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PSC REF#: 300853

OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

Petition of the Wisconsin Department of Transportation for the
Establishment of Two Public Crossings of the UP Tracks with the West
Allis Crosstown Connector Trail in the City of West Allis, Milwaukee
County

9040-RX-1334

FINAL DECISION

This is the Final Decision in the proceeding conducted as a Class 1 proceeding by the Office of the Commissioner of Railroads (Office) on the petition of the Wisconsin Department of Transportation (WisDOT) for the establishment of two public crossings of the Union Pacific Railroad Company (UP) tracks with the West Allis Crosstown Connector Trail in the city of West Allis, Milwaukee County.

The petition is GRANTED subject to conditions.

Introduction

On April 10, 2015, the WisDOT petitioned the Office under Wis. Stat. § 195.28 and 195.29 to establish two new crossings.¹ The WisDOT and the city of West Allis (West Allis) plan a multi-use path to connect S. 108th Street (STH 100) to West Burnham Street. As part of this project, the WisDOT and West Allis propose to establish two public crossings of the UP tracks with the Crosstown Pathway.² The pathway would cross the UP tracks at-grade at Milepost 88.60 on the UP's Waukesha Subdivision; and the connection track between the Milwaukee Subdivision and the Waukesha Subdivision known as the Waukesha Industrial Lead track (wey track). The project is partially funded by the federal Congestion Mitigation and Air

¹ PSC REF#: 235374.

² The West Allis Cross-town Connector Trail is a proposed 5-mile trail that will cross the city of West Allis from the east city limits to the west city limits. This project will connect to other existing state and county bikeways and trails in Milwaukee and Waukesha Counties. PSC REF#: 283891 at 1.

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Quality Program and Transportation Enhancements Program (CMAQ) that funds transportation related environmental projects for State DOTs.³ The WisDOT and West Allis would provide remaining funding and do not seek an apportionment of costs against the UP.

West Allis wants the new crossings in order to increase “the continuity of the multi-county bicycle trails in the area.” The trail would provide a connection from Madison to Lake Michigan’s lakefront. The proposed trail in West Allis would be a continuation of the decades old New Berlin Recreation Trail, which, ends abruptly east of S. 124th Street.

Pursuant to due notice,⁴ the Office held a public hearing on July 16, 2015, in West Allis with Administrative Law Judge Douglas S. Wood presiding. A list of appearances is found at Appendix A.

On March 7, 2017, the Office issued a Proposed Final Decision for public comments.⁵ Only the UP filed comments.⁶ The UP notes that it is on record as opposing establishing the crossing but supports electrified grade crossing warning devices if such a crossing is established. In the alternative, the UP proposes a maze and fence system similar to that in docket 9040-RX-1209.⁷

Statutory Authority

In this type of case the issues are, as indicated in Wis. Stat. §195.29(1): (a) will the proposed crossing promote the public safety; (b) by whom shall the same be made; and (c)

³ The Fixing America’s Surface Transportation Act, continued the CMAQ program to provide a flexible funding source to State and local governments for transportation projects and programs to help meet the requirements of the Clean Air Act. 23 U.S.C. § 149. The federal share is determined under 23 U.S.C. § 120.

⁴ PSC REF#: 237705.

⁵ PSC REF#: 298926.

⁶ PSC REF#: 299606, PSC REF#: 299607.

⁷ See *Final Decision in Petition of the City of Oak Creek, Milwaukee County, for the Alteration of the Public Crossing of the Union Pacific Railroad Company Tracks with Elm Road in the City of Oak Creek, Milwaukee County*, docket 9040-RX-1209 (Wis. P.S.C., May 30, 2006) (PSC REF#: 180761).

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because this is a new crossing, the advisability of allowing it to be established and the manner of making it. *Re City of Madison*, Docket 2-R-3108, 20 P.U.R.3d 255 (Wis. P.S.C., July 10, 1957). Under Wis. Stat. §195.29(2), the issue is the equitable apportionment of cost between the municipality and the railroad. *Id.* In this docket, however, the WisDOT and West Allis are fully funding this project.

