OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

On the Commissioner's Own Motion Regarding the Safety of the Wisconsin and Southern Railroad, L.L.C. tracks with North Shore Drive, Fish Hatchery Road, and West Washington Avenue in the City of Madison, Dane County	9170-RX-346

FINAL DECISION

On February 5, 2020, the Commissioner of Railroads issued an *Interim Final Decision* in this docket requiring that the city of Madison not install rectangular rapid flashing beacons (RRFBs) at any new location within 200 feet of any railroad-highway grade crossing pending a Final Decision in this docket. The *Interim Final Decision* stated that RRFBs were already installed at crosswalks near the Wisconsin and Southern Railroad LLC (WSOR) tracks with West Washington Avenue and North Shore Drive. (PSC REF#: 383353)[1]

Legal Authority

Wisconsin Stat. § 195.29 grants broad discretionary powers to the Office with respect to railroad-highway crossings. Under Wis. Stat. § 195.29(1), the Office "…shall determine what, if anything, shall be done to promote the public safety and the means by which it shall be accomplished …" including the approaches to the crossing.

Findings of Fact

1. The Southwest Commuter Path runs parallel to the crossing of the WSOR tracks with West Washington Avenue and North Shore Drive.

[1] For a discussion of the RRFBs adjacent to the Fish Hatchery Road railroad crossing, see *Final Decision in Petition of the City of Madison for the Establishment of Two Public Multiuse Pathway Crossings of the Wisconsin & Southern Railroad LLC Tracks with Cannonball Path at the Madison Newspapers Railroad Spur and Ridgeway Way in the City of Madison, Dane County*, docket 9170-RX-415 (Wis. O.C.R., July 22, 2024). (Final Decision - PSC REF#: 509679)

2. The WSOR crossings at West Washington Avenue and North Shore Drive are equipped with flashing lights, gates, and bells.

3. The WSOR operates one daily thru train at a maximum table timetable speed of 10 mph and two switch trains at the West Washington Avenue crossing.

4. The WSOR operates one weekly train at a maximum table timetable speed of 10 mph at the North Shore Drive crossing.

5. The city of Madison installed RRFBs at West Washington Avenue on August 25, 2017, and at North Shore Drive on August 11, 2017.

6. West Washington Avenue is a minor arterial with posted speed at 25-mph and an Average Annual Daily Traffic (AADT) of 27,400 vehicles per day.

7. North Shore Drive is a principal arterial with posted speed at 30-mph and an AADT of 16,300 vehicles per day.

Conclusions of Law

1. The WSOR 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, 195.30; Wis. Stat. § 227.47(1); and Wis. Admin. Code § RR 1.15, to issue this final decision.

3. Under Wis. Stat. § 195.29(1), the Office "…shall determine what, if anything, shall be done to promote the public safety and the means by which it shall be accomplished …" including the approaches to the crossing.

4. Wisconsin Stat. § 195.286(5) prohibits any sign between the advance warning (W10-1) signs at the approaches to railroad crossings except signs or signals required by law or permitted by the Office for protection at railroad crossings.

Discussion

RRFBs do not direct or control vehicle or pedestrian/bicyclist movement with indications to proceed or stop. RRFBs at pedestrian crosswalks parallel to and close to railroad crossings have been a safety concern[2] because vehicles are unprepared to stop at a safe distance from such crossings and instead have stopped on railroad tracks and crosswalks. This puts the vehicle in a high-risk position as it dwells on railroad tracks with the threat of oncoming trains.

The problem with these configurations is that jurisdictions treat them as two completely independent intersections of roadways with railroad tracks and adjacent pathways, where they should be treated as one multimodal intersection with the State, local jurisdictions and the Commissioner of Railroads all working jointly to resolve existing conflicts between trains, pedestrians, bicyclists and motor vehicles. The Commissioner recognizes that there are competing interests -- jurisdictions weigh the costs and the WisDOT weighs whether the potential safety benefit warrants disruption to vehicle traffic flow.

