



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

IN REPLY PLEASE
REFER TO OUR FILE
Bp8 3002326

January 29, 2019

VIA ELECTRONIC FILING

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

Re: Andrew Broden v. CSX Transportation, Inc., City of Philadelphia,
Commonwealth Department of Transportation
Docket No. C-2018-3002326
(I&E Prehearing Conference Memorandum)

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Prehearing Conference Memorandum of the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement in the above-captioned proceeding.

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

Sincerely,

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

Bradley R. Gorter
Prosecutor
PA Attorney ID No. 312666

Enclosure

cc: As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Andrew Broden,

v.

CSX Transportation Inc., City of
Philadelphia, PENNDOT

:
:
:
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:
:

Docket No. C-2018-3002326

CERTIFICATE OF SERVICE

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

Service by First Class Mail:

Andrew Broden
7420 Frankford Avenue
Philadelphia, PA 19136

Derek Mihaly, Project Manager
CSX Transportation, Inc.
4 Neshaminy Interplex, Suite 205
Trevose, PA 19053

Benjamin C. Dunlap, Jr., Esquire
Nauman, Smith, Shissler, & Hall
200 North Third Street, 18th Floor
P.O. Box 840
Harrisburg, PA 17108

Gina M. D'Alfonso, Esquire
Pennsylvania Department of
Transportation
Office of Chief Counsel
P. O. Box 8212
Harrisburg, PA 17105-8212

James C. Kellett, Esq.
City of Philadelphia, Law Dept.
1515 Arch Street, 16th Floor
Philadelphia, PA 19102



Bradley R. Gorter
Prosecutor
PA Attorney ID No. 312666
Bureau of Investigation and Enforcement

Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
Phone: 717-783-6150

Dated: January 29, 2019

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Andrew Broden,	:	
	:	
Complainant	:	
	:	Docket No. C-2018-3002326
v.	:	
	:	
CSX Transportation, Inc., City of Philadelphia, Pennsylvania Department of Transportation,	:	Electronically Filed
	:	
Respondents	:	

**PREHEARING CONFERENCE MEMORANDUM OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

The Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) files this Prehearing Conference Memorandum in accordance with Administrative Law Judge (“ALJ”) Eranda Vero’s Prehearing Conference Order dated January 17, 2019. In her January 17, 2019, Prehearing Conference Order, ALJ Vero directed all parties to file a prehearing conference memorandum, pursuant to 52 Pa. Code § 5.222(d)(1), by January 29, 2019.

Service:

All service on, and communications to, I&E in this proceeding should be addressed to:

Bradley R. Gorter, Esq.
Prosecutor
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
Phone: (717) 783-6150
bgorter@pa.gov

Settlement:

I&E is open and willing to discuss settlement of this matter. Currently, I&E is unaware of the status of settlement negotiations between Andrew Broden (“Complainant”) and CSX Transportation, Inc. (“CSX”), the Pennsylvania Department of Transportation (“PennDOT”), and the City of Philadelphia (“City”).

History of the Proceeding:

On May 30, 2018, Complainant filed with the Commission a formal complaint alleging that there is a damaged guide rail along SR 1011 (Grant Avenue) where Grant Avenue meets Welsh Road and travels below a railroad bridge carrying the tracks of CSX in the City. Complainant lists CSX, PennDOT, and the City as respondents, and all three respondents have disputed maintenance and repair responsibility for the guiderails through the crossing. Complainant alleges that the damaged section of the guide rail presents a safety hazard to both vehicular and pedestrian traffic traveling through the crossing. Respondents do not deny that the guiderail damage should be repaired, and the matter presents only questions of maintenance and repair responsibility and cost allocation for any maintenance and repair work to be performed.

The Commission’s Bureau of Technical Utility Services (“TUS”) conducted a field investigation and conference with the parties to discuss the complaint and observe the crossing. At the field conference, some of the parties indicated that there may be previous agreements regarding repair and maintenance responsibility for the crossing that

would affect the Commission's action here. Further some of the parties alleged that CSX performed work in or around the crossing without approval of appropriate parties or entities and materially changed the crossing so as to necessitate a change in maintenance responsibilities. Although the parties believe there in an existing agreement defining the maintenance responsibilities in this matter, the parties could not reach an agreement to resolve the complaint. As a result, TUS referred the proceeding to the Commission's Office of Administrative Law Judge for scheduling of an evidentiary hearing. The Commission assigned this matter to ALJ Vero to proceed accordingly.

Issues to be Addressed:

- (A) Whether the subject crossing, including the damaged guide rail, is safe for vehicular and pedestrian traffic traveling through the crossing;
- (B) What work, if any, should be done to improve the safety of the crossing;
- (C) Which party or parties should perform any ordered work;
- (D) Which party or parties should bear the cost responsibility for any ordered work; and,
- (E) Which party or parties should bear the cost and responsibility for continued maintenance, inspection, and repair of the crossing.

Names and addresses of witnesses to be presented:

- (A) George Steiner, P.E.
Rail Safety Section
Bureau of Technical Utility Services
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

I&E reserves the right to present additional witnesses as it deems necessary based on the issues identified by the parties.

Proposed area of testimony for each witness:

I&E's witness will testify as to the current status of the crossing. I&E's witness will testify to any repairs that must be made to the crossing and to any safety upgrades that may be necessary to ensure the safety of both vehicular and pedestrian traffic traveling through the crossing. I&E's witness may testify to additional matters based on the issues identified by the parties.

Proposed litigation schedule:

Direct Testimony:	March 15, 2019
Rebuttal Testimony:	April 5, 2019
Hearings:	Week of April 15, 2019 or April 22, 2019
Main Briefs:	21 days after transcripts
Reply Briefs:	14 days after main briefs

Other matters that may aid in expediting the orderly conduct and disposition of the proceeding, including the following:

- (A) The exchange and acceptance of service of exhibits proposed to be offered in evidence.

- (B) The obtaining of admissions as to, or stipulations of, facts not remaining in dispute, or the authenticity of documents which might properly shorten the hearing.
- (C) The discovery or production of data or other material.



Bradley R. Gorter, Esq.
Prosecutor
PA Attorney ID No. 312666

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Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 783-6150

Dated: January 29, 2019