BEFORE THE

ILLINOIS COMMERCE COMMISSION

BENCH SESSION

(TRANSPORTATION)

Chicago, Illinois

Wednesday, July 10, 2013

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

State of Illinois Building, 160 North LaSalle Street, Eighth Floor, Chicago, Illinois.

PRESENT:

MR. DOUGLAS P. SCOTT, Chairman
MS. ANN McCABE, Commissioner
MR. MIGUEL DEL VALLE, Acting Commissioner
MR. JOHN T. COLGAN, Commissioner
   (Via audiovisual conference)
MS. SHERINA MAYE, Acting Commissioner
   (Via telephone conference)

MIDWEST LITIGATION SERVICES
By: Pamela S. Morgan, Reporter
CSR # 084-001687
CHAIRMAN SCOTT: Pursuant to the provisions of the Open Meetings Act, I now convene the regularly scheduled Bench Session of the Illinois Commerce Commission.

With me in Chicago are Commissioner McCabe and Acting Commissioner Del Valle. In Springfield is Commissioner Colgan. I am Chairman Scott. We have a quorum. We should also have Acting Commissioner Maye available on the phone.

Are you there, Commissioner?

Acting COMMISSIONER MAYE: Good morning, I'm here.

CHAIRMAN SCOTT: Great.

Under the Commission's rules we will have to vote to allow Commissioner Maye to participate by phone.

I move to allow Acting Commissioner Maye's participation by phone.

Is there a second?

COMMISSIONER McCabe: Second.

CHAIRMAN SCOTT: It's been moved and seconded.

All in favor say aye.

(A chorus of ayes.)

Any opposed?

(No response.)
The vote is four to nothing, and Acting Commissioner Maye may participate in today's meeting by phone.

Moving into the agenda, according to Section 1700.10 of Title Two of the Administrative Code, this is the time for all members of the public to address the Commission. Members of the public wishing to address the Commission must notify the Chief Clerk's Office at least 24 hours prior to Commission meetings. According to the Chief Clerk's Office, we have no requests to speak at today's Bench Session.

Moving now to the Transportation agenda, we will begin with approval of minutes from our June 26th Bench Session.

Is there a motion to approve the minutes?

COMMISSIONER McCabe: So moved.

CHAIRMAN SCOTT: Is there a second?

Acting COMMISSIONER DEL VALLE: Second.

CHAIRMAN SCOTT: It's been moved and seconded.

All in favor say aye.

(A chorus of ayes.)

Any opposed?

(No response.)
The vote is five to nothing and the minutes from our June 26th Bench Session are approved.

On to the Railroad portion of today's agenda. Items RR-1 through RR-7 can be taken together. These items are stipulated agreements seeking authorization for safety improvement projects of highway-rail crossings across Illinois. In each case, our Transportation staff recommends entry of an order granting the request to relieve.

Is there any discussion?

(No response.)

Is there a motion to enter the orders?

COMMISSIONER McCabe: So moved.

CHAIRMAN Scott: Is there a second?

Acting COMMISSIONER Del Valle: Second.

CHAIRMAN Scott: It's been moved and seconded.

All in favor say aye.

(A chorus of ayes.)

Any opposed?

(No response.)

The vote is five to nothing and the orders are entered. We will use the five to
nothing vote for the remainder of today's Transportation agenda unless otherwise noted. Items RR-8 and RR-9 can be taken together. These items are petitions seeking additional time or funding for previously authorized safety improvement projects of highway-rail grade crossings across Illinois. In both cases, our Transportation staff recommends an entry of a supplemental order granting the request of relief.

Is there any discussion?

(No response.)

Any objections?

(No response.)

Hearing none, the orders are entered.

On to Motor Carriers. Item MC-1 is Christopher Reed's application for an operator's employment permit pursuant to Section 18a-403 of the Illinois Commercial Relocation of Trespassing Vehicles Law. ALJ Kirkland-Montaque recommends entry of an order granting the application.

Is there any discussion?

(No response.)

Any objections?
(No response.)

Hearing none, the order is entered.

Moving now to Collateral Recovery. Item CR-1 is Docket Number 184899 MC. This is David Damsalla's application for a Class EE Recovery Permit pursuant to Section 45 of the Collateral Recovery Act. ALJ Kirkland-Montaque recommends entry of an order granting the application.

