

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

Complaint of the City of West Allis for the Repair of the Public Crossings of the Union Pacific Railroad Co. Tracks with 55<sup>th</sup> Street and 57<sup>th</sup> Street in the City of West Allis, Milwaukee County

9040-RX-1240

AMENDED FINAL DECISION

On June 1, 2007, the OCR ordered the Union Pacific Railroad Co. to repair the crossings at-grade of 55<sup>th</sup> Street and 57<sup>th</sup> Street with its tracks by fully renewing the crossing with a *concrete-paneled surface* in the City of West Allis, Milwaukee County by October 1, 2007 (crossing no. 177 234U and 177 235B).

By letter dated January 21, 2008, the City of West Allis filed a complaint which states that the UP has not complied with the order for the repair of the 55<sup>th</sup> and 57<sup>th</sup> Street crossings. The order required concrete-paneled surface at each of those crossings. The UP renewed the crossings, but installed full-timber plank crossings.

Pursuant to due notice, public hearing was held in this matter on March 27, 2008 in West Allis, Wisconsin with hearing examiner Douglas S. Wood presiding.

On June 16, 2008, the hearing examiner issued a proposed decision. The OCR received no comments on the proposed decision. The Commissioner adopts the proposed decision as final.

Appearances:

**Parties**

City of West Allis, Complainant  
by  
Jeffrey J. Warchol  
Assistant City Attorney  
7525 W. Greenfield Avenue  
West Allis, WI 53214

No Appearance by Union Pacific Railroad Co. The UP submitted a letter at the time of the hearing.

## Findings of Fact

THE COMMISSIONER FINDS:

### **55<sup>th</sup> Street and 57<sup>th</sup> Street crossings**

As noted above, the OCR previously ordered the UP to repair the 55<sup>th</sup> Street and 57<sup>th</sup> Street crossings by installing a concrete-paneled surface at each crossing. The City later filed a complaint that the railroad has failed to comply with the order. While the crossings at 55<sup>th</sup> Street and 57<sup>th</sup> Street have been replaced, they do not have the ordered concrete-paneled surfaces. The 57<sup>th</sup> Street crossing is full timber plank. The 55<sup>th</sup> Street crossing has concrete between the rails, but timber planks on the outside. These repairs do not conform to the order.

Upon further consideration, the original order should not have specified concrete-paneled crossing surfaces. The OCR typically follows the Wisconsin Department of Transportation Facilities Development Manual (FDM) guidelines when determining appropriate crossing surface.

The FDM states that, "In urban areas, the concrete-panel crossing is the standard crossing surface when the design traffic volume exceeds 7,000 vehicles per day or the exposure factor exceeds 20,000." (FDM, 17-60-30). The "exposure factor" equals the product of the number of trains per day and the number of highway vehicles per day.

55<sup>th</sup> Street carried 468 ADT (average daily traffic) and 57<sup>th</sup> Street carried 392 ADT in 2005. The railroad operates 34 train movements per day according to the Federal Railroad Administration (FRA) database. Thus, the exposure factor is below 20,000 at each crossing (15,912 and 13,328, respectively). The crossing repairs made by the UP meet the requirement of state law to keep the crossing "in good condition and repair for highway travel". The Commissioner concludes that the requirement for concrete-paneled crossing surface be rescinded.

## Ultimate Conclusions on the Issues

THE COMMISSIONER CONCLUDES:

That the Union Pacific Railroad Co. has repaired the crossings at-grade of 55<sup>th</sup> Street and 57<sup>th</sup> Street with its tracks so that they are in good condition and repair for public travel in the City of West Allis, Milwaukee County.

## Conclusion of Law

THE COMMISSIONER CONCLUDES:

That the jurisdiction of the Office of the Commissioner of Railroads under §86.12, Wis. Stats., extends to this matter. Accordingly, the Office enters an order consistent with the findings of fact.

Order

THE COMMISSIONER ORDERS:

1. That the order to the **Union Pacific Railroad Co.** to install a concrete-paneled surface at the crossings of **55<sup>th</sup> Street and 57<sup>th</sup> Street** with its tracks in the City of West Allis, Milwaukee County is hereby **rescinded**.

2. That jurisdiction is retained.

Dated at Madison, Wisconsin, (August 7, 2008).

By the Office of the Commissioner of Railroads.

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Roger Breske  
Commissioner of Railroads

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