



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

IN REPLY PLEASE
REFER TO OUR FILE

July 31, 2023

A-2023-3038119

TO ALL PARTIES OF RECORD

Application of North East Borough for approval of the alteration of the public crossing (DOT 524 029 W) where Loomis Street crosses, at grade, two (2) tracks of CSX Transportation Inc., and one (1) track of Norfolk Southern Railway Company, located in North East Borough in Erie County.

To Whom It May Concern:

This matter is before us by reason of an application filed February 6, 2023, by North East Borough seeking Commission approval for the alteration of the public crossing (DOT 524 029 W) where Loomis Street crosses, at grade, two (2) tracks of CSX Transportation Inc. (CSXT), and one (1) track of Norfolk Southern Railway Company (NSRC), located in North East Borough in Erie County.

A field conference was arranged by a Commission staff engineer and held on March 23, 2023, and a second field conference was held on May 4, 2023. Pennsylvania Department of Transportation, CSXT, NSRC, North East Township, North East Borough and the Federal Railroad Administration attended both field conferences. Erie County attended the March meeting and Erie Powder Coatings attended the May meeting.

Presently, Loomis Street is a two-lane bituminous asphalt roadway with no sidewalks that crosses, at grade, two (2) tracks of CSXT, and one (1) track of NSRC. The (2) CSX crossings have timber and asphalt crossing surfaces and the NSRC crossing has an asphalt and rail seal crossing surface. There is approximately eighty feet (80') of roadway between the southernmost track of CSXT and the NSRC track at the Loomis Street crossing. The warning facilities located on the northbound and southbound approach roadway consist of flashing-light warning signals with gates and a bell. Both roadway approaches have Grade Crossing Advance Warning signs (W10-1), "DO NOT STOP ON TRACKS" signs (R8-8), pavement markings and stop lines.

The maximum train speed at the subject crossing is 79 miles per hour (mph). The FRA lists 32 daily trains over the subject crossing. The highway speed limit on Loomis Street is 25 mph.

Crossing accidents and incidents are recorded by the Federal Railroad Administration (FRA). There have been five reported accidents since 2010. Four (4) involved tractor trailers and one (1) involved an automobile. The dates of the accidents reported to the FRA are dated October 17, 2022, March 24, 2021, June 14, 2018, April 19, 2018, and August 27, 2010.

At the first field conference in March, North East Borough discussed their application. North East Borough proposed to fund an engineering traffic study to evaluate alternatives that will improve safety and reduce accidents at the crossing. The study is anticipated to take one-year to complete. North East Borough will provide the recommended option by the study to improve safety and reduce accidents at the subject crossing to the Commission and to all the parties of record. Funding for the recommended option will then have to be pursued. North East Borough requested copies of the current situation and circuitry plans from CSXT and from NSRC at the Loomis Street crossing.

The PUC, FRA and NSRC, all requested the Borough consider having the Loomis Street crossing closed and abolished. Closure of the crossing would eliminate the risk of future accidents from occurring. Typically, all costs for abolishing a crossing are shared by the railroads and the roadway owner. When a crossing is abolished, funds are contributed to the roadway owner, in this case North East Borough, from the operating railroads and that amount is matched up to \$100,000 by the Pennsylvania Department of Transportation. Additional funding for a crossing abolition can be applied for from the FRA. The Borough stated that the Loomis Street crossing is a vital transportation link for businesses and residents in the Borough and they are not agreeable to pursuing an abolition of the Loomis Street crossing.

Next, the parties discussed what immediate improvements could be made to improve safety at the existing Loomis Street crossing until a long-term solution is decided upon. The parties agreed to making several immediate improvements at the crossing.

North East Borough, at its sole cost and expense, will install the dynamic envelope pavement markings consisting of white "X" hatching applied to both lanes of Loomis Street between the crossing surfaces of CSXT and NSRC and for six feet before the outermost rails on both crossing approaches. North East Borough will install "DO NOT STOP ON TRACKS" signs (R8-8) fitted at the top and bottom with dynamic envelope warning signs, consisting of five (5) white X's on a black background on a rectangular reflective sign measuring 6-inches by 24-inches. The R-8 signs will be installed on both roadway approaches to the tracks of CSX Transportation Inc., and to the track of Norfolk Southern Railway Company.

