrival at the at-grade crossing of the fastest train operated over the track;
- (17) the Commission finds that it is in the interest of public safety that the current railroad preemption sequence be retained at the subject IL 159 (DOT#724 532N) at-grade crossing.

IT IS THEREFORE ORDERED by the Commission that the Company shall replace the existing railroad cantilever located on the south side of the IL159 grade crossing and the company shall install a new cantilever that will accommodate the Department's highway widening project; the cantilever shall be designed to allow for the installation of two traffic signal heads on the cantilever arm and shall be equipped with one set of railroad flashing lights on the cantilever arm and one set of railroad flashing lights on the supporting post for traffic on IL 159 and one set of railroad flashing lights on the supporting post for westbound traffic on Douglas Avenue; and shall be designed to allow for the installation of crossbuck signs for westbound motorists on Douglas Avenue and for northbound motorists on IL 169; and shall be designed to allow for the installation of traffic control signals for westbound motorists on IL 169.

IT IS FURTHER ORDERED that the Department or the Department's contractor shall install two far side overhead traffic signals, as proposed by the Department, on the new railroad cantilever herein required and shall remove the existing highway traffic signal cantilever at said location.

T98-0033

IT IS FURTHER ORDERED that the Department or the Department's contractor shall install and thereafter maintain all of the highway traffic signals and circuitry herein required by this Order; and the Company shall install and thereafter maintain all of the railroad signals and circuitry herein required by this Order.

IT IS FURTHER ORDERED that the new cantilever is and will remain the property of the Company. The Department shall pay 100% of the cost of this new cantilever including all costs associated with its design and installation, including any necessary flagging work. In the event this new cantilever requires replacement for whatever reason, the cost for the replacement and installation of that cantilever will be apportioned as follows: 60% - the Department; 50% - the Company. 60/50

IT IS FURTHER ORDERED by the Commission that the subject highway-rail grade crossing warning system shall be designed to provide for a minimum of 20 seconds simultaneous preemption time for the normal operation of through trains at the aforesaid IL 158 (DOT 724 592N) at-grade crossing, and shall thereafter be maintained by the Company.

IT IS FURTHER ORDERED that the Company shall not take any action which would result in a reduction of the minimum simultaneous preemption time herein required for the normal operation of through trains at the aforesaid IL 159 (DOT 724 592N) at-grade crossing without approval of the Commission.

IT IS FURTHER ORDERED that the Company shall comply with applicable Federal Railroad Administration ("FRA") regulations and its operating rules concerning the activation of the warning devices for low speed switching movements or train operations that require stopping short of the subject IL 169 (DOT#724 592N) at-grade crossing. Compliance with such FRA regulations and Norfolk Southern operating rules for such train movements shall be deemed to be in compliance with this Order.

IT IS FURTHER ORDERED that the Company shall post a readily visible notice inside their warning system cabinet at the aforesaid IL 159 (DOT 724 592N) at-grade crossing notifying their personnel not to take any action which would result in a reduction of the simultaneous minimum railroad preemption time herein required without the approval of the Commission. An actual size copy of the notices shall be submitted to the Commission's Railroad Safety Program Administrator for approval.

IT IS FURTHER ORDERED that the proposed railroad preemption sequences provided in Exhibit B are hereby approved for the highway traffic control devices at the aforesaid highway intersection of IL 159 and Douglas Avenue.

IT IS FURTHER ORDERED that the Department shall post a readily visible notice inside their traffic signal cabinets notifying their personnel not to alter the railroad preemption sequences for the traffic signals interconnected with the railroad warning devices at the aforesaid IL 159 (DOT 724 592N) at-grade crossing in a manner which would reduce the amount of time vehicles encroaching the track zone would have to clear the tracks without the approval of the Commission. An actual size copy of the notices shall be submitted to the Commission's Railroad Safety Program Administrator for approval.

IT IS FURTHER ORDERED that the Department and Company shall each perform their work herein required within eighteen (18) months from the date of this Order.

IT IS FURTHER ORDERED that the Company, in consultation with the Department shall design the railroad cantilever herein required to meet the specifications, requirements and needs of the Company, Department and the Commission.

