

Nauman Smith

Attorneys At Law

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

Benjamin C. Dunlap, Jr.
E-mail: bdunlapjr@nssh.com
Telephone Extension: 21

August 31, 2018

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 matter, please find the Exceptions of Norfolk Southern Railway Company to Recommended Decision. Copies will be 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	:	

**EXCEPTIONS OF NORFOLK SOUTHERN RAILWAY COMPANY
TO RECOMMENDED DECISION**

Norfolk Southern Railway Company ("Norfolk Southern"), hereby files the following Exceptions to the Recommended Decision of Administrative Law Judge David A. Salapa, issued August 6, 2018, in the above-referenced matters, pursuant to the provisions of 52 Pa. Code §5.533 and the Secretarial Letter dated August 14, 2018, granting the request for extensions of time to file Exceptions and Reply Exceptions, as follows:

1. Norfolk Southern excepts to Finding of Fact 84 on page 20 of the Recommended Decision, which states as follows: "The March 3, 1998 order directed D&H to maintain the substructure and superstructure of the SR 2032 bridge." This finding of fact fails to include that the referenced Order, which is DOT Exhibit D6, at page 3, ordering paragraph 20, directed D&H to maintain the substructure and superstructure of the referenced bridge "at its initial cost and expense."

2. Norfolk Southern excepts to Finding of Fact 150 on page 27 of the Recommended Decision, which states as follows: “The February 22, 1985 order directed that D&H maintain its railroad facilities at the T-821 crossing.” This finding of fact overlooks that the referenced Order, which is DOT Exhibit D11, specifies that D&H’s railroad facilities include, within the context of that Order, “the bridge substructure and superstructure, exclusive of the bituminous roadway wearing surface.”

3. Norfolk Southern excepts to Recommended Ordering Paragraph 9 on page 78 of the Recommended Decision, which states as follows: “That the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and perform all work necessary to inspect the SR 1025 bridge.” This provision conflicts with Recommended Ordering Paragraph 2 on page 77 of the Recommended Decision, which states that Norfolk Southern and the Pennsylvania Department of Transportation (“PennDOT”) “shall continue to inspect and maintain the existing SR 1025 crossing, in accordance with the Commission’s November 8, 2013 Secretarial Letter pending final disposition of the existing SR 1025 crossing.” That Secretarial Letter, at Ordering Paragraphs 14 and 15, requires PennDOT to conduct future inspections of the bridge and for Delaware and Hudson Railway Company, Inc. (“D&H”) to reimburse PennDOT twenty percent (20%) of the cost of future inspections. See PennDOT Exhibit D3 at 4. Therefore, Ordering Paragraph 9 is superfluous unless it is amended to clarify that PennDOT conduct future inspections of the SR 1025 bridge at its sole cost and expense after December 31, 2043, which are the timeframes discussed in the recommended ordering paragraphs preceding and succeeding Recommended Ordering Paragraph 9. Therefore, Recommended Ordering Paragraph 9 should be amended as follows:

9. That the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and perform all work necessary to inspect the SR 1025 bridge after December 31, 2043.

4. Norfolk Southern excepts to Recommended Ordering Paragraphs 12 and 13 on pages 78-79 of the Recommended Decision, in that these two paragraphs do not specify that the roadway authority shall be responsible for roadway paving located on the SR 1018 bridge and its approaches, as well as snow, ice and debris removal thereon. This work is not only invariably the responsibility of the roadway authority, but PennDOT has agreed to do so. See PennDOT Statement No. 3 at page 9, lines 7-11. Therefore, Recommended Ordering Paragraphs 12 and 13 should be amended as follows:

12. That the Pennsylvania Department of Transportation, at its initial cost and expense, furnish all material and perform all work necessary to inspect and maintain the existing SR 1018 bridge, including the roadway paving located on the bridge and its approaches and shall remove any snow, ice or debris from the roadway paving on the SR 1018 bridge and its approaches.

13. That Norfolk Southern Railway Company reimburse the Pennsylvania Department of Transportation 50% of the costs that the Pennsylvania Department of Transportation incurs in inspecting and maintaining the existing SR 1018 bridge, excluding for the roadway paving on the bridge and its approaches and for the removal of any snow, ice or debris from the roadway paving on the SR 1018 bridge and its approaches.