In enacting Wis. Stat. § 195.29(1), the Legislature did not establish any standard to apply in determining when a new crossing at-grade is to be permitted, or if advisable, whether the new crossing must be by overhead structure or underpass. *Green Bay & W. R. Co. v. Pub. Serv. Comm'n*, 269 Wis. 178, 186–87, 68 N.W.2d 828, 832 (1955). The statute purposely grants the Office wide discretion to determine the methods that should be required at the crossing to promote the public safety. *Id.* It may be conceded that a crossing by means of an overhead structure or underpass is more safe than a crossing at grade protected by automatic signals. *Id.* at 187, N.W.2d at 832. The statute, however, reasonably construed to accomplish its objective, does not require the Office to order the type of crossing protection that is safest, but only such as is reasonably necessary to promote public safety. *Id.*

The UP states it is UP policy to not permit private or public parallel at-grade trails within the railroad's right of way for safety reasons.⁸ That establishing new trails over the railroad track and right of way not adjacent to existing public roadways will require over or under grade separation structures. As stated above, however, the authority to approve or disapprove public trail railroad crossings rests with the Office.

⁸ PSC REF#: 283890.

Findings of Fact

1. The railroad currently operates one train movement per day at a timetable speed of 10 mph on the Waukesha Subdivision and on the Waukesha Industrial Lead.
2. The design bicycle speed for the pathway is 20 mph.
3. The establishment of the crossings at-grade of the Crosstown Pathway with the UP tracks in accordance with the design plans of the WisDOT and West Allis in the city of West Allis will promote public safety and convenience.
4. Establishment of the crossings is advisable under all the circumstances.
5. In order to adequately protect and promote public safety, it is necessary to install and maintain reflective crossbucks with STOP signs and detectable warning fields.
6. It is reasonable that the UP bear no part of the cost for the crossing construction.

Conclusions of Law

1. The UP is a railroad as defined in Wis. Stat. § 195.02(1).
2. The Office has authority under Wis. Stat. §§ 189.02, 195.03, 195.04, 195.06, 195.28, 195.285, 195.29, 195.30, Wis. Stat. § 227.47(1), and Wis. Admin. Code §§ RR 1.15, to issue this final decision authorizing the proposed project.

Opinion

West Allis states that pedestrians have been crossing the tracks at many different locations between the proposed crossing and the I-894 overpass.⁹ The nearby Reservoir Park and Irving Elementary School generate substantial pedestrian traffic across the railroad tracks evidenced by the numerous beaten trails that crisscross the tracks.¹⁰

⁹ PSC REF#: 298273 at 4.

¹⁰ PSC REF#: 298275 at 6-8.

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The city states that widespread use of the route by the public is due to it being the missing link between numerous other trails connecting Madison with the Lake Michigan lakefront. In 1994¹¹ and 2001,¹² the Southeastern Wisconsin Regional Planning Commission's (SEWRPC) report - *A Regional Bicycle and Pedestrian Facilities System Plan for Southeastern Wisconsin: 2010* - recommended a bicycle trail along many of the other corridors formerly owned by the Milwaukee Electric Railway & Light Company. Other trails recommended by the SEWRPC report have been implemented except for the Crosstown Pathway, creating a gap in the regional plan of routes.¹³

The trail will carry pedestrian and bicycle traffic the majority of the time. Utility and maintenance vehicles will continue to utilize the trail.¹⁴ Anticipated bicycle/pedestrian traffic volumes are expected to be approximately 200 users per day when the trail is opened.

In order to improve the overall safety to the public and the railroad, West Allis states that there is a need to construct safe, well maintained, public crossings of the tracks to eliminate the multiple unsafe crossings where pedestrians are currently crossing the tracks.

West Allis states that the UP does not own the land underneath the proposed crossing at the wye track.¹⁵ That both the trail and the UP tracks are on property owned by WE Energies¹⁶

¹¹ The year 2010 Regional Bicycle and Pedestrian plan is available at

http://www.sewrpc.org/SEWRPCFiles/Publications/pr/pr-043_bicycle_and_pedestrian_plan_2010.pdf.

