

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation upon the Commission’s motion	:	
into matters pertaining to the proper safety of the	:	
traveling public traversing the crossing where	:	I-2016-2527248
Lighthouse Road (DOT 535 148 L) crosses, at	:	
grade, one track of Norfolk Southern Railway	:	
Company in Guilford Township, Franklin County	:	

RECOMMENDED DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

This Recommended Decision recommends approval, without modification, the Joint Petition for Settlement submitted by the parties as a resolution of the Pennsylvania Public Utility Commission’s investigation into the safety to the travelling public over the crossing where Lighthouse Road crosses, at grade, one track of Norfolk Southern Railway Company (Norfolk Southern) in Guilford Township, Franklin County, Pennsylvania (“Township”). Approval of the Joint Petition is recommended because it is just, reasonable and in the public interest.

HISTORY OF THE PROCEEDING

By Order entered February 25, 2016, the Pennsylvania Public Utility Commission (“Commission”) initiated, upon its own motion, an investigation for purposes of determining all matters relating to the safety of the railroad crossing where Lighthouse Road (T-425) crosses, at grade, one track of Norfolk Southern in Guilford Township, Franklin County, Pennsylvania

(“Crossing”), and the future disposition of the Crossing. A field conference was held on March 15, 2016, for the purpose of determining whether an amicable resolution of the various matters involved in this proceeding could be reached.

During the initial field conference, the parties were unable to arrive at a mutually acceptable resolution of the issues related to the Crossing. The Commission thereafter referred the proceeding to the Commission’s Office of Administrative Law Judge for the scheduling of an evidentiary hearing.

A Prehearing Conference was held on May 18, 2016, attended by counsel for Norfolk Southern, the Township, Pennsylvania Department of Transportation (“PennDOT”), and the Commission’s Bureau of Investigation and Enforcement (“I&E”). Following the Prehearing Conference, this matter was referred to the Commission’s Mediation Unit upon agreement of the parties. The parties were unable to resolve the issues involved through proceedings before the Commission’s Mediation Unit.

A Scheduling Order was set on March 12, 2018, for further proceedings before the ALJ. Subsequently, at the request of the parties, I issued an Order Suspending Litigation Schedule on May 29, 2018, suspending litigation to give the parties additional time to attempt to finalize a settlement. Thereafter, the parties engaged in amicable negotiations to address the concerns raised in this matter and to achieve terms of resolution acceptable to all parties for the benefit of the public.

After extensive and lengthy negotiations, the parties agreed to settlement terms in this proceeding and, on December 21, 2021, submitted a Joint Petition for Settlement (“Joint Petition”). The record was closed on this date.

STIPULATION OF FACTS

In their Joint Petition, the parties included stipulated facts that support approval of the settlement terms. The Stipulated Facts are set forth on pages 2-6 of the Joint Petition and are restated below as they appear in the Joint Petition.

[Begin Stipulated Facts]

1. The Crossing is an at-grade crossing where Lighthouse Road (T-425) crosses, at grade, a single track of Norfolk Southern's railway line (DOT No. 535 148 L) in the Township.
2. By order entered February 25, 2016, the Commission initiated, upon its own motion, an investigation for the purpose of determining all matters relating to the safety of the Crossing and the future disposition of the Crossing.
3. A traffic study was performed in May of 2018, indicating an average daily traffic volume of 132 vehicles on Lighthouse Road and a peak average daily traffic volume of 155.
4. Upon a field review, inspections, and engineering input, and during the course of discovery in this matter, it was determined that the subject Crossing should be closed and abolished.
5. Additionally, it was determined that certain safety related improvements that might be installed at the Crossing may not be feasible due to potential conflicts that might arise from electrical and/or electromagnetic interference from nearby electrical transmission lines.
6. The parties agreed that the subject Crossing should be abolished.

7. The parties agreed that abolishing the Crossing would be preferable to upgrading existing traffic control facilities or constructing additional facilities and upgrades.

