# PENNSYLVANIA

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held July 11, 2019

Commissioners Present:

Gladys Brown Dutrieuille, Chairman

David W. Sweet, Vice Chairman

Norman J. Kennard

Andrew G. Place

John F. Coleman, Jr.

Bridge Structure where State Route 1025 M-2013-2364201

crosses over a single track of Delaware and

Hudson Railway Company, Inc. (264 293 K)

in Nicholson Borough, Wyoming County

Investigation upon the Commission’s own I-2015-2472242

motion to determine the condition and

disposition of six (6) existing structures

carrying various highways above the grade of

the tracks of the Canadian Pacific Railroad in

Great Bend Township, New Milford Township,

Brooklyn Township, Hop Bottom Borough,

Lathrop Township, Susquehanna County and

Benton Township, Lackawanna County

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Clarification and Reconsideration (Petition) filed by the Commonwealth of Pennsylvania, Department of Transportation (PennDOT) on March 14, 2019, pertaining to the Order entered on February 28, 2019 (*February 2019 Order*), in the above-captioned proceeding. Norfolk Southern Railway Company (NS) filed an Answer to the Petition on March 25, 2019. For the reasons detailed herein, we shall grant PennDOT’s Petition, consistent with the discussion in this Opinion and Order.

**I. History of the Proceeding**

By Order entered May 23, 2013, at Docket No. M-2013-2364201 (*May 2013 Order*) the Commission addressed the crossing where State Route (SR) 1025 crosses over the facilities of the Delaware and Hudson Railway Company (D&H), a wholly owned subsidiary of the Canadian Pacific Railway Company located in Nicholson Borough (Nicholson), Wyoming County (Wyoming). The *May 2013 Order* directed PennDOT, at its initial cost, to perform all work and furnish all material necessary to close the bridge to pedestrian and vehicular traffic, to provide any detours necessary during the duration of the bridge closure, and to maintain any barricades, fencing, and signage installed to prevent vehicular and pedestrian access to the bridge. The *May 2013 Order* also directed PennDOT, at its initial cost, to provide any engineering inspections and analyses evaluating the structural condition of the bridge. Further, the *May 2013 Order* directed PennDOT, at its initial cost, to provide an engineering study and analysis evaluating the feasibility of reopening the bridge and, if reopening the bridge was feasible, what work was necessary to reopen the bridge.

By Order entered August 16, 2013, at Docket No. M-2013-2364201 (*August 2013 Order*), the Commission, *inter alia*, referred the matter to the Office of Administrative Law Judge (OALJ).

On November 1, 2013, PennDOT, D&H, and the Commission’s Bureau of Investigation and Enforcement (I&E) filed a Joint Petition for Partial Remand of Matters Pending (Joint Petition) at Docket No. M-2013-2364201. In the Joint Petition, the Parties indicated that PennDOT provided the Parties with copies of its studies and analyses of the SR 1025 bridge. According to the Joint Petition, D&H would perform the work described in the plans and reimburse PennDOT for the costs it had incurred to date. PennDOT would inspect the bridge, and D&H agreed to reimburse PennDOT 20% of the costs of inspecting the bridge. The Parties indicated that they did not object to reopening the bridge in the manner set forth in the Joint Petition. The Parties also did not object to the OALJ reassigning the matter to the Commission’s Bureau of Technical Utility Services (TUS) for approval of the attached plans, the final inspection upon completion of the work, and the reopening of the bridge. The Parties indicated that they were still discussing future maintenance responsibility for the bridge and future disposition of the crossing and requested that those issues remain pending before the OALJ. By order dated November 5, 2013, ALJ Salapa granted the Joint Petition and referred the entire case to TUS for further action.

On November 8, 2013, the Commission issued a Secretarial Letter at Docket No. M-2013-2364201 (*November 2013 Secretarial Letter*) that approved plans for the alteration of the structure carrying SR 1025 over the facilities of D&H and ordered various parties to perform the work set forth in the approved plans. The *November 2013 Secretarial Letter* directed that the work necessary to alter the crossing be completed on or before December 13, 2013. Upon completion of the work, the proceeding would be scheduled for a hearing to allocate the costs of construction, assign future maintenance responsibilities, and consider the future disposition of the bridge structure.