¹² The 2001 amendment recommends that the year 2010 plan be reaffirmed and its design year extended to the year 2020. The year 2020 plan is available at http://www.sewrpc.org/SEWRPCFiles/Publications/pr/pr-043_amendment_bicycle_pedestrian_plan_2020.pdf.

¹³ PSC REF#: 298276 at 1.

¹⁴ Under 23 U.S.C. § 217(h), existing and proposed non-motorized trails and pedestrian walkways using Federal transportation funds do not permit motorized use. However, the legislation authorizes exceptions, under certain circumstances, for permitting maintenance vehicles, snowmobiles, motorized wheelchairs, electric bicycles, and for "such other circumstances as the [U.S.] Secretary [of Transportation] deems appropriate."

¹⁵ PSC REF#: 298273 at 3.

¹⁶ We Energies is the trade name of Wisconsin Electric Power Co. and Wisconsin Gas LLC, utility subsidiaries of WEC Energy Group.

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under license.¹⁷ West Allis has further argued that the pathway is already a public highway by virtue of a declaration of the common council. The import of these arguments need not be reached because of the conclusion on the merits of the proposal. The establishment of the crossings still requires Office approval.

Alternatives

At the July 16, 2015 hearing the WisDOT agreed to conduct an analysis of grade separating the two crossings. The UP agreed to respond to such an analysis with 45 days. On September 25, 2015, Bloom Companies, LLC filed an ALTERNATIVE ANALYSIS TO PROPOSED AT-GRADE CROSSINGS as a delayed exhibit.¹⁸ The UP filed no comments.

Taking safety, constructability, cost and utility impacts into consideration, Bloom looked at an overpass and underpass alternative structure conceptual design for each of the two crossings. Bloom evaluated each of the alternatives based on: vertical elements, cross-section, utility impacts, access issues, drainage issues, real estate impacts, safety, as well as cost. Bloom recommended the current at-grade crossing designs for both crossings as providing the least impact to the surroundings; are cost effective; provide safe usage of the trail; and, affords the least exposure to users based on the number of through trains.

West Allis has also demonstrated that alternate routes using existing crossings would result in lengthy detours. The closest east-west crossing of the tracks occurs 0.42 miles to the north on W. Greenfield Avenue or 0.53 miles to the south on W. Lincoln Avenue. The absence

¹⁷ We Energies' predecessor, the Milwaukee Electric Railway and Light Company, was incorporated in January, 1896 and began operation of interurban rail service in 1898. The company succeeded to the property and business of the Milwaukee Street Railway Company organized in 1890. It is likely that it was the Milwaukee Street Railway Company that purchased the current right-of-way corridor in 1890.

¹⁸ Complete details will not be repeated here as they are available in Bloom's report at [PSC REF#: 283891](#).

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of a crossing at the requested location will require a detour of approximately one mile for any pedestrian or bicyclist currently using the We Energies service road. The nearest connecting roadways are S. 108th Street on the west and S. 101st Street on the East. The proposed crossings are located between 760 feet and 2,000 feet east of S. 108th Street.¹⁹

Crossing Geometrics

The Crosstown Pathway would have a typical cross section of 10 feet wide asphalt surface with 2 feet crushed aggregate shoulders on each side, and a 3-foot clear zone. The pathway would intersect both crossings at an angle of 90 degrees to reduce the chance of a wheel getting caught between the rails and the crossing surface.

West Allis has proposed that the UP install the crossings using a timber and asphalt surface with a field flangeway filler. The WisDOT states that concrete panels are more durable and provide a better surface for bicyclists. The WisDOT also states that flangeway filler is appropriate at the wye crossing, given rail traffic, but left open the option of the UP installing it at the Waukesha Subdivision crossing.

The proposed horizontal alignment of the crossings is as follows.²⁰

Wye Track Crossing (Waukesha Industrial Lead track):

Profile Grade Line (PGL) = 4.40 percent from the West and -6.50 percent from the East

Track superelevation is: 4.40 percent

Track Grade is: 1.37 percent

Total Crossing length: 16 feet

Waukesha Subdivision:

Profile Grade Line (PGL) = 0.30 percent from the North and 0.92 percent from the South

Track superelevation is: 0.30 percent

Track Grade is: 0.41 percent

Total Crossing length: 16 feet

¹⁹ PSC REF#: 298273 at 2.

