

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF A REQUEST FOR THE
INSTALLATION OF ACTIVE WARNING
DEVICES AT THE WHEELING & LAKE ERIE
RAILWAY COMPANY GRADE CROSSING AT
TRUX STREET/STATE ROUTE 603, IN
PLYMOUTH, OHIO.

CASE NO. 16-1281-RR-STP

FINDING AND ORDER

Entered in the Journal on July 6, 2016

I. SUMMARY

{¶ 1} In this Finding and Order, the Commission approves the use of State Grade Crossing Protection Funds for Wheeling & Lake Erie Railway Company to complete the installation of warning lights and gates at a grade crossing in the village of Plymouth, Ohio by July 6, 2017, subject to the Commission's ongoing jurisdiction and oversight.

II. DISCUSSION

A. *Applicable Law*

{¶ 2} R.C. 4905.04 provides that the Commission has statutory authority to regulate and promote the welfare and safety of railroad employees and the traveling public.

{¶ 3} R.C. 4907.471 provides that the Commission is responsible for evaluating public grade crossings to determine the need for installing active warning devices and apportioning the cost thereof.

{¶ 4} R.C. 4907.471 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.

{¶ 5} Pursuant to Ohio Adm.Code 4901-1-30, any two or more parties may enter into a written stipulation concerning issues of fact.

{¶ 6} R.C. 4907.476 provides that where the Ohio Department of Transportation (ODOT) enters into contracts and agreements for grade crossing protective device projects, the Commission shall work with and through the department. Federal funding for such projects is provided through the Ohio Rail Development Commission (ORDC), which is an independent agency of the state within ODOT, established in accordance with R.C. 4981.02.

{¶ 7} Wheeling & Lake Erie Railway Company (WLE) is a railroad as defined in R.C. 4907.02 and subject to the jurisdiction of the Commission under R.C. 4905.04.

B. Procedural Background and Other Details

{¶ 8} On June 13, 2016, Staff filed a memorandum indicating that Staff, ORDC, WLE, and the village of Plymouth (village), which is the local highway authority (LHA), entered into a subsidy stipulation (stipulation), whereby WLE will upgrade the warning devices at the Trux Street/State Route 603 grade crossing (001-976A) located in the village. Staff explains that the crossing was identified for an upgrade by the village due to the proximity of the local schools and the usage of the crossing by school buses, pedestrians, and cars. Due to its ranking and operational conditions, ORDC agreed to fund the LHA share.

{¶ 9} The following is a summary of the conditions agreed to by the parties and is not intended to replace or supersede the stipulation. Under the stipulation:

- (a) WLE will complete the installation of lights and gates at the Trux Street/State Route 603 grade crossing in 12 months from the date of the Commission Finding and Order adopting the stipulation;

- (b) The parties agree to comply with the terms of the stipulation and the Finding and Order adopting the stipulation;
- (c) The Commission will provide funds from the State Grade Crossing Protection Fund to cover the Commission's cost of the project.
- (d) *The LHA shall furnish advance warning signs and pavement markings as specified in the Manual on Uniform Traffic Control Devices and assume all costs to maintain such signage and markings in the future.*
- (e) The costs of the project shall be apportioned as between WLE (10 percent plus maintenance), Commission (65 percent), and ORDC (25 percent).

{¶ 10} While actual project design and cost estimates are not yet complete, predesign estimated costs for the project are to be apportioned as follows:

Party to Agreement	Share of costs
WLE	\$25,000 (10 per cent of project cost est. plus maintenance.)
Commission	\$162,500 (65 per cent of estimated cost of the project.)
ORDC	\$62,500 (25 per cent of the estimated cost of the project.)

{¶ 11} Staff requests a Commission order that adopts the stipulation, directs WLE to submit plans and estimates to the Commission and ORDC within 90 days, and requires completion of the project within one year.

