



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

IN REPLY PLEASE
REFER TO OUR FILE
A-2021-3023652

October 11, 2022

Via Eservice and Email Only
TO ALL PARTIES OF RECORD

Application of South Whitehall Township for approval of the alteration of the public crossing (DOT 591 377 F) where Eck Road crosses, at grade, the track of Norfolk Southern Railway Company located in South Whitehall Township, Lehigh County.

To Whom It May Concern:

By application filed with the Commission on January 8, 2021, South Whitehall Township is seeking approval to alter the crossing (DOT 591 377 F) where Eck Road crosses, at grade, the single track of Norfolk Southern Railway Company (NS) in South Whitehall Township, Lehigh County.

In its application, South Whitehall Township avers that the existing at-grade crossing needs to be widened in order to allow for the construction of a roadway shoulder and a sidewalk necessary for pedestrian and vehicular safety associated with development of warehouse projects along Eck Road. In the application, South Whitehall Township avers that the project will be wholly funded by a private developer (Black Creek Group).

Upon receipt of the application, a field investigation and conference was arranged by a Commission staff engineer and held on March 10, 2021 at the site of the crossing. Representatives of Pennsylvania Department of Transportation, AECOM (NS), South Whitehall Township and Black Creek Group were in attendance.

Eck Road is a two-lane bituminous asphalt roadway which crosses, at grade, a single track of Norfolk Southern Railway Company. The railroad track is aligned generally east to west and the existing crossing surface is constructed of asphalt and rubber flangeway. The existing warning devices at the crossing consist of crossbucks with yield signs, emergency notification signs and reflective strips on the crossbuck posts. The approach roadways have advance warning signs (W10-1) and stop bars.

At the time of the field conference, it was noted that several noncarrier public utilities occupy the crossing area and were not served a copy of the application. Therefore, the following parties will be added to the record for this proceeding; PP&L Electric Utilities and UGI Gas Utilities.

At the field conference, Black Creek Group, through its consultant engineer, described the proposed project. Black Creek Group, having agreed to do so, at its sole cost and expense, proposes to widen Eck Road by addition of a roadway shoulder, guiderail and sidewalk on the west side of Eck Road. The proposed roadway shoulder and sidewalk will require the extension of the crossing surface in the area of the crossing.

Black Creek Group agrees to construct the project at its sole cost and expense. Black Creek Group agrees to reimburse Norfolk Southern Railway Company for any costs incurred to construct the widened crossing surface with asphalt and rubber flangeway and relocate the existing railroad crossbuck on the northern approach roadway and for providing engineering, watchman and flagman services in conjunction with the project.

Norfolk Southern Railway Company, at the sole cost and expense of the Black Creek Group, agrees to construct the widened crossing surface with asphalt and rubber flangeway, construct a sidewalk in the area of the crossing and relocate the existing railroad crossbuck on the northern approach roadway.

At the time of the field conference, South Whitehall Township, Norfolk Southern Railway Company and the Black Creek Group were undecided if it will be necessary for the Commission to appropriate railroad property for construction of the project but will submit right-of-way plans and metes and bounds descriptions at a later date if it is deemed necessary.

After the field conference, NS requested that the new sidewalk include 1) a R15-8 “LOOK” sign with post on southern sidewalk approach to the proposed widened crossing surface and 2) crosshatch paint markings that contrast with the bituminous portion of both sidewalk approaches and 3) detectable warning surface treatment on both sidewalk approaches. It has been determined that a new R15-8 “LOOK” sign, detectable warning surface treatment and sidewalk paint markings will be included as part of the project.

All work is to be performed in accordance with the plans entitled: “NORFOLK SOUTHERN AT GRADE CROSSING #591377F AT ECK ROAD” consisting of seven (7) sheets submitted to the Commission via electronic mail on February 8, 2022.

