

WRIGHT & REIHNER<sup>PC</sup>  
ATTORNEYS AT LAW

[djgromelski@wrightreihner.com](mailto:djgromelski@wrightreihner.com)

May 5, 2014

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SECRETARY'S BUREAU

**VIA FIRST CLASS MAIL**

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

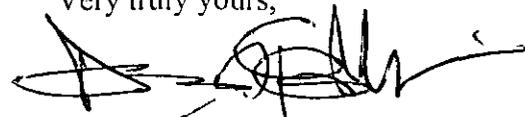
**Re: Pawlukovich v. Canadian Pacific Railway, et al.**  
**No. C-2012-2332909**

Dear Secretary Chiavetta:

Enclosed please find an original and one (1) copy of a Petition for Reconsideration regarding the above referenced matter. Please file the original and return to me the extra time stamped copy in the self addressed stamped envelope enclosed for your convenience.

Should you have any questions, do not hesitate to contact me.

Very truly yours,



David J. Gromelski

DJG/ab

Enclosures

cc: PUC, Office of Trial Staff (w/ encl.)  
PUC, Office of Small Business Advocate (w/ encl.)  
PUC, Office of Consumer Advocate (w/ encl.)  
All Counsel of Record (w/ encl.)



COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

Robert Pawlukovich :  
 :  
 v. :  
 :  
 Canadian Pacific Railroad in Benton : No. C-2012-2332909  
 Township, Lackawanna County :  
 :  
 and :  
 :  
 Application of Delaware and Hudson :  
 Railway Company, Inc. d/b/a Canadian :  
 Pacific (CP) for approval of the abolition of :  
 the crossing (DOT 265 847 P) where :  
 Reynolds Road (Township Road 532) : No. A-2013-2384795  
 Crosses above grade the tracks of CP at :  
 Milepost 657.22, located in Benton :  
 Township :

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**PETITION FOR RECONSIDERATION**

The Township of Benton, Lackawanna County (“Benton Township”) hereby files, pursuant to 52 Pa. Code § 5.44, the instant Petition for Reconsideration and, in support thereof, states as follows:

1. Benton Township is a Township of the Second Class duly organized and existing under the laws of the Commonwealth of Pennsylvania with an address of P.O. Box 29, Fleetville, Pennsylvania.
2. Benton Township seeks reconsideration of an action taken by Secretary Rosemary Chiavetta dated April 17, 2014, a true and correct copy of which is attached hereto as Exhibit “A” (“Action”).

3. The Action requires, among other things, Benton Township to construct and maintain cul-de-sacs at the terminus of Township Road 532 resulting from Canadian Pacific's abolishment of crossing DOT 265 847 P where Township Road 532 crosses above grade its tracks at Mile Post 657.22 in Benton Township, Lackawanna County.

4. Benton Township seeks reconsideration specifically with respect to paragraph 12 of the Action which states as follows:

"12. Canadian Pacific Railway and Benton Township, pay all compensation for damages; if any, due to owners of property taken, injured or destroyed by its respective work in accordance with this letter"

See Exhibit A, paragraph 12.

5. Benton Township believes that the language of paragraph 12 is not clear and is confusing with respect to liability for property damage of Benton Township and Canadian Pacific for the work required to be performed by the Action.

6. To clarify the liability of Benton Township and Canadian Pacific for property damages, Benton Township requests that paragraph 12 of the Action be deleted and replaced with the following language:

12. Canadian Pacific Railway pay all compensation for damages, if any, due to owners of property taken, injured or destroyed by its work in accordance with paragraphs 5, 6 and 13 of this letter. Benton Township pay all compensation for damages, if any, due to owners of property taken, injured or destroyed by its work in accordance with paragraphs 7, 8 and 14 of this letter.

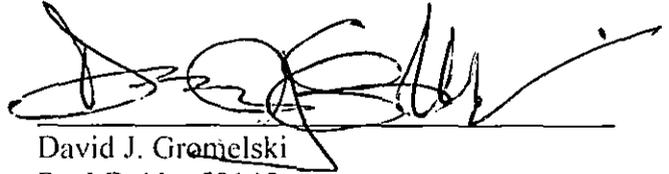
7. By replacing paragraph 12 of the Action with the language set forth above the liability for property damages with respect to Benton Township and Canadian Pacific is clear.

