

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE AUTHORIZATION
OF NORFOLK SOUTHERN RAILWAY TO
INSTALL NEW ACTIVE WARNING
DEVICES AT FOUR GRADE CROSSINGS IN
THE CITY OF DAYTON, MONTGOMERY
COUNTY.

CASE NO. 17-1508-RR-FED

ENTRY

Entered in the Journal on March 27, 2019

I. SUMMARY

{¶ 1} The Commission grants additional time, until May 13, 2019, for Norfolk Southern Railway to install new active warning devices at four grade crossings in the city of Dayton, Montgomery County, subject to the Commission's ongoing jurisdiction and oversight.

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} On July 26, 2017, the Commission issued a Finding and Order approving NS's installation of new active warning devices at four grade crossings in the city of Dayton, Montgomery County. The grade crossings are at Stewart Street (DOT#524628S), Irwin Street (DOT#527818F), Miami Chapel Road (DOT#524629Y), and Findlay Street (DOT#527819M). The Commission ordered completion of the projects by July 26, 2018.

{¶ 7} On July 12, 2018, NS filed a request for additional time to complete the projects. NS explained that its resources have been directed toward meeting the December 31, 2018, Positive Train Control (PTC) federal mandate, and it requested until December 31, 2020, to complete the projects. Subsequently, on August 17, 2018, NS amended its request by asking that the completion date be extended to November 15, 2018.

{¶ 8} On August 28, 2018, Staff filed a memorandum stating that, while the Ohio Rail Development Commission (ORDC) does not oppose the extension request, ORDC notes that the four grade crossings were initially surveyed in 2011. Staff recommended that the Commission grant NS's request to extend the completion date for the projects to November 15, 2018.

{¶ 9} In a September 19, 2018, Entry, the Commission approved until November 15, 2018, to complete the projects.

{¶ 10} Following the Commission's September 19, 2018 Entry, NS filed requests on November 1, 2018, November 14, 2018, December 3, 2018, and December 27, 2018, to further extend the completion date for the projects. In each request, NS indicated that utility issues had delayed completion of the projects at Findlay Street (DOT#527819M), Miami Chapel Road (DOT#524629Y), and Stewart Street (DOT#524628S); NS noted that Irwin Street (DOT#527818F) was placed into service in early November 2018. Following the filing of Staff recommendations to NS's requests, the completion date for the projects was ultimately extended by attorney examiner Entries, the most recent of which was issued January 15, 2019, and which granted NS until to February 11, 2019 to complete the Findlay Street

(DOT#527819M), Miami Chapel Road (DOT#524629Y), and Stewart Street (DOT#524628S) projects.

{¶ 11} On January 28, 2019, and February 8, 2019, NS requested additional time to complete the Stewart Street (DOT#524628S) project. NS states that Miami Chapel Road (DOT#524629Y) was placed in service February 4, 2019, with Findlay Street (DOT#527819M) expected to be placed in service by February 12, 2019. NS explains that there are utility conflicts at Stewart Street (DOT#524628S), because Dayton Power & Light (DP&L), Spectrum/Charter, and Windstream/Crown Castle, share utility poles. NS adds that Spectrum/Charter and Windstream/Crown Castle intend to transfer their utilities to new poles, which is expected to take three weeks; once the transfer is complete, NS estimates that it will need seven weeks to complete construction and cut-in. NS requests a completion date of July 11, 2019.

{¶ 12} Staff filed a memorandum February 22, 2019, noting that NS has worked to resolve utility conflicts and has completed three of the four projects. Regarding Stewart Street (DOT#524628S), Staff emphasizes that NS could begin construction before the utility conflicts are resolved, with coordination later required to complete the in-service cut in. Staff recommends that the Commission grant a 90 day extension, until May 13, 2019, for NS to complete the Stewart Street (DOT#524628S) project.

{¶ 13} Upon review of NS's request and Staff's recommendation, the Commission finds that extending the project completion date to May 13, 2019, is warranted. NS should expedite work on the project and follow all standard railroad crossing safety protocol to ensure the protection of the traveling public at the crossings. Further, Staff should monitor work at the projects to ensure completion within the newly ordered timeframe.

{¶ 14} NS should notify Staff, ORDC, the Engineering Department for the city of Dayton, and DP&L upon completion of the projects. At the time Staff or ORDC makes its final inspection and finds that the installations are completed, Staff should file a memorandum in this docket indicating that the projects are completed.

III. ORDER

{¶ 15} It is, therefore,

{¶ 16} ORDERED, That NS's request for additional time to complete the projects be granted in accordance with Paragraph 13. It is, further,

{¶ 17} ORDERED, That NS complete the projects no later than May 13, 2019. It is, further,

{¶ 18} ORDERED, That NS follow all standard railroad crossing safety protocol to ensure the protection of the traveling public at the crossings. It is, further,

{¶ 19} ORDERED, That NS notify Staff, ORDC, the Engineer for the city of Dayton, and DP&L upon the completion of the projects. It is, further,

{¶ 20} ORDERED, That when Staff or ORDC makes its final inspection and finds that the projects are completed, Staff file a memorandum in this docket indicating that the projects are completed. It is, further,

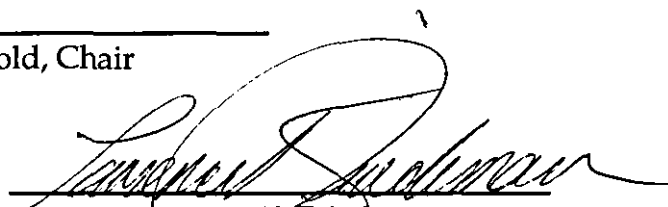
{¶ 21} ORDERED, That a copy of this Entry be served upon ORDC, NS, Engineer for the city of Dayton, DP&L, and any other interested person of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

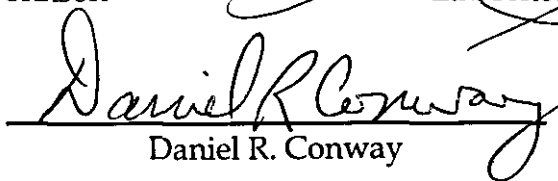
M. Beth Trombold, Chair



Thomas W. Johnson



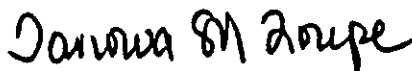
Lawrence K. Friedeman



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JML/hac

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Tanowa M. Troupe
Secretary