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July 13, 2020

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

*In re: Docket No. A-2019-3009552
Docket No. C-2020-3017829*

Dear Secretary Chiavetta:

Please find enclosed for electronic filing in the above-referenced proceeding the Joint Prehearing Conference Memorandum of the City of Uniontown and the County of Fayette. Copies have been served on the parties of record as described in the Certificate of Service included herewith. If you have any questions, please do not hesitate to contact me.

Very truly yours,

Timothy J. Witt

TJW:clm

Enclosures

Cc: Emily I. DeVoe, Administrative Law Judge
Mary D. Long, Administrative Law Judge
Eric M. Hocky, Esquire
Kayla L. Rost, Esquire
Gina D'Alfonso, Esquire

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

JOINT PREHEARING CONFERENCE MEMORANDUM
OF
THE CITY OF UNIONTOWN AND THE COUNTY OF FAYETTE

In accordance with the Interim Order Scheduling Second Prehearing Conference dated June 16, 2020, issued by Administrative Law Judge Emily I. DeVoe and Administrative Law Judge Mary D. Long, in the above-referenced matter, the City of Uniontown and the County of Fayette jointly offer the following in response to the specific requests contained therein:

I. Background and History of the Proceeding.

The City of Uniontown and the County of Fayette incorporate and restate, by reference, the background and history from their initial prehearing conference memorandum and the aforementioned Interim Order Scheduling Prehearing Conference. The City of Uniontown and the County of Fayette also concur with the History of the Proceeding contained in the Bureau of Investigation and Enforcement's Prehearing Conference Memorandum.

II. Requested Pre-Hearing Conference Information.

The City of Uniontown and the County of Fayette respectively provide the following information, as requested in the Prehearing Conference Order.

a. Service List Entries.

City of Uniontown:

Timothy J. Witt, Esquire
Watson Mundorff, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Phone: 724-626-8882 (ext. 111)
Fax: 724-626-8886
Email: timwitt@wmlaw.com

County of Fayette:

John M. Purcell, Esquire
55 East Church St., Suite 101
Uniontown, Pa. 15401
Phone: 724-437-2711
Email: jackpurcell146@gmail.com

b. Settlement.

The City of Uniontown and the County of Fayette have engaged in discussions with Southwest Pennsylvania Railroad regarding the settlement of the issues raised in this petition and controversies related thereto. Although no settlement has been reached at present, the City of Uniontown and the County of Fayette continue to make good faith efforts to successfully resolve this matter through settlement for the mutual benefit of all parties, subject to approval of the Pennsylvania Public Utility Commission and its charge to protect the interests of residents of the Commonwealth. In the event settlement discussions fail to result in a full and complete resolution of the matter, the City of Uniontown and the County of Fayette are prepared to fully or partially litigate this proceeding. It is the understanding of the City of Uniontown and the County of Fayette

that Southwest Pennsylvania Railroad and PennDOT may have reached a settlement regarding those open issues.

c. Proposed Plan and Schedule of Discovery.

The City of Uniontown and the County agree with a litigation schedule as follows:

Discovery Concluded – October 13, 2020

Written Direct Testimony – November 17, 2020

Written Rebuttal Testimony – December 23, 2020

Hearing – Week of January 25, 2021

Briefing Schedule to be established at the hearing.

The City of Uniontown and the County of Fayette each reserves the right to request changes, modifications, or amendments to any proposed schedule or to present or agree to a different schedule depending upon the issues raised in subsequent discovery.

d. Discovery Orders and Modifications.

The City of Uniontown and the County of Fayette presently do not anticipate the need for other orders with respect to discovery. For purposes of satisfying in-hand requirements for discovery responses, prepared testimony, and briefs, the City of Uniontown and the County of Fayette will accept electronic delivery of documents with a follow-up hard copy provided by regular first-class mail.

The City of Uniontown and the County of Fayette each reserves the right to request changes, modifications, or amendments to any discovery order or to present or agree to different discovery orders depending upon the issues raised in subsequent discovery.

e. Proposed Schedule for Written Testimony, Evidentiary Hearing, and Submission of Briefs.

