

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

Petition of the Wisconsin Department of Transportation for the Consolidation of the Public Crossings of 20th Street and 10th Avenue with the Union Pacific Railroad Co. Tracks in the Town of Wheaton, Chippewa County and the Town of Union, Eau Claire County

9040-RX-1254

FINAL DECISION

By letter dated October 19, 2007, the Wisconsin Department of Transportation (DOT) filed a petition with the Office of the Commissioner of Railroads (OCR) under §§86.13, 195.28 and 195.29, Stats., for the consolidation of the public crossings of 20th Street and 10th Avenue with the Union Pacific Railroad Co. (UP) tracks in the Town of Wheaton, Chippewa County and the Town of Union, Eau Claire County (crossing nos. 183 931U and 183 932B).

DOT also asked that the OCR determine the compensation for the new and vacated easements and to apportion the overall costs of the crossing work. DOT proposes that the old and new easements be swapped with the UP conveying the easement rights to the Town for a fee of \$1.00.

Pursuant to due notice, public hearing was held in this matter on February 12, 2008 in Eau Claire, Wisconsin with hearing examiner Douglas S. Wood presiding.

On April 3, 2008, the hearing examiner issued a proposed decision. On April 20, 2008, the DOT filed comments supporting the proposed decision with two exceptions. First, DOT requests that paragraph 5 of the order be changed from a "limited easement" to a "highway easement". The Commissioner concurs. The DOT also notes that in addition to the highway easement the project will also require a Temporary Limited Easement (TLE) in order to construct the project. The Highway Easement and the TLE will be included in one document. DOT typically also pays the railroad an administrative fee, which is in addition to the value of the easements.

DOT requested that the final decision remain silent on the closure incentive because the DOT is paying for the entire project, the local governments have no cost share and will benefit from the DOT work. DOT states that "the incentive was never used as an enticement to consolidate the crossings into one". DOT notes that the two existing crossings are in separate townships, which complicate who any incentive would be allocated. The Commissioner declines to remove the reference to the incentive program. The Commissioner notes that the OCR does not control the incentive program and participation is voluntary. The railroad will benefit financially from the closure of the 10th Avenue crossing and is not paying any cost for the project. The Towns supported the project. The railroad should reward that support. The Town may also apply to the DOT regional office for the matching federal safety funds (up to \$7500) and that application would be evaluated separately.

The Commissioner amends Paragraph 5 of the order and otherwise adopts the proposed decision as final.

Appearances:

Parties

Wisconsin Department of Transportation, Petitioner
by
Mark Morrison, PE
Grade Crossing Safety Engineer
PO Box 7914
Madison, WI 53707-7914

In Support:

Town of Wheaton (by letter)
by
Paul Krumenauer, Chair
6114 CTH 'T'
Chippewa Falls, WI 54729

No appearance by the Union Pacific Railroad Co.

Findings of Fact

THE COMMISSIONER FINDS:

The Wisconsin Department of Transportation plans to resurface USH 12 in the 2010 construction season. While reviewing that project, DOT identified the potential consolidation of 10th Avenue and 20th Street to reduce the number of at-grade crossings. More specifically, as part of the USH 12 highway project, the DOT proposes to close the existing crossings of 20th Street and 10th Avenue and to replace them with a new crossing of 20th Street.

The railroad currently operates four freight trains per day operating over these crossings at speeds up to 30 mph.

20th Street is a town road that runs north and south and intersects the UP tracks at an angle of 63° (left-hand forward). The existing typical section of 20th Street consists of a 22'-wide asphalt surface with 3'-wide crushed aggregate shoulders. The current speed limit on 20th Street is 55 mph.

10th Avenue, runs east and west in the project area and divides Chippewa and Eau Claire Counties. 10th Avenue is 0.17 miles east of the 20th Street crossing, measured along the tracks. 10th Avenue intersects the UP tracks at an angle of 28° (right-hand forward). The existing typical section of 10th Avenue consists of a 20'-wide asphalt surface with 3'-wide crushed aggregate shoulders. The speed limit on 10th Avenue is 55 mph.

20th Street carries 975 ADT (average daily traffic). 10th Avenue carries 125 ADT. 20th Street is projected to carry about 1,500 vehicles per day in the design year of 2029. USH 12 carries

3,250 ADT including an estimated 6.5% trucks. USH 12 is projected to carry 5100 ADT in 2029.

USH 12 runs parallel to the UP tracks about 93' to the south. Thus, both roadways also intersect USH 12 a short distance from the rail-highway crossing. Both of those roadway intersections have the skewed angle as the rail-highway crossings. The project will eliminate the roadway intersection of 10th Avenue and USH 12. The project will also realign 20th Street slightly to the west to create a 90° intersection with both the UP tracks and USH 12. The 10th Avenue rail-highway crossing and USH 12 intersection will be obliterated. 10th Avenue will be extended to 20th Street by a short connecting roadway.

