

UNION PACIFIC RAILROAD
101 North Wacker Drive, Room 1920
Chicago, Illinois 60606-1718

P 312.777.2055
F 877.213.4433
mackshumate@up.com

Mack H. Shumate, Jr.
Senior General Attorney, Law Department

238369

May 12, 2015

ENTERED
Office of Proceedings
May 12, 2015
Part of
Public Record

E-FILE

The Honorable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E. Street, S.W., Room #100
Washington, DC 20423-0001

 GRANTED Office of Proceedings	DECISION ID NO.: <u>44513</u>
	DECIDED DATE: <u>5/20/15</u>
	SERVICE DATE: <u>5/20/2015</u>
	APPROVED: <u>Rachel D. Campbell</u> Director
	☐

RE: Proposed Discontinuance of the Waukesha Industrial Lead from Milepost 17.15 to Milepost 18.16 near Waukesha, a total distance of 1.01 miles in Waukesha County, Wisconsin; STB Docket No. AB-33 (Sub-No. 325X)

Dear Ms. Brown:

Attached as Exhibit A and hereby made a part hereof is the OCR decision authorizing the removal of the Les Paul Parkway at grade crossing in conjunction with the subject discontinuance. The OCR decision also authorizes Union Pacific to reinstall said crossing and warning devices if rail service is ever reinstated on the Line. Therefore, Union Pacific respectfully requests that the Board through the Office of Proceedings amend the decision in this matter and authorize Union Pacific to remove the Les Paul Parkway at grade crossing on the Line subject to the terms of the OCR decision should service on the Line be reinstated.

Sincerely,



Mack H. Shumate, Jr.
Senior General Attorney

MHS/ev

2015_05_11_STB OCR Decision



RECEIVED

Exhibit A

MAY 11 2015

LAW DEPARTMENT
UNION PACIFIC RR CO.

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

Complaint of the City of Waukesha for the Repair of the Public Crossings of the Union Pacific Railroad Co. Tracks with STH 59/164 (Les Paul Parkway) and Pearl Street in the City of Waukesha, Waukesha County

9040-RX-1329

FINAL DECISION

By letter dated December 8, 2014, the City of Waukesha filed a complaint with the Office of the Commissioner of Railroads (OCR) under Wis. Stat. § 86.12 that the Union Pacific Railroad Co. (UP) has failed to maintain in good condition and repair for public travel the crossings of its tracks with STH 59/164 (Les Paul Parkway) (Crossing No. 177 294D / MP 17.92) and Pearl Street (Crossing No. 177 295K / MP 18.11) in the City of Waukesha, Waukesha County.

The resolution requiring the repairs was adopted on December 3, 2015 and sent to the railroad on December 16, 2014.

As explained below, the UP and the City have agreed to the issuance of an order by the OCR resolving the complaint without hearing.

On March 19, 2015, the UP filed a Notice of Exemption for Discontinuance of Service with the Surface Transportation Board (STB) for 1.01 miles of its Waukesha Industrial Lead between milepost 17.15 and milepost 18.16. STH 59/164 (Les Paul Parkway) crosses this line within the limits of the discontinuance of service. The Pearl Street crossing is located on an industrial spur track that switches off the Waukesha Industrial Lead track about 800' west of the STH 59/164 (Les Paul Parkway) crossing.

In its STB filing, the UP states the discontinuance will become effective on or after May 8, 2015. The UP also stated it will either remove or pave crossings located within the discontinued limits. The UP also represented to the STB that it anticipated the OCR would issue an order authorizing the railroad to remove the crossings and crossing warning devices in lieu of repairing the crossings, provided that the railroad would also be obligated to reinstall the STH 59/164 (Les Paul Parkway) crossing and warning devices at its own expense if rail service is reinstated in the future. Finally, the UP stated it would file the OCR's decision with the STB.

In communications with the OCR and City, the UP has undertaken to complete the crossing work by May 22, 2015. That undertaking persuaded the City to waive its right to a hearing before the OCR. The UP proposes to remove the tracks, pave the void and remove the warning devices at the STH 59/164 (Les Paul Parkway) crossing. The City concurs with that plan.

Because STH 59/164 (Les Paul Parkway) is under the jurisdiction of the Wisconsin Department of Transportation (DOT), the UP will also be responsible for implementing DOT's traffic control plan while performing the work at the crossing. The UP has been coordinating with DOT on implementing the traffic control plan. STH 59/164 (Les Paul Parkway) is a divided 4-lane roadway carrying 34,700 vehicles per day. Closing all lanes at the same time would be extremely disruptive to area traffic movement. As requested by DOT, the order requires the UP to remove this crossing in two stages and to provide at least two weeks' notice to the DOT prior to commencing removal of the crossing.

