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| PUC logo |  COMMONWEALTH OF PENNSYLVANIA PENNSYLVANIA PUBLIC UTILITY COMMISSION400 NORTH STREET 2ND FLOOR, HARRISBURG PA 17120<http://www.puc.pa.gov> *E-filing and E-service only per Emergency Order M-2020-3019262* | **IN REPLY PLEASE REFER TO OUR FILE** |

November 5, 2020

A-2015-2466693

**Via Eservice and Email Only**

**TO PARTIES OF RECORD**

Application of the Department of Transportation of the Commonwealth of Pennsylvania for approval to alter the public at-grade crossing by the installation of safety enhancements where South Third Street (T-559) crosses the single track of Norfolk Southern Railroad Company (DOT No: 535 152 B) in Guilford Township, Franklin County all in accordance with the Federal Grade Crossing Program and the allocation of costs incident thereto.

To Whom It May Concern:

By application filed with the Commission on February 10, 2015, Pennsylvania Department of Transportation seeks Commission approval to alter the at grade crossing (DOT 535 152 B) by the installation of new automatically operated flashing light crossing warning signals where South Third Street (T-559) crosses the single track of Norfolk Southern Railroad Company in Guilford Township, Franklin County.

 A field conference was held at the site of the crossing on September 15, 2015, and subsequent conference calls between the parties were held on October 20, 2015 and November 18, 2015. During the field conference and subsequent conference calls, the parties were unable to reach a mutually acceptable resolution of the issues at the crossing. The case was referred to the Office of Administrative Law Judge for scheduling an evidentiary hearing.

A Prehearing Conference was held on February 4, 2106 and was attended by Norfolk Southern Railway Company, Guilford Township, Pennsylvania Department of Transportation and the Commission’s Bureau of Investigation and Enforcement. Following the Prehearing Conference, the matter was referred to the Commission’s Mediation Unit. The parties were unable to resolve the issues involved in the proceeding before the Commission’s Mediation Unit.

Thereafter, the parties engaged in amicable negotiations to address the concerns raised in this matter and to achieve terms of resolution acceptable to all parties for the benefit of the public. On May 14, 2020, the parties submitted a Joint Petition for Settlement to the Commission’s Office of Administrative Law Judge for consideration.

Due to the current restriction caused by COVID-19 and safety issues existing at the subject crossing, the Petitioner’s requested the matter be remanded the Commission’s Bureau of Technical Utility Services to memorize the agreed upon terms of the settlement via a Secretarial Letter in lieu of an Administrative Law Judge decision in this matter.

The Commission’s Office of Administrative Law Judge remanded this matter to the Commission’s Bureau of Technical Utility Services as a reassignment on September 22, 2020.

Due to the remand to the Commission’s Bureau of Technical Utility Services occurring near the Joint Petition for Settlement agreed upon completion date, the parties further agree to a revised completion date of December 31, 2021.

 In accordance with the Joint Petition for Settlement, the following alterations and obligations were agreed to by the parties for the enhanced protection of the public’s safety with respect to the crossing.

Guilford Township agrees to:

* Install and maintain thermoplastic rumble strips on both roadway approaches;
* Install and maintain bracketed (left and right side of the roadway) 36” x 36” conventional road, multi-lane stops signs for both roadway approaches;
* Install and maintain red reflective tape on all stop sign masts and;
* Install and maintain two (2) alternately flashing solar-powered circular yellow warning beacons attached to the existing stop ahead sign mast for both roadway approaches.

All work shall be performed in accordance with the Manual on Uniform Traffic Control Devices.

Norfolk Southern Railway Company agrees to inspect, maintain and repair, as necessary, the crossing surface and shall keep the right-of-way clear on an ongoing basis.

Pennsylvania Department of Transportation agrees to reimburse Guilford Township for the costs associated with the installation of the safety enhancements indicted herein by utilizing Federal Section 130 funds. Pennsylvania Department of Transportation further agrees to the timely process of the Township’s application for a Permit to Install and Operate Flashing Warning Devices.

 The Commission hereby establishes its jurisdictional limits at the subject crossing as the area within the confines of the railroad right-of-way and the highway right-of-way.

The Commission has exclusive jurisdiction in crossing alterations and is the final arbiter of any fees associated with a crossing application. Any conditions, including fees associated with a crossing application, must be approved by the Commission.

Upon full consideration of the matters involved, we find that a hearing is not necessary and that a Secretarial Letter may be issued approving the application in accordance with the Joint Petition for Settlement.

 The Commission issues this Secretarial Letter in accordance with Section 2702 of the Public Utility Code and finds that the alteration of the crossing is necessary and proper for the service, accommodation, convenience or safety of the public.

 The application of Pennsylvania Department of Transportation is approved as herein directed:

