

**Martin, George**

**From:** Susan.Kirkland@dot.state.oh.us  
**Sent:** Tuesday, February 10, 2009 11:47 AM  
**To:** brad.ovitt@railamerica.com  
**Cc:** Joe.Reinhardt@dot.state.oh.us; Tim.Perkins@dot.state.oh.us; Catherine.Stout@dot.state.oh.us; castone@feci.com; Martin, George; Dalton, Leah; ryan.raqtledge@RailAmerica.com; T\_Frank@swsignal.com; clinton.martin@railamerica.com; Don.Clark@RailAmerica.com; Biff.Konrad@RailAmerica.com; schonder@feci.com; TZaro@bbri.com; Marc.Travis@dot.state.oh.us  
**Subject:** Existing Warning Device Projects

09-68-RR-FED  
 07-1169-RR-FED  
 07-1154-RR-FED

Brad:

I would like to touch base with you regarding warning device projects in Ohio on Rail America lines. Currently we have three active and two upcoming warning device projects on the Indiana and Ohio Railway Company (I&O) lines in Ohio. The progression of these projects has been impacted by structural changes within Rail America on the management of warning device projects. In addition to these 5 projects, Ryan Ratledge has inquired about another Rail America crossing on the I&O Mason Sub being considered for upgrade. All of the crossings are outlined below.

PIC	Ballah Road, TR 159	151878W
CLI	Hulse Street, Village of Sabina	151936P
CHP	29-3.63	258706N
CHP	Thackery Road, CR 79	258740V
WAR	W. Main Street, Village of Mason	525235M
WAR	SR 63- 00.86, Village of Monroe	525108L

PUCO

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I bring this comprehensive issue to you as you are the only person in Rail America management that I know that covers all of the territory in Ohio and I need the help of someone with holistic authority for the railroad. I am concerned on several fronts regarding the progression of federally funded warning device projects. First and foremost, I am apprehensive about the completion of the existing three projects under current PUCO Order, secondly about the smooth preparation of plans and estimates and ultimate construction for the two projects that will be under PUCO Order in the near future and finally about the possibility of tapping into Federal Stimulus dollars to fund Ryan's requested SR 63 crossing, and future projects like the Delphos corridor.

In general the progression of the three projects currently under or pending construction has been tenuous for all parties concerned. Orders were issued by the PUCO for the first two installations to be in service by November 20, 2008, and the third on CHP 29 on March 5, 2009, to date none of the projects are in service. Deadlines have been extended by the PUCO on the first two; but I feel that the coordination between the railroad and the ORDC on these projects is not adequate. The summaries below highlight the current status of the three projects.

PIC, Ballah Road, TR 159, 151878W - PUCO Case No. 07-1154-RR-FED

The project was authorized for construction by the ORDC on October 22, 2008. Project construction began in early-December, 2008. The warning devices have been in place for over a month and bagged due to a lack of electrical service. Arrangements for power service with South Central Power should have been arranged by Rail American and done prior to construction beginning. In a communication dated 1/8/09, Terry Frank of Southwest Signal, states that "Our installation subcontractor is working with proper authorities to gain the needed utility easement to allow AC hook-up work to be completed. We are expecting the AC work to be completed very soon. The installation of the rail plugs will be contingent on having a window of a couple of days at the site with temperatures of at least 40+ degrees Fahrenheit. The tentative schedule is to have this project complete and in-service yet this month." Since that communication was written, ORDC staff has contacted numerous Rail America

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employees to get this issue rectified. As of today's date, my staff found the interim stop signs removed from the crossing and the warning devices still bagged. On 2/5/2009, PUCO was again approached by Rail America for another extension of time. I am hoping that you will agree that this situation is neither prudent nor acceptable. The highest priority should be given to this matter and the crossing cut into service immediately.

CLI, Hulse Street, Village of Sabina, 151936P - PUCO Case No. 07-1169-RR-FED

The project was authorized for construction by the ORDC on October 27, 2008, however dynamics for this improvement are much more complicated than that of Ballah Road. Unfortunately in my personal haste to get the project moving, the authorization letter I wrote on October 27, 2008, did not call for Rail America to submit a modified estimate. Tim Perkins of my staff communicated this error on January 16, 2009 by referring to the past authorization and requesting a modified estimate.

I have reviewed that submission made by Charles Stone to the PUCO concerning the request for extension on the project. I am frustrated by the characterization of "delays" on the project progression. The modifications the scope of this projected were reviewed and accepted by all parties at a meeting of PUCO, ORDC, ODOT and Rail America on September 3, 2008. Design changes were accepted by the ORDC and in my opinion the project should have electric service in place and construction should be imminent.

Also in response to Mr. Stone's submission to the PUCO, we expect this project to be billed under the agreement reached at the September 3, 2008 meeting. While we understand that Southwest Signal is acting on behalf of Rail America for this project and Ballah Road, the ORDC shall not reimburse any costs associated with the preliminary engineering or project management for the projects, nor any future installations until and overall acceptance of the project management concept is granted.

