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September 24, 2018

**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 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 for filing in the above-captioned matter, please find the Reply Exceptions of Norfolk Southern Railway Company Regarding the Recommended Decision. Copies will be provided to all parties as indicated on the attached Certificate of Service.

Sincerely yours,



Benjamin C. Dunlap, Jr.

BCDjr/lp  
Enclosure

cc: All Interested Parties  
David A. Salapa, Administrative Law Judge

**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	:	

**REPLY EXCEPTIONS OF NORFOLK SOUTHERN RAILWAY  
COMPANY REGARDING THE RECOMMENDED DECISION**

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Date: September 24, 2018

## **I. Introduction**

Following are the Reply Exceptions of Norfolk Southern Railway Company (“Norfolk Southern”) to the Exceptions of the Pennsylvania Department of Transportation (“PennDOT”) and Great Bend Township (“Great Bend”) on the Recommended Decision of Administrative Law Judge (“ALJ”) David A. Salapa. This document has been organized into Norfolk Southern’s replies to PennDOT’s Exceptions then Great Bend’s Exceptions. PennDOT’s exceptions are broken down into its broad subcategories and then numbered as PennDOT has done in its Exceptions to correspond to each of PennDOT’s numbered paragraphs. Next the Exceptions of Great Bend are addressed, numbered for each exception as Great Bend has done in its Exceptions.

## **II. Replies to PennDOT Exceptions**

### *A. Replies to PennDOT General Exceptions*

1. In its first General Exception, PennDOT excepts to the ordering paragraphs that the repairs to SR 1025, SR 2032 and SR 2041 be completed according to Norfolk Southern’s recommendations instead of PennDOT’s recommendations. PennDOT states that the ordered repairs will not be sufficient to prolong the service lives of the bridges for 25 years, even though PennDOT witness Gerald Babinski testified that contingent upon his review of Norfolk Southern plans, its repairs could last the estimated 25 years. See Hearing Transcript, pages 96-100.

ALJ Salapa pinned the required maintenance of these structures to Norfolk Southern’s estimated 25-year extension of the service lives of the bridges, ordering it to maintain the bridges through the duration of this time period. Consequently, Norfolk Southern is responsible for performing any additional work that becomes necessary until that time period has run.

This makes PennDOT's concerns moot, considering it will not fall upon the shoulders of anyone but Norfolk Southern to perform additional repairs. Here, as provided in Recommended Decision Ordering Paragraph ("RD OP") 8 on page 78, RD OP 29 on page 81, and RD OP 40 on page 82, Norfolk Southern will be responsible for maintenance of the three bridges until December 31, 2043. Therefore, Norfolk Southern will need to ensure that its present and any additional repairs will extend the service life of each bridge until the end of 2043, and it is reasonable for Norfolk Southern to be permitted to utilize its repair recommendations to do so.

2. In its second General Exception, PennDOT excepts to the asserted lack of a requirement that Norfolk Southern's plans be submitted pursuant to PennDOT specifications, which would include an anticipated bridge rating. Norfolk Southern's plans will be prepared pursuant to standard, sound engineering specifications. With all due respect, if PennDOT wants plans prepared pursuant to its specifications, perhaps it should have taken on maintenance responsibilities. Although PennDOT will have the opportunity to review and comment on the plans, it is the Commission that will be providing plan approval.

In regard to bridge load ratings, Norfolk Southern does not perform these on any highway bridge it maintains. Instead, the highway authority does this through its inspections process. All of these bridges have already been rated by PennDOT and the ratings entered into evidence in PennDOT Exhibits E1 - E7. The current load ratings were determined a few years ago through these proceedings and then reevaluated and updated by PennDOT, if necessary, in its regular inspections. Norfolk Southern defers to PennDOT on its determined ratings in regard to the four bridges where Norfolk Southern has been assigned maintenance work responsibilities.

For SR 1025, the prior load ratings were deemed to be still valid at the inspection performed on October 20, 2017. PennDOT Exhibit E1, page 7. The SR 1025 bridge is currently posted at 28 tons or combinations of 32 tons and is restricted to a single 12' lane. Id.

SR 2032 was rated previously on February 5, 2016, and no section loss was noted requiring further analysis in the most recent inspection on January 24, 2018. PennDOT Exhibit E3, page 10. Load posting on the bridge is not necessary. Id.

The load rating for the SR 2041 structure was performed on February 11, 2016, and no section loss requiring further analysis was noted in the most recent inspection performed on January 25, 2018. PennDOT Exhibit E4, page 9. Load posting on the bridge is not necessary. Id.

Finally, the load rating analysis for the T-821 structure was performed on February 2, 2016, and “no significant additional structural deterioration has occurred which would affect the load carrying capacity of the bridge,” as of the most recent inspection on December 19, 2017. PennDOT Exhibit E7, page 11. Current conditions require a load posting of 35 tons. Id.