8. The parties agreed that certain work must be undertaken to abolish the Crossing.

9. Specifically, the parties agreed that the Township will undertake the following work to facilitate the closure and abolishment of the Crossing:

- a. To the east of the Crossing, the Township shall establish a relief road from the current terminus of or other connection point along Archer Drive (T-820) on the north, to Lighthouse Road (T-425) on the south (the “Relief Road”). The design and construction of the Relief Road commenced in or around Spring of 2020 and was completed on or around September 2021. The Township intends to fund construction of the Relief Road through a combination of funds received pursuant to this Stipulation, grant funding recently awarded to the Township for this purpose, and otherwise through available funds of the Township.
- b. The Township’s responsibilities in designing and building said Relief Road shall include, but not be limited to: (i) preparing a survey prior to commencing construction; (ii) acquiring property, obtaining or vacating any easements or rights of way if necessary, obtaining any required permits and authorizations, and executing and recording any instruments necessary to facilitate the construction of the Relief Road; (iii) taking all actions necessary to vacate the Lighthouse Road roadway from State Route 11 to its intersection with the established Relief Road, as shown on Exhibit “A” attached hereto, in favor of WCN Properties, L.P., Target Corporation, Norfolk Southern, and West Penn Power Company, at its sole cost and expense; and (iv) constructing the new Relief Road.
- c. The Township will remove a portion of the roadway surface on each side of the Norfolk Southern railroad track as follows: (i) from the eastern boundary

of the State Route 11 right-of-way to a point extending two (2) feet from the western boundary of the Norfolk Southern railroad track; and (ii) from a point extending two (2) feet from the eastern boundary of the Norfolk Southern railroad track to a point onto the roadway of Lighthouse Road at the boundary of the Norfolk Southern right-of-way, where the Township will place concrete median barriers.

10. The parties further agreed that Norfolk Southern shall:
 - a. Pay the Township a one-time, lump sum payment of Twenty-Eight Thousand Dollars (\$28,000.00) as incentive for closing and abolishing the crossing.
 - b. Remove the Crossing itself and the roadway surface for two feet outside the tracks, at its sole cost and expense.
 - c. Remove any crossbucks associated with the Crossing at Norfolk Southern's sole cost and expense.
 - d. Issue any and all permits to the Township and/or the Township's contractors, at no cost to the Township or its contractors, to the extent they are required by Norfolk Southern for the removal of the roadway surface within the Norfolk Southern right-of-way. Pay for the costs of any flaggers that are required for the Township's on-site removal of the roadway surface within the Norfolk Southern right-of-way provided that the Township shall provide ninety days' written notice to Norfolk Southern of the Township's intent to commence the roadway surface removal work so that Norfolk Southern can coordinate its work of removal of the Crossing if desired.

11. Finally, the parties agreed that PennDOT shall not be responsible for performing any work outside of its own right of way along State Route 11. Within the PennDOT right of way, however, PennDOT shall perform the following at its sole cost:

- a. Issue a Highway Occupancy Permit to the Township at no cost to the Township consistent with 67 Pa. Code § 441.4.
- b. Stake/paint the State Route 11 right of way 70'/35' from the centerline.
- c. Eradicate any lines and restripe the shoulder adjacent to the Crossing on State Route 11.
- d. Remove turn lane indications associated with the Crossing as deemed necessary by PennDOT.
- e. Remove any railroad crossing signs or signs on State Route 11 indicating a grade crossing on Lighthouse Road.

12. PennDOT shall also approve a Section 130 incentive payment for at-grade crossing closures in accordance with 23 U.S.C. § 130 of Seven Thousand Five Hundred Dollars (\$7,500.00) based upon the incentive payment by Norfolk Southern to the Township as specified herein.

13. The work and contribution of each party toward abolishing the Crossing will facilitate complete abolishment of the crossing and will thereby reduce hazards and increase public safety in the area.

[End Stipulated Facts] Joint Petition for Settlement, pp. 2-6.

SETTLEMENT TERMS AND CONDITIONS

The settlement terms agreed upon by the parties are set forth on pages 7-12 of the Joint Petition and are restated below as they appear in the Joint Petition.

[Begin Settlement Terms]

Pursuant to Sections 507 (relating to “Contracts between public utilities and municipalities”) and 2702 (relating to “Construction, relocation, suspension and abolition of

crossings”) of the Pennsylvania Public Utility Code (“Code”), 66 Pa.C.S. §§ 507 and 2702, the undersigned parties to this proceeding agree in this Joint Petition for Settlement as follows:

1. The parties, by the signatures of their representatives below, stipulate to the facts as presented in the Stipulated Facts within this Petition for Settlement.

