



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

July 13, 2020

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Application of Southwest Pennsylvania Railroad Company for approval of the abolition of eight rail highway at-grade crossings along its Uniontown Industrial Track, as identified in Exhibit A, in City of Uniontown, Fayette County, Pennsylvania.
Docket No. A-2019-3009552

City of Uniontown v. Southwest Pennsylvania Railroad Company,
Fayette County & PennDOT
Docket No. C-2020-3017829

I&E Prehearing Conference Memorandum

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Bureau of Investigation and Enforcement's ("I&E") **Prehearing Conference Memorandum** in the above-referenced matters.

Copies have been served on the parties of record in accordance with the Certificate of Service. If you have any questions, please contact the undersigned.

Sincerely,

A handwritten signature in blue ink that reads "Kayla L. Rost".

Kayla L. Rost
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 322768
(717) 787-1888
karost@pa.gov

KLR/ac
Enclosures

cc: Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Southwest Pennsylvania Railroad Company for approval of the abolition of eight rail highway at-grade crossings along its Uniontown Industrial Track, as identified in Exhibit A, in City of Uniontown, Fayette County, Pennsylvania. : : Docket No. A-2019-3009552

City of Uniontown v. Southwest Pennsylvania Railroad Company, Fayette County & PennDOT : : Docket No. C-2020-3017829
Electronically Filed

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

**TO ADMINISTRATIVE LAW JUDGE EMILY I. DEVOE AND
ADMINISTRATIVE LAW JUDGE MARY D. LONG:**

The Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) files this Prehearing Conference Memorandum in accordance with Administrative Law Judge (“ALJ”) Emily DeVoe’s and ALJ Mary Long’s Interim Order Scheduling Second Prehearing Conference dated June 16, 2020.

I. HISTORY OF THE PROCEEDING

By letter dated April 25, 2019, Southwest Pennsylvania Railroad Company (“SWP”) submitted an application, Docket No. A-2019-3009552 (“Application”), for

approval to abolish eight (8) at-grade crossings in the City of Uniontown, Fayette County. The eight (8) subject crossings include:

1. 527 215 H, East Penn Street
2. 527 216 P, East Peter Street
3. 527 217 W, East Main Street (SR 0040W)
4. 527 218 D, East South Street¹
5. 527 219 K, East Church Street
6. 527 221 L, East Fayette Street (SR 0040E)
7. 527 223 A, Dunbar Street
8. 529 125 R, Pennsylvania Avenue

Receipt of SWP's application by the Commission was confirmed by Secretarial Letter dated May 1, 2019. An initial field investigation and conference was held on July 11, 2019. On September 10, 2019, the Bureau of Technical Utility Services, Rail Safety Section ("Rail Safety") requested that the matter be referred to the Office of Administrative Law Judge, noting that the parties were unable to reach an amicable agreement on the scope of work and allocation of costs and responsibilities.

On September 20, 2019, the matter was assigned to Administrative Law Judge Emily DeVoe and a telephonic prehearing conference was scheduled for October 2, 2019. On or about September 24, 2019, counsel for SWP requested a continuance of the prehearing conference. Judge DeVoe granted SWP's request for a continuance and directed the parties to identify a mutually agreeable date for the conference to be

¹ SWP's application listed the DOT No. as 527 219 K. However, the correct DOT No. is 527 218 D.

rescheduled. On September 26, 2019, a Pre-hearing Conference Cancellation/Reschedule Notice was issued, canceling the October 2, 2019 prehearing conference and rescheduling it for October 21, 2019.

On October 21, 2019, the Prehearing Conference was held before ALJ Mary Long. Counsel for SWP, the Pennsylvania Department of Transportation (“PennDOT”), I&E, the County of Fayette, and the City of Uniontown appeared. The parties agreed to a litigation schedule, scheduling an evidentiary hearing to be held on March 17, 2020.

On January 13, 2020, I&E filed a Motion for Clarification and Request for Expedited Consideration (“Motion for Clarification”). Specifically, I&E requested that ALJ DeVoe and ALJ Long establish jurisdiction over the entire length of track extending along Beeson Avenue because allowing SWP to limit its application to the specific areas where the identified streets intersect with the train tracks will defeat the purpose of the Public Utility Code and its intention to maintain public safety. Over the objection of SWP, the parties were directed to file responses to the Motion for Clarification on or before January 24, 2020.

The City of Uniontown and the County of Fayette filed a joint response supporting I&E’s Motion for Clarification. SWP opposed the motion. On January 27, 2020, an Interim Order was issued denying the motion.

On February 6, 2020, the City of Uniontown filed a complaint, Docket No. C-2020-3017829 (“Complaint”), against SWP, requesting the abolition of the entirety of the rail line including the portions of the tracks running down Beeson Avenue. The City of Uniontown also requested that the Complaint be consolidated with the application proceeding.

On February 7, 2020, an Interim Order Suspending the Litigation Schedule and Directing a Prehearing Conference. The Order scheduled a prehearing conference for March 31, 2020.

