

OFFICE OF THE COMMISSIONER OF RAILROADS**STATE OF WISCONSIN**

Petition of the Wisconsin & Southern Railroad Co. for the Closure of
Three Public Crossings of the Its Tracks with Livingston Street, Brearly
Street, and Blount Street in the City of Madison, Dane County

9170-RX-242

ORDER DISMISSING PETITION

On April 3, 2009, the Wisconsin & Southern Railroad, LLC (WSOR) petitioned the Office of the Commissioner of Railroads (Office) to close the public at-grade crossings of the WSOR tracks with Blount Street, Livingston Street and Brearly Street¹ in the city of Madison, Dane County.

The Office issued a *Final Decision*² on September 13, 2012, which, the Circuit Court remanded to the Office in 2013. *City of Madison v. Office of the Comm'n of Railroads*, No. 12-CV-4529 (Wis. Cir. Ct. Dane Cnty, September 16, 2013) (Remand Order). Pursuant to the Remand Order, on November 2, 2016, the Office issued a *Second Proposed Final Decision* on Remand for comments.³ The *Second Proposed Final Decision* proposed closing only the Livingston Street crossing. The Office received a number of comments opposing the closing⁴ and describing planned and ongoing development around the Livingston Street crossing.

The changing conditions around the Livingston Street crossing are not part of the evidentiary hearing record. But even if they were, the near decade that this docket has been before the Office renders stale any evidence introduced at the early stages and diminishes any

¹ U.S. DOT crossing nos. 177823J, 177827L and 177831B, respectively.

² *Final Decision*, [PSC REF#: 171933](#).

³ *Second Proposed Final Decision*, [PSC REF#: 293967](#).

⁴ Those opposing the closing included the city of Madison, who, during the underlying court proceedings supported closing the Livingston Street crossing.

value that reopening the docket would offer. This begs restarting the process if the WSOR so chooses.

It is the Commissioner's expectation, however, that the parties continue working toward a goal of voluntarily reducing the number of crossings over this relatively short 1.06 track miles – from S Blair Street to S Dickinson Street. These railroad crossings are within eight cross streets connecting Williamson Street to E. Washington Avenue not within an FRA approved quiet zone.

Accordingly, the petition is DISMISSED without prejudice.

Conclusions of Law

1. The WSOR is a railroad as defined in Wis. Stat. § 195.02(1).
2. The Office has authority under Wis. Stat. §§ 189.02, 195.03, 195.04, 195.06, 195.28, 195.285, 195.29, 195.30, Wis. Stat. § 227.47(1), and Wis. Admin. Code §§ RR 1.15, to issue this order dismissing the petition.

Order

1. The WSOR's April 3, 2009, Petition under Wis. Stat. § 195.29, for the closure of one or more public at-grade crossings described above is DISMISSED without prejudice.
2. This Order is effective one day after service.
3. Jurisdiction is retained.

 SigPlus1

08/16/2018 10:46:00 am

Yash P. Wadhwa, P.E.
Commissioner of Railroads

da:DL: 01627197

See attached Notice of Rights

OFFICE OF THE COMMISSIONER OF RAILROADS
610 North Whitney Way
P.O. Box 7854
Madison, Wisconsin 53707-7854

**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE TIMES
ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE
NAMED AS RESPONDENT**

The following notice is served on you as part of the Commissioner's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

PETITION FOR REHEARING

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Office of the Commissioner of Railroads (Office) for rehearing within 20 days of the date of service of this decision, as provided in Wis. Stat. § 227.49. The date of service is shown on the first page. The petition for rehearing must be filed with the Office and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

PETITION FOR JUDICIAL REVIEW

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Office within 30 days of the date of service of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of the date of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Office serves its original decision.¹ The Office must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: April 16, 2016

¹ See *Currier v. Wisconsin Dep't of Revenue*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.