

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bridge Structure where State Route 1025 :  
crosses over a single track of Delaware :  
and Hudson Railway Company, Inc. : M-2013-2364201  
(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 : I-2015-2472242  
Great Bend Township, New Milford Township, :  
Brooklyn Township, Hop Bottom Borough, :  
Lathrop Township, Susquehanna County and :  
Benton Township, Lackawanna County :

**RECOMMENDED DECISION**

Before  
David A. Salapa  
Administrative Law Judge

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## I. INTRODUCTION

The Pennsylvania Public Utility Commission (Commission) initiated proceedings concerning the condition and disposition of seven above grade rail-highway crossings on the same rail line. This decision assigns maintenance and inspection responsibilities for the structures at the crossings, orders repairs for some of the structures and orders some of the structures replaced.

## II. HISTORY OF THE PROCEEDINGS

On May 23, 2013, the Commission issued an order at M-2013-2364201 regarding the crossing where State Route (SR) 1025 crosses over the facilities of the Delaware and Hudson Railway Company, a wholly owned subsidiary of the Canadian Pacific Railway Company (D&H) located in Nicolson Borough (Nicholson), Wyoming County (Wyoming). The order at M-2013-2364201 stated that a field meeting was held at the site of the crossing on May 14, 2013. Present at the meeting were representatives of D&H, the Commission and the Pennsylvania Department of Transportation (DOT).

The parties at the field meeting concluded that the bridge carrying SR 1025 was in such poor condition that it was necessary for DOT to take action to close the structure to vehicular and pedestrian traffic immediately. The May 23, 2013 order at M-2013-2364201 directed DOT, at its initial cost, to perform all work and furnish all material necessary to close the bridge to all pedestrian and vehicular traffic and provide for any detours necessary and to maintain any barricades or fencing installed to prevent vehicular and pedestrian access to the bridge.

The order at M-2013-2364201 further directed DOT, at its initial cost, within 30 days of the order, to provide any engineering inspections and analyses evaluating the condition of the bridge. In addition, the order directed DOT, at its initial cost, within 90 days of the order, to provide an engineering study and analysis evaluating the feasibility of reopening the bridge and if reopening the bridge was feasible, what work was necessary to reopen the bridge. The

order at M-2013-2364201 directed that DOT, D&H, Nicholson and Wyoming all be made parties to the proceeding.

On June 3, 2013, DOT filed a petition for reconsideration of the May 23, 2013 Commission order at M-2013-2364201, a motion for certification of interlocutory order and stay of proceedings pending appeal and a petition for protective order. No answers were filed to these pleadings. By order dated June 13, 2013, at M-2013-2364201, the Commission granted DOT's petition for reconsideration, pending review and consideration on the merits.

On July 31, 2013, DOT 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 at M-2013-2364201.

By order dated August 16, 2013, at M-2013-2364201, the Commission granted DOT's petition for leave to withdraw its motion for certification of interlocutory order and stay of proceedings pending appeal and its petition for reconsideration. The Commission's August 16, 2013 order at M-2013-2364201 also granted DOT's petition for a protective order. The August 16, 2013 order extended the deadline for DOT to file its engineering studies and analyses with the Commission to 120 days from the May 23, 2013 order. The August 16, 2013 order referred the matter to the Office of Administrative Law Judge (OALJ).

By notice dated August 21, 2013, the Commission scheduled a telephonic prehearing conference for the matter at M-2013-2364201 on October 4, 2013 at 10:00 a.m. I issued a prehearing conference order on August 22, 2013, setting forth the procedural matters to be addressed at the prehearing conference.

I conducted a telephonic prehearing conference in the matter at M-2013-2364201 as scheduled on October 4, 2013 at 10:00 a.m. Participating were counsel for D&H, Nicholson, Wyoming, DOT and the Commission's Bureau of Investigation and Enforcement (I&E). As a result of the prehearing conference, I issued Prehearing Order #2 on October 11, 2013.

Prehearing Order #2 established litigation and briefing schedules for the matter at M-2013-2364201.

By notice dated October 7, 2013, the Commission scheduled hearings for the matter at M-2013-2364201 for November 20, 2013 in Hearing Room 2, Commonwealth Keystone Building, Harrisburg.

On November 1, 2013, DOT, on behalf of DOT, D&H, and I&E, filed a joint petition for partial remand at M-2013-2364201. The joint petition alleged that DOT provided the parties with copies of its studies and analyses of the SR 1025 bridge, evaluating the feasibility of reopening the bridge. DOT's analyses indicated that the bridge could be reopened to a single lane of traffic with a posted weight limit of 28 tons for single vehicles and 32 tons for combination vehicles. Traffic would be controlled by stop signs at either end of the bridge. Attached to the joint petition were plans setting forth the scope of work.

According to the joint petition, D&H would perform the work described in the plans and would reimburse DOT for the costs, in the amount of \$12,045.73, that DOT had incurred to date. DOT would inspect the bridge and D&H agreed to reimburse DOT 20% of the costs of inspecting the bridge. The joint petition asserted that none of the parties objected to reopening the bridge in the manner set forth in the joint petition.

The joint petition stated that the parties did not object to OALJ reassigning the matter to the Commission's Bureau of Technical Utility Services (TUS) for approval of the attached plans, final inspection upon completion of the work and reopening of the bridge. The joint petition asserted that the parties waived the right to reply to the joint petition and requested an order as soon as possible.

The joint petition indicated that the parties were still discussing future maintenance responsibility for the bridge and future disposition of the crossing. The joint petition requested that these issues remain pending before the OALJ. The parties also requested that the hearing scheduled for November 20, 2013, be converted to a telephonic status conference and that the

litigation schedule for this proceeding be suspended. By order dated November 5, 2013 at M-2013-2364201, I granted the joint petition and referred the entire case to TUS for further action, rather than just the portion addressing the approval of the plans, final inspection upon completion of the work and reopening of the bridge. I stated that if the parties could agree on future maintenance responsibility for the bridge and future disposition of the crossing, TUS could issue a further order adopting and approving that agreement. If the parties could not agree on future maintenance responsibility for the bridge and future disposition of the crossing, TUS could refer the case to the OALJ for a hearing and recommended decision on those issues.

On November 8, 2013, the Commission issued a Secretarial Letter at M-2013-2364201 that approved plans for the alteration of the structure carrying SR 1025 over the facilities of D&H and ordered various parties to perform the work set forth in the approved plans. The Secretarial Letter directed that the work necessary to alter the crossing be completed on or before December 13, 2013. Upon completion of the work, the Secretarial Letter ordered that the proceeding be scheduled for a hearing to allocate the costs of construction, assign future maintenance and consider the future disposition of the bridge structure.

On November 12, 2013, the Pennsylvania Electric Company (Penelec) filed a petition to intervene in the proceeding at M-2013-2364201, pursuant to 52 Pa.Code §§ 5.72-5.75. Penelec's petition alleged that it has facilities in the vicinity of the crossing and that there was a high probability that a Commission order in this proceeding could direct it to relocate its facilities. A Commission order directing it to relocate its facilities could raise issues concerning the feasibility, safety and cost of such a relocation. According to the petition, Penelec's interests were not adequately represented by any other party in this proceeding. Penelec's petition requested that it be permitted to intervene in this proceeding. None of the parties filed an answer to Penelec's petition to intervene opposing the petition.

On December 11, 2013, the Commission issued a Secretarial Letter at M-2013-2364201 indicating that the work ordered by the November 8, 2013 Secretarial Letter had been completed. The December 11, 2013 Secretarial Letter directed that the structure carrying

SR 1025 over the facilities of D&H be reopened with a maximum weight limit of twenty-eight tons for single vehicles and thirty-two tons for combination vehicles.

On October 30, 2014, DOT filed a petition at M-2013-2364201 requesting that the Commission schedule a hearing for the purposes of allocating costs incurred for work performed pursuant to the November 8, 2013 Secretarial Letter. The petition alleged that DOT incurred costs of approximately \$40,000.00 in performing the work ordered by the November 8, 2013 Secretarial Letter. The petition requested that the Commission schedule a hearing to allocate costs and assign maintenance responsibilities. None of the parties filed an answer to DOT's petition opposing the petition.

By notice dated February 20, 2015, the Commission scheduled a hearing at M-2013-2364201 for April 14, 2015 at 10:00 a.m. in Hearing Room 2, Commonwealth Keystone Building, Harrisburg. I issued Prehearing Order #3, dated February 24, 2015, establishing litigation and briefing schedules.

On March 9, 2015, Norfolk Southern Railway Company (NS) filed a motion to join or in the alternative, a petition to intervene at M-2013-2364201. In its pleading, NS alleged that it currently operates over D&H's facilities at the SR 1025 crossing. In addition, the pleading asserted that NS was currently negotiating with D&H to purchase the rail line from D&H. NS requested that the Commission permit it to intervene in this proceeding. NS requested that the Commission continue the hearing scheduled for April 14, 2015 and suspend the litigation schedule at M-2013-2364201 established by Prehearing Order #3, pending NS' purchase of the rail line, which it expected to occur in the summer of 2015.

On March 17, 2015, D&H filed an answer to NS' pleading. D&H's answer supported NS' request to intervene, as well as its request to continue the April 14, 2015 hearing and suspend the litigation hearing established at M-2013-2364201 by Prehearing Order #3. The answer requested that the Commission grant NS' request to intervene in the proceeding, continue the April 14, 2015 hearing and suspend the litigation schedule. On March 18, 2015, DOT filed an answer to NS' pleading at M-2013-2364201. DOT's answer did not object to NS' request to

intervene in the proceeding. DOT did not object to NS' request to continue the April 14, 2015 hearing and suspend the litigation schedule established by Prehearing Order #3.

By order dated March 23, 2015, I granted the petitions to intervene of Penelec and NS at M-2013-2364201. The order also cancelled the hearing scheduled for April 14, 2015 and suspended the litigation schedule set forth in Prehearing Order #3.

By order entered on April 9, 2015, the Commission initiated an investigation at I-2015-2472242 to evaluate the condition and disposition of six highway over rail crossings located on the same rail line as the crossing in the proceeding at M-2013-2364201. The six crossings are in Susquehanna and Lackawanna Counties. The Commission determined that the following crossings were to be investigated:

<u>Highway Name</u>	<u>Structure Type</u>	<u>DOT No.</u>	<u>Municipality/ County</u>
T-821 (Old Lackawanna Trail)	Steel Thru-Girder	263 952 J	Great Bend Twp., Susquehanna
SR 1018 (Old Lackawanna Trail)	Concrete Arch	264 028 V	New Milford Twp., Susquehanna
SR 2032 (Depot Street)	Concrete Arch	264 033 S	Brooklyn Twp., Susquehanna
SR 2041 (Glenwood Street)	Concrete Arch	264 292 D	Hop Bottom Borough, Susquehanna
SR 2017 (Station Hill Road)	Concrete Arch	264 291 W	Lathrop Twp., Susquehanna
SR 4005 (Seamans Road)	Concrete Arch	265 849 D	Benton Twp., Lackawanna

The Commission directed that DOT, D&H, NS, Great Bend Township (Great Bend), New Milford Township (New Milford), Brooklyn Township (Brooklyn), Hop Bottom Borough (Hop Bottom), Lathrop Township (Lathrop), Benton Township (Benton), Lackawanna County (Lackawanna) and Susquehanna County (Susquehanna) be made parties to the investigation at I-2015-2472242.

As part of the investigation at I-2015-2472242, the Commission directed DOT, at its initial cost and expense, to perform in-depth load rating analyses on these six structures. The Commission also directed that DOT provide the other parties to the investigation with the most recent National Bridge Inspection Standards (NBIS) inspection reports for each bridge, including an in-depth load rating analysis for each bridge. The Commission order directed D&H to pay



20% of the cost for the NBIS inspection for the bridge where T-821, Old Lackawanna Trail, crosses over its tracks in Great Bend.

By notice dated June 25, 2015, the Commission scheduled a hearing on the proceeding at M-2013-2364201 for September 14, 2015 at 10:00 a.m. in Hearing Room 2, Commonwealth Keystone Building, Harrisburg. I issued Prehearing Order #4, dated June 29, 2015, establishing litigation and briefing schedules.

On August 4, 2015, NS filed a motion for continuance of the proceeding at M-2013-2364201, pursuant to 52 Pa.Code § 1.15(b). In support of its motion NS asserted that the closing date for its purchase of the rail line had been rescheduled from mid-August 2015 to mid-September 2015. NS alleged that following the closing of its purchase of the rail line, it planned to engage in discussions with the parties to resolve the outstanding issues in this proceeding as well as the proceeding at I-2015-2472242.

NS requested that the Commission schedule a hearing in the proceeding at M-2013-2364201 for January or February 2016 and revise the litigation schedule established by Prehearing Order #4. The motion asserted that NS had contacted the other parties to the proceeding at M-2013-2364201 and the parties concurred in the continuance request. By order dated August 6, 2015, I granted NS' motion and suspended the litigation schedule for the proceeding at M-2013-2364201 established by Prehearing Order #4.

By notice dated August 6, 2015, the Commission scheduled a hearing for the proceeding at M-2013-2364201 for February 4, 2016 at 10:00 a.m. in Hearing Room 2, Commonwealth Keystone Building, Harrisburg. I issued Prehearing Order #5, dated August 7, 2015, establishing litigation and briefing schedules for the proceeding at M-2013-2364201.

On December 3, 2015, DOT filed a motion for continuance, pursuant to 52 Pa.Code § 1.15(b). In support of its motion DOT asserted that on or about September 19, 2015, NS acquired the rail line. DOT stated that it anticipated finalizing bridge inspection reports for the structures that are the subject of the proceeding at I-2015-2472242 by the end of February

2016. Once it completed the inspection reports, DOT alleged it would discuss disposition of the structures that are the subject of the proceeding at I-2015-2472242 and the proceeding at M-2013-2364201 with NS. DOT requested that the Commission schedule a hearing for the proceeding at M-2013-2364201 for August 2016. The motion asserted that DOT had contacted the other parties to the proceeding at M-2013-2364201 and the parties concurred in the continuance request. By order dated December 11, 2015, I granted DOT's motion and continued the hearing for the proceeding at M-2013-2364201, scheduled for February 4, 2016.

By notice dated January 14, 2016, the Commission scheduled a hearing for the proceeding at M-2013-2364201 for August 16, 2016 at 10:00 a.m. in Hearing Room 2, Commonwealth Keystone Building, Harrisburg.

On July 18, 2016, DOT filed a motion for continuance, pursuant to 52 Pa.Code § 1.15(b). In support of its motion, DOT stated that it had submitted bridge inspection reports for the structures that are the subject of the proceeding at I-2015-2472242 to NS. DOT alleged that it was engaged in discussions with NS concerning disposition of the structures that are the subject of the proceeding at I-2015-2472242 as well as the structure that is the subject of the proceeding at M-2013-2364201. DOT requested that the Commission continue the hearing scheduled in the proceeding at M-2013-2364201 for six months to allow the parties additional time for settlement discussions. The motion asserted that DOT had contacted the other parties to the proceeding at M-2013-2364201 and the parties concurred in the continuance request. By order dated July 20, 2016, I granted DOT's motion and continued the hearing scheduled in the proceeding at M-2013-2364201 for August 16, 2016.

By notice dated July 25, 2016, the Commission scheduled a hearing in the proceeding at M-2013-2364201 for April 19, 2017 at 10:00 a.m. in Hearing Room 2, Commonwealth Keystone Building, Harrisburg. On February 23, 2017, DOT and NS filed a letter requesting that this matter and the matter at I-2015-2472242 be referred to mediation and that the hearing scheduled for April 19, 2017 be cancelled. Apparently, DOT and NS wished to continue settlement discussions. The letter indicated that the other parties to both proceedings had been served with a copy of the letter.

By order dated February 28, 2017, I granted DOT's and NS' request and referred the matters at M-2013-2364201 and I-2015-2472242 to the Commission's Mediation Unit for mediation review and cancelled the hearing scheduled in the proceeding at M-2013-2364201 for April 19, 2017.

On June 26, 2017, the Commission's Mediation Unit filed a report indicating that a mediation session had taken place and that the parties had been unsuccessful in resolving the cases during the mediation session. The report also stated that the parties requested that both cases be scheduled for hearing.

On June 30, 2017, DOT filed a letter stating that it, NS and I&E jointly requested that the matters at M-2013-2364201 and I-2015-2472242 be consolidated for hearing.

By notice dated August 4, 2017, the Commission scheduled a prehearing conference for the matters at M-2013-2364201 and I-2015-2472242 for September 22, 2017 at 10:00 a.m. in Hearing Room 4, Commonwealth Keystone Building, Harrisburg. I issued a prehearing conference order for the matters at M-2013-2364201 and I-2015-2472242, dated August 8, 2017, setting forth the procedural matters to be addressed at the prehearing conference.

I conducted a prehearing conference for the matters at M-2013-2364201 and I-2015-2472242 on September 22, 2017. Present were counsel for DOT, I&E, NS, Wyoming, Nicholson, Penelec and Lackawanna. At the prehearing conference, the parties agreed that the proceedings should be consolidated. N.T. 9. As a result of the prehearing conference, I issued Prehearing Order #2 for the matters at M-2013-2364201 and I-2015-2472242 dated September 25, 2017. Prehearing Order #2 consolidated the matters at M-2013-2364201 and I-2015-2472242, pursuant to 52 Pa.Code § 5.81 and established litigation and briefing schedules.

By notice dated October 10, 2017, the Commission scheduled hearings for the matters at M-2013-2364201 and I-2015-2472242 for March 6 and 7, 2018 at 10:00 a.m. in Hearing Room 2, Commonwealth Keystone Building,

On January 19, 2018, DOT, I&E and NS contacted me to request that I modify the existing litigation schedule set forth in Prehearing Order #2, dated September 25, 2017, so that DOT could complete the scheduled biennial inspections on the bridges that are the subjects of these proceedings and distribute the resulting inspection reports to the parties. DOT, I&E and NS represented that Wyoming, Nicholson, Lackawanna and Penelec did not oppose revising the litigation schedule. DOT, I&E and NS agreed on a revised litigation and briefing schedule. By Prehearing Order #3, for the matters at M-2013-2364201 and I-2015-2472242, dated January 19, 2018, I granted this request and revised the litigation and briefing schedules.

By notice dated January 23, 2018, the Commission scheduled hearings for the matters at M-2013-2364201 and I-2015-2472242 for April 24 and 25, 2018 at 10:00 a.m. in Hearing Room 4, Commonwealth Keystone Building. On January 23, 2018, I issued Corrected Prehearing Order #3, for the matters at M-2013-2364201 and I-2015-2472242.

On March 14, 2018, the Commission issued a public safety advisory stating that the Rail Safety Section of the Commission had identified a serious public safety hazard concerning the bridge where State Route 2017 crosses over the facilities of NS in Lathrop Township, Susquehanna County. According to the advisory, the highway bridge's right parapet is severely deteriorated and was no longer effective in providing protection to motorists. The advisory states that the right parapet, far-right wing wall and approach guiderail should be repaired immediately.

On April 20, 2018, the parties contacted me and advised me that they would only need one day of hearings for these proceedings. I agreed to cancel the hearing scheduled for April 25, 2018.

