

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

In the Matter of the:

Petition of the City of La Crosse for the Closure of Three Public Crossings of the BNSF Railway Company Tracks in the City of La Crosse, La Crosse County

9020-RX-158

FINAL DECISION

By letter dated May 17, 2007, the City of La Crosse filed a petition with the Office of the Commissioner of Railroads (OCR) under §§195.28 and 195.29, Stats., for the closure of three public crossings of the BNSF Railway Company (BNSF) tracks in the City of La Crosse and the Town of Shelby, La Crosse County. The City proposes to close the crossings of Weston Street (crossing no. 079 836R) and 27th Street (crossing no. 079 826K, and **either** 14th Street (crossing no. 079 834C) **or** Horton Street (crossing no. 079 833V). The 27th Street crossing is in the Town of Shelby. All of the crossings are on the BNSF's spur track known as Track 76. Jurisdiction: Secs. 195.28 and 195.29, Stats.

Pursuant to due notice, public hearing was held in this matter on July 24 and July 25, 2007 in La Crosse, Wisconsin with hearing examiner Douglas S. Wood presiding.

On November 8, 2007, the hearing examiner issued a proposed decision. On November 21, 2007, the OCR received comments from the BNSF generally supporting the proposed decision, but also offering some comments opposing parts of the proposed decision. On November 23, 2007, the OCR received comments from the Town of Shelby opposing the closure of 27th Street, and on November 30, 2007, the OCR received comments from the City of La Crosse supporting the proposed decision.

The BNSF notes that the proposed decision discussed the need to retain pedestrian crossings at Weston Street and 14th Street, but then failed to include such provisions in the order. BNSF also restated its opposition to retaining these pedestrian crossings. Pedestrians will continue to cross here, especially given the limited number and speed of trains, whether there is an improved crossing or not. It is safer for pedestrians to cross at improved locations.

The BNSF requested that all cul de sacs be placed off of BNSF right-of-way. The Commissioner denies the request. Both the BNSF and the City of La Crosse already have existing property rights where the roadway and sidewalks run.

The BNSF also requested that the schedule for the closure be advanced from October 1, 2008. The Commissioner declines the request. The Commissioner notes that the Town of Shelby requested that the closure be delayed and the Commissioner also declines that request.

The Town of Shelby objects to the closure of the 27th Street crossing. None of the reasons offered were presented at the hearing, but could have been. Even accepting the assertions in the Town's letter as factually accurate, the Commissioner still concludes that the closure of the crossing will promote public safety in a manner consistent with public convenience.

The Town indicated that a belief that it had several years to decide what to do in order to retain the federal quiet zone on Track 76. In fact, the City and Town must submit a safety improvement plan to the Federal Railroad Administration (FRA) by June 24, 2008 in order to retain the quiet zone. In other words, time is short. The safety improvements then have to be completed by 2010 (or possibly 2013 if the requirements of 49 CFR 222.41 (c) (3) are met). Furthermore, it should be noted that if the 27th Street does not meet the requirements for the federal quiet zone, then the *entire* Track 76 quiet zone could lose its pre-rule status and train horns would begin to be blown immediately after June 24, 2008.

The Commissioner adopts the proposed decision as final, except for adding the sidewalk crossing retention inadvertently left out of the proposed decision.

Appearances:

Parties

City of La Crosse, Petitioner
by
Dale Hexom, Director of Public Works, PE
400 La Crosse Street
La Crosse, WI 54601

As Interest May Appear:

BNSF Railway Company
by
Craig Rasmussen
Manager Public Projects
80- 44th Avenue
Minneapolis, MN 55421

Town of Shelby
by
Jeff Brudos, Town Administrator
2800 Ward Avenue
La Crosse, WI 54601

Findings of Fact

THE COMMISSIONER FINDS:

The City proposes to close the crossings of Weston Street and 27th Street, and either 14th Street or Horton Street. The 27th Street crossing is in the Town of Shelby. All of the crossings are on the BNSF's spur track known as Track 76.

The City of La Crosse wants to continue a federal quiet zone through this area. The City proposes to close three crossings and to upgrade the warning devices at the remaining crossings.

Having considered all the evidence in the record, the Commissioner of Railroads orders **examiner recommends** that the Weston Street, 27th Street and 14th Street crossings be closed.