Upon completion of the project, Norfolk Southern Railway Company agrees to maintain the railroad facilities at the widened crossing to include the crossbuck assemblies with yield signs, the R-15-8 “LOOK” sign with post and the crossing surface at its sole cost and expense.

Upon completion of the project, South Whitehall Township agrees to maintain the new sidewalk, detectable warning surface treatment, guiderail, sidewalk paint markings in the crossing area, the approach roadways and the advance warning signs and roadway pavement markings, if required.

It does not appear the facilities of non-carrier public utilities will be affected by the project. However, several non-carrier public utility companies were not present at the field conference to determine the extent of their project involvement. So that the parties are afforded the opportunity to fully participate we will direct the non-carrier public utility companies to perform their project work, if any, at their initial cost. The parties will then determine at a later

date whether they have been adequately compensated for their project work and whether a hearing is needed to resolve any remaining issues.

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

The project is estimated to cost between \$100,000 to \$150,000 and be 100% privately funded.

Upon full consideration of the matters involved and inasmuch as no objection has been filed with the Commission, we find that a Secretarial Letter can be issued approving the application without a formal hearing.

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

The application of South Whitehall Township is approved as herein directed:

1. The caption of the subject proceeding is hereby revised as shown herein.
2. PP&L Electric Utilities be made a party hereto.
3. UGI Gas Utilities be made a party hereto.
4. Black Creek Group be made a party hereto.
5. The crossing (DOT 591 377 F) where Eck Road crosses, at grade, the single track of Norfolk Southern Railway Company in South Whitehall Township, Lehigh County be altered generally in accordance with the installation plan entitled: "NORFOLK SOUTHERN AT GRADE CROSSING #591377F AT ECK ROAD" consisting of seven (7) sheets provided to the Commission via electronic mail on February 9, 2022; which plan is made part hereof and is hereby approved except insofar as they may relate to the division of work, deletion of work, or the allocation of costs and expenses incident to the installation of the project.
6. Black Creek Group, having agreed to do so, at its sole cost and expense, furnish all material and perform all work necessary to construct the alteration project generally in accordance with this Secretarial Letter, the approved plans and South Whitehall Township roadway specifications.
7. South Whitehall Township, at its initial cost and expense and prior to start of construction, prepare and submit to this Commission for approval and to all parties of record for examination, right-of-way plans and property descriptions for any railroad property for the Commission to appropriate as necessary.
8. Black Creek Group, having agreed to do so, at its sole cost and expense, furnish all material and perform all work necessary to establish and maintain all traffic controls that may be required to properly accommodate highway and pedestrian traffic during the time the crossing project is being constructed.

9. Norfolk Southern Railway Company, at the sole cost and expense of the Black Creek Group, furnish all material and perform all work necessary to furnish 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 constructed.

10. Norfolk Southern Railway Company, at the sole cost and expense of the Black Creek Group, furnish all material and do all work necessary to alter the subject crossing by: 1) relocating the existing crossbuck with yield sign on the northern approach roadway; 2) installing a new R15-8 "LOOK" sign with post on the left side of the southern approach roadway between the roadway and the sidewalk; 3) constructing the bituminous portion of the new roadway shoulder and sidewalk between the rails and for a distance of twenty-four (24) inches beyond the outermost rails in the area of the crossing; all in accordance with Part 8 of the Manual on Uniform Traffic Control Devices and this Secretarial Letter.

11. Any relocation of, changes in and/or removal of any adjacent structures, equipment or other facilities of any non-carrier public utility company, municipality or municipal authority located within the limits of the Commission's jurisdiction, which may be required as incidental to the execution of the proposed project, be made by said public utility, municipality or municipal authority, at its initial cost and expense and in such manner as will not interfere with construction of the project.

12. Any relocation of, changes in and/or removal of any adjacent structures, equipment or other facilities of any non-carrier public utility company, municipality or municipal authority located in private right-of-way within the limits of the Commission's jurisdiction, which may be required as incidental to the execution of the crossing project, be made by said public utility, municipality or municipal authority and in such manner as will not interfere with the project.

