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December 6, 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 Norfolk Southern Railway Company'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

SECRETARY'S BUREAU  
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PA P.U.C.  
SECRETARY'S BUREAU

C-2016-25709

A. EDWARD SCHWARTZ,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF TRANSPORTATION ET ALL

**COMPLAINANT'S REPLY TO NORFOLK SOUTHERN RAILWAY'S NEW MATTER**

A. Edward Schwartz (herein "Complainant") , by and through his attorney, Lawrence M. Ludwig, Esquire, respectfully responds to the New Matter of Norfolk Southern Railway Company (herein "Railway") set forth in its Answer With New Matter, as follows:

22. Denied. To the extent that the averments of Paragraphs 11 through 21 of the Railway's Answer state legal conclusions, no response is required; to the extent that a response may be deemed necessary, the legal conclusions of Paragraphs 11 through 21 of Railway's Answer are denied. By way of further response, as to Paragraphs 11, 15 and 16 of Railway's Answer, Complainant denies that "there are two other nearby crossings serving the same transportation purposes"; to the contrary, the cited 3.4 mile route is unsuitable for tractor trailer use, and the other route is a 5.5 mile mile trek which is posted with a 10 ton limit. As to Paragraphs 15 and 16 of Railway's Answer, Complainant denies any implication that he has any means whatsoever to cross the Main Line within his bisected Raintree Farm; to the contrary, he has none and has been

threatened with arrest if he attempts to so cross. Paragraphs 1 through 21 of the Application for Determination (herein "Complaint") and Paragraphs 29 through 33, 35, 36 and 38 hereof are hereby incorporated herein as though fully set forth.

23. Admitted in part and denied in part. It is admitted that the Complaint states what it states; it is denied that Railway's characterization thereof is entirely accurate; rather the Complaint speaks for itself. The remaining averments of Paragraph 23 state a legal conclusion to which no response is required. To the extent that a response may be deemed necessary, the legal conclusions of Paragraph 23 of Railway's New Matter are denied. By way of further response, Complainant denies that his Complaint only seeks damages for "de facto" taking; 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 bisected) land in the abolition of the subject railroad crossing by Commission Order, despite Complainant's vigorous fight for repair and eventually replacement of the bridge. Furthermore, none of the cited cases had anything whatsoever to do with the abolition of a crossing or 66 Pa.C.S. Section 2704.
24. Admitted in part and denied in part. It is admitted that the cited Zettlemoyer case and the cited statute state what they state, including the quoted text. Paragraph 24 states legal conclusions to which no response is required. To the extent that a response may be deemed necessary, the legal conclusions of Paragraph 24 of Railway's New Matter are denied. By way of further response, Complainant denies that either the holding of the cited Zettlemoyer case, which had nothing whatsoever to do with the abolition of a crossing within a bisected farm or 66 Pa.C.S. Section 2704, or the cited statute is applicable to this matter. Rather, the Commission's referenced Orders effected the abolition of a crossing per 66 Pa.C.S. Section 2702, and the Commission's referenced

Orders resulting in the abolition of the subject crossing injured Complainant's adjacent (and bisected) property within the meaning of 66 Pa.C.S. Section 2704 and applicable law. See CSX Transportation, Inc. v. Department of Transportation of Commonwealth of Pennsylvania, 163 Pa.Cmwlth 620, 626, 641 A.2d 705, 708 (1994) wherein the Court held: "Thus, the Code does not affect the jurisdiction of the commission under section 2702 and 2704 of the Public Utility Code".

