



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

November 2, 2023

Via Electronic Filing

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

Re: Application of CSX Transportation, Inc., for approval to abolish four (4) at-grade crossings where East Bayfront Parkway (DOT # 918 322 D); Ore Dock Road (DOT # 976 924 B and 932 473 C); and East Bay Drive (DOT # 918 325 Y) cross, at grade, the tracks of CSX Transportation, Inc. in the City of Erie, Erie County.
Docket No. A-2023-3041598

Application of the Department of Transportation of the Commonwealth of Pennsylvania for approval to alter one (1) public at-grade crossing (DOT 918 324 S) by the installation of Z Gates at the multi-use trail along East Bayfront Parkway (State Route 4034) and alter two (2) public at-grade crossings (DOT's 524 337 C, and 524 335 N) by installing pedestrian crossing improvements and altering the pre-emption and timing where East 8th Street and East 10th Street cross the track of CSX Transportation Inc., in the City of Erie, Erie County, and the allocation of costs incident thereto.

Docket No. A-2022-3036626

I&E Prehearing Conference Memorandum

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Bureau of Investigation and Enforcement's ("I&E") **Prehearing Conference Memorandum** in the above-referenced matter.

Copies have been served on the parties of record in accordance with the attached Certificate of Service. If you have any questions, please contact the undersigned.

Sincerely,

A handwritten signature in blue ink that reads 'Kayla L Rost'.

Kayla L. Rost
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 322768
(717) 787-1888
karost@pa.gov

Enclosures

cc: Per Certificate of Service
Andrew B. Reed, P.E. (via email - andreed@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of CSX Transportation, Inc., :
for approval to abolish four (4) at-grade :
crossings where East Bayfront Parkway :
(DOT # 918 322 D); Ore Dock Road (DOT : Docket No. A-2023-3041598
976 924 B and 932 473 C); and East Bay :
Drive (DOT # 918 325 Y) cross, at grade, :
the tracks of CSX Transportation, Inc. in :
the City of Erie, Erie County. :

Application of the Department of :
Transportation of the Commonwealth of :
Pennsylvania for approval to alter one (1) :
public at-grade crossing (DOT 918 324 S) :
by the installation of Z Gates at the multi- :
use trail along East Bayfront Parkway :
(State Route 4034) and alter two (2) public : Docket No. A-2022-3036626
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pre-emption and timing where East 8th :
Street and East 10th Street cross the track :
of CSX Transportation Inc., in the City of :
Erie, Erie County, and the allocation of :
costs incident thereto. :

**PREHEARING CONFERENCE MEMORANDUM
OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

TO ADMINISTRATIVE LAW JUDGE CHARECE Z. COLLINS:

The Pennsylvania Public Utility Commission's ("Commission") Bureau of Investigation and Enforcement ("I&E") files this Prehearing Conference Memorandum in accordance with the Prehearing Conference Order of Administrative Law Judge ("ALJ") Charece Z. Collins dated September 18, 2023.

I. HISTORY OF THE PROCEEDING

A. APPLICATION FILED IN 2022 BY PENNDOT

By letter dated November 3, 2022, the Pennsylvania Department of Transportation (“PennDOT”) filed an application for approval to alter one public at-grade crossing by installing Z Gates along State Route 4034 (DOT 918 324 S) and alter two public at-grade crossings by altering the pre-emption and timing where 8th Street (DOT 524 337 C) and 10th Street (DOT 524 335 N) cross the tracks of CSX Transportation, Inc. (“CSXT”) in the City of Erie, Erie County, Pennsylvania (hereinafter “2022 Application”), Docket No. A-2022-3036626. PennDOT proposed to fund the project with 80% federal funding and 20% state funding. The Application was received by the Commission on November 8, 2022.

On December 6, 2022, the Commission’s Technical Utility Service, Rail Safety Section (“Rail Safety”) held an initial investigation and field conference. Representatives from PennDOT, CSXT, the City of Erie, Cyient, Penelec (First Energy/Pennsylvania Electric Company), and the Erie Port Authority were in attendance.

On February 24, 2023, a Secretarial Letter was issued approving the 2022 Application of PennDOT and outlining directives made to PennDOT, CSXT, and the City of Erie. The work outlined in the Secretarial Letter was to be completed on or before July 31, 2025.

