

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) Case No. 19-180-RR-UNC
NOS. 481482D AND 518257V) IN ORANGE)
TOWNSHIP, DELAWARE COUNTY, OHIO)

**DELAWARE COUNTY BOARD OF COMMISSIONERS'
INITIAL POST-HEARING BRIEF**

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STATEMENT OF ISSUE FOR DETERMINATION

Whether there is a demonstrable need for the railroad grade crossings at Franklin Street, Orange Township, Delaware County, Ohio, to exist according to the factors listed in divisions (A)(1) to (9) of R.C. 4907.474.

INTRODUCTION

This matter is a petition for closure of railroad grade crossings at Franklin Street in Orange Township, Delaware County, Ohio. The community in which the Franklin Street crossings are located is an unincorporated village referred to as Lewis Center, which should be distinguished from the larger area of Orange Township bearing a “Lewis Center” post office address. While the number of vehicles that are estimated to use the Franklin Street crossings is low (less than 100 per day), the Franklin Street crossings nevertheless serve a vital role as a transportation link for the unincorporated village of Lewis Center, as a primary or alternate response route for the emergency medical services unit located immediately adjacent to the crossings, and as a relief to the much more heavily-traveled Lewis Center Road, which is at or above capacity at the Lewis Center Road railroad crossings during peak traffic. For these reasons, there is a demonstrable need for the Franklin Street crossings to remain open, until such time as the scheduled Home Road extension, which includes a railroad grade separation, is completed to Lewis Center Road.

PROCEDURAL HISTORY

On January 28, 2019, Norfolk Southern Railway Company and CSX Transportation, Inc. (collectively, the “Petitioners”) filed a joint petition to close the Franklin Street grade crossings, located in Orange Township, Delaware County, Ohio, pursuant to R.C. 4907.475. On April 23, 2019, the Delaware County Board of Commissioners (the “Board”) filed a motion to intervene, which was granted by entry dated July 8, 2019. On July 9, 2019, a local public hearing was held at the Orange Township branch of the Delaware County Library, wherein members of the public provided testimony. On October 12, 2021, an evidentiary hearing was held, wherein the parties presented evidence on whether there is a demonstrable need for the Franklin Street crossings to exist.

In light of the factors for consideration set forth in R.C. 4907.474, many of the facts pertinent to this matter are not in dispute. Specifically, the parties do not dispute the approximate daily number of vehicles and trains at the Franklin Street crossings or the other grade crossings in the vicinity, the nature of the roadways utilizing the crossings, the distance to alternate crossings, or the nature of the crossings. The parties do, however, differ in how the Commission should weigh those facts and draw different conclusions about the impact closure of the Franklin Street crossings will have on vehicular traffic, emergency response vehicles, and the residents of the unincorporated village of Lewis Center.

STANDARD OF REVIEW

Any railroad having jurisdiction over a crossing may file an application with the Commission stating that it believes that there is not a demonstrable need for the crossing to exist and that the crossing should be closed to the public. R.C. 4907.475. Based on the application, the Commission shall determine whether or not there is a demonstrable need for the crossing to exist according to the factors listed in divisions (A)(1) to (9) of R.C. 4907.474. R.C. 4907.475. While the term “demonstrable need” is not specifically defined, R.C. 4907.474(A) provides that, in making that determination, the Commission shall consider the following factors: (1) the daily vehicular and train traffic at the crossing; (2) the daily vehicular and train traffic at alternate crossings; (3) the increase in vehicular traffic at alternate crossings resulting from the crossing closure; (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 alternate crossings; (8) the impact of the closure on vehicular traffic, emergency vehicles, commercial enterprises, and municipal corporations and other populated areas; and (9) any other factor the Commission determines appropriate. The Commission has previously set forth the standard “that a demonstrable need exists when the evidence shows that the crossing is essential, vital, and indispensable to the general public and when its closure would negatively impact the interests and well-being of the general community.” *In the Matter of the Petition of CSX Transportation, Inc. to Close to Vehicular Traffic the County Road 205/Ulsh Road Grade Crossing (262-061N), Located in Claridon Township, Marion County, Ohio*, Case No. 09-125-RR-UNC, Opinion and Order (Oct. 28, 2009).

The statutes governing this matter (R.C. 4907.474 and R.C. 4907.475) are silent on the issue of which party bears the burden of proof, but the Commission has previously found that the petitioner bears the burden of proof to demonstrate that there is no demonstrable need for the subject crossing(s) to exist. *In the Matter of the Petition of Indiana & Ohio RR, Inc. to Close to Vehicular Traffic the Vorhees Street and Vine Street Crossings in the City of Reading, Hamilton County, Ohio*, Case No. 02-589-RR-UNC, Case No. 02-590-RR-UNC, 2004 WL 2578495, Opinion and Order (Oct. 13, 2004). In that same case, a party requested that the Commission apply a “clear and convincing evidence” standard to the petitioner’s burden of proof, but the Commission declined to apply the “clear and convincing evidence” standard, instead relying exclusively on the statutory factors set forth in R.C. 4907.474. *In the Matter of the Petition of Indiana & Ohio RR, Inc. to Close to Vehicular Traffic the Vorhees Street Crossing in the City of Reading, Hamilton County, Ohio*, Case No. 02-589-RR-UNC, 2004 WL 3188071, Entry on Rehearing (Dec. 8, 2004).

