



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

October 2, 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's *Stipulation of Settlement*, 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:aca

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BOROUGH OF NESQUEHONING	:	Complaint Docket
Complainant	:	No: C-2012-2291457
	:	
v.	:	
	:	Electronically Filed
C&S RAILROAD COMPANY,	:	
CARBON COUNTY, and	:	
COMMONWEALTH OF	:	
PENNSYLVANIA, DEPARTMENT	:	
OF TRANSPORTATION	:	
Respondents	:	

STIPULATION OF SETTLEMENT

WHEREAS, the Borough of Nesquehoning (“Borough”), by Formal Complaint filed on February 22, 2012 with the Pennsylvania Public Utility Commission, initiated this matter against C&S Railroad, PennDOT, and the Carbon County Commissioners (collectively, the “parties”). The aforesaid Complaint alleged that four railroad crossings within its borders were poorly maintained, dangerous and otherwise unsafe for the community. These crossings are found at Allen Street (“Allen Crossing”) and Mermon Avenue (“Mermon Crossing”), and the remaining two crossings are found on Industrial Road (“Industrial East Crossing” and “Industrial West Crossing,” respectively).

WHEREAS, instead of litigating the matter, the parties have agreed to a solution to address the Borough’s concerns with the subject crossings and the parties wish to amicably resolve this case pursuant to the terms of this Stipulation of Settlement (“Stipulation”); and,

WHEREAS, the parties hereto agree that this proposed settlement is in the interest of public safety because it will establish the condition of the subject crossings in a suitable

condition for use by the public and permits the installation of safety devices at the Mermon Crossing. Further, C&S Railroad has agreed to provide the funding and/or materials necessary for improving the subject crossings, as outlined below. The Borough of Nesquehoning has agreed to undertake certain work on the subject crossings, as outlined below. And, the parties have agreed to the maintenance responsibilities for the crossings, as allocated below..

NOW, THEREFORE, the parties to this proceeding, Borough of Nesquehoning, C&S Railroad, Carbon County Commissioners, the Bureau of Investigation and Enforcement and PennDOT agree as follows:

1. The effective date of this Stipulation shall be the last day upon which it is signed by any of the parties hereto. The parties hereto agree that this Stipulation may be signed in individual counterparts and all signatures hereto shall be considered as original.
2. The parties hereto agree to abide by the work responsibilities and financial obligations delineated in this Stipulation, including any attachments hereto.
3. This Stipulation is contingent upon its approval pursuant to §§ 507 and 2702 *et seq.* of the Public Utility Code, 66 Pa.C.S. § 101 *et seq.*, and the issuance of a Commission Secretarial Letter or Order accepting and approving the same.
4. The parties agree that any party may petition the Commission for hearing if the Commission Secretarial Letter or Order substantively modifies this Stipulation or agreed-upon ordering paragraphs. In that event, any party may give notice to the other parties that it is withdrawing from this Stipulation. Such notice must be in writing and must be given within ten (10) business days of the issuance of any Initial or Recommended Decision or any Commission Order or Secretarial Letter which adopts this Stipulation or

the agreed-upon ordering paragraphs with substantive modifications. The consequence of any party withdrawing from this Stipulation as set forth above will be that all issues associated with the requested relief presented in the proceeding will be fully litigated unless otherwise stipulated between the parties and all obligations of the parties as set forth above to each other are terminated and of no force and effect.

5. The benefits and obligations of this Stipulation shall be binding upon the successors and assigns of the parties to this Stipulation.

In order to effectuate the parties' Stipulation, the undersigned parties request that the Commission issue a Secretarial Letter or Order including the following terms. The Commission will serve the public interest by adopting this Stipulation. The Stipulation will save the parties the time and expense they would incur further litigating this matter before the Commission. Since all of the parties agree to the terms of the Stipulation, adopting it will eliminate the possibility of any appeal from the Commission Secretarial Letter or Order, thus saving the parties the additional time and expense they might incur in such an appeal. Adopting this Stipulation will further the statutory provisions of 66 Pa.C.S. § 2702 *et seq.*, in regard to the public convenience and safety. The parties hereto therefore request that the Commission take the following actions to effectuate the Stipulation of Settlement among the parties:

1. Approve and adopt the Stipulation of Settlement entered into by the parties to this proceeding.
2. Adopt and enter an Order with the following ordering paragraphs:

- a. PennDOT will provide the funding required for the installation of warning devices as a safety improvement project to the Mermon Crossing.
- b. C&S Railroad will, at its sole cost and expense, undertake the following:
 - i. Installation of LAG Type 7" Concrete panel surface between the outer edges of the existing sidewalks (constructed in 9' long sections by 10' wide) with ties underneath concrete at a spacing of 18" and a rubber flangeway filler on both the gage and field sides of both rails for Mermon Crossing;
 - ii. Installation of good relay crossing timbers for Allen Crossing;
 - iii. Installation of good relay crossing timbers for Industrial East Crossing;
 - iv. Installation of LAG Type 7" Concrete panel surface (constructed in 9' long sections by 10' wide) with ties underneath concrete at a spacing of 18" and a rubber flangeway filler on both the gage and field sides of both rails for Industrial West Crossing;

- v. Install the safety warning devices at Mermon Crossing with the funding to be provided by PennDOT through the Section 130 Funding program ;
 - vi. Maintain the newly-installed warning devices thereafter.
 - vii. Provide railroad inspectors (aka “flagmen”) for the duration of the paving work required for the crossings, scheduled with the coordination of the Borough of Nesquehoning.
- d. Borough of Nesquehoning will, at its sole cost and expense, undertake the following:
- i. Maintain the approach signage for the subject crossings, including all stop lines on roadway and pave/repave the roadway up to the edge of the concrete or timber of crossings belonging to C&S Railroad at Industrial East Crossing, Mermon Avenue Crossing, and Allen Street Crossing, as part of already-scheduled paving projects on municipally-owned roads.
 - ii. Perform all paving work required for the timber and asphalt crossing surface at Allen Street on C & S property.
 - iii. Provide all five-day detours necessary to close each road down for the crossing reconstruction to be performed.
- e. All non-carrier utilities, if any, will relocate and/or adjust their facilities at their initial cost and expense.

- f. The parties agree that maintenance responsibilities for the four subject crossings are unchanged by these proceedings from previous determinations by the Commission.

Date:


Robert Yurchak, Esquire
Counsel for Borough of Nesquehoning

Date:

Daniel A. Miscavige, Esquire
Counsel for Carbon County Commissioners

Date:

9/11/2012



Sean M. Concannon, Esquire
Counsel for Commonwealth of Pennsylvania
Department of Transportation

Date:

Adam Young, Esquire
Counsel for Commonwealth of Pennsylvania
PA Public Utility Commission- Bureau of
Investigation & Enforcement

Date:

Wayne A. Michel
President of Reading and Northern Railroad
Authorized Agent for C&S Railroad

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OF TRANSPORTATION	:	
Respondents	:	

**STATEMENT OF COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF
TRANSPORTATION IN SUPPORT OF SETTLEMENT**

The Pennsylvania Department of Transportation (“PennDOT”) offers this statement in support of the parties’ Stipulation for Settlement of the Commission’s investigation.

The Public Utility Commission (Commission) will serve the public interest by adopting and granting the parties’ Stipulation for Settlement of the Commission’s investigation in the above captioned matter. The Commission encourages the settlement of contested proceedings. 52 Pa Code §5.231(a). Settlement is an efficient use of the resources of the Commission and the parties.

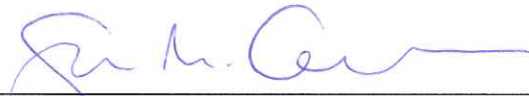
This settlement is the result of a successful negotiation; it permits the improvement of several crossings; and, it reflects a compromise of all parties. The settlement will save the parties the time and expense they would incur in further litigating this matter before the Commission. Since all of the parties agree to the terms of the settlement, adopting it will eliminate the possibility of any appeal from a Commission Order, thus saving the parties the additional time and expense they might incur in such an appeal. Further, the settlement minimizes the potential exposure of public funds which could have been allocated for the

proposed work on the subject crossings.

In the event that this Stipulation is not accepted by the Administrative Law Judge or the Commission, PennDOT will resume its litigation position which differs from the terms of the Stipulation. However, if the settlement is approved as proposed, PennDOT will not file exceptions. PennDOT does not waive its right to file exceptions if there are changes to the proposed settlement. PennDOT does reserve its right to file reply exceptions to any exceptions which may be filed by others.

