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BEFORE THE
ILLINOIS COMMERCE COMMISSION

TRANSPORTATION BENCH SESSION

Chicago, Illinois
April 7, 2010

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

BEFORE:

MR. MANUEL FLORES, Acting Chairman

MS. LULA M. FORD, Commissioner

MS. ERIN M. O'CONNELL-DIAZ, Commissioner

MR. SHERMAN J. ELLIOTT, Commissioner

MR. JOHN T. COLGAN, Acting Commissioner

1 ACTING CHAIRMAN FLORES: Good morning.
2 Pursuant to the provisions of the Illinois Open
3 Meeting Act, I now convene a regularly scheduled
4 bench session of the Illinois Commerce Commission.
5 With me in Chicago are Commissioners O'Connell-Diaz,
6 Elliott, Acting Commissioner Colgan and I am Acting
7 Chairman Flores. Commission Ford is available by
8 phone.

9 Good morning, Commissioner.

10 COMMISSIONER FORD: Good morning.

11 ACTING CHAIRMAN FLORES: By rule we are
12 required to vote on allowing Commissioner Ford to
13 participate by telephone.

14 Is there a motion to approve
15 Commissioner Ford's participation by phone?

16 COMMISSIONER ELLIOTT: So moved.

17 ACTING CHAIRMAN FLORES: Is there a second?

18 ACTING COMMISSIONER COLGAN: Second.

19 ACTING CHAIRMAN FLORES: Its been moved and
20 seconded.

21 All in favor say "aye."

22 (Chorus of ayes.)

1 Any opposed?

2 (No Response.)

3 The vote is 4-0 approving Commissioner
4 Ford's participation by phone.

5 Thank you so much, Commissioner Ford.

6 We have a quorum.

7 We will now begin with the
8 Transportation Agenda.

9 As a different matter, we have minutes
10 to approve from the March 10, 2010 Bench Session. I
11 understand that amendments have been circulated.

12 Is there a motion to accept the
13 amendments to the minutes?

14 COMMISSIONER ELLIOTT: So moved.

15 ACTING CHAIRMAN FLORES: Is there a second?

16 ACTING COMMISSIONER COLGAN: Second.

17 ACTING CHAIRMAN FLORES: Its been moved and
18 seconded.

19 All in favor say "aye."

20 (Chorus of ayes.)

21 Any opposed?

22 The vote is 5-0, the amendments are

1 approved.

2 Is there a motion to approve the
3 minutes as amended?.

4 COMMISSIONER O'CONNELL-DIAZ: So moved.

5 ACTING CHAIRMAN FLORES: Is there a second?

6 COMMISSIONER ELLIOTT: Second.

7 ACTING CHAIRMAN FLORES: Its been moved and
8 seconded.

9 All a favor say "aye."

10 (Chorus of ayes.)

11 Any opposed?

12 The vote is 5-0 approving the minutes.

13 Stating with the Railroad Agenda,

14 Items RR-1 through RR-7 will be taken together.

15 These are Stipulated Agreements for
16 expenditures directed toward improving public safety
17 at designated highway-rail grade crossings across
18 Illinois.

19 Staff recommends entering the Orders
20 approving the Stipulated Agreements.

21 Is there a motion to enter the Order?

22 ACTING COMMISSIONER COLGAN: So moved.

1 ACTING CHAIRMAN FLORES: Is there a second?

2 COMMISSIONER ELLIOTT: Second.

3 ACTING CHAIRMAN FLORES: Its been moved and
4 seconded.

5 All in favor say "aye."

6 (Chorus of ayes.)

7 Any opposed?

8 (No response.)

9 The vote is 5-0. The Orders are
10 entered. We will now use this 5-0 vote for the
11 remainder of the Transportation Agenda unless
12 otherwise noted.

13 Items RR-8 and RR-9 will be taken
14 together. These items are Petitions for additional
15 track and grade crossings in Plainfield. ALJ
16 Kirkland-Montequé recommends entering the Order
17 granting the Petition.

