

# Nauman Smith

Attorneys At Law

Please Reply to:  
P. O. Box 840  
Harrisburg, PA 17108-0840

Benjamin C. Dunlap, Jr.  
E-mail: [bdunlapjr@nssh.com](mailto:bdunlapjr@nssh.com)  
Telephone Extension: 21

January 29, 2015

**Filed Electronically**

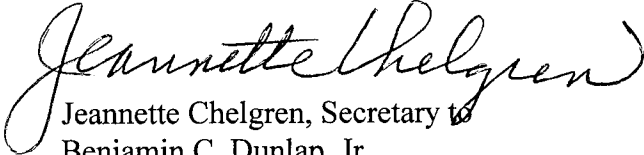
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

**RE: Petition of CSX Transportation, Inc. to reassign maintenance responsibility for the bridge structure where Bort Road (T-270) crosses above CSX Transportation, Inc.'s tracks (DOT 524 035 A) in North East Township, Erie County**

Dear Secretary Chiavetta:

I am enclosing an original of CSX Transportation, Inc.'s Petition to Reassign Maintenance Responsibility for filing in the above-referenced matter. As evidenced by the attached Certificate of Service, a copy of the Petition is being served upon all interested parties. In accordance with the new requirements, a hard copy of the Petition will **not** be delivered to your office. If you have any questions, please advise.

Sincerely yours,

  
Jeannette Chelgren, Secretary to  
Benjamin C. Dunlap, Jr.

Enclosure

cc: All Interested Parties of Record (w/enc.)  
Sean Craig, Esquire (via e-mail)  
Ross White (via e-mail)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF CSX TRANSPORTATION, :  
INC. TO REASSIGN MAINTENANCE :  
RESPONSIBILITY FOR THE BRIDGE : P-2014-  
STRUCTURE WHERE BORT ROAD (T-270) :  
CROSSES ABOVE CSX TRANSPORTATION, : Filed Electronically  
INC.'S TRACKS (DOT 524 035 A) IN NORTH :  
EAST TOWNSHIP, ERIE COUNTY. :**

**PETITION**

CSX Transportation, Inc. (“CSXT”), by and through its counsel, Nauman, Smith, Shissler & Hall, LLP, hereby petitions pursuant to 52 Pa. Code § 5.41 for the reassignment of maintenance responsibility for the bridge structure where Bort Road (T-270) crosses above CSXT’s tracks in North East Township (“Township”), Erie County (DOT 524 035 A), based upon the following:

1. The bridge structure carrying Bort Road over what are now CSXT’s tracks was built in 1905 by the Lake Shore and Michigan Southern Railroad.
2. By Commission Order entered October 31, 1988, at Docket No. I-870042, Consolidated Rail Corporation (“Conrail”) was assigned maintenance responsibility for the entire substructure and superstructure of the Bort Road bridge at the then-posted maximum load limits. A true and correct copy of the Commission Order entered October 31, 1988, is attached hereto as Exhibit “A.”
3. CSXT is the successor in interest to Conrail’s obligations under the 1988 Order by virtue of becoming the owner of Conrail’s rail lines and real property under the subject bridge in 1999.

4. Pursuant to an Amended Secretarial Letter dated October 28, 2013, at the proceeding docketed to M-2013-2386854, CSXT was ordered to undertake extensive repairs to the bridge, pursuant to the requirements of that order, by April 30, 2014. A true and correct copy of the aforementioned Secretarial Letter is attached hereto as Exhibit "B."

5. Following a final inspection meeting, the Commission determined by Secretarial Letter dated November 3, 2014, that the repairs to the bridge were satisfactorily completed by CSXT and the case at Docket No. M-2013-2386854 was closed. A true and correct copy of the Secretarial Letter dated November 3, 2014, is attached hereto as Exhibit "C."

6. CSXT's engineers estimate that the repairs made to the Bort Road bridge will provide approximately 10 years of additional service life for the bridge. At the end of that time, however, the bridge will be well over 100 years old, far past its expected service life and in need of replacement.

