

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Norfolk Southern Railway : A-2018-3006432
Company For Approval to Reconstruct the :
crossing of the North Avenue/Brighton Road :
bridge crossing Above its tracks in the City of :
Pittsburgh, Allegheny County (DOT No. 507 450 :
B), and for An exemption from the Commission’s :
Overhead Clearance Regulations :

PETITION FOR INTERLOCUTORY REVIEW AND ANSWER TO MATERIAL QUESTION

Pursuant to Section 5.302 of the Pennsylvania Public Utility Commission (“Commission”) Regulations, 52 Pa. Code § 5.302, Rail Pollution Protection Pittsburgh (“RP3”) respectfully requests the Commission grant review of and answer the following question in the affirmative:

- 1) Whether RP3 should be permitted to intervene under 52 Pa. Code § 5.72(a)(2) because RP3 represents the interests of individual members of the public who may be directly and substantially affected by reconstruction of the W. North Avenue bridge Crossing and the City of Pittsburgh is not adequately representing the interests of those members; and under § 5.72(a)(3) because RP3 has another interest of such nature that participation may be in the public interest.

The procedural background related to RP3’s February 7, 2019 Petition to Intervene (“Petition”) and Norfolk Southern Railway Company (“Norfolk Southern”) objections are contained in the March 8, 2019, Interim Order denying Intervention at Docket No. A-2018-3006432. On March 8, 2019, the Administrative Law Judge (“ALJ”) issued an order denying the Petition to Intervene filed by RP3 (the “Order”). The ALJ reasoned that “RP3’s interest as a group consisting of two local residents and a City-wide group might be directly affected but RP3 did not show that its interest will not be adequately represented by the City’s participation... [and] RP3 failed to aver that it has another interest of such nature that the public interest necessitates its participation in this proceeding.”

RP3 submits that review of the Order is necessary to prevent substantial prejudice, which would result if this proceeding continues without the interests of RP3 and its members being

adequately represented and without providing RP3 an opportunity for a hearing to provide evidence in support of intervention. RP3's broader interests described in the Petition to Intervene were not intended to be taken as an attempt to incorporate issues outside the Commission's jurisdiction, but as qualification separately under Subsection (a)(3). RP3's basis for intervention under §5.72(a)(2) is the close proximity that individual members of RP3 reside in relation to the Crossing, and their daily safe use of that crossing by walking, running, biking and driving,¹ making them "directly affected" by any action that the Commission can take in this proceeding since it "binds them directly." In addition, RP3 avers their interests will not be adequately represented by the City due to the City's interests in identifying funding for bridge construction, Norfolk Southern's lawsuit against the City,² past failures of communication and cooperation between the City and Norfolk Southern,³ and a material disagreement between RP3 and the City regarding whether crossings should be raised or lowered.⁴ Under § 5.72(a)(3), RP3's interest that is appropriate to the administration of the statute is the organization's role as a public safety watchdog, particularly regarding 1) dangers related to diminished sight lines at the Crossing, again relating to the close proximity of RP3 members and their regular use of the intersection (i.e., being a first responder route one block from Allegheny General Hospital, being primarily a

¹ These RP3 members living in close proximity to the crossing surely are aggrieved persons with a direct, immediate and substantial interest in the outcome of the proceeding under the William Penn Garage analysis. *See Application of Metropolitan Edison*, 1994 Pa. PUC LEXIS 52, *18-20 (Pa. P.U.C. February 25, 1994)(granting intervention because participation will facilitate administration of the statute and acknowledging that "while the standards for intervention under Section 5.72 of our regulations are similar, the *William Penn Garage, Inc.* common law standard for intervention is [even] somewhat stricter"). Upon information and belief, PennDOT District 11 Representative Cheryl Moon-Sirianni has admitted that the current height and the site lines of the W. North Ave. bridge are unsafe, and would not have been approved if constructed today. Raising the bridge even further endangers safety.

² *See Norfolk Southern Railway Co. v City of Pittsburgh*, Civil Division #GD 18-006431.


³ During the field investigation held in this docket, it was indicated that city administrators have been directed not to communicate with NSRR personnel on any matter, including issues related to these proceedings, making their representation entirely inadequate.


⁴ Upon information and belief, PUC Senior Civil Engineer Ronald Hull agreed with RP3 at the field investigation that raising the Merchant Street bridge would result in a further raising of the W. North Ave. bridge. It would also forever preclude a lowering of the tracks through the historic landmark Allegheny Commons Park.

pedestrian and vehicle crossing), 2) the public's demonstrated interest in understanding how taxpayer money is being used at the Crossings, (i.e., impacts to the historic park as a result of bridge work), and 3) RP3's role in educating and engaging the public where Norfolk Southern and the City have so far failed. (i.e., RP3 held 11 public meetings on these issues while Norfolk Southern and the City continue to lack transparency). Further, these issues are all the more relevant to the public interest given crossing's proximity to identified Environmental Justice Areas ("EJA). The Environmental Justice Program was developed to ensure that all Pennsylvanians "are equipped with the proper resources and opportunities to meaningfully participate in decision-making processes." The stated objective is to minimize adverse environmental "impacts in vulnerable communities, ensuring opportunities for public participation and dialogue, and fostering responsible economic development that benefits both residents and the regulated sector". Safety at rail highway crossings is part of one's environment and residents in EJAs are required to receive extra consideration in policy decisions to ensure that they do not disproportionately shoulder additional burdens to their safety.

