

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

Carl Hill

Electronically Filed.

v.

Reading Blue Mountain & Northern Railroad  
Hazel Township  
Luzerne County  
Commonwealth of Pennsylvania Department of Transportation

No. C-2012-2303046

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**MOTION FOR CERTIFICATION OF INTERLOCUTORY ORDER  
AND STAY OF PROCEEDING PENDING APPEAL**

NOW COMES the Defendant, Reading, Blue Mountain & Northern Railroad Company (“Movant”), by and through its attorneys, Paul R. Ober, Esquire, and Paul R. Ober & Associates, and requests the Order of the Pennsylvania Public Utility Commission (“Respondent”) dated October 24, 2012 be certified as involving a controlling issue of law to which there is a substantial ground for a difference of opinion and that an immediate appeal to Commonwealth Court may materially advance the ultimate determination of this matter; and in support thereof, avers as follows:

1. The Pennsylvania Public Utility Commission has jurisdiction over this matter by reason of Section 5.633 of the Rules of Administrative Practice and Procedure.
2. The Commission has made an Order, which may not be a final Order, which contains a controlling question of law as to which there is substantial ground for difference of opinion.
3. An immediate Appeal to the Commonwealth Court from the Order will materially advance the ultimate determination of this matter.
4. On October 24, 2012 the Pennsylvania Utility Commission entered an Order in the matter of Carl Hill v. Reading Blue Mountain & Northern Railroad, Hazel Township, Luzerne County, Commonwealth of Pennsylvania Department of Transportation (Docket C-2012-2303046).
5. The Opinion and Order entered by Respondent provides, *inter alia*, that the Petitioner within twenty (20) days, at its sole cost and expense,

“establish and maintain any detours or traffic controls which might be required to make the repairs to a certain at-grade railroad crossing located in Hazel Township at State Road 3019 (Stockton Mountain Road) in Luzerne County.”

6. The Order of the Pennsylvania Public Utility Commission in this regard is erroneous in that it is without legal authority to close a road or detour traffic. Hence:
  - a. Respondent lacks statutory authority to adopt said Order; and
  - b. The Order of the Respondent is not supported by substantial evidence.
7. Movant is a railroad operating and doing business as a corporation, organized and existing under the laws of the Commonwealth of Pennsylvania with a mailing address at P.O. Box 218, 1 Railroad Boulevard, Port Clinton, PA 19549.
8. Hazel Township is a municipal entity organized and existing under the laws of the Commonwealth of Pennsylvania with offices located at 101 West 27<sup>th</sup> Street, Hazel Township, Luzerne County, PA 18202.
8. Luzerne County is a municipal entity organized and existing under the laws of the Commonwealth of Pennsylvania with offices located at 200 N. River Street, Wilkes-Barre, PA 18711.
9. Pennsylvania Department of Transportation is a governmental unit having its state offices located at Riverfront Office Center, 1101 South Front Street, Harrisburg, PA 17104-2516.
10. Carl Hill is an individual residing at 826 Lattimer Road, P.O. Box 66, Lattimer Mines, PA 18234.
11. Carl Hill filed a Complaint with the Pennsylvania Public Utility Commission on May 2, 2012 alleging that the crossing in question was in a state of disrepair, which created a rough crossing surface.
12. On July 27, 2012, a meeting was held at the site at which time whether the crossing was in need of repairs was discussed.
13. A further conference and field investigation was held on August 10, 2012, during which further repairs were discussed. This resulted in a prior Order of August 30, 2012 (attached hereto as Exhibit "A").
14. On September 18, 2012, Movant filed exceptions to the Order, which were treated as a Petition for Reconsideration, which was granted by the Pennsylvania Public Utility Commission on September 27, 2012 (attached hereto as Exhibit "B").
15. On October 24, 2012, the Commission entered the attached Order (attached hereto as Exhibit "C").
16. Petitioner objects to the determination of the Commission in that the Commission committed

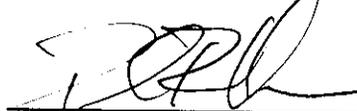
an abuse of discretion and errors of law for the following reasons:

- (A) Movant was ordered, at its initial cost and expense, to establish and maintain any detour or traffic controls which might be required in order to make repairs to the crossing.
- (B) Movant objects to repairs to the crossing and to the responsibility directed to Movant to detour traffic.
- (C) In its decision, the Commission adopted the position of the Pennsylvania Department of Transportation that the General Assembly has granted exclusive jurisdiction over rail and highway crossings to the Commission, pursuant to 66 Pa C.S. Section 2702, 2704.
- (D) The Commission's Order also found that the Commission is not bound by the State Highway Law in the area of highway crossings, citing Mill Creek Township v. Pennsylvania Public Utility Commission, 753 A. 2d 324 (PA Commonwealth 2000).
- (E) Whereas the authority to maintain, operate and construct railroad crossings may be within the ambit of the Commission's responsibility, for the safety of the general public, Petitioner does not believe it extends to the establishment and the maintaining of "any detours", as set forth in paragraph five (5) of the Commission's Order.
- (F) The ambit of the Commission's authority does not extend to detours nor does it abrogate the requirements of the State Highway Law.
- (G) Detours, by their nature, may extend for many miles over roads and conditions far beyond the jurisdiction of the "crossing", the repair of which the Commission's Order seeks to address.
- (H) The State Highway Law (36 PS Section 670-101 *et seq.*) provides that:  
  
"when any state highway shall be closed, it shall be the duty of the department to immediately designate or lay out a detour, on which it shall erect or cause to be created and maintained, while such detour is in use, legible signs at each public road intersection throughout its entire length, indicating the direction to the main highway. During the period when such detour is in use, it shall be the duty of the department to maintain such detour in safe and passable condition . . ."

WHEREFORE, Reading Blue Mountain & Northern Railroad Company requests that:

- (a) The Commission find and conclude that the determination of the question set forth above is controlling and to which there is substantial ground for difference of opinion.
- (b) That an immediate appeal to Commonwealth Court for an Order will materially advance its determination in this matter; and
- (c) Pending Determination, a stay of proceedings of the Commission's Order of October 24, 2012 be Ordered by the Commission.

Respectfully submitted,  
**Paul R. Ober & Associates**



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**Paul R. Ober, Esquire**  
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PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

RECEIVED SEP 4 2012

Public Meeting held August 30, 2012

Commissioners Present:

Robert F. Powelson, Chairman  
John F. Coleman, Jr., Vice Chairman  
Wayne E. Gardner  
James H. Cawley  
Pamela A. Witmer

C-2012-2303046

Carl Hill

V.

Reading Blue Mountain and Northern Railroad  
Hazel Township  
Luzerne County  
Commonwealth of Pennsylvania Department of Transportation

**ORDER**

**BY THE COMMISSION:**

At a location in Hazel Township, the track of Reading Blue Mountain and Northern Railroad crosses, at-grade, State Route 3019 (Stockton Mountain Road) in Luzerne County (DOT 361 521 L).

In a complaint filed May 2, 2012, the complainant, Mr. Carl Hill, alleges that the crossing where State Route 3019 (Stockton Mountain Road) crosses, at grade, a single track of Reading Blue Mountain and Northern Railroad in Hazel Township, Luzerne County, is in disrepair due to track movement which has created a rough crossing surface. Mr. Hill states that the crossing is in need of repairs to attain an acceptable condition.

A meeting, arranged by a Commission staff engineer, was held on July 27, 2012 at the site of the crossing. Mr. Hill, as well as representatives of Reading Blue Mountain and Northern Railroad and the Commonwealth of Pennsylvania Department of Transportation were in attendance. At the meeting the parties discussed the condition of the crossing and the need for repairs at the crossing. Reading Blue Mountain and Northern Railroad indicated that they would consider making some repairs to the crossing.

EXHIBIT "A"

A formal field investigation and conference, held on August 10, 2012, was attended by Mr. Hill, representatives of Reading Blue Mountain and Northern Railroad, the Commonwealth of Pennsylvania Department of Transportation and Hazel Township. At the field conference it was noted that minor repairs were made by Reading Blue Mountain and Northern Railroad, however they were not sufficient to satisfy the complaint and that further repairs were needed to restore the crossing to a safe and satisfactory condition. Reading Blue Mountain and Northern Railroad later stated that they were agreeable to making further repairs to the crossing.

Inasmuch as the parties are in agreement that repairs are necessary to the at-grade crossing herein and in the interest of public safety, the Commission is of the opinion that an order can be issued approving the repairs of the at-grade crossing without a formal hearing.

The Commission hereby establishes its jurisdictional limits at the subject crossing as the area within the confines of the railroad right-of-way and the highway right-of-way.

The parties are reminded that failure to comply with this or any Order/Secretarial Letter in this proceeding may result in an enforcement action seeking civil penalties and/or other sanctions pursuant to Public Utility Code 66 Pa. C.S. §3301.

