

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of the York Railway Company	:	
to determine fair and reasonable maintenance	:	
responsibilities for the warning devices at the	:	
Broadway Street crossings (DOT 540 847 W	:	A-00123148
and DOT 832 109 N) where York Railway	:	
Company and CSX Transportation cross said	:	
roadway in the Borough of Hanover, York	:	
County, Pennsylvania	:	

Application of CSX Transportation, Inc.	:	
for approval to abolish the public crossing	:	
(DOT #540847W) where Broadway Street	:	A-2016-2581908
crosses, at grade, a single track of York	:	
Railway Company in the Borough of Hanover,	:	
York County, Pennsylvania	:	

**RECOMMENDED DECISION**

Before  
Andrew M. Calvelli  
Administrative Law Judge

**INTRODUCTION**

This Decision recommends that the Joint Petition for Settlement (Petition or Settlement) be approved in its entirety without modification because it is in the public interest and is supported by substantial evidence. This Decision finds that the Settlement complies with the relevant Sections of the Public Utility Code regarding applications concerning railway crossings and maintenance cost allocation and is consistent with Commission regulations promoting settlements.

## HISTORY OF THE PROCEEDING

On September 27, 2006, York Railway Company (York) filed an application with the Pennsylvania Public Utility Commission (Commission) at Docket No. A-00123148. York's application requested that the Commission evaluate and make a fair determination concerning railroad signal maintenance at the at-grade crossings where the facilities of York and CSX Transportation, Inc. (CSX) cross Broadway Street in the Borough of Hanover, York County.

York's application asserts that York is responsible for 100% of the grade crossing signal maintenance for CSX's facilities. According to York's application, CSX's trains use the crossing more frequently than York's. York's application requests that the Commission order a more equitable allocation of maintenance responsibilities.

On December 29, 2016, CSX filed an application with the Commission at Docket No. A-2016-2581908. CSX's application requests that the Commission abolish York's crossing. CSX's application asserts that York has taken its crossing out of service by removing a rail and disabling its signals. Since York disabled its signals, CSX has instituted stop and flag procedures for trains using its crossing. According to CSX's application, it has received numerous complaints concerning children handling the fuses after the stop and flag procedure is completed. As a result, CSX took control of York's signal box at the crossing.

In order to resolve the issues at these crossings, CSX's application requests that the Commission order York to abolish its crossing by removing its rails. CSX's application states that after York removes its rails, CSX will reposition its signal mast and assume maintenance responsibilities for the signals.

By notice dated June 14, 2017, the Commission scheduled a telephonic prehearing conference for York's application on September 7, 2017 and assigned the case to Administrative Law Judge David Salapa.

By notice dated June 29, 2017, the Commission rescheduled the telephonic prehearing conference for York's application to September 12, 2017. A prehearing conference order dated July 5, 2017 was issued, setting forth the procedural matters to be addressed at the telephonic prehearing conference.

On July 24, 2017, CSX filed a motion to consolidate the two applications, pursuant to 52 Pa.Code § 5.81(a). The motion alleges that the two applications involve common issues of law and fact. The motion requests that the Commission enter an order consolidating the two applications.

By Order dated September 13, 2017, the two applications were consolidated. Following consolidation, various prehearing conferences were held. The most recent prehearing conference was held on February 19, 2019, during which the parties advised the new presiding officer, Andrew M. Calvelli (replacing Judge Salapa who had retired), that a settlement on all issues had been reached in principal. The parties further advised the presiding officer that they expected to have settlement documents ready to submit for the Commission's consideration within 60 days.

On March 6, 2019, an Interim Scheduling Order directed the parties to submit their settlement documents no later than April 30, 2019. Upon requests of the parties to extend the deadlines, the deadlines were extended via emails from the Presiding Officer to the parties. The deadline was extended to May 31, 2019 via email dated April 25, 2019, and the deadline was further extended to June 30, 2019 via email dated May 29, 2019. The parties filed their Joint Petition for Settlement with the Commission on June 27, 2019; however, the Certificate of Service does not indicate service to the Presiding Officer, and the Presiding Officer has no record of receiving a hard copy of the Joint Petition. The Presiding Officer became aware of the Joint Petition as of September 26, 2019 when he performed a manual check of his case docket entries. The Presiding Officer therefore closed the record in this proceeding on September 26, 2019.