Review of any multimodal intersection with a rail crossing as one component starts with understanding there is a safe distance at railroad crossings known as the minimum track

[2] See, i.e., *Final Decision, On the Commissioner's Own Motion for a Determination of the Adequacy of Warning Devices and the Exemption of the Public Crossing of the BNSF Railway Tracks with Ward Avenue in the City of La Crosse and Town of Shelby, La Crosse County*, docket 9020-RX-182 (Wis. O.C.R., Mar. 19, 2024) (PSC REF#: 494367); *Final Decision, Petition of the Wisconsin Department of Transportation for a Determination of the Adequacy of Warning Devices and Exemption of the Public Crossing of the Wisconsin & Southern Railroad, LLC tracks with Mequon Road/STH 167 in the City of Mequon, Ozaukee County*, docket 9170-RX-411 (Wis. O.C.R., Nov. 13, 2023) (PSC REF#: 483642).

clearance distance (MTCD)[3] on both sides of the tracks. The upstream point of the MTCD is at least 10 feet measured perpendicular from the nearest rail for unpaved roads or the portion of the automatic gate arm or Stop line farthest from the nearest rail. The downstream point of the MTCD is 6 feet beyond the track(s) or the edge of the downstream highway-pathway intersection, whichever is closer, and is measured perpendicular to the farthest rail to obtain the longer distance. When a parallel crosswalk is upstream of the railroad crossing, vehicles should be prepared to stop a minimum of four feet in advance of the crosswalk,[4] and should entirely clear the tracks and crosswalk downstream.

Maintaining a safe distance from the multimodal intersection can avoid accidents spilling from the crosswalk to the tracks or vice versa, lessening the potential danger to the public. An accident close to the tracks can foul the tracks for a significant time and lead to a second train-vehicle accident or train derailing.

West Washington Avenue (Crossing No. 391720V / MP 138.88)

The crosswalk at West Washington Avenue is 30 feet south of the crossing of the WSOR tracks and is equipped with flashing lights and gates interconnected with the traffic lights at the intersection with Regent Street, but not interconnected with the RRFBs.

On September 22, 2018, a vehicle headed northbound was rear-ended by a second vehicle when the first vehicle stopped at the pedestrian crosswalk resulting in two injuries.[5]

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[3] *See* MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES, 11th Ed. (FHWA, 2023), § 8A.07. Available at MUTCD 11th Edition - FHWA MUTCD (dot.gov).
[4] *Id.*, § 3B.19.13.
[5] PSC REF#: 382952.

On July 15, 2019, a vehicle headed northbound swerved to avoid a bicyclist eastbound on the crosswalk and crashed into the RRFB pole causing major property damage.[6]

On July 29, 2024, a vehicle struck a bicyclist resulting in injury. In one week (August 11 and 17, 2024) there were two separate incidents of vehicles striking bicyclists at the West Washington Avenue crosswalk resulting in injury. Madisonbikes.org writes:

> "This intersection is notoriously dangerous and has seen several crashes involving drivers and cyclists this year alone. Despite having [RRFBs] there are multiple potential reasons for the level of danger at this intersection. Path users have to cross 4 motor traffic lanes to get across W. Washington, with a refuge island in the middle. In addition to the issue of crossing multiple lanes at once, often times the driver in the first lane will stop to yield for a pedestrian or cyclist and the driver in the next lane will not. Speeding and driver inattentiveness can also play roles in making this area more dangerous."[7]

In comments to the *Interim Final Decision*, the City stated that there were 10 crashes during the four years prior to the installation of the RRFBs, six were rear ends attributed to the first driver yielding to the path crossing with the second driver "Following Too Close" to the driver ahead or cited for "Inattentive Driving".[8] The other four crashes were multiple-threat type crashes where one driver in lane 2 goes around the other yielding drivers in lane 1.

North Shore Drive (Crossing No. 391716F / MP 138.55)

The crosswalk at North Shore Drive is 30 feet north of the WSOR crossing and is equipped with flashing lights and gates but no preemption.

On December 8, 2017, a vehicle eastbound on North Shore Drive was waiting for a pedestrian to cross the southwest commuter path when it was rear-ended by a second vehicle

[6] PSC REF#: 382953.
[7] Christo Alexander, *Housing Week; Board Elections; Advocacy Woes: West Washington Crash*, Madison Bikes (Aug. 18, 2024), https://www.madisonbikes.org/2024/08/.
[8] City of Madison Comments to Interim Final Decision - PSC REF#: 393043 at 2.

resulting in injuries to the second driver.[9] This accident is significant because it occurred on the railroad tracks.

