

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Application of the Department of Transportation ) Docket No. A-2022-3036626**  
**of the Commonwealth of Pennsylvania for )**  
**Approval to alter (1) Public At Grade Crossing by )**  
**the installation of Z Gate at the multi-trail along )**  
**State Route 4034 and (2) Public At Grade )**  
**Crossings by Altering the Preemption and Timing )**  
**where 8<sup>th</sup> Street and 10<sup>th</sup> Street cross the track of )**  
**CSX Transportation, Inc. (DOT Nos. 918 324 S, )**  
**524 337 C, 524 335 N) in the City of Erie, Erie )**  
**County, and Allocation of Costs Incentive thereto )**

**Application of the Department of Transportation ) Docket No. A-2022-3036618**  
**of the Commonwealth of Pennsylvania for of )**  
**extending the public at-grade crossing by widening )**  
**the existing crossing surface and moving the )**  
**warning device for roadway widening where the )**  
**Bayfront Parkway crosses, at grad, the track of )**  
**CSX Transportation, Inc (DOT No. 936 054 T) in )**  
**the City of Erie, Erie County, and the allocation of )**  
**costs incident thereto. )**  
**)**

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

**JOINT PETITION FOR SETTLEMENT**

**I. PROCEDURAL HISTORY**

**A. A-2022-3036626**

1. By letter dated November 3, 2022, the Pennsylvania Department of Transportation (“PENNDOT”) filed an application for approval to alter one public-grade crossing by installing Z gates along the Bayfront Highway, State Route 4034 (DOT No. 918 324

S) and alter two public at-grade crossings by altering the pre-exemption and timing for Eighth Street (DOT No. 524 337 C) and Tenth Street (DOT No. 524 335 N) across the tracks of CSX Transportation, Inc. (“CSXT”) in the City of Erie, Erie County, Pennsylvania. 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 (“2022 Application”).

2. 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-Western Pennsylvania Port Authority (“Port Authority”) were in attendance.

3. On February 24, 2023, a Secretarial Letter was issued approving the 2022 Application of PENNDOT 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.

4. 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.

5. On July 3, 2023, CSXT filed a Petition to Amend Secretarial Letter dated February 23, 2023 (“Petition to Amend”). Specifically, CSXT stated that since the submission and approval of PENNDOT’s construction plans, CSXT has determined that the industry spur tracks at the State Route 4034 (DOT No. 918 324 S) crossing locations are no longer needed. Accordingly, PENNDOT agreed to remove the tracks and restore the road service at its own cost and that CSXT request that the crossing at the State Route 4034 be abolished.

6. On July 19, 2023, the Port Authority filed a Protest and Objection to the Petition to Amend filed by CSXT. Specifically, the Port Authority stated that the industry rails service the Port Authority and the adjacent industrial customers were an absolute necessary and the crossing at State Route 4034 (DOT No. 918 324 S) should not be removed or abolished.

7. On August 1, 2023, the Erie Sewer Authority (“Sewer Authority”) filed a Protest and Objection to the Petition to Amend filed by CSXT. Specifically, the Sewer Authority stated that the industry rail line serves the Sewer Authority and the rails are a necessity to ensure a fully functional wastewater treatment plant. Accordingly, the Sewer Authority requested that the crossing at State Route 4034 (DOT No. 918 324 S) remain in place and that CSXT’s Petition to Amend be denied.

B. A-2023-3041598

8. By letter dated July 3, 2023, CSXT filed an Application for the Approval to Abolish Four (4) At-Grade Public Rail Crossings where CSXT’s tracks cross East Bayfront Parkway, State Route 4034 (DOT No. 918 322 D); Ore Dock Road (DOT No. 976 924 B and DOT No. 932 473 C); and East Bay Drive (DOT No. 918 325 Y) in the City of Erie, Erie County, Pennsylvania (hereinafter “2023 Application”). The 2023 Application was received by the Commission on July 5, 2023.

9. On July 19, 2023, the Port Authority filed a Protest and Objection to CSXT’s 2023 Application. Specifically, the Port Authority stated the four at-grade public rail road crossings are necessary for the effective use of 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 & Stone, Erie Sand & Gravel and Sidehill Copper Works. The Port Authority requested that the 2023 Application requesting abolishment of the four crossings be denied.

10. 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 rail road crossings, and that the crossings are necessary for the 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.

11. 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 performing the work to remove the crossings, 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.

12. In August of 2023, the City of Erie objected to CSXT's 2023 Application based upon its ownership of the wastewater treatment plant and alleged that the rails of the associated crossings have been essential access points to service the Erie Wastewater Treatment Plant.

C. A-2022-3036618

13. On November 3, 2022, PENNDOT filed an Application for Approval to Alter the Public At-Grade Crossing by widening the existing crossing surface and moving the warning device for roadway widening where East Bayfront Highway, State Route 4034 crosses at-grade, the tracks of CSXT (DOT No. 936 054 T) in the City of Erie, Erie County, Pennsylvania. PENNDOT anticipated that the funding for the project would be 80% federal

funds and 20% state funds. PENNDOT asserted that the project was necessary and proper for the safety and convenience of the public.

14. On or about August 15, 2023, Rail Safety requested that the two matters A-2022-3036626 and A-2023-3041598 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, the relationship between the two applications.

15. On September 18, 2023, an Initial Telephonic Pre-Hearing Conference Notice was issued that scheduled a telephonic pre-hearing conference for November 9, 2023 before the Administrative Law Judge Charece Collins. Additionally, on September 18, 2023, a Pre-Hearing Conference Order was issued instructing the parties to file and serve pre-hearing memoranda on or before November 2, 2023.

16. On October 27, 2023, counsel for the Port Authority and Sewer Authority submitted correspondence to Administrative Law Judge Collins stating that a tentative agreement had been reached with CSXT and requested a waiver of the requirement for submitting pre-trial memoranda. The Bureau of Investigation and Enforcement did file a pre-hearing conference memorandum and the Commonwealth of Pennsylvania Department of Transportation also filed a pre-hearing statement. Counsel for the Port Authority and Sewer Authority submitted a letter dated November 2, 2023, outlining the settlement with the attached Exhibit A depicting the rail crossings and roads.

17. On November 9, 2023, the Pre-Hearing Conference was held on November 9, 2023, attended by counsel for CSXT, counsel for the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission, a representative of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission, counsel for the Port Authority

and Sewer Authority, counsel for the City of Erie, counsel for PENNDOT, and a representative of PENNDOT, and the settlement terms were reviewed among all parties in attendance.

18. Judge Collins ordered that a Joint Petition for Settlement be submitted by January 31, 2024.

19. Administrative Law Judge Collins stated at the November 9, 2023, Pre-Hearing Conference that she would consolidate the proceedings at Dockets A-2022-3036626, A-2023-3041598 and A-2022-3036618 into one docket. No party objected to the consolidation of these matters.

20. The parties engaged in amicable negotiations to address concerns raised in this matter and have achieved terms of resolution acceptable to all parties for the benefit of the public.

21. The parties now have agreed to settlement terms in this proceeding and now submit this Joint Petition for Settlement (“Petition”):

(a) The parties have agreed that the crossing at (DOT No. 918 324 S) may be suspended with the rail crossing and existing traffic control facilities to be removed. PENNDOT has agreed to be solely responsible for the cost and expense related to the removal of the rail facilities and existing traffic control facilities at crossing (DOT No. 918 324 S) and restoring the road surface of the East Bayfront Parkway, State Route 4034.

(b) The parties have agreed that crossing at (DOT No. 918 325 Y) shall be suspended with the removal of the rail crossing and existing traffic control facilities to be removed by CSXT. CSXT has agreed to be solely responsible for the cost and expense of removing the rail crossing, existing control facilities (DOT No. 918 324 S) and restoring the road surface on East Bay Drive.

(c) Rail crossings (DOT No. 976 924 B) and (DOT No. 932 473 C) are on a private rail line owned by the Port Authority serving the Sewer Authority and the Port Authority. The responsibility for the rail crossing on (DOT No. 976 924 B) and (DOT No. 932 473 C) are already assigned to the City of Erie under the Order dated June 26, 2006 at Docket A-00118931 attached as Exhibit B. There is an existing agreement between the City of Erie and the Port Authority

concerning maintenance of the rail crossings DOT No. 976 924 B) and (DOT No. 932 473 C) attached as Exhibit C. The parties agree that the maintenance responsibilities for these crossings (DOT No. 932 473 C) and (DOT No. 976 924 B) should remain with the City of Erie.

(d) The parties agree that the maintenance responsibilities for crossing (DOT No. 918 322 D) should be assigned to the City of Erie, as the track at that crossing is owned by the Port Authority. A new agreement between the City of Erie and the Port Authority for maintenance of (DOT No. 918 322 D) is attached hereto as Exhibit D.

(e) The parties have agreed that these rail crossings (DOT No. 918 322 D), (DOT No. 976 924 B) and (DOT No. 932 473 C) will not be abolished in consideration of the City of Erie's continued agreement to maintain the crossings with reimbursement by the Port Authority.

