

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

**In the Matter of the Joint Petition of
Norfolk Southern Railway Company and
CSX Transportation Inc., to Close the
Franklin Street Crossings (DOT Nos.
481482D & 518257V) in Orange Township,
Delaware County.**

Case No. 19-180-RR-UNC

POST-HEARING BRIEF OF PETITIONER CSX TRANSPORTATION, INC.

I. Introduction

Delaware County and Orange Township do not really dispute that the Franklin Street crossings (DOT crossing number 481482D – Norfolk Southern and DOT crossing number 518257V/CSX Transportation, Inc.)¹ should be closed; they simply do not want to close the crossing now. Instead, they would like to wait until the Home Road overpass/connector has been completed, while at the same time acknowledging that the precise completion date is unknown and, indeed, that it is possible that the project will never be completed. The most optimistic completion date indicated is 2026, five years from now. (See, Pre-filed testimony of Glen Keating, Del. Cty. Exb. 7, p. 3; Pre-filed testimony of Patrick Brandt, Del. Cty. Exb. 6, p. 4; Pre-filed testimony of Robert Riley, Del. Cty. Exb. 5, pp. 13-14; Pre-filed testimony of Chief McNeal, Orange Twp. Exb. B, p. 9; Pre-filed testimony of Michele Boni, Orange Twp. Exb. C, pp. 4-5; Robert Riley testimony, pp. 83-85; Chief McNeal testimony, pp. 204-224; Michele Boni testimony, pp. 222-223) The County and the Township are also unwilling or unable to state that the County and/or the Township will indemnify the Petitioner railroads if an accident occurs at the crossing between now and the theoretical completion of the Home Road project and eventual closure of the crossing

¹ Although assigned two DOT crossing numbers because there are two railroads involved, this is for all intents and purposes one crossing. For that reason, the accident experience of one railroad at this crossing is really the accident experience at both crossings and of both railroads. You cannot close one crossing without closing the other. To the motoring public, it clearly has the appearance of one crossing. For that reason, throughout the remainder of this brief, it will be referred to as one crossing.

(Robert Riley testimony, pp. 87-88; Michele Boni testimony, pp. 222-225); this despite the fact that the Township has already acknowledged, in its April 19, 2021 Resolution initially consenting to the closure of this crossing, that closure “will enhance the safety of the traveling public.” (Petitioner Exb. 9; Michele Boni testimony, pp. 230-234) At the time of that Resolution, the County was in full support of Orange Township’s decision to voluntarily close the crossing. (See, generally, Petitioner’s Exb. 10, including numerous emails/correspondence regarding closing of the crossing on which representatives of Delaware County and/or its legal counsel were copied. There was no objection to closure raised by the County at that time.) Moreover, Orange Township representatives attended the Diagnostic Survey of these crossings, way back in 2012, when the recommendation to close this crossing was originally made. (Petitioners Exb. 8; Michele Boni testimony, pp. 227-229)

Only after Orange Township initially refused to voluntarily close the crossing despite the significant incentives offered following the 2012 Diagnostic Survey, and only after first agreeing to voluntarily close the crossing in April, 2021 then flip-flopping in late May, 2021, did it become necessary to move forward with the recent evidentiary hearing on this Petition, filed on January 28, 2019. A public hearing was held on July 9, 2019, at which only seven (7) witnesses testified, one of whom supported closure. (See Public Hrg. Transcript generally; Michele Boni testimony, pp. 221-222) Then, as noted above, last spring, with the knowledge and support of the County, the Township came to the Railroads to ask that the prior incentives be put back on the table in exchange for voluntary closure. (Michele Boni testimony, pp. 229-230, Petitioner’s Exb. 10) As noted above, after considerable time and effort, that offer was again made and the Township approved closure by Resolution dated April 19, 2021, only to inexplicably change its position a month or so later thereby necessitating the evidentiary hearing. (Michele Boni testimony, pp. 230-236)