My office in conjunction with Commissioner McCabe's office had some edits that we wanted to propose to this that would actually change the conclusion to a denial of this particular application. The revisions, I will point out they are troubled by both the prior theft conviction and the conviction related to driving. The edits are related to both of those.

With regard to the driving offense specifically, I will speak to that one.

Petitioner was convicted of driving on a revoked license and sentenced to three years for that offense, which indicates to us that the offense was not only a felony and that the Petitioner in order to get a sentence that strong either had a series of such convictions in the
past or that the underlying revocation was for something very, very serious, it isn't clear from the record, and this information, therefore, isn't provided to us.

In fact, it's unclear from the record whether Petitioner even now holds a valid Illinois driver's license.

In either case, such a conviction and the sentence is very troubling for a job like this which often requires driving, obviously.

Due to these concerns and also concerns about the nature of the theft offense, my edits propose that the application be denied, and I would move for adoption of these edits.

Is there a second?

COMMISSIONER McCabe: Second.

COMMISSIONER Colgan: Chairman, I would like to ask a question or two of the judge.

CHAIRMAN Scott: Sure, Commissioner.

JUDGE Kirkland-Montague: Hi.

COMMISSIONER Colgan: In my mind, you know, the biggest factor here is the overarching issue of whether or not this applicant has a valid and current driver's license, and I can't tell from
the record what the answer to that question is.

Do you know the answer to that question?

JUDGE KIRKLAND-MONTAQUE: Yes, he does have a valid driver's license. That is part of the application process, all applicants have to provide a copy of their driver's license with application. Mr. Damsalla did so and his license is valid. It's issued on September 25th of 2012 and expires July 22nd of 2017.

COMMISSIONER COLGAN: Okay. Well, if he didn't have a driver's license, I would support the edits, but knowing that he does have a driver's license, it's been -- his most recent crime was nine years ago and it appears to me that he's paid his debt to society.

So thank you for those answers -- that answer.

JUDGE KIRKLAND-MONTAQUE: You are welcome.

CHAIRMAN SCOTT: Is there further questions of the judge?

Acting COMMISSIONER DEL VALLE: Now, we don't -- does the record show why the driver's license was revoked for three years?

JUDGE KIRKLAND-MONTAQUE: It does not. That
question was not asked during the hearing, so it's
not in the transcript. I do know that it did run
concurrently with another crime but I don't know
the reason for the original revocation.

Acting COMMISSIONER DEL VALLE: Is there a reason why
that question was not asked?

JUDGE KIRKLAND-MONTAQUE: Personally, I don't
know. You know, staff is present on behalf of the
Commission at these hearings. Staff counsel did
not ask the question, nor did I. I have no reason
for why that was not asked.

CHAIRMAN SCOTT: But as a part of the
application, didn't you say that the applicant has
to show a valid driver's license?

JUDGE KIRKLAND-MONTAQUE: Yes, he has a valid
driver's license now. But as to why the license
was revoked some years ago, I don't know the
reason for that.

COMMISSIONER COLGAN: But if he didn't have a
driver's license, this case would have been
denied, it would have never really gotten to us,
would it?

JUDGE KIRKLAND-MONTAQUE: I think that's
correct. But this is an EE, an intern
application, it's not for a recovery permit. As an intern, he's allowed to do everything that a repossession can do. However, the requirement is that he does it with a licensed repossession. So he would not be able to drive, obviously, without a driver's license and do the work -- the repossession work.

COMMISSIONER COLGAN: All right. Well, I think when the record showed that he had a conviction for driving on a revoked license, it raised the issue, in my mind and others' minds, that there was a possibility that he had a revoked driver's license and it was never renewed. But your answer to my question indicates to me when somebody applies for one of these permits, they as a part of the application process have to demonstrate that they have a current and valid driver's license.

JUDGE KIRKLAND-MONTAQUE: That is correct, yes.

COMMISSIONER COLGAN: Okay, thank you.

COMMISSIONER McCabe: A point of order, Commissioner Colgan, are you making a separate motion?
COMMISSIONER COLGAN: No, I am not making a separate motion, but I am going to vote no on the amendments that's been proposed.

I believe that if he had not had a driver's -- valid driver's license, that would be enough reason for me to vote no on this case, but now that I know that he does have a driver's license, I mean it looks like he's had some serious offenses in the past, felony offenses, but the most recent one was nine years ago and it seems to me that he has satisfied the terms of his sentence. So I would vote to approve his application.

