

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

In the Matter of:

Petition of the Union Pacific Railroad Co. for the Closure of the Public Crossings of the Union Pacific Railroad Co. Tracks with 22nd Street and 23rd Street in the Town of Necedah, Juneau County

9040-RX-1220

FINAL DECISION

On May 10, 2006, the Union Pacific Railroad Co. (UP) filed a petition with the Office of the Commissioner of Railroads (OCR) under ss. 195.28 and 195.29 Stats., for the closure of the public crossings of the UP tracks with 22nd Street and 23rd Street in the Town of Necedah, Juneau County (crossing nos. 179 271D and 179 269C).

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

Jurisdiction: Secs. 195.28 and 195.29, Stats.

Pursuant to due notice, public hearing was held in this matter on July 25, 2006 in Necedah, Wisconsin with hearing examiner Douglas S. Wood presiding.

On September 5, 2006, the hearing examiner issued a proposed decision. The OCR received 5 comments opposing the closure of 22nd Street and 3 comments opposing the closure of 23rd Street. Among those objecting to the closure of the 22nd Street crossing were Town Chairman Vince Marchetti, State Senator Dale W. Schultz, and State Representative Sheryl K. Albers.

The Commissioner has considered all of the comments and offers the following remarks. First, two of the letters expressed a belief that the railroad is making the decision to close the crossings, which is incorrect. It is the state Commissioner of Railroads that has decided to close these crossings not the railroad. Next, the Town road supervisor expressed a desire for full cul de sac turnarounds. The Commissioner has concluded that such expense is unwarranted based on the small amount of roadway traffic at these locations. One commenter asserted that only one train-vehicle accident has occurred at 23rd Street, but OCR records show that two accidents have occurred since 1973.

Mr. Van Hoof, the owner of Van Hoof Farm Gardens located on 22nd Street south of the crossing, asserts that the closure will destroy his business primarily because he will lose drive-by business. This claim is taken up by several other objectors. Mr. Van Hoof made this assertion at the hearing, but did not offer any evidence to show how much of his business is in fact a result of customers driving by on this low-volume rural roadway and deciding to stop and buy plants and trees. On its face, this claim of lost drive-by business is dubious and nothing in the record supports it apart from

a bare assertion.

Several objectors assert that the 22nd Street crossing is not dangerous because no train-vehicle accidents have occurred at the crossing. Train-vehicle accidents are fairly unusual events; in order to have a train-vehicle accident there must generally be an inattentive driver arriving at a crossing at the same time as a train. With 12 trains per day, a train is only approaching the crossing within a roadway driver's decision time for about 6 minutes per day. These trains only occupy the crossing for about 20-30 minutes per day. The opportunity to hit or be hit by a train is relatively infrequent. On a relatively low traffic volume road like 22nd Street it is not surprising that an accident has not happened – yet. As noted in the Findings of Fact, the sight distance down the tracks is inadequate for the driver of *any type of vehicle* stopped for the crossing to see far enough down the tracks to decide whether to proceed. School buses use this crossing. It is a physical impossibility for the drivers of those buses to see far enough down the tracks to know whether a train will come around the curve, reach the crossing, and hit the bus before the school bus clears the crossing.

At least two objectors suggested that other crossings in the area be closed rather than the crossing most important to that particular objector. Mr. Van Hoof suggests that 16th Avenue be closed instead of 22nd Street. The OCR has ordered new automatic flashing lights and gates at the 16th Avenue crossing. The 16th Avenue suffers from fewer physical shortcomings than the 22nd Street crossing and carries about 3 times as much roadway traffic as 22nd Street. A similar argument was made with respect to 23rd Street except it was asserted that 18th Avenue or 19th Avenue should be closed instead of 23rd Street. Both of those roadways carry about 4 to 5 times as much traffic as 23rd Street.

Changes to the Proposed Decision

The Commissioner does depart from the proposed decision in two respects. First, the proposed decision required vehicle turnarounds on each approach to each crossing. The Commissioner has personally visited the sight and has determined that no turnaround is needed at all on the north side of the 22nd Street crossing or the west side of the 23rd Street crossing. On the north side at 22nd Street vehicles can simply use Shrine Road. On the west side at 23rd Street vehicles that need to turn around can just use Pinecone Court.

