

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**A. Edward Schwartz,**

**Docket Nos. P-2011-2241780**

**C-2011-2237486**

**Complainant,**

**v.**

**Delaware & Hudson Railway Company,  
Inc. d/b/a Canadian Pacific, and  
Pennsylvania Department of  
Transportation,**

**Respondents.**

**EXCEPTIONS OF DELAWARE AND HUDSON RAILWAY COMPANY, INC.  
d/b/a CANADIAN PACIFIC AND REQUEST FOR LEAVE TO FILE FURTHER  
EXCEPTIONS**

Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific (“the Railroad”), through its attorneys, Oliver, Price & Rhodes, now files the following Exceptions to the Initial Decision of Administrative Law Judge David A. Salapa (ALJ) and states as follows:

1. Counsel for the Railroad did not receive, either electronically or through United States Mail, a copy of the August 14, 2013 Recommended Decision.
2. Counsel received service of exceptions to that Recommended Decision in the afternoon of September 3, 2013 at approximately 3:30 p.m..
3. At that point, counsel checked the PUC docket and for the first time realized that the Recommended Decision had issued on August 14, 2013.

4. Counsel offers the following general exceptions and seeks leave to file exceptions in further detail upon full review of the Recommended Decision.
5. The Railroad files exceptions to Ordering Paragraphs 2, 5, 6, 7, 9, 10.
6. Ordering Paragraph 2 does not state allocation without prejudice per page 23:

For all the above reasons, DOT and the Railroad should share the costs of the work performed by DOT. Such an allocation is just and reasonable and supported by evidence in the record. Since the Railroad and DOT disagree over whether their cooperation agreement applies to these costs, this allocation will be without prejudice to their rights to enforce such obligations upon or seek reimbursement from others pursuant to any applicable law or lawful agreement. Consolidated Rail Corp. v. City of Harrisburg, 842 A.2d 369 (Pa. 2004).

7. Ordering Paragraph 5 does not state allocation without prejudice per page 25:

For the above reasons, DOT should inspect and maintain the existing structure carrying S.R. 4009 over the Railroad's facilities and the Railroad should reimburse DOT a portion of the costs it incurs for inspection and maintenance. This assignment of responsibilities and allocation of costs is just and reasonable and supported by evidence in the record. Since the Railroad and DOT disagree over whether their cooperation agreement applies to these responsibilities and costs, this allocation will be without prejudice to their rights to enforce such obligations upon or seek reimbursement from others pursuant to any applicable law or lawful agreement. Consolidated Rail Corp. v. City of Harrisburg, 842 A.2d 369 (Pa. 2004).

8. Ordering Paragraphs 6 & 7 do not state allocation without prejudice per page 25:

For the above reasons, DOT should inspect and maintain the existing structure carrying S.R. 4009 over the Railroad's facilities and the Railroad should

reimburse DOT a portion of the costs it incurs for inspection and maintenance. This assignment of responsibilities and allocation of costs is just and reasonable and supported by evidence in the record. Since the Railroad and DOT disagree over whether their cooperation agreement applies to these responsibilities and costs, this allocation will be without prejudice to their rights to enforce such obligations upon or seek reimbursement from others pursuant to any applicable law or lawful agreement. Consolidated Rail Corp. v. City of Harrisburg, 842 A.2d 369 (Pa. 2004).

WHEREFORE, the Railroad, based upon the foregoing, respectfully requests that the PUC grant its exceptions to the Recommended Decision of August 14, 2013 and further allow the Railroad leave to file further detailed exceptions.

Dated: September 3, 2013

Respectfully submitted,

s/ Erin A. Brennan  
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## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 relating to service by a party.

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Dated this 3d day of September, 2013.

s/ Erin A. Brennan  
(Signature)