

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Authorization of )  
Wheeling and Lake Erie Railway and Norfolk )  
and Southern Railway to Construct Active ) Case No. 08-574-RR-FED  
Grade Crossing Warning Devices in )  
Crawford, Preble, and Montgomery Counties. )

ENTRY

The Commission finds:

- (1) By entry of May 28, 2009, the Commission, in part, ordered Norfolk Southern Railway (NS) to install active grade crossing warning devices at the Kimberly Road grade crossing (524-642M), located in the city of West Carrollton, Montgomery County. The Commission directed that the construction of active warning devices at the grade crossing be completed by May 28, 2009.
- (2) Section 4905.47, Revised Code, provides, in relevant part, that any person owning or operating a railroad and neglecting or refusing to erect or maintain such gate, automatic alarm bell, or other mechanical device when required by the Commission, shall forfeit to the state, for every such neglect or refusal, one thousand dollars for each day such neglect or refusal continues.
- (3) On May 28, 2009, NS filed a request for a 14-day extension of the construction deadline. NS states that the project is nearly completed and the only aspect of the project remaining is for NS to install the insulated joints and then hang the gates and activate and test the detection circuitry. NS indicated that "there appears to have been a communication breakdown with Norfolk Southern and accordingly this issue did not surface until Tuesday, May 26."
- (4) On May 28, 2009, Commission staff filed a memo recommending that the extension of time not be granted. According to staff, they received a construction start notice for this project on March 13, 2009, stating that work would commence on this project on March 16, 2009, and that this should have allowed more than sufficient time for the project to

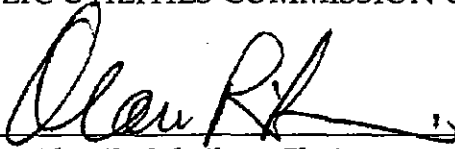
be placed in service. Staff also noted that, during a teleconference with NS on May 6, 2009, it inquired as to the status of the project and followed up with electronic mail, but never received a response. Staff also indicated that subsequent to the teleconference, it inquired on May 26 and 27, 2009 on the status of the project and was notified that NS intended to request an extension of time due to the lack of insulated joints.

- (5) The Commission order issued in this case clearly directed NS to complete the project no later than May 28, 2009. The Commission established a procedure for entertaining requests for extensions of time to complete grade crossing installation projects. The Commission's policy with respect to extensions of time in grade crossing project cases requires that all requests for extensions be filed by the railroad in sufficient advance of the ordered installation date to allow for Commission action on the request and to clearly state the reasons prompting the request.
- (6) In this case, NS has neither timely filed its extension request nor clearly stated the reasons prompting the request. Such inaction by NS violates Commission policy as well as its rules and regulations.
- (7) On June 2, 2009, staff advised the attorney examiner that, on June 1, 2009, NS had placed the active grade crossing warning devices at the project crossing in service.
- (8) NS is hereby put on notice that, in the future, all grade crossing improvement projects are to be completed, absent extraordinary circumstances, in the time set forth by the Commission. In the event NS fails to timely complete a grade crossing project in the future as ordered by the Commission, the Commission will consider imposing a civil forfeiture pursuant to Section 4905.47, Revised Code.

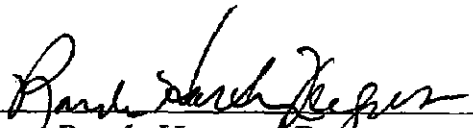
It is, therefore,

ORDERED, That a copy of this entry be served upon NS and its counsel; the mayor of West Carrollton, Ohio; the Ohio Rail Development Commission; and all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Alan R. Schriber, Chairman

  
Paul A. Centolella

  
Ronda Hartman Feigus

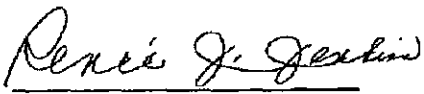
  
Valerie A. Lemmie

  
Cheryl L. Roberto

SEF:ct

Entered in the Journal

JUN 03 2009

  
Renee J. Jenkins  
Secretary