

# 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 AND  
518257V) IN ORANGE TOWNSHIP,  
DELAWARE COUNTY, OHIO.

CASE NO. 19-180-RR-UNC

## OPINION AND ORDER

Entered in the Journal on November 30, 2022

### I. SUMMARY

{¶ 1} The Commission grants the joint petition of Norfolk Southern Railway Company and CSX Transportation Inc. to close to vehicular and pedestrian traffic the Franklin Street grade crossings in Orange Township, Delaware County, Ohio.

### II. DISCUSSION

#### A. *Applicable Law*

{¶ 2} Pursuant to R.C. 4907.474 and R.C. 4907.475, the Commission is vested with the statutory authority to close grade crossings located in municipal corporations and on rural roads.

{¶ 3} R.C. 4907.475 requires that a petitioner seeking to close a railroad grade crossing on a rural road must demonstrate that there is not a demonstrable need for the grade crossing to exist.

{¶ 4} Collectively, R.C. 4907.474 and R.C. 4907.475 provide that, in making the determination as to a demonstrable need, the Commission shall consider the following: 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 closure; the nature of the roadway at any alternate crossings; the total number of crossings within one linear mile of the crossing to be closed; the type of warning devices and sight distances at

alternate crossings; the impact of the closure on vehicular traffic, emergency vehicles, commercial enterprises, and municipal corporations and other populated areas; and any other factor the Commission determines appropriate.

{¶ 5} R.C. 4907.475 provides that in determining a petition for closure, the Commission shall hold a hearing at a location within the county in which the crossing is located.

***B. Procedural History***

{¶ 6} On January 28, 2019, Norfolk Southern Railway Company, and CSX Transportation Inc., (NSRC and CSXT, respectively, and collectively, the Railroads) filed a joint petition to close to vehicular and pedestrian traffic the grade crossings at Franklin Street (DOT Nos. 481482D and 518257V), located in Orange Township, Delaware County, Ohio.

{¶ 7} On February 1, 2019, Staff filed a memorandum to add parties to the case, including NSRC, CSXT, and the Orange Township Board of Trustees (Orange Township).

{¶ 8} By Entry issued March 26, 2019, the attorney examiner set a deadline to file comments in the case by April 24, 2019. As of the date of this Opinion and Order, seven public comments have been filed in the docket.

{¶ 9} On April 23, 2019, the Delaware County Board of Commissioners (Delaware County) filed a motion to intervene in the case. The motion was granted by Entry issued on July 8, 2019.

{¶ 10} By Entry issued April 23, 2019, a local public hearing was scheduled for July 9, 2019.

{¶ 11} Legal notice of the local public hearing was published in the *Delaware Gazette*, a newspaper of general circulation in Delaware County.

{¶ 12} The local public hearing was held as scheduled on July 9, 2019, where seven witnesses provided sworn testimony.

{¶ 13} By Entry issued June 8, 2020, an evidentiary hearing was scheduled to commence on August 3, 2020. The evidentiary hearing was rescheduled by Entry issued on July 23, 2020, to commence instead on November 16, 2020. By Entry issued on November 6, 2020, the evidentiary hearing was rescheduled to commence on March 2, 2021. On February 25, 2021, the evidentiary hearing was rescheduled to commence on June 1, 2021. As to each rescheduling, the attorney examiner's decision was in response to a joint request from the parties.

{¶ 14} On May 28, 2021, by Entry, the evidentiary hearing to commence on June 1, 2021, was converted to a prehearing conference. The prehearing conference occurred as scheduled.

{¶ 15} On July 29, 2021, the Railroads filed a joint motion for temporary closure of the Franklin Street crossings, with an accompanying memorandum in support.

{¶ 16} By Entry issued on September 10, 2021, the Railroads' motion for temporary closure was denied, and the evidentiary hearing was scheduled to commence on October 12, 2021.

