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February 19, 2024

**VIA ELECTRONIC FILING**

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

***Re: Petition of CSX Transportation, Inc. to  
Reassign Maintenance Responsibility for the  
Bridge Structure where Bort Road (T-270)  
Crosses above CSX Transportation, Inc.'s  
Tracks (DOT 524 035 A) in North East  
Township, Erie County  
Docket No. P-2015-2465847***

Dear Secretary Chiavetta:

Enclosed please find the Reply of CSX Transportation, Inc. to the New Matter of North East Township for filing in the above-referenced matter. A copy has been served upon all interested parties of record. Thank you.

Very truly yours,

Benjamin C. Dunlap, Jr.

BCD:klg  
Enclosures  
cc: All Parties of Record

**BEFORE THE  
PENNSYLVANIA PUBLIC 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, : Filed Electronically  
INC.'S TRACKS (DOT 524 035 A) IN NORTH :  
EAST TOWNSHIP, ERIE COUNTY :**

**REPLY OF CSX TRANSPORTATION, INC.  
TO THE NEW MATTER OF NORTH EAST TOWNSHIP**

CSX Transportation, Inc. (“CSXT”), hereby replies to the New Matter of North East Township (“Township”), pursuant to 52 Pa. Code § 5.63, as follows:

20. After reasonable investigation, CSXT lacks sufficient knowledge or information to form a belief as to the truth or falsity of Paragraph 20 of the Township’s New Matter, which is therefore deemed denied.

21. After reasonable investigation, CSXT lacks sufficient knowledge or information to form a belief as to the truth or falsity of Paragraph 21 of the Township’s New Matter, which is therefore deemed denied.

22. After reasonable investigation, CSXT lacks sufficient knowledge or information to form a belief as to the truth or falsity of Paragraph 22 of the Township’s New Matter, which is therefore deemed denied. By way of further answer, it is unknown whether the Township performed any maintenance on the bridge superstructure, substructure or decking prior to the assignment of maintenance responsibilities to CSXT’s predecessor in 1988.

23. After reasonable investigation, CSXT lacks sufficient knowledge or information to form a belief as to the truth or falsity of Paragraph 23 of the Township’s New Matter, which is therefore deemed denied. By way of further answer, it is unknown whether the Township ever

placed a bituminous wearing course on the bridge deck.

24. Admitted in part and denied in part. It is admitted that maintenance responsibilities for the bridge were previously assigned to CSXT's predecessor Consolidated Rail Corporation ("Conrail") by Order of the Public Utility Commission ("PUC") entered October 31, 1988, at Docket No. I-870042. It is denied that the requested relief of reassigning maintenance responsibility for the bridge to the Township and/or Erie County is barred by the doctrine of *res judicata*. The Public Utility Code and PUC regulations explicitly provide that "[t]he Commission may, at any time, after notice and opportunity to be heard . . . rescind or amend any Order made by it." 66 Pa. C.S. § 703(g); 52 Pa. Code § 5.572(d). A petition for amendment filed under Section 703(g) of the Public Utility Code may properly raise any matter designed to convince the Commission that it should exercise its discretion to amend or rescind a prior order, which may include changed circumstances such as in this case. *Duick v. PG & W*, 56 Pa. PUC 553 (1982).

25. Denied. It is specifically denied that "CSXT and its predecessors have continuously exerted control over the Bridge" such that following the aforementioned Order of October 31, 1988, it "moved Bridge supports and raised the level of the deck to accommodate taller train cars, without notification or request for authorization to the Township." To the contrary, CSXT's predecessor Conrail was required to and did seek approval from the PUC in the proceeding docketed to A-00109143 to vertically raise the superstructure of the bridge to accommodate higher dimensional shipments. It is explicitly denied that the Township received no "notification or request for authorization." To the contrary, the Township participated in the PUC proceeding and approved the plans and specifications for the project. See Exhibit "A", letter from Roy D. Thomson, Secretary of the North East Township Supervisors to J. D. Cossel,

Chief Engineer, Design and Construction of Conrail, dated May 10, 1990.

26. Admitted in part and denied in part. While neither the Township nor the County to CSXT's knowledge has ever requested that the bridge be replaced with an at-grade crossing, it is CSXT's policy, in line with that of the Federal Railroad Administration, to not agree to the establishment of any new at-grade crossings. That is especially true on highly traveled lines with high-speed trains as on this line. Furthermore, whether a bridge or at-grade crossing or neither should be constructed is up to a determination of the PUC, not CSXT.

