

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE PETITION OF
OHI-RAIL CORPORATION TO CLOSE TO
VEHICULAR TRAFFIC THE W. PLAIN STREET
GRADE CROSSING (DOT#503425E),
LOCATED IN MINERVA, CARROLL COUNTY,
OHIO.

CASE No. 15-1714-RR-UNC

OPINION AND ORDER

Entered in the Journal on August 31, 2016

I. SUMMARY

{¶ 1} The Commission grants the petition of OHI-Rail Corporation to close to vehicular and pedestrian traffic the W. Plain Street grade crossing in Minerva, Ohio.

II. DISCUSSION

A. *Applicable Law*

{¶ 2} Pursuant to R.C. 4907.474, the Commission is vested with the statutory authority to close grade crossings located in municipal corporations.

{¶ 3} R.C. 4907.474 requires that an applicant seeking to close a railroad grade crossing must demonstrate that there is not a demonstrable need for the grade crossing to exist.

{¶ 4} R.C. 4907.474 provides that, in making the determination as to a demonstrable need, the Commission shall consider the following: the daily vehicular and train traffic at the crossing and at alternate crossings; the increase in vehicular traffic at alternate crossings resulting from the crossing closure; the nature of the roadway at any alternate crossings; the total number of crossings within one linear mile of the crossing to be closed; the type of warning devices and sight distances at alternate crossings; the impact of the closure on vehicular traffic, emergency vehicles, commercial

enterprises, and municipal corporations and other populated areas; and any other factor the Commission determines appropriate.

{¶ 5} R.C. 4907.474 provides that the Commission shall hold a hearing at a location within which the crossing is located.

B. *Procedural History*

{¶ 6} On October 2, 2015, OHI-Rail Corporation (OHIC) filed a petition to close to vehicular and pedestrian traffic the grade crossing at W. Plain Street (DOT#503425E), located in Minerva, Carroll County, Ohio.

{¶ 7} By Entry issued November 18, 2015, a local public hearing was scheduled for December 17, 2015.

{¶ 8} Legal notice of the local public hearing was published in the *Carrollton Free Press Standard*, *Canton Repository*, and *Louisville Herald*, newspapers of general circulation in Carroll County.

{¶ 9} The local public hearing was held as scheduled on December 17, 2015, where five witnesses provided sworn testimony.

{¶ 10} The evidentiary hearing was held on April 5, 2016. At the evidentiary hearing, testimony was provided by Denny Varian, OHIC General Manager, and Neil Youngman, OHIC Compliance Manager. No briefs were filed.

C. *Factors in the Determination of Demonstrable Need*

{¶ 11} As noted previously, there are several factors used by the Commission in determining whether there is a demonstrable need for the grade crossing to exist. These are set forth in R.C. 4907.474 and are discussed below.

1. DAILY VEHICULAR AND TRAIN TRAFFIC AT THE W. PLAIN STREET CROSSING AND AT ALTERNATE CROSSINGS

{¶ 12} W. Plain Street is a paved, two lane, residential street located in the village of Minerva, Ohio. W. Plain Street has an east/west orientation that originates just east of S. Market Street and extends west beyond S. Main Street. A single OHIC railroad track crosses W. Plain Street at a 60 degree angle in a northeast to southwest direction. There are no active warning devices at the crossing. (OHIC Ex. 1 and Ex. 2; OHIC Ex. 3 at 1; Tr. II at 22.)

{¶ 13} There was no evidence regarding the speed limit on W. Plain Street; however, the evidence indicates that a maximum two vehicles could travel on W. Plain Street simultaneously and pass one another in opposite directions (OHIC Ex. 1). A traffic count performed by OHIC over several days in March 2016 indicated less than three vehicles per hour during 8:00 a.m. to 4:30 p.m. (OHIC Ex. 3 at 2; Tr. II at 35-36). The average daily train count over the W. Plain Street crossing is six trains per week, at an average speed of 10 miles per hour. The number of trains at the crossing is expected to double because of the anticipated signing of a contract to transport freight for a nearby business. (Tr. II at 13-14.) In addition, there are occasions when only a locomotive travels on the track; this, when added to the expected increase in the number of trains, will raise the total train count to approximately 20 weekly movements on the track. The number of cars per train is also expected to increase because of the higher freight volume, multiplying the tonnage of OHIC's trains by four, resulting in longer stopping distances for trains. (Tr. II at 60-62.)

