

CAPTION SHEET

CASE MANAGEMENT SYSTEM

1. REPORT DATE: 00/00/00	:	
2. BUREAU: TSR	:	
3. SECTION(S):	:	
5. APPROVED BY:	:	4. PUBLIC MEETING DATE:
DIRECTOR:	:	00/00/00
SUPERVISOR:	:	
6. PERSON IN CHARGE:	:	7. DATE FILED: 06/11/03
8. DOCKET NO: C-20030526	:	9. EFFECTIVE DATE: 00/00/00

PARTY/COMPLAINANT: HARMER TOWNSHIP

RESPONDENT/APPLICANT: NORFOLK SOUTHERN RAILWAY CO

COMP/APP COUNTY: ALLEGHENY

UTILITY CODE: 500250

ALLEGATION OR SUBJECT

COMPLAINANT IS CONCERNED ABOUT THE MAINTENANCE OF A PEDESTRIAN CROSSING OVER TRACKS OF NORFOLK SOUTHERN RAILWAY COMPANY, FORMERLY PENNSYLVANIA RAILROAD CO, LOCATED IN HARMAR TOWNSHIP. THEY WANT THE COMPANY TO TAKE RESPONSIBILITY FOR THE CROSSING PER REPORT AND ORDER OF THE PUBLIC SERVICE COMMISSION OF PA, APPLICATION DOCKET NO. 21878-1930. RESPONDENTS ARE NORFOLK SOUTHERN RAILWAY CO, PENNDOT AND ALLEGHENY COUNTY.

DOCUMENT  
FOLDER

**DOCKETED**  
JUN 25 2003

# SPRINGER BUSH & PERRY P.C.

SHAWN N. GALLAGHER

ATTORNEYS AT LAW

Direct Dial  
412-454-0124

sgallagher@springer-law.com

Direct Fax  
412-338-9168

June 11, 2003

## VIA FEDERAL EXPRESS

James McNulty  
Secretary  
Pennsylvania Public Utility Commission  
400 North Street  
Commonwealth Keystone Building  
Harrisburg, PA 17120

*Re: Formal Complaint: Harmar Township v. Norfolk Southern Railway Company*

Dear Mr. McNulty:

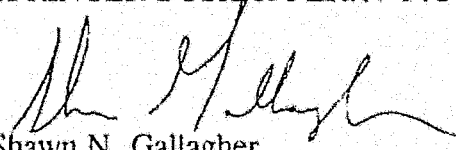
Please file the enclosed Formal Complaint for the above referenced matter. Three additional copies of the Formal Complaint are also enclosed herein.

If you have any questions or concerns regarding the enclosed Formal Complaint, please contact our offices at your earliest convenience.

Very truly yours,

SPRINGER BUSH & PERRY P.C.

By

  
Shawn N. Gallagher

SNG/jrl

Enclosure

cc: Robert W. Seibert, Jr. (w/encl.)

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JUN 11 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

98

# ORIGINAL

C-20030526  
500250

## Formal Complaint Form Pennsylvania Public Utility Commission

Please Print: (you may also type your answers directly onto the form as it appears on your screen)

1. Your name, mailing address and telephone number:

Name Harmar Township

Street/P.O.Box 701 Freeport Road Apt # \_\_\_\_\_

City Cheswick State PA Zip 15024-1208

County Allegheny Area Code/Home Phone \_\_\_\_\_

Area Code/Work Phone (724) 274-4550

2. Name of company your complaint concerns: Norfolk Southern Railway Co.

3. What is your complaint? (Use additional paper if need more space)  
Please See Attached

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JUN 11 2003

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

4. What do you want the Public Utility Commission to do about your complaint?  
(Use additional paper if need more space).

Please See Attached

5. You must sign and date your complaint below.

The information I have placed on this form is true and correct to the best of my knowledge. I understand that I could be punished under Pennsylvania State Law if I purposely give false information.

[Signature]  
Signature

June 11, 2003  
Date

Continued on next page

Chairman, Harmar Township  
Board of Supervisors

6. If you are represented by a lawyer you must provide your lawyer's name, address and telephone number.

Lawyer's Name Blaine A. Lucas and Shawn N. Gallagher

Street Springer, Bush and Perry, Two Gateway Center, 15th Floor

City Pittsburgh State PA Zip 15222

Area Code/Phone Number (412)281-4900

**Mail to:**  
Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

**For more information, please contact the Secretary's Bureau at 717-772-7777.**

**Formal Complaint Form**  
**Pennsylvania Public Utility Commission**

3. What is your Complaint?

This complaint is in regard to the maintenance of a pedestrian crossing over the tracks of the Norfolk Southern Railway Company ("Norfolk"), formerly the Pennsylvania Railroad Company, located in Harmar Township, Allegheny County, Pennsylvania (the "Township"). The pedestrian crossing at issue is the subject, *inter alia*, of the Report and Order of the Public Service Commission of the Commonwealth of Pennsylvania, docketed at Application Docket No. 21878-1930, which is attached hereto as Exhibit "A" (the "Order"). The Order provides that all costs and expenses in connection with the pedestrian crossing, including maintenance, are the responsibility of the Pennsylvania Railroad Company, whose rail line is now owned by Norfolk.

Norfolk has failed to maintain the pedestrian crossing as required by the Order. The pedestrian crossing is dilapidated, and in its current deteriorated state poses a significant risk to the health and safety of pedestrians. The Township has received numerous verbal and written complaints concerning the condition of the pedestrian crossing. In response to these complaints, the Township notified Norfolk of its continued obligation to maintain the crossing by letter dated January 16, 2002, attached hereto as Exhibit "B". Due to inaction by Norfolk, by letter dated July 2, 2002, attached hereto as Exhibit "C", the Township again notified Norfolk of its obligation to maintain the crossing, and requested a meeting in an effort to accomplish an amicable solution. Norfolk failed to respond to the Township's letters contained in Exhibits B and C. In a letter dated August 27, 2002, attached hereto as Exhibit "D", the Township notified Norfolk that if it did not contact the Township in regard to the maintenance of the pedestrian crossing by September 2002, the Township would have no other recourse but to initiate proceedings with the PUC.

Norfolk failed to contact the Township by September 2002. Thereafter, the Chairman of the Township Board of Supervisors, Robert W. Seibert, contacted Mr. Terry Sullivan of Norfolk on April 15, 2003, regarding the maintenance of the pedestrian crossing and was verbally informed by Mr. Sullivan that no relief would be offered by Norfolk for the maintenance of the crossing.

4. What do you want the Public Utility Commission to do about your complaint?

The Township requests that the PUC order Norfolk to comply with the terms of the original Order, repair the pedestrian crossing and maintain it in the future in accordance with sound engineering practice and safety standards.

THE PUBLIC SERVICE COMMISSION  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

RECEIVED

JUN 11 2003

Application Docket No. 21878-1930  
PA PUBLIC UTILITY COMMISSION  
SECRETARY'S OFFICE

In re: Application of THE PENNSYLVANIA RAILROAD COMPANY, for the approval of the alteration of an existing crossing, at grade, from a vehicular to a pedestrian crossing, at point where tracks of said railroad company cross a township highway in Harmar Township, Allegheny County, Pennsylvania, immediately west of Harmarville Passenger Station, said railroad company; and, also for the abolition of another crossing, at grade, where township highway crosses tracks of the said railroad company, approximately eight hundred and fifty (850) feet east of Harmarville Station; and, also for the construction of crossing, at grade, at point where a new connecting highway will cross the tracks of said railroad company and the tracks of the Allegheny Valley Street Railway Company, approximately six hundred (600) feet east of Harmarville Station.

REPORT AND ORDER

BY THE COMMISSION:

The tracks and right-of-way of The Pennsylvania Railroad Company cross at grade in the vicinity of its Harmarville Passenger Station in Harmar Township, Allegheny County, two township highways connecting with State Highway Route 70, locally known as Freeport Road. The street railway tracks of the Allegheny Valley Street Railway Company parallels said State Highway Route 70 on the east side. The first crossing is immediately west of Harmarville Passenger Station, and the second township crossing is approximately eight hundred and fifty (850) feet east of said station.

It is proposed by this proceeding to alter or change first grade crossing west of Harmarville Station from a vehicular and pedestrian crossing to a four foot pedestrian crossing at grade, and to abolish the second crossing about eight hundred and fifty (850) feet east of the Harmarville Passenger Station. Under the plan submitted, a new connecting township highway is to be constructed from the township road west of the station to the township road eight hundred and fifty (850) feet east of the Station, and to construct a new highway leading from the aforesaid new connecting highway to State Highway Route 70. This latter new highway will cross at grade the tracks of The Pennsylvania Railroad Company, and Allegheny Valley Street Railway Company at point approximately six hundred (600) feet east of the Harmarville Station. The street railway track at point of new crossing is about eleven (11) inches higher than the State Highway Route 70, and will be lowered to meet the grade of the State Highway. The Department of Highways; Township Supervisors of Harmar Township, and the Allegheny Valley Street Railway Company have approved the proposed improvement. The Pennsylvania Railroad Company will bear all expenses in connection with the entire improvement, and after construction the Allegheny Valley Street Railway Company will maintain new highway crossing over its tracks; The Pennsylvania Railroad Company maintain crossings over its tracks, and the Township of Harmar will maintain the new connecting highways.

EXHIBIT

A

The Commission from consideration of the record finds and determines that the approval of the application in accordance with plan dated January 4, 1929, and identified as Exhibit 3 at hearing of May 15, 1930, as modified with respect to lowering the tracks of Allegheny Valley Street Railway Company, the elevation of the concrete paving, State Highway Route 70, and agreement of parties, and the issuance of a certificate of public convenience in evidence thereof, subject to the following conditions is necessary and proper for the service, accommodation and convenience of the public:

FIRST: That the new grade crossings over tracks of the Allegheny Valley Street Railway Company and The Pennsylvania Railroad Company shall be planked solid or paved between rails for a distance of eighteen inches outside of each rail for a width of twenty-eight feet measured at right angles to the center line of the highway.

SECOND: That the approaches of the new grade crossing shall be graded for a width of twenty-eight feet and surfaced with cinder, slag or broken stone thoroughly compacted for a width of at least twenty feet.

THIRD: That the crossing immediately west of Hammarville Station altered and changed from vehicular to pedestrian crossing shall be planked or paved for a width of four feet.

FOURTH: That adequate drainage facilities to properly drain the highway at point of the new crossing shall be installed and maintained.

FIFTH: That standard railroad crossing warning signs shall be erected and maintained at the new crossing.

SIXTH: That the top rail of the track of the Allegheny Valley Street Railway Company at point of new highway crossing shall be lowered to meet the elevation of the concrete paving of said State Highway Route 70.

SEVENTH: That all costs and expenses in connection with the entire improvement shall be borne and paid for by The Pennsylvania Railroad Company and the maintenance of the new crossing over tracks of the Allegheny Valley Street Railway Company shall be borne and paid for by said company, and the maintenance of the new crossing over tracks of The Pennsylvania Railroad Company as well as pedestrian crossing shall be borne by The Pennsylvania Railroad Company and the maintenance of the new connecting highways shall be borne and paid for by the Township of Hammar.

