

PENNSYLVANIA PUBLIC UTILITY COMMISSION

DATE: December 16, 2013

SUBJECT: Miscellaneous/Other, Bridge Structure Where State Route 1025 Crosses over a Single Track of Delaware and Hudson Railway Company, Inc. (264 293 K) in Nicholson Borough, Wyoming County.

Docket Number M-2013-2364201

TO: ROSEMARY CHIAVETTA

SECRETARY

FROM: ALLYSON E. LEONARD

Legal Assistant 1/Judge's Secretary

Attached please find a copy of the Order Reassigning Proceeding for the above captioned case which was mailed to Wes Carpenter (Representing Sprint Communications Company, LP), at the address listed on the Parties List – Wes Carpenter, 484 Williamsport Pike, Box 113, Martinsburg, WV 25404, on November 7, 2013. It was returned with a label stating "RETURN TO SENDER – NOT DELIVERABLE AS ADDRESSED – UNABLE TO FORWARD" by the U.S. postal service on December 1, 2013. Mr. Carpenter was contacted and he confirmed that his address that was listed on the Parties List was correct. A second address and contact were found for Sprint Communications Company, LP – Sprint Communications Company, LP, Attn: Cindy Powell, 250 Lincoln Way, P.O. Box 429, Chambersburg, PA 17201. The associated parties list will be updated. Furthermore, a copy of the returned Order Reassigning Proceeding will be mailed again to the Mr. Carpenter's address and the second address of Sprint Communications Company, LP. Please file these items in the appropriate folder in the Secretary's Bureau.

Thank you.

Encl.

Pc: ALJ Salapa
Scheduling File

M-2013-2364201 – Bridge structure where state Route 1025, crosses over a single track of Canadian Pacific Railroad (264 293 K) in Nicholson Borough, Wyoming County (Revised 12/16/13)

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FORM UGCD 12 (Rev. 10/09)
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OALJ

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bridge Structure where State Route 1025 :
crosses over a single track of Delaware :
and Hudson Railway Company, Inc. : M-2013-2364201
(264 293 K) in Nicholson Borough, :
Wyoming County :

ORDER REASSIGNING PROCEEDING

On May 23, 2013, the Pennsylvania Public Utility Commission (Commission) issued an order regarding the crossing where State Route 1025 crosses over the facilities of the Delaware and Hudson Railway Company, a wholly owned subsidiary of the Canadian Pacific Railway Company (D&H) located in Nicholson Borough (Borough), Wyoming County (County). The order alleges that a field meeting was held at the site of the crossing on May 14, 2013. Present at the meeting were representatives of D&H, the Commission and the Pennsylvania Department of Transportation (DOT).

The parties at the field meeting concluded that the bridge carrying State Route 1025 was in such poor condition that it was necessary for DOT to take action to close the structure to vehicular and pedestrian traffic immediately. The May 23, 2013 order directed DOT, at its initial cost, to perform all work and furnish all material necessary to close the bridge to all pedestrian and vehicular traffic and provide for any detours necessary and to maintain any barricades or fencing installed to prevent vehicular and pedestrian access to the bridge. The order further directed DOT, at its initial cost, within 30 days of the order, to provide any engineering inspections and analyses evaluating the condition of the bridge. In addition, the order directed DOT, at its initial cost, within 90 days of the order, to provide an engineering study and analysis evaluating the feasibility of reopening the bridge and if reopening the bridge was feasible what work was necessary to reopen the bridge. The order directed that DOT, D&H, the Borough and the County all be made parties to the proceeding.

On June 3, 2013, DOT filed a petition for reconsideration of the May 23, 2103 Commission order, a motion for certification of interlocutory order and stay of proceedings pending appeal and a petition for protective order. No answers were filed to these pleadings. By order dated June 13, 2013, the Commission granted DOT's petition for reconsideration, pending review and consideration on the merits.

On July 31, 2013, DOT filed a petition for leave to withdraw its motion for certification of interlocutory order and stay of proceedings pending appeal and its petition for reconsideration. By order dated August 16, 2013, the Commission granted DOT's petition for leave to withdraw its motion for certification of interlocutory order and stay of proceedings pending appeal and its petition for reconsideration. The Commission granted DOT petition for a protective order. The August 16, 2013 order extended the deadline for DOT to file its engineering studies and analyses with the Commission to 120 days from the May 23, 2013 order. The order referred the matter to the Office of Administrative Law Judge.

By notice dated August 21, 2013, the Commission scheduled a telephonic prehearing conference for this matter on October 4, 2013 at 10:00 a.m. I issued a prehearing conference order on August 22, 2013, setting forth the procedural matters to be addressed at the prehearing conference.

