



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

IN REPLY PLEASE
REFER TO OUR FILE

August 23, 2024

A-2022-3036626

TO ALL PARTIES OF RECORD

Application of the Department of Transportation of the Commonwealth of Pennsylvania for approval to alter one (1) public at-grade crossing (DOT 918 324 S) by the installation of Z Gates at the multi-use trail along East Bayfront Parkway (State Route 4034) and alter two (2) public at-grade crossings (DOT's 524 337 C, and 524 335 N) by installing pedestrian crossing improvements and altering the pre-emption and timing where East 8th Street and East 10th Street cross the track of CSX Transportation Inc., in the City of Erie, Erie County, and the allocation of costs incident thereto.

To Whom It May Concern:

This matter is before us, by reason of an application filed on November 3, 2022, by Pennsylvania Department of Transportation (Department) seeking Commission approval to alter the public at-grade crossing (DOT 918 324 S) by installing Z Gates at the multi-use trail along East Bayfront Parkway (State Route (S.R.) 4034) and altering two (2) public at-grade crossings (DOT's 524 337 C, and 524 335 N) by installing pedestrian crossing improvements and altering the pre-emption and timing where East 8th Street and East 10th Street cross the track of CSX Transportation Inc., (CSX), in the City of Erie, Erie County, and the allocation of costs incident thereto.

Upon receipt of the application, a field investigation and conference was arranged by a Commission staff engineer and held on December 6, 2022, at the site of the crossings. All parties were notified by letter via electronic mail sent on November 15, 2022, of the date and time of the field conference. Representatives of the Department, CSX, Erie City, Cyient, Penelec (First Energy / Pennsylvania Electric Company), and Erie Port Authority were in attendance. Verizon, National Fuel Gas Distribution Corporation, Velocity Net Communications, Charter Communications, Erie Water Works and Erie County were notified of the time and place of the meeting but did not attend.

At the existing public at-grade crossing (DOT 918 324 S), East Bayfront Parkway (S.R. 4034) is a five-lane bituminous asphalt roadway with curbs on both sides of the roadway approaches and a multi-use trail on the east side of the crossing that runs parallel to the roadway. The roadway and multi-use trail cross, at grade, a single track of CSX. The crossing surface consists of a high-type rubber crossing surface. The warning facilities at the crossing consist of cantilevered flashing-light railroad warning signals and a bell. The approach roadways to the crossing have grade crossing advance warning (W10-1) signs, stop lines and pavement markings.

At the existing public at-grade crossing (DOT 524 337 C), East 8th Street, aligned east-west, intersects East Bayfront Parkway (S.R. 4034), aligned north-south. A single track of CSX, aligned north-south, crosses East 8th Street on the west side of Bayfront Parkway. East 8th Street is a three-lane asphalt roadway which includes a left turning lane through the crossing approaching the intersection with curbs and sidewalks on each side. East Bayfront Parkway (S.R. 4034) at the intersection is a five-lane asphalt roadway with left turning lanes on each approach to the intersection with curbs and sidewalks on each side. The intersection has crosswalks on all four sides. On the western side of the intersection, the crosswalk is located on the western side of the crossing where East 8th Street crosses at-grade a track of CSX having a high-type rubber crossing surface. The warning facilities at the subject crossing consist of flashing-light warning signals with a gate and bell. The intersection has highway traffic signals with simultaneous railroad preemption and has railroad LED blank-out signs. East 8th Street has grade crossing advance warning (W10-1) signs on both approaches to the crossing. There are no Grade Crossing Advance Warning signs (W10-2 or W10-3) on East Bayfront Parkway (S.R. 4034).

At the existing public at-grade crossing (DOT 524 335 N), East 10th Street, aligned east-west, intersects East Bayfront Parkway (S.R. 4034), aligned north-south. A single track of CSX, aligned north-south, crosses East 10th Street on the west side of Bayfront Parkway. East 10th Street is a three-lane asphalt roadway which includes a left turning lane through the crossing approaching the intersection with curbs and sidewalks on each side. East Bayfront Parkway (S.R. 4034) at the intersection is a five-lane asphalt roadway with left turning lanes on each approach to the intersection with curbs and sidewalks on each side. The intersection has crosswalks on all four sides. On the western side of the intersection, the crosswalk is located on the western side of the crossing where East 10th Street crosses at-grade a track of CSX having a high-type rubber crossing surface. The warning facilities at the subject crossing consist of flashing-light warning signals with a gate and bell. The intersection has highway traffic signals with simultaneous railroad preemption and has railroad LED blank-out signs. East 10th Street has grade crossing advance warning (W10-1) signs on both approaches to the crossing. There are no Grade Crossing Advance Warning signs (W10-2 or W10-3) on East Bayfront Parkway (S.R. 4034).

