

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

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| City of Rochelle, an Illinois municipal corporation | : | |
| Petitioner, | : | |
| | : | |
| v. | : | |
| | : | |
| Ogle County, Illinois; Illinois Department of Transportation; The | : | |
| Illinois State Toll Highway Authority; Union Pacific Railroad | : | T04-0071 |
| Company; and The Burlington Northern and Santa Fe Railway | : | |
| Company. | : | |
| Respondents. | : | |
| | : | |
| Petition for an Order authorizing three (3) new at grade crossings | : | |
| of the City of Rochelle Streets and one (1) new at grade crossing | : | |
| of Ogle County Highway 17 (Steward Road), an Ogle County | : | |
| highway, with a track belonging to the City of Rochelle, Illinois, and | : | |
| directing the installation of crossing protection. | : | |

SUPPLEMENTAL ORDER

PROCEDURAL HISTORY

On May 17, 2005, the Illinois Commerce Commission (Commission) entered an Order authorizing four new at-grade crossings and a grade separated crossing under Interstate Route 88, all in Ogle County, Illinois to allow the extension of a railroad track owned by the City of Rochelle. Due to the proximity of two of the new at-grade crossings to each other and the proximity of the roadway to the track it was not practical to install automatic flashing lights and gates at those two crossings. Rather, passive reflective signage was ordered along with a requirement for flaggers at the crossings. Passive signage and flagging were also deemed sufficient for a third at-grade crossing as it was anticipated that crossing would be only minimally utilized. The fourth newly authorized at-grade crossing became unnecessary when funding was made available for a grade separation which was constructed as authorized by the Commission Order in docket T08-0116.

On December 14, 2018, the City filed a Petition to Reopen and Issue a Supplemental Order modifying the signage and flagger requirements. The changes were requested based on the experiences and practicalities of operating on the track since the 2005 Order. After the Petition for Supplemental Order was filed, the City along with its contractual railroad operator met at the site to confer with The Burlington Northern and Santa Fe Railway Company (BNSF), Union Pacific Railroad Company (UP), and Railroad

Safety Specialists of the Commission's Rail Safety Division to consider what changes could be jointly agreed. Those agreed changes are as stated and required herein.

As noted, the City owns the track and has received authority from the Surface Transportation Board to operate as a rail carrier. The City has contracted with a third-party rail operator to perform day to day rail carrier functions for the City. The City track connects with BNSF and UP tracks. The City operator may move its own railcars or railcars owned by other rail carriers or private entities to and from shippers located along the track.

Pursuant to notice given in accordance with the Law and the rules and regulations of the Commission, a duly authorized Administrative Law Judge (ALJ) of the Commission conducted a public hearing by video and/or telephone on June 26, 2024. The City of Rochelle, UP and BNSF all appeared by counsel. Staff of the Railroad Safety Section of the Transportation Division of the Commission (Staff) also appeared.

Ogle County, Illinois, the Illinois Department of Transportation (IDOT), and the Illinois State Toll Highway Authority (Tollway) were served with notice of the hearing but did not appear as the issues raised and relief requested by the Supplemental Petition do not concern them. Ogle County had jurisdiction over pertinent roadways, Caron Road and Steward Road, at the time of the 2005 Order but jurisdiction has since been transferred to the City of Rochelle. The Tollway and IDOT were previously interested in requested extension of the City of Rochelle track under Interstate Route 88 Tollway. That extension has been installed. They have no direct interest in the present Supplemental Petition for modification of at-grade crossing signage and flagging procedures. However, it would not be proper to dismiss them as parties as they are parties subject to terms of the original Order.

UP and BNSF operated on the City track at the time of the original Petition. They remain active parties at this time because they may operate on the City track and, therefore, have an interest in the protective devices and flagging procedures.

At the conclusion of the hearing on June 26, 2024, the record was marked "Heard and Taken."

THE EVIDENCE

Location and Configuration of the 3 At-Grade Crossings

Pursuant to the authority granted in the 2005 Order, the City installed a 9,900-foot track extension mostly along the west side of and parallel to S. Caron Road. S. Caron Road is a two-lane concrete road which, in pertinent part, runs in a generally north-south direction through an industrial area south of First Avenue/ Creston Road. The three new at-grade crossings installed as authorized by the 2005 Order are in this section of S. Caron Road.