(f) The parties agree that PENNDOT will be solely responsible for the expense and cost associated with the widening and improvement of rail crossing (DOT No. 936 054 T). PENNDOT has agreed to incorporate into their design a change order to the Bayfront Parkway Project to improve the rail crossing at (DOT No. 936 054 T).

(g) The parties agree that maintenance of rail crossing (DOT No. 936 054 T) after the completion of the Bayfront Parkway Project will be assigned to the City of Erie. In a separate agreement the City of Erie, CSXT and the Port Authority will agree that the Port Authority will assume maintenance of the crossing (DOT No. 936 054 T) upon completion of the Bayfront Parkway Project.

## II. STIPULATED FINDINGS OF FACT

1. The public at-grade crossing on the East Bayfront Highway, State Route 4034 (DOT No. 918 324 S) is no longer needed and the suspension and removal of the crossing will improve the safety and travel on the East Bayfront Highway.

2. The public at-grade crossing on East Bay Drive (DOT No. 918 325 Y) is no longer needed and the suspension and removal of the crossing will improve the safety and travel on East Bay Drive.

3. The public at-grade crossing on the East Bayfront Highway, State Route 4034 (DOT No. 936 054 T) serves the Port Authority shipyard leased to Donjon, Inc. and is necessary for the continued operation of a fully operational shipyard on the Great Lakes.

4. PENNDOT has filed an Application for Approval to Alter the Public – At Grade Crossing by widening the existing crossing surface and moving the warning devise for roadway widening where East Bayfront Highway, State Route 4034 crosses – at grade the track of CSXT (DOT No. 936 054 T).

5. A PUC Order formally assigning maintenance responsibilities is not presently in place to the crossing (DOT No. 936 054 T) and thus, it is in the best interest of all parties to ensure the crossing is maintained in the future to ensure the safety of the crossing and East Bayfront Highway that a PUC Order be issued assigning maintenance responsibilities for the future. The City of Erie has agreed to accept the assignment of maintenance responsibility for the crossing (DOT No. 936 054 T) in light of its agreement that the Port Authority will ultimately be responsible for the maintenance of the crossing pursuant to the agreement attached as Exhibit D.

6. The public at-grade crossing on the East Bayfront Highway, State Route 4034, (DOT No. 918 322 D) serves the Port Authority’s stevedore, Carmeuse Lime & Stone and other industrial tenants, Sidehill Copper Works, McShane Welding, Inc. and Erie Sand & Gravel. The crossing (DOT No. 918 322 D) is attached to a rail line owned by the Port Authority and is necessary for the fully functional port on the Great Lakes and for the operation of industrial tenants.

7. The crossing (DOT No. 918 322 D) also serves the Erie Sewer Authority and the City of Erie Wastewater Treatment Plant and the crossing and the rail line is necessary for a fully functional treatment plant and the future operation of the facility.

8. The rail line attached to the crossing (DOT NO. 918 322 D) is owned by the Port Authority which expended approximately \$458,000 on this rail line in 2018 to improve the rail

line to current standards to ensure rail service to Carmeuse Lime & Stone and the other industrial customers.

9. A PUC Order formally assigning maintenance responsibilities is not presently in place for the rail crossing (DOT No. 918 322 D) and thus, it is in the best interests of all parties to ensure the crossing is maintained in the future to ensure the safety of the crossing and the East Bayfront Highway that a PUC Order be issued assigning maintenance responsibilities for the future. The City of Erie has agreed to accept the assignment of maintenance responsibility for the crossing (DOT No. 918 322 D) in light of its agreement that the Port Authority will ultimately be responsible for maintenance of the crossing pursuant to the agreement attached as Exhibit D.

10. The Port Authority rail line and the at-grade crossings on Ore Dock Road (DOT NO. 976 924 B) and (DOT No. 932 473 C) are necessary for the proper operation of the Port Authority stevedore, Carmeuse Lime & Stone, and the other industrial customers.

11. A PUC Order already exists in regard to the maintenance of these crossings, Exhibit B and an agreement concerning the division of responsibility exists between the City of Erie and the Port Authority as set forth in Exhibit C.

### III. PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. §2702 and §2704.

2. The Commission has the authority to order the construction, reconstruction, alteration, repair, relocation, repair, maintenance, protection, suspension or abolition of railroad crossings, and the authority to determine and order which concerned parties should perform such

work in order to prevent accidents and promote the safety of the public. 66 Pa.C.S. §2702 and §2704.

3. The City of Erie, CSXT, PENNDOT and BI&E are all concerned parties within the meaning of 66 Pa.C.S. §2702 and §2704. Port Authority and Sewer Authority have consented to be parties to this proceeding solely for the purpose of effectuating the settlement and addressing the handling of the rail crossings.

4. It is the policy of the Commission to encourage settlements. 52 Pa.Code §5.231(a).

5. The Joint Petition for Settlement is in the public interest as its terms provide for the protection of the public safety with respect to the aforesaid crossings.

#### IV. SETTLEMENT TERMS

Pursuant to Section 507 (relating to “contracts between public utilities and municipalities”) and 2702 (relating to “construction, relocation, suspension and abolition of crossings”) of the Pennsylvania Public Utility Code (“Code”), 66 Pa.C.S. §507 and §2702, the undersigned parties to this proceeding agree in this Joint Petition for Settlement as follows:

1. The parties, by signatures of the representatives below, stipulate to the facts as presented in the Stipulated Facts within this Petition for Settlement.
2. The parties agree to perform the responsibilities as specified herein in a combined effort to improve, maintain and suspend the crossings as set forth herein.
3. In connection with this Joint Petition for Settlement, the Port Authority and Sewer Authority have consented to their addition as parties to this proceeding solely for the purposes of effectuating resolution to the handling of the rail crossings as set forth herein.
4. The parties’ responsibilities and cost sharing associated with this Petition are as follows:

(a) The parties have agreed that the crossing at (DOT No. 918 324 S) may be suspended with the rail crossing and existing traffic control facilities to be

removed. PENNDOT has agreed to be solely responsible for the cost and expense related to the removal of the rail facilities and existing traffic control facilities at crossing (DOT No. 918 324 S) and restoring the road surface of the East Bayfront Parkway, State Route 4034.

(b) The parties have agreed that crossing at (DOT No. 918 325 Y) shall be suspended with the removal of the rail crossing and existing traffic control facilities to be removed by CSXT. CSXT has agreed to be solely responsible for the cost and expense of removing the rail crossing, existing traffic control facilities (DOT No. 918 324 S) and restoring the road surface on East Bay Drive.

(c) Rail crossings (DOT No. 976 924 B) and (DOT No. 932 473 C) are on a private rail line owned by the Port Authority serving the Sewer Authority and the Port Authority. The responsibility for the rail crossing on (DOT No. 976 924 B) and (DOT No. 932 473 C) are already assigned to the City of Erie under the Order dated June 26, 2006 at Docket A-00118931 attached as Exhibit B. There is an existing agreement between the City of Erie and the Port Authority concerning maintenance of the rail crossings (DOT No. 976 924 B) and (DOT No. 932 473 C) attached as Exhibit C. The parties agree that the maintenance responsibilities for these crossings (DOT No. 932 473 C) and (DOT No. 976 924 B) should be assigned to the City of Erie.

(d) The parties agree that the maintenance responsibilities for crossing (DOT No. 918 322 D) should be assigned to the City of Erie, as the tracks at that crossing are owned by the Port Authority. A new agreement between the City of Erie and the Port Authority for maintenance of (DOT No. 918 322 D) is attached hereto as Exhibit D.

(e) The parties have agreed that these rail crossings (DOT No. 918 322 D), (DOT No. 976 924 B) and (DOT No. 932 473 C) will not be abolished in consideration of the City of Erie's continued agreement to maintain the crossings with reimbursement by the Port Authority.

(f) The parties agree that PENNDOT will be solely responsible for the expense and cost associated with the widening and improvement of rail crossing (DOT No. 936 054 T). PENNDOT has agreed to incorporate into their design a change order to the Bayfront Parkway Project to improve the rail crossing at (DOT No. 936 054 T).

(g) The parties agree that maintenance of rail crossing (DOT No. 936 054 T) after the completion of the Bayfront Parkway Project will be assigned to the City of Erie. In a separate agreement the City of Erie, CSXT and the Port Authority will agree that the Port Authority will assume maintenance of the crossing (DOT No. 936 054 T) upon completion of the Bayfront Parkway Project pursuant to Exhibit D.

