

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

In the Matter of the:

Petition of the Union Pacific Railroad Company for the Closure of the Public Crossing of the Union Pacific Railroad Company Tracks with Salt Box Road in the Town of Sharon, Walworth County

9040-RX-1135

FINAL DECISION

On the Commissioner's Own Motion for a Determination of the Adequacy of Warning Devices at the Grade Crossing of the Union Pacific Railroad Co. Tracks with STH 67 in the Town of Sharon, Walworth County

9040-RX-1136

SUPPLEMENTAL ORDER

On January 15, 2004, the Union Pacific Railroad Company 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 Union Pacific Railroad Company (UP) tracks with Salt Box Road in the Town of Sharon, Walworth County (crossing no. 177-028G).

Pursuant to due notice, public hearing was held in this matter on March 3, 2004, in the Village of Sharon, Wisconsin with hearing examiner David J. Meier presiding. The Commissioner subsequently assigned hearing examiner Douglas S. Wood to prepare this proposed decision after he reviewed the record.

On December 22, 2004, the hearing examiner issued a proposed decision. The OCR received no comments on the proposed decision. The Commissioner does wish to comment that the Union Pacific Railroad Co. has agreed to provide a \$7500 incentive payment to the Town of Sharon. Once the Town receives that incentive payment it will be eligible for a matching \$7500 from the state by applying with the Wisconsin Department of Transportation.

In addition, the Commissioner amends the decision in docket 9040-RX-1136 regarding a crossing of STH 67 with the UP tracks. In the initial decision the state was to provide all necessary funding for the signal materials and labor costs. The UP has now agreed to install the signals at its own expense and the state will provide the signal materials cost (including shipping).

With these additions, the Commissioner adopts the proposed decision as final.

Parties

Appearances:

In Support:

Union Pacific Railroad Co.
by
Attorney Brian Baird
735 N. Water Street, 15th Floor
Milwaukee WI 53202-4188

In Opposition: None

As Interest May Appear:

The Town of Sharon,
by
Town Board Chairman, Edward Vander Veen and Town Board
Supervisors, William Henning and Richard Brandl.

Of the Office Staff:

Thomas Clauder, Rail Safety Analyst

Other than the Parties, and an expert witness called by the Union Pacific Railroad Co., no one attended the hearing and no other testimony was taken.

Findings of Fact

THE COMMISSIONER FINDS:

The Union Pacific Railroad proposes to close the crossing of its tracks by Salt Box Road. Salt Box Road carries an average daily traffic (ADT) of 70 vehicles at a posted speed limit of 40 miles per hour (MPH). The railroad currently operates 12 through rail movements per day over the Salt Box Road crossing at a timetable speed of 50 mph. The segment of Salt Box Road that crosses the tracks extends from New Factory Road, immediately north of the Union Pacific right-of-way, to State Trunk Highway 67, some 400' to the south. There are no residences, nor accesses of any kind, on this segment of Salt Box Road.

Salt Box Road is 20' wide and intersects the Union Pacific Railroad tracks at an angle of 60° left-hand forward. The northerly approach declines to the crossing at a grade of 2% while the southerly approach declines at a grade of 1%, making more difficult the task of bringing an approaching vehicle to a halt.

The railroad was constructed in a cut through a small hill at this location. The topography, with a roadway elevation both north and south of the crossing, renders this crossing hazardous. The sides of the cut, through which the trains run, obstruct visibility of the trains to approaching motorists. Standing corn and naturally occurring vegetation exacerbate the restriction on visibility.

A grain elevator lies in the northwest quadrant of the crossing, at the intersection of Salt Box Road and New Factory Road. During the fall corn harvest and, to a lesser extent in the spring, a great number of grain trucks haul into or from this facility. A large portion of these trucks use the Salt Box Road crossing to travel between the grain elevator and State Trunk Highway 67. These trucks, northbound and southbound, must stop at the crossing before proceeding. The crossing is also used by three school buses each day and by a significant number of farm vehicles. All of these heavier vehicles are subject to the restraints in acceleration that make clearing sight distances a critical factor at this crossing.

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 Salt Box Road crossing is 1120'. The available clearing sight distance is 535' in the northwest quadrant and 735' in the southwest quadrant. The clearing sight exceeds 1200' in the northeast and southeast quadrants.

