

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of a Request for CSX )  
Transportation, Inc. to Install Active Grade )  
Crossing Warning Devices in Wayne ) Case No. 09-1990-RR-STP  
Township/Darke County, at HB Hole Road )  
(538-785B) and Wolf Road (538-798C). )

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 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 or oral stipulation concerning the issues presented in such proceeding.
- (5) On December 23, 2009, the Commission staff ("staff") filed a subsidy stipulation (stipulation), which it had entered into with CSX Transportation, Inc. (CSX), the Ohio Rail Development Commission (ORDC), and Wayne Township/Darke County. The stipulation states that the parties have entered into an agreement to install active warning devices at the HB Hole Road (538-785B) and the Wolf Road (538-798C) grade crossings, located in Wayne Township/Darke County. Pursuant to the stipulation, the costs for the projects will be allocated as follows:

- (a) HB Hole Road (538-785B)—CSX will pay 10 percent of the project cost, plus maintenance; the Commission will pay 68 percent of the project cost; and ORDC will pay 22 percent of the project cost, and
  - (b) Wolf Road (538-798C)—CSX will pay 10 percent of the project cost, plus maintenance; the Commission will pay 50 percent of the project cost; and ORDC will pay 40 percent of the project cost.
- (6) On January 11, 2010, staff filed a memo recommending that the Commission approve this stipulation and that CSX file site plans and cost estimates within 90 days of the Commission's approval. Staff also has recommended that CSX complete the projects within one year after the Commission's approval.
- (7) Upon review of the stipulation, 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 should be approved and, accordingly, the cost of the projects should be allocated as set forth therein.
- (8) CSX should submit to the staff and ORDC by April 20, 2010, site plans and cost estimates for the projects. Within seven days thereafter, CSX 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, CSX is hereby authorized to acquire project materials and to commence work as detailed in the letter of construction authorization. CSX should notify staff at least five working days before the date work is scheduled to begin at the project sites so that arrangements can be made for inspections. In addition, CSX 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. CSX should complete these projects on or before January 20, 2011. The Commission will issue no further construction authorization in this matter.

- (9) Within 120 days of the issuance of this finding and order, CSX shall file notice(s) in the docket that it has initiated discussions with The Dayton Power and Light Company (DP&L), with regard to the HB Hole Road grade crossing project, and the Darke County Rural Electric Cooperative Inc. (DCREC), with regard to the Wolf Road 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 CSX has taken with DP&L and DCREC and the local highway authority to have electric service available during the construction and cut-in phases of the projects. CSX shall serve a copy of the docketed notice upon DP&L and DCREC. To ensure that the deadline is met, CSX 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 inspections 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 inspections of the devices and finds that the installations are completed and the warning devices 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 project locations. 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 20, 2010, CSX submit to the Commission's Railroad Division site plans and cost estimates for the projects. It is, further,

ORDERED, That, by April 27, 2010, CSX file a letter in this docket advising that it has submitted site plans and cost estimates to the Commission. It is, further,

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

ORDERED, That CSX 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, CSX proceed with and complete the projects on or before January 20, 2011. It is, further,

ORDERED, That by May 20, 2010, CSX file a notice that it has initiated with DP&L and DCREC the process to ensure that electric service will be available at the involved grade crossings as set forth in finding (9). It is, further,

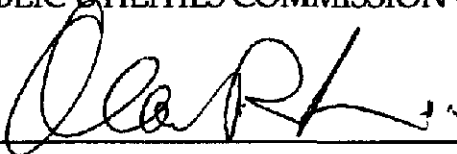
ORDERED, That CSX follow the detailed instructions as outlined in the letter of construction authorization. It is, further,

ORDERED, That CSX notify the Commission 30 days before the projected dates of completion. It is, further,

ORDERED, That, at the time the staff makes its final inspections and finds that the installations are completed and the warning devices have been put in service, staff 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 CSX, ORDC, the Wayne Township Trustees, DP&L, DCREC, and all interested persons of record.

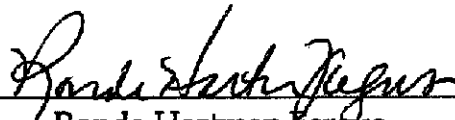
THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman



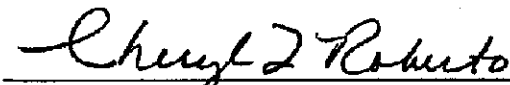
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Entered in the Journal

**JAN 20 2010**



Renee J. Jenkins  
Secretary