



(c) The Office of Special Assistants recommends that the Commission adopt the proposed Opinion and Order which grants the Parties' Motions for Time Extension.

Order Doc. No. 680737v1

Calendar Doc. No. 681063v1



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

IN REPLY PLEASE  
REFER TO OUR FILE

October 31, 2007

A-00111016  
C-00913256

BART TOWNSHIP BOARD OF SUPERVISORS  
28 HARRISON DRIVE  
QUARRYVILLE PA 17566

**DOCUMENT  
FOLDER**

Application of Consolidated Rail Corporation for the Abolition of Thirty-One  
Crossings of the Enola Branch, LC201323, MP 3.5 to MP 27.0, Sub No. 1095X,  
Harrisburg Division, Lancaster County

Board of Supervisors of Bart Township

v.

Consolidated Rail Corporation and the Pennsylvania Department of  
Transportation and Commissioners of the County of Lancaster, et al

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on September 13, 2007 has adopted  
an Opinion and Order in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty  
Secretary

encls  
cert. mail  
MH

See attached list for additional parties of record.

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Public Meeting held September 13, 2007

**Commissioners Present:**

Wendell F. Holland, Chairman  
James H. Cawley, Vice Chairman  
Tyrone J. Christy  
Kim Pizzingrilli

Application of Consolidated Rail Corporation  
for the Abolition of Thirty-One Crossings of  
the Enola Branch, LC201323, MP 3.5 to  
MP 27.0, Sub No. 1095X, Harrisburg Division,  
Lancaster County

A-00111016

Board of Supervisors of Bart Township

C-00913256

v.

Consolidated Rail Corporation and the  
Pennsylvania Department of Transportation  
and Commissioners of the County of  
Lancaster, *et al.*

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Commission for consideration and disposition are the following  
Motions: (1) Motion for Extension of Time filed by the Pennsylvania Department of  
Transportation (PennDOT's Motion) on July 25, 2007; (2) Motion for Extension of Time  
filed by Bart, Martic and Sadsbury Townships (Townships' Motion) on July 30, 2007;  
and (3) Motion for Further Extension of Time filed by Norfolk Southern Railway

Company (Railroad's Motion) on August 3, 2007. No Response to the Motions has been filed.

The Opinion and Order to which the above-enumerated documents refer was initially entered on October 9, 1997, and subsequently was modified by Opinion and Orders entered on November 22, 1999, January 26, 2001, and April 15, 2002.

### **History of the Proceedings**

This proceeding involves two consolidated proceedings at Docket Nos. C-00913256 and A-00111016. The Complaint at the C-docket was initiated on February 25, 1991. The proceeding at the A-docket was initiated when Conrail filed an Application with the Commission on September 29, 1993, requesting approval for the abolition of thirty-one rail-highway crossings along its Enola Branch located in Lancaster County.

After preliminary proceedings, the Commission, per Opinion and Order entered on October 9, 1997, adopted the Recommended Decision of Administrative Law Judge (ALJ) Louis G. Cocheres, as modified. A Stipulation of Settlement among the Parties subsequently was approved, consistent with the October 9, 1997 Opinion and Order. As above noted, the October 9, 1997 Opinion and Order was modified by Opinion and Orders entered on November 22, 1999, January 26, 2001, and April 15, 2002.

The instant Motions were filed as enumerated above.

## Discussion

We note that Section 1.15 of our Regulations, 52 Pa. Code § 1.15, confers upon us the authority and discretion to grant an extension of time. Section 1.15 provides, in pertinent part, as follows:

### **§ 1.15. Extensions of time and continuances**

- (a) Extensions of time shall be governed by the following:

Except as otherwise provided by statute, whenever under this title or by order of the Commission, . . . an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, by the Commission, the presiding officer or other authorized person, for good cause be extended upon motion made before the expiration of the period originally prescribed or as previously extended. Upon motion made after the expiration of the specified period, the act may be permitted to be done where reasonable grounds are shown for the failure to act.

