

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Sullivan Township, Moultrie County, Illinois
Petitioner,

Vs.

Union Pacific Railroad Company and the State of Illinois, Illinois
Department of Transportation,
Respondents.

T03-0048

Petition for an Order of the Illinois Commerce Commission
authorizing permanent closure and removal of the T.R. 104 grade
crossing (DOT # 167270M) and authorizing the signalization and
improvement of the T.R. 117A grade crossing (DOT # 167269T)
located in Sullivan Township, Moultrie County, Illinois on the
trackage of Union Pacific Railway Company, together with
construction of a connecting road, and allocating a portion of the
cost to the Grade Crossing Protection Fund.

ORDER

On May 20, 2003, the Township of Sullivan ("Township" or "Petitioner"), Moultrie County ("County"), filed its Petition with the Illinois Commerce Commission ("Commission") naming therein the Union Pacific Railroad Company ("UP" or "Railroad") and the Illinois Department of Transportation ("IDOT" or "Department") as Respondents. The Township requests an Order of the Commission authorizing that the TR 104 crossing be close, abolished, and barricaded, that the TR 117A (Eden Street) crossing be improved by the installation of automatic flashing light signals and gates, and that a connecting road be constructed between TR 104 and TR 117A. Petitioner further requests that the cost be divided between the parties and that a portion of the cost be borne by the Grade Crossing Protection Fund of the Motor Fuel Tax Law ("GCPF" or "Fund").

On July 17, 2003, this matter came on for hearing before the Commission's Chief Administrative Law Judge at the Commission's Springfield offices. Present at the hearing was counsel for the Township. A representative of IDOT and staff of the Railroad Section of the Commission ("Staff") were present and participated in the hearing. There was no representative from the UP present at the hearing. At the conclusion of the hearing on July 17, 2003, the matter was marked "Heard and Taken."

As required by the rules and regulations of the Commission, on July 9, 2003, public notice of the proposed closure was published in the Sullivan News Progress, a newspaper of general circulation.

Township's Testimony

Sullivan Township has jurisdiction over the two roadways subject to this Petition. Both roadways have an oil and chip surface and cross the tracks of the UP at an approximate 33° angle. TR 104 extends in a general north-south direction while TR 117A extends in a general east-west direction. The two roadways intersect each other immediately west of the crossing on TR 117A. These two crossings are located only 1/8 mile apart (1000 feet). The TR 117A crossing is currently equipped with automatic flashing light signals and the TR 104 crossing is posted with crossbuck signs. The crossing surface at TR 117A is in better condition than the crossing at TR 104 because the UP has just completed some minor improvements to the TR 117A crossing. The highway approaches to the TR 104 crossing are not in compliance with Commission requirements. The approaches are so steep that a motorist approaching the crossing cannot see a car approaching the crossing from the opposite direction.

The single main line track of the UP extends in a northeast to southwest direction. Train operations consist of approximately 24 freight trains per day at a speed lower than the maximum speed limit on the line, 60 mph. This reduced speed is the result of a crossover between the UP track and a track of the Illinois Central Railroad Company immediately northeast of the two subject crossings. With two major rail carriers crossing Moultrie County with the crossing point in the City of Sullivan, the UP crossings subject to this hearing are blocked by UP trains for periods of time when the interlocker is occupied by an Illinois Central train. Due to the length of the UP trains, when the blockages occur, usually both crossings are blocked at the same time. The average daily vehicular traffic on TR 117A is 750 vehicles per day and 175 vehicles per day on TR 104. A new traffic count was conducted after the Petition was filed. The speed limit on both roadways is 55 mph. The roadways carry local traffic, emergency vehicles (including a dive team), four school buses daily, and motorists going to and from the Lake Shelbyville Recreational Area and to local businesses such as Agri Fab. A new subdivision has been built near the crossing and now that traffic is using TR 117A and TR 104 for access to the City of Sullivan. In addition, farm materials are hauled across the crossings that include such items as anhydrous ammonia and propane. A new gasoline distribution facility has been constructed to the north of the crossings and its trucks use both of the crossings.

The Moultrie County Highway Department is to be the agent for the Township and will perform and supervise all the required work to improve the highway approaches to TR 117A and to construct the new connecting road, including engineering, land acquisition, construction, and construction engineering. The two subject crossings were inspected as part of a larger

corridor study. It was agreed by the parties that four crossings on the UP line be closed. Three have already been addressed. TR 104 is the final crossing in the corridor for closure.

A connecting road between TR 104 and TR 117A will be constructed on the south side of UP tracks conforming to Motor Fuel Tax standards. The connecting road will be a major benefit to school bus and emergency vehicle traffic with southbound traffic bypassing the railroad tracks and possible crossing blockage by a UP train. The cost for the connecting road is estimated to be \$426,240. The Township has already negotiated options for purchase of the required right-of-way for the connecting road contingent upon the entry of a Commission Order. The connecting road is designed for traffic of 350 cars a day at 40 mph because it is anticipated that more traffic will use the new roadway when completed. The new 2400-foot roadway will consist of an aggregate base with a 24-foot oil and chip bituminous surface. The roadway will have 4-foot shoulders on each side of the roadway. The roadway will extend through a low area with poor drainage necessitating the raising of the new roadway. This will require a large amount of fill dirt at a cost of \$113,000. The new roadway will intersect with TR 117A at a 90° angle approximately 150 feet east from the actual center of the TR 117A crossing.