A driver traveling at 40 mph on level pavement needs a distance of 335' to stop safely. The crossing is visible from more than that distance in each direction. Assuming a train speed of 50 mph, however, a driver traveling at 40 mph needs to see a train when it is 530' from the crossing from a point 335' down the highway. The sight distance available in each quadrant is as follows: 385' in the northwest quadrant, more than 530' in the northeast quadrant, and 130' in both the southwest and southeast quadrants. Sight distance is inadequate in three of the four quadrants. This sight limitation becomes greatly exacerbated during the growing and pre-harvest season for corn as adjacent corn acreage further restricts sight distance to less than 75' in the northeast, southeast and southwest quadrants.

Three train-vehicle accidents have occurred at this crossing since 1973. The accidents occurred in 1974, 1988, and 1998. Injuries occurred in the 1988 and 1998 crashes.

Accidents that occur here will likely be quite serious because of the 50 mph train 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. According to Federal Railroad Administration (FRA) statistics, nationally, in 1994 71% of fatalities occurred at crossings with train speeds of 40 mph+, even though only 26% of all crossings had train speeds of 40 mph+.

The Salt Box Road crossing presently has cross bucks with stop signs for warning devices. These warning devices are not adequate. This protection is not adequate. In order to provide adequate protection, automatic signal lights with gates and constant warning time circuitry would be required. The exposure factor at this crossing is about 840. 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.

Also, a limited amount of public funds are available for automatic warning devices. Signal installations average about \$125,000 or more per crossing. As noted earlier, if the Salt Box Road crossing remains open it must be protected by automatic flashing lights with gates.

Eliminating a redundant crossing serves the public interest. A very limited amount of public funds are available for automatic warning devices. Closing this crossing will allow the signal safety money to be allocated to other areas where a greater need exists.

Adequate alternate routes to Salt Box Road exist. New Factory Road intersects Salt Box Road on the north side of this crossing and runs southeasterly, parallel to the tracks, to STH 67. STH 67 then crosses the tracks immediately west of that intersection. The Commissioner ordered the upgrade of the warning devices at the STH 67 crossing on January 21, 2004 in Docket number 9040-RX-1136.

The DOT is considering a highway project to improve the turning radius at the intersection of New Factory Road and STH 67 to serve the truck traffic that now uses Salt Box Road.

Closing the crossing will not reduce the total number of potential conflicts. Frequently, it is suggested that spreading the traffic over two crossings instead of one crossing would be safer. The contrary is actually true. The fewer the points of conflict the less likely a conflict is to occur. Closing the crossing will eliminate a point of conflict and that will increase safety due to the "queuing" effect. The queuing effect works to reduce accidents because it reduces the number of drivers that must make a decision to stop for an approaching train. In essence, after one driver stops, other drivers are much less likely to pass and go across the tracks. The queuing effect works because it favorably influences driver behavior at the precise moment of danger, when a train is approaching the crossing.

The frequency and speed of trains make this crossing dangerous for public use. The availability of nearby crossings with convenient connecting roads allows the crossing to be closed without undue impact on the convenience of motorists. Closing the crossing after the upgrading of the warning devices at the adjacent crossing will improve public safety.

Consistent with prior OCR practice, the order requires the Union Pacific Railroad Company to pay the entire costs of closing the crossing except that the Town Of Sharon shall furnish, install, and maintain the roadway barricades. Apportioning the majority of the closing cost to the railroad is consistent with the past practice of the OCR. (see, e.g., 9164-RX-332, Wisconsin Central Ltd., Plank Road, Mukwonago; 9020-RX-109/112, Burlington Northern Railroad Co., 13th Place, La Crosse; 9164-RX-196, Wisconsin Central Ltd., 271st Avenue, Town of Salem, Kenosha County; 9068-RX-35, Fox Valley Western Ltd., Depot Street, Kaukauna; 9164-RX-227, Wisconsin Central Ltd., Evergreen Avenue, Solon Springs; 9164-RX-306, Holmes

Road, Town of Brillion, Calumet County; and 9163-RX-111, Wisconsin & Southern Railroad Co., Old CTH DT, Town of Genesee, Waukesha County.)

While public safety will benefit from the closing the railroad will obtain substantial and permanent financial gains from the closing. First, railroads bear a statutory duty to maintain all at-grade crossings. A full rehabilitation of a crossing like this one could easily cost \$20,000 to \$30,000. Second, the inconvenience occasioned by the closing of the crossing all falls on the public, not the railroad.