IT IS FURTHER ORDERED that the Department's contractor shall be responsible for all traffic signal installation, maintenance, repair and replacement and that the Company shall not be liable for any damages to property or for bodily injury resulting from any traffic signal failure or malfunction.

IT IS FURTHER ORDERED that the Company shall within ninety (90) days from the date of this Order file a Form 3 of 92 Ill. Adm. Code 1535 with the Commission showing details of the cantilever installation herein required, which includes the Department's traffic signal mounting details and shall receive approval by X-Resolution before commencing the work of installation.

IT IS FURTHER ORDERED that the Department or the Department's contractor shall notify the Company at least 7 days prior to commencing the traffic signal installation work herein required.

IT IS FURTHER ORDERED that the Department or the Department's contractor shall notify the Company prior to performing maintenance work to the traffic signals herein required.

IT IS FURTHER ORDERED that the Department and Company shall each within six (6) months from the date of this Order furnish to the Director of Processing, Transportation Division of the Commission a written report stating the progress each has made toward the completion of their work herein required.

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IT IS FURTHER ORDERED that the Department and Company shall each notify the Director of Processing, Transportation Division of the Commission within five (5) days of completion of their work herein required.

IT IS FURTHER ORDERED that subject to Section 18c-2201 and 18c-2206 of the Law, this is a final decision of the Commission subject to Administrative Review Law.

By Order of the Commission this 18th day of October, 2000.

EXAMINER	<i>[Signature]</i>
SECTION CHIEF	<i>[Signature]</i>
Department of Orders	

Richard P. Martin

Chairman

Global Change

~~Person~~

Illinois Pacific Railroad

(CUPID)

RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2000, by and between the Norfolk Southern Railway Company ("NS"), and a(n) _____ corporation, ("Indemnitor"). NS and Indemnitor are hereinafter sometimes individually referred to as a "Party" and jointly referred to as the "Parties".

PRELIMINARY STATEMENT

Indemnitor desires to enter upon that portion of NS's right-of-way property located at ~~Douglas Avenue and Illinois Route 150 in Belleville, Illinois~~ depicted in Exhibit "A" attached to and made a part of this Agreement ("Premises") for the purpose of installing, maintaining and/or repairing traffic signals on the NS cantilever located on the Premises ("Permitted Activities").

NOW, THEREFORE, for and in consideration of the above stated recitals ~~MI~~ are by ~~this~~ reference hereby incorporated into ~~this~~ Agreement and the mutual promises and agreements set forth below, the sufficiency of which are hereby acknowledged by the Parties, NS and Indemnitor agree as follows,

1. NS hereby agrees to permit Indemnitor to enter upon the Premises commencing on the effective date of this agreement, to conduct the Permitted Activities and for no other purpose whatsoever subject to the terms and conditions set forth in this Agreement.

2. Indemnitor agrees to reimburse NS for all costs and expenses incurred in connection with the use of NS's personnel and equipment as a direct result of the Permitted Activities.

3. To the fullest extent permitted by law, Indemnitor agrees to indemnify and hold harmless the Company and its officers, employees and agents from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees arising out of or resulting from the performance of the work by the Indemnitor on or about the company's property; provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property including the loss of use resulting therefrom, and further provided that the Indemnitor shall not be obligated to indemnify and hold harmless the Company from

T98-0033

EXHIBIT a

liability for injury or death or damages proximately caused by the negligence of any officers, employees or agents of the Company. The indemnification and hold harmless provisions set forth in this agreement shall not be construed as an indemnification or hold harmless against and from the negligence of the Company with respect to any construction work performed by the Company's contractor or those performing on behalf of or with the authority of the Company's contractor to the extent that such is in violation of the Illinois Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 seq.

4. Prior to entering upon the Premises or commencing the Permitted Activities, Indemnitor agrees to furnish insurance to NS in form and in such amounts as set forth in Sections 107.11 and 107.27 of the Illinois Department of Transportation's Standard Specifications for Road and Bridge Construction, adopted January 1, 1997 ("IDOT Regulations"), and shall deliver to NS's Risk Management Department certificates of insurance or such other documentation acceptable to NS's Risk Management Department evidencing the acquisition of the required insurance and showing NS as additional insureds.

