

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 S. 60<sup>th</sup> Street, S. 80<sup>th</sup> Street, and S. 82<sup>nd</sup> Street and for the Removal of the Abandoned Spur Track Crossing with W. Electric Avenue in the City of West Allis, Milwaukee County

9040-RX-1256

FINAL DECISION

By letter dated January 21, 2008, the City of West Allis 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 crossings of its tracks with S. 60<sup>th</sup> Street (crossing no. 177 236H), S. 80<sup>th</sup> Street (crossing no. 177 247V), and S. 82<sup>nd</sup> Street (crossing no. 177 248C) in the City of West Allis, Milwaukee County.

The resolution requiring the repair of S. 60<sup>th</sup> Street and S. 82<sup>nd</sup> Street crossings was adopted on September 4, 2007 and sent to the railroad by certified mail on September 10, 2007. The resolution requiring the repair of 80<sup>th</sup> Street crossing was adopted on February 6, 2007 and sent to the railroad by certified mail on February 12, 2007.

The City has also sought the removal of the abandoned spur track crossing with W. Electric Avenue (crossing no. 177 231Y).

The issues with regard to the 80<sup>th</sup> Street, 82<sup>nd</sup> Street, and Electric Avenue crossings have been addressed in a final decision issued separately. This **final decision addresses the 60<sup>th</sup> Street crossing.**

The OCR previously issued a final decision with regard to the 80<sup>th</sup> and 82<sup>nd</sup> Street and the Electric Avenue crossings on June 16, 2008.

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 August 7, 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:

#### **60<sup>th</sup> Street crossing**

The City complains that the railroad has failed to fulfill its obligation under §86.12 Wis. Stats., to keep this crossing in good and safe condition for public travel.

Subsequent to the issuance of the Notice of Hearing in this matter, the Wisconsin Department of Transportation (DOT) filed a petition with the OCR for the alteration and improvement of this crossing as part of a federal-aid project in 2010. The DOT and the City of West Allis plan to reconstruct 60<sup>th</sup> Street from W. Lincoln Avenue to the north city limits in 2010. The project would add medians on the approaches to the crossing.

The hearing on that petition took place on June 26, 2008 in West Allis. That case is docket number 9040-RX-1257. A separate decision will be issued in that docket.

60<sup>th</sup> Street is a 4-lane roadway that crosses the UP tracks at an angle of about 66°. The crossing consists of two mainline tracks. Each track crossing has a full-timber plank surface. The south track is in reasonably good condition. The north track has severe deficiencies that must be addressed prior to 2010. The crossing is constructed with prefabricated sections of timber planks. Several of these sections have either sunk or come loose or both. The railroad has reported that it is making (or already has made) temporary repairs. The railroad initially attempted to lag down the existing plank sections without success and plans to try other temporary measures.

While repairs to the crossing surface cannot wait until 2010, neither can the full rebuild of the crossing be performed this year. When the crossing is rebuilt as part of the DOT highway project, the surface will be raised, probably by about 2"-3" or more. The crossing is already at the peak of a horizontal curve in the roadway and it would only make the approaches even steeper to raise the crossing without addressing the roadway profile at the same time. The DOT project will coordinate the raising of the crossing and the change in roadway profile.

The OCR is informed that the temporary repairs have been completed. The OCR issues this final decision in order to make the formal finding that the railroad failed to maintain the crossing as required by s. 86.12 and to retain jurisdiction in the event that the temporary repairs are inadequate.

The city and railroad should monitor the temporary repairs and contact the OCR if the repairs fail.

Ultimate Conclusions on the Issues

THE COMMISSIONER CONCLUDES:

That the Union Pacific Railroad Co. has failed to maintain the crossing at-grade of 60<sup>th</sup> with its tracks 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 **Union Pacific Railroad Co.** shall make temporary repairs to the crossing surface at the crossing of its tracks with **60<sup>th</sup> Street** in the City of West Allis, Milwaukee County by **August 31, 2008**.
2. That jurisdiction is retained.

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

By the Office of the Commissioner of Railroads.

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Roger Breske  
Commissioner of Railroads