By Secretarial Letter dated February 24, 2023, the Commission approved the subject application filed by the Department to alter a public at-grade crossing (DOT 918 324 S) by installing Z Gates at the multi-use trail along East Bayfront Parkway (State Route 4034) and to alter two (2) public at-grade crossings (DOT's 524 337 C and 524 335 N) by installing pedestrian crossing improvements and changing the pre-emption and timing where East 8th Street and East 10th Street cross the track of CSX Transportation Inc., (CSXT), in the City of Erie, Erie County, and the allocation of costs incident thereto.

By petition received by the Commission on July 3, 2023, CSXT petitioned to amend the Secretarial Letter dated February 24, 2023. CSXT has determined that the public at-grade crossing (DOT 918 324 S) on East Bayfront Parkway (State Route 4034) is an industry spur track that is no longer needed and requested it be abolished. The Department, at its sole cost and expense, agreed to remove the tracks and restore the roadway.

A Protest and Objection was filed with the Commission on July 19, 2023, by the Erie-Western Pennsylvania Port Authority (Port Authority). The Port Authority asserted that the industry rail line is a necessity and the public at-grade crossing (DOT 918 324 S) on East Bayfront Parkway (State Route 4034) should not be removed and that CSXT's Petition to Amend be denied.

On August 1, 2023, a Protest and Objection was filed by the Erie Sewer Authority (Sewer Authority) to the petition filed by CSXT. The Sewer Authority requested that the public at-grade crossing (DOT 918 324 S) on East Bayfront Parkway (State Route 4034) remain in place and that CSXT's Petition to Amend be denied.

On August 15, 2023, the Commission's Rail Safety Division requested that the matter, docketed at A-2022-3036626, be referred to the Office of Administrative Law Judge (OALJ). On October 27, 2023, counsel for the Port Authority and Sewer Authority submitted correspondence to OALJ stating that a tentative agreement had been reached with CSXT. A telephonic prehearing conference was held on November 9, 2023, with CSXT, PENNDOT, the City of Erie, the Port Authority, the Erie Sewer Authority and the Pennsylvania Public Utility Commission (PUC) Bureau of Investigation and Enforcement in attendance, with an Administrative Law Judge presiding.

On January 17, 2024, the Department, CSXT, City of Erie, the Erie Sewer Authority and the Port Authority filed a Settlement Term Sheet to the ALJ for consideration. The parties agreed that the public at-grade crossing (DOT 918 324 S) on East Bayfront Parkway (State Route 4034) be suspended, and that the railroad crossing surface and the existing active traffic control devices be removed. The Department, at its sole cost and expense, agreed to remove the track, ties, ballast and crossing surface for the full width of the roadway and multi-use trail, to remove the existing active traffic control devices, cantilevers, flashing-light signals, stop bars, grade crossing advance warning signs (W10-1), and to restore the surface of roadway of East Bayfront Parkway (State Route 4034) and of the multi-use trail.

By Order entered April 4, 2024, the proceeding was reassigned to the Commission's Bureau of Technical Utility Services, Rail Safety Section for the issuance of a Secretarial Letter setting forth the Parties' settlement terms.

On February 27, 2023, the Department submitted final construction plans, traffic signals plans and traffic control plans, to all parties of record for review. By Secretarial Letter dated March 23, 2023, the Commission approved the plans. The Department will need to submit revised plans to reflect the suspension of the public crossing (DOT 918 324 S) on East Bayfront Parkway (State Route 4034).

Funding for the project will be 80% Federal funds and 20% State funds. The estimated total cost for the project described above is \$250,000.00.

CSX agreed to maintain its warning facilities at the subject crossings including the automatically operated flashing-light warning signals, gates and all appurtenant equipment, and to maintain at all times in a smooth and satisfactory condition the high-type rubber rail crossing surfaces.

The Department, at its sole cost and expense, will maintain highway of East Bayfront Parkway (State Route 4034) at the site of the suspended crossing (DOT 918 324 S), the east highway approaches of East 8th Street and East 10th Street up to the high-type rubber crossing surfaces, and the grade crossing advance warning (W10-2 or W10-3) signs on East Bayfront Parkway (S.R. 4034) to the approaches of East 8th and East 10th Street intersections.

