



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

June 3, 2013

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

RE: **Docket No. M-2013-2364201**

Dear Secretary Chiavetta:

Enclosed for filing please find the Department's *Motion for Certification of Interlocutory Order and Stay of Proceedings Pending Appeal*, in the above-captioned matter.

I hereby certify that a copy has been sent to all parties of record as indicated by the Certificate of Service.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Nicolas Mertens".

Nicolas Mertens  
Assistant Counsel

Enclosure

220/NDM:aca

cc: Parties of Record  
Mark J. Chappell, P.E., Chief, Utilities and Right-of-Way Section  
Gerard Babinski, District Bridge Engineer, District 4-0  
Joseph Strok, District Grade Crossing Engineer, District 4-0

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**


Bridge Structure where State Route 1025,	:	
crosses over a single track of Canadian	:	Docket Number M-2013-2364201
Pacific Railroad (264 293 K) in Nicholson	:	
Borough, Wyoming County	:	<b>Filed Electronically</b>

**NOTICE TO PLEAD**

This pleading has been filed with the Secretary of the Public Utility Commission. Any responsive pleading to the Department's Motion for Certification of Interlocutory Order and Stay of Proceedings Pending Appeal must be filed within twenty (20) days of service of this pleading upon you. 52 Pa. Code §5.103(3).

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

*for*   
\_\_\_\_\_  
Gina M. D'Alfonso  
Assistant Counsel in Charge  
Nicholas Mertens  
Assistant Counsel  
Office of Chief Counsel  
P.O. Box 8212  
Harrisburg, PA 17105-8212  
Telephone No. (717) 787-3128  
Fax Number (717) 772-2741  
gdalfonso@pa.gov  
nimertens@pa.gov

DATED: June 3, 2013

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bridge Structure where State Route 1025,	:	
crosses over a single track of Canadian	:	Docket Number M-2013-2364201
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**MOTION FOR CERTIFICATION OF INTERLOCUTORY ORDER AND STAY OF  
PROCEEDINGS PENDING APPEAL**

AND NOW, comes the Commonwealth of Pennsylvania, Department of Transportation (“Department”), by and through its counsel, Gina M. D’Alfonso, and submits the following in support of its Motion for Certification of Interlocutory Order and Stay of Proceedings Pending Appeal, issued by the Public Utility Commission (“Commission”) on May 23, 2013 and pursuant to 52 Pa. Code §5.633(a):

1. The Commission has jurisdiction over the present matter under the Public Utility Code, 66 Pa.C.S. §§2702 and 2704.
2. The Commission’s Rules and Regulations require a party to move for the Commission to certify interlocutory orders for appeal to the Commonwealth Court. 52 Pa. Code §5.633.
3. The Commission issued an Interlocutory Order, which contains a controlling question of law as to which there is substantial ground for difference of opinion.
4. An immediate appeal to the Commonwealth Court from this order will materially advance the ultimate determination of this matter.
5. The crossing is subject to a prior Commission Order issued on June 11, 1951, filed under Commission Docket Number 76276. *Application of the Dep’t of Highways*, PUC Docket No. 76276 (Commission Order, June 11, 1951). A copy of the Commission’s June 11, 1951 Order has been attached hereto as Exhibit “A.”
6. Paragraph Thirteen (13) of the June 11, 1951 Order reads:

That, upon completion of the improvement herein ordered and its opening to public use, The Delaware, Lackawanna and Western Railroad Company, at its sole costs and expense, furnish all material and do all work necessary to maintain the substructure and superstructure of the bridge, exclusive of the roadway paving thereon at the crossing above grade, herein ordered altered.

7. Paragraph Fourteen (14) of the June 11, 1951 Order reads:

That, upon completion of the improvement herein ordered and its opening to public use, Department of Highways, at its sole costs and expense, furnish all material and do all work necessary to maintain the remainder of the improvement, including any drainage facilities installed in accordance with this order and including the roadway paving located on the bridge at the crossing above grade, herein ordered altered.

8. On May 23, 2013, at a Public Meeting, the Commission issued an Order, *inter alia*, directing that the Department, at its initial cost and expense, “provide any engineering inspections and analysis necessary to determine the existing structural condition of the subject bridge” and “provide any engineering study and analysis to determine the feasibility and any remedial action to reopen the bridge safely to the public and report its findings to the Commission.” Secretarial Letter and Opinion, ¶¶5 and 6, PUC Docket M-2013-2364201, issued May 23, 2013. A copy of the Commission’s May 23, 2013 Order has been attached hereto as Exhibit “B.”

9. Paragraph Five (5) of the May 23, 2013 Order reads:

That Pennsylvania Department of Transportation, at its initial cost and expense, within thirty (30) days of the issuance of this Order, provide any engineering inspections and analysis necessary to determine the existing structural condition of the subject bridge and report its findings to the Commission.

10. Paragraph Six (6) of the May 23, 2013 Order reads:

That Pennsylvania Department of Transportation, at its initial cost and expense, within ninety (90) days of the issuance of this Order, provide any engineering study and analysis to determine the feasibility and any

remedial action to reopen the bridge safely to the public and report its findings to the Commission.

