

**A report by the staff of the
Public Utilities Commission of Ohio**

In the Matter of a Request for Closure Due to the Discontinuance of Service on
Michigan Southern Railroad Crossings in Henry County.
Case Number 17-412-RR-RCP

March 1, 2017

INTRODUCTION

Rail Division

The Public Utilities Commission of Ohio (PUCO) works with local highway authorities and communities to provide safety for the citizens of Ohio at highway-railroad grade crossings.

The PUCO has the statutory authority to regulate and promote the welfare and safety of railroad employees and the traveling public pursuant to Ohio Revised Code (ORC) §4905.471.

The PUCO has the authority to close public at grade crossings pursuant to ORC §§4907.474 and 4907.475. These sections set forth a variety of factors to be considered by the Commission in determining whether there is a demonstrable need for any public grade crossing to exist and whether any such crossing could be closed to vehicular traffic and/or pedestrian traffic and the travel over the grade crossing diverted to other grade crossings.

The PUCO is responsible for evaluating public highway railroad grade crossings to determine the need for upgrading the warning devices and apportioning the cost thereof pursuant to ORC §4907.471.

The PUCO has the authority under ORC §4511.63(B) to declare a grade crossing exempt, whereby vehicles normally required to stop at a grade crossing, under that title and Code of Federal Regulations Title 49, §392.10, would be able to proceed through the crossing without stopping.

The PUCO enforces all aspects of the Federal Railroad Administration regulations through inspections and evaluations of Ohio's public highway railroad grade crossings.

DESCRIPTION OF RAILROAD

The Michigan Southern Railroad Company d/b/a Napoleon, Defiance & Western Railway (NDW) is a wholly owned subsidiary of Pioneer Railcorp. They operate 53 miles of track running from Woodburn, Indiana eastward to Liberty Center, Ohio. They interconnect with Norfolk Southern Railway in Woodburn, Indiana and CSX Transportation in Defiance, Ohio. In Ohio, they can serve the communities of Antwerp, Cecil, Defiance, Jewell, Okolona, Napoleon, and Liberty Center.

PROJECT DESCRIPTION

NDW has been working to discontinue service and close seven crossings on 5.43 miles of line located between Napoleon and Liberty Center, Ohio. The project will be to remove the tracks from the roadway surface and to remove all existing warning devices from all seven crossings. No roadway closures will take place the crossings will only be closed to train traffic.

Background Information

On August 12, 2016, NDW petitioned the Surface Transportation Board (STB) to grant an exemption under 49 USC 10502 from the provisions of 49 USC 10903 to discontinue rail service over this portion of their line. On November 16, 2016, the STB granted this exemption and it became effective on December 16, 2016. (See Attachment A for a copy of the STB Order)

The following open public crossings are located on this segment of line:

| USDOT# | Milepost | Street | Highway | City | County |
|---------|----------|-----------|---------|----------------|--------|
| 477627F | 29.24 | W MAPLE | | LIBERTY CENTER | HEN |
| 477628M | 29.63 | KLINE AVE | CR8 | LIBERTY CENTER | HEN |
| 477630N | 0 | CR 9 | CR9 | LIBERTY CENTER | HEN |
| 477632C | 31.59 | CR S | CRS | LIBERTY CENTER | HEN |
| 477633J | 31.86 | TR 10 | TR10 | LIBERTY CENTER | HEN |
| 477635X | 32.97 | TR 11 | TR11 | NAPOLEON | HEN |
| 477636E | 33.39 | US 6 | US24 | NAPOLEON | HEN |

The decision to discontinue service on this portion of the line comes from the Ohio Department of Transportation's (ODOT) desire to close the US 6/US 24 crossing after two accidents in 2015.

- In June 2015, a truck carrying hazardous materials crashed at the crossing, creating a hazmat spill. The truck driver was injured.
- In July 2015, traffic was stopped at the grade crossing due to a passing train. A semi-truck rear-ended another tractor trailer and the driver was killed.

