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April 1, 2021

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
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**

Dear Secretary Chiavetta:

Enclosed please find the Main Brief of CSX Transportation, Inc. for filing in the above-referenced matter. A copy has been served upon all interested parties of record.

Thank you.

Sincerely yours,

A handwritten signature in black ink that reads 'Benjamin C. Dunlap, Jr.' in a cursive script.

Benjamin C. Dunlap, Jr.

Enclosure

BCDjr/law

cc: All Parties of Record

**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	:	Electronically Filed
thereto.	:	

MAIN BRIEF OF CSX TRANSPORTATION, INC.

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of CSX Transportation, : Docket No. A-2019-3013783
Inc. for Approval of the Abolition of the :
Crossing (DOT No. 140634G) where :
Cemetery Avenue crosses above grade the :
tracks of CSX Transportation, Inc. located :
in the City of Philadelphia, Philadelphia :
County, Pennsylvania :

MAIN BRIEF OF CSX TRANSPORTATION, INC.

I. STATEMENT OF THE CASE

This abolition proceeding involves the highway bridge carrying Cemetery Avenue over two sets of tracks of CSX Transportation, Inc. (“CSXT”) in the City of Philadelphia (“City”). As confirmed by a Traffic Impact Study conducted in August 2019, the current roadway network and other crossings in the vicinity of the Cemetery Avenue bridge have made the crossing redundant and unnecessary for the public safety and convenience. CSXT Exhibit 4.

The Cemetery Avenue bridge was originally constructed in 1886 by the B&O Railroad. By PUC Order dated October 2, 1961, Docket A-88079, maintenance responsibility for the superstructure and substructure of the bridge reconstructed at that time was assigned to the railroad and maintenance responsibility for the approaches was assigned to the City. CSXT Exhibit 2.

On October 24, 2019, pursuant to the provisions of 66 Pa.C.S. § 2702 and 52 Pa. Code 5.13, CSXT filed an application to abolish this public rail-highway crossing of Cemetery Avenue over its Philadelphia Subdivision (DOT No. 140 643 G). An initial field investigation and conference was held on February 26, 2020, with the PUC’s Bureau of Technical Utility Services, Rail Safety Section (“Rail Safety”), the Pennsylvania Department of Transportation (“PennDOT”), CSXT,

the Philadelphia Water Department, the City Streets Department, and a local landowner in attendance. There were objections to the abolition at the field conference and Rail Safety requested the matter be referred to the Office of Administrative Law Judge.

Pursuant to an informal discovery request, PennDOT provided the March 2020 Interim Bridge Inspection Report on the condition of the bridge to the parties on August 25, 2020, identifying priority maintenance items to be completed. By letter dated December 3, 2020, the PUC's Bureau of Investigation and Enforcement ("I&E") notified CSXT and the City that priority items had not been fully resolved. By letter on December 18, 2020, CSXT expressed its position that the features identified as priority items were new features and constituted alterations of the bridge requiring PUC approval rather than mere repairs of the existing features.

An initial telephonic prehearing conference for this matter occurred on September 29, 2020. The hearing took place on February 9, 2021 via Zoom video conference following the submission of written direct and rebuttal testimony with exhibits.

II. ARGUMENT SUMMARY

The bridge carrying Cemetery Avenue over the tracks of CSXT is unnecessary for the public convenience or safety within the modern roadway network. Prior to the submission of the Application to Abolish the subject crossing, a thorough traffic analysis was performed to determine whether the crossing was necessary for the public convenience or safety in the area. The study determined that the crossing is not integral to the local roadway network. Because there are five other crossings of the railroad within the ten-block area from 58th Street to 68th Street, any diverted traffic from the proposed closure can easily be absorbed by the existing

network without affecting the levels of service for residents and businesses. The study found minimal travel time increases for pedestrians and vehicles, who are likely to adapt to the bridge closure and find faster routes utilizing the various alternate routes available.

Emergency services similarly will not be impacted by closure of the crossing. The study found that removal of the bridge would not produce any impact on incident response times in the local area. Thus, the crossing does not provide any public safety benefits and an evaluation of the commonly considered factors in bridge closings supports the abolition of this crossing.

If the PUC denies CSXT's request to abolish this crossing and remove the bridge structure, future maintenance responsibilities should be assigned to the City of Philadelphia. Compared to the minimal contribution the bridge provides to the convenience and safety of the local community, CSXT has spent substantial resources in recent years to maintain an unnecessary structure. However, under Pennsylvania law the City is the owner of the bridge carrying the highway over the railroad tracks and as such, it would be reasonable to assign the City future maintenance responsibilities and costs for the bridge.

III. ARGUMENT

- a. **The rail-highway crossing where CSXT's tracks cross under the bridge carrying Cemetery Avenue should be abolished.**

The rail-highway crossing where CSXT's tracks cross under the Cemetery Avenue bridge is unnecessary for the public convenience or safety and should be abolished. The roadway network surrounding Cemetery Avenue and other existing crossings in the area offer sufficient capacity and alternative routes for the current traffic volume that may be diverted. Emergency service

and incident response times will not be impacted by the abolition of the redundant crossing as there are emergency services found on both sides of the crossing and in the event of an incident, service providers will respond from multiple agencies and locations given the urban nature of the area. CSXT Exhibit 4, pp. 18-19.

The PUC has the power to abolish an unnecessary crossing under Section 2702 of the Public Utility Code (“Code”):

66 Pa.C.S. § 2702(b) vests the Commission with the exclusive power to determine and prescribe, by regulation or order, the manner in which highway-rail crossings may be constructed, altered, relocated, suspended or abolished, and the manner and conditions in or under which such crossings shall be maintained, operated and protected to effectuate the prevention of accidents and the promotion of public safety. Section 2702(c) of the Code, 66 Pa.C.S. § 2702(c), empowers the Commission to order any public utility or municipal corporation concerned or the Commonwealth to perform this work, and under Section 2704(a), 66 Pa.C.S. § 2704(a), the PUC may allocate costs among these parties.

Pittsburgh & Lake Erie R. Co. v. Pennsylvania Pub. Util. Comm'n, 445 A.2d 851, 853 (Pa. Commw. Ct. 1982). The decision to abolish a crossing must not be arbitrary or capricious. Bueg v. Pennsylvania Pub. Util. Comm'n, 144 A.2d 511, 514 (Pa. Super. Ct. 1958).

An application to abolish a crossing should be granted where “the applicant has established that the abolition is necessary and proper for the service, accommodation, convenience or safety of the public.” N. Lebanon Twp. v. Pub. Util. Comm'n, 962 A.2d 1237, 1245 (Pa. Commw. Ct. 2008). To determine whether the abolition is necessary and proper, the factors to be considered “include traffic congestion, access for emergency responders, any impact on businesses, and the economic feasibility of the proposed change.” Id. A crossing abolition can still be deemed necessary and proper “even though the change might result in personal inconvenience to some residents.” Borough of Bridgewater v. Pennsylvania Pub. Util. Comm'n, 124 A.2d 165, 172 (Pa. Super. Ct. 1956).

In determining the manner in which a rail-highway crossing may be abolished or how costs should be allocated, the PUC “is not limited to any fixed rule, but may take into consideration all relevant factors, with the only requirement being that the order is just and reasonable.” Mun. of Monroeville v. Pennsylvania Pub. Util. Comm’n, 600 A.2d 655, 657 (Pa. Commw. Ct. 1991). In the past, the PUC has considered: the importance of the road in the roadway system,¹ a bridge closure’s impact on traffic patterns² and traffic congestion,³ the safety of the traveling public and pedestrians,⁴ the lack of public necessity,⁵ the presence or absence of other adjacent crossings in the same area,⁶ access to emergency responders,⁷ impact on access for local businesses,⁸ and the economic feasibility of the change.⁹ Considering all these factors in the case of the Cemetery Avenue bridge leads to the conclusion that the crossing should be abolished.

1. A crossing at Cemetery Avenue is superfluous for both current and projected traffic volumes within the existing roadway network.

The importance of the Cemetery Avenue crossing was studied in a 2019 Traffic Impact Study (“Study”) conducted by Grove Miller Engineering, Inc. CSXT Exhibit 4. The Study indicated that the Cemetery Avenue crossing is not an integral part of the roadway network in the surrounding area and is not a necessary component of the transportation system. CSXT

¹ Mun. of Monroeville, 600 A.2d at 657.

² Id.

³ N. Lebanon Twp., 962 A.2d at 1245; Pa. Pub. Util. Comm’n v. Borough of Souderton, 231 A.2d 875, 878 (Pa. Super. Ct. 1967).

⁴ Mun. of Monroeville, 600 A.2d at 657

⁵ Id.

⁶ Borough of Souderton, 231 A.2d at 879.

⁷ N. Lebanon Twp., 962 A.2d at 1245.

⁸ Id.

⁹ Id.

Statement No. 2 at 10, lines 20-22. Likewise, Cemetery Avenue is not integral to the state highway system. PennDOT Hearing Statement No. 2 at 2, lines 6-9.

The subject crossing is located in an area comprised of both residential and commercial uses. CSXT Statement No. 2 at 4, lines 11-14. Near the crossing there is an auto repair shop, a storage/garage unit business, as well as single and multi-family housing. Id. At the time the Study was conducted, the average daily traffic over the Cemetery Avenue bridge crossing was approximately 5,400 vehicles per day. CSXT Exhibit 4 at 4. According to the Study, this level of traffic could be accommodated by the existing roadway network surrounding Cemetery Avenue without negative effects. Id.

Addressing whether the crossing closure could cause traffic congestion in the surrounding intersections, a factor for consideration under N. Lebanon Twp., 962 A.2d at 1245, the Study examined the impact on desirable levels of service. Diverted traffic from the closed crossing would likely use a combination of Kingsessing Avenue, 65th Street, 61st Street and Woodland Avenue. See CSXT Exhibit 4, Figure 1. It was determined that if the Cemetery Avenue crossing remained open, all of the studied intersections were expected to operate at a Level of Service (“LOS”) of “B” or better in the 2030 design year. CSXT Exhibit 4, pp. 7-15. Even with the proposed crossing closure, all of these intersections will continue to operate at LOS “B” or better in 2030. Id. Thus, diverted traffic volumes due to the proposed closure of the Cemetery Avenue bridge crossing will not negatively impact the intersection LOS ratings in the surrounding roadway network.

2. Abolition of the Cemetery Avenue crossing will have no appreciable impact on travel times.

Another component of the Study was an evaluation of the potential impact on travel times for traffic that currently uses the Cemetery Avenue crossing to divert to other routes (“Travel Time Study”). Assuming the unlikely worst-case scenario where traffic would be at one side of the former bridge and would have to reroute to the other side of the bridge, the diverted vehicular traffic route was a total distance of just 0.4 miles, with an average travel time of two minutes. CSXT Exhibit 4, pp. 16-17. It is expected that local traffic would easily adapt to the closing of the bridge and adopt shorter routes to reach their destinations with the multiple other crossings in the area. Id.; CSXT Statement No. 2 at 7, lines 8-11.

Because the street network has sufficient connections to provide drivers multiple alternate route choices, the Cemetery Avenue bridge is not necessary for the public convenience. The City contends that closure of the bridge would restrict the ability of residents to cross the rail line and for the two businesses near the crossing to attract clientele from the other side of the bridge. City Statement No. 1 at 9, lines 15-17.

However, according to the Study, potential business customers and residents will still have access to both sides of Cemetery Avenue despite the closure by traveling to Kingsessing Avenue to the West or Greenway Avenue to the East and using the network grid to reach the other side of the crossing. CSXT Exhibit 4, pp. 16-17; CSXT Statement No. 4 at 7, lines 21-23 and at 8, lines 1-3. There are five other crossings in the 10-block area from 58th to 68th Streets, including those streets as well as at 60th, 61st and 65th Streets. CSXT Statement No. 4 at 4, lines 18-20. In a vehicle, the ability to reach these businesses in a timely matter will not be impacted at all. CSXT Exhibit 4, pp. 16-17; CSXT Statement No. 4 at 7, lines 21-23 and at 8, lines 1-3.

The Study also examined the impact on pedestrians who use the Cemetery Avenue bridge. In a 24-hour period, 119 pedestrians crossed the bridge with 63 crossing eastbound toward Greenway Avenue and 56 crossing westbound toward Kingsessing Avenue. CSXT Statement No. 2 at 9, lines 8-18. Again, assuming the worst-case scenario where a pedestrian walked from one side of the bridge to the other, the average additional walk time would be six minutes. CSXT Statement No. 2 at 9; CSXT Exhibit 5.

While PennDOT raised an issue regarding the safety of the diverted pedestrian traffic (*see* PennDOT Statement No. 2 at 3, lines 5-10), the intersections of 65th Street and Kingsessing Avenue and Greenway Avenue are controlled by traffic signals and have crosswalks on all four approaches. CSXT Statement No. 4 at 3, lines 11-13. The unsignalized intersection of 65th and Upland Street also provides crosswalks for the Upland Street approaches. Finally, because the Study showed that the diverted traffic from removal of the Cemetery Avenue bridge would not negatively impact the levels of service in the nearby intersections, it likewise would not create a hazardous situation for pedestrians.

3. Abolition of the Cemetery Avenue bridge does not present any public safety concerns.

A negative impact on emergency response times would weigh against abolition of a crossing. N. Lebanon Twp., 962 A.2d at 1245. Removal of the Cemetery Avenue bridge would have no such impact. There are emergency responder locations on both sides of the Cemetery Avenue crossing, located at Woodland Avenue/65th Street (south of the bridge) and 52nd Street/Willows Avenue (northeast of the bridge). CSXT Statement No. 2 at 8, lines 4-8; CSXT Exhibit 4, Figure 10. As discussed *supra* in Section III(a)(1), the existing roadway network is sufficient to absorb the diverted traffic volumes without any impact on traffic congestion.