The instant Motions were filed as enumerated above. We shall address each request separately.

### **PennDOT's Motion**

By Opinion and Order entered herein on October 9, 1997, the Commission directed PennDOT to perform certain items of work within specified time frames. PennDOT avers that, due to ongoing litigation that has recently been resolved, it was unable to complete all of the items of work it had agreed to perform in conjunction with

the Stipulation of Settlement which was incorporated in the 1997 Opinion and Order. Accordingly, PennDOT requests that the 1997 Opinion and Order be modified relative to Crossing Nos. 17 and 27. (PennDOT's Motion, ¶¶ 3-5).

As to Crossing No. 17, PennDOT was directed to remove the bridge substructure and superstructure and to construct a new highway on a new alignment to remove the sharp turns. PennDOT anticipates that this project will be completed by December 31, 2011, and it requests that the Commission's 1997 Order be modified to reflect that completion date. (PennDOT's Motion, ¶¶ 6, 7). Specifically, a grant of PennDOT's request for a time extension for Crossing No. 17 would entail modification of Ordering Paragraphs Nos. 99 and 100.

As to Crossing No. 27, if PennDOT had not, within two years of the date of entry of the 1997 Order, let a contract to reconstruct and realign S.R. 0324 (Marticville Road), then Martic Township was required to perform certain items of work. Those provisions were outlined in Ordering Paragraph No. 142 of the 1997 Order.

PennDOT avers that, given the litigation in this matter, the project is only in the preliminary engineering phase. A consultant has been retained to perform the preliminary engineering, and PennDOT requests that it be granted an extension of time until December 31, 2010 to perform the items of work outlined in Ordering Paragraph No. 142. PennDOT further avers that Martic Township, Providence Township and Norfolk Southern do not oppose its request for a time extension. (PennDOT's Motion, ¶¶ 10, 13).

On review of PennDOT's Motion, we find it to be meritorious. As noted by PennDOT, there has been extensive litigation in this matter. Additionally, no Party objects to the extension of time sought by PennDOT. Accordingly, the instant Motion

will be granted, and the appropriate modifications will be made to the affected Ordering Paragraphs.

### **Townships' Motion**

The Townships note that the Commission's 1997 Order directed the Parties to perform various tasks within specified time frames, including the conveyance of the Railroad's property to the Townships and the payment of funds by the Railroad to the Townships.

On January 1, 2000, the Townships jointly filed a motion to request an extension of time for the purpose of extending the deadlines established by the Commission for the completion of certain tasks directed by the 1997 Order. By Order entered on February 16, 2000, the Commission granted the Townships' motion. However, the Townships aver that, since 2000, they have been unable to convey the relevant property because of the pendency of several matters in other forums, including the Federal Surface Transportation Board, the Third Circuit Court of Appeals, the Lancaster County Court of Common Pleas and the Pennsylvania Commonwealth Court. (Townships' Motion, ¶ 3).

In 2005, Lancaster County initiated a condemnation action and attempted to take the property from the Railroad. The Townships successfully opposed the condemnation and prevailed after the County appeal to the Commonwealth Court. (Townships' Motion, ¶ 4). Currently, the Railroad is completing the "Section 106" duties and the subdivision approval process necessary to allow it to convey the property to the Townships. The Townships expect that, barring further unforeseen delays, the Railroad will be legally empowered to convey the property to the Townships in the fall of 2007. (Townships' Motion, ¶¶ 5, 6).

We will briefly outline the portions of the Motion of Sadsbury, Bart and Martic Townships.

### **Portion of Sadsbury Township**

The 1997 Order required Sadsbury Township to perform certain specified work at the Orchard Road crossing (Crossing No. 2), as detailed in Ordering Paragraphs 28 and 29 of that Order. Sadsbury Township avers that, due to the delay in the conveyance of the property and settlement funds to the Township, it requests an extension of time until December 31, 2009, to perform the work it was directed to do. The Township further avers that the grant of its request will not cause any decrease in safety or any additional threat of harm to the public through the duration of the requested extension. (Motion, ¶¶ 8, 9).

