

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REQUEST FOR
CLOSURE OF SERVICE OF MICHIGAN
SOUTHERN RAILROAD CROSSINGS IN
HENRY COUNTY, OHIO.

CASE NO. 17-412-RR-RCP

FINDING AND ORDER

Entered in the Journal on March 22, 2017

I. SUMMARY

{¶ 1} In this Finding and Order, the Commission approves an agreement for the removal of warning devices from seven grade crossings in Henry County, Ohio.

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. 4907.52 provides that when a railroad and street or highway cross at grade, it is the opinion of the Commission that public safety requires protection, the Commission may make an order requiring the railroad to install such devices as in the opinion of the Commission will properly protect such crossing.

{¶ 4} The Ohio Rail Development Commission (ORDC) is an independent agency of the state within the Ohio Department of Transportation (ODOT), established in accordance with R.C. 4981.02.

{¶ 5} Michigan Southern Railroad dba Napoleon, Defiance & Western Railway (NDW) 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 February 24, 2017, NDW filed an agreement it had entered into with ODOT and ORDC to discontinue service and close to rail traffic seven crossings on 5.43 miles of track located between Napoleon and Liberty Center, Ohio. The seven crossings include: W. Maple (477-627F), Kline Ave. (477-628M), County Road 3 (477-630N), County Road S (477-632C), Township Road 10 (477-633J), Township Road 11 (477-635X), and /US US 6/US 24 (477-636E).¹ Under the agreement, all rail, crossing surfaces, materials, and active and passive warning devices will be removed from the seven grade crossings. The agreement also provides that NDW shall restore the roadway surface at all crossings except US 6/US 24, which ODOT shall restore. According to NDW, the crossings will only be closed to train traffic and no closures to roadways will take place. NDW also notes that on August 12, 2016, it petitioned the Surface Transportation Board (STB) to grant an exemption to discontinue service along this track, and on November 16, 2016, the STB granted the exemption petition, which became effective on December 16, 2016.

{¶ 7} On March 1, 2017, Staff filed a report of investigation on NDW's agreement and request. Staff notes that the decision to discontinue service on this portion of the line stems, in part, from ODOT's interest in closing the US 6/US 24 crossing after two vehicular accidents in 2015, one involving a commercial motor vehicle transporting hazardous materials and the other involving a semi tractor-trailer that rear-ended another tractor-trailer into a train. Staff finds that, under the agreement, the seven grade crossings will be closed to train traffic, the rails removed and the crossing surface restored so that the vehicular traffic on all seven roadways is not affected. Staff indicates that, given the fact that the grade crossings will be eliminated and no trains will be operating on the rail line, there will be no need for warning devices. In addition, Staff indicates that all seven crossings will be closed in the state and Federal Railroad Administration

¹ The agreement includes three other crossings that were to be closed including; High Street (477625S), Cherry Street (477624K), and Pleasantview Drive (477623D); however, these crossings have subsequently been closed to rail traffic, signage removed, and roadway surfaces restored.

databases. According to Staff, the US 6/US 24 crossing was made exempt in Case # 05-738-RR-RCP on August 10, 2005, due to the lack of train traffic and the concern about rear-end collisions for traffic stopping at this crossing.

{¶ 8} Attached to its staff report, are letters from the Henry County Engineer and Liberty Center, indicating their approval of the agreement for closure of these seven crossings to train traffic.² Also attached to its report, is the decision of the STB. In it, the STB notes that there was only one shipper served on the railroad line and that shipper has moved its facility and supports NDW's petition to discontinue service.

{¶ 9} Staff recommends the Commission approve the agreement to close the crossings to train traffic. Staff also recommends that, since the US 6/US 24 crossing is exempt from having certain vehicles stop at the crossing, the railroad could remove the warning devices, including flashing lights, at the crossing prior to the removal of the tracks; however, the 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. Staff further recommends that the Commission 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. Finally, Staff recommends that the Commission require staff to conduct a final inspection to verify removal of tracks and warning devices and thereafter close the crossings in the Commission crossing database.

