**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held February 28, 2019 |
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| Commissioners Present:  Gladys M. Brown, Chairman  David W. Sweet, Vice Chairman  Norman J. Kennard  Andrew G. Place  John F. Coleman, Jr. |  |
| Bridge Structure where State Route 1025 crosses over a single track of Delaware and Hudson Railway Company, Inc. (264 293 K) in Nicholson Borough, Wyoming County  Investigation upon the Commission’s own motion to determine the condition and disposition of six (6) existing structures carrying various highways above the grade of the tracks of the Canadian Pacific Railroad in Great Bend Township, New Milford Township, Brooklyn Township, Hop Bottom Borough, Lathrop Township, Susquehanna County and Benton Township, Lackawanna County | M-2013-2364201  I-2015-2472242 |
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**OPINION AND ORDER**

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**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of the following Parties: Norfolk Southern Railway Company (NS), the Pennsylvania Department of Transportation (PennDOT), and Great Bend Township (Great Bend), all filed on August 31, 2018, to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) David A. Salapa that was issued on August 6, 2018, relative to the above-captioned consolidated proceeding. NS and PennDOT filed Replies to Exceptions on September 24, 2018.[[1]](#footnote-1) For the reasons stated below, we shall: (1) grant, in part, and deny, in part, NS’ Exceptions; (2) grant, in part, and deny, in part, PennDOT’s Exceptions; (3) grant, in part, and deny, in part, Great Bend’s Exceptions; and (4) adopt the ALJ’s Recommended Decision as modified by this Opinion and Order.

I. History of the Proceeding

By Order entered May 23, 2013, at Docket No. M-2013-2364201 (*May 2013 Order*) the Commission addressed the crossing where State Route (SR) 1025 crosses over the facilities of the Delaware and Hudson Railway Company (D&H), a wholly owned subsidiary of the Canadian Pacific Railway Company located in Nicholson Borough (Nicholson), Wyoming County (Wyoming). In the *May 2013 Order*, the Commission explained that a field conference was held at the crossing site on May 14, 2013, and representatives from D&H, the Commission, and PennDOT were present. The parties at the field conference concluded that the bridge carrying SR 1025 was in such poor condition that it was necessary for PennDOT to close the structure to vehicular and pedestrian traffic immediately. The *May 2013 Order* directed PennDOT, at its initial cost, to perform all work and furnish all material necessary to close the bridge to pedestrian and vehicular traffic, to provide any detours necessary during the duration of the bridge closure, and to maintain any barricades, fencing, and signage installed to prevent vehicular and pedestrian access to the bridge. The *May 2013 Order* also directed PennDOT, at its initial cost, within thirty days of the Order, or by June 24, 2013, to provide any engineering inspections and analyses evaluating the structural condition of the bridge. Further, the *May 2013 Order* directed PennDOT, at its initial cost, within ninety days of the Order, or by August 21, 2013, 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.

On June 3, 2013, PennDOT filed a Petition for Reconsideration and Amendment of the *May 2013 Order*, a Motion for Certification of Interlocutory Order and Stay of Proceedings Pending Appeal, and a Petition for Protective Order. On July 31, 2013, PennDOT filed a Petition for Leave to Withdraw Certain Pleadings, including its Motion for Certification of Interlocutory Order and Stay of Proceedings Pending Appeal and certain portions of its Petition for Reconsideration.

By Order entered August 16, 2013, at Docket No. M-2013-2364201 (*August 2013 Order*), the Commission granted PennDOT’s Petition for Leave to Withdraw its Motion for Certification of Interlocutory Order and Stay of Proceedings Pending Appeal and a considerable portion of its Petition for Reconsideration. The *August 2013 Order* also granted PennDOT’s Petition for a Protective Order. With respect to certain portions of PennDOT’s Petition for Reconsideration, the *August 2013 Order* extended the deadline for PennDOT to file its engineering studies and analyses with the Commission to 120 days from the issuance of the *May 2013 Order*, or by September 20, 2013. The *August 2013 Order* further referred the matter to the Office of Administrative Law Judge (OALJ).

By notice dated October 7, 2013, the Commission scheduled hearings for the matter at Docket No. M-2013-2364201 for November 20, 2013.

On November 1, 2013, PennDOT, D&H, and the Commission’s Bureau of Investigation and Enforcement (I&E) filed a Joint Petition for Partial Remand of Matters Pending (Joint Petition) at Docket No. M-2013-2364201. In the Joint Petition, the Parties indicated that PennDOT had provided the Parties with copies of PennDOT’s studies and analyses of the SR 1025 bridge. PennDOT’s analyses indicated that the bridge could be reopened to a single lane of traffic with a posted weight limit of twenty-eight tons for single vehicles and thirty-two tons for combination vehicles. PennDOT also stated that traffic would be controlled by stop signs at either end of the bridge. The Parties attached to the Joint Petition 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 PennDOT for the costs that PennDOT had incurred to date. PennDOT would inspect the bridge, and D&H agreed to reimburse PennDOT 20% of the costs of inspecting the bridge. The Parties indicated that they did not object to reopening the bridge in the manner set forth in the Joint Petition.

The Parties also did not object to the OALJ reassigning the matter to the Commission’s Bureau of Technical Utility Services (TUS) for approval of the attached plans, the final inspection upon completion of the work, and the reopening of the bridge. The Parties indicated that they were still discussing future maintenance responsibility for the bridge and future disposition of the crossing and requested that those issues remain pending before the OALJ.

By order dated November 5, 2013, ALJ Salapa granted the Joint Petition and referred the entire case to TUS for further action. The ALJ stated that if the Parties agreed on future maintenance responsibility for the bridge and future disposition of the crossing, TUS could issue a further order adopting and approving that agreement. The ALJ also stated that 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 Docket No. M-2013-2364201 (*November 2013 Secretarial Letter*) 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 *November 2013 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 proceeding would be scheduled for a hearing to allocate the costs of construction, assign future maintenance responsibilities, and consider the future disposition of the bridge structure.

On December 11, 2013, the Commission issued a Secretarial Letter at Docket No. M-2013-2364201 (*December 2013 Secretarial Letter*) indicating that the work ordered in the *November 2013 Secretarial Letter* had been completed. The *December 2013 Secretarial Letter* directed that the SR 1025 bridge 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, PennDOT filed a petition requesting that the Commission schedule a hearing to allocate costs incurred for work performed pursuant to the *November 2013 Secretarial Letter* and to assign maintenance responsibilities.

By notice dated February 20, 2015, the Commission scheduled a hearing at M-2013-2364201 for April 14, 2015.

On March 9, 2015, NS filed a Motion to Join or, in the Alternative, Petition to Intervene, and Motion for Continuance. NS averred that it currently operates over D&H’s facilities at the SR 1025 crossing and was negotiating with D&H to purchase the rail line. By order dated March 23, 2015, the ALJ granted NS’ Petition to Intervene and cancelled the scheduled hearing.

By Order entered on April 9, 2015, at Docket No. I-2015-2472242 (*April 2015 Order*), the Commission initiated an investigation to evaluate the condition and disposition of six highways over rail crossings located on the same rail line as the SR 1025 crossing in the proceeding at Docket No. M-2013-2364201. The Commission determined that the following crossings would be investigated:

|  |  |  |  |
| --- | --- | --- | --- |
| Highway Name | Structure Type | PENNDOT No. | Municipality/County |
| 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)  SR 4005 (Seamans Road) | Concrete Arch  Concrete Arch | 264 291 W  265 849 D | Lathrop Twp., Susquehanna  Benton Twp., Lackawanna |

The Commission directed that PennDOT, D&H, NS, Great Bend, New Milford Township, Brooklyn Township, Hop Bottom Borough, Lathrop Township, Benton Township, Lackawanna County (Lackawanna), and Susquehanna County (Susquehanna) be made parties to the investigation at Docket No. I-2015-2472242.

As part of the investigation at Docket No. I-2015-2472242, the Commission directed PennDOT, at its initial cost and expense, to perform in-depth load rating analyses on these six structures. The Commission also directed that PennDOT 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 further directed D&H to pay 20% of the cost for the NBIS inspection for the T-821 bridge.

By notice dated August 6, 2015, the Commission scheduled a hearing for the proceeding at Docket No. M-2013-2364201 for February 4, 2016 to determine cost allocation and responsibilities regarding the SR 1025 bridge. On December 3, 2015, PennDOT filed a Motion for Continuance, stating that NS had acquired the rail line from D&H on or about September 19, 2015. PennDOT stated that it anticipated finalizing bridge inspection reports for the structures that are the subject of the proceeding at Docket No. I-2015-2472242 by the end of February 2016. Once it completed the inspection reports, PennDOT explained it would discuss with NS the disposition of the structures that are the subject of the proceedings at Docket Nos. I-2015-2472242 and M‑2013-2364201. PennDOT requested that the Commission schedule a hearing for the proceeding at Docket No. M-2013-2364201 for August 2016. By order dated December 11, 2015, the ALJ granted PennDOT’s motion and continued the hearing for the proceeding at Docket No. M-2013-2364201.

By Order entered December 17, 2015, at Docket I-2015-2472242, the Commission granted a Petition for Protective Order filed by PennDOT. The NBIS bridge inspection reports that are part of the record in this proceeding, in PennDOT’s Confidential Exhibits E1-E7, are subject to this Protective Order and the Protective Order granted on August 15, 2013. We have not included any confidential information in this Opinion and Order. Any general references to PennDOT’s Confidential Exhibits E1-E7 will be referred to as PennDOT’s inspection reports.

By notice dated January 14, 2016, the Commission scheduled the hearing regarding Docket No. M-2013-2364201 for August 16, 2016, as PennDOT had requested.

On July 18, 2016, PennDOT filed a Motion for Continuance of the scheduled hearing. In support of its motion, PennDOT stated that it had submitted to NS bridge inspection reports for the structures that are the subject of the proceeding at Docket No. I-2015-2472242. PennDOT also stated that it was engaged in discussions with NS concerning disposition of the structures that are the subject of the proceedings at Docket Nos. I-2015-2472242 and M-2013-2364201. PennDOT, with the concurrence of the other Parties, requested that the Commission continue the hearing at Docket No. M‑2013-2364201 for six months to allow the Parties additional time for settlement discussions.

By order dated July 20, 2016, the ALJ granted PennDOT’s motion and continued the hearing. By notice dated July 25, 2016, the Commission scheduled a hearing for April 19, 2017. On February 23, 2017, PennDOT and NS filed a letter requesting that the matters at Docket Nos. M-2013-2364201 and I-2015-2472242 be referred to mediation and that the scheduled hearing be cancelled. By order dated February 28, 2017, the ALJ granted PennDOT’s and NS’ request and referred the matters to the Commission’s Mediation Unit for mediation review.

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

ALJ Salapa conducted a prehearing conference for the matters at Docket Nos. M-2013-2364201 and I-2015-2472242 on September 22, 2017. At the prehearing conference, the Parties agreed that the proceedings should be consolidated. Tr. at 9. As a result of the prehearing conference, the ALJ issued a Prehearing Order dated September 25, 2017, consolidating the matters at Docket Nos. 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 was severely deteriorated and no longer effective in providing protection to motorists. The advisory stated that the right parapet, far-right wing wall, and approach guiderail of the bridge should be repaired immediately.

An evidentiary hearing for the matters at Docket Nos. M-2013-2364201 and I-2015-2472242 was held on April 24, 2018. PennDOT, Wyoming, Nicholson, Lackawanna, I&E, the Pennsylvania Electric Company (Penelec),[[2]](#footnote-2) NS, and Great Bend were represented by counsel. The hearing consists of a 250-page transcript and the various testimony and exhibits of the Parties.

On June 15, 2018, NS, PennDOT, I&E, and Great Bend filed Main Briefs. On July 3, 2018, NS, PennDOT, I&E, and Great Bend filed Reply Briefs. The evidentiary record in this proceeding closed on July 3, 2018, the date the Parties filed their Reply Briefs.

As previously noted, the ALJ’s Recommended Decision was issued on August 6, 2018. NS, PennDOT, and Great Bend filed Exceptions on August 31, 2018. NS and PennDOT filed Replies to Exceptions on September 24, 2018. Also on September 24, 2018, Great Bend filed a letter indicating it would not be filing Replies to Exceptions.

II. Background Regarding the Rail Line

The seven crossings that are the subject of this consolidated proceeding are located on the same rail line. Additionally, 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.

NS purchased the line from D&H in September 2015 and refers to it as the D&H line. NS indicated that the Delaware Lackawanna and Western Railroad Company (DLW) constructed the line in approximately 1915. Since DLW built the line, the line has had several owners. NS St. 1 at 3. By the time NS purchased the rail line, the line had suffered from a significant amount of deferred maintenance. NS St. 1 at 4.

PennDOT presented evidence that DLW built what was referred to as the Nicholson Cutoff, now the D&H line, between 1912 and 1916. According to 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, 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. Construction of the Nicholson Cutoff reduced the curves and grades that DLW trains had to navigate which, in turn, reduced the amount of time it would take each DLW train to travel between Clark’s Summit and Hallstead. 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. Additionally, the Nicholson Cutoff would allow DLW to use only two locomotives, instead of five, to move trains between Clark’s Summit and Hallstead. PennDOT St. 3 at 6; PennDOT Exh. I.

As part of constructing the Nicholson Cutoff, DLW constructed the grade separated crossings that are the subject of this consolidated proceeding. PennDOT St. 3 at 5; PennDOT Exh. I. The crossings are located on a twenty-four-mile long segment of the D&H line. PennDOT Exh. A8; Tr. at 69-70. Currently, there is a single track at each of the crossings, except for the SR 2017 crossing where there are two tracks. Six to eight trains per day operate on this rail line at a maximum speed of 40 miles per hour. NS St. 1 at 4.

III. Discussion

A. Legal Standards and Commission Jurisdiction Over Rail Highway Crossings

In the Recommended Decision, ALJ Salapa reached 154 Findings of Fact, R.D. at 11-28, and six Conclusions of Law, R.D. at 75-76. We shall adopt and incorporate herein by reference the ALJ’s Findings of Fact and Conclusions of Law unless they are either expressly or by necessary implication overruled or modified by this Opinion and Order.

As a preliminary matter, we note that any issue we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. [*Consolidated Rail Corp. v. Pa. Public Util. Comm’n,* 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also see, generally,* [*University of Pennsylvania v. Pa. Pub. Util. Comm’n*, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

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 in order to prevent accidents and promote public safety. *Southeastern Pennsylvania Transportation Authority v. Pa. Pub. Util. Comm’n*, 592 A.2d 797 (Pa. Cmwlth. 1991). In addition, 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 has the authority to assess the costs of any work it orders performed upon the concerned public utilities or municipal corporations, or the Commonwealth, in such proper proportions as it may determine. 66 Pa. C.S. §§ 2702(c), 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. *Wheeling and Lake Erie Railway Co. v. Pa. Pub. Util. Comm’n* (*Wheeling*), 778 A.2d 785 (Pa. Cmwlth. 2001); *AT&T v. Pa. Pub. Util. Comm’n*  (*AT&T*), 737 A.2d 201 (Pa. 1999). The financial ability of a concerned party to pay is not determinative of the issue of cost allocation. *East Rockhill Twp. v. Pa. Pub. Util. Comm’n*, 540 A.2d 600 (Pa. Cmwlth. 1988) (*East Rockhill Township*).

Among the relevant factors noted in *Greene Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm’n (Greene Township)*, 668 A.2d 615 (Pa. Cmwlth. 1995), for consideration of cost allocation are: (1) which party built the crossing and whether the roadway existed before or after the construction of the crossing, *PennDOT v. Pa. Pub. Util. Comm’n*, 464 A.2d 645 (Pa. Cmwlth. 1983 (*PennDOT v. Pa. Pub. Util. Comm’n 1983*); (2) the party that owned and maintained the crossing, *id.*; (3) the relative benefit conferred on each party with the construction of the crossing, *PennDOT v. Pa. Pub. Util. Comm’n (PennDOT v. Pa. Pub. Util. Comm’n 1975)*, 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, *PennDOT 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 Lake Erie Railroad Co. v. Pa. Pub. Util. Comm’n (Pittsburgh)*, 556 A.2d 944 (Pa. Cmwlth. 1989).

In addition, the Commission has considered the following: (1) the benefits to the utility and its ratepayers; (2) the availability of state or federal funding for the project; (3) the placing of the costs upon the party responsible for the situation; and (4) the equities of a particular situation. *Application of the City of Wilkes-Barre*, Docket No. A-00101606 (Order entered April 9, 1981) (*Wilkes-Barre*).

Finally, while the Commission has considered the above-mentioned 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. 1995) (*Bell Atlantic-Pa)*; *AT&T; PECO Energy Co. v. Pa. Pub. Util. Comm’n (PECO Energy)*, 791 A.2d 1155 (Pa. 2002). The Commission’s decision, however, must be “just and reasonable” and have a sound legal and factual basis. *Greene Township*.

Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm’n,* 489 Pa. 109, 413 A.2d 1037 (1980).

B. Positions of the Parties

1. NS

NS argued that maintenance responsibility for the unassigned bridges[[3]](#footnote-3)(SR 1018, SR 2017, and SR 4005) should be assigned to PennDOT, and that maintenance responsibility for the four bridges assigned to the predecessor railroad (T-821, SR 1025, SR 2032, and SR 2041) should be reassigned to PennDOT or Great Bend following NS’ repairs, because those entities are the owners of the bridges. NS M.B. at 3. NS stated that under Pennsylvania law, the entity owning the highway is the owner of any bridge carrying the highway, absent definitive proof to the contrary. *Id*. at 4 (citing *North Pa. Railroad Co. v. Inland Traction Co*., 205 Pa. 579 (1903)). NS also stated that it is of no consequence that the railroad company constructed the bridge, as the bridge becomes part of the public highway it was built to connect once the bridge is complete. NS M.B. at 4 (citing *City of Philadelphia v. CONRAIL (CONRAIL*), 747 A.2d 352 (Pa. 2000); *Pa. Railroad. Co. v. Greensburg, Jeanette & Pittsburg Street Railway Co*., 35 A. 122 (Pa. 1896)). NS contended that the original constructer of the bridges is only one factor considered when assigning maintenance responsibilities, and the Commission in allocating costs is not limited to any fixed rule. NS M.B. at 6 (citing *PennDOT v. Pa. Pub. Util. Comm’n 1975*).

Additionally, NS averred that the general principle under Pennsylvania law is that highway authorities, rather than railroads, are in a better position to maintain highway structures, and bridges should be maintained by the same entities responsible for maintaining the highway. NS M.B. at 7 (citing *Heinlein v. Allegheny County (Heinlein)*, 98 A.2d 36, 38 (Pa. 1953)). NS pointed out that PennDOT is already responsible for many of the bridges along the same rail line and, thus, familiar with the work required. NS M.B. at 7 (citing PennDOT St. 3 at 8-9). According to NS, PennDOT has been conducting bi-annual inspections of these structures and has been aware of their deteriorating conditions for years before NS became involved with the line. NS stated that PennDOT also has the ability to secure federal funding to reconstruct the bridges in the future. NS M.B. at 8-9.

Further, NS argued that the bridges exist mainly for the convenience of the traveling public, particularly the convenience of local vehicular traffic, and therefore PennDOT should be responsible for the maintenance. NS stated that six of the seven locations have an average daily traffic volume of fewer than 700 vehicles, with the lowest being 60 and the highest being 1400 vehicles per day. NS St. 2 at 5, 10. NS also stated that the average increase in travel times, if any of these bridges were to be closed, was about six minutes, with a range from one minute to twelve minutes, and that the closure of all of the structures would have a minimal impact on the ability of the local roadway network to handle the current traffic volumes according to a NS traffic engineering expert. *Id*. at 6-12.

Regarding the four assigned bridges, NS averred that repairs should be ordered according to NS’ assessment of what is necessary. For the SR 1025 bridge, NS proposes $350,000 worth of work, including completely restoring the concrete on both sides of the arch, patching and sealing any exposed reinforcing steel on the underside of the arch, and pushing the existing New Jersey barriers out to the edge of the bridge and permanently anchoring them to effectively become the new parapet wall and restore the bridge to two lanes instead of one. NS St. 1 at 6. Due to the current condition of the bridge, NS would complete its repairs by October 31, 2019. *Id.* at 7. For the SR 2041 bridge, NS proposes concrete repairs on the left spandrel wall (lower edge and under concrete barrier) and patching of certain concrete areas at a total cost of $50,000. NS St. 1 at 7. For the SR 2032 bridge, NS proposes proactive repairs to reface both sides of the concrete arch spans to avoid reinforcing steel from being exposed, at a cost of about $100,000. NS St. 1 at 8. NS believes these repairs could wait another ten years, as the bridge is structurally sound based on core samples. NS St. 1 at 8. For bridge T-821, NS had already developed plans to make bridge seat and abutment repairs, as well as scale loose concrete off each through girder, at a cost of about $200,000. NS St. 1 at 9. NS anticipated that construction would begin in July of 2018, with the bridge reopened by September 30, 2018. NS St. 1 at 9.

2. PennDOT

PennDOT’s position was that based on the applicable legal factors the Commission considers for the allocation of highway-rail maintenance responsibilities, repair and replacement, and costs, it is just and reasonable for the Commission to allocate the responsibility and costs for the seven bridges to NS. First, PennDOT stated that NS’ predecessor railroad constructed the seven rail-highway crossings. PennDOT M.B. at 10 (citing PennDOT Exh. I). Second, PennDOT averred that NS owns the crossings and has been ordered to maintain four of the bridges. PennDOT M.B. at 11-12. PennDOT indicated that as a general rule, the bridge is owned by the entity whose traffic it carries; however, this rule only applies when there is insufficient indicia that legal title lies with another entity. *Id*. at 12 (citing *CONRAIL*, 747 A.2d at 357). PennDOT argued that in this case, there is evidence of ownership because the railroad was ordered to maintain four of the subject crossings. *Id*. at 13 (citing *Schwartz v. Delaware and Hudson Railway Co*. (*Schwartz 2013 Order*), Docket No. C-2011-2237486 (Order entered December 5, 2013). PennDOT also argued that *Application of the Department of Highways of the Commonwealth of Pennsylvania for Approval of the Alteration of the Crossing where State Highway Route 65025 Crosses Over and Above Tracks of the DLW in Nicholson Borough* (*June 1951 Order*), Docket No. 76276 (Order dated June 11, 1951), clearly states that the SR 1025 bridge was owned and maintained by DLW. PennDOT M.B. at 13 (citing PennDOT Exh. D4). PennDOT contended that because an ownership interest was found in the SR 1025 crossing then an ownership interest could also be found in the other crossings since all of the crossings were built at the same time and for the same benefits. PennDOT M.B. at 13.

Third, PennDOT averred that NS’ predecessor, DLW, received the initial benefits of the construction of the rail line and the subject bridges. PennDOT cited to the information that the railroad built the cut-off between 1912-1915 to reduce the distance of the line between Clark’s Summit and Hallstead and to decrease the travel time for every freight train by one hour. PennDOT M.B. at 19 (citing PennDOT Exh. I at 1, 9). PennDOT noted witness Hauschildt’s testimony that the elimination of automatic signals and the prevention of accidents between motor vehicles and trains were benefits to NS in operating on the grade-separated crossings. PennDOT M.B. at 20 (citing Tr. at 201-202).

Fourth, PennDOT argued that NS or its predecessor is primarily responsible for the deterioration of the crossing and that, accordingly, it would not be unjust to assign reconstruction costs to NS as the successor railroad. PennDOT M.B. at 21 (citing *Wheeling* at 793). PennDOT stated that its records indicate that the railroad performed maintenance only three times on any of these bridges and only because the Commission ordered it. PennDOT M.B. at 22 (citing PennDOT St. 3 at 7-8; PennDOT Exhs. D3, D6, and D8). Fifth, PennDOT contended that NS will benefit from the repair, replacement, or removal of the crossing. PennDOT averred that NS acknowledged that it benefits from grade-separated crossings because it prevents collisions between motor vehicles and trains, and the railroad does not need to provide for the maintenance of automatic signals and lights. PennDOT M.B. at 26 (citing Tr. at 201).

Sixth, PennDOT averred that federal and state funds are unavailable for six of the seven crossings, and none of the crossings, except SR 4005, are on a transportation plan or currently programmed. PennDOT noted that it secured funding for the SR 4005 crossing in the interest of public safety. PennDOT M.B. at 27 (citing PennDOT St. 3 at 9). Seventh, PennDOT argued that the equities in this situation dictate that NS should be responsible for the sole cost and expense of any alterations, suspension, or abolishment of the crossings. PennDOT M.B. at 28-30.

Based on the above factors, PennDOT stated that it is just and reasonable for the Commission to require NS to bear the sole cost of maintenance as well as any construction, rehabilitation, or removal costs for all of the subject structures. PennDOT M.B. at 31-32. PennDOT submitted that it is unable to quickly complete any future maintenance, rehabilitation, or reconstruction, and that it does not have funding in place to provide for such work. PennDOT M.B. at 32-34. Additionally, PennDOT argued that it should be reimbursed for expenses incurred on the SR 1018, SR 1025, SR 2017, SR 2032, and SR 2041 structures. *Id*. at 34 (citing PennDOT St. 1 at 34-35). Further, PennDOT contended that NS should be required to provide for all costs associated with bridge inspections, design plan reviews, flagging costs to include flaggers, watchers, and observers, as well as insurance and right of entry acquisitions or entry onto the railroad property. PennDOT M.B. at 35 (citing PennDOT St. 3 at 10).

Further, PennDOT averred that NS should address each of the priority maintenance items for the subject crossings irrespective of whether the crossing will be repaired or replaced in the future. PennDOT explained that the priority maintenance items for the crossings were given their priority based on federally mandated inspections completed by NBIS certified engineers on behalf of PennDOT. The priority maintenance items procedure that PennDOT established to ensure that critical findings are ranked and addressed in a timely manner is explained in PennDOT St. 2 and PennDOT Exh. F. PennDOT M.B. at 37.[[4]](#footnote-4)

3. Great Bend

As explained in more detail below, Great Bend stated that in a series of Commission Orders relating to the T-821 bridge, NS was assigned responsibility for current inspection, maintenance, repair, and rehabilitation of the T-821 bridge and all attendant costs. Great Bend M.B. at 11-12. Based on the prior Commission Orders, Great Bend indicated that there is no dispute regarding the responsibility for the present repair, rehabilitation, maintenance, and costs for the T-821 bridge. Great Bend averred that NS is responsible as the successor to D&H and noted that NS has accepted this responsibility and agreed to perform and pay for the repair work on the T-821 bridge. *Id*. at 12-13. Regarding the scope and extent of necessary repairs, Great Bend indicated that NS’ plans are a step in the right direction but that they are not sufficient to satisfy PennDOT’s findings in PennDOT’s most recent inspection report the Commission mandated as part of this proceeding. *Id*. at 14. Great Bend contended that without a full rehabilitation that greatly reduces or stops deterioration, the work NS proposed will not result in the anticipated twenty-year service life. *Id*. at 16.

With respect to the disputed issue of future maintenance costs and responsibilities, Great Bend argued that NS should bear these responsibilities for the T‑821 bridge consistent with past practice and Commission Orders. *Id*. at 17. Great Bend believed that this issue had already been determined based on the Commission’s *April 2015 Order* that specifically ordered that “any assignments for maintenance previously assigned to any party of record in any prior Commission Orders or Secretarial Lettersremain in full force and effect.” *Id*. (citing *April 2015 Order* at 3). Accordingly, Great Bend argued that the Commission did not need to include the issue of future responsibility as part of its investigation because the Commission’s Orders concerning the T-821 bridge assign all future maintenance and cost responsibilities to the railroad, and these orders remain controlling. Great Bend M.B. at 17.