On review of Sadsbury Township's Motion, we find it to be meritorious. As noted by the Township, PennDOT, the Railroad and the Townships of Martic, Conestoga, Providence and Bart do not oppose its request for a time extension. Accordingly, this portion of the Motion will be granted, and the appropriate modifications will be made to the affected Ordering Paragraphs.

### **Portion of Bart Township**

The 1997 Order required Bart Township to perform certain items of work at the Lamparter Road crossing (Crossing 7A), as detailed in Ordering Paragraphs 58 and 59 of that Order. Bart Township avers that, due to the delay in the conveyance of the property and settlement funds to the Township, it requests an extension of time until December 31, 2009, to perform the work it was directed to do. The Township further

avers that the grant of its request will not cause any decrease in safety or any additional threat of harm to the public through the duration of the requested extension. (Motion, ¶¶ 13, 14).

On review of Bart Township's Motion, we find it to be meritorious. As noted by the Township, PennDOT, the Railroad and the Townships of Martic, Conestoga, Providence and Sadsbury do not oppose its request for a time extension. Accordingly, this portion of the Motion will be granted, and the appropriate modifications will be made to the affected Ordering Paragraphs.

#### **Portion of Martic Township**

The 1997 Order required Martic Township to perform certain items of work at the Marticville Road crossing, (Crossing 27), as detailed in Ordering Paragraph 142 of that Order. Martic Township avers that, due to the delay in the conveyance of the property and settlement funds to the Township, it requests an extension of time until December 31, 2010, to perform the work it was directed to do. The Township further avers that the grant of its request will not cause any decrease in safety or any additional threat of harm to the public through the duration of the requested extension. (Motion, ¶¶ 18, 19).

On review of Martic Township's Motion, we find it to be meritorious. As noted by the Township, PennDOT, the Railroad and the Townships of Conestoga, Providence, Bart and Sadsbury do not oppose its request for a time extension. Accordingly, this portion of the Motion will be granted, and the appropriate modifications will be made to the affected Ordering Paragraphs. We note, however, that Ordering Paragraph 142 has already been modified in response to PennDOT's Motion, *supra*. Additionally, PennDOT also requested that the time for the performance of its portion of

the work be extended to December 31, 2010. Accordingly, that date will be reiterated twice in the modified Ordering Paragraph herein.

### **Railroad's Motion**

In the 1997 Order, the Commission directed the Parties to perform certain items of work within specified time frames, including the conveyance of the Railroad's property to the Townships and the payment of funds by Consolidated Rail Corporation (Conrail) to the Townships. The 1997 Order directed Conrail to perform certain items of work at a number of the crossings, namely: Crossing Nos. 1, 4, 10, 15, 16, 21, 26, and 28.

On October 18, 1999, Conrail filed a motion to request an extension of time with regard to the work directed to be performed at the relevant crossings. That motion was granted per Commission Order entered November 22, 1999. On December 8, 2000, Conrail filed a petition for time extension with regard to the removal of the crossing structure at U.S. Route 222 in Providence Township (Crossing No. 16). That petition was granted per Commission Order entered January 26, 2001.

On June 1, 1999, the subject rail line was conveyed to Pennsylvania Lines LLC. On August 27, 2004, Pennsylvania Lines LLC was merged into Norfolk Southern Railway, referred to in this Order as "Railroad," which now owns the subject line. (Railroad's Motion, ¶ 5). The Railroad avers that, since 2000, it has been unable to convey the property to the Townships because of the pendency of several matters in other forums, including the Federal Surface Transportation Board, the Third Circuit Court of Appeals, the Lancaster Court of Common Pleas, and the Pennsylvania Commonwealth Court. (Railroad's Motion, ¶ 6).