7. The Bort Road bridge has been on the State Bridge Bill and eligible for replacement funding since 1987. See Act of July 9, 1986, P.L. 597, at page 834 (Act 100 of 1986).

8. Although CSXT has present maintenance responsibility for the bridge, the Township owns the roadway on the bridge, and so is the owner of the bridge itself under Pennsylvania law. See *City of Philadelphia v. Consolidated Rail Corporation*, 560 Pa. 587, 747 A.2d 352 (2000).

9. The owner of a bridge is the only party that can apply for Bridge Bill funding.

10. The Township has done nothing to progress the process to secure funding and replace the bridge in the 28 years since it was placed on the Bridge Bill.

11. By letter dated March 21, 2014, CSXT informed the Township that it would agree to maintain the bridge until replacement if, and only if, the Township took the necessary steps to secure replacement funding for the bridge. A copy of the aforementioned letter is attached hereto as Exhibit "D".

12. The Township refused and continues to refuse to take the necessary actions to secure Bridge Bill funding for bridge replacement.

13. CSXT will not agree to provide any funding for bridge replacement when that becomes necessary if the Township continues to refuse to take the necessary steps to secure available funding.

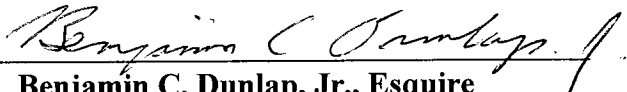
14. The Township's refusal to take the necessary steps to secure Bridge Bill funding, a process that generally takes years to achieve, virtually assures bridge closure and extensive litigation when the bridge requires replacement.

15. CSXT believes that reassignment of maintenance responsibility for the bridge to the Township will provide the necessary impetus for the Township to pursue Bridge Bill funding.

16. It is equitable to assign maintenance responsibility for the bridge to the Township, when it is the only entity that can pursue potentially available funding for a bridge replacement all parties know will be necessary in the coming years.

WHEREFORE, CSX Transportation, Inc., respectfully requests that this Honorable Commission grant its Petition and reassign maintenance responsibility for the Bort Road bridge to North East Township.

Respectfully submitted,  
**NAUMAN, SMITH, SHISSLER & HALL, LLP**

By   
**Benjamin C. Dunlap, Jr., Esquire**  
Supreme Court I.D. #66283

200 North Third Street, 18<sup>th</sup> Floor  
P. O. Box 840  
Harrisburg, PA 17108-0840  
Telephone: 717-236-3010  
Counsel for CSX Transportation, Inc.

Date: January 29, 2015

**VERIFICATION**

I, Ross M. White, P.E., ADE Structures, of CSX Transportation, Inc., in the foregoing proceeding, 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 ADE Structures for CSX Transportation, Inc., I am authorized to make this statement on behalf of CSX Transportation, Inc., and that the facts set forth in the foregoing **“Petition to Reassign Maintenance Responsibility”** are true and correct to the best of my knowledge, information and belief.

\_\_\_\_\_  
Ross M. White

Date: 1/28/17

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

Public Meeting held October 27, 1988

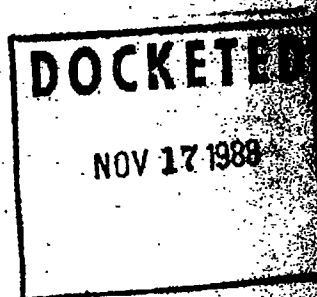
Commissioners Present:

Bill Shane, Chairman  
William H. Smith, Vice Chairman  
Linda C. Talliferro, Commissioner  
Joseph Rhodes, Jr., Commissioner  
Frank Fischl, Commissioner



Investigation upon the Commission's  
own motion into matters pertaining to  
the maintenance of the rail-highway  
crossing (AAR 524 035 A) carrying Bort  
Road (7-786) over and above the grade  
of the tracks of Consolidated Rail  
Corporation, in North East Township,  
Allegheny County.