When the Township passed the April 19, 2021 Resolution agreeing to voluntary closure of the crossing to “enhance the safety of the traveling public,” the impact, or lack thereof, of closure on vehicular traffic and emergency medical services was the same as it is now. Indeed, the County and the Township acknowledged at the evidentiary hearing that their decision to oppose closure, set forth in the Township’s May, 2021 Resolution reneging on the April 19 resolution approving voluntary closure, was made before they ever did any actual analysis of EMS runs by Delaware Medic 3 to the area west of the tracks. (Patrick Brandt testimony, pp. 104-105, Glen Keating testimony, pp. 159-160)² In other words, the Township and the County seemingly, eventually opposed closure of the crossing for political or other “non-data based” reasons and only later looked for data in an effort to justify that position. As will be discussed in greater detail below, this belated effort to analyze data to support their previously established position opposing closure fails. The evidence set forth in Co-Petitioners’ Petition for closure, along with that developed at the Public Hearing and the recent Evidentiary Hearing, support a finding that the Franklin Street crossing in Lewis Center, Ohio, meets the criteria for closure set forth under Ohio Revised Code Sections 4907.474 and 4907.475.

² Everyone who testified on the subject agrees that the only emergency response issue relates to the EMS response by Medic 3 to the area west of the tracks—fire department response is not an issue because their areas of primary responsibility are already separated by the railroad tracks, and Medic 3’s response to the area east of the crossing, three fourths of its geographic territory, is totally unaffected by the closure. (Patrick Brandt testimony, pp. 106-108; Glen Keating testimony p. 171; Michele Boni testimony, p. 219) There has never been any contention by anyone that police response is in any way affected by the closure, likely because the police are generally patrolling away from the station such that response time from a fixed location is not an issue. In that regard, it is noteworthy that Delaware County is implementing an automatic vehicle location system which will allow the closest EMS medic unit, which may be on the road already, to be dispatched if they are available. This system was to be in place by the end of August, 2021, but it is behind schedule and is only partially in place. Nevertheless, when installed, the dispatching of EMS will often be similar to dispatching police who are already on the road and are not dispatched from a fixed location. This is the intent, and the perceived advantage, of the new system. Delaware County admits that no aspect of their analysis of the impact on EMS after grade crossing closure included an analysis of the impact of the automatic vehicle location system on response times. (Patrick Brandt testimony, pp. 133-134)

II. The Criteria for Closure

There is no dispute regarding the criteria for closure of a grade crossing on Ohio. These criteria, set forth in Ohio Revised Code Sections 4907.474 and 4907.475, are as follows:

- (1) The daily vehicular and train traffic at the crossing to be closed;
- (2) The daily vehicular and train traffic at any alternate crossings;
- (3) The daily increase in vehicular traffic at alternate crossings resulting from proposed crossing closures;
- (4) The nature of the roadway at any alternate crossings;
- (5) The total number of crossings within one linear mile of the crossing to be closed;
- (6) The type of advance warning devices at any alternate crossings;
- (7) The sight distances at any alternate crossings, including any permanent obstruction affecting distance of view;
- (8) The impact of closure on vehicular traffic, emergency vehicles, commercial enterprises, and any other factors pertinent to municipal corporations and other populated areas;
- (9) Any other factor the commission determines appropriate.

The evidence concerning criteria numbers 1-7 is also not in dispute. As set forth in the Petition and Exhibits thereto, and in the pre-filed testimony of Amanda DeCesare of CSX Transportation, Inc. (“CSXT”), and the pre-filed testimony of Leon Jackson of Norfolk Southern Railway Company (“NSRC”), Co-Petitioner Exbs. 11 and 12, as well as at other locations in the evidentiary hearing transcript, the daily train count and vehicular count at the Franklin Street crossing are 42 trains (combined total) and 64 vehicles. There are three alternate crossings, Lewis Center Road, Shanahan Road, and Orange Road, which have daily vehicular and train counts as follows:

Lewis Center Road: 10,295 vehicles, 42 trains

Shanahan Road: 1,034 vehicles, 42 trains

Orange Road: 13,711 vehicles, 42 trains

The daily increase in vehicular traffic will be 64 vehicles distributed over the three crossings, with more vehicles likely using the Lewis Center Road crossing because of its very close proximity to the closed Franklin Street crossing. As established during the questioning of Chief Deputy County Engineer, Robert Riley, 64 vehicles translates into 2.66 vehicles per hour, and Lewis Center Road can more than accommodate all of the 64 vehicles per day even if it is the case on any given day that they all use Lewis Center Road as an alternate route. (Robert Riley testimony, pp. 82-83, 96-97)

The nature of the roadway at the three alternate crossings can be described as a two lane road, one lane in each direction running generally east and west, surrounded by residential and/or light commercial properties, all crossing the tracks at between a 60 and 90 degree angle. All three alternate crossings are already equipped with flashers and gates. Two crossings, Lewis Center Road and Shanahan Road, are located within one linear mile of the Franklin Street crossing. There are no permanent sight obstructions at any of the three alternate crossings and, of course, even if there were, they are all protected by flashers and gates thereby mitigating any such obstruction.

The County and the Township have offered no evidence to suggest there is any dispute concerning criteria 1-7 as outlined above.

In sharp contrast to the above description of the alternate crossings, Franklin Street is a narrow roadway (often less than two car widths wide), the crossing has a raised (humped) profile, there is an obstruction to view in the northeast quadrant (the Medic 3 building), and there are no flashers or gates in place. (Robert Riley testimony, pp 78-79, 97-98; Chief McNeal testimony,

pp. 201-203) Indeed, the proposed closure, recommended by the Ohio Rail Development Commission and signed off on by the attendees of the Diagnostic Survey, is in part motivated by the desire to avoid the significant use of state/federal money that will likely be necessary to install flashers and gates at a crossing which is used by only about 64 vehicles per day, is located about a football field away from the primary alternate crossing, Lewis Center Road, and which presents a significant safety hazard. (Amanda DeCesare pre-filed testimony, p. 5; Catherine Stout testimony, Petitioners' Exb. 17, pp.13-24, 30-31, 54-56)

Therefore, the crux of this dispute regarding closure of the crossing, and the subject of the majority of the testimony provided at the evidentiary hearing, relates to criteria No. 8³, the "impact of closure on vehicular traffic, emergency vehicles, commercial enterprises, and any other factors pertinent to municipal corporations and other populated areas."⁴ For the reasons discussed below, the evidence of record supports a finding that permanent closure will not impact vehicular traffic or emergency vehicles at all or that any such impact will be minimal, and that the Franklin Street grade crossing, a redundant, unsafe, infrequently used grade crossing, should be permanently closed, particularly in light of the significant expenditure of state/federal funds that will likely be needed to install flashers and gates if closure does not occur.

III. The Closure of the Franklin Street Crossing Will Not Significantly Impact Vehicular Traffic

As noted above, the evidence shows that approximately 64 vehicles use the Franklin Street crossing on a daily basis. This results, on average, in an additional 2.66 cars per hour using the Lewis Center Road crossing, assuming they all use Lewis Center Road and not one of the other

³ Criteria No. 9, "any other factors", does not seem to apply as the issues in dispute are covered directly by criteria No. 8.

⁴ There also is no evidence of impact on commercial enterprises or on other factors pertinent to municipal corporations or other populated areas.

alternate crossings. Lewis Center Road, and the grade crossing there, can more than accommodate these additional vehicles even recognizing that they would likely not be distributed equally on an hourly basis. (Robert Riley testimony, pp. 83, 96-97) Franklin Street is a short street, about a third of a mile long. It is not a main east/west corridor because it terminates a short distance both east and west of the grade crossing. Anyone travelling on Franklin Street, if they intend to travel anywhere other than within Lewis Center⁵, must travel the short distance north from Franklin Street to Lewis Center Road on one of multiple available cross streets to turn right or left on Lewis Center Road. (Robert Riley testimony, pp 80-81) There is no other way in or out of Lewis Center. At times, traffic can back up on Lewis Center Road. However, the short distance between the various Lewis Center streets within Lewis Center, Ohio which intersect with Lewis Center Road would necessarily be less than the overall length of Franklin Street, estimated to be less than one-third of a mile long. (Robert Riley testimony, p. 80) Therefore, there is no evidence of any significant difference in the amount of traffic backed up on Lewis Center Road at any one of those intersections, located just east or just west of the Lewis Center Road crossing.

