

NOTICE TO THE PARTIES

Any party adversely affected by this order may petition for rehearing in writing within 20 days after service of this order. The petition for rehearing shall be served upon the Office of the Commissioner of Railroads (OCR) by mail or in person. The petition for rehearing must also be served upon all other parties listed in the "Appearance" section of this order. Filing a petition for rehearing does not automatically stay this order. The process for rehearings is in sec. 227.49 of the statutes.

A party adversely affected by this order may petition for judicial review within 30 days after the service of this order or after the disposition of a request for rehearing. A petition for rehearing is not a prerequisite for filing a petition for judicial review. The Office of the Commissioner of Railroads shall be named as respondent.

The petition for judicial review must be served on the Office of the Commissioner of Railroads either by certified mail or by personal service upon the Commissioner of Railroads. The appeal must also be served upon all other parties listed in the "Appearance" section of this order. The process for court review is in sec. 227.53 of the statutes.

The OCR is located at 610 North Whitney Way, Room 110, Madison, Wisconsin.

The OCR's mailing address is: Office of the Commissioner of Railroads, P.O. Box 8968, Madison, WI 53708-8968.

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

In the Matter of the:

Petition of the City of Milwaukee for the Establishment of a Public Crossing of the Soo Line Railroad Co. Tracks with South 20th Street in the City of Milwaukee, Milwaukee County

9150-RX-511

FINAL DECISION

By letter dated August 13, 2001, the City of Milwaukee petitioned the Office of the Commissioner of Railroads (OCR) for the establishment of a public crossing of South 20th Street with the Soo Line Railroad Co. (Soo Line) tracks located in the City of Milwaukee, Milwaukee County. Jurisdiction: Secs. 195.28 and 195.29, Stats.

Pursuant to due notice, public hearing was held in this matter on October 23, 2001 in Milwaukee, Wisconsin with hearing examiner Douglas S. Wood presiding.

On November 9, 2001, the hearing examiner issued a proposed decision. By letter dated November 16, 2001, Key Railroad Development filed comments on behalf of the Forest County Potawatomi Council (Potawatomi) generally supporting the proposed decision. The Potawatomi did ask that the completion date for the crossing work be extended from July 1, 2002 to December 31, 2002. The Commissioner extends the deadline to October 31, 2002. Extending the deadline past the end of October would be unwise because of the difficulty of constructing a crossing in cold weather.

By letter dated November 16, 2001, the City of Milwaukee filed comments supporting the proposed decision. The City did note that Potawatomi will actually pay the costs for the construction.

By letter dated November 23, 2001, Emmpak Foods, Inc. filed an objection to the proposed decision. However, Emmpak's objections relate to the overall roadway project and not to the crossing. Emmpak's concerns are more properly addressed to the City. The OCR only has jurisdiction over the crossing itself, not the entire roadway design.

By letter dated November 30, 2001, the Soo Line objected to the requirement for train crew flagging of the crossing. The railroad suggested that train crews could be given access to push button control of the traffic signals. The Commissioner disagrees. Roadway traffic will be traveling slowly as it approaches and proceeds through the intersection. Also, the presence of the traffic signals will create gaps that will allow the train crews to flag over the crossing safely. Push button control of the traffic signals is unduly complicated, costly, and unnecessary.

The Commissioner adopts the proposed decision as final, except that the deadline for construction is extended to October 31, 2002.

Appearances:

Parties

City of Milwaukee, Petitioner
by
Jeffrey J. Mantes
Chief Planning and Development Engineer
841 N. Broadway, Room 919
Milwaukee, WI 53202

Findings of Fact

THE COMMISSIONER FINDS:

The City of Milwaukee proposes to establish a public crossing of South 20th Street with the Soo Line Railroad Co. tracks. The City plans to extend S. 20th Street across the track.

S. 20th Street will be 44' wide between curbs and will intersect the Soo Line tracks at an angle of 85-90°. The City also proposes to construct a sidewalk on each side. The roadway approaches to the crossing would be +0.45% for northbound traffic and +1.28% for southbound traffic. The crossing will consist of two spur tracks. S. 20th Street will intersect W. Canal Street about 45' to 50' north of the near spur. The City plans to install traffic signals at that intersection.

The City projects S. 20th Street will carry 9000 ADT in 2010. The speed limit will be 25 mph.

