

LAWRENCE M. LUDWIG, ESQUIRE

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

February 1, 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 Initial Prehearing Conference Memorandum. 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 have also Faxed a copy directly to Administrative Law Judge David A. Salapa.

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

Thank you.

Very truly yours,



Lawrence M. Ludwig

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

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**PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

A. EDWARD SCHWARTZ,

v.

C-2016-2570-9

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NORFOLK SOUTHERN RAILWAY COMPANY,

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF TRANSPORTATION ET ALL

COMPLAINANT'S INITIAL PREHEARING CONFERENCE MEMORANDUM

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

- a). Lawrence M. Ludwig, Esquire
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Clarks Green, PA 18411
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lawludwig@epix.net
- b). Complainant is amenable to compromise
- c). Complainant requires no discovery if parties stipulate that bridge was demolished by Norfolk Southern and the crossing was abolished, per P.U.C. Order
- d). None
- e). Complainant is generally available for telephonic or in-person hearing; his counsel is generally available except for the last two weeks of April, 2017 and the month of May, 2017; his expert witness appraiser is generally available upon sufficient notice.
- f). Complainant, Edward A. Schwartz, RD #4, Box 52, Dalton, Pa 18414, (570) 945-7888,

regarding the averments of his Application in this matter and his opinion as to the lost value of his

property as a result of the crossing abolition; Complainant's expert appraiser, Gregory Rodenbach, CRC Real Estate Services, 125 Main Street, Blakely, Pa 18447, (570) 489-7000, regarding his appraisal; subpoenaed designee of Norfolk Southern and P.U.C. if parties fail to stipulate that bridge was demolished by Norfolk Southern and crossing abolished, per P.U.C. Order

g) Issues

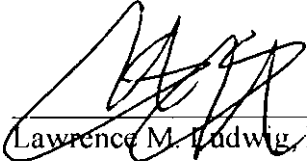
- (1) Whether 66 Pa.C.S. Section 2704(a) provides a cause of action distinct from causes of action under the Eminent Domain Code?
- (2) Whether “the (Eminent Domain) Code does not affect the jurisdiction of the commission under section 2702 and 2704 of the Public Utility Code”, as stated by the Commonwealth Court in CSX Transportation, Inc. v. Department of Transportation of Commonwealth of Pennsylvania, 163 Pa.Cmwlth 620, 626, 641 A.2d 705, 708 (1994)?
- (3) Whether this matter should be transferred to Lackawanna County Court of Common Pleas?
- (4) Whether the denial of the only relief sought by the Complaint docketed to C-2011-2237486 and P-2011-2241780, namely an Order directing repair of the bridge bars Complainant from monetary relief when P.U.C. ultimately determined that too much deterioration had occurred in the interim and ordered the bridge be demolished mid-2016 rather than repaired?
- (5) Whether, in causing the demolition of the bridge and abolition of the crossing, Commission's Orders docketed to C-2011-2237486 and P-2011-2241780 effected the abolition of a crossing per 66 Pa.C.S. Section 2702?
- (6) Whether the Commission's referenced Orders docketed to C-2011-2237486 and P-2011-2241780 resulting in the abolition of the subject crossing injured Complainant's adjacent (and bisected) property within the meaning of 66

Pa.C.S. Section 2704 and applicable law?

h) Evidence

- (1) Judicial notice of Public Utility Code statute and CSX Transportation, supra decision
- (2) same
- (3) Convenience of the forum
- (4) Judicial notice of the filings docketed to C-2011-2237486 and P-2011-2241780; testimony of P.U.C. designee in lieu of parties' stipulation unless judicial notice taken.
- (5) Judicial notice of the P.U.C. Orders docketed to C-2011-2237486 and P-2011-2241780; testimony of Norfolk Southern designee in lieu of parties' stipulation; testimony of P.U.C. designee in lieu of parties' stipulation unless judicial notice taken.
- (6) Appraisal by Gregory Rodenbach of CRC Real Estate Services and related testimony by appraiser expert witness; testimony by Complainant as to his opinion as to the lost value of his property as a result of the crossing abolition

Respectfully submitted,



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

Dated: February 1, 2017

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PUBLIC UTILITY COMMISSION**

A. EDWARD SCHWARTZ,

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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 February 2, 2017, I serve the foregoing **Complainant's Initial Prehearing Conference Memorandum** by depositing true and correct copies thereof in the U.S. Mail, first-class postage prepaid, addressed to counsel of record, as follows:

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

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

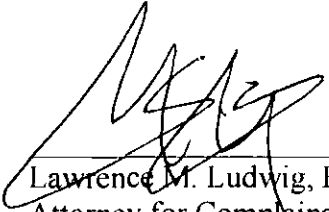
Donald J. Frederickson, Jr., Esquire
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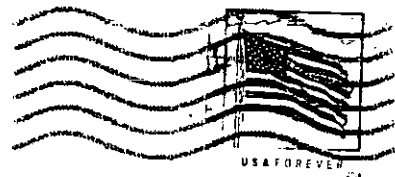


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