

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH OF PENNSYLVANIA**

**BOROUGH OF NESQUEHONING,
COMPLAINANT**

**COMPLAINT DOCKET
NO: C-2012-2291457**

VS.

**READING BLUE MOUNTAIN &
NORTHERN RAILROAD**

PENNDOT

**CARBON COUNTY COMMISSIONERS,
RESPONDENTS**

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**BRIEF OF BOROUGH OF NESQUEHONING CONTRA PRELIMINARY
OBJECTIONS OF C&S RAILROAD**

I. FACTS:

Plaintiff Borough of Nesquehoning filed a complaint with the Public Utility Commission pursuant to 66 PA CS Section 701 et. Seq and 66 PACS Section 1501 et seq. and alleged the nature of the complaint in paragraph #3 of the complaint as follows:

3. What is your complaint? A number of requests have been made to the Carbon County Commissioners and C&S Railroad Corporation directly and through their representatives to maintain the following railroad crossings within the Borough of Nesquehoning:, namely Allen Street, Mermon Avenue and two(2) on Industrial Road. The condition of the crossings is uneven, poorly maintained and dangerous to cross. This condition makes the crossings hazardous and unsafe for the community to travers. In addition, the Borough believes and therefore avers that the crossings are not passable for the handicapped.

Defendant, C&S Railroad has now come forth and filed Preliminary Objections inferring that the nature of the complaint filed by plaintiff was solely that "2. Paragraph 3 of Plaintiff's complaint avers that the "crossings are not passable for the handicapped." Plaintiff has filed a

timely response which matter is now before the court for disposition.

II. ISSUES:

1- Whether the complaint filed by plaintiff meets the requirements for a legally recognizable cause of action pursuant to 66 PA CS Section 701 et. seq. and 66 PA CS Section 1501 et. seq.?

III. DISCUSSION:

66 PA CS Section 701 provides in relevant part as follows:

The commission, or any person, corporation, or municipal corporation having any interest in the subject matter, or any public utility concerned, may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.

66 PA CS Section 1501 provides in relevant part as follows:

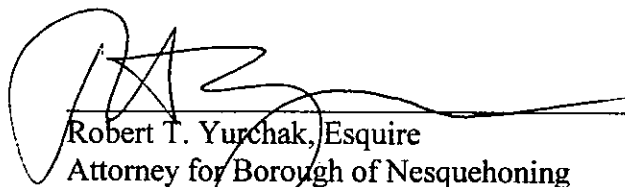
Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs changes, alterations, substitutions, extensions and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.

In paragraph #3 of its complaint, plaintiff, Borough of Nesquehoning alleges as follows:

3. What is your complaint? A number of requests have been made to the Carbon County Commissioners and C&S Railroad Corporation directly and through their representatives to maintain the following railroad crossings within the Borough of Nesquehoning:, namely Allen Street, Mermon Avenue and two(2) on Industrial Road. The condition of the crossings is uneven, poorly maintained and dangerous to cross. This condition makes the crossings hazardous and unsafe for the community to travers. In addition, the Borough believes and therefore avers that the crossings are not passable for the handicapped.

Defendant, C&S Railroad, in its Preliminary Objections misrepresents and misleads as to the nature of the complaint being made inferring that the sole basis of the complaint is whether the crossings are passable for the handicapped. This is not the nature of the complaint, as seen above, and even assuming for the basis of argument that the statement made by C&S Railroad was true, it still avers a complaint for members of the public, namely the handicapped who are inconvenienced by the failure to maintain the railroad crossings. Accordingly, the averments made by C&S Railroad are without merit, the complaint made meets the criteria of the aforesaid statutes and accordingly, the Preliminary Objections of C&S Railroad must be dismissed with prejudice.

Respectfully Submitted,



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