

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

Complaint of the Village of Oostburg for the Repair of the Public Crossing of the Union Pacific Railroad Co. Tracks with Center Avenue (CTH AA) in the Village of Oostburg, Sheboygan County

9040-RX-1262

FINAL DECISION

By letter dated August 21, 2008, the Village of Oostburg 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 Center Avenue (CTH AA) (crossing no. 180-185D) in the Village of Oostburg, Sheboygan County.

The resolution requiring the repairs was adopted on July 14, 2008 and sent to the railroad on July 17, 2008. The Village 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 October 8, 2008 in Oostburg, Wisconsin with hearing examiner Tom Running presiding.

The UP registered "as interest may appear", and the testimony and position taken by the UP during the hearing concurred with the need to repair the crossing. The Village agreed with the UP's proposed work. Therefore, the matter is uncontested and no proposed decision is required.

Appearances:

Parties

Village of Oostburg, Complainant
by
Jack E. Hoffmann, Village President
445 New York Avenue
Oostburg, WI 53070

As Interest May Appear:

Union Pacific Railroad Co.
by
James Fisher, Manager of Track Maintenance
4823 N. 119th Street
Milwaukee, WI 53225

Two residents also appeared in support.

Findings of Fact

THE COMMISSIONER FINDS:

The railroad currently operates about 3 train movements per day over these crossings at a maximum speed of 30 mph.

At the hearing, the UP agreed that the crossings need repairs. The UP proposed to do temporary repairs at the crossing this year, prior to November 27. The temporary repair would involve the removal of some asphalt and other material including the standup mud rails in the track zone, and replace it with new asphalt. The UP has a track rehabilitation project scheduled for this line of track in the spring. This project would include the renewal of the crossing of Center Avenue. The UP proposes to install a new full concrete panel crossing due to the high traffic volume. The project is scheduled for June of 2009, and the order reflects that the work shall be completed by June 30, 2009. The UP and the Village shall make every effort to coordinate the repair work with the Village's 100th Anniversary and Heritage Day events.

The Village 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 this crossing. The crossing needs the repairs described above and set forth in the order.

Ultimate Conclusions on the Issues

THE COMMISSIONER CONCLUDES:

That the Union Pacific Railroad Co. has failed to maintain the crossing at-grade of Center Avenue with its tracks in good condition and repair for public travel in the Village of Oostburg, Sheboygan 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 **Center Avenue (CTH AA) (crossing no. 180-185D)** with its tracks by fully renewing the crossing with a concrete-panel surface in the Village of Oostburg, Sheboygan County by **June 30, 2009**.

2. That the **Union Pacific Railroad Co.** shall complete **temporary repairs** of the crossing by replacing the asphalt between the rails and removal of mud rails by **November 26, 2008**.

3. That jurisdiction is retained.

Dated at Madison, Wisconsin, October 23, 2008,

By the Office of the Commissioner of Railroads.

Roger Breske
Commissioner of Railroads

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