

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Mary J.)	
Bailar, Gary E. Bailar, Alan L. Bailar, and)	
Kurt F. Bailar,)	
)	
Complainants,)	
)	
v.)	Case No. 12-1314-RR-CSS
)	
RailAmerica, Inc. and Indiana and Ohio)	
Railway Company,)	
)	
Respondents.)	

ENTRY

The attorney examiner finds:

- (1) On April 27, 2012, Mary J. Bailar, Gary E. Bailar, Alan L. Bailar, and Kurt F. Bailar (complainants) filed a complaint against RailAmerica, Inc. and Indiana and Ohio Railway Company (respondents) alleging that respondents are the owners/lessees/operators of a railroad track and embankment which effects the farmland complainants own in Adams Township, Champaign County. Specifically, complainants explain that their property is used for growing crops and the railroad track and embankment interferes with the natural flow of water from complainants' field tile system in violation of Section 4959.01, Revised Code. As a result of flooding, complainants have suffered crop losses that they believe totals \$58,837.28, along with further losses from planting delays.
- (2) On May 14, 2012, respondents filed their answer, admitting that respondents own and operate the track and railroad embankments adjacent to complainants' property, but denying the allegations in the complaint. Moreover, respondents assert numerous affirmative defenses, including that complainants have failed to state a claim upon which relief can be granted, that complainants' injuries are caused by the intervening or superseding acts of a third party, and that complainants'

injuries have been caused, in whole or in part, by their own negligence or contributory negligence.

- (3) On June 1, 2012, Staff filed its report of investigation.
- (4) By entry issued June 1, 2012, the attorney examiner scheduled this matter for a settlement conference on June 26, 2012.
- (5) By entry issued June 15, 2012, the attorney examiner granted the parties' joint motion to continue the settlement conference pending the completion of a hydrologic study of the subject property.
- (6) The attorney examiner has been notified that the hydrologic study is complete. Accordingly, the attorney examiner finds that the settlement conference in this matter should be rescheduled. A settlement conference shall be scheduled for November 13, 2012, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, Room 1247, Columbus, Ohio 43215-3793. If a settlement is not reached at the conference, the attorney examiner will conduct a discussion of procedural issues. Procedural issues for discussion may include discovery dates, possible stipulations of facts, and potential hearing dates.

It is, therefore,

ORDERED, That a settlement conference be scheduled for November 13, 2012, at 10:00 a.m., at the offices of the Commission. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Katie Stenman

By: Katie L. Stenman
Attorney Examiner

JRJ/sc

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in

Case No(s). 12-1314-RR-CSS

Summary: Attorney Examiner Entry scheduling a settlement conference for 11/13/12 at 10:00 a.m. at the offices of the Commission, 180 E. Broad St., 12th Flr., Rm. 1247, Columbus, Ohio. - electronically filed by Sandra Coffey on behalf of Katie Stenman, Attorney Examiner, Public Utilities Commission of Ohio