

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Whitehall Township

v.

R.J. Corman Railroad Company

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C-20054822

DOCUMENT  
FOLDER

PROCEDURAL ORDER

A Prehearing Conference was held in this case on Thursday, March 2, 2006, at 10:00 a.m. All parties participated and presented prehearing memoranda in advance of the Prehearing Conference.

I noted the appearances of Frank G. Procyk, Esquire, and Charles Falzone, Esquire, on behalf of Complainant ("Township" or "Applicant"); Janet L. Miller, Esquire, on behalf of R.J. Corman Railroad Company ("R.J. Corman" or "Respondent"); Gina D'Alfonso, Esquire, on behalf of the Commonwealth of Pennsylvania, Department of Transportation ("PennDOT"); Rhonda L. Daviston, Esquire, on behalf of the Pennsylvania Public Utility Commission's Law Bureau; and Lee Mescolotto, Esquire, on behalf of the County of Lehigh.

The following matters were addressed: (1) preliminary matters; (2) issues for the hearing; (3) clarification of whether the 1956 Commission Order appended to the Township's Complaint was a complete copy; (4) procedural schedule; (5) service of documents; (6) any discovery modifications; (7) need for a Protective Order; and (8) possible settlement or stipulations. These matters are further discussed below.

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### Preliminary Matters

The County of Lehigh had preliminarily raised the question of whether it was a proper party to this proceeding. I ruled that it was a proper party and would not be released at this time. Tr. 6.

The County of Lehigh also raised a jurisdictional issue in its pleadings but, in the Prehearing Conference, indicated that it was not going to be questioning jurisdiction, based upon certain photos that it had just reviewed. Tr. 17.

### Issues

The parties listed various issues that they proposed to address at the hearing. I distributed copies of Questions and Procedure that had been prepared by the Commission's Rail Safety Division, and which are appended to this Procedural Order. I will direct that the parties address these Questions and Procedure in the record of this proceeding, as appropriate.

The parties' Prehearing Memoranda also were to address the proposed witnesses associated with the issues. Respondent did not yet identify its witnesses. The issues which it proposes to address, at this point, do not appear to depend upon information not within its control; therefore, potential witnesses should be identifiable. I will direct that Respondent provide its witness list on its currently identified issues no later than April 21, 2006. This list can be modified as necessary if and when additional issues are identified.

### Commission's 1956 Order

I requested that the Township ascertain whether the Commission's 1956 Order, appended to the Complaint, was a full and complete copy. The Township agreed to provide a full copy of that Order to me, and that was done by cover letter dated March 3, 2006.

Procedural Schedule

The parties agreed upon the following procedural schedule, which assumes the normal 21-day period for transcript delivery:

Discovery deadline	May 12, 2006
Direct Testimony of all parties	June 9, 2006
Rebuttal Testimony of all parties	June 23, 2006
Surrebuttal Testimony/Outlines	June 27, 2006
Evidentiary Hearings In Harrisburg	June 29-30, 2006
Evidentiary Record Closes	June 30, 2006
Main Brief	August 3, 2006
Reply Brief	August 18, 2006

The above dates are all in-hand dates. At the conclusion of the hearings, I will provide further briefing instruction.

Service of documents

The parties agreed that they will accept electronic delivery of documents on or before the due dates, followed by hard copy by first class mail, express mail, or interoffice mail, as constituting "in hand" service. Tr. 19. I will also accept service of documents in this manner, but requested that I be provided an electronic version of all documents in Word 2003, if possible.

Discovery modifications

The parties did not request any modification of the discovery deadlines provided for in the Commission's procedural regulations.

Protective Order

The parties did not anticipate a need for a Protective Order. Tr. 20.

Settlement discussions

Settlement discussions may result as an outcome of a field visit scheduled in April. I encouraged the parties to continue with their discussions to achieve either a full settlement or stipulations, to reduce hearing time and costs.

THEREFORE,

IT IS ORDERED:

1. That the procedural schedule and other matters set forth herein are adopted for this proceeding;
2. That the parties shall address the attached Questions and Procedure in their testimony, as appropriate;
3. That, except for good cause, any requests for a change in the established deadlines must be submitted to me in writing no later than five (5) days prior to the due date. 52 Pa. Code §1.15(b). Requests for changes must state the agreement or opposition of other parties,

and must be sent to me and all parties of record. The address is: Administrative Law Judge  
Kandace F. Melillo, Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA  
17105-3265;

4. That briefs are to comply with 52 Pa. Code §§5.501 and 5.502, with the understanding that proposed findings of fact, conclusions of law, and ordering paragraphs are optional;

5. That when filing exceptions and reply exceptions, the parties shall serve a copy on the Commission's Office of Special Assistants;

6. That Respondent shall provide a list of its proposed witnesses associated with issues identified in its Prehearing Memorandum, no later than April 21, 2006.

