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## Office of the Commissioner of Railroads

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Jeff Plale, Commissioner  
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July 30, 2012

9040-RX-1299

Re: Petition of the Wisconsin Department of Transportation for the Establishment of Two Public Crossings of the Union Pacific Railroad Co. Tracks with the West Allis Cross-Town Pathway in the City of West Allis, Milwaukee County

To The Person Addressed:

Enclosed with this letter you will find the Proposed Decision of the Hearing Examiner. This proposed decision is the hearing examiner's recommendation and not the final decision of the Commissioner of Railroads. The Commissioner will issue a final decision only after considering any written comments on the proposed decision.

Comments, either in support or in opposition, must be filed in writing in time to reach the Office of the Commissioner of Railroads (OCR) not later than 15 days from the date of this letter. One copy of the comments must be filed with the OCR and one copy served by regular mail or in person upon each party of record. Generally, "parties" include those persons and organizations listed in the "Appearance" section of the proposed decision (but not including any members of the OCR staff).

This 15-day period is your opportunity to file any comments on the proposed decision. Comments need not follow any particular format nor do they need to be elaborate. A clear, concise and specific explanation of your comments is sufficient and helpful. Short extensions may be granted upon request in writing or by telephone.

Sincerely,

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Douglas S. Wood, Hearing Examiner  
Enclosure  
9040p1299/dw

C: Mike Schoer  
Mike Lewis



BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

In the Matter of the:

Petition of the Wisconsin Department of Transportation for the Establishment of Two Public Crossings of the Union Pacific Railroad Co. Tracks with the West Allis Cross-Town Pathway in the City of West Allis, Milwaukee County

9040-RX-1299

PROPOSED DECISION

By letter dated January 17, 2012, the Wisconsin Department of Transportation (DOT) petitioned the Office of the Commissioner of Railroads (OCR) pursuant to §§195.28 & 195.29 Stats., for the establishment of two public crossings of the Union Pacific Railroad Co. (UP) tracks with the West Allis Cross-Town Pathway in the City of West Allis, Milwaukee County. The City of West Allis represented the DOT's interests at the hearing.

Pursuant to due notice, a public hearing was held in this matter on April 12, 2012 in West Allis, Wisconsin with hearing examiner Douglas S. Wood presiding.

Appearances:

**Parties**

City of West Allis & Wisconsin Department of Transportation, Petitioners  
by  
Scott Post, City Attorney  
7525 W. Greenfield Avenue  
West Allis, WI 53214

In Opposition:

Union Pacific Railroad Co.  
by  
Mack H. Shumate, Jr., Senior General Attorney  
101 N. Wacker Drive, Suite 1920  
Chicago, IL 60606

PROPOSED FINDINGS OF FACT

The Wisconsin Department of Transportation and the City of West Allis propose to establish two public crossings of the Union Pacific Railroad Co. tracks with the West Allis Cross-Town Pathway. The DOT and the City of West Allis propose to construct a multiuse pathway during the 2013

construction season. The pathway would cross the UP tracks at-grade in two locations; one crossing will be at Milepost 88.60 on the UP's Milwaukee Subdivision (two mainline tracks), the other crossing will be located on the connection track between the Milwaukee Subdivision and the Waukesha Subdivision. The City and DOT would provide all funding for the project. They do not seek an apportionment of costs against the railroad.<sup>1</sup>

The City 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. 124<sup>th</sup> Street.

As proposed by the City, the West Allis Cross-Town Pathway would have a typical cross section 1'-wide asphalt surface with 2' crushed aggregate shoulders on each side, and a 3' clear zone. The pathway would intersect the Milwaukee Subdivision tracks at an angle of 65° and the wye track at an angle of 60°.

The city's testimony summarized the essential geometric elements of the crossings.

Wye Track Crossing (Waukesha Line)

Profile Grade Line (PGL) = 3.99% from the West and 5.00% from the East

Track superelevation is: 3.99%

Track Grade is: 1.37%

Total Crossing length: 5.5' to outside of rails

St. Francis/Butler Line Dual Track Crossing

Profile Grade Line (PGL) = 2.00% from the West and 2.22% from the East

Track superelevation is: 1.76% on East Track and 2.01% on West Track

Track Grade is: 0.38%

Distance between track centerlines: 16.4'

Total Crossing length: 21.4' to outside rails

The City requested that the western track of the Milwaukee Subdivision double mainline track be raised about 6" by the railroad to accommodate ADA accessibility requirements. The western track is presently about 12" higher than the easterly track.

The railroad currently operates 14 through train movements per day on the Milwaukee Subdivision double mainline tracks at a speed of 30 mph. The railroad also operates 2 switch movements per day on the line at this location. The railroad operates 2 train movements per week on the west wye track.

The City amply demonstrated the desirability of a centrally located route somewhere between W. Greenfield Avenue on the north and W. Lincoln Avenue to the south. The City clearly showed that alternate routes using existing crossings would create in effect lengthy detours.<sup>2</sup> The City

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<sup>1</sup> In addition to the proposed new crossings of the Milwaukee Subdivision and of the wye track, at the hearing the City requested the removal of a disconnected industrial spur track that formerly served Univar Corporation. The removal of the abandoned spur track was not included in the petition and will not be addressed in this proposed decision.

<sup>2</sup> The City Engineer testified: "The next 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 of a crossing at the

convincingly established that the West Allis Cross-Town Pathway would be heavily used.

The City also presented testimony that people are already crossing the tracks at several places without the benefit of an improved crossing. The City argued that establishing a public crossing with an improved crossing surface and improved visibility would improve public safety. The **hearing examiner** agrees with this assertion as a general proposition.

All that being accepted as true and supported by the record, the **hearing examiner** nonetheless **recommends** that the new crossings be denied because the proposed crossing locations would create such unsafe conditions as to overcome all the benefits outlined above.

Recommending the denial of the proposed crossings of the double mainline track in the middle of a track curve with significant superelevation is not a close call. Even if the westerly track were raised 6", the superelevation cannot be removed. Because of the superelevation, the pathway would have to go up and down and then up and down again. This undulating course would divert the attention of pathway users from the risk posed by the approach of trains. The railroad has lubricating devices (greasers) in advance of the curve to assist train wheels as they go around the track curve. As a result, there would be a significant residue of grease on the rails at the crossing creating a higher than usual risk of slip-and-fall accidents at the crossing.

The West Allis Cross-Town Pathway is a great project, but the proposed crossings aren't. Crossings located on these severe track curves cannot be approved because crossings at these locations would not promote public safety and convenience due to the superelevation of the tracks and the steep approach grades at both proposed locations. In addition to those reasons, the crossing of the Milwaukee Subdivision track would not promote public safety and convenience because of the train speeds, the difference in elevation between the two tracks at the easterly location, and the proximity of the track greaser.

The City argued that both the trail and the UP tracks are on property owned by WE Energies under license. The City 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 **recommendation** on the merits of the proposal. Even if the pathway is already a public highway (or more properly, a public way), the establishment of the crossings still requires the OCR's approval.<sup>3</sup>

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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. 108<sup>th</sup> Street (STH 100) on the west and S. 101<sup>st</sup> Street on the East. The proposed crossings are located between 760 feet and 2,000 feet east of South 108<sup>th</sup> Street (STH 100)."

<sup>3</sup> It has to be noted, in all fairness, that the UP touted out its own standards for pathway crossings, one of which states that the "The Railroad does not allow at-grade Trail crossings." In a literal sense, the railroad is correct because in Wisconsin, the railroad doesn't allow (or disallow) public trail crossings. That authority rests with the OCR.

### PROPOSED ULTIMATE CONCLUSIONS ON THE ISSUES

1. That the establishment of the crossing at-grade of West Allis Cross-Town Pathway with the Union Pacific Railroad Co. tracks would not promote public safety and convenience.
2. That establishment of the crossing is inadvisable under all the circumstances.

### PROPOSED CONCLUSION OF LAW

That the jurisdiction of the Office of the Commissioner of Railroads under §§195.28 and 195.29, Stats., extends to this matter. Accordingly, the Office enters an order consistent with the findings of fact.

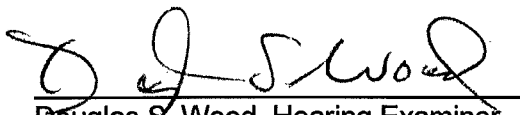
### PROPOSED ORDER

#### **The hearing examiner recommends:**

1. That the petition of the **Wisconsin Department of Transportation and the City of West Allis** in the City of West Allis, Milwaukee County be **denied**.
2. That jurisdiction is retained.

Dated at Madison, Wisconsin, July 30, 2012.

By the Office of the Commissioner of Railroads.

  
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Douglas S. Wood, Hearing Examiner