I-870042



ORDER

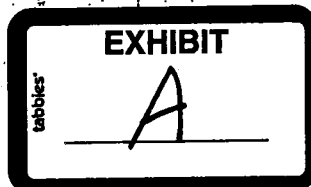
BY THE COMMISSION:

We adopt as our action the Recommended Decision of  
Administrative Law Judge Michael A. Nemeo dated August 29, 1988;  
THEREFORE,

IT IS ORDERED:

1. That the posting of the structure for 12 ton single and  
17 ton combination vehicles as existing at the crossing, be and  
is hereby approved.

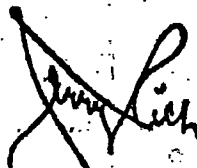
2. That Consolidated Rail Corporation, at its sole  
cost and expense, furnish all material and do all work necessary  
to maintain the entire sub and superstructure of the bridge at  
the posted maximum load limits, except bituminous surface course  
if any on the deck, in a safe and satisfactory condition.



3. That North East Township, at its sole cost and expense, furnish all material and do all work necessary to maintain the approach roadways to the structure as well as bituminous surface course, if any on the deck, in a safe and satisfactory condition.

4. That the costs incurred by the parties, if any, in performing work at the crossing in accordance with the previous orders of the Commission issued in this proceeding, be borne by the parties involved.

BY THE COMMISSION,



Jerry Rich  
Secretary

APPROVED: October 27, 1988

DATE REPEALED: OCT 31 1988



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

IN REPLY PLEASE  
REFER TO OUR FILE

October 28, 2013

M-2013-2386854  
(Amended)

TO ALL PARTIES

In re: Bridge Structure where Bort Road (T-780) crosses above  
grade of the tracks of CSX Transportation Inc.,  
(DOT 524 035 A) in North East Township, Erie County.

To Whom It May Concern:

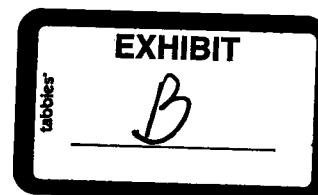
At a location in North East Township, Erie County, Bort Road (T-780)  
crosses above the grade of the tracks owned by CSX Transportation Inc., (CSX).

The existing structure consists of a three-span, steel girder bridge  
supported by steel pier bents with a timber deck. The length of the bridge is 151 feet  
with a single traffic lane. A Commission Order, I-870042, dated October 27, 1988,  
ordered the bridge be posted for a maximum load limit of twelve (12) tons single and  
seventeen (17) tons combination vehicles. Consolidated Rail Corporation was ordered to  
maintain the superstructure and substructure of the bridge at the posted maximum load  
limits, except for the bituminous surface course, if any, on the deck. North East  
Township was ordered to maintain the approach roadways.

By electronic mail with Pennsylvania Department of Transportation  
(PennDOT) personnel, the Commission was notified that the subject bridge was closed  
by North East Township on August 15, 2013 as a result of the findings of a recent bridge  
inspection by Infrastructure Engineers, Inc., on behalf of Pennsylvania Department of  
Transportation. Infrastructure Engineers, Inc., found structural deficiencies requiring  
repair work to the pier cap beams and steel columns of the subject bridge.

A field investigation and conference was arranged by a Commission staff  
engineer and held at the site of the crossing on September 26, 2013. All parties of record  
were notified of the conference and representatives of the following entities were in  
attendance.

CSX Transportation Inc.  
North East Township  
Erie County  
Pennsylvania Department of Transportation  
Macdonald, Illig, Jones & Britton LLP



Nauman, Smith, Shissler & Hall, LLP  
Arrowhead Wine Cellars  
Swan Merlot  
Infrastructure Engineers, Inc.

At the field conference it was noted that the subject bridge was closed due to severe deterioration and section loss on both bents and pier cap beams. It was also noted that several of the timber planks on the deck were deteriorated and need replaced. The bridge is listed for replacement in Bridge Bill II (Act 1986-100); however, no party has currently proceeded with any plans for replacement or programmed any funding.

