

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

Complaint of the City of Fort Atkinson for the Repair of Three Public Crossings of the Union Pacific Railroad Co. Tracks in the City of Fort Atkinson, Jefferson County

9040-RX-1259

FINAL DECISION

By letter dated June 16, 2008, the City of Fort Atkinson 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 East Cramer Street (crossing no. 177 844C), Harrison Street (crossing no. 178 214L), and East Blackhawk Drive (crossing no. 199 828E) in the City of Fort Atkinson, Jefferson County.

The resolution requiring the repairs was adopted on May 6, 2008 and sent to the railroad on May 7, 2008. The City now states 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 August 13, 2008 in Fort Atkinson, Wisconsin with hearing examiner Douglas S. Wood presiding.

Although the UP registered in "opposition", the testimony and position taken by the UP during the hearing concurred with the need to repair the crossings. The City agreed with the UP's proposed work. Therefore, the matter is uncontested and no proposed decision is required.

Appearances:

**Parties**

City of Fort Atkinson, Complainant  
by  
Jeffery Woods, PE  
City Engineer/Director of Public Works  
City of Fort Atkinson  
101 North Main Street  
Fort Atkinson, WI 53538

In Opposition:

Union Pacific Railroad Co.  
by  
Patrick McNally, Attorney  
Borgelt, Powell, Peterson & Frauen S.C.  
735 N. Water Street, Suite 1500  
Milwaukee, WI 53202-4188

## Findings of Fact

### THE COMMISSIONER FINDS:

The railroad currently operates about 2 train movements per day once per week over these crossings at a maximum speed of 10 mph.

At the hearing, the UP agreed that the crossings need repairs. The UP proposed to repair the crossings this year. More specifically, the UP proposed to renew the crossing surface at East Cramer Street and East Blackhawk Drive. Renewing the surface includes removing the asphalt and timber planks in the crossing surface. The UP proposes to install new asphalt and rubber rail seal. Each roadway would need to be closed for three days to complete the work. The crossing should not be closed at the same time.

For Harrison Street, the UP proposed to saw cut the asphalt on each approach and install new asphalt. This work would require the roadway to be closed for one day.

The possibility was discussed that the track could be removed from Harrison Street. Subsequently the City informed the OCR that Loeb-Lorman Metals, Inc. does receive rail service and needs the track through Harrison Street to access its property.

The City concurred with the proposed repairs as described by the UP at the hearing.

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 these crossings. The crossings need the repairs described above and set forth in the order.

Note: Subsequent to the hearing a field review determined that the existing concrete pavement at East Cramer Street and East Blackhawk Drive is closer to the tracks than is typical. This proximity makes it difficult to adequately compress the asphalt for the crossing. The proximity of the concrete to the crossing also puts a rigid section next to a less rigid section with almost no transition zone. The City and UP should consider whether to saw cut the concrete for a distance of 10' to 15' from the crossings on each approach and replace it with asphalt up to the crossing. This additional work would likely warrant some cost-share by the City. This additional work is optional and not required by the order.

## Ultimate Conclusions on the Issues

### THE COMMISSIONER CONCLUDES:

That the Union Pacific Railroad Co. has failed to maintain the crossings at-grade of East Cramer Street, Harrison Street, and East Blackhawk Drive with its tracks in good condition and repair for public travel in the City of Fort Atkinson, Jefferson 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 **East Cramer Street (crossing no. 177 844C), and East Blackhawk Drive (crossing no. 199 828E)** with its tracks by renewing the crossing surface in the City of Fort Atkinson, Jefferson County by **October 31, 2008**.

2. That the **Union Pacific Railroad Co.** shall not close **East Cramer Street and East Blackhawk Drive** for repairs at the same time.

3. That the **Union Pacific Railroad Co.** shall repair the crossing at-grade of **Harrison Street (crossing no. 178 214L)** with its tracks by renewing the asphalt adjacent to the tracks in the City of Fort Atkinson, Jefferson County by **October 31, 2008**.

4. That jurisdiction is retained.

Dated at Madison, Wisconsin, (September 15, 2008).

By the Office of the Commissioner of Railroads.

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Roger Breske  
Commissioner of Railroads

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