

MAR - 9 2017

LAWRENCE M. LUDWIG, ESQUIRE

238 VASSAR AVENUE
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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

March 8, 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 "Applicant's Motion for Summary Judgment as to PUC Jurisdiction over Application for Determinations as to Compensation for Damages Sustained due to Abolition of Railroad Crossing" with the Affidavit of Edward Schwartz in support thereof attached thereto. 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 will also Fax 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

PENNSYLVANIA PUBLIC UTILITY COMMISSION

A. EDWARD SCHWARTZ,

v.

C-2016-2570929

NORFOLK SOUTHERN RAILWAY COMPANY,
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION, LACKAWANNA COUNTY
and LAPLUME TOWNSHIP

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**APPLICANT'S MOTION FOR SUMMARY JUDGMENT AS TO PUC JURISDICTION OVER
APPLICATION FOR DETERMINATIONS AS TO COMPENSATION FOR DAMAGES
SUSTAINED DUE TO ABOLITION OF RAILROAD CROSSING**

A. Edward Schwartz ("Schwartz"), by and through his attorney, Lawrence M. Ludwig, Esquire, respectfully moves for summary judgment confirming the jurisdiction of the Commission over his "Application for Determinations as to Compensation for Damages Sustained due to Abolition of Railroad Crossing" pursuant to 66 Pa.C.S. Section 2704(a), and in support thereof sets forth the following:

1. On September 21, Schwartz filed his "Application for Determinations as to Compensation for Damages Sustained due to Abolition of Railroad Crossing" pursuant to inter alia 66 Pa.C.S. Section 2704(a) for "compensation for damages which (as) owners of adjacent property... injured (they) sustain(ed) in the... abolition of (the) crossing" "carrying S.R. 4009 over the facilities of the Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific Railroad located in LaPlume Township, Lackawanna County", per P.U.C. Order.
2. As alleged in Paragraphs 2 and 6 of his Application, Schwartz (and, before him, his deceased wife, Bonnie G. Schwartz) has been at all times pertinent hereto the title owner of

that property known as Raintree Farm, which is comprised of approximately 20 acres on the western side of the pertinent railroad right-of way and approximately 70 acres on eastern side thereof and has expended substantial effort, money and resources making substantial improvements to the Premises, including their home, new horse riding indoor and outdoor arenas, a grand new stables structure, a new landing strip, a new quarry and other fixtures, all located on the 70 acres on the eastern side of the Main Line (the "Improvements") and other supportive improvements were made to the 20 acres on the western side of the Main Line; further, to the extent deemed helpful to support the Commission's exercise of its primary jurisdiction under Section 2704(a), Schwartz respectfully moves to amend his Application regarding the foregoing so as to conform to the Affidavit of Edward Schwartz in Support of Jurisdiction of PUC over "Application for Determinations as to Compensation for Damages Sustained due to Abolition of Railroad Crossing" (the "Schwartz Affidavit") which is attached hereto and incorporated herein by reference as though fully set forth.

3. As alleged in Paragraphs 3 through 5 of the Application, in 1912 or so, The Delaware, Lackawanna and Western Railroad Company ("DL&W"), had constructed its Main Line through that area in a generally north/south direction and thereby bisected or divided not only the farm, which previously had been approximately 110 acres, and but also the public road now known as S.R. 4009 which extended across the Premises in a generally east/west direction; in constructing its Mainline, DL&W had built bridges, passages and viaducts thereon, including the bridge which carried S.R. 4009 over its railroad tracks below (the "Bridge"); the Bridge had a floor or cartway about 24 feet wide from curb to curb, a load capacity well in excess of 40 tons and was fit and convenient for all purposes for almost a century.
4. As alleged in Paragraphs 16 and 15 of the Application, prior to its demolition/abolition, the Bridge crossing was at all times pertinent hereto (i) the only means of Applicant's travel