Train operations

The railroad currently operates two through train movements per day over each crossing location at a speed of 10 mph. Each crossing consists of one main line track (Track 76). The railroad does not typically stop and flag movements over the crossings. All movements are 'head-end' (with an engine in front).

Weston Street (crossing no. 079 836R)

Weston Street is 36' wide between curbs and intersects the tracks at an angle of about 35° (right-hand forward). Weston Street carries about 300 ADT (average daily traffic). The speed limit is 25 mph. The crossing has advance warning, "NO TRAIN HORN", crossbuck and yield signs for warning devices. Weston Street now terminates without intersecting South Avenue.

At all crossings, except those with gates, a driver stopped 15' short of the near rail must be able to see far enough down the track, in both directions, to determine if sufficient time exists for moving their vehicle safely across the tracks to a point 15' past the far rail, prior to the arrival of a train. Required clearing sight distance along both directions of the track, from the stopped position of the vehicle, is dependent upon the maximum train speed and the acceleration characteristics of the "design" vehicle. The necessary clearing sight distance at the Weston Street crossing is 225' assuming a 10 mph train. The available clearing sight distance is more than 225' in all quadrants.

14th Street (crossing no. 079 834C)

14th Street is 36' wide and intersects the tracks at an angle of about 55° (left-hand forward). 14th Street carried 242 vehicles per day according to a 2007 count. The speed limit is 25 mph. The crossing has advance warning, "NO TRAIN HORN", crossbuck and yield signs for warning devices.

The necessary clearing sight distance at the 14th Street crossing is 225' assuming a 10 mph train.

The available clearing sight distance is more than 225' in all quadrants.

Horton Street (crossing no. 079 833V)

Horton Street is 36' wide and intersects the tracks at an angle of about 35° (right-hand forward). Horton Street carried 438 vehicles per day according to a 2007 count. The speed limit is 25 mph. The crossing has advance warning, "NO TRAIN HORN", crossbuck and yield signs for warning devices.

The necessary clearing sight distance at the Horton Street crossing is 225' assuming a 10 mph train. The available clearing sight distance is more than 225' in all quadrants.

Discussion of Weston Street, Horton Street, and 14th Street

The streets in this immediate area are laid out on a grid pattern. South Avenue (STH 35) is the major thoroughfare in the immediate vicinity and it is located about two blocks west of these crossings. Each block in this area is about 250' long. Weston Street is an east-west street. There are other east-west roadways one block north (Barstow), two blocks north (Travis) and one block south (Horton). After Horton Street, the next east-west street to the south is Chase Street, which is four blocks south of Weston Street.

Likewise, there are north-south streets nearly every block beginning with West Avenue on the west, then 13th Street (one block to the east of West Avenue), 14th Street (three blocks to the east of West Avenue), and 15th Street (four blocks east of West Avenue). The crossing at 13th Place (between 13th Street and 14th Street) was closed in 1994 by order of the Office of the Commissioner of Transportation, the predecessor agency to the OCR.

Horton Street and 14th Street each intersect with South Avenue and are controlled by stop signs. Weston Street no longer intersects with South Avenue.

Traffic signals are located on South Avenue at its intersections with Ward Avenue, Losey Boulevard, Birch Street, and Broadview Place, which is located at about 29th Street.

At the hearing, two residents of the area testified that they would prefer to see both Weston and Horton Street closed in order to limit the amount of traffic on 15th Street where they reside. Closing both Horton Street and Weston Street would leave no through east-west streets in the area between Barstow Street and Chase Street. Closing Weston Street and 14th Street eliminates an east-west street and a north-south street and also leaves two or more streets for each direction of travel.

Another resident testified he would prefer to see 14th Street, 15th Street, and Horton Street closed and Weston Street left open. While there are a variety of ways the closures and remaining crossings could be configured, the closure of 15th Street was not included in the hearing and can not legally be considered in this docket (but see below, the City can petition for other closures later).

Eliminating redundant crossings serves the public interest. Closing Weston Street and 14th Street and leaving Horton Street open would eliminate redundant crossings, but also provide adequate traffic circulation and access.

The impact of the closures can be further evaluated by the City after the crossings are closed. If the City determines that it desires to close another crossing(s), then the City may again petition the OCR. Given the voluntary nature of the City's closure petition, the OCR is reticent to expand the closures or change the City's choices of which crossings to close.

