



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

April 10, 2020

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

RE: C-2011-2237486 and P-2011-2241780

Dear Secretary Chiavetta,

Enclosed for filing please find the *Response of The Pennsylvania Department of Transportation to A. Edward Schwartz's Petition for Reconsideration from Staff Action* in the above-captioned matter.

I hereby certify that a copy has been sent to all parties of record as indicated by the Certificate of Service.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Jennifer B. Sweeney".

Jennifer Brown-Sweeney
Assistant Counsel

Cc: Parties of Record
Daniel D. Leonard, Acting Chief, Highway Delivery Division
Gregory J. Vaughn, Grade Crossing Engineer, Central Office, KCB 7th Floor
Sarah Fenton, District Grade Crossing Engineer, District 4-0
Rick Cooper, District Grade Crossing Engineer, District 4-0

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

A. Edward Schwartz	:	P-2011-2241780
	:	C-2011-2237486
v.	:	Electronically Filed
	:	
Delaware and Hudson Railway Company, Inc.	:	
d/b/a Canadian Pacific Railroad and Pennsylvania	:	
Department of Transportation	:	

**RESPONSE OF THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION TO A.
EDWARD SCHWARTZ’S PETITION FOR RECONSIDERATION FROM STAFF ACTION**

The Commonwealth of Pennsylvania, Department of Transportation (“Department”) files this Response to A. Edward Schwartz’s (“Schwartz”) Petition for Reconsideration from Staff Action:

1. Admitted.
2. Admitted.
3. Admitted in part, denied in part. It is admitted that Petitioner filed a document entitled “Application” to Docket C-2011-2237486. The rest of the claim is denied as stated. By way of further answer, the Commission recognized that it does not have jurisdiction or the authority to award damages and determined that the filing was incorrectly labeled an “Application” and considered the filing a formal complaint and served the formal complaint under docket C-2016-2570929, as discussed in the Secretarial Letter dated October 31, 2016.
4. Admitted.
5. Admitted in part, denied in part. It is admitted that the quoted ordering paragraph does not specifically address the matter of transfer of jurisdiction to the Court of Common Pleas. The rest of the claim is denied as stated. By way of further answer, the Commission lacked jurisdiction to refer the matter to the Court of Common Pleas as no appropriation of property was found, as stated in its April 23, 2018 Order. Further, the Petitioner has been aware of the content of the April 23, 2018 Order since it was issued and has failed to address it in a timely manner and therefore under res judicata, the issue cannot be relitigated. *City of McKeesport v. Pa. Public Utility Comm’n*, 442 A.2d 30 (Pa. Commw. Ct. 1982)
6. Admitted.

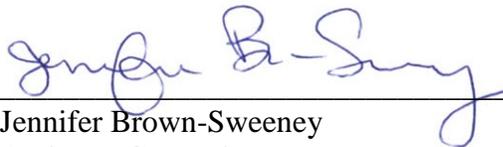
7. Denied. Petitioner is seeking to have matters reconsidered that are not the subject of the Secretarial Letter. Specifically, the March 4, 2020 Secretarial Letter is addressing the only outstanding matter in the case, following up to ensure that all work in accordance with the March 17, 2016 Order has been satisfactorily completed. The March 17, 2016 Order, in sum, provides for the removal of the bridge, including retaining walls and abutments, in accordance with approved plans. These matters were satisfactorily completed and the matter should be marked "CLOSED". Petitioner is trying to object to the fact that the Commission did not transfer jurisdiction to the Court of Common Pleas under a different Secretarial Letter years ago, despite the fact that the Petitioner had ample opportunity to appeal that decision using the correct vehicle to do so, but did not.

8. Denied. As stated above, the Petitioner is seeking to object to the fact that the Commission did not transfer jurisdiction to the Court of Common Pleas under a different Secretarial Letter approximately two years ago. The Petitioner has long missed their opportunity to appeal that decision and cannot keep seeking additional attempts at decisions that have already been made by the Commission.

WHEREFORE, the Department respectfully requests that the Public Utility Commission take this response into consideration when reviewing A. Edward Schwartz's Petition for Reconsideration and deny the Petition for Reconsideration.

Respectfully Submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



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DATED: April 10, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

A. Edward Schwartz	:	P-2011-2241780
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v.	:	Electronically Filed
	:	
Delaware and Hudson Railway Company, Inc.	:	
d/b/a Canadian Pacific Railroad and Pennsylvania	:	
Department of Transportation	:	

VERIFICATION

I, Sarah Fenton, District Grade Crossing Engineer, Commonwealth of Pennsylvania, Department of Transportation, in the foregoing document, make the following statement subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authority, and do state that as the District Grade Crossing Engineer for the Commonwealth of Pennsylvania, Department of Transportation, I am authorized to make this statement on behalf of the Commonwealth of Pennsylvania, Department of Transportation, and that the facts set forth in the foregoing document are true and correct to the best of my information, knowledge, and belief.

DATED: 04/10/2020

/s/ Sarah Fenton
Sarah Fenton
District Grade Crossing Engineer
Engineering District 4-0

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

A. Edward Schwartz	:	P-2011-2241780
	:	C-2011-2237486
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	:	
Delaware and Hudson Railway Company, Inc.	:	
d/b/a Canadian Pacific Railroad and Pennsylvania	:	
Department of Transportation	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **Response to Petition for Reconsideration** was served upon the parties below by electronic mail, this 10th day of April 2020:

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DATED: April 10, 2020