WHEREFORE, RP3 respectfully requests that the Commission undertake interlocutory review of the March 8, 2019 Order, answer the material question in the affirmative, and direct that RP3 be granted status in the proceeding as an intervenor.

RESPECTFULLY SUBMITTED,


Emma Hempstead, Esq. PA ID #324816
Ryan Hamilton, Esq. PA ID #318844
Fair Shake Environmental Legal Services
3495 Butler Street, Suite 102
Pittsburgh, PA 15201
(412) 904-2774
Counsel for Rail Pollution Protection Pittsburgh (RP3)


Glenn M. Olcerst, Esq. PA ID #25241
1200 Resaca Place
Pittsburgh PA 15212
(412) 999-2539
In-house Counsel for RP3

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PUBLIC UTILITY COMMISSION

Application of Norfolk Southern Railway
Company for approval to reconstruct the
Crossing of the North Avenue/Brighton
Road Bridge crossing above its tracks in
The City of Pittsburgh, Allegheny County
(DOT No. 507450B), and for an exemption
From the Commission's overhead clearances
regulations

Docket No. A-2018-3006432

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of March, 2019, one (1) copy of the foregoing Petition for Interlocutory Review and Answer to Material Question on behalf of Rail Pollution Protection Pittsburgh (RP3) was served by US First Class U.S. Mail, Postage Pre-Paid, addressed as follows:

The Honorable Katrina Dunderdale
Pennsylvania P.U.C.
Office of Administrative Law Judge
301 5th Ave, Suite 220,
Pittsburgh PA 15222

David A. Wolf, Esq.
Debra R. Erbestein, Esq.
Goldberg, Kamin, Garvin, LLP
1806 Frick Bldg.
437 Grant Street
Pittsburgh, PA 15219

Mark Chappell, P.E.
Chief Right-of-Way and Utilities
Division Bureau of Design, Penn
DOT
P.O. Box 3362
Harrisburg, PA 17105-3362

Allegheny County
Solicitor
Dept. Of Law
445 Fort Pitt Blvd.
Pittsburgh, PA 15219

Engineering District 11-0
Pennsylvania Dept. of Transportation
Attn: Cheryl Moon-Sirianni, P.E.
45 Thomas Run Road
Bridgeville, PA 15017

Verizon Pennsylvania LLC
Attn: Deborah Barum
1026 Hay Street
Pittsburgh, PA 15221

Community College of Allegheny County
Facilities Management Division
Attn: Rich Schlegel
800 Allegheny Ave.
Pittsburgh, PA 15233

Windstream
Attn: Locate Desk Personnel
929 Marthas Way
Hiawatha, IA 52233

NRG Energy Center Pittsburgh
Attn: Bryan Sarti
111 S. Commons Ave.
Pittsburgh, PA 15212

Comcast Cablevision
Attn: Joseph Bechtold
1530 Chartiers Ave.
Pittsburgh, PA 15204

Level 3 Communications LLC
Attn: Level 3 Operator
1025 Eldorado Blvd
Broomfield, CO 80021

Century Link f/k/a Embarq
Attn: George McElvain
Grid No. UTOO-D27.34
700 W. Mineral Ave.
Littleton, CO 80120

Duquesne Light Company Attn: Shane
Thieret PA-TD
2645 New Beaver Ave
Pittsburgh, PA 15233

Crown Castle
Attn: Rebecca Caldwell
2000 Corporate Drive
Canonsburg, PA 15317

William J. Cressler, Esquire
Gina M. D'Alfonso, Esquire
Office of Chief Counsel - PennDOT
P. O. Box 8212
Harrisburg, PA 17105-8212

City of Pittsburgh Solicitor's Office
Dept. Of Law
313 City-County Building
414 Grant Street
Pittsburgh, PA 15219

Peoples Gas Company LLC
Attn: Debbie Ross
375 North Shore Drive
Pittsburgh, PA 15212

Pittsburgh Water & Sewer Authority
Attn: Rick Obermeier
1200 Penn Avenue
Pittsburgh, PA 15222

City of Pittsburgh
Dept. of Mobility &
Infrastructure
Attn: Karina Ricks
611 Second Ave.
Pittsburgh, PA 15219

Benjamin C. Dunlap, Jr., Esquire
Nauman Smith
Attorneys At Law
PO Box 840
Harrisburg, PA 17108-0840



*Counsel for Petitioner,
Rail Pollution Protection Pittsburgh (RP3)*