{¶ 17} The evidentiary hearing was held on October 12, 2021. At the evidentiary hearing, testimony was provided by Ernest Jackson for NSRC, by Amanda DeCesare for CSXT, by Robert Riley and Patrick Brandt for Delaware County, and by Nathan McNeil and Michele Boni for Orange Township. On December 10, 2021, CSXT, NSRC, Delaware County, and Orange Township filed post-hearing briefs. On January 7, 2022, CSXT, NSRC, Delaware County, and Orange Township filed reply briefs.

**C. *Factors in the Determination of Demonstrable Need***

{¶ 18} As noted above, there are several factors used by the Commission in determining whether there is a demonstrable need for the grade crossing to exist. These are set forth in R.C. 4907.474 and are discussed in detail below.

**1. DAILY VEHICULAR AND TRAIN TRAFFIC AT THE FRANKLIN STREET CROSSINGS AND AT ALTERNATE CROSSINGS**

{¶ 19} Franklin Street is a paved, two lane, residential street located in the unincorporated area of Lewis Center, Ohio. Franklin Street has an east/west orientation that ends at Fifth Street on the east and dead ends past Center Street on the west. Three sets of railroad tracks cross Franklin Street; two of NSRC and one of CSXT, both in a north to south direction. There are no active warning devices at the crossings, but there are cross bucks and stop signs. (Delaware County Ex. 5 at 4; Evid. Tr. at 92.)

{¶ 20} There was no evidence regarding the speed limit on Franklin Street; however, the evidence indicates that Franklin Street is wide enough for two vehicles going in opposite directions to pass each other. (Delaware County Ex. 5 at 4-6). According to NSRC witness Leon Jackson, the daily vehicle count of Franklin Street crossings is 64 vehicles per day; the daily train count is 4 per day for CSXT and as many as 38 for NSRC, the latter of which travel at approximately 40 to 60 miles per hour. (Co-Petitioner Ex. 12 at 2-4; Evid. Tr. at 14.)

{¶ 21} There are three alternate crossings near the Franklin Street crossings; specifically, Lewis Center Road to the north, Shanahan Road to the north, and Orange Road to the south (Co-Petitioner Ex. 12 at 2). There was no evidence regarding the speed limit at the alternate crossings; however, evidence was presented concerning the rail traffic count because the same CSX and NSRC tracks pass through all three grade crossings such that the daily train count would be the same at each crossing (Co-Petitioner Ex. 12 at 4-5). Concerning current motor vehicle traffic count at the alternate crossings, Orange Road crossings total 13,711 vehicles per day, and Shanahan Road

crossings total 1,034 vehicles per day. Further, evidence was presented concerning the current traffic count of Lewis Center Road, the alternative crossing the Co-Petitioners anticipate is most likely and best able to absorb additional traffic. At the hearing, Delaware County Chief Deputy Engineer, Robert Riley, testified that the current traffic count of Lewis Center Road is about 8,000 to 10,000 vehicles per day. (Evid. Tr. at 80-82; Co-Petitioner Ex. 12 at 3.)

**2. THE DAILY INCREASE IN VEHICULAR TRAFFIC AT ALTERNATE CROSSINGS  
RESULTING FROM THE CROSSING CLOSURE**

{¶ 22} No evidence was presented regarding the increase in traffic at either Orange Road or Shanahan Road. Evidence was presented at the hearing concerning the increase in traffic at one of the alternate crossings, Lewis Center Road. Specifically, testimony provided by witness Robert Riley on cross examination confirmed that Franklin Street currently experiences approximately 64 vehicles per day or 2.66 vehicles per hour at its crossings. Mr. Riley responded affirmatively that closure of the Franklin Street crossings would result in Lewis Center Road needing to absorb that number of vehicles. (Evid. Tr. at 83.)

**3. TOTAL NUMBER OF CROSSINGS WITHIN ONE LINEAR MILE OF THE W. PLAIN  
STREET CROSSING**

{¶ 23} There are two sets of grade crossings located within one mile of the Franklin Street crossings. Of these crossings, the closest to Franklin Street are at Lewis Center Road, which is located approximately 6/100 of a mile or 325 feet to the north. The next closest is Shanahan Road, which is approximately one mile north of Franklin Street, and the next from that is Orange Road crossing, approximately 1.65 miles south of Franklin Street. (Evid. Tr. at 80-81, Co-Petitioner Exhibit 12 at 3.)