Moreover, because of the narrow nature of the streets, Franklin Street is never used as a detour if Lewis Center Road or the Lewis Center Road grade crossing are closed. (Robert Riley testimony, pp. 82-84) Also, motor vehicles/drivers wishing to travel from one side of Lewis Center, Ohio to the other can move from one side of the tracks to the other in a motor vehicle (a non-emergency vehicle without flashers and gates), using Lewis Center Road, in less than 30 seconds.⁶ (Glen Keating testimony, pp. 181-183)

⁵ Lewis Center is a small, unincorporated community located in Orange Township. (Robert Riley testimony, p. 71)

⁶ And, as discussed in greater detail below, in Section IV regarding impact on EMS response, because emergency vehicles would typically be moving with their siren and flashing lights on, considering the obligation of the motoring public to move out of their way, an ambulance can also travel from the Medic 3 station on the east, to the west side of

There have been a limited number of occasions in the past when both the Franklin Street crossing and Lewis Center Road crossing were closed at the same time for railroad maintenance activities. The evidence shows that this has occurred one time in the past decade. There have been a total of three times in that decade when one or the other or both of these crossings were closed. (Patrick Brandt testimony, pp. 127-128) Closure of crossings for railroad maintenance projects, to refurbish the crossing as the railroads are required to do from time to time, is not a frequent occurrence.⁷ And, in any event, the evidence clearly shows that notice to the County and the Township is provided by the railroads and appropriate detours are established by the County. (Glen Keating testimony, pp. 163-164; Patrick Brandt testimony, pp. 127-128) These maintenance related grade crossing closures are short in duration, a few days to a week or so in length, and traffic is re-routed. Significantly, as noted above, Franklin Street is not considered a detour route for traffic during these closures. (Robert Riley testimony, pp. 80-81; Stahl Public Hearing testimony, pp. 17-24) Consequently, closure of the Franklin Street crossing will have little or no impact on vehicular traffic flow generally or during these infrequent, maintenance related crossing closures.

IV. The Closure of the Franklin Street Crossing Will Not Significantly Impact Emergency Vehicle Traffic Including, In Particular, EMS Response Times to the Response Area West of the Crossing

As an initial matter, it is clear that closure of the Franklin Street Crossing will have no impact on fire response anywhere, and no impact on EMS response for response areas east of the

Lewis Center, using Lewis Center Road, in less than 30 seconds, probably even more quickly than non-emergency vehicular traffic. (Glen Keating testimony, pp. 181-183)

⁷ Given the infrequency historically that such closures have occurred, and assuming arguendo that Delaware's best case estimate as to when the Home Road overpass will be completed (2026) is accurate, there would likely be very few instances of closure of the Lewis Center Road crossing in the interim. And, in connection with the EMS discussion below, when any such closing occurs, notice is always provided and Orange Township has always been able to reassign responsibility for the EMS response area west of the track with no known negative impact on emergency services. (Patrick Brandt testimony, pp. 127-130; Keating testimony, pp. 161-164)

tracks.⁸ The fire response territories have been created using the tracks as a dividing line—as it relates to Orange Township, Station 362, located on the east side of the tracks, has primary responsibility to respond to territories east of the tracks, whereas Station 361, located on the west side of the tracks, responds to fire calls on the west side of the tracks. (Patrick Brandt testimony, pp. 106-108; Chief McNeal testimony, p. 199) Regarding EMS response, it is also undisputed that the closure of the Franklin Street crossing will not impact Medic 3’s ability to respond to three of its four run card territories, because they are located east of the crossing. (Patrick Brandt testimony, p. 106; Glen Keating testimony, pp. 170-171) The primary focus of the hearing, because of the focus placed on it by the Township and the County, was the impact of closure on EMS service and, specifically, response times to the west of the crossing, to the run card area referenced as 361-M3-1, and sometimes referenced in testimony as the “Kroger area.” (See, Hearing testimony generally including, for example, Patrick Brandt testimony, pp. 106-107)

