



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

March 25, 2011

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Application of Consolidated Rail Corporation for the abolition of thirty-one crossings of the Enola Branch, LC201323, MP 3.5 to MP 27.0, Sub No. 1095, Harrisburg Division, Lancaster County; Docket No. A-00111016

Board of Supervisors of Bart Township v. Consolidated Rail Corporation, Pennsylvania Department of Transportation and Lancaster County, et al.; Docket No. C-00913256

Dear Secretary Chiavetta:

Enclosed herewith, please find the original and three copies of the Bureau of Transportation and Safety Prosecutory Staff's Answer to Providence Township's Petition for Modification of the Commission's October 9, 1997 Order in the above-captioned matter. Copies have been served on the parties as stated on the Certificate of Service attached.

Very truly yours,

David E. Screven
Assistant Counsel

cc: Parties of Record
Enclosures

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Consolidated Rail Corporation
for the abolition of thirty-one crossings of the
Enola Branch, LC201323, MP 3.5 to MP 27.0, Sub No.
1095, Harrisburg Division, Lancaster County,

A-00111016

Board of Supervisors of Bart Township,

C-00913256

v.

Consolidated Rail Corporation,
and the Pennsylvania Department of
Transportation and Commissioners of the
County of Lancaster, et al.

**PENNSYLVANIA PUBLIC UTILITY COMMISSION BUREAU OF
TRANSPORTATION AND SAFETY PROSECUTORY STAFF'S ANSWER
TO THE PETITION FOR MODIFICATION OF PROVIDENCE
TOWNSHIP, LANCASTER COUNTY**

AND NOW the Bureau of Transportation and Safety Prosecutory Staff ("BTSPS"), by its undersigned counsel and pursuant to 5.572(e) of the Public Utility Commission's (Commission) regulations, 52 Pa. Code § 5.572(e), hereby files this answer to the Petition for Modification of the Commission's October 9, 1997 Order filed in the above-captioned proceeding by the Providence Township (hereinafter "Petitioner"). BTSPS has legitimate safety concerns regarding the relief requested in the instant petition. In support of its answer, the BTSPS respectfully represents the following:

1. Admitted.
2. Admitted.
3. Admitted.

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4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted in part, denied in part. It is admitted only that Crossings No. 18-25 were abolished by the 1997 Order, without removal of the bridge structures. All of the remaining aspects of this averment are denied as a conclusion of law to which no response pleading is required. By way of further response, the averments of Paragraph 10 are requests for relief for which no response is required.

11. Denied, as after reasonable investigation BTSPS is without knowledge or information to form a belief as to the truth of this averment.

12. Admitted in part, denied in part. It is admitted only that the Traffic Study indicates an "Average Daily Traffic" for the Hollow Road Crossing. It is denied that the Traffic Study sets forth the 85th Percentile Speed on the road.

13. Admitted in part, denied in part. It is admitted only that the Traffic Study indicates an Average Daily Traffic count of 290 vehicles for Hollow Road. The remaining factual allegations in this paragraph are denied generally. By way of further response, all the remaining aspects of this averment are denied, as after reasonable investigation BTSPS is without knowledge or belief as to their truth.

14. Admitted in part, denied in part. It is admitted only that RAV Associates prepared a signage plan for the Petitioner. All of the remaining aspects of this averments are denied, as after reasonable investigation BTSPS is without knowledge or information sufficient to form a belief as to their truth. By way of further response, the allegations contained in Paragraph 14 are conclusions of law to which no responsive pleading is required.

15. Denied. The allegations contained in Paragraph 15 are conclusions of law to which no responsive pleading is required. By way of further response, Petitioner has not submitted sufficient evidence that the technical and public safety issues related to the subject crossing such as the sight distance for traffic and clearances have been mitigated in any fashion. The Traffic Study does not deal with the aspect of the realignment of the road as a viable option to the proposed signage plan to deal with the sight distance issue for traffic approaching the Hollow Road (West) crossing (Crossing No. 21) from opposite directions. Thus, BTS Prosecutory Staff is of the opinion that the remaining structure at Crossing No. 21 is and continues to be a safety hazard to the public and should be removed as initially directed by the Commission in its October 9, 1997 Order.

