

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

Petition of Chippewa County for the Repair of the Public Crossings of the Wisconsin Central Ltd. Tracks with CTH 'O', CTH 'G', and CTH 'N' in the City of Stanley, Town of Delmar, and Town of Howard, Chippewa County

9164-RX-575

FINAL DECISION

By letter dated August 9, 2004, Chippewa County filed a complaint with the Office of the Commissioner of Railroads (OCR) under §86.12, Stats., that the Wisconsin Central Ltd. (WCL) has failed to maintain in good condition for public travel the public crossings of its tracks with CTH 'O', CTH 'G', and CTH 'N' in the City of Stanley, Town of Delmar, and Town of Howard, Chippewa County (crossing nos. 692 866V, 692 873F, 692 947V).

The resolution requiring the repairs was adopted on April 20, 2004 and sent to the railroad on April 30, 2004.

The matter was put on hold to allow the parties the opportunity to resolve the matter. The County and the WCL did reach a tentative agreement that was formalized in a letter dated February 2, 2005. The County requested confirmation of the terms from the WCL by February 18, 2005. The County did not receive the confirmation and the County requested that the matter be put on for hearing.

Pursuant to due notice, public hearing was held in this matter on April 14, 2004 in Chippewa Falls, Wisconsin with hearing examiner Douglas S. Wood presiding.

On June 21, 2005, the hearing examiner issued a proposed decision. By letter dated June 24, 2005, the Chippewa County Highway Commissioner filed comments generally supporting the proposed decision. The County did request that the cost to relocate the signal at CTH 'N' be apportioned to the railroad rather than the County (paragraph 5 of the order). The County also asked that paragraph 6 of the order be amended to require that the railroad pay the cost to replace the three crossings, including flagging costs, and that the County would pay the cost and furnish and install the asphalt surfacing.

The Commissioner concludes that the County should bear the cost to relocate the signal for the reasons set forth in the proposed decision and in the Findings of Fact (below). The Commissioner does add a requirement that the railroad reuse the existing signal equipment to the extent feasible and to use salvaged material for any replacements parts needed, if any, to the extent feasible.

While the Commissioner appreciates the County's offer to furnish and install the asphalt at its own expense, the statute imposes the cost to repair the crossings on the railroad. The Commissioner recognizes that it is a common practice for the highway authority to furnish and install the asphalt. The Commissioner would certainly not object if the County and railroad agreed to have the paving done by the County and would leave it up to the County to determine whether to bill the railroad

for the work. The Commissioner is not willing, however, to order that these costs be imposed on the County. The Commissioner would also not object if the County and railroad reached a global agreement to share costs for both the signal relocation and the crossing work. With these changes, the Commissioner adopts the proposed decision as final.

Appearances:

Parties

Chippewa County Highway Department, Petitioner
by
Bruce Stelzner, County Highway Commissioner
Pat Calabrese, Operations Superintendent
801 E. Grand Avenue
Chippewa Falls, WI 54729

As Interest May Appear:

Wisconsin Central Ltd.
by
Jack Palach
Signal Design Officer
1625 Depot Street
Stevens Point, Wisconsin 54481

Findings of Fact

THE COMMISSIONER FINDS:

CTH 'O' City of Stanley crossing no. 692 866V

CTH 'O' is 24' wide with 5'-wide paved shoulders and intersects the tracks at an angle of 73° right-hand forward. The roadway approaches to the crossing are relatively flat.

CTH 'O' carried 950 ADT (average daily traffic) in 2004. The speed limit on CTH 'O' is 25 mph.

The railroad currently operates about up to two train movements per day over the crossing location at a maximum speed of 10 mph.

The crossing is in poor condition for highway travel. The railroad agreed the crossing needs to be replaced. The crossing needs replacement with a crossing at least 40' wide and extending between the back of the shoulders.

Under §86.12 and 86.13 Wis. Stats., 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.

The County requested that the order require completion of crossing repairs by September 1, 2005, a reasonable request in light of the crossing condition. In addition, the railroad has been aware of these conditions for many months. The County requested a timber-plank and asphalt crossing and is willing to provide the asphalt.

CTH 'G' Town of Delmar crossing no. 692 873F

CTH 'G' is 22' wide with 4'-wide gravel shoulders and intersects the tracks at an angle of approximately 85°. The roadway approaches to the crossing are relatively flat.

CTH 'G' carried 500 ADT in 2003. The speed limit on CTH 'G' is 55 mph.

The railroad currently operates about 6 through train movements per day over the crossing location at a maximum speed of 40 mph.

The crossing is in poor condition for highway travel. The railroad agreed the crossing needs to be replaced. The crossing needs replacement with a crossing at least 32' wide and extending between the back of the shoulders.

Under §86.12 and 86.13 Wis. Stats., 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.

The County requested that the order require completion of crossing repairs by September 1, 2005, a reasonable request in light of the crossing condition. In addition, the railroad has been aware of these conditions for many months. The County requested a timber-plank and asphalt crossing and is willing to provide the asphalt.

