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September 20, 2017

Via Electronic Filing

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

**RE: Bridge structure where State Route 1025 crosses over a single track of Delaware and Hudson Railway Company, Inc. (264 293 K) in Nicholson Borough, Wyoming County
Docket No.: M-2013-2364201**

**Investigation upon the Commission's own motion to determine the condition and disposition of six (6) existing structures carrying various highways above the grade of the tracks of the Canadian Pacific Railroad in Great Ben Township, New Milford Township, Brooklyn Township, Hop Bottom Borough, Lathrop Township, Susquehanna County and Benton Township, Lackawanna County
Docket No.: I-2015-2472242**

Dear Secretary Chiavetta:

I am enclosing the Prehearing Conference Memorandum of Norfolk Southern Railway Company for the above-referenced matters. In accordance with the accompanying Certificate of Service, we are providing a copy of this document to all interested parties. If you have any questions, please advise.

Sincerely yours,



Benjamin C. Dunlap, Jr.

BCDjr:ras
Enclosure

cc: All Interested Parties (w/enc.)
Administrative Law Judge David A. Salapa (via electronic mail w/enc.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|--|---|-----------------------------------|
| Bridge structure where State Route 1025 crosses over a single track of Delaware and Hudson Railway Company, Inc. (264 293 K) in Nicholson Borough, Wyoming County | : | Docket No.: M-2013-2364201 |
| | : | Filed Electronically |
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**PREHEARING CONFERENCE MEMORANDUM OF
NORFOLK SOUTHERN RAILWAY COMPANY**

Norfolk Southern Railway Company ("Norfolk Southern"), by and through its undersigned counsel, hereby submits this Prehearing Conference Memorandum, pursuant to the Prehearing Conference Order of Administrative Law Judge David A. Salapa, dated August 8, 2017, in the above-referenced matters,¹ as follows:

1. Norfolk Southern's Sole Entry on Service List:

Benjamin C. Dunlap, Jr., Esquire
Nauman, Smith Shissler & Hall, LLP
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Harrisburg, PA 17108-0840
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¹ Norfolk Southern notes that an unopposed Motion to Consolidate filed by the Department of Transportation and the Commission's Bureau of Investigation and Enforcement is outstanding.

2. Statement Regarding Possible Settlement of the Case – Although mediation ended in a deadlock, Norfolk Southern is certainly willing to discuss potential settlement of this matter.

3. Proposed Plan and Schedule Discovery – Norfolk Southern is amendable to the Pennsylvania Department of Transportation (“PennDOT”) proposal for discovery to be completed 45 days prior to the hearing.

4. Other Proposed Orders with Respect to Discovery – As long as the parties respond to discovery in a timely manner, Norfolk Southern is unaware of any discovery orders that would be necessary in this proceeding.

5. Proposed Schedule for the Submission of Written Testimony, Conducting in Person Hearing and Submission of Briefs – Norfolk Southern is in agreement with PennDOT’s proposal for a March hearing. Norfolk Southern proposes that written direct testimony be submitted 30 days prior and rebuttal testimony 10 days prior to the hearing. Norfolk Southern is in agreement with PennDOT that main briefs be due 30 days after receipt of the transcript and reply briefs 20 days later.

6. Witness Names, Contact Information and Expected Subject Matter of Testimony –

Kevin G. Hauschildt, P.E.
Chief Engineer Bridges and Structures
1200 Peachtree Street NE
Atlanta, GA 30309

Mr. Hauschildt will testify as to the current structural condition of the four bridges for which the railroad has current maintenance responsibility, the repairs that Norfolk Southern is proposing to perform at each of these four crossings, the estimated cost of these repairs, the effect that the repairs will have on each bridge’s service life, and the assignment of future maintenance responsibilities following those repairs and the reasons therefor.

Greg Creasy, P.E.
President and Senior Traffic Engineer
Grove Miller Engineering, Inc.
4800 Linglestown, Road, Ste. 105
Harrisburg, PA 17112

Mr. Creasy will testify as to the results of the traffic study he will be conducting in regard to each of the six bridges at issue in this proceeding.

Norfolk Southern reserves the right to call different or additional witnesses in support of its case as the issues in this proceeding are further developed through discovery.

7. List of the Issues and Sub-Issues of this Proceeding which Norfolk Southern Intends to Address and Statement of the Party's Position on Each of the Issues and Sub-Issues – Norfolk Southern thinks it would be clearest to first state its current position as to the seven bridges at issue in this proceeding, followed by the issues it intends to address at hearing in light of its position.