CSXT and NSRC, at their sole cost and expense, agreed to provide flagging during the installation of the dynamic envelope painting. CSXT and NSRC, at their sole cost and expense, agreed to cut down the brush and trees that are growing along their joint property line between the two railroads and along their respective rights-of-way. CSXT, at its sole cost and expense, agreed to secure loose timbers, rails and remove protruding bolt heads in their existing timber and asphalt crossing surfaces at the subject crossing. NSRC and CSXT agreed to provide copies of the current situation and circuitry plans to Pennsylvania Department of Transportation, North East Borough and to the Commission.

All parties of the diagnostic team discussed the proposed safety improvements at the subject crossing. The diagnostic team's decisions were amicable and agreed to by all parties.

CSXT and NSRC will maintain its railroad facilities over its operations and tracks and will maintain the flashing-light signals with automatic gates, and all appurtenant equipment at the subject crossing, and maintain their respective timber and asphalt crossing surfaces in a smooth and satisfactory condition.

North East Borough, at its sole cost and expense, will be directed to maintain the highway approaches up to the crossing surface and to maintain the dynamic envelope pavement markings, the advanced warning signs, the do not stop on tracks signs, dynamic envelope warning signs, pavement markings and stop lines on the approach roadways.

It does not appear that any facilities of any non-carrier public utility will be affected by the alteration of the crossing. It will not be necessary for the Commission to appropriate railroad property to accommodate the improvement.

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

The proposed alteration was discussed in detail at the field conference with all attending parties of record and none have advised that it objects to the issuance of a Secretarial Letter, prior to hearing, approving and or affirming the alteration and maintenance of the crossing.

The Commission has exclusive jurisdiction in crossing alterations and is the final arbiter of any fees associated with a crossing application. Any conditions, including fees associated with a crossing application, must be approved by the Commission.

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 and maintenance of the subject crossing is necessary and proper for the service, accommodation, convenience or safety of the public.

The application of North East Borough is approved as herein directed:

1. The caption of the subject proceeding is hereby revised as shown.
2. The public crossing (DOT 524 029 W) where Loomis Street crosses, at grade, two (2) tracks of CSX Transportation Inc., and one (1) track of Norfolk Southern Railway Company, located in North East Borough in Erie County, be altered and maintained as herein directed.
3. North East Borough, at its sole cost and expense, furnish all material and do all work necessary to alter the subject crossing by painting dynamic envelope pavement markings with white cross hatching across both lanes of Loomis Street between the crossings of CSX Transportation Inc., and Norfolk Southern Railway Company and for six feet before the outermost rail on both crossing approaches.
4. North East Borough, at its sole cost and expense, furnish all material and do all work necessary to alter the subject crossing by installing "DO NOT STOP ON TRACKS" signs (R8-8) fitted at the top and bottom with dynamic envelope warning signs, consisting of five (5) white X's on a black background on a rectangular reflective sign, on both roadway approaches to the track of Norfolk Southern Railway Company and to the tracks of CSX Transportation Inc. all in accordance with Part 8 of the Manual on Uniform Traffic Control Devices and this Secretarial Letter.
5. North East Borough, at its sole cost and expense, furnish all material and perform all work necessary to establish and maintain any detours or traffic controls at the subject crossing that may be required to properly and safely accommodate highway and pedestrian traffic during the time the crossing is being altered.
6. CSX Transportation Inc., at its sole cost and expense, cut brush and trees that are growing along its property lines and areas between the two railroads.
7. Norfolk Southern Railway Company, at its sole cost and expense, cut brush and trees that are growing along its property lines and areas between the two railroads.
8. CSX Transportation Inc., at its sole cost and expense, secure or replace the loose timbers and rails and remove or repair the protruding bolt heads in their existing timber and asphalt crossing surfaces at the subject crossing.
9. CSX Transportation Inc., at its sole cost and expense, provide copies of its current situation and circuitry plans to the Commission, the Pennsylvania Department of Transportation and to North East Borough.
10. Norfolk Southern Railway Company, at its sole cost and expense, provide copies of its current situation and circuitry plans to the Commission, the Pennsylvania Department of Transportation and to North East Borough.