5. Norfolk Southern further excepts to Recommended Ordering Paragraph 12 on page 79 of the Recommended Decision, in that it does not specify what repairs PennDOT should perform on the existing SR 1018 bridge, for which Norfolk Southern will be responsible for half the costs pursuant to Recommended Ordering Paragraph 13. As noted in Findings of Fact 56 and 57 on page 17 of the Recommended Decision, deterioration in the SR 1018 bridge deck under the parapets has undermined support for the parapets, which could dislodge if a vehicle strikes one of them. Therefore, some repairs will need to be conducted prior to the bridge being reconstructed in seven years, pursuant to Recommended Ordering Paragraphs 14 and 15, in order to protect the public safety. Norfolk Southern had recommended concrete repair work along the underside edge of the arch and patching the small areas of spalling concrete under the railing on one side, at a total estimated cost of \$85,000. Norfolk Southern Statement No. 1 at 13, lines 9-21. Therefore, Recommended Ordering Paragraph 12 should be further amended as follows:

12. That the Pennsylvania Department of Transportation, at its initial cost and expense, furnish all material and perform all work necessary to inspect and maintain the existing SR 1018 bridge, including the roadway paving located on the bridge and its approaches and shall remove any snow, ice or debris from the roadway paving on the SR 1018 bridge and its approaches. The repair work shall include concrete repair work along the underside edge of the arch and patching the small areas of spalling concrete under the railing on one side, which shall be completed within one (1) year of the date of this Order.

6. Norfolk Southern excepts to Recommended Ordering Paragraph 30 on page 81 of the Recommended Decision, which states as follows: "That the Pennsylvania Department of

Transportation, at its sole cost and expense, furnish all material and perform all work necessary to inspect the SR 2032 bridge.” PennDOT would already be required, pursuant to Recommended Ordering Paragraph 21 on page 80 of the Recommended Decision, to inspect the existing SR 2032 bridge at its sole cost and expense. Therefore, Recommended Ordering Paragraph 30 would be superfluous unless it clarifies that those inspection obligations continue after December 31, 2043, when PennDOT would be responsible to maintain the entire SR 2032 bridge pursuant to Recommended Ordering Paragraph 31. Therefore, Ordering Paragraph 30 should be amended as follows:

30. That the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and perform all work necessary to inspect the SR 2032 bridge after December 31, 2043.

7. Norfolk Southern excepts to Recommended Ordering Paragraph 41 on page 83 of the Recommended Decision, which states as follows: “That the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and perform all work necessary to inspect the SR 2041 bridge.” PennDOT would already be required, pursuant to Recommended Ordering Paragraph 32 on page 81 of the Recommended Decision, to inspect the existing SR 2032 bridge at its sole cost and expense. Therefore, Recommended Ordering Paragraph 41 would be superfluous unless it clarifies that those inspection obligations continue after December 31, 2043, when PennDOT would be responsible to maintain the entire SR 2041 bridge pursuant to Recommended Ordering Paragraph 42. Therefore, Recommended Ordering Paragraph 41 should be amended as follows:

41. That the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and perform all work necessary to inspect the SR 2041 bridge after December 31, 2043.

8. Norfolk Southern excepts to Recommended Ordering Paragraphs 43 and 44 on page 83 of the Recommended Decision, in that these two paragraphs do not specify that the roadway authority shall be responsible for roadway paving located on the SR 2017 bridge and its approaches, as well as snow, ice and debris removal thereon. This work is not only invariably the responsibility of the roadway authority, but PennDOT has agreed to do so. See PennDOT Statement No. 3 at page 9, lines 7-11. Therefore, Recommended Ordering Paragraphs 43 and 44 should be amended as follows:

43. That the Pennsylvania Department of Transportation, at its initial cost and expense, furnish all material and perform all work necessary to inspect and maintain the existing SR 2017 bridge, including the roadway paving located on the bridge and its approaches and shall remove any snow, ice or debris from the roadway paving on the SR 2017 bridge and its approaches.

44. That Norfolk Southern Railway Company reimburse the Pennsylvania Department of Transportation 50% of the costs that the Pennsylvania Department of Transportation incurs in inspecting and maintaining the existing SR 2017 bridge, excluding for the roadway paving on the bridge and its approaches and for the removal of any snow, ice or debris from the roadway paving on the SR 2017 bridge and its approaches.

