

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

SCHEDULING 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, however, 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 for 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 should be established.

Two additional requests for a suspension of the litigation schedule were subsequently made by the parties so that settlement discussions could continue. Both requests were granted.

On December 29, 2016, I inquired with the parties whether a settlement of all issues would be achieved. 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. Of course, establishing a litigation schedule does not preclude the parties from continuing to engage in settlement discussions. As a result, prehearing conference order #2 was issued confirming the establishment of the further prehearing conference for Tuesday, January 24, 2017. Pursuant to prehearing conference order #2, the parties submitted further prehearing memoranda on January 17, 2017.

The further prehearing conference convened on January 24, 2017, as scheduled. Again, the following counsel was present: Nicholas Mertens, Esquire, on behalf of PennDOT; Rhonda Daviston, Esquire, on behalf of the Commission; and, Thomas Caffrey, Esquire on behalf of Lehigh County. Chris Gittinger, Esquire, appeared on behalf of Whitehall Township.

During the further prehearing conference, the parties agreed to the following procedural schedule:

All parties' pre-served written direct testimony	April 24, 2017
All parties' pre-served written rebuttal testimony	June 26, 2017
Evidentiary hearings in Harrisburg	July 25 th and 26 th , 2017

The parties were reminded that questions and procedures, "Q's and P's," were previously provided and should be addressed in their respective pre-served testimony, as applicable. A discussion was also held regarding the need to publish notice of the evidentiary hearings and the parties were informed that a subsequent order will be issued regarding that matter. Finally, the parties were also reminded that the Commission strongly encourages settlement and that, even though a litigation schedule has been established again for this matter, further efforts toward settlement are not precluded.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the following schedule is adopted for this proceeding:

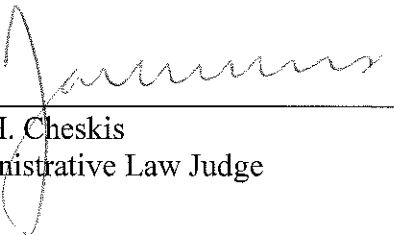
All parties' pre-served written direct testimony	April 24, 2017
All parties' pre-served written rebuttal testimony	June 26, 2017

Evidentiary hearings in Harrisburg	July 25 th and 26 th , 2017
---------------------------------------	---

2. That the parties are encouraged to continue settlement discussions.

3. That all other provisions of the scheduling order issued in this case dated February 11, 2016 remain in effect.

Date: January 26, 2017



Joel H. Cheskis
Administrative Law Judge

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

REVISED 1/28/16

NICHOLAS D MERTENS ESQUIRE
PENNDOT
PO BOX 8212
HARRISBURG PA 17105-8212
717-772-6985

Accepts e-Service

KAREN S MILLER ORNER ESQUIRE
MCNEES WALLACE & NURICK
100 PINE STREET
HARRISBURG PA 17108-1166

OFFICE OF CONSUMER ADVOCATE
555 WALNUT STREET
5TH FLOOR FORUM PLACE
HARRISBURG PA 17101-1923

OFFICE OF SMALL BUSINESS ADVOCATE
300 NORTH 2ND STREET SUITE 202
HARRISBURG PA 17101

WILLIAM J CRESSLER ESQUIRE
PENNDOT
OFFICE OF CHIEF COUNSEL
PO BOX 8212
HARRISBURG PA 17105-8212

RHONDA L DAVISTON ESQUIRE
PA PUC BUREAU OF INVESTIGATION &
ENFORCEMENT
400 NORTH STREET
HARRISBURG PA 17120
717-787-5000

Accepts e-Service

J MCGEE
DAVID MCGUCKIN PE
1002 HAMILTON STREET
ALLENTOWN PA 18101

SEAN M CONCANNON
PENNDOT
PO BOX 8212
HARRISBURG PA 17105

RODNEY REHNERT
PENNDOT DISTRICT 5
1002 HAMILTON STREET
ALLENTOWN PA 18101

CHARLES FONZONE ESQUIRE
GROSS MCGINLEY LLP
PO BOX 4060
33 SOUTH SEVENTH STREET
ALLENTOWN PA 18105

DEBBIE HAWLEY
ONE JAY STATION
PO BOX 788
NICKOLASVILLE KY 40356

MATTHEW R SORRENTINO ESQUIRE
LEHIGH COUNTY GOVERNMENT CENTER
17 SOUTH SEVENTH STREET
ALLENTOWN PA 18101-2400

DAVID C HART MANAGER
PUC - RAIL SAFETY DIVISION
PO BOX 3265
HARRISBURG PA 17105-3265
Accepts e-Service

PETE PETREE
ALLENTOWN LINES INC
PO BOX 788
NICHOLASVILLE KY 40340

WAYNE GRIM SECRETARY
PLANNING COMMISSION
3161 BRYNWOOD DRIVE
WHITEHALL PA 18052

MARK CHAPPELL PE CHIEF
PENNDOT
BUREAU OF DESIGN ROW & UTILITY
DIVISION
PO BOX 3362
HARRISBURG PA 17105-3362

KEYSTONE CONSULTING ENGINEERS
433 EAST BROAD STREET
BETHLEHEM PA 18018

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

THOMAS M CAFFREY ESQUIRE
NORRIS MCLAUGHLIN & MARCUS PA
515 WEST HAMILTON STREET SUITE 502
ALLENTOWN PA 18101