



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

September 4, 2019

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

RE: C-2018-3002326

Dear Secretary Chiavetta,

Enclosed for filing please find the *Notice of Errata* in the above referenced matter. The undersigned certifies that this filing contains no averments or denials subject to verification and penalties under 52 Pa. Code Section 1.36

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

Very truly yours,

A handwritten signature in blue ink that reads "Gina M. D'Alfonso".

Gina M. D'Alfonso
Senior Counsel in Charge

cc: Administrative Law Judge Eranda Vera via email and first class mail
Parties of Record per Certificate of Service
Mark A. Chappell P.E., Chief, Utilities and Right-of-Way Section
John Krafczyk, ADE Maintenance, District 6-0
Mary Ann Lang, District Utility Manager, District 6-0
Robert Magee, District Grade Crossing Engineer, District 6-0

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Andrew Broden, Complainant

v.

CSX Transportation, Inc., City of
Philadelphia, Pennsylvania Department of
Transportation

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Docket No. C-2018-3002326

Electronically Filed

NOTICE OF ERATTA AND CORRECTION

PLEASE TAKE NOTICE that the undersigned, as drafter of the Joint Petition for Settlement in the above captioned matter filed August 1, 2019, included an incorrect date in paragraph 22 (e). The correct date, as referenced in paragraph 11, is December 31, 2019. A corrected Joint Petition for Settlement with the original signature pages is attached hereto.

Respectfully Submitted:



Gina M. D'Alfonso
Senior Counsel in Charge
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105-8212
Telephone No. (717) 787-3128
Fax Number (717) 772-2741
Pennsylvania Attorney I.D. Number 46767
gdalfonso@state.pa.us

Dated: 9/4/19

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Andrew Broden

v.

CSX Transportation Inc.;
City of Philadelphia
Pennsylvania Department of Transportation

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C-2018-3002326

Electronically Filed

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **Notice of Errata** was served upon the parties listed below, in accordance with the requirements of §1.54, by First-Class mail, postage prepaid, and electronically as indicated, this 4th day of September 2019

Andrew Broden
742 Frankford Avenue
Philadelphia, PA 19136
abroden@pahouse.net

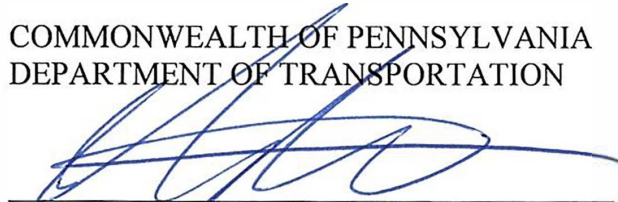
Benjamin C. Dunlap, Jr., Esquire
Nauman Smith Shissler & Hall
200 North Street, 18th Floor
PO Box 840
Harrisburg, PA 17108
bdunlapjr@nssh.com

James Kellett, Esquire
City of Philadelphia Law Department
1515 Arch Street, 16th Floor
Philadelphia, PA 19102
James.Kellett@phila.gov

Michael Swindler, Esquire
PA PUC Bureau of Investigation and
Enforcement
400 North Street
PO Box 3265
Harrisburg, 17105-3265
mwindler@pa.gov

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



Iber Guerrero-Lopez, Legal Assistant to
Gina M. D'Alfonso
Senior Counsel in Charge
Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105-8212
Telephone No. (717) 787-3128
gdalfonso@pa.gov

DATED: September 4, 2019

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

JOINT PETITION FOR SETTLEMENT

I. PROCEDURAL HISTORY

1. On May 30, 2018, Andrew Broden filed a formal Complainant with the Pennsylvania Public Utility Commission (Commission) alleging that there is damaged guide rail under a CSX Transportation Inc. (CSX) railroad bridge, which CSX and the City of Philadelphia (City) are disputing over which party is responsible to repair the guide rail. The subject public grade-separated crossing (DOT #593 023 T) is located where State Route 1011 (Grant Avenue) crosses below grade, the single track of CSX Transportation Inc. in the City of Philadelphia, Philadelphia County (Crossing). The Pennsylvania Department of Transportation (PennDOT) was made a party to the proceeding.