CTH 'N' Town of Howard crossing no. 692 947V

CTH 'N' is 22" wide with 4'-wide gravel shoulders and intersects the tracks at an angle of 64° right-hand forward. The track has a superelevation of 3.4%, which makes it difficult to provide a smooth ride for motorists. The County is planning to adjust its roadway profile, to the extent possible, to accommodate the superelevation.

CTH 'N' carried 440 ADT (average daily traffic) in 2001. The speed limit on CTH 'N' is 55 mph.

The railroad currently operates about 6 through train movements per day over the crossing location at a maximum speed of 40 mph.

The crossing is in poor condition for highway travel. The railroad agreed the crossing needs to be replaced. The crossing needs replacement with a crossing at least 36' wide and extending between the back of the shoulders.

Under §86.12 and 86.13 Wis. Stats., 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.

The County requested that the order require completion of crossing repairs by November 1, 2005, a reasonable request in light of the crossing condition. In addition, the railroad has been aware of these conditions for many months. The County requested a timber-plank and asphalt crossing and is willing to provide the asphalt.

The crossing signal in the southeast quadrant is only 14' from the roadway centerline or 3' from the edge of the traveled surface. According to the Manual on Uniform Traffic Control Devices (MUTCD) the signal should be located at least 6' from the edge of the traveled roadway. The railroad and County agreed the signal should be moved, but disagreed as to who should pay the cost. It is likely that the signal was once located in an appropriate location when the original signals were installed in 1957 (the existing signals are newer than that) and that the roadway was gradually widened.

For the purposes of the crossing surface, s. 86.13 requires the railroad to meet changes in the crossing. No such similar statute exists with respect to signal relocation. The Commissioner orders that the County be responsible for the cost of relocating the signal.

The County requested that the railroad supply advance warning signs pursuant to s. 195.286. Provision of these signs is a statutory duty and does not require an order of the Commissioner.

Ultimate Conclusions on the Issues

THE COMMISSIONER CONCLUDES:

1. That the Wisconsin Central Ltd. has failed to maintain in good and safe condition for public travel the crossings at-grade of CTH 'O', CTH 'G', and CTH 'N' in the City of Stanley, Town of Delmar, and Town of Howard, Chippewa County.

2. That in order to adequately protect and promote public safety, it is necessary to relocate the crossing signal in the southeast quadrant of the CTH 'N' crossing to a location at least 6' from the traveled roadway edge.

Conclusion of Law

THE COMMISSIONER CONCLUDES:

That the jurisdiction of the Office of the Commissioner of Railroads under §86.12, 86.13, and 195.28, Wis. Stats., extends to this matter. Accordingly, the Office enters an order consistent with the findings of fact.

Order

THE COMMISSIONER ORDERS:

1. That the **Wisconsin Central Ltd.** shall repair the crossing at-grade of **CTH 'O'** with its tracks by fully renewing the crossing in the City of Stanley, Chippewa County by **September 1, 2005.** (crossing no. 692 866V)

2. That the **Wisconsin Central Ltd.** shall repair the crossing at-grade of **CTH 'G'** with its tracks by fully renewing the crossing in the Town of Delmar, Chippewa County by **September 1, 2005.** (crossing no. 692 873F)

3. That the **Wisconsin Central Ltd.** shall repair the crossing at-grade of **CTH 'N'** with its tracks by fully renewing the crossing in the Town of Howard, Chippewa County by **November 1, 2005.** (crossing no. 692 947V)

4. That the **Wisconsin Central Ltd.** shall relocate the crossing signal in the southeast quadrant to a location at least 6' from the traveled roadway edge with appropriate appurtenances in accordance with such plans as are filed with and approved by the Office of the Commissioner of Railroads at the crossing of **CTH 'N'** with its tracks in the Town of Howard, Chippewa County by **November 1, 2005.** (crossing no. 692 947V).

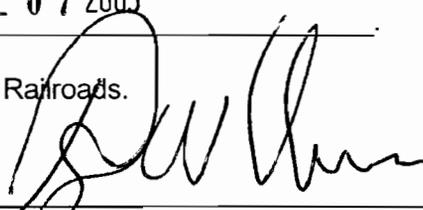
5. That **Chippewa County** shall bear the cost to relocate the signal as required in paragraph 4, provided that the **Wisconsin Central Ltd.** shall reuse the existing signal equipment to the extent feasible and to reuse salvaged material for any replacements parts needed, if any, to the extent feasible.

6. That the **Wisconsin Central Ltd.** shall bear the costs to replace the crossings. The **Wisconsin Central Ltd. and the Chippewa County Highway Department** may agree that the County may furnish and install the asphalt surfacing, either at the railroad's or the county's expense. If the County provides and installs the asphalt, then the **Wisconsin Central Ltd.** shall bear any flagging costs.

7. That jurisdiction is retained.

Dated at Madison, Wisconsin, JUL 07 2005

By the Office of the Commissioner of Railroads.



Rodney W. Kreunen
Commissioner of Railroads

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