On June 6, 2016, ODOT entered into an agreement with the Ohio Rail Development Commission (ORDC) and the NDW to discontinue service on this segment of line and close to train traffic the seven crossings listed above that were open public crossings on the rail segment. The railroad used this portion of the line to store rail cars. The agreement allows for additional rail to be built south of US 6/ US 24 crossing to handle this need for the railroad. Please note that on Page 2 of the agreement three crossings are identified that have already been closed. (See attachment B for a copy of the agreement)

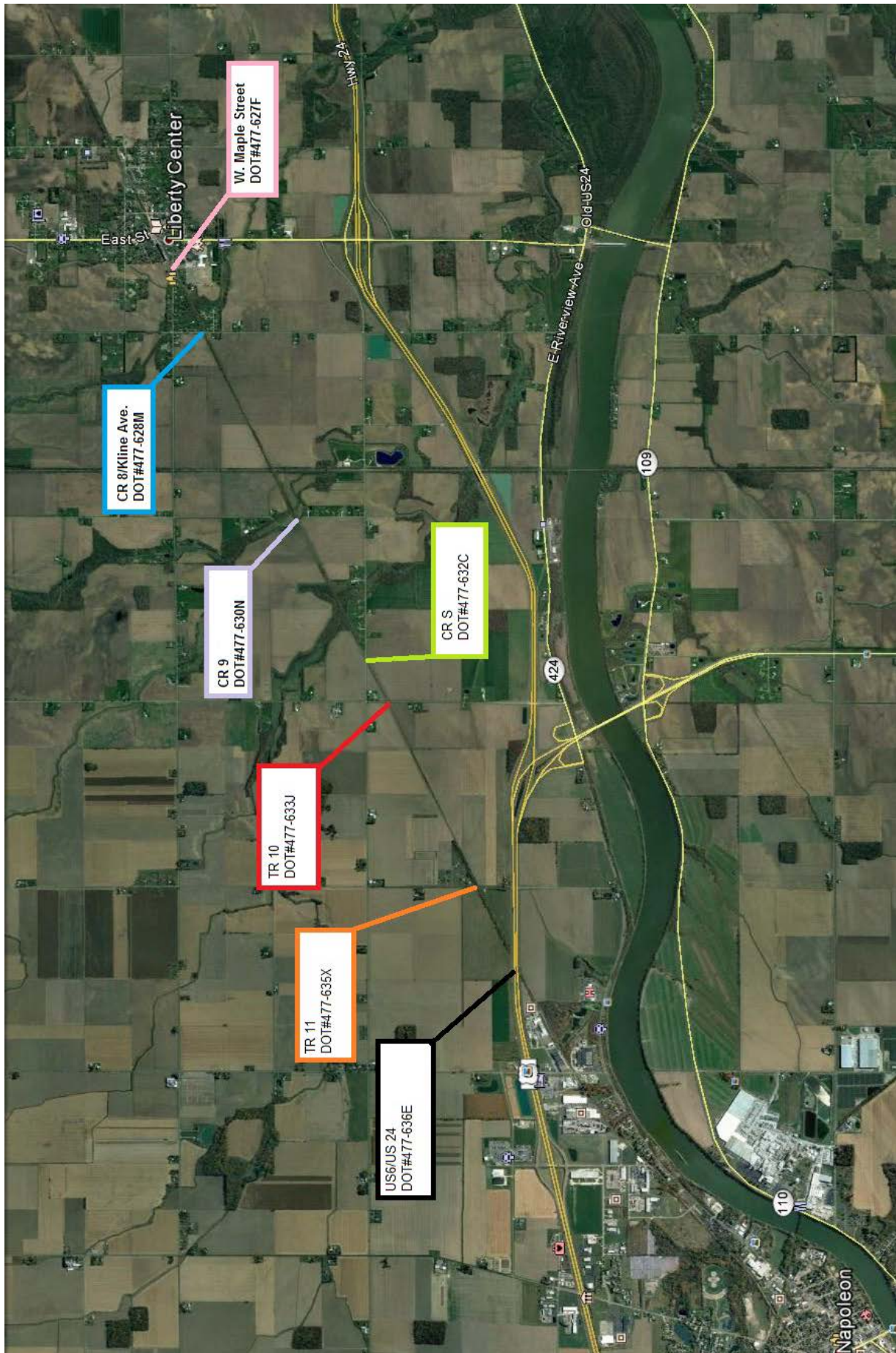
Now that the discontinuance of service has been approved by the STB and the Agreement between the parties has been put in place, they want to move forward with the project. (See attachment C for a copy of letter from ORDC asking to move forward with closure of the crossings)

