BEFORE THE
ILLINOIS COMMERCE COMMISSION

BENCH SESSION
TRANSPORTATION

Wednesday, October 22, 2014
Springfield, Illinois

Met, pursuant to notice, at 10:30 A.M., at
527 East Capitol Avenue, Springfield, Illinois.

PRESENT:
Douglas P. Scott, Chairman
John T. Colgan, Commissioner
Ann McCabe, Commissioner
Sherina E. Maye, Commissioner
Miguel del Valle, Commissioner

MIDWEST LITIGATION SERVICES, by
Robin A. Enstrom, RPR, CSR
CSR No. 084-002046
CHAIRMAN SCOTT: Is everything ready in Chicago?

JUDGE HILLIARD: Yes, it is, Chairman.

CHAIRMAN SCOTT: Thank you, Judge. Pursuant to the provisions of the Open Meetings Act, I now convene a regularly scheduled Bench Session of the Illinois Commerce Commission.

With me in Springfield are Commissioner Colgan, Commissioner McCabe Commissioner del Valle, and Commissioner Maye. I am Chairman Scott. We have a quorum.

Before moving into the agenda, according to Section 1700.10 of Title 2 of the Administrative Code, this is the time we allow 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 four requests to speak at today's Bench Session.
We will move first to our transportation agenda, and we'll begin with the approval of minutes from our September 18th Bench Session.

Is there a motion to approve the Minutes?

COMMISSIONER COLGAN: So moved.

CHAIRMAN SCOTT: Is there a second?

COMMISSIONER MCCABE: Second.

CHAIRMAN SCOTT: Moved by Commissioner Colgan. Second by Commissioner McCabe.

All in favor say "Aye."

("Ayes" heard.)

CHAIRMAN SCOTT: Any opposed?

(No response.)

CHAIRMAN SCOTT: The vote is 5-0, and the minutes from our September 18th Bench Session are approved.

Turning to the railroad portion of today's agenda, Items RR-1 through RR-5 can be taken together. These items are Petitions for
Authorization to Construct various railway and improvement projects in the Village of Melrose Park, McDonough County, and Cook County.

The ALJ in each case recommends entry of an Order granting the petition.

Is there any discussion?
(No response.)

CHAIRMAN SCOTT: Is there a motion to enter the Orders?

COMMISSIONER MCCABE: So moved.

CHAIRMAN SCOTT: Is there a second?

COMMISSIONER COLGAN: Second.

CHAIRMAN SCOTT: Moved by Commissioner McCabe. Second by Commissioner Colgan.

Any discussion?
(No response.)

CHAIRMAN SCOTT: All in favor say "Aye."
("Ayes" heard.)

CHAIRMAN SCOTT: Any opposed?
(No response.)

CHAIRMAN SCOTT: The vote is 5-0, and the Orders are entered.
We will use this 5-0 vote for the remainder of today's transportation agenda unless otherwise noted.

Item RR-6 is Docket No. T14-0075. This is our Citation against Chicago Terminal Railway for failure to maintain various highway-rail grade crossing surfaces in accordance with the requirements of 92 Illinois Administrative Code Part 1535.203.

ALJ Duggan recommends entry of an Order requiring the Respondent to perform repairs before November 30, 2014, subject to a $500 per day penalty.

Is there any discussion?

(No response.)

CHAIRMAN SCOTT: Are there any objections?

(No response.)

CHAIRMAN SCOTT: Hearing none, the Order is entered.

Item RR-7 is Docket No. T14-0108. This is Canal Barge Company and CSX Transportation's Petition for an Order authorizing the installation of an additional
railroad track at a highway-rail grade crossing in Will County.

ALJ Kirkland-Montaque recommends entry of an Order granting the requested relief.

Is there any discussion?

(No response.)

CHAIRMAN SCOTT: Any objections?

(No response.)

CHAIRMAN SCOTT: Hearing none, the Order is entered.

Items RR-8 and RR-9 can be taken together. These items are Stipulated Agreements seeking authorization for safety improvement projects at highway-rail grade crossings across Illinois.

In each case our transportation Staff recommends entry of an Order granting the requested relief.

Is there any discussion?

(No response.)

CHAIRMAN SCOTT: Any objections?

(No response.)

CHAIRMAN SCOTT: Hearing none, the Orders are entered.
Item RR-10 is Docket No. T14-0097.

This is BNSF Railway Company's Petition for Authorization to install an additional railroad track in Ogle County and for determination of appropriate warning and traffic devices and the division of costs between the parties.