These are the ratings that Norfolk Southern proposes to use; PennDOT’s own, updated ratings that specifically explain what the bridge’s ratings are, whether or not the bridge must be posted, and if so to what load limit. Since these load ratings will not be changing for the worse with Norfolk Southern’s repairs, it would be unreasonable to force Norfolk Southern to repeat the still valid work already done to PennDOT’s specifications for this proceeding.

3. As a follow up to PennDOT’s previous exception, PennDOT’s third exception takes issue with the fact that Norfolk Southern is not required to maintain the structures to a specific load rating. It argues that “once the load rating is determined, NS must be required to maintain the

bridges to that load rating.” Since the load ratings have already, in fact, been determined by PennDOT as explained supra in Norfolk Southern’s reply to PennDOT Exception 2, Norfolk Southern does not object to this requirement. Norfolk Southern agrees to maintain the bridges to their current load ratings as already determined by PennDOT in this proceeding. PennDOT Exhibits E1, page 7; E3, page 10; E4, page 9; and E7, page 11.

4. In its fourth General Exception, PennDOT complains that the calculation of construction repair time is not added into the 25 year figure for Norfolk Southern maintenance of the SR 1025, SR 2032 and SR 2041 bridge structures and therefore the “clock” should start to run after Norfolk Southern’s repairs are completed. This proposed alteration in the timekeeping would make figuring out responsibilities at a later date more difficult and inconsistent. As ALJ Salapa no doubt realized, a date certain is necessary to provide certainty and uniformity.

The actual repair completion date will almost certainly be different for each bridge, which would be reflected in separate secretarial letters for each bridge following the completion of work. Furthermore, such a change would not materially benefit PennDOT with the long timeframes at issue. All the work Norfolk Southern is required to complete will be performed within about a year after the start date of December 31, 2018, which is a date certain to make the shifting of responsibilities to PennDOT on December 31, 2043, clear for all structures and entities involved. Therefore, the timekeeping should not be altered merely to provide PennDOT with a few more months without maintenance responsibilities at the expense of clarity.

5. PennDOT, in its fifth General Exception, takes issue with the fact that it has been ordered to eventually replace and then maintain all of the bridges carrying the state roads at issue instead

of Norfolk Southern, claiming that it is not just and reasonable. For all of the reasons argued in Norfolk Southern's Main Brief and Reply Brief, the orders requiring PennDOT to replace and maintain its highway bridges over Norfolk Southern's tracks are just and reasonable.

Norfolk Southern has documented its argument for PennDOT's assumption of some of the responsibility for these structures every step in this proceeding, offering suggested solutions for shared work and cost allocations over time. All the while, PennDOT asserted its complete absolution from any and all responsibility for every structure at issue. Clearly, PennDOT shares the benefit of and the responsibility for these structures which carry state roadways, and therefore should also share the costs.

Norfolk Southern thinks that the overall work and cost allocations in the Recommended Decision are a just and reasonable sharing of these responsibilities. In particular, Norfolk Southern is required to maintain the SR 1025, SR 2032 and SR 2041 bridge structures for 25 years until they are then maintained and/or reconstructed by PennDOT. Furthermore, Norfolk Southern is required to pay half the inspection and maintenance costs for the currently unassigned SR 1018 and SR 2017 bridge structures in the seven years until they are reconstructed by PennDOT, and then pay \$300,000 each toward the cost of their reconstruction. Norfolk Southern's Reply Brief rebuts in detail each of PennDOT's arguments for why it should share none of the costs of these structures.

6. Here PennDOT excepts to the absence of desired ordering paragraphs requiring Norfolk Southern to assume a myriad of additional tasks and expenses including: providing access to its right of way, bearing all its costs associated with future inspections on all bridges carrying state routes, and reimbursing PennDOT 50% of the costs of the inspections pursuant to the order.

PennDOT does not, however, provide a reason supporting its exception, stopping with the bald assertion that Norfolk Southern should foot the bill, in violation of 52 Pa. Code § 5.533(b).<sup>1</sup> RD OPs 13 and 44, concerning structures SR 1018 and SR 2017 respectively, are cited as how other state bridge reimbursements should have been ordered. What PennDOT fails to note is that Norfolk Southern is responsible for all other maintenance costs for SR 1025, 2032 and 2014.

If the necessary flagging and other costs PennDOT seeks to attribute solely to Norfolk Southern are not included in the total to be split, there would not be a true 50/50 splitting of the inspection costs. Instead PennDOT would pay merely half of its own costs, with 50% reimbursement from Norfolk Southern, and Norfolk Southern paying all of its costs, creating a lopsided split. It is worth noting that PennDOT receives federal funding of which it may allocate to up to 80% to the costs of completing these inspections, making the argument that Norfolk Southern should pay a greater proportion than PennDOT untenable. 23 U.S.C. § 133(b)(9), Surface Transportation Block Grant Program; 23 U.S.C. § 119(d)(2)(D), National Highway Performance Program; 23 U.S.C. § 120(b)(1), Federal Share Payable.

