

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE AUTHORIZATION
FOR THE DEFIANCE COUNTY CASE No. 16-1598-RR-STP
CONSOLIDATION PROJECT AGREEMENT.

FINDING AND ORDER

Entered in the Journal on November 9, 2016

I. SUMMARY

{¶ 1} In this Finding and Order, the Commission modifies and approves an agreement between Staff, CSX Transportation, Defiance County, and Delaware Township for the use of grade crossing protection funds for roadway modifications and closure of public grade crossings, subject to the Commission's ongoing jurisdiction and oversight.

II. DISCUSSION

A. *Applicable Law*

{¶ 2} R.C. 4905.04 provides that the Commission has statutory authority to regulate and promote the welfare and safety of railroad employees and the traveling public.

{¶ 3} R.C. 4907.472 provides that the Commission is responsible for the administration and implementation of the Grade Crossing Protection Fund, which was established for the purpose of paying the public share of the cost of reducing hazards at public highway-railway grade crossings.

{¶ 4} Pursuant to Ohio Adm.Code 4901-1-30, any two or more parties may enter into a written stipulation concerning issues of fact.

{¶ 5} CSX Transportation (CSX) is a railroad as defined in R.C. 4907.02 and is subject to the jurisdiction of the Commission under R.C. 4905.04.

B. *Procedural Background and Other Details*

{¶ 6} On July 22, 2016, Staff filed a memorandum indicating that Staff, CSX, Defiance County (County), and Delaware Township (Township) entered into an agreement (Agreement) for the closure of public grade crossings in exchange for roadway modifications that move the roadways off of the railroad tracks. The following is a summary of the conditions agreed to by the parties and is not intended to replace or supersede the Agreement:

The County and Township agree to the closure of three public grade crossings including Ashwood Road-AAR No. 142374X, Tittle Road-AAR No. 142377T, and Jacobs Trail Road-AAR No. 142379G, and two private grade crossings identified as AAR No. 142376L located at Mile Post 92.61, and AAR No. 142378A located at Mile Post 93.15.

Two roadways will be constructed. One roadway, 1.85 miles in length, will be constructed from Jacobs Trail Road heading southeast, parallel to and north of, the rail line. This roadway will terminate after intersecting with County Road 424. The second roadway will be a .25 mile section which will start from County Road 424, just west of the rail line and head southeast, just south of and parallel to, the rail line. It will terminate after intersecting with Ashwood Road.

Modifications to the roadways shall be undertaken by the County and the County will be reimbursed by the Commission at 47.6 percent of the project costs using state funds up to a dollar maximum of \$352,000 and by CSX at 52.4 percent of the project costs up to a dollar maximum of \$388,225, for a total project cost of \$740,225.

Party to Agreement	Share of Costs
CSX	52.4 per cent of project cost, up to a maximum of \$388,225 of roadway modifications, 100 percent of pavement and warning device removal.
Commission	47.6 percent of roadway modifications, up to a maximum of \$352,030.
County and Township	100 percent of advanced warning signs and pavement markings, removal from public crossings.

{¶ 7} The crossing closures shall be undertaken by the Township and CSX. The Township shall install guardrails on each side of the tracks at the public grade crossings, with the work to be completed within 90 days of the completion of the roadway modifications.

{¶ 8} The application of barricades on public right-of-way at the CSX right-of-way and removal of roadway surface approaching the public crossings may be accomplished by the County and Township. The cost of this work shall be on a reimbursement basis from the Commission to the County and Township only for public grade crossings and is limited to \$4,000 per crossing, with a total reimbursement of \$12,000 that applies.

{¶ 9} The Township shall remove the advance warning signs and pavement markings from the public crossings to be closed. The actual costs for the removal of advance warning signs and pavement markings for the public grade crossings to be closed will be borne 100 percent by the Township.

{¶ 10} CSX shall remove all pavement from the crossing areas within the CSX right-of-way and remove all existing warning devices from the crossings to be closed.

CSX shall be responsible for 100 percent of the actual costs for the removal of warning devices at the grade crossings to be closed.

{¶ 11} On November 4, 2016, Staff filed a supplement to the Agreement and Agreement No. 17427 between CSX and the Commission, dated May 3, 2013 (Master Agreement), which sets forth the terms and conditions for work by CSX on grade crossing improvement projects. These include: cost allocation and billing, record retention and audits, notifications, termination, representations and warranties, Ohio Ethics law requirements, and compliance with federal, State and local laws and regulations.

