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February 19, 2015

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, Pennsylvania 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 tracts (DOT 524 035 A) in North East Township, Erie County; Our File No. 29,628***

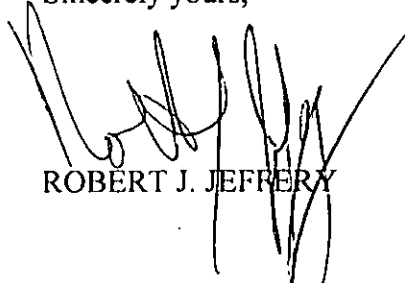
Dear Ms. Chiavetta:

Enclosed please find the original of the Answer to Petition of CSX Transportation, Inc. and New Matter filed on behalf of North East Township. Also attached is my Certificate of Service.

Please enter my appearance on behalf of North East Township. In addition, I have enclosed a copy of the first page of our Answer. I would ask that you time stamp that page and return it to me in the envelope provided.

Thank you for your assistance in this matter.

Sincerely yours,



ROBERT J. JEFFERY

RJJ:law  
Encls.  
cc: All parties per Certificate  
Supervisors, North East Township

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF CSX TRANSPORTATION, :  
INC. TO REASSIGN MAINTENANCE :  
RESPONSIBILITY FOR THE BRIDGE : P-2015-2465847  
STRUCTURE WHERE BORT ROAD (T-270) :  
CROSSES ABOVE CSX TRANSPORTATION, :  
INC.;S TRACTS (DOT 524 035 A) IN NORTH :  
EAST TOWNSHIP, ERIE COUNTY :

**ANSWER TO PETITION OF  
CSX TRANSPORTATION, INC.  
AND NEW MATTER**

*AND NOW*, comes North East Township, by and through its Solicitor, Robert J. Jeffery,

Esq., and answers as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Denied. The opinion of CSXT's engineers is within the exclusive control of CSXT

and strict proof is requested at hearing. It is denied that the bridge has an additional service life of approximately ten (10) years. The entire substructure was replaced and it is believed that the bridge, if properly maintained, has an additional service life far in excess of ten (10) years.

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7. Admitted in part and denied in part. It is admitted that the Bort Road bridge is listed in Act 100 of 1986. It is denied that it is eligible for replacement funding pursuant to said Act. Bort Road bridge is only listed for design costs, in an anticipated amount of \$13,000.00.

8. Denied. Bort Road is a Township road but the Township does not own the roadway on the bridge, nor is it the owner of the bridge itself. Reliance upon *City of Philadelphia v. Consolidated Rail Corporation*, 560 Pa. 587, 747 A.2d 352 (2000) is misplaced.

9. Admitted.

10. Admitted. Upkeep, maintenance and, if need be, replacement is the obligation of CSXT. It appears the bridge was only placed on the Bridge Bill for design costs.

11. Admitted. CSXT sent the letter in question, offering to do what the PUC has previously ordered.

12. Denied. The Township has not refused to take any action to secure Bridge Bill funding, the Township is not in a position to do so. As stated in paragraph 9, only the owner of a bridge may apply for bridge funding and the Township is not the owner of the Bort Road bridge.

13. Denied. All evidence regarding CSXT's intent is in its exclusive control and strict proof is demanded at hearing. Answering further, it is respectfully submitted that CSXT will provide such funding as may be ordered by the Public Utility Commission.

14. Admitted in part and denied in part. It is admitted that the process to obtain Bridge Bill funding generally takes years to achieve. With proper maintenance by CSXT, the Bort Road bridge should have an extended life span.

15. Denied. CSXT's threats to the Township do not constitute a valid reason for the Public Utility Commission to shift maintenance responsibilities, nor would such a shift be fair, equitable or reasonable.

16. Denied. The bridge in question was built by the railroad for its convenience. CSXT and its predecessors have enjoyed that convenience and the only equitable remedy, at such time as the Bort Road bridge is no longer serviceable, is for CSXT or its successors to repair or replace the bridge or, in the alternative, establish an at grade crossing.

**NEW MATTER**

17. Bort Road was laid out pursuant to Order of the Court of Quarter Sessions held at Erie in and for the County of Erie on November 8, 1832 and confirmed by the Court on May 9, 1833.

