

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE AUTHORIZATION  
OF MICHIGAN SOUTHERN RAILWAY  
COMPANY/NAPOLEON, DEFIANCE, &  
WESTERN RAILWAY FOR UPGRADE OF  
WARNING DEVICES AT A GRADE  
CROSSING IN THE CITY OF DEFIANCE,  
DEFIANCE COUNTY.

CASE NO. 22-1045-RR-STP

## FINDING AND ORDER

Entered in the Journal on December 14, 2022

### I. SUMMARY

{¶ 1} The Commission approves a stipulation agreement with Michigan Southern Railway Company/Napoleon, Defiance, & Western Railway to upgrade warning devices at the West High Street grade crossing in the city of Defiance, Defiance County, by December 14, 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} Michigan Southern Railway Company/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.

{¶ 7} On November 14, 2022, Staff filed a memorandum stating that the Staff and NDW entered into a subsidy stipulation (Stipulation) for an upgrade to flashing lights and gates at the West High Street (DOT#477683M) grade crossing in the city of Defiance, Defiance County. New and/or refurbished materials will be used for the upgrade; Toledo Edison Company (TEC) will provide electric service. Staff has reviewed the Stipulation and determined it to be in order. Staff recommends that the Commission adopt the agreement and direct NDW to submit plans and estimates within 90 days, with completion of the upgrade 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, MSR/NDW will install active warning devices at the West High Street (DOT#477683M) grade crossing, by December 14, 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} Costs are to be apportioned as follows: the Commission will pay 80 per cent of project costs, up to a maximum \$285,000; NDW will pay 20 per cent of project costs and, after the Commission maximum of \$285,000 is reached, will pay 100 per cent of project costs. NDW will also pay maintenance costs.

{¶ 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, NDW 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 March 14, 2023, NDW submit to the Commission's Railroad Division site plans and cost estimates for the project, and by March 21, 2023, 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, NDW proceed with and complete the project by December 14, 2023. It is, further,

{¶ 16} ORDERED, That by April 14, 2023, NDW file notice that it has initiated with TEC, 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 NDW 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 NDW 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 NDW 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 NDW, City Engineer of Defiance, TEC, 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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**Case No(s). 22-1045-RR-STP**

Summary: Finding & Order approving a stipulation agreement with Michigan Southern Railway Company/Napoleon, Defiance, & Western Railway to upgrade warning devices at the West High Street grade crossing in the city of Defiance, Defiance County, by December 14, 2023, subject to the Commission's ongoing jurisdiction and oversight electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio