



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

IN REPLY PLEASE  
REFER TO OUR FILE

February 15, 2024

A-2023-3043240

**TO ALL PARTIES OF RECORD**

Application of D&J Fox Holdings, LLC for approval of the alteration of the crossing (DOT 966 038 R) where State Route 0050 (Millers Run Road) crosses, at grade, the tracks of MarkWest Liberty Midstream & Resources LLC through lease agreement/easement with property owner Montour Trail Council, operated thereon by Wheeling & Lake Erie Railway Company, located in Cecil Township, Washington County.

To Whom It May Concern:

By Application filed on September 22, 2023, D&J Fox Holdings, LLC is seeking Commission approval to alter the crossing (DOT 966 038 R) where State Route 0050 (Millers Run Road) crosses, at grade, one (1) track of MarkWest Liberty Midstream & Resources LLC / MPLX, operated thereon by Wheeling & Lake Erie Railway Company located in Cecil Township, Washington County. Montour Trail Council is the owner of the railroad property and MarkWest Liberty Midstream & Resources LLC / MPLX has a lease agreement/easement for the rail line.

In its application, D&J Fox Holdings, LLC states that it is submitting the application to comply with a Pennsylvania Department of Transportation directive and to enable further processing of its highway occupancy permit from Pennsylvania Department of Transportation (PennDOT). D&J Fox Holding, LLC avers that the highway occupancy permit application to PennDOT does not propose any change in usage of the property but rather seeks to formalize an existing usage that predated and survived a prior MarkWest Liberty Midstream & Resources, LLC application to the Commission docketed at A-2011-2223296.

Upon receipt of the application, a field investigation and conference was arranged by a Commission staff engineer and held on November 16, 2023 at the site of the subject crossing. Representatives of the D&J Fox Holdings, LLC, Pennsylvania Department of Transportation, Montour Trail Council, MPLX, Wheeling & Lake Erie Railway Company, KLH Engineers (consultant for D&J Fox Holding, LLC), Columbia Gas of Pennsylvania and Washington County attended the field conference. Although notified by letter sent via electronic mail on October 26, 2023, there were no representatives from Cecil Township, Verizon Pennsylvania LLC, Windstream, Pennsylvania American Water, Comcast or West Penn Power.

At the field conference, it was noted that State Route (S.R.) 0050 is a two (2) lane, two-way, bituminous paved roadway that crosses property of Montour Trail Council that has a lease agreement/easement for the rail line with one (1) track of MarkWest Liberty Midstream & Resources LLC (DOT 966 038 R), operated thereon by Wheeling & Lake Erie Railway Company with a concrete panel crossing surface in good condition. The crossing is equipped with a cantilever mounted automatically operated flashing-lights and gate on the eastbound approach roadway and post-mounted automatically operated flashing-light signals on the westbound approach roadway. Additional sets of post-mounted flashing-lights are present in the northwest and southeast quadrants of the crossing. Additional gates are located in the northwest quadrant to deter traffic from entering the crossing and track area north of Millers Run Road. Grade Crossing (Crossbucks) (R15-1), Emergency Notification (I-13) signs, Bicycle (W11-1) signs with supplemental AHEAD plaques (W16-9P), grade crossing advance warning signs (W10-1), stop lines and pavement markings are present on both approach roadways.

At the field conference, D&J Fox Holdings, LLC, through its consultant engineer, described the proposed project. D&J Fox Holdings, LLC, having agreed to do so, at its sole cost and expense, proposes to alter the crossing by reconfiguring private driveway access points onto S.R. 0050 and modifying the active warning devices at the crossing. Two discrete private driveways, with automatically operated flashing-lights and gates are proposed for the alteration. Additional guiderail and chain-link fencing are proposed to direct traffic entering and exiting the highway in the area of the crossing. At the field conference, the parties discussed the proposed alterations and agreed to modify the configuration of the warning devices from the plan attached to the application.

After the field conference, a teleconference was held on January 25, 2024, to discuss the revised plans for the project. During the teleconference, the parties agreed to the modifications to the plans and D&J Fox Holdings, LLC agreed to submit revised construction plans to the Commission for approval and all parties for review and consideration.

D&J Fox Holdings, LLC agrees to construct the project at its sole cost and expense and provide for maintenance and protection of highway and pedestrian traffic during the time the work is being performed. D&J Fox Holdings, LLC agrees to reimburse Wheeling & Lake Erie Railway Company for any costs incurred to construct or relocate the active warning devices and for providing engineering, watchman and flagman services in conjunction with the project.

Wheeling & Lake Erie Railway Company, at the sole cost and expense of the D&J Fox Holdings, LLC, agrees to construct or relocate the active warning devices and for providing engineering, watchman and flagman services in conjunction with the project.

At the time of the field conference, D&J Fox Holdings, LLC averred that it will not be necessary for the Commission to appropriate property for construction of the project but will submit right-of-way plans and metes and bounds descriptions at a later date if it is deemed necessary.

D&J Fox Holdings, LLC agrees to prepare and submit final detailed construction plans for the proposed project to the Commission for approval and the parties of record for consideration in this proceeding. Accordingly, it will be necessary for D&J Fox Holdings, LLC to do so prior to the start of construction.

