

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

The City of Chicago, Cook County, Illinois :
a municipal corporation, :
Petitioner :

vs. :

Norfolk Southern Railway Company, Indiana :
Harbor Belt Railroad Company, Department of :
Transportation of the State of Illinois, and :
Arrow Terminals, L.P. :

In the matter of the petition for an order of the :
Illinois Commerce Commission authorizing: :
1) the establishment of a new grade crossing :
at the intersection of 126th Place with the :
tracks of the Norfolk Southern Railway :
Company in the City of Chicago, Cook County, :
Illinois, directing thereon the installation of :
automatic protection devices and construction :
of a proper crossing to be paid by the City of :
Chicago; 2) the reconstruction of an existing :
grade crossing at the intersection of 126th :
Place with the tracks of the Indiana Harbor :
Belt Railroad Company in the City of Chicago, :
Cook County, Illinois, directing thereon the :
installation of cross bucks and reconstruction :
of a proper crossing to be paid by the City of :
Chicago; and 3) the removal of an existing :
viaduct structure to be paid by the City of :
Chicago carrying a rail line no longer in use of :
the Indiana Harbor Belt Railroad Company :
over 126th Place in the City of Chicago, Cook :
County, Illinois :

T01-0018

ORDER

By the Commission:

On March 16, 2001, the City of Chicago, Cook County, Illinois, a municipal corporation ("Petitioner" or "City") filed the above-captioned verified petition naming as Respondents Norfolk Southern Corporation ("Norfolk"), Indiana Harbor Belt Railroad Company ("Indiana Harbor"), the Department of

Transportation of the State of Illinois ("IDOT"), and Arrow Terminals L.P. ("Arrow").

Pursuant to notice, this matter came on before a duly authorized Administrative Law Judge ("ALJ") of the Illinois Commerce Commission ("Commission") at the offices of the Commission in Chicago, Illinois, on June 26, 2001. Appearances were entered by counsel for the City, the Norfolk, and Indiana Harbor. Arrow was represented by its Director of Operations, Tom Ruff. Henry Humphries, Railroad Safety Specialist of the Commission's Transportation Division also entered an appearance. Counsel for the Norfolk moved that Norfolk Southern Railway Company be substituted as the party of interest for the Norfolk Southern Corporation. The ALJ granted the motion. At the conclusion of the hearing, the record was marked "Heard and Taken."

The City, Indiana Harbor, Norfolk, and Arrow have entered into a stipulated agreement and there is no opposition to the project. This is a three pronged project involving the demolition of a viaduct which holds no track and is unused; the construction of a new crossing over the tracks of the Norfolk equipped with automatic flashing lights, gates, and bells; and the reconstruction of an existing crossing over the tracks of the Indiana Harbor equipped with crossbuck signs.

The City presented as its witness, Michael P. Magnuson, associate engineer with Civiltech Engineering, Inc.; Indiana Harbor presented Nicholas Montagano, its chief engineer as its witness; and Norfolk presented Richard D. Joram, its superintendent.

In summary, a Chicago Manufacturing Campus, a redevelopment of the Lake Calumet region, will be constructed to house a Ford Motor Company assembly plant and other businesses. Public infrastructure improvements will be provided by shifting Torrence Avenue approximately 110 feet east and realigning 126th Place from Torrence Avenue to Carondelet Avenue and extending 126th Place from Carolandet Avenue to Avenue O. Access will be provided to a 150 acre industrial park via the redeveloped 126th Place. At present, 126th Place crosses only one set of tracks located to the west of Carondelet Avenue. With the extension of 126th Place, there will be two at-grade crossings.

Upon completion of the 126th Place project, it is estimated that the roadway will carry 9,000 vehicles each day, including an estimated 700 tractor trailer combinations. The installation of automatic warning devices at the Norfolk crossing and installation of reflectorized crossbuck signs at the Indiana Harbor crossing are necessary in the interests of public safety.

Further, the City proposes to remove an existing viaduct structure which carries a rail line over 126th Place, 655 east of Torrence Avenue. This rail line is

no longer in use and its removal will facilitate the extension and widening of 126th Place.

The Commission, having given due consideration to the petition and the record herein, and being fully advised in the premises, is of the opinion and finds that:

- (1) the City of Chicago is a municipal corporation within the State of Illinois;
- (2) the Norfolk Southern Railway Company and the Indiana Harbor Belt Railroad Company are corporations engaged in the transportation of property and/or passengers for-hire and as such are "rail carriers" as defined in Chapter 625 ILCS5/18c-1104(30) of the Illinois Commercial Transportation Law ("Law"), as amended;
- (3) the Department of Transportation of the State of Illinois is a department of the State of Illinois which exists by virtue of the laws of the State of Illinois;
- (4) the Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (5) the recitals of fact set forth in the prefatory portion of this Order are supported by the evidence of record and are hereby adopted as findings of fact;
- (6) public convenience and necessity do not require the retention of the viaduct over 126th Place, 655 feet east of Torrence Avenue, in the City of Chicago, Illinois, at Bridge Number 522-162 of the Cal-Western Industrial Line of the Indiana Harbor Belt Railroad Company; it is no longer in use and its demolition will not interfere with the operations of the Indiana Harbor Belt Railroad Company; costs of the demolition and removal of the viaduct will be borne by the City of Chicago;
- (7) public convenience and necessity require the reconstruction of an existing at-grade crossing of 126th Place with the tracks of the Indiana Harbor Belt Railroad Company at a point 1375 feet east of Torrence Avenue and 2700 feet north of 120th Street, where 126th Place crosses an existing rail spur that extends into the private property of Arrow Terminals, L.P. at about Muskegon Avenue within the City of Chicago, Illinois; warning devices at this crossing should consist of reflectorized crossbuck signs; this at-grade crossing is a needed thoroughfare and is used by statewide traffic;

costs of the reconstruction of the existing at-grade crossing shall be borne by the City of Chicago;

