

LAWRENCE M. LUDWIG, ESQUIRE
238 VASSAR AVENUE
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(570) 586-6817

December 1, 2016

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

In Re: Schwartz v. Norfolk southern Railway Company, PennDOT et al
PUC Docket No.: C-2016-2570929

Dear Secretary Chiavetta:

Please find enclosed for filing the verified Complainant's Reply to PennDOT's New Matter

I hereby certify that a copy of this pleading has been sent to all parties of record as indicated on the Certificate of Service attached thereto.

Should you have any questions or wish to discuss anything regarding this matter, please contact me at your convenience.

Thank you.

Very truly yours,



Lawrence M. Ludwig

cc: Gina M D'Alfonso, Senior Counsel
Benjamin C. Dunlap, Jr., Esq.
John J. Brazil, Esquire
David J. Gromelski, Esquire

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**PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

A. EDWARD SCHWARTZ,

v.

C-2016-2570929

NORFOLK SOUTHERN RAILWAY COMPANY,

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF TRANSPORTATION ET AL

COMPLAINANT'S REPLY TO PENNDOT'S NEW MATTER

A. Edward Schwartz (herein "Complainant") , by and through his attorney, Lawrence M. Ludwig, Esquire, respectfully responds to the New Matter of the Commonwealth of Pennsylvania, Department of Transportation (herein "PennDOT") set forth in its Answer to Complaint and New Matter as follows:

22. Paragraphs 1 through 21 of the Application for Determination (herein "Complaint") are hereby incorporated herein as though fully set forth.
23. Admitted in part and denied in part. It is admitted that Norfolk Southern Railway Company and PennDOT were named in the caption as "Interested Parties" and were served by the Commission. Complainant denies that he is seeking damages to be paid solely by the Commission. Rather, as the owner of adjacent (and bisected) property, he is seeking a determination from the Commission pursuant to 66 Pa.C.S. Section 2704 regarding the Complainant's compensation for damages sustained as a result of injury to his adjacent (and bi-sected) land in the abolition of the subject railroad crossing by Commission Order, despite Complainant's vigorous fight for repair and eventual replacement of the bridge.

24. Admitted, with the caveat that the Commission has also served Norfolk Southern Railway Company.
25. Denied. Pursuant to 66 Pa.C.S. Section 2704 and applicable law, the Commonwealth of Pennsylvania, including its pertinent Department, should be a party to the proceeding.
26. Admitted in part and denied in part. It is admitted that the Complainant did not appeal the referenced Orders of the Commission that effected the abolition of the crossing. Complainant denies that such constitutes a waiver of his rights under 66 Pa.C.S. Section 2704 and applicable law in that the referenced Orders did not in any sense adjudicate whether his property has been injured or what resulting damages were suffered. Cf CSX Transportation, Inc. v. Department of Transportation of the Commonwealth of Pennsylvania, 163 Pa.Cmwlth 620, 626-627 (1994) where failure to appeal the prior PUC Order which "specifically excluded CSX from receiving compensation for damages" merely raised an issue as to whether there was a waiver.
27. Admitted in part and denied in part. It is admitted that no parcel described by metes and bounds was appropriated by the Commission per 66 Pa.S.C. Section 2702. However, the Commission's referenced Orders abolished the crossing per 66 Pa.C.S. Section 2702, and the Commission's referenced Orders resulting in the abolition of the subject crossing after demolition of the bridge injured Complainant's adjacent (and bi-sected) property within the meaning of 66 Pa.C.S. Section 2704 and applicable law.
28. Admitted in part and denied in part. It is admitted that no such determination has yet been adjudicated by any tribunal. Complainant denies that his property has not been injured by the abolition of the crossing pursuant to the Commission's referenced Orders. By way of further response, Complainant incorporates by reference the averments of Paragraphs 15 through 19 of his Complaint as though fully set forth.
29. Denied. The abolition of the crossing after demolition of the bridge pursuant to the

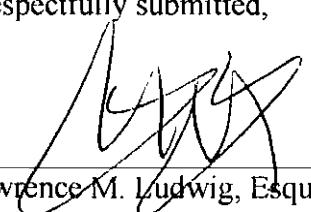
Commission's referenced Orders injured Complainant's adjacent (and bi-sected) land within the meaning of 66 Pa.S. Section 2704 and effected de jure and de facto taking.

30. Admitted in part and denied in part. The first sentence of Paragraph 30 of PennDOT's new Matter states a legal conclusion to which no response is required and the same shall be deemed denied. It is admitted that the cited Hassett case states what it states, including the quoted text. Complainant denies that Hassett vitiates 66 Pa.C.S. Section 2704 or otherwise precluded Complainant from pursuing this matter before the PUC. Indeed, the Court in CSX, supra, at page 626 expressly held, in the context of a 66 Pa.C.S. Section 2704 proceeding, that "...the (Eminent Domain) Code does not effect the jurisdiction of the commission under section 2702 and 2704 of the Public Utility Code."

31. It is admitted that 66 Pa.C.S. Section 2704(b) allows for the transfer of matters such as this to the appropriate Court of Common Pleas. Complainant lacks knowledge or information sufficient to discern whether the cited decision addresses a 66 Pa.c.s. Section 2704 matter such as this in that the copy of PennDOT's Answer to Complaint and New Matter served upon Complainant did not have an Exhibit attached thereto.

WHEREFORE, A. Edward Schwartz respectfully requests that this Honorable Commission determine his compensation for damages sustained as a result of injury to his adjacent (and bi-sected) land in the abolition of the subject railroad crossing by Commission Order.

Respectfully submitted,



Lawrence M. Ludwig, Esquire
PA Attorney I.D. # 21599
238 Vassar Avenue
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(570) 586-6817

Dated: December 1, 2016

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

A. EDWARD SCHWARTZ,

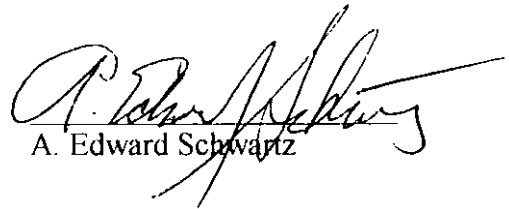
v.

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NORFOLK SOUTHERN RAILWAY COMPANY,
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION ET AL

VERIFICATION

I, A. Edward Schwartz, do hereby swear that the facts in the foregoing **Complainant's Reply to PennDOT's New Matter** are true and correct to the best of my information, knowledge and belief. I understand that false statements herein are made subject to the Rules of 18 Pa C.S. §4904 relating to unsworn falsification to authorities.


A. Edward Schwartz

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DEPARTMENT OF TRANSPORTATION ET ALL

CERTIFICATE OF SERVICE

I, Lawrence M. Ludwig, Esquire, attorney for Complainant, hereby certify that on December 1, 2016, I serve the foregoing **REPLY TO NEW MATTER** by depositing true and correct copies thereof in the U.S. Mail, first-class postage prepaid, addressed to counsel of record, as follows:

Gina M. D'Alfonso, Senior Counsel
Department of Transportation
Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105-8212

Benjamin C. Dunlap, Jr., Esq.
Nauman Smith Shissler & Hall
200 N. Third St. 18th Floor
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Harrisburg, PA 17108-0840

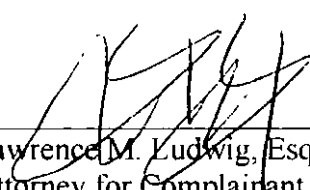
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