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March 25, 2019

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 matters, please find Norfolk Southern Railway Company's Answer to the Commonwealth's Petition for Clarification and Reconsideration of the Commission Order entered February 28, 2019. Copies have been 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	:	

**ANSWER TO THE COMMONWEALTH'S PETITION FOR
CLARIFICATION AND RECONSIDERATION OF
THE COMMISSION ORDER ENTERED FEBRUARY 28, 2019**

NAUMAN, SMITH, SHISSLER & HALL, LLP
Benjamin C. Dunlap, Jr. Esquire
Supreme Court ID # 66283
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200 North Third Street, 18th Floor
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717.236.3010, Extension 121
Attorney for the Norfolk Southern
Railway Company

Date: March 25, 2019

AND NOW, comes Norfolk Southern Railway Company (“Norfolk Southern”), by and through its counsel, Benjamin C. Dunlap, Jr., and submits the following Answer to the Commonwealth of Pennsylvania, Department of Transportation (“PennDOT”) Petition for Clarification and Reconsideration of the Commission Order entered February 28, 2019, (“Petition”) pursuant to 52 Pa. Code § 5.572(e), as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. This averment is a prayer for relief to which no response is necessary.
5. Admitted. By way of further answer, Norfolk Southern concurs with the clarification requested by PennDOT.
6. Admitted. By way of further answer, Norfolk Southern concurs with the clarification requested by PennDOT.
7. Admitted. By way of further answer, Norfolk Southern concurs with the clarification requested by PennDOT.
8. Admitted. By way of further answer, Norfolk Southern concurs with the clarification requested by PennDOT.
9. The averment is an incorporation of previous paragraphs to which no response is necessary.
10. Admitted.
11. Admitted.
12. Admitted. Norfolk Southern is also solely concerned with what PennDOT has delineated as the italicized language in paragraph 11 of its Petition.

13. Paragraph 13 of the Petition states a legal conclusion to which no response is necessary.
14. Paragraph 14 of the Petition states a legal conclusion to which no response is necessary.
15. Admitted in part and denied in part. It is denied that the Disposition of PennDOT Exception No. 24 (“Disposition No. 24”) is not just and reasonable as it is supported by a legal basis which was decided upon after reviewing all relevant evidence. The italicized alternative basis language accompanying the actual disposition in paragraph 11 of the Petition, however, presents potential future issues that are not in line with current precedents regarding the deferral of the disposition of “initial costs.”
16. Admitted.
17. Admitted.
18. Admitted.
19. Admitted.
20. Admitted.
21. Admitted.
22. Admitted.
23. Admitted.
24. Admitted.
25. Denied as stated. While the disposition of costs to PennDOT pursuant to Disposition No. 24 was just and reasonable pursuant to the Commission’s stated reasons for it (see Disposition of PennDOT General Exception No 9), the alternative italicized basis

for disposition (see Petition ¶ 11) is not in line with Commission and appellate precedents regarding the meaning of “initial costs.” See Petition ¶¶ 17-22.

26. It is admitted that the italicized language in Disposition No. 24 is contrary to “initial costs and expense” Commission and appellate precedents. See Petition ¶¶ 17-22.
27. After reasonable investigation, Norfolk Southern lacks sufficient information to form a belief as to the truth of the averments in paragraph 27 of the Petition
28. After reasonable investigation, Norfolk Southern lacks sufficient information to form a belief as to the truth of the averments in paragraph 28 of the Petition.
29. Admitted.
30. Paragraph 30 of the Petition states a legal conclusion to which no response is necessary.
31. Admitted.
32. Admitted to the extent that the quote PennDOT attributed to Parkesburg Borough is accurate, but it is noted that Pa. R.A.P. 341(b)(2) has been rescinded. Pa. R.A.P. 341(b)(2).
33. It is admitted that under Pa. R.A.P. 341(b)(1) and (3) the January 4, 2018 Secretarial Letter was not a final order. Pa. R.A.P. 341(b)(2), however, is inapplicable as it has been rescinded.
34. Admitted.
35. Admitted.
36. Admitted.
37. Admitted in part and denied in part. It is admitted that PennDOT was authorized to pursue cost allocation at the hearing in this matter and therefore the italicized

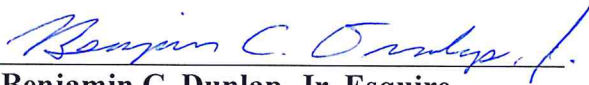
alternative basis language in Disposition No. 24 was legally incorrect. See Petition ¶ 11. It is denied that the final cost allocation to PennDOT was not otherwise “just and reasonable” and supported by a legal basis.

38. Admitted. By way of further answer, Norfolk Southern concurs with the potential adverse impact on public safety that could result if the italicized language in Disposition No. 24 is not struck. See Petition ¶11.
39. This is a prayer for relief to which no response is necessary. To the extent that a response is required, Norfolk Southern agrees with the proposed striking of the italicized language in Disposition No. 24 of the Opinion and Order, as shown in Petition ¶ 11, and the adoption of the clarifying modifications in paragraphs 5-8 of PennDOT’s Petition for Clarification and Reconsideration.

WHEREFORE, Norfolk Southern Railway Company respectfully requests that the Pennsylvania Public Utility Commission grant the Pennsylvania Department of Transportation’s Petition for Clarification and Reconsideration of the Commission Order entered February 28, 2019, to the extent consistent with what is set forth in this Answer.

Respectfully Submitted,

NAUMAN, SMITH, SHISSLER & HALL, LLP

By: 

Benjamin C. Dunlap, Jr. Esquire

Supreme Court ID # 66283

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Attorneys for Norfolk Southern Railway

Company

Date: March 25, 2019

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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 *ANSWER TO THE COMMONWEALTH'S PETITION FOR CLARIFICATION AND RECONSIDERATION OF THE COMMISSION ORDER ENTERED FEBRUARY 28, 2019* 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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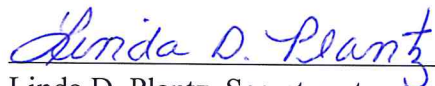
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Linda D. Plantz, Secretary to
Benjamin C. Dunlap Jr., Esquire

Date: March 25, 2019