- (8) public convenience and necessity require the establishment of a new at-grade crossing of 126th Place with the single track of Norfolk Southern Railway Company's River Line at Mile Post 3.6, a location approximately 3400 feet east of Torrence Avenue and 2800 feet north of 130th Street within the City of Chicago, Illinois; warning devices at this crossing should consist of automatic flashing light signals, gates, bells, and constant warning time circuitry; this at-grade crossing is a needed thoroughfare and is used by statewide traffic; costs of the construction of the new at-grade crossing shall be borne by the City of Chicago;
- (9) proper crossing surfaces should be constructed at the existing crossing and at the new crossing; the costs of construction are to be borne by the City of Chicago as well as the costs of future maintenance;
- (10) the parties are required and directed to proceed immediately in performing the work herein required of each of them and shall complete these improvements within twelve (12) months of the date of this Order.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the City of Chicago, Cook County, Illinois be, and the same is hereby directed and required to demolish and remove the viaduct structure which formerly carried a rail line over 126th Place, 655 feet east of Torrence Avenue, at Bridge Number 522-162 of the Cal-Western Industrial Line of the Indiana Harbor Belt Railroad Company within the City of Chicago, Illinois.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company be, and the same is hereby required to construct a new at-grade crossing where its tracks cross 126th Place at Mile Post 3.6, a location approximately 3400 feet east of Torrence Avenue and 2800 feet north of 130th Street within the City of Chicago. Warning devices shall consist of automatic flashing light signals, gates, bells, and constant warning time circuitry. Costs of the warning devices and a proper asphalt crossing surface shall be the financial responsibility of the City of Chicago. Future maintenance of the warning devices shall be the responsibility of the Norfolk Southern Railway Company at the cost of the City of Chicago. Costs of the future maintenance of the crossing surface shall be the responsibility of the City of Chicago.

IT IS FURTHER ORDERED that Indiana Harbor Belt Railroad Company be, and the same is hereby required to reconstruct the existing at-grade crossing of its tracks at a point 1375 feet east of Torrence Avenue and 2700 feet north of

130th Street where 126th Place crosses an existing rail spur which extends into the private property of Arrow Terminal, L.P. at about Muskegon Avenue within the City of Chicago. The train operations will continue to be performed by Indiana Harbor Belt Railroad Company. This reconstructed crossing should be equipped with reflectorized crossbuck signs. Costs for the warning devices and a proper asphalt crossing surface, as well as costs of their future maintenance shall be the financial responsibility of the City of Chicago.

IT IS FURTHER ORDERED that Norfolk Southern Railway Company be, and it is hereby required and directed to install automatic flashing light signals, gates, bells, and constant warning time circuitry at the crossing of its tracks described in the second ordering paragraph hereinabove.

IT IS FURTHER ORDERED that the Indiana Harbor Belt Railroad Company be, and it is hereby required and directed to install reflectorized crossbuck signs at the crossing of its tracks described in the third ordering paragraph hereinabove.

IT IS FURTHER ORDERED that the Indiana Harbor Belt Railroad Company, the Norfolk Southern Railway Company, and the City of Chicago are hereby required and directed to proceed immediately in performing the work required of them and shall complete these respective improvements within twelve (12) months of the date of this Order.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company shall within one hundred twenty (120) days from the date of this Order furnish the Illinois Department of Transportation for its approval, two copies of the detailed estimates of cost and general layout plans applying to the installation of the automatic flashing light signals and gates controlled by constant warning time circuitry.

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall, within thirty (30) days of its receipt of the aforesaid plans and cost estimates, furnish to the Commission a statement of its approval or disapproval thereof, this for the information of the Commission when among other things, considering the application herein required to be filed in accordance with Form 3 of 92 Illinois Administrative Code ("I.A.C.") 1535.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company shall file a Form 3 of 92 I.A.C. 1535 of this Commission showing details of the automatic warning devices herein required and shall receive approval thereof by X-Resolution before commencing the work of installation.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company, the Indiana Harbor Belt Railroad Company, and the City of Chicago, within six months from the date of this Order, shall each submit a written report to the

Director of Processing, Transportation Division of the Commission, stating the progress each has made toward the accomplishment of their respective work herein required.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company and the Indiana Harbor Belt Railroad Company shall submit to the Director of Processing, Transportation Division of the Commission, within five days of the completion of its work herein required, National Inventory Update Report forms as notice of said completion.

IT IS FURTHER ORDERED that the City of Chicago, Cook County, Illinois, shall submit to the Director of Processing, Transportation Division of the Commission, within five days of the completion of its work herein required, a written notice of said completion.

IT IS FURTHER ORDERED that Indiana Harbor Belt Railroad Company and Norfolk Southern Railway Company are required by Chapter 625 ILCS 5/18c-7402(2) to sound a train's whistle at the newly established crossings for a five year study period. After this five year study period has elapsed, Petitioners may petition the Commission, and after hearing, the Commission will determine if the public is reasonably and sufficiently protected at the crossing and if found to be so, will issue an order excusing the Railroads from further sounding of the whistles at the subject crossings.

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 19th day of December, 2001.

JUDGE	JBT
SECTION CHIEF	
ORDERS SUPERVISOR	<i>JBT</i>

*Richard P. Mathias*⁵

Chairman