For all of the above reasons, PennDOT submits the Stipulation for Settlement in the above matter, filed along with Borough of Nesquehoning, C&S Railroad and the Carbon County Commissioners.

Respectfully submitted,



Sean M. Concannon, Assistant Counsel
Pennsylvania Department of Transportation
Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105-8212
(717) 787-3128

Dated: 9/11/2012

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 - vi. Maintain the newly-installed warning devices thereafter.
 - vii. Provide railroad inspectors (aka “flagmen”) for the duration of the paving work required for the crossings, scheduled with the coordination of the Borough of Nesquehoning.
- d. Borough of Nesquehoning will, at its sole cost and expense, undertake the following:
- i. Maintain the approach signage for the subject crossings, including all stop lines on roadway and pave/repave the roadway up to the edge of the concrete or timber of crossings belonging to C&S Railroad at Industrial East Crossing, Mermon Avenue Crossing, and Allen Street Crossing, as part of already-scheduled paving projects on municipally-owned roads.
 - ii. Perform all paving work required for the timber and asphalt crossing surface at Allen Street on C & S property.
 - iii. Provide all five-day detours necessary to close each road down for the crossing reconstruction to be performed.
- e. All non-carrier utilities, if any, will relocate and/or adjust their facilities at their initial cost and expense.

- f. The parties agree that maintenance responsibilities for the four subject crossings are unchanged by these proceedings from previous determinations by the Commission.

Date:

Robert Yurchak, Esquire
Counsel for Borough of Nesquehoning

Date:

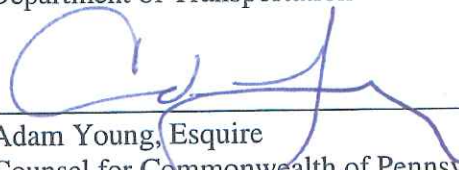
Daniel A. Miscavige, Esquire
Counsel for Carbon County Commissioners

Date:

Sean M. Concannon, Esquire
Counsel for Commonwealth of Pennsylvania
Department of Transportation

Date:

9/10/12



Adam Young, Esquire
Counsel for Commonwealth of Pennsylvania
PA Public Utility Commission- Bureau of
Investigation & Enforcement

Date:

Wayne A. Michel
President of Reading and Northern Railroad
Authorized Agent for C&S Railroad

BEFORE THE
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COMPLAINANT	:	
	:	Docket No. C-2012-2291457
V:	:	
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C&S RAILROAD COMPANY, CARBON COUNTY,	:	
AND COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF TRANSPORTATION	:	
	:	
RESPONDENTS	:	

BUREAU OF INVESTIGATION AND ENFORCEMENT
STATEMENT IN SUPPORT OF SETTLEMENT

The Public Utility Commission's Bureau of Investigation and Enforcement (I&E) offers this statement in support of the parties' Stipulation for Settlement of the Public Utility Commission's investigation.

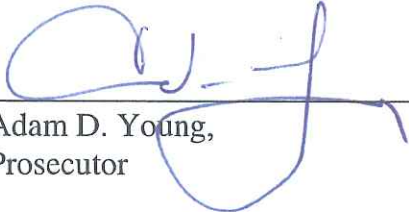
This settlement is the result of a successful negotiation among all the interested parties, and resolves I&E's primary safety concern, namely, the condition of 4 (four) at-grade rail-highway crossings located in the Borough of Nesquehoning. The settlement will save the parties the time and expense they would incur in further litigating this matter before the Commission. Since all of the parties agree to the terms of the settlement, adopting it will eliminate the possibility of any appeal from a Commission Order. This settlement is the most cost effective solution for all interested parties, and resolves all of the parties' outstanding issues.

Finally, the Public Utility Commission will serve the public interest by adopting and granting the parties' Stipulation for Settlement of the Commission's investigation in

the above captioned matter. The Commission has a policy of promoting settlements in contested proceedings. 52 Pa Code §5.231(a).

For all of the above reasons, I&E submits the Stipulation for Settlement in the above matter, filed along with PennDOT, C&S Railroad, the Carbon County Commissioners, and the Borough of Nesquehoning.

