

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PA 17120**

A. Edward Schwartz

v.

**Norfolk Southern Railway Company,
Pennsylvania Department of
Transportation, Lackawanna County and
LaPlume Township**

Public Meeting held April 5, 2018

2570929 - OSA

Docket No. C-2016-2570929

**JOINT MOTION OF
COMMISSIONER DAVID W. SWEET AND VICE CHAIRMAN ANDREW G. PLACE**

Before us today are the exceptions of A. Edward Schwartz to the Recommended Decision (RD) issued by Administrative Law Judge David A. Salapa in this matter. Mr. Schwartz is a property owner who alleges that the value of his property has decreased as a result of a Commission order that directed the abolition of a crossing consisting of a bridge across the railroad which bisects his property. The crossing is gone, the railroad remains, and the land is separated with approximately 70 acres on one side of the railroad right-of-way and 30 acres on the other. His filing was actually an application for a finding that his property was taken and therefore the matter should be referred to the Court of Common Pleas for a determination of the amount of the taking. However, because there was no property appropriated in this case, the application was treated as a complaint.

Mr. Schwartz excepts to the finding in the RD that the Commission is without jurisdiction to find that abolition of the crossing constitutes a taking where there has been no appropriation of property associated with the abolition of the crossing. Specifically, in this case, the Commission has not authorized the appropriation of that property with an order.

PennDOT filed a motion to strike the exceptions, or in the alternative, to reply to the exceptions, and Norfolk Southern filed reply exceptions. Both parties point out that the Commission's jurisdiction is to condemn property in conjunction with the construction, relocation or abolition of a crossing, and to then refer the case to the Court of Common Pleas for a determination of the compensation for the condemnation under the Public Utility Code.¹ The Commission's statutory authority does not extend to granting the Commission the authority to address claims that a rail-highway crossing project may affect the value of adjacent property.

In other words, where there is no condemnation of real property such that a value must be ascertained, there is no Commission jurisdiction to look beyond the confines of the rail-highway crossing and the project costs.

¹ 66 Pa. C.S.A. §§2702, 2704.

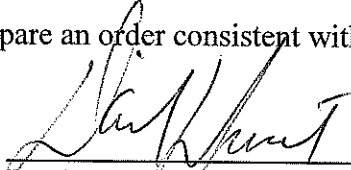
The Recommended Decision contains a thorough and correct discussion and analysis of this subject matter and the appropriate outcome, and therefore, we move that the Exceptions of Mr. Schwartz be denied and the Recommended Decision be adopted in its entirety.

THEREFORE,

WE MOVE:

1. That the Exceptions filed by A. Edward Schwartz be denied.
2. That the Recommended Decision of Administrative Law Judge David A. Salapa be adopted in its entirety.
3. That the Office of Special Assistants prepare an order consistent with this motion.

April 5, 2018
DATE



David W. Sweet

Commissioner



Andrew G. Place, Vice Chairman