

NC  
FILE

**Public Utilities  
Commission of Ohio**

# Memo

RECEIVED-DOCKETING DIV

2014 FEB 27 PM 12: 26

PUCO

**To:** Docketing Division  
**From:** Jill Henry, Rail Specialist, Rail Division  
**Cc:** PUCO Legal Department  
**Date:** 2/27/14

**Re:** PUCO Case No. 14-0333 -RR-RCP- In the matter of a request for the Installation of New LED Lights at Five Ann Arbor Railroad crossings in Toledo, Ohio.

On February 27, 2014, Commission Staff and Ann Arbor Railroad (AA) entered into an agreement (attached) whereby new LED lights would be installed at 5 crossings in Toledo, Ohio.

Please assign a case number in this matter; docket this document and record the parties of record.

A suggested case coding and heading would be as follows:

PUCO Case No. 14- -RR-RCP- In the matter of a request for the Installation of New LED Lights at Five Ann Arbor Railroad crossings in Toledo, Ohio.

The costs of the Project shall be apportioned between the PUCO and the Railroad, as follows:

<u>Grade Crossing</u>	<u>DOT#</u>	<u>PUCO</u>	<u>Railroad</u>
Erie Street	473-894V	\$5,000	Any Costs Exceeding \$5,000
Albany Street	473-907U	\$5,000	Any Costs Exceeding \$5,000
Summit Street	509-126T	\$5,000	Any Costs Exceeding \$5,000
Erie Street	509-124E	\$5,000	Any Costs Exceeding \$5,000
Chase Street	510-101U	\$5,000	Any Costs Exceeding \$5,000

Staff has reviewed this document and has determined it to be in order. Staff requests an Entry adopting the attached Subsidy Stipulation and directing AA to complete the upgrade within one year.

This is to certify that the foregoing is an accurate and complete reproduction of the documents delivered in the regular course of business.  
Technician AMP Date Processed 2/27/14

**Please serve the following parties of record:**

John M. Chipala  
Chief Engineer  
Ann Arbor Railroad  
P. O. Box 380  
Howell, MI 48844



**Article I. PURPOSE**

The Subsidy Stipulation is a joint collaboration by the Railroad and the PUCO to promote the health and safety of the traveling public who are required to travel through these public highway-railroad grade crossings.

**Article II. PROJECT**

The project work to be completed shall include the following upgrades ("Project"):

<b><u>Grade Crossing #</u></b>	<b><u>Location</u></b>	<b><u>Nature of Upgrade</u></b>
473-894V	Erie Street	Upgrade of 8" incandescent light to 12" LED lights
473-907U	Albany Street	
509-126T	Summit Street	
509-124E	Erie Street	
510-101U	Chase Street	
	Lucas County	
	Toledo, Ohio	

The Project shall be completed within 12 months from the date of the PUCO order adopting this Stipulation. The terms of that PUCO order are incorporated into and made a part of this Stipulation.

**Article III. ALLOCATION OF PROJECT COSTS**

A. The costs of the Project shall be apportioned as between the PUCO and the Railroad, as follows:

**PUCO**

\$5,000 per crossing

**Railroad**

Any costs exceeding \$5,000 for each crossing

B. The Railroad shall be responsible for initially paying all of the actual costs to upgrades of the warning devices identified above. However, the PUCO shall be legally bound to reimburse the Railroad for the above-mentioned amounts upon proper application by the Railroad, consistent with the terms of this Subsidy Stipulation and in accordance with all applicable state regulations.

C. The PUCO has agreed to provide funds from the State Grade Crossing Protection Fund, pursuant to Ohio Rev. Code 4907.472, to cover that portion of the upgrade cost to be borne by the PUCO proposed above.

D. All plans, specifications, estimate of cost, acceptance of work, and procedures in general, to facilitate the construction of the safety upgrade described above, shall conform in all respects to federal laws, rules, regulations, orders, and approvals applicable to State Aid projects. The Railroad shall render billings to the PUCO Staff in accordance with said rules and regulations, and shall provide and furnish such itemized records of and substantiating data for such cost that may be required.

