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October 1, 2025

VIA ELECTRONIC FILING

Matthew L. Homsher, 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 Homsher:

Enclosed please find CSX Transportation, Inc.'s Petition to Convert Proceeding to an Application for the Abolition of the Bort Road Crossing for filing in the above-referenced matter. A copy has been served upon all interested parties of record. Thank you.

Sincerely yours,

Benjamin C. Dunlap, Jr.

BCD:klg
Enclosure
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 : Filed Electronically
TRANSPORTATION, INC.'S TRACKS :
(DOT 524 035 A) IN NORTH EAST :
TOWNSHIP, ERIE COUNTY :**

**PETITION TO CONVERT PROCEEDING TO AN APPLICATION FOR THE
ABOLITION OF THE BORT ROAD CROSSING**

CSX Transportation, Inc. (“CSXT”) hereby petitions this Honorable Commission to convert the present Petition proceeding to reassign maintenance responsibilities for the Bort Road bridge structure in North East Township (“Township”), Erie County, to an Application Proceeding to Abolish the Bort Road Bridge crossing, based upon the following:

1. The Bort Road bridge structure over CSXT’s tracks is now 120 years old, being built in 1905 by the Lake Shore and Michigan Southern Railroad.
2. CSXT’s predecessor in title, Consolidated Rail Corporation (“Conrail”), was assigned maintenance responsibility for the entire substructure and superstructure of the Bort Road Bridge in the Commission Order entered October 31, 1988, at Docket Number I-870042.
3. CSXT is a successor in interest to Conrail’s obligations under the 1988 Order by virtue of becoming the owner of Conrail’s rail lines and real property under the Bort Road Bridge in 1999.
4. Pursuant to an Amended Secretarial Letter dated October 28, 2013, at the proceeding docketed to M-2013-2386854, CSXT was ordered to undertake extensive repairs to

the bridge, pursuant to the requirements of that order, by April 30, 2014.

5. Following a final inspection meeting, the Commission determined by Secretarial Letter dated November 3, 2014, that the repairs to the bridge were satisfactorily completed by CSXT and the case at Docket No. M-2013-2386854 was closed.

6. CSXT's engineers estimated at the time that the repairs made to the Bort Road Bridge in 2014 would provide approximately 10 years of additional service life for the bridge, at which time it would be far past its expected useful life and in need of replacement.

7. CSXT thereafter filed a Petition to Reassign Maintenance Responsibility for the Bort Road Bridge ("Petition to Reassign") to the Township on January 29, 2015, which is the present proceeding.

8. CSXT's Petition to Reassign was based upon Bridge Bill and other state and federal funding potentially being available for the replacement of the Bort Road Bridge. Although CSXT had maintenance responsibility for the bridge, the Township owns the roadway on the bridge and so is the owner of the bridge under Pennsylvania law.¹ As the owner of the bridge, the Township was the primary party responsible to apply for potential replacement funding.

9. The Township filed an Answer with New Matter in Opposition to CSXT's Petition to Reassign Maintenance Responsibility on February 22, 2015, and CSXT filed a Reply to the Township's New Matter.

10. CSXT thereafter put pursuit of the matter on hold while the Pennsylvania

¹ *City of Philadelphia of the Consolidated Rail Corporation*, 560 Pa. 587, 747 A.2d 352 (2000). In that case, the Pennsylvania Supreme Court held that absent documentary evidence shifting title in a bridge from the municipality to the railroad, the common law rule that the owner of the roadway on a bridge over the railroad also owns the bridge prevails. Here, the Township has produced no evidence that CSXT or any of its predecessors acquired ownership of the Bort Road Bridge.

Department of Transportation (“PennDOT”) conducted a study of future Township roadway and bridge connectivity needs in the vicinity of the subject crossing, which may have eliminated the need for the Bort Road crossing. This study, dated September 13, 2016, and titled “North East Township Economic Analysis and Feasibility Study: An Assessment of Future Roadway and Bridge Connectivity in the vicinity of Bort Road (T-780) and Remington Road (T-760),” (hereinafter “Feasibility Study”) is attached hereto as Exhibit A.

11. The Feasibility Study looked at a variety of options both preserving and eliminating the Bort Road crossing, and made a number of findings relevant to this Petition:
 - a. Bort Road has an ADT of less than 400 vehicles per day (pg. 6, Exhibit 2).
 - b. Reconstructing the Bort Road Bridge would be difficult from an engineering perspective and expensive (approximately \$10 million at that time) due to the need to accommodate the nearby Norfolk Southern at-grade crossing (pg. 11).
 - c. The Feasibility Report authors (the engineering firm of Whitman, Requardt & Associates, LLP) assumed “that the Bort Road Bridge over CSX will deteriorate to a point that requires it to be closed and removed, or closed and replaced,” within “5-10 years out” (pg. 20).

12. The Feasibility Report Summary at page 29 states that “PennDOT and North East Township officials . . . acknowledged that proactive planning . . . will be crucial to ensuring that future decision-making, project development and implementation . . . are set in place within a timeframe that ideally precedes future bridge failures or additional maintenance concerns at the existing Bort/CSX Bridge.”

13. Nothing has been done by the governmental entities concerned to advance any planning to address the inevitable bridge failure in the next few years, despite CSXT efforts to

engage the parties in discussions.

14. As a result of this stasis, CSXT filed a Petition to Assign Proceeding to Office of Administrative Law Judge for scheduling of a hearing on January 25, 2024, in which CSXT requested that maintenance responsibility for the bridge be assigned to the Township and/or Erie County.