11. Paragraphs Five (5) and Six (6) of the May 23, 2013 disregard the allocation of future responsibility of the superstructure and substructure as set forth in Paragraphs Thirteen (13) and Fourteen (14) of the June 11, 1951 Order. *See* attached Exhibit "A."
12. The Commission is "required to provide due process to the parties appearing before them." *Schneider v. Pa. P.U.C.*, 479 A.2d 10, 15 (Pa. Cmwlth. 1984).
13. The Commission may rescind or amend a prior order; however, due process is an essential requirement. *See ARIPPA v. Pa. P.U.C.*, 792 A.2d 636, 663 (Pa. Cmwlth. 2002).
14. The Commission reached its findings without due process, inasmuch as:
  - a. The Commission rescinded or amended a prior order without notice;
  - b. No evidentiary hearing was ever held in the matter;
  - c. There was no opportunity to provide testimony or evidence to the Commission;
  - d. The Department was not provided with a meaningful opportunity to present its case before the Commission;
  - e. Like the railroad, the Department did not agree to do the work but was not given the same latitude as the railroad who in fact is under a prior order to perform the work; and
  - f. Neither party indicated a willingness to perform engineering analysis or inspections to determine the feasibility and any remedial actions to reopen the bridge. However, regardless of an existing order addressing maintenance of the structure, the Department was ordered to perform the work.
15. The allocation of costs between the concerned parties must be both "just and reasonable." *PECO Energy Co. v. Pa. P.U.C.*, 791 A.2d 1155, 1163 (Pa. 2002).

16. Additionally, a decision issued by the Commission must be supported by both a “sound legal or factual basis.” *City of Phila. v. Pa. P.U.C.*, 676 A.2d 1298, 1301 (Pa. Cmwlth. 1996).
17. Paragraphs Five (5) and Six (6) of the May 23, 2013 Order are neither “just and reasonable” nor supported by a legal or factual basis.
18. It is well-established that the Commission is not confined to any specific formula in allocating costs and/or maintenance responsibilities. *AT&T v. Pa. P.U.C.*, 737 A.2d 201 (Pa. 2001).
19. However, the evidence in the present matter demonstrates that all of the relevant factors, generally taken into consideration by the Commission, lead to the sole conclusion that the Canadian Pacific Railroad should be allocated the responsibility and initial costs of providing any future engineering inspections, analyses, studies, and reports for the subject highway-rail crossing and any costs and expenses related to the closure of the subject bridge and traffic detour.
20. A prior order for the subject crossing clearly demonstrates that the bridge was both owned and operated by The Delaware, Lackawanna, and Western Railroad Company, a predecessor-in-interest to Canadian Pacific Railroad. *Application of the Dep’t of Highways*, PUC Docket No. 76276, pg. 2 (Commission Order, June 11, 1951). See *Greene Twp. Bd. of Supervisors v. Pa. P.U.C.*, 668 A.2d 615, 619 (Pa. Cmwlth. 1995) (listing allocation factors, including “the party that owned and maintained the crossing”).
21. The prior order also directed that Canadian Pacific’s predecessor-in-interest “do all work necessary to maintain the substructure and substructure of the bridge.” *Application of the Dep’t of Highways*, PUC Docket No. 76276, pg. 12 (Commission Order, June 11, 1951).

22. Given the deteriorated condition of the subject bridge, it is reasonable to conclude that there has been a lack of maintenance by the responsible party, here, Canadian Pacific Railroad, pursuant to the 1951 Commission Order, and that the lack of maintenance is the reason for the current condition and the need to close the bridge to traffic and pedestrians. *See PECO Energy Co.*, 791 A.2d at 1163 (factors include: “the party who is responsible for the deterioration of the crossing”).
23. As such, Canadian Pacific Railroad is the party responsible for the necessity of the present matter. *See PECO Energy Co.*, 791 A.2d at 1163 (factors include: “the party who is responsible for the deterioration of the crossing”).
24. Additionally, Canadian Pacific received inherent benefits from a separated grade crossing. *See Pittsburgh and Lake Erie R.R. Co. v. Pa. P.U.C.*, 556 A.2d 994 (Pa. Cmwlth. 1989). *See also Greene Twp. Bd. of Supervisors*, 668 A.2d at 619 (a relevant factor includes “[t]he relative benefit that each party will receive from the repair, replacement or removal of the crossing”).
25. There is no evidence in the record supporting even an initial assignment of costs to the Department in this matter. The Department has been allocated a vast majority of the initial costs in this matter, regardless of the fact that the Department has fully complied with the Commission’s June 11, 1951 Order to maintain the remaining portions of the bridge outside of the substructure and superstructure (i.e., drainage and roadway surface).
26. An Interlocutory Order, which goes against the weight of all evidence, is not just nor is it reasonable. *See PECO Energy Co.*, 791 A.2d 1155.

27. The Department requests that the following question be certified for interlocutory appeal to the Commonwealth Court:

Whether or not the Commission's May 23, 2013 Interlocutory Order is a "just and reasonable" allocation of initial costs and responsibilities of the parties hereto given the existence of an order assigning maintenance to the railroad?

28. The Department respectfully petitions the Commission to stay the proceedings in the present matter pending appeal to the Commonwealth Court. *See Pa. P.U.C. v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983) (factors the Commission takes into consideration when granting a stay of proceedings pending appeal).

29. The Department, as discussed *supra*, has demonstrated that it is likely to prevail on the ultimate merits of the appeal as the Commission's order was not "just and reasonable" nor is it supported by a legal or factual basis.

30. Without a stay of the present proceedings, the Department, through Engineering District 4-0, will be forced to expend limited resources conducting engineering inspections, reports, studies, and tests when the evidence clearly demonstrates that such maintenance responsibilities, for the substructure and superstructure, rest with the railroad. Any resources devoted to this work will diminish the District's resources available to other safety projects.

31. If granted, staying the proceedings in the present matter will not harm Canadian Pacific, as the railroad may take protective measures, without the Order, to prevent any damage to its facilities.


