



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

January 25, 2013

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

RE: **Docket No. C-2011-2248320**

Dear Secretary Chiavetta:

Enclosed for filing please find 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.

Sincerely,

Gina M. D'Alfonso
Assistant Counsel in Charge

Enclosure

220/GMD:aca

cc: Administrative Law Judge David A. Salapa
Parties of Record
John Ciprich, Senior Civil Engineer, District 9-0
Mike Smith, District Grade Crossing Administrator, District 9-0

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Borough of Windber : Complaint Docket
Complainant : No: G-2011-2248320
:
v. :
:
B & E Railroad d/b/a Allegheny Southern :
Railroad, Somerset County, :
Commonwealth of Pennsylvania :
Department of Transportation :
Respondents :

STIPULATION OF SETTLEMENT

WHEREAS, the Borough of Windber ("Borough") filed a Formal Complaint ("Complaint") on or about June 24, 2011, with the Pennsylvania Public Utility Commission ("Commission") against B&E Railroad d/b/a Allegheny Southern Railroad ("ASR"), alleging the poor condition of three (3) of ASR's at-grade crossings within the Borough's jurisdiction. The Formal Complaint seeks the removal of the three (3) subject crossings. All crossing are at-grade with State Route 0160: 21st Street (21st Street) near the intersection with Stockholm Avenue (DOT # 529 066R); Graham Avenue (Graham Avenue East) approximately 130 feet northwest of 21st Street (DOT # 529 150Y); and Graham Avenue (Graham Avenue West) approximately 100 feet southwest of 17th Street (DOT # 529 067X). Additionally, the Borough alleged that the subject crossings have not been used for at least ten years; and,

WHEREAS, the Pennsylvania Department of Transportation ("Department") and Somerset County ("County") were made parties to the Complaint; and,

WHEREAS, given that there was no amicable resolution of the Complaint the Department filed a Motion to Schedule the matter for a hearing so that the matter could be resolved prior to the commencement of a Department highway improvement project on SR 0160; and,

WHEREAS, the matter was subsequently scheduled for a hearing on January 29 and 30, 2013; and,

WHEREAS, the parties have agreed to a solution to address the Borough's concerns with the subject crossings and the Department's need to have the matter resolved prior to construction; and,

WHEREAS, the parties wish to amicably resolve this case pursuant to the terms of this Stipulation of Settlement ("Stipulation") and to have the matter remanded to Transportation and Utility Services for a Secretarial Letter to be issued; and,

WHEREAS, ASR has agreed to allow the Department to remove the crossings located at-grade to 21st Street (DOT # 529 066R) and Graham Avenue East (DOT # 559 150Y) and to allow the Department to restore the aforementioned roadways at no cost to Allegheny Southern; and,

WHEREAS, the Borough and the County have agreed to participate in the costs associated with the work at 21st Street (DOT # 529 066R) and Graham Avenue East (DOT # 559 150Y) ; and

WHEREAS, ASR has agreed to repair and repave the at-grade crossing of its facilities with Graham Avenue West (DOT # 529 067X) at the conclusion of the Department repaving project for Graham Avenue; and,

WHEREAS, the Department has agreed to provide a detour for three (3) consecutive calendar days, at the Department's sole cost and expense, for the proposed work to be performed at the Graham Avenue West (DOT # 529 067X) crossing; and,

WHEREAS, the Borough agrees to monitor the detour signs made necessary by the aforementioned project located at Graham Avenue West (DOT # 529 067X) and the Borough has agreed to maintain the pavement of the crossing until December 31, 2014; and,

WHEREAS, ASR will assume all maintenance responsibilities of the Graham Avenue West (DOT # 529 067X) crossing, at its sole cost and expense after December 31, 2014; and,

WHEREAS, the parties hereto agree that this proposed settlement is in the interest of public safety because it will provide for the removal and/or repair of the subject crossings and will establish the obligations of ASR, the Department, the County, and the Borough; and,

WHEREAS, the Borough has agreed that these actions will sufficiently satisfy its complaint in this matter.

