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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

1 PROCEEDINGS

2 CHAIRMAN SCOTT: Is everything ready
3 in Chicago?

4 JUDGE HILLIARD: Yes, it is,
5 Chairman.

6 CHAIRMAN SCOTT: Thank you, Judge.

7 Pursuant to the provisions of the
8 Open Meetings Act, I now convene a regularly
9 scheduled Bench Session of the Illinois Commerce
10 Commission.

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

15 Before moving into the agenda,
16 according to Section 1700.10 of Title 2 of the
17 Administrative Code, this is the time we allow
18 members of the public to address the Commission.
19 Members of the public wishing to address the
20 Commission must notify the Chief Clerk's office
21 at least 24 hours prior to Commission meetings.

22 According to the Chief Clerk's
23 office, we have four requests to speak at today's
24 Bench Session.

1 (See public utility transcript
2 for public comments.)

3 We will move first to our
4 transportation agenda, and we'll begin with the
5 approval of minutes from our September 18th Bench
6 Session.

7 Is there a motion to approve the
8 Minutes?

9 COMMISSIONER COLGAN: So moved.

10 CHAIRMAN SCOTT: Is there a second?

11 COMMISSIONER MCCABE: Second.

12 CHAIRMAN SCOTT: Moved by
13 Commissioner Colgan. Second by Commissioner
14 McCabe.

15 All in favor say "Aye."

16 ("Ayes" heard.)

17 CHAIRMAN SCOTT: Any opposed?

18 (No response.)

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

22 Turning to the railroad portion of
23 today's agenda, Items RR-1 through RR-5 can be
24 taken together. These items are Petitions for

1 Authorization to Construct various railway and
2 improvement projects in the Village of Melrose
3 Park, McDonough County, and Cook County.

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

6 Is there any discussion?

7 (No response.)

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

10 COMMISSIONER MCCABE: So moved.

11 CHAIRMAN SCOTT: Is there a second?

12 COMMISSIONER COLGAN: Second.

13 CHAIRMAN SCOTT: Moved by
14 Commissioner McCabe. Second by Commissioner
15 Colgan.

16 Any discussion?

17 (No response.)

18 CHAIRMAN SCOTT: All in favor say
19 "Aye."

20 ("Ayes" heard.)

21 CHAIRMAN SCOTT: Any opposed?

22 (No response.)

23 CHAIRMAN SCOTT: The vote is 5-0, and
24 the Orders are entered.

1 We will use this 5-0 vote for the
2 remainder of today's transportation agenda unless
3 otherwise noted.

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

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

14 Is there any discussion?

15 (No response.)

16 CHAIRMAN SCOTT: Are there any
17 objections?

18 (No response.)

19 CHAIRMAN SCOTT: Hearing none, the
20 Order is entered.

21 Item RR-7 is Docket No. T14-0108.
22 This is Canal Barge Company and CSX
23 Transportation's Petition for an Order
24 authorizing the installation of an additional

1 railroad track at a highway-rail grade crossing
2 in Will County.

3 ALJ Kirkland-Montague recommends
4 entry of an Order granting the requested relief.

5 Is there any discussion?

6 (No response.)

7 CHAIRMAN SCOTT: Any objections?

8 (No response.)

9 CHAIRMAN SCOTT: Hearing none, the
10 Order is entered.

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

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

19 Is there any discussion?

20 (No response.)

21 CHAIRMAN SCOTT: Any objections?

22 (No response.)

23 CHAIRMAN SCOTT: Hearing none, the
24 Orders are entered.

1 Item RR-10 is Docket No. T14-0097.
2 This is BNSF Railway Company's Petition for
3 Authorization to install an additional railroad
4 track in Ogle County and for determination of
5 appropriate warning and traffic devices and the
6 division of costs between the parties.

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

9 Is there any discussion?

10 (No response.)

11 CHAIRMAN SCOTT: Any objections?

12 (No response.)

13 CHAIRMAN SCOTT: Hearing none, the
14 Order is entered.

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

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

23 Is there any discussion?

24 (No response.)

1 CHAIRMAN SCOTT: Any objections?

2 (No response.)

3 CHAIRMAN SCOTT: Hearing none, the
4 Orders are entered.

5 On to motor carriers. Item MC-1 is
6 Scott Edwards doing business as Sycamore and
7 Suburbs Moving Service's Application for a
8 Certificate of Public Convenience and Necessity
9 under the provisions of the Illinois Commercial
10 Transportation Law.

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

14 Is there any discussion?

15 (No response.)

16 CHAIRMAN SCOTT: Any objections?

17 (No response.)

