

**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**

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 Recommended Decision ("Decision") of Administrative Law Judge David A. Salapa (ALJ Salapa) and states as follows:

1. The Railroad objects to Ordering Paragraph 2 which directs the Railroad to reimburse the Pennsylvania Department of Transportation (the "Department") \$ 239,238.50 for work that the Department performed pursuant to an August 3, 2012 Order issued by the Pennsylvania Utility Commission ("PUC"). This conclusion is not supported by the Decision in which ALJ Salapa reasons that: (a) both the Railroad and the Department "benefit from the continued existence of the grade-separated crossing" (Decision at 22);

(b) both the Railroad and the Department “benefit from the crossing being repaired” (Decision at 22); and (c) both the Railroad and the Department failed to perform any meaningful repairs to or maintenance of the structure (Decision at 23). Based on these identified reasons ALJ Salapa ultimately concluded that the Department and the Railroad “should share the costs of the work performed by the” Department. (Decision at 23). Nonetheless, the Decision allocates a disproportionate share of the Department’s costs to the Railroad. ALJ Salapa’s Decision, moreover, ignores well-settled Pennsylvania law that upon completion of construction of a bridge carrying a road over railroad tracks, the road authority owns and is responsible for maintenance of the bridge. *See, e.g., City of Philadelphia v. Consol. Rail Corp.*, 560 Pa. 587, 591-93, 747 A.2d 352, 354 (2000); *Schlosser v. Manor Township*, 293 Pa. 315, 318, 142 A. 322, 322 (1928); *Rapho and W. Hempfield Townships v. Moore*, 68 Pa. 404 (1871). For these reasons, allocation of \$239,238.50 to the Railroad is inequitable, arbitrary, inconsistent and unjust. The Railroad therefore requests that these costs be allocated solely to the Department.

2. The Railroad objects to Ordering Paragraph 5 which directs the Railroad to reimburse the Department for 20% of the costs of inspection and 80% of the costs of maintenance the Department will incur in the future for the bridge carrying S.R. 4009 over the Railroad facilities. The allocation stated in this Ordering Paragraph is inconsistent with the language of the Decision which states that: (a) both parties benefit from the continued existence of the grade-separated crossing; and (b) both parties bear some responsibility for the deteriorated condition of the crossing. (Decision at 25). The recommended allocation also ignores the maintenance responsibilities attendant with the Department’s ownership of the bridge by operation of Pennsylvania law. Accordingly, ALJ Salapa’s

recommended cost allocation is inequitable, arbitrary, inconsistent and unjust. The Railroad requests that the costs of future inspection and maintenance be borne solely by the Department.

3. The Railroad objects to Ordering Paragraph 6 which directs the Railroad, “at its sole cost and expense,” to complete detailed final demolition plans for the removal of the bridge within 12 months of the disposition of this matter. The allocation of costs stated in this Ordering Paragraph is inconsistent with the language of the Decision which states that “the Railroad and DOT both bear some responsibility for the deteriorated condition of the crossing, which has led to the need to remove the bridge” (Decision at 35) and “both parties will benefit from the removal of the bridge.” (Decision at 35). As with the recommended allocation of past and future maintenance and inspection costs, the Decision also ignores the Department’s ownership of the bridge. Accordingly, a cost allocation attributing 100% of the costs of the demolition plans to the Railroad is inequitable, arbitrary, inconsistent and unjust. The Railroad thus requests that the costs associated with the demolition plans be allocated solely to the Department. The Railroad further objects to Ordering Paragraph 6 to the extent that it requires submission of final demolition plans within twelve (12) months of the date of the PUC Order entered in this matter. This timeline is inconsistent with the language of the Decision which establishes that: (a) “the bridge at the crossing is capable of carrying the posted loads and is not in danger of immediate collapse” (Decision at 30); (b) “the bridge does not need to be replaced immediately” (Decision at 30); and (c) “it is clear that while the bridge can safely carry the posted loads, it will not be able to do so indefinitely.” (Decision at 31). There is no support for the imposition of an arbitrary 12 month timeline for submission of

demolition plans. The Railroad requests that any submission of demolition plans be delayed until such time as it is actually determined that the bridge has become impaired to a point which requires removal.

4. The Railroad objects to Ordering Paragraph 7 which requires the Railroad, “at its sole cost and expense”, to demolish and remove the Bridge within 12 months of PUC approval of its submitted demolition plans. The allocation of costs stated in this Ordering Paragraph is inconsistent with the language of the Decision which states that “the Railroad and DOT both bear some responsibility for the deteriorated condition of the crossing, which has led to the need to remove the bridge” (Decision at 35) and “both parties will benefit from the removal of the bridge.” (Decision at 35). Moreover, the Decision ignores the Department’s ownership of the bridge. Accordingly, a cost allocation attributing 100% of the costs of the demolition of the bridge to the Railroad is inequitable, arbitrary, inconsistent and unjust. The Railroad requests that the costs associated with the demolition and removal be allocated solely to the Department. The Railroad further objects to Ordering Paragraph 7 to the extent that it requires removal of the bridge to be accomplished within twelve (12) months of the PUC approval of demolition plans. This timeline is inconsistent with the language of the Decision which establishes that: (a) “the bridge at the crossing is capable of carrying the posted loads and is not in danger of immediate collapse” (Decision at 30); (b) “the bridge does not need to be replaced immediately” (Decision at 30); and (c) “it is clear that while the bridge can safely carry the posted loads, it will not be able to do so indefinitely.” (Decision at 31). There is no support for the imposition of an arbitrary 12 month timeline for demolition and removal after approval of demolition plans. The Railroad requests that the

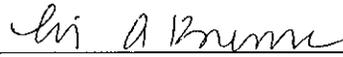
demolition and removal of the bridge be delayed until it is actually determined that the bridge has become impaired to a point which requires removal.

5. Finally, the Railroad objects to Ordering Paragraphs 9 and 10 to the extent that they impose responsibilities on the Railroad that are inconsistent with the Railroad's exceptions to Ordering Paragraphs 6 and 7.

WHEREFORE, the Railroad, based upon the foregoing, respectfully requests that the PUC grant its exceptions to the Recommended Decision of August 14, 2013.

Dated: September 30, 2013

Respectfully submitted,



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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 30th day of September, 2013.



(Signature)