

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

In the Matter of the:

Petition of the Wisconsin Department of Transportation for the Establishment of a Public Crossing of the BNSF Railway Company Tracks with Power Plant Road in the Town of Genoa, Vernon County

9020-RX-160

FINAL DECISION

By letter dated August 28, 2007, the Wisconsin Department of Transportation (DOT) petitioned the Office of the Commissioner of Railroads (OCR) for the establishment of a public crossing of Power Plant Road with the BNSF Railway Company (BNSF) tracks located in the Town of Genoa, Vernon County. DOT provided the new crossing number (927 477U) that has apparently been already been assigned.

Jurisdiction: Secs. 195.28 and 195.29, Stats.

Pursuant to due notice, public hearing was held in this matter on October 4, 2007 in La Crosse, Wisconsin with hearing examiner Douglas S. Wood presiding.

On November 14, 2007, the hearing examiner issued a proposed decision. By letter dated November 16, 2007, the BNSF filed comments regarding the proposed decision. On November 21, 2007, the DOT submitted comments as well.

The BNSF disagrees with the conclusion in the proposed decision that the existing crossing is a private crossing. The BNSF also asks that the OCR order the closure of the existing crossing. The Commissioner agrees that there is evidence supporting both sides of the question, but concurs with the conclusion reached in the proposed decision. The Commissioner can not order the closure of the private crossing, but all parties agree that the crossing is going to be closed when the new crossing is opened. As a practical matter the new crossing is a replacement for the existing crossing.

The BNSF notes that paragraph 4 in the Proposed Ultimate Conclusions on the Issues incorrectly stated that the cost-sharing. As BNSF notes, the railroad has agreed to contribute to the cost of the new crossing. The final decision corrects that error.

The BNSF notes that the completion date in the proposed decision for the crossing work (September 12, 2008) and signal installation (September 26, 2008) are different. DOT's comments addressed this point. DOT stated: "it is typical for there to be a week or two between the completion dates for the crossing surface and the signals. The crossing surface needs to be

constructed prior to paving operations. It is the intent on highway projects for the crossing surface to be installed, then the highway be paved and then opened to traffic only after the warning devices are operational.”

The BNSF also requests 12 months from the date of the order to install the new warning devices at the new crossing. The Commissioner extends the deadline to October 31, 2008 for the signal installation. The deadline for the crossing installation remains October 10, 2008. The crossing can not be opened until the new warning devices are installed and operating. Likewise, as a practical matter the existing crossing can not be closed until the new public crossing is opened. However, the new crossing does not need to be installed before the hot mix asphalt plants close next fall.

The existing warning devices are owned by the State of Wisconsin. The warning devices can be reused on another railroad. The OCR will issue a separate order. DOT stated it will accept the signal material “as-is” with no warranty or guarantees. DOT added: “However, the DOT does expect the signal material be whole and parts not be removed (such as cards for the circuitry).”

The Commissioner adopts the proposed decision as final without change.

Appearances:

Parties

Wisconsin Department of Transportation, Petitioner
by
Mark Morrison, PE
Grade Crossing Safety Engineer
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Madison, WI 53707-7914

In Support:

Town of Genoa
by
George O. Kruck, Town Chair
PO Box 27
Genoa, WI 54632

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

Dairyland Power Cooperative
by
Kurt D. Childs
PO Box 817
La Crosse, WI 54602-0817

Findings of Fact

THE COMMISSIONER FINDS:

The Wisconsin Department of Transportation, Dairyland Power Cooperative, BNSF, and the Town of Genoa propose to replace the existing crossing (crossing no. 079 873T) with a public crossing located about 0.31 miles to the south.

While the record contains conflicting evidence as to whether the existing roadway and crossing are public or private, the preponderance of the evidence supports a conclusion that the existing crossing is private. The crossing was treated as a public crossing by the Public Service Commission of Wisconsin in a 1975 order (2-R-6041). Public funds were used to pay 85% of the cost to upgrade warning devices by the Wisconsin Department of Transportation. While the roadway provides access to the power plant, it also provides public access to a public boat landing.

On the other hand, there is a private crossing agreement for the crossing between the railroad and Dairyland dating from the 1940's, the Town of Genoa does not claim the roadway as a town road for reimbursement from the state, and the DOT issued a private driveway permit to Dairyland for the access to STH 35. The Town does not maintain the roadway. Moreover, no evidence supports a finding that the roadway has been 'laid out' by the Town in accordance with chapter 80 of the Wisconsin statutes or that the land was ever dedicated to public use. Finally, the evidence does not support a conclusion that the Town acquired a prescriptive easement over the tracks because the use was permissive.

The Commissioner concludes that the existing crossing is private.

Relocating the access roadway will maintain public access to the river and boat launch while also allowing improved security at the power plant. The new crossing will be about 1600' south of the existing crossing. DOT has agreed to grant a new permit for access to STH 35.

