



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

August 31, 2018

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


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

Dear Secretary Chiavetta:

Enclosed for filing please find the Department's *Exceptions* in the above captioned matter. This filing does not contain facts that are not currently in the record. Therefore, a verification is not required.

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

Very truly yours,


Gina M. D'Alfonso
Senior Counsel in Charge

Enclosure

220/GMD:igl

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

EXCEPTIONS OF THE COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION

And now, comes the Commonwealth of Pennsylvania, Department of Transportation ("PennDOT"), by and through its counsel, Gina M. D'Alfonso, Senior Counsel in Charge, offering the following Exceptions to the Recommended Decision of Administrative Law Judge David A. Salapa ("ALJ") dated August 6, 2018.¹

GENERAL EXCEPTIONS

1. The ALJ has ordered Norfolk Southern Railway Company ("NS") to perform work on the bridges that carry State Route ("SR")1025, SR 2032 and SR 2041 as NS proposed in its

¹ At the request of counsel for Norfolk Southern Railway Company and Great Bend Township, and with the concurrence of counsel for the remaining parties, the due date for Exceptions was extended to August 31, 2018 with Reply Exceptions due on September 24, 2018. *See*, Secretarial Letter dated August 14, 2018.

testimony and relies upon the testimony of NS that this work will extend the life of the bridges for 25 years, until December 31, 2043. PennDOT excepts to the limited scope of work proposed by NS and accepted by the ALJ. The ALJ disregarded the testimony of PennDOT's Bridge Engineer that the work proposed by NS will not be sufficient and that all concrete work must be done at the same time so that the concrete does not continue to deteriorate and to get the 25-year life. PennDOT recommends that the repairs be done in accordance with the inspection reports for the reasons set forth in its testimony. PennDOT Statement 4, page 1, line 19 through page 2, line 10; PennDOT Exhibits E1-E6.

2. PennDOT excepts to the lack of a requirement that any plans submitted by NS must be prepared per PennDOT specifications which would include an anticipated bridge rating. PennDOT Statement 4, page 2, lines 8-9. The load rating is also necessary so that the parties know whether the bridge(s) will need to be posted after the repairs are completed. It would be reasonable to use the same load rating analysis method that was previously requested by the PUC.
3. PennDOT excepts to the lack of standard to which the bridges are to be maintained by NS. Once the load rating is determined, NS must be required to maintain the bridges to that load rating.
4. PennDOT excepts to the set date that NS is relieved of its maintenance responsibility - December 31, 2043. The set date presupposes that NS completes the work on all the bridges by the end of 2018. This is impossible. In fact, the Recommended Decision gives NS 15 months from the date of the Order within which to complete the work that is to extend the life of the bridges for 25 years. If NS is to maintain the bridges for 25 years, then the clock should start to tick after the work is completed. NS is ordered to notify the PUC when the

work is completed; the 25 years of maintenance should begin after the work is deemed final.

5. PennDOT excepts to the Proposed Ordering Paragraphs² directing it to replace all the bridges, SR 1018 and SR 2017 in approximately seven (7) years and ultimately SR 1025, SR 2032 and SR 2041 after the 25 years and to assume the cost of the maintenance of the bridges. This is not just and reasonable for the reasons set forth in PennDOT's Main Brief Pages 8-35. It is not just and reasonable to direct PennDOT to bear the burden of this lack of responsibility of the railroads. NS should be ordered to replace the bridges and PennDOT reimburse them in accordance with the Recommended Decision. The railroad built the bridges and has ignored them for over 100 years. NS Statement 1, page 3, line 18; NS Statement 1, page 4, line 1; PennDOT Statement 3, page 7, line 21-page 8, line 11. Moreover, PennDOT has already assumed its share of responsibility on this line by addressing the condition of other bridges. PennDOT Statement 2, page 4, lines 12-13; page 8, lines 19-25; page 9, lines 1-6.
6. PennDOT excepts to the lack of ordering paragraphs directing NS to provide access to its right of way at no cost to PennDOT and to bear all its costs associated with all future inspections on all bridges carrying state routes and to reimburse PennDOT 50% of the cost of the inspection consistent with Proposed Ordering Paragraphs 13 and 44. PennDOT Statement 3, page 10, lines 10-20.
7. PennDOT excepts to the lack of ordering paragraphs directing NS to bear its costs associated with these bridges. NS should be directed to provide access to its right of way at no cost to PennDOT and to bear its respective costs associated with inspections, design

² Proposed Ordering Paragraphs 11, 14, 15, 31, 42, 45 and 46.

plan reviews, construction engineering, flagmen, watchman and observer costs, insurance and right of way acquisitions or entry onto the railroad property even in a temporary situation if PennDOT is ordered to maintain and ultimately replace any of the bridges carrying state routes. NS should also be directed to donate any of its right of way necessary for the construction of a new bridge. Because the bridges were built by the railroad PennDOT does not own the right of way. Further, PennDOT testified that construction of bridges over railroads is much more expensive than other bridges. PennDOT Statement 3, page 10, lines 10-20.

