

LAWRENCE M. LUDWIG, ESQUIRE

238 VASSAR AVENUE
CLARKS GREEN, PA 18411
(570) 586-6817

December 13, 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 Lackawanna County's New Matter in its Amended Answer to Complaint and 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.
Donald J. Frederickson, Jr., 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 LACKAWANNA COUNTY'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 County of Lackawanna (herein "County") set forth in its Amended 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. Denied. Paragraph 23 states a legal conclusion to which no response is required. To the extent that a response may be deemed necessary, the averments of Paragraph 23 of Railway's New Matter are denied. By way of further response, the abolition of the crossing after demolition of the bridge pursuant to the Commission's referenced Orders injured Complainant's adjacent (and bisected) land within the meaning of 66 Pa.S. Section 2704.
24. 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 in the abolition of the crossing or what resulting

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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.

25. Admitted in part and denied in part. It is admitted that no parcel described by metes and bounds was appropriated by the Commission. Paragraph 25 states a legal conclusion to which no response is required. To the extent that a response may be deemed necessary, the averments of Paragraph 25 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 when the Commission abolishes a railroad crossing per 66 Pa.C.S. Section 2702, and in such abolition injures adjacent property within the meaning of 66 Pa.C.S. Section 2704 and applicable law. Indeed, in this case, 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 bisected) property within the meaning of 66 Pa.C.S. Section 2704 and applicable law.
26. Admitted in part and denied in part. It is admitted that Lackawanna County does not own or maintain the crossing in question and has not owned or maintained the crossing in question for a long time. The remaining averment in Paragraph 26 of County's New Matter is denied in that Complainant is without knowledge or information sufficient to form a belief as to the truth thereof, and accordingly strict proof is demanded. Regardless, the abolition of the crossing after demolition of the bridge pursuant to the Commission's referenced Orders injured Complainant's adjacent (and bisected) land within the meaning of 66 Pa.S. Section 2704.

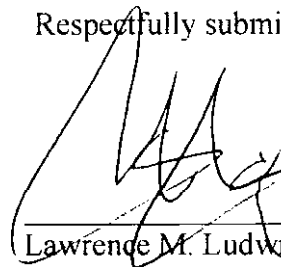
27. Denied. The averment in Paragraph 27 of County's New Matter is denied in that Complainant is without knowledge or information sufficient to form a belief as to the truth thereof, and accordingly strict proof is demanded. Regardless, the abolition of the crossing after demolition of the bridge pursuant to the Commission's referenced Orders injured Complainant's adjacent (and bisected) land within the meaning of 66 Pa.S. Section 2704.

28. Admitted. Regardless, the abolition of the crossing after demolition of the bridge pursuant to the Commission's referenced Orders injured Complainant's adjacent (and bisected) land within the meaning of 66 Pa.S. Section 2704.

29. Denied. The averment in Paragraph 29 of County's New Matter is denied in that Complainant is without knowledge or information sufficient to form a belief as to the truth thereof, and accordingly strict proof is demanded. Regardless, the abolition of the crossing after demolition of the bridge pursuant to the Commission's referenced Orders injured Complainant's adjacent (and bisected) land within the meaning of 66 Pa.S. Section 2704.

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 bisected) 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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Dated: December 13, 2016

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A. EDWARD SCHWARTZ,

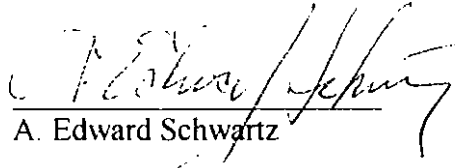
v.

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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 Lackawanna County'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

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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 13, 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:

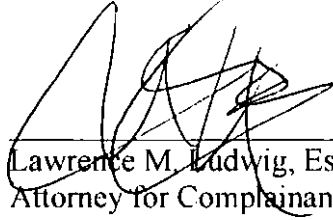
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David J. Gromelski, Esquire
LaPlume Twp Solicitor
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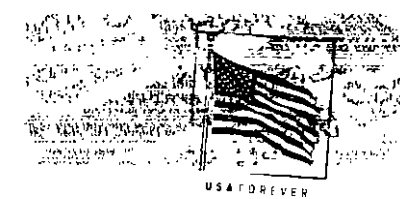
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