

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

Petition of the Wisconsin Department of Transportation for the Establishment of Two Public Crossings of the Union Pacific Railroad Co. Tracks with STH 26 and CTH 'Y' in the Town of Watertown, Jefferson County

9040-RX-1248

FINAL DECISION

By letter dated August 9, the Wisconsin Department of Transportation (DOT) filed a petition with the Office of the Commissioner of Railroads (OCR) under §§84.05, 86.13, 195.28 and 195.29, Stats., for the establishment of two public crossings of the Union Pacific Railroad Co. (UP) tracks with STH 26 and CTH 'Y' in the Town of Watertown, Jefferson County.

Pursuant to due notice, public hearing was held in this matter on November 27, 2007 in Watertown, Wisconsin with hearing examiner Douglas S. Wood presiding.

On February 8, 2008, the hearing examiner issued a proposed decision. By letter dated February 21, 2008, the DOT filed a statement of support for the proposed decision. By letter dated February 28, 2008, the UP filed comments opposing the proposed decision.

The UP complains that it did not receive adequate notice of the STH 26 project. The UP did receive adequate legal notice of the hearing. Chapter 195 Stats., requires 20 days notice of hearings held under s. 195.29 Stats. (see, s. 195.04 Stats.). The OCR issued the original notice of hearing on August 30, 2007 for an October 16, 2007 hearing. The hearing was postponed to November 27, 2007 at the request of the UP. The UP had more than 20 days notice of the hearing. Indeed, the UP had nearly three months notice of the matters to be heard. In addition, the DOT notified the UP of this matter at least as early as its August 9, 2007 petition to the OCR.

The UP apparently believes it could have made a better case at the OCR hearing if the DOT had informed the UP of this 'majors' project earlier in the planning stages. Perhaps so, but the UP has no legal right to such notification. The UP's comments make much of the statement in the proposed decision that the UP's alternative "plan was developed in just a few days by a consultant hired by the UP for the hearing. STH 26 is a 'majors' project. DOT spends years and hundreds of thousands of dollars engineering 'majors' projects." The UP does not dispute the accuracy of this statement.

In any event, more important than the timing is the OCR's *analysis* of the UP's alternative. The record shows that DOT has in fact considered "the westerly location suggested by the UP's consultant" for the grade-separated crossing. The record also establishes the reasons that DOT did not select that location and that the OCR also rejected the UP alternative as explained in the proposed decision: "[T]his location does not work essentially because of its proximity to the Rock River. The drawing of an interchange on Exhibit 5 would not meet DOT standards for transition speeds and is far too small. In reality, an interchange at that location would require the

extension of two additional bridges over the Rock River.”

The proposed decision also explained that the UP’s alternative included an inadequate connection between CTH ‘Y’ and current STH 26 (which will be Business STH 26 after the project).

The UP’s alternative was not and is not rejected because it was put together under a tight time line, it was and is rejected because it “is not a realistic alternative that would serve the same transportation and safety needs as the DOT project”.

The Commissioner adopts the proposed decision as final without change.

Appearances:

Parties

Wisconsin Department of Transportation, Petitioner
by
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Assistant General Counsel
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Please note that Assistant General Counsel Kathleen Chung now represents the DOT in this matter.

In Opposition:

Union Pacific Railroad Co.
by
Mack Shumate, Jr.
General Attorney
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And by
Brian Baird, Attorney
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Findings of Fact

THE COMMISSIONER FINDS:

The DOT plans to reconstruct STH 26 on a new alignment from Johnson Creek to Watertown in the 2010 and 2011 construction seasons. The DOT proposes to establish a grade-separated crossing of STH 26 and an at-grade crossing of CTH 'Y'.

The railroad currently operates 2 through train movements per day over each crossing at a speed of 30 mph.

The overall STH 26 corridor is being constructed in segments. The STH 26 corridor is located in south central Wisconsin in Rock, Jefferson and Dodge Counties. The corridor begins on the north side of Janesville at IH 90 and extends north about 48 miles to approximately 9 miles north of Watertown at STH 60-East. Engineering plans are being developed separately for each segment. The Watertown Bypass segment of the corridor begins near Baneck Lane and continues north approximately 12-miles to CTH Q, including the Watertown bypass.

The proposed improvements involve widening STH 26 to a four lane expressway from Baneck Lane to Turf Road and from Kiln Road to CTH Q. At Turf Road, future STH 26 will bypass Watertown to the west as a freeway facility to Kiln Road, and rejoin existing STH 26 north of the city near CTH Q.

STH 26

DOT proposes to establish a new grade-separated STH 26. STH 26 will consist of two 2-lane roadways separated by a median. The highway will cross above the tracks on two structures. Each structure will have a 40' clear roadway width. The vertical clearance will exceed 23' for each structure.

At this location, STH 26 will carry 13,400 ADT (average daily traffic) in 2009. The DOT projects STH 26 will carry 18,800 ADT in the design year of 2029. The speed limit will be 55 mph.

Construction of a grade-separated crossing for STH 26 will promote public safety and convenience by nearly eliminating train-vehicle accidents¹ and eliminating traffic delays caused by train operations.

CTH 'Y'

DOT proposes to relocate and construct CTH 'Y', which will create a new crossing at the Union Pacific Railroad. CTH 'Y' is being relocated to connect to the Business STH 26 interchange to improve local traffic circulation. The Business STH 26 interchange will provide a southern entry point into the City of Watertown.

¹ The OCR recognizes the very slight possibility exists that a highway vehicle will run off the roadway, crash through the barriers, land on the tracks, and be struck by a train. As unlikely as that sounds, it has happened on very rare occasions.