EIGHTH: That when the new crossings are constructed and open to public travel and crossing eight hundred and fifty feet east of Hammarville Station abolished shall be properly barricaded by The Pennsylvania Railroad Company, and the barricades thereafter maintained by said company.

NINTH: That new connecting highways shall be graded for a width of twenty-eight feet and surfaced for a width of twenty feet with granulated slag and that necessary drainage structures to properly drain the highway shall be constructed.

TRUTH: That all work in connection with the improvement shall be made in a manner satisfactory to this Commission.

HOW, to-wit, September 23, 1930, IT IS ORDERED: That the following highways be, and the same are hereby laid out and established and opened:

(a) A new highway beginning at a point in the township highway extending across the tracks of The Pennsylvania Railroad Company west of its station at a point approximately 180 feet south-east of said crossing, and extending thence in a general north-easterly direction for a distance of approximately 900 feet to a junction with a township highway extending northwesterly to the crossing to be abolished; alignment, width and grade to be as shown on the approved plan.

(b) A new highway beginning at a point in the State Highway Route 70 approximately 145 feet east of the crossing to be abolished and extending thence in a southeasterly direction across the track of the Allegheny Valley Street Railway Company and the tracks of The Pennsylvania Railroad Company a distance of 130 feet to a junction with the new connecting highway above laid out; alignment, width and grade to be as shown on the approved plan;

IT IS FURTHER ORDERED: That the following properties are hereby appropriated for the right-of-way of the new highways:

All that certain strip of property of The Pennsylvania Railroad Company, 33 feet in width, extending along the southerly right-of-way line of said Pennsylvania Railroad Company from a point 73 feet westwardly from the center line of Harrisville Passenger Station of the said Pennsylvania Railroad Company to a point 330 eastwardly from the said line of the said passenger station, including the southerly approach to a proposed grade crossing located 604 feet eastwardly from the center line of said passenger station bounded and described as follows, to-wit:

Beginning at a point in the southerly right-of-way line of The Pennsylvania Railroad Company; said line having a bearing south 59°25' west from a certain monument stone for a distance of 41.1 feet; said stone being located 868.8 feet eastwardly from the center line of the said Pennsylvania Railroad Company's Harrisville Passenger Station; said distance being measured along the center line of the said Pennsylvania Railroad Company; and distant 50.2 feet southeasterly at right angles from said center line; thence south 39°25' west 119.1 feet to a stone; thence south 41°42'27" west 100.08 feet to a stone; thence south 39°25' west 100 feet to a stone; thence south 40°26'52" west 201 feet to a point; thence south 42°21'58" west 101.8 feet to a point; thence south 50°18'11" west 47.4 feet to a point; thence south 54°39' west 45 feet; thence south 57°08'15" west 115.6 feet; thence north 27°01' west 33.1 feet; thence north 57°08'15" east 119.2 feet; thence north 54°39' east 43.0 feet; thence north 50°12'11" east 44.1 feet; thence north 42°21'58" east 99.2 feet; thence north 40°26'52" east 200 feet; thence north 39°25' east 100 feet; thence north 41°42'27" east 79.45 feet; thence north 57°02' west 89.7 feet; thence north 55°57' east 23 feet; thence south 57°03' east 32.6 feet; thence north 50°25' east 130.2 feet; and thence along the arc of a curve to the right with a radius of 103 feet a distance of 85 feet to the point and place of beginning. Containing an area of 0.554 acres more or less.

Parcel 2

All that certain parcel of property of the Pennsylvania Railroad Company to be used as a northerly approach to a proposed grade crossing and situate approximately 804 feet eastwardly from the center line of the Harmarville Passenger Station of the said Pennsylvania Railroad Company, bounded and described as follows to-wit:

Beginning at a point 588.2 feet eastwardly from the center line of the Harmarville Passenger Station, said distance measured along the center line of the said Pennsylvania Railroad Company and distant 39.4 feet northwardly at right angles from center line; thence north 37° 35' west 9.1 feet, said line being a prolongation of the westerly line of the southerly approach to a proposed grade crossing and extending to the southerly line as determined by the State Highway Department in establishing the right of way of present Highway Route No. 29 known locally as "Freeport Road"; thence along said line of Freeport Road north 62° 42' east 35 feet; thence south 37° 03' east 9.1 feet and thence south 62° 57' west 35.0 feet to the point and place of beginning containing an area of 300.1 square feet more or less.

All that certain parcel of property of the Inland Collieries Company, Post Office address, Indianola, Pa., bounded and described as follows:

Beginning at a point in the southerly right of way line of the said Pennsylvania Railroad Company, said point of beginning being identical with the point of beginning of the aforesaid parcel No. 1; thence along the arc of a curve in a southeasterly direction of 80.8 feet, said curve having a radius of 105 feet and thence south 29° 12' west 100.0 feet to the approximate

road company's Harmarville Passenger Station; thence south 27° 52' east along the said westerly line of the said public road a distance of 48.2 feet; thence along the arc of a curve in a northwardly direction for a distance of 100.75 feet, said curve having a radius of 70 feet to a point in the southerly right of way line of said Pennsylvania Railroad Company and thence along said southerly right of way line north 39° 25' east 75.8 feet to the point and place of beginning, containing an area of 1599.1 square feet more or less.

IT IS FURTHER ORDERED: That effective upon the completion of new highways and new grade crossing that portion of the township highway approximately eight hundred and fifty feet east of Harmarville Station between the property line of the Allegheny Valley Street Railway Company on the north side of its track and the southerly property line of the Pennsylvania Railroad Company be, and is hereby vacated.

IT IS FURTHER ORDERED: That the said court of public convenience issue evidencing the Commission's approval of this application as above determined.

ATTEST:

*[Handwritten signature]*



POOR ORIGINAL

BOARD OF SUPERVISORS

Robert W. Seibert, Jr. - Chairman  
James R. DiPalma - Vice Chairman  
Donald R. Muse - Supervisor  
John F. Burns, III - Supervisor  
Leo Chini - Supervisor  
Blaine A. Lucas - Solicitor  
Senate Engineering Co. - Engineers  
Michael Liberati - Secretary/Treasurer

HARMAR TOWNSHIP

701 Freeport Road  
Cheswick, Pennsylvania 15024 - 1208  
Phone No. (724) 274 - 4550  
Fax No. (724) 274 - 9522

PLANNING COMMISSION

James Szarnicki - Chairman  
Donald Kiser - Vice Chairman  
Carmela DiPalma - Secretary  
Frederick Domaratz - Member  
John B. Colpo - Member  
Blaine A. Lucas - Solicitor  
Senate Engineering Co. - Engineers

January 16, 2002

Mr. Terry Sullivan  
A.D.E. Administration  
Norfolk Southern Railroad  
425 Holiday Drive - Suite 301  
Pittsburgh, PA 15220

RE: PEDESTRIAN CROSSING  
PUC APPLICATION DOCKET NO. 21878-1950

Dear Mr. Sullivan:

A resident of the Wenzel Drive area of Harmar Township has recently sent a letter to the Board of Supervisors, copy enclosed, concerning the deteriorated condition of a pedestrian crossing over the tracks of the Norfolk Southern Railroad, formerly the Pennsylvania Railroad Company, as mentioned in a Commonwealth of Pennsylvania, Public Utility Commission Application Docket No. 21878-1950.

The Docket is being forwarded to you for your review and comment on maintenance responsibility for the pedestrian crossing. Should you not be the proper person to review this matter, please forward the correspondence to the proper representative of Norfolk Southern Railroad, or advise the Township on where to direct the information.

Your prompt consideration of the matter will be most appreciated.

Should you have any questions, please feel free to contact me.

Sincerely,

HARMAR TOWNSHIP SUPERVISORS

*Michael Liberati*  
Michael Liberati  
Secretary/Treasurer

/ml

cc: Harmar Township Supervisors

EXHIBIT  
B

RECEIVED  
JUN 11 2003  
PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

BOARD OF SUPERVISORS

Robert W. Seibert, Jr. - Chairman  
James R. DiPalma - Vice Chairman  
Donald R. Mute - Supervisor  
John F. Burns, III - Supervisor  
Leo Chini - Supervisor  
Blaine A. Lucas - Solicitor  
Senate Engineering Co. - Engineers  
Michael Liberati - Secretary/Treasurer

HARMAR TOWNSHIP

701 Freeport Road  
Cheswick, Pennsylvania 15024 - 1208  
Phone No. (724) 274 - 4550  
Fax No. (724) 274 - 9522

PLANNING COMMISSION

James Szarnicki - Chairman  
Donald Kiser - Vice Chairman  
Carmela DiPalma - Secretary  
Frederick Domaratz - Member  
John B. Colpo - Member  
Blaine A. Lucas - Solicitor  
Senate Engineering Co. - Engineers

July 2, 2002

Mr. Terry Sullivan  
A.D.E. Administration  
Norfolk Southern Railroad  
425 Holiday Drive - Suite 301  
Pittsburgh, PA 15220

RE: PEDESTRIAN CROSSING  
PUC APPLICATION DOCKET NO. 21878-1950

RECEIVED  
JUN 11 2003  
PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Dear Mr. Sullivan:

Enclosed is a copy of a letter that was sent to you from Harmar Township, dated January 16, 2002, concerning a letter that was received from a resident of the Wenzel Drive area of the Township. This letter refers to the deteriorated condition of the pedestrian crossing over the tracks of the Norfolk Southern Railroad, formerly the Pennsylvania Railroad Company. Also, forwarded at that time for your review was a copy of Commonwealth of Pennsylvania, Public Utility Commission (PUC) Application Docket No. 21878-1950 concerning among other items, maintenance responsibility for said crossing. I have enclosed another copy of the docket.

The Harmar Township Board of Supervisors again asks that you review the docket concerning maintenance responsibility for the pedestrian crossing. Should you not be the proper person to review the information, please forward it on to the proper representative of the Norfolk Southern Railroad, or advise the Township on to whom it may be directed.

The Supervisors would like to meet, in the very near future, with a representative(s) of the Norfolk Southern Railroad to discuss the condition of the crossing and to work out a solution for the needed repairs, without the involvement of the PUC. At your earliest convenience, following review of the docket, please contact the undersigned to arrange for a meeting.

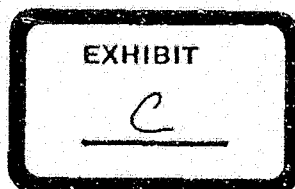
Should you have any questions, please feel free to contact me.