SUMMATION OF EVIDENCE AND ARGUMENT

I. The Unincorporated Village of Lewis Center and the Franklin Street Crossings

The facts generally about the unincorporated village of Lewis Center and the crossings in question are not in dispute. The unincorporated village of Lewis Center is located in Orange Township, Delaware County, Ohio. It is bisected by three sets of north-south oriented railroad tracks, two owned by Norfolk Southern and one by CSX. The village fronts the south side of Lewis Center Road, an east-west arterial county highway, and within the village are several local streets, including the east-west Franklin Street, which runs parallel to Lewis Center Road approximately one-tenth of a mile south. The village has two roads with railroad crossings: Lewis Center Road and Franklin Street. Adjacent to the railroad tracks at the intersection of Third Street and Franklin Street is a Delaware County EMS Station, known as Medic 3.

II. Considering the factors set forth in R.C 4907.474(A), the Petitioners have failed to meet their burden of proving that there is not a demonstrable need for the Franklin Street crossings to exist.

As stated above, the Commission shall consider the following factors in determining whether or not there is a demonstrable need for a crossing to exist: (1) the daily vehicular and train traffic at the crossing; (2) the daily vehicular and train traffic at alternate crossings; (3) the increase in vehicular traffic at alternate crossings resulting from the crossing closure; (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 alternate crossings; (8) the impact of the closure on vehicular traffic, emergency vehicles, commercial enterprises, and municipal corporations and other populated areas; and (9) any other factor the Commission determines appropriate. R.C. 4907.474(A). There is no indication in the statute that any one factor is dispositive of the issue,

so due consideration should be given to each pertinent factor. In this case, the weight of the evidence after considering all factors supports a finding that there is a demonstrable need for the Franklin Street crossings to exist.

A. The daily vehicular and train traffic at the Franklin Street crossings does not support closure of the crossings.

The Board is in general agreement with the Petitioners in regard to the approximate number of vehicles and trains at the Franklin Street crossings, with approximately 64 vehicles per day and 42 trains per day (amongst all three sets of railroad tracks). [Petitioners Exhibit 11, pp. 3-4]. The Petitioners' witnesses are not able, however, to offer evidence about what traffic comprises those daily vehicular trips, including how many trips are from residents living within the unincorporated village of Lewis Center or emergency vehicles stationed at Delaware County Medic 3. [Evidentiary Hearing Tr., p. 14-15; Petitioners Exhibit 17, p. 26, ll. 14-16]. One witness for Petitioners, Ms. DeCesare, did state on direct examination that it is anticipated that "the majority of the vehicles that would have otherwise used the Franklin Street crossing would likely be starting or ending their trip in Lewis Center, Ohio, as few drivers not intending to begin or end their trip in Lewis Center, Ohio would intentionally drive to this area and cross at the Franklin Street crossing." [Petitioners Exhibit 12, Answer to Question 18]. Detailed crash data was not introduced into evidence, other than a reference to four accidents at the crossings within, approximately, the last fifty years. [Petitioners Exhibit 17, p. 24; Evidentiary Hearing Tr., p. 24-25].

The evidence supports a finding that, given the low volume of traffic and the statement by Ms. DeCesare, that the Franklin Street crossings are primarily used by the residents and organizations located within the unincorporated village of Lewis Center. The issue for the Commission to determine is whether it is reasonable to permanently terminate that use and

redirect it to alternate crossings, in particular the Lewis Center Road crossings. The evidence supports a determination that terminating the existing use is not reasonable because of the current and projected traffic volumes at the Lewis Center Road crossings, as discussed in following sections.

B. The only reasonable alternate crossing is Lewis Center Road, and its present traffic volume and congestion at the crossing support keeping the Franklin Street crossings open.

The Board is in general agreement with the Petitioners in regard to the approximate number of trains at the alternate crossings at Lewis Center Road, Shanahan Road, and Orange Road, since the tracks are the same as at Franklin Street without any diversions between. Due to the proximity of Lewis Center Road compared with the other potential alternate crossings, the Commission should focus its analysis on Lewis Center Road. With respect to daily vehicular traffic, the Board is in general agreement that the Lewis Center Road crossings have approximately 10,000 vehicles per day. [Petitioners Exhibit 11, p. 4]. The Board does dispute that figure as uniform throughout the day, however, and instead would direct the Commission to the testimony of Mr. Robert Riley, P.E., P.S., Chief Deputy Engineer for Delaware County, in which he stated that peak volume for Lewis Center Road at the railroad crossings is over 1,000 vehicles per hour. [Delaware County Exhibit 5, p. 6, l. 15]. Although Mr. Riley admitted during cross-examination that the capacity for Lewis Center Road overall is 15,000 to 20,000 vehicles per day, his opinion is that the volume at the Lewis Center Road crossings is near or above capacity, due to the reduction in speed necessary to navigate the crossings. [Delaware County Exhibit 5, p. 7, ll. 1-3]. This reduced capacity at the crossings results in delays and backups, making it difficult for vehicles to turn onto Lewis Center Road at the various cross streets in the unincorporated village of Lewis Center. [Delaware County Exhibit 5, p. 7, ll. 15-17]. Mr. Riley

also testified about anticipated growth in the immediate area, exacerbating the capacity restrictions at the Lewis Center Road crossings. [Delaware County Exhibit 5, pp. 10-11]. According to Mr. Riley, the planned Home Road extension project will, upon completion, divert traffic from Lewis Center Road, reducing the peak flow to more manageable levels without the need for improvements to Lewis Center Road. [Delaware County Exhibit 5, p. 12, ll. 1-3]. Residents of the unincorporated village of Lewis Center stated similar concerns during the public hearing in this matter. [Public Hearing Tr., pp. 31, 35].