The local highway authorities are supportive of this project. Attached are letters from the Henry County Engineer, the Village of Liberty Center, and an e-mail from the Henry County Engineer that acknowledges that they handle engineering matters for the townships in Henry County. (Please see attachments D, E, & F)

Additional Project Facts

- 1) These grade crossings will be closed to train traffic, the rails removed and the crossing surface roadway restored so that the vehicular traffic on all seven roadways is not affected.
- 2) Given the fact that the grade crossings will be eliminated, there will be no need for warning devices. No trains will be operating on the line.
- 3) All seven crossings will be closed in our state database and the Federal Railroad Administration database.
- 4) The US 6/US 24 crossing was made exempt in Case # 05-738-RR-RCP on August 10, 2005. This was due to the lack of train traffic and the concern about rear end collisions for traffic stopping at this crossing.

Crossings where Service has been Discontinued



Pictures of Crossings where Service has been Discontinued



South Side US6/US 24 Crossing DOT#477-636E



North Side US6/US 24 Crossing DOT#477-636E



TR 11 Crossing DOT#477-635X



TR 10 Crossing DOT#477-633J



CR S Crossing DOT#477-632C



CR 9 Crossing DOT#477-630N



CR 8 Klein Avenue Crossing DOT#477-628M



W. Maple Street Crossing DOT#477-627F

V STAFF RECOMENDATIONS

PUCO Rail Staff recommends the following actions be taken:

- 1) Approve the agreement to close the crossings to train traffic.
- 2) Since the US 6/US 24 crossing is exempt from having certain vehicles stop at the crossing, the railroad could remove the warning devices (flashing lights) at the US 6/US 24 crossing prior to the removal of the tracks. Exempt signage must remain in place until the tracks have been removed from the roadway surface. The track removal and restoration of the roadway surface will take place in the spring once weather permits.
- 3) Allow for the removal of the warning devices at the other six crossings only after the tracks have been removed from the roadway and the pavement has been restored.
- 4) Require staff to conduct a final inspection to verify removal of tracks and warning devices. Staff should then close the crossings in the PUCO crossing database.

VI OTHER INFORMATION

Ohio's Rail Grade Crossing Programs

Ohio is a national leader in terms of railroad operations. Ohio is home to nearly 40 railroads that operate thousands of trains in Ohio every day over approximately 5,300 miles of track and 5,800 public grade crossings. The Public Utilities Commission of Ohio (PUCO) is the state agency with regulatory authority over railroads operating in Ohio. The Commission works in partnership with the Federal Railroad Administration to ensure that rail operations and infrastructure are safe and in compliance with federal and state regulations.

In addition to central office planners and other support staff, the PUCO employs federally certified railroad inspectors throughout Ohio. These inspectors respond to inquiries and complaints and conduct specialized inspections of railroad tracks and equipment, rail operations, hazardous material transportation, and grade crossing signal circuitry. The inspectors also monitor railroad rights-of-way and grade crossings for: surface conditions, view obstructions, fencing and drainage concerns. Additionally, inspections are conducted on railroad equipment at rail yards and other facilities and they review safety concerns of both the PUCO and railroad employees.