32. If granted, a stay in the present proceedings will not adversely affect the interest of the public; the subject bridge has already been closed to both vehicular and pedestrian traffic.

33. The Department has simultaneously filed, with the present Motion for Certification of Interlocutory Order, a Petition for Reconsideration of the Commission's May 23, 2013 Order.

**WHEREFORE**, the Commonwealth of Pennsylvania Department of Transportation respectfully requests that the Pennsylvania Public Utility Commission certify the subject Interlocutory Order for immediate appeal to the Pennsylvania Commonwealth Court as it will materially advance determination of this matter and the question set forth above is controlling and to which there is substantial ground for difference of opinion.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

*for*   
Gina M. D'Alfonso  
Assistant Counsel in Charge  
Nicholas Mertens  
Assistant Counsel  
Commonwealth of Pennsylvania  
Department of Transportation  
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Fax Number (717) 772-2741  
gdalfonso@pa.gov  
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DATED: June 3, 2013

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bridge Structure where State Route 1025,	:	
crosses over a single track of Canadian	:	Docket Number M-2013-2364201
Pacific Railroad (264 293 K) in Nicholson	:	
Borough, Wyoming County	:	<b>Filed Electronically</b>

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Department's *Motion for Interlocutory Order and Stay of Proceedings Pending Appeal* was served upon the parties listed below, in accordance with the requirements of §1.54, by First-Class mail, postage prepaid and by electronic mail as indicated this 3<sup>rd</sup> day of June, 2013:

George A. Bernard, Coordinator  
Canadian Pacific Railway  
P.O. Box 8002  
200 Clifton Park Corporate Park  
Clinton Park, NY 12065

Wyoming County  
Board of Commissioners  
Wyoming County Courthouse  
1 Courthouse Square, 2nd Floor  
Tunkhannock, PA 18657

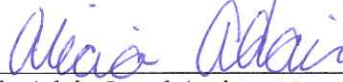
Michael J. Washo, Chairman  
Lackawanna County Commissioners  
200 Adams Avenue  
Scranton, PA 18503

Nicholson Borough  
17 Main Street  
P.O. Box AD  
Nicholson, PA 18446

Bohdan Pankiw, Chief Counsel  
Law Bureau  
Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION



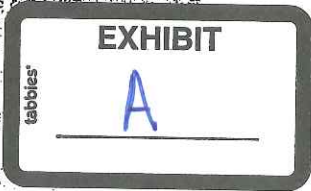
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Alicia Adair, Legal Assistant to  
Gina M. D'Alfonso  
Assistant Counsel in Charge  
Nicholas Mertens  
Assistant Counsel  
Office of Chief Counsel  
P.O. Box 8212  
Harrisburg, PA 17105-8212  
Telephone No. (717) 787-3128  
gdalfonso@pa.gov  
nimertens@pa.gov

DATED: June 3, 2013

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application Docket No. 76276



In re: Application of DEPARTMENT OF HIGHWAYS OF THE COMMONWEALTH OF PENNSYLVANIA - For approval of the alteration of the crossing where State Highway Route 65025 crosses over and above tracks of The Delaware, Lackawanna and Western Railroad Company in Nicholson Borough, Wyoming County, and the allocation of the costs and expenses incident thereto.

O R D E R

BY THE COMMISSION, JUNE 11, 1951:

State Highway Route 65025 is a secondary highway extending in a general northerly direction from a junction with State Highway Route 9 in Nicholson Borough, Wyoming County, through the said borough and through Nicholson Township, Wyoming County to a junction with State Highway Route 57034 on the boundary line between Susquehanna County and Wyoming County, a distance of about 1.5 miles. At a point in the Borough of Nicholson, about 830 feet south of the boundary line between Nicholson Borough and Nicholson Township, State Highway Route 65025 crosses above grade two main tracks and one siding track of The Delaware, Lackawanna and Western Railroad Company.

Department of Highways of the Commonwealth of Pennsylvania proposes to reconstruct a portion of State Highway Route 65025 located in Nicholson Borough and in Nicholson Township, Wyoming County, and the highway improvement, as proposed, will involve the alteration of the aforementioned crossing above grade. In the instant application, Department of Highways seeks our approval of the alteration of the crossing and the allocation of the costs and expenses incident thereto.

State Highway Route 65025 in the vicinity of the crossing above grade has a legal width of 50 feet. The highway approaches to the crossing are unimproved and graded to a width of 15 feet.

The bridge carrying State Highway Route 65025 over the tracks of The Delaware, Lackawanna and Western Railroad Company consists of a single span concrete arch structure having a length of 59 feet, a

APPLICATED FOR  
JUN 27 1951  
ENTRY No. 15

RECORD FOLDER

vertical clearance over the track of 22.75 feet and provides a roadway width of 24 feet. The bridge, which is presently in fair condition, is owned and maintained by The Delaware, Lackawanna and Western Railroad Company.

The daily average of highway traffic sustained by State Highway Route 65025 in the vicinity of the crossing above grade consists of 110 passenger cars, 25 trucks or a total of 133 motor vehicles.

A general plan, showing the location of State Highway Route 65025 and the manner in which it is proposed to relocate and reconstruct the highway, was prepared by Department of Highways and submitted of record at the hearing held October 24, 1950 as Department of Highways' Exhibit No. 1. The plan provides for a change in the alignment and grade of the highway approaches to the crossing, and shows that the southwesterly approach to the crossing above grade will be graded for a width of 30 feet and paved for a width of 20 feet, and that the northeasterly approach to the crossing will be graded for a width of 28 feet and paved for a width of 18 feet. The plan also shows that the elevation of the highway paving on the bridge will be raised approximately one foot and that the roadway over the bridge will be paved for a width of 14 feet 8 inches. No other changes are proposed in the substructure and superstructure of the bridge carrying the highway over the tracks of the railroad company.

