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June 15, 2018

*Via Hand Delivery*

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
400 North Street, 2<sup>nd</sup> Fl  
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 Bend 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:

Enclosed please find redacted and unredacted versions of the Main Brief of Norfolk Southern Railway Company for filing in the above-referenced matters. The unredacted version should be filed pursuant to the Protective Order in this proceeding. In accordance with the accompanying Certificate of Service, we are providing a copy of the unredacted Main Brief to all interested parties.

Thank you for your assistance and attention to this matter. If you should have any questions regarding the enclosed, please do not hesitate to contact me.

Sincerely yours,



Benjamin C. Dunlap, Jr.

BCDjr/klg  
Enclosures

cc: All Interested Parties of Record (per attached service list)  
David A. Salapa, Administrative Law Judge

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Bridge Structure where State Route 1025 : M-2013-2364201  
crosses over a single track of Delaware and :  
Hudson Railway Company, Inc. (264 293 K) :  
in Nicholson Borough, Wyoming County :

Investigation upon the Commission's own : I-2015-2472242  
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 Bend Township, New Milford :  
Township, Brooklyn Township, Hop Bottom :  
Borough, Lathrop Township, Susquehanna :  
County, and Benton Township, Lackawanna :  
County :

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BRIEF OF NORFOLK SOUTHERN RAILWAY COMPANY

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Date June 15, 2018

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## **I. HISTORY OF THE PROCEEDING**

In 2014, the Pennsylvania Department of Transportation ("PennDOT") requested a hearing before the Pennsylvania Public Utility Commission ("PUC" or "Commission") to allocate costs associated with repair of a bridge in Nicholson Borough, Wyoming County, in M-2013-2364201. The maintenance of this bridge had been assigned to the predecessor of the D&H Railway Company, which refused to assume maintenance responsibilities. The Commission was concerned about the safety of the bridge, so an inspection was performed.

In 2015, an investigation was instituted on a motion from the Commission to determine the condition of six other highway bridges in the same area spanning the D&H rail line in I-2015-2472242. This investigation was also to determine the safety of the bridges, their future disposition, the party or parties responsible for the construction of any improvements, and the assignment of future maintenance.

All seven bridges were consolidated into this proceeding at the request of both PennDOT and Norfolk Southern Railway Company ("Norfolk Southern"). D&H Railway Company previously had been assigned at least some maintenance responsibilities for four of these bridges: DOT #263 952 J on T-821, Old Lackawanna Trail in Great Bend Township, Susquehanna County; DOT #264 033 S on SR 2032, Depot Street in Brooklyn Township, Susquehanna County; DOT #264 292 D on SR 2041, Glenwood Street in Hop Bottom Borough, Susquehanna County; and #264 293 K on SR 1025, Station Hill Road in Nicholson Borough, Wyoming County. PennDOT Exhibits D4, pg. 1; D6, pg. 1; D7, pg. 1; D10, pg. 1. Norfolk Southern agreed to provide specified repairs on these bridges, but not assume permanent maintenance responsibilities following the completion of the repairs.

The responsibility for the other three bridges, #264 028 V on SR 1018, Old Lackawanna Trail in New Milford Township, Susquehanna County; #264 291 W on SR 2017, Station Hill Road in Lathrop Township, Susquehanna County; and # 265 849 D on SR 4005, Seamans Road in Benton Township, Lackawanna County, has yet to be assigned.

Mediation was attempted unsuccessfully in June of 2017, and the parties requested that the matters proceed to hearing. The hearing took place on April 24, 2018, following the submission of written direct and rebuttal testimony.

## **II. SUMMARY OF ARGUMENT**

Maintenance responsibilities for the three unassigned bridges should be assigned to PennDOT because it owns the roads which are carried by the bridges, and therefore under Pennsylvania law, it owns the bridges. This ownership of the road and the structure carrying the road puts PennDOT in a much better position to maintain the bridges than the railroad. It has more familiarity with the structures and roadways, conducting detailed inspections mandated by federal law every two years. It has experience with the ownership and maintenance of other bridges spanning the same rail line in the same area, and other highway bridges over railroads in general. It is best able to secure federal funding to systematically plan replacements. And case law supports the general proposition that since the bridges are treated as portions of the highways that cross over them, maintenance of the bridges should fall to the same entities which own the highways.

Future maintenance for the four bridges currently assigned to Norfolk Southern's predecessor should be reassigned to PennDOT and Great Bend Township for the same reasons. Furthermore, maintenance of two of the "assigned" bridges, was merely assigned at the initial

cost and expense of Norfolk Southern's predecessor, specifically leaving open the option of permanent maintenance assignment to another entity. This future maintenance should be assigned after Norfolk Southern completes repairs to the structures at its sole cost and expense. Any ordered repairs should be based on Norfolk Southern's recommendations, instead of PennDOT's recommendations which unnecessarily entail replacement of all bridges at this time.

### III. ARGUMENT

#### A. Maintenance Responsibility for the Three Unassigned Bridges Should be Assigned to PennDOT

In the instant case there are seven bridges, four of which have maintenance orders in place, three of which do not. All seven bridges traverse Norfolk Southern's D & H line, which has a speed limit of 40 mph and traffic of six to eight trains per day. Norfolk Southern Statement No. 1 at 4. All seven bridges carry public highways. Six of these bridges carry state owned roads, and one of the bridges carries a road owned by Great Bend Township. Of the three bridges which do not have maintenance orders, all carry state highways owned by PennDOT.<sup>1</sup>

The maintenance of these three bridges without orders should be assigned to PennDOT for three reasons. The entity which owns the highway is also the entity which owns the bridge absent definitive evidence to the contrary. The entity which owns the highway is in a better position than the railroad to maintain the bridge. And the bridges exist primarily for the benefit of the traveling public, and not the railroad.

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<sup>1</sup> In fact, in the case of one of these unassigned bridges, PennDOT has voluntarily assumed maintenance responsibility in the interim by taking on the rehabilitation of SR 4005. Hearing Transcript at 132, line 5. PennDOT explained that it was "being responsible" by seeking funding for the unassigned bridge. PennDOT Statement No.3 at 4, line 12. If repairs are needed in the interim for the other two unassigned bridges, they should also fall under the responsibility of PennDOT.

1. Under Pennsylvania law, the entity owning the highway is the owner of any bridge carrying the highway, absent definitive proof to the contrary.

For over a hundred years Pennsylvania has recognized the well-established principle that a bridge carrying a public highway over railroad tracks is part of that public highway and owned by the same entity that owns the highway. North Pa. R. Co. v. Inland Traction Co., 205 Pa. 579 (1903).<sup>2</sup> It is of no consequence that the railroad company may have constructed the bridge. Pa. R. Co. v. Greensburg, J. & P. St. Ry. Co., 176 Pa. 559 (1896). Upon a bridge's completion it becomes part of the public highway it was built to connect. Id.

In North Pa. R. Co. v. Inland Traction Co., a railroad which had constructed a bridge to allow a turnpike to traverse its tracks argued that it should own that bridge and therefore be able to disallow another passenger railroad company from using the bridge. The court ruled that the bridge in fact belonged to the turnpike company upon completion of the bridge, and the turnpike company had consented to the passenger railroad's use of the bridge. Id. The North Pennsylvania Railroad Company no longer had a say in how the bridge was used or by whom. Id.

This principle was recently reaffirmed in City of Philadelphia, which clearly articulates that ownership of a bridge carrying a public street belongs to the entity which owns the street. Id., 560 Pa. 587, 747 A.2d 352 (2000). Here the court again analyzes a bridge built by the railroad for a public highway which was carried and supported by the bridge and held that the railroad was not the owner of the bridge. Id.

The City of Philadelphia case also addressed ownership when there was a contract in place dictating that the railroad would provide maintenance for the bridge. Id. The court held

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<sup>2</sup> See also: City of Philadelphia v. Consolidated Rail Corp., 560 Pa. 587, 747 A.2d 352 (2000); Pa. R. Co. v. Greensburg, J. & P. St. Ry. Co., 176 Pa. 559 (1896).



that even with a maintenance agreement in place, the bridge was still owned by the entity owning the street, in this case the municipality. Id. The contract in that case was silent on ownership, only addressing maintenance, and the court reasoned that “the agreement to maintain the bridge created contractual obligations for [the railroad], not ownership.” Id. at 593, 747 A.2d at 355. The contractual responsibilities in that case were discharged through the predecessor railroad’s bankruptcy. City of Philadelphia v. Consol. Rail Corp., 222 F.3d 990. (D.C. Cir. 2000). Here, no evidence has been produced that any of Norfolk Southern’s predecessors had any contractual responsibility for maintenance of any of the bridges at issue.

PennDOT consistently asserts that since Norfolk Southern’s predecessor railroad built the structures, they are consequently the owners of the bridges which carry state roads. See, e.g., PennDOT Statement No. 3 at 6. Case law shows that PennDOT is mistaken in this belief. The Pennsylvania Supreme Court has consistently held that as soon as the bridge is completed, it becomes part of the highway and therefore belongs to the entity which owns the highway. City of Philadelphia at 592, 747 A.2d at 354. Great Bend Township advances the same claim that the T-821 bridge has always been owned by the railroad running underneath it. Great Bend Township Statement No. 1 at 6-7.

Here, there is no evidence that Norfolk Southern’s predecessor railroads did anything more than construct the bridges. No documents were placed into evidence transferring ownership from the highway authorities to Norfolk Southern. As City of Philadelphia instructs, absent definitive evidence to the contrary, upon completion of the structures, bridges become part of the roads they carry, and ownership is vested in the owners of the roads. City of Philadelphia at 593-594, 747 A.2d at 355. Therefore, the six bridges in the instant case carrying

state highways are owned by PennDOT, and the bridge carrying the township road is owned by Great Bend Township. None are owned by Norfolk Southern.

This is an important consideration when the court assigns maintenance responsibilities, particularly for the three bridges carrying state highways without current maintenance orders. PennDOT states, in error, that because the predecessor railroad designed and built the bridges, PennDOT should not be given maintenance responsibilities. PennDOT Statement No. 2 at 29-33; PennDOT Statement No. 3 at 6, line 8. Who originally constructed the bridges, however, is merely one factor considered when assigning maintenance responsibilities. In Dept. of Transp. v. Pa. Pub. Util. Comm'n., the court held that when determining maintenance responsibilities, “the Commission in apportioning is not limited to any fixed rule, but that all relevant factors must be taken into consideration with the fundamental requirement being that the order be just and reasonable.” Id., 21 Pa. Cmwlth. 407, 413, 346 A.2d 371, 375 (1975).<sup>3</sup>

Some of the factors to be considered include: the party that owns and maintains the crossing, whether either party is responsible for the deterioration of the crossing that has led to its need for repair, and the relative benefit each party would receive from the repair. N. Lebanon Twp v. Pub. Util. Comm'n., 962 A.2d 1237, 1247 (Pa. Cmwlth. Ct. 2008). PennDOT is currently performing extensive repairs on at least one of the bridges, SR 4005. Hearing Transcript at 132, line 5. The traveling public, and not the railroad, receives the primary benefit of the crossing in that they do not have to stop to wait for passing trains like they would at an at-grade crossing. Hearing Transcript at 213, line 4. The traffic atop the bridge comes in direct contact with the structure, contributing to its wear and tear, whereas the structure is built to avoid contact with the trains passing underneath. The public also stands the most to gain from the

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<sup>3</sup> This consideration of all relevant factors was later upheld in Pa. Dept. of Transp. v. Pa. Pub. Util. Comm'n., et al., 76 Pa. Cmwlth. 525, 464 A.2d 645 (1983).

repair of the bridge considering the railroad's efficiency would not be affected if these bridges were abolished. Id. Since ownership is actually vested in PennDOT for all three bridges currently without maintenance assignments, PennDOT, the owner of the bridges which is in the best position to maintain the bridges, should be responsible for their upkeep.

2. Highway authorities rather than railroads are in a better position to maintain highway structures.

The general principle that bridges should be maintained by the same entities responsible for maintaining the highway is another concept which the Pennsylvania Supreme Court has upheld for many years. In Rapho & W. Hempfield Twps v. Moore, the court stated that "As a general proposition, but by no means universal, bridges are treated as portions of the highways which cross them, and are to be maintained by the same persons to whom the duty of repairing the highways is committed." Id., 68 Pa. 404, 406 (1871).

This language was quoted again by the Pennsylvania Supreme Court in Heinlein v. Allegheny Cnty., well after the establishment of the Commission, which applied the standard to bridge crossings over railroads, again expressing that, in Pennsylvania and generally in the country, bridges become part of the public highways that traverse them. Id., 374 Pa. 496, 500, 98 A.2d 36, 38 (1953). The case states that the trend in Pennsylvania was for the Commonwealth to assume responsibility for the structures, "that the progressive and undeviating policy of the Commonwealth has been to assume more and more of the responsibility for [state highway] bridges..." Id. at 510, 98 A.2d at 43.

The entities responsible for maintaining the roads are in a much better position to provide maintenance for the bridges which are a part of the same roadways. The entities maintaining the roads have more interaction with the bridges and the public using the bridges, putting them in a

better position to understand the condition of the bridges. Additionally, PennDOT is already responsible for a number of bridges along the same rail line, giving it a familiarity for the work required. PennDOT Statement No. 3 at 8-9.

PennDOT regularly inspects bridges carrying all of Pennsylvania's roads pursuant to federal law and sometimes PUC orders. 23 C.F.R. 650, subchapters C, D; PennDOT Statement No. 1 at 28, line 1. The federal standards in 23 U.S.C. § 144 instruct that the bridges on public highways must be inspected to aid in "the systematic preventative maintenance of bridges, and replacement and rehabilitation of deficient bridges." 23 U.S.C. § 144 (a)(1)(B). These inspections are 100% state-funded for state roads, and 80% state, 20% locality funded for local roads. PennDOT Statement No. 2 at 2, line 12. PennDOT acknowledges that the PUC regularly orders PennDOT to perform inspections of bridges. PennDOT Statement No. 1 at 28, line 1. These mandated, detailed inspections put PennDOT in a much better position to know what is happening with the condition of each bridge. Additionally, it is logical that when a problem is noticed by a concerned citizen, he or she is more likely to contact the authority known to be responsible for the road, PennDOT or the locality, than the railroad beneath the bridge, again putting PennDOT in a better position to understand bridge issues.

PennDOT prioritizes its bridge rehabilitation and reconstruction projects generally based on regional needs and a number of different factors. PennDOT Statement No. 3 at 5; Hearing Transcript at 124. Pennsylvania participates in a federally funded metropolitan transportation planning program which develops long-range plans to improve surface transportation in each state. 23 U.S.C. § 134. PennDOT, along with its regional planning partners, has prioritized and secured funding for extensive projects on bridges spanning the exact same rail line. PennDOT Statement No. 3 at 8, line 19. Although PennDOT claims that funding for any more bridge

projects might be an issue, PennDOT is able to prioritize over a number of years to plan for these and other bridges under its responsibility. PennDOT Statement No. 6 at 1, line 15. In fact, the law requires such prioritization be updated at least every five years, making the claim that PennDOT is unable to re-allocate funds should it be assigned these bridges untenable. 23 U.S.C. § 134(i)(1)(b)(ii).

PennDOT implies that the railroad does not share budgetary constraints, similar legal and environmental hurdles, or prioritization requirements for its projects. PennDOT Statement No. 3 at 10-11. On PennDOT's own admission, however, Norfolk Southern is not able to reconstruct at will and must also observe laws and gain PUC approval. Id. Also, just as PennDOT must prioritize its projects due to budgetary constraints, so must Norfolk Southern. Hearing Transcript at 199-200. Both organizations are in similar circumstances concerning internal prioritization procedures, but PennDOT's prioritization exists in part to ensure that projects obtain federal and other government funding whereas Norfolk Southern's prioritization may never result in government funding. Id.

In fact, when Norfolk Southern at times does seek government reimbursement for crossing work, it is put in the exact same position as PennDOT as far as what processes it must observe, without the perk of sitting on the decision-making committees appropriating the federal funds. Hearing Transcript at 204, 131-32. The Regional Planning Commissions are the government committees responsible for funding the projects. PennDOT Statement No. 3 at 4. PennDOT has a voting membership on all of the Regional Planning Commissions, whereas no private railroad has a voting membership. Hearing Transcript at 129-31. This contradicts the assertion that Norfolk Southern is in a better position to fund the necessary repairs on the bridges.

As stated previously, PennDOT has already rehabilitated numerous bridges carrying their highways over the same span of track in the same area, or is in the process of doing so.

PennDOT Statement No. 3 at 8, line 19. This is not surprising considering it is more common for highway authorities to maintain the bridges carrying their roads than for the railroads to do so. Id. at 9-10. This is evidenced by the fact that PennDOT has responsibility for other bridges over this line. Id. Mr. Hauschildt testified that in his experience, this was the case. “Just as railroads are generally responsible for bridges carrying rail lines over highways, the respective highway authority is generally responsible for bridges carrying highways over railroads.” Norfolk Southern Statement No. 1 at 4, line 20. The concept Mr. Hauschildt articulates is reflected generally in the Heinlein case. Id. at 499-500, 98 A.2d at 38-39.

It is for all of these reasons that PennDOT is in a better position to maintain the bridges it owns which carry its state highways. It owns similar bridges up and down the same line of track. It has thorough inspection regimens in place as well as more contact with the public using the bridges. It has avenues to receive federal funding, which are not available to private entities. Finally, Pennsylvania Supreme Court precedent shows that maintenance of the bridges carrying the roads generally should belong to the entity maintaining the roads. Heinlein at 499-500, 98 A.2d at 38-39.

3. The bridges exist for the convenience of the traveling public.

In assigning maintenance responsibilities, it is important to take into consideration the benefit each party receives from the structure. The Commonwealth Court has held that it is reasonable to consider the parties most directly affected by the condition of a bridge when assigning maintenance responsibilities. Pa. Dept. of Transp. v. Pa. Pub. Util. Comm'n, 76 Pa.

Cmwlth. 525, 533, 464 A.2d 645, 649 (1983). The structures at issue exist mainly for the convenience of the local vehicular traffic. Norfolk Southern Statement No. 1 at 14, line 15; Norfolk Southern Statement No. 2 at 5, line 2. Although when constructed 100 years ago for high volumes of passenger train traffic, now just 6-8 freight trains per day use the line. Norfolk Southern Statement No. 1 at 3-4; Norfolk Southern Statement No. 1R at 2.

None of these bridges carry major vehicular travel routes, and most of the traffic is residential on these roadways, which do not have high average daily traffic volumes. Norfolk Southern Statement No. 2 at 5. Six of the seven locations have an average daily traffic volume of fewer than 700 vehicles, with the lowest being 60 and the highest being 1400 vehicles per day. Id. at 5, 10. The average increase in travel times if any of these bridges were to be closed averaged about six minutes, with a range from one minute to twelve minutes. Id. at 6-12. "...[T]he closure of all of the structures would have a minimal impact on the ability of the local roadway network to handle the current traffic volumes from a capacity standpoint," according to Norfolk Southern traffic engineering expert. Id. at 12. This limited utility of such local highways means that these bridges exist primarily to serve the local traveling public.

Although PennDOT witnesses testified that these bridges are primarily for the benefit of the railroad, at-grade crossings are sufficient for the railroad's needs. Norfolk Southern Statement No. 1R at 4, line 19. The addition of a bridge really serves to benefit the efficiencies of the traveling public, who would otherwise need to stop at at-grade crossings to wait for trains to pass. Id. Mr. Hauschildt explains, "...at an at-grade crossing, the train does not have to stop. It does not slow down. If these were all at-grade crossings, our train performance would stay exactly the same." Hearing Transcript at 213, line 4. This testimony also indicates that the primary benefits are experienced by the public and not the railroad.

This idea is expressed in Beaver Cnty. v. Cent. Dist. & Printing Telegraph Co., where the court reiterates that “In Pennsylvania bridges are treated as part of the highway, which is carried and supported by them...the county owns the bridge and maintains it *for the comfort and convenience of the traveling public.*” Id., 219 Pa. 340, 343 (1908) (emphasis added). This language is later echoed in City of Philadelphia, which directly applies the idea of bridges being maintained for the “comfort and convenience of the traveling public” to bridges carrying highways over railroads. City of Philadelphia at 592, 747 A.2d at 354.

Of course, both parties do benefit from the grade separation in terms of safety. PennDOT Statement No. 2 at 2, line 20. Separating the grades eliminates the chance of train-vehicle contact and collisions. Id. PennDOT attempts to claim that the railroad therefore receives the benefit, in the form of decreased liability, but as Mr. Hauschildt pointed out in his cross examination, “the cost of a bridge... is much greater than the cost of gates and lights,” which would provide similar relief from liability. Hearing Transcript at 202, line 5. Tellingly, PennDOT does not suggest abolishing the bridges and replacing them with at-grade crossings. Instead, PennDOT asserts that none of these bridges are redundant and all are an integral part of the state highway system. See PennDOT Statement No. 2.

Regardless, for the reasons pointed out by Norfolk Southern, “the benefit of the grade separations is primarily with the roadway and not with the railroad.” Hearing Transcript at 213. This is yet another factor supporting that maintenance responsibilities should be assigned to PennDOT. As these bridges exist and are maintained for the “comfort and convenience of the traveling public,” City of Philadelphia at 592, 747 A.2d at 354, PennDOT and not Norfolk Southern should be responsible for their maintenance since the traveling public is realizing the primary benefit.



**B. Maintenance Responsibility for the Four Bridges Assigned to the Predecessor Railroad Should be Reassigned to PennDOT and Great Bend Township Following Norfolk Southern's Repairs**

Four of the bridges at issue in this case already have maintenance orders which assign responsibility to the predecessor railroad of Norfolk Southern. See PennDOT Exhibits D3, D4, D6, D7 and D11. Three of these bridges are owned by PennDOT and one by Great Bend Township.<sup>4</sup> The maintenance of these four bridges should be reassigned to the owners of the bridges, PennDOT and Great Bend Township, for all the reasons previously discussed in section A of this brief, following repairs made by Norfolk Southern. Also, the repairs should be ordered according to Norfolk Southern's more reasonable assessment of what is necessary instead of the Bureau of Investigation and Enforcement ("BI&E") and PennDOT recommendations. The repairs Norfolk Southern proposes are sufficient to add 25 years of use to each bridge, allowing PennDOT time to schedule the bridges for replacement pursuant to the federal funding programs it helps to administer.

1. Repairs should be ordered pursuant to Norfolk Southern's assessment of what is necessary.

Norfolk Southern has proposed, at its sole cost and expense, extensive repairs to the four bridges where maintenance responsibility was assigned contingently or fully to its predecessor. These repairs include concrete work and other rehabilitations, which Norfolk Southern thinks would extend the lives of each of the bridges for up to 25 years. Hearing Transcript at 199, line 5. Pending its review of Norfolk Southern's plans, PennDOT would agree with this assessment. Hearing Transcript at 100, line 10.

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<sup>4</sup> See: section A(1) of this brief. SR 2032, SR 2041, and SR 1025 are owned by PennDOT, whereas T-821 is owned by Great Bend Township, according to Pennsylvania case law holding that a bridge is owned by the same entity which owns the highway traversing it.

For the bridge over Station Hill Road, SR 1025, Norfolk Southern proposes \$350,000 worth of work including completely restoring the concrete on both sides of the arch, patching and sealing any exposed reinforcing steel on the underside of the arch, and pushing the existing New Jersey barriers out to the edge of the bridge and permanently anchoring them to effectively become the new parapet wall and restore the bridge to two lanes instead of one. Norfolk Southern Statement No. 1 at 6, line 14 – 7, line 12. [REDACTED] PennDOT estimates its repairs will cost \$160,000, which Norfolk Southern believes is low. Norfolk Southern Statement No. 1 at 7, lines 13-16. Due to the current condition of the bridge, Norfolk Southern would complete its repairs by October 31, 2019. Id. at 7, lines 1-3.

For the Glenwood Road bridge, SR 2041, Norfolk Southern proposes concrete repairs on the left spandrel wall (lower edge and under concrete barrier) and patching of the concrete areas shown on photos 17, 18 and 19 of PennDOT's Exhibit E4 at a total cost of \$50,000. Norfolk Southern Statement No. 1 at 7, line 21 – 8, line 5. Norfolk Southern notes that this bridge is structurally sound and has excellent concrete based on core samples. Id. at 7, lines 20-21. [REDACTED] Norfolk Southern does not think that PennDOT's additional repairs are necessary at this time. Norfolk Southern Statement No. 1 at 8, line 9.

For the Depot Street bridge, SR 2032, Norfolk Southern proposes proactive repairs to reface both sides of the concrete arch spans to avoid reinforcing steel from being exposed, at a cost of about \$100,000. Norfolk Southern Statement No. 1 at 8, lines 11-18. These repairs could wait another ten years, as the bridge is structurally sound based on core samples. Id.

[REDACTED]

The last bridge, on Old Lackawanna Trail, T-821, is a skewed through plate girder span on concrete abutments that was closed last December. Norfolk Southern has already developed

plans to make bridge seat and abutment repairs, as well as scale loose concrete off each through girder, at a cost of about \$200,000. Norfolk Southern Statement No. 1 at 9, lines 1-11.

Construction is expected to begin in July of 2018, with the bridge reopened by September 30, 2018. Id. [REDACTED] About \$200,000 of PennDOT's estimate, however, is for painting the bridge superstructure, which would not increase its useful life and so would be done for cosmetic rather than structural reasons. Norfolk Southern Statement No. 1 at 9, lines 15-18.

BI&E also gave its opinions for the maintenance of these bridges. BI&E Statement No. 1 at 4-9. Most of the repairs it recommends for these four bridges concur and defer to PennDOT's recommendations and assessments. Id. One notable difference is the urgency at which BI&E expects the repairs to take place. Id. It is also important to note that BI&E recommends every bridge be programmed for replacement and seems to view the repairs as temporary measures to hold the bridges over until they are able to be replaced. Id. This position is in line with Norfolk Southern's longer range proposed resolution, discussed below, assigning PennDOT permanent maintenance responsibilities for the bridges carrying its highways which would include programming bridge replacements, following Norfolk Southern's repairs. Norfolk Southern Statement No. 1R at 2, lines 14-17.

Although PennDOT's inspection reports provide recommendations for repair of the bridges, its preferred disposition for all state-owned bridges is replacement instead of rehabilitation. PennDOT Statement No. 2 at 8-20. This is curious considering the policy it generally uses to determine whether to repair or replace bridges. That policy provides that when the repair costs exceed 50% of the replacement costs, PennDOT may then reevaluate the age of the structure to determine how many years the bridge might have left to weigh repair against replacement. E.g., id. at 14, lines 19-27. In none of these instances is the PennDOT estimated

cost for repairs even close to 50% of what a replacement cost would be, yet PennDOT still suggests replacement of every single bridge. Norfolk Southern Statement No. 1R at 5, line 5 – 6, line 8 (referencing various sections of PennDOT Statement No. 2). This suggests that PennDOT is not following its own guidelines but is instead basing the replacement recommendation solely on the age of the bridges, at Norfolk Southern's expense. Id. It is also telling that for the SR 4005, Seamans Road bridge for which PennDOT has taken responsibility and begun repairs, it is not replacing the structure, but repairing it despite similar wear and tear. Id. at 6, lines 10-13.

Norfolk Southern has offered to perform additional repairs now at its sole cost and expense to extend the lives of the state-owned bridges for 25 years, and the Township-owned bridge for 20 years, with permanent maintenance being assigned to PennDOT and Great Bend Township. Norfolk Southern Statement No. 1 at 11, line 7 – 12, line 10. This would include an additional \$150,000 spent on SR 1025 to repair the parapets rather than permanently anchoring the New Jersey barriers, and \$75,000 spent on SR 2041 to repair the concrete on all spandrel walls and curbs and repair one bridge end barrier. Id. It would include another \$100,000 on SR 2032 to repair the concrete spandrel walls on both sides of the structure. At the T-821 crossing, it would spend an additional \$55,000 to plate the three areas on the web where there is 100% section loss, install guiderail on each side inside through girder to protect the knee bracing as well as fill the void and seal the spalling section loss on the underside of the deck between floorbeams 10 and 11, as shown in photo 13 of PennDOT Exhibit E7. Id. None of these repairs are necessary at this time, but Norfolk Southern would be willing to do the work to allow PennDOT and Great Bend Township to assume permanent maintenance responsibilities with a maximum extension of the useful life of each bridge.<sup>5</sup> Id.

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<sup>5</sup> These additional repairs are incorporated into Norfolk Southern's proposed ordering paragraphs.

After the additional repairs are completed by Norfolk Southern, PennDOT should assume maintenance responsibilities for the bridges it owns, SR 1025, SR 2032, and SR 2041, and Great Bend Township for the bridge it owns, T-821. PennDOT could then begin to fit the bridge replacement projects into its 12-year plans with the Regional Planning Commission. This reassignment would be reasonable considering Norfolk Southern's repairs will have bought PennDOT and Great Bend Township a quarter of a century to schedule appropriately prioritized bridge replacements. Norfolk Southern Statement No. 1R at 2, line 14.

2. No matter what repairs are ordered, maintenance responsibility should be reassigned to PennDOT and Great Bend Township.

Extensive discussion concerning why maintenance responsibilities should be assigned to PennDOT in the case of the three unassigned bridges was provided in section A of this brief. All of the reasons explained in that section apply to why maintenance responsibilities should be reassigned to PennDOT and Great Bend Township concerning the bridges with maintenance responsibilities currently assigned to Norfolk Southern's predecessor.

To reiterate those reasons in less detail, according to Pennsylvania precedent, the controlling highway authority owns the bridges which carry its roads. City of Philadelphia at 592, 747 A.2d at 354. The fact that they own the roads and the bridges carrying the roads puts them in the best position to maintain the bridges. *See* section A(2). They have more contact with the structure and the public which uses the structure. Id. They have the ability to more easily secure federal funding to reconstruct the bridges in the future. Id. In fact, PennDOT has access to TIP funding and Great Bend also has indirect access to the same funds through its own Regional Planning Commission. Hearing Transcript at 135. PennDOT even has voting memberships on these Regional Planning Commission boards. Id.

Additionally, Pennsylvania case law supports that since bridges are treated as portions of the highways that cross them, maintenance generally falls to the same entity owning the highway. Heinlein at 499-500, 98 A.2d at 38-39. The bridges exist primarily for the convenience of the local traveling public, and not the railroad. *See* section A(3). The bridges in question carry roads with low traffic volumes which serve mainly residential local traffic. Id. If these crossings were changed to at-grade crossings the railroad's efficiency would not be affected and the railroad would experience the same level of performance, whereas the traveling public would have to stop and wait for trains to pass. Id.

Out of the four maintenance orders assigned to Norfolk Southern's predecessors, two of them only assigned maintenance responsibilities at the predecessor railroad's *initial* cost and expense — explicitly leaving open the assignment of permanent maintenance responsibilities. PennDOT Exhibits D3 at 5, Ordering Paragraph 20, and D6 at 3, Ordering Paragraph 10. Across PUC orders, the phrase “sole cost and expense” is used deliberately to make very certain to whom a particular cost is assigned.<sup>6</sup> Therefore, in ordering the predecessor railroad to maintain the structure at its “initial” rather than “sole” cost and expense, the PUC shows it did not intend to assign permanent maintenance to the predecessor railroad for crossings SR 2032 and SR 1025, although it had the option to do so.

The PUC's unwillingness to assign Norfolk Southern's predecessor with permanent maintenance responsibilities for these two structures explicitly left open the assignment of future maintenance to a party other than the railroad. Norfolk Southern is seeking that this permanent maintenance be assigned to PennDOT since not only did Norfolk Southern's predecessor complete the original maintenance at its initial cost and expense, but also it has long been the

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<sup>6</sup> *See* other PUC orders PennDOT exhibits D7 and D10 mandating that parties perform maintenance at their sole cost and expense.

trend in Pennsylvania for the Commonwealth to take on more responsibility for state highway bridge maintenance. Heinlein at 510, 98 A.2d at 43.

This means that Norfolk Southern is truly only seeking reassignment to PennDOT and Great Bend Township for two bridges, #263 952 J on T-821, Old Lackawanna Trail in Great Bend Township and #264 292 D on SR 2041, Glenwood Street in Hop Bottom Borough. These two bridges are currently assigned to Norfolk Southern's predecessor but should be reassigned to PennDOT upon the completion of Norfolk Southern's repairs for all the reasons stated above.

#### **IV. CONCLUSION WITH RELIEF REQUESTED**

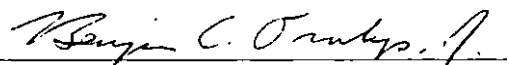
With more than 100 years of Pennsylvania case law precedent, it is clear that none of the bridges at issue are owned by Norfolk Southern, but are instead owned by the highway authorities responsible for the road carried by each bridge. The highway authorities, PennDOT and Great Bend Township, should therefore be assigned maintenance for the bridges they own. These authorities are in a better position to care for the bridges and know the condition of the bridges. They are also in a better position to secure federal funding for the eventual reconstruction of the bridges, which exist primarily for the convenience of the local traveling public.

Norfolk Southern does agree, however, to perform repairs, at its sole cost and expense, on the four structures where maintenance was assigned to its predecessor in order to prolong the lives of the bridges for another 25 years on the state-owned bridges and about 20 years on the Township-owned structure. This extended time will allow PennDOT and Great Bend Township the opportunity to secure federal funding and plan for the bridges to be rebuilt when necessary. Norfolk Southern does not agree to unnecessarily rebuild each bridge at this time, which is the

recommendation of both PennDOT and BI&E. Instead, Norfolk Southern requests that the specified repairs be based on Norfolk Southern's recommendations, rather than PennDOT's recommendations which unreasonably require replacement of all bridges as opposed to repairs to extend their useful lives by 20-25 years.

Norfolk Southern respectfully requests that PennDOT be assigned maintenance responsibilities for the three bridges without orders that PennDOT currently owns, SR 1018, DOT #264 028 V, on Old Lackawanna Trail in New Milford Township; SR 2017, DOT #264 291 W, on Station Hill Road in Lathrop Township; and SR 4005, DOT # 265 849 D, on Seamans Road in Benton Township. Upon completion of its repairs, Norfolk Southern additionally requests that PennDOT be assigned permanent maintenance responsibilities for the three bridges at which maintenance was ordered to be performed by Norfolk Southern's predecessor: SR 2032, DOT#264 033 S, on Depot Street in Brooklyn Township; SR 2041, DOT #264 292 D, on Glenwood Street in Hop Bottom Borough; and SR 1025, DOT#264 293 K, on Station Hill Road in Nicholson Borough. Norfolk Southern also requests that Great Bend Township be assigned permanent maintenance responsibilities for the bridge it owns which was previously assigned to Norfolk Southern's predecessor, on T-821, DOT #263 952 J, Old Lackawanna Trail in Great Bend Township.

Respectfully Submitted,



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Date: June 15, 2018

Attorney for the Norfolk Southern Railway Company



## V. APPENDICES

### A. PROPOSED FINDINGS OF FACT

#### GENERAL MATTERS

1. Norfolk Southern's bridge department is responsible for 9,757 bridges, 49,5000 culverts, and 151 tunnels in 22 states. Norfolk Southern Statement No. 1 at 2.
2. Norfolk Southern bought the D&H Line from Canadian Pacific's Delaware and Hudson Railway Company, Inc. in 2015. The line was originally constructed for passenger trains with a high volume of train traffic. Norfolk Southern Statement No. 1 at 3; Norfolk Southern Statement No 1R at 2.
3. The bridges on this line were originally constructed in about 1915 by Canadian Pacific's predecessor the Delaware, Lackawanna, and Western Railroad Company. Norfolk Southern Statement No. 1 at 3. PennDOT Statement No. 3 at 6.
4. The speed on the D&H Line in this area is 40 mph, and six to eight trains travel the line per day. Norfolk Southern Statement No. 1 at 4.
5. The bridges at issue on this line are: SR 1025, DOT # 264 293 K carrying Station Hill Road in Nicholson Borough; SR 2041, DOT # 264 292 D carrying Glenwood Street in Hop Bottom Borough; SR 2032, DOT # 264 033 S carrying Depot Street in Brooklyn Township; T-821, DOT # 263 952 J carrying Old Lackawanna Trail in Great Bend Township; SR 4005, DOT # 265 849 D carrying Seamans Road in Benton Township; SR 2017, DOT # 264 291 W carrying Station Hill Road in Lathrop Township; and SR 1018, DOT # 264 028 B carrying Old Lackawanna Trail in New Milford Township. Norfolk Southern Statement No. 1 at 5-6.
6. All of the bridges at issue are highway bridges that carry roads over the railroad lines at separated grades. Six of them carry state roads, (SR 1025, # 264 293 K; SR 2041, # 264 292 D;

SR 2032, # 264 033 S; SR 4005, # 265 849 D; SR 2017, # 264 291 W; and SR 1018 # 264 028 B) and one of them carries a township road in Great Bend Township, (T-821, # 263 952 J). Norfolk Southern Statement No. 1 at 5-6.

7. If the crossings were changed to at-grade crossings rather than separated-grade crossings, the railroad's movements would not be affected. The trains would not slow. Instead the vehicular traffic would be impacted by waiting at crossings for trains to pass. Norfolk Southern Rebuttal No. 1R at 3. Norfolk Southern Statement No. 1R at 4.

#### VEHICULAR TRAFFIC SPECIFICS

8. All of the bridges are located in rural settings, and in general, none of the roadways carried on the bridges are major travel routes. Norfolk Southern Statement No. 2 at 5.

9. All of the roads carried by the bridges serve primarily residential motorists with interspersed industrial use, generally associated with farming or natural gas extraction. Norfolk Southern Statement No. 2 at 5.

10. None of the bridges have particularly high average daily traffic volumes:

- SR 4005, # 265 849 D carrying Seamans Road = 250 vehicles per day
- SR 1025, # 264 293 K carrying Station Hill Road (Nicholson) = 600 vehicles per day
- SR 2017, # 264 291 W carrying Station Hill Road (Lathrop) = 110 vehicles per day
- SR 2041, # 264 292 D carrying Glenwood Street = 475 vehicles per day
- SR 2032, # 264 033 S carrying Depot Street = 60 vehicles per day
- SR 1018, # 264 028 B carrying Old Lackawanna Trail (New Milford) = 1400 vehicles per day
- T-821, # 263 952 J carrying Old Lackawanna Trail (Great Bend) = 700 vehicles per day

Norfolk Southern Statement No. 2 at 5-11.

11. Generally, the roads carried by the bridges are narrow, under 22 feet wide. The bridge on SR 2032, # 264 033 S, carries a gravel road. Norfolk Southern Statement No. 2 at 5.

12. In general, closing the bridges would have a minimal impact on the ability of the local roadway network to handle the current low traffic volumes from a capacity standpoint. Average travel times would increase minimally in the event of a bridge closure:

- SR 4005, # 265 849 D carrying Seamans Road = 6 to 7 minutes
- SR 1025, # 264 293 K carrying Station Hill Road (Nicholson) = 3 to 12 minutes
- SR 2017, # 264 291 W carrying Station Hill Road (Lathrop) = 6 minutes
- SR 2041, # 264 292 D carrying Glenwood Street = 6 minutes
- SR 2032, # 264 033 S carrying Depot Street = 7 minutes
- SR 1018, # 264 028 B carrying Old Lackawanna Trail (New Milford) = 1 to 2 minutes
- T-821, # 263 952 J carrying Old Lackawanna Trail (Great Bend) = 8 minutes

Norfolk Southern Statement No. 2 at 12.

13. The bridges primarily benefit and serve local vehicular traffic since the traffic volumes are low, and none of the bridges are located on critical roadways/major travel routes. Norfolk Southern Statement No. 2 at 13.

#### STANDING PUC ORDERS

14. There are four PUC orders assigning at least initial maintenance responsibility for four of the bridges to Norfolk Southern's predecessor railroad. These four bridges are SR 1025, DOT # 264 293 K carrying Station Hill Road in Nicholson Borough; SR 2041, DOT # 264 292 D carrying Glenwood Street in Hop Bottom Borough; SR 2032, DOT # 264 033 S carrying Depot Street in Brooklyn Township; and T-821 DOT # 263 952 J carrying Old Lackawanna Trail in

Great Bend Township. Norfolk Southern Statement No. 1 at 5; PennDOT Statement No. 3 at 7. See PennDOT Exhibits D3, D6, D7 and D11.

15. The other three bridges have no maintenance assignments. These three bridges are SR 4005, DOT # 265 849 D carrying Seamans Road in Benton Township; SR 2017, DOT # 264 291 W carrying Station Hill Road in Lathrop Township; and SR 1018, DOT # 264 028 B carrying Old Lackawanna Trail in New Milford Township. Norfolk Southern Statement No. 1 at 5-6.

16. Out of the four bridges with PUC assignments, two of the assignments are only at Norfolk Southern's predecessor railroad's "initial cost and expense," SR 1025, # 264 293 K and SR 2032, # 264 033 S, explicitly leaving open future assignment. PennDOT Exhibit D3 at 5, Ordering Paragraph 20; PennDOT Exhibit D6 at 3, Ordering Paragraph 10; Norfolk Southern Statement No. 1 at 5, lines 12-19; PennDOT Statement No. 3 at 7.

17. PennDOT did not appeal the determination in the 2013 PUC Order which changed the railroad's financial responsibilities for SR 1025, # 264 293 K to "at its initial cost and expense" instead of a permanent maintenance responsibility. Norfolk Southern Statement No. 1R at 3; PennDOT Exhibit D3.

#### PENNDOT PROCEDURES

18. PennDOT receives an 80% cost share from the federal government to perform bi-annual bridge inspections. Norfolk Southern Statement No. 1R at 3.

19. Bridge inspections along state routes are 100% state funded, whereas bridges along local roads which are greater than 20 feet in length are 80% federally funded and 20% locally funded. PennDOT Statement No. 2 at 2.

20. Norfolk Southern has only ever had to pay PennDOT for inspections of two bridges out of the 600 highway bridges it runs under in Pennsylvania and both are at issue in this case.

Norfolk Southern Statement No. 1R at 3.

21. PennDOT generally follows a procedure that when rehabilitation costs start to exceed 50% of the replacement costs of a structure, it looks at the age of the structure to try to determine the remaining service life to weigh whether the structure should be repaired or replaced. Norfolk Southern Statement No. 1R at 5.

22. There are designated planning regions which provide state funding to prioritized projects. SR 4005 is in the Lackawanna Luzerne Metropolitan Planning Organization and all other bridges at issue are in the Northern Tier Planning Region. PennDOT Statement No. 3 at 4.

23. Projects are programmed and prioritized by PennDOT and the Plan Department to be approved by the Regional Planning Commission, which develops plans for a 12-year TIP program. Hearing Transcript at 121-22.

24. PennDOT has voting memberships on all of the Regional Planning Commissions, whereas no private railroad has a voting membership. Hearing Transcript at 129-30.

25. PennDOT has already sought and received funding for the SR 4005 bridge, that it had submitted to the 12-year TIP program. Hearing Transcript at 132.

26. There are a variety of factors which influence whether a project gets 12-year TIP program funding such as: laying miles of highway, condition of highway, number of bridges, sizes of bridges, condition of bridges, congestion, etc. Hearing Transcript at 133.

#### GREAT BEND TOWNSHIP PROCEDURES

27. The Township of Great Bend employs two full time and one part time individual for the purpose of road work and maintenance. Great Bend Statement No. 1 at 3.

28. Great Bend Township is able to request that the bridge be put into the 12-year TIP program through their Regional Planning Commission. Hearing Transcript at 135.

#### NORFOLK SOUTHERN PROCEDURES

29. Norfolk Southern must prioritize bridge projects due to funding constraints. Norfolk Southern Statement No. 1R at 2; Hearing Transcript at 188.

30. In bridge projects, Norfolk Southern, like PennDOT, needs to abide by certain design standards and obtain certain clearances before commencing work. Hearing Transcript at 139.

31. Norfolk Southern inspects bridges per FRA standards a minimum of once a year. Hearing Transcript at 188.

32. Norfolk Southern's typical process for bridge repairs begins with a design, goes out for a bid, then is commenced. This portion of the process takes between 6 and 12 months. Hearing Transcript at 184.

33. Repairs of bridges are not submitted to the PUC for approval, but alteration and reconstruction plans are submitted to the PUC for approval as per the regulations. Hearing Transcript at 192-94.

#### RECOMMENDED REPAIRS AND ESTIMATES

34. None of PennDOT's repair estimates come close to 50% of what would be expected to replace the structures, yet it still recommends its preference to have Norfolk Southern replace all of the state-owned bridges except the one on which they have already begun repairs. This is at odds with the normal PennDOT procedures which only call for replacement after a bridge's repairs exceed 50% of its replacement costs. Norfolk Southern Statement No. 1R at 5-6; PennDOT Statement No. 2 at 8, 12, 16, 20, 25; Hearing Transcript at 92-94.

35. Pending his review of Norfolk Southern's plans, PennDOT's expert agrees that Norfolk Southern's repairs would extend the useful lives of the bridges by 25 years. Norfolk Southern Statement No. 1R at 6; Hearing Transcript at 98-100.

36. SR 4005, the bridge for which PennDOT has assumed responsibility, is being repaired and not replaced, which is at odds with PennDOT's recommendations for all of the other bridges at issue. Norfolk Southern Statement No. 1R at 5-6.

37. PennDOT has already funded and performed repairs on other highway bridges spanning the same rail line. PennDOT Statement No. 3 at 8.

38. Norfolk Southern's proposed repairs are not merely cosmetic in nature, but involve extensive concrete work, and have been designed to extend the life of the state-owned bridges by about 25 years and the Township owned bridge by about 20 years. Hearing Transcript at 168-70, 172-73; Norfolk Southern Statement No. 1 at 11, line 7 – 12, line 10.

39. For the bridge over Station Hill Road, SR 1025, Norfolk Southern proposes \$350,000 worth of work including completely restoring the concrete on both sides of the arch, patching and sealing any exposed reinforcing steel on the underside of the arch, and pushing the existing New Jersey barriers out to the edge of the bridge and permanently anchoring them to effectively become the new parapet wall and restore the bridge to two lanes instead of one. Norfolk Southern Statement No. 1 at 6, line 14 – 7, line 12. Due to the current condition of the bridge, Norfolk Southern would complete its repairs by October 31, 2019. Id. at 7, lines 1-3.

40. For the Glenwood Road bridge, SR 2041, Norfolk Southern proposes concrete repairs on the left spandrel wall (lower edge and under concrete barrier) and patching of the concrete areas shown on photos 17, 18 and 19 of PennDOT's Exhibit E4 at a total cost of \$50,000. Norfolk

Southern Statement No. 1 at 7, line 21 – 8, line 5. Norfolk Southern notes that this bridge is structurally sound and has excellent concrete based on core samples. Id. at 7, lines 20-21.

41. For the Depot Street bridge, SR 2032, Norfolk Southern proposes proactive repairs to reface both sides of the concrete arch spans to avoid reinforcing steel from being exposed, at a cost of about \$100,000. Norfolk Southern Statement No. 1 at 8, lines 11-18. These repairs could wait another 10 years, as the bridge is structurally sound based on core samples. Id.

42. The bridge on Old Lackawanna Trail, T-821, is a skewed through plate girder span on concrete abutments that was closed last December. Norfolk Southern has already developed plans to make bridge seat and abutment repairs, as well as scale loose concrete off each through girder, at a cost of about \$200,000. Norfolk Southern Statement No. 1 at 9, lines 1-11.

Construction is expected to begin in July of 2018, with the bridge reopened by September 30, 2018. Id.

43. About \$200,000 of PennDOT's estimate for repairs on the Old Lackawanna Trail bridge, T-821, is for painting the bridge superstructure, which would not increase its useful life and so would be done for cosmetic rather than structural reasons. Norfolk Southern Statement No. 1 at 9, lines 15-18.

