

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Petition of CSX)	
Transportation, Inc. to Close to Vehicular)	Case No. 01-2402-RR-UNC
Traffic Three Highway-Railway Grade)	Case No. 01-2404-RR-UNC
Crossings in the City of Hoytville, Wood)	Case No. 01-2405-RR-UNC
County, Ohio.)	

OPINION AND ORDER

The Commission, considering the applicable law and the exhibits, statements, and evidence of record, and being otherwise fully advised, hereby issues its opinion and order in this matter.

APPEARANCES:

Anspach, Serraino, Meeks & Nunn, L.L.P., by Mark D. Meeks, 405 Madison Avenue, Suite 2100, Toledo, Ohio 43604-1236, on behalf of CSX Transportation, Inc.

SUMMARY OF THE PROCEEDING:

The proceedings were initiated on September 12, 2001, with the filing by CSX Transportation, Inc. (CSX) of petitions for closure of three highway/railroad crossings located at Sands Road (AAR 142-289H) in Case No. 01-2402-RR-UNC (01-2402), Hockenberry Road (AAR-922R) in Case No. 01-2404-RR-UNC (01-2404), and Prairie View Road (AAR 142-291J) in Case No. 01-2405-RR-UNC (01-2405). In its petitions, CSX contends that all three crossings have low volumes of vehicular traffic and high volumes of railroad traffic. CSX also states that the closing of these three crossings will not cause unreasonable inconvenience to the public and that any and all vehicular traffic can be diverted to other nearby crossings in the city of Hoytville, Ohio.

By entry of November 28, 2001, the Commission directed its staff to file an investigative report on the closure petitions. On April 19, 2002, staff filed its investigative report. By entry issued April 30, 2002, and pursuant to Section 4907.475, Revised Code, these cases were scheduled for a local public hearing and the Commission's Docketing Division was directed to publish notice of the hearing in a newspaper of general circulation in Wood County, Ohio, once a week for three consecutive weeks. One letter in opposition to the closure in 01-2402 was filed but no comments were filed in 01-2404 or 01-2405. The public hearing in this matter was held on May 22, 2002, at the Hyco Building in Hoytville, Ohio. Proof of publication of the hearing notice in *The Sentinel-Tribune* was filed on June 11, 2002.

SUMMARY OF THE EVIDENCE:

Staff filed a memorandum summarizing its investigation of these crossings. Staff noted that the public crossings under review are located in Jackson Township, Wood County. Staff indicated that the three crossings are located within a one-mile vicinity of each other on the same CSX line and are currently equipped with only crossbucks.

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Further, each of the crossings is relatively high profiled with the crossing surface located above an unpaved access road. Staff noted that there are alternate crossings adjacent to these crossings that have paved access roads with good surfaces and that the alternate crossings are each protected by train-activated flashing lights and roadway gates. In its report, staff explained that Commission records indicate that CSX operates 72 daily freight trains reaching speeds of 59 miles per hour (mph) and that two daily passenger trains reaching speeds up to 79 mph also use the tracks. Staff reported that the average vehicular traffic at the Hockenberry, Prairie View, and Sands Road crossings average two, three, and seven vehicles per day, respectively. Staff claimed that, should the three crossings be closed, the increase in automobile traffic at the closest alternate crossings would be a total increase of 12 automobiles per day. Staff also noted that, because the roadway approaches are paved, travel over the alternate crossings which have about the same profile as the petitioned crossings, can be negotiated by vehicles much easier. Staff determined that, because of the low average daily vehicular traffic count, the condition of the roadway at the crossings, and the absence of residences on any of the roadways adjacent to the crossings at issue, it is very doubtful that emergency or commercial vehicles ever use any of the three crossings and could be easily diverted to alternate crossings.