The northernmost of the three crossing begins at what was the then existing terminal point of the City track on the east side of S. Caron Road. The extension crosses over the roadway at an angle from the east side of S. Caron Road to the west side of S. Caron Road. It is designated as AAR/DOT #926122P. beginning at a point 3,200 feet south of the east-west oriented First Avenue/ Creston Road and approximately 870 feet north of east-west oriented Steam Plant Road.

The remaining 9,900 feet of the main line of the extension was installed with the nearest rail approximately eight feet west of and parallel to S. Caron Road. The proximity of the track extension to S. Caron Road and the skew of the track to the road limit options for installation of flashing lights and gates.

The second crossing is at Steam Plant Road, an east-west road approximately 870 feet south of the first crossing. Steam Plant Road intersects with S. Caron Road. The track was installed approximately eight feet west of the curb of the intersection. It is designated as AAR/DOT #926124D. Since it is only 870 feet between the northern S. Caron Road crossing, and the Steam Plant Road crossing, in most cases, a single train can be partially on both City track crossings at the same time.

West of the City extension track are three BNSF mainline tracks which run parallel to the extension. The BNSF tracks also cross Steam Plant Road west of the extension crossing with the closest BNSF track sixty-five feet (track center line to track center line) from the City track. The BNSF and City extension crossings are so close that a semi-tractor and trailer can be partially on each crossing at the same time. The three track BNSF crossing is protected by flashing lights and gates.

The eight-foot distance between the S. Caron Road curb and the extension track over Steam Plant Road does not allow for the structural abutments necessary for installation of flashing lights and gates. The eight-foot distance is also insufficient room for the crossbuck with Yield sign for traffic traveling west on Steam Plant Road. Rather, a crossbuck sign was installed on the west side of the track facing westbound traffic. The Yield sign for westbound traffic was not posted. For eastbound traffic, the crossbuck with Yield sign was posted but as discussed below, the City requests authority to remove that Yield sign.

Travelling south, the extension passes under Interstate Route 88 and then crosses under a grade separation at east-west oriented Steward Road. The third grade crossing is between those two grade-separated crossings. An industrial spur track was installed over S. Caron Road from the extension track on the west side of the road to the east side of S. Caron Road. The spur line allows rail service to an industry at the location. It is designated as AAR/DOT #933194K. The spur track is very minimally utilized. It is presently used only by the City track operator to serve one industry.

There are no other grade crossings south of this spur track.

Warning Devices and Flagging Required by 2005 Order

The 2005 Order required that:

“...the City shall install and thereafter maintain the track, crossing surface, passive warning signs (reflectorized crossbuck with “Yield”), railroad advance warning signs and highway pavement marking as set forth in Finding 3 herein and in accordance with 92 Ill. Adm. Code Part 1535, and the City shall provide Flagmen at each of the grade crossings when in use by the City’s operator, and a bulletin to that effect to City rail line employees shall issue and a copy of said bulletin shall be mailed via certificated mail to the Commission’s Transportation Director of Processing, 527 East Capitol Avenue, Springfield, IL 62701”

Potential ambiguity in the Ordering paragraph and intended flagging specifics are clarified in Finding 6 which states in part:

“[T]he City’s design plans for constructing the grade crossings and warning devices include . . . passive warning signs (reflectorized crossbuck signs with “Yield”), railroad advance warning signs, highway pavement marking and flagmen at each of the grade crossings when in use by the City’s operator; one flagman on either side of the crossing, and the flag person on the side with BNSF tracks shall be on the far west side of the City lead tracks and BNSF tracks”

The Finding clarifies that the Order is to be read to require the signage be installed at each crossing. The flagging specifics in the Finding clarify the intent of the Ordering paragraph.

Now, the City requests that the signage and flagging provisions of the Order be modified.

Requested Signage Modifications

Remove Yield Sign – Eastbound on Steam Plant Road

The 2005 Order requires reflectorized crossbuck with “Yield” sign at each crossing. The City requests that the “Yield” sign not be required on the approach traveling east on Steam Plant Road toward the City extension track crossing.

A Yield sign was placed in advance of the City extension crossing, east of the gated and signalized BNSF crossing. As noted, the BNSF and City extension crossings at Steam Plant Road are so close that a semi-tractor and trailer can be partially on each crossing at the same time. This means that, if a vehicle traveling on Steam Plant Road

east toward S. Caron Road is required to Yield to S. Caron Road traffic, the end of the vehicle may be sitting on the BNSF track and under the BNSF crossing gates.

