

COMMONWEALTH OF PENNSYLVANIA
 DEPARTMENT OF TRANSPORTATION
 OFFICE OF CHIEF COUNSEL
 REAL PROPERTY DIVISION
 POST OFFICE BOX 8212
 HARRISBURG, PA 17105-8212
 TELEPHONE: (717) 787-3128
 FACSIMILE: (717) 772-2741



December 1, 2006

James J. McNulty, Secretary
 Pennsylvania Public Utility Commission
 P.O. Box 3265
 Harrisburg, PA 17105-3265

ORIGINAL

RE: Docket No. C-20054822

Dear Secretary McNulty:

Enclosed for filing please find the original and three (3) copies of the **Petition for Reconsideration** in the above-captioned matter.

I hereby certify that a copy of the Department's **Petition** has been sent to all parties of record as indicated on the **CERTIFICATE OF SERVICE**.

Very truly yours,

Gina M. D'Alfonso
 Assistant Counsel-in-Charge

220/GMD
 Enclosures

cc: Parties of Record
 Gary C. Fawver, P.E., Chief, Utilities and Right-of-Way Section, 7th Floor
 David McGuckin, P.E., Grade Crossing Engineer, District 5

DOCUMENT
 FOLDER

2005 DEC -1 PM 8:05
 SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Whitehall Township :
 :
 v. : C-20054822
 R.J. Corman Railroad Company, :
 Lehigh County, :
 Commonwealth of Pennsylvania, :
 Department of Transportation :

2005 DEC -1 AM 8:05
SECRETARY'S BUREAU

PETITION FOR RECONSIDERATION OF THE INTERIM ORDER DATED
NOVEMBER 20, 2006

AND NOW, comes the Commonwealth of Pennsylvania, Department of Transportation (Department), by and through its counsel, Gina M. D'Alfonso, Assistant Counsel in Charge, in its Petition for Reconsideration of the Interim Order respectfully represents:

1. The name and address of your Petitioner is:

Commonwealth of Pennsylvania
Department of Transportation
Bureau of Design
P.O. Box 3362
Harrisburg, Pennsylvania 17105-3362

2. The name and address of Counsel for the Petitioner is:

Gina M. D'Alfonso
Assistant Counsel in Charge
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel
P.O. Box 8212
Harrisburg, Pennsylvania 17105-8212

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3. On November 21, 2006, the Department was served electronically with an Interim Order dated November 20, 2006, reopening the record and directing the Department to perform an engineering study at its initial cost and expense by May 21, 2006.¹

4. The Department respectfully requests that the Court reconsider the Interim Order for the reasons set forth below.

5. The jurisdiction of the Commission in this matter was raised by R. J. Corman and is addressed in its main brief. The parties have not had full opportunity to litigate the jurisdictional issue pending before the Commission. Therefore, it is not just and reasonable for this Court to order the Department, or any party for that matter, to bear any additional costs in a matter where the question of subject matter jurisdiction of the Public Utility Commission is still outstanding.

6. If it is determined that the Commission has subject matter jurisdiction in this matter, then it is still not just and reasonable to order the Department to perform the engineering study outlined in the Interim Order. The Complaint in this matter was filed by Glenn D. Solt on behalf of Whitehall Township. The Complainant has the burden of proof in this matter. If the record has been deemed incomplete, then the Complainant should bear the burden of supplementing the record as ordered by the Administrative Law Judge. Further, the Complainant proposed a repair plan and should be the party to provide the engineering to support the scope of work proposed at the hearing.

¹ A signed copy of the order was received by mail on November 22, 2006.

7. There is no evidence in the record supporting even an initial assignment of costs to the Department in this matter. The record is clear that in 1976 Lehigh Avenue at this location was deleted from the State Highway System and once again became a local road. Department Statement 1, Page 3; Department Exhibit A.² Upon the deletion of the road from the state highway system, the Department no longer had jurisdiction over or maintenance responsibility for the road.³ This interim assignment of costs to the Department is neither just and reasonable nor supported by the evidence of record.