2. The parties agree to perform the responsibilities as specified herein in a combined effort to abolish the Crossing to reduce hazards and increase public safety at the Crossing.

3. The subject crossing shall be abolished, upon the establishment and construction of a relief road, as further detailed in this Joint Petition for Settlement.

4. The Township’s responsibilities and share of costs associated with the combined effort shall be as specified herein. Subject to the payment of funds by Norfolk Southern and PennDOT as specified herein, the Township shall undertake the following work to facilitate the closure and abolishment of the Crossing:

- a. To the east of the Crossing, the Township shall establish a relief road from the current terminus of or other connection point along Archer Drive (T-820) on the north, to Lighthouse Road (T-425) on the south (the “Relief Road”). Design and construction of the Relief Road commenced in or around Spring of 2020 and was completed in or around September 2021. The Township intends to fund construction of the Relief Road through a combination of funds received pursuant to this Stipulation, grant funding recently awarded to the Township for this purpose, and otherwise through available funds of the Township.
- b. The Township’s responsibilities in designing and building said Relief Road shall include, but not be limited to: (i) preparing a survey prior to commencing construction; (ii) acquiring property, obtaining or vacating any easements or rights of way if necessary, obtaining any required permits and

authorizations, and executing and recording any instruments necessary to facilitate the construction of the Relief Road; (iii) taking all actions necessary to vacate the Lighthouse Road roadway from State Route 11 to its intersection with the established Relief Road, as shown on Exhibit "A" attached hereto, in favor of WCN Properties, L.P., Target Corporation, Norfolk Southern, and West Penn Power Company, at its sole cost and expense; and (iv) constructing the new Relief Road.

- c. The Township will remove a portion of the roadway surface on each side of the Norfolk Southern railroad track as follows: (i) from the eastern boundary of the State Route 11 right-of-way to a point extending two (2) feet from the western boundary of the Norfolk Southern railroad track; and (ii) from a point extending two (2) feet from the eastern boundary of the Norfolk Southern railroad track to a point onto the roadway of Lighthouse Road at the boundary of the Norfolk Southern right-of-way, where the Township will place concrete median barriers.

5. The Township agrees, in addition to and in connection with the abolishment of the Crossing, to vacate those portions of Lighthouse Road from its centerline adjacent to property owned by WCN Properties L.P., Target Corporation, Norfolk Southern, and West Penn Company, to those entities, as shown on the plans and metes and bounds descriptions attached hereto as Exhibit "A" and Exhibit "B," respectively. The Township will not vacate any other portion of Lighthouse Road in conjunction with this proceeding. The vacation of the above referenced roadway and abolishment of the crossing shall occur upon the completion of Relief Road and the issuance of a Secretarial Letter memorializing the abolition and closing this investigation.

6. In connection with the request to vacate the specified portion of Lighthouse Road, the parties request that the adjacent property owners be added as parties to this proceeding solely for the purpose of effectuating this roadway vacation as follows:

WCN Properties L.P.
900 Kriner Road, Suite 1,
Chambersburg, Pa 17201

Target Corporation
1000 Nicollet Mall,
Minneapolis, MN 55403

West Penn Power Company
800 Cabin Hill Drive,
Greensburg, PA 15601

WCN Properties, L.P., Target Corporation, and West Penn Power Company have each consented to its addition as a party to this proceeding solely for purposes of effectuating the roadway vacation as evidenced by the letters of support attached hereto as Exhibit “C.”

7. Norfolk Southern shall:
 - a. Pay the Township a one-time, lump sum payment of Twenty-Eight Thousand Dollars (\$28,000.00) as incentive for closing and abolishing the crossing.
 - b. Remove the Crossing itself and the roadway surface for two feet outside the tracks, at its sole cost and expense.
 - c. Remove any crossbucks associated with the Crossing at Norfolk Southern’s sole cost and expense.
 - d. Issue any and all permits to the Township and/or the Township’s contractors, at no cost to the Township or its contractors, to the extent they are required by Norfolk Southern for the removal of the roadway surface within the Norfolk Southern right-of-way. Pay for the costs of any flaggers that are required for the Township’s on-site removal of the roadway surface within the Norfolk Southern right-of-way provided that the Township shall provide ninety days’ written notice to Norfolk Southern of the Township’s intent to commence the roadway surface removal work so that Norfolk Southern can coordinate its work of removal of the Crossing if desired.

