



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

April 27, 2023

Via E-File

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

RE: **A-2020-3017848**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find PennDOT's "*Motion to Schedule Matter for Hearing*" in 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.

Respectfully,

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

Eric W. White
Assistant Counsel

cc: Parties of Record
Mark Chappell, P.E., Chief, Highway Delivery Division (email)
Gregory J. Vaughn, Grade Crossing Engineer, Central Office, KCB 7th Floor (email)
Mary Ann Lang, District Utility Manager, District 6-0 (email)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Application of the Department of :
Transportation of the Commonwealth of :
Pennsylvania for approval to alter the public :
above grade crossing by the reconstruction of : A-2020-3017848
the State Route 0001 Expressway over State :
Route 2037 and the track(s) of CSX :
Transportation Inc. and Southeastern : Electronically Filed
Pennsylvania Transportation Authority, DOT :
Number 589 953 U in Middletown Township, :
Bucks County. :**

MOTION TO SCHEDULE MATTER FOR HEARING

AND NOW, comes the Commonwealth of Pennsylvania, Department of Transportation (PennDOT), by and through its counsel, Eric W. White, Assistant Counsel, and files this Motion to Schedule Matter for Hearing and in support thereof respectfully represents:

1. The name and address of your moving party is:

Commonwealth of Pennsylvania
Department of Transportation
Engineering District 6-0
7000 Geerdes Blvd.
King of Prussia, Pennsylvania 19406-1525

2. The name and address of counsel for the moving party is:

Eric W. White
Assistant Counsel
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel
P.O. Box 8212
Harrisburg, Pennsylvania 17105-8212

3. On or about February 5, 2020, PennDOT filed an Application seeking approval to alter the crossing where State Route (S.R.) 0001 crosses (DOT 589 953 U), above grade, S.R. 2037, the racks of CSX Transportation Inc. (CSXT) and the tracks of Southeastern

Pennsylvania Transportation Authority (SEPTA) in Middletown Township, Bucks County (Project).

4. A field investigation and conference was scheduled for March 20, 2020, but due to COVID-19 issues the Commission conducted a teleconference on April 29, 2020 regarding the matter.
5. Following the teleconference, the Commission issued a Secretarial Letter on May 13, 2020 where in it approved the application of PennDOT and Ordered, *inter alia*:

CSX Transportation, Inc., at the sole cost and expense of the Pennsylvania Department of Transportation, furnish construction engineering and inspection service as required as a result of the proposed work; and *furnish and maintain flagmen and watchmen as required to protect its operations during the time work is being performed across, above and adjacent to its tracks.*

Secretarial Letter dated May 13, 2020, Ordering paragraph 6 (emphasis added).

6. Thereafter, final plans were approved and the Project proceeded.
7. On or about April 18, 2023, PennDOT Engineering District 6-0 (District 6) learned through its subcontractor that CSXT would not provide a commitment to provide flagging for the following week beginning April 24, 2023.
8. CSXT has been ordered to furnish and maintain flagmen and watchmen as required to protect its operations by the Commission through its May 13, 2020 Secretarial Letter.
9. To date, flagging has not been provided for the week beginning April 24, 2023.
10. CSXT, through failing to adhere to the Order of the Commission, is subjecting the Project to potential unnecessary delays.
11. If flagging is not provided as required, it is anticipated that the Project will be substantially delayed and impact a scheduled PECO (electricity) outage which is scheduled for early fall.

12. In addition, it is likely that these delays will impact a commuter line affected by the Project as well as potentially continuing to cause traffic delays through the community surrounding the project.
13. Further, District 6 has been advised that if flaggers are not able to be provided in the near future it is anticipated that the subcontracting crew will need to demobilize due to a lack of necessary flagging protection which will effectively stop the Project.
14. Due to the type of work as well as the time it takes to coordinate PECO outages, it is anticipated this will also drastically increase the expense to PennDOT in addition to causing delays.
15. Due to the obvious and apparent safety concerns of proceeding without the necessary flagging protection as well as the potential impacts to the Project, PennDOT seeks expedited review of this matter.

WHEREFORE, the Department of Transportation respectfully requests that this matter be scheduled for a hearing as soon as possible.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



Eric W. White, Assistant Counsel
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Department of Transportation
Office of Chief Counsel
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DATED: April 26, 2023

**BEFORE THE
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VERIFICATION

I, Mary Ann Lang, District Utility Manager, Commonwealth of Pennsylvania, Department of Transportation, hereby state that the facts above set forth are true and correct to the best of my knowledge, information, and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand the statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsifications to authorities.

/s/ Mary Ann Lang

Mary Ann Lang
District Utility Manager

DATED: [April 26,2023](#)

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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):

e-Service via Email

Ryan Hill
Conrail
1000 Howard Blvd.
Mt. Laurel, NJ 08054
ryan.hill@conrail.com

USPS Postage Prepaid

Derek Mihaly
Project Manager-Public Projects
CSX Transportation, Inc.
2000 Cabot Boulevard, Suite 130
Langhorne, PA 19047

Bill Hensil
Program Manager
Peco Energy Company
1050 West Swedesford Road
Berwyn, PA 19312

Southeastern Pennsylvania Transit Authority
1234 Market Street, 12th Floor
Philadelphia, PA 19107

Brian Hessenthaler
Chief Operating Officer
Bucks County Commissioners
55 East Court Street
Administration Building
Doylestown, PA 18901

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Verizon Pennsylvania, LLC
1050 Virginia Drive Floor 4
Fort Washington, PA 19034

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Bucks County Water And Sewer Authority
1275 Almshouse Road
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3 Municipal Way
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Bensalem Township
2400 Byberry Road
Bensalem, Pa 19020

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

1s/ Kevin Belle

Kevin A. Belle, Legal Assistant to
Eric W. White
Assistant Counsel
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P.O. Box 8212
Harrisburg, PA 17105-8212
Telephone No. (717) 787-3128

DATED: April 27, 2023