

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE AUTHORIZATION  
OF WHEELING & LAKE ERIE RAILWAY  
FOR INSTALLATION OF ACTIVE WARNING  
DEVICES AT A GRADE CROSSING IN THE  
CITY OF CANTON, STARK COUNTY.

CASE NO. 22-276-RR-STP

## FINDING AND ORDER

Entered in the Journal on April 20, 2022

### I. SUMMARY

{¶ 1} The Commission approves a stipulation agreement with the Ohio Rail Development Commission, Wheeling & Lake Erie Railway, and the city of Canton, Stark County, to install gates and flashing lights at the 15<sup>th</sup> Street SE and Allen SE grade crossing, by April 20, 2023, 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 is responsible for evaluating public grade crossings to determine the need for installing active warning devices and apportioning the cost thereof.

{¶ 4} R.C. 4907.471 also provides that the Commission is responsible for the administration and implementation of the State Grade Crossing Protection Fund, established to help defray a portion of the public's share of the cost of upgrading warning devices at Ohio's highway-railroad grade crossings.

{¶ 5} Pursuant to Ohio Adm.Code 4901-1-30, any two or more parties may enter into a written stipulation concerning issues of fact.

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

{¶ 7} On March 30, 2022, Staff filed a memorandum stating that the Staff, Ohio Rail Development Commission (ORDC) WLE, and the city of Canton, which is the local highway authority (LHA), entered into a subsidy stipulation (stipulation). Staff has reviewed the subsidy agreement and determined it to be in order. Staff recommends that the Commission adopt the agreement and direct WLE to submit plans and estimates within 90 days and complete the upgrades within one year.

{¶ 8} The following is a summary of the conditions agreed to by the parties and is not intended to replace or supersede the stipulation. Under the Stipulation:

- (a) Within 12 months from the date of the Commission Finding and Order adopting the stipulation, WLE will install flashing lights and gates at the 15<sup>th</sup> Street SE and Allen SE grade crossing, by April 20, 2023.
- (b) The parties agree to comply with the terms of the stipulation and the Finding and Order adopting the stipulation;
- (c) The Commission will provide funds from the State Grade Crossing Protection Fund to cover the Commission's cost of the projects.

{¶ 9} While actual project design and cost estimates are not yet complete, preliminary cost estimates of the project are \$305,000. Costs are to be apportioned as follows: the Commission will pay 35 per cent of costs, ORDC will pay for 55 per cent of costs, and WLE pays for 10 per cent of costs, plus maintenance. LHA has no expenses for this project.

{¶ 10} Upon review of the stipulation, the Commission finds that the terms and conditions therein ensure the timely protection of the public at the crossing and provide a reasonable basis for apportioning costs thereof. Therefore, the stipulation should be approved and, accordingly, the cost of the project should be allocated as set forth therein.

{¶ 11} In order to expedite the activation of the warning devices, the Commission no longer requires railroad companies to delay such activation pending the final inspection by Staff. However, WLE should notify Staff 30 days before the projected date of completion. At the time Staff makes its final inspection of the devices and finds that the installations have been completed and the warning devices have been put in service, Staff should file a memorandum in this docket indicating that the installations have been completed and the warning devices have been put in service.

{¶ 12} With the intention of promoting increased public safety during the pendency of this 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 project crossing. The Commission may provide assistance in funding improvements such as rumble strips, illumination, signs, or other safety enhancements at the project location. Applications for such funding should be made to the Commission's Transportation Department, Railroad Division, which shall review all proposals. 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 crossing. However, the local government agency should not initiate any improvements until a contract has been executed.

### III. ORDER

{¶ 13} It is, therefore,

{¶ 14} ORDERED, That, by July 20, 2022, WLE submit to the Commission's Railroad Division site plans and cost estimates for the project, and by July 27, 2022, file a letter in this docket advising that site plans and cost estimates have been submitted to the Commission. It is, further,

{¶ 15} ORDERED, That, following approval of the site plans and cost estimates, WLE proceed with and complete the project by April 20, 2023. It is, further,

{¶ 16} ORDERED, That by August 20, 2022, WLE file notice that it has initiated with AEP-Ohio, and any applicable utility, the process to ensure that electric service will be available at the involved grade crossing. It is, further,

{¶ 17} ORDERED, That WLE notify Staff 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 WLE timely notify Staff 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 WLE notify the Commission and the ORDC 30 days before the projected date of completion. It is, further,

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

{¶ 21} ORDERED, That a copy of this Finding and Order be served upon WLE, ORDC, Engineering Department for the city of Canton, AEP-Ohio, and any other interested person of record.

COMMISSIONERS:

*Approving:*

Jenifer French, Chair  
M. Beth Trombold  
Lawrence K. Friedeman  
Daniel R. Conway  
Dennis P. Deters

JML/hac

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Summary: Finding & Order approving a stipulation agreement with the Ohio Rail Development Commission, Wheeling & Lake Erie Railway, and the city of Canton, Stark County, to install gates and flashing lights at the 15th Street SE and Allen SE grade crossing, by April 20, 2023, subject to the Commission's ongoing jurisdiction and oversight. electronically filed by Kelli C. King on behalf of The Public Utilities Commission of Ohio