

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

Complaint of the City of New Berlin for the Repair of the Public Crossing of the Union Pacific Railroad Co. Tracks with Calhoun Road in the City of New Berlin, Waukesha County

9040-RX-1255

FINAL DECISION

By letter dated January 2, 2008, the City of New Berlin filed a complaint with the Office of the Commissioner of Railroads (OCR) under §86.12, Stats., that the Union Pacific Railroad Co. (UP) has failed to maintain in good condition for public travel the public crossing of its tracks with Calhoun Road in the City of New Berlin, Waukesha County (crossing no. 177 290B).

The resolution requiring the repairs was adopted on July 10, 2007 and sent to the railroad on November 14, 2007. On December 20, 2007, the City adopted a resolution complaining to the OCR that the UP has failed to repair the crossing within 30 days from the service date of the original resolution.

Pursuant to due notice, public hearing was held in this matter on February 26, 2008 in New Berlin, Wisconsin with hearing examiner Douglas S. Wood presiding.

The Union Pacific Railroad Co. elected not to attend the hearing. The matter is uncontested and a proposed decision is not required.

Appearances:

Parties

City of New Berlin, Petitioner
by
Mark G. Blum
City Attorney
720 Clinton Street
PO Box 766
Waukesha, WI 53187-0766

No appearance by the Union Pacific Railroad Co.

Findings of Fact

THE COMMISSIONER FINDS:

Calhoun Road is a two-lane roadway about 22' wide with 3'-wide gravel shoulders and intersects the tracks at an angle of 90°. The roadway approaches to the crossing are basically flat. The crossing consists of one mainline track and one unused spur track. Both crossings are three-rail type crossings. Each crossing is in very poor condition.

Subsequent to the hearing the UP indicated to the OCR that it planned to remove the spur track (north track). As of June 26, 2008, the track had not been removed. The UP also stated a belief that the main line crossing was not in as poor condition as the north track. This belief is unfounded. The mainline or south track is in at least as poor if not worse condition as the spur track crossing.

Some traffic slows on the approach to the crossing and some traffic also deviates to avoid the worst spots. Other traffic does not slow down. This mixing of speed changes makes the crossings not only uncomfortable, but also dangerous.

Calhoun Road carries 13,000 ADT (average daily traffic). The speed limit on Calhoun Road is 30 mph.

According to the Federal Railroad Administration (FRA) database, the railroad currently operates up to two train movements per day over the crossing location at a maximum speed of 10 mph.

Each crossing is in poor condition for highway travel. The crossings need to be replaced. Given the traffic volumes, the installation of concrete-panels is warranted. Alternatively, the railroad may also remove the spur track.

Under §86.12 Wis. Stats., the railroad bears an obligation to keep all highway/rail crossings in good and safe condition for public travel. The railroad has failed to do so at this crossing. The crossing is at the end of its useful life and requires complete renewal.

This crossing is under the maintenance authority of Jim Fisher, Manager of Track Maintenance, Union Pacific Railroad Co. The territory under Fisher's management has more pending rough crossing complaints than any other part of the UP in Wisconsin or any other railroad in Wisconsin.

The UP did not appear at the hearing in this matter and often does not send any representative to rough crossing hearings. It should be noted that rough crossing cases generally only proceed to hearing after the municipality and the OCR have attempted to resolve the matter informally. Municipalities frequently complain that the UP, in particular Mr. Fisher, simply ignores their complaints about poor crossing conditions. **Going forward, the OCR intends to subpoena Mr. Fisher to compel his appearance at rough crossing hearings on his territory. If necessary, subpoenas will also be issued to Mr. Fisher's supervisors.**

The OCR **also intends to conduct hearings into non-compliance with deadlines** for the repair of crossings and to subpoena appropriate railroad personnel. This **order requires the UP to rebuild the crossing of each track and to install concrete panel surfaces by October 31, 2008.**

Ultimate Conclusions on the Issues

THE COMMISSIONER CONCLUDES:

That the Union Pacific Railroad Co. has failed to maintain the crossing at-grade of Calhoun Road with its tracks in good condition and repair for public travel in the City of New Berlin, Waukesha 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 **Union Pacific Railroad Co.** shall repair the crossing at-grade of Calhoun Road with each of its tracks by fully renewing the crossing with a concrete-panel surface in the City of New Berlin, Waukesha County by **October 31, 2008** (crossing no. 177 290B).

2. That jurisdiction is retained.

Dated at Madison, Wisconsin, (July 9, 2008).

By the Office of the Commissioner of Railroads.

Roger Breske
Commissioner of Railroads

9040F1255