15. The Township filed an Answer and New Matter in opposition to CSXT's Petition to Assign the Proceeding to the OALJ on February 14, 2024. CSXT filed a Reply to the Township's New Matter on February 19, 2024.

16. The matter was assigned to Administrative Law Judge ("ALJ") Alphonso Arnold, III and a prehearing conference was scheduled and held on April 17, 2024, in which CSXT, PennDOT and the Township participated.

17. Pursuant to ALJ Arnold's subsequent Prehearing Conference Order, CSXT filed a Status Report on April 30, 2024. With the agreement of all parties, the Status Report proposed the close of discovery for June 5, 2024; the submission of written direct testimony with exhibits by July 12, 2024; the submission of written rebuttal testimony with exhibits by July 31, 2024; and a hearing date on certain specified dates in the second half of August 2024.

18. Erie County participated in planning for the litigation schedule and thereafter became an active party in the proceeding.

19. ALJ Arnold adopted the proposed litigation schedule in a Scheduling Order dated May 1, 2024, with evidentiary hearings scheduled on August 20 and 21, 2024.

20. The parties thereafter engaged in extensive discovery, with a primary focus being the potential availability of state and federal funds for the replacement of the Bort Road Bridge. Unfortunately, this discovery showed that due to the high expected cost of reconstruction and

low volume of traffic on the roadway, the chances of obtaining replacement funding were slim.

21. CSXT, PennDOT, the Township and the County all submitted written direct testimony with exhibits by the agreed upon deadline of July 12, 2024. No party submitted rebuttal testimony.

22. Following the submission of direct testimony, CSXT and the Township had some initial discussions regarding a potential resolution of the matter. As a means of informing those discussions, CSXT volunteered to conduct an engineering examination of the current condition of the bridge to determine what work could be done at that time to further extend the useful life of the bridge, at what cost and how much additional usage would be provided.

23. CSXT requested a 120-day continuance of the hearings to conduct this study and for the parties to consider its implications for a potential agreed-upon resolution. CSXT's Motion was granted in an Interim Order dated August 19, 2024, which directed the filing of a subsequent status report.

24. In its Status Report filed December 17, 2024, CSXT included a Bridge Inspection Report which specified a number of items which CSXT would agree to perform to extend the life of the bridge. CSXT suggested that a status conference be scheduled among the parties following the holidays to discuss next steps after it obtained estimates for the bridge work.

25. ALJ Arnold scheduled a Call-In Telephonic Status Conference for January 28, 2025. Following that Status Conference, ALJ Arnold issued an Interim Order directing the filing of a Second Status Report by the parties by March 28, 2025.

26. In its Second Status Report filed on March 28, 2025, CSXT informed ALJ Arnold and the other parties that CSXT made an offer to permanently resolve the disposition of the Bort Road Bridge to the Township 10 days prior. Counsel for the Township informed counsel for

CSXT that it was considering and investigating CSXT's offer, which would be discussed at the Township's next regularly scheduled meeting on April 7, 2025. CSXT therefore requested that the parties be provided an additional 60 days to pursue this potential resolution.

27. CSXT filed its Third Status Report on May 30, 2025, in which it informed the Commission and other parties that while the Township and CSXT attempted to negotiate a final resolution on the disposition of the bridge, the Township rejected CSXT's comprehensive settlement offer. CSXT related that it then proposed an interim settlement in which more moderately priced repairs would be conducted to extend the life of the bridge for about another 10 years and which would require some financial cooperation of the Township, which was also rejected. As the parties appeared to have exhausted the potential for any resolution of the matter, CSXT requested the parties be ordered to submit an agreed-upon litigation schedule, including for the submission of updated direct and rebuttal testimony if a party so desired.

28. ALJ Arnold instead scheduled a further Telephonic Status Conference for July 21, 2025. At this conference the parties explained the impasse they had reached, due to no viable source of federal or state funding for the replacement of the bridge being available and the parties' inability to reach any other negotiated settlement, even if only to further extend the life of the bridge.

29. CSXT expressed its desire at the most recent Status Conference to pursue the abolition of the crossing for the aforesaid reasons of lack of federal and state funding for bridge replacement and an inability to reach any other negotiated resolution. Due to this change in the relief requested by CSXT, CSXT was ordered to submit a new filing for the abolition.

30. In this regard, CSXT notes that the abolition of the crossing would result in a maximum 2.6-mile detour for any of the less than 400 vehicles per day desiring to go from one

side of the former crossing directly to the other side of the former crossing.

31. CSXT agrees to pay for the costs of bridge removal and the placement of roadway barriers following the abolition of the crossing.

WHEREFORE, CSXT respectfully requests that this proceeding be converted to an Application Proceeding for the Abolition of the Bort Road Crossing and that a litigation schedule for updated direct and rebuttal testimony and a hearing date be set.

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: October 1, 2025

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 **“Petition to Convert Proceeding to an Application for the Abolition of the Bort Road Crossing** are true and correct to the best of my knowledge, information and belief.



Michael Sliper

Date: 9-24-25

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TOWNSHIP, ERIE COUNTY :**

CERTIFICATE OF SERVICE

I hereby certify that I served one (1) copy of the foregoing document in the above-referenced matter, this day, via electronic mail only as noted below, addressed to:

Alphonso Arnold, III
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Office of Administrative Law Judge
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/s/ Karen L. Gagne

Karen L. Gagne, Secretary to
Benjamin C. Dunlap, Jr., Esquire

Date: October 1, 2025