18 CHAIRMAN SCOTT: Hearing none, the
19 Order is entered.

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

24 ALJ Duggan recommends entry of an

1 Order granting the Application.

2 Is there any discussion?

3 (No response.)

4 CHAIRMAN SCOTT: Any objections?

5 (No response.)

6 CHAIRMAN SCOTT: Hearing none, the
7 Order is entered.

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

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

15 Is there any discussion?

16 (No response.)

17 CHAIRMAN SCOTT: Any objections?

18 (No response.)

19 CHAIRMAN SCOTT: Hearing none, the
20 Order is enter.

21 Item MC-4 is Protective Parking
22 Service Corporation doing business as Lincoln
23 Towing Service's Petition for a relocation towing
24 rate increase.

1 ALJ Kirkland-Montaque recommends
2 entry of an Order granting the Petition.

3 This item will be held for
4 disposition at a future Commission proceeding.

5 Items MC-5 and MC-6 can be taken
6 together. These items are Stipulated Settlement
7 Agreements concerning alleged violations of the
8 Illinois Commercial Transportation Law. In each
9 case our transportation Counsel recommends entry
10 of an Order accepting the Stipulated Settlement
11 Agreement.

12 Is there any discussion?

13 (No response.)

14 CHAIRMAN SCOTT: Any objections?

15 (No response.)

16 CHAIRMAN SCOTT: Hearing none, the
17 Orders are entered.

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

24 Our transportation Counsel recommends

1 entry of an Order accepting the Stipulated
2 Settlement Agreement.

3 Commissioner del Valle, you had some
4 questions?

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

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

12 In 2010, the Commission assessed over
13 \$25,000 in penalties for various violations
14 occurring between 2006 and 2009.

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

22 These admissions accumulatively
23 covered more than two-and-a-half years of
24 operating in violation.

1 The Stipulated Agreement before the
2 Commission today is in response to allegations of
3 similar violations.

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

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

13 CHAIRMAN SCOTT: I believe Attorney
14 Anderson is here.

15 MS. ANDERSON: Thank you,
16 Commissioner del Valle.

17 With respect to the penalty proposed
18 in the Settlement Agreement up for the
19 Commission's consideration today -- with respect
20 to the previous Settlement Agreement, the civil
21 penalty that totaled \$25,847.50 was calculated
22 purely based on violations related to the use --
23 the use of, failure to use, or more specific
24 violations related to relocation towing invoices.

1 In the Order entered in that docket,
2 which was 92 RTV-R Sub 13, the Respondent was
3 ordered to cease and desist from operating as a
4 commercial vehicle relocater without workers'
5 compensation insurance coverage in effect, but it
6 was not specifically included in the civil
7 penalty.

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

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

19 In terms of the Commission's statute
20 and rules and whether they permit or require
21 further penalty for a company that has engaged in
22 repeat violations, the statute, the Illinois
23 Commercial Transportation Law, contains the
24 financial parameters that the Commission has to

1 follow in terms of assessing civil penalties for
2 commercial vehicle relocators even though they
3 are regulated primarily under Chapter 18a
4 of the Illinois Vehicle Code. The Chapter 18a
5 incorporates the enforcement provisions from the
6 Illinois Commercial Transportation Law. It
7 permits the Commission to assess a penalty of up
8 to \$1,000 per violation.

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

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

22 MS. ANDERSON: There has been a
23 change in the Commission's Administrative Rules.
24 At the time of the 2010 Settlement Agreement, the

1 statute and rules did not contain specific
2 provisions requiring commercial vehicle
3 relocators to maintain workers' compensation
4 insurance in effect as part of their requirement
5 to hold a license for commercial vehicle
6 relocating with the Illinois Commerce Commission.

7 There were amendments to the
8 Commission's Administrative Rules, including an
9 amendment to 92 Illinois Administrative Code Part
10 1710.22, that went into effect, I believe, on
11 January 1, 2011, which incorporated maintaining
12 continuous workers' compensation insurance
13 compliance as part of the standard for
14 maintaining licensure as a commercial vehicle
15 relocator.

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

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

24 COMMISSIONER DEL VALLE: But the rule

1 is in place now?

2 MS. ANDERSON: Yes, Commissioner.

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

7 MS. ANDERSON: In the future --

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

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

17 The Commission could also potentially
18 take disciplinary action against a license
19 against a relocater that is in repeat violation.

20 COMMISSIONER DEL VALLE: Thank you.

21 CHAIRMAN SCOTT: Is there any further
22 discussion?

23 (No response.)

