BEFORE THE
ILLINOIS COMMERCE COMMISSION

REGULAR OPEN MEETING
TRANSPORTATION

Wednesday, March 9, 2016
Chicago, Illinois

Met, pursuant to notice, at 10:30 A.M.,
at 160 North La Salle Street, Chicago, Illinois.

PRESENT:
BRIEN J. SHEAHAN, Chairman
ANN MCCABE, Commissioner (via telephonically)
SHERINA E. MAYE EDWARDS, Commissioner
MIGUEL DEL VALLE, Commissioner
JOHN R. ROSALES, Commissioner

SULLIVAN REPORTING COMPANY, by
PATRICIA WESLEY
CSR NO. 084-002170
CHAIRMAN SHEAHAN: Good morning. Are we ready to proceed in Springfield?

EXECUTIVE DIRECTOR SMITH: Yes, we are.

CHAIRMAN SHEAHAN: Pursuant to the Open Meeting Act, I call the March 9, 2016 Regular Open Meeting of the Illinois Commerce Commission to order. Commissioners del Valle, Edwards and Rosales are present with me in Chicago. We have a quorum. Commissioner McCabe is participating by phone.

Commissioner McCabe, are you with us?

COMMISSIONER MCCABE: Yes, I am.

CHAIRMAN SHEAHAN: I move to allow Commissioner McCabe to participate by phone.

Is there a second?

COMMISSIONER ROSALES: Seconded.

CHAIRMAN SHEAHAN: Any discussion?

(No response.)

All in favor, say aye.

(Chorus of ayes.)

Opposed, say no.

(No response.)
The ayes have it and Commissioner McCabe is granted permission to participate by phone.

We have no requests to speak and will, therefore, move to our Regular Transportation agenda. There are edits to the Minutes of our February 24, 2016 Regular Open Meeting.

Are there any objections to approving the Minutes as edited?

(No response.)

Hearing none, the Minutes as edited are approved.

Moving on to our Railroad agenda, RR-1 is a Stipulated Agreement Authorizing Grade Crossing Safety Improvement Projects in Iroquois County.

Are there any objections to approving the Supplemental Order?

(No response.)

Hearing none, the Order is approved.

Item AM-1 concerns the Approval of the 2015 Annual Report on Accidents Involving Hazardous Material on Railroads in Illinois.
Commissioner del Valle has questions.

Commissioner del Valle.

COMMISSIONER del VALLE: Thank you, Mr. Chairman.

I have a few quick questions.

We currently have one full-time federally-certified inspector's position that is responsible for all of Illinois, and the report indicates that another inspector is working through the FRA training process and expected to be certified in 2016.

Are there any requirements or federal requirements for the number of certified inspectors that we need to have on staff?

MR. STANTON: Commissioners, this is Mike Stanton of the Safety Rail Section.

There are no federal requirements for the number of inspectors in any discipline. That does state that for employees it's strictly up to the state to determine the level of personnel required for each of these disciplines.

Just to clarify, the information that you read from in the report, we have a second, and
that inspector received his federal certification
last week, so now both of our inspectors are both
federally certified.

COMMISSIONER del VALLE: Very good. So now we
have two on board?

MR. STANTON: That is correct.

COMMISSIONER del VALLE: In looking at the
numbers in 2008, we did 17 inspections of
railcars -- 17,000 inspections of railcars, and at
that time we had two inspectors. Were those both
federally certified at that time?

MR. STANTON: Yes.

COMMISSIONER del VALLE: And so now we are back
to two?

MR. STANTON: That's correct. Between 2008 and
2015, one of our inspectors retired and we just were
able to receive permission to hire the second
inspector beginning August 3rd of last year.

COMMISSIONER del VALLE: So from 2008, where we
were at 17,000, to 2015, we dropped to 8,000.

Will those numbers now go back up for
next year because we will have two inspectors?
MR. STANTON: Yes. I anticipate the number of inspections completed in 2016 will be greater than they were in 2015. I don't inspect them to meet the level of 2008 immediately, but as we move forward, as our second inspector needs more experience, that number should increase.

COMMISSIONER del VALLE: And you are expecting a sizable increase?