On December 11, 2013, the Commission issued a Secretarial Letter at Docket No. M-2013-2364201 (*December 2013 Secretarial Letter*) indicating that the work ordered in the *November 2013 Secretarial Letter* had been completed. On October 30, 2014, PennDOT filed a petition requesting that the Commission schedule a hearing to allocate costs incurred for work performed pursuant to the *November 2013 Secretarial Letter* and to assign future maintenance responsibilities.

On March 9, 2015, NS filed a Motion to Join or, in the Alternative, Petition to Intervene. NS averred that it currently operates over D&H’s facilities at the SR 1025 crossing and was negotiating with D&H to purchase the rail line. NS ultimately acquired the rail line from D&H on or about September 19, 2015. By order dated March 23, 2015, the ALJ granted NS’ Petition to Intervene.

By Order entered on April 9, 2015, at Docket No. I-2015-2472242 (*April 2015 Order*), the Commission initiated an investigation to evaluate the condition and disposition of six highways over rail crossings located on the same rail line as the SR 1025 crossing in the proceeding at Docket No. M-2013-2364201. The Commission determined that the following crossings would be investigated:

|  |  |  |  |
| --- | --- | --- | --- |
| Highway Name | Structure Type | PENNDOT No. | Municipality/County |
| T-821 (Old Lackawanna Trail) | Steel Thru-Girder | 263 952 J | Great Bend Twp., Susquehanna |
| SR 1018 (Old Lackawanna Trail) | Concrete Arch | 264 028 V | New Milford Twp., Susquehanna |
| SR 2032 (Depot Street) | Concrete Arch | 264 033 S | Brooklyn Twp., Susquehanna |
| SR 2041 (Glenwood Street) | Concrete Arch | 264 292 D | Hop Bottom Borough, Susquehanna |
| SR 2017 (Station Hill Road)  SR 4005 (Seamans Road) | Concrete Arch  Concrete Arch | 264 291 W  265 849 D | Lathrop Twp., Susquehanna  Benton Twp., Lackawanna |

The Commission directed that PennDOT, D&H, NS, Great Bend, New Milford Township, Brooklyn Township, Hop Bottom Borough, Lathrop Township, Benton Township, Lackawanna County (Lackawanna), and Susquehanna County (Susquehanna) be made parties to the investigation at Docket No. I-2015-2472242.

As part of the investigation at Docket No. I-2015-2472242, the Commission directed PennDOT, at its initial cost and expense, to perform in-depth load rating analyses on these six structures. The Commission also directed that PennDOT provide the other Parties to the investigation with the most recent National Bridge Inspection Standards (NBIS) inspection reports for each bridge, including an in-depth load rating analysis for each bridge. The Commission further directed D&H to pay twenty percent of the cost for the NBIS inspection of the T-821 bridge.

The ALJ issued a Prehearing Order dated September 25, 2017, consolidating the matters at Docket Nos. M-2013-2364201 and I‑2015-2472242. An evidentiary hearing for the matters at Docket Nos. M-2013-2364201 and I-2015-2472242 was held on April 24, 2018. PennDOT, Wyoming, Nicholson, Lackawanna, I&E, the Pennsylvania Electric Company (Penelec),[[1]](#footnote-1) NS, and Great Bend were represented by counsel. The record consists of a 250-page transcript and the various testimony and exhibits of the Parties.

On June 15, 2018, NS, PennDOT, I&E, and Great Bend filed Main Briefs. On July 3, 2018, NS, PennDOT, I&E, and Great Bend filed Reply Briefs. The evidentiary record closed on July 3, 2018.

In the Recommended Decision served on August 6, 2018, the ALJ assigned maintenance and inspection responsibilities for the structures at the crossings, ordered repairs for some of the structures, and ordered some of the structures to be replaced. NS, PennDOT, and Great Bend filed Exceptions on August 31, 2018. NS and PennDOT filed Replies to Exceptions on September 24, 2018.

By Opinion and Order entered February 28, 2019 (*February 2019 Order*), the Commission: (1) granted, in part, and denied, in part, NS’ Exceptions; (2) granted, in part, and denied, in part, PennDOT’s Exceptions; (3) granted, in part, and denied, in part, Great Bend’s Exceptions; and (4) adopted the ALJ’s Recommended Decision as modified by the Opinion and Order.

PennDOT filed the instant Petition on March 14, 2019, seeking clarification and reconsideration of the *February 2019 Order*. NS filed an Answer to the Petition on March 25, 2019.

**II. Discussion**

**A. Legal Standards**

We note that any issue we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the Parties. [*Consolidated Rail Corporation v. Pa. PUC,* 625 A.2d 741 (Pa. Cmwlth. 1993)*;*](file:///C:\Documents%20and%20Settings\tfarrar\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\research\buttonTFLink) *also* *see, generally,* [*University of Pennsylvania v. Pa. PUC,* 485 A.2d 1217 (Pa. Cmwlth. 1984).](file:///C:\Documents%20and%20Settings\tfarrar\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\research\buttonTFLink)

The Public Utility Code (Code) establishes a party’s right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. §§ 703(f) and 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision. The standards for granting a Petition for Reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Company*, 1982 Pa. PUC Lexis 4, \*12-13.

A Petition for Reconsideration, under the provisions of

66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part.

In this regard we agree with the court in the Pennsyl­vania Railroad Company case, wherein it was stated that:

Parties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them . . . what we expect to see raised in such petitions are new and novel arguments, not previously heard, or considera­tions which appear to have been overlooked by the Commission.

Under the *Duick* standards, a petition for reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Id*. at \*13.

**B. Petition, Answer, and Disposition**

In its Petition, PennDOT requests reconsideration of the Commission’s disposition of PennDOT’s Exception No. 24 in the *March 2019 Order*. PennDOT also requests certain minor clarifications to the *March 2019 Order*. We will address each of PennDOT’s requests below. Based on our review of the record in this proceeding, PennDOT’s Petition, and NS’ Answer, we shall grant the Petition, consistent with the discussion herein.

**1. The Commission’s Disposition of PennDOT’s Exception No. 24**

**a. Procedural Background**

By Secretarial Letter issued January 4, 2018 (*January 2018 Secretarial Letter*), the Commission affirmed PennDOT’s action to close the T-821 Bridge to pedestrian and vehicle traffic in the interest of public safety based on the condition of the bridge. The Secretarial Letter also provided the following directives:

2. Pennsylvania Department of Transportation, at its initial cost and expense, within fourteen (14) days from the date of service of this letter, furnish all material and perform all work necessary to erect proper fencing, signs and barricades at the ends of the bridge and approaches, thereto closing the bridge carrying T-821 (Old Lackawanna Trail) above grade the tracks of Norfolk Southern Railway Company, in Great Bend Township, Susquehanna County.

3. Pennsylvania Department of Transportation, at its initial cost and expense, furnish all material and do all work necessary to maintain the proper signs, fencing and barricades at the ends of the bridge and approaches, thereto.

*January 2018 Secretarial Letter* at 1-2. The Secretarial Letter contained language indicating that if the Parties were dissatisfied with the resolution of the matter, they could file a Petition for Reconsideration from Staff Action, consistent with 52 Pa. Code §§ 1.31 and 5.44. *January 2018 Secretarial Letter* at 2.