The Study concluded that removal of the Cemetery Avenue bridge would not impact incident response times. CSXT Statement No. 2 at 8, lines 4-12. However, the City expressed concern that removal of the bridge would result in two short dead ends that would be inaccessible to large City service vehicles as well as ambulances and UPS trucks. City Statement No. 1 at 7, lines 21-22. This concern was addressed in the Study, which found that police or ambulance vehicles that access locations on Cemetery Avenue near the bridge closure will be able to make U-turns or three-point turns to turn around. CSXT Statement No. 2 at 8, lines 15-18.

Large trucks, fire trucks, or snowplows would have to back out of the cul-de-sac area, for a distance of approximately 200 feet, or use business parking lots. Id. The public safety would not be impacted by the removal of the bridge and creation of these dead ends, however, because these larger vehicles already avoid the Cemetery Avenue bridge with its current load posting of 14 Tons, although the posting is no longer needed. CSXT Statement No. 4 at 5, lines 4-13; City Statement No. 1 at 3, lines 5-7; City Exhibit 2.

In spite of the City's contention that the Cemetery Avenue crossing is essential for the public safety, the City did not remove the 14-ton load limit signs on its streets when the City was informed by McCormick Taylor in 2017 following CSXT's repairs that the bridge no longer needed to be posted. The Streets Director instead contended that was CSXT's responsibility, which is denied, although he did not testify that the City ever asked CSXT to do so. Hearing Transcript, pp. 86-96.

Because the urban roadway network provides many alternative routes for emergency responders and City service vehicles to cross at other intersections and incident response times would not increase, closure of the bridge would not be a public safety concern.

- b. **If the Cemetery Avenue crossing is not abolished, its maintenance should be assigned to the City as owner of the bridge.**
 1. As there are no public safety or convenience reasons for the bridge to exist, the City should be assigned maintenance responsibilities if it does not want the crossing to be abolished.

Although the removal of the Cemetery Avenue bridge would not present any threat to the public safety or appreciable inconvenience to the traveling public, should the PUC order it to remain, CSXT should not be responsible for future maintenance. For the reasons discussed *supra* in Section III(a), the bridge is redundant within the surrounding roadway network and its removal would not impact traffic congestion, accessibility for residents or local businesses, pedestrian safety, or emergency response times. Nevertheless, if the application to abolish the crossing is denied and the bridge structure remains, maintenance responsibilities should be assigned to the City.

Under 66 Pa.C.S. § 2704, the PUC “has the exclusive authority to determine who shall bear the costs associated with any work it orders in a proceeding related to the abolition of a rail crossing.” N. Lebanon Twp., 962 A.2d at 1247. In assigning maintenance costs and responsibilities, the Commission “is not limited to any fixed rule, but that all relevant factors must be taken into consideration with the fundamental requirement being that the order be just and reasonable.” Com. Dep't of Transp. v. Pennsylvania Pub. Util. Comm'n, 346 A.2d 371, 375 (Pa. Commw. Ct. 1975).

The allocation of costs between the parties is within the discretion of the Commission. N. Lebanon Twp. v. Pub. Util. Comm'n, 962 A.2d at 1247. For rail crossing cases, the PUC should consider the following factors:

1) the party that originally built the crossing; 2) the party that owns and maintains the crossing; 3) the relative benefit initially conferred on each party with the construction of the crossing; 4) whether either party is responsible for the deterioration of the crossing that has led to the need for its repair, replacement or removal; and 5) the relative benefit that each party will receive from the repair, replacement or removal of the crossing.

N. Lebanon Twp., 962 A.2d at 1247.

The bridge was constructed in 1886 by the B&O Railroad. An 1885 City ordinance authorized the B&O to cross Cemetery Avenue and required the railroad to maintain the facility carrying the street over the rail line. City Exhibit 1. These maintenance responsibilities did not serve to transfer title to CSXT's predecessor or establish ownership of the bridge with CSXT's predecessor, as similar responsibilities did not in the 41st Street case. Thus, "[t]he normal principle that the bridge is owned by the City, as owner of the street that the bridge supports, therefore governs." City of Philadelphia v. Consol. Rail Corp., 747 A.2d 352, 355 (Pa. 2000).

