

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE AUTHORIZATION
OF NORFOLK SOUTHERN RAILWAY TO
INSTALL NEW ACTIVE WARNING DEVICES
AT ALBANY STREET AND WASHINGTON
STREET, IN THE CITY OF DAYTON,
MONTGOMERY COUNTY.

CASE NO. 16-2181-RR-FED

FINDING AND ORDER

Entered in the Journal on December 20, 2017

I. SUMMARY

{¶ 1} The Commission places in abeyance the project completion date for Norfolk Southern Railway to install new lights and gates at Albany Street and Washington Street in the city of Dayton, Montgomery County, and requires Norfolk Southern Railway to complete the project within 60 days after CSX Transportation completes related crossing work at Washington Street.

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} Norfolk Southern Railway (NS) is a railroad as defined in R.C. 4907.02 and subject to the jurisdiction of the Commission under R.C. 4905.04.

{¶ 6} In a December 21, 2016 Finding and Order, the Commission directed NS to install new lights and roadway gates at Albany Street (DOT#524626D) and Washington Street (DOT#524622B) in the city of Dayton, Montgomery County. The project was to be completed by September 21, 2017.

{¶ 7} On September 7, 2017, NS filed a request to extend the project deadline for 60 days. NS states that progress has been made on the project, but adds that its existing circuitry is interconnected with circuitry for CSX Transportation (CSX). NS explains that it cannot place new equipment in service until CSX resolves matters with the Ohio Utilities Protection Service, receives authorization to proceed from the Ohio Rail Development Commission (ORDC), and completes its work.

{¶ 8} Staff filed a memorandum on October 11, 2017, concerning NS's request. Staff notes that the CSX track at Washington Street (DOT#155116F) is to be upgraded and is adjacent to NS's track at Washington Street (DOT#524622B). Staff states that it has consulted with ORDC about the CSX project and was informed that ORDC supports placing the project in abeyance until CSX can complete its work at that location.¹ Staff recommends that the Commission place the project in abeyance and

¹ See *In re Authorization of CSX Transportation to Install New Active Warning Devices at a Grade Crossing in the City of Dayton, Montgomery County*, Case No. 17-2292-RR-FED, Finding and Order (December 20, 2017).

require NS to finish its project within 60 days of CSX completing work at the Washington Street track (DOT#155116F).

{¶ 9} The Commission finds NS's request for additional time and Staff's recommendation to be reasonable. Therefore, the completion date for NS's project at Albany Street (DOT#524626D) and Washington Street (DOT#524622B) should be placed in abeyance, and NS should complete its project within 60 days of CSX finishing work at the Washington Street track (DOT#155116F).

III. ORDER

{¶ 10} It is, therefore,

{¶ 11} ORDERED, That the completion date for NS's project at Albany Street (DOT#524626D) and Washington Street (DOT#524622B) be placed in abeyance. It is, further,

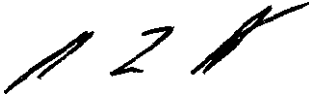
{¶ 12} ORDERED, at the time Staff or ORDC makes its final inspection in Case No. 17-2292-RR-FED and finds that CSX's installation at the Washington Street crossing (DOT#155116F) is complete, Staff will file a memorandum in this docket indicating that the installation is complete. It is, further,

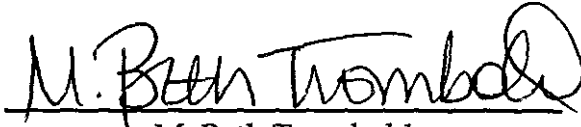
{¶ 13} ORDERED, That NS complete its project within 60 days after CSX finishes work at its Washington Street crossing (DOT#155116F). It is, further,

{¶ 14} ORDERED, at the time Staff or ORDC makes its final inspection and finds that NS's installations at the grade crossings 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,

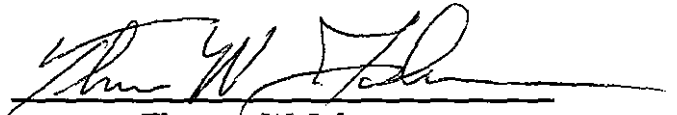
{¶ 15} ORDERED, That a copy of this Finding and Order be served upon ORDC, NS Public Projects Engineer, NS Director of Grade Crossing Safety, city of Dayton Engineering Department, The Dayton Power and Light Company, and any other interested person of record.

