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June 15, 2018

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

RE: I-2015-2472242, M-2013-2364201

Dear Secretary Chiavetta:

Enclosed for filing please find the Department's *Brief* along with Appendix A, B, and C in the above captioned matter. This filing does not contain facts that are not currently in the record. Therefore, a verification is not required.

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

Very truly yours,

Jennifer Brown-Sweeney
Assistant Counsel

Enclosure

220/JBS:igl

Cc: Parties of Record
Mark J. Chappell, P.E., Chief, Utilities and Right-of-Way Section
Sarah J. Fenton, District Grade Crossing Engineer, District 4-0
Daniel Leonard, Grade Crossing Engineer, Central Office, CKB 7th floor

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bridge structure where State Route 1025 crosses	:	:
over a single track of Delaware and Hudson	:	Docket No. M-2013-2364201
Railway Company, Inc. (264 293 K) in Nicholson	:	
Borough, Wyoming County	:	
	:	
Investigation upon the Commission's own motion	:	
to determine the condition and disposition of six	:	Docket No. I-2015-2472242
(6) existing structures carrying various highways	:	
above the grade of the tracks of the Canadian	:	
Pacific Railroad in Great Bend Township, New	:	
Milford Township, Brooklyn Township, Hop	:	
Bottom Borough, Lathrop Township,	:	
Susquehanna County, and Benton Township,	:	
Lackawanna County	:	

**MAIN BRIEF OF THE COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION**

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DATED: June 15, 2018

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Statement of the Questions Involved

1. Should the Public Utility Commission order the alteration of the structures for the crossings located on SR 1025, SR 2032, SR 2017, SR 2041, SR 1018, and T-821 as described in the testimony of the Department of Transportation.

Suggested Answer: Yes.

2. Is it just and reasonable to allocate the current and future maintenance, future costs, reimbursement of expenses, and alteration or abolition expenses of the seven subject highway-rail crossings to Norfolk Southern Railway Company?

Suggested Answer: Yes

3. In the interest of public safety, should the Public Utility Commission require the completion of all priority maintenance items excluding those for SR 4005?

Suggested Answer: Yes.

4. Should the Public Utility Commission assign current and future maintenance of the SR 4005 crossing to Norfolk Southern in this proceeding?

Suggested Answer: Yes.

Statement of the Case

On April 9, 2015, the Pennsylvania Utility Commission (“Commission”) on its own motion initiated an investigation to determine the condition and disposition of six existing structures carrying various highways above the grade of railroad tracks of the Canadian Pacific Railroad in Susquehanna County and Lackawanna County. Those structures are located at crossings in Great Bend Township, New Milford Township, Brooklyn Township, Hop Bottom Borough, and Lathrop Township in Susquehanna County and in Benton Township in Lackawanna County. *See* Docket No. I-2015-2472242 (Order entered Apr. 9, 2015).

On April 24, 2015, Lackawanna County filed a two-page letter with the Commission, requesting to be dismissed as a party from the proceeding. As support for its request, Lackawanna County noted that the County was not invited to participate at a field investigation in November 2012, that the County does not own the bridge in question, and that the County has no history of maintenance over the bridge. In its letter request filing, Lackawanna County did not include a certificate of service or indicate that it served other parties to the proceeding. *See* Docket No. I-2015-2472242 (Letter filed Apr. 24, 2015).

On May 12, 2015, the Pennsylvania Department of Transportation (“Department”) simultaneously filed two petitions with the Commission: (1) a Petition to Modify the April 9, 2015 Order at this docket; and (2) a Petition for Protective Order. In the Petition to Modify the April 9, 2015 Order (Petition to Modify), the Department requested an extension of time until September 30, 2015 to submit in-depth load rating analyses for the six structures subject to the investigation. The Department indicated it would disclose the National Bridge Inspection Standards (“NBIS”) inspection reports within 30 days of the Commission’s issuance of a protective order. Accordingly, the Department sought a modification of the April 9, 2015 Order.

On October 8, 2015, the Department filed an Answer to Letter/Motion Filed by Lackawanna County. PennDOT Answer, Docket No. I-2015-2472242 (filed Oct. 8, 2015). The Department explained that it never received a copy of the County’s letter and only inadvertently discovered the letter while searching the docket file housed in the Commission’s filing room. Accordingly, the Department asked the Commission to deny Lackawanna County’s letter/request.

On October 29, 2015, the Department renewed its Petition to Modify the April 9, 2015 Order. The Department explained that it has been diligently working toward completing the reports, but has experienced some delays resulting from protracted discussions with the consultant

performing the work and the change in ownership of the rail line. As the Commission had not yet acted on the Department's May 12, 2015 Petition to Modify or Petition for Protective Order, the Department requested a new extension of time until March 31, 2016 to complete the NBIS inspection reports. Accordingly, the Department requested a modification to the *April 9, 2015 Order*.

On November 12, 2015, Susquehanna County filed a two-page letter with the Commission, requesting to be dismissed as a party from the proceeding. Similar to Lackawanna County, Susquehanna County noted that it was not invited to participate at a field investigation in November 2012, that the County does not own the bridge in question, and that the County has no history of maintenance over the bridge. In its letter request filing, Susquehanna County also did not include a certificate of service or indicate that it served other parties to the proceeding. *See* Docket No. I-2015-2472242 (Letter filed Nov. 12, 2015).

On December 17, 2015, the Commission granted the Department's Petition for Protective Order as well as its request for an extension of time until March 31, 2016. Additionally, the Commission denied the requests of Susquehanna and Lackawanna Counties to be dismissed as parties to the proceeding, citing that county governments are "concerned" parties for the purposes of cost allocation.

On April 5, 2016, the Commission received the NBIS bridge inspection reports and corresponding load rating analyses from the Department. The parties then agreed to mediation. On June 21, 2017, the mediator reported that the matter remained unresolved and requested that it proceed to hearing.

On June 30, 2017, the Department and Norfolk Southern Railway Company ("Norfolk Southern"), with concurrence of the Bureau of Investigation and Enforcement, requested that

docket M-2013-2364201 regarding the crossing located on SR 1025, be consolidated into this matter for hearing. The matters were consolidated in the prehearing order dated September 25, 2017 and a hearing was held on April 24, 2018.

This matter is before the Commission to determine the condition and disposition of the seven subject crossings which are the subject of the consolidated docket.

Summary of the Argument

The Public Utility Commission is vested with the exclusive authority to order a highway-rail crossing to be altered, suspended, or abolished and to allocate costs and assign maintenance responsibilities. An Investigation docket was initiated due to the deteriorated condition of the subject bridges. The record reflects that Norfolk Southern's predecessor-in-interest built all of the bridges and received the lion's share of the benefits from the bridges for the last one hundred years. Since the construction of the bridges, the record reflects that the railroad performed maintenance three times and only when ordered to do so. The record is also clear that Norfolk Southern was aware of the deficient structures at the time it purchased the line, was aware of maintenance responsibility for four of the structures, and was aware that additional responsibility was likely due to the matters pending before the Commission. However, the railroad still has not performed any maintenance or improvements.

The Department, however, has incurred \$121,093.94 in expenses to provide inspections, maintenance, and repairs on the subject bridges, in the interest of public safety even though it does not have maintenance responsibility. Additionally, the Department has prioritized and begun the process for the rehabilitation of the SR 4005 structure, despite not being responsible for this structure. The Department has also completed extensive reconstruction work on six other

structures on this line, not included in this docket. As such, the Department alleges that Norfolk Southern should be ordered to replace the subject structures, excluding the structure on SR 4005. The Department also avers that Norfolk Southern should be ordered current and future maintenance for each of the subject structures that carry state routes.

In allocating costs associated with a rail-highway crossing, the Commission is not limited to any fixed rule and it takes all relevant factors into consideration. The fundamental requirement is that any allocation be just and reasonable. Here, Norfolk Southern's predecessor-in-interest constructed the line, had maintenance responsibility on four of the structures, likely would have been assigned maintenance of the other structures if an issue would have arisen before the Commission or if the railroad would have filed applications for those crossings, received the majority of the benefit on each crossing, was responsible for the deterioration of the subject structures due to failure to maintain or repair, and continues to benefit from the crossings. Additionally, the fact that there is no federal or state funding available for the crossings, exclusive of the SR 4005 structure, also weighs in favor of allocating the costs to Norfolk Southern. Furthermore, in balancing the equities, it is clear that the Department has carried the burden on this line by providing repairs and improvements to structures that should have been addressed by the railroad. Norfolk Southern should no longer be allowed to shirk its duties and force its responsibilities onto the taxpayers of the Commonwealth. Therefore, it is just and reasonable for the Commission to order Norfolk Southern to reimburse the Department \$121,093.94 for expenses previously incurred, to allocate future costs, including flagman, watchers, and observers, design plan review, bridge inspections, insurance, right of way acquisitions and right of entry onto railroad property, as well as to allocate all alteration work and costs onto Norfolk Southern.

Further, the record supports a finding that it is just and reasonable for current and future maintenance to be assigned to Norfolk Southern, exclusive of roadway maintenance, based on the same factors for all state route structures. To further support that outcome, the record reflects that the railroad was previously assigned maintenance for the structures located on SR 1025, SR 2032, SR 2041, and T-821. However, the Commission sua sponte reassigned maintenance on SR 1025 and SR 2032 from the railroad's sole cost and expense, to its initial cost and expense. The Commission is only authorized to amend or rescind a prior order if they have provided due process to the parties. In this case, due process was not provided and maintenance should be reassigned to the railroad for SR 1025 and SR 2032. The Department has already begun the rehabilitation process for the SR 4005 bridge at its initial cost and expense. The Department will be filing an application for the alteration, but since all of the necessary facts for allocation of current and future maintenance are located in this record, requests that the Commission assign current and future maintenance of this structure to Norfolk Southern under this proceeding as well.

It is the opinion of the Department that due to the deficient state of the structures as well as the cost of repair in relation to the achievable additional life span for each bridge, that each structure should be replaced by Norfolk Southern, excluding SR 4005. However, regardless of whether the Commission orders replacement or rehabilitation of the structures in the future, the Department avers that railroad and public safety dictate that all priority maintenance items be addressed without delay. These priority maintenance items are listed in the Department's current inspection reports and correlate to suggested times of completion for safety purposes. The Department offered sound and un rebutted engineering testimony that Norfolk Southern should be required to complete all of the priority repairs listed and not just those that it would like to complete

now, leaving others to be eventually completed once assigned by the Commission. Norfolk Southern should not be permitted to barter with public safety.

Lastly, the record is clear that each of the seven crossings are important to the local community and the roadway network and should be rehabilitated or replaced, not removed. However, if the Commission were to order the removal of any, the Department alleges that it is just and reasonable for Norfolk Southern to remove the existing structures as well as provide for the improvement of the alternate travel routes the closure of the bridges would require. Many of the alternate travel routes cited by Norfolk Southern are not similar in nature and do not provide the same level of safety as the current roadways and crossings. Additionally, some of the alternate routes provided by Norfolk Southern include other crossings under this docket that also have the possibility of being ordered closed. The Department requests that the Commission be mindful of the rippling impact on the local roadway network if bridges are closed. Further, if the Commission orders any of the bridges to be closed, the Department believes that it is just and reasonable that Norfolk Southern be allocated the costs of removing the bridges and improving the alternate route roadways since the current roadways are not all suitable as a permanent detour. It is due to the railroad's neglect that the bridges have deteriorated to the condition that they are in. If they are going to be relieved of the responsibility of maintaining and replacing the bridges, it is just and reasonable that they are responsible for improving the alternate routes. Additionally, if the Commission orders any of the bridges to be removed, it is just and reasonable for Norfolk Southern to provide for the public safety and be required to construct cul-de-sacs to the Department's specifications and acquire right of way necessary to do so.

ARGUMENT

I. **IT IS JUST AND REASONABLE FOR THE PUBLIC UTILITY COMMISSION TO ALLOCATE THE RESPONSIBILITY AND COSTS OF THE SEVEN SUBJECT BRIDGES TO NORFOLK SOUTHERN RAILWAY COMPANY.**

It is well established that the Public Utility Commission has jurisdiction over rail-highway crossings. 66 Pa.C.S. § 2702. The Commission also has the exclusive authority to allocate the costs related to the creation, maintenance, repair, replacement, or removal of a crossing. 66 Pa.C.S. § 2704(a). In evaluating a rail-highway matter, the Commission is not limited to any fixed rule but must take all relevant factors into consideration, with the fundamental requirement being that its order is just and reasonable. *AT&T v. Pa. P. U. C.*, 737 A.2d 201, 213 (1999). Reviewing courts will not overturn an allocation of costs or responsibilities unless it is unjust or unreasonable. *Phila. V. Pa. P.U.C.*, 676 A.2d 1298 (Pa. Cmwlth. 1995).

a. The Commission is not limited to any set or fixed test, but considers all relevant factors based upon a case-by-case analyses.