UPS

5. Indemnitor agrees to and shall comply with the requirements of Sections 105.02, 105.07, 107.01, 107.04, 107.12, 107.20, 107.28 and 107.31 of the IDOT Regulations during the course of Indemnitor's performance of the Permitted Activities on the Premises.

6. Indemnitor shall not place, keep, store or otherwise permit to be placed, kept or stored on the Premises any equipment or materials except during such time as Indemnitor's employees, agents, contractor's or subcontractors are physically present and conducting activities permitted under this Agreement.

7. Any rights to the Premises not specifically granted to Indemnitor herein, are reserved to NS, its successors and assigns.

8. This Agreement and the rights and obligations accruing hereunder are binding upon the successors and assigns NS and Indemnitor. This Agreement shall be governed by the laws of the State of Illinois. This Agreement, together with the Exhibits attached hereto, constitutes the entire Agreement between the Parties with respect to the subject matter hereof. If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word or the application thereof is held invalid, the remainder of this Agreement shall be and remain valid and enforceable to the fullest extent permitted by

T98-0033

EXHIBIT A

law provided that such exclusion does not unfairly prejudice the rights of either Party to this Agreement.

9. All notices, demands, elections, and other instruments required or permitted to be given or made by either Party upon the other under the terms of this Agreement or any statute shall be in writing. Such communications shall be deemed to have been sufficiently served if sent by commercial courier, certified or registered mail, return receipt requested, with proper postage prepaid at the respective addresses shown below or in such other party or address as either Party may from time to time furnish to the other in writing. Such notices, demands, elections and other instruments shall be considered as delivered to recipient on the day of delivery if sent by commercial courier, on the second business day after deposit in the U.S. Mail if sent by certified or registered mail or on the first business day after successful transmission if sent by facsimile transmission.

Engineering

(a) Notices to NS shall be sent to: VP Gay W. I&ski
Vice President Norfolk Southern Railway Co.
Street S.W.
Atlanta, Georgia 30303
404-529-1700

VICE PRESIDENT /
Union Pacific Railroad
99 Spring Company, 1416
Dodge Street
Dunbar, Nebraska
zip
phone

(b) Notices to Indemnitor shall be sent to:

(phone #)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their duly authorized officers on the day and year first written above.

NORFOLK SOUTHERN
RAILWAY
Indemnitor
COMPANY

Union Pacific
RAILROAD COMPANY
Indemnitor

T98-0033

EXHIBIT A

By: _____

By:

Its: _____

Its:

ATTEST:

ATTEST:

By: _____

By:

Its: _____

Its:

EXHIBIT B

IL 169 @ Douglas Street

AMENDED PROPOSED MINIMUM PREEMPTION TIME

	TIME NEEDED
Delay	1
Minimum Green (sec)	1
Yellow Interval (sec)	3.5
All Red Interval (sec)	2.0
Maximum Time Prior to Track Clear Phase	7.5
Track Clearance (sec) (not applicable)	0
Separation Time	9.0
Min. RR Warning Time Required (Total seconds)	20.0 sec

* - FRA requirements mandate a Minimum Preemption Time of no less than 20 seconds.



Illinois Department of Transportation

Telefax Cover Letter

Date: 4/16/01

To: <u>Mack H. Shumate, Jr.</u>	Bureau/District: <u>N/A</u>
Phone Number: <u>372-853-8455</u>	Company: <u>Union Pacific Railroad Co.</u>
Room Number: _____	Telefax No.: <u>312-853-6465</u>
From: <u>Yogesh Gautam, P.E.</u>	Bureau/District: <u>Central Bureau of Operations (Traffic)</u>
Telephone Number: <u>(217)782-3452</u>	Telefax No.: <u>(217)782-7990</u>
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Number of Pages Including This Cover Sheet 16

Subject: US 14 at E. Hillside Ave/ Eastern Ave, Railroad-traffic signal interconnect

Comments: Dear Mr. Shumate:

Pursuant to your conversation with Ken Wood, accompanying this cover sheet is the ICC's Order for IL 159 @ Douglas Ave. Yogesh Gautam

If there are any problems upon receipt of this transmission, **please call the sender immediately.**

Originals to be returned: Yes No

Confirmation copy needed: Yes No

Other instructions or requests: CC: Ken Wood

Note to Sender: Remove any staples
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Transportation ("IDOT").

