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MAY 14 2015

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS CITY OF WEST ALLIS  
CITY CLERK

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, Waukesha County

904-RX-1331

FINAL DECISION

By letter dated February 18, 2015, the City of West Allis filed a complaint with the Office of the Commissioner of  
Railroads (OCR) under Wis. Stat. § 86.12 that the Union Pacific Railroad Co. (UP) has 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. 177 242L / MP 86.34).

The resolution requiring the repairs was adopted on May 12, 2014 and sent to the railroad on June 12, 2014.

Pursuant to due notice, public hearing was held in this matter on April 21, 2015 in West Allis, Wisconsin with hearing  
examiner Douglas S. Wood presiding. Because this matter is uncontested a proposed decision is not required.

Appearances:

Parties

City of West Allis , Complainant  
by  
Jeffrey J. Warhol, Assistant City Attorney  
7525 W. Greenfield Avenue  
West Allis, WI 53214

No appearance by the Union Pacific Railroad Co.

Findings of Fact

THE COMMISSIONER FINDS:

The City of West Allis complains that the Union Pacific Railroad Co. has failed to maintain the public crossing of its  
tracks with STH 59 (W. Greenfield Avenue) in good condition for public travel as it is required to do by Wis. Stat. §  
86.12.

STH 59 (W. Greenfield Avenue) is 4-lane urban roadway at the crossing. The crossing consists of one spur track.

STH 59 (W. Greenfield Avenue) carries 14,900 ADT (average daily traffic) at a speed limit of 30 mph. Traffic volumes  
are currently higher than normal because the roadway is being used as an alternate route to I-94 due to the ongoing Zoo  
Interchange project.

emailed: J. Warhol  
5/14/15 M. Lewis  
J. Burch

The railroad currently operates a small number of switch movements over the crossing location at a maximum speed of 5 mph.

The crossing is in very poor condition for highway travel. The crossing surface is constructed with a concrete panel surface. The concrete panels have multiple partially missing sections with extensive spalling. The panels are uneven and loose. Some of the steel bands around the panels protrude above the adjacent roadway. These conditions cause a very rough ride for motorists. Motorists sometimes divert from their direct path to avoid the worst sections of the crossing. The crossing needs replacement.

Under Wis. Stat. § 86.12, the railroad bears an obligation to keep all highway/rail crossings in good and safe condition for public travel. The railroad has failed to do so at this crossing. The crossing is at the end of its useful life and requires complete renewal.

A "full renewal of an at-grade crossing" means a complete reconstruction from the subgrade up. Major elements include the removal and disposal of the existing crossing surface and track, excavation and removal of the existing ballast (and possibly excavation below the ballast, depending on the conditions discovered when the crossing is opened up), complete track reconstruction and placement of a new crossing surface. By contrast, "replacement of the crossing surface" generally only involves removing the existing crossing surface and installing a new crossing surface.

Both types of repairs include a requirement that the roadway approaches provide a proper transition to the crossing. The Wisconsin Department of Transportation Facilities Development Manual, section 17-60-5 provides standards for the appropriate profile. DOT requires that a 2'6" minimum approach section from the field side of the rails be in the same plane as the rails, with a maximum deviation from the plane of 3" at distances 30' from the near rail.

The complete chapter 17 of the FDM can be found free on the Internet at:

<http://roadwaystandards.dot.wi.gov/standards/fdm/17-00toc.pdf>

The order requires the City to provide traffic control plans for the crossing closure during the crossing repairs to the railroad, which the railroad shall implement at its cost.

#### Findings of Ultimate Fact

##### THE COMMISSIONER FINDS:

That the Union Pacific Railroad Co. has failed to maintain the crossing at-grade of STH 59 (W. Greenfield Avenue) with its tracks in good condition and repair for public travel in the City of West Allis, Waukesha County.

#### Conclusion of Law

##### THE COMMISSIONER CONCLUDES:

That the jurisdiction of the Office of the Commissioner of Railroads under Wis. Stat. § 86.12 extends to this matter and the Office enters this order consistent with the findings of fact.

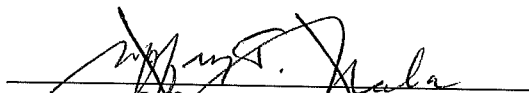
Order

THE COMMISSIONER ORDERS:

1. That the **Union Pacific Railroad Co.** shall repair the crossing at-grade of **STH 59 (W. Greenfield Avenue)** with its tracks by fully renewing the crossing with a concrete panel crossing surface in the City of West Allis, Waukesha by **October 31, 2015** (177 242L / MP 86.34).
2. That the **Union Pacific Railroad Co.** shall implement a traffic control plan as determined by the **City of West Allis** while replacing the roadway crossings and shall provide at least two weeks' advance notice to the City of West Allis before commencing work, provided that the City of West Allis may agree to a shorter notice period.
3. That jurisdiction is retained.

Dated at Madison, Wisconsin,           **MAY 12 2015**          .

By the Office of the Commissioner of Railroads.

  
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Jeffrey T. Plale  
Commissioner of Railroads

9040F1331 /DW

## **NOTICE TO THE PARTIES**

**Any party adversely affected by this order may petition for rehearing in writing within 20 days after service of this order. The petition for rehearing shall be served upon the Office of the Commissioner of Railroads (OCR) by mail or in person. The petition for rehearing must also be served upon all other parties listed in the "Appearance" section of this order. Filing a petition for rehearing does not automatically stay this order. The process for rehearings is in sec. 227.49 of the statutes.**

**A party adversely affected by this order may petition for judicial review within 30 days after the service of this order or after the disposition of a request for rehearing. A petition for rehearing is not a prerequisite for filing a petition for judicial review. The Office of the Commissioner of Railroads shall be named as respondent.**

**The petition for judicial review must be served on the Office of the Commissioner of Railroads either by certified mail or by personal service upon the Commissioner of Railroads. The appeal must also be served upon all other parties listed in the "Appearance" section of this order. The process for court review is in sec. 227.53 of the statutes.**

**The OCR is located at 610 North Whitney Way, Room 110, Madison, Wisconsin.**

**The OCR's mailing address is: Office of the Commissioner of Railroads, P.O. Box 7854, Madison, WI 53707-7854.**