In its Exception No. 24 pertaining to the T-821 Bridge, PennDOT objected “to assuming the costs that it has borne to date to close the bridge and to maintain the closure of a bridge carrying a local road.” PennDOT also referred to its General Exception No. 9, in which it disagreed with the ALJ’s statement on page 35 of the Recommended Decision that it bear the costs it incurred for inspections, maintenance, and bridge closures. PennDOT continued to request reimbursement consistent with its testimony in PennDOT Statement 1 at 34-35 and pages 49 through 51 of the transcripts in this proceeding.[[2]](#footnote-2) In the *March 2019 Order*, we denied PennDOT’s Exception and referred to our disposition of PennDOT’s General Exception No. 9. We agreed with the ALJ’s determination regarding the allocation of costs and the assignment of responsibilities in this proceeding, finding the determination was just and reasonable and based on sound legal and factual grounds. *March 2019 Order* at 39. As explained in more detail below, PennDOT contests certain language in the Disposition portion of the *March 2019 Order* that addresses PennDOT’s Exception No. 24.

**b.** **Petition and Answer**

In its Petition, PennDOT objects to the Commission’s disposition of its Exception No. 24 in the *March 2019 Order*. PennDOT explains that it is solely contesting the following language of the *March 2019 Order* for purposes of its Petition:

Additionally, in our *January 2018 Secretarial Letter* which affirmed PennDOT’s action to close the bridge, we assigned PennDOT, at its initial cost and expense, the responsibilities for furnishing all material and performing all work necessary to close the bridge and to maintain the closure, including signs, fencing, and barricades at the ends of the bridge and approaches thereto. Our records indicate that PennDOT did not object to this initial assignment of work and associated costs by filing a Petition for Reconsideration from Staff Action. Accordingly, the directives in the Secretarial Letter became the final action of the Commission pursuant to 52 Pa. Code § 5.44. We do not find any reason to rescind our prior decision on this issue relating to costs PennDOT has already incurred. Accordingly, this Exception is denied.

Petition at 3-4 (citing *March 2019 Order* at 104). PennDOT requests that the Commission strike the above language. Petition at 9.

PennDOT avers that the Commission’s decision is not supported by a sound legal or factual basis and is not just and reasonable. PennDOT contends that the Commission redefined a previously relied on definition of the term “initial cost and expense” and disregarded case law indicating that the *January 2018 Secretarial Letter* was an interlocutory order. PennDOT explains that the terms “initial cost and expense” have been consistently interpreted as requiring the party assigned such costs to pay for the required work up front, with the understanding that such costs may be reimbursed by other parties at a later date. Petition at 4. PennDOT states that the Commission frequently directs parties to perform work in the interest of public safety at their “initial cost and expense” so that work can be performed in a timely manner and without having to litigate costs first, as was the situation with the T-821 Bridge. PennDOT is concerned that the Commission’s interpretation of “initial cost and expense” in the *March 2019 Order* will discourage a party’s willingness to agree to do work at its initial cost and expense. *Id*. at 5. PennDOT is also concerned that parties will be forced to file Petitions for Reconsideration from Staff Action for every secretarial letter or order directing a party to bear costs at its “initial cost and expense” before work is performed to preserve their right for reimbursement and that this will result in delays in addressing safety concerns at railroad/highway crossings.

PennDOT avers that the Commonwealth Court has found that when the Commission assigned parties work at their “initial cost and expense,” the parties were given an opportunity to later determine the final allocation of costs, and “initial cost and expense” was viewed as temporary in nature. *Id****.*** (citing *Township of Middletown v. Pa. PUC,* 729 A.2d 640 (Pa. Cmwlth. 1999) (*Middletown*));*Parkesburg Borough v. Pa. PUC,* 681 A.2d 872 (Pa. Cmwlth. 1996) (*Parkesburg*);*City of Philadelphia v. Pa. PUC,* 458 A.2d 1026 (Pa. Cmwlth. 1983) (*City of Philadelphia*). PennDOT notes that in this case, the *January 2018 Secretarial Letter* did not contain language referencing a final hearing or whether the costs would be held in abeyance, but it assigned the costs of closing the T-821 bridge to PennDOT at its initial cost and expense. PennDOT states that the matter was already assigned to an ALJ and in active litigation for a determination of the final cost allocation. PennDOT believes that a plain language interpretation of “initial cost and expense” and past Commission practice indicates that “initial” costs are not final and, instead, are subject to become final at a subsequent time. *Id*. at 6.