Safety is our highest priority

Grade crossing safety is one of the PUCO's highest priorities, and we are proud of our accomplishments. Since 1990, motor vehicle/train crashes at grade crossings in Ohio have declined by 66 percent and the number of fatalities has dropped by 77 percent. This dramatic improvement has been achieved during a period of steady increase in the amount of train traffic and in the number of registered motor vehicles and licensed drivers in Ohio. Over the past 15 years, the PUCO has participated in the installation of lights and gates at more than 1,900 grade crossings across Ohio. We look forward to working with your community to help make grade crossings as safe as possible.

Questions or Concerns?

Call the Ohio Rail Hotline at (866) 814-RAIL or log on to www.OhioRail.ohio.gov for answers to all of your railroad crossing needs.

45387
EB

SERVICE DATE – NOVEMBER 16, 2016

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1245X

MICHIGAN SOUTHERN RAILROAD COMPANY, D/B/A NAPOLEON, DEFIANCE & WESTERN RAILWAY—DISCONTINUANCE OF SERVICE EXEMPTION—IN HENRY COUNTY, OHIO

Digest:¹ This decision permits Michigan Southern Railroad Company, d/b/a Napoleon, Defiance & Western Railway, to discontinue rail service over approximately 5.43 miles of rail line in Henry County, Ohio, subject to standard employee protective conditions.

Decided: November 15, 2016

By petition filed on August 11, 2016, Michigan Southern Railroad Company, d/b/a Napoleon, Defiance & Western Railway (NDW), a Class III rail carrier, seeks an exemption under 49 U.S.C. § 10502 from the provisions of 49 U.S.C. § 10903 to discontinue service over approximately 5.43 miles of rail line between milepost TN 28.0, near Liberty Center, Ohio, and milepost TN 33.43, near Napoleon, Ohio, in Henry County, Ohio (the Line).

On August 26, 2016, the Ohio Department of Transportation, District 2 (Ohio DOT) filed a statement in support of the petition. Notice of the exemption proceeding was served and published in the Federal Register on August 31, 2016 (81 Fed. Reg. 60,112). No further comments concerning the proposed discontinuance were filed. The Board will grant the exemption from 49 U.S.C. § 10903, subject to standard employee protective conditions.

BACKGROUND

According to NDW, the Line was originally part of the larger Wabash Railroad Company. A 51-mile segment of that railroad, referred to by NDW as the former Wabash Line, was eventually acquired by Norfolk and Western Railway Company and later became part of the Norfolk Southern Railway Company. NDW states that, over the past 23 years, ownership of the former Wabash Line has transferred four times, the condition of the line worsening each time.²

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² Ind. Hi-Rail Corp.—Lease & Operation Exemption—Norfolk & W. Ry. Between Liberty Center, Ohio & Woodburn, Ind., FD 31514 (STB served Oct. 13, 1989); Maumee & W., (Continued . . .)

In December of 2012, NDW acquired the former Wabash Line. See Mich. S. R.R.—Acquis. & Operation Exemption—RMW Ventures, L.L.C., FD 35696 (STB served Dec. 14, 2012). NDW states that approximately seven miles of the former Wabash Line has little to no traffic and does not routinely serve any active industries. According to NDW, the Line is part of that seven miles that has little to no traffic.

NDW states that the Line is stub-ended and has served only one shipper in recent years, Glenn Hunter & Associates, Inc. (GHA), a transload operator who ships brickbats. According to the petition, GHA shipped six carloads in 2015, and 13 carloads of brickbats this year. NDW submitted a letter from GHA with its petition, in which GHA states that it is relocating its facility to a better location on NDW's line and that it supports the discontinuance petition. (Pet., Ex. A.) NDW further states that the avoidable costs to provide this service were approximately \$16,910.33, not including maintenance costs, and to restore the Line to FRA Class I standards would cost approximately \$498,000. There is no overhead freight traffic on the Line.