44. Norfolk Southern has offered to perform additional repairs now at its sole cost and expense to extend the lives of the state-owned bridges for 25 years, and the Township-owned bridge for 20 years, with permanent maintenance being assigned to PennDOT and Great Bend Township. Norfolk Southern Statement No. 1 at 11, line 7 – 12, line 10. This would include an additional \$150,000 spent on SR 1025 to repair the parapets rather than permanently anchoring the New Jersey barriers, and \$75,000 spent on SR 2041 to repair the concrete on all spandrel walls and curbs and repair one bridge end barrier. Id. It would include another \$100,000 on SR



2032 to repair the concrete spandrel walls on both sides of the structure. At the T-821 crossing, it would spend an additional \$55,000 to plate the three areas on the web where there is 100% section loss, install guiderail on each side inside through girder to protect the knee bracing as well as fill the void and seal the spalling section loss on the underside of the deck between floorbeams 10 and 11, as shown in photo 13 of PennDOT Exhibit E7. Id. None of these repairs are necessary at this time, but Norfolk Southern would be willing to do the work to allow PennDOT and Great Bend Township to assume permanent maintenance responsibilities with a maximum extension of the useful life of each bridge. Id.

45. Norfolk Southern's proposed concrete repairs generally encompass all of the Department's recommended concrete repairs. Hearing Transcript at 203.

46. BI&E recommends repairs that mirror PennDOT's repairs, except on a more urgent timetable. BI&E suggests the repairs be completed as a stop-gap measure to the replacement of the bridges. BI&E Statement No. 1 at 4-9.

#### BEST PRACTICES

47. Railroads are generally responsible for bridges carrying rail lines over highways, and the respective highway authorities are generally responsible for bridges carrying their highways over railroads. Norfolk Southern Statement No.1 at 4.

48. The roadway authority is always in a better position to maintain highway structures, just as a railroad is in a better position to maintain structures carrying its facilities. Norfolk Southern Statement No. 1 at 10.

49 Separated-grade crossings are safer than at-grade crossings because the chance for train-vehicle contact is eliminated. PennDOT Statement No. 2 at 17.

50. Separated-grade crossings prevent delays of motor vehicles which would otherwise have to stop for a passing train and thus are for the convenience of the traveling public. Hearing Transcript at 90.

### **B. PROPOSED CONCLUSIONS OF LAW**

1. A bridge carrying a public highway over a railroad track upon its completion becomes part of the public highway and is owned by the entity which owns the public highway. N. Pa. R. Co. v. Inland Traction Co., 205 Pa. 579, 587, 55 A. 774, 775 (1903); City of Phila. v. Consol. Rail Corp., 560 Pa. 587, 589-90, 747 A.2d 352, 353 (2000); Pa. R. Co. v. Greensburg, J. & P. St. Ry. Co., 176 Pa. 559, 575, 35 A. 122 (1896).
2. In determining maintenance responsibilities for bridges carrying public highways over rail lines in Pennsylvania, all relevant factors must be taken into consideration, with the fundamental requirement being that the order be just and reasonable. Dept. of Transp. v. Pub. Util. Comm'n, 21 Pa. Cmwlth. Ct. 407, 413, 346 A.2d 371, 375 (1975).
3. Generally, bridges are treated as portions of the highways which cross them and should be maintained by the same entities responsible for maintaining the highway. Rapho & W. Hempfield Twps v. Moore, 68 Pa. 404, 406, 18 P.F. Smith 404 (1871); Heinlein v. Allegheny Cnty., 374 Pa. 496, 500, 98 A.2d 36, 38 (1953).
4. Bridges in Pennsylvania are treated as part of the highways they carry and are maintained for the comfort and convenience of the traveling public. Beaver Cnty. v. Cent. Dist. & Printing Telegraph Co., 219 Pa. 340, 343, 68 A. 846, 847 (1908); City of Phila. v. Consol. Rail Corp., 560 Pa. 587, 592, 747 A.2d 352, 354 (2000).

5. It is reasonable to consider the parties most directly affected by the condition of the bridge when assigning maintenance responsibilities. Pa. Dept. of Transp. v. Pa. Pub. Util. Comm'n, et al., 76 Pa. Cmwlth. 525, 533 A.2d 645, 649 (1983).

6. PennDOT is mandated to both inspect public bridges and fix bridges for which it is responsible into its metropolitan transportation program in order to continue to receive federal funding for such programs. 23 U.S.C. § 134; 23 U.S.C. § 144; 23 C.F.R. § 650.

### **C. PROPOSED ORDERING PARAGRAPHS**

1. That future maintenance responsibility for the three bridges currently unassigned, SR 1018, SR 2017, and SR 4005, is assigned to the Pennsylvania Department of Transportation, at its sole cost and expense.

2. That Norfolk Southern Railway Company shall perform repairs at the crossing of its facilities with Station Hill Road, SR 1025, by completely restoring the concrete on both sides of the arch, patching and sealing any exposed reinforcing steel on the underside of the arch, and repairing the parapet walls to restore the bridge to two lanes instead of one, at its sole cost and expense, by October 31, 2019.

3. That Norfolk Southern Railway Company shall perform additional repairs at the crossing of its facilities with Old Lackawanna Trail, T-821, by plating the three areas on the web where there is 100% section loss, installing guiderail on each side inside through girder to protect the knee bracing, and filling the void and sealing the spalling section loss on the underside of the deck between floorbeams 10 and 11, as shown in photo 13 of PennDOT Exhibit E7, at its sole cost and expense, by December 31, 2019.

4. That Norfolk Southern Railway Company shall perform repairs at the crossing of its facilities with Depot Street, SR 2032, to reface both sides of the concrete arch spans to avoid reinforcing steel from being exposed and to repair the concrete spandrel walls on both sides of the structure, at its sole cost and expense, by December 31, 2020.

5. That Norfolk Southern Railway Company shall perform repairs at the crossing of its facilities with Glenwood Road, SR 2041, by repairing the concrete on all spandrel walls, patching of the concrete areas shown on photos 17, 18 and 19 of PennDOT's Exhibit E4, repairing the concrete on curbs and repairing one bridge end barrier, at its sole cost and expense, by December 31, 2020.

6. That future maintenance responsibility for the three bridges currently assigned to Norfolk Southern Railway Company's predecessor, SR 2032, SR 2041, and SR 1025, shall be assigned to the Pennsylvania Department of Transportation, at its sole cost and expense, following the completion of repairs on each of those structures by Norfolk Southern.

7. That future maintenance of the bridge currently assigned to Norfolk Southern Railway Company's predecessor, T-821, shall be assigned to Great Bend Township, at its sole cost and expense, following the completion of repairs by Norfolk Southern.

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bridge Structure where State Route 1025	:	M-2013-2364201
crosses over a single track of Delaware and	:	
Hudson Railway Company, Inc. (264 293 K)	:	
in Nicholson Borough, Wyoming County	:	
	:	
Investigation upon the Commission's own	:	I-2015-2472242
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 Bend Township, New Milford	:	
Township, Brooklyn Township, Hop Bottom	:	
Borough, Lathrop Township, Susquehanna	:	
County, and Benton Township, Lackawanna	:	
County	:	

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**CERTIFICATE OF SERVICE**

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

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 Jennifer Brown-Sweeney, Esquire  
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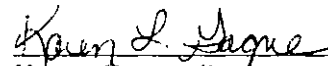
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Karen Gagne, Secretary to  
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Date: 6/15/18

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