Pursuant to notice as required by the Law and the rules and regulations of the Commission, the matter came on for hearing before a duly authorized Hearing Examiner of the Commissioner at its offices in Chicago on May 10, 2001. Appearances were entered by counsel for Petitioner and the Railroad and by a Railroad Safety Specialist from the Railroad Section, Transportation Division of the Commission. At the conclusion of a full and public hearing on the aforementioned date, the record was marked "Heard and Taken".

Arthur Osten, Village Administrator; Glenn Azuma, Manager of Community Care, L.L.C., developer of the shopping center; George M. Ziegler, a licensed professional engineer employed by Christopher B. Burk Engineering, Ltd.; and James M. Graziano, a licensed professional engineer employed by Baxter & Woodman, Inc., a professional transportation design firm testified about the emerging needs of the Village in the vicinity of Foxmoor Road, U.S. Highway Route 14 ("Hwy. 14"), and the tracks of the Railroad.

Foxmoor Road intersects with Hwy. 14 approximately fifty-two feet (52') north of its at-grade crossing of the tracks. A shopping center is being developed on the north side of Hwy. 14 which now has an entrance and exit located directly across from where Foxmoor Road intersects with Hwy. 14 (the Foxmoor Road Shopping Center Entrance [the "Entrance"]). The Village proposes to provide pedestrian access between a nearby residential subdivision (Fox Subdivision) and the shopping center and Hwy. 14. This walkway would allow pedestrians to walk from the Foxmoor Subdivision to Hwy. 14 and the shopping center without sharing the road with motor vehicles and bicycles.

To improve traffic flow and safety, the Village proposes to modify the current right-in/right-out access at the Entrance to provide full access to the expanding shopping center by including an addition center-turn lane and east and west right-turn lanes on Hwy. 14.

In conjunction with the above, the Village proposes to replace the existing stop signs controlling traffic at the intersection of Hwy. 14 and Foxmoor Road with traffic signals. ~~The proposed traffic signals which will govern the flow of~~ traffic and pedestrians along Hwy. 14 and to and from Foxmoor Road will be under the jurisdiction of IDOT. The Village is of the opinion that highway traffic presignals on the southeast side of the crossing should be installed on a railroad signal cantilever.

Mr. Ziegler and Mr. Graziano testified in regard to the technical details and construction of the proposed presignals and signals.

The Village and its advisors recommend that the minimum simultaneous preemption time provided by the Railroad to IDOT for the proposed traffic signal preemption sequence at the Foxmoor Road crossing of the Railroad's tracks be set at twenty-five seconds (25").

Gerald E. Lienemann, manager of field engineering for the Railroad testified in opposition to the petition. The Railroad is not in favor of a mounted signal on the cantilever. The cantilever and signals are owned and maintained by the Railroad and access to the cantilever and signals would require a right-of-way entry agreement, cost agreements, an easement agreement, and maintenance using a bucket truck, thereby avoiding trespass upon Railroad property.

In closing, the Village requested the Commission enter an Interim Order allowing installation of traffic signals on the cantilever or on a wire above the intersection, thereby allowing detailed costs of the project to be developed by the Railroad. The Village shall petition the Commission in the event that appropriate Commission action is required for the Village's construction of the proposed walkway from the Foxmoor Subdivision to U. S. Highway 14 and the shopping center.