The Joint Petition for Settlement is ready for consideration. For the reasons discussed below, the Joint Petition for Settlement will be recommended for approval without

modification. However, in the Ordering Paragraphs of this Recommended Decision, several clarifying paragraphs are being inserted in order to state that the Commission shall ultimately determine whether the work called for in the Settlement has been satisfactorily completed in accordance with any plans submitted by the parties to the Settlement, along with any applicable laws and regulations. These Ordering Paragraphs do not alter the substance of the Settlement, or the rights and obligations of the parties to the Settlement.

### FINDINGS OF FACT

The Parties reached a full settlement in this proceeding prior to the holding of any evidentiary hearings. As a result, the Parties stipulated to certain facts as part of the Joint Petition for Settlement. By way of this Recommended Decision, I am recommending that the stipulated facts be adopted by the Commission. Those facts are set forth below, with the original paragraph numbering and headings retained:

1. CSX Transportation, Inc. is currently maintaining the signalization and its track at the subject crossing, performing all required inspections and tests.

2. York Railway Company has determined that its track can be removed at the crossing subject to the ability of York to maintain connectivity between its track remaining on either side of the crossing by operating over CSX's track, if necessary, to fulfill York's common carrier obligation under federal law.

3. CSX and York have agreed upon the terms for York's proposed track reconfiguration, including the removal of its track through Broadway Street, and future trackage rights over CSX, as noted in the Letter Agreement attached to the Joint Petition for Settlement as Exhibit A thereto.

4. The Federal Surface Transportation Board (STB) acknowledged that York's verified notice of exemption to enter into a joint project with CSX for the relocation of a segment of York's rail line in the area of the crossing required no separate approval or exemption

in the Notice printed in the Federal Register on April 11, 2019, at page 14711, which is attached to the Joint Petition for Settlement as Exhibit B thereto.

## DISCUSSION

### Legal Standard

Section 2702 of the Public Utility Code vests the Commission with the exclusive jurisdiction to determine the points at which, and the manner in which, rail-highway crossings are to be constructed, altered, relocated, suspended or abolished, as well as the manner and conditions under which rail-highway crossings shall be maintained, operated and protected. 66 Pa.C.S. § 2702; Pa. Department of Transportation v. Pa. Pub. Util. Comm'n., 440 A.2d 657 (Pa. Cmwlth. 1982). The Commission also has the exclusive authority to determine and order which parties should perform such work at the crossings and which parties should maintain the crossings in the future, all to effectuate the prevention of accidents and the promotion of the safety of the public. 66 Pa.C.S. § 2702(b); SEPTA v. Pa. Pub. Util. Comm'n., 592 A.2d 797 (Pa. Cmwlth. 1991), alloc. denied, 611 A.2d 714 (Pa. 1992); see also, Pa. Game Comm'n v. Pa. Pub. Util. Comm'n., 651 A.2d 596 (Pa. Cmwlth. 1994), alloc. denied, 664 A.2d 977 (Pa. 1995) (the Commission is empowered to order the work performed upon such reasonable terms and conditions it prescribes).

The Public Utility Code also provides the Commission with the exclusive authority to assess the costs of any work ordered to be performed upon the concerned public utilities or municipal corporations, or the Commonwealth, in such proper proportions as it may determine. 66 Pa.C.S. § 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. East Rockhill Twp. v. Pa. Pub. Util. Comm'n., 540 A.2d 600 (Pa. Cmwlth. 1988). The only requirement is that the Commission's Order be just and reasonable. Id.

In this case, a Joint Petition for Settlement has been filed by all parties to this proceeding. The focus of inquiry for determining whether a proposed settlement should be

recommended for approval is not a "burden of proof" standard, as is utilized for contested matters. Pa. Pub. Util. Comm'n. v. City of Lancaster - Bureau of Water, Docket Nos. R-2010-2179103 (Opinion and Order entered July 14, 2011). Instead, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. Id. (citing Warner v. GTE North, Inc., Docket No. C-00902815 (Opinion and Order entered April 1, 1996); see also, Pa. Pub. Util. Comm'n. v. CS Water and Sewer Associates, 74 Pa PUC 767 (1991).

Commission policy promotes settlements. 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401.

The Settlement in this case was not opposed by any party. Consequently, this case is no longer a contested matter and does not require a hearing. Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n., 128 Pa. Cmwlth. 276, 563 A.2d 557 (1989) (a hearing is only required to resolve disputed questions of fact and is not required to decide questions of law, policy or discretion); see also, Dee-Dee Cab, Inc. v. Pa. Pub. Util. Comm'n., 817 A.2d 593 (Pa. Cmwlth. 2003), alloc. denied, 575 Pa. 698, 836 A.2d 123 (2003). Therefore, the analysis required in this Decision is to determine whether the Settlement submitted by the parties on June 27, 2019 is in the public interest.