The parties discussed remedial action to reopen the bridge safely to the traveling public. CSX stated it is now the current operator under the bridge and agreed to make repairs to the bridge. CSX stated that they will repair or replace deteriorated girders, pier bents and planking of the timber deck. The rehabilitation work will allow the bridge to be reopened to the former posted load limits; however, all the parties discussed and agreed that lowering the bridge posting to eight (8) tons for all vehicles will reduce the live loads subjected to the bridge, thus possibly extending the service life of the bridge. An exemption will be granted for emergency vehicle usage.

PennDOT agreed to perform future bridge inspections in accordance with the requirements of National Bridge Inspections Standards (NBIS), AASHTO standards and Pennsylvania Department of Transportation Policies and Procedures.

North East Township agreed to install and maintain eight (8) ton weight limit signs (R12-1) and to maintain the one-lane bridge signs (W5-3), on the approach roadways and agreed to maintain all guiderails approaching the bridge.

Upon full consideration of the matters involved, we will issue a Secretarial Letter affirming North East Township's closing of the subject bridge and to direct CSX to make all repairs to the bridge including repairs or replacement to the girders, bents, and timber plank deck, to ensure the bridge is capable of safely carrying vehicular traffic traversing the structure, and to direct the bridge to be reposted for a load limit of eight (8) tons.

The Commission issues this Secretarial Letter in accordance with Section 2702 of the Public Utility Code and finds that the alteration of the crossing is necessary and proper for the service, accommodation, convenience or safety of the public.

Upon review of the circumstances regarding the condition of the bridge and in the interest of the safety of the public, we affirm the action taken by North East Township in closing the bridge to all vehicular traffic; and will direct CSX to make repairs to safely reopen the bridge to an eight (8)-ton load limit, THEREFORE;

1. Pennsylvania Department of Transportation, Pennsylvania State Police, Norfolk Southern Railway Company, CSX Transportation Inc., Macdonald, Illig, Jones & Britton LLP, Nauman, Smith, Shissler & Hall, LLP, Arrowhead Wine Cellars, Swan Merlot, Infrastructure Engineers, Inc., North East Township and Erie County are made parties hereto.

2. The action taken by North East Township to close the bridge carrying Bort Road (T-780) above the grade of the tracks of CSX Transportation Inc., in North East Township, Erie County be and is hereby affirmed.

3. CSX Transportation Inc., at its sole cost and expense, on or before April 30, 2014, furnish all material and perform all work necessary to make repairs to the subject bridge, including repairs or replacement to the girders, bents, and timber plank deck, to ensure the bridge is capable of safely carrying vehicular traffic traversing the structure.

4. CSX Transportation Inc., at its sole cost and expense, furnish and maintain any flagmen, watchmen, and/or construction inspectors necessary to protect and safeguard its railroad operations during the time the subject crossing is being constructed along, above or adjacent to its tracks.

5. North East Township, at its sole cost and expense, furnish all material and do all work necessary to install an eight (8) ton weight limit sign (R12-1), conforming to the Manual on Uniform Traffic Control Devices, on each approach roadway on each end of the structure.

6. Any non-carrier public utilities, at their sole cost and expense, furnish all material and do all work necessary to make any temporary or permanent changes, alteration, adjustment and relocation of their facilities to permit CSX Transportation Inc., to repair, rehabilitate and alter the subject bridge; and such relocated or altered facilities thereafter be maintained by said public utility, at its sole cost and expense.

7. The parties to this proceeding shall cooperate with each other, so that in the rehabilitation of the bridge, the facilities of all parties will not be endangered or unnecessarily impacted.

8. All work necessary to complete the rehabilitation of the crossing project be done in a manner satisfactory to this Commission on or before April 30, 2014, and that on or before said date, CSX Transportation Inc., report to this Commission the date of actual completion of the work.