The Commission, while not limited to any fixed rule, has consistently relied upon certain relevant factors for the allocation of highway-rail maintenance responsibilities, repair and replacement, and costs:

1. The party that originally built the crossing.
2. The party that owned and maintained the crossing.
3. The relative benefit conferred on each party with the construction of the crossing.
4. Whether each party is responsible for the deterioration of the crossing that has led to the need for its repair, replacement, or removal.
5. The relative benefit that each party will receive from the repair, replacement, or removal of the crossing.

N. Lebanon Twp. v. Pa. P.U.C., 962 A.2d 1237, 1247 (Pa. Cmwlth. 2008) (citing *Greene Twp. Bd. of Supervisors v. Pa. P.U.C.*, 668 A.2d 615, 619 (Pa. Cmwlth. 1995)). The Commission is not required to set forth an analysis of these five factors since such “a practice . . . would hold PUC to a more rigorous standard in expressing its reasons for a cost allocation determination [and] would unnecessarily infringe upon the discretionary aspect of [its] decision” *Millcreek Twp. v. Pa. P.U.C.*, 753 A.2d 324 (Pa. Cmwlth. 2000) (quoting *AT&T v. Pa. P. U. C.*, 737 A.2d 201 (1999)). However, the Commission can consider other factors such as the availability of state and/or federal funding for a project and the general equities of the case in its determination. *Erie L.R. Co. v. Pa. P.U.C.*, 278 A.2d 188 (Pa. Cmwlth. 1971); *SEPTA v. Pa. P.U.C.*, 802 F. Supp. 1273, 1273 (E.D. Pa. 1992); *Application of the City of Wilkes-Barre*, Docket No. A-00101606, 1981 Pa. PUC LEXIS 102, *5-*6 (Order entered April 9, 1981). Overall, the Commission has wide latitude “to determine which factors are relevant in assessing costs within the context of the particular case before it.” *Bell Atl. Pa. v. Pa. P.U.C.*, 672 A.2d 352, 355 (Pa. Cmwlth. 1995).

b. An analysis of the relevant factors demonstrates that it is just and reasonable for the Commission to allocate the responsibility and costs to Norfolk Southern.

In the instant case, the Commission should consider all of the above factors as each applies. They are: (1) The party that originally built the crossing; (2) The party that owned and maintained the crossing; (3) The relative benefit conferred on each party with the construction of the crossing; (4) Whether each party is responsible for the deterioration of the crossing that has led to the need for its repair, replacement, or removal; (5) The relative benefit that each party will receive from the repair, replacement, or removal of the crossing; (6) The availability of state and/or federal funding for a project; and (7) The equities of a particular situation.

- i. ***Norfolk Southern's predecessor-in-interest, the Delaware, Lackawanna and Western Railroad Company, originally constructed the seven subject rail-highway crossings.***

In *Greene Twp.*, the Commonwealth Court states the initial factor that the Commission should consider is: “[t]he party that originally built the crossing.” *Greene Twp. Bd. of Supervisors* at 619 citing *Dep’t of Transp. v. Pa. P.U.C.*, 464 A.2d 645 (Pa. Cmwlth. 1983). In *Dep’t of Transp.*, the Commonwealth Court held that it was unreasonable for the Commission to allocate costs associated with relocating railroad facilities made necessary by a bridge rehabilitation project onto the County and Township involved. In short, the court found that because the railroad had built the subject bridge, they should assume such costs. *Dep’t of Transp.* at 533. In each case, the Commission may consider any one of many factors; however, this factor has been relied upon in numerous cases. *See id.*; *Borough of Bridgeville v. Allegheny County.*, Docket No. C-79091518, 1991 Pa. PUC LEXIS 82 (Order entered April 29, 1991); *In Re: Investigation into Montgomery Drive*, Docket No. I-870030, 70 Pa. PUC 321, 1989 Pa. PUC LEXIS 150 (Order entered July 26, 1989).

In the present case, this factor must be considered. The unrebutted evidence presented demonstrates that the bridges were constructed by Norfolk Southern’s predecessor-in-interest, the Delaware, Lackawanna and Western Railroad Company (“DLWR”). (Dep’t Ex. 1). The party responsible for the construction of the subject bridges is not in dispute. (NS St. 1, p.3, lines 18-22); (Dep’t St. 3, p.6, line 8). The record is clear that the subject bridges were constructed as part of “a grade reduction project which involve[d] some of the heaviest grading and concrete bridge work ever undertaken” in order to provide DLWR with a more efficient, cost-effective way to provide service. (Dep’t Ex. 1, p. 3, 9). The construction of the cut-off, which encompasses all seven of the subject crossings, reduced the distance for the railroad from 43.2 to 39.6 miles, but more

importantly, the reduction of curves to less than two degrees and the vast reduction in grades meant that the railroad saved twenty minutes in travel time for every passenger train and an hour in the time of every freight train. (Dep't Ex. I, p. 1, 9). Also, it reduced the number of engines required to pull the trains up the formerly steep grades from five to two. (Dep't Ex. I, p. 9); (Dep't St. 3, p.6, lines 11-17). In considering whether to reconstruct the line, the railroad considered a number of factors, including: the total cost of operation and maintenance for the current line, the total train miles that would be saved, the cost of operation and maintenance per train mile, the average yearly increase in net tons of freight handled, the average yearly increase in passengers carried, the total net weight of freight moved, the total reduction of distance, the elimination of curvature in total degrees, the elimination of the rise and fall as well as the reduction in gradient, and the fact that a third track was going to need to be constructed soon on the heavy grades of the existing line. (Dep't Ex. I, p. 2). Furthermore, there existed 22 public highway crossings at-grade, all of which the railroad would have been made to eliminate at considerable expense, if the rail line was not reconstructed. *Id.* As such, it is just and reasonable to allocate responsibility and costs to Norfolk Southern, as evidenced by its predecessor-in-interest's well thought-out decision to reconstruct the line.

ii. Norfolk Southern owns the crossings and has been ordered to maintain four of the subject bridges by the Commission.

“The party that owned and maintained the crossing” is the second enumerated factor in the *Greene Twp.* analysis and should be considered. *Greene Twp. Bd. Of Supervisors* at 619. However, ownership alone is rarely, if ever, dispositive of the issue and generally is considered as part of a benefits analysis. *Compare Dep't of Transp.*, 464 A.2d 645 (Commission may allocate costs onto Department “regardless of whether the highway involved is a state highway, county road or township road”) *with Dep't of Transp. v. Pa. P.U.C.*, 469 A.2d 1149 (Pa. Cmwlth. 1983)

(Commission may allocate cost for work done to a state route onto the local authorities based upon benefit to the latter). Furthermore, where ownership is unknown, the Commission must base its decision on other relevant factors. *In Re: Investigation into Ridge Pike*, 2001 Pa. PUC LEXIS 210 (Commission Order, October 26, 2001).

- a. Norfolk Southern owns the subject crossings and this factor should be weighed against them, however if ownership cannot be determined the Commission must base its decision on the other relevant factors.

In the present case, Norfolk Southern disputes ownership of any of the subject bridges. (NS Rebuttal St. 1, p.7, line 2). As a general rule, a bridge is owned by the entity whose traffic it carries. *City of Phila. v. CONRAIL*, 747 A.2d 352, 357 (2000). However, this rule only applies where there are insufficient indicia that legal title lies with another entity. *City of Phila. v. CONRAIL*, 747 A.2d 352, 357 (2000) (Saylor, J., concurring). In Justice Saylor's concurring opinion he specifically cites *Heinlein v. Allegheny County*, 98 A.2d 36, 39 (1953) for the purpose of clarifying that the holding is "a general proposition, but [is] by no means universal" *Id.* He goes on to state that "particularly with respect to older bridges, I would not require that the evidence of ownership necessary to overcome the common law rule equate with a written deed reflecting title." *Id.* He then acknowledged that the problems associated with the passage of an extensive period of time and the current conceptions of reorganization law make ownership a much more complicated issue than at the time when ownership would have initially vested. *Id.*

Similar to Justice Saylor's opinion, in 2005 the Commonwealth court found that the *City of Phila.* general rule did not apply to its case where there was record evidence that indicated that Norfolk Southern owned and continued to own the bridge. *Norfolk S. Ry. Co. v. Pa. P.U.C.*, 870 A.2d 942, 949 (Pa. Cmwlth. 2005). In distinguishing its case from *City of Phila.*, the court stated

that the default rule had only applied in that case because there had been no evidence presented to establish that the railroad owned the subject bridge. *Norfolk S. Ry. Co.* at 949.

In our case, it was undisputed that Norfolk Southern's predecessor-in-interest built the railroad line that included the construction of the bridges and received benefits from that line. (NS St. 1, p. 3, lines 18-22); (Tr. 201-202, lines 13-7); (Dep't Ex. I); (Dep't St. 3, p. 6, lines 8 -17 and p. 7, lines 2-4). Evidence of ownership includes the fact that the railroad was ordered to maintain four of the subject crossings and likely would have been ordered to maintain the remainder of the crossings had an issue arisen in front of the Commission. See (Dep't Ex.s D4, D7, D11, D12); *Schwartz v. Delaware and Hudson Railway Co.*, Docket No. C-2011-2237486 (Order entered December 5, 2013) (assigning removal of structure on this same line to the railroad); *In re: Abolition of Grade Crossings and the Construction of a Crossing Above Trade in the Township of Great Bend, Susquehanna County*, Docket No. 321 (Order entered April 9, 1915) (assigning costs to the railroad for the abolition of two at-grade crossings and the cost of construction for an above-grade crossing, for crossings on this same line); *Great Bend Twp. v. Consolidated Rail Corp.*, Docket No. C-79081404 (Order entered October 3, 1985) (order reaffirming the railroad's sole maintenance responsibility for a structure on this line). Orders attached as Appendix A.

Additionally, the Commission Order dated June 11, 1951 clearly states that in relation to the crossing for SR 1025 "[t]he bridge, which is presently in fair condition is *owned* and maintained by The Delaware, Lackawanna and Western Railroad Company." (Dep't Ex. D4, p. 2) (*emphasis added*). This crossing has the same characteristics as the other crossings, as it was built at the same time and for the same benefits as the other structures under this docket, and would lead one to believe that if the Commission found an ownership interest in it, the same characteristics could be used to prove an ownership interest in the others. Furthermore, the numerous articles written about

the line, included as Department Exhibit I, outline the railroad's thoughtful and historic decision to reconstruct the line for its continued benefit. *See* (Dep't Ex. I).

Unfortunately, just as Justice Saylor specified, the passage of an extensive period of time has made finding definitive proof on every crossing for this line very difficult. But taking into consideration all of the facts before the Commission, including the numerous articles written about the DLWR line, the assignment of maintenance for four of the structures in this matter, the assignment of responsibility for other structures on this line, and the specific language in the Commission Order indicating that the crossing for SR 1025 is *owned* by the railroad, certainly signifies that Norfolk Southern owns all of the bridges in this case. At a minimum, the evidence indicates that the default rule does not apply to the instant case.

- b. Norfolk Southern has been ordered to maintain four of the subject crossings and likely would have been ordered to maintain the remainder of the crossings had the issue arisen before the Commission.

Norfolk Southern, or its predecessor, has been ordered to maintain four of the seven crossings. (Dep't Ex.s D4, D7, D6, D11); (Dep't St 3, p. 7, lines 7-13); (NS St. 1, p. 5, lines 1-10). The crossings where the Commission has previously assigned the railroad maintenance include the crossings for SR 1025, SR 2032, SR 2041, and T-821. *Id.* For SR 2032 the railroad acknowledged that it had current maintenance of the structure in the Commission Order dated February 26, 1998, Department Exhibit D6. (Dep't Ex. D6, p. 1). The Commission then sua sponte assigned maintenance at the railroad's initial cost and expense. (Dep't Ex. D6, p. 3). For SR 1025 the Commission assigned maintenance responsibilities to the railroad in 1951, but in 2013 the Commission sua sponte assigned maintenance to the railroad at only its initial cost and expense. (Dep't Ex.s D3, D4).

- i. *The Commission erred by sua sponte changing the previously assigned maintenance of the SR 1025 crossing for the railroad from its sole cost and expense to its initial cost and expense.*

The Commission Order dated June 11, 1951 assigned maintenance of the SR 1025 crossing to DLWR at its sole cost and expense. (Dep't Ex. D4, p.12). On May 23, 2013, the Commission issued an order addressing a safety concern at the crossing. (Dep't Ex. D3). Rather than enforcing the existing order and ordering the railroad to do the work, the Commission sua sponte assigned maintenance to the railroad at its initial cost and expense. *Id.* at 5.