The evidence provided at the evidentiary hearing, the public hearing, and in the Petition for Closure and Exhibits thereto, clearly supports a finding that the impact, if any, of closure of the Franklin Street crossing on EMS response to run card area 361-M3-1 (the “Kroger area”), does not support a finding that the Franklin Street grade crossing should not be closed. Quite the contrary, the evidence of record supports a finding that the Franklin Street crossing can be closed with de minimis adverse impact on EMS service, including EMS response time to run card area 361-M3-1.

Delaware County Medic 3 is the primary responder to run card area 361-M3-1. It is the “M3” in the run card designation. Medic 3 is located in the northeast quadrant of the Franklin Street

⁸ There is also no evidence provided by Delaware County and/or Orange Township that there will be any impact on police response. The only emergency response issue raised by the County and Orange Township relates to EMS response west of the crossing by Medic No. 3.

crossing. It is located in a building which Delaware County rents from Orange Township. It is undisputed that the physical location of Medic 3 may change at some point in the future, likely moving further east of the Lewis Center Road and Franklin Street crossings. (Robert Riley testimony, pp. 94-95)

The evidence shows that even now, with the Franklin Street crossing open, there are numerous circumstances when Medic 3 is not the first responder to 361-M3-1, and nevertheless emergency medical service response to that area meets or is faster than the national standard. (Patrick Brandt testimony, pp. 135-136; Glen Keating testimony, pp. 161-163; Chief Noble depo. testimony, Petitioners' Exb. 13, pp. 25-26, 28-33, 38-39, 51-52) If Medic 3 is already responding to a prior call to one of its other run card areas, east of the crossing, Medic 361 or the next available Medic will respond to 361-M3-1. (Patrick Brandt testimony, pp. 134-135; Chief Noble depo. testimony, supra.) Similarly, when Medic 3 is in the process of transporting a patient to one of the Columbus area hospitals, another Medic, typically Medic 361, will respond. (Patrick Brandt testimony, pp. 135-136; Chief Noble depo. testimony, supra.) This routine, backup coverage of 361-M3-1 by Medic 361 will continue unchanged under the above-referenced circumstances even after the Franklin Street crossing is closed as it is anticipated that the County will continue to designate Medic 3 as having the primary responsibility for 361-M3-1 because Medic 3's ability to get to that area, using the Lewis Center Road crossing, will not change. (Glen Keating testimony, p. 173) The evidence supports a finding that at all times when Medic 361 or other Medics respond to 361-M3-1 because of one of the above circumstances, Delaware County EMS response times to this area met and usually were faster than the national standard. (Patrick Brandt testimony, p. 111; Glen Keating testimony, pp. 160-163; Chief Noble depo. testimony, supra.)

When considering the impact of closure of the Franklin Street crossing, it is also important to note that at various times in the past, the primary responding Medic to the Kroger area was changed to Medic 361 because either one or both crossings (Franklin Street and Lewis Center Road) were closed for maintenance, or Lewis Center Road itself was closed west of the crossing (in 2019) for installation of a roundabout. On these past occasions of closure, the County and Township were aware in advance of the closure, and the run cards were changed so that Medic 361 was primarily responsible for this area. (Patrick Brandt testimony, pp. 127-129; Chief Noble depo. testimony, Petitioners' Exb. 13, pp. 38, 39, 42) The crossing closures were for short periods of time, a few days to a week or so. However, the closure of Lewis Center Road in 2019, for construction of a roundabout, extended over a period of approximately six months. (Patrick Brandt testimony, p.128) During these times, Orange Township did not have to add personnel, employ additional ambulances or add any other equipment at Station 361 to meet their obligation as the primary medic servicing 361-M3-1. And, as stated above, the County and Township witnesses are not aware of any circumstance when the Lewis Center Road was closed for roundabout construction or crossing maintenance⁹ where response times were inadequate and/or where there was an adverse patient outcome. (Chief Noble depo. testimony, Petitioners' Exb. 13, pp. 34, 38-39, 41-42, adopted by Chief McNeil; Chief McNeil testimony, pp. 194-195; Patrick Brandt testimony, pp. 128-130; Glen Keating testimony, pp. 161-165)