While the condition of the railroad crossings, including rails and ties, and railroad trestles have created public safety, accessibility, and flooding issues, the City of Uniontown and the County of Fayette are agreeable to that proposed schedule described above.

The City of Uniontown and the County of Fayette each reserves the right to request changes, modifications, or amendments to any proposed schedule or to present or agree to a different schedule depending upon the issues raised in subsequent discovery.

f. Expected Witnesses.

The City of Uniontown and the County of Fayette expect to call witnesses to provide testimony as follows:

City of Uniontown:

- i. Kimberly Marshall, City Clerk
20 North Gallatin Avenue
Uniontown, PA 15401
Phone: 724-430-2900
Subject matter of testimony: (a) City records relating to affected streets, waterways, and rights of way, (b) City finances and budgetary limitations, and (c) complaints regarding Southwest Pennsylvania railroad lines received by the City.

- ii. Phil Mahoney and John Podolinski, Public Works Foremen
20 North Gallatin Avenue
Uniontown, PA 15401
Phone: 724-430-2900

Subject matter of testimony: (a) poor condition of Southwest Pennsylvania railroad lines, (b) complaints regarding Southwest Pennsylvania railroad lines received by the City, (c) local requirements for street openings, (d) past problems regarding railroad line removals, including improper or incomplete removals, (e) traffic patterns within the City affected by the railroad lines, and (f) the scope of work that should be performed to properly and fully rectify issues.

iii. Mark Rafail, Redevelopment Authority Executive Director

20 North Gallatin Avenue

Uniontown, PA 15401

Phone: 724-430-2900

Subject matter of testimony: (a) legal and grant requirements for concrete removal and replacement relating to the past, current, and potential future use of Community Development Block Grant and other federal and state funding sources.

iv. John Over, P.E. and Brian Lake, Project Manager, City Engineers

K2 Engineering, Inc.

234 Pittsburgh Street

Uniontown, PA 15401

Phone: 724-439-3440

Subject matter of testimony: (a) poor condition of Southwest Pennsylvania railroad lines, (b) local requirements for street openings, (c) past problems regarding railroad line removals, including improper or incomplete removals, (d) the scope of work that should be performed to properly and fully rectify issues, and (e) estimated costs for necessary work to be completed.

County of Fayette:

- i. Donna Holdorf, Executive Director
National Road Heritage Corridor
65 West Main Street
Uniontown, PA 15401
Phone: 724-437-9877
Email: donnah@nationalroadpa.org
Subject matter of testimony: (a) Proposed trail improvements in the City of Uniontown and the surrounding area and related cost information, and (b) estimated costs for development and installation of trail infrastructure.

The City of Uniontown and the County of Fayette also intend to call as witnesses (i) any other person revealed in discovery between the parties as having knowledge of the circumstances related to this proceeding; and (ii) any person identified as a witness in the prehearing conference memorandum of any other party or person in this proceeding. The City of Uniontown and the County of Fayette each reserves the right to call other witnesses as their respective investigations and preparations for this proceeding continue.

g. Issues and Sub-Issues.

The following list represents the City of Uniontown's and the County of Fayette's preliminary determination of the potential issues in this proceeding. This list is as complete as can be made at this time. The City of Uniontown and the County of Fayette each reserves the right to raise and address other issues, as it may deem appropriate, as such issues arise.

1. Whether the abolition of the affected crossings should include the removal of railroad rails?

Suggested Answer: Yes, the abolition of the affected crossings includes the removal of railroad rails as being necessary for public safety and the advancement of the public's interests.

2. Whether the abolition of the affected crossings should include excavation to a depth of at least thirty inches and the removal of railroad ties and ballast?

Suggested Answer: Yes, the abolition of the affected crossings includes excavation to a depth of at least thirty inches and the removal of railroad ties and ballast as being necessary for public safety and the advancement of the public's interests.

