



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

May 6, 2011

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

RE: **Docket No. C-2011-2232148**

Dear Secretary Chiavetta:

Enclosed for filing, please find the original and one copy of the *Answer to New Matter and Additional New Matter of the City of Carbondale* of the Department of Transportation.

A copy of this *Answer* has been served upon the parties in the Certificate of Service attached to the application.

Very truly yours,

Gina M. D'Alfonso
Assistant Counsel in Charge

Enclosures

220/GMD:gw

cc: Parties of Record
Mark J. Chappell, P.E., Chief, Utilities and Right-of-Way Section
Joseph Strok, Grade Crossing Administrator, Engineering District 4-0

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOSEPH CASSARO	:	Complaint Docket
Complainant	:	No: C-2011-2232148
	:	
v.	:	
	:	Electronically Filed
DELAWARE LACKAWANNA	:	
RAILROAD, LACKAWANNA	:	
COUNTY, CARBONDALE CITY,	:	
COMMONWEALTH OF	:	
PENNSYLVANIA, DEPARTMENT	:	
OF TRANSPORTATION	:	
Respondents	:	

**ANSWER TO NEW MATTER AND ADDITIONAL NEW MATTER OF CITY OF
CARBONDALE**

AND NOW, comes the Commonwealth of Pennsylvania, Department of Transportation (Department), by and through its counsel, Gina M. D'Alfonso, Assistant Counsel in Charge, in its Answer to New Matter and Additional New Matter, respectfully represents:

5. Admitted. By way of further answer, the crossing is located within the City of Carbondale.
6. Admitted. By way of further answer, the crossing is located within the City of Carbondale
7. No response is required to this incorporation paragraph.
8. Denied. It is denied that any alleged injuries or damages are the result of the Department. By way of further, the Department denies as a conclusion of law that it is liable in any way for any injuries or damages which may have been suffered by the complainant and strict proof thereof is demanded at the time of hearing in this matter.

9. Paragraph nine (9) is a conclusion of law to which no response is required. To the extent that a response is warranted, it is denied. The present Commission action, by statute, is limited to addressing the necessary modification, alteration or replacement of the subject rail/highway crossing, and the related costs thereto. 66 Pa. C.S. § 2702, 2704. The Commission does not award damages. *Feingold v. Bell of Pennsylvania*, 383 A.2d 791, 794-795 (Pa. 1977). To the extent that the Commission finds that crossing modification or replacement is necessary, it is fully vested with the authority to allocate the work responsibility, and the related costs, to all concerned parties of record, including the City of Carbondale. 66 Pa. C.S. §§ 2702 (c); 2704 (a); *County of Chester v. Pennsylvania Public Utility Com.*, 408 A.2d 552, 554 (Pa. Cmwlth. 1979); *Millcreek Twp. v. Pennsylvania PUC*, 753 A.2d 324, 326-328 (Pa. Cmwlth. 2000).

WHEREFORE, the Department of Transportation respectfully requests that the City of Carbondale's Additional New Matter be struck and that a field conference be scheduled in this matter.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



Gina M. D'Alfonso
Assistant Counsel in Charge
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105-8212
Telephone No. (717) 787-3128
Fax Number (717) 772-2741
Pennsylvania Attorney I.D. Number 46767
gdalfonso@state.pa.us

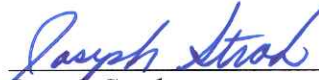
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PENNSYLVANIA, DEPARTMENT	:	
OF TRANSPORTATION	:	
Respondents	:	

VERIFICATION

I, Joseph Strok, District Grade Crossing Administrator, 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 Grade Crossing Administrator 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.



Joseph Strok
District Grade Crossing Administrator

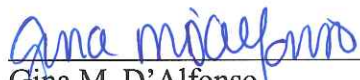
DATED: 5/6/11

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COMMONWEALTH OF	:	
PENNSYLVANIA, DEPARTMENT	:	
OF TRANSPORTATION	:	
Respondents	:	

VERIFICATION

I, Gina M. D'Alfonso, Esquire, 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 Assistant Counsel in Charge 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.



Gina M. D'Alfonso
Assistant Counsel in Charge

DATED: 5/6/11

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COMMONWEALTH OF	:	
PENNSYLVANIA, DEPARTMENT	:	
OF TRANSPORTATION	:	
Respondents	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the *Answer* was served upon the parties below by first-class mail; postage prepaid this day Friday, May 6, 2011:

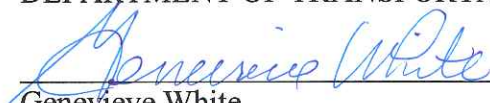
Joseph Cassaro
84 43rd Street
Carbondale, PA 18407

Delaware Lackawanna Railroad
1 Mill Street, Suite 101
Batavia, NY 14020

Elaine Geroulo, Esquire
Lackawanna County Solicitor
200 Adams Ave
Scranton, PA 18503

Frank Ruggiero, Esquire
Carbondale City
964 Scranton Carbondale Highway
Archbald, PA 18403

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION


Genevieve White

Legal Assistant to Gina M. D'Alfonso
Assistant Counsel in Charge
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105-8212
Telephone No. (717) 787-3128

DATED: 5/6/11