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STATE OF WISCONSIN

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Public Service Commission of Wisconsin
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March 8, 2017

Re: Petition of the Manitowoc County for the Alteration of the Public Crossing of the Wisconsin Central Ltd. Tracks with CTH R (S. Rapids Road) in the Town of Manitowoc Rapids, Manitowoc County, docket 9164-RX-847

To The Service List:

Attached is the Proposed Final Decision of the Administrative Law Judge (ALJ). This proposed final decision is the ALJ's recommendation and not the final decision of the Commissioner of Railroads. The Commissioner will issue a final decision after considering written comments, if any.

Comments on the proposed final decision need not follow any particular format nor be elaborate. A clear, concise and specific explanation is sufficient and helpful. Extensions may be granted for just cause. Requests must be made in writing using the Electronic Records Filing System (ERF) or, if time does not permit, via email to the docket coordinator listed in the Notice of Investigation or Proceeding.

Comments must be filed electronically or in writing in time to reach the Office not later than 4:45 pm, March 24, 2017. Parties shall file comments through ERF as a registered user. Generally, 'parties' include those persons and organizations listed in the 'Appearance' section of the proposed final decision. Any other person(s) shall file comments at the Office's web site at <http://ocr.wi.gov> by selecting 'Public Comments' at the top of the page and selecting this docket.

Sincerely,

David Albino
Administrative Law Judge

Enclosure

DA:jg DL: 01502466

OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

Petition of the Manitowoc County for the Alteration of the Public
Crossing of the Wisconsin Central Ltd. Tracks with CTH R (S. Rapids
Road) in the Town of Manitowoc Rapids, Manitowoc County

9164-RX-847

PROPOSED FINAL DECISION

This is the Proposed Final Decision in the proceeding conducted as a Class 1 proceeding by the Office of the Commissioner of Railroads (Office) on the petition of Manitowoc County (Manitowoc) for the Alterations of the public crossing of the Wisconsin Central Ltd. (WCL) tracks with Rapids Road (CTH R) in the town of Manitowoc Rapids. (Crossing No. 689792C)

The petition is GRANTED subject to conditions.

Introduction

On December 28, 2015, Manitowoc petitioned the Office under Wis. Stat. § 195.28 and 195.29 for the alteration of the public at-grade crossing of the WCL tracks with CTH R to accommodate roadway upgrades. ([PSC REF#: 280028](#)) Manitowoc is reconstructing CTH R from Custer Street north to the Manitowoc River Bridge (a length of about 0.8 miles) to bring it to current highway design standards, including alignment and profile adjustments. Work on the roadway project and crossing is planned for completion at the same time as the Wisconsin Department of Transportation Manitowoc River bridge project to limit disruption to traffic and the length of time the detour needs to be in place. The roadway project is planned for completion in one stage during the summer of 2018.

The Office issued a Notice of Investigation on April 19, 2016. ([PSC REF#: 285004](#)) Pursuant to due notice, the Office held a public hearing on August 16, 2016, at Madison, WI, and

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by telephone from the Manitowoc Highway Commission, Manitowoc, WI, before Administrative Law Judge David Albino. A list of appearances is found at Appendix A.

Findings of Fact

1. Rail traffic on this line consists of four through freight trains per day at a maximum timetable speed of 35 mph and a typical speed of 15 to 25 mph.
2. The posted speed limit on CTH R is 45 mph, but will be reduced to 35 mph during reconstruction.
3. The WCL tracks intersect CTH R at 80-degrees, left-hand forward skew.
4. The average annual daily traffic (AADT) on CTH R was 11,800 vehicles in 2014 and is projected to be 14,000 AADT in the design year of 2037.
5. The exposure factor in 2014 was 47,200; in 2037 the exposure factor is projected to reach 56,000 using current rail traffic.
6. There are no reported crashes in the Federal Railroad Administration's database.
7. The existing at-grade crossing consists of treated timber along both sides of each rail with an asphalt surface between the timbers and outside of the timbers. The asphalt is in poor condition; the timbers are in fair condition.
8. The crossing is protected with mast mounted cross bucks and flashing lights; and overhead cantilevered flashing lights triggered by motion detection. The existing warning devices were installed in May 1991. The LED lamps were installed in 2009.
9. The existing warning devices are adequate until such time as new warning devices and a median are installed.
10. Cantilevers cannot be extended for road widening projects.