The Recommended Decision, as it stands, is a fair allocation of responsibility for these structures to the parties which benefit from them. PennDOT continues to argue against taking any of the responsibility itself, and instead of providing compromises and potential solutions, unilaterally asserts that the railroad should assume all the burden for PennDOT's structures carrying its highways. In the spirit of proceeding forward in good faith, Norfolk Southern will agree to provide access to its right of way at no cost to PennDOT for future inspections, however, all other costs should be included within the inspection costs to be split between PennDOT and Norfolk Southern.

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<sup>1</sup> "Supporting reasons for the exceptions shall follow each specific exception." 52 Pa. Code § 5.533(b).



7. It is unclear to which bridges and work PennDOT is referring in this exception. If PennDOT is asking that Norfolk Southern be ordered to provide such supplemental services and personnel during PennDOT's eventual maintenance and/or reconstructions of SR 1025, SR 2032 and SR 2041, Norfolk Southern is already ordered to do so for its own repairs. Flagging and inspection services to protect its facilities and operations during for the replacement of SR 1018 and 2017 is also at Norfolk Southern's sole cost. See RD OP 16 on page 79 and RD OP 47 on page 83.

To the extent that PennDOT is seeking to have Norfolk Southern bear its own costs where inspection and maintenance costs are to be split between the two for SR 1018, SR 2017 and SR 4005, PennDOT is trying to avoid a true 50/50 split by having a disproportionate share of those costs shifted to Norfolk Southern, as explained in the prior reply. This unreasonable demand is in keeping with PennDOT's consistent refusal to shoulder any of the responsibility for its structures, instead trying to force any expense possible onto the railroad, regardless of equity.

8. In this exception PennDOT takes issue to a lack of ordering paragraphs directing Norfolk Southern to provide appropriate protective services in a timely manner for inspection, maintenance, and replacement of any or all the bridges. Of course, Norfolk Southern will provide protective services in a timely manner whenever necessary, which is implicit in any order requiring Norfolk Southern to provide flagging.

In addition, no supporting reasons were advanced by PennDOT in this General Exception as required by 52 Pa.Code § 5.53(b). Instead, PennDOT simply asserts that protective services should have been ordered to be provided in a timely manner.

9. Next, PennDOT excepts to the “statement” of ALJ Salapa on page 35 of the RD, concerning just the SR 1025 bridge, that both PennDOT and the railroad bear their respective costs they incurred in the past and demands reimbursement from Norfolk Southern for work PennDOT performed presumably for all the bridges. For the reasons articulated by Norfolk Southern in its Reply Brief pages 21-22, expecting Norfolk Southern to reimburse PennDOT in this instance would be unreasonable.

Norfolk Southern should not be responsible for costs that PennDOT incurred during the tenure of Norfolk Southern’s predecessor from whom it bought the line, which is what PennDOT is now seeking. This is especially true since PennDOT is not being asked to repay any of the costs incurred by the predecessor railroad, which were paid at its initial cost and expense. Norfolk Southern Reply Brief, pages 21-22. In its typical fashion, PennDOT would like this door to only swing one way, but what ALJ Salapa recommends is just and reasonable.

10. Here PennDOT excepts to the lack of ordering paragraphs directing Norfolk Southern to maintain the bridges after PennDOT replaces them. Instead, there are specific recommended ordering paragraphs directing PennDOT to maintain the bridges it is ordered to replace. See RD OPs 20 and 51 on pages 80 and 84 respectively. Norfolk Southern has provided ample justification why this is just and reasonable in its Main and Reply Briefs. Norfolk Southern Main Brief pages 3-13, 18-21; Norfolk Southern Reply Brief pages 3-19.

Also, in violation of 52 Pa. Code § 5.53(b), PennDOT fails to cite to any portion of the Recommended Decision and provides no supporting reason for this exception. PennDOT merely points to its original arguments, rehashing that which has already been said instead of providing a material reason for reconsideration of ALJ Salapa’s reasoning in assigning this maintenance to

PennDOT. For each structure ALJ Salapa discusses the mutual responsibility which resulted in the repairs being necessary, the low usage of the bridges despite PennDOT's insistence that the bridges are integral to the highway system and therefore need to be replaced, and the benefits that the structures confer on both parties.<sup>2</sup> Because PennDOT stands so much to gain from the continued existence of the structures, ALJ Salapa required PennDOT to share responsibility for these structures and was justified in doing so. See also Reply Exception 7 supra, which is incorporated herein.

*B. Replies to PennDOT Exceptions regarding SR 1025*

1. Here, PennDOT excepts to ALJ Salapa requiring that each party bear the costs previously incurred for this structure in RD OP 1. Norfolk Southern addressed this concern in the response it provided supra to PennDOT General Exception 9. Norfolk Southern reiterates that expecting Norfolk Southern to reimburse PennDOT for initial costs it incurred while a predecessor railroad was in control is unreasonable, when PennDOT is not required to reimburse Norfolk Southern for initial costs incurred by the predecessor railroad.