Great Bend averred that NS bears responsibility under the relevant legal factors the Commission examines in assigning costs and responsibilities. Great Bend stated that the evidence establishes that NS’ predecessor railroad designed and built the T-821 Bridge. Great Bend M.B. at 20 (citing NS St. 1 at 3; PennDOT St. 3 at 6). Great Bend indicated that it has never had any ownership or management interest in this bridge. Great Bend M.B. at 21 (citing Great Bend St. 1 at 7; Great Bend St. 1-R at 3). Great Bend stated that the railroads have maintained the D&H Line and the crossing structures along it for over 100 years and, accordingly NS is the owner of the T-821 bridge. More significantly and irrespective of ownership, Great Bend argued that NS and its predecessors have always been assigned and charged under Commission Orders to, at their sole cost and expense, perform all work and furnish all materials necessary to make repairs and maintain the crossing, and nothing has changed to warrant a departure from that practice. Great Bend M.B. at 21.

Additionally, Great Bend contended that NS receives the greatest benefit from the construction of the crossing. Great Bend pointed out that the above grade crossing permits NS to enjoy the benefit of running, without interruption or detour, six to eight trains per day on the track at 40 mph through this crossing, a benefit it continues to receive even with the current closure of the bridge. *Id*. at 22 (citing NS St. 1 at 4). Great Bend also pointed out that the bridge relieves NS of the burden and costs associated with maintaining gates, warning devices, and lights that would be present at an at-grade crossing and precludes any possibility for accidents that would occur if an at-grade crossing existed. Great Bend M.B. at 22 (citing Tr. at 202, 212). Great Bend explained that it also benefits from the T-821 bridge, as the bridge serves as a critical access point for local traffic to access the Blue Ridge School complex coming from the north, it provides a convenience to local vehicular traffic, and it eliminates the chance of a train-vehicle collision. Great Bend M.B. at 22 (citing PennDOT St. 1 at 30; PennDOT St. 2 at 12; Tr. at 201). Great Bend continued that the condition and closure of the bridge has disadvantaged Great Bend and the traveling public by creating significant detours. Great Bend M.B. at 23 (citing Great Bend St. 1 at 5-6; Great Bend St. 1-R at 5-6).

Great Bend further argued that the evidence conclusively demonstrates that the railroad is solely responsible for the deterioration of the T-821 crossing structure which has led to the need for the existing repair work. Great Bend M.B. at 23 (citing NS St. 1 at 3; Tr. at 178). Great Bend added that there is no state or federal funding available for maintenance and repairs related to the T-821 Bridge and Great Bend does not have any funds budgeted or available to it for any potential cost allocation related to future repair and maintenance of the bridge. Great Bend M.B. at 23-24 (citing Tr. at 121-122, 133, and 135; Great Bend St. 1 at 8-9). Finally, Great Bend averred that equity dictated that NS should bear responsibility for future maintenance and costs, as it appears that NS is trying to wash its hands of the responsibilities it acquired as part of its purchase of the D&H Line in September 2015. Great Bend M.B. at 24. In the same vein, Great Bend contended that it would be inequitable to direct Great Bend to shoulder responsibility for future maintenance and costs in light of the factors discussed above, the inaction and dilatory conduct of NS’ predecessor, and the Township’s lack of fiscal and operational resources. *Id*. at 25 (citing Great Bend St. 1 at 3).

C. PennDOT’s General Exceptions and NS’ Replies

In addition to filing Exceptions pertaining to the specific bridges in this proceeding, PennDOT filed “General Exceptions” relating to the ALJ’s findings in the Recommended Decision that are general or pertain to more than one bridge. We will address the General Exceptions first for ease of reference. Additionally, we note that more specific information pertaining to each individual bridge will be included in the Exceptions pertaining to the individual bridges throughout this Opinion and Order.

1. PennDOT’s General Exception No. 1, NS’ Reply, and Disposition

PennDOT contends that the ALJ ordered NS to perform work on the bridges that carry SR 1025, SR 2032 and SR 2041 as NS proposed in its testimony and relies on NS’ testimony that this work will extend the life of the bridges for twenty-five years, until December 31, 2043. PennDOT avers that the ALJ accepted the limited scope of work NS proposed and disregarded the testimony of PennDOT’s Bridge Engineer that the work NS proposed would be insufficient and that all concrete work should be done simultaneously so that the concrete does not deteriorate. PennDOT recommends that the repairs be done in accordance with its inspection reports consistent with the reasons set forth in its testimony. PennDOT Exc. at 1-2. (citing PennDOT St. 4 at 1).

In reply, NS asserts that for the structures SR 1025, SR 2032, and SR 2041, the ALJ ordered NS to do the repairs and be responsible for maintenance until December 31, 2043, or for twenty-five years. Therefore, NS is responsible for performing any additional work that becomes necessary until that time period has been exhausted. NS opines that this makes PennDOT’s concerns moot. NS avers that because NS will need to ensure that its present repairs and any additional repairs will extend the service life of each bridge until the end of 2043, it is reasonable for NS to be permitted to use its repair recommendations to accomplish this. NS R. Exc. at 1-2.

**Disposition**

We agree with the ALJ on this issue and shall deny PennDOT’s General Exception No. 1, consistent with the following discussion. For the structures, SR 1025, SR 2032, and SR 2041, the ALJ recommends that NS, at its sole cost and expense, prepare and submit to all parties of record, within three months, detailed final repair plans for examination and Commission approval. *See* R.D. Ordering Paragraphs 3, 24, and 35. The final repair plans are to be consistent with the repairs outlined in the evidence in this proceeding and the Recommended Decision. We expect NS to submit appropriate repair plans based on sound engineering principles. Consistent with the Commission’s standard review process, once the plans are submitted, PennDOT and other parties will have the opportunity to comment on NS’ plans before final Commission approval.

PennDOT has advocated that these three bridges should be replaced. PennDOT St. 2. However, detailed planning, funding, and timing coordination must first be done to replace these bridges, and that will take years. PennDOT avers that these bridges cannot be replaced at the same time. When one bridge is being replaced, the others need to be in use for detoured traffic and emergency situations. Since all the bridges cannot be replaced at the same time, repairs must be done to extend the life of the bridges. The ALJ has assigned NS to do these repairs at its sole cost and expense, because the record indicates that NS can accomplish the repairs in a quick manner. It is not unusual for a railroad to submit repair plans when it is responsible for the repairs. Further, NS is to maintain the bridges, at its sole cost and expense, for twenty-five years, after which the ALJ recommends that PennDOT be responsible for the maintenance of the bridges. Since NS is responsible for the bridges for a significant period, it has the incentive to properly repair them. Accordingly, we shall deny PennDOT’s General Exception No. 1.

2. PennDOT’s General Exception No. 2, NS’ Reply, and Disposition

PennDOT states that the Recommended Decision lacks a requirement that any plans NS submits must be prepared per PennDOT specifications that would include an anticipated bridge rating. According to PennDOT, 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. PennDOT Exc. at 2 (citing PennDOT St. 4 at 2).

In reply, NS asserts that repair plans will be prepared pursuant to standard, sound engineering specifications. NS states that PennDOT will have the opportunity to review and comment on the plans, and then the Commission will provide final plan approval. On the topic of bridge load ratings, NS avers that it does not perform these on any highway bridge it maintains, as the highway authority does this through its inspection process. NS indicates that the current load ratings were determined a few years ago through these proceedings and were reevaluated during the 2017-2018 PennDOT inspections. NS explains that the load ratings are reevaluated and updated by PennDOT, if necessary, in its regular inspections. NS defers to PennDOT on its determined ratings for these structures. NS states that PennDOT’s most current ratings are on the record, and these are the ratings NS proposes to use. NS further states that since these load ratings will not be changing for the worse with NS repairs, it would unreasonable to force NS to repeat the still valid work already done to PennDOT’s specifications for this proceeding. NS R. Exc. at 2-3.

**Disposition**

On review of the record, we agree with NS. We expect NS to submit appropriate repair plans based on sound engineering principles. PennDOT will have the chance to comment on NS’ plans before final Commission approval. The current PennDOT bridge load ratings are on the record and NS will maintain or improve upon this load rating after repairs. Therefore, we shall deny PennDOT’s General Exception No. 2.

3. PennDOT’s General Exception No. 3, NS’ Reply, and Disposition

PennDOT excepts to the lack of standard to which the bridges are to be maintained by NS. PennDOT states that once the load rating is determined, NS must be required to maintain the bridges to that load rating. PennDOT Exc. at 2.

In reply, NS states that PennDOT’s exception takes issue with the fact that NS is not required to maintain the structures to a specific load rating. It argues that “once the load rating is determined, NS must be required to maintain the bridges to that load rating.” Since the load ratings already have been determined by PennDOT, as explained in NS’ reply to PennDOT General Exception No. 2, NS does not object to this requirement. NS agrees to maintain the bridges to their current load ratings as already determined by PennDOT in this proceeding. NS R. Exc. at 3-4 (citing generally PennDOT Inspection Reports for SR 1025; SR 2032; SR 2041; and T-821).

**Disposition**

We agree with PennDOT and NS on this issue. We believe that NS should be required to maintain the bridges at the current determined load rating. PennDOT’s most current load ratings for these structures are in the record and should be used as NS’ benchmark. By repairing the structures, the load rating should improve, or at least stay the same. Accordingly, for the bridges that are to be repaired and maintained by NS, SR 1025, SR 2032, SR 2041, and T-821, we will require NS to maintain the bridges at the current load ratings as determined by PennDOT in this proceeding.

4. PennDOT’s General Exception No. 4, NS’ Reply, and Disposition

PennDOT excepts to the set date in the Recommended Decision that NS will be relieved of its maintenance responsibility on December 31, 2043. PennDOT argues that the set date presupposes that NS completes the work on all the bridges by the end of 2018. PennDOT claims that this is impossible given the fact that the Recommended Decision allowed fifteen months for NS to complete the work that is to extend the life of the bridges for twenty-five years. PennDOT opines that if NS is to maintain the bridges for twenty-five years, then the clock should start to tick after the work is completed. PennDOT maintains that NS has been ordered to notify the Commission when the work is completed and the twenty-five years of maintenance should begin after the work is deemed final. PennDOT Exc. at 2-3.

In reply to PennDOT’s complaint that the calculation of construction repair time is not added into the twenty-five-year figure for NS maintenance of the SR 1025, SR 2032 and SR 2041 bridge structures and the “clock” therefore should start to run after NS’ repairs are completed, NS avers that this proposed alteration in the timekeeping would make figuring out responsibilities at a later date more difficult and inconsistent. NS R. Exc. at 4.

Furthermore, NS states that such a change would not materially benefit PennDOT with the long timeframes at issue. All the work NS is required to complete will be performed within about a year after the start date of December 31, 2018, which is a date certain to make the shifting of responsibilities to PennDOT on December 31, 2043, clear for all structures and entities involved. Therefore, NS submits that the timekeeping should not be altered merely to provide PennDOT with a few more months without maintenance responsibilities at the expense of clarity. *Id.*

**Disposition**

Upon review, we agree with the ALJ on this issue and shall deny PennDOT’s General Exception No. 4, consistent with the discussion in this disposition. We find that a uniform date for all structures is preferred. The ALJ concluded that NS is required to complete the repair work within twelve months from the date the Commission approves its submitted repair plans. The ALJ also recommended that NS be responsible for the maintenance of the SR 1025, SR 2032 and SR 2041 bridge structures until December 31, 2043, after which PennDOT becomes responsible for the maintenance of these bridge structures. We believe the ALJ chose this date because it coincided with PennDOT’s estimate, based upon the record, that repairs will extend the service life of these bridges for twenty-five years. Also, PennDOT has taken the position that these bridge structures should be replaced. The ALJ assigned this date to allow PennDOT the time to take the steps necessary to replace these structures that PennDOT indicates are integral to the state transportation system. PennDOT St. 2. We find, in the interest of public safety, that it is reasonable to assume that PennDOT will formulate plans for these bridge structures by December 31, 2043 and implement these plans as soon as possible thereafter. Accordingly, we shall deny PennDOT’s General Exception No. 4.

5. PennDOT’s General Exception No. 5, NS’ Reply, and Disposition

In its General Exception No. 5, PennDOT voices concern regarding Ordering Paragraph Nos. 11, 14, 15, 31, 42, 45, and 46, directing it to replace all of the bridges, SR 1018 and SR 2017 in approximately seven years, and ultimately SR 1025, SR 2032, and SR 2041 after twenty-five years, and to assume the cost of the maintenance of the bridges. The Ordering Paragraphs in the Recommended Decision that PennDOT objects to provide the following:

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.

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.

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.

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

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.

PennDOT argues that these directives are not just and reasonable, and PennDOT should not bear the burden of the railroads’ lack of responsibility. PennDOT contends that NS should be ordered to replace the bridges, and PennDOT should reimburse NS in accordance with the Recommended Decision. PennDOT Exc. at 3. PennDOT avers that the railroad built the bridges and has ignored them for over 100 years. *Id*. (citing NS St. 1 at 3, 4; PennDOT St. 3 at 7-8). PennDOT asserts that it already has assumed its share of responsibility on this line by addressing the condition of other bridges. PennDOT Exc. at 3 (citing PennDOT St. 2 at 4, 8, 9).

In Reply, NS states that in consideration of the reasons it highlighted in its Main and Reply Briefs, the ALJ’s recommendations that PennDOT replace and maintain the highway bridges over NS’ tracks are just and reasonable. NS argues that despite PennDOT’s attempt to absolve itself from being responsible for the replacement and maintenance costs, because PennDOT benefits and is also responsible for these structures which carry state roadways, it should be responsible for a portion of the costs. NS . Exc. at 4-5. NS avers that in addition to the fact that it is required to maintain the SR 1025, SR 2032 and SR 2041 bridge structures for twenty-five years until they are then maintained and/or reconstructed by PennDOT, it is also required to pay half of the inspection and maintenance costs for the currently unassigned SR 1018 and SR 2017 bridge structures in the seven years until they are reconstructed by PennDOT. NS argues it is also required to pay a monetary portion toward the cost of their reconstruction. Therefore, NS believes the Ordering Paragraphs are just and reasonable. *Id.* at 5.

**Disposition**

Based on our review of the record and the Parties’ positions, we find that the ALJ properly allocated responsibility to PennDOT for the replacement and maintenance of the subject bridges. PennDOT’s arguments and NS’ response involve an analysis of the allocation factors and applicable case law that the Commission examines in apportioning costs in rail/highway crossing cases, as set forth *supra*. In reaching its determination, the Commission is not limited to any fixed rule but takes all relevant factors into consideration, the only requirement being that the Commission’s decision must be just and reasonable and supported by a sound legal and factual basis. *Wheeling*; *Greene Township*.

The first factor we may consider for allocation is which party built the crossing and whether the roadway existed before or after the construction of the crossing. *PennDOT v. Pa. Pub. Util. Comm’n 1983*. In this case, the evidence demonstrates that NS’ predecessor constructed the rail line where the crossings are located as well as the grade separated crossings that are the subject of this proceeding. NS St. 1 at 3; PennDOT St. 3 at 5; PennDOT Exh. I.

The second factor we may consider is the party that owned and maintained the crossing *PennDOT v. Pa. Public Util. Comm’n 1983*. While we note that this factor alone is not dispositive of allocation costs and responsibilities, it appears that PennDOT is the owner of the bridges based on the record before us. It is well-established that a bridge carrying a public street is deemed to be a part of the street and, accordingly, is owned by the entity that owns the street, unless there is sufficient evidence to the contrary, such as a title. *CONRAIL; Heinlein* at 38. In this case, there is no clear evidence that NS owns the bridges. Even though NS was charged with maintenance responsibilities for some of the bridges, this alone does not confer ownership on NS. *See CONRAIL* at 355 (a clear contractual duty to perform maintenance and bear the associated costs that was silent regarding the ownership of the bridge did not create an ownership interest for the railroad company).

The third allocation factor we may consider is the relative benefit conferred on each party with the construction of the crossing. *PennDOT v. Pa. Public Util. Comm’n 1975*. Here, it appears that NS’ predecessor, DLW, benefitted largely when the Nicholson Cutoff, now the D&H line, was built between 1912 and 1916. The record shows that 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. DLW passengers using the Nicholson Cutoff reduced their travel times by twenty minutes, and DLW freight trains using the Nicholson Cutoff reduced their travel times by one hour. PennDOT St. 3 at 6; PennDOT Exh. I.

The fourth allocation factor is whether a party is responsible for the deterioration of the crossing which has led to the need for its repair, replacement or removal. *PennDOT v. Pa. Pub. Util. Comm’n*, 469 A.2d 1149 (Pa. Cmwlth. 1983). In this case, both Parties bear some responsibility for the deterioration of the bridges. Although NS’ predecessors built the bridges and were assigned maintenance responsibilities for some of the bridges, they did not perform any substantial repairs to avoid deterioration of the bridges. PennDOT stated that its records indicate that the railroad performed maintenance only three times on any of these bridges and only because the Commission ordered it. PennDOT St. 3 at 7-8; PennDOT Exhs. D3, D6, and D8. While NS did not acquire the rail line until September 2015 after much of the deterioration was already present, it was aware of the deferred maintenance on the line and the ongoing proceeding regarding the SR 1025 crossing. Courts have held that railroad companies can be considered responsible for the actions or inactions of their predecessor railroads when acquiring a rail line. *Wheeling* at 793. On the other hand, there is no information in the record that PennDOT performed any meaningful repairs to or maintenance of the structures despite the fact that the majority of these bridges carry a state highway and PennDOT is responsible for inspecting the bridges.

The fifth allocation factor we may examine is the relative benefit that each party will receive from the repair, replacement or removal of the crossing. *Pittsburgh*. In this case, both PennDOT and NS will benefit from the repair and replacement of the bridges. The continued existence of a grade-separated crossing will enable traffic to remain open to both trains and vehicles and promote the safe interface between rail and vehicle traffic, another factor we may consider in assigning maintenance responsibilities. *See Norfolk Southern Railway Co. v. Pa. Pub. Util. Comm’n (Norfolk Southern)*, 971 A.2d 545 (Pa. Cmwlth. 2009). Once the bridges are repaired/replaced, hazards to NS from concrete falling onto their facilities will be eliminated. PennDOT will benefit from the roads being open to traffic again, as PennDOT has indicated that the bridges are not redundant and are integral to the state highway system, despite the low Average Daily Traffic (ADT) volume. The evidence shows that the bridges are used for the convenience of the traveling public, particularly local vehicular traffic. Six of the seven locations have an ADT volume of fewer than 700 vehicles, with the lowest being sixty and the highest being 1400 vehicles per day. NS St. 2 at 5, 10.

We also find that the ALJ’s allocation is equitable under the circumstances in this case, is just and reasonable, and is based on sound legal and factual grounds. The allocation achieves a middle ground and assigns responsibilities to all Parties. NS is responsible for repairing some of the bridges, so that the repair can be accomplished quickly and prolong the life of the structures, as well as maintaining some of the structures until responsibilities for the structures transitions to PennDOT. NS is also required to pay half of the inspection and maintenance costs for some of the unassigned bridge structures until they are reconstructed by PennDOT, as well as a monetary amount toward the cost of their reconstruction. This allocation is appropriate given the benefits NS and its predecessors have received from the crossings as well as their role in the deterioration of the crossings. PennDOT is responsible for ultimately replacing many of the bridges and assuming the cost of the maintenance of the bridges. This allocation considers the federal funding available to PennDOT and allows time for PennDOT to request and obtain PennDOT or federal funding. This allocation also properly considers the fact that the bridges carry state roads and are integral to the state highway system, despite their low ADT volume. For all of these reasons, we shall deny PennDOT’s General Exception No. 5.

6. PennDOT’s General Exception No. 6, NS’ Reply, and Disposition

In its General Exception No. 6, PennDOT objects to the lack of Ordering Paragraphs in the Recommended Decision directing NS to provide access to its right of way at no cost to PennDOT and to bear all of its costs associated with future inspections on all bridges carrying state routes and to reimburse PennDOT 50% of the cost of the inspection, consistent with Ordering Paragraph Nos. 13 and 44. PennDOT Exc. at 3 (citing PennDOT St. 3 at 10). Ordering Paragraph Nos. 13 and 44 provide the following:

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.

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.

R.D. at 79, 83.

In Reply, NS disagrees with PennDOT’s Exception, arguing that the ALJ’s recommended allocation of responsibilities is fair, given that NS and PennDOT both benefit from the structures. According to NS, PennDOT fails to provide any reason to support its exception, which violates 52 Pa. Code § 5.533(b).[[5]](#footnote-5) NS R. Exc. at 6. NS contends that PennDOT’s Exception ignores the fact that NS is responsible for all other maintenance costs for SR 1025, SR 2032 and SR 2014. NS argues that if the necessary flagging and the other costs PennDOT seeks to attribute solely to NS are not included in the total cost to be split, there would not be a true 50-50 splitting of the inspection costs. Rather, PennDOT would merely pay half of its own costs, with 50% reimbursement from NS, and NS paying all of its cost. From NS’ perspective, the split PennDOT is requesting, if approved, would be a lopsided one. *Id.* at 5-6. According to NS, PennDOT’s argument that NS should pay a greater proportion than PennDOT is untenable because PennDOT receives federal funding and can allocate up to 80% of the funding to the costs of completing these inspections. *Id.* at 6 (citing 23 U.S.C.

§ 133(b)(9) (Surface Transportation Block Grant Program); 23 U.S.C. § 119(d)(2)(D), (National Highway Performance Program); 23 U.S.C. § 120(b)(1) (Federal Share Payable). Nonetheless, while NS argues that all other costs be included within the inspection costs to be split between PennDOT and NS, in the spirit of proceeding forward in good faith, NS agrees to provide access to its right of way at no cost to PennDOT for future inspections. NS R. Exc. at 6.

**Disposition**

Upon review, we shall grant PennDOT’s General Exception No. 6, in part. We have established in our disposition of General Exception No. 5 that we find the cost allocation and the maintenance and repair assignments in the Recommended Decision to be fair, just, and reasonable. Specifically, we have indicated that the ALJ’s allocation is equitable under the circumstances in this case and is based on sound legal and factual grounds. We note that in Ordering Paragraph No. 12 of the Recommended Decision, the ALJ clearly directed PennDOT to, at its initial cost and expense, furnish all material and perform all work necessary to inspect and maintain the existing SR 1018 bridge. The ALJ then followed up this directive with Ordering Paragraph No. 13, which requires NS to reimburse PennDOT 50% of the costs it will incur in inspecting and maintaining the existing SR 1018 bridge. R.D. at 79. The ALJ applied the same cost allocation and assignment of responsibilities for the SR 2017 bridge in Ordering Paragraph Nos. 43 and 44 of the Recommended Decision. *Id.* at 83. In our opinion, the ALJ’s directives in the Recommended Decision clearly indicate that PennDOT furnish all material and perform all work necessary to inspect and maintain the existing SR 1018 and 2017 bridges, while NS will reimburse PennDOT 50% of the costs it will incur in inspecting and maintaining the existing bridges. We find no confusion in these directives as highlighted in the Recommended Decision. Therefore, we shall deny PennDOT’s Exception regarding this issue. However, we note that NS has agreed to provide PennDOT access to its right of way for future inspections, at no cost to PennDOT. Accordingly, we shall direct NS to provide access to its right of way at no cost to PennDOT for future inspection of the bridges in this proceeding. In light of the above, we shall grant PennDOT’s General Exception No. 6, in part.

7. PennDOT’s General Exception No. 7, NS’ Reply, and Disposition

In its General Exception No. 7, PennDOT excepts to the lack of ordering paragraphs in the Recommended Decision directing NS to bear its costs associated with these bridges. PennDOT Exc. at 3. Similar to General Exception No. 6, PennDOT argues that 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 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. PennDOT also argues that NS should be directed to donate any of its right of way necessary for the construction of a new bridge, because the railroad owns the right of way as the original builder of the bridges. PennDOT Exc. at 3-4. PennDOT further points to its testimony that construction of bridges over railroads is much more expensive than other bridges. PennDOT Exc. at 4 (citing PennDOT St. 3 at 10).

In Reply, NS avers that while it is unclear as to which bridges and work PennDOT is referring to in General Exception No. 7, to the extent that PennDOT is seeking to have NS bear its own costs where inspection and maintenance costs are to be split 50-50 between the two parties for SR 1018, SR 2017, and SR 4005, PennDOT is only trying to avoid an equal split and is attempting to shift a disproportionate share of the costs to NS. NS R. Exc. at 7. NS reiterates that the Commission has already directed it to repair SR 1025, SR 2032 and SR 2041, which were assigned to NS’ predecessor, and to provide supplemental services and personnel during PennDOT’s eventual maintenance and/or reconstruction of these structures. NS points out that flagging and inspection services to protect its own facilities and operation during the replacement of SR 1018 and SR 2017 is also at NS’ sole cost. *Id.* (citing R.D. at 79 and 83).

**Disposition**

Upon review, we shall grant PennDOT’s General Exception No. 7, in part. Similar to our disposition of General Exception No. 5, we find that the ALJ’s allocation of costs, assignment of replacement, maintenance, and future inspection responsibilities for these structures are just and reasonable. However, to the extent that PennDOT is requesting that NS provide supplemental services and personnel at no cost to PennDOT during PennDOT’s eventual maintenance and/or reconstructions of SR 1025, SR 2032, and SR 2041 for future inspections, NS has agreed to do so. Similar to its response to General Exception No. 6, NS has also agreed to provide access to its right way at no cost to PennDOT for future inspections of the bridges. We have already directed NS to provide access to its right of way at no cost to PennDOT for future inspection of the bridges in our disposition of General Exception No. 6. Therefore, we shall direct NS to provide supplemental services and personnel at no cost to PennDOT during PennDOT’s eventual maintenance and/or reconstruction of SR 1025, SR 2032 and SR 2041 for future inspections of the bridges. In light of the above, we shall grant General Exception No. 7, in part.

8. General Exception No. 8, NS’ Reply, and Disposition

In its General Exception No. 8, PennDOT objects to the lack of ordering paragraphs in the Recommended Decision directing NS to provide appropriate protective services in a timely manner for inspection, maintenance, and replacement of any or all of the bridges carrying a state route. PennDOT Exc. at 4 (citing PennDOT St. 3 at 10).

In Reply, NS avers that while PennDOT did not provide any reasons to support its argument as required by 52 Pa. Code § 5.533(b), NS has already agreed to provide protective services in a timely manner whenever necessary, as this is implicit in any order requiring NS to provide flagging. NS R. Exc. at 7.

**Disposition**

Upon review, we shall grant PennDOT’s General Exception No. 8. Similar to its response to General Exception No. 7, NS has indicated that it will provide protective services in a timely manner whenever necessary for inspection, maintenance, and replacement of any or all of the bridges carrying a state route. Therefore, we shall direct NS to provide protective services in a timely manner, whenever necessary, at no cost to PennDOT. As such, General Exception No. 8, is hereby granted.

9. General Exception No. 9, NS’ Reply, and Disposition

In General Exception No. 9, PennDOT disagrees with the ALJ’s statement on page 35 of the Recommended Decision that it bear its costs incurred for inspections, maintenance, and bridge closures. PennDOT continues to request reimbursement consistent with its testimony in PennDOT Statement 1 at 34-35 and pages 49 through 51 of the transcripts of this proceeding.[[6]](#footnote-6) PennDOT Exc. at 4.