24 CHAIRMAN SCOTT: Is there any

1 objections to the proposed Stipulated Settlement
2 Agreement?

3 (No response.)

4 CHAIRMAN SCOTT: Hearing none, the
5 Order is entered.

6 Thank you, Counselor.

7 MS. ANDERSON: Thank you.

8 CHAIRMAN SCOTT: Item MC-8 is a
9 Stipulated Settlement Agreement with Knight
10 Transportation concerning alleged violations of
11 the Illinois Commercial Transportation Law.

12 Our transportation Counsel recommends
13 entry of an order accepting the Stipulated
14 Settlement Agreement.

15 Is there any discussion?

16 (No response.)

17 CHAIRMAN SCOTT: Any objections?

18 (No response.)

19 CHAIRMAN SCOTT: Hearing none, the
20 Order is entered.

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

23 Item CR-1 is Michael Webb's
24 Application for a Class "EE" Recovery Permit

1 pursuant to Section 45 of the Collateral Recovery
2 Act, 225 ILCS Section 422/45 and 92 Illinois
3 Administrative Code Section 148.50(c).

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

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

11 In making a determination as to
12 whether we should grant or deny a permit, it
13 appears from both the transcript in this and
14 other similar proceedings that both Commission
15 Staff and the Administrative Law Judge interpret
16 the phrase, quote, "related to the practice of
17 the profession," end quote, contained in Section
18 80a of the Collateral Recovery Act to mean that
19 the Commission can only consider crimes committed
20 while the applicant was engaged in the physical
21 act of a collateral recovery.

22 The edits interpret this provision
23 instead to state that the Commission may also
24 take into account convictions for crimes related

1 to the applicant's ability to execute the
2 practice of or required duties of the profession
3 in a safe and responsible manner among the
4 general public.

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

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

21 The edits appear at page 5 of the
22 PEPO.

23 And with that, I'll move for adoption
24 of the edits.

1 Is there a second?

2 COMMISSIONER DEL VALLE: Second.

3 CHAIRMAN SCOTT: Second by
4 Commissioner del Valle.

5 Is there any discussion on the edits?

6 COMMISSIONER COLGAN: I, Mr.
7 Chairman --

8 CHAIRMAN SCOTT: Commissioner Colgan.

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

17 In my opinion the phrase "a crime
18 that is related to the practice of the
19 profession" refers to conflicts that may arise
20 during the act of repossession. I think the
21 phrase is part of the law in order to deter
22 altercations that might otherwise occur, for
23 example, between the person whose car is being
24 repossessed and the reposessor. If the

1 repossessor cannot conduct himself in a lawful
2 and professional manner, then I believe the law
3 requires the Commission to deny the permit.

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

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

17 Thank you.

18 CHAIRMAN SCOTT: Thank you,
19 Commissioner Colgan.

20 Further discussion on the edits.

21 COMMISSIONER MAYE: Mr. Chairman, may
22 I?

23 CHAIRMAN SCOTT: Commissioner Maye.

24 COMMISSIONER MAYE: Thank you.

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

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

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

19 CHAIRMAN SCOTT: Commissioner.

20 Further discussion?

21 (No response.)

22 CHAIRMAN SCOTT: Motion and second on
23 the edits.

24 All in favor of the edits say "Aye."

1 ("Ayes" heard.)
2 CHAIRMAN SCOTT: Opposed?
3 COMMISSIONER COLGAN: No.
4 CHAIRMAN SCOTT: The vote is 4-1, and
5 the edits are adopted.
6 Is there further discussion now?
7 (No response.)
8 CHAIRMAN SCOTT: Is there now a
9 motion to enter the Order as amended?
10 COMMISSIONER MAYE: So moved.
11 CHAIRMAN SCOTT: Is there a second?
12 COMMISSIONER DEL VALLE: Second.
13 CHAIRMAN SCOTT: Moved by
14 Commissioner Maye. Second by Commissioner del
15 Valle.
16 Any discussion?
17 (No response.)
18 CHAIRMAN SCOTT: All in favor of the
19 Order as amended say "Aye."
20 ("Ayes" heard.)
21 CHAIRMAN SCOTT: Any opposed?
22 (No response.)
23 CHAIRMAN SCOTT: The vote is 5-0, and
24 the Order as amended is entered.

1 Mr. Matrisch, is there any further
2 transportation business to come before the
3 Commission today?
4 MR. MATRISCH: No, Chairman. Thank
5 you very much.
6 CHAIRMAN SCOTT: Thank you, sir.
7 Hearing none, that concludes today's
8 transportation agenda.
9 (Whereupon the transportation
10 agenda was concluded.)
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