**4. NATURE OF THE ROADWAY AT THE ALTERNATE CROSSINGS**

{¶ 24} As noted previously, the three crossings located closest to Franklin Street, at Lewis Center Road, Shanahan Road, and Orange Road, are all paved roads, and wide

enough for two vehicles to pass one another traveling in opposite directions (Co-Petitioner Ex. 12 at 3). The evidence indicates that the road at all three alternate crossings is straight, and the angle at which the track intersects is between 60 and 90 degrees. (Co-Petitioner Ex. 12 at 3).

**5. TYPE OF ADVANCE WARNING DEVICES AND SIGHT DISTANCES AT THE ALTERNATE CROSSINGS**

{¶ 25} All three of the alternate crossings are protected by flashers and gates according to the testimony of Co-Petitioner witness Amanda DeCesare. (Co-Petitioner Exhibit 12 at 3).

{¶ 26} The evidence indicates that, because of the nature of the roadway and the angle at which the track crosses the road, there is little difficulty for driver sight distances at the three alternative crossings, according to testimony from witness DeCesare. (Co-Petitioner Ex. 12 at 3.) No one testifying at the local public hearing expressed concern about sight distances at either alternate crossing.

**6. IMPACT OF THE CLOSURE ON VEHICULAR TRAFFIC, EMERGENCY VEHICLES, COMMERCIAL ENTERPRISES, AND ANY OTHER FACTORS PERTINENT TO MUNICIPAL CORPORATIONS AND OTHER POPULATED AREAS**

{¶ 27} At the local public hearing, seven witnesses provided sworn testimony opposing the proposed closure. Leonard Fisher testified concerning the consequences for local cyclists if the Franklin Street crossing were to close. Mr. Fisher testified that, should the Franklin Street crossing close, cyclists would need an alternative for crossing the tracks. Mr. Fisher opined that the crossing at Orange Road is not safe for cyclists as there is not a bike path over it, and there is also not such a path on Lewis Center Road yet, so the only option is Franklin Street. (Pub. Tr. at 8-12.) Michael McCarthy testified that, for residents of Lewis Center on the west side of the tracks, closure of the Franklin Street crossing will eliminate nearby means of crossing the tracks to get home. Finally, Mr. McCarthy testified as to the slowness of traffic on Lewis Center Road heading westbound. (Pub. Tr. at 13-16.) Jamie Stabl testified that the closure would not affect

EMS negatively where Lewis Center Road traffic can accommodate them regularly as motorists know to pull over and stop when EMS and Fire vehicles running their sirens come down the road. (Pub. Tr. at 17-24.) Both David and Geri Dill testified concerning the closure and its effect on EMS and Fire service being less of a problem than the local convenience and causing a barrier to exist within their village. (Pub. Tr. at 24-33.) Finally, Fred Lecrone testified concerning the future if the Franklin Street crossing is closed and whether the other grade crossings nearby, namely those on Lewis Center Road, will remain open. (Pub. Tr. at 33-35.)

{¶ 28} Orange Township and Delaware County argue that the evidence indicates that closing the Franklin Street crossing could have negative impacts on emergency response to the area west of the railroad tracks within the unincorporated village of Lewis Center and further west.

{¶ 29} Delaware County Director of Emergency Communications, Mr. Brandt, identified Delaware County Medic 3 as the unit that covers this run card area, which details the designated departments and EMS vehicles for particular areas. (Delaware County Ex. 6 at 2.) Upon compilation and review of a written report of all dispatches within the run card area for the years 2018, 2019, 2020, and 2021 (through August), Mr. Brandt testified that Medic 3 has shorter response times. Mr. Brandt explained that due to its shorter response times, Medic 3 is the primary responding medic for Lewis Center and everything west of the Franklin Street crossing. (Delaware County Ex. 6 at 3.) It is Mr. Brandt's opinion that closing the Franklin Street crossing would negatively impact Medic 3's response times due to the congestion on Lewis Center Road (Delaware County Exhibit 6 at 3). Additionally, the evidence indicates that Franklin Street provides an alternate route in the event of unplanned closure or blockages at the Lewis Center Road crossings (Delaware County Exhibit 6 at 4). In his direct testimony, Mr. Brandt stated that the Franklin Street crossing should stay open until such a time that the Home Road overpass is constructed, which is currently being considered. In his opinion, there is a