The Commission is authorized to amend or rescind a prior order, however, providing due process to the parties appearing before it is an essential requirement. *Schneider v. Pa. P.U.C.*, 479, A.2d 10, 15 (Pa. Cmwlth. 1984); *ARIPPA v. Pa. P.U.C.*, 792 A.2d 636, 663 (Pa. Cmwlth. 2002). In fact, the PA Supreme Court stated that such power must be "granted judiciously and only under appropriate circumstances." *City of Pittsburgh v. Dep't of Transp.*, 416 A.2d 461 (1980). This order did not follow the law and instead disregarded the allocation of maintenance previously assigned under the June 11, 1951 Order and amended the prior order without any discussion or due process to any party.

In response, the Department filed a petition for reconsideration of the May 23, 2013 order, a motion for certification of interlocutory order and stay of proceedings. No answers were filed to these pleadings. By order dated June 13, 2013, the Commission granted the Department's petition for reconsideration. However, on July 31, 2013 the Department filed a petition for leave to withdraw its motion for certification of interlocutory order and stay of proceedings pending appeal and its petition for reconsideration. The Department explained that since the Commission had not yet acted upon its motions, that due to safety concerns at the crossing, the Department must continue to move the process forward. However, the Department reserved the right to address

cost allocation at a hearing pursuant to Section 2704 of the Public Utility Code. On November 1, 2013, the Department filed a joint petition for partial remand of matters pending. This joint petition indicated that the parties were still discussing the future maintenance responsibility for the bridge and future disposition of the crossing. On October 30, 2014, the Department filed a petition requesting that the Commission schedule a hearing for the purposes of allocating costs and assigning maintenance responsibilities. None of the parties filed an answer. Due to the sale of the rail line, as well as other intervening factors, the hearing was continued. The matter was then consolidated into the present Investigation docket under the Order dated April 9, 2015, Department Exhibit D1. These pleadings and orders have been attached to this brief for convenience, in Appendix B.

As evidenced by the history of the case, the Department has not waived its right to dispute the allocation of maintenance, and the costs thereof, for SR 1025. Further, the Department asserts that this hearing is the time and place to determine the future assignment of maintenance and the costs thereof. It is the Department's position that since there was no evidence presented at the hearing to support a change of responsibilities, and given that the Commission had previously found that the railroad owned the bridge and had previously assigned maintenance to the railroad at its sole cost and expense under the June 11, 1951 Order, that the Commission must recognize its abuse of discretion and reinstate maintenance to the railroad at its sole cost and expense.

Furthermore, the Department avers that the May 23, 2013 Commission Order was reached without due process since the Commission rescinded/amended its prior order without notice; did not hold an evidentiary hearing on the matter; did not provide an opportunity for testimony or evidence for the parties; and, did not provide the Department with a meaningful opportunity to present its case to the Commission. The facts indicate that the Department never agreed to do the

work assigned. Regardless, the Department was ordered to complete the work despite an existing order addressing the maintenance of the structure. Therefore, the Department submits that amending the prior order was neither just nor reasonable, as required by the PA Supreme Court. *City of Pittsburgh*, 416 A.2d 461 (1980). Therefore, the Department requests that this error be corrected by reinstating maintenance for this structure to Norfolk Southern, at its sole cost and expense.

ii. *The Commission erred by sua sponte changing the previously assigned maintenance of the SR 2032 crossing for the railroad to its initial cost and expense.*

Just as the Commission erred by sua sponte changing previously assigned maintenance of SR 1025, the Commission also erred when it changed the assigned maintenance for SR 2032. As stated in the February 26, 1998 Commission Order, “[t]he Delaware and Hudson Railway Company (D and H) stated that it currently maintains the structure, exclusive of the roadway surface” (Dep’t Ex. D6, 1.) Then, inexplicably, under ordering paragraph 10, the Commission directed D and H, at its initial cost and expense, to provide maintenance for the structure, exclusive of the roadway. *Id.* at 3. Again, the Commission is authorized to amend or rescind a prior order, however, providing due process to the parties appearing before it is an essential requirement. *Schneider v. Pa. P.U.C.*, 479, A.2d 10, 15 (Pa. Cmwlth. 1984); *ARIPPA v. Pa. P.U.C.*, 792 A.2d 636, 663 (Pa. Cmwlth. 2002).

Therefore, the Department asserts that the February 26, 1998 Commission Order was reached without due process since the Commission rescinded/amended its prior order without notice; did not hold an evidentiary hearing on the matter; did not provide an opportunity for testimony or evidence for the parties, and; did not provide the Department with a meaningful opportunity to present its case to the Commission. The facts indicate that the Commission amended

its order despite acknowledging the maintenance responsibility of D and H earlier in its own order. Therefore, the Department submits that amending the prior order was done without regard to due process, as required by the PA Supreme Court. *City of Pittsburgh, 416 A.2d 461 (1980)*. Therefore, the Department requests that this error be corrected by reinstating maintenance for this structure to D and H's successor-in-interest, Norfolk Southern, at its sole cost and expense.

iii. Norfolk Southern likely would have been assigned maintenance for the remaining structures had the issue arisen.

Despite only four of the crossings having maintenance assigned to the railroad, the Commission should consider that the maintenance for the remaining crossings would likely have been assigned to the railroad as well if an issue would have arisen at the Commission. All of the subject crossings are on the same line, were constructed by the same railroad, for the same benefits. No orders were found for any of the remaining crossings, by any party. Had an issue arisen in the past that would have necessitated the intervention of the Commission, the Commission would likely have assigned maintenance to the railroad for these crossings, just as it did for the other four crossings under this docket and others on the line. (Dep't St. 3, p.9-10, lines 19-9); *Great Bend Twp. v. Consolidated Rail Corp.*, Docket No. C-79081404 (Order entered July 26, 1985).

In fact, the record is unclear as to why there are no records of applications being filed by the railroad for the construction of the original crossings with either the Public Service Commission or the State Railroad Commission, since these entities had jurisdiction over this type of construction when the line was being built. However, what is clear is that the railroad's failure to file applications or to later obtain orders on the remaining bridges should not be the basis for the railroad to get out of its responsibilities.

Therefore, maintenance of the subject crossings should be a factor that weighs against the railroad in determining the allocation of responsibility and costs.

In looking at the factor as a whole, the “party that owned and maintained the structure” must be the railroad. Norfolk Southern, or its predecessor, has been ordered to maintain four of the structures, has had one designated for ownership, has benefitted from each, and has constructed them all. Therefore, the Commission should find that this factor weighs against Norfolk Southern.

iii. *Norfolk Southern’s predecessor-in-interest, DLWR, received the initial benefits of the construction of the rail line and subject bridges.*

Under *Greene Twp.*, the Commission can consider the initial benefits of the crossing between the parties. *Greene Twp. Bd. of Supervisors v. Pa. P.U.C.*, 668 A.2d 615, 619 (Pa. Cmwlth. 1995). In our case, it is clear that the railroad received all of the initial benefits of the crossings. As indicated by the historic newspaper articles, the railroad built the cut-off between 1912-1915 to reduce the distance of the line between Clark’s Summit and Hallstead. (Dep’t Ex. 1). As discussed above, the construction of this cut-off reduced the distance from 43.2 to 39.6 miles and decreased the travel time for every freight train by one hour. (Dep’t Ex. 1, p. 1, 9). Previously, where it once took five engines to pull the trains up steep grades, once the cut-off was constructed, it only took two. (Dep’t Ex. 1, p. 9). The railroad considered many factors before it decided to proceed with such a large project, including the fact that a third track was going to need to be constructed soon on the heavy grades of the existing line. (Dep’t Ex. 1, 2). Furthermore, there were 22 public highway crossings at-grade, all of which the railroad would have been made to eliminate at considerable expense, if the rail line was not reconstructed. *Id.* Many, including the governor attended the opening ceremony of the new cut-off. In giving remarks, the president of DLWR, Mr. Truesdale, noted that “this cut-off which has cost so much and which will save so much is only

one instance of this work we are carrying on. It is worthy of note, besides this, that there is not a single grade crossing on the Lackawanna Railroad.” *Id.* at 9. The statement clearly indicates the president of DLWR perceived great benefit in the elimination of the grade crossings. Further, the article goes on to say that the “elimination of grades and curves has resulted in a remarkable diminution of friction and side pull. Among its principal features . . . is the largest concrete viaduct in the world.” *Id.* The article then notes that had the war not caused such a disturbance, several European governments would have attended the opening of this engineering marvel. *Id.* It is evident that the railroad would not have constructed such an engineering marvel had it not planned on receiving numerous benefits to sustain the costs, as indicated by Mr. Truesdale.

In fact, the courts have found an inherent benefit to railroads from the creation and maintenance of separated grade crossings. See *Consol. R.R. Corp. v. Pa. P.U.C.*, 671 A.2d 248, 251 (Pa. Cmwlth. 1995) (“Clearly, a railroad receives a significant benefit from a grade-separated crossing”). In *Pittsburgh and Lake Erie R.R. Co. v. Pa. P.U.C.*, 556 A.2d 944 (Pa. Cmwlth. 1989), the Commonwealth Court, in affirming the Commission’s Order, discussed the benefits of separated grade crossings. The inherent benefits of separated grade crossings, were identified as: “1) relief from liability for accidents and reduced insurance costs, 2) elimination of the need and maintenance for automatic signals, and 3) uninhibited use of the rail line.” *Id.* at 946.

In Mr. Hauschildt’s testimony, he acknowledged that both the elimination of automatic signals and the prevention of accidents between motor vehicles and trains were benefits to Norfolk Southern in operating on the grade-separated crossings. (Tr. 201-202, lines 13-7). Additionally, the historical significance of this line cannot be understated, as it was created in such a unique manner to afford the most benefit to the railroad that the structures are not allowed to be repaired by the Department without prior approval by the Pennsylvania Historical Museum Commission

("PHMC"). (Dep't Ex. I); (Tr. 103, lines 7-18 and 142, lines 2-5).

The Department also receives some benefit from grade-separated crossings. A grade separation is the safest type of rail crossing because it eliminates the chance of train-vehicle contact. (Dep't St. 2, p. 18, lines 16-17). This benefits both the rail and roadway users as safety is greatly increased for both and neither are inconvenienced since the grade separation provides for the free movement of both. (Tr. 144-145, lines 23-1).

As such, the railroad clearly benefits on a much greater scale than the Department, and has since the cut-off was first constructed. Therefore, it is just and reasonable to allocate responsibility and costs to Norfolk Southern, as evidenced by its predecessor-in-interest's many initial and ongoing benefits from the construction of the line.

iv. Norfolk Southern, or its predecessor-in-interest, is primarily responsible for the deterioration of the crossing that has led to the need for replacement or repair.

In determining the allocation of costs, the court in *Greene Twp.* acknowledged that the party who is responsible for the deterioration of the crossing is a factor that should be considered. *Greene Twp. Bd. of Supervisors v. Pa. P.U.C.*, 668 A.2d 615, 619 (Pa. Cmwlth. 1995). Additionally, in *Wheeling & Lake Erie Ry. Co. v. Pa. P.U.C.*, the court noted that where a railroad was assigned maintenance but failed to properly maintain a crossing, that it was not unjust to assign total reconstruction costs to the successor railroad. *Wheeling & Lake Erie Ry. Co. v. Pa. P.U.C.*, 778 A.2d 785, 793 (Pa. Cmwlth. 2001).

In *Wheeling & Lake Erie Ry. Co.*, the railroad's predecessor-in-interest constructed the railroad crossing in 1930. The construction of the bridge was made necessary due to the excavation of a hill by the railroad in order to expand its service through the area. At the hearing in 1995 the railroad testified that no maintenance had taken place on the bridge despite maintenance

responsibilities being assigned to the railroad. The Commission allocated the entire reconstruction costs to the railroad. In appealing the decision, the railroad argued that other parties should bear some of the costs as the railroad should have been notified that repairs were necessary sooner and that there were improper repairs performed to the bridge. In weighing the factors and finding the total allocation of costs to the railroad to be reasoned and articulate, the court stated that since the predecessor railroad had the obligation to properly maintain the bridge yet allowed the bridge to fall in disrepair, they would dismiss the argument that other entities should have been made to share in the costs. *Id.*

In our case, the railroad built the crossings between 1912 and 1915 to improve efficiency and decrease costs of travel through this region. (Dep't Ex. I); (Dep't St. 3, p. 7, lines 2-4). The railroad was assigned maintenance for four structures. (NS St. 1, p.5, lines 1-3); (Dep't St. 3, p. 7, lines 7-13). The records of the Department indicate that the railroad performed maintenance a total of three times on any of these bridges and only because the Commission ordered it. (Dep't St. 3, p. 7-8, lines 21-11.) The first was in 1998, approximately 80 years after the bridges were built, when the railroad was ordered to install new jersey concrete parapets on SR 2032, but the railroad applied for a permit to seal and restore the existing parapets instead. (Dep't St. 3, p. 7, lines 21-24); (Dep't Ex. D6). The next time occurred when the Commission ordered the railroad to perform maintenance work to reopen the SR 1025 bridge in 2013. (Dep't St. 3, p. 8, lines 4-9); (Dep't Ex. D3). This work consisted of installing concrete barriers and protective fencing. *Id.* The final time was in 2015 when the Commission ordered the railroad to install single face concrete barriers and protective fencing, at its initial cost and expense, in order to reopen the structure for SR 2017. (Dep't St. 3, p. 8, lines 1-3); (Dep't Ex. D8).