3. Whether the abolition of the affected crossings should include the removal of railroad trestle(s)?

Suggested Answer: Yes, the abolition of the affected crossings includes the removal of railroad trestles as being necessary for public safety and the advancement of the public's interests.

4. Whether the abolition of the affected crossings should include the re-filling, re-impacting, re-packing, re-supporting, and reconstruction, including with adequate base and wearing course, of affected streets and embankments?

Suggested Answer: Yes, the abolition of the affected crossings includes the re-filling, re-impacting, re-packing, re-supporting, and reconstruction, including with adequate base and wearing course, of affected streets and embankments as being necessary for public safety and the advancement of the public's interests.

5. Whether the abolition of the affected crossings should include the curb-to-curb repaving of affected City streets?

Suggested Answer: Yes, the abolition of the affected crossings includes the curb-to-curb repaving of affected City streets as being necessary for public safety and the advancement of the public's interests.

6. Whether the abolition of the affected crossings should include the coloration and restamping of existing decorative concrete located at crossings?

Suggested Answer: Yes, the abolition of the affected crossings includes the coloration and restamping of existing decorative concrete located at crossings as being necessary for the advancement of the public's interests and the satisfaction of federal and state grant requirements and applicable law.

7. Whether the abolition of the affected crossings should include the provision of adequate safety measures, traffic control and signage measures, coordination with Commonwealth (e.g., PennDOT and DEP) and City personnel for street closures, permitting, and the provision of police or related security services?

Suggested Answer: Yes, the abolition of the affected crossings includes the provision of adequate safety measures, traffic control and signage measures, coordination with Commonwealth (e.g., PennDOT and DEP) and City personnel for street closures, permitting, and the provision of police or related security services as being necessary for public safety, the advancement of the public's interests, and satisfaction of state and local requirements and applicable law.

8. Whether the City of Uniontown reasonably concluded from the proceedings with the Surface Transportation Board relating to the abandonment of the subject railroad line that Southwest Pennsylvania Railroad would be performing all removal and remediation work at its sole expense?

Suggested Answer: Yes, the City of Uniontown reasonably concluded from the proceedings with the Surface Transportation Board relating to the abandonment of the subject railroad line that Southwest Pennsylvania Railroad would be performing all removal and remediation work at its sole expense based on a reasonable interpretation of the language of the filings and findings of those proceedings.

9. Whether the costs for the abolition of crossings and all related work to be performed, as previously described, should be allocated solely to Southwest Pennsylvania Railroad?

Suggested Answer: Yes, all costs for the abolition of the crossings and all related work to be performed should be allocated solely to Southwest Pennsylvania Railroad as the most equitable approach in light of (i) the benefit resulting to the Railroad therefrom, (ii) City's financial hardship and limited resources, (iii) the advancement of the public's interests, and (iv) the City's willingness to assume all ongoing and continuing maintenance and repair obligations and liabilities following the full and proper completion of aforementioned work.

10. Whether the City of Uniontown acquired certain rights of way and interests in certain portions of the railroad right of way running within Beeson Avenue due to continual use

as a public road for an extended period of time in accordance with then-applicable Pennsylvania law?

Suggested Answer: Yes, the City of Uniontown acquired certain rights of way and interests in certain portions of the railroad right of way running within Beeson Avenue due to continual use as a public road for an extended period of time in accordance with then-applicable Pennsylvania law.

11. Whether the City of Uniontown has regulatory power over aspects of Southwest Pennsylvania Railroad's operations within public rights of way by virtue of the City's authority under the Third Class City Code, 15 Pa.C.S.A. § 1511(e) and 53 P.S. § 1991?

Suggested Answer: Yes, the City of Uniontown has regulatory power over aspects of Southwest Pennsylvania Railroad's operations within public rights of way by virtue of the City's authority under the Third Class City Code, 15 Pa.C.S.A. § 1511(e) and 53 P.S. § 1991.

