



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

March 11, 2024

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street 2nd FL
Harrisburg, PA 17120

Re: Romanoski v. PennDOT et. al.
Docket No. C-2023-3043702

Dear Secretary Chiavetta:

Enclosed for filing please find the ***Reply Exceptions of the Commonwealth of Pennsylvania, Department of Transportation***, in the above-captioned matter.

Copies of this correspondence have been served on the parties of record in accordance with the Certificate of Service. If you have any questions, please contact the undersigned.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Caroline G. Robelen".

Caroline G. Robelen
Assistant Counsel

cc: Parties of Record
Commission's Office of Special Assistants (ra-OSA@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DAVID A. ROMANOSKI	:	
Complainant	:	
	:	
vs.	:	Docket No.: C-2023-3043702
	:	
COMMONWEALTH OF	:	Electronically Filed
PENNSYLVANIA, DEPARTMENT OF	:	
TRANSPORTATION, ET. AL.	:	
Respondent	:	

REPLY EXCEPTIONS OF THE COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION

The Commonwealth of Pennsylvania, Department of Transportation (Department), by its counsel, Caroline G. Robelen, files these Reply Exceptions to the Exceptions of David A. Romanoski (Romanoski) to the Initial Decision of Administrative Law Judge Alphonso Arnold III (ALJ) dated February 28, 2024.

1. In response to **Romanoski Exception 1**, the Department incorporates its argument from Paragraphs 47-49 of its Answer to Romanoski’s Complaint. Romanoski’s Exception 1 lacks merit because, regardless of whether the ALJ confused Hockersville Crossing with Swatara Station Crossing (which the Department does not concede), the essential issue is that *both* crossings were abolished by the Public Service Commission’s 1919 Order (1919 Order). Romanoski does not argue that the abolishment did not occur – in fact, Romanoski clearly admits that the Swatara Station Crossing was part of the 1919 Order eliminating and abolishing grade crossings and was indeed eliminated. (Romanoski Complaint, Paragraph 11 - 12).

The Department respectfully requests this Commission reject Romanoski’s Exception 1 and find that the ALJ properly concluded that this Commission lacks jurisdiction over

Romanoski's Complaint because the 1919 Order abolished the railroad-highway crossing for which the retaining wall in question was built.

2. In response to **Romanoski Exception 2**, the Department incorporates its argument from Paragraphs 47-49 of its Answer to Romanoski's Complaint. Romanoski's Exception 2 lacks merit and is based on error – the Exhibits on which Romanoski relies do not show that the construction was for a railroad underpass, nor does the remainder of the record demonstrate that the construction of the retaining wall in question was for a railroad underpass. Further, the Swatara Station Crossing was one of the crossings clearly abolished by the 1919 Order, a fact which Romanoski clearly admits in his Complaint. (See Romanoski Complaint, Paragraphs 11 – 12).

The Department respectfully requests this Commission reject Romanoski's Exception 1 and find that the ALJ properly concluded that this Commission lacks jurisdiction over Romanoski's Complaint because the 1919 Order abolished the railroad-highway crossing for which the retaining wall in question was built.

3. In response to **Romanoski Exception 3** the Department incorporates its argument from Paragraphs 47-49 of its Answer to Romanoski's Complaint. Romanoski's Exception 3 lacks merit and is based on error and a misinterpretation of the ALJ's Initial Decision. The ALJ's Conclusion of Law, Paragraph 10 reads only that the "1919 Order of the PSC abolished the railroad-highway crossing for which the retaining wall in question was built. Therefore, the Commission lacks jurisdiction over the Complaint." Throughout his Initial Decision, the ALJ refers to the crossing at issue as the Swatara Station Crossing, not the Hockersville Crossing. Moreover, even if the ALJ was referring to the Hockersville Crossing (which the Department does not concede), the Swatara Station Crossing which Romanoski clarifies is the central focus

of this matter was clearly abolished by the 1919 Order. Romanoski not only does not dispute this abolishment, but readily admits that the “Swatara Station Crossing was eliminated[.]” (See Romanoski Complaint, Paragraph 12).

The Department respectfully requests this Commission reject Romanoski’s Exception 1 and find that the ALJ properly concluded that this Commission lacks jurisdiction over Romanoski’s Complaint because the 1919 Order abolished the railroad-highway crossing for which the retaining wall in question was built.

WHEREFORE, the Department of Transportation respectfully requests that the Public Utility Commission dismiss David A. Romanoski’s Exceptions from the Recommended Decision of Administrative Law Judge Alphonso Arnold III dated February 28, 2024, in their entirety and enter an Order accordingly.

Respectfully Submitted,



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Telephone No. (717) 787-3128

Dated: March 11, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DAVID A. ROMANOSKI
Complainant

vs.

**COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
TRANSPORTATION, ET. AL.**
Respondent

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: **Electronically Filed**
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing *Reply Exceptions of the Commonwealth of Pennsylvania, Department of Transportation*, upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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Respectfully Submitted,

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Dated: March 11, 2024