



ILLINOIS COMMERCE COMMISSION

August 6, 2003

State of Illinois, Illinois Department of Transportation,
Petitioner,

v.

Burlington Northern & Santa Fe Railway Company & Chalmers Township,
Respondents.

Petition for an Order granting permission to relocate an at-grade crossing which
traverses BNSF's tracks west of Macomb, McDonough County.

T03-0074

Ms. Stacey C. Hollo
Illinois Department of Transportation
2300 S. Dirksen Parkway
Springfield, IL 62703

Dear Ms. Hollo:

Receipt is acknowledged of the original and three (3) copies of the Petition filed August 5, 2003 in the
above matter.

**All future correspondence/pleadings should be filed with an original and three (3) copies and
addressed to: Mr. Dave Lazarides, Acting Director of Processing, Illinois Commerce Commission, 527
E. Capitol Avenue, Springfield, IL 62701.**

Processing and Information Section

kl

cc: Mr. Victor A. Modeer, IDOT
Mr. W. Douglas Werner, BNSF
Ms. Cheryl Townlian, BNSF
CT Corporation System, BNSF
Chalmers Township

ORIGINAL

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS)
ILLINOIS DEPARTMENT OF TRANSPORTATION,)
Petitioner,)
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v.)
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Burlington Northern & Santa Fe Railway)
Company & Chalmers Township)
Respondent.)
)
Petition for an Order granting permission to relocate)
An at-grade crossing which traverses BNSF's tracks)
west of Macomb, McDonough County.)

Docket No. T03-0074
RECEIVED
AUG 5 2003
Illinois Commerce Commission
RAIL SAFETY SECTION

PETITION

Now comes State of Illinois, Department of Transportation (Department) by and through its attorney, Lisa Madigan, Attorney General, and states as follows:

1. The Burlington Northern Santa Fe Railway Company ("BNSF"), whose address is 1670 South Henderson, Galesburg, IL 61401 is a rail carrier operating its lines of railroad in the State of Illinois.
2. Approximately 2 miles west of the City of Macomb, US 136 (FAP Route 315) is a public street under the jurisdiction of the Department and is situated in close proximity to a mainline track of the BNSF.
3. US 136 (FAP Route 315) is on the State System of Highways.
4. Approximately 2 miles west of the City of Macomb, TR226 is a public street under the jurisdiction of Chalmers Township, which traverses BNSF's tracks at-grade (DOT/AAR 072-593S).
5. Approximately 0.14 miles north of the TR226 at-grade crossing, TR226 intersects with US 136.
6. Due to the Department's desire to improve the safety of the traveling public, the Department has developed plans to improve US 136 in the vicinity of TR226, which will include realigning TR226 near its intersection with US 136.
7. The realignment of TR226 will require the TR226 at-grade crossing (DOT/AAR 072-593S) be relocated approximately 235 feet west of its current location.
8. The Department has developed plans to construct the new at-grade crossing, as well as, remove the existing at-grade crossing. Said plans were prepared in accordance with applicable State and Federal guidelines.
9. The Department accepts financial responsibility for both constructing the new TR226 at-grade crossing and removing the existing TR226 at-grade crossing.

DOCKETED

AUG 6 2003

10. Chalmers Township will assume the maintenance responsibilities for the relocated TR226 and approaches through separate agreement with the Department.
11. The Department proposes the BNSF responsible for maintaining the new TR226 at-grade crossing and all other related railroad facilities.
12. The Department and the BNSF have executed a written agreement providing for the installation of the new TR226 at-grade crossing, the division of expenses for the proposed work and the future maintenance of the new at-grade crossing upon completion of the proposed project. A copy of said agreement is attached hereto as Exhibit 1 for the Commission's review.

WHEREFORE, THE PETITIONER PRAYS that the Illinois Commerce Commission order the following:

- A. The attached agreement (Exhibit 1) be incorporated into the record.
- B. The Department be authorized to proceed with the project as delineated in its plans, and the cost of constructing the new TR226 at-grade crossing and removing the existing TR226 at-grade crossing shall be the responsibility of the Department,
- C. The BNSF be responsible for maintaining the new TR226 at-grade crossing and all other railroad facilities,
- D. The Chalmers Township through an agreement with the Department be responsible for maintaining the newly constructed TR226 and approaches, and
- E. Any further relief the Illinois Commerce Commission may deem appropriate.

Respectfully submitted,
ILLINOIS DEPARTMENT OF TRANSPORTATION

By: Lisa Madigan
Attorney General

By: Stacey C. Hallo
Stacey C. Hallo ^{LB}
Special Assistant Attorney General

Dated: August 4, 2003

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

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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NOTICE OF FILING

TO: W. Douglas Werner, Esq., BNS
Mick Wisslead, Mayor
Melanie Falk, City Clerk

PLEASE TAKE NOTICE that I have this 4th day of August, 2003 forwarded to Mr. Lazarides, Director of Processing, Transportation Division, of the Illinois Commerce Commission, Springfield, Illinois, for filing in the above matter, Department's Petition, a copy of which is attached hereto and hereby served upon you.