Additionally, with respect to the proposed or potential use of the railroad right of way for trail use, the City of Uniontown and the County of Fayette anticipate raising the following issues for consideration as part of this proceedings (i) the abandonment and ownership of portions of the railroad right of way; (ii) the applicability of restrictive covenants in the relevant deed to the availability of the railroad right of way for trail use; (iii) the unsuitability of portions of the railroad right of way located wholly within public streets for trail use; and (iv) the unsuitability of portions of the railroad right of way for trail use given the unavailability of other railroad rights of way for linking to other proposed trail segments. Furthermore, the City of Uniontown and the County of Fayette note that the aforementioned list of issues has been made without the benefit of complete discovery or analysis of other parties to this proceeding. The City of Uniontown and the County

of Fayette, therefore, each, respectfully, reserves the right to address issues raised in direct or rebuttal testimony or any other issues that become apparent at a later point in time or to remove issues from this list of issues, as it may deem appropriate.

h. Summary of Evidence.

The City of Uniontown and the County of Fayette each expects to present written and verbal direct and rebuttal testimony at the hearing. The City of Uniontown and the County of Fayette each expects to submit photographs of the railroad lines and right of way; the Southwest Pennsylvania Railroad's filings with the Surface Transportation Board relating to the abandonment of the subject railroad line and right of way; deeds and other ownership documents relating to the railroad right of way; City ordinances, rules, and permits regarding street openings, excavations, and repairs; studies and reports regarding the proper removal of railroad lines and the effects of the improper removal of railroad lines; flooding studies; studies and plans relating to a proposed recreational trail in the vicinity; grant documents relating to the decorative concrete and the use of related grant funds; and summaries of the City's financial situation. With this written, verbal, and documentary evidence, the City of Uniontown and the County of Fayette intend to show the poor condition of the railroad line and right of way and the resulting current and future threats to public safety; the scope of work needed to properly remove the railroad lines, ties, and trestles; various requirements of applicable law relating to the proper scope of work and other requirements; representations previously made by Southwest Pennsylvania Railroad with respect to salvage of its railroad line; the unsuitability of the railroad crossings for trail use; and the City's inability to be saddled with the costs of the work to be performed.

i. Consolidation.

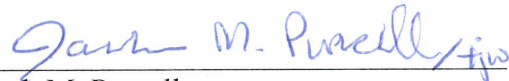
The City of Uniontown and the County of Fayette assert that the two above-captioned proceedings should be consolidated. In addition to promoting judicial economy, both cases relate to the same issues and matters and both arose as a result of the same set of facts, namely the failure of SWPRR to adequately maintain the entirety of the railroad and the threat to public safety created thereby.

Respectfully Submitted,



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720 Vanderbilt Road
Connellsville, PA 15425
tim@watsonmundorff.com

DATED: July 10, 2020



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Chief Solicitor, County of Fayette
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Uniontown, Pa. 15401
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DATED: July 10, 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 its Uniontown : Docket No. A-2019-3009552
 Industrial Track, as identified in Exhibit A, in City :
 of Uniontown, Fayette County, Pennsylvania :

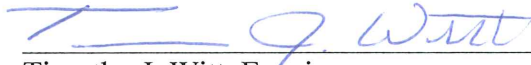
City of Uniontown v. Southwest Pennsylvania : Docket No. C-2020-3017829
 Railroad Company, Fayette County & PennDOT :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Joint 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 Administrative Law Judge Pennsylvania Public Utility Commission 301 Fifth Avenue Suite 220, Piatt Place Pittsburgh, PA 15222	Honorable Mary D. Long Administrative Law Judge Pennsylvania Public Utility Commission 301 Fifth Avenue Suite 220, Piatt Place Pittsburgh, PA 15222
Eric M. Hocky, Esquire Clark Hill PLC 2005 Market Street Suite 1000 Philadelphia, PA 19103	Kayla L. Rost, Esquire Pennsylvania Public Utility Commission Bureau of Investigation and Enforcement Commonwealth Keystone Building 400 North Street Harrisburg, PA 17120
Gina M. D'Alfonso, Esquire Pennsylvania Department of Transportation Office of Chief Counsel P.O. Box 8212 Harrisburg, PA 17105-8212	



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DATED: July 13, 2020