I conducted the hearing for the matters at M-2013-2364201 and I-2015-2472242 on April 24, 2018. Jennifer Brown Sweeney, Esquire and Gina M. D'Alfonso, Esquire, appeared on behalf of DOT. Anthony P. Litwin, Esquire, appeared on behalf of Wyoming and Nicholson. Donald T. Frederickson, Jr., Esquire, appeared on behalf of Lackawanna. Bradley R. Gorter, Esquire, appeared on behalf of I&E. Teresa K. Harrold, Esquire, appeared on behalf of Penelec.

Benjamin C. Dunlap, Jr., Esquire, appeared on behalf of NS. Charles E. Thomas III, Esquire, appeared on behalf of Great Bend. The hearing resulted in a transcript of 250 pages consisting of pages 2 through 250.

On June 15, 2018, NS, DOT, I&E and Great Bend filed main briefs (M.B.). On July 3, 2018, NS, DOT, Great Bend and I&E filed reply briefs (R.B.).

The evidentiary record in this proceeding closed on July 3, 2018, the date the parties filed their reply briefs. The matter is now ready for decision.

### III. FINDINGS OF FACT

1. NS purchased the rail line where the crossings are located from D&H in September 2015 and now refers to it as the D&H line. NS St. 1, p. 3.

2. The line was constructed in approximately 1915 by the Delaware Lackawanna and Western Railroad Company (DLW). NS St. 1, p. 3.

3. Since DLW built the line, the line has had several owners. NS St. 1, p. 3.

4. When NS purchased the rail line, its condition suffered from a significant amount of deferred maintenance. NS St. 1, p.4.

5. DLW built what was referred to as the Nicholson Cutoff, now the D&H line, between 1912 and 1916. DOT St. 3, p. 6, DOT Ex. I.

6. DLW built the Nicholson Cutoff to reduce the distance its trains had to travel between Clark's Summit and Hallstead from 43.2 miles to 39.6 miles. DOT St. 3, p. 6, DOT Ex. I.

7. The construction of the Nicholson Cutoff reduced the curves and grades that DLW trains had to navigate. DOT St. 3, p. 6, DOT Ex. I.

8. Reducing the curves and grades on the Nicholson Cutoff reduced the amount of time it would take each DLW train to travel between Clark's Summit and Hallstead. DOT St. 3, p. 6, DOT Ex. I.

9. Each DLW passenger train using the Nicholson Cutoff would save twenty minutes and each DLW freight train using the Nicholson Cutoff would save one hour. DOT St. 3, p. 6, DOT Ex. I.

10. The Nicholson Cutoff required DLW to use only two locomotives instead of five to move trains between Clark's Summit and Hallstead. DOT St. 3, p. 6, DOT Ex. I.

11. As part of constructing the Nicholson Cutoff, DLW constructed the grade separated crossings which are the subject of these consolidated proceedings. DOT St. 3, p. 5, DOT Ex. I.

12. The crossings that are the subjects of these proceedings are located on a twenty-four-mile long segment of what NS refers to as its D&H line. DOT Ex. A8, N.T. 69-70.

13. Currently, there is a single track at each of the crossings that are the subjects of these proceedings except for the SR 2017 crossing where there are two tracks. NS St. 1, p.4.

14. Six to eight trains per day operate on this rail line. NS St. 1, p.4.

15. The trains operate at a maximum speed of 40 miles per hour. NS St. 1, p.4.

A. Crossing No. 264 293 K, SR 1025, Nicholson Borough, Wyoming County

16. SR 1025 crosses above the tracks of NS in Nicholson Borough, Wyoming County. DOT St. 1, p. 2, DOT Ex. A1.

17. SR 1025 begins at the intersection of SR 0011 and SR 0092 in Nicholson and continues north into Susquehanna County where the designation for the highway changes to SR 2017. DOT St. 1, p. 2, DOT Ex. A1.

18. SR 2017, which also crosses the tracks of NS, continues to an intersection with SR 0011 in Hop Bottom Borough, Susquehanna County. DOT St. 1, p. 2-3, DOT Ex. A1.

19. SR 1025 is designated as a Rural Local Collector that connects to SR 0092 and SR 0011. DOT St. 1, p. 3, DOT Ex. A1.

20. Collector Roads generally move traffic from Local Roads and Streets to Arterials. DOT St. 1, p. 3.

21. Unlike Arterials, Collector Roads are designed to provide access to residential properties. DOT St. 1, p. 3.

22. Collector Roads have lower speeds and are shorter in length. DOT St. 1, p. 3.

23. Major Collector Roads provide service to county seats, larger towns and other traffic generators. DOT St. 1, p. 3.

24. Major Collector Roads connect routes of high classification and serve intra-county travel corridors. DOT St. 1, p. 3.

25. Minor Collector Roads are spaced at intervals to collect traffic from local roads.
26. Minor Collector Roads provide services to remaining smaller communities and link local traffic generators with rural areas. DOT St. 1, p. 3.
27. Rural Local Collectors provide access to land adjacent to the collector network and connect this traffic to higher systems. DOT St. 1, p. 3.
28. Rural Local Collectors serve motorists over relatively short distances. DOT St. 1, p. 3.
29. Rural Local Connectors also constitute all roads not classified in one of the higher systems. DOT St. 1, p. 3.
30. SR 1025 runs parallel to SR 0011 and can be used as a bypass road if there is an incident on SR 0011 between the two points where SR 1025 intersects SR 0011. DOT St. 1, p. 3.
31. Traffic over the SR 1025 bridge is currently one lane and is controlled by two stop signs, one on each side of the bridge. DOT St. 1, p. 3.
32. The current Average Daily Traffic (ADT) at the SR 1025 crossing is estimated at 561 vehicles per day. DOT St. 1, p. 4.
33. Of this total, 93 are estimated to be trucks, 3 are estimated to be motorcycles, 324 vehicles are estimated to be automobiles and 141 are estimated to be pickups/vans. St. 1, p. 4-5, DOT Ex. B1.
34. DOT estimates that the ADT at the SR 1025 crossing will increase by .45% per year for the next 20 years. St. 1, p. 5-6, DOT Ex. C.



35. The bridge carrying SR 1025 over the tracks of NS is a 60' single span concrete arch built in approximately 1914. NS St. 1, p.6, I&E St. 1, p.9, I&E Ex. 7A-7C, DOT St. 2, p. 4, DOT Proprietary Ex. E1, p. 4-6, 9-27.

36. The face of the SR 1025 arch has severe concrete spalling or loss. NS St. 1, p.6, DOT Proprietary Ex. E1, p. 4-6, 13-24.

37. The SR 1025 arch has lost its parapet walls. NS St. 1, p.6, I&E St. 1, p.9, I&E Ex. 7A-7C, DOT Proprietary Ex. E1, p. 4-6, 11-15.

38. The original parapets of the SR 1025 bridge have been replaced with precast concrete safety barriers with chain link fencing mounted on top of the barriers. NS St. 1, p.6, I&E St. 1, p.9, I&E Ex. 7A-7C, DOT Proprietary Ex. E1, p. 4-6, 9-12, 25.

39. Because of where the barriers were installed, the SR 1025 bridge has been reduced to one lane from two. NS St. 1, p.6, I&E St. 1, p.9, I&E Ex. 7A-7C, DOT Proprietary Ex. E1, p. 4-6, 9-27.

40. The SR 1025 bridge is posted for a weight limit of 28-tons/32-ton combinations. NS St. 1, p. 7, I&E Ex. 7B, DOT St. 2, p. 4, DOT Proprietary Ex. E1, p. 4-6, 26.

41. The May 23, 2013 order at M-2013-2364201 directed DOT, at its initial cost, to perform all work and furnish all material necessary to close the SR 1025 bridge to all pedestrian and vehicular traffic and provide for any detours necessary and to maintain any barricades or fencing installed to prevent vehicular and pedestrian access to the bridge. DOT St. 1, p. 6, DOT Ex. D2.

42. The May 23, 2013 order at M-2013-2364201 further directed DOT, at its initial cost, within 30 days of the order, to provide any engineering inspections and analyses evaluating the condition of the SR 1025 bridge. DOT St. 1, p. 6, DOT Ex. D2.

43. The May 23, 2013 order at M-2013-2364201 directed DOT, at its initial cost, within 90 days of the order, to provide an engineering study and analysis evaluating the feasibility of reopening the SR 1025 bridge and if reopening the bridge was feasible, what work was necessary to reopen the bridge. DOT St. 1, p. 6, DOT Ex. D2.

44. On November 8, 2013, the Commission issued a Secretarial Letter at M-2013-2364201 that approved plans for the alteration of the structure carrying SR 1025 and ordered various parties to perform the work set forth in the approved plans. DOT St. 1, p. 6-7, DOT Ex. D3.

45. The November 8, 2013 Secretarial Letter directed that D&H perform work to reopen the SR 1025 bridge by installing concrete barriers and protective fencing to reopen the bridge as a one lane structure. DOT St. 1, p. 7, DOT Ex. D3.

46. Once the SR 1025 bridge was reopened, the November 8, 2013 Secretarial Letter directed, DOT, at its initial cost to maintain the roadway pavement, highway approaches, roadway surface, load limit signs, traffic signs, warning devices and perform snow and ice removal. DOT St. 1, p. 7, DOT Ex. D3.

47. The Commission directed D&H, at its initial cost and expense, to maintain the concrete barriers, fencing, and remainder of the SR 1025 bridge structure, but excluding the roadway pavement. DOT St. 1, p. 7, DOT Ex. D3.

48. The November 8, 2013 Secretarial Letter did not address final future maintenance of the SR 1025 structure or the cost of that maintenance nor did it address the disposition of the structure. DOT St. 1, p. 7, DOT Ex. D3.

B. Crossing No. 264 028 V, SR 1018 New Milford Township., Susquehanna County

49. SR 1018 crosses above the tracks of NS in New Milford Township, Susquehanna County. DOT St. 1, p. 9, DOT Ex. A2.

50. SR 1018 begins at the intersection of with SR 4002, Bolles Road and Booth Road in Franklin Township, Susquehanna County and continues east to an intersection where it terminates at SR 0011 in New Milford Township, Susquehanna County. DOT St. 1, p. 9, DOT Ex. A2.

51. The portion of SR 1018 that crosses over NS' facilities is designated as a Major Collector Road. DOT St. 1, p. 9, DOT Ex. A2.

52. The current ADT at the SR 1018 crossing is estimated at 807 vehicles per day. DOT St. 1, p. 10.

53. Of this total, 56 are estimated to be trucks, 11 are estimated to be motorcycles, 538 vehicles are estimated to be automobiles and 202 are estimated to be pickups/vans. DOT St. 1, p. 10, DOT Ex. B2.

54. DOT estimates that the ADT at the SR 1018 crossing will increase by .56% per year for the next 20 years. DOT St. 1, p. 10-11, DOT Ex. C.

55. The bridge carrying SR 1018 over the tracks of NS is a 45' single span concrete arch built in approximately 1915. NS St. 1, p. 13, I&E St. 1, p. 5, I&E Ex. 3A-3D, DOT Proprietary Ex. E2, p. 4-6, 16-29.

56. Deterioration in the SR 1018 bridge deck under the parapets has undermined support for the parapets. I&E St. 1, p.5, I&E Ex. 3A-3D, DOT Proprietary Ex. E2, p. 4-6, 16-29.

57. The SR 1018 bridge parapets could dislodge if a vehicle strikes one of them. I&E St. 1, p.5.

58. The SR 1018 bridge is currently open to two lanes of traffic. DOT Proprietary Ex. E2, p. 4-6, 16-29.

59. The SR 1018 bridge has no weight limit posting. DOT St. 2, p. 8-9, DOT Proprietary Ex. E2, p. 4-6, 16-19.

60. The SR 1018 crossing is the subject of the Commission order dated April 9, 2015 at I-2015-2472242. DOT St. 1, p. 11, DOT Ex. D1.

61. The April 9, 2015 order directed DOT to inspect the SR 1018 bridge and five others. DOT St. 1, p. 11, DOT Ex. D1.

62. The April 9, 2015 order does not assign maintenance responsibilities for the SR 1018 bridge. DOT Ex. D1.

63. In addition, the SR 1018 crossing is the subject of a Commission order dated January 3, 1994 at A-00111034. DOT St. 1, p. 11, DOT Ex. D5.

64. The January 3, 1994 order directed D&H to alter the SR 1018 crossing by lowering its track. DOT St. 1, p. 11, DOT Ex. D5.

65. The work at the SR 1018 crossing was done to improve vertical clearance to accommodate double stack container traffic. DOT Ex. D5.

66. The January 3, 1994 order does not assign maintenance responsibilities for the SR 1018 bridge. DOT Ex. D5.

C. Crossing No. 264 033 S, SR 2032 Brooklyn Township., Susquehanna County

67. SR 2032 crosses above the tracks of NS in Brooklyn, Susquehanna County. DOT St. 1, p. 13, DOT Ex. A3.

68. SR 2032 begins at the intersection with SR 2015 in Brooklyn Township, Susquehanna County and continues east to an intersection where it terminates at SR 0011 in Harford Township, Susquehanna County. DOT St. 1, p. 13, DOT Ex. A3.

69. SR 2032 is designated as a Local Collector Road. DOT St. 1, p. 9, DOT Ex. A3.

70. The current ADT at the SR 2032 crossing is estimated at 39 vehicles per day. DOT St. 1, p. 13.

71. Of this total, 9 are estimated to be trucks, 21 vehicles are estimated to be automobiles and 9 are estimated to be pickups/vans. DOT St. 1, p. 13-14.

72. The SR 2032 bridge is used by Marcellus gas related traffic which may fluctuate depending on the season and active wells. DOT St. 1, p. 14.

73. DOT estimates that the ADT at the SR 2032 crossing will increase by .56% per year for the next 20 years. DOT St. 1, p. 14, DOT Ex. C.

74. The bridge carrying SR 2032 over the tracks of NS is a 70' single span concrete arch built in approximately 1913. NS St. 1, p. 8, I&E St. 1, p.6, I&E Ex. 4A-4D, DOT Proprietary Ex. E3, p. 4-6, 15-24.

75. The original parapets on the SR 2032 bridge have been removed and replaced by precast concrete barriers with a chain link fence mounted on top. I&E St. 1, p.6, I&E Ex. 3A-4D, DOT Proprietary Ex. E3, p. 4-6, 15-24.

76. The support for these barriers on the SR 2032 bridge has been undermined and the barriers may need to be repositioned to gain proper structural stability. I&E St. 1, p.6.

77. The SR 2032 bridge is currently open to two lanes of traffic. DOT Proprietary Ex. E3, p. 4-6, 15-24.

78. The SR 2032 bridge has no weight limit posting. DOT Proprietary Ex. E3, p. 4-6, 15-24.

79. The SR 2032 crossing is the subject of the Commission order dated April 9, 2015 at I-2015-2472242. DOT St. 1, p. 15, DOT Ex. D1.

80. The April 9, 2015 order directed DOT to inspect the SR 2032 bridge and five others. DOT St. 1, p. 15, DOT Ex. D1.

81. The April 9, 2015 order does not assign maintenance responsibilities for the SR 2032 bridge. DOT Ex. D1.

82. In addition, the SR 2032 crossing is the subject of a Commission order dated March 3, 1998 at M-980137. DOT St. 1, p. 15, DOT Ex. D6.

83. The March 3, 1998 order directed D&H to install new concrete parapets on the SR 2032 bridge. DOT St. 1, p. 15, DOT Ex. D6.

84. The March 3, 1998 order directed D&H to maintain the substructure and superstructure of the SR 2032 bridge. DOT St. 1, p. 15, DOT Ex. D6.

D. Crossing No. 264 292 D, SR 2041 Hop Bottom Borough., Susquehanna County

85. SR 2041 crosses above the tracks of NS in Hop Bottom Borough, Susquehanna County. DOT St. 1, p. 17, DOT Ex. A4.

86. SR 2041 begins at the intersection with SR 2039 and Bennett Road in Lenox Township, Susquehanna County and continues north to an intersection where it terminates

at SR 0011 and SR 0167 in Hop Bottom Borough, Susquehanna County. DOT St. 1, p. 17, DOT Ex. A4.

87. SR 2041 is designated as a Minor Collector Road. DOT St. 1, p. 17, DOT Ex. A4.

88. The current ADT at the SR 2041 crossing is estimated at 416 vehicles per day. DOT St. 1, p. 17.

89. Of this total, 45 are estimated to be trucks, 2 vehicles are estimated to be motorcycles, 244 vehicles are estimated to be automobiles and 125 are estimated to be pickups/vans. DOT St. 1, p. 18.

90. DOT estimates that the ADT at the SR 2041 crossing will increase by .56% per year for the next 20 years. DOT St. 1, p. 19, DOT Ex. C.

91. The bridge carrying SR 2041 over the tracks of NS is a 70' single span concrete arch built in approximately 1915. NS St. 1, p. 7, I&E St. 1, p.7, I&E Ex. 5A-5B, DOT Proprietary Ex. E4, p. 4-6, 14-24.

92. Deterioration in the SR 2041 bridge deck under the parapets has undermined support for the parapets. I&E St. 1, p. 7, I&E Ex. 35A-5B, DOT Proprietary Ex. E4, p. 4-6, 14-24.

93. The parapets on the SR 2041 bridge could dislodge if a vehicle strikes one of them. I&E St. 1, p.5.

94. The SR 2041 bridge is currently open to two lanes of traffic. DOT Proprietary Ex. E4, p. 4-6, 14-24. The SR 2041 bridge has no weight limit posting. DOT, St. 2, p. 14, DOT Proprietary Ex. E4, p. 4-6, 14-24.

95. The SR 2041 crossing is the subject of the Commission order dated April 9, 2015 at I-2015-2472242. DOT St. 1, p. 20, DOT Ex. D1.

96. The April 9, 2015 order directed DOT to inspect this bridge and five others. DOT St. 1, p. 20, DOT Ex. D1.

97. The April 9, 2015 order does not assign maintenance responsibilities for the SR 2041 bridge. DOT Ex. D1.

98. In addition, the SR 2041 crossing is the subject of a Commission order dated August 5, 1947 at A-68459. DOT St. 1, p. 19, DOT Ex. D7. T

99. The August 5, 1947 order directed DLW to maintain the substructure and superstructure of the bridge. DOT St. 1, p. 20, DOT Ex. D7.

E. Crossing No. 264 291 W, SR 2017 Lathrop Township., Susquehanna County

100. SR 2017 crosses above the tracks of NS in Lathrop Township, Susquehanna County. DOT St. 1, p. 21, DOT Ex. A5. SR 2017 begins at the Wyoming and Susquehanna County line and continues north to an intersection with SR 0011 in Hop Bottom Borough, Susquehanna County, where it ends. DOT St. 1, p. 21, DOT Ex. A5.

101. SR 2017 is designated as a Local Collector Road. DOT St. 1, p. 21, DOT Ex. A5.

102. The current ADT at the SR 2017 crossing is estimated at 119 vehicles per day. DOT St. 1, p. 12.

103. Of this total, 12 are estimated to be trucks, 2 vehicles are estimated to be motorcycles, 88 vehicles are estimated to be automobiles and 17 are estimated to be pickups/vans. DOT St. 1, p. 22.



104. DOT estimates that the ADT at the SR 2017 crossing will increase by .56% per year for the next 20 years. DOT St. 1, p. 22, DOT Ex. C.

