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2009 OCT 29 AM 8:14

Public Utilities
Commission of Ohio

PUCO

Memo

To: Docketing Division

From: George Martin, Grade Crossing Planner, Rail Division

Re: PUCO Case No. 09-68-RR-FED Request of the Indiana & Ohio Railway for a suspension of the Commission Order

Date: October 29, 2009

By its Entry dated February 4, 2009, the Commission ordered the Indiana & Ohio Railway (IORY) to install active grade crossing warning devices at Champaign County, Mad River Township, Thackery Rd/CR 79, DOT# 258-740V and Warren county, City of Mason, W. Main St., DOT# 525235M on or before February 4, 2010. These crossings were surveyed in September of 2008 due to their high hazard index (ranked 81 and 43, respectively) and were found to warrant the installation of flashing lights and roadway gates.

On October 5, 2009, IORY filed in this docket a request for the suspension of the Commission Order for these projects "due to the pending approval acceptance by the ORDC of the Engineering Processes and Subcontracted Vendor selection." IORY further stated that ORDC had provided construction authorization on June 1, 2009, but until ORDC approved the "Engineering Process and Vendor...", any work performed by those vendors would not be reimbursable.

On October 15, 2009, the Ohio Rail Development Commission (ORDC) filed in this docket a response to IORY that stated the construction authorization dated June 1, 2009 directed IORY to "complete the project using its continuing contract with Balfour Beatty or by letting a competitive bid for the project." The authorization further stated that should IORY opt to bid the projects out, ORDC and ODOT would assist in developing the bid package. To date, IORY has not submitted either a notice that it will use Balfour Beatty, or submitted a bid package for approval. ORDC supports the continued progression of the projects and the ordered due date.

The fourth ordering paragraph in the Commission's Entry of February 4, 2009 states "That I&O follow the detailed instructions as outlined in the ORDC letter of construction authorization". IORY, by and through its parent company, RailAmerica, has not followed the directions provided by ORDC not only in the authorization letter of June 1, 2009, but in a position statement dated May 24, 2009. Staff does not believe that IORY has presented sufficient justification to extend the construction deadline for these projects.

Based upon the record in this case, staff recommends that the Commission deny IORY's request and reaffirm the construction deadline previously imposed.

C: Legal Department

Please serve the following parties of record.

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