NDW also states that the discontinuance is supported by the Ohio Rail Development Commission (ORDC) due to safety concerns at an existing crossing. NDW submitted a letter from ORDC with its petition, in which ORDC states that the Line crosses U.S. Highway 24, a divided four-lane, limited access highway, which ORDC believes should be closed as soon as possible. (Pet., Ex. A.)

Ohio DOT also supports the proposed discontinuance. In its submission, Ohio DOT states that it is very concerned about the safety of the at-grade crossing of U.S. Highway 24 on the Line. Ohio DOT states that it, ORDC, and NDW have reached an agreement on the proposed removal of the crossings on the segment and improvements to NDW's remaining track.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail carrier may not discontinue operations without the prior approval of the Board. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

(. . . Continued)

L.L.C.—Acquis. & Operation Exemption—Norfolk & W. Ry., FD 33478 (STB served Oct. 31, 1997); RMW Ventures, L.L.C.—Control Exemption—C&NC, L.L.C., FD 33565 (STB served Mar. 10, 1998); and Mich. S. R.R.—Acquis. & Operation Exemption—RMW Ventures, L.L.C., FD 35696 (STB served Dec. 14, 2012).

Detailed scrutiny of NDW's proposed discontinuance of freight operations on the Line under 49 U.S.C. § 10903 is not necessary to carry out the RTP in this case. The Line's only shipper has not opposed the proposed discontinuance and has indicated that it is relocating its facility. An exemption from the application process would minimize expenses, reduce regulatory barriers to exit, and result in the efficient and expeditious handling and resolution of this unopposed proceeding. 49 U.S.C. §§ 10101(2), (7), & (15). Further, allowing NDW to discontinue service over the Line would promote a safe and efficient rail transportation system by allowing NDW to avoid losses and facilitate its ability to earn adequate revenues, as well as eliminate an at-grade crossing, which has raised safety concerns for two state agencies. 49 U.S.C. § 10101(3). Other aspects of the RTP would not be adversely affected by the exemption.

The Board finds that regulation under 49 U.S.C. § 10903 is not necessary to protect shippers from the abuse of market power. As discussed earlier, no comments have been filed opposing the proposed discontinuance and the Line's only shipper, GHA, states that it plans to relocate its facility to another part of the former Wabash Line. Nevertheless, to ensure that the remaining shipper is informed of this proceeding and of our action, the Board will direct NDW to serve a copy of this decision on GHA so that it receives it within five days of the service date of this decision, and to certify to the Board contemporaneously that it has done so.³

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, the Board will impose on NDW the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

Because this is a discontinuance of service and not an abandonment, the Board need not consider offers of financial assistance (OFAs) under 49 U.S.C. § 10904 to acquire the Line for continued rail service, trail use requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the segments under 49 U.S.C. § 10905. However, the OFA provisions under 49 U.S.C. § 10904 for a subsidy to provide continued rail service do apply to discontinuances.

Because there would be environmental review during any subsequent proceeding for authority to abandon, discontinuance proceedings do not require an environmental review.

³ Because the Board finds that regulation of the proposed discontinuance is not necessary to protect shippers from the abuse of market power, there is no need to determine whether the proposed discontinuance is limited in scope.

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of operations by NDW over the above-described segments of rail line, subject to the employee protective conditions set forth in Oregon Short Line.

2. NDW is to serve a copy of this decision on GHA so that it receives it within five days after the service date of this decision, and to certify contemporaneously to the Board that it has done so.