5. Upon entry of an Order approving the settlement, the matter will be reassigned to the Commission's Bureau of Technical Utility Services, Rail Safety Section.
6. Upon completion of the work provided herein, the parties agree to provide written notice to Rail Safety. Rail Safety shall thereafter perform a final inspection to determine whether the work performed by the parties with regard to the crossing was completed satisfactorily and as specified in this Petition. If the work has been completed satisfactorily as specified in this Petition, Rail Safety will issue a Secretarial Letter officially closing the matter.
7. Subject to the parties' right to withdraw from the Joint Petition for Settlement pursuant to Paragraph 9 below, the parties hereto agree to abide by the work responsibilities and financial obligations delineated in this Joint Petition for Settlement.
8. This Joint Petition for Settlement is contingent upon its approval pursuant to Sections 507 and 2702 of the Code and the issuance of a Commission Secretarial Letter or Order accepting and approving the same.
9. The parties agree that any party may petition the Commission for rehearing if the Commission Secretarial Letter or Order substantially modifies the terms of this Joint Petition for Settlement. In that event, any party may give notice to the other parties that it is withdrawing from this Joint Petition for Settlement. Such notice must be in writing and must be given within twenty (20) business days of the issuance of any Initial or Recommended Decision or any Commission Order or Secretarial Letter which adopts this Joint Petition for Settlement with substantive modification of its terms. The consequence of any party withdrawing from this Joint Petition for Settlement as set forth above is that all issues associated with the request for relief presented in the proceeding will be fully litigated unless otherwise stipulated between the parties and all agreements of the parties set forth above to each other are terminated and have no force and effect.
10. The parties executing this Joint Petition for Settlement agree that its purpose is to act as a General Release except as specifically noted within, and is to settle, compromise and release all claims, actions, suits, rights whatsoever existing between and on behalf of those respective parties as set forth above, their successors and assigns, including such claims, actions, suits and rights whatsoever, whether known or unknown to those parties except to enforce the terms of this Joint Petition for Settlement.
11. The benefits and obligations of this Joint Petition for Settlement shall be binding upon the successors and assigns of the parties to this stipulation. This stipulation may be signed in counterparts and all signatures attached hereto will be considered as originals.

V. PROPOSED ORDER


The Commission will serve the public interest by adopting this Stipulation. The Joint Petition for Settlement will save the parties the time and expense that would be incurred by further litigating this matter before the Commission. Since all the parties agree to the terms of this Joint Petition for Settlement, adopting it will eliminate the possibility of any appeal from the Commission Secretarial Letter or Order, thus saving the parties additional time and expense they might incur in such an appeal. Adopting this Joint Petition for Settlement will further the statutory provisions of 66 Pa.C.S. §2702 et seq. in regard to the public convenience and safety and further the Commission policy of encouraging settlements at 52 Pa.Code §5.231(a). The parties hereto therefore request that the Commission adopt the following ordering paragraphs in accordance with the Joint Petition for Settlement of the parties and in furtherance of the public interest and safety:

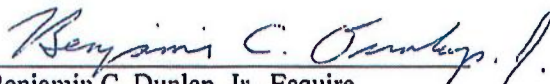
In order to effectuate the parties' Joint Petition for Settlement, the undersigned parties request that the Commission issue a Secretarial Letter or Order in substantially the following form:


1. That the Joint Petition for Settlement in this proceeding is hereby approved and adopted.
2. That the three proceedings at Docket No's A-2022-3036626, A-2022-3036618 and A-2023-3041598 are consolidated for purposes of this settlement.
3. These matters are reassigned to the Commission's Bureau of Technical Utility Services, Rail Safety Section for the issuance of a Secretarial Letter setting forth the parties' settlement terms.
4. Upon completion of the work provided herein, the parties agree to provide written notice to Rail Safety. Rail Safety shall thereafter perform a final inspection to determine whether the work performed by the parties was completed satisfactorily and as specified in this Petition. If the work has been completed satisfactorily as specified in this Petition, Rail Safety will issue a Secretarial Letter officially closing the matter.

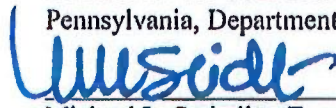
5. That this Order is without prejudice to the right of any party to enforce any lawful agreement allocating costs among the parties.

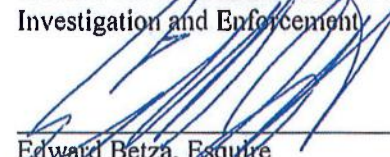
Respectfully submitted:

  
\_\_\_\_\_  
Timothy M. Sennett, Esquire  
Counsel for Erie-Western Pennsylvania Port  
Authority and Erie Sewer Authority

  
\_\_\_\_\_  
Benjamin C. Dunlap, Jr., Esquire  
Counsel for CSX Transportation, Inc.

  
\_\_\_\_\_  
Karen L. Cummings, Esquire  
Counsel for the Commonwealth of  
Pennsylvania, Department of Transportation

  
\_\_\_\_\_  
Michael L. Swindler, Esquire  
Counsel for the Commission's Bureau of  
Investigation and Enforcement

  
\_\_\_\_\_  
Edward Betza, Esquire  
Counsel for City of Erie

# 2478054.v1

# EXHIBIT A

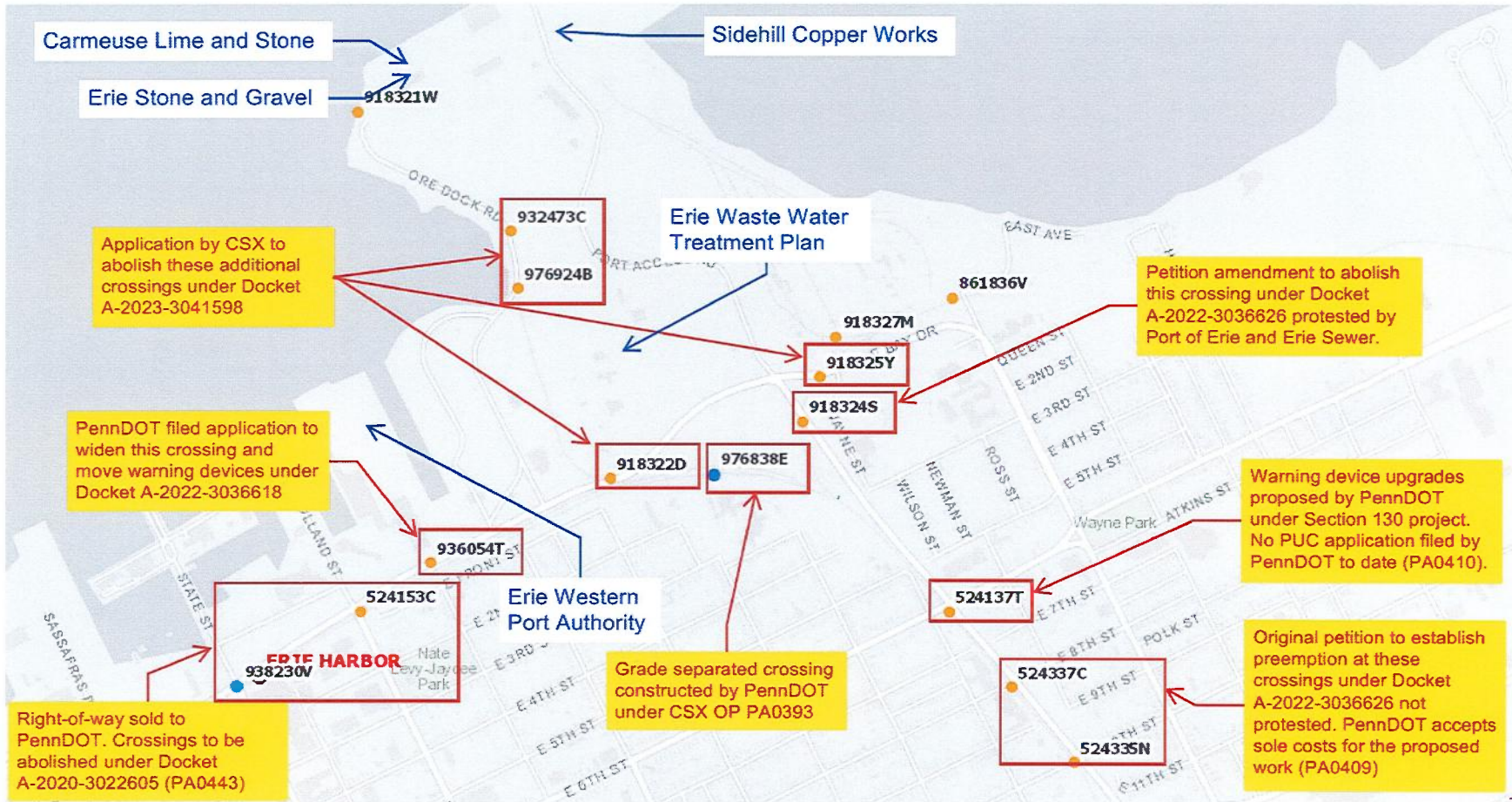


EXHIBIT B



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

June 26, 2006

IN REPLY PLEASE  
REFER TO OUR FILE

A-00118931

TO ALL PARTIES

Application of Erie-Western Pennsylvania Port Authority for approval of the construction of the crossings where the proposed Ore Dock Access Road crosses, at grade, the tracks of Erie-Western Pennsylvania Port Authority, located in the City of Erie, Erie County.

