

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

In the Matter of the:

Petition of the Wisconsin Department of Transportation for the Clearance Exemption of a Public Crossing of the Union Pacific Railroad Co. Tracks with Interstate 94 in the Town of Lincoln, Monroe County

9040-RX-1263

FINAL DECISION

By letter dated October 7, 2008, the Wisconsin Department of Transportation (DOT) petitioned the Office of the Commissioner of Railroads (OCR) for the clearance exemption of the grade-separated public crossing of the Union Pacific Railroad Co. (UP) tracks with Interstate 94 (Structure No. B-41-63) in the Town of Lincoln, Monroe County (**corrected crossing no. 184 058R**). The DOT plans to reconstruct the highway bridge over the UP tracks with a vertical clearance of 22'-1". State law requires a minimum vertical clearance of 23' unless the OCR grants an exemption.

Jurisdiction: Secs. 84.05, 192.31, and 195.29, Stats.

Pursuant to due notice, public hearing was held in this matter on November 13, 2008 in Madison, Wisconsin with hearing examiner Douglas S. Wood presiding. This matter is uncontested and therefore a proposed decision is not required before issuance of this final decision.

Appearances:

Parties

Wisconsin Department of Transportation, Petitioner
by
Gregory A. Baer, PE
Railroad Project Coordination Engineer
PO Box 7914
Madison, WI 53707-7914

In Support:

Union Pacific Railroad Co. by email

Findings of Fact

THE COMMISSIONER FINDS:

The DOT plans to partially reconstruct the westbound Interstate 94 (Structure No. B-41-63) highway bridge over the UP tracks with a vertical clearance of at least 22'-1". The project is scheduled for 2009.

The existing grade separation structure, i.e., bridge, was built in 1968 and received an asphalt overlay in 1989. The bridge deck needs replacement. In addition, the DOT wants to widen the bridge to allow 4-lanes of travel during construction and for future expansion of the overall interstate. The OCR concludes that the reconstruction of the crossing is consistent with public safety and convenience.

The new highway structure will provide a minimum 22'-1" vertical clearance over the top of rail. The actual expected vertical clearance will be 22'-1 5/8". The stipulation defines the vertical clearance as 22', but that represents a rounding up.

Interstate 94 carried 32,000 ADT (average daily traffic) in 2006 at a legal speed limit of 65 mph. The DOT projects Interstate 94 will carry 46,000 ADT in the design year of 2026.

The UP operates 6-8 train movements per day over the tracks at the crossing at a timetable speed of 50 mph.

Interstate 94 is a freeway. By statutory definition a freeway has no at-grade crossings. Sec. 990.01 (9a) Stats., defines a freeway as "a highway with full control of access and with all crossroads separated in grade from the pavements for through traffic."

The DOT project will promote public safety and convenience by replacing the current aged structure with a new structure carrying the interstate over the tracks.

The DOT proposes to let the contracts for this construction in December 2008 and to complete construction of the grade separation in Spring 2009. The DOT proposes that the railroad pay no part of the costs for the grade separation.

Vertical clearance exemption

Wisconsin law requires a minimum of 23' vertical clearance. Wisconsin law no longer requires the routine installation of telltales, but the OCR *may* require telltales if the "absence of a telltale would create an unreasonable risk of harm to the public or a railroad employee *on a railroad not under the jurisdiction of the federal railroad administration...*" (see 192.31 Stats. as amended by 2005 Wisconsin Act 179). The law allows the OCR to grant exemptions. The DOT seeks an exemption from the vertical clearance requirement.

The parties have agreed that the vertical clearance set forth above will not imperil life or limb. The

UP is under the jurisdiction of the FRA and thus the OCR cannot require telltales. (Telltales are generally an obsolete safety device because railroads no longer allow any person to be on top of moving railroad freight cars.) The DOT provided a stipulated agreement to the UP. The UP has agreed to the stipulation, but has not formally executed the agreement.

Reconstruction of Interstate 94 Structure No. B-41-63 with a vertical clearance of 22'-1" will not imperil life and limb and the public interest permits such construction.

Ultimate Conclusions on the Issues

THE COMMISSIONER CONCLUDES:

1. That alteration of the grade-separated crossing of Interstate 94 with the Union Pacific Railroad Co. tracks will promote public safety and convenience.
2. That it is reasonable that no part of the cost of the crossing construction shall be apportioned to the Union Pacific Railroad Co.
3. That the reconstruction of Interstate 94 Structure No. B-41-63 with a vertical clearance of less than 23' will not imperil life and limb, and the public interest permits such construction.

Conclusion of Law

THE COMMISSIONER CONCLUDES:

That the Office has jurisdiction under sections 84.05, 192.31, and 195.29, Wis. Stats., and sections RR 2.15 and 2.16, Wis. Adm. Code, to grant the requested exemption, and such an appropriate order should be entered in accordance with the above Findings of Fact.

Order

THE COMMISSIONER ORDERS:

1. That the **Wisconsin Department of Transportation** is authorized to reconstruct the grade-separated crossing of **Interstate 94 (Westbound - Structure No. B-41-63)** with the tracks of the Union Pacific Railroad Co. as proposed by it in the Town of Lincoln, Monroe County (crossing no. 184 058R).

2. That the terms of the proposed stipulation entitled "STIPULATION BY AND BETWEEN THE STATE OF WISCONSIN, DEPARTMENT OF TRANSPORTATION AND UNION PACIFIC RAILROAD COMPANY, IH-94 Overpass (Westbound), Project I.D. 1023-02-65, Structure B-41-63, Located at the intersection of Interstate Highway 94 and Railroad Mile Post 161.29 on the Wyeville Subdivision of Union Pacific Railroad Company in the Town of Lincoln, Monroe County" is incorporated in this order by reference.

3. That the **Union Pacific Railroad Co.** shall bear no part of the cost of the crossing construction, except for any cost assessed to the railroad pursuant to §195.60, Stats., for the investigation of this matter by the Office. The railroad shall not pass on those assessment costs either directly or indirectly.

4. That the **Wisconsin Department of Transportation** is authorized to reconstruct the grade-separated crossing of **Interstate 94 (Structure No. B-41-63)** with the Union Pacific Railroad Co. tracks with a minimum vertical clearance of 22'-1".

5. That jurisdiction is retained.

Dated at Madison, Wisconsin, (November 18, 2008).

By the Office of the Commissioner of Railroads.

Roger Breske
Commissioner of Railroads