



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

July 3, 2018

**Via Electronic Filing**

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

Re: Bridge Structure where State Route 1025 crosses over a single track of Delaware and Hudson 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 (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 Nos. M-2013-2364201 and I-2015-2472242  
**(Reply Brief)**

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Reply Brief of the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement in the above-captioned proceedings.

Copies have been served on the parties of record in accordance with the Certificate of Service.

Sincerely,

A handwritten signature in black ink, appearing to read "Bradley R. Gorter", is written over a horizontal line.

Bradley R. Gorter, Prosecutor  
Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
(717) 783-6150  
bgorter@pa.gov

Enclosure

cc: As per Certificate of Service

**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	:	Docket No. I-2015-2472242
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.	:	
	:	
	:	
Bridge Structure Where State Route 1025,	:	
Crosses Over a Single Track of Canadian	:	Docket No. M-2013-2364201
Pacific Railroad (264 293 K) in Nicholson	:	
Borough, Wyoming County.	:	

**REPLY BRIEF OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION’S  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

**TO THE HONORABLE DAVID A. SALAPA:**

AND NOW COMES the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) of, by and through its prosecuting attorneys, pursuant to 52 Pa. Code § 5.501, and files this Reply Brief in the above-captioned proceeding. In support, I&E respectfully avers:

**I. SUMMARY OF ARGUMENTS**

Pursuant to Administrative Law Judge David A. Salapa’s instructions, I&E, the Pennsylvania Department of Transportation (“PennDOT”), Norfolk Southern Railway Company, (“NS”), Great Bend Township (“Great Bend”), Nicholson Borough, and

Wyoming County concurrently filed Main Briefs on June 15, 2018 (collectively the “Parties”). Generally, the Parties acknowledge that the seven (7) bridges at issue in this consolidated proceeding are currently in various states of disrepair and some action must be taken to protect the travelling public and NS’s operations. While the Parties agree that repairs must be made, NS disagrees with the repairs recommended by I&E and PennDOT and suggests that the repairs that it outlined in its testimony and at the hearing are more appropriate. See NS Main Brief at 13-17.

Great Bend, Nicholson Borough, and Susquehanna County generally argue that they should not be assigned maintenance and repair responsibilities and should not be assigned any of the costs of maintaining or repairing the bridges within their municipal jurisdictions. NS, PennDOT, and Great Bend further extensively argue as to where maintenance responsibility for all bridges should lie and which party or parties should bear cost responsibility for repairs and current and future maintenance. I&E takes no position on which party or parties should bear the costs of repairs, current maintenance, and future maintenance, and simply asks that the Commission assign these costs and maintenance responsibilities pursuant to the applicable law.

In summary, before the Commission are the following issues: 1) what repairs should be, in the short term, ordered; 2) the timeframes for completion of these repairs; 3) what party or parties should bear the responsibility for the costs of these repairs; and, 4) which party or parties should bear ongoing maintenance, repair, and inspection responsibility for these bridges.

For all the reasons set forth in its Main Brief and as further set forth below, I&E respectfully requests that the Commission issue an order requiring that: 1) NS perform any and all necessary work to reopen T-821 within ninety (90) days of the entry of a final Commission order; 2) NS perform all Priority Code 1 repairs within six (6) months of the date of the entry of a final order in this matter; 3) NS, PennDOT, and the local municipalities perform all Priority Code 2 and Priority Code 3 repairs within one (1) year of the date of the final order; 4) the Commission allocate costs of all repairs as it sees fit; and, 5) the Commission assign future maintenance, repair, and inspection responsibilities to a party or parties as it deems appropriate.

## II. DISCUSSION

As fully outlined in I&E's Main Brief, the Commission is vested with the exclusive jurisdiction to determine how railroad-highway crossings are constructed, maintained, altered, or abolished to prevent accidents and promote public safety. See I&E Main Brief at 6. The Commission is further given broad powers to direct how these crossings are maintained and which party or parties shall bear responsibility for the repairs and maintenance and the costs of the repairs and maintenance. Id. I&E submits that the Commission should order NS to perform all Priority repairs in PennDOT's inspection reports, and not simply order NS to perform the repairs it suggests, because the inspection reports recommend repairs in accordance with National Bridge Inspection Standards ("NBIS") and PennDOT policy and provide concrete timelines to improve the

safety of the crossings. Additionally, the Commission must assign future maintenance responsibilities for all crossings.

A. The Commission should order NS to perform all priority repairs because the inspection reports conform to NBIS and safeguard the public interest.

The Commission should order NS to perform all priority code repairs in PennDOT's inspection reports within the applicable timeframes because the suggested repairs conform with federal and state regulations and policies and will provide for the public safety interests. Further, the timeframes recommended in PennDOT's inspection reports would require that repairs are scheduled in a timely manner and prevent further deterioration and potential bridge closures.