27th Street (crossing no. 079 826K)

27th Street is 36' wide between curbs and intersects the tracks at an angle of about 55° (left-hand forward). The crossing consists of one main line track. 27th Street is the first crossing on Track 76. 27th Street carried 221 vehicles per day according to a 2007 count. The speed limit is 25 mph. The crossing has advance warning, "NO TRAIN HORN", crossbuck and yield signs for warning devices.

The necessary clearing sight distance at the 27th Street crossing is 225' assuming a 10 mph train. The available clearing sight distance is more than 225' in all quadrants.

Adequate alternate routes to 27th Street exist. The City, Town of Shelby, and Wisconsin Department of Transportation recently improved the traffic capacity at the signalized intersections of South Avenue (aka Mormon Coulee Road) with Losey Boulevard and Ward Avenue. 27th Street has been used as an alternate route to Losey Boulevard and Ward Avenue, but the capacity improvements lessen the utility of 27th Street as an alternate. Traffic that uses 27th Street to get across the tracks will be able to use Losey Boulevard with little inconvenience, especially on the south side where Diagonal Road runs parallel to the track.

The Losey Boulevard crossing of Track 76 has cantilevered automatic flashing lights. The City has recently petitioned the OCR to evaluate the Losey Boulevard and Ward Avenue crossings (among several others) for upgraded warning devices.

The 27th Street crossing is in the Town of Shelby. South of Diagonal Road 27th Street is in the City.

27th Street is a redundant crossing. Eliminating a redundant crossing serves the public interest. The City of La Crosse and the Town of Shelby want to continue a federal quiet zone through this area.

End-of-Road Treatments

The order requires the City to construct and maintain one cul de sac at the termination of Weston Street and 14th Street and for the Town of Shelby to do the same at 27th Street. The City submitted design plans for each of the crossings (including 27th Street) and the order is consistent with those plans. More specifically, a cul de sac is needed on the west side of the Weston Street crossing and new curbing is needed on the east side of the crossing. At 14th Street, a cul de sac is needed on the east side of the crossing and the roadway should be obliterated on the west side up to Horton Street and new curb installed at that intersection. At 27th Street, a cul de sac is needed on the north side of the crossing and the 27th Street roadway should be obliterated on the south side up to Diagonal Street and new curb installed at that intersection.

The roadway authority shall also install either Type III barricades with red and white stripes **or** End-of-Roadway markers just beyond the cul de sac. No barricades or marker are required on the other side of the crossing where the roadway will be obliterated and new curb installed.

Weston Street and 14th Street have sidewalk crossings on each side of the roadway (27th Street does not have sidewalks). Given the residential nature of the area, pedestrians will continue to cross at these locations whether a crossing is in place or not and it is safer for the pedestrians to use an improved crossing. However, one sidewalk will adequately serve the public need at each location. The sidewalks at each crossing shall be consolidated either by constructing one relocated sidewalk crossing or by closing one the existing sidewalk crossings.

The order also provides for the installation of temporary barricades if the cul de sac and other end-of-road treatments are not completed by October 1, 2008.

Costs

Consistent with prior OCR practice, the order requires the BNSF Railway Company to pay the costs to remove the crossing and roadway approaches within its right-of-way, and the construction of vehicle turnarounds. The City of La Crosse and Town of Shelby, respectively, shall bear the cost to install and maintain the permanent barricades or end-of-road markers, and to maintain the vehicle turnarounds. It is also anticipated that the BNSF Railway Company will contribute voluntary crossing closure incentive payments to the City and Town.

Deadlines

The City did not specify exact dates for completion. This **proposed decision** uses dates in October 2008. The parties may wish to submit comments on those dates.

Ultimate Conclusions on the Issues

THE COMMISSIONER CONCLUDES:

1. That the closure of the crossings at-grade of the BNSF Railway Company tracks with Weston Street and 14th Street in the City of La Crosse and 27th Street in the Town of Shelby, La Crosse County will promote public safety and convenience.
2. That it is reasonable that the BNSF Railway Company shall pay the cost to close the Weston Street, 14th Street, and 27th Street crossings, including the construction of vehicle turnarounds, and removal of the crossing and the roadway approaches within its right-of-way.
3. That it is reasonable that the City of La Crosse shall pay the cost to install and maintain the permanent barricades or end-of-road markers, and to maintain the vehicle turnarounds at the Weston Street and 14th Street crossings.
4. That it is reasonable that the Town of Shelby shall pay the cost to install and maintain the permanent barricades or end-of-road markers, and to maintain the vehicle turnaround at the 27th Street crossing.