{¶ 14} There are two alternate crossings near the W. Plain Street crossing, specifically, at S. Main Street and S. Market Street (OHIC Ex. 1). There was no evidence regarding the speed limit or traffic count at either alternate crossing; however, because the same OHIC track passes through all three grade crossings, the daily train count would be the same at each crossing (OHIC Ex. 1; OHIC Ex. 3 at 68).

**2. THE DAILY INCREASE IN VEHICULAR TRAFFIC AT ALTERNATE CROSSINGS
RESULTING FROM THE CROSSING CLOSURE**

{¶ 15} There was no evidence regarding whether motor vehicle traffic diverted from the W. Plain Street crossing would be more or less likely to use either alternate grade crossing. As already noted, OHIC counted only three vehicles per hour using the W. Plain Street crossing. (Tr. II at 35-36.)

**3. TOTAL NUMBER OF CROSSINGS WITHIN ONE LINEAR MILE OF THE W. PLAIN
STREET CROSSING**

{¶ 16} There are nine grade crossings located within one mile of the W. Plain Street crossing and five grade crossings located within 550 feet of the W. Plain Street crossing. Of these crossings, the closest to W. Plain Street are at S. Market Street, which is located approximately 80 feet to the northeast, and S. Main Street, which is located approximately 35 feet to the southwest. (Tr. II at 26-27, 68.) If the W. Plain Street crossing is closed, traffic could travel between S. Market Street and S. Main Street by using E. Line Street, which is located one block north of W. Plain Street. Another alternate route is an alley located behind the Normandy Inn (the Inn), a restaurant one half block north of the intersection of W. Plain Street and S. Market Street. (OHIC Ex. 1 and Ex. 2; Tr. II at 23-25, 36-37.)

4. NATURE OF THE ROADWAY AT THE ALTERNATE CROSSINGS

{¶ 17} As noted previously, the two crossings located closest to W. Plain Street, at S. Market Street and S. Main Street, are both paved roads, and wide enough for two vehicles to pass one another traveling in opposite directions (OHIC Ex. 1). The evidence indicates that the road at both alternate crossings is straight, and the angle at which the track intersects S. Market Street and S. Main Street is not as severe as at W. Plain Street (OHIC Ex. 1).

5. TYPE OF ADVANCE WARNING DEVICES AND SIGHT DISTANCES AT THE ALTERNATE CROSSINGS

{¶ 18} The S. Main Street crossing is protected by crossbucks and traffic control devices (Tr. II at 27, 69, 71).¹ The S. Market Street crossing is protected by flashing lights, and is scheduled to be upgraded to gates and flashing lights by October 21, 2016, pursuant to the Commission's order to install warning devices. *In re OHI-Rail Corp.* Case No. 15-1715-RR-FED, Finding and Order (November 4, 2015) (Tr. II at 15, 27).

{¶ 19} The evidence indicates that, because of the nature of the roadway and the angle at which the track crosses the road, there is little difficulty for driver sight distances at the S. Market Street crossing (OHIC Ex. 1). With respect to the S. Main Street crossing, OHIC witness Mr. Varian contends that any difficulty in sight distance would be minor and would exist only for northbound drivers. He explained that if a train was approaching from the southwest, a building in the southwest quadrant limits sight distance "a little," and the angle of the track would require drivers to look over the "slightly over * * * [the] left shoulder" and through the driver's side window. If a train was approaching from the northeast, he added, drivers would experience a "little bit" of obstructed view because of a building in the southeast quadrant, but he asserts that drivers would compensate by looking "out the corner of the windshield" while decelerating for a yield sign or stop sign as they approach the track. No one testifying at the local public hearing expressed concern about sight distances at either alternate crossing. (OHIC Ex. 1 and Ex. II; Tr. II at 70-72.)

6. IMPACT OF THE CLOSURE ON VEHICULAR TRAFFIC, EMERGENCY VEHICLES, COMMERCIAL ENTERPRISES, AND ANY OTHER FACTORS PERTINENT TO MUNICIPAL CORPORATIONS AND OTHER POPULATED AREAS

{¶ 20} At the local public hearing, five witnesses provided sworn testimony opposing the proposed closure. Village Administrator David Harp and Fire Chief

¹ At hearing, Mr. Varian testified that there were either yield or stop signs at the S. Main Street crossing. He was uncertain which type of sign was present.

