

**OFFICE OF THE COMMISSIONER OF RAILROADS**

**STATE OF WISCONSIN**

Petition of Wisconsin Central Ltd. for the Relocation of 105th Street in 9164-RX-914  
the Town of Richmond, St. Croix County

## **ORDER**

This is the Order in the Class 1 proceeding by the Office of the Commissioner of Railroads (Office) on the March 27, 2020, Wisconsin Central Ltd. (WCL) Amended Petition<sup>1</sup> seeking an order under Wis. Stat. § 195.29 for the town of Richmond to relocate 105<sup>th</sup> Street to avoid establishing a new crossing of proposed siding tracks with 105<sup>th</sup> Street at the street's current location.

The parties have settled on terms mutually agreeable. Thus, this Order terminates this proceeding; the Office does not retain jurisdiction to enforce any portions of the agreement specified below.

## Introduction

The WCL is developing a joint automotive and intermodal facility on a 58-acre parcel south of STH 64 and east of 105<sup>th</sup> Street in the town of Richmond. The WCL plans to serve the facility via a new siding track off its Minneapolis Subdivision mainline with a crossing at 105<sup>th</sup> Street. The WCL proposes that the 105<sup>th</sup> Street crossing be closed to traffic and that traffic instead use a new road to be constructed south of the proposed crossing, running east along the south side of the facility then north to intersect STH 64.

The Office held a public hearing<sup>2</sup> on this matter on June 9, 2020, in Madison and Richmond, where witnesses offered testimony and exhibits on behalf of the parties. The Office

<sup>1</sup> PSC REF#: 386533.

<sup>2</sup> Notice of Hearing, [PSC REF#: 389679](#).

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accepted oral comments from members of the public at the hearing and written comments through the Office's website during the open comment period through June 8, 2020.<sup>3</sup>

Following the public hearing, the parties filed simultaneous initial briefs on June 23, 2020, and simultaneous reply briefs on June 30, 2020, regarding the Office's jurisdiction to order relocating 105<sup>th</sup> Street.

The parties, for the purposes of review under Wis. Stat. §§ 227.47 and 227.53, are listed in Appendix A.

### **Statutory Authority**

In this type of case the issues are, as indicated in Wis. Stat. § 195.29(1): (a) will the proposed crossing promote the public safety; (b) by whom shall the same be made; and (c) because this is a new crossing, the advisability of allowing it to be established and the manner of making it. *Re City of Madison*, Docket 2-R-3108, 20 P.U.R.3d 255 (Wis. P.S.C., July 10, 1957). The equitable apportionment of costs between the municipality and the railroad is directed under Wis. Stat. § 195.29(2).

In enacting Wis. Stat. § 195.29(1), the Legislature did not establish any standard to apply in determining when a new at-grade crossing is to be permitted, or if advisable, whether the new crossing must be by overhead structure or underpass. *Green Bay & W. R. Co. v. Pub. Serv. Comm'n*, 269 Wis. 178, 186–87, 68 N.W.2d 828, 832 (1955). The statute purposely grants the Office wide discretion to determine the methods that should be required at the crossing to promote public safety. *Id.* The statute, however, reasonably construed to accomplish its objective, does not require the Office to order the type of crossing protection that is safest, but only such as is reasonably necessary to promote public safety. *Id.* The statute's clear and

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<sup>3</sup> [PSC REF#: 391598](#).

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unambiguous language extends to relocating highway to avoid a crossing and promote public safety. *Chicago and N.W. Ry. Co. v. Railroad Commission of Wisconsin*, 178 Wis. 485 (1922).

### **Conclusions 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; Wis. Stat. §§ 195.03, 195.04, 195.06, 195.28, 195.285, 195.29 and 195.30; Wis. Stat. § 227.47(1); and, Wis. Admin. Code § RR 1.15, to issue this Order.

### **Opinion**

A spur track from the WCL's mainline to its proposed autoport and intermodal facility requires crossing 105<sup>th</sup> Street. The proposed autoport will ship new vehicles via rail to another facility where the vehicles can then be transferred to regional car dealerships for consumer purchase in the upper Midwest.<sup>4</sup> The proposed intermodal facility is designed to transfer shipping containers between truck and rail, inbound or outbound, empty or with cargo.

The WCL expects the facility to receive train service twice daily, five to seven days a week not including numerous daily switch movements.<sup>5</sup> Given that an at-grade crossing of the proposed spur track is likely to cause significant roadway user delays, the WCL is proposing that 105<sup>th</sup> Street be relocated 2,547 feet to the east side of the facility. The move results in the intersection of CTH A with 105<sup>th</sup> Street moving about 1,400 feet to the east with about 0.75 miles of new roadway constructed to town highway standards to reach the new intersection.

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<sup>4</sup> [PSC REF#: 388223](#) at 3.

<sup>5</sup> Id. at 4.