Under Pennsylvania law it is well-established that "a bridge carrying a public street is deemed to be a part of the street, and, as such, it is owned by the entity that owns the street." City of Philadelphia v. Consol. Rail Corp., 747 A.2d 352, 354 (Pa. 2000). Accordingly, a bridge carrying a public highway over a railroad track, upon its completion, becomes part of the public highway and is owned by the entity that owns the public highway. Id. at 354; N. Pa. R. Co. v. Inland Traction Co., 55 A. 774, 775 (Pa. 1903). Thus, upon completion of the bridge carrying Cemetery Avenue over the railroad tracks, it became part of the public highway and is owned by the City, in spite of CSXT's current maintenance responsibilities under the 1961 PUC Order, as was also the case in the 41st Street proceeding.

If the City wishes to keep an unnecessary bridge for the perceived convenience of its residents, it should do so at its sole cost. It would be unreasonable for the PUC to order CSXT to

continue to pay for a crossing structure it does not own, which serves no public need and is not needed for public safety.

The City of Philadelphia contends that the bridge is in general disrepair and asserts that the replacement of the superstructure is the most cost-effective solution. City Statement No. 1 at 2, 7. To the contrary, CSXT performed extensive repairs to the bridge structure in 2015 and 2016 incurring costs of approximately \$645,000. CSXT Statement No. 3 at 3, lines 11-13; CSXT Exhibit 9. CSXT's replacement of floorbeams increased the load capacity to be greater than the original bridge design. CSXT Statement No. 3 at 3, lines 19-22; CSXT Exhibit 6. This increased load capacity permitted the load limit postings to be removed four years ago, which the City did not bother to do and apparently did not ask CSXT to do.

Given these extensive repairs, the remaining service life of the structure is expected to be greater than 25 years. CSXT Cross Examination Exhibit 2. The Cemetery Avenue bridge can be open to all traffic, if the load posting signage is removed by the City. In fact, if the City has maintenance responsibility for a bridge carrying one of its streets, it might pay greater attention to matters such as whether the bridge needs to be posted for load limits.

Should the crossing be abolished, CSXT has offered to bear all costs to remove the bridge structure and construct any barricades deemed necessary. *See* Application to Abolish at 6, ¶ 24. It would be unfair to expect CSXT to continue to bear the cost of maintaining a bridge structure, or potentially upgrading a bridge superstructure, that is not needed by the local community and primarily benefits the City as owner of the bridge.

Additionally, the City receives Liquid Fuels Money for Cemetery Avenue. PennDOT Hearing Statement No. 2 at 3, lines 12-13. Removal of the approximately 650 feet of Cemetery

Avenue where the bridge is located could result in the loss of approximately \$2,000 per year in Liquid Fuels Money according to the 2020 PennDOT Municipal Liquid Fuels (MLF) Allocation Report. CSXT Statement No. 4 at 4, lines 7-10; CSXT Exhibit 12. Because the City is the owner of the bridge, receives the greatest benefit from the maintenance of the bridge, and receives Liquid Fuels Money due to the existence of the bridge, it would be reasonable to assign future maintenance responsibilities to the City.

2. The City is in the best position to obtain any potential governmental funding for future construction work on the Cemetery Avenue bridge.

If the structure is ordered to remain, the City is in the best position to obtain state or federal funding for any future construction work. First, Cemetery Avenue is a Federal Aid Route and any work on Cemetery Avenue is eligible for federal funding. PennDOT Statement No. 2 at 3-4, lines 12-21 and 1-7. The Cemetery Avenue bridge currently is not on the Transportation Improvement Plan (“TIP”), meaning there are no federal or state funds currently available for the bridge. PennDOT Statement No. 2 at 3, lines 12-21 and at 4, lines 1-7. *Id.* For a project to be on a TIP and be funded, the project sponsor has to go through a detailed approval process. PennDOT Statement No. 2R at 1-3. As owner of the bridge, the City would be in the best position to navigate this funding process. City of Philadelphia v. Consol. Rail Corp., 747 A.2d at 355 (Pa. 2000).

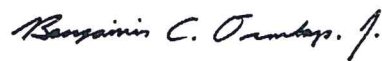
In addition, while PennDOT’s witness on federal funding could not say categorically that a railroad cannot be a sponsor for such funding, he has never seen a situation where other than the state or a municipality was the project sponsor to obtain federal funding. Hearing Transcript, pp. 101-103. The City is familiar with the federal TIP funding process. *Id.*, pp. 91-95. As the City would need to be the project sponsor, assigning the City maintenance responsibility for the

Cemetery Avenue bridge would help to assure that the City follows through with the TIP process to obtain funding when the bridge eventually does need to be replaced.¹⁰

IV. CONCLUSION WITH REQUESTED RELIEF

The rail-highway crossing where the bridge Carrying Cemetery Avenue crosses over the tracks of CSXT should be abolished. The bridge crossing is not necessary for the public convenience or safety and its removal would minimally impact the surrounding area. Alternatively, should the application for abolition be denied, all future maintenance responsibilities should be assigned to the City of Philadelphia, as the owner of the bridge that is in the best position to maintain it and secure governmental funding for its eventual replacement.