8. If this Court still deems it appropriate for the Department to perform the engineering study, then this Court must also be apprised of the following time constraints the Department would have to overcome to use the public funds to perform the study.

9. The Department would have to find a funding source and would have to request the state and/or federal capital budget funds from the Lehigh Valley Transportation Study (LVTS) Improvement Program. LVTS would first have to identify the source for the funds since the funding is all currently assigned to other projects. The LVTS voting committee (17 members) would have to vote to approve the use of the funds which means moving the funding from another project. The Department has two (2) votes on the committee. This approval process would take up to four (4) months.

² 36 P.S. §1738-2

³ See the Department's main brief for the complete argument on this issue.

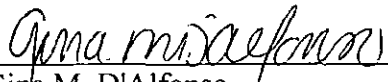
10. Another source of funds is the Department's Lehigh County maintenance funds which is very limited. At this time in the fiscal year, the funds are committed to paving contracts or reserved for winter snow removal operations.

11. If funding is secured the Department would have to select a consultant to perform the study since the Department does not have the staff to do so. This process which includes: a scoping field view and estimate preparation, advertising and selecting a consultant, executing an agreement with the consultant to perform the work. This process can take up to eight (8) months. Once a consultant is selected it is estimated that the study would take 2-5 months.

12. If after review of the above the Department is still ordered to perform the study, the Department requests that it be given 18 months to do so. Given the fiscal requirements, the time needed to hire a consultant if funding is made available by LVTS and the time needed to actually perform the study, it is impossible to do so within 6 months. Another party that does not have similar constraints may be in a better position to perform the study in the time period ordered by the Court.

WHEREFORE, the Department of Transportation respectfully requests that the Court reconsider its order dated November 20, 2006, in light of the above.

Respectfully submitted,



Gina M. D'Alfonso
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 1, 2006

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION


SECRETARY'S BUREAU

2006 DEC -1 AM 8:05

Whitehall Township :
 :
 v. : C-20054822
 R.J. Corman Railroad Company, :
 Lehigh County, :
 Commonwealth of Pennsylvania, :
 Department of Transportation :

VERIFICATION

I, David L. McGuckin, P.E.; Grade Crossing Engineer, Commonwealth of Pennsylvania, Department of Transportation, in the foregoing document, make the following statement subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsifications to authority, and do state that as Grade Crossing Engineer for the Commonwealth of Pennsylvania, Department of Transportation, I am authorized to make this statement on behalf of the Commonwealth of Pennsylvania, Department of Transportation, and that the facts set forth in the foregoing document are true and correct to the best of my information, knowledge and belief.


David L. McGuckin, P.E.
District 5-0
Grade Crossing Engineer

DATED: December 1, 2006

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Whitehall Township	:	
	:	
v.	:	C-20054822
R.J. Corman Railroad Company,	:	
Lehigh County,	:	
Commonwealth of Pennsylvania,	:	
Department of Transportation	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the *Department's Petition for Reconsideration* was served upon the parties listed below by first-class mail, postage-prepaid this day, the 1st day of December, 2006:

Honorable Kandace F. Melillo
Administrative Law Judge
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Frank G. Procyk, Esquire
Charles Falzone, Esquire
33 South 7th Street
Allentown, PA 18105

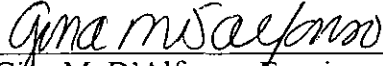
Thomas Caffrey, Esquire
535 High Street
P.O. Box 792
Pottstown, PA 19464

Janet L. Miller, Esquire
100 North 10th Street
Harrisburg, PA 17101

SECRETARY'S BUREAU
2005 DEC -1 AM 8:05

Whitehall Township v. R.J. Corman Railroad
Docket Nos.: C-20054822
Certificate of Service

