



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

June 8, 2016

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

RE: **Docket No. A-00111016 and C-00913256**

Dear Secretary Chiavetta:

Enclosed for filing please find the Department's *Joint Petition for Modification* in the above-captioned matter. Due to the size of the filing, a CD is also provided. Only the signatory parties are being provided the entire filing. Nonsignatory parties will not be receiving the construction plans due the size. If a party is interested in seeing the plans, they will be promptly provided.

I hereby certify that a copy has been sent to all parties of record as indicated by the Certificate of Service.

Very truly yours,

Gina M. D'Alfonso
Assistant Counsel in Charge

Enclosure

220/GMD:ndm

cc: ALJ Joel Cheskis
Parties of Record
Ronald Hull, PUC, Supervisor, Rail Safety Engineering
Mark J. Chappell, P.E., Chief, Utilities and Right-of-Way Section
Ahmed Lasloudji, District Grade Crossing Administrator, District 8-0

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Application of Consolidated Rail Corporation for the Abolition of 31 Crossings for the Enola Branch, LC201323, MP 3.5 to MP 27.0, Sub No. 1095X, Harrisburg Division, Lancaster County :

Docket No. A-00913256

Board of Supervisors of Bart Township :

Docket No. C-00913256

v. :

Consolidated Rail Corporation, Pennsylvania Department of Transportation and Lancaster County, et al. :

JOINT PETITION FOR MODIFICATION OF COMMISSION ORDER ENTERED OCTOBER 9, 1997

WHEREAS, Consolidated Rail Corporation ("Conrail") filed an Application with the Public Utility Commission ("Commission") to abolish thirty-one (31) crossings where the Enola Branch, Harrisburg Division, crossed above and below certain highways in a total of eight (8) municipalities in Lancaster and Chester Counties, Pennsylvania, including a low-grade crossing where Pumping Station Road, (State Road 2015) crosses under the railroad right-of-way in Eden Township, Lancaster County ("Township");

WHEREAS, Norfolk Southern Railway Company ("Norfolk Southern") is the successor-in-interest to Pennsylvania Lines, LLC, as the result of a merger that became effective in 2004 and, under which, Norfolk Southern is now responsible for all obligations assigned to Conrail in this proceeding;

WHEREAS, on October 9, 1997, the Commission entered an Opinion and Order ("1997 Order") approving a Stipulation of Settlement dated February 5, 1997 ("1997 Stipulation") entered

into by multiple parties, including the Pennsylvania Department of Transportation (“PennDOT”), Township, Conrail, now Norfolk Southern and the Department of Conservation and Natural Resources (“DCNR”);

WHEREAS, in the 1997 Order, the Pumping Station Road crossing, identified in that Order as Crossing No. 10, was abolished upon completion of the work ordered therein;

WHEREAS, Crossing No. 10 has a stone masonry arch structure which was constructed on a skew that crosses two lanes of roadway. The bridge was to be removed to a point two (2) feet below the surrounding ground line and the embankments graded to a two-to-one slope;

WHEREAS, pursuant to the 1997 Order, PennDOT would remain responsible for maintenance of the roadway at its sole expense;

WHEREAS, Norfolk Southern submitted plans for the removal of the arch to the parties for review and to the Commission for approval on November 22, 2011;

WHEREAS, PennDOT filed objections to said plans on December 15, 2011;

WHEREAS, by Petition filed with the Commission on April 23, 2012, Township sought a modification of the 1997 Order to allow the stone bridge (Crossing 10) to remain and to be preserved by Township;

WHEREAS, this matter was assigned to the Office of Administrative Law Judge and a Prehearing Conference Order was issued on January 25, 2013;

WHEREAS, Township, by its counsel, Janice Longer, Esquire, PennDOT, by its counsel, Gina M. D’Alfonso, Esquire, the Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement (“Bureau”), by its counsel, David E. Screven, Esquire, DCNR by its counsel, Stephen Ekema-Agbaw, Esquire, Pennsylvania – American Water Company, by its counsel,

Michael A. Gruin, Esquire and Norfolk Southern, by its counsel, Benjamin C. Dunlap, Jr., Esquire, remain active parties in this matter;

WHEREAS, a prehearing conference was held on February 21, 2013, before Administrative Law Judges Elizabeth H. Barnes and Joel H. Cheskis;

WHEREAS, the matter was scheduled for hearing on October 17, 2013;