In 2005, Lancaster County initiated a condemnation action and attempted to appropriate the relevant property from the Railroad. The Townships successfully opposed the condemnation and prevailed after the County appealed to Commonwealth Court. Currently, the Railroad is completing the "Section 106" historic preservation procedure and is in the process of obtaining the local subdivision approval necessary to allow it to convey the property to the Townships. Barring further unforeseen delays, the Railroad expects to be legally empowered to convey the property to the Townships in the fall of 2007. (Railroad's Motion, ¶¶ 8, 9).

On review of the Railroad's Motion, we find it to be meritorious. As noted previously in this Opinion and Order, there has been extensive litigation in this matter. Additionally, we conclude that the Railroad has asserted reasonable grounds for a further extension of time and that its request is congruent with the public interest and safety. We note that the U.S. Route 222 structure in Providence Township, at Crossing No. 16, will be removed on an expedited basis prior to the removal of the other structures. Accordingly, the instant Motion will be granted, and the appropriate modifications will be made to the Ordering Paragraphs of the instant Opinion and Order.

### **Conclusion**

We have carefully reviewed the record as developed in this proceeding. Premised upon our review, we find that PennDOT's Motion, the Townships' Motion, and the Railroad's Motion, all requesting time extensions, are meritorious to the extent discussed. Accordingly, they will be granted.

However, due to the lengthy litigation which has characterized this proceeding, this project has been pending for far too long, putting the safety of the traveling public in jeopardy. Accordingly, we encourage all Parties to work as

expeditiously as possible to complete the project in a timely manner. Additionally, we will direct that the Parties file status reports on the progress of this project. Said reports are to be filed with the Secretary of the Commission, with a copy to the Bureau of Transportation and Safety, Rail Division, every six months, commencing six months after the date of entry of the instant Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Motion for Extension of Time filed by Pennsylvania Department of Transportation on July 25, 2007, with reference to our Opinion and Order herein originally entered on October 9, 1997, as subsequently modified, is granted.

2. That Motion for Extension of Time filed by Sadsbury, Bart and Martic Townships on July 30, 2007, with reference to our Opinion and Order herein originally entered on October 9, 1997, as subsequently modified, is granted.

3. That the Motion for Further Extension of Time filed by Norfolk Southern Railway Company on August 3, 2007, with reference to our Opinion and Order herein originally entered on October 9, 1997, as subsequently modified, is granted.

4. That our Opinion and Order herein originally entered on October 9, 1997, as subsequently modified, be further modified as outlined in the following Paragraphs.

5. That Ordering Paragraph No. 99 of our Opinion and Order herein originally entered on October 9, 1997, as subsequently modified, and referring to Crossing No. 17, be further modified to read as follows:

99. The Pennsylvania Department of Transportation, at its sole cost and expense, on or before December 31, 2011, furnish all materials and do all work necessary to remove the bridge substructure and superstructure to a point two (2) feet below the surrounding ground line, and to grade, seed, and mulch the area thus disturbed to prevent soil erosion, all in a safe and satisfactory condition.

6. That Ordering Paragraph No. 100 of our Opinion and Order herein originally entered on October 9, 1997, as subsequently modified, and referring to Crossing No. 17, be further modified to read as follows:

100. The Pennsylvania Department of Transportation, at its sole cost and expense, on or before December 31, 2011, furnish all materials and do all work necessary to construct a new highway, on partial embankment if necessary, on a new alignment so as to remove the sharp turns on the existing highway. The said new highway is to be constructed for the class and volume of traffic using the highway. Said construct is to include a pipe(s) to provide for surface water drainage under the highway along the existing ditches or swales. All areas thus disturbed shall be graded, seeded, and mulched to prevent soil erosion.

