

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REQUEST OF  
NORFOLK SOUTHERN RAILWAY COMPANY  
TO DOWNGRADE THE EXISTING WARNING  
DEVICES AT STATE STREET GRADE  
CROSSING (DOT#473-711A), FREMONT,  
SANDUSKY COUNTY.

CASE No. 12-2198-RR-RCP

IN THE MATTER OF THE AUTHORIZATION  
OF NORFOLK SOUTHERN RAILWAY  
COMPANY TO INSTALL ACTIVE GRADE  
CROSSING WARNING DEVICES AND  
TRAFFIC PREEMPTION IN THE CITY OF  
FREMONT, SANDUSKY COUNTY (DOT#473-  
711A).

CASE No. 16-787-RR-FED

FINDING AND ORDER

Entered in the Journal on May 18, 2016

I. SUMMARY

{¶ 1} In Case No. 16-787-RR-FED, the Commission authorizes Norfolk Southern Railway to proceed with installation of new mast-mounted and cantilevered flashing lights with roadway gates at State Street, in Fremont, Ohio, and simultaneous preemption with traffic lights at the intersection of State Street and N. Front Street. The Commission dismisses Case No. 12-2198-RR-RCP, in which Norfolk Southern received authorization to temporarily downgrade warning devices that had been damaged at the State Street crossing.

II. APPLICABLE LAW

{¶ 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 Company (NS) is a railroad as defined in R.C. 4907.02 and subject to the jurisdiction of the Commission under R.C. 4905.04.

### III. DISCUSSION

{¶ 6} On July 30, 2012, as amended on August 28, 2012, NS filed a request for a temporary downgrade of the existing warning devices at the State Street grade crossing (DOT# 473-711A), in the city of Fremont (City), Sandusky County. The downgrade was necessary because a motor vehicle had struck and irreparably damaged the foundation/cantilever assembly in the northeast quadrant of the grade crossing. In an October 3, 2012 Entry, the downgrade was approved until April 3, 2014; the downgrade was extended to May 3, 2016, by subsequent Entries. The approval was made with the understanding that NS, the City, and ORDC would collaborate on a comprehensive project at the crossing to include new mast-mounted and cantilevered flashing lights with roadway gates at State Street, and simultaneous preemption with traffic lights at the intersection of State Street and N. Front Street.

{¶ 7} On April 13, 2016, Staff opened Case No. 16-787-RR-FED, concerning authorization of NS to proceed with the project. In an additional memorandum filed on April 18, 2016, in Case Nos. 16-787-RR-FED, and 12-2198-RR-RCP, Staff stated that the ORDC has authorized funding for the project, to include installation of new mast-mounted and cantilevered flashing lights with roadway gates at State Street, and simultaneous preemption with traffic lights at the intersection of State Street and N. Front Street. The approved actual cost, to be paid fully by federal funds, is as follows:

County / City / Streets	Federal Funds
Sandusky County, City of Fremont, State Street and N. Front Street	\$423,887.40

In addition, Staff recommends that the Commission dismiss Case No. 12-2198-RR-RCP. Finally, Staff requests that the Commission issue an order directing completion of the project within 12 months, as cases involving preemption with traffic lights typically involve more than nine months to finish.

{¶ 8} Upon review, NS is hereby authorized to acquire project materials and to commence construction as detailed in the letter of construction authorization. NS shall notify Staff at least five working days before the date work is scheduled to begin at the project so that arrangements can be made for any inspection. In addition, NS shall timely notify Staff of any changes in the scope of work, cost overruns, materials, etc., which are not in the approved plans in order to estimate and secure approval before the work is performed.

{¶ 9} Within 30 days of the issuance of this Finding and Order, NS shall file notice that it has initiated discussions with American Electric Power (AEP) or any other applicable utility, to ensure that electric service will be available to enable the grade crossing improvements to be constructed and placed in service within the deadline specified by the Commission. Such filing shall identify the steps NS has taken with AEP, or any other electric utility, and the local highway authority to have electric service available during the construction and cut-in phases of the project. NS shall serve a copy of the notice upon AEP or any other applicable utility. To ensure that the deadline is met, AEP or any other applicable utility shall timely inform the Commission in writing of any issues regarding the availability of electric service.

{¶ 10} The Commission will issue no further construction authorization. Further, the grade crossing improvement project should be completed by May 18, 2017.

{¶ 11} It is expected that all work necessary for Federal Highway Administration acceptance of the warning devices will be completed by the in-service due date and that NS will be responsible for this work. This work includes, but is not limited to, any ancillary work to make the warning devices function as designed and visible to the roadway user, and Manual of Uniform Traffic Control Devices compliance, including minor roadway work if necessary.

{¶ 12} In order to expedite the activation of the warning devices, the Commission no longer requires a delay in activation pending final inspection by Staff. However, NS should notify Staff and ORDC 30 days before the projected date of completion. At the time Staff or ORDC makes its final inspection of the devices and finds that the identified installation is complete and the warning devices have been put in service, Staff should file a memorandum in this docket indicating that the installation is complete and that the warning devices have been put in service.

{¶ 13} With the intention of promoting increased public safety during the pendency of the 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 crossing. The Commission may provide assistance in funding improvements, such as rumble strips, illumination, signs or other safety enhancements for the project. Applications for such funding should be made to the Commission's Transportation Department, Rail Division, which shall review any proposal. 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 project location.

However, the local government agency should not initiate any improvements until a contract has been executed.

#### IV. ORDER

{¶ 14} It is, therefore,

{¶ 15} ORDERED, That Case No. 12-2198-RR-RCP be dismissed. It is, further,

{¶ 16} ORDERED, That by June 17, 2016, NS file notice that it has initiated with AEP, or any applicable utility, the process to ensure that electric service will be available at the involved grade crossing as set forth in paragraph (9). It is, further,

{¶ 17} ORDERED, That NS follow the detailed instructions as outlined in the ORDC *letter of construction authorization and proceed with and complete the project by May 18, 2017*. It is, further,

{¶ 18} ORDERED, That NS 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,

{¶ 19} ORDERED, That NS 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,

{¶ 20} ORDERED, That NS notify the Commission and ORDC 30 days before the projected date of completion. It is, further,

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

{¶ 22} ORDERED, That a copy of this Finding and Order be served upon ORDC, city of Fremont Engineer, AEP, and any other interested person of record.

**Commissioners Voting: Andre T. Porter, Chairman; Asim Z. Haque, Vice Chairman; Lynn Slaby; M. Beth Trombold; Thomas W. Johnson.**

JML/sc