



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

December 19, 2022

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street 2nd FL
Harrisburg, PA 17120

RE: A-2020-3020667

Dear Secretary Chiavetta,

Enclosed for electronic filing please find the Department's *Prehearing Conference Memorandum* regarding the above-captioned matter.

I hereby certify that a copy has been sent to all parties of record as indicated by the Certificate of Service.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Eric W. White".

Eric W. White
Assistant Counsel

cc: Parties per Certificate of Service
Nicholas Miskanic, Legal Assistant (Email: nmiskanic@pa.gov)
Mark Chappell, P.E., Chief, Highway Delivery Division (Email)
Gregory J. Vaughn, Grade Crossing Engineer, Central Office, KCB 7th Floor (Email)
Philip Mutunga, District Grade Crossing Engineer, District 11-0 (Email)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of the Department of Transportation of :
the Commonwealth of Pennsylvania for approval to :
alter the crossings where State Route 3104 crosses, :
above grade, the tracks of CSX Transportation Inc. : A-2020-3020667
(DOT 584 825 U), Norfolk Southern Railway :
Company (DOT 507 455 K), and the Pittsburgh and :
Ohio Central Railroad Company (DOT Unknown) : **Electronically Filed**
in the City of Pittsburgh, Stowe Township and :
McKees Rocks Borough, Allegheny County. :
:

PREHEARING CONFERENCE MEMORANDUM

In accordance with the November 3, 2022 Prehearing Conference Order of Administrative Law Judge Conrad A. Johnson in the above-referenced matter, the Department of Transportation (“Department”) offers the following:

1. The Department requests that the sole service entry for the Department be as follows:

Eric W. White
Office of Chief Counsel
Pennsylvania Department of Transportation
PO Box 8212
Harrisburg, PA 17105-8212
ewwhite@pa.gov

All other Department representatives may be removed. Counsel will accept service electronically.

BRIEF PROCEDURAL HISTORY

2. On July 7, 2020 the Department filed an Application seeking approval of the Public Utilities Commission (“Commission”) to alter the crossings where state route 3104 crosses above-grade, the tracks of Norfolk Southern Railway Company (“Norfolk Southern”), the Pittsburgh & Ohio Central Railroad Company (“POCR”), CSX

Transportation, Inc. (“CSX”), the Ohio River and numerous surface streets located in the City of Pittsburgh (“City”), Stowe Township (“Township”), and McKees Rocks Borough (“Borough”), all in Allegheny County.

3. A field conference was held on Wednesday October 21, 2020 to discuss the project. The Public Utility Commission Bureau of Investigation and Enforcement (“BIE”), Norfolk Southern, POCR, CSX, Peoples Natural Gas Company, Verizon, the City, the Borough, and the Department were in attendance.
4. Because all issues could not be resolved, the matter was referred to Office of the Administrative Law Judge on or about March 10, 2021.
5. A telephonic evidentiary hearing took place on September 30, 2021 before Administrative Law Judge Conrad A. Johnson. The Department, I&E, Norfolk Southern, CSXT, and the Borough were represented by their respective counsel. The City and Township did not participate in the hearing.
6. On March 18, 2022, a Recommended Decision was issued by Administrative law Judge Johnson.
7. The Department filed Exceptions to Recommended Decision on April 7, 2022.
8. The Commission issued an Order and Opinion in which it granted in part and denied in part the Department’s Exceptions on June 16, 2022.
9. Thereafter, the Department filed a Petition for Reconsideration and/or Clarification on or about July 1, 2022.
10. The Commission then issued an Order and Opinion on or about October 27, 2022 granting reconsideration and referring the matter back to the Office of Administrative Law Judge for further proceedings.

ISSUES TO BE ADDRESSED

11. At this time, the Department believes the issues to be addressed are:
- a. responsibility for the future maintenance and expenses of the traffic signals on the bridge; and
 - b. responsibility for the future maintenance and expenses of the signage on the bridge.
12. At this time, no settlements have been reached regarding those issues.

PROPOSED PROCEDURAL SCHEDULE

13. The Department concurs with BIE's proposed procedural schedule which is as follows:
- a. Written direct testimony due on March 1, 2023;
 - b. Written rebuttal testimony due on April 3, 2023;
 - c. Witness schedule due 3 business days before the hearing;
 - d. Hearing to occur the week of May 8, 2023 (one day); and
 - e. Briefing schedule to be established at the hearing.

WITNESSES AND EXHIBITS

14. The Department intends to offer the following four (4) witnesses to address the issues and any questions which are directed to the Department:

Philip M. Mutunga
Grade Crossing Engineer
Pennsylvania Department of Transportation
Engineering District 11-0
45 Thoms Run Road
Bridgeville, PA 15017

Philip M. Mutunga will testify generally regarding the project including discussing its location, plans, and background.

Steve Gault
Highway Administration Program Manager
Pennsylvania Department of Transportation
Bureau of Maintenance and Operations
400 North Street
Keystone Building, 6th Floor
Harrisburg, PA 17120

Steve Gault will testify about Department policies regarding signs and signals as well as the regulatory and legal background of those policies.

Ed M. Miller
Senior Civil Engineer Supervisor
Pennsylvania Department of Transportation
Engineering District 11-0
45 Thoms Run Road
Bridgeville, PA 15017

Ed M. Miller will testify regarding the traffic signal locations around the project location as well as the related Traffic Signal Permits #1-069-04 and #1-092-108.

Seth A. Michaels
Operations Section Supervisor
Pennsylvania Department of Transportation
Engineering District 11-0
45 Thoms Run Road
Bridgeville, PA 15017

Seth A. Michaels will testify regarding the sign and their locations around the project location as well as the requirements, both legal and policy based, for signage around the project.

15. The Department reserves the right to call additional witnesses deemed necessary or modify its proposed witnesses as the case develops.
16. At this time, the Department intends to tender the following Exhibits through testimony which are still being compiled for submission with the Department's written testimony:
 - a. PennDOT Traffic Signal Permit #1-069-04;

b. PennDOT Traffic Signal Permit #1-069-108; and

c. Project Location Map.

17. The Department reserves the right to supplement with additional Exhibits through testimony as deemed necessary as the case develops.

18. The Department is willing to work with the parties to reach any situations or settlements that may expedite these proceedings.

Respectfully Submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



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Pennsylvania Attorney I.D. Number 317171
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DATED: December 19, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of PENNDOT for approval to : Docket No. A-2020-3020667
install new protective fence on the structure :
where State Route 3194 crosses the tracks of : Electronically Filed
CSX Transportation Inc (DOT # 584 825 U), :
Norfolk Southern Railway Company (DOT # :
507 455 K), and the Pittsburgh and Ohio :
Central Railroad Company in the City of :
Pittsburgh, Stowe Township and McKees :
Rocks Borough, Allegheny County. :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document, upon the parties listed below, in accordance with the requirements of 52 Pa.Code § 1.54 (relating to service by a party):

USPS Postage Prepaid and by Email if listed

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cojohnson@pa.gov
Assigned ALJ

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*Counsel for Norfolk Southern Railway
Company & CSX Transportation Inc*

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Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

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DATED: December 19, 2022