

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

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PETITION OF

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CSX TRANSPORTATION, INC.,

CASE NO. PUR-2024-00066

For relief from a railroad crossing application
filed by Cox Communications, Inc., under
Virginia Code § 56-16.3

ORDER ON MOTION FOR STAY

On June 14, 2024, the State Corporation Commission ("Commission") issued an Order in this matter under § 56-16.3(H) of the Code of Virginia ("Code") ("June 14 Order").

On June 20, 2024, CSX Transportation, Inc. ("CSXT"), filed a Motion for Stay Pending Appeal ("Motion"). CSXT "moves for a temporary stay to preserve the status quo while CSXT appeals the constitutionality of Virginia Code § 56-16.3(H) to the Supreme Court of Virginia."¹

On June 21, 2024, the Commission issued an order scheduling expedited pleadings on the Motion. On June 24, 2024, the Commission issued an order temporarily suspending the June 14 Order pending resolution of the Motion.

Cox filed a response to the Motion on June 26, 2024, and CSXT filed a reply on June 28, 2024.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows.

Code § 8.01-676.1(H) provides the standard that the Commission must apply in deciding whether to suspend an order pending appeal to the Supreme Court of Virginia. Code § 8.01-676.1(H) states in full (emphases added):

¹ Motion at 1.

Appeal from State Corporation Commission; suspension. – Any judgment, order, or decree of the State Corporation Commission subject to appeal to the Supreme Court may be suspended by the Commission or by the Supreme Court pending decision of the appeal if the Commission or the Supreme Court *deems such suspension necessary for the proper administration of justice* but only upon the written application of an appellant after reasonable notice to all other parties in interest and the filing of a suspending bond or irrevocable letter of credit with such conditions, in such penalty, and with such surety thereon as the Commission or the Supreme Court may deem sufficient. But no surety shall be required if the appellant is any county, city or town of this Commonwealth, or the Commonwealth.²

The June 14 Order permits Cox – under the provisions of Code § 56-16.3 – to impact interests in real property. Pursuant thereto, Cox could unilaterally install a potentially permanent, underground physical occupation below CSXT's railroad tracks.

Contemporaneously, the parties recognize that CSXT's appeal to the Supreme Court of Virginia will be a case of first impression for the Court, wherein the Court could hold that Cox's physical, subgrade disturbance and installation under railroad property pursuant to Code § 56-16.3 is unconstitutional.³ Under these circumstances, the Commission finds that maintenance of the status quo, as related to the June 14 Order pending appeal, is "necessary for the proper administration of justice" and, thus, hereby suspends the June 14 Order pending the Court's decision on appeal.⁴

² The Motion, as well as the subsequent pleadings thereon, do not cite this statute or the specific standard contained therein.

³ In addition, CSXT confirmed that it has not foreclosed accepting installation under its currently employed procedures for such crossings. *See, e.g.*, CSXT's June 28, 2024, Reply at 14.

⁴ Code § 8.01-676.1(H). The parties also strongly briefed whether the appeal is likely to succeed on the merits. In granting suspension pending appeal under the standard in Code § 8.01-676.1(H), however, the Commission has not determined that CSXT's appeal is likely to succeed on the merits.

Accordingly, IT IS ORDERED that the June 14 Order shall remain suspended under Code § 8.01-676.1(H) pending decision of CSXT's appeal to the Supreme Court of Virginia, and this matter is continued.⁵

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.

⁵ The Commission herein waives the filing of a suspending bond or irrevocable letter of credit for purposes of Code § 8.01-676.1(H), as permitted under Code § 8.01-676.1(L).