Rhonda L. Daviston, Esquire
Law Bureau
P.O. Box 3265
Harrisburg, PA 17105-3265



Gina M. D'Alfonso, Esquire
Office of Chief Counsel
Keystone Building – 9th Floor
P.O. Box 8212
Harrisburg, PA 17105-8212
Telephone No. (717) 787-3128

DATED: December 1, 2006

LAW OFFICES
FONZONE AND ASHLEY
33 SOUTH SEVENTH STREET
P.O. BOX 4180
ALLENTOWN, PENNSYLVANIA 18105-4180

TEL. (610) 433-0121
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CHARLES J. FONZONE
JOHN W. ASHLEY

CHRISTOPHER W. GITTINGER

FRANCES A. FRUHWIRTH
MARYANN E. HIGGINS
FRANK G. PROCYK

OF COUNSEL
JAMES L. WEIRBACH

December 7, 2006

ORIGINAL

Mr. James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**RE: Whitehall Township vs. R.J. Corman Railroad Company/
Allentown Lines, Inc., et al.
P.U.C. Docket No. C20054822
Our File No. 48-2004-529**

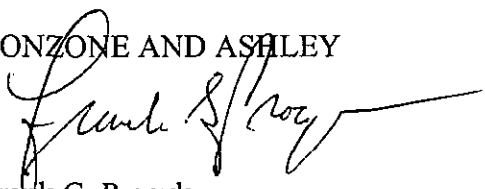
Dear Mr. McNulty:

Enclosed for filing please find the original and three copies of an Answer filed by the Complainant, Whitehall Township, to the Petition for Reconsideration filed by the Commonwealth of Pennsylvania, Department of Transportation, in the above-captioned matter.

I hereby certify that a copy of the Complainant's Answer to the Petition for Reconsideration has been sent to all parties of record as indicated on the Certificate of Service enclosed herein.

Should you have any questions in this matter, please contact this office.

**DOCUMENT
FOLDER**

Very truly yours,
FONZONE AND ASHLEY

Frank G. Procyk

RECEIVED
2006 DEC 11 AM 8:58
P.A.P.U.C.
SECRETARY'S BUREAU

BTL

FGP:sw
Enclosure
Cc: The Honorable Kandace F. Melillo (w/encl)
Janet L. Miller, Esq. (w/encl)
Gina M. D'Alfonso, Esq. (w/encl)
Rhonda L. Daviston, Esq. (w/encl)
Thomas Caffrey, Esq. (w/encl)

63

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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P.U.C.
SECRETARY'S BUREAU

GLENN D. SOLT, WHITEHALL TOWNSHIP)
EXECUTIVE, C/O WHITEHALL TOWNSHIP)
COMPLAINANT)
VS.)
R.J. CORMAN RAILROAD COMPANY/)
ALLENTOWN LINES, INC., LEHIGH COUNTY-)
SOLICITOR, COMMONWEALTH OF)
PENNSYLVANIA, DEPARTMENT OF)
TRANSPORTATION)
RESPONDENTS)

COMPLAINT DOCKET
NO. C-20054822

**ANSWER BY COMPLAINANT, WHITEHALL TOWNSHIP, IN OPPOSITION TO THE
PETITION FOR RECONSIDERATION OF THE INTERIM ORDER DATED NOVEMBER
20, 2006 FILED BY THE RESPONDENT, COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION**

AND NOW, comes the Complainant, Whitehall Township, by and through its counsel of record, Frank G. Procyk, Esquire of Fonzone and Ashley, and files the within Answer In Opposition to the Petition for Reconsideration of the Interim Order filed by the Respondent, Commonwealth of Pennsylvania, Department of Transportation, as follows:

1. The allegations in paragraph 1 of the Petition do not pertain to the answering Claimant, and, therefore, no further response is required.
2. The allegations of paragraph 2 of the Petition do not pertain to the answering Claimant, and, therefore, no further response is required.
3. The answering Claimant, after reasonable investigation, is unable to admit or deny the allegations contained in Paragraph 3 of the Petition for Reconsideration, and therefore, the same are denied, and proof thereof is demanded.