105. The bridge carrying SR 2017 over the tracks of NS is a 70' single span concrete arch built in approximately 1915. NS St. 1, p. 12, I&E St. 1, p. 2, I&E Ex. 1A-1D, DOT Proprietary Ex. E5, p. 4-6, 18-33.

106. The SR 2017 structure is deteriorated throughout. I&E St. 1, p.2, I&E Ex. 1A-1D, DOT Proprietary Ex. E5, p. 4-6, 18-33.

107. The far-right approach guiderail at the SR 2017 crossing shows signs of collision damage. I&E St. 1, p.2-3, I&E Ex. 1A-1D.

108. The embankment and wingwall that support this section of guiderail at the SR 2017 crossing have failed and are unlikely to prevent a vehicle from falling onto the railroad right of way if a vehicle strikes the guiderail. I&E St. 1, p.2-3, I&E Ex. 1A-1D, DOT Proprietary Ex. E5, p. 4-6, 23-25.

109. The SR 2017 bridge is currently open to two lanes of traffic. DOT Proprietary Ex. E5, p. 4-6, 23-25.

110. The SR 2017 bridge has no weight limit posting. DOT St. 2, p. 17, DOT Proprietary Ex. E5, p. 4-6, 23-25.

F. Crossing No. 265 849D, SR 4005 Benton Township, Lackawanna County

111. SR 4005 crosses above the tracks of NS in Benton Township, Lackawanna County. DOT St. 1, p. 25, DOT Ex. A6. SR 4005 begins at the Lackawanna and Wyoming County line in Benton Township. DOT St. 1, p. 25, DOT Ex. A6.

112. SR 4005 continues north to an intersection where it terminates at SR 0107. DOT St. 1, p. 25, DOT Ex. A6.

113. SR 4005 is designated as a Minor Collector Road. DOT St. 1, p. 25, DOT Ex. A6.

114. The current ADT at the SR 4005 crossing is estimated at 227 vehicles per day. DOT St. 1, p. 26.

115. Of this total, 27 are estimated to be trucks, 1 vehicle is estimated to be a motorcycle, 158 vehicles are estimated to be automobiles and 41 are estimated to be pickups/vans. DOT St. 1, p. 26.

116. DOT estimates that the ADT at the SR 4005 crossing will increase by .45% per year for the next 20 years. DOT St. 1, p. 27, DOT Ex. C.

117. The bridge carrying SR 4005 over the tracks of NS is a 128' open spandrel concrete arch built in approximately 1915. I&E St. 1, p. 8, I&E Ex. 6A-6C, DOT Proprietary Ex. E6, p. 4-16.

118. The parapets on the SR 4005 bridge are deteriorated. I&E St. 1, p. 8, I&E Ex. 6A-6C, DOT Proprietary Ex. E6, p. 4-16.

119. The parapet and wingwall of the SR 4005 bridge have been severely undermined and washed out due to water flow. I&E St. 1, p. 8, I&E Ex. 6A-6C, DOT Proprietary Ex. E6, p. 4-16.

120. The SR 4005 bridge is currently open to two lanes of traffic. DOT St. 1, p. 25, DOT Proprietary Ex. E5, p. 4-6, 23-25.

121. The SR 4005 bridge is posted for a weight limit of 17 tons with 22-ton combinations. DOT St. 2, p. 20, DOT Proprietary Ex. E6, p. 16.

122. The SR 4005 crossing is the subject of the Commission order dated April 9, 2015 at I-2015-2472242. DOT St. 1, p. 28, DOT Ex. D1.

123. The April 9, 2015 order directed DOT to inspect this bridge and five others. DOT St. 1, p. 28, DOT Ex. D1.

124. The April 9, 2015 order does not assign maintenance responsibilities for the SR 4005 bridge. DOT Ex. D1

125. In addition, the SR 4005 crossing is the subject of a Commission Secretarial Letter dated January 15, 2015 at M-2014-2400414. DOT St. 1, p. 27, DOT Ex. D9.

126. The January 15, 2015 Secretarial Letter directed DOT to post the SR 4005 bridge at its initial cost and expense. DOT St. 1, p. 27, DOT Ex. D9.

127. The January 15, 2015 Secretarial Letter does not assign maintenance responsibilities for the SR 4005 bridge. DOT Ex. D9.

G. Crossing No. 263 952 J, T-821 Great Bend Township, Susquehanna County

128. T-821 crosses above the tracks of NS in Great Bend Township, Susquehanna County. DOT St. 1, p. 29, DOT Ex. A7.

129. T-821 begins at SR 1018 in New Milford Township and runs parallel to SR 0011. DOT St. 1, p. 29, DOT Ex. A7.

130. T-821 continues into Hallstead Township and terminates at an intersection with SR 0011 and Dayton Street in Hallstead Borough. DOT St. 1, p. 29, DOT Ex. A7.

131. T-821 is designated as a Local Collector Road. DOT St. 1, p. 29, DOT Ex. A7.

132. T-821 is important to Great Bend Township and Susquehanna County. Great Bend St. 1, p. 5.

133. With the closure of the T-821 bridge, school buses serving the Blue Ridge School are now limited to one access route to the school complex. Great Bend St. 1, p. 5.

134. Residents living along T-821 have experienced a considerable detour to reach local services such as the grocery store, gas stations or the local bank. Great Bend St. 1, p. 5.

135. Some residents now have a detour of approximately ten miles. Great Bend St. 1, p. 6.

136. Local emergency services have been adversely impacted by closure of the T-821 bridge. Great Bend St. 1, p. 6.

137. Response times for emergency services have increased. Great Bend St. 1, p. 6.

138. The bridge carrying T-821 over the tracks of NS is an 88' single span thru-girder bridge built in approximately 1914. I&E St. 1, p. 4, I&E Ex. 2A-2C, DOT Proprietary Ex. E7, p. 4-6, 17-33, NS St. 1, p. 8, Great Bend St. 1, p. 4.

139. The bridge was closed to traffic on December 19, 2017. I&E St. 1, p. 4, I&E Ex. 2A-2C, DOT Proprietary Ex. E7, p. 4-6, 17-33, NS St. 1, p. 8, Great Bend St. 1, p. 4.

140. The T-821 crossing is the subject of the Commission order dated April 9, 2015 at I-2015-2472242. DOT St. 1, p. 30, DOT Ex. D1.

141. The April 9, 2015 order directed DOT to inspect the T-821 bridge and five others. DOT St. 1, p. 30, DOT Ex. D1.

142. The April 9, 2015 order does not assign maintenance responsibilities for the T-821 bridge. DOT Ex. D1.

143. The T-821 crossing is also the subject of the Commission Secretarial Letter dated January 4, 2018 at I-2015-2472242. DOT St. 1, p. 31, DOT Ex. D13.

144. The January 4, 2018 Secretarial Letter affirmed the closing of the T-821 bridge. DOT St. 1, p. 31, DOT Ex. D13.

145. The January 4, 2018 Secretarial Letter does not assign maintenance responsibilities for the T-821 bridge. DOT Ex. D13.

146. The T-821 crossing is the subject of a Commission order dated August 14, 1980 at C-79081404. DOT St. 1, p. 31, DOT Ex. D13.

147. The August 14, 1980 order directed Consolidated Rail Corporation (Conrail), then the owner of the rail line, to repair the southwest wingwall of the T-821 bridge. DOT St. 1, p. 31, DOT Ex. D10.

148. The August 14, 1980 order did not assign maintenance responsibilities for the T-821 bridge. DOT Ex. D10.

149. The T-821 crossing is the subject of a Commission order dated February 22, 1985 at C-79081404. DOT St. 1, p. 31, DOT Ex. D11.

150. The February 22, 1985 order directed that D&H maintain its railroad facilities at the T-821 crossing. DOT St. 1, p. 31, DOT Ex. D11.

151. The February 22, 1985 Secretarial Letter did not assign maintenance responsibilities for the T-821 bridge. DOT Ex. D11.

152. The T-821 crossing is the subject of a Commission order dated April 9, 1915 at A-321. DOT St. 1, p. 31, DOT Ex. D12.

153. The April 9, 1915 order directed the abolition of two at grade crossings and construction of an above grade crossing. DOT St. 1, p. 31, DOT Ex. D12.

154. The April 9, 1915 order at A-321 directs DLW to maintain the T-821 bridge. DOT St. 1, p. 31, DOT Ex. D12.

#### IV. DISCUSSION

##### A. Commission Jurisdiction at Rail Highway Crossings

Before addressing the merits of the case, I will first provide a brief discussion of the Commission's jurisdiction over rail highway crossings. The Commission has the authority, pursuant to 66 Pa.C.S. § 2702, to order the construction, reconstruction, alteration, repair, protection, suspension or abolition of a rail highway crossing, as well as the authority to determine and order which parties shall perform such work at the crossing and which parties shall maintain the crossing in the future to prevent accidents and promote the safety of the public. Southeastern Pennsylvania Trans. Auth. v. Pa. Pub. Util. Comm'n., 592 A.2d 797 (Pa.Cmwlth. 1991), alloc. denied, 611 A.2d 714 (Pa. 1992). The Commission is empowered, pursuant to 66 Pa.C.S. § 2702(b), to determine and prescribe the manner in which such a crossing may be constructed, altered, relocated, suspended, abolished, maintained, operated or protected.

The Commission is also empowered, pursuant to 66 Pa.C.S. § 2702(c), to order the relocation, alteration, suspension or abolition of a crossing upon such reasonable terms and conditions as the Commission prescribes. Pennsylvania Game Comm'n v. Pa. Pub. Util.

Comm'n., 651 A.2d 596 (Pa.Cmwlth. 1994), alloc. denied, 664 A.2d 977 (Pa. 1995). The Commission's jurisdiction over a rail-highway crossing includes the highway approaches to the crossing. Dept. of Trans. v. Pa. Pub. Util. Comm'n., 440 A.2d 657 (Pa.Cmwlth. 1982); Springettsbury Twp. v. Pa. Pub. Util. Comm'n., 289 A.2d 762 (Pa.Cmwlth. 1972). Pittsburgh and L.E.R. Co. v. Pa. Pub. Util. Comm'n., 445 A.2d 851 (Pa.Cmwlth. 1982); Pittsburgh and Shawmut R. Co v. Pa. Pub. Util. Comm'n., 14 A.2d 903 (Pa.Super. 1940).

In a rail-highway crossing proceeding, the Commission determines which parties are concerned within the meaning of 66 Pa.C.S. § 2704(a) and § 2702(c). County of Chester v. Pa. Pub. Util. Comm'n., 408 A.2d 552 (Pa.Cmwlth. 1979); Consolidated Rail Corp. v. Pa. Pub. Util. Comm'n., 671 A.2d 24 (Pa.Cmwlth. 1995). The Commission has the authority to assess the costs of any work it orders performed upon the concerned public utilities, municipal corporations, or the Commonwealth, in such proper proportions as it may determine. 66 Pa.C.S. § 2704(a). In apportioning costs in rail-highway crossing cases, the Commission is not limited to any fixed rule but takes all relevant factors into consideration; the only requirement being that its order is just and reasonable. Wheeling and L. E. Rwy. Co. v. Pa. Pub. Util. Comm'n., 778 A.2d 785 (Pa.Cmwlth. 2001), alloc. denied, 790 A.2d 1021 (Pa. 2001); AT&T v. Pa. Pub. Util. Comm'n., 737 A.2d 201 (Pa. 1999); East Rockhill Twp. v. Pa. Pub. Util. Comm'n., 540 A.2d 600 (Pa.Cmwlth. 1988); Municipality of Monroeville v. Pa. Pub. Util. Comm'n., 600 A.2d 655 (Pa.Cmwlth. 1991); Greene Twp. Bd. Of Supervisors v. Pa. Pub. Util. Comm'n., 668 A.2d 615 (Pa.Cmwlth. 1995); Dept. of Trans. v. Pa. Pub. Util. Comm'n., 464 A.2d 645 (Pa.Cmwlth. 1983). See also, Consolidated Rail Corp. v. Pa. Pub. Util. Comm'n., 423 A.2d 1108 (Pa.Cmwlth. 1980); D & H Corp. v. Pa. Pub. Util. Comm'n., 613 A.2d 622 (Pa.Cmwlth. 1992), alloc. denied, 626 A.2d 1160 (Pa. 1993).

Among the factors that the Commonwealth Court noted in Greene Twp. v. Pa. Pub. Util. Comm'n., 668 A.2d 615 (Pa.Cmwlth. 1995) as relevant to apportioning costs are the following: (1) which party built the crossing Pennsylvania Dept. of Trans. v. Pa. Pub. Util. Comm'n., 464 A.2d 645 (Pa.Cmwlth. 1983); (2) whether the roadway existed before or after the construction of the crossing Pennsylvania Dept. of Trans. v. Pa. Pub. Util. Comm'n., 464 A.2d 645 (Pa.Cmwlth. 1983); (3) relative benefit conferred on each party with the construction of the

crossing Pennsylvania Dept. of Trans. v. Pa. Pub. Util. Comm'n., 346 A. 2d 371 (Pa.Cmwlth. 1975); (4) whether a party is responsible for the deterioration of the crossing which has led to the need for its repair, replacement or removal Pennsylvania Dept. of Trans. v. Pa. Pub. Util. Comm'n., 469 A.2d 1149 (Pa.Cmwlth. 1983); and (5) the relative benefit that each party will receive from the repair, replacement or removal of the crossing Pittsburgh and L. E. R. Co. v. Pa. Pub. Util. Comm'n., 556 A.2d 944 (Pa.Cmwlth. 1989). While the Commission has considered these factors to be relevant in the past, this in no way limits the factors that the Commission can consider. Bell Atlantic-Pa, Inc., v. Pa. Pub. Util. Comm'n., 672 A.2d 352 (Pa.Cmwlth. 1996); AT&T v. Pa. Pub. Util. Comm'n., 737 A.2d 201(Pa. 1999); PECO Energy Co. v. Pa. Pub. Util. Comm'n., 791 A.2d 1155 (Pa. 2002); Norfolk Southern Rwy Co. v. Pa. Pub. Util. Comm'n., 971 A.2d 545 (Pa.Cmwlth. 2009).

#### B. Historical Background of the Rail Line

Turning to the merits, this case has an extensive record that is complex. In order to provide a thorough yet understandable explanation, I will first provide some historical background on the rail line at the crossings. I will then provide the historical background of each crossing, set forth the current condition of each crossing, set forth the proposals of the parties to address the conditions at each crossing, determine the work to be performed at each crossing, assign parties to perform that work, allocate the costs of the work and finally assign future maintenance responsibilities for each crossing.

All the crossings that are the subject of these consolidated proceedings are located on the same rail line. In addition, the crossing that was the subject of the proceedings at Schwartz v. Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific Railroad and Pennsylvania Department of Transportation, Docket Nos. P-2011-2241780 and C-2011-2237486 (Schwartz) was also located on this rail line. Readers interested in additional historical background on the rail line should refer to the Schwartz proceedings.

NS purchased the line from D&H in September 2015 and now refers to it as the D&H line. NS St. 1, p. 3. NS indicated that the line was constructed in approximately 1915 by



DLW. NS St. 1, p. 3. Since DLW built the line, the line has had several owners. NS St. 1, 3. According to NS, when it purchased the rail line, its condition suffered from a significant amount of deferred maintenance. NS St. 1, p.4.

DOT presented evidence that DLW built what was referred to as the Nicholson Cutoff, now the D&H line, between 1912 and 1916. DOT St. 3, p. 6, DOT Ex. I. According to the articles from the 1913 Railway Age Gazette, an article from the November 7, 1915 edition of the New York Times and the American Concrete Institute Proceedings of the Tenth Annual Convention, published in 1917, offered by DOT, DLW built the Nicholson Cutoff to reduce the distance its trains had to travel between Clark's Summit and Hallstead from 43.2 miles to 39.6 miles. DOT St. 3, p. 6, DOT Ex. I.

In addition, the construction of the Nicholson Cutoff reduced the curves and grades that DLW trains had to navigate. DOT St. 3, p. 6, DOT Ex. I. Reducing the curves and grades on the Nicholson Cutoff reduced the amount of time it would take each DLW train to travel between Clark's Summit and Hallstead. DOT St. 3, p. 6, DOT Ex. I. Each DLW passenger train using the Nicholson Cutoff would save twenty minutes and each DLW freight train using the Nicholson Cutoff would save one hour. DOT St. 3, p. 6, DOT Ex. I.

Finally, the Nicholson Cutoff would require DLW to use only two locomotives instead of five to move trains between Clark's Summit and Hallstead. DOT St. 3, p. 6, DOT Ex. I.

As part of constructing the Nicholson Cutoff, DLW constructed the grade separated crossings which are the subjects of these consolidated proceedings. DOT St. 3, p. 5, DOT Ex. I. The crossings that are the subjects of these proceedings are located on a twenty-four-mile long segment of what NS refers to as its D&H line. DOT Ex. A8, N.T. 69-70.

Currently, there is a single track at each of the crossings that are the subjects of these proceedings except for the SR 2017 crossing where there are two tracks. NS St. 1, p.4. Six

to eight trains per day operate on this rail line. NS St. 1, p.4. The trains operate at a maximum speed of 40 miles per hour. NS St. 1, p.4.

Having provided some historical background on the rail line at the crossings, I will now provide the background of each crossing, set forth the current condition of each crossing, determine the work to be performed at each crossing, assign parties to perform that work, allocate the costs of the work and finally assign future maintenance responsibilities for each crossing. For ease of reference, I will refer to each crossing using the Association of American Railroads (AAR) crossing number, township road (T) or SR number and municipality and county where the crossing is located. I will start with the crossing that is the subject of the proceeding at M-2013-2364201.

C. Crossing No. 264 293 K, SR 1025, Nicholson Borough, Wyoming County

SR 1025 crosses above the tracks of NS in Nicholson Borough, Wyoming County. DOT St. 1, p. 2, DOT Ex. A1. SR 1025 begins at the intersection of SR 0011 and SR 0092 in Nicholson and continues north into Susquehanna County where the designation for the highway changes to SR 2017. DOT St. 1, p. 2, DOT Ex. A1. SR 2017, which also crosses the tracks of NS, continues to an intersection with SR 0011 in Hop Bottom Borough, Susquehanna County. DOT St. 1, p. 2-3, DOT Ex. A1.

SR 1025 is designated as a Rural Local Collector that connects to SR 0092 and SR 0011. DOT St. 1, p. 3, DOT Ex. A1. Collector Roads generally move traffic from Local Roads and Streets to Arterials. DOT St. 1, p. 3. Unlike Arterials, Collector Roads are designed to provide access to residential properties. DOT St. 1, p. 3. Collector Roads have lower speeds and are shorter in length. DOT St. 1, p. 3.

Major Collector Roads provide service to county seats, larger towns and other traffic generators. DOT St. 1, p. 3. They connect routes of high classification and serve intra-county travel corridors. DOT St. 1, p. 3.

Minor Collector Roads are spaced at intervals to collect traffic from local roads. They provide services to remaining smaller communities and link local traffic generators with rural areas. DOT St. 1, p. 3.

Rural Local Collectors provide access to land adjacent to the collector network and connect this traffic to higher systems. DOT St. 1, p. 3. They serve motorists over relatively short distances. Rural Local Connectors also constitute all roads not classified in one of the higher systems. DOT St. 1, p. 3.

