

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
Telephone Extension: 21

March 13, 2015

Filed Electronically

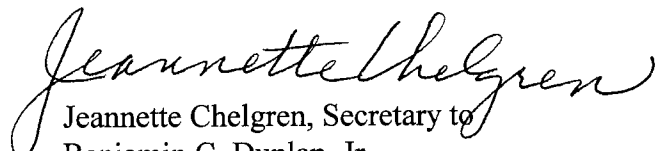
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

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. Docket No. P-2015-2465847

Dear Secretary Chiavetta:

I am enclosing CSX Transportation, Inc.'s Reply to North East Township's New Matter 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)

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

REPLY TO NORTH EAST TOWNSHIP'S NEW MATTER

CSX Transportation, Inc. ("CSXT"), by and through its undersigned counsel, hereby replies to the New Matter of North East Township, pursuant to 52 Pa. Code § 5.63(a) and § 1.56(b), as follows:

17. After reasonable investigation, CSXT is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 17 of the New Matter, and strict proof thereof is demanded.

18. After reasonable investigation, CSXT is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 18 of the New Matter, and strict proof thereof is demanded.

19. After reasonable investigation, CSXT is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 19 of the New Matter, and strict proof thereof is demanded.

20. After reasonable investigation, CSXT is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 20 of the New Matter, and strict proof thereof is demanded.

21. Admitted in part and denied in part. It is admitted that CSXT has current maintenance responsibility for the substructure and superstructure of the Bort Road bridge as the successor in interest to Consolidated Rail Corporation (“Conrail”), to maintain the bridge at the then-posted maximum load limits under the Commission’s Order entered October 31, 1988, at Docket No. I-870042. It is denied that such Order is *res judicata* as to CSXT’s current Petition to reassign maintenance responsibilities for the bridge structure. “The Commission may, at any time, after notice and after opportunity to be heard . . . amend any Order made by it.” 66 Pa.C.S. § 703(g); 52 Pa. Code § 5.572(d).

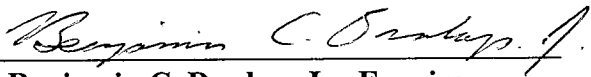
22. Admitted in part and denied in part. It is admitted that CSXT’s predecessor in interest, Conrail, vertically raised the superstructure of the bridge in or about 1990 to accommodate increased dimensional shipments, pursuant to Commission approval in the proceeding docketed to A-00109143. It is denied that the Township received no “notification or request for authorization.” To the contrary, the Township participated in the PUC proceeding and approved the plans and specifications for the project. See Exhibit “A,” letter from Roy D. Thomson, Secretary of the North East Township Supervisors to J.D. Cossel, Chief Engineer, Design and Construction of Conrail, dated May 10, 1990. It is further denied that CSXT owns the subject bridge. Conrail’s actions in raising the bridge superstructure to accommodate its operational needs and seeking the necessary PUC approval to do so mean nothing in regard to bridge ownership. The general rule under Pennsylvania law is that a bridge carrying a highway is owned by the governmental entity whose roadway traverses the bridge, absent definitive evidence to the contrary. See City of Philadelphia v. Consolidated Rail Corporation, 560 Pa. 587, 747 A.2d 352 (2000) (holding that the City owned the bridge carrying its street in spite of fact that

railroad's predecessor had constructed bridge and had maintenance responsibilities for it under an ordinance agreement with the City). The Township has not alleged any facts that would refute the legal presumption that it owns the Bort Road bridge.

23. Admitted. By way of further answer it is CSXT's policy, in line with that of the Federal Railroad Administration, to not agree to the establishment of any new at-grade crossings, especially on heavily traveled lines with high speed trains as on this line.

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, 18th Floor
P. O. Box 840
Harrisburg, PA 17108-0840
Telephone: 717-236-3010
Counsel for CSX Transportation, Inc.

Date: March 13, 2015

VERIFICATION

I, **Benjamin C. Dunlap, Jr., Esquire**, a member of the firm of Nauman, Smith, Shissler & Hall, LLP, attorneys for CSX Transportation, Inc. in the foregoing proceeding, make this verification on behalf of CSX Transportation, Inc., and do state that as an attorney for CSX Transportation, Inc., I am authorized to make this Verification on behalf of CSX Transportation, Inc., and further state that, based on information provided to me by CSX Transportation, Inc., the facts set forth in the foregoing **“Reply to North East Township’s New Matter”** are true and correct to the best of my knowledge, information and belief. I understand that my statements are made subject to 18 Pa. C.S. § 4904 providing for criminal penalties for unsworn falsification to authorities.



Benjamin C. Dunlap, Jr., Esquire

Date: March 13, 2015



NORTH EAST TOWNSHIP SUPERVISORS

10300 WEST MAIN ROAD • P. O. BOX 249
NORTH EAST, PENNSYLVANIA 16428

TELEPHONE: 814/725-8606

May 10, 1990

Consolidated Rail Corporation
15 North 32nd Street
Room 1200
Philadelphia, PA 19104-2849

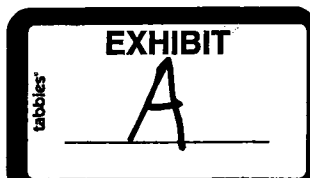
Attention: J. D. Cossel
Chief Engineer
Design and Construction

Subject: Bort Road Crossing
North East Township

Gentlemen:

The North East Township Supervisors have reviewed the plans and specifications forwarded by your office for approval via transmittal letter dated April 2, 1990. Based upon this review, the Supervisors, at their May 7, 1990 meeting approved these documents together with commitments made in the transmittal letter, subject to the following:

1. Authorization is given for a maximum elevation adjustment of 11.0 inches. If, during construction, it becomes evident additional height is necessary for any reason, the Supervisors will be presented with a revised strategy for this crossing. Any such strategy which increases approach slopes beyond the proposed, or, suggest closure of the crossing will not be considered acceptable at that time.
2. The analysis performed per Item 1 on page 2 of your transmittal must be completed, stamped and signed by a professional engineer licensed to practice in Pennsylvania and currently certified by PennDOT as a Bridge Safety Inspector. The structural analysis shall provide both inventory and operating load ratings using the allowable stress method. The use of PennDOT's Bar V Program is recommended. Evaluate load ratings using the AASHTO H loadings. The current inventory load rating equal to 12 tons must be maintained and a minimum inventory load rating of 15 tons is preferred by the Township when construction is complete.



Consolidated Rail Corporation
May 10, 1990
Page Two

Should you have any questions concerning this approval,
please don't hesitate to call me.

Very truly yours,

NORTH EAST TOWNSHIP SUPERVISORS

Roy D. Thomson

Roy D. Thomson
Secretary

cc: Mr. David Wilhelm

RECEIVED

MAY 14 1990

ASST. CHIEF
ENGINEER - STAFF

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF CSX TRANSPORTATION, :
INC. TO REASSIGN MAINTENANCE :
RESPONSIBILITY FOR THE BRIDGE : P-2015-2465847
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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 Reply to New Matter 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
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HARRISBURG PA 17105-3362

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PENNDOT
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ERIE, PA 16507-1459

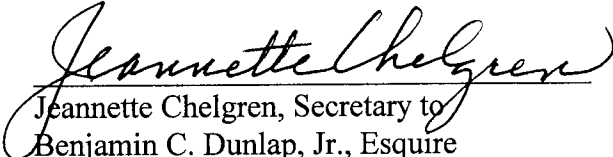
NICHOLAS MOBILIA
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12073 EAST MAIN ROAD
NORTH EAST PA 16428

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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: March 13, 2015


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