

C-20031000

JAMES E. KELLEY, JR.
ATTORNEY AT LAW
Lincoln Professional Building
1714 Lincoln Avenue
Latrobe, Pennsylvania 15650

(724) 539-0676
Fax (724) 539-3273

DOCKETED
October 19, 2004
DEC 02, 2004
DOCUMENT
FOLDER

David Oliver
Rail Safety Division
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

PA PUBLIC UTILITY COMMISSION

RECEIVED

OCT 25 2004

John G. Wall, Esq.
Burns, White & Hickton
120 Fifth Avenue, Suite 2400
Pittsburgh, PA 15222-3001

OCT 29 2004

BUREAU OF TRANSPORTATION & SAFETY
RAIL SAFETY DIVISION

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**IN RE: Norfolk Southern Corporation / City of Latrobe
Secretarial Letter – Section 2702 of the Public Utility Code**

Dear Mr. Oliver and Mr. Wall:

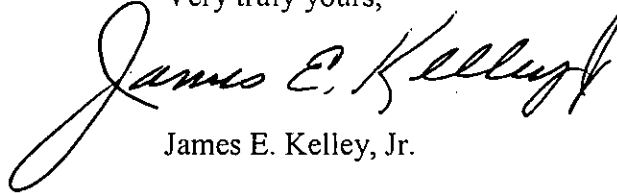
The Code Officer for the City of Latrobe, Ann Powell, advised me that there was deadline for completion of the lighting work on the underpasses of October 25, 2004. After reviewing the various correspondences going back and forth, there were numerous dates so I cannot definitively state that she is correct. However, I would assume that this date, if accurate, was for the benefit of the City to ensure expeditious completion of the project. Over the last several months an agreement has been reached between the City and Norfolk Southern that, rather than causing the inconvenience to Norfolk Southern to locate contractors in this area to perform the work, it was agreed that the City would submit three bids to Norfolk Southern. Norfolk Southern would approve one of the bids and would then pay a lump sum to the City which would include the amount of the bid plus reasonable administrative and inspection fees (please see copies of e-mails from John G. Wall, Esquire to the City of Latrobe dated May 25, 2004 and my e-mail to Mr. Wall dated September 16, 2004). I am advised by Mrs. Powell that Mr. David Wyatt from Norfolk Southern agreed to the lump sum prepayment prior to commencement of work.

October 19, 2004
Page 2

The City is in the process of putting together three bids to submit to Norfolk Southern. We believe this is the best resolution for everybody since the lump sum payment would discharge Norfolk Southern of any further obligation and the City would essentially be responsible for the lighting under its own underpasses.

I write this letter only to ensure that the deadline of October 25th, if not met, would not cause any problem to the City. Obviously, the City is pleased with the manner in which this matter is progressing to completion. We would anticipate the submission of bids, approval, payment and completion of the project to occur within the next several months, weather permitting. If there is a problem with the deadline of October 25, 2004, would either of you so advise as soon as possible. Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink that reads "James E. Kelley, Jr." The signature is written in a cursive style with a large, looping initial "J".

James E. Kelley, Jr.

JEKjr/bam
Enclosures

cc: Richard J. Stadler, City Manager
Ann Powell, Code Officer

Apowell

From: "Wall, John G." <jgwall@bwhllc.com>
To: <apowell@cityoflatrobe.com>; "David Wyatt (E-mail)" <tdwyatt@nscorp.com>
Sent: Tuesday, May 25, 2004 10:49 AM
Subject: PUC # C-20031000

Dear Ms. Powell and Mr. Wyatt:

Kindly allow the within electronic mail message to memorialize the agreement reached this morning Between Norfolk Southern (hereinafter "NS") and the City of Latrobe (hereinafter "Latrobe") regarding completion of rehabilitation of lighting facilities which are the subject of the within matter. This agreement shall not serve to negate, alter or obviate provisions of prior Commission Orders in the within matter. It is agreed upon that the parties hereto shall undertake all reasonable efforts to ensure that rehabilitation is completed in a timely manner in compliance with prior Commission Orders.

Having agreed to do so, Latrobe shall secure three (3) bids from qualified contractors and submit same to David Wyatt of NS for prompt review and approval. Upon approval, Latrobe shall direct the successful bidder to complete work at the three (3) crossings at issue herein in accordance with previously approved construction plans and prior Commission Orders. Upon completion in accordance with said plans and Commission Orders, Latrobe shall certify same and submit one (1) invoice to NS for reimbursement of agreed upon contractor expenses, reasonable administrative fees and reasonable electrical inspection fees. Thereafter, one (1) lump sum payment shall be promptly made by NS to Latrobe.