City of Erie, at its sole cost and expense, will maintain the maintain the west highway approaches of East 8th Street and East 10th Street up to the high-type rubber crossing surfaces, the highway traffic signals, blank out signs, advanced pre-emption timing, pedestrian signals, pedestrian medians, crosswalks, stop lines, pavement markings, and the grade crossing advance warning (W10-1) signs on East 8th and East 10th Streets.

The Commission hereby establishes its jurisdictional limits at the subject crossings as the area within the confines of the railroad right-of-way and the highway right-of-way and along East Bayfront Parkway (S.R. 4034) extending along the highway right-of-way to include the intersections at East 8th Street and East 10th Street.

The Commission has exclusive jurisdiction in crossing alterations and is the final arbiter of any fees associated with a crossing application. Any conditions, including fees associated with a crossing application must be approved by the Commission.

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 crossings are necessary and proper for the service, accommodation, convenience or safety of the public.

The application of Pennsylvania Department of Transportation is approved as herein directed:

1. The Secretarial Letter dated February 24, 2023, for A-2022-3036626 is hereby rescinded.

2. The (2) public crossings (DOT's 524 337 C, and 524 335 N) where East 8th Street and East 10th Street cross, at grade, a track of CSX Transportation Inc., be altered as herein directed, and the public crossing (DOT 918 324 S) where East Bayfront Parkway (State Route 4034) crosses, at grade, a track of CSX Transportation Inc., be suspended, as herein directed; in the City of Erie, Erie County.

3. Pennsylvania Department of Transportation, at its sole cost and expense and prior to the start of construction, revise the Traffic Control plans as previously submitted on February 27, 2023, to reflect the suspension of the public crossing (DOT 918 324 S) where East Bayfront Parkway (State Route 4034) crosses, at grade, a track of CSX Transportation Inc., and submit to all parties of record for review and to the Commission for approval.

4. In all respects not inconsistent herewith, our Secretarial Letter dated March 23, 2023, approving the pedestrian improvements and traffic signal plans with railroad preemption at the intersections of East 8th Street and East 10th Street and East Bayfront Parkway (State Route 4034) remains in full force and effect.

5. Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and do all work necessary at the crossing (DOT 918 324 S) on East Bayfront Parkway (State Route 4034) to remove the track, ties, ballast and crossing surface for the full width of the roadway and multi-use trail, to remove the existing active traffic control devices, cantilevers, flashing-light signals, stop bars, grade crossing advance warning signs (W10-1), and to restore the surface of roadway of East Bayfront Parkway (State Route 4034) and of the multi-use trail; all in accordance with the approved plans and this Secretarial Letter.

6. Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and do all work necessary, at the intersections of East 8th Street and East 10th Street and East Bayfront Parkway (State Route 4034), to change the railroad pre-emption timing for the highway traffic signals from simultaneous to advanced preemption, to add pedestrian signals, video detection, and pedestrian medians for the crosswalks across East Bayfront Parkway, to repaint the crosswalks, and to install grade crossing advance warning (W10-2 or W10-3) signs on the approaches of East Bayfront Parkway (S.R. 4034) to the East 8th and East 10th Street intersections; all in accordance with the approved plans and this Secretarial Letter.

7. Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and do all work necessary to establish and maintain any detours or traffic controls at the subject crossings that may be required to properly and safely accommodate highway and pedestrian traffic during the time the crossings are being altered.

8. CSX Transportation Inc., at the sole cost and expense of Pennsylvania Department of Transportation, furnish all material and perform all work necessary to furnish any 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 installed.

9. Any relocation of, changes in and/or removal of any adjacent structures, equipment or other facilities of any non-carrier public utility company 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, at its initial cost and expense and in such manner as will not interfere with construction of the project.

10. Any relocation of, changes in and/or removal of any adjacent structures, equipment or other facilities of any non-carrier public utility company 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 or municipal authority and in such manner as will not interfere with the project.

11. 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.

12. Pennsylvania Department of Transportation notify all parties of record at least ten (10) days prior to performing any work in accordance with this Secretarial Letter.

13. All work necessary to complete the alteration of the subject crossings be done in a manner satisfactory to this Commission on or before July 31, 2027, and that on or before said date, Pennsylvania Department of Transportation report the date of actual completion of the work.

14. All costs, which are to be reimbursed by the Department of Transportation consistent with this Secretarial Letter, shall be reimbursed as set forth in the provisions of 23 C.F.R. Parts 140 and 646. The aforesaid Federal reimbursement shall not supersede, delay or, in any manner, postpone the effect of any paragraph contained in this or any related Secretarial Letter or Order.