In Reply, NS dismisses PennDOT’s Exception regarding the ALJ’s statement on page 35 of the Recommended Decision that both PennDOT and NS bear their respective costs incurred in the past in compliance with the Orders at M-2013-2364201 for the SR 1025 bridge. NS also rejects PennDOT’s request that NS reimburse PennDOT for work PennDOT performed presumably for all the bridges. NS argues that in line with the reasons it highlighted on pages 21-22 of its Reply Brief, it is unreasonable to require NS to reimburse PennDOT for costs that PennDOT incurred during the tenure of NS’ predecessor. According to NS, this is particularly true because PennDOT is not being asked to repay any of the costs NS’ predecessor incurred, which were paid at its initial cost and expense. Therefore, NS avers that the ALJ’s recommendation in this matter is just and reasonable. NS R. Exc. at 8.

**Disposition**

Upon review, we shall grant, in part, General Exception No. 9 for clarification purposes as it applies to certain aspects of SR 1025 based on the specific language in the *May 2013 Order* and *November 2013 Secretarial Letter* (*see* disposition of PennDOT Exception No. 1 for a full discussion). The only finding the ALJ made regarding past work performed in relation to bridge closures was in Ordering Paragraph No. 1 regarding the SR 1025 crossing, and we do not view the Recommended Decision as overturning the prior reimbursements to PennDOT as delineated in the *May 2013 Order* and *November 2013 Secretarial Letter* and in the *April 2015 Order* pertaining to the T-821 bridge. As the prior railroad was NS’ predecessor, NS can be directed to pay these reimbursements. *Wheeling* at 793.

We will not grant this Exception regarding the remaining structures in this proceeding or regarding other allocation determinations by the ALJ in this proceeding, because the focus of this proceeding is the current and future allocation responsibilities of the Parties and the dispositions of the bridge structures. As we have indicated in our earlier dispositions, we agree with the ALJ’s recommendation regarding the allocation of costs and assignment of responsibilities in the instant proceeding. We find the ALJ’s recommendations to be just and reasonable and based on sound legal and factual grounds. The record is clear that while both Parties have benefitted and continue to benefit from this structure, they are also both responsible for its deteriorated state. Therefore, the ALJ found them both to be responsible and has directed them to share the costs of repair, maintenance and inspection of this bridge. We have indicated that we find the allocation is equitable, achieves a middle ground, and assigns responsibilities to all Parties.

10. General Exception No. 10, NS’ Reply, and Disposition

In General Exception No. 10, PennDOT objects to the lack of a proposed Ordering Paragraph directing NS to maintain the substructure and superstructure of the bridges after they are replaced. PennDOT Exc. at 4 (citing PennDOT St. 2 at 9).

In Reply, NS asserts that throughout this proceeding, the ALJ clearly discussed the mutual responsibility and benefits of the bridges to both PennDOT and NS and the basis for his cost allocation and assignment of responsibilities regarding the structures. Therefore, NS does not see any reason for the relief requested by PennDOT in General Exception No. 10. NS contends that PennDOT fails to cite any portion of the Recommended Decision and provides no reason to support this exception, which violates 52 Pa. Code § 5.533(b). According to NS, it has provided ample justifications in its Main and Reply Briefs and agrees that the ALJ’s recommendations in this proceeding are just and reasonable. NS R. Exc. at 8-9 (citing R.D. at 45-47, 64-67; NS M.B. at 3-13, 18-21; NS R.B. at 3-19).

**Disposition**

Upon review, we shall deny PennDOT’s General Exception No. 10. As we have indicated, we agree with the ALJ’s cost allocation and assignment of responsibilities regarding the structures in this proceeding and we find them to be just and reasonable.

D. Exceptions Relating to the Assigned Bridges

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

**a. Background**

SR 1025 crosses above the tracks of NS in Nicholson Borough, Wyoming County. 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. PennDOT St. 1 at 2; PennDOT Exh. A1. SR 2017, which also crosses the tracks of NS, continues to an intersection with SR 0011 in Hop Bottom Borough, Susquehanna County. PennDOT St. 1 at 2-3; PennDOT Exh. A1.

SR 1025 is designated as a Rural Local Collector Road that connects to SR 0092 and SR 0011. Collector Roads generally move traffic from Local Roads and Streets to Arterials. Unlike Arterials, Collector Roads are designed to provide access to residential properties. Collector Roads have lower speeds and are shorter in length. Major Collector Roads provide service to county seats, larger towns, and other traffic generators and connect routes of high classification and serve intra-county travel corridors. Minor Collector Roads are spaced at intervals to collect traffic from local roads and provide services to smaller communities and link local traffic generators with rural areas. Rural Local Collectors provide access to land adjacent to the collector network and connect this traffic to higher systems. Rural Local Collectors serve motorists over relatively short distances and constitute all roads not classified in one of the higher systems. PennDOT St. 1 at 3; PennDOT Exh. A1.

SR 1025 runs parallel to SR 0011 and can be used a bypass road if there is an incident on SR 0011 between the two points where SR 1025 intersects SR 0011. Traffic over the SR 1025 bridge is currently one lane and is controlled by two stop signs, one on each side of the bridge. PennDOT St. 1 at 3. The current Average Daily Traffic (ADT) at the SR 1025 crossing is estimated at 561 vehicles per day. PennDOT St. 1 at 4. Of this total, 93 are estimated to be trucks, three are estimated to be motorcycles, 324 are estimated to be automobiles, and 141 are estimated to be pickups/vans. PennDOT St. 1 at 4-5; PennDOT Exh. B1. PennDOT estimates that the ADT at the SR 1025 crossing will increase by .45% per year for the next twenty years. PennDOT St. 1 at 5-6; PennDOT Exh. 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 at 6; I&E St. 1 at 9; I&E Exh. 7A-7C. The face of the arch has severe concrete spalling or loss. NS St. 1 at 6.The arch has lost its parapet walls. NS St. 1 at 6; I&E St. 1 at 9; I&E Exh. 7A-7C. 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 at 6; I&E St. 1 at 9; I&E Exh. 7A-7C. Because of where the barriers were installed, the bridge has been reduced from two lanes to one lane. NS St. 1 at 6; I&E St. 1 at 9; I&E Exh. 7A-7C. The bridge is posted for a weight limit of 28-tons/32-ton combinations. NS St. 1 at 7; I&E Exh. 7B.

**b. Recommended Decision**

First, the ALJ reached determinations regarding the work to be performed at the SR 1025 crossing, the parties that would perform that work, the allocation of the costs of the work, and the assignment of future maintenance responsibilities. In so doing, the ALJ initially discussed the Commission Orders and Secretarial Letters pertaining to the SR 1025 crossing. The ALJ stated that the SR 1025 crossing is the subject of several Orders at Docket No. M-2013-2364201. R.D. at 34. The ALJ explained that the *May 2013 Order* directed PennDOT, at its initial cost, to perform all work and furnish all material necessary to close the bridge to all pedestrian and vehicular traffic and to provide for any detours necessary and maintain any barricades or fencing installed to prevent vehicular and pedestrian access to the bridge. The ALJ also explained that the *May 2013 Order* additionally directed PennDOT, at its initial cost, to provide any engineering inspections and analyses evaluating the condition of the bridge within thirty days. The *May 2013 Order* further directed PennDOT, at its initial cost, 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 within ninety days. *Id*. (citing PennDOT St. 1 at 6; PennDOT Exh. D2).

The ALJ continued that on November 8, 2013, the Commission issued the *November 2013 Secretarial Letter* 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. The *November 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. The ALJ noted that once the bridge was reopened, the *November 2013 Secretarial Letter* directed PennDOT, 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. The Commission directed D&H, at its initial cost and expense, to maintain the concrete barriers, fencing, and remainder of the bridge structure, excluding the roadway pavement. The ALJ also noted that the *November 2013 Secretarial Letter* did not address final future maintenance of the structure, the cost of that maintenance, or the disposition of the structure. R.D. at 34-35 (citing PennDOT St. 1 at 6-7; PennDOT Exh. D3).

The ALJ determined that it was just and reasonable for the Parties to bear their respective costs initially incurred in complying with the Orders at Docket No. M‑2013-2364201. The ALJ also determined that PennDOT and NS shall continue to inspect and maintain the existing crossing, consistent with the Commission’s *November 2013 Secretarial Letter* pending final disposition of the existing crossing. The ALJ reached this determination for several reasons.

First, the ALJ reasoned that NS’ predecessors constructed the SR 1025 bridge and created the crossing, as the existence of the crossing was due to DLW’s construction of a rail line. Second, the ALJ found that both Parties benefit from the continued existence of the grade-separated crossing. The ALJ stated that NS benefits from the grade separated crossing because it eliminates the possibility that a train will collide with vehicles or pedestrians at this location. The ALJ also stated that PennDOT derives the same benefit as NS from the grade separated crossing. Third, the ALJ concluded that PennDOT and NS have an interest in seeing that the work is performed on the bridge. The ALJ observed that 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. As such, the ALJ found that both Parties benefit from the crossing being repaired, reasoning that NS’ operations will no longer be endangered by pieces of the parapet falling on its right of way and PennDOT will have the road open to traffic again. R.D. at 35.

Fourth, the ALJ reasoned that NS’ predecessors bear some responsibility for the deteriorated condition of the crossing that has resulted in the need for work to be performed on the bridge. The ALJ stated that 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. *Id*. The ALJ observed that in the *June 1951 Order*, the Commission directed DLW, at its sole cost and expense, to maintain the substructure and superstructure of the SR 1025 bridge. *Id*. (citing PennDOT St. 1 at 6; PennDOT Exh. D1). The ALJ found that while NS purchased the rail line in September 2015 after much of the deterioration had occurred, NS purchased the line with the knowledge that the line and the structures had deteriorated due to deferred maintenance. The ALJ noted that NS was also aware of the ongoing proceeding concerning the SR 1025 crossing. R.D. at 35.

The ALJ next addressed the disposition of the crossing. The ALJ noted that none of the Parties advocated for abolishing this crossing. The ALJ summarized the Parties’ positions and evidence concerning the bridge. The ALJ stated that NS agrees to repair the existing bridge carrying SR 2015. R.D. at 36. Specifically, NS would restore the concrete on each side of the arch; patch and seal the exposed reinforcing steel on the underside of the arch; move the existing barriers to the edge of the bridge and permanently anchor those barriers to the bridge to become a new parapet wall. *Id*. at 36‑37. The ALJ explained that NS estimated that this construction work would cost $300,000, plus another $50,000 for construction plans and permits, and that the work could be completed by October 31, 2019. *Id*. at 37 (citing NS St. 1 at 6-8). The ALJ also explained that NS averred that the arch is structurally sound, and the bridge is currently posted for a 28-ton weight limit. NS additionally averred that its proposed work will restore the structural integrity of the outer edges of the bridge and restore the bridge back to its original width. R.D. at 37 (citing NS St. 1 at 6). The ALJ observed that NS estimates that this work will add twenty-five years to the useful life of the structure. R.D. at 37 (citing NS St. 1 at 12).

The ALJ stated that PennDOT recommends that the Commission order NS to replace the SR 1025 bridge, as DLW constructed the bridge approximately 100 years ago and the bridge is near the end of its service life. PennDOT averred that rehabilitation of the structure is possible but that the level of rehabilitation required with the SR 1025 structure is not cost effective. The ALJ noted that according to PennDOT, when rehabilitation costs exceed 50% of the replacement costs, PennDOT examines the age of the structure to determine the remaining service life. In this instance, PennDOT indicated that the existing concrete will have no more than twenty-five years of service life before it will deteriorate. R.D. at 37 (citing PennDOT St. 2 at 5). The ALJ continued that PennDOT presented evidence that the SR 1025 crossing is integral to the state highway system and 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. R.D. at 37 (citing PennDOT St. 2 at 2-3). Furthermore, Nicholson and Wyoming both presented testimony that the crossing serves regional, rather than local, traffic. R.D. at 37 (citing Nicholson St. 1 at 2-4; Wyoming St. 2 at 3-5). Based on this evidence, the ALJ concluded that rehabilitation or replacement of the structure was appropriate. R.D. at 38.

The ALJ determined that NS should repair the SR 1025 bridge as it proposed. The ALJ observed that NS’ proposal to repair the existing structure can be accomplished in a relatively short period of time – by the estimated completion date of October 31, 2019. The ALJ additionally observed that the estimated cost of NS’s proposed work, $350,000, is relatively inexpensive. The ALJ reasoned that NS’ relatively quick repair of the bridge 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. The ALJ stated that while PennDOT proposes that NS replace the bridge, PennDOT did not provide any information on how long it would take to replace the structure or how much replacement would cost. *Id*. Rather, PennDOT indicated that the SR 1025 crossing is not included in any regional transportation plan and that PennDOT funding is not available for this crossing based on the way that PennDOT and federal funds are allocated to fund highway projects. *Id*. (citing PennDOT St. 3 at 2, 4-5; PennDOT M.B. at 27-28, 33-34).

The ALJ also found that repairing the SR 1025 structure will extend the service life of the structure and, consequently, provide additional time to replace the structure. The ALJ noted that while PennDOT has argued in favor of replacing this structure and the other structures on this line, the evidence indicates that some level of coordination concerning when each of these bridges should be replaced is necessary, because if one bridge is taken out of service for replacement, the other bridges must remain open to provide alternate routes across NS’ rail line. The ALJ continued that there is no evidence indicating in what order or over what period the bridges should be replaced. The ALJ observed that 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. Accordingly, regardless of the order in which the bridges are replaced, the ALJ found it evident that several of the bridges will have to remain in service for an extended period before being replaced. R.D. at 39. The ALJ concluded that because 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, it will provide flexibility in scheduling and replacing other bridges on this rail line. *Id*. at 39-40.

Moreover, the ALJ concluded that since NS’ predecessors constructed the bridge and created the crossing, NS should continue to maintain the bridge after it completes the repair work. As noted above, the ALJ stated that NS’ predecessors bear some responsibility for the deteriorated condition of the crossing, which has led to the deteriorated condition of the SR 1025 bridge. The ALJ observed that it is not clear what repairs or maintenance, if any, DLW or its successors performed to the structure after the date of the *June 1951 Order*, but it is apparent that some portion of the current condition of the crossing is due to lack of repairs or maintenance. The ALJ found that NS will benefit from the repairs it will perform 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, and it will no longer have pieces of concrete from a deteriorating bridge falling onto its right of way. The ALJ additionally found that PennDOT will 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, as well as a crossing that is integral to the state highway system.

As such, the ALJ emphasized that NS’s obligation to maintain the repaired 1025 bridge will not continue indefinitely. *Id*. at 40. The ALJ noted that PennDOT avers 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. *Id*. at 40-41. The ALJ stated that the Commission has previously abolished at-grade crossings with ADTs of less than 2,000 on the basis that they were redundant. *Id*. at 41 (citing *Application of CSX Transportation Inc*., Docket No. A-11222266 (Order entered March 18, 1997)). The ALJ found that 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 in this case, the low traffic volume is a consideration in how long NS should be obligated to maintain the existing structure. The ALJ cited to *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*),a decision involving a highway bridge over this same rail line, in which the Commission ordered the crossing abolished and the structure removed where there was low ADT and the structure and crossing were found unnecessary to the state or local transportation system. The ALJ reasoned that the SR 1025 bridge and crossing were distinguishable from the structure and crossing in *Schwartz* because PennDOT, Nicholson, and Wyoming have all indicated that despite the low ADT, the structure and crossing are integral and necessary to the state and local transportation system. R.D. at 41.

Accordingly, the ALJ found that because NS’ repairs to the SR 1025 bridge will extend the service life of the bridge for twenty-five years, it was reasonable that NS only be obligated to continue to maintain the structure for a twenty-five-year period. The ALJ stated that if PennDOT has not taken steps to replace the SR 1025 within that period, then PennDOT shall assume maintenance for the existing SR 1025 bridge. The ALJ concluded that NS’ maintenance responsibility for the SR 1025 bridge will terminate on December 31, 2043. *Id*.

c. NS Exception No. 3 and PennDOT’s Reply; PennDOT’s Exception No. 2 and NS’ Reply; and Disposition

**(1) NS Exception No. 3 and PennDOT’s Reply**

In its third Exception,NS excepts to Ordering Paragraph No. 9, which states as follows: “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.” NS avers that this Ordering Paragraph conflicts with Ordering Paragraph No. 2, which states that NS and PennDOT “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.” NS Exc. at 2. NS explains that the *November 2013 Secretarial Letter*, at Ordering Paragraph Nos. 14 and 15, requires PennDOT to conduct future inspections of the bridge and for D&H to reimburse PennDOT 20% of the cost of future inspections. *Id*. (citing PennDOT Exh. D3 at 4). As such, NS believes that Ordering Paragraph No. 9 is superfluous unless it is amended to clarify that PennDOT conduct future inspections of the SR 1025 bridge at its sole cost and expense after December 31, 2043, consistent with the timeframes discussed in the Ordering Paragraphs before and after Ordering Paragraph No. 9. NS Exc. at 2. Therefore, NS requests that Ordering Paragraph No. 9 be amended as follows:

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 after December 31, 2043.

*Id.*

In reply, PennDOT states that it addresses the same issue in its Exceptions and requests that the Commission adopt its argument. PennDOT R. Exc. at 2.

**(2) PennDOT’s Exception No. 2 and NS’ Reply**

In its Exception No. 2, PennDOT excepts to Ordering Paragraph Nos. 2 and 9 on the basis that they are inconsistent. PennDOT states that Ordering Paragraph No. 2 directs compliance with the Commission’s *November 2013 Secretarial Letter*, PennDOT Exhibit D3, and would require NS to reimburse PennDOT 20% of the cost of inspection. PennDOT states that, on the other hand, Ordering Paragraph No. 9 directs PennDOT to inspect the bridge at its sole cost and expense. PennDOT Exc. at 5. PennDOT avers that federal funds are not used for inspections of bridges carrying state roads, and NS did not provide testimony that it was not willing to reimburse PennDOT for these costs. *Id*. (citing PennDOT St. 2 at 2). Accordingly, PennDOT argues there is no reason to overturn the prior Secretarial Letter, and it is just and reasonable for NS to reimburse PennDOT 20% percent of the inspection costs. PennDOT Exc. at 5.

In reply, NS agrees with PennDOT that clarification is necessary regarding Ordering Paragraph No. 9, as addressed in NS’ Exceptions. NS disagrees, however, that Ordering Paragraph Nos. 2 and 9 are inconsistent. In order to clarify the ALJ’s intent, NS recommends that Ordering Paragraph No. 9 be amended to contain the date upon which PennDOT’s inspection at its sole cost and expense should begin, “December 31, 2043.” NS R. Exc. at 9.

**Disposition**

Upon review, we find that the ALJ intended to direct PennDOT to conduct future inspections of the SR 1025 bridge at its sole cost and expense after December 31, 2043, consistent with the timeframes discussed in the Ordering Paragraphs before and after Ordering Paragraph No. 9. We find that this result is sound and is consistent with the ALJ’s analysis of the applicable allocation factors. Accordingly, we shall clarify current Ordering Paragraph No. 9 in the Recommended Decision to state that PennDOT will be solely responsible for inspection of the bridge after December 31, 2043, as follows:

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 **after December 31, 2043. [new language in bold, Ordering Paragraph No. 14 herein]**

To this extent, we will grant NS’ Exception on this issue.

**d. PennDOT Exception No. 1, NS’ Reply, and Disposition**

PennDOT excepts to Ordering Paragraph No. 1 for the reasons set forth in PennDOT’s General Exception No. 9. Ordering Paragraph No. 1 states the following: “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.” PennDOT also avers that the language in Ordering Paragraph No. 1 is inconsistent with PennDOT Exhibit D3, which directs NS to reimburse PennDOT. PennDOT Exc. at 5.

In response, NS states that it addressed PennDOT’s argument in the response NS provided to PennDOT General Exception 9. NS reiterates that expecting NS to reimburse PennDOT for initial costs it incurred while a predecessor railroad was in control is unreasonable because PennDOT is not required to reimburse NS for initial costs incurred by the predecessor railroad. NS R. Exc. at 9.

**Disposition**

Upon review, we will grant PennDOT’s Exception as it applies to certain aspects of the SR 1025 crossing and the specific language in the *November 2013 Secretarial Letter* and the *May 2013 Order*. We find that some clarification is necessary to Ordering Paragraph No. 1. The language in the Recommended Decision at pages 34 through 35 and in Ordering Paragraph No. 1 appears to reflect the ALJ’s intention that the costs and responsibilities assigned to the parties in the *May 2013 Order* and the *November* *2013 Secretarial Letter* remain in full force and effect; however, there is no express mention of the reimbursement that NS’ predecessor was required to pay to PennDOT. Specifically, Ordering Paragraph No. 13 in the *May 2013 Order* states the following: “Delaware and Hudson Railway Company, Inc. shall reimburse the Pennsylvania Department of Transportation the amount of $12,045.73 for work the Department performed pursuant to the Commission’s Order entered on May 23, 2013.”

The work that the Parties performed at the SR 1025 crossing, and that is addressed in the *May 2013 Order* and *November 2013 Secretarial Letter*, pertains to work that was conducted in relation to the closing of the bridge. The work at issue has been completed, and it does not necessarily impact the current or future allocation responsibilities of the Parties or the disposition of the bridge structure. For instance, PennDOT performed all work and furnished all material necessary to close the bridge to traffic; provide for necessary detours; and maintain barricades or fencing installed to prevent access to the bridge. PennDOT also submitted an engineering analysis to the Commission regarding the condition of the bridge. As the *May 2013 Order* and *November 2013 Secretarial Letter* remain effective, we shall amend Ordering Paragraph No. 1 in the Recommended Decision, as follows:

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, **as well as any reimbursements directed 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. **[new language in bold, Ordering Paragraph No. 5 herein]**

**e. PennDOT’s Exception No. 3, NS’ Reply, and Disposition**

PennDOT excepts to Ordering Paragraph No. 3 for clarification purposes, consistent with PennDOT’s General Exceptions 1 and 2. PennDOT avers that there should be a clear directive that NS must do the concrete work identified in PennDOT’s inspection report for this bridge. PennDOT Exc. at 5.

In its Replies to Exceptions, NS avers that Ordering Paragraph No. 3 is not unclear. Rather, NS states that the Recommended Decision clearly requires NS to do the work it identified and proposed, not the work that PennDOT proposed, because NS’ proposed work can be performed relatively quickly and will extend the bridge’s service life. NS argues that Ordering Paragraph No. 3 is reasonable, as NS discussed in its Replies to PennDOT General Exceptions Nos. 1 and 2, particularly because NS is responsible for additional repairs necessary until December 31, 2043 if the concrete work does not last the anticipated twenty-five years. NS R. Exc. at 10.

**Disposition**

For the disposition of this issue, please refer to our Dispositions for PennDOT’s General Exceptions Nos. 1 and 2, *supra*. Consistent with our prior discussion, we will deny PennDOT’s exception on this issue and NS shall submit appropriate repair plans based on sound engineering principles. PennDOT and other parties will have the opportunity to comment on NS’ plans prior to final Commission approval of the plans.

**f. PennDOT’s Exception No. 4, NS’ Reply, and Disposition**

PennDOT excepts to Ordering Paragraph No. 8 for clarification purposes. PennDOT Exc. at 5. Ordering Paragraph No. 8 provides “[t]hat 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.” PennDOT requests clarification of this Ordering Paragraph regarding whether the assigned responsibilities include the roadway surface. PennDOT states that it will continue to remove snow, ice, and debris from the roadway. PennDOT Exc. at 5-6.

In response, NS states that it also seeks clarification of Ordering Paragraph No. 8, as explained in its Exceptions, and contends that the roadway surface should be allocated to PennDOT as it is customary for a highway authority to maintain the roadway carried on a bridge structure. NS R. Exc. at 10.

**Disposition**

Upon review, we agree with the Parties and will clarify that PennDOT will be responsible for maintaining the roadway surface. Accordingly, Ordering Paragraph No. 8 in the Recommended Decision will be amended as follows:

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**,** **except that PennDOT shall be responsible for the roadway paving located on the bridge and its approaches and shall remove any snow, ice or debris from the roadway paving on the SR 1025 Bridge and its approaches. [new language in bold, Ordering Paragraph No. 13 herein]**

**g. PennDOT’s Exception No. 5, NS’ Reply, and Disposition**

PennDOT objects to Ordering Paragraph No. 10 for the reasons set forth in its General Exceptions Nos. 5, 6, and 7. PennDOT Exc. at 6. Ordering Paragraph No. 10 provides “[t]hat 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.”

In response, NS refers to its Replies to PennDOT’s General Exceptions Nos. 5, 6, and 7. NS argues that it is reasonable for the entity that replaced a bridge to assume maintenance responsibilities thereof. NS R. Exc. at 11 (citing NS M.B. at 3-13, 18-21; R.B. at 14-19, 20-21).

**Disposition**

For the disposition of this issue, please refer to our Dispositions for PennDOT’s General Exceptions Nos. 5, 6, and 7, *supra*. Consistent with our earlier dispositions of PennDOT’s General Exceptions Nos. 5-7, we are of the opinion that the ALJ appropriately allocated costs and adequately assigned maintenance and inspection responsibilities in this proceeding.

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

**a. Background**

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

The current ADT at the SR 2032 crossing is estimated at thirty-nine vehicles per day. PennDOT St. 1 at 13. Of this total, nine are estimated to be trucks, twenty-one vehicles are estimated to be automobiles, and nine are estimated to be pickups/vans. PennDOT St. 1 at 13-14. The bridge is used by Marcellus gas related traffic which may fluctuate depending on the season and active wells. PennDOT St. 1 at 14. PennDOT estimates that the ADT at the SR 1018 crossing will increase by 0.56% per year for the next twenty years. PennDOT St. 1 at 14; PennDOT Exh. 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 at 8; I&E St. 1 at 6; I&E Exh. 4A‑4D. The original parapets have been removed and replaced by precast concrete barriers with a chain link fence mounted on top. I&E St. 1 at 6; I&E Exh. 3A-4D. 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 at 6.

**b. Recommended Decision**

Initially, the ALJ provided background information regarding Commission Orders pertaining to the SR 2032 crossing. The ALJ stated that the SR 2032 crossing was the subject ofthe Order entered April 9, 2015, at Docket No. I-2015-2472242 (*April 2015 Order*) which directed PennDOT to inspect this bridge and five others. R.D. at 48 (citing PennDOT St. 1 at 15; PennDOT Exh. D1). The ALJ observed that the *April 2015 Order* did not assign maintenance responsibilities for the SR 2032 bridge. R.D. at 48. The ALJ also stated that the SR 2032 crossing was the subject of a Commission Order dated March 3, 1998, at Docket No. M-980137 (*March 1998 Order*), which directed D&H to install new concrete parapets. R.D. at 48 (citing PennDOT St. 1 at 15; PennDOT Exh. D6). The ALJ noted that this Order directed D&H to maintain the substructure and superstructure of the bridge. R.D. at 48.

Next, the ALJ concluded that it was just and reasonable for PennDOT and NS to bear their respective costs initially incurred as a result of the prior Commission Orders. In addition, the ALJ stated that PennDOT and NS shall continue to inspect and maintain the existing crossing, in accordance with those Orders, pending final disposition of the existing SR 2032 crossing. The ALJ’s conclusion was based on several reasons. First, the ALJ averred that NS’ predecessors constructed the bridge and created the crossing. R.D. at 49. Second, the ALJ determined that both Parties benefit from the continued existence of the grade-separated crossing because it eliminates the possibility that a train will collide with vehicles or pedestrians at this location. The ALJ notes that PennDOT derives the same benefit as NS from the grade separated crossing, noting that the safe interface between rail and vehicle traffic is a factor the Commission may consider in allocating costs. *Id.* at 49. Third, the ALJ stated that NS’ predecessors bear some responsibility for the deteriorated condition of the crossing. NS purchased the line knowing that the line and the structures suffered from deferred maintenance, and that the Commission could possibly allocate responsibility and costs to it. *Id.* at 49.