#### **Article IV. BILLING**

A. The Railroad may bill the PUCO monthly or periodically for its costs when costs exceed \$1,000.00. The Railroad shall submit three (3) copies of its bill and in accordance with said rules and regulations as they have been issued or as thereafter may be supplemented or revised. A final bill covering the actual costs and showing all details shall be submitted to the PUCO Staff, within ninety (90) days after completion of each project, the PUCO Staff shall pay all bills within sixty (60) days after receipt thereof, except that the PUCO may hold a retainer on all bills not to exceed eight percent (8%) until final payment. The PUCO Staff shall make final payment for all amounts due the Railroad within sixty (60) days after a final audit has been performed and approved by the PUCO Staff. The Railroad agrees to cooperate and assist, as requested, in any such audit. At any time during normal business hours upon three (3) days written notice and as often as the PUCO staff may deem necessary and in such a manner as not to interfere with the normal business operations, the Railroad shall make available to the PUCO Staff for examination, and to appropriate state agencies or officials, all of its records with respect to matters covered by this Subsidy Stipulation including, but not limited to, records of personnel and conditions of employment and shall permit the PUCO Staff to audit, examine and make excerpts or transcripts from such records. In the event of a controversy as to the eligibility for reimbursement of any charges claimed against the Project, as set in this Subsidy Stipulation, the decision of the PUCO regarding the same should be final.

B. No Project activity reimbursable under this Stipulation, including, without limitation, preliminary engineering, shall be commenced until all of the following have occurred: (1) this Stipulation shall have been approved and the Railroad directed to submit plans and estimates by the PUCO; (2) all financial obligations of the PUCO, as provided for in this Stipulation are subject to the provisions of Section 126.07 of the Ohio Revised Code and shall not be valid and enforceable unless funds are appropriated by the Ohio General Assembly and encumbered by the PUCO Staff; and, (3) the Railroad has been notified by the PUCO Staff to proceed with construction of the Project work. Work on the improvements shall commence within 30 days of the occurrence of events (1), (2), and (3) described herein. Said work shall be pursued diligently by the Railroad until completed.

#### **Article V. NOTIFICATION**

All notices, consents, demands, requests and other communications which may or are required hereunder by the Railroad shall be in writing and shall be deemed duly given if personally delivered or sent by facsimile and confirmed by telephone or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth hereunder or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision.

RAILROAD:                      Ann Arbor Railroad  
   John M. Chlipala  
   Chief Engineer  
   P. O. Box 380  
   Howell, MI 48844  
   (517) 548-3930  
   (517) 548-3937 (fax)  
   Email: [jchlipala@watcocompanies.com](mailto:jchlipala@watcocompanies.com)

PUCO: Public Utilities Commission of Ohio  
Jill Henry  
Rail Specialist  
Transportation Department, Rail Division  
180 East Broad Street  
Columbus, Ohio 43215-3793  
614-466-0435  
614-995-5535 (fax)  
[jill.henry@puc.state.oh.us](mailto:jill.henry@puc.state.oh.us)

#### **Article VI. TERMINATION**

This Subsidy Stipulation shall terminate at the end of the present biennium, June 30, 2015. If construction covered under this Subsidy Stipulation is not completed by that date, it is the expressed intention of the parties to renew this Subsidy Stipulation on each successive biennium period until such time as all work contemplated under this Subsidy Stipulation has been satisfactorily completed. If it appears to the PUCO that the Railroad has failed to perform satisfactorily any requirements of this Subsidy Stipulation, or if the Railroad, is in violation of any provision of this Subsidy Stipulation, or upon just cause, the PUCO may:

- A. Terminate the Subsidy Stipulation after providing the Railroad with written notice, in accordance with the notice provisions of this Subsidy Stipulation, of its failure to perform satisfactorily any requirement of this Subsidy Stipulation (the "Notice"), which shall provide the Railroad, with a thirty (30) day period to cure any and all defaults under this Subsidy Stipulation; or
- B. Immediately terminate the Subsidy Stipulation. During the thirty (30) day cure period, the PUCO or the Railroad shall incur only those obligations or expenditures that are necessary to enable the Railroad to achieve compliance as, set forth in the Notice. If it is determined that the Railroad cannot cure its default, the Railroad shall immediately cease work under this Subsidy Stipulation, take all necessary or appropriate steps to limit disbursements and minimize cost, and the Railroad shall provide a report, as of the date of receipt of the Notice, setting forth the status of the work completed, the cost of the work completed and such other information as the PUCO shall deem pertinent.

#### **Article VII. -REPRESENTATIONS AND WARRANTIES**

- A. RAILROAD: The Railroad represents and warrants the following:
  - (1)The Railroad has the power and authority to enter into this Subsidy Stipulation; and
  - (2)The Railroad has the authority to carry out its obligations under this Subsidy Stipulation; and
  - (3) No personnel of the Railroad, any subcontractor of the Railroad, public official, employee or member of the governing body of the particular locality where this Subsidy Stipulation shall be completed, who exercises any functions or responsibilities in connection with the review or approval of the work completed under this Subsidy Stipulation, shall prior to the completion of said work, voluntarily or involuntarily acquire any personal monetary interest, direct or indirect, which is incompatible or in conflict with the discharge or fulfillment of his functions or responsibilities with respect to the completion of the work contemplated under this Subsidy Stipulation. Any person, who, prior to or after the execution of this Subsidy Stipulation, acquires any personal monetary

interest, involuntarily or voluntarily, shall immediately disclose his interest to the PUCO in writing. Thereafter, such person shall not participate in any action affecting the work contemplated under this Subsidy Stipulation unless the PUCO determines that, in light of the personal monetary interest disclosed his participation in any such action would not be contrary to the public interest.

B. PUCO: PUCO represents and warrants that they have the power and authority to enter into this Subsidy Stipulation and to carry out their obligations pursuant to the terms of this Subsidy Stipulation.

### **Article VIII. RECORD KEEPING**

During performance of this Stipulation and for a period of three years after its completion, the Railroad shall maintain auditable records of all work performed under and charges pertaining to this Stipulation and shall make such records available to the PUCO as the PUCO may reasonably require.

### **Article IX. RIGHTS TO DATA**

The PUCO shall have unrestricted authority to reproduce, distribute and use (in whole or in part) any reports, data or materials prepared by the Railroad pursuant to this Stipulation.

### **Article X. FALSIFICATION OF INFORMATION**

The Railroad affirmatively covenants that it has not made any false statements to the PUCO in the process of obtaining this grant of funds. If the Railroad has knowingly made a false statement, the Railroad shall be required to return all funds immediately pursuant to Ohio Revised Code Section 9.66(C) (2) and shall be ineligible for any future economic development assistance from the State, any state agency or a political subdivision pursuant to O.R.C. Section 9.66(C) (1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to O.R.C. Section 2921.13(D)(1), which is punishable by a fine of not more than One Thousand Dollars (\$1,000) and/or a term of imprisonment of not more than six (6) months.

#### **Article XI. EQUAL EMPLOYMENT OPPORTUNITY**

In performing this Subsidy Stipulation, the Railroad shall not discriminate against any employee, applicant for employment, or other person because of race, color, religion, gender, national origin (ancestry), military status (past, present or future), disability, age (40 years of age or older), genetic information, or sexual orientation. The Railroad will ensure that applicants are hired and that employees are treated during employment without regard to their race, color, religion, gender, national origin (ancestry), military status (past, present or future), disability, age (40 years of age or older), genetic information, or sexual orientation. The Railroad shall incorporate the foregoing requirements of this paragraph in all of its contracts for any of the work prescribed herein (other than subcontracts for standard commercial supplies or raw materials) and will require all of its subcontractors for any part of such work to incorporate such requirements in all such subcontracts.

