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December 19, 2022

VIA ELECTRONIC FILING


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

RE: 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. (DOT 584 825 U), Norfolk Southern Railway Company (DOT 504 455 K), and the Pittsburgh and Ohio Central Railroad Company (DOT Unknown) in the City of Pittsburgh, Stowe Township and McKees Rocks Borough, Allegheny County. Docket No. A-2020-3020667.

Dear Ms. Chiavetta:

Enclosed for filing please find the Prehearing Memorandum for the Borough of McKees Rocks in the above-captioned matter. A copy has been served on all interested parties of record.

Yours very truly,



Danielle Guarascio

Enclosure

cc: Judge Conrad A. Johnson (via email)
All Parties of Record

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. (DOT 584 825 U), Norfolk Southern Railway Company (DOT 504 455 K), and the Pittsburgh and Ohio Central Railroad Company (DOT Unknown) in the City of Pittsburgh, Stowe Township and McKees Rocks Borough, Allegheny County.

Docket No. A-2020-3020667

PREHEARING MEMORANDUM

Filed on behalf of: McKees Rocks Borough

Counsel of Record for this Party:

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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. (DOT 584 825 U), Norfolk Southern Railway Company (DOT 504 455 K), and the Pittsburgh and Ohio Central Railroad Company (DOT Unknown) in the City of Pittsburgh, Stowe Township and McKees Rocks Borough, Allegheny County.

Docket No. A-2020-3020667

PREHEARING MEMORANDUM

McKees Rocks Borough (hereinafter, the “Borough”), by and through its attorneys, Megan M. Turnbull and Danielle Guarascio, respectfully submits this Prehearing Memorandum consistent with Administrative Law Judge Conrad A. Johnson’s Prehearing Conference Order for Telephonic Hearing on Remand, issued on November 3, 2022 in reference to the above-captioned proceeding.

I. HISTORY OF THE PROCEEDING

On July 2, 2020, the Pennsylvania Department of Transportation (hereinafter, “PennDOT”) filed an application with the Pennsylvania Utility Commission (hereinafter, “Commission”), seeking approval to alter the crossings where State Route (SR) 3104 crosses, above-grade, the tracks of Norfolk Southern Railway Company (NS), the Pittsburgh & Ohio Central Railroad Company (POHC), CSX Transportation, Inc. (CSXT), the Ohio River and numerous surface streets located in the City of Pittsburgh, Stowe Township and McKees Rocks Borough, all in Allegheny County.

PennDOT proposed various rehabilitation work, including the following: expansion dam replacements, bridge deck concrete barrier repairs and replacements, protective fencing replacements above the railroads, strip seal replacements, limited sidewalk replacement with

concrete filled steel grate decking, miscellaneous steel and concrete repairs, limited steel structure painting (pedestrian railing and sidewalk support elements) and approach slab replacement. PennDOT proposed that the maintenance responsibilities relative to salting, plowing and lighting be assigned to the municipal entities.

A Prehearing Conference Order for Telephonic Hearing and Call-in Telephone Prehearing Conference Notice was issued to all parties on March 10, 2021, informing them that a prehearing conference would be conducted by Administrative Law Judge Conrad A. Johnson (hereinafter, "ALJ Conrad"), as the presiding officer, on April 13, 2021. Further, on March 10, 2021, a Secretarial Letter (hereinafter, the "Secretarial Letter") was issued granting PennDOT permission to submit final detailed constructions plans of the proposed work and allowing PennDOT to begin construction once the plans were submitted and approved by the Commission. The Secretarial Letter referred the outstanding future maintenance items and any other unresolved items to the Office of Administrative Law Judge (hereinafter, the "OALJ") for adjudication.

A telephonic evidentiary hearing was held on September 30, 2021 before ALJ Conrad.

The Department, I&E, and the Borough filed briefs on December 10, 2021. No reply briefs were filed.

ALJ Conrad issued a Recommended Decision on March 18, 2022, which assigned all costs associated with the altering of the McKees Rocks Bridge, including 1.) the maintenance and energization of the navigational and roadway lighting; 2.) year-round maintenance of the sidewalks and applying anti-skid/de-icing material; and 3.) maintenance of the signage, to PennDOT.

PennDOT filed Exceptions on April 7, 2022, challenging the Recommended Decision. Accordingly, I&E and the Borough each filed a Letter Reply in response to PennDOT's Exceptions.

The Commission considered the Exceptions and Reply Letters, and on June 16, 2022, the Commission issued an Order modifying the Recommended Decision in part (hereinafter, the “Final Order”). The Final Order granted, in part, and denied, in part, the Exceptions filed by PennDOT. Specifically, the Final Order granted PennDOT’s Exception concerning the bridge sidewalk maintenance. Therefore, the Final Order determined that, upon completion of the construction of the project at the McKees Rocks Bridge, the City of Pittsburgh, Borough of McKees Rocks, and Stowe Township would each be responsible for all materials and maintenance of removing snow, ice, and debris from the sidewalks on the bridge within each of their respective municipal boundaries. However, all other Exceptions filed by PennDOT were denied. The Final Order adopted the ALJ’s recommendations to assign to PennDOT the costs of the maintenance and energization for the navigational lighting and roadway lighting of the bridge, and the maintenance of the signage and signals of the bridge.

