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February 18, 2022

**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 Petition for Reconsideration 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,

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 No. 140634G) where : Docket No. A-2019-3013783  
Cemetery Avenue crosses above grade the :  
tracks of CSX Transportation, Inc. located :  
in the City of Philadelphia, Philadelphia : Electronically Filed  
County, Pennsylvania :

**PETITION FOR RECONSIDERATION**

CSX Transportation, Inc. (“CSXT”) hereby files this Petition for Reconsideration of the Opinion and Order entered February 3, 2022, in the above-referenced matter (“Opinion and Order”), pursuant to the provisions of 52 Pa. Code § 5.572, as follows:

**Standard for Review**

1. “A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g) may properly raise any matters designed to convince the commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the commission.” *Duick v. Pa. Gas & Water Co.*, 56 Pa. PUC 553, 558-559 (1983); 51 P.U.R.4th 284 (Dec. 17, 1982).

2. “Petitions for Reconsideration and Clarification are governed by the standards of *Duick*. Those standards essentially require a two-step analysis . . . First, the Commission will determine whether a party has offered new and novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous order. . . The

second step of the Duick analysis is to evaluate the new or novel argument, or overlooked consideration, in order to determine whether to modify our previous decision.” *Petition of Metro. Edison Co. for Approval of A Default Serv. Program for the Period Beginning June 1, 2019 Through May 31, 2023* *Petition of Pennsylvania Elec. Co. for Approval of A Default Serv. Program for the Period Beginning June 1, 2019 Through May 31, 2023*, No. C-2018-2643211, 2018 WL 5994761, at \*9 (Nov. 1, 2018).

**The Commission failed to consider that its own Rail Safety Section recommended that bridge maintenance responsibilities should be re-allocated to the City.**

3. In its ninth Exception to the Recommended Decision, CSXT argued that the responsibility for doing the work of maintaining the bridge superstructure should be re-allocated from CSXT to the City. CSXT further argued that the cost of maintaining the superstructure should be divided between the two entities. It agreed to maintain sole maintenance and cost responsibility for the bridge substructure. See CSXT Statement No. 1 at 7, lines 3-6. In its review and disposition of that exception on pages 19 through 22 of its Opinion and Order, the Commission agreed with the ALJ that the allocation to CSXT of all maintenance responsibility and costs of the crossing is just and reasonable.

4. In so deciding, the Commission looked to the railroad’s historic responsibilities for maintaining the bridge structure since its original construction in 1886. The Commission issued an Order on October 2, 1961, in Application Docket No. 88079 at ordering paragraph 11 on page 5 assigning both the work and costs of maintaining the Cemetery Avenue Bridge to CSXT’s predecessor. CSXT Exhibit No. 2.

5. ALJ Heep recommended in ordering paragraph 14 of her Recommended Decision that “in all respects not inconsistent herewith, all previous orders and secretarial letters of the

Pennsylvania Public Utility Commission pertaining to the subject crossing shall remain in full force and effect.” This provision, along with all others in the Recommended Decision, was adopted by the Commission in ordering paragraph 2 on page 22 of the Opinion and Order.

6. However, just because something has been done one way in the past does not mean that it makes sense in the present. The trend in recent decades, in fact, has been that the involved state or municipal entity maintains the highway bridges carrying their roadways and the involved railroad maintains the railroad bridges carrying its tracks. This has been the subject of numerous Commission orders and agreements among the parties.<sup>1</sup>

7. CSXT has historic maintenance responsibility for only “a handful” of highway bridges in Pennsylvania. CSXT Statement No. 1, pg. 7, lines 12 – 18.

