

BEFORE

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 Grade ) Case No. 15-842-RR-STP  
Crossing, DOT#473-568S, Pawnee Road, )  
in Medina County, Ohio. )

FINDING AND ORDER

The Commission finds:

- (1) Pursuant to R.C. 4905.04, the Commission has statutory authority to regulate and promote the welfare and safety of railroad employees and the traveling public.
- (2) Pursuant to R.C. 4907.471, the Commission is responsible for evaluating public grade crossings to determine the need for installing active warning devices and apportioning the cost thereof.
- (3) 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.
- (4) In this case, Medina County (LHA) submitted an application for a grade crossing improvement project to the Staff to install active warning devices at the Pawnee Road grade crossing (DOT#473-568S), located in Medina County, Ohio. In response, the Staff provided a funding proposal to the County for the project. Thereafter, the County, requested funds from the Ohio Rail Development Commission (ORDC), which is an independent agency of the state within the Ohio Department of Transportation that provides federal funds, through subsidy stipulations, for grade crossing improvement projects in accordance with R.C. 4981.02. ORDC agreed to provide sufficient federal funds that would finance the County's share of the funding proposal for the project.

- (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) On April 27, 2015, Staff filed a subsidy stipulation (stipulation), which it has entered into with ORDC, Wheeling & Lake Erie Railway Company (WE), and Medina County (LHA). WE is a railroad, as defined in R.C. 4907.02, and subject to the jurisdiction of the Commission under R.C. 4905.04.
- (7) 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) The Commission will pay 55 percent of the cost of the project with state funds, which is currently estimated to be \$107,250.00, ORDC will pay 35 percent of the cost of the project with federal funds, which is currently estimated to be \$68,250.00, and WE will pay ten percent of the cost of the project, which is currently estimated to be \$19,500.00, and will also pay for maintenance;<sup>1</sup>
  - (b) WE will complete the project within 12 months from the date of the Commission Finding and Order adopting this stipulation;
  - (c) The parties agree to comply with the terms of the stipulation and the Finding and Order adopting the stipulation;
  - (d) The Commission will provide funds from the State Grade Crossing Protection Fund to cover the Commission's cost of the project.
  - (e) 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.

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<sup>1</sup> While the percentages do not change, costs listed in this Finding and Order are estimates and may change after final designs and bids are approved.

- (8) Staff recommends that the Commission approve the stipulation and order WE to file site plans and cost estimates within 90 days of the Commission's approval. Staff also recommends that the Commission order WE to complete the project within one year after the Commission's approval of the stipulation.
- (9) 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.
- (10) By August 20, 2015, WE should submit to Staff the site plans and cost estimates for the project. Within seven days thereafter, WE 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, WE is hereby authorized to acquire project materials and to commence work as detailed in the letter of construction authorization. WE 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, WE 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. WE should complete the project on or May 20, 2016. The Commission will issue no further construction authorization in this matter.
- (11) Within 120 days of the issuance of this finding and order, WE shall file a notice in the docket that it has initiated discussions with Lorain Medina Rural Electric Cooperative (LMRE) 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 WE has taken with LMRE 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. WE shall serve a copy of the docketed notice upon LMRE and any other applicable utility. To ensure that the

deadline is met, LMRE shall timely inform the Commission in writing of any issues regarding the availability of electric service.

- (12) 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, the railroad 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.
- (13) 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.

It is, therefore,

ORDERED, That the stipulation be adopted and approved. It is, further,

ORDERED, That, by August 20, 2015, WE submit to the Commission's Railroad Division site plans and cost estimates for the project, and by August 27, 2015, file a letter in this docket advising that site plans and cost estimates have been submitted to the Commission. It is, further,

ORDERED, That, following approval of the site plans and cost estimates, WE proceed with and complete the project on or before May 20, 2016. It is, further,

ORDERED, That WE notify Staff of any changes in the scope of work, cost overruns, materials, etc., which are not in the approved plans and estimates, notify the 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, and notify the Commission 30 days before the projected date of completion. It is, further,

ORDERED, That, by September 20, 2015, WE file a notice that it has initiated with LMRE, and any other applicable utility, the process to ensure that electric service will be available at the involved grade crossing as set forth in finding (11). It is, further,

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

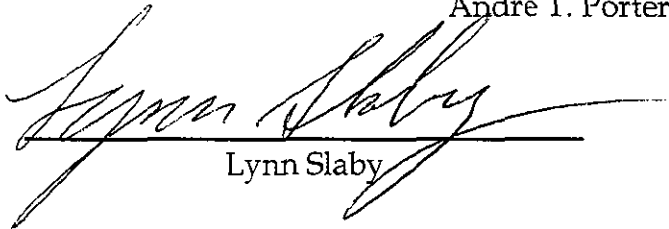
ORDERED, That, at the time Staff makes its final inspection and finds that the installation has been completed and the warning devices have been put in service, Staff file a memorandum in this docket indicating that the installation has been completed and the warning devices have been put in service. It is, further,

ORDERED, That a copy of this Finding and Order be served upon ORDC, WE, LHA, LMRE, and all interested persons of record.

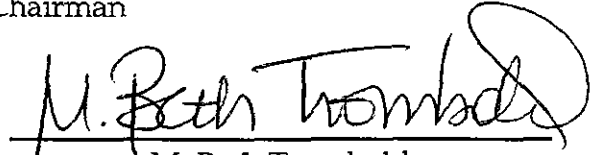
THE PUBLIC UTILITIES COMMISSION OF OHIO



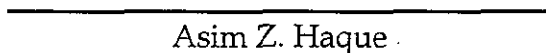
Andre T. Porter, Chairman



Lynn Slaby



M. Beth Trombold



Asim Z. Haque



Thomas W. Johnson

JML/sc

Entered in the Journal **MAY 20 2015**



Barcy F. McNeal  
Secretary