At the hearing, testimony was provided by 14 public witnesses. Eugene George testified that he owns land on each side of Sands Road. He indicated that, as a result, his tractors must travel across the tracks to store grain and move equipment. He also indicated that, closing the Sands Road crossing would necessitate him traveling across a state highway which he considered more dangerous (Tr. 8). Dan Zernhel testified that the access roads for these crossings aren't in passable shape for the general public but he claimed that, when the farming season begins, the roads would be dry and useful as agricultural roads. Mr. Zernhel acknowledged that road closure signs were placed at the beginning of the access roads for each crossing but he claimed the signs would be removed when the farmers use the crossing (*Id.* at 9-10). Gene Weaver testified that, because of poor visibility, Milton Road and Custer Road are not acceptable alternate crossings for the movement of farm machinery. He claimed that the petitioned crossing access roads are routinely used for farming purposes and he wanted the crossings to remain agricultural crossings in order to get equipment across the crossings (*Id.* at 11). Linda Holmes, Brendyn George and Matthew Sheeks also requested that these crossings remain available for agricultural use (*Id.* at 23, 28). Donna Gordon claimed that emergency vehicles such as fire trucks could travel across the crossings and would be required to travel too far if the crossings were closed (*Id.* at 12-14). Linda Holmes questioned the authority of the Commission to close the crossings and claimed that closing the crossings will cause economic harm to the community. She acknowledged that there are times when the roads for these crossings are impassable because of weather conditions. Ms. Holmes noted her concern that, because the alternate crossings are so elevated, it is difficult to see oncoming traffic from either side of the crossings and claimed that CSX refuses to lower the approaches (*Id.* at 14-21). Tony Allion explained that CSX received permission from Wood County to place the road closed signs in order to accomplish maintenance and upgrade work at the crossings. He noted that the road closed signs were never removed because CSX has not finished the maintenance work (*Id.* at 24-27).

DISCUSSION:

Section 4907.474, Revised Code, generally requires that an applicant seeking to close a railroad crossing to vehicular traffic must demonstrate that there is not a demonstrable need for the crossing to exist. Section 4907.474, Revised Code, provides that, in making the determination whether a crossing should be closed to vehicular traffic, or to pedestrian traffic, or to both and whether travel over the crossing should be diverted to other crossings, the Commission should consider the daily vehicular and train traffic at the crossing and at alternate crossings, the increase in vehicular traffic at alternate crossings resulting from the crossing closures, the nature of the roadway at any alternate crossings, the total number of crossings within one linear mile of the crossing, the type of warning devices and the sight distances at alternate crossings, the impact of the closure on vehicular traffic, emergency vehicles, commercial enterprises, and any other factors pertinent to municipal corporations and other populated areas, and any other factors the Commission determines appropriate.

After consideration of the evidence of record, we find that there is not a demonstrable need for the crossings to exist and CSX's petitions for closure of the Hockenberry, Prairie View, and Sands Road crossings should be granted. The evidence shows that there is minimal automobile traffic and extremely high rail traffic at the petitioned crossings. Approximately 12 automobiles travel these roads each day, whereas approximately 74 freight trains and two passenger trains are operated on the railroad track each day. The evidence shows that three alternative crossings, located at Custar Road, Milton Road, and Weston Road, are available to the traveling public and that all three are located within mile vicinity of the three petitioned crossings. We find that the diversion of this small number of automobiles to these alternate crossings will have minimal impact on the alternate crossings and the traveling public. Further, all three alternate crossings have paved roadways with good surfaces making them more suitable for travel than the petitioned crossings which are unpaved dirt roads.¹ The alternate crossings should also provide greater safety for the traveling public because all three alternate crossings are protected by warning lights and gates, whereas the petitioned crossings are protected by only crossbucks. While one individual testified to her belief that emergency vehicles could negotiate the three crossings, staff determined that it is unlikely any emergency vehicles ever use these crossings because of their unpaved surfaces, because there are no residences on any of the roadways adjacent to the crossings, and because of the availability of crossings with paved surfaces within one mile of these crossings. There was no evidence that any emergency vehicles have used these crossings. During the hearing, many of the witnesses requested that these crossings remain available to farmers as agricultural crossings in Jackson Township. Agricultural crossings are governed by Section 4955.27, Revised Code.

Section 4955.27, Revised Code, provides that:

¹ The attorney examiner indicated at the hearing that all three access roads to the petitioned crossings had road closed signs present and testimony at the hearing was that the signs had been present for many months.

When a person owns fifteen or more acres of land in one body through which a railroad passes, which land is so situated that he cannot use a crossing in a public street, lane, road or other highway in going from his land on one side of the railroad to that on the other side without great inconvenience, at his request the company or person operating such railroad, at the expense of such company or person shall, within four months after such request, construct a good and sufficient private crossing across such railroad and the lands occupied by the company, between the two pieces of land to enable such landowner to pass with a loaded team and over which he may go at all times when such railroad is not being used at the crossing, or so near to it as to render passing thereat dangerous.

We note that our railroad staff advised both CSX and the Jackson Township Trustees of this provision. In addition, staff was involved in discussions between the township and CSX concerning retaining one of the crossings as an agricultural crossing. We encourage both parties to continue such discussions.