Additionally, PennDOT avers that it was not “just and reasonable” for the Commission to disrupt a well-settled definition of the phrase “initial cost and expense” and then allocate costs to PennDOT based on that change in definition. *Id*. PennDOT indicates that it did not file a Petition for Reconsideration from Staff Action, because it agreed with closing the bridge in the interest of public safety at its “initial cost and expense” given that all past experiences showed that those costs could later be recouped. *Id.* at 6-7(citing PennDOT Exhs. D10, D11, D12; NS St. 1 at 5; Tr. at 196).

PennDOT continues that the *January 2018 Secretarial Letter* did not become a final Order in this case. PennDOT explains that this is a unique case where the matter was pending before ALJ Salapa for a cost allocation proceeding when Commission Staff discovered and addressed the T-821 Bridge safety concerns. Petition at 7. PennDOT states that the Commonwealth Court has found Orders assigning work at a party’s “initial cost and expense” but not determining final allocations of cost and expense to be interlocutory. *Id*. (citing *Philadelphia,* 458 A.2d at 1028; *Parkesburg*,681 A.2d at 875; *Middletown,* 729 A.2d at 643-44)). PennDOT also cites to Pa. R.A.P. 341 in support of its argument that the *January 2018 Secretarial Letter* did not become a final Order.[[3]](#footnote-3) Petition at 7-8. PennDOT argues that the *January 2018 Secretarial Letter* did not dispose of all claims or all parties, as a hearing was held on the outstanding issues and no parties were dismissed from the case. PennDOT also argues that there was no express determination in the Secretarial Letter that an immediate appeal would facilitate resolution of the entire case, nor would such an express determination have been appropriate due to the large number of outstanding issues in the case. Petition at 8.

In its Answer, NS states that the Commission’s disposition of PennDOT’s Exception No. 24 and the final cost allocation in the *March 2019 Order* is just and reasonable because it is supported by a legal basis based on the record evidence. Nevertheless, NS agrees with PennDOT that the language PennDOT objects to on page  104 of the Order presents potential future issues and is contrary to Commission and appellate precedents regarding the deferral of the disposition of “initial costs.” Answer at 3. NS also concurs that the *January 2018 Secretarial Letter* is not a final order and that PennDOT was authorized to pursue cost allocation at the hearing in this matter. Answer at 4. NS further agrees that the subject language could have an adverse impact on public safety and that the language should be stricken from the *March 2019 Order*. Answer at 5.

**c. Disposition**

Upon review of the Petition, we will grant PennDOT’s request to strike the language in question and provide some additional clarification regarding the language. It was not our intention to set a new precedent or to change the established meaning of “initial cost and expense” or the Commission’s practice regarding “initial cost and expense.” Nevertheless, in the context of the *March 2019 Order*, we are persuaded that the language in question is unclear and may be construed in a different manner.

We agree with PennDOT that when the phrase “initial cost and expense” is used, it means that a party has been assigned some work responsibility and will initially bear the cost of this work with the understanding that such cost may be reimbursed by other parties at a later date. In this case, PennDOT was authorized to pursue reimbursement for the work it performed on the T-821 bridge, as final cost allocation issues for the T-821 Bridge and six other bridges were pending before the ALJ in this proceeding and the final allocation of costs had not yet been determined. Along these lines, we agree with PennDOT and NS that the *January 2018 Secretarial Letter* was not a final order within the meaning of the Pennsylvania Rules of Civil Procedure.

We intend to continue to follow our current practice of interpreting the phrase “initial cost and expense” as an up-front cost for which the responsible party may be reimbursed at a later date. *See, e.g., Application of the City of Greensburg*, Docket No. A-00115808 (Order entered June 3, 2003) (assigning initial costs and expenses to the parties for construction of a bridge, noting that a hearing would be scheduled upon completion of the construction to consider the final allocation of costs and expenses for the project and final maintenance responsibility for the bridge). This interpretation is consistent with the Commonwealth Court decisions PennDOT cites in its Petition. *See Middletown*, 729 A.2d at 643-644 (Commission determinations on which party is required to perform initial work and to bear initial costs are interlocutory, not final, decisions); *Parkesburg*, 681 A.2d at 875 (costs initially allocated to one party may be allocated to a different party when the Commission determines final costs in a proceeding).

