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July 14, 2020

VIA ELECTRONIC FILING

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

Re: Docket Nos. A-2019-3009552 and C-2020-3017829

Dear Secretary Chiavetta:

Enclosed for filing in the above-referenced proceedings is the Second Prehearing Conference Memorandum of Southwest Pennsylvania Railroad Company.

I hereby certify that a copy has been sent to the Administrative Law Judges and to all parties of record as shown in the Certificate of Service.

Respectfully,

CLARK HILL PLC

/s/ Eric M. Hocky

Eric M. Hocky

EMH/dml
encl.

cc: Emily I. DeVoe, Administrative Law Judge
Mary D. Long, Administrative Law Judge
All parties shown on the 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
	:	
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	:	
City of Uniontown v. Southwest Pennsylvania Railroad Company, Fayette County & PennDOT	:	Docket No. C-202-3017829
	:	
	:	Electronically filed

**SECOND PREHEARING CONFERENCE MEMORANDUM OF
SOUTHWEST PENNSYLVANIA RAILROAD COMPANY**

Applicant Southwest Pennsylvania Railroad Company (“SWP”) files this Second Memorandum in response to the Interim Order Scheduling Second Prehearing Conference issued on June 16, 2020, by Administrative Law Judge Emily I. DeVoe and Administrative Law Judge Mary D. Long. In accordance with the Interim Order, SWP states as follows:

1. Service List Entry. SWP’s sole entry on the service list shall be as follows:

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2. Statement Regarding Possible Settlement.

SWP expects that it and the Pennsylvania Department of Transportation (“PennDOT”) will be able to stipulate and agree on the specifics of the work to be done

at the two state roadway crossings. SWP will reserve the right to seek contributions of costs from parties other than PennDOT.

In approximately 2014, SWP had discussions with the City of Uniontown (the “City”) and thought there was an agreement under which SWP would have agreed to pull the rail, and Uniontown would take care of paving and any additional work that the City wanted to do. However, the proposed arrangement was never finalized.

Following the field conference, counsel for SWP and counsel for the City have had discussions regarding settlement options including possible sharing of the work or costs, and transfer of a portion of the railroad’s property in the City to the City for salvage, trail or other uses in return for the City performing all of the work. The settlement discussions have included both the crossings that SWP seeks to abolish, the tracks in Beeson Ave., as well as other issues between the parties unrelated to the two proceedings. No agreement has been reached, but settlement discussions are continuing.

3. Proposed Revised Schedule, Including Discovery.

SWP agrees with the following schedule as discussed among counsel for the parties:

Discovery Concluded – October 13, 2020

Written Direct Testimony – November 17, 2020

Written Rebuttal Testimony – December 23, 2020

Witness schedule: 3 days before hearing

Hearing – Week of January 25, 2021 (subject to availability of the Administrative Law Judges)

Post-bearing Briefing schedule to be established at the hearing.

4. SWP Witnesses.

SWP intends to offer the following witnesses:

- (a) A corporate representative of SWP, Bldg 1, Suite 100, 519 Cedar Way, Oakmont, PA 15139, who would provide testimony regarding the history of the railroad line at the crossings and in Beeson Ave., the condition of crossings and the approaches, the condition of the tracks in Beeson Ave., and to respond to any questions and procedures promulgated by the Commission.
- (b) A roadway engineer (not yet retained), who would provide testimony regarding the condition of the approaches and adjacent roadways, the condition of the tracks and adjacent roadway in Beeson Ave., the sufficiency of the work proposed by SWP to create a smooth travelling surface, and the estimated costs of such work.
- (c) An engineer / surveyor representative of McMillen Engineering, Inc., 115 Wayland Smith Drive, Uniontown, PA 15401, who would provide testimony regarding SWP's property ownership (including ownership of portions of the property underlying Beeson Ave.), and the lack of any recorded documents relating to the occupation of the railroad right of way by Beeson Ave. or the City's right to pay such roadway.
- (d) SWP reserves the right to present additional witnesses as it determines necessary based on the evidence and issues presented by other parties.

5. Issues to be presented by SWP.

(a) In the abolishment proceeding, SWP expects to raise issues regarding the scope of the work to be done in a connection with the removal of the railroad crossing and the restoration of a smooth travelling surface, and the allocation of costs related thereto. With respect to the Uniontown roadway crossings, SWP believes that any repaving of the crossings should only be required to match the condition of the roadway approaches and adjacent roadways, and that removal of the rails and the pavement between the rails and repaving would be sufficient. If any additional work were requested or required, SWP will seek to have the costs assigned or apportioned to other parties. With respect to the state roadway crossings, SWP will agree to remove the two state roadway crossings and to reconstruct the area removed in accordance with PennDOT's specifications. SWP expects that it and PennDOT will be able to stipulate and agree on the specifics before written testimony is filed. To the extent the work to be done at the state roadway crossings exceed the work necessary to create a standard smooth roadway surface (for example the additional cost of a stamped concrete crossing that was installed at the request of the City (and paid for on behalf of the City), SWP will seek to have the costs assigned or apportioned to other parties (other than PennDOT).

(b) In the complaint proceeding, SWP expects to raise issues regarding whether the tracks located within Beeson Ave. constitute a "crossing" and are subject to the jurisdiction of the Commission. If the Commission determines that it has jurisdiction, then SWP expects to raise issues regarding the scope of the work to be done in a connection with the removal of the railroad crossing and the restoration of a smooth travelling surface, and the allocation of costs related thereto. In particular, with respect to

the allocation of work and costs, SWP believes that because it owns the right of way and the tracks pre-dated the roadway (and its paving), that the City, as the primary beneficiary of the removal and repaving, should be responsible for the removal of the tracks and the paving of the roadway. Moreover, to the extent any issues with the condition of the roadway are related to the presence of the utilities that have been installed beneath the roadway, SWP will seek to have a portion of the costs allocated to the utilities.

6. SWP Position on Consolidation:

If the Commission determines that it has jurisdiction over the Beeson Ave. tracks as a “crossing,” then SWP does not object to the joint handling of the application and the complaint proceedings for procedural convenience. However, SWP does not believe that the proceedings should be formally consolidated, as there are different parties (no utility parties in the application proceeding; PennDOT has no role in the complaint proceeding), different parties have the burden of proof in each proceeding, and the separate issues regarding the rights and obligations of the City with respect to Beeson Ave. where it has no recorded rights to the roadway which is located on railroad property, apply only in the

complaint proceeding. Accordingly, SWP believes a separate decision in each proceeding is necessary, and the matters should not be consolidated into a single proceeding.

Respectfully submitted,

/s/ Eric M. Hocky

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Attorney for Southwest Pennsylvania
Railroad Company

Dated: July 14, 2020

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of July, 2020, a true and correct copy of the foregoing Second Prehearing Conference Memorandum was served on the Administrative Law Judges by electronic mail as directed in the Interim Order, and on the participants listed below by electronic mail pursuant to the Emergency Order at Docket No. M-2020-3019262:

Administrative Law Judge Emily I. DeVoe
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Dated: July 14, 2020

Administrative Law judge Mary D. Long
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/s/ Eric M. Hocky

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