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BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
CITY OF SPRINGFIELD,)
)
Petitioner)

vs.) No. T14-0095

ILLINOIS CENTRAL RAILROAD)
COMPANY,)
Respondent.)

Petition for an Order)
authorizing new at-grade)
crossing of Stanford Avenue at)
the existing Illinois Central)
Railroad Company tracks in the)
City of Springfield and)
directing installation of)
crossing protection and to)
apportion costs.)

Chicago, Illinois
S January 28, 2015

Met pursuant to notice at 11:15 a.m.

BEFORE:

Timothy E. Duggan, Administrative Law Judge

1 APPEARANCES:

2 HINSHAW & CULBERTSON LLP, by
3 MR. EDWARD R. GOWER
4 400 South Ninth Street, Suite 200
5 Springfield, Illinois 62701

6 Appearing on behalf of the Petitioner;

7 MR. THOMAS J. HEALEY
8 17641 South Ashland Avenue
9 Homewood, Illinois 60430

10 Appearing on behalf of the Respondent;

11 MR. JOE VON DE BUR
12 527 East Capitol Avenue
13 Springfield, Illinois 62701

14 Appearing on behalf of the Illinois
15 Commerce Commission.

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23 SULLIVAN REPORTING COMPANY, by
24 Christine L. Kowalski, CSR
25 License No. 084-004422

1 JUDGE DUGGAN: Pursuant to the authority vested
2 in me by the State of Illinois and the Illinois
3 Commerce Commission, I now call Docket T14-0095 for a
4 hearing.

5 May we have the appearances starting
6 with Mr. Gower.

7 MR. GOWER: My name is Ed Gower. I'm with the
8 law firm Hinshaw & Culbertson LLP. Our office is at
9 400 South Ninth Street, Suite 200, Springfield,
10 Illinois 62701; my direct dial telephone is
11 (217) 467-4916; and I represent the Petitioner, City
12 of Springfield, in this matter.

13 With me here today are Mr. Jim Moll
14 and Ms. Julie Shipp, both of whom are Registered
15 Engineers with the State of Illinois who are employed
16 by Hanson Professional Services, Inc., and served as
17 the contractual engineer on this project for the
18 City. Also with me is the City engineer, Nathan
19 Bottom, B-o-t-t-o-m.

20 JUDGE DUGGAN: Okay. Mr. Healey?

21 MR. HEALEY: Good morning, your Honor. Thomas
22 Healey, H-e-a-l-e-y, on behalf of Illinois Central

1 Railroad Company. I'm in-house counsel with them.
2 My office address is 17641 South Ashland Avenue.
3 That's in Homewood, Illinois 60430. The phone number
4 is (708) 332-4381. And I do not have any witnesses
5 today.

6 JUDGE DUGGAN: Very good.

7 Mr. Von De Bur?

8 MR. VON DE BUR: Joe Von De Bur, Illinois
9 Commerce Commission, 527 East Capitol Avenue,
10 Springfield, Illinois 62704, phone is (217) 557-1286.

11 JUDGE DUGGAN: Very good.

12 At the last hearing, we took all of
13 the evidence except there was two loose ends. One of
14 them was the Illinois Central policy of not having
15 any obstructions within 100 feet of their structures
16 so that they may perform maintenance, and that, in
17 fact, they have a structure that will be
18 approximately within 100 feet of the proposed roadway
19 or its appurtenances.

20 And the other unfinished business was
21 the fact that as -- or in conjunction with opening a
22 new grade crossing would be the closing of two other

1 crossings by closing the roads under the jurisdiction
2 of Woodside Township.

3 Before we went on the record today, we
4 discussed both these issues. And the issue of the
5 100-foot clearance, I'm informed, has been resolved
6 between the City and Illinois Central by way of a
7 stipulation which will -- or by which the City has
8 agreed that it will close the sidewalk -- it doesn't
9 refer to the road, but the sidewalk which -- the
10 pedestrian crossing that will run parallel to the
11 road across the tracks.