Aaron Stoller claim that closing the crossing compromises fire and emergency access to the Inn and to the two residences on W. Plain Street between S. Market Street and the track. Fire Chief Stoller asserts that because the Inn is a restaurant, closing the crossing would narrow access to less than 20 feet "from one side," creating an increased risk if there was a fire. He added that closing the crossing would make W. Plain Street the only street in Minerva that is, in part, a dead end, and yet continues another four blocks beyond the crossing. He contends that this would "create a new 911 mapping issue that would need to be taken care of," because current 911 mapping indicates that W. Plain Street "goes all the way through." However, no evidence was presented indicating that the mapping issue could not be corrected, or that closing the crossing would create an unnecessary burden for emergency responders. (OHIC Ex. 1; Tr. I at 3-10.) Village Council members Mr. Gary Ruff and Ms. Billie Rowe assert that OHIC's placement of concrete barriers on either side of the track has harmed the Inn's business by effectively removing approximately 20 parking spaces. Mr. Ruff and Ms. Rowe believe that closing the crossing will further harm business at the Inn, because entry to parking areas will require a more indirect route. (Tr. I at 13-20; OHIC Ex. 1.) Mr. James Waller, a Minerva resident, agreed with the testimony of the other witnesses (Tr. I at 20-22). Neither the owners of the two W. Plain Street residences, nor the owner of the Inn, testified at the local hearing. One W. Plain Street homeowner, Anthony Buzzelli, filed correspondence in the docket regarding the closure petition. Mr. Buzzelli's primary concern is the accessibility of emergency responders to his home, given the increased volume of truck traffic on S. Market Street caused by oil and gas drilling in the vicinity. In addition, Mr. Buzzelli objected to the use of concrete barriers to block the crossing, as he feels the barriers are unsightly and would devalue property.

{¶ 21} At the evidentiary hearing, Mr. Varian and Mr. Youngman testified in favor of the proposed closure; no witnesses spoke in opposition. Mr. Varian stated that the Inn's two parking lots are immediately adjacent to, and just north and south of, the track at the W. Plain Street crossing. He stated that because both parking lots are within

OHIC's right-of-way, the Inn leases the property from OHIC. (Tr. II at 10-12; OHIC Ex. 1.) According to Mr. Varian, OHIC placed concrete barriers next to, and on both sides of, the track to prevent Inn patrons and delivery drivers from driving from the south lot to the north lot and from parking too close to the track. Before the barriers were erected, he added, parked vehicles had sometimes blocked rail traffic, and a vehicle too close to the track was struck by a train. (Tr. II at 12-13, 37-38; OHIC Ex. 1; OHIC Ex. 3 at 3.)

{¶ 22} Mr. Youngman stated that there are two houses on W. Plain Street between S. Market Street and the W. Plain Street crossing, with a third house at the corner of S. Market Street and W. Plain Street (OHIC Ex. 1; Tr. II at 39-40). Mr. Varian and Mr. Youngman both assert that if the crossing is closed, the Minerva police and fire departments could still access the two W. Plain Street houses and the Inn from the east via S. Market Street (Tr. II at 16-20, 38-40). Mr. Varian added that E. Line Street, which is one block north of the Inn, provides access between S. Market Street and S. Main Street, while Mr. Youngman noted that an alley behind the Normandy Inn provides the same access (OHIC Ex. 1; Tr. II at 18, 40-41.) Mr. Youngman contends that fire department access from the west to the W. Plain Street homes would also be possible. He explained that in an emergency, the fire department could call OHIC's emergency response telephone number and request stoppage of train traffic. After the train traffic stoppage, fire hoses could be stretched across the track. (Tr. II at 42-44.) Mr. Varian further asserts that Fire Chief Stoller incorrectly believes that the crossing would be closed by placing barriers at the intersection of W. Plain Street and S. Main Street. Mr. Varian clarified that OHIC would only erect traffic barriers immediately on either side of the track where it crosses W. Plain Street, so that westbound access onto W. Plain Street and the Inn's north parking lot would remain open. (OHIC Ex. 1; Tr. II at 63-65.) In addition, Mr. Varian noted that S. Market Street "make[s] a loop" and connects with S. Main Street, providing an additional available travel route from S. Main Street to S. Market Street (Tr. II at 24).