²⁰ PSC REF#: 298273 at 7.

Sight Distances

Corner sight distance involves the clear sight line, in both directions up and down the tracks that allows a user to determine in advance of the crossing that there is no train approaching and that it is safe to proceed across the tracks without having to come to a stop. Corner sight distance is dependent upon both train speed and user speed.

Clearing sight distance (applying to crossings without automatic gates) involves the clear sight line, in both directions up and down the tracks, present at the crossing itself. A user stopped 15 feet short of the nearest rail must be able to see far enough down the track in both directions to determine if the user can move across the tracks, to a point 15 feet past the far rail, before the arrival of a train.

The WisDOT states that the expected corner sight distance at both of the proposed crossings would be adequate [for a bicyclist or maintenance vehicle moving at 20 mph] in all four quadrants with some clearing required and is expected to exceed the required 106 feet. The clearing sight distance is expected to be greater than 300 feet in each quadrant of both proposed crossings.

Stopping sight distance is the minimum sight distance available on a pathway offering sufficient length to enable the user to stop safely. When only passive warning devices such as crossbucks and pavement markings are used, users are warned of the crossing location but must determine for themselves whether or not there are train movements for which they should stop. The warning devices would be visible for more than 150 feet at each approach to the crossings. The stopping sight distances are adequate at both proposed crossings.

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Drainage

West Allis states that it has taken great care to channel water away from the grade crossings and to prevent it from flowing into the track structure.²¹ Culvert pipes or storm sewer were installed in Phase 1 and will be installed in Phase 2 to prevent any rapid crossing deterioration or early failure.

Warning Devices

The WisDOT recommends that both proposed crossings have passive warning devices with detectable warning fields²² and required advanced warning signage. The materials and installation of the warning devices shall be paid by the pathway project. The UP's comments support electrified grade crossing warning devices if such a crossing is established. Given the conditions at the crossing, and expected adequate corner and clearing sight distances, however, electrified grade crossing warning devices are not warranted to promote public safety.

Fencing

West Allis is proposing the construction of a 6-foot high fence from 92nd Street to a point past the proposed trail at MP 88.60 that would eliminate all other crossing locations currently being used by the public. In its comments, the UP proposes a maze and fence system similar to that in docket 9040-RX-1209²³ if no electrified warning devices are installed. The maze

²¹ PSC REF#: 298276 at 4.

²² Detectable warnings are a distinctive surface pattern of truncated domes detectable by cane or underfoot. They indicate to people with vision impairments of a change from the pedestrian way/sidewalk to vehicular way, that is the entering into a street, railroad, or hazardous drop-off at transit platforms. The Americans with Disabilities Act Accessibility Guidelines requires detectable warnings fields on curb ramps at all legal crossings, sidewalk and shared-use paths independent of funding source. WisDOT FACILITIES DESIGN MANUAL (FDM), § 11-46-10.1, available at <http://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrces/rdwy/fdm.aspx>. See PSC REF#: 283889 for typical placement of detectable warnings.

²³ PSC REF#: 299607.

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adopted in docket 9040-RX-1209 consisted of a fence design where users would face both up and down the tracks as they negotiate the maze on their approach to the crossing.

Because the city's design has users approaching the crossings at 90 degrees, the maze may serve more to slow down users or discourage cyclists rather than to force them to look up and down the tracks, something they can already do on the straight-on approach. The maze could also have the negative effect of making it difficult for beginning cyclists to maintain themselves upright at very slow speeds.

Given very few train movements (one daily) and slow speeds (10 mph), a maze is not reasonable to promote public safety.

Crossing illumination

There has been no proposal in this docket for illuminating the proposed crossings. Given need to quickly identify distance at dusk or nighttime when approaching the crossings, it is reasonable to investigate and determine the need for pedestrian illumination at the crossing. There does not appear to be any nighttime train operations through these proposed crossings. However, for safety reasons, the crossing should be equipped with lighting to aid users in distinguishing obstructions with sufficient time to react.

