

STATE OF ILLINOIS



**ILLINOIS COMMERCE COMMISSION  
TRANSPORTATION DIVISION / RAIL SAFETY SECTION**

*Michael E. Stead*

*Rail Safety Program Administrator*

(Filed in E-Docket and e-mailed to Judge Kirkland-Montaque and as attached)

October 20, 2016

Latrice Kirkland-Montaque  
Chief Administrative Law Judge  
Review and Examination  
Illinois Commerce Commission  
160 N. LaSalle Street  
Chicago, IL

RE: T15-0159

Dear Judge Kirkland-Montaque:

The attached Staff Proposed Order is respectfully provided for your review and use in preparing a Proposed Order

If you have any questions, or require additional information, please contact me at (312) 636-7760 or [bvercruy@icc.illinois.gov](mailto:bvercruy@icc.illinois.gov).

Very truly yours,

A handwritten signature in black ink that reads "Brian Vercruysse".

Brian Vercruysse  
Senior Rail Safety Specialist

Certificate of Service

I, Brian Vercruysse, Senior Rail Safety Specialist for the Illinois Commerce Commission, hereby certify that the STAFF PROPOSED ORDER for T15-0159 was docketed on e-Docket and e-mailed to the parties listed below on October 20, 2016.

<p>Thomas J. Healey, Counsel - Regulatory CN/Illinois Central Railroad Company 17641 S. Ashland Avenue Homewood, IL 60430 <a href="mailto:tom.healey@cn.ca">tom.healey@cn.ca</a></p>	<p>Barbara Reynolds Assistant State's Attorney DuPage County State's Attorney 503 North County Farm Road Wheaton, IL 60187 <a href="mailto:barbara.reynolds@dupageco.org">barbara.reynolds@dupageco.org</a></p>
<p>Laura Czarnecki Village Clerk Village of Carol Stream <a href="mailto:lczarnecki@carolstream.org">lczarnecki@carolstream.org</a></p>	<p>Lawrence D. Parrish Office of the Chief Counsel Illinois Dept. of Transportation 69 West Washington, Suite 21 Chicago, Illinois 60601 (312)793-2965 <a href="mailto:lawrence.parrish@illinois.gov">lawrence.parrish@illinois.gov</a></p>
<p>Robert Czernek Township Highway Commissioner Bloomington Township <a href="mailto:hwytsp@ameritech.net">hwytsp@ameritech.net</a></p>	<p>Jane Michelotti Village Clerk Village of Bloomingtondale <a href="mailto:Michelottij@vil.bloomingtondale.il.us">Michelottij@vil.bloomingtondale.il.us</a></p>

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

County of Du Page,	:	
Petitioner,	:	
	:	
v.	:	T15-0159
	:	
Chicago, Central & Pacific Railroad; Illinois, Department of	:	
Transportation; Village of Bloomingdale; Village of Carol	:	
Stream; and Bloomingdale Township,	:	
Respondents.	:	
	:	
Petition for the construction of a multi-use path along County	:	
Highway 23/Gary Avenue from the Great Western Trail north to	:	
Army Trail Road crossing Gary Avenue at the Chicago, Central	:	
& Pacific Railroad designated as AAR/DOT #289890N, railroad	:	
milepost 29.55 and, construction and/or reconfiguration of two	:	
(2) sidewalks and crossings along Army Trail Road at the	:	
Chicago, Central & Pacific Railroad designated as AAR/DOT	:	
#289891V, railroad milepost 29.70.	:	

**STAFF PROPOSED ORDER (October 20, 2016)**

By Order of the Commission:

On December 10, 2016, the County of DuPage (County) filed the above-captioned verified Petition (Petition) with the Illinois Commerce Commission (Commission) naming as Respondents the Chicago, Central & Pacific Railroad Company (Company or CCP), Illinois Department of Transportation (Department), Village of Bloomingdale (Bloomingdale), Village of Carol Stream (Carol Stream), and Bloomingdale Township (Township). The County's petition requests authority to construct a new multi-use pedestrian path on the west side of the Gary Avenue highway-rail grade crossing of the Company's track (AAR/DOT #289890N, railroad milepost 29.55), located in Bloomingdale and Carol Stream. The County also requests authority to modify the existing sidewalks on the north and south sides of the Army Trail Road highway-rail grade crossing of the Company's track (AAR/DOT #289891V, railroad milepost 29.70) located in Bloomingdale and the Township. Gary Avenue and Army Trail Road are both under the jurisdiction of the County.

