BEFORE THE
ILLINOIS COMMERCE COMMISSION

BENCH SESSION

(TRANSPORTATION)

Springfield, Illinois

Wednesday, September 21, 2011

Met, pursuant to notice, at 10:30 a.m.
in Hearing Room A, First Floor, Leland Building, 527 East Capitol Avenue, Springfield, Illinois.

PRESENT:

MR. DOUGLAS P. SCOTT, Chairman
Via Audiovisual Teleconference

MS. LULA M. FORD, Commissioner
Via Audiovisual Teleconference

MS. ERIN M. O'CONNELL-DIAZ, Commissioner
Via Audiovisual Teleconference

MR. SHERMAN J. ELLIOTT, Commissioner

MR. JOHN T. COLGAN, Acting Commissioner

SULLIVAN REPORTING COMPANY, by
Carla J. Boehl, Reporter

CSR #084-002710
CHAIRMAN SCOTT: I will start with the Transportation agenda, the Railroad Section. Item RR-1 is Docket Number T10-0128. This item concerns a Stipulated Agreement regarding public safety improvements at a highway-rail grade crossing in Marion County. Staff recommends entry of a Supplemental Order granting additional time associated with the project's completion.

Is there a motion to enter the Supplemental Order?

COMMISSIONER O'CONNELL-DIAZ: So moved.

CHAIRMAN SCOTT: Is there a second?

COMMISSIONER FORD: Second.

CHAIRMAN SCOTT: It's been moved and seconded.

All in favor say aye.

COMMISSIONERS: Aye.

CHAIRMAN SCOTT: Any opposed?

(No response.)

The vote is five to nothing, and the Order is entered. We will use this five to nothing vote for the remainder of the Transportation agenda,
Item RR-2 is Docket Number T11-0056. This is a petition seeking authority to construct railroad tracks across six public roads in Montgomery County. ALJ Duggan recommends entry of an Order authorizing construction.

Is there any discussion?

ACTING COMMISSIONER COLGAN: Mr. Chairman, I would like to have the Staff brief us a little bit on what the nature of the disagreement is here between us and DNR.

JUDGE DUGGAN: Well, DNR simply -- I think their main objection, of course, is they are a state agency and they may question our authority to exert jurisdiction over something that they have. However, our authority is in Section 7-401 that says we have jurisdiction over public roads for the railroad crossings. So they have got in the business of owning a road and they have agreed to have this railroad crossing, so it raises the issue of public safety.

As I say, they filed their exceptions.
They didn't ask to speak here today. I think they could have done that. Whether they chose to object on a formality or a true objection, I don't know. But they are a public road and --

**ACTING COMMISSIONER COLGAN:** Are they disputing that fact that they are a public road?

**JUDGE DUGGAN:** Well, that's where they start out. They say we are not a public road because we are owned by -- because they don't fall under that definition of the highway code, is their argument. But our definition under 7-401 doesn't define public road as necessarily something that falls under the highway code.

And I asked DNR, I said, do you want to brief this before we close the hearing, you know, a full opportunity, and they declined. And you can't read too much into it, but I think really the essence is this, it is a unique situation. When they drafted these statutes, when they drafted the highway code, there are things that aren't anticipated. This is one of the things that is not anticipated, in my mind.
But any time we look at this, we look at the purpose. We start off, of course, with what's the purpose of our statute. The purpose of our statute is extremely clear, that the Commission is authorized and has the duty to look out for the safety of rail crossings, okay.

So when we decide what is a public road within the meaning of Section 7-401, you don't necessarily look at the highway code. It doesn't control. You don't necessarily look at whether it is funded by motor fuel taxes. We look at is it a -- and we are not going to get much closer to any other definition of a public road. This thing is owned by a public agency; it is for a public purpose which is to provide access to a public wildlife area.

ACTING COMMISSIONER COLGAN: And the public is using the area.

JUDGE DUGGAN: And the public is invited without restriction.

So we are not setting a bad precedent, I don't think, because you are going to be hard pressed to find another situation like this. And if
On a practical matter, if you don't --
if we don't have jurisdiction -- and we have to
decide one way or the other, okay. But the signage
we are asking them to put up is minimal, but that's
probably because of the traffic count, etcetera,
factors that the railroad factors into their
recommendation and I just adopted their
recommendation for cross bucks.

But the other thing is, is that I
think that if we take jurisdiction, then the train
has to sound its -- the whistle, and otherwise you
would have got nothing. And you have got hunters
going down possibly at dark, kids coming out at
night. You don't know what you have got here. But
you have a crossing that people go into. There is
going to be 20 trains a day. I think there is no
limit on whether they might be running at night or
not. I don't know.

Night or day, the fact is, if you have
no warning that this is an active crossing and that
there may be a train coming, obviously it is
dangerous. So from a practical standpoint, it is a good idea.

