BEFORE THE
ILLINOIS COMMERCE COMMISSION

TRANSPORTATION BENCH SESSION

Chicago, Illinois
April 7, 2010

Met, pursuant to notice, at 10:30 a.m.

BEFORE:

MR. MANUEL FLORES, Acting Chairman

MS. LULA M. FORD, Commissioner

MS. ERIN M. O'CONNELL-DIAZ, Commissioner

MR. SHERMAN J. ELLIOTT, Commissioner

MR. JOHN T. COLGAN, Acting Commissioner
ACTING CHAIRMAN FLORES: Good morning.

Pursuant to the provisions of the Illinois Open Meeting Act, I now convene a regularly scheduled bench session of the Illinois Commerce Commission. With me in Chicago are Commissioners O'Connell-Diaz, Elliott, Acting Commissioner Colgan and I am Acting Chairman Flores. Commission Ford is available by phone.

Good morning, Commissioner.

COMMISSIONER FORD: Good morning.

ACTING CHAIRMAN FLORES: By rule we are required to vote on allowing Commissioner Ford to participate by telephone.

Is there a motion to approve Commissioner Ford's participation by phone?

COMMISSIONER ELLIOTT: So moved.

ACTING CHAIRMAN FLORES: Is there a second?

ACTING COMMISSIONER COLGAN: Second.

ACTING CHAIRMAN FLORES: Its been moved and seconded.

All in favor say "aye."

(Chorus of ayes.)
Any opposed?

(No Response.)

The vote is 4-0 approving Commissioner Ford's participation by phone.

Thank you so much, Commissioner Ford.

We have a quorum.

We will now begin with the Transportation Agenda.

As a different matter, we have minutes to approve from the March 10, 2010 Bench Session. I understand that amendments have been circulated.

Is there a motion to accept the amendments to the minutes?

COMMISSIONER ELLIOTT: So moved.

ACTING CHAIRMAN FLORES: Is there a second?

ACTING COMMISSIONER COLGAN: Second.

ACTING CHAIRMAN FLORES: Its been moved and seconded.

All in favor say "aye."

(Chorus of ayes.)

Any opposed?

The vote is 5-0, the amendments are
approved.

Is there a motion to approve the minutes as amended?.

COMMISSIONER O'CONNELL-DIAZ: So moved.

ACTING CHAIRMAN FLORES: Is there a second?

COMMISSIONER ELLIOTT: Second.

ACTING CHAIRMAN FLORES: Its been moved and seconded.

All a favor say "aye."

(Chorus of ayes.)

Any opposed?

The vote is 5-0 approving the minutes.

Stating with the Railroad Agenda,

Items RR-1 through RR-7 will be taken together.

These are Stipulated Agreements for expenditures directed toward improving public safety at designated highway-rail grade crossings across Illinois.

Staff recommends entering the Orders approving the Stipulated Agreements.

Is there a motion to enter the Order?

ACTING COMMISSIONER COLGAN: So moved.
ACTING CHAIRMAN FLORES: Is there a second?

COMMISSIONER ELLIOTT: Second.

ACTING CHAIRMAN FLORES: Its been moved and seconded.

All in favor say "aye."

(Chorus of ayes.)

Any opposed?

(No response.)

The vote is 5-0. The Orders are entered. We will now use this 5-0 vote for the remainder of the Transportation Agenda unless otherwise noted.

Items RR-8 and RR-9 will be taken together. These items are Petitions for additional track and grade crossings in Plainfield. ALJ Kirkland-Monteque recommends entering the Order granting the Petition.

Is there any discussion?

(No response.)

Any objections?

(No response.)

Hearing none, the Orders are entered.
Item RR-10 concerns a Petition to remove the existing grade separation structure carrying Voorhees Street over the exempt Norfolk Southern track and to construct a new roadway on embankment over the existing railroad right of way situated in Danville and apportioning cost thereof. ALJ Kirkland-Montague recommends entering a Supplemental Order approving the request of the extension of time.

Is there any discussion?

(No response.)

Any objections?

(No response.)

Hearing none the Supplemental Order is entered.

RR-14 concerns a Petition for an Order authorizing the establishment of a new grade crossing at 183rd Street in Tinley Park directing the installation of automatic flashing light signals and gates and dividing the cost of installation among the parties. ALJ Kirkland-Montague recommends entering the second Supplemental Order requesting additional
project completion time.

Is there any discussion?

(No response.)

Any objection?

(No response.)

Hearing none, the second Supplemental Order is entered.

Items RR-12 is a Stipulated Agreement for expenditures directed toward improving public safety at a highway-rail grade crossing in Thayer. Staff recommends entering an Order approving an increase in cost.

Is there any discussion?

(No response.)

Any objection?

(No response.)

Hearing none, the Order is entered.

Item RR-13 is a Stipulated Agreement for expenditures directed toward improving public safety at the Oak Street highway-rail grade crossing in Coal City. Staff recommends entering an Order allowing for supplemental costs and an extension of
time.

Is there any discussion?

(No response.)

Any objection?

(No response.)

Nearing none, the order is entered.

We now turn to the Motor Carrier Agenda.