SR 1025 runs parallel to SR 0011 and can be used as a bypass road if there is an incident on SR 0011 between the two points of where SR 1025 intersects SR 0011. DOT St. 1, p. 3. Traffic over the SR 1025 bridge is currently one lane and is controlled by two stop signs, one on each side of the bridge. DOT St. 1, p. 3.

The current Average Daily Traffic (ADT) at the SR 1025 crossing is estimated at 561 vehicles per day. DOT St. 1, p. 4. Of this total, 93 are estimated to be trucks, 3 are estimated to be motorcycles, 324 vehicles are estimated to be automobiles and 141 are estimated to be pickups/vans. St. 1, p. 4-5, DOT Ex. B1. DOT estimates that the ADT at the SR 1025 crossing will increase by .45% per year for the next 20 years. St. 1, p. 5-6, DOT Ex. C.

The bridge carrying SR 1025 over the tracks of NS is a 60' single span concrete arch built in approximately 1914. NS St. 1, p.6, I&E St. 1, p.9, I&E Ex. 7A-7C, DOT St. 2, p. 4, DOT Proprietary Ex. E1, p. 4-6, 9-27. The face of the arch has severe concrete spalling or loss. NS St. 1, p.6, DOT Proprietary Ex. E1, p. 4-6, 13-24.

The arch has lost its parapet walls. NS St. 1, p.6, I&E St. 1, p.9, I&E Ex. 7A-7C, DOT Proprietary Ex. E1, p. 4-6, 11-15. The original parapets of the bridge have been replaced with precast concrete safety barriers with chain link fencing mounted on top of the barriers. NS St. 1, p.6, I&E St. 1, p.9, I&E Ex. 7A-7C, DOT Proprietary Ex. E1, p. 4-6, 9-12, 25. Because of where the barriers were installed, the bridge has been reduced to one lane from two. NS St. 1, p.6, I&E St. 1, p.9, I&E Ex. 7A-7C, DOT Proprietary Ex. E1, p. 4-6, 9-27. The bridge is posted

for a weight limit of 28-tons/32-ton combinations. NS St. 1, p. 7, I&E Ex. 7B, DOT St. 2, p. 4, DOT Proprietary Ex. E1, p. 4-6, 26.

Having provided some background and set forth the current condition of the SR 1025 crossing, I will now determine the work to be performed at the SR 1025 crossing, assign parties to perform that work, allocate the costs of the work and finally assign future maintenance responsibilities.

The SR 1025 crossing is currently the subject of several orders at M-2013-2364201. The May 23, 2013 order at M-2013-2364201 directed DOT, at its initial cost, to perform all work and furnish all material necessary to close the bridge to all pedestrian and vehicular traffic and provide for any detours necessary and to maintain any barricades or fencing installed to prevent vehicular and pedestrian access to the bridge. DOT St. 1, p. 6, DOT Ex. D2.

The order at M-2013-2364201 further directed DOT, at its initial cost, within 30 days of the order, to provide any engineering inspections and analyses evaluating the condition of the bridge. DOT St. 1, p. 6, DOT Ex. D2. In addition, the order directed DOT, at its initial cost, within 90 days of the order, to provide an engineering study and analysis evaluating the feasibility of reopening the bridge and if reopening the bridge was feasible, what work was necessary to reopen the bridge. DOT St. 1, p. 6, DOT Ex. D2.

On November 8, 2013, the Commission issued a Secretarial Letter at M-2013-2364201 that approved plans for the alteration of the structure carrying SR 1025 and ordering various parties to perform the work set forth in the approved plans. DOT St. 1, p. 6-7, DOT Ex. D3. The November 8, 2013 Secretarial Letter directed that D&H perform work to reopen the bridge by installing concrete barriers and protective fencing to reopen the bridge as a one lane structure. DOT St. 1, p. 7, DOT Ex. D3.

Once the bridge was reopened, the November 8, 2013 Secretarial Letter directed, DOT, at its initial cost to maintain the roadway pavement, highway approaches, roadway surface, load limit signs, traffic signs, warning devices and perform snow and ice removal. DOT

St. 1, p. 7, DOT Ex. D3. The Commission directed D&H, at its initial cost and expense, to maintain the concrete barriers, fencing, and remainder of the bridge structure, but excluding the roadway pavement. DOT St. 1, p. 7, DOT Ex. D3. The November 8, 2013 Secretarial Letter did not address final future maintenance of the structure or the cost of that maintenance nor did it address the disposition of the structure. DOT St. 1, p. 7, DOT Ex. D3.

I conclude that it is just and reasonable for the parties to bear their respective costs initially incurred in complying with the orders at M-2013-2364201. In addition, DOT and NS shall continue to inspect and maintain the existing crossing, in accordance with the Commission's November 8, 2013 Secretarial Letter pending final disposition of the existing SR 1025 crossing. I reach this conclusion for several reasons.

First, NS' predecessors constructed the SR 1025 bridge and created the crossing. As stated earlier, the existence of the crossing is due to the construction of a rail line by DLW. As part of the construction of that rail line, DLW constructed the bridge. Which party constructed the bridge and created the crossing is a relevant factor that the Commission may consider in allocating costs. Pennsylvania Dept. of Trans. v. Pa. Pub. Util. Comm'n., 464 A.2d 645 (Pa.Cmwlth. 1983); Consolidated Rail Corp. v. Pa. Pub. Util. Comm'n., 423 A.2d 1108 (Pa.Cmwlth. 1980).

Second, both parties benefit from the continued existence of the grade-separated crossing. NS benefits from a grade separated crossing at this location because it eliminates the possibility that a train will collide with vehicles or pedestrians at this location. DOT derives the same benefit as NS from the grade separated crossing. The safe interface between rail and vehicle traffic is a factor the Commission may consider in allocating costs. D&H Corp. v. Pa. Pub. Util. Comm'n., 613 A.2d 622 (Pa.Cmwlth. 1992) alloc. denied, 626 A.2d 1160 (Pa. 1994), Norfolk Southern Rwy. Co. v Pa. Pub. Util. Comm'n., 971 A.2d 545 (Pa.Cmwlth. 2009).

Third, both DOT and NS have an interest in seeing that the work be performed on the bridge. The Commission ordered the repairs to remove the hazard to D&H and NS of concrete falling onto their facilities and to allow the crossing to be reopened to vehicular traffic.

Both parties benefit from the crossing being repaired. NS' operations will no longer be endangered by pieces of the parapet falling on its right of way. DOT has the road open to traffic again. The relative benefit that each party will receive from the repair of a crossing is a factor that the Commission may consider in allocating costs and assigning maintenance. Pittsburgh and L. E. R. Co. v Pa. Pub. Util. Comm'n., 556 A.2d 944 (Pa.Cmwlth. 1989).

Fourth, NS' predecessors bear some responsibility for the deteriorated condition of the crossing, which has led to the need for work to be performed on the bridge. In this regard, NS' predecessors failed to perform any meaningful repairs to or maintenance of the structure in spite of the fact that DLW built the rail line and constructed the bridge. While NS only purchased the rail line in September 2015, after much of the deterioration had occurred, it purchased the line knowing that the line and the structures suffered from deferred maintenance. It was also aware of the ongoing proceeding concerning the SR 1025 crossing.

The Commission, by order dated June 11, 1951 at A-76276, directed DLW, at its sole cost and expense, to maintain the entire substructure and superstructure of the SR 1025 bridge. DOT St. 1, p.6, Dot Ex. D1. Whether a party is responsible for the deterioration of the crossing which has led to the need for its repair, replacement or removal is a factor that the Commission may consider in allocating costs and assigning maintenance. Pennsylvania Dept. of Trans. v. Pa. Pub. Util. Comm'n., 469 A.2d 1149 (Pa.Cmwlth. 1983). While NS purchased the rail line after much of the deterioration to the SR 1025 bridge occurred, it knew of the condition of the rail line and the SR 1025 bridge as well as the possibility that the Commission could allocate responsibilities and costs to it for the SR 1025 bridge.

Having addressed the allocation of costs for work performed by the parties in reopening the existing SR 1025 bridge and the assignment of future inspection and maintenance responsibilities for the existing crossing, I will now address the disposition of the crossing. None of the parties has advocated abolishing this crossing. DOT M.B. p. 39-44.

NS will agree to repair the existing bridge carrying SR 2015. NS St. 1, p. 6-8. NS would restore the concrete on each side of the arch. NS St. 1, p. 6. It would patch and seal

the exposed reinforcing steel on the underside of the arch. NS St. 1, p. 6. The existing barriers would be moved to the edge of the bridge and permanently anchored to the bridge to become a new parapet wall. NS St. 1, p. 6. Moving the barriers to the edge of the bridge would allow the bridge to accommodate two lanes of traffic. NS St. 1, p. 6. NS estimates that this construction work would cost \$300,000 with another \$50,000 for construction plans and permits. NS St. 1, p. 6. NS estimates that this work could be completed by October 31, 2019. NS St. 1, p. 6.

NS contends that the arch is structurally sound and points out that the bridge is currently posted for a 28-ton weight limit. NS St. 1, p. 6. NS contends that its proposed work will restore the structural integrity of the outer edges of the bridge and bring the bridge back to its original width. NS St. 1, p. 6. NS estimates that this work will add 25 years to the useful life of the structure. NS St. 1, p. 12.

DOT recommends that the Commission order NS to replace the SR 1025 bridge. DOT St. 2, p. 5. DOT points out that DLW constructed the bridge approximately 100 years ago and that the bridge is near the end of its service life. DOT St. 2, p. 5.

DOT indicates that rehabilitation of the structure is possible but that the level of rehabilitation required with the SR 1025 structure is not cost effective. DOT St. 2, p. 5. DOT contends that when rehabilitation costs exceed 50% of the replacement costs, it looks at the age of the structure to try to determine remaining service life. DOT St. 2, p. 5. DOT asserts that the existing concrete will have no more than 25 years of service life left before it will deteriorate. DOT St. 2, p. 5.

DOT presented evidence that the SR 1025 crossing is integral to the state highway system. DOT St. 2, p. 2. DOT does not consider the crossing to be redundant. DOT St. 2, p. 2. DOT points out that when the bridge was out of service, the public raised concerns over emergency response time, extended school bus travel time and economic impact to local businesses and contractors. DOT ST. 2, p. 2-3. Nicholson and Wyoming both presented testimony that the crossing serves regional as opposed to local traffic. Nicholson St. 1, p. 2-4, Wyoming St. 2, 3-5.

Since DOT has indicated that the crossing is integral to the state highway system and none of the parties has advocated abolishing this crossing, there is no evidence to support abolishing the crossing and removing the SR 1025 bridge. DOT M.B. p. 39-44. The evidence presented advocates either rehabilitation or replacement of the structure.

Penelec entered a stipulation into the record concerning the SR 1025 crossing. Penelec Stip. 1, N.T. 22-24. The stipulation is signed by Penelec, NS and DOT. Penelec Stip. 1.

The stipulation indicates that Penelec has overhead facilities that traverse over the SR 1025 bridge. The stipulation provides that, to the extent that future work would require Penelec to remove or modify its facilities, NS and/or DOT agree to notify Penelec 90 days before the work begins. Cost allocation issues related to Penelec's facilities would be resolved among Penelec, DOT and NS after the work is completed.

Turning first to rehabilitating the existing structure, adopting NS' proposal to repair the existing structure has the benefit that it can be done in a relatively short period of time. NS estimates that its proposed work could be completed by October 31, 2019.

In addition, the cost of NS' proposed work is relatively inexpensive. NS estimates that its proposed work can be completed for \$350,000.

In contrast, while DOT advocates that NS replace the bridge, DOT provides no information on how long it would take to replace the structure or how much replacing the structure would cost. DOT indicated that the SR 1025 crossing is not included in any regional transportation plan and is not currently programmed. DOT St. 3, p. 2, DOT M.B. p. 33-34. There is no DOT funding available for this crossing. DOT St. 3, p. 2, DOT M.B. p. 27-28, 33-34. This lack of funding is due to the way that DOT and federal funds are allocated to fund highway projects. DOT M.B. p. 33-34.

DOT and federal funds are allocated among the Metropolitan or Regional Planning Organizations in Pennsylvania. The SR 1025 bridge is located in the Northern Tier



Planning Region. DOT St.3, p. 4. The Northern Tier Planning Region is a rural planning region and does not receive as much funding as the adjoining Lackawanna Luzerne Metropolitan Planning Organization. DOT St.3, p. 4. Any project involving the SR 1025 bridge and crossing would have to compete against other projects in the Northern Tier Planning Region, based on regional needs. DOT St.3, p. 4-5, DOT M.B. p. 33-34. The SR 1025 bridge does not have a high enough priority when compared to other projects in the Northern Tier Planning Region to obtain DOT or federal funding.

After reviewing the evidence set forth above, I conclude that NS should repair the SR 1025 bridge as it has proposed. I reach this conclusion for several reasons.

First, the work NS proposes can be performed relatively quickly. NS indicated that the work could be completed by October 2019. This would address concerns expressed over emergency response time, extended school bus travel time and economic impact to local businesses and contractors that occurred when the bridge was previously closed for an extended period.

In addition, repairing the SR 1025 structure will extend the service life of the structure. This is important since it will provide additional time to replace the structure. While DOT has advocated replacing this and the other structures on this line, the evidence indicates that there needs to be some coordination as to when each of these bridges should be replaced. It is apparent that if one bridge is taken out of service for replacement, the other bridges will have to remain open to provide alternate routes across NS' rail line.

Unfortunately, there is no evidence indicating in what order or over what period the bridges should be replaced. If more than one bridge is taken out of service at the same time, the evidence indicates that it could create extended emergency response times and school bus travel times. Regardless of the order in which the bridges are replaced, it is evident that several of the bridges will have to remain in service for an extended period prior to being replaced. Since NS has proposed work on the SR 1025 bridge that can be completed in a relatively short period of time and will extend the service life of the bridge for a lengthy period, repairing the SR 1025 bridge will

provide flexibility in scheduling and replacing other bridges on this rail line. As stated above, NS' predecessors constructed the bridge and created the crossing. Since NS' predecessors constructed the bridge and created the crossing, NS should continue to maintain the bridge after it completes the repair work it has proposed.

As noted above, NS' predecessors bear some responsibility for the deteriorated condition of the crossing, which has led to the deteriorated condition of the SR 1025 bridge. By order dated June 11, 1951, at A-76276, the Commission directed DLW to maintain the substructure and superstructure of the bridge carrying SR 1025. DOT Dt. 1, p. 6, DOT Ex. D4. It is not clear what repairs or maintenance, if any, DLW or its successors performed to the structure after the date of the 1951 Commission order. It is apparent that some portion of the current condition of the crossing is due to lack of repairs or maintenance. Whether a party is responsible for the deterioration of the crossing which has led to the need for its repair, replacement or removal is a relevant factor that the Commission may consider in directing which party shall perform work at a crossing or bear the cost of that work. Pennsylvania Dept. of Trans. v. Pa. Pub. Util. Comm'n., 469 A.2d 1149 (Pa.Cmwlth. 1983).

NS will benefit from the repairs it will perform on the SR 1025 bridge because it will continue to have a grade separated crossing that eliminates the possibility of a collision between its trains and vehicles using the roadway. In addition, NS will no longer have pieces of concrete from a deteriorating bridge falling onto its right of way.

DOT will also benefit from the repairs to the SR 1025 bridge because it will continue to have a grade separated crossing that eliminates the possibility of a collision between vehicles and NS' trains. DOT will also benefit since the repairs will allow for the continuation of a crossing that is integral to the state highway system. The relative benefit that each party will receive from the repair, replacement or removal of the crossing is a relevant factor that the Commission may consider in directing which party shall perform work at a crossing and bear the cost of that work. Pittsburgh and L. E. R. Co. v Pa. Pub. Util. Comm'n., 556 A.2d 944 (Pa.Cmwlth. 1989). While I am ordering NS to maintain the repaired SR 1025 bridge in the future, this obligation should not continue indefinitely. DOT contends that the SR 1025 bridge is

integral to the state highway system and is not redundant but the ADT for the SR 1025 crossing is estimated at only 561 vehicles per day.

In the past, the Commission has abolished at-grade crossings with ADTs of less than 2,000 on the basis that they were redundant. Application of CSX Transportation Inc., Docket Nos. A-11222266, et al (Opinion and Order entered March 18, 1997). While the SR 1025 crossing is a grade separated crossing and the consideration of reducing the number of collisions between vehicles and trains in abolishing redundant crossings is not present here, the low traffic volume should be a consideration in how long NS should be obligated to maintain the existing structure.

In the Schwartz decision involving a highway bridge over this same rail line, the Commission ordered the crossing abolished and the structure removed where there was low ADT and the structure and crossing were found not to be integral or necessary to the state or local transportation system. The SR 1025 bridge and crossing are distinguishable from the structure and crossing in Schwartz because DOT, Nicholson and Wyoming have all indicated that in spite of the low ADT, the structure and crossing are integral and necessary to the state and local transportation system.

Since the NS repairs to the SR 1025 bridge will extend the service life of the SR 1025 bridge for twenty-five years, it seems reasonable that NS should only be obligated to continue to maintain the structure for that period. If, by that time, DOT has not taken steps to replace the SR 1025 structure that it indicates is integral to the state transportation system, it shall assume maintenance for the existing SR 1025 bridge. NS' maintenance responsibility for the SR 1025 bridge will terminate on December 31, 2043.

D. Crossing No. 264 028 V, SR 1018 New Milford Township., Susquehanna County

SR 1018 crosses above the tracks of NS in New Milford Township, Susquehanna County. DOT St. 1, p. 9, DOT Ex. A2. SR 1018 begins at the intersection of SR 4002, Bolles Road and Booth Road in Franklin Township, Susquehanna County and continues east to an

intersection where it terminates at SR 0011 in New Milford Township, Susquehanna County. DOT St. 1, p. 9, DOT Ex. A2. The portion of SR 1018 that crosses over NS' facilities is designated as a Major Collector Road. DOT St. 1, p. 9, DOT Ex. A2.

The current ADT at the SR 1018 crossing is estimated at 807 vehicles per day. DOT St. 1, p. 10. Of this total, 56 are estimated to be trucks, 11 are estimated to be motorcycles, 538 vehicles are estimated to be automobiles and 202 are estimated to be pickups/vans. DOT St. 1, p. 10, DOT Ex. B2. DOT estimates that the ADT at the SR 1018 crossing will increase by .56% per year for the next 20 years. DOT St. 1, p. 10-11, DOT Ex. C.

The bridge carrying SR 1018 over the tracks of NS is a 45' single span concrete arch built in approximately 1915. NS St. 1, p. 13, I&E St. 1, p. 5, I&E Ex. 3A-3D, DOT Proprietary Ex. E2, p. 4-6, 16-29. Deterioration in the deck under the parapets has undermined support for the parapets. I&E St. 1, p.5, I&E Ex. 3A-3D, DOT Proprietary Ex. E2, p. 4-6, 16-29. The parapets could dislodge if a vehicle strikes one of them. I&E St. 1, p.5.

The bridge is currently open to two lanes of traffic. DOT Proprietary Ex. E2, p. 4-6, 16-29. The bridge has no weight limit posting. DOT St. 2, p. 8-9, DOT Proprietary Ex. E2, p. 4-6, 16-19.