8. PennDOT excepts to the lack of ordering paragraphs directing NS ordered to provide appropriate protective services in a timely manner for inspection, maintenance and replacement of any or all the bridges carrying a state route. PennDOT Statement 3, page 10, lines 10-20.
9. PennDOT excepts to the ALJ's statement, RD page 35, that it bears its costs incurred for inspections, maintenance and bridge closures and continues to request reimbursement consistent with its testimony in PennDOT Statement 1, page 34, lines 16-25 through page 35 lines 1-10; NT page 49-page 51, line 7.
10. PennDOT excepts to the lack of a Proposed Ordering Paragraph directing NS to maintain the substructure and superstructure of the bridges after they are replaced. PennDOT Statement 2, page 9, lines 17-24, page 10, lines 1-20.

CROSSING SPECIFIC EXCEPTIONS. General Exceptions 1 through 8 above are incorporated herein as if set forth completely for each crossing below.

A. Crossing Number 264 293 K, State Route 1025, Nicholson Borough, Wyoming County

1. PennDOT excepts to Proposed Ordering Paragraph 1 for the reasons set forth in General Exception 9. Further, this language is inconsistent with PennDOT Exhibit D3 which directs NS to reimburse PennDOT.
2. PennDOT excepts to Proposed Ordering Paragraphs 2 and 9 because they are inconsistent. Proposed Ordering Paragraph 2 directs compliance with the Commission's November 8, 2013, Secretarial Letter, PennDOT Exhibit D3 and would require NS to reimburse PennDOT twenty (20%) the cost of inspection. Proposed Ordering Paragraph 9 directs PennDOT to inspect the bridge at its sole cost and expense. No federal funds are used for the inspections of bridges carrying state roads, (PennDOT Statement 2, page 2, line 12) and no testimony was proffered that NS was not willing to reimburse PennDOT these costs so there is no reason to overturn the prior Secretarial Letter, it is just and reasonable for NS to reimburse PennDOT \$847.67, twenty (20%) percent of the cost of inspection as stated above in General Exception 9 and to bear their costs associated with said inspection, consistent with PennDOT Exhibit D3.
3. PennDOT excepts to Proposed Ordering Paragraph 3 for clarification purposes. See General Exceptions 1 and 2. The order should be clear that NS must do the concrete work identified in PennDOT Exhibit E1.
4. PennDOT excepts to Proposed Ordering Paragraph 8 for clarification purposes. NS is ordered to maintain the entire SR 1025 bridge until December 31, 2043. PennDOT seeks clarification of this paragraph and whether it includes the roadway surface as well.

PennDOT will continue to remove snow, ice and debris from the roadway regardless of this clarification.

5. PennDOT excepts to Proposed Ordering Paragraph 10 for the reasons set forth in General Exceptions 5, 6 and 7.

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

6. PennDOT excepts to Proposed Ordering Paragraph 12 as it relates to the maintenance of the structure carrying SR. 1018. PennDOT will inspect the bridge at its initial cost and expense to ensure compliance with the National Bridge Inspection Standards (“NBIS”). However, this bridge was constructed at the same time as the other structures in this litigation and because no party can find an order approving the construction of this bridge and because no party brought the lack of order and maintenance to the attention of the Commission previously, the ALJ has found it just and reasonable to assign this responsibility to PennDOT. This is far from just and reasonable. See General Exceptions 5- 10. In fact, the ALJ noted that the crossing is the subject of a prior PUC order, PennDOT Exhibit D5. The PUC had the opportunity to address maintenance responsibilities at that time and chose not to. It would be just and reasonable for NS to ordered to perform the maintenance as required by the inspection report and to program this bridge for replacement. PennDOT Statement 3, page 10, lines 2-9. See also General Exception 5.
7. PennDOT excepts to Proposed Ordering Paragraph 13 in that it does not order NS to bear its own costs associated with the inspection and maintenance of this bridge. See General Exception 6.

8. PennDOT excepts to Proposed Ordering Paragraphs 14 and 15. See General Exceptions 5-10. PennDOT would then reimburse NS \$300,000.00 per Proposed Ordering Paragraph 19.
9. PennDOT excepts to Proposed Ordering Paragraph 16 for not including all of the railroad costs associated with the replacement of a bridge. See General Exceptions 6-8.
10. PennDOT excepts to Proposed Ordering Paragraph 20 for the reasons set forth in General Exceptions 5 and 10.