Items MC-1 through MC-10 will be taken together. These items all concern Stipulated Settlement Agreements concerning alleged violations of the Illinois Commercial Transportation law. In each matter Staff transportation counsel recommends entering an Order approving the Stipulated Settlement Agreement.

Is there any discussion?

COMMISSIONER O'CONNELL-DIAZ: Chairman, I don't see Judge Nagel in the room; but I question with regard to MC-1. So if we can hold that for a while -- he is here.

I think I just called you Judge Nagel.

That could a demotion or a promotion. I don't know
Mr. Nagel, with regard to this particular -- Smith movers -- I notice in your memo that there have been two other occasions where this company has been founded in violation of operating without authority.

MR. NAGEL: Yes.

COMMISSIONER O'CONNELL DIAZ: And so what we are doing here is -- obviously they've been caught again and we're penalizing them for 50 days violation with a penalty of $5,000. Are we going to be seeing them next spring again or -- and if it's 50 days violation, you know, if they move a couple people, I'm sure they would be making more than $5,000.

How do we make sure that we don't have them coming before us again?

MR. NAGEL: Certainly. The Commercial Transportation Law provides for violations or civil penalties between $100 and $1,000 per violation. Sections -- well, our -- the Commission's rules provide for informal settlement discussions and where those settlements will result in conserving the resources of the commission and expediting the
resolution of these types of issues. We're committed
to provide and reduce the penalties. Typically our
office takes into consideration several factors which
include the past compliance history, the type of
violations, the number of the violations, whether
these are willful or really more properly
characterized as negligent violations, the license
holders cooperation with Staff in resolving the
dispute, their compliance with -- or the willingness
to comply with these regulations in the future as
well as the revenues that were -- resulted from the
legal operations.

COMMISSIONER O'CONNELL-DIAZ: Do we know what
those revenues were?

MR. NAGEL: I'd have to look at the file. I
don't know -- I don't recall off the top of my head.
I'd have to do some math by looking at the actual
bills in lading. What this proposed settlement does
is proposing a $100 per day of violation which is an
escalation from -- initially there was a $50 per day
violation --

COMMISSIONER O'CONNELL-DIAZ: But this is their
third violation. So I'm kind of missing how they're acting --

COMMISSIONER FORD: The first violation was in 1997?

COMMISSIONER O'CONNELL-DIAZ: This is their third violation.

COMMISSIONER ELLIOTT: Yeah, first in '97. It's becoming the cost of doing business.

COMMISSIONER O'CONNELL-DIAZ: Well, I'm thinking, too, you know, this $5,000 although I understand that we're confined to the penalty provisions; but in one day the cost of moving, that could be one move. And if they were operating for 50 days.

MR. NAGEL: I do believe that the reason for the authority -- the reason the authority went revoked was the failure to have on file workers' compensation coverage. I do believe that that was a failure of the insurance company and not the lapse of coverage for this case. I also recall -- I believe these were moves that were conducted with regard to a Chicago Housing Authority -- on agreement with the
COMMISSIONER O'CONNELL-DIAZ: Well, I just had questions. I really kind of blindsided you because I didn't let you know so you could have looked more closely at the file. I'm sure that your understanding of the underpinnings of your recommendation are fine. It just struck me that this was a third time up for this company, and given the fact that it's moving season now, that we really need to be making sure that these companies that are authorized by us have the appropriate documentation to have the insurance and that they are actually authorized by us because moving is a very expensive proposition for people and so it did catch my eye.

I'm satisfied with your evaluation. I just was curious and I'll take a look at the files so I'm more educated about what occurred, so thank you.

MR. NAGEL: Thank you.

ACTING CHAIRMAN FLORES: Should we hold this matter?

COMMISSIONER O'CONNELL-DIAZ: No, I'm fine.

ACTING CHAIRMAN FLORES: Very well.
Then again, MC-1 through MC-10.

Any further discussion on any of the other matters?

(No response.)

Any objections?

(No response.)

Hearing none, the Orders are entered.

Item MC-11 concerns an Application for Certificate of Public Convenience and Necessity for Century 1 movers. ALJ Kirkland-Montaqué recommends an entry of the Order denying permanent household because of authority of the applicant.

Is there any discussion?

(No response.)

Any objections?

(No response.)

Hearing none, the Order denying permanent household because of authority is entered.

Item MC-12 is an Application for an Operator Employment Permit by Jeffrey Norlander. The Applicant has failed to appear at multiple hearings.

ALJ Kirkland-Montaqué recommends entering an Order
dismissing this Application without prejudice for lack of prosecution.

Is there any discussion?

(No response.)

Any objections?

(No response.)

Hearing none, the order is entered.

Item MC-13 is the Application for an Operator's Employment Permit by Miguel Gomez. ALJ Kirkland-Montague recommends entering the Order approving the application.

Is there any discussion?

(No response.)

Any objections?

(No response.)

Hearing none, the order is entered.

Mr. Matrisch, is there will any further Transportation business to come before the Commission today?

MR. MATRISCH: Nothing further. Thank you.

ACTING CHAIRMAN FLORES: Thank you very much.

Thank you for the good work.
Hearing none, that concludes the Transportation agenda.