Sincerely,

HARMAR TOWNSHIP SUPERVISORS

*Michael Liberati*  
Michael Liberati  
Township Secretary

/ml  
Enclosures



BOARD OF SUPERVISORS

Robert W. Seibert, Jr. - Chairman  
James R. DiPalma - Vice Chairman  
Donald R. Muse - Supervisor  
John F. Burns, III - Supervisor  
Leo Chini - Supervisor  
Blaine A. Lucas - Solicitor  
Senate Engineering Co. - Engineers  
Michael Liberati - Secretary/Treasurer

HARMAR TOWNSHIP

701 Freeport Road  
Cheswick, Pennsylvania 15024 - 1208  
Phone No. (724) 274 - 4550  
Fax No. (724) 274 - 9522

PLANNING COMMISSION

James Szarnickj - Chairman  
Donald Kiser - Vice Chairman  
Carmela DiPalma - Secretary  
Frederick Domaratz - Member  
John B. Colpo - Member  
Blaine A. Lucas - Solicitor  
Senate Engineering Co. - Engineers

August 27, 2002

Mr. Terry Sullivan  
A.D.E. Administration  
Norfolk Southern Railroad  
525 Holiday Drive - Suite 301  
Pittsburgh, PA 15220

RECEIVED  
JUN 11 2003  
PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

RE: PEDESTRIAN CORSSING  
PUC APPLICATION DOCKET NO. 21878-1950

Dear Mr. Sullivan:

Several weeks ago Harmar Township had sent you a second letter regarding the deteriorate condition of the pedestrian crossing over the tracks of the Norfolk Southern Railroad in Harmar Township, directly across from where Guys Run Road intersects with State Route 28. The above referenced Pennsylvania Public Utility Commission Application Docket, which a copy was forwarded to you for your review, refers to among other items maintenance responsibility for said pedestrian crossing. A copy of the docket is enclosed.

The Harmar Township Board of Supervisors had asked that you review the docket concerning the stated maintenance responsibility for the pedestrian crossing, or if you are not the proper person to review the information to forward it on to the appropriate representative of the Norfolk Southern Railroad for his or her review. Also, the Supervisors had asked to meet with a representative(s) of the railroad to discuss the condition of the crossing to work out a solution for the needed repairs without involvement of the PUC.

To date the township has not heard from you or a railroad representative concerning this matter. Should the township not here from you or a representative of the railroad by the end of September, 2002, the Supervisors will have no other recourse but to involve the PUC.

Should you have any questions or comments regarding this matter, please feel free to contact me.

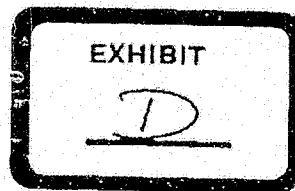
Sincerely,

HARMAR TOWNSHIP SUPERVISORS

*Michael Liberati*  
Michael Liberati  
Township Secretary

/ml

Enclosure



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P O BOX 3265, HARRISBURG PA 17105-3265

DATE SERVED: JUNE 25, 2003

C-20030526

NORFOLK SOUTHERN RAILWAY COMPANY  
110 FRANKLIN ROAD, S.E.  
ROANOKE VA 24042-0028

DOCUMENT  
FOLDER

-----  
TERRY MCVERRY, ALLEGHENY COUNTY SOLICITOR  
300 FORT PITT COMMONS  
445 FORT PITT BOULEVARD  
PITTSBURGH PA 15219

-----  
PENNDOT  
ATTN: ANDREW GORDEN ESQUIRE  
OFFICE OF CHIEF COUNSEL  
P O BOX 8212  
HARRISBURG PA 17105-8212

**DOCKETED**  
JUN 25 2003

Dear Sir/Madam:

A complaint has been filed against you before the Pennsylvania Public Utility Commission by HARMAR TOWNSHIP. To defend yourself against the claims stated in the following pages, you must act within twenty (20) days by filing in writing with the Commission, either personally or through your attorney, your defenses or objections to the claims stated against you. Or, you may satisfy the complaint by settling the matter with the Complainant and submitting proof of settlement to the Commission within twenty (20) days.

IF YOU FAIL TO RESPOND WITHIN TWENTY (20) DAYS, THE CASE MAY GO FORWARD IN YOUR ABSENCE AND A JUDGEMENT MAY BE ENTERED AGAINST YOU BY THE COMMISSION WITHOUT FURTHER NOTICE.

CUSTOMER OF A UTILITY

A payment schedule may be prescribed or a termination of utility services may be authorized. You may lose money or property or other rights important to you.

JUNE 25, 2003

COMPANY/UTILITY

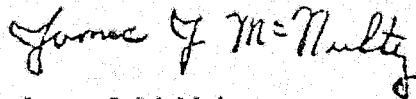
An Administrative Law Judge may revoke or suspend any certificate or permit held by you, or impose a fine, or any other appropriate penalty or remedy authorized by the Public Utility Code. You may lose money or property or other rights important to you.

Detailed instructions on how to proceed are contained in the attached pages. You are advised to read them carefully.

Unless you are a corporation or other organization, you may proceed without a lawyer. However, if you want a lawyer and do not have one or cannot afford one, the office listed below can tell you where you can get legal help:

Pennsylvania Lawyer Referral Service  
Pennsylvania Bar Association  
P.O. Box 186  
Harrisburg, PA 17108  
(800) 692-7375

Very truly yours,



James J. McNulty  
Secretary

dbs

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

DATE SERVED: JUNE 25, 2003

HARMAR TOWNSHIP  
Complainant

DOCUMENT  
FOLDER

VS.

NORFOLK SOUTHERN RAILWAY  
COMPANY  
ALLEGHENY COUNTY  
Commonwealth of Pennsylvania  
Department of Transportation  
Respondents

Complaint Docket  
No: C-20030526

**DOCKETED**  
JUN 25 2003

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FORMAL COMPLAINT NOTICE TO RESPONDENT TO ANSWER OR SATISFY

---

TO: RESPONDENTS

TAKE NOTICE:

That a complaint in the above entitled matter, of which the attached is a true and correct copy, has been presented and filed of record with the Pennsylvania Public Utility Commission. Section 702 of the Public Utility Code, 66 Pa. C.S. Section 702, requires the Commission to serve on each party named in a complaint a copy of the complaint and notice calling upon each party to satisfy the complaint, or to answer the same in writing within a specified time; THEREFORE,

1. You have twenty (20) days from the date on which this complaint is served to either satisfy this complaint or to file with the Secretary of the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, an answer (original and three copies), in writing, under oath, which, as required by Section 5.61 of the Commission's Rules of Practice and Procedure, 52 Pa. Code Section 5.61, either affirms or specifically denies the allegations in this complaint. You must also serve a copy of the answer upon the complainant. The date of service is the mailing date as indicated by the date at the top of this Notice. Section 1.56(a) of the Commission's Rules of Practice and Procedure, 52 Pa. Code Section 1.56(a).

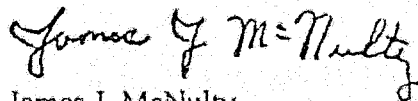
2. If you fail to either satisfy this complaint or to file answer or other responsive pleading within twenty (20) days, you will be deemed to have admitted all the allegations in this complaint in accordance with Section 5.61 of the Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code Section 5.61. In that event, the Commission may, without hearing, enter an order which either revokes or suspends any certificate or permit held by you or which

imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C.S. Section 101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

3. If you elect to satisfy this complaint you must file, within twenty (20) days from the date on which this complaint is served, affidavits executed by each complainant that this complaint has been satisfied. Such affidavits must describe the basis on which this complaint was satisfied; any settlement agreement between the parties must be reduced to writing and attached to the affidavit. Such affidavits are to be filed with the Secretary of the Commission at the address set forth in paragraph 1. Upon receipt of affidavits of satisfaction from all complainants, this complaint may be dismissed by the Commission in accordance with Section 703(a) of the Public Utility Code, 66 Pa. C.S. Section 703(a), unless the Commission determines that such dismissal would be contrary to the public interest, in which event the Commission may direct that hearings be held upon the complaint.

4. If you file an answer which admits the allegations in this complaint, or which fails to specifically deny the allegations in this complaint, the Commission may, without hearing, enter an order which either revokes or suspends any certificate held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C. S. Section 101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

5. If you file a timely answer which specifically denies the allegations in this complaint, or which raises material questions of law or fact, this matter shall be referred to the Office of Administrative Law Judge for hearing and decision. If, after hearing on the issues raised by that answer, you are found to have committed any of the violations alleged in the complaint, the Administrative Law Judge may render a decision which either revokes or suspends any certificate or permit held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C. S. Section 101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. In the imposition of a penalty after a hearing the Administrative Law Judge is not bound by the relief sought by the complainant in paragraph 4 of the attached complaint.



James J. McNulty  
Secretary

(SEAL)

Certified Mail  
Return Receipt Requested

ORIGINAL

OFFICE OF CHIEF COUNSEL - Real Property Division  
Commonwealth Keystone Building  
400 North Street, Harrisburg PA 17120-0096  
Post Office Box 8212, Harrisburg, PA 17105-8212



July 14, 2003

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

SECRETARY'S BUREAU  
03 JUL 14 PM 2:57

RE: Harmar Township v. Norfolk Southern Railway Company,  
Allegheny County  
Commonwealth of Pennsylvania, Department of Transportation  
Docket No. C-20030526

Dear Secretary McNulty:

Enclosed for filing, please find the original and three (3) copies of an ANSWER TO COMPLAINT, in the above-captioned matter.

I hereby certify that a copy of the Department's Petition has been sent to the parties of record as indicated on the CERTIFICATE OF SERVICE.

Very truly yours,

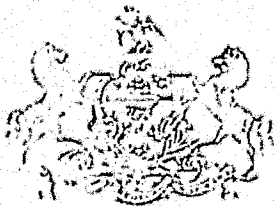
*Gina M. D'Alfonso*  
Gina M. D'Alfonso  
Assistant Counsel-in-Charge

220 GDM/hdm

cc: Parties of Record

Gary C. Fawver, P.E., Chief, Utilities and Right of Way Division  
ATTN: Roger S. Aulakh, P.E.  
John S. Fail, Engineering District 11-0

Enclosures



GOVERNOR'S OFFICE OF GENERAL COUNSEL  
TELEPHONE: 717.787.3128  
FAX: 717.772.2741  
www.dot.state.pa.us

DOCUMENT  
FOLDER

RECEIVED

61

Pennsylvania Department of Transportation

# ORIGINAL

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

HARMAR TOWNSHIP,  
Complainant

v.

NORFOLK SOUTHERN RAILWAY  
COMPANY  
ALLEGHENY COUNTY  
COMMONWEALTH OF  
PENNSYLVANIA, DEPARTMENT OF  
TRANSPORTATION

Respondents

DOCKET NO. C-20030526

SECRETARY'S BUREAU  
JUN 14 PM 2:57

ANSWER TO COMPLAINT

AND NOW, comes the Commonwealth of Pennsylvania, Department of Transportation (Department) by and through its counsel, Gina M. D'Alfonso, and files this following Answer to Complaint dated June 25, 2003:


1. Admitted.
2. Admitted.
3. Denied. The Department is without sufficient information to either affirm or deny the allegations in Paragraph No. 3.
4. Paragraph 4 is a Prayer for Relief to which no response is warranted.

DOCUMENT  
FOLDER

DOCKETED  
JUL 15 2003

WHEREFORE, the Department of Transportation respectfully requests  
that the Public Utility Commission schedule the matter for a field conference.

Respectfully submitted,

  
Gina M. D'Alfonso  
Assistant Counsel in Charge  
Office of Chief Counsel  
Commonwealth of Pennsylvania  
P.O. Box 8212  
Harrisburg, PA 17105-8212  
Telephone No.: 717/787-3128

DATED: 7/14/03

SECRETARY'S BUREAU

09 JUN 16 PM 2:57

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

HARMAR TOWNSHIP,  
Complainant

v.

