



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

January 26, 2015

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

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

Dear Secretary Chiavetta:

Enclosed for filing please find the Department's *Answer to Complainant's Petition for Reconsideration of Demolition Plan*, 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,

A handwritten signature in blue ink, appearing to read "Nicholas D. Mertens".

Nicholas D. Mertens
Assistant Counsel

Enclosure

220/NDM: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	:	
Complainant	:	C-2011-2237486
	:	P-2011-2241780
	:	
v.	:	
	:	Electronically Filed
CANADIAN PACIFIC RAILROAD,	:	
LACKAWANNA COUNTY,	:	
La PLUME TOWNSHIP,	:	
COMMONWEALTH OF	:	
PENNSYLVANIA, DEPARTMENT	:	
OF TRANSPORTATION	:	
Respondents	:	

**ANSWER TO COMPLAINANT’S PETITION FOR
RECONSIDERATION OF DEMOLITION PLAN**

AND NOW, comes the Commonwealth of Pennsylvania, Department of Transportation (“Department”), by and through its counsel, Nicholas D. Mertens, and offers the following Answer to the Complainant’s Petition for Reconsideration of Demolition Plan filed in response to the Pennsylvania Public Utility Commission (“Commission”) Secretarial Letter, issued December 22, 2014, approving the Demolition Plan filed on behalf of the Delaware and Hudson Railway Company (“D&H”) and avers the following:¹

1. Neither Admitted nor Denied. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph One (¶ 1) of the Complainant’s Petition for Reconsideration. Specific proof thereof is demanded.
2. Neither Admitted nor Denied. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph Two (¶ 2) of the Complainant’s Petition for Reconsideration. Specific proof thereof is demanded.

¹ It is important to note that the Complainant has failed to include a verification form as required by the Commission’s Regulations. 52 Pa. Code § 1.36(a).

3. Admitted in part. It is admitted that the plan does not indicate the location of a cul-de-sac or turn-around. By way of further answer, the Commission's Final Opinion and Order, issued December 5, 2013, specifically declined to order the construction and maintenance of cul-de-sacs. As such, the Commission has already adjudicated this issue and the Complainant is attempting to re-litigate an issue initially presented to the Commission over a year ago. All other allegations of fact or law contained in Paragraph Three (§ 3) of the Complainant's Petition are hereby denied and specific proof thereof is demanded.
4. Admitted in part. It is admitted that the plan does not indicate whether or not any dirt road in the vicinity of the highway-rail crossing will be paved. By way of further answer, the paving of the subject dirt road is irrelevant and beyond the scope of the current proceeding. Additionally, the Commission lacks jurisdiction over the paving of the subject dirt road as it is beyond the limits of the highway-rail crossing. 66 Pa.C.S. § 2702. All other allegations of fact or law contained in Paragraph Four (§ 4) of the Complainant's Petition are hereby denied and specific proof thereof is demanded.
5. Denied. Specific proof thereof is demanded. By way of further answer, the Commission lacks jurisdiction to widen a street, state route or otherwise, outside the limits of a highway-rail crossing. 66 Pa.C.S. § 2702.
6. Denied. Specific proof thereof is demanded. By way of further answer, the Commission lacks jurisdiction to order the installation and maintenance of guardrails, on a state route or otherwise, outside the limits of a highway-rail crossing. 66 Pa.C.S. § 2702.
7. Admitted. It is admitted that the plan lacks any information as to the paving and/or plowing of State Route 4009—such information is irrelevant to and beyond the scope of the current proceeding. Additionally, the Commission lacks jurisdiction over the paving

and/or plowing of both State Route 4009 and the subject dirt road to the extent that they are beyond the limits of the highway-rail crossing. 66 Pa.C.S. § 2702.

8. Denied. It is denied that the subject Demolition Plans contain no information as to the D&H's plans for the embankment. By way of further answer, the Demolition Plans specifically address the embankment issue, the plan states that the D&H will "restore embankment slopes to match existing and re-establish vegetation using envirograd or geocell on steep slopes." Specific proof thereof is demanded.
9. Admitted. It is admitted that the plan lacks any information as to the maintenance and upkeep on the adjacent dirt road—such information is irrelevant to and beyond the scope of the current proceeding. Additionally, the Commission lacks jurisdiction over the maintenance and upkeep of the subject dirt road as it is beyond the limits of the highway-rail crossing. 66 Pa.C.S. §2702.

WHEREFORE, the Department of Transportation, based upon the foregoing, respectfully requests that the Pennsylvania Public Utility Commission deny the Petition for Reconsideration of Demolition Plan, filed by the Complainant, A. Edwards Schwartz, in response to the Secretarial Letter, issued December 22, 2014, approving the Demolition Plan filed on behalf of the Delaware and Hudson Railway Company.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



Nicholas Mertens
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Department of Transportation
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DATED: January 26, 2015


**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

A. EDWARD SCHWARTZ	:	
Complainant	:	C-2011-2237486
	:	P-2011-2241780
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v.	:	
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CANADIAN PACIFIC RAILROAD,	:	
LACKAWANNA COUNTY,	:	
La PLUME TOWNSHIP,	:	
COMMONWEALTH OF	:	
PENNSYLVANIA, DEPARTMENT	:	
OF TRANSPORTATION	:	
Respondents	:	

VERIFICATION

I, Joseph Strok Jr., District Grade Crossing Coordinator, Commonwealth of Pennsylvania, Department of Transportation, in the foregoing document, make the following statement subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authority, and do state that as the Grade Crossing Administrator for the Commonwealth of Pennsylvania, Department of Transportation, I am authorized to make this statement on behalf of the Commonwealth of Pennsylvania, Department of Transportation, and that the facts set forth in the foregoing document are true and correct to the best of my information, knowledge, and belief.

DATED: Jan 23, 2015



Joseph Strok Jr.
District Grade Crossing Coordinator
Engineering District 4-0

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

A. EDWARD SCHWARTZ	:	
Complainant	:	
	:	Complaint Docket
v.	:	No: C-2011-2237486
	:	
CANADIAN PACIFIC RAILROAD	:	Electronically Filed
LACKAWANNA COUNTY,	:	
La PLUME TOWNSHIP,	:	
COMMONWEALTH OF	:	
PENNSYLVANIA, DEPARTMENT	:	
OF TRANSPORTATION	:	
Respondents	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Department's *Answer to Complainant's Petition for Reconsideration of Demolition Plan* was served upon the parties below by First-Class mail; postage prepaid this 26th day of January, 2015:

Jill M. Spott, Esquire
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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



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DATED: January 26, 2015