

# Memo

To: Docketing Division

From: Jill Henry, Rail Specialist, Rail Division

Cc: PUCO Legal Department

Date: 2/24/17

Re: PUCO Case No. 17-0412-RR-RCP- In the Matter of a Request for Closure  
Due to the Discontinuance of Service on Michigan Southern Railroad  
Crossings in Henry County.

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On June 6, 2016, the Ohio Rail Development Commission (ORDC), Michigan Southern Railroad, d/b/a Napoleon, Defiance & Western Railroad (NDW), and the Ohio Department of Transportation entered into an agreement (attached) to discontinue service on a segment of track and to close seven crossings to train traffic in Henry County, Ohio.

Staff requests a Finding & Order with completion of the project in nine months.

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

Ohio Rail Development Commission  
Matt Deitrich  
Executive Director  
1980 West Broad Street  
Mail Stop #3140  
Columbus, Ohio 43223

Ohio Department of Transportation  
Aaron Behrman  
Transportation Engineer  
317 East Poe Road  
Bowling Green, Ohio 43402-1330

Napoleon Defiance & Western Railway  
J. Michael Carr  
President  
1318 S. Johanson Road  
Peoria, IL 61607

Henry County Engineer  
Patrick M. McColley  
Chief Deputy County Engineer  
1823 Oakwood Avenue  
Napoleon, Ohio 43545

Village of Liberty Center  
Max Fetterman  
Mayor  
11 East Street  
P.O. Box 92  
Liberty Center, Ohio 43532

IN THE MATTER OF THE REMOVAL OF RAIL  
THROUGH US24 AND OTHER CROSSINGS  
IN AND NEAR LIBERTY CENTER, OHIO

AGREEMENT NO. 19707

ON THE NAPOLEON DEFIANCE AND WESTERN  
RAILWAY

### CROSSING AGREEMENT

THIS CROSSING AGREEMENT is entered into on this 16<sup>th</sup> day  
of JUNE, 2016 by and among the Ohio Rail Development Commission  
("ORDC"), the Ohio Department of Transportation ("ODOT"), and the Napoleon Defiance and  
Western Railway ("NDW").

#### WITNESSETH:

WHEREAS, the Ohio Rail Development Commission ("ORDC") is charged with the  
statutory authority under Ohio Revised Code ("ORC") §4981.03 to develop, promote, and  
support safe, adequate, and efficient rail service throughout the State of Ohio; and

WHEREAS, the Fixing America's Surface Transportation Act thereto provides funding  
for the cost to eliminate hazards at public grade crossings; and

WHEREAS, the parties hereto propose to facilitate the modifications identified in this  
Crossing Agreement in accordance with the Title 23 Code of Federal Regulations ("CFR") and  
applicable provisions of Title 23 of the United States Code pursuant to the terms hereof; and

WHEREAS, this agreement and any information or documentation relating thereto is for  
the purpose of identifying, evaluating, and/or planning the safety enhancement of railway-  
highway crossings which may be implemented utilizing federal-aid highway funds; and

WHEREAS, the NDW agrees to cooperate with the ORDC and ODOT in the  
implementation of projects in furtherance of the public safety; and

WHEREAS the ORDC, ODOT and NDW will execute this Crossing Agreement to  
specify details for the modifications at the designated grade crossings; and

WHEREAS, the parties, intending to be legally bound, further agree that the public  
grade crossing identified in Section II of this Crossing Agreement should be removed via  
removal of the rail from the crossing as a part of the safety project to be implemented by this  
Crossing Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants  
contained herein, the parties agree as follows:

#### I. GRADE CROSSING REMOVALS

The NDW agrees to remove all rail and crossing surfaces and materials from the following at-grade crossings:

Highway Name	DOT Number
US24/US6	477636E
TR11	477635X
TR10	477633J
CRS	477632C
CR9	477630N
CR8	477628M
W. Maple Street	477627F

In addition, if funds allow, NDW agrees to remove all rail and crossing surfaces and materials from the following, previously-closed at-grade crossings:

Highway Name	DOT Number
High Street	477625S
Cherry Street	477624K
Pleasantview Drive	477623D

The NDW shall restore the crossings above, with the exception of US24/US6, to the pavement standard attached in Exhibit A. Construction authorization will be issued upon execution of this Crossing Agreement and the securing of federal funds by the ORDC. Any work done prior to advanced approval of the ORDC will not be reimbursable as a part of this Crossing Agreement.