It should be noted that the UP has not petitioned the STB for the *abandonment* of the Waukesha Industrial Lead track. Rather, the UP is simply proposing to discontinue rail service, but will retain ownership of this 1.01 mile section. Consequently, should rail service be reinstated on that portion of the line, the UP has a common carrier right and obligation to reinstall the grade crossing including the track, crossing panels and warning devices.

With respect to the Pearl Street crossing, the UP proposes to either remove the crossing entirely or simply pave over the crossing. The City proposes that the UP remove the Pearl Street crossing entirely, pave the void and remove the warning devices. The Commissioner agrees with the City. The Pearl Street crossing is in extremely poor condition, including settlement of sections of the crossing below the adjacent roadway approaches. Given the condition of the crossing surface and the long-term lack of maintenance, it is highly likely the underlying timbers and subsurface are also in a similar state. Under these conditions, simply paving over the crossing surface would be a short-term fix and would not be reasonable.

The UP will need to coordinate a detour route with the City of Waukesha during the removal of the Pearl Street crossing because the roadway will need to be closed while the crossing is removed. The removal of this crossing will obviously be much less complicated than at STH 59/164 (Les Paul Parkway) and the detour plan much simpler given the much lower volume of traffic (450 vehicles per day in 1990 according to Federal Railroad Administration records).

Unlike the STH 59/164 (Les Paul Parkway) crossing, the UP states the Pearl Street crossing is not directly implicated by the STB proceeding. Thus, the UP would have no common carrier obligation to reinstall the crossing. The OCR would treat any proposed reinstallation of the Pearl Street crossing as the establishment of a new crossing requiring a petition and order pursuant to Wis. Stat. § 195.29.

Costs. The UP will be responsible for all costs of removing the crossings, paving the void, and removing the warning devices.

The order also requires the UP to bear the cost to implement the traffic control plan provided by DOT at the STH 59/164 (Les Paul Parkway) crossing and by the City at the Pearl Street crossing. Following its past practice, if the OCR ordered the railroad to repair the crossings, it would also order the railroad to bear the cost of providing detour routes during the crossing repairs. Detours are a necessary part of replacing crossings. Requiring the UP to bear the cost of the detours while the crossings are removed is consistent with that practice.

The UP will also be responsible for all costs to reinstall the STH 59/164 (Les Paul Parkway) crossing and warning devices if rail service is reinstated on the Waukesha Industrial Lead track across that roadway.

Order

THE COMMISSIONER ORDERS:

1. That the **Union Pacific Railroad Co.** shall remove the tracks, pave the void, and remove the warning devices at the crossings of **STH 59/164 (Les Paul Parkway)** (Crossing No. 177 294D / MP 17.92) and **Pearl Street** (Crossing No. 177 295K / MP 18.11) in the City of Waukesha, Waukesha County no later than **May 22, 2015**.
2. That the **Union Pacific Railroad Co.** shall implement the Wisconsin Department of Transportation's traffic control plan when removing the **STH 59/164 (Les Paul Parkway)**, perform the work in two stages, and give at least two weeks' advance notice to the Wisconsin Department of Transportation before commencing work, provided that the Wisconsin Department of Transportation may agree to a shorter notice period.
3. That the **Union Pacific Railroad Co.** shall implement a traffic control plan as determined by the **City of Waukesha** during the removal of the **Pearl Street** crossing and provide at least two weeks' advance notice to the City of Waukesha before commencing work, provided that the City of Waukesha may agree to a shorter notice period.

4. That the **Union Pacific Railroad Co.** shall reinstall the crossing and warning devices on **STH 59/164 (Les Paul Parkway)** at its own cost if rail service is reinstated over that roadway.

5. That the **Union Pacific Railroad Co.** shall be responsible for all costs of removing the crossings, paving the void, removing the warning devices, implementing the traffic control plans.

6. That jurisdiction is retained.

Dated at Madison, Wisconsin, May 8, 2015.

By the Office of the Commissioner of Railroads.

/s/ Jeffrey T. Plale
Jeffrey T. Plale,
Commissioner of Railroads

9040F1329/dw

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 7854, Madison, WI 53707-7854.