

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE AUTHORIZATION
OF NORFOLK SOUTHERN RAILWAY TO
INSTALL ACTIVE WARNING DEVICES AT
A GRADE CROSSING IN FULTON
COUNTY.

CASE NO. 16-1413-RR-FED

ENTRY

Entered in the Journal on November 6, 2019

I. SUMMARY

{¶ 1} The Commission grants the request of Norfolk Southern Railway for a variance concerning installation of active grade crossing warning devices at the West Barre Street grade crossing in the village of Archbold, Fulton County, subject to modifications.

II. PROCEDURAL HISTORY

{¶ 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} On June 16, 2016, Staff filed a memorandum stating that the ORDC had authorized funding for NS to install mast-mounted flashing lights, side lights, roadway

gates, and one cantilevered set of lights at the West Barre Street grade crossing (DOT#509522J), located in the village of Archbold, Fulton County. Staff requested that the Commission issue an order directing completion within nine months, but noted that issues with underground gas, fiber, and water lines may necessitate NS requesting additional time to complete the project.

{¶ 7} On July 6, 2016, the Commission issued a Finding and Order approving NS's installation of the active warning devices at the West Barre Street grade crossing (DOT#509522J). The Commission ordered completion of the project by April 6, 2017.

{¶ 8} On March 23, 2017, NS requested 30 additional days, until May 6, 2017, to complete the project. In a March 31, 2017 memorandum, Staff recommended approval of NS's request. Thereafter, in an April 5, 2017 Entry, the attorney examiner approved extension of the project deadline to May 6, 2017.

{¶ 9} On April 24, 2017, NS filed a request for a variance in which the railroad proposed installation of flashing lights in the southeast quadrant in order to direct the same westbound traffic as cantilever lights in the northeast quadrant. NS also requested an additional 120 days to complete the project. NS explained that the project is complex, with utility concerns impeding placement of the cantilever foundation for the northeast quadrant.

{¶ 10} Staff filed a memorandum on May 5, 2017, stating that it was still evaluating the variance request, but recommending that NS's request for additional time be approved. In a May 5, 2017 Entry, the attorney examiner granted NS 30 more days, until June 5, 2017, to complete the project, and to allow the Commission more time to consider the variance request.

{¶ 11} On September 1, 2017, NS filed a request to extend the project deadline to January 3, 2018. NS asserted that progress had been made toward project completion, but issues remained regarding project design and construction in the northeast quadrant. NS

added that, after the parties conducted an onsite visit in mid-July, ORDC suggested several alternative resolutions that the parties are considering.

{¶ 12} On September 8, 2017, Staff filed a memorandum regarding NS's September 1, 2017 request. Staff noted that there had been significant delays with the project engineering because of "multiple utility conflicts." Staff added that it had evaluated the variance request, had numerous discussions with NS, and participated in a July 19, 2017 onsite review with NS, ORDC, and the village of Archbold. According to Staff, several options were discussed at the onsite meeting to resolve the northeast quadrant issues; further, Staff and ORDC had provided written comments to NS for review. Staff stated that it was waiting for NS to determine if it would proceed with the variance request or construct one of the options proposed at the onsite meeting. Staff recommended approval of NS's request to extend the project completion date to January 3, 2018.

{¶ 13} On October 11, 2017, a Commission Entry was issued granting NS until January 3, 2018, to complete the project.

{¶ 14} Thereafter, as discussed below, on June 17, 2019, the Ohio Attorney General filed a letter on behalf of ORDC in support of NS's variance request. Staff filed a response on August 16, 2019.

III. DISCUSSION

{¶ 15} In the request for a variance, NS asserts that construction in two of the three quadrants is largely complete. According to NS, the northeast quadrant was supposed to have a cantilever with lights to direct the westbound traffic in the left turn lane of West Barre Street. However, states NS, since the initial authorization for the project, unforeseen utility issues in the third quadrant appear to prevent the installation of the foundation for the required cantilever. NS requests to instead install flashing lights in the southeast quadrant that would direct the traffic in the left turn lane. NS avers that this variance would still comply with the Ohio Manual of Uniform Traffic Control Devices.

