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BEFORE THE  
ILLINOIS COMMERCE COMMISSION  
TRANSPORTATION SPECIAL OPEN MEETING  
Wednesday, March 18, 2020  
Chicago, Illinois

Met pursuant to notice at 1:00 P.M., at 160  
North LaSalle Street, Chicago, Illinois.

PRESENT:

- CARRIE ZALEWSKI, Chairwoman
- MARIA BOCANEGRA, Commissioner
- SADZI M. OLIVA, Commissioner
- D. ETHAN KIMBREL, Commissioner
- MICHAEL T. CARRIGAN, Commissioner (via video conference)

SULLIVAN REPORTING COMPANY, by  
BRAD BENJAMIN, CSR  
LICENSE NO. 084-004805

1           CHAIRWOMAN ZALEWSKI: Good afternoon.

2                           Are we ready to proceed in  
3 Springfield?

4           COMMISSIONER CARRIGAN: Chairman, Mike  
5 Carrigan. Yes, we are. I can hear you loud and  
6 clear.

7           CHAIRWOMAN ZALEWSKI: Thank you.

8                           Under the Open Meetings Act, I call  
9 the March 18th, 2020, Special Open Meeting to order.  
10 Commissioners Bocanegra, Kimbrel, and Oliva are with  
11 me in Chicago and at a healthy distance from each  
12 other. And Commissioner Carrigan is joining us from  
13 Springfield. We have a quorum.

14                           Before we proceed, I'd like to  
15 indicate that, due to the emergency measures  
16 implemented in response to the COVID-19 pandemic, the  
17 Governor's Executive Order 2020-07, we expect more  
18 remote participation from the general public. Due to  
19 that, I would ask that every Commissioner -- to state  
20 their name before speaking for the benefit of the  
21 public.

22                           With that, let's continue our meeting.

1                   We have no requests to speak.

2                   We will now move on to our  
3                   Transportation Agenda.

4                   There are no minutes to review on the  
5                   Transportation Agenda.

6                   Under our Railroad items: Items RR-1  
7                   through RR-6 concern various public safety  
8                   improvement projects at railway crossings. The  
9                   Orders authorize the construction or extend project  
10                  completion dates and approve project costs  
11                  apportionment.

12                  Are there any objections to  
13                  considering these items together and approving the  
14                  Orders?

15                  (No response.)

16                  CHAIRWOMAN ZALEWSKI: Hearing none, the Orders  
17                  are approved.

18                  Item RR-7 concerns Docket 6- -- excuse  
19                  me -- Docket T13-0047, which is a complaint against  
20                  Krinos Foods, Inc., regarding alleged damage to  
21                  railroad property or freight. The Order dismisses  
22                  the complaint for lack of jurisdiction.

1                   Are there any objections to approving  
2 the Order?

3                   (No response.)

4           CHAIRWOMAN ZALEWSKI: Hearing none, the Order  
5 is approved.

6                   Under our Motor Carriers items:  
7 Item MC-1 concerns an application for commercial  
8 relocation towing license renewal. The Order grants  
9 the renewal, finding that the applicant meets the  
10 requirements.

11                   Are there any objections to approving  
12 the Order?

13                   (No response.)

14           CHAIRWOMAN ZALEWSKI: Hearing none, the Order  
15 is approved.

16                   Item MC-2 concerns a Stipulated  
17 Agreement concerning alleged violations of the  
18 Illinois Commercial Transportation Law. The Order  
19 accepts the Stipulated Agreement.

20                   Are there any objections to approving  
21 the Order?

22                   (No response.)

1           CHAIRWOMAN ZALEWSKI: Hearing none, the Order  
2 is approved.

3                   Item MC-3 concerns an application for  
4 a common carrier certificate to transport household  
5 goods. The Order grants a temporary certificate,  
6 finding that the applicant meets the requirements.

7                   Are there any objections to approving  
8 the Order?

9                   (No response.)