13. Black Creek Group, having agreed to do so, at its sole cost and expense, furnish all material and perform all work necessary to complete the remainder of the crossing project, including installation of all attendant storm drainage facilities and any other ancillary features of the project, generally in accordance with this Secretarial Letter.

14. Black Creek Group, at least ten (10) days prior to the start of work, notify all parties in interest of the actual date on which work will begin.

15. 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.

16. The alteration of the crossing be completed on or before June 30, 2023, and that on or before said date, South Whitehall Township report to this Commission in writing the actual date of completion of the work.

17. Black Creek Group, having agreed to do so, at its sole cost and expense, pay all compensation for damages due to the owners of any property taken, injured or destroyed by reason of the alteration of the subject crossing in accordance with this Secretarial Letter.

18. Upon completion of the alteration of the subject crossing, Norfolk Southern Railway Company, at its sole cost and expense, furnish all material and perform all work necessary thereafter to maintain its railroad facilities at the crossing, including the crossbuck assemblies with yield signs and the R15-8 "LOOK" sign and post; 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, and provide South Whitehall Township ten (10) business days advance notice when performing any work as directed by this paragraph.

19. Upon completion of the alteration of the subject crossing, South Whitehall Township, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the highway approach roadway of the subject crossing to points twenty-four (24) inches beyond each outside rail and in addition, maintain the grade crossing advance warning signs, stop lines and pavement markings, if required, all in accordance with Part 8 of the Manual on Uniform Traffic Control Devices and this Secretarial Letter, and provide Norfolk Southern Railway Company ten (10) business days advance notice when performing any work as directed by this paragraph.

20. Upon completion of construction of the project, South Whitehall Township, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the new sidewalk with paint markings and detectable warning surface treatment to points twenty-four (24) inches beyond each outside rail in the area of the sidewalk all in accordance with the Manual on Uniform Traffic Control Devices and this Secretarial Letter.

21. This Secretarial Letter is without prejudice to the right of any party to recover all or part 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.

22. The terms of any agreement established in accordance with Paragraph No. 21 of this Secretarial Letter shall not preclude the Pennsylvania Public Utility Commission from taking any action necessary to protect the public interest, including but not limited to the reassignment or enforcement of any costs or responsibilities assigned or transferred as a result of this Secretarial Letter.

23. 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 costs incurred by the non-carrier utility companies and other matters relevant to this proceeding.

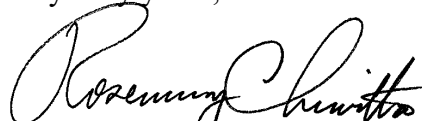
The Parties are reminded that failure to comply with this or any Order or Secretarial Letter in this proceeding may result in an enforcement action seeking civil penalties and/or other sanctions pursuant to 66 Pa. C.S. § 3301.

The Commission has waived certain regulatory service provisions as directed by the Commission's Order at M-2021-3028321. Currently, while the Commission's physical facilities are open for business, some of the operational restraints occasioned by the pandemic remain. It is evident that the pandemic and its changing nature require certain procedural flexibility for the public, the regulated community, and the Commission. Toward this end, the Commission will continue to permit electronic service by the Commission on all parties, regardless of whether a particular party has agreed to electronic service. An exception to this general waiver is where the Public Utility Code requires service by specified means, e.g., Section 702. Additionally, service on Commission staff in proceedings pending before it, whether staff is a party or otherwise, shall be exclusively electronic unless the parties agree otherwise. Filings must be submitted by e-filing with the Secretary of the Commission by opening an e-filing account through the Commission's website and accepting eservice at <https://www.puc.pa.gov/filing-resources/efiling/>. If your filing contains confidential material, you are required to file by overnight delivery to ensure the timely filing of your submission.

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