On October 18, 2018, another eastbound vehicle stopped for a pedestrian at the crosswalk and was rear-ended by a second vehicle resulting in property damage.[10] This accident occurred at the railroad tracks.

On October 4, 2019, a westbound vehicle was stopped at the crosswalk for a bicyclist. The vehicle then proceeded forward and struck a second bicyclist at the crosswalk causing minor injury.[11] The driver was cited for failure to yield.

There were five crashes during the four years prior to the installation of RRFBs at North Shore Drive. All five crashes were rear ends attributed to the first driver yielding to the path crossing and the second driver "Following Too Close" to the driver ahead. The City's review of crashes for these locations indicated that drivers who were behind other "yielding" drivers were inattentive or unaware of what the driver ahead was doing.

RRFB's pre-2023 MUTCD

On March 20, 2018, the Federal Highway Administration (FHWA) granted Interim Approval (IA) 21 for optional use of RRFBs at uncontrolled marked crosswalks.[12,13] On April

[9] PSC REF#: 382954.
[10] PSC REF#: 382956.
[11] PSC REF#: 382955.
[12] FHWA Memorandum SUBJ: MUTCD – Interim Approval for Optional Use of Pedestrian-Actuated Rectangular Rapid-Flashing Beacons at Uncontrolled Marked Crosswalks (IA-21), March 20, 2018. Accessed January 7, 2019 Interim Approval 21 – Rectangular Rapid-Flashing Beacons at Crosswalks - Interim Approvals Issued by FHWA - FHWA MUTCD.
[13] *See also*, Wisconsin Stat. § 346.24 providing:

> Crossing at uncontrolled intersection or crosswalk.
> (1) At an intersection or crosswalk where traffic is not controlled by traffic control signals or by a traffic officer, the operator of a vehicle shall yield the right-of-way to a pedestrian or personal delivery device, or to a person riding a bicycle, electric scooter, or electric personal assistive mobility device in a manner which is consistent with the safe use of the crosswalk by pedestrians, that is crossing the highway within a marked or unmarked crosswalk.

27, 2018, the FHWA granted the Wisconsin Department of Transportation (WisDOT) approval to use pedestrian-actuated RRFBs on a blanket basis at uncontrolled marked crosswalk locations statewide where WisDOT or local highway agencies install RRFBs under the technical conditions of IA-21.[14]

On May 7, 2018, the WisDOT notified jurisdictions that it had been approved for statewide use of RRFB's under IA-21.[15] A jurisdiction needed only to notify the WisDOT by email verifying acceptance of the [2009] MUTCD and IA-21 requirements. IA-21 is silent on RRFBs at crosswalks near railroad crossings. However, the WisDOT does not allow RRFBs on the State Trunk Highway (STH) system in conjunction with railroad crossings.[16]

As a condition of IA-21, jurisdictions using RRFBs were required to comply with all the conditions listed in § 1A.10.18 of the 2009 MUTCD. Paragraph 18D.1. required jurisdictions to restore the site of the interim approval to a condition complying with the MUTCD "within [three] months following the issuance of a Final Rule on this traffic control device."[17]

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(2) No pedestrian, personal delivery device, bicyclist, or rider of an electric scooter or an electric personal assistive mobility device may suddenly leave, and no personal delivery device operator may allow a personal delivery device to suddenly leave, a curb or other place of safety and walk, run, or ride into the path of a vehicle which is so close that it is difficult for the operator of the vehicle to yield.

(3) Whenever any vehicle is stopped at an intersection or crosswalk to permit a pedestrian, personal delivery device, bicyclist, or rider of an electric scooter or an electric personal assistive mobility device to cross the roadway, the operator of any other vehicle approaching from the rear may not overtake and pass the stopped vehicle.

[14] *See* 2023 MUTCD, supra note 3, Ch 4L (RRFBs).

[15] WisDOT Memorandum SUBJ: Subject: Pedestrian-Actuated Rectangular Rapid-Flashing Beacons at Uncontrolled, Marked Crosswalks (IA-21), May 7, 2018. https://wisconsindot.gov/dtsdManuals/traffic-ops/manuals-and-standards/wmutcd/ia21-memo-locals.pdf.