2. Norfolk Southern agrees with PennDOT that clarification is necessary concerning Recommended Decision Ordering Paragraph 9 and discussed this in Norfolk Southern's own Exception 3. Here, PennDOT asserts that Paragraphs 2 and 9 are inconsistent, but they are not inconsistent if read in context. To remedy the issue and clarify the presumed intent of ALJ Salapa, Norfolk Southern asserts that Ordering Paragraph 9 should contain the date upon which PennDOT's inspection at its sole cost and expense should begin, "December 31, 2043."

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<sup>2</sup> SR 1018 reasoning on RD pages 45-47 and SR 2017 reasoning on RD pages 64-67.

3. PennDOT excepts to RD OP 3 for clarification purposes, but the Paragraph is not unclear, it is simply not what PennDOT wants. After discussing both Norfolk Southern's and PennDOT's proposals for this structure, he concludes that "[a]fter reviewing the evidence set forth above, I conclude that NS should repair the SR 1025 bridge as it has proposed." Recommended Decision, page 39. The Recommended Decision is clear that Norfolk Southern is required to do the work it identified and proposed, not what PennDOT proposed, because Norfolk Southern's proposed work can be performed relatively quickly and will extend the service life of the bridge. This recommended ordering paragraph is reasonable, as discussed in Norfolk Southern's replies to PennDOT General Exceptions 1 and 2. Importantly, Norfolk Southern remains responsible for additional repairs necessary until December 31, 2043, should the current concrete work not last the anticipated 25 years.

4. Here PennDOT seeks clarification of RD OP 8 to specify that Norfolk Southern be required to maintain the bridge including the roadway surface until December 31, 2043. Norfolk Southern also seeks clarification of this ordering paragraph, per its own Exception 4, and contends that the roadway surface should be allocated to PennDOT since it is customary for a highway authority to maintain the roadway carried on a bridge structure. Norfolk Southern has no expertise in maintaining highway surfaces and gains no benefit from the road. Furthermore, PennDOT's witness testified that it would continue to maintain the roadway surface and perform snow, ice and debris removal on the state routes. PennDOT Statement No. 3, page 9, lines 9-11. Therefore, the roadway surface should be the responsibility of PennDOT.

5. PennDOT excepts to maintaining the SR 1025 bridge after December 31, 2043, which is ordered in RD OP 10. Norfolk Southern directs the Commission's attention to its replies to PennDOT's General Exceptions 5, 6, and 7 supra. It is reasonable for the entity which replaced a bridge to then assume maintenance responsibilities thereof, and this proposed resolution was argued extensively in Norfolk Southern's Main Brief, pages 3-13, 18-21 and in its Reply Brief, pages 14-19, with a specific discussion of the timing of Norfolk Southern's maintenance on pages 20-21.

*C. Replies to PennDOT Exceptions regarding SR 1018*

6. Here PennDOT excepts to RD OP 12 which directs it to inspect and maintain the existing bridge, claiming it is not just and reasonable. What PennDOT neglects to mention is that the next recommended ordering paragraph directs 50% reimbursement of these costs by Norfolk Southern. This sharing of responsibility is just and reasonable for all the reasons explained in Norfolk Southern's Main and Reply Briefs and is supported by ample evidence in the record. Arguments for maintenance being allocated to PennDOT, the entity which owns the structure and neglected to maintain it in the past, can be found in Norfolk Southern's Main Brief pages 3-13 and Reply Brief pages 3-14, 19-20.

Norfolk Southern also excepts to RD OP 12, albeit for different reasons. See Norfolk Southern's Exceptions 4 and 5, which explain the additional language Norfolk Southern requests be included in Paragraph 12. Norfolk Southern has replied above to PennDOT's General Exceptions 5-10 which PennDOT points to here, although PennDOT's General Exception 9 is not applicable in this instance.

7. PennDOT excepts to RD OP 13 because it does not order Norfolk Southern to “bear its own costs” but instead orders a splitting of the costs at issue. Here is yet another example of PennDOT attempting to stick Norfolk Southern with a disproportionate share of the costs for PennDOT’s structure carrying PennDOT’s highway. Norfolk Southern also excepts to Ordering Paragraph 13, but again, for different reasons. See Norfolk Southern Exception 4.

Norfolk Southern has explained its reasons for disagreeing with PennDOT’s General Exception 6 supra. Norfolk Southern throughout this proceeding has attempted to find an acceptable middle ground with shared cost allocations, but has been met every step of the way by PennDOT’s unrelenting arguments for costs falling entirely to Norfolk Southern. Also important to note, no supporting reasons were advanced by PennDOT in this Exception, or the underlying General Exception as required by 52 Pa.Code § 5.53(b).