NDW shall remove all track, ties, crossing surfaces, active and/or passive warning devices, ballast and sub-ballast as necessary for restoration of the road surface.

ODOT shall be responsible for the removal of the US24/US6 crossing surface material, track and ties, and restoration of the roadway surface over the US24/US6 crossing. NDW shall remain responsible for the removal of the warning devices currently present at US24/US6. This work will be authorized separately by ORDC.

## **II. CONDITIONS PRECEDENT**

The obligations of the parties to this Agreement are contingent upon the satisfaction of the following conditions:

(A) Approval by the Surface Transportation Board ("STB") of the discontinuance of common carrier service by NDW over the track segment between Mile Post \_\_\_\_ and Mile Post \_\_\_\_\_, without the imposition of any conditions that are reasonably unacceptable to NDW. NDW shall be responsible for filing of such petition required to obtain such discontinuance, at its expense, and shall use its best efforts to obtain such approval in a timely manner. NDW shall promptly provide ORDC and ODOT with copies of all documents it files in such proceeding. ORDC and ODOT shall file letters of support of such petition, and shall otherwise cooperate with NDW to obtain such approval.

(B) Appropriation/approval of any funds or other authority needed to fully implement this Agreement. ORDC and/or ODOT shall diligently pursue such funding/implementation authority, and shall promptly notify NDW of its progress/status/completion of such.

Unless the parties agree otherwise in writing, the preconditions contained in this Section must be satisfied on or before December 31, 2016, or this Agreement shall be void.

### **III. CONSIDERATION**

In consideration of the commitment by the NDW to close the grade crossings to all railroad traffic of any kind by removal of the rail as designated in Section I, ORDC and ODOT will provide the following compensation/incentives to the NDW:

- A. In Defiance Yard:
  - 1. 8,000 track feet of rehabilitation work on tracks located in the yard;
  - 2. 2,705 additional track feet of new rail installed; and
  - 3. 9 new or upgraded switches installed throughout the yard.
- B. West of Jewell, Ohio
  - 1. Install two new rail switches; and
  - 2. Install approximately 600 new track feet.
- C. US24/US6 crossing
  - 1. ODOT will provide all pavement and rail removal services at ODOT's own expense.

NDW will construct items A and B above according to American Railway Engineering and Maintenance of Way Association standards, and be reimbursed by ORDC after completion of the work.

NDW will provide any necessary detours and maintenance of traffic for all work to be performed under this Crossing Agreement, with the exception of US24/US6 as described in Section C.

### **IV. COST ALLOCATION AND BILLING**

The actual costs for the removal of the rail from the crossings, including the pavement of new surfaces and the removal of existing warning devices, in Section I will be borne 100% by ORDC, with the exception of US24/US6 as described in Section III.C.

The actual costs for the construction of items III.A and III.B will be borne 100% by ORDC.

In total the actual costs to be borne by ORDC under this Crossing Agreement shall not be greater than \$2,509,000.

NDW shall be responsible for initially paying actual costs for the work described in Sections I and III (A & B only). NDW may bill ORDC no more frequently than monthly for its costs when costs incurred during the billing period exceed \$1,000.00. NDW shall submit two (2) 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 actual cost and showing details shall be submitted to ORDC within one hundred and eighty (180) days after completion of the modifications. ORDC shall pay all bills within sixty (60) days after receipt thereof, except that ORDC may hold a retainer on all bills not to exceed eight percent (8%) until final payment. Final payment for all amounts due NDW shall be made by ORDC within sixty (60) days after a final audit has been performed and approved by ORDC. The audit shall occur within 180 days of submission of NDW's final bill. NDW agrees to cooperate and assist, as requested, in any such audit.

#### **V. RECORDS AND ACCESS; AUDIT CIRCULAR COMPLIANCE**

NDW agrees that ORDC, or its duly authorized representatives, shall, during ORDC normal business hours, upon reasonable notice, in accordance with NDW safety rules and regulations, and accompanied by NDW personnel, be permitted to examine the records and data maintained by NDW related to this Crossing Agreement as may be necessary to monitor NDW's compliance with this Crossing Agreement.

NDW shall maintain all books, documents, papers, program agreements, accounting records, and other evidence pertaining to this Crossing Agreement, its revenues and expenditures, and shall provide such information upon request of ORDC or its designee and shall permit ORDC to examine and audit those books, records, and the accounting procedures and practices of the NDW relevant to this Crossing Agreement. All documents and information shall be made available for review and audit at a mutually-agreeable location within the state of Ohio. The records shall be retained for three years after receipt of final payment to the NDW from the ORDC.