The portion of the improvement extending between State Highway Survey stations 17400 and 38400, which points are approximately 820 feet southwest and 1,280 feet northeast of the center line of the bridge at the crossing, constitutes the portion of the highway improvement over which this Commission will assume jurisdiction as a crossing improvement.

An estimate of the construction cost of the portion of the improvement within our jurisdiction prepared by Department of Highways and submitted of record at the hearing held October 24, 1950 as Department of Highways' Exhibit No. 2, totals \$18,370 and consists of the following principal items:

Grading	\$ 6,000
Drainage	1,100
Paving	8,400
Guard fence	1,200
Contingencies	<u>1,670</u>
Total	\$18,370

The record discloses that it will be necessary for us to lay out the portions of the relocated highway within our jurisdiction, to vacate the portions of the existing highway located beyond the right of way of the new highway, and to appropriate property necessary for the construction of the improvement. Descriptions of the property to be appropriated were prepared by Department of Highways and submitted of record at the hearing held October 24, 1950 as Department of Highways' Exhibit No. 3. The record discloses that the Borough of Nicholson will be responsible for the payment of damages for property located within the borough that may be taken, injured or destroyed by reason of the construction of the improvement and that the Commissioners of Wyoming County will assume liability for property damages for property located in Nicholson Township that may be taken, injured or destroyed by reason of the construction of the improvement.

The witness testifying for Department of Highways stated that the department agrees to construct the highway approaches to the crossing in accordance with the general plan and to assume all costs in connection therewith.

A witness, testifying for The Delaware, Lackawanna and Western Railroad Company at the hearing held March 27, 1951, stated that the railroad company agrees to the construction of the improvement as proposed by Department of Highways, and further stated that since there will be no change to the railroad facilities, and since the project is entirely a highway improvement, the railroad company will not assume any costs in connection therewith nor will it maintain any of the proposed improvement. The witness also stated that it will not be necessary to maintain a watchman or flagman to protect train movements of the railroad company during the time the crossing above grade is being altered and that the railroad company

will not release damages for any of its property taken, injured or destroyed by reason of the proposed highway improvement.

We are of the opinion that the general plan, submitted of record by Department of Highways as Department of Highways' Exhibit No. 1, should be revised to provide (1) that the roadway on the bridge structure be paved for the full width of 24 feet between parapets; (2) to provide that the roadway paving on the southwesterly approach to the bridge be tapered from a width of 24 feet at the southwesterly end of the bridge to a width of 20 feet in a distance of about 80 feet measured along the highway from the southwesterly end of the bridge, and (3) that the highway paving on the northeasterly approach be tapered from a width of 24 feet at the northeasterly end of the bridge to a width of 18 feet in a distance of about 100 feet measured along the highway from the northeasterly end of the bridge. We are of the further opinion that Department of Highways should be required to maintain the roadway paving on the bridge.

The matters and things involved having been fully considered, we find and determine that the alteration of the crossing above grade, at a point in the Borough of Nicholson, Wyoming County, about 830 feet south of the boundary line between Nicholson Borough and Nicholson Township, where State Highway Route 65025 crosses over and above the grade of two main tracks and one siding track of The Delaware, Lackawanna and Western Railroad Company, in accordance with the general plan submitted of record at the hearing held October 24, 1950 as Department of Highways' Exhibit No. 1, revised so as to provide (1) that the roadway on the bridge be paved for the full width of 24 feet between parapets; (2) to provide that the roadway paving on the southwesterly approach be tapered from a width of 24 feet to a width of 20 feet in a distance of about 80 feet measured along the highway from the southwesterly end of the bridge, and (3) to provide that the highway paving on the northeasterly approach be tapered from a width of 24 feet to a width of 18 feet in a distance of about 100 feet measured along the highway from the northeasterly end of the bridge, is necessary or proper for the service, accommodation, convenience

IT IS ORDERED:

1. That the instant application be and is hereby approved.

2. That the crossings above grade, at a point in the Borough of Nicholson, Wyoming County, about 830 feet south of the boundary line between Nicholson Borough and Nicholson Township, where State Highway Route 65025 crosses over and above the grade of two main tracks and one siding track of The Delaware, Lackawanna and Western Railroad Company, be altered in accordance with the general plan prepared by Department of Highways and submitted of record at the hearing held in this proceeding on October 24, 1950 as Department of Highways' Exhibit No. 1, revised to provide (1) that the roadway on the bridge be paved for the full width of about 24 feet between parapets; (2) that the roadway paving on the southwesterly approach be tapered from a width of about 24 feet to a width of about 20 feet in a distance of about 80 feet measured along the highway from the southwesterly end of the bridge, and (3) that the highway paving on the northeasterly approach to the bridge be tapered from a width of about 24 feet to a width of about 18 feet in a distance of about 100 feet measured along the highway from the northeasterly end of the bridge, which said plan is attached hereto, made part hereof and, as herein revised, is hereby approved, except in so far as it may relate to the division of work, to the deletion of work and to the allocation of the costs and expenses incident to the construction and maintenance of the improvement herein ordered.

3. That the following highway be and is hereby laid out and established to wit:

A road or highway approximately 2,100 feet in length beginning at a point in existing State Highway Route 65025 in Nicholson Borough about 1,791 feet southwest of the boundary line between Nicholson Borough and Nicholson Township, Wyoming County, extending thence in a general northeasterly direction to a point in State Highway Route 65025 in Nicholson Township about 309 feet northeast of the boundary line between Nicholson Borough and Nicholson Township; alignment, width and grade to be as shown on the approved plan.