It does not appear the facilities of non-carrier public utilities will be affected by the project. However, several non-carrier public utility companies were not present at the field conference to determine the extent of their project involvement. So that the parties are afforded the opportunity to fully participate, we will direct the non-carrier public utility companies to perform their project work, if any, at their initial cost. The parties will then determine at a later date whether they have been adequately compensated for their project work and whether a hearing is needed to resolve any remaining issues.

Upon completion of the project, Wheeling & Lake Erie Railway Company agrees to maintain all railroad facilities within the public highway right-of-way to include the automatically operated flashing-lights and gates for S. R. 0050 (Millers Run Road) and the crossing surface for the full width of the crossing, at its sole cost and expense. Further, Wheeling & Lake Erie Railway Company agrees to maintain the automatically operated flashing-lights and gates that are proposed outside of the public right-of-way through a separate private agreement.

Upon completion of the project, Pennsylvania Department of Transportation agrees to maintain the approach roadways of S. R. 0050 (Millers Run Road) up to the crossing surface, as well as the advance warning signs, stop lines, bicycle signs and pavement markings on the roadway approaches, at its sole cost and expense.

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

D&J Fox Holdings, LLC estimates the project cost to be \$63,197 and be 100% privately funded.

Upon full consideration of the matters involved and inasmuch as no objection has been filed with the Commission, we find that a Secretarial Letter can be issued approving the application without a formal hearing.

The Commission issues this Secretarial Letter in accordance with Section 2702 of the Public Utility Code and finds that the alteration of the subject crossing is necessary and proper for the service, accommodation, convenience, or safety of the public.

The application of D&J Fox Holdings, LLC is approved as herein directed:

1. The caption of the subject proceeding is hereby revised as shown herein.
2. The application of D&J Fox Holdings, LLC for approval to alter the public crossing (DOT 966 038 R) by reconfiguring private driveway access points onto S.R. 0050 and modifying the active warning devices at the crossing where S.R. 0050 (Millers Run Road) crosses, at grade, the single track of MarkWest Liberty Midstream & Resources LLC through a lease agreement/easement with property owner Montour Trail Council, operated thereon by Wheeling & Lake Erie Railway Company, located in Cecil Township, Washington County be and is hereby approved to the extent provided herein.
3. D&J Fox Holdings, LLC, having agreed to do so, at its sole cost and expense, furnish all material and perform all work necessary to construct the alteration project to include two (2) private concrete driveways, new chain-link fencing and Type 31-S strong post guiderail generally in accordance with this Secretarial Letter, and the approved plans.

4. Wheeling & Lake Erie Railway Company, at the sole cost and expense of D&J Fox Holdings, LLC and prior to the start of construction, prepare and submit a situation plan for the subject crossing to all parties for review and to the Commission for approval.

5. Wheeling & Lake Erie Railway Company, at the sole cost and expense of D&J Fox Holdings, LLC and prior to the start of construction, prepare and submit a circuitry plan for the subject crossing to all parties for review and to the Commission for approval, if appropriate.

6. D&J Fox Holdings, LLC, having agreed to do so, at its sole cost and expense and prior to the start of construction, prepare and submit to this Commission for approval and to all parties of record for examination, complete detailed construction plans, right-of-way plans and the appropriate property descriptions, if any, that is needed for the proposed crossing alteration project.

7. D&J Fox Holdings, LLC, having agreed to do so, at its sole cost and expense, furnish all material and perform all work necessary to establish and maintain all traffic controls that may be required to properly accommodate highway and pedestrian traffic during the time the crossing project is being constructed.

8. Wheeling & Lake Erie Railway Company, at the sole cost and expense of the D&J Fox Holdings, LLC, furnish all material and perform all work necessary to furnish watchmen, flagmen, inspectors, and/or engineering services that may be deemed necessary to protect the railroad's operations or facilities during the time the facilities are being constructed.

9. Wheeling & Lake Erie Railway Company, at the sole cost and expense of D&J Fox Holdings, LLC, furnish all material and do all work necessary to alter the subject crossing by: 1) constructing the new or relocated post-mounted automatically operated flashing-lights and gates in accordance with the approved plans; 2) constructing a new or additional railroad signal bungalow; and 3) removal of the existing post-mounted flashing lights in the northwest quadrant of the crossing.

10. Any relocation of, changes in and/or removal of any adjacent structures, equipment or other facilities of any non-carrier public utility company, municipality or municipal authority located within the limits of the Commission's jurisdiction, which may be required as incidental to the execution of the proposed project, be made by said public utility, municipality or municipal authority, at its initial cost and expense and in such manner as will not interfere with construction of the project.

11. Any relocation of, changes in and/or removal of any adjacent structures, equipment or other facilities of any non-carrier public utility company, municipality or municipal authority located in private right-of-way within the limits of the Commission's jurisdiction, which may be required as incidental to the execution of the crossing project, be made by said public utility, municipality or municipal authority and in such manner as will not interfere with the project.