25. Admitted in part and denied in part. It is admitted that the cited German case states what it states. Paragraph 25 states a legal conclusion to which no response is required. To the extent that a response may be deemed necessary, the legal conclusion of Paragraph 25 of Railway's New Matter is denied. By way of further response, Complainant denies that the holding of the cited German case, which also had nothing whatsoever to do with the abolition of a crossing within a bisected farm or 66 Pa.C.S. Section 2704, is applicable to this matter. Rather, the Commission's referenced Orders effected the abolition of a crossing per 66 Pa.C.S. Section 2702, and the Commission's referenced Orders resulting in the abolition of the subject crossing injured Complainant's adjacent (and bisected) property within the meaning of 66 Pa.C.S. Section 2704 and applicable law.
26. Admitted in part and denied in part. To the extent that the averments of Paragraph 26 of the Railway's New Matter state legal conclusions, no response is required; to the extent that a response may be deemed necessary, the legal conclusions of Paragraph 26 of Railway's New Matter are denied. Other averments therein are admitted, with the caveat that the Commission premised its decision not to replace the bridge upon the conclusion that it was not needed by the general public. By way of further response, Complainant denies that, even if the bridge were demolished "for public safety", that would bar determination of compensation for damages sustained as a result injury to adjacent (and bisected) farm due to the abolition of the subject crossing under 66 Pa.C.S. Section 2704

and applicable law. Rather, the Commission's referenced Orders effected the abolition of the subject crossing per 66 Pa.C.S. Section 2702, and the Commission's referenced Orders resulting in the abolition of the subject crossing injured Complainant's adjacent (and bisected) property within the meaning of 66 Pa.C.S. Section 2704 and applicable law.

27. Admitted in part and denied in part. It is admitted that no parcel described by metes and bounds was appropriated by the Commission. Paragraph 27 states a legal conclusion to which no response is required. To the extent that a response may be deemed necessary, the averments of Paragraph 27 of Railway's New Matter are denied. By way of further response, Complainant denies that the absence of "metes and bounds" appropriation precludes determination of compensation for damages sustained as a result of the abolition of the subject crossing. Rather, the Commission's referenced Orders effected the abolition of the subject crossing per 66 Pa.C.S. Section 2702, and the Commission's referenced Orders resulting in the abolition of the subject crossing injured Complainant's adjacent (and bisected) property within the meaning of 66 Pa.C.S. Section 2704 and applicable law.

28. Denied. Paragraph 28 states a legal conclusion to which no response is required. To the extent that a response may be deemed necessary, the averment of Paragraph 28 of Railway's New Matter is denied. By way of further response, Complainant denies that, even if the bridge were demolished "for public safety", that bars or precludes determination of compensation for damages sustained as a result of the abolition of the subject crossing. Rather, the Commission's referenced Orders effected the abolition of the subject crossing per 66 Pa.C.S. Section 2702, and the Commission's referenced Orders resulting in the abolition of the subject crossing injured Complainant's adjacent (and bisected) property within the meaning of 66 Pa.C.S. Section 2704 and applicable

law.

29. Admitted in part; denied in part. It is admitted that the cited Espy case states what it states. Paragraph 29 states a legal conclusion to which no response is required. To the extent that a response may be deemed necessary, the averment of Paragraph 29 of Railway's New Matter is denied. By way of further response, Complainant denies that the holding of the cited Espy case, which had nothing whatsoever to do with the abolition of a crossing within a bisected farm or 66 Pa.C.S. Section 2704, is applicable to this matter. Rather, the Commission's referenced Orders effected the abolition of a crossing per 66 Pa.C.S. Section 2702, and the Commission's referenced Orders resulting in the abolition of the subject crossing injured Complainant's adjacent (and bisected) property within the meaning of 66 Pa.C.S. Section 2704 and applicable law.
30. Admitted in part; denied in part. It is admitted that the cited Allegheny County case states what it states. Paragraph 30 states a legal conclusion to which no response is required. To the extent that a response may be deemed necessary, the averment of Paragraph 30 of Railway's New Matter is denied. By way of further response, Complainant denies that the holding of the cited Allegheny County case, which had nothing whatsoever to do with the abolition of a crossing within a bisected farm or 66 Pa.C.S. Section 2704, is applicable to this matter. Rather, the Commission's referenced Orders effected the abolition of a crossing per 66 Pa.C.S. Section 2702, and the Commission's referenced Orders resulting in the abolition of the subject crossing injured Complainant's adjacent (and bisected) property within the meaning of 66 Pa.C.S. Section 2704 and applicable law.
31. Admitted in part; denied in part. It is admitted that the cited cases state what they state. Paragraph 31 states legal conclusions to which no response is required. To the extent that a response may be deemed necessary, the averments of Paragraph 31 of Railway's