On February 13, 2020, PennDOT filed an Answer to the Compliant.

On February 27, 2020, SWP filed an Answer and New Matter. Additionally, SWP filed Preliminary Objections, averring that the City of Uniontown did not identify the public utilities located within Beeson Avenue and within SWP's right-of-way, and did not include them as additional parties.

On March 5, 2020, the City of Uniontown filed a reply to the New Matter and a response to the Preliminary Objections. The City of Uniontown averred that, after a diligent inquiry, it determined that the following utilities have or may have rights-of-way, facilities, infrastructure, or otherwise operate within the subject portion of Beeson Avenue in the crossing identified in the Complaint: Columbia Gas of Pennsylvania (Columbia), Pennsylvania American Water Company (PAWC), Verizon, Atlantic Broadband Enterprise, LLC (Atlantic), and West Penn Power Company (West Penn) (collectively, Additional Utilities).

On March 12, 2020, a Cancellation Notice was issued, canceling the prehearing conference scheduled for March 31, 2020.

On May 12, 2020, a Notice of Prehearing Conference was issued, rescheduling the prehearing conference for July 15, 2020.

II. I&E PREHEARING CONFERENCE MEMORANDUM

A. Service

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

By Mail: Kayla L. Rost
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

By Telephone: (717) 787-1888²

By E-mail: karost@pa.gov

B. Statement Regarding Settlement

I&E is open and willing to discuss settlement of this matter. Currently, I&E was notified that PennDOT and SWP may have reached a settlement concerning the state roads, 527 217 W, East Main Street (SR 0040W) and 527 221 L, East Fayette Street (SR 0040E).

C. Plan and Schedule of Discovery

I&E proposes that discovery be conducted consistent with the Commission's regulation at 52 Pa. Code §§ 5.321, *et seq.*

D. Discovery Orders

I&E does not propose any modifications to the Commission's regulations pertaining to discovery at 52 Pa. Code §§ 5.321, *et seq.*

² Due to the closure of the Keystone Building, the undersigned currently does not have access to this telephone number and requests that the Parties correspond via email until further notice.

E. Proposed Litigation Schedule

I&E discussed a mutually agreeable litigation schedule with Eric M. Hocky, Timothy J. Witt, Jack Purcell, and Gina M. D'Alfonso via email. The parties suggest the following litigation schedule:

1. Discovery due on October 13, 2020.
2. Written direct testimony due on November 17, 2020.
3. Written rebuttal testimony due on December 23, 2020.
4. Witness schedule due 3 days before the hearing.
5. Hearing to occur the week of January 25, 2021.
6. Briefing schedule to be established at the hearing.

F. Names and Addresses of Witness(es) to be Presented

George Steiner, P.E.
Pennsylvania Public Utility Commission
Bureau of Technical Utility Services - Rail Safety Section
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 787-6805

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

G. Issues to be Addressed

1. What is the scope and limits of work to be addressed by the abolishment?
2. Will the abolishment include the tracks which continue down Beeson Avenue?

3. Does the abolishment include the crossing located at the intersection of Beeson Avenue and Library Pl.?
4. How will the crossings be abolished and how will the affected areas be restored?
5. Which party or parties are responsible for the costs related to the abolishment of the crossings?

H. Statement of Evidence to be Presented

Mr. Steiner will testify to all matters pertaining to the public safety, present conditions, inspection, existing maintenance, future maintenance, cost allocation, and the scope of the abolishment of the eight (8) crossings. Mr. Steiner may testify to additional matters based upon the issues identified by the parties.

I. I&E's Position on Consolidation

Section 5.81 of the Commission's regulations provides that the Commission or a presiding officer may order consolidation if the proceedings involve "a common question of law or fact." 52 Pa. Code § 5.81. Additionally, a presiding officer "may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay." *Id.* I&E submits that the Complaint and Application should be consolidated because both filings have a common question of law and fact, whether the abolition of the tracks located on Beeson Avenue include just the intersections or the whole rail line. Furthermore, consolidating the

proceedings will avoid unnecessary costs or delay by limiting the issues presented to one legal proceeding versus two.

Respectfully submitted,



Kayla L. Rost

Prosecutor

PA Attorney ID No. 322768

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Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
Phone: (717) 787-1888
Email: karost@pa.gov

Dated: July 13, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Southwest Pennsylvania :
Railroad Company for approval of the abolition :
of eight rail highway at-grade crossings along : Docket No. A-2019-3009552
its Uniontown Industrial Track, as identified in :
Exhibit A, in City of Uniontown, Fayette :
County, Pennsylvania. :

City of Uniontown v. Southwest Pennsylvania :
Railroad Company, Fayette County & : Docket No. C-2020-3017829
PennDOT : Electronically Filed

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing
Prehearing Conference Memorandum dated July 13, 2020, upon the parties listed
below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by
a party).

Service by Electronic Mail Only:

Honorable Emily I. DeVoe
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