Delaware County went to some effort, primarily in the pre-filed testimony of Patrick Brandt, to compare response times as between Medic 361 and Medic 3 to 361-M3-1, the response area west of the crossing. This was done through the creation of, and reference to, Delaware County

⁹ See also footnote 7 above.

Exhibit 4. A thorough review of that Exhibit and the testimony of Mr. Brandt, in particular¹⁰, reveals that when Medic 361 and Medic 3 were both called to the same accident/incident scene, sometimes Medic 3 responded more quickly, sometimes Medic 3 and Medic 361 responded equally quickly, and sometimes Medic 361 responded more quickly.¹¹ (Patrick Brandt testimony, pp. 108-127) Although not specifically discussed at the hearing, it is also important to note that irrespective of whether Medic 361 or Medic 3 responded more quickly to the scene, the difference in response time is minimal. (See, generally, Delaware County Exb. 4 and Patrick Brandt testimony, *supra*.) Moreover, when looking at any of the Medic 3 response times, it is impossible to know if Medic 3 on that occasion used the Lewis Center Road crossing or the Franklin Street crossing—this data tells us nothing about that. (Patrick Brandt testimony, pp. 109-112) Therefore, it is impossible to conclude based on this data that closure of the Franklin Street crossing would impact response times.

Despite their assertions to the contrary, Delaware County Exhibit 4 establishes that there is no significant difference in response time for Medic 3 versus Orange Township Medic 361 when they are simultaneously dispatched to the same emergency and same location within run card 361-M3-1 (i.e., west of the Franklin Street and Lewis Center Road crossings), that being the most appropriate comparison of run times in terms of relative traffic conditions. In fact, of the 12 times it is possible to compare the data in Delaware County Exhibit 4 for the simultaneous run times, Medic 361 arrived in less time than Medic 3 on five occasions, Medic 3 arrived in less time on six

¹⁰ The only detailed discussion of Delaware County Exhibit 4 was in the cross examination of Mr. Brandt. This testimony will be discussed below. Any other reference by the County or the Township to this data was more in the nature of conclusory generalities.

¹¹ In addition, occasionally it is not possible to compare the response times because one Medic's response time is indicated as "null", with no time entered.

occasions, and they had the identical travel time on one occasion (see Table below and Patrick Brandt testimony, pp. 108-127).

<u>Call ID</u>	<u>M3 Run Time</u>	<u>M361 Run Time</u>	<u>Difference in Travel Time</u>
33505	0:01:34	0:02:41	0:01:07
39071	0:02:27	0:03:04	0:00:37
138819	0:02:59	0:02:53	0:00:06
163119	0:02:58	0:02:30	0:00:28
164532	0:02:57	0:02:28	0:00:29
74717	0:03:00	0:03:29	0:00:29
21230	0:01:13	0:02:39	0:01:26
67363	0:02:29	0:02:29	0:00:00
31820	0:06:13	0:04:59	0:01:14
123109	0:05:29	0:05:08	0:00:21
23384	0:03:12	0:03:32	0:00:20
37958	0:02:53	0:02:59	0:00:06

Bold=M3 faster; Unbold=M361
faster or the same

Further, with respect to locations where the most calls occur within run card 361-M3-1, as identified by Orange Township's witness, Fire Chief McNeil, and the County's witness Patrick Brandt (See, pre-filed testimony of Chief McNeil, Orange Twp. Exb. B, p. 4; pre-filed testimony of Patrick Brandt, Del. Cty. Exb. 6, p. 3), the average run times differ by only seconds (see Table below).