I conducted a telephonic prehearing conference in this case as scheduled on October 4, 2013 at 10:00 a.m. Participating were counsel for D&H, the Borough, the County, DOT and the Commission's Bureau of Investigation and Enforcement (I&E). As a result of the prehearing conference, I issued Prehearing Order #2 on October 11, 2013. Prehearing Order #2 established a litigation and briefing schedule.

By notice dated October 7, 2013, the Commission scheduled hearings in this matter for November 20, 2013 in Hearing Room 2, Commonwealth Keystone Building, Harrisburg.

On November 1, 2013, DOT filed a joint petition for partial remand of matters pending. The joint petition alleges that DOT provided the parties with copies of its studies and analyses of the State Route 1025 bridge evaluating the feasibility of reopening the bridge. DOT's analyses indicate that the bridge could be reopened to a single lane of traffic with a posted weight limit of 28 tons for single vehicles and 32 tons for combination vehicles. Traffic would be controlled by stop signs at either end of the bridge. Attached to the joint petition are plans setting forth the scope of work.

According to the joint petition, D&H will perform the work described in the plans and will reimburse DOT for the costs, in the amount of \$12,045.73, that DOT has incurred to date. DOT will inspect the bridge and D&H agrees to reimburse DOT 20% of the costs of inspecting the bridge. The joint petition asserts that none of the parties object to reopening the bridge in the manner set forth in the joint petition.

The joint petition states that the parties do not object to the Office of Administrative Law Judge reassigning the matter to the Commission's Bureau of Technical Utility Services for approval of the attached plans, final inspection upon completion of the work and reopening of the bridge. The joint petition asserts that the parties waive the right to reply to the joint petition and request an order as soon as possible.

The joint petition indicates that the parties are still discussing future maintenance responsibility for the bridge and future disposition of the crossing. The joint petition requests that these issues remain pending before the Administrative Law Judge. The parties also request that the hearing scheduled for November 20, 2013, be converted to a telephonic status conference and that the litigation schedule for this proceeding be suspended.

I will grant the joint petition. However, I will refer the entire case to the Commission's Bureau of Bureau of Technical Utility Services for further action, rather than just the portion addressing the approval of the attached plans, final inspection upon completion of the work and reopening of the bridge. If the parties can agree on future maintenance responsibility for the bridge and future disposition of the crossing, the Commission's Bureau of

Bureau of Technical Utility Services can issue a further order adopting and approving that agreement. If the parties cannot agree on future maintenance responsibility for the bridge and future disposition of the crossing, the Commission's Bureau of Bureau of Technical Utility Services can refer the case to the Office of Administrative Law Judge for a hearing and recommended decision on those issues.

I will also suspend the litigation schedule set forth in Prehearing Order #2, dated October 11, 2013. Suspending the litigation schedule will relieve the parties of the necessity to prepare and serve prepared testimony.

Finally, I will cancel the hearing scheduled for November 20, 2013, rather than conduct a telephonic status conference. Since the parties have agreed to reopen the bridge in the manner set forth in the joint petition, there is no reason to conduct a telephonic status conference at this time.

The joint petition states that the parties agree to request that the case be reassigned from the Office of Administrative Law Judge to the Bureau of Technical Utility Services so that the Bureau of Technical Utility Services can issue an order promptly, directing the work agreed to by the parties. Reassigning the matter will allow the work to commence as soon as possible. I will therefore issue the following order reassigning this case to the Commission's Bureau of Technical Utility Services for issuance of an order without hearing.

ORDER

THEREFORE,

IT IS ORDERED:

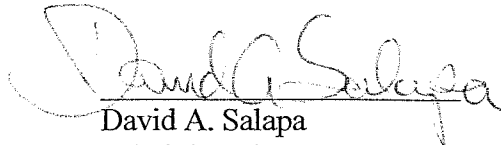
1. That the proceeding at Docket No. M-2013-2364201 is reassigned from the Pennsylvania Public Utility Commission's Office of Administrative Law Judge to the

Pennsylvania Public Utility Commission's Bureau of Technical Utility Services for further action.

2. That the litigation schedule set forth in Prehearing Order #2 dated October 11, 2013, in this proceeding is suspended.

3. That the hearing scheduled for November 20, 2013 in this proceeding is cancelled.

Date: November 5, 2013


David A. Salapa
Administrative Law Judge

M-2013-2364201 – Bridge structure where state Route 1025, crosses over a single track of Canadian Pacific Railroad (264 293 K) in Nicholson Borough, Wyoming County
(Revised 11/6/13)

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