MR. STANTON: Yes.

COMMISSIONER del VALLE: I know that our compliance rate -- even though the number of inspections was lower -- compliance rate improved, you are indicating in the report that's due to education awareness.

MR. STANTON: That is correct.

COMMISSIONER del VALLE: Do you expect that compliance rate to continue to improve?

MR. STANTON: I believe so, both from an employee standpoint they get training annually from the FRA and also the outreach that our inspectors are providing to railroad employees and commercial employees.
The receivers of these hazardous material cargos were able to provide those employees with better education in what they should and should not be doing when they're receiving these types of cargo.

COMMISSIONER del VALLE: Thank you.

CHAIRMAN SHEAHAN: Hey, Mike, in your professional judgment, how many inspectors do we really need to cover the fifth largest state in the country with the second largest rail not working in the country?

MR. STANTON: More than we have.

(Laughter.)

I would say for each particular discipline, we are down on all of our numbers, but for hazmat, in particular, I would say at least three, if not four, for the state and for the track we have inspectors. We used to have three. Three was the very minimum, I would say four, possibly five on the track side.

Given the fact that the High-Speed Passenger Rail Service is due to begin here within
the next year-and-a-half, that will provide a separate set of unique circumstances that will need to be inspected on a regular basis.

Operating practices is one of the other disciplines. We only have one inspector for the state, so we need at least two, possibly three, preferably three.

The train patrol went down to one signal inspector. We had two last month. The end of February our second inspector retired, so we need at least three signal inspectors and probably four. That's a bare minimum in my opinion.

CHAIRNAN SHEAHAN: I think the line of questioning from Commissioner del Valle is apt, and we have got our Appropriation's Committee hearing the 7th in the Senate. The House has been rescheduled, but I'll speak for myself.

I think our staffing is definitely inadequate and, you know, the agencies had obviously a very severe setback financially. We are trying to work around that at this point, but I hope that when we actually work through the issues, we can
substantially increase the number of these really
central public safety employees in addition to
pipeline, and police, and others and that the
current situation of employees really is untenable.

COMMISSIONER MAYE EDWARDS: Mr. Chairman, may I
ask Mike a question?

Good morning, Mike. I know last year
when we discussed this, I specifically asked about
our numbers in comparison to our fellow
Commissioners across the nation who did have
oversight jurisdiction over the railroad as well,
and it seemed that we were, considering where we
are, being, you know, number two in having such a
very large area that we oversee in railroads in the
State of Illinois, that we are lagging quite far
behind our colleagues in other states. Is that
still so?

I mean, I would imagine, since you are
saying that we are not at the numbers that you would
recommend where we should be, we are quite still far
behind that.

And then my other question is from a
liability perspective, I guess I'm just wearing a
lawyer's hat a little bit, and wondering if certain
things are happening or if there are certain
accidents or incidents, and so forth, could we be
held liable from a standpoint if we don't have
adequate staffing?

MR. STANTON: The answer to your first question
is, yes, we are still way below what our needs are
certainly in context with other states, given, for
example, California they employ 67 state inspector
disciplines for safety inspections. That's by far
the largest network of state inspectors in the state
and country, but with other states that are of
similar size, Texas, for instance, has the largest
rail network in the country and they have twice the
number of inspectors that we have.

Ohio has a very large amount of
network and their inspection rate is almost
one-and-a-half times our size.

So, yes, we happen to have the need
for increasing the number of inspectors within the
State of Illinois.
With regard to liability, I hope there's no liability attached to it, but certainly if a major accident would occur, the NTSB would desire to determine that they would need to investigate. Part of that investigation could result in finding that the State of Illinois' inspection program is lacking.

COMMISSIONER MAYE EDWARDS: That's nerve-racking.

CHAIRMAN SHEAHAN: Commissioner del Valle.

COMMISSIONER del VALLE: Just a quick comment. Certainly we support your statement and would encourage us as we go through the appropriation process, particularly on the day that our appropriations get presented before the committee -- when was that?

CHAIRMAN SHEAHAN: The 2nd --

COMMISSIONER del VALLE: The 2nd.

