



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

July 31, 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 *Notice to Plead and Petition for Leave to Withdraw Certain Pleadings*, 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 that reads "Gina M. D'Alfonso".

Gina M. D'Alfonso
Assistant Counsel in Charge

Enclosure

220/GMD:aca

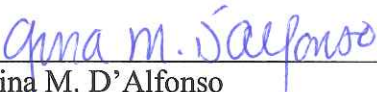
cc: Parties of Record
Mark J. Chappell, P.E., Chief, Utilities and Right-of-Way Section
Joseph Strok, District Grade Crossing Engineer, District 4-0

**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	:	Filed Electronically

NOTICE TO PLEAD

This pleading has been filed with the Secretary of the Public Utility Commission. Any responsive pleading to the Department's Petition for Leave to Withdraw Certain Pleadings must be filed within twenty (20) days of service of this pleading upon you. 52 Pa. Code §5.94(a).



Gina M. D'Alfonso
Assistant Counsel in Charge
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gdalfonso@pa.gov
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DATED: July 31, 2013

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

PETITION FOR LEAVE TO WITHDRAW CERTAIN PLEADINGS

AND NOW, comes the Commonwealth of Pennsylvania, Department of Transportation (“Department”), by and through its counsel, Gina M. D’Alfonso, and petitions the Pennsylvania Public Utility Commission (“Commission”) for Leave to Withdraw Certain Pleadings previously filed before the Commission, pursuant to 52 Pa. Code §5.94(a) and submits the following in support of its Petition:

1. On May 2, 2013, the Department notified the Commission of a safety concern involving an separated-grade highway-rail crossing carrying State Route 1025 over and above a single track of the Canadian Pacific Railroad (DOT No. 264 293K) in the Nicholson Borough, Wyoming County (“Subject Bridge”).
2. On or about May 14, 2013, a field investigation and conference was held that the site of the Subject Bridge.
3. On May 23, 2013, the Commission entered an Order directing, *inter alia*, that the Department provide certain engineering inspections and analysis necessary to determine: (1) the structural condition of the Subject Bridge and (2) the feasibility of and any remedial action necessary to reopen same.
4. On May 29, 2013, the Department completed the work necessary to close the Subject Bridge to all vehicular and pedestrian traffic in compliance with the May 23, 2013 Order.

5. On June 3, 2013, the Department caused to be filed with the Commission: (1) a Petition for Reconsideration and Amendment of the May 23, 2013 Order (“Petition for Reconsideration”); (2) Motion for Certification of Interlocutory Order and Stay of Proceedings Pending Appeal (“Motion for Certification”); and (3) a Petition for Protective Order.
6. The foundation of the Department’s Petition for Reconsideration and Motion for Certification was founded on the belief that the Commission’s initial allocation of certain responsibilities onto the Department was not “just and reasonable”—because the Order contradicted a prior Commission Order directing maintenance of the substructure and superstructure of the Subject Bridge onto Canadian Pacific Railroad. *Application of the Dep’t of Highways*, PUC Docket No. 76276 (Commission Order, entered June 11, 1951).
7. On June 13, 2013, the Commission granted reconsideration, pending review of, and consideration on, the merits of the Department’s Petition for Reconsideration.
8. The Commission did not take any action on the Department’s Motion for Certification or Petition for Protective Order.
9. As of July 31, 2013, the Commission has not taken up review of, and consideration on, the merits of the Department’s Petition for Reconsideration or Motion for Certification.
10. The Department, in the interest of public safety and convenience, finds it necessary to perform and provide any and all engineering inspections and analysis necessary to determine the existing structural condition of the Subject Bridge.
11. The Department, in the interest of public safety and convenience, finds it necessary to perform and provide any and all engineering inspections and analysis necessary to

determine the feasibility of and any remedial action necessary to safely reopen the Subject Bridge to the public.

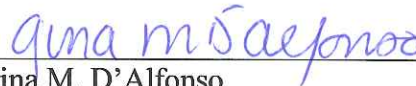
12. While the Department avers that its Petition for Reconsideration and Motion for Certification have merit, it is in the best interest of public safety to withdraw its objections to the May 23, 2013 Commission Order and to continue to move this process forward.
13. The Department is no longer raising its objections to the **initial** allocation of costs—however, the Department reserves all rights to request a cost allocation hearing pursuant to Section 2704 of the Public Utility Code at a later date. 66 Pa.C.S. §2704(a). The Department’s acquiescence in this proceeding should not be deemed precedent for any other proceedings in this matter or any other rail/highway crossing.
14. For the foregoing reasons, the Department respectfully requests that Counts 1, 3, 4, and 5 of its Petition for Reconsideration be withdrawn from the above captioned proceedings.
15. The Department renews Count Two (2) contained in its Petition for Reconsideration: it is averred that the Paragraphs Five (5) and Six (6) of the Commission’s May 23, 2013 Order place an unreasonable timing burden on the Department and it is requested that the Commission amend its Order to allow for 120 days—from the issuance of an Order responsive to the within Petition—to complete such work.
16. The Department also respectfully requests that the Commission consider the merits of, and issue an Order relative to, the Department’s Petition for Protective Order prior to any requirement that the Department disclose any aforementioned bridge reports, study, or analysis as required by the May 23, 2013 Order.

17. Additionally, the Department respectfully requests that its Motion for Certification be withdrawn from the above captioned proceedings.

WHEREFORE, the Department respectfully requests that the Commission grant this Petition for Leave to Withdraw Certain Pleadings and withdraw the Department's June 3, 2013 Motion for Certification of Interlocutory Order and Counts 1, 3, 4, and 5 of its Petition for Reconsideration, and to grant the relief sought in Count Two (2) of the Department's Petition for Reconsideration and the Petition for Protective Order relative to any bridge inspection reports, studies, or analyses.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



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Assistant Counsel in Charge
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DATED: July 31, 2013

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

A. EDWARD SCHWARTZ	:	Complaint Docket
Complainant	:	No: C-2011-2237486
	:	
v.	:	
	:	
CANADIAN PACIFIC RAILROAD	:	
LACKAWANNA COUNTY,	:	
La PLUME TOWNSHIP,	:	
COMMONWEALTH OF	:	
PENNSYLVANIA, DEPARTMENT	:	
OF TRANSPORTATION	:	
Respondents	:	

VERIFICATION

I, Debbie A. Noone, P.E., Commonwealth of Pennsylvania, Department of Transportation, in the foregoing document, make the following statement subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsifications to authority, and do state that as Assistant District Executive for Design Services for the Commonwealth of Pennsylvania, Department of Transportation, I am authorized to make this statement on behalf of the Commonwealth of Pennsylvania, Department of Transportation, and that the facts set forth in the foregoing document are true and correct to the best of my information, knowledge and belief.


Debbie A. Noone
Assistant District Executive for Design Services

DATED: 7/30/13

**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 : **Filed Electronically**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Department's *Petition for Leave to Withdraw Certain Pleadings* 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 31st day of July, 2013:

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Canadian Pacific Railway
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Clinton Park, NY 12065

Wyoming County
Board of Commissioners
Wyoming County Courthouse
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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

William Lloyd, Jr.
Office of Small Business Advocate
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Bohdan Pankiw, Chief Counsel
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Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



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DATED: July 31, 2013