



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

ISSUED: March 17, 1993

IN REPLY PLEASE
REFER TO OUR FILE

C-00923909

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* JOHN L HEATON CHIEF COUNSEL
GINA M D'ALFONSO ASSISTANT COUNSEL
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION
521 T & S BUILDING
HARRISBURG PA 17120
* Pennsylvania Department of Transportation of Commonwealth of PA.

vs.

TO WHOM IT MAY CONCERN: CSX Transportation

Enclosed is a copy of the Recommended Decision of Administrative Law Judge Michael A. Nemeck. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION IN ROOM B-18, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within twenty (20) days of the issuance date of this letter.** The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions.

Replies to exceptions, if any, must be served on the Secretary of the Commission, in the manner described above, within ten (10) days of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)". Any reference to specific sections of the Administrative Law Judge's Recommended Decision shall include the page number(s) of the cited section of the decision. All timely filed exceptions and replies thereto will be attached to the decision for consideration at Public Meeting. Late filed exceptions and/or late filed replies might not be considered by the Commission.

Very truly yours,

Allison K. Turner
Chief Administrative Law Judge

BTL

jz
Encls.
Certified Mail
Receipt Requested

ALJ Nemeck, Office of ALJ, Chairman, Commissioners, Bureau of S & C-Rail Division,
Law Bureau, Our File New Filing Section, Public Information Office-John Frazier
Copy of Recommended Decision to: See attached list.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Department of Transportation
of the Commonwealth of Pennsylvania

v.

CSX Transportation

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:
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C-923909
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RECOMMENDED DECISION

Before
Michael A. Nemec
Administrative Law Judge

History of the Proceeding

The Department of Transportation of the Commonwealth of Pennsylvania (PennDOT) stated the following in its complaint docketed March 30, 1992:

We have contacted CSX Transportation November 7, 1990 and November 30, 1990, in writing concerning repairs to a one span bridge carrying SR 3009 over Buffalo Creek in Buffalo Township, Washington County. This is a railroad structure. It is imperative that repairs be made to this structure to accommodate a 3 ton posting which can possibly be upgraded to 5 tons if the proper repairs are performed.

A field conference was held at the site of the subject crossing on April 29, 1992. No formal answer was filed by CSX, but counsel filed her appearance in due course. The initial hearing was held in Pittsburgh on September 15, 1992. Thereafter both PennDOT and CSX filed supplemental information.

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Following the hearing, and after a visit to the site, I concluded that an additional hearing at the site would be helpful in creating a full record. A site hearing was held on January 23, 1993. The resulting record consists of 91 pages of transcript, six PennDOT exhibits and three CSX exhibits.

Summary of the Record

At the initial hearing, Complainant PennDOT presented the testimony of Henry W. Farrell, a civil engineer employed by PennDOT's Bureau of Design. Mr. Farrell testified he was responsible for investigating the subject crossing and that he had attended the field conference. He described the crossing as being located in Washington County, Buffalo Township, midway between Interstate Route 70 and Taylorstown. The highway involved is State Route 3009, as set forth on PennDOT's Exhibit 1, a location map. (Tr. 5-6, PennDOT Exhibit 1)

Mr. Farrell described the structure as consisting of a tunnel with a 30 foot embankment over it, on top of which are located railroad tracks owned by CSX Transportation. Within the tunnel are located both the highway structure (bridge) and a stream, which he identified as either Buffalo Creek or Little Buffalo Creek. PennDOT's records indicate that the structure was built in 1907, presumably by the railroad company at that time.

The tunnel above the roadway provides about 13 feet of vertical clearance and very limited horizontal clearance. (Tr. 6-7)

Mr. Farrell stated that State Route 3009 is presently closed due to damage to the abutments of the arch structure which supports the roadway deck. The damage has resulted from scouring or erosion (washout) of a portion of the abutment by the action of the stream water. (Tr. 7)

Mr. Farrell testified that PennDOT accepts no responsibility for the crossing. In his opinion, repairs to the abutments will have to be made prior to opening the road to vehicular traffic. The proposed repairs would entail damming the stream and pumping it dry. Then the abutments could be examined and repaired. The resulting strengthening would permit opening the crossing with a 3 ton posting. The preliminary cost estimate is \$50,000. He also stated that "previous" studies indicated that 500 cars a day would use the structure. On cross-examination, he could not specify when the count was taken. He agreed that alternate routes exist using State Route 3009, Traffic Route 221, and Township Road T-422. (Tr. 8-10, 18-20)

PennDOT has performed cursory inspections of the structure and had a consultant perform an underwater examination in 1989. The report of the consultant has been offered as a late-filed exhibit by both PennDOT and CSX. The report is summarized in a letter dated October 11, 1989, from the

consultants, Pickering, Corts & Summerson, Inc. In essence, the upstream abutments have been severely undermined with the result that cracks have appeared in the substructure indicating movement. The recommendation is that the bridge be closed until repairs can be made. Mr. Farrell noted that no bridge bill funds are available for this crossing. While PennDOT will not assume any responsibility for the necessary repairs or future maintenance, it will agree to do the work at its initial cost and expense. (Tr. 10-12; CSX Exhibit 3)

On my questioning, Mr. Farrell stated that the arch was built in 1907 by the railroad, but he had no information as to when or by whom the roadway/bridge was constructed. He stated that PennDOT was moving to reopen the structure due to requests received from state elected officials. (Tr. 23-24)

Donald Wayne Herbert, assistant bridge engineer for PennDOT, testified that stone was placed in the stream to fill in an area to redirect the stream flow. The estimated cost was arrived at during the recent site conference. On cross-examination, he stated that a 3 ton limit would permit the use of the structure by passenger cars and pickup trucks. He agreed that CSX had done some work on the structure involving repairs to the wingwalls and the emplacement of gabion baskets (wire mesh boxes filled with large rocks). He stated that the work done was not sufficient to warrant reopening the structure

as the problems revealed by the underwater inspection had not been addressed. He had not had any direct contact with any local officials concerning the structure. (Tr. 26-43)

Wayne J. Martin, project engineer for CSX Transportation, testified for his employer and stated that CSX is the owner and operator of the line of railroad at the subject crossing. No trains are currently operated over the line but it is proposed to be used for freight traffic at a proposed speed of 25 mph. The projected time frame for using the single set of tracks is within the next three years. (Tr. 43-46)

Mr. Martin described the existing structure as a concrete arch about 90 feet long and 30 feet high at the highest point. Apparently the structure was built in 1907. CSX has no opinion as to the convenience or safety of the crossing; it does not believe that the structure needs to be altered or demolished. Instead, CSX believes the structure needs rehabilitation as determined by PennDOT. CSX does not agree to perform any work or assume any maintenance responsibility. (Tr. 46-51)

Mr. Martin then provided a detailed chronology of events from a November 3, 1988, site conference, up to the present time. At the second site conference, he related, PennDOT took the position that the work done by CSX was not enough to permit reopening the crossing. Apparently the cost related at the conference for the necessary repairs was \$120,000 to repair

the scouring or erosion problem. Additionally, PennDOT wanted CSX to address the spalling in the walls of the tunnel. He noted the presence of a telephone line crossing through the structure but not attached to it or supported by it. (Tr. 51-63)

David T. Taubken, P & B Supervisor for CSX, testified that in his opinion the general condition of the structure is good. He noted the presence of cracks inside the arch and sidewalls but no movement has been noted in the last five years. He also noted what he characterized as minor spalling. (Tr. 67-69)

