

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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| City of Rockford, a municipal corporation, Petitioner, | : | |
| | : | |
| v. | : | T15-0018 |
| | : | |
| The Union Pacific Railroad Company Respondents. | : | |
| | : | |
| Petition for an order of the Illinois Commerce Commission to permit the maintenance, use and improvement of an existing pedestrian tunnel under Respondent's single track approximately 600 feet south of Walnut Street (DOT/AAR crossing 174468M), railroad milepost 72.98 and improvement of the approaches and access thereto in Rockford, Winnebago County, Illinois. | : | |

**STAFF RESPONSE TO CITY OF ROCKFORD'S
February 3, 2015 PETITION**

Now comes Staff of the Commission (Staff), and in response to the Petition filed by the City of Rockford (City), respectfully states as follows:

1. Staff has no objection to the City's petition, and concurs with the use of the existing pedestrian tunnel under the Union Pacific Railroad Company's (UP) tracks to link the City's parks and new facilities.
2. Staff has prepared a draft Proposed Order included herein. Staff stipulates to the facts as provided in this Agreed Order, and requests that it be entered without a hearing.

Respectfully Submitted on March 25, 2015:



Brian Vercruyse, P.E.
Senior Rail Safety Specialist
Illinois Commerce Commission
(312) 636-7760 mobile
bvercruy@icc.illinois.gov

PROOF OF SERVICE

I, Brian Vercruysse, Senior Rail Safety Specialist, certify that on the 25th day of March 2015, I caused to be served, a true and correct copy of the **STAFF RESPONSE** upon the following by the indicated method of service:

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| <p>Kerry F. Partridge (via e-mail) Dept. of Law City of Rockford 425 E. State St. Rockford, IL 61104 kerry.partridge@rockfordil.gov</p> <p>Mr. Mack Shumate, Jr. (via e-mail) Union Pacific Railroad Company 101 N. Wacker Drive Suite 1920 Chicago, IL 60606 mackshumate@up.com</p> | |
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| | : | |

STAFF PROPOSED ORDER

By Order of the Commission:

On February 3, 2015, the City of Rockford ("City" or "Petitioner") filed the above-captioned petition with the Illinois Commerce Commission ("Commission") naming as Respondent the Union Pacific Railroad Company ("UP" or "Respondent"), to permit the maintenance, use and improvement of an existing pedestrian tunnel under the Respondent's track, located approximately 600 feet south of Walnut Street (DOT/AAR #174468M, railroad milepost 72.98), and improvement of the access and approaches thereto in the City of Rockford, Illinois.

PETITIONER'S EVIDENCE

An existing pedestrian tunnel ("tunnel") beneath the UP's right of way is located approximately 600 feet south of Walnut Street (DOT/AAR crossing #174468M, railroad milepost 72.98) on the UP's track sometimes known as the "KD" Line. The City has acquired the real estate and improvements lying east and west of the KD Line in the vicinity of the tunnel. The tunnel was designed, built, and used by a previous owner to provide access to buildings located on either side of the KD Line, and the City has now acquired the rights to the tunnel from the prior owner.

The City is partially demolishing the building at the eastern terminus of the tunnel, improving the area with parking, and further improving a building directly west of the western terminus of the tunnel as an indoor recreation facility. The parking east of the tunnel will serve the building west of the tunnel. The tunnel will also provide access for the residential areas east of Madison Street and provide a connection to Ingersoll Centennial Park. The City has determined that it is necessary to promote the public

safety and convenience of the public that the subject tunnel be maintained and that the approaches thereto be improved for access to and from the aforementioned parking areas, residential areas, and the proposed recreational building. The design includes provisions for handicap ramps, and other necessary features to meet the requirements of the federal Americans with Disabilities Act ("ADA"). No structural changes to the tunnel are proposed by the City. A copy of the engineering plans for the tunnel and approaches was attached to the City's Petition. Also attached to the petition was a structural report and more detailed description of the subject tunnel. It concludes that the tunnel is in good condition and that the portion of the tunnel supporting the track of the UP is adequate for Cooper E80 loading.