8. PennDOT excepts to the Paragraphs 14 and 15 ordering it to replace the SR 1018 bridge. Norfolk Southern directs the attention of the Commission to its prior reply to PennDOT’s General Exceptions 5-10 supra. With this Exception, PennDOT is seeking to make Norfolk Southern responsible for a bridge it owns, the maintenance of which was never assigned to the railroad, and which PennDOT has neglected over the years. Norfolk Southern would also note that there are no supporting reasons advanced by PennDOT, simply a reference to its General Exceptions 5 through 10, 9 and 10 of which are not applicable, in violation of 52 Pa.Code § 5.53(b).

9. PennDOT excepts to RD OP 16 because it asserts this ordering paragraph does not include additional expenses involved with bridge replacement. Norfolk Southern assumes that

the costs it refers to are those enumerated in its General Exception 7 for costs such as design plan reviews, insurance and right of way acquisitions. Norfolk Southern submits that ALJ Salapa included all of the costs he saw appropriate to allocate to Norfolk Southern and that any other costs should fall to PennDOT as the entity owning and replacing the bridge.

In this regard, it is important to remember that a lump sum of \$300,000 is ordered to be paid by Norfolk Southern to PennDOT in connection with the bridge reconstruction, which presumably will cover costs such as those not specifically outlined in RD OP 16, should PennDOT even be responsible for such costs under any federal funding program. See RD OP 19. Norfolk Southern has responded to PennDOT's General Exceptions 6-8 supra, but cannot respond to any specific reasons for this exception, as PennDOT has not asserted any such reasons in violation of 52 Pa.Code § 5.53(b).

10. PennDOT excepts to RD OP 20 requiring it to maintain and inspect the SR 1018 structure after its replacement. Norfolk Southern directs the Commission's attention to the replies it provided supra regarding PennDOT General Exceptions 5 and 10 and asserts there is ample evidence and justification for this ordering paragraph. See Norfolk Southern's Main Brief, pages 3-13 and Reply Brief, pages 3-14, 19-21.

*D. Replies to PennDOT Exceptions regarding SR 2032*

11. Norfolk Southern agrees with PennDOT's exception in regard to paragraph 30 of the Recommended Decision to the extent that it would be superfluous without the addition of the date "December 31, 2043" as explained in Norfolk Southern Exception 6. Norfolk Southern disagrees with PennDOT's assertion that it should not bear the costs assigned to it, however, as

explained in its reply to PennDOT's General Exception 6 supra. See also Norfolk Southern's arguments for PennDOT to share in the responsibility for the structure carrying its highway in Norfolk Southern's Main Brief, pages 13-21, and Reply Brief, pages 14-21, with a discussion targeting inspection costs in the Reply Brief, pages 19-20.

12. PennDOT excepts to RD OP 24 for clarification purposes similar to its objection to Paragraph 3, but again the Paragraph is not unclear. When read in conjunction with his discussion of both parties' repair proposals on pages 50-52 of the Recommended Decision, it becomes clear that ALJ Salapa is referring to Norfolk Southern's proposed repairs. Had he wanted the order to reflect PennDOT's proposed repairs, he could have said as much. Instead he referred to repairs "consistent with the repairs outlined in the evidence in this proceeding and this order" in RD OP 24, stating in the text at page 51 of the Recommended Decision, "I conclude that NS should repair the SR 2032 bridge as it has proposed."

This is equitable considering that Norfolk Southern is also responsible for the maintenance of its repairs until December 31, 2043. This Ordering Paragraph is reasonable, and the Commission is directed to the reply Norfolk Southern provided supra regarding PennDOT's General Exceptions 1 and 2.

13. Norfolk Southern disagrees with PennDOT's assertion that it should not have to maintain the bridge Norfolk Southern currently maintains after December 31, 2043. As discussed in Norfolk Southern's reply to PennDOT's General Exception 5, it is reasonable for ALJ Salapa to have determined that PennDOT should be responsible for the structure it owns carrying its



highway after replacement. See Norfolk Southern Main Brief, pages 13-21, and Reply Brief, pages 14-21.

*E. Replies to PennDOT Exceptions regarding SR 2041*

14. Norfolk Southern agrees with PennDOT's exception in regard to paragraph 41 of the Recommended Decision to the extent that it would be superfluous without the addition of the date December 31, 2043, as explained in Norfolk Southern Exception 7. Norfolk Southern disagrees with PennDOT that it should not bear the inspection costs assigned to it, when Norfolk Southern will be bearing all other work and cost responsibilities for the maintenance of this PennDOT-owned bridge substructure and superstructure for the next 25 years. See RD OP 40.

15. As argued previously with PennDOT's exceptions to RD OPs 3 and 24, there is not a lack of clarity in RD OP 35. It clearly sets out that Norfolk Southern must submit its final repair plans for Commission approval with respect to its proposed repairs for the SR 2041 structure. Again, ALJ Salapa clearly states that the bridge should be repaired as Norfolk Southern has proposed and not as PennDOT has proposed. See Recommended Decision, page 58.

Norfolk Southern reiterates that along with its responsibility of repairing the structure comes the responsibility to maintain the structure until December 31, 2043. This means that Norfolk Southern must make any additional repairs during this time period should its initial repairs not be sufficient to last 25 years. Furthermore, Norfolk Southern has replied to PennDOT's General Exceptions 1 and 2 supra concerning why such an ordering paragraph is reasonable.