NORFOLK SOUTHERN RAILWAY  
COMPANY  
ALLEGHENY COUNTY  
COMMONWEALTH OF  
PENNSYLVANIA, DEPARTMENT OF  
TRANSPORTATION  
Respondents


DOCKET NO. C-20030526

SECRETARY'S BUREAU

10:11:11 PM 2:57

VERIFICATION

I, Gina M. D'Alfonso, Assistant Counsel in Charge, for the Commonwealth of Pennsylvania, Department of Transportation, in this matter, hereby verify that the statements made in the foregoing ANSWER TO COMPLAINT, are true and correct to the best of my knowledge, information and belief. I understand that this statement is made subject to penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

  
Gina M. D'Alfonso  
Assistant Counsel in Charge

DATED: 7/14/03

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

HARMAR TOWNSHIP,  
Complainant

v.

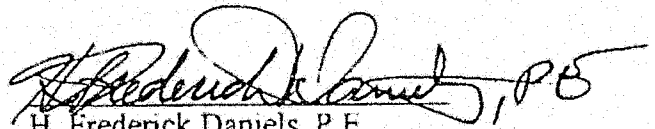
NORFOLK SOUTHERN RAILWAY  
COMPANY  
ALLEGHENY COUNTY  
COMMONWEALTH OF  
PENNSYLVANIA, DEPARTMENT OF  
TRANSPORTATION

Respondents

DOCKET NO. C-20030526

VERIFICATION

I, H. Frederick Daniels, P.E., Grade Crossing Engineer, for the Commonwealth of Pennsylvania, Department of Transportation, in this matter, hereby verify that the statements made in the foregoing ANSWER TO COMPLAINT, are true and correct to the best of my knowledge, information and belief. I understand that this statement is made subject to penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

  
H. Frederick Daniels, P.E.  
Grade Crossing Engineer

DATED: 7/14/03

SECRETARY'S BUREAU

7 11 03 2:57

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

HARMAR TOWNSHIP  
Complainant

v.

DOCKET NO. C-20030526

NORFOLK SOUTHERN RAILWAY  
COMPANY  
ALLEGHENY COUNTY  
COMMONWEALTH OF  
PENNSYLVANIA, DEPARTMENT OF  
TRANSPORTATION

Respondents

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the ANSWER TO COMPLAINT  
was served upon the parties listed below by first-class mail, postage prepaid this 14<sup>th</sup> day  
of July, 2003:

Norfolk Southern Railway Company  
110 Franklin Road, S.E.  
Roanoke, Virginia 24042-0028

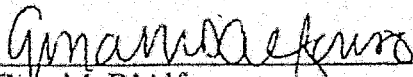
Harmar Township  
701 Freeport Road  
Cheswick, PA 15024-1208

Randy Noe, Esquire  
Norfolk Southern Railway Company  
3 Commercial Place  
Norfolk, Virginia 23510

Mr. Terry McVerry  
Allegheny County Solicitor  
300 Fort Pitt Commons  
445 Fort Pitt Boulevard  
Pittsburgh, PA 15219

Blaine A. Lucas  
Shawn N. Gallagher  
Springer, Bush and Perry  
Two Gateway Center  
15<sup>th</sup> Floor  
Pittsburgh, PA 15222

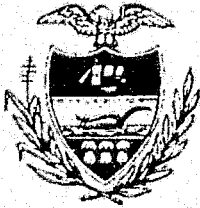
Respectfully submitted,

  
Gina M. D'Alfonso  
Assistant Counsel-in-Charge  
Office of Chief Counsel  
P.O. Box 8212  
Harrisburg, Pennsylvania 17105-8212  
Telephone No.: (717) 787-3128

DATED: 7/14/03

SECRETARY'S BUREAU

03 JUL 14 PM 2:57



Charles P. McCullough  
County Solicitor

DEPARTMENT OF LAW

ORIGINAL

# County of Allegheny

300 FORT PITT COMMONS BLDG  
445 FORT PITT BLVD  
PITTSBURGH, PA 15219-1327  
PHONE (412) 350-1120 - FAX (412) 350-1174

BTL

July 9, 2003

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
P O. Box 3265  
Harrisburg, PA 17105-3265

**In Re: Harmar Township vs. Norfolk Southern Railway Company,  
Allegheny County, Commonwealth of Pennsylvania, Department of  
Transportation  
Docket No. C-20030526**

Dear Mr. McNulty:

Enclosed for filing please find an original and three (3) copies of the Answer of Respondent,  
Allegheny County, to Complaint of Harmar Township.

Very truly yours,

HOWARD M. LOUIK  
Assistant County Solicitor

HML/sm

Enclosure

cc: Blaine A. Lucas, Esquire  
Shawn N. Gallagher, Esquire  
Attorneys for Harmar Township  
Andrew Gorden, Esquire, PennDOT

DOCUMENT  
FOLDER

SECRETARY'S BUREAU

2003 JUN 15 AM 9:12

REC'D

**ORIGINAL**

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

SECRETARY'S BUREAU

JUL 15 11 51 AM '03

RECEIVED

HARMAR TOWNSHIP )

Complainant, )

vs. )

Complaint Docket No. C-20030526

NORFOLK SOUTHERN RAILWAY )  
COMPANY )

ALLEGHENY COUNTY, )  
COMMONWEALTH OF PENNSYLVANIA )  
DEPARTMENT OF TRANSPORTATION )

Respondents. )

**ANSWER OF RESPONDENT, ALLEGHENY COUNTY,  
TO COMPLAINT OF HARMAR TOWNSHIP**

ALLEGHENY COUNTY ("County"), by and through, CHARLES P.

McCULLOUGH, County Solicitor, and HOWARD M. LOUIK, Assistant County

Solicitor, offers the following Answer to the Complaint filed by HARMAR TOWNSHIP

in the above referenced matter:

1. Admitted.
2. Admitted.
3. The County agrees that the Norfolk Southern Railway Company is obligated to maintain the pedestrian crossing at issue in this proceeding. By way of further answer, the County denies any responsibility for the maintenance of such crossing,

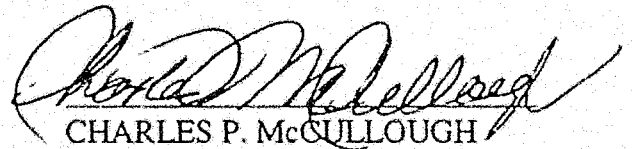
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**DOCKETED**  
JUL 16 2003

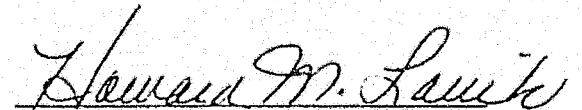
pursuant to the terms of the Pennsylvania Public Utility Commission ("PUC") Order identified in the Complaint.

4. In the event that the Commission determines that Norfolk Southern Railway Company has violated the PUC Order, then the County requests that the Commission direct Norfolk Southern Railway Company to comply in all respects with the terms of said Order.
5. No reply need be made to paragraph 5 of the Complaint

Respectfully Submitted,



CHARLES P. McCULLOUGH  
County Solicitor  
PA I.D. No. 33212



HOWARD M. LOUIK  
Assistant County Solicitor  
PA I.D. No. 21941

Allegheny County Law Department  
300 Fort Pitt Commons Building  
445 Fort Pitt Boulevard  
Pittsburgh, PA 15219

(412) 350-1120

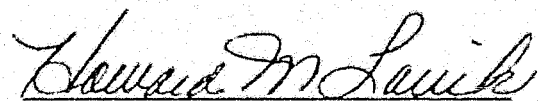
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Answer of Respondent, Allegheny County, to Complaint of Harmar Township, on all parties of record via U.S. mail, first-class, postage prepaid, addressed as follows:

Blaine A. Lucas, Esquire  
Shawn N. Gallagher, Esquire  
Springer, Bush and Perry  
Two Gateway Center, 15<sup>th</sup> Floor  
Pittsburgh, PA 15222  
Attorneys for Harmar Township

Andrew Gordon, Esquire  
PennDOT  
Office of Chief Counsel  
P.O. Box 8212  
Harrisburg, PA 17105-8212

DATE: July 9, 2003

  
HOWARD M. LOUIK, ESQUIRE  
Assistant County Solicitor  
Allegheny County Law Department



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

July 15, 2003

BTL

C-20030526

GARY C FAWVER PE CHIEF  
ROW & UTILITY DIVISION  
PENNDOT BUREAU OF DESIGN  
PO BOX 3362  
HARRISBURG PA 17105-3362

**DOCKETED**  
JUL 22 2003

**DOCUMENT**

Harmar Township  
v.  
Norfolk Southern Railway Company

Dear Mr. Fawver

This is to advise that a field investigation and conference will be held at the site where the subject crossing crosses tracks of NS in Harmar Township on Thursday August 21, 2003 at 1:30 p.m. to discuss the Township's complaint.

Kindly arrange to have a representative present

Very truly yours,

David A. Fischer, P.E.  
Rail Safety Division  
Bureau of Transportation and Safety  
717-787-3434

DAF:lg

LAW OFFICES  
NAUMAN, SMITH, SHIBLER & HALL, LLP

18<sup>TH</sup> FLOOR  
200 NORTH THIRD STREET  
P O Box 840

HARRISBURG, PENNSYLVANIA 17108-0840

TELEPHONE

(717) 236-3010

TELEFAX

(717) 234-1925

July 18, 2003

**ORIGINAL**

DIRECT E-MAIL ADDRESS  
NSSH@NSSH.COM

BTL

**HAND DELIVERED**

SPENCER G. NAUMAN, JR.  
J. STEPHEN FEINOUR  
CRAIG J. STAUDENMAIER  
BENJAMIN C. DUNLAP, JR.  
DENNIS E. BOYLE

JODI A. BEIERSCHMITT  
L. RENEE LIEUX

James McNulty, Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

**In Re: Harmar Township v. Norfolk Southern Railway Company; Allegheny County;  
and Commonwealth of Pennsylvania, Department of Transportation. PUC  
Docket No. C-20030526; Our File No. 14077**

Dear Sir:

I enclose an original and three (3) copies each of the following documents for filing on behalf of Norfolk Southern Railway Company in the above-referenced matter:

1. Entry of Appearance by Benjamin C. Dunlap, Jr., Esquire on behalf of Norfolk Southern Railway Company;
2. Answer with New Matter of Norfolk Southern Railway Company; and
3. Preliminary Motion to Dismiss of Norfolk Southern Railway Company.

As evidenced by the Certificates of Service attached to each document, copies of the documents have been provided to all active parties of record. Once the documents are filed, please return time-stamped copies to our messenger. If you have any questions, please advise.

Sincerely yours,

*Jeannette Chelgren*  
Jeannette Chelgren, Secretary to  
Benjamin C. Dunlap, Jr., Esquire

Enclosures

cc: All Parties of Record (w/encs.)  
Randal S. Noe, Esquire (w/encs.)  
B. Terrance Sullivan (w/encs.)