The City has coordinated its Project as herein described with the UP and Commission staff and will continue to do so. It intends on starting construction in 2015. All costs of the project, including construction and maintenance of the approaches to the tunnel, shall be paid by the City.

RESPONDENT UNION PACIFIC RAILROAD COMPANY'S POSITION

The Respondent has no objection to the City's Petition.

STAFF'S POSITION

Staff supports the Project.

FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record, finds that:

- (1) The recitals of fact in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (2) Petitioner, City of Rockford, Illinois, is an Illinois municipal corporation existing under and by virtue of the laws of the State of Illinois;
- (3) Respondent, Union Pacific Railroad Company, is a rail carrier engaged in the transportation of property by rail in the State of Illinois;
- (4) The Petitioner has filed a Petition for an order to permit the maintenance, use and improvement of an existing pedestrian tunnel under the Respondents single track approximately 600 feet south of Walnut Street (DOT/AAR #174468M, railroad milepost 72.98) and improvement of the access and approaches thereto in the City of Rockford, Illinois;
- (5) The Commission has jurisdiction over the Petitioner and the Respondent and the subject-matter of this proceeding;
- (6) The improvements to the existing pedestrian tunnel as requested by the Petitioner, are necessary to promote safety and the convenience of the

public, in accordance with the Illinois Commercial Transportation Law, 625 ILCS 5/18c-7401(3);

- (7) The recitals of fact and conclusions of law contained in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law;
- (8) The City of Rockford shall at its sole cost and expense improve and maintain the existing pedestrian tunnel in accordance with the plans and reports included within its petition;
- (9) The City of Rockford should be responsible for all construction and maintenance costs associated with the improvements to tunnel and approaches;
- (10) The parties should proceed immediately to take the actions they are directed to perform by this Order. All work required of the parties under this Order should be completed by December 31, 2016;
- (11) Any person making a Request for an Extension of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request;
- (12) Any person making a Request for an Extension of Time that exceeds 30 days must file a Petition for Supplemental Order with the Director of Processing and Information no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders;
- (13) Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the Project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the Project within the ordered timeframe; and
- (14) The Commission or its Administrative Law Judge reserves the right to deny Petitions for Supplemental Orders and Requests for Extension of Time, if the reason(s) supporting the request is (are) insufficient or where it appears the person has not made a good faith effort to complete the Project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the City of Rockford is authorized, in accordance with the plans incorporated into the petition to improve, use, and maintain the existing pedestrian tunnel under the

Respondent's single track approximately 600 feet south of Walnut Street (DOT/AAR #174468M, railroad milepost 72.98) in the City of Rockford, Illinois. All work shall be completed by or on behalf of the City of Rockford in accordance with Findings (5) through (14).

IT IS FURTHER ORDERED that the City of Rockford shall, at six-month intervals from the date of this order until the Project has been completed, submit written reports to the Director of Processing in the Commission's Transportation Bureau (Director of Processing), describing the progress that has been made toward completing the Project. If the Project is behind schedule, the report shall include a brief explanation of the reason for the delay. Each progress report shall include the Commission Order number; the date the Order was entered; the deadline for completion of the Project established by the Order; the type of improvement; and Project manager information (name, title, mailing address, telephone number, and facsimile number) of the employee responsible for the management of the Project.

IT IS FURTHER ORDERED that the City of Rockford shall, within five days of the completion of the Project, file with the Director of Processing a letter advising the Commission of the completion date, along with an updated USDOT Crossing Inventory form completed in coordination with the Union Pacific Railroad Company.

IT IS FURTHER ORDERED that the Commission shall retain jurisdiction for the purpose of issuing any supplemental order or orders as it may deem necessary.

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

By Order of the Commission this ____ day of _____, 2015.

BRIEN SHEAHAN
CHAIRMAN