11. In order to adequately protect public safety, it is reasonable to relocate existing warning devices but install new cantilevers to meet the new road width.

12. It is reasonable for the signal work to be funded entirely by the roadway project.

13. The alteration of the crossing at-grade of the WCL tracks with CTH R in accordance with Manitowoc County's design plans will promote public safety by providing better approaches and improved warning devices.

14. It is reasonable that the crossing surface materials and installation be apportioned 42 percent to the WCL and 52 percent to Manitowoc.

15. It is reasonable that the signal materials and installation be paid by the highway project.

Conclusion 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, 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 final decision authorizing the proposed project.

Opinion

CTH R is a two-lane undivided rural roadway with 15 foot lanes and 8 foot shoulders, 6 feet of which are paved. CTH R is a principal arterial and is currently owned and maintained by Manitowoc County. Manitowoc proposes to reconstruct CTH R to a four-lane undivided urban roadway with 48-foot wide asphaltic pavement and 2.5-foot curb and gutter. A 10-foot wide multi-use path will be located on the east side of the roadway and will be separated from the

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roadway by a 10-foot wide grass terrace. After the reconstruction project is completed, the new roadway will be turned over to the city of Manitowoc.¹

The multi-use path will intersect the WCL tracks at 90-degrees.

Hessel Court intersects at grade with CTH R about 60 feet north of the railroad crossing. The intersection will remain as an at grade intersection with the traffic on Hessel Court having stop sign control.

Sight Distances

A driver traveling at 45 mph needs a distance of 383 feet to stop safely.² The crossing warning devices are visible from more than 383 feet in each direction. The approach sight distance is adequate.

Corner sight distance is the distance down the track that a motorist must see the approaching train in order to stop safely. Assuming a train speed of 35 mph, in order to have adequate corner sight distance, a driver traveling at 45 mph needs to see a train when it is 358 feet from the crossing from a point 383 feet down the highway. The corner sight distance available from the safe stopping distance is inadequate all quadrants.

Clearing sight distance is the distance that a train is visible from a vehicle located 15 feet from the nearest rail. The required clearing sight distance for the CTH R crossing is 867 feet. From the record, it appears that the eastern quadrants may provide the necessary clearance. However, the western quadrants would need clearing brush along the WCL right-of-way to achieve the required sight distance.

¹ [PSC REF#: 288573](#) at 7.

² The county's testimony is that the posted speed limit on CTH R is 45 mph, reduced to 35 mph during reconstruction. [PSC REF#: 288572](#) at 5. However, its sight triangle calculations were done using a vehicle speed of 35 mph. [PSC REF#: 288573](#) at 22.

Crossing Surface

The current timber and asphalt crossing is about 60 feet long as measured along the rails. The new crossing would be approximately 100 feet long as measured along the rails, to include the new multi-use pathway. Manitowoc proposes to remove the existing crossing and replace it with new ballast, composite Endurance XL Plus 10-foot ties and composite Endurance XL Plus timbers along the rails with Hot Mix Asphalt (HMA) pavement between the timbers, similar to what currently exists. The WCL states that the crossing surface will be fully renewed (new rail, ties, ballast, surface) and the surface will be replaced with a full depth composite crossing material installed in the gauge and field sides of the rail but no asphalt between the gauge of the rail.

Warning Devices

The crossing currently has mast mounted cross bucks and flashing lights; and overhead cantilevered flashing lights that are in good condition. Motion detection triggers the lights.³ The existing devices were installed in May 1991. LED lamps were installed in 2009. The flashing lights are not interconnected to the traffic signals at the Custer Street intersection, about 1,000 feet south of the crossing.⁴

Manitowoc proposes to relocate the cross bucks and signals to 4 feet, 3 inches outside of the proposed curb and gutter. Manitowoc also proposes that the cantilever arms be lengthened to cover the new lanes of traffic. The WCL, however, states that cantilevers cannot be extended for

³ Motion detection is not constant warning time (CWT) detection. Motion detection activates warning signals when sensing train movement near a highway-rail grade crossing and deactivates the signals after a specific time period when the system no longer sense train movement. CWT, on the other hand, measures train speed and provides a uniform warning time to the public.

