



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

May 20, 2011

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: **Docket No. C-2011-2237486**

Dear Secretary Chiavetta:

Enclosed for filing, please find the original and one copy of the *Answer to Petition for Issuance of an Emergency Order and Request for Expedited Hearing and Supplemental Petition for Protective Order* of the Department of Transportation.

A copy of this attached has been served upon the parties in the Certificate of Service attached to the application.

Very truly yours,


Gina M. D'Alfonso
Assistant Counsel in Charge

Enclosures

220/GMD:gw

cc: Parties of Record
Judge David A. Salapa, Pennsylvania Public Utility Commission
Mark J. Chappell, P.E., Chief, Utilities and Right-of-Way Section
Joseph Strok, Grade Crossing Administrator, Engineering District 4-0
David Elmer, P.E., District Bridge Engineer, Engineering District 4-0
Thomas M. Opalka, Assistant Highway Maintenance Manager, District 4-0
Keith D. Williams, P.E. PTOE, District Traffic Engineer, District 4-0

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

A. EDWARD SCHWARTZ	:	P-2011-2241780
Complainant	:	C-2011-2237486
	:	
v.	:	
	:	Electronically Filed
CANADIAN PACIFIC RAILROAD	:	
LACKAWANNA COUNTY,	:	
La PLUME TOWNSHIP,	:	
COMMONWEALTH OF	:	
PENNSYLVANIA, DEPARTMENT	:	
OF TRANSPORTATION	:	
Respondents	:	

**ANSWER TO PETITION FOR ISSUANCE OF AN EMERGENCY ORDER AND
REQUEST FOR EXPEDITED HEARING**

AND NOW, comes the Commonwealth of Pennsylvania, Department of Transportation (Department), by and through its attorneys, Gina M. D'Alfonso, and Jason D. Sharp, and submits the following in support of its Answer to a Petition for Issuance of an Emergency Order and Request for Expedited Hearing pursuant to 52 Pa C.S. §3.1 *et seq.*;

1. Admitted.
2. Admitted.
3. Denied. The Department is not aware of a "notice issued to respondents on or about May 5, 2001." By way of further answer the Department is aware of a Secretarial Letter issued on May 5, 2001 which allows for, as per 52 Pa C.S. §5.44, the filing of an appeal petition from said letter, with any such appeal petition being due on or about May 31, 2011. 52 Pa. Code § 1.56 (b).
4. Admitted in part and denied in part. It is admitted that a section of parapet on the subject bridge fell onto the railroad tracks below the bridge. The Department is

without sufficient information or knowledge as to determine the exact time of the loss of the parapet and therefore strict proof is demanded at the time of hearing.

5. Admitted in part and denied in part. It is admitted that PennDOT closed the bridge for further investigation as to the integrity of the bridge. PennDOT closed the bridge on May 10, 2011 in the interest of public safety
6. Admitted.
7. Admitted in part and denied in part. It is admitted that the Petitioner's real property is bifurcated by the railroad tracks. It is denied that the "only way to access the far side of the property is over the bridge." By way of further answer, as part of the safety closure of the bridge, the Department has implemented a proper highway detour. 67 Pa. Code § 212.117 (f) and PennDOT Publication 213. See attached Exhibit A, which is a map of the posted detour route.
8. Paragraph eight (¶8) is a conclusion of law to which no response is required. To the extent that a response is warranted, it is denied that PennDOT has any responsibility to provide for any farm or other private crossing for the use of the Petitioner's land.
9. Denied. The Department is without sufficient knowledge or information to determine the day to day operations of the Petitioner's property and business and therefore strict proof is demanded at the time of hearing. It is denied that the bridge is necessary for the Complainant to take delivery of items or for the transportation of his livestock because Complainant has access to SR 4009 and both sections of his land via the posted detour.
10. Admitted in part and denied in part. It is admitted that a section of SR4009 is not paved with bituminous material. It is denied that the road is in "severe" need of repair and maintenance and further denied that PennDOT closes the road in wintertime. By way of further answer, PennDOT provides year round maintenance for SR 4009 while North Abington Township is responsible for snow removal from SR 4009 under contract with PennDOT for the portion of the road in its jurisdiction. It is denied that the Complainant cannot access both sides

of the property given that the Department has implemented a detour pursuant to PennDOT Publication 213. The remainder of the averment is denied as the Department is without sufficient knowledge or information to form an answer to this allegation and therefore strict proof is demanded at the time of hearing.