The Yield sign caused confusion for drivers, particularly large semi-trucks. There were a number of close calls at the BNSF mainline crossing and the area in between the BNSF crossing and the City tracks where longer trucks would slow to yield or stop as they approached S. Caron Road and were stuck on one set of tracks or the other when a train approached.

Removing the Yield sign will allow the vehicle the right-of-way to exit off of Steam Plant Road and onto S. Caron Road since there are stop signs for traffic traveling north or south on S. Caron Road. The crossbuck sign would remain in place on each side of the crossing.

Remove Yield Sign /Authorize Crossbuck West of Steam Plant Road Track

As noted, the crossbuck sign intended for westbound traffic on Steam Plan Road was placed west of the track facing east, since there was not enough room to post it between the track and the S. Caron Road curb. Also, no Yield sign was ever posted facing westbound traffic. The City requests that placement of the crossbuck west of the crossing without a Yield sign be authorized.

Requested Flagging Procedure Modifications and Clarifications

When the parties and Staff conferred they discussed both signage and flagging issues. Discussions on flagging issues included consideration of the use of a single flagger at the two S. Caron Road Crossings, and the potential for the flagger stationed on the east side of the Steam Plant Road crossing to proceed to flag at the northern crossing on S. Caron Road for trains traveling north from Steam Plant Road. If the east flagger proceeded to flag at the northern crossing, the flagger may have already warned traffic and the roadway may be clear by the time the train arrived, which could allow the train to proceed without stopping. As the parties and Staff conferred, consideration was also given to the fact that flaggers may arrive by various means and at various times.

Ultimately, however, the flagging procedures should be the same no matter when or how the flaggers arrive. It was also determined that no specific authority was needed for the east flagger at Steam Plant Road to proceed to flag at the northern crossing on S. Caron Road when the flagging duties were completed at Steam Plant Road. It was also concluded that no specific additional authority was needed for the train to proceed through the northern crossing on S. Caron Road Crossing without stopping if the flagger were able to signal it was safe to proceed.

However, as there appeared to be good reason to modify the existing Order, it also appeared that clarification and some specifications were advisable. Accordingly, the City along with UP, BNSF and the Commission's Rail Safety Staff, have agreed to recommend

that the following clarified and modified procedures be approved and Ordered by the Commission.

CROSSING AND FLAGGING PROCEDURES- Revised 2024
For City of Rochelle City Industrial Track

The following provisions should apply at each crossing:

(A) The train is required to stop at each crossing at least 5 to 10 feet prior to the point where the track first crosses with any part of the Roadway, as the "Roadway" is defined in 92 Ill. Admin. Code 1535.100 – Definitions:

"Roadway" means that portion of a street or highway improved, designed, or ordinarily used for vehicular travel."

EXCEPT if a flagger at the crossing performing flagging duties as the train approaches has already communicated to the engineer of a train that it is safe to proceed, then the train may proceed without stopping.

(B) A flagger is required to be appropriately equipped, as that term is defined in 49 CFR Part 234.5 to perform the flagging operation.

(C) Any railroad operating through any of the crossings on which flagging is required shall be responsible to arrange for the flaggers for its operations at those crossings and shall follow the procedures as stated herein. A railroad may enter into agreements with others to provide the flaggers and perform the required flagging.

Northern and Southern Crossings on S. Caron Road

At the northern crossing on S. Caron Road, designated as AAR/DOT #926122P, and the southern crossing on S. Caron Road designated as AAR/DOT #933194K, the use of a single flagger is authorized. When the flagger is in position, appropriately equipped, the flagger should proceed to warn northbound and southbound vehicle traffic of the presence of the train, and signal or otherwise communicate to the engineer when it is safe to proceed. The flagger should continue to warn traffic as the train passes through the crossing until the lead car, whether locomotive or other railcar, has fully passed through the Roadway and is completely outside of the Roadway.

Steam Plant Road - Train Traveling North or South

At Steam Plant Road crossing, designated as AAR/DOT #926124D, 2 flaggers are required. One appropriately equipped flagger should be in position east of the crossing to stop traffic on S. Caron Road from entering onto Steam Plant Road.

A second appropriately equipped flagger should be in position west of the BNSF crossing to stop all eastbound traffic at a point a safe distance from the BNSF crossing gates.