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4. The answering Claimant specifically denies that this Honorable Court should reconsider the Interim Order entered on November 20, 2006, which re-opens the instant record to allow for an engineering study to be performed by the Commonwealth of Pennsylvania, Department of Transportation at its initial cost, and proof thereof is demanded.

5. The answering Claimant avers that even though the issue of jurisdiction by the Pennsylvania Utility Commission has been raised in this proceeding by respondent, R.J. Corman Railroad Company, it does not necessarily follow that this Honorable Court could not impose the initial obligation upon the Commonwealth of Pennsylvania, Department of Transportation, to perform an engineering study outlined in the Interim Order, especially since PennDot's own witness, Jack W. Hubbard, testified that an engineering study would be critical to any repair plan for the retaining wall, and he admitted during redirect examination on June 29, 2006 that the Department of Transportation had not performed any such study.

6. Answering Complainant avers and believes that it is still just and reasonable for this Honorable Court to order the Commonwealth of Pennsylvania, Department of Transportation to perform the engineering study at its own initial cost as outlined in the Interim Order as a reasonable exercise of discretion by this Honorable Court in accordance with 52 Pa. Code Sec. 5.404(a) and 52 Pa. Code Sec. 5.571(d), where public interest requires the re-opening of the record. It is specifically denied that the answering Complainant should bear any initial burden of supplementing the record as Ordered by the Administrative Law Judge based on the Order dated November 20, 2006, and avers to the contrary, that the initial placement of that cost should remain as imposed by this Honorable Court against the Commonwealth of Pennsylvania, Department of Transportation based on the testimony given by Hack W. Hubbard at the hearing on June 29, 2006.

7. The allegations in paragraph 7 of the Petition are conclusions of law which are denied and deemed at issue. In further answer, the answering Complainant avers that regardless of the evidence in the record which may or may not support the initial assignment of costs against the Commonwealth of Pennsylvania, Department of Transportation to perform the engineering study ordered by the Court based on the Interim Order dated November 20, 2006, this Honorable Court does have the right to reasonably exercise its discretion pursuant to the Rules of Administrative Practice and Procedure for the PUC in re-opening the record to receive further evidence as long as the public interest requires. This Honorable Court has concluded that such interest exists and has done that in this matter.

8. Answering Complainant, after reasonable investigation, is unable to admit or deny the allegations contained in paragraph 8 of the Petition for Reconsideration, and therefore, the same are denied, and proof thereof is demanded.

9. Answering Complainant, after reasonable investigation, is unable to admit or deny the allegations contained in paragraph 9 of the Petition for Reconsideration, and therefore, the same are denied, and proof thereof is demanded.

10. Answering Complainant, after reasonable investigation, is unable to admit or deny the allegations contained in paragraph 10 of the Petition for Reconsideration, and therefore, the same are denied, and proof thereof is demanded.

11. Answering Complainant, after reasonable investigation, is unable to admit or deny the allegations contained in paragraph 11 of the Petition for Reconsideration, and therefore, the same are denied, and proof thereof is demanded.

12. Answering Complainant, after reasonable investigation, is unable to admit or deny the allegations contained in paragraph 12 of the Petition for Reconsideration, and therefore, the same are

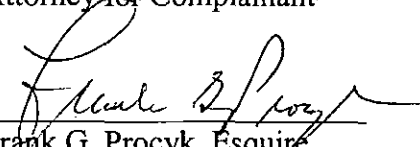
denied, and proof thereof is demanded. It is specifically denied that the answering Complainant should be obligated initially to incur the costs for performing at its initial cost the engineering study proposed by the Court as set forth in its Interim Order of November 20, 2006, especially since the Complainant presented evidence at the hearing on June 29, 2006 that there was no drainage problem or issue along South Lehigh Avenue with regard to the deterioration of the retaining wall below that road north of the Race Street Bridge in Whitehall Township.