10           CHAIRWOMAN ZALEWSKI: Hearing none, the Order  
11 is approved.

12                   Item MC-4 concerns a petition by  
13 Northwest Recovery to increase the relocation towing  
14 rate that the Petitioner may charge for light-duty  
15 vehicles. The Commission staff has reviewed the  
16 petitioner's request and has determined that a  
17 requested rate increase is unsupported by the record  
18 but an in- -- by the -- excuse me -- but an increase  
19 to \$216 is reasonable. The Order therefore  
20 authorizes the increase of the relocation towing rate  
21 for light-duty vehicles to \$216.

22                   Are there any objections to approving

1 the Order?

2 (No response.)

3 CHAIRWOMAN ZALEWSKI: Hearing none, the Order  
4 is approved.

5 Under Petitions for Rehearing:  
6 Item PR-1 concerns BNSF's Motion for Rehearing or  
7 Reconsideration in Docket T17-0033. BNSF's motion  
8 requests that the Commission modify or rescind the  
9 Illinois Department of Transportation's, or IDOT's,  
10 motion for rehearing that the Commission granted on  
11 January 8th, 2020.

12 BNSF asserts that IDOT's motion  
13 that -- did not state sufficient grounds for the  
14 Commission to grant rehearing and that the Commission  
15 should rescind its previous ruling on IDOT's motion.  
16 In the alternative, BNSF requests that the Commission  
17 restrict IDOT during rehearing to introducing  
18 cross-examination testimony on project design plans  
19 that were part of the original evidentiary record.

20 The Commission finds that IDOT's  
21 Motion for rehearing met the requirements of the  
22 Commission Rules Part 200.800 and 200.880.

1       Therefore, the Commission should deny the -- BNSF's  
2       Motion for Rehearing or Reconsideration and its  
3       request to restrict the scope of the evidence during  
4       the rehearing and the January 8, 2020, Grant of  
5       IDOT's Motion for Rehearing should not be modified or  
6       rescinded.

7                               Do any Commissioners have any  
8       comments?

9               COMMISSIONER BOCANEGRA: Chair, thank you.  
10       Commissioner Bocanegra here. I do have a few  
11       comments to make on this particular matter.

12                              This afternoon, I respectfully dissent  
13       from the Majority's vote here today. I would grant  
14       BNSF's petition.

15                             Although it is captioned as a request  
16       for rehearing, I would take this as BNSF's appeal  
17       from our last Order, which I note is the last  
18       administrative step before seeking appellate relief  
19       elsewhere.

20                             A few points I would like to make in  
21       support of my dissent: BNSF correctly points out that  
22       IDOT failed to establish sufficient grounds to grant

1 rehearing. IDOT previously was given every  
2 opportunity to provide and present evidence on the  
3 issue of both unreasonable interference with railroad  
4 operations and on the issue of federal preemption,  
5 which is well documented in the transcripts in this  
6 case.

7           In my opinion, BNSF is correct that  
8 IDOT failed to preserve any objections to the extent  
9 it was not given such an opportunity to introduce  
10 such evidence. And under the normal rules of  
11 evidence this constitutes waiver.

12           BNSF correctly points out that IDOT's  
13 assertion that it is simply entitled to determine  
14 which property right it chooses to seek essentially  
15 renders our judicial function meaningless here.

16           While the Act may give authority for  
17 the Commission to ask that an ALJ appear before it to  
18 discuss pending matters, I am not particularly fond  
19 of such a practice. In my entire tenure I have never  
20 seen this occur. Further, as BNSF correctly points  
21 out that it was done without any notice to any party  
22 and without providing any opportunity for any party



1 to respond raises troubling concerns for me both as a  
2 lawyer and as a judge.

3 I am also troubled by the fact that,  
4 at the time the ALJ in this case was permitted to  
5 speak, no new or additional evidence was provided by  
6 any party. The only thing that was introduced to the  
7 Commissioners were the ALJ's remarks.