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The town argues that 105<sup>th</sup> Street is not being relocated but that additional roads are being constructed that the town must then maintain.<sup>6</sup> Stating that St. Croix County uses a coordinate system for its rural road naming and numbering system to aid in fire protection, emergency services, and civil defense, the town states that the proposed east-west segment would be designated as 175<sup>th</sup> Avenue and the proposed north-south segment would be designated as 110<sup>th</sup> Street.

The town objects to adding roads to the town's 67.21 miles of paved road system citing the higher costs of maintaining roads constructed to a higher standard than other town roads.<sup>7</sup> The town argues that the current cost to reconstruct a town road is \$187,500 per 0.75 mile.<sup>8</sup> The town states that the projected reconstruction cost of the proposed 105<sup>th</sup> Street [in year 2051] is \$410,000 in current dollars, or double that of a standard road.

After close of all the evidence and before this Order was issued, the parties agreed that the WCL will construct its road from 105<sup>th</sup> Street to CTH A as a private road not open to public travel but allowing use by emergency vehicles. The WCL will construct an at-grade crossing of 105<sup>th</sup> Street and will construct a cul-de-sac south of the crossing and remove and restore to a natural condition that portion of 105<sup>th</sup> Street north of the crossing.

Specifically, the parties agree that:

1. WCL will construct a private road from the current 105<sup>th</sup> Street to County Rd. A.

The road will not be open to the public, but WCL will allow emergency services vehicles responding to an emergency complete access to use this private driveway road. All emergency service vehicles must be equipped with flashing lights or sirens, and such equipment must

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<sup>6</sup> [PSC REF#: 390115](#) at 5-6.

<sup>7</sup> [PSC REF#: 390121](#) at 2.

<sup>8</sup> Id at 3.

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be activated while using the private driveway. WCL is responsible for maintenance of this private road. The portion of the road from WCL's westernmost driveway will be at least 20 feet wide, and WCL will determine whether it will be a crushed stone or a paved surface. This section will remain the property of the WCL subject to the right of use for the described emergency services. [Parties] will need to further discuss whether a specific easement will need to be drafted.

2. WCL agrees that all semi or heavy truck traffic will turn left (east) out of the driveway of the facility and travel on the private driveway to County Road A. WCL will post Left Turn Only or other directional signage for vehicle traffic leaving its facility to its private driveway.

3. WCL will construct the proposed cul-de-sac on 105<sup>th</sup> Street and be responsible for the installation and upkeep of any signage related to the cul-de-sac. 105<sup>th</sup> Street would dead-end at the proposed cul-de-sac.

4. The Town will take the necessary steps required under Wis. Stat. § 66.1003 for discontinuance of 105<sup>th</sup> Street north of the proposed cul-de-sac/rail spur. Alternatively, the parties' agreement would be presented to the Office of Commissioner of Railroads as a stipulated agreement on WCL's Alternative 1 (closure of 105<sup>th</sup> Street).

5. WCL will remove and restore to a natural condition the portion of 105<sup>th</sup> Street north of the proposed cul-de-sac/rail spur.

6. WCL will be responsible for the cost of reconstruction of 105<sup>th</sup> Street from 170<sup>th</sup> Avenue to the termination at the cul-de-sac described in paragraph 3 above. The road will be reconstructed to Town Road standards as described in the "Preliminary Cost Estimate for 105<sup>th</sup>

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Street from 170<sup>th</sup> Avenue to new cul-de-sac" document prepared by Ms. Popenhagen. The Town will assume responsibility for future maintenance of 105<sup>th</sup> Street.

7. The Town will notify St. Croix County and [the Office] in writing that it has no objection to WCL's request for a private driveway connecting to CTH A.

8. WCL will pay the sum of \$175,000 to settle all ownership rights the Town has in the section of 105<sup>th</sup> Street being discontinued, any claims the Town may assert against WCL for trespass or failure to obtain necessary permits prior to construction activity, the Town's agreement to withdraw its factual and legal claims in the [Office] and waive any right to appeal any decision of [Office], the Town's further agreement to immediately initiate proceedings under Wis. Stat. § 66.1003 for discontinuance of 105<sup>th</sup> Street north of the proposed cul-de-sac/rail spur, and for the Town's claim for past or future professional fees.

A railroad-highway grade crossing is public when the highway approaches are under the jurisdiction of and maintained by a public authority and open to public travel. 49 C.F.R. § 234.401 (2019). Because the town is voluntarily closing 105<sup>th</sup> Street just south of the proposed crossing, the crossing would no longer be open to public travel and thus, would not be a public crossing subject to Office jurisdiction.

Because the Office no longer has jurisdiction, the Commissioner of Railroads enters this Order terminating all proceedings herein.

  
Yash P. Wadhwa  
03/14/2020 03:16:53pm

Yash P. Wadhwa, P.E.  
Commissioner of Railroads

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## Appendix A

**OFFICE OF THE COMMISSIONER OF RAILROADS**  
(Not a party but must be served per Wis. Stat. § 227.53)  
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