Respectfully submitted,



Adam D. Young,
Prosecutor

Counsel for the Bureau of Investigation and
Enforcement

P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-5000

Dated: 9/10/12

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Counsel for Carbon County Commissioners

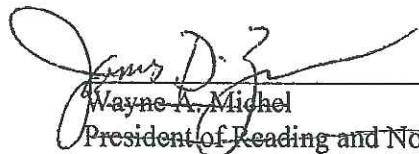
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PA Public Utility Commission- Bureau of
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Wayne A. Michel
President of Reading and Northern Railroad-
Authorized Agent for C&S Railroad—

James Zurn
President of C&S Railroad JK 8/31/12

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STATEMENT OF C & S RAILROAD IN SUPPORT OF SETTLEMENT

The Public Utility Commission (Commission) will serve the public interest by adopting the Settlement Petition in the above captioned matter. The settlement will save the parties the time and expense they would incur in further litigating this matter before the Commission. Since all of the parties agree to the terms of the settlement, adopting it will eliminate the possibility of any appeal from the Commission Secretarial Letter or Order, thus saving the parties the additional time and expense they might incur in such an appeal. Adopting this settlement will further the statutory provisions of 66 Pa. C.S. § 2702 *et seq.*, in regard to the public convenience and safety.

This settlement is in the public interest because it promotes the safety and welfare of the public. The Commission's paramount goals in regulating rail/highway crossings are to prevent accidents and promote public safety. 66 Pa. C.S. § 2702 (b). The settlement in this matter ensures that any safety concerns that were raised during the course of the proceeding will be addressed in an appropriate manner. It further addresses allocation of costs and establishes a limit of exposure to the Commonwealth. The settlement also addresses future maintenance responsibilities.

For all of the above reasons, C&S Railroad submits the Settlement Petition in the above matter, filed jointly along with the Department of Transportation, the Borough of Nesquehoning, the Commissioners of Carbon County and the Commission's Bureau of Transportation and Safety, complies with the requirements of 66 Pa.C.S §2702 *et seq.*, in regard to the public safety and convenience and therefore should be approved.

Respectfully submitted,

Frances Karycki 9/11/12
Frances Karycki

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WHEREAS, the parties hereto agree that this proposed settlement is in the interest of public safety because it will establish the condition of the subject crossings in a suitable

condition for use by the public and permits the installation of safety devices at the Mermon Crossing. Further, C&S Railroad has agreed to provide the funding and/or materials necessary for improving the subject crossings, as outlined below. The Borough of Nesquehoning has agreed to undertake certain work on the subject crossings, as outlined below. And, the parties have agreed to the maintenance responsibilities for the crossings, as allocated below..

NOW, THEREFORE, the parties to this proceeding, Borough of Nesquehoning, C&S Railroad, Carbon County Commissioners, the Bureau of Investigation and Enforcement and PennDOT agree as follows:

1. The effective date of this Stipulation shall be the last day upon which it is signed by any of the parties hereto. The parties hereto agree that this Stipulation may be signed in individual counterparts and all signatures hereto shall be considered as original.
2. The parties hereto agree to abide by the work responsibilities and financial obligations delineated in this Stipulation, including any attachments hereto.
3. This Stipulation is contingent upon its approval pursuant to §§ 507 and 2702 *et seq.* of the Public Utility Code, 66 Pa.C.S. § 101 *et seq.*, and the issuance of a Commission Secretarial Letter or Order accepting and approving the same.
4. The parties agree that any party may petition the Commission for hearing if the Commission Secretarial Letter or Order substantively modifies this Stipulation or agreed-upon ordering paragraphs. In that event, any party may give notice to the other parties that it is withdrawing from this Stipulation. Such notice must be in writing and must be given within ten (10) business days of the issuance of any Initial or Recommended Decision or any Commission Order or Secretarial Letter which adopts this Stipulation or

the agreed-upon ordering paragraphs with substantive modifications. The consequence of any party withdrawing from this Stipulation as set forth above will be that all issues associated with the requested relief presented in the proceeding will be fully litigated unless otherwise stipulated between the parties and all obligations of the parties as set forth above to each other are terminated and of no force and effect.

5. The benefits and obligations of this Stipulation shall be binding upon the successors and assigns of the parties to this Stipulation.

