



Eckert Seamans Cherin & Mellott, LLC
213 Market Street
8th Floor
Harrisburg, PA 17101

TEL: 717 237 6000
FAX: 717 237 6019

Bryce R. Beard, Esq.
717.237.6041
bbeard@eckertseamans.com

November 18, 2024

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Todd Clay v. G & W Railroad, Pennsylvania Department
of Transportation, and City of York
Docket No. C-2024-3051856

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Preliminary Objections of City of York with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

Bryce R. Beard
Bryce R. Beard

BRB/red
Enclosure

cc: Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of City of York's **Preliminary Objections** upon the persons listed below in the manner indicated in accordance with the requirements of 52

Pa. Code Section 1.54.

Via First Class Mail

Todd Clay
137 S Newberry Street
York, PA 17401

Via Electronic Mail

Caroline G. Robelen
Commonwealth of Pennsylvania
Department of Transportation
P.O. Box 8212
Harrisburg, PA 17105
CRobelen@pa.gov

Scott D. Clements, Esquire
J. Lawson Johnston, Esquire
Aaron M. Ponzio, Esquire
DICKIE, McCAMEY & CHILCOTE, P.C.
Two PPG Place, Suite 400
Pittsburgh, PA 15222
sclements@dmclaw.com
ljohnston@dmclaw.com
aponzo@dmclaw.com

Date: November 18, 2024

/s/ Bryce R. Beard

Bryce R. Beard, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Todd Clay,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2024-3051856
	:	
	:	
G & W Railroad, Pennsylvania Department	:	
of Transportation, and City of York.,	:	
Respondent.	:	

NOTICE TO PLEAD

To: Todd Clay
137 S Newberry Street
York, PA 17401

You are hereby notified that a Reply to the New Matter in the enclosed **Preliminary Objections** of the City of York must be filed within 20 days of the date of service.

All pleadings, such as a Reply to New Matter, must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served to counsel for the City of York, and where applicable, the Administrative Law Judge presiding over the proceeding.

File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

With electronic copy to:

Brett C. Flower, Esquire (I.D. No. 324458)
Bryce R. Beard, Esquire (I.D. No. 325837)
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Floor
Harrisburg, PA 17101
(717) 237-6041 (phone)
(717) 237-6019 (fax)
bflower@eckertseamans.com
bbeard@eckertseamans.com

/s/ Brett C. Flower

Brett C. Flower
Counsel for City of York

Date: November 18, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Todd Clay,	:		
	Complainant,	:	
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	:		
G & W Railroad, Pennsylvania Department	:		
of Transportation, and City of York.,	:		
Respondent.	:		

PRELIMINARY OBJECTIONS OF THE CITY OF YORK

Pursuant to 52 Pa. Code § 5.101, City of York (“City” or “Respondent”) submits the following Preliminary Objection to the Complaint of Todd Clay (“Complainant” or “Mr. Clay”), which was served on the City by the Pennsylvania Public Utility Commission (“Commission” or “PUC”) on October 29, 2024. Pursuant to 52 Pa. Code §§ 5.61, 5.62, the City is also filing an Answer and New Matter to the Complaint. In support of this Preliminary Objection, the City avers as follows:

I. INTRODUCTION

1. The City is a municipal corporation responsible for the maintenance of certain roadways within its municipal boundaries.
2. There is no Grantley “Ave” within the City of York.
3. There is a Grantley Street.
4. There are no rail crossings of Grantley Street in the City of York.
5. Grantley Street leaves the City of York as it crosses the Codorus Creek, the municipal boundary, and enters Spring Garden Township.

6. In Spring Garden Township, Grantley Street becomes Grantley Road.
7. There is a rail crossing of Grantley Road approximately one third of one mile into Spring Garden Township.
8. In its New Matter, the City provided a map as Attachment A showing the location of the rail crossing outside of its municipal boundaries of the City and within the adjacent Spring Garden Township.

II. PRELIMINARY OBJECTIONS

A. Applicable Legal Standards

9. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code § 5.101(a).

10. Under Section 5.101(a) of the Commission's regulations, 52 Pa. Code § 5.101(a)(1)-(7), preliminary objections must specifically state the legal and factual grounds relied upon and be limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding;
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter;
- (3) Insufficient specificity of a pleading;
- (4) Legal insufficiency of a pleading;
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action;
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution; and
- (7) Standing of a party to participate in the proceeding.

11. The moving party may not rely on its own factual assertions but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts.¹ However, the Commission

¹ *County of Allegheny v. Cmwlth. of Pa.*, 490 A.2d 402 (Pa. 1985).

need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion.²

12. In deciding the preliminary objections, the Commission must determine whether, based on the well-pleaded factual averments of the party, recovery or relief is possible.³

13. Preliminary objections requesting dismissal of a pleading will be granted only where the right to relief is clearly warranted and free from doubt.⁴

B. Dismissal Based on Legal Insufficiency of the Complaint, 52 Pa. Code § 5.101(a)(4).

14. The provision at 52 Pa. Code § 5.101(a)(4) permits the filing of a preliminary objection to dismiss a pleading for legal insufficiency.

15. The provision at 52 Pa. Code § 5.101(a)(4) serves judicial economy by avoiding a hearing where no factual dispute exists, and the matter in dispute is purely a legal question.⁵

16. The Complaint seeks the repair of facilities of a public utility upon order of the Commission.⁶

17. The City of York was served with the Complaint by the Commission, presumably based upon the Complainant's provided residential mailing address, which is in the City of York.

18. However, the location of the allegedly insufficient facility is in Spring Garden Township and not in the City of York.

² *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Commw. 2007).

³ *Department of Auditor General, et al. v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Commw. 2003); *P.J.S. v. Pa. State Ethics Commission*, 669 A.2d 1105 (Pa. Commw. 1996).

⁴ *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

⁵ 66 Pa. C.S. § 703(a); *Lehigh Valley Power Committee v. Pa. PUC*, 563 A.2d 557, 564 (Pa. Commw. 1989).

⁶ 66 Pa.C.S. § 1505(a).

19. The City only has the power to establish, repair, and keep in safe condition streets within City limits.⁷

20. The City is without the power to oversee the condition of the subject crossing and, therefore, could not remediate the condition of Grantley Street at the rail crossing if so ordered by the Commission.

21. Thus, the Complaint is legally insufficient as to the City of York as there is no recovery possible against the City of York.

CONCLUSION

WHEREFORE, the City of York, respectfully requests that the Commission (a) grant these Preliminary Objections so as to dismiss the Complaint against the City of York; and (b) grant any other relief deemed appropriate.

Respectfully submitted,

/s/Brett C. Flower

Brett C. Flower, Esquire (I.D. No. 324458)
Bryce R. Beard, Esquire (I.D. No. 325837)
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Date: November 18, 2024

Counsel for City of York

⁷ 11 Pa.C.S. § 12915(a).

Verification

I, Keith Gerber, hereby state that I am the Highway Superintendent for the City of York, responsible for the maintenance of the roadways within the City limits. I hereby state that the facts set forth in the foregoing **Preliminary Objections** are true and correct to the best of my knowledge, information and belief and that I expect the City of York to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: November 18, 2024

/s/ **Keith Gerber**
Highway Superintendent
City of York