need for the Franklin Street crossing to serve as the primary route for emergency response west of the crossing and as an alternate route to Lewis Center Road, when it is unreasonable or unavailable during a railroad blockage or times of peak traffic volume. (Delaware County Ex. 6 at 4.)

{¶ 30} Captain Glen Keating of Delaware County EMS testified that if the Franklin Street crossing was closed, response times within the unincorporated village of Lewis Center would be negatively impacted (Delaware County Ex. 7 at 3; Delaware County Ex. 4). Captain Keating testified that Franklin Street is the most direct route to service the unincorporated village of Lewis Center via Medic 3 (Evid. Hearing Tr. at 180). Captain Keating explained that the “redundant crossings” are necessary because Lewis Center Road becomes congested at the railroad crossings. He identified that the traffic volume on Lewis Center Road will negatively affect EMS response times if the Franklin Street crossing was closed and was no longer available as the alternative route (Evid. Hearing Tr. at 183). Captain Keating’s opinion is that the Franklin Street crossing should not be closed until the Home Road overpass is completed (Delaware County Ex. 7 at 3).

{¶ 31} Ms. Boni, the Orange Township Administrator testified that besides Franklin Street crossing, the closest crossing is Lewis Center Road, which “is often impassable due to traffic or closure by railroad company” (Orange Township Ex. C at 3). Ms. Boni claims that the traffic congestion on Lewis Center Road, significant volume of traffic, and narrow width of the road, emergency vehicles create difficulty in driving that route if there is any amount of traffic on the road. Ms. Boni explained that upon Franklin Crossing’s closing, emergency response vehicles traveling west from the area of the unincorporated village of Lewis Center would have to use another route to get across the railroad tracks. Ms. Boni identified the nearest alternative routes could be Shanahan Road, approximately 1 mile to the north, or Orange Road, approximately 1.7 miles to the south. (Orange County Ex. C at 3-4.)



{¶ 32} Orange Township Fire Chief McNeil identified that Orange Township's Medic 3 frequents a commercial area that includes a Kroger grocery store and Ohio State Outpatient Area (Kroger area). Chief McNeil noted that the calls in this area can be serious in nature, pertaining to chest pain, heart problems, stroke and difficulty breathing. (Orange County Ex. B at 8.) McNeil testified that if the Franklin Street crossing closed, he would anticipate that there would be more frequent situations where Medic 3 could not respond to the west of the train tracks, or it would take Medic 3 longer to get across the road crossings due to traffic or closure. According to Chief McNeil, in addition to these two possibilities, it could be the case that emergency response equipment would have to come from farther away to respond to an emergency call. (Orange County Ex. B at 4-5.)

{¶ 33} CSX disputed Orange Township and Delaware County's position, positing that the closure of the Franklin Street crossing would not negatively impact emergency response. Initially, CSX claims that closing the Franklin Street crossing would have no impact on fire response anywhere or on emergency medical response for areas east of the tracks due to the manner in which those service territories are currently divided (CSX Br. at 8). Next, CSX argued that given the evidence of record, closing Franklin Street crossing would have a de minimis impact on emergency response times in the area west of the crossing (CSX Br. at 8). CSX indicated that according to Mr. Brandt, Chief McNeil, and Chief Noble, there are numerous circumstances when Medic 3 is not the first responder to the area and that regardless, the emergency medical service response time either meets or is faster than the national standard (CSX Br. at 10; Evid. Hearing Tr. at 135-36; 161-163). In those instances, it appears that Medic 361, which is situated west of the railroad crossings at issue, is generally the first responder. Further, CSX stated that during the period when Lewis Center Road was closed west of the Franklin Street crossings for six months of construction, Orange Township and Delaware County's witnesses testified that there was no evidence of adverse impacts or outcomes for any patients (CSX Br. at 13; Evid. Hearing Tr. at 128-130; 161-165; 194-195). CSX noted that Medic 361's response,

