

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of a Request for Wheeling)
& Lake Erie Railway Company to Install)
Active Grade Crossing Warning Devices) Case No. 12-1025-RR-STP
in Wayne County, Sugar Creek)
Township, at Kohler Road (473-178E).)

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) Section 4907.471, Revised Code, also provides that the Commission is responsible for the administration and implementation of the State Grade Crossing Protection Fund established to help defray a portion of the public's share of the cost of upgrading warning devices at Ohio's highway-railroad grade crossings.
- (4) Pursuant to Rule 4901-1-30, Ohio Administrative Code, any two or more parties may enter into a written stipulation concerning issues of fact.
- (5) On March 19, 2012, the Commission staff (staff) filed a subsidy stipulation (stipulation), which it had entered into with the Ohio Rail Development Commission (ORDC), Wheeling & Lake Erie Railway Company (WE), and Sugar Creek Township, Wayne County. The stipulation states that the parties have entered into an agreement to install

flashing lights and warning gates at the Kohler Road grade crossing (473-178E) in Sugar Creek Township, Wayne County. Pursuant to the stipulation, ORDC will be responsible for 32 percent of 90 percent of the project cost, the Commission will be responsible for 58 percent of 90 percent of the project cost, and WE will be responsible for 10 percent of the project cost plus 100 percent of the maintenance of the project.

- (6) Staff recommended that the Commission approve the stipulation and that WE file site plans and cost estimates within 90 days of the Commission's approval. Staff also recommended that WE complete the project within one year after the Commission's approval of the stipulation.
- (7) Upon review of the stipulation, the Commission finds that the terms and conditions therein insure the timely protection of the public at the crossing and provide a reasonable basis for apportioning costs thereof. Therefore, the stipulation should be approved and, accordingly, the costs of the project should be allocated as set forth therein.
- (8) WE should submit to the staff and ORDC by July 10, 2012, site plans and cost estimates for the project. Within seven days thereafter, WE should file a letter in this docket advising that the site plans and cost estimates have been submitted to the Commission and ORDC. Following submission and approval of the site plans and cost estimates, unless otherwise directed, WE is hereby authorized to acquire project materials and to commence work as detailed in the letter of construction authorization. WE should notify staff at least five working days before the date work is scheduled to begin at the project site so that arrangements can be made for inspection. In addition, WE should 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. WE should complete the project on or before April 11, 2013. The Commission will issue no further construction authorization in this matter.

- (9) Within 120 days of the issuance of this finding and order, WE shall file notice(s) in the docket that they have initiated discussions with American Electric Power (AEP), with regard to the grade crossing project, 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(s) shall identify the steps that WE has taken with AEP, the government entity, and the local highway authority to have electric service available during the construction and cut-in phases of the project. WE shall serve a copy of the docketed notice upon AEP. To ensure that the deadline is met, WE 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 the 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 installation is completed and the warning devices have been put in service, the staff should file a memorandum in this docket indicating that the installation is completed and the warning devices have been put in service.
- (11) With the intention of promoting increased public safety during the pendency of this project, 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 crossing. The Commission may provide assistance in funding improvements such as rumble strips, illumination, signs, or other safety enhancements at the project location. 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 the crossing. However, the local government agency should not initiate any improvements until a contract has been executed.

It is, therefore,

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

ORDERED, That, by July 10, 2012, WE submit to ORDC and the Commission's Railroad Division site plans and cost estimates for the project and by July 17, 2012, file a letter in this docket advising that site plans and cost estimates have been submitted to the Commission. It is, further,

ORDERED, That, following approval of the site plans and cost estimates, WE proceed with and complete the project on or before April 11, 2013. It is, further,

ORDERED, That WE notify staff of any changes in the scope of work, cost overruns, materials, etc., which are not in the approved plans and estimates, notify staff at least five working days before the date work is scheduled to begin at the project site so that arrangements can be made for inspections, and notify the Commission 30 days before the projected date of completion. It is, further,

ORDERED, That, by August 9, 2012, WE file a notice that they have initiated with AEP the process to ensure that electric service will be available at the involved grade crossing as set forth in finding (9). It is, further,

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

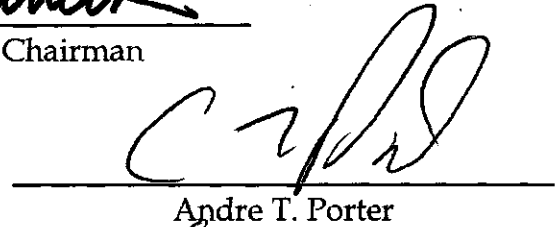
ORDERED, That, at the time the staff makes its final inspection and finds that the installation is completed and the warning devices have been put in service, staff file a memorandum in this docket indicating that the installation is completed and the warning devices have been put in service. It is,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

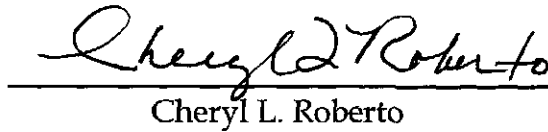
ORDERED, That a copy of this finding and order be served upon WE, ORDC, Sugar Creek Township, AEP, and all interested persons of record.

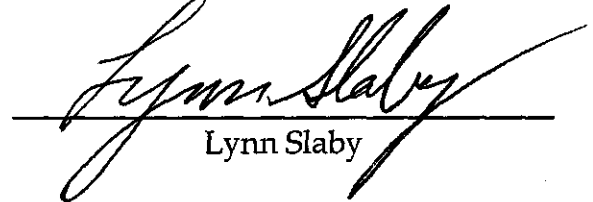
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser


Andre T. Porter

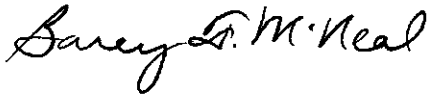

Cheryl L. Roberto


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Entered in the Journal

APR 11 2012



Barcy F. McNeal
Secretary