4. That, in accord with the provisions of Section 409 of the Public Utility Law, 1937, P. L. 1053, as amended by Act No. 388, approved the 25th day of May, 1945, P. L. 1012, the following described property be and is hereby taken and appropriated for the purpose of the improvement in accordance with the approved plan filed of record at Application Docket No. 76276 with Pennsylvania Public Utility Commission at Harrisburg, Pennsylvania, and that numbered Paragraph 4 of this order shall be recorded in its entirety by the Recorder of Deeds of Wyoming County and shall be indexed under the name or names of the record owners of such property at the sole cost and expense of Department of Highways of the Commonwealth of Pennsylvania, applicant herein.

1. The Delaware, Lackawanna and Western Railroad Company, record owner  
140 Cedar Street  
New York, New York

ALL THOSE CERTAIN tracts of land situated in Nicholson Borough, Wyoming County, bounded and described as follows, to wit:

Tract No. 1

Beginning at a point on the easterly side of State Highway Route 65025, said point being on the required right of way line and distant twenty-five (25) feet easterly from the construction center line at or about Station 18/61 thereof and measured at right angles thereto; thence in a southwesterly direction along the northwesterly legal right of way line of the present State Highway Route 65025 to a point on the construction center line at or about Station 18/14 thereof; thence in a northerly direction to a point on the required right of way line distant forty (40) feet westerly and measured radially from the construction center line at or about Station 21/12 thereof; thence in a north-easterly direction along the required limit of slope line to a point distant forty (40) feet northwesterly and measured radially from the construction center line at or about Station 22/00 thereof; thence in a southeasterly direction along the required limit of slope line to a point distant thirty (30) feet northwesterly and measured radially from the construction center line at or about Station 22/00 thereof; thence in a northeasterly direction along the required limit of slope line to a point distant thirty (30) feet northwesterly and measured radially from the construction center line at or about Station 23/00 thereof; thence in a northwesterly direction along the required limit of slope line to a point distant forty (40) feet northwesterly and measured radially from the construction center line at or about Station 23/00 thereof; thence in a northeasterly direction along the required limit of slope line to a point distant forty (40) feet northerly and measured at right angles from the construction center line at or about Station 24/50 thereof; thence in a southerly direction to a point on the legal right of way line distant twenty-five (25) feet northerly and measured at right angles from the construction center line at

direction along the legal right of way line to a point distant nineteen (19) feet northerly and measured at right angles from the construction center line at or about Station 24/20 thereof; thence in a southwesterly direction along the legal right of way line to a point on the construction center line at or about Station 23/75 thereof; thence in a southwesterly direction along the legal right of way line to a point distant fifteen (15) feet southerly and measured radially from the construction center line at or about Station 23/50 thereof; thence in a southwesterly direction along the legal right of way line to a point on the required limit of slope line distant thirty (30) feet southerly and measured radially from the construction center line at or about Station 23/30 thereof; thence in a southwesterly direction along the required limit of slope line to a point distant thirty (30) feet southeasterly and measured radially from the construction center line at or about Station 23/00 thereof; thence in a northwesterly direction along the required limit of slope line to a point on the required right of way line distant twenty-five (25) feet southeasterly and measured radially from the construction center line at or about Station 23/00 thereof; thence in a southwesterly direction along the required right of way line to a point distant twenty-five (25) feet southeasterly and measured radially from the construction center line at or about Station 22/00 thereof; thence in a southeasterly direction along the required limit of slope line to a point distant thirty (30) feet southeasterly and measured radially from the construction center line at or about Station 22/00 thereof; thence in a southwesterly direction along the required limit of slope line to a point distant thirty (30) feet easterly and measured at right angles from the construction center line at or about Station 19/50 thereof; thence in a westerly direction along the required limit of slope line to a point on the required right of way line distant twenty-five (25) feet easterly and measured at right angles from the construction center line at or about Station 19/50 thereof; thence in a southerly direction along the required right of way line to a point and the place of beginning and containing seven hundred twenty-seven thousandths (0.727) of an acre of land, more or less.

#### Tract No. 2

Beginning at a point on the southeasterly side of State Highway Route No. 65025, said point being on the required right of way line and distant twenty-five (25) feet southeasterly from the construction center line at or about Station 26/27 thereof, and measured radially thereto; thence in a northeasterly direction along the southeasterly legal right of way line of the present State Highway Route 65025 to a point on the required limit of slope line distant thirty (30) feet northwesterly and measured radially from the construction center line at or about Station 27/44 thereof; thence in a southerly direction to a point on the required right of way line distant twenty-five (25) feet southeasterly and measured radially from the construction center line at or about Station 26/95 thereof; thence in a southwesterly direction along the required right of way line to a point and the place of beginning and containing fifty-seven thousandths (0.057) of an acre of land, more or less.

The above two tracts of land are portions of real estate which became legally vested in The Delaware, Lackawanna and Western Railroad Company by deed of Frank E. Brink, et ux, dated August 1, 1912 and recorded August 6, 1912 in Deed Book 65, page 97 and deed of Margaret Coyle, dated December 3, 1912 and recorded December 16, 1912 in Deed Book 65, page 373 in the Wyoming County Courthouse.