within the Premises between the 20 acre portion of the bisected Premises and the 70 acre portion thereof, (ii) Applicant's only direct means of ingress and egress between home and business Improvements on the Premises and the town of LaPlume, and (iii) the only fit means of access to Applicant's home and business Improvements on the 70 acre portion the Premises, the other being the dirt road known as Lily Lake Road which has always been and remains unfit for Applicants' use of the Premises; thus, since the demolition/abolition, there has existed no crossing whatsoever connecting Applicant's bisected/divided Premises, and Applicant no longer has any means whatsoever to cross the Main Line within his bisected Premises; further, to the extent deemed helpful to support the Commission's exercise of its primary jurisdiction under Section 2704(a), Schwartz respectfully moves to amend his Application regarding the foregoing so as to conform to the Affidavit of Edward Schwartz in Support of Jurisdiction of PUC over "Application for Determinations as to Compensation for Damages Sustained due to Abolition of Railroad Crossing" (the "Schwartz Affidavit") which is attached hereto and incorporated herein by reference as though fully set forth, including by adding the following allegata: instead, there is the circuitous "Detour" of eight (8) miles which is dangerous and impassable at times (described in Paragraph 6 below).

5. The crossing provided by the Bridge was a "vested right... as sacred as any other property right" Green v. Baltimore & Ohio Railroad Company, 245 Pa. 35, 38, 91 A. 248, 249 (1914)
6. As alleged in Paragraphs 7 of his Application, in an effort to force repair of the Bridge, on April 15, 2011, Schwartz filed his formal Complaint with the Pennsylvania Public Utility Commission ("Commission") against Delaware and Hudson Railway, Inc. d/b/a Canadian Pacific Railroad and PennDOT, which was docketed at No. C-2011-2237486, alleging that the Bridge carrying S.R. 4009 over the facilities of that railroad was unsafe and was not being properly maintained by that railroad and PennDOT; further, to the extent deemed helpful to support the Commission's exercise of its primary jurisdiction under Section

2704(a), Schwartz respectfully moves to amend his Application regarding the foregoing so as to conform to the Schwartz Affidavit, which is attached hereto and incorporated herein by reference as though fully set forth, including the following allegata: the Bridge was formally closed within a month (i.e., on May 11, 2011) pending repair, with a circuitous "Detour" established by PennDOT of eight (8) miles (according to PennDOT's P.U.C. Hearings Exhibits), almost one-half (½) mile of which is dangerous and impassable at times.

7. As alleged in Paragraphs 8, 9, 11 and 12 of the Application, on May 11, 2012, the ALJ issued a Recommended Decision which directed, inter alia, PennDOT, at its initial cost and expense, perform and complete limited repair work set forth in approved plans; on August 3, 2012, the Commission issued its Opinion and Order filed to No. C-2011-2237486 and to P-2011-2241780, adopting the ALJ's Recommended Decision ("2012 Order"), but expressing concern that the repair work, which was characterized as a "temporary fix", might allow permanent repairs to languish and accordingly remanded the matter back to the ALJ for a determination on the future disposition of the crossing; based upon the ALJ's further recommendation, the Commission issued its December 5, 2013 Opinion and Order ("2013 Order") wherein it ordered inter alia in paragraph 11 thereof "That the Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific Railroad at its sole cost and expense, within twelve months from the date the Pennsylvania Public Utility Commission approves its submitted demolition plans, shall furnish all material and do all work necessary to demolish and remove the bridge carrying S.R. 4009 over its facilities, including the abutments and retaining walls, in accordance with the approved plans", and in paragraph 15 thereof "That, upon completion of the demolition and removal work by the Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific Railroad, and the inspection and approval of that work by the Pennsylvania Public Utility Commission, the crossing carrying S.R. 4009 over the facilities of the Delaware and Hudson Railway Company, Inc. d/b/a

Canadian Pacific Railroad located in LaPlume Township, Lackawanna County is abolished.”; that Order was supplemented by further Orders including the Commission's Opinion and Order issued on March 17, 2016 (“2016 Order”) which, after noting in footnote 3 thereof that Norfolk Southern Railway Company (“Norfolk Southern”) “acquired this Canadian Pacific Railroad line in September 2015, and has assumed Canadian Pacific Railroad's responsibility for the Bridge demolition and removal”, granted Norfolk Southern's Petition for an “extension of time until April 30, 2016, for Norfolk Southern to complete removal and demolition of the Bridge”