In order to effectuate the parties' Stipulation, the undersigned parties request that the Commission issue a Secretarial Letter or Order including the following terms. The Commission will serve the public interest by adopting this Stipulation. The Stipulation will save the parties the time and expense they would incur further litigating this matter before the Commission. Since all of the parties agree to the terms of the Stipulation, adopting it will eliminate the possibility of any appeal from the Commission Secretarial Letter or Order, thus saving the parties the additional time and expense they might incur in such an appeal. Adopting this Stipulation will further the statutory provisions of 66 Pa.C.S. § 2702 *et seq.*, in regard to the public convenience and safety. The parties hereto therefore request that the Commission take the following actions to effectuate the Stipulation of Settlement among the parties:

1. Approve and adopt the Stipulation of Settlement entered into by the parties to this proceeding.
2. Adopt and enter an Order with the following ordering paragraphs:


- a. PennDOT will provide the funding required for the installation of warning devices as a safety improvement project to the Mermon Crossing.
- b. C&S Railroad will, at its sole cost and expense, undertake the following:
 - i. Installation of LAG Type 7" Concrete panel surface between the outer edges of the existing sidewalks (constructed in 9' long sections by 10' wide) with ties underneath concrete at a spacing of 18" and a rubber flangeway filler on both the gage and field sides of both rails for Mermon Crossing;
 - ii. Installation of good relay crossing timbers for Allen Crossing;
 - iii. Installation of good relay crossing timbers for Industrial East Crossing;
 - iv. Installation of LAG Type 7" Concrete panel surface (constructed in 9' long sections by 10' wide) with ties underneath concrete at a spacing of 18" and a rubber flangeway filler on both the gage and field sides of both rails for Industrial West Crossing;

- v. Install the safety warning devices at Mermon Crossing with the funding to be provided by PennDOT through the Section 130 Funding program ;
 - vi. Maintain the newly-installed warning devices thereafter.
 - vii. Provide railroad inspectors (aka “flagmen”) for the duration of the paving work required for the crossings, scheduled with the coordination of the Borough of Nesquehoning.
- d. Borough of Nesquehoning will, at its sole cost and expense, undertake the following:
- i. Maintain the approach signage for the subject crossings, including all stop lines on roadway and pave/repave the roadway up to the edge of the concrete or timber of crossings belonging to C&S Railroad at Industrial East Crossing, Mermon Avenue Crossing, and Allen Street Crossing, as part of already-scheduled paving projects on municipally-owned roads.
 - ii. Perform all paving work required for the timber and asphalt crossing surface at Allen Street on C & S property.
 - iii. Provide all five-day detours necessary to close each road down for the crossing reconstruction to be performed.
- e. All non-carrier utilities, if any, will relocate and/or adjust their facilities at their initial cost and expense.

f. The parties agree that maintenance responsibilities for the four subject crossings are unchanged by these proceedings from previous determinations by the Commission.

Date:

9/27/12


Robert Yurchak, Esquire
Counsel for Borough of Nesquehoning

Date:

Daniel A. Miscavige, Esquire
Counsel for Carbon County Commissioners

Date:

Sean M. Concannon, Esquire
Counsel for Commonwealth of Pennsylvania
Department of Transportation

Date:

Adam Young, Esquire
Counsel for Commonwealth of Pennsylvania
PA Public Utility Commission- Bureau of
Investigation & Enforcement

Date:

Wayne A. Michel
President of Reading and Northern Railroad
Authorized Agent for C&S Railroad

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

**BOROUGH OF NESQUEHONING,
COMPLAINANT**

**COMPLAINT DOCKET
NO:**

VS.

**C&S RAILROAD and
CARBON COUNTY COMMISSIONERS,
RESPONDENTS**

CERTIFICATE OF SERVICE

I, Robert T. Yurchak, Esquire, Attorney for Borough of Nesquehoning, hereby certify that I have on this date served a copy of the Stipulation of Settlement and Statement of Nesquehoning Borough in Support of the Settlement upon the following persons by mailing a copy of the same by First Class mail, addressed, as follows:

Daniel Miscavige, Esquire
P.O. Box 129
Jim Thorpe, PA. 18229

Sean M. Concannon, Esquire
PA DOT, P.O. Box 8212
Harrisburg, PA. 17105-8212

Paul Ober, Esquire
234 North 6th Street
Reading, PA. 19601

Adam Young, Esquire
PA PUC Law Bureau
P.O. Box 3265
Harrisburg, PA. 17120

James Zurn
C&S Railroad
2541 Hemlock Drive
Lehighon, PA. 18235

Date:9/27/12



Robert T. Yurchak, Esquire
1 East Catawissa Street, POB 127
Nesquehoning, PA. 18240
Attorney for Nesquehoning Borough
Phone(570)669-6650
Fax(570)669-6105

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BOROUGH OF NESQUEHONING,
Complainant

COMPLAINT DOCKET
No. C-2012-2291457

vs.