Having addressed the assignment of future inspection and maintenance responsibilities for the SR 2032 crossing, the ALJ then addressed the disposition of the crossing. The ALJ first addressed the Parties’ positions briefly, as follows. NS stated that it would agree to repair the existing bridge carrying SR 2032. While NS contends that the bridge is structurally sound, it would reface the concrete on each side of the arch. NS estimates that this construction work would cost $100,000. NS St. 1 at 8.

PennDOT recommended that the Commission order NS to replace the SR 2032 bridge. PennDOT M.B. at 6; PennDOT St. 2 at 9. PennDOT pointed out that DLW constructed the bridge approximately 100 years ago and that the bridge is near the end of its service life. PennDOT St. 2 at 9. PennDOT indicated 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. PennDOT contended 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. PennDOT conceded that the existing concrete will have no more than twenty-five years of service life left before it will deteriorate. PennDOT St. 2 at 9.

PennDOT presented evidence that the SR 2032 crossing is integral to the state highway system. PennDOT does not consider the crossing to be redundant. 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. PennDOT St. 2 at 10.

The ALJ determined that the repair of the existing bridge carrying SR 2032 by resurfacing the concrete on each side of the arch will be done by NS at an estimated cost of $100,000. R.D. at 50 (citing NS St. 1 at 8). The ALJ noted that PennDOT recommended that NS replace the SR 2032 bridge since DLW constructed the bridge approximately 100 years ago and it is near the end of its service life. R.D. at 50 (citing PennDOT St. 2 at 9). The ALJ also noted that PennDOT had indicated that the SR 2032 crossing is integral to the state highway system and it does not consider it to be redundant. R.D. at 50 (citing PennDOT St. 2 at 10).

The ALJ found that NS should repair the SR 2032 bridge as it proposed. The ALJ’s conclusion was based on several reasons. First, the work NS proposed can be performed in a relatively short period of time and will extend the service life of the bridge, thereby providing flexibility in scheduling and replacing other bridges on this rail line. R.D. at 52. The ALJ continued that since NS’ predecessors constructed the bridge and created the crossing, NS should continue to maintain the bridge after it completes the proposed repair work. Second, the ALJ reasoned that 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 ALJ noted that while the *March 1998 Order* directed D&H to install new concrete parapets and to maintain the substructure and superstructure of the SR 2032 bridge, it is not clear what repairs or maintenance, if any, D&H performed to the structure after the date of the *March 1998 Order*. *Id.* at 52.

Third, the ALJ stated that both Parties will benefit from the replacement of the bridge. The ALJ observed that NS will continue to have a grade separated crossing that eliminates the possibility of a collision between its trains and vehicles using the roadway, and NS will no longer have the possibility of pieces of concrete from a deteriorating bridge falling onto its right of way. The ALJ also observed that PennDOT 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, and because replacement will allow for the continuation of a crossing that is integral to the state highway system. *Id.* at 53. The ALJ noted that PennDOT contended that SR 2032 is integral to the state highway system and is not redundant even though the ADT is estimated at only 39 vehicles per day. The ALJ averred that this low traffic volume should be a consideration in how long NS should be obligated to maintain the existing structure. *Id.* at 53. Therefore, the ALJ found that it is reasonable for NS’ maintenance responsibility for the SR 2032 bridge to terminate on December 31, 2043, the twenty-five years that the repairs will extend the service life of the SR 2032 bridge. *Id.* at 54.

**c. NS’ Exception No. 1, PennDOT’s Reply, and Disposition**

In its first Exception, NS states that Finding of Fact No. 84 of the Recommended Decision fails to include pertinent language from the *March 1998 Order*. Finding of Fact No. 84 states: “The March 3, 1998 order directed D&H to maintain the substructure and superstructure of the SR 2032 bridge.” NS avers that this Finding of Fact should read: “The March 3, 1998 order directed D&H to maintain the substructure and superstructure of the SR 2032 bridge at its initial cost and expense.” NS Exc. at 1.

In reply, PennDOT refers to its argument in its Main Brief on pages 15-17 in which it contended that the Commission erred by *sua sponte* changing the previously assigned maintenance of the SR 1025 crossing for the railroad from its sole cost and expense to its initial cost and expense. PennDOT R. Exc. at 1 (citing PennDOT M.B. at 15-17).

**Disposition**

First, we find that PennDOT’s Reply is misplaced in response to NS’ Exception pertaining to the SR 2032 bridge and the Orders that pertain to the SR 2032 bridge. PennDOT’s argument appears to address issues related to the SR 1025 crossing and Orders that pertain to the SR 1025 crossing. All issues that PennDOT has raised in its Exceptions concerning SR 1025 have been addressed above.

With regard to NS’ Exception, upon review, we find that the additional language requested by NS should be included in Finding of Fact No. 84, because it is consistent with the language in the *March 1998 Order*. Accordingly, we shall modify Finding of Fact No. 84 to read as follows:

The March 3, 1998 order directed D&H to maintain the substructure and superstructure of the SR 2032 bridge **at its initial cost and expense**. **[new language in bold]**

**d. NS’ Exception No. 6 and PennDOT’s Reply; PennDOT’s Exception No. 11 and NS’ Reply; and Disposition**

**(1) NS’ Exception No. 6 and PennDOT’s Reply**

In its sixth Exception, NS argues that Ordering Paragraph No. 30 states exactly what Ordering Paragraph No. 21 states, *i.e.*, “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.” NS avers that Ordering Paragraph No. 30 is superfluous unless it clarifies that those inspection obligations continue after December 31, 2043 when PennDOT shall be responsible to maintain the entire SR 2032 bridge pursuant to Ordering Paragraph No. 31. NS Exc. at 5.

In reply, PennDOT states that it has addressed the same issue in its Exception No. 11 and requests that this Commission adopt its argument. PennDOT R. Exc. at 3.

**(2) PennDOT’s Exception No. 11 and NS’ Reply**

In PennDOT’s eleventh exception, PennDOT objects to Ordering Paragraph Nos. 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 PennDOT General Exception No. 6. PennDOT Exc. at 7.

In reply, NS agrees with regard to Ordering Paragraph No. 30, to the extent that it would be superfluous without the addition of the date “December 31, 2043” as explained in NS’ Exception No. 6. NS disagrees with PennDOT’s assertion that it should not bear the costs assigned to it. NS R. Exc. at 13.

**Disposition**

We shall grant NS’ Exception No. 6 and clarify Ordering Paragraph No. 30 to state that PennDOT’s inspection obligations continue after December 31, 2043. Accordingly, Ordering Paragraph No. 30 in the Recommended Decision will be amended to read as follows:

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 **after December 31, 2043**. **[new language in bold, Ordering Paragraph No. 42 herein]**

As for PennDOT’s exception to bearing the costs of the inspection, see Disposition for PennDOT’s General Exception No. 6, *supra*.

**e. PennDOT’s Exception No. 12 and NS’ Reply and Disposition**

In its twelfth exception PennDOT seeks clarification to Ordering Paragraph No. 24 to reflect that NS must do the concrete work identified in PennDOT’s Inspection Report for SR 2032. PennDOT Exc. at 7. PennDOT also refers to its General Exceptions Nos. 1 and 2, *supra*, in support of this Exception.

NS replies that Ordering Paragraph No. 24 is not unclear. NS references its reply to PennDOT’s General Exceptions Nos. 1 and 2, *supra*, in support of its argument and states that when read in conjunction with the ALJ’s discussion of both Parties’ repair proposals on pages 50-52 of the Recommended Decision, it becomes clear that the ALJ is referring to NS’ proposed repairs. NS further states that had the ALJ wanted the order to reflect PennDOT’s proposed repairs, the ALJ would have indicated this. Instead, the ALJ concluded that NS should repair the SR 2032 bridge as it has proposed. Thus, NS further submits that Ordering Paragraph No. 24 is reasonable and equitable, considering that NS is also responsible for the maintenance of its repairs until December 31, 2043. *Id.*

**Disposition**

For the disposition of this issue, please refer to the Dispositions of PennDOT’s General Exceptions Nos. 1 and 2, *supra.* Consistent with our prior discussion, we will deny PennDOT’s exception on this issue. Consistent with our prior dispositions, NS will submit appropriate repair plans based on sound engineering principles, and PennDOT and other parties will have the opportunity to comment on NS’ plans prior to final Commission approval.

**f. PennDOT’s Exception No. 13, NS’ Reply, and Disposition**

PennDOT’s objects to Ordering Paragraph No. 31 in its thirteenth exception for the same reasons set forth in its General Exception No. 5, *supra*. PennDOT Exc. at 7.

NS rejoins that it disagrees with PennDOT’s assertion that it should not have to maintain the SR 2032 bridge after December 31, 2043, and references its reply to PennDOT’s General Exception No. 5, *supra*, in support of its position. Thus, NS opines that the ALJ’s determination that PennDOT should be responsible for the structure it owns carrying its highway after replacement is reasonable and should not be changed. NS R. Exc. at 14-15.

**Disposition**

For the disposition of this issue, please refer to our Disposition for PennDOT’s General Exception No. 5, *supra*. Consistent with our disposition of General Exception No. 5, we shall deny PennDOT’s Exception, as we find that the ALJ properly allocated replacement and maintenance responsibility to PennDOT.

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

**a. Background**

SR 2041 crosses above the tracks of NS in Hop Bottom Borough, Susquehanna County. 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. SR 2041 is designated as a Minor Collector Road. PennDOT St. 1 at 17; PennDOT Exh. A4.

The current ADT at the SR 2041 crossing is estimated at 416 vehicles per day. PennDOT St. 1 at 17. Of this total, forty-five are estimated to be trucks, two vehicles are estimated to be motorcycles, two hundred forty-four vehicles are estimated to be automobiles, and one hundred twenty-five are estimated to be pickups/vans. PennDOT St. 1 at 18. PennDOT estimates that the ADT at the SR 1018 crossing will increase by 0.56% per year for the next twenty years. PennDOT St. 1at 19; PennDOT Exh. 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 at 7; I&E St. 1 at 7; I&E Exh. 5A-5B. Deterioration in the deck under the parapets has undermined support for the parapets. I&E St. 1 at 7; I&E Exh. 35A-5B. The parapets could dislodge if a vehicle strikes one of them. I&E St. 1 at 5.

**b. Recommended Decision**

Initially, the ALJ provided background information regarding Commission Orders pertaining to the SR 2041 crossing. The ALJ stated that the SR 2041 crossing was the subject ofthe *April 2015 Order* which directed PennDOT to inspect this bridge and five others. R.D. at 55 (citing PennDOT St. 1 at 20; PennDOT Exh. D1). The ALJ observed that the *April 2015 Order* did not assign maintenance responsibilities for the SR 2041 bridge. R.D. at 55. The ALJ also stated that the SR 2041 crossing was the subject of a Commission Order dated August 5, 1947, at Docket No. A-68459, which directed DLW to maintain the substructure and superstructure of the bridge. R.D. at 55 (citing PennDOT St. 1 at 19; PennDOT Exh. D7). The ALJ noted that this Order directed D&H to maintain the substructure and superstructure of the bridge. R.D. at 55 (citing PennDOT St. 1 at 20; PennDOT Exh. D7).

Next, the ALJ concluded that it was just and reasonable for PennDOT and NS to bear their respective costs initially incurred as a result of the prior Commission Orders. In addition, the ALJ stated that PennDOT and NS shall continue to inspect and maintain the existing crossing, in accordance with those orders, pending final disposition of the existing SR 2041 crossing. The ALJ’s conclusion was based on several reasons. First, the ALJ averred that NS’ predecessors constructed the bridge and created the crossing. R.D. at 55-56. Second, the ALJ determined that both Parties benefit from the continued existence of the grade-separated crossing because it eliminates the possibility that a train will collide with vehicles or pedestrians at this location. The ALJ notes that PennDOT derives the same benefit as NS from the grade separated crossing, noting that the safe interface between rail and vehicle traffic is a factor the Commission may consider in allocating costs. *Id.* at 56. Third, the ALJ stated that NS’ predecessors bear some responsibility for the deteriorated condition of the crossing. NS purchased the line knowing that the line and the structures suffered from deferred maintenance, and that the Commission could possibly allocate responsibility and costs to it. *Id.* at 56.

Having addressed the assignment of future inspection and maintenance responsibilities for the SR 2041 crossing, the ALJ then addressed the disposition of the crossing. Initially, the ALJ addressed the Parties’ positions on this issue, as follows. NS agreed to repair the existing bridge carrying SR 2041. NS St. 1 at 7-8. NS would repair the concrete on the left spandrel wall and patch concrete on certain areas. NS estimated that this repair work would cost $50,000. NS St. 1 at 8.

PennDOT recommended that the Commission order NS to replace the SR 2041 bridge. PennDOT pointed out that DLW constructed the bridge approximately 100 years ago and that the bridge is near the end of its service life. PennDOT St. 2 at 14. PennDOT indicated 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. PennDOT contended 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. PennDOT conceded that the existing concrete will have no more than twenty-five years of service life left before it will deteriorate. PennDOT St. 2 at 14.

PennDOT presented evidence that the SR 2041 crossing is integral to the state highway system. PennDOT does not consider the crossing to be redundant. 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. PennDOT St. 2 at 13.

The ALJ determined that the repair of the existing bridge carrying SR 2041 by repairing the concrete on the left spandrel wall, and patching concrete on various areas will be done by NS at an estimated cost of $50,000. R.D. at 57 (citing NS St. 1 at 7-8). The ALJ noted that PennDOT recommended that NS replace the SR 2041 bridge since DLW constructed the bridge approximately 100 years ago and it is near the end of its service life. R.D. at 57 (citing PennDOT St. 2 at 14). The ALJ also noted that PennDOT indicated that the SR 2041 crossing is integral to the state highway system and it does not consider it to be redundant. R.D. at 57 (citing PennDOT St. 2 at 12-13).

The ALJ concluded that NS should repair the SR 2041 bridge as it proposed. The ALJ’s conclusion was based on several reasons. First, the work NS proposed can be performed in a relatively short period of time and will extend the service life of the bridge, thereby providing flexibility in scheduling and replacing other bridges on this rail line. R.D. at 58-59. The ALJ continued that since NS’ predecessors constructed the bridge and created the crossing, NS should continue to maintain the bridge after it completes the repair work proposed. Second, the ALJ reasoned that 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 ALJ noted that while the August 5, 1947 Order at Docket No. A-68459 directed DLW to maintain the substructure and superstructure of the SR 2041 bridge, it is not clear what repairs or maintenance, if any, DLW or its successors performed to the structure after the date of the 1947 Order. *Id.* at 59.

Third, the ALJ stated that both Parties will benefit from the replacement of the bridge. The ALJ observed that NS will continue to have a grade separated crossing that eliminates the possibility of a collision between its trains and vehicles using the roadway, and NS will no longer have the possibility of pieces of concrete from a deteriorating bridge falling onto its right of way. The ALJ also observed that PennDOT 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, and because replacement will allow for the continuation of a crossing that is integral to the state highway system. R.D.at 60. The ALJ noted that PennDOT contended that SR 2041 is integral to the state highway system and is not redundant even though the ADT is estimated at only 416 vehicles per day. The ALJ averred that this low traffic volume should be a consideration in how long NS should be obligated to maintain the existing structure. *Id.* at 60. Therefore, the ALJ found that it is reasonable for NS’ maintenance responsibility for the SR 2041 bridge to terminate on December 31, 2043, the twenty-five years that the repairs will extend the service life of the SR 2041 bridge. *Id.* at 61.

**c. NS’ Exception No. 7 and PennDOT’s Reply; PennDOT’s Exception No. 14 and NS’ Reply; and Disposition**

**(1) NS’ Exception No. 7 and PennDOT’s Reply**

In its seventh Exception, NS argues that Ordering Paragraph 41 states exactly what Ordering Paragraph 32 states: “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.” NS avers that Ordering Paragraph 41 is superfluous unless it clarifies that those inspection obligations continue after December 31, 2043, when PennDOT shall be responsible to maintain the entire SR 2041 bridge pursuant to Ordering Paragraph 42. NS Exc. at 5-6.

PennDOT replies that it has addressed the same issue in its Exception No. 14 (see below) and requests that this Commission adopt its argument. PennDOT R. Exc. at 3.

**PennDOT’s Exception No. 14 and NS’ Reply**

PennDOT objects to Ordering Paragraphs 32 and 41 as they apply to the SR 2041 bridge because they appear to be redundant. Further, PennDOT excepts to bearing the costs of the inspections for the reasons set forth in its General Exception No. 6, *supra.* PennDOT Exc. at 7.

In reply, NS agrees with PennDOT to the extent that Ordering Paragraph 41 would be superfluous unless, as it submitted in its Exception No. 7, *supra*, clarification is added to reflect that those inspection obligations continue *after December 31, 2043*, when PennDOT will be responsible to maintain the entire SR 2041 bridge pursuant to Ordering Paragraph No. 42. In addition, NS disagrees with PennDOT’s assertion that it should not bear the costs assigned to it. NS R. Exc. at 15.

**Disposition**

We shall grant NS’ Exception No. 7 and clarify Ordering Paragraph No. 41 to state that PennDOT’s inspection obligations continue after December 31, 2043. Ordering Paragraph No. 41 in the Recommended Decision will be amended to read as follows:

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 **after December 31, 2043. [new language in bold, Ordering Paragraph No. 57 herein]**

As for PennDOT’s exception to bearing the costs of the inspection, please refer to our Disposition for PennDOT’s General Exception No. 6, *supra.*

**d. PennDOT’s Exception No. 15; NS’ Reply; and Disposition**

PennDOT asserts in its Exception No. 15 that clarification should be added to Ordering Paragraph No. 35 to reflect that NS must do the concrete work identified in PennDOT’s inspection report for this bridge. PennDOT Exc. at 8.

In reply, NS avers that Ordering Paragraph No. 35 is not unclear and is reasonable. In support of its argument, NS references its reply to PennDOT’s General Exceptions Nos. 1 and 2, *supra*. NS opines that Paragraph No. 35 clearly establishes that NS must submit its final repair plans for Commission approval with respect to its proposed repairs for the SR 2041 structure. Additionally, NS points out that this is consistent with the ALJ’s Recommended Decision on page 58 where he concluded that the bridge should be repaired as NS has proposed and not as PennDOT has proposed. NS R. Exc. at 15.

NS reiterates that along with its responsibility for repairing the structure, comes the responsibility to maintain the structure until December 31, 2043. Thus, NS submits that it is responsible for making all additional repairs until then should its initial repairs not be sufficient to last twenty-five years. *Id.*

**Disposition**

For the disposition of this issue, please refer to our Dispositions for PennDOT’s General Exceptions Nos. 1 and 2, *supra*. Consistent with our prior discussion, we will deny PennDOT’s exception on this issue. As we previously determined, NS shall submit appropriate repair plans based on sound engineering principles and PennDOT and other parties will have the opportunity to comment on NS’ plans prior to final Commission approval.

**e. PennDOT’s Exception No. 16, NS’ Reply, and Disposition**

PennDOT’s objects to Ordering Paragraph No. 42[[7]](#footnote-7) in its sixteenth Exception for the same reasons set forth in its General Exceptions Nos. 5 and 10, *supra*. PennDOT Exc. at 8.

NS rejoins that it disagrees with PennDOT’s assertion that PennDOT should not have to maintain the SR 2041 bridge after December 31, 2043. NS references it reply to PennDOT’s General Exceptions Nos. 5 and 10 in support of its argument on this matter. NS R. Exc. at 16.

**Disposition**

For the disposition of this issue, please refer to our Dispositions for PennDOT’s General Exceptions Nos. 5 and 10, *supra*. Consistent with our disposition of General Exception Nos. 5 and 10, we shall deny PennDOT’s Exception, as we find that the ALJ properly allocated replacement and maintenance responsibility to PennDOT after December 31, 2043.

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

**a. Background**

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

The parties did not provide 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 and Susquehanna County. Great Bend stated that since the closure of the T-821 bridge, school buses serving the Blue Ridge School are currently limited to one access route to the school complex. Great Bend also stated that the T-821 bridge closure has disrupted residents and businesses in Great Bend, specifically that 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 at 5. According to Great Bend, some residents now have an approximately ten-mile detour. In addition, local emergency services have been adversely impacted by the T-821 bridge closure, as response times for emergency services have increased. Great Bend St. 1 at 6.

The bridge carrying T-821 over the tracks of NS is an 88’ single span thru-girder bridge built in approximately 1914. The bridge was closed to traffic on December 19, 2017. I&E St. 1 at 4; I&E Exh. 2A-2C; NS St. 1 at 8; Great Bend St. 1 at 4.

**b. Recommended Decision**

Initially, the ALJ provided background information regarding Commission Orders and Secretarial Letters pertaining to the T-821 crossing. The ALJ stated that the T-821 crossing was the subject ofthe *April 2015 Order* which directed PennDOT to inspect this bridge and five others. R.D. at 71 (citing PennDOT St. 1 at 30; PennDOT Exh. D1). The ALJ observed that the *April 2015 Order* did not assign maintenance responsibilities for the T-821 bridge. R.D. at 71. The ALJ also stated that the T-821 crossing was the subject of a Commission Secretarial Letter issued January 4, 2018, at Docket No. I-2015-2472242, which affirmed the closing of the T-821 bridge. R.D. at 71 (citing PennDOT St. 1 at 31; PennDOT Exh. D13). The ALJ noted that the Secretarial Letter did not assign maintenance responsibilities for the T-821 bridge. R.D. at 71. Additionally, the T-821 crossing was the subject of *Great Bend Twp. v. Consolidated Rail Corp., et al.*, Docket No. C-79081404(Order entered August 14, 1980) (“*T-821 1980 Order*”), that directed Consolidated Rail Corporation (Conrail), the owner of the rail line at that time, to repair the southwest wingwall of the T-821 bridge. R.D. at 72 (citing PennDOT St. 1 at 31; PennDOT Exhs. D10 and D13). The ALJ observed that the Order did not assign maintenance responsibilities for the T-821 bridge. R.D. at 72.

Further, the T-821 crossing was the subject of *Great Bend Twp. v. Consolidated Rail Corp., et al.*, Docket No. C-79081404 (Order entered February 22, 1985) (“*T-821 1985 Order*”), which directed that D&H maintain its railroad facilities at the crossing. R.D. at 72 (citing PennDOT St. 1 at 31; PennDOT Exh. D11). The ALJ stated that the Order did not assign maintenance responsibilities for the T-821 bridge. R.D. at 72. Finally, the ALJ noted that the T-821 crossing was the subject of *In the Matter of the Abolition of Grade Crossings of the Delaware, Lackawanna and Western Railroad Company’s Tracks over the Cochecton and Great Bend Turnpike, and the Construction of a Crossing above Grade in the Township of Great Bend, Susquehanna County*, 1 Pa. P.U.C. 361, Docket No. A-321, 1914 (Order entered April 8, 1915) (“*T-821 1915 Order*”), which directed the abolition of two at grade crossings and construction of an above grade crossing. R.D. at 72 (citing PennDOT St. 1 at 31; PennDOT Exh. D12). The Order also directed DLW to maintain the T-821 bridge. R.D. at 72 (citing PennDOT St. 1 at 31; PennDOT Exh. D12).

Next, the ALJ concluded that it was just and reasonable for NS to inspect and maintain the existing bridge and for Great Bend to reimburse NS 10% of the costs of inspection and maintenance. The ALJ’s conclusion was based on two reasons. First, the ALJ determined that both Parties benefit from the continued existence of the grade-separated crossing. The ALJ stated that assigning maintenance responsibility to NS will allow the grade separated crossing to remain open to both train and vehicle traffic, noting that the safe interface between rail and vehicle traffic is a factor the Commission may consider in assigning maintenance. Second, the ALJ determined that both NS and Great Bend bear some responsibility for the deteriorated condition of the crossing. The ALJ reasoned that NS’ predecessors had some responsibility for the deteriorated condition of the crossing, which contributed to the need for work to be performed on the bridge. R.D. at 72. The ALJ observed that 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. *Id*. at 72-73. The ALJ also observed that Great Bend failed to perform any meaningful repairs or maintenance to the structure even though the bridge carries a township highway. *Id*. at 73.

Having addressed the assignment of future inspection and maintenance responsibilities for the T-821 crossing, the ALJ then addressed the disposition of the crossing. The ALJ noted that NS is developing repair plans for the bridge seats and abutments for the T-821 bridge and estimates the total cost of this work will be $200,000. *Id*. (citing NS St. 1 at 9; NS Exh. 1). NS estimates that the repair work will commence in July 2018 and be completed by September 30, 2018, so that the T-821 bridge can be reopened. R.D. at 73 (citing NS St. 1 at 9). The ALJ also noted that PennDOT, Great Bend, and Susquehanna did not offer any opinion concerning replacement of the structure. R.D. at 73.

The ALJ found that because there is a need for a crossing at this location, the existing bridge should be replaced since it will continue to deteriorate, even if it is rehabilitated. The ALJ determined 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. The ALJ also determined that NS shall reimburse Great Bend for $400,000 of the costs of plan preparation, demolition, and replacement and that NS will also bear the costs of providing watchmen, flagmen, and inspectors. R.D. at 74.

The ALJ’s conclusion was based on two reasons. First, NS’ predecessors constructed the bridge and created the crossing and, therefore, NS should be responsible for a portion of the costs for replacing the bridge. Second, the ALJ reasoned that NS’ predecessors bear some responsibility for the deteriorated condition of the crossing, which has led to the need to replace the bridge. The ALJ noted that while the *T-821 1915 Order* directed 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 Order. *Id*. Third, the ALJ stated that both Parties will benefit from the replacement of the bridge. The ALJ observed that NS will continue to have a grade separated crossing that eliminates the possibility of a collision between its trains and vehicles using the roadway, and NS will no longer have pieces of concrete from a deteriorating bridge falling onto its right of way. The ALJ also observed that 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, and because replacement will allow for the continuation of a crossing that is necessary to the local road network. R.D. at 75.

**c. Maintenance Responsibilities and Costs**

**(1) Great Bend’s Exception No. 1 and NS’ Reply;**

**NS’ Exceptions Nos. 2 and 11; and Disposition**

**(a) Great Bend’s Exception No. 1 and NS’ Reply**

In its first Exception, Great Bend avers that the ALJ erred in recommending that Great Bend should reimburse NS for 10% of the costs incurred for inspecting and maintaining the existing T-821 bridge. First, Great Bend argues that the question of which party bears responsibility for the present inspection, maintenance, repair, and costs of the T-821 bridge is not at issue in this proceeding and has already been resolved by prior Commission Orders. Great Bend Exc. at 4. Great Bend states that in the *April 2015 Order*, the Commission did not assign specific maintenance responsibilities for the T-821 bridge, but instead expressly ordered that “any assignments for maintenance previously assigned to any party of record in any prior Commission Orders or Secretarial Lettersremain in full force and effect.” *Id*. (citing *April 2015 Order* at 3). Great Bend also states that the T-821 bridge is the subject of a series of Commission Orders dating back to 1915, all of which assigned maintenance and costs responsibilities exclusively to the railroad. Great Bend Exc. at 5. Great Bend observes that the most recent of those orders, the *T-821 1985 Order* – directed D&H, NS’ predecessor, “at its sole cost and expense, [to] do all work and furnish all materials necessary thereafter to maintain its railroad facilities at the crossing, including the bridge substructure and superstructure, exclusive of the bituminous roadway wearing surface.”

Great Bend argues that based on the *April 2015 Order* and the *T-821 1985 Order*, NS, as successor to D&H, bears sole responsibility for present inspection, repair, maintenance, and costs of the T-821 bridge, and this was not in dispute in this proceeding. Great Bend Exc. at 5. Great Bend states that NS presented testimony accepting its maintenance and cost responsibility, as assigned by these prior Orders, and agreed to perform and pay for current repair work on the T-821 bridge. *Id*. (citing NS St. 1 at 5-6; Tr. at 196-197). Great Bend also states that NS confirmed its responsibility related to the T-821 bridge in briefing, even stating that the maintenance for the bridges carrying SR 2041 and T-821 “have not expressly been left open for reassignment” as part of this proceeding. Great Bend Exc. at 5-6 (citing NS M.B. at 13; NS R.B. at 15).