Having provided some background and set forth the current condition of the SR 1018 crossing, I will now determine the work to be performed at the SR 1018 crossing, assign parties to perform that work, allocate the costs of the work and finally assign future maintenance responsibilities. None of the parties has advocated for abolishing this crossing. DOT M.B. 39-44.

The SR 1018 crossing is the subject of the Commission order dated April 9, 2015 at I-2015-2472242. DOT St. 1, p. 11, DOT Ex. D1. This order directed DOT to inspect this bridge and five others. DOT St. 1, p. 11, DOT Ex. D1. This order does not assign maintenance responsibilities for the SR 1018 bridge.

In addition, the SR 1018 crossing is the subject of a Commission order dated January 3, 1994 at A-00111034. DOT St. 1, p. 11, DOT Ex. D5. This order directed D&H to alter the crossing by lowering its track. DOT St. 1, p. 11, DOT Ex. D5. This work was done to improve vertical clearance to accommodate double stack container traffic. DOT Ex. D5. This order does not assign maintenance responsibilities for the SR 1018 bridge.

I conclude that it is just and reasonable for DOT to inspect and maintain the existing bridge. I also conclude that it is just and reasonable for NS to reimburse DOT for 50% of the costs of inspection and maintenance. I reach this conclusion for two reasons.

First, both parties benefit from the continued existence of the grade-separated crossing. Assigning maintenance responsibility to DOT will allow the grade separated crossing to remain open to both train and vehicle traffic. As noted above, the safe interface between rail and vehicle traffic is a factor the Commission may consider in assigning maintenance.

Second, also as noted above, both NS and DOT bear some responsibility for the deteriorated condition of the crossing. NS' predecessors bear some responsibility for the deteriorated condition of the crossing, which has led to the need for work to be performed on the bridge. In this regard, NS' predecessors failed to perform any meaningful repairs to or maintenance of the structure even though DLW built the rail line and constructed the bridge. While NS only purchased the rail line in September 2015, after much of the deterioration had occurred, it purchased the line knowing that the line and the structures suffered from deferred maintenance and was aware that the Commission had initiated an investigation into the condition of the SR 1018 crossing and could allocate responsibilities and costs to it. DOT also failed to perform any meaningful repairs to or maintenance of the structure even though the bridge carries a state highway.

In addition, neither NS nor DOT brought the condition of the crossing or the lack of a Commission order assigning maintenance responsibility for the crossing to the attention of the Commission prior to the time that the Commission initiated the investigation at I-2015-

2472242. The lack of a Commission order assigning maintenance responsibility for this structure contributed to the deteriorated condition of the structure.

Assigning future inspection and maintenance responsibility will at least provide some monitoring of the bridge and perhaps slow the deterioration of the bridge. As noted above, whether a party is responsible for the deterioration of the crossing which has led to the need for its repair, replacement or removal is a factor that the Commission may consider in allocating costs and assigning maintenance.

For the above reasons, DOT should inspect and maintain the existing structure carrying S.R. 1018 over NS' facilities and NS should reimburse DOT 50% of the costs it incurs for inspection and maintenance. This assignment of responsibilities and allocation of costs is just and reasonable and supported by evidence in the record. This allocation will be without prejudice to the rights of DOT and NS to enforce such obligations upon or seek reimbursement from others, pursuant to any applicable law or lawful agreement. Consolidated Rail Corp. v. City of Harrisburg, 842 A.2d 369 (Pa. 2004).

Having addressed the assignment of future inspection and maintenance responsibilities for the existing SR 1018 crossing, I will now address the disposition of the crossing.

NS contends that the arch is structurally sound. NS St. 1, p. 13. NS contends that the only work that is needed at this time is concrete patching on the underside of the arch and under the railing on one side of the bridge. NS St. 1, p. 13.

DOT recommends that the Commission order NS to replace the SR 1018 bridge. DOT St. 2, p. 9. DOT points out that DLW constructed the bridge approximately 100 years ago and that the bridge is near the end of its service life. DOT St. 2, p. 9.

DOT indicates that rehabilitation of the structure is possible, but in its experience, the level of rehabilitation required with the SR 1018 structure is not cost effective. DOT St. 2,

p. 9. DOT contends that when rehabilitation costs exceed 50% of the replacement costs, it looks at the age of the structure to try to determine remaining service life. DOT St. 2, p. 9. DOT concedes that the existing concrete will have no more than 25 years of service life left before it will deteriorate. DOT St. 2, p. 9.

DOT presented evidence that the SR 1018 crossing is integral to the state highway system. DOT St. 2, p. 7. DOT does not consider the crossing to be redundant. DOT St. 2, p. 7. DOT points out that the crossing is close to the Blue Ridge School. DOT St. 2, p. 7. If the crossing were closed, the closure would cause an increase in travel time for school buses and school buses would be forced to use a detour with an at grade crossing. DOT St. 2, p. 7. DOT indicated that local officials have indicated that the crossing is vital for school buses. DOT St. 2, p. 7.

While DOT has advocated replacing this and the other structures on this line, the evidence indicates that there needs to be some coordination as to when each of these bridges should be replaced. It is apparent that if one bridge is taken out of service for replacement, the other bridges will have to remain open to provide alternate routes across NS' rail line.

Unfortunately, there is no evidence indicating in what order or over what period the bridges should be replaced. If more than one bridge is taken out of service at the same time, the evidence indicates that it could create extended emergency response times and school bus travel times. Regardless of the order in which the bridges are replaced, it is evident that several of the bridges will have to remain in service for an extended period prior to being replaced.

Since DOT has indicated that the crossing is integral to the state highway system, the existing bridge should be replaced. While DOT advocates that NS replace the bridge, DOT provides no information on how long it would take to replace the structure or how much replacing the structure would cost. DOT indicated that the SR 1018 crossing is not included in any regional transportation plan and is not currently programmed. DOT St. 3, p. 2. There is no DOT funding available for this crossing. DOT St. 3, p. 2. This lack of funding is due to the way that DOT and federal funds are allocated to fund highway projects.

DOT and federal funds are allocated among the Metropolitan or Regional Planning Organizations in Pennsylvania. The SR 1018 bridge is located in the Northern Tier Planning Region. DOT St.3, p. 4. The Northern Tier Planning Region is a rural planning region and does not receive as much funding as the adjoining Lackawanna Luzerne Metropolitan Planning Organization. DOT St.3, p. 4. Any project involving the SR 1018 bridge and crossing would have to compete against other projects in the Northern Tier Planning Region, based on regional needs. DOT St.3, p. 4-5. The SR 1018 bridge does not have a high enough priority when compared to other projects in the Northern Tier Planning Region to obtain DOT or federal funding.

After reviewing the evidence set forth above, I conclude that DOT should prepare plans for the demolition and removal of the existing SR 1018 bridge and replacement with a new structure. Upon Commission approval of those plans, DOT shall remove the structure and replace it at its initial cost and expense. To give DOT sufficient time to coordinate replacement of the SR 1018 bridge with the other bridges on the rail line, DOT will have five years to prepare plans for removal and replacement of the SR 1018 structure. It will then have two years to complete the work after the Commission approves the plans.

NS shall reimburse DOT for \$300,000 of the costs of plan preparation, demolition and replacement. NS will also bear the costs of providing watchmen, flagmen and inspectors. I reach this determination concerning the disposition of the structure and allocation of costs for several reasons.

First, as stated above, NS' predecessors constructed the bridge and created the crossing. Since NS' predecessors constructed the bridge and created the crossing, NS should be responsible for a portion of the costs for replacing the bridge. Which party constructed the bridge and created the crossing is a relevant factor that the Commission may consider in directing which party shall perform work at a crossing or bear the cost of that work.

Pennsylvania Dept. of Trans. v. Pa. Pub. Util. Comm'n, 464 A.2d 645 (Pa.Cmwlt. 1983); Consolidated Rail Corp. v. Pa. Pub. Util. Comm'n, 423 A.2d 1108 (Pa.Cmwlt. 1980).



Second, as noted above, NS' predecessors bear some responsibility for the deteriorated condition of the crossing, which has led to the need to replace the bridge. It is not clear what repairs or maintenance, if any, DLW or its successors performed to the structure after it constructed the bridge. It is apparent that some portion of the current condition of the crossing is due to lack of repairs or maintenance. Whether a party is responsible for the deterioration of the crossing which has led to the need for its repair, replacement or removal is a relevant factor that the Commission may consider in directing which party shall perform work at a crossing or bear the cost of that work. Pennsylvania Dept. of Trans. v. Pa. Pub. Util. Comm'n., 469 A.2d 1149 (Pa.Cmwlth. 1983).

Third, both parties will benefit from the replacement of the bridge. NS will benefit because it will continue to have a grade separated crossing that eliminates the possibility of a collision between its trains and vehicles using the roadway. In addition, NS will not have the possibility of pieces of concrete from a deteriorating bridge falling onto its right of way.

DOT will benefit from replacement of the bridge because it will continue to have a grade separated crossing that eliminates the possibility of a collision between vehicles and NS' trains. DOT will also benefit since replacement will allow for the continuation of a crossing that is integral to the state highway system. The relative benefit that each party will receive from the repair, replacement or removal of the crossing is a relevant factor that the Commission may consider in directing which party shall perform work at a crossing and bear the cost of that work. Pittsburgh and L. E. R. Co. v. Pa. Pub. Util. Comm'n., 556 A.2d 944 (Pa.Cmwlth. 1989).

E. Crossing No. 264 033 S, SR 2032 Brooklyn Township., Susquehanna County

SR 2032 crosses above the tracks of NS in Brooklyn Township, Susquehanna County. DOT St. 1, p. 13, DOT Ex. A3. SR 2032 begins at the intersection with SR 2015 in Brooklyn Township, Susquehanna County and continues east to an intersection where it terminates at SR 0011 in Harford Township, Susquehanna County. DOT St. 1, p. 13, DOT Ex. A3. SR 2032 is designated as a Local Collector Road. DOT St. 1, p. 9, DOT Ex. A3.

The current ADT at the SR 2032 crossing is estimated at 39 vehicles per day. DOT St. 1, p. 13. Of this total, 9 are estimated to be trucks, 21 vehicles are estimated to be automobiles and 9 are estimated to be pickups/vans. DOT St. 1, p. 13-14. The bridge is used by Marcellus gas related traffic which may fluctuate depending on the season and active wells. DOT St. 1, p. 14. DOT estimates that the ADT at the SR 1018 crossing will increase by .56% per year for the next 20 years. DOT St. 1, p. 14, DOT Ex. C.

The bridge carrying SR 2032 over the tracks of NS is a 70' single span concrete arch built in approximately 1913. NS St. 1, p. 8, I&E St. 1, p.6, I&E Ex. 4A-4D, DOT Proprietary Ex. E3, p. 4-6, 15-24. The original parapets have been removed and replaced by precast concrete barriers with a chain link fence mounted on top. I&E St. 1, p.6, I&E Ex. 3A-4D, DOT Proprietary Ex. E3, p. 4-6, 15-24. The support for these barriers has been undermined and the barriers may need to be repositioned to gain proper structural stability. I&E St. 1, p.6.

The bridge is currently open to two lanes of traffic. DOT Proprietary Ex. E3, p. 4-6, 15-24. The bridge has no weight limit posting. DOT Proprietary Ex. E3, p. 4-6, 15-24.

Having provided some background and set forth the current condition of the SR 2032 crossing, I will now determine the work to be performed at the SR 2032 crossing, assign parties to perform that work, allocate the costs of the work and finally assign future maintenance responsibilities. None of the parties has advocated abolishing this crossing. DOT M.B. 39-44.

The SR 2032 crossing is the subject of the Commission order dated April 9, 2015 at I-2015-2472242. DOT St. 1, p. 15, DOT Ex. D1. This order directed DOT to inspect this bridge and five others. DOT St. 1, p. 15, DOT Ex. D1. This order does not assign maintenance responsibilities for the SR 2032 bridge.

In addition, the SR 2032 crossing is the subject of a Commission order dated March 3, 1998 at M-980137. DOT St. 1, p. 15, DOT Ex. D6. This order directed D&H to install new concrete parapets. DOT St. 1, p. 15, DOT Ex. D6. The order directed D&H to maintain the substructure and superstructure of the bridge. DOT St. 1, p. 15, DOT Ex. D6.

I conclude that it is just and reasonable for the parties to bear their respective costs initially incurred as a result of the orders at M-980137 and I-2015-2472242. In addition, DOT and NS shall continue to inspect and maintain the existing crossing, in accordance with the Commission's March 3, 1998 order at M-980137 and April 9, 2015 order at I-2015-2472242, pending final disposition of the existing SR 2032 crossing. I reach this conclusion for several reasons.

First, NS' predecessors constructed the bridge and created the crossing. As stated earlier, the existence of the crossing is due to the construction of a rail line by DLW. As part of the construction of that rail line, DLW constructed the bridge. Which party constructed the bridge and created the crossing is a relevant factor that the Commission may consider in allocating costs. Pennsylvania Dept. of Trans. v. Pa. Pub. Util. Comm'n., 464 A.2d 645 (Pa.Cmwlth. 1983); Consolidated Rail Corp. v. Pa. Pub. Util. Comm'n., 423 A.2d 1108 (Pa.Cmwlth. 1980).

Second, both parties benefit from the continued existence of the grade-separated crossing. NS benefits from a grade separated crossing at this location because it eliminates the possibility that a train will collide with vehicles or pedestrians at this location. DOT derives the same benefit as NS from the grade separated crossing. The safe interface between rail and vehicle traffic is a factor the Commission may consider in allocating costs. D&H Corp. v. Pa. Pub. Util. Comm'n., 613 A.2d 622 (Pa.Cmwlth. 1992) alloc. denied, 626 A.2d 1160 (Pa. 1994), Norfolk Southern Rwy. Co. v Pa. Pub. Util. Comm'n., 971 A.2d 545 (Pa.Cmwlth. 2009).

Third, NS' predecessors bear some responsibility for the deteriorated condition of the crossing, which has led to the need for work to be performed on the bridge. In this regard, NS' predecessors failed to perform any meaningful repairs to or maintenance of the structure in spite of the fact that the DLW built the rail line and constructed the bridge. While NS only purchased the rail line in September 2015, after much of the deterioration had occurred, it purchased the line knowing that the line and the structures suffered from deferred maintenance and was aware that the Commission had initiated an investigation into the condition of the SR 2032 crossing and could allocate responsibilities and costs to it.

The Commission, by order dated March 3, 1998 at M-980137, directed D&H, at its initial cost and expense, to maintain the entire substructure and superstructure of the SR 2032 bridge. DOT St. 1, p. 15-16, DOT Ex. D6. Whether a party is responsible for the deterioration of the crossing which has led to the need for its repair, replacement or removal is a factor that the Commission may consider in allocating costs and assigning maintenance. Pennsylvania Dept. of Trans. v. Pa. Pub. Util. Comm'n., 469 A.2d 1149 (Pa.Cmwlth. 1983).

Having addressed the allocation of costs for work performed by the parties to maintain the existing S.R. 2032 bridge and the assignment of future inspection and maintenance responsibilities for the crossing, I will now address the disposition of the crossing.

NS will agree to repair the existing bridge carrying SR 2032. NS St. 1, p. 8. While NS contends that the bridge is structurally sound, it would reface the concrete on each side of the arch. NS St. 1, p. 8. NS estimates that this construction work would cost \$100,000. NS St. 1, p. 8.

DOT recommends that the Commission order NS to replace the SR 2032 bridge. DOT St. 2, p. 9. DOT points out that DLW constructed the bridge approximately 100 years ago and that the bridge is near the end of its service life. DOT St. 2, p. 9.

DOT indicates that rehabilitation of the structure is possible, but in its experience, the level of rehabilitation required with the SR 2032 structure is not cost effective. DOT St. 2, p. 9. DOT contends that when rehabilitation costs exceed 50% of the replacement costs, it looks at the age of the structure to try to determine remaining service life. DOT St. 2, p. 9. DOT concedes that the existing concrete will have no more than 25 years of service life left before it will deteriorate. DOT St. 2, p. 9.

DOT presented evidence that the SR 2032 crossing is integral to the state highway system. DOT St. 2, p. 10. DOT does not consider the crossing to be redundant. DOT St. 2, p. 10. If the crossing were closed, the closure would cause an increase in travel time for emergency

vehicles and emergency vehicles would be forced onto a detour, increasing response time. DOT St. 2, p. 10.

Since DOT has indicated that the crossing is integral to the state highway system, and none of the parties has advocated abolishing this crossing, there is no evidence to support abolishing the crossing and removing the SR 2032 bridge. The evidence presented advocates either rehabilitation or replacement of the structure. Turning first to rehabilitating the existing structure, adopting NS' proposal to repair the existing structure has the benefit that it can be done in a relatively short period of time.

In addition, the cost of NS' proposed work is relatively inexpensive. NS estimates that its proposed work can be completed for \$100,000.

In contrast, while DOT advocates that NS replace the bridge, DOT provides no information on how long it would take to replace the structure or how much replacing the structure would cost. DOT indicated that the SR 2032 crossing is not included in any regional transportation plan and is not currently programmed. DOT St. 3, p. 3. There is no DOT funding available for this crossing. DOT St. 3, p. 3. This lack of funding is due to the way that DOT and federal funds are allocated to fund highway projects.

DOT and federal funds are allocated among Metropolitan or Regional Planning Organizations in Pennsylvania. The SR 2032 bridge is in the Northern Tier Planning Region. DOT St.3, p. 4. The Northern Tier Planning Region is a rural planning region and does not receive as much funding as the adjoining Lackawanna Luzerne Metropolitan Planning Organization. DOT St.3, p. 4. Any project involving the SR 2032 bridge and crossing would have to compete against other projects in the Northern Tier Planning Region, based on regional needs. DOT St.3, p. 4-5. The SR 2032 bridge does not have a high enough priority when compared to other projects in the Northern Tier Planning Region to obtain DOT or federal funds.

After reviewing the evidence set forth above, I conclude that NS should repair the SR 2032 bridge as it has proposed. I reach this conclusion for several reasons. First the work NS

proposes can be performed relatively quickly. This would address concerns expressed over emergency response time.

In addition, repairing the SR 2032 structure will extend the service life of the structure. This is important since it will provide additional time to replace the structure. While DOT has advocated replacing this and the other structures on this line, the evidence indicates that there needs to be some coordination as to when each of these bridges should be replaced. It is apparent that if one bridge is taken out of service for replacement, the other bridges will have to remain open to provide alternate routes across NS' rail line.

Unfortunately, there is no evidence indicating in what order or over what period the bridges should be replaced. If more than one bridge is taken out of service at the same time the evidence indicates that it could create extended emergency response times and school bus travel times. Regardless of in what order the bridges are replaced, it is evident that several of the bridges will have to remain in service for an extended period prior to being replaced. Since NS has proposed work on the SR 2032 bridge that can be completed in a relatively short period of time and will extend the service life of the bridge for a lengthy period, repairing SR 2032 will provide flexibility in scheduling and replacing other bridges on this rail line.

As stated above, NS' predecessors constructed the bridge and created the crossing. Since NS' predecessors constructed the bridge and created the crossing, NS should continue to maintain the bridge after it completes the repair work it has proposed.