NDW will comply with the requirements of the ODOT Railroad Audit Circulars, available at: <http://www.dot.state.oh.us/Divisions/Finance/Auditing/Pages/RailUtilities.aspx.aspx>

#### **VI. NOTIFICATION**

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All notices, consents, demands, requests and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered or sent by facsimile and confirmed by telephone or sent by electronic mail, 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.

If to NDW:            Napoleon Defiance and Western Railway  
1318 S. Johanson Road  
Peoria, Illinois 61607  
Attn: VP Marketing

If to ODOT:           Hussein Abounaaj, PE  
Roadway Services Manager  
Ohio Department of Transportation  
317 East Poe Road  
Bowling Green, Ohio 43402-1330

If to ORDC:           Matthew Dietrich  
Executive Director  
Ohio Rail Development Commission  
Mail Stop 3140  
1980 West Broad Street  
Columbus, Ohio 43223

NDW shall furnish notification to ORDC at least five (5) working days prior to the date work is scheduled to start for items in Sections I and III so arrangements can be made for inspection. NDW shall also notify ORDC of any stoppage and resumption of the work activity, and the reasons therefore, and the date the work on the items in Sections I and III was completed. Notification may be sent by email to [cstout@dot.state.oh.us](mailto:cstout@dot.state.oh.us) with confirmation of receipt or by telephone to the Manager, Safety Programs at 614-644-0313.

NDW shall furnish written notification to the Local Highway Authority for the respective crossings in Section I at least fourteen (14) working days prior to starting any work requiring the establishment of a detour for highway traffic.

## **VII. TERMINATION**

Said Crossing Agreement shall terminate at the end of the present US Transportation Bill. If construction under this Crossing Agreement is not completed by that date, it is the express intention of the parties to renew this Crossing Agreement on each successive biennium period until such time as all work contemplated under this Crossing Agreement has been satisfactorily completed. If it appears to ORDC that NDW has failed to perform satisfactorily any requirements of this Crossing Agreement or if NDW is in violation of any provision of this Crossing Agreement, or upon just cause, ORDC may terminate the Crossing Agreement after providing NDW with written notice, in accordance with the notice provisions of this Crossing Agreement, of its failure to perform satisfactorily any requirement of this Crossing Agreement (the "Notice"), which shall provide NDW with a thirty (30) day period to cure any and all defaults under this Crossing Agreement.

During the thirty (30) day cure period, NDW shall incur only those obligations or expenditures which are necessary to enable NDW to achieve compliance as set forth in the Notice. If it is determined that NDW cannot cure its default, NDW shall immediately cease work under this Crossing Agreement, take all necessary or appropriate steps to limit disbursements and minimize costs, and 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 ORDC shall deem pertinent.

If this Crossing Agreement is terminated for breach or failure to satisfactorily perform, the breaching party shall reimburse the non-breaching party any of its costs not reimbursed by the ORDC.

It is expressly understood by the parties that none of the rights, duties, and obligations described in this Crossing Agreement shall be binding on any party until all statutory provisions of the ORC, including but not limited to ORC § 126.07 and 126.08 have been complied with, and until such time that all necessary funds are made available and forthcoming from the appropriate state agency and such expenditure of funds is approved, if necessary, by the Controlling Board of the State of Ohio pursuant to ORC §127.16, or in the event that federal funds are used, until such time that the ORDC gives NDW written notice that such funds have been made available to the ORDC by the ORDC's funding source.

## **VIII. REPRESENTATIONS AND WARRANTIES**

- A. NDW: NDW for itself, represents and warrants the following:
1. NDW has the power and authority to enter into this Crossing Agreement;
  2. NDW has the authority to carry out its obligations under this Crossing Agreement; and



3. No personnel of NDW, any subcontractor of NDW, public official, employee or member of the governing body of the particular locality where this Crossing Agreement shall be completed, who exercises any functions or responsibilities in connection with the review or approval of the work completed under this Crossing Agreement, 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 Crossing Agreement. Any person who, prior to or after the execution of this Crossing Agreement, acquires any personal monetary interest, involuntarily or voluntarily, shall immediately disclose his interest to ORDC in writing. Thereafter, such person shall not participate in any action affecting the work under this Crossing Agreement unless the ORDC 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. ORDC/ODOT: ORDC and ODOT represent and warrant that they have the power and authority to enter into this Crossing Agreement and to carry out their obligations under this Crossing Agreement.