8. Rail Safety’s own witness testified in this proceeding that if the crossing is not abolished, “then I suggest reassigning maintenance of the bridge to the City of Philadelphia and

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<sup>1</sup> See, e.g., *Disposition of the bridge structure where SR 3022 (Maclay Street) at the public crossing (DOT 518 088 K) crosses, above grade, the tracks of Norfolk Southern Railway Company in the City of Harrisburg, Dauphin County*, A-2021-3025976, Secretarial Letter issued July 16, 2021; *Disposition of the bridge structure where SR 3001 (Eisenhower Boulevard) at the public crossing (DOT 592 181 P) crosses, below grade, the tracks of Norfolk Southern Railway Company in Swatara Township, Dauphin County*, A-2021-3023995, Secretarial Letter issued June 8, 2021; *Disposition of the bridge structure where SR 0011 (West King Street) at the public crossing (DOT 592 122 M) crosses, above grade, the tracks of Norfolk Southern Railway Company in Shippensburg Borough and Southampton Township, Franklin County*, A-2021-3025973, Secretarial Letter issued August 16, 2021; *Application of the Department of Transportation of the Commonwealth of Pennsylvania for approval to replace the existing public above grade crossing by the construction of a new bridge where State Route 0075, Market Street, crosses the track(s) of Norfolk Southern Railway Company, DOT No. 506.587.S in Port Royal Borough, Juniata County and the allocation of costs incident thereto*, A-2019-3008365, Recommended Decision issued April 28, 2020; *In re: Joint Application of Norfolk Southern Railway Company and the Borough of Girard, Erie County, for approval to reconstruct the bridge carrying Lake Street (DOT 471 933 C) over and above a single track of Norfolk Southern in the Borough of Girard, Erie County; and to establish maintenance responsibilities*, A-2016-2530631, Secretarial Letter issued July 29, 2016.

providing cost allocation to the City of Philadelphia from CSX Transportation, Inc.” I&E Statement No. 1, pg. 11, lines 8 - 11.

9. The City should be assigned the bridge superstructure only, as the bridge substructure is integrated into the wall maintained by CSXT on either side of CSXT’s tracks below ground level. CSXT Statement No. 3R, pg. 5, lines 8 - 13.

10. No matter who pays for the work, the City is in the best position to know what work should be done on a bridge superstructure carrying one of its streets and to carry out that work.

11. Furthermore, the City is in the best position to obtain state or federal funding for any future construction work. Cemetery Avenue is a Federal Aid Route and any work on Cemetery Avenue is eligible for federal funding. PennDOT Statement No. 2 at 3, lines 12 - 21, and at 4, lines 1 - 7.

12. As with all bridges, the Cemetery Avenue bridge eventually will need to be replaced. The Cemetery Avenue bridge is not currently on the state’s Transportation Improvement Plan (“TIP”), meaning there are no federal or state funds currently available for the eventual replacement of the bridge. PennDOT Statement No. 2 at 3, lines 12 - 21 and at 4, lines 1 - 7.

13. 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 through 3. The City is well aware of this process and has successfully utilized it to obtain funding for other nearby bridges. See Hearing Transcript, pages 91 - 95.

14. In addition, PennDOT's witness testified that he has never seen an entity other than the state or involved municipality as the project sponsor to obtain federal funding. Hearing Transcript, pages 101 - 103.

15. As the City would need to be the project sponsor, assigning the City maintenance responsibility for the Cemetery Avenue bridge superstructure would help to assure that it follows through with the TIP process to obtain funding when the bridge eventually does need to be replaced.

16. Therefore, no matter which party funds the maintenance, it would be both logical and in the best interest of public safety to reassign maintenance responsibility for the Cemetery Avenue bridge superstructure to the City, as recommended by Rail Safety's witness.

WHEREFORE, CSX Transportation, Inc., respectfully requests that the Commission's Opinion and Order entered February 3, 2022, be amended to reallocate responsibility for maintenance of the Cemetery Avenue bridge superstructure to the City of Philadelphia, at its initial cost and expense.

Respectfully submitted,

**NAUMAN, SMITH, SHISSLER & HALL, LLP**

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Date: February 18, 2022

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allocation of cost thereto : Electronically Filed

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document 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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/s/ Lori Wyman  
Lori Wyman, Legal Assistant

Dated: February 18, 2022