Automatic flashing light signals and gates controlled by constant warning time circuitry and a new concrete crossing surface are scheduled to be installed at the TR 117A crossing. The existing timber crossing surface is 24 feet in length measured at a right angle to the roadway (40 feet as measured along the track) and is not properly aligned with the roadway surface. The highway approaches will be reconstructed to comply with Commission regulations. In combination with the approach improvements, the roadway surface of TR 117A will be widened from 20 feet to 24 feet with 4-foot shoulders on each side of the roadway. As stated previously, this will necessitate the installation of a wider crossing surface to cover the roadway surface and usable shoulder. Staff estimates this length to be 56 feet. There are no estimates for the warning device or crossing surface installation or for the closure of the TR 104 crossing. Staff has estimated these costs based on similar projects with the UP.

Staff has no objection to the division of cost for the improvements or to the Order be approved by the Commission.

The Commission, having given due consideration to the entire record herein, finds that:

- 1) The Commission has jurisdiction over the parties hereto and the subject matter herein;

- 2) The recitals of fact as set forth in the prefatory portion of this Order are true and correct and are hereby adopted as findings of fact;
- 3) The TR 117A crossing should be equipped with automatic flashing light signals and gates controlled by constant warning time circuitry; and a new 56 foot concrete, crossing surface; the highway approach grades to the TR 117A crossing should be brought into compliance with the grade requirements of 92 Ill. Adm. Code 1535.204;
- 4) The TR 104 should be closed, abolished, and barricaded to vehicular traffic; said barricades being a type 3 barricade conforming to the requirements of 92 Ill. Adm. Code 1535,701 and the Manual on Uniform Traffic Control Devices; the Railroad should re-establish any ditch lines along its track for proper drainage; signs should be posted advising of the closure of the roadway; the TR 104 crossing should not be closed until the signal system required at the TR 117A crossing is placed in service;
- 5) A connecting road should be constructed between TR 104 and TR 117A substantially in the location and in the manner as testified to by the consulting engineer hired by the Township;
- 6) The cost of the aforementioned improvements should be divided between the parties and the Fund as required by Law;
- 7) The cost for the aforementioned improvements should be divided in the following manner:

Improvement	Estimated Cost	GCPF	Railroad	Township
Install AFLS and gates w/CWT circuitry	\$*235,000	90% (\$211,500)	10% (\$23,500)	—
Install crossing surface	\$*47,187	—	**\$33,705	**\$13,482
Reconstruct highway approaches to TR 1172 and construct connecting Road.	\$426,240	50% (\$213,120)	***50% (\$213,120)	—
Close TR 104	\$*5,000	—	100% \$5,000	—
Total	\$713,427	\$424,620	\$275,325	\$13,482

The amount to be paid by the Fund for the installation of the warning devices at TR 117A and the construction of the connecting road should not exceed \$211,500 and \$213,120, respectively; the amount to be paid by the UP toward the connecting road should not exceed \$213,120, all remaining cost for the warning device installation, the sum of \$33,705 toward the crossing surface installation, and all cost of future maintenance and operation of the warning devices, and all cost of future maintenance of the crossing surface should be borne by the Railroad.; any remaining cost for the installation of the connecting road, the sum of \$13,482 toward the installation of the crossing surface, and all cost of future maintenance of the highway approaches to TR 117A, and all cost for future maintenance and ownership of the connecting road should be borne by the Township;

* designates that no estimates were supplied by UP; estimates as shown were prepared by staff using estimates submitted by the UP for similar projects. The Railroad is required to submit detailed estimates of cost for the warning devices and crossing surface for the Department's and Staff review and approval prior to starting the work.

**the cost of the crossing surface is divided between the UP and the Township in that the existing crossing surface is showing deterioration and the wider roadway and shoulder area require a new, wider surface. The UP has been charged for replacing the 40-foot crossing and the Township for the increased width.

***the Railroad has been assessed a portion of the cost for the construction of the connecting road because of the benefit it receives from the closure of the TR 104 crossing. The closure reduces the Railroads liability and maintenance costs.

- 8) 625 ILCS 5/18c-1701 and 1704 require each "person", as defined by Section 18c-1104, to comply with every regulation or Order of the Commission. These sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the state not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense. While the Commission expects the UP and the Township to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises the UP and the Township that any failure to comply may result in the assessment of such sanctions.

IT IS THEREFORE ORDERED by the Commission that the UP be, and it is hereby, required and directed to install automatic flashing light signals and

gates controlled by constant warning time circuitry at its crossing with TR 117A in Sullivan Township, Moultrie County, and thereafter maintain and operate same.

IT IS FURTHER ORDERED that the Railroad be, and it is hereby, required and directed to install a new, 56 foot concrete crossing surface at its crossing with TR 117A and thereafter maintain same.