III. COMMISSION CONCLUSION

{¶ 10} As the STB has approved NDW's request to discontinue service on this railroad line, upon the removal of track, these seven locations will no longer constitute

² The Henry County Engineer also indicated that it typically handles matters involving crossing closures and roadway restorations for townships, like Liberty, because the townships have no engineering staffs.

railroad grade crossings. Therefore, grade crossing warning devices will no longer be required at these locations in order to protect the welfare and safety of railroad employees and the traveling public in accordance with R.C. 4905.04 and 4907.52, who will no longer be at risk.

{¶ 11} Accordingly, the Agreement should be approved. Once NDW has removed all rail at the crossings, NDW may remove all active and passive warning devices and surfaces at these locations and complete all required roadway restoration. At the US 6/US 24 crossing, NDW should remove the warning devices at the crossing prior to the removal of the tracks; however, exempt signage must remain in place until the tracks have been removed from the roadway surface, and ODOT completes restoration of the road surface. NDW should advise Staff when it has completed the removal of all track, surface material, and warning devices and completed all required roadway surface restoration. Thereafter, once Staff makes a final inspection of the locations and finds that the rail and warning devices have been removed and restoration of the roadway surface work is completed, Staff should file a memorandum in this docket indicating that all rail and warning devices have been removed and roadway surface restoration work has been completed and Staff should designate these crossings as closed in the Commission's grade crossing inventory.

IV. ORDER

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That the Agreement is approved. It is, further,

{¶ 14} ORDERED, That, upon the completion of the removal of track, NDW remove all warning signs and surfaces and complete all road surface work in accordance with all applicable railroad standards at the grade crossings located at the Township Road 11 (477-635X), Township Road 10 (477-633J), County Road S (477-632C), County

Road 9 (477-630N), County Road 8 (477-628M), and West Maple Street (477-627F). It is, further,

{¶ 15} ORDERED, That at the US 6/US 24 (477-636E) crossing, NDW remove the warning devices prior to the removal of the tracks, leaving in place all exempt signage until the tracks have been removed from the roadway surface. It is, further,

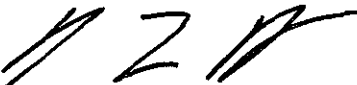
{¶ 16} ORDERED, That NDW complete all roadway restoration of all road surfaces at the grade crossings with the exception of US 6/US 24, the restoration for which ODOT shall complete. It is, further,

{¶ 17} ORDERED, That NDW advise Staff when it has removed the rails, surface, and warning devices at the identified locations and completed all required road surface work in accordance with this order. It if, further,

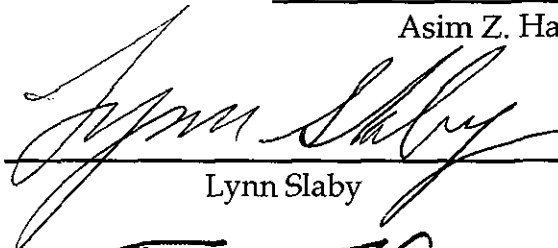
{¶ 18} ORDERED, That, once Staff makes a final inspection of the locations and finds that the rail, crossing surface, materials, and warning devices have been removed and road surface work has been completed, Staff file a memorandum in this docket indicating that all rail, crossing surfaces and materials, and warning devices have been removed and road surface work has been completed. It is, further,

{¶ 19} ORDERED, That a copy of this Finding and Order be served upon NDW, ORDC, ODOT, the village of Liberty Center, Henry County, and any other interested person of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Asim Z. Haque, Chairman



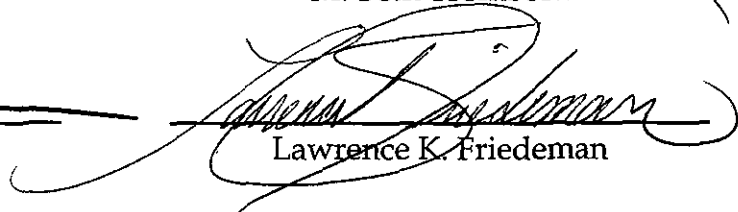
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MAR 22 2017



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