Mr. Taubken attended the November 1988 site conference which concluded that the major concern was the southeast abutment and wingwall (upstream). He planned and supervised concrete repairs to the southeast abutment that started in November 1988, and were completed as of December 1989, at a cost of \$30,570. The wingwall was reinforced with 27 yards of concrete. Gabion baskets were installed to protect the wingwall. Additional gabion baskets were installed in the bed of the creek and ahead of the abutment to prevent additional undermining. Where the culvert was undermined he had seven men digging by hand behind the wingwall in order to get at the undermined portion of the footer. They then put in about 20 bags of cement and backfilled. He also installed roof bolts in the wingwall that had a full length crack. The crack was then filled with grout. (Tr. 69-70)

Mr. Taubken testified that he has inspected the site on a frequent basis. He stated that the repairs are supporting the beams that were not supported before and, as a result, supporting the roadway. As a late-filed exhibit, CSX presented the full underwater inspection report of PennDOT's consultant and appended to it photographs of its repairs taken July 12, 1990. (Tr. 70-77; CSX Exhibit 3)

Mr. Taubken characterized the spalling as minor. He stated it could be repaired by a "tunnel force" in a couple of weeks. The work would involve chipping of the old cement, wiring and recementing. He agreed that the area is rural in nature and no industrial or commercial buildings were in the vicinity. (Tr. 78-81)

CSX has submitted late-filed exhibits that include a detailed cost statement totalling \$30,560.18. It also submitted an as built sketch which represents repairs made by it. (CSX Exhibits 1 and 2)

PennDOT submitted four late-filed exhibits that include the underwater inspection report and an itemization of costs for safety lights amounting to \$16,935.70. This matter is a mystery item in this record. Also filed were two affidavits. The affidavit of Kenneth A. Sharp states that no title search was ever made and, "State Route 3009 was never subject to a turn back." Another mystery. The final item, the affidavit of Donald

W. Herbert, relates three legislative contacts and states that the estimate for repairs is now \$50,000. (PennDOT Exhibits 3, 4, 5 and 6)

David A. Fischer, a civil engineer with this Commission's Bureau of Safety and Compliance, testified he held a field conference at the subject crossing on April 29, 1992. He found no prior Commission orders pertaining to this crossing in his review of this Commission's records. While he viewed the work done by CSX, he hesitated to state an opinion as to whether the structure could be reopened posted for 3 tons. He also was reluctant to approve PennDOT's proposal without seeing any detailed plans. He did point out that existing steel railings at either end of the structure should be replaced by modern guiderails. He also opined that one party should be assigned to regularly inspect the structure to insure that erosion has not occurred resulting in a weakening of the support for the structure. He had not viewed the underwater study. (Tr. 83-88)

The site hearing held on January 20, 1993, at 10:00 A.M. was attended by representatives of PennDOT, CSX, GTE, Buffalo Township and this Commission. Counsel present were Attorney Shawn Stevenson from PennDOT and Attorney David Slapa from the PUC Law Bureau. (Tr. 4-5)

I opened the hearing by explaining the reason for the hearing; I had visited the site in November 1992, and concluded

that I could not proceed to prepare a recommendation on the crossing without providing the parties with an opportunity to question me concerning my observations at the location. (Tr. 4-5)

My observations are recounted at length in the transcript and, where pertinent, in the findings of fact. I noted that in November 1992, I found a large corrugated steel culvert resting on the roadway and extending through and beyond each end of the tunnel.

Don Herbert, PennDOT, explained that the culvert was part of an attempt by PennDOT maintenance forces to remove water from the stream in order to make a further inspection. Apparently the effort was not entirely successful but revealed that the undermining was more substantial than disclosed by a 1989 underwater examination. (Tr. 7-9)

Tom Wright, a Buffalo Township Supervisor, was present. I noted that neither the Township nor Washington County was represented at the prior hearing in Pittsburgh. Mr. Wright commented that the Township had received very few complaints from residents of Buffalo Township. He was aware of complaints from Blaine Township's Fire Department, but stated that the inconvenience of a few families were the major complaints of which he was aware. He also stated in response to my questions that the Township had no records of traffic accidents at the site

but related that local residents indicated that collisions requiring tow trucks and/or ambulances were rather frequent at the location. (Tr. 9-10)