At the hearing, Norfolk Southern admitted that at the time it purchased the line in 2015, it was aware there existed “a lot of deferred maintenance.” (NS St. 1, p. 4, line 1); (Tr. 178, lines 5-9 and 178-179, lines 23-1). When asked about whether Norfolk Southern received any information regarding the work the predecessor railroads performed on the rail line and structures, Mr. Hauschildt responded, “not much.” (NS St. 1, p. 4, line 4). Mr. Hauschildt was then asked whether Norfolk Southern accounted in its purchase price for the fact that the structures were known to be deficient on the rail line. (Tr. 195, lines 11-14). Mr. Hauschildt was not sure. *Id.* Additionally, Mr. Hauschildt testified that despite being aware that the railroad had maintenance responsibility for four of the deficient structures, they have yet to take initial steps to begin any repairs continuing the trend of deferred maintenance. (Tr. 184-185, lines 16-2 and 195, lines 16-25).

Furthermore, Norfolk Southern should have known that in addition to the four structures where the railroad was assigned maintenance, that it also had the possibility of exposure for the other bridges as well. The Commission instituted an investigation for six of the subject bridges, excluding SR 1025, and made Norfolk Southern a party on April 9, 2015. (Dep’t Ex. D1). However, on March 9, 2015 Norfolk Southern petitioned to intervene in the SR 1025 docket stating that it was currently in negotiations with Delaware and Hudson Railway Company to purchase this portion of the rail line. (NS Petition to Intervene, Docket No. M-2013-2364201, dated March 9, 2015). The Department’s answer to this petition clearly indicated that an Investigation Docket was forthcoming for the additional structures. (Dep’t Answer to Petition to Intervene, Docket No. M-2013-2364201, dated March 18, 2015). Pleadings attached as Appendix C. Therefore, Norfolk Southern was made aware prior to the purchase of the rail line that it had possible exposure on the structures that do not have maintenance currently assigned, as well as those that do.

Thus, the railroad realized a substantial cost savings by not spending money on adequate maintenance and most likely received the benefit of negotiating a price break in the cost of the rail line, given that the railroad was aware that they were purchasing deficient structures where they had been assigned maintenance responsibilities and also had exposure for bridges that were not yet assigned. (NS St. 1, p. 5, lines 1-3); (Dep't St. 3, p. 7, lines 7-13); (Dep't Ex. D1); (NS Petition to Intervene, Docket No. M-2013-2364201, dated March 9, 2015); (Dep't Answer to Petition to Intervene, Docket No. M-2013-2364201, dated March 18, 2015). Now, Norfolk Southern continues the feckless behavior by delaying necessary maintenance. Norfolk Southern states that if assigned maintenance, they will only agree to perform, at its cost, all of the required maintenance listed in the Department's inspection reports for just two of the subject bridges, and only if it is permitted to program the work over several years. See (NS St. 1, p.10, lines 10-15, p. 10-11, lines 18-1) (*stating that if maintenance is assigned to Norfolk Southern, Norfolk Southern will do what is required from an engineering standpoint when it becomes necessary in the future, but that the roadway authorities should share in the costs going forward for the bridges at SR 1025, SR 1041, SR 2032 and T-821, and the roadway authorities should share in the present costs for the bridges at SR 1025 and SR 2032*). See (NS St.1, p.6-9, lines 6-20) (*explaining Norfolk Southern's proposed scope of work and that Norfolk Southern does not find all of the priority repairs necessary*); (Tr. 197-198, lines 12-2) (*clarifying that Norfolk Southern is only willing to do work it believes is necessary at this time and would program additional work it deems necessary at a later time, which may not be completed for another ten years*).

As the *Wheeling & Lake Erie Ry. Co.* court found, the Commission should find that for the four crossings where maintenance is assigned to the railroad, the total reconstruction costs should be assigned to the railroad. Just as in the *Wheeling* case, Norfolk Southern's predecessor-in-interest

received the initial benefits from the construction of the crossings, the construction of the structures was necessary due to the railroad's desired new placement of the rail line, and by its own testimony, the railroad and its predecessors neglected to perform appropriate maintenance on the bridges causing severe deterioration. The fact that the railroad utilized and benefitted from this railroad for over one hundred years while only providing maintenance one time, to three different bridges, and only then when ordered to do so, should be weighed against the railroad in allocating all costs to the railroad. In *Wheeling*, the court noted specifically that since the predecessor railroad had the obligation to properly maintain the bridge yet allowed the bridge to fall in disrepair, that they would dismiss the argument that other entities should have been made to share in the costs. *Id.* This should be true for our case as well and Norfolk Southern should not be rewarded for shirking its duties to properly maintain bridges that it purchased knowing the condition of the bridges and possibly receiving a discounted rate for such bridges due to their deteriorated condition.

Moreover, even where maintenance is currently unassigned, the fact that the railroad has not provided any maintenance on structures that it built and profited from for over a hundred years should be weighed against the railroad. If the railroad had filed an application for the construction of the crossings or if an issue had arisen the Commission likely would have assigned maintenance to the railroad, as discussed above. Again, the railroad should not be rewarded for evading its responsibilities. Therefore, this factor should be weighed against the railroad and the Commission should allocate all replacement, rehabilitation, and maintenance costs to Norfolk Southern.

v. *Norfolk Southern will benefit from the repair, replacement, or removal of the crossing.*

Under *Greene Twp.*, the court has found that “[t]he relative benefit that each party will receive from the repair, replacement or removal of the crossing” is a relevant factor to be weighed in the allocation of costs among parties. *Greene Twp. Bd. of Supervisors v. Pa. P.U.C.*, 668 A.2d 615, 619 (Pa. Cmwlth. 1995). In *Pittsburgh & L. E. R. Co. v. Pa. P.U.C.*, the court found that the railroad benefits when a bridge is rehabilitated or reconstructed due to the nature of a grade separated crossing. *Pittsburgh & Lake Erie R.R. Co. v. Pa. P.U.C.* 556 A.2d 944 (Pa. Cmwlth. 1989). These benefits were specifically identified as the elimination of the need for, and maintenance of, automatic crossing signals and the uninhibited use of its rail line. *Id.*

Norfolk Southern acknowledged these benefits when it stated that the railroad benefits from grade-separated crossings because it prevents collisions between motor vehicles and trains and also because the railroad would not need to provide for the maintenance of automatic signals and lights. (Tr. 201, lines 13-19 and 202, lines 1-7). Furthermore, Mr. Truesdale, president of DLWR when the crossings were built, clearly acknowledged the benefits of these crossings to the railroad. (Dep’t Ex. I, p. 9).

The Department will also benefit on a much smaller scale from the repair or replacement of any crossings. As discussed earlier, both the Department and railroad benefit from grade-separated crossings as both the rail and roadway users are safer and are allow for free movement. (Dep’t St. 2, p. 18, lines 16-17); (Tr. 144-145, lines 23-5).

Additionally, the removal of the bridges, although not recommended in this case, also would be considered a benefit to the railroad since the railroad would be relieved of maintaining any of the bridges. *Erie L. R. Co. v. Pa. P.U.C.*, 182 A.2d 80 (Pa. Super. Ct. 1962) (stating that the

removal of a bridge especially at a time when the bridge is in need of major renovations is a benefit to the railroad). This benefit was acknowledged by Norfolk Southern when it offered to bear the cost of removal and barricades for any of the subject bridges that the Commission were to order closed. (Tr. 167, lines 14-25).

Therefore, the Commission should weigh this factor against the railroad since whether the bridges are repaired, rehabilitated, replaced, or removed, the railroad derives benefit from it.

vi. *There are no federal or state funds available for six of the seven crossings.*

Another factor relevant to the Commission's cost allocation analysis is the availability of federal or state funding. *Wilkes-Barre*, 1981 Pa. PUC LEXIS 102. See *PECO Energy Co. v. Pa. P.U.C.*, 791 A.2d 1155, 1164 (2002) (Supreme Court affirmed Commission's consideration of the lack of federal funding in allocating utility relocation costs); *Phila. v. Pa. P.U.C.*, 822 A.2d 94 (Pa. Cmwlth. 2003) (Commonwealth Court held that the Commission adequately considered the funding factor).

In the present case, there is only funding available for the crossing located on SR 4005. Despite the railroad constructing this crossing, receiving its benefits, and failing to provide any maintenance whatsoever on this bridge, the Department went out and secured funding for this structure in the interest of public safety. (Dep't St. 3, p. 9, line 16). Additionally, in the spirit of cooperation and for the safety of the community, as well as the health and welfare of the traveling public and the railroad traffic, the Department has already vastly exceeded its responsibility for Norfolk Southern's line by securing funding and completing extensive work for six structures, not a part of this docket. (Dep't St. 3, p. 8, lines 21-23 and p. 9 lines 1-4). The Department has secured funding for an additional structure on this line, but construction has not yet begun. (Dep't St. 3, p. 8, lines 22-25).

There are no federal or state funds available to allocate towards any alterations or removals of the subject crossings nor are any, except SR 4005, on a transportation improvement plan or currently programmed. (Dep't St. 3, p. 2 lines 9-13, 15-19 and p. 3 lines 2-6, 8-12, 14-18, and p. 4 lines 2-6 and p. 5 lines 14-18). Further, as the steward of federal and state highway money, the Department is no longer in a financial position to take over responsibility for the railroad, nor would it be prudent for the taxpayers to bear the costs for that which is the responsibility of a private entity. (Dep't St. 3, p. 9, lines 1-6). It is time for the railroad to bear its responsibility for the structures on the cut-off. Therefore, the Commission should weigh this factor against the railroad.

vii. The equities hold that Norfolk Southern should be held responsible for the sole cost and expense of any alterations, suspension, or abolishment of the crossings.

Under *Wilkes-Barre*, the “equities of a particular situation” is a factor that can be considered. *Application of the City of Wilkes-Barre*, Docket No. A-00101606, 1981 Pa. PUC LEXIS 102, *5-*6 (Order entered April 9, 1981). The equities have also been discussed as a factor in the SEPTA case. *SEPTA v. Pa. P.U.C.*, 802 F. Supp. 1273, 1273 (E.D. Pa. 1992).

In the present matter, equity dictates that it is just and reasonable to assign the responsibility and any cost allocation onto Norfolk Southern. Norfolk Southern was aware of the poor condition of the line when they purchased it in 2015. (NS St. 1, p. 4, line 1). The Department is only aware of three instances of maintenance on all of the subject crossings since the line was built in 1915, and only then when ordered by the Commission. (Dep't St. 3, p. 7-8, lines 21-11). Norfolk Southern or its predecessors did not adequately maintain any of the subject crossings since their construction. (NS St. 1, p. 4, line 1). Norfolk Southern admits that they did not receive much information as to the work performed by predecessor railroads on the line and structures. (NS St.

1, p.4, line 4). In its testimony, Norfolk Southern has only agreed to perform maintenance at its cost to the level required under current inspection reports for a total of two bridges if they are assigned future maintenance of the structures. (NS St. 1, p.10-11, lines 10-6); (Tr. 197-199, lines 12-9). This despite having maintenance responsibility for four of the subject crossings and having received the primary benefit for all seven crossings.

The Department has already contributed more than its fair share by completing extensive reconstruction of six crossings on this line at its cost. (Dep't St. 3, p. 8, lines 21-25). The Department has also secured funding and is in the process of rehabilitation for two additional crossings on this line, one of which is SR 4005, a bridge under this docket. *Id.*

Additionally, the overall expense for the reconstruction or rehabilitation of each of the subject bridges is more expensive for the Department to complete than the railroad. It is the Department's experience that a project with a railroad is more expensive than if the same bridge were built over a highway due to the involvement of the railroad. (Dep't St. 3, p. 10, lines 14-16 and p. 10-11, lines 23-2); (Dep't St. 2, p. 21-22, lines 21-2); (Tr. 123, lines 5-21). Due to a myriad of processes that the Department is required to undertake, including design, environmental, right-of-way, acquisition, and utility clearances, the railroad is in a better position to undertake the projects. (Dep't St. 3, p. 10-11, lines 25-2). Given that there is not currently any federal or state funding available to offset these costs, with the exception of SR 4005, the Department would be unable to complete some projects currently in process if it were assigned these additional subject crossings. (Tr. 126, lines 3-12). Furthermore, since this is a historic line, the overall timeframe for which the Department could reasonably expect to complete any projects would be extraordinarily longer than the normal time required for such projects. (Tr. 141, lines 16-24) (*stating that the SR*

4005 project has been in design for four years and two of those years were due to the required historic structures analyses).