16. Norfolk Southern disagrees with PennDOT's assertion that it should not have to maintain the SR 2041 bridge after December 31, 2043, in its Exception to RD OP 42. See Norfolk Southern replies to PennDOT General Exceptions 5 and 10 supra.

*F. Replies to PennDOT Exceptions regarding SR 2017*

17. PennDOT excepts to RD OP 43 assigning maintenance to PennDOT rather than Norfolk Southern. Norfolk Southern also excepts to RD OP 43 but for different reasons. These issues are articulated in Norfolk Southern's Exceptions 8 and 9. It is just and reasonable that PennDOT be required to inspect and maintain this and the other currently unassigned structures, as argued extensively in Norfolk Southern's Main Brief, pages 3-12, and Reply Brief, pages 6-7.

PennDOT owns the bridge, which it neglected to maintain, leading to a Public Safety Advisory being issued to it by BI&E concerning the lack of repairs. See Exhibit A to Norfolk Southern Reply Brief. PennDOT ignores that Norfolk Southern is required to reimburse half the costs of bridge maintenance and inspections to PennDOT until such time as the bridge is reconstructed as ordered in RD OP 44. Norfolk Southern has addressed PennDOT General Exception 5, supra.

18. Norfolk Southern also excepts to RD OP 44, but for clarification of roadway maintenance responsibilities, instead of PennDOT's assertion that Norfolk Southern should have to "bear its own costs." In fact, this Ordering Paragraph orders Norfolk Southern to shoulder half of the costs until PennDOT reconstructs the bridge. If Norfolk Southern had to "bear its own costs" and then also reimburse 50% of PennDOT's costs, there would not be an equal split of the expenses attached to inspecting and maintaining the structure.

Norfolk Southern discusses its own clarification concerns with Ordering Paragraph 44 in Norfolk Southern Exception 8. Norfolk Southern replies to PennDOT's General Exceptions 6 and 7 supra.

19. Here, PennDOT excepts to the RD OPs 45 and 46, which direct it to develop plans and reconstruct the SR 2017 bridge structure. PennDOT advocates for the flipping of recommended responsibilities for the disposition of this structure, but does not justify the assertion beyond directing the Commission to its General Exception 5, which argues the Recommended Decision is not just and reasonable. Norfolk Southern replies to PennDOT General Exception 5 supra, and asserts that RD OPs 45 and 46 are just and reasonable for all the reasons articulated in Norfolk Southern's Main Brief, pages 3-12, and Reply Brief, pages 3-14 and 19-21. Particularly important is the fact that PennDOT neglected this unassigned structure, which it nonetheless owns, to the point that BI&E issued a Public Safety Advisory. This particular issue is discussed more fully in Norfolk Southern's Reply Brief on page 10, with the Public Safety Advisory attached as Exhibit A to that Reply Brief.

20. PennDOT excepts to RD OP 47 because it does not include additional expenses to flagging and inspections involved with a bridge replacement. Norfolk Southern again must assume that the costs PennDOT refers to are those enumerated in its General Exception 7 for items such as design plan reviews, insurance, and right of way acquisition. Norfolk Southern asserts that ALJ Salapa included all of the costs he saw appropriate to allocate to Norfolk Southern. Any other costs should fall to PennDOT as project costs payable by the entity replacing the bridge, as is usual in a bridge replacement project. Furthermore, Norfolk Southern

will be reimbursing PennDOT \$300,000 for this reconstruction project. Norfolk Southern responds to PennDOT General Exceptions 6-8 supra.

21. PennDOT excepts to RD OP 51, presumably because it makes PennDOT solely responsible for future maintenance of the bridge it replaces. Again in violation of 52 Pa.Code § 5.53(b), PennDOT does not afford Norfolk Southern any specific supporting reasons for the exception and instead points to its General Exceptions 5-10. As argued extensively in Norfolk Southern's Main and Reply Briefs, PennDOT should be responsible for the structures it owns and any orders supporting that end are just and reasonable. Norfolk Southern Main Brief, pages 3-12; Reply Brief, pages 3-14. Norfolk Southern's replies to PennDOT's General Exceptions 5-10 are above, although again General Exception 9 is inapplicable.

*G. Replies to the PennDOT Exception regarding SR 4005*

22. PennDOT excepts to RD OP 53 to which Norfolk Southern also excepts. Norfolk Southern excepts because roadway maintenance is not specifically assigned to the roadway authority. See Norfolk Southern Exception 10. PennDOT, however, excepts because it wants to see Norfolk Southern shoulder more than 50% of the costs of maintaining the structure. Norfolk Southern is already ordered to reimburse PennDOT for 50% of the overall costs. However, as usual, a shared allocation is not enough for PennDOT and it pushes for Norfolk Southern to "bear its own costs" in addition to paying 50% of PennDOT's costs, resulting in an uneven split. This exception again violates 52 Pa. Code § 5.533(b), in that it fails to provide specific supporting reasons. Norfolk Southern did, however, reply to PennDOT's General Exceptions 6-

10 supra, although PennDOT General Exception 9 discussing costs already incurred is not applicable to this exception.

