

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

In the Matter of the:

Petition of the Wisconsin Central Ltd. for the Closure of the Public Crossing of its Tracks with Foley Drive in the Town of Farmington, Waupaca County

9164-RX-676

FINAL DECISION

By letter dated May 25th, 2007, the Wisconsin Central Ltd. filed a petition with the Office of the Commissioner of Railroads (OCR) under §§195.28 and 195.29, Stats., for the closure of the public crossing of its tracks with Foley Drive in the Town of Farmington, Waupaca County (crossing no. 692 494F). Commissioner Kreunen directed the office to set the case for hearing in the matter.

Closing a crossing means that the roadway would be terminated at the tracks and would be permanently closed to public travel.

Jurisdiction: Secs. 195.28 and 195.29, Stats.

Pursuant to due notice, public hearing was held in this matter on September 10, 2007 in the Town of Farmington, with examiner Thomas Running presiding.

On April 11, 2008, the hearing examiner issued a proposed decision. By letter dated April 25, 2008, the Wisconsin Central Ltd. filed comments opposing the proposed decision. The WCL stated that the crossing was redundant, and that emergency vehicles could use an alternate route of Sheridan and Rieben Roads. The crossing is not redundant. It is a critical part of the Ice Age Trail. The Wisconsin Department of Transportation retained access to Foley Drive in its design for the reconstruction of USH 10 as an expressway. The record shows that Sheridan and Rieben is an inadequate route for emergency vehicles that would require the use of a severely skewed intersection. The installation of automatic warning devices will address safety concerns at Foley Drive. The Commissioner adopts the proposed decision as final without change.

Appearances:

Parties

In Support:

Wisconsin Central Ltd.
by
Michael Barron
General Attorney

29 N. Wacker Dr Suite 920
Chicago, Illinois 60606-2832

In Opposition:

Town of Farmington
by
Don Fabricius
Town Chairman
N 2980 Highland Lane
Waupaca, Wisconsin 54981

Ice Age Park and Trail Foundation, Inc.
by
Andrew Hanson
Trailway Director
306 East Wilson Street lower level
Madison, Wisconsin 53703

As Interest May Appear:

Wisconsin Department of Transportation
by
Stephen E. Kienitz, Utility/Rail Coordinator, North Central Region
510 N. Hanson Lake Road
Rhinelander, Wisconsin 54501

Of the Office Staff:

Tom Clauder, Railroad Investigator

In addition to the parties, 25 persons registered at the hearing in opposition to the closure.

Findings of Fact

THE COMMISSIONER FINDS:

The Commissioner directed the staff of the Office of the Commissioner of Railroads (OCR or Office) to investigate the potential closure of the public crossing of the Wisconsin Central Ltd. (WCL) tracks with Foley Drive in the Town of Farmington, Waupaca County. The Commissioner orders that the Foley Drive crossing remain open and that the warning devices be **upgraded to flashing light signals with gates.**

The railroad currently operates 20 through train movements per day over the Foley Drive crossing location at a speed of 60 mph. There have been no train-vehicle accidents at this crossing since at least 1973.

Foley Drive is 20 feet wide and intersects the WCL tracks at an angle of 90°. The roadway approaches to the crossing are approximately 1 percent ascending according to the report of the OCR investigator and photographic exhibits. The crossing consolidation study prepared by TKDA for the WCL incorrectly stated that the grades were 7 percent and 4 percent.

In docket 9164-RX-428, the Office investigated the closure of Rieben Road and Morgan Road in the Town of Farmington. On August 23, 2000, the Office ordered the closure of the crossing of Morgan Road, which is three quarters of a mile to the east of the Foley Drive crossing.

Foley Drive carried 163 ADT (average daily traffic) according to 1991 Wisconsin Department of Transportation records. The speed limit is unposted. The distance from the track centerline to the edge of the pavement of USH 10 is approximately 85 feet. The proximity of the intersection with USH 10 prevents speeds over 25 mph. The WCL track in the area of the crossing is level and straight for at least 2000 feet in either direction.