The proposed decision also delayed the closures until July 15, 2007, some 7 months away, in order to allow the Town time to install vehicle turnarounds. The Commissioner finds this delay to be unacceptable and orders the closure of these crossings by **November 6, 2006**. The Town shall erect temporary barricades on each approach to each crossing and the railroad shall physically remove the crossings by that date. Vehicles on the south side of the 22nd Street crossing that need to turn around in the mean time (until the vehicle turnaround is built next Spring) can just turn around in the roadway and, if necessary, use a little bit of the Van Hoof Farm Garden driveway. Vehicles on the east side of the 23rd Street crossing that need to turn around can just use the wide, flat, and open area on the UP right-of-way on that side of the tracks.

Some objectors expressed concerns about costs being imposed on the Town. First, the Commissioner notes that the order requires the UP to bear the cost to remove the crossing, the roadway approaches, and the vehicle turnarounds (roughly 90% of the expected costs). The Town is only required to pay for the barricades (roughly 10% of the expected costs). In addition, prior to the hearing ever taking place the Commissioner discussed this matter with the UP and the Town chairman and the Commissioner believes that all parties agreed that the UP would also pay the Town \$20,000 per crossing closure on top of the costs to remove the crossing and build the vehicle turnaround. The Commissioner anticipates that the Town will come out ahead financially.

The Commissioner amends the proposed decision to delete two of the vehicle turnarounds and move up the closure dates and otherwise adopts the proposed decision as final.

Appearances:

Parties

Union Pacific Railroad Co., Petitioner
by
Brian Baird, Attorney
Borgelt, Powell, Peterson & Frauen S.C.
735 N. Water Street, Suite 1500
Milwaukee, WI 53202-4188

As Interest May Appear:

Town of Necedah
by
Vince Marchetti, Town Chairman
W5531 Shrine Road
Necedah, WI 54646

Findings of Fact

THE COMMISSIONER FINDS:

The Union Pacific Railroad Co. petitioned the Office of the Commissioner of Railroads to investigate the potential closure of the public crossings of the Union Pacific Railroad Co. tracks with 22nd Street and 23rd Street in the Town of Necedah. Having considered all the evidence in the record, the **Commissioner orders** that both crossings be closed.

The OCR has recently ordered the installation of 12" LED automatic flashing lights with gates and constant warning time circuitry at 16th Avenue, 18th Avenue, 19th Avenue, and CTH 'G' crossings in the Town of Necedah on this same line of track.

The railroad currently operates 12 through train movements per day over each crossing location at a speed of 40 mph. At the time of the hearing the UP was in the process of upgrading the tracks to be able to operate at 50 mph.

22nd Street 179 271D

22nd Street is 22' wide with 4'-wide grass shoulders and intersects the tracks at an angle of about 30° (left-hand forward). The crossing is at the crest of a grade. The roadway ascends to the crossing at grades of 4.0% and 8%. The crossing consists of one main line track. The tracks are in a 2° curve at the crossing. The track curve and the severe left-hand forward skew greatly impede driver's view down the tracks.

22nd Street carried estimated 100 ADT (average daily traffic). The speed limit is 55 mph (unposted).

The crossing has stop signs and crossbucks. Drivers should stop before attempting to proceed over the crossing. However, some drivers will not do so. Those drivers will find that the corner sight distance is inadequate. That is, a driver approaching the crossing without stopping can not see far enough down the tracks to determine whether it is safe to proceed or not.

Unfortunately, stopping at the stop signs is not sufficient and safe at the 22nd Street 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 22nd Street crossing is 1120' (for 50 mph trains). The available clearing sight distance is about 400' in the southwest and northeast quadrants due to the track curve and vegetation and about 50' in the southeast quadrant due to the crossing skew and the track curve.

This inadequacy means that vehicles stopped at the crossing can not see far enough down the tracks in those three quadrants to determine whether it is safe to proceed or not. Even if the driver stops for the crossing, he or she can still not determine whether it is safe to go.