CTH 'Y' will be a two-lane roadway consisting of 12'-wide driving lanes and 6'-wide shoulders (5' paved) and will intersect the track at an angle of 87.5°. The driving lanes will be separated by a 10'-wide median at the railroad crossing location with 30-inch concrete curb and gutter in each direction. The profile grade of the roadway at both approaches is 0.6%.

The average daily traffic on CTH 'Y' at the crossing in the construction year (2009) is projected to be 1,800 vehicles per day. The average daily traffic in the design year (2029) is projected to be 2,600 vehicles per day. The roadway will have a posted speed limit of 45 mph.

A roundabout will be located approximately 170' west of the railroad crossing. The railroad expressed concerns that traffic might back up from the roundabout to the crossing. The railroad expressed a preference for T-type intersection. The roundabout will move traffic more efficiently than a T-intersection and will be less likely to cause traffic to queue over the tracks.

In order to adequately protect public safety, mast-mounted 12" LED automatic flashing lights with gates and constant warning time circuitry are needed.

Assuming a train speed of 30 mph, a driver traveling at 45 mph needs to see a train when it is 310' from the crossing from a point 394' down the highway. The necessary sight distance will be available in the two westbound quadrants.

The eastbound approach is from the roundabout. The internal speed of the roundabout is estimated to be between 15 and 20 mph. Due to the close proximity of the roundabout to the railroad crossing, 20 mph was used as the vehicle speed for the eastbound approach. Assuming a train speed of 30 mph, a driver traveling at 20 mph needs to see a train when it is 147' from the crossing from a point 150' down the highway. The necessary sight distance will be available in the two eastbound quadrants.

The order requires that the DOT acquire permanent sight easements to create and maintain a clear view within the required sight triangles in each quadrant.

UP Alternative

The UP presented testimony that purported to show a way to serve all the transportation needs, while avoiding the need for the new at-grade crossing at CTH 'Y'. This plan is shown on Exhibit 5. The alternative has a certain superficial plausibility, but does not hold up under scrutiny. This plan was developed in just a few days by a consultant hired by the UP for the hearing. STH 26 is a "majors"² project. DOT spends years and hundreds of thousands of dollars engineering "majors" projects. DOT had looked at dozens of locations for the grade-separated crossing, including the westerly location suggested by the UP's consultant. For reasons amply and clearly explained by DOT at the hearing, this location does not work essentially because of its proximity to the Rock River. The drawing of an interchange on Exhibit 5 would not meet DOT standards

² As defined in s. 84.013 Stats., a majors projects is one that has a total cost of more than \$5 million, and one of the following: Constructing a New Highway for 2.5 miles or more; Relocating 2.5 miles or more of the existing highway; Adding lanes for 5 miles or more; Converting expressway to freeway for 10 miles or more.

for transition speeds and is far too small. In reality, an interchange at that location would require the extension of two additional bridges over the Rock River.

The second key part of the UP alternative included a small connector roadway at the north end of CTH 'Y' to connect to current STH 26 (which will be Business STH 26 after the project). This minor connection has an alignment that would not work to carry the very substantial traffic flows without major improvements.

The UP's proposal is not a realistic alternative that would serve the same transportation and safety needs as the DOT project.

In summary, the establishment of the crossing at-grade of the UP tracks with CTH 'Y' will promote public safety and convenience by providing a reasonably safe access across the tracks that connects CTH 'Y' with new STH 26 and Business STH 26 to provide a convenient south entry point to Watertown.

The highway project will pay 100% of all costs for both crossings.

Ultimate Conclusions on the Issues

THE COMMISSIONER CONCLUDES:

1. That the establishment of the crossing at-grade of CTH 'Y' with the Union Pacific Railroad Co. tracks in accordance with the design plans of the Wisconsin Department of Transportation in the Town of Watertown, Jefferson County will promote public safety and convenience.
2. That establishment of the CTH 'Y' crossing is advisable under all the circumstances.
3. That the establishment of the grade-separated crossing of STH 26 with the Union Pacific Railroad Co. tracks in accordance with the design plans of the Wisconsin Department of Transportation in the Town of Watertown, Jefferson County will promote public safety and convenience.
4. That establishment of the STH 26 crossing is advisable under all the circumstances.
5. That in order to adequately protect and promote public safety, it is necessary to install and maintain 12" LED automatic flashing lights with gates at the CTH 'Y' crossing.
6. That it is reasonable that the Union Pacific Railroad Co. bear no part of the cost for the crossing construction.

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 **Wisconsin Department of Transportation** shall construct a grade-separated crossing of **STH 26** with the Union Pacific Railroad Co. tracks in accordance with the design plans of the Wisconsin Department of Transportation in the Town of Watertown, Jefferson County by **August 1, 2011**.

2. That the **Union Pacific Railroad Co.** shall install and maintain a crossing at-grade of **CTH 'Y'** with its tracks in accordance with the design plans of the Wisconsin Department of Transportation in the Town of Watertown, Jefferson County by **August 1, 2011**.

3. That the **Union Pacific Railroad Co.** 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 **CTH 'Y'** at-grade in the Town of Watertown, Jefferson County by **August 1, 2011**.

4. That the **Union Pacific Railroad Co.** 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.

5. 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.

6. That the **Wisconsin Department of Transportation** shall obtain permanent easements to provide a clear view within the required sight triangles for the **CTH 'Y'** crossing.

7. That the **Wisconsin Department of Transportation** and **Jefferson County** shall not open **CTH 'Y'** at the railroad crossing to unrestricted public use until the installation and activation of the automatic warning devices ordered above.

8. That the **Union Pacific Railroad Co.** shall bear no part of the cost of the crossing construction, except 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.

9. That jurisdiction is retained.

Dated at Madison, Wisconsin, (March 20, 2008).

By the Office of the Commissioner of Railroads.

Rodney W. Kreunen
Commissioner of Railroads

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