⁴ Preemption generally is used when a signalized intersection exists within 200 feet of a grade crossing or traffic queues routinely back up over the crossing during at least a portion of the day. WisDOT FACILITIES DESIGN MANUAL (2017), § 17-60-25.1. Available at <http://wisconsindot.gov/rdwy/fdm/fd-17-00toc.pdf#fd17>.

road widening projects but require installation of new cantilevers to meet the new road width. Cantilever arms are usually fixed at 12-foot lane spacing and require matching with the supporting structure to meet its structural loading.

Because of the large volume of traffic on CTH R, Manitowoc recommends that the WCL consider installing gates at the crossing. Whether to upgrade warning devices at a highway-rail grade crossing is normally triggered by a petition under Wis. Stat. § 195.28, or by the Office's own motion under the statute. After investigation, the Office determines whether the existing warning devices at such crossing are adequate to protect and promote public safety. If determined inadequate, the Office uses Federal-Aid Safety funds for the upgrade. The WisDOT then prepares the agreement necessary for approval by the railroad to accomplish the work.

Financial Arrangement

Manitowoc and the WCL agree on a cost share of 48 percent to WCL and 52 percent to Manitowoc for the crossing surface. However, Manitowoc proposes the same 48/52 cost share for the signals while the WCL believes that Manitowoc should pay for 100 percent of the signals.

The Office's long-standing policy is to apportion all of the costs that result from changes to an existing crossing as a result of a highway project to the project, including crossing surface and signals. The WCL receives no benefit from this highway project and should not be expected to bear the cost of it. The parties, however, agree to apportion the cost of fully renewing the crossing surface to the railroad.

Order

1. The WCL shall install and maintain a reconstructed crossing at-grade of its tracks with CTH R in accordance with Manitowoc County's design plans, WCL requirements and this Order, by November 15, 2018. (Crossing No. 689792C / MP 41.32).

2. The WCL shall install and maintain retroreflective back-to-back crossbucks with 2-inch wide reflective vertical strips on the front and back of the support posts on each approach to the crossing of its tracks with CTH R by November 15, 2018.

3. The WCL shall install and maintain signal equipment at a reconstructed crossing at-grade of its tracks with CTH R in accordance with Manitowoc County's design plans, WCL requirements and this Order, by November 15, 2018.

4. The WCL shall reuse existing signal equipment to the extent feasible.

5. The WCL shall install and maintain Americans with Disabilities Act compliant flangeway filler at the crossing of its tracks with the CTH R Multi-Use Pathway by November 15, 2018.

6. Upon completion of the signal project, the WCL shall submit a detailed statement of its actual cost of the project to the Office and to Manitowoc.

7. The signal installation work herein ordered shall not begin until Manitowoc County informs the WCL that it may start such work.

8. Manitowoc County shall install and maintain advance warning signs (sign W10-1) and on each approach to the crossing at a distance in accordance with the Manual on Uniform Traffic Control Devices (MUTCD).

9. Manitowoc County shall install and maintain DO NOT STOP ON TRACKS signs (Sign R8-8 in the MUTCD) on the signal masts on each approach to the CTH R crossing by November 15, 2018.

10. Manitowoc County shall install and maintain pavement markings on each approach to the crossing.

11. Manitowoc County shall bear 48 percent and the WCL shall bear 52 percent of the cost of the crossing construction.

12. The WCL shall clear brush and trees from its right-of-way and keep clear for 330 feet down the tracks in each direction from the CTH R crossing by November 15, 2018.

13. Manitowoc County shall clear brush and trees from all public right-of-way and keep clear for 330 feet down the roadway in each direction from the CTH R crossing, by November 15, 2018.

14. The signal materials and installation, including installation of new cantilevers and relocation of existing crossbucks, shall be paid by the highway project.

15. Notwithstanding any other cost apportionment in this order, the WCL shall bear any cost assessed to the railroad pursuant to Wis. Stat. § 195.60 for the investigation of this matter by the Office. The railroad shall not pass on those assessment costs either directly or indirectly.

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16. After the reconstruction project is completed and the new roadway turned over to the city of Manitowoc, the city shall assume all of Manitowoc County's responsibilities for ongoing maintenance provided herein.

17. Jurisdiction is retained.

A handwritten signature in black ink, appearing to read "David Albino". The signature is fluid and cursive, with a large initial "D" and a long horizontal stroke at the end.

David Albino
Administrative Law Judge

DA:jg:DL: 01497861

Appearances

Wisconsin Central Ltd.
by
Jackie Macewicz
Manager Public Works
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Stevens Point, WI 54481

Manitowoc County
by
Mark S. Schuster, P.E.
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