New Matter are denied. By way of further response, Complainant denies that either the cited Commerce Land case's holding or the cited Nod, Inc. case's holding is applicable to this matter. Indeed, neither had anything whatsoever to do with the abolition of a crossing within a bisected farm or 66 Pa.C.S. Section 2704. Rather, the Commission's referenced Orders effected the abolition of a crossing per 66 Pa.C.S. Section 2702, and the Commission's referenced Orders resulting in the abolition of the subject crossing injured Complainant's adjacent (and bisected) property within the meaning of 66 Pa.C.S. Section 2704 and applicable law.

32. Admitted in part; denied in part. It is denied that Complainant "continues to have access to all the Premises." It is admitted that there exist unsuitable routes to get indirectly from one side of Complainant's bisected farm to the other. It is denied Complainant's alternate means of "crossing the Main Line" are in any sense "nearby" or suitable; to the contrary, the cited 3.4 mile route is unsuitable for tractor trailer use, and the other route is a 5.5 mile mile trek which is posted with a 10 ton limit. By way of further response, the averments of Paragraphs 15 through 20 of the Application for Determination (herein "Complaint") are hereby incorporated herein as though fully set forth.
33. Admitted in part; denied in part. It is admitted that the Bridgewater case states what it states. To the extent that the averments of Paragraph 33 of the Railway's New Matter state legal conclusions, no response is required. By way of further response, Complainant denies that the holding of the cited Bridgewater case, which had nothing whatsoever to do with the abolition of a crossing within a bisected farm or 66 Pa.C.S. Section 2704, is applicable to this matter. It is denied that such factors as the non-existence, "posting", topography, layout and inherent condition of the only pertinent roads (that are not part of the actual railroad crossing) cannot be considered when the Commission's referenced Orders effected the abolition of the subject crossing per 66

Pa.C.S. Section 2702, and the Commission's referenced Orders resulting in the abolition of the subject crossing injured Complainant's adjacent (and bisected) property within the meaning of 66 Pa.C.S. Section 2704 and applicable law

34. Admitted, with the caveat that the cited statutes do not bar or preclude determination of compensation for damages sustained as a result of the abolition of the subject crossing; rather, the Commission's referenced Orders effected the abolition of the subject crossing per 66 Pa.C.S. Section 2702, and the Commission's referenced Orders resulting in the abolition of the subject crossing injured Complainant's adjacent (and bisected) property within the meaning of 66 Pa.C.S. Section 2704 and applicable law.
35. Admitted in part; denied in part. It is admitted that the cited O'Toole case and the cited statute state what they state. To the extent that the averments of Paragraph 35 of the Railway's New Matter state legal conclusions, no response is required. To the extent that a response may be deemed necessary, the averments of Paragraph 35 of Railway's New Matter are denied. By way of further response, Complainant denies that either the holding of the cited O'Toole case, which had nothing whatsoever to do with the abolition of a crossing within a bisected farm or 66 Pa.C.S. Section 2704, or the cited statute is in any sense dispositive of this matter. By way of further response, Complainant denies that, even if the bridge were demolished "for public safety" and not replaced due to "lack of public need", that would bar or preclude determination of compensation for damages sustained as a result of the abolition of the subject crossing; rather, the Commission's referenced Orders effected the abolition of the subject crossing per 66 Pa.C.S. Section 2702, and the Commission's referenced Orders resulting in the abolition of the subject crossing injured Complainant's adjacent (and bisected) property within the meaning of 66 Pa.C.S. Section 2704 and applicable law. Cf CSX Transportation, Inc. v. Department of Transportation of Commonwealth of Pennsylvania, 163 Pa.Cmwlth 620,

626-627, 641 A.2d 705, 708 (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. Complainant hereby incorporates herein by reference the averments of Paragraphs 22, 26 and 28 hereof as though fully set forth.

