

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE AUTHORIZATION  
OF WHEELING & LAKE ERIE RAILWAY  
TO INSTALL NEW ACTIVE WARNING  
DEVICES IN THE CITY OF AKRON,  
SUMMIT COUNTY.

CASE NO. 16-2258-RR-FED

### FINDING AND ORDER

Entered in the Journal on January 18, 2017

#### I. SUMMARY

{¶ 1} The Commission directs the Wheeling & Lake Erie Railway to install mast-mounted and cantilevered lights and gates at the Summit Street grade crossing in the city of Akron, Summit County, by October 18, 2017, 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. 4907.471 provides that the Commission shall survey all grade crossings and establish a priority list to determine which grade crossings are in need of additional protective devices.

{¶ 4} R.C. 4907.476 provides that where the Ohio Department of Transportation (ODOT) enters into contracts and agreements for grade crossing protective device projects, the Commission shall work with and through the department. Federal funding for such projects is provided through the Ohio Rail Development Commission (ORDC),

which is an independent agency of the state within ODOT, established in accordance with R.C. 4981.02.

{¶ 5} Wheeling & Lake Erie Railway (WLE) is a railroad as defined in R.C. 4907.02 and subject to the jurisdiction of the Commission under R.C. 4905.04.

**B. Procedural Background and Other Details**

{¶ 6} On November 28, 2016, Staff filed a memorandum stating that the ORDC has authorized funding for WLE install to mast-mounted and cantilevered lights and roadway gates at the Summit Street grade crossing (DOT#002141R), located in the city of Akron, Summit County. The approved actual cost, to be paid fully by federal funds, is as follows:

City/County/Road	Federal Funds
Akron, Summit County, Summit Street (DOT#002141R)	\$354,320.06

Staff notes that the crossing was surveyed on May 5, 2016, and was found to warrant the upgrade. Staff requests that the Commission issue an order directing completion within nine months.

{¶ 7} Upon review, WLE is hereby authorized to acquire project materials and to commence construction as detailed in the letter of construction authorization. WLE shall notify Staff at least five working days before the date work is scheduled to begin at the project so that arrangements can be made for any inspection. In addition, WLE shall timely notify Staff of any changes in the scope of work, cost overruns, materials, etc., which are not in the approved plans in order to estimate and secure approval before the work is performed.

{¶ 8} Within 30 days of the issuance of this Finding and Order, WLE shall file notice that it has initiated discussions with Ohio Edison Company (OEC) or any other

applicable utility, 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 WLE has taken with OEC, or any other electric utility, and the local highway authority to have electric service available during the construction and cut-in phases of the project. WLE shall serve a copy of the notice upon OEC or any other applicable utility. To ensure that the deadline is met, OEC or any other applicable utility shall timely inform the Commission in writing of any issues regarding the availability of electric service.

{¶ 9} The Commission will issue no further construction authorization. Further, the grade crossing improvement project should be completed by October 18, 2017.

{¶ 10} It is expected that all work necessary for Federal Highway Administration acceptance of the warning devices will be completed by the in-service due date and that WLE will be responsible for this work. This work includes, but is not limited to, any ancillary work to make the warning devices function as designed and visible to the roadway user, and Manual of Uniform Traffic Control Devices compliance, including minor roadway work if necessary.

{¶ 11} In order to expedite the activation of the warning devices, the Commission no longer requires a delay in activation pending final inspection by Staff. At the time Staff or ORDC makes its final inspection of the devices and finds that the identified installation is complete and the warning devices have been put in service, Staff should file a memorandum in this docket indicating that the installation is complete and that the warning devices have been put in service.

{¶ 12} With the intention of promoting increased public safety during the pendency of the 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 crossing. The Commission may provide assistance in

funding improvements, such as rumble strips, illumination, signs or other safety enhancements for the project. Applications for such funding should be made to the Commission's Transportation Department, Rail Division, which shall review any proposal. 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 project location. However, the local government agency should not initiate any improvements until a contract has been executed.

### III. ORDER

{¶ 13} It is, therefore,

{¶ 14} ORDERED, That by February 17, 2017, WLE file notice that it has initiated with OEC, or any applicable utility, the process to ensure that electric service will be available at the involved grade crossing as set forth in paragraph 8. It is, further,

{¶ 15} ORDERED, That WLE follow the detailed instructions as outlined in the ORDC letter of construction authorization and proceed with and complete the project by October 18, 2017. It is, further,

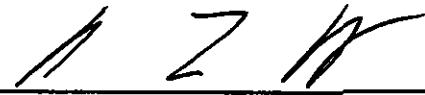
{¶ 16} ORDERED, That WLE notify Staff and ORDC at least five working days before the date work is scheduled to begin at the project site so that arrangements can be made for any inspection. It is, further,

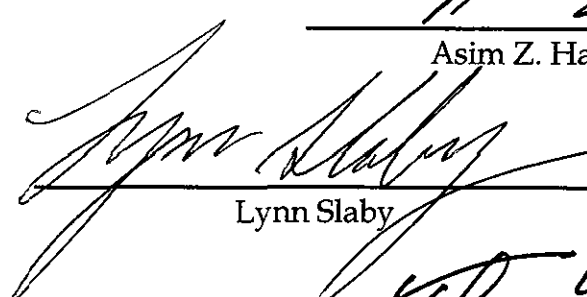
{¶ 17} ORDERED, That WLE timely notify Staff and ORDC of any changes in the scope of work, cost overruns, materials, etc., which are not in the approved plans and estimates, and shall secure approval before the work is performed. It is, further,

{¶ 18} ORDERED, That, at the time Staff or ORDC makes its final inspection and finds that the installation at the grade crossing is complete and the warning devices have been put in service, Staff will file a memorandum in this docket indicating that the installation is complete and the warning devices have been put in service. It is, further,

{¶ 19} ORDERED, That a copy of this Finding and Order be served upon ORDC, WLE, OEC, city of Akron Engineering Bureau, and any other interested person of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Asim Z. Haque, Chairman

  
Lynn Slaby

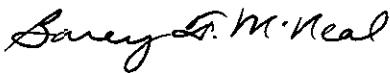
  
M. Beth Trombold

  
Thomas W. Johnson

JML/sc

Entered in the Journal

JAN 18 2017

  
Barcy F. McNeal

Barcy F. McNeal  
Secretary