WHEREFORE, Benton Township respectfully request that the Commission grant its Petition for Reconsideration and revise its Action of April 17, 2014 with respect to the liability of Canadian Pacific and Benton Township as set forth above.

Respectfully submitted,

**WRIGHT & REIHNER, P.C.**

By:



David J. Granielski  
Pa. I.D. No. 58145  
148 Adams Avenue  
Scranton, PA 18503  
(570) 961-1166  
(570) 961-1199 – fax

Dated: May 5, 2014

Attorneys for Benton Township

**ATTORNEY VERIFICATION**

I, David J. Gromelski, Solicitor to Benton Township, hereby state that the facts set forth in the instant Petition for Reconsideration are true and correct to the best of my knowledge, information and belief and Benton Township expects to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



David J. Gromelski

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# EXHIBIT "A"



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

April 17, 2014

TO ALL PARTIES

C-2012-2332909 – Robert Pawlukovich v. Canadian Pacific Railroad in Benton Township, Lackawanna County.

A-2013-2384795 - Application of Delaware and Hudson Railway Company Inc. d/b/a Canadian Pacific (CP) for approval of the abolition of the crossing (DOT 265 847 P) where Reynolds Road (Township Road 532) crosses above grade the tracks of CP at Milepost 657.22, located in Benton Township in Lackawanna County.

To Whom It May Concern:

At a location in Benton Township, Lackawanna County, Reynolds Road (T-532) crosses, above grade, the tracks of Canadian Pacific (CP) (Delaware and Hudson Railway Company Inc.).

By complaint filed October 24, 2012, Robert Pawlukovich stated that the subject bridge is in “poor repair” the complaint states the bridge should be repaired, replaced or removed.

A field investigation and conference was held at the site of the crossing on November 8, 2012 and was attended by representatives from Pennsylvania Department of Transportation, Canadian Pacific Railway, Benton Township and Robert Pawlukovich.

At the field conference it was noted that Pennsylvania Department of Transportation had already taken action to close the bridge to all vehicular and pedestrian traffic due to the severe deterioration of the bridge. CP acknowledged maintenance responsibilities of the subject structure. All parties agreed to the permanent closing of the bridge, the bridge removal and abolition of the crossing.

By application filed September 25, 2013, Canadian Pacific requested the abolition of the crossing. CP will assume the cost of the demolition of the bridge structure at total cost estimate of \$50,000. By letter dated September 13, 2013, and attached to the application (Exhibit 1), Benton Township agreed to assume the cost of constructing cul-de-sac turnarounds as deemed necessary and maintaining of signage on both sides of the crossing.

A second field investigation was held October 22, 2013 and was attended by representatives of Pennsylvania Department of Transportation, Canadian Pacific, Benton Township, Norfolk Southern Railway Company and Robert Pawlukovich.

Although notified by letter dated October 9, 2013, no representatives from Lackawanna County attended the field conference.

At the field conference, all parties agreed to CP's application. Benton Township stated it would develop plans for providing cul-de-sacs for the terminus of the township road as deemed necessary. It does not appear that any facilities of any non-carrier public utility will be affected by the abolition of the crossing.

The Commission issues this Secretarial Letter in accordance with Section 2702 of the Public Utility Code and finds that the abolition of the subject crossing is necessary and proper for the service, accommodation, convenience or safety of the public; THEREFORE,

The application of Canadian Pacific Railway is approved as herein directed:

1. The grade separated crossing listed herein, located in Benton Township, Lackawanna County, be abolished upon completion of the work herein directed.
2. Norfolk Southern Railway Company be made party to this proceeding.
3. The action taken by Pennsylvania Department of Transportation to close the bridge to all vehicular and pedestrian traffic be and is hereby affirmed.
4. Benton Township maintains any barricades, fencing, and signage installed to prevent vehicular and pedestrian traffic to the bridge until its removal.
5. Canadian Pacific Railway, at its sole cost and expense, within sixty (60) days of the date of service of this Secretarial Letter, prepare and submit to all parties of record for review and this Commission for approval, a set of demolition plans for the removal of the structure carrying Reynolds Road above the grade of Canadian Pacific in Benton Township, Lackawanna County.
6. Canadian Pacific Railway, at its sole cost and expense, upon Commission approval of the final demolition plans and within nine (9) months from the plan approval, furnish all materials and do all work necessary to remove the structure in its entirety, all in accordance with the approved final construction plans and this Secretarial Letter.