#### **Article XII. DRUG FREE WORKPLACE**

For any work under this Subsidy Stipulation that is performed on government property, the Railroad shall enforce its policy that its employees, while engaged in such work, shall not purchase, transfer, and use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

#### **Article XIII. HOLD HARMLESS PROVISION**

The Railroad covenants and agrees to indemnify and hold the PUCO and their agents and employees harmless from and against any loss, claim, cause of action, damages, liability (including, without limitation, strict or absolute liability in tort or by statute imposed), charge, cost or expense (including, without limitation, counsel fees to the extent permitted by law), predicated on personal injury or death, or loss of or damage to property, and arising from any work performed pursuant to this Subsidy Stipulation and caused by the Railroad's negligent, intentional, willful or wanton actions or inactions, or such actions or omissions by any subcontractors that may be hired by the Railroad under this Subsidy Stipulation. In case any action involving any work covered by this Subsidy Stipulation is brought by or against any party or parties, said party or parties shall promptly notify the other party or parties of such action.

#### **Article XIV. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS AND OHIO ETHICS LAWS**

The signatory parties agree to comply with all federal, state and local laws, rules, regulations, and auditing standards, which are applicable to their performance under this Stipulation.

#### **Article XV. BUY OHIO/BUY AMERICAN PROVISIONS; OFFSHORE OUTSOURCING PROVISION:**

The Railroad shall use its best efforts to purchase goods from other companies doing business in the State of Ohio, for the purpose of performing work under this Subsidy Stipulation. Further, in the performance of the work contemplated under this Subsidy Stipulation, the Railroad and all contractors, subcontractors, material men, or suppliers, shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or



manufactured, as the case may be, in the United States. The Railroad affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Subsidy Stipulation. Notwithstanding any other terms of this Subsidy Stipulation, the PUCO and the ORDC reserve the right to recover any funds paid for services the Railroad performs outside the United States for which it did not receive a waiver from the Director of the Ohio Department of Administrative Services.

#### **Article XVI. ENTIRETY OF AGREEMENT**

This Stipulation and its exhibits and any documents referred to herein constitute the entire agreement of the parties and supersede any and all other discussions, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof. This Stipulation shall not be modified, amended, or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties. A waiver by any party of any breach or default by the other party shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

#### **Article XVII. CAMPAIGN CONTRIBUTIONS**

The Railroad hereby certifies that all applicable parties listed in Division (I)(3) or (J)(3) of R.C. 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of R.C. 3517.13.

#### **Article XVIII. AMENDMENTS OR MODIFICATIONS**

Neither this Subsidy Stipulation, nor any rights, duties, nor obligations hereunder, may be assigned or transferred, in whole or in part, by any signatory party, without the written consent of the PUCO and the ORDC.

#### **Article XIX. DEBARMENT**

The Railroad represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either R.C. 153.02 or R.C. 125.25. If this representation and warranty is found to be false, this Agreement is void *ab initio* and the Railroad shall immediately repay to the PUCO any funds paid under this Stipulation.

#### **Article XX. HEADINGS**

Section headings contained in this Stipulation are inserted for convenience only and shall not be deemed a part of this Stipulation.

#### **Article XXI. GOVERNING LAW**

This Stipulation shall be governed by the laws of the state of Ohio as to all matters, including but not limited to matters of validity, construction, effect and performance.

#### **Article XXII. PARTIAL INVALIDITY**

A judicial or administrative finding, order, or decision that any part of this Stipulation is illegal or invalid shall not invalidate the remainder of the Stipulation.

#### **Article XXIII. DUPLICATE COUNTERPARTS**

This Stipulation may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which taken together shall be deemed to constitute a single agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Subsidy Stipulation to be executed as of the date and year set forth below.

**On behalf of the Ann Arbor Railroad:**

By: Robert A. Billings  
Robert A. Billings  
[Print Name]

Title: GM

Date: 2-24-2014

**On behalf of the Public Utilities  
Commission of Ohio :**

By: Milan Orbovich  
Milan Orbovich

Title: Director of Transportation

Date: 2/27/2014