

BEFORE THE PENNSYLVANIA UTILITY COMMISSION

PETITION OF CSX)
TRANSPORTATION,)
INC. TO REASSIGN MAINTENANCE)
RESPONSIBILITY FOR THE BRIDGE) P-2015-2465847
STRUCTURE WHERE BORT ROAD (T-)
270) CROSSES ABOVE CSX)
TRANSPORTATION, INC.'S TRACKS)
(DOT 524 035 A) IN NORTH EAST)
TOWNSHIP, ERIE COUNTY)

NOTICE TO PLEAD

TO THE PETITIONER: CSX TRANSPORTATION, INC.

You are hereby notified to file a written response to the enclosed New Matter within twenty (20) days from service hereof or you may be deemed in default, and relevant facts stated in the objections may be deemed to be admitted.

Respectfully submitted,

KNOX McLAUGHLIN GORNALL &
SENNETT, P.C.

BY: 

Michael J. Musone
120 West Tenth Street
Erie, Pennsylvania 16501
Phone: (814) 459-2800

Attorneys for Respondent,
North East Township

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**NORTH EAST TOWNSHIP'S ANSWER AND NEW MATTER TO PETITION TO
ASSIGN PROCEEDING TO OFFICE OF ADMINISTRATIVE LAW JUDGE FOR
SCHEDULING OF A HEARING**

North East Township (the "Township"), through its counsel, Knox McLaughlin Gornall & Sennett, P.C., files the following Answer and New Matter to Petition to Assign Proceeding to Office of Administrative Law Judge for Scheduling of a Hearing, stating as follows:

1. Admitted.
2. Admitted.
3. It is admitted that the bridge structure carrying Bort Road over what are now CSXT's tracks was constructed in or around 1905 (the "Bridge"). After reasonable investigation the Township is without sufficient information to either admit or deny the remaining averments of this paragraph.
4. The averments of this paragraph refer to a written document that speaks for itself. Further, the averments of this paragraph contain a legal conclusion to which no response is required.
5. The averments of this paragraph contain a legal conclusion to which no response is required.

6. It is admitted that the Township owns the roadway on which the Bridge is located. The remaining averments of this paragraph contain a legal conclusion to which no response is required.

7. It is admitted that the Township has not undertaken any actions to secure funding to replace the Bridge. It is specifically denied that the Township has the ability to undertake such actions.

8. It is admitted that CSXT filed a Petition to Reassign Maintenance Responsibility for the Bridge on January 29, 2015. It is admitted that the Township has not undertaken any actions to secure funding to replace the Bridge. It is specifically denied that the Township has the ability to undertake such actions. It is also denied that the Township owns the Bridge. The remaining averments of this paragraph refer to a written document that speaks for itself.

9. The averments of this paragraph refer to written documents that speaks for themselves.

10. Admitted.

11. The averments of this paragraph refer to a written document that speaks for itself.

12. The averments of this paragraph refer to a written document that speaks for itself.

13. After reasonable investigation the Township is without sufficient information to either admit or deny the remaining averments of this paragraph.

14. The averments of this paragraph contain a legal conclusion to which no response is required.

15. The averments of this paragraph contain a legal conclusion to which no response is required.

16. After reasonable investigation the Township is without sufficient information to either admit or deny the remaining averments of this paragraph.

17. It is specifically denied that it is irresponsible that neither North East Township nor Erie County will take responsibility for obtaining available funding for the reconstruction of the Bridge.

18. After reasonable investigation the Township is without sufficient information to either admit or deny the remaining averments of this paragraph.

19. The averments of this paragraph contain a legal conclusion to which no response is required.

WHEREFORE, the Township requests that the Commission dismiss the Petition, with prejudice, and enter such further relief as is just.

NEW MATTER

20. Bort Road was laid out pursuant to Order of the Court of Quarter Sessions held at Erie in and for the County of Erie on November 8, 1832, and confirmed by the Court on May 9, 1833.

21. The railroad tracks in question were constructed after the establishment of Bort Road.

22. The Township has never maintained the Bridge substructure, superstructure or decking.

23. The Township has never placed a bituminous course on the bridge deck.

24. Maintenance responsibilities for the Bridge were previously assigned by Order of the Public Utility Commission, adopted October 27, 1988, and the relief as requested in CSXT's Petition is barred by the doctrine of *res judicata*.

25. CSXT and its predecessors have continuously exerted control over the Bridge. Subsequent to the Order of October 27, 1988, CSXT, or its predecessors, moved Bridge supports and raised the level of the deck to accommodate taller train cars, without notification or request for authorization to the Township. These actions demonstrate CSXT's complete ownership and control of the bridge.

26. Although CSXT's predecessor constructed the bridge over a then existing road, CSXT has adamantly refused to restore the road with an at-grade crossing.

27. The Township does not own the Bridge.

28. The Township is not responsible for the maintenance, replacement or upkeep of the Bridge.


29. The Township has no ability to request funding for replacement of the Bridge.

WHEREFORE, the Township requests that the Commission dismiss the Petition, with prejudice, and enter such further relief as is just.

Respectfully submitted,

KNOX McLAUGHLIN GORNALL &
SENNETT, P.C.

BY: _____


Michael J. Musone, Esquire
120 West Tenth Street
Erie, Pennsylvania 16501
(814) 459-2800

Attorneys for Respondent,
North East Township

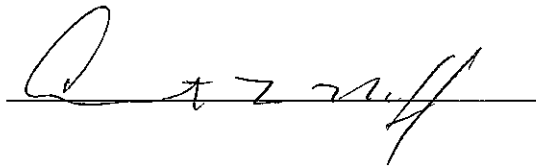
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VERIFICATION

On this, the 13 day of February 2024, August Neff, the undersigned, deposes and states that he/she is authorized to execute this verification on behalf of the North East Township and hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 13th day of February, 2024, a copy of the within document was served on all counsel of record and unrepresented parties in accordance with the applicable rules of court.



Michael J. Musone

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.



Michael J. Musone