{¶ 16} In support of the variance request, ORDC explains that, because of utility conflicts, some parts of the warning system are complete, but the gate and cantilever combination have not been installed in the northeast quadrant. ORDC adds that right-of-way acquisition is necessary for relocation of a water line before installing the cantilever foundation; however, any such acquisition is not eligible for inclusion in this project, which is federally funded. ORDC considers it to be impractical to comply with the typical installation of cantilevered flashing lights for the left turn lane. ORDC and NS propose a standard flashing light and gate in the northeast quadrant, and mast-mounted flashing lights in the southeast quadrant directed to the westbound left turn lane. NS says that a smaller foundation for a gate mechanism, as compared to a gate and cantilever combination unit, can be accommodated in the northeast quadrant. ORDC concurs with NS's request of April 24, 2017, and asks the Commission to approve the requested variance.

{¶ 17} Staff concludes that the current record is insufficient to recommend Commission approval of the variance. Staff acknowledges ORDC's observation that the Ohio Manual of Uniform Traffic Control Devices does not mandate installation of cantilevered lights; however, the American Railway Engineering and Maintenance-of-Way Association manual states that a pair of flashing lights should be visible for each approaching traffic lane when placement of the mast-mounted lights is greater than ten feet from the traveled way. Staff asserts that NS could shift the cantilever and flashing lights further from the tracks, but would have to acquire additional right-of-way to do so properly. Staff contends that the Grade Crossing Protection Fund could be used to purchase the additional right-of-way. Staff adds that such funding would be contingent on NS completing the project under the proposed variance, entering into an agreement with the Commission to purchase the right-of-way, and installing a cantilever immediately following completion of construction. Staff adds that installation in the northeast quadrant may also require the relocation of a 20-inch diameter water line; although NS questions the viability of relocating the water line, Staff adds, it has received no documentation describing the costs and difficulties of relocation.

{¶ 18} Staff concludes that the variance proposed by NS may create significant safety risks for drivers traveling through the crossing, because the flashing lights will be far from the driver's line of sight when compared with typical flashing light installations. Staff proposes that the variance be granted only after NS and ORDC provide more information documenting why alternatives to the variance are not feasible. The information would include, but not be limited to, the presence of utility lines, any restrictions imposed on NS working near those lines, and the costs associated with the purchase of additional right of way. Alternatively, Staff recommends that any approval of the variance should require NS to monitor traffic at the crossing for a minimum two years after completion of construction, and then file an engineering analysis at the Commission on the efficacy of the pair of mast-mounted left-hand flashing lights in the southeast quadrant for alerting drivers to the presence of an oncoming train.

{¶ 19} Because completion of this safety project has been delayed numerous times, the Commission finds that the variance requested by NS should be granted. However, the Commission finds Staff's recommended modifications should be adopted. Specifically, NS shall monitor traffic at the crossing for two years after completion of construction, and then file in this docket an engineering analysis regarding the efficacy of the pair of mast-mounted left-hand flashing lights in the southeast quadrant of the crossing for alerting drivers to the presence of an oncoming train. Thereafter, the Commission may take appropriate action, if any, in response to analysis after it is filed.

IV. ORDER

{¶ 20} It is, therefore,

{¶ 21} ORDERED, That the variance request be granted, to include a standard flashing light and gate in the northeast quadrant, and mast-mounted flashing lights in the southeast quadrant directed to the westbound left turn lane. It is, further,

{¶ 22} ORDERED, That, NS monitor traffic at the crossing for two years after completion of construction, and then file in this docket an engineering analysis regarding the efficacy of the pair of mast-mounted left-hand flashing lights in the southeast quadrant of the crossing for alerting drivers to the presence of an oncoming train. It is, further,

{¶ 23} ORDERED, That a copy of this Entry be served upon ORDC, NS, Toledo Edison Company, Archbold Village Administrator, and all interested persons of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

JML/hac

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