If either of you feel as though this correspondence fails to properly and accurately reflect your agreement of this morning, kindly advise via return e-mail with a copy to all recipients of this e-mail at earliest convenience.

John G. Wall
Burns, White & Hickton
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Suite 2400
Pittsburgh, PA 15222
412.359.7386 Phone
412.359.7378 Fax
jgwall@bwhllc.com

5/25/2004

James E. Kelley, Jr.

From: James E. Kelley, Jr. [jekjresq@surfshop.net]
Sent: Thursday, September 16, 2004 4:36 PM
To: 'jgwall@bwhillc.com'; 'tdwyatt@nscorp.com'
Cc: 'apowell@cityoflatrobe.com'
Subject: PUC # C-20031000

Dear Mr. Wall and Mr. Wyatt:

This e-mail is in response to your May 25, 2004, e-mail to Ann Powell and David Wyatt. In that e-mail you outlined an agreement between Norfolk Southern and the City of Latrobe regarding completion of the rehabilitation of lighting facilities which are the subject of a Secretarial Letter. Having reviewed the agreement, I suggest one change to the agreement which I understand, in conversation with Ann Powell, has been agreed upon by Mr. Wyatt. In essence, the agreement remains that the City of Latrobe will secure three (3) bids from qualified contractors' and submit the same to David Wyatt of Norfolk Southern for prompt review and approval. Each of the bids will also include any administrative fees and electrical inspection fees attributable to the contractor's work. Upon approval, Norfolk Southern will pay the lump sum amount of the bid, together with the listed reasonable administrative fees and reasonable electrical inspection fees, to the City of Latrobe. This will be done prior to the initiation of work by the contractor. Upon payment of this lump sum amount, any further obligation of Norfolk Southern, financial or otherwise, with regard to the completion of the project will be discharged, financial or otherwise, will be discharged. Thereafter, it will be the City's responsibility to see the project through to completion and to pay the contractor.

If this agreement is acceptable to Norfolk Southern, kindly advise and Ms. Powell will promptly submit to Mr. Wyatt the three bids from qualified contractors, together with administrative fees and electrical inspection fees for approval. You may e-mail Norfolk Southern's agreement to this community directly to Ms. Powell. If you have any questions, please feel free to contact either Ms. Powell or myself.

Very truly yours,

James E. Kelley, Jr., Solicitor
City of Latrobe

9/16/2004



BURNS, WHITE & HICKTON

A LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

ORIGINAL

John G. Wall
Attorney at Law

(412) 359-7386
(412) 359-7378 - fax
jgwall@bwhllc.com

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(412) 394-2500 • FAX (412) 281-1352
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THE MAXWELL CENTRE
SUITE 200
32-20TH STREET
WHEELING, WEST VIRGINIA 26003
(304) 233-9500 • FAX (304) 233-1363

October 25, 2004

REC-11

OCT 25 2004

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, Pennsylvania 17120

PA PUBLIC UTILITY COMMISSION
HARRISBURG, PA

Re: City of Latrobe v. Norfolk Southern Railway Company
Docket No. C-20031000
Our File No. 3091/137871

DOCUMENT
FOLDER

Dear Mr. McNulty:

Enclosed herein kindly find a Petition for Extension of Time to be filed on behalf of Respondent, Norfolk Southern Railway Company in the within matter. Kindly file same.

Very truly yours,


John G. Wall

JGW:pc
Enclosure

c: Ann E. Powell
R. Mark Gesalman, Esquire
Andrew Gorden, Esquire
James E. Kelley, Jr., Esquire
David Oliver, P.E.

VIA OVERNIGHT MAIL

102

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

OCT 25 2004

CITY OF LATROBE,)
)
 Complainant,)
)
 v.)
)
 NORFOLK SOUTHERN RAILWAY)
 COMPANY, WESTMORELAND COUNTY)
 SOLICITOR, COMMONWEALTH OF)
 PENNSYLVANIA, DEPARTMENT OF)
 TRANSPORTATION,)
)
 Respondents.)

PA PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

No. C-20031000

DOCKETED
NOV 29 2004

ORIGINAL

PETITION FOR EXTENSION OF TIME

NOW COMES, Norfolk Southern Railway Company (hereinafter "Norfolk Southern"), by and through its attorneys, Burns, White & Hickton and John G. Wall, Esquire, and files the within Petition for Extension of Time and respectfully avers the following:

1. On or about July 21, 2003, the City of Latrobe (hereinafter "City") initiated the within matter by Complaint averring the need to rehabilitate lighting facilities at three (3) grade-separated crossings where Jefferson Street, Alexandria Street, and Ligonier Street cross below-grade within the City of Latrobe.

2. On or about September 19, 2003, a field conference and investigation was held during which time agreement was reached between Norfolk Southern and the City to rehabilitate lighting systems at all three (3) crossings herein.