C&S RAILROAD, COMMONWEALTH
OF PENNSYLVANIA, DEPARTMENT OF
TRANSPORTATION and CARBON COUNTY
Respondents

STATEMENT OF NESQUEHONING BOROUGH IN SUPPORT OF SETTLEMENT

The Nesquehoning Borough offers this statement in support of the parties' Stipulation for Settlement of the Commission's investigation.

The Public Utility Commission (commission) will serve the public interest by adopting and granting the parties' Stipulation for Settlement of the Commission's investigation in the above captioned matter. The Commission encourages the settlement of contested proceedings. 52 Pa Code Section 5.231(a). Settlement is an efficient use of the resources of the Commission and the parties.

This settlement is the result of a successful negotiation; it permits the improvement of several crossings; and, it reflects a compromise of all parties. The settlement will save the parties the time and expense they would incur in further litigating this matter before the Commission. Since all of the parties agree to the terms of the settlement, adopting it will eliminate the possibility of any appeal from a Commission Order, thus saving the parties the additional time and expense they might incur in such an appeal. Further, the settlement minimizes the potential exposure of public funds which could have been allocated for the proposed work on the subject crossings.

In the event that this Stipulation is not accepted by the Administrative Law Judge or the Commission, Nesquehoning Borough will resume its litigation position which differs from the terms of the Stipulation. However, if the settlement is approved as proposed, Nesquehoning Borough will not file exceptions. Nesquehoning Borough does not waive its right to file exceptions if there are changes to the proposed settlement. Nesquehoning Borough does reserve its right to file exceptions to any exceptions which may be filed by others.

For all the above reasons, Nesquehoning Borough submits the Stipulation for Settlement in the above matter, filed along with C&S Railroad, PennDOT and the Carbon County Commissioners.

Respectfully Submitted,



Robert T. Yurchak, Esquire
Nesquehoning Borough Solicitor
1 East Catawissa Street, POB 127
Nesquehoning, PA. 18240-0127
(570)669-6650

Dated: 9/27/12

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BOROUGH OF NESQUEHONING	:	Complaint Docket
Complainant	:	No: C-2012-2291457
	:	
v.	:	
	:	Electronically Filed
C&S RAILROAD COMPANY,	:	
CARBON COUNTY, and	:	
COMMONWEALTH OF	:	
PENNSYLVANIA, DEPARTMENT	:	
OF TRANSPORTATION	:	
Respondents	:	

STIPULATION OF SETTLEMENT

WHEREAS, the Borough of Nesquehoning (“Borough”), by Formal Complaint filed on February 22, 2012 with the Pennsylvania Public Utility Commission, initiated this matter against C&S Railroad, PennDOT, and the Carbon County Commissioners (collectively, the “parties”). The aforesaid Complaint alleged that four railroad crossings within its borders were poorly maintained, dangerous and otherwise unsafe for the community. These crossings are found at Allen Street (“Allen Crossing”) and Mermon Avenue (“Mermon Crossing”), and the remaining two crossings are found on Industrial Road (“Industrial East Crossing” and “Industrial West Crossing,” respectively).

WHEREAS, instead of litigating the matter, the parties have agreed to a solution to address the Borough’s concerns with the subject crossings and the parties wish to amicably resolve this case pursuant to the terms of this Stipulation of Settlement (“Stipulation”); and,

WHEREAS, the parties hereto agree that this proposed settlement is in the interest of public safety because it will establish the condition of the subject crossings in a suitable

condition for use by the public and permits the installation of safety devices at the Mermon Crossing. Further, C&S Railroad has agreed to provide the funding and/or materials necessary for improving the subject crossings, as outlined below. The Borough of Nesquehoning has agreed to undertake certain work on the subject crossings, as outlined below. And, the parties have agreed to the maintenance responsibilities for the crossings, as allocated below..