12 Well, it does say "and/or crossing" --
13 the "sidewalk and/or crossing" -- that it will
14 close --

15 Let's go off the record.

16 (Whereupon, a discussion was had
17 off the record.)

18 JUDGE DUGGAN: Back on the record.

19 I just went off the record to verify
20 with Mr. Gower that, in fact, this new agreement does
21 contemplate the potential for closing the roadway
22 itself as well as the sidewalk for purposes of

1 allowing the Illinois Central to do maintenance on
2 the railroad structures.

3 And that entire agreement has not been
4 signed yet, but they agreed to it, and so Mr. Gower
5 may choose to read this into the record. But, in any
6 event, after both parties sign that agreement, it is
7 going to be submitted as an exhibit.

8 The other issue of the -- the
9 obligation or the agreement of Woodside Township to
10 close their roads effectively closing the two other
11 at-grade crossings was also discussed. And the --
12 while there is an intergovernmental agreement between
13 the City and Woodside Township at this time that --

14 Was that attached to the petition or
15 not?

16 MR. GOWER: Yes. It was Exhibit 6 --

17 JUDGE DUGGAN: Okay.

18 MR. GOWER: -- Exhibit 7 -- I'm sorry -- to the
19 amended petition.

20 JUDGE DUGGAN: Okay.

21 MR. GOWER: The intergovernmental agreement was
22 attached, not the stipulated agreement.

1 JUDGE DUGGAN: The one he gave me?

2 MR. GOWER: Yes.

3 JUDGE DUGGAN: Off the record.

4 (Whereupon, a discussion was had
5 off the record.)

6 JUDGE DUGGAN: Okay. Back on the record.

7 All right. The intergovernmental
8 agreement I was referring to was attached to the
9 amended petition as Exhibit 7 and admitted into
10 evidence as Exhibit 7.

11 But, in any event, the
12 intergovernmental agreement -- or by the
13 intergovernmental agreement, Woodside Township
14 authorizes the City of Springfield to perform the
15 necessary work to close these roads; but there's also
16 an implication in there that that -- that the
17 authority to do so may be dependent upon receiving
18 funds from the government --

19 Are they Railroad -- are they Railroad
20 Crossing Protection Funds, Joe?

21 MR. VON DE BUR: Yes.

22 JUDGE DUGGAN: Okay.

1 MR. VON DE BUR: Grade Crossing Protection
2 Funds.

3 JUDGE DUGGAN: -- from the Grade Crossing
4 Protection Fund as an incentive to -- to close these.

5 And I'm informed orally that, in any
6 event, nobody's going to do anything unless these
7 funds are granted. Therefore, the authority to open
8 this new crossing proposed in this petition for
9 Stanford would be dependent upon the obligation and
10 the commitment to close those other two crossings.

11 So, basically, the parties are
12 basically telling me -- or the City's telling me
13 they're not going to make that commitment until the
14 incentive agreement is reached. And, apparently,
15 that needs another signature yet of the parties and
16 then approval by the Commission.

17 Additionally, I'm informed that the --
18 Woodside Township has on its agenda for February 3rd
19 an ordinance which more specifically sets out the
20 obligations of each party with regards to closing
21 these two records.

22 Since we need to leave the record open

1 for purposes of the incentive agreement and the
2 Commission Order approving the incentive agreement,
3 then we may as well leave the record open for the
4 ordinance and --

5 Off the record.

6 (Whereupon, a discussion was had
7 off the record.)

8 JUDGE DUGGAN: Back on the record.

9 -- for the completely signed incentive
10 agreement; the Commission Order approving the
11 incentive agreement; and the ordinance, which is
12 expected to be passed by Woodside Township; as well
13 as the stipulation.

14 So that's four more exhibits that the
15 City is going to submit.

16 Is that correct; Mr. Gower?

17 MR. GOWER: That's correct, your Honor.

18 JUDGE DUGGAN: Okay. And then off the record,
19 we agreed to a procedure by which Mr. Gower would
20 post those proposed exhibits to the eDocket. And
21 Mr. Healey and Mr. Von De Bur would both, if they
22 meet their approval, file statements that they have

1 no objections to the admission of those exhibits,
2 and -- at which time I can admit the exhibits by --
3 by way of an ALJ ruling and also have the record
4 marked heard and taken.