36. Admitted in part; denied in part. It is admitted that Exhibit “B” to Railway's Answer and New Matter is a copy of the recorded version of the Deed; it is denied that it accurately depicts the text of the original Deed. Otherwise, Paragraph 36 states a legal conclusion to which no response is required. To the extent that a response may be deemed necessary, the averment of Paragraph 36 of Railway's New Matter is denied. By way of further response, Complainant denies that the original Deed forecloses determination of compensation for damages sustained as a result of injury to adjacent (and bisected) farm due to the abolition of the subject crossing. Rather, the Commission's referenced Orders effected the abolition of the subject crossing per 66 Pa.C.S. Section 2702, and the Commission's referenced Orders resulting in the abolition of the subject crossing injured Complainant's adjacent (and bisected) property within the meaning of 66 Pa.C.S. Section 2704 and applicable law.

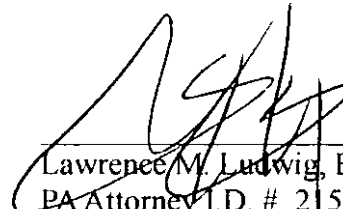
37. Denied. Paragraph 37 states a legal conclusion to which no response is required. To the extent that a response may be deemed necessary, the averment of Paragraph 37 of Railway's New Matter is denied. By way of further response, Complainant denies that he cannot present a prima facie case. Rather, the Commission's referenced Orders effected the abolition of a crossing per 66 Pa.C.S. Section 2702, and the Commission's referenced Orders resulting in the abolition of the subject crossing injured Complainant's adjacent (and bisected) property within the meaning of 66 Pa.C.S. Section 2704 and applicable law.

38. Denied. Paragraph 38 states a legal conclusion to which no response is required. To the

extent that a response may be deemed necessary, the averment of Paragraph 38 of Railway's New Matter is denied. By way of further response, it is denied that the release would bar or preclude determination of compensation for damages sustained as a result of injury to adjacent (and bisected) farm due to the abolition of the subject crossing; rather, the Commission's referenced Orders effected the abolition of the subject crossing per 66 Pa.C.S. Section 2702, and the Commission's referenced Orders resulting in the abolition of the subject crossing injured Complainant's adjacent (and bisected) property within the meaning of 66 Pa.C.S. Section 2704 and applicable law.

WHEREFORE, A. Edward Schwartz respectfully seeks 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 bisected) land in the abolition of the subject railroad crossing by Commission Order.

Respectfully submitted,



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

Dated: December 7, 2016

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**

A. EDWARD SCHWARTZ,

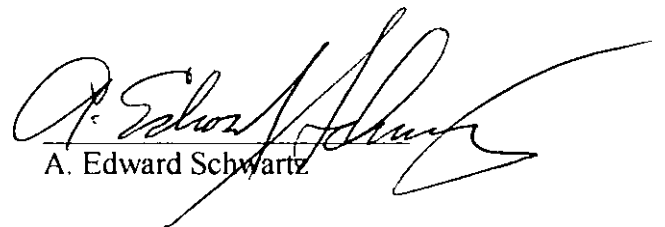
v.

C-2016-2570929

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 Norfolk Southern Railway Company'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

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**

A. EDWARD SCHWARTZ,

v.

C-2016-2570929

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

**CERTIFICATE OF SERVICE**

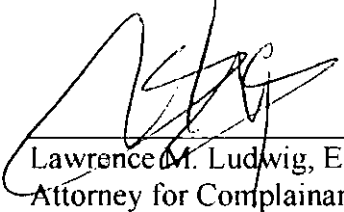
I, Lawrence M. Ludwig, Esquire, attorney for Complainant, hereby certify that on December 7, 2016, I serve the foregoing **REPLY TO NEW MATTER** by depositing true and correct copies thereof in the U.S. Mail, first-class postage prepaid, addressed to counsel of record, as follows:

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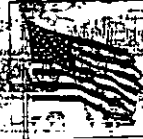
LEHIGH VALLEY PA 180

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ADDITIONAL  
OUNCE



USA FOREVER



USA FOREVER

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