To Whom It May Concern:

By Secretarial letter issued October 4, 2002, we directed the construction of two new at grade crossings where the new Ore Park Access Road crosses the track of Erie-Western Pennsylvania Port Authority. The Secretarial letter further directed CSX Transportation, Inc. (CSX) maintenance responsibility for the new south crossing and Erie-Western Pennsylvania Port Authority (EWPPA) maintenance responsibilities for the new north crossing.

CSX by petition filed October 15, 2002 contested our Secretarial letter of October 4, 2002, Paragraph 14, whereas CSX had been assigned future maintenance responsibilities of the south crossing. CSX's petition was denied by Order entered January 2, 2003. CSX thereafter filed a petition for reconsideration, in response to which EWPPA sent a letter to the Commission agreeing to take responsibility for future maintenance of the south crossing. CSX's petition for reconsideration was denied in an Opinion and Order entered May 21, 2003, based upon the Commission's determination that it lacked jurisdiction to assigning future costs or for maintenance to EWPPA pursuant to 66 Pa. C. S. §§2702 and 2704, but referred the matter to the Office of Administrative Law Judge for alternative dispute resolution. Hereafter the parties agreed to mediation. By letter dated February 13, 2006, the Commission was notified that the parties have resolved their issues and that the City of Erie agreed to maintain both the new north and south crossings, THEREFORE,

1. Paragraph 14 of our Secretarial letter issued October 4, 2002, which reads as follows, to wit:

"14. Upon completion of the construction of the new south crossing and its opening to public use, CSX Transportation, Inc., at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the railroad facilities at the new crossing, including the high-

type rubber surface and the highway-rail grade crossing (crossbuck) signs installed at the crossing.”

be and is hereby modified to read:

14. Upon completion of the construction of the new south crossing and its opening to public use, City of Erie, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the railroad facilities at the new crossing, including the high-type rubber surface and the highway-rail grade crossing (crossbuck) signs installed at the crossing.

2. Paragraph 15 of our Secretarial letter issued October 4, 2002, which reads as follows, to wit:

“15. Upon completion of the new north crossing and its opening to public use, Erie-Western Pennsylvania Port Authority, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the railroad facilities at the new crossing, including the high-type rubber surface and the “TRACKS OUT OF SERVICE” signs installed at the crossing.

be and is hereby modified to read:

15. Upon completion of the new north crossing and its opening to public use, City of Erie, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the railroad facilities at the new crossing, including the high-type rubber surface and the “TRACKS OUT OF SERVICE” signs installed at the crossing.

3. In all respects not inconsistent herewith, our Secretarial letter issued October 4, 2002 remain in full force and effect.

If you are dissatisfied with the resolution of this matter, you may, as set forth in 52 Pa. Code §5.44, file a petition with the Commission within ten (10) days of the date of this letter.

Very truly yours,

James J. McNulty  
Secretary

## EXHIBIT C

### AGREEMENT

THIS AGREEMENT, made and entered into this 2nd day of December, 2003, by and between the Erie-Western Pennsylvania Port Authority of Pennsylvania, hereinafter called the "PORT AUTHORITY",

AND

the City of Erie, located in Erie County, acting through its proper officials, hereinafter called the "CITY".

### WITNESSETH:

WHEREAS, the Port Authority has under construction, or plans to construct a road known as Ore Dock Road (hereinafter the "HIGHWAY") located within the CITY; and

WHEREAS, as the HIGHWAY is completed and open to traffic, the PORT AUTHORITY desires to dedicate the HIGHWAY to the CITY with the understanding that the CITY shall have complete jurisdiction of the entire HIGHWAY; and

WHEREAS, the PORT AUTHORITY is authorized to dedicate the Ore Dock Road if the CITY wherein it is located by ordinance or resolution approves the action and agrees to assume expense of maintenance and improvement thereof; and

WHEREAS, the CITY has agreed to accept dedication of each section of the HIGHWAY as construction is completed to the satisfaction of the CITY and said section opened to traffic with a view toward having jurisdiction over the entire HIGHWAY and rail crossings

NOW, THEREFORE, in consideration of the foregoing premises and of the mutual promises set forth below, the parties agree, with the intention of being legally bound, to the following:

1. The PORT AUTHORITY currently has, or shall have, the responsibility for construction of the HIGHWAY and rail crossings.

2. As the HIGHWAY is completed and opened to traffic, the PORT AUTHORITY shall, in accordance with its normal procedure, provide written notice of dedication to the CITY and the CITY agrees, at no cost to the PORT AUTHORITY, to assume the expense of maintenance, improvement, repair and/or reconstruction of the HIGHWAY and rail crossings thereafter.

3. The CITY shall be responsible for providing documentary evidence of the dedication of the HIGHWAY to the office in the County Courthouse which is responsible for municipal road dockets.

4. As evidence of its intention to accept dedication of the HIGHWAY, the CITY has enacted an ordinance and/or passed a resolution approving the aforesaid dedication. A copy of the ordinance and/or resolution is attached as Exhibit A and made a part of this Agreement.

5. The HIGHWAY is to be built utilizing federal funds, the CITY agrees to comply with all applicable federal laws, regulations, rules and/or guidelines applicable to its responsibility for the HIGHWAY.

IN WITNESS WHEREOF, the parties hereto to the Agreement have caused these presents to be executed, attested and sealed by their proper officials, pursuant to due and legal action authorizing the same to be done, the day and year first written above.

ATTEST:

ERIE-WESTERN PENNSYLVANIA  
PORT AUTHORITY

*Supria D. Looie* 11/14/03  
Signature Date

By: *P. Behr* 11/14/03  
Signature Date

Title: Administrative Assistant  
(SEAL)

Title: Executive Director

ATTEST:

CITY OF ERIE

*Jamie Klein* 12-2-03  
Signature CITY CLERK Date

By: *Robert E. Gley* 11-2  
Signature MAYOR Date

Title: City Clerk  
(SEAL)

Title: MAYOR

By: *Cecilia J. Kuntz* 12  
Signature CITY CONTROLLER Date

Title: CITY CONTROLLER

# 510360

  
Mrs. Jenkins-Husband

By

Seconded By:

  
Mr. Thompson

## COUNCIL CHAMBERS

November 26, 2003  
Erie, Pa.

Resolved, by the Council of the City of Erie, that the Mayor and City Controller are hereby authorized and directed to execute an Ownership Transfer Agreement for the Ore Dock Access Road between the Erie-Western Pennsylvania Port Authority and the City of Erie to transfer from Port Authority to City control after the completion of construction.

\_\_\_\_\_  
James Klemm, City Clerk

\_\_\_\_\_  
Richard E. Filippi, Mayor

\_\_\_\_\_  
Casimir J. Kwitowski, Controller

-----  
Distribution: 1. Clerk-White 2. Finance-Blue 3. Public Works-Green  
4. Public Safety-Yellow 5. Economic & C.D.-Pink 6. Mayor/Misc.-Gold  
-----

JOURNAL

122-639-040

NOV 26 2003

CITY COUNCIL - CITY OF ERIE, PA.

NO. 4

2003	Ayes	Nays
Borgia	/	
Casey	/	
Husband	/	
Murray	/	
Thompson	/	
Witherspoon	/	
Bagnoni	/	

08/01/05 MON 11:18 FAX 814 484 3757

KNOX LAW FIRM

002



A Professional Corporation

120 West Tenth Street  
Erie, Pennsylvania 16501-1461  
814-459-2800  
Fax 814-453-4530  
www.kmgslaw.com

Timothy M. Sennett  
tsennett@kmgslaw.com

December 15, 2005

Gerald Villella, Esq.  
900 State Street, Suite 310  
Erie, PA 16501

**RE: Application of Erie-Western Pennsylvania Port Authority for Approval of the Construction of Two Crossings where the Proposed Ore Dock Access Road will Cross, at Grade, the Track of the Erie-Western Pennsylvania Port Authority, Operated by CSX Transportation, Located in the City of Erie, Erie County; PUC Docket No. A-00118931; Your File No. 13934**

RICHARD H ZAMBOLDI  
JACK M. GORNALL  
HARRY K. THOMAS  
MICHAEL A. FEZNER  
JAMES T. MANNEN  
MICHAEL J. VISNOSKY  
DONALD E. WRIGHT, JR.  
RICHARD W. PERIACIS  
ROBERT C. DWYER  
R. PERDIN HAKER  
MARK E. MODUSZBWSKI  
CARL N. MOORE  
DAVID M. MOSIER  
THOMAS A. TURTICA  
QUY C. MUSTINE  
RICHARD B. DORDONARD  
BRIAN GLOWACKI  
JOHN G. DODICK  
FRANCIS J. KLEMENSIC  
TIMOTHY M. SKRINEY  
WILLIAM C. WAGNER  
PATRICIA K. SMITH  
MARK T. WASSILL  
RICHARD A. LANZILLO  
JOANNA K. BUDIG  
PETER A. PUNZ  
MARK G. CLAYPOOL  
THOMAS C. HOFFMAN II  
MARK J. KUJAR  
CHRISTOPHER J. SPINOTT  
TIMOTHY M. ZIEGULA  
JENNIFER L. GORNALL-BOUCH  
MARK A. DENLINGER  
JEROME C. WEGLEY  
TRACEY D. BOWEN  
TRACY J. BIRNHART  
NEAL R. DOVLEN  
ANDREW F. GORNALL  
NADIA A. HAVARD

OF COUNSEL:  
WILLIAM C. SENNETT  
EDWIN L. MCKEAN

Dear Attorney Villella:

The purpose of this letter is to propose a clarification and resolution of the City of Erie's objections to the Petition to Amend Order submitted in the above-referenced case. The Erie-Western Pennsylvania Port Authority will agree with the City of Erie that their responsibility in regard to the Ore Dock Access Road crossing is limited to the Ore Dock Access Road right-of-way. Second, that the City's responsibility for the Ore Dock Access Road crossing within the right-of-way is the responsibility to maintain and repair the crossing, the pavement and berms within the right-of-way, pursuant to the normal maintenance program of the City of Erie. The City of Erie would not have a responsibility for repairs to the crossing or the pavement or the berms within the right-of-way caused by an alteration in the track itself or a relocation of the crossing. The City of Erie would not have any responsibility for the raising or lowering or additions to the track necessitated by the Erie-Western Pennsylvania Port Authority or CSX.

