

LEYMARIE CLARK LONG, P.C.

Attorneys at Law

EDWARD LEYMARIE, JR.
ed@lclpc.com

PHILLIP L. CLARK, JR.
phillip@lclpc.com

RYAN C. LONG
ryan@lclpc.com

RECEIVED
2016 JAN -8 AM 9:51
PA.P.U.C.
SECRETARY'S BUREAU

Ellwood City Office:
423 Sixth Street
Ellwood City, PA 16117
p: (724) 752-1583
f: (724) 752-9038

New Castle Office:
1429 New Butler Road
Suite 8, Second Floor
New Castle, PA 16101
p:(724) 923-4500
f: (724) 698-7665

January 5, 2016

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

**RE: Borough of Ellwood City v. CSX Transportation, Inc., Lawrence County, and
Pennsylvania Department of Transportation
PUC Docket Nos. C-2015-2513384 and C-2015-2513130**

Dear Secretary Chiavetta:

Enclosed for filing is the Borough's Reply to New Matter concerning the above captioned matter.
A copy of the same was forwarded to all interested parties of record as of this date.

Sincerely,

LEYMARIE CLARK LONG, P.C.

Edward Leymarie, Jr., Esquire

EL/lls

Enclosure

cc: Benjamin C. Dunlap, Jr., Esquire (w/enc.)
Thomas W. Leslie, Esquire (w/enc.)
William J. Cressler, Esquire (w/enc.)
Nicholas D. Mertens, Esquire (w/enc.)
Derek Mihaly, CSX Project Manager (w/enc.)
William V. Gentilman, Property Manager (w/enc.)
Eric M. Hocky, Esquire (w/enc.)

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED
2016 JAN -8 AM 9:51
PA.P.U.C.
SECRETARY'S BUREAU

BOROUGH OF ELLWOOD CITY, :
 :
 :
 Complainant, :
 :
 vs. : **Docket No. C-2015-2513130**
 : **and**
 : **Docket No. C-2015-2513384**
 :
 CSX TRANSPORTATION, INC.; :
 LAWRENCE COUNTY; AND :
 PENNSYLVANIA DEPARTMENT OF :
 TRANSPORTATION, :
 :
 :
 Respondent. :

REPLY TO NEW MATTER

NOW COMES the Complainant, BOROUGH OF ELLWOOD CITY, by and through its counsel, Edward Leymarie, Jr., Esquire and replies to the New Matter of CSX Transportation, Inc. accordingly:

11. This paragraph requires no reply in that it is merely an incorporation clause.
12. Admitted.
13. Admitted.
14. Admitted.
15. Admitted. By way of further averment, the Borough of Ellwood City agreed to this provision needing the right-of-way for their new wastewater system being implemented. Any delay to the implementation of said system would have caused harm to the Borough of Ellwood City and the Connoquenessing Creek.
16. Admitted. By way of further averment, the Borough of Ellwood City agreed to this provision needing the right-of-way for their new wastewater system being implemented. Any delay to the implementation of said system would have caused harm to the Borough of Ellwood City and the Connoquenessing Creek.
17. Admitted.

18. Denied. The repairs needed to restore the Fifth Street Underpass to a safe condition extend well beyond cosmetic repairs. Such repairs being born by the Borough of Ellwood City would be unjust, unreasonable, inequitable and otherwise contrary to the interests and well being of this Commonwealth.

19. Admitted in part, denied in part. It is admitted that the Borough of Ellwood City has been responsible for the cosmetic maintenance of the Fifth Street Underpass. It is specifically denied that the current deteriorated condition of the structure falls within those parameters. Rather, to the contrary, the depth of the repairs necessitated clearly fall outside the cosmetic repair boundary.

20. Denied. The Borough of Ellwood City was forced to enter into said Agreement in order to timely construct a new wastewater treatment plan, the same which was a part of a corrective action plan entered into with the Commonwealth of Pennsylvania.

21. Denied. The Borough is trying to correct an unjust and unreasonable situation with regard to the maintenance of the structure owned by Respondent, CSX Transportation, Inc.

22. Admitted.

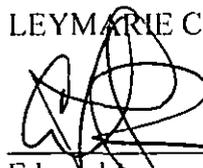
23. Denied. The Private Road Grade Crossing Agreement is unjust, unreasonable, inequitable and contrary to public interest.

24. Admitted.

WHEREFORE, Complainant, Borough of Ellwood City prays that this Commission find the Private Road Grade Crossing Agreement unjust, unreasonable, inequitable and contrary to public interest and grant the relief requested.

Respectfully Submitted,

LEYMARIE CLARK LONG, P.C.



Edward Leymarie, Jr., Esquire
Solicitor, Borough of Ellwood City

CERTIFICATE OF SERVICE

I, **Edward Leymarie, Jr., Esquire**, counsel for the Borough of Ellwood City, hereby certifies that a true and correct copy of the within **Reply to New Matter** was served upon the following individual(s) in the following ways and manners _____ day of January, 2016:

Via first class mail, postage prepaid:

Benjamin C. Dunlap, Jr.
Nauman Smith Shissler & Hall, LLP
200 North 3rd Street
18th Floor
Harrisburg, PA 17101

Eric M. Hocky, Esquire
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103

Thomas W. Leslie, Esquire
Lawrence County - Solicitor
430 Court Street
New Castle, PA 16101

William V. Gentilman, Property Manager
Buffalo & Pittsburgh Railroad, Inc.
P.O. Box 336
Warren, PA 16365-0336

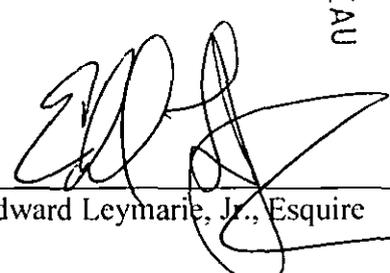
William J. Cressler, Chief Counsel
Office of Chief Counsel
Commonwealth of Pennsylvania
Department of Transportation
P.O. Box 8212
Harrisburg, PA 17105-8212

Derek Mihaly, Project Manager
CSX Transportation
4 Neshaminy Interplex, Suite 205
Trevose, PA 19053

Nicholas D. Mertens, Asst. Counsel
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel
P.O.Box 8212
Harrisburg, PA 17105-8212

RECEIVED
2016 JAN - 8 AM 9: 51
PA.P.U.C.
SECRETARY'S BUREAU

BY:



Edward Leymarie, Jr., Esquire



Leymarie Clark Long, P.C.
Attorneys at Law
423 Sixth Street
Ellwood City, PA 16117



UNITED STATES POSTAGE
PITNEY BOWES
02 1P \$ 000.48⁵
0001790692 JAN 05 2016
MAILED FROM ZIP CODE 16117

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