27. Denied. The rule under Pennsylvania law is that a bridge carrying a highway is owned by the governmental entity whose roadway traverses the bridge, absent definitive evidence to the contrary. See *City of Philadelphia v. Consolidated Rail Corporation*, 560 Pa. 587, 747 A.2d 352 (2000). In that case, the Supreme Court of Pennsylvania held that the City of Philadelphia owned the bridge carrying its street in spite of the fact that the railroad's predecessor had constructed the bridge and the railroad had maintenance responsibilities for the bridge under an ordinance agreement with the City. Here, while CSXT has current maintenance responsibilities for the bridge pursuant to a prior PUC Order, the Township has not alleged any facts which would refute the legal presumption that it owns the Bort Road Bridge.

28. Denied as stated. It is admitted that CSXT has current responsibility for maintenance of the bridge. However, that does not mean that those responsibilities could not be changed by the Commission pursuant to the *Duick* standards.

29. Denied. It is denied that the Township has no ability to request funding for the replacement of the bridge. To the contrary, the Township and/or Erie County are the entities that must seek funding for any potential bridge replacement under either the State Bridge Bill or federal Section 130 programs. CSXT cannot do so.

WHEREFORE, CSX Transportation, Inc. requests that the Commission grant its requested relief of reassigning maintenance responsibility for the Bort Road Bridge to North East Township and/or Erie County. In the alternative, CSXT requests that the crossing be abolished.

Respectfully submitted,

**COHEN, SEGLIAS, PALLAS, GREENHALL &  
FURMAN, PC**

By: *Benjamin C. Dunlap, Jr.*  
**Benjamin C. Dunlap, Jr., Esquire**  
Supreme Court I.D. #66283

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Counsel for CSX Transportation, Inc.

Date: February 19, 2024

**VERIFICATION**

I, Michael Sliper, Project Manager II, CSX Transportation, Inc., in the foregoing proceeding, make the following statement subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authority, and do state that as Project Manager II for CSX Transportation, Inc., I am authorized to make this statement on behalf of CSX Transportation, Inc. and that the facts set forth in the foregoing **“Reply to the New Matter of North East Township”** are true and correct to the best of my knowledge, information and belief.

  
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Michael Sliper

Date: 2-18-24

**BEFORE THE  
PENNSYLVANIA PUBLIC 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, : Filed Electronically  
INC.'S TRACKS (DOT 524 035 A) IN NORTH :  
EAST TOWNSHIP, ERIE COUNTY. :**

**CERTIFICATE OF SERVICE**

I hereby certify that I served one (1) copy of the Reply to the New Matter of North East Township in the above-referenced matter, this day, via electronic mail only as noted below, addressed to:

Mark Chappell, P.E., Chief  
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*/s/ Karen L. Gagne*  
\_\_\_\_\_  
Karen L. Gagne, Secretary to  
Benjamin C. Dunlap, Jr., Esquire

Date: February 19, 2024



**NORTH EAST TOWNSHIP SUPERVISORS**

10300 WEST MAIN ROAD • P. O. BOX 249  
NORTH EAST, PENNSYLVANIA 16428

TELEPHONE: 814/725-8606

May 10, 1990

Consolidated Rail Corporation  
15 North 32nd Street  
Room 1200  
Philadelphia, PA 19104-2849

Attention: J. D. Cossel  
Chief Engineer  
Design and Construction

Subject: Bort Road Crossing  
North East Township

Gentlemen:

The North East Township Supervisors have reviewed the plans and specifications forwarded by your office for approval via transmittal letter dated April 2, 1990. Based upon this review, the Supervisors, at their May 7, 1990 meeting approved these documents together with commitments made in the transmittal letter, subject to the following:

1. Authorization is given for a maximum elevation adjustment of 11.0 inches. If, during construction, it becomes evident additional height is necessary for any reason, the Supervisors will be presented with a revised strategy for this crossing. Any such strategy which increases approach slopes beyond the proposed, or, suggest closure of the crossing will not be considered acceptable at that time.
2. The analysis performed per Item 1 on page 2 of your transmittal must be completed, stamped and signed by a professional engineer licensed to practice in Pennsylvania and currently certified by PennDOT as a Bridge Safety Inspector. The structural analysis shall provide both inventory and operating load ratings using the allowable stress method. The use of PennDOT's Bar V Program is recommended. Evaluate load ratings using the AASHTO H loadings. The current inventory load rating equal to 12 tons must be maintained and a minimum inventory load rating of 15 tons is preferred by the Township when construction is complete.



Consolidated Rail Corporation  
May 10, 1990  
Page Two

Should you have any questions concerning this approval,  
please don't hesitate to call me.

Very truly yours,

NORTH EAST TOWNSHIP SUPERVISORS

*Roy D. Thomson*

Roy D. Thomson  
Secretary

cc: Mr. David Wilhelm

**RECEIVED**

MAY 14 1990

ASST. CHIEF  
ENGINEER-STAFF