For these reasons, we will grant PennDOT’s request to remove the above language from the *March 2019 Order*. We will not otherwise alter our disposition of PennDOT’s Exception No. 24, as we find that our final cost allocation determinations in the Order are just and reasonable and supported by substantial evidence in the record.

**2.** **Requested Clarifications**

**a. Petition and Answer**

In its Petition,PennDOTrequestsclarifications to certain portions of the *March 2019 Order*. PennDOT states that Ordering Paragraph No. 7 of the *March 2019 Order* assigns work to NS on the SR 1025 bridge; however, the language in Ordering Paragraph No. 7 references SR 2015 rather than SR 1025. Therefore, PennDOT requests that Ordering Paragraph No. 7 be clarified as follows:

7. That Norfolk Southern Railway Company, at its sole cost and expense, within three (3) months of the date of this Order, prepare and submit to all parties of record for examination and to this Commission for approval, complete detailed final repair plans, consistent with the repairs outlined in the evidence in this proceeding and this order, for the proposed repair of the existing bridge carrying ~~SR 2015~~ SR 1025, including restoration of the concrete on each side of the arch, patching and sealing the underside of the arch, moving the existing barriers to the edge of the bridge and permanently anchoring the existing barriers to the bridge to become a new parapet wall.

Petition at 2.

In a similar vein, PennDOT states that on page 125 of the *March 2019 Order*, the Commission discusses the SR 2017 bridge; however, the accompanying footnote 20 references the SR 1018 bridge rather than the SR 2017 bridge. Thus, PennDOT requests that footnote 20 be modified as follows:

Based on our disposition of Great Bend’s Exception No. 6, herein, NS will be directed to reimburse PennDOT 20%, rather than $300,000, of the costs that PennDOT incurs in removing and replacing the ~~SR 1018~~ SR 2017 bridge.

Petition at 3.

Additionally, PennDOT requests two similar clarifications to Ordering Paragraph Nos. 19 and 60 of the *March 2019 Order*. PennDOT requests that Ordering Paragraph No. 19 be clarified as follows:

19. That Norfolk Southern Railway Company shall provide supplemental services and personnel at no cost to the Pennsylvania Department of Transportation during the Pennsylvania Department of Transportation’s eventual maintenance and/or reconstruction of the SR 1025 Bridge and for future inspections of the bridge.

Petition at 2.

Moreover, PennDOT requests that Ordering Paragraph No. 60 be clarified as follows:

60. That Norfolk Southern Railway Company shall provide supplemental services and personnel at no cost to the Pennsylvania Department of Transportation during the Pennsylvania Department of Transportation’s eventual maintenance and/or reconstruction of the SR 2041 Bridge and for future inspections of the bridge.

Petition at 3.

In its Answer, NS agrees with PennDOT’s requested clarifications. NS Answer at 2.

**b. Disposition**

Upon review, we will make PennDOT’s requested clarifications to the *March 2019 Order*. The first two requested clarifications, above, will resolve unintentional references to incorrect bridge names. Modifying the *March 2019 Order* to contain the correct bridge names is consistent with our discussion and disposition of the issues in this proceeding and does not alter our substantive determinations. *See* *March 2019 Order* at 22, 125, and Ordering Paragraph No. 69 at 156. Similarly, modifying Ordering Paragraph Nos. 19 and 60 to contain the word “and” is consistent with the discussion in our Order that NS will provide supplemental services and personnel at no cost to PennDOT for future inspections of the SR 1025 and the SR 2041 Bridges. The new language adopting PennDOT’s requested clarifications will mirror PennDOT’s suggested language and will be specifically contained in the Ordering Paragraphs of this Opinion and Order.