#### **IX. OHIO ETHICS LAW REQUIREMENTS**

NDW affirms that it is not in violation of ORC §102.04, as that section is applicable to this Crossing Agreement and NDW.

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

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 ORC §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.

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

In performing this Crossing Agreement, the NDW 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 (forty (40) years of age or older), genetic information, or sexual orientation. The NDW 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 (forty (40) years of age or older), genetic information, or sexual orientation. The NDW 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.

#### **XII. OHIO ELECTIONS LAW**

NDW represents that its participation in this Crossing Agreement does not violate ORC §3517.13.

### **XIII. DRUG FREE WORKPLACE**

In the event that work performed pursuant to the terms of this Crossing Agreement will be done while on State of Ohio property, NDW hereby certifies that its rules require all of its employees, while working on State of Ohio property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

### **XIV. HOLD HARMLESS PROVISION**

NDW covenants and agrees to indemnify and hold the ORDC and its 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, predicated on personal injury or death, or loss of or damage to property, and arising from any work performed pursuant to this Crossing Agreement and caused by NDW's negligent, intentional, willful or wanton actions or inactions, or such actions or omissions by any subcontractors that may be hired by NDW under this Crossing Agreement.

In case any action involving any work covered by this Crossing Agreement is brought by or against any party or parties, said party or parties shall promptly notify the other party or parties of such action.

### **XV. UNUSUAL CIRCUMSTANCES AFFECTING PERFORMANCE**

In the event that NDW cannot meet any or all of the obligations placed upon it by the terms of this Crossing Agreement, NDW shall immediately notify ORDC in writing, and ORDC may, at its sole discretion, make reasonable efforts to assist NDW in meeting its obligations under the Crossing Agreement.

If NDW is unable to complete the PROJECT within the time period set forth in the Order issued by the PUCO, NDW must request an extension of time to complete the PROJECT. All such requests must be submitted to the PUCO in accordance with PUCO guidelines.

### **XVI. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS**

NDW agrees to comply with all applicable federal, state, and local laws in the conduct of the work hereunder. To the extent applicable, NDW accepts full responsibility for payments of all income tax deductions, railroad retirement, railroad unemployment, and any and all other taxes or payroll deductions required for all employees engaged by NDW on the performance of the work authorized by this Crossing Agreement.

During the performance of this Crossing Agreement, the NDW, for itself, its assignees, and successors in interest, which includes consultants) agrees to comply, to the extent applicable, with the following non-discrimination statutes and authorities; including but not limited to:

**Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-Aid programs and projects)
- Federal-Aid Highway Act of 1973 (23 U.S.C. § 324 et seq.) (prohibits discrimination on the basis of sex)
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), as amended (prohibits discrimination on the basis of disability) and 49 CFR Part 27
- The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) (prohibits discrimination on the basis of age)
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of Federal-Aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not)
- Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§ 12131-12189), as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38 (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities)

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations)
- Executive Order 13166, Improving Access to Services for People with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100)

During the performance of this Crossing Agreement, the NDW for itself, its assignees, and successors in interest further agrees as follows:

1. **Compliance with Regulations:** The NDW (hereinafter includes consultants) will comply with the Acts and Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration ("FHWA"), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Loan Agreement.
2. **Non-discrimination:** The NDW, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, disability, low-income status, or limited English proficiency in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The NDW will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix E, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontractors, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the NDW for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, disability, low-income status, or limited English proficiency.

4. Information and Reports: The NDW will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Director or FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of the NDW is in the exclusive possession of another who fails or refuses to furnish this information, the NDW will so certify to the ORDC, ODOT or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the NDW's noncompliance with the Nondiscrimination provisions of this Crossing Agreement, ORDC or ODOT will impose such contract sanctions as they or FHWA may determine to be appropriate, including, but not limited to:

a. withholding payments to the NDW under the Loan Agreement until the NDW complies; and/or

b. cancelling, terminating, or suspending the Loan Agreement, in whole or in part.

6. Incorporation of Provisions: The NDW will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The NDW will take action with respect to any subcontract or procurement as ORDC, ODOT or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the NDW becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the NDW may request ORDC or ODOT to enter into any litigation to protect the interests of ORDC and ODOT. In addition, the NDW may request the United States to enter into the litigation to protect the interests of the United States.

