

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE AUTHORIZATION  
OF KANAWHA RIVER RAILROAD FOR  
INSTALLATION OF ACTIVE WARNING  
DEVICES AT A GRADE CROSSING IN  
JACKSON TOWNSHIP, PERRY COUNTY.

CASE NO. 17-2305-RR-FED

### FINDING AND ORDER

Entered in the Journal on December 20, 2017

#### I. SUMMARY

{¶ 1} The Commission directs the Kanawha River Railroad to install active warning devices at the Township Road 185 (DOT#513448N) grade crossing in Jackson Township, Perry County, by December 20, 2018, subject to the Commission's ongoing jurisdiction and oversight.

#### II. DISCUSSION

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

{¶ 3} R.C. 4907.471 provides that the Commission shall survey all grade crossings and establish a priority list to determine which grade crossings are in need of additional protective devices.

{¶ 4} R.C. 4907.476 provides that where the Ohio Department of Transportation (ODOT) enters into contracts and agreements for grade crossing protective device projects, the Commission shall work with and through the department. Federal funding for such projects is provided through the Ohio Rail Development Commission (ORDC), which is an independent agency of the state within ODOT, established in accordance with R.C. 4981.02.

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

{¶ 6} On September 30, 2015, in Case No. 15-1494-RR-FED, the Commission issued a Finding and Order approving Norfolk Southern Railway (NS) to install mast-mounted flashing lights and roadway gates at the Township Road 185 grade crossing (DOT#513448N), in Jackson Township, Perry County. The Commission ordered completion of the project by June 30, 2016; a subsequent Commission Entry extended the completion date to September 30, 2016. Thereafter, on September 16, 2016, NS filed a request to extend the project deadline. NS explained that on March 21, 2016, much of the track was taken out of service, with the intent to request cancellation of the project. However, added NS, a portion of the track that included the Township Road 185 grade crossing (DOT#513448N) was subsequently leased to KNWA.

{¶ 7} On November 19, 2017, Staff filed a memorandum stating that ORDC authorized funding for KNWA to install active warning devices at the Township Road 185 grade crossing (DOT#513448N) in Jackson Township, Perry County. Plans and estimates have been approved, subject to revision after bid tabulation, and will be paid fully by federal funds. The cost is as follows:

Township/County/Road	Federal Funds
Jackson Township, Perry County, Township Road 185 (DOT#513448N)	\$228,243 subject to revision after bid tabulation

Staff confirms that NS was initially responsible for the project and adds that NS ceased service on that track in March 2016, after which it leased the track to KNWA in June 2016. After a field review on April 26, 2017, ORDC determined that the project should move forward; on July 25, 2017, ORDC authorized funding for KNWA to undertake the project. Staff requests that the Commission issue an order directing completion within 12 months.

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

{¶ 9} Within 30 days of the issuance of this Finding and Order, KNWA shall file notice that it has initiated discussions with the South Central Power Company (SCP) or any other applicable utility, to ensure that electric service will be available to enable the grade crossing improvements to be constructed and placed in service within the deadline specified by the Commission. Such filing shall identify the steps KNWA has taken with SCP, or any other electric utility, and the local highway authority to have electric service available during the construction and cut-in phases of the project. KNWA shall serve a copy of the notice upon SCP or any other applicable utility. To ensure that the deadline is met, SCP or any other applicable utility shall timely inform the Commission in writing of any issues regarding the availability of electric service.

{¶ 10} The Commission will issue no further construction authorization. Further, the grade crossing improvement project should be completed by December 20, 2018.

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

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

{¶ 13} With the intention of promoting increased public safety during the pendency of the project, the Commission urges the appropriate local government agency to make an immediate assessment of interim physical improvements, which would enhance driver awareness at the crossing. The Commission may provide assistance in funding improvements, such as rumble strips, illumination, signs or other safety enhancements for the project. Applications for such funding should be made to the Commission's Transportation Department, Rail Division, which shall review any proposal. In the event the department finds the improvements appropriate, the department director is hereby authorized to execute a contract with the local government agency, and obligate up to \$5,000 from the State Grade Crossing Safety Fund for such improvements at the project location. However, the local government agency should not initiate any improvements until a contract has been executed.

### III. ORDER

{¶ 14} It is, therefore,

{¶ 15} ORDERED, That by January 20, 2018, KNWA file notice that it has initiated with SCP, or any applicable utility, the process to ensure that electric service will be available at the involved grade crossing as set forth in Paragraph 8. It is, further,

{¶ 16} ORDERED, That KNWA follow the detailed instructions as outlined in the ORDC letter of construction authorization and proceed with and complete the project by December 20, 2018. It is, further,

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

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

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

{¶ 20} ORDERED, That a copy of this Finding and Order be served upon ORDC, NS, KNWA, Jackson Township Trustees, SCP, and any other interested person of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Asim Z. Haque, Chairman

M. Beth Trombold

Thomas W. Johnson

Lawrence K. Friedeman

Daniel R. Conway

JML/sc

Entered in the Journal

DEC 20 2017

Barcy F. McNeal  
Secretary