5 So with that, I will ask Mr. Gower
6 what else you would like to add, clarify, correct,
7 and if you want to read the stipulation into the
8 agreement (sic), that is entirely up to you.

9 MR. GOWER: Thank you, Judge. I think I will
10 read into the record the stipulation that -- to which
11 Mr. Healey and I have agreed and that I've signed and
12 I would anticipate that Mr. Healey will sign on
13 behalf of the Illinois Central Railroad. That's what
14 we ultimately will file.

15 If there's any discrepancy between the
16 court reporter's transcript and the written
17 agreement, the written agreement shall prevail. The
18 language of the stipulation that the parties have
19 negotiated is as follows --

20 JUDGE DUGGAN: Okay. Hold on.

21 And, Mr. Healey, do you agree that if
22 there's any discrepancy between the transcript and

1 the written filed agreement, that the -- the written
2 filed exhibit, that the document filed as the exhibit
3 for the stipulation would control?

4 MR. HEALEY: I agree with that, your Honor,
5 yes.

6 JUDGE DUGGAN: Very good.

7 And, Christine, are -- can you hear?
8 Are you ready to hear about a paragraph -- about a
9 third-of-a-page long statement to be read? Are you
10 ready for this?

11 THE REPORTER: Yes, I am, your Honor.

12 JUDGE DUGGAN: Very good.

13 MR. GOWER: I can send this to you as well,
14 Christine, if that's helpful.

15 JUDGE DUGGAN: Well, she's supposed to take
16 down what you say.

17 MR. GOWER: Oh, okay.

18 THE REPORTER: Thank you.

19 MR. GOWER: The City of Springfield will agree
20 to close the Stanford Avenue sidewalk and/or crossing
21 to traffic for a period of time up to one month, for
22 the purpose of enabling the Illinois Central Railroad

1 to remove, replace or perform major rehabilitation to
2 the Illinois Central Railroad structure that carries
3 Illinois Central Railroad traffic over the old
4 Interurban tracks. The Illinois Central Railroad
5 agrees to completes the work requiring the closure
6 with reasonable commercial dispatch.

7 Further, if the Illinois Central
8 Railroad work on the bridge is delayed beyond one
9 month for reasons currently not anticipated by the
10 parties, the City of Springfield will agree to
11 closure of the Stanford Avenue sidewalk and/or
12 crossing for a short period beyond a month, provided
13 that the Illinois Central Railroad track is
14 contemporaneously closed to traffic, and the extended
15 closure appears in good faith to be reasonably
16 necessary to allow the Illinois Central Railroad to
17 complete its work on the bridge.

18 And that's the stipulation to which
19 the City of Springfield and the Illinois Central
20 Railroad have agreed to address the Railroad's
21 concern about possible future need to get equipment
22 in to work on the structure over the Interurban, and

1 I think it disposes of -- it addresses one of the two
2 lingering issues from the last hearing, Judge.

3 JUDGE DUGGAN: Okay. Mr. Healey, do you agree
4 that that's the stipulation?

5 MR. HEALEY: What Counsel read appears to be
6 the stipulation that he and I have entered into, yes.

7 JUDGE DUGGAN: Okay. That was hedged a little
8 bit by "appears." Are you not stipulating or do you
9 just want to wait for the exhibit to be filed and
10 call that a stipulation?

11 MR. HEALEY: Since my understanding is that the
12 stipulation is going to be filed when signed and
13 since my understanding is your Honor has requested
14 the parties to file a concurrence that the exhibit's
15 correct, I intend to follow that procedure.

16 I don't have a copy in front of me.
17 What Counsel read is consistent with my recollection
18 of what the stipulation was, but I would like to wait
19 to see what gets filed to make sure it is, in fact,
20 the correct stipulation.