or an alternate response from a dispatch proximate to State Route 23 would be “in a better position to get around traffic” than would be a Medic 3 using the Lewis Center Road (CSX Br. at 14; Evid. Hearing Tr. at 130-33; 165-66; 199-200). CSX claimed that there is no situation when responding to the Kroger area, that Medic 361, the alternate emergency response team, would be required to cross railroad tracks, where it would be blocked by a stopped or moving train (CSX Br. at 14; Evid. Hearing Tr. at 170). CSX further claimed that even if Medic 3 remains the primary responder to the Kroger area, there will be little or no impact on Medic 3’s ability to respond to that area given the availability of the proximate alternate crossing at Lewis Center Road (CSX Br. at 15; Evid. Hearing Tr. at 15).

**7. ANY OTHER FACTOR THE COMMISSION DETERMINES APPROPRIATE**

{¶ 34} An additional consideration in this case relates to the potential for the creation of a new alternate crossing within the next several years. Testimony and evidence indicate that there is a proposal to extend Home Road east of U.S. Route 23, to cross the railroad tracks using an overpass and connect to Lewis Center Road, which would serve as a possible significant alternate route to the Franklin Street crossing. Ms. Boni explained that Orange Township would not agree to the Franklin Street crossing closure until the Home Road extension is completed because it will provide an alternative access over the railroad tracks. Ms. Boni said the Home Road Extension would provide residents and travelers a feasible alternate route to travel across the railroad tracks without needing to rely on the Franklin Street crossing. (Orange Township Ex. C at 5.) Ms. Boni testified that once the Home Road overpass is completed, then Orange Township would have no objection to the closure (Evid. Hearing Tr. at 222). However, during the evidentiary hearing, Chief McNeil and Ms. Boni testified that there is a possibility the Home Road overpass will not be built. (Evid. Hearing Tr. at 205; 223). Lastly, as noted above, Ms. Boni affirmed there are two existing alternate routes to the Lewis Center Road crossing, which are Shanahan Road, approximately 1 mile to the north, or Orange Road, approximately 1.7 miles to the south (Orange County Ex. C at 4).

### III. CONCLUSION

{¶ 35} In assessing this case, the Commission must determine whether the petitioners have met their burden to prove that there is no demonstrable need for the Franklin Street crossing. R.C. 4907.075. As previously noted, the term “demonstrable need” is not defined in the statute. Historically, the Commission has found 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. See *In re the Petition to Close the W. Plain Street Grade Crossing Located in Minerva, Carroll County, Ohio*. Case No. 15-1714-RR-UNC, Opinion and Order, (August 31, 2016); *In re the Petition to Close the Bloomingrove-New Winchester Road Grade Crossing Located in Washington Township, Morrow County, Ohio*. Case No. 14-379-RR-UNC, Opinion and Order (November 18, 2015). For there to be a demonstrable need for a crossing, the impact of closing the crossing must provide more than just an inconvenience to local residents and motorists.

{¶ 36} After consideration of the evidence in this case, we find that there is not a demonstrable need for the Franklin Street crossing to exist and, therefore, the petition for closure filed by NSRC and CSXT should be granted. In making this determination, we consider the concerns of both Delaware County and Orange Township regarding the impact of closing the crossing against the petitioners’ assertions that closing the Franklin Street crossing would enhance public safety and not materially impact local residents, finding that the evidence supports closing the crossing.