A driver traveling at 25 mph needs a distance of 187 feet to stop safely. The crossing is visible from greater than this distance in each direction. Assuming a train speed of 60 mph, a driver traveling at 25 mph needs to see a train when it is 635 feet from the crossing from a point 187 feet down the highway. The sight distance available in each quadrant from the safe stopping distance is greater than 1000 feet in all four quadrants. If corn is growing in fields adjacent to the crossing it could restrict the view down the tracks.

At all crossings, except those with gates, a driver stopped 15 feet short of the near rail must be able to see far enough down the track, in both directions, to determine if sufficient time exists to move their vehicle safely across the tracks to a point 15 feet beyond the far rail, prior to the arrival of the train on the crossing. The required amount of clearing sight distance from the stopped position of the vehicle is dependent upon the train speed and the acceleration characteristics of the design vehicle. The necessary clearing sight distance at the Foley Drive crossing is 1345 feet for a WB-50 semi-truck. Clearing sight distance is adequate in all four quadrants.

If Foley Drive is closed, EMT services would need to follow an alternate route on Rieben Road to the north. If Rieben Road were used, the turn from Rieben Road to Sheriden Road is too acute, and the roadways too narrow, for trucks such as fire trucks to make the turn. That intersection is approximately 30 degrees. Rieben Road is a residential road, 20 feet wide, and a posted speed limit of 25 mph. The signals at the crossing of Rieben Road have two driveways west of the crossing, but east of the warning devices. This can allow vehicles to drive around lowered gates.

Foley Drive is part of the Ice Age Trail. This trail is a 1000 mile route through Wisconsin. It is a partnership project with the United States Department of the Interior, National Park Service, the Wisconsin Department of Natural Resources, the non-profit Ice Age Park and Trail Foundation, and County and local organizations. The Ice Age Trail was designated a State Scenic Trail by the Wisconsin Legislature in 1987. Section 23.17(5)(b) states in part: "Each state agency shall consider the ice age trail in the long range plans..."

Large amounts of property have been purchased north and south of USH 10 on Foley Drive as

part of the Ice Age Trail. Foley Drive provides access to the recently purchased Skunk and Foster Lake Natural Area.

Foley Drive, in conjunction with the Ice Age Trail, is a popular recreational bicycle route. The closure of Foley Drive would direct this bicycle traffic onto USH 10.

DOT reconstructed USH 10 within the last few years from a 2-lane highway to an expressway consisting of two lanes in each direction separated by a median. As part of that project, DOT proposed and in 2003 the OCR approved the consolidation of two existing crossings (CTH "T" and Pipe Road) into one new crossing of CTH "T" approximately 100' west of the existing crossing. DOT also consolidated the existing highway intersections of CTH "T" and Pipe Road with USH 10 with one relocated intersection of CTH "T"/CTH "DD"/Pipe Road. (OCR Docket 9164-RX-468). The relocated intersection is about one mile west of Foley Drive.

By law, an 'expressway' has a limited number of at-grade intersections.¹ During the expansion of USH 10 to an expressway, DOT recognized the importance of Foley Drive as part of the transportation and recreation network when it chose to leave an intersection of USH 10 at Foley Drive.

Accidents that do occur here will likely be quite serious if a through train is involved due to their 60 mph speed. Train speed is strongly correlated with fatalities in train/vehicle accidents. More specifically, crossings with train speeds of 40 mph and over have a disproportionate number of fatalities. According to Federal Railroad Administration (FRA) statistics, nationally, in 1994 71% of fatalities occurred at crossings with train speeds of 40 mph+, even though only 26% of all crossings had train speeds of 40 mph+.

The exposure factor at the Foley Drive crossing is 2,260. The exposure factor equals the product of the number of trains per day and the number of highway vehicles per day, which yields a numerical value for the potential conflicts each day at the crossing.