16. The averments of Paragraph 16 are requests for relief for which no response is required.

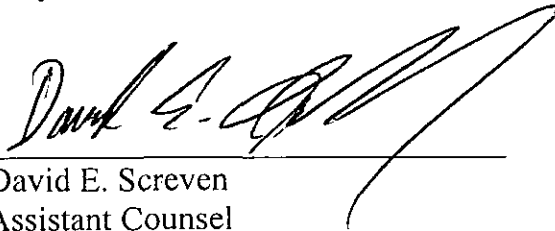
17. The averments of Paragraph 17 are requests for relief for which no response is required. By way of further response, Petitioner has not submitted any evidence that it has the financial capability to maintain the bridge substructure,

superstructure and abutments of the Hollow Road (West) crossing (Crossing No. 21) and the roadway at its sole cost and expense. In a previous pleading dated June 11, 2010, and filed before the Commission, the Petitioner asserted that it “no longer has the financial capability to pursue its request that the Hollow Road (West) bridge structure remain in place. Nor does the Township believe it has or will have the financial ability to maintain the bridge on a going forward basis or to realign Hollow Road (West), if needed.” See Paragraph No. 9 of *Petition to Withdraw Request to Modify Opinion and Order of the Pennsylvania Public Utility Commission (Petition to Withdraw)*. A true and correct copy of the *Petition to Withdraw* is attached hereto as Exhibit “A”. Based on this averment, the Commission granted the Petitioner’s previous *Petition to Withdraw*. See Commission’s Opinion and Order, C-00913256 (entered September 8, 2010).

18. The averments of Paragraph 18 are requests for relief for which no response is required.

WHEREFORE for all foregoing reasons, the Bureau of Transportation and Safety Prosecutory Staff respectfully requests the Honorable Commission to deny the Petition for Modification or, in the alternative, to transfer the Petition for Modification to the Office of Administrative Law Judge so that an evidentiary hearing can be held on the existing financial, technical and public safety concerns related to the subject crossing and the requested relief.

Respectfully submitted



David E. Screven
Assistant Counsel

Eric A. Rohrbaugh
Deputy Chief Counsel

(Counsel for Bureau of Transportation and Safety Prosecutory Staff)

P.O. Box 3265
Harrisburg, PA 17105
Dated: March 25, 2011

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EXHIBIT A

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William T. Hawke
Kevin J. McKeon
Thomas J. Sniscak
Lillian Smith Harris
Scott T. Wyland
Todd S. Stewart

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Janet L. Miller
Steven K. Haas
William E. Lehman
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100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

June 11, 2010

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Filing Room
Harrisburg, PA 17120

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Re: Application of Consolidated Rail Corporation for the Abolition of 31 Crossings of the Enola Branch, LC: 201323, MP 3.5 to MP 27.0, Sub No. 1095X, Harrisburg Division, Lancaster County; Docket No. A-00111016

Board of Supervisors of Bart Township v. Consolidated Rail Corporation, Pennsylvania Department of Transportation and Lancaster County, *et al.*; Docket No. C-00913256

PETITION TO WITHDRAW REQUEST TO MODIFY OPINION AND ORDER OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Dear Secretary Chiavetta:

By this letter, Providence Township, Lancaster County, Pennsylvania (“Township”) is electronically filing with the Pennsylvania Public Utility Commission (“Commission”) the enclosed Petition to Withdraw its November 17, 2009 Petition to Modify portions of the October 9, 1997 Opinion and Order entered in connection with the above-captioned matters.

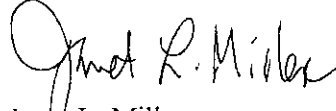
The original copy of this filing will be provided to the Commission as required by the Regulations. In addition, copies of the attached Petition have been served as indicated on the attached Certificate of Service.

MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
June 11, 2010
Page Two

If you have any questions, please feel free to contact me.

Very truly yours,

A handwritten signature in black ink that reads "Janet L. Miller". The signature is written in a cursive style with a large initial "J".