{¶ 37} The evidence demonstrates that the Franklin Street crossing is a particularly hazardous crossing, being ranked the 39th most hazardous crossing in Ohio by the Commission’s rail division (Evid. Tr. at 41-42, 49). Further, the testimony of Orange Township Administrator Michele Boni indicates that, as recently as April 2021, Orange Township resolved that closure of the Franklin Street crossing would enhance the safety of the traveling public, which correlates with the Commission’s Rail Division’s hazard

ranking of the crossing. (Orange Township Ex. C at 225; Co-Petitioner Ex. 8.) Additionally, the crossing sees relatively little motor vehicle traffic (64 vehicles per day) such that the high costs of enhancing its safety via roadway improvements and the installation of active gates and warning devices are likely not cost-justified. Thus, the combination of the low volume of usage and the high-hazard nature of the crossing strongly supports the need for consideration of its closure in accordance with our ultimate goal of increasing the safety of pedestrians and motorists. *In re Indiana & Ohio Railroad*, Case No. 02-580-RR-UNC, Opinion and Order (Oct. 13, 2004) at 12.

{¶ 38} The primary consideration in this case involves whether the closure would have a substantial impact on safety or emergency services. We conclude that the closure will not substantially impact such services based on (1) alternate crossings are reasonably available to mitigate the very limited safety service route change impacts from the closing, (2) Orange Township recently resolved, in April 2021, that the closing would enhance the safety of the traveling public<sup>1</sup>, (3) safety services were recently re-routed in 2019 for approximately six months in a manner comparable to the impact at issue in this case without any adverse service impacts, and (4) response times for alternative safety services are comparable in the event that the closing were to contribute to any increase in safety service response times.

{¶ 39} Delaware County EMS Captain Glen Keating testified on behalf of the county as to the negative service impact from the crossing closure. Though on cross examination, witness Keating stated that even should the Franklin Street crossing be closed, he would expect (1) the current EMS service provider, Medic 3, to continue to be assigned to areas of most concern, including the Kroger area, as a response unit, and (2) Medic 3 would still be able to meet the national standard for response time in spite of the

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<sup>1</sup> The Commission acknowledges that Orange Township later rescinded the April 2021 resolution in favor of a resolution that opposes the closing in May 2021, and that the township actively participated in this case in opposition to the closure. Nevertheless, the Commission finds that the prior resolution serves as a factor in considering the safety arguments in this case.

added 6/100 of a mile distance that is required to reach the nearest alternate crossing, Lewis Center Road. In fact, witness Keating estimated that non-emergency vehicles are currently able to use Lewis Center Road to travel between sides of the Franklin Street crossing in under 30 seconds. (Evid. Tr. at 172-176, 181-184.)

{¶ 40} Witness Keating's testimony pursuant to cross examination as to the limited impacts from the closing at issues is bolstered by the testimony of Orange Township Fire Chief Noble, retired, and Delaware County Emergency Communications Director Patrick Brandt, who collectively testified as to the continuity in emergency services that occurred in 2019, when the six-month closure of Lewis Center Road precluded Medic 3 from servicing the Kroger area territory that is purportedly jeopardized by the Franklin Street crossing closure. (Evid. Tr. at 128-130, 161-165, 194-195.)

{¶ 41} Further, Director Brandt and current Orange Township Fire Chief McNeil provide evidence supporting the fact that the comparative response times of Medic 3 and alternate response provides are historically quite similar (CSXT Br. at 11-15; Delaware County Ex. 4).

{¶ 42} In addition to our finding that safety services are not materially impacted by the closing, we also consider and reject arguments that the closing should not occur until the local communities complete the construction of another road project, the Home Road Extension Project. While Orange Township and Delaware County maintain that completion of the Home Road Extension Project would alleviate their respective concerns as to the closure of the Franklin Street crossing, we find (1) that the safety considerations supporting the closure of the Franklin Street crossing warrant its expedient closure, and (2) the Home Road Extension Project has been in various stages of construction and/or planning for several years and, assuming it is ultimately completed, the "most optimistic" completion date would be in 2026. (Evid. Tr. at 205, 221-223, Delaware County Ex. 7 at 3.) Based on these considerations, we conclude that the potential for completion of the

Home Road Extension Project does not impact our determination that the Franklin Street crossing should be closed at this time.