The Wisconsin Department of Transportation has produced a benefit-cost analysis for all at-grade crossings in the state. Installing new automatic flashing lights with gates and constant warning time circuitry at the Foley Drive crossing has a net benefit of about \$1,025,000. The benefit-cost ratio is about 6.30 meaning that the public will receive \$6.30 in safety benefits for each dollar expended.

The crossing presently has crossbucks for warning devices. Conditions warrant upgrading the warning devices at this crossing. The existing warning devices will be adequate until such time as the new warning devices are installed. In order to adequately protect public safety, 12" LED automatic flashing lights with gates and constant warning time circuitry are needed.

¹ Section 990.01 (7a) defines an "expressway" as "a divided arterial highway for through traffic with "full" or "partial" control of access and generally with grade separations at intersections. "Full" control of access means that the authority to control access is exercised to give preference to through traffic by providing access connections with selected public roads only and by prohibiting crossings at grade or direct private driveway connections. "Partial" control of access means that the authority to control access is exercised to give preference to through traffic to a degree that, in addition to access connections with selected public roads, there may be some crossings at grade and some private driveway connections.

Constant warning time circuitry adjusts for train speed and causes the crossing signals to always operate for the same amount of time before the train reaches the crossing, regardless of train speed. A motion detector simply detects the train operation, but does not adjust for train speed so that the amount of warning time varies based on train speed.

Light emitting diodes (LED) lamps replace incandescent bulbs. LEDs have higher conspicuity, a wider cone of vision, and longer life than incandescent lights. LEDs are especially useful on east-west roadways where the rising and setting sun may make the signals difficult to see.

In summary, the closure of the crossing at-grade of the Wisconsin Central Ltd. tracks with Foley Drive will not promote public safety and convenience because the crossing is needed so that the roadway may properly function as part of the area's transportation and recreation network.

Source of funding: The OCR will use federal and state safety funds to pay for the signal materials and installation.

Ultimate Conclusions on the Issues

THE COMMISSIONER CONCLUDES:

1. That the closure of the crossing at-grade of the Wisconsin Central Ltd. tracks with Foley Drive in the Town of Farmington, Waupaca County will not promote public safety and convenience.
2. That in order to adequately protect and promote public safety, it is necessary to install and maintain 12" LED automatic flashing lights with gates.

Conclusion of Law

THE COMMISSIONER CONCLUDES:

That the jurisdiction of the Office of the Commissioner of Railroads under §§195.28 and 195.29, Stats., extends to this matter. Accordingly, the Office enters an order consistent with the findings of fact.

Order

THE COMMISSIONER ORDERS:

1. That the petition of the Wisconsin Central Ltd. to close the crossing of its tracks with Foley Drive is **denied**.
2. That the **Wisconsin Central Ltd.** shall install and maintain 12" LED automatic flashing lights with gates, constant warning time circuitry, and other appropriate

appurtenances in accordance with such plans as are filed with and approved by the Office of the Commissioner of Railroads at the crossing of its tracks with **Foley Drive** at-grade in the Town of Farmington, Waupaca County by **December 31, 2010** (crossing no. 692 494F).

3. That the **Wisconsin Central Ltd.** shall submit to the Office of the Commissioner of Railroads signal and circuit plans with the cost estimate of its proposed installation and upon completion of the signal project, a detailed statement of the actual cost to the Office and to the Wisconsin Department of Transportation.

4. That the signal installation work herein ordered shall not begin until the regional office of the Wisconsin Department of Transportation informs the railroad that they may start such work and such start notice will not be issued until appropriate federal aid or other funding arrangements have been assured. The cost of the new project initiated before the start notice will not be reimbursed with public funds and shall be the responsibility of the railroad.

5. That jurisdiction is retained.

Dated 5th day of September, 2008 at Madison, Wisconsin

By the Office of the Commissioner of Railroads.

Roger Breske
Commissioner of Railroads

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