7. That Ordering Paragraph No. 142 of our Opinion and Order herein originally entered on October 9, 1997, as subsequently modified, and referring to Crossing No. 27, be further modified to read as follows:

142. That, if Pennsylvania Department of Transportation has not let a contract to reconstruct and realign S.R. 0324, Marticville Road, by December 31, 2010, then Martic Township, having agreed to do so, at its sole cost and expense, by December 31, 2010, furnish all materials and do all work necessary to remove the bridge substructure and superstructure at the Marticville Road crossing to a point

two (2) feet below the surrounding ground line, and to grade the embankments behind the structure to a two-to-one slope, and to grade, seed and mulch the areas thus disturbed to prevent soil erosion, all in a safe and satisfactory condition.

8. That Ordering Paragraph No. 28 of our Opinion and Order herein originally entered on October 9, 1997, as subsequently modified, and referring to Crossing No. 2, be further modified to read as follows:

28. That Sadsbury Township, at its sole cost and expense, by December 31, 2009, furnish all materials and do all work necessary to remove the bridge substructure and superstructure to a point two (2) feet below the grade of the new highway.

9. That Ordering Paragraph No. 29 of our Opinion and Order herein originally entered on October 9, 1997, as subsequently modified, and referring to Crossing No. 2, be further modified to read as follows:

29. That Sadsbury Township, by December 31, 2009, at its sole cost and expense, furnish all materials and do all work necessary to construct a new highway embankment for the class and volume of traffic using the highway. Said construction is to include a pipe(s) at the bottom of the embankment to provide for surface water drainage through the embankment along the ditches or swales. All embankments shall be graded, seeded and mulched to prevent soil erosion.

10. That Ordering Paragraph No. 58 of our Opinion and Order herein originally entered on October 9, 1997, as subsequently modified, and referring to Crossing No. 7A, be further modified to read as follows:

58. That Bart Township, having agreed to do so, at its sole cost and expense, by December 31, 2009, furnish all materials and do all work necessary to remove the bridge substructure and superstructure at the Lamparter Road crossing to a point two (2) feet below the grade of the new highway.

11. That Ordering Paragraph No. 59 of our Opinion and Order herein originally entered on October 9, 1997, as subsequently modified, and referring to Crossing No. 7A, be further modified to read as follows:

59. That Bart Township, by December 31, 2009, at its sole cost and expense, furnish all materials and do all work necessary to construct a new highway on embankment for the class and volume of traffic using the highway at the Lamparter Road crossing. Said construction is to include a pipe(s) at the bottom of the embankment to provide for surface water drainage through the embankment along the ditches or swales. All embankments shall be graded, seeded and mulched to prevent soil erosion.

12. That Ordering Paragraph No. 22 of our Opinion and Order herein originally entered on October 9, 1997, as subsequently modified, and referring to Crossing No. 1, be further modified to read as follows:

22. That Norfolk Southern Railway Company, at its sole cost and expense, by June 30, 2008, furnish all materials and do all work necessary to install fencing along the parapets of the bridge.

13. That Ordering Paragraph No. 92 of our Opinion and Order herein originally entered on October 9, 1997, as subsequently modified, and referring to Crossing No. 16, be further modified to read as follows:

92. That Norfolk Southern Railway Company, having agreed to do so, at its sole cost and expense, by December 31, 2008, furnish all materials and do all work necessary to remove the bridge substructure and superstructure to a point two (2) feet below the surrounding ground line, at to grade the embankments behind the structure to a two-to-one slope, and to grade, seed and mulch the areas thus disturbed to prevent soil erosion, all in a safe and satisfactory condition.

14. That Ordering Paragraph No. 149 of our Opinion and Order herein originally entered on October 9, 1997, as subsequently modified, and referring to Crossing No. 28, be further modified to read as follows:

149. That Norfolk Southern Railway Company, by June 30, 2009, at its sole cost and expense, furnish all materials and do all work necessary to remove the National Railroad Passenger Corporation's transmission line towers from the bridge, and to re-suspend the line, in a manner satisfactory to National Railroad Passenger Corporation. That National Railroad Passenger Corporation cooperate with Norfolk Southern Railway Company to permit this work, and further that National Railroad Passenger Corporation cooperate with Norfolk Southern Railway Company in the removal of said towers and re-suspension of the transmission line.