Mr. Riley is the only witness in this matter that is a professional engineer with traffic engineering experience. [Delaware County Exhibit 5, pp. 2-3]. Therefore, his testimony in regard to traffic volume concerns should be given considerable weight. While it is simple for Petitioners to argue that the 64 daily vehicle trips on the Franklin Street crossings could be easily diverted to the Lewis Center Road crossings “a football field length” away, the reality of the current and projected traffic volumes makes that assertion unreasonable. According to Mr. Riley, the Lewis Center Road crossings are near, or possibly exceeding, capacity. Even assuming the vehicles could easily divert to Lewis Center Road, which Mr. Riley and residents question, adding more vehicles to a failing facility is imprudent when a reasonable alternative exists. The reasonable alternative is to maintain the status quo with one crossing for local use (Franklin) and one for regional use (Lewis Center) until such time as the Home Road extension is completed and the traffic volumes on Lewis Center Road are reduced.

C. Detours to other alternate crossings are not reasonable.

As stated above, the Lewis Center Road crossings are the most pertinent alternate for examination in this matter. Shanahan Road is one mile north [Petitioners Exhibit 11, p.5], but Mr. Riley testified that Shanahan Road is not a viable alternative, due to the distance necessary

to access it. [Delaware County Exhibit 5, p. 9, ll. 13-23]. The Petitioners focused cross-examination on past detours when Lewis Center Road is closed, at the railroad crossings or otherwise, but that assertion is a red herring due to the nature of Franklin Street. Mr. Riley testified that Franklin Street could never handle the traffic volume of Lewis Center Road. [Evidentiary Hearing Tr., p. 80]. The Commission should not waste time considering how past detours have been posted because that distracts from the central concern about vehicles within the unincorporated village of Lewis Center being able to access Lewis Center Road, especially at times of peak traffic volume. The existence of other alternate crossings one mile or further away does not present a solution to the actual problem that exists: over-congestion of Lewis Center Road at the railroad crossings. It is that traffic-dependent obstruction that supports the current need for the Franklin Street crossings, not the occasional planned closure for crossing maintenance or other road maintenance.

D. The presence of advance warning devices at any alternate crossings is insufficient to warrant closure of the Franklin Street crossings.

The Board does not contest that the alternate crossings, including Lewis Center Road, have advance warning devices and adequate sight distances, but the Petitioners presented conflicting evidence about the importance of advance warning devices. Ms. Stout testified that the addition of advance warning devices would reduce the hazard ranking for the Franklin Street crossings [Petitioners Exhibit 17, p. 25, ll. 21-25], but Mr. Jackson testified that advance warning devices do not make crossings safer. [Evidentiary Hearing Tr., p. 22, ll. 6-8]. In consideration of this factor, the Commission should also consider the ability to add such devices to the Franklin Street crossings as an alternative to closure, but even if such devices are not added, the limited crash history at the lightly-traveled crossing should not outweigh the evidence proffered against closing the Franklin Street crossings.

E. Closing the Franklin Street crossings would have negative impacts on vehicular traffic, emergency vehicles, and the residents of the unincorporated village of Lewis Center.

Closing the Franklin Street crossings would have severe negative impacts on vehicular traffic, emergency vehicles, and the residents of the unincorporated village of Lewis Center, and each of the Board's and Orange Township's witnesses presented sufficient evidence to demonstrate those negative impacts.

1. Closing the Franklin Street crossings will create unnecessary risks.

Mr. Riley summarized his concerns in regard to vehicular traffic in the vicinity of the Lewis Center Road crossings as follows:

Based on the existing traffic volume on Lewis Center Road, the current secondary road network, and the configuration of the crossings on Lewis Center Road, closure of the Franklin Street crossings would have a negative impact on vehicular traffic within the unincorporated village of Lewis Center, would create unnecessary safety risks to the traveling public, and would negatively impact prompt response of emergency vehicles, specifically from Medic Station 3. Lewis Center Road already is burdened by heavy traffic flows, especially at peak hours, with vehicle queueing routinely blocking access to the secondary streets serving the unincorporated village of Lewis Center. Lewis Center Road also does not include sidewalks, trails, or other pedestrian and non-motorized paths. Maintaining the Franklin Street crossing provides an alternate route for vehicular, non-motorized, and pedestrian traffic within the unincorporated village of Lewis Center without contributing to, or being subject to the limitations of, the traffic volume issues on Lewis Center Road. Maintaining the Franklin Street crossings would also provide an alternate route for Medic Station 3 to navigate potential obstacles on Lewis Center Road when responding to the west of the railroad tracks. Our office considers these purposes as justification for the Franklin Street crossings to remain open at least until the planned improvements are completed on Home Road.

[Delaware County Exhibit 5, pp. 12-13]. The residents of the unincorporated village of Lewis Center supported this opinion in their testimony at the public hearing, stating that the Franklin Street crossings are utilized to access alternative points at which to enter Lewis Center Road during peak traffic volumes. [Public Hearing Tr., pp. 31, 35].

