

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

City of South Beloit of Winnebago County, a city government, :
Petitioner, :
 :
v. : T15-0022
 :
The Canadian Pacific Railway Company, :
Respondents. :
 :
Petition for an order of the Illinois Commerce Commission to permit :
the construction and maintenance of a multi-use path on the west :
side of Wheeler Avenue, AAR/DOT #388 394R, railroad milepost :
83.00 located in Winnebago County, Illinois. :

STAFF RESPONSE
TO THE CITY OF SOUTH BELOIT'S PETITION

NOW COMES Staff of the Illinois Commerce Commission's Rail Safety Section (Staff), and in response to the February 10, 2015, Petition of the City of South Beloit (City), Staff offers the following:

1. Staff has no objection to the City's petition, including the improvement of the crossing by replacing the existing sidewalk with a bike path on the west side of Wheeler Street in accordance with the plans included in the City's petition.
2. A Proposed Stipulation, attached hereto, has been prepared by Staff and coordinated with the City and Canadian Pacific Railway Company (CP). With acceptance of the Proposed Stipulation by the Administrative Law Judge, the City, CP, and Staff will file formal Stipulations waiving the issuance of a Proposed Order, and stipulating to the facts, finding, and conclusions provided in the attached Proposed Stipulation.
3. With the forthcoming Stipulations, Staff respectfully requests that the Hearing scheduled for May 19, 2015, be cancelled and an Order entered by the Commission on the earliest bench session.

Respectfully Submitted May 15, 2015,



Brian Vercruysse, P.E.
Senior Rail Safety Specialist
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CERTIFICATE OF SERVICE

I, Brian Vercruysse, Senior Rail Safety Specialist, hereby certify that on the 15th day of May 2015, I caused the foregoing STAFF RESPONSE to be served on attorneys/parties of record by e-filing the same with the Illinois Commerce Commission and by forwarding the same to the following at the email addresses, and depositing copies thereof in the United States Mail to the addresses listed below.

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	:	

PROPOSED STIPULATION

By Order of the Commission:

On February 10, 2015, the City of South Beloit (“City” or “Petitioner”) filed the above-captioned petition with the Illinois Commerce Commission (“Commission”) naming as Respondent the Canadian Pacific Railway Company (“CP” or “Respondent”), to enter an order pursuant to the authority in Section 18c 7401(3) of the Illinois Commercial Transportation Law (625 ILCS 5/18c 7401(3)) to permit the construction and maintenance of a multi-use path on the west side of Wheeler Avenue at its intersection with the CP track, designated as AAR/DOT #388 394R, railroad mile post 83.00.

THE PETITION

The Petitioner represents that an existing highway-rail crossing is located on Wheeler Avenue at its intersection with the CP track, designated as AAR/DOT #388 394R, railroad mile post 83.00. Wheeler Avenue is a public roadway under the jurisdiction of the City, at the crossing, as depicted on the roadway plat attached to the petition. The single track over Wheeler Avenue is owned by the CP, and is open and utilized by local industry with approximately two (2) trains per day. However, the U.S. DOT Crossing Inventory Information of January 1, 2001, incorrectly identifies the crossing status as “Closed”. The City believes that this may be due to the fact that the bridge over Turtle Creek, north of the crossing was closed to vehicular traffic.

The City has determined that it is necessary to promote public safety and convenience to the public that the existing crossing located at Wheeler Avenue be altered

by the addition of a multi-use path on the west side of Wheeler Avenue, as shown on the plans attached to the petition. The multi-use path will replace and improve the sidewalk that is currently on the west side of Wheeler Avenue and crosses over the CP track, and will be constructed in accordance with the plans in the petition. The Project will provide a connection for existing pedestrian facilities and generators on the north and south side of the crossing including the regional City Center Bicycle Link. A sidewalk is also currently located on the east side of the crossing which terminates at the crossing. The sidewalk at the highway-rail crossing is adjacent to the Behr Recycling Facility, which utilizes the existing crossing for pedestrians and vehicles.

The City has coordinated the Project with the CP, Illinois Department of Transportation, and Commission Staff and intends on beginning construction in 2015. The Petition represents that the City will at its sole cost and expense install and maintain the trail approaches to the rail crossing.

THE LAW

“The Commission shall also have power by its order to require the reconstruction, minor alteration, minor relocation or improvement of any crossing (including the necessary highway approaches thereto) of any railroad across any highway or public road, pedestrian bridge, or pedestrian subway, whether such crossing be at grade or by overhead structure or by subway, whenever the Commission finds after a hearing, or without a hearing as otherwise provided in this paragraph that such reconstruction, alteration, relocation or improvement is necessary to preserve or promote the safety or convenience of the public or of the employees or passengers of such rail carrier or carriers.”

“A hearing shall not be required in those instances when the Commission enters an order confirming a written stipulation in which” the Commission, the public highway authority, and the rail carrier agree to the “reconstruction, alteration, relocation, or improvement and the subsequent maintenance thereof and the division of costs of such changes of any . . . pedestrian subway.”

In summary, the Commission may allow or deny permission for the modifications at the crossing, require any alterations or improvements to the crossing, including the approaches, and may prescribe the terms of operation, maintenance and use of the crossing, and prescribe the division of costs of installation and subsequent maintenance. The Commission may do this without a hearing if the Commission, the City, and CP agree by stipulation to the improvements, responsibility for construction and future maintenance, and allocation of costs.

