

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

Petition of the Village of West Milwaukee for a Determination of the Adequacy of Warning Devices at the Grade Crossing of the Tracks Owned by the Union Pacific Railroad Co. and Operated by the Soo Line Railroad Co. with W. Mitchell Street in the Village of West Milwaukee, Milwaukee County

9005-RX-90

Application of the Village of West Milwaukee for the Removal of Three Abandoned Spur Tracks at W. Mitchell Street in the Village of West Milwaukee, Milwaukee County

9005-RX-95

Complaint of the Village of West Milwaukee for the Repair of the Public Crossing of the Tracks Owned by the Union Pacific Railroad Co. and Operated by the Soo Line Railroad Co. with W. Mitchell Street in the Village of West Milwaukee, Milwaukee County

9005-RX-96

STIPULATION AND ORDER

By letter dated April 26, 2006, the Village of West Milwaukee filed a petition with the Office of the Commissioner of Railroads (OCR) for a determination under §195.28, Stats., of the adequacy of warning devices at the grade crossing of the Soo Line Railroad Co. (Soo Line - also known as CP Rail) tracks with W. Mitchell Street in the Village of West Milwaukee, Milwaukee County (Crossing No. 177217D / MP 6.00). The roadway crosses the Menomonee Belt track that is owned by the Union Pacific Railroad Co. (UP) and operated and maintained by the Soo Line.

The crossing presently consists of 8 tracks.

By letter dated April 17, 2007, the Village of West Milwaukee filed an application with the Office of the Commissioner of Railroads (OCR) under §190.16 (5), Stats, for authority for the removal of three abandoned spur tracks at W. Mitchell Street in the Village of West Milwaukee, Milwaukee County. (The Village also petitioned for protective appliances under s. 195.30 Stats. That statute only applies to "railroad crossings", i.e. where two railroad tracks cross one another, not a rail-highway crossing.).

By letter dated May 22, 2007, the Village of West Milwaukee filed a complaint with the Office of the Commissioner of Railroads (OCR) under §86.12, Stats., that the Union Pacific Railroad Co. (UP) and the Soo Line Railroad Co. (Soo Line, also known as CP Rail) have failed to maintain in good condition for public travel the public crossing of tracks owned by the Union Pacific Railroad Co. and operated by the Soo Line Railroad Co. with W. Mitchell Street in the Village of West Milwaukee, Milwaukee County. The Village of West Milwaukee states that it served the resolution on the respective railroads on April 16, 2007.

The Village of West Milwaukee, City of Milwaukee, Soo Line Railroad Co., Union Pacific Railroad Co., and ADM have reached a stipulation. Having reviewed the stipulation, the Commissioner finds and concludes that the stipulation and order satisfactorily resolve all matters in these three dockets.

STIPULATION

Whereas, the Village of West Milwaukee filed an application with the Commissioner of Railroads for the abandonment of spur tracks at W. Mitchell Street (9005-RX-90) and a Complaint that the railroads have not maintained that crossing in a good condition for travel of the public. (9005-RX-95).

During a prehearing conference before the Commissioner, Union Pacific, CP Rail, ADM, the Village and the City of Milwaukee agreed to a plan for the crossing improvements and removal of three abandoned ADM spur tracks and the consolidation of the remaining activity tracks to accommodate the Village roadway improvement projects. Therefore, the parties agree as follows:

1. The number of rail road tracks at the W. Mitchell Street crossing shall be reduced from 8 to 1.
2. The Railroads will repair and improve the main line crossing. In repairing the crossing, the Railroads will remove all tracks at the crossing and replace the main line crossing after the water main installation work by the Village has been completed, if the water main installation can be completed over a weekend time frame from Friday afternoon to Monday morning.
3. The Railroads may utilize salvaged signal equipment from W. Bluemound Road in improving the warning devices at the crossing.
4. The Railroads will allow for an open cut type of water main installation while repairing and improving the crossing as shown in Exhibit A, if the water main installation is completed over a week end time frame.
5. The Village of West Milwaukee will improve the water main and roadway to the edge of the new grade crossing surface of the new main line crossing as shown on Exhibit B.
6. ADM will pay \$25,000 in cash, split equally between CP Rail and Union Pacific, for the crossing improvement and spur removal. This is the full extent of ADM's obligation as it relates to this crossing and this amount will not change even if actual costs of the project are higher or lower than estimated. The Village has no further claims against ADM in these dockets.
7. The Village, City, Union Pacific and CP Rail will share the costs of the signal and track work, estimated at \$190,000, in the following manner:

Village of West Milwaukee	30%
City of Milwaukee	10%
CP Rail	30%
Union Pacific	30%

It is acknowledged by all parties that the costs may vary from those estimated on Exhibit C and therefore the actual amount paid by any party, except for ADM as set forth in paragraph 6, may vary. However the percentage that each party pays will remain as set forth in this paragraph.

8. The Village and City will allow W. Mitchell Street to be closed to traffic during construction of the improvements in the 2008 construction season. The project construction is scheduled for May 1 - June 30, 2008.
9. The track removal and crossing repair and improvement will be completed by CP Rail and Union Pacific in conjunction with the Village and City's roadway and utility work.
10. Exhibits A, B and C are incorporated as if set forth fully herein. Construction, repairs and improvements shall be in general conformity with Exhibits A (Water Main Extension) and B (Street Improvements) dated 10/2/07.

WHEREAS, the Village of West Milwaukee, City of Milwaukee, ADM, Union Pacific and the Soo Line Railroad Co. (CP Rail) have entered into an agreement for the repair and improvement of the W. Mitchell Street crossing in the Village as well as the removal of 7 spur railroad tracks which will no longer be necessary.

Order

THE COMMISSIONER ORDERS:

1. That the parties shall proceed as outlined in the forgoing stipulation entered into and approved by the parties or their counsel.
2. That the **Soo Line Railroad Co.** shall install and maintain cantilevered 12" LED automatic flashing lights 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 its tracks with **W. Mitchell Street** at-grade in the Village of West Milwaukee and the City of Milwaukee, Milwaukee County by **July 31, 2008** (Crossing No. 177 217D / MP 6.00). The Soo Line Railroad Co. may reuse warning devices from the **W. Bluemound Road** crossing.
3. That jurisdiction is retained.

Dated at Madison, Wisconsin, (June 12, 2008).

By the Office of the Commissioner of Railroads.

Roger Breske
Commissioner of Railroads