The Commission should order repairs to be performed in accordance with the repairs and timeframes recommended in PennDOT's inspection reports. See PennDOT Exs. E1-E7. PennDOT's inspections were performed by qualified contractors who are certified by the United States Department of Transportation, Federal Highway Administration on the NBIS requirements. See PennDOT Statement 2 at 1, ln. 26-28. These inspectors provide reliable, consistent recommendations regarding the condition of bridges and recommend repairs and maintenance based on the specific needs of each bridge. The repair timeframes are based on generally accepted engineering knowledge of structures and are uniformly applied based on federal guidelines. See PennDOT Statement 4, at 1-3. As such, the repairs suggested in PennDOT's inspection reports

present the most logical, reasonable, and safest course of action for the Commission to order.

NS disagrees that the repairs recommended in the NBIS inspection reports are necessary. NS conducts its own internal inspections performed by NS employees. See Tr. at 188. However, NS admits that it bases much of what it does with regard to bridge repairs on PennDOT inspections and that NS “do[es] not do the detailed inspection that the state does.” Tr. at 189, ln. 4-5. In fact, NS stated at the hearing that the PennDOT inspection reports “give us a more accurate detail of [] the bridge.” Tr. at 189, ln. 22-23. NS has provided some detail on the repairs that it would make if necessary, but generally its suggestions lack detail and provide no timeline whatsoever for the completion of work and, to date, NS does not have any plans to perform any work other than the reopening of the T-821 bridge. See generally NS Statement 1; see Tr. at 186, ln. 7-10; see Tr. at 170, ln. 1-4. As such, NS’s suggestions regarding the maintenance and repairs needed at each bridge lacks the detail and scheduling elements that the NBIS inspection reports provided by PennDOT include.

At the hearing in this matter, PennDOT testified that failure to make timely repairs to these bridges could result in reclassification to Priority Code 0 status for some of these bridges, which could result in closure of some or all of these bridges. See Tr. at 87, ln. 1-25. Due to the lack of maintenance on the bridge structure carrying T-821 over NS’s tracks, the bearing areas deteriorated enough that the bridge has been closed to vehicular traffic since December 2017. See PennDOT Statement 2A at 30-33. Accordingly, the Commission should order repairs to be completed as recommended in PennDOT’s

inspection reports, including the repair timeframes in the reports and PennDOT policy, and not leave the repairs up to NS's discretion.

B. The Commission should assign future maintenance responsibility for all bridges as it sees fit.

As outlined in I&E's Main Brief, I&E submits that the Commission must assign future maintenance responsibilities for all the bridges so that they are maintained until they are replaced or rehabilitated. See I&E Main Brief at 12. I&E takes no position on which party or parties should bear these responsibilities; however, I&E must clarify its position based on an assertion presented in NS's Main Brief. In its Main Brief, NS states, "It is also important to note that [I&E] recommends every bridge be programmed for replacement and seems to view the repairs as temporary measures to hold the bridges over until they are able to be replaced. Id. This position is in line with Norfolk Southern's longer range proposed resolution, discussed below, assigning PennDOT permanent maintenance responsibilities for the bridges carrying its highways which would include programming bridge replacements, following Norfolk Southern's repairs." NS Main Brief at 16. This statement seems to imply that I&E recommends that current and future maintenance responsibility be assigned to PennDOT for the bridges carrying state routes over NS's tracks until such time as the bridges are scheduled for replacement. While I&E does recommend that all bridges be programmed for replacement, I&E does not take a position regarding the party to be assigned future maintenance responsibilities.

### III. CONCLUSION

For the foregoing reasons and the additional reasons set forth in its Main Brief, I&E respectfully requests that the Commission issue an order directing: 1) that NS shall reopen the T-821 bridge within 90 days of the entry of a final order in this matter; 2) that NS shall perform all Priority Code 1 repairs to all bridges within six (6) months of the date of entry of a final order in this matter; 3) that NS and PennDOT complete, as the Commission sees fit, the Priority Code 2 and Priority Code 3 repairs within one (1) year of the entry of a final order in this matter; 4) that a certain party or parties be assigned future maintenance and repair responsibilities for all of the bridges; and, 5) any other relief that the Commission deems appropriate.

Respectfully submitted,



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Bradley R. Gorter  
Prosecutor  
PA Attorney ID No. 312666  
Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission

P.O. Box 3265  
Harrisburg, PA 17105-3265  
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Dated: July 3, 2018



**BEFORE THE  
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Bridge Structure where State Route 1025	:	
crosses over a single track of Delaware and	:	
Hudson Railway Company, Inc. (264 293 K)	:	Docket No. M-2013-2364201
in Nicholson Borough, Wyoming County	:	
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motion to determine the condition and	:	
disposition of six (6) existing structures	:	
carrying various highways above the grade	:	Docket No. I-2015-2472242
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	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

**Service by First Class Mail:**

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A handwritten signature in black ink, appearing to read 'BRADLEY R. GORTER', written over a horizontal line.

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