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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

1 PROCEEDINGS

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

10 Is there a motion to enter the
11 Supplemental Order?

12 COMMISSIONER O'CONNELL-DIAZ: So moved.

13 CHAIRMAN SCOTT: Is there a second?

14 COMMISSIONER FORD: Second.

15 CHAIRMAN SCOTT: It's been moved and seconded.

16 All in favor say aye.

17 COMMISSIONERS: Aye.

18 CHAIRMAN SCOTT: Any opposed?

19 (No response.)

20 The vote is five to nothing, and the
21 Order is entered. We will use this five to nothing
22 vote for the remainder of the Transportation agenda,

1 unless otherwise noted.

2 Item RR-2 is Docket Number T11-0056.
3 This is a petition seeking authority to construct
4 railroad tracks across six public roads in Montgomery
5 County. ALJ Duggan recommends entry of an Order
6 authorizing construction.

7 Is there any discussion?

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

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

22 As I say, they filed their exceptions.

1 They didn't ask to speak here today. I think they
2 could have done that. Whether they chose to object
3 on a formality or a true objection, I don't know.
4 But they are a public road and --

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

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

14 And I asked DNR, I said, do you want
15 to brief this before we close the hearing, you know,
16 a full opportunity, and they declined. And you can't
17 read too much into it, but I think really the essence
18 is this, it is a unique situation. When they drafted
19 these statutes, when they drafted the highway code,
20 there are things that aren't anticipated. This is
21 one of the things that is not anticipated, in my
22 mind.

1 But any time we look at this, we look
2 at the purpose. We start off, of course, with what's
3 the purpose of our statute. The purpose of our
4 statute is extremely clear, that the Commission is
5 authorized and has the duty to look out for the
6 safety of rail crossings, okay.

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

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

18 JUDGE DUGGAN: And the public is invited
19 without restriction.

20 So we are not setting a bad precedent,
21 I don't think, because you are going to be hard
22 pressed to find another situation like this. And if

1 you do, it fits.

2 On a practical matter, if you don't --
3 if we don't have jurisdiction -- and we have to
4 decide one way or the other, okay. But the signage
5 we are asking them to put up is minimal, but that's
6 probably because of the traffic count, etcetera,
7 factors that the railroad factors into their
8 recommendation and I just adopted their
9 recommendation for cross bucks.

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

20 Night or day, the fact is, if you have
21 no warning that this is an active crossing and that
22 there may be a train coming, obviously it is

1 dangerous. So from a practical standpoint, it is a
2 good idea.

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

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

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

19 And I think their motivation was, yes,
20 they wanted us to have the most minimum authority
21 over them as possible, okay. And our authority
22 extends that, once we find that this is a public road

1 and we recommend safety devices, of course, included
2 in those safety devices are advanced warning signs,
3 what they call W10s which says there is a railroad up
4 there, and then cross buck signs.

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

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

19 So the answer to your question is that
20 is what they argued, and the problem being two-fold.
21 Number 1, that the statute itself -- their argument
22 really didn't fall within the statute itself. The

1 statute itself says you can waive the safety
2 requirements if there is no need for the safety
3 requirements.

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

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

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

22 COMMISSIONER ELLIOTT: So they could make those

1 arrangements between the two parties, DNR and
2 Savatran, outside of this process.

3 JUDGE DUGGAN: And they represented they did.
4 The only difference being this: DNR still has to be
5 primarily responsible, and that's what they wanted to
6 avoid.

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

10 JUDGE DUGGAN: Right.

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

20 JUDGE DUGGAN: Yes.

21 COMMISSIONER O'CONNELL-DIAZ: Thank you.

22 CHAIRMAN SCOTT: Any further discussion?

1 (No response.)

2 ACTING COMMISSIONER COLGAN: Thank you.

3 CHAIRMAN SCOTT: Thank you, Judge.

4 Is there any objection to entering the
5 Order?

6 (No response.)

7 Hearing none, the Order is entered.

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

15 Is there any discussion?

16 (No response.)

17 Any objections?

18 (No response.)

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

21 Item MC-7 is EZ Moving's application
22 for a new Household Goods Property Motor Carrier

1 Authority. ALJ Duggan recommends entry of an Order
2 approving the application.

3 Is there any discussion?

4 (No response.)

5 Any objections?

6 (No response.)

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

9 Item MC-8 is Stick Towing and Repair's
10 application for a Commercial Relocator's License.
11 ALJ Kirkland-Montague recommends entry of an Order
12 granting the application.

13 Is there any discussion?

14 (No response.)

15 Any objections?

16 (No response.)

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

19 We have one administrative matter to
20 address. This concerns our Transportation Regulatory
21 Fund 2010 Annual Report. Is somebody from Staff
22 available on this?

1 MR. MATRISCH: Yes, Chairman, I can answer any
2 questions.

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

5 (No response.)

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

9 (No response.)

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

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

15 MR. MATRISCH: Nothing further, Chairman.
16 Thank you.

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

19 TRANSPORTATION AGENDA CONCLUDED

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