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FRANK G. PROCYK

OF COUNSEL
JAMES L. WEIRBACH

September 22, 2011

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

RE: Whitehall Township vs. R.J. Corman Railroad Company et al
Docket No. C-20054822
Our File No. 48-2004-529

Dear Secretary Chiavetta:

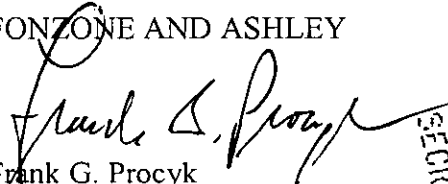
Enclosed for filing please find an original and one copy of an Answer by the Complainant, Whitehall Township, to PennDOT's Motion to Modify Order Entered July 26, 2007 in the above case.

I hereby certify that a copy of the Complainant's Answer has been sent to all parties of record as indicated on the enclosed Certificate of Service.

Should you have any questions, please contact this office.

Very truly yours,

FONZONE AND ASHLEY


Frank G. Procyk
610-433-0121, Ext. 312

FGP/mb
Enclosure
cc: Gina M. D'Alfonso, Esquire
Janet L. Miller, Esquire
Thomas M. Caffrey, Esquire
Rhonda Daviston, Esquire

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FONZONE AND ASHLEY LAW OFFICES

By: Frank G. Procyk, Esquire

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Attorney for Complainant: Whitehall Township

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WHITEHALL TOWNSHIP

**BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

v.

NO. C-20054822

R.J. CORMAN RAILROAD COMPANY

**ANSWER BY COMPLAINANT, WHITEHALL TOWNSHIP,
TO MOTION BY COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION, SEEKING TO
MODIFY ORDER ENTERED JULY 26, 2007**

AND NOW, comes the Complainant, Whitehall Township, by and through its record counsel, Frank G. Procyk, Esquire of Fonzone and Ashley, and files the within Answer to the Motion filed by Respondent/Petitioner, Commonwealth of Pennsylvania, Department of Transportation, seeking to modify the Order entered July 26, 2007 in this matter, and in support thereof, avers the following:

1. Admitted.
2. Admitted.
3. Admitted in part and denied in part. It is admitted that the prior Order entered July 26, 2007 directed the Commonwealth of Pennsylvania, Department of Transportation, to prepare a drainage study and take all necessary preliminary steps, including obtaining funding, for repair of the retaining wall within 18 months from the date of said Order. In further answer, the Commonwealth of Pennsylvania, Department of Transportation, was ordered to complete the repairs to the retaining wall within 12

months. While a drainage study was submitted by PennDot to the Court on or about January 23, 2009, the funding for and repair of the retaining wall has not occurred in a timely fashion as ordered by this Honorable Court. Until filing on September 20, 2011 the *Motion to Modify the Prior Order entered July 26, 2007*, no excuse has been given, nor any request for modification of the Order been made by the Commonwealth of Pennsylvania, Department of Transportation, which by itself demonstrates an extreme and unreasonable delay of more than four years of noncompliance with said Order of July 26, 2007.

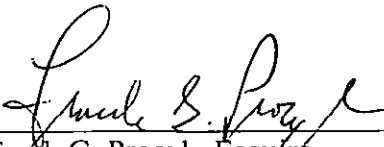
4. After reasonable investigation, the Complainant is without sufficient knowledge and information to form a belief as to the truth or falsity of the allegations contained in this paragraph of the Motion by the Commonwealth of Pennsylvania, Department of Transportation, and therefore, the same are denied and proof thereof is demanded. In further answer, the Complainant avers and believes that to the extent that funding is in place for the repair of the retaining wall to be completed, then it should be completed sometime during 2012, and not by the end of 2013 as requested by PennDot.

5. Denied as stated as being an unreasonable extension of time for completion, and proof thereof is demanded. In further answer, complainant believes that *any modification to the Order entered July 26, 2007 should compel PennDot to complete the repairs to the retaining wall by the end of 2012, given the excessive and unreasonable delay, which has already taken place since the Order entered on July 26, 2007.*

WHEREFORE, the Complainant, Whitehall Township, respectfully requests that the Motion to Modify the Order entered July 26, 2007 filed by the Commonwealth of Pennsylvania, Department of Transportation, be denied.

Respectfully submitted,

FONZONE AND ASHLEY

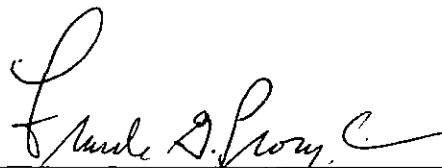
By: 
Frank G. Procyk, Esquire

Dated: September 22, 2011

VERIFICATION

I, **FRANK G. PROCYK, ESQUIRE** of Fonzone and Ashley, being duly sworn according to law, depose and state that I am the attorney for the Complainant, Whitehall Township, that I make this pleading on its behalf, that the said Complainant is unavailable and unable to make this verification on its own behalf within the time allotted for filing of this Answer, and that the facts set forth in the foregoing Answer are true and correct to the best of counsel's knowledge, information and belief. A verification by a representative from said Complainant may be substituted at a later date.

This verification is made subject to the penalties of 18 Pa. C.S. Sec.4904, relating to the unsworn falsification to authorities.



FRANK G. PROCYK, ESQUIRE

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WHITEHALL TOWNSHIP

v.

R.J. CORMAN RAILROAD COMPANY

**BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

NO. C-20054822

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Answer by Complainant, Whitehall Township, to Motion by Commonwealth of Pennsylvania, Department of Transportation, to Modify Order entered July 26, 2007 was served upon the parties listed below, in accordance with the requirements of §1.54, by first-class mail, postage prepaid, this 22nd day of September, 2011:

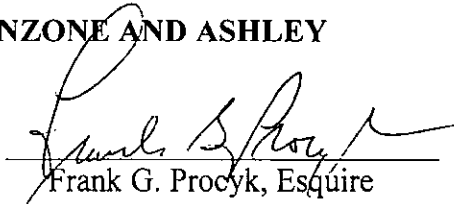
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FONZONE AND ASHLEY

By: 
Frank G. Procyk, Esquire

