

ORIGINAL

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

State of Illinois)
Department of Transportation,)
Petitioner,)

v.)

Illinois Central Railroad Company)
Respondent.)

Petition for authorization to replace the grade separation structure)
carrying IL Rt. 17 (Court Street) over IC's tracks located in the City of)
Kankakee, Kankakee County, Illinois and for a waiver of the)
clearance requirements of 92 Ill. Adm. Code Section 1500.)

Docket No. T02-0090

RECEIVED
FEB 6 2003

Illinois Commerce Commission
RAIL SAFETY SECTION

**MOTION TO REOPEN THE RECORD AND
FOR LEAVE TO FILE LATE TESTIMONY**

Now comes Petitioner, State of Illinois, Department of Transportation ("Department"), by and through its attorney, Lisa Madigan, Illinois Attorney General and respectfully moves the Illinois Commerce Commission ("Commission") to reopen the record in the above-referenced docket and for leave to file the attached affidavit of J. Patrick Gietl as late testimony in the above-referenced docket. In support of its Motion, the Department states as follows:

1. On September 6, 2002, the Department filed a Petition with the Commission requesting the above-captioned relief.
2. Said Petition incorporated by reference the project plan sheet which was attached thereto and marked as Exhibit A.
3. Said plan sheet, Exhibit A, designated the vertical clearance as **22 feet and 3/4 inch.**
4. In paragraph 5 of the Petition, however, the proposed vertical clearance is indicated as **22 feet and 9 inch.**
5. The vertical clearance designation in the Petition was a typographical error. In fact, the express language in paragraph 5 of the Petition should have read **22 feet and 3/4 inch** in order to accurately reflect the design contained in the submitted plan sheet.
6. The Affidavit of J. Patrick Gietl attached and incorporated herein as Exhibit 1 provides further clarification of the issue.

DOCKETED

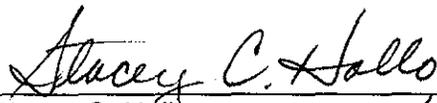
7. The Department believes the record in this matter should be reopened for a limited period to allow the vertical clearance issued to be resolved.
8. Based on conversations with Thomas R. Zeinz, it is the Department's understanding that Respondent, Illinois Central Railroad Company has no objection to the relief requested herein.

WHEREFORE, State of Illinois, Department of Transportation respectfully requests that the Commission:

- a. Reopen the record and grant the State of Illinois, Department of Transportation, leave to file the Affidavit of J. Patrick Gietl attached hereto as late testimony;
- b. Leave the record open in this docket for a short period of time (14 days) from the date of this Motion to provide the Illinois Central Railroad Company time to file a Response if it so chooses; and
- c. Provide such other relief as the Commission deems just and appropriate.

Respectfully submitted,
ILLINOIS DEPARTMENT OF TRANSPORTATION

By: Lisa Madigan, Illinois Attorney General



Stacey C. Holl *HB*
Special Assistant Attorney General

Dated February 5, 2003

Illinois Department of Transportation
2300 South Dirksen Parkway, Room 311
Springfield, Illinois 62764
Telephone (217)782-3215

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AFFIDAVIT

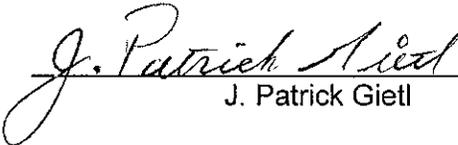
I, J. Patrick Gietl, on oath state:

1. I am employed by the State of Illinois, Department of Transportation (Department), as an Agreement Technician for the Bureau of Design and Environment.
2. I have held this position, or a similar position for eleven and a half years.
3. In my current position, I negotiate and prepare agreements involving railroad/highway matters.
4. My predecessor, Michael Pugh, was responsible for the preparation and execution of the pertinent railroad agreement between the Department and Illinois Central Rail Company dated October 18, 1996.
5. At the time of the execution of the agreement, it was (and still is) the parties' intent to build a new grade separation structure carrying IL Rt. 17 over IC's tracks with a vertical clearance of 22 ft and 3/4 inch.
6. Paragraph 5 of the Petition is erroneous in that it indicates a vertical clearance of 22 ft and 9 inches and, therefore, should be corrected to indicate the accurate desired vertical clearance of 22 ft and 3/4 inch.
7. Said intent is clearly illustrated in the plan sheet which was not only attached to the original agreement but also attached to the underlying Petition as Exhibit A.
8. No written revisions and/or amendments have been executed by the parties thereby changing/modifying the agreed upon vertical clearance.
9. The Department still desires to build a grade separation structure at the location in question in accordance with the submitted plan sheet which reflects a vertical clearance of 22 ft and 3/4 inch.

EXHIBIT # 1

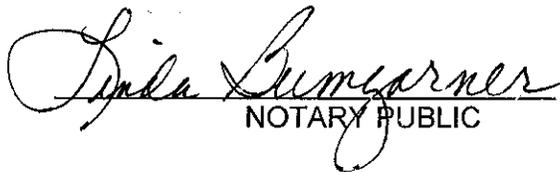
10. Based on my telephone conference with Thomas R. Zeinz of the Illinois Central Rail Company, it is my understanding that Illinois Central Rail Company is in agreement with and has no objection to a vertical clearance of 22 ft and $\frac{3}{4}$ inch.

AFFIANT SAYETH FURTHER NOT.

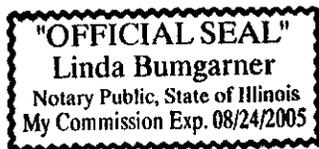


J. Patrick Gietl

Subscribed and sworn to before me on the 5th day of February 2003.



NOTARY PUBLIC



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ILLINOIS COMMERCE COMMISSION

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NOTICE OF FILING

TO: Ken Novander, IC
Katherine Carr, City Clerk
Gary Hammond, Public Works

PLEASE TAKE NOTICE that I have this 5th day of February, 2003, forwarded to Mr. Kevin Sharpe, Director of Processing, Transportation Division, of the Illinois Commerce Commission, Springfield, Illinois, for filing in the above matter, a Motion To Reopen The Record and For Leave To File Late Testimony, a copy of each which are attached hereto and hereby served upon you.

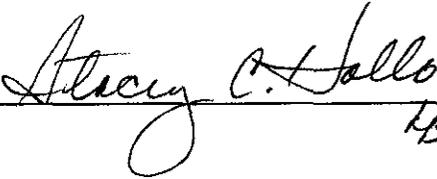


Stacey C. Gallo
Special Assistant Attorney General
2300 South Dirksen Parkway
Room 311
Springfield, Illinois 62764
(217) 782-3215

Counsel for the Illinois
Department of Transportation

PROOF OF SERVICE

The undersigned hereby certifies that a copy of the foregoing instrument was served upon the addressees listed below by mailing a true and correct copy via first class mail, postage pre-paid and depositing the same in the United States Mail, Springfield, Illinois, this 5th day of February, 2003:



Mr. Ken Novander
Illinois Central Railroad Co.
17641 Ashland Avenue
Homewood, IL 60430

Katherine Carr
City Clerk
385 E. Oak Street
Kankakee, IL 60901

Gary Hammond
Director of Public Works
401 W. Oak Street
Kankakee, IL 60901