As such, allocating costs to Norfolk Southern, in the present matter, is just and reasonable and is fully supported by all relevant factors, including the equities of this particular situation.

II. THE ALLOCATION OF RESPONSIBILITY AND COSTS TO NORFOLK SOUTHERN SHOULD INCLUDE ALL MAINTENANCE, REPAIRS, REPLACEMENT, OR REMOVAL OF THE SUBJECT STRUCTURES AS WELL AS FUTURE COSTS ASSOCIATED WITH BRIDGE INSPECTIONS, DESIGN PLAN REVIEWS, FLAGGING COSTS, RIGHT OF ENTRY, INSURANCE, AND RIGHT OF WAY ACQUISITIONS AND REIMBURSEMENT FOR THE DEPARTMENT'S PREVIOUS EXPENSES.

Given the aforementioned factors, it is both just and reasonable for the Commission to require Norfolk Southern to bear the sole cost of maintenance as well as any construction, rehabilitation, or removal costs for all of the subject structures.¹ Additionally, the Department should be reimbursed \$121,093.34 for expenses incurred on the SR 1018, SR 1025, SR 2017, SR 2032, and SR 2041 structures. (Dep't St. 1, p. 34-35, lines 16-2). Further, Norfolk Southern should be required to provide for all costs associated with bridge inspections, design plan reviews, flagging costs to include flaggers, watchers, and observers, as well as insurance and right of entry acquisitions or entry onto the railroad property. (Dep't St. 3, p. 10, lines 10-20).

¹ The Department is not intending to limit the type or scope of work by using general terms such as "repairs," "replacement", "removal," or "abolishment." These terms are intended to include any type of maintenance, repair, removal, replacement, reconstruction, abolition, or rehabilitation as may be required.

a. It is just and reasonable for Norfolk Southern to be assigned future costs and responsibility, to include maintenance, rehabilitation, reconstruction, or removal for all seven subject bridges.

As discussed above, an analysis of each of the relevant factors makes clear that the allocation of future costs and responsibility to Norfolk Southern is just and reasonable. At the most basic level, the history for this line shows that Norfolk Southern's predecessor-in-interest spared no expense in reconstructing the now-historic line in order to increase efficiency and profits for its company. (Dep't Ex. I, p. 9). In doing so, they eliminated twenty-two at-grade crossings, decreased travel time, and bestowed many court-recognized benefits on to the railroad. *Id.*; *Pittsburgh and Lake Erie R.R. Co. v. Pa. P.U.C.*, 556 A.2d 944, 946 (Pa. Cmwlth. 1989) (stating that the inherent benefits of separated grade crossings, were identified as: "1) relief from liability for accidents and reduced insurance costs, 2) elimination of the need and maintenance for automatic signals, and 3) uninhibited use of the rail line."). Despite achieving these many benefits, the railroad failed to provide adequate maintenance on any of the structures over the next one hundred years. (NS St. 1, p. 4, line 1). In fact, the railroad has sought to impose this maintenance onto the other parties, even where they have previously been assigned maintenance. (NS St. 1, p. 10, lines 1-4). At the conclusion of these proceedings, however the Commission rules, these structures will eventually need to be repaired, replaced, or removed. Norfolk Southern will receive the benefits from any of those outcomes as well. If the structures are removed, the railroad is the only winner. The benefits the railroad will receive if repaired or replaced, as previously discussed, are the elimination for the need to maintain traffic signals, the prevention of collisions, and the uninhibited use of the rail line.

However, if the Department were ordered to complete the repairs, rehabilitation, replacements, or removals, the Department, the motoring public, and overall the taxpayers would

suffer as there are no state or federal funds available for the subject bridges, with the exception of SR 4005. (Tr. 125, lines 4-7). This would again allow the railroad to unjustly benefit without putting forth any investment or effort. In balancing the equities, it is clear that the only solution is to allocate to Norfolk Southern future maintenance, repair, rehabilitation, replacement, and removal costs for all of the subject structures.

i. The Department is unable to quickly complete any future maintenance, rehabilitation, or reconstruction on the subject structures.

If the Department were assigned future maintenance, rehabilitation or reconstruction it would require substantially more time to complete the project than the railroad would require. (Tr. 85, lines 18-25, Tr. 123, lines 17-21 and Tr. 171, lines 14-25). Maintenance has been deferred by the railroad for so long, that a delay in work due to the time it would take for the Department to complete a project would undoubtedly risk the public safety for some of the structures or would impose undue hardship on the traveling public if forced to close the bridges in the interim.

As discussed previously, the Department must follow a time-consuming process to comply with a myriad of federal and state laws and regulations. The nature of this delay is best illustrated by using the rehabilitation of SR 4005 as an example. SR 4005 is a structure under this docket that did not have maintenance assigned to any party, but the Department agreed to rehabilitate it due to public safety concerns and funding availability. So far, it has taken the Department approximately four years to get through the design process on this bridge. (Tr. 141, lines 16-24). All of the structures under this docket, including SR 4005, require environmental clearance prior to starting any type of work. (Tr. 85, lines 18-25); 23 C.F.R. § 771. Additionally, all of the crossings are also considered historic and the Department is required to undertake a historic structures analysis on each. (Tr. p. 85, lines 18-25); 16 U.S.C. § 470(f). For SR 4005, at least two

out of the past four years was spent just trying to get through the historic structures analysis in order to actually perform the work. (Tr. 141, lines 16-24). Despite having some public safety concerns, SR 4005 was not in such bad shape that it required a closure while the process was being followed. However, many of the bridges under this docket are in much worse shape and could not sustain a four-year design process. As evidenced by the fact that the Pennsylvania Historic Museum Commission had no problem holding up work being done for public safety on SR 4005, it could be expected that many of the bridges with public safety issues may need to be closed until the Department could work through the process, if the Department were assigned costs. (Tr. 142, lines 2-12).

Additionally, in discussing the maintenance currently required on the other six structures, the Department clearly indicated that it would be unable to perform any of the work within six months due to several reasons, but mainly as a result of the required environmental clearance and historic structures evaluation. (Tr. 85, lines 18-25). In contrast, Norfolk Southern testified that in emergency situations its work is advanced immediately by local and state agencies, demonstrating its ability to more efficiently complete the repairs and better serve the interest of public safety. (Tr. 171, lines 14-25).

ii. The Department does not have funding readily available to timely complete any major maintenance, repairs, or reconstruction on the subject structures.

The Department does not have funding in place to provide for future maintenance, rehabilitation, or reconstruction costs. This lack of funding would likely require any bridges needing immediate, major repairs to be closed for a substantial time until funding issues could be resolved. If the Department were assigned maintenance, it would have to work with the District's Regional Planning Commission ("RPC") to establish funding, as none of the structures besides SR

4005 has been programmed for rehabilitation or replacement. (Tr. 126 lines 3-12 and 127, lines 3-23). In doing so, the RPC would have to consider all of projects of the program and all other structurally deficient bridges in the region that are already on the 12-year program. *Id.* They would then have to decide whether to bump another project in order to provide funding or whether a project should wait. *Id.* In short, if the work were delayed, the bridges would either remain open with safety concerns and potentially posing a safety risk to the public or the bridges would need to be closed, creating an unfair burden on the traveling public, especially given the non-redundant aspect of each bridge as well as the close proximity to a school.

Given that the railroads' collective deferred maintenance caused the deterioration of the structures, the weighing of the other relevant factors, as well as the length of time the Department would require to complete each project, and the lack of funding available to the Department without jeopardizing other projects that have been prioritized by the RPC, it is both just and reasonable for Norfolk Southern to be assigned these costs.

b. It is just and reasonable for Norfolk Southern to be required to reimburse the Department for costs incurred on the subject bridges.

The Department is seeking reimbursement from Norfolk Southern in the amount of \$121,093.94. (Dep't St. 1, p. 35, line 1). This amount has been calculated based on the expenses already incurred by the Department and is comprised of expenses that accrued while the railroad had maintenance responsibility, expenses where the railroad was ordered to pay by the Commission, and expenses incurred during current inspections that the Department would like assigned to the railroad. (Dep't St. 1, p. 35, line 2).

Norfolk Southern, or its predecessor-in-interest, has been assigned maintenance of some type for the structures located at SR 2041, SR 2032, T-821, and SR 1025. (NS St. 1, p. 5,

lines 3-10). The Department has spent \$107,050.63 on maintenance for these structures. (Dep't St. 1, p. 34-35, lines 16-4). Recently, the Department incurred another \$3,768.14 in costs to close the local bridge T-821 due to safety concerns. *Id.* The railroad was ordered by the Commission to reimburse the Department for 20% of the costs of inspections for SR 1025 and T-821. (Dep't Ex.s D1, D3). These amounts are \$847.67 and \$311.67, respectively. (Dep't St. 1, p. 34, lines 19-21). Finally, the Department seeks the reimbursement of 100% of the cost of the current inspections for the bridges located on SR 1018, SR 2017, SR 2032, and SR 2041, in the amount of \$6,595.83. (Dep't St. 1, p. 34, lines 16-18). The total amount being \$121,093.94. (Dep't St. 1, p. 35, line 1).

The request for reimbursement is just and reasonable given that all of the costs except for the current inspections of SR 1018, SR 2017, SR 2032, and SR 2041 were assigned by the Commission and are consistent with Commission orders. The current inspection costs are just and reasonable given that the factors considered in determining cost allocation weigh against Norfolk Southern and the equities require a determination in the Department's favor.

- c. It is just and reasonable for Norfolk Southern to be required to pay for future costs associated with the subject bridges, including bridge inspections, design plan reviews, flagging costs to include flaggers, watchers, and observers, insurance, as well as right of entry acquisitions or entry onto the railroad property.**

Regardless of which party is actually assigned future maintenance responsibilities for each of the structures, it is just and reasonable for Norfolk Southern to be obligated to pay for the additional future costs associated with the subject bridges. These costs include inspections, design plan reviews, flagging/watcher/observer costs, insurance, entry on to railroad property, and right of entry acquisitions, as well as the costs associated with the closure of T-821 until Norfolk Southern can do the work to get it reopened.

As discussed *supra*, in subsection (b) of this brief, each factor weighs in favor of the Department. Further, it is the Department's experience that bridge projects over a railroad cost exponentially more than if the same bridge was built over a highway due to railroad involvement. (Dep't St. 3, p. 10, lines 14-16 and p. 10-11, lines 23-2); (Dep't St. 2, p. 21-22, lines 21-2); (Tr. 123, lines 5-21). It is more expensive during the design process as a result of required design reviews by the railroad and potential Commission involvement. (Tr. 144, lines 2-7). It is more expensive during the construction phase as the Department needs to provide for flagmen, watchmen, and potential right of way acquisitions and other railroad costs such as right of entry and railroad protective insurance *Id.* These projects also take more time to carry out. (Tr. 123-124, lines 17-11). Furthermore, projects with Norfolk Southern, in particular, cost the Department more since they require design review agreement and payment for the design review prior to the project, whereas other railroads do not. (Tr. p. 140, lines 14-20).

Therefore, assigning Norfolk Southern the future costs associated with the subject bridges, including bridge inspections, design plan reviews, flagging costs, insurance, right of way acquisitions and entry onto railroad property in addition to the general maintenance, rehabilitation, reconstruction, or removal for all seven subject bridges, is both just and reasonable. Furthermore, the Department believes it is just and reasonable for the Commission to reassign the work and the cost thereof associated with the closure of T-821 to Norfolk Southern until work on this local bridge necessary to reopen it is completed. (Dep't Ex. D13).

III. THE PRIORITY ITEMS OF WORK FOR EACH OF THE CROSSINGS SHOULD BE ADDRESSED BY NORFOLK SOUTHERN REGARDLESS OF WHETHER THE CROSSING WILL BE REPAIRED OR REPLACED IN THE FUTURE.

Each of the priority maintenance items for the subject crossings were given its priority status as a result of federally mandatory inspections completed by NBIS certified engineers on behalf of the Department. Priority maintenance items are a procedure established by the Department to ensure that critical findings are ranked and addressed in a timely manner. (Dep't St. 2, p. 4-5, lines 25-5). The numerical values indicate the level of deteriorating conditions of bridge elements, how severe the condition is, and how quickly the conditions need to be addressed. *Id.*; (Dep't Ex. F).