8. PennDOT shall not be responsible for performing any work outside of its own right of way along State Route 11. Within the PennDOT right of way, however, PennDOT shall perform the following at its sole cost:

- a. Issue a Highway Occupancy Permit to the Township at no cost to the Township consistent with 67 Pa. Code § 441.4.
- b. Stake/paint the State Route 11 right of way 70'/35' from the centerline.
- c. Eradicate any lines and restripe the shoulder adjacent to the Crossing on State Route 11.
- d. Remove turn lane indications associated with the Crossing as deemed necessary by PennDOT.
- e. Remove any railroad crossing signs or signs on State Route 11 indicating a grade crossing on Lighthouse Road.

9. PennDOT shall also approve a Section 130 incentive payment for at-grade crossing closures in accordance with 23 U.S.C. § 130 of Seven Thousand Five Hundred Dollars (\$7,500.00) based upon the incentive payment by Norfolk Southern to the Township as specified herein.

10. The parties shall coordinate in good faith to determine any other cost sharing that may become necessary as work progresses.

11. All work will be completed by May 1, 2022, unless another date is agreed to by the parties.

12. Upon the entry of an order by the Commission approving the settlement, the matter will be reassigned to the Commission's Bureau of Technical Utility Services, Rail Safety Section.

13. Upon completion of the work provided herein, the parties agree to provide written notice to Rail Safety. Rail Safety shall, within thirty days of written notice, complete a

final inspection to determine that the Relief Road has been established and that the work performed by the Parties within the limits of the Crossing was completed satisfactorily and as specified in this Petition. If the Relief Road has been established and the balance of the work is found to have been completed satisfactorily and as specified in this Petition, Rail Safety shall issue a Secretarial Letter closing the matter and officially abolishing the crossing.

14. Subject to the parties' right to withdraw from this Joint Petition for Settlement pursuant to Paragraph 16 below, the parties hereto agree to abide by the work responsibilities and financial obligations delineated in this Joint Petition for Settlement.

15. This Joint Petition for Settlement is contingent upon its approval pursuant to Sections 507 and 2702 of the Code [66 Pa.C.S. § 507, 66 Pa.C.S. § 2702] and the issuance of a Commission Secretarial Letter or Order accepting and approving the same.

16. The parties agree that any party may petition the Commission for rehearing if the Commission Secretarial Letter or Order substantively modifies the terms of this Joint Petition for Settlement. In that event, any party may give notice to the other parties that it is withdrawing from this Joint Petition for Settlement. Such notice must be in writing and must be given within twenty (20) business days of the issuance of any Initial or Recommended Decision or any Commission Order or Secretarial Letter which adopts this Joint Petition for Settlement with substantive modifications of its terms. The consequence of any party withdrawing from this Joint Petition for Settlement as set forth above is that all issues associated with the requested relief presented in the proceeding will be fully litigated unless otherwise stipulated between the parties and all obligations of the parties as set forth above to each other are terminated and of no force and effect.

17. The parties executing this Joint Petition for Settlement agree that its purpose is to act as a General Release, except as specifically noted within, and is to settle, compromise and release all claims, actions, suits and rights whatsoever existing between and on behalf of those respective parties as set forth above, their successors and assigns, including all

such claims, actions, suits and rights whatsoever; whether known or unknown to those parties, except to enforce the terms of this Joint Petition for Settlement.

18. The benefits and obligations of this Joint Petition for Settlement shall be binding upon the successors and assigns of the parties to this Stipulation.

19. This Stipulation may be signed in counterparts and all signatures attached hereto will be considered as originals.

[End Settlement Terms] Joint Petition for Settlement, pp. 7-12.

