

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Installation of Active       )  
Grade Crossing Warning Devices in       )  
Medina County at Beat Road (DOT#002-       ) Case No. 09-1955-RR-STP  
067N), Stone Road/TR74 (DOT#002-066G),       )  
and Root Road/CR58 (DOT#002-053F).       )

FINDING AND ORDER

The Commission finds:

- (1) Pursuant to Section 4905.04, Revised Code, the Commission has statutory authority to regulate and promote the welfare and safety of railroad employees and the traveling public.
- (2) Pursuant to Section 4907.471, Revised Code, the Commission is responsible for evaluating public grade crossings to determine the need for installing active warning devices and apportioning the cost thereof.
- (3) The Commission is responsible for the administration and implementation of the State Grade Crossing Protection Fund, which was established to help defray a portion of the public's share of the cost of installing or modernizing warning devices at Ohio's highway-railroad grade crossings.
- (4) Pursuant to Rule 4901-1-30, Ohio Administrative Code (O.A.C.), any two or more parties may enter into a written or oral stipulation concerning the issues presented in such proceeding.
- (5) On December 14, 2009, the Commission staff ("staff") filed a subsidy stipulation (stipulation), which it had entered into with the Wheeling & Lake Erie Railway (W&LE), the Ohio Rail Development Commission (ORDC), and Medina County pursuant to Rule 4901:1-30, O.A.C. The stipulation states that the parties desire to participate in the installation of active warning devices at the W&LE grade crossings at Beat Road (DOT#002-067N), Stone Road/TR74 (DOT#002-066G), and Root Road/CR58 (DOT#002-053F) in Medina County. Pursuant to the stipulation, costs will be allocated for the crossings as follows:

<u>Grade Crossing</u>	<u>Railroad</u>	<u>ORDC</u>	<u>PUCO</u>
Beat Road (DOT#002-067N)	10% of 100% plus maintenance	38.5% of 90%	61.5% of 90%
Stone Road/TR74 (DOT#002-066G)	10% of 100% plus maintenance	28.5% of 90%	71.5% of 90%
Root Road/CR58 (DOT#002-053F)	10% of 100% plus maintenance	38.5% of 90%	61.5% of 90%

- (6) Staff has recommended that the Commission approve this stipulation and that W&LE file site plans and cost estimates within 90 days of the Commission's approval. Staff also has recommended that W&LE complete the project within one year after the Commission's approval.
- (7) Upon review of the stipulation filed by the parties, the Commission finds that the terms and conditions therein insure the timely protection of the public at the crossings and provide a reasonable basis for apportioning costs thereof. Therefore, the stipulation entered into among the parties should be approved and, accordingly, the cost of the projects should be allocated as set forth therein.
- (8) W&LE should submit to the staff by April 7, 2010 site plans and cost estimates for the project crossings. Within seven days thereafter, W&LE should file a letter in this docket advising that the site plans and cost estimates have been submitted to the Commission. Following submission and approval of the site plans and cost estimates, unless otherwise directed, W&LE is hereby authorized to acquire project materials and to commence work as detailed in the letter of construction authorization. W&LE shall notify staff at least five working days before the date work is scheduled to begin at the project crossings so that arrangements can be made for inspections. In addition, W&LE shall notify staff of any changes in the scope of work, cost overruns, materials, etc., which are not in the approved plans and estimates and secure approval before the work is performed. W&LE should complete this project on or before January 7, 2011. The Commission will issue no further construction authorization in this matter.

