

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

City of Chicago, Cook County, Illinois,)	
Petitioner,)	
)	
v.)	No. T07-0096
)	
CSX Transportation, Inc.)	
The Baltimore & Ohio Chicago Terminal Railroad)	
Company)	
Norfolk Southern Railway Company)	
Respondents.)	
)	
Petition for funding from the Grade Crossing)	
Protection Fund to make vertical clearance)	
improvements underneath the elevated viaduct)	
containing tracks of CSX Transportation,)	
Inc. through the reconstruction of 35th Street,)	
a roadway in the City of Chicago, County)	
of Cook and State of Illinois and to establish the)	
terms and conditions of the project between the)	
City of Chicago and CSX Transportation, Inc.)	

NOTICE OF FILING

To: Service List

Please take notice that on this date I caused to be sent to the Director of Processing, Transportation Division, Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, Illinois 62701, by electronic mail, the Second Supplemental Petition of the City of Chicago in the above-captioned docket.

CERTIFICATE OF SERVICE

I, Jared Policicchio, hereby certify that a copy of the Second Supplemental Petition of the City of Chicago in the above-captioned docket was served upon the parties listed in the service list for this docket, by electronic mail, in accordance with the Rules of Practice of the Illinois Commerce Commission.

Dated: March 2, 2016



Jared Policicchio
Assistant Corporation Counsel
City of Chicago, Department of Law
30 North LaSalle Street
Suite 1400
Chicago, IL 60602
(312) 744-1438
jared.policicchio@cityofchicago.org

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

City of Chicago, Cook County, Illinois,)	
Petitioner,)	
)	
v.)	No. T07-0096
)	
CSX Transportation, Inc.,)	
The Baltimore & Ohio Chicago Terminal Railroad)	
Company, and)	
Norfolk Southern Railway Company)	
Respondents.)	
)	
Petition for funding from the Grade Crossing)	
Protection Fund to make vertical clearance)	
improvements underneath the elevated viaduct)	
containing tracks of CSX Transportation,)	
Inc. through the reconstruction of 35th Street,)	
a roadway in the City of Chicago, County)	
of Cook and State of Illinois and to establish the)	
terms and conditions of the project between the)	
City of Chicago and CSX Transportation, Inc.)	

SECOND SUPPLEMENTAL PETITION BY CITY OF CHICAGO TO DISMISS ITS
PETITIONS AND TO VACATE CERTAIN ORDERS OF THE ILLINOIS
COMMERCE COMMISSION

The City of Chicago (“City”), by its attorney Stephen Patton, Corporation Counsel, hereby petitions the Illinois Commerce Commission (“Commission”) to dismiss its original petition filed herein with the Commission on November 6, 2007 without prejudice, and to vacate the November 13, 2008 Commission Order, and in support thereof states as follows:

1. On November 6, 2007, the City filed with the Commission a verified Petition in which it requested the Commission’s authorization for funding from the Grade Crossing Protection Fund to make vertical clearance improvements underneath the elevated viaduct containing tracks of Norfolk Southern Railway Company (“NS”) and

CSX Transportation, Inc. (“CSX”) through the reconstruction of 35th Street, a roadway in the City of Chicago, Cook County, Illinois and to establish the terms and conditions of the project between the City and CSX. In its initial Petition, the City did not name NS as a respondent.

2. On February 5th and 19th, 2008, the matter came before an Administrative Law Judge of the Commission for a hearing at the Commission’s Chicago office. At the hearings, the parties indicated no objection to the relief requested in the Petition and indicated agreement to the Railroad Force Account scope and costs as well as the Construction Agreement, entered into evidence as City of Chicago Exhibits 1.5 and 1.4, respectively.

3. On June 11, 2008, an Agreed/Proposed Order was filed with the Commission after preparation by the City, CSX, and Staff of the Commission (“Staff”).

4. On February 19, 2008, the case was marked “Heard and Taken” by the Administrative Law Judge.

5. On November 13, 2008, the Commission issued an Order (“Order”) granting the City permission and authority to construct vertical clearance safety improvements at the 35th Street highway-rail underpass of CSX’s tracks (AAR/DOT #163 462R; railroad milepost 27.62), with 60% funding from the Grade Crossing Protection Fund (not to exceed \$1,495,714), to be completed by November 13, 2010.

6. On January 15, 2009, representatives of the City, CSX, Staff, and NS informally met to discuss the possibility that the City’s lowering of the 35th Street roadway to achieve greater vertical clearance might be duplicative of a proposed Chicago Region Environmental and Transportation Efficiency Program (“CREATE”) project

(“WA-2”) and the possibility of modifying WA2 to change the track structure at 35th and 36th Streets so as to provide the same vertical clearance as proposed in the City’s Petition. Even though NS was not a party to the ICC proceeding at that time, NS was included in the meeting because it operates train movements over and through the 35th Street bridge structure. At that meeting, Staff suggested that CSX and NS review the feasibility of raising the track structure at 35th and 36th Streets by 12 inches through the CREATE WA-2 project, thereby accomplishing the goal of the City’s project permitted by the Order.

7. On August 7, 2012, Staff submitted a Request for Hearing to determine the statuses of the City project and of WA2. In Staff’s Request, it was noted that budget constraints in 2009 and 2010 precluded CREATE’s progress in moving forward with the WA-2 project. Staff’s Request also noted that passage of a recent federal transportation funding bill would possibly put CREATE in a position to move forward with the WA-2 project.

8. On January 8, 2013, a hearing was held by an Administrative Law Judge of the Commission at the Commission’s Chicago office. At the hearing, NS was added, for the first time, as a respondent and the parties discussed possible funding and timeframe implications of the CREATE WA-2 project as it would affect the City’s construction project as permitted by the Order.

9. On March 14, 2013, a hearing was held by an Administrative Law Judge of the Commission at the Commission’s Chicago office. At the hearing, the Baltimore and Ohio Chicago Terminal Railroad Company (“B&O CT”) was added as a respondent. The parties discussed the absence of federal CREATE funding at the time, and therefore,

the lack of a construction schedule. The City notified the parties that any closure of 36th Street would require the local Alderman's approval, which had been denied in the past.

10. On July 11, 2013, a hearing was held by an Administrative Law Judge of the Commission at the Commission's Chicago office. At the hearing, the parties discussed their ongoing meetings with the Alderman whose ward contains 35th and 36th Streets. The parties also discussed meetings to gain community input in order to inform the Alderman of issues regarding a potential closure of 36th Street.

11. On September 11, 2013, a hearing was held by an Administrative Law Judge of the Commission at the Commission's Chicago office. As requested by the Administrative Law Judge, CSX and B&O CT provided information regarding design and funding status of WA2, including the present absence of federal funding.

12. On February 11, 2014, a hearing was held by an Administrative Law Judge of the Commission at the Commission's Chicago office. At the hearing, the parties discussed the City's intention to file a supplemental petition seeking an amendatory order of the Commission that would extend authority for the City to complete its project through 2015.

13. On February 25, 2014, the City filed a Petition for Supplemental Order ("Supplemental Petition") seeking an amendatory order of the Commission authorizing an extension of time to complete the City project to December 31, 2015. After the City filed its Supplemental Petition, the parties engaged in discussions to facilitate an agreed proposed order on the Supplemental Petition and in discussions related to Staff concerns regarding the Supplemental Petition. To facilitate such discussions, Staff submitted a

Motion for Continuance on March 7, 2014 and an Administrative Law Judge of the Commission further continued the matter on June 6, 2014.

14. On July 10, 2014, a hearing was held by an Administrative Law Judge of the Commission at the Commission's Chicago office. At the hearing, the parties reported continued discussions to facilitate an agreed proposed order on the Supplemental Petition, with the focus of discussions being establishment of the terms and conditions of the project between the City and CSX.

15. On September 25, 2014, a hearing was held by an Administrative Law Judge of the Commission at the Commission's Chicago office. At the hearing, the parties reported continued discussions to facilitate an agreed proposed order on the Supplemental Petition, with the focus of discussions being review by CSX, NS, and B&O CT of the proposed terms and conditions of the project between the City and the three railroads.

16. On January 6, 2015, a hearing was held by an Administrative Law Judge of the Commission at the Commission's Chicago office. At the hearing, the parties discussed a further continuance of the matter while discussions continued regarding the City's design plans for the project and the proposed terms and conditions of the project.

17. On April 14, 2015, a hearing was held by an Administrative Law Judge of the Commission at the Commission's Chicago office. At the hearing, the City reported submittal of its design plans to the other parties for their review and approval and continued review of the proposed terms and conditions of the project. The parties' anticipated completion of these tasks within 90 days so as to move forward with an agreed Proposed Order on the Supplemental Petition.

18. On July 14, 2015, a hearing was held by an Administrative Law Judge of the Commission at the Commission's Chicago office. At the hearing, the City reported its understanding that the CREATE WA-2 project had received funding for design work and that work had gotten underway. The City stated its position seeking a continuance in order to allow this design work to progress such that the work would indicate the feasibility of raising the viaduct and obviating the need for the City project.

19. On November 3, 2015, the City reported receipt as of November 2, 2015 of final design plans for the CREATE WA-2 project. The City received a continuance from the Administrative Law Judge in order to review those plans so as to determine the feasibility of raising the viaduct and obviating the need for the City Supplemental Petition.

20. Based on its examination of the WA-2 project design plans provided to it by CSX on or about November 2, 2015, the City's Department of Transportation is of the opinion that the WA-2 project, as currently designed, cannot accommodate raising the track structure by 12 inches so as to obviate the need for the City's roadway project.

12. The parties have now collectively exhausted their good faith and diligent efforts to develop a feasible alternative to the underlying Commission Order entered on November 13, 2008. Furthermore, the City does not have funds available at this time in order to fund its share of the costs associated with the vertical clearance safety improvements authorized and required by the Commission's underlying order. The City continues to consider these safety improvements a priority and contemplates a new petition to the Commission in the future seeking authorization as well as Grade Crossing Protection Funds for the improvements.

13. In consideration of the foregoing factors, the City respectfully requests the Commission to relieve the City of any further obligation at this time to undertake vertical clearance safety requirements at the 35th Street highway-rail underpass of CSX tracks.

WHEREFORE, the City prays that the Commission allow the City's petition and enter an order:

- A. Dismissing the City's original petition filed with the Commission on November 6, 2007 and its Supplemental Petition filed on February 25, 2014, both without prejudice;
- B. Vacating the Commission's November 13, 2008 Order or otherwise eliminating any obligation on the part of the City to undertake the vertical clearance safety improvements authorized and required by the Order;
- C. In light of the above and forgoing, that said order enter without the necessity for a hearing before an Administrative Law Judge; and
- D. For such other and further relief as is deemed just.

Dated: March 2, 2016



Jared Policicchio
Assistant Corporation Counsel
City of Chicago, Department of Law
30 North LaSalle Street
Suite 1400
Chicago, IL 60602
(312) 744-1438
jared.policicchio@cityofchicago.org