



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

October 8, 2015

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

RE: **Docket No. I-2015-2472242**

Dear Secretary Chiavetta:

Enclosed for filing please find the Department's *Answer to Letter/Motion Filed by Lackawanna County*, 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 black ink, appearing to read "Nicholas D. Mertens".

Nicholas D. Mertens
Assistant Counsel

Enclosure

220/NDM:aca

cc: Parties of Record
Mark J. Chappell, P.E., Chief, Utilities and Right-of-Way Section
Joseph Strok, District Grade Crossing Engineer, District 4-0

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation upon the Commission’s own	:	
motion to determine the condition and	:	I-2015-2472242
disposition of six (6) existing structures	:	
carrying various highways above the grade of	:	Electronically Filed
the tracks of the Canadian Pacific Railroad in	:	
Great Bend Township, New Milford	:	
Township, Brooklyn Township, Hop Bottom	:	
Borough, Lathrop Township, Susquehanna	:	
County and Benton Township, Lackawanna	:	
County.	:	

ANSWER TO LETTER/MOTION FILED BY LACKAWANNA COUNTY

AND NOW, comes the Commonwealth of Pennsylvania, Department of Transportation (“Department”), by and through its counsel, Nicholas D. Mertens, Assistant Counsel, and states the following in support of its Answer to the Letter/Motion submitted by Lackawanna County (“County”) to the Pennsylvania Public Utility Commission (“Commission”) Secretary’s Bureau on April 24, 2015:

1. On April 9, 2015, the Commission issued an Order establishing a formal investigation into the condition and disposition of six (6) highway-rail crossing structures that cross over and above the tracks of the Canadian Pacific Railroad in Great Bend Township, New Milford Township, Brooklyn Township, Hop Bottom Borough, Lathrop Township, Susquehanna County and Benton Township, Lackawanna County.
2. The Commission’s Order stated that the County, Department, Canadian Pacific Railroad, Norfolk Southern Railway Company (as the current owner of the subject line), Great Bend Township, New Milford Township, Brooklyn Township, Hop Bottom Borough, Lathrop Township, Benton Township, and Susquehanna County are to be made parties to the matter.

3. On or about April 24, 2015, the County send a letter, addressed to the Commission's Secretary, objecting to being included as a party in the present matter. A true and correct copy of the County's Letter is attached hereto and marked as "Exhibit A."
4. The Department never received a copy of the County's Letter.
5. The Department discovered this letter inadvertently while searching through the docket file housed in the Commission's filing room.
6. Insomuch as the County's Letter is deemed as a Motion to Dismiss itself as a concerned party in the present matter, the Department files the foregoing Answer.
7. As such, the County failed to adhere to the Commission's Rules and Regulations, 52 Pa. Code § 1.54, by not serving its Letter/Motion upon all parties hereto.

The County is a Concerned Party to the Formal Investigation

8. Paragraphs One (1) through Seven (7) are incorporated herein as if set forth at length.
9. The Commission has subject matter jurisdiction over formal investigations pursuant to 66 Pa.C.S. § 331.
10. The Commission has the exclusive jurisdiction over the construction, relocation, alteration, suspension, and abolition of highway-rail crossings. 66 Pa.C.S. § 2702.
11. Additionally, the Commission has exclusive authority to allocate costs, occasioned by the construction, relocation, alterations, protection, or abolition of public highway-rail crossings, upon specific concerned parties including, but not limited to, municipal corporations. 66 Pa.C.S. § 2704.
12. The Commission determines which parties are "concerned" or "interested" within the meaning of 66 Pa.C.S. §§ 2702 and 2704. *City of Chester v. Pa. P.U.C.*, 408 A.2d 552, 553 (Pa. Cmwlth. 1979).

13. The Public Utility Code defines “municipal corporation” as “[a]ll cities, boroughs, towns, townships, or **counties of this Commonwealth**, and also any public corporation, authority, or body whatsoever created or organized under any law of this Commonwealth for the purpose of rendering any service similar to that of a public utility.” 66 Pa.C.S. § 102 (emphasis added).
14. One (1) of the Six (6) subject crossings is located within Lackawanna County—the County does not dispute this fact.
15. The Commission has routinely determined that a county government constitutes a “concerned” party by virtue that a subject crossing is located within its boundaries despite the fact that it does not maintain the subject highway. *See City of Chester*, 408 A.2d at 554. *See also PennDOT v. Pa. P.U.C.*, 469 A.2d 1149 (Pa. Cmwlth. 1983); *In re: Colebrook Road*, PUC Docket No. I-00000088, 2010 Pa. PUC LEXIS 1592 (Commission Opinion and Order entered Sept. 17, 2010).
16. As such, the County is a concerned party within the meaning of the Public Utility Code and for purposes of the subject formal investigation.