The record having been certified to this Commission, we issue this order approving the repairs pursuant to section 335(a) of the Public Utility Code (66 Pa. C.S. §335(a)) and find that repairs to the crossing are necessary and proper for the service, accommodation, convenience or safety of the public; **THEREFORE,**

**IT IS ORDERED:**

1. That the complaint be and is hereby sustained.
2. That the at-grade crossing where State Route 3019 (Stockton Mountain Road) crosses the track of Reading Blue Mountain and Northern Railroad in Hazel Township, Luzerne County, be repaired.
3. That Reading Blue Mountain and Northern Railroad, at its initial cost and expense, furnish all material and do all work necessary to repair the subject crossing to establish a smooth and satisfactory condition.
4. That Reading Blue Mountain and Northern Railroad, at its initial cost and expense, establish and maintain any detours or traffic controls that may be required to make the repairs as stated in Paragraph 3, herein.
5. That any relocation of, changes in or removal of any adjacent structures, equipment or other facilities of any non-carrier public utility company or municipal authority located within the limits of this Commission's jurisdiction, which may be required as incidental to the execution of the proposed project, be made by said public utility company or municipal

authority at its initial cost and expense, and in such manner as will not interfere with the construction of the project.

6. That all work necessary to complete the repairs to the crossing be done in a manner satisfactory to this Commission to satisfy the complaint within thirty (30) days of the entry date of this order, and that on or before said date, Reading Blue Mountain and Northern Railroad report to this Commission, in writing, the date of the actual completion of work.

7. That Reading Blue Mountain and Northern Railroad pay all compensation for damages, if any, due to owners of property taken, injured or destroyed by reason of the repairs to the crossing, in accordance with this order.

8. That Reading Blue Mountain and Northern Railroad, at least ten (10) days prior to the start of work, notify all parties in interest of the actual date on which work will begin.

9. That Reading Blue Mountain and Northern Railroad, at its sole cost and expense, furnish all material and perform all work necessary to maintain its railroad facilities at the subject crossing, including the Grade Crossing (crossbuck) signs; and to maintain at all times in a smooth and satisfactory condition the crossing surface to points located twenty-four (24) inches outside each rail, all in accordance with this Order.

10. That Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and do all work necessary to maintain its highway approach roadways to the subject crossing to points twenty-four (24) inches beyond each outside rail and in addition, maintain the grade crossing advance warning signs and stop lines; all in accordance with this Order.

11. That upon completion of the work herein ordered, and upon a written request by any party hereto, this proceeding be scheduled for a hearing at a time and a place assigned by this Commission, upon due notice to all parties, to receive evidence relative to the allocation of initial costs incurred, if any, by any of the parties, and any other matters relevant to this proceeding.

BY THE COMMISSION



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: August 30, 2012

ORDERED ENTERED: August 30, 2012

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

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Public Meeting held September 27, 2012

**Commissioners Present:**

Robert F. Powelson, Chairman  
John F. Coleman, Jr., Vice Chairman  
Wayne E. Gardner  
James H. Cawley  
Pamela A. Witmer

Carl Hill

C-2012-2303046

v.

Reading Blue Mountain & Northern  
Railroad, Hazel Township, Luzerne County  
and Pennsylvania Department of  
Transportation

**OPINION AND ORDER**

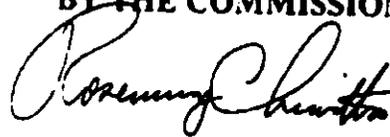
**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Reconsideration (Petition), filed by Reading Blue Mountain & Northern Railroad, on September 18, 2012, seeking reconsideration of the Order entered August 30, 2012, relative to the above-captioned proceedings.

Pursuant to Rule 1701 of the Pennsylvania Rules of Appellate Procedure, Pa. R.A.P. Rule 1701, the Commission must act to grant a petition for reconsideration within thirty days of the date of entry of the order for which reconsideration is sought, or otherwise lose jurisdiction to do so if a petition for review is timely filed. The thirty-day period within which the Commission must act upon this Petition for Reconsideration in order to preserve jurisdiction ends on October 1, 2012. Accordingly, we shall grant reconsideration, within the meaning of Pa. R.A.P. Rule 1701(b)(3), pending review of, and consideration on, the merits of the Petition; **THEREFORE,**

**IT IS ORDERED:** That the Petition for Reconsideration filed on September 18, 2012, by Reading Blue Mountain & Northern Railroad, is hereby granted, pending further review of, and consideration on, the merits.

**BY THE COMMISSION,**



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: September 27, 2012

ORDER ENTERED: September 27, 2012

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Public Meeting held October 24, 2012

Commissioners Present:

Robert F. Powelson, Chairman  
John F. Coleman, Jr., Vice Chairman  
Wayne E. Gardner  
James H. Cawley  
Pamela A. Witmer

Carl Hill

C-2012-2303046

v.