{¶ 23} Mr. Varian contends that, if the W. Plain Street crossing is closed, residents will learn that the crossing is unavailable and will easily access one of several alternate routes from S. Market Street to S. Main Street, resulting in little additional travel time. In his opinion, closing the W. Plain Street crossing would add only a "handful of seconds" for vehicles traveling between S. Market Street and S. Main Street. (Tr. II at 24-25.)

{¶ 24} Mr. Varian did not have an estimate of the travel time from the police and fire department stations to W. Plain Street (Tr. II at 73). He added that the distance from the fire station to W. Plain Street is only one-half to three-quarters of a mile, and because there is a police vehicle on patrol at all times, police response to locations on or near W. Plain Street may start from locations in closer proximity than the police station (Tr. II at 74-75).

{¶ 25} Mr. Varian and Mr. Youngman emphasize safety to drivers and OHIC train conductors as an additional reason to close the W. Plain Street crossing (Tr. II at 22-23, 34). Mr. Varian explained that, in addition to the absence of automatic warning devices at W. Plain Street, the stop sign for westbound W. Plain Street traffic is not located at the S. Main Street intersection, but rather is only about 25 feet from track. Consequently, some drivers stop on, or very close to, the track, which increases the risk to their safety. (Tr. II at 22, 57-60, 79-81.) Mr. Varian and Mr. Youngman added that, because of the angle at which the track crosses W. Plain Street, drivers approaching the track must look sharply to the rear, over their right shoulder, and through the vehicle's passenger side windows to observe whether there are any approaching trains (Tr. II at 22, 45). Mr. Varian contends that visibility is most problematic for westbound delivery van drivers, because vans typically have fewer side windows than other vehicles (Tr. II at 56-57). Mr. Varian and Mr. Youngman also note that OHIC exchanges rail cars with Norfolk Southern Railway in nearby Bayard, Ohio. The track configuration at this location requires that an OHIC locomotive pushes, rather than pulls, rail cars into the

interchange. When this occurs, a train conductor must ride on the side of the leading rail car until the train crosses W. Plain Street, where the conductor steps down onto the street to flag traffic. OHIC contends that its conductors are at risk when drivers avoid trains at the S. Market Street crossing by turning onto W. Plain Street and "darting" quickly toward S. Main Street (OHIC Ex. 1; OHIC Ex. 3 at 2-3.) In addition, Mr. Varian and Mr. Youngman assert, the installation of gates at the S. Market Street crossing will result in even more drivers using W. Plain Street to avoid trains at S. Market Street (OHIC Ex. 1; OHIC Ex. 3 at 1-2; Tr. II at 34, 37.)

7. ANY OTHER FACTOR THE COMMISSION DETERMINES APPROPRIATE

{¶ 26} Other factors that the Commission considers relevant in determining whether there is a demonstrable need for the crossing to exist include the angle of the crossing, the speed of trains at the crossing, and the number of alternative crossings located in close proximity to the W. Plain Street crossing. Testimony and evidence indicate that the angle of the W. Plain Street crossing is sharp, estimated at 60 degrees. The sharp angle unsafely reduces the sight distance for westbound W. Plain Street drivers, who must look to the rear, over their right shoulder, and through the vehicle's passenger side windows for train traffic. (Tr. at 22-23, 45, 56-57; OHIC Ex. 1; OHIC Ex. 3 at 1.) The speed of trains at the crossing, as already noted, is 10 miles per hour; while not a high speed, it is significant that OHIC expects that the anticipated increase in freight volume will add more rail cars to its trains, resulting in longer stopping distances (Tr. at 13-14; 60-62). In addition, as noted previously, there are nine alternative grade crossings located within one mile of the W. Plain Street crossing, including two that are within less than 550 feet. Thus, there are a large number of available additional crossings within a short travel distance of the W. Plain Street crossing, which lessens the need to use this crossing.

III. CONCLUSION

{¶ 27} As previously noted, the term "demonstrable need" is not defined in the statute. Historically, the Commission has made the determination as to whether a demonstrable need exists by weighing the record evidence. In prior cases involving petitions for closure of railroad grade crossings, the Commission has found that a demonstrable need exists when the evidence shows that the crossing is essential, vital, and indispensable to the general public and when its closure would negatively impact the interests and well being of the general community. After consideration of the evidence in this case, we find that there is not a demonstrable need for the W. Plain Street crossing to exist and, therefore, OHIC's petition should be granted. In making this determination, we have balanced the concerns of village council members and Minerva residents regarding the impact of closing the crossing against OHIC's assertions that closure will improve safety for community residents and OHIC conductors. The balance of evidence in this case favors closing the crossing.