The Erie-Western Pennsylvania Port Authority would assume responsibility for alterations or relocations of the track or the raising and lowering of the track or additions to the track. The Erie-Western Pennsylvania Port Authority will be responsible for compliance with the license agreement entered into between the Erie-Western Pennsylvania Port Authority and CSX on April 14, 2004.

002/004

01/13/2006 FRI 16:05 FAX 814 455 9438 ERIE SOLICITORS OFFICE

Gerald Villella, Esq.  
December 15, 2005  
Page 2

If the City of Erie is in agreement with the clarification, I do not believe any further agreements need to be executed between the parties and the existing agreements attached to the Petition to Amend Order submitted by Attorney Dunlap on or about September 1, 2005 with a copy of this letter acknowledged by a representative of the City of Erie could resolve all issues and thus the PUC could proceed forward in regard to this matter.

Very truly yours,

KNOX McLAUGHLIN GORNALL &  
SENNETT, P.C.

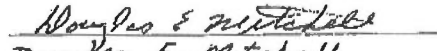


Timothy M. Sennett

TMS/gj  
# 648300

I, the undersigned authorized representative of the City of Erie, do hereby agree to the clarification of the agreements attached to the Petition to Amend Order concerning the above-referenced matter as the understanding between the Erie-Western Pennsylvania Port Authority and the City of Erie.

CITY OF ERIE

  
Douglas E. Mitchell  
Director of Public Works,  
Property & Parks

003/004

01/13/2006 FRI 16:05 FAX 814 455 9438 ERIE SOLICITORS OFFICE

Gerald Vilella, Esq.  
December 15, 2005  
Page 3

cc: Benjamin C. Dunlap, Jr.  
200 North Third Street  
Harrisburg, PA 17101

Robin Katzman, Assistant Counsel  
Pennsylvania Public Utility Commission  
Law Bureau  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Douglas Mitchell, Director  
City of Erie Public Works Department  
Municipal Building  
626 State Street  
Erie, PA 16501

Raymond P. Schreckengost  
Executive Director  
Erie-Western Pennsylvania Port Authority  
208 East Bayfront Parkway, Suite 201  
Erie, PA 16507

Douglas Pomorski  
Erie-Western Pennsylvania Port Authority  
208 East Bayfront Parkway, Suite 201  
Erie, PA 16507

*Via Facsimile (717/787-0481)*  
Bruce Bigelow, Mediator

004/004

01/13/2006 FRI 16:05 FAX 814 455 9438 ERIE SOLICITORS OFFICE

**EXHIBIT D**  
**AGREEMENT**

This Agreement, is made and entered into this 17th of January, 2024 by and between the Erie-Western Pennsylvania hereinafter referred to as “Port Authority”, and the City of Erie, located in Erie County, hereinafter referred to as the “City”.

WHEREAS, there are two rail crossings that exist on the East Bayfront Parkway referred to as (DOT No. 936 054 T) which serves the Port Authority property and its shipyard currently leased to DonJon Shipbuilding and Repair, LLC. and (DOT No. 918 322 D) at the intersection of the East Bayfront Parkway and Ore Dock Road serving the rail line which is adjacent to the Erie Sewer Authority and the City of Erie wastewater treatment plant and other industrial tenants of the Port Authority along Ore Dock Road; and

WHEREAS, CSXT recently filed Petitions for the abolishment of those rail crossings before the Pennsylvania Public Utility Commission; and

WHEREAS, the Port Authority, Erie Sewer Authority and City filed Protest and Objections to the abolishment of those crossings; and

WHEREAS, the Port Authority, the City and CSXT wish to resolve those Petition and the Protest and Objections filed by the Port Authority, the Erie Sewer Authority and the City concerning those crossing; and

WHEREAS, the parties hereto wish to confirm by this Agreement the resolution of those matters before the PUC and the maintenance and responsibility of these crossings for the future.

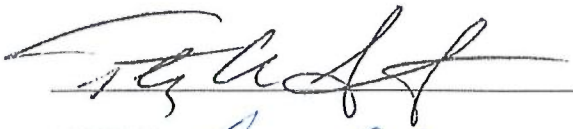
NOW THEREFORE, in consideration of the foregoing premises of the mutual promises set forth below the parties agree with the intention to be legally bound hereby to the following:

1. The maintenance and responsibility for the crossings (DOT No. 918 322 D) and (DOT No. 936 054 T) shall be assigned through the Pennsylvania Public Utility Commission by appropriate order to the City.

2. The Port Authority will assume the responsibility to maintain and repair the crossings including repairs to the crossings (DOT No. 918 322 D) and (DOT No. 936 054 T) or pavement or the berms within the right-of-way of the East Bayfront Parkway through normal maintenance or as a result of alteration in the track itself or relocation of the crossings.

IN WITNESS WHEREOF, the parties hereto the Agreement have caused it to be executed, attested and sealed by the proper officials pursuant to do legal action authorizing the same on the date and year first written above.

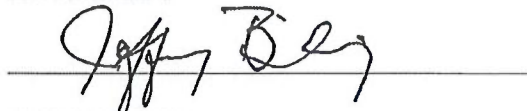
ATTEST:

A handwritten signature in black ink, appearing to be "T. G. ...", written over a horizontal line.

ATTEST:

A handwritten signature in blue ink, appearing to be "E. M. ...", written over a horizontal line.

ERIE-WESTERN PENNSYLVANIA PORT  
AUTHORITY

A handwritten signature in black ink, appearing to be "Jeffrey Bell", written over a horizontal line.

CITY OF ERIE

A handwritten signature in blue ink, appearing to be "Joseph Schember", written over a horizontal line.  
Joseph Schember, Mayor

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of the Department of Transportation ) Docket No. A-2022-3036626  
of the Commonwealth of Pennsylvania for )  
Approval to alter (1) Public At Grade Crossing by )  
the installation of Z Gate at the multi-trail along )  
State Route 4034 and (2) Public At Grade )  
Crossings by Altering the Preemption and Timing )  
where 8<sup>th</sup> Street and 10<sup>th</sup> Street cross the track of )  
CSX Transportation, Inc. (DOT Nos. 918 324 S, )  
524 337 C, 524 335 N) in the City of Erie, Erie )  
County, and Allocation of Costs Incentive thereto )

Application of the Department of Transportation ) Docket No. A-2022-3036618  
of the Commonwealth of Pennsylvania for of )  
extending the public at-grade crossing by widening )  
the existing crossing surface and moving the )  
warning device for roadway widening where the )  
Bayfront Parkway crosses, at grad, the track of )  
CSX Transportation, Inc (DOT No. 936 054 T) in )  
the City of Erie, Erie County, and the allocation of )  
costs incident thereto. )  
)

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

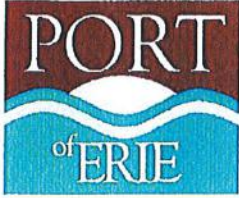
**CERTIFICATE OF SERVICE**

<p>BENJAMIN C DUNLAP JR ESQUIRE  NAUMAN SMITH SHISSLER &amp; HALL  LLP  200 N THIRD STREET  18TH FLOOR  HARRISBURG, PA 17108  717.236.3010  <a href="mailto:bdunlapjr@nssh.com">bdunlapjr@nssh.com</a>  Accepts eService  <i>(Representing CSX Transportation, Inc.)</i></p>	<p>MICHAEL L. SWINDLER ESQUIRE  400 NORTH STREET  HARRISBURG PA 17120  717.787.1888  <a href="mailto:mwindler@pa.gov">mwindler@pa.gov</a>  Accepts eService  <i>(Representing Bureau of Investigation &amp;  Enforcement of the PA Public Utility  Commission)</i></p>
--	--