WHEREFORE, the answering Complainant, Whitehall Township, respectfully requests that your Honorable Court deny the Petition for Reconsideration of the Interim Order dated November 20, 2006 filed by the Commonwealth of Pennsylvania, Department of Transportation.

Respectfully Submitted:

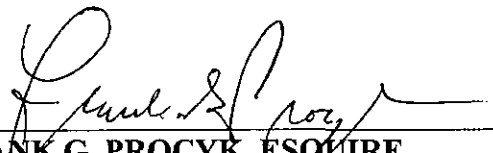
FONZONE AND ASHLEY
Attorney for Complainant

By:


Frank G. Procyk, Esquire
Attorney I.D. #33317
33 South Seventh Street
P.O. Box 4180
Allentown, PA 18105-4180
Phone: (610) 433-0121

VERIFICATION

I, FRANK G. PROCYK, ESQUIRE, of FONZONE AND ASHLEY, make the following statements subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsifications to authority, and do state that I am authorized to make this statement on behalf of the Complainant, Whitehall Township, in order to timely file the within Answer to the Petition for Reconsideration, and that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief as counsel for the Complainant, Whitehall Township.


FRANK G. PROCYK, ESQUIRE
FONZONE AND ASHLEY

Date: December 7, 2006

CERTIFICATE OF SERVICE

I, Frank G. Procyk, Esquire, of FONZONE AND ASHLEY, hereby certify that I mailed true and correct copy of Complainant's Answer to the Petition for Reconsideration filed by Defendant, Commonwealth of Pennsylvania, Department of Transportation, of the Interim Order by U.S. Mail, postage prepaid on December 7, 2006 to:

The Honorable Kandace F. Melillo
Administrative Law Judge
Pennsylvania Public Utility Commission
The Keystone Building
400 North Street, P.O. Box 3265
Harrisburg, PA 17105-3265

Janet L. Miller, Esq.
Hawke McKeon & Associates
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105-1778

Gina M. D'Alfonso, Esq.
Assistant Counsel
9th Floor Keystone Bldg.
P.O. Box 8212
Harrisburg, PA 17105-8212

Rhonda L. Daviston, Esq.
Assistant Counsel, Law Bureau
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Thomas Caffrey, Esq.
Assistant County Solicitor
Lehigh County Government Center
17 South Seventh Street
Allentown, PA 18101-2401

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PA. PUBLIC UTILITY
SECRETARY'S BUREAU

Respectfully Submitted:
FONZONE AND ASHLEY

By: 

Frank G. Procyk, Esquire
Attorney I.D. #33317
33 South Seventh Street
P.O. Box 4180
Allentown, PA 18105-4180
Phone: (610) 433-0121

COMMONWEALTH OF PENNSYLVANIA

DATE: December 11, 2006

SUBJECT: C-20054822

TO: Office of Special Assistants

FROM: James J. McNulty, Secretary *KB*

Whitehall Township
v.
R. J. Corman Railroad Company, Lehigh County, Commonwealth of
Pennsylvania Department of Transportation

Attached is a copy of a Petition for Reconsideration of Interim Order,
filed by Commonwealth of Pennsylvania, Department of Transportation in
connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

cc: ALJ
TAS

ksb

BTL

DOCUMENT
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DOCKETED
DEC 11 2006

Hawke
 Mckeon
 Sniscak &
 Kennard LLP
ATTORNEYS AT LAW

William T. Hawke
Kevin J. McKeon
Thomas J. Sniscak
Norman James Kennard
Lillian Smith Harris
Scott T. Wyland
Todd S. Stewart
Craig R. Burgraff

Steven D. Snyder
Janet L. Miller
Steven K. Haas
William E. Lehman
Rikardo J. Hull
Katherine E. Lovette
Amy A. Whitney