Respectfully Submitted,



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¹⁰ Funding for the SEPTA bridge replacement project at Woodland Avenue which Mr. Gatti vaguely described in his hearing testimony appears to be different from the TIP process under which most bridge replacements are funded. Hearing Transcript, pp. 93-95. Although the City's counsel said that he would provide CSXT counsel information about this reconstruction project, the PUC docket number provided (I-00870064) concerned maintenance responsibilities for the bridge and SEPTA preemption from being assigned such responsibilities. Mr. Gatti's unsubstantiated testimony in regard to funding for that project should therefore be disregarded.

V. APPENDICES

A. Proposed Findings of Fact

i. General Matters

1. The bridge carrying Cemetery Avenue over the tracks of CSXT is a single span, through-plate girder superstructure with a reinforced vehicular roadway, measuring 88 feet long and 48.3 feet wide. CSXT Statement No. 1 at 3, lines 9-11.

2. Cemetery Avenue provides for two-way traffic, and the land uses near the bridge consist of both residential and commercial uses, including an auto repair shop, a storage/garage unit business, single family homes, and multi-family housing. CSXT Statement No. 2 at 4, lines 11-14.

3. There are two sets of non-electrified tracks running under the Cemetery Avenue bridge. In 2018 the traffic volume was 14 trains per day with a timetable speed of 30 miles per hour. CSXT Statement No. 1 at 5, lines 21-22.

4. The vertical clearance for trains under the bridge carrying Cemetery Avenue is 19.8 feet on Track 1 and 19.9 feet on Track 2, and the horizontal clearance is 17.74 feet for Track 1 and 20 feet for Track 2. CSXT Statement No. 1 at 3, lines 16-18.

5. Near the Cemetery Avenue bridge, there is an ongoing clearance project for which CSXT obtained an approved PennDOT grant to lower the tracks to allow double-stack container traffic to use the line. This clearance project plays no part in CSXT's request for the crossing to be abolished, as the required clearances will be achieved by lowering the tracks at this crossing and at the adjacent four other structures. CSXT Statement No. 1 at 5, lines 21-23 and at 6, lines 1-9.

ii. Structure History

6. The original bridge structure carrying Cemetery Avenue was constructed by the B&O Railroad in 1886 and reconstructed by B&O in 1921. CSXT Statement No. 1 at 3, lines 13-15.

7. The present bridge superstructure was reconstructed by the B&O Railroad in 1961. CSXT Statement No. 1 at 3, lines 13-15.

8. By Order dated October 2, 1961, in the proceeding docketed to A-88079, B&O was assigned maintenance responsibility for the bridge substructure and superstructure, and the City was assigned maintenance responsibility for the approaches. CSXT Statement No. 3 at 3-4; CSXT Exhibit 2.

iii. Bridge Structure Condition

9. The bridge carrying Cemetery Avenue over the tracks is currently open for traffic, is safe, and adequately meets the requirements and serves the purposes for which it was designed. CSXT Statement No. 1 at 5, lines 11-14.

10. McCormick Taylor performs NBIS inspections of the Cemetery Avenue bridge for the City. CSXT Statement No. 1 at 3, lines 4-8.

11. The bridge is posted at a load rating of “14 Tons except Combinations 21 Tons.” City Hearing Statement No. 1 at 3, lines 5-7; City Exhibit 2.

12. CSXT performed approximately \$645,000 worth of repairs on the bridge in 2015 and 2016, as permitted by the City. CSXT Statement No. 3 at 3, lines 11-13; CSXT Exhibit 9.

13. In 2015 CSXT repaired corrosion and perforations in the web by adding steel plates to patch over and strengthen the deteriorated condition, replaced floor system components that were

damaged by a bridge strike, and repaired a portion of the concrete deck. CSXT Statement No. 3 at 3, lines 15-19; CSXT Exhibit 8.

14. In 2016, CSXT replaced Floorbeams 19, 20, 21 and 22, providing equal or greater capacity than the original bridge design. CSXT Statement No. 3 at 3, lines 19-22; CSXT Exhibit 6.

15. McCormick Taylor inspected the maintenance work and by letter dated October 9, 2017, informed the City Streets Department that following the replacement of Floorbeams 19, 20, 21 and 22, the load ratings for the structure were updated and the bridge no longer required posting. CSXT Exhibit 6.