Reading Blue Mountain & Northern Railroad,  
Hazel Township, Luzerne County, Commonwealth  
of Pennsylvania Department of Transportation

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Petition for Reconsideration (Petition)<sup>1</sup> filed by Reading Blue Mountain & Northern Railroad (Railroad) on September 18, 2012, relative to the above-captioned proceeding. The Order to which the Petition refers was issued on August 30, 2012 (*August 30 Order*).

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<sup>1</sup> The pertinent document was styled "Exceptions." However, since it was filed in response to a Commission Order, it is more properly considered a Petition for Reconsideration. See, 66 Pa. C.S. §§ 703(f), 703(g); 52 Pa. Code § 5.572(a).

Also before the Commission is a Motion to Strike Exceptions (Motion to Strike) filed by the Pennsylvania Department of Transportation (PennDOT) on October 1, 2012. On the same date, PennDOT also filed an Answer to Exceptions (Answer) in the event the Commission denied its Motion to Strike.

Per Secretarial Letter issued October 3, 2012 (*October 3 Secretarial Letter*), we reduced the time period for the Parties to respond to PennDOT's Motion to Strike. Specifically, we required that any Answer to that Motion be filed on or before October 12, 2012. On October 12, 2012, the Railroad filed the following documents: (1) an Answer and New Matter to PennDOT's Motion to Strike; and (2) a Reply to PennDOT's Answer to the Petition.<sup>2</sup>

For the reasons delineated below, we will: (1) deny PennDOT's Motion to Strike; (2) grant the Railroad's Petition for Reconsideration; (3) pursuant to our authority at 66 Pa. C.S. § 2702(f), direct the Railroad to perform repairs to the instant crossing; and (4) refer this matter to the Office of Administrative Law Judge (OALJ) for further proceedings, consistent with this Opinion and Order.

### **History of Proceeding**

At a location in Hazel Township (Township), the track of the Railroad crosses, at-grade, State Route 3019 (Stockton Mountain Road) in Luzerne County (DOT 361 521 L).

Carl Hill (Complainant) filed a Complaint on May 2, 2012, alleging that this crossing is in a state of disrepair due to track movement, which has created a rough

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<sup>2</sup> Our Regulations do not provide for a Reply to an Answer to a Petition for Reconsideration. Consequently, we will not consider this filing.

crossing surface. The Complainant further states that the crossing is in need of repair to attain an acceptable condition.

On July 27, 2012, a meeting was held at the site. In addition to Commission staff, the following entities were in attendance: (1) the Complainant; (2) the Railroad; and (3) PennDOT. The condition of the crossing and the need for repairs thereon were discussed. The Railroad indicated that it would consider making some of the needed repairs.

On August 10, 2012, a field investigation and conference was held at the site. In addition to Commission staff, the following Parties attended the field investigation and conference: (1) the Complainant; (2) the Railroad; (3) PennDOT; and (4) the Township. At the conference, it was noted that, although the Railroad had made minor repairs, those repairs were not sufficient to satisfy the Complaint and that further repairs were needed. The Railroad agreed to make further repairs. *August 30 Order* at 2.

In our *August 30 Order*, we stated that, since the Parties were in agreement that certain repairs to the crossing were necessary, the Order could be issued approving such repairs and assigning the responsibility for them, without the necessity of a formal hearing. *August 30 Order* at 2.

As previously indicated, the Railroad filed its Petition on September 18, 2012. By Order entered September 27, 2012, we granted reconsideration, pending review of and consideration on the merits, in order to preserve jurisdiction over this matter.

On October 1, 2012, PennDOT filed its Motion to Strike, and also filed an Answer to the Petition, in the event that the Commission denied the Motion to Strike. Per our *October 3 Secretarial Letter*, we directed the Parties to file Answers to PennDOT's Motion to Strike on or before October 12, 2012.

On October 12, 2012, the Railroad filed the following documents: (1) an Answer and New Matter to PennDOT's Motion to Strike; and (2) a Reply to PennDOT's Answer to the Petition for Reconsideration.

## Discussion

### PennDOT's Motion to Strike

As the proponent of a rule or order, PennDOT bears the burden of proof on its Motion to Strike. 66 Pa. C.S. § 332(a). Courts have held that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, PennDOT’s evidence must be more convincing, by even the smallest amount, than that presented by the other Parties. *Selling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

In its Motion to Strike, PennDOT initially notes that, although the Railroad called its document “Exceptions,” PennDOT (and the Commission) is treating the document as a Petition for Reconsideration in accordance with 52 Pa. Code § 5.572. Motion at ¶ 1. PennDOT then avers that it never received a copy of the Railroad’s Petition and that it was only by happenstance that PennDOT was made aware of this filing on September 26, 2012. *Id.* at ¶ 2. Additionally, no certificate of service was attached to the Petition which was filed with the Commission. *Id.* at ¶ 