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Of Counsel
Paul D. Horger
Robert P. Browning
Dorance R. Belin

September 13, 2013

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

*RE: A. Edward Schwartz v. Delaware and Hudson Railway Company, et al.
Docket No. 's P-2011-2241780 and C-2011-2237486*

Dear Secretary Chiavetta:

Enclosed herewith is a copy of your correspondence dated September 9, 2013 along with the corrected documents.

If you require anything further, please do not hesitate to contact me.

Very truly yours,

OLIVER, PRICE & RHODES

Erin A. Brennan
Erin A. Brennan

EAB/meb
Enclosure

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2013 SEP 06 AM 10:42

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September 3, 2013

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

Of Counsel
Paul D. Horger
Robert P. Browning
Dorance R. Belin

RE: Docket No. 's P-2011-2241780 and C-2011-2237486

Dear Secretary Chiavetta:

Enclosed for filing please find the RAILROAD'S EXCEPTIONS TO THE RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE ISSUED AUGUST 14, 2013, in the above-captioned matter.

I hereby certify that a copy has been sent to all parties of record as indicated by the Certificate of Service.

Very truly yours,

OLIVER, PRICE & RHODES


Erin A. Brennan

EAB/jlk

Enclosure

Cc: Parties of Record

**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.

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**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,

 09/13/2013
s/ Erin A. Brennan

Erin A. Brennan
Joseph A. O'Brien, Esq.
Oliver Price & Rhodes
P.O. Box 240
Clarks Summit, PA 18411
Telephone: (570) 585-1200
Attorneys for Delaware and Hudson
Railway Company, Inc.
d/b/a Canadian Pacific

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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Adam Young, Assistant Counsel
Pennsylvania Public Utility Commission
Bureau of Inspection and Enforcement
P.O. Box 3265
Harrisburg, PA 17105

Dated this 3d day of September, 2013.


s/ Erin A. Brennan
(Signature)

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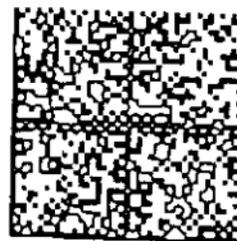
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