Second, Great Bend argues that there is no evidence to support the ALJ’s conclusion that Great Bend failed to perform any meaningful repairs or maintenance to the bridge. To the contrary, Great Bend avers that the record confirms that none of the Commission’s prior Orders concerning the T-821 bridge assigned any responsibility to Great Bend. Great Bend Exc. at 6. Great Bend also avers that none of the critical priority code items identified in PennDOT’s inspection report for the T-821 bridge and explained in PennDOT witness Babinski’s testimony relates to the roadway surface features for which Great Bend assumed responsibility. *Id*. (citing PennDOT St. 2A at 32-33). Great Bend asserts that the evidence demonstrates that the railroad is solely responsible for the deterioration of the T-821 crossing structure. Great Bend Exc. at 6. Great Bend cites to NS witness Hauschildt’s testimony that there was “a lot of deferred maintenance” when NS purchased the D&H Line from Canadian Pacific in September 2015. *Id*. at 6-7 (citing NS St. 1 at 3; Tr. at 178).

Third, Great Bend argues that Ordering Paragraph No. 55[[8]](#footnote-8) and the related conclusions are inconsistent with the ALJ’s analysis and conclusions on pages 55-56 of the Recommended Decision. concerning the SR 2041 bridge, which, along with the T‑821 bridge, was the only other structure in this proceeding that was the subject of a prior Commission Order assigning maintenance to NS’ predecessor at its sole cost and expense. Great Bend states that while the ALJ’s conclusion for the T-821 bridge disturbed the Commission’s prior Orders assigning sole maintenance and cost responsibility to the railroad, the ALJ concluded that it was just and reasonable for the Parties to continue to bear cost and maintenance responsibility for the SR 2041 bridge in accordance with the Commission’s prior Orders, including the *April 2015 Order* and an Order entered on August 5, 1947 at Docket No. A-68459. Great Bend observed that like the *T-821 1985 Order*, the 1947 Order specifically directed NS’ predecessor to maintain the entire substructure and superstructure of the SR 2041 bridge. Great Bend Exc. at 7. Moreover, Great Bend avers that the ALJ appears to have overlooked the evidence of record establishing that NS’ predecessor railroad designed and built the T-821 Bridge, and the Township roadway (Old Lackawanna Trail or T-821) did not exist until after the crossing structure was constructed. *Id*. (citing NS St. 1 at 3; PennDOT St. 3 at 6; PennDOT Exh. D-12; *T-821 1915 Order*). Great Bend concluded that the only current costs and maintenance it should be responsible for are those related to maintaining the highway approaches to the bridge and the bituminous roadway wearing surface on the bridge. Great Bend Exc. at 8.

In it Replies to Exceptions, NS agrees to continue maintenance responsibility without the 10% reimbursement from Great Bend pursuant to the *T-821 1985 Order*, subject to a time limitation consistent with NS’ estimated extension of the service life of the bridge effected by its repairs. NS states that because Great Bend will replace the structure as directed in Ordering Paragraph Nos. 62 and 63, NS agrees to assume maintenance responsibilities until the ordered reconstruction, or up to twenty years in the future (December 31, 2038), whichever is sooner. NS also states that at that time, maintenance responsibilities should shift to Great Bend if it has not yet effected reconstruction. NS provides that its assumption of current maintenance should not include the roadway surface and snow and ice removal, which was excluded from the railroad’s responsibilities in the *T-821 1985 Order* and which Great Bend has agreed to continue performing. NS R. Exc. at 20.

**(b) NS’ Exceptions Nos. 2 and 11**

In its second Exception, NS objects to Finding of Fact No. 150, which states “The February 22, 1985 order directed that D&H maintain its railroad facilities at the T-821 crossing.” NS avers that this Finding of Fact overlooks that the *T-821 1985 Order*, which is PennDOT Exh. D11, indicates that the railroad facilities include “the bridge substructure and superstructure, exclusive of the bituminous roadway wearing surface.” NS Exc. at 2.

In its eleventh Exception, NS argues that Great Bend should be ordered to maintain the paving on the roadway and approaches of the bridge and to remove the snow, ice and debris from the bridge, as it agreed to do. *Id*. (citing Great Bend St. 1 at 8). Therefore, NS proposes that Ordering Paragraph Nos. 54 and 55 be amended as follows:

54. That 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, with the exception of the roadway paving located on the bridge and its approaches and the removal of any snow, ice or debris from the roadway paving on the T-821 bridge and its approaches, which shall be performed by Great Bend Township at its sole cost and expense.

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.[[9]](#footnote-9)

**Disposition**

Based on Great Bend’s arguments and NS’ response, including the agreement to continue maintenance responsibility without the 10% reimbursement from Great Bend pursuant to the *T-821 1985 Order*, subject to a time limitation consistent with NS’ estimated extension of the service life of the bridge effected by its repairs, we shall modify the ALJ’s recommendations in Ordering Paragraph Nos. 54 and 55. Additionally, based on our review of our prior Orders pertaining to the T-821 bridge, NS’ predecessors were responsible for the maintenance of the bridge, exclusive of the bituminous roadway wearing surface. Our *April 2015 Order*, at 3, was clear that “any assignments for maintenance previously assigned to any party of record in any prior Commission Orders or Secretarial Lettersremain in full force and effect.” For these reasons, we shall grant Great Bend’s and NS’ Exceptions on these issues. Accordingly, we shall eliminate Ordering Paragraph No. 55 from the Recommended Decision, and modify Ordering Paragraph No. 54 in the Recommended Decision to read as follows:

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**, with the exception of the roadway paving located on the bridge and its approaches and the removal of any snow, ice or debris from the roadway paving on the T-821 bridge and its approaches, which shall be performed by Great Bend Township at its sole cost and expense.[[10]](#footnote-10) [new language in bold, Ordering Paragraph No. 77 herein]**

We shall also modify Finding of Fact No. 150, to clarify that Great Bend is responsible for the maintenance of the roadway, as follows:

The February 22, 1985 order directed that D&H maintain its railroad facilities at the T-821 crossing**, exclusive of the bituminous roadway wearing surface. [new language in bold]**

**d. Inspection Responsibilities**

**(1) NS’ Exception No. 11 and PennDOT’s Reply; PennDOT’s Exception No. 23 and NS’ Reply; and Disposition**

**(a) NS’ Exception No. 11 and PennDOT’s Reply**

In its eleventh Exception, NS excepts to Ordering Paragraph Nos. 54 and 55 to the extent that those Ordering Paragraphs require NS to inspect the existing T-821 bridge and to bear 90% of the inspection costs, with a 10% reimbursement by Great Bend. NS states that PennDOT regularly inspects highway bridges and is required to ensure that all municipal-owned bridges be inspected under the NBIS at least every two years. NS Exc. at 9 (citing 23 C.F.R. §§ 650.307(a) and 650.311(a)). NS also states that PennDOT receives 80% federal reimbursement for the inspection of the T-821 bridge. *Id*. (citing PennDOT St. 2 at 2; Tr. at 205-206). Accordingly, NS avers that it is just and reasonable for PennDOT to continue to inspect this structure, with NS reimbursing PennDOT for the 20% of costs not reimbursed under the federal program. NS Exc. at 9. Consistent with its arguments, NS proposes two new Ordering Paragraphs, as follows:

56. That the Pennsylvania Department of Transportation, at its initial cost and expense, furnish all material and perform all work necessary to inspect the existing T-821 bridge.

57. That Norfolk Southern Railway Company reimburse the Pennsylvania Department of Transportation 20% of the costs that the Pennsylvania Department of Transportation incurs in inspecting the existing T-821 bridge.

NS Exc. at 9-10.

In reply, PennDOT states that it agrees to performing the NBIS inspection of the bridge and does not oppose NS’ proposed Ordering Paragraph No. 56. PennDOT avers that instead of reimbursing PennDOT, NS should reimburse Great Bend because Great Bend is responsible for the 20% share of inspection costs. PennDOT indicates that it provided testimony that it receives an 80% reimbursement from the federal government for inspections on local roads, and the local governments are responsible for 20% of the cost of inspection. PennDOT R. Exc. at 4. As such, PennDOT suggests that Ordering Paragraph No. 57 read as follows: “That Norfolk Southern Railway Company reimburse Great Bend Township its 20% share of the cost of the inspection of the T-821 bridge.” *Id*. at 5.

**PennDOT’s Exception No. 23 and NS’ Reply**

In its Exception No. 23, PennDOT objects to Ordering Paragraph No. 54[[11]](#footnote-11) because it does not specify that the inspection must comply with NBIS standards and that a copy of the report must be provided to PennDOT because PennDOT is responsible for ensuring that bridges are inspected. PennDOT Exc. at 9 (citing PennDOT St. 2 at 1).[[12]](#footnote-12)

In its Replies to Exceptions, NS states that both it and PennDOT except to Ordering Paragraph No. 54 assigning inspections to NS. NS excepts due to the assignment of highway inspections that are typically assigned to PennDOT, whereas PennDOT excepts because the Ordering Paragraph does not specify to which standards the inspections must comply. NS avers that that PennDOT is responsible for ensuring that bridges such as the T-821 bridge are inspected every two years pursuant to the NBIS standards and receives up to 80% federal reimbursement for doing so. NS R. Exc. at 19.

**Disposition**

Based on the Parties’ positions and their agreement that PennDOT will conduct the bridge inspection, we shall grant NS’ Exception on this issue and add two new Ordering Paragraphs to the Recommended Decision, as follows:

**That the Pennsylvania Department of Transportation, at its initial cost and expense, furnish all material and perform all work necessary to inspect the existing T-821 bridge. [new language in bold, Ordering Paragraph No. 78 herein]**

**That Norfolk Southern Railway Company reimburse Great Bend Township its 20% share of the cost of the inspection of the existing T-821 bridge. [new language in bold, Ordering Paragraph No. 79 herein]**

This resolution is consistent with PennDOT’s duty to ensure that all municipal-owned bridges be inspected under the NBIS standards at least every two years. *See* 23 C.F.R.

§§ 650.307(a) and 650.311(a)), and PennDOT receives 80% federal reimbursement for such inspections. This resolution will also address PennDOT’s concerns that the bridge be inspected consistent with the NBIS standards. It is also appropriate for NS to reimburse Great Bend 20% of the inspection costs, as PennDOT provided testimony indicating that bridges carrying local roads are funded with 80% federal and 20% local funds. PennDOT St. 2 at 2.

**e. Bridge Repairs**

(**1) Great Bend’s Exception No. 2 and NS’ Reply;**

**NS’ Exception No. 12; and Disposition**

**(a) Great Bend’s Exception No. 2 and NS’ Reply**

In its second Exception, Great Bend objects to Ordering Paragraph Nos. 56[[13]](#footnote-13) and 57[[14]](#footnote-14) of the Recommended Decision. Great Bend avers that the ALJ erred by failing to address the scope and extent of the repairs to be performed on the T-821 bridge, consistent with the record developed in this case, and, instead directing NS to first submit repair plans for Commission approval. Great Bend states that while the ALJ correctly affirmed NS’ duty to make repairs to the T-821 bridge at its sole cost and expense, consistent with Commission Orders, the ALJ failed to determine the scope and extent of those repairs, despite a thoroughly developed record on this issue. Great Bend believes that the adoption of Ordering Paragraph Nos. 56 and 57 will delay the repair and reopening of the T-821 Bridge and create additional litigation over an issue that has already been developed on the record. Great Bend Exc. at 9.

Additionally, Great Bend states that Ordering Paragraph No. 56 fails to clarify which repairs should be made. Great Bend notes that NS, PennDOT, and I&E presented testimony on the scope of repairs necessary for the T-821 bridge, but it is unclear if the ALJ accepted any of those proposals. *Id*. at 10. Great Bend asserts that the public interest requires that the present repairs on the T-821 bridge be as comprehensive as possible, while being undertaken as soon as practical. Great Bend avers that repairs performed in accordance with the priority maintenance items in the PennDOT inspection report will ensure comprehensiveness and extend the service life of the bridge. *Id*. at 11. For these reasons, Great Bend requests that the Commission reverse Ordering Paragraph Nos. 56 and 57 and, instead, direct NS, at its sole cost and expense to: (1) within three months of a final Commission Order, complete the $200,000 in repairs proposed in its plans, and (2) within fifteen months of a final Commission Order, complete the remaining priority maintenance items identified in PennDOT’s inspection report for the T-821 bridge, with the exception of items related to the roadway features that would remain Great Bend’s responsibility. Great Bend Exc. at 11-12. Great Bend states that the three-month time frame should not be problematic for NS, as the record shows that NS would be able to complete the repairs proposed in its plans within three months of the commencement of field construction. *Id*. at 12 (citing NS St. 1 at 9; NS Exh. 1).

In response, NS avers that its repairs are replacements in kind, for which Commission approval is unnecessary. NS R. Exc. at 21 (citing NS Exc. at 12; 66 Pa. C.S. § 2702(a)). NS also avers that it already submitted its repair plans in this proceeding for the ALJ’s and the Parties’ review. NS R. Exc. at 21 (citing NS Exh. 1). NS asserts that it will be responsible for ensuring that its repairs extend the bridge service life during the time it has maintenance responsibilities, which NS has voluntarily extended from seven to twenty years. Furthermore, NS agrees to perform additional repairs necessary to ensure the full extended bridge service life in a timely manner to avoid any future closure of the bridge. NS R. Exc. at 21. NS states that these repairs could include plating areas on the web where there is 100% section loss, installing guiderail on each side inside through girder to protect the knee bracing, and filling the void and sealing the spalling section loss on the underside of the deck between floor beams 10 and 11. *Id*. (citing NS St. 1 at 11-12).

**(2) NS’ Exception No. 12**

NS also addresses this issue in its twelfth Exception. NS objects to Ordering Paragraph Nos. 56 and 57 of the Recommended Decision, which would require NS to prepare plans, consistent with the repairs outlined in its evidence in this proceeding to repair the existing T-821 bridge and to perform those repairs within twelve months of the Commission’s approval of its submitted repair plans. NS explains that as discussed in NS St. 1 at 9, NS has already developed plans to repair the bridge seats and abutments on both sides of the bridge, which are underway and should be completed by approximately September 30, 2018. NS states that it submitted these repair plans into evidence as NS Exh. 1. NS Exc. at 10. NS asserts that these repairs are replacements in kind, not alterations that require the Commission’s approval under 66 Pa. C.S. § 2702(a). *Id*. at 11 (citing Tr. at 193-194). NS requests that Ordering Paragraph Nos. 56 and 57 be deleted entirely because the repairs, which meet the substantive requirements of Ordering Paragraph No. 56, will be completed by the time of any Commission final Order. NS Exc. at 11.

**Disposition**

Upon review, we will adopt the language in the Recommended Decision’s Ordering Paragraph Nos. 56 and 57, because it is consistent with the Commission’s process for reviewing construction plans. The Commission generally requires that the plans be submitted to all Parties for review and to the Commission, specifically the Commission’s Rail Safety Section, for approval. The Commission does not approve plans unless they are complete detailed construction plans that are certified by a professional engineer registered in Pennsylvania. In this case, NS’ plans do not fully satisfy this requirement, and they are not certified by an engineer. It is also unclear whether the repairs are, in fact, merely replacements in kind that would not require Commission approval.

In an instance like this one where a bridge has been closed for safety reasons, the bridge would not be reopened until the Commission affirms that it is safe to do so. Given the Commission’s role in reopening this bridge in the future once the repairs have been satisfactorily completed, we find that it is appropriate for the Commission to review the plans to ensure that they are comprehensive and address public safety issues.

**f. Interim Maintenance and Cost Responsibility**

**(1) Great Bend’s Exception No. 3 and NS’ Reply**

In its third Exception, Great Bend avers that the ALJ erred by failing to assign interim future maintenance and cost responsibility for the T-821 Bridge following completion of NS’ current repairs to the bridge. Great Bend states that the ALJ unilaterally recommended an improper process for removing and replacing the bridge. Great Bend also states that, as a result, maintenance and cost responsibility for the T-821 Bridge will remain unassigned for a considerable period following completion of NS’ current bridge repairs and until the proposed removal and replacement of the bridge occurs. Great Bend Exc. at 12. Great Bend argues that the ALJ appears to have overlooked NS’ testimony that NS’ proposed repairs would provide approximately twenty years of additional useful life to the bridge. *Id*. at 13 (citing NS St. 1 at 12; Tr. at 203-204, 210-211). Great Bend asserts that consistent with the disposition of the SR 2041 bridge, the Commission’s prior Orders on the T-821 bridge, and the analysis of relevant factors discussed in Great Bend’s Main Brief, NS should be assigned future maintenance and cost responsibility, at a minimum, until December 31, 2038, or upon satisfaction of compliance with the requirement in Ordering Paragraph No. 60,[[15]](#footnote-15) whichever is later. Great Bend Exc. at 13.

In its Replies to Exceptions, NS states that the ALJ did not fail to assign interim maintenance responsibilities. NS points out that in Ordering Paragraph No. 54, NS is directed to inspect and maintain the “existing bridge.” NS avers that it is clear that this maintenance responsibility continues until the bridge is replaced, because ALJ Salapa assigns maintenance to Great Bend after the reconstruction is completed pursuant to Ordering Paragraph No. 67. Great Bend R. Exc. at 21-22.

**Disposition**

Upon review, we agree with NS that the ALJ assigned interim maintenance responsibilities with respect to the “existing T-821 bridge.” We have also addressed the interim responsibilities in this Opinion and Order. In the modified Ordering Paragraph No. 54, we stated that NS is responsible for all maintenance work for the existing T-821 Bridge, except for the roadway maintenance responsibilities (*i.e*., paving and ice and snow removal) that Great Bend will perform at its cost and expense. We also stated in new Ordering Paragraphs that PennDOT is responsible for the inspection of the existing T-821 Bridge. There is a clear transition of responsibilities in Ordering Paragraph No. 67, which we will adopt herein, “[t]hat, upon the completion of the removal and replacement of the T-821 Bridge, Great Bend Township, at its sole cost and expense, furnish all material and perform all work necessary to maintain and inspect the entire T-821 bridge.” Since we have provided clear direction on the Parties’ responsibilities, we will deny Great Bend’s Exception on this issue.

**g. Future Allocation Responsibilities**

**(1) Great Bend’s Exception No. 4 and NS’ Reply**

In its fourth Exception, Great Bend contends that the ALJ erred in recommending that the T-821 Bridge be removed and replaced, and that Great Bend be assigned primary responsibilities related thereto, as well as future maintenance and cost responsibility following replacement. Great Bend is objecting to Ordering Paragraph Nos. 61-67. Great Bend Exc. at 14. Ordering Paragraph Nos. 61-67 provide as follows:

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.

62. That Great Bend Township, 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 T-821 bridge in accordance with the approved plans.

63. 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 improvement is being constructed in accordance with this order.

64. That Great Bend Township, 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.

65. That Great Bend Township report to the Commission the date of actual completion of the work.

66. That Norfolk Southern Railway Company reimburse Great Bend Township $400,000 of the costs that Great Bend Township incurs in removing and replacing the T-821 bridge.

67. That, upon the completion of the removal and replacement of the T-821 bridge, Great Bend Township, at its sole cost and expense, furnish all material and perform all work necessary to maintain and inspect the entire T-821 bridge.

In support of its Exception, Great Bend first argues that the evidence supports repair and rehabilitation of the bridge, not removal and replacement. Great Bend argues that the ALJ disregarded two critical facts concerning the issue of rehabilitation versus replacement of the bridge. First, Great Bend avers that the only reason rehabilitation appears not to be a viable long-term solution is the negligence of D&H, NS’ predecessor, in maintenance and upkeep of the bridge. *Id*. at 15. Great Bend acknowledges that Conrail repaired the bridge in the 1980s, but states that it appears there was little to no work done in the intervening years based on the “deferred maintenance” NS assumed when it purchased the D&H Line from Canadian Pacific in September 2015. *Id*. (citing NS St. 1 at 3; Tr. at 178). Great Bend believes that the ALJ’s decision would reward NS for the negligence of its predecessor and require Great Bend to bear the burden of that negligence. Great Bend Exc. at 15.

Second, Great Bend argues that the T-821 Bridge does not need to be replaced and further deterioration can be avoided if the Commission directs that the bridge be repaired consistent with PennDOT’s inspection report for the bridge and not the repairs NS proposed. Great Bend Exc. at 16. Thus, Great Bend asserts that without full rehabilitation that greatly reduces or stops deterioration, the work NS proposed may not achieve the anticipated twenty-year service life. Great Bend believes that all work should be discussed with PennDOT, as it volunteered, before construction begins to ensure that the crossing structure is designed to meet state and/or national standards. Great Bend Exc. at 16.

In support of its Exception, Great Bend next argues that even if a determination is made that the T-821 Bridge must be replaced, Great Bend is not the appropriate party to which primary work and initial cost responsibility, as well as further maintenance and cost responsibility, should be assigned. Great Bend Exc. at 17. Great Bend avers that based on a consideration of all relevant factors that the Commission may consider, based on applicable law, the ALJ’s conclusions are neither just nor reasonable. *Id*. at 18. Great Bend states that of the three factors the ALJ considered – the party that constructed the crossing, the party responsible for the deterioration, and the benefits conferred – the ALJ only relied on the benefits conferred in finding that Great Bend should be responsible for performing the work and bearing the cost. *Id*. at 18-19.

Great Bend also states that while the ALJ cited all three factors as reasons why NS should be assigned the work and cost responsibility, the ALJ nevertheless concluded, based solely on the benefits conferred shared factor, that Great Bend should be responsible for performing the work and paying initial costs for the removal and replacement of the T-821 Bridge as well as all future costs and maintenance related to the bridge after it is replaced. Great Bend contends that this result is not just and reasonable given that the record demonstrates that NS’ predecessor bears full responsibility for the bridge’s deteriorating condition. Great Bend continues that the ALJ failed to consider all of the factors the Commission traditionally considers in reaching his conclusion even though the record contained evidence regarding those factors. Great Bend asserts that when all relevant factors are considered, the only just and reasonable conclusion is that NS, not Great Bend, should be assigned both initial and future work and cost responsibility for the T-821 Bridge, including responsibility related to the substructure and superstructure, regardless of whether the bridge is rehabilitated or replaced. *Id*. at 19.

Additionally, Great Bend emphasizes that in assigning the work and costs to Great Bend, the ALJ failed to recognize the evidence demonstrating that Great Bend is in a much worse financial position than NS, because Great Bend lacks the financial wherewithal and operational resources and expertise to assume bridge maintenance, repair, rehabilitation, or replacement projects. *Id*. at 20 (citing Great Bend St. 1 at 3, 8-9). Great Bend avers that placing it in financial distress and potential bankruptcy by assigning it the responsibilities set forth in Ordering Paragraph Nos. 61-67 is not in the public interest. Under these circumstances, Great Bend also avers that assigning it both initial and future work and cost responsibility to perform a complex, costly bridge removal and replacement project will jeopardize the public safety and leave Great Bend and the general public with the burden of completing work that should have been done by the railroad in the first place. Great Bend Exc. at 20.

Further, Great Bend contends that the ALJ failed to properly consider the equities of the particular situation. Great Bend states that while NS and its predecessors have been responsible for maintenance and costs for the T-821 Bridge, the ALJ’s decision would depart from that practice and precedent. Great Bend asserts that the evidence shows that the deterioration and need for repairs is due to D&H’s inaction and refusal to obey its Commission-ordered responsibilities. Great Bend Exc. at 21. Great Bend avers that as successor, NS must bear responsibility for the deterioration of the structure and its need for repairs and be held accountable. *Id*. (citing *Wheeling* at 793). Accordingly, Great Bend requests that the Commission modify the Recommended Decision. to provide for the repair and rehabilitation of the T-821 Bridge in accordance with PennDOT’s inspection report for the bridge. If the T-821 Bridge must be replaced, Great Bend believes the Commission should assign NS primary responsibility for performing the work and bearing the costs. Further, regardless of whether repair/rehabilitation or replacement is ordered, Great Bend asks the Commission to direct that upon completion of the repairs or replacement, NS, at its sole cost and expense, shall furnish all material and perform all work necessary to maintain and inspect the T-821 Bridge, exclusive of the bituminous roadway wearing surface which shall remain Great Bend’s responsibility. Great Bend Exc. at 21.

In reply, NS states that the ALJ weighed Great Bend’s argument that the low usage Bridge was important for Great Bend’s citizens in determining not to abolish the crossing. NS R. Exc. at 22. NS avers that Great Bend’s financial arguments must be rejected, as an inability to pay is not relevant in rail-highway crossing cases because municipal “governing bodies ha[ve] sufficient revenue-raising ability to offset any deficit created.” *Id*. (citing *East Rockhill Township* at 603). NS contends that because Great Bend can offset expenses by raising taxes, its argument that the allocation will be a financial hardship does not make the allocation unjust or unreasonable. NS R. Exc. at 22. NS submits that Great Bend is the party that must apply for federal funding, and Great Bend would be eligible for federal funding if this project is approved and placed on a Transportation Improvement Plan (TIP) program. *Id*. (citing 23 U.S.C. § 133(h)(4)(B); Tr. at 135). NS believes it is important to assign responsibility for replacement now to allow Great Bend the time to line up federal and state funding.

NS continues that the relevant factors considered support ALJ Salapa’s decision to assign future maintenance responsibilities to Great Bend. NS states that Great Bend is incorrect that the road was constructed after the rail line and, therefore, NS should be responsible for the crossing maintenance. NS R. Exc. at 23. Rather, NS states that because the rail line predated the road, the crossing was constructed to accommodate the new roadway, a factor that weighs in favor of the railroad. *Id*. (citing PennDOT Exh. D12; *Greene Township* at 619 (Pa. Cmwlth. 1995); *PennDOT v. Pa. Public Util. Comm’n 1983*).

**Disposition**

Based on our review of the record and the applicable case law, we find that the ALJ properly found that the T-821 Bridge should be removed and replaced and that Great Bend should be assigned primary responsibilities related thereto, as well as future maintenance and cost responsibility following replacement. First, the evidence supports replacement of the bridge in the interest of public safety. By Secretarial Letter issued January 4, 2018, the Commission affirmed PennDOT’s decision to close this bridge to both pedestrian and vehicle traffic on December 19, 2017, due to the deterioration of the bridge and in the interest of public safety. Based on I&E’s observations, deteriorated conditions exist throughout the bridge, with noted section loss in the webs of the main girders. I&E’s expert engineer DiCarlantonio testified that the bridge should be programmed for replacement. I&E St. 1 at 4-5. We find that the ALJ’s conclusion that the existing bridge will only continue to deteriorate, even if it is rehabilitated, is reasonable and supported by substantial evidence in the record.

Additionally, we find that the ALJ properly allocated responsibility to Great Bend for the replacement and future maintenance and costs related to the T-821 bridge based on a consideration of the relevant cost allocation factors in this particular case. In reaching its determination, the Commission is not limited to any fixed rule but takes all relevant factors into consideration, the only requirement being that the Commission’s decision must be just and reasonable and based on a sound legal and factual basis. *Wheeling*; *Greene Township*. While the Commission has considered the above-mentioned factors to be relevant in the past, this in no way limits the factors that the Commission can consider. *Bell Atlantic-Pa*; *AT&T; PECO Energy*.