Norfolk Southern's predecessors were assigned maintenance responsibility for the following four structures at issue:

| <u>Highway Name</u> | <u>DOT No.</u> | <u>Municipality/County</u> |
|------------------------------|----------------|---------------------------------|
| T-821 (Old Lackawanna Trail) | 263 952 J | Great Bend Twp., Susquehanna |
| SR 2032 (Depot Street) | 264 033 S | Brooklyn Twp., Susquehanna |
| SR 2041 (Glenwood Street) | 264 292 D | Hop Bottom Borough, Susquehanna |
| SR 1025 (Station Hill Road) | 264 293 K | Nicholson Borough, Wyoming |

Norfolk Southern is willing to perform specified repairs on these structures, with a current estimated cost of approximately \$1.7 million. Norfolk Southern estimates that these repairs will extend the life of the bridges on the state highways to 25+ years and will add an estimated 10 to 15 years of extended service life on the Township bridge. Following completion of the repairs, it is Norfolk Southern's position that future maintenance for the structures should be assigned to the owner of the highway on each of the bridges. Norfolk Southern will present its repair proposal in

detail at the hearing and will share its proposal with the other involved parties and the Commission's Bureau of Investigation & Enforcement as part of any settlement negotiations.

Maintenance responsibilities for the following three bridges at issues are unassigned to any governmental entity or current or former rail line located at the crossing:

| <u>Highway Name</u> | <u>DOT No.</u> | <u>Municipality/County</u> |
|--------------------------------|----------------|-------------------------------|
| SR 1018 (Old Lackawanna Trail) | 264 028 V | New Milford Twp., Susquehanna |
| SR 2017 (Station Hill Road) | 264 291 W | Lathrop Twp., Susquehanna |
| SR 4005 (Seamans Road) | 265 849 D | Benton Twp., Lackawanna |

Norfolk Southern is of the understanding that the structure on SR 4005 (Seamans Road) in Benton Township, Lackawanna County, has been programmed for rehabilitation and that PennDOT will cover all costs in connection therewith. Norfolk Southern is of the opinion that future maintenance responsibility for that crossing, as well as the responsibility to conduct current repairs or reconstruction to the other two unassigned crossings and for future maintenance of those crossings should be assigned to PennDOT. As the owner of the roadway on the bridge, PennDOT is deemed to be the owner of the highway bridges that carry those roadways under Pennsylvania law. City of Philadelphia v. Consolidated Rail Corp., 560 Pa. 587, 747 A.2d 352 (2000).

Issue No. 1 -- What repairs should be performed on the four bridges for which maintenance responsibilities are currently assigned to the railroad?

Norfolk Southern's Position – Norfolk Southern agrees to perform the repairs it will propose in order to extend the current service life of each of the bridges.

Sub-Issue No. 1 – Which party should be assigned future maintenance responsibilities for these bridges?

Norfolk Southern's Position – The party that owns the roadway on the bridge, which is also deemed the owner of the bridge itself, should be assigned future maintenance

responsibilities. Also, highway authorities are in a better position than a railroad to maintain highway bridges.

Issue No. 2 – Which party should be assigned responsibility to perform the repairs and/or reconstruction of the three bridges to which no responsibility is currently assigned?

Norfolk Southern's Position – The owner of the bridge should be assigned this responsibility.

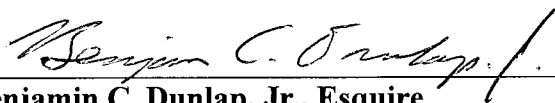
Sub-Issue No. 2 – Which party should be assigned future maintenance responsibility?

Norfolk Southern's Position – The party that owns the roadway on the bridge, which is also deemed the owner of the bridge itself, should be assigned future maintenance responsibilities. Also, highway authorities are in a better position than a railroad to maintain highway bridges.

8. Evidence Proposed to be Presented at Hearing – Norfolk Southern will present evidence to support the written statements of its witnesses. That evidence has yet to be fully determined, but will be provided along with its written testimony.

Respectfully Submitted,

NAUMAN, SMITH, SHISSLER & HALL, LLP

By: 
Benjamin C. Dunlap, Jr., Esquire
Supreme Court I.D. #66283
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P.O. Box 840
Harrisburg, PA 17108-0840
Attorney for Norfolk Southern Railway Company

Dated: September 20, 2017

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Bridge structure where State Route 1025 crosses
over a single track of Delaware and Hudson
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Milford Township, Brooklyn Township, Hop
Bottom Borough, Lathrop Township, Susquehanna
County and Benton Township, Lackawanna
County** :

Docket No.: I-2015-2472242
Filed Electronically

CERTIFICATE OF SERVICE

I hereby certify that I served one (1) copy of the Prehearing Conference Memorandum of Norfolk Southern Railway Company in the above-referenced matter, this day, via electronic mail as noted below and by depositing the same in the United States mail, postage prepaid, in Harrisburg, Pennsylvania, addressed to:

Tori L. Giesler, Esquire
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Via Electronic Mail

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Rebecca Silvia, Legal Assistant to
Benjamin C. Dunlap, Jr., Esquire

Dated: September 20, 2017