[16] *See* WisDOT TRAFFIC ENGINEERING, OPERATIONS & SAFETY MANUAL (TEOPS), § 4-5-1 (July 2018). Available at https://wisconsindot.gov/dtsdManuals/traffic-ops/manuals-and-standards/teops/04-05.pdf.

[17] The 2009 MUTCD is available at 2009 MUTCD with Revisions 1, 2, and 3 incorporated, dated June 2022 (PDF) - FHWA MUTCD.

RRFBs post-2023 MUTCD

On December 19, 2023, the Federal Register published a Final Rule adopting the 11th Edition of the MUTCD with an effective date of January 18, 2024.[18] The MUTCD provides that if a highway traffic signal is installed 200 feet or less from a passive crossing, an active crossing warning system should be installed to provide a means to preempt the highway traffic signal to clear vehicles from the MTCD upon approach of rail traffic.[19] If a highway traffic signal is interconnected with flashing-light signals, the flashing-light signals should be provided with automatic gates to prevent additional vehicles from being drawn into the MTCD during the track clearance interval prior to the arrival of rail traffic.[20]

RRFBs installed within 50 feet of any rail equipped with flashing lights require consideration as to whether the RRFB operation should be terminated during the approach and passage of rail traffic.[21] As stated above, however, such configurations need to be treated as multimodal intersections requiring clear signalization to each user group.

WisDOT Policy for Installation of RRFBs

The WisDOT maintains a policy providing *non-mandatory* standards for installation of RRFBs on local roads while prohibiting use on STHs in conjunction with train crossings.[22] This policy does not consider installation of RRFBs near train crossings on local roads nor require any coordination with the Commissioner whose signage and signal jurisdiction includes the approaches to the railroad crossings between the advance warning signs.

[18] National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Revision, 82 Fed. Reg. 87,672 (Dec. 19, 2023).
[19] 2023 MUTCD, supra note 3, at § 8D.09.06.
[20] Id., at § 8D.09.07.
[21] Id., supra note 3, at § 8D.09.14.
[22] *See* WisDOT TEOPs, supra note 16, at 1.

The WisDOT *suggests* that for installing RRFBs, "[a] minimum volume of 20 or more pedestrians during a single hour (any four consecutive 15-minute periods) of an average day *should* be met. Young (<12), elderly (>85), and disabled pedestrians count 2 times toward volume thresholds. Additionally, seasonal day volumes can be used in place of average day volumes if the crossing is in a known tourist area."

The WisDOT also *suggests* a minimum vehicular volume of 1,500 vehicles per day and a maximum of four lanes crossed, unless there is a raised median, in which case it can be six lanes. However, there is no process in place to review or even require that a jurisdiction wanting to install an RRFB meet such de-minimus thresholds, especially in proximity to a railroad crossing.

The WisDOT believes that the decision to install RRFBs at multi-use paths (regardless of whether the crossing is near a railroad or not) should include an engineering review of factors such as number of trains/vehicles/pedestrians/bicyclists, number of trains, geometrics, etc., on a location-by-location basis.[23] Because this is neither a requirement of the MUTCD nor a suggestion of WisDOT policy, however, the Commissioner must take the lead to promote the public safety and the means by which it shall be accomplished.

Analysis for Interconnecting RRFBs and Railroad Warning Devices

The Commissioner is unaware of any analysis or engineering studies being done for the purpose of installing and preempting RRFBs near crossings even though such installations would require Commissioner approval under Wis. Stat. § 195.286(5).

In 2019, the WisDOT did contract with CBS Squared, Inc., (CBS) to review the crossings herein to determine whether the RRFBs should be interconnected to the crossing signal

[23] PSC REF#: 386460 at 3.

equipment to preempt the RRFBs in advance of the train.[24] CBS looked at a design vehicle under three scenarios,[25] the most dangerous being where the design vehicle is at the West Washington Avenue crosswalk but extends over the tracks.