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmsk-law.com

December 11, 2006

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Filing Room
P.O. Box 3265
Harrisburg, PA 17105-3265

ORIGINAL

RECEIVED 11 PM 12:22
SECRETARY'S BUREAU

RE: Glenn D. Solt, Whitehall Township Executive, c/o Whitehall Township v. RJ Corman Railroad Company/Allentown Lines, Inc., Lehigh County Solicitor and Commonwealth of Pennsylvania, Department of Transportation; Docket No. C-20054822; **ANSWER TO PETITION FOR RECONSIDERATION**

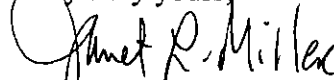
DOCUMENT FOLDER

Dear Mr. McNulty:

Enclosed for filing with the Commission are an original and three (3) copies of the Answer of RJ Corman Railroad Company to the Petition for Reconsideration filed by the Commonwealth of Pennsylvania, Department of Transportation in connection with the above-captioned matter. A copy of this document has been served in accordance with the attached Certificate of Service.

If you have any questions, please feel free to call. Thank you for your attention to this matter.

Very truly yours,



Scott T. Wyland
Janet L. Miller

Counsel for RJ Corman Railroad Company

STW:JLM

Enclosures

cc: Honorable Kandace F. Melillo
Per Certificate of Service

MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

135

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

GLENN D. SOLT,
WHITEHALL TOWNSHIP EXECUTIVE,
C/O WHITEHALL TOWNSHIP,

Complainant

v.

RJ CORMAN RAILROAD COMPANY/
ALLENTOWN LINES, INC.,
LEHIGH COUNTY SOLICITOR, AND
COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,

Respondents

Docket No. C-20054822

ORIGINAL

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DEC 12 2006

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**ANSWER OF RJ CORMAN RAILROAD COMPANY
TO THE PETITION FOR RECONSIDERATION FILED BY
THE COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION**

RJ Corman Railroad Company ("RJ Corman"), by and through its attorneys in this proceeding, Hawke McKeon Sniscak & Kennard LLP, hereby submits its Answer to the Petition for Reconsideration ("Petition") filed on December 1, 2006 by the Commonwealth of Pennsylvania, Department of Transportation ("Department"). The Department seeks reconsideration of the November 20, 2006 Interim Order Reopening the Record for Admission of Additional Evidence issued by Administrative Law Judge ("ALJ") Kandace F. Melillo in the above proceeding. This Interim Order (a) reopens the record of this proceeding; (b) directs the Department to perform an engineering study of the retaining wall along South Lehigh Avenue in Whitehall Township, Lehigh County; and (c) requires the parties to "present evidence" in response to that study. Interim Order

at 1-2. For the reasons set forth below, RJ Corman supports the Department's Petition and agrees that ALJ Melillo should rule on whether the Pennsylvania Public Utility Commission ("Commission") has subject matter jurisdiction over the issues raised in this proceeding before directing additional work and the presentation of additional evidence. In support thereof, RJ Corman responds and avers as follows:

1. ADMITTED.

2. ADMITTED.

3. ADMITTED.

4. ADMITTED.

5. ADMITTED in part; DENIED in part. RJ Corman ADMITS it raised the question of the Commission's subject matter jurisdiction over the issues raised in this proceeding at the end of the June 29, 2006 Initial Hearing held before ALJ Melillo. RJ Corman DENIES, however, that the issue of the Commission's jurisdiction needs to be fully litigated. On the contrary, whether the Commission has jurisdiction to order any party to make repairs to the South Lehigh Avenue retaining wall, as described in the prepared and oral testimony given in this case, is an issue of law and the parties had an opportunity to present legal arguments on this point. Specifically, ALJ Melillo directed the parties to include arguments on the jurisdictional question in the briefs that were filed in this matter. NT 208. The material facts, which show that the area of concern is no closer than 140 feet from a rail-highway crossing, are undisputed and of record. Thus, each party in this case had the opportunity to provide support for or against the Commission's subject matter jurisdiction and the question can be decided by ALJ Melillo on the basis of those arguments.