I request an update of the progression of this project. I do not consider an extension of time through June 30, 2009, as approved by the PUCO, to be acceptable. Although the PUCO approved an extension of time through June 30, 2009, I think this is an excessive amount of time and the continued delay reflects poorly on Rail America's partnership with the ORDC.

CHP, 29-3.63, 258706N - PUCO Case No. 08-1171-RR-FED

The ORDC awaits a revised plan for this project. On November 11, 2008 Tim Perkins of my staff communicated to Terry Frank, Southwest Signal that a revised plan needed to be submitted. The PUCO due date of March 5, 2009 is quickly approaching. I request an update of the progression of this project. If asked, I will not support the request of an extension for this project.

CHP, Thackery Road, CR 79, 258740V

WAR, W. Main Street, Village of Mason, 525235M

Both of these crossings are early in their stage of development. The locations were identified by the PUCO using the hazard index. Both have PUCO Ordered due dates of February 4, 2010. I am requesting that Rail America take clear and decisive action on the progression of these projects. I only want one contact for warning device projects in Ohio. My preference would be a local contact, but I realize this may not be possible. For the two outstanding projects covered above my staff and I dealt with over a dozen people representing Rail America; see list below:

Don Clark, Signals and Communication Regional Manager, Rail America (Cincinnati)  
 Biff Konrad, Assistant General Manager, I&O (Cincinnati)  
 Joseph S. Banasiak, National Signal Corp. (Michigan)  
 Kenneth Charron, VP and Commercial Counsel, Rail America (Florida)  
 Charles Stone, General Director Engineering, Florida East Coast Railway (Florida)  
 Clinton Martin, Director Signals, Rail America (Florida)  
 Kristine Storm, AVP Purchasing & Contracts, Rail America (Florida)  
 Leslie Schonder, Project Engineer Rail America (Florida)  
 Terry Frank, Southwest Signal (Jacksonville)

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Paul Kleinhenz, GE Transportation System (Kentucky)  
 Lonnie Caudill, Balfour Beatty Rail (Ohio)  
 Tom Zaro, Balfour Beatty Rail (Jacksonville)

In a meeting on September 3, 2008, Rail America pitched a very elaborate project management suggestion to the ORDC, ODOT and the PUCO. Very little was committed to at that time other than the progression of the Hulse and Ballah projects as "trials or sample projects." It was believed that CHP 29 would fall into a natural progression after the finalization of Hulse and Ballah (through final bill). All parties also agreed to consider the comprehensive plan for warning device installations in Ohio upon submission of the plan in detail and all supporting documents. I believe that over the course of the last many months, much if not all of the documentation has been submitted by Rail America. I confirmed this understanding with my colleague at ODOT and further acknowledge that the contract with Southwest Signal was submitted to ODOT and ORDC on January 16, 2009.

I will stand by the ORDC commitment to consider the comprehensive Rail America project management plan, but it is not realistic for Rail America to think that the outcome of our review will happen in the near future. At a minimum, I expect the following items to have taken place prior to any commitment by the ORDC:

1. The finalization of the Railroad Audit Circulars. Over the course of the past 24 months, the Ohio Department of Transportation, Office of Audits has conducted a thorough review of more than 50 railroad projects pertaining to grade crossing construction and upgrades, grade separations, flagging, and resurfacing projects. In the course of this extensive review, ODOT has identified inconsistencies in billing practices and application of Federal statutes, in addition to other areas of concern to ODOT. In an effort to create consistency, and standardization of billing practices and procedures, ODOT Auditors have drafted policies communicated through proposed Railroad Audit Circulars, as follows:

- No. 1 – Definitions, Audit Authority, and Guidance on Computing Overhead Rates
- No. 2 – Travel, Meal, and Lodging Costs
- No. 3 – Labor Costs
- No. 4 – Subcontracted Costs
- No. 5 – Final Invoicing Procedures
- No. 6 – Equipment
- No. 7 - Materials

2. The installations at Hulse and Ballah to be completed and final bills submitted and sufficient time allowed for the ORDC and ODOT to ascertain the impacts of Rail America and three or more vendors having involvement in a warning device project.

WAR, SR 63-00,86, Village of Monroe, 525108L

Lastly, some time ago Ryan Ratledge inquired about the ORDC considering SR 63 in the Village of Monroe for a warning device upgrade. At the time it did not seem feasible for the ORDC to participate in an upgrade project at this location without a funding commitment from Rail America as well.

Recently, it has come to ORDC's attention that Federal Stimulus funds might materialize for the progression of projects like SR 63. It is further possible that 100% federal funds could be appropriated, if the project funds could immediately encumbered with construction being initiated within 180 days of authorization.

I would very much like to consider this option with you and Ryan, but I need reassurance that the project progression would be smooth.

I know this is a great deal to digest and I am sorry to lay so much out on the table at one time. I simply did not see another avenue to cover this multifaceted issue. I look forward to discussing the issue at your convenience and in whatever venue you deem appropriate.

Susan J. Kirkland

2/10/2009

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