The order requires the Union Pacific Railroad Company to remove the crossing surfaces and the roadway surface from within its right-of-way at Salt Box Road between March 1 and March 15, 2005. The order also requires the Town of Sharon to install Type III barricades with red and white reflective material on each approach to each crossing by March 1, 2005. These are temporary barricades that the Town of Sharon is required to replace with permanent steel guard rail barricades when it constructs the vehicle turnarounds.

The order requires the Town of Sharon to install a vehicle turnaround area on the southerly approach to the existing Salt Box Road crossing. The Town may construct any non-cul de sac turnaround design consistent with the AASHTO's, "A Policy on Geometric Design of Highways and Streets", 2001. Specifically, the Commissioner approves L-type, T-type, Y-type or I Branch turnarounds as shown on pages 398-400 and Exhibit 5-8. These turnaround designs are adequate for the low volume of traffic that would be on Salt Box Road after the crossing is closed.

In summary, the closure of the crossing at-grade of the Union Pacific Railroad Company tracks with Salt Box Road will promote public safety and convenience by eliminating a point of potential conflict between trains and vehicles.

Ultimate Conclusions on the Issues

THE COMMISSIONER CONCLUDES:

1. That the closure of the crossing at-grade of the Union Pacific Railroad Company tracks with Salt Box Road in the Town of Sharon, Walworth County will promote public safety and convenience.
2. That it is reasonable that the Union Pacific Railroad Company bear the cost to close the Salt Box Road crossing, including the construction of one vehicle turnaround, and the removal of the crossing and the roadway approaches within its right-of-way.
3. That it is reasonable that the Town of Sharon shall bear the costs to install and maintain barricades on Salt Box Road.

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 **Union Pacific Railroad Company** shall remove the crossing surface and the roadway approaches within their right-of-way for the crossing at-grade of **Salt Box Road** with their tracks in the Town of Sharon, Walworth County, between **March 1, and March 15, 2005**. (crossing no. 177-028G).

2. That the Town of Sharon shall install Type III barricades with red and white stripes at or near the terminus of each approach to the crossing at-grade of **Salt Box Road** with the Union Pacific Railroad Company tracks in the Town of Sharon, Walworth County between **February 21, and March 1, 2005**. [see Sections 3F-1, 6C-8 and Figure 6-14 in the Manual on Uniform Traffic Control Devices (MUTCD)].

3. That the **Town of Sharon** shall install and maintain an L-type, T-type, Y-type or I Branch turnaround at or near the terminus of the southerly approach to the tracks of **Salt Box Road** consistent with American Association of State Highway and Transportation Officials (AASHTO) guidelines (2001 edition, pages 398-400 and Exhibit 5-8) in the Town of Sharon, Walworth County by **May 1, 2005**.

4. That the **Town of Sharon** shall install and maintain a steel guard rail barricade with reflective red and white stripes at or near the terminus of the southerly approach to the crossing at-grade of **Salt Box Road** with the Union Pacific Railroad Company tracks and also at the southerly limit of the intersection of Salt Box Road and New Factory Road in the Town of Sharon, Walworth County, by **May 1, 2005**.

5. That the **Union Pacific Railroad Company** shall give notice in writing to the **Town of Sharon** at least 10 days prior to commencing work to close the crossings.

6. That the **Town of Sharon** shall not remove or destroy driveway accesses, if any, that currently exist within its right-of-way in removing the roadway approaches.

7. That the **Union Pacific Railroad Company** shall bear the cost to close the **Salt Box Road** crossing, including the construction of a vehicle turnaround, removal of the crossing and the roadway approaches within its right-of-way. The **Union Pacific Railroad 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.

8. That the **Town of Sharon** shall bear the costs to install and maintain the barricades on Salt Box Road.

9. That the **State of Wisconsin** shall bear the cost of the mast-mounted 12" LED automatic flashing lights with gates, and constant warning time circuitry with appropriate appurtenances (including shipping costs) at STH 67 (crossing no. 177-027A). The **Union Pacific Railroad Co.** has agreed to pay any other costs necessary to install the ordered warning devices by **December 31, 2005**. The Union Pacific Railroad Co. shall also pay 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.

10. That jurisdiction is retained.

Dated at Madison, Wisconsin, _____.

By the Office of the Commissioner of Railroads.

Rodney W. Kreunen
Commissioner of Railroads

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