**PROCEDURAL HISTORY**

Pursuant to notice as required by law and the rules and regulations of the Commission, the matter came on for hearing before a duly authorized Administrative Law

Judge (ALJ) of the Commission at the Commission's Chicago office on February 3, 2016. At the hearing, the County, CCP, and Department were represented by counsel. Brian Vercruysse, Senior Railroad Safety Specialist also appeared on behalf of the Commission's Railroad Safety Section (Staff). Testimony was provided by Paul Krueger, Chief Highway Engineer for the County, and Paul Chojenski, Manager of Public Works for the Illinois Central Railroad Company, a subsidiary of the Canadian National Railway Company (CN). The Illinois Central Railroad Company provides engineering and other services for CN's other subsidiaries such as the CCP.

At the conclusion of the hearing, the matter was continued to October 11, 2016, for status hearing allowing the parties and Staff necessary time to finalize the design plans and associated cost estimates. At the status hearing, the County's Exhibits J and K, railroad cost estimates for the Army Trail Road and Gary Road crossings, were admitted into evidence. County Exhibit L was also admitted into evidence providing the updated path and sidewalk plans. At the conclusion of the status hearing, the matter was marked "heard and taken."

Without responses from Bloomingdale, Carol Stream, and the Township, a Proposed Order was sent to the parties and Staff on November \_\_, 2016.

## **PETITIONER'S EVIDENCE**

Within its Petition, the County is seeking authority to construct a new multi-use pedestrian path 10 feet wide on the west side of the Gary Avenue highway-rail grade crossing of the Company's track. In conjunction with the installation of the multi-use path crossing, the County requests that the existing warning devices be upgraded to include pedestrian gates and lights. The new multi-use path will extend from the intersection of Army Trail Road south for approximately 2.5 miles to the Great Western Trail.

The County also requests authority to modify the existing sidewalks on the north and south sides of the Army Trail Road highway-rail grade crossing of the Company's track. This work would include the realignment of the sidewalk to allow for a 45 degree crossing of the track versus the current 20 degree skew. To further improve the approach angle, the county also proposes widening the sidewalk to 12 feet at the track. In conjunction with the modifications to the sidewalks, the County requests that the existing warning devices be upgraded to include pedestrian gates and lights.

The new multi-use path and modified sidewalks will provide improved pedestrian connections from residential areas and the Great Western Trail to commercial and retail areas, including Stratford Square Mall, along Gary Avenue and Army Trail Road.

The County intends on letting the project in the fall of 2017, with construction starting in 2018, and completion by December 31, 2018. The County will be responsible for all installation costs associated with the project.

### **RESPONDENT COMPANY'S POSITION**

The CCP does not object to the County's plans to install the multi-use path on Gary Avenue or the sidewalk modifications on Army Trail Road. CCP, however, does not believe pedestrian gates at the multi-use path grade crossing are necessary and would like the Commission to determine whether pedestrian gates should be installed.

### **COMMISSION STAFF ANALYSIS AND CONCLUSION**

Staff supports the County's petition, and concurs with the installation of the new multi-use pedestrian path on the west side of the Gary Avenue highway-rail grade crossing of the Company's track. Staff also concurs with the modifications to the sidewalks at the Army Trail Road highway-rail grade crossing of the Company's track. Staff also recommends and concurs with the installation of pedestrian gates and lights.

Staff agrees that the County should be responsible for all installation costs associated with the project, including the multi-use path, sidewalks, crossing surface, and pedestrian gates. Staff believes that the Company should be responsible for routine maintenance of the crossing surfaces and pedestrian gates, and the County should be responsible for all repair costs associated with any damage or vandalism to the pedestrian gates. The County should also be responsible for the maintenance of the multi-use paths and sidewalks away from the crossing surfaces.