As noted above, NS' predecessors bear some responsibility for the deteriorated condition of the crossing, which has led to the deteriorated condition of the SR 2032 bridge. The SR 2032 crossing is the subject of a Commission order dated March 3, 1998 at M-980137. This order directed D&H to install new concrete parapets. DOT St. 1, p. 15, DOT Ex. D6. The order directed D&H to maintain the substructure and superstructure of the bridge. DOT St. 1, p. 15, DOT Ex. D6. It is not clear what repairs or maintenance, if any, D&H performed to the structure after the date of the 1998 Commission order. It is apparent that some portion of the current condition of the crossing is due to lack of repairs or maintenance. Whether a party is responsible

for the deterioration of the crossing which has led to the need for its repair, replacement or removal is a relevant factor that the Commission may consider in directing which party shall perform work at a crossing or bear the cost of that work. Pennsylvania Dept. of Trans. v. Pa. Pub. Util. Comm'n., 469 A.2d 1149 (Pa.Cmwlth. 1983).

NS will benefit from the repairs it will perform on the SR 2032 bridge because it will continue to have a grade separated crossing that eliminates the possibility of a collision between its trains and vehicles using the roadway. In addition, NS will no longer have the danger of pieces of concrete from a deteriorating bridge falling onto its right of way.

DOT will also benefit from the repairs to the SR 2032 bridge because it will continue to have a grade separated crossing that eliminates the possibility of a collision between vehicles and NS' trains. DOT will also benefit since the repairs will allow for the continuation of a crossing that is integral to the state highway system. The relative benefit that each party will receive from the repair, replacement or removal of the crossing is a relevant factor that the Commission may considered in directing which party shall perform work at a crossing and bear the cost of that work. Pittsburgh and L. E. R. Co. v Pa. Pub. Util. Comm'n., 556 A.2d 944 (Pa.Cmwlth. 1989).

While I am ordering NS to maintain the repaired SR 2032 bridge in the future, this obligation should not continue indefinitely. While DOT contends that the SR 2032 is integral to the state highway system and is not redundant, the ADT is estimated at only 39 vehicles per day.

In the past, the Commission has abolished at-grade crossings with ADTs of less than 2,000 on the basis that they were redundant. Application of CSX Transportation Inc., Docket Nos. A-11222266, et al (Opinion and Order entered March 18, 1997). While the SR 2032 crossing is a grade separated crossing and the consideration of reducing the number of collisions between vehicles and trains in abolishing redundant crossings is not present here, the low traffic volume should be a consideration in how long NS should be obligated to maintain the existing structure.

In the Schwartz decision involving a highway bridge over this same rail line, the Commission ordered the crossing abolished and the structure removed where there was low ADT and the structure and crossing were found not to be integral or necessary to the state or local transportation system. The SR 2032 bridge and crossing are distinguishable from the structure and crossing in Schwartz because DOT has indicated that, in spite of the low ADT, the structure and crossing are integral and necessary to the state and local transportation system.

Since the NS repairs to SR 2032 bridge will extend the service life of the SR 2032 bridge for twenty-five years, it seems reasonable that it should only be obligated to continue to maintain the structure for that period. If by that time DOT has not taken steps to replace a structure that it indicates is integral to the state transportation system, it shall assume maintenance for the existing SR 1025 bridge. NS' maintenance responsibility for the SR 2032 bridge will terminate on December 31, 2043.

F. Crossing No. 264 292 D, SR 2041 Hop Bottom Borough., Susquehanna County

SR 2041 crosses above the tracks of NS in Hop Bottom Borough, Susquehanna County. DOT St. 1, p. 17, DOT Ex. A4. SR 2041 begins at the intersection with SR 2039 and Bennett Road in Lenox Township, Susquehanna County and continues north to an intersection where it terminates at SR 0011 and SR 0167 in Hop Bottom Borough, Susquehanna County. DOT St. 1, p. 17, DOT Ex. A4. SR 2041 is designated as a Minor Collector Road. DOT St. 1, p. 17, DOT Ex. A4.

The current ADT at the SR 2041 crossing is estimated at 416 vehicles per day. DOT St. 1, p. 17. Of this total, 45 are estimated to be trucks, 2 vehicles are estimated to be motorcycles, 244 vehicles are estimated to be automobiles and 125 are estimated to be pickups/vans. DOT St. 1, p. 18. DOT estimates that the ADT at the SR 1018 crossing will increase by .56% per year for the next 20 years. DOT St. 1, p. 19, DOT Ex. C.

The bridge carrying SR 2041 over the tracks of NS is a 70' single span concrete arch built in approximately 1915. NS St. 1, p. 7, I&E St. 1, p.7, I&E Ex. 5A-5B, DOT



Proprietary Ex. E4, p. 4-6, 14-24. Deterioration in the deck under the parapets has undermined support for the parapets. I&E St. 1, p. 7, I&E Ex. 35 A-5B, DOT Proprietary Ex. E4, p. 4-6, 14-24. The parapets could dislodge if a vehicle strikes one of them. I&E St. 1, p.5.

The bridge is currently open to two lanes of traffic. DOT Proprietary Ex. E4, p. 4-6, 14-24. The bridge has no weight limit posting. DOT, St. 2, p. 14, DOT Proprietary Ex. E4, p. 4-6, 14-24.

Having provided some background and set forth the current condition of the SR 2041 crossing, I will now determine the work to be performed at the SR 2041 crossing, assign parties to perform that work, allocate the costs of the work and finally assign future maintenance responsibilities. None of the parties has advocated for abolishing this crossing.

The SR 2041 crossing is the subject of the Commission order dated April 9, 2015 at I-2015-2472242. DOT St. 1, p. 20, DOT Ex. D1. This order directed DOT to inspect this bridge and five others. DOT St. 1, p. 20, DOT Ex. D1. This order does not assign maintenance responsibilities for the SR 2041 bridge.

In addition, the SR 2041 crossing is the subject of a Commission order dated August 5, 1947 at A-68459. DOT St. 1, p. 19, DOT Ex. D7. This order directed DLW to maintain the substructure and superstructure of the bridge. DOT St. 1, p. 20, DOT Ex. D7.

I conclude that it is just and reasonable for the parties to bear their respective costs initially incurred as a result of the August 5, 1947 order at A-68459 and the April 9, 2015 order at I-2015-2472242. In addition, DOT and NS shall continue to inspect and maintain the existing crossing, in accordance with the Commission's August 5, 1947 order at A-68459 and the April 9, 2015 order at I-2015-2472242, pending final disposition of the existing SR 2041 crossing. I reach this conclusion for several reasons.

First, NS' predecessors constructed the bridge and created the crossing. As stated earlier, the existence of the crossing is due to the construction of a rail line by DLW. As part of

the construction of that rail line, DLW constructed the bridge. Which party constructed the bridge and created the crossing is a relevant factor that the Commission may consider in allocating costs. Pennsylvania Dept. of Trans. v. Pa. Pub. Util. Comm'n., 464 A.2d 645 (Pa.Cmwlth. 1983); Consolidated Rail Corp. v. Pa. Pub. Util. Comm'n., 423 A.2d 1108 (Pa.Cmwlth. 1980).

Second, both parties benefit from the continued existence of the grade separated crossing. NS benefits from a grade separated crossing at this location because it eliminates the possibility that a train will collide with vehicles or pedestrians at this location. DOT derives the same benefit as NS from the grade separated crossing. The safe interface between rail and vehicle traffic is a factor the Commission may consider in allocating costs. D&H Corp. v. Pa. Pub. Util. Comm'n., 613 A.2d 622 (Pa.Cmwlth. 1992) alloc. denied, 626 A.2d 1160 (Pa. 1994), Norfolk Southern Rwy. Co. v. Pa. Pub. Util. Comm'n., 971 A.2d 545 (Pa.Cmwlth. 2009).

Third, NS' predecessors bear some responsibility for the deteriorated condition of the crossing, which has led to the need for work to be performed on the bridge. In this regard, NS' predecessors failed to perform any meaningful repairs to or maintenance of the structure in spite of the fact that DLW built the rail line and constructed the bridge. While NS only purchased the rail line in September 2015, after much of the deterioration had occurred, it purchased the line knowing that the line and the structures suffered from deferred maintenance and was aware that the Commission had initiated an investigation into the condition of the SR 2041 crossing and could allocate responsibilities and costs to it.

The Commission by order dated August 5, 1947 order at A-68459 directed DLW to maintain the entire substructure and superstructure of the SR 2041 bridge. DOT St. 1, p. 19-20, DOT Ex. D7. Whether a party is responsible for the deterioration of the crossing which has led to the need for its repair, replacement or removal is a factor that the Commission may consider in allocating costs and assigning maintenance. Pennsylvania Dept. of Trans. v. Pa. Pub. Util. Comm'n., 469 A.2d 1149 (Pa.Cmwlth. 1983).

Having addressed the allocation of costs for work performed by the parties to maintain the existing SR 2041 bridge and the assignment of future inspection and maintenance responsibilities for the crossing, I will now address the disposition of the crossing.

NS will agree to repair the existing bridge carrying SR 2041. NS St. 1, p. 7-8. NS would repair the concrete on the left spandrel wall. NS St. 1, p. 8. NS will also patch concrete on areas depicted by DOT photographs 17-20. NS St. 1, p. 8, DOT Proprietary Ex. E4, p. 22-23. NS estimates that this repair work would cost \$50,000. NS St. 1, p. 8.

DOT recommends that the Commission order NS to replace the SR 2041 bridge. DOT St. 2, p. 14. DOT points out that DLW constructed the bridge approximately 100 years ago and that the bridge is near the end of its service life. DOT St. 2, p. 14.

DOT indicates that rehabilitation of the structure is possible, but in its experience, the level of rehabilitation required with the SR 2041 structure is not cost effective. DOT St. 2, p. 14. DOT contends that when rehabilitation costs exceed 50% of the replacement costs, it looks at the age of the structure to try to determine remaining service life. DOT St. 2, p. 14. DOT concedes that the existing concrete will have no more than 25 years of service life left before it will deteriorate. DOT St. 2, p. 14.

DOT presented evidence that the SR 2041 crossing is integral to the state highway system. DOT St. 2, p. 12-13. DOT does not consider the crossing to be redundant. DOT St. 2, p. 12-13. If the crossing were closed, the closure would cause an increase in travel time for emergency vehicles and emergency vehicles would be forced onto a detour, increasing response time. DOT St. 2, p. 13.

Since DOT has indicated that the crossing is integral to the state highway system and none of the parties has advocated abolishing this crossing, there is no evidence to support abolishing the crossing and removing the SR 2041 bridge. The evidence presented supports either rehabilitation or replacement of the structure. Turning first to rehabilitating the existing

structure, adopting NS' proposal to repair the existing structure has the benefit that it can be done in a relatively short period of time.

In addition, the cost of NS' proposed work is relatively inexpensive. NS estimates that its proposed work can be completed for \$50,000.

In contrast, while DOT advocates that NS replace the bridge, DOT provides no information on how long it would take to replace the structure or how much replacing the structure would cost. DOT indicated that the SR 2041 crossing is not included in any regional transportation plan and is not currently programmed. DOT St. 3, p. 3. There is no DOT funding available for this crossing. DOT St. 3, p. 3. This lack of funding is due to the way that DOT and federal funds are allocated to fund highway projects.

DOT and federal funds are allocated among Metropolitan or Regional Planning Organizations in Pennsylvania. The SR 2041 bridge is in the Northern Tier Planning Region. DOT St.3, p. 4. The Northern Tier Planning Region is a rural planning region and does not receive as much funding as the adjoining Lackawanna Luzerne Metropolitan Planning Organization. DOT St.3, p. 4. Any project involving the SR 2041 bridge and crossing would have to compete against other projects in the Northern Tier Planning Region, based on regional needs. DOT St.3, p. 4-5. The SR 2041 bridge does not have a high enough priority when compared to other projects in the Northern Tier Planning Region to obtain DOT or federal funding.

After reviewing the evidence set forth above, I conclude that NS should repair the SR 2041 bridge as it has proposed. I reach this conclusion for several reasons.

First the work NS proposes can be performed relatively quickly. This would address concerns expressed over emergency response time.

In addition, repairing the SR 2041 structure will extend the service life of the structure. This is important since it will provide additional time to replace the structure. While

DOT has advocated replacing this and the other structures on this line, the evidence indicates that there needs to be some coordination as to when each of these bridges should be replaced. It is apparent that if one bridge is taken out of service for replacement, the other bridges will have to remain open to provide alternate routes across NS' rail line.

Unfortunately, there is no evidence indicating in what order or over what period the bridges should be replaced. If more than one bridge is taken out of service at the same time the evidence indicates that it could create extended emergency response times and school bus travel times. Regardless of in what order the bridges are replaced, it is evident that several of the bridges will have to remain in service for an extended period prior to being replaced. Since NS has proposed work on the SR 2041 bridge that can be completed in a relatively short period of time and will extend the service life of the bridge for a lengthy period, it will provide flexibility in scheduling and replacing other bridges on this rail line.

As stated above, NS' predecessors constructed the bridge and created the crossing. Since NS' predecessors constructed the bridge and created the crossing, NS should continue to maintain the bridge after it completes the repair work it has proposed.

As noted above, NS' predecessors bear some responsibility for the deteriorated condition of the crossing, which has led to the deteriorated condition of the SR 2041 bridge. The SR 2041 crossing is the subject of a Commission order dated August 5, 1947 at A-68459. DOT St. 1, p. 19, DOT Ex. D7. This order directed DLW to maintain the substructure and superstructure of the bridge. DOT St. 1, p. 20, DOT Ex. D7. It is not clear what repairs or maintenance, if any, DLW or its successors performed to the structure after the date of the 1947 Commission order. It is apparent that some portion of the current condition of the crossing is due to lack of repairs or maintenance. Whether a party is responsible for the deterioration of the crossing which has led to the need for its repair, replacement or removal is a relevant factor that the Commission may consider in directing which party shall perform work at a crossing or bear the cost of that work. Pennsylvania Dept. of Trans. v. Pa. Pub. Util. Comm'n., 469 A.2d 1149 (Pa.Cmwlth. 1983).

NS will benefit from the repairs it will perform on the SR 2041 bridge because it will continue to have a grade separated crossing that eliminates the possibility of a collision between its trains and vehicles using the roadway. In addition, NS will no longer have pieces of concrete from a deteriorating bridge falling onto its right of way.

DOT will also benefit from the repairs to the SR 2041 bridge because it will continue to have a grade separated crossing that eliminates the possibility of a collision between vehicles and NS' trains. DOT will also benefit since replacement will allow for the continuation of a crossing that is integral to the state highway system. The relative benefit that each party will receive from the repair, replacement or removal of the crossing is a relevant factor that the Commission may consider in directing which party shall perform work at a crossing and bear the cost of that work. Pittsburgh and L. E. R. Co. v Pa. Pub. Util. Comm'n., 556 A.2d 944 (Pa.Cmwlth. 1989).

While I am ordering NS to maintain the repaired SR 2041 bridge in the future, this obligation should not continue indefinitely. While DOT contends that the SR 2041 is integral to the state highway system and is not redundant, the ADT is estimated at only 416 vehicles per day.

In the past, the Commission has abolished at-grade crossings with ADTs of less than 2,000 on the basis that they were redundant. Application of CSX Transportation Inc., Docket Nos. A-11222266, et al (Opinion and Order entered March 18, 1997). While the SR 2041 crossing is a grade separated crossing and the consideration of reducing the number of collisions between vehicles and trains in abolishing redundant crossings is not present here, the low traffic volume should be a consideration in how long NS should be obligated to maintain the existing structure.

In the Schwartz decision involving a highway bridge over this same rail line, the Commission ordered the crossing abolished and the structure removed where there was low ADT and the structure and crossing were found not to be integral or necessary to the state or local transportation system. The SR 2041 bridge and crossing are distinguishable from the structure

and crossing in Schwartz because DOT has indicated that in spite of the low ADT, the structure and crossing are integral and necessary to the state and local transportation system.

Since the NS repairs to SR 2041 bridge will extend the service life of the SR 2041 bridge for twenty-five years, it seems reasonable that NS should only be obligated to continue to maintain the structure for that period. If by that time DOT has not taken steps to replace a structure that it indicates is integral to the state transportation system, it shall assume maintenance for the existing SR 2041 bridge. NS' maintenance responsibility for the SR 2041 bridge will terminate on December 31, 2043.

G. Crossing No. 264 291 W, SR 2017 Lathrop Township., Susquehanna County

SR 2017 crosses above the tracks of NS in Lathrop Township, Susquehanna County. DOT St. 1, p. 21, DOT Ex. A5. SR 2017 begins at the Wyoming and Susquehanna County line and continues north to an intersection with SR 0011 in Hop Bottom Borough, Susquehanna County, where it ends. DOT St. 1, p. 21, DOT Ex. A5. SR 2017 is designated as a Local Collector Road. DOT St. 1, p. 21, DOT Ex. A5.

The current ADT at the SR 2017 crossing is estimated at 119 vehicles per day. DOT St. 1, p. 12. Of this total, 12 are estimated to be trucks, 2 vehicles are estimated to be motorcycles, 88 vehicles are estimated to be automobiles and 17 are estimated to be pickups/vans. DOT St. 1, p. 22. DOT estimates that the ADT at the SR 2017 crossing will increase by .56% per year for the next 20 years. DOT St. 1, p. 22, DOT Ex. C.

The bridge carrying SR 2017 over the tracks of NS is a 70' single span concrete arch built in approximately 1915. NS St. 1, p. 12, I&E St. 1, p. 2, I&E Ex. 1A-1D, DOT Proprietary Ex. E5, p. 4-6, 18-33. The structure is deteriorated throughout. I&E St. 1, p.2, I&E Ex. 1A-1D, DOT Proprietary Ex. E5, p. 4-6, 18-33. The far-right approach guiderail shows signs of collision damage. I&E St. 1, p.2-3, I&E Ex. 1A-1D. The embankment and wingwall that support this section of guiderail have failed and are unlikely to prevent a vehicle from falling

onto the railroad right of way if a vehicle strikes the guiderail. I&E St. 1, p.2-3, I&E Ex. 1A-1D, DOT Proprietary Ex. E5, p. 4-6, 23-25.

The SR 2017 bridge is currently open to two lanes of traffic. DOT Proprietary Ex. E5, p. 4-6, 23-25. The bridge has no weight limit posting. DOT St. 2, p. 17, DOT Proprietary Ex. E5, p. 4-6, 23-25.

Having provided some background and set forth the current condition of the SR 2017 crossing, I will now determine the work to be performed at the SR 2017 crossing, assign parties to perform that work, allocate the costs of the work and finally assign future maintenance responsibilities. None of the parties has advocated for abolishing this crossing. DOT M.B.39-44.

The SR 2017 crossing is the subject of the Commission order dated April 9, 2015 at I-2015-2472242. DOT St. 1, p. 24, DOT Ex. D1. This order directed DOT to inspect this bridge and five others. DOT St. 1, p. 24, DOT Ex. D1. This order does not assign maintenance responsibilities for the SR 2017 bridge.

In addition, the SR 2017 crossing is the subject of a Commission Secretarial Letter dated January 8, 2015 at M-2014-2459368. DOT St. 1, p. 23, DOT Ex. D8. This order directed D&H to install concrete barriers and protective fences. DOT St. 1, p. 23-24, DOT Ex. D8. This order does not assign maintenance responsibilities for the SR 2017 bridge.

