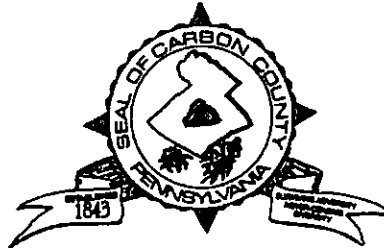


OFFICE OF THE  
**CARBON COUNTY COMMISSIONERS**



Commissioners  
Wayne E. Nothstein, Chairman  
Tom J. Gerhard, Vice-Chairman  
William J. O'Gurek, Member  
Eloise K. Ahner, County Administrator  
Daniel A. Miscavige, Solicitor

Court House Annex  
P.O. Box 129  
Jim Thorpe, PA 18229-1238

Telephone: (570) 325-3611  
FAX: (570) 325-3622  
E-mail: cccommis@ptd.net

April 17, 2012

Commonwealth of Pennsylvania  
Pennsylvania Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

RE: **COMPAINT DOCKET NO: C-2012-2291457**

Dear Sir/Madam:

Please be advised I represent the County of Carbon in the above matter. Enclosed please find an original and copy of the following documents for filing in the above captioned matter:

**PREHEARING MEMORANDUM OF THE COUNTY OF CARBON AND  
CERTIFICATE OF SERVICE**

Kindly file the originals in your office. Please stamp the copies filed and return them in the enclosed self-addressed, stamped envelope.

Please advise if you have any questions. Kindest regards.

Very truly yours,

Daniel A. Miscavige, Esquire  
Carbon County Solicitor

DAM:sk

/Enclosures

cc: Commissioners (3)  
Eloise K. Ahner, County Administrator  
Attorney Sean Concannon  
Judge Ember S. Jandebeur  
Attorney Paul Ober  
Attorney Robert T. Yurchak  
Attorney Adam Young

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SECRETARY'S BUREAU

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED  
2012 APR 19 AM 11:47  
PA P.U.C.  
SECRETARY'S BUREAU

BOROUGH OF NESQUEHONING :

v. :

C & S RAILROAD :

PENNDOT & CARBON COUNTY COMMISSIONERS :

C-2012-2291457

**PREHEARING MEMORANDUM OF COUNTY OF CARBON**

Pursuant to a Prehearing Conference Order dated April 12, 2012 in the above captioned matter, County of Carbon hereby submit this prehearing memorandum.

(I) HISTORY OF THE PROCEEDING

On or about February 22, 2012 Borough of Nesquehoning, 114 West Catawissa Street, Nesquehoning, PA, filed a Complaint in the above captioned matter against C & S Railroad, the County of Carbon and Penn Dot. The Complaint alleged that C & S Railroad has failed to maintain the Railroad Crossings within the Borough of Nesquehoning at the following locations:

1. Allen Street
2. Mermon Avenue
3. (2) crossings on Industrial Road

The Complaint further alleges that numerous requests were made to the County of Carbon and C & S Railroad Corporation to maintain said crossings. In addition, the Complaint indicates that the condition of the crossings is unsafe, dangerous, a hazard to the community and are not passable to the handicapped.

The Complaint further requests that the Commission require C & S Railroad and the County of Carbon to repair, upgrade and maintain the crossings aforementioned.

On or about the 13<sup>th</sup> day of March, 2012 the County of Carbon filed an Answer as Respondent, to the Complaint of the Borough of Nesquehoning. The Answer denied that the conditions of the crossings are unsafe, dangerous and a hazard to the community and demanded strict proof of the allegations at hearing.

The Answer further alleged that in the event that the determination of the Commission was made that the crossings are in need of repair that Respondent County of Carbon deny any responsibility to contribute to the cost of repair.

Further, Respondent County of Carbon raised as new matter the following defenses: estoppel, authority to grant relief against Respondent County of Carbon, no responsibility for cost of repairs; lack of jurisdiction; immunity from suit; impossibility of performance, lack of legal notice, and failure to set forth a cause of action against Respondent County of Carbon upon which relief can be granted.

The Borough of Nesquehoning has filed a reply to the new matter raised by the County of Carbon.

