

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Investigation of the)
Windham Road Grade Crossing) Case No. 13-2269-RR-UNC
(141-752M), in the City of Newton Falls,)
Trumbull County.)

ENTRY

The Commission finds:

- (1) On December 5, 1991, the Commission approved a stipulation and recommendation (Stipulation), in Case No 91-1847-RR-STP, between Staff, CSX Transportation (CSX), and the city of Newton Falls (City). Under the Stipulation, CSX agreed to install automatic traffic gates and flashing warning lights at the Warren Road grade crossing (141-734P), and permanently close to vehicular traffic the Windham Road grade crossing (141-752M).
- (2) On November 25, 2013, Staff filed an inspection report of the Windham Road grade crossing where it found that there was a metal gate and a no trespassing sign on the south side of the tracks, and open access to the tracks and no similar warning sign on the north side of the tracks. The inspection report noted that City officials claimed that children, ATVs, dirt bikes, and other vehicles were accessing the tracks at Windham Road because of the missing barricade and a motor vehicle had become stuck on the tracks from the north side of Windham Road.
- (3) By Entry of December 4, 2013, the Commission ordered CSX to place guardrails at both the north and south sides of Windham Road by December 31, 2013.
- (4) On December 11, 2013, CSX filed a notice that it installed a gate with a lock on the north side of the track and it added reflector tape to the gate on the south side of the track due to its need for access to the tracks. CSX requested that these measures be accepted as satisfying the Commission's December 4, 2013 Entry. On December 16,

2013, the City filed a letter raising concerns with the actions CSX had taken.

- (5) A hearing was scheduled for January 28, 2014; however, the hearing was continued at the request of the parties which indicated they had developed an alternative solution to the directive of December 4, 2013 Entry for the crossing.
- (6) On March 18, 2014, the parties filed a joint proposal to modify the Commission's December 4, 2013 Entry, (hereinafter known as the "Interim Agreement"). Under the Interim Agreement: two staggered barricades would be placed on the north side of the tracks, enabling CSX vehicle access to the gated fence barricade; permanent barriers would be placed along the south side of the tracks at the property line; the permanent fence with locked gate along the north side of the tracks would remain in place; and the selection of the two barricades and any signage would be determined by the City in compliance with applicable highway regulations. In addition, the Interim Agreement would be implemented for a six-month test period, the City would report any concerns to CSX, and CSX would be afforded an opportunity to address such concerns. Further, the City and CSX would reconvene in September 2014 to either finalize or modify the Interim Agreement based on the performance of the barriers. The parties also requested that, if the Interim Agreement performed adequately, it become permanent.
- (7) On April 2, 2014, the Commission approved the Interim Agreement for a six-month time period and directed Staff to monitor the situation. In addition, the Commission directed the City and CSX to file progress reports on May 1, 2014, and July 1, 2014, and directed Staff to file a memorandum as to its findings and recommendations regarding the Interim Agreement. Neither party filed a progress report for May or July 2014.
- (8) On October 31, 2014, CSX filed a status report and a recommendation that the Interim Agreement be made permanent. CSX explained that it placed two sets of

concrete barricades on the north side of the tracks, staggered in an offset manner. CSX noted that new signage was placed on the barricades, including two high visibility yellow and black 90 degree turn arrows have been placed on the front jersey barrier and two "Road Closed" signs have been placed; one on the front jersey barrier, the second on the permanent metal gate, (set behind the second barrier; elevated and visible from the roadway. In addition, CSX explained that a permanent barrier was placed along the south side of the tracks with additional signage stating "Road Closed" and "Do Not Enter." Further, the permanent fence with gate lock remains in place along the north side of the tracks.

CSX stated that since implementation of the Interim Agreement, it has received no reports of incidences of concern from the City, it has observed no safety incidences with the public, and it has received no complaints from the general public, by any means, (e.g. by the telephone phone "Tell CSX" line, by e-mail, or regular mail). CSX also asserted that the Interim Agreement has accomplished the primary goal of enhancing safety by clearly alerting re-directing traffic with signage, and placing physical and visual barricades to access, while maintaining CSX's operational access. CSX claims that, to the best of its knowledge, no member of the public has inadvertently accessed or traversed the closed right of way, nor inappropriately or mistakenly entered the apron area along the north side of the tracks and it is unaware of any improper or mistaken access along the south side of the tracks.¹

- (9) On December 15, 2014, Staff filed its report of investigation conducted on November 5, 2014. Staff found that, since the implementation of the Interim Agreement, no reports of any incidents were filed with

¹ According to CSX, in a telephone conference with Staff, CSX, and the City, held in September 2014, the City claimed that there was one occasion when the back gate on the north side was left open, and one time the second barrier was out of place; although neither incident involved a member of the public or evidenced misdirected traffic or unsafe access to the railroad tracks having occurred.

the Commission. Staff recommended that the Interim Agreement should become permanent and that the Commission close this case.

- (10) By Entry of December 16, 2014, the attorney examiner sought responses from CSX and the City on Staff's December 15, 2014 report of investigation. All responses were to be filed by December 31, 2014.
- (11) No responses to Staff's report of investigation were filed.
- (12) Based upon the record in this matter, the Commission finds that the December 3, 2014 Entry should be modified to make permanent the terms and conditions set forth in the Interim Agreement. CSX shall be responsible for maintenance of all protective measures described in the Interim Agreement and in Finding 8 of this Entry.

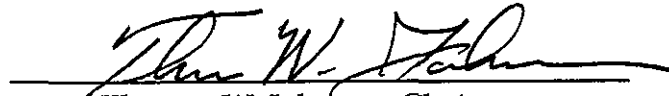
It is, therefore,

ORDERED, That the December 3, 2014 Entry be modified to make permanent the terms and conditions set forth in the Interim Agreement. It is, further,


ORDERED, That CSX shall maintain all protective measures described in the Interim Agreement and in Finding 8 of this Entry. It is, further,


ORDERED, That a copy of this Entry be served upon all parties of record.

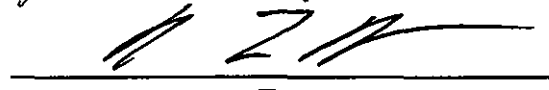
THE PUBLIC UTILITIES COMMISSION OF OHIO


Thomas W. Johnson, Chairman


Steven D. Lesser


Lynn Slaby

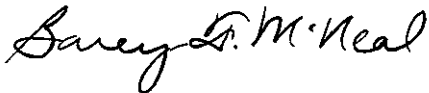

M. Beth Trombold


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Entered in the Journal

JAN 14 2015


Barcy F. McNeal
Secretary