NOW, THEREFORE, the parties to this proceeding, Borough of Windber, Allegheny Southern Railroad, Somerset County, the Department and the Commission's Bureau of Investigation and Enforcement (BI&E) 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. The Department, at its sole cost and expense, agrees to:
 - i. Remove the rail facilities, including the crossbuck signs, of Allegheny Southern located at-grade to 21st Street (DOT # 529 066R) and Graham Avenue

- East (DOT # 559 150Y) at its initial cost and expense;
- ii. Contribute the first \$10,000.00 to the removal of the aforementioned rail facilities of ASR;
 - iii. All rails removed from the aforementioned crossings and the crossbuck signs shall remain the property of ASR. The Department's contractor will place the removed rails and signs on ASR right-of-way adjacent to the crossings;
 - iv. Complete the aforementioned removal of the at-grade crossings and restoration of the roadway to Department specifications no later than October 15, 2013;
 - v. Provide ASR with contact information to coordinate with the Department's inspector in charge of the SR 160 highway improvement project;
 - vi. Provide a detour for three (3) consecutive calendar days, at the Department's sole cost and expense, for the proposed work to the at-grade crossing located at Graham Avenue West (DOT # 529 067X). In the event that weather or other unforeseen circumstances preclude performance of the work or cause ASR to require more than 3 days, ASR will contact the Department regarding an extension of the detour which shall not be unreasonably withheld; and
 - vii. Notify the local media one (1) week prior to the detour implementation for the construction project for the at-grade crossing located at Graham Avenue West (DOT # 529 067X).

- b. ASR, at its sole cost and expense, agrees to:
- i. Repair and repave the at-grade crossing, located at Graham Avenue West (DOT # 529 067X), to preserve the aforementioned crossing for future rail use at the conclusion of the Department highway improvement project for SR 0160;
 - ii. The timber ties on either side of the rails shall be removed and replaced with subgrade aggregate stone;
 - iii. There shall be a minimum of four inches (4") of bituminous material on top of a compacted 2A material subbase;
 - iv. All subbase material will be covered by the aforementioned bituminous;
 - v. A rubberized seal shall be installed adjacent to each side of both rails in a manner similar to the crossing at Somerset Avenue and 17th Street and the crossing shall be repaved with asphalt within two feet (2') of the outside of each rail and between the rails;
 - vi. The aforementioned asphalt shall be contoured to the roadway surface and abut the rubber seal with the rail exposed;
 - vii. The aforementioned project must be performed after the Department's detour route for its highway improvement project and temporary traffic signal at Jefferson Avenue are removed;
 - viii. Coordinate with the Department inspector in charge of the project for the timing of the work;

- ix. In the event that weather or other unforeseen circumstances preclude performance of the work or cause ASR to require more than 3 days, ASR will contact the Department regarding an extension of the detour. All work shall be accomplished as soon as possible thereafter
- x. All the aforementioned work in this subparagraph shall be completed no later than November 15, 2013;
- xi. Post "tracks out of service" signs indicating the suspended status of the at-grade crossing located at Graham Avenue West (DOT # 529 067X);
- xii. Assume all maintenance responsibilities of the aforementioned crossing after December 31, 2014, which shall include furnishing all materials and performing all work necessary to maintain its railroad facilities at the Graham Avenue West crossing (DOT # 529 067X), including any signs installed at this crossing and to maintain at all times in a smooth and satisfactory condition the crossing surface located between the rails and for a distance of twenty-four (24") inches beyond the outermost rails; and
- xiii. Nothing in this subparagraph shall be construed to allocate any costs upon ASR for the removal of the crossings located at-grade to 21st Street (DOT # 529 066R) and Graham Avenue East (DOT # 559 150Y).

d. The Borough, at its sole cost and expense, agrees to:

- i. Reimburse PennDOT 90% of costs incurred over \$10,000.00 for the removal of the rail facilities of ASR located at-grade to 21st Street (DOT # 529 066R) and Graham Avenue East (DOT # 559 150Y) and the restoration of the roadway. Said amount shall not exceed \$7,500.00;
- ii. Monitor the detour signs during construction of the at-grade crossing located at Graham Avenue West (DOT # 529 067X);
- iii. Notify emergency providers, the school district, and local businesses one (1) week prior to the aforementioned detour;
- iv. Assume the maintenance responsibilities of the asphalt pavement surface of the Graham Avenue West crossing from the date of its repair until December 31, 2014; and
- v. Issue a public notice acknowledging that the subject crossing suspensions do not constitute the abandonment or discontinuance of future rail service on the ASR rail lines within the Borough.

e. The County, at its sole cost and expense, agrees to:

- i. Reimburse PennDOT 10% of costs incurred over \$10,000.00 for the removal of the rail facilities of ASR located at-grade to 21st Street (DOT # 529 066R) and Graham Avenue East (DOT # 559 150Y) and the

restoration of the roadway. Said amount shall not exceed \$750.00;