11. CSX Transportation Inc., at its sole cost and expense, furnish and maintain any flagmen, watchmen, inspectors and/or engineering services which may be necessary to protect and safeguard its railroad facilities and operations during the time the dynamic envelope markings are being painted and maintained.

12. Norfolk Southern Railway Company, at its sole cost and expense, furnish and maintain any flagmen, watchmen, inspectors and/or engineering services which may be necessary to protect and safeguard its railroad facilities and operations during the time the dynamic envelope markings are being painted and maintained.

13. North East Borough, at its sole cost and expense, complete an engineering traffic study to evaluate alternatives to reduce accidents and improve safety at the crossing and provide the recommended option to the Commission and to all the parties of record.

14. North East Borough, 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.

15. Any relocation of, changes in and/or removal of any adjacent structures, equipment or other facilities of any non-carrier public utility company, which may be required as incidental to the alteration of the crossing, be made by said public utility at its initial cost and expense and in such manner as will not interfere with the alteration of the crossing; and such relocated or altered facilities thereafter be maintained by said public utility at its sole cost and expense.

16. North East Borough, at its sole cost and expense, notify all parties of record at least ten (10) days prior to performing any work in accordance with this Secretarial Letter.

17. 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.

18. All work necessary to complete the maintenance and alteration of the subject crossing, per ordering paragraph numbers 3 through 12, be done in a manner satisfactory to this Commission on or before August 10, 2023.

19. All work necessary to complete the engineering study as per ordering paragraph number 13, be done in a manner satisfactory to this Commission on or before July 31, 2024, and that on or before said date, North East Borough, report the date of actual completion of the work.

20. Upon completion of the alteration and maintenance of the subject crossing, CSX Transportation Inc., 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 automatically operated flashing-light warning signals with gates and all appurtenant equipment, and to 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 and area between the tracks, all in accordance with of the Manual on Uniform Traffic Control Devices and this Secretarial Letter and provide North East Borough at least ten (10) business days advance notice when performing any work as directed by this paragraph.

21. 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 automatically operated flashing-light warning signals with gates and all appurtenant equipment, and to 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 of the Manual on Uniform Traffic Control Devices and this Secretarial Letter and provide North East Borough at least ten (10) business days advance notice when performing any work as directed by this paragraph.

22. Upon completion of the alteration of the subject crossing, North East Borough, at its sole cost and expense, furnish all material and do all work necessary to maintain the highway approaches up to points twenty-four (24) inches beyond each outside rail, including the roadway in between the two operating railroads, in a safe, smooth and satisfactory condition, and, in addition, maintain the “DO NOT STOP ON TRACKS” signs (R8-8), the dynamic envelope warning signs, the Grade Crossing Advance Warning signs (W10-1), the stop lines and the dynamic envelope pavement markings on the approaches thereto, in accordance with Part 8 of the Manual on Uniform Traffic Control Devices and this Secretarial Letter; and provide ten (10) business days of advance notice Norfolk Southern Railway Company and CSX Transportation Inc., prior to doing any work in accordance with this paragraph that may affect their facilities.

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 public 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.

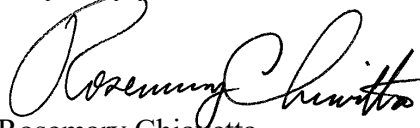
All formal documents must be filed with the Secretary of the Commission. Documents must be eFiled, mailed or hand delivered. All filings should be addressed to the Secretary, PA Public Utility Commission, 400 North Street, Harrisburg, PA 17120. The Commission will not accept documents delivered by fax or by e-mail. Parties are encouraged to file formal documents by eFiling with the Secretary of the Commission by opening an eFiling account through the Commission’s website (the account is free of charge) 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. There are certain filings that cannot be eFiled, such as filings containing confidential or proprietary material. These must be submitted to the Secretary by overnight delivery, priority, or certified mail to allow tracking of your filing.

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 eFiled with the Secretary of the Commission or sent to: Secretary, PA Public Utility Commission, 400 North Street, Harrisburg, PA 17120, and must be filed 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,

A handwritten signature in cursive script, appearing to read "Rosemary Chiavetta".

Rosemary Chiavetta
Secretary