

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Joint:
Petition of Norfolk :
Southern Railway Company :
and CSX Transportation, :
Inc., to Close the : Case No. 19-180-RR-UNC
Franklin Street Crossings :
(DOT Nos. 481482D and :
518257V) in Orange :
Township, Delaware County, :
Ohio. :

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PROCEEDINGS

before Ms. Lauren Augostini, Attorney Examiner, at
the Public Utilities Commission of Ohio, via
teleconference, called at 10:02 a.m. on Tuesday,
June 1, 2021.

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APPEARANCES:

Eastman & Smith Ltd.
By Mr. D. Casey Talbott
One Seagate, 24th Floor
Toledo, Ohio 43604

On behalf of the Co-Petitioner Norfolk
Southern Railway Company.

Dickie, McCamey & Chilcote, P.C.
By Mr. Richard Silk
and Mr. R. Leland Evans
250 Civic Center Drive, Suite 280
Columbus, Ohio 43215

On behalf of the Co-Petitioner CSX
Transportation, Inc.

Brosius, Johnson & Griggs, LLC
By Mr. Peter N. Griggs
and Ms. Jennifer L. Huber
1600 Dublin Road, Suite 100
Columbus, Ohio 43215

On behalf of Orange Township, Delaware
County, Ohio.

Delaware County Board of Commissioners
By Mr. Aric I. Hochstettler
Staff Attorney
101 North Sandusky Street
Delaware, Ohio 43015

On behalf of the Delaware County Board of
Commissioners.

ALSO PRESENT:

Mr. Rob Riley, Delaware County Engineer's
Office.

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1 Tuesday Morning Session,
2 June 1, 2021.

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4 EXAMINER AUGOSTINI: Let's go on the
5 record.

6 Good morning. The Public Utilities
7 Commission of Ohio has scheduled for hearing at this
8 time and place Case No. 19-180-RR-UNC which is
9 captioned in the Matter of the Joint Petition of
10 Norfolk Southern Railway Company and CSC
11 Transportation, Inc., to Close the Franklin Street
12 Crossings in Orange Township, Delaware County, Ohio.
13 My name is Lauren Augostini, and I have been assigned
14 by the Commission to facilitate this case.

15 As indicated by the May 28, 2021, entry,
16 this session was initially scheduled as an
17 evidentiary hearing; however, given the certain
18 circumstances outlined in the entry, this session
19 will be a prehearing conference.

20 I would like to note on the record that
21 given the dial in number was published in the May 28,
22 2021, entry, there may be members of the public
23 attending this prehearing conference. Today is not a
24 comment session. I'm holding this prehearing
25 conference so that the parties and myself can discuss

1 a procedural schedule with respect to testimony and
2 hearing dates. With that being said, this is not a
3 confidential session.

4 Before we begin, since this is
5 technically audio only, I would like to ask counsel
6 to identify him or herself each time they speak so
7 that our court reporter can accurately reflect, you
8 know, who's speaking in the record.

9 All right. At this time let's take
10 appearances of counsel for the parties. Let's begin
11 with Norfolk.

12 MR. TALBOTT: Thank you, your Honor.
13 Casey Talbott on behalf of Norfolk Southern Railway
14 Company.

15 EXAMINER AUGOSTINI: Thank you.
16 CSX.

17 MR. EVANS: Lee Evans and Rick Silk on
18 behalf of CSX Transportation.

19 EXAMINER AUGOSTINI: Thank you.
20 Delaware County Board of Commissioners.

21 MR. HOCHSTETTLER: Thank you, your Honor.
22 Aric Hochstettler on behalf of the Board of County
23 Commissioners.

24 EXAMINER AUGOSTINI: Aric, I have to
25 apologize for always mispronouncing your name. Thank

1 you for that.

2 All right. Orange Township. Pete, it
3 looks like you're on mute.

4 MR. GRIGGS: Sorry about that. You would
5 think I would know by now. Pete Griggs and Jen Huber
6 on behalf of Orange Township.

7 EXAMINER AUGOSTINI: Thank you.

8 And last Delaware County Engineer's
9 Office.

10 MR. RILEY: Yes, your Honor. Rob Riley,
11 I am Chief Deputy Engineer with the Delaware County
12 Engineer's Office on behalf of Chris Bauserman and
13 Doug Riedel.

14 EXAMINER AUGOSTINI: Thank you.

15 So before we get into the discussion for
16 procedural -- for procedural schedule, is there
17 someone who would like to give a status update on
18 this case and how we -- we came about to where we are
19 now?

20 MR. TALBOTT: You Honor, this is Casey
21 Talbot. I did that the other day, so I will go ahead
22 and do that now, if -- if you are okay with that.