One factor we may consider for allocation is which party built the crossing and whether the roadway existed before or after the construction of the crossing. *PennDOT v. Pa. Public Util. Comm’n 1983*. In this case, the evidence demonstrates that NS’ predecessors constructed the bridge and created the crossing. The evidence also indicates that the rail line predated the road, and the crossing was constructed to accommodate the new roadway. PennDOT St. 1 at 31; PennDOT Exh. D12.

Another factor we may consider is the party that owned and maintained the crossing. *PennDOT v. Pa. Public Util. Comm’n 1983*. It is well-established that a bridge carrying a public street is deemed to be a part of the street and, accordingly, is owned by the entity that owns the street, unless there is sufficient evidence to the contrary, such as a title. *CONRAIL; Heinlein* at 38. In this case, there is no clear evidence that NS owns the bridge. Even though NS was charged with maintenance responsibilities, this alone does not confer ownership on NS. *See CONRAIL* at 355 (a clear contractual duty to perform maintenance and bear the associated costs that was silent regarding the ownership of the bridge did not create an ownership interest for the railroad company). The evidence suggests that Great Bend has an ownership interest in the T-821 bridge as the bridge carries a township highway.

We may also consider whether a party is responsible for the deterioration of the crossing which has led to the need for its repair, replacement or removal, *PennDOT v. Pa. Pub. Util. Comm’n*, 469 A.2d 1149 (Pa. Cmwlth. 1983). In this case, both Parties bear some responsibility for the deterioration of the bridge. Although DLW built the rail line and constructed the bridge and was assigned some maintenance responsibilities, NS’ predecessors did not perform any substantial repairs or maintenance to avoid deterioration of the bridge. While NS did not acquire the rail line until September 2015 after much of the deterioration was already present, it was aware of the deferred maintenance on the line and the ongoing proceeding regarding the SR 1025 crossing. Courts have held that railroad companies can be considered responsible for the actions or inactions of their predecessor railroads when acquiring a rail line. *Wheeling* at 793. On the other hand, there is no information in the record that Great Bend performed any meaningful repairs to or maintenance of the structure despite the fact that the bridge carries a township highway.

Another factor we may examine is the relative benefit that each party will receive from the repair, replacement or removal of the crossing. *Pittsburgh*. In this case, both Great Bend and NS will benefit from the repair and replacement of the bridge. The continued existence of a grade-separated crossing will enable traffic to remain open to both trains and vehicles and promote the safe interface between rail and vehicle traffic, another factor we may consider in assigning maintenance responsibilities. *See Norfolk Southern*. Once the bridge is repaired/replaced, NS will no longer have pieces of concrete falling onto its right-of-way.

Great Bend will benefit from the continuation of the crossing because Great Bend has indicated that the crossing is necessary to the local road network. Great Bend’s witness O’Connor testified that the bridge is important to Great Bend and Susquehanna County generally. Great Bend St. 1 at 5. He also testified that since the bridge has been closed, school buses serving the Blue Ridge School are limited to one access route to the school complex. Great Bend St. 1 at 5. Mr. O’Connor further indicated that residents living on or along T-821 have experienced a considerable detour to reach local amenities such as the grocery store, gas stations, or the bank. He stated that emergency services have the same detour in order to respond to issues in this area and, as a result, emergency services have been severely hampered. *Id*. at 6.

A factor we may also consider, which the Parties raise here, is the availability of state or federal funding for the project. *Wilkes-Barre*. Here, Great Bend is in a position to apply for federal funding and would be eligible for federal funding if this project is approved by the Regional Planning Commission and placed on a TIP program. Tr. at 135; 23 U.S.C. § 133(h)(4)(B). Great Bend is also eligible to receive funds under the Municipal Liquid Fuels Program, which funds a range of projects to support construction, reconstruction, maintenance, and repair of public roads or streets. *See* Liquid Fuels Tax Municipal Allocation Law (Act 655), 72 P.S §§ 2615.1-2615.10. While Great Bend indicates that it is not in a position to take on the responsibilities for the replacement and future maintenance of the T-821 Bridge, financial ability is not determinative of the issue of cost allocation. *East Rockhill Township*. Courts have previously upheld similar allocations to townships. *See East Rockhill Township* at233 (upholding the Commission’s allocation of 90% of the costs of bridge reconstruction to the township); [*Department of Transportation v. Pa. Public Util. Comm’n*, 469 A.2d 1149, 1154, n.12](https://advance.lexis.com/search/?pdmfid=1000516&crid=8e377419-70a3-4758-a91b-04263545a81f&pdsearchterms=540+A.2d+600&pdstartin=hlct%3A1%3A1&pdtypeofsearch=searchboxclick&pdsearchtype=SearchBox&pdqttype=and&pdpsf=&pdquerytemplateid=&ecomp=g7d59kk&earg=pdpsf&prid=fb6747c6-0de2-43f7-82c7-ac11e5fbbb10) (Pa. Cmwlth. 1983) (the allocation of bridge replacement costs to a locality, more specifically to boroughs and a county, was not unjust and unreasonable, as the governing bodies had sufficient revenue-raising ability to offset any deficit created).

In view of the above factors, we find that the ALJ’s allocation is equitable under the circumstances in this case, is just and reasonable, and is based on sound legal and factual grounds. The allocation achieves a middle ground and assigns responsibilities to both Parties. NS is responsible for repairing the bridge, as well as maintaining the structure until responsibilities for the bridge transition to Great Bend. NS is also required to reimburse Great Bend a percentage of the costs that Great Bend incurs in removing and replacing the T-821 Bridge. This allocation is appropriate given the benefits NS and its predecessors have received from the crossing as well as their role in the deterioration of the crossing. Great Bend is responsible for replacing the bridge and assuming the cost of the maintenance of the bridge. This allocation considers the federal and other funding available to Great Bend and allows time for Great Bend to request and obtain funding. This allocation also properly considers the fact that the bridge carries a township highway that is of great significance to Great Bend, despite its low ADT levels, which could otherwise result in abolishing the bridge. For all of these reasons, we shall deny Great Bend’s Exception on this issue.

**h. Time Frame for Preparation and Submission of Plans**

**(1) Great Bend’s Exception No. 5 and NS’ Reply and Disposition**

In its fifth Exception, Great Bend argues that if the T-821 Bridge must be removed and replaced and Great Bend is assigned primary responsibilities related thereto, then the ALJ erred in recommending that Great Bend must take action on an accelerated timeframe, which would require the preparation and submission of plans within five years of the date of the Commission’s Order and completion of the replacement within two years of Commission approval. Great Bend Exc. at 22 (citing Ordering Paragraph

Nos. 61 and 62).[[16]](#footnote-16) Great Bend avers that the timeframes set forth in these Ordering Paragraphs are premature and are not supported by the evidence in this proceeding. Great Bend explains that as NS witness Hauschildt testified, the proposed repairs NS would perform on the existing T-821 Bridge would add approximately twenty years of useful life to the bridge. Great Bend Exc. at 22 (citing NS St. 1 at 12; Tr. at 203-204, 210-211). NS observes that if NS is directed to make repairs consistent with PennDOT’s inspection report for the T-821 Bridge, that twenty-year estimate would increase. Therefore, according to Great Bend, an estimated twenty years of useful life should be achieved at a minimum. Great Bend Exc. at 22. Consequently, Great Bend contends that it is illogical to direct Great Bend to design and file plans for removing and replacing the bridge within five years of the Commission’s final Order when the bridge would not need to be replaced for at least another fifteen years. *Id*. at 22-23. Likewise, Great Bend contends it is premature to direct Great Bend to complete the bridge removal and replacement within two years of Commission approval of those plans when that date will fall more than a decade before the twenty-year mark.

Great Bend suggests that a more reasonable time frame would require plans to be submitted within fifteen years of the completion of NS’ repairs to the existing bridge, followed by a two-year completion window after Commission plan approval. Great Bend avers that this would maximize the useful life of the bridge, while ensuring that all inputs required for the project, including, among other things, costs, technology, contracts, and resources, will be accurate and up to date. Great Bend also avers that this time frame would provide time for Great Bend to secure funding for the project, which it does not have at this time. *Id*. at 23.

In its Replies to Exceptions, NS stands by the estimate that its repairs will provide twenty years of service life and, therefore, does not object to Great Bend receiving an additional thirteen years in which to complete the bridge replacement, as it will allow Great Bend more time to plan and secure funding for the project. NS R. Exc. at 23-24.

**Disposition**

Upon review, we will not alter the time frames in the Recommended Decision that direct Great Bend to submit its plans within five years and to replace the T‑821 Bridge within two years from the date of Commission approval of the plans. First, the evidence in this proceeding indicates that there must be coordination of the replacement times for the seven bridges, because when certain bridges are taken out of service for replacement, other bridges need to remain open to provide alternate routes across NS’ rail line. The ALJ’s replacement time frames for the bridges in this proceeding are intended to provide for such coordination. The ALJ’s time frames for replacement of the respective bridges also takes into consideration the level of deterioration of the bridges in deciding which bridges should be replaced first. Given the level of deterioration of the T-821 Bridge, as was described in more detail above, and the need for coordination between the replacement of all of the bridges, we find that the time frames the ALJ recommended in Ordering Paragraph Nos. 61 and 62 are reasonable and supported by the record. Accordingly, we shall deny Great Bend’s Exception on this issue.

**i. NS’ Share of Removal and Replacement Costs**

**(1) Great Bend’s Exception No. 6 and NS’ Reply and**

**Disposition**

In its sixth Exception, Great Bend contends that the ALJ erred in recommending that NS reimburse Great Bend only $400,000 for the costs related to removal and replacement in the event that Great Bend is assigned primary responsibilities related to the removal and replacement of the T-821 Bridge. Great Bend Exc. at 24 (citing Ordering Paragraph No. 66). First, Great Bend avers that there is no evidentiary support for the $400,000 amount, and the Recommended Decision contains no discussion on how the ALJ arrived at that amount. Second, Great Bend avers that a removal and replacement project will likely cost millions of dollars and, therefore, the $400,000 amount seems to greatly underestimate the amount for which NS should be responsible. *Id*. Third, Great Bend avers that while cost will be a critical component of any replacement project, it is premature to consider a replacement project at this time, including the assignment of costs for that project, since the repairs to the existing bridge will provide at least twenty more years of service life. *Id*. (citing NS St. 1 at 12; Tr. at 203-204, 210-211).

In response, NS explains the ALJ’s basis for directing NS to reimburse $400,000 to Great Bend. NS states that with Regional Planning Commission approval, the project can be placed on the TIP plan, and the federal government will reimburse 80% of the bill. NS R. Exc. at 24 (citing PennDOT St. 2 at 2; 23 U.S.C. §§ 120(b)(1), 133(h)(4)(B)). NS also states that even if replacement of the bridge costs as much as $2 million, $1,600,000 of the project will be federally covered, leaving $400,000 (20%) to be covered by NS’ reimbursement. NS R. Exc. at 24. NS continues that Ordering Paragraph No. 63 requires NS to provide at its sole cost and expense flaggers, inspectors, and engineers to protect its operations and facilities during the reconstruction work. *Id*. at 24-25. NS avers that this would result in the entire cost of reconstruction being covered by entities other than Great Bend. *Id*. at 25.

**Disposition**

Based on our review of the record and prior Commission decisions in rail crossing proceedings, we shall grant Great Bend’s Exception to the extent that we are modifying the $400,000 reimbursement amount in the Recommended Decision. There is no evidence in the record regarding estimated costs for the replacement of the

T-821 Bridge or the other bridges in this proceeding, and the ALJ did not provide a basis for the $400,000 amount. We find that using a straight 20% reimbursement amount would be reasonable under the circumstances, and this percentage amount is consistent with prior Commission decisions which normally include percentage amounts, rather than numerical amounts, in allocating costs. Additionally, using a percentage amount will provide a more consistent reimbursement standard over time, until it is closer to the bridge replacement time, as the percentage will remain the same even as construction costs rise and plans for the bridge replacement are altered. Accordingly, Ordering Paragraph No. 66 in the Recommended Decision will be modified to read as follows:

That Norfolk Southern Railway Company reimburse Great Bend Township ~~$400,000~~ **20%** of the costs that Great Bend Township incurs in removing and replacing the T-821 bridge. **[new language in bold, Ordering Paragraph No. 91 herein]**

For these same reasons, we will modify the ALJ’s discussion and the directives in Ordering Paragraph Nos. 19 and 50 in the Recommended Decision that require NS to reimburse PennDOT $300,000 of the replacement costs for the SR 1018 and SR 2017 bridges. Ordering Paragraph Nos. 19 and 50 in the Recommended Decision will be modified to read as follows:

That Norfolk Southern Railway Company reimburse the Pennsylvania Department of Transportation ~~$300,000~~ **20%** of the costs that the Pennsylvania Department of Transportation incurs in removing and replacing the SR 1018 bridge. **[new language in bold, Ordering Paragraph No. 28 herein]**

That Norfolk Southern Railway Company reimburse the Pennsylvania Department of Transportation ~~$300,000~~ **20%** of the costs that the Pennsylvania Department of Transportation incurs in removing and replacing the SR 2017 bridge. **[new language in bold, Ordering Paragraph No. 69 herein]**

**j. Costs and Responsibilities Related to the T-821 Bridge Closure**

(1) **PennDOT’s Exceptions Nos. 24 and 25 and NS’ Replies**

**and Disposition**

(a) **PennDOT’s Exception Nos. 24 and NS’ Reply**

In its twenty-fourth Exception, PennDOT objects 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. PennDOT Exc. at 9; *see also* PennDOT’s General Exception No. 9. In reply, NS argues that in violation of 52 Pa. Code § 5.533(b), PennDOT objects to assuming costs it has borne to date to close the bridge and maintain the closure without citing to any portion of the Recommended Decision or providing a specific supporting reason for this exception. NS asserts that it is just and reasonable for each party to be responsible for costs it has already incurred. NS R. Exc. at 19.

**Disposition**

For the disposition of this issue, please refer to our Disposition for PennDOT’s General Exception No. 9, *supra*. We will not grant PennDOT’s Exception as it applies to costs PennDOT has incurred to date for the closure of the bridge. Additionally, in our *January 2018 Secretarial Letter* which affirmed PennDOT’s action to close the bridge, we assigned PennDOT, at its initial cost and expense, the responsibilities for furnishing all material and performing all work necessary to close the bridge and to maintain the closure, including signs, fencing, and barricades at the ends of the bridge and approaches thereto. Our records indicate that PennDOT did not object to this initial assignment of work and associated costs by filing a Petition for Reconsideration from Staff Action. Accordingly, the directives in the Secretarial Letter became the final action of the Commission pursuant to 52 Pa. Code § 5.44. We do not find any reason to rescind our prior decision on this issue relating to costs PennDOT has already incurred. Accordingly, this Exception is denied.

**(b) PennDOT’s Exception Nos. 25 and NS’ Reply**

In its twenty-fifth Exception, PennDOT excepts to the lack of an order directing either NS or Great Bend, one of the Parties responsible for the maintenance, inspection and replacement of the bridge, to be responsible for the continued closure of the bridge. PennDOT avers that it would be just and reasonable to reallocate those responsibilities directed to PennDOT in its Exhibit D13 to NS or to Great Bend. PennDOT Exc. at 9; *see also* PennDOT’s General Exception No. 9.

In response, NS states that PennDOT does not provide a supporting reason for this exception and merely references its General Exception No. 9. NS R. Exc. at 19. NS avers that PennDOT’s General Exception No. 9, however, discusses past costs already incurred, while this exception protests unidentified costs presumably continuing to be accrued in connection with the current bridge closure. *Id*. at 19-20. NS indicates that this bridge will be reopened before the issuance of an order in this proceeding. *Id*. at 20.

**Disposition**

Upon review, we shall grant PennDOT’s Exception on this issue and direct Great Bend to be responsible for the work and associated costs for the continuing closure of the T-821 Bridge, on a going forward basis until the bridge is reopened. Since this bridge carries a Township highway, we find the reallocation of responsibilities to Great Bend to be reasonable under the circumstances. This decision is consistent with the Commission’s practice of assigning work and cost responsibilities for bridge closures to municipalities when a borough or township road is involved. Municipalities have traditionally been charged with closing the bridges and maintaining barricades, fencing, and signage installed to prevent access to the bridge and providing traffic controls or detours for the duration of the bridge closure. *See* *Emergency Order*, Docket No.

M-2013-2386557 (issued October 7, 2013); Secretarial Letter, Docket No. M-2014-2442631 (issued September 16, 2014). Accordingly, we shall add an Ordering Paragraph to this Opinion and Order stating the following:

**That Great Bend Township maintain any barricades, fencing, and signage installed to prevent vehicular and pedestrian access to the subject bridge and provide/maintain any traffic controls or detours for the duration the subject bridge is closed. [new language in bold]**

E. Exceptions Relating to the Unassigned Bridges

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

**a. Background**

SR 1018 crosses above the tracks of NS in New Milford Township, Susquehanna County. PennDOT St. 1 at 9; PennDOT Exh. A2. 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. PennDOT St. 1 at 9; PennDOT Exh. A2. The portion of SR 1018 that crosses over NS’ facilities is designated as a Major Collector Road. PennDOT St. 1 at 9; PennDOT Exh. A2.

The current ADT at the SR 1018 crossing is estimated at 807 vehicles per day. PennDOT St. 1 at 10. Of this total, fifty-six are estimated to be trucks, eleven are estimated to be motorcycles, 538 vehicles are estimated to be automobiles, and 202 are estimated to be pickups/vans. PennDOT St. 1 at 10; PennDOT Exh. B2. PennDOT estimates that the ADT at the SR 1018 crossing will increase by 0.56% per year for the next 20 years. PennDOT St. 1 at 10-11; PennDOT Exh. 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 at 13; I&E St. 1 at 5; I&E Exh. 3A-3D. Deterioration in the deck under the parapets has undermined support for the parapets. I&E St. 1 at 5; I&E Exh. 3A-3D. The parapets could dislodge if a vehicle strikes one of them. I&E St. 1 at 5.

**b. Recommended Decision**

Initially, the ALJ provided background information regarding Commission Orders pertaining to the SR 1018 crossing. The ALJ stated that the SR 1018 crossing was the subject ofthe *April 2015 Order* which directed PennDOT to inspect this bridge and five others. R.D. at 42 (citing PennDOT St. 1 at 11; PennDOT Exh. D1). The ALJ observed that the *April 2015 Order* did not assign maintenance responsibilities for the SR 1018 Bridge. R.D. at 42. The ALJ also stated that the SR 1018 crossing was the subject of a Commission Order dated January 3, 1994, at Docket No. A-00111034, which directed D&H to alter the crossing by lowering its track. R.D. at 43 (citing PennDOT St. 1 at 11; PennDOT Exh. D5). This work was done to improve vertical clearance to accommodate double stack container traffic. The ALJ noted that this Order did not assign maintenance responsibilities for the SR 1018 Bridge. R.D. at 43.

Next, the ALJ concluded that it was just and reasonable for PennDOT to inspect and maintain the existing bridge and for NS to reimburse PennDOT 50% of the costs of inspection and maintenance. The ALJ’s conclusion was based on two reasons. First, the ALJ determined that both Parties benefit from the continued existence of the grade-separated crossing. The ALJ stated that assigning maintenance responsibility to PennDOT would allow the grade separated crossing to remain open to both train and vehicle traffic, noting that the safe interface between rail and vehicle traffic is a factor the Commission may consider in assigning maintenance. Second, the ALJ determined that both NS and PennDOT should bear some responsibility for the deteriorated condition of the crossing. The ALJ reasoned that NS’ predecessors had some responsibility for the deteriorated condition of the crossing, which contributed to the need for work to be performed on the bridge. R.D. at 43. The ALJ observed that 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. *Id*. at 43. The ALJ also observed that PennDOT failed to perform any meaningful repairs or maintenance to the structure even though the bridge carries a state highway. *Id*. at 43.

Having addressed the assignment of future inspection and maintenance responsibilities for the SR 1018 crossing, the ALJ then addressed the disposition of the crossing. The ALJ noted that NS maintains that the arch is structurally sound and the only work needed is concrete patching at various places (R.D. at 44, citing NS St. 1 at 13). PennDOT recommended that NS replace the SR 1018 Bridge since DLW constructed the bridge approximately 100 years ago and it is near the end of its service life. R.D. at 44 (citing PennDOT St. 2 at 9). PennDOT also stated that while rehabilitation of the structure is possible, in its experience, the level of rehabilitation required with the SR 1018 structure is not cost effective. PennDOT contends that when rehabilitation costs exceed 50% of the replacement costs, it looks at the age of the structure to try to determine its remaining service life. PennDOT concedes that the existing concrete will have no more than 25 years of service life left before it will deteriorate. R.D. at 44-45(citing PennDOT St. 2 at 9). The ALJ also noted that PennDOT had indicated that the SR 1018 crossing is integral to the state highway system and it does not consider it to be redundant. R.D. at 45 (citing PennDOT St. 2 at 7).

The ALJ found that because there is a need for a crossing at this location, the existing bridge should be replaced. The ALJ determined that PennDOT 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, PennDOT shall remove the structure and replace it at its initial cost and expense. The ALJ also determined that NS shall reimburse PennDOT for $300,000 of the costs of plan preparation, demolition, and replacement and that NS will also bear the costs of providing watchmen, flagmen, and inspectors. The ALJ reached this determination for several reasons.

First, the ALJ reasoned that NS’ predecessors constructed the SR 1018 Bridge and created the crossing, as the existence of the crossing was due to the construction of a rail line by DLW. Second, the ALJ reasoned that NS’ predecessors bear some responsibility for the deteriorated condition of the crossing, which 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. R.D. at 47. Third, the ALJ stated that both Parties will benefit from the replacement of the bridge. The ALJ observed that NS will continue to have a grade-separated crossing. The ALJ stated that NS benefits from the grade-separated crossing because it eliminates the possibility of a collision between its trains and vehicles using the roadway, and it will no longer have pieces of concrete from a deteriorating bridge falling onto its right of way. The ALJ also observed that PennDOT 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, and because replacement will allow for the continuation of a crossing that is integral to the state highway system. R.D. at 47.

**c. PennDOT’s Exception No. 6 and NS’ Reply; NS’ Exceptions Nos. 4 and 5 and PennDOT’s Replies; and Disposition**

**(1) PennDOT’s Exception No. 6 and NS’ Reply**

In PennDOT’s sixth exception, PennDOT objects to Ordering Paragraph No. 12, as it relates to the maintenance of the structure carrying SR 1018. PennDOT avers that it will inspect the bridge at its initial cost and expense to ensure compliance with the NBIS standards. However, PennDOT does not believe it is just and reasonable for it to be ordered to perform the maintenance as required by the inspection report and to program this bridge for replacement, since no party can find an order approving the construction of the bridge and no party brought the lack of order and maintenance to the attention of the Commission. PennDOT states that it would be just and reasonable for NS to be ordered to perform the maintenance as required by the inspection report and to program this bridge for replacement. PennDOT Exc. at 6 (citing PennDOT St. 3 at 10). PennDOT also refers to its General Exceptions Nos. 5-10.

In reply, NS states that PennDOT objects to being directed to inspect and maintain the existing bridge, claiming it is not just and reasonable. NS states that PennDOT neglects to mention the fact that the next ordering paragraph directs a 50% reimbursement of these costs by NS. NS opines that this sharing of responsibility is just and reasonable for all the reasons explained in NS’ Main and Reply Briefs and is supported by ample evidence in the record. NS R. Exc. at 11.

**Disposition**

For the disposition of this Exception, please refer to our Dispositions for PennDOT’s General Exceptions Nos. 5-10, *supra*. As we stated previously in disposing of these General Exceptions, we agree with the ALJ’s determination that because both PennDOT and NS benefit from this crossing and because both Parties bear some responsibility for the deteriorated condition of the bridge, they should both bear the cost of inspecting and maintaining the bridge. In recognition of the several reasons highlighted by the ALJ in the Recommended Decision in reaching his conclusion on this matter, and as we stated in our disposition of General Exception No. 5, we concur with the ALJ that it is just and reasonable for PennDOT to inspect and maintain the existing bridge and for NS to reimburse PennDOT 50% of the costs of the inspection and maintenance. While we appreciate PennDOT’s agreement to inspect the bridge at its initial cost and expense to ensure compliance with the NBIS, we disagree with PennDOT’s argument disputing the ALJ’s recommendation of a 50-50 split of the costs of inspecting and maintaining this crossing. In our opinion, the ALJ’s recommendation in Ordering Paragraph Nos. 12 and 13 that PennDOT, at its initial cost and expense, furnish all material and perform all work necessary to inspect and maintain the existing SR 1018 Bridge, and that NS reimburse half of the maintenance and inspections costs to PennDOT until such time as the bridge is reconstructed, is just and reasonable under the circumstances of this case. We reached this decision based on our finding that the ALJ’s allocation is equitable under the circumstances and is based on sound legal and factual grounds. As such, we will deny PennDOT’s sixth Exception.

**(2) NS’ Exception Nos. 4 and PennDOT’s Reply**

In its fourth Exception, NS argues that Ordering Paragraph Nos. 12 and 13 do not specify that PennDOT shall be responsible for roadway paving located on the SR 1018 Bridge and its approaches, as well as snow, ice and debris removal thereon. NS avers that this work is not only invariably the responsibility of PennDOT, but PennDOT has agreed to do so. NS Exc. at 3 (citing PennDOT St. 3 at 9). Therefore, NS requests that Ordering Paragraphs No. 12 and No. 13 be amended as follows:

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, including the roadway paving located on the bridge and its approaches and shall remove any snow, ice or debris from the roadway paving on the SR 1018 bridge and its approaches.

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, excluding for the roadway paving located on the bridge and its approaches and shall remove any snow, ice or debris from the roadway paving on the SR 1018 bridge and its approaches.

In reply, PennDOT states that it does not oppose the clarification proposed by NS. PennDOT R. Exc. at 2.

**Disposition**

We shall grant NS’ fourth Exception and modify the Ordering Paragraphs accordingly. The language NS proposes to include in Ordering Paragraph Nos. 12 and 13 is for clarification purposes and is unopposed by PennDOT.

**(3) NS’ Exception Nos. 5 and PennDOT’s Reply**

In its fifth Exception, NS further argues that Ordering Paragraph No. 12 does not specify what repairs PennDOT should perform on the existing SR 1018 Bridge, for which NS will be responsible for half the costs pursuant to Ordering Paragraph No. 13. NS states that the deterioration of the SR 1018 Bridge deck under the parapets has undermined support for the parapets, which could dislodge if a vehicle strikes one of them. NS Exc. at 4 (citing Findings of Fact Nos. 56 and 57). NS avers that pursuant to Ordering Paragraph Nos. 14 and 15, in order to protect the public safety, some repairs will be needed prior to the bridge being reconstructed in seven years. NS had recommended concrete repair work along the underside edge of the arch and patching the small areas of spalling concrete under the railing on one side, at a total estimated cost of $85,000. *Id.* (citing NS St. 1 at 13). Therefore, NS further requests that Ordering Paragraph No. 12 be amended as follows:

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, including the roadway paving located on the bridge and its approaches and shall remove any snow, ice or debris from the roadway paving on the SR 1018 bridge and its approaches. The repair work shall include concrete repair work along the underside edge of the arch and patching the small areas of spalling concrete under the railing on one side, which shall be completed within one (1) year of the date of this Order.