Janet L. Miller
Counsel for Providence Township

JLM/das
Enclosure

cc: Providence Township Board of Supervisors
Melvin Newcomer, Esquire
Per Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Consolidated Rail Corporation for the Abolition of 31 Crossings of the Enola Branch, LC: 201323, MP 3.5 to MP 27.0, Sub No. 1095X, Harrisburg Division, Lancaster County : Docket No. A-00111016

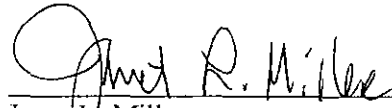
Board of Supervisors of Bart Township : Docket No. C-00913256

v.

Consolidated Rail Corporation, Pennsylvania Department of Transportation and Lancaster County, *et al.*

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.94(a), you are hereby notified that, if you do not file a written objection to the attached Petition within twenty (20) days from service of this notice, the facts set forth in the Petition may be deemed to be true, thereby requiring no other proof. All pleadings, such as a response to the Petition, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on all parties.



Janet L. Miller
Attorney ID No. 63491
Hawke McKeon & Sniscak LLP
100 North Tenth Street
PO Box 1778
Harrisburg, PA 17105-1778
717-236-1300 (Voice)
717-236-4841 (Facsimile)
jlmiller@hmslegal.com

DATED: June 11, 2010

Counsel for Providence Township

SECRETARY'S BUREAU

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Consolidated Rail Corporation for the Abolition of 31 Crossings of the Enola Branch, LC: 201323, MP 3.5 to MP 27.0, Sub No. 1095X, Harrisburg Division, Lancaster County	:	Docket No. A-00111016
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Board of Supervisors of Bart Township	:	Docket No. C-00913256
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	:	

v.

Consolidated Rail Corporation, Pennsylvania Department of Transportation and Lancaster County, <i>et al.</i>	:	
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**PETITION TO WITHDRAW REQUEST TO MODIFY
OPINION AND ORDER OF THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Providence Township, Lancaster County, Pennsylvania (“Petitioner” or “Township”), by and through its counsel in this matter, Hawke McKeon & Sniscak LLP, and pursuant to 52 Pa. Code § 5.94(a), hereby files this Petition to withdraw (“Petition to Withdraw”) the Petition filed by the Township on November 17, 2009 requesting that the Pennsylvania Public Utility Commission (“Commission”) modify portions of the October 9, 1997 Opinion and Order entered by the Commission in the above-captioned matters (“Petition to Modify”). In support thereof, the Township represents as follows:

I. INTRODUCTION

1. The name and address of the Petitioner is:

Providence Township
Providence Township Municipal Office
200 Mt. Airy Road
New Providence, PA 17560-9781

2. The name and address of counsel for the Petitioner is:

Janet L. Miller
Hawke McKeon & Sniscak LLP
100 North Tenth Street
PO Box 1778
Harrisburg, PA 17105-1778
717-236-1300 (Voice)
717-236-4841 (Facsimile)
jlmiller@hmslegal.com

3. On October 9, 1997, the Commission entered an Opinion and Order (“1997 Order”) approving a Stipulation of Settlement dated February 25, 1997 (“1997 Settlement”) entered into by multiple parties, including Petitioner and Consolidated Rail Corporation (“Conrail”).¹ The 1997 Settlement resolved various issues in connection with an application filed by Conrail to abolish 31 crossings where the Enola Branch, Harrisburg Division, crossed above and below certain highways in a total of eight (8) municipalities in Lancaster and Chester Counties, Pennsylvania, including the Hollow Road (West) crossing in Providence Township. This crossing was identified as Crossing No. 21.

4. The 1997 Order directed Conrail, at its initial cost and expense, to demolish the bridge substructure and superstructure at the Hollow Road (West) crossing and to realign the roadway, if necessary. 1997 Order at pp. 65-67. This work was to be completed within one (1) year of the date on which the 1997 Order was entered, or, by October 9, 1998. 1997 Order at

¹ Through a series of transfers and mergers, Norfolk Southern Railway Company (“Norfolk Southern”) became the successor-in-interest to Conrail and is now responsible for all obligations agreed to by Conrail in the 1997 Settlement and assigned to Conrail by the 1997 Order.

pp. 65-67. Through a series of Commission Orders, the completion date was extended to December 31, 2009.²

5. The 1997 Order directed the Township to maintain the roadway at the Hollow Road (West) crossing, at its sole cost and expense. 1997 Order at pp. 65-67.

