

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE AUTHORIZATION
OF NORFOLK SOUTHERN RAILWAY TO
INSTALL ACTIVE WARNING DEVICES IN
THE CJ CORRIDOR PROJECT IN BUTLER
COUNTY.

CASE No. 16-1497-RR-FED

FINDING AND ORDER

Entered in the Journal on August 17, 2016

I. SUMMARY

{¶ 1} The Commission approves the use of federal funds for Norfolk Southern Railway to complete the installation of mast-mounted flashing lights and roadway gates at five crossings, including a cantilevered light at two of the crossings and traffic preemption at four of the crossings, by November 17, 2017, in the city of Middletown, Butler County, subject to the Commission's ongoing jurisdiction and oversight.

II. DISCUSSION

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

B. Procedural Background and Other Details

{¶ 6} On June 29, 2016, Staff filed a memorandum stating that the ORDC has authorized funding for NS to install mast-mounted flashing lights and roadway gates at five crossings, including a cantilevered light at two of the crossings and traffic preemption at four of the crossings, in the city of Middletown, Butler County. The approved actual cost, to be paid fully by federal funds, is as follows:

DOT#	Street	Mast-Mounted Flashing Lights and Roadway Gates	One Cantilevered Light	Traffic Preemption	Cost
524678V	First Avenue	Yes		Yes	\$391,402
524677N	Central Avenue	Yes	Yes	Yes	\$389,166
524679C	Woodlawn Avenue	Yes	Yes	Yes	\$501,107
524676G	Manchester Avenue	Yes		Yes	\$381,587
524684Y	Oxford State Road	Yes			\$291,101

Staff notes that the Woodlawn Avenue crossing was surveyed December 16, 2015, while the other four crossings were surveyed on October 4, 2011. Staff requests that the Commission issue an order directing completion within 15 months. Staff explains that the extended length of time is necessary because of multiple crossing

locations that will need to be cut-in simultaneously, and because the city of Middletown has responsibility for the traffic preemption aspect of the project.

{¶ 7} 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 projects 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.

{¶ 8} Within 30 days of the issuance of this Finding and Order, NS shall file notice that it has initiated discussions with Duke Energy Ohio (Duke) 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 Duke or any other electric utility, and the local highway authority to have electric service available during the construction and cut-in phases of the projects. NS shall serve a copy of the notice upon Duke or any other applicable utility. To ensure that the deadline is met, Duke or any other applicable utility shall timely inform the Commission in writing of any issues regarding the availability of electric service.

{¶ 9} The Commission will issue no further construction authorization. Further, the grade crossing improvement projects should be completed by November 17, 2017.

{¶ 10} 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.

{¶ 11} 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 installations are complete and the warning devices have been put in service, Staff should file a memorandum in this docket indicating that the installations are complete and that the warning devices have been put in service.

{¶ 12} 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 crossings. The Commission may provide assistance in funding improvements, such as rumble strips, illumination, signs or other safety enhancements for the projects. 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 locations. 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 September 16, 2016, NS file notice that it has initiated with Duke, or any applicable utility, the process to ensure that electric service will be available at the involved grade crossing as set forth in Paragraph 8. It is, further,

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

{¶ 16} ORDERED, That NS notify Staff at least five working days before the date work is scheduled to begin at the project sites so that arrangements can be made for any inspection. It is, further,


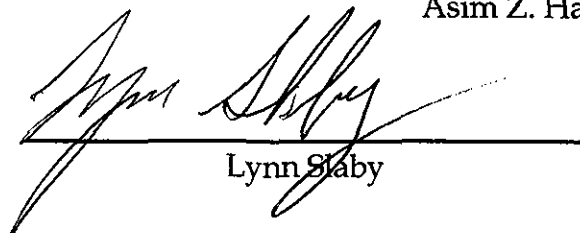
{¶ 17} ORDERED, That NS timely notify Staff of any changes in the scope of work, cost overruns, materials, etc., which are not in the approved plans and estimates, and shall secure approval before the work is performed. It is, further,

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

{¶ 19} 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,

{¶ 20} ORDERED, That a copy of this Finding and Order be served upon ORDC, NS, Duke, City Manager of Middletown, and any other interested person of record.

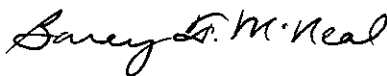
THE PUBLIC UTILITIES COMMISSION OF OHIO


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AUG 17 2018


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Secretary