11. Denied. The Department is without sufficient knowledge or information to form an answer to this allegation and therefore strict proof is demanded at the time of hearing. It is denied that there is no access via SR4009 and it is denied that SR 4009 is "closed" in the winter. The Department incorporates its response to paragraph ten (§ 10) herein.
12. Admitted in part and denied in part. It is admitted that a PennDOT representative stated at the May 12, 2011 field conference that he estimated that it would take two months for engineers to conduct an in-depth investigation of the bridge to determine whether or not the bridge may be reopened. It is denied that PennDOT has made any determination as to whether or not the bridge should be repaired, replaced, or abolished at this time.
13. Denied. The Department incorporates its answers to paragraph seven and ten (§§ 7, 10) herein.
14. Admitted. By way of further answer, the Petitioner's deed attached to its original complaint speaks for itself. By way of further answer, PennDOT is not a party to that deed. Rather, that deed is between the Petitioner's predecessor in title and a prior railroad company.
15. Paragraph fifteenth (§ 15) is a conclusion of law to which no response is required. To the extent that a response is warranted, the averment in the paragraph deals with the Canadian Pacific Railroad (CP) and the Complainant and does not involve PennDOT.
16. Admitted upon information and belief that Complainant has requested that CP provide him with a private at grade crossing to access his property. Upon information and belief, it is PennDOT understanding that CP has not agreed to a private crossing at this time.

17. Denied. PennDOT is without sufficient knowledge or information as to form a response to this averment and therefore it is denied with strict proof being demanded at the time of hearing.
18. Paragraph eighteen (¶ 18) is a conclusion of law to which no response is required to the extent to which a response is warranted, the subject deed speaks for itself.
19. Denied. The Complainant has access over SR4009 to his property and via the subject detour. The Department incorporates its answers to paragraph seven and ten (¶¶ 7, 10) herein.
20. Denied. The Complainant has access to the other side of his property via SR4009 and the subject detour. The Department incorporates its answers to paragraph seven and ten (¶¶ 7, 10) herein.
21. Denied.
22. Denied. The Complainant has access to both portions of his subject property via SR4009 and the subject detour. The Department incorporates its answers to paragraph seven and ten (¶¶ 7, 10) herein.
23. Paragraph twenty three (¶ 23) is a conclusion of law to which no response is required. To the extent that a response is warranted, it is denied. Time is not of the essence as Complainant has access to his property over SR4009 and the subject detour. The Department incorporates its answers to paragraph seven and ten (¶¶ 7, 10) herein. The remainder of the request in paragraph twenty three (¶ 23) is a request for an expedited hearing which PennDOT rejects as this is not an emergency situation as the bridge has been closed for valid safety reasons and a detour has been put in place providing the Complainant with access to both portions of his property.
24. Paragraph twenty four (¶24) is a prayer for relief to which no response is required.

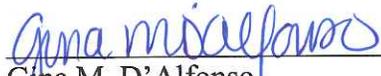
NEW MATTER

25. Paragraphs one (§ 1) through twenty four (§ 24) are incorporated herein as if set forth at length.
26. The Commission must deny this request for emergency relief whether it is treated a request for an issuance of an emergency order or treated as a request for the issuance of interim emergency relief because the Petitioner's right to relief is not clear, the need for relief is not immediate, the injury is not irreparable if relief is not granted and the relief requested is injurious to the public interest.
27. The Petitioner's right to relief is not clear because the petitioner mixes a request for both a public crossing and a private crossing in its emergency petition, and the Commission is without jurisdiction to grant a private crossing access.
28. The Petitioner's right to relief is not clear where he has not demonstrated that a crossing at the subject location is necessary where it currently has access to SR4009 and can access the other portion of its property via a roadway detour.
29. Petitioner's right to relief is not immediate because petitioner has access to the other side of its property via SR4009 and a roadway detour.
30. The petitioner's requested need for relief is not immediate because he has access to both sections of his property via SR 4009 and the highway detour.
31. The petitioner's requested need for relief is not immediate because his request for a public at grade crossing would require the construction of an at grade crossing over the subject rail line, possibly over double track section of CP's line, in addition to the relocation of significant portions of SR 4009 onto property not currently owned by PennDOT or previously appropriated by the Public Utility Commission. Therefore, the requested relief, even assuming it is immediate, which is not admitted, cannot be addressed by a temporary at-grade crossing.
32. The petitioner's injury will not be irreparable if relief is not granted because the petitioner has not suffered any injury where it continues to have access to its property via SR4009 and the highway detour.

33. The relief requested is injurious to the public interest as it would require the Department to expend significant public funding to create a temporary at grade crossing essentially to service one property owner to access portions of their property which are already accessible via SR4009 and a posted highway detour.
34. The Commission must deny the subject request for emergency relief because it does not present “a situation which presents a clear and present danger to life or property.”
35. As opposed to a true emergency, Petitioner’s request does not concern a clear or present danger to life or property but rather represents an inconvenience at best to the petitioner for purposes of travel from one side of his property to another. Additionally, petitioner has full access to his property over SR4009 and the highway detour and is therefore not injured by the closure of the bridge.
36. Any request for relief based on concerns over access during winter maintenance months is premature at this time given that it is May and summer is approaching. Rendering any emergency order based on access during the winter months is premature and therefore not an emergency.
37. To the extent that the Commission will entertain any testimony or argument related to winter related issues as part of the Petitioner’s request for emergency relief, North Abington Township must be joined as a party to this proceeding as it has winter maintenance responsibility for a segment of S.R, 4009.