RJ Corman agrees with the Department that the issue of subject matter jurisdiction should be decided before any party to this proceeding is required to perform additional work and/or present additional testimony. As argued in detail its Briefs,¹ RJ Corman submits the undisputed testimony and evidence presented in this matter clearly proves the portion of the retaining wall that needs to be repaired is no closer than 140 feet from the location where the Race Street Bridge crosses the Lehigh River and the railroad right-of-way. The retaining wall is not located at or within a rail-highway crossing and is, therefore, physically outside the Commission's jurisdictional limits. For this reason, the portion of the retaining wall that needs repaired is not a "utility facility." In addition, no party has alleged the Race Street Bridge, any part of South Lehigh Avenue, or any street or highway that intersects with the Bridge is in need of repair or rehabilitation. Thus, there are no utility facilities at a rail-highway crossing for which work is required.

In her Interim Order, ALJ Melillo states the engineering study she directs the Department to perform is required because "[i]t would not be reasonable to order repairs and to allocate costs" without evidence as to "the cause of the wall's deterioration, a remedy for future deterioration of this nature, and the costs of remediation." Interim Order at 2. Without subject matter jurisdiction, neither ALJ Melillo nor the Commission has statutory authority to direct any party to make repairs or to perform work associated with or in connection with that section of the retaining wall that was identified on the record of this proceeding.

¹ RJ Corman incorporates herein by reference the arguments regarding the Commission's lack of subject matter jurisdiction over this proceeding set forth at pages 4-9 of its Main Brief and at pages 1-4 of its Reply Brief.

If ALJ Melillo finds, as she should, that the Commission has no subject matter jurisdiction to decide the question of what, if any, repairs need to be made to the portion of the South Lehigh Avenue retaining wall identified by the parties, it is not necessary to address the cause of the deterioration or the remedy therefore. Until the question of jurisdiction is decided, it is premature to order the Department, or any other party, to perform additional work related to this case.

6. ADMITTED.

7. ADMITTED.

8. RJ Corman is without sufficient information or knowledge to respond to the statements made in this Paragraph.

9. RJ Corman is without sufficient information or knowledge to respond to the statements made in this Paragraph.

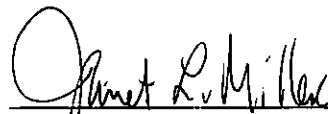
10. RJ Corman is without sufficient information or knowledge to respond to the statements made in this Paragraph.

11. RJ Corman is without sufficient information or knowledge to respond to the statements made in this Paragraph.

12. RJ Corman is without sufficient information or knowledge to respond to the statements made in this Paragraph.

For all the reasons set forth above, RJ Corman Railroad Company respectfully requests that the Petition for Reconsideration filed on December 1, 2006 by the Commonwealth of Pennsylvania, Department of Transportation, be granted and that ALJ Melillo rule on the issue of the Commission's subject matter jurisdiction over the questions presented in this Formal Complaint prior to requiring any party to undertake additional work or present additional evidence.

Respectfully submitted,



Scott T. Wyland (Attorney ID No. 52660)
Janet L. Miller (Attorney ID No. 63491)
Hawke McKeon Sniscak & Kennard LLP
Harrisburg Energy Center
100 North Tenth Street
P. O. Box 1778
Harrisburg, PA 17105-1778
717-236-1300
717-236-4841 (Facsimile)
stwyland@hmsk-law.com
jlmiller@hmsk-law.com

DATED: December 11, 2006

Counsel for RJ Corman Railroad Company

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service via Electronic Mail and First Class Mail:

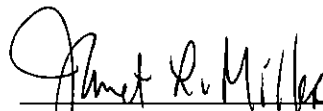
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Harrisburg, PA 17105-3265

Dated this 11th day of December, 2006.