18 Is there any discussion?

19 (No response.)

20 Any objections?

21 (No response.)

22 Hearing none, the Orders are entered.

1 Item RR-10 concerns a Petition to
2 remove the existing grade separation structure
3 carrying Voorhees Street over the exempt Norfolk
4 Southern track and to construct a new roadway on
5 embankment over the existing railroad right of way
6 situated in Danville and apportioning cost thereof.
7 ALJ Kirkland-Montaque recommends entering a
8 Supplemental Order approving the request of the
9 extension of time.

10 Is there any discussion?

11 (No response.)

12 Any objections?

13 (No response.)

14 Hearing none the Supplemental Order is
15 entered.

16 RR-14 concerns a Petition for an Order
17 authorizing the establishment of a new grade crossing
18 at 183rd Street in Tinley Park directing the
19 installation of automatic flashing light signals and
20 gates and dividing the cost of installation among the
21 parties. ALJ Kirkland-Montaque recommends entering
22 the second Supplemental Order requesting additional

1 project completion time.

2 Is there any discussion?

3 (No response.)

4 Any objection?

5 (No response.)

6 Hearing none, the second Supplemental
7 Order is entered.

8 Items RR-12 is a Stipulated Agreement
9 for expenditures directed toward improving public
10 safety at a highway-rail grade crossing in Thayer.
11 Staff recommends entering an Order approving an
12 increase in cost.

13 Is there any discussion?

14 (No response.)

15 Any objection?

16 (No response.)

17 Hearing none, the Order is entered.

18 Item RR-13 is a Stipulated Agreement
19 for expenditures directed toward improving public
20 safety at the Oak Street highway-rail grade crossing
21 in Coal City. Staff recommends entering an Order
22 allowing for supplemental costs and an extension of

1 time.

2 Is there any discussion?

3 (No response.)

4 Any objection?

5 (No response.)

6 Nearing none, the order is entered.

7 We now turn to the Motor Carrier

8 Agenda.

9 Items MC-1 through MC-10 will be taken
10 together. These items all concern Stipulated
11 Settlement Agreements concerning alleged violations
12 of the Illinois Commercial Transportation law. In
13 each matter Staff transportation counsel recommends
14 entering an Order approving the Stipulated Settlement
15 Agreement.

16 Is there any discussion?

17 COMMISSIONER O'CONNELL-DIAZ: Chairman, I don't
18 see Judge Nagel in the room; but I question with
19 regard to MC-1. So if we can hold that for a
20 while -- he is here.

21 I think I just called you Judge Nagel.

22 That could a demotion or a promotion. I don't know

1 which one. Transportation counsel -- yes --
2 Mr. Nagel, with regard to this particular -- Smith
3 movers -- I notice in your memo that there have been
4 two other occasions where this company has been
5 founded in violation of operating without authority.

6 MR. NAGEL: Yes.

7 COMMISSIONER O'CONNELL DIAZ: And so what we
8 are doing here is -- obviously they've been caught
9 again and we're penalizing them for 50 days violation
10 with a penalty of \$5,000. Are we going to be seeing
11 them next spring again or -- and if it's 50 days
12 violation, you know, if they move a couple people,
13 I'm sure they would be making more than \$5,000.

14 How do we make sure that we don't have
15 them coming before us again?

16 MR. NAGEL: Certainly. The Commercial
17 Transportation Law provides for violations or civil
18 penalties between \$100 and \$1,000 per violation.
19 Sections -- well, our -- the Commission's rules
20 provide for informal settlement discussions and where
21 those settlements will result in conserving the
22 resources of the commission and expediting the

1 resolution of these types of issues. We're committed
2 to provide and reduce the penalties. Typically our
3 office takes into consideration several factors which
4 include the past compliance history, the type of
5 violations, the number of the violations, whether
6 these are willful or really more properly
7 characterized as negligent violations, the license
8 holders cooperation with Staff in resolving the
9 dispute, their compliance with -- or the willingness
10 to comply with these regulations in the future as
11 well as the revenues that were -- resulted from the
12 legal operations.

