

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'
APPLICATION FOR REHEARING**

In accordance with R.C. 4907.475, R.C. 4903.10, and OAC Rule 4901-1-35, the Delaware County Board of Commissioners (the “Board”), by and through counsel, respectfully applies for limited rehearing of the Commission’s Opinion and Order entered on November 30, 2022. The grounds for the application are as follows, and are supported in the accompanying Memorandum:

1. The Order is internally inconsistent with respect to the legislative authority responsible to take action to discontinue the use of the Franklin Street crossings; and
2. The Order fails to include an assessment of costs of the closure of the Franklin Street crossings against the railroads that applied for closure.

Respectfully submitted,

/s/ Aric I. Hochstettler
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MEMORANDUM IN SUPPORT

While the Board disagrees with the Commission's Order entered in this matter, the Board's request for a rehearing is not based on the merits of the Commission's Order. Rather, the Board respectfully asserts that the Order is unlawful in two respects and requires correction before it can lawfully be enforced against any parties hereto. In accordance with R.C. 4903.10, this application operates to stay the Order, subject to disposition or other order of the Commission, but the Board respectfully asserts that this application is not made for the purposes of delay but to address bona fide errors in the Order that unduly prejudice the Board.

First, the Order is internally inconsistent with respect to the legislative authority responsible to take action to discontinue the use of the Franklin Street crossings. R.C. 4907.475 states, in pertinent part, as follows:

If, after the hearing, it is the opinion of the commission that there is not a demonstrable need for the crossing to exist according to the factors listed in divisions (A)(1) to (9) of section 4907.474 of the Revised Code and that the crossing should be closed, the commission shall issue an order to the board of county commissioners of the county in which such crossing is located directing it to discontinue the crossing and to close it to vehicular traffic, or to pedestrian traffic, or to both, by resolution as provided by sections 5553.01 to 5553.07 of the Revised Code. The board, within thirty days after receipt of 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.

R.C. 4907.475(A). It appears, therefore, that the Board should have responsibility for closing the Franklin Street crossings, since it is the board of county commissioners for the county in which the rural crossings are located, and the Board is the entity with statutory jurisdiction under R.C. 5553.01, *et seq.* The Commission's Order does direct the Board to take action in paragraph 54, but paragraphs 44 and 57 contain contradictory statements, ordering Orange Township to take action to close the crossings. The Commission should, for the benefit of all parties, correct its

Order to clarify which party is required to take action to discontinue the use of the Franklin Street crossings.

Second, the Order fails to include an assessment of costs of the closure of the Franklin Street crossings against the railroads that applied for closure. Pursuant to R.C. 4907.475, “[t]he commission shall assess the costs, as determined by the commission, of the closure of a crossing under this section against the railroad having jurisdiction over the crossing.” R.C. 4907.475(C). Before the Board (or any other legislative body) is required to take action to discontinue the use of the crossings, the Commission should assess the costs therefor to the co-applicant railroads in this matter.

Based on the deficiencies in the Commission’s Order, the Order is unlawful until the necessary corrections have been made and a new Order is issued that fully complies with the applicable law. For the foregoing reasons, the Commission should permit the limited rehearing of the Order.

Respectfully submitted,

/s/ Aric I. Hochstettler

Aric I. Hochstettler (0081081)

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CERTIFICATE OF SERVICE

A copy of the foregoing document was filed electronically with the Commission on December 20, 2022. 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: Application for Rehearing electronically filed by Mr. Aric I. Hochstettler
on behalf of Delaware County Board of Commissioners