The Commission, having reviewed the entire record herein and being advised in the premises, is of the opinion and finds that:

- (1) the Village of Fox River Grove, McHenry County, Illinois (the "Village") is a political subdivision within the State of Illinois;
- (2) Union Pacific Railroad Company (the "Railroad") is a for-hire carrier of passengers and/or freight within the State of Illinois and is a rail carrier as defined by the Illinois Commercial Transportation Law ("Law");
- (3) the Department of Transportation of the State of Illinois ("IDOT") is an agency of the State of Illinois;
- (4) the Commission has jurisdiction over the parties and the subject matter of this petition;
- (5) Foxmoor Road is a public street within the Village and

is under the jurisdiction of the Village;

- (6) Foxmoor Road crosses the tracks of the Railroad at-grade and is identified as DOT 174364F;
- (7) Foxmoor intersects with U.S. Route 14 fifty-two feet (52') north of the aforementioned crossing;
- (8) U.S. Route 14 is under the jurisdiction of IDOT;
- (9) a shopping center is being developed on the north side of U.S. Route 14, directly to the north of where Foxmoor Road intersects with the Railroad's tracks and intersections with U.S. Route 14;
- (10) the Village, through a private developer, proposes to modify the current right-in/right-out access at the shopping center to provide full access to the shopping center with an additional center-turn land and east and west right-turn lanes on U.S. Route 14;
- (11) in connection with the modification of the shopping center entrance and exit, the Village proposes to replace the existing stop signs controlling traffic at U.S. Route 14 and Foxmoor Road with traffic signals; the traffic signals which will control the flow of traffic and pedestrians along the subject area will be under the jurisdiction of IDOT;
- (12) the Village also proposes a sidewalk along the east side of Foxmoor Road, north and south of the Railroad's tracks to provide pedestrian access between the Foxmoor Residential Subdivision, the shopping center, and U.S. Route 14;
- (13) there has not yet been any indication that Commission action is required for the construction of the proposed sidewalk;
- (14) the operation of the existing automatic flashing lights and gate at the Foxmoor road at-grade crossing of the Railroad's tracks need to be interconnected and coordinated with the operation of the proposed traffic signal system ~~at U.S. Route 14 and Foxmoor Road;~~
- (15) the highway traffic presignals on the southeast side of the crossing need to be installed on a railroad signal cantilever **which shall be installed by the Railroad as an integral part of the railroad signal system required**

solely as a result of the highway modifications and subject to the same cost allocation as the entire railroad signal system.

- (16) the Village proposes that the minimum simultaneous preemption time provided by the Railroad to IDOT for the proposed traffic signal preemption sequence at the Foxmoor Road crossing of the Railroad's tracks should be twenty-five seconds (25").

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the petition of the Village of Fox River Grove, McHenry County, Illinois, be, and the same is hereby granted permission for 1) the installation of interconnect traffic signals at the intersection of U.S. Route 14 (Northwest Highway) and Foxmoor Road with the railroad warning devices at the Foxmoor Road at-grade crossing of the Railroad's double mainline tracks; 2) establish the minimum preemption time provided by the Railroad to IDOT for the traffic signal preemption sequence at said intersection; 3) provide a six foot (6') wide sidewalk platform across the tracks; and 4) install the southeast side traffic presignals on a railroad signal cantilever in the interest of public safety and convenience.

IT IS FURTHER ORDERED that IDOT and IDOT's contractor shall install an overhead traffic signal on the railroad cantilever on the southeast side of the subject crossing **and such installation shall be performed using a bucket truck and IDOT and IDOT's contractor and its employees shall be prohibited from climbing onto the railroad cantilever to install, repair, maintain, or rehabilitate the overhead traffic signals.**

IT IS FURTHER ORDERED that IDOT or IDOT's contractor shall install and thereafter maintain the highway traffic signals approved herein and circuitry therefore and the Railroad shall install and thereafter maintain all of the railroad signals and circuitry herein required by this Order **and IDOT shall require its contractor's, subcontractor's and their employees performing said installation and maintenance on the railroad's property including the cantilever to execute and deliver to Railroad a Right-of-Entry Agreement in the form of that attached hereto as Exhibit 3 and hereby made a part hereof.**

IT IS FURTHER ORDERED that the new cantilever **is part of the railroad system** is and will remain the property of the Railroad; the cost **for the new cantilever** shall be divided on the same basis as all other components of the railroad signal system.

IT IS FURTHER ORDERED by the Commission that the subject highway rail grade crossing warning system shall be designed to provide for a minimum of twenty-five seconds (25") simultaneous preemption time for the normal operation of through trains at the subject at-grade crossing, identified as DOT 174364F and shall thereafter be maintained by the Railroad.