On or about February 27, 2023, PennDOT submitted the final signed Drawings for Construction of State Route 4034.

On March 23, 2023, a Secretarial Letter was issued approving the plans filed by PennDOT on February 27, 2023.

On July 3, 2023, CSXT filed a Petition to Amend Secretarial Letter dated February 24, 2023 (“Petition to Amend”). Specifically, CSXT stated that since the submission and approval of PennDOT’s construction plans, CSXT had determined that the industry spur tracks at the State

Route 4034 (DOT 918 324 S) crossing location are no longer needed. Accordingly, PennDOT has agreed to remove the tracks and restore the road surface at its own cost and that CSXT requests that the crossing at State Route 4034 be abolished.

On July 19, 2023, the Erie-Western Pennsylvania Port Authority (“Port Authority”) filed a Protest and Objection to the Petition to Amend filed by CSXT. Specifically, the Port Authority stated that the industry rails which serve the Port Authority and adjacent industrial customers are an absolute necessity, and that the crossing at State Route 4034 (DOT 918 324 S) should not be removed or abolished.

On August 1, 2023, the Erie Sewer Authority (“Sewer Authority”) filed a Protest and Objections to the Petition to Amend filed by CSXT. Specifically, the Sewer Authority stated that the industry rail lines serve the Sewer Authority and that the rail lines are a necessity to ensure a fully functional wastewater treatment plant. Accordingly, the Sewer Authority requested that the crossing at State Route 4030 (DOT 918 324 S) remain in place and that CSXT’s Petition to Amend be denied.

B. APPLICATION FILED IN 2023 BY CSXT

By letter dated July 3, 2023, CSXT filed an application for approval to abolish four (4) at-grade public rail crossings where CSXT’s tracks cross East Bayfront Parkway (DOT 918 322 D); Ore Dock Road (DOT 976 924 B and DOT 932 473 C); and East Bay Drive (DOT 918 325 Y) in the City of Erie, Erie County, Pennsylvania, (hereinafter “2023 Application”), Docket No. A-2023-3041598. The Application was received by the Commission on July 5, 2023.

On July 19, 2023, the Port Authority filed a Protest and Objection to CSXT’s 2023 Application. Specifically, the Port Authority stated that the four at-grade public railroad crossings are necessary for the effective use of the rail lines which serve the Port Authority and the industrial customers connected and adjacent to the rail line, including but not limited to,

Carmeuse Lime and Stone, Erie Sand and Gravel, and Sidehill Copper Works. The Port Authority requested that the 2023 Application requesting abolishment of the four crossings be denied.

On August 1, 2023, the Sewer Authority filed a Protest and Objection to CSXT's 2023 Application. Specifically, the Sewer Authority stated that its wastewater treatment plant is served by the industry rails connected to the four at-grade public railroad crossings, and that the crossings are necessary for effective use of the rail lines and future operations of the wastewater treatment plant. The Sewer Authority requested that the 2023 Application requesting abolishment of the four crossings be denied.

On August 3, 2023, PennDOT filed a Protest and Objection to CSXT's 2023 Application. Specifically, PennDOT did not object to the abolishment of the four crossings nor to performing the work to remove the rails, remove the warning devices, and to resurface the roadway. Rather, PennDOT objected to CSXT's proposal that the abolishment of the four crossings would be performed by PennDOT at its sole cost and expense. Accordingly, PennDOT requested that the Commission deny CSXT's proposal that PennDOT be solely responsible for the expense and cost associated with abolishing the four crossings.

On or about August 15, 2023, Rail Safety requested that the two matters be referred to the Office of Administrative Law Judge, noting the protests and objections filed by the Port Authority, the Sewer Authority, and PennDOT, in addition to the relationship between the two applications.

On September 18, 2023, an Initial Telephonic Prehearing Conference Notice was issued, scheduling a telephonic prehearing conference for November 9, 2023 before Administrative Law Judge Charece Collins. Additionally, on September 18, 2023, a Prehearing Conference Order

was issued, instructing the parties to file and serve prehearing memoranda on or before November 2, 2023.¹

II. I&E PREHEARING CONFERENCE MEMORANDUM

A. Service

All service on and communication to I&E in this proceeding should be addressed to:

By Mail: Kayla L. Rost, Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

By Telephone: (717) 787-1888

By E-mail: karost@pa.gov

B. Position Regarding Consolidation

I&E supports consolidation of the 2022 Application and 2023 Application because the outcome of the 2023 Application may affect the February 24, 2023 Secretarial Letter in the 2022 Application in addition to CSXT's Petition to Amend.