DOCUMENT  
FOLDER

RECEIVED  
HARRISBURG  
BUREAU

JUL 21 3:57

03

ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Harmar Township, :  
Complainant :  
 :  
vs. :  
 :  
Norfolk Southern Railway Company; :  
Allegheny County; and Commonwealth of :  
Pennsylvania, Department of Transportation, :  
Respondents :

Docket No. C-20030526

SECRETARY'S BUREAU

03 JUL 10 PM 3:57

PRAECIPE FOR ENTRY OF APPEARANCE

Please enter the appearance of the undersigned as counsel for Norfolk Southern Railway Company in regard to the above-captioned proceeding.

NAUMAN, SMITH, SHISSLER & HALL, LLP

By Benjamin C. Dunlap, Jr.  
Benjamin C. Dunlap, Jr., Esquire  
Supreme Court I.D. #66283

200 North Third Street, 18<sup>th</sup> Floor  
P. O. Box 840  
Harrisburg, PA 17108-0840  
717-236-3010  
Attorney for Norfolk Southern Railway Company

Date: July 18, 2003

DOCUMENT  
FOLDER

DOCKETED  
JUL 28 2003

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Harmar Township, :  
Complainant :  
 : Docket No. C-20030526  
vs. :  
 :  
Norfolk Southern Railway Company; :  
Allegheny County; and Commonwealth of :  
Pennsylvania, Department of Transportation, :  
Respondents :

CERTIFICATE OF SERVICE

I hereby certify that I served one (1) copy of the Praecipe for Entry of Appearance on behalf of Norfolk Southern Railway Company, in the above action, this day by depositing the same in the United States mail, postage prepaid, in Harrisburg, Pennsylvania, addressed to:

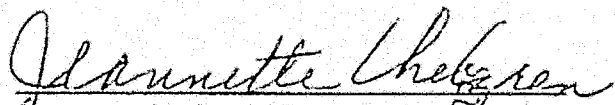
Harmar Township  
701 Freeport Road  
Cheswick, PA 15024-1208

Ferry McVerry, Esquire  
Allegheny County Solicitor  
300 Fort Pitt Commons  
445 Fort Pitt Boulevard  
Pittsburgh, PA 15219

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

Blaine A. Lucas, Esquire  
Shawn N. Gallagher, Esquire  
Springer, Bush & Perry  
Two Gateway Center, 15<sup>th</sup> Floor  
Pittsburgh, PA 15222

Date: July 18, 2003

  
Jeannette Chelgren, Secretary to  
Benjamin C. Dunlap, Jr., Esquire

REC'D  
P.U.C.  
BUREAU  
JUL 18 2003 3:57

**ORIGINAL**

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Harmar Township,  
Complainant

vs.

Norfolk Southern Railway Company;  
Allegheny County; and Commonwealth of  
Pennsylvania, Department of Transportation,  
Respondents

Docket No. C-20030526

TO: Harmar Township

SECRETARY'S BUREAU  
JUL 19 2003 3:55

You are hereby notified to plead to the enclosed New Matter within twenty (20) days from the service hereof or a default judgment may be entered against you.

NAUMAN, SMITH, SHISSLER AND HALL, LLP

by: Benjamin C. Dunlap, Jr.  
Benjamin C. Dunlap, Jr., Esquire  
Supreme Court ID#66283

200 North Third Street  
P.O. Box 840  
Harrisburg, PA 17108  
Telephone: 717/236-3010  
Counsel for Norfolk Southern Railway Company

Date: 7-18-03

DOCUMENT  
FOLDER

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Harmar Township, :  
Complainant :  
 : Docket No. C-20030526  
vs. :  
 :  
Norfolk Southern Railway Company; :  
Allegheny County; and Commonwealth of :  
Pennsylvania, Department of Transportation, :  
Respondents :

ANSWER WITH NEW MATTER OF  
NORFOLK SOUTHERN RAILWAY COMPANY

SECRETARY'S BUREAU  
03/11/13 PM 3:58

Norfolk Southern Railway Company ("Norfolk Southern"), by and through its counsel, Nauman, Smith, Shissler & Hall, LLP, hereby answers the Complaint of Harmar Township, pursuant to 52 Pa.Code §§ 1.56(b) and 5.61-5.62, as follows:

1. Admitted.
2. Admitted.
3. It is denied that Norfolk Southern has failed to maintain the subject crossing, that the crossing is dilapidated and that its current condition poses a risk to the health and safety of pedestrians. It is denied that Norfolk Southern owns the tracks at the subject crossing; instead, Norfolk Southern operates on the tracks pursuant to an agreement. After reasonable investigation Norfolk Southern lacks sufficient information to form a belief as to the truth of the averment that the Township has received numerous verbal and written complaints concerning the condition of the pedestrian crossing, which averments are therefore deemed denied. By way of further answer, the averments of the Complaint as well as the Public Service Commission Order attached thereto as

DOCUMENT  
FOLDER

DOCKETED  
JUL 28 2003

Exhibit "A" state that the subject crossing is a pedestrian crossing, over which the Commission would have no jurisdiction.

4. Paragraph 4 of the Complaint is a prayer for relief to which no response is required.

5. Paragraph 5 of the Complaint is a signature and verification by a representative of Harmar Township, to which no reply is required.

6. Paragraph 6 of the Complaint is the name of counsel for the Township, to which no response is required.

WHEREFORE, Norfolk Southern Railway Company respectfully requests that the Complaint of Harmar Township be dismissed.

#### NEW MATTER

7. The averments of Paragraphs 1 through 6 above are incorporated herein as if stated in full

8. The subject crossing about which Harmar Township complains is a pedestrian crossing, pursuant to the averments of the Complaint and the Public Service Commission Order attached thereto as Exhibit "A".

9. The Commission has no jurisdiction over a pedestrian crossing.

WHEREFORE, Norfolk Southern Railway Company respectfully requests that the Complaint of Harmar Township be dismissed.

Respectfully submitted,  
NAUMAN, SMITH, SHISSLER & HALL, LLP

By *Benjamin C. Dunlap, Jr.*  
**Benjamin C. Dunlap, Jr., Esquire**  
Supreme Court I.D. #66283  
200 North Third Street, 18<sup>th</sup> Floor  
P. O. Box 840  
Harrisburg, PA 17108-0840  
717-236-3010  
Attorney for Norfolk Southern Railway Company

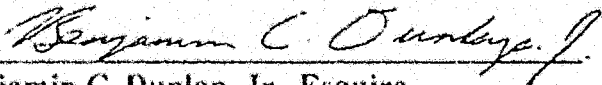
Date: July 18, 2003

SECRETARY'S BUREAU

13 JUL 18 PM 3:58

VERIFICATION

I, Benjamin C. Dunlap, Jr., Esquire, a member of the firm of Nauman, Smith, Shissler & Hall, LLP, attorneys for Norfolk Southern Railway Company in the foregoing proceeding, make this verification on behalf of Norfolk Southern Railway Company, and do state that as an attorney for Norfolk Southern Railway Company, I am authorized to make this Verification on behalf of Norfolk Southern Railway Company, and further state that, based on information provided to me by Norfolk Southern Railway Company, the facts set forth in the foregoing Answer with New Matter are true and correct to the best of my knowledge, information and belief. I understand that my statements are made subject to 18 Pa. C S. § 4904 providing for criminal penalties for unsworn falsification to authorities

  
Benjamin C. Dunlap, Jr., Esquire

Date: July 18, 2003

SECRETARY'S BUREAU

03 JUL 18 PM 3:58

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Harmar Township, :  
Complainant :  
 : Docket No. C-20030526  
vs. :  
 :  
Norfolk Southern Railway Company; :  
Allegheny County; and Commonwealth of :  
Pennsylvania, Department of Transportation, :  
Respondents :

CERTIFICATE OF SERVICE

I hereby certify that I served one (1) copy of the Answer with New Matter of Norfolk Southern Railway, in the above action, this day by depositing the same in the United States mail, postage prepaid, in Harrisburg, Pennsylvania, addressed to:

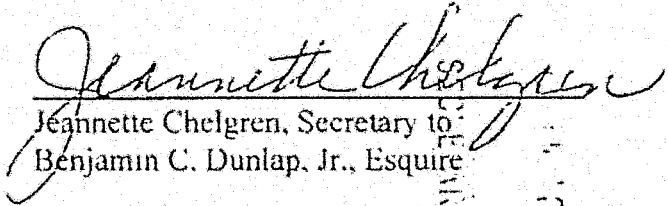
Harmar Township  
701 Freeport Road  
Cheswick, PA 15024-1208

Terry McVerry, Esquire  
Allegheny County Solicitor  
300 Fort Pitt Commons  
445 Fort Pitt Boulevard  
Pittsburgh, PA 15219

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

Blaine A. Lucas, Esquire  
Shawn N. Gallagher, Esquire  
Springer, Bush & Perry  
Two Gateway Center, 15<sup>th</sup> Floor  
Pittsburgh, PA 15222

Date. July 18, 2003

  
Jeannette Chelgren, Secretary to  
Benjamin C. Dunlap, Jr., Esquire

REGISTRY'S BUREAU

JUL 19 2003 3:58

**ORIGINAL**

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Harmar Township,  
Complainant

vs.

Norfolk Southern Railway Company;  
Allegheny County; and Commonwealth of  
Pennsylvania, Department of Transportation,  
Respondents

Docket No. C-20030526

SECRETARY'S BUREAU  
JUL 19 11:35:53

PRELIMINARY MOTION TO DISMISS OF  
NORFOLK SOUTHERN RAILWAY COMPANY

Norfolk Southern Railway Company ("Norfolk Southern"), by and through its counsel, Nauman, Smith, Shissler & Hall, I.L.P., hereby files the following Preliminary Motion to Dismiss the Complaint of Harmar Township for lack of subject matter jurisdiction, pursuant to the provisions of 52 Pa.Code §§ 1.56(b) and 5.101(a)(1), based upon the following:

1. Harmar Township filed a Complaint in the above-referenced matter which alleges that Norfolk Southern has failed to maintain a "pedestrian crossing" located in the Township. See Complaint ¶ 3.

2. Harmar Township attached to its Complaint as Exhibit "A" a Report and Order of the Public Service Commission at Application Docket No. A-21878 ("Report and Order"), which the Township alleges obligates Norfolk Southern to maintain the subject pedestrian crossing.

3. The original Petition of The Pennsylvania Railroad Company at Application Docket No. A-21878 requests that the Commission "abandon and close the public crossing" which carried a highway at the subject crossing and that the crossing become a pedestrian crossing. Petition of The

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Pennsylvania Railroad Company at ¶ 4, a true and correct copy of which is attached hereto as Exhibit "A."

4. The Report and Order on its second page approves the Application of The Pennsylvania Railroad Company in that proceeding.

5. The Report and Order states on its first page that the proposed crossing was changed from a "vehicle and pedestrian crossing to a four foot pedestrian crossing at-grade."

6. The Third Ordering Paragraph of the Report and Order further provides that the subject crossing was changed at the time of the Report and Order from a vehicular to a pedestrian crossing

7. The Commission has no jurisdiction over a pedestrian crossing. *County of Bucks v. PA Public Utility Commission*, 684 A.2d 678 (Pa.Cmwlth. 1996).

8. The Public Utility Code limits the Commission's jurisdiction to a highway, which is defined in § 102 of the Code as "[a] way or place of whatever nature open to the use of the public as a matter of right *for purposes of vehicular traffic*." *Id.* at 681 (italics in original), citing, 66 Pa.C.S. § 102.

9. Any prior assertion of jurisdiction over a pedestrian crossing by the Commission is without effect, and therefore, any provisions of the Report and Order assigning maintenance responsibilities for the pedestrian crossing to the railroad are without effect.

WHEREFORE, Norfolk Southern Railway Company respectfully requests that the Complaint of Harmar Township be dismissed for lack of subject matter jurisdiction.

Respectfully submitted,  
NAUMAN, SMITH, SHISSLER & HALL, LLP

By *Benjamin C. Dunlap, Jr.*  
**Benjamin C. Dunlap, Jr., Esquire**  
Supreme Court I.D. #66283  
200 North Third Street, 18<sup>th</sup> Floor  
P. O. Box 840  
Harrisburg, PA 17108-0840  
717-236-3010  
Attorney for Norfolk Southern Railway Company

Date: July 18, 2003

SECRETARY'S BUREAU

03 JUL 19 PM 3:53

Before  
THE PUBLIC SERVICE COMMISSION  
OF THE  
COMMONWEALTH OF PENNSYLVANIA.

---oo000---

IN THE MATTER OF THE APPLICATION OF THE PENNSYLVANIA RAILROAD COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE EVIDENCING THE COMMISSION'S APPROVAL OF THE ABANDONMENT OF PUBLIC VEHICULAR CROSSING IMMEDIATELY WEST OF HARMARVILLE PASSENGER STATION, HARMAR TOWNSHIP, ALLEGHENY COUNTY, AND CONTINUED MAINTENANCE AT THAT POINT OF A FOUR FOOT PEDESTRIAN CROSSING; EVIDENCING THE COMMISSION'S APPROVAL OF THE ABANDONMENT AND CLOSING OF EXISTING VEHICULAR AND PEDESTRIAN CROSSING APPROXIMATELY 860 FEET EAST OF HARMARVILLE PASSENGER STATION AND THE CONSTRUCTION OF A NEW VEHICULAR AND PEDESTRIAN CROSSING APPROXIMATELY 260 FEET WESTWARDLY FROM THE PRESENT CROSSING AND EVIDENCING THE COMMISSION'S APPROVAL OF THE DEDICATION OF AN APPROXIMATE 33 FOOT STRIP OF PROPERTY TO HARMAR TOWNSHIP, ALLEGHENY COUNTY, OF WHICH PETITIONER IS TO CONSTRUCT A 20 FOOT ROADWAY OF GRANULATED SLAG.

APPLICATION TICKET  
NO.

P E T I T I O N

TO THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA:

The petition of The Pennsylvania Railroad Company respectfully represents:

1. That your petitioner is a public service company of the Commonwealth of Pennsylvania and as such is engaged in the operation of a line of railroad, known as the Conemaugh Division, through the Borough of Harmarville, Harmar Township, Allegheny County, Pennsylvania.
2. That the name and address of your petitioner's attorney is Lambert McAllister, 925 Pennsylvania Station, Pittsburgh, Pennsylvania.
3. That said line of railroad crosses at grade in said Borough a public highway immediately west of Harmarville Passenger Station, identified as point "A" upon attached blueprint which is made a part hereof and identified as "Exhibit X"; that said line of railroad crosses at grade in said Borough a second public highway approximately 860 feet eastwardly from the Harmarville Passenger Station and identified as point "C" on said blueprint.
4. That your petitioner proposes to abandon and close the public crossing immediately west of the Harmarville Passenger Station identified as point "A" on the attached blueprint but proposes to maintain at this point a four foot crossing to accommodate pedestrian travel, that your petitioner proposes to abandon and close the public highway crossing now existing approximately 860 feet eastwardly from the Harmarville Passenger Station and identified as point "C" on attached blueprint and to construct a new public highway crossing approximately 260 feet westwardly from said existing crossing, the new crossing being shown on attached blueprint and being identified as point "B"; that your petitioner will dedicate to Harmar Township, Allegheny County, Pennsylvania, a strip of property approximately 33 feet in width from the present existing highway 860 feet east of Harmarville Passenger Station to highway which crosses petitioner's tracks immediately west of the Harmarville

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1/11/11

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EXHIBIT  
A

RECORD

Passenger Station, as shown in yellow on attached blueprint marked "Exhibit X" and petitioner proposes to construct upon said strip of property a twenty foot roadway of granulated slag.

6. That the closing of the existing vehicular crossing at point "A" and the relocation at point "B" of the public highway crossing now existing at point "C" as shown on attached blueprint will promote safety of the traveling public and are therefore necessary and proper for the service, accommodation and convenience of the public.

WHEREFORE, Your petitioner prays your honorable Commission to issue a certificate of public convenience evidencing its approval of the abandonment of public vehicular crossing immediately west of Harmarville Passenger Station, Harmar Township, Allegheny County, and continued maintenance at that point of a four foot pedestrian crossing; evidencing the Commission's approval of the abandonment and closing of existing vehicular and pedestrian crossing approximately 850 feet east of Harmarville Passenger Station and the construction of a new vehicular and pedestrian crossing approximately 250 feet westwardly from the present crossing and evidencing the Commission's approval of the dedication of an approximate 33 foot strip of property to Harmar Township, Allegheny County, on which petitioner is to construct a twenty foot roadway of granulated slag.

THE PENNSYLVANIA RAILROAD COMPANY,

BY: [Signature]

[Signature]  
President

STATE OF Pennsylvania )  
COUNTY OF Allegheny ) ss:

W. M. [Signature] [Signature]  
of The Pennsylvania Railroad Company, being first duly sworn on oath deposes and says that he has read the foregoing petition by him subscribed and that the statements therein contained are true and correct to the best of his knowledge and belief.

Sworn and subscribed to before me this 1-16 day of December,  
A.D. 1929.

[Signature]  
Notary Public

FILE

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Harmar Township,  
Complainant  
  
vs.  
  
Norfolk Southern Railway Company;  
Allegheny County; and Commonwealth of  
Pennsylvania, Department of Transportation,  
Respondents

Docket No. C-20030526

SECRETARY'S BUREAU

JUL 19 01:3:53

CERTIFICATE OF SERVICE

I hereby certify that I served one (1) copy of the Preliminary Motion to Dismiss of Norfolk Southern Railway, in the above action, this day by depositing the same in the United States mail, postage prepaid, in Harrisburg, Pennsylvania, addressed to:

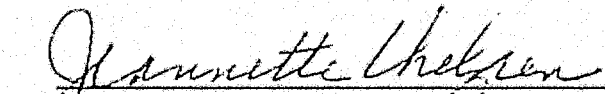
Harmar Township  
701 Freeport Road  
Cheswick, PA 15024-1208

Terry McVerry, Esquire  
Allegheny County Solicitor  
300 Fort Pitt Commons  
445 Fort Pitt Boulevard  
Pittsburgh, PA 15219

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

Blaine A. Lucas, Esquire  
Shawn N. Gallagher, Esquire  
Springer, Bush & Perry  
Two Gateway Center, 15<sup>th</sup> Floor  
Pittsburgh, PA 15222

Date July 18, 2003

  
Jeannette Chelgren, Secretary to  
Benjamin C. Dunlap, Jr., Esquire

LAW OFFICES  
NAUMAN, SMITH, SHISSLER & HALL, LLP

BTL

18TH FLOOR  
200 NORTH THIRD STREET

P O BOX 840

HARRISBURG, PENNSYLVANIA 17103-0840

TELEPHONE

(717) 236-3010

TELEFAX

(717) 234-1925

July 22, 2003

ORIGINAL

COUNSEL

DAVID C. EATON

JOHN C. SULLIVAN

DIRECT E-MAIL ADDRESS

JSULL@PSH.COM

SPENCER G. NAUMAN, JR.  
J. STEPHEN FEINGOLD  
FRANK J. STAUDENMAIER  
BENJAMIN C. DUNLAP, JR.  
DENNIS E. BOYLE

JOSEPH A. BEIERSCHMITT  
L. RENEE LIEUX

HAND DELIVERED

James McNulty, Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

In Re: Harmar Township v. Norfolk Southern Railway Company; Allegheny County;  
and Commonwealth of Pennsylvania, Department of Transportation. PUC  
Docket No. C-20030526; Our File No. 14077

Dear Sir:

I enclose an original and three (3) copies each of the Addendum of Norfolk Southern Railway Company to Preliminary Motion to Dismiss for filing in the above-referenced matter. As evidenced by the Certificate of Service attached, copies of the Addendum have been provided to all active parties of record. Once the Addendum is filed, please return a time-stamped copy to our messenger. If you have any questions, please advise.

Sincerely yours,

*Jeannette Chelgren*  
Jeannette Chelgren, Secretary to  
Benjamin C. Dunlap, Jr., Esquire

Enclosures

cc All Parties of Record (w/enc.)  
David A. Fisher, P.E. (w/enc.)  
Randal S. Noe, Esquire (w/enc.)  
B. Terrance Sullivan (w/enc.)

SECRETARY'S BUREAU

13 JUL 22 PM 3:53

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

**ORIGINAL**

Harmar Township,  
Complainant

vs.

Norfolk Southern Railway Company;  
Allegheny County; and Commonwealth of  
Pennsylvania, Department of Transportation,  
Respondents

Docket No. C-20030526

PRELIMINARY'S BUREAU

19 JUL 22 PM 3:53

**ADDENDUM TO NORFOLK SOUTHERN RAILWAY COMPANY'S  
PRELIMINARY MOTION TO DISMISS**

Norfolk Southern Railway Company ("Norfolk Southern"), by and through its counsel, Nauman, Smith, Shissler & Hall, LLP, hereby files the following Addendum to its Preliminary Motion to Dismiss the Complaint of Harmar Township, based upon the following:

1. Norfolk Southern filed its Preliminary Motion to Dismiss the Complaint of Harmar Township for lack of subject matter jurisdiction on July 18, 2003. The averments of Norfolk Southern's Preliminary Motion to Dismiss are incorporated herein by reference as if stated in full.

2. Since the filing of its Preliminary Motion to Dismiss, Norfolk Southern has discovered in the Commission's records a Certificate of Public Convenience dated September 23, 1930, in the proceeding docketed to Application Docket No. A-21878, which approved the Pennsylvania Railroad's application to *inter alia* "abandon and close the public crossing" which carried the highway at the subject crossing and that the crossing become a pedestrian crossing. A true and correct copy of the Certificate of Public Convenience is attached hereto as Exhibit "A". See

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AUG 07, 2003

also Petition of the Pennsylvania Railroad Company at ¶ 4, which is attached to Norfolk Southern's Preliminary Motion to Dismiss as Exhibit "A."

3. The subject crossing has been formally abolished, and therefore any assignment of maintenance responsibility for the remaining pedestrian crossing to the railroad in the Report and Order attached to Harmar Township's Complaint as Exhibit "A" is without effect. *County of Bucks v PA Public Utility Commission*, 684 A.2d 678, 682 (Pa.Cmwlt. 1996)

WHEREFORE, Norfolk Southern Railway Company respectfully requests that the Complaint of Harmar Township be dismissed for lack of subject matter jurisdiction

Respectfully submitted,  
NAUMAN, SMITH, SHISSLER & HALL, LLP

By *Benjamin C Dunlap, Jr.*  
Benjamin C. Dunlap, Jr., Esquire  
Supreme Court I D #66283  
200 North Third Street, 18<sup>th</sup> Floor  
P. O. Box 840  
Harrisburg, PA 17108-0840  
717-236-3010  
Attorney for Norfolk Southern Railway Company

Date: July 22, 2003

03 JUL 22 PM 3:53  
SECRETARY'S BUREAU

THE PUBLIC SERVICE COMMISSION  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

A. 21270-1930.

IN THE MATTER OF THE APPLICATION OF

THE PENNSYLVANIA RAILROAD COMPANY,  
under Section 5, Article III, and Sections 12, 13 and  
19, Article V, of the Public Service Company Law, for  
the approval of the alteration of an existing  
crossing at grade from a vehicular to a pedestrian  
crossing, at point where tracks of said railroad com-  
pany cross a township highway in Hammar Township,  
Allegheny County, Pennsylvania, immediately west  
of Hammarville Passenger Station, said railroad  
company; and, also for the abolition of another  
crossing, at grade, where township highway crosses  
tracks of the said railroad company, approximately  
eight hundred and fifty (850) feet east of Hammar-  
ville Station; and, also for the construction of crossing, at  
grade, at point where new connecting highway will cross tracks of the said  
railroad company and the tracks of the Allegheny Valley Street Railway  
Company, approximately six hundred feet east of Hammarville Station.  
and entered, a copy of which is hereto attached and made a part hereof, found and determined that the

CERTIFICATE  
OF  
PUBLIC CONVENIENCE

SECRETARY'S OFFICE

03 JUL 22 1930

granting of said application is necessary and proper for the service, accommodation, convenience and safety  
of the public, and this certificate is issued evidencing its approval of the said application as set forth in  
said report and order.

In Testimony Whereof, THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH  
OF PENNSYLVANIA has caused these presents to be signed and sealed, and duly attested by its Secre-  
tary at its office in the city of Harrisburg this 23d day of Sept., 1930.

THE PUBLIC SERVICE COMMISSION  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

Attest:

*John G. ...*  
Secretary

Chairman

EXHIBIT  
A

FILE



Shawn N. Gallagher

sgallagher@springerlaw.com

# SPRINGER BUSH & PERRY P.C.

ATTORNEYS AT LAW

Direct Dial  
412-454-0124

Direct Fax  
412-338-9168

# ORIGINAL

July 30, 2003

# RECEIVED

JUL 30 2003

James McNulty, Secretary  
Pennsylvania Public Utility Commission  
P O Box 3265  
Harrisburg, PA 17105-3265

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

*Re: Harmar Township v. Norfolk Southern Railway Company  
PUC Docket No. C-20030526*

Dear Mr. McNulty:

Please find enclosed an original and three (3) copies of Harmar Township's Reply to New Matter and Reply to Norfolk Southern Railway Company's Preliminary Motion to Dismiss and Addendum to Preliminary Motion to Dismiss with regard to the above-referenced matter.

If you have any questions or concerns, please contact our office at your earliest convenience.

Very truly yours,

SPRINGER BUSH & PERRY P.C.

# DOCUMENT FOLDER

By:   
Shawn N. Gallagher

SNG/jrl

Enclosures

cc: All parties of record (w/encl.)  
Robert W. Seibert, Jr., Chairman (w/encl.)

1/0



Township's Complaint as Exhibit "A" is admitted. By way of further response, the subject crossing is also a vehicular crossing, and is the real property of Norfolk.

9. The averment set forth in paragraph 9 of the New Matter that the Commission has no jurisdiction over a pedestrian crossing is a conclusion of law to which no further response is required. To the extent a response is required, it is specifically denied that the Commission lacks jurisdiction over this matter.

WHEREFORE, Harmar Township respectfully requests that the Public Utility Commission grant the relief sought by the Township in its Complaint.

#### **REPLY TO PRELIMINARY MOTION TO DISMISS**

1. The averment set forth in paragraph 1 of Norfolk's Preliminary Motion to Dismiss ("Motion") that the Township filed a Complaint against Norfolk for failure to maintain a pedestrian crossing located in the Township is admitted.

2. The averment set forth in paragraph 2 of the Motion that the Order obligated Norfolk to maintain the crossing is admitted.

3. The averment set forth in paragraph 3 of the Motion that the original Petition of The Pennsylvania Railroad Company at Application Docket No. A-21878 ("Petition"), attached thereto as Exhibit "A", requested that the Commission "abandon and close the public crossing" which carried a highway at the subject crossing and that the crossing become a pedestrian crossing is admitted.

4. The averment set forth in paragraph 4 of the Motion that the Order on its second page approved the Application of The Pennsylvania Railroad Company in that proceeding is denied as stated, the Order did not approve the Petition as submitted. The Petition requested to

abandon and close two separate public crossings used for vehicular and pedestrian traffic. The Order approved the abandonment of the public crossing used for vehicular and pedestrian traffic 850 feet east of the Harmarville Passenger Station. The Order did not approve the "abandonment" of the subject crossing. The Order approved the "alteration" of the crossing subject to the following two conditions: that Pennsylvania Railroad Company (1) pay all costs associated with the alteration, and (2) maintain the crossing once the alteration was completed. Order, Condition No. 2.

5. The averment set forth in paragraph 5 of the Motion that the Order states on its first page that the proposed crossing was changed from a "vehicle and pedestrian crossing to a four foot pedestrian crossing at-grade" is admitted. By way of further answer, the approval of the alteration of the proposed crossing from a "vehicle and pedestrian crossing to a four foot pedestrian crossing at-grade" was subject to the condition that the Pennsylvania Railroad Company would continually maintain the subject crossing. Having failed this condition, the Public Service Commission's approval of the alteration is without effect and the subject crossing legally remains both a vehicular and pedestrian crossing.

6. The averment set forth in paragraph 6 of the Motion that the Third Condition of the Order changed at the time of the Order from a vehicular to a pedestrian crossing is denied. By way of further answer, in the first paragraph on page two of the Order, the Public Service Commission expressly stated that its approval was conditional.

7. The averment set forth in paragraph 7 of the Motion that the Commission has no jurisdiction over a pedestrian crossing is a conclusion of law to which no further response is required. By way of further answer, Norfolk's reliance on *County of Bucks v PA Public Utility Commission*, 684 A.2d 678 (Pa.Cmwlth 1996), as authority for the proposition that the

Commission lacks jurisdiction over the subject crossing is misplaced.

In *County of Bucks*, upon application of Amtrak the Commission ordered the County and Township to pay for the *closing* of a pedestrian bridge that had been formally ordered abolished by prior order of the Public Service Commission. Amtrak is federally exempt from state imposed taxes or fees. The County and Township appealed the Commission's Order, and the Court held that the Commission lacked jurisdiction over purely pedestrian crossings.

In the present matter, as previously explained, the subject crossing was not formally ordered abolished by the Public Service Commission, as was the pedestrian bridge in *County of Bucks*. The Township is not seeking to close a formally abolished pedestrian crossing, it requests that Norfolk adhere to the requirements and conditions of the Order. Furthermore, Norfolk, as owner of the property where the subject crossing is located, does not benefit from the same limited statutory exemption that Amtrak possessed in *County of Bucks*.

8. The averment set forth in paragraph 8 of the Motion that the Public Utility Code limits the Commission's jurisdiction to a highway, which is defined in Section 102 of the Code as "[a] way or place of whatever nature open to the use of the public as a matter of right *for purposes of vehicular traffic*" is admitted to the extent that it applies to the limited factual circumstances in *County of Bucks*. It is denied as it relates to this matter. The subject crossing was never formally abolished. The Commission's approval of the alteration of the subject crossing from vehicular and pedestrian to pedestrian was conditioned upon the perpetual maintenance of the crossing. Having failed that condition, the subject crossing remains a vehicular and pedestrian crossing precluding the applicability of *County of Bucks*.

Furthermore, Section 1501 of the Code would confer jurisdiction to the Commission in this matter 66 Pa.C.S.A. § 1501. This Section provides that "every public utility *shall* furnish

and *maintain* adequate, efficient, *safe*, and reasonable service and *facilities*, and *shall make all such repairs*, changes, alterations, substitutions, extensions, and *improvements* in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and *safety* of its patrons, employees, and the *public*." 66 Pa.C.S.A. § 1501 (emphasis added). The definition of "facilities" includes "[a]ll the plant and equipment of a public utility, *including all tangible and intangible real and personal property without limitation*." 66 Pa.C.S.A. § 102 (emphasis added).

It is Norfolk's property interest at a crossing, not mere usage, that gives the Commission the authority to allocate costs for repair, removal, reconstruction, or *maintenance* of the crossing. *City of Chester v. Pennsylvania Public Utility Commission*, 798 A.2d 288 (Pa.Cmwlth. 2002). As such, in addition to having subject matter jurisdiction in this matter because the subject crossing remains a vehicular and pedestrian crossing, the Commission possesses subject matter jurisdiction because of Norfolk's property interest in the crossing, irrespective of what type of crossing it is categorized as.

9. The averment set forth in paragraph 9 of the Motion that any prior assertion of jurisdiction over a pedestrian crossing by the Commission is without effect is a conclusion of law to which no further response is required.

#### **REPLY TO ADDENDUM TO PRELIMINARY MOTION TO DISMISS**

1. The averments of the Township's Reply to Preliminary Motion to Dismiss are incorporated herein by reference as if stated in full.

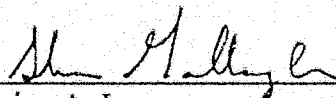
2. The averment set forth in paragraph 2 of the Addendum that a Certificate of Public Convenience, dated September 23, 1930, attached thereto as Exhibit "A", approved the

Pennsylvania Railroad's application to "abandon and close the public crossing" which carried the highway at the subject crossing and that the crossing became a pedestrian crossing is specifically denied. To the contrary, the Certificate approved the "alteration" of the subject crossing, and the "abolition" of another crossing 850 east of the Harmarville Station.

3. The averment set forth in paragraph 3 of the Addendum that the subject crossing has been formally abolished, and that any assignment of maintenance responsibility for the remaining pedestrian crossing to the railroad in the Order is without effect is denied for the aforementioned reasons.

WHEREFORE, Harmar Township respectfully requests that Norfolk's Preliminary Motion to Dismiss and Addendum to Preliminary Motion to Dismiss be denied and that the relief sought by the Township be granted.

Respectfully submitted,



Blaine A. Lucas  
Shawn N. Gallagher

SPRINGER BUSH & PERRY P.C.  
Two Gateway Center, 15<sup>th</sup> Floor  
Pittsburgh, PA 15222-1402

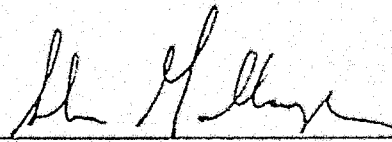
(412) 281-4900

Attorneys for Complainant, Harmar Township

Dated: July 30, 2003

VERIFICATION

I, Shawn N. Gallagher, Esquire, attorney for Harmar Township in the foregoing proceeding, make this verification on behalf of Harmar Township, do state that as an attorney for Harmar Township, I am authorized to make this Verification on behalf of Harmar Township, and further state that, based on information provided to me by Harmar Township, the facts set forth in the foregoing Reply to New Matter and Answer to Norfolk Southern Railway Company's Preliminary Motion to Dismiss and Addendum to Preliminary Motion to Dismiss are true and correct to the best of my knowledge, information and belief. I understand that my statements are made subject to 18 Pa. C.S. §4904 providing for criminal penalties for unsworn falsification to authorities.



---

Shawn N. Gallagher

Dated July 30, 2003

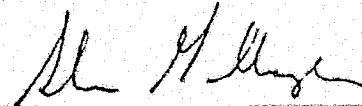
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon the following persons, by first class United States mail, postage prepaid, addressed as follows:

Benjamin C. Dunlap, Jr., Esquire  
Nauman, Smith, Shissler & Hall, LLP  
200 North Third Street  
P.O. Box 840  
Harrisburg, PA 17108-0840

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

Charles P. McCullough, Esquire  
Solicitor, County of Allegheny  
300 Fort Pitt Commons  
445 Fort Pitt Boulevard  
Pittsburgh, PA 15219



---

Shawn N. Gallagher

Dated: July 30, 2003



DEPARTMENT OF PUBLIC WORKS

County of Allegheny

THOMAS E. DONATELLI, P.E.  
DIRECTOR

501 COUNTY OFFICE BUILDING  
542 FORBES AVENUE  
PITTSBURGH, PENNSYLVANIA 15219-2904  
PHONE (412) 350-5902 \* FAX (412) 350-5386

August 8, 2003

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

**DOCKETED**

AUG 25 2003

Dear Mr. McNulty:

RE: HARMAR TOWNSHIP V. NORFOLK SOUTHERN RAILWAY COMPANY  
PEDESTRIAN CROSSING AT GUYS RUN ROAD AND FREEPORT ROAD  
C-20030526

We received a field investigation notice dated July 15, 2003 on the above subject project scheduled for August 21, 2003. Please be advised that Allegheny County has no record of being responsible for any facilities in the subject crossing area. We have no objection to any improvements proposed, as long as no costs are assigned to Allegheny County. If costs are assigned to Allegheny County, we request an additional hearing be held.

Please call David L. Wright, P.E., Project Manager, at (412) 350-6645 if you have any questions.

Yours truly,

**DOCUMENT**

Thomas E. Donatelli, P.E.  
Director

pacBorderltr.doc

cc: Howard Louik, Esq., Law Dept. w/attachment  
Don Killmeyer, P.E.  
Bernie Rossman, P.E.  
Dave Wright, P.E.

126

ORIGINAL

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Public Utility Commission

DATE: October 8, 2003  
SUBJECT: C-20030526  
TO: James J. McNulty  
Secretary  
FROM: David C. Hart, P.E., Manager  
Rail Safety Division  
Bureau of Transportation & Safety

OCT 20 2003

*DC Hart*

Harmar Township  
v.  
Norfolk Southern Railway Company

We have reviewed the record in the above-docketed proceeding and held a field conference at the site. It is suggested that this proceeding be reassigned to the Office of Administrative Law Judge and be scheduled for a hearing with the following parties in interest being served notice thereof:

Harmar Township  
Norfolk Southern Railway Company  
Allegheny County  
Pennsylvania Department of Transportation

In addition to any other relevant information, it is suggested that testimony at the hearing be adduced upon the appended list of Questions and Procedure and that appropriate action be taken at the hearing to incorporate the Questions and Procedure to the record in this proceeding.

DAF:lg

cc: Office of Administrative Law Judge

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DOCKETED  
OCT 28 2003

## QUESTIONS AND PROCEDURE

1. Harmar Township (applicant) submit a plan of the general area of the subject crossing showing the location of the crossing, any highways in the area and any businesses which may be affected by maintaining a crossing at the location.
2. Applicant submit an ordinance, if any, or Public Utility Commission order which lays out or ordains a right-of-way through the crossing area.
3. Applicant submit a plan and testimony indicating type and width of crossing and the approaches to the subject crossing.
4. Applicant submit testimony stating why a crossing is necessary at the location and explain the reasons for its answer.
5. Applicant submit testimony indicating the estimated daily volume of pedestrians that use the subject crossing.
6. Applicant submit testimony as to what portion, if any, of any construction work deemed necessary at the crossing that it will agree to perform; and what portion, if any, of costs of same and future maintenance that it will agree to bear, and the portions of any of said work and costs which should be performed and borne by each of the other parties hereto.
7. Norfolk Southern Railway Company (NS) submit testimony as to the exact corporate name and operator of the line of railroad involved at the subject rail-highway crossing.
8. NS submit testimony stating the number of tracks located at the subject crossing; state the volume, class and approximate speed over these tracks; and state whether any changes in operations are contemplated in the foreseeable future.
9. NS submit a typical cross-section plan of subject crossing area.
10. NS submit testimony stating if a crossing is necessary at this location and explain the reasons for its answer.
11. NS submit testimony as to what portion, if any, of any construction work deemed necessary at the crossing that it will agree to perform, and what portion, if any, of the costs of same and of future maintenance that it will agree to bear; and the portions, if any, of said work and costs which should be performed and borne by each of the other parties hereto.
12. Query whether any party I interest, or any other party desires to submit any additional relevant testimony.

COMMONWEALTH OF PENNSYLVANIA

DATE: October 17, 2003  
SUBJECT: C-20030526  
TO: Office of Administrative Law Judge  
FROM: James J. McNulty, Secretary *JJ*

Harmar Township  
v.  
Norfolk Southern Railway Company

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Per memo dated October 8, 2003, from David C. Hart, P.E., Manager, Rail Safety Division, Bureau of Transportation & Safety, the above docketed proceeding is being reassigned to your Office for appropriate action.

was

pc: TSR

DOCUMENT  
FOLDER

DOCKETED  
OCT 28 2003



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Office Of Administrative Law Judge  
P.O. Box 3265, Harrisburg, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

October 29, 2003

In Re: C-20030526

(See attached list)

**Harmar Township v. Norfolk Southern Railway Company**

Complainant wants the company to take responsibility for the maintenance of a Pedestrian Crossing over tracks of Norfolk Southern Railway Company, per Report and Order of the Public Service Commission of Pennsylvania, Application Docket No. 21878-1930.

Hearing Notice

This is to inform you that a hearing on the above-captioned case will be held as follows:

Type: Initial hearing  
Date: Thursday, January 29, 2004  
Time: 10:00 a.m.  
Location: 11th floor hearing room  
Pittsburgh State Office Building  
300 Liberty Avenue  
Pittsburgh, Pennsylvania  
Presiding: Administrative Law Judge John H. Corbett, Jr.  
1103 Pittsburgh State Office Building  
300 Liberty Avenue  
Pittsburgh, PA 15222  
Telephone: (412) 565-3550  
Fax: (412) 565-5692

DOCUMENT  
FOLDER

**DOCKETED**

NOV 03 2003

We have enclosed a list of questions prepared by the Bureau of Transportation & Safety indicating information to be developed at the hearing along with other relevant testimony.

Each party should submit testimony and exhibits with respect to the entire crossing alteration project with the understanding that the Commission may, in determining this manner, take jurisdiction over any portion of the project.

If any party intends to offer prepared written testimony, the testimony must be served on the presiding officer and each party at least 20 days prior to the hearing unless a different schedule has been ordered by the presiding officer.

The Commission's rules require that all parties, except for those individuals appearing on their own behalf, be represented by counsel. Therefore, you should have an attorney of your choice file an entry of appearance before the scheduled hearing.

If you intend to file exhibits, 2 copies of all hearing exhibits to be presented into evidence must be submitted to the reporter. An additional copy must be furnished to the Presiding Officer. A copy must also be provided to each party of record.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call the scheduling office at the Public Utility Commission:

- Scheduling Office: (717) 787-1399.
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1-800-654-5988.

pc: Judge Corbett  
Eric Levis-BPL, Keystone 3NE  
Dave Hart-T&S Rail  
Judy W. Springer  
Beth Plantz  
Docket Section  
Calendar File

## QUESTIONS AND PROCEDURE

1. Harmar Township (applicant) submit a plan of the general area of the subject crossing showing the location of the crossing, any highways in the area and any businesses which may be affected by maintaining a crossing at the location.
2. Applicant submit an ordinance, if any, or Public Utility Commission order which lays out or ordains a right-of-way through the crossing area.
3. Applicant submit a plan and testimony indicating type and width of crossing and the approaches to the subject crossing.
4. Applicant submit testimony stating why a crossing is necessary at the location and explain the reasons for its answer.
5. Applicant submit testimony indicating the estimated daily volume of pedestrians that use the subject crossing.
6. Applicant submit testimony as to what portion, if any, of any construction work deemed necessary at the crossing that it will agree to perform; and what portion, if any, of costs of same and future maintenance that it will agree to bear, and the portions of any of said work and costs which should be performed and borne by each of the other parties hereto.
7. Norfolk Southern Railway Company (NS) submit testimony as to the exact corporate name and operator of the line of railroad involved at the subject rail-highway crossing.
8. NS submit testimony stating the number of tracks located at the subject crossing; state the volume, class and approximate speed over these tracks; and state whether any changes in operations are contemplated in the foreseeable future.
9. NS submit a typical cross-section plan of subject crossing area.
10. NS submit testimony stating if a crossing is necessary at this location and explain the reasons for its answer.
11. NS submit testimony as to what portion, if any, of any construction work deemed necessary at the crossing that it will agree to perform, and what portion, if any, of the costs of same and of future maintenance that it will agree to bear, and the portions, if any, of said work and costs which should be performed and borne by each of the other parties hereto.
12. Query whether any party I interest,, or any other party desires to submit any additional relevant testimony.



*to be published 11-15-03*

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

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REFER TO OUR FILE

November 4, 2003

Mary Jane Phelps, Director  
Pennsylvania Code & Bulletin  
Room 647, Main Capitol Building  
Harrisburg, PA 17120

**DOCKETED**  
NOV 12 2003

Re: Notice  
Harmar Township v. Norfolk Southern Railway Co.  
Docket No. C-20030526

Dear Ms. Phelps:

**DOCUMENT**

Enclosed please find two (2) copies of a notice as captioned above. The Commission requests that this notice be published in the Pennsylvania Bulletin.

Very truly yours,

Veronica A. Smith  
Executive Director

Enclosure

cc: Regulatory Coordinator DelBiondo  
Docketing ✓

# PENNSYLVANIA PUBLIC UTILITY COMMISSION

## N O T I C E

Harmar Township v. Norfolk Southern Railway Company.  
Complainant wants the company to take responsibility for the maintenance of a Pedestrian Crossing over the tracks of Norfolk Southern Railway Company, per Report and Order of the Public Service Commission of Pennsylvania, Application Docket No. 21878-1930. This complaint is Docket No. C-20030526.

An initial hearing on this matter will be held Thursday, January 29, 2004 at 10:00 a.m. in an available hearing room, 11<sup>th</sup> floor, Pittsburgh State Office Building, 300 Liberty Avenue, Pittsburgh, Pennsylvania when and where all persons in interest may appear and be heard, if they so desire.

BY THE COMMISSION

James J. McNulty  
Secretary