IT IS FURTHER ORDERED that the Railroad shall not take any action which would result in a reduction of the minimum simultaneous preemption time herein required for the normal operation of through trains at the aforesaid crossing without approval of the Commission.

IT IS FURTHER ORDERED that the Railroad shall post a readily visible notice inside their warning system bungalow at the aforesaid crossing notifying their personnel not to take any action which would result in a reduction of the simultaneous minimum railroad preemption time herein required without the approval of the Commission. An actual size copy of the notices shall be submitted to the Commission's Railroad Safety Program Administrator for approval.

IT IS FURTHER ORDERED that IDOT shall post a readily visible notice inside their traffic signal bungalow notifying their personnel not to alter the railroad preemption sequences for the traffic signals interconnected with the railroad warning devices at the aforesaid at-grade crossing in a manner which would reduce the amount of time vehicles encroaching the track zone would have to clear the tracks, without the approval of the Commission; an actual size copy of the notices shall be submitted to the Commission's Railroad Safety Program Administrator for approval.

IT IS FURTHER ORDERED that the parties are hereby required and directed to proceed immediately in performing the work required of them and shall complete these respective improvements within **eighteen (18)** months from the date of this Order.

IT IS FURTHER ORDERED that the Railroad, in consultation with IDOT, shall design the railroad cantilever herein required, to meet the specifications, requirements, and needs of the Railroad, IDOT, and the Commission.

~~IT IS FURTHER ORDERED~~ that upon approval of all required plans for the interconnect traffic signals and traffic presignals by the Commission, the Railroad shall within ninety (90) days, submit detailed cost estimates to all parties **and the Commission thereafter shall prepare a cost allocation and supplement this Order in accordance with such cost allocation.**

IT IS FURTHER ORDERED that IDOT's contractor shall be responsible for all traffic signal installation, maintenance, repair, and replacement and that the Railroad shall not be liable for any damages to property or for bodily injury resulting from any traffic signal failure or malfunction.

IT IS FURTHER ORDERED that in the event the railroad cantilever requires replacement or substantial maintenance for whatever reason, the cost for such replacement or substantial maintenance will be apportioned 50% to IDOT and 50% to the Railroad.

IT IS FURTHER ORDERED that the Railroad shall within ninety (90) days from the date of this Order file a Form 3 of 92 Illinois Administrative Code 1535 with the Commission showing details of the cantilever installation herein required, which includes IDOT's traffic signal mounting details and shall receive approval by X-Resolution before commencing the work of installation.

IT IS FURTHER ORDERED that the Railroad shall deliver and IDOT shall accept the fixture easement covering the rights and obligations of IDOT to install and maintain its highway traffic signals on the Railroad's cantilever substantially in the form of the Fixture Easement attached hereto as Exhibit 4 and hereby made a part hereof.

IT IS FURTHER ORDERED that IDOT's or IDOT's contractor shall notify the Railroad at least seven (7) days prior to commencing the traffic signal installation work herein required.

IT IS FURTHER ORDERED that IDOT and the Railroad shall each within six (6) months from the date of this Order furnish to the Director of Processing, Transportation Division of the Commission a written report stating the progress each has made toward the completion of the work herein required. Each progress report shall include the Commission Order number, the Order date, the project completion date as noted in the Order, crossing information (inventory number and railroad milepost), type of improvement, and project manager information (the name, title, mailing address, telephone number and facsimile number of the ~~employee responsible for management of the project~~). If the project is behind schedule, the report must also include a brief explanation of the reasons for the delay.

IT IS FURTHER ORDERED that the Railroad and IDOT shall each notify the Director of Processing, Transportation Division of the Commission within five (5) days of completion of their work herein required.

IT IS FUTURE ORDERED that the Commission shall retain jurisdiction of this matter for purposes of entering such further order or orders as it may deem necessary.

By Order of the Commission this 8th day *of* August, 2001.