2. A field investigation and conference was held at the site of the crossing on August 3, 2018. Although the parties believed there was an existing agreement defining the maintenance responsibilities to address the matter, the parties could not reach an agreement concerning the resolution of the complaint. As a result, the Commission referred the proceeding to the Commission’s Office of Administrative Law Judge (OALJ) for the scheduling of an evidentiary hearing. Administrative Law Judge Eranda Vero was assigned this matter.

3. A Prehearing Conference was held on January 30, 2019 and a litigation schedule was established. At the request of PennDOT, the hearing was cancelled and rescheduled for June 28, 2019.

4. The parties notified the ALJ that they had settled the matter on June 26, 2019.

5. The parties have now agreed to settlement terms in this proceeding and now submit this Joint Petition for Settlement (“Petition”).

II. STIPULATED FACTS

6. The Crossing is a grade separated crossing where Grant Avenue, State Route 1011 crosses under a bridge carrying CSX in the City known as DOT 593 023 T. This Crossing is near the intersection of Grant Avenue and Welsh Avenue in the Northeast section of the City. Grant Avenue is an east/west arterial roadway.

7. The average daily traffic is 12,319 with 2% truck traffic.

8. Grant Avenue has 2 travel lanes in each direction. The roadway width varies from 23 feet to 24 feet based upon the pavement markings. The pavement markings also create a median barrier that is approximately 2-foot 6-inch median. The travel ways are curbed with no shoulders. The pavement is aged but is in acceptable condition with limited patching. The pavement markings are adequate to convey travel way usage. The speed limit is posted at 30 miles per hour.

9. The sidewalks are sound with good surface conditions. The widths are adequate at approximately 5 feet and greater. They do not present any issues to pedestrians.

10. In the last five years there have not been any accidents involving trains and motor vehicles; there were 10 reportable accidents involving motor vehicles. None involved guiderail.

11. PennDOT was assigned maintenance responsibility for the guiderail in the order of the Public Utility Commission order docketed at A-94401 dated February 10, 1969.

12. The current condition of the guiderail is unacceptable for a number of reasons. The end treatments for the existing guiderail are no longer considered crash-worthy. The end treatments

no longer provide adequate deflection for the guiderail to operate properly. They do not meet current standards.

13. The guiderail height is insufficient. The guiderail height ranges from 23.5 inches to 25.5 inches; the current design height for guiderail is 31 inches.

14. The guiderail is missing posts resulting in too much space between the posts for the guiderail to operate properly allowing for a larger deflection and potential connection with the concrete collars.

15. There is insufficient clearance (less than 18 inches) between the concrete collars around the metal piers for the railroad bridge and the guiderail. The unobstructed distance from the back of the guiderail system to the face of the concrete collars is insufficient and does not achieve the appropriate deflection.

16. The combination of the inadequate height, non-uniform post spacing and the insufficient unobstructed distance from the guiderail to the face of the concrete collar, would likely prevent the guiderail system from achieving the smooth deflected shape that is essential for controlled redirection of an impacting vehicle.

17. The guiderail needs to be removed and replaced with a single face concrete barrier in front of the concrete collars and steel beams. The installation of this barrier will require removal of approximately 6 inches of existing bituminous pavement. Appropriate end treatments must be installed at all four corners of the structure. Two locations will require crash cushions at the approach ends. The crash cushions will be Test Level 2, self-restoring, minimal maintenance units.

18. PennDOT will remove the existing guiderail system and engineer and install the concrete barrier estimated at \$104,225 with the costs capped at \$105,000. PennDOT will use 100% state funds to complete the work.

19. Upon completion of the project PennDOT will invoice CSX for one third of the costs not to exceed \$35, 000.00.

20. Upon completion of the project PennDOT will invoice the City \$15, 000.00.

21. The City will maintain the barriers and end treatments.

22. PennDOT will maintain the roadway between the barriers and the approaches thereto.

23. CSX is a Virginia corporation authorized to transact freight railroad business in the Commonwealth of Pennsylvania with a business address of 4 Neshaminy Interplex, Suite 205, Trevoese, PA 19053.

24. CSX is not aware of any conditions existing along its line that will impact its operations or adjacent property.

25. The railroad facilities of CSX cross above Grant Avenue on a three-span through plate girder bridge constructed in 1904 by the Reading Railroad. The structure is approximately 91 feet long and designed to carry two tracks. Current timetable speed is 50 miles per hour.