## **XVII. DISPUTE RESOLUTION**

In the event the NDW desires clarification or explanation of, or disagrees with, any matter concerning the Crossing Agreement, or the interpretation or application of any and all federal or state statutes, rules, regulations, laws or ordinances, the matter must be submitted in writing to the ORDC. If the dispute cannot be resolved, and the NDW has failed to comply materially with the terms and conditions of this Crossing Agreement, then procedures for suspension and/or termination may be instituted as provided for under this Crossing Agreement, or this matter may be submitted to a court of competent jurisdiction for final determination.

## **XVIII. NO WAIVER**

No delay or omission to exercise any right or option accruing to either party upon any breach by the other shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed necessary by the aggrieved party. Further, if any term, provision, covenant or condition contained in this Crossing Agreement is breached by either party and thereafter such breach is waived in writing by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

#### **XIX. CONSTRUCTION**

This Crossing Agreement 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.

#### **XX. BUY AMERICA**

NDW shall furnish steel and iron products that are made in the United States according to the applicable provisions of Federal regulations stated in 23 CFR 635.410 and State of Ohio laws, and ORC §§ 153.011 and 5525.21, and ODOT Construction and Material Specifications, 109.09.

The NDW affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Crossing Agreement. Notwithstanding any other terms of this Crossing Agreement, the ORDC reserves the right to recover any funds paid for services the NDW performs outside the United States for which it did not receive a waiver from the Director of the Ohio Department of Administrative Services.

#### **XXI. FORUM AND VENUE**

All actions brought against the ORDC regarding this Crossing Agreement shall be forumed and venued in a court of competent subject matter jurisdiction in Franklin County, Ohio.

#### **XXII. SEVERABILITY**

Whenever possible, each provision of this Crossing Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Crossing Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Crossing Agreement.

#### **XXIII. ENTIRE AGREEMENT**

This Crossing Agreement and its exhibits and any documents referred to herein constitute the complete understanding of the parties and merge and supersede any and all other discussions, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof.

#### **XXIV. CAPTIONS**

The captions in this Crossing Agreement are for the convenience of reference only and in no way define, limit or describe the scope or intent of this Crossing Agreement or any part hereof and shall not be considered in any construction hereof.

#### **XXV. AMENDMENTS OR MODIFICATIONS**

Any party may at any time during the term of this Crossing Agreement request amendment or modification. Requests for amendment or modification of this Crossing Agreement shall be in writing to the other parties and shall specify the requested changes and the justification for such changes. All parties shall then review the request for modification. Should the parties all agree to modification of the Crossing Agreement, then an amendment shall be drawn, approved, and executed in the same manner as this Crossing Agreement.

It is anticipated by the parties that, at some point in the future, the rail corridor being discontinued may be needed for rail service, including "high-speed" passenger rail service, and that a bridge will be constructed over U.S. Highway 24, and operating authority restored to NDW (and, perhaps, other entities). The parties agree to cooperate in that endeavor, including preserving the roadbed and obtaining the necessary federal funds for said project, but the parties make no representations that such project will be accomplished within any particular time frame, or at all.

Any revisions to this Crossing Agreement shall be made in writing and agreed upon by all parties.

#### **XXVI. SUCCESSORS OR ASSIGNS**

This Crossing Agreement shall be binding upon the successors and assigns of the NDW. It is understood that this Crossing Agreement, and any subsequent amendments thereto, shall apply to crossings owned by the NDW that may, in the future, become subject to the PROJECT and therefore qualify for modifications as described above.

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

OHIO DEPARTMENT OF TRANSPORTATION

NAPOLEON DEFIANCE AND WESTERN  
RAILWAY

By Todd M. Audet

By J. Michael Carr

Print Name Todd M. Audet

Print Name J. Michael Carr

Title DISTRICT DEPUTY DIRECTOR

Title President

Date 6 June 16

Date June 6, 2016

OHIO RAIL DEVELOPMENT  
COMMISSION

Matthew R. Dietrich

Matthew R. Dietrich, Executive Director

Date 6-6-16



**This foregoing document was electronically filed with the Public Utilities**

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**in**

**Case No(s). 17-0412-RR-RCP**

Summary: Agreement In the Matter of Closing Crossings to Train Traffic Due to the Discontinuance of Service on Michigan Southern Railroad Crossings in Henry County. electronically filed by Mrs. Jill A Henry on behalf of PUCO/Rail Division