- (9) Within 120 days of the issuance of this entry, W&LE shall file in the docket notice that it has initiated discussions with Lorain Medina Rural Electric Cooperative, Inc. (LMREC) to ensure that electric service will be available to enable the grade crossing improvements to be constructed and placed in service within the deadline specified by the Commission. Such filing shall identify the steps that W&LE has taken with LMREC and the local highway authority to have electric service available during the construction and cut-in phases of the projects. W&LE shall serve a copy of the notice upon LMREC. To ensure that the deadline is met, W&LE shall timely inform the Commission, in writing, of any issues regarding the availability of electric service.
- (10) In order to expedite the activation of the warning devices, the Commission no longer requires railroad companies to delay such activation pending final inspection by the staff. However, the railroad should notify the staff 30 days before the projected date of completion. At the time the staff makes its final inspection of the devices and finds that the installations are completed and have been put in service, the staff should file a memorandum in this docket indicating that the installations are completed and the warning devices have been put in service.
- (11) With the intention of promoting increased public safety during the pendency of these projects, the Commission urges the appropriate local government agency to make an immediate assessment of interim physical improvements which would enhance driver awareness at the project crossings. The Commission may provide assistance in funding improvements such as rumble strips, illumination, signs, or other safety enhancements at the locations of the crossings. Applications for such funding should be made to the Commission's Transportation Department, Railroad Division, which shall review all proposals. In the event the department finds the improvements appropriate, the department director is hereby authorized to execute a contract with the local government agency, and obligate up to \$5,000 from the State Grade Crossing Safety Fund for such improvements at each crossing. However, the local government agency should not initiate any improvements until a contract has been executed.

It is, therefore,

ORDERED, That the stipulation is adopted and approved. It is, further,

ORDERED, That, by April 7, 2010, W&LE submit to the Commission's Railroad Division site plans and cost estimates for this project. It is, further,

ORDERED, That, by April 14, 2010, W&LE file a letter in this docket advising that it has submitted plans and cost estimates to the Commission. It is, further,

ORDERED, That W&LE shall notify staff at least five working days before the date work is scheduled to begin at project crossings so that arrangements can be made for inspections. It is, further,

ORDERED, That by May 7, 2010, W&LE shall file a notice that it has initiated with LMREC the process to ensure that electric service will be available at the involved grade crossings as set forth in finding (5). It is, further,

ORDERED, That W&LE shall notify staff of any changes in the scope of work, cost overruns, materials, etc., which are not in the approved plans and estimates and secure approval before the work is performed. It is, further,

ORDERED, That, following approval of the site plans and cost estimates, W&LE proceed with and complete the project on or before January 7, 2011. It is, further,

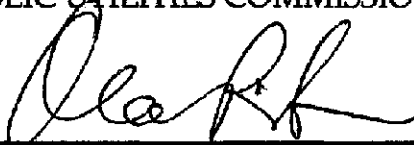
ORDERED, That W&LE follow the detailed instructions as outlined in the letter of construction authorization. It is, further,

ORDERED, That W&LE notify the Commission 30 days before the projected date of completion. It is, further,

ORDERED, That, at the time the staff makes its final inspection and finds that the installations are completed and the warning devices have been put in service, staff will file a memorandum in this docket indicating that the installations are completed and the warning devices have been put in service. It is, further,

ORDERED, That a copy of this finding and order be served upon W&LE and its counsel, ORPC, Medina County, and all interested persons of record.

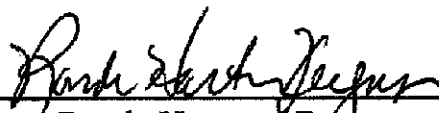
THE PUBLIC UTILITIES COMMISSION OF OHIO



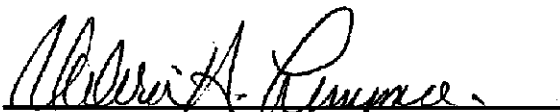
Alan R. Schriber, Chairman



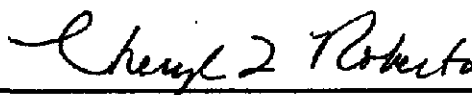
Paul A. Centolella



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Valerie A. Lemmie

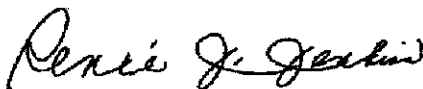


Cheryl L. Roberto

KKS/vrm

Entered in the Journal

JAN 07 2010



Renee J. Jenkins

Secretary