WHEREFORE, PennDOT respectfully requests that the Commission deny this request for an emergency order.

Respectfully submitted,



Gina M. D'Alfonso
Assistant Counsel in Charge
Pennsylvania Attorney I.D. Number 46767

Jason D. Sharp
Assistant Counsel
Pennsylvania Attorney I.D. Number 80488

Commonwealth of Pennsylvania
Department of Transportation
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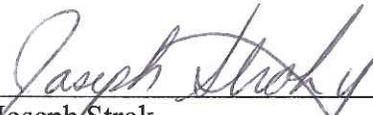
DATED: May 20, 2011

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

A. EDWARD SCHWARTZ	:	Complaint Docket
Complainant	:	No: C-2011-2237486
	:	
v.	:	
	:	Electronically Filed
CANADIAN PACIFIC RAILROAD	:	
LACKAWANNA COUNTY,	:	
La PLUME TOWNSHIP,	:	
COMMONWEALTH OF	:	
PENNSYLVANIA, DEPARTMENT	:	
OF TRANSPORTATION	:	
Respondents	:	

VERIFICATION

I, Joseph Strok, District Grade Crossing Administrator, Commonwealth of Pennsylvania, Department of Transportation, in the foregoing document, 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 Grade Crossing Administrator for the Commonwealth of Pennsylvania, Department of Transportation, I am authorized to make this statement on behalf of the Commonwealth of Pennsylvania, Department of Transportation, and that the facts set forth in the foregoing document are true and correct to the best of my information, knowledge and belief.



Joseph Strok
District Grade Crossing Administrator

DATED: 5/20/11

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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COMMONWEALTH OF	:	
PENNSYLVANIA, DEPARTMENT	:	
OF TRANSPORTATION	:	
Respondents	:	

VERIFICATION

I, David Elmer, P.E., District Bridge Engineer, Commonwealth of Pennsylvania, Department of Transportation, in the foregoing document, 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 District Bridge Engineer for the Commonwealth of Pennsylvania, Department of Transportation, I am authorized to make this statement on behalf of the Commonwealth of Pennsylvania, Department of Transportation, and that the facts set forth in the foregoing document are true and correct to the best of my information, knowledge and belief.

David K. Elmer, PE
David Elmer, P.E.
District Bridge Engineer

DATED: May 18, 2011

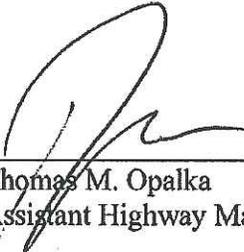
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COMMONWEALTH OF	:	
PENNSYLVANIA, DEPARTMENT	:	
OF TRANSPORTATION	:	
Respondents	:	

VERIFICATION

I, Thomas M. Opalka, Assistant Highway Maintenance Manager, Commonwealth of Pennsylvania, Department of Transportation, in the foregoing document, 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 Assistant Highway Maintenance Manager for the Commonwealth of Pennsylvania, Department of Transportation, I am authorized to make this statement on behalf of the Commonwealth of Pennsylvania, Department of Transportation, and that the facts set forth in the foregoing document are true and correct to the best of my information, knowledge and belief.

DATED: 5/18/2011



Thomas M. Opalka
Assistant Highway Maintenance Manager

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

A. EDWARD SCHWARTZ
Complainant

: Complaint Docket
: No: C-2011-2237486
:

v.

: Electronically Filed
:

CANADIAN PACIFIC RAILROAD
LACKAWANNA COUNTY,
La PLUME TOWNSHIP,
COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT
OF TRANSPORTATION
Respondents

VERIFICATION

I, Keith D. Williams, P.E., PTOE District Traffic Engineer, Commonwealth of Pennsylvania, Department of Transportation, in the foregoing document, 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 District Traffic Engineer for the Commonwealth of Pennsylvania, Department of Transportation, I am authorized to make this statement on behalf of the Commonwealth of Pennsylvania, Department of Transportation, and that the facts set forth in the foregoing document are true and correct to the best of my information, knowledge and belief.



