



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

April 18, 2012

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

RE: **Docket No. C-2012-2291457**

Dear Secretary Chiavetta:

Enclosed for filing please find the original and one (1) copy of the Department of Transportation's *Prehearing Conference Memorandum*, in the above-captioned matter.

I hereby certify that a copy has been sent to all parties of record as indicated by the Certificate of Service.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Sean M. Concannon".

Sean M. Concannon
Assistant Counsel

Enclosure

220/SMC:bjk

cc: ALJ Ember S. Jandebour
Parties of Record
Mark J. Chappell, P.E., Acting Chief, Utilities and Right-of-Way Section
Rodney Rehnert, Grade Crossing Administrator, District 5-0

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Borough of Nesquehoning	:	
	:	
v.	:	
	:	C-2012-2291457
Reading Blue Mountain & Northern Railroad,	:	
Commonwealth of Pennsylvania,	:	
Pennsylvania Department of Transportation and	:	
Carbon County Commissioners	:	

**PRE-HEARING CONFERENCE MEMORANDUM OF THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION**

And now, comes the Commonwealth of Pennsylvania, Department of Transportation (“Department”) and files this Pre-hearing Conference Memorandum in accordance with the Pre-hearing Conference Order dated April 12, 2012 by Administrative Law Judge Ember S. Jandebeur.

1. History of the Proceeding:

The Borough of Nesquehoning filed a Complaint with the Commission on March 5, 2012, averring that the C&S Railroad Corporation and Carbon County Commissioners have failed to maintain four (4) railroad crossings located within the Borough (Allen Street, Mermon Street, and two (2) crossings on Industrial Road). The Complaint also averred that the condition of the crossings is “uneven, poorly maintained and dangerous to cross,” and “not passable for the handicapped.”

On March 13, 2012, Carbon County Commissioners filed an Answer and New Matter to the Complaint. On March 20, 2012, C&S Railroad filed Preliminary Objections to the Complaint with a Brief in support. On March 30, 2012, the Borough of Nesquehoning filed a Reply to New Matter of Carbon County Commissioners. On April 4, 2012, the Borough of Nesquehoning filed

an Answer to Preliminary Objections with a Brief in support. On April 10, 2012, the Department filed an Answer to the Complaint with Praeceptum for Substitution of Counsel.

Some written discovery between the parties has taken place, pursuant to a Complaint filed by the Borough of Neshannock with the Commission under Docket No. C-2011-2239223. The Department does not intend to undertake any discovery at this time.

2. Identified Issues:

The identified issues in this matter relevant to the Department are:

- a. The condition of the crossings identified in the underlying Complaint; and
- b. The party(ies) responsible for maintenance of the crossings.

3. Names and Addresses of Department Witnesses:

Rodney Rehnert

District 5-0 Grade Crossing Administrator

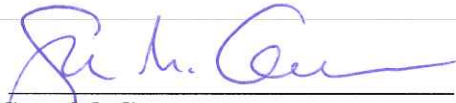
Department of Transportation, 1002 Hamilton Street, Allentown, PA 18101.

Note: the Department also reserves the right to amend and/or add additional witnesses as may be required to address the issues herein. The Department will provide written notice to all parties in the event of a change to its witness list.

4. Subject area of Testimony

The Department's witness(es) will testify as to the condition of the subject crossings, particularly as to the aspects of public health and safety. Further testimony may also be provided to address those issues identified by the other parties, presently and hereafter.

Respectfully Submitted,



Sean M. Concannon
Assistant Counsel
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 205998
sconcannon@pa.gov

Dated: April 18, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Borough of Nesquehoning	:	
	:	
v.	:	
	:	C-2012-2291457
C & S Railroad Corporation,	:	
Commonwealth of Pennsylvania,	:	
Pennsylvania Department of Transportation and	:	
Carbon County Commissioners	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Pre-Hearing Conference Memorandum* of the Commonwealth of Pennsylvania, Department of Transportation, was served upon the person(s) listed below by first-class mail, postage prepaid this 18th day of April, 2012:

Honorable Ember S. Jandebeur
Pennsylvania Public Utility Cmsn
317 State Office Bldg.
100 Lackawanna Avenue
Scranton, PA 18503

Adam D. Young, Esquire
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Robert T. Yurchak, Esquire
Solicitor of Borough of Nesquehoning
1 East Catawissa Street
Nesquehoning, PA 18240

Michael L. Ozalas, Esquire
Carbon County Commissioners
2 Hazard Square
Courthouse Annex, 3rd Flr.
Jim Thorpe, PA 18229

Daniel A. Miscavige, Esquire
Carbon County Commissioners
Carbon County Courthouse
P.O. Box 129
Courthouse Annex
Jim Thorpe, PA 18229

Paul Ober, Esquire
Attorney for C&S Railroad
234 North 6th Street
Reading, PA 19601

DATED: April 18, 2012


Billie Kauffman, Legal Assistant to
Sean M. Concannon, Assistant Counsel
Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105-8212
Telephone No.: 717/787-3128
Fax No.: 717/772-2741