STIPULATION

The City, CP, and Staff of the Commission’s Rail Safety Division have stipulated to the above representations, and the following factual representations, findings and ordering paragraphs. Accordingly, no hearing is required.

An existing public highway-rail crossing is located on Wheeler Avenue at its intersection with the CP track designated as AAR/DOT #388 394R, railroad mile post 83.00

south of Turtle Creek. The crossing is incorrectly designated as “Closed” in the USDOT Inventory of highway-rail crossings. A plat of highways included in the City’s petition identifies Wheeler Avenue as a public roadway south and north of the CP crossing over Turtle Creek to the Illinois-Wisconsin state line. At the highway-rail crossing, the crossing surface is in place allowing motorists and pedestrians to cross the single track via the roadway or existing sidewalk.

The City proposes the addition of a multi-use path on the west side of Wheeler Avenue, in accordance with the plans attached to the petition. The multi-use path will replace and improve the sidewalk that is currently on the west side of Wheeler Avenue and crosses over the CP track. The Project will provide a connection for existing pedestrian facilities and generators on the north and south side of the crossing including the regional City Center Bicycle Link. A sidewalk is also currently located on the east side of the crossing which terminates at the crossing.

The City has coordinated the Project with the CP, Illinois Department of Transportation, and Commission Staff and intends on beginning construction in 2015 with completion by August 1, 2016. The City will at its sole cost and expense install and maintain the trail approaches to the rail crossing.

RESPONDENT CANADIAN PACIFIC RAILWAY COMPANY’S POSITION

The Respondent has no objection to the City’s Petition.

STAFF’S POSITION

Staff supports the Project.

FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record, finds that:

- (1) The recitals of fact in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (2) Petitioner, City of South Beloit, Illinois, is an Illinois municipal corporation existing under and by virtue of the laws of the State of Illinois;
- (3) Respondent, Canadian Pacific Railway Company, is a rail carrier engaged in the transportation of property by rail in the State of Illinois;
- (4) The Petitioner has filed a Petition to permit the construction and maintenance of a multi-us path on the west side of Wheeler Avenue at its intersection with the CP track, designated as AAR/DOT #388 394R, railroad mile post 83.00;
- (5) The Commission has jurisdiction over the Petitioner and the Respondent and the subject-matter of this proceeding;

- (6) The multi-use path, will replace and improve the sidewalk that is currently on the west side of Wheeler Avenue and crosses over the CP track as requested by the Petitioner, is necessary to promote safety and the convenience of the public, in accordance with the Illinois Commercial Transportation Law, 625 ILCS 5/18c-7401(3);
- (7) The recitals of fact and conclusions of law contained in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law;
- (8) The City of South Beloit shall at its sole cost and expense improve and maintain the multi-use path in accordance with the plans and reports included within its petition;
- (9) The City of South Beloit should be responsible for all construction and maintenance costs associated with the improvements to multi-use path;
- (10) The parties should proceed immediately to take the actions they are directed to perform by this Order. All work required of the parties under this Order should be completed by August 1, 2016;
- (11) Any person making a Request for an Extension of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request;
- (12) Any person making a Request for an Extension of Time that exceeds 30 days must file a Petition for Supplemental Order with the Director of Processing and Information no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders;
- (13) Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the Project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the Project within the ordered timeframe; and
- (14) The Commission or its Administrative Law Judge reserves the right to deny Petitions for Supplemental Orders and Requests for Extension of Time, if the reason(s) supporting the request is (are) insufficient or where it appears the person has not made a good faith effort to complete the Project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the City

of South Beloit is authorized, in accordance with the plans incorporated into the petition to improve, use, and maintain the multi-use path on the west side of Wheeler Avenue at its intersection with the CP track, designated as AAR/DOT #388 394R, railroad mile post 83.00. in the City of South Beloit, Illinois. All work shall be completed by or on behalf of the City of South Beloit in accordance with Findings (5) through (14).

IT IS FURTHER ORDERED that the City of South Beloit shall, at six-month intervals from the date of this order until the Project has been completed, submit written reports to the Director of Processing in the Commission's Transportation Bureau (Director of Processing), describing the progress that has been made toward completing the Project. If the Project is behind schedule, the report shall include a brief explanation of the reason for the delay. Each progress report shall include the Commission Order number; the date the Order was entered; the deadline for completion of the Project established by the Order; the type of improvement; and Project manager information (name, title, mailing address, telephone number, and facsimile number) of the employee responsible for the management of the Project.

IT IS FURTHER ORDERED that the City of South Beloit shall, within five days of the completion of the Project, file with the Director of Processing a letter advising the Commission of the completion date, along with an updated USDOT Crossing Inventory form completed in coordination with the Canadian Pacific Railroad Company.

IT IS FURTHER ORDERED that the Commission shall retain jurisdiction for the purpose of issuing any supplemental order or orders as it may deem necessary.

IT IS FURTHER ORDERED that in accordance with Chapter 625 ILCS 5/18c-2201 and 5/18c-2206 of the Illinois Commercial Transportation Law, this is a final Order subject to the Administrative Review Law.

By Order of the Commission this ____ day of _____, 2015.

BRIEN SHEAHAN
CHAIRMAN