Stacey C. Hollis ^{CB}
Special Assistant Attorney General
2300 South Dirksen Parkway, Rm 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 addressee 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 4th day of August, 2003:


_____ LP

The Burlington Northern and Santa Fe Railway Company
W. Douglas Werner, Esq.
P.O. Box 961039
Fort Worth, TX 76161-0039

Mick Wisslead
Mayor
City Hall Building
Macomb, IL 61455

Melanie Falk
City Clerk
City Hall Building
Macomb, IL 61455

STATE OF ILLINOIS
DEPARTMENT OF TRANSPORTATION
PROJECT NOTICE

Served to: THE BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY

This Project Notice is hereby incorporated into the Master Agreement entered into between the STATE and the BURLINGTON NORTHERN RAILROAD COMPANY on August 16, 1991.

FAP Route 315 (U.S. 136)
Section 32R-1
Contract No. 68000
Job No. C-94-136-99
McDonough County

DOT/AAR No. 072 593S
RR Mile Post 206.36
Agreement No. RR 499136

Project Location: TR 226 East of Colchester

Existing Conditions: Existing timber and asphalt crossing protected by crossbucks

Work proposed to be performed by the COMPANY:

- Install 40 track feet of new full depth treated timber crossing surface at the proposed relocated TR 226 location approximately 235 feet north of its current location.
- Install new rail, ties, ballast and OTM at new location as needed.
- Install new crossbuck signs at new location.
- Remove existing timber and asphalt crossing at the current TR 226 location.

Work proposed to be performed by the STATE:

- Provide survey and layout for the COMPANY to construct the new grade crossing.
- Construct the proposed relocated TR 226 roadway up to the newly constructed grade crossing.
- Remove the existing TR 226 pavement up to the ends of the ties.

COMPANY's Estimated Cost: \$ 33,883

Reimbursement by: Force Account

Traffic Control : Full Closure

Acquisition of Property Rights required: N/A

District Engineer to be notified: Mr. Joseph E. Crowe – Attn: Randy Hopper at 401 Main, Peoria, Illinois 61602, telephone (309) 671-3496

Attachments: Addendum to Project Notice; State Required Ethical Standards Governing Contract Procurement – Attachment A; Plans

Under penalties of perjury, the COMPANY certifies that its correct Federal Taxpayer Identification Number (TIN) is 41-6034000 and the COMPANY is doing business as a corporation.

Executed by the STATE this 4th
day of August, 2003.

By Victor A. Madecier
Director of Highways

Executed by the BURLINGTON NORTHERN
& SANTA FE RAILWAY COMPANY
this 14th day of July, 2003

By: Cheryl Jankla

APPROVED AS TO FORM 6/17/03
Wesley
Burlington Northern Santa Fe Law Department

ADDENDUM TO PROJECT NOTICE

The COMPANY, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The COMPANY shall carry out applicable requirements of 49 CFR part 26 in the award and administration of STATE-assisted contracts. Failure by the COMPANY to carry out these requirements is a material breach of this Agreement, which may result in the termination of this contract or such other remedy as deemed appropriate.

In the event any work is performed by other than COMPANY forces, the provisions of "an act regulating wages of laborers, mechanics and other workers employed in public works by the State, County, City or any public body or any political subdivision or by any one under contract for public works" (Illinois Compiled Statutes, 820 ILCS 130/1) shall apply.

The COMPANY shall maintain, for a minimum of 5 years after the completion of the contract, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with the contract; the contract and all books, records, and supporting documents related to the contract shall be available for review and audit by the Auditor General and other STATE auditors; and the COMPANY agrees to cooperate fully with any audit conducted by the Auditor General and other STATE auditors and to provide full access to relevant materials. Failure to maintain the books, records, and supporting documents required by this section shall establish a presumption in favor of the STATE for the recovery of any funds paid by the STATE under the contract for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

In compliance with the Illinois international Anti-Boycott Certification Act, 30 ILCS 582/1 et seq, the railroad certifies in signing this agreement that neither the railroad nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the U.S. Export Administration Act of 1979 or the regulations of the U.S. Department of Commerce promulgated under that Act.

At the time this Agreement was executed, there were funds available for the PROJECT; however, obligations assumed by the STATE under this Agreement shall cease immediately, without penalty or payment, should the Illinois General Assembly or the Federal Highway Administration fail to appropriate or otherwise make available funds for the PROJECT.

ATTACHMENT A

STATE REQUIRED ETHICAL STANDARDS GOVERNING CONTRACT PROCUREMENT

The certifications hereinafter made by the COMPANY are each a material representation of fact. The STATE may terminate the agreement if it is later determined that the COMPANY rendered a false or erroneous certification.

Bribery. Section 50-5 of the Illinois Procurement Code provides that: (a) no person or business shall be awarded a contract or subcontract under this Code who: (1) has been convicted under the laws of Illinois or any other state of bribery or attempting to bribe an officer or employee of the State of Illinois or any other state in that officer's or employee's official capacity; or (2) has made an admission of guilt of that conduct that is a matter of record but has not been prosecuted for that conduct.