18. The railroad tracks in question were constructed after the establishment of Bort Road.

19. The Township has never maintained the Bort Road bridge substructure, superstructure or decking.

20. North East Township has never placed a bituminous course on the bridge deck.

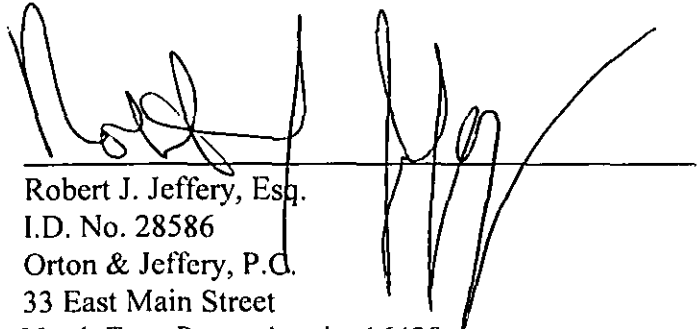
21. Maintenance responsibilities have previously been assigned by Order of the Public Utility Commission, adopted October 27, 1988, and the relief as requested in CSXT's Petition is barred by the doctrine of *res judicata*.

22. CSXT and its predecessors have continuously exerted control over the bridge. Subsequent to the Order of October 27, 1988, CSXT, or its predecessors, moved bridge supports and raised the level of the deck to accommodate taller train cars, without notification or request for authorization to the Township. These actions demonstrate CSXT's complete ownership and control of the bridge.

23. Although CSXT's predecessor constructed the bridge over a then existing road. CSXT has adamantly refused to restore the road with an at grade crossing.

**WHEREFORE**, North East Township respectfully requests that the Petition of CSX Transportation, Inc. be denied.

Respectfully submitted,



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Robert J. Jeffery, Esq.  
I.D. No. 28586  
Orton & Jeffery, P.C.  
33 East Main Street  
North East, Pennsylvania 16428  
Telephone: (814) 725-9657

Dated: February 17, 2015

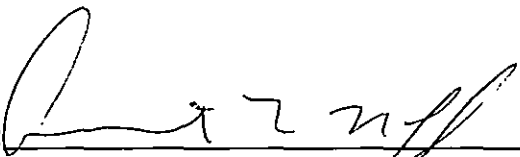
**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF CSX TRANSPORTATION, :  
INC. TO REASSIGN MAINTENANCE :  
RESPONSIBILITY FOR THE BRIDGE : P-2015-2465847  
STRUCTURE WHERE BORT ROAD (T-270) :  
CROSSES ABOVE CSX TRANSPORTATION, :  
INC.;S TRACTS (DOT 524 035 A) IN NORTH :  
EAST TOWNSHIP, ERIE COUNTY :

**VERIFICATION**

The undersigned verifies that the facts set forth in this Answer and New Matter are true and correct to the best of his knowledge, information and belief, and any false statements herein are subject to the penalties of 18 Pa. C.S. Section 4904 relating to Unsworn Falsification to Authorities.

NORTH EAST TOWNSHIP

BY:   
August Neff, Chairman, Board of Supervisors

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INC.'S TRACTS (DOT 524 035 A) IN NORTH :  
EAST TOWNSHIP, ERIE COUNTY :

**CERTIFICATE OF SERVICE**

AND NOW, this 19 day of February, 2015, the undersigned hereby certifies that a copy of the foregoing Answer and New Matter was served by first class, United States mail, postage pre-paid, addressed as follows:

Mark Chappell PE Chief  
PennDOT  
Bureau of Design ROW &  
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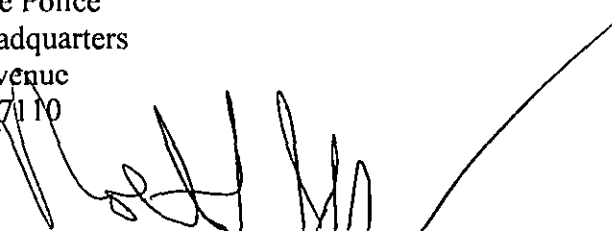
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Erie, PA 16501

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