In reply, PennDOT avers that it does not oppose the clarification regarding the maintenance of SR 1018, *i*.*e*. removal of snow, ice, debris from the roadway paving, but it does oppose being directed to do the preservation work suggested by NS and also to replacing the bridge within seven years of a Commission Order. PennDOT explains that the work proposed by NS would be considered preservation work and if federal funds are used, the work would have to last for at least ten years.[[17]](#footnote-17) Further, if PennDOT is ordered to do the work as proposed by NS, that same work will cost more than the $85,000 estimated by NS. PennDOT R. Exc. at 2. According to PennDOT, if the Commission were to determine that the work proposed by NS is to be done by PennDOT, it will need at least a year from the date of an Order to procure the funding and to perform the work. This timeframe is dependent upon timely interaction with NS and the availability of the appropriate protective services. Further, if PennDOT is ordered to do the work proposed by NS and to continue to maintain the structure, then PennDOT should be given the latitude to maintain the bridge and program it for replacement when the replacement is warranted and should not be bound by the currently proposed seven-year period in the Recommended Decision. PennDOT opines that the combination of what is proposed by NS and the Recommended Decision is not a prudent expenditure of public funds. *Id.* (citing Ordering Paragraph Nos. 14-15).

**Disposition**

Upon review, we shall deny NS’ fifth Exception. While we agree with adding the language NS proposed in its fourth Exception, we do not agree to add language regarding the description and the cost of the work NS proposes for SR 1018, prior to replacement. Initially, we note that the ALJ recommended that PennDOT inspect and maintain the existing bridge and that NS reimburse PennDOT for 50% of the costs of inspection and maintenance. R.D. at 43-44. The ALJ also stated that the SR 1018 Bridge be replaced since PennDOT has indicated that the crossing is integral to the state highway system. Therefore, the ALJ directed PennDOT to prepare plans for the demolition and removal of the existing SR 1018 Bridge and replacement with a new structure. According to the ALJ, upon Commission approval of those plans, PennDOT shall remove the structure and replace it at its initial cost and expense. In Ordering Paragraph Nos. 14 and 15, the ALJ gave PennDOT five years from the date of this Order to prepare and submit the plans and two years from plan approval to replace the bridge. *Id.* at 79. This timeframe should give PennDOT sufficient time to coordinate replacement of the SR 1018 Bridge with the other bridges on the rail line. The ALJ further directed NS to reimburse PennDOT $300,000 of the costs that PennDOT incurs in removing and replacing the SR 1018 Bridge,[[18]](#footnote-18) as well as to bear the costs of providing watchmen, flagmen, and inspectors. *Id.* at 79-80.

We note that the ALJ gave PennDOT five years to prepare plans for the demolition and removal of the existing SR 1018 Bridge and to replace it with a new structure. The ALJ observed that 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. In our opinion, this is sufficient time in which to coordinate which bridge should be replaced, including acquiring the associated funding that would be required for the work. The ALJ also gave PennDOT two years to complete the work after the plans are approved. Additionally, we find, for public safety, that it is reasonable to assume that PennDOT will maintain and inspect the bridge until it complies with the ALJ’s directive in this matter. We encourage NS to work closely with PennDOT to provide the appropriate protective services to help enhance the timely completion of the maintenance and replacement work.

**d. PennDOT’s Exception No. 7, NS’ Reply, and Disposition**

PennDOT’s argues in its seventh exception that Ordering Paragraph No. 13 does not order NS to bear its own costs associated with the inspection and maintenance of this bridge. PennDOT references its General Exception No. 6. PennDOT Exc. at 6.

In reply, NS states that PennDOT is attempting make NS pay a disproportionate share of the costs for a PennDOT structure carrying a PennDOT highway. NS also notes that no supporting reasons were advanced by PennDOT in this Exception, or the underlying General Exception, as required by 52 Pa. Code § 5.533(b). NS R. Exc. at 12.

**Disposition**

For the disposition of this Exception, please refer to our Disposition for PennDOT’s General Exception No. 6, *supra*. As we indicated in our previous disposition of this General Exception, we find that because both Parties benefit from this structure and are responsible for the current deteriorated state of the structure, a 50-50 split of the costs associated with inspecting and maintaining the structure is just and reasonable.

**e. PennDOT’s Exception No. 8, NS’ Reply, and Disposition**

PennDOT’s objects to Ordering Paragraph Nos. 14 and 15 in its eighth exception.[[19]](#footnote-19) PennDOT references its General Exceptions Nos. 5-10 as support for its position in this matter. PennDOT proposes to reimburse NS $300,000, instead of NS reimbursing it as per Ordering Paragraph No. 19.

In reply, NS opines that PennDOT is seeking to make NS responsible for a bridge it owns, the maintenance of which was never assigned to the railroad, and which PennDOT has neglected over the years. NS also notes that there are no supporting reasons advanced by PennDOT, simply a reference to its General Exceptions Nos. 5 through 10, of which 9 and 10 are not applicable, in violation of 52 Pa. Code § 5.533(b). NS R. Exc. at 12.

**Disposition**

For thedisposition of this Exception, please refer to our Disposition for PennDOT’s General Exceptions Nos. 5-8, *supra*. As we indicated in our earlier dispositions of these General Exceptions, we agree with the ALJ’s cost allocations and assignment of responsibilities in this proceeding, and we find them to be just and reasonable. We note; however, that as discussed in our disposition of Great Bend’s Exception No. 6, herein, NS will be directed to reimburse PennDOT 20%, rather than $300,000, of the costs that PennDOT incurs in removing and replacing the SR 1018 Bridge. Accordingly, Ordering Paragraph No. 19 will be modified.

**f. PennDOT’s Exception No. 9, NS’ Reply, and Disposition**

In PennDOT’s ninth exception, it objects to Ordering Paragraph No. 16 for not including all of the railroad costs associated with the replacement of a bridge. Ordering Paragraph No. 16 provides “[t]hat 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.” PennDOT references its General Exceptions Nos. 6-8. PennDOT Exc. at 7.

In reply, NS assumes that the costs PennDOT is referring to are those enumerated in its General Exception No. 7 for costs such as design plan reviews, insurance, and right of way acquisitions. NS submits that the ALJ included all of the costs he saw appropriate to allocate to NS and that any other costs should fall to PennDOT as the entity owning and replacing the bridge. NS states that it is important to remember that a lump sum of $300,000 is ordered to be paid by NS to PennDOT in connection with the bridge reconstruction, which presumably will cover costs such as those not specifically outlined in Ordering Paragraph No. 16, should PennDOT even be responsible for such costs under any federal funding program. NS avers that it cannot respond to any specific reasons for this exception, as PennDOT has not asserted any such reasons which is in violation of 52 Pa. Code § 5.533(b). NS R. Exc. at 12-13.

**Disposition**

While it is not clear from this Exception what costs PennDOT is alluding to, consistent with our earlier dispositions of PennDOT’s General Exceptions Nos. 6-8, we find that the ALJ appropriately allocated the costs and adequately assigned maintenance and inspection responsibilities in this proceeding.

**g. PennDOT’s Exception No. 10, NS’ Reply, and Disposition**

PennDOT’s tenth exception relates to Ordering Paragraph No. 20. Ordering Paragraph No. 20 provides the following: “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.” PennDOT objects for the reasons set forth in PennDOT’s General Exceptions Nos. 5 and 10. PennDOT Exc. at 7.

In reply, NS states that the replies it provided regarding PennDOT General Exceptions Nos. 5 and 10 demonstrate that there is ample evidence and justification for this ordering paragraph. NS R. Exc. at 13.

**Disposition**

Upon review, we shall also deny this Exception. Consistent with our dispositions of General Exceptions Nos. 5-10, we agree with the ALJ’s cost allocations and assignment of responsibilities, and we find the ALJ’s recommendations to be just and reasonable.

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

**a. Background**

Although there is a single track at each of the other crossings that are the subject of this proceeding, the SR 2017 crossing has two tracks. NS St. 1 at 4. SR 2017 is a two-lane roadway running in a north/south direction. NS Exh. 3 at 2. SR 2017 crosses above the tracks of NS in Lathrop Township, Susquehanna County. SR 2017 begins at the Wyoming and Susquehanna County lines and continues north to an intersection with SR 0011 in Hop Bottom Borough, Susquehanna County, where it ends. SR 2017 is designated as a Local Collector Road. PennDOT St. 1 at 21; PennDOT Exh. A5.

The current ADT at the SR 2017 crossing is estimated at 119 vehicles per day. PennDOT St. 1 at 12. Of this total, twelve are estimated to be trucks, two vehicles are estimated to be motorcycles, eighty-eight vehicles are estimated to be automobiles and 127 are estimated to be pickups/vans. *Id.* at 22. PennDOT estimates that the ADT at the SR 2017 crossing will increase by 0.56% per year for the next twenty years. *Id.*; PennDOT Exh. 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 at 12; I&E St. 1 at 2; I&E Exh. 1A-1D. The structure is deteriorated throughout. I&E St. 1 at 2; I&E Exh. 1A-1D. The far-right approach guiderail shows signs of collision damage. I&E St. 1 at 2-3; I&E Exh. 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 at 2-3; I&E Exh. 1A-1D.

**b. Recommended Decision**

Initially, the ALJ provided background information regarding Commission Orders pertaining to the SR 2017 crossing. The ALJ pointed out that none of the Parties in this proceeding advocated for abolishing the SR 2017 crossing. The ALJ noted that this crossing was the subject ofthe *April 2015 Order* which directed PennDOT to inspect this bridge and five others but did not assign maintenance responsibilities for the bridge. R.D. at 62 (citing PennDOT St. 1 at 23-24; PennDOT Exh. D1). According to the ALJ, in addition to the *April 2015 Order*, a Secretarial Letter issued January 8, 2015, at Docket No. M-2014-2459368, directed D&H to install concrete barriers and protective fences. The ALJ noted that similar to the *April 2015 Order*, the 2015 Secretarial Letter did not assign maintenance responsibilities for the SR 2017 Bridge. R.D. at 62 (citing PennDOT St. 1 at 23-24; PennDOT Exh. D8).

Next, the ALJ determined that based on his analysis of the record evidence, it was just and reasonable for PennDOT to inspect and maintain the existing bridge and for NS to reimburse PennDOT for 50% of the costs of inspection and maintenance. The ALJ’s conclusion was based on two reasons. First, the ALJ pointed out that both NS and PennDOT benefit from the continued existence of the grade-separated crossing and so assigning maintenance responsibility to PennDOT will allow the grade separated crossing to remain open to both train and vehicle traffic. The ALJ noted that the safe interface between rail and vehicle traffic is a factor the Commission may consider in assigning maintenance. R.D. at 62-63.

Secondly, the ALJ stated that both NS and PennDOT bear some responsibility for the deteriorated condition of the crossing. For instance, according to the ALJ, NS’ predecessors bear some responsibility for the deteriorated condition of the crossing because they failed to perform any meaningful repairs to or maintenance of the structure even though DLW built the rail line and constructed the bridge. Although, he acknowledged that NS only purchased the rail line in September 2015 after much of the deterioration had occurred, the ALJ, nonetheless, stated that NS purchased the line knowing that the line and the structures suffered from deferred maintenance and was aware that that the Commission had initiated an investigation into the condition of the crossing and could allocate responsibilities and costs to it prior to purchasing the rail line. The ALJ stated that PennDOT failed to perform any meaningful repairs to or maintenance of the structure even though the bridge carries a state highway. Because the actions of both NS and PennDOT contributed to the need for work to be performed on the bridge, the ALJ found both Parties to be responsible for the bridge. *Id.* at 63.

Next, the ALJ emphasized the lack of a Commission order assigning maintenance responsibility for the SR 2017 structure, which, according to the ALJ, contributed to the deteriorated condition of the structure. The ALJ blamed both Parties for not bringing the condition of the crossing or the lack of a Commission order assigning maintenance responsibility for the crossing to the attention of the Commission previously. The ALJ believed assigning future inspection and maintenance responsibility would have at least provided some monitoring of the existing bridge and perhaps slowed the deterioration of the bridge. This is especially because, according to the ALJ, the Commission, for the most part, considers the responsibility of a Party in the deterioration of a crossing in allocating costs and assigning maintenance. *Id.*

Based on the above, the ALJ concluded that PennDOT should inspect and maintain the existing structure carrying SR 2017 over NS’ facilities while NS should reimburse PennDOT a portion of the costs for inspection and maintenance. The ALJ reiterated that this assignment of responsibilities and allocation of costs is just and reasonable and is supported by evidence in the record. The ALJ also indicated that the allocation will be without prejudice to the rights of PennDOT and NS to enforce such obligations upon or seek reimbursement from others pursuant to any applicable law or lawful agreement. *Id.* at 63-64 (citing *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, the ALJ then proceeded to address the disposition of the crossing. In doing so, the ALJ considered the Parties’ positions on this issue, which are as follows. PennDOT requested that the Commission order NS to replace the SR 2017 bridge because the bridge was constructed approximately 100 years ago and the bridge is near the end of its service life. PennDOT St. 2 at 17. PennDOT argued that while rehabilitation of the structure is possible, based on the age of the structure, it may not be cost-effective to rehabilitate the bridge due to the level of rehabilitation required with the SR 2017 structure. *Id.* at 17-18. According to PennDOT, when rehabilitation costs exceed 50% of the replacement costs, it looks at the age of the structure to try to determine the remaining service life. PennDOT averred that because the existing concrete will have no more than twenty-five years of service life left before it will deteriorate, it is better to replace it rather than rehabilitate it. *Id.*

NS, on the other hand, argued that unlike other structures in this proceeding, SR 2017 was not assigned to it and even the 2015 Secretarial Letter which addressed repairs to the SR 2017 bridge railing, explicitly left open the assignment of future maintenance. NS St. 1 at 4-6. While NS agrees to perform work on four of the seven bridges in this proceeding that were assigned to it, NS indicated that any work and maintenance responsibilities for SR 2017 should be assigned to PennDOT as the owner of the bridge. NS also pointed out that the faces on both the left and right arch sides of the 70’ concrete arch span of SR 2017 need concrete repair work, which NS estimates would cost $100,000. NS St. 1 at 7. NS further indicated that the failed wingwall area on the right side of the arch should be stabilized, which NS estimates would cost $15,000. NS recommended that the New Jersey barriers along the left side of the roadway continue to be used and only the fencing should be replaced. NS estimates this replacement cost at $1,000, for a total estimated cost of $116,000 for the proposed repair work for SR 2017. NS St. 1 at 12-13.

First, the ALJ acknowledged that although PennDOT advocates replacing this crossing rather than rehabilitating it, PennDOT has also provided evidence in this proceeding to confirm that the SR 2017 crossing is integral to the state highway system and that it does not consider the crossing to be redundant. According to the ALJ, PennDOT indicated that 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. R.D. at 64 (citing PennDOT St. 2 at 15-16). The ALJ also observed that while PennDOT has advocated replacing this and the other structures on this line, the evidence indicates there must be some coordination as to when each of these bridges should be replaced. According to the ALJ, 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. The ALJ also noted that there is no evidence indicating in what order or over what period the bridges should be replaced. R.D. at 64. The ALJ stated that based on the record, if more than one bridge is taken out of service at the same time, it could create extended emergency response times and school bus travel times. The ALJ explained that 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. *Id.* at 64-65.

Next, the ALJ opined that since PennDOT has indicated that the crossing is integral to the state highway system, the existing bridge should be replaced. The ALJ also explained that while PennDOT advocates that NS replace the bridge, PennDOT did not provide any information on how long it would take to replace the structure or how much replacing the structure would cost. R.D. at 65. The ALJ acknowledged PennDOT’s argument that the SR 2017 crossing is not included in any regional transportation plan and is not currently programmed for replacement. According to the ALJ, PennDOT contended that there is no PennDOT funding available for this crossing and that this lack of funding is due to the way PennDOT and federal funds are allocated to fund highway projects. *Id.* (citing PennDOT St. 3 at 3). The ALJ acknowledged PennDOT’s contention that PennDOT and federal funds are allocated among Metropolitan or Regional Planning Organizations in Pennsylvania. According to PennDOT, the SR 2017 Bridge is in the Northern Tier Planning Region, and 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. R.D. at 65 (citing PennDOT St. 3 at 4). The ALJ further noted PennDOT’s argument that 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. R.D. at 65 (citing PennDOT St. 3 at 4-5). According to PennDOT, the SR 2017 Bridge does not have a high enough priority when compared to other projects in the Northern Tier Planning Region to obtain PennDOT or federal funding. R.D. at 65.

Having reviewed the record evidence in this proceeding, the ALJ concluded that PennDOT should prepare plans for the demolition and removal of the existing SR 2017 Bridge and for its replacement with a new structure. According to the ALJ, upon Commission approval of those plans, PennDOT shall remove the structure and replace it at its initial cost and expense. The ALJ gave PennDOT five years to prepare the plans, stating that this gives PennDOT sufficient time to coordinate replacement of the SR 2017 Bridge with the other Bridges on the rail line. The ALJ also gave PennDOT two years to complete the work after the Commission approves the plans. R.D. at 65. The ALJ further directed that NS shall reimburse PennDOT for $300,000 of the costs of plan preparation, demolition and replacement[[20]](#footnote-20) and that NS will also bear the costs of providing watchmen, flagmen and inspectors. *Id.* at 66.

Highlighting the relevant factors that the Commission may consider in allocating the costs and responsibilities, the ALJ explained the reasons for reaching this determination. First, the ALJ explained that because NS’ predecessors constructed the bridge and created the crossing, NS should be responsible for a portion of the costs for replacing the bridge. Second, the ALJ reiterated that NS’ predecessors bear some responsibility for the deteriorated condition of the crossing, which has led to the need to replace the bridge. The ALJ observed that it is not clear what repairs or maintenance, if any, DLW or its successors performed to the structure after it constructed the bridge. The ALJ noted that some portion of the current condition of the crossing is due to lack of repairs or maintenance. R.D. at 66.

Third, the ALJ stated that both parties will benefit from the replacement of the bridge. According to the ALJ, 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. The ALJ noted that NS will not have the possibility of pieces of concrete from a deteriorating bridge falling onto its right of way. On the other hand, PennDOT 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. The ALJ stated that PennDOT will also benefit since replacement will allow for the continuation of a crossing that is integral to the state highway system.

**c. PennDOT’s Exception No. 17 and NS’ Reply; NS’ Exceptions Nos. 8 and 9 and PennDOT’s Reply; and Disposition**

**(1) PennDOT’s Exception No. 17 and NS’ Reply**

In its seventeenth Exception, PennDOT objects to Ordering Paragraph No. 43 of the Recommended Decision relating to the maintenance of the structure carrying SR 2017. Ordering Paragraph No. 43 provides the following:

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.

R.D. at 83. Although, PennDOT agrees to inspect the bridge at its initial cost and expense to ensure compliance with the NBIS standards, PennDOT disagrees with the ALJ’s conclusion that the recommendation is just and reasonable. PennDOT Exc. at 8. PennDOT argues the SR 2017 bridge was constructed at the same time as other structures in the instant proceeding and because no party can find an Order approving the construction of this bridge and no party previously brought the lack of Commission Order and maintenance to the Commission’s attention, there is nothing just and reasonable about the ALJ’s recommendation. *Id.* (citing PennDOT’s General Exceptions Nos. 5-10). From PennDOT’s point of view, it would be just and reasonable if the Commission ordered NS to perform the maintenance recommended in PennDOT’s Inspection Reports and program the bridge for replacement. PennDOT Exc. at 8 (citing PennDOT St. 3 at 10; PennDOT Exh. E5; PennDOT’s General Exception No. 5).

In Reply, NS avers that while it also excepts to Ordering Paragraph No. 43, it disagrees with PennDOT’s Exception because PennDOT owns the bridge but failed to maintain it, thereby leading to a Public Safety Advisory being issued by the Commission due to lack of repairs. NS R. Exc. at 16 (citing NS M.B. at 3-12; NS R.B. at 6-7). NS argues that PennDOT’s seventeenth Exception fails to recognize the fact that Ordering Paragraph No. 44 ordered that NS reimburse half of the costs of the bridge’s maintenance and inspections to PennDOT until such time as the bridge is reconstructed. NS R. Exc. at 16 (citing PennDOT’s General Exception No. 5).

**Disposition**

Upon review, we shall deny PennDOT’s seventeenth Exception. In line with the reasons we highlighted in our disposition of General Exception No. 5, we shall uphold the ALJ’s recommendations regarding SR 2017. We agree with the ALJ’s determination that because both PennDOT and NS benefit from this crossing and because both Parties bear some responsibility for the deteriorated condition of the bridge, they should both bear the cost of inspecting and maintaining the bridge. In recognition of the several reasons highlighted by the ALJ in the Recommended Decision in reaching his conclusion on this matter, and as we stated in our disposition of General Exception No. 5, we concur with the ALJ that it is just and reasonable for PennDOT to inspect and maintain the existing bridge and for NS to reimburse PennDOT 50% of the costs of the inspection and maintenance. While we appreciate PennDOT’s agreement to inspect the bridge at its initial cost and expense to ensure compliance with the NBIS, we disagree with PennDOT’s argument disputing the ALJ’s recommendation of a 50-50 split of the costs of inspecting and maintaining this crossing. In our opinion, the ALJ’s recommendation in Ordering Paragraph Nos. 43 and 44 that PennDOT, at its initial cost and expense, furnish all material and perform all work necessary to inspect and maintain the existing SR 2017 bridge, and that NS reimburse half of the costs of maintenance and inspections to PennDOT until such time as the bridge is reconstructed, is just and reasonable under the circumstances of this case. We reached this decision based on our finding that the ALJ’s allocation is equitable under the circumstances and is based on sound legal and factual grounds. As such, we will deny PennDOT’s seventeenth Exception.

**(2) NS’ Exception No. 8 and PennDOT’s Reply**

In its eighth Exception, NS excepts to Ordering Paragraph Nos. 43 and 44. NS avers that these Ordering Paragraphs do not specify PennDOT’s responsibility regarding roadway paving located on the SR 2017 Bridge and its approaches, as well as snow, ice and debris removal thereon. NS argues that not only is PennDOT responsible for the highlighted work but that PennDOT has agreed to do the work. NS Exc. at 6 (citing PennDOT St. 3 at 9). Therefore, NS suggests Ordering Paragraph Nos. 43 and 44, be amended as follows:

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, including the roadway paving located on the bridge and its approaches and shall remove any snow, ice or debris from the roadway paving on the SR bridge and its approaches.

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, excluding the roadway paving located on the bridge and its approaches and shall remove any snow, ice or debris from the roadway paving on the SR bridge and its approaches.

NS Exc. at 6.

In Reply, PennDOT states that it is not opposed to the clarification NS proposes regarding Ordering Paragraph Nos. 43 and 44. PennDOT R. Exc. at 3.

**Disposition**

Upon review, we shall grant NS’ eighth Exception and modify Ordering Paragraph Nos. 43 and 44 as NS proposes above. We note that PennDOT is not opposed to adding the clarifying language to Ordering Paragraph Nos. 43 and 44. We also do not find any issue with the clarification, as PennDOT is typically responsible for maintaining the roadway paving on state highways.

**(3) NS’ Exception No. 9 and PennDOT’s Reply**

In its ninth Exception, NS disputes Ordering Paragraph No. 43, stating that the Ordering Paragraph does not specify the repairs that should be done by PennDOT and for which NS will pay half of the costs within seven years from the Final Order when this bridge will be reconstructed pursuant to Ordering Paragraph Nos. 45 and 46.[[21]](#footnote-21) NS Exc. at 7. NS highlights the deteriorated state of SR 2017, including the fact that the far-right approach guardrail at the crossing shows signs of collision damage and the embarkment and wingwall that support this section of the guardrail at the crossing have failed and are unlikely to prevent a vehicle from falling onto the railroad right of way if a vehicle strikes the guardrail. *Id.* (citing R.D. at 23). To address these deficiencies in the interim, until the bridge is reconstructed, NS recommends that the concrete faces on both the left and right arch sides be repaired, the failed wingwall area on the right side be stabilized, and the New Jersey barriers on the left side of the roadway continue to be used, and the fencing be repaired at a total estimated cost of $116,000. NS Exc. at 7 (citing NS St. 1 at 12-13).

Accordingly, NS suggests Ordering Paragraph No. 43, be amended as follows:

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, including the roadway paving located on the bridge and its approaches and shall remove any snow, ice or debris from the roadway paving on the SR bridge and its approaches. The repair work shall include repairing the concrete faces on both the left and right arch sides; stabilizing the failed wingwall area on the right side; and continuing to use the New Jersey barriers on the left side of the roadway and repairing the fencing located thereon, which repairs shall be completed within one (1) year of the date of this Order.

NS Exc. at 7-8.

In Reply, PennDOT avers it is not opposed to NS’ proposed clarification to Ordering Paragraph No. 43 regarding the maintenance of SR 2017, especially the section that states “including the roadway paving located on the bridge and its approaches and shall remove any snow, ice or debris from the roadway paving on the SR Bridge and its approaches.” However, PennDOT indicates that it is opposed to being directed to do the preservation work suggested by NS and to replace the bridge within seven years of a final Commission Order. PennDOT R. Exc. at 3. According to PennDOT, the work NS proposes would be considered preservation work and if federal funds are to be used, would have to last at least ten (10) years. PennDOT further notes that NS’ estimated cost of $116,000 for the work is below the actual cost of the work that needs to be done on the bridge because NS’ estimate did not include the cost of railroad coordination as well as the requirements of expenditure of public funding should PennDOT be required to do the work. PennDOT also believes it would cost NS less to do the same work. *Id.* at 3-4 (PennDOT St. 3 at 10-11; Tr. at 122-124, 126-127).

Additionally, referencing PennDOT Exhibit H, PennDOT explains that the estimate provided by NS is way less than PennDOT’s estimate for the proposed work on this bridge. According to PennDOT, should the Commission require it to do the proposed work, the Commission should give PennDOT at least a year from the date of a final Commission Order to procure the funding to perform the work.[[22]](#footnote-22) While PennDOT does not believe the work proposed by NS and the ALJ is a prudent expenditure of public funds, PennDOT avers that if the Commission still require PennDOT to do the proposed work and continue to maintain the structure, the Commission should also give PennDOT the latitude to maintain the bridge and program it for replacement when replacement is warranted. PennDOT R. Exc. at 4.

**Disposition**

Upon review, we shall deny NS’ ninth Exception. We agree with NS’ proposal to add the language referenced in NS’ eighth Exception, which PennDOT does not oppose. However, to the extent that NS is requesting that we adopt the description and the cost of the work it proposes for SR 2017, prior to replacement, we shall deny the Exception.

Initially, we note that the ALJ recommended that PennDOT inspect and maintain the existing bridge and that NS reimburse PennDOT for 50% of the costs of inspection and maintenance. R.D. at 62-64. The ALJ also stated that the SR 2017 bridge be replaced since PennDOT has indicated that the crossing is integral to the state highway system. Therefore, the ALJ directed PennDOT to prepare plans for the demolition and removal of the existing SR 2017 Bridge and replacement with a new structure. According to the ALJ, upon Commission approval of those plans, PennDOT shall remove the structure and replace it at its initial cost and expense. In Ordering Paragraph Nos. 45 and 46, the ALJ gave PennDOT five years from the date of this Order to prepare and submit the plans, and two years from plan approval to replace the bridge. This timeframe should give PennDOT sufficient time to coordinate replacement of the SR 2017 Bridge with the other bridges on the rail line. *Id.* The ALJ further directed NS to reimburse PennDOT for $300,000 of the costs of plan preparation, demolition and replacement and to bear the costs of providing watchmen, flagmen and inspectors. *Id.* at 66.

We note that the ALJ gave PennDOT five years to prepare plans for the demolition and removal of the existing SR 2017 Bridge and to replace it with a new structure. The ALJ observed that 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. In our opinion, this is sufficient time in which to coordinate which bridge should be replaced, including acquiring the associated funding that would be required for the work. The ALJ also gave PennDOT two years to complete the work after the plans are approved. Additionally, we find in the interest of public safety, that it is reasonable to assume that PennDOT will maintain and inspect the bridge until it complies with the ALJ’s directive in this matter. We encourage NS to work closely with PennDOT to provide the appropriate protective services to help enhance the timely completion of the maintenance and replacement work.