Accidents that do occur here will likely be quite serious if a through train is involved due to their 40 mph speed (soon to be 50 mph). 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+.

Adequate alternate routes to 22nd Street exist. STH 21 provides the main access in and out of this area. The north side of the tracks can be accessed directly from STH 21 without crossing the tracks. The area south of the tracks can be accessed via the 16th Avenue crossing without using the

22nd Street crossing. The alternate routes are analyzed in detail in the TKDA report (Exhibit 1). The increased travel time will be minimal, especially after the other crossings are upgraded to automatic flashing lights and gates instead of stop signs. Closing 22nd Street at the tracks will have very little impact on public convenience.

The frequency and speed of trains along with the inadequate sight distance at and approaching the crossing make this crossing dangerous for public use. Closing the crossing will improve public safety.

The 22nd Street crossing is presently protected with crossbucks and stop signs. This protection is inadequate. In order to provide adequate protection automatic flashing lights and gates would be required if the crossing remained open. The state and the railroad are investing about \$600,000 or more in safety improvements at the 16th Avenue, 18th Avenue, 19th Avenue, and CTH 'G' crossings. It is simply too costly to install train-activated warning devices at all of the crossings in the Town and 22nd Street is too unsafe to leave open with the current inadequate warning devices. 22nd Street is a redundant crossing. Eliminating a redundant crossing serves the public interest.

23rd Street 179 269C

23rd Street is 18' wide with 3'-wide grass shoulders and intersects the tracks at an angle of about 45° (right-hand forward). The roadway approach grades to the crossing are about 4% to 6%.

23rd Street carries 60 ADT. The speed limit is 55 mph (unposted).

The crossing has stop signs and crossbucks. Drivers should stop before attempting to proceed over the crossing. However, some drivers will not do so. Those drivers will find that the corner sight distance is inadequate. That is, a driver approaching the crossing without stopping can not see far enough down the tracks to determine whether it is safe to proceed or not.

Stopping at the stop signs is not sufficient and safe at the 23rd Street crossing either. 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 22nd Street crossing is 1120' (for 50 mph trains). The available clearing sight distance is about 150' in the northwest and 80' in the southeast quadrant due to the crossing skew.

This inadequacy means that vehicles stopped at the crossing can not see far enough down the tracks in those two quadrants to determine whether it is safe to proceed or not. Even if the driver stops for the crossing, he or she can still not determine whether it is safe to go.

Two train-vehicle accidents have occurred at this crossing since 1973. The accidents occurred in 1974 and 1995.

Accidents that do occur here will likely be quite serious if a through train is involved due to their 50 mph speed.

Adequate alternate routes to 23rd Street exist. The area west of the crossing can be accessed by 16th Avenue and the area east of the crossing can be accessed by 18th Avenue. These roads are the primary access roads, but these areas can also be reached via a network of other roads, such as 17th Avenue and CTH 'G'. The alternate routes are analyzed in detail in the TKDA report (Exhibit 2). The increased travel time will be minimal, especially after the other crossings are upgraded to automatic flashing lights and gates instead of stop signs. Closing 23rd Street at the tracks will have very little impact on public convenience. The remaining crossings will provide reasonably adequate access to the area.

The frequency and speed of trains along with the inadequate sight distance at and approaching the crossing make this crossing dangerous for public use. Closing the crossing will improve public safety.

The 23rd Street crossing is presently protected with crossbucks and stop signs. This protection is inadequate. In order to provide adequate protection automatic flashing lights and gates would be required if the crossing remained open. The state and the railroad are investing about \$600,000 or more in safety improvements at the 4 other crossings. It is simply too costly to install train-activated warning devices at all of the crossings in the Town and 23rd Street is too unsafe to leave open with the current inadequate warning devices. 23rd Street is a redundant crossing. Eliminating a redundant crossing serves the public interest.

End-of-Road Treatments – Both crossings

The order requires the Town of Necedah to install Type III barricades with red and white reflective material on each approach to the crossings by **November 6, 2006**, before the crossing is removed. These are temporary barricades that the Town is required to replace with permanent steel guardrail barricades or end-of-road markers when it constructs the vehicle turnarounds. The order also requires the UP to remove the crossing surface and the roadway surface from within its right-of-way at 22nd Street and 23rd Street between **November 6 and November 10, 2006**.