DISCUSSION

It is the Commission's policy to promote settlements. 52 Pa. Code §§ 5.231 and 69.401. Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission's decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties and the Commission, but also all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails. The Commission has indicated that settlement results are often preferable to those achieved through a fully litigated proceeding. 52 Pa. Code § 69.401. The Commission must, however, review proposed settlements to determine whether the terms are in the public interest. *Pa. Pub. Util. Comm'n v. Phila. Gas Works*, Docket No. M-00031768 (Opinion and Order entered January 7, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water & Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa. P.U.C. 1 (1985).

Section 332(a) of the Code, 66 Pa.C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. Consequently, in this proceeding, the Joint Petitioners, as the parties seeking a rule or order from the Commission, have the burden of proving that the terms and conditions of the settlement are just, reasonable and in the public interest.

In rail-highway crossing proceedings in the Commonwealth, the Commission has exclusive authority to order the construction, alteration, protection, suspension, or abolition of a rail-highway crossing, as well as the exclusive authority to determine and order which parties should perform such work at the crossing and which parties must maintain the crossing in the future, with the ultimate goal being the elimination of hazards, the prevention of accidents and the promotion of the public safety. 66 Pa.C.S. §§ 2702, 2704; *Pittsburgh R.R. Co. v. Pa. Pub. Util. Comm'n*, 182 A.2d 80 (Pa. Super. 1962) (citing *Pa. R.R. Co. v Pa. Pub. Util. Comm'n*, 35 A.2d 588 (Pa. Super. 1944)).

Upon consideration of the Joint Petition, Stipulation of Facts and attached Statements in Support in this matter, I conclude, as more fully explained below, that the settlement is just, reasonable and in the public interest. Therefore, I recommend approval of the settlement in its entirety, without modification.

All parties agree that approval of the settlement will promote the public interest by saving them and the Commission the additional time and expense that would be incurred in fully litigating this matter before the Commission, and by eliminating the possibility of appeal by a party from a Commission Order. PennDOT Stmt. in Support, p. 1; Norfolk Southern Stmt. in Support, p. 1; I&E Stmt. in Support, p. 5; Township Stmt. in Support, p. 1. Approval of the settlement allows what has been a very lengthy proceeding to conclude under terms that are acceptable to all parties without the need for any further expenditure of time and money by the parties and the Commission.

The Crossing intersects with Lighthouse Road at a point immediately east of Route 11 in Guildford Township. In the Joint Petition, the parties agree that the best way to ensure the safety of the travelling public is to abolish the Crossing rather than merely adding enhanced safety features and devices. Stipulation of Facts Nos. 4, 6-7. The settlement addresses and accomplishes removal of the Crossing and related signage and warning devices, vacation of the impacted portion of Lighthouse Road, installation of new signage and warning devices indicating no crossing, construction of a relief road from the terminus of Lighthouse Road east of

the crossing to nearby Archer Road, and assignment of costs associated with the various settlement obligations.

In order to accomplish abolition of the crossing, the parties have agreed on the various actions and obligations set forth in the Joint Petition. I will summarize and address key elements of the settlement below.

Relief Road

In connection with abolition of the subject crossing, the Township agreed to design and construct a Relief Road from a connection point along Archer Drive (T-820) on the north, to Lighthouse Road (T-425) on the south. Design and construction of the Relief Road commenced in Spring 2020 and was completed in Fall 2021. As part of its obligations related to the Relief Road, the Township performed initial survey work, acquired or vacated necessary property rights, obtained necessary permits, and executed and recorded all documentation required for construction of the Relief Road.

The Township, in connection with the abolishment of the Crossing, will vacate portions of Lighthouse Road from its centerline adjacent to property owned by WCN Properties L.P., Target Corporation, Norfolk Southern, and West Penn Company, to those companies, as shown on Exhibits "A" and Exhibit "B," of the Joint Petition.¹ The Township will not vacate any other portion of Lighthouse Road in conjunction with this proceeding. The vacation of the above referenced roadway and abolishment of the Crossing will occur upon the issuance of a Secretarial Letter memorializing the abolition and closing this investigation.

¹ WCN Properties, L.P., Target Corporation, and West Penn Power Company have each consented to its addition as a party to this proceeding solely for purposes of effectuating the roadway vacation.

