

**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
GRANTING MOTION FOR CONTINUANCE AND
DIRECTING THE FILING OF STATUS REPORT**

Procedural History

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

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.

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 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. Following the conference, my Interim Order #1 was issued which directed the parties to file a Status Report in which they were to propose a litigation schedule for this matter.

On April 30, 2024, CSX filed a Status Report proposing a litigation schedule agreed to by the parties⁴ to this proceeding.

On May 1, 2024, my Scheduling Order was issued adopting the litigation schedule proposed by the parties in the Status Report.

Also on May 1, 2024, Attorney Speros formally entered his appearance on behalf of the County of Erie.

On May 9, 2024, a 28-page electronic transcript of the prehearing conference was filed with the Commission.

On July 12, 2024, the parties submitted direct testimony with exhibits pursuant to the Scheduling Order.⁵

⁴ CSX indicated that William S. Speros, on behalf of the County of Erie, participated in the discussions held by the parties concerning the litigation schedule.

⁵ No party submitted rebuttal testimony by the July 31, 2024, deadline established by the Scheduling Order.

On August 2, 2024, a Hearing Notice was issued formally scheduling evidentiary hearings for August 20 and 21, 2024.⁶

On August 12, 2024, CSX filed a Motion to Continue Hearing (“Motion”). In its Motion, CSX sought a 120-day continuance of the hearings so CSX could conduct a further engineering examination of the current condition of the bridge in question, and so the parties could consider the implications of the examination in coming to a potential resolution of the case. CSX represented that all parties agree with continuance of the hearings.

On August 19, 2024, a Cancellation Notice was issued, cancelling the August 20 and 21, 2024 hearings in this matter.

Discussion

The Commission’s regulations address requests for continuances of hearings:

§ 1.15. Extensions of time and continuances.

Except as otherwise provided by statute, requests for continuance of hearings or for extension of time in which to perform an act required or allowed to be done at or within a specified time by this title or by order of the Commission or the presiding officer, shall be by motion in writing, timely filed with the Commission, stating the facts on which the application rests, except that during the course of a proceeding, the requests may be made by oral motion in the hearing before the Commission or the presiding officer. Only for good cause shown will requests for continuance be considered. The requests for a continuance should be filed at least 5 days prior to the hearing date.

52 Pa. Code § 1.15(b).

⁶ The Scheduling Order ordered that evidentiary hearings would be held in this matter over Microsoft Zoom on August 20 and 21, 2024. The hearings were formally scheduled to take place telephonically, instead of Zoom, after the undersigned failed to get permission from the Commission to hold the hearings over Zoom.

Thus, as cited, I must consider whether good cause has been shown to grant a continuance of the hearings in this matter. Good cause exists to continue the hearings in this matter. Continuing the hearing so that CSX may perform an engineering examination is good cause to continue the hearings because the results of the examination will serve provide the parties and the Commission with important information concerning the condition of the bridge in question. Also, the results of the engineering examination may provide an avenue for the parties to come to a resolution of this matter. It is the Commission's policy to encourage settlements. 52 Pa. Code § 5.231(a). Settlements lead to time and cost savings for the Commission and parties involved, and the results of a settlement are typically preferable to the results of a litigated proceeding. Further, I have considered the fact that no party objected to continuance of the hearings.

Therefore, for the above reasons, CSX's Motion will be granted, and this matter will be continued, in the Ordering paragraphs below. Further, the parties are directed to file a Joint Status Report in this matter on or by December 17, 2024, which is 120 days from the date of this Order. The Status Report should give an update on the engineering examination to be conducted by CSX and the settlement discussions held between the parties. The Status Report should also propose the next procedural steps to be taken in this proceeding.

ORDER

THEREFORE,

IT IS ORDERED:

1. That CSX Transportation, Inc.'s Motion to Continue Hearing, filed on August 12, 2024, is granted.
2. That the evidentiary hearings scheduled for August 20 and 21, 2024, in this matter are cancelled.
3. That the parties shall file a Joint Status Report **on or before December 17, 2024.**

Date: August 19, 2024

/s/
Alphonso Arnold III
Administrative Law Judge

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.

Revised: May 3, 2024

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