8. As alleged in Paragraph 13 of the Application and as is uncontested if not admitted, the Bridge was demolished on or about May 9, 2016, and, according to the PUC Secretary's letter dated July 20, 2016, a “final inspection conducted by a Commission staff engineer on July 14, 2016 revealed that all work has been satisfactory (sic) completed in accordance with (the Commission's) Order entered April 23, 2015”, and in turn the subject railroad crossing has been abolished per paragraph 15 of the 2013 Order quoted above.
9. In causing the demolition of the bridge and abolition of the crossing, the Commission's above-mentioned Orders docketed to C-2011-2237486 and P-2011-2241780 effected the abolition of a railroad crossing per 66 Pa.C.S. Section 2702
10. As alleged in Paragraph 17 of his Application, the Premises has been injured and has sustained substantial damage as a result the demolition/abolition in that Applicant can no longer operate his business enterprises efficiently or profitably; further, to the extent deemed helpful to support the Commission's exercise of its primary jurisdiction under Section 2704(a), Schwartz respectfully moves to amend his Application regarding the foregoing so as to conform to the Schwartz Affidavit which is attached hereto and incorporated herein by reference as though fully set forth, including the following allegata from paragraph 16 thereof: Since the demolition/ abolition, there has existed no crossing whatsoever

connecting the bisected/divided portions of Premises and there exists no means whatsoever to cross the railroad right-of-way within the bisected/divided Premises; instead, there is the circuitous "Detour" of eight (8) miles which is dangerous and impassable at times (as described in Paragraph 6 above).

11. As alleged in Paragraph 18 of the Application, the Premises has been injured and has sustained substantial damage as a result the demolition/abolition in that, per appraisal by a licensed professional, the fair market value of Applicant's Premises as historically used with a bridge in service would be \$565,000, but is now, as a result of the demolition/abolition, only \$465,000; furthermore, as alleged in Paragraph 19 of the Application, the diminution in fair market value (bearing in mind potential demand therefor) of Premises as a result of the demolition/abolition is even more for the "highest and best" potential use of same, including alternatively for (A) residential development with shared/common equine facilities or (B) quarry and related or compatible commercial/ industrial uses.
12. The Commission's above-mentioned Orders docketed to C-2011-2237486 and P-2011-2241780 resulting in the abolition of the subject railroad crossing injured Complainant's adjacent (and bisected) property within the meaning of 66 Pa.C.S. Section 2704 and applicable law
13. Schwartz separately and distinctly alleged in Paragraph 20 of his Application that he is entitled to full compensation as determined pursuant to 66 Pa.C.S. Section 2704(a).
14. 66 Pa.C.S. Section 2704(a) very specifically provides statutory jurisdiction, procedure and remedy for the pertinent peculiar occurrence, i.e., the abolition of the railroad crossing.
15. Moreover, "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)

16. Furthermore, the jurisdiction of a Court of Common Pleas over a claim under 66 Pa.C.S.

Section 2704 has been held to be only derivative or secondary, as follows:

“It is apparent that Section 2704(a) contemplates an application first be made to the Commission for a determination of the amount of compensation for damages... An application must instead be filed with the Commission, which has the authority to determine the amount in question or to refer it to a court of common pleas for the appointment of a Board of View. The jurisdiction of a common pleas court to appoint a Board of View to determine damages in these matters is, therefore, derivative, being dependent solely upon the Commission's action.”

Huss v. Department of Transportation, 99 Pa.Cmwlth. 386, 390, 512 A.2d 1356, 1358 (Pa.Cmwlth. 1986) appeal dismissed 544 A.2d 446 (Pa.1988) which was cited by Pennsylvania Supreme Court as the authority for per curiam reversal of the Commonwealth Court in Barron v. Department of Transportation, 526 Pa. 539, 587 A.2d 727 (1991). See also CSX, supra at 708 [“Thus, the trial court, under section 2704(b), has no jurisdiction to appoint a board of view without the commission relinquishing its jurisdiction to the trial court to do so.”]

