

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the County of)	FORMAL COMPLAINT NO. 1196
Franklin, Nebraska, Complainant,)	
vs. Burlington Northern Railroad)	COMPLAINT SUSTAINED
Company, Defendant.)	
)	ENTERED: August 13, 1985

APPEARANCES:

Appearing for Complainant:
Patrick A. Duncan
Attorney at Law
Box 207
Franklin, Nebraska 68939

Appearing for Defendant:
Larry L. Ruth
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1000 NBC Center
Lincoln, Nebraska 68508

BY THE COMMISSION:

OPINION AND FINDINGS:

By Formal Complaint filed May 22, 1985, the County of Franklin, Nebraska, seeks to relocate a portion of public road for the safety and convenience of the public. Notice and copies of this formal complaint were sent to the various officers and attorneys of the defendant pursuant to the rules and regulations of this commission.

On or about July 8, 1985, the secretary of this commission sent a letter by certified mail to all parties interested in this proceeding giving them notice that the hearing would be held on July 19, 1985 in the District Courtroom, Franklin County Courthouse, Franklin County, Nebraska. Hearing was held on that date before Commissioner Eric Rasmussen, presiding. Prior to the hearing, the defendant amended their answer by striking out the allegation that the proposed crossing is unsafe, substituting the new language that the proposed crossing is of a lesser safety level than the current crossing.

Complainant called as its first witness, Wayne Bach, Franklin County Highway Superintendent, who testified that he is in charge of maintenance of roads and bridges in Franklin County and makes bridge inspections, provides maintenance of all roads and construction. He is very familiar with proposed project to relocate a portion of public road and to relocate a railroad crossing near Riverton, Nebraska. He explained that the old crossing was designated as R083 and had an average traffic count daily of 220 cars. He explained with pictures and maps how the existing road approaches a bridge crossing over the Republican River. The old roadway coming off of Highway 136 going down a steep hill makes a turn of almost 90 degrees going under the railroad tracks and right onto the river bridge and across the river. He explained how dangerous this road was with the sharp turn under an old railroad bridge with only a 15 foot overhead clearance. He explained that he has inspected the river bridge many

times and with pictures pointed out the bridge deficiencies in that it is only 18 feet wide and is in very poor condition. The center pier has deteriorated to almost nothing and the floor of the bridge is cracked to a very critical degree. Pictures show the deteriorated condition. He stated that the present bridge does not meet minimum Nebraska standards. He explained that in his opinion, the only way they could meet minimum standards is to build the proposed new bridge. If the new bridge was placed where the old bridge is now located, traffic would funnel in under the railroad overhead bridge which is only 18' 5" wide, causing a hazardous condition.

He explained that the Federal Highway Administration funds approximately 80 percent of the bridge and 75 percent of the dirt work. The county will furnish 15 percent of the funds and the state 5 percent. The county will also fund 25 percent of the dirt work. He explained that they had to meet the minimum Federal standards to receive Federal funding. He explained further that the State Department of Roads had issued minimum design standards which must be met in a project of this type. The cost of the entire project would be \$405,000 to \$450,000. The county's share would be around \$60,000. He explained that the county could not take on a project of this size by itself and would need Federal funding. On cross examination, Mr. Bach testified that the present crossing is a grade separation crossing or an underpass while the proposed crossing will be an at grade crossing and admitted that it would be more likely that a vehicle-railroad accident could happen on the at grade crossing rather than the grade separation crossing. Mr. Bach testified that there is a real danger at the present crossing because of the ice on the steep hill which approaches the sharp turn under the railroad bridge. There is no room for cars to meet under the railroad bridge. He explained that some trucks had been turned back from crossing the river bridge because the floor is virtually ready to fall in. He explained that if anything should happen to the present old bridge there would be a detour of approximately 23 miles for heavy equipment and trucks and 10 miles for motorized vehicles. He explained that as far as he knew, the defendant was not spending any money on this project.

Mr. Bruce Raddadz, the registered professional engineer, testified that he is familiar with the present problem of relocating the railroad crossing near Riverton, Nebraska. This witness testified concerning the basic design of the proposed new road and bridge. Mr. Raddadz explained that a project must meet design criteria and standards provided for railroad-highway grade crossing projects or the project would not be approved by the State of Nebraska.

He explained that this project has been approved for funding. He testified that based on his training and experience and personal observations, he is of the opinion that the proposed crossing would provide an adequate level of safety to the traveling public. He testified that the present road and bridge is practically a blind corner, a very short radius with poor visibility and with a steep grade where there can be ice and other hazards for that crossing. The new proposed road would cross the river at nearly 90 degrees.

There would be a 50 mile per hour design curve that then intersects at the grade crossing with the railroad and connects onto Highway 136. He explained the fill and earth moving project that would be necessary for the new road and river bridge and crossing. The witness testified that having reviewed the plans for the new road and river bridge, that based on his knowledge as an engineer, it was his opinion that the design standards of both State and Federal were complied with in all respects.

