

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

Petition of the Wisconsin Department of Transportation for the Alteration of a Grade-separated Public Crossing of the Union Pacific Railroad Co. Tracks with S. 29th Street in the City of Milwaukee, Milwaukee County

9040-RX-1230

FINDINGS OF FACT AND ORDER

By letter dated June 2, 2006, the Wisconsin Department of Transportation (DOT) filed a petition with the Office of the Commissioner of Railroads (OCR) under §§84.05, 192.31, and 195.29, Stats., for the alteration of a public crossing of the Union Pacific Railroad Co. (UP) tracks with S. 29th Street in the City of Milwaukee, Milwaukee County (crossing no. 177 204C). The DOT plans to replace the existing highway bridge over the UP tracks with a new structure. The DOT, the City and the UP have reached an agreement on all issues.

Under s. 84.05 the project may proceed without an OCR order except for that DOT also requests an exemption from the railroad track clearance laws of structures. The existing structure has a minimum vertical clearance of 19' 10". The new structure is proposed to have a minimum vertical clearance of 22' 0". State law requires a 23' minimum vertical clearance unless an exemption is granted.

A stipulation agreeing to the vertical clearance exemption and signed by the Wisconsin Department of Transportation, the City of Milwaukee, and the Union Pacific Railroad Co. was filed with the Office of the Commissioner of Railroads in lieu of hearing. No hearing was held.

Findings of Fact

THE COMMISSIONER FINDS:

The existing structure carrying 29th Street over the two UP tracks has a minimum vertical clearance of 19' 10". The new structure is proposed to have a minimum vertical clearance of 22' 0" over the southerly track and 22' 2" over the northerly track.

Wisconsin law requires a minimum 23' vertical clearance and 8' 6" horizontal clearance unless the OCR grants an exemption. Wisconsin law no longer requires the routine installation of telltales, but the OCR *may* require telltales if the "absence of a telltale would create an unreasonable risk of harm to the public or a railroad employee on a railroad not under the jurisdiction of the federal railroad administration..." (see 192.31 Stats. as amended by 2005 Wisconsin Act 179). The law allows the OCR to grant exemptions to these minimums. The petitioner seeks exemption from the 23' vertical clearance requirement.

The parties submitted a stipulation with attached plans. The parties waive their right to a hearing on this petition before the Office of the Commissioner of Railroads.

The parties stipulated that the vertical clearance set forth above will not imperil life or limb and that the public interest requires such minimum vertical clearance be permitted. The parties agreed that a new structure with 23' 0" of vertical clearance would adversely affect the roadway sight distances, adjacent properties, and street intersections. The parties further agreed that 23' 0" vertical clearance is not needed for railroad operations and is not economically warranted.

The parties also stipulated that the installation of a telltale is not required on the railroad approaches to the structure.

The Office finds that the construction of the grade-separated public crossing of the Union Pacific Railroad Co. tracks with S. 29th Street in the City of Milwaukee, Milwaukee County will not imperil life and limb, and the public interest permits such construction.

Conclusion of Law

THE COMMISSIONER CONCLUDES:

That the Office has jurisdiction under sections 192.31, Wis. Stats., to grant the requested exemption, and an appropriate order should be entered in accordance with the above Findings of Fact.

Order

THE COMMISSIONER THEREFORE ORDERS:

1. That the **Wisconsin Department of Transportation and the City of Milwaukee** are authorized to construct a grade-separated public crossing of the Union Pacific Railroad Co. tracks with S. 29th Street in the City of Milwaukee, Milwaukee County with a minimum vertical clearance of 22' 0" over the southerly track and 22' 2" over the northerly track.

2. That jurisdiction is retained.

Dated at Madison, Wisconsin (August 15, 2007)

By the Office of the Commissioner of Railroads

Rodney W. Kreunen, Commissioner