Removal of Crossing

Under the settlement, the Township will remove a portion of the roadway surface on each side of the Norfolk Southern railroad track as follows: (i) from the eastern boundary of the State Route 11 right-of-way to a point extending two (2) feet from the western boundary of the Norfolk Southern railroad track; and (ii) from a point extending two (2) feet from the eastern boundary of the Norfolk Southern railroad track to a point onto the roadway of Lighthouse Road at the boundary of the Norfolk Southern right-of-way, where the Township will place concrete median barriers.

Norfolk Southern agrees to remove the roadway surface two feet in each direction beyond its railroad track at its sole cost and expense. In addition, Norfolk Southern will remove existing crossbucks at the crossing at its sole cost and expense. Further, Norfolk Southern will issue to the Township all necessary permits associated with removal of roadway surfaces within Norfolk Southern's right-of-way.

PennDOT agrees to take the following actions within its own right-of-way along State Route 11 at its sole cost and expense:

- a. Issue a Highway Occupancy Permit to the Township at no cost to the Township consistent with 67 Pa. Code § 441.4.
- b. Stake/paint the State Route 11 right of way 70'/35' from the centerline.
- c. Eradicate any lines and restripe the shoulder adjacent to the Crossing on State Route 11.
- d. Remove turn lane indications associated with the Crossing as deemed necessary by PennDOT.
- e. Remove any railroad crossing signs or signs on State Route 11 indicating a grade crossing on Lighthouse Road.

Costs

Norfolk Southern will make a one-time, lump sum payment to the Township in the amount of \$28,000.00 as an incentive for, and to help offset the costs of, closing and abolishing the crossing. Further, PennDOT will approve a Section 130 incentive payment for at-grade crossing closures pursuant to 23 U.S.C. § 130 in the amount of \$7,500.00.

Finally, the parties request that, upon the entry of an Order by the Commission approving the settlement, the matter be assigned to the Commission's Rail Safety Bureau for final inspection and approval of completion of the Relief Road and all other work required to be performed under the settlement. The parties reserve their rights to withdraw from the settlement and request rehearing if the Commission substantively modifies the terms of the settlement.

I agree with the parties that abolishment of the Crossing will best assure and enhance public safety. All parties agree that abolishing the Crossing is preferable to attempting to upgrade existing traffic control devices or constructing additional facilities and upgrades. Stipulation of Fact Nos. 4, 6-7. This position is supported by record evidence which shows that the effectiveness of such enhancements may be compromised by electrical and/or electromagnetic interference from nearby electrical transmission lines. Stipulation of Fact No. 5. Consequently, all parties agree that the best course of action is abolition of the Crossing. Stipulation of Fact Nos. 4, 6-7.

I also agree that the various obligations in the settlement will result in an abandoned crossing that is safe to the public. Completion of the settlement terms will result in: (1) closure of the crossing and the removal of existing signage and road markings on Lighthouse Road and State Route 11 which currently indicate a railroad crossing; (2) removal of existing Lighthouse Road roadway surface for several feet on each side of the railroad tracks; (3) installation of concrete median barriers on the eastern approach to the track; (3) installation of new markings and road lines on State Route 11 consistent with the fact that there is no longer a crossing at that location; (4) construction of a new relief road that connects the new terminus of Lighthouse Road east of the crossing to the nearby existing Archer Road; (5) vacation by the

Township of a portion of Lighthouse Road east of the crossing in favor of three adjacent property owners; and (6) sharing of costs incurred to effectuate closure and abolition of the crossing. As noted, Norfolk Southern will make a one-time payment to the Township in the amount of \$28,000.00, and PennDOT will approve a Section 130 incentive payment to the Township, pursuant to 23 U.S.C. § 130 in the amount of \$7,500.00. These payments will help offset expenditures incurred by the Township associated with its obligations under the settlement.

In supporting the settlement, PennDOT states, “[a]dopting the settlement will further the statutory provisions of 66 Pa.C.S. § 2702 *et seq.* in regard to the public convenience and safety.” PennDOT Stmt. in Support, p. 1. Norfolk Southern states, “the settlement provides for the abolition of a crossing that all parties agree is dangerous. . . . The settlement assigns responsibility for the removal of the crossing and resolves all cost issues.” Norfolk Southern Stmt. in Support, p. 1. I&E states, “[t]he abolishment of the public at-grade crossing and construction of the Relief Road pursuant to the terms of the settlement address the safety concerns to the satisfaction of I&E.” I&E Stmt. in Support, p. 5. Finally, the Township states, “[t]he settlement will serve to protect the public safety by abolishing an at-grade crossing for which certain safety related improvements may not be feasible and, in light of the abolishment, establishing and constructing a relief road. . . . the settlement is in the best interests of the Township.” Township Stmt. in Support, p. 1.