17. A claim under the only other vaguely relevant statute, section 714 of the Eminent domain Code, 26 Pa.C.S. Section 714 (formerly 26 P.S. Section 1-612), has been held to be “distinct and separate from a claim for de facto taking. Capece v. City of Philadelphia, 123 Pa Cmwlth 86, 552 A.2d 1147 (1989).” Colombari v. Port Authority of Allegheny County, 951 A.2d 409, 413.

18. Sienkiewicz v. Dept. of Transportation, 584 Pa. 270 (2005) is clearly distinguishable in that the landowner therein never filed anything with the Commission let alone a Section 2704 Application; rather, as the Pennsylvania Supreme Court recited:

“Landowner filed a petition for appointment of a board of viewers pursuant to

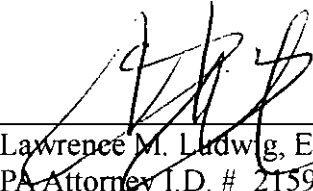
Section 502(e) of the Eminent Domain Code, 26 P.S. Section 1-502(e), which provides for the appointment of a board of viewers where a petitioner has suffered a compensable injury at the instance of an entity clothed with the power of eminent domain, but no declaration of taking has been filed... In an amended petition, Landowner invoked Section 612 of the Eminent Domain Code, 26 P.S. Section 1-612, authorizing an award of consequential damages relative to, inter alia, permanent interference with access..."

19. The 2005 Cramer decision is an unreported, non-precedential decision without published opinion (that, I believe, is subject to 210 Pa. Code Section 67.55, Pa. Rules of Court, I.O.P. Chapter 4, Section 414), which stems from procedurally convoluted litigation, and does not bar the Commission's exercise of its primary jurisdiction over a Section 2704 application regarding injury sustained by owners of adjacent property in the abolition of a railroad crossing.
20. After the aforesaid decision in Cramer, the Legislature re-established the Commission's jurisdiction in matters such as this by stating in pertinent part in the new Eminent Domain Code at 26 Pa.C.S. Section 203(b) that: "This chapter does not affect... (t)he jurisdiction or power of the Pennsylvania Public Utility Commission."
21. Thus, the Commission has primary jurisdiction over the instant Section 2704 Application.
22. To accommodate the Commission's exercise of that primary jurisdiction to "determine" after due notice and hearing under section 2704(a), Schwartz withdraws any de facto claim without prejudice.

WHEREFORE, Schwartz respectfully moves this Honorable Commission to rule that, pursuant to Section 2704, it has primary jurisdiction over his Application and will exercise that jurisdiction to "determine" inter alia under Section 2704(a) compensation for damages which as owner of the injured adjacent Premises were sustained in the Commission's above-described abolition of the railroad

crossing.

Respectfully submitted,



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

Dated: March 9, 2017

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MAR - 9 2017 PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

A. EDWARD SCHWARTZ,

v.

C-2016-2570929

NORFOLK SOUTHERN RAILWAY COMPANY,
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION, LACKAWANNA COUNTY
and LAPLUME TOWNSHIP

**AFFIDAVIT OF EDWARD SCHWARTZ IN SUPPORT OF JURISDICTION OF P.U.C. OVER
“APPLICATION FOR DETERMINATIONS AS TO COMPENSATION FOR DAMAGES
SUSTAINED DUE TO ABOLITION OF RAILROAD CROSSING”**

A. Edward Schwartz, by and through his attorney, Lawrence M. Ludwig, Esquire, respectfully deposes and states under oath, in support of his Application pursuant to 66 Pa.C.S. Section 2704(a) for “compensation for damages which (as) owner of adjacent property... injured (he) sustain(ed) in the... abolition of (the railroad) crossing” “carrying S.R. 4009 over the facilities of the Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific Railroad located in LaPlume Township, Lackawanna County” per P.U.C. Order dated December 5, 2013, as modified and supplemented by Orders dated April 23, 2005 and March 17, 2016:

1. For almost two decades (and, before me, my deceased wife, Bonnie G. Schwartz) I have been at all times pertinent hereto the title owner of the subject property known as Raintree Farm, which is comprised of approximately 20 acres on the western side of the pertinent railroad right-of way and approximately 70 acres on eastern side thereof (the “Premises”)
2. In 1912 or so, The Delaware, Lackawanna and Western Railroad Company (“DL&W”), had constructed its Main Line through that area in a generally north/south direction and thereby

bisected or divided not only the Premises, which previously had been approximately 110 acres, and but also the public road now known as S.R. 4009 which extended across the Premises in a generally east/west direction. In constructing its Mainline, DL&W built bridges, passages and viaducts thereon, including the bridge which carried S.R. 4009 over its railroad tracks below (the "Bridge"). The Bridge had a floor or cartway about 24 feet wide from curb to curb and a load capacity well in excess of 40 tons and was fit and convenient for all purposes for almost a century.