5. That, in accord with the provisions of Section 409 of the Public Utility Law, 1937, P. L. 1053, as amended by Act No. 388, approved the 25th day of May, 1945, P. L. 1012, the following described properties, together with all buildings or parts thereof, of any description or use whatsoever, erected or located thereon, be and are hereby severally taken and appropriated for the purpose of the improvement in accordance with the approved plans filed of record at Application Docket No. 76276 with Pennsylvania Public Utility Commission at Harrisburg, Pennsylvania, and that numbered Paragraph 5 of this order shall be recorded in its entirety by the Recorder of Deeds of Wyoming County and shall be indexed under the name or names of the record owners of such properties at the sole cost and expense of Department of Highways of the Commonwealth of Pennsylvania, applicant herein.

1. W. W. Sloat, record owner  
Nicholson, Penna.

ALL THAT CERTAIN tract of land situated in Nicholson Borough, Wyoming County, bounded and described as follows, to wit:

Beginning at a point on the westerly side of State Highway Route No. 65025, said point being on the required right of way line and distant twenty-five (25) feet westerly from the construction center line at or about Station 17+00 thereof and measured at right angles thereto; thence in a northerly direction along the required right of way line to a point distant twenty-five (25) feet westerly and measured at right angles from the construction center line at or about Station 18+00 thereof; thence in a westerly direction along the required limit of slope line to a point distant thirty (30) feet westerly and measured at right angles from the construction center line at or about Station 18+00 thereof; thence in a northerly direction along the required limit of slope line to a point distant thirty (30) feet westerly and measured at right angles from the construction center line at or about Station 19+00 thereof; thence in a westerly direction along the required limit of slope line to a point distant thirty-five (35) feet westerly and measured at right angles from the construction center line at or about Station 19+00 thereof; thence in a northerly direction along the required limit of slope line to a point distant thirty-five (35) feet westerly and measured at right angles from the construction center line at or about Station 20+50 thereof; thence in a westerly direction along the required limit of slope line to a point distant forty (40) feet westerly and measured at right angles from the construction center line at or about Station 20+50 thereof; thence in a northerly direction along the required limit of slope line to a point distant forty (40) feet westerly and measured radially from the construction center line at or about Station 21+12 thereof.

of way line and on the construction center line at or about Station 18<sup>4</sup>/<sub>14</sub> thereof; thence in a southwesterly direction along the legal right of way line to a point distant nineteen (19) feet westerly and measured at right angles from the construction center line at or about Station 17<sup>4</sup>/<sub>50</sub> thereof; thence in a southwesterly direction along the legal right of way line to a point and the place of beginning and containing one hundred fifty-two thousandths (0.152) of an acre of land, more or less.

The above tract of land is a portion of real estate which became legally vested in Patrick Dugan by deed of Samuel and Hesther Estes, dated March 20, 1858 and recorded August 3, 1858 in Deed Book 8, page 69, in the Wyoming County Courthouse.

Patrick Dugan died November 25, 1906 and left a will which was recorded in Will Book 9, page 334 in Wyoming County Courthouse. The only living heir is Nellie Dugan, who sold said property by land contract, dated July 31, 1947 to W. W. Sloat, who has not recorded any deed for said property.

2. Paul Bolog, et ux, Rhea Bolog, record owners  
63 Middlebrook Avenue  
Bridge 14, Connecticut

ALL THAT CERTAIN tract of land situated in Nicholson Borough, Wyoming County, bounded and described as follows, to wit:

Beginning at a point on the northwesterly side of State Highway Route 65025, said point being on the required right of way line and distant twenty-five (25) feet northwesterly from the construction center line at or about Station 33<sup>4</sup>/<sub>64</sub> thereof and measured at right angles thereto; thence in a northeasterly direction along the required right of way line to a point distant twenty-five (25) feet northwesterly and measured at right angles from the construction center line at or about Station 34<sup>4</sup>/<sub>50</sub> thereof; thence in a northwesterly direction along the required limit of slope line to a point distant forty (40) feet northwesterly and measured at right angles from the construction center line at or about Station 34<sup>4</sup>/<sub>50</sub> thereof; thence in a northeasterly direction along the required limit of slope line to a point distant forty (40) feet northwesterly and measured radially from the construction center line at or about Station 36<sup>4</sup>/<sub>00</sub> thereof; thence in a southeasterly direction along the required limit of slope line to a point distant twenty-five (25) feet northwesterly and measured radially from the construction center line at or about Station 36<sup>4</sup>/<sub>00</sub> thereof; thence in a northerly direction along the required right of way line to a point distant twenty-five (25) feet westerly and measured at right angles from the construction center line at or about Station 37<sup>4</sup>/<sub>25.25</sub> thereof; thence in a southerly direction along the legal right of way line to a point distant ten (10) feet westerly and measured radially from the construction center line at or about Station 36<sup>4</sup>/<sub>00</sub> thereof; thence in a southerly direction along the legal right of way line to a point distant four (4) feet westerly and measured radially from the construction center line at or about Station 35<sup>4</sup>/<sub>50</sub> thereof; thence in a southwesterly direction along the legal right of way line to a point distant one and five tenths (1.5) feet northwesterly and measured radially from the construction center line at or about Station 35<sup>4</sup>/<sub>00</sub> thereof; thence in a southwesterly direction along the legal right of way line to a point distant three (3) feet northwesterly and measured at right angles from the construction center line at or about Station 34<sup>4</sup>/<sub>50</sub> thereof; thence in a southwesterly direction along the legal right of way line to a point and the place of beginning and containing one hundred fifty-nine thousandths (0.159) of an acre of land, more or less.

The above tract of land is a portion of real estate which became legally vested in Paul Bolog; et ux, Rhea Bolog by deed of Iris May Brink, dated March 21, 1942 and recorded March 21, 1942 in Deed Book 108, page 145 in the Wyoming County Courthouse.