I conclude that it is just and reasonable for DOT to inspect and maintain the existing bridge. I also conclude that it is just and reasonable for NS to reimburse DOT for 50% of the costs of inspection and maintenance. I reach this conclusion for two reasons.

First, as noted above, both parties benefit from the continued existence of the grade-separated crossing. Assigning maintenance responsibility to DOT will allow the grade separated crossing to remain open to both train and vehicle traffic. As noted above, the safe



interface between rail and vehicle traffic is a factor the Commission may consider in assigning maintenance.

Second, also as noted above, both NS and DOT bear some responsibility for the deteriorated condition of the crossing. NS' predecessors bear some responsibility for the deteriorated condition of the crossing, which has led to the need for work to be performed on the bridge. In this regard, NS' predecessors failed to perform any meaningful repairs to or maintenance of the structure even though DLW built the rail line and constructed the bridge. While NS only purchased the rail line in September 2015, after much of the deterioration had occurred, it purchased the line knowing that the line and the structures suffered from deferred maintenance and was aware that the Commission had initiated an investigation into the condition of the SR 1018 crossing and could allocate responsibilities and costs to it. DOT also failed to perform any meaningful repairs to or maintenance of the structure even though the bridge carries a state highway.

In addition, neither NS nor DOT brought the condition of the crossing or the lack of a Commission order assigning maintenance responsibility for the crossing to the attention of the Commission prior to the time that the Complainant initiated the investigation at I-2015-2472242. The lack of a Commission order assigning maintenance responsibility for this structure contributed to the deteriorated condition of the structure.

Assigning future inspection and maintenance responsibility will at least provide some monitoring of the existing bridge and perhaps slow the deterioration of the bridge. As noted above, whether a party is responsible for the deterioration of the crossing which has led to the need for its repair, replacement or removal is a factor that the Commission may consider in allocating costs and assigning maintenance.

For the above reasons, DOT should inspect and maintain the existing structure carrying SR 2017 over NS' facilities and NS should reimburse DOT a portion of the costs it incurs for inspection and maintenance. This assignment of responsibilities and allocation of costs is just and reasonable and supported by evidence in the record. This allocation will be

without prejudice to the rights of DOT and NS to enforce such obligations upon or seek reimbursement from others pursuant to any applicable law or lawful agreement. Consolidated Rail Corp. v. City of Harrisburg, 842 A.2d 369 (Pa. 2004).

Having addressed the assignment of future inspection and maintenance responsibilities for the SR 2017 crossing, I will now address the disposition of the crossing.

DOT recommends that the Commission order NS to replace the SR 2017 bridge. DOT St. 2, p. 17. DOT points out that DLW constructed the bridge approximately 100 years ago and that the bridge is near the end of its service life. DOT St. 2, p. 17.

DOT indicates that rehabilitation of the structure is possible, but in its experience, the level of rehabilitation required with the SR 2017 structure is not cost effective. DOT St. 2, p. 17-18. DOT contends that when rehabilitation costs exceed 50% of the replacement costs, it looks at the age of the structure to try to determine remaining service life. DOT St. 2, p. 17-18. DOT concedes that the existing concrete will have no more than 25 years of service life left before it will deteriorate. DOT St. 2, p. 17-18.

DOT presented evidence that the SR 2017 crossing is integral to the state highway system. DOT St. 2, p. 15. DOT does not consider the crossing to be redundant. DOT St. 2, p. 15. If the crossing were closed, the closure would cause an increase in travel time for emergency vehicles and emergency vehicles would be forced onto a detour, increasing response time. DOT St. 2, p. 16.

While DOT has advocated replacing this and the other structures on this line, the evidence indicates that there needs to be some coordination as to when each of these bridges should be replaced. It is apparent that if one bridge is taken out of service for replacement, the other bridges will have to remain open to provide alternate routes across NS' rail line.

Unfortunately, there is no evidence indicating in what order or over what period the bridges should be replaced. If more than one bridge is taken out of service at the same time, the

evidence indicates that it could create extended emergency response times and school bus travel times. Regardless of in what order the bridges are replaced, it is evident that several of the bridges will have to remain in service for an extended period prior to being replaced.

Since DOT has indicated that the crossing is integral to the state highway system, the existing bridge should be replaced. While DOT advocates that NS replace the bridge, DOT provides no information on how long it would take to replace the structure or how much replacing the structure would cost. DOT indicated that the SR 2017 crossing is not included in any regional transportation plan and is not currently programmed. DOT St. 3, p. 3. There is no DOT funding available for this crossing. DOT St. 3, p. 3. This lack of funding is due to the way that DOT and federal funds are allocated to fund highway projects.

DOT and federal funds are allocated among Metropolitan or Regional Planning Organizations in Pennsylvania. The SR 2017 bridge is in the Northern Tier Planning Region. DOT St.3, p. 4. The Northern Tier Planning Region is a rural planning region and does not receive as much funding as the adjoining Lackawanna Luzerne Metropolitan Planning Organization. DOT St.3, p. 4. Any project involving the SR 2017 bridge and crossing would have to compete against other projects in the Northern Tier Planning Region, based on regional needs. DOT St.3, p. 4-5. The SR 2017 bridge does not have a high enough priority when compared to other projects in the Northern Tier Planning Region to obtain DOT or federal funding.

After reviewing the evidence set forth above, I conclude that DOT should prepare plans for the demolition and removal of the existing SR 2017 bridge and replacement with a new structure. Upon Commission approval of those plans, DOT shall remove the structure and replace it at its initial cost and expense. To give DOT sufficient time to coordinate replacement of the SR 2017 bridge with the other bridges on the rail line, DOT shall have five years to prepare plans for removal and replacement of the SR 2017 structure. It will have two years to complete the work after the Commission approves the plans.

NS shall reimburse DOT for \$300,000 of the costs of plan preparation, demolition and replacement. NS will also bear the costs of providing watchmen, flagmen and inspectors. I reach this determination concerning the disposition of the structure and allocation of costs for several reasons.

First, as stated above, NS' predecessors constructed the bridge and created the crossing. Since NS' predecessors constructed the bridge and created the crossing, NS should be responsible for a portion of the costs for replacing the bridge. Which party constructed the bridge and created the crossing is a relevant factor that the Commission may consider in directing which party shall perform work at a crossing or bear the cost of that work.

Pennsylvania Dept. of Trans. v. Pa. Pub. Util. Comm'n., 464 A.2d 645 (Pa.Cmwlth. 1983);  
Consolidated Rail Corp. v. Pa. Pub. Util. Comm'n., 423 A.2d 1108 (Pa Cmwlth. 1980).

Second, as noted above, NS' predecessors bear some responsibility for the deteriorated condition of the crossing, which has led to the need to replace the bridge. It is not clear what repairs or maintenance, if any, DLW or its successors performed to the structure after it constructed the bridge. It is apparent that some portion of the current condition of the crossing is due to lack of repairs or maintenance. Whether a party is responsible for the deterioration of the crossing which has led to the need for its repair, replacement or removal is a relevant factor that the Commission may consider in directing which party shall perform work at a crossing or bear the cost of that work. Pennsylvania Dept. of Trans. v. Pa. Pub. Util. Comm'n., 469 A.2d 1149 (Pa.Cmwlth. 1983).

Third, both parties will benefit from the replacement of the bridge. NS will benefit because it will continue to have a grade separated crossing that eliminates the possibility of a collision between its trains and vehicles using the roadway. In addition, NS will not have the possibility of pieces of concrete from a deteriorating bridge falling onto its right of way.

DOT will benefit from replacement of the bridge because it will continue to have a grade separated crossing that eliminates the possibility of a collision between vehicles and NS' trains. DOT will also benefit since replacement will allow for the continuation of a crossing that

is integral to the state highway system. The relative benefit that each party will receive from the repair, replacement or removal of the crossing is a relevant factor that the Commission may consider in directing which party shall perform work at a crossing and bear the cost of that work. Pittsburgh and L. E. R. Co. v Pa. Pub. Util. Comm'n., 556 A.2d 944 (Pa.Cmwlt. 1989).

H. Crossing No. 265 849D, SR 4005 Benton Township, Lackawanna County

SR 4005 crosses above the tracks of NS in Benton Township, Lackawanna County. DOT St. 1, p. 25, DOT Ex. A6. SR 4005 begins at the Lackawanna and Wyoming County line in Benton Township. DOT St. 1, p. 25, DOT Ex. A6. SR 4005 continues north to an intersection where it terminates at SR 0107. DOT St. 1, p. 25, DOT Ex. A6. SR 4005 is designated as a Minor Collector Road. DOT St. 1, p. 25, DOT Ex. A6.

The current ADT at the SR 4005 crossing is estimated at 227 vehicles per day. DOT St. 1, p. 26. Of this total, 27 are estimated to be trucks, 1 vehicle is estimated to be a motorcycle, 158 vehicles are estimated to be automobiles and 41 are estimated to be pickups/vans. DOT St. 1, p. 26. DOT estimates that the ADT at the SR 4005 crossing will increase by .45% per year for the next 20 years. DOT St. 1, p. 27, DOT Ex. C.

The bridge carrying SR 4005 over the tracks of NS is a 128' open spandrel concrete arch built in approximately 1915. I&E St. 1, p. 8, I&E Ex. 6A-6C, DOT Proprietary Ex. E6, p. 4-16. The parapets are deteriorated. I&E St. 1, p. 8, I&E Ex. 6A-6C, DOT Proprietary Ex. E6, p. 4-16. The parapet and wingwall of the bridge has been severely undermined and washed out due to water flow. I&E St. 1, p. 8, I&E Ex. 6A-6C, DOT Proprietary Ex. E6, p. 4-16.

The SR 4005 bridge is currently open to two lanes of traffic. DOT St. 1, p. 25, DOT Proprietary Ex. E5, p. 4-6, 23-25. The bridge is posted for a weight limit of 17 tons with 22-ton combinations. DOT St. 2, p. 20, DOT Proprietary Ex. E6, p. 16.

Having provided some background and set forth the current condition of the SR 4005 crossing, I will now determine the work to be performed at the SR 4005 crossing, assign parties to perform that work, allocate the costs of the work and finally assign future maintenance responsibilities. None of the parties has advocated for abolishing this crossing. DOT M.B. 39-44.

The SR 4005 crossing is the subject of the Commission order dated April 9, 2015 at I-2015-2472242. DOT St. 1, p. 28, DOT Ex. D1. This order directed DOT to inspect this bridge and five others. DOT St. 1, p. 28, DOT Ex. D1. This order does not assign maintenance responsibilities for the SR 2017 bridge.

In addition, the SR 4005 crossing is the subject of a Commission Secretarial Letter dated January 15, 2015 at M-2014-2400414. DOT St. 1, p. 27, DOT Ex. D9. The Secretarial Letter directed DOT to post the SR 4005 bridge at its initial cost and expense. DOT St. 1, p. 27, DOT Ex. D9. This order does not assign maintenance responsibilities for the SR 4005 bridge.

I conclude that it is just and reasonable for DOT to inspect and maintain the existing bridge. I also conclude that it is just and reasonable for NS to reimburse DOT for 50% of the costs of inspection and maintenance. I reach this conclusion for two reasons.

First, as noted above, both parties benefit from the continued existence of the grade-separated crossing. Assigning maintenance responsibility to DOT will allow the grade separated crossing to remain open to both train and vehicle traffic. As noted above, the safe interface between rail and vehicle traffic is a factor the Commission may consider in assigning maintenance.

Second, also as noted above, both NS and DOT bear some responsibility for the deteriorated condition of the crossing. NS' predecessors bear some responsibility for the deteriorated condition of the crossing, which has led to the need for work to be performed on the bridge. In this regard, NS' predecessors failed to perform any meaningful repairs to or

maintenance of the structure even though DLW built the rail line and constructed the bridge. While NS only purchased the rail line in September 2015, after much of the deterioration had occurred, it purchased the line knowing that the line and the structures suffered from deferred maintenance and was aware that the Commission had initiated an investigation into the condition of the SR 4005 crossing and could allocate responsibilities and costs to it. DOT also failed to perform any meaningful repairs to or maintenance of the structure even though the bridge carries a state highway.

In addition, neither NS nor DOT brought the condition of the crossing or the lack of a Commission order assigning maintenance responsibility for the crossing to the attention of the Commission prior to the time that the Commission initiated the investigation at I-2015-2472242. The lack of a Commission order assigning maintenance responsibility for this structure contributed to the deteriorated condition of the structure.

Assigning future inspection and maintenance responsibility will at least provide some monitoring of the existing bridge and perhaps slow the deterioration of the bridge. As noted above, whether a party is responsible for the deterioration of the crossing which has led to the need for its repair, replacement or removal is a factor that the Commission may consider in allocating costs and assigning maintenance.

For the above reasons, DOT should inspect and maintain the existing structure carrying S.R. 4005 over NS' facilities and NS should reimburse DOT a portion of the costs it incurs for inspection and maintenance. This assignment of responsibilities and allocation of costs is just and reasonable and supported by evidence in the record. This allocation will be without prejudice to the rights of DOT and NS to enforce such obligations upon or seek reimbursement from others pursuant to any applicable law or lawful agreement. Consolidated Rail Corp. v. City of Harrisburg, 842 A.2d 369 (Pa. 2004).

Having addressed the assignment of future inspection and maintenance responsibilities for the SR 4005 crossing, I will now address the disposition of the crossing.

DOT indicates that the SR 4005 bridge is being rehabilitated by DOT after working with the Pennsylvania Historic and Museum Commission (PHMC) because of its historical significance. DOT St. 2, p. 20. DOT will be filing an application to modify the existing crossing. DOT St. 2, p. 21. The project is a full rehabilitation and will involve removing the concrete deck and spandrel columns and replacing them completely. DOT St. 2, p. 21. The arch ribs, abutments and wingwalls will also be rehabilitated to near original condition, except where safety upgrades are mandated. DOT St. 2, p. 21.

DOT anticipates that contractors will be able to bid the project starting on October 10, 2019. DOT St. 2, p. 21. DOT anticipates that construction will be complete by November 1, 2020. DOT St. 2, p. 21. DOT contends that the Commission should determine maintenance responsibility for the existing structure and the rehabilitated structure in this proceeding. DOT St. 2, p. 21. Since DOT will file an application to rehabilitate the structure, it is more appropriate that future maintenance responsibility for the rehabilitated structure should be the subject of that application proceeding.

I. Crossing No. 263 952 J, T-821 Great Bend Township, Susquehanna County

T-821 crosses above the tracks of NS in Great Bend Township, Susquehanna County. DOT St. 1, p. 29, DOT Ex. A7. T-821 begins at SR 1018 in New Milford Township and runs parallel to SR 0011. DOT St. 1, p. 29, DOT Ex. A7. T-821 continues into Hallstead Township and terminates at an intersection with SR 0011 and Dayton Street in Hallstead Borough. DOT St. 1, p. 29, DOT Ex. A7. T-821 is designated as a Local Collector Road. DOT St. 1, p. 29, DOT Ex. A7.

None of the parties provided information on the current or future ADT at the T-821 crossing. However, Great Bend presented testimony that the T-821 bridge is important to Great Bend Township and Susquehanna County. Great Bend St. 1, p. 5. Great Bend points out that with the closure of the T-821 bridge, school buses serving the Blue Ridge School are now limited to one access route to the school complex. Great Bend St. 1, p. 5.



Great Bend states that the closure of the T-821 bridge has disrupted residents and businesses in Great Bend. Residents living along T-821 have experienced a considerable detour to reach local services such as the grocery store, gas stations or the local bank. Great Bend St. 1, p. 5. According to Great Bend, some residents now have a detour of approximately ten miles. Great Bend St. 1, p. 6.

In addition, local emergency services have been adversely impacted by closure of the T-821 bridge. Great Bend St. 1, p. 6. Response times for emergency services have increased. Great Bend St. 1, p. 6.

The bridge carrying T-821 over the tracks of NS is an 88' single span thru-girder bridge built in approximately 1914. I&E St. 1, p. 4, I&E Ex. 2A-2C, DOT Proprietary Ex. E7, p. 4-6, 17-33, NS St. 1, p. 8, Great Bend St. 1, p. 4. The bridge was closed to traffic on December 19, 2017. I&E St. 1, p. 4, I&E Ex. 2A-2C, DOT Proprietary Ex. E7, p. 4-6, 17-33, NS St. 1, p. 8, Great Bend St. 1, p. 4.

Having provided some background and set forth the current condition of the T-821 crossing, I will now determine the work to be performed at the T-821 crossing, assign parties to perform that work, allocate the costs of the work and finally assign future maintenance responsibilities. None of the parties has advocated for abolishing this crossing. DOT M.B. 39-44.

The T-821 crossing is the subject of the Commission order dated April 9, 2015 at I-2015-2472242. DOT St. 1, p. 30, DOT Ex. D1. This order directed DOT to inspect this bridge and five others. DOT St. 1, p. 30, DOT Ex. D1. This order does not assign maintenance responsibilities for the T-821 bridge.

The T-821 crossing is also the subject of the Commission Secretarial Letter dated January 4, 2018 at I-2015-2472242. DOT St. 1, p. 31, DOT Ex. D13. The January 4, 2018 Secretarial Letter affirmed the closing of the T-821 bridge. DOT St. 1, p. 31, DOT Ex. D13. This Secretarial Letter does not assign maintenance responsibilities for the T-821 bridge.

In addition, the T-821 crossing is the subject of a Commission order dated August 14, 1980 at C-79081404. DOT St. 1, p. 31, DOT Ex. D13. The August 14, 1980 order directed Consolidated Rail Corporation (Conrail), then the owner of the rail line, to repair the southwest wingwall of the T-821 bridge. DOT St. 1, p. 31, DOT Ex. D10. This Secretarial Letter does not assign maintenance responsibilities for the T-821 bridge.

The T-821 crossing is the subject of a Commission order dated February 22, 1985 at C-79081404. DOT St. 1, p. 31, DOT Ex. D11. The February 22, 1985 order directed that D&H maintain its railroad facilities at the crossing. DOT St. 1, p. 31, DOT Ex. D11. This Secretarial Letter does not assign maintenance responsibilities for the T-821 bridge.

The T-821 crossing is the subject of a Commission order dated April 9, 1915 at A-321. DOT St. 1, p. 31, DOT Ex. D12. The April 9, 1915 order directed the abolition of two at grade crossings and construction of an above grade crossing. DOT St. 1, p. 31, DOT Ex. D12. The April 9, 1915 order at A-321 directs DLW to maintain the T-821 bridge. DOT St. 1, p. 31, DOT Ex. D12.

I conclude that it is just and reasonable for NS to inspect and maintain the existing bridge. I also conclude that it is just and reasonable for Great Bend to reimburse NS 10% of the costs of inspection and maintenance. I reach this conclusion for two reasons.

First, as noted above, both parties benefit from the continued existence of the grade-separated crossing. Assigning maintenance responsibility to NS will allow the grade separated crossing to remain open to both train and vehicle traffic. As noted above, the safe interface between rail and vehicle traffic is a factor the Commission may consider in assigning maintenance.

Second, also as noted above, both NS and Great Bend bear some responsibility for the deteriorated condition of the crossing. NS' predecessors bear some responsibility for the deteriorated condition of the crossing, which has led to the need for work to be performed on the bridge. In this regard, NS' predecessors failed to perform any meaningful repairs to or

maintenance of the structure even though DLW built the rail line and constructed the bridge. Great Bend also failed to perform any meaningful repairs or maintenance to the structure even though the bridge carries a township highway.

