



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

March 18, 2015

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

RE: **Docket No. M-2013-2364201**

Dear Secretary Chiavetta:

Enclosed for filing please find the Department's *Answer to Motion to Join, or in the Alternative Petition to Intervene, and Motion for Continuance* 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 "N. D. Mertens".

Nicholas D. Mertens
Assistant Counsel

Enclosure

220/GMD:aca

cc: Parties of Record
Mark J. Chappell, P.E., Chief, Utilities and Right-of-Way Section
Joseph Strok, District Grade Crossing Administrator, District 4-0
Administrative Law Judge David Salapa

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bridge Structure where State Route	:	
1025, crosses over a single track of	:	M-2013-2364201
Delaware and Hudson Railway	:	
Company, Inc. (264 293 K) in	:	Electronically Filed
Nicholson Borough, Wyoming County.	:	

**ANSWER TO MOTION TO JOIN, OR IN THE ALTERNATIVE PETITION TO
INTERVENE, AND MOTION FOR CONTINUANCE**

AND NOW, comes the Commonwealth of Pennsylvania, Department of Transportation (“Department”), by and through its counsel, Nicholas D. Mertens, Assistant Counsel, and pursuant to 52 Pa. Code § 5.61, hereby files its Answer to the Motion to Join, or in the Alternative Petition to Intervene, and Motion for Continuance filed by the Norfolk Southern Railway Company (“Norfolk Southern”) on March 9, 2015 and responds as follows:

1. Admitted.
2. It is admitted that Norfolk Southern is a current operator on the line. The remaining allegations of facts in Paragraph Two (¶ 2) are directed to the Public Utility Commission (“Commission”), not the Department. Therefore, a response to such allegation is not required.
3. Admitted.
4. The allegations in Paragraph Four (¶ 4) constitute conclusions of law to which no response is required.
5. The Department has no objection to Norfolk Southern’s request to intervene in the present matter.
6. The Department does not oppose Norfolk Southern’s request for a continuance of the April 14, 2015 hearing and suspension of the current litigation schedule. In the event that

a continuance is granted in the present matter, the Department will cooperate with the active parties in developing a litigation schedule.

7. The Department is without knowledge or information as to any correspondence solely between Norfolk Southern and the Commission's Bureau of Technical Utility Services. By way of further answer, on or about October 30, 2014, the Department requested that the Commission open an Investigation Docket for five (5) above grade highway-rail crossings on the same rail line as the subject crossing.¹ The Department's request recommended that engineering analysis be performed on the five crossing structures and that the Commission assign future maintenance responsibilities as the crossings are not subject to any prior Commission orders. However, the SR 1025 crossing which is the subject of this proceeding, in addition to the SR 4009 crossing,² was never intended, nor agreed upon by the Department, to be included in the aforementioned Investigation Docket as the condition of the structural elements of such crossings and the future maintenance allocation have been or will be addressed by the Commission. As such, the Department intends to object to any transfer or remand of the present proceeding, as it is averred that the disposition of the subject bridge is properly before the Commission in the present matter.


¹ These crossings include SR 2017, SR 2041, SR 2032, SR 1018, and T-821 (located in Great Bend Township, Susquehanna County).

² As Your Honor is aware, the SR 4009 crossing was the subject of the *Schwartz v. Canadian Pacific Railroad* proceeding at Docket Numbers C-2011-2237486 and P-2011-2241780.

WHEREFORE, the Department does not oppose Norfolk Southern's request to intervene in the present matter and to postpone the hearing scheduled for April 14, 2015 and suspend the current litigation schedule.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



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DATED: March 18, 2014


**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bridge Structure where State Route :
1025, crosses over a single track of : M-2013-2364201
Delaware and Hudson Railway :
Company, Inc. (264 293 K) in : **Electronically Filed**
Nicholson Borough, Wyoming County. :

VERIFICATION

I, Joseph Strok, District Grade Crossing Administrator, 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 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: March 18, 2015


Joseph Strok
District Grade Crossing Administrator

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bridge Structure where State Route 1025, crosses over a single track of Canadian Pacific Railroad (264 293 K) in Nicholson Borough, Wyoming County	: : : :	Docket Number M-2013-2364201 Filed Electronically
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Department's *Answer to Motion to Join, or in the Alternative Petition to Intervene, and Motion for Continuance* was served upon the parties listed below, in accordance with the requirements of §1.54, by First-Class mail, postage prepaid this 18th day of March, 2015:

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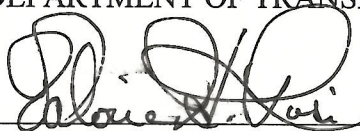
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Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



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DATED: March 18, 2015