From a precedent standpoint I don't see a downside to it if everything is limited to something totally analogous to this. And from a statutory interpretation standpoint, I think we are on solid ground.

COMMISSIONER ELLIOTT: Was an argument raised about cost and responsibility for maintaining, issues surrounding the grade crossing that was an obligation to DNR if we find that DNR is in fact obligated to do that in this Order?

JUDGE DUGGAN: Well, they made an argument, an alternative argument. The first argument is you don't have jurisdiction because we are not a public road. The second argument was, even if you find we are a public road, we would like you to waive the safety requirements here.

And I think their motivation was, yes, they wanted us to have the most minimum authority over them as possible, okay. And our authority extends that, once we find that this is a public road
and we recommend safety devices, of course, included in those safety devices are advanced warning signs, what they call W10s which says there is a railroad up there, and then cross buck signs.

But I think the railroad signs -- excuse me, the W10s and then -- actually, I think the W10 signs, the ones that are advanced and just says railroad up there, is the only thing in this case that is going to be outside of the railroad's right-of-way authority. There could also be approach grade issues, though, so they have to keep their grade correct and they have to keep these W10 signs maintained, and I believe that is the only thing that DNR would have to do, okay, in this particular case.

They asked us to waive these safety requirements, and I think, once again, the motivation being don't tell us what to do, okay. We don't want you to.

So the answer to your question is that is what they argued, and the problem being two-fold. Number 1, that the statute itself -- their argument really didn't fall within the statute itself. The
statute itself says you can waive the safety requirements if there is no need for the safety requirements.

Well, they have got to keep the approach grade up and they have got to keep the advanced warning signs. And in a situation like this, you need as much notice as possible that there is a track there, and somebody has got to maintain it. Somebody has got to be responsible for it.

So they don't meet the requirements to waive the safety requirement, so they made other arguments that really didn't apply. But they were kind of just saying come on, you know, let us off the hook because there is other reasons, because you don't want to do this.

But as I say, and one of their arguments was that Savatran was going to do the stuff, anyway. That may be the case, but that's really between those two, okay. We can't order Savatran to do that. We can't order Savatran to go on the DNR property and do these things for them.

COMMISSIONER ELLIOTT: So they could make those
arrangements between the two parties, DNR and Savatran, outside of this process.

JUDGE DUGGAN: And they represented they did.

The only difference being this: DNR still has to be primarily responsible, and that's what they wanted to avoid.

COMMISSIONER ELLIOTT: That's the legal responsibility that we are laying out here in this Order.

JUDGE DUGGAN: Right.

COMMISSIONER O'CONNELL-DIAZ: Judge, so if I understand having read your Order, it is the safety, the necessity of the safety devices, that are required to protect the public that are really at stake, that kind of trump the argument of the DNR. Additionally, if DNR is not happy with the results of this Commission entering your Proposed Order, they could appeal that in the normal course of appeals process, is that correct?

JUDGE DUGGAN: Yes.

COMMISSIONER O'CONNELL-DIAZ: Thank you.

CHAIRMAN SCOTT: Any further discussion?
(No response.)

ACTING COMMISSIONER COLGAN: Thank you.

CHAIRMAN SCOTT: Thank you, Judge.

Is there any objection to entering the Order?

(No response.)

Hearing none, the Order is entered.

On to Motor Carriers, Items MC-1 through MC-6 can be taken together. These items are Stipulated Settlement Agreements concerning alleged violations to the Illinois Commercial Transportation Law. In each case our Transportation counsel recommends entry of an Order accepting the Stipulated Settlement Agreement.

Is there any discussion?

(No response.)

Any objections?

(No response.)

Hearing none, the Orders are entered, and the Settlement Agreements are approved.

Item MC-7 is EZ Moving's application for a new Household Goods Property Motor Carrier
Authority. ALJ Duggan recommends entry of an Order approving the application.

Is there any discussion?

(No response.)

Any objections?

(No response.)

Hearing none, the Order is entered, and the application is approved.

Item MC-8 is Stick Towing and Repair's application for a Commercial Relocator's License. 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, and the application is approved.

We have one administrative matter to address. This concerns our Transportation Regulatory Fund 2010 Annual Report. Is somebody from Staff available on this?
MR. MATRISCH: Yes, Chairman, I can answer any questions.

CHAIRMAN SCOTT: Thank you. Is there any questions, any discussion?

(No response.)

Are there any objections to accepting the report and having it sent to the Governor and the General Assembly?

(No response.)

Hearing none, the Report is accepted. It will be sent on to the Governor and the General Assembly.

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

MR. MATRISCH: Nothing further, Chairman.

Thank you.

CHAIRMAN SCOTT: Thank you. And hearing none, that concludes today's Transportation agenda.

TRANSPORTATION AGENDA CONCLUDED