WHEREAS, by letter dated October 8, 2013, the Township withdrew its petition to allow the stone bridge to remain in place on;

WHEREAS, counsel for PennDOT and Norfolk Southern requested a suspension of the litigation schedule to allow the parties time to try to resolve the remaining issue which was PennDOT's objections to the removal plan;

WHEREAS, Township, Norfolk Southern and PennDOT have worked together to develop a solution that addresses the concerns of the parties and the safety concerns that had been raised at the initial hearing in this matter;

WHEREAS, PennDOT caused to be performed a Traffic Control Study at the crossing location which is attached hereto as Exhibit "A" and incorporated herein¹;

WHEREAS, this traffic control study shows that Pumping Station Road has an estimated Annual Average Daily Traffic (AADT) of 280 vehicles and identifies recommendations regarding safety measures that should be put into place to address the safety concerns raised at the initial hearing in this matter;

¹ The Department has filed a Petition for Protective Order covering the Traffic Control Study on May 26, 2016. Attached is the work order for the Traffic Control Study. The body of the Traffic Control Study will be provided once a Protective Order has been issued.

WHEREAS, the parties hereto have also reached a consensus as to a scope of work to address storm water management at the crossing location;

WHEREAS, all of the active parties now agree that the stone bridge can remain, as requested by Township, subject to the imposition of certain conditions;

WHEREAS, counsel for Township, PennDOT, Norfolk Southern and the Bureau had a telephone conference with ALJ Cheskis regarding the resolution of the outstanding issues wherein the parties were directed to file a petition to modify the existing order; and,

WHEREAS the terms of the proposed resolution of the issues are memorialized in this Joint Petition.

NOW, THEREFORE, pursuant to 66 Pa. C.S §2702 and 52 Pa Code §5.41 the undersigned parties to this proceeding jointly petition the Commission for modification of its October 9, 1997 Order as follows:

1. Upon the Commission's approval of this Petition, the stone bridge at Crossing No. 10 shall be permitted to remain in place and Township agrees to assume ownership and all future maintenance responsibility for the stone bridge structure, at its sole cost and expense.

2. In addition to assuming ownership and maintenance responsibilities for the bridge, Township agrees to the following conditions and requirements:

(a) Township, as part of its maintenance responsibility of the stone arch, shall perform every two years, an environs-only inspection of the bridge consistent with PennDOT specifications and requirements and provide a copy of that inspection report to PennDOT.

(b) Township shall relocate, install and maintain all signing identified on Exhibit "A" which is attached hereto and incorporated herein.

(c) All signs shall be erected in accordance with PennDOT standards and the applicable regulations. Township has no objection to the signs advising the motoring public of the reduced vertical clearance remaining on the stone arch bridge.

(d) Township will maintain the concrete drainage facilities installed in accordance with Exhibit B.

(e) Township will donate any right of way necessary for the construction and future maintenance of installation of the concrete drainage facilities and the natural swale.

3. Township confirms that all emergency vehicles requiring access to properties in or about Pumping Station Road are able to travel through the stone arch. Township is not aware of any commercial vehicles that are unable to travel through the arch; however, if there are any commercial vehicles of this type, there are adequate alternative routes for those vehicles to use.

4. Norfolk Southern agrees that it will bear the cost of the preparation of the construction plans for the drainage improvements, which includes the plans for the maintenance and protection of traffic consistent with PennDOT Publication 213. These plans are attached hereto as Exhibit "B" and incorporated herein for the review by all parties and approval by the Commission; obtain and implement any and all permits as may be required for the drainage improvements as shown on Exhibit "B" and bear the cost of the procurement of any and all permits and the construction of the drainage facilities, and the implementation of the maintenance and protection of traffic in accordance with PennDOT Publication 213.

5. PennDOT shall continue to maintain State Route 2015, exclusive of the concrete drainage facility, at its sole cost and expense. Said maintenance includes:

i. The installation and maintenance of any pavement markings as may be required.

ii. The maintenance of signs attached to the stone arch bridge indicating the vertical clearance available to the traveling public.

iii. The maintenance of any natural drainage swale.

6. The conditions identified above, while not guaranteeing that an accident could not occur in the vicinity of the stone arch bridge, adequately safeguard the public.

7. Upon approval of this Joint Petition for Modification, PennDOT's objections to Norfolk Southern's plans for removal of the stone arch can be deemed withdrawn and the removal plans would be deemed moot.