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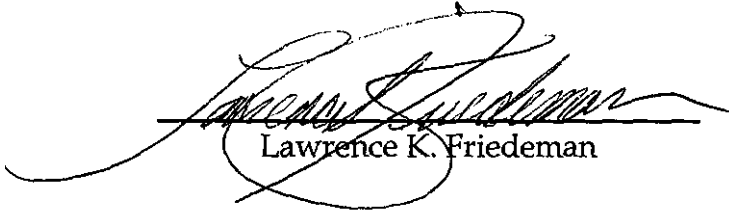


Asim Z. Haque, Chairman

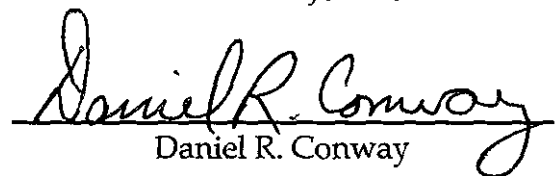
M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman

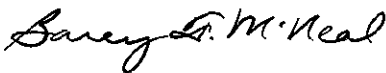


Daniel R. Conway

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Entered in the Journal

DEC 20 2017



Barcy F. McNeal
Secretary



THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF SCS LOGISTICS,
NOTICE OF APPARENT VIOLATION AND
INTENT TO ASSESS FORFEITURE.

CASE NO. 17-1623-TR-CVF

ENTRY

Entered in the Journal on December 20, 2017

I. SUMMARY

{¶ 1} The Commission closes this case, as all violations and forfeitures against SCS Logistics have been deleted.

II. DISCUSSION

{¶ 2} R.C. 4923.04 provides that the Commission shall adopt rules applicable to the transportation of persons or property motor carriers operating in interstate and intrastate commerce. Pursuant to Ohio Adm.Code 4901:2-5-03(A), the Commission adopted the Federal Motor Carrier Safety Regulations (FMCSR) for the purpose of governing transportation by motor vehicle in the state of Ohio. Further, R.C. 4923.99 authorizes the Commission to assess a civil forfeiture of up to \$25,000 per day against any person who violates the safety rules adopted by the Commission.

{¶ 3} On July 19, 2017, SCS Logistics (SCS) filed a request for an administrative hearing in accordance with Ohio Adm.Code 4901:2-7-13.

{¶ 4} A prehearing conference was conducted on September 26, 2017. Thereafter, SCS sent documents to Staff that were relevant to the alleged FMCSR violation.

{¶ 5} Staff filed a motion to dismiss on November 22, 2017. In the motion, Staff states that on June 7, 2017, SCS was initially cited for a violation of 49 C.F.R. 390.21(b). Staff adds that the violation was later changed to 49 C.F.R. 390.21(e), and on November 8, 2017, the violation was deleted. With all violations and forfeitures against SCS dropped, concludes Staff, this case should be dismissed.

{¶ 6} The Commission finds Staff's request to dismiss the case to be reasonable. Accordingly, the motion to dismiss should be granted.

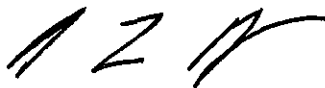
III. ORDER

{¶ 7} It is, therefore,

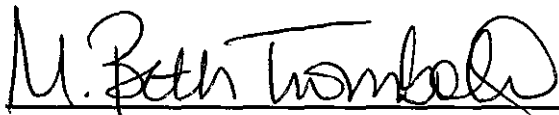
{¶ 8} ORDERED, That this case be dismissed. It is, further,

{¶ 9} ORDERED, That a copy of this Entry be served upon counsel for SCS and all other interested parties of record.

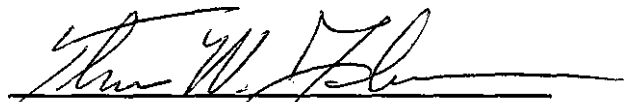
THE PUBLIC UTILITIES COMMISSION OF OHIO



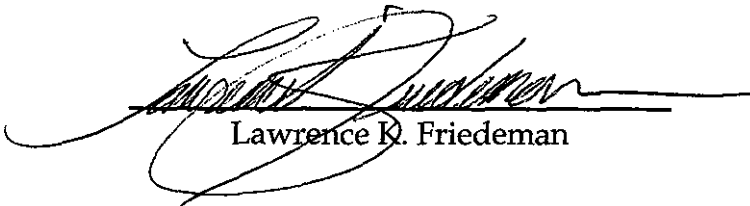
Asim Z. Haque, Chairman



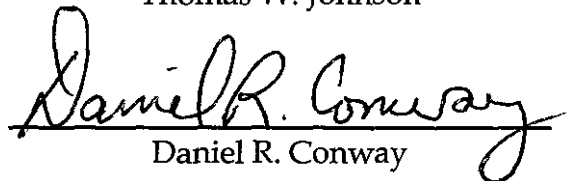
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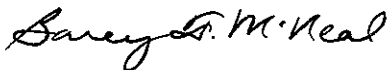


Daniel R. Conway

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Barcy F. McNeal
Secretary