### **COMMISSION FINDINGS AND CONCLUSIONS**

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, the County of DuPage, is a county organized and existing under and by virtue of the laws of the State of Illinois and the Village of Bloomingdale, Village of Carol Stream, Illinois, are municipal corporations organized and existing under and by virtue of the laws of the State of Illinois;
- (3) Respondent, Illinois Department of Transportation, is a Department of the State of Illinois which exists by virtue of the laws of the State of Illinois;
- (4) Respondent, Bloomingdale Township, is a unit of government organized and existing under and by the virtue of the laws of the State of Illinois;
- (5) Respondent Chicago, Central & Pacific Railroad Company, is a rail carrier engaged in the transportation of persons and property by rail in the State of Illinois;
- (6) The Commission has jurisdiction over the Petitioners and the Respondents and the subject-matter of this proceeding;

- (7) The improvements to the Gary Avenue and Army Trail Road highway-rail grade crossing, 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);
- (8) 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;
- (9) In accordance with Exhibit L entered into evidence, a multi-use pedestrian path 10 feet wide should be installed on the west side of the Gary Avenue highway-rail grade crossing of the Chicago, Central & Pacific Railroad Company's track. In conjunction with the installation of the multi-use path crossing, the warning devices should be upgraded to include pedestrian gates and lights;
- (10) In accordance with Exhibit L entered into evidence, the sidewalks should be modified on the north and south sides of the Army Trail Road highway-rail grade crossing of the Company's track. In conjunction with the sidewalk modifications, the warning devices should be upgraded to include pedestrian gates and lights;
- (11) The County of DuPage should be responsible for all construction costs associated with the project, including the multi-use path, sidewalks, crossing surface, and pedestrian gates;
- (12) The Chicago, Central & Pacific Railroad Company, at the County of DuPage's sole cost and expense, should install the crossing surfaces and pedestrian gates. The Chicago, Central & Pacific Railroad Company should be responsible for the routine maintenance costs associated with the pedestrian gates, and the crossing surfaces;
- (13) The County of DuPage should be responsible for all repair costs associated with any damage or vandalism to the pedestrian gates. The County should also be responsible for the maintenance of the multi-use paths and sidewalks away from the crossing surfaces;
- (14) 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, 2018;
- (15) 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;

- (16) 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;
- (17) 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;
- (18) 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 County of DuPage is authorized, in accordance with the plans entered into evidence as Exhibit L, to construct a multi-use path on the west side of the Gary Avenue highway-rail grade crossing of the Chicago, Central and Pacific Railroad Company's track, including the installation of pedestrian gates and warning lights. The County of DuPage is also authorized, in accordance with the plans entered into evidence as Exhibit L, to modify the sidewalks on the north and south sides of the Army Trail Road crossing of the Chicago, Central & Pacific Railroad Company's track. All work shall be completed by or on behalf of the County of DuPage in accordance with Findings (7) through (18).

IT IS FURTHER ORDERED that the Chicago, Central & Pacific Railroad Company shall complete the installation of the crossing surfaces and pedestrian gates and lights at the Gary Avenue and Army Trail Road highway-rail grade crossings of its track, in conjunction with the Petitioners' work, and in accordance with Findings (7) through (18).

IT IS FURTHER ORDERED that prior to construction, the Chicago, Central & Pacific Railroad Company shall file Form 3 of Section 1535 of Title 92 of the Illinois Administrative Code showing details of the automatic warning devices required under this order, and shall receive approval by resolution of the Commission's Transportation Bureau Rail Safety Program Administrator before installing the devices.

IT IS FURTHER ORDERED that the County of DuPage 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 County of DuPage 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.

IT IS FURTHER ORDERED that the Chicago, Central & Pacific Railroad Company shall, within five days of the completion of the work herein required, submit a completely updated United States Department of Transportation Inventory Form to the Federal Railroad Administration, the Chief of Data Services at the Illinois Department of Transportation, and the Director of Processing and Information, Transportation Bureau of the Illinois Commerce Commission.

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 \_\_\_\_\_, 2016.

BRIEN SHEAHAN  
CHAIRMAN