Department policy allows deferral of priority maintenance items only where a project is scheduled to begin within 24 months. (Dep't St. 2, p. 20, lines 24-25). Since only the crossing located on SR 4005 can meet that timeframe, the Department believes that all priority maintenance items need to be completed for the remainder of the crossings regardless of whether the bridges will be repaired or replaced in the future. (Dep't St. 2, p. 6, lines 12-19 and p. 9, lines 20-24 and p. 12, lines 14-17 and p. 15, lines 3-5 and p. 18, lines 7-10 and p. 20, lines 24-25 and p. 23, lines 17-19); (Dep't Protected St. 2A, p.7, lines 16-23 and p. 12, lines 9-18 and 16, lines 6-16 and p. 20, lines 1-11 and p.24-25, lines 19-8 and p.28-29, lines 26-5 and p.32-33, lines 18-13); (Dep't Protected Exs. E1-E7). The Department is willing to address those priority items related to the roadway surface for the state route crossings after the concrete work is completed. (Dep't St. 2, p. 6, lines 12-19 and p. 9, lines 20-24 and p. 12, lines 14-17 and p. 15, lines 3-5 and p. 18, lines 7-10 and p. 20, lines 24-25 and p. 23, lines 17-19); (Tr. 115, lines 9-16). However, the Department requests that Norfolk Southern complete all other priority maintenance items, regardless of

whether the crossing will be repaired or replaced in the future, before it does the roadway maintenance. *Id.*

Norfolk Southern should be ordered to complete all priority maintenance items in the manner described by Gerard Babinski's testimony, Dep't St. 2 and Protected St. 2A, and without regard for who will be assigned future maintenance of each structure. Norfolk Southern has acknowledged being aware of deficiencies in the bridges as well as the associated priority maintenance items for the bridges where they have assigned maintenance responsibilities, yet have not developed a plan to start any of the repairs and have only agreed to "complete the most crucial work to keep the bridges in service", not to actually complete all of the priority maintenance items. (Tr. 168, lines 10-12 and 184-186, lines 16-12 and 195, lines 6-9). Further, Norfolk Southern stated that the repairs they have offered to complete would not satisfy all of the priority maintenance items, nor would they be enough to achieve an additional twenty-five years service life out of the bridges without the additional priority repairs listed in the inspection report also being completed. (Tr. 197-200, lines 1-1; Dep't St. 4, p.4, lines 5-11 and p.5, lines 5-15 and p.6, lines 9-15 and p.7, lines 7-11 and p. 8, lines 5-11). Norfolk Southern has also tried to "incentivize" the Commission to assign future maintenance to other parties by stating that they will only complete all of the priority repairs, and therefore create a twenty-five year useful life in the bridges, if the Commission honors its request. (NS St. 1, p. 11, lines 10-13); (Tr. 197-198, lines 19-5).

Priority maintenance items provide for the safety of the traveling public as well as the railroad. By prioritizing and informing the parties of the repairs that are required, accidents are minimized and the public is safer. It then follows that when priority maintenance items are not addressed in a timely manner, then the railroad and public safety is negatively impacted. Therefore, the Department requests that the Commission order Norfolk Southern to complete all of the

priority maintenance items, not involving the roadway surface, in a timely manner and prior to the crossings being repaired or replaced since there are currently no projects in the works.

This request is especially true for the crossings where the Commission has already assigned maintenance. Norfolk Southern or its predecessor was obligated to perform the maintenance for those crossings already, and had they provided adequate maintenance, there would not be as many repairs required. Therefore, there should be no bargaining with Norfolk Southern about which repairs they can incentivize or pawn off on other parties. Norfolk Southern must be made to fulfill its duty and provide all of the necessary repairs regardless of who is assigned future maintenance or when replacement or rehabilitation may occur.

Based on the relevant factors analysis, the Department believes that it is just and reasonable for Norfolk Southern to be allocated all of the future maintenance and costs for all of the subject crossings. This would include the costs of performing all of the priority maintenance repairs. The Department strongly believes that all of the priority maintenance repairs must be made, and in a timely manner, in order to provide for the interest of public safety.

IV. NONE OF THE SUBJECT CROSSINGS SHOULD BE ABOLISHED AS EACH IS IMPORTANT TO THE LOCAL COMMUNITY AND IS NON-REDUNDANT, BUT IF THE COMMISSION ORDERS THEIR ABOLITION, NORFOLK SOUTHERN SHOULD PROVIDE ROADWAY IMPROVEMENTS FOR THE ALTERNATE ROUTES.

Despite none of the subject crossings being located on a major travel route, each of the routes affected play an important role in the rural road system. The rural road system provides service to smaller communities and closing any of the bridges in the instant docket would detrimentally affect these local communities, especially given how none of the state road crossings are redundant. (Dep't St. 2, p. 2, lines 23-24 and p. 3, lines 23-27 and p.7, lines 2-3 and p. 10, lines

8-9 and p. 12-13, lines 26-1 and p. 15, lines 15-16 and p. 18, lines 19-20); (Dep't St. 5, p. 2, lines 10-19 and p. 3, lines 12-19).

a. None of the crossings should be closed as the alternate travel routes would negatively impact the local traveling public.

Although Norfolk Southern's traffic assessment concluded that closures would result in a minimal impact, the Department believes their assessment to be insufficient since it did not consider many factors that would normally be relevant in a Department traffic assessment. (Dep't St. 5 p. 2, lines 7-19 and p.4-7, lines 1-1).

A traffic assessment should include impacts to Emergency Management Services, home health services, school bus operations, fuel costs, as well as a calculation for Roadway User Liquidated Damages, which is a way to establish the monetary impact to the motorist if a bridge is closed. (Dep't St. 5, p. 4, lines 9-23). An assessment should also include the impact to traffic interaction between the state and local road systems beyond each bridge, the potential negative impact to surrounding state and municipal roads that adjoin the proposed detour routes, such as higher volumes due to diverted traffic, roadway and bridge weight limits, accelerating deterioration on the existing roadway network, increased dust on dirt roads, width of roadways, and lower level safety features on detour roadways as opposed to the safer grade-separated crossings. (Dep't St. 5, p. 5, lines 3-17). An assessment should also address impacts to other modes of transportation, the impacts to maintenance, both regular and winter, as well as the impacts to the natural gas industry, farm interests, and other businesses and residences. (Dep't St. 5, p. 5-6, lines 18-21). Norfolk Southern's failure to consider the above factors should cause the Commission to dismiss its characterization of a minimal impact to the traveling public if the crossings were to be closed.

Further, the alternate travel routes listed by Norfolk Southern for the six crossings located on SR 1025, SR 2017, SR 2041, SR 2032, SR 1018, and T-821 were proven to have detrimental issues and the information gleaned from their proposed usage should be dismissed as well. (Dep't St. 5, p. 7-10, lines 1-19). Major concerns as stated by the Department include the fact that Norfolk Southern used roadways as alternative travel routes that have bridges on them that they also claim, if closed, would provide only a minimal impact to the traveling public. (NS St. 2, p. 7, line 1 and p. 8, lines 3-4 and p. 10, lines 2,18 and p. 11, lines 6-7 and p. 12, lines 6-8); (Dep't St. 5, p. 7, lines 7-9 and p. 7, lines 20-21). This would create multiple instances of having to detour the detour route if any of the bridges were closed. (Tr. 238, line 8-25); (Dep't St. 5, p.7 lines 7-9 and lines 21-22). Due to bridge removals ordered by the Commission in 2016, there are already a limited number of crossings that the traveling public can use in this area. (Dep't St. 2, p. 19, lines 23-26). Therefore, the proposed alternate travel routes simply would not work or would not be accurate in terms of time and/or distance. Another major concern is that some of the proposed alternate travel routes are not of a similar character to the roadway being closed. For instance, SR 1025 is a paved roadway with pavement markings. (Dep't St. 5, p. 7, lines 5-16). The proposed detour includes narrow, gravel roads, with a one-lane bridge. *Id.* Another concern is that one of the alternate travel route includes a tunnel under the railroad with a steep downgrade as well as radius and sight distance issues. (Dep't St. 5, p. 7, lines 11-12). Two of the alternate travel routes create issues because they would funnel traffic to an at-grade railroad crossing where stacking, queuing, signalization, and turn radius issues would need to be addressed. (Dep't St. 5, p. 9, lines 8-12 and lines 16-19). Of note, is that due to the school's proximity, school buses would be directed to this crossing under Norfolk Southern's proposed alternative route. (Dep't St. 5, p. 9, lines 12-14). Therefore, there are major issues with each of the six alternate travel routes proposed by Norfolk

Southern and the Commission should dismiss the claim that there would only be minimal impact if any of the crossings were closed. In fact, each of the crossings should remain open. As stated by the Department, none of the state crossings are redundant and each roadway is “fairly critical to the local roadway system.” (Tr. 151, lines 16-20); (Dep’t St. 2, p. 2, lines 23-24 and p. 3, lines 23-27 and p.7, lines 2-3 and p. 10, lines 8-9 and p. 12-13, lines 26-1 and p. 15, lines 15-16 and p. 18, lines 19-20).

b. Norfolk Southern should be ordered to maintain and provide for the improvement of the alternate travel routes as well as the installation of cul-de-sacs and acquisition of right of way if the Commission orders any crossing closed.

Despite the Department’s position that each of the crossings should remain open due to their importance in the local roadway system, if the Commission were to close any of the crossings the Department believes that Norfolk Southern should be ordered to remove the bridges as well as to maintain and provide for the necessary improvements to any alternate travel routes. These improvements should include the construction of cul-de-sacs to the Department’s specifications, the acquisition of any necessary right of way, as well as any safety improvements or actual betterments to the roadway itself.

As previously discussed, the railroad has benefitted from each of these crossings since they were built over one hundred years ago. (Tr. 201, lines 13-19 and 202, lines 1-7); (Dep’t Ex. 1, p. 9). During that time the railroad has failed to maintain any of the crossings, except in three instances where they were ordered to do so by the Commission, which has led to the advanced deterioration of the structures. (Dep’t St. 3, p.7-8, lines 21-11); (NS St. 1, p.4, line 1). If the Commission were to order any of the crossings to be closed, the railroad should be required to put the traveling public into a position that would provide for their safety by being ordered to remove

the bridges and perform maintenance as well as the aforesaid upgrades. (Dep't St. 6, p. 2, lines 11-22). The railroad should not be allowed to benefit any further by being rewarded for evading its duties and its feckless behavior.

The closure of railroad crossings has been found by the courts to be a benefit in and of itself to the railroad. *Erie L. R. Co. v. Pa. P.U.C.*, 182 A.2d 80 (Pa. Super. Ct. 1962) Norfolk Southern seems to acknowledge this benefit by offering to bear the cost of the removal of the structures and the placement of the barricades for any structure under this docket that the Commission orders closed. (Tr. 167, lines 14-25). However, Norfolk Southern makes clear that they would not be agreeable to performing any additional improvements to the alternate routes. (Tr. 168, lines 1-4). This, despite the benefit that they would be receiving by not having to maintain, repair, or replace any of the structures that they have allowed to deteriorate to the point that major repairs are now required. This outcome would be both unjust and unreasonable, especially given that the alternate routes proposed by Norfolk Southern include roadways that are not of the same character, grade, or safety features. By closing the crossings, the Commission would be forcing the traveling public onto alternate routes. Without providing adequate improvements and enhancements to these alternate routes, the public's safety would be endangered. These necessary improvements and enhancements, despite the railroad's protest, should be paid for by it since they were the ones that created the situation and now should not be allowed to benefit by it without at least providing for the public's safety first. Again, it would not be just and reasonable to put this burden on to the taxpayers.

Additionally, where bridges are removed, the installation of cul-de-sacs is required in order to allow for plowing and other roadway maintenance. (Dep't St. 6, p.1-2, lines 20-3.) The installation of cul-de-sacs may require the acquisition of right of way as well. *Id.* If any bridge is

ordered removed, the railroad should be required to acquire the right of way and construct the cul-de-sacs to the Department's specifications so that the roadways may be satisfactorily maintained. After decades of inadequate maintenance, this would be both a just and reasonable solution. It is the railroad's lack of maintenance to the existing structures that will have led to the Commission's decision to close the crossings and order the structures to be removed, necessitating the installation of cul-de-sacs in the first place.

Therefore, the Commission should not order the closure of any subject crossings since each crossing is important to the local roadway networks and would have negative impact to the roadway system. However, if the Commission were to order any crossing closed, Norfolk Southern should be required to pay for the removal of the structure, acquisition of right of way and installation of cul-de-sacs, as well as provide any maintenance or improvements to the alternate routes.