Chairman

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RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2001, by and between the UNION PACIFIC RAILROAD COMPANY (hereinafter referred to as either "UP" or "Company"), and _____ a(n) _____ corporation, ("Indemnitor"). UP and Indemnitor are hereinafter sometimes individually referred to as a "Party" and jointly referred to as the "Parties".

PRELIMINARY STATEMENT

Indemnitor desires to enter upon that portion of UP's right-of-way property located at _____, Illinois depicted in Exhibit "A" attached to and made a part of this Agreement ("Premises") for the purpose of installing, maintaining and/or repairing traffic signals on the UP cantilever located on the Premises ("Permitted Activities").

NOW, THEREFORE, for and in consideration of the above stated recitals which are by this reference hereby incorporated into this Agreement and the mutual promises and agreements set forth below, the sufficiency of which are hereby acknowledged by the Parties. UP and Indemnitor agree as follows:

1. UP hereby agrees to permit Indemnitor to enter upon the Premises commencing on the effective date of this Agreement, to conduct the Permitted Activities and for no other purpose whatsoever subject to the terms and conditions set forth in this Agreement.
2. Indemnitor agrees to reimburse UP for all costs and expenses incurred in connection with the use of UP's personnel and equipment as a direct result of the Permitted Activities.
3. To the fullest extent permitted by law, Indemnitor agrees to indemnify and hold harmless the Company and its officers, employees and agents from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees arising out of or resulting from the performance of the work by the

Indemnitor on or about Company's property; provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property including the loss of use resulting therefrom, and further provided that the Indemnitor shall not be obligated to indemnify and hold harmless the Company from liability for injury or death or damages proximately caused by the negligence of any officers, employees or agents of the Company. The indemnification and hold harmless provisions set forth in this Agreement shall not be construed as an indemnification or hold harmless against and from the negligence of the Company with respect to any construction work performed by the Company's contractor or those performing on behalf of or with the authority of the Company's contractor to the extent that such is in violation of the Illinois Construction Contract Indemnification for Negligence Act. **740 ILCS 35/0.01** et seq.

4. Prior to entering upon the Premises or commencing the Permitted Activities, Indemnitor agrees to furnish insurance to UP in form and in such amounts as set forth in Sections **107.11** and **107.27** of the Illinois Department of Transportation's Standard Specifications for Roads and Bridge Construction, adopted January 1, **1997** ("IDOT Regulations"), and shall deliver to UP's Risk Management Department certificates of insurance or other such documentation acceptable to UP's Risk Management Department evidencing the acquisition of the required insurance and showing UP as an additional insured.

5. Indemnitor agrees to and shall comply with the requirements of Sections **105.02**, **105.07**, **107.01**, **107.04**, **107.12**, **107.20**, **107.28** and **107.31** of the IDOT Regulations during the course of Indemnitor's performance of the Permitted Activities on the Premises.

6. Indemnitor shall not place, keep, store or otherwise permit to be placed, kept or stored on the Premises any equipment or materials except during such time as Indemnitor's employees, agents, contractors or subcontractors are physically present and conducting activities permitted under this Agreement. _____

7. Any rights to the Premises not specifically granted to Indemnitor herein, are reserved to UP, its successors and assigns.

8. This Agreement and the rights and obligations accruing hereunder are binding upon the successors and assigns of UP and Indemnitor. This Agreement shall be

governed by the laws of the State of Illinois. This Agreement, together with the Exhibits attached hereto, constitutes the entire Agreement between the Parties with respect to the subject matter hereof. If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word or the application thereof is held invalid, the remainder of this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law provided that such exclusion does not unfairly prejudice the rights of either Party to this Agreement.

9. All notices, demands, elections, and other instruments required or permitted to be given or made by each Party upon the other under the terms of this Agreement or any statute shall be in writing. Such communications shall be deemed to have been sufficiently served if sent by commercial courier, certified or registered mail, return receipt requested, with proper postage prepaid at the respective addresses shown below or to such other party or address as either Party may from time to time furnish to the other in writing. Such notices, demands, elections and other instruments shall be considered as delivered to recipient on the day of delivery if sent by commercial courier, on the second business day after deposit in the U.S. Mail if sent by certified or registered mail or on the first business day after successful transmission if sent by facsimile transmission.

a. Notices to UP shall be sent to:

Vice President of Engineering
Union Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179
Telephone: _____

b. Notices to Indemnitor shall be sent to:

Telephone: _____

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their duly officers on the day and year first written above.