9. CSX Transportation Inc., pay all compensation for damages, if any, due to owners of property taken, injured or destroyed by reason of the construction; in accordance with this Secretarial Letter.

10. North East Township, at its sole cost and expense, maintain the approach roadways to the bridge, the entire guiderails installed on the approaches and on the bridge, the eight (8) ton weight limit signs (R12-1), and the one-lane bridge signs (W5-3) in a safe and satisfactory conation.

11. CSX Transportation Inc., at its sole cost and expense, furnish all material and do all work necessary to maintain the superstructure and substructure of the bridge, except for the guiderail, in a safe and satisfactory condition.

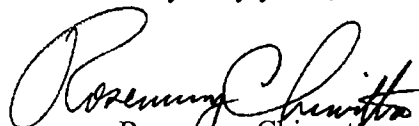
12. Pennsylvania Department of Transportation, at its initial cost and expense, perform all bridge inspections at the subject crossing; the inspection of the bridge should conform to all requirements of the National Bridge Inspection Standards, AASHTO Standards, and Pennsylvania Department of Transportation Policies and Procedures.

13. North East Township enforce the posted maximum load limit established herein, enlisting the assistance of the Commonwealth Weight Enforcement Teams, if necessary.

14. An exemption for vehicles in excess of eight (8) tons to utilize the bridge in emergency situations is hereby granted.

If you are dissatisfied with the resolution of this matter, you may, as set forth in 52 Pa. Code § 5.44, file a petition with the Commission within twenty (20) days of the date of this letter.

Very truly yours,

  
Rosemary Chiavetta  
Secretary



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

IN REPLY PLEASE  
REFER TO OUR FILE

November 3, 2014

M-2013-2386854

TO ALL PARTIES

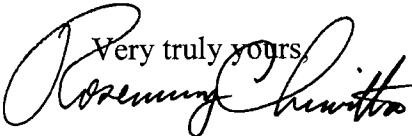
Bridge Structure where Bort Road (T-780) crosses above  
grade of the tracks of CSX Transportation Inc.,  
(DOT 524 035 A) in North East Township, Erie County.

To Whom It May Concern:

A final inspection conducted by a Commission staff engineer on August 27, 2014 revealed that all work has been completed in accordance with the Secretarial Letter dated October 28, 2013, and that all outstanding matters have been satisfied.

The Commission issues this Secretarial Letter in accordance with Section 2702 of the Public Utility Code and finds that since all work has been completed, the case be "CLOSED."

If you are dissatisfied with the resolution of this matter, you may, as set forth in 52 Pa. Code §5.44, file a petition with the Commission within twenty (20) days of the date of this Secretarial Letter.

Very truly yours,  


Rosemary Chiavetta  
Secretary



# Nauman Smith

Attorneys At Law

**Please Reply to:**  
P. O. Box 840  
Harrisburg, PA 17108-0840

Benjamin C. Dunlap, Jr.  
E-mail: [bdunlapjr@nssh.com](mailto:bdunlapjr@nssh.com)  
Telephone Extension 21

March 21, 2014

Robert J. Jeffrey, Esquire  
Solicitor - North East Township  
33 East Main Street  
North East, PA16428-1340

Dear Mr. Jeffrey:

As you know, our client, CSX Transportation, Inc. ("CSXT") is required under the Amended PUC Secretarial Letter dated October 28, 2013, to complete repairs to the Bort Road bridge in North East Township ("Township") and have the bridge reopened by April 30, 2014. CSXT is on track to meet that deadline.

I have been informed by CSXT's engineers that these repairs should provide approximately 10 years of additional service life for the bridge. At the end of that time, however, the bridge will be over 100 years old, well past its expected service life and in need of replacement.