The Joint Petition disposes of all outstanding issues. All parties to this proceeding are signatories to the Joint Petition. The parties have worked together to address all issues to their satisfaction. The public interest is served by the disposition of the case as represented by the Joint Petition and, for all the reasons set forth above, approval of the settlement is recommended without modification.

CONCLUSIONS OF LAW

1. It is the Commission’s policy to promote settlements. 52 Pa. Code §§ 5.231 and 69.401.

2. The benchmark for determining the acceptability of a settlement is whether the terms and conditions contained therein are in the public interest. *Pa. Pub. Util. Comm'n v. Phila. Gas Works*, Docket No. M-00031768 (Opinion and Order entered January 7, 2004); *Warner v. GTE N., Inc.*, Docket No. C-00902815 (Opinion and Order entered April 1, 1996); *Pa. Pub. Util. Comm'n v. CS Water & Sewer Assocs.*, 74 Pa. PUC 767 (1991).

3. The party seeking a rule or order from the Commission has the burden of proof in that proceeding. 66 Pa.C.S. § 332(a).

4. The Joint Petitioners, as the parties seeking a rule or order from the Commission in this proceeding, have the burden of proving that the terms and conditions of the settlement are just, reasonable and in the public interest. 66 Pa.C.S. § 332(a).

5. In rail-highway crossing proceedings, the Commission has exclusive authority in the Commonwealth to order the construction, alteration, protection, suspension, or abolition of a rail-highway crossing, as well as the exclusive authority to determine and order which parties should perform such work and the crossing and which parties must maintain and crossing in the future, with the ultimate goal being the prevention of accidents and the promotion of the public safety. 66 Pa.C.S. §§ 2702, 2704; *Pittsburgh R.R. Co. v. Pa. Pub. Util. Comm'n*, 182 A.2d 80 (Pa. Super. 1962) (citing *Pa. R.R. Co. v Pa. Pub. Util. Comm'n*, 35 A.2d 588 (Pa. Super. 1944)).

6. The settlement terms contained in the Joint Petition for Settlement are just, reasonable and in the public interest. *Pa. Pub. Util. Comm'n v. Phila. Gas Works*, Docket No. M-00031768 (Opinion and Order entered January 7, 2004); *Warner v. GTE N., Inc.*, Docket No. C-00902815 (Opinion and Order entered April 1, 1996); *Pa. Pub. Util. Comm'n v. CS Water & Sewer Assocs.*, 74 Pa. PUC 767 (1991).

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Settlement in this proceeding be approved and adopted.
2. That this Order be without prejudice to the right of any party to enforce any lawful agreement allocating costs among the parties.
3. That the portion of Lighthouse Road from State Route 11 to its intersection with the established Relief Road, shall be vacated as shown on the right-of-way plans and metes and bounds descriptions attached hereto as Exhibit "A" and Exhibit "B," respectively. The Township will not vacate any other portion of Lighthouse Road in conjunction with this proceeding. The vacation of the above referenced roadway and abolishment of the crossing shall occur upon the completion of the Relief Road and the issuance of a Secretarial Letter memorializing the abolition and closing this investigation.
4. That the following adjacent property owners be added to this proceeding solely for the purpose of effecting the roadway vacation:

WCN Properties, L.P.
900 Kriner Road, Suite 1,
Chambersburg, Pa 17201

Target Corporation
1000 Nicollet Mall,
Minneapolis, MN 55403

West Penn Power Company
800 Cabin Hill Drive,
Greensburg, PA 15601

5. Subject to the payment of funds by Norfolk Southern and PennDOT as specified herein, the Township shall undertake the following work to facilitate the closure and abolition of the Crossing:

- a. To the east of the Crossing, the Township shall establish a Relief Road from the current terminus of or other connection point along Archer Drive (T-820) on the north, to Lighthouse Road (T-425) on the south. Design and construction of the Relief Road commenced in or around Spring of 2020 and was completed in or around September 2021. The Township intends to fund construction of the Relief Road through a combination of funds received pursuant to this Stipulation, grant funding recently awarded to the Township for this purpose, and otherwise through available funds of the Township.
- b. The Township's responsibilities in designing and building said Relief Road shall include, but not be limited to: (i) preparing a survey prior to commencing construction; (ii) acquiring property, obtaining or vacating any easements or rights of way if necessary, obtaining any required permits and authorizations, and executing and recording any instruments necessary to facilitate the construction of the Relief Road; (iii) taking all actions necessary to vacate the Lighthouse Road roadway from State Route 11 to its intersection with the established Relief Road, as shown on the plan attached hereto as Exhibit "A", in favor of WCN Properties, L.P., Target Corporation, Norfolk Southern, and West Penn Power Company, at its sole cost and expense; and (iv) constructing the new Relief Road.
- c. The Township will remove a portion of the roadway surface on each side of the Norfolk Southern railroad track as follows: (i) from the eastern boundary of the State Route 11 right-of-way to a point extending two (2) feet from the western boundary of the Norfolk Southern railroad track; and (ii) from a point extending two (2) feet from the eastern boundary of the Norfolk Southern railroad track to a point onto the roadway of Lighthouse Road at the boundary of the Norfolk Southern right-of-way, where the Township will place concrete median barriers.

6. That Norfolk Southern shall:
 - a. Pay the Township a one-time, lump sum payment of Twenty-Eight Thousand Dollars (\$28,000.00) as incentive for closing and abolishing the crossing.
 - b. Remove the Crossing itself and the roadway surface for two feet outside the tracks, at its sole cost and expense.
 - c. Remove any crossbucks associated with the Crossing at Norfolk Southern's sole cost and expense.
 - d. Issue any and all permits to the Township and/or the Township's contractors, at no cost to the Township or its contractors, to the extent they are required by Norfolk Southern for the removal of the roadway surface within the Norfolk Southern right-of-way. Pay for the costs of any flaggers that are required for the Township's on-site removal of the roadway surface within the Norfolk Southern right-of-way provided that the Township shall provide ninety days' written notice to Norfolk Southern of the Township's intent to commence the roadway surface removal work so that Norfolk Southern can coordinate its work of removal of the Crossing if desired.

7. That PennDOT shall within the PennDOT right of way, perform the following at its sole cost:

- a. Issue a Highway Occupancy Permit to the Township at no cost to the Township consistent with 67 Pa. Code § 441.4.
- b. Stake/paint the State Route 11 right of way 70'/35' from the centerline.
- c. Eradicate any lines and restripe the shoulder adjacent to the Crossing on State Route 11.
- d. Remove turn lane indications associated with the Crossing as deemed necessary by PennDOT.
- e. Remove any railroad crossing signs or signs on State Route 11 indicating a grade crossing on Lighthouse Road.

8. That PennDOT shall also approve a Section 130 incentive payment for at-grade crossing closures in accordance with 23 U.S.C. § 130 of Seven Thousand Five Hundred Dollars (\$7,500.00) based upon the incentive payment by Norfolk Southern to the Township as specified herein.

9. That all work will be completed by May 1, 2022, unless another date is agreed to by the parties.

10. Upon the entry of an order by the Commission approving the settlement, the matter will be reassigned to the Commission's Bureau of Technical Utility Services, Rail Safety Section.

11. Upon completion of the project, the parties agree to provide written notice to Rail Safety. Rail Safety shall, within thirty days of receiving written notice, complete a final inspection to determine that the Relief Road has been established and that the work performed by the Parties within the limits of the Crossing was completed satisfactorily and as specified in this order. Nothing herein shall be interpreted as imparting jurisdiction upon Rail Safety or any other entity over or with respect to the design, plans, specifications, execution, or acceptability of the work related to the Township's construction of the Relief Road.

12. If the Relief Road has been established and the balance of the work performed by the Parties within the limits of the Crossing is found to have been completed satisfactorily and as specified in this Order, Rail Safety shall issue a Secretarial Letter closing the matter and officially abolishing the crossing.

Dated: January 19, 2022

/s/

Steven K. Haas
Administrative Law Judge