

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE AUTHORIZATION
OF NORFOLK SOUTHERN RAILWAY TO
INSTALL ACTIVE WARNING DEVICES AT
A GRADE CROSSING IN FULTON
COUNTY.

CASE NO. 16-1413-RR-FED

SECOND ENTRY ON REHEARING

Entered in the Journal on March 11, 2020

I. SUMMARY

{¶ 1} The Commission grants, in part, and denies, in part, Norfolk Southern Railway's request concerning its obligations after installing, in accordance with a variance, warning devices at the West Barre Street grade crossing in the village of Archbold, Ohio.

II. PROCEDURAL HISTORY

{¶ 2} 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. Pursuant to R.C. 4905.04, 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. 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.

{¶ 4} On July 6, 2016, the Commission issued a Finding and Order authorizing installation of active warning devices at the West Barre Street grade crossing (DOT#509522J) in the Village of Archbold, Fulton County.

{¶ 5} On April 24, 2017, NS filed a request for a variance in which the railroad proposed installation of flashing lights in the southeast quadrant in order to direct the same westbound traffic as cantilever lights in the northeast quadrant. NS explained that the project is complex, with utility concerns impeding placement of the cantilever foundation for the northeast quadrant. Thereafter, several extension requests were granted by the Commission.

{¶ 6} On June 17, 2019, the Ohio Attorney General filed a letter on behalf of ORDC in support of NS's variance request.

{¶ 7} Staff filed a response on June 17, 2019. Staff concludes that the variance proposed by NS may create significant safety risks for drivers traveling through the crossing, because the flashing lights will be far from the driver's line of sight when compared with typical flashing light installations. Staff proposes that the variance be granted only after NS and ORDC provide more information documenting why alternatives to the variance are not feasible. The information would include, but not be limited to, the presence of utility lines, any restrictions imposed on NS working near those lines, and the costs associated with the purchase of additional right of way. Alternatively, Staff recommends that any approval of the variance should require NS to monitor traffic at the crossing for a minimum two years after completion of construction, and then file an engineering analysis at the Commission on the efficacy of the pair of mast mounted left-hand flashing lights in the southeast quadrant for alerting drivers to the presence of an oncoming train.

{¶ 8} In a November 6, 2019 Entry, the Commission granted the request of Norfolk Southern Railway for a variance concerning installation of active grade crossing warning devices at the West Barre Street grade crossing (DOT#509522J). The Commission's approval included an obligation to monitor traffic at the crossing for two years after completion of construction, and then filing in this docket "* * * an engineering analysis regarding the efficacy of the pair of mast-mounted left-hand flashing lights in the southeast quadrant of

the crossing for alerting drivers of the presence of an oncoming train.”

{¶ 9} On December 6, 2019, NS filed an application for rehearing, limited to the post-installation obligations placed on NS. NS asserts that there is no statute, administrative rule, or case law that authorizes the Commission to order a railroad to monitor a crossing after installation of safety devices, or to conduct an engineering study concerning the effectiveness of the safety devices that the Commission approved for installation. NS contends that, even if such authority exists, there is “* * *no readily-available funding mechanism, since the related ORDC encumbrance will be closed in or about June of 2020.” Finally, explains NS, such an obligation is unnecessary, as “* * * the warning devices will activate only when this defined area of the track is occupied by rail equipment * * *.” NS states that it will “operate its trains per operating rule and, in the event it becomes aware of any concerns at this crossing, * * * [it will] request a further diagnostic, together will all interested parties.”

{¶ 10} On December 18, 2019, the Commission granted the application for rehearing for the limited purpose to further consider the matters raised by NS in the application.

III. DISCUSSION

{¶ 11} NS’s application for rehearing is denied in part and granted in part. R.C. 4905.04 directs that the Commission has statutory authority to regulate and promote the welfare and safety of railroad employees and the traveling public. Further, R.C. 4907.471 directs the Commission to survey all grade crossings and determine which grade crossings are in need of additional protective devices. Pursuant to that statute, the Commission concluded on July 6, 2016, that the West Barre Street grade crossing (DOT #509522J) is in need of additional safety protections. July 6, 2016 Finding and Order at ¶ 7. In granting NS’s request for a variance, we acknowledged that, after multiple delays, a resolution was necessary to go forward with this safety project. We further recognized the safety concerns with the requested modifications identified by Staff. Nov. 16, 2019 Entry at ¶ 19. Given the Commission’s obligation under R.C. 4907.04 to promote the safety and welfare of railroad

employees and the traveling public, we do not find it overly burdensome for NS to monitor efficacy of the warning devices post-installation, given its statement that if NS “*** becomes aware of any concerns at this crossing * * * [NS] would request a further diagnostic * * *.” Therefore, while we will not require NS to file in the docket an engineering analysis as specified in the November 6, 2019 Entry, we affirm our finding that NS should monitor the West Barre Street grade crossing (DOT#509522J) for two years after completion of construction. In lieu of an engineering study, at the conclusion of the two years, NS should file a report of the results, as such information will provide feedback regarding the efficacy of the safety devices at the crossing and whether any additional safety measures need to be undertaken.

IV. ORDER

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That NS’s application for rehearing be granted in part and denied in part. It is, further,

{¶ 14} ORDERED, That a copy of this Second Entry on Rehearing be served upon all parties of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

JML/kck

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Summary: Entry on Rehearing that the Commission grants, in part, and denies, in part, Norfolk Southern Railway's request concerning its obligations after installing, in accordance with a variance, warning devices at the West Barre Street grade crossing in the village of Archbold, Ohio. electronically filed by Docketing Staff on behalf of Docketing