The east flagger should signal or otherwise communicate to the engineer when it is safe to proceed, after:

1. Both flaggers have assured that all traffic between the City track crossing and the BNSF crossing on Steam Plant Road has been cleared out, and
2. The west flagger indicates to the east flagger that the flow of eastbound traffic has stopped; and
3. The east flagger has observed vehicle traffic seeking to enter onto Steam Plant Road has stopped.

The east flagger should continue to warn traffic as the train passes through the crossing until the lead car has fully passed through the crossing and is completely outside of the Roadway.

The west flagger should continue flagging until the train has fully passed through the Roadway at the City crossing, and the flagger has determined there is not another train within sight approaching the City extension crossing or the BNSF crossing.

Responsibility for Effectuation of Flagging Procedures

Any railroad operating through any of the crossings on which flagging is required shall arrange for the flaggers for its operations at those crossings and shall follow the "Crossing and Flagging Procedures - Revised 2024" – For City of Rochelle City Industrial Track" as stated above. The City shall provide the Crossing and Flagging Procedures required herein in writing to any entity which will be operating through those crossings. A copy of the written statement of Crossing and Flagging Procedures that the City provides to entities which will be operating through those crossings shall be sent by certified mail, or other equally verifiable documented delivery, to the Commission's Transportation Director of Processing, 527 East Capitol Avenue, Springfield, IL 62701.

Nothing in this Order is intended to limit any agreement a railroad may make with others to provide the flaggers and perform the required flagging. Nothing in this Order is intended to restrict the City from determining the terms and conditions of operating on its track.

Staff Position

Staff has no objection to requiring implementation of the crossing and flagging procedures as set out in the prefatory portion of this Order. Staff concurs that the YIELD signs at the Steam Plant Road crossing should not be present due to the confusion and unsafe conditions found when they were in place; and Staff agrees that the Crossbuck sign for westbound traffic at the City crossing should be installed on the west side of the track facing westbound traffic.

FINDINGS AND ORDERING PARAGRAPHS

The Commission, having given due consideration to the entire record in this matter, finds that:

- (1) The Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (2) The recitals of fact as set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (3) The crossing and flagging procedures should be modified and Ordered as specified in the prefatory portion of this Order; the procedures should be communicated, implemented, and enforced as set out in the prefatory portion of this Order;
- (4) The requirement of the original Order for "Yield" signs at the City track crossing with Steam Plant Road should be modified to omit the requirement for "Yield" signs for both the westbound and eastbound traffic; the requirement of the original Order for placement of crossbuck signs should be modified to require that the crossbuck sign for westbound traffic through the City track be installed on the west side of the City track facing east;
- (5) All other terms and conditions of the original 2005 Order should remain in full force and effect except as herein modified.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the crossing and flagging procedures for the at-grade crossings on S. Caron Road designated as AAR/DOT #926122P and AAR/DOT #933194K, and that the crossing and flagging procedures for the at-grade crossing with Steam Plant Road designated as AAR/DOT #926124D, all in the City of Rochelle, Illinois, shall be as set out in the prefatory section of this Order, and shall be communicated, implemented, and enforced as set out in the prefatory portion of this Order, and that the requirements previously Ordered in this docket are modified to that extent.

IT IS FURTHER ORDERED that the requirement of the original Order for "Yield" signs at the City track crossing with Steam Plant Road is hereby modified to omit the requirement for "Yield" signs for both the westbound and eastbound traffic, and the requirement of the original Order for placement of crossbuck signs is hereby modified to require that the crossbuck sign for westbound traffic through the City track be installed on the west side of the City track facing east.

IT IS FURTHER ORDERED that all other terms and conditions of the original Order, May 17, 2005, are hereby affirmed and shall remain in full force and effect except as herein modified.

IT IS FURTHER ORDERED that this is a Final Order which terminates the proceeding as contemplated by Section 3-101 of the Administrative Review Law (735 ICLS 5/3-101); Administrative Review of Final Orders is subject to the rehearing requirement of 83 Ill. Adm. Code 200.880(d) and subject to 625 ILCS 5/18c-2110, the statutory provision for rehearing, and governed by Sections 2201 through 2206 of the Illinois Commercial Transportation Law (625 ILCS 5/18c) and is subject to the Administrative Review Law to the extent made applicable in those sections.

By Order of the Commission this 24th day of July 2024.

(Signed) DOUGLAS P. SCOTT
CHAIRMAN