Date: March 14, 2006

Kandace F. Melillo  
Kandace F. Melillo  
Administrative Law Judge

## QUESTIONS AND PROCEDURE

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1. Whitehall Township (complainant) submit testimony describing the general location of the rail-highway crossing involved in this proceeding.
2. Complainant submit testimony describing the general type of the wall along Lehigh Avenue, when it was built, and the general physical condition thereof.
3. Complainant state its present obligation with respect to the maintenance of the Lehigh Avenue Wall.
4. Complainant state the nature, type, extent, date, cost and other pertinent details as to any recorded substantial items of maintenance and/or repairs performed on the wall by it or its contractor.
5. Complainant state whether the existing condition is adequate for the convenience and safety of the public or should be altered or rehabilitated, and, if so, submit testimony regarding the general nature and extent of the work or changes, if any, which the complainant deems advisable to provide a safe and convenient condition at this location.
6. Complainant state whether it has prepared any inspection reports, plans or cost estimates as may be required for work necessary or advisable at this location.
7. Complainant submit testimony as to what portion, if any, of any construction work it will agree to perform; what portion, if any, of the cost of same and future maintenance that it will agree to bear; and the portions, if any, of said work and costs thereof which should be performed and borne by each of the parties hereto.
8. R. J. Corman Railroad Company (RJC) submit testimony as to the exact corporate name of the owners and operators of the line of railroad located at this location, including the number of tracks and the volume, class and approximate speed of all trains operated daily thereon, and whether any significant changes to such operations are contemplated in the foreseeable future.
9. RJC state the approximate date of construction of the subject retaining wall and any significant changes that have been made to it in the past which have affected or altered the structure.
10. RJC state its present obligation with respect to maintenance of the existing wall.

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11. RJC State the nature and type, extent, date, cost and other pertinent specific details as to any recorded substantial items of maintenance and/or repair performed on the existing wall structure by the railroad or its contractor.
12. RJC state whether the existing wall is adequate for the convenience and safety of the public or should be altered or rehabilitated, and, if so, submit testimony regarding the general nature and extent of all work or changes; if any, which the railroad deems advisable to provide a safe and convenient crossing at this location.
13. RJC state whether it will agree to prepare any inspection reports, plans or cost estimates as may be required for any work necessary or advisable at this location.
14. RJC submit testimony as to what portion, if any, of any construction work that it will agree to perform; what portion, if any, of the cost of same and future maintenance that it will agree to bear; and the portions, if any, of said work and costs thereof which should be performed and borne by the other parties hereto.
15. Pennsylvania Department of Transportation (PennDOT) state its present obligation with respect to maintenance of the subject wall structure.
16. PennDOT state whether the existing wall structure is adequate for the convenience and safety of the public or should be altered or rehabilitated, and, if so submit testimony regarding the general nature and extent of all work or changes, if any, which PennDOT deems advisable to provide a safe and convenient crossing at this location.
17. That PennDOT submit testimony as to what portion, if any, of any construction work that it will agree to perform; and what portion, if any, of the costs of same or future maintenance it will agree to bear; and the portions, if any, of said work and costs thereof which should be performed or borne by each of the other parties hereto.
18. Query whether any of the other parties desires to submit any additional relevant testimony to this proceeding.

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FRANK G PROCYK ESQUIRE  
CHARLES FONZONE ESQUIRE  
FONZONE & ASHLEY  
33 SOUTH 7TH STREET  
PO BOX 4180  
ALLENTOWN PA 18105-4180

GINA D'ALFONZO ASSISTANT CHIEF  
COUNSEL  
PENNDOT OFFICE OF CHIEF  
COUNSEL  
9TH FLOOR KEYSTONE  
PO BOX 8212  
HARRISBURG PA 17105-8212

RHONDA DAVISTON ESQUIRE  
PUC LAW BUREAU  
400 NORTH STREET  
3 WEST KEYSTONE  
HARRISBURG PA 17120  
,

JANET L MILLER ESQUIRE  
HAWKE MCKEON SNISCAK &  
KENNARD LLP  
100 NORTH TENTH STREET  
PO BOX 1778  
HARRISBURG PA 17105-1778

LEE D MESCOLOTTO ESQUIRE  
LEHIGH COUNTY  
535 HIGH STREET  
PO BOX 792  
POTTSTOWN PA 19464