3. Prior to its demolition/abolition, the Bridge crossing was at all times pertinent hereto (i) the only means of travel within the Premises between the 20 acre portion of the bisected Premises and the 70 acre portion thereof, (ii) the only direct means of ingress and egress between the Business Improvements (as defined in Paragraph 5 below) on the Premises and the town of LaPlume at Routes 6 and 11, and (iii) the only fit means of access to my Business Improvements on the 70 acre portion the Premises, the other being via the chipped/dirt road known as Lily Lake Road which is dangerous and impassable at times and has always been and remains unfit for beneficial use of the Premises.
4. When my deceased wife and I acquired the farm, I did some research and reasonably relied upon the text in the 1917 Deed from Emma Slayton to DL&W regarding "the obligation imposed upon it by law to keep open the public road crossing the land" acquired by DL&W, other information available to me, and applicable law explained to me as ensuring that, as owners of the bisected farm, rather than as mere members of the general public, the Premises would always be provided with a fit crossing over the railroad-right-of-way within our bisected farm.
5. In the ensuing decades, I expended substantial effort, money and resources making substantial business improvements to the Premises, including new horse riding indoor and outdoor arenas, a grand new stables structure, a new landing strip, a new quarry, a new solar

farm and other fixtures, all located on the 70 acres on the eastern side of the Main Line (the "Business Improvements"), and supportive improvements located on the other 20 acres on the western side of the Main Line.

6. Thus, for decades prior to the demolition of the Bridge/abolition of the crossing I operated my business ventures on the Premises, filing tax returns with Schedule C; and, due to assessments for the Business Improvements, I have incurred realty taxes more than three times greater than what I had previously paid.
7. In an effort to force repair of the Bridge after years of ignored requests and complaints, on April 15, 2011, I filed a formal Complaint with the Pennsylvania Public Utility Commission ("Commission") against Delaware and Hudson Railway, Inc. d/b/a Canadian Pacific Railroad and PennDOT, which was docketed at No. C-2011-2237486, alleging that the Bridge carrying S.R. 4009 over the facilities of that railroad was unsafe and was not being properly maintained by that railroad and/or PennDOT.
8. Confirming my concerns, the Bridge was formally closed within a month (i.e., on May 11, 2011) pending repair, with a circuitous "Detour" established by PennDOT of eight (8) miles (according to PennDOT's P.U.C. Hearings Exhibits), almost one-half (½) mile of which is dangerous and impassable at times (as discussed in Paragraph 3 above)
9. On April 25, 2012, the ALJ issued a Recommended Decision which directed, inter alia, PennDOT, at its initial cost and expense, to perform particular repair work.
10. On August 3, 2012, the Commission issued its Opinion and Order filed to No. C-2011-2237486 and to P-2011-2241780, adopting the ALJ's Recommended Decision ("2012 Order"), but expressing concern that the repair work, which was characterized as a "temporary fix", might allow permanent repairs to languish and accordingly remanded the matter back to the ALJ for a determination as to the future disposition of the crossing.
11. In the meantime, that "temporary fix" resulted in the Bridge being modified to a one-lane,

weight-restricted structure, despite the fact that, during that time period, the nearby bridge carrying Waverly Road above the tracks was fully repaired without such modification so that it remained and remains two lanes without posted weight restriction.