UNION PACIFIC RAILROAD COMPANY

By: _____

ATTEST :

INDEMNITOR

By: _____
Its: _____

ATTEST :

FIXTURE EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that UNION PACIFIC RAILROAD COMPANY, a corporation of the State of Delaware, duly authorized to do business in the state of Illinois, hereinafter referred to as the Grantor, for and in consideration of *Ten Dollars and no/100 (\$10.00)*, the receipt of which is hereby acknowledged, does hereby grant, so far as it lawfully may, unto the STATE OF ILLINOIS, hereinafter referred to as Grantee, a fixture easement (the "Fixture Easement") for the purpose of installing, maintaining, repairing, renewing and using highway signals on the Grantor's signal cantilever(s) at the intersection of the Grantor's railroad right-of-way and Foxmoor Road (the "Premises"), at Milepost _____, Harvard Subdivision, at or near the Village of Fox River Grove, McHenry County, Illinois, as depicted in Exhibit A, hereto attached and hereby made a part hereof and legally described as:

Fixture Easement (Parcel No. _____):

That part of the Union Pacific Railroad Company property consisting of the Premises subject to the following terms and conditions:

1. Terms and conditions covering the reconstruction and maintenance of said Premises from time to time and the expenses resulting therefrom will be covered by that certain agreement between the Grantor and Grantee dated July 1, 2001 (the "Agreement").
2. Said grant of right is subject to all outstanding rights, licenses or interests, restrictions, reservations, conditions, encumbrances and easements, whether recorded or unrecorded.
3. The Grantor reserves unto itself, its grantees (other than the Grantee named in this Fixture Easement), licensees, lessees, successors and assigns, the right not only to continue to keep and use or operate **all** tracks and other facilities to structures now upon or beneath the surface of, or above, the said described Premises, but also the right to install and use or operate new or additional tracks, facilities and structures upon and beneath the surface of and above the said described Premises, and Grantor reserves also the right to grant to others permission to install and use or operate other facilities and structures, including, but not limited to, underground pipes and conduits and fiber optic or other communication or signal facilities, upon and beneath the surface of said Premises, and overhead wires, cables, and poles or other structures for the support of such facilities and structures which may now hereafter be on said Premises; provided that said installations can be made without interfering with the use of said Premises as provided in this Fixture Easement,

impairing the highway or interfering with the free and safe flow of traffic thereon. The Grantor may also move equipment of all types over the Premises. No attachments of any kind will be permitted to be installed on any structure or facility of the Grantee without the prior written consent of said Grantee, which consent shall not be unreasonably withheld.

4. The Grantor does not warrant title to said described Premises in which the foregoing Fixture Easement is granted and does not undertake to defend the Grantee in the peaceable enjoyment thereof, and the grant of Fixture Easement aforesaid shall be subject to the continuing lien of all lawful outstanding existing liens and superior rights, if any, in and to said Premises.
5. If the public use of the Fixture Easement on the Premises for the purposes described herein shall be abandoned or discontinued, said Fixture Easement shall thereupon cease and determine, and the Grantee shall surrender, or cause to be surrendered, to the Grantor or its successors or assigns, the peaceable possession of said described Premises and title to said Premises shall remain in the Grantor, or its successors and assigns, free and clear of all rights and claims of the Grantee and of the public for use and occupancy of the said Premises. Full and complete title, ownership and use of Grantor's Premises and of the portions thereof herein involved are reserved unto Grantor, its successors or assigns, subject to the right, permission and authority herein expressly granted in this Fixture Easement. Upon termination of the Fixture Easement for any reason, the Grantee shall restore the Grantor's Premises to a like condition as at present, insofar as such restoration may in the opinion of the Grantor's duly authorized representative be practicable.
6. Subject to the provisions of the foregoing Section 4, this Fixture Easement and the conditions contained in it shall run with the land and be binding upon the respective grantees, licensees, successors and assigns of the parties.