CHAIRMAN SCOTT: If I can make a suggestion, maybe we just hold this one and put it on at the next meeting, and then in the meantime have an opportunity to see if there's additional information that any of us want, or to do that, rather than try to sort through it today, if that's acceptable.

COMMISSIONER COLGAN: I will agree with that, I think that's a good idea.

Acting COMMISSIONER DEL VALLE: That's fine.

COMMISSIONER McCabe: Yes.
CHAIRMAN SCOTT: So CR-1, then, will be held for disposition at a future Commission proceedings.

Thank you, Judge.

JUDGE KIRKLAND-MONTAQUE: You are welcome.

CHAIRMAN SCOTT: CR-2, Wonyell Burrow's application to serve as a repossessor pursuant to Section 45 of the Collateral Recovery Act.

ALJ Duggan entered an order granting the application.

Commissioner McCabe.

COMMISSIONER McCabe: Mr. Burrow has a significant criminal history and convictions for breaking into buildings, stealing money, and selling crack cocaine in various contents. In one such drug-related conviction he was sentenced in Federal Court to 10 years, released in 2009, and remains on supervised release for about another 18 months.

The remaining supervised release and the nature of the crimes are troubling, and what is particularly troubling is that on his application he listed only one conviction, claiming that he ran out of room on the application. When you
review the application, it shows he left a, excuse me, blank section reserved for listing at least a second conviction. And as explained in the order, the Commission needs applicants to be entirely forthcoming. Because the record evidence in these matters is often less extensive, the public interest cannot be served by applicants withholding information.

My edits, along with those from the chairman, point out all these issues and explain that given the totality of these facts, the application should be denied. That's what I am moving.

CHAIRMAN SCOTT: I will second that.

Discussion?

COMMISSIONER COLGAN: Yes, just to make -- I am going to support your motion, Commissioner McCabe, but I think just a note for the record, I think it's really important that applicants fess up to what their history is. It doesn't -- as we've seen here in the past, it doesn't necessarily mean that we are going to deny their application because they've had a history of criminal record. I think this area -- this line
of work, it seems that those issues come to us on a fairly frequent basis and it's a new subject matter for us to be dealing with, relatively new.

But just for the record, I would like to make sure and see that applicants are encouraged to be straightforward with what their record is so that we can make a determination based on, you know, their truthful and forthcoming sentences.

CHAIRMAN SCOTT: I would agree with that statement. In fact, we don't see any of these applications unless there is some kind of record that the statute says has to be -- warrants a hearing to come to us. So I wholeheartedly agree that obviously, and from our past, you know, we've had lots of them that we've approved with folks that had some criminal records in their past, but it's impossible, or next to impossible, to really do this work and do it very well without the applicants be forthcoming. So I agree with that sentiment, Commissioner, and also with Commissioner McCabe.

Acting COMMISSIONER DEL VALLE: Mr. Chairman, I have
a question. Is this individual still under supervision?

JUDGE DUGGAN: Yes, he's got 18 more months of supervised release.

Acting COMMISSIONER DEL VALLE: And I know we consider these on a case-by-case basis, but I just generally have problems granting permits to individuals who are still on probation, have not completed their probationary period of supervision. So for that reason, I would vote no on this application.

COMMISSIONER McCabe: I would just also point out that in this case the applicant is currently working as a repo -- for a repo firm in Missouri.

CHAIRMAN SCOTT: Further discussion?

Acting COMMISSIONER MAYE: I wanted to say that I totally concur with Commissioner Del Valle. I also see that as a problem. I believe what is important here, as we excused in the past, making sure that we are looking at these applications, of course, on a one-by-one basis but we are comparing facts and making similar decisions and need to go forward. I agree that while somebody having a probationary period or something that is not fully
lapsed, I do also have an issue. So I will vote
to deny this permit.

CHAIRMAN SCOTT: So the question is on the
revisions. It's been moved and seconded to
approve the revisions proposed by
Commissioner McCabe.

All in favor of the revisions vote aye.

(A chorus of ayes.)

CHAIRMAN SCOTT: Any opposed to the revisions?

(No response.)

The vote is five to nothing and the
revisions are adopted.

Is there now a motion to approve the
order as amended?

COMMISSIONER McCabe: So moved.