15. Pennsylvania Department of Transportation pay all compensation for damages due to the owners of any property taken, injured or destroyed by reason of the alteration of the subject crossings in accordance with this Secretarial Letter.

16. Upon completion of construction of the project, CSX Transportation Inc., at its sole cost and expense, furnish all material and perform all work necessary thereafter to maintain its railroad facilities at the subject crossings, including the automatically operated flashing-light warning signals and all appurtenant equipment, and to maintain at all times in a smooth and satisfactory condition the high-type railroad crossing surfaces, 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 City of Erie at least ten (10) business days advance notice when performing any work that may affect their facilities, as directed by this paragraph.

17. Upon completion of construction of the project, Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and do all work necessary to maintain the highway of East Bayfront Parkway (State Route 4034) at the site of the suspended crossing (DOT 918 324 S) in a safe and satisfactory condition exclusive of the facilities of any carrier or non-carrier public utility, and the east highway approaches of East 8th Street and East 10th Street up to the high-type rubber crossing surfaces at the subject crossings, in a safe and satisfactorily condition, and to maintain the grade crossing advance warning (W10-2 or W10-3) signs on East Bayfront Parkway (S.R. 4034) to the approaches of East 8th and East 10th Street intersections; all in accordance with Part 8 of the Manual on Uniform Traffic Control Devices and this Secretarial Letter, and provide CSX Transportation Inc. and City of Erie at least ten (10) business days advance notice when performing any work that may affect their facilities, as directed by this paragraph.

18. Upon completion of construction of the project, City of Erie, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the multi-use trail beside East Bayfront Parkway (State Route 4034) at the site of the suspended public crossing (DOT 918 324 S) in a safe and satisfactory condition, exclusive of the facilities of any carrier or non-carrier public utility, all in accordance with this Secretarial Letter, and provide CSX Transportation Inc. and Pennsylvania Department of Transportation at least ten (10) business days advance notice when performing any work that may affect their facilities, as directed by this paragraph.

19. Upon completion of construction of the project, City of Erie, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the grade crossing advance warning (W10-1) signs and the sidewalk approaches including snow, ice and debris removal and to the 8th and 10th Street public crossings (DOT's 524 337 C, and 524 335 N), to maintain the west highway approaches of East 8th Street and East 10th Street up to the high-type rubber crossing surfaces, in a safe and satisfactorily condition, and to maintain the crosswalks, pedestrian controls, stop lines and pavement markings at the intersections of East 8th and East 10th Street with East Bayfront Parkway (S.R. 4034); all in accordance with Part 8 of the Manual on Uniform Traffic Control Devices and this Secretarial Letter and provide CSX Transportation Inc. and Pennsylvania Department of Transportation at least ten (10) business days advance notice when performing any work that may affect their facilities, as directed by this paragraph.

20. Upon completion of the work herein directed, City of Erie, at its sole cost and expense, shall maintain and shall annually inspect the traffic signals, LED blank-out signs, traffic signal control boxes and the cables from the junction boxes to both the traffic signal control boxes at the intersections of East 8th Street and East 10th Street with East Bayfront Parkway (S.R. 4034) to ensure that the timing and preemption operation of the signal systems are functioning as designed. City of Erie shall contact CSX Transportation Inc., and arrange for railroad personnel to activate the railroad crossing warning system to accommodate the required inspection. City of Erie shall report any operational problems that cannot be corrected during the annual inspection to both the Pennsylvania Department of Transportation and the Pennsylvania Public Utility Commission.

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.

22. This Secretarial Letter is without prejudice to CSX Transportation Inc.'s right to reactivate the subject line at the East Bayfront Parkway (State Route 4034) crossing (DOT 918 324 S) upon due notice to all parties of record and the Commission by application.

23. Any interested party or entity seeking to alter in any manner the suspended crossing shall make a formal application to this Commission for approval prior to any alteration of the crossing. Meaning, any alteration to this crossing includes, but is not limited to, any installation, removal or modification of any fixed utility facilities or trail related facilities at this suspended crossing.

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.

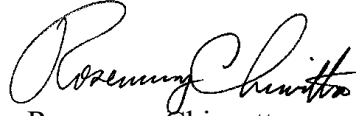
All formal documents must be filed with the Secretary of the Commission. Documents must be eFiled, mailed or hand delivered. All filings should be addressed to the Secretary, PA Public Utility Commission, 400 North Street, Harrisburg, PA 17120. The Commission will not accept documents delivered by fax or by e-mail. Parties are encouraged to file formal documents by eFiling with the 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,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive style with a large initial "R".

Rosemary Chiavetta
Secretary