13 COMMISSIONER O'CONNELL-DIAZ: Do we know what
14 those revenues were?

15 MR. NAGEL: I'd have to look at the file. I
16 don't know -- I don't recall off the top of my head.
17 I'd have to do some math by looking at the actual
18 bills in lading. What this proposed settlement does
19 is proposing a \$100 per day of violation which is an
20 escalation from -- initially there was a \$50 per day
21 violation --

22 COMMISSIONER O'CONNELL-DIAZ: But this is their

1 third violation. So I'm kind of missing how they're
2 acting --

3 COMMISSIONER FORD: The first violation was in
4 1997?

5 COMMISSIONER O'CONNELL-DIAZ: This is their
6 third violation.

7 COMMISSIONER ELLIOTT: Yeah, first in '97.
8 It's becoming the cost of doing business.

9 COMMISSIONER O'CONNELL-DIAZ: Well, I'm
10 thinking, too, you know, this \$5,000 although I
11 understand that we're confined to the penalty
12 provisions; but in one day the cost of moving, that
13 could be one move. And if they were operating for
14 50 days.

15 MR. NAGEL: I do believe that the reason for
16 the authority -- the reason the authority went
17 revoked was the failure to have on file workers'
18 compensation coverage. I do believe that that was a
19 failure of the insurance company and not the lapse of
20 coverage for this case. I also recall -- I believe
21 these were moves that were conducted with regard to a
22 Chicago Housing Authority -- on agreement with the

1 Chicago Housing Authority.

2 COMMISSIONER O'CONNELL-DIAZ: Well, I just had
3 questions. I really kind of blindsided you because I
4 didn't let you know so you could have looked more
5 closely at the file. I'm sure that your understanding
6 of the underpinnings of your recommendation are fine.
7 It just struck me that this was a third time up for
8 this company, and given the fact that it's moving
9 season now, that we really need to be making sure
10 that these companies that are authorized by us have
11 the appropriate documentation to have the insurance
12 and that they are actually authorized by us because
13 moving is a very expensive proposition for people
14 and so it did catch my eye.

15 I'm satisfied with your evaluation. I
16 just was curious and I'll take a look at the files so
17 I'm more educated about what occurred, so thank you.

18 MR. NAGEL: Thank you.

19 ACTING CHAIRMAN FLORES: Should we hold this
20 matter?

21 COMMISSIONER O'CONNELL-DIAZ: No, I'm fine.

22 ACTING CHAIRMAN FLORES: Very well.

1 Then again, MC-1 through MC-10.

2 Any further discussion on any of the
3 other matters?

4 (No response.)

5 Any objections?

6 (No response.)

7 Hearing none, the Orders are entered.

8 Item MC-11 concerns an Application for
9 Certificate of Public Convenience and Necessity for
10 Century 1 movers. ALJ Kirkland-Montaque recommends
11 an entry of the Order denying permanent household
12 because of authority of the applicant.

13 Is there any discussion?

14 (No response.)

15 Any objections?

16 (No response.)

17 Hearing none, the Order denying
18 permanent household because of authority is entered.

19 Item MC-12 is an Application for an
20 Operator Employment Permit by Jeffrey Norlander. The
21 Applicant has failed to appear at multiple hearings.
22 ALJ Kirkland-Montaque recommends entering an Order

1 dismissing this Application without prejudice for
2 lack of prosecution.

3 Is there any discussion?

4 (No response.)

5 Any objections?

6 (No response.)

7 Hearing none, the order is entered.

8 Item MC-13 is the Application for an
9 Operator's Employment Permit by Miguel Gomez. ALJ
10 Kirkland-Montaque recommends entering the Order
11 approving the application.

12 Is there any discussion?

13 (No response.)

14 Any objections?

15 (No response.)

16 Hearing none, the order is entered.

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

20 MR. MATRISCH: Nothing further. Thank you.

21 ACTING CHAIRMAN FLORES: Thank you very much.

22 Thank you for the good work.