During the field review, several bicyclists and pedestrians crossed West Washington Avenue without ever triggering the RRFB. CBS found this occurrence was far more common with bicyclists than pedestrians as their crossing time is significantly reduced compared to that of a pedestrian, requiring smaller gaps in traffic.[26]

CBS analyzed the crosswalk in one direction of travel on West Washington Avenue and calculated that it would take an average pedestrian over nine seconds to move halfway across West Washington Avenue (32 feet).[27] CBS determined that it would take 11 seconds for a design vehicle at the crosswalk to clear to six feet beyond the far track. A single pedestrian crossing when the railroad lights begin flashing could delay the vehicle up to nine seconds, leaving zero clearance time. With no clearance time, a vehicle could be struck by a train if additional pedestrians crossed at just two-second intervals.

CBS concluded that preempting the RRFB from flashing did not prevent a vehicle from stopping for a pedestrian at the crosswalk as statutorily required, nor did it tell the pedestrian to step away from the crosswalk and wait until after the train has entered the crossing to complete

[24] CBS Report, PSC REF#: 376264.
[25] Based on the acceleration characteristics of the design vehicle (65-foot double truck).
[26] CBS Report, supra note 24, at 20.
[27] MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES, 2009 Ed. (FHWA, Rev. 2012), § 4E.06 provides that the pedestrian clearance time should be sufficient to allow a pedestrian crossing in the crosswalk who left the curb or shoulder at the end of the walking person (symbolizing WALK) signal indication to travel at a walking speed of 3.5 feet per second to at least the far side of the traveled way or to a median of sufficient width for pedestrians to wait. Available at http://mutcd.fhwa.dot.gov/pdfs/2009r1r2/mutcd2009r1r2edition.pdf.

their crossing of West Washington Avenue. Especially, as CBS observed several bicyclists and pedestrians crossing West Washington Avenue without ever triggering the RRFB.

A design vehicle at the stop bar behind a queue will need to decide to stay or proceed based upon other factors such as flashing lights or the queue of vehicles ahead proceeding onward. In this situation, queue startup (including the extra 2 seconds of perception reaction time) was calculated at 6 seconds. Added to the 17 seconds of time needed to clear to 6 feet beyond the far track, a design vehicle that was stopped at the stop bar when the lights began to flash and decided to follow the queue of clearing vehicles despite the flashing lights would not clear the tracks prior to the arrival of the train.

A similar review at North Shores Drive with queue startup calculated at 5 seconds and added to the 15 seconds of time needed to clear to 6 feet beyond the far track, a design vehicle that was stopped at the stop bar when the lights began to flash and decided to follow the queue of clearing vehicles despite the flashing lights would need 20 seconds total to clear, leaving no clearance time.

A design vehicle stopped at the crosswalk could wait up to 8 seconds and still complete its crossing with 2 seconds of clearance time, assuming a single pedestrian crossing between the curb and median of the northbound/eastbound traffic lanes. If, however, a series of pedestrians began crossing 2 seconds apart, the design vehicle could theoretically be sitting for any amount of time waiting for a gap in pedestrians or bicyclists unaware of the oncoming train because the flashing beacons are not visible to the driver from this stopped location.

CBS concluded that the key to protecting the crossings is in reinforcing that the stop bar is the appropriate place to stop when yielding right-of-way to pedestrians and bicyclists in the

crosswalk. WisDOT agreed with CBS adding that the closer the pedestrian crossing is to the railroad tracks, the quicker the queue dissipates once the first vehicle starts moving.[28] The WisDOT continued that a more efficient option would be to keep the pedestrian and railroad crossings close to one another and to add warning time to the railroad signals paired with signs informing the motorist to yield to people in the crosswalk at the stop bar for the railroad crossing (and not on the track) specifically when the crosswalk is on the far side of the railroad track.[29]

The two crosswalks at issue are equipped with Stop signs for pedestrians and bicyclists, yet they routinely ignore them. Bicyclists treat Stop signs as Yield signs and Yield signs as invisible. The same can be said of drivers approaching railroad crossings equipped with Stop or Yield signs. Additional signage is not the solution.

The WisDOT acknowledges that there are still potential safety concerns with a train striking a vehicle stranded on the tracks. And while the WisDOT offers several factors that should be considered as part of the design process, those all fall short of the significant problem of a vehicle dwelling on the tracks at risk of an oncoming train.