	<u>OSU Outpatient</u>	<u>Kroger Complex</u>	<u>Olentangy HS</u>
M3 avg. run time	0:02:51	0:03:08	0:03:38
M361 avg. run time	0:03:05	0:03:20	0:04:19

Moreover, the response time for Medic 361 is undoubtedly more predictable as they will never be presented with a delay due to a blocked crossing as a result of a moving train as would be Medic 3. (Glen Keating testimony, p. 170)

In sum, the arguments made by Orange Township and Delaware County that closing the Franklin Street Crossing will adversely affect emergency response times to run card 361-M3-1 are not supported by the data. Their corresponding speculation that the few seconds on average of additional run time between the two Medics “might” or “could” result in an adverse outcome is equally unavailing. Neither presented any evidence supporting that speculation. Moreover, during the period when Lewis Center Road was closed west of the railroad crossings for six months for construction, former Orange Township Fire Chief Noble and others testified that there is NO EVIDENCE of adverse impacts or outcomes for any patients. (Chief Noble depo. testimony, Petitioners’ Exb. 13, pp. 34, 38-39, 41-42; Chief McNeil testimony, pp. 194-195; Patrick Brandt testimony, pp. 128-130; Glen Keating testimony, pp. 161-165)

It is not surprising that the Medic 361 and Medic 3 response times to run area 361-M3-1 are the same or similar as it is undisputed that a Medic responding primarily on State Route 23, as Medic 361 would do, has more options to circumvent traffic because Route 23 is wider, has a wide berm, and often has more lanes of travel such that when vehicles stop and move over, as they are required by law to do, the Medic on Route 23 is in a better position to get around traffic than is Medic 3 on Lewis Center Road. (Patrick Brandt testimony, pp. 130-133; Glen Keating testimony, pp. 165-166; Chief McNeil testimony, pp. 199-200) Moreover, unlike Medic 3, there is no circumstance when responding to 361-M3-1 where Medic 361 would be required to cross railroad tracks such that they could potentially be blocked by a moving or stopped train. (Glen Keating testimony, p. 170) When Medic 3 is stopped by moving train traffic, although it is left to the discretion of the medics, the typical protocol is to let the moving train pass (which occurs at the Franklin Street and Lewis Center crossings at almost the same time due to their very close proximity to one another) thereby necessitating some delay in Medic 3’s response whether the Franklin Street

crossing is closed or not. (Glen Keating testimony, p. 170) There is little wonder then that the comparative response times as between Medic 361 and Medic 3 are very similar. And it is important to note that after closure of the Franklin Street crossing, the status quo will be preserved in that Medic 3's role as the primary responder to 361-M3-1 is not expected to change; with the Lewis Center Road crossing open, there will be little or no impact on Medic 3's ability to respond to this area. (Glen Keating testimony, p. 173) In short, the impact of closure of the Franklin Street Crossing on EMS response time is minimal to non-existent and does not support a decision not to close the crossing.¹²

V. Safety Concerns at the Franklin Street Crossing Require Closure of the Crossing

There is no dispute that there have been four (4) documented accidents at the Franklin Street crossing since records of these events began to be kept. (See, Leon Jackson testimony pp. 24-25, DOT Highway-Rail Grade Crossing Accident/Incident Report for Crossing No. 48148D¹³) When considering safety at the Franklin Street crossing, it is of little or no consequence which of the three tracks and, hence, which of the two railroads was involved. Moreover, while the number of accidents and fatalities at a crossing provides some measure of the hazardous nature of the crossing, it is certainly the case that a crossing can be hazardous before any accidents have occurred there as it is the physical characteristics of the crossing that make it hazardous, irrespective of whether the motoring public has been lucky enough to avoid an accident.