In response to my question, no one present had any knowledge regarding the presence of any warning signs or other devices to alert highway travelers to the very restricted roadway at the crossing. Further, no one present had any questions for me. Finally, telephone cables crossing through the tunnel were identified as belonging to GTE. (Tr. 10-11)

Findings of Fact

1. The subject crossing consists of the crossing below grade of a line of railroad tracks owned and operated by CSX Transportation by SR 3009, LR 62135 at Station 418+59, both of which cross above and over Little Buffalo Creek, in Buffalo Township, Washington County.

2. The subject crossing was constructed by the operating railroad in 1907.

3. The subject crossing consists of a concrete arch under a rail roadbed fill some 90 feet long and 30 feet high at the highest point. No horizontal measurements were provided, but roadway consumes the full width of the tunnel. The crossing is unusual in that the roadway is supported above and parallel to the stream below. Entering the crossing from the northern

approach requires a sharp turn to the right and then an immediate turn to the left. The interior of the tunnel is not visible during the approach, even on foot as is presently required. Exiting the crossing moving south requires a sharp right turn and then an immediate left turn. Similarly to a northern approach, the interior of the tunnel is not visible as one approaches the crossing from the south. (Hearing of 1/20/93, Tr. 6-7; PennDOT Exhibit 3)

4. The subject crossing was restricted to loads not to exceed 3 tons in 1987 and finally closed to all traffic in 1989.

5. While PennDOT has located information that 500 vehicles a day used the subject crossing, PennDOT's witness was unable to state the date of the count or to provide any documentation. The crossing is located in a rural area with a low population density and no commercial or industrial activity in the vicinity. I find the count offered by PennDOT questionable given the setting and the restrictiveness of the approaches and the tunnel itself.

6. The approximate road distance from one end of the crossing to the other is about 4 to 4.5 miles. About six individual residences are located within 1/4 mile of the southern end of the crossing; three residences are located within 1/4 mile of the northern end. The northern end is approximately one mile

from State Route 221; the southern end is about one mile from U.S. Route 40. (Hearing of 1/20/93, Tr. 5)

7. The line of railroad is not presently being operated. CSX anticipates using the single set of tracks for freight (coal) only at speeds up to 25 mph within the next three years.

8. PennDOT has apparently expended a sum in excess of \$12,000 for lighting of some sort at the site. I saw no evidence of any lighting devices on my two visits to the site.

9. CSX has provided a detailed breakdown of its expenditure of in excess of \$30,000 to make necessary repairs to the structure.

Discussion

As I happened to be in the area on Saturday, November 7, 1992, I stopped at the SR 3009 crossing. My approach was from the north; I encountered a road block consisting of a pile of dirt and rock some 50 to 75 yards from the structure. The roadway approaches the structure from the east of Little Buffalo Creek which at the location of the structure is flowing to the northwest. The structure itself is oriented roughly on an northwest/southeast axis. See PennDOT Exhibit 1. CSX Exhibit 2 has the tunnel oriented incorrectly and has the road coming in from the wrong side of the stream on the north side.

The structure itself is unusual to say the least. The tunnel itself is aligned with the stream bed and permits the stream to flow under the embankment. Interposed and suspended in the tunnel is the roadway which is above and parallel to the stream bed. At either end of the tunnel are concrete platforms that permit vehicles to make turns (sharp) from the roadway into the tunnel. The alignment of both approaches is such as to make it impossible for an approaching driver to see into the tunnel. The roadway within the tunnel is precisely the width of the roadway on the approaches with the walls sloping inward to the rounded roof. Mr. Fischer is right on the mark regarding the railings; those present are more suitable for handrails than for stopping or containing a vehicle.