Assigning future inspection and maintenance responsibility will at least provide some monitoring of the existing bridge and perhaps slow the deterioration of the bridge. As noted above, whether a party is responsible for the deterioration of the crossing which has led to the need for its repair, replacement or removal is a factor that the Commission may consider in allocating costs and assigning maintenance.

For the above reasons, NS should inspect and maintain the existing structure carrying T-821 over its facilities and Great Bend should reimburse NS a portion of the costs it incurs for inspection and maintenance. This assignment of responsibilities and allocation of costs is just and reasonable and supported by evidence in the record. This allocation will be without prejudice to the rights of Great Bend and NS to enforce such obligations upon or seek reimbursement from others pursuant to any applicable law or lawful agreement. Consolidated Rail Corp. v. City of Harrisburg, 842 A.2d 369 (Pa. 2004).

Having addressed the assignment of future inspection and maintenance responsibilities for the T-821 crossing, I will now address the disposition of the crossing. NS is developing repair plans for the bridge seats and abutments for the T-821 bridge. NS St. 1, p. 9, NS Ex. 1. It estimates the total cost of this work to be \$200,000. NS St. 1, p. 9, NS Ex. 1. NS estimates that the repair work will commence in July 2018 and be completed by September 30, 2018. NS St. 1, p. 9. Once NS completes the repairs, the T-821 bridge can be reopened. NS St. 1, p. 9.

DOT has offered no opinion on whether the T-821 bridge should be replaced since the bridge does not carry a state route. DOT St. 2, p. 23. Great Bend and Susquehanna do not offer any opinion concerning replacement of the structure.

Since Great Bend has indicated that the crossing is necessary to the local highway system, the evidence supports only rehabilitation or replacement of the structure. NS is in the process of repairing the bridge. However, the bridge was previously repaired in the 1980s by Conrail. Given the history of the structure, rehabilitation does not appear to be a viable long-term solution to the structural problems that exist at the T-821 crossing.

Since there is a need for a crossing at this location, the existing bridge should be replaced since it will only continue to deteriorate, even if it is rehabilitated. I conclude that Great Bend should prepare plans for the demolition and removal of the existing T-821 bridge and replacement with a new structure. Upon Commission approval of those plans, Great Bend shall remove the structure and replace it at its initial cost and expense. NS shall reimburse Great Bend for \$400,000 of the costs of plan preparation, demolition and replacement. NS will also bear the costs of providing watchmen, flagmen and inspectors. I reach this conclusion for several reasons.

First, as stated above, NS' predecessors constructed the bridge and created the crossing. Since NS' predecessors constructed the bridge and created the crossing, NS should be responsible for a portion of the costs for replacing the bridge. Which party constructed the bridge and created the crossing is a relevant factor that the Commission may consider in directing which party shall perform work at a crossing or bear the cost of that work.

Pennsylvania Dept. of Trans. v. Pa. Pub. Util. Comm'n., 464 A.2d 645 (Pa.Cmwlt. 1983);  
Consolidated Rail Corp. v. Pa. Pub. Util. Comm'n., 423 A.2d 1108 (Pa.Cmwlt. 1980).

Second, as noted above, NS' predecessors bear some responsibility for the deteriorated condition of the crossing, which has led to the need to replace the bridge. The April 9, 1915 order at A-321 directs DLW to maintain the T-821 bridge. It is not clear what repairs or maintenance, if any, DLW or its successors performed to the structure after the date of the Commission order. It is apparent that some portion of the current condition of the crossing is due to lack of repairs or maintenance. Whether a party is responsible for the deterioration of the crossing which has led to the need for its repair, replacement or removal is a relevant factor that the Commission may consider in directing which party shall perform work at a crossing or bear

the cost of that work. Pennsylvania Dept. of Trans. v. Pa. Pub. Util. Comm'n., 469 A.2d 1149 (Pa.Cmwlth. 1983).

Third, both parties will benefit from the replacement of the bridge. NS will benefit because it will continue to have a grade separated crossing that eliminates the possibility of a collision between its trains and vehicles using the roadway. In addition, NS will no longer have pieces of concrete from a deteriorating bridge falling onto its right of way.

Great Bend will benefit from replacement of the bridge because it will continue to have a grade separated crossing that eliminates the possibility of a collision between vehicles and NS' trains. Great Bend will also benefit since replacement will allow for the continuation of a crossing that is necessary to the local road network. The relative benefit that each party will receive from the repair, replacement or removal of the crossing is a relevant factor that the Commission may consider in directing which party shall perform work at a crossing and bear the cost of that work. Pittsburgh and L. E. R. Co. v Pa. Pub. Util. Comm'n., 556 A.2d 944 (Pa.Cmwlth. 1989).

## V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa. C.S. §§ 2702 and 2704.

2. The Commission has the authority to order the construction, reconstruction, alteration, relocation, repair, maintenance, protection, suspension or abolition of railroad crossings, 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 and 2704.

3. In apportioning costs in railroad crossing cases, the Commission is not limited to any fixed rule but takes into consideration all relevant facts, the only requirement being that its order be just and reasonable. Bell Atlantic-Pa, Inc. v. Pa. Pub. Util. Comm'n., 672 A.2d 352

(Pa. Cmwlth. 1996), Greene Twp. Board of Supervisors v. Pa. Pub. Util. Comm'n, 668 A.2d 615 (Pa. Cmwlth. 1995).

4. Among the relevant facts the Commission may consider in allocating costs are the following: (1) which party built the crossing Pennsylvania Dept. of Trans. v. Pa. Pub. Util. Comm'n, 464 A.2d 645 (Pa.Cmwlth. 1983); (2) whether the roadway existed before or after the construction of the crossing Pennsylvania Dept. of Trans. v. Pa. Pub. Util. Comm'n, 464 A.2d 645 (Pa.Cmwlth. 1983); (3) relative benefit conferred on each party with the construction of the crossing Pennsylvania Dept. of Trans. v. Pa. Pub. Util. Comm'n, 346 A.2d 371 (Pa.Cmwlth. 1975); (4) whether a party is responsible for the deterioration of the crossing which has led to the need for its repair, replacement or removal Pennsylvania Dept. of Trans. v. Pa. Pub. Util. Comm'n, 469 A.2d 1149 (Pa.Cmwlth. 1983); and (5) the relative benefit that each party will receive from the repair, replacement or removal of the crossing Pittsburgh and L. E. R. Co. v. Pa. Pub. Util. Comm'n, 556 A.2d 944 (Pa.Cmwlth. 1989).

5. The Commission is not limited to the facts it can consider in allocating costs. Bell Atlantic-Pa, Inc., v. Pa. Pub. Util. Comm'n, 672 A.2d 352 (Pa.Cmwlth. 1996); AT&T v. Pa. Pub. Util. Comm'n, 737 A.2d 201 (Pa. 1999); PECO Energy Co. v. Pa. Pub. Util. Comm'n, 791 A.2d 1155 (Pa. 2002); Norfolk Southern Rwy Co. v Pa. Pub. Util. Comm'n, 971 A.2d 545 (Pa.Cmwlth. 2009).

6. DOT, NS, Wyoming, Nicholson, Great Bend, New Milford, Brooklyn, Hop Bottom, Lathrop, Susquehanna, Benton and Lackawanna are all concerned parties within the meaning of 66 Pa. C.S. §§ 2702 and 2704.

## VI. ORDER

THEREFORE,

IT IS RECOMMENDED:

A. Crossing No. 264 293 K, SR 1025, Nicholson Borough, Wyoming County

1. That Norfolk Southern Railway Company and the Pennsylvania Department of Transportation shall each bear the costs they have incurred for work performed at the SR 1025 crossing, pursuant to the Pennsylvania Public Utility Commission's May 23, 2013 and November 8, 2013 orders at M-2013-2364201.

2. That Norfolk Southern Railway Company and the Pennsylvania Department of Transportation shall continue to inspect and maintain the existing SR 1025 crossing, in accordance with the Commission's November 8, 2013 Secretarial Letter pending final disposition of the existing SR 1025 crossing.

3. That Norfolk Southern Railway Company, at its sole cost and expense, within three (3) months of the date of this Order, prepare and submit to all parties of record for examination and to this Commission for approval, complete detailed final repair plans, consistent with the repairs outlined in the evidence in this proceeding and this order, for the proposed repair of the existing bridge carrying SR 1025, including restoration of the concrete on each side of the arch, patching and sealing the underside of the arch, moving the existing barriers to the edge of the bridge and permanently anchoring the existing barriers to the bridge to become a new parapet wall.

4. That Norfolk Southern Railway Company, at its sole cost and expense, within twelve (12) months from the date that the Commission approves its submitted repair plans, shall furnish all materials and do all work necessary to repair the SR 1025 bridge in accordance with the approved plans.

5. That Norfolk Southern Railway Company shall, at its sole cost and expense, furnish any watchmen, flagmen, inspectors and engineers deemed necessary by Norfolk Southern Railway Company to protect its operations and facilities during the time the SR 1025 repair is being constructed in accordance with this order.

6. That Norfolk Southern Railway Company, at least ten (10) days prior to the start of work, notify all parties in interest of the actual date on which work will begin.

7. That Norfolk Southern Railway Company report to the Commission the date of actual completion of the work.

8. That Norfolk Southern Railway Company, at its sole cost and expense, furnish all material and perform all work necessary to maintain the entire SR 1025 bridge until December 31, 2043.

9. That the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and perform all work necessary to inspect the SR 1025 bridge.

10. That the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and perform all work necessary to maintain the entire SR 1025 bridge after December 31, 2043.

11. That the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and perform all work required thereafter to maintain the SR 1025 roadway paving located on the SR 1025 bridge and its approaches and shall remove any snow, ice or debris from the roadway paving on the SR 1025 bridge and its approaches.



B. Crossing No. 264 028 V, SR 1018 New Milford Township, Susquehanna County

12. That the Pennsylvania Department of Transportation, at its initial cost and expense, furnish all material and perform all work necessary to inspect and maintain the existing SR 1018 bridge.

13. That Norfolk Southern Railway Company reimburse the Pennsylvania Department of Transportation 50% of the costs that the Pennsylvania Department of Transportation incurs in inspecting and maintaining the existing SR 1018 bridge.

14. That the Pennsylvania Department of Transportation, at its initial cost and expense, within five (5) years of the date of this Order, prepare and submit to all parties of record for examination and to this Commission for approval, complete detailed final plans for the removal and replacement of the SR 1018 bridge.

15. That the Pennsylvania Department of Transportation, at its initial cost and expense, within two (2) years from the date that the Commission approves its submitted removal and replacement plans, shall furnish all materials and do all work necessary to remove and replace the SR 1018 bridge in accordance with the approved plans.

16. That Norfolk Southern Railway Company shall, at its sole cost and expense, furnish any watchmen, flagmen, inspectors and engineers deemed necessary by Norfolk Southern Railway Company to protect its operations and facilities during the time the SR 1018 improvement is being constructed in accordance with this order.

17. That the Pennsylvania Department of Transportation, at least ten (10) days prior to the start of work, notify all parties in interest of the actual date on which work will begin.

18. That the Pennsylvania Department of Transportation report to the Commission the date of actual completion of the work.

19. That Norfolk Southern Railway Company reimburse the Pennsylvania Department of Transportation \$300,000 of the costs that the Pennsylvania Department of Transportation incurs in removing and replacing the SR 1018 bridge.

20. That, upon the completion of the removal and replacement of the SR 1018 bridge, the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and perform all work necessary to maintain and inspect the entire SR 1018 bridge.

C. Crossing No. 264 033 S, SR 2032 Brooklyn Township, Susquehanna County

21. That the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and perform all work necessary to inspect the existing SR 2032 bridge.

22. That Norfolk Southern Railway Company, at its sole cost and expense, maintain the substructure and superstructure of the existing SR 2032 bridge.

23. That the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and perform all work required to maintain the SR 2032 roadway paving located on the SR 2032 bridge and its approaches and shall remove any snow, ice or debris from the roadway paving on the SR 2032 bridge and its approaches.

24. That Norfolk Southern Railway Company, at its sole cost and expense, within three (3) months of the date of this Order, prepare and submit to all parties of record for examination and to this Commission for approval, complete detailed final repair plans, consistent with the repairs outlined in the evidence in this proceeding and this order, for the proposed repair of the existing bridge carrying SR 2032, including refacing the concrete on each side of the arch.

25. That Norfolk Southern Railway Company, at its sole cost and expense, within twelve (12) months from the date that the Commission approves its submitted repair plans, shall furnish all materials and do all work necessary to repair the SR 2032 bridge in accordance with the approved plans.

26. That Norfolk Southern Railway Company shall, at its sole cost and expense, furnish any watchmen, flagmen, inspectors and engineers deemed necessary by Norfolk Southern Railway Company to protect its operations and facilities during the time the SR 2032 repair is being constructed in accordance with this order.

27. That Norfolk Southern Railway Company, at least ten (10) days prior to the start of work, notify all parties in interest of the actual date on which work will begin.

28. That Norfolk Southern Railway Company report to the Commission the date of actual completion of the work.

29. That Norfolk Southern Railway Company, at its sole cost and expense, furnish all material and perform all work necessary to maintain the entire SR 2032 bridge until December 31, 2043.

30. That the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and perform all work necessary to inspect the SR 2032 bridge.

31. That the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and perform all work necessary to maintain the entire SR 2032 bridge after December 31, 2043.

D. Crossing No. 264 292 D, SR 2041 Hop Bottom Borough, Susquehanna County

32. That the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and perform all work necessary to inspect the existing SR 2041 bridge.

33. That Norfolk Southern Railway Company, at its sole cost and expense, maintain the substructure and superstructure of the existing SR 2041 bridge.

34. That the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and perform all work required to maintain the SR 2041 roadway paving located on the SR 2041 bridge and its approaches and shall remove any snow, ice or debris from the roadway paving on the SR 2041 bridge and its approaches.

35. That Norfolk Southern Railway Company, at its sole cost and expense, within three (3) months of the date of this Order, prepare and submit to all parties of record for examination and to this Commission for approval, complete detailed final repair plans, consistent with the repairs outlined in the evidence in this proceeding and this order, for the proposed repair of the existing bridge carrying SR 2041, including repairing the concrete on the left spandrel wall and patching concrete.

36. That Norfolk Southern Railway Company, at its sole cost and expense, within twelve (12) months from the date that the Commission approves its submitted repair plans, shall furnish all materials and do all work necessary to repair the SR 2041 bridge in accordance with the approved plans.

37. That Norfolk Southern Railway Company shall, at its sole cost and expense, furnish any watchmen, flagmen, inspectors and engineers deemed necessary by Norfolk Southern Railway Company to protect its operations and facilities during the time the SR 2041 repair is being constructed in accordance with this order.

38. That Norfolk Southern Railway Company, at least ten (10) days prior to the start of work, notify all parties in interest of the actual date on which work will begin.

39. That Norfolk Southern Railway Company report to the Commission the date of actual completion of the work.

40. That Norfolk Southern Railway Company, at its sole cost and expense, furnish all material and perform all work necessary to maintain the entire SR 2041 bridge until December 31, 2043.

41. That the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and perform all work necessary to inspect the SR 2041 bridge.

42. That the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and perform all work necessary to maintain the entire SR 2041 bridge after December 31, 2043.

E. Crossing No. 264 291 W, SR 2017 Lathrop Township, Susquehanna County

43. That the Pennsylvania Department of Transportation, at its initial cost and expense, furnish all material and perform all work necessary to inspect and maintain the existing SR 2017 bridge.

44. That Norfolk Southern Railway Company reimburse the Pennsylvania Department of Transportation 50% of the costs that the Pennsylvania Department of Transportation incurs in inspecting and maintaining the existing SR 2017 bridge.

45. That the Pennsylvania Department of Transportation, at its initial cost and expense, within five (5) years of the date of this Order, prepare and submit to all parties of record for examination and to this Commission for approval, complete detailed final plans for the removal and replacement of the SR 2017 bridge.

46. That the Pennsylvania Department of Transportation, at its initial cost and expense, within two (2) years from the date that the Commission approves its submitted removal and replacement plans, shall furnish all materials and do all work necessary to remove and replace the SR 2017 bridge in accordance with the approved plans.

47. That Norfolk Southern Railway Company shall, at its sole cost and expense, furnish any watchmen, flagmen, inspectors and engineers deemed necessary by Norfolk Southern Railway Company to protect its operations and facilities during the time the SR 2017 improvement is being constructed in accordance with this order.

48. That the Pennsylvania Department of Transportation, at least ten (10) days prior to the start of work, notify all parties in interest of the actual date on which work will begin.

49. That the Pennsylvania Department of Transportation report to the Commission the date of actual completion of the work.

50. That Norfolk Southern Railway Company reimburse the Pennsylvania Department of Transportation \$300,000 of the costs that the Pennsylvania Department of Transportation incurs in removing and replacing the SR 2017 bridge.

51. That, upon the completion of the removal and replacement of the SR 2017 bridge, the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and perform all work necessary to maintain and inspect the entire SR 2017 bridge.

F. Crossing No. 265 849D, SR 4005 Benton Township, Lackawanna County

52. That the Pennsylvania Department of Transportation, at its initial cost and expense, furnish all material and perform all work necessary to inspect and maintain the existing SR 4005 bridge.

53. That Norfolk Southern Railway Company reimburse the Pennsylvania Department of Transportation 50% of the costs that the Pennsylvania Department of Transportation incurs in inspecting and maintaining the existing SR 4005 bridge.

G. Crossing No. 263 952 J, T-821 Great Bend Township, Susquehanna County

54. That the Norfolk Southern Railway Company, at its initial cost and expense, furnish all material and perform all work necessary to inspect and maintain the existing T-821 bridge.

55. That Great Bend Township reimburse Norfolk Southern Railway Company 10% of the costs that Norfolk Southern Railway Company incurs in inspecting and maintaining the existing T-821 bridge.

56. That Norfolk Southern Railway Company, at its sole cost and expense, within three (3) months of the date of this Order, prepare and submit to all parties of record for examination and to this Commission for approval, complete detailed final repair plans, consistent with the repairs outlined in the evidence in this proceeding and this order, for the proposed repair of the existing bridge carrying T-821, including repair of the bridge seats and abutments.

57. That Norfolk Southern Railway Company, at its sole cost and expense, within twelve (12) months from the date that the Commission approves its submitted repair plans, shall furnish all materials and do all work necessary to repair the T-821 bridge in accordance with the approved plans.

58. That Norfolk Southern Railway Company shall, at its sole cost and expense, furnish any watchmen, flagmen, inspectors and engineers deemed necessary by Norfolk Southern Railway Company to protect its operations and facilities during the time the T-821 repair is being constructed in accordance with this order.

59. That Norfolk Southern Railway Company, at least ten (10) days prior to the start of work, notify all parties in interest of the actual date on which work will begin.

60. That Norfolk Southern Railway Company report to the Commission the date of actual completion of the work.

61. That Great Bend Township, at its initial cost and expense, within five (5) years of the date of this Order, prepare and submit to all parties of record for examination and to this Commission for approval, complete detailed final plans for the removal and replacement of the T-821 bridge.