16. Given the repairs made by CSXT and current condition of the bridge, the remaining service life of the structure is expected to be greater than 25 years. CSXT Cross Examination Exhibit 2.

iv. Traffic Assessment

17. The Cemetery Ave bridge structure is not integral to the state highway system in the area. PennDOT Hearing Statement No. 2 at 2, lines 6-9.

18. The Cemetery Avenue crossing is not an integral part of the roadway network in the surrounding area and is not a necessary component of the transportation system. CSXT Statement No. 2 at 10, lines 20-22.

19. A Traffic Impact Study was performed to assess if the roadway network surrounding Cemetery Avenue can accommodate the traffic that currently uses the bridge crossing and to evaluate travel times to determine the impact the crossing closure would have on vehicles currently using the crossing. CSXT Statement No. 2 at 3, lines 22-23 and at 4, lines 1-2; CSXT Exhibit 4.

20. According to the Traffic Impact Study, the average daily traffic (“ADT”) on Cemetery Avenue at the subject bridge is approximately 5,400 vehicles per day. CSXT Statement No. 2 at 5, lines 7-8; CSXT Exhibit 4.

21. The Study determined that no roadway or traffic control improvements would be necessary at any of the nearby intersections to accommodate any additional traffic. CSXT Statement No. 2 at 5, lines 16-17; CSXT Exhibit 4.

22. The capacity analysis conducted as part of the Traffic Impact Study indicates that all of the studied intersections will continue to operate at an overall desirable level of service through at least 2030 with the proposed removal of the Cemetery Avenue bridge. CSXT Statement No. 2 at 6, lines 1-5. CSXT Exhibit 4 at 1-2.

23. Travel time increases were studied assuming a worst-case scenario where traffic would be at the crossing and would have to reroute to the other side of the bridge to complete their trip. CSXT Statement No. 2 at 7, lines 3-5.

24. The route for diverted traffic was along Kingsessing Avenue, 65th street, and Greenway Avenue with a total distance of 0.4 miles and the average travel time was approximately two minutes. Most traffic would not be traveling from one side of the bridge to the other and those vehicles would be able to choose shorter routes to their destination. CSXT Statement No. 2 at 7, lines 8-11; CSXT Exhibit 4.

25. A 24-hour pedestrian count for the bridge found a total of 119 pedestrians crossing the bridge. Sixty-three crossed eastbound toward Greenway Avenue and 56 crossed westbound toward Kingsessing Avenue. CSXT Statement No. 2 at 9, lines 8-18.

26. Assuming the worst-case scenario where a pedestrian walked from one side of the bridge to the other, the average additional walk time would be 6 minutes. CSXT Statement No. 2 at 9, lines 8-18.

27. The intersections of 65th Street and Kingsessing Avenue and Greenway Avenue are controlled by traffic signals and have crosswalks on all four approaches. CSXT Statement No. 4 at 3, lines 11-13.

28. Households and businesses affected by the Cemetery Avenue bridge closure would have reasonable ingress and egress and would still have access to Cemetery Avenue to travel to Kingsessing Avenue to the west or Greenway Avenue to the east to connect to the local street network grid. CSXT Statement No. 2 at 10, lines 1-6.

v. Emergency Response

29. There are emergency responder locations at Woodland Avenue/65th Street (south of the crossing bridge) and 52nd Street/Willows Avenue (northeast of the crossing bridge). CSXT Statement No. 2 at 8, lines 4-8; CSXT Exhibit 4, Figure 10.

30. The roadway network in the area of the Cemetery Avenue bridge provides many travel route options for emergency responders and the removal of the bridge is not expected to have an impact on incident response times. CSXT Statement No. 2 at 8, lines 4-12.

31. Cemetery Avenue is wide enough for police and ambulance vehicles to make U-turns or three-point turns to turn around, but not fire trucks or large snowplows. Large trucks would have to back out of the cul-de-sac area or use business parking lots to turn around. CSXT Statement No. 2 at 8, lines 15-18.

32. With the unnecessary weight restrictions of the bridge posted at “14 Tons except Combinations 21 Tons,” many heavier vehicles such as snowplows, trash trucks, emergency

services, and busses should not have been using the bridge and removal of the bridge would not impact the current travel pattern of those large vehicles. CSXT Statement No. 4 at 5, lines 4-13; City Hearing Statement No. 1 at 3, lines 5-7; City Exhibit 2.

vi. Funding

33. The City receives Liquid Fuels Money for Cemetery Avenue. PennDOT Hearing Statement No. 2 at 3, lines 12-13.

34. Removal of the approximately 650 feet of Cemetery Avenue where the bridge is located could result in the loss of approximately \$2,000 per year in Liquid Fuels Money according to the 2020 PennDOT Municipal Liquid Fuels (“MLF”) Allocation Report. CSXT Statement No. 4 at 4, lines 7-10; CSXT Exhibit 12.

