

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

Complaint of the Village of Bayside for the Repair of the Public Crossings of the Union Pacific Railroad Co. Tracks with Fairy Chasm Road and Regent Road in the Village of Bayside, Milwaukee County

On the Commissioner's Own Motion for a Determination of the Adequacy of Warning Devices at the Grade Crossing of the Union Pacific Railroad Co. Tracks with Fairy Chasm Road and Regent Road in the Village of Bayside, Milwaukee County

9040-RX-1258

FINAL DECISION

By letter dated June 11, 2008, the Village of Bayside 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 Fairy Chasm Road and Regent Road in the Village of Bayside, Milwaukee County (crossing nos. 180 110E and 180 109K).

The resolution requiring the repairs was adopted and sent to the railroad on January 3, 2008. On June 5, 2008, the Village of Bayside adopted a resolution complaining to the OCR that the UP has failed to repair the crossings within 30 days from the service date of the original resolution.

The OCR will also investigate the adequacy of warning devices under §195.28, Stats., at the Fairy Chasm Road and Regent Road crossings. An order addressing the warning devices at these two crossings will be issued separately.

Pursuant to due notice, public hearing was held in this matter on July 17, 2008 in Bayside, Wisconsin with hearing examiner Douglas S. Wood presiding.

On July 22, 2008, the hearing examiner issued a proposed decision. By letters dated August 11 and 12, 2008, respectively, the Village of Bayside and State Senator Alberta Darling and State Representative Jim Ott filed comments regarding the proposed decision. Both letters request that the Commissioner order the railroad to install a concrete-paneled crossing surface at the Regent Road crossing. The Commissioner finds that the crossing does not warrant concrete-panels based on current standards. A full-timber plank crossing will provide a good ride for users of Regent Road. The Commissioner notes that the order requires the railroad to *fully renew* the crossing, which entails not just replacing the crossing surface, but digging out the subsurface and replacing the entire track structure. The Commissioner adopts the proposed decision as final.

Appearances:

**Parties**

Village of Bayside, Complainant  
by  
Andy Pederson, Village Manager  
9075 N. Regent Road  
Bayside, WI 53217

In Opposition:

Union Pacific Railroad Co.  
by  
Brian Baird, Attorney  
Borgelt, Powell, Peterson & Frauen SC  
735 N. Water Street - 15<sup>th</sup> floor  
Milwaukee, WI 53202

Findings of Fact

THE COMMISSIONER FINDS:

The Village of Bayside filed a complaint that the Union Pacific Railroad Co. had failed to maintain in good condition for public travel the public crossings of its tracks with Fairy Chasm Road and Regent Road.

At the time of the hearing, the UP was fully renewing the Fairy Chasm Road and installing a concrete paneled surface. The work was expected to be completed and the roadway reopened to public travel by July 18. Consequently, the complaint with regard to Fairy Chasm Road is moot and is dismissed, except that jurisdiction is retained in case any post-construction issues arise (none are expected to arise; retention of jurisdiction is precautionary).

Regent Road is about 24' wide and intersects the tracks at an angle of approximately 45°. The crossing consists of one main line track. The crossing surface consists of a three-rail type crossing. The crossing is in poor to fair condition. The asphalt surface is mostly intact, but does have a fair amount of cracking adjacent to the outside of the rails. The crossing also does not quite extend entirely to the edge of the roadway. The crossing should extend one foot beyond the edge of the shoulder.

The UP's Manager of Track Projects for the Chicago Service Unit testified that the railroad plans to renew the crossing in August 2008 with a full-timber plank crossing surface. The OCR generally follows the Wisconsin Department of Transportation standards on crossing surfaces (See, Current Standard Crossing Surface 17-60-30 FDM). A concrete-panel crossing is warranted in urban areas when the traffic volume exceeds 7,000 vehicles per day or the exposure factor exceeds 20,000. (The exposure factor equals the product of the number of trains per day and the number of highway vehicles per day, which yields a numerical value for the potential conflicts each day at the crossing.) The Regent Road crossing does not warrant concrete-panels.

Regent Road carried 1700 ADT (average daily traffic) in 2005. The speed limit on Regent Road is 25 mph.

The railroad currently operates 4-6 through train movements per day over the crossing location at a maximum speed of 30 mph.

Under §86.12 Wis. Stats., the railroad bears an obligation to keep all highway/rail crossings in good and safe condition for public travel. This crossing requires complete renewal.

The UP indicated the work will probably be completed in August 2008. The order *requires* the work to be completed no later than September 30, 2008.

#### Ultimate Conclusions on the Issues

THE COMMISSIONER CONCLUDES:

1. That the Union Pacific Railroad Co. has failed to maintain the crossing at-grade of **Regent Road** with its tracks in good condition and repair for public travel in the Village of Bayside, Milwaukee County.

2. That the Union Pacific Railroad Co. failed to maintain the crossing at-grade of **Fairy Chasm Road** with its tracks in good condition and repair for public travel in the Village of Bayside, Milwaukee County and has now cured that failure.

#### 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 Regent Road with its tracks by fully renewing the crossing with a timber-plank surface in the Village of Bayside, Milwaukee County by **September 30, 2008**.

2. That the complaint with regard to **Fairy Chasm Road** in the Village of Bayside, Milwaukee County is dismissed for mootness, except that jurisdiction is retained to oversee any post-construction issues.

3. That jurisdiction is retained.

Dated at Madison, Wisconsin, (August 14, 2008).

By the Office of the Commissioner of Railroads.

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Roger Breske  
Commissioner of Railroads

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