<p>KAREN CUMMINGS ESQUIRE  CAROLINE G. ROBELEN, ESQUIRE  PENNDOT  PO BOX 8212  HARRISBURG PA 17105-8212  <b>717.787.3128</b>  <a href="mailto:kcummings@pa.gov">kcummings@pa.gov</a>  <a href="mailto:crobelen@pa.gov">crobelen@pa.gov</a>  Accepts eService  <i>(Counsel for PA Department of  Transportation)</i></p>	<p>MARK CHAPPELL  BUREAU OF DESIGN ROW &amp; UTILITY  PENNDOT  PO BOX 3362  HARRISBURG PA 17105-3362  <a href="mailto:marchappel@pa.gov">marchappel@pa.gov</a>  Served electronically</p>
<p>DONALD J SMITH  PENNDOT  KEYSTONE BUILDING  400 NORTH ST 9TH FLOOR  HARRISBURG PA 17105  <b>717.787.5473</b>  <a href="mailto:dojsmith@pa.gov">dojsmith@pa.gov</a>  Accepts eService</p>	<p>PAMELA GRACI  CHARTER COMMUNICATIONS  1700 COMMERCE PKWY  LANCASTER NY 14086  <a href="mailto:Pamela.Graci@charter.com">Pamela.Graci@charter.com</a>  Served electronically</p>
<p>DANIEL LEONARD  PENNDOT  PO BOX 3362  HARRISBURG PA 17105-3362  <b>717.214.4522</b>  <a href="mailto:danleonard@pa.gov">danleonard@pa.gov</a>  Accepts eService</p>	<p>JASON FLEEK  NATIONAL FUEL GAS  1100 STATE STREET  ERIE PA 16512  <a href="mailto:fleekj@natfuel.com">fleekj@natfuel.com</a>  Served electronically</p>
<p>CRAIG PALMER  ERIE WATER WORKS  340 W BAYFRONT PARKWAY  ERIE PA 16507  <a href="mailto:cpalmer@eriewaterworks.org">cpalmer@eriewaterworks.org</a>  Served electronically</p>	<p>DAVID HUMES  CITY OF ERIE  626 STATE STREET  ERIE PA 16501  <a href="mailto:dhumes@erie.pa.us">dhumes@erie.pa.us</a>  Served electronically</p>
<p>BRIAN A MCNULTY  PENNDOT DISTRICT 1-0  255 ELM STREET  PO BOX 398  OIL CITY PA 16301  Served first-class mail</p>	<p>VICTOR WOOD  VERIZON BUSINESS FORMERLY MCI  7000 WESTON PARKWAY  CARY NC 27513  <a href="mailto:victor.s.wood@verizon.com">victor.s.wood@verizon.com</a>  Served electronically</p>

<p>MELYSSA ADAMS  FIRST ENERGY CORPORATION  21 S MAIN STREET  AKRON OH 44308  <a href="mailto:madams@firstenergycorp.com">madams@firstenergycorp.com</a>  Served electronically</p>	<p>RONALD SILINSKIE  VERIZON NORTH  37 W 8TH STREET  WYOMING PA 18644  <a href="mailto:ronald.silinskie@verizon.com">ronald.silinskie@verizon.com</a>  Served electronically</p>
<p>TIMOTHY M SENNETT ESQUIRE  KNOX MCLAUGHLIN GORNALL &amp;  SENNETT PC  120 W TENTH STREET  ERIE PA 16501  <b>814.459.2800</b>  <a href="mailto:tsennett@kmgslaw.com">tsennett@kmgslaw.com</a>  Accepts eService</p>	<p>EDWARD BETZA ESQUIRE  CITY OF ERIE  456 WEST 6TH STREET  ERIE PA 16507  <b>814.456.4000</b>  <a href="mailto:ejbetza@elderkinlaw.com">ejbetza@elderkinlaw.com</a>  Served electronically</p>
<p>THOMAS J MCCLELLAND  PENNDOT DISTRICT 1-0  255 ELM STREET  PO BOX 398  OIL CITY PA 16301  <b>814.678.7081</b>  <a href="mailto:thmcclella@pa.gov">thmcclella@pa.gov</a>  Served electronically</p>	<p>MAT KACPROWICZ  VELOCITY NET COMMUNICATIONS 121  WEST 12TH STREET  PO BOX 9008  ERIE PA 16505  <a href="mailto:mat.kacprowicz@velocitynetwork.net">mat.kacprowicz@velocitynetwork.net</a>  Served electronically</p>
<p>DEREK MIHALY CSX  TRANSPORTATION INC  4 NESHAMINY INTERPLEX SUITE 205  TREVOSE PA 19053  <a href="mailto:Derek_Mihaly@csx.com">Derek_Mihaly@csx.com</a>  Served electronically</p>	<p>ERIC RODRIGUES  VERIZON  20 EAST 10TH STREET  ERIE PA 16501  <b>814.871.2317</b>  <a href="mailto:eric.rodriques@verizon.com">eric.rodriques@verizon.com</a>  Served electronically</p>

# 2476968.v1



ERIE-WESTERN PENNSYLVANIA PORT AUTHORITY

1 Holland Street  
Erie, PA 16507  
Phone: 814-455-7557  
Fax: 814-455-8070  
www.porterie.org

Jeffrey W. Brinling  
Chairman

Sharon L. Knoll  
Vice-Chairwoman

Carl Wolfrom  
Treasurer

William T. Panitzke  
Secretary

BOARD MEMBERS:  
Darla Devlin  
Patrick Groner, Jr.  
Scott Hiltz  
Jamie Martin-Stewart  
William Pettit, P.E.  
William Sabatini  
David Uhlig

Martin H. LaMar  
Executive Director

Julie Slomski  
Deputy Executive Director

Robin Waldinger  
Chief Financial Officer

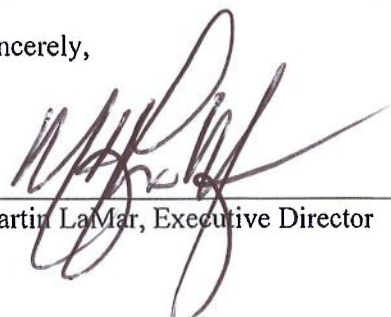
Timothy M. Sennett, Esquire  
Knox McLaughlin Gornall & Sennett, P.C.  
120 West Tenth Street  
Erie, PA 16501

Re: Pennsylvania Public Utility Commission  
Docket Nos. A-2022-3036626, A-2022-3036618, and A-2023-3041598

Dear Attorney Sennett:

As an authorized representative of the Erie-Western Pennsylvania Port Authority, I write to confirm that the Erie-Western Pennsylvania Port Authority agrees with the terms of the Joint Petition for Settlement in regard to the above referenced Pennsylvania Public Utility Commission proceeding. In addition, Erie-Western Pennsylvania Port Authority has no objection to being joined as a party in the PUC proceeding for the limited purposes accomplishing the tasks as set forth in the Joint Petition for Settlement.

Sincerely,



---

Martin LaMar, Executive Director

# 2472071.v1

ERIE SEWER AUTHORITY  
120 WEST 10TH STREET  
ERIE, PENNSYLVANIA 16501

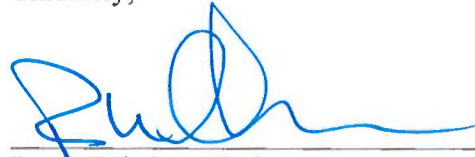
Timothy M. Sennett, Esquire  
Knox McLaughlin Gornall & Sennett, P.C.  
120 West Tenth Street  
Erie, PA 16501

Re: Pennsylvania Public Utility Commission  
Docket Nos. A-2022-3036626, A-2022-3036618, and A-2023-3041598

Dear Attorney Sennett:

As an authorized representative of the Erie Sewer Authority, I write to confirm that the Erie Sewer Authority agrees with the terms of the Joint Petition for Settlement in regard to the above referenced Pennsylvania Public Utility Commission proceeding. In addition, Erie Sewer Authority has no objection to being joined as a party in the PUC proceeding for the limited purposes accomplishing the tasks as set forth in the Joint Petition for Settlement.

Sincerely,



---

Roger Whelan, Chairman

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of the Department of Transportation of :  
the Commonwealth of Pennsylvania for Approval to :  
alter (1) Public At Grade Crossing by the :  
installation of Z Gate at the multi-trail along State : Docket No. A-2022-3036626  
Route 4034 and (2) Public At Grade Crossings by :  
Altering the Preemption and Timing where 8<sup>th</sup> Street :  
and 10<sup>th</sup> Street cross the track of CSX :  
Transportation, Inc. (DOT Nos. 918 324 S, 524 337 :  
C, 524 335 N) in the City of Erie, Erie County, and :  
Allocation of Costs Incentive thereto :

Application of the Department of Transportation of :  
the Commonwealth of Pennsylvania for of :  
extending the public at-grade crossing by widening :  
the existing crossing surface and moving the : Docket No. A-2022-3036618  
warning device for roadway widening where the :  
Bayfront Parkway crosses, at grad, the track of CSX :  
Transportation, Inc (DOT No. 936 054 T) in the :  
City of Erie, Erie County, and the allocation of costs :  
incident thereto. :

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

---

**BUREAU OF INVESTIGATION AND ENFORCMENT’S  
STATEMENT IN SUPPORT  
OF THE JOINT PETITION FOR SETTLEMENT**

---

The Pennsylvania Public Utility Commission’s (“Commission”) Bureau of  
Investigation and Enforcement (“I&E”) hereby submits this Statement in Support of the Joint  
Petition for Settlement in this matter.