2. The Petitioners failed to adequately consider impacts to emergency vehicles.

With respect to emergency vehicles, the Petitioners rest their argument on the bare, conclusory statements that there is no, or negligible, impact to emergency vehicles if the Franklin Street crossings are closed. [Evidentiary Hearing Tr., p. 28, ll. 15-17]. The Commission should seriously question those arguments, due to the Petitioners' witnesses failing to have laid the proper foundation to make an informed decision. Mr. Jackson testified that he had no discussions with emergency medical services personnel as a part of his analysis. [Evidentiary Hearing Tr., p. 16, ll. 22-23]. He also admitted that he has never been involved in emergency response planning. [Evidentiary Hearing Tr., p. 26, ll.11-14]. Ms. DeCesare testified that Delaware County EMS personnel were not present at the diagnostic review and that she had no discussions with Delaware County EMS personnel as a part of her analysis. [Evidentiary Hearing Tr., p. 40, ll. 19, 24]. She also admitted that she has no knowledge of emergency medical services runs within the unincorporated village of Lewis Center or adjacent area [Evidentiary Hearing Tr., p. 43] and that she possesses no emergency medical services training. [Evidentiary Hearing Tr., pp. 46-47]. Ms. Stout similarly testified that she had no discussions with Delaware County EMS personnel or 9-1-1 personnel. [Petitioners Exhibit 17, p. 32]. She also admitted that she had no knowledge of how many emergency vehicles utilize the Franklin Street crossings. [Petitioners Exhibit 17, p. 26, ll. 14-16].

3. Experts in emergency services proffered ample evidence supporting the proposition that closing the Franklin Street crossings would have a negative impact on responding emergency vehicles.

Patrick Brandt, the Delaware County Director of Emergency Communications, testified that EMS dispatch in Delaware County is conducted through the use of computerized "run cards" that indicate which departments and vehicles are dispatched within designated areas. [Delaware

County Exhibit 6, p. 2, ll. 5-18]. The run card specific to the area west of the Franklin Street crossings is identified by the number 361-M3-1, which is depicted on Delaware County Exhibit 3. Delaware County Medic 3 is the unit that covers this run card area. [Delaware County Exhibit 6, p. 2, ll. 26-33]. Mr. Brandt also prepared the written report of all dispatches within the run card area for the years 2018, 2019, 2020, and 2021 (through August). [Delaware County Exhibit 4]. He testified that Medic 3 has shorter response times, on average, which is why Medic 3 is the primary responding medic unit for the run card area, including rapid response to the part of the unincorporated village of Lewis Center that lies west of the railroad tracks. [Delaware County Exhibit 6, p. 3, ll. 8-33]. He also testified that, while Medic 3's service territory also includes an area to the east of the railroad tracks that is geographically larger, a majority of Medic 3's runs are west of the railroad tracks. [Evidentiary Hearing Tr., p. 148, ll. 14-20]. In Mr. Brandt's opinion, closing the Franklin Street crossings would negatively impact response times due to the congestion on Lewis Center Road. [Delaware County Exhibit 6, p. 3, ll. 37-46]. Franklin Street also provides an alternate route in the event of unplanned closure or blockages at the Lewis Center Road crossings. [Delaware County Exhibit 6, p. 4, ll. 1-5].

Mr. Brandt was questioned extensively about the run card report he prepared, and the Commission should consider the report in its appropriate context. Mr. Brandt admitted under cross examination that the report is dependent on the responding units promptly and accurately inputting their "en route" and "on scene" data, which does not convey the unit's starting locations or other factors that could impact the response times. The Board respectfully asserts that the data has been presented to support Mr. Brandt's opinion that, on average, Medic 3 responds more quickly to the run card area, particularly within the unincorporated village of Lewis Center. Mr. Brandt acknowledged exceptions, which did not include any responses within

the unincorporated village of Lewis Center itself. If the Commission reviews the data in detail, it will find that of the nearly 120 dispatches where both units from Medic 3 and from the Orange Township station on Gooding Boulevard respond and mark on scene, Medic 3 responded in less time in more than seventy percent (70%) of those incidents. [Delaware County Exhibit 4].

The Petitioners appear to be arguing that the emergency services organizations serving this area should simply revise their response plans, but Orange Township Fire Chief McNeil testified that changes to the response areas have impacts to responses in the township overall. [Orange Township Exhibit B., 4, ll. 1-15]. This shows a complete disregard for the complex planning involved in the deployment of emergency services resources. A review of Delaware County Exhibit 3 will clearly indicate that simply adjusting the boundaries of one run card area would have a domino effect. The Petitioners also appear unduly focused on the national standard for EMS response times, which is not the appropriate measure for the most positive patient outcomes, as demonstrated by testimony from Delaware County and Orange Township emergency services experts.

The Board called Captain Glen Keating of Delaware County EMS, who is a certified paramedic and on the administrative staff for Delaware County EMS, which operates Medic 3. [Delaware County Exhibit 7, p 1, ll. 12-14]. Capt. Keating testified that response times are important for patient outcomes, especially for the highest priority calls that involve chest pain, difficulty breathing, stroke symptoms, cardiac or respiratory arrest, or life-threatening injuries. [Delaware County Exhibit 7, p. 2, ll. 17-26]. While recognizing that the national standard for EMS response is an eight-minute average for all runs [Delaware County Exhibit 7, p. 2, ll. 29-30], Capt. Keating testified that the standard has little meaning for those highest priority calls, in which the fastest response possible is crucial for the patient's condition. [Evidentiary Hearing

Tr., 177, ll. 7-16]. Cardiac or respiratory arrest impacts blood flow to the brain, which can cause irreversible damage. [Evidentiary Hearing Tr., p. 179, ll. 2-5]. Capt. Keating also questioned the Petitioners' argument that the lack of knowledge of a "bad patient outcome" is proof that the Franklin Street closings have no value, since there are too many variables at play to determine if response time contributed to or caused a "bad patient outcome." [Evidentiary Hearing Tr., p. 176, ll. 17-20].