12. D&J Fox Holdings, LLC, having agreed to do so, at its sole cost and expense, furnish all material and perform all work necessary to complete the remainder of the crossing alteration project and any other ancillary features of the project, generally in accordance with this Secretarial Letter.

13. D&J Fox Holdings, LLC, at least ten (10) days prior to the start of work, notify all parties in interest of the actual date on which work will begin.

14. All parties involved herein cooperate fully with each other so that during the time the work is being performed, vehicular, pedestrian and railroad traffic will not be endangered or unnecessarily inconvenienced and so that the requirements of each of the parties will be provided for and accommodated insofar as possible.

15. The alteration of the crossing be completed on or before June 30, 2025, and that on or before said date, D&J Fox Holdings, LLC report to this Commission in writing the actual date of completion of the work.

16. D&J Fox Holdings, LLC, having agreed to do so, at its sole cost and expense, pay all compensation for damages due to the owners of any property taken, injured or destroyed by reason of the alteration of the subject crossing in accordance with this Secretarial Letter.

17. Upon completion of the alteration of the subject crossing, Wheeling & Lake Erie Railway Company, at its sole cost and expense, furnish all material and perform all work necessary thereafter to maintain its railroad facilities at the crossing, including the crossbucks (R15-1), emergency notification signs (I-13), post-mounted flashing-light signals, cantilever mounted flashing-light signals, gates and all appurtenant equipment, and to maintain at all times in a smooth and satisfactory condition the high-type concrete crossing surface, all in accordance with Part 8 of the Manual on Uniform Traffic Control Devices and this Secretarial Letter, and provide Pennsylvania Department of Transportation and Cecil Township ten (10) business days advance notice when performing any work as directed by this paragraph.

18. Upon completion of the alteration of the subject crossing, Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the highway approaches to the subject crossing up to the high-type crossing surface and in addition, maintain the Bicycle (W11-1) signs with supplemental AHEAD plaques (W16-9P), grade crossing advance warning signs (W10-1), stop lines and pavement markings, if required, all in accordance with the Manual on Uniform Traffic Control Devices and this Secretarial Letter, and provide Wheeling & Lake Erie Railway Company and Cecil Township ten (10) business days advance notice when performing any work as directed by this paragraph.

19. This Secretarial Letter is without prejudice to the right of any party to recover all or part of any costs incurred by said party in compliance with the provisions of this Secretarial Letter, in accordance with any lawful agreement between it and any other party.

20. The terms of any agreement established in accordance with Paragraph No. 19 of this Secretarial Letter shall not preclude the Pennsylvania Public Utility Commission from taking any action necessary to protect the public interest, including but not limited to the reassignment or enforcement of any costs or responsibilities assigned or transferred as a result of this Secretarial Letter.

21. Upon completion of the work herein directed, and upon written request from any party of record, this proceeding be scheduled for a hearing at a time and place to be determined by the Commission, for the purpose of taking testimony upon the final allocation of any costs incurred by the non-carrier utility companies and other matters relevant to this proceeding.

The Parties are reminded that failure to comply with this or any Order or Secretarial Letter in this proceeding may result in an enforcement action seeking civil penalties and/or other sanctions pursuant to 66 Pa. C.S. § 3301.

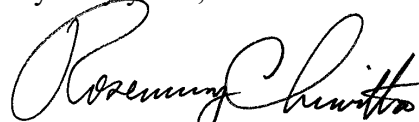
All formal documents must be filed with the Secretary of the Commission. Documents must be eFiled, mailed or hand delivered. All filings should be addressed to the Secretary, PA Public Utility Commission, 400 North Street, Harrisburg, PA 17120. The Commission will not accept documents delivered by fax or by e-mail. Parties are encouraged to file formal documents by eFiling with the Secretary of the Commission by opening an Efiling account through the Commission's website (the account is free of charge) and accepting eservice at <https://www.puc.pa.gov/filing-resources/efiling/>.

If your filing contains confidential material, you are required to file by overnight delivery to ensure the timely filing of your submission. There are certain filings that cannot be eFiled, such as filings containing confidential or proprietary material. These must be submitted to the Secretary by overnight delivery, priority, or certified mail to allow tracking of your filing.

If you are dissatisfied with the resolution of this matter, you may, as set forth in 52 Pa. Code §§ 1.31 and 5.44, file a Petition for Reconsideration from Staff Action (Petition) with the Commission within twenty (20) days of the date of this letter. The Petition shall be eFiled with the Secretary of the Commission or sent to: Secretary, PA Public Utility Commission, 400 North Street, Harrisburg, PA 17120, and must be filed within twenty (20) days, or if no timely request is made, the action will be deemed to be a final action of the Commission.

The Petition MUST include: (1) a written statement (divided into numbered paragraphs) outlining the reasons for the request; (2) the case docket number (it is provided for you at the top right hand corner of this letter); (3) the party on whose behalf the petition is made; (4) a Certificate of Service on the other parties of record; and (5) a Verification with original signature in accordance with 52 Pa. Code § 1.36.

Very truly yours,



Rosemary Chiavetta  
Secretary