35. Cemetery Avenue is a Federal Aid Route and any work on Cemetery Avenue is eligible for federal funding. PennDOT Statement No. 2 at 3-4, lines 12-21 and 1-7.

36. The Cemetery Avenue bridge is not on the Transportation Improvement Plan (“TIP”), meaning there are no federal or state funds currently available for the bridge. PennDOT Statement No. 2 at 3-4, lines 12-21 and 1-7.

B. Proposed Conclusions of Law

1. The PUC has the authority to abolish a railroad crossing so long as the decision is not arbitrary or capricious. 66 Pa.C.S. § 2702; Pittsburgh & Lake Erie R. Co. v. Pennsylvania Pub. Util. Comm'n, 445 A.2d 851, 853 (Pa. Commw. Ct. 1982); Bueg v. Pennsylvania Pub. Util. Comm'n, 144 A.2d 511, 514 (Pa. Super. Ct. 1958).

2. When ruling on crossing abolitions, the PUC is not limited to any fixed rule and may take into consideration all relevant factors, with the only requirement being that the order is just and reasonable. Mun. of Monroeville v. Pennsylvania Pub. Util. Comm'n, 600 A.2d 655, 657 (Pa. Commw. Ct. 1991).

3. An application to abolish a crossing should be granted where the applicant establishes the abolition is necessary and proper for the service, accommodation, convenience, or safety of the public. N. Lebanon Twp. v. Pub. Util. Comm'n, 962 A.2d 1237, 1245 (Pa. Commw. Ct. 2008).

4. A crossing abolition can still be deemed necessary and proper even if the change might result in personal inconvenience to some residents. Borough of Bridgewater v. Pennsylvania Pub. Util. Comm'n, 124 A.2d 165, 172 (Pa. Super. Ct. 1956).

5. Factors to consider in closing and abolishing a crossing include: the importance of the roadway in the roadway system, the bridge closure's impact on traffic congestion and traffic patterns, access for emergency responders, impact on businesses, the economic feasibility of the proposed change, the presence of adjacent crossings servicing the area, the safety of the traveling public and pedestrians, and the lack of public necessity. N. Lebanon Twp. v. Pub. Util. Comm'n, 962 A.2d 1237, 1245 (Pa. Commw. Ct. 2008); Mun. of Monroeville v. Pennsylvania Pub. Util. Comm'n, 600 A.2d 655, 657 (Pa. Commw. Ct. 1991); Pa. Pub. Util. Comm'n v. Borough of Souderton, 231 A.2d 875, 878 (Pa. Super. Ct. 1967).

6. If the crossing is not abolished, it is just and reasonable for the PUC to order the City of Philadelphia to pay for the bridge's future maintenance costs. City of Philadelphia v. Consol. Rail Corp., 747 A.2d 352, 354 (Pa. 2000); N. Lebanon Twp. v. Pub. Util. Comm'n, 962 A.2d 1237, 1245 (Pa. Commw. Ct. 2008).

7. A bridge carrying a public highway, upon its completion, becomes part of the public highway and is owned by the entity that owns the public highway. City of Philadelphia v. Consol. Rail Corp., 747 A.2d 352, 354 (Pa. 2000); N. Pa. R. Co. v. Inland Traction Co., 55 A. 774, 775 (Pa. 1903).

8. An agreement to maintain a bridge running over railroad tracks that is silent as to ownership of the bridge does not shift title or ownership of the bridge to the railroad and “[t]he normal principle that the bridge is owned by the City, as owner of the street that the bridge supports, therefore governs.” City of Philadelphia v. Consol. Rail Corp., 560 Pa. 587, 593, 747 A.2d 352, 355 (2000).

C. Proposed Ordering Paragraphs

1. That the Cemetery Avenue crossing is hereby abolished.
2. That CSX Transportation, Inc. shall remove the bridge superstructure, at its sole cost and expense.
3. That CSX Transportation, Inc. shall construct roadway barriers on each approach to the former crossing, at its sole cost and expense.
4. That the City of Philadelphia shall maintain the roadway barriers on each approach to the former crossing, at its sole cost and expense.
5. That the City of Philadelphia shall construct and maintain “Dead End” signage on each approach to the former crossing, at its sole cost and expense.

**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	:	Electronically Filed

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Main Brief of CSX Transportation, Inc.**, upon the parties listed below, via electronic mail, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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Dated: April 1, 2021