{¶ 12} 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 provides a reasonable basis for apportioning costs thereof. Therefore, the stipulation should be approved and, accordingly, the cost of the project should be allocated as set forth therein.

{¶ 13} By October 4, 2016, WLE should submit to Staff the site plans and cost estimates for the project. Within seven days thereafter, WLE 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, WLE is hereby authorized to acquire project materials and to commence work as detailed in the letter of construction authorization. WLE 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 inspections. In addition, WLE 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. WLE should complete the project by July 6, 2017. The Commission will issue no further construction authorization in this matter.

{¶ 14} Within 120 days of the issuance of this Finding and Order, WLE shall file a notice in the docket that it has initiated discussions with Plymouth Municipal Electric (PME) 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 WLE has taken with PME 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. WLE shall serve a copy of the docketed notice upon PME and any other applicable utility. To ensure that the deadline is met, WLE and PME shall timely inform the Commission in writing of any issues regarding the availability of electric service.

{¶ 15} 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, WLE 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 has been completed and the warning devices have been put in service, Staff should file a memorandum in this docket indicating that the installation has been completed and the warning devices have been put in service.

{¶ 16} 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.

III. ORDER

{¶ 17} It is, therefore,

{¶ 18} ORDERED, That the subsidy stipulation be adopted and approved. It is, further,

{¶ 19} ORDERED, That, by October 4, 2016, WLE submit to the Commission's Railroad Division site plans and cost estimates for the project, and by October 11, 2016, file a letter in this docket advising that site plans and cost estimates have been submitted to the Commission. It is, further,

{¶ 20} ORDERED, That, following approval of the site plans and cost estimates, WLE proceed with and complete the project by July 6, 2017. It is, further

{¶ 21} ORDERED, That by November 3, 2016, WLE file notice that it has initiated with Plymouth Municipal Electric and any applicable utility, the process to ensure that electric service will be available at the involved grade crossing as set forth in Paragraph 14. It is, further,

{¶ 22} ORDERED, That WLE 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 any inspection. It is, further,

{¶ 23} ORDERED, That WLE timely notify Staff of any changes in the scope of work, cost overruns, materials, etc., which are not in the approved plans and estimates, and shall secure approval before the work is performed. It is, further,

{¶ 24} ORDERED, That WLE notify the Commission and ORDC 30 days before the projected date of completion. It is, further,

{¶ 25} ORDERED, That, at the time Staff or ORDC makes its final inspection and finds that the installation at the grade crossing is complete and the warning devices

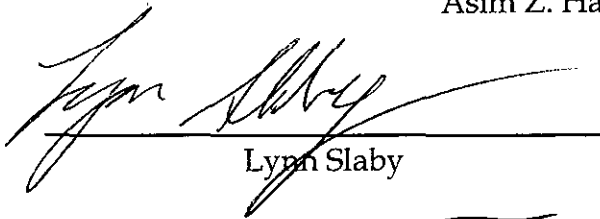
have been put in service, Staff will file a memorandum in this docket indicating that the installation is complete and the warning devices have been put in service. It is, further,

{¶ 26} ORDERED, That a copy of this Finding and Order be served upon ORDC, Wheeling & Lake Erie Railway Company, Plymouth Municipal Electric, the village of Plymouth, and any other interested person of record.

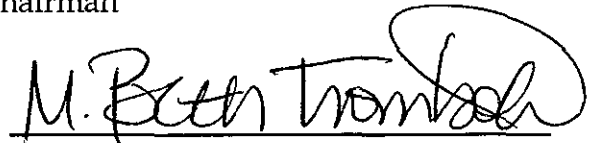
PUBLIC UTILITIES COMMISSION OF OHIO



Asim Z. Haque, Chairman



Lynn Slaby



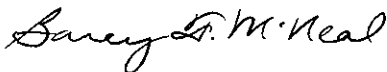
M. Beth Trombold



Thomas W. Johnson

SEF/dah

Entered in the Journal

JUL 06 2016Barcy F. McNeal
Secretary