26. CSX will maintain its railroad facilities.

27. The safety improvements agreed to above, when completed, will increase safety through the crossing.

III. PROPOSED CONCLUSIONS OF LAW

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

2. The Commission has the authority to order the construction, reconstruction, alteration, relocation, repair, maintenance, protection, suspension or abolition of railroad crossings, and the authority to determine and order which concerned parties should perform such work, in order to prevent accidents and promote the safety of the public. 66 Pa.C.S. §§ 2702 and 2704.

3. The City, CSX, PennDOT, Complainant Broden and I&E are all concerned parties within the meaning of 66 Pa.C.S. §§ 2702 and 2704.

4. “It is the policy of the Commission to encourage settlements.” 52 Pa. Code § 5.231(a).

5. The Joint Petition for Settlement is in the public interest as its terms provide for the protection of the public safety with respect to the Crossing.

IV. SETTLEMENT TERMS

6. The parties, by the signatures of their representatives below, stipulate to the facts as presented in the Stipulated Facts within this Petition.

7. The parties agree to perform the responsibilities as specified herein to increase safety and reduce future incidents at the Crossing.

8. PennDOT shall:

- a. Remove the guiderail and replace it with a single face concrete barrier in front of the concrete collars and steel beams and install appropriate end treatments.
- b. Perform the work detailed above at its initial cost and expense using state funds.
- c. Invoice the City \$15,000.00 and CSX one-third of the final costs not to exceed \$35,000.00.

d. Maintain the roadway between the barriers.

9. The City shall:

- a. Reimburse PennDOT upon receipt of invoice for its share of the barrier work, \$15,000.00;
- b. Maintain the single face concrete barrier and end treatments at its sole cost and expense.

10. CSX shall:

- a. Reimburse PennDOT upon receipt of invoice for its one-third share of the barrier work, not to exceed \$35,000.00.
- b. Maintain its railroad facilities at its sole cost.

11. All work will be completed by December 31, 2019 unless another date is agreed to by the parties.

12. This Joint Petition for Settlement is contingent upon its approval pursuant to Sections 507 and 2702 of the Code and the issuance of a Commission Secretarial Letter or Order accepting and approving the same without modification.

13. The parties agree that any party may petition the Commission for rehearing if the Commission Secretarial Letter or Order substantively modifies the terms of this Joint Petition for Settlement. In that event, any party may give notice to the other parties that it is withdrawing from this Joint Petition for Settlement. Such notice must be in writing and must be given within twenty (20) business days of the issuance of any Initial or Recommended Decision or any Commission Order or Secretarial Letter which adopts this Joint Petition for Settlement with substantive modifications of its terms. The consequence of any party withdrawing from this Joint Petition for

Settlement as set forth above is that all issues associated with the requested relief presented in the proceeding will be fully litigated unless otherwise stipulated between the parties and all obligations of the parties as set forth above to each other are terminated and of no force and effect.

14. The parties executing this Joint Petition for Settlement agree that its purpose is to act as a General Release, except as specifically noted within, and is to settle, compromise and release all claims, actions, suits and rights whatsoever existing between and on behalf of those respective parties as set forth above, their successors and assigns, including all such claims, actions, suits and rights whatsoever; whether known or unknown to those parties, except to enforce the terms of this Joint Petition for Settlement.

15. The benefits and obligations of this Joint Petition for Settlement shall be binding upon the successors and assigns of the parties to this Stipulation.

16. This Stipulation may be signed in counterparts and all signatures attached hereto will be considered as originals.

17. In order to effectuate the parties' Joint Petition for Settlement, the undersigned parties request that the Commission issue a Secretarial Letter or Order approving the Petition without modification.

18. The Commission will serve the public interest by adopting this Joint Petition for Settlement.

19. The Joint Petition for Settlement will save the parties the time and expense they would incur further litigating this matter before the Commission.

20. Since all of the parties agree to the terms of the Joint Petition for Settlement, adopting it will eliminate the possibility of any appeal from the Commission Secretarial Letter or Order, thus saving the parties the additional time and expense they might incur in such an appeal.

21. Adopting this Joint Petition for Settlement will further the statutory provisions of 66 Pa.C.S. § 2702 *et seq.*, in regard to the public convenience and safety, and further the Commission policy of encouraging settlements. 52 Pa. Code § 5.231(a).

