



Joshua D. Bonn, Esquire

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November 6, 2023

Via Electronic Filing

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

**Re: David A. Romanoski v. Commonwealth of Pennsylvania Department of
Transportation et. al
Docket # C-2023-3043702**

Dear Secretary Chiavetta:

Enclosed please find the Preliminary Objections to Complaint on behalf of Norfolk Southern Railway Company for filing in the above-referenced matter. The attached was originally filed on October 16, 2023, under docket number T-2023-3040729, but Norfolk Southern wishes to refile under the new docket number. A copy has been served upon all parties of record. Thank you.

Sincerely yours,

A handwritten signature in cursive script that reads 'Joshua D. Bonn'.

Joshua D. Bonn

JDB/ino

Attachment

cc: All parties of record (w/ attachment)

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Counsel for Defendant Norfolk Southern Railway Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DAVID A. ROMANOSKI,	:	
	:	
Complainant	:	C-2023-3043702
	:	Electronically Filed
v.	:	
	:	
COMMONWEALTH OF	:	
PENNSYLVANIA DEPARTMENT	:	
OF TRANSPORTATION, et. al	:	
	:	
Respondents	:	

**NORFOLK SOUTHERN RAILWAY COMPANY'S
PRELIMINARY OBJECTIONS TO COMPLAINT**

AND NOW comes the Defendant, Norfolk Southern Railway Company (hereinafter “Norfolk Southern”), and files preliminary objections pursuant to 52 Pa. Code § 5.101 and avers in support thereof as follows:

1. Complainant, David A. Romanoski, initiated the above-captioned matter by filing a Complaint on September 28, 2023, seeking to have a retaining wall (“Wall”) located on the north side of the 600 block of Old West Chocolate Avenue in Hershey, Pennsylvania inspected and maintained by some unspecified entity.

2. Norfolk Southern files these preliminary objections pursuant to 52 Pa. Code § 5.101 because the Commission lacks jurisdiction over the Retaining Wall and Complainant fails to state a claim against Norfolk Southern upon which relief may be granted.

3. Complainant alleges that the Retaining Wall was constructed in 1922 pursuant to an order of the Public Service Commission (“PSC”) issued May 20, 1919 (attached to the Complaint as Exhibit 11) which abolished five grade crossings over the Lebanon Valley Railroad in Derry Township, Pennsylvania. Complaint, ¶¶ 11, 14, Exhibit 11.

4. The PUC has no jurisdiction over the Retaining Wall because the PSC’s order issued May 20, 2019 abolished the five grade crossings in question. *County of Bucks v. Pennsylvania Public Utility Commission*, 684 A.2d 678 (Pa. Commw. 1996) (once grade crossing was abolished, as ordered by PSC, PUC had no power to order maintenance of pedestrian bridge built in its place).

5. The Complaint contains no allegations regarding Norfolk Southern nor otherwise offers any explanation why Norfolk Southern is named as a Respondent or how Norfolk Southern has any responsibility to inspect and maintain the wall.

WHEREFORE, Norfolk Southern Railway Company, Defendant, respectfully requests that this court dismiss the Complaint with prejudice due to lack of subject matter jurisdiction, or, alternatively, dismiss Norfolk Southern as a Respondent to these proceedings due to Plaintiff’s failure to state a claim against Norfolk Southern upon which relief may be granted.

NAUMAN, SMITH, SHISSLER & HALL, LLP

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*Counsel for Defendant, Norfolk Southern
Railway Company*

Date: November 6, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DAVID A. ROMANOSKI,	:	
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Complainant	:	C-2023-3043702
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v.	:	
	:	
COMMONWEALTH OF	:	
PENNSYLVANIA DEPARTMENT	:	
OF TRANSPORTATION, et. al	:	
	:	
Respondents	:	

CERTIFICATE OF SERVICE

AND NOW, on the date stated below, I, Ijeoma N. Okereke, an employee of the firm of Nauman, Smith, Shissler & Hall, LLP, hereby certify that I this day served the foregoing “Preliminary Objections to Complaint” by depositing a copy of the same in the United States Mail, first class, postage prepaid, at Harrisburg, Pennsylvania, via email addressed to the following:

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NAUMAN, SMITH, SHISSLER & HALL, LLP

By: /s/ Ijeoma N. Okereke
Ijeoma N. Okereke, Legal Assistant

Date: November 6, 2023