*H. Replies to PennDOT Exceptions regarding T-821*

23. PennDOT and Norfolk Southern both except to RD OP 54 assigning inspections to Norfolk Southern. Norfolk Southern excepts due to the assignment of highway inspections typically falling to PennDOT rather than the railroad. PennDOT, however, excepts to this paragraph because it does not specify to which standards the inspections must comply. Norfolk Southern points out that PennDOT is responsible to ensure that bridges such as this are inspected every two years pursuant to National Bridge Inspection Standards (“NBIS”) and receives up to 80% federal reimbursement for doing so. See Norfolk Southern Exception 11.

24. In violation of 52 Pa. Code § 5.533(b), PennDOT excepts to assuming the costs it has borne to date to close the bridge and maintain the closure without citing to any portion of the Recommended Decision or providing a specific supporting reason for this exception. It is just and reasonable for each party to be responsible for costs it has already incurred.

25. Here PennDOT excepts to Norfolk Southern or Great Bend not being ordered to be responsible for the continued closure of the T-821 structure. PennDOT does not give a supporting reason for this exception protesting its payment of any continuing bridge closure costs beyond that “it would be just and reasonable” to reallocate PennDOT’s responsibilities to Norfolk Southern or Great Bend. PennDOT merely points to its General Exception 9. That exception, however, discusses past costs already incurred and this exception protests unidentified

costs presumably continuing to be accrued in connection with the current bridge closure.

Furthermore, this bridge will be reopened prior to the issuance of any order in this proceeding.

### **III. Replies to Great Bend Exceptions**

1. In its first exception, Great Bend takes issue with RD OP 55 in which it was ordered to reimburse Norfolk Southern 10% of the costs incurred for inspecting and maintaining the T-821 bridge structure, asserting that current maintenance responsibilities were not at issue in this proceeding, as they had already been resolved by previous orders. Norfolk Southern will agree to continue maintenance responsibility without the 10% reimbursement from Great Bend pursuant to the Order entered February 22, 1985, in Docket No. C-79081404 cited by Great Bend in its Exception, PennDOT Exhibit D11, subject to a time limitation consistent with Norfolk Southern's estimated extension of the service life of the bridge effected by its repairs. See Norfolk Southern Statement 1, page 12, lines 5-10.

Since Great Bend will be replacing the structure as ordered in RD OPs 62 and 63, Norfolk Southern will agree to assume maintenance responsibilities until the ordered reconstruction, or up to 20 years in the future (December 31, 2038), whichever is sooner. At that time, maintenance responsibilities should shift to Great Bend if it has not yet effected reconstruction. Norfolk Southern's assumption of current maintenance should not include the roadway surface and snow and ice removal, which was excluded from the railroad's responsibilities in the 1985 Order and which Great Bend has agreed in its exception to continue performing.

2. In its second exception, Great Bend takes issue with the RD OPs 56 and 57, to which Norfolk Southern also excepted. Great Bend objects to ALJ Salapa not addressing the scope and extent of the repairs, whereas Norfolk Southern argues that its repairs are replacements in kind, for which Commission approval is unnecessary. See Norfolk Southern Exception 12, citing 66 Pa.C.S. § 2702(a). Furthermore, Norfolk Southern has already submitted its repair plans in this proceeding for ALJ Salapa's and all parties' review. See Norfolk Southern Exhibit 1.

Great Bend finds ALJ Salapa's rejection of PennDOT's and BI&E's proposed repairs to be "erroneous." Great Bend Exception 2, pg. 10. However, as discussed in reply to similar arguments made by PennDOT, Norfolk Southern will be responsible to ensure that its repairs extend the bridge service life during the time it has maintenance responsibilities, which Norfolk Southern has volunteered to extend from seven to 20 years. Furthermore, Norfolk Southern will agree to perform additional repairs to ensure the full extended bridge service life in a timely manner to avoid any future closure of the bridge. These repairs could include plating 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. Norfolk Southern Statement 1, pg. 11, line 22 – pg. 12, line 4. Norfolk Southern will not agree to perform cosmetic repairs, like painting at a cost of \$200,000 as suggested by PennDOT, which will not increase the structural integrity of the bridge. Id. at pg. 9, lines 15-18.

3. In its third exception, Great Bend asserts that ALJ Salapa failed to assign maintenance responsibilities from the time that the bridge is repaired by Norfolk Southern until the time the bridge is removed and replaced by Great Bend. However, in RD OP 54, Norfolk Southern is

ordered to inspect and maintain the “existing bridge.” It becomes clear that this maintenance responsibility continues until the bridge is replaced, since ALJ Salapa hands the maintenance reins to Great Bend after the reconstruction is completed in RD OP 67. Thus, ALJ Salapa did not fail to assign interim maintenance responsibilities.

4. In its fourth exception, Great Bend excepts to RD OPs 61-67, which assign Great Bend the responsibility of removing and replacing the bridge, with \$400,000 reimbursement from Norfolk Southern, and thereafter assuming maintenance responsibilities for the new structure. Although it may not be the result Great Bend was hoping for, that does not mean it is in error. This low usage bridge was argued to be important for the citizens of Great Bend, and it appears that ALJ Salapa took Great Bend at its word in not abolishing the crossing.

Great Bend argues that this responsibility would “[place] Great Bend into financial distress and potential bankruptcy.” Great Bend Exceptions, pg. 20. This argument, however, must be rejected since an inability to pay has been held not relevant in rail-highway crossing cases because municipal “governing bodies ha[ve] sufficient revenue-raising ability to offset any deficit created.” E. Rockhill Twp. v. Pa. Pub. Util. Comm'n, 540 A.2d 600, 603 (Pa. Commw. 1988). Since Great Bend can offset expenses by raising taxes, its argument that the allocation will be a financial hardship does not make such an allocation unjust or unreasonable. Id.

Great Bend fails to mention that it is eligible for federal funding should this project be approved and placed on a TIP program. 23 U.S.C. § 133(h)(4)(B). In fact, it is the party that must apply for this funding. Id.; Hearing Transcript, page 135, lines 13-17. It is important to assign responsibility for replacement at this time precisely to avoid any emergency funding situation. Since the repairs will only last another 20 years, assigning the replacement



responsibility now allows Great Bend time to line up federal and state funding. Not assigning maintenance responsibilities now, as Great Bend argues at pages 15-17 of its Exceptions, will only serve to precipitate a crisis situation 20 years from now, if no planning and lining up of funding has occurred in the interim. Great Bend contends that these Ordering Paragraphs are not equitable, but the equities behind these paragraphs were argued at length in Norfolk Southern's Main Brief, pages 13-20, and Reply Brief, pages 14-19.

Great Bend also advances the argument that the relevant factors considered do not support ALJ Salapa's order to assign future maintenance to Great Bend, but as argued in Norfolk Southern's Reply Brief, pages 14-19, a complete analysis of the factors results in responsibility falling to Great Bend. Great Bend misinterprets some of the factors, including the application of which was constructed first, the railroad track or the roadway. Great Bend asserts that because the road was constructed after the rail line, Norfolk Southern should be responsible for the crossing maintenance. This is in error. Since the rail line predated the road, the crossing was constructed to accommodate the new roadway. See PennDOT Exhibit D12. Thus, this factor weighs in favor of the railroad. See Greene Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n, 668 A.2d 615, 619 (Pa Commw. 1995); Pa. Dept. of Trans. v. Pa. Pub. Util. Comm'n, 464 A.2d 645 (Pa. Commw. 1983).

5. Here Great Bend excepts to RD OPs 61 and 62 for ordering it to replace the structure within seven years instead of within 20 years, which is the estimated extension in service life which will be provided by Norfolk Southern's repairs. Norfolk Southern stands by the estimate that its repairs will provide another 20 years of service life and therefore does not take issue with

Great Bend asking for an additional 13 years in which to complete the bridge replacement. This will allow Great Bend more time to plan and secure funding for the project.


6. In its sixth exception, Great Bend excepts to the amount of money, \$400,000, which Norfolk Southern is ordered to reimburse it for the bridge replacement project. ALJ Salapa, in RD OP 66, orders Norfolk Southern to reimburse \$400,000 to Great Bend for its reconstruction project, which is more than is ordered for any other bridge at issue. Great Bend asserts that this number is plucked out of thin air, but that is not the case.

With regional planning commission approval, the project can be placed on the TIP plan, and the federal government will reimburse 80% of the bill. PennDOT Statement R2 page 2; 23 U.S.C. § 133(h)(4)(B); 23 U.S.C. § 120(b)(1). Even if replacement of the bridge costs as much as \$2 million, \$1,600,000 of the project will be federally covered, leaving \$400,000 (20%) to be covered by Norfolk Southern's reimbursement. Furthermore, RD OP 63 requires Norfolk Southern to provide at its sole cost and expense flaggers, inspectors, and engineers to protect its

operations and facilities during the reconstruction work. This would result in the entire cost of reconstruction being covered by entities other than Great Bend.

Respectfully Submitted,

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Attorney for the Norfolk Southern

Railway Company

Date: September 24, 2018

**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	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I served one (1) copy of the *REPLY EXCEPTIONS OF NORFOLK SOUTHERN RAILWAY COMPANY TO RECOMMENDED DECISION* 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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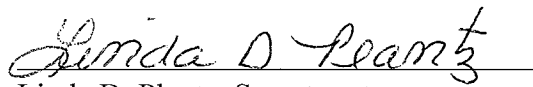
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Benjamin C. Dunlap Jr., Esquire

Date: September 24, 2018