1. The caption of the subject proceeding is hereby revised as shown herein.
2. The crossing where South Third (T 559) crosses, at grade, a single track of Norfolk Southern Railway Company, located in Guilford Township, Franklin County (DOT 535 152 BJ) be altered in accordance with the Joint Petition for Settlement, submitted to the Commission by the parties on May 14, 2020.
3. Guilford Township, at its initial cost and expense, furnish all material and perform all work necessary to alter the crossing by the installation of transverse thermoplastic rumble strips on both roadway approaches to the subject crossing in accordance with the Manual on Uniform Traffic Control Devices.
4. Guilford Township, at its initial cost and expense, furnish all material and perform all work necessary to alter the crossing by the installation of bracketed (left and right side of the roadway) 36” x 36” conventional road, multi-lane stop signs with red reflective tape on all stop sign masts on both roadway approaches to the subject crossing in accordance with the Manual on Uniform Traffic Control Devices.
5. Guilford Township, at its initial cost and expense, furnish all material and perform all work to alter the subject crossing by installation of two (2) alternately flashing solar-powered circular yellow warning beacons attached to the existing stop ahead sign mast on both roadway approaches to the subject crossing in accordance with the Manual of Uniform Traffic Control Devices.
6. Guilford Township, at its initial cost and expense, furnish all material and perform all work necessary to establish and maintain any detours or traffic controls that may be required to properly and safely accommodate highway and pedestrian traffic during the time the crossing is being altered.
7. Any relocation of, changes in and/or removal of any adjacent structures, equipment or other facilities of any non-carrier public utility which may be required as incidental to the alteration of the crossing, be made by said public utility at its initial cost, and in such a manner as will not interfere with the alteration of the crossing; and such relocated or altered facilities thereafter be maintained by said public utility, at its sole cost and expense.
8. Norfolk Southern Railway Company, at its initial cost and expense, furnish all material and perform all work relating to its facilities which may be required as incidental to the performance of the proposed work and furnish any watchmen, flagmen, inspectors and/or engineering services that may be deemed necessary to protect the railroad’s operations or facilities during the time the facilities are being installed.
9. Pennsylvania Department of Transportation, at its sole cost and expense, expeditiously facilitate any and all permitting processes necessary to perform work required as agreed to in the May 14, 2020 Joint Petition for Settlement.
10. Pennsylvania Department of Transportation utilize Federal Section 130 funds to reimburse Guilford Township for all of its costs in performing the work agreed upon above in numbered paragraphs 3, 4 and 5.
11. The alteration of the crossing be completed on or before December 31, 2021, and that on or before said date Guilford Township, report in writing the date of actual completion of the work to this Commission and certify to the parties of record and this Commission that the work has been satisfactorily completed in accordance with the May 14, 2020 Joint Petition for Settlement.

1. Guilford Township, at its sole cost and expense, pay all compensation for damages, if any, due to owners of property taken, injured or destroyed by reason of the alteration of the crossing in accordance with this Secretarial Letter.
2. This Secretarial Letter is without prejudice to the right of any party to recover part or all of any costs incurred by said party in compliance with the provisions of this Secretarial Letter, in accordance with any lawful agreement between it and any other party.
3. All parties involved herein cooperate fully with each other so that during the time the work is being performed, vehicular, pedestrian and railroad traffic will not be endangered or unnecessarily inconvenienced, and so that the requirements of each of the parties will be provided for and accommodated insofar as possible.
4. Guilford Township, at least seven (7) days prior to the start of work, notify all parties in interest of the actual date on which work will begin.
5. All costs which are to be reimbursed by the Department of Transportation consistent with this letter shall be reimbursed pursuant to the provisions of 23 C.F.R. Parts 140 and 646. The aforesaid Federal reimbursement shall not supersede, delay or in any manner, postpone the effect of any paragraph contained in this or any related Secretarial Letter or Order.
6. Upon completion of the alteration of the crossing, Guilford Township, at its sole cost and expense, furnish all material and perform all work necessary thereafter to maintain the thermoplastic rumble strips, stops signs and alternately flashing solar-powered circular yellow warning beacons installed in accordance with this Secretarial Letter and to maintain its highway approaches to the subject crossing to points twenty-four (24) inches beyond each outside rail and in addition, maintain the Grade Crossing Advance Warning (W10-1) signs, as required.
7. Upon completion of the alteration of the crossing, Norfolk Southern Railway Company, at its sole cost and expense, furnish all material and perform all work necessary to keep the their right of way clear and to maintain its railroad facilities at the subject crossing and all appurtenant equipment; and maintain at all times in a smooth and satisfactory condition the crossing surface located between the rails and for a distance of twenty-four (24) inches beyond the outermost rails, all in accordance with Part 8 of the Manual on Uniform Traffic Control Devices and this Secretarial Letter.
8. Upon completion of the work herein directed, and upon written request from any party of record, this proceeding be scheduled for a hearing at a time and place to be determined by the Commission, for the purpose of taking testimony upon the final allocation of any remaining costs incurred by the non-carrier utility companies and other matters relevant to this proceeding.

 The Parties are reminded that failure to comply with this or any Order or Secretarial Letter in this proceeding may result in an enforcement action seeking civil penalties and/or other sanctions pursuant to 66 Pa. C.S. § 3301.

All parties are being served via email due to the COVID-19 Emergency Closure. Please note that during this period of Disaster Emergency, the Commission shall only accept

e-filings in lieu of paper filings, for all documents. Thus, all parties are to open and use e-filing accounts to file documents and accept service during the pandemic emergency in accordance with the Commission’s Emergency Order at M-2020-3019262.

If you are dissatisfied with the resolution of this matter, you may, as set forth in 52 Pa. Code §§ 1.31 and 5.44, file a Petition for Reconsideration from Staff Action (Petition) with the Commission within twenty (20) days of the date of this letter.  The Petition shall be submitted by e-filing said petition within twenty (20) days, or if no timely request is made, the action will be deemed to be a final action of the Commission.

The Petition MUST include: (1) a written statement (divided into numbered paragraphs) outlining the reasons for the request; (2) the case docket number (it is provided for you at the top right hand corner of this letter); (3) the party on whose behalf the petition is made; (4) a Certificate of Service on the other parties of record; and (5) a Verification with original signature in accordance with 52 Pa. Code § 1.36.

**** Very truly yours,

 Rosemary Chiavetta

 Secretary