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 **Weston Street, 14th Street, and 27th Street** with its tracks in the City of La Crosse and the Town of Shelby, La Crosse County **after October 1, 2008 and before October 31, 2008** (crossing nos. 079 836R, 079 834C, and 079 826K). The **BNSF Railway Company** shall not remove the crossing surface or approaches until the barricades or End-of-Road markers are in place.

2. That the **City of La Crosse** shall install and maintain end of road treatments, including one cul de sac at each crossing, curbing, and obliteration of roadway at or near the termini of **Weston Street and 14th Street** in accordance with the design plans submitted at the hearing by the City of La Crosse in the City of La Crosse, La Crosse County **no later than October 1, 2008**. That as part of the end-of-road treatment the **BNSF Railway Company** shall install and maintain one sidewalk crossing at **Weston Street and 14th Street** either by constructing one relocated sidewalk crossing or by closing one the existing sidewalk crossings at the option of the **City of La Crosse by October 1, 2008**.

3. **Temporary barricades.** That if the cul de sac, roadway obliteration and curb installation is not completed by **October 1, 2008**, then as a temporary measure the **City of La Crosse** shall install Type III barricades with red and white stripes at or near the terminus of each approach to the crossings at-grade of **Weston Street and 14th Street** with the BNSF Railway Company tracks in the City of La Crosse, La Crosse County **no later than October 1, 2008** [see Sections 3F.01 and 6F.63 and Figure 6F-7, (Sheet 2 of 2) in the Manual on Uniform Traffic Control Devices (MUTCD)].

4. **Permanent barricades or end-of-road markers.** That **after the construction of the respective cul de sacs**, the **City of La Crosse** shall install and maintain Type III barricades with red and white stripes or 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) at or near the terminus of the approach on the **west side at the Weston Street and the east side at the 14th Street** crossings at-grade of the BNSF Railway Company tracks in the City of La Crosse, La Crosse County. If End-of-Roadway markers are used, then a minimum of three markers shall be placed at each terminus.

5. That the **Town of Shelby** shall install and maintain end of road treatments, including a cul de sac on the north side and curbing and obliteration of roadway on the south side at or near the termini of **27th Street** in accordance with the design plans submitted at the hearing by the City of La Crosse in the Town of Shelby, La Crosse County **no later than October 1, 2008**.

6. **Temporary barricades.** That if the vehicle turnaround, roadway obliteration and curb installation is not completed by **October 1, 2008**, then as a temporary measure the **Town of Shelby** shall install Type III barricades with red and white stripes at or near the terminus of each approach to the crossing at-grade of **27th Street** with the BNSF Railway Company tracks in the Town of Shelby, La Crosse County **no later than October 1, 2008** [see Sections 3F.01 and 6F.63 and Figure 6F-7, (Sheet 2 of 2) in the Manual on Uniform Traffic Control Devices (MUTCD)].

7. **Permanent barricades or end-of-road markers.** That **after the construction of the cul de sac**, the **Town of Shelby** shall install and maintain a Type III barricade with red and white stripes **or** 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) at or near the terminus of the approach on the **north** side of the crossing at-grade of **27th Street** with the BNSF Railway Company tracks in the Town of Shelby, La Crosse County. If End-of-Roadway markers are used, then a minimum of three markers shall be placed at each terminus.

Costs

8. That the **BNSF Railway Company** shall pay the cost to remove the crossings and roadway approaches within its right-of-way, and to construct the cul de sacs, obliterate roadways, and install new curbing at the **Weston Street, 14th Street, and 27th Street** crossings. The BNSF Railway Company 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.

9. That the **City La Crosse and the Town of Shelby** shall bear the costs to install and maintain the temporary barricades (if any), the permanent barricades or end-of-road markers, and to maintain the vehicle turnarounds at the **Weston Street, 14th Street, and 27th Street** crossings respectively. The **City of La Crosse** shall bear the costs, if any, associated with retaining the sidewalk crossings.

10. That jurisdiction is retained.

Dated at Madison, Wisconsin, (January 22, 2008).

By the Office of the Commissioner of Railroads.

Rodney W. Kreunen
Commissioner of Railroads

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