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. Subsequently, a field conference was held and various pleadings were filed.

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. Subsequently various parties filed various pleadings.<sup>1</sup> By email correspondence dated October 27, 2023, submitted by counsel for the Port Authority and Sewer Authority to ALJ Charece Collins (“ALJ Collins”), I&E was first made aware of a tentative agreement reached among the Port Authority, Sewer Authority and CSX Transportation, Inc. A Prehearing Conference was held before ALJ Collins on November 9, 2023.

---

<sup>1</sup> A more detailed history of this proceeding and the matters consolidated therein is set forth in the Joint Petition for Settlement filed at this docket and the Prehearing Conference Memorandum of the Bureau of Investigation and Enforcement filed November 2, 2023.

This proceeding will resolve long-disputed maintenance obligations for two of the crossings involved in these consolidated proceedings, DOT No. 918 322 D and DOT No. 936 054 T. It will also serve to suspend two unnecessary rail-highway crossings, 918 324 S and 918 325 Y. These crossing suspensions and assignments of maintenance responsibilities will serve to improve the public safety by insuring that needed crossings are properly maintained and that unnecessary crossings are eliminated.

Pursuant to the Joint Petition for Settlement, at two of the crossings being suspended, we wanted the warning facilities and rails removed from the roadway and the roadway paved. At rail crossing (DOT No. 936 054 T), PENNDOT will be responsible to widen and improve the rail crossing. PENNDOT has agreed to incorporate into their design a change order to the Bayfront Parkway Project to improve the crossing. The maintenance of this rail crossing (DOT No. 936 054 T) will be assigned to the City of Erie. As far as the other crossings, I&E and the Commission's Rail Safety Division wanted a party to agree to be responsible for maintenance and to be assigned the maintenance of the crossings. The City of Erie agreed to the maintenance and to be reimbursed by the Port Authority for the remainder of the crossings.

As such, the settlement that has been provided reflects an adequate resolution of all of the concerns of I&E and the Commission's Rail Safety Division and are satisfied that approval of the proposed settlement is in the public interest.

As set forth at Section 5.231(a) of the Commission's regulations, it is the Commission's policy to encourage settlements, 52 Pa. Code § 5.231(a). The instant Joint Petition for Settlement will resolve all work and cost allocations in connection with the subject crossing suspensions and maintenance assignments. The settlement will save the

parties the time and expense that would be incurred in litigating this matter before the Commission. Since all the signatory parties have agreed to the terms of this Joint Petition for Settlement, adopting it will eliminate the possibility of an appeal from a Secretarial Letter or Order, thus saving the signatory parties the time and expense that might have been incurred in such an appeal. Accordingly, the Joint Petition for Settlement filed at this docket should be granted and settlement approved as in the public interest.

Respectfully submitted,



Michael L. Swindler  
Deputy Chief Prosecutor  
PA Attorney ID No. 43319

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
(717) 783-6369  
[mwindler@pa.gov](mailto:mwindler@pa.gov)

Date: January 8, 2024

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Application of the Department of Transportation of the Commonwealth of Pennsylvania for Approval to alter (1) Public At Grade Crossing by the installation of Z Gate at the multi-trail along State Route 4034 and (2) Public At Grade Crossings by Altering the Preemption and Timing where 8<sup>th</sup> Street and 10<sup>th</sup> Street cross the track of CSX Transportation, Inc. (DOT Nos. 918 324 S, 524 337 C, 524 335 N) in the City of Erie, Erie County, and Allocation of Costs Incentive thereto** : **Docket No. A-2022-3036626**

**Application of the Department of Transportation of the Commonwealth of Pennsylvania for of extending the public at-grade crossing by widening the existing crossing surface and moving the warning device for roadway widening where the Bayfront Parkway crosses, at grad, the track of CSX Transportation, Inc (DOT No. 936 054 T) in the City of Erie, Erie County, and the allocation of costs incident thereto.** : **Docket No. A-2022-3036618**

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

**CSX TRANSPORTATION, INC.’S STATEMENT IN SUPPORT  
OF THE JOINT PETITION FOR SETTLEMENT**

CSX Transportation, Inc. (“CSXT”) hereby submits this Statement in Support of the Joint Petition for Settlement in this matter. This proceeding will resolve long disputed maintenance obligations for two of the crossings involved in these consolidated proceedings, DOT No. 918 322 D and DOT No. 936 054 T. It will also serve to suspend two unnecessary rail-highway crossings, 918 324 S and 918 325 Y. These crossing suspensions and assignments of

maintenance responsibilities will serve to improve the public safety by insuring that needed crossings are properly maintained and that unnecessary crossings are eliminated.

The Settlement will resolve all work and cost allocations in connection with the subject crossing suspensions and maintenance assignments. Settlement will save the parties the time and expense that would be incurred in litigating this matter before the Commission. Since all the signatory parties have agreed to the terms of this Settlement, adopting it will eliminate the possibility of an appeal from a Secretarial Letter or Order, thus saving the signatory parties the time and expense that might have been incurred in such an appeal. It is Commission policy to encourage settlements, 52 Pa. Code § 5.231(a), and the adoption of this Stipulation of Settlement will advance the public interest.

Respectfully submitted,

**NAUMAN, SMITH, SHISSLER & HALL, LLP**

By: 

---

Benjamin C. Dunlap, Jr., Esquire  
Supreme Court I.D. #66283  
200 North Third Street, 18<sup>th</sup> Floor  
Harrisburg, PA 17101  
Phone: 717-236-3010, Ext. 121  
Fax: 717-234-1925  
Email: [bdunlapjr@nssh.com](mailto:bdunlapjr@nssh.com)

*Counsel for CSX Transportation, Inc.*

Date: January 3, 2024

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of the Department of Transportation ) Docket No. A-2022-3036626  
of the Commonwealth of Pennsylvania for )  
Approval to alter (1) Public At Grade Crossing by )  
the installation of Z Gate at the multi-trail along )  
State Route 4034 and (2) Public At Grade )  
Crossings by Altering the Preemption and Timing )  
where 8<sup>th</sup> Street and 10<sup>th</sup> Street cross the track of )  
CSX Transportation, Inc. (DOT Nos. 918 324 S, )  
524 337 C, 524 335 N) in the City of Erie, Erie )  
County, and Allocation of Costs Incentive thereto )

Application of the Department of Transportation ) Docket No. A-2022-3036618  
of the Commonwealth of Pennsylvania for of )  
extending the public at-grade crossing by widening )  
the existing crossing surface and moving the )  
warning device for roadway widening where the )  
Bayfront Parkway crosses, at grad, the track of )  
CSX Transportation, Inc (DOT No. 936 054 T) in )  
the City of Erie, Erie County, and the allocation of )  
costs incident thereto. )  
)

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

**COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF  
TRANSPORTATION'S STATEMENT IN SUPPORT OF THE JOINT PETITION FOR  
SETTLEMENT**

The Commonwealth of Pennsylvania, Department of Transportation (Department), submits this Statement in Support of the Joint Petition for Settlement. The Pennsylvania Public Utility Commission (Commission) will serve the public interest by adopting the Joint Petition for

Settlement in the above-captioned matter. The Settlement will save the parties the time and expense that would be incurred in litigating this matter before the Commission. Since all of the signatory parties agree to the terms of the Settlement, adopting it will eliminate the possibility of an appeal from the Commission Secretarial Letter or Order, thus saving the signatory parties the additional time and expense that might be incurred in such an appeal. Adopting this Settlement will further the statutory provisions of 66 Pa. C.S. § 2702 *et seq.*, in regard to the public convenience and safety.

