

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Whitehall Township	:	
	:	
v.	:	C-20054822
	:	
RJ Corman Railroad Company	:	

**PREHEARING CONFERENCE ORDER #2**

On July 26, 2007, the Pennsylvania Public Utility Commission entered an Opinion and Order at Docket Number C-20054822 adopting a Recommended Decision that directed the Pennsylvania Department of Transportation (PennDOT) to perform certain work, at its initial expense, regarding a retaining wall located underneath the Race Street Bridge along South Lehigh Avenue, West Catasauqua, Whitehall Township. The Order further stated that, upon completion of the repairs, and upon receipt of a written request by PennDOT, a proceeding will be scheduled for a hearing to receive evidence relative to the final allocation of costs incurred by PennDOT, assignment of responsibility for future maintenance and any other matters relevant to this proceeding.

On June 19, 2015, PennDOT filed with the Commission a Petition Requesting a Hearing for the Purpose of Allocating Future Maintenance and Costs Associated with the Commission's Opinion and Order Entered July 26, 2007 (Petition). In its Petition, PennDOT noted that the Commission previously allowed it to request the final allocation of costs incurred pursuant to the July 26, 2007 Order, as well as assignment of responsibility for future maintenance and any other matters relevant to the proceeding. PennDOT added that it is not willing to assume the costs initially incurred in complying with the July 26, 2007 Order or future maintenance for the retaining wall. PennDOT averred that it is just and reasonable for the Commission to allocate future maintenance of the retaining wall and all associated costs to Whitehall Township. PennDOT concluded the Petition by requesting that a hearing be scheduled to determine the allocation of future maintenance of the retaining wall and all costs incurred by

the Department as a result of the July 26, 2007 Order.

On July 17, 2015, Charles J. Fonzone, Esquire filed an Entry of Appearance on behalf of Whitehall Township.

On November 17, 2015, the Commission issued a Notice scheduling an Initial Prehearing Conference for this matter for Tuesday, December 22, 2015 and assigning me as the Presiding Officer. A Prehearing Conference Order was issued on November 20, 2015 setting forth various requirements that will govern the Initial Prehearing Conference. On December 10, 2015, at the request of counsel, the Initial Prehearing Conference scheduled for Tuesday, December 22, 2015 was continued until January 26, 2016. The Initial Prehearing Conference scheduled for January 26, 2016 was cancelled due to inclement weather and rescheduled for Wednesday, February 10, 2016.

The Initial Prehearing Conference convened on February 10, 2016, as scheduled. The following counsel was present: Nicholas Mertens, Esquire, on behalf of PennDOT; Rhonda Daviston, Esquire, on behalf of the Commission; Thomas Caffrey, Esquire on behalf of Lehigh County; and Charles Fonzone, Esquire, on behalf of Whitehall Township.

During the Initial Prehearing Conference, various procedural matters were discussed. A Scheduling Order dated February 11, 2016 was issued memorializing those procedural matters. Additionally, an Order Directing Publication was issued on February 25, 2016 directing PennDOT to publish notice of the July 12 and 13, 2016 hearing in a newspaper of general circulation in the county where the crossing is located once a week for two consecutive weeks immediately prior to the hearing date, pursuant to Section 3.361(b) of the Commission's regulations.

On March 24, 2016, counsel for PennDOT requested that this matter be referred to the Commission's Mediation Unit for mediation review. PennDOT noted that all parties agree with this request. PennDOT further noted that it is conducting an updated inspection of the retaining wall that is the subject of this proceeding and that an up to date inspection report will give the parties a more recent picture of the present conditions of the wall. PennDOT added that

such information will be helpful during the mediation process and that the litigation schedule should be postponed or continued while the case is being considered for mediation. PennDOT's request for a suspension of the litigation schedule and the matter to be referred to the Commission's mediation unit for mediation review was granted via order dated March 28, 2016. The parties were directed to provide a status report within 90 days of the order indicating whether mediation will continue or a new litigation schedule will be established.

On June 29, 2016, counsel for PennDOT requested via email an additional continuance to further pursue mediation. That request was granted via email with the direction to provide an additional status report within 90 days.

On September 28, 2016, counsel for PennDOT again requested via email a further continuance of this matter. Counsel indicated that settlement discussions have continued and that he was confident that a settlement could be reached by the end of the calendar year. That additional request for a continuance was again granted via email. In addition, however, the parties were reminded that, while the Commission strongly encourages settlement, it discourages cases from lingering. The parties were advised that, as a result, if a settlement is not reached by the end of the calendar year, a further prehearing conference would be scheduled so that a litigation schedule could be established to ensure the case continues to move forward to a resolution.

On December 29, 2016, I inquired with the parties whether a settlement of all issues would be achieved by the end of the calendar year. In response, the parties noted that, although settlement was still possible, several questions remain and additional information exchange was necessary. Therefore, to avoid this case from lingering, a further prehearing conference was scheduled for Tuesday, January 24, 2017 in Hearing Room 3 of the Commonwealth Keystone Building in Harrisburg so that a litigation schedule can be established for this case. Although settlement is still possible, the Commission's regulations can be liberally construed to ensure the just, speedy and inexpensive determination of every action or proceeding. 52 Pa.Code § 1.2(a). Establishing a litigation schedule for this case after more than nine months of settlement efforts will help ensure the just, speedy and inexpensive determination

of this proceeding. Of course, establishing a litigation schedule does not preclude the parties from continuing to engage in settlement discussions.

As a result, the purpose of this prehearing conference order #2 is to confirm the establishment of the further prehearing conference for Tuesday, January 24, 2017 and note that all other provisions of the prehearing conference order dated November 20, 2015 remain in effect, except that parties are directed to file prehearing conference memoranda no later than **Tuesday, January 17, 2017** providing the information requested in paragraph 8 of the November 20, 2015 prehearing conference order.

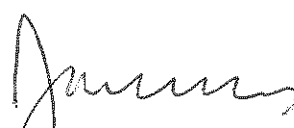
ORDER

THEREFORE,

IT IS ORDERED:

1. That a further prehearing conference is established for this matter for Tuesday, January 24, 2017 in Hearing Room 3 of the Commonwealth Keystone Building in Harrisburg.
2. That the parties are directed to file prehearing conference memoranda no later than **Tuesday, January 17, 2017** providing the information requested in paragraph 8 of the November 20, 2015 prehearing conference order.
3. That all other provisions of the prehearing conference order dated November 20, 2015 remain in effect.

Date: January 3, 2017

  
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Joel H. Cheskis  
Administrative Law Judge

C-20054822 - SOLT, GLENN D., WHITEHALL TOWNSHIP EXE v. R.J. CORMAN  
RAILROAD/COMPANY/ALLENTOWN

REVISED 2/16/16

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