No business shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of the business if the employee or agent is no longer employed by the business, and: (1) the business has been finally adjudicated not guilty; or (2) the business demonstrates to the governmental entity with which it seeks to contract, and that entity finds that the commission of the offense was not authorized, requested, commanded, or performed by a director, officer, or high managerial agent on behalf of the business as provided in paragraph (2) of subsection (a) of Section 5-4 of the Criminal Code of 1961.

For purposes of this Section, when an official, agent, or employee of a business committed the bribery or attempted bribery on behalf of the business and in accordance with the direction or authorization of a responsible official of the business, the business shall be chargeable with the conduct.

Every bid submitted to and contract executed by the State shall contain a certification by the COMPANY that it is not barred from being awarded a contract or subcontract under this Section. A COMPANY who makes a false statement, material to the certification, commits a Class 3 felony. The COMPANY certifies that it is not barred from being awarded a contract under Section 50-5.

Educational Loan. The Educational Loan Default Act provides that no State agency shall contract with an individual for goods or services if that individual is in default, as defined by Section 2 of this Act, on an educational loan. Any contract used by a State agency shall include a statement certifying that the individual is not in default on an educational loan as provided in this Section.

Bid Rigging/Bid Rotating. Section 33E-11 of the Criminal Code of 1961 provides: (a) that every bid submitted to and public contract executed pursuant to such bid by the State or a unit of local government shall contain a certification by the COMPANY that it is not barred from contracting with any unit of State or local government as a result of a violation of either Section 33E-3 or 33E-4 of the Code. The state and units of local government shall provide appropriate forms for such certification.

A COMPANY that makes a false statement, material to the certification, commits a Class 3 felony.

A violation of Section 33E-3 would be represented by a conviction of the crime of bid-rigging which, in addition to Class 3 felony sentencing, provides that any person convicted of this offense or any similar offense of any state or the United States which contains the same elements as this offense shall be barred for 5 years from the date of conviction from contracting with any unit of State or local government. No corporation shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation, and: (1) it has been finally adjudicated not guilty, or (2) if it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer, or a high managerial agent in behalf of the corporation.

A violation of Section 33E-4 would be represented by a conviction of the crime of bid-rotating which, in addition to Class 2 felony sentencing, provides that any person convicted of this offense or any similar offense of any state or the United States which contains the same elements as this offense shall be permanently barred from contracting with any unit of State or local government. No corporation shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation and: (1) it has been finally adjudicated not guilty, or (2) if it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer, or a high managerial agent in behalf of the corporation.

The COMPANY certifies that it is not barred from contracting with the Department by reason of a violation of either Section 33E-3 or Section 33E-4.

International Anti-Boycott. Section 5 of the International Anti-Boycott Certification Act provides that every contract entered into by the State of Illinois for the manufacture, furnishing, or purchasing of supplies, material, or equipment or for the furnishing of work, labor, or services, in an amount exceeding the threshold for small purchases according to the purchasing laws of this State or \$10,000, whichever is less, shall contain certification, as a material condition of the contract, by which the COMPANY agrees that neither it nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the U.S. Export Administration Act of 1979 or the regulations of the U.S. Department of Commerce promulgated under that Act. The COMPANY makes the certification set forth in Section 5 of the Act.

Drug Free Workplace. The Illinois Drug Free Workplace Act applies to this contract and it is necessary to comply with the provisions of the Act if the COMPANY is a corporation, partnership, or other entity (including a sole proprietorship) which has 25 or more employees.

The COMPANY certifies that if awarded a contract in excess of \$5,000 it will provide a drug free workplace by: (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, including cannabis, is prohibited in the COMPANY's workplace; specifying the actions that will be taken against employees for violations of such prohibition; and notifying the employee that, as a condition of employment on such contract, the employee shall abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; (b) Establishing a drug free awareness program to inform employees about the dangers of drug abuse in the workplace; the COMPANY's policy of maintaining a drug free workplace; any available drug counseling, rehabilitation, and employee assistance programs; and the penalties that may be imposed upon employees for drug violations; (c) Providing a copy of the statement required by subparagraph (a) to each employee engaged in the performance of the contract and to post the statement in a prominent place in the workplace; (d) Notifying the Department within ten (10) days after receiving notice from an employee or otherwise receiving actual notice of the conviction of an employee for a violation of any criminal drug statute occurring in the workplace; (e) Imposing or requiring, within thirty (30) days after receiving such notice from an employee of a conviction or actual notice of such a conviction, an appropriate personnel action, up to and including termination, or the satisfactory participation in a drug abuse assistance program approved by a federal, state, or local health, law enforcement, or other appropriate agency; (f) Assisting employees in selecting a course of action in the event drug counseling, treatment, and rehabilitation is required and indicating that a trained referral team is in place; (g) Making a good faith effort to continue to maintain a drug free workplace through implementation of the actions and efforts stated in this certification.

Debt Delinquency Certification. The COMPANY certifies it is not delinquent in the payment of any debt to the STATE (or if delinquent has entered into a deferred payment plan to pay the debt), and the COMPANY acknowledges the STATE may declare the Agreement void if this certification is false (30 ILCS 500/50-11, effective July 1, 2002).

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