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MAR 20 2017

CITY OF WEST ALLIS
CITY CLERK

OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

Complaint of the City of West Allis for the Repair of the Public
Crossing of the Union Pacific Railroad Co. Tracks with STH 59 (W.
Greenfield Avenue) in the City of West Allis, Milwaukee County

9040-RX-1331

NOTICE AND ORDER TO REOPEN
AND REQUEST FOR COMMENTS

<p>Comments Due:</p> <p>Tuesday, March 28, 2017</p>	<p>Address Comments To:</p> <p>Heather Graves Office of the Commissioner of Railroads P.O. Box 7854 Madison, Wisconsin 53707-7854</p>
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Public Service Commission of Wisconsin
RECEIVED: 03/16/2017 12:44:30 PM

The Commissioner of Railroads (Commissioner) reopens this docket pursuant to Wis. Stat. § 195.05(4) and § 227.49, for the limited purpose of addressing an issue in the city of West Allis' March 7, 2017, email to the Office of the Commissioner of Railroads (Office), that the Union Pacific Railroad Co. (UP) has failed to fully renew the crossing.

By Final Decision dated May 12, 2015, the Commissioner, pursuant to Wis. Stat. § 86.12 and §§ 195.28 and 195.29, determined that the UP had failed to maintain in good condition for public travel the public crossing of its tracks with STH 59 (W. Greenfield Avenue) in the city of West Allis, Waukesha County (Crossing No. 177242L / MP 86.34). The Final Decision followed a public hearing on April 21, 2015, where the UP did not appear.

On August 11, 2016, the city stated that it was forced to partially close STH 59 indefinitely due to the unsafe crossing.¹ On October 29, 2015, the UP stated that the crossing had been repaired and renewed. On November 6, 2015, the city stated that the UP replaced only 3 of 20 concrete panels and that the remaining panels were loose, uneven and in disrepair.

By email dated March 7, 2017, West Allis stated that it was on the verge of closing STH 59² "... due to the badly neglected railroad crossing [that the UP] is still under order[] to repair".³ The city also stated that "[i]f these repairs are not addressed in the coming days, the

¹ PSC REF#: 298933 at 3.

² Wis. Stat. § 84.07 provides:

(4) EMERGENCY REPAIRS; BLOCKING STREETS OR ROADS; DETOURS. Except in case of emergency, no city, village or town shall obstruct any street or road over which any state trunk highway is marked unless it first makes arrangements with the department for marking a detour.

³ PSC REF#: 298933 at 1.

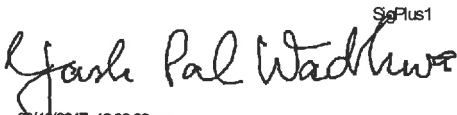
Docket 9040-RX-1331

City will be forced to unilaterally close the crossing and the City Alderpersons have promised to direct all their constituent calls to [Office] and railroad officials.”⁴

Just four days prior, on March 3, 2017, an investigator from this Office conducted a recheck inspection of the crossing.⁵ While the crossing appears to be in good condition and repair for highway travel, the city’s main argument appears to be that the UP has failed to fully renew the crossing as required.

In light of the foregoing, the Commissioner hereby reopens its May 12, 2015, Final Decision to consider whether any other type of Amended or Supplemental Order would be warranted.

COMMENTS. The Commissioner requests comments on the above. Specifically, the Commissioner is affording parties an opportunity to be heard as to whether modification of its previous Final Decision as to full renewal is appropriate. Comments are due no later than **Tuesday, March 28, 2017, at 4:00pm**. Any person or group shall file one comment using the Electronic Records Filing System. To file a comment, go to the Office’s web site at <http://ocr.wi.gov> and click on the “Public Comments” at the top of the page. On the next page, select docket 9040-RX-1331.


03/16/2017 12:36:08 pm

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

DA:jg: DL: 01502600

See attached Notice of Rights

⁴ The Commissioner notes that the crossing was in bad shape in January and March 2015 and but STH 59 remained open. See PSC REF#: 299018, PSC REF#: 299022.

⁵ PSC REF#: 298839.

OFFICE OF THE COMMISSIONER OF RAILROADS
610 North Whitney Way
P.O. Box 7854
Madison, Wisconsin 53707-7854

**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.⁶ 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

⁶ See *Currier v. Wisconsin Dep't of Revenue*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.