7. Benton Township, at its sole cost and expense, within sixty (60) days of the date of this Secretarial letter, prepare and submit to all parties of record for review and this Commission for approval, a set of highway plans for construction of cul-de-sacs at the terminus of the township roadway as deemed necessary.

8. Benton Township, at its sole cost and expense, within nine (9) months upon Commission approval of the final highway plans, furnish all materials and do all work necessary to construct cul-de-sacs at the terminus of the township roadway as deemed necessary.

9. Any relocation of, changes in and/or removal of any adjacent structures, equipment or other facilities of any public utility, which may be required as incidental to the abolition of the crossing be made by said public utility at its sole cost and expense and in such a manner as will not interfere with the alteration and abolition of the crossing; and such relocated or altered facilities thereafter be maintained by said public utility, at its sole cost and expense.

10. Canadian Pacific Railway and Brenton Township provide at least fourteen (14) days advance notice of the start of its respective work to abolish the crossing to each party involved in this proceeding.

11. All parties involved herein cooperate fully with each other so that during the time the work is being performed, vehicular, pedestrian and railroad traffic will not be endangered or unnecessarily inconvenienced, and so that the requirements of each of the parties will be provided for and accommodated insofar as possible.

12. Canadian Pacific Railway and Benton Township, pay all compensation for damages, if any, due to owners of property taken, injured or destroyed by its respective work in accordance with this letter.

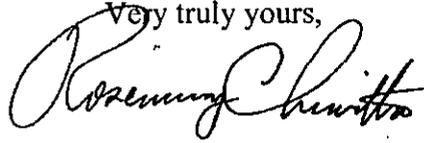
13. Upon completion of the abolition of the crossing, Canadian Pacific Railway, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain its railroad facilities at the site of the former crossing.

14. Upon completion of the abolition of the subject crossing, Benton Township, at its sole cost and expense, furnish all material and do all work necessary to maintain the highway facilities on both approaches to the former crossing.

The Parties are reminded that failure to comply with this or any Order or Secretarial Letter in this proceeding may result in an enforcement action seeking civil penalties and/or other sanctions pursuant to 66 Pa. C.S. § 3301.

If you are dissatisfied with the resolution of this matter, you may, as set forth in 52 Pa. Code § 5.44, file a petition with the Commission within twenty (20) days of the date of this letter.

Very truly yours,

A handwritten signature in cursive script, reading "Rosemary Chiavetta". The signature is written in black ink and is positioned above the printed name and title.

Rosemary Chiavetta  
Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that I have caused to be served this day a true and correct copy of the foregoing Petition for Reconsideration on all counsel of record via first class mail addressed as follows:

Robert Pawlukovich  
Reynolds Road  
RR 2 Box 2560  
Factoryville, PA 18419

Public Utility Commission  
Office of Trial Staff  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Erin A. Brennan, Esquire  
Oliver, Price & Rhodes  
P.O. Box 240  
Clarks Summit, PA 18411

Public Utility Commission  
Office of Consumer Advocate  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Gerard M. Karam, Esquire  
Lackawanna County  
200 Adams Avenue  
Scranton, PA 18503

Public Utility Commission  
Office of Small Business Advocate  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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Gina M. D'Alfonso, Assistant Counsel in Charge  
Commonwealth of Pennsylvania  
Office of Chief Counsel  
Real Property Division  
P.O. Box 8212  
Harrisburg, PA 17105-8212



David J. Gromelski

Dated: May 5, 2014

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**WRIGHT & REIHNER PC**  
ATTORNEYS AT LAW

148 ADAMS AVENUE  
SCRANTON, PA 18503

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

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From:

WRIGHT & REIHNER PC  
148 ADAMS AVE  
SCRANTON PA 18503

SCRANTON, PA 18503  
MAY -5 2014

To: Rosemary Chiavetta, Secretary  
Public Utility Commission  
P.O. BOX 3265  
Harrisburg, PA 17105-3265