9. Norfolk Southern further excepts to Recommended Ordering Paragraph 43 on page 83 of the Recommended Decision, which states as follows: “That the Pennsylvania Department of Transportation, at its initial cost and expense, furnish all material and perform all work necessary to inspect and maintain the existing SR 2017 bridge.” Recommended Ordering Paragraph 43 does not specify the repairs that should be conducted by PennDOT, for which Norfolk Southern will pay half the costs, to protect the public safety within the seven years from the final Order when this bridge would be reconstructed pursuant to Recommended Ordering Paragraphs 45 and 46. As noted in Findings of Facts 106-108 on page 23 of the Recommended Decision, the SR 2017 structure is deteriorated throughout. The far-right approach guardrail at the crossing shows signs of collision damage, and the embankment and wingwall that support this section of guiderail at the crossing have failed and are unlikely to prevent a vehicle from falling onto the railroad right of way if a vehicle strikes the guiderail. To address these deficiencies in the interim until the bridge is reconstructed, Norfolk Southern has recommended that the concrete faces on both the left and right arch sides should be repaired; the failed wingwall area on the right side (photo 31 in PennDOT Exhibit E5) should be stabilized and the New Jersey barriers on the left side of the roadway should continue to be used and the fencing there repaired at a total estimated cost of \$116,000. See Norfolk Southern Statement No. 1 at page 12, line 17, through page 13, line 8. Therefore, Recommended Ordering Paragraph 43 should be further amended as follows:

43. That the Pennsylvania Department of Transportation, at its initial cost and expense, furnish all material and perform all work necessary to inspect and maintain the existing SR 2017 bridge, including the roadway paving located on the bridge and its approaches and shall remove any snow, ice or debris from the roadway paving on the SR 2017 bridge and its approaches. The repair work shall

include repairing the concrete faces on both the left and right arch sides; stabilizing the failed wingwall area on the right side (photo 31 in PennDOT Exhibit E5); and continuing to use the New Jersey barriers on the left side of the roadway and repairing the fencing located thereon, which repairs shall be completed within one (1) year of the date of this Order.

10. Norfolk Southern excepts to Recommended Ordering Paragraphs 52 and 53 on page 84 of the Recommended Decision, in that these two paragraphs do not specify that the roadway authority shall be responsible for roadway paving located on the SR 4005 bridge and its approaches, as well as snow, ice and debris removal thereon. This work is not only invariably the responsibility of the roadway authority, but PennDOT has agreed to do so. See PennDOT Statement No. 3 at page 9, lines 7-11. Therefore, Recommended Ordering Paragraphs 52 and 53 should be amended as follows:

52. That the Pennsylvania Department of Transportation, at its initial cost and expense, furnish all material and perform all work necessary to inspect and maintain the existing SR 4005 bridge, including the roadway paving located on the bridge and its approaches and shall remove any snow, ice or debris from the roadway paving on the SR 4005 bridge and its approaches.

53. That Norfolk Southern Railway Company reimburse the Pennsylvania Department of Transportation 50% of the costs that the Pennsylvania Department of Transportation incurs in inspecting and maintaining the existing SR 4005 bridge, excluding for the roadway paving on the bridge and its approaches

and for the removal of any snow, ice or debris from the roadway paving on the SR 4005 bridge and its approaches.

11. Norfolk Southern excepts to Recommended Ordering Paragraphs 54 and 55 on pages 84 and 85 of the Recommended Decision, to the extent that those ordering paragraphs require Norfolk Southern to inspect the existing T-821 bridge and to bear 90% of the inspection costs, with a 10% reimbursement by Great Bend Township (“Township”). PennDOT regularly inspects highway bridges and is required to ensure that all municipal-owned bridges such as that at the T-821 crossing be inspected under National Bridge Inspection Standards (“NBIS”) at least every two years. 23 C.F.R. §§ 650.307(a) and 650.311(a). Furthermore, PennDOT receives 80% federal reimbursement for the inspection of the T-821 bridge. See PennDOT Statement No. 2, page 2, lines 12-13 and Hearing Transcript at pages 205-206. Therefore, Norfolk Southern thinks it just and reasonable for PennDOT to continue to inspect this structure, with Norfolk Southern reimbursing PennDOT for the 20% of costs not reimbursed under the federal program.

In addition, Norfolk Southern excepts to the Township not being ordered to maintain the paving on the roadway and approaches of the bridge and to remove the snow, ice and debris from the bridge, as it agreed to do. See Township Statement No. 1 at page 8, lines 6-14.