CHAIRMAN SCOTT: Is there a second?

Acting COMMISSIONER DEL VALLE: Second.

CHAIRMAN SCOTT: It's been approved and
seconded to approve the order as amended.

Any further discussion?

(No response.)

All in favor say aye.

(A chorus of ayes.)

Any opposed?
The vote is five to nothing and the order as amended is entered.

Item CR-3 is Daniel Fontana's application to serve as a repossessor pursuant to Section 45 of the Collateral Recovery Act. ALJ Duggan recommends entry of an order granting the application.

COMMISSIONER McCabe: The edits in this case make it clear that up until a week ago, July 3rd, Mr. Fontana had not paid his outstanding fines and debts, but now he has and we are prepared to grant his application.

CHAIRMAN SCOTT: Those are the revisions. Are you moving those?

COMMISSIONER McCabe: Yes.

CHAIRMAN SCOTT: Is there a second?

Acting COMMISSIONER DEL VALLE: Second.

CHAIRMAN SCOTT: It's been moved and seconded to approve the revisions proposed by Commissioner McCabe.

Is there any discussion on that?

(No response.)
The only thing I will say, and I am going
to support your motion, Commissioner, the only
thing I will say about that is that it seems
fairly clear that the applicant wasn't going to
pay that until he got called on it first by the
ALJ and then in some of the discussions that we
had had about that on the bench about having
outstanding issues, like Acting Commissioner Del Valle
just pointed out.

So obviously we are talking about
Mr. Fontana here, but I think for future
applicants as well, trying to go along with what
Commissioner Del Valle said in the last case, for
people to clear up what they can clear up before
they come here, especially in a case like this
where these debts were not new, they were old and
had not been taken care of by the applicant for a
long period of time. So I would hope that in the
future, applicants would try to do the best they
can to take care of all these issues before they
came here.

I am going to support your revision.

Further discussion?

(No response.)
The motion and the second is to approve the revisions as suggested by Commissioner McCabe. All in favor say aye.

(A chorus of ayes.) Any opposed? (No response.) The ayes have it and the revisions are adopted. Is there now a motion to approve the order as amended?

Acting COMMISSIONER DEL VALLE: So moved. CHAIRMAN SCOTT: Is there a second? COMMISSIONER McCabe: Second. CHAIRMAN SCOTT: It's been moved and seconded to approve the order as amended. Any discussion? (No response.) All in favor say aye. (A chorus of ayes.) Any opposed? (No response.) The ayes have it and the vote is five to nothing, and the order as amended is entered. Item CR-4 is Ralph Cornell's application
to serve as repossessor pursuant to Section 45 of the Collateral Recovery Act.

ALJ Kirkland-Montaque recommends entry of an order granting the application.

Commissioner McCabe.

COMMISSIONER McCabe: The proposed edits to this order do not change the outcome but do provide more facts in the final order to reflect the full record. Mr. Cornell's burglary convictions are serious, particularly to the conviction in which he entered a home with a key he was given. However, Mr. Cornell was 17 at the time, he is now 34 years old. In the years since, the record shows that Mr. Cornell has not been convicted of any other theft-related crimes. So I move the order granting his application.

CHAIRMAN SCOTT: Is there a second to the revisions -- excuse me, second to the revisions proposed?

Acting COMMISSIONER DEL VALLE: Second.

CHAIRMAN SCOTT: Discussions about the revision?

(No response.)

I appreciate the additional information
that's there but I can't support the ultimate conclusion in this case. So to be consistent, I am going to vote against the revision and the conclusion.

I can't get past the given a key to a home and stealing items out of that home in addition to the other parts of Mr. Cornell's record, especially for a job like this that involves handling other people's property and being in places gaining access to different pieces of property. I just think that that's exactly the kind of conviction that's not only teed up for us by the General Assembly but the kind of thing that, even though it was a long time ago, which I fully recognize and I appreciate that, I just can't get past that on this particular application.

Further discussion?

Acting COMMISSIONER MAYE: Chairman Scott, this is Acting Commissioner Maye.

CHAIRMAN SCOTT: Yes, Commissioner.

Acting COMMISSIONER MAYE: I also believe that this type of incident is what we are supposed to be protecting consumers against. So therefore, I
will not be supporting the edits either and I will vote to deny the application.

CHAIRMAN SCOTT: Acting Commissioner Del Valle.