3. Matthew Pencek, et ux, Laura Pencek, record owners  
Nicholson, Penna.

ALL THAT CERTAIN tracts of land situated in Nicholson Borough and Nicholson Township, Wyoming County, bounded and described as follows, to wit:

Beginning at a point on the southeasterly side of State Highway Route 65025, said point being on the required right of way line and distant twenty-five (25) feet southeasterly from the construction center line at or about Station 26/95 thereof and measured radially thereto; thence in a northeasterly direction to a point on the required limit of slope line distant thirty (30) feet northwesterly and measured radially from the construction center line at or about Station 27/44 thereof; thence in a northeasterly direction along the required limit of slope line to a point distant thirty (30) feet northwesterly and measured radially from the construction center line at or about Station 28/50 thereof; thence in a southeasterly direction along the required limit of slope line to a point on the required right of way line distant twenty-five (25) feet northwesterly and measured radially from the construction center line at or about Station 28/50 thereof; thence in a northeasterly direction along the required right of way line to a point on the southeasterly legal right of way line of the present State Highway Route 65025 distant twenty-five (25) feet northwesterly and measured at right angles from the construction center line at or about Station 30/83 thereof; thence in a northeasterly direction along the legal right of way line to a point on the required right of way line distant twenty-five (25) feet southeasterly and measured at right angles from the construction center line at or about Station 33/60 thereof; thence in a southwesterly direction along the required right of way line to a point distant twenty-five (25) feet southeasterly and measured radially from the construction center line at or about Station 28/50 thereof; thence in a southeasterly direction along the required limit of slope line to a point distant thirty-five (35) feet southeasterly and measured radially from the construction center line at or about Station 28/50 thereof; thence in a southwesterly direction along the required limit of slope line to a point distant thirty-five (35) feet southeasterly and measured radially from the construction center line at or about Station 27/00 thereof; thence in a northwesterly direction along the required limit of slope line to a point on the required right of way line distant twenty-five (25) feet southeasterly and measured radially from the construction center line at or about Station 27/00 thereof; thence in a southwesterly direction along the required right of way line to a point and the place of beginning and containing six hundred fifty-nine thousandths (0.659) of an acre of land, more or less.

The above tract of land is a portion of real estate which became legally vested in Matthew Pencek, et ux, Laura Pencek, by deed of Lenora Bidwell dated February 18, 1943 and recorded February 23, 1943 in Deed Book 109, page 161 in the Wyoming County Courthouse.

6. That Department of Highways, at its sole cost and expense, furnish all material and do all work necessary to establish and maintain such detours as may be required to accommodate properly highway traffic during the time the improvement herein ordered is being constructed.

7. That any relocation of, changes in, or removal of any adjacent structures, equipment or other facilities of any public utility, other than The Delaware, Lackawanna and Western Railroad Company, located within the limits of any highway, which may be required as incidental to the execution of the improvement herein ordered, be made by said public utility, at its sole cost and expense, and in such a manner as will not interfere with the construction of the improvement.

8. That any relocation of, changes in, or removal of any adjacent structures, equipment or other facilities of any public utility, other than The Delaware, Lackawanna and Western Railroad Company, located beyond the limits of any highway, which may be required as incidental to the execution of the improvement herein ordered, be made by said public utility in such a manner as will not interfere with the construction of the improvement.

9. That Department of Highways, at its sole cost and expense, furnish all material and do all work necessary to complete the remainder of the improvement in accordance with the approved plan, including the installation or alteration of any facilities necessary to effect proper drainage of the highway at the crossing above grade, herein ordered altered.

10. That all work necessary to complete the improvement herein ordered be done in a manner satisfactory to this Commission and be fully completed on or before December 31, 1952, and that on or before said date Department of Highways, herein required to do work, report to this Commission the date of actual completion of its portion and at the earliest practicable time, subsequent to said date of completion, submit to this Commission a detailed statement of the

actual cost incurred by it in furnishing material and performing work in compliance with this order.

11. That Borough of Nicholson, Wyoming County, pay all compensation for damages due to the owners for property located in the Borough of Nicholson taken, injured or destroyed by reason of the alteration of the crossing above grade, in accordance with this order.

12. That Wyoming County pay all compensation for damages due to the owners for property located in Nicholson Township, Wyoming County, taken, injured or destroyed by reason of the alteration of the crossing above grade, in accordance with this order.

13. That, upon completion of the improvement herein ordered and its opening to public use, The Delaware, Lackawanna and Western Railroad Company, at its sole cost and expense, furnish all material and do all work necessary to maintain the substructure and superstructure of the bridge, exclusive of the roadway paving thereon at the crossing above grade, herein ordered altered.

14. That, upon completion of the improvement herein ordered and its opening to public use, Department of Highways, at its sole cost and expense, furnish all material and do all work necessary to maintain the remainder of the improvement, including any drainage facilities installed in accordance with this order and including the roadway paving located on the bridge at the crossing above grade, herein ordered altered.

15. That, effective upon completion of the improvement herein ordered and its opening to public use, those portions of State Highway Route 65025 located between State Highway Survey stations 17400 and 38400 and beyond the limits of the new highway hereinabove laid out, be and are hereby vacated and closed to public use.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Commissioners:

*B. J. Morgan*  
*Harold J. Stray*  
*John S. ...*

ATTEST:

MMS  
5/24

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**  
Harrisburg, PA. 17105-3265

Public Meeting held May 23, 2013

Commissioners Present:

- Robert F. Powelson, Chairman
- John F. Coleman Jr., Vice Chairman
- Wayne E. Gardner
- James H. Cawley
- Pamela A. Witmer

M-2013-2364201

Bridge Structure where State Route 1025, crosses over a single track of Canadian Pacific Railroad (264 293 K) in Nicholson Borough, Lackawanna County.

