

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of CSX Transportation Inc to reassign	:	P-2015-2465847
maintenance responsibility for the bridge	:	
structure where Bort Road (T-270)	:	
crosses above CSX Transportation Inc's	:	
tracks (DOT#524035A)	:	
in Northeast Township, Erie County	:	

INTERIM ORDER #1
DIRECTING THE FILING OF STATUS REPORT

On January 29, 2015, CSX Transportation, Inc. (“CSX”) filed a Petition with the Pennsylvania Public Utility Commission (“Commission”). In this Petition, CSX requested that maintenance responsibility for the bridge structure where Bort Road (T-270) crosses above CSX’s tracks in Northeast Township, Erie County (“the Township”), be reassigned from it to the Township.¹ CSX in its Petition contended that maintenance responsibility should be reassigned to the Township because replacement of the bridge will be necessary in the coming years, and the Township, as the owner of the bridge, is the only party capable of securing the funding necessary for its replacement. CSX argued that the Township has not taken the steps necessary to secure funding for the bridge’s replacement and that maintenance reassignment would provide the needed drive for the Township to secure the necessary funding. The Petition was docketed at P-2015-2465847.²

On February 23, 2015, the Township filed an Answer with New Matter to the 2015 Petition. The Township argued that it is not the owner of the bridge in question and therefore cannot apply for funding for the bridge. The Township also argued that maintenance and, if need be, replacement of the bridge is the responsibility of CSX. In its New Matter, the

¹ The Commission assigned maintenance responsibility for the bridge at issue to CSX by Commission Order, entered October 31, 1988, at Docket No. I-870042 (“1988 Order”).

² This Petition will be referred to as the “2015 Petition” in this Order.

Township argued that maintenance responsibilities have been assigned via the 1988 Order and thus the relief requested in the 2015 Petition is barred by the doctrine of *res judicata*. The Township requested that the Commission deny the Petition.

The Commission scheduled a field investigation for March 12, 2015, in this matter. The field investigation was cancelled, at the request of the Pennsylvania Department of Transportation (“PennDot”) to permit time for the Township to conduct a road connectivity study.

On March 13, 2015, CSX filed a Reply to the Township’s Answer with New Matter. CSX admitted that it had current maintenance responsibilities over the bridge, but denied that the doctrine of *res judicata* applied to the Petition, noting that the Commission may amend any Order made by it (citing to 66 Pa.C.S. § 703(g) and 52 Pa.Code. § 5.572(d)).

On January 25, 2024, CSX filed a Petition to Assign Proceeding to Office of Administrative Law Judge for Scheduling of a Hearing (“2024 Petition”). In the 2024 Petition, CSX requested that this matter be scheduled for a hearing and subsequently order that maintenance responsibility for the bridge be reassigned to the Township and/or Erie County to pursue available funding for the bridge reconstruction, or order that the crossing be abolished.³ CSX referenced the 2015 Petition in the 2024 Petition and included the 2015 Petition as an attachment. Also attached to the 2024 Petition were the results of the connectivity study for which the March 12, 2015, field investigation was cancelled.

On February 13, 2024, the Township filed an Answer with New Matter to the 2024 Petition. In its Answer, the Township argued that maintenance responsibility over the bridge was decided in the 1988 Order and as such CSX’s 2015 Petition is barred by the doctrine of *res judicata*, and that it is not the owner of the bridge and thus cannot obtain funding for the bridge’s replacement.

³ The Certificate of Service indicates that this Petition was served on Erie County, via its Solicitor.

On February 19, 2024, CSX filed a Reply to the Township's Answer with New Matter to the 2024 Petition. CSX argued that the Township is the owner of the bridge and that the Township, or Erie County, are the entities that must seek funding for its replacement.

On March 15, 2024, a Prehearing Conference Order was issued, assigning this matter to the undersigned and scheduling a prehearing conference for April 17, 2024.

On April 17, 2024, the prehearing conference was held as scheduled. CSX, PennDot, and the Township participated in the conference. Various procedural matters were discussed during the conference, including whether or not this matter was appropriately before the Office of Administrative Law Judge.⁴ It was concluded at the conference that this matter would proceed towards an evidentiary hearing. In that regard, this Order memorializes the discussion held during the conference concerning the filing of a Status Report by CSX, which will propose a litigation schedule for this proceeding.

ORDER

THEREFORE,

IT IS ORDERED:

1. That on or by the close of business, **May 1, 2024**, CSX shall file a Status Report in this proceeding. The Status Report shall propose a litigation schedule that has been agreed upon by all parties (CSX, PennDot, and the Township) to this case. The proposed litigation schedule should propose dates/deadlines for the following:

- a. Close of discovery
- b. Submission of testimony
- c. Hearings (including whether the parties are requesting in-person or telephonic hearings)
- d. Main and Reply Briefs

⁴ See March 15, 2024, Prehearing conference order.

P-2015-2465847 - 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.

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