In Capt. Keating's professional opinion, closing the Franklin Street crossings would have a negative impact on emergency medical services in the community. [Delaware County Exhibit 7, p. 3, ll. 8-13; Evidentiary Hearing Tr., p. 180, ll. 1-5]. This is due to the fact that Medic 3 uses the Franklin Street crossings, both as a primary route for reaching the residential area of the unincorporated village of Lewis Center west of the railroad tracks and as an alternate for reaching destinations further west when the Lewis Center Road crossings are blocked. [Delaware County Exhibit 7, p. 2, ll. 1-40; Evidentiary Hearing Tr., pp. 180-181]. Franklin Street is the most direct route to service the unincorporated village of Lewis Center from Medic 3. [Evidentiary Hearing Tr., p. 180, ll. 9-13]. Response times within the unincorporated village of Lewis Center could suffer unnecessarily, including to those residences that have had multiple highest priority calls. [Delaware County Exhibit 7, p. 3, ll. 2-4; Delaware County Exhibit 4]. Even for those locations further west, for which response via the Lewis Center Road crossings is the primary route, the Lewis Center Road crossings are not the exclusive route while the Franklin Street crossings remain open. [Evidentiary Hearing Tr., 157, ll. 12-15]. The redundant crossings are necessary because Lewis Center Road is congested at the railroad crossings [Delaware County Exhibit 7, p. 3, ll. 13-14], and the traffic volume on Lewis Center Road impacts response

times if the Franklin Street crossings are closed and no longer available as an alternative. [Evidentiary Hearing Tr., p. 183, ll. 2-4].

The Petitioners argument against the traffic congestion having an impact rests almost entirely on the availability for emergency vehicles to use lights and sirens. In response, Capt. Keating testified that lights and sirens do not have the intended results in congested areas like Lewis Center Road. [Evidentiary Hearing Tr., p. 156, ll. 3, 13-18]. The Petitioners also cite to the testimony of Mr. Stabl at the public hearing, in which he stated that EMS can “always get out,” as evidence that Medic 3 suffers no access difficulty. [Public Hearing Tr., p. 19, l. 11]. The testimony of Capt. Keating specifically contradicts Mr. Stabl’s testimony, and other witnesses have echoed Capt. Keating’s concerns, including Mr. Riley, who testified that the congestion on Lewis Center Road impacts the ability for vehicles trying to cross at Lewis Center Road. [Delaware County Exhibit 5, pp. 8-9]. It is worth noting, as well, that Mr. Stabl is not a resident of the unincorporated village of Lewis Center, as the Petitioners would have the Commission believe. Mr. Stabl’s address, as entered on the record at the public hearing, is in a subdivision in another part of Orange Township, as Michele Boni, a witness for Orange Township confirmed in her testimony. [Evidentiary Hearing Tr., pp. 214-215]. The Petitioners have also mischaracterized the testimony of Mr. Dill at the public hearing, citing to his questioning whether EMS is the best argument in favor of the Franklin Street crossings remaining open. Reading Mr. Dill’s remarks as they continued, however, the Commission should note that he expressed a concern that Medic 3’s use of the Franklin Street crossings is a lifeline for certain residents on the west side of the railroad tracks within the unincorporated village of Lewis Center. [Public Hearing Tr., p. 25, ll. 3-8].

Both the current and former Orange Township Fire Chiefs also testified that closing the Franklin Street crossings would have negative impacts. Chief McNeil agrees that Franklin Street serves as an alternate route for EMS response from Medic 3 [Orange Township Exhibit B, pp. 3-4], and he later clarified that having alternate emergency access routes is important for the obvious reason that primary routes may be blocked. [Evidentiary Hearing Tr., p. 192, ll. 3-11]. He also agreed with Capt. Keating that the use of lights and sirens during response is not always effective in the case of a congested road with nowhere else for vehicles to move. [Evidentiary Hearing Tr., p. 188, ll. 1-8]. Lewis Center Road is one example of a congested road where lights and sirens are not as effective. [Evidentiary Hearing Tr., p. 188, l. 16]. Chief McNeil also agreed that the high traffic volumes, and the resultant delays, could ultimately lead to bad outcomes. [Orange Township Exhibit B, p. 4, ll. 19-23]. This is of particular concern to Chief McNeil because many calls in the Medic 3 run card area are serious in nature, due to the location of medical facilities at the intersection of Lewis Center Road and US Route 23. [Orange Township Exhibit B, p. 8, ll. 3-5]. If Franklin Street is not available as an alternate route for Medic 3, then Chief McNeil expressed concern about the impact of increased runs for Orange Township medic units. [Orange Township Exhibit B, p. 4, ll. 1-15].

