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BEFORE THE  
ILLINOIS COMMERCE COMMISSION  
REGULAR OPEN MEETING  
TRANSPORTATION  
Wednesday, March 9, 2016  
Chicago, Illinois

Met, pursuant to notice, at 10:30 A.M.,  
at 160 North La Salle Street, Chicago, Illinois.

- PRESENT:
- BRIEN J. SHEAHAN, Chairman
  - ANN MCCABE, Commissioner (via telephonically)
  - SHERINA E. MAYE EDWARDS, Commissioner
  - MIGUEL DEL VALLE, Commissioner
  - JOHN R. ROSALES, Commissioner

SULLIVAN REPORTING COMPANY, by  
PATRICIA WESLEY  
CSR NO. 084-002170

1 CHAIRMAN SHEAHAN: Good morning. Are we ready to  
2 proceed in Springfield?

3 EXECUTIVE DIRECTOR SMITH: Yes, we are.

4 CHAIRMAN SHEAHAN: Pursuant to the Open Meeting  
5 Act, I call the March 9, 2016 Regular Open Meeting  
6 of the Illinois Commerce Commission to order.

7 Commissioners del Valle, Edwards and  
8 Rosales are present with me in Chicago. We have a  
9 quorum. Commissioner McCabe is participating by  
10 phone.

11 Commissioner McCabe, are you with us?

12 COMMISSIONER McCABE: Yes, I am.

13 CHAIRMAN SHEAHAN: I move to allow Commissioner  
14 McCabe to participate by phone.

15 Is there a second?

16 COMMISSIONER ROSALES: Seconded.

17 CHAIRMAN SHEAHAN: Any discussion?

18 (No response.)

19 All in favor, say aye.

20 (Chorus of ayes.)

21 Opposed, say no.

22 (No response.)



1                   Commissioner del Valle has questions.

2           Commissioner del Valle.

3           COMMISSIONER del VALLE: Thank you, Mr. Chairman.

4           I have a few quick questions.

5                   We currently have one full-time  
6           federally-certified inspector's position that is  
7           responsible for all of Illinois, and the report  
8           indicates that another inspector is working through  
9           the FRA training process and expected to be  
10          certified in 2016.

11                   Are there any requirements or federal  
12          requirements for the number of certified inspectors  
13          that we need to have on staff?

14          MR. STANTON: Commissioners, this is Mike Stanton  
15          of the Safety Rail Section.

16                   There are no federal requirements for  
17          the number of inspectors in any discipline. That  
18          does state that for employees it's strictly up to  
19          the state to determine the level of personnel  
20          required for each of these disciplines.

21                   Just to clarify, the information that  
22          you read from in the report, we have a second, and

1 that inspector received his federal certification  
2 last week, so now both of our inspectors are both  
3 federally certified.

4 COMMISSIONER del VALLE: Very good. So now we  
5 have two on board?

6 MR. STANTON: That is correct.

7 COMMISSIONER del VALLE: In looking at the  
8 numbers in 2008, we did 17 inspections of  
9 railcars -- 17,000 inspections of railcars, and at  
10 that time we had two inspectors. Were those both  
11 federally certified at that time?

12 MR. STANTON: Yes.

13 COMMISSIONER del VALLE: And so now we are back  
14 to two?

15 MR. STANTON: That's correct. Between 2008 and  
16 2015, one of our inspectors retired and we just were  
17 able to receive permission to hire the second  
18 inspector beginning August 3rd of last year.

19 COMMISSIONER del VALLE: So from 2008, where we  
20 were at 17,000, to 2015, we dropped to 8,000.

21 Will those numbers now go back up for  
22 next year because we will have two inspectors?

1 MR. STANTON: Yes. I anticipate the number of  
2 inspections completed in 2016 will be greater than  
3 they were in 2015. I don't inspect them to meet the  
4 level of 2008 immediately, but as we move forward,  
5 as our second inspector needs more experience, that  
6 number should increase.

7 COMMISSIONER del VALLE: And you are expecting a  
8 sizable increase?

9 MR. STANTON: Yes.

10 COMMISSIONER del VALLE: I know that our  
11 compliance rate -- even though the number of  
12 inspections was lower -- compliance rate improved,  
13 you are indicating in the report that's due to  
14 education awareness.

15 MR. STANTON: That is correct.

16 COMMISSIONER del VALLE: Do you expect that  
17 compliance rate to continue to improve?

18 MR. STANTON: I believe so, both from an employee  
19 standpoint they get training annually from the FRA  
20 and also the outreach that our inspectors are  
21 providing to railroad employees and commercial  
22 employees.

1                   The receivers of these hazardous  
2 material cargos were able to provide those employees  
3 with better education in what they should and should  
4 not be doing when they're receiving these types of  
5 cargo.