### Settlement Terms

The parties have agreed to the following terms as set forth in the Joint Petition for Settlement filed with the Commission on June 27, 2019. The original paragraph numbering will be used as submitted in the Settlement:<sup>1</sup>

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<sup>1</sup> As used in the Settlement, the term "YRC" refers to York Railway Company and the term "CSXT" refers to CSX Transportation, Inc.

1. YRC agrees to remove its track through the Broadway Street crossing and restore the road surface to a condition satisfactory to applicable state and local standards. This work will be completed by YRC at no expense to CSXT and in coordination with PennDOT.
2. CSXT agrees to install new gates and lights at the crossing, with the signal mast on the YRC side of the crossing repositioned to comply with Manual on Uniform Traffic Control Device standards. This work will be completed at CSXT 's sole cost and expense.
3. CSXT, at its sole cost and expense and prior to the start of construction, shall submit a situation plan for the subject crossing to all parties of record for review and to the Commission for approval, following a 20-day comment period. CSXT, at its sole cost and expense and prior to the start of construction, shall also submit a circuitry plan for the subject crossing to the Commission for approval.
4. CSXT agrees to construct the switch shown on the plan attached to Exhibit "A", which will permit the removal of YRC's track through the crossing, by June 30, 2020.
5. CSXT and YRC agree to coordinate and complete the work agreed upon in paragraphs 1 and 2 above by December 31, 2020.
6. Following the installation of new and repositioned warning devices at the crossing, CSXT agrees to assume complete maintenance responsibility for the signalization, its tracks and other facilities at the crossing, at its sole cost and expense.
7. This Joint Petition for Settlement is contingent upon its approval pursuant to 507 and 2702 et. seq. of the Code and the issuance of a Commission Order accepting and approving the same.
8. The parties agree that any party may petition the Commission for hearing if the Commission 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 ten (10) business days of the issuance of any Initial or Recommended Decision or any Commission Order which adopts this Stipulation 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.

9. The parties, by the signatures of their representatives below, stipulate to the facts as presented in the Proposed Findings of Fact within this Petition.

10. Counterparts: This document may be signed in counterparts and all signatures attached hereto will be considered as original.

A review of the Settlement and preliminary documents submitted as part of this proceeding reveals that the Settlement, which is unopposed by any party, is in the public interest. Ultimately, the Settlement is in the public interest because the upgraded crossing facilities will be properly installed and maintained thus increasing public safety. This is especially important here because the parties have noted various safety issues, including the need to institute stop and flag procedures and the fact that children have been able to handle the fuses at the crossing. Approving the Settlement will eliminate the manual stop and flag process and institute automatic signaling through the signal box(es) when the work is completed. This will help ensure public safety in crossing the tracks by uniformly alerting the travelling public when a train is approaching the crossing.

Furthermore, acceptance of the Settlement is in the public interest because it apportions costs and responsibilities for carrying out the crossing changes in a manner that is acceptable to all the parties to the Settlement. The parties are in agreement as to the work to be performed and the costs to be borne by the respective parties.

Finally, acceptance of the Settlement is in the public interest because it will avoid the necessity of further administrative and potential appellate proceedings at what could have been a substantial cost to the settling parties and the Commission. The Settlement is in the public interest because it is an efficient use of the resources of the parties and the Commission. Settlements eliminate the time, effort and expense of litigating a matter to its

ultimate conclusion, which may include review of the Commission's decision by the appellate courts of Pennsylvania. Such savings not only benefit the individual parties, but also the Commission and the public. The Commission's general policy is to encourage settlement of formal cases whenever such settlement is in the public interest.

### CONCLUSION

I find the Settlement to be in the public interest and recommend that it be approved without modification. The Settlement addresses the main issues raised in this consolidated proceeding regarding which party will be responsible to pay for the changes to the crossing, and further addresses which party shall be responsible for the various changes to be made to the crossing. After the changes to the crossing are made, the safety issues identified by the parties will have been fully addressed. Also, no party is opposed to the Settlement and, therefore, this matter can be closed which brings about the associated public interest benefits regarding the elimination of the time, effort and expense of litigating this matter, including any appellate review. As such, I find that the Settlement is in the public interest and recommend that the Commission approve the Settlement without modification. However, as stated above, several clarifying Ordering Paragraphs are being inserted in order to state that the Commission shall ultimately determine whether the work called for in the Settlement has been satisfactorily completed in accordance with any plans submitted by the parties to the Settlement, along with any applicable laws and regulations. These Ordering Paragraphs do not alter the substance of the Settlement, or the rights and obligations of the parties to the Settlement.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the public rail-highway crossing at issue in 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, as well as 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. CSX Transportation, Inc, York Railway Company and the Pennsylvania Department of Transportation (PennDOT) are all concerned parties within the meaning at 66 Pa.C.S. §§ 2702 and 2704.