Order

1. The UP shall install a concrete panel crossing surface with flangeway filler at-grade of the Crosstown Pathway crossing of its Waukesha Subdivision tracks in accordance with the city of West Allis' design plans and existing state and federal guidelines for shared use paths by **May 1, 2019**.

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2. The UP shall install a concrete panel crossing surface with or without flangeway filler at-grade of the Crosstown Pathway crossing of its wye tracks in accordance with the city of West Allis' design plans and existing state and federal guidelines for shared use paths by **May 1, 2019**.

3. The UP shall install and maintain retroreflective back-to-back R15-1 crossbucks with 2-inch wide reflective vertical strips on the front and back of the support posts on each approach to the crossings of its Waukesha Subdivision and wye tracks with the Crosstown Pathway at-grade in city of West Allis by **May 1, 2019**.

4. The city of West Allis shall install and maintain R1-1 STOP (18 inch) signs mounted below each set of R15-1 crossbucks signs on each approach to the crossing of the UP Waukesha Subdivision and wye tracks with the Crosstown Pathway at-grade by **May 1, 2019**.

5. The city of West Allis shall install and maintain W10-1 circular railroad advance warning (18 inch) signs and W3-1 STOP ahead advance warning (18 inch) signs at such distance from the crossings as specified in the Wisconsin Manual on Uniform Traffic Control Devices (WMUTCD) on each approach to the crossings of the UP tracks with the Crosstown Pathway at **by May 1, 2019**.

6. The city of West Allis shall install and maintain pavement markings on each approach to the crossing.

7. The UP shall clear brush and trees from its right-of-way for 330 feet down the tracks in each direction from the Crosstown Pathway crossings by **May 1, 2019**.

8. The city of West Allis shall clear brush and trim trees within its highway right-of-way for 330 feet down the pathway in each direction from the Waukesha Subdivision and wye

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track crossings by **May 1, 2019**; and, shall acquire necessary property or vision easements to effectuate this provision.

9. The UP shall initiate and process U.S. DOT Crossing Inventory Form FRA F 6180.71 within 90 days after 100 percent completion of the crossings.

10. If not already available, the city of West Allis shall investigate and determine the need for, and type of, illumination to increase the visibility of the rail crossing at dusk or night, and report its finding to the Office within 60 days of the date of the Final Decision in this docket.

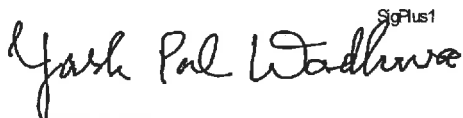
11. The ongoing maintenance of the crossing surface shall be as provided in an agreement between the WisDOT and the UP.

12. The UP shall bear no part of the cost of the crossing construction, signal materials or installation.

13. Notwithstanding any other cost apportionment in this order, the UP shall bear any cost assessed to the railroad pursuant to Wis. Stat. § 195.60 for the investigation of this matter by the Office. The railroad shall not pass on those assessment costs either directly or indirectly.

14. This Final Decision is effective one day after service.

15. Jurisdiction is retained.


04/06/2017 09:45:29 am

Yash P. Wadhwa, P.E.
Commissioner of Railroads

DA:jg: DL: 01514860

See attached Notice of Rights

OFFICE OF THE COMMISSIONER OF RAILROADS
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**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE TIMES
ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE
NAMED AS RESPONDENT**

The following notice is served on you as part of the Commissioner's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

PETITION FOR REHEARING

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Office of the Commissioner of Railroads (Office) for rehearing within 20 days of the date of service of this decision, as provided in Wis. Stat. § 227.49. The date of service is shown on the first page. The petition for rehearing must be filed with the Office and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

PETITION FOR JUDICIAL REVIEW

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Office within 30 days of the date of service of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of the date of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Office serves its original decision.¹ The Office must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: April 16, 2016

¹ See *Currier v. Wisconsin Dep't of Revenue*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.

Appearances

Parties

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