ALJ Kirkland-Montaque recommends entry of an Order granting the requested relief.

Is there any discussion?

(No response.)

CHAIRMAN SCOTT: Any objections?

(No response.)

CHAIRMAN SCOTT: Hearing none, the Order is entered.

Items RR-11 through RR-14 can be taken together. These items are Stipulated Agreements seeking authorization for safety improvement projects at highway-rail grade crossing across Illinois.

In each case our transportation Staff recommends entry of a Supplemental Order granting the requested relief.

Is there any discussion?

(No response.)
CHAIRMAN SCOTT: Any objections?

(No response.)

CHAIRMAN SCOTT: Hearing none, the Orders are entered.


ALJ Kirkland-Montaque recommends entry of an Amended Order correcting Applicant's name in the Order entered on July 30, 2014.

Is there any discussion?

(No response.)

CHAIRMAN SCOTT: Any objections?

(No response.)

CHAIRMAN SCOTT: Hearing none, the Order is entered.

Item MC-2 is Move Within Movers Chicago's Application for a Certificate of Public Convenience and Necessity under the provisions of the Illinois Commercial Transportation Law.

ALJ Duggan recommends entry of an
Order granting the Application.

Is there any discussion?

(No response.)

CHAIRMAN SCOTT: Any objections?

(No response.)

CHAIRMAN SCOTT: Hearing none, the

Order is entered.

Item MC-3 is S & S Towing's
Application for a Commercial Vehicle Relocator's
License pursuant to Section 400 of the Illinois
Commercial Relocation of Trespassing Vehicles
Law, 625 ILCS 5/18(a)-400.

ALJ Kirkland-Montaque recommends entry of an Order granting the Application.

Is there any discussion?

(No response.)

CHAIRMAN SCOTT: Any objections?

(No response.)

CHAIRMAN SCOTT: Hearing none, the

Order is enter.

Item MC-4 is Protective Parking Service Corporation doing business as Lincoln Towing Service's Petition for a relocation towing rate increase.
ALJ Kirkland-Montaque recommends entry of an Order granting the Petition. This item will be held for disposition at a future Commission proceeding. Items MC-5 and MC-6 can be taken together. These items are Stipulated Settlement Agreements concerning alleged violations of 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.)

CHAIRMAN SCOTT: Any objections?

(No response.)

CHAIRMAN SCOTT: Hearing none, the Orders are entered.

Item MC-7 is a Stipulated Settlement Agreement with Protective Parking Service Corporation doing business as Lincoln Towing Service concerning alleged violations of the Illinois Commercial Relocation of Trespassing Vehicles Law.

Our transportation Counsel recommends
entry of an Order accepting the Stipulated Settlement Agreement.

Commissioner del Valle, you had some questions?

COMMISSIONER DEL VALLE: Thank you, Mr. Chairman. I have a couple of questions.

It is my understanding that this is not the first instance in which Protective Parking Services doing business as Lincoln Towing has been assessed civil penalties for alleged violations of the Act and our rules.

In 2010, the Commission assessed over $25,000 in penalties for various violations occurring between 2006 and 2009.

Further, the Commission also ordered that Lincoln Towing, after having admitted to operating without workers' comp insurance for four different periods between September 2001 and March 2009, cease and desist from conducting operations as a commercial vehicle relocator without workers' compensation insurance coverage.

These admissions accumulatively covered more than two-and-a-half years of operating in violation.
The Stipulated Agreement before the Commission today is in response to allegations of similar violations.

My first question is how do these past violations, particularly the fact that Lincoln Towing was cited for operating without workers' comp before, affect the civil penalty assessed, if at all, this time around?

The second question is what procedures or proceedings consider repeat offenses, and do our rules or the law afford any additional consequences for repeat offenses?

CHAIRMAN SCOTT: I believe Attorney Anderson is here.

MS. ANDERSON: Thank you, Commissioner del Valle.

With respect to the penalty proposed in the Settlement Agreement up for the Commission's consideration today -- with respect to the previous Settlement Agreement, the civil penalty that totaled $25,847.50 was calculated purely based on violations related to the use -- the use of, failure to use, or more specific violations related to relocation towing invoices.
In the Order entered in that docket, which was 92 RTV-R Sub 13, the Respondent was ordered to cease and desist from operating as a commercial vehicle relocator without workers' compensation insurance coverage in effect, but it was not specifically included in the civil penalty.