The project will provide a second access route to the Potawatomi Casino.

The railroad currently operates 4 switch movements per day at a maximum speed of 10 mph. Trains are typically about 20 cars in length.

The City anticipates that these tracks will be removed as part of the W. Canal Street project scheduled for 2003.

A driver traveling at 25 mph needs a distance of 165' to stop safely. The crossing will be visible from more than 165' in each direction. Assuming a train speed of 10 mph, a driver traveling at 25 mph needs to see a train when it is 90' from the crossing from a point 165' down the highway. Adequate sight distance will be available in each quadrant, except the southeast where a fence located about 30' from the roadway would obstruct the view.

The exposure factor at this crossing will be about 36,000 in 2010. 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 Department of Transportation's Facilities Development Manual (FDM) recommends consideration of automatic

flashing lights when the exposure factor at a crossing exceeds 5,000-7,000 in an urban area. The FDM also recommends consideration of gates when the exposure factor exceeds 20,000.

Crossbucks, advance warning signs, and a 'stop-and-flag' order for train crews will adequately protect public safety based on the relatively low number of trains and low train speed. Although the exposure factor exceeds one warrant for consideration of signals and gates, these warning devices are not necessary in this instance because of the slow train speed and slow highway vehicle speed. In addition, expending funds for signals and gates would be wasteful given that the tracks will probably be removed within the next few years. The order requires one advance warning sign on S. 20th Street on the south approach and two "parallel tracks" advance warning signs on W. Canal Street. The City also suggested using stop signs at the crossing, but stop signs could cause more safety problems than they solve given the proximity of an intersection with traffic signals.

In summary, the establishment of the crossing at-grade of the Soo Line Railroad Co. tracks with S. 20th Street will promote public safety and convenience.

Ultimate Conclusions on the Issues

THE COMMISSIONER CONCLUDES:

1. That the establishment of the crossing at-grade of S. 20th Street with the Soo Line Railroad Co. tracks in accordance with the design plans of the City of Milwaukee in the City of Milwaukee, Milwaukee County will promote public safety and convenience.
2. That establishment of the crossing is advisable under all the circumstances.
3. That in order to adequately protect and promote public safety, it is necessary to install and maintain reflective crossbucks, and advance warning signs. It is also necessary for train crews to 'stop-and-flag' all moves over the crossing.
4. That it is reasonable that the Soo Line Railroad Co. bear no part of the cost for the crossing construction.

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 **Soo Line Railroad Co.** shall install and maintain a crossing at-grade of S. 20th Street with its tracks in accordance with the design plans of the City of Milwaukee in the City of Milwaukee, Milwaukee County by **October 31, 2002.**

2. That the **Soo Line Railroad Co.** shall install and maintain reflective back-to-back crossbucks with 2" wide reflective vertical strips on the front and back of the support posts on each approach to the crossing of its tracks with S. 20th Street at-grade in the City of Milwaukee, Milwaukee County by **October 31, 2002.**

3. That the **Soo Line Railroad Co.** shall require its train crews to stop and flag all train movements over the crossing of its tracks with S. 20th Street at-grade in the City of Milwaukee in the City of Milwaukee, Milwaukee County.

4. That the **City of Milwaukee** shall install and maintain an advance warning sign (sign W10-1) at a distance in accordance with the Manual on Uniform Traffic Control Devices (MUTCD) from the crossing on the south approach by **October 31, 2002.**

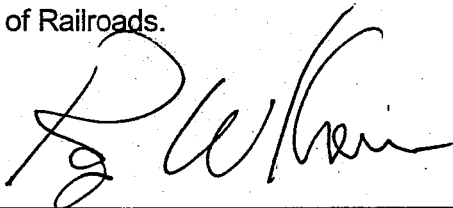
5. That the **City of Milwaukee** shall install and maintain a "parallel tracks" advance warning sign [Sign W10-2, 3, or 4 in the MUTCD] on W. Canal Street at a distance in accordance with the MUTCD by **October 31, 2002.**

6. That the **Soo Line 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.

7. That jurisdiction is retained.

Dated at Madison, Wisconsin, January 17, 2002.

By the Office of the Commissioner of Railroads.



Rodney W. Kreunen
Commissioner of Railroads