II. PETITION TO MODIFY

6. On November 17, 2009, the Township filed a Petition to Modify in which it requested that the bridge structure at the Hollow Road (West) crossing remain in place rather than being demolished. If the Petition to Modify was approved, the Township agreed, at its own cost and expense, to maintain the bridge substructure, superstructure and abutments, as well as the roadway and approaches and, if and when necessary, to realign Hollow Road (West).

7. The only responses filed to the Petition to Modify were filed by the Pennsylvania Department of Transportation and the Commission's Bureau of Transportation and Safety Prosecutory Staff, which were dated November 30, 2009 and December 10, 2009, respectively.

8. On February 16, 2010, the Commission entered an Opinion and Order in which the Township's Petition to Modify was held in abeyance until the conclusion of an evidentiary hearing to be scheduled by the Office of Administrative Law Judge. As of this date, no hearing has been scheduled.

III. PETITION TO WITHDRAW

9. Subsequent to its filing of the Petition to Modify, the Township determined it no longer has the financial capability to pursue its request that the Hollow Road (West) bridge structure remain in place. Nor does the Township believe it has or will have the financial ability

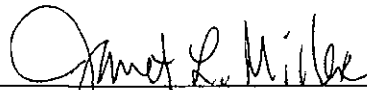
² In its Petition to Modify, the Township requested that the completion date be stayed until the Commission entered an order approving or denying the Petition and that Norfolk Southern be given twelve (12) months from the entry date of an order denying the Township's Petition to complete the work directed by the 1997 Order at this location.

to maintain the bridge on a going forward basis or to realign Hollow Road (West), if needed. For these reasons, the Township respectfully requests that the Commission permit it to withdraw the November 17, 2009 Petition to Modify and asks that the Commission's file with regard to that Petition be closed.

10. Should the Commission approve the requests contained herein, the Township respectfully requests that Norfolk Southern be given twelve (12) months from date on which the Commission's Order is entered to complete the work required by the 1997 Order.

WHEREFORE, for all the reasons set forth above, Providence Township, Lancaster County, Pennsylvania respectfully requests that the (a) relief sought in this Petition to Withdraw be approved; (b) November 17, 2009 Petition to Modify the Commission's 1997 Opinion and Order in the above-captioned proceedings be withdrawn; and (c) Commission's file with regard to the Township's Petition to Modify be closed.

Respectfully submitted,



Janet L. Miller
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jlmiller@hmslegal.com

DATED: June 11, 2010

Counsel for Providence Township

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties listed below, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

Service by First Class U.S. Mail:

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PO Box 539
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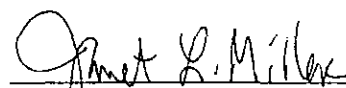
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Harrisburg, PA 17101

Office of Trial Staff
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265



Janet L. Miller

Dated this 11th day of June, 2010

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Consolidated Rail Corporation
for the abolition of thirty-one crossings of the
Enola Branch, LC201323, MP 3.5 to MP 27.0, Sub No.
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County of Lancaster, et al.

VERIFICATION

I, David Oliver, hereby state that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief and that the Bureau of Transportation and Safety Prosecutory Staff expects to be able to prove the same at any hearings held in this matter. I understand that the statements herein are made subject to penalties set forth at 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



David Oliver
Engineer
Bureau of Transportation and Safety
Prosecutory Staff

Dated: March 25, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document, Answer to Petition for Modification, upon the participants listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

SERVICE BY FIRST CLASS U.S. MAIL:

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Morgan Hallgren Crosswell & Kane PC
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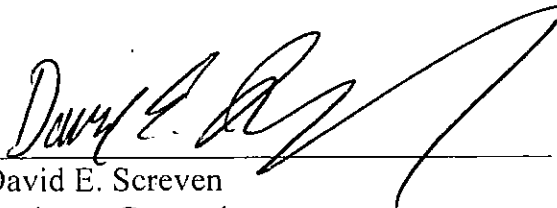
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Solicitor Quarryville Borough
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James H. Thomas Esquire
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Solicitor for Sadsbury & Conestoga
Twps
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David E. Screven
Assistant Counsel

Eric A. Rohrbaugh
Deputy Chief Counsel

(Counsel for Bureau of Transportation & Safety
Prosecutory Staff)

Dated: March 25, 2011

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