15. That Ordering Paragraph No. 39 of our Opinion and Order herein originally entered on October 9, 1997, as subsequently modified, and referring to Crossing No. 4, be further modified to read as follows:

39. That Norfolk Southern Railway Company, having agreed to do so, at its sole cost and expense, by December 31, 2009, furnish all materials and do all work necessary to remove the bridge substructure and superstructure to a point two (2) feet below the surrounding ground line, and to grade the embankments behind the structure to a two-to-one slope, and to grade, seed and mulch the areas thus disturbed to prevent soil erosion, all in a safe and satisfactory condition.

16. That Ordering Paragraph No. 70 of our Opinion and Order herein originally entered on October 9, 1997, as subsequently modified, and referring to Crossing No. 10, be further modified to read as follows:

70. That Norfolk Southern Railway Company, having agreed to do so, at its sole cost and expense, by December 31, 2009, furnish all materials and do all work necessary to remove the bridge substructure and superstructure to a point two (2) feet below the surrounding ground line, and to grade the embankments behind the structure to a two-to-one slope, and to grade, seed and mulch the areas thus disturbed to prevent soil erosion, all in a safe and satisfactory condition.

17. That Ordering Paragraph No. 86 of our Opinion and Order herein originally entered on October 9, 1997, as subsequently modified, and referring to Crossing No. 15, be further modified to read as follows:

86. That Norfolk Southern Railway Company, having agreed to do so, at its initial cost and expense, by December 31, 2009, furnish all materials and do all work necessary to remove the bridge substructure and superstructure to a point two (2) feet below the surrounding ground line, and to grade the embankments behind the structure to a two-to-one slope, and to grade, seed and mulch the areas thus disturbed to prevent soil erosion, all in a safe and satisfactory condition.

18. That Ordering Paragraph No. 114 of our Opinion and Order herein originally entered on October 9, 1997, as subsequently modified, and referring to Crossing No. 21, be further modified to read as follows:

114. That Norfolk Southern Railway Company, having agreed to do so, at its initial cost and expense, by

December 31, 2009, furnish all materials and do all work necessary to remove the bridge substructure and superstructure to a point two (2) feet below the surrounding ground line, and to grade the embankments behind the structure to a two-to-one slope, and to grade, seed and mulch the areas thus disturbed to prevent soil erosion, all in a safe and satisfactory condition.

19. That Ordering Paragraph No. 136 of our Opinion and Order herein originally entered on October 9, 1997, as subsequently modified, and referring to Crossing No. 26, be further modified to read as follows:

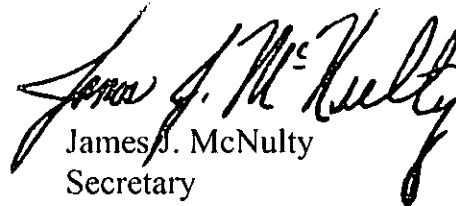
136. That Norfolk Southern Railway Company, having agreed to do so, at its initial cost and expense, by December 31, 2009, furnish all materials and do all work necessary to remove the bridge substructure and superstructure to a point two (2) feet below the surrounding ground line, and to grade the embankments behind the structure to a two-to-one slope, and to grade, seed and mulch the areas thus disturbed to prevent soil erosion, all in a safe and satisfactory condition.

20. That, in all other respects, our Opinion and Order herein originally entered on October 9, 1997, as subsequently modified, remains in full force and effect.

21. That the Pennsylvania Department of Transportation, the Townships of Bart, Martic and Sadsbury and Norfolk Southern Railway Company each file status reports on the progress of this project. Said reports are to be filed with the Secretary of

the Commission, with a copy to the Bureau of Transportation and Safety, Rail Division, every six months, commencing six months after the date of entry of the instant Opinion and Order.

THE COMMISSION,

  
James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: September 13, 2007

ORDER ENTERED: OCT 31 2007