On July 1, 2022, PennDOT filed a Petition for Reconsideration and/or Clarification of the Opinion and Order of The Public Utility Commission Issued on June 16, 2022. Accordingly, the Borough filed an Answer to the Petition, and I&E filed a Letter Answer in response to the Petition. On July 14, 2022, the Commission entered and adopted an Opinion and Order granting PennDOT’s Petition pending review of, and consideration on, the merits of the Petitions. The Commission entered and adopted an Opinion and Order on October 27, 2022 that 1.) granted the Petition for Reconsideration and/or Clarification filed by PennDOT on July 1, 2022; and 2.) referred the sole issue regarding the responsibility for the future maintenance and expenses of the traffic signals and signage on the bridge to the OALJ to conduct an evidentiary hearing, develop a complete and comprehensive record of the issue, and prepare and issue a Recommended Decision for the Commission’s consideration and disposition.

Norfolk Southern Railway Company (“Norfolk Southern”) and CSX Transportation Inc (“CSXT”) submitted a letter on November 2, 2022, informing the Commission that they will not be participating in the further call-in telephonic prehearing conference on remand or any further hearing or proceedings in this matter because said parties are not involved in the remaining issue being considered.

On November 3, 2022, the Commission issued a Prehearing Conference Order on Remand scheduling the conference for Thursday, December 22, 2022 before ALJ Johnson. The parties were instructed to provide Prehearing Memoranda no later than 4:00 p.m. on December 19, 2022.

II. ISSUE

The Borough maintains that the sole remaining issue in this matter concerns the responsibility for the future maintenance and expenses of the traffic signals and signage on the bridge.

III. PROPOSED WITNESSES

If testimony is necessary regarding the aforementioned issues, the Borough anticipates calling the following Borough representatives:

LeeAnn Wozniak, Borough Manager
340 Bell Avenue
McKees Rocks, PA 15136
manager@mckeesrockspa.us

Bobby Thompson, Code Enforcement Officer
340 Bell Avenue
McKees Rocks, PA 15136
streetdept@mckeesrockspa.us

Doug Evans, P.E., Borough Engineer
Rachel Smart, P.E., Assistant Borough Engineer
NIRA Engineers
950 5th Avenue
Coraopolis, PA 15108
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The Borough reserves the right to modify or supplement this witness list during the course of this proceeding. In the event that the Borough decides to modify or supplement the witness list, it will inform all parties and ALJ Johnson as soon as possible.

IV. PROPOSED AREA OF TESTIMONY OF EACH WITNESS

LeeAnn Wozniak and Bobby Thompson will each testify as to the Borough's operations and budget. Similarly, the Borough Engineer's Office may testify regarding municipal boundaries and other matters within the scope of their professional engineering judgment.

V. EXHIBITS OR DOCUMENTS INTENDED TO BE PRESENTED AT HEARING

At this time, the Borough anticipates potentially offering exhibits, if needed, to establish municipal boundaries and related linear square footage of project work within the Borough. The Borough would like to reserve the right to raise supplement exhibits or documents during the course of this proceeding in support of its position and/or in rebuttal to other testimony or exhibits presented. In the event that the Borough decides to supplement any exhibits or documents, it will inform all parties and ALJ Johnson as soon as possible.

VI. PROPOSED PROCEDURAL SCHEDULE

The Borough is open and willing to discuss settlement of this matter; however, the Borough is not aware of any settlement discussions at this time. The Borough accepts the discovery and litigation schedule proposed by counsel for the Public Utility Commission Bureau of Investigation and Enforcement. The schedule is as follows:

1. Written direct testimony due on March 1, 2023.
2. Written rebuttal testimony due on April 3, 2023.
3. Witness schedule due 3 business days before the hearing.
4. Hearing to occur the week of May 8, 2023 (one day).
5. Briefing schedule to be established at the hearing.

Respectfully submitted,

Handwritten signature of Megan Turnbull in blue ink, written over a horizontal line.

Megan Turnbull
McKees Rocks Borough Solicitor
Pa. I.D. #93333

Handwritten signature of Danielle M. Guarascio in blue ink, written over a horizontal line.

Danielle Guarascio
McKees Rocks Borough Assistant Solicitor
Pa. I.D. #3279

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Docket No. A-2020-3020667

CERTIFICATE OF SERVICE

I, Megan M. Turnbull, Esquire, do hereby certify that a true and correct copy of the foregoing **Prehearing Memorandum** was served by electronic mail on this 19th day of December 2022, upon the following:

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