



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

September 30, 2013

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

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

Dear Secretary Chiavetta:

Enclosed for filing please find the Department's *Exceptions to the Recommended Decision of Administrative Law Judge Issued August 14, 2013 and Reserved September 10, 2013*, in the above-captioned matter. There have been no changes to the Exceptions.

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

Very truly yours,

A handwritten signature in blue ink that reads "Gina M. D'Alfonso".

Gina M. D'Alfonso
Assistant Counsel in Charge

Enclosure

220/GMD:aca

cc: Parties of Record
Debbie Noone, Assistant District Executive, District 4-0
Gerard Babinski, Senior Civil Engineer Supervisor, District 4-0
Joseph Strok, District Grade Crossing Administrator, District 4-0

**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	:	

**EXCEPTIONS OF THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT
OF TRANSPORTATION TO THE RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE ISSUED AUGUST 14, 2013 AND RESERVED
SEPTEMBER 10, 2013**

AND NOW, comes the Commonwealth of Pennsylvania, Department of Transportation (“Department”), by and through its counsel, Gina M. D’Alfonso, and offers the following Exceptions to the Recommended Decision issued by Administrative Law Judge David A. Salapa (“ALJ”) on August 14, 2013 and reserved September 10, 2013:

1. The Department excepts to Ordering Paragraph 5 only to the extent that it does not require the Delaware and Hudson Railway Company (“Railroad”) to bear its own costs during the inspection of the structure in addition to the local share of inspection costs as well as when the Department is performing any required maintenance of the structure. It would be just and reasonable to do so since the ALJ has recommended that the Railroad bear 80% of the maintenance cost and the local share (20%) of the inspection costs. It would not be just and reasonable to have the taxpayers bear any

portion of the Railroad's costs. The Department requests that Ordering Paragraph 5 be modified as follows (modification is underlined):

5. That the Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific Railroad shall bear all of its costs and shall reimburse the Pennsylvania Department of Transportation for 20% of the costs of the inspection and 80% of the costs of maintenance the Pennsylvania Department of Transportation incurs inspecting and maintaining the bridge carrying S.R. 4009 over the facilities of the Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific Railroad, located in LaPlume Township, Lackawanna County.

2. The Department excepts to Ordering Paragraph 6 only to the extent that it does not require the Railroad to include the construction of cul-de-sacs at both ends of the bridge in accordance with the then current Department standards for cul-de-sacs. Without the cul-de-sacs vehicles will not have the ability to turn around in a safe manner. The lack of cul-de-sacs would be especially problematic for the vehicles performing maintenance or snow removal on the road. The Railroad should be ordered to include the design of cul-de-sacs as described above in the demolition plan at its sole cost and expense. The Department requests that Ordering Paragraph 6 be modified as follows (modification is underlined):

6. That the Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific Railroad, at its sole cost and expense, within twelve (12) months of the date of the Pennsylvania Public Utility Commission Order entered in this matter prepare and submit to the Pennsylvania Department of Transportation, LaPlume Township and Lackawanna County for examination and review and to the Pennsylvania Public Utility Commission for approval, complete detailed final demolition plans for the removal of the bridge carrying S.R. 4009, including the abutments and retaining walls, over its facilities as well as the construction of cul-de-sacs on both approaches, located in LaPlume Township, Lackawanna County.

3. The Department excepts to Order Paragraph 7 only to the extent that it does not require the Railroad to construct the cul-de-sacs, including the acquisition of all necessary right of way, at its sole cost and expense, for the reasons set forth above in Exception 2. The Department requests that Ordering Paragraph 7 be modified as follows (modification is underlined):

7. That the Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific Railroad at its sole cost and expense, within twelve (12) months from the date that the Pennsylvania Public Utility Commission approves its submitted demolition plans, shall furnish all materials and do all work necessary to demolish and remove the bridge carrying S.R. 4009 over its facilities, including the abutments and retaining walls and the construction of cul-de-sacs on both approaches, in accordance with the approved plans.

WHEREFORE, the Department of Transportation, based upon the foregoing, respectfully requested that the Pennsylvania Public Utility Commission grant its Exceptions to the Recommended Decision issued on August 14, 2013, reserved September 10, 2013.

Respectfully Submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



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Commonwealth of Pennsylvania
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DATED: September 30, 2013

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Department's *Exceptions to the Recommended Decision of Administrative Law Judge Issued August 14, 2013* was served upon the parties below by E-mail and First-Class mail; postage prepaid this 30th day of September, 2013:

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



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DATED: September 30, 2013