4. The Public Utility Code provides the Commission with the exclusive authority to assess the costs of any work ordered performed upon the concerned public utilities or municipal corporations, or the Commonwealth, in such proper proportions as it may determine. 66 Pa.C.S. § 2704(a).

5. In apportioning costs in rail-highway crossing cases, the Commission is not limited to any fixed rule but takes all relevant factors into consideration. East Rockhill Twp. v. Pa. Pub. Util. Comm'n., 540 A.2d 600 (Pa. Cmwlth. 1988). The only requirement is that the Commission's Order be just and reasonable. Id.

6. The benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. Pa. Pub. Util. Comm'n., v. City of Lancaster - Bureau of Water, Docket Nos. R-2010-2179103 (Opinion and Order entered July 14, 2011) (citing Warner v. GTE North, Inc., Docket No. C-00902815 (Opinion and Order entered April 1, 1996); see also, Pa. Pub. Util. Comm'n. v. CS Water and Sewer Associates, 74 Pa. PUC 767 (1991).

7. Commission policy promotes settlements because they lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. 52 Pa.Code § 5.231.

8. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401.

9. An uncontested matter involving only questions of law, policy or discretion does not require a hearing. Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n., 128 Pa. Cmwlth. 276, 563 A.2d 557 (1989) (a hearing is only required to resolve disputed questions of fact and is not required to decide questions of law, policy or discretion); see also, Dee-Dee Cab, Inc. v. Pa. Pub. Util. Comm'n., 817 A.2d 593 (Pa. Cmwlth. 2003), alloc. denied, 575 Pa. 698, 836 A.2d 123 (2003).

10. Approval of the Settlement submitted by the parties on June 27, 2019 is just and reasonable and in the public interest.

### ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Stipulation of Facts contained in the Joint Petition for Settlement filed on June 27, 2019 in this consolidated proceeding at Docket Numbers A-00123148 and A-2016-2581908 is hereby approved and adopted.

2. That the stipulated facts contained in the Joint Petition for Settlement filed on June 27, 2019 in this consolidated proceeding at Docket Numbers A-00123148 and A-2016-2581908 are entered into the record of this consolidated proceeding.

3. That the Joint Petition for Settlement filed on June 27, 2019 in this consolidated proceeding at Docket Numbers A-00123148 and A-2016-2581908 is hereby approved and adopted.

4. That York Railway Company shall remove its track through the Broadway Street crossing and restore the road surface to a condition satisfactory to applicable state and local standards at no expense to CSX Transportation, Inc. and in coordination with the Pennsylvania Department of Transportation.

5. That CSX Transportation, Inc., at its sole cost and expense, shall install new gates and lights at the crossing, with the signal mast on the York Railway side of the crossing repositioned to comply with the Manual on Uniform Traffic Control Device standards.

6. That CSX Transportation, Inc., at its sole cost and expense and prior to the start of construction, shall submit a situation plan for the subject crossing to all parties of record for review and to the Commission for approval, following a 20-day comment period. CSX Transportation, Inc., at its sole cost and expense and prior to the start of construction, shall also submit a circuitry plan for the subject crossing to the Commission for approval.

7. That CSX Transportation, Inc., and York Railway Company agree to coordinate and complete the work ordered in Ordering Paragraphs 4 and 5 above by December 31, 2020.

8. That, following completion of the work ordered in Ordering Paragraphs 4 and 5 above, CSX Transportation, Inc. shall thereafter maintain the signalization, its track and other facilities at the subject crossing at its sole cost and expense.

9. That this Order is without prejudice to the right of any party to enforce any lawful agreement among the parties to the Order.

10. That upon the completion of the work ordered herein, the parties to this proceeding shall notify the Commission that the work ordered herein is complete.

11. That upon notification from the parties to this proceeding that the work ordered herein is complete, the Commission shall verify that the work has been completed in

accordance with any plans submitted by the parties and in accordance with applicable laws and regulations, including, without limitation, applicable Commission Regulations.

12. That upon the Commission's verification of the completion of the work ordered herein, this consolidated proceeding at Docket Numbers A-00123148 and A-2016-2581908 shall be marked closed by the Commission's Secretary's Bureau.

Date: November 21, 2019

/s/  
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Andrew M. Calvelli  
Administrative Law Judge