

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 June 5, 2019

I. SUMMARY

{¶ 1} The Commission grants additional time, until August 13, 2019, for Norfolk Southern Railway to install new active warning devices at the Stewart Street grade crossing 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) did not oppose the extension request, ORDC noted 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 several attorney examiner Entries, including one issued January 15, 2019, and

which granted NS until 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, and noted that the Miami Chapel Road (DOT#524629Y) and Findlay Street (DOT#527819M) projects were placed in service in February 2019. NS explained 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 added that Spectrum/Charter and Windstream/Crown Castle intend to transfer their utilities to new poles, which would take several weeks. NS requested a completion date of July 11, 2019.

{¶ 12} Staff filed a memorandum February 22, 2019, emphasizing that NS could begin construction before the utility conflicts are resolved. Staff recommended that the Commission grant a 90 day extension, until May 13, 2019, for NS to complete the Stewart Street (DOT#524628S) project.

{¶ 13} In a March 27, 2019 Entry, NS was granted until May 13, 2019 to finish the Stewart Street (DOT#524628S) project.

{¶ 14} On May 6, 2019, NS filed a memorandum stating that the utility conflicts at Stewart Street (DOT#524628S) remain. NS added that the conflict with Windstream/Crown Castle is expected to be resolved shortly and with Spectrum/Charter should be resolved by late May. Because of the PTC deadline approaching, NS asserts, it will need to May 13, 2020, to complete construction and cut-in. NS notes that this crossing is currently protected by active warning devices.

{¶ 15} Staff filed a memorandum on May 20, 2019, contending that the projects in this case have been pending for many years and need to be completed. Staff reasserts that some construction could have been completed prior to the overhead conflicts being resolved. Staff concludes by stating that a 12 month extension of time is excessive, given that utility

conflicts are the remaining issue, and notes that ORDC does not support a 12 month extension request. Staff recommends a 90 day extension of time.

{¶ 16} Upon review of NS's request and Staff's recommendation, the Commission finds that extending the project completion date to August 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 crossing. Further, Staff should monitor work at the project to ensure completion within the newly ordered timeframe.

{¶ 17} 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

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That NS's request for additional time to complete the Stewart Street (DOT#524628S) project be granted in accordance with Paragraph 16. It is, further,

{¶ 20} ORDERED, That NS complete the Stewart Street (DOT#524628S) project no later than August 13, 2019. It is, further,

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

{¶ 22} 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,

{¶ 23} 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,

{¶ 24} 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



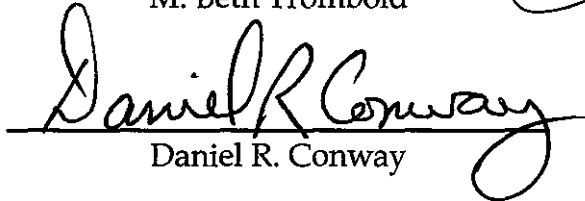
Sam Randazzo, Chairman



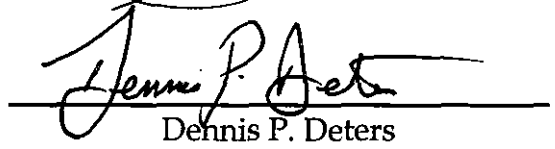
M. Beth Trombold



Lawrence K. Friedeman



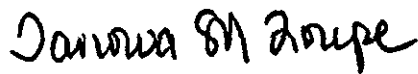
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