

Nauman Smith

A t t o r n e y s A t L a w

Please remit to:
P.O. Box 840
Harrisburg, PA 17108-0840

Benjamin C. Dunlap, Jr., Esquire
Email: bdunlapjr@nssh.com
(717) 236-3010, Ext 121

April 21, 2020

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

**In Re: Jason Paul, Complainant vs. Norfolk Southern Railway Company, Borough of Boswell, County of Somerset PennDOT, Respondent
Docket No. C-2020-3019169**

Dear Secretary Chiavetta:

Attached please find the Preliminary Objections of Norfolk Southern Railway Company and Certificate of Service, evidencing service of the same, in the above-captioned matter.

Please contact me if you have any questions.

Sincerely yours,



Benjamin C. Dunlap, Jr.

BCDjr/io
attachment
cc w/ attachment: all parties of record

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Jason Paul,
Complainant

vs.

Norfolk Southern Railway Company,
Borough of Boswell, County of Somerset
PENNDOT,
Respondents

:
:
:
:
:
:
:
:
:
:
:

Docket No: C-2020-3019169

NOTICE TO PLEAD

TO: Jason Paul

You are hereby notified to plead to the enclosed Preliminary Objections within ten (10) days from the service hereof, or a default judgment may be entered against you.

NAUMAN, SMITH, SHISSLER, & HALL, LLP



Benjamin C. Dunlap, Jr., Esquire
Supreme Court ID # 66283
200 North Third Street, 18th Floor
P.O. Box 840
Harrisburg, Pennsylvania, 17108
Counsel for Norfolk Southern Railway Company

DATE: April 21, 2020

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Jason Paul,	:	
Complainant	:	
	:	
vs.	:	Docket No: C-2020-3019169
	:	
Norfolk Southern Railway Company,	:	
Borough of Boswell, County of Somerset	:	
PENNDOT,	:	
Respondents	:	

PRELIMINARY OBJECTIONS OF NORFOLK SOUTHERN RAILWAY COMPANY

Norfolk Southern Railway Company (“Norfolk Southern”) hereby files the following Preliminary Objections to the Complaint of Jason Paul (“Paul” or “Complainant”), re-served on April 3, 2020, on the basis of a lack of subject matter jurisdiction, pursuant to 52 Pa. Code §§ 5.101(a)(1) and 5.61, based upon the following:

1. Complainant, Jason Paul, commenced this action by filing his Complaint with the Pennsylvania Public Utility Commission (“PUC”) on February 18, 2020.
2. Complainant therein seems to complain that Norfolk Southern recorded an “unlegeable,” [sic] “vauge” [sic] deed, and he further states that Norfolk Southern “claims land I [Complainant] own.” Complaint ¶¶ 4 and 5.
3. Complainant then demands that, “Pennsylvania Lines” must “properly supply me with a readable deed and relinquish all claim to my land.” Complaint ¶ 5.
4. Complainant describes his land as 54-04-14-0-115 Map #, which he claims is recorded in “Deed Book 3678, page 373 AKA 3678-0312 Westmoreland County, PA... Deed inst. # 199906181396951.” Complaint ¶ 5.
5. Complainant also contends that, “consol [sic] will not talk about anything and same rep. will denie [sic] ownership.”

6. The PUC lacks subject matter jurisdiction over private disputes of real property rights. Robert G. Kuhn, Jr. v. Duquesne Light Co., No. C-2017-2610584, 2018 WL 5620874, at *5 (Sept. 20, 2018), *citing* Fairview Water Co. v. Pa. Pub. Util. Comm'n., 502 A.2d 162 (Pa. 1985); *see also*, Vale Vista Assocs., LP; Donald J. Ivill & Gloria Ivill t/a Ivill Development; Gen. Contractors, Inc., d/b/a Gen. Indus. v. West Penn Power Co., No. C-2015-2517345, 2016 WL 826759, at *6 (Feb. 16, 2016), Fred D. Wilson v. Columbia Gas of Pa. Inc., No. C-2013-2367375, 2013 WL 6835138, at *5 (Dec. 19, 2013).
7. “The Commission has determined that it is not the proper forum for resolving property rights controversies. Rather, such controversies are a matter for a court of general jurisdiction.” Tonia Scott v. Pennsylvania-American Water Co., No. C-2016-2529902, 2016 WL 3361902, at *6 (May 18, 2016), Rita & Ray Royce c/o Safeguard Int'l, Inc. v. PECO Energy Co., No. C-20067158, 2008 WL 4614199, at *5 (Aug. 26, 2008), *citing* Anne E. Perrige v. Metropolitan Edison Co., C-00004110 (Order entered July 3, 2003).
8. Furthermore, in a preliminary search of the tax parcel ID identified by Complainant, it appears that the parcel described by Complainant is not owned by Norfolk Southern and is separated from the railroad right-of-way by another privately owned parcel from the right of way of the railroad. However, that is not a matter for determination by the Commission.

WHEREFORE, Norfolk Southern Railway Company respectfully requests that this Honorable Commission dismiss the Complaint of Jason Paul for lack of subject matter jurisdiction.

Respectfully Submitted,

NAUMAN, SMITH, SHISSLER, & HALL, LLP



Benjamin C. Dunlap, Jr., Esquire
Supreme Court ID # 66283
200 North Third Street, 18th Floor
Harrisburg, Pennsylvania, 17108
Counsel for Norfolk Southern Railway Company

DATE: April 21, 2020

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Jason Paul, :
Complainant :
 :
vs. : **Docket No: C-2020-3019169**
 :
Norfolk Southern Railway Company, :
Borough of Boswell, County of Somerset :
PENNDOT, :
Respondents :

CERTIFICATE OF SERVICE

I hereby certify that I served one (1) copy of the foregoing *Preliminary Objections of Norfolk Southern Railway Company* in the above action, this day via electronic mail and by depositing the same in the United States mail, postage prepaid, in Harrisburg, Pennsylvania, as indicated below:

GINA M. D'ALFONSO, ESQUIRE
SENIOR COUNSEL IN CHARGE
OFFICE OF CHIEF COUNSEL – PennDOT
PO BOX 8212
HARRISBURG, PA 17105-8212
Via Email: gdalfonso@pa.gov

BOROUGH OF BOSWELL
DAVID LEAKE, ESQUIRE, SOLICITOR
LAW OFFICE OF DAVID T. LEAKE,
ESQUIRE
130 WEST MAIN STREET
SOMERSET, PA 15501
Via Email: david.leake.esq@gmail.com.

SOMERSET COUNTY
DANIEL RULLO, ESQUIRE, SOLICITOR
146 WEST MAIN STREET
SOMERSET, PA 15501
Via Email: drullo@bcbrm.com
attorneys@barberalaw.com

JASON PAUL
132 CESSNA HILL ROAD
BOSWELL, PA 15531

/s/ Ijeoma N. Okereke
Ijeoma N. Okereke, Secretary
to Benjamin C. Dunlap, Jr., Esquire

Date: April 21, 2020