8 In my opinion, the remarks -- excuse  
9 me. On its face, it appears as though the majority,  
10 in an about face, chose to reverse itself without any  
11 new evidence in hand with which to weigh or  
12 deliberate over. The only thing before the majority  
13 then and before the majority now that was different  
14 was the ALJ's remarks.

15 BNSF correctly points out that the  
16 majority failed to give any reason for its sudden  
17 reversal on January 8th, 2020. It is only now, today  
18 on the record, that the majority has just found  
19 IDOT's motion for rehearing met Rules 200.800 and  
20 200.880. In a conclusory fashion, no reasoning is  
21 still provided.

22 I hold our duty in ensuring that our

1 judicial processes are fair, thorough, and  
2 transparent sacred. And I remain deeply concerned  
3 that it could be argued that the ALJ's remarks on  
4 this matter caused the Commission to consider  
5 extraneous evidence in ruling on IDOT's motion and in  
6 reversing itself.

7           Because BNSF's motion will be denied  
8 today, out of an abundance of caution, in an effort  
9 to be fair and transparent, it bears worth asking  
10 whether a substitution of judge is appropriate in  
11 this case. In this case, I submit that BNSF and the  
12 parties are entitled to a new ALJ based upon the  
13 remarks made, based upon the memo referenced in  
14 BNSF's petition, and due to the valid concerns raised  
15 by BNSF overall in its motion, which include the fact  
16 that no party was notified of the ALJ's appearance.

17           Finally, in addressing BNSF's  
18 alternative relief requested, I further dissent from  
19 the majority and I would grant BNSF's request to  
20 limit the scope of additional evidence to be  
21 introduced from IDOT, or from any party for that  
22 matter, to project design plans only.

1                   For those reasons I respectfully  
2                   dissent. Thank you.

3                   CHAIRWOMAN ZALEWSKI: Thank you, Commissioner  
4                   Bocanegra.

5                   Any other comments?

6                   COMMISSIONER KIMBREL: Yeah. This is  
7                   Commissioner Kimbrel. I'll respond to a few of the  
8                   points that Commissioner Bocanegra made.

9                   First, in regards to IDOT's petition  
10                  for rehearing, I think that we -- this Commission, in  
11                  a majority vote including myself; the current Chair;  
12                  and the past Chair, Commissioner Brien Sheahan, we  
13                  granted that because we weren't -- we want to be  
14                  certain that we got this matter correct. And where  
15                  we're just opening up the record, the judge is going  
16                  to handle it from there.

17                  Regarding the ALJ being given notice  
18                  or a party's being given notice or the practice of an  
19                  ALJ being called before the Commission, I realize  
20                  respectfully that Commissioner Bocanegra is new to  
21                  this commission, relatively new, and that this  
22                  commission may not -- this current makeup of this

1 Commission may not have seen that practice before,  
2 but those of us who've been here for some length of  
3 time are very familiar with ALJs being called up  
4 before this commission. I, being a former ALJ, have  
5 been before this commission, summoned to answer  
6 questions by Commissioners.

7 This isn't new. As far as the  
8 parties -- stakeholder, parties to the docket being  
9 given notice, that's unheard of. We have a -- we  
10 have a meeting; we call in the ALJs up to -- to ask  
11 questions because maybe we don't understand their  
12 decision.

13 So I guess -- the other comment that  
14 was disturbing was that -- the thought that the ALJ  
15 should be -- recuse himself or that we should remove  
16 him. That's pretty disturbing to me.

17 The only thing that happened in this  
18 docket is that the ALJ, as he would, as all ALJs do  
19 with all docketed matters that come up -- well, all  
20 dockets that are on the agenda, they are asked to  
21 provide a memo, which accompanies all their  
22 decisions. That's what Judge Duggan wrote. And when

1 he was called before us, I called him; he explained  
2 his decision.