**d. PennDOT’s Exception No. 18, NS’ Reply, and Disposition**

In its eighteenth Exception, PennDOT excepts to Ordering Paragraph No. 44. According to PennDOT, this Ordering Paragraph does not order NS to bear its own costs associated with the inspection and maintenance of the SR 2017 Bridge. PennDOT Exc. at 8 (citing PennDOT’s General Exception Nos. 6 and 7).

In Reply, NS disagrees with PennDOT, stating that if NS had to “bear its own costs” and then also reimburse 50% of PennDOT’s costs as directed in the Ordering Paragraph, there would not be an equal split of the expenses associated with inspecting and maintaining the structure. NS references its Exception to this ordering paragraph which essentially clarifies the amount of work to be done to this structure. NS R. Exc. at 16-17.

**Disposition**

Upon review, we shall deny this Exception. We concur with the ALJ’s recommendation in Ordering Paragraph No. 44. As we indicated in our previous dispositions, we believe that because both Parties benefit from this structure and are responsible for the current deteriorated state of the structure, a 50-50 split of the costs associated with inspecting and maintaining the structure is just and reasonable.

**e. PennDOT’s Exception No. 19, NS’ Reply, and Disposition**

In its nineteenth Exception, PennDOT excepts to Ordering Paragraph Nos. 45 and 46. Advocating a reversal of the responsibilities for the disposition of this structure, PennDOT avers it would reimburse NS $300,000 consistent with Ordering Paragraph No. 50. PennDOT Exc. at 8 (citing PennDOT’s General Exception No. 5).

In Reply, NS disagrees with PennDOT’s nineteenth Exception, stating that Ordering Paragraph Nos. 45 and 46 are just and reasonable. Citing to its position in its Main and Reply Briefs, NS argues that because PennDOT neglected this unassigned structure even though it owns it, the ALJ appropriately assigned the responsibilities highlighted in Ordering Paragraph Nos. 45 and 46. NS R. Exc. at 17 (citing NS M.B. at 3-12; NS R.B. at 3-14, 19-21; NS R.B Exh. A).

**Disposition**

Upon review, we shall deny PennDOT’s nineteenth Exception. As we indicated in our earlier dispositions, we agree with the ALJ’s cost allocations and assignment of responsibilities in this proceeding, and we find them to be just and reasonable. We note; however, that as discussed in our disposition of Great Bend’s Exception No. 6, herein, NS will be directed to reimburse PennDOT 20%, rather than $300,000, of the costs that PennDOT incurs in removing and replacing the SR 1018 Bridge. Accordingly, Ordering Paragraph No. 50 in the Recommended Decision will be modified.

**f. PennDOT’s Exception No. 20, NS’ Reply, and Disposition**

In its twentieth Exception, PennDOT disagrees with Ordering Paragraph No. 47 for failure to include all of the railroad costs associated with the replacement of a bridge, consistent with the reasons set forth in its General Exceptions Nos. 6 through 8. PennDOT Exc. at 9. Ordering Paragraph No. 47 provides as follows:

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.

R.D. at 83.

In its Replies, NS avers that to the extent that the costs referenced in PennDOT’s Exception involve the same costs highlighted in PennDOT’s General Exception No. 7 for items such as design plan reviews, insurance, and right of way acquisition, the ALJ already included all of the costs he considered appropriate to allocate to NS, and any additional project costs should be PennDOT’s responsibility since it is the entity replacing the bridge. NS reiterates the fact that it will be reimbursing PennDOT $300,000 for the reconstruction project. NS R. Exc. at 17-18.

**Disposition**

Upon review, we shall also deny this Exception. While it is not clear from this Exception what costs PennDOT is alluding to, consistent with our earlier dispositions of PennDOT’s General Exceptions Nos. 6-8, we find that the ALJ appropriately allocated the costs and adequately assigned maintenance and inspection responsibilities in this proceeding.

**g. PennDOT’s Exception No. 21, NS’ Reply, and Disposition**

In its twenty-first Exception, PennDOT avers that it excepts to Ordering Paragraph No. 51 for the reasons set forth in its General Exceptions Nos. 5-10. PennDOT Exc. at 9. Ordering Paragraph 51 provides as follows:

47. 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.

R.D. at 84.

In Reply, NS believes PennDOT is disputing this Ordering Paragraph because it makes PennDOT solely responsible for replacing the bridge and its future maintenance. NS R. Exc. at 18. NS argues that PennDOT’s failure to provide any support or reasons for disputing Ordering Paragraph No. 51 violates 52 Pa. Code § 5.533(b). NS further argues that the ALJ’s recommendation in Ordering Paragraph No. 51 is just and reasonable because as the entity that owns the bridge, it is PennDOT’s sole responsibility to replace and maintain the bridge. NS R. Exc. at 18 (citing NS M.B. at 3-12; NS R.B. at 3-14).

**Disposition**

Upon review, we shall also deny this Exception. Consistent with our dispositions of General Exceptions Nos. 5-10, we agree with the ALJ’s cost allocations and assignment of responsibilities, and we find the ALJ’s recommendations to be just and reasonable.

3. Crossing No. 265 891 D, SR 4005, Benton Township, Lackawanna County

**a. Background**

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

The current ADT at the SR 4005 crossing is estimated at 227 vehicles per day. Of this total, twenty-seven are estimated to be trucks, one vehicle is estimated to be a motorcycle, 158 vehicles are estimated to be automobiles and forty-one are estimated to be pickups/vans. PennDOT estimates that the ADT at the SR 4005 crossing will increase by 0.45% per year for the next twenty years. PennDOT St. 1 at 26- 27; PennDOT Exh. C.

The bridge carrying SR 4005 over the tracks of NS is a 128’ open spandrel concrete arch built in approximately 1915. The parapets are deteriorated. The parapet and wingwall of the bridge have been severely undermined and washed out due to water flow. I&E St. 1 at 8; I&E Exh. 6A-6C. SR 4005 is a two-lane roadway running in a north/south direction. NS Exh. 3 at 2.

**b. Recommended Decision**

Initially, the ALJ provided background information regarding Commission Orders pertaining to the SR 2017 crossing. The ALJ pointed out that none of the Parties in this proceeding advocated for abolishing the SR 4005 crossing. R.D. at 68. The ALJ stated that the SR 4005 crossing was the subject ofthe *April 2015 Order* which directed PennDOT to inspect this bridge and five others. R.D. at 62. The ALJ noted that the *April 2015 Order* did not assign maintenance responsibilities for the bridge. *Id.* (citing PennDOT St. 1 at 28; PennDOT Exh. D1). The ALJ noted that the SR 4005 crossing was also the subject of a Commission Secretarial Letter issued January 15, 2015 at M-2014-2400414. According to the ALJ, the 2015 Secretarial Letter directed PennDOT to post the SR 4005 Bridge at its initial cost and expense. The ALJ noted that similar to the *April 2015 Order*, the 2015 Secretarial Letter did not assign maintenance responsibilities for the SR 2017 Bridge. R.D. at 62 (citing PennDOT St. 1 at 27; PennDOT Exh. D9).

Next, based on his analysis of the record evidence, the ALJ concluded it is just and reasonable for PennDOT to inspect and maintain the existing bridge and for NS to reimburse PennDOT 50% of the costs of inspection and maintenance. The ALJ reached this conclusion based on two main reasons. First, in consideration of the safe interface between rail and vehicle traffic, which is one of the factors the Commission may consider in assigning maintenance, the ALJ pointed out that both NS and PennDOT benefit from the continued existence of the grade-separated crossing and assigning maintenance responsibility to PennDOT will allow the grade separated crossing to remain open to both train and vehicle traffic. R.D. at 68.

Second, the ALJ stated that both NS and PennDOT bear some responsibility for the deteriorated condition of the crossing. For instance, according to the ALJ, NS’ predecessors bear some responsibility for the deteriorated condition of the crossing because they failed to perform any meaningful repairs to or maintenance of the structure even though DLW built the rail line and constructed the bridge. Although, the ALJ acknowledged that NS only purchased the rail line in September 2015 after much of the deterioration had occurred, the ALJ, nonetheless, pointed out that NS purchased the line knowing that the line and the structures suffered from deferred maintenance. According to the ALJ, NS 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 prior to purchasing the rail line. The ALJ also stated that PennDOT failed to perform any meaningful repairs to or maintenance of the structure even though the bridge carries a state highway. Because the actions of both NS and PennDOT contributed to the need for work to be performed on the bridge, the ALJ found both Parties responsible for the bridge. *Id.* at 68-69.

Next, emphasizing that the lack of a Commission order assigning maintenance responsibility for the SR 4005 structure contributed to the deteriorated condition of the structure, the ALJ blamed both Parties for not bringing the condition of the crossing or the lack of a Commission Order assigning maintenance responsibility for the crossing, to the attention of the Commission on time or prior to the Commission’s initiation of the investigation at Docket No. I-2015-2472242. The ALJ believed assigning future inspection and maintenance responsibility would have at least provided some monitoring of the existing bridge and perhaps slowed the deterioration of the bridge. *Id.* at 69.

Based on the above, the ALJ concluded that PennDOT should inspect and maintain the existing structure carrying SR 4005 over NS’ facilities, while NS should reimburse PennDOT a portion of the costs it incurs for inspection and maintenance. The ALJ reiterated that this assignment of responsibilities and allocation of costs is just and reasonable and is supported by evidence in the record. The ALJ also indicated that the allocation will be without prejudice to the rights of PennDOT and NS to enforce such obligations upon or seek reimbursement from others pursuant to any applicable law or lawful agreement. *Id.* (citing *Consolidated Rail Corp. v. City of Harrisburg,* 842 A.2d 369 (Pa. 2004)).

Having addressed the assignment of future inspection and maintenance responsibility for this crossing, the ALJ noted that the SR 4005 Bridge is currently being rehabilitated by PennDOT after working with the Pennsylvania Historic and Museum Commission because of its historical significance. R.D. at 69-70 (citing PennDOT St. 2 at 20). According to the ALJ, PennDOT indicated that it will be filing an application to modify the existing crossing. The ALJ noted PennDOT’s affirmation that the application project will be a full rehabilitation that will involve removing the concrete deck and spandrel columns and replacing them completely and rehabilitating the arch ribs, abutments, and wingwalls to near original condition, except where safety upgrades are mandated. R.D. at 70 (citing PennDOT St. 2 at 21). The ALJ also pointed out that PennDOT anticipates that contractors will be able to bid the project starting on October 10, 2019, and PennDOT anticipates that construction will be completed by November 1, 2020. Although PennDOT contended that the Commission determine maintenance responsibility for the existing structure and the rehabilitated structure in the instant proceeding, the ALJ concluded that because PennDOT has indicated it will file an application to rehabilitate the structure, it would be more appropriate that future maintenance responsibility for the rehabilitated structure be the subject of a future application proceeding. *Id.*

**c. PennDOT’s Exception No. 22 and NS’ Reply; NS’ Exception No. 10 and PennDOT’s Reply; and Disposition**

In its twenty-second Exception, PennDOT disagrees with Ordering Paragraph No. 53 of the Recommended Decision for failing to direct NS to bear its own costs associated with the inspection and maintenance of the existing SR 4005 Bridge. PennDOT Exc. at 9 (citing General Exceptions Nos. 6-10). Ordering Paragraph No. 53 provides as follows:

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.

R.D. at 84.

In Reply, NS agrees with the ALJ’s recommendation. NS avers that PennDOT’s Exception fails to recognize the fact that NS has already been ordered to reimburse half of the overall costs to PennDOT. According to NS, while it has addressed this issue in its Replies to PennDOT’s General Exceptions Nos. 6-10, this Exception is merely an attempt by PennDOT to ensure NS bears more than the 50% cost allocation. Similar to its response to PennDOT’s seventeenth Exception, NS reiterates that PennDOT’s failure to provide any support or reasons for disputing Ordering Paragraph No. 53 violates 52 Pa. Code § 5.533(b). NS R. Exc. at 18-19.

In its tenth Exception, NS also excepts to the ALJ’s Ordering Paragraph Nos. 52 and 53. NS avers that the Ordering Paragraphs do not specify PennDOT’s responsibility with regard to roadway paving located on the SR 4005 Bridge and its approaches, as well as snow, ice and debris removal thereon. NS argues that not only is PennDOT responsible for the highlighted work but PennDOT has also agreed to do the work. NS Exc. at 8 (citing PennDOT St. 3 at 9). Therefore, NS suggests Ordering Paragraph Nos. 52 and 53, be amended as follows:

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, including the roadway paving located on the bridge and its approaches and shall remove any snow, ice or debris from the roadway paving on the SR bridge and its approaches.

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, excluding the roadway paving located on the bridge and its approaches and shall remove any snow, ice or debris from the roadway paving on the SR bridge and its approaches.

NS Exc. at 8-9.

In its Replies to NS’ tenth Exception, PennDOT avers that it is not opposed to the clarification NS proposes regarding Ordering Paragraph Nos. 52 and 53. PennDOT R. Exc. at 4.

**Disposition**

Upon review, we shall deny PennDOT’s twenty-second Exception and grant NS’ tenth Exception. We agree with NS that PennDOT’s twenty-second Exception ignores the fact that NS has already been ordered to reimburse half of the overall costs to PennDOT. As highlighted by the ALJ in his Recommended Decision, because both PennDOT and NS benefit from the structures and are also both responsible for the current state of the structures, they should share in the costs. Furthermore, we agree with the ALJ’s conclusion that because PennDOT has indicated that it will file an application to rehabilitate the structure, it would be more appropriate that future maintenance and inspection responsibility for the rehabilitated structure be reserved and addressed in a future application proceeding. Therefore, similar to our dispositions regarding cost allocations and assignment of responsibilities in the instant proceeding, we agree with the ALJ’s recommendations and find them to be fair, equitable, and reasonable, and based on sound legal and factual grounds.

However, PennDOT has agreed to the amendment to Ordering Paragraph Nos. 52 and 53 that NS proposes. We also find the proposed amendment to be appropriate and consistent with roadway maintenance responsibilities for state highways that are typically assigned to PennDOT. Therefore, we shall grant NS’ tenth Exception.

IV. Conclusion

Based on our review of the record, the Parties’ positions, and the ALJ’s Recommended Decision, we shall: (1) grant, in part, and deny, in part, NS’ Exceptions; (2) grant, in part and deny, in part, PennDOT’s Exceptions; (3)grant, in part, and deny, in part, Great Bend’s Exceptions; and (4) adopt the ALJ’s Recommended Decision as modified by this Opinion and Order, all consistent with this Opinion and Order; THEREFORE,

**IT IS ORDERED:[[23]](#footnote-23)**

## 

## 1. That the Exceptions Norfolk Southern Railway Company filed on August 31, 2018, are granted, in part, and denied, in part.

## 2. That the Exceptions the Pennsylvania Department of Transportation filed on August 31, 2018, are granted, in part, and denied, in part.

3. That the Exceptions Great Bend Township filed on August 31, 2018, are granted, in part, and denied, in part.

4. That the Recommended Decision of Administrative Law Judge David A. Salapa issued on August 6, 2018, is adopted as modified by this Opinion and Order.

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

5. 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, as well as any reimbursements for directed 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.

6. 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.

7. 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 2015, 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.

8. 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.

9. 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 Opinion and Order.

10. That Norfolk Southern Railway Company shall work closely with the Pennsylvania Department of Transportation in a timely manner in order to provide the appropriate protective services to help enhance the timely completion of the proposed work.

11. 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.

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

13. 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, except that PennDOT shall be responsible for the roadway paving located on the bridge and its approaches and shall remove any snow, ice or debris from the roadway paving on the SR 1025 Bridge and its approaches.

14. 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 after December 31, 2043.

15. That Norfolk Southern Railway Company is required to maintain the SR 1025 Bridge at the load rating determined by the Pennsylvania Department of Transportation in this proceeding until December 31, 2043.

16. 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.

17. That the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and perform all work required thereafter to maintain the S.R. 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.

18. That Norfolk Southern Railway Company shall provide access to its right of way at no cost to the Pennsylvania Department of Transportation, for inspection of the SR 1025 Bridge.

19. That Norfolk Southern Railway Company shall provide supplemental services and personnel at no cost to the Pennsylvania Department of Transportation during the Pennsylvania Department of Transportation’s eventual maintenance and/or reconstruction of SR 1025 for future inspection of the bridge.

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

20. 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, including the roadway paving located on the bridge and its approaches and shall remove any snow, ice or debris from the roadway paving on the SR 1018 Bridge and its approaches.

21. 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, excluding for the roadway paving located on the bridge and its approaches and shall remove any snow, ice or debris from the roadway paving on the SR 1018 Bridge and its approaches.

22. 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.

23. 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.

24. 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 Opinion and Order.

25. That Norfolk Southern Railway Company shall work closely with the Pennsylvania Department of Transportation in a timely manner in order to provide the appropriate protective services to help enhance the timely completion of the proposed work.

26. 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.

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

28. That Norfolk Southern Railway Company reimburse the Pennsylvania Department of Transportation 20% of the costs that the Pennsylvania Department of Transportation incurs in removing and replacing the SR 1018 Bridge.

29. 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.

30. That Norfolk Southern shall provide access to its right of way at no cost to the Pennsylvania Department of Transportation, for inspection of the SR 1018 Bridge.

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

31. 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.

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

33. 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.

34. 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.

35. 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.

36. 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 Opinion and Order.

37. That Norfolk Southern Railway Company shall work closely with the Pennsylvania Department of Transportation in a timely manner in order to provide the appropriate protective services to help enhance the timely completion of the proposed work.

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 is required to maintain the SR 2032 Bridge at the load rating determined by the Pennsylvania Department of Transportation in this proceeding until December 31, 2043.

41. 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.

42. 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 after December 31, 2043.

43. 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.

44. That Norfolk Southern Railway Company shall provide access to its right of way at no cost to the Pennsylvania Department of Transportation, for inspection of the SR 2032 Bridge.

45. Therefore, we shall direct NS to provide supplemental services and personnel at no cost to PennDOT during PennDOT’s eventual maintenance and/or reconstruction of SR 2032 and for future inspection of the bridge.

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

46. 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.

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

48. 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.

49. 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.

50. 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.

51. 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.

52. That Norfolk Southern Railway Company shall work closely with the Pennsylvania Department of Transportation in a timely manner in order to provide the appropriate protective services to help enhance the timely completion of the proposed work.

53. 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.

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

55. That Norfolk Southern Railway Company is required to maintain the SR 2041 Bridge at the load rating determined by the Pennsylvania Department of Transportation in this proceeding until December 31, 2043.

56. 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.

57. 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 after December 31, 2043.

58. 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.

59. That Norfolk Southern Railway Company shall provide access to its right of way at no cost to the Pennsylvania Department of Transportation, for inspection of the SR 2041 Bridge.

60. That Norfolk Southern Railway Company shall provide supplemental services and personnel at no cost to the Pennsylvania Department of Transportation during the Pennsylvania Department of Transportation’s eventual maintenance and/or reconstruction of the SR 2041 Bridge for future inspections of the bridge.

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

61. 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, including the roadway paving located on the bridge and its approaches and shall remove any snow, ice or debris from the roadway paving on the SR 2017 bridge and its approaches.

62. 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, excluding the roadway paving located on the bridge and its approaches and shall remove any snow, ice or debris from the roadway paving on the SR 2017 Bridge and its approaches.

63. 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.

64. 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.

65. 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.

66. That Norfolk Southern Railway Company shall work closely with the Pennsylvania Department of Transportation in a timely manner in order to provide the appropriate protective services to help enhance the timely completion of the proposed work.

67. 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.

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

69. That Norfolk Southern Railway Company reimburse the Pennsylvania Department of Transportation 20% of the costs that the Pennsylvania Department of Transportation incurs in removing and replacing the SR 2017 Bridge.

70. 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.

71. That Norfolk Southern shall provide access to its right of way at no cost to the Pennsylvania Department of Transportation, for inspection of the SR 2017 Bridge.

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

72. 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, including the roadway paving located on the bridge and its approaches and shall remove any snow, ice or debris from the roadway paving on the SR Bridge and its approaches.

73. 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, excluding the roadway paving located on the bridge and its approaches and shall remove any snow, ice or debris from the roadway paving on the SR Bridge and its approaches.

74. That Norfolk Southern Railway Company shall work closely with the Pennsylvania Department of Transportation in a timely manner in order to provide the appropriate protective services to help enhance the timely completion of the proposed work.

75. That Norfolk Southern shall provide access to its right of way at no cost to the Pennsylvania Department of Transportation, for inspection of the SR 4005 Bridge.

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

76. That Great Bend Township maintain any barricades, fencing, and signage installed to prevent vehicular and pedestrian access to the subject bridge and provide/maintain any traffic controls or detours for the duration the subject bridge is closed.

77. That Norfolk Southern Railway Company, at its initial cost and expense, furnish all material and perform all work necessary to maintain the existing T-821 Bridge, with the exception of the roadway paving located on the bridge and its approaches and the removal of any snow, ice or debris from the roadway paving on the T-821 Bridge and its approaches, which shall be performed by Great Bend at its sole cost and expense.

78. That the Pennsylvania Department of Transportation, at its initial cost and expense, furnish all material and perform all work necessary to inspect the existing T-821 Bridge.

79. That Norfolk Southern Railway Company reimburse Great Bend Township its 20% share of the cost of the inspection of the existing T-821 Bridge.”

80. 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.

81. 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.

82. 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.

83. 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.

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

85. That Norfolk Southern Railway Company is required to maintain the SR 2041 Bridge at the load rating determined by the Pennsylvania Department of Transportation PennDOT in this proceeding.

86. 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.

87. That Great Bend Township, at its initial cost and expense, within two (2) year 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 T-821 Bridge in accordance with the approved plans.

88. 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 improvement is being constructed in accordance with this order.

89. That Great Bend Township, 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.

90. That Great Bend Township report to the Commission the date of actual completion of the work.

91. That Norfolk Southern Railway Company reimburse Great Bend Township 20% of the costs that Great Bend Township incurs in removing and replacing the T-821 Bridge.

92. That, upon the completion of the removal and replacement of the T-821 Bridge, Great Bend Township, at its sole cost and expense, furnish all material and perform all work necessary to maintain and inspect the entire T-821 Bridge.

93. That any directive, requirement, disposition or the like contained in the body of this Opinion and Order that is not the subject of an individual Ordering Paragraph, shall have the full force and effect as if fully contained in this part.

**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

ORDER ADOPTED: February 28, 2019

ORDER ENTERED: February 28, 2019

(SEAL)

1. By Secretarial Letter issued August 14, 2018, the Commission granted an extension of time for the Parties to file Exceptions and Replies to Exceptions. Pursuant to the Secretarial Letter, Exceptions were due by August 31, 2018, and Replies to Exceptions were due by September 24, 2018. [↑](#footnote-ref-1)
2. Penelec filed a Petition to Intervene in the proceeding at Docket No. M‑2013-2364201, because it has facilities in the area of the crossing and there was a high probability that a Commission Order could direct it to relocate its facilities. The ALJ granted Penelec’s Petition to Intervene by Order dated March 23, 2015. [↑](#footnote-ref-2)
3. Initially, we note that D&H had previously been assigned maintenance responsibilities for four of the bridges, T-821, SR 2032, SR 2041, and SR 1025. PennDOT Exhs. D4, D6, D7, and D10. We will refer to these bridges as the assigned bridges. Conversely, we will refer to the remaining bridges for which maintenance responsibilities had not been assigned, SR 1018, SR 2017, and SR 4005, as the unassigned bridges. [↑](#footnote-ref-3)
4. The current priority maintenance items specific to the crossings in this proceeding are subject to the Protective Order granted August 15, 2013, and are part of PennDOT’s Protected Testimony St. 2A. [↑](#footnote-ref-4)
5. 52 Pa. Code § 5.533(b), states that “[e]ach exception must be numbered and identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision. Supporting reasons for the exceptions shall follow each specific exception.” [↑](#footnote-ref-5)
6. In its Statement 1, PennDOT requested that NS reimburse 100% of the cost of the current inspections for the bridges located on SR 1018, SR 2017, SR 2032, and SR 2041, in the amount of $6,595.83. PennDOT also requested 20% of the cost of the current inspection for the bridge located at T-821, in the amount of $311.67, and 20% of the cost of the current inspection for the bridge located at SR 1025, in the amount of $847.67. PennDOT further requested reimbursement for the cost it incurred in the closure of T-821, in the amount of $3,768.14. Finally, PennDOT, among other costs, requested a total reimbursement in the amount of $121,093.34. According to PennDOT, this amount includes all of the costs incurred by PennDOT to date, with the exception of the lighting replacement costs associated with SR 1025 that it has not yet been invoiced for by the contractor. PennDOT St. 1 at 34-35. [↑](#footnote-ref-6)
7. As previously noted, Ordering Paragraph No. 42 directed “[t]hat the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and perform all work necessary to inspect and maintain the entire SR 2041 bridge after December 31, 2043.” [↑](#footnote-ref-7)
8. Ordering Paragraph No. 55 states the following: “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.” [↑](#footnote-ref-8)
9. Since NS has agreed to forego reimbursement from Great Bend in its Replies to Exceptions, we shall disregard NS’ proposed Ordering Paragraph No. 55. [↑](#footnote-ref-9)
10. The inspection responsibilities for the T-821 bridge will be addressed separately herein, below. [↑](#footnote-ref-10)
11. Ordering Paragraph No. 54 states the following: “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.” [↑](#footnote-ref-11)
12. We will not consider PennDOT’s Exception in its entirety because PennDOT has agreed to conduct the inspection in its Replies to Exceptions. [↑](#footnote-ref-12)
13. Ordering Paragraph No. 56 provides the following:

    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. [↑](#footnote-ref-13)
14. Ordering Paragraph No. 57 provides the following:

    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. [↑](#footnote-ref-14)
15. Ordering Paragraph No. 60 states the following: “That Norfolk Southern Railway Company report to the Commission the date of actual completion of the work.” [↑](#footnote-ref-15)
16. Ordering Paragraph Nos. 61 and 62 provide the following:

    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.

    62. That Great Bend Township, 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 T-821 bridge in accordance with the approved plans. [↑](#footnote-ref-16)
17. *See* PennDOT Publication 15M, Design Manual 4, Section 5.6.1. “Once preservation activities are completed at a candidate bridge, this structure should not be revisited for rehabilitation or preservation work for 10 years, except for routine maintenance.” PennDOT Exh. A. [↑](#footnote-ref-17)
18. Based on our disposition of Great Bend’s Exception No. 6, herein, NS will be directed to reimburse PennDOT 20%, rather than $300,000, of the costs that PennDOT incurs in removing and replacing the SR 1018 bridge. [↑](#footnote-ref-18)
19. Ordering Paragraph Nos. 14 and 15 state the following:

    14. That the Pennsylvania Department of Transportation, at its initial cost and expense, with 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. [↑](#footnote-ref-19)
20. Based on our disposition of Great Bend’s Exception No. 6, herein, NS will be directed to reimburse PennDOT 20%, rather than $300,000, of the costs that PennDOT incurs in removing and replacing the SR 1018 bridge. [↑](#footnote-ref-20)
21. Ordering Paragraph Nos. 45 and 46 provide the following:

    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.

    R.D. at 83. [↑](#footnote-ref-21)
22. PennDOT avers that the timing would depend upon timely interaction between NS and PennDOT and the availability of the appropriate protective services. PennDOT R. Exc. at 4. [↑](#footnote-ref-22)
23. For ease of reference, we have followed as closely as possible the structure and order of the Ordering Paragraphs in the Recommended Decision; however, since we have added new Ordering Paragraphs and made other adjustments herein, the numbers in the Ordering Paragraphs herein do not necessarily mirror the numbers in the Ordering Paragraphs in the Recommended Decision. [↑](#footnote-ref-23)