CHAIRMAN SHEAHAN: The 2nd.

COMMISSIONER del VALLE: -- that we highlight this area and that we go on record with the Illinois General Assembly has expressed concern.
We agree that the budget is up, but, as Commissioner Maye indicated, we talked about this last year and we are talking about it this year, and probably talk about it next year again, but I think it's important for the Commission. We have a tight fiscal situation here.

This is one of those categories that -- that we can't set aside in terms of expressing new before the General Assembly, new before the appropriation process.

I would encourage us to highlight -- you know, you had other things to highlight, that this be one of the things that we highlight in the presentation.

CHAIRMAN SHEAHAH: I agree strongly. We need to make sure that Staff have the resources to do their jobs.

Any further questions?

(No response.)

Without objection then, we'll approve the annual report.

Item AM-2 concerns the FY 2017 through
21 Crossing Safety Improvement Program 5-Year Plan submitted pursuant to the Motor Fuel Tax Law.

Are there any questions regarding this?

Commissioner del Valle.

COMMISSIONER del VALLE: Thank you, Mr. Chairman.

What did we spend in FY 15?

MR. STANTON: FY 15 total obligations were the amount that the Commission approved was about $42 million.

COMMISSIONER del VALLE: Where did I get the 31.3 million figure from?

MR. STANTON: That may be the obligation that's so far been spent out or paid out to-date for the projects that we previously authorized by the Commission.

COMMISSIONER del VALLE: Okay. Then were there -- there was a fund sweep that took place last March, right?

MR. STANTON: That's correct.

COMMISSIONER del VALLE: And how much did we lose in that sweep?
MR. STANTON: The sweep last year took $10 million from the Grade Crossing Protection Fund and part of that legislation included a pay-back requirement that the $10 million would be paid back into the fund by September of this year.

COMMISSIONER del VALLE: That's the question.

MR. STANTON: The current legislation that was introduced within the last couple of weeks that would rescind that pay-back requirement.

COMMISSIONER del VALLE: Right. So we have budgeted for FY 17 39 million -- 39.7 million.

MR. STANTON: That's correct.

COMMISSIONER del VALLE: And what happens to that million into those projects if there's another sweep that takes place as a result of the current negotiations that at some point take place for this current fiscal year and how do we prioritize?

I know that you indicated that if the funds aren't available that there won't be a process for prioritizing.

How do you go about doing that and what projects get put aside or carried over into the
following fiscal year?

MR. STANTON: Well, the current balance of the fund is a little over $36 million. That's what we have available to us today. Unfortunately, we don't have an appropriation authority, so we don't really have anything to spend this fiscal year.

What Staff has been doing up till now, continues to do, is we are working on projects, preparing agreements and submitting Orders to the Commission. Those Orders are pending, so we're not actually submitting them to you until we have obligation -- excuse me -- appropriation authority.

If we get that authority before the end of this fiscal year, then we will send you a very large stack of projects for your approval. If not, if this budget impasse continues and we don't receive that appropriation authority, then all those projects that have already been agreed to and Orders have been drafted, we will continue to hold those until we get that authority.

As we move forward, we still believe that we have a responsibility to identify safety
improvements at crossings around the state, so we are making those plans and identifying those locations with people at the local agencies and railroads to begin that process.

So we will be ready to go with more projects when the time comes and we have the authority to move forward.

If we have to, we'll just bend forward -- and we don't have as much money as we need this fiscal year -- then we'll just roll the projects forward as best we can and doing the priority basis we will do the lower cost projects, if you will, installing automatic warning devices across -- not currently equipped we believe the most priority of projects and push back the higher dollar projects, the push projects, let's say move those back.

We have been in contact with the local agency that sponsored the Rich Project, letting them know what our problem is, what the challenges we are facing.

Financially they understand that we have local agencies that have the same types of
problems, so it's not that there will be a problem
for them to defer these projects to a later date.

COMMISSIONER del VALLE: Thank you.

CHAIRMAN SHEAHAN: Any other questions?

(No response.)

Are there any objections to approving

the program plan?

(No response.)

Hearing none, the plan is approved.