¹² It is also worth noting that Orange Township and Delaware County are asking that Franklin Street crossing not be closed even though it is admitted that they have not even tried strategies available to them to improve Medic 3's ability to get out onto Lewis Center Road when responding to an emergency, specifically, for example, installation of signage on Lewis Center Road warning not to block the Third Street intersection, and/or installation of a flashing light on Lewis Center Road that flashes when Medic 3 is about to respond to a call. These are ideas which Mr. Keating testified are, in his opinion, worth considering. (Glen Keating testimony, pp. 169-170)

¹³ This document was not made an exhibit by anyone at the hearing, however, it is clearly admissible as a public record. In any event, there is no dispute that the accident history consists of four accidents.

There is no dispute that the Franklin Street crossing is hazardous because of the narrowness of Franklin Street, the humped nature of the crossing, the unusual width of the crossing because it involves three tracks and two railroads, including the large gap between the CSXT track and Norfolk Southern tracks such that a vehicle could get trapped between tracks, and the limited site view particularly in the northeast quadrant as a result of the building occupied by Medic. (Catherine Stout testimony, pp. 13-21; Chief McNeil testimony, p. 203; Diagnostic Survey, Petitioners' Exb. 8) All of these factors result in its current rank as the 39th most hazardous crossing in the entire state of Ohio. (Amanda DeCesare pre-filed testimony, p. 5, and Hearing testimony, p. 49)

It is presumably the recognition of the hazardous nature of the crossing that led the Orange Township trustees to initially vote to voluntarily close the crossing, stating in the Resolution dated April 19, 2021, that closure "will enhance the safety of the traveling public." (Michele Boni testimony, pp. 230-234; Petitioners' Exb. 8)

Of course, not every hazardous, unsafe crossing can be closed. Some must be addressed by the expenditure of state and federal money to install flashers, gates and/or other safety devices. However, the Franklin Street crossing, given its limited use, its redundancy and close proximity to the Lewis Center Road crossing (which already has flashers and gates in place), and the fact that it clearly meets all criteria for closure set forth in Ohio Revised Code §§4907.474 and 4907.475, should be closed for the safety of the motoring public. Requiring the installation of flashers and gates at this crossing would be expensive, and would not be a good use of state and federal taxpayer dollars. Those dollars could be better used at some other crossing where closure is not a viable option as it is here. (Catherine Stout testimony, pg. 54, Amanda DeCesare pre-filed testimony, pp. 28-29)

VI. Conclusion

Based on all of the evidence of record, including the testimony at the Public Hearing, the testimony at the Evidentiary Hearing, the various deposition testimony and exhibits submitted by agreement of the parties, the Joint Petition of Norfolk Southern Railway Company and CSX Transportation, Inc. to Close the Franklin Street Crossings (DOT Nos. 481482D and 518257V) in Orange Township, Delaware County, should be granted.

Respectfully submitted,

/s/ R. Leland Evans
R. Leland Evans (0006833)
(Trial Attorney)
Richard J. Silk, Jr. (0074111)
DICKIE, McCAMEY & CHILCOTE, P.C.
250 Civic Center Dr., Suite 280
Columbus, Ohio 43215
Telephone: (614) 258-6000
Facsimile: (614) 258-6006
revans@dmclaw.com
rsilk@dmclaw.com
Attorneys for Co-Petitioner
CSX Transportation, Inc.

CERTIFICATE OF SERVICE

A copy of the foregoing was filed electronically with the PUCO this 10th day of December,

2021. Notice of this filing has been sent via electronic mail to the following:

D. Casey Talbott

DCTalbott@eastmansmith.com

Counsel for Co-Petitioner Norfolk Southern Railway Company

Aric Hochstettler

AHochstettler@co.delaware.oh.us

Julie Donnan

jdonnan@BJGlaw.net

Jennifer L. Huber

jhuber@BJGlaw.net

/s/ R. Leland Evans

R. Leland Evans

Attorney for Co-Petitioner

CSX Transportation, Inc.

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

12/10/2021 11:06:39 AM

in

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

Summary: Brief Post-Hearing Brief of Petitioner CSX Transportation, Inc.
electronically filed by Mr. R. Leland Evans on behalf of CSX Transportation, Inc.