

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of a Request for Wheeling     )  
& Lake Erie Railroad Company to Install     )  
Active Grade Crossing Warning Devices     )     Case No. 13-1321-RR-STP  
at State Route 212 (473-080B) in Carroll     )  
County.     )

FINDING AND ORDER

The Commission finds:

- (1) Pursuant to Section 4905.04, Revised Code, the Public Utilities Commission of Ohio (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 June 4, 2013, the Commission Staff (Staff) filed a subsidy stipulation (stipulation), which it had entered into with the Ohio Rail Development Commission (ORDC) and Wheeling & Lake Erie Railroad (W&LE). The stipulation states that the parties have entered into an agreement to install warning lights and gates at the State Route 212 grade crossing

(473-080B) in Carroll County, Ohio. Pursuant to the stipulation, the Commission will be responsible for 65 percent of the project cost, ORDC will be responsible for 25 percent of the project cost, and W&LE will be responsible for 10 percent of the project cost and 100 percent of the maintenance of the project.

- (6) Staff recommended that the Commission approve the stipulation and that W&LE file site plans and cost estimates within 90 days of the Commission's approval. Staff also recommended that W&LE 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) By September 10, 2013, W&LE should submit to Staff and ORDC the site plan and cost estimate for the project. Within seven days thereafter, W&LE should file a letter in this docket advising that the site plan and cost estimate have been submitted to the Commission and ORDC. Following submission and approval of the site plan and cost estimate, 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 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, W&LE should notify Staff of any changes in the scope of work, cost overruns, materials, etc., which are not in the approved plan and estimate and secure approval before the work is performed. W&LE should complete the project on or before June 12, 2014. The Commission will issue no further construction authorization in this matter.

- (9) Within 120 days of the issuance of this finding and order, the Railroad shall file a notice in the docket that they have initiated discussions with American Electric Power (AEP), and any other applicable utility 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 shall identify the steps that W&LE has taken with AEP and any other applicable electric utility, the government entity, and the local highway authority to have electric service available during the construction and cut-in phases of the project. W&LE shall serve a copy of the docketed notice upon AEP and any other applicable utility. 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 the final inspection by Staff. However, the railroad should notify Staff 30 days before the projected date of completion. At the time Staff makes its final inspection of the devices and finds that the installation is completed and the warning devices have been put in service, 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 September 10, 2013, W&LE submit to ORDC and the Commission's Railroad Division site plans and cost estimates for the project and by September 17, 2013, 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, W&LE proceed with and complete the project on or before June 12, 2014. It is, further,

ORDERED, That W&LE notify Staff of any changes in the scope of work, cost overruns, materials, etc., which are not in the approved plans and estimates, notify the 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 October 10, 2013, W&LE file a notice that they have initiated with AEP, and any other applicable utility, 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 W&LE follow the detailed instructions as outlined in the letter of construction authorization. It is, further,

ORDERED, That, at the time 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 W&LE, ORDC, Ohio Department of Transportation District 11, Carroll County Commission, AEP, and all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

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Todd A. Snitchler, Chairman

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Steven D. Lesser

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Lynn Slaby

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M. Beth Trombold

SEF/sc

Entered in the Journal

**JUN 11 2013**  
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Barcy F. McNeal

Barcy F. McNeal  
Secretary