Chief McNeil's testimony is largely consistent with the prior deposition of former Chief Matthew Noble, who was with the Orange Township Fire Department for seventeen years prior to his retirement. Chief Noble repeatedly testified that traffic congestion at the Lewis Center Road crossings can prevent Medic 3 from responding west of the railroad tracks. [Petitioners Exhibit 13, p. 40, ll. 5-7; p. 51, ll. 3-4; p. 58, ll. 15-20]. In Chief Noble's words, the Franklin Street crossings serve as a "relief valve" to the congestion on Lewis Center Road. [Petitioners Exhibit 13, p. 55, l. 8]. Chief Noble's primary concern with the potential closure of the Franklin

Street crossings is the impact on response times because “seconds count” in EMS response. [Petitioners Exhibit 13, p. 55, l. 19]. He testified that it would take longer for Medic 3 to respond to residences within the unincorporated village of Lewis Center west of the railroad tracks if they use the Lewis Center Road crossings instead of the Franklin Street crossings [Petitioners Exhibit 13, p. 77, ll. 8-9], and the Orange Township Medic 361 would take longer to respond than Medic 3. [Petitioners Exhibit 13, p. 78, ll. 15-17]. Petitioners’ own witness, Mr. Jackson, acknowledged that it would take longer for Medic 3 to respond within the unincorporated village of Lewis Center using the Lewis Center Road crossings. [Evidentiary Hearing Tr., p. 20, ll. 11-12].

The Commission should give considerable weight to the emergency services experts the Board and Orange Township presented as witnesses at the evidentiary hearing. They unanimously expressed concerns about the impact on emergency vehicles if the Franklin Street crossings are closed, and the primary concern relates to the traffic congestion on Lewis Center Road serving as an obstacle. The Franklin Street crossings serve as a primary response route within the village and as a vital alternative for the Medic 3 crew to have flexibility in navigating the most appropriate response route, especially during peak traffic flow.

4. Closing the Franklin Street crossings would have a negative impact on the unincorporated village of Lewis Center as a historical neighborhood community.

While much of the focus of the evidentiary hearing was on the impact to the provision of emergency services, it would be inappropriate to fail to also consider the impacts the closure of the Franklin Street crossings would have on the historical neighborhood that constitutes the unincorporated village of Lewis Center. The public hearing included several residents of the unincorporated village of Lewis Center that spoke passionately about the survival of their community in the midst of rapid modern growth in Orange Township and much of Delaware

County. [Public Hearing Tr., Testimony of Wickline, Dill, Dill, and Lecrone]. Mr. McCarthy, who was at the time legal counsel for Orange Township, also testified about the impacts to the community. [Public Hearing Tr., pp. 14-15]. The current Orange Township Administrator, Michele Boni, testified that closing the Franklin Street crossings would reduce the ability for residents to travel within the unincorporated village of Lewis Center, due to congestion on Lewis Center Road. [Orange Township Exhibit C, p. 3, ll. 4-12]. Ms. Boni portrayed the unincorporated village of Lewis Center much more accurately and respectfully than the Petitioners, pointing out that this is a residential community with dwellings on both sides of the railroad, multiple churches, and commercial businesses. [Evidentiary Hearing Tr., p. 215]. Delaware County and Orange Township officials also expressed concerns about the safety of pedestrians and cyclists if the Franklin Street crossings are closed. Mr. Riley testified that Lewis Center Road does not include sidewalks, trails, or other pedestrian and non-motorized paths, so maintaining the Franklin Street crossings provides an alternate route for vehicular, non-motorized, and pedestrian traffic within the unincorporated village of Lewis Center without contributing to, or being subject to the limitations of, the traffic volume issues on Lewis Center Road. [Delaware County Exhibit 5, pp. 12-13]. Chief McNeil shared this concern, due to the traffic volume on Lewis Center Road without the availability of sidewalks. [Orange Township Exhibit B, p. 9, ll. 16-21]. In his opinion, the Franklin Street crossings are a safer alternative for pedestrians and cyclists. [Evidentiary Hearing Tr., p. 203, ll. 4-5].

The Commission should consider the impacts to the unincorporated village of Lewis Center as a community, which would, for all practical purposes, be permanently separated into two parts if the Franklin Street crossings are closed. With the current and projected traffic volumes on Lewis Center Road, it becomes extremely difficult for neighbors to access the

opposite side of the railroad tracks like they currently enjoy through use of the Franklin Street crossings.

F. Other factors the Commission should consider also support keeping the Franklin Street crossings open.

The Commission is also likely to be asked to consider the physical characteristics of the Franklin Street crossings and the hazard ranking for the Franklin Street crossings, but those factors are insufficient to warrant closing the Franklin Street crossings. Another key factor that the Commission should consider is the construction of the Home Road extension that will have a substantial impact on the issues related to the Franklin Street and Lewis Center Road crossings.

1. The physical characteristics of the Franklin Street crossings are essentially the same as the Lewis Center Road crossings.

The Petitioners' description of the Franklin Street crossings focuses on characteristics perceived to be negative but that are essentially the same as the primary alternate crossing at Lewis Center Road. For example, the Franklin Street crossings are described as having a higher profile grade that is humped with a gap between the sets of tracks. [Petitioners Exhibit 11, pp. 5-6]. A review of Petitioners' Exhibits 3, 5, and 6 shows that the profile at Lewis Center Road is similar in terms of sight distance on the roadway, and the gap between the tracks is similar. The Petitioners also describe Franklin Street as an inferior roadway, but Mr. Riley testified that Franklin Street should not be compared to an arterial highway like Lewis Center Road and that Franklin Street is consistent with other township roads within Delaware County. [Evidentiary Hearing Tr., p. 92].