6           COMMISSIONER del VALLE: Thank you.

7           CHAIRMAN SHEAHAN: Hey, Mike, in your  
8 professional judgment, how many inspectors do we  
9 really need to cover the fifth largest state in the  
10 country with the second largest rail not working in  
11 the country?

12          MR. STANTON: More than we have.

13   (Laughter.)

14                   I would say for each particular  
15 discipline, we are down on all of our numbers, but  
16 for hazmat, in particular, I would say at least  
17 three, if not four, for the state and for the track  
18 we have inspectors. We used to have three. Three  
19 was the very minimum, I would say four, possibly  
20 five on the track side.

21                   Given the fact that the High-Speed  
22 Passenger Rail Service is due to begin here within

1 the next year-and-a-half, that will provide a  
2 separate set of unique circumstances that will need  
3 to be inspected on a regular basis.

4 Operating practices is one of the  
5 other disciplines. We only have one inspector for  
6 the state, so we need at least two, possibly three,  
7 preferably three.

8 The train patrol went down to one  
9 signal inspector. We had two last month. The end  
10 of February our second inspector retired, so we need  
11 at least three signal inspectors and probably four.  
12 That's a bare minimum in my opinion.

13 CHAIRMAN SHEAHAN: I think the line of  
14 questioning from Commissioner del Valle is apt, and  
15 we have got our Appropriation's Committee hearing  
16 the 7th in the Senate. The House has been  
17 rescheduled, but I'll speak for myself.

18 I think our staffing is definitely  
19 inadequate and, you know, the agencies had obviously  
20 a very severe setback financially. We are trying to  
21 work around that at this point, but I hope that when  
22 we actually work through the issues, we can



1 substantially increase the number of these really  
2 central public safety employees in addition to  
3 pipeline, and police, and others and that the  
4 current situation of employees really is untenable.

5 COMMISSIONER MAYE EDWARDS: Mr. Chairman, may I  
6 ask Mike a question?

7 Good morning, Mike. I know last year  
8 when we discussed this, I specifically asked about  
9 our numbers in comparison to our fellow  
10 Commissioners across the nation who did have  
11 oversight jurisdiction over the railroad as well,  
12 and it seemed that we were, considering where we  
13 are, being, you know, number two in having such a  
14 very large area that we oversee in railroads in the  
15 State of Illinois, that we are lagging quite far  
16 behind our colleagues in other states. Is that  
17 still so?

18 I mean, I would imagine, since you are  
19 saying that we are not at the numbers that you would  
20 recommend where we should be, we are quite still far  
21 behind that.

22 And then my other question is from a

1 liability perspective, I guess I'm just wearing a  
2 lawyer's hat a little bit, and wondering if certain  
3 things are happening or if there are certain  
4 accidents or incidents, and so forth, could we be  
5 held liable from a standpoint if we don't have  
6 adequate staffing?

7 MR. STANTON: The answer to your first question  
8 is, yes, we are still way below what our needs are  
9 certainly in context with other states, given, for  
10 example, California they employ 67 state inspector  
11 disciplines for safety inspections. That's by far  
12 the largest network of state inspectors in the state  
13 and country, but with other states that are of  
14 similar size, Texas, for instance, has the largest  
15 rail network in the country and they have twice the  
16 number of inspectors that we have.

17 Ohio has a very large amount of  
18 network and their inspection rate is almost  
19 one-and-a-half times our size.

20 So, yes, we happen to have the need  
21 for increasing the number of inspectors within the  
22 State of Illinois.

1                   With regard to liability, I hope  
2                   there's no liability attached to it, but certainly  
3                   if a major accident would occur, the NTSB would  
4                   desire to determine that they would need to  
5                   investigate. Part of that investigation could  
6                   result in finding that the State of Illinois'  
7                   inspection program is lacking.

8                   COMMISSIONER MAYE EDWARDS: That's  
9                   nerve-racking.

10                  CHAIRMAN SHEAHAN: Commissioner del Valle.

11                  COMMISSIONER del VALLE: Just a quick comment.

12                  Certainly we support your statement and would  
13                  encourage us as we go through the appropriation  
14                  process, particularly on the day that our  
15                  appropriations get presented before the committee --  
16                  when was that?

17                  CHAIRMAN SHEAHAN: The 2nd --

18                  COMMISSIONER del VALLE: The 2nd.

19                  CHAIRMAN SHEAHAN: The 2nd.

20                  COMMISSIONER del VALLE: -- that we highlight this  
21                  area and that we go on record with the Illinois  
22                  General Assembly has expressed concern.

1                   We agree that the budget is up, but,  
2     as Commissioner Maye indicated, we talked about this  
3     last year and we are talking about it this year, and  
4     probably talk about it next year again, but I think  
5     it's important for the Commission. We have a tight  
6     fiscal situation here.

