

BEFORE THE PENNSYLVANIA
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

Application of Norfolk Southern Railway Company for approval to reconstruct the Rehabilitation of the below-grade crossing (DOT No. 507446L) where Merchant Street passes under the tracks of Norfolk Southern Railway Company in the City of Pittsburgh, Allegheny County

Docket No. A-2018-3001039

**PREHEARING MEMORANDUM OF
RAIL POLLUTION PROTECTION PITTSBURGH**

AND NOW comes Rail Pollution Protection Pittsburgh (RP3), by and through its undersigned counsel, and files this Prehearing Memorandum for the above-captioned proceedings. Pursuant to 52 Pa. Code §5.223, the March 11, 2019 Third Interim Order Scheduling Telephonic Prehearing Conference, and in anticipation of the Wednesday, March 27, 2019 Call-in Telephonic Prehearing Conference before Administrative Law Judge Katrina L. Dunderdale, RP3 submits this Prehearing Memorandum.

I. Procedural History

Applicant Norfolk Southern Railway Company filed an application with the Commission on December 7, 2018 requesting the Commission grant approval for the

reconstruction of a public rail-highway crossing at North Avenue/Brighton Rd in the City of Pittsburgh, Allegheny County which required an exemption from the Commission's overhead clearance regulations. On February 7, 2019, RP3 filed a Petition to Intervene in the above-captioned matter. On February 7, 2019, RP3 also participated in the Commission's field investigation and conference in connection with Norfolk Southern Applications in Merchant Street Bridge and W North Ave Bridge. On February 25, 2019, RP3 filed a Motion to Consolidate Applications. On March 4, 2019 Norfolk Southern filed its Answer in Opposition to RP3's Petition. On March 4, 2019, Norfolk Southern filed its Answer in Opposition to RP3's Motion. On March 8, 2019, the Commission issued its First and Second Interim Orders denying RP3's Petition and Motion. On March 20, 2019 RP3 filed a Petition for Reconsideration of the First Interim Order Motion to Consolidate averring that the Applications Docketed as Docket No. A-2018-3006432 and Docket No. A-2018-3001039 are best consolidated due to common questions of fact and law. On March 21, 2019 RP3 Filed a Petition for Interlocutory Review on the question of the denial of intervention of RP3.¹ On March 22, 2019 RP3 filed a Petition for Reconsideration of the denial of their Petition to Intervene, requesting approval of the Intervention as in the public interest, and averring that the interests of RP3 are not adequately represented by the parties of record.

II. REPRESENTATION

RP3 requests that all documents be served on

Emma Hempstead, Esq.
Ryan Hamilton, Esq.

¹ <http://www.puc.pa.gov//pcdocs/1611291.pdf>

Fair Shake Environmental Legal Services
3495 Butler St, Suite 102
Pittsburgh, PA 15201
(412) 742 4615
Fax (412) 291 1197

Glenn Olcerst
RP3 In-house Counsel
1200 Resaca Place,
Pittsburgh, PA 15212
glennolcerst@gmail.com

III. PRESENTLY IDENTIFIED ISSUES

1. RP3 joins in City's Protest Paragraphs 15-16.
2. RP3 submits, however, that the 1901 and 1946 documents must result in a finding that the city owns the W North Ave Bridge, however, Norfolk Southern must pay all costs related to raising the bridge.
3. W North Ave Bridge has a remaining useful life of 17 years and can be repaired (in ways that grandfather its current height), rather than reconstructed or replaced.
4. Raising Merchant Street Bridge as the city requests, will result in the further raising of the height of the W North Ave Bridge.
5. Raising the Merchant Street Bridge will foreclose the lowering of the tracks in the trough between those two bridges, or increase the costs of that option.
6. Community organizations and surrounding neighbors prefer lowering of the tracks in the trough
7. The feasibility of replacing Merchant Street Bridge at a lower height.
8. The feasibility of lowering the tracks a little and raising the bridges a little.

9. The feasibility of lowering the two middle tracks to obtain statutory clearance and not change the height of any of the bridges.
10. The feasibility of lowering the road below Merchant St Bridge, instead of increasing the height of Merchant St Bridge.
11. The City has requested that studies be undertaken to determine the relative costs of all of the available options and the results of the analysis must be considered before the project proceeds.
12. Potential impact of available options on Allegheny Commons- which enjoys state and federal historic status and contains a number of historic landmarks.

IV. WITNESSES AND PROPOSED SCOPE OF TESTIMONY

1) Senior Civil Engineer Manager Ronald J Hull

PUC Bureau of Technical Utility Services
P.O. Box 3265
Harrisburg, Pa. 17105-3265

Proposed Area of Testimony for Mr Hull: statements made by him at the February 7, Field Investigation Conference.

2) Glenn Olcerst

RP3 Principal and In House Counsel
1200 Resaca Place
Pittsburgh, Pa. 15212

Proposed Area of Testimony for Mr Olcerst: statements made by him at the February 7, Field Investigation Conference. Statements made about the useful life of W North Ave Bridge.

RP3 reserves the right to modify this witness list prior to the submission or presentation of testimony.

V. PROCEDURAL SCHEDULE AND DISCOVERY

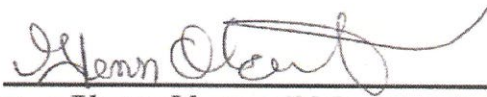
RP3 is willing to discuss the litigation schedule for this proceeding and any proposed discovery modifications. Additional witnesses that might testify to the engineering and cost analysis of the issues and options outlined above are peculiarly within the knowledge and control of the other parties within the meaning of 52 Pa Code 5.242c.

As a result, advance study of all relevant materials is requested and the order of presentation must take the above into account and be varied.

VI. SETTLEMENT

RP3 is willing to discuss settlement with any party.

Respectfully submitted,



Glenn Olcerst, ESQ.
PA ID#25241
1200 Resaca Place
Pittsburgh, PA 15212
412-999-2539
*In House Counsel for Petitioner Rail
Pollution Protection Pittsburgh (RP3)*



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) 742-4615

(412) 291-1197 (fax)

*Counsel for Petitioner Rail
Pollution Protection Pittsburgh
(RP3) and the Breathe Project*

BEFORE THE PENNSYLVANIA
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 25th day of March, 2019, one (1) copy of the foregoing Prehearing Memorandum 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

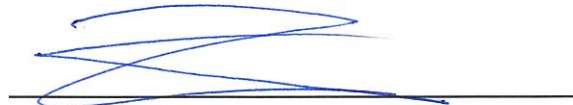
City of Pittsburgh Solicitor's Office
Dept. Of Law
313 City-County Building
414 Grant Street
Pittsburgh, PA 15219

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)*