2. The hazard ranking for the Franklin Street crossings does not warrant closure.

The testimony in regard to the hazard ranking for the Franklin Street crossings is contradictory and without sufficient support to warrant closure. Mr. Jackson testified that the

hazard ranking for Franklin Street is #31. [Evidentiary Hearing Tr., p. 32, l. 8]. When asked, however, Mr. Jackson could not explain how the ranking is calculated. [Evidentiary Hearing Tr., p. 35, ll. 11-13]. Ms. DeCesare testified that the hazard ranking for Franklin Street is #39. [Petitioners Exhibit 12, Question 28]. When asked, however, Ms. DeCesare could also not explain the hazard ranking. [Evidentiary Hearing Tr., p. 42, ll. 11-16]. Even Ms. Stout, presumably the one witness most capable of fully explaining the hazard ranking for Franklin Street, could only provide some of the factors included in the analysis. [Petitioners Exhibit 17, p. 23]. Ms. Stout also testified to fluctuations in the hazard ranking based on incorrect data, which even caused Franklin Street to drop from a level of immediate concern during the diagnostic review process. [Petitioners Exhibit 17, pp. 15-17]. This begs the question as to whether corrected data or improvements to the crossings would improve the hazard ranking. Considering the evidence already discussed in regard to active warning devices, the hazard ranking evidence is insufficient to establish that the Franklin Street crossings should be closed.

3. The Home Road extension project is not speculative and would allow for the Franklin Street crossings to be closed.

The construction of the Home Road extension, which includes a grade separation over the railroad tracks in question, will have a substantial impact on the issues related to the Franklin Street and Lewis Center Road crossings, which is why the witnesses for the Board and Orange Township expressed the unanimous opinion that the Franklin Street crossings should remain open until the Home Road extension is complete. At that time, the parties are likely in a position to agree to a voluntary closure of the Franklin Street crossings.

The Board presented the testimony of Mr. Riley, who is intimately familiar with the Home Road extension project, and he summarized the importance of the Home Road project as follows:

Home Road is being extended east from its current terminus at Green Meadows Drive, including a bridge over the railroad tracks, south of the Franklin Street crossing, to a new intersection with Lewis Center Road east of the unincorporated village of Lewis Center. This is referred to as Home Road Extension, Phase 4. The Home Road extension is pertinent to this matter because once the Home Road extension grade separation overpass is completed, it will provide a full modern handling of all types of traffic crossing the tracks and will divert much of the traffic currently using the Lewis Center grade crossing. Home Road would also provide a more reasonable alternate crossing, as compared to Shanahan or Orange Road, that could be used in the event of any closure, planned or unplanned, at the Lewis Center grade crossing. Since it is a grade separated crossing, Home Road could also serve as a primary emergency response route.

[Delaware County Exhibit 5, p. 13, ll. 12-22; *see also* Delaware County Exhibits 1 and 2]. Mr.

Riley also testified about the progress on the project to date and the plans for completion:

Home Road Extension, Phase 4 is currently being designed in two sub-phases. Phase 4B will include a roundabout at Lewis Center Road and plans are nearly complete as of October 1, 2021. OHM is the consulting engineer on this project. I anticipate beginning construction on Phase 4B in summer or fall of 2022 with completion of this sub-phase in early 2023. Phase 4A, which includes the bridge over the railroad tracks is currently in final design by the County's consulting engineer, HDR. Coordination with railroads on the proposed bridge will be underway within the next few months. I anticipate beginning construction in 2025 and completing this phase in 2026. The phasing plan for this project is depicted in Delaware County Exhibit 2.

[Delaware County Exhibit 5, p. 14, ll. 2-10]. Mr. Riley was cross-examined extensively about the Home Road extension project, with Petitioners' apparent goal to portray the project as speculative. While acknowledging that all projects are subject to delays and cancellation, Mr. Riley testified clearly that the Home Road extension project is not speculative: the county has awarded a final design contract; the county has already completed the first three phases of the project; the county has acquired real property for phase four of the project; and the county has already expended in excess of \$10,000,000 in furtherance of the project. [Evidentiary Hearing Tr., pp. 92-94].

The completion of the Home Road project will be a major turning point in this area of Delaware County. Mr. Brandt and Capt. Keating testified that the completion of the Home Road extension project will be a cause to re-evaluate emergency services in the Lewis Center area. [Delaware County Exhibit 6, p. 4, ll. 5-7; Delaware County Exhibit 7, p. 3, ll. 18-20]. The Home Road extension will be a major east-west connector that will divert traffic flow away from Lewis Center Road, alleviating the traffic congestion at the railroad crossings that necessitates the Franklin Street crossings. Emergency vehicles and residents alike would then be able to more easily access Lewis Center Road, allowing for manageable access between the two sides of the railroad tracks. Home Road would also provide an alternate emergency route unimpeded by rail traffic. [Orange Township Exhibit B, p. 9, ll. 8-11]. Former Chief Noble also testified that Franklin Street is key to response times until Home Road is completed. [Petitioners Exhibit 13, p. 59, l. 22]. The potential impact for emergency services is substantial enough that the Board has asked the County Engineer to prepare conceptual plans for relocating Medic 3 to a new facility at the intersection of the Home Road extension with Lewis Center Road. [Evidentiary Hearing Tr., pp. 94-95].