3 I guess I'll leave it at that.

4 CHAIRWOMAN ZALEWSKI: Thank you, Commissioner  
5 Kimbrel.

6 Does anyone else have anything else to  
7 say?

8 (No response.)

9 CHAIRWOMAN ZALEWSKI: Okay. With no other  
10 comments, we'll proceed to the vote.

11 All those in favor of denying the  
12 Motion for Rehearing or Reconsideration, say "aye."

13 (Chorus of ayes.)

14 CHAIRWOMAN ZALEWSKI: All opposed, say "nay."

15 COMMISSIONER BOCANEGRA: Nay.

16 COMMISSIONER OLIVA: Nay.

17 CHAIRWOMAN ZALEWSKI: The ayes have it, and the  
18 Motion is denied.

19 Okay. So now we're going to call a  
20 vote regarding the scope of the evidence during  
21 rehearing.

22 All in favor of denying the request to

1 restrict the scope of the evidence during the  
2 rehearing, say "aye."

3 (Chorus of ayes.)

4 CHAIRWOMAN ZALEWSKI: All opposed, say "nay."

5 COMMISSIONER BOCANEGRA: Nay.

6 COMMISSIONER OLIVA: Nay.

7 CHAIRWOMAN ZALEWSKI: The ayes have it, and the  
8 request is denied.

9 Okay. Moving on. Under the  
10 Miscellaneous items: Item M-1 concerns the  
11 2021-2025 Crossing Safety Improvement Program 5-Year  
12 Plan that will be submitted to the Governor and the  
13 General Assembly upon Commission approval. The  
14 Report directs the Commission to implement a  
15 five-year planning process for the highway-rail  
16 crossing safety improvement projects.

17 The report represents the Rail Safety  
18 Section's recommended list of highway-rail safety  
19 capital improvement projects and the Commission's  
20 FY 2021-2025 Plan. Among other spending, the report  
21 recommends that over \$258 million from the Grade  
22 Crossing Protection Fund be approved to help local

1 communities and railroads pay for safety improvements  
2 at nearly 1,400 crossing locations.

3 Are there any objections to approving  
4 the Report?

5 (No response.)

6 CHAIRWOMAN ZALEWSKI: Hearing none, the Report  
7 is approved.

8 Item M-2 concerns the Commission's  
9 2019 Annual Report on Accidents and Incidents  
10 Involving Hazardous Materials on Railroads in  
11 Illinois. The Report will be submitted to the  
12 Governor and the General Assembly upon Commission  
13 approval. The Report includes the accidents'  
14 locations, the involved substances and amounts, and  
15 the suspected reason for the accident that occurred  
16 in Illinois during the calendar year 2019.

17 Are there any objections to approving  
18 the Order [sic]?

19 (No response.)

20 CHAIRWOMAN ZALEWSKI: Hearing none, the Report  
21 is approved.

22 This concludes our Transportation

1 Agenda.

2 Judge Teague Kingsley, do we have any  
3 matters to come before the Commission today?

4 JUDGE KINGSLEY: No, Madam Chairman.

5 CHAIRWOMAN ZALEWSKI: Thank you.

6 Finally, I want to thank everyone for  
7 their flexibility as we navigate these unchartered  
8 waters. We're grateful for the Governor's leadership  
9 as evidenced by the recently executed Executive Order  
10 to allow Commissioners to participate in open  
11 proceedings via telephone. Everyone's safety is of  
12 paramount concern.

13 Lastly and equally importantly, I  
14 would like to extend my heartfelt thanks and  
15 appreciation to the Commission's dedicated staff, who  
16 worked tirelessly over the weekend to ensure the --  
17 that the Commission's operations continue.

18 Do any of the Commissioners have any  
19 other business to discuss?

20 (No response.)

21 Please note: The Emergency Special  
22 Open Meeting was noticed for 1:30. So that's when



1 we'll start the Emergency Open Meeting.

2                               With no other objection, this meeting  
3 is adjourned. Thank you.

4   (Whereupon the above  
5   matter was adjourned.)

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