Finally, it was noted by several witnesses at the hearing that, at the alternate crossings, the railroad track is unsafely elevated from the access roads and constitutes a dangerous condition. In its investigative report, staff noted that the elevations of the crossings to be closed are approximately the same as the alternate crossings, but found that the sight views in either direction from all of the crossings exceed one-half mile. In order that the traveling public is protected, we encourage our staff to work with CSX and Jackson Township and Wood County officials to insure that the elevation of the railroad track at the alternate crossings is safe for vehicular traffic.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) These proceedings were initiated on September 19, 2001, with the filing of petitions for closure of the Hockenberry, Prairie View, and Sands Road railroad grade crossings located in Jackson Township, Wood, Ohio.
- (2) CSX's petitions were filed pursuant to Sections 4907.474 and 4907.475, Revised Code.
- (3) A public hearing on these matters was held on May 22, 2002, at the Hyco Building in Hoytville, Ohio, at which 14 public witnesses testified.
- (4) On April 19, 2002, staff filed its report of investigation.
- (5) Proof of publication of the hearing notice in *The Sentinel-Tribune* was filed on June 11, 2002.
- (6) The Sands Road, Hockenberry Road, and Prairie View Road crossings have unpaved surfaces and are passively protected by only crossbucks.

- (7) Commission records indicate that CSX operates 72 daily freight trains reaching speeds of 59 mph and that two daily passenger trains reaching speeds up to 79 mph on the tracks.
- (8) Commission records indicate that average vehicular traffic at the Hockenberry Road, Prairie View Road, and Sands Road crossings average two, three, and seven vehicles per day, respectively.
- (9) Three alternative crossings, Custar Road, Milton Road, and Weston Road are available to the traveling public and all three are located within _ mile vicinity of the three petitioned crossings.
- (10) All three alternate crossings have paved surfaces and are protected by warning lights and gates.
- (11) There was no evidence that any emergency vehicles regularly use Hockenberry Road, Prairie View Road, and the Sands Road crossings.
- (12) CSX's petitions to close the Sands Road, Hockenberry Road, and Prairie View Road crossings are reasonable and in the best interests of the public and state of Ohio and should be granted.

ORDER

It is, therefore,

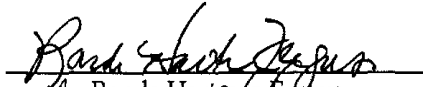
ORDERED, That the petitions for closure filed by CSX Hockenberry Road, Prairie View Road, and Sands Road be granted. It is, further,

ORDERED, That, in order that the traveling public is protected, staff work with CSX to insure that the elevation of the railroad crossings at the alternate crossings remain safe for vehicular traffic. It is, further,

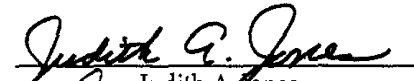
ORDERED, That a copy of this opinion and order be served on the village of Hoytville mayor, engineer, and city council, the Wood County Engineer, Jackson Township Trustees, Ohio Rail Development Commission, CSX Transportation, Inc. and all other parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman



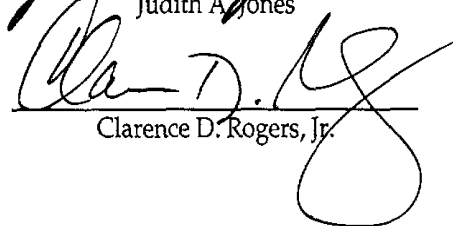
Ronda Hartman Fergus



Judith A. Jones



Donald L. Mason



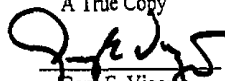
Clarence D. Rogers, Jr.

SEF/geb

Entered in the Journal

OCT 24 2002

A True Copy



Gary E. Vigoro
Secretary

CASE NUMBER: 01-2402-RR-UNC
CASE DESCRIPTION: CSX TRANSPORTATION, INC./CITY OF HOYTVILLE, WOOD COUNTY
DOCUMENT SIGNED ON: 10/23/2002
DATE OF SERVICE: 10/24/02

PARTIES SERVED

PARTIES OF RECORD

ATTORNEYS

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INTERESTED PARTYS

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INTERVENORS

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CASE NUMBER: 01-2404-RR-UNC
CASE DESCRIPTION: CSX TRANSPORTATION, INC./HOCKENBERRY RD/CITY OF HOYTVILLE, WOOD CO.
DOCUMENT SIGNED ON: 10/24/2002
DATE OF SERVICE: 10/24/02

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CASE NUMBER: 01-2405-RR-UNC
CASE DESCRIPTION: CSX TRANSPORTATION, INC./PRAIRIE VIEW RD CROSSING/CITY
OF HOYTVILLE, WOOD CO.
DOCUMENT SIGNED 10/24/2002
ON:
DATE OF SERVICE: 10/24/02

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PARTIES OF RECORD

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