The order requires the Town of Necedah to construct and maintain a vehicle turnaround area on the northbound approach (south side of the tracks) to the 22nd Street crossing and on the westbound approach (east side of the tracks) to the 23rd Street crossing. **No vehicle turnaround** is needed on the north side of the 22nd Street crossing or the west side of the 23rd Street 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 edition. Specifically, the Commissioner approves L-type, T-type, Y-type or I Branch turnarounds as shown in ASSHTO Exhibit 5-8 (page 399). These turnaround designs are adequate for the low volume of traffic that would be on 22nd Street and 23rd Street after the crossings are closed.

Costs

Consistent with prior OCR practice, the order requires the Union Pacific Railroad Co. to pay the costs to remove the crossings and roadway approaches within its right-of-way, and the construction of vehicle turnarounds. The Town of Necedah shall bear the cost to install and maintain the temporary barricades, the permanent barricades or end-of-road markers, and to maintain the vehicle turnarounds. It is also anticipated that the UP will contribute voluntary crossing closure incentive payments of \$20,000 for each crossing to the Town, notwithstanding the Town's post-hearing objection to the closure of 22nd Street.

Ultimate Conclusions on the Issues

THE COMMISSIONER CONCLUDES:

1. That the closure of the crossings at-grade of the Union Pacific Railroad Co. tracks with 22nd Street and 23rd Street in the Town of Necedah, Juneau County will promote public safety and convenience.

2. That it is reasonable for the Union Pacific Railroad Co. pay the cost to close the 22nd Street and 23rd Street crossings, including the construction of vehicle turnarounds, and removal of the crossings and the roadway approaches within its right-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 **Union Pacific Railroad Co.** shall remove the crossing surfaces and the roadway approaches within its right-of-way for the crossings at-grade of **22nd Street and 23rd Street** with their tracks in the Town of Necedah, Juneau County **between November 6, 2006 2007 and November 10, 2006 (inclusive)** (crossing nos. 179 271D and 179 269C). The **Union Pacific Railroad Co.** shall not remove the crossing surface or approaches until the barricades are in place.

2. That the **Town of Necedah** shall install Type III barricades with red and white stripes at or near the terminus of each approach to the crossings at-grade of **22nd Street and 23rd Street** with the Union Pacific Railroad Co. tracks in the Town of Necedah, Juneau County **no later than November 6, 2006** [see Sections 3F.01 and 6F.63 and Figure 6F-7, (Sheet 2 of 2) in the Manual on Uniform Traffic Control Devices (MUTCD)].

3. That the **Town of Necedah** shall install and maintain L-type, T-type, Y-type or I Branch turnarounds at or near the termini of **22nd Street (south side only) and 23rd Street (east side only)** consistent with American Association of State Highway and Transportation Officials (AASHTO) guidelines (*A Policy on Geometric Design of Highways and Streets*, 2001 edition, pages 398-400 and Exhibit 5-8) in the Town of Necedah, Juneau County **no later than July 15, 2007**.

4. That the **Town of Necedah** shall install and maintain a steel guard rail barricade with reflective 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 approaches on each side of the crossings at-grade of **22nd Street and 23rd Street** with the Union Pacific Railroad Co. tracks in the Town of Necedah, Juneau County **after the construction of the vehicle turnarounds**. If End-of-Roadway markers are used, then a minimum of three markers shall be placed at each terminus.

Costs

5. That the **Union Pacific Railroad Co.** shall pay the cost to remove the crossings and roadway approaches within its right-of-way, and to construct the vehicle turnarounds at the **22nd Street and 23rd Street** crossings. The Union Pacific 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.

6. That the **Town of Necedah** shall bear the costs to install and maintain the temporary barricades, the permanent barricades or end-of-road markers, and to maintain the vehicle turnarounds at the 22nd Street and 23rd Street crossings.

7. That jurisdiction is retained.

Dated at Madison, Wisconsin, (October 12, 2006).

By the Office of the Commissioner of Railroads.

Rodney W. Kreunen
Commissioner of Railroads