V. THE DEPARTMENT REQUESTS THAT THE COMMISSION ASSIGN NORFOLK SOUTHERN BOTH CURRENT AND FUTURE MAINTENANCE OF THE CROSSING LOCATED ON SR 4005 IN THIS PROCEEDING.

The crossing located on SR 4005 is currently programmed for rehabilitation by the Department. (Dep't St. 3, p.4, line 1). Although the Department does not have maintenance responsibility for the bridge, the Department sought funding for replacement in the interest of public safety in 2011. (Dep't St. 3, p. 4, lines 12-15). It has retained its funding and priority ever since. *Id.*

Despite seeking to replace the structure, the Department was required by the Pennsylvania Historic Museum Commission to rehabilitate the structure due to its historic nature. (Dep't St. 2, p. 20, lines 19-21); (Tr. 92, lines 10-12). All of the bridges under this docket are considered historic

by PHMC and subject to their approval. (Dep't St. 3, p. 141-142, lines 16-20). The rehabilitation of this structure involves removing the concrete deck and spandrel columns and replacing them completely. (Dep't St. 2, p. 21, lines 6-9). The arch ribs, abutments, and wingwalls will also be rehabilitated to near-original condition, except where safety upgrades are mandated. (Dep't St. 2, p. 21, lines 6-9). Due to the myriad of processes the Department is required to comply with by law, this project has already taken four years just to get through the design process. (Tr. 141, lines 16-24); (Dep't St. 3, p. 10-11, lines 25-2). The contractors are scheduled to bid on this project beginning October 10, 2019 and construction is anticipated to be complete by November 2020. (Dep't St. 2, p. 21, lines 11-12). The Department will be filing an application to modify the existing crossing.

Given that all of the relevant facts for present and future maintenance of the crossing have been very thoroughly presented by all of the parties in this proceeding, as well as the fact that if the Department did not step up to commence this project the Commission would be determining maintenance for this bridge along with the other six bridges anyway, the Department is requesting that the Commission determine both present and future maintenance for the structure located on SR 4005 in this action.

The Department believes that it is just and reasonable for the Commission to assign both present and future maintenance of the crossing to Norfolk Southern based on the legal argument articulated above at I(b), but summarized to say that in analyzing all of the relevant factors, each of the factors weighs in favor of the Department and against the railroad. Further, the Department has already exceeded its responsibility for this crossing by obtaining funding and moving forward with its rehabilitation, whereas the railroad has never even performed maintenance on this bridge that they built for their benefit. Additionally, in the interest of public safety the Department is also

moving forward with a replacement of another structure on this line, SR 1016, where no maintenance was previously assigned. Therefore, it is just and reasonable for the Commission to assign present and future maintenance of this crossing to Norfolk Southern, in this proceeding.

Proposed Findings of Fact

1. On April 9, 2015, the Pennsylvania Utility Commission on its own motion initiated an investigation to determine the condition and disposition of six existing structures carrying various highways above the grade of railroad tracks of the Canadian Pacific Railroad in Susquehanna County and Lackawanna County under docket I-2015-2472242. (Dep't Ex. D1).
2. By order dated September 25, 2017 Judge David A Salapa consolidated docket M-2013-2364201, dealing with the condition and disposition of the structure located on SR 1025, with docket I-2015-2472242. *Bridge Structure on State Route 1025*, Docket No. M-2013-2364201 (Prehearing Order #2 entered September 25, 2017).
3. The predecessor-in-interest to Norfolk Southern was ordered to maintain the crossings located on SR 2041 and T-821, at its sole cost and expense. (Dep't Ex. D7, D11); (NS St. 1, p.5, lines 1-10).
4. The predecessor-in-interest to Norfolk Southern was ordered to maintain the crossing located on SR 1025 at its sole cost and expense in 1951 by the Commission prior to it sua sponte amending the order to the railroad's initial cost and expense in 2013. (Dep't Ex. D3, D4); (NS St. 1, p.5, lines 15-19); (Dep't St. 3, p.7, lines 7-19).
5. The predecessor-in-interest to Norfolk Southern had maintenance of the structure located on SR 2032 prior to the Commission sua sponte ordering the railroad to maintain the

crossing at its initial cost and expense. (Dep't Ex. D6, p.1 and p.3); (NS St. 1, p. 5, lines 12-15).

6. There are no records at the Commission for the remaining structures and maintenance has not been assigned to any party. (NS St. 1, p.6, lines 1-2); (Dep't St. 3, p.10, lines 2-5).
7. The predecessor-in-interest to Norfolk Southern constructed the line that encompasses all seven crossings in order to provide a more efficient, cost-effective way to provide service. (NS St. 1 p.3); (Dep't Ex. I).
8. The railroad benefitted from the construction of the line since it reduced the distance for the railroad as well as provided a vast reduction in grades, saving an hour of time for every freight train and reducing the number of engines required to pull trains up the formerly steep grades from five to two. (Dep't Ex. I); (Dep't St. 3, p.6, lines 11-17).
9. The railroad benefitted from the construction of the line since it eliminated 22 at-grade public crossings, and the elimination of at-grade crossings confers a greater benefit on to the railroad than roadway authorities. (Dep't Ex. I); (Tr. 201-202, lines 13-7).
10. The Department and the railroad equally benefit from grade-separated crossings where the freedom of movement is maintained for both and the chance of train-vehicle contact is eliminated. (Dep't St. 2, p. 18, lines 16-17); (Tr. 144, lines 23-25).
11. The railroad owns all seven bridges, as evidenced by the fact that the railroad built the structures as well as the line, received the lion's share of the benefits, and was ordered to maintain each of the structures that went before the Commission. (NS St. 1, p.3, lines 18-22); (Tr. 201-202, lines 13-7); (Dep't Ex. I); (Dep't Ex.s D4, D7, D11, D12).
12. The railroad owns the bridge located on SR 1025 as acknowledged by the Commission in its 1951 order. (Dep't Ex. D4, p.2).

13. The railroad would have been assigned maintenance of the remaining structures had an issue arisen before the Commission or the railroad filed applications for their construction, which is what occurred for the other crossings. (Dep't St. 3, p. 9-10, lines 19-9).
14. The predecessors-in-interest to Norfolk Southern, as well as Norfolk Southern, are primarily responsible for the deterioration of the crossings due to inadequate maintenance despite being aware of the deteriorated conditions of the structures. (Dep't St. 3, p.7-8, lines 21-11); (NS St. 1, p.4, line 1); (Tr. 178, lines 5-9 and 178-179, lines 23-1).
15. The railroad has performed maintenance on its structures only three times since the railroad built them, and only when ordered to do so by the Commission. (Dep't St. 3, p.7-8, lines 21-11); (Dep't Exs. D3, D6, D8).
16. Norfolk Southern was aware that there was a lot of deferred maintenance on the structures when it purchased the line in 2015. (NS St. 1, p.4, line 1); (Tr. 178, lines 5-9 and 178-179, lines 23-1).
17. Norfolk Southern was aware that it had maintenance responsibilities for at least four of the structures and possible exposure on the structures that did not have maintenance assigned, due to its notice of this Investigation docket prior to purchasing the line. (Dep't Ex. D1); (Tr. 184-185, lines 16-2 and 195, lines 16-25).
18. Norfolk Southern has yet to take any steps to begin repairs for any of the structures. (Tr. 184-185, lines 16-2 and 195, lines 16-25).
19. The Department vastly exceeded its responsibility by securing funding and completing extensive work for six structures on this line, not part of this docket, as well as securing funding for an additional structure where construction has yet to begin. (Dep't St. 3, p. 8, lines 21-25 and p. 9, lines 1-4).

20. In order to provide for public safety, the Department has secured funding and begun the process for rehabilitating the structure on SR 4005, even though the Department was not assigned maintenance. (Dep't St. 3, p.9, line 16).
21. Despite seeking to replace the structure at SR 4005, the Department was required by the Pennsylvania Historic Museum Commission to rehabilitate the structure due to its historic nature. (Dep't St. 2, p.20, lines 19-21); (Tr. 92, lines 10-12).
22. All of the bridges under this docket are considered historic and require a historic structures analysis and environmental clearance before the Department may undertake any type of work. (Tr. 85, lines 18-25); 23 C.F.R. § 771; 16 U.S.C. § 470(f).
23. There are no federal or state funds currently available to allocate towards any alterations or removals for any of the subject bridges, excluding SR 4005, nor are any on a transportation improvement plan or currently programmed. (Dep't St. 3, p.2 lines 9-13, 15-19 and p. 3, lines 2-6, 8-12, 14-18, and p.4, lines 2-6 and p. 5, lines 14-18).
24. If the Department were assigned any major maintenance, repair, replacement, rehabilitation, or removal of a structure, the Department would have to decide whether to bump another project currently in process in order to provide funding or to delay the structure repair and risk having the bridge close temporarily until funding can be obtained. (Tr. 126, lines 3-12 and 127, lines 3-23).
25. The Department is not in a financial position to take over responsibility for the railroad, nor would it be prudent for the taxpayers to bear the costs for that which is the responsibility of a private entity. (Dep't St. 3, p.9, lines 1-6).

26. Projects involving railroads are more expensive for the Department than projects built over a highway, due to railroad involvement. (Dep't St. 3, p. 10, lines 14-16 and p.10-11, lines 23-2); (Dep't St. 2, p.21-22, lines 21-2); (Tr. 123, lines 5-21).
27. Projects involving Norfolk Southern are even more expensive than projects with other railroads. (Tr. p.140, lines 14-20).
28. The overall timeframe for which the Department could reasonably expect to complete a project on any of these structures is substantially longer than the project would require if Norfolk Southern was ordered to complete it. (Tr. 85, lines 18-25 and 123-124 lines 17-11 and 141, lines 16-24 and 171, lines 14-25).
29. The Department is owed \$121,093.94 by Norfolk Southern for expenses already incurred on the structures. (Dep't St. 1, p. 35, line 1).
30. Priority maintenance items are a Department procedure to ensure that critical findings from inspections are ranked and addressed in a timely manner. (Dep't St. 2, p.4-5, lines 25-5).
31. All priority maintenance items need to be addressed for all structures, excluding SR 4005, regardless of whether the bridges will be repaired or replaced in the future. (Dep't St. 2, p.6 lines 12-19 and p. 9, lines 20-24 and p. 12, lines 14-17 and p.15, lines 3-5 and p.18, lines 7-10 and p.20, lines 24-25 and p. 23, lines 17-19); (Dep't St. 4, p.1-2, lines 19-13).
32. The Department will address those priority items related to the roadway surface for the state route crossings after the concrete work is completed. (Tr. 115, lines 9-16).
33. Each of the crossings are important to the local community and are not redundant. (Dep't St. 2, p.2, lines 23-24 and p.3, lines 23-27 and p.7, lines 2-3 and p.10, lines 8-9 and p.12-13, lines 26-1 and p.15, lines 15-15 and p.18, lines 19-20); (Dep't St. 5, p. 2, lines 10-19 and p.3, lines 12-19).

34. The traffic assessment provided by Norfolk Southern was insufficient since it did not consider many factors that are relevant. (Dep't St. 5, p.2, lines 7-19 and p.4-7, lines 1-1).
35. The alternate routes listed by Norfolk Southern in the event the Commission were to close a crossing are not reliable. (Dep't St. 5, p.7-10, lines 1-19); (Tr. 238, lines 8-25).
36. Due to bridge removals previously ordered by the Commission, there are already only a limited number of crossings the traveling public can use in this area. (Dep't St. 2, p.19, lines 23-26).
37. The removal of any crossing would solely benefit the railroad, as evidenced by Norfolk Southern's offer to bear the cost of removal and barricades for any bridge the Commission were to order closed. (Tr. 167, lines 14-25).
38. If a structure were ordered closed, abolished, or removed, additional improvements to the alternate routes such as roadway improvements, the construction of cul-de-sacs to the Department's specifications, and the acquisition of right of way would be required to provide for the public's safety. (Dep't St. 6, p.1-2, lines 20-22).

Proposed Conclusions of Law

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. §§102, 501, 2702 *et seq.*
2. The Commission has exclusive jurisdiction to regulate the construction, relocation, suspension, abolition or alteration of railroad facilities that cross any other public utility or a public highway either at grade or above or below grade as well as the authority to determine and order which concerned parties should perform such work, in order to prevent accidents and promote the safety of the public. 66 Pa.C.S. § 2702.