The USH 12/20th Street intersection has one of the highest intersection crash rates in Chippewa County with a significant number of injuries over the past several years. Realigning the roadway intersection should reduce the crash rate. Realigning the roadway intersection necessitates realigning the rail-highway crossing as well.

The project will also improve the horizontal profile at the rail-highway crossing by raising the elevation of USH 12 to more closely match the elevation of the adjacent railroad track. Right-turn lanes will be added to the new USH 12/20th Street intersection. The proposed distance from the track centerline to the intersection stop bar for southbound traffic on 20th Street will be 61' feet providing a total of 80' from track centerline to through lane of USH 12. The storage space will be nearly the same as under existing conditions.

Reconstructed 20th Street will consist of a 36'-wide asphalt surface between back of curbs. The new roadway will meet the track at a 90° angle. The proposed crossing surface is timber and asphalt extending for a length of 38' (one foot beyond each edge of pavement). The DOT's contractor will furnish and place the asphalt surfacing necessary to construct the new crossing, including between the rails. The corner, quadrant, and clearing sight distances for the proposed crossing are all well above the required minimums.

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

In summary, the relocation and consolidation of the 10th Avenue and 20th Street crossings at-grade of the UP tracks will promote public safety and convenience.

Source of funding: Federal and state funds will be used to reimburse the Union Pacific Railroad for costs to remove the existing track, prepare the new track structure, and for installing a timber and asphalt surface at the relocated 20th Street crossing. The Union Pacific Railroad will also be reimbursed, as part of the project, for the cost of new active warning devices.

Typically, the railroad pays an incentive payment to the local unit of government when a rail-highway crossing is closed. The OCR strongly encourages the UP to follow this practice to reward the closure of the 10th Avenue crossing. In addition, when the railroad makes such payment the local government may apply to the DOT for a matching payment of up to \$7500 from federal safety funds. Those applications are made through the regional rail coordinator in the regional DOT office.

Real Estate

To accommodate the proposed improvements, the DOT will need to acquire new right-of-way as part this project. A new highway easement amounting to 0.42 acres is required for the new 20th Street crossing. The two existing town road easements totaling 0.49 acres will be vacated in conjunction with removal of the two existing railroad crossings. DOT proposes to swap the old and new easements (both a permanent easement and a temporary limited easement). The DOT proposes that the UP convey the new easement rights to the Town of Wheaton for a nominal fee of \$1.00.

Timing

The proposed improvements will be completed in three main stages. Initial construction of the relocated town roadways will begin with no major disruptions to existing traffic. Upon completion of the grading work for the new town roadways, USH 12 will be closed during the second stage and mainline traffic will be detoured around the project area. This will allow the completion of the new USH 12/20th Street intersection, along with the new 20th Street railroad crossing. Basically all new town road construction will be completed by the end of this second stage on June 25, 2010. Stage 3 will begin when 20th Street and 10th Avenue traffic is switched to the new roadway and crossing, which will allow the two existing crossings to be removed and the USH 12 reconstruction to be completed. Town road connections and private accesses will be maintained throughout the project with appropriate traffic control signs and devices as well as temporary surfacing.

Ultimate Conclusions on the Issues

THE COMMISSIONER CONCLUDES:

1. That the relocation of the crossing at-grade of 20th Street with the Union Pacific Railroad Co. tracks in accordance with the design plans of the Wisconsin Department of Transportation in the Town of Wheaton, Chippewa County will promote public safety and convenience.
2. That the closure of the crossing at-grade of 10th Avenue with the Union Pacific Railroad Co. tracks in accordance with the design plans of the Wisconsin Department of Transportation in the Town of Union, Eau Claire County will promote public safety and convenience.
3. That in order to adequately protect and promote public safety, it is necessary to install and maintain 12" LED automatic flashing lights with gates.
4. 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 **Union Pacific Railroad Co.** shall install and maintain a crossing at-grade of **20th Street** with its tracks in accordance with the design plans of the Wisconsin Department of Transportation in the Town of Wheaton, Chippewa County by **June 11, 2010**.

2. 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 **20th Street** at-grade in the Town of Wheaton, Chippewa County by **June 25, 2010**.

3. 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.

4. 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.

5. That the **Union Pacific Railroad Co.** shall grant a permanent highway easement and a Temporary Limited Easement for transportation purposes for the new **20th Street** crossing in exchange for \$1.00 and the easements being vacated and given to the Union Pacific Railroad Co. at the existing **10th Avenue and 20th Street** crossings. The **Wisconsin Department of Transportation** will also pay the standard administrative fee to the Union Pacific Railroad Co.

6. 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.

7. That jurisdiction is retained.

Dated at Madison, Wisconsin, (April 29, 2008).

By the Office of the Commissioner of Railroads.

Rodney W. Kreunen
Commissioner of Railroads

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