The next witness was Mr. Ellis Tompkins, Railroad Liason Engineer for the State of Nebraska, who testified that his duties provide for the control of all of the State and Federal funds, railroad safety funds which are utilized for grade separation structures, installation of crossing warning devices, and other types of safety projects. His office handles all agreements between the State of Nebraska and railroads, aiding the cities and counties in highway construction projects including railroad crossings. He explained that cross-buck signs would be necessary along with advice warning signs on the approaches to the crossing. He explained that his office has information which indicated there is less than one train per day on the railroad line involved and the speed limit is 35 miles per hour. In his opinion, the proposed railroad crossing would not provide any unreasonable risk to the traveling public. He stated that with the low volume of one train or less per day and only 220 motor vehicles per day that this crossing would have a low priority of ever having warning devices installed at this crossing.

Mr. Stenstrom, Regional Engineer for the Defendant, Burlington Northern Railroad Company, testified that the reason for not approving this crossing was that presently there is a grade separation where the railroad goes over the county road and now the county is proposing to build a new grade crossing at a new location which is at grade. Therefore, in the opinion of the railroad, there is an increase in the hazard at that crossing. Also, the railroad is opposed to funding any of this proposed grade crossing. The Defendant's position is that the railroad is generally opposed to removing grade separation crossings and replacing them with at grade crossings because of the increased exposure that it gives to the railroad.

DISCUSSION

The instant application is governed by Section 75-410, R.R.S., 1943, as amended, which reads as follows:

"Crossings: Jurisdiction of Commission. The commission shall have jurisdiction over all crossings outside of incorporated villages, towns, and cities, both public and private, across, over or under all railroads in the state, except as provided in Section 75-4162, 75-418, and shall make such rules and regulations for the jurisdiction, repair, and maintenance thereof as the commission shall deem adequate and sufficient for the protection and necessity of the public, except as to automatic grade crossing protec-

tion devices. The provisions of Sections 75-410 to 75-418 should not be construed as a limitation on the powers of the commission which have been heretofor granted, but as supplemental and additional thereto. The powers herein granted shall not be construed as extending to the projection of a new public highway crossing or to the abandonment of any existing public crossing."

In resolving an issue as the one before us, we as a commission are keenly aware of the interests brought forth at the hearing by the respective parties. On the one hand, we see the railroad who is actively participating in safety programs which include such measures as reducing the number of at grade crossings and promoting separated crossings. On the other side of the coin, we see the Complainant's problem who has invoked this commission's jurisdiction to obtain a new at grade crossing. The new at grade crossing and the river bridge certainly would be more convenient and safer for the public if the hazardous bridge and hairpin curve and narrow underpass were eliminated. The fact that this crossing would have with only one train or less and 220 cars per day was considered important by the commission.

It would appear from the testimony that in this particular situation, the Complainants present the stronger case. The Complainants demonstrated to the commission by admissible testimony the necessity of installing a new bridge across the Republican River which is badly needed and eliminating a dangerous curve and situation on the old road in Franklin County near Riverton, Nebraska. The commission feels that under the facts as presented in this case, the new at grade crossing is appropriate and should be approved.

After due consideration of the evidence contained in the record and the applicable statutes and precedence, we are of the opinion and find:

- 1) That Complainant filed a Formal Complaint with the Nebraska Public Service Commission pursuant to the provisions of Section 75-410 R.R.S., 1943, as amended.
- 2) That the Complainant has presented a logical, straight-forward application to do away with the dangerous situation on its public road.
- 3) The Complainant testified that it intends to cooperate to the fullest extent possible with the railroad. The railroad Defendant testified as to an intent to cooperate to the fullest extent possible with the Complainant.
- 4) That the complaint should be sustained and the Defendant should cooperate with the Complainant in providing for the new at grade crossing situated near Riverton, Nebraska.

O R D E R

IT IS, THEREFORE, ORDERED by the Nebraska Public Service Commission that Formal Complaint No. 1196 be, and it is thereby, sustained, and the Burlington

FORMAL COMPLAINT NO. 1196

Page 5

Northern Railroad Company directed to cooperate with the Complainant, County of Franklin, in locating a new at grade crossing at or near Riverton, Nebraska and take all necessary actions to ensure that the project is completed within a reasonable period of time.

IT IS FURTHER ORDERED that Complainant shall be subject to such terms, conditions, and limitations which have been or may hereinafter be, prescribed by the Commission.

MADE AND ENTERED at Lincoln, Nebraska, this 13th day of August, 1985.

NEBRASKA PUBLIC SERVICE COMMISSION

Eric Rasmussen

Chairman

ATTEST:

Donald Adams

Executive Secretary

COMMISSIONERS CONCURRING:

