

**LAWRENCE M. LUDWIG, ESQUIRE**  
238 VASSAR AVENUE  
CLARKS GREEN, PA 18411  
(570) 586-6817

January 10, 2017

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

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

Dear Secretary Chiavetta:

Please find enclosed for filing the verified Complainant's Reply to LaPlume Township's New Matter in its Answer to Complaint and New Matter. I hereby certify that a copy of this pleading has been sent to all parties of record as indicated on the Certificate of Service attached thereto.

I believe that, with this filing, pleadings in the matter are complete.

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

Thank you.

Very truly yours,



Lawrence M. Ludwig

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

SECRETARY'S BUREAU  
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PUBLIC UTILITY COMMISSION

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PA P.U.C.  
SECRETARY'S BUREAU

A. EDWARD SCHWARTZ,

v.

C-2016-2570929

NORFOLK SOUTHERN RAILWAY COMPANY,

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF TRANSPORTATION ET AL

**COMPLAINANT'S REPLY TO LAPLUME TOWNSHIP'S NEW MATTER**

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

22. Paragraphs 1 through 21 of the Application for Determination (herein "Complaint") are hereby incorporated herein as though fully set forth.
23. Denied. Paragraph 23 states a legal conclusion to which no response is required. To the extent that a response may be deemed necessary, the averments of Paragraph 23 of Railway's New Matter are denied. By way of further response, the abolition of the crossing after demolition of the bridge pursuant to the Commission's referenced Orders injured Complainant's adjacent (and bisected) land within the meaning of 66 Pa.C.S. Section 2704.
24. Admitted in part and denied in part. It is admitted that the Complainant did not appeal the referenced Orders of the Commission that effected the abolition of the crossing. Complainant denies that such or otherwise constitutes a waiver of his rights under 66

Pa.C.S. Section 2704 and applicable law in that the referenced Orders did not in any sense adjudicate whether his property has been injured in the abolition of the crossing or what resulting damages were suffered. Cf CSX Transportation, Inc. v. Department of Transportation of the Commonwealth of Pennsylvania, 163 Pa.Cmwlth 620, 626-627 (1994) where failure to appeal the prior PUC Order which “specifically excluded CSX from receiving compensation for damages” merely raised an issue as to whether there was a waiver.

25. Admitted in part and denied in part. It is admitted that no parcel described by metes and bounds was appropriated by the Commission. Paragraph 25 states a legal conclusion to which no response is required. To the extent that a response may be deemed necessary, the averments of Paragraph 25 of Railway's New Matter are denied. By way of further response, Complainant denies that the absence of “metes and bounds” appropriation precludes determination of compensation for damages sustained as a result of the abolition of the subject crossing when the Commission abolishes a railroad crossing per 66 Pa.C.S. Section 2702, and in such abolition injures adjacent property within the meaning of 66 Pa.C.S. Section 2704 and applicable law. Indeed, in this case, the Commission's referenced Orders abolished the crossing per 66 Pa.C.S. Section 2702, and the Commission's referenced Orders resulting in the abolition of the subject crossing after demolition of the bridge injured Complainant's adjacent (and bisected) property within the meaning of 66 Pa.C.S. Section 2704 and applicable law.

26. Admitted in part and denied in part. It is admitted that Township does not own or maintain, and has not owned or maintained, the crossing in question for a very long time. The remaining averment in Paragraph 26 of Township's New Matter is denied in that Complainant is without knowledge or information sufficient to form a belief as to the truth thereof, and accordingly strict proof is demanded. Regardless, the abolition of

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

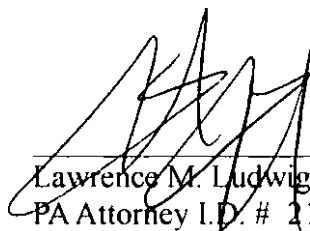
27. Admitted in part and denied in part. It is admitted that Township has never been responsible for construction of the crossing in question and has not been responsible for its operation or maintenance for a very long time. The remaining averment in Paragraph 27 of Township's New Matter is otherwise denied in that Complainant is without knowledge or information sufficient to form a belief as to the truth thereof, and accordingly strict proof is demanded. Regardless, the abolition of the crossing after demolition of the bridge pursuant to the Commission's referenced Orders injured Complainant's adjacent (and bisected) land within the meaning of 66 Pa.C.S. Section 2704.
28. Denied. The averment in Paragraph 28 of County's New Matter is denied in that Complainant is without knowledge or information sufficient to form a belief as to the truth thereof, and accordingly strict proof is demanded. Regardless, the abolition of the crossing after demolition of the bridge pursuant to the Commission's referenced Orders injured Complainant's adjacent (and bisected) land within the meaning of 66 Pa.C.S. Section 2704.
29. Admitted. Regardless, the abolition of the crossing after demolition of the bridge pursuant to the Commission's referenced Orders injured Complainant's adjacent (and bisected) land within the meaning of 66 Pa.C.S. Section 2704.
30. Denied. The averment in Paragraph 29 of County's New Matter is denied in that Complainant is without knowledge or information sufficient to form a belief as to the truth thereof, and accordingly strict proof is demanded. Regardless, the abolition of the crossing after demolition of the bridge pursuant to the Commission's referenced Orders

injured Complainant's adjacent (and bisected) land within the meaning of 66 Pa.C.S. Section 2704.

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

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

Respectfully submitted,



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Lawrence M. Ludwig, Esquire  
PA Attorney I.D. # 21599  
238 Vassar Avenue  
Clarks Green, PA 18411  
(570) 586-6817

Dated: January 10, 2017

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**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**

A. EDWARD SCHWARTZ,

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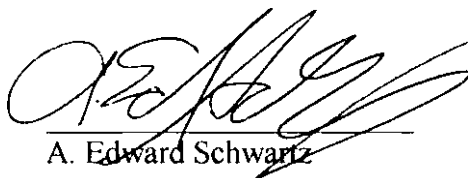
NORFOLK SOUTHERN RAILWAY COMPANY,

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF TRANSPORTATION ET AL

**VERIFICATION**

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



A. Edward Schwartz

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**

A. EDWARD SCHWARTZ,

v.

C-2016-2570929

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

**CERTIFICATE OF SERVICE**

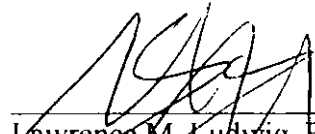
I, Lawrence M. Ludwig, Esquire, attorney for Complainant, hereby certify that on January 10, 2017, I serve the foregoing **REPLY TO NEW MATTER** by depositing true and correct copies thereof in the U.S. Mail, first-class postage prepaid, addressed to counsel of record, as follows:

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

Benjamin C. Dunlap, Jr., Esq.  
Nauman Smith Shissler & Hall  
200 N. Third St. 18<sup>th</sup> Floor  
P.O. Box 840  
Harrisburg, PA 17108-0840

Donald J. Frederickson, Jr., Esquire  
Lackawanna Cty General Counsel  
200 Adams Avenue 6<sup>th</sup> Floor  
Scranton, PA 18503

David J. Gromelski, Esquire  
LaPlume Twp Solicitor  
Wright & Reihner PC  
148 Adams Avenue  
Scranton, PA 18503

  
\_\_\_\_\_  
Lawrence M. Ludwig, Esquire  
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PA Attorney I.D. # 21599

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LEHIGH VALLEY PA 18000

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