3. An OFA under 49 C.F.R. § 1152.27(b)(2) to subsidize continued rail service must be received by NDW and the Board by November 28, 2016, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,700. See Regulations Governing Fees for Servs. Performed in Connection with Licensing & Related Servs.—2016 Update, EP 542 (Sub-No. 24) (STB served Aug. 2, 2016).⁴

4. OFAs for subsidy and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **"Office of Proceedings, AB-OFA."**

5. Petitions to stay must be filed by December 1, 2016. Petitions to reopen must be filed by December 12, 2016.

6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on December 16, 2016.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

⁴ Consistent with Board precedent, any person seeking to file an OFA must provide evidence that there is some shipper that would make use of common carrier service. See, e.g., CSX Transp., Inc.—Aban. Exemption—in Wash. Cty., Md., AB 55 (Sub-No. 727X) (STB served Oct. 24, 2013); Union Pac. R.R.—Aban. Exemption—in Pottawattamie Cty., Iowa, AB 33 (Sub-No. 300X) (STB served Jan. 20, 2012).

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 16th 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

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 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 foruned 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

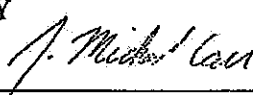
This Crossing Agreement shall be binding upon the successors and assigns of the NDW. It is understood that this Crossing Agreement, and any subsequent amendments thereto, shall apply to crossings owned by the NDW that may, in the future, become subject to the PROJECT and therefore qualify for modifications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

By 

Print Name Todd M. Audet

Print Name J. Michael Carr

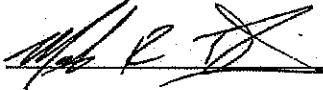
Title DISTRICT DEPUTY DIRECTOR

Title President

Date 6 June 16

Date June 6, 2016

OHIO RAIL DEVELOPMENT
COMMISSION



Matthew R. Dietrich, Executive Director

Date 6-6-16



OHIO RAIL DEVELOPMENT COMMISSION

Mail Stop #3140, 1980 West Broad Street, Columbus OH 43223

John R. Kasich, Governor • Mark Policinski, ORDC Chairman

ATTACHMENT C

February 6, 2017

Randall Schumacher
Rail Division Supervisor, Transportation Department
Public Utilities Commission of Ohio
180 E. Broad St.
Columbus, OH 43215

Dear Mr. Schumacher,

On August 12, 2016, Michigan Southern Railroad Company DBA Napoleon, Defiance, and Western Railway (NDW) petitioned the Surface Transportation Board (STB) to grant an exemption under 49 USC 10502 from the provisions of 49 USC 10903 to discontinue rail service over 5.43 miles of rail line from Napoleon, OH to Liberty Center, OH in Henry County (Docket No. AB 1245X). This rail line includes the following grade crossings (from west to east) which are currently classified as Open in the PUCO's Grade Crossing Database:

- 477636E – US6/US24
- 477635X - TR11
- 477633J – TR10
- 477632C – CR S
- 477630N – CR9
- 477628M – CR8/Kline Ave
- 477627F – W Maple St

On November 16, 2016, the STB granted an exemption to NDW to discontinue service over this rail line to be effective December 16, 2016. As service has been discontinued over this line, NDW will no longer move trains over the grade crossings referenced above. The crossings will be closed to train traffic but remain open to vehicular traffic. Thus, ORDC recommends removal of the warning devices at the crossings.

As PUCO is aware, the grade crossing at US6/US24 poses a serious safety hazard to the motoring public, particularly the possibility of rear-end collisions at the crossing. ORDC recommends and ODOT supports the removal of warning devices as soon as possible. There are been five accidents at or near the crossing with three of the accidents directly related to the presence of the crossing. Two of these accidents happened recently in 2015:

- In June 2015, a haz-mat semi-truck crashed at the crossing, causing a spill. The semi-truck driver was injured.
- In July 2015, traffic stopped at the grade crossing backed up and a semi-truck rear-ended another vehicle stopped on the highway. The semi-truck driver was killed.