**III. Conclusion**

Based on our review of the record, the Parties’ positions, and the applicable law, we shall grant PennDOT’s Petition, consistent with the discussion in this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Clarification and Reconsideration filed by the Commonwealth of Pennsylvania, Department of Transportation on March 14, 2019, pertaining to the Order entered on February 28, 2019, is granted, consistent with the discussion in this Opinion and Order.

2. That the following language is removed from page 104 of the Opinion and Order entered on February 28, 2019:

Additionally, in our *January 2018 Secretarial Letter* which affirmed PennDOT's action to close the bridge, we assigned PennDOT, at its initial cost and expense, the responsibilities for furnishing all material and performing all work necessary to close the bridge and to maintain the closure, including signs, fencing, and barricades at the ends of the bridge and approaches thereto. Our records indicate that PennDOT did not object to this initial assignment of work and associated costs by filing a Petition for Reconsideration from Staff Action. Accordingly, the directives in the Secretarial Letter became the final action of the Commission pursuant to 52 Pa. Code § 5.44. We do not find any reason to rescind our prior decision on this issue relating to costs PennDOT has already incurred. Accordingly, this Exception is denied.

3. That Ordering Paragraph Nos. 7, 19, and 60 in the Opinion and Order entered on February 28, 2019, are modified as follows:

7. That Norfolk Southern Railway Company, at its sole cost and expense, within three (3) months of the date of this Order, prepare and submit to all parties of record for examination and to this Commission for approval, complete detailed final repair plans, consistent with the repairs outlined in the evidence in this proceeding and this order, for the proposed repair of the existing bridge carrying SR 1025, including restoration of the concrete on each side of the arch, patching and sealing the underside of the arch, moving the existing barriers to the edge of the bridge and permanently anchoring the existing barriers to the bridge to become a new parapet wall.

19. That Norfolk Southern Railway Company shall provide supplemental services and personnel at no cost to the Pennsylvania Department of Transportation during the Pennsylvania Department of Transportation’s eventual maintenance and/or reconstruction of the SR 1025 Bridge and for future inspections of the bridge.

60. That Norfolk Southern Railway Company shall provide supplemental services and personnel at no cost to the Pennsylvania Department of Transportation during the Pennsylvania Department of Transportation’s eventual maintenance and/or reconstruction of the SR 2041 Bridge and for future inspections of the bridge.

4. That footnote 20 on page 125 in the Opinion and Order entered on February 28, 2019, is modified as follows:

Based on our disposition of Great Bend’s Exception No. 6, herein, NS will be directed to reimburse PennDOT 20%, rather than $300,000, of the costs that PennDOT incurs in removing and replacing the SR 2017 bridge.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: July 11, 2019

ORDER ENTERED: July 11, 2019

1. Penelec filed a Petition to Intervene in the proceeding at Docket No. M‑2013-2364201, because it has facilities in the area of the crossing and the Commission Order could direct it to relocate its facilities. The ALJ granted Penelec’s Petition to Intervene by Order dated March 23, 2015. [↑](#footnote-ref-1)
2. In its Statement 1, PennDOT requested 20% of the cost of the current inspection for the T-821 Bridge, in the amount of $311.67. PennDOT also requested reimbursement for the cost it incurred for the closure of the T-821 Bridge, in the amount of $3,768.14. PennDOT St. 1 at 34-35. [↑](#footnote-ref-2)
3. Rule 341 provides the following, in pertinent part:

   (b) Definition of Final Order.–-A final order is any order that:

   (1) disposes of all claims and of all parties; or

   (2) RESCINDED

   (3) is entered as a final order pursuant to

   paragraph (c) of this rule.

   (c) Determination of finality.—When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim or when multiple parties are involved, the trial court or other government unit may enter a final order as to one or more but fewer than all of the claims and parties only upon an express determination that an immediate appeal would facilitate resolution of the entire case. Such an order becomes appealable when entered. In the absence of such a determination and entry of a final order, any order or other form of decision that adjudicates fewer than all the claims and parties shall not constitute a final order.

   Pa. R.A.P. 341(b),(c). [↑](#footnote-ref-3)