Acting COMMISSIONER DEL VALLE: I agree with what you indicated but we are talking about a very young person here who committed the crime that you described. Seventeen years of age, is that correct?

COMMISSIONER McCabe: Uh-huh.

Acting COMMISSIONER DEL VALLE: If we are going to apply that rule, you are going to have a lot of people unemployed that are never able to gain opportunities -- to take advantage of opportunities that may present themselves. So I consider the age and I consider the time that has passed since the offense was committed, and that's why I will favor the motion by Senator -- by Commissioner McCabe.

CHAIRMAN SCOTT: And I appreciate what you are saying, Acting Commissioner Del Valle, and I grappled with that one a little bit as well. There are statutes, and we both know this, we probably voted on a bunch of them when we were in the General Assembly --
Acting COMMISSIONER DEL VALLE: That's what I was thinking when I called her senator.

CHAIRMAN SCOTT: -- that are automatic prohibitions against holding certain kinds of work, and you find that in health care type industries, and where children are involved, and things like that where there's a lot of automatic prohibitions, and we don't have that here, but it seems to me that the General Assembly has given us some guidelines of things to look at, and certainly that's not -- that's not the only convictions in Mr. Cornell's past either, and not the only felony conviction in Mr. Cornell's past.

So I realize it was a long time ago, and I grappled with that, but again, to me, this is the kind of thing, that even though it's not an automatic prohibition from the General Assembly, it's the kind of thing that's very difficult for me to, again looking at it on a case-by-case basis, but the totality of the facts here, this applicant here, it's difficult for me to get past, and I appreciate your comments.

COMMISSIONER COLGAN: I would like to thank everybody who has weighed in on this issue, these
applications -- these permit applications for collateral recovery.

I said earlier it's a fairly new subject matter for us and I think we are kind of grappling with where the lines are -- where to draw the line in terms of who can and who cannot do this work. As you pointed out, Chairman, the ones that have possible reasons to deny the permits come to the Commission, where others don't make it this far along this line of a hearing process.

I am going to come down on the side of this youthful indiscretion argument. You know, 17-year-old kids will do a lot of things that they are not likely to redo as adults when they mature. And because that was 17 years ago, I think while that is a serious crime, no doubt about it, I think that I am going to give the benefit of the doubt. These permits are time based, and people have to come back and be reevaluated at some point. So I would like to give this young man the opportunity to have this job and, you know, have a -- make a living for himself and his loved ones. So that's the side I am going to come down on.

I appreciate the discussion that has
happened in the last couple of weeks back and forth. All of us have individually spoken with one another at different times about how to come to these conclusions and I think it's been helpful to our process.

CHAIRMAN SCOTT: Further discussion?

(No response.)

The motion and second is for revisions as proposed by Commissioner McCabe.

All in favor of the revisions vote aye.

(A chorus of ayes.)

Opposed?

No.

Acting COMMISSIONER MAYE: No.

CHAIRMAN SCOTT: The vote is three to two and the revisions are adopted.

Is there now a motion to approve the order as amended?

Acting COMMISSIONER MAYE: So moved.

Acting COMMISSIONER DEL VALLE: Second.

CHAIRMAN SCOTT: Moved and seconded to approve the order as amended.

Any discussion?

(No response.)
All in favor say aye.

(A chorus of ayes.)

Opposed?

No.

Acting COMMISSIONER MAYE: No.

CHAIRMAN SCOTT: The vote is three to two, and the order as amended is adopted.

I also want to concur with what Commissioner Colgan just said about all of these cases and the others that we are looking at, we are all trying to figure this out as a new subject matter for us to regulate and a new set of regulations there, and I appreciate all the work everybody put into that because I think it's helped to inform these decisions and others that we will make along the line here, too, so I really appreciate all the work that everybody has put into that.

Item CR-5 is Melissa Ann Cobb's application for a Class EE Recovery permit pursuant to Section 45 of the Collateral Recovery Act. ALJ Kirkland-Montaque recommends an order granting the application.

Is there any discussion?
(No response.)

Any objections?

(No response.)

Hearing none, the order is entered.

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

MR. MATRISCH: Nothing further, Chairman.

Thank you.

CHAIRMAN SCOTT: Hearing none, that concludes today's Transportation agenda. (Which were all the proceedings had for the Transportation agenda.)