The removal of warning devices and advance warning signage at the US6/US24 crossing can take place with two weeks of notice to mobilize ODOT and NDW crews upon approval from



www.rail.ohio.gov

phone: 614.644.0306

IMPROVING RAIL TODAY FOR TOMORROW'S ECONOMY

PUCO. The removal of the rail and crossing surface and installation of new roadway surface will be performed by ODOT crews as soon as asphalt plants open in the region in late March or early April. This operation is expected to take under a week to perform depending on weather.

Regarding the six crossings east of US6/US24, the warning devices will not be removed until the rail can be removed. NDW is currently working to develop a bid package for a qualified contractor to remove the rail and crossing surfaces and install new roadway surfaces at these six crossings. We anticipate that this will occur during the 2017 construction season.

The Henry County Engineer and village of Liberty Center have indicated their support to PUCO of the closure to train traffic of these other county- and village-maintained crossings.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Timothy Brown', with a long horizontal flourish extending to the right.

Timothy Brown
Planner/Special Projects

Attachment: STB Decision, Docket No. AB 1245X



Henry County Engineer

Timothy J. Schumm, P.E., P.S.

1823 Oakwood Avenue, Napoleon, Ohio 43545

E-mail: hce@henrycountyohio.com

Website: www.henrycountyengineer.com

ATTACHMENT D

July 7, 2016

Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

Dear Commissioners,

Please accept this letter as our support of the ND&W Multiple Crossing Closure, PID 102772. The Henry County Engineer is supportive of this project as it will improve roadway safety in Henry County, particularly at the US 24/6 grade crossing.

If you have any further questions or concerns please feel free to call or email me at pmccolley@henrycountyengineer.com.

On Behalf of the Office of County Engineer,

A handwritten signature in black ink, appearing to read "Patrick M. McColley", is written over a faint, larger signature.

Patrick M. McColley, P.E., S.I.
Chief Deputy County Engineer

RECEIVED
PUBLIC UTILITIES
COMMISSION OF OHIO
2016 JUL 12 AM 10:05
RAIL DIVISION

Engineer: (419)592-2976

Mapping: (419)592-6375
Fax: (419)592-5508

Surveyor: (419)599-2327

ATTACHMENT E

Village of Liberty Center
11- East St~ P O Box 92
Liberty Center, OH 43532
(419)533-3321

RECEIVED
ORDC

2016 JUL 11 PM 12:39

July 7, 2016

Public Utilities Commission of Ohio
180 E. Broad St.
Columbus, OH 43204

Dear Commissioners,

Please accept this letter as our support of the ND&W Multiple Crossing Closure, PID 102772. The Village of Liberty Center is supportive of this project as it will improve roadway safety in our village.

If you have any questions please contact me.

Sincerely,

Max Fetterman
Mayor of L.C.

RECEIVED
PUBLIC UTILITIES
COMMISSION OF OHIO
2016 JUL 12 AM 10:05
RAIL DIVISION

Henry, Jill

From: Brown, Timothy
Sent: Friday, December 02, 2016 2:31 PM
To: Henry, Jill
Cc: Dietrich, Matthew
Subject: NDW US24/Henry County crossing closures

Hello Jill,

Regarding the proposed crossing closures in Henry County, I spoke with Asst. County Engineer Patrick McColley about the closures back in May of this year. He indicated that the Henry County Engineer's office typically handled these types of matters (the crossing closure and roadway restoration, and specifications thereof) for townships in Henry County as the townships in question do not have engineering staff of their own.

Please let me know if you need further information.

Best,
Tim

Tim Brown
Planner/Special Projects
Ohio Rail Development Commission
Mail Stop #3140
1980 W. Broad St.
Columbus, OH 43223
timothy.brown@dot.ohio.gov / 614-728-5426

The Public Utilities Commission of Ohio
Asim Z. Haque, Chairman

180 E. Broad Street, Columbus, Ohio 43215-3793
(800) 686-PUCO (7826)

An Equal Opportunity Employer and Service Provider

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

3/1/2017 3:59:20 PM

in

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

Summary: Staff Report Filed In the Matter of a Request for Closure 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