

CLARK HILL

Eric M. Hocky
T (215) 640-8523
F (215) 640-8501
Email: ehocky@clarkhill.com

Clark Hill PLC
Two Commerce Square
2001 Market Street, Suite 2620
Philadelphia, PA 19103
T (215) 640-8500
F (215) 640-8501

clarkhill.com

January 11, 2021

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, PO Box 3265
Harrisburg, PA 17105-3265

Re: Docket No. C-2020-3017829

Dear Secretary Chiavetta:

Enclosed for filing in the above-referenced proceeding on behalf of Southwest Pennsylvania Railroad Company, Respondent, and the City of Uniontown, Complainant, is a Joint Certification of Satisfaction of Complaint.

I hereby certify that a copy has been sent to the Administrative Law Judges and to all parties of record as shown in the Certificate of Service.

Respectfully,

CLARK HILL PLC

s/ Eric M. Hocky

Eric M. Hocky

EMH/dml
encl.

cc: All parties shown on the Certificate of Service

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

The City of Uniontown, Complainant	:	<i>Electronically filed</i>
	:	
v.	:	Complaint Docket
	:	
Southwest Pennsylvania SWP Company, Pennsylvania Department of Transportation, and Fayette County, Respondents.	:	No.: C-2020-3017829
	:	
	:	

JOINT CERTIFICATION OF SATISFACTION OF COMPLAINT

Pursuant to 52 Pa. Code §5.24, Complainant the City of Uniontown (“the City”) and Respondent Southwest Pennsylvania SWP Company (“SWP”) hereby jointly certify that they have addressed the issues raised by the Complaint, the City is satisfied with the settlement, the City no longer wishes to pursue the Complaint.

In support of the foregoing, the City and SWP state as follows:

1. The Complaint was filed with the Commission by the City on February 5, 2020. The Complaint alleged that the tracks of SWP’s Uniontown Industrial Track running through/within Beeson Avenue in the City constitute a crossing, and requested that SWP be required to remove the street running tracks and repair Beeson Avenue.

2. Among other issues, SWP disputed whether the street running tracks constituted a crossing subject to the jurisdiction of the Commission, and alleged that any track removal, repairs or improvements to Beeson Avenue would be for the benefit of parties other than SWP, and that such parties should be responsible for the costs of any track removal, repairs or improvements that might be required by the Commission.

3. Separately, there are eight at-grade street crossings of the Uniontown Industrial Track for which SWP has filed an application to abolish in PUC Docket No. A-2019-3009552 (the “Abolishment Proceeding”).

4. The City and SWP have agreed to settle the issues raised by the Complaint (and in the Abolishment Proceeding) as set forth more fully below. As respect the portion of the Uniontown Industrial Track located in Beeson Avenue, the settlement provides that ownership of the tracks and right of way will be transferred by SWP to the City, SWP will pay the City a sum of money and provide other considerations, and the City will assume all responsibility for removal of the tracks and repair of the roadway.

5. The settlement is contingent on the resolution of this Complaint proceeding and the Abolition Proceeding. Based on the settlement there are two joint petitions for partial settlement being filed in the Abolishment Proceeding.

6. In more detail, the settlement between the City and SWP provides:

- (a) SWP will transfer to the City by quitclaim deed all of its property and right-of-way, including all of the State and City crossings subject to abolishment, along its Uniontown Industrial Track between MP 7 and the border between the City and South Union Township at Survey Station 2032+20 that was abandoned in Surface Transportation Board Docket No. AB 1240X (the “abandoned line”) and associated adjacent parcels, together with the rail, ties, ballast, bridges and other track material and by assignment and assumption, any leases, licenses, encroachment, or other agreements related to the property being transferred. The transfer will be “AS IS, WHERE IS” and without any warranties. Except with respect to the removal and restoration of the two State Crossings, the City will be responsible for all maintenance and liability with respect to the property after the transfer, and will indemnify SWP with respect to any claims made against SWP after the transfer.
- (b) In addition to the agreement to assume maintenance and liability of the property after transfer as described above, the City agrees to be solely responsible for the removal of all crossings (other than the State crossings at Main Street and Fayette Street) along the abandoned line that are the subject of the Abolishment Proceeding (and at Library Place to the extent it

is considered a crossing although not named in the proceeding), and for the restoration of the roadways at the City street crossings in a safe condition for the travelling public according to specifications established by the City. The City will assume all future maintenance of the streets following removal of the crossings. The removal and restoration of the City crossings, and future maintenance, are subject to the Joint Petition -City being filed in the Abolishment Proceeding, and the terms of settlement set forth therein.

- (c) The removal and restoration of the two State crossings, and future maintenance, are subject to the Joint Petition – State being filed in the Abolishment Proceeding, and the terms of settlement set forth therein.
- (d) In addition to the agreement to assume maintenance and liability of the property after transfer as described above, the City agrees in this Complaint proceeding, to be responsible for the removal of the street running rail in Beeson Avenue that is the subject of the Complaint proceeding, and restoration of the roadway. The City will assume all future maintenance of Beeson Avenue following removal of the street running rail.
- (e) SWP will pay the City the sum of \$215,000 within 30 days of the entry of an order or orders by the Commission approving the terms of the settlement and granting the relief requested in this Joint Certification, and in the Joint Petition – City and the Joint Petition – State in the Abolishment Proceeding. Said payment will represent SWP’s sole financial obligation with respect to the removal and restoration of the City crossings in the Abolishment Proceeding and the removal of the street running rail and restoration of Beeson Avenue in this Complaint proceeding.
- (f) As additional consideration for the settlement of this Complaint proceeding, and the settlement of the Abolishment Proceedings, SWP will contribute up to \$20,000 towards the City’s share of costs incurred within five (5) years of the entry of an order by the PUC accepting the terms of the settlement agreement and granting the relief requested, in connection with the remediation of the water flow or stormwater issues related to the railroad bridge over Redstone Creek/Coal Lick Run that will be transferred to the City as part of the property described above.

WHEREFORE, pursuant to 52 Pa. Code §5.24 and based on the foregoing, the City and SWP request that this complaint be marked closed upon the entry of orders in the Abolishment Proceeding approving the joint petitions for partial settlement.

Respectfully submitted,



Eric M. Hocky
Clark Hill, PLC
Two Commerce Square
2001 Market Street, Suite 2620
Philadelphia, PA 19103
215-640-8500 (phone)
215-640-8501 (fax)
ehocky@clarkhill.com

*Counsel for Southwest Pennsylvania
Railroad Company*



Timothy J. Witt
City of Uniontown Solicitor
Watson Mundorff Brooks & Sepic, LLP
720 Vanderbilt Road
Connellsville, PA 15425
timwitt@wmblaw.com

Counsel for City of Uniontown

Dated: January 11, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of January, 2021, a true and correct copy of the foregoing Joint Certification was served on the Administrative Law Judges by electronic mail as directed in the Interim Order, and on the participants listed below by electronic mail pursuant to the Emergency Order at Docket No. M-2020-3019262:

Administrative Law Judge Emily DeVoe
edevoe@pa.gov

Administrative Law Judge Mary Long
malong@pa.gov

Kayla L. Rost
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street
Harrisburg, PA 17120
karost@pa.gov

John M. Purcell
Chief Solicitor, Fayette County
55 East Church St., Suite 101
Uniontown, PA 15401
Jpurcell146@gmail.com

Gina D'Alfonso
Senior Counsel in Charge
Pennsylvania Department of Transportation
Office of Chief Counsel
PO Box 8212
Harrisburg, PA 17105-8212
gdalfonso@pa.gov

Dated: January 11, 2021



Eric M. Hocky