The new Power Plant Road will consist of two 18'-wide roadways divided by a 4'-wide raised median at a 90° angle. Power Plant Road will intersect STH 35 at a distance of 87' from the crossing compared to the existing 60'. The approach grades will also improve. A deceleration lane will be added on STH 35 for southbound traffic and a bypass lane will be added on the right for northbound traffic. The crossing consists of two mainline tracks.

Power Plant Road will carry about 270 ADT (average daily traffic). Actual traffic speeds will generally be less than 25 mph due to the proximity of STH 35. Many of the drivers are likely to be non-local users of the public boat launch.

The railroad currently operates 43 through train movements per day over the crossing at a speed of 60 mph.

The exposure factor at this crossing is about 12,000. The exposure factor equals the product of the number of trains per day and the number of highway vehicles per day, which yields a numerical value for the potential conflicts each day at the crossing.

No train-vehicle accidents occurred at the existing crossing since 1973.

Accidents that do occur here will likely be quite serious if a through train is involved due to their 60 mph speed. Train speed is strongly correlated with fatalities in train/vehicle accidents. More specifically, crossings with train speeds of 40 mph and over have a disproportionate number of fatalities.

The Wisconsin Department of Transportation has produced a benefit-cost analysis for all at-grade crossings in the state. Installing new automatic flashing lights with gates and constant warning time circuitry at the Power Plant Road crossing has a net benefit of about \$1,900,000.

In order to adequately protect public safety, 12" LED automatic flashing lights with gates and constant warning time circuitry are needed because of the number of trains, train speed, projected net benefit, and use by non-local drivers.

Constant warning time circuitry adjusts for train speed and causes the crossing signals to always operate for the same amount of time before the train reaches the crossing, regardless of train speed. A motion detector simply detects the train operation, but does not adjust for train speed so that the amount of warning time varies based on train speed.

Light emitting diodes (LED) lamps replace incandescent bulbs. LEDs have higher conspicuity, a wider cone of vision, and longer life than incandescent lights. LEDs are especially useful on east-west roadways where the rising and setting sun may make the signals difficult to see.

In summary, the establishment of the crossing at-grade of the BNSF tracks with Power Plant Road will promote public safety and convenience by increasing the distance between STH 35 and the crossing, adding medians, improving the approach grades, and improving security at the power plant.

Source of funding:

The BNSF, DOT, and Dairyland agreed to split the cost of the project as follows: The DOT will use federal safety funds to pay 100% of the signal materials and installation cost. The BNSF will be responsible for the new concrete paneled crossing and all associated track work. The BNSF will

grant the Town of Genoa an easement at no cost. Dairyland will be responsible for all grading and roadway work associated with the project.

Ultimate Conclusions on the Issues

THE COMMISSIONER CONCLUDES:

1. That the establishment of the crossing at-grade of Power Plant Road with the BNSF Railway Company tracks in accordance with the design plans of the Wisconsin Department of Transportation in the Town of Genoa, Vernon County will promote public safety and convenience.
2. That establishment of the crossing is advisable under all the circumstances.
3. That in order to adequately protect and promote public safety, it is necessary to install and maintain 12" LED automatic flashing lights with gates.
4. That it is reasonable that the BNSF Railway Company be responsible for the cost of the new concrete paneled crossing and all associated track work and to grant an easement to the Town of Genoa at no cost.

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 install and maintain a crossing at-grade of **Power Plant Road** with its tracks in accordance with the design plans of the Wisconsin Department of Transportation in the Town of Genoa, Vernon County by **October 10, 2008** (Crossing No. 927 477U).

2. That the **BNSF Railway Company** shall install and maintain 12" LED automatic flashing lights with gates, constant warning time circuitry, and other 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 **Power Plant Road** at-grade in the Town of Genoa, Vernon County by **October 31, 2008** (Crossing No. 927 477U).

3. That the **BNSF Railway Company** shall submit to the Office of the Commissioner of Railroads signal and circuit plans with the cost estimate of its proposed installation and upon completion of the signal project, a detailed statement of the actual cost to the Office and to the Wisconsin Department of Transportation.

4. That the signal installation work herein ordered shall not begin until the regional office of the Wisconsin Department of Transportation informs the railroad that they may start such work and such start notice will not be issued until appropriate federal aid or other funding arrangements have been assured. The cost of the new project initiated before the start notice will not be reimbursed with public funds and shall be the responsibility of the railroad.

5. That the **Town of Genoa** shall not open Power Plant Road at the railroad crossing to unrestricted public use until the installation and activation of the automatic warning devices ordered above.

6. That the **BNSF Railway Company** shall bear be responsible for the new concrete paneled crossing and all associated track work. The **BNSF Railway Company** shall grant an easement to the Town of Genoa at no cost. The **BNSF Railway Company** shall be responsible for 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.

7. That the **Dairyland Power Cooperative** shall be responsible for the cost of all grading and roadway work associated with the project.

8. That jurisdiction is retained.

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

By the Office of the Commissioner of Railroads.

Rodney W. Kreunen
Commissioner of Railroads

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