

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

Petition of Wisconsin Central Ltd. for the Relocation of 105th Street in
the Town of Richmond, St. Croix County

9164-RX-914

ORDER TO REOPEN**AND INTERIM FINAL DECISION**

This Order reopens this docket and issues an Interim Final Decision authorizing the Wisconsin Central Ltd. (WCL) to construct a public crossing of its tracks with 105th Street in the town of Richmond.¹

The Commissioner of Railroads terminated this proceeding on September 14, 2020, because the parties had come to an agreement where the WCL would construct the at-grade crossing of 105th Street and would construct a cul-de-sac south of the crossing while removing the remainder of the roadway north of the crossing. The WCL now seeks authority for constructing the crossing because the town's process under Wis. Stat. ch. 66 to discontinue part of 105th Street would prohibit the WCL from meeting construction season deadlines.²

The parties, for the purposes of review under Wis. Stat. §§ 227.47 and 227.53, are listed in Appendix A.

Authority to Order Reopening

As a quasi-judicial body, the Office of the Commissioner of Railroads has the inherent authority to reopen, review, and modify decisions absent an express statutory grant of authority. It is a fundamental and basic principle of administrative agency law that an administrative agency has the power to reconsider its own decisions because the power to decide carries with it

¹ [PSC REF#: 396746.](#)

² [PSC REF#: 397254.](#)

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the power to reconsider. *Schoen v. Bd. of Fire & Police Comm'rs of City of Milwaukee*, 2015 WI App 95, ¶ 20, 366 Wis. 2d 279, 293, 873 N.W.2d 232, 238–39 (citing *City of Oak Creek v. PSC*, 2006 WI App 83, ¶ 27, 292 Wis.2d 119, 716 N.W.2d 152).

Pursuant to the above authority, the Commissioner reopens this docket for the limited purpose of authorizing the WCL to construct the proposed crossing as an interim measure.

Conclusions of Law

1. The WCL is a railroad as defined in Wis. Stat. § 195.02(1).
2. The Office has authority under Wis. Stat. § 189.02; Wis. Stat. §§ 195.03, 195.04, 195.06, 195.28, 195.285, 195.29, and 195.30; Wis. Stat. § 227.47(1); and, Wis. Admin. Code § RR 1.15, to issue this Interim Final Decision authorizing the proposed at-grade crossing.

Opinion

Under Wis. Stat. § 66.1003(4), a town board may initiate discontinuance of a public way by Resolution after public hearing not earlier than 40 days after introduction of the Resolution. A proposed discontinuance is subject to objections, which, would cause further delays. Thus, the WCL is concerned that the process may extend beyond its ability to construct the crossing due to winter weather. Given the long delays already in this docket, and the parties having agreed to the crossing, it is reasonable to allow the WCL to construct its crossing and put in operation its long awaited business plans.

The WCL states that it anticipates 15-20 moves over the crossing, 5-7 days a week at or below 10 mph.³ With an average daily traffic on 105th Street of 583 vehicles, the exposure at the crossing (product of daily train movements and traffic) is 11,660.⁴

³ [PSC REF#: 388223](#) at 10-11.

⁴ [PSC REF#: 391217](#) at 5.

The WCL proposes to cross the tracks at an angle of about 30-degrees, right-hand forward skew.⁵ The location of the proposed crossing appears to have restricted stopping, corner, and clearance sight distances owing to a combination of curvatures of the roadway and the proposed spur tracks.

Sight Distances

A driver approaching a railroad crossing at a given speed must have a clear line of sight at a predetermined distance from the crossing ahead to be able to stop safely. This is known as the approach or safe stopping distance.⁶ From this distance, a driver needs a clear line of sight of the tracks to the left and right in advance of an approaching train. This is known as the corner sight distance.⁷

To stop safely, a driver approaching the 105th Street crossing at 45 mph needs to see the crossing warning devices from a distance of 497 feet because of the skewed tracks. The crossing warning devices would not be visible from 497 feet. The stopping sight distance is inadequate.

From the safe stopping distance, a driver needs to see an approaching train traveling at 10 mph when the train is 131 feet from the crossing in order to stop safely. The corner sight distance would be inadequate in all quadrants.

For adequate clearing sight distance,⁸ a driver stopped 30 feet short of the near rail needs 320 feet of clear sight lines along both directions of the tracks in order to accelerate and clear the

⁵ [PSC REF#: 388225](#).

⁶ "Stopping sight distance" means the length of highway on the approach to a highway-rail grade crossing required to safely stop a vehicle traveling at the posted speed limit at the stop bar.

⁷ "Corner sight distance" means the length of highway on the approach to a highway-rail grade crossing that would be required by a road user to detect an approaching train from either direction of track in sufficient time to safely stop a vehicle traveling at the posted speed limit at the stop bar.

⁸ "Clearing sight distance" means the distance required along each direction of track for the road user stopped at the stop bar to be able to see far enough down the track, in both directions, to determine if sufficient time exists for moving safely across the tracks prior to the arrival of a train.

tracks before a train traveling at 10 mph arrives at the crossing.⁹ The clearing sight distance would be restricted in all quadrants due to proposed track curvature.