22. The parties hereto therefore request that the Commission adopt the following ordering paragraphs in accordance with the Joint Petition for Settlement of the parties and in furtherance of the public interest and safety:

- a. That the Joint Petition for Settlement in this proceeding is hereby approved and adopted in its entirety without modification;
- b. That PennDOT shall:
 - i. Remove the guiderail and replace it with a single face concrete barrier in front of the concrete collars and steel beams and install appropriate end treatments.
 - ii. Perform the work detailed above at its initial cost and expense using state funds.
 - iii. Invoice the City \$15,000.00 and CSX one-third of the final costs not to exceed \$35,000.00.
 - iv. Maintain the roadway between the barriers.
- c. That the City shall:
 - i. Reimburse PennDOT upon receipt of an invoice for its share of the barrier work, \$15,000.00
 - ii. Maintain the single face concrete barrier and end treatments at its sole cost and expense.
- d. That CSX shall:
 - i. Reimburse PennDOT upon receipt of an invoice for its one-third share of the barrier work, an amount not to exceed \$35,000.00.
 - ii. Maintain its railroad facilities at its sole cost.

- e. That all work will be completed by December 31, 2019, unless another date is agreed to by the parties;
- f. That all costs which are to be reimbursed by PennDOT shall be reimbursed pursuant to the provisions of 23 CFR Parts 140 and 646. The aforesaid federal reimbursement shall not supersede, delay or, in any manner, postpone the effect of any paragraph contained in this or any related Secretarial Letter or Order.
- g. That, pursuant to 52 Pa.Code § 5.591, Notice of Compliance shall be filed by all parties upon completion of the work designated in this Order; and,
- h. That upon completion of the work designated in this Order, this proceeding shall be closed.

[SIGNATURE PAGE TO FOLLOW]

Date: 7/30/19


Andrew Broden, Complainant

Date: _____

Benjamin C. Dunlap, Jr.
Counsel for CSX Transportation, Inc.

Date: _____

James Kellett
Counsel for the City of Philadelphia

Date: _____

Gina M. D'Alfonso
*Counsel for the Commonwealth of
Pennsylvania, Department of Transportation*

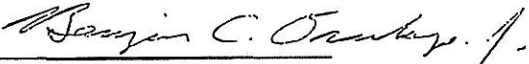
Date: _____

Michael L. Swindler
*Counsel for the Bureau of Investigation and
Enforcement*

Date: _____

Andrew Broden, Complainant

Date: July 30, 2019



Benjamin C. Dunlap, Jr.
Counsel for CSX Transportation, Inc.

Date: _____

James Kellett
Counsel for the City of Philadelphia

Date: _____

Gina M. D'Alfonso
*Counsel for the Commonwealth of
Pennsylvania, Department of Transportation*

Date: _____

Michael L. Swindler
*Counsel for the Bureau of Investigation and
Enforcement*


Date: _____

Andrew Broden, Complainant

Date: _____

Benjamin C. Dunlap, Jr.
Counsel for CSX Transportation, Inc.

Date: 07/31/2019



James Kellett
Counsel for the City of Philadelphia

Date: _____

Gina M. D'Alfonso
*Counsel for the Commonwealth of
Pennsylvania, Department of Transportation*

Date: _____

Michael L. Swindler
*Counsel for the Bureau of Investigation and
Enforcement*

Date: _____

Andrew Broden, Complainant

Date: _____

Benjamin C. Dunlap, Jr.
Counsel for CSX Transportation, Inc.

Date: _____

James Kellett
Counsel for the City of Philadelphia

Date: July 30, 2014

Gina M. D'Alfonso
Gina M. D'Alfonso
*Counsel for the Commonwealth of
Pennsylvania, Department of Transportation*

Date: _____

Michael L. Swindler
*Counsel for the Bureau of Investigation and
Enforcement*

Date: _____

Andrew Broden, Complainant

Date: _____

Benjamin C. Dunlap, Jr.
Counsel for CSX Transportation, Inc.

Date: _____

James Kellett
Counsel for the City of Philadelphia

Date: _____

Gina M. D'Alfonso
*Counsel for the Commonwealth of
Pennsylvania, Department of Transportation*

Date: 31 JUL 19



Michael L. Swindler
*Counsel for the Bureau of Investigation and
Enforcement*