{¶ 43} Based on our determination that (1) local emergency service response times are not materially impacted by closing the Franklin Street crossing, and (2) the closure benefits public safety by eliminating a dangerous crossing in favor of routing a relatively small amount of traffic to alternate crossings that are equipped with active gates and warning light systems, we find that there is no demonstrable need for the crossing.

{¶ 44} Accordingly, we find that the petition to close the crossing should be granted. Pursuant to R.C. 4907.474 and R.C. 4907.475, if after the hearing it is the opinion of the Commission that there is not a demonstrable need for the crossing to exist and that the crossing should be closed, the Commission shall issue an order to the legislative authority of the municipal corporation in which the crossing is located, directing it to discontinue the crossing and close it to vehicular traffic or to pedestrian traffic, or both, by ordinance. The legislative authority, within 30 days after receiving the order from the Commission, shall discontinue the crossing and close it to vehicular traffic, or to pedestrian traffic, or both, as specified in the order of the Commission. In this case, the evidence demonstrates that there is not a demonstrable need for the Franklin Street crossing to exist and it should be closed. Accordingly, within 30 days of this Opinion and Order, Orange Township, Delaware County is directed to issue an ordinance discontinuing the use of the Franklin Street crossing to all vehicular and pedestrian traffic.

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 45} On January 1, 2019, NSRC and CSXT filed a joint petition to close the Franklin Street crossing, pursuant to R.C. 4907.474 and 4907.475.

{¶ 46} A local public hearing was held in Orange Township, Delaware County, on July 9, 2019.

{¶ 47} Proof of publication of the local public hearing was published in the *Delaware Gazette*, a newspaper of general circulation in Delaware County, Ohio.

{¶ 48} By Entry issued June 8, 2020, an evidentiary hearing was scheduled to commence on August 3, 2020. The evidentiary hearing was rescheduled several times and by Entry on February 25, 2021, the evidentiary hearing was rescheduled to commence on June 1, 2021.

{¶ 49} On May 28, 2021, by Entry, the evidentiary hearing to commence on June 1, 2021, was converted to a prehearing conference. The prehearing conference occurred as scheduled.

{¶ 50} On July 29, 2021, the Railroads filed a joint motion for temporary closure of the Franklin Street crossings, with an accompanying memorandum in support.

{¶ 51} By Entry issued on September 10, 2021, the Railroads' motion for temporary closure was denied, and the evidentiary hearing was scheduled to commence on October 12, 2021.

{¶ 52} The evidentiary hearing was held at the offices of the Commission on October 12, 2021.

{¶ 53} The evidence demonstrates that there is not a demonstrable need for the Franklin Street crossing to exist.

{¶ 54} Accordingly, the petition to close the crossing should be granted and Delaware County is directed to issue a resolution discontinuing the use of the Franklin Street crossing.

## V. ORDER

{¶ 55} It is, therefore,

{¶ 56} ORDERED, That NSRC and CSXT's joint petition for closure of the Franklin Street crossing be granted. It is, further,

{¶ 57} ORDERED, That, within 30 days of this Opinion and Order, Orange Township, Delaware County, Ohio, issue an ordinance discontinuing the use of the Franklin Street crossing to vehicles and pedestrians. It is, further,

{¶ 58} ORDERED, That a copy of this Opinion and Order be served on the Orange Township, Delaware County Board of Commissioners, Norfolk Southern Railway Company, and CSX Transportation Inc., and all other interested persons of record.

**COMMISSIONERS:**

*Approving:*

Jenifer French, Chair  
M. Beth Trombold  
Lawrence K. Friedeman  
Daniel R. Conway  
Dennis P. Deters

JMD/IMM/dmh



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**in**

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

Summary: Opinion & Order that the Commission grants the joint petition of Norfolk Southern Railway Company and CSX Transportation Inc. to close to vehicular and pedestrian traffic the Franklin Street grade crossings in Orange Township, Delaware County, Ohio electronically filed by Ms. Donielle M. Hunter on behalf of Public Utilities Commission of Ohio