Scott T. Wyland
Janet L. Miller

SECRETARY'S BUREAU

2006 DEC 11 PM 4:22



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE REFER TO
OUR FILE
2006.0038.00

December 12, 2006

VIA HAND DELIVERY

Honorable Kandace F. Melillo
Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**DOCUMENT
FOLDER**

Re: Whitehall Township v. R.J. Corman Railroad Company
Docket No. C-20054822

Dear Judge Melillo:

The Law Bureau will not be submitting a response to the Department of Transportation's Petition for Reconsideration in the above-captioned case. In addition, the Law Bureau does not object to the timetable proposed by the Department of Transportation to perform the engineering study directed by Your Honor. Thank you.

Respectfully yours,

Rhonda L. Daviston
Assistant Counsel
Pennsylvania Public Utility Commission

cc: As per certificate of service
Robert Longwell, Deputy Chief Counsel
David A. Fischer, PE, PUC Rail Safety Division, BTS

RECEIVED
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PENNSYLVANIA
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I hereby certify that I have this 12th day of December 2006, served a true copy of the foregoing document upon the participants listed below, in accordance with the requirements of §1.54 (relating to service by a participant).

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Dated: December 12, 2006

2006 DEC 12 PM 2:52
SECRETARY'S BUREAU

ORIGINAL

Date: December 12, 2006
Subject: C-20054822, Whitehall Township v. R.J. Corman Railroad Co., Lehigh County, Commonwealth of Pennsylvania Department of Transportation
To: James P. McNulty, Secretary
From: Eric A. Rohrbaugh, Supervisor
OALJ Legal Division 

By memo dated December 11, 2006 (copy attached) your Office had a Petition for Reconsideration of Interim Order filed by PennDot assigned to OSA. After consulting OSA, this Petition should be **reassigned** to the Office of Administrative Law Judge for handling. PennDot has requested the assigned ALJ to reconsider an interim order issued by the ALJ on November 20, 2006.

Should you have any questions, please do not hesitate to contact me.

Thank you.

Attachment

Pc: CALJ Smith
Katherine Sophy, Senior Special Assistant
ALJ Melillo
TAS

SECRETARY'S BUREAU
2006 DEC 13 AM 8:34

MEMO

PUBLIC UTILITY COMMISSION

ORIGINAL

December
November 13, 2006

Subject: C-20054822; Whitehall Township v RJ Corman Railroad Company, Lehigh County, Commonwealth of Pennsylvania, Department of Transportation

To: James McNulty, Secretary

From: Cheryl Walker Davis, Director
Office of Special Assistants *CWD*

The Office of Special Assistants received the assignment in the above-referenced matter on December 11, 2006 of the Commonwealth of Pennsylvania Department of Transportation's Petition for Reconsideration of Interim Order dated November 20, 2006. Upon review of the Petition it has been determined that the Interim Order referenced in the Petition is an ALJ Order, not a Commission Order, and should be reassigned to the OALJ.

Therefore, OSA is requesting that your office remove this matter from our open assignments. Thank you for your attention to this matter. If you have any questions or concerns, please feel free to call Bobbi Lathrop at 772-8584. Thank you.

DOCUMENT
FOLDER

DOCKETED
DEC 14 2006

SECRETARY'S BUREAU

2006 DEC 14 PM 2:35

BTL

COMMONWEALTH OF PENNSYLVANIA

DATE: December 14, 2006
SUBJECT: C-20054822
TO: Office of Administrative Law Judge
FROM: James J. McNulty, Secretary *KB*

Whitehall Township
v.
R. J. Corman Railroad Co.

Per memo dated December 13, 2006, from Cheryl Walker Davis, Director, Office of Special Assistants, the above docketed proceeding is being reassigned to your Office for appropriate action.

ksb

cc: OSA

DOCUMENT
FOLDER

DOCKETED
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