As you know from the PUC field meeting held at the end of September, the bridge has been on the State Bridge Bill and eligible for replacement funding since 1986. However, in the 28 years since then, the Township has done nothing to progress the process to secure that funding and replace the bridge. The Township, as the owner of the roadway on the bridge, under Pennsylvania law is the owner of the bridge itself. See *City of Philadelphia v. Consolidated Rail Corporation*, 560 Pa. 587, 747 A.2d 352 (2000). As noted by John Morgan of the Erie County Department of Planning at the PUC field meeting, the owner of the bridge is the only party that can apply for Bridge Bill funding.


Please be advised that CSXT will agree to maintain the bridge until replacement, but if and only if the Township takes the necessary steps and secures replacement funding for the bridge within that time frame. If not, CSXT will petition the PUC to have maintenance responsibility for the bridge transferred to the Township.



Robert J. Jeffrey, Esquire  
March 21, 2014  
Page 2

As stated at the field meeting, CSXT will work with the Township to assist it in securing this funding, while the extensive repairs CSXT is making to the bridge should provide more than sufficient time to accomplish this, but only if the Township is diligent in pursuing the funding. Please contact me if you have any questions in this regard.

Sincerely yours,



Benjamin C. Dunlap, Jr.

BCDjr/jc

cc: Sean Craig, Esquire  
Ross White

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF CSX TRANSPORTATION, :  
INC. TO REASSIGN MAINTENANCE :  
RESPONSIBILITY FOR THE BRIDGE : P-2014-  
STRUCTURE WHERE BORT ROAD (T-270) :  
CROSSES ABOVE CSX TRANSPORTATION, : Filed Electronically  
INC.'S TRACKS (DOT 524 035 A) IN NORTH :  
EAST TOWNSHIP, ERIE COUNTY. :**

**CERTIFICATE OF SERVICE**

I hereby certify that I served one (1) copy of the Petition for Reassignment of Maintenance Responsibility on behalf of CSX Transportation, Inc. in the above-referenced matter, this day, by depositing the same in the United States mail, postage prepaid, in Harrisburg, Pennsylvania, addressed to:

MARK CHAPPELL PE CHIEF  
PENNDOT  
BUREAU OF DESIGN ROW & UTILITY  
DIVISION  
PO BOX 3362  
HARRISBURG PA 17105-3362

GINA M D'ALFONSO ESQUIRE  
PENNDOT  
OFFICE OF CHIEF COUNSEL  
PO BOX 8212  
HARRISBURG PA 17105-8212

MARK BREDL, A.D.BRIDGE ENGINEER  
PENNDOT DISTRICT 1-0  
255 ELM STREET  
OIL CITY, PA 16301

JEANETTE UHL  
PENNDOT DISTRICT 1-0  
255 ELM STREET  
OIL CITY, PA 16301

JOHN PERSINGER  
MACDONALD, ILLIG, JONES &  
BRITTON LLP  
100 STATE STREET, SUITE 700  
ERIE, PA 16507-1459

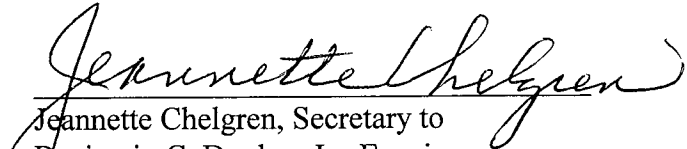
NICHOLAS MOBILIA  
ARROWHEAD WINE CELLARS  
12073 EAST MAIN ROAD  
NORTH EAST PA 16428

FRANCES J NOONAN JR  
PENNSYLVANIA STATE POLICE  
3RD FLOOR DEPT HEADQUARTERS  
1800 ELMERTON AVENUE  
HARRISBURG PA 17110

ERIE COUNTY  
ERIE COUNTY  
140 WEST SIXTH STREET  
ERIE PA 16501

AUGUST NEFF  
NORTHEAST TOWNSHIP  
10300 WEST MAIN ROAD  
NORTH EAST PA 16428

Date: January 29, 2015

  
Jeannette Chelgren, Secretary to  
Benjamin C. Dunlap, Jr., Esquire