Warning Devices

Railroad crossing (crossbucks) and YIELD (R1-2) signs are required at each approach to a passive railroad-highway grade crossing. The placement and maintenance of the signs is normally the responsibility of the railroad. [Wis. Stat. § 192.29\(5\)](#). However, given the restricted sight distances at the proposed WCL crossing, a STOP (R1-1) sign would better promote public safety. A STOP sign establishes a legal requirement for each and every vehicle to come to a full stop.¹⁰ Installation and maintenance is the town's responsibility. [Wis. Stat. § 349.085](#).

A railroad advance warning sign is required on each approach to a grade crossing, with some exceptions. Standards for the signs are found in the Manual of Uniform Traffic Control Devices (MUTCD).¹¹ The railroad normally furnishes the W10-1 signs for crossings on town maintained roads, [Wis. Stat. § 195.286\(1\)](#), and the town is required to install and maintain these signs. Given the severe skew of the proposed crossing, however, an advance warning (W10-12) sign is required, which, the town is required to provide, install, and maintain.

Temporary Traffic Control

Responsibilities for reconstruction of highway-railroad grade crossings is normally shared between the railroad and highway authority to maximize expertise and economies of each.

⁹ Clearing sight distance is dependent upon the maximum train speed and the acceleration characteristics of the “design” vehicle (65-foot double truck). Perception-reaction time increases clearing sight distance as the angle between the roadway and the tracks decreases.

¹⁰ Certain commercial motor vehicles and school buses are required to stop at all highway-rail grade crossings, in accordance with 49 C.F.R. § 392.10, even if a YIELD sign or just a Crossbuck sign are posted.

¹¹ See MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES, 2009 Ed. (FHWA, Rev. 2012), § 8B.06, available at <http://mutcd.fhwa.dot.gov/pdfs/2009r1r2/mutcd2009r1r2edition.pdf>. See also, 2009 WISCONSIN MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (WMUTCD) (Rev. 2017), § 8B.06, available at <http://wisconsin.gov/dtsdManuals/traffic-ops/manuals-and-standards/wmutcd/wismutcd.pdf>.

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The railroad is statutorily responsible for the work activities within the track area. However, the railroad cannot redirect traffic because the public streets and traffic control thereon is the highway authority's responsibility.

The highway authority is responsible for traffic control, public announcements, and asphalt paving starting at four-feet from the near rails -- activities that are frequently provided in concert with its typical highway maintenance responsibilities.¹² However, when the highway authority has granted proper authority, others such as contractors, shall be permitted to install temporary traffic control devices in temporary traffic control zones.¹³

Order

1. The **WCL** shall install and maintain an at-grade crossing of 105th Street with its tracks in accordance with current standards and design plans in the town of Richmond, St. Croix County, by **December 31, 2020**.
2. The **WCL** shall install and maintain new reflective crossbuck (R15-1) signs on each approach to the crossing of its tracks with 105th Street by **December 31, 2020**.
3. The **town of Richmond** shall install and maintain STOP (R1-1) signs on the same posts as, and under the crossbucks on each approach to the crossing of the WCL tracks with 105th Street by **December 31, 2020**.
4. The **town of Richmond** shall install and maintain yellow-background advance warning (**W10-12**) signs (in lieu of the round (W10-1) signs) and pavement markings, including

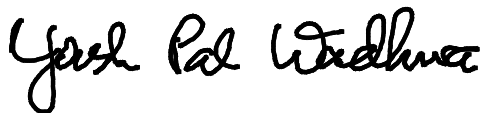
¹² The MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES DESIGN MANUAL (MUTCD) provides that temporary traffic control plans and devices shall be the responsibility of the authority of a public body or official having jurisdiction for guiding road users. MUTCD, 2009 Ed. (FHWA, Rev. 2012) at 547.

¹³ Wisconsin MUTCD Supplement, § 1A.08 (WisDOT, 2017).

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stop lines, on each approach to the new crossing at a distance as set forth in the Wisconsin MUTCD Supplement by **December 31, 2020**.

5. The **town of Richmond** shall implement a traffic control plan for redirecting traffic and shall coordinate all work with the WCL as early as feasible.
6. The proposed crossing shall not be open for public travel until the warning devices, signage, and pavement markings ordered herein are placed in service.
7. The **WCL** shall be responsible for the costs of the new crossing surface and installation of crossbucks, and shall reimburse the **town of Richmond** for the reasonable costs of planning and implementing the **town's** traffic control plan.
8. The WCL shall process U.S. DOT Crossing Inventory Form FRA F 6180.71 no later than 120 days after construction of the crossing.
9. Notwithstanding any other cost apportioned in this order, the **WCL** shall bear costs assessed to the **WCL** under Wis. Stat. § 195.60 and shall not pass on those costs.
10. This Order is effective upon service.
11. The Commissioner retains jurisdiction over the at-grade crossing and approaches.



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

DA/ss:DL: 01768102

See attached Notice of Rights

OFFICE OF THE COMMISSIONER OF RAILROADS
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**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. 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. The filing of a petition for rehearing does not suspend or delay the order's effective date. Wis. Stat. § 227.49(2). 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. The petition must be filed in circuit court and served upon the Commissioner by personal service or certified mail 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.¹⁴ 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: March 27, 2018

¹⁴ See *Currier v. Wisconsin Dept. of Revenue*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.

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Appendix A

OFFICE OF THE COMMISSIONER OF RAILROADS

(Not a party but must be served per Wis. Stat. § 227.53)

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