7                   This is one of those categories that  
8     -- that we can't set aside in terms of expressing  
9     new before the General Assembly, new before the  
10    appropriation process.

11                  I would encourage us to highlight --  
12    you know, you had other things to highlight, that  
13    this be one of the things that we highlight in the  
14    presentation.

15                  CHAIRMAN SHEAHAN: I agree strongly. We need to  
16    make sure that Staff have the resources to do their  
17    jobs.

18                  Any further questions?

19   (No response.)

20                  Without objection then, we'll approve  
21    the annual report.

22                  Item AM-2 concerns the FY 2017 through

1 21 Crossing Safety Improvement Program 5- Year Plan  
2 submitted pursuant to the Motor Fuel Tax Law.

3 Are there any questions regarding  
4 this?

5 Commissioner del Valle.

6 COMMISSIONER del VALLE: Thank you, Mr. Chairman.

7 What did we spend in FY 15?

8 MR. STANTON: FY 15 total obligations were the  
9 amount that the Commission approved was about  
10 \$42 million.

11 COMMISSIONER del VALLE: Where did I get the 31.3  
12 million figure from?

13 MR. STANTON: That may be the obligation that's  
14 so far been spent out or paid out to-date for the  
15 projects that we previously authorized by the  
16 Commission.

17 COMMISSIONER del VALLE: Okay. Then were there  
18 -- there was a fund sweep that took place last  
19 March, right?

20 MR. STANTON: That's correct.

21 COMMISSIONER del VALLE: And how much did we lose  
22 in that sweep?

1 MR. STANTON: The sweep last year took  
2 \$10 million from the Grade Crossing Protection Fund  
3 and part of that legislation included a pay-back  
4 requirement that the \$10 million would be paid back  
5 into the fund by September of this year.

6 COMMISSIONER del VALLE: That's the question.

7 MR. STANTON: The current legislation that was  
8 introduced within the last couple of weeks that  
9 would rescind that pay-back requirement.

10 COMMISSIONER del VALLE: Right. So we have  
11 budgeted for FY 17 39 million -- 39.7 million.

12 MR. STANTON: That's correct.

13 COMMISSIONER del VALLE: And what happens to that  
14 million into those projects if there's another sweep  
15 that takes place as a result of the current  
16 negotiations that at some point take place for this  
17 current fiscal year and how do we prioritize?

18 I know that you indicated that if the  
19 funds aren't available that there won't be a process  
20 for prioritizing.

21 How do you go about doing that and  
22 what projects get put aside or carried over into the

1 following fiscal year?

2 MR. STANTON: Well, the current balance of the  
3 fund is a little over \$36 million. That's what we  
4 have available to us today. Unfortunately, we don't  
5 have an appropriation authority, so we don't really  
6 have anything to spend this fiscal year.

7 What Staff has been doing up till now,  
8 continues to do, is we are working on projects,  
9 preparing agreements and submitting Orders to the  
10 Commission. Those Orders are pending, so we're not  
11 actually submitting them to you until we have  
12 obligation -- excuse me -- appropriation authority.

13 If we get that authority before the  
14 end of this fiscal year, then we will send you a  
15 very large stack of projects for your approval.  
16 If not, if this budget impasse continues and we  
17 don't receive that appropriation authority, then all  
18 those projects that have already been agreed to and  
19 Orders have been drafted, we will continue to hold  
20 those until we get that authority.

21 As we move forward, we still believe  
22 that we have a responsibility to identify safety

1 improvements at crossings around the state, so we  
2 are making those plans and identifying those  
3 locations with people at the local agencies and  
4 railroads to begin that process.

5 So we will be ready to go with more  
6 projects when the time comes and we have the  
7 authority to move forward.

8 If we have to, we'll just bend forward  
9 -- and we don't have as much money as we need this  
10 fiscal year -- then we'll just roll the projects  
11 forward as best we can and doing the priority basis  
12 we will do the lower cost projects, if you will,  
13 installing automatic warning devices across -- not  
14 currently equipped we believe the most priority of  
15 projects and push back the higher dollar projects,  
16 the push projects, let's say move those back.

17 We have been in contact with the local  
18 agency that sponsored the Rich Project, letting them  
19 know what our problem is, what the challenges we are  
20 facing.

21 Financially they understand that we  
22 have local agencies that have the same types of



1 problems, so it's not that there will be a problem  
2 for them to defer these projects to a later date.

3 COMMISSIONER del VALLE: Thank you.

4 CHAIRMAN SHEAHAN: Any other questions?

5 (No response.)

6 Are there any objections to approving  
7 the program plan?

8 (No response.)

9 Hearing none, the plan is approved.

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