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

11. PennDOT excepts to Proposed Ordering Paragraphs 21 and 30 since they appear to be redundant. Further, PennDOT excepts to bearing the costs of the inspections for the reasons set forth in General Exception 6.
12. PennDOT excepts to Proposed Ordering Paragraph 24 for clarification purposes. See General Exceptions 1 and 2. The order should be clear that NS must do the concrete work identified in PennDOT Exhibit E3.
13. PennDOT excepts to Proposed Ordering Paragraph 31 for the reasons set forth in General Exception 5.

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

14. PennDOT excepts to Proposed Ordering Paragraphs 32 and 41 since they appear to be redundant. PennDOT excepts to bearing the costs of the inspections for the reasons set forth in General Exception 6.

15. PennDOT excepts to Proposed Ordering Paragraph 35 for clarification purposes. See General Exceptions 1 and 2. The order should be clear that NS must do the concrete work identified in PennDOT Exhibit E4.
16. PennDOT excepts to Proposed Ordering Paragraph 42 for the reasons set forth in General Exceptions 5 and 10.

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

17. PennDOT excepts Proposed Ordering Paragraph 43 as it relates to the maintenance of the structure carrying SR 2017. PennDOT will inspect the bridge at its initial cost and expense to ensure compliance with the National Bridge Inspection Standards (“NBIS”). However, this bridge was constructed at the same time as the other structures in this litigation and because no party can find an order approving the construction of this bridge and because no party brought the lack of order and maintenance to the attention of the Commission previously, the ALJ has found it just and reasonable to assign this responsibility to PennDOT. This is far from just and reasonable. See General Exceptions 5-10. It would be just and reasonable for NS to ordered to perform the maintenance as required by the inspection report, PennDOT Exhibit E5 and to program this bridge for replacement. PennDOT Statement 3, page 10, lines 2-9. See also General Exception 5.
18. PennDOT excepts to Proposed Ordering Paragraph 44 in that it does not order NS to bear its own costs associated with the inspection and maintenance of this bridge. See General Exceptions 6 and 7.
19. PennDOT excepts to Proposed Ordering Paragraphs 45 and 46. See General Exception 5. PennDOT would then reimburse NS \$300,000.00 per Proposed Ordering Paragraph 50.

20. PennDOT excepts to Proposed Ordering Paragraph 47 for failure to include all of the railroad costs associated with the replacement of a bridge for the reasons set forth in General Exceptions 6-8.

21. PennDOT excepts to Proposed Ordering Paragraph 51 for the reasons set forth in General Exceptions 5-10.

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

22. PennDOT excepts to Proposed Ordering Paragraph 53 for failing to direct NS to bear its own costs associated with the inspection and maintenance of the existing SR 4005 bridge. See General Exceptions 6-10.

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


23. PennDOT excepts to Proposed Ordering Paragraph 54 for not specifying that the inspection must comply with NBIS standards and that a copy of the report has to be provided to PennDOT since PennDOT is responsible for ensuring that bridges are inspected. PennDOT Statement 2, page 1, lines 21-23.

24. PennDOT excepts to assuming the costs that it has borne to date to close the bridge and to maintain the closure of a bridge carrying a local road. See General Exception 9. The

25. PennDOT excepts the lack of an order directing either NS or Great Bend Township, one of the parties responsible for the maintenance, inspection and ultimate replacement of this bridge to be responsible for the continued closure of the bridge. It would be just and reasonable to reallocate those responsibilities directed to PennDOT in its Exhibit D13. See General Exception 9.

WHEREFORE, the Department of Transportation respectfully requests that the Public Utility Commission consider its Exceptions to the Recommended Decision of Administrative Law Judge David A. Salapa and enter an Order accordingly.

Respectfully Submitted,


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DATED: August 31, 2018

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Docket No. I-2015-2472242

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

Docket No. M-2013-2364201

Electronically Filed

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Department's *Exceptions* was served upon the participants listed below, in accordance with the requirements of 52 Pa. Code § 1.54, by first class mail, postage prepaid this 31st day of August, 2018.

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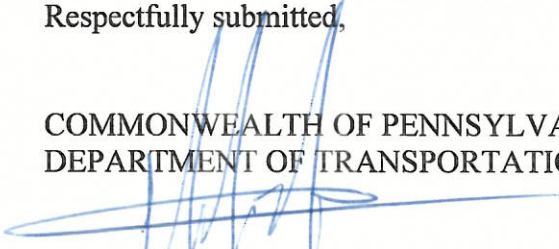
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Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



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