My opinion of the structure is that it has always been a makeshift matter and probably the scene of many close calls or fender benders. Certainly driving anything larger than a medium sized automobile through the approach and tunnel would require a very skilled and careful driver. I see no reason to seek to establish a 5 ton posting on the structure. Also noted on my November visit was a corrugated steel culvert approximately six feet in diameter resting on the roadway surface and extending the full length of the tunnel and extending about ten feet on either end. That mystery was solved at the site hearing. PennDOT used the culvert to attempt to divert the stream. While unsuccessful,

the work crew apparently noted that the undermining of the structure was worse than noted in the 1989 underwater study.

It is a matter of concern to me also that no representatives of the local municipality or Washington County appeared at the initial hearing. As noted above, a representative of Buffalo Township attended the site hearing. While the lack of access to the structure probably works an inconvenience for the four or five families that live in the immediate vicinity, a perfectly adequate route around is available on State Route 221 and U.S. Route 40. See PennDOT Exhibit 1.

Further, the crossing is dangerous due to the grossly inadequate sight distances on the approaches. At the minimum, appropriate signing and perhaps mirrors should be installed.

My recommendation to the Commission is that the crossing be abandoned in place. It is already barricaded and marked closed. The cost of replacing the present structure with anything adequate would be prohibitive.

Alternatively, the most that should be done is to ensure that the structure is safe for 3 tons. Obviously CSX believes that its repairs have had that result; however, its witnesses would not express such an opinion but deferred to PennDOT. Rather than expend an additional \$50,000, PennDOT should report on its recent dewatering experiment or another

underwater inspection should be performed and a calculation of the weight bearing capability of the structure completed. If it is adequate for 3 tons as is, then it can be reopened. However, the roadway approaches have deteriorated and will have to be repaired. Further the crossing should not be reopened without the installation of adequate warning signs and perhaps even lighting. This crossing will be a matter of local convenience only and a substantial portion of the costs incurred should be borne by the local municipalities.

Conclusions of Law

1. The parties to and subject matter of this proceeding are subject to the jurisdiction of this Commission.
2. The record here does not support a finding that the repair and/or rehabilitation of the subject crossing is in the public interest or will result in protecting or enhancing the safety and/or convenience of the traveling public. The Complainant Pennsylvania Department of Transportation has not met its burden of proof under 66 Pa. Stat. Ann. §332(a).

RECOMMENDED ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of the Pennsylvania Department of Transportation at Docket No. C-923909 is sustained to the extent of this Commission assuming jurisdiction of the crossing where State Route 3009 crosses below the grade of the tracks of CSX Transportation and above Buffalo Creek in Buffalo Township, Washington County.

2. That the conditions and situation at the crossing where State Route 3009 crosses below the grade of the tracks of CSX Transportation and above Buffalo Creek in Buffalo Township, Washington County, would still be unsafe even if the proposed repairs were made. The result is that the crossing should be abolished and the road permanently closed.

3. That the Pennsylvania Department of Transportation at its sole expense erect permanent barricades to close the road at the structure.

4. That the Pennsylvania Department of Transportation construct turnarounds at appropriate locations on the highway approaches.

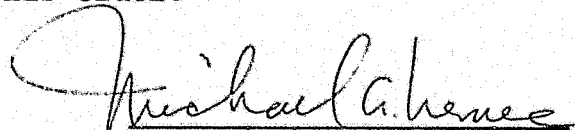
5. That the Pennsylvania Department of Transportation erect "No Outlet" signs at appropriate intersections of SR 3009 to alert the traveling public to the closed road.

6. That the Pennsylvania Department of Transportation maintain all signs and barricades erected in compliance with this Order.