8. The parties hereto have no objections to Exhibits "A" and "B" and agree to abide by the responsibilities and financial obligations delineated in this Joint Petition.

9. This obligations contained herein are contingent upon the approval of this Joint Petition and the issuance of a Commission Secretarial Letter or Order accepting and approving the same.

10. The parties agree that any party may petition the Commission for hearing, if the Commission Secretarial Letter or Order substantively modifies the terms of this Joint Petition. In that event, any party may give notice to the other parties that it is withdrawing from this Joint Petition. Such notice must be in writing and must be given within ten (10) business days of the issuance of any Initial or Recommended Decision or any Commission Order or Secretarial Letter which adopts this Joint Petition with substantive modifications of its terms. The consequence of

any party withdrawing from this Joint Petition as set forth above is that all issues associated with the requested relief presented in the proceeding will be fully litigated unless otherwise agreed between the parties and all obligations of the parties as set forth above to each other are terminated and of no force and effect.

11. The benefits and obligations of this Joint Petition shall be binding upon the successors and assigns of the parties to this Joint Petition upon entry of an Order or issuance of a Secretarial Letter.

12. Counterparts: This document may be signed in counterparts and all signatures attached hereto will be considered as original.

In order to effectuate the parties' proposed resolution, the undersigned parties request that the Commission issue a Secretarial Letter or Order in substantially the following form. The Commission will serve the public interest by adopting the terms of this Joint Petition. The proposed resolution will save the parties the time and expense they would incur further litigating this matter before the Commission. Facts and circumstances have changed since the 1997 Order in that the recreational trail is a reality; the retention of the stone arch bridge will enhance the trail in terms of use and safety; and the demonstrated low traffic using Pumping Station Road, together with the safety features incorporated in this Joint Petition will adequately safeguard the traveling public. Since all of the parties agree to the terms of the Joint Petition, adopting it will eliminate the possibility of any appeal from the Commission Secretarial Letter or Order, thus saving the parties the additional time and expense they might incur in such an appeal. Adopting this terms of this Joint Petition will further the statutory provisions of 66 Pa.C.S. § 2702 *et seq.*, in regard to the public convenience and safety, and further the Commission policy of encouraging settlements.

52 Pa. Code § 5.231(a). The parties hereto therefore request that the Commission adopt the following ordering paragraphs in accordance with the Joint Petition of the parties and in furtherance of the public interest and safety:

1. That the Joint Petition offered by the parties in this proceeding be and hereby is approved and adopted by the Commission.
2. The construction plans, including the plans for the maintenance and protection of traffic, submitted by the Parties as Exhibit "B" are hereby approved.
3. The Commission's 1997 Order entered in the above-captioned matters shall be

modified to read as follows:

69. That the Crossing where Pumping Station Road crosses under the former right-of-way of Consolidated Rail Corporation in Eden Township is hereby abolished, with the structure remaining in place, subject to the following conditions:

(a) Township shall perform a bi-annual, environs-only inspection of the bridge consistent with PennDOT specifications and requirements and provide a copy of that inspection report to PennDOT. The first inspection shall be performed by September 30, 2016.

(b) Township shall install the traffic control signs consistent with Exhibit "B" and in accordance with PennDOT standards and the applicable regulations.

(c) Township will maintain the concrete drainage facilities installed in accordance with Exhibit B.

(d) Norfolk Southern shall, at its sole cost and expense, and in accordance with the approved construction plans, obtain all permits necessary for the drainage improvements, implement the maintenance and protection of traffic in accordance with PennDOT

Publication 213 and construct the drainage improvements consistent with the plans submitted as Exhibit "B" and approved by the Commission herein.

(e) PennDOT shall reduce the number of lanes under the bridge tunnel from two (2) lanes to one lane.

70. Deleted in its entirety.

71. Deleted in its entirety.

72. That Norfolk Southern, at its sole cost and expense, in the construction of the drainage improvements, shall, if required, make any necessary provisions for the protection and/or relocation of the Pennsylvania American Water Company, water line near the Crossing.

73. Remains unchanged.

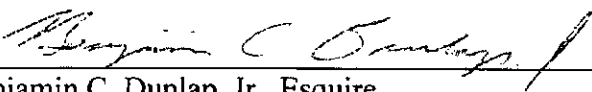
74.1 That the Pennsylvania Department of Transportation, at its sole cost and expense, upon completion of the work herein ordered furnish all materials and do all work necessary to maintain the highway, including pavement markings, natural drainage swales and vertical clearance signs on the stone bridge

74.2 That Eden Township, having agreed to do so at its sole cost and expense, shall furnish all materials and do all work necessary to maintain the bridge, substructure and superstructure at this location and the improvements by Norfolk Southern pursuant to paragraph 69(d) after completion.