21 JUDGE DUGGAN: All right. That being the case,
22 you don't have a stipulation yet. Okay?

1 And --

2 MR. GOWER: I do have a stipulation. It's just
3 he doesn't know what I -- whether what I read is the
4 stipulation.

5 JUDGE DUGGAN: Okay. Two parties -- it takes
6 two parties to stipulate.

7 MR. GOWER: And he's seen and stipulated to the
8 language. He just doesn't know whether what I read
9 is that language.

10 JUDGE DUGGAN: Yeah. We don't -- we don't have
11 it on the record. How's that?

12 MR. GOWER: That's -- that's a deal.

13 JUDGE DUGGAN: Anything else you want to add to
14 clarify the representations I previously made?

15 MR. GOWER: No, your Honor. I -- I'm
16 prepared -- if Mr. Von De Bur needed to talk to you
17 about any of the documents that are being filed or
18 any of the exhibits -- the four exhibits to be filed
19 that you identified -- I am prepared to waive any
20 concern about ex parte contacts, and I would hope
21 that Mr. Healey would agree to that as well.

22 JUDGE DUGGAN: Okay. Well, I'm going to

1 broaden the ex parte exception in a bit.

2 Right now, I want to know if there's
3 any additions, corrections, or clarifications to the
4 representations I made on the record or if you need
5 to say anything else, Mr. Healey.

6 MR. HEALEY: No, I don't, your Honor. Thank
7 you for the opportunity.

8 JUDGE DUGGAN: Mr. Von De Bur?

9 MR. VON DE BUR: I have nothing to add, your
10 Honor.

11 JUDGE DUGGAN: Very good.

12 Okay. Now, let's -- with the
13 ex parte -- not just about the exhibits, but I would
14 want to waive prohibition for purposes of drafting an
15 Order, so would you -- do you agree to -- as well as
16 the exhibits and the things that you mentioned -- but
17 do you -- does everybody agree to waive the ex parte
18 prohibition for purposes of getting a Draft Order?

19 MR. GOWER: I waive the ex parte prohibitions
20 on conversations between you and Mr. Von De Bur for
21 anything in this record including, but not limited
22 to, the preparation of an order or any discussions

1 about any of the exhibits.

2 JUDGE DUGGAN: Okay. Yeah. But we also need
3 it for the purposes of Mr. Von De Bur or me sending
4 e-mails to everybody with these Draft Orders and
5 asking for corrections. So, basically --

6 MR. GOWER: So stipulated.

7 JUDGE DUGGAN: Very good.

8 Mr. Healey, do you so waive the
9 prohibition to the same extent?

10 MR. HEALEY: What he said, yes.

11 JUDGE DUGGAN: Very good.

12 Mr. Von De Bur?

13 MR. VON DE BUR: I do, your Honor.

14 JUDGE DUGGAN: Very good. Okay. I guess
15 that's -- that's all for today unless you guys have
16 something else.

17 MR. GOWER: One question, Judge. As I
18 understand it, the procedure will be that when we
19 have the four exhibits that you -- that we discussed,
20 the signature -- stipulation, the ordinance, the
21 Commission Order, and the Township ordinance, and I
22 file those -- the City files those, and if the other

1 parties file statements of no objection to the
2 admission of those documents into the record, as I
3 understand it, there will be no need for any
4 additional hearing in this matter. Is that correct?

5 JUDGE DUGGAN: Correct. But I do not want to
6 mark the record heard and taken yet because there's
7 exhibits coming.

8 MR. GOWER: I understand. I just want to make
9 sure we didn't need to get back together.

10 JUDGE DUGGAN: Yeah. Well, I'm asking you.
11 You tell me. Is there anything else?

12 MR. GOWER: I don't think so.

13 JUDGE DUGGAN: Okay. As far as I know, we've
14 got everything ready and that will tie everything up.
15 So that all being the case, then that
16 will conclude the hearing for today. Thank you very
17 much.

18 MR. HEALEY: Thank you, your Honor.

19 (Whereupon, the above-entitled
20 matter was continued sine die.)

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