



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

IN REPLY PLEASE
REFER TO OUR FILE

November 21, 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 please find an original and one copy of the Pennsylvania Public Utility Commission Bureau of Transportation and Safety's Prehearing Memorandum to be filed in the above-captioned proceeding. A copy of this document has been served upon all parties of record.

RECEIVED
2011 NOV 21 PM 1:47
PA PUC
SECRETARY'S BUREAU

Respectfully submitted,

David E. Screven
Assistant Counsel

Counsel for Pennsylvania Public
Utility Bureau of Transportation
and Safety

Enclosure

cc: ALJ Elizabeth H. Barnes (via electronic mail and First Class U.S. Mail)
ALJ Joel H. Cheskis (via electronic mail and First Class U.S. Mail)
Parties of Record

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED
2011 NOV 21 PM 1:48
PA PUC
SECRETARY'S BUREAU

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,

Docket No. C-00913256

v.

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

Prehearing Conference Memorandum

The Pennsylvania Public Utility Commission Bureau of Transportation and Safety (BTS) hereby files this Prehearing Memorandum setting forth the background of this case, a discovery proposal, the issues we intend to address, and the proposed litigation schedule in the above-captioned proceeding.

Background

This proceeding involves two consolidated proceedings at Docket Nos. C-00913256 and A-00111016. The Complaint of the Board of Supervisors of Bart Township at the C-docket was initiated on February 25, 1991. The proceeding at the A-docket was initiated when Conrail filed an Application with the Commission on

September 29, 1993, requesting approval for the abolition of thirty-one rail-highway crossings along its Enola Branch located in Lancaster County.

After preliminary proceedings, the Commission, per Opinion and Order entered on October 9, 1997 (*1997 Order*), adopted the Recommended Decision of Administrative Law Judge (ALJ) Louis G. Cocheres, as modified. A Stipulation of Settlement among the Parties subsequently was approved, consistent with the *1997 Order*. As above noted, the *1997 Order* was modified by Opinion and Orders entered on November 22, 1999, January 26, 2001, April 15, 2002, and October 31, 2007.

The instant proceedings involve the Crossing identified in the *1997 Order* as Crossing No. 21 (Hollow Road (West)), hereafter referred to as the "Crossing." The Crossing is a below-grade crossing where Hollow Road (West) crosses under the railroad right-of-way in the Township. The bridge at the Crossing is a stone arch culvert that is 58' in length and is located beneath the railroad embankment. The bridge headwalls, wingwalls and abutments are constructed of cut stone masonry. Hollow Road (West) is a two-lane paved macadam highway with a width, including shoulders, of approximately 22' as it approaches the Crossing and a width of 20' through the Crossing. While the grade of the roadway is fairly level, the road curves through the Crossing, which creates some sight distance restrictions for vehicles traveling in both directions.

The *1997 Order* directed Conrail,¹ at its initial cost and expense, to demolish the bridge structure and superstructure at the Crossing and to realign the roadway, if necessary. *1997 Order* at 65-67. This work was to be completed within one year of the date on which the *1997 Order* was entered, or by October 9, 1998. *1997 Order* at 65-67.

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*.

Through a series of Commission Orders, the completion date was extended to December 31, 2009.

The *1997 Order* directed the Township to maintain the roadway at the Crossing, at its sole cost and expense. *1997 Order* at 65-67.

On November 17, 2009, the Township filed a *Petition to Modify Commission Opinion and Order (Petition to Modify)*. In that *Petition*, the Township requested that the *1997 Order* be modified with respect to the Crossing. The Pennsylvania Department of Transportation (PennDOT) and Prosecutory Staff filed Responses to the Township's *Petition to Modify*.

By Order entered on February 16, 2010 (*February 16 Order*), the Township's *Petition to Modify* was held in abeyance, pending the outcome of proceedings directed in that Order. The proceeding was assigned to the Office of Administrative Law Judge (OALJ) for further proceedings as deemed appropriate.

On June 11, 2011, the Township filed a *Petition to Withdraw* its Request to Modify the *1997 Order (Petition to Withdraw)*. In that pleading, the Township 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." ¶ 9 of *Petition to Withdraw*. Based on these uncontested averments, the Commission granted the Township's *Petition to Withdraw*. See Commission's Opinion and Order, C-00913256 (entered September 8, 2010).

On March 25, 2011, the Township filed another *Petition to Modify the 1997 Order* requesting the same relief that had been requested in the withdrawn *November 17, 2009*

Petition to Withdraw. PennDOT and the Commission's Bureau of Transportation and Safety Prosecutory Staff (now referred to as the Bureau of Investigation and Enforcement "BI&E") filed Answers to the Township's second Petition to Modify. A Secretarial Letter was issued on April 7, 2011, referring the above-captioned matter to the OALJ for further proceedings.

On October 19, 2011, a Prehearing Conference Order was issued by Administrative Law Judges Barnes and Cheskis.