{¶ 28} The evidence indicates that there are significant safety concerns at the W. Plain Street crossing. There are no automatic warning devices at this crossing, and the severe angle at which the track intersects W. Plain Street creates visibility problems for westbound drivers, who must look sharply over the right shoulder, to the rear, and through a vehicle's passenger side windows for train traffic. (Tr. II at 22, 45.) In addition, the stop sign for westbound traffic on W. Plain Street is not located at the intersection with S. Main Street, but is only about 25 feet from the track, causing some drivers to stop on, or very close to, the track (Tr. II at 22, 56-60, 79-81). Also, it is expected that, in the near future, there will be more freight movement on this track; as more rail cars are added to OHIC trains, stopping distances will become longer (Tr. II at 60-62.) Each of the preceding factors increases the likelihood of a vehicle colliding with an OHIC train. The evidence also indicates that some northbound drivers, in an attempt to avoid a train at the S. Market Street crossing, turn onto W. Plain Street and

quickly drive one block toward S. Main Street (OHIC Ex. 3 at 2-3). Such actions by drivers increase the likelihood of a vehicle/train collision at the W. Plain Street crossing, which is only 80 feet from the S. Market Street crossing, and could injure train conductors that, under circumstances already discussed, stand at the crossing and flag traffic (OHIC Ex. 3 at 2-3; Tr. II at 26-27).

{¶ 29} We also note that the evidence indicates only two residences on W. Plain Street between S. Market Street and S. Main Street, with a third residence on the corner of W. Plain Street and S. Market Street, and that the volume of daily vehicular traffic is less than three vehicles per hour (OHIC Ex. 3 at 2; Tr. II at 35-36, 39-40). None of the residents of these homes testified at the local or evidentiary hearings, and only one resident, Mr. Buzzelli, filed correspondence in the docket opposing closure. Further, there are two alternate crossings within very close access to the W. Plain Street crossing, including at S. Market Street, which is 80 feet to the northeast, and S. Main Street, which is 35 feet to the southwest (OHIC Ex. 1; Tr. II at 26-27, 68). At the S. Market Street crossing, warning lights are already present; gates are scheduled to be installed by October 21, 2016, thereby increasing safety for motorists (Tr. II at 15, 27). The S. Main Street crossing is protected by crossbucks and a stop sign or yield sign (Tr. II at 29, 67, 71). Alternate routes for travel between S. Market Street and S. Main Street are at E. Line Street, which is one block north of W. Plain Street, and an alley that is one-half block north of W. Plain Street (OHIC Ex. 1 and Ex. 2; Tr. II at 23-25, 36-37). There is no evidence that the additional distance to either alternate crossing or route would create an unreasonable burden to anyone living in the vicinity.

{¶ 30} Although several community members expressed concern that closing the crossing would harm business at the Inn, no representative of the Inn filed correspondence in the docket or testified at the local or evidentiary hearing, and no testimony was provided regarding any other business that might be negatively impacted by closing the crossing (Tr. I at 4, 11, 15-16). In addition, there was testimony

alleging that concrete barriers erected by the railroad alongside the track had harmed business at the Inn. The evidence indicates that the concrete barriers were erected by OHIC to stop drivers from traveling over the track at a location other than the crossing, and to prevent drivers from parking too close to the track; there was no evidence or testimony how much, if any, the concrete barriers' presence harmed the Inn's business. (Tr. I at 17-18.) Indeed, the evidence demonstrates that, even if the W. Plain Street crossing were closed, parking for the Inn would still be accessible from S. Market Street and S. Main Street (OHIC Ex. 1; Tr. II at 63-65). Further, while we note the concerns of W. Plain Street resident Mr. Buzzelli regarding access for emergency services, the evidence indicates that, given the location of the fire and police department stations, closing the crossing would not impact emergency access to the Inn, or to the homes on W. Plain Street between S. Market Street and the track. Regarding Mr. Buzzelli's objection to concrete barriers to close the crossing, we note that the type of barrier used for closure is not an issue to be addressed by the Commission. Rather, Mr. Varian and Mr. Youngman testified that the village of Minerva will determine the kind of barrier used for closure. We also observe that access to W. Plain Street residences west of S. Main Street would also not be affected by closing the crossing; responders driving from the fire and police department stations, which are located northeast of W. Plain Street, would simply travel directly to Main Street and turn south toward the intersection with W. Plain Street, which is just north of where the track crosses S. Main Street. (OHIC Ex. 2; Tr. II at 16-20, 38-40, 42-44.) Finally, although Fire Chief Stoller contends that closing the crossing would "create a new 911 mapping issue" because W. Plain Street continues for several blocks west of the crossing, there is no evidence that remedying the mapping issue would be insurmountable, or that closing the crossing would create an unnecessary burden for Minerva's emergency responders.