This Settlement is in the public interest because it promotes the safety and welfare of the public. The Settlement satisfies the Department's Protest and Objection filed in Docket No. A-2023-3041598. The Settlement benefits and serves the public by ensuring that the continuation of the rail crossings at issue provide access to the port in the City of Erie and will promote a fully operational port. The Settlement provides benefit to all parties and the public by clearly allocating costs and future maintenance responsibilities. This Settlement resolves all outstanding issues and allows the Department to move forward with its rail crossing widening project and the Department respectfully requests that the Joint Petition for Settlement in the above matter should be approved and the matter be resolved by the adoption of the terms outlined in the Joint Petition for Settlement.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION



---

Caroline Robelen  
Assistant Counsel  
Commonwealth of Pennsylvania  
Department of Transportation  
Office of Chief Counsel  
P.O. Box 8212

DATED: January 4, 2024

Harrisburg, PA 17105-8212  
Telephone No. (717) 787-3128  
Fax Number (717) 772-2741  
Pennsylvania Attorney I.D. Number 328743  
crobelen@pa.gov

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Application of the Department of Transportation ) Docket No. A-2022-3036626**  
**of the Commonwealth of Pennsylvania for )**  
**Approval to alter (1) Public At Grade Crossing by )**  
**the installation of Z Gate at the multi-trail along )**  
**State Route 4034 and (2) Public At Grade )**  
**Crossings by Altering the Preemption and Timing )**  
**where 8<sup>th</sup> Street and 10<sup>th</sup> Street cross the track of )**  
**CSX Transportation, Inc. (DOT Nos. 918 324 S, )**  
**524 337 C, 524 335 N) in the City of Erie, Erie )**  
**County, and Allocation of Costs Incentive thereto )**

**Application of the Department of Transportation ) Docket No. A-2022-3036618**  
**of the Commonwealth of Pennsylvania for of )**  
**extending the public at-grade crossing by widening )**  
**the existing crossing surface and moving the )**  
**warning device for roadway widening where the )**  
**Bayfront Parkway crosses, at grad, the track of )**  
**CSX Transportation, Inc (DOT No. 936 054 T) in )**  
**the City of Erie, Erie County, and the allocation of )**  
**costs incident thereto. )**  
**)**

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

**THE ERIE-WESTERN PENNSYLVANIA PORT AUTHORITY’S STATEMENT IN**  
**SUPPORT OF THE JOINT PETITION FOR SETTLEMENT**

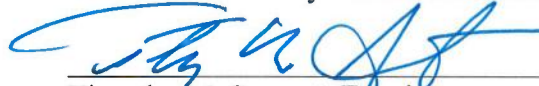
The Erie-Western Pennsylvania Port Authority submits this Statement in Support of the Joint Petition for Settlement. The Pennsylvania Public Utility Commission (“Commission”) will serve the public interest by adopting the Joint Petition for Settlement in the above-captioned matter. The Settlement will save the parties the time and expense that would be incurred in litigating this matter before the Commission. Since all the signatory parties agree to terms of this

Settlement, adopting it will eliminate the possibility of an appeal from the Commonwealth Secretarial Letter or Order, thus saving the signatory parties the initial time and expense that might have been incurred in such an appeal. Adopting this Settlement will further the statutory provisions of 66 Pa.C.S. §2702 et seq., in regard to public convenience and safety.

The Settlement is in the public interest because it promotes safety and welfare of the public. The Settlement satisfies the Erie-Western Pennsylvania Port Authority's Protest and Objection filed in these matters. The Settlement will be a benefit to the Erie-Western Pennsylvania Port Authority, its industrial customers and will serve the public by ensuring a fully operational port in the City of Erie with the continuation of the rail crossings. The Settlement provides benefit to all parties and the public through the mutual agreement in regard to maintenance responsibilities for the future and the allocation of costs for the same. This Settlement resolves all outstanding issues and the Erie-Western Pennsylvania Port Authority respectfully requests that the Joint Petition for Settlement in the above matter be approved and the matter be resolved.

Respectfully submitted:

Erie-Western Pennsylvania Port Authority



---

Timothy M. Sennett, Esquire  
Knox McLaughlin Gornall & Sennett, P.C.  
120 West 10<sup>th</sup> Street  
Erie, PA 16501  
Counsel for Erie-Western Pennsylvania Port  
Authority

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Application of the Department of Transportation ) Docket No. A-2022-3036626**  
**of the Commonwealth of Pennsylvania for )**  
**Approval to alter (1) Public At Grade Crossing by )**  
**the installation of Z Gate at the multi-trail along )**  
**State Route 4034 and (2) Public At Grade )**  
**Crossings by Altering the Preemption and Timing )**  
**where 8<sup>th</sup> Street and 10<sup>th</sup> Street cross the track of )**  
**CSX Transportation, Inc. (DOT Nos. 918 324 S, )**  
**524 337 C, 524 335 N) in the City of Erie, Erie )**  
**County, and Allocation of Costs Incentive thereto )**

**Application of the Department of Transportation ) Docket No. A-2022-3036618**  
**of the Commonwealth of Pennsylvania for of )**  
**extending the public at-grade crossing by widening )**  
**the existing crossing surface and moving the )**  
**warning device for roadway widening where the )**  
**Bayfront Parkway crosses, at grad, the track of )**  
**CSX Transportation, Inc (DOT No. 936 054 T) in )**  
**the City of Erie, Erie County, and the allocation of )**  
**costs incident thereto. )**  
**)**

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

**THE ERIE SEWER AUTHORITY’S STATEMENT IN SUPPORT OF THE JOINT**  
**PETITION FOR SETTLEMENT**

The Erie Sewer Authority submits this Statement in Support of the Joint Petition for Settlement. The Pennsylvania Public Utility Commission (“Commission”) will serve the public interest by adopting the Joint Petition for Settlement in the above-captioned matter. The Settlement will save the parties the time and expense that would be incurred in litigating this matter before the Commission. Since all the signatory parties agree to terms of this Settlement,

adopting it will eliminate the possibility of an appeal from the Commonwealth Secretarial Letter or Order, thus saving the signatory parties the initial time and expense that might have been incurred in such an appeal. Adopting this Settlement will further the statutory provisions of 66 Pa.C.S. §2702 et seq., in regard to public convenience and safety.

The Settlement is in the public interest because it promotes safety and welfare of the public. The Settlement satisfies the Erie Sewer Authority's Protest and Objection filed in these matters. The Settlement will be a benefit to the Erie Sewer Authority and the public by ensuring that the sewage treatment plant will be fully operational with the continuation of the rail line that serves that property. The Settlement provides benefit to all parties through the mutual agreement in regard to maintenance responsibilities for the future and the allocation of costs for the same. This Settlement resolves all outstanding issues and the Erie Sewer Authority respectfully requests that the Joint Petition for Settlement in the above matter be approved and the matter be resolved.

Respectfully submitted:

Erie Sewer Authority



---

Timothy M. Sennett, Esquire  
Knox McLaughlin Gornall & Sennett, P.C.  
120 West 10<sup>th</sup> Street  
Erie, PA 16501  
Counsel for Erie Sewer Authority

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of the Department of Transportation ) Docket No. A-2022-3036626  
of the Commonwealth of Pennsylvania for )  
Approval to alter (1) Public At Grade Crossing by )  
the installation of Z Gate at the multi-trail along )  
State Route 4034 and (2) Public At Grade )  
Crossings by Altering the Preemption and Timing )  
where 8<sup>th</sup> Street and 10<sup>th</sup> Street cross the track of )  
CSX Transportation, Inc. (DOT Nos. 918 324 S, )  
524 337 C, 524 335 N) in the City of Erie, Erie )  
County, and Allocation of Costs Incentive thereto )

Application of the Department of Transportation ) Docket No. A-2022-3036618  
of the Commonwealth of Pennsylvania for of )  
extending the public at-grade crossing by widening )  
the existing crossing surface and moving the )  
warning device for roadway widening where the )  
Bayfront Parkway crosses, at grad, the track of )  
CSX Transportation, Inc. (DOT No. 936 054 T) in )  
the City of Erie, Erie County, and the allocation of )  
costs incident thereto )

Application of CSX Transportation, Inc. for ) Docket No. A-2023-3041598  
approval to abolish four (4) at grade crossings )  
where 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) )  
Cross at-grade the Tracks of CSX Transportation, )  
Inc. in the City of Erie, Erie County, Pennsylvania )

**THE CITY OF ERIE'S STATEMENT IN SUPPORT OF THE JOINT  
PETITION FOR SETTLEMENT**

The City of Erie submits this Statement in Support of the Joint Petition for Settlement. The Pennsylvania Public Utility Commission ("Commission") will serve the public interest by adopting the Joint Petition for Settlement in the above-captioned matter. The Settlement will save the parties the time and expense that would be incurred in litigating this matter before the Commission. Since all the signatory parties agree to terms of this Settlement, adopting it will

eliminate the possibility of an appeal from the Commonwealth Secretarial Letter or Order, thus saving this signatory parties the initial time and expense that might have been incurred in such an appeal. Adopting this Settlement will further the statutory provisions of 66 Pa.C.S. §2702 et seq., in regard to public convenience and safety.

The Settlement is in the public interest because it promotes safety and welfare of the public. The Settlement satisfies the City of Erie's Protest and Objection filed in these matters. The Settlement will be a benefit to the City of Erie and the public by ensuring that its sewage treatment plant will be fully operational with the continuation of the rail line that serves that property. The Settlement provides benefit to all parties through the mutual agreement in regard to maintenance responsibilities for the future and the allocation of costs for the same. This Settlement resolves all outstanding issues and the City of Erie respectfully requests that the Joint Petition for Settlement in the above matter be approved and the matter be resolved.

Respectfully submitted,

By: 

Edward J. Betza, Esq.  
PA I.D. No. 65529  
City of Erie, Pennsylvania  
626 State Street, Room 505  
Erie, PA 16501  
Solicitor for City of Erie