ORDER

BY THE COMMISSION:

On Thursday, May 2, 2013, Pennsylvania Department of Transportation (Department) notified the Commission of a safety concern regarding the condition of the existing bridge structure carrying State Route 1025 above grade, the single track of Canadian Pacific Railroad (CP).

A field investigation and conference was arranged by the Department and held at the site of the crossing on May 14, 2013, with representatives of the Commission, Pennsylvania Department of Transportation and Canadian Pacific Railroad in attendance.

At the field conference it was observed that the existing structural condition of the bridge structure is in such poor condition, that it is necessary for the Department to take action to close the bridge to all vehicular and pedestrian traffic to ensure the safety of the public. The Department did not have ample time to determine if it is feasible and what remedial action is necessary to reopen the bridge.

At the field conference it was also noted that according to the Commission's prior order, dated June 11, 1951, filed under PUC Application Docket No. 76276, regarding said subject bridge, The Delaware, Lackawanna and Western Railroad, at its sole cost and expense, was directed to furnish all material and do all work necessary to maintain the substructure and

DOT-2013-84



811

superstructure of the bridge, exclusive of the roadway paving.

Presently, the Canadian Pacific Railroad is unwilling to commit to any necessary maintenance or repairs regarding the subject bridge/arch structure, however CP is agreeable to provide any protection it deems necessary to protect its railroad vehicles, facilities, equipment and personnel operating in the vicinity of the crossing.

The Pennsylvania Department of Transportation has agreed to take all necessary action to: 1) close the bridge to all vehicular traffic; 2) prevent pedestrian access to the bridge/arch structure, and 3) establish and maintain any detours or traffic controls that may be required to properly and safely accommodate highway traffic during the time the bridge is closed.

Neither Canadian Pacific Railroad or the Pennsylvania Department of Transportation have agreed to perform or provide any engineering inspections and analysis to determine the feasibility and any remedial action required to reopen the bridge safely to the public.

Upon full consideration of the matters before us at this time, we determine that a hearing should be held to determine the condition for the subject bridge, the future disposition of it and to determine the party or parties responsible for the construction of any improvements and any required maintenance at the crossing.

The Parties are reminded that failure to comply with this or any Order or Secretarial Letter in this proceeding may result in an enforcement action seeking civil penalties and/or other sanctions pursuant to 66 Pa. C.S. § 3301.

In the interest of the safety of the public, we direct the Department to take all necessary action to close the bridge to all vehicular traffic and to prevent pedestrian access to the bridge/arch structure, within thirty (30) days of the issuance of this Order. In the interest of the safety of the public and to expedite the reopening of the section of State Route 1025, which is to be closed during the duration of the subject bridge closure, we further direct the Department to take all necessary action to perform engineering studies and analysis to determine the feasibility and any remedial action to reopen the bridge safely to the public; **THEREFORE,**

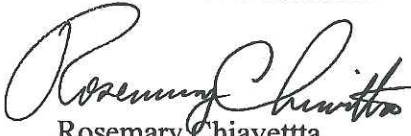
**IT IS ORDERED:**

1. Pennsylvania Department of Transportation, Canadian Pacific Railroad, Lackawanna County and Nicholson Borough are made parties hereto.

2. That Pennsylvania Department of Transportation, at its initial cost and expense, furnish all material and perform all work necessary to close the subject bridge to all vehicular and pedestrian traffic.
3. That Pennsylvania Department of Transportation, at its initial cost and expense, provide for any traffic and pedestrian controls or detours during the duration for the time period the bridge is closed to vehicular use.
4. That Pennsylvania Department of Transportation maintain any barricades, fencing, and signage installed to prevent vehicular and pedestrian access to the bridge and its approach roadways.
5. That Pennsylvania Department of Transportation, at its initial cost and expense, within thirty (30) days of the issuance of this Order, provide any engineering inspections and analysis necessary to determine the existing structural condition of the subject bridge and report its findings to the Commission.
6. That Pennsylvania Department of Transportation, at its initial cost and expense, within ninety (90) days of the issuance of this Order, provide any engineering study and analysis to determine the feasibility and any remedial action to reopen the bridge safely to the public and report its findings to the Commission.
7. That Canadian Pacific Railway, at its initial cost and expense, furnish and maintain any flagmen, watchmen, construction inspectors and/or engineering services necessary to protect and safeguard its railroad operations during any times that Pennsylvania Department of Transportation is performing any inspections, analysis, or safety measures of the subject bridge.
8. That Canadian Pacific Railway, at its initial cost and expense, furnish all material and perform all work necessary to protect and safeguard its railroad facilities and operations for the duration of the bridge closure and until remedial action is performed to reopen the bridge safely to the public.
9. That Pennsylvania Department of Transportation cooperate with Canadian Pacific Railway so that during any inspections or analysis of the bridge and approach roadway, the movement of railroad traffic will not be endangered or unnecessarily inconvenienced.
10. That Canadian Pacific Railway cooperate with Pennsylvania Department of Transportation and provide for all train movements to be made in a safe manner and under control.

11. A copy of this Order be served on each party named in numbered Paragraph 1, and that this proceeding be set for a hearing at a time and place assigned by this Commission, on due notice to the parties hereto, to receive testimony and evidence to the matters involved.

BY THE COMMISSION

  
Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: May 23, 2013

ORDER ENTERED: May 23, 2013