3. A Secretarial Letter was issued on or about November 25, 2003, requiring that the City, within three (3) months from the date of Secretarial Letter, prepare and submit to the Commission for approval construction plans and/or specifications for rehabilitation of the lighting facilities at the three (3) crossings at issue herein.

**DOCUMENT
FOLDER**

4. The aforementioned Secretarial Letter also directed that Norfolk Southern, within six (6) months following approval of construction plans, furnish all materials and perform all work necessary to rehabilitate the aforementioned lighting systems.

5. The City and Norfolk Southern have entered into an agreement whereby the City shall select a contractor, approved by Norfolk Southern, and engage same to perform all construction work necessary and/or called for pursuant to the aforementioned Secretarial Letter dated November 25, 2003. Norfolk Southern agreed to tender to City payment for all agreed upon construction and associated costs.

6. Attached hereto kindly find correspondence dated October 19, 2004, from James E. Kelley, Jr., Esquire, counsel for the City, indicating that, *inter alia*, contractor selection has yet to be completed and, therefore, an extension of time is required to complete the aforementioned construction project.

WHEREFORE, for reasons set forth herein, Norfolk Southern Railway Company respectfully requests that the Commission grant the within Petition for Extension of Time until June 1, 2005, within which to complete construction of the aforementioned rehabilitation to lighting systems at the three (3) grade-separated crossings herein.

Respectfully submitted,

BURNS, WHITE & HICKTON

BY: 

John G. Wall, Esquire
Attorneys for NORFOLK SOUTHERN
RAILWAY COMPANY

Burns, White & Hickton
120 Fifth Avenue, Suite 2400
Pittsburgh, PA 15222-3001

(412) 359-7386

JAMES E. KELLEY, JR.

ATTORNEY AT LAW

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1714 Lincoln Avenue
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October 19, 2004

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Rail Safety Division
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

John G. Wall, Esq.
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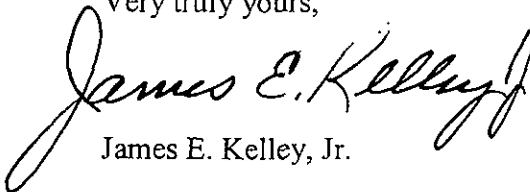
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JEKjr/bam

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Ann Powell, Code Officer

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To: <apowell@cityoflatrobe.com>; "David Wyatt (E-mail)" <tdwyatt@nscorp.com>
Sent: Tuesday, May 25, 2004 10:49 AM
Subject: PUC # C-20031000

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Very truly yours,

James E. Kelley, Jr., Solicitor
City of Latrobe

9/16/2004

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **PETITION FOR EXTENSION OF TIME** was served upon all parties of record by United States first class mail, postage prepaid, this 25th day of October, 2004, as follows:

James E. Kelley, Jr., Esquire
Lincoln Professional Building
1714 Lincoln Avenue
Latrobe, PA 15650

R. Mark Gesalman, Esquire
2 North Main Street
Courthouse Square, Suite 103
Greensburg, PA 15601

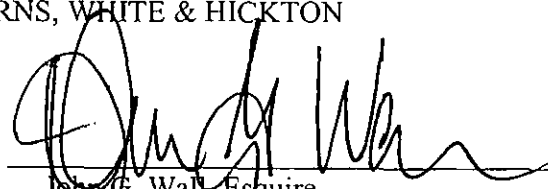
Ann E. Powell
Code Enforcement Officer
City of Latrobe
Planning and Development
901 Jefferson Street
P.O. Box 829
Latrobe, PA 15650

Andrew Gordon, Esquire
Office of Chief Counsel
Commonwealth of Pennsylvania
Department of Transportation
P.O. Box 8212
Harrisburg, PA 17105-8212

David Oliver, P.E.
Rail Safety Division
Bureau of Transportation and
Safety
Pennsylvania Public Utility
Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

BURNS, WHITE & HICKTON

BY:



John G. Wall, Esquire
Attorneys for NORFOLK SOUTHERN
RAILWAY COMPANY

COMMONWEALTH OF PENNSYLVANIA

DATE: October 29, 2004

SUBJECT: C-20031000

DOCKETED
NOV 29 2004

TO: Bureau of Transportation and Safety
Rail Division

FROM: James J. McNulty, Secretary *KB*

**DOCUMENT
FOLDER**

City of Latrobe
Vs
Norfolk Southern Railway Company, Westmoreland County Solicitor,
Commonwealth of Pennsylvania, Department of Transportation

Attached is a copy of a Petition for Extension of Time, filed by Norfolk Southern Railway Company in connection with the above docketed proceeding.

This matter is assigned to your Bureau for appropriate action.

cc: TSL

