

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

In the Matter of the:

Petition of the City of Superior for the Closure of the Public Crossing of the Soo Line and the BNSF Railway Company Tracks with 59th Street in the City of Superior, Douglas County

9005-RX-91

FINAL DECISION

The City of Superior filed a petition with the Office of the Commissioner of Railroads (OCR) under §§195.28 and 195.29, Stats., for the closure of the public crossing of the BNSF Railway Company (BNSF - crossing no. 082 860V) and Soo Line Railroad Co. (Soo Line - crossing no. 691 648K) tracks with 59th Street in the City of Superior, Douglas County. The Soo Line is sometimes also known as CP Rail. Jurisdiction: Secs. 195.28 and 195.29, Stats.

Closing a crossing means that the roadway would be terminated at the tracks and would be permanently closed to public travel.

Pursuant to due notice, public hearing was held in this matter on February 22, 2007 in Superior, Wisconsin with hearing examiner Douglas S. Wood presiding.

On March 15, 2007, the hearing examiner issued a proposed decision. The OCR received no comments on the proposed decision. The Commissioner adopts the proposed decision as final without change.

Appearances:

Parties

City of Superior, Petitioner
by
Frog Prell, City Attorney
1316 N. 14th Street
Suite 301
Superior WI 54880

In Support:

Burlington Northern Santa Fe Railroad Co.
by
Craig N. Rasmussen
Manager Public Projects
80- 44th Avenue
Minneapolis, MN 55421

Soo Line Railroad Co.
by
Kurt Rohde
Track Maintenance Supervisor
501 Marquette Avenue
Minneapolis, MN 55402

As Interest May Appear:

Wisconsin Department of Transportation
by
Anna Davey
Rail Coordinator
1701 N. 44th Street
Superior, WI 54880

Of the Office Staff:

Thomas Running, Railroad Investigator

Findings of Fact

THE COMMISSIONER FINDS:

The City of Superior petitioned the Office of the Commissioner of Railroads to investigate the potential closure of the public crossings of the tracks of the BNSF Railway Company and the Soo Line Railroad Co. with 59th Street. Having considered all the evidence in the record, the Commissioner orders that the crossings be closed.

59th Street is about 20' wide. The roadway crosses the tracks of the BNSF and the Soo Line about 300' apart. The Soo Line track is the easterly track. 59th Street intersects the Soo Line track at an angle of about 75° (left-hand forward) and the BNSF track at an angle of about 40° (left-hand forward). The roadway ascends to each crossing at steep grades of 3% or more on each approach, which makes for a 'humped' crossing. Each crossing consists of one track.

59th Street intersects Hammond Avenue about 125' east of the Soo Line crossing. 59th Street intersects John Street about 300' west of the BNSF crossing. No residences or businesses front on 59th Street between Hammond Avenue and John Street. About 75' west of the BNSF track, an alley runs north and serves several outbuildings of residences that front on Johns Street. The alley makes a complete circuit and connects back to Johns Street. Access to this alley needs to be maintained.

The BNSF currently operates only on an as needed, customer demand basis over this crossing at a speed of 10 mph. The Soo Line operates 2 to 4 train movements per day on a seasonal basis at a speed of 10 mph.

59th Street carries approximately 50 vehicles per day. The speed limit is 25 mph. The roadway is also sometimes used for access to the back of athletic fields associated with the nearby public school on Central Avenue. These fields can be reached more directly from a parking lot at the school or by parking along John Street.

The crossings at 58th Street & Hammond Avenue and at Central Avenue provide adequate alternative routes at better crossings. Both crossings have flatter approach grades and the 58th Street & Hammond Avenue crossing has train-activated warning devices. The 59th Street crossing is redundant. Eliminating a redundant crossing serves the public interest.

End-of-Road Treatment

The City's Director of Public Works testified that vehicle turnarounds are not needed and the OCR agrees. The city does not plan to obliterate the roadway approaches to the crossings. The order does require the City of Superior to install guardrail barricades with reflective end-of-road markers on the east side of the Soo Line crossing and the west side of the BNSF crossing. These barricades shall be placed outside the railroad right-of-way.

Costs

The City shall pay the cost to install the barricades and end-of-road markers. Each railroad shall bear the cost of removing the crossing surfaces and roadway approaches within their respective rights-of-way. Each railroad also indicated it intends to make a crossing closure incentive payment to the City of Superior, which can then be matched by the State of Wisconsin with federal safety funds (up to \$7500 per crossing).

Ultimate Conclusions on the Issues

THE COMMISSIONER CONCLUDES:

1. That the closure of the crossings at-grade of the BNSF Railway Company and the Soo Line Railroad Co. tracks with 59th Street in the City of Superior, Douglas County will promote public safety and convenience.

2. That it is reasonable for the City to bear the cost to install the barricades and end-of-road markers and for each railroad to bear the cost of removing the crossing surfaces and roadway approaches within their respective rights-of-way.

Conclusion of Law

THE COMMISSIONER CONCLUDES:

That the jurisdiction of the Office of the Commissioner of Railroads under §§195.28 and 195.29, Stats., extends to this matter. Accordingly, the Office enters an order consistent with the findings of fact.

Order

THE COMMISSIONER ORDERS:

1. That the **BNSF Railway Company** shall remove the crossing surfaces and the roadway approaches within its right-of-way for the crossing at-grade of **59th Street** with their tracks in the City of Superior, Douglas County **after May 18, 2007 and before May 25, 2007** (crossing no. 082 860V). The **BNSF Railway Company** shall not remove the crossing surface or approaches until the barricades are in place.

2. That the **Soo Line Railroad Co.** shall remove the crossing surfaces and the roadway approaches within its right-of-way for the crossing at-grade of **59th Street** with their tracks in the City of Superior, Douglas County **after May 18, 2007 and before May 25, 2007** (crossing no. 691 648K). The **Soo Line Railroad Co.** shall not remove the crossing surface or approaches until the barricades are in place.

3. That the **City of Superior** shall install and maintain a steel guard rail barricade with reflective red and white stripes with End-of-Roadway markers (See Section 3C.04 and Figure 3C-1, Object Markers and End-of-Roadway Markers, Signs OM4-1 or OM4-3 in the MUTCD) outside of the railroad right-of-way on the west approach to the BNSF Railway Company crossing and on the east approach to the Soo Line Railroad Co. crossing of **59th Street** in the City of Superior, Douglas County by **May 18, 2007**.

Costs

4. That the **BNSF Railway Company and the Soo Line Railroad Co.** shall bear the cost of removing the crossing surfaces and roadway approaches within their respective rights-of-way at the **59th Street** crossing. The **BNSF Railway Company and the Soo Line Railroad Co.** shall also bear any cost assessed to the railroad pursuant to §195.60, Stats., for the investigation of this matter by the Office. The railroad shall not pass on those assessment costs either directly or indirectly.

5. That the **City of Superior** shall bear the costs to install and maintain the barricades and end-of-road markers at the **59th Street** crossing.

6. That jurisdiction is retained.

Dated at Madison, Wisconsin, (March 30, 2007).

By the Office of the Commissioner of Railroads.

Rodney W. Kreunen
Commissioner of Railroads

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