7. That CSX Transportation maintain the remaining structure.

8. That all parties shall bear those costs they have or will incur in complying with this Order.

Date: February 24, 1993


Michael A. Nemecek
Administrative Law Judge



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

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March 26, 1993

John G. Alford, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RECEIVED
MAR 26 1993

RE: Department of Transportation of the
Commonwealth of Pennsylvania
v.
CSX Transportation
Docket No. C-923909

Public Utility Commission
SECRETARY'S BUREAU
Information Control Division

DOCUMENT
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Dear Secretary Alford:

Enclosed herewith, please find the original and nine copies of the Pennsylvania Public Utility Commission Law Bureau's Exceptions to the Recommended Decision in the above-captioned matter.

Copies have been served on the parties as stated on the attached Certificate of Service.

Very truly yours,

David A. Salapa
Assistant Counsel

Enclosures

DAS/lst

cc: As per Certificate of Service

BTL

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Department of Transportation
of the Commonwealth of Pennsylvania

v.

CSX Transportation

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C-923909

RECEIVED

MAR 26 1993

SECRETARY'S OFFICE
Public Utility Commission

DOCUMENT
FOLDER

EXCEPTIONS OF THE LAW BUREAU
TO THE RECOMMENDED DECISION

The Law Bureau takes exception to the Recommended Decision of the Administrative Law Judge in the above-captioned matter as follows:

1. The Law Bureau excepts to Ordering Paragraph No. 2 of the Recommended Decision to the extent that it orders the crossing abolished. The Law Bureau believes that the crossing should be suspended and barricaded rather than abolished.

The Law Bureau has no objection to the portion of the Recommended Decision which orders the crossing closed and barricaded. That portion of the Recommended Decision is supported by adequate evidence of record. However, the legal effect of abolishing the crossing and leaving the structure in place is that the Commission will relinquish jurisdiction over the structure.

Should CSX Transportation, Inc. (CSX) abandon service on the railroad line involved at this crossing in the future, it will only be obligated to maintain the structure when it may be safer to remove the entire structure. CSX may voluntarily decide to remove the structure but would be under no legal obligation to do so. The Commission will be unable to order CSX to remove the structure since the Commission order already abolished the crossing.

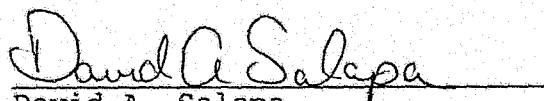
As an alternative, the Commission should order the crossing suspended. If the crossing is only suspended, the Commission retains authority over the crossing. Should CSX abandon service over the line in the future, the Commission may then decide what terms and conditions should be imposed on the abolition of the crossing, including possible removal of the structure. Suspending the crossing at this time, gives the Commission the option to order removal of the structure should CSX abandon service on the rail line.

Paragraph 2 of the Recommended Decision should be altered to state the following:

"The conditions and situation at the crossing where State Route 3009 crosses below the grade of the tracks of CSX Transportation and above Buffalo Creek in Buffalo Township, Washington County, would still be unsafe even if the proposed repairs were made. The result is that the crossing should be suspended and the road permanently closed."

WHEREFORE, the Law Bureau requests that the Commission alter Ordering Paragraph No. 2 of the Recommended Decision as set forth above.

Respectfully submitted,


David A. Salapa
Assistant Counsel

John B. Wilson
Deputy Chief Counsel

Counsel for Pennsylvania
Public Utility Commission

P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 783-2840

DATED: March 26, 1993

CERTIFICATE OF SERVICE

I hereby certify that I am this date serving the foregoing document upon the persons and in the manner indicated below pursuant to 52 Pa. Code §1.54.

SERVICE OF FIRST CLASS MAIL ADDRESSED AS FOLLOWS:

Wandaleen Poynter, Esquire
CSX Transportation Corporation
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Baltimore, MD 21201

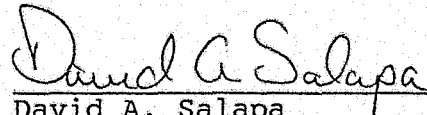
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DATED: March 26, 1993