

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 October 17, 2012, the attorney examiner scheduled this matter for a settlement conference on November 20, 2012.
- (5) On November 16, 2012, the parties filed a request for a continuance of the settlement conference. Specifically, the parties state that they are undertaking settlement discussions, and wish to continue those discussions between the parties before proceeding to a settlement conference.
- (6) The attorney examiner finds that the parties' request is reasonable and should be granted. Accordingly, the settlement conference currently scheduled for November 20, 2012, should be held in abeyance.
- (7) The parties are directed to file, within 60 days of the date of this entry, an update indicating the status of their negotiations.

It is, therefore,

ORDERED, That the parties' motion for a continuance of the settlement conference be granted. It is, further,

ORDERED, That the settlement conference scheduled for November 20, 2012, be held in abeyance. It is, further,

ORDERED, That the parties comply with the directive set forth in finding (7). 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

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**11/19/2012 11:40:16 AM**

**in**

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

Summary: Attorney Examiner Entry granting the parties' motion for a continuance of the settlement conference. - - electronically filed by Sandra Coffey on behalf of Katie Stenman, Attorney Examiner, Public Utilities Commission of Ohio