



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

September 23, 2020

**Via Electronic Filing**

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

Re: Application of CSX Transportation, Inc. for Approval of the Abolition of the Crossing (DOT 140 634 G) where Cemetery Avenue crosses above grade the tracks of CSX Transportation, Inc. located in the City of Philadelphia, Philadelphia County, Pennsylvania, and the allocation of cost thereto.  
Docket No. A-2019-3013783

**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 matter.

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](mailto:karost@pa.gov)

KLR/ac  
Enclosures

cc: Per Certificate of Service  
Pamela McNeal, Legal Assistant (*via email - [pmcneal@pa.gov](mailto:pmcneal@pa.gov)*)  
William Sinick, P.E. (*via email - [wilsinick@pa.gov](mailto:wilsinick@pa.gov)*)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of CSX Transportation, Inc. for :  
Approval of the Abolition of the Crossing (DOT :  
140 634 G) where Cemetery Avenue crosses above :  
grade the tracks of CSX Transportation, Inc. : Docket No. A-2019-3013783  
located in the City of Philadelphia, Philadelphia :  
County, Pennsylvania, and the allocation of cost :  
thereto. :

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

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**TO ADMINISTRATIVE LAW JUDGE DARLENE D. HEEP:**

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”) Darlene D. Heep’s Prehearing Conference Order dated August 26, 2020.

**I. HISTORY OF THE PROCEEDING**

By letter dated October 24, 2019, CSX Transportation, Inc. (“CSXT”) submitted an application (“Application”) for approval to abolish the public rail-highway crossing where CSXT’s tracks cross under a highway bridge carrying Cemetery Avenue in the City of Philadelphia.

Receipt of CSXT’s application by the Commission was confirmed by Secretarial Letter dated October 24, 2019. An initial field investigation and conference was held on February 26, 2020. The Commission’s Bureau of Technical Utility Services, Rail Safety Section (“Rail Safety”), the Pennsylvania Department of Transportation (“PennDOT”), CSXT, the Philadelphia

Water Department, the City of Philadelphia Department of Streets, and a local landowner attended the field conference.

On August 11, 2020, Rail Safety requested that the matter be referred to the Office of Administrative Law Judge, noting that two parties objected to the abolition of Cemetery Avenue at the field conference.

On August 19, 2020, a Call-in Telephone Conference Notice was issued, scheduling a telephonic prehearing conference for September 29, 2020 before Administrative Law Judge Darlene Heep. On August 20, 2020, a Prehearing Conference Order was issued.

On August 26, 2020, a corrected Hearing Notice and Prehearing Order were issued, converting the Initial Telephone Conference into a Prehearing Conference. The parties were instructed to provide Prehearing Memoranda no later than noon on September 28, 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) 787-1888<sup>1</sup>

By E-mail: [karost@pa.gov](mailto:karost@pa.gov)

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<sup>1</sup> 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.

B. Statement Regarding Settlement

I&E is open and willing to discuss settlement of this matter. Currently, I&E is not aware of any settlement discussions at this time.

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.*

E. Proposed Litigation Schedule

I&E proposes the following litigation schedule:

1. Written direct testimony due on December 18, 2020.
2. Written rebuttal testimony due on January 22, 2021.
3. Witness schedule due 3 business days before the hearing.
4. Hearing to occur the week of February 8, 2021 or February 15, 2021.
5. Briefing schedule to be established at the hearing.

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

William Sinick, P.E.  
Pennsylvania Public Utility Commission  
Bureau of Technical Utility Services - Rail Safety Section  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
(717) 787-5936  
[wilsinick@pa.gov](mailto:wilsinick@pa.gov)

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

1. Issues to be Addressed

- a) Whether the abolition of Cemetery Avenue is in the public interest.
- b) Whether the abolition includes the abutments, and if not, which party will be responsible for future maintenance of the abutments.
  - 1) Whether the abutments, if not removed, are sufficient to remain as retaining walls if the crossing is abolished.

2. Statement of Evidence to be Presented

Mr. Sinick will testify to all matters pertaining to the public safety, present conditions, inspection, existing maintenance, future maintenance, and potential effect of abolishing the Cemetery Avenue crossing. Mr. Sinick may testify to additional matters based upon the issues identified by the parties.

Respectfully submitted,



Kayla L. Rost  
Prosecutor  
PA Attorney ID No. 322768

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

Dated: September 23, 2020

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of CSX Transportation, Inc. for :  
Approval of the Abolition of the Crossing (DOT :  
140 634 G) where Cemetery Avenue crosses :  
above grade the tracks of CSX Transportation, : Docket No. A-2019-3013783  
Inc. located in the City of Philadelphia, :  
Philadelphia County, Pennsylvania, and the :  
allocation of cost thereto. :

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing **Prehearing Conference Memorandum** dated September 23, 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 Darlene Heep  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
801 Market Street  
Suite 4063  
Philadelphia, PA 19107  
[dheep@pa.gov](mailto:dheep@pa.gov)

Benjamin C. Dunlap Jr., Esquire  
Nauman Smith Shissler & Hall  
200 North Third Street  
18th Floor  
P.O. Box 840  
Harrisburg, PA 17108  
[bdunlapjr@nssh.com](mailto:bdunlapjr@nssh.com)

Gina D'Alfonso, Esquire  
Pennsylvania Department of Transportation  
Office of Chief Counsel  
P.O. Box 8212  
Harrisburg, PA 17105-8212  
[GDALFONSO@pa.gov](mailto:GDALFONSO@pa.gov)

James Clifford Kellett, Esquire  
City of Philadelphia  
1515 Arch Street  
16th Floor  
Philadelphia, PA 19102  
[james.kellett@phila.gov](mailto:james.kellett@phila.gov)

**Service by First Class Mail Only**

Dean Boyers  
Verizon Business  
400 International Pkwy.  
Richardson, TX 75081

Eric Ponert  
1101 Market Street  
Second Floor  
Ara Tower  
Philadelphia, PA 19107-2994

Robert Harvey  
Comcast Cable Communications Inc.  
4400 Wayne Avenue  
Philadelphia, PA 19140

Kevin McGinley  
City of Philadelphia  
4501 G St.  
Philadelphia, PA 19120

George Huss  
Zayo Bandwidth F/K/A PPL Telcom LLC  
1060 Hardees Drive  
Unit H  
Aberdeen, MD 21001


Darline Lepperd Johnson  
Verizon Pennsylvania LLC  
1050 Virginia Drive  
Fort Washington, PA 19034

Michael Parzanese  
Philadelphia Water Works  
800 W. Montgomery Avenue  
Philadelphia, PA 19122

Michael Hoey, P.E., President  
CSX Transportation Inc.  
Director Project Management  
4 Neshaminy Interplex  
Suite 205  
Trevose, PA 19053

Monitoring Center Personnel  
Columbia Gas Transmission LLC  
1700 MacCorkle Avenue  
SE 8th Fl.  
P.O. Box 1273  
Charleston, WV 25314-1273

Nikkia Simpkins  
USIC  
450 South Henderson Road  
Suite B  
King of Prussia, PA 19406

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