

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 August 28, 2019

I. SUMMARY

{¶ 1} The Commission denies Norfolk Southern Railway's request for additional time 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,

granting 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 intended 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 Commission 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) remained. Because of the PTC deadline approaching, NS asserted, it would need to May 13, 2020, to complete construction and cut-in. NS noted 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 reasserted that some construction could have been completed prior to the overhead conflicts being resolved. Staff concluded that a 12 month extension of time was excessive, given that only utility conflicts remained, and noted that ORDC did not support a 12 month extension request. Staff recommended a 90 day extension of time, to August 13, 2019.

{¶ 16} In a June 5, 2019, Entry, the Commission extended the completion date for the Stewart Street (DOT#524628S) project to August 13, 2019.

{¶ 17} On July 30, 2019, NS filed a request to extend the Stewart Street (DOT#524628S) project completion date by 12 months. NS explains that there is one utility conflict remaining at Stewart Street (DOT#524628S) and that lack of available union labor until January 2020 have caused continued project completion delays.

{¶ 18} Staff filed a memorandum on August 8, 2019, in response to NS's request for additional time. Staff notes that the Stewart Street (DOT#524628S) project has been ongoing for many years and needs to be completed. Staff further observes that ORDC does not support a nine month extension request. Staff adds that this is a safety project that must be completed and that numerous time extensions have already been granted. Staff does not recommended another extension of the project deadline.

{¶ 19} Upon review of NS's request and Staff's recommendation, the Commission finds that Stewart Street (DOT#524628S) is a safety project and that several time extensions have already been granted. Accordingly, the Commission does not find that good cause exists to grant additional time to complete this project, and NS's request should be denied.

{¶ 20} NS should notify Staff, ORDC, the Engineering Department for the city of Dayton, and DP&L upon completion of the Stewart Street (DOT#524628S) project. At the time Staff or ORDC makes its final inspection and finds that each of the four installations are completed, Staff should file a memorandum in this docket indicating that each of the projects are completed.

III. ORDER

{¶ 21} It is, therefore,

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

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

{¶ 24} ORDERED, That NS notify Staff, ORDC, Engineer for the city of Dayton, DP&L, Spectrum/Charter, and Windstream/Crown Castle upon the completion of the projects. It is, further,

{¶ 25} 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,

{¶ 26} ORDERED, That a copy of this Entry be served upon ORDC, NS, Engineer for the city of Dayton, DP&L, Spectrum/Charter, and Windstream/Crown Castle, and any other interested person 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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