Therefore, Norfolk Southern proposes that Recommended Ordering Paragraphs 54 and 55 be amended as follows:

54. That Norfolk Southern Railway Company, at its initial cost and expense, furnish all material and perform all work necessary to ~~inspect and~~ maintain the existing T-821 bridge, with the exception of the roadway paving located on the bridge and its

approaches and the removal of any snow, ice or debris from the roadway paving on the T-821 bridge and its approaches, which shall be performed by Great Bend Township at its sole cost and expense.

55. That Great Bend Township reimburse Norfolk Southern Railway Company 10% of the costs that Norfolk Southern Railway Company incurs in ~~inspecting and~~ maintaining the existing T-821 bridge.

56. That the Pennsylvania Department of Transportation, at its initial cost and expense, furnish all material and perform all work necessary to inspect the existing T-821 bridge.

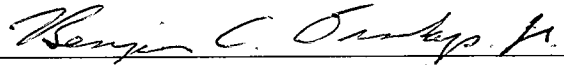
57. That Norfolk Southern Railway Company reimburse the Pennsylvania Department of Transportation 20% of the costs that the Pennsylvania Department of Transportation incurs in inspecting the existing T-821 bridge.

12. Norfolk Southern excepts to Recommended Ordering Paragraphs 56 and 57 on page 85 of the Recommended Decision, which would respectively require Norfolk Southern to prepare plans, consistent with the repairs outlined in its evidence in this proceeding to repair the existing T-821 bridge and to perform those repairs within twelve (12) months of the Commission's approval of its submitted repair plans. As discussed in Norfolk Southern Statement No. 1 at 9, lines 1 – 18, Norfolk Southern has already developed plans to repair the bridge seats and abutments on both sides of the bridge, which are underway and should be completed by approximately September 30, 2018. These repair plans were submitted into evidence as Norfolk Southern Exhibit

1. Furthermore, these repairs are replacements in kind, not alterations which would require the Commission's approval under 66 Pa.C.S. §2702(a). See Hearing Transcript, page 193, line 8, through page 194, line 5. As these repairs, which meet the substantive requirements of Recommended Ordering Paragraph 56, will be completed by the time of any Commission final Order, present Recommended Ordering Paragraphs 56 and 57 should be deleted in their entirety.

Respectfully Submitted,

NAUMAN, SMITH, SHISSLER & HALL, LLP

By: 
Benjamin C. Dunlap, Jr. Esquire
Supreme Court ID # 66283
Nauman, Smith, Shissler, & Hall, LLP
200 North Third Street, 18th Floor
P.O. Box 840
Harrisburg PA, 17108-0840
717.236.3010, Extension 121
Attorney for the Norfolk Southern
Railway Company

Date: August 31, 2018

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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motion to determine the condition and	:	
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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	:	

CERTIFICATE OF SERVICE

I hereby certify that I served one (1) copy of the *EXCEPTIONS OF NORFOLK SOUTHERN RAILWAY COMPANY TO RECOMMENDED DECISION* 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:

Gina M. D'Alfonso, Esquire
Jennifer Brown-Sweeney, Esquire
PennDOT, Office Chief Counsel
P.O. Box 8212
Harrisburg PA 17105
gdalfonso@pa.gov
jbrownswee@pa.gov

Donald J. Frederickson, Jr. Esquire
Koval & Frederickson
435 Main Street
Moosic, PA 18507
donald_frederickson@yahoo.com

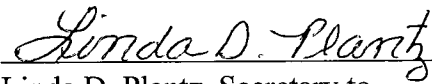
Bradley R. Gorter, Esquire
PA Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg PA 17120
bgorter@pa.gov

Charles E. Thomas III, Esquire
Thomas, Niesen, & Thomas, LLC
212 Locust Street, Suite 302
Harrisburg PA 17101
Cet3@tntlawfirm.com

Michael J. Giangrieco, Esquire
Solicitor for Susquehanna County
60 Public Avenue
PO Box 126
Montrose, PA 18801-0126
judy@giangrieco.com

Anthony P. Litwin, III, Esquire
24 East Tioga Street
Tunkhannock, PA 18657
plitwin@epix.net

Teresa K. Harrold, Esquire
First Energy
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612
tharrold@firstenergycorp.com


Linda D. Plantz, Secretary to
Benjamin C. Dunlap Jr., Esquire

Date: August 31, 2018