With respect to the civil penalty that's up for the Commerce Commission's consideration today, the penalty is calculated assessing a $75 penalty per day for 62 days of operations as a commercial vehicle relocator without workers' comp insurance.

So whereas the previous Settlement Agreement did not provide for a financial penalty for that specific type of violation, this Settlement Agreement is primarily focused on the days of operations without workers' compensation.

In terms of the Commission's statute and rules and whether they permit or require further penalty for a company that has engaged in repeat violations, the statute, the Illinois Commercial Transportation Law, contains the financial parameters that the Commission has to
follow in terms of assessing civil penalties for commercial vehicle relocators even though they are regulated primarily under Chapter 18a of the Illinois Vehicle Code. The Chapter 18a incorporates the enforcement provisions from the Illinois Commercial Transportation Law. It permits the Commission to assess a penalty of up to $1,000 per violation.

In terms of the Settlement Agreement here, because this is the first Settlement Agreement that the Commission has pursued with this Respondent in terms of a financial penalty concerning operations without workers' compensation insurance, we calculated the penalty at the amount of $75 per violation.

COMMISSIONER DEL VALLE: So they went two-and-a-half years of operating without workers' comp, and there was no penalty assessed between 2001 and 2009. Did the law change, or why wasn't there a penalty assessed but this time there's a penalty assessed?

MS. ANDERSON: There has been a change in the Commission's Administrative Rules.

At the time of the 2010 Settlement Agreement, the
statute and rules did not contain specific provisions requiring commercial vehicle relocators to maintain workers' compensation insurance in effect as part of their requirement to hold a license for commercial vehicle relocating with the Illinois Commerce Commission.

There were amendments to the Commission's Administrative Rules, including an amendment to 92 Illinois Administrative Code Part 1710.22, that went into effect, I believe, on January 1, 2011, which incorporated maintaining continuous workers' compensation insurance compliance as part of the standard for maintaining licensure as a commercial vehicle relocator.

Now that that rule is in place, that is the specific section that the Respondent is admitting to being in violation of in the Settlement Agreement that's up for the Commission's consideration.

That rule was not adopted yet by the Commission at the time of their previous Settlement Agreement.

COMMISSIONER DEL VALLE: But the rule
is in place now?

MS. ANDERSON: Yes, Commissioner.

COMMISSIONER DEL VALLE: And so in the future, a repeat offense would be treated the same way for workers' comp as it's being treated right now?

MS. ANDERSON: In the future --

COMMISSIONER DEL VALLE: Are there any consequences for a repeat offense given that there is a history here that goes back prior to the rule?

MS. ANDERSON: Looking forward, the Commission would have to consider, in terms of settlement, the level of financial penalty to assess against a respondent who has a previous history of violations of this type.

The Commission could also potentially take disciplinary action against a license against a relocator that is in repeat violation.

COMMISSIONER DEL VALLE: Thank you.

CHAIRMAN SCOTT: Is there any further discussion?

(No response.)

CHAIRMAN SCOTT: Is there any
objections to the proposed Stipulated Settlement Agreement?

(No response.)

CHAIRMAN SCOTT: Hearing none, the Order is entered.

Thank you, Counselor.

MS. ANDERSON: Thank you.

CHAIRMAN SCOTT: Item MC-8 is a Stipulated Settlement Agreement with Knight Transportation concerning alleged violations of the Illinois Commercial Transportation Law. Our transportation Counsel recommends entry of an order accepting the Stipulated Settlement Agreement.

Is there any discussion?

(No response.)

CHAIRMAN SCOTT: Any objections?

(No response.)

CHAIRMAN SCOTT: Hearing none, the Order is entered.

We have one item of collateral recovery on today's transportation agenda.

Item CR-1 is Michael Webb's Application for a Class "EE" Recovery Permit
pursuant to Section 45 of the Collateral Recovery Act, 225 ILCS Section 422/45 and 92 Illinois Administrative Code Section 148.50(c).

ALJ Kirkland-Montaque recommends entry of an Order denying the application.

I have proposed edits to the Order. They do not change the ultimate decision to deny the application but broaden the justification to include Commission consideration of Mr. Webb's prior convictions.

In making a determination as to whether we should grant or deny a permit, it appears from both the transcript in this and other similar proceedings that both Commission Staff and the Administrative Law Judge interpret the phrase, quote, "related to the practice of the profession," end quote, contained in Section 80a of the Collateral Recovery Act to mean that the Commission can only consider crimes committed while the applicant was engaged in the physical act of a collateral recovery.