NOW, THEREFORE, the parties to this proceeding, Borough of Nesquehoning, C&S Railroad, Carbon County Commissioners, the Bureau of Investigation and Enforcement and PennDOT agree as follows:

1. The effective date of this Stipulation shall be the last day upon which it is signed by any of the parties hereto. The parties hereto agree that this Stipulation may be signed in individual counterparts and all signatures hereto shall be considered as original.
2. The parties hereto agree to abide by the work responsibilities and financial obligations delineated in this Stipulation, including any attachments hereto.
3. This Stipulation is contingent upon its approval pursuant to §§ 507 and 2702 *et seq.* of the Public Utility Code, 66 Pa.C.S. § 101 *et seq.*, and the issuance of a Commission Secretarial Letter or Order accepting and approving the same.
4. The parties agree that any party may petition the Commission for hearing if the Commission Secretarial Letter or Order substantively modifies this Stipulation or agreed-upon ordering paragraphs. In that event, any party may give notice to the other parties that it is withdrawing from this Stipulation. Such notice must be in writing and must be given within ten (10) business days of the issuance of any Initial or Recommended Decision or any Commission Order or Secretarial Letter which adopts this Stipulation or

the agreed-upon ordering paragraphs with substantive modifications. The consequence of any party withdrawing from this Stipulation as set forth above will be that all issues associated with the requested relief presented in the proceeding will be fully litigated unless otherwise stipulated between the parties and all obligations of the parties as set forth above to each other are terminated and of no force and effect.

5. The benefits and obligations of this Stipulation shall be binding upon the successors and assigns of the parties to this Stipulation.

In order to effectuate the parties' Stipulation, the undersigned parties request that the Commission issue a Secretarial Letter or Order including the following terms. The Commission will serve the public interest by adopting this Stipulation. The Stipulation will save the parties the time and expense they would incur further litigating this matter before the Commission. Since all of the parties agree to the terms of the Stipulation, adopting it will eliminate the possibility of any appeal from the Commission Secretarial Letter or Order, thus saving the parties the additional time and expense they might incur in such an appeal. Adopting this Stipulation will further the statutory provisions of 66 Pa.C.S. § 2702 *et seq.*, in regard to the public convenience and safety. The parties hereto therefore request that the Commission take the following actions to effectuate the Stipulation of Settlement among the parties:

1. Approve and adopt the Stipulation of Settlement entered into by the parties to this proceeding.
2. Adopt and enter an Order with the following ordering paragraphs:

- a. PennDOT will provide the funding required for the installation of warning devices as a safety improvement project to the Mermon Crossing.
- b. C&S Railroad will, at its sole cost and expense, undertake the following:
 - i. Installation of LAG Type 7" Concrete panel surface between the outer edges of the existing sidewalks (constructed in 9' long sections by 10' wide) with ties underneath concrete at a spacing of 18" and a rubber flangeway filler on both the gage and field sides of both rails for Mermon Crossing;
 - ii. Installation of good relay crossing timbers for Allen Crossing;
 - iii. Installation of good relay crossing timbers for Industrial East Crossing;
 - iv. Installation of LAG Type 7" Concrete panel surface (constructed in 9' long sections by 10' wide) with ties underneath concrete at a spacing of 18" and a rubber flangeway filler on both the gage and field sides of both rails for Industrial West Crossing;

- v. Install the safety warning devices at Mermon Crossing with the funding to be provided by PennDOT through the Section 130 Funding program ;
 - vi. Maintain the newly-installed warning devices thereafter.
 - vii. Provide railroad inspectors (aka “flagmen”) for the duration of the paving work required for the crossings, scheduled with the coordination of the Borough of Nesquehoning.
- d. Borough of Nesquehoning will, at its sole cost and expense, undertake the following:
- i. Maintain the approach signage for the subject crossings, including all stop lines on roadway and pave/repave the roadway up to the edge of the concrete or timber of crossings belonging to C&S Railroad at Industrial East Crossing, Mermon Avenue Crossing, and Allen Street Crossing, as part of already-scheduled paving projects on municipally-owned roads.
 - ii. Perform all paving work required for the timber and asphalt crossing surface at Allen Street on C & S property.
 - iii. Provide all five-day detours necessary to close each road down for the crossing reconstruction to be performed.
- e. All non-carrier utilities, if any, will relocate and/or adjust their facilities at their initial cost and expense.