{¶ 31} Accordingly, we find that the evidence demonstrates that there is not a demonstrable need for the W. Plain Street crossing to exist and, therefore, the petition to close the crossing should be granted. Pursuant to R.C. 4907.474, if after the hearing it is

the opinion of the Commission that there is not a demonstrable need for the crossing to exist and that the crossing should be closed, the Commission shall issue an order to the legislative authority of the municipal corporation in which the crossing is located, directing it to discontinue the crossing and close it to vehicular traffic or to pedestrian traffic, or both, by ordinance. The legislative authority of the municipal corporation, within 60 days after receiving the order from the Commission, shall discontinue the crossing and close it to vehicular traffic, or to pedestrian traffic, or both, as specified in the order of the Commission. In this case, the evidence demonstrates that there is not a demonstrable need for the W. Plain Street crossing to exist and it should be closed. Accordingly, within 60 days of this Opinion and Order, the village of Minerva, as the local highway authority for the W. Plain Street crossing, is directed to issue an ordinance discontinuing the use of the W. Plain Street crossing. Also, within 90 days of this Opinion and Order, the village of Minerva is directed to close the W. Plain Street crossing to all vehicular and pedestrian traffic.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 32} On October 2, 2015, OHIC filed a petition to close the W. Plain Street crossing, pursuant to R.C. 4907.474.

{¶ 33} A local public hearing was held in Minerva, Ohio, on December 17, 2015.

{¶ 34} The evidentiary hearing was held at the offices of the Commission on April 5, 2016.

{¶ 35} Proof of publication of the local public hearing was published in the *Carrollton Free Press Standard*, *Canton Repository*, and *Louisville Herald*, newspapers of general circulation in Carroll County, Ohio.

{¶ 36} The evidence demonstrates that there is not a demonstrable need for the W. Plain Street crossing to exist.

V. ORDER

{¶ 37} It is, therefore,


{¶ 38} ORDERED, That OHIC's petition for closure of the W. Plain Street crossing be granted. It is, further,

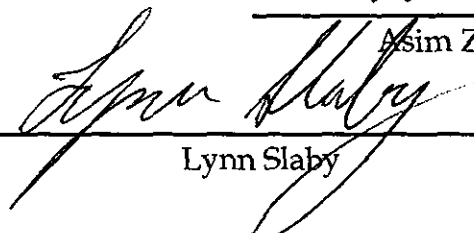
{¶ 39} ORDERED, That, within 60 days of this Opinion and Order, the village of Minerva issue an ordinance discontinuing the use of the W. Plain Street crossing to vehicles and pedestrians. It is, further,

{¶ 40} ORDERED, That, within 90 days of this Opinion and Order, the village of Minerva close the W. Plain Street crossing to all vehicular and pedestrian traffic. It is, further,

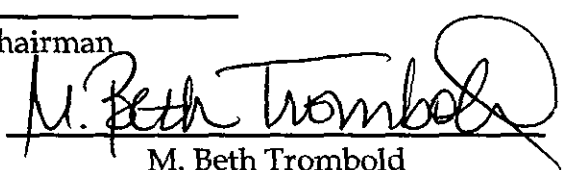
{¶ 41} ORDERED, That a copy of this Opinion and Order be served on the village of Minerva, ORDC, OHIC and its counsel, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Asim Z. Haque, Chairman


Lynn Slaby

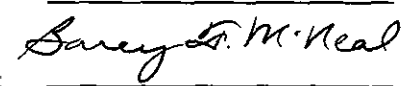

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Entered the Journal
AUG 31 2016


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