The Home Road extension project is not speculative. Upon completion by 2026, the Home Road extension project would allow for the Franklin Street crossings to be closed without the impacts described by witnesses at the hearing. The Franklin Street crossings should remain open until that time.

III. There is a demonstrable need for the Franklin Street crossings to remain open.

After a review of all the statutory factors, the Petitioners have failed to meet their burden of proof that there is not a demonstrable need for the Franklin Street crossings to remain open. Mr. Riley, the Chief Deputy Engineer for Delaware County, testified that, in his professional

opinion, there is a demonstrable need for the Franklin Street crossings to remain open, at least until the Home Road grade separation project is completed and open to traffic. [Delaware County Exhibit 5, p. 14, ll. 15-17]. Mr. Brandt, the Delaware County Director of Emergency Communications, and Capt. Keating of Delaware County EMS offered the same professional opinions. [Delaware County Exhibit 6, p. 4, ll. 11-16; Delaware County Exhibit 7, p. 3, ll. 24-29]. Chief McNeil of the Orange Township Fire Department also testified that, in his opinion as Fire Chief, there is a demonstrable need for the Franklin Street crossings. [Orange Township Exhibit B, p. 3, ll. 16-17]. Former Chief Noble also testified that there is a need for the Franklin Street crossings. [Petitioners Exhibit 13, p. 53]. Finally, Ms. Boni testified that there is a demonstrable need for the Franklin Street crossings to remain open, at least until the Home Road extension is open. [Orange Township Exhibit C, p. 5, ll. 19-20].

These opinions are all supported by competent, credible evidence, as summarized herein, which shows that the Franklin Street crossings are essential, vital, and indispensable to the general public, and their closure would negatively impact the interests and well-being of the general community. The Petitioners evidence in support of closure is insufficient to justify closure, due primarily to the clearly demonstrated need for the Franklin Street crossings for localized vehicular traffic and emergency response in light of the traffic congestion pushing the alternate Lewis Center Road crossing to its capacity limits.

IV. The Commission's past decisions support the Franklin Street crossings remaining open.

Each petition for closing railroad grade crossings must be examined in light of its own facts, but past Commission decisions support the Board's position in this matter, particularly with respect to emergency vehicles. The testimony of emergency services experts in this matter is unanimous that closing the Franklin Street crossings would have a negative impact on

emergency vehicle response. In cases where there is a demonstrated need for emergency vehicles to use a crossing, the Commission has ordered the crossings in question to remain open. *In the Matter of the Petition of CSX Transportation, Inc. to Close to Vehicular Traffic Township Road 1101, DOT/AAR No. 142101D, Located Near Nova, Ashland County, Ohio*, Case No. 02-3054-RR-UNC, 2004 WL 1797858, Opinion and Order (Feb. 4, 2004); *In the Matter of the Petition of Norfolk Southern Railway Company to Close to Vehicular Traffic the Crossing at Township Road 7D, DOT No. 472503V, Located in or near Leipsic, Putnam County, Ohio*, Case No. 03-372-RR-UNC, 2003 WL 22535478, Opinion and Order (Oct. 7, 2003); *In the Matter of the Petition of CSX Transportation, Inc. to Close to Vehicular Traffic the Shorle Road Crossing (Township Road 41, DOT/AAR No. 142031R), Located Near Sterling, Wayne County, Ohio*, Case No. 02-3052-RR-UNC, 2003 WL 22597945, Opinion and Order (Aug. 6, 2003).

The Commission should contrast those cases with other cases in which the crossings were closed, due, in part, to evidence that local emergency services agencies had standing orders to specifically avoid using the crossings proposed for closure. *In the Matter of the Petition of CSX Transportation, Inc. to Close to Vehicular Traffic the County Road 205/Ulsh Road Grade Crossing (262-061N), Located in Claridon Township, Marion County, Ohio*, Case No. 09-125-RR-UNC, 2009 WL 3699027, Opinion and Order (Oct. 28, 2009); *In the Matter of the Petition of Indiana & Ohio RR, Inc. to Close to Vehicular Traffic the Vorhees Street and Vine Street Crossings in the City of Reading, Hamilton County, Ohio*, Case No. 02-589-RR-UNC, Case No. 02-590-RR-UNC, 2004 WL 2578495, Opinion and Order (Oct. 13, 2004).

In this case, Chief McNeil and Capt. Keating both testified as to the use of the Franklin Street crossings by emergency vehicles and how this use will continue to be necessary until such

time as the Home Road extension is completed. This factor should be given considerable weight, consistent with past decisions.

CONCLUSION

Based on the foregoing summation of evidence and argument, the Board respectfully asserts that the Petitioners have failed to meet their burden of proving that there is not a demonstrable need for the Franklin Street crossings to exist. There is competent, credible evidence demonstrating that the Franklin Street crossings are essential, vital, and indispensable to the general public, and their closure would negatively impact the interests and well-being of the general community. Accordingly, the Commission should find that there is a demonstrable need for the railroad grade crossings at Franklin Street, Orange Township, Delaware County, Ohio, to exist according to the factors listed in divisions (A)(1) to (9) of R.C. 4907.474 and order that the crossings remain open.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing document was filed electronically with the Commission on December 10, 2021. Notice of this filing will be sent by operation of the Commission's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Commission's system. Courtesy copies will be sent via email to the following:

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Summary: Brief Delaware County Board of Commissioners' Initial Post-Hearing
Brief electronically filed by Mr. Aric I. Hochstettler on behalf of Delaware County
Board of Commissioners