The edits interpret this provision instead to state that the Commission may also take into account convictions for crimes related
to the applicant's ability to execute the practice of or required duties of the profession in a safe and responsible manner among the general public.

The General Assembly can't have meant it to mean just in the commission of the collateral recovery duties because to do so would mean, if a person hadn't done this type of work before and was coming before us for the first time, we couldn't consider any of those types of offenses before, which, to me, seems to be a result that the Assembly couldn't have meant and certainly doesn't protect the public or consumers.

This interpretation will help the Commission to keep those members of the public who come into contact with recovery agents safe and is also consistent with fitness determinations for certification in order professional fields.

The edits appear at page 5 of the PEPO.

And with that, I'll move for adoption of the edits.
Is there a second?

COMMISSIONER DEL VALLE: Second.

CHAIRMAN SCOTT: Second by Commissioner del Valle.

Is there any discussion on the edits?

COMMISSIONER COLGAN: I, Mr. Chairman --

CHAIRMAN SCOTT: Commissioner Colgan.

COMMISSIONER COLGAN: I agree that Mr. Webb's request for a collateral recovery intern permit should be denied by the Commission, but I support the ALJ's order in the -- how it's presented to us in that Order because I believe the Order was written -- Order as written contains the correct analysis of Section 80a of the Collateral Recovery Act.

In my opinion the phrase "a crime that is related to the practice of the profession" refers to conflicts that may arise during the act of repossession. I think the phrase is part of the law in order to deter altercations that might otherwise occur, for example, between the person whose car is being repossessed and the repossession.
repossessor cannot conduct himself in a lawful
and professional manner, then I believe the law
requires the Commission to deny the permit.

The proposed edits, on the other
hand, would require a subjective analysis of
every crime committed by an applicant to
determine whether it is somehow related to the
duties of the repossessor. And, as such, I do
not support the proposed edits.

I believe, however, that because the
record indicates Mr. Webb knowingly
misrepresented his criminal history for the
purpose of obtaining the permit, the permit
should not be granted, and for this reason I
agree with the ultimate conclusion to deny the
permit and will vote to approve the Order.

Thank you.

Commissioner Colgan.

Further discussion on the edits.

Mr. Chairman, may I?

Commissioner Maye.

Thank you.
Thank you for your edits. I wholeheartedly agree, and I do think that there has been, you know, over the last year or so as we've been really looking closely at these cases, kind of a bit of debate about that related to a portion of 80a.

And I think that, at the end of the day as a Commission, we are -- you know, we want to protect our consumers, and I think we do have to take a stringent, closer look at the "related to" and what that means and what that means for the professional who is seeking a permit or a license, in this case.

So I do think that "related to" has more to do with the ability to actually do the profession as opposed to taking the broader approach, and I do agree, you know, with your edits and support them.

CHAIRMAN SCOTT: Commissioner. Further discussion?

(No response.)

CHAIRMAN SCOTT: Motion and second on the edits.

All in favor of the edits say "Aye."
("Ayes" heard.)

CHAIRMAN SCOTT: Opposed?
COMMISSIONER COLGAN: No.
CHAIRMAN SCOTT: The vote is 4-1, and the edits are adopted.
Is there further discussion now?
(No response.)
CHAIRMAN SCOTT: Is there now a motion to enter the Order as amended?
COMMISSIONER MAYE: So moved.
CHAIRMAN SCOTT: Is there a second?
COMMISSIONER DEL VALLE: Second.
CHAIRMAN SCOTT: Moved by Commissioner Maye. Second by Commissioner del Valle.
Any discussion?
(No response.)
CHAIRMAN SCOTT: All in favor of the Order as amended say "Aye."
("Ayes" heard.)
CHAIRMAN SCOTT: Any opposed?
(No response.)
CHAIRMAN SCOTT: The vote is 5-0, and the Order as amended is entered.
Mr. Matrisch, is there any further transportation business to come before the Commission today?

MR. MATRISCH: No, Chairman. Thank you very much.

CHAIRMAN SCOTT: Thank you, sir. Hearing none, that concludes today's transportation agenda.

(Whereupon the transportation agenda was concluded.)
CERTIFICATE OF REPORTER

STATE OF ILLINOIS )
       ) ss.
COUNTY OF SANGAMON )

I, ROBIN A. ENSTROM, a Registered Professional Reporter and Certified Shorthand Reporter within and for the State of Illinois, do hereby certify that the foregoing proceedings were taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

_______________________________
ROBIN A. ENSTROM
Illinois CSR No. 084-002046