The crossings herein meet the MUTCD and WisDOT guidelines for installation of a Pedestrian Hybrid Beacon (PHB) -- crossing lengths more than 50 feet, AADTs above 2,000 and at least 20 pedestrians per hour (under WisDOT policy guidance). Specifically, the WisDOT provides that "[t]he use of warning sign enhancements *may not* be appropriate at locations where there is a combination of both high traffic volumes and high pedestrian volumes. In these situations, there *may* be an increase in crashes and/or delay that make the use of the actuated

[28] PSC REF#: 386460 at 2
[29] Id.

blinker signs inappropriate. Instead, a traffic signal or [PHB] *should* be considered, if feasible."[30]

Marked crosswalks with PHB or pedestrian signals capable of being preempted and sending the right signal to roadway and crosswalk users would be more appropriate.

A pedestrian activated hybrid beacon (PHB) is a special type of hybrid beacon used to warn and control traffic at an unsignalized location to assist pedestrians in crossing a street or highway at a marked crosswalk.[31] The beacon head consists of two red lights above a single yellow light. The lights remain "dark" until a pedestrian wanting to cross the street pushes the call button to activate the beacon. The signal then initiates a yellow to red lighting sequence consisting of steady and flashing lights that directs motorists to slow and come to a stop. The pedestrian signal then flashes a WALK display to the pedestrian. Once the pedestrian has safely crossed, the hybrid beacon again goes dark after going through an alternating flashing sequence.[32]

Conclusion

A pedestrian crossing near a railroad crossing with controlled approaches requires treating both crossings as a multimodal intersection that sends a clear signal to drivers to stop prior to the tracks on one side and prior to the crosswalk on the other side. RRFBs do not send the proper signal to motorists and raise significant safety concerns when vehicles stop on the tracks. Preempting the RRFBs sends no signal at all and would be more confusing to all users.

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[30] TEOps, *supra* note 16.
[31] MUTCD, supra note 3, § 4F.01.
[32] Description from DRAFT Milwaukee Pedestrian Plan, January 2019, at 76. https://city.milwaukee.gov/ImageLibrary/Groups/cityDPW/general/docs/reports/Ped-Plan/MilwaukeePedestrianPlan-DRAFT-20190122-LowRez.pdf.

Moreover, none of the RRFB installations include an audio information device for persons with impaired visibility alerting those users when it is safe to cross and cautioning users that they are in the immediate vicinity of active railroad tracks.

The Commissioner's duty is to promote and protect public safety at both the railroad crossing and the crosswalk given its proximity to the railroad crossing. To that end, the City of Madison shall file a plan to remove and replace the RRFBs with PHBs or other pedestrian signals to ensure the crosswalk and crossing is clear of any stopped vehicles prior to a train's arrival.

Order

1. The **City of Madison** shall file a plan to remove and replace the RRFBs near the crossings of the WSOR tracks with West Washington Avenue and North Shore Drive with pedestrian hybrid beacons, pedestrian signals, or other traffic control device capable of being interconnected with the active warning devices at the crossings to keep the tracks and crosswalk clear of vehicles while providing a clear signal to drivers to be prepared to, and to stop, **within 120 days** of the effective date of this Final Decision.

2. This Final Decision is effective upon service.

3. Jurisdiction is retained.

Don Vruwink
Commissioner of Railroads

DA/ss:DL:02025403

See attached Notice of Rights

Docket 9170-RX-346

OFFICE OF THE COMMISSIONER OF RAILROADS
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NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE NAMED AS RESPONDENT

The following notice is served on you as part of the Commissioner's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

PETITION FOR REHEARING

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Office of the Commissioner of Railroads (Office) for rehearing within 20 days of the date of service of this decision. Wis. Stat. § 227.49. The date of service is shown on the first page. The petition for rehearing must be filed with the Office and served on the parties. The filing of a petition for rehearing does not suspend or delay the order's effective date. Wis. Stat. § 227.49(2). An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

PETITION FOR JUDICIAL REVIEW

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. The petition must be filed in circuit court and served upon the Commissioner by personal service or certified mail within 30 days of the date of service of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of the date of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Office serves its original decision.[1] The Office must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: March 27, 2018

[1] *See Currier v. Wisconsin Dept. of Revenue,* 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.

Appendix A

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