C. Statement Regarding Settlement

I&E is open and willing to discuss settlement of this matter. I&E has been made aware of a tentative settlement agreement reached between CSXT and the Port Authority. However, I&E has not been privy to the settlement discussions or tentative settlement agreement.

¹ By email correspondence dated October 27, 2023, counsel for the Port Authority and Sewer Authority submitted correspondence to ALJ Collins stating that a tentative agreement has been reached with CSXT and requesting waiver of the requirement to submit a prehearing memorandum. ALJ Collins responded by email and advised that the requirement to file a prehearing memorandum will be waived if there are no outstanding issues to be litigated. I&E submits this prehearing memorandum as neither I&E nor Rail Safety were involved in any settlement discussions and were not made aware of a tentative settlement agreement until the October 27, 2023 email correspondence.

D. Plan and Schedule of Discovery

I&E proposes that discovery be conducted consistent with the Commission's regulations at 52 Pa. Code §§ 5.321, *et seq.*

E. Discovery Orders

I&E does not propose any modifications to the Commission's regulations pertaining to discovery at 52 Pa. Code §§ 5.321, *et seq.*

F. Proposed Litigation Schedule

I&E provided a proposed litigation schedule to PennDOT, CSXT, the Port Authority, and the Sewer Authority. PennDOT agreed to the proposed schedule.

Accordingly, I&E proposes the following litigation schedule:

1. Written direct testimony due on February 21, 2024.
2. Written rebuttal testimony due on March 25, 2024.
3. Witness schedule due 3 business days before the hearing.
4. Hearing to occur the week of April 15, 2024.
5. Briefing schedule to be established at the hearing.

G. Names and Addresses of Witness(es) to be Presented

Andrew B. Reed, P.E.
Pennsylvania Public Utility Commission
Bureau of Technical Utility Services - Rail Safety Section
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 787-4510
andreed@pa.gov

I&E reserves the right to modify the identified witness and/or present additional witnesses as it deems necessary based on the issues identified by the parties.

1. Issues to be Addressed

- 1) Whether the public crossing at East Bayfront Parkway (DOT 918 322 D) should be abolished.
 - a) If abolished, which party should be responsible for (1) completing the work associated with abolishing the crossing, and (2) cost and expenses related to abolishing the crossing.
- 2) Whether the public crossing at Ore Dock Road (DOT 976 924 B and 932 473 C) should be abolished.
 - a) If abolished, which party should be responsible for (1) completing the work associated with abolishing the crossing, and (2) cost and expenses related to abolishing the crossing.
- 3) Whether the public crossing at East Bay Drive (DOT 918 325 Y) should be abolished.
 - a) If abolished, which party should be responsible for (1) completing the work associated with abolishing the crossing, and (2) cost and expenses related to abolishing the crossing.
- 4) If the crossings in the 2023 Application are abolished, whether the February 24, 2023 Secretarial Letter shall be amended or modified.
- 5) Whether the public crossing at the State Route 4034 (DOT 918 324 S) should be abolished.

- a) If abolished, which party should be responsible for (1) completing the work associated with abolishing the crossing, and (2) cost and expenses related to abolishing the crossing.

2. Statement of Evidence to be Presented

Mr. Reed will testify to all matters pertaining to public safety, present conditions, existing maintenance, and future maintenance at the subject public crossings. Mr. Reed may testify to additional matters based upon the issues identified by the parties. The Rail Safety Section and Mr. Reed support CSXT's Petition to Amend and CSXT's 2023 Application to abolish the four (4) crossings. If the Port Authority, Sewer Authority, and CSXT reach an agreement whereas the inactive industry rail lines are not abolished, then the Rail Safety Section supports suspending the four (4) crossings by removing the warning devices and tracks across the roadways and paving over of the area formerly occupied by said tracks.

Respectfully submitted,



Kayla L. Rost
Prosecutor
PA Attorney ID No. 322768

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Bureau of Investigation and Enforcement
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Dated: November 2, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Prehearing Conference Memorandum** dated November 2, 2023, upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service by Electronic Mail Only

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