C & S Railroad has filed preliminary objections to the Complaint of Nesquehoning which are pending at the present time

(II) **ISSUES TO BE PRESENTED:**

County of Carbon has not received any expert reports from the Borough of Nesquehoning indicating that the crossings in question are unsafe, dangerous and

a hazard to the community; therefore the County of Carbon does not believe that the Borough of Nesquehoning has presented any viable issues to be resolved by the Commission. Further, the County of Carbon believes that the affirmative defenses raised in its new matter will be issues for consideration by the Commission.

(III) NAMES AND ADDRESSES OF WITNESSES:

1. Wayne Nothstein, Carbon County Commissioner, Third Floor Court House Annex, 2 Hazard Square, Jim Thorpe, PA
2. Carbon County Administrator, Third Floor Court House Annex, 2 Hazard Square, Jim Thorpe, PA

(IV) PROPOSED AREA OF TESTIMONY OF EACH WITNESS:

Each witness will testify that they have not received any expert reports indicating that the crossings in question are improperly maintained and are unsafe, dangerous, and a hazard to the community. In addition, the testimony will provide that the County of Carbon is not responsible for maintenance of the crossings. In addition, the witnesses will testify with respect to the issues raised in new matter.

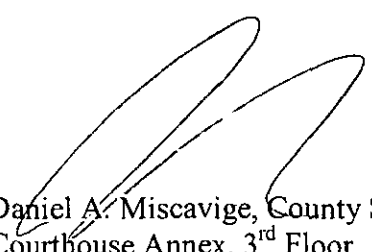
(V) OTHER ISSUES:

The County of Carbon anticipates interrogatories and request for production of documents to be propounded to the Borough of Nesquehoning prior to the time of

the pretrial conference. Therefore the County of Carbon reserves the right to amend this prehearing memorandum after such time as the County of Carbon has had the opportunity to review answers to discovery. In addition if, after receiving answers to the discovery, the County of Carbon believes it is in its' best interest to do so, they will retain the services of one or more experts to prepare reports with regard to the issues raised in Borough of Nesquehoning's Complaint.

Respectfully submitted,

Date: April 17, 2012



Daniel A. Miscavige, County Solicitor  
Courthouse Annex, 3<sup>rd</sup> Floor  
2 Hazard Square  
Jim Thorpe, PA 18229  
Telephone No. 570-325-3611  
Sup Ct I.D. #25755

CERTIFICATE OF SERVICE

COMPLAINT DOCKET NO. C-2012-2291457  
PREHEARING MEMORANDUM OF THE COUNTY OF CARBON

Robert T. Yurchak, Esquire  
1 East Catawissa Street  
PO Box 127  
Nesquehoning, PA 18240

The Honorable Ember S. Jandebour, ALJ  
Scranton State Office Building, Room 317  
100 Lackawanna Avenue  
Scranton, PA 18503

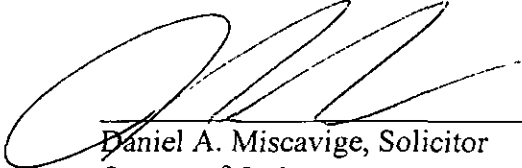
Sean Concannon, Esquire  
PENNDOT  
PO Box 8212  
Harrisburg, PA 17105

Paul Ober, Esquire  
234 North 6<sup>th</sup> Street  
Reading, PA 19601

Adam D. Young, Esquire  
PA PUC Law Bureau  
PO Box 3265  
Harrisburg, PA 17105-3265

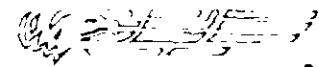
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SECRETARY'S BUREAU

Date: April 18, 2012

  
Daniel A. Miscavige, Solicitor  
County of Carbon



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**CARBON COUNTY COMMISSIONERS**  
COURT HOUSE ANNEX  
P.O. BOX 129  
JIM THORPE, PA 18229

**TO**

COMMONWEALTH OF PENNSYLVANIA  
PA PUBLIC UTILITY COMMISSION  
PO BOX 3265  
HARRISBURG PA 17105-3265