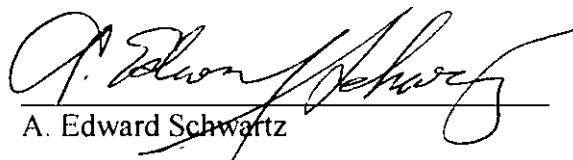
12. Based upon the ALJ's August 2, 2013 Recommended Decision upon Remand, the Commission issued its December 5, 2013 Opinion and Order ("2013 Order") wherein it ordered inter alia in Paragraph 11 thereof "That the Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific Railroad at its sole cost and expense, within twelve months from the date the Pennsylvania Public Utility Commission approves its submitted demolition plans, shall furnish all material and do all work necessary to demolish and remove the bridge carrying S.R. 4009 over its facilities, including the abutments and retaining walls, in accordance with the approved plans", and in Paragraph 15 thereof "That, upon completion of the demolition and removal work by the Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific Railroad, and the inspection and approval of that work by the Pennsylvania Public Utility Commission, the crossing carrying S.R. 4009 over the facilities of the Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific Railroad located in LaPlume Township, Lackawanna County is abolished."
13. By Order entered April 23, 2015, the Commission denied my Petition for Reconsideration.
14. As set forth in footnote 3 of the Commission's Opinion and Order issued on March 17, 2016 ("2016 Order"), Norfolk Southern Railway Company ("Norfolk Southern") "acquired this Canadian Pacific Railroad line in September 2015, and has assumed Canadian Pacific Railroad's responsibility for the Bridge demolition and removal", and that 2016 Order granted Norfolk Southern's Petition for an "extension of time until April 30, 2016, for Norfolk Southern to complete removal and demolition of the Bridge"
15. In fact, the Bridge was demolished on or about May 9, 2016, and, according to the P.U.C. Secretarial Letter dated July 20, 2016, a "final inspection conducted by a Commission staff

engineer on July 14, 2016 revealed that all work has been satisfactory (sic) completed in accordance with (the Commission's) Order entered April 23, 2015", and in turn the crossing has been abolished per Paragraph 15 of the December 5, 2013 Order quoted above.

16. Since the demolition/abolition, there has existed no crossing whatsoever connecting my bisected/divided Premises, and I no longer have any means whatsoever to cross the railroad right-of-way within my bisected Premises; instead, there is the circuitous "Detour" of eight (8) miles which is dangerous and impassable at times (as described in Paragraph 8 above).
17. Demolition of the Bridge/abolition of the crossing has resulted in substantial and permanent interference with access to my Premises and to the Business Improvements in particular.
18. My Premises has been injured and has sustained substantial damage as a result abolition of the crossing in that I can no longer operate my business enterprises efficiently or profitably.
19. Furthermore, my Premises has been injured and has sustained substantial damage as a result the demolition/abolition in that, per appraisal by a licensed professional, the fair market value of my Premises as historically used with a bridge in service would be \$565,000, but is now, as a result of the demolition/abolition, only \$465,000.
20. Furthermore, the diminution in fair market value (bearing in mind potential demand therefor) of the Premises prior to demolition/abolition is even more for the "highest and best" potential use of same, including alternatively for (A) residential development with shared/common equine facilities or (B) quarry and solar farm and related or compatible commercial/ industrial uses.
21. I am entitled to full compensation as determined pursuant to 66 Pa.C.S. Section 2704(a) which statutorily provides a discrete, specific mechanism to address the particular injury sustained as a result of peculiar specified action, i.e., the abolition of the railroad crossing.

VERIFICATION

I, A. Edward Schwartz, do hereby swear that the facts in the foregoing **Affidavit** 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

Dated: March 8, 2017

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**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 March 9, 2017, I serve the foregoing **Applicant's Motion for Summary Judgment** with attached **Affidavit** 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
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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

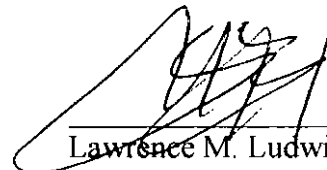
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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



Lawrence M. Ludwig, Esquire
238 Vassar Avenue
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PA Attorney I.D. # 21599

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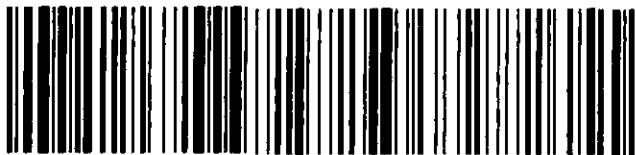
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