- f. No party to this proceeding shall oppose that the crossings, located at-grade to 21st Street (DOT # 529 066R) and Graham Avenue East (DOT # 559 150Y), be suspended rather than abolished.
- g. The removal of the crossings located at-grade to 21st Street (DOT # 529 066R) and Graham Avenue East (DOT # 559 150Y) shall be allocated to the non-railroad parties as set forth in this Stipulation of Settlement. The estimated cost for said removals and restoration of the roadway is \$17,500.00. The Department shall, at its initial cost and expense, remove the said crossings and restore the roadway. The Borough shall reimburse the Department 90% of all costs over \$10,000.00 for the said removals and restoration of the roadway. The Borough's share shall not exceed \$7,500.00 under this paragraph. The County shall reimburse the Department 10% of all costs over \$10,000.00 for the removals and restoration of the roadway. The County's cost shall not exceed \$750.00 under this paragraph. There shall be no costs allocated towards ASR for the work performed at these two crossings.
- h. All non-carrier public utilities, if any, will relocate and/or adjust their facilities at their initial cost and expense.
- i. The Department agrees to maintain SR 160 at 21st Street (DOT # 529 066R) and Graham Avenue East (DOT # 559 150Y) and to maintain the highway approach roadways to the Graham Avenue West (DOT # 529 067X) crossing to points twenty-four (24) inches beyond each outside rail at its sole cost and expense.

- j. The undersigned parties agree that this matter should be referred to Transportation and Utility Services for a Secretarial Letter to be issued in accordance with this Stipulation of Settlement.

Respectfully Submitted:

Date: *January 17, 2013*



Jeffrey Berkey, Esquire
Windber Borough Solicitor

Date:

Gina M. D'Alfonso, Esquire
Counsel for Commonwealth of Pennsylvania
Department of Transportation

Date:

Richard R. Wilson, Esquire
Counsel for Allegheny Southern Railroad

Date:

Daniel W. Rullo, Esquire
Somerset County Solicitor

Date:

Adam Young, Esquire
Counsel for the Bureau of Investigation
and Enforcement,
Pennsylvania Public Utility Commission

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Respectfully Submitted:

Date:

Jeffrey Berkey, Esquire
Windber Borough Solicitor

Date:

1/17/2013

Gina M. D'Alfonso

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Department of Transportation

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Date:

Jeffrey Berkey, Esquire
Windber Borough Solicitor

Date:

Gina M. D'Alfonso, Esquire
Counsel for Commonwealth of Pennsylvania
Department of Transportation

Date:

1-21-2013



Richard R. Wilson, Esquire
Counsel for Allegheny Southern Railroad

Date:

Daniel W. Rullo, Esquire
Somerset County Solicitor

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Adam Young, Esquire
Counsel for the Bureau of Investigation
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Jeffrey Berkey, Esquire
Windber Borough Solicitor

Date:

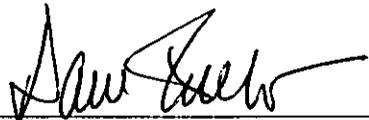
Gina M. D'Alfonso, Esquire
Counsel for Commonwealth of Pennsylvania
Department of Transportation

Date:

Richard R. Wilson, Esquire
Counsel for Allegheny Southern Railroad

Date:

1/23/13



Daniel W. Rullo, Esquire
Somerset County Solicitor

Date:

Adam Young, Esquire
Counsel for the Bureau of Investigation
and Enforcement,
Pennsylvania Public Utility Commission

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Date:

Jeffrey Berkey, Esquire
Windber Borough Solicitor

Date:

Gina M. D'Alfonso, Esquire
Counsel for Commonwealth of Pennsylvania
Department of Transportation

Date:

Richard R. Wilson, Esquire
Counsel for Allegheny Southern Railroad

Date:

Daniel W. Rullo, Esquire
Somerset County Solicitor

Date:

1/17/13

Adam Young, Esquire
Counsel for the Bureau of Investigation
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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Borough of Windber
Complainant

v.

B & E Railroad d/b/a Allegheny Southern
Railroad, Somerset County,
Commonwealth of Pennsylvania
Department of Transportation
Respondents

Complaint Docket
No: C-2011-2248320

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 25th day of January, 2013:

Chuck Erickson, President
B&E Railroad
d/b/a Allegheny Southern Railroad
4200 RT 22 East, Suite 7
Blairsville, PA 15717

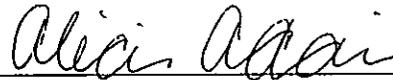
Daniel W. Rullo, Esquire
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P.O. Box 775
Somerset, PA 15501

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Windber Borough Solicitor
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P.O. Box 431
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Adam Young, Esquire
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PO Box 3265
Harrisburg, PA 17105-3265

Richard Wilson, Esquire
518 North Center Street, Suite 1
Ebensburg, PA 15931

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



Alicia Adair
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Telephone No. (717) 787-3128

Dated: January 25, 2013

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