WHEREFORE, the Department of Transportation respectfully requests that the Pennsylvania Public Utility Commission deny the Letter/Motion, dated April 24, 2015, filed by Lackawanna County in above captioned matter.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



Nicholas Mertens
Assistant Counsel
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105-8212
Telephone No. (717) 787-3128
Fax Number (717) 772-2741
nimertens@pa.gov

DATED: October 8, 2015

Donald J. Frederickson, Jr., Esquire
~~Lackawanna County Solicitor~~
Commissioner's Office
200 Adams Avenue - 6th Floor
Scranton PA 18503
Ph. (570)963-6800
(570)451-0600
Fax: (570)451-2976

April 24, 2015

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

RE: SR 4005 Concrete Bridge - Benton Twp., PA
- DOT No. 265 849 D
- I-2015-2472242

Dear Ms. Chiavetta,

Please be advised that we are in receipt of the Administrative Order of April 9, 2015, entered by the PUC in the above referenced matter, wherein Lackawanna County was made a party thereto.

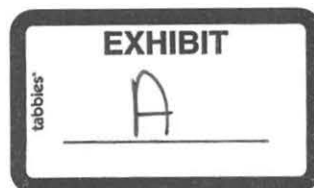
Lackawanna County Objects to it's inclusion as a party in this matter for the following reasons:

1. We were not invited to participate in the field investigation held on November 8, 2012;
2. The bridge in question is owned by PennDOT, and not Lackawanna County;
and
3. Lackawanna County has no history of performing maintenance or other work to the bridge in question.

Therefore, Lackawanna County demands that it be removed as a party to this matter.

Lastly, the Order was mailed to the attention of Mr. William Jenkins. Be advised that Mr. Jenkins retired as an employee of Lackawanna County in 2004, over 10 years ago, and three Governors ago.

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2015 APR 28 AM 10:37
PA P.U.C.
SECRETARY'S BUREAU



**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation upon the Commission's own	:	
Motion to determine the condition and	:	
Disposition of six (6) existing structures	:	Docket No. I-2015-2472242
Carrying various highways above the grade	:	
Of the Canadian Pacific Railroad in	:	Filed Electronically
Great Bend Township, New Milford Township	:	
Brooklyn Township, Hop Bottom Borough	:	
Lathrop Township, Susquehanna County and	:	
Benton Township, Lackawanna County	:	
(264 293 K) in Nicholson	:	
Borough, Wyoming County	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Department's *Answer to Letter/Motion* **Filed by Lackawanna County** was served upon the parties listed below, in accordance with the requirements of §1.54, by First-Class mail, postage prepaid, this 8th day of October, 2015.

Larry Seamour, Chairman
Benton Township
P.O. Box 29
Fleetville, PA 18420

Tom Bracey
Norfolk Southern Railway Co.
1200 Peachtree Street, NE
Atlanta, GA 30309

Pennsylvania State Police Commissioners
Pennsylvania State Police
3rd Floor Department Headquarters
1800 Elmerton Ave.
Harrisburg, PA 17110

Paul J. Himka
1148 Polovitch Road
Nicholson, PA 18446

Brian O'Conner
153 Halls Road
Great Bend, PA 18821

Alan Hall, Chairman
Susquehanna County
105 Maple Street
Montrose, PA 18801

Donald J. Frederickson, Jr., Esq.
Lackawanna County Commissioners Office
200 Adams Avenue – 6th Floor
Scranton, PA 18503

John Koshinski
350 Greenwood Street
Hop Bottom, PA 18824

Don Shibley
19730 State Route 11
New Milford, PA 18834

Daniel Sabatka
Canadian Pacific
11306 W. Franklin Ave
Franklin Park, PA 60131

Shawn Starling
Norfolk Southern Corporation
1200 Peachtree Street NE
Atlanta, GA 30309

Benjamin C. Dunlap, Jr., Esq.
Nauman Smith Shissler & Hall
200 North Third Street, 18th Floor
P.O. Box 840
Harrisburg, PA 17108

Graham A. Anthony
P.O. Box 23
Brooklyn, PA 18813

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



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DATED: October 8, 2015