{¶ 12} In its supplement, Staff explained that all of the crossings have high accident risk rankings and have seen either fatal or nonfatal accidents in the past 12 years. Staff indicated that the CSX track is a double main, class 5 track, rated for 60 mph train speeds. Staff also noted that approximately 50 trains per day travel over the crossings. Staff also explained that the costs to be incurred by the Commission will be derived from the Grade Crossing Protection Fund. Staff finds that the project will significantly improve rail safety in this general area and recommends the Commission approve the Agreement.

{¶ 13} Upon review of the Agreement, the Commission finds that the terms and conditions therein ensure the timely protection of the public at the crossings and provide a reasonable basis for apportioning the costs thereof. In addition, the crossings to be closed have elevated surfaces, which increases the danger to vehicle travel over the crossings. The closure of crossings will increase the safety of the traveling public and the construction of the roadway will provide additional access to motor vehicles that previously relied upon the crossings that will be closed and without great inconvenience. Therefore, the Agreement should be approved and, accordingly, the cost of the project should be allocated as set forth therein. CSX shall also comply with the provisions of the Master Agreement.

{¶ 14} The Commission notes that all private crossings, including the two identified in the Agreement, are governed by R.C. 4955.27, and do not fall under the jurisdiction of the Commission. R.C. 4955.27 provides that:

“When a person owns fifteen or more acres of land in one body through which a railroad passes, which land is so situated that he cannot use a crossing in a public street, lane, road or other highway in going from his land on one side of the railroad to that on the other side without great inconvenience * * * shall***construct a***private crossing across such railroad * * * to enable such landowner to pass.”

As such, we have no jurisdiction over the private crossings identified in the Agreement. Accordingly we are not, through our approval of the Agreement, approving the closure of any private crossing or approving any action by any government entity related to the closure of any private crossing. Further, R.C. 4907.472 provides that Grade Crossing Protection Funds shall be used to pay the public share of the cost of reducing hazards at public highway-railway grade crossings. Thus, we are also not authorizing the use of Grade Crossing Protection Funds to close any private grade crossing, or to remove any warning devices, signage, or any road surface leading to or existing between the rails at any private crossing.

{¶ 15} The parties to the Agreement should file a notice in the docket when all crossing closures and road work are completed. The County and Township should notify Staff 30 days before the projected date of completion. At the time Staff makes its final inspection of the crossings and roadway and finds that the crossings have been closed and the roadway has been completed, Staff should file a memorandum in this docket indicating that the crossings have been closed and the roadway has been completed.

III. ORDER

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That the Agreement be approved in accordance with this Finding and Order. It is, further,

{¶ 18} ORDERED, That CSX will undertake the work in the Agreement under the terms of the Agreement and Master Agreement. It is, further,

{¶ 19} ORDERED, That CSX notify the Commission 30 days before the projected date of completion. It is, further,

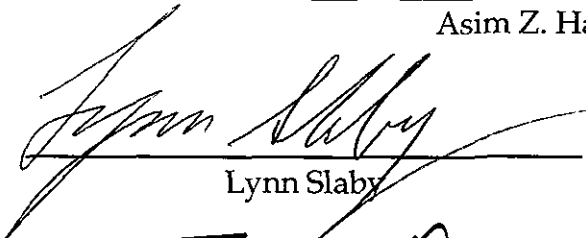
{¶ 20} ORDERED, That, at the time Staff makes its final inspection and finds that the grade crossings are closed and the roadways have been completed, Staff file a memorandum in this docket indicating that the grade crossings have been closed and the roadways have been completed. It is, further,

{¶ 21} ORDERED, That a copy of this Finding and Order be served upon CSX, Delaware Township, Defiance County, and any other interested person of record.

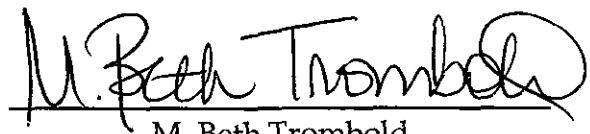
THE PUBLIC UTILITIES COMMISSION OF OHIO




Asim Z. Haque, Chairman



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SEF/dah

Entered in the Journal

NOV 09 2018



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Secretary