



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

December 18, 2015

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

RE: **Docket No. C-20054822**

Dear Secretary Chiavetta:

Enclosed for filing please find the Department'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 black ink, appearing to read "N. D. Mertens".

Nicholas D. Mertens  
Assistant Counsel

Enclosure

220/NDM:aca

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Whitehall Township	:	Docket No. C-20054822
	:	
v.	:	
	:	<b>Electronically Filed</b>
R.J. Corman Railroad Company	:	

**COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF  
TRANSPORTATION'S PREHEARING CONFERENCE MEMORANDUM**

In accordance with the November 20, 2015 Prehearing Conference Order of Administrative Law Judge Joel H. Cheskis, in the above referenced matter, the Department of Transportation ("Department") offers the following in response to the specific requests contained therein:

- a) It is requested that the Department's sole entry on the service list shall be as follows:

Nicholas D. Mertens  
Assistant Counsel  
Department of Transportation  
Office of Chief Counsel  
P.O. Box 8212  
Harrisburg, PA 17105-8212  
Telephone No. (717) 787-3128  
Fax No. (717) 772-2741  
nimertens@pa.gov

- b) At this time, the Department is open to holding discussions with Whitehall Township and is optimistic that a settlement may be reached as to the allocation of the expense of repairs made to the retaining wall and the future maintenance of same.
- c) At this time, the Department does not anticipate the need for discovery. In the event that the Department or any other party desires to engage in discovery, the Department proposes that all discovery is completed, including discovery requests and any responses thereto, no later than one (1) month prior to the date for the submission of pre-served written direct testimony.

d) The Department proposes the following litigation schedule:

Written direct testimony submitted on or before: Two weeks prior to hearing

Written rebuttal testimony submitted on or before: One week prior to hearing

Hearing May or June 2016

e) The Department intends to present the following witnesses to testify in this matter:

- 1) Rodney O. Rehnert  
District Grade Crossing Administrator  
1002 Hamilton Street  
Allentown, PA 18101  
Telephone No. (610) 871-4106

Mr. Rehnert's testimony will discuss the issues involving the highway-rail crossing and the Department's position as to the cost allocation and assignment of future maintenance.

- 2) District 5-0 Bridge Engineer  
1002 Hamilton Street  
Allentown, PA 18101  
Telephone No. (610) 871-4106

The Department anticipates calling a member of the District's Bridge Unit to discuss the repair work performed to the retaining wall.

f) The issues in the present matter are related to the Department's June 19, 2015 Petition requesting a hearing to allocate future maintenance and costs associated with the Commission's Opinion and Order entered July 26, 2007. These issues include:

- 1) Pursuant to 66 Pa.C.S. § 2704, how should the Commission allocate the costs (\$1,760,853.11), associated with the Commission's Opinion and Order entered July 26, 2007, to repair the Lehigh Avenue retaining wall?

It is the Department's position that it is just and reasonable to allocate all costs associated with the repair of the Lehigh Avenue retaining wall onto the Whitehall Township as the retaining wall supports a Township street—Lehigh Avenue.

- 2) Pursuant to 66 Pa.C.S. § 2704, how should the Commission assign future maintenance responsibilities for the Lehigh Avenue retaining wall?

It is the Department's position that it is just and reasonable to assign future maintenance responsibilities to the Whitehall Township for the portion of the subject retaining wall that supports the Township street—Lehigh Avenue.

- g) The Department specifically requests that the parties concerned with the above captioned matter submit written testimony pursuant to 52 Pa. Code § 5.412.
- h) The Department believes that one day for a hearing is sufficient if the parties are directed to pre-file written testimony.

Respectfully Submitted,

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION



---

Nicholas D. Mertens  
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  
Pennsylvania Attorney I.D. No. 313998  
nimertens@pa.gov

DATED: December 18, 2015

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Whitehall Township	:	Docket No. C-20054822
	:	
v.	:	
	:	<b>Electronically Filed</b>
R.J. Corman Railroad Company	:	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Department's *Prehearing Conference Memorandum*, was served upon the parties listed below, in accordance with the requirements of §1.54, by First-Class mail, postage prepaid, this 18<sup>th</sup> day of December, 2015:

Rhonda L. Daviston, Esquire  
Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
400 North Street  
Harrisburg, PA 17120

Karen S. Miller Orner, Esq.  
Mcneese Wallace & Nurick  
100 Pine Street  
Harrisburg, PA 17108-1166

Thomas M. Cafrey, Esq.  
Norris McLaughlin & Marcus  
515 West Hamilton Street, Suite 502  
Allentown, PA 18101

Charles Fonzone, Esq.  
Gross Mcginley, LLP  
P.O. Box 4060  
33 south Seventh Street  
Allentown, PA 18105

Frank G. Procyk, Esquire  
Fonzone & Ashley  
33 South Seventh Street  
P.O. Box 4180  
Allentown, PA 18105-4180

David C. Hart, Manager  
Pennsylvania Public Utility Commission  
Rail Safety Division  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Pete Petree  
Allentown Lines, Inc.  
P.O. Box 788  
Nicholasville, KY 40340

Wayne Grimm, Secretary  
Planning Commission  
3161 Brynwood Drive  
Whitehall, PA 18052

Debbie Hawley  
R.J. Corman Railroad Company  
One Jay Station  
P.O. Box 788  
Nickolasville, KY 40356

Matthew R. Sorrentino  
Lehigh County Government Center  
17 South Seventh Street  
Allentown, PA 18101-2400

Keystone Consulting Engineers  
433 East Broad Street  
Bethlehem, PA 18018

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION



---

Alicia Adair, Legal Assistant to  
Nicholas D. Mertens  
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: December 18, 2015