3. In appropriating costs in railroad crossing cases, the Commission is not limited to any fixed rule but must take all relevant factors into consideration, with the fundamental requirement being that it is just and reasonable. *AT&T v. Pa. P. U. C.*, 737 A.2d 201, 213 (1999); *Greene Twp. Bd. of Supervisors v. Pa. P.U.C.*, 668 A.2d 615 (Pa. Cmwlth. 1995).
4. The Commission, while not limited to any fixed rule, has consistently relied upon certain relevant factors for the allocation of highway-rail maintenance responsibilities, repair and replacement, and costs: the party that originally built the crossing; the party that owned and maintained the crossing; the relative benefit conferred on each party with the construction of the crossing; whether each party is responsible for the deterioration of the crossing that has led to the need for its repair, replacement, or removal, and; the relative benefit that each party will receive from the repair, replacement, or removal of the crossing. *N. Lebanon Twp. v. Pa. P.U.C.*, 962 A.2d 1237, 1247 (Pa. Cmwlth. 2008) (citing *Greene Twp. Bd. Of Supervisors v. Pa. P.U.C.*, 668 A.2d 615, 619 (Pa. Cmwlth. 1995)).
5. However, the Commission can consider other factors such as the availability of state and/or federal funding for a project and the general equities of the case in its determination. *Erie L.R. Co. v. Pa. P.U.C.*, 278 A.2d 188 (Pa. Cmwlth. 1971); *SEPTA v. Pa. P.U.C.*, 802 F. Supp. 1273, 1273 (E.D. Pa. 1992); *Application of the City of Wilkes-Barre*, Docket No. A-00101606, 1981 Pa. PUC LEXIS 102, *5-*6 (Order entered April 9, 1981).
6. Overall, the Commission has wide latitude “to determine which factors are relevant in assessing costs within the context of the particular case before it.” *Bell Atl. Pa. v. Pa. P.U.C.*, 672 A.2d 352, 355 (Pa. Cmwlth. 1995).
7. Applying the facts to the above factors, it is just and reasonable that Norfolk Southern Railway Company, at its sole cost and expense, furnish all material and do all work

necessary to maintain, repair, replace, rehabilitate and/or remove all seven of the subject bridges. *Greene Twp. Bd. Of Supervisors v. Pa. P.U.C.*, 668 A.2d 615, 619 (Pa. Cmwlth. 1995); *Erie L.R. Co. v. Pa. P.U.C.*, 278 A.2d 188 (Pa. Cmwlth. 1971); *SEPTA v. Pa. P.U.C.*, 802 F. Supp. 1273, 1273 (E.D. Pa. 1992); Application of the City of Wilkes-Barre, Docket No. A-00101606, 1981 Pa. PUC LEXIS 102, *5-*6 (Order entered April 9, 1981).

8. It is just and reasonable for Norfolk Southern Railway Company to be assigned future maintenance and costs including bridge inspections, design plan reviews, flagging, watcher, and observer costs, insurance, right of entry acquisitions, and entry on to the railroad property. *Id.*
9. It is just and reasonable for Norfolk Southern Railway Company to be allocated the costs involving the closure of T-821 until Norfolk Southern Railway Company can do the work required to reopen the structure. *Id.*
10. It is just and reasonable for Norfolk Southern Railway Company to be required to reimburse the Department for costs already incurred on the subject bridges. *Id.*
11. The Commission may, at its discretion, rescind or amend a prior order after giving all parties notice and an opportunity to be heard. 66 Pa.C.S. § 703(g).
12. Amending or rescinding a prior order must be done judiciously and only under appropriate circumstances. *City of Pittsburgh v. Dep't of Transp.*, 416 A.2d 461 (1980).
13. The Commission amended the prior orders for SR 1025 and SR 2032 sua sponte and without due process. *Id.*
14. It is just and reasonable to reassign maintenance to Norfolk Southern Railway Company, at its sole cost and expense, for the crossings at SR 1025 and SR 2032. *Id.*

15. It is just and reasonable for the Department of Transportation to be allocated current and future maintenance of the roadway for each of the subject crossings on a state route. *AT&T v. Pa. P. U. C.*, 737 A.2d 201, 213 (1999).
16. It is just and reasonable for Norfolk Southern Railway Company to be required to address all of the priority items for safety reasons at each of the crossings, regardless of whether the crossing will be repaired or replaced in the future. *AT&T v. Pa. P. U. C.*, 737 A.2d 201, 213 (1999).
17. It is just and reasonable for the Commission to assign both current and future maintenance of the SR 4005 bridge in this proceeding. *AT&T v. Pa. P. U. C.*, 737 A.2d 201, 213 (1999).
18. It is not just and reasonable to abolish any of the crossings as each are important to the local community. *AT&T v. Pa. P. U. C.*, 737 A.2d 201, 213 (1999).

In the alternative, if the Commission concludes that it is just and reasonable to abolish any of the subject crossings and remove any of the bridges:

- 18. It is just and reasonable for Norfolk Southern Railway Company to maintain and provide roadway improvements on all of the alternative routes for the closed bridge as well as the construction of cul-de-sacs to Department specifications and acquisition of right of way. AT&T v. Pa. P. U. C., 737 A.2d 201, 213 (1999).*

Proposed Order

THEREFORE,

IT IS RECOMMENDED:

1. That Norfolk Southern Railway Company shall, at its sole cost and expense, furnish all material and do all work necessary to maintain the existing structures and any other railroad facilities, existing or altered, located at the seven subject highway-rail crossings.
2. That Norfolk Southern Railway Company shall, at its sole cost and expense, furnish all material and do all work necessary to replace the railroad-highway crossing structures located on SR 1025, SR 2032, SR 1018, SR 2041, SR 2017, and T-821, and the highway approaches thereto.

In the alternative, if the Commission decides to abolish any of the subject crossings:

2. *That Norfolk Southern Railway Company, at its sole cost and expense, furnish all material and do all work necessary to maintain and provide roadway improvements on all of the alternative routes for the closed bridges as well as provide for the construction of cul-de-sacs to Department specifications and acquisition of right of way.*
3. *That Norfolk Southern Railway Company, at its sole cost and expense, furnish all materials and do all work necessary to remove the structures at the crossing, including the abutments, to grade the slopes to a grade of one-to-one, and abolish the crossing.*
3. That Norfolk Southern Railway Company shall, at its sole cost and expense, within three months of this order submit plans to be reviewed by all parties and approved by the Commission for all work ordered herein.

4. That the Commonwealth of Pennsylvania, Department of Transportation, shall, at its sole cost and expense, furnish all material and do all work necessary to maintain the roadway surfaces and approach roadway in a smooth and satisfactory manner and perform appropriate winter maintenance for the crossings located on state routes.
5. That Great Bend Township shall, at its sole cost and expense, furnish all material and do all work necessary to maintain the roadway surfaces and approach roadway in a smooth and satisfactory manner for the crossing located on T-821.
4. That Norfolk Southern Railway Company shall, at its sole cost and expense, perform all work necessary to address the priority maintenance repair items located in the Department of Transportation's current inspection reports, and that the work be done in a manner satisfactory to the Commission within six months of this order, and that on or before said date, Norfolk Southern Railway Company shall report to the Commission the dates of actual completion of the work for each structure; and certify to the Commission that the work has been satisfactorily completed in accordance with the approved plans and this order.
5. That Norfolk Southern Railway Company shall, at its sole cost and expense, furnish and maintain any flagmen, watchmen, observers, construction inspectors necessary to protect and safeguard its railroad operations during maintenance of the seven subject crossings and during the time any crossing projects are being constructed along, above, or adjacent to its track.
6. That Norfolk Southern Railway Company shall, at its sole cost and expense, furnish all material and do all work necessary to provide for the future maintenance costs of the

subject bridges, including bridge inspections, design plan reviews, insurance, right of entry acquisitions, and/or entry onto the railroad property.

7. That Norfolk Southern Railway Company shall reimburse the Department of Transportation \$121, 093.94 for costs incurred on the subject bridges.
8. That Norfolk Southern Railway Company shall be assigned, at its sole cost and expense, maintenance of and costs associated with the closure of T-821 until such time as Norfolk Southern Railway Company is able to reopen the bridge.
9. That the Department of Transportation, at its initial cost and expense, furnish all material and do all work necessary to submit an application for the rehabilitation of the crossing located on SR 4005.
10. That Norfolk Southern Railway Company, at its sole cost and expense, furnish all material and do all work necessary for the current and future maintenance of the structure located on SR 4005 and any other railroad facilities, existing or altered, located at the highway-rail crossing.
11. That Norfolk Southern Railway Company pay all compensation for damages, if any, due to owners of property taken, injured, or destroyed by reason of construction of an improvement, in accordance with this order.
12. That any relocation of, changes in and/or removal of any adjacent structures, equipment or other facilities of any non-carrier public utility located within the limits of the highway, within the Commission's jurisdiction, be made by said public utility, at its initial cost and expense, and in such manner as will not interfere with the construction of the improvement; and such relocated or altered facilities thereafter be maintained by said public utility, at its sole cost and expense.

13. That any relocation of, changes in, and/or removal of any adjacent structures, equipment, or other facilities of any non-carrier public utility located beyond the limits of the highway, within the limits of the Commission's jurisdiction, be made by said public utility in such a manner as will not interfere with the construction of the improvement; and such relocated or altered facilities thereafter be maintained by said public utility, at its sole cost and expense.
14. That non-carrier public utility companies cooperate with Norfolk Southern Railway Company so that the alteration and/or relocation of any facilities will not interfere with the completion of any crossing alteration or maintenance project.
15. That Norfolk Southern Railway Company furnish all material and do all work necessary thereafter to maintain its tracks, wire lines and other facilities, existing or altered, located within the limits of the improvements.
16. That upon completion of the construction of the improvements and their opening to public use, Norfolk Southern Railway Company, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the remaining portions of the entire substructure and superstructure including any sidewalks, bridge railings, and any facilities pertinent to the improvements constructed as a result and in compliance with this order.

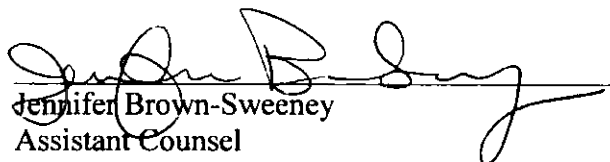
CONCLUSION

The Department respectfully requests, that based on the foregoing, the Commission determine that it is just and reasonable to allocate the maintenance responsibility, and the cost thereof, of the seven subject bridges to Norfolk Southern Railway Company. These costs should include all maintenance, repairs, replacement, removal, as well as future costs associated with bridge inspections, design plan reviews, flagging costs, right of entry, insurance, right of way

acquisitions, and reimbursement for the Department's previous expenses. In the alternative, if the Commission orders the Department to be responsible for maintenance of any of the structures, then it is just and reasonable for Norfolk Southern to be required to repair each structure and to pay future costs associated with the structure, such as bridge inspections, design plan reviews, flagging costs, right of entry, insurance, and right of way acquisitions. Further, the Commission should order that Norfolk Southern address all of the priority items for each crossing, regardless of whether the crossing will be repaired or replaced in the future. The Commission should also determine that each of the subject crossings are important to the local community and should not be abolished. In the alternative, if the Commission orders the abolition of any crossing, then Norfolk Southern should be required to pay for the removal of the structures, provide improvements to the alternative routes as well as construct the cul-de-sacs and the acquire any necessary right of way, for each closed structure or abolished crossing. Finally, the Department requests that the Commission assign Norfolk Southern both the current and future maintenance of the SR 4005 crossing in this proceeding.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



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DATED: June 15, 2018

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation upon the commission's own motion to :
determine the condition and disposition of six (6) :
existing structures carrying various highways above :
the grade of the tracks of the Canadian Pacific Railroad :
in Great Bend Township, New Milford Township, :
Brooklyn Township, Hop Bottom Borough, Lathrop :
Township, Susquehanna County and Benton :
Township, Lackawanna County :

Docket No. I-2015-2472242

Bridge structure where State Route 1025, crosses over :
a single track of Canadian Pacific Railroad (264 293 :
K) in Nicholson Borough, Wyoming County :

Docket No. M-2013-2364201

Electronically Filed

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Department's *Brief* was served upon the participants listed below, in accordance with the requirements of 52 Pa. Code § 1.54, by first class mail, postage prepaid this 15th day of June, 2018.

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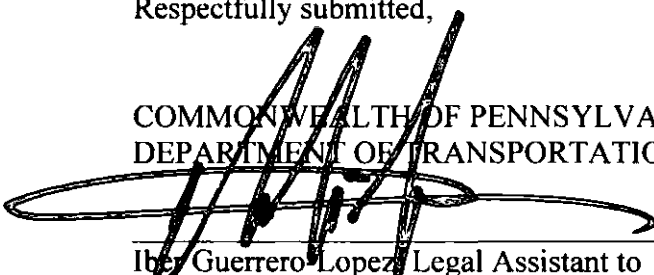
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