4. All other provisions of, and obligations and rights set forth in, the Commission's 1997 Order shall remain in full force and effect.

5. The Commission retains jurisdiction of this matter until satisfactory completion of the conditions and requirements set forth in this decision.

Date: May 31, 2016


Benjamin C. Dunlap, Jr., Esquire
Attorney for Norfolk Southern Railway Company
and Consolidated Rail Corporation

Date:

Gina M. D'Alfonso, Senior Counsel in Charge
Pennsylvania Department of Transportation

Date:

Janice Longer, Esquire
Solicitor for Providence Township

Date:

David E. Screven, Esquire
Pennsylvania Public Utility Bureau of
Transportation and Safety

Date:

Stephen Ekema-Agbaw, Esquire
Department of Conservation and Natural Resources

Date:

Michael A. Gruin, Esquire
Attorney for Pennsylvania American
Water Company

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Date:

Benjamin C. Dunlap, Jr., Esquire
Attorney for Norfolk Southern Railway Company
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Date:

MAY 31, 2016

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Pennsylvania Department of Transportation

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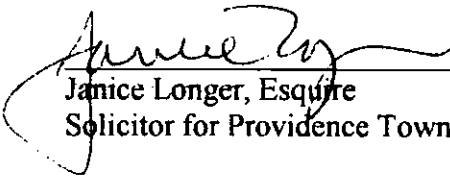
Benjamin C. Dunlap, Jr., Esquire
Attorney for Norfolk Southern Railway Company
and Consolidated Rail Corporation

Date:

Gina M. D'Alfonso, Senior Counsel in Charge
Pennsylvania Department of Transportation

Date:

6/2/2016



Janice Longer, Esquire
Solicitor for Providence Township

Date:

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Pennsylvania Public Utility Bureau of
Transportation and Safety

Date:

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Pennsylvania Department of Transportation

Date:

Janice Longer, Esquire
Solicitor for Providence Township

Date:

David E. Screven, Esquire
Pennsylvania Public Utility Bureau of
Transportation and Safety

Date: *JUNE 1, 2016*

Stephen Ekema-Agbaw

Stephen Ekema-Agbaw, Esquire
Department of Conservation and Natural Resources

Date:

Michael A. Gruin, Esquire
Attorney for Pennsylvania American
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Pennsylvania Department of Transportation

Date:

Janice Longer, Esquire
Solicitor for Providence Township

Date:

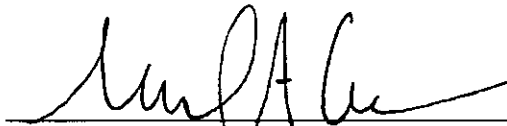
David E. Screven, Esquire
Pennsylvania Public Utility Bureau of
Transportation and Safety

Date:

Stephen Ekema-Agbaw, Esquire
Department of Conservation and Natural Resources

Date:

6/1/16



Michael A. Gruin, Esquire
Attorney for Pennsylvania American
Water Company

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DATE: January 12, 2015

SUBJECT: Open End Contract Work Order - Minor Assignment Task
WO#4 Traffic Engineering and Operations Section

TO: Jason Bewley, P.E., District Traffic Engineer

FROM: Pharon Bertsch, P.E., Traffic Engr. And Operations Supervisor
District 8-0 *Ph Bertsch*

It is anticipated that the following minor assignment task will be processed:

Consultant: Baker/Pennoni

Open End Agreement Number: E02030

Minor Assignment Task Number: 15

Completion Date: see below

For the Railroad Underpass on Pumping Station Road (SR 2015) at Segment 0090/0000, evaluate to determine whether one-lane, 2-way stop-control is warranted and justified as per state policy and standards. The location has a greater than 15-year history including a PUC order. Single lane is being considered because drainage features will need added on both sides of the road, restricting the available cartway. Collaborate with the District RR coordinator, Ahmed Lasludji regarding the drainage improvements. If the one-lane underpass is warranted and justified, provide a sketch showing the anticipated signs and pavement markings. Final report is due within 30 days of man-hour estimate approval.

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