

**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.

**REPLY OF DELAWARE AND HUDSON RAILWAY COMPANY, INC. TO
COMPLAINANT'S PETITION FOR RECONSIDERATION OF DEMOLITION PLAN**

INTRODUCTION

Pursuant to Ordering Paragraph 10 of the Commission's December 5, 2013 Order in the above matter, Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific ("D&H") submitted complete detailed final demolition plans for the removal of the bridge carrying S.R. 4009, including the abutments and retaining walls, over its facilities located in LaPlume Township, Lackawanna County. By Secretarial Letter dated December 22, 2014, the Commission approved the plans as submitted. In his Petition for Reconsideration, Complainant A. Edward Schwartz now seeks to expand the scope of the 2013 Order to require D&H to install cul-de-sacs and pave, widen, maintain, and otherwise improve S.R. 4009. Not only does this request far exceed any responsibility D&H has with respect to the roadway, but the request is also untimely. The plans as approved are fully compliant with the 2013 Order and, accordingly, the Commission should deny the Petition in all respects.

ARGUMENT

In the 2013 Order, the Commission denied Exceptions to ALJ Salapa's Recommended Decision filed by both PennDOT and the Bureau of Investigation and Enforcement ("I&E") and declined to require the installation of cul-de-sacs after demolition of the bridge is completed.

On review, we conclude that PennDOT's Exception Nos. 2 and 3 lack merit. ALJ Salapa carefully considered all aspects of this proceeding, and made reasoned recommendations on the apportionment of the work and costs associated with this project. He made no findings and reached no conclusions on the issue of the possible construction of cul-de-sacs at both ends of the Bridge. As such, we decline to assign that responsibility at this point. We do note, however, that in general it is PennDOT's responsibility to maintain the Commonwealth's highways, and also to protect the safety of motorists. Accordingly, PennDOT's Exceptions will be denied.

Order at 17; *see also id.* at 22 (denying I&E's Exceptions). In addition, except as noting above PennDOT's general responsibilities regarding S.R. 4009, nowhere does either the Order or the Recommended Decision expressly discuss roadway improvements post-demolition or require any party to widen, pave, install guardrails, or plow the roadway that currently crosses the bridge. The 2013 Order does, however, expressly address one of the issues Complainant raises in his Petition--the need to protect the public and animals from falling down the embankment after the bridge is removed. Ordering Paragraph 12 provides:

That the Pennsylvania Department of Transportation, at its sole cost and expense, shall erect and maintain barricades, in accordance with the Manual on Uniform Traffic Control Devices, where the bridge carrying S.R. 4009 crosses over the facilities of the Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific Railroad, located in LaPlume Township, Lackawanna County.

In summary, Complainant fails to point to any inconsistency between the 2013 Order and D&H's demolition plan and his objections are plainly without merit. Moreover, Complainant's opportunity to raise these issues for the Commission's consideration has long passed, as has his ability to seek appellate review of the deficiencies he appears to claim lie with the 2013 Order.


Accordingly, in view of these circumstances and the Petition's utter lack of merit, the Commission should deny the Petition in all respects.

CONCLUSION

For the foregoing reasons, D&H respectfully requests that the Commission deny the Petition in all respects.

Dated: January 16, 2015

Respectfully submitted,



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.

Jill M. Spott
Shiels Law Associates, P.C.
108 North Abington Road
Clarks Summit, PA 18411


Gina D'Alfonso
Office of Chief Counsel
Commonwealth of Pennsylvania
Department of Transportation
P.O. 8212
Harrisburg, PA 17105-8212

Raymond C. Rinaldi, Esquire
Borough Solicitor
Rinaldi & Poveromo PC
520 Spruce Street
P.O. Box 826
Scranton, PA 18501

Donald J. Fredrickson
Lackawanna County Solicitor
Commissioner's Office
200 Adams Avenue
Scranton, PA 18503

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

Dated this 16th day of January, 2015.



(Signature)