IT IS FURHTER ORDERED that Township be, and it is hereby, required and directed to reconstruct the highway approaches to the TR 177A crossing to conform to the requirements of 92 Ill. Adm. Code 1535.204 and thereafter maintain same.

IT IS FURTHER ORDERED that the TR 104 crossing be, and it is hereby, required and directed to be closed, abolished, and barricaded to vehicular traffic; said barricades being a type-3 barricade conforming to the requirements of 92 Ill. Adm. Cod 1535.701 and the Manual on Uniform Traffic Control Devices. In addition, signs should be posted and maintained by the Township advising the motoring public that TR 104 is closed; said signs shall be posted prior to the crossing per the requirements of the Manual on Uniform Traffic Control Devices; the TR 104 crossing shall not be closed until the signal system required installed at the TR 117A crossing is placed in service.

IT IS FURTHER ORDERED that the Township be, and it is hereby, required and directed to construct a connected road between TR 117A and TR 104 in the place and substantially in the manner as testified to by the consulting engineer under hire by Sullivan Township.

IT IS FURTHER ORDERED that the Railroad shall within one hundred twenty (120) days from the date of this Order, furnish to the Department for its approval two (2) copies of the detailed estimates of cost and two (2) of the general layout plan applying to the installation of the automatic flashing light signals and gates and concrete crossing surface.

IT IS FURTHER ORDERED that the Township shall within one hundred twenty (120) days from the date of this Order, furnish to the Department for its approval two (2) copies of the detailed estimate of cost and two (2) copies of the plans applying to the construction of the connecting road.

IT IS FURHTER ORDERED that the Department shall within thirty (30) days of its receipt of the aforesaid plans and estimates, furnish to the Commission a statement of its approval or disapproval thereof, this for the information of the Commission when considering the application to be filed in accordance with Form 3 of 92 Ill. Adm. Code 1535.

IT IS FURTHER ORDERED that the UP shall file Form 3 of 92 Ill. Adm. Code 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 cost of making the improvements herein required shall be divided among the parties, Federal funding, and the Fund, as set forth in Finding 7 herein. Due to the deteriorating condition of the existing crossing surface and to the increased width necessitated by the increased roadway and shoulder width, the cost for the crossing surface installation has been divided between the Township and UP. The UP will pay for replacing the existing crossing surface with its standard surface (concrete) and the Township will pay that portion for the increased width necessitated by the increased roadway and shoulder width.

IT IS FURTHER ORDERED that all bills for expenditures authorized to be reimbursed from the Fund shall be submitted to the Fiscal Control Unit of the Illinois Department of Transportation Bureau of Local Roads and Streets, 2300 South Dirksen Parkway, Springfield, IL 62764. A copy of all bills received shall be submitted to the Director of Processing and Information, Transportation Division of the Commission. The final bill for expenditures from the UP and Township shall be clearly marked "Final Bill". All bills shall be submitted no later than twelve (12) months from the date of completion as set forth in this Commission Order. The Department shall, at the end of the 12th month from the Commission Order completion date, de-obligate all residual funds accountable for the cost of the warning device installation.

IT IS FURTHER ORDERED that the Railroad and Township shall file a written report with the Director of Processing and Information, Transportation Division of the Commission, within fifteen (15) days of the conclusion of each calendar quarter, stating the status of expenditures of the project and the percentage of completion of the project; if the project is behind schedule, the report must include a brief explanation of the reason(s) for the delay.

IT IS FURTHER ORDERED that the Railroad and Township shall at six (6) month intervals from the date of the Order until the project has been completed, each submit written reports to the Director of Processing and Information, Transportation Division of the Commission, stating the progress they have made toward the completion of the project. Each progress report shall include the Commission Order number, the Order date, the project completion date as noted in this Order, crossing information (the name, title, mailing address, telephone number, and facsimile number of the UP and Township employee responsible for management of their portion of the project).

IT IS FURTHER ORDERED that any person making a Request For Extension Of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting an extension of time that exceeds 30 days must file a Petition For Supplemental Order with the Director of Processing no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions For Supplemental Orders.

IT IS FURTHER ORDERED that 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 time.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny Petitions For Supplemental Order and Requests For Extension Of Time, if the reason(s) supporting the request is 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 FURTHER ORDERED that the UP shall submit to the Director of Processing and Information, Transportation Division of the Commission within five (5) days of the completion of the work herein required, National Inventory Update Report Forms as notice of said completions.

IT IS FURTHER ORDERED that the Township be, and it is hereby, required and directed to submit a written notice, to the Director of Processing and Information, Transportation Division of the Commission, of the date the work herein required of it has been completed, said notice shall be submitted within five (5) days after the date for the completions.

IT IS FURTHER ORDERED that subject to Sections 18c-2201 and 18c-2206 of the Law, this is a final decision of the Commission subject to Administrative Review Law.

By Order of the Commission this 4th day of September, 2003.

JUDGE 
SECTION CHIEF
ORDERS SUPERVISOR 



Chairman