Keith D. Williams, P.E., PTOE
District Traffic Engineer

DATED: 05-18-2011

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

A. EDWARD SCHWARTZ	:	P-2011-2241780
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	:	
v.	:	
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LACKAWANNA COUNTY,	:	
La PLUME TOWNSHIP,	:	
COMMONWEALTH OF	:	
PENNSYLVANIA, DEPARTMENT	:	
OF TRANSPORTATION	:	
Respondents	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the *Answer and New Matter* was served upon the parties below by first-class mail; postage prepaid this 20th day of May, 2011:

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Factoryville, PA 18419

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Representing A. Edward Schwartz

Robert Browning, Esquire
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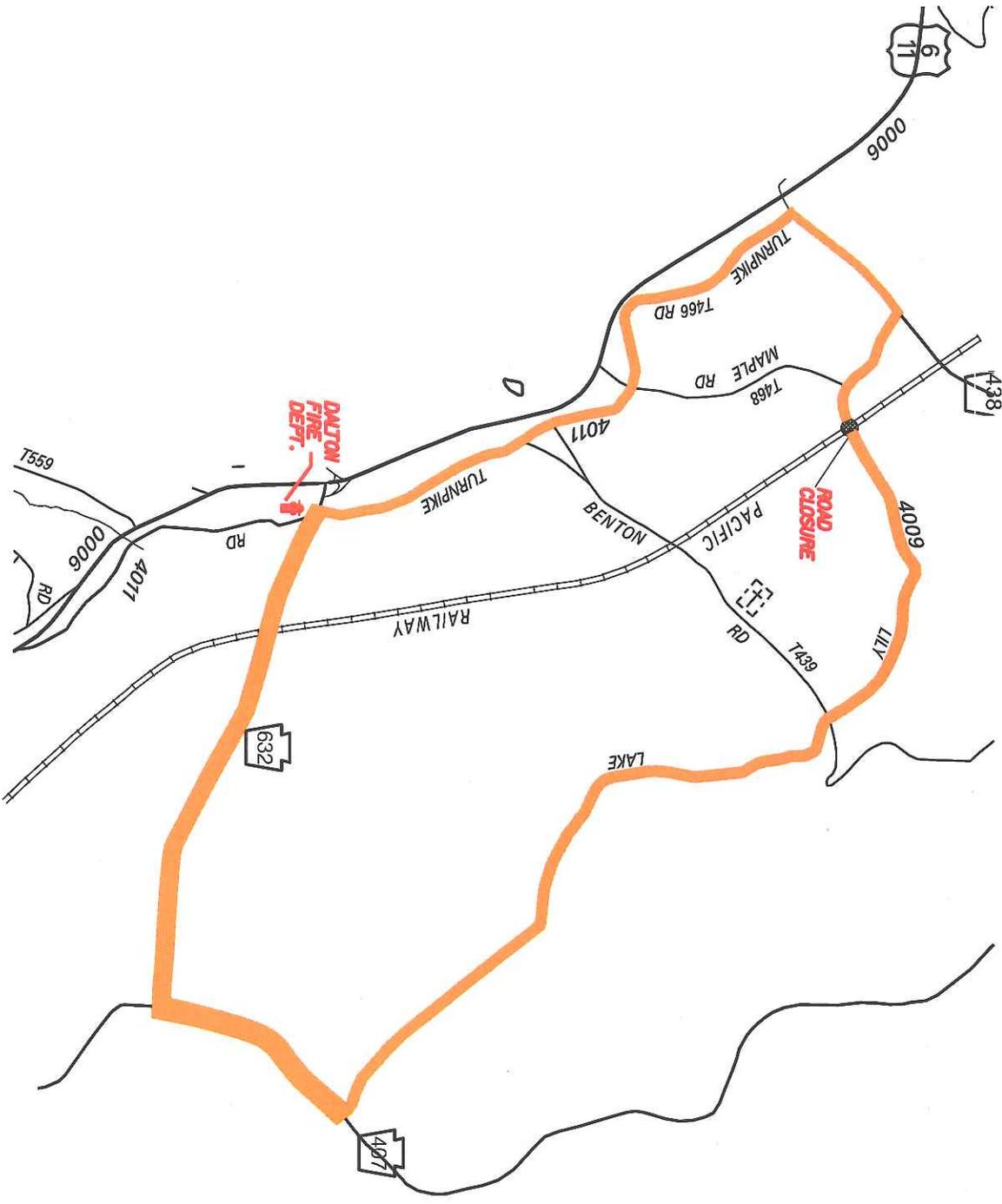
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Harrisburg, AP 17101-1923

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



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Assistant Counsel in Charge
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105-8212
Telephone No. (717) 787-3128

DATED: May 20, 2011



DETOUR ROUTE
 DETOUR DISTANCE
 FIRE HOUSE DIST USING PA 438
 FIRE HOUSE DIST USING BENTON RD
 FIRE HOUSE DIST USING PA 632

8 MILES
 3 MILES
 3 MILES
 5 MILES

EXHIBIT A