Issues

In the October 19, 2011 Prehearing Conference Order, the ALJS requested the parties to file a prehearing conference memorandum addressing the subjects set forth in Paragraph No. 7. The following is BTS response:

- (a) BTS is not opposed to resolving this matter through settlement negotiations. However, the possibility of settlement will not occur until sufficient evidence is provided by the Township regarding any attendant public safety concerns and evidence of sufficient financial wherewithal regarding Crossing No. 21
- (b) BTS anticipates filing relevant and material testimony regarding the alteration of the subject at-grade crossing and any attendant public safety concerns that may arise during the course of the proceeding so a hearing is necessary to resolve the matter.
- (c) BTS does not foresee the need for more than two days of hearings to resolve any outstanding issues in this matter. The Township has the burden of proof in this proceeding. Accordingly, BTS proposes the following litigation schedule:

January 23, 2011 (Mon.)
February 6-7 (Mon-Tues.)
February 24 (Fri.)
March 16 (Fri.)
April 30 (Mon.)
Twenty Days after issuance of R.D.
Ten Days after receipt of Exceptions

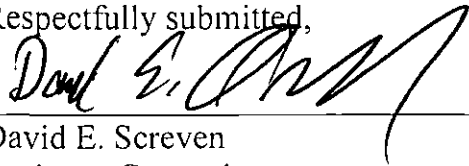
Pre-filed testimony submitted
Hearings (9:00 am) (Oral rejoinder)
Main Briefs (Conrail)
Reply Briefs
Recommended Decision
Exceptions
Reply Exceptions

(d) BTS request the hearings be scheduled in February 2012 so that any direct testimony of witnesses can be provided in advance of the hearing. See proposed litigation schedule above.

Conclusion

BTS hereby requests that the proposed resolution of procedural issues discussed in this Prehearing Memorandum be considered in any prehearing order issued in this proceeding.

Respectfully submitted,



David E. Screven
Assistant Counsel

Pennsylvania Public Utility Commission
Bureau of Transportation and Safety
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-2126

Dated: November 21, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document, Prehearing Conference Memorandum, 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:

Gina M. D'Alfonso
Assistant Counsel-in-Charge
Office of Chief Counsel
Department of Transportation
Keystone Bldg. 9th Floor
P.O. Box 8212
Harrisburg, PA 17105-8212

Joyce A. Nettke, Esquire
FAST
P.O. Box 27
Strasburg, PA 17579

David Dulick
Pennsylvania Power & Light
2 North Ninth Street
Allentown, PA 18101

John Chase
Quarryville Water Authority
300 Saint Catherine Street
Quarryville, PA 17566

Benjamin C. Dunlap, Jr., Esquire
Nauman Smith Shissler & Hall
200 North Third Street
P.O. Box 840
Harrisburg, PA 17108-0840

Dennis M. Moore
National Railroad Passenger Corp
(AMTRAK)
60 Massachusetts Avenue, NE
Washington, DC 20002

Matthew J. Crème, Jr., Esquire
Nikolaus & Hohenadel, LLP
212 North Queen Street
Lancaster, PA 17603

Suburban Cable Company
Legal Department
202 Shoemaker Road
Pottstown, PA 19464

Lancaster County Planning
Commission
Suite 320
150 North Queen Street
Lancaster, PA 17603

Lancaster County Commissioners
Suite 715
150 North Queen Street
Lancaster, PA 17603

Fronfield Crawford, Jr., Esquire
Montgomery McCracken Walker &

William Crosswell, Esquire
Morgan Hallgren Crosswell & Kane PC

RECEIVED
2011 NOV 21 PM 1:48
PA PJG
SECRETARY'S BUREAU

Rhoads LLP Suite 200
1235 Westlakes Drive,
Berwyn, PA 19312-2401

Bart Township Supervisors
46 Quarry Road
Quarryville, PA 17566

Conestoga Township Supervisors
3959 Main Street
P.O. Box 98
Conestoga, PA 17516

Martic Township
370 Steinman Farm Road
Pequea, PA 17565

Sadsbury Township
7182 White Oak Road
Christiana, PA 17509

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

Solicitor, Martic Township
700 North Duke Street
Lancaster, PA 17604-4686

Eden Township Board of Supervisors
489 Stony Hill Road
Quarryville, PA 17566

Kenelm Shirk, III, Esquire
Solicitor – Bart Township
115 South State Street
Ephrata, PA 17522

Borough of Quarryville
330 St. Catherine Street
Quarryville, PA 17566

Office of Consumer Advocate
Forum Place 5th Floor
555 Walnut Street
Harrisburg, PA 17101-1923

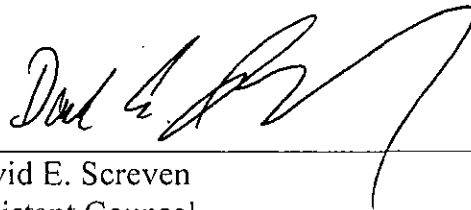
Office of Small Business Advocate
Suite 1102 Commerce Building
300 N Second Street
Harrisburg, PA 17101

Janice L. M. Longer
Solicitor Eden Township
Suite 700 F
8 North Queen Street
Lancaster, PA 17603-3827

Melvin Newcomer, Esquire
Solicitor Providence Township
339 N. Duke Street
P.O. Box 539
Lancaster, PA 17608

Josele Cleary, Esquire
Solicitor Quarryville Borough
Morgan Hallgren Crosswell & Kane PC
700 Duke Street
P.O. Box 4686
Lancaster, PA 17604-4686

James H. Thomas Esquire
Blakinger Byler & Thomas
Solicitor for Sadsbury & Conestoga
Twps
28 Penn Square
Lancaster, PA 17603



David E. Screven
Assistant Counsel

Eric A. Rohrbaugh
Deputy Chief Counsel

(Counsel for Bureau of Transportation & Safety
Prosecutory Staff)

Dated: November 21, 2011