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 APR 10 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

ORDER

On May 12, 2015, the Office of the Commissioner of Railroads (Office), pursuant to Wis. Stat. § 86.12 and §§ 195.28 and 195.29, issued a Final Decision in the complaint brought by the city of West Allis. (PSC REF#: 236268) The Office determined that the Union Pacific Railroad Co. (UP) had failed to maintain in good condition for public travel the public crossing of its tracks with STH 59 (W. Greenfield Avenue) (Crossing No. 177242L / MP 86.34). The UP did not appear at the public hearing on April 21, 2015, and the Office ordered that the crossing be fully renewed.

On August 11, 2016, the city stated that it was forced to partially close STH 59 indefinitely due to the unsafe crossing. (PSC REF#: 298933) 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.

On March 7, 2017, the city stated that it was on the verge of closing STH 59¹ "... due to the badly neglected railroad crossing [that the UP] is still under order[] to repair". The city also stated that "[i]f these repairs are not addressed in the coming days, the city will be forced to

¹ 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.

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unilaterally close the crossing and that the city Alderpersons have promised to direct all their constituent calls to [Office] and railroad officials.”²

On March 3 and 7, 2017, an investigator from this Office conducted a recheck inspection of the crossing. The investigator noted that one panel had some corrosion and the metal plating was lifting up slightly. (PSC REF#: 299587) Observing vehicular traffic, the investigator also noted no vehicles slowing down or braking as they approached the crossing or travelling over the crossing.

On March 16, 2017, the Commissioner reopened this docket under Wis. Stat. § 195.05(4) and § 227.49, for the limited purpose of addressing the city’s March 7, 2017, correspondence. (PSC REF#: 299451) The Commissioner afforded parties an opportunity to be heard as to whether modification of its previous Final Decision as to full renewal was appropriate. The UP responded on March 28, 2017, concurring with the Office investigator’s report and stating that it would replace one small concrete panel so the metal plating surrounding it does not lift up. (PSC REF#: 300096) The city filed no comments.

The Commissioner finds that it is reasonable to make no changes to its Final Decision in this docket. However, the Commissioner also finds that it is reasonable to memorialize the UP’s commitment to repair or replace the one offending concrete panel.

Order

1. The UP shall repair or replace the concrete panel identified in the Office investigator’s March 7, 2017 report, at the STH 58 crossing, by **May 18, 2017**.
2. The UP shall inform the Office upon completion of the repairs.

² The Commissioner notes that the crossing was in bad shape in January and March 2015, and the city did not close STH 59. See PSC REF#: 299018, PSC REF#: 299022.

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3. All other terms and conditions of the May 12, 2015, Final decision shall remain in effect.

4. This Order is effective one day after service.

5. Jurisdiction is retained.

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06/04/2017 02:08:44 pm

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

DA:jg DL: 01514842

See attached Notice of Rights

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.³ 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

³ See *Currier v. Wisconsin Dep't of Revenue*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.