- f. The parties agree that maintenance responsibilities for the four subject crossings are unchanged by these proceedings from previous determinations by the Commission.

Date:

Robert Yurchak, Esquire
Counsel for Borough of Nesquehoning

Date:

25 Sept 2012

Daniel A. Miscavige, Esquire
Counsel for Carbon County Commissioners

Date:

Sean M. Concannon, Esquire
Counsel for Commonwealth of Pennsylvania
Department of Transportation

Date:

Adam Young, Esquire
Counsel for Commonwealth of Pennsylvania
PA Public Utility Commission – Bureau of
Investigation & Enforcement

Date:

Wayne A. Michel
President of Reading and Northern Railroad
Authorized Agent for C&S Railroad

James Zurn
President of C&S Railroad

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

BOROUGH OF NESUEHONING :
Complaint : Complaint Docket
: No.: C-2012-2291457
vs. :
: :
C & S RAILROAD, CARBON :
COUNTY, COMMONWEALTH OF :
PENNSYLVANIA, DEPARTMENT :
OF TRANSPORTATION, :
Respondents :

STATEMENT OF CARBON COUNTY IN SUPPORT OF SETTLEMENT

The County of Carbon offers this statement in support of the parties' Stipulation for Settlement of the Complaint of the Borough of Nequehoning.

The Public Utility Commission (Commission) will serve the public interest by adopting and granting the parties' Stipulation for Settlement of the Commissions' investigation in the above-captioned matter. The Commission encourages the settlement of contested proceedings. 52 Pa Code § 5.231(a). Settlement is an efficient use of the resources of the Commission and the parties.

This settlement is the result of a successful negotiation among the parties to this action. It accomplishes the improvements of several railroad crossings and reflects a compromise of the position of all parties to this matter.

This settlement will save the parties time and expense they would otherwise incur in further litigating this matter before the Commission.

Since all of the parties to this action agree to the terms of the settlement, adoption of the Stipulation will eliminate an Appeal from the Commission Order thus saving the parties additional time and expense which would be incurred by participating in such an Appeal.

The adoption of this Stipulation will also remain with the parties to effect the improvements of the railroad crossings as set out in this Stipulation and will further clarify the work to be accomplished.

In the event the Stipulation is not accepted by the Administrative Law Judge or the Commission, the County of Carbon will resume its litigation position which differs from the terms of the Stipulation.

However, in the event the settlement would be approved under the terms and conditions as set out in the proposed Stipulation, the County of Carbon will not file acceptance or further appeal from the Decision adopting and implementing the Stipulation.

The County of Carbon does not waive its right to file exceptions and/or revisions to the proposed settlement.

The County of Carbon does reserve its right to reply to any exceptions which maybe filed by other parties:

The County of Carbon respectfully joins in the Stipulation for Settlement in the above matter as filed with the Borough of Nesquehoning, C & S Railroad and the Commonwealth of Pennsylvania, Department of Transportation.

Respectfully submitted,



DANIEL A. MISCAVIGE, ESQUIRE

County of Carbon - Solicitor

Carbon County Courthouse

PO Box 129

2 Hazard Square

Jim Thorpe, PA 18229

(570) 325-3611

I.D. No.: 25755

Date: 25 Sept 2012

BOROUGH OF NESQUEHONING
Complainant

v.

C&S RAILROAD,
CARBON COUNTY,
COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT
OF TRANSPORTATION
Respondents

: Complaint Docket
: No: C-2012-2291457
:

: Electronically Filed
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the *Stipulation of Settlement* was served upon the parties below by first-class mail; postage prepaid this 2nd day of October, 2012:

Daniel Miscavige, Esquire
P.O. Box 129
Jim Thorpe, PA 18229

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

Paul Ober, Esquire
234 North 6th Street
Reading, PA 19601

Adam Young, Esquire
PA PUC Law Bureau
P.O. Box 3265
Harrisburg, PA 17120

James Zurn
C&S Railroad
2541 Hemlock Drive
Lehighton, PA 18235

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



Alicia Adair
Legal Assistant to Sean M. Concannon
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: October 2, 2012