23 EXAMINER AUGOSTINI: Of course.

24 MR. TALBOTT: Okay. Yes. There is a bit
25 of a long history here. At some point in the past

1 the RDC and I believe the railroad had identified the
2 Franklin Street crossing as a crossing that may be
3 appropriate for -- for consolidation or closure.

4 So they had some lengthy discussions
5 going back again a period of years to see if the
6 crossing could be closed voluntarily. Those
7 discussions at that point were not fruitful; and,
8 therefore, Norfolk Southern Railway Company and CSX
9 filed a petition to petition to close these
10 crossings. That was proceeding by way of discovery,
11 counsel working quite well together by way of
12 document production and also depositions of different
13 witnesses.

14 We go back to enter about the beginning
15 of this year, 2021, the Township approached the
16 railways, asked if we would be amenable to revisiting
17 the voluntary closure discussions. So that began to
18 take shape. And then I believe it was in -- and when
19 we updated you on that in February, that it looked
20 like we had reached a contingent resolution subject
21 to some crossing Ts and dotting of Is. The
22 resolution was then passed by the Township I believe
23 it was in April. So, of course, as all of that was
24 going on, the preparation for the evidentiary hearing
25 ceased. The discovery ceased.

1 And then as recently as a week ago, we
2 were fine-tuning the issues to actually physically
3 close the crossing, and then at that point it --
4 counsel learned that the Township had -- had
5 attempted to -- or had taken action to rescind the
6 settlement agreement or resolution.

7 So that caused us to come back to you by
8 e-mail collectively a week or so back as counsel
9 indicated. So also together with that the Township
10 counsel saw a need to withdraw, so he has done that.
11 So counsel for the railway are still evaluating the
12 potential legal consequences of the -- of the
13 resolution that was passed back in April.

14 But in the meantime we recognize that
15 with this hearing, evidentiary hearing, on the books
16 for today and with Township counsel withdrawing on
17 behalf of not only the Township but on behalf of the
18 County Engineer, there was a need to get together
19 with you sooner rather than later to discuss the
20 practicalities of that.

21 We had the introductory call to set the
22 stage for that last week, and now we are back here
23 formally on the record. We do understand that the
24 Township counsel's -- former counsel is out, and now
25 the Township has new counsel. Pete Griggs is

1 entering an appearance and is on the call today.

2 One of the concerns we have, of course,
3 is that the County Engineer is -- we understood from
4 former counsel's comments that there may be a process
5 for the County Engineer to hire new process -- or to
6 hire new counsel, so perhaps Mr. Riley at some point
7 can speak to that today as to whether that's going to
8 happen and, if so, when.

9 But our hope and goal is to get a -- to
10 get a firm date on the docket as soon as practical
11 for the evidentiary hearing and also, of course, the
12 witness deadlines and we have raised another issue
13 with regard to perhaps the temporary closure of the
14 crossing that may be beyond the scope of today's
15 call, but I thought I would mention it.

16 I think that's it.

17 EXAMINER AUGOSTINI: Thank you,
18 Mr. Talbot. I think that's a good segue to hand it
19 off to Mr. Rob Riley just to explain and give us a
20 clear picture of what's going on with representation
21 for the Delaware County Engineer.

22 MR. RILEY: Yes, your Honor, thank you.
23 At this point we would actually like to respectfully
24 request to be dismissed from this case as a party.
25 Basically under Ohio law we -- we function as kind of

1 an engineer advisor to both the Board of County
2 Commissioners as well as all of the Boards of
3 Trustees, Township Trustees, within the county.

4 I understand we were named as a party
5 initially to this case, but we really have no
6 ownership interest in the roads. We are merely
7 charged with the basically advising Townships. In
8 particular Franklin Street being a Township road, we
9 act as an advisor and instruct Townships on the best
10 methods of maintenance. And so we really don't have
11 an ownership interest in Franklin Street, per se.

12 And so while I think it was probably
13 beneficial to be listed as a party initially because
14 I did help facilitate some of the discussions we've
15 already had with both of the railroads, at this point
16 frankly I think the best role for us would be to
17 continue our involvement as a witness. We can
18 certainly provide testimony to any party but on
19 behalf of either the Township Board of Trustees or
20 the Board of Commissioners certainly intend to be
21 available to do that.

22 But at this point, again, I think we
23 would respectfully request to be dismissed as a
24 party.

25 EXAMINER AUGOSTINI: Thank you,

1 Mr. Riley. I will hold off on a ruling on that and
2 memorialize it in an entry, but does anybody have a
3 response to -- to those comments?

4 MR. TALBOTT: Your Honor, could I speak
5 to that just briefly? This is Casey Talbot.

6 EXAMINER AUGOSTINI: Yes. Please
7 proceed.

8 MR. TALBOTT: Yes, thank you. I
9 appreciate Mr. Riley's comments, and he has been, of
10 course, professional to deal with throughout, so --
11 so we appreciate that. I honestly don't recall
12 whether the -- the County Engineer had been named
13 originally as a party by the railroad without looking
14 at the docket or whether the -- the PUCO had -- had
15 included them as potentially a necessary party.

16 But it does raise a logistical concern
17 that Pete may or may not be able to speak to at this
18 time. What we understood the reason for the
19 Township's counsel's need to withdraw was potential
20 conflicts that he foresaw going forward between the
21 Township and the County Engineer. And if the County
22 Engineer is not -- isn't actually a party, isn't
23 going to be a party, then that potentially or
24 seemingly eliminates the conflict and the need to
25 withdraw which would potentially allow us to -- to

1 expedite the rescheduling of the -- of the
2 evidentiary hearing. I just kick that out there.

3 I don't know if Pete can speak to that or
4 not and that ship may have sailed, but on behalf of
5 the railways we have an interest in -- with new
6 counsel coming in, we understand it proposes
7 logistical concerns getting him brought up and --
8 getting Pete and Jen Huber up to speed. But that
9 kind of begs for the question I just asked that if
10 the County Engineer isn't a player, then is there --
11 is there conflict?

12 And the short of it is we would like it
13 as soon as we can practically have it, and in the
14 meantime we have got that -- we would love to have
15 this thing closed temporarily. We think this would
16 be the best scenario for all of us.

17 EXAMINER AUGOSTINI: Understood. Thank
18 you, Mr. Talbott.

19 Mr. Griggs, I don't know if you want to
20 speak to that if you are prepared. If not, no
21 worries.

22 MR. GRIGGS: No, your Honor, thank you.
23 Pete Griggs, Orange Township. I mean, unfortunately
24 I can't -- I mean, I can't speak to whether or not
25 Mr. Betts has a conflict or not. I mean, that's --

1 that's his decision and the Prosecutor's Office
2 decision. You know, whether or not we need to
3 discuss that matter with him, I am more than happy to
4 do that, but I can't formally on the record begin to
5 state whether Chris would feel he no longer has a
6 conflict or not. That's up to the Prosecutor's
7 Office.

8 EXAMINER AUGOSTINI: Understood. Thank
9 you.

10 Are there any other comments regarding
11 this issue?

12 MR. HOCHSTETTLER: Yes, your Honor. I do
13 not -- this is Aric Hochstettler again. I do not
14 represent the County Engineer, but I do represent the
15 County Commissioners and have had discussions with
16 Mr. Riley about this issue. The concern we have is
17 there is a statutory process by which the Engineer
18 may obtain outside counsel and that would require
19 action by the Board of County Commissioners. The
20 Commissioners would actually be the ones to retain
21 outside counsel for the Engineer, and so in reviewing
22 the docket, it appeared that the County Engineer was
23 added as a party by an entry from the Commission.
24 And if -- if the Commission is okay with allowing
25 them to be dropped as a party from this case, my

1 indication to Mr. Riley was that since he has been
2 deposed in this matter, the County or the Township
3 could call him as a witness at an evidentiary hearing
4 if one is held.

5 And so that was -- that was my suggestion
6 so we certainly have no objections to it. Outside
7 counsel in this situation would be a County expense
8 that if the Engineer is not a necessary party, we
9 would like to not have to make that expense.

10 EXAMINER AUGOSTINI: Absolutely. And not
11 to put you on the spot, but do you know which entry
12 that was? I'm actually looking at the March 26,
13 2019, entry, and it doesn't name the Delaware County
14 Engineer as a party, but it -- if you look at
15 paragraph 10, it says that this entry should be
16 served on the Delaware County Engineer, so I just
17 want to make sure if the Delaware County Engineer is
18 a party or not.

19 MR. HOCHSTETTLER: Yes. So when I looked
20 at it going all the way back to the beginning of when
21 the petition was filed, the Engineer was not named as
22 a party. And the very next entry on the docket is
23 not really an entry but more of a -- it looks like a
24 notice of additional parties that should be added to
25 the service list, so it wasn't very clear to me, but

1 in my reviewing of the Revised Code and the
2 Administrative Code and just thinking about it, it
3 seemed to me like the County Engineer would be a
4 necessary party to this action so that's why it was
5 my suggestion to the County Engineer they bring that
6 issue up today.

7 EXAMINER AUGOSTINI: Of course. I think
8 we are on the same page. I will specifically outline
9 this after doing my own digging in an entry, and I
10 will try to get that out to the parties as soon as
11 possible because I don't want this to hinder any --
12 any trial preparation or anything like that.

13 If there is no more comments on this
14 issue, then I think I am ready to proceed to discuss
15 hearing dates, testimony dates if someone would like
16 to speak up. I have got my calendar open right now,
17 so we can -- we can dig in that discussion.

18 MR. EVANS: Your Honor, this is Lee
19 Evans. Casey's summary of things was -- was terrific
20 but I did -- and I realize this PUCO docket will
21 speak for itself, but in terms of the history, I
22 think I wanted to make sure I noted that in the
23 summer of 2019, there was a public hearing for
24 comment scheduled, and it occurred. I don't have the
25 exact date, but I am pretty sure it was in August of

1 2019. So that's part of that history that all took
2 place leading up to the first resolution that was
3 cited by the Orange Township Trustees in April. So I
4 just wanted to add that.

5 EXAMINER AUGOSTINI: Thank you. I
6 appreciate that. It looks like the public hearing
7 was held on July 9, 2019, just so we have a clear
8 record. I can't believe 2019 but here we are.

9 Okay. With that let's discuss hearing
10 and testimony dates.

11 MR. EVANS: Your Honor, this is Lee Evans
12 again since I hadn't quite unmuted myself yet. I
13 guess it seems to me that at this stage we don't know
14 for sure whether Mr. Griggs is going to be involved
15 or not. And if that's -- if that's the case, then
16 I -- you know, that may impact the time frame that we
17 are looking at in terms of this hearing, so I guess I
18 am throwing out a question again and comment before
19 we get into looking at actual dates.

20 MR. HOCHSTETTLER: This is Aric
21 Hochstettler again. I do want to raise something on
22 that point because I consider it to be likely that
23 Mr. Griggs is going to continue as counsel for the
24 Township because you all need to remember that the
25 Prosecutor's Office also represents the County as

1 statutory counsel. So just because I'm in-house
2 staff attorney for the Commissioners, the
3 Prosecutor's Office still represents the County, so I
4 won't speak for Mr. Betts either, but in my brief
5 discussions with him that I did have last week, he
6 seemed to think that conflict was going to persist
7 regardless of what happened with the County Engineer.

8 MR. GRIGGS: This is Pete Griggs, Orange
9 Township. I mean, I would agree with Aric, and I
10 think we can assume our office -- I will certainly
11 reach out, but I think at this point we can assume
12 that our office will be proceeding as counsel for the
13 Township.

14 EXAMINER AUGOSTINI: And I would just
15 clarify I am looking at my docket. I see the parties
16 that, you know, raised appearances and filed notices
17 of appearances, so I think we're -- we're okay to
18 move forward in that regard, and we may need to work
19 out some dates later on but let's go -- go forward as
20 planned.

21 MR. EVANS: Again, your Honor, Lee Evans
22 here. Since I have some -- some restrictions on
23 dates and so forth, I will throw some dates out there
24 and at least get the discussion rolling. I don't
25 know exactly how much time, you know, Pete is looking

1 for in terms of getting up to speed, and we certainly
2 want to be reasonable in that regard. With that in
3 mind though one of our witnesses, Amanda Decesare, a
4 CSX employee, I had checked with her concerning
5 availability and basically was told for all intents
6 and purposes any time over the summer but except for
7 the last two weeks of July. And so that's one
8 restriction.

9 And then my other restriction I have is
10 two trial dates in cases that seem likely to take
11 place back-to-back weeks in August, August 16 and
12 August 23. So I'm a little bit out of commission in
13 August, and then when you throw in the July witness
14 issue that I mentioned, you know, and not knowing how
15 much -- you know, how much time Pete is going to need
16 but, you know, I may from -- if it was completely up
17 to me, which I realize it's not, I might be looking
18 at early -- the first couple weeks of September.

19 EXAMINER AUGOSTINI: Okay. Let's go off
20 the record real quick.

21 (Discussion off the record.)

22 EXAMINER AUGOSTINI: Let's go back on the
23 record.

24 The parties and myself had a discussion
25 off record, and we came to the conclusion that the

evidentiary hearing will be held on October 12, 2021,
at 10:00 a.m., and testimony will be due prior to
that on October 5, 2021. I will issue an entry
memorializing these dates as well as touching on the
issue of the Delaware County Engineer.

And with that I take it there are no
other issues that need to be addressed.

MR. TALBOTT: None from Delaware County,
your Honor.

EXAMINER AUGOSTINI: All right. So we
are concluded. I appreciate everybody's
participation and patience during today's prehearing
conference. And thank you to our court reporter,
Karen.

We are adjourned.

(Thereupon, at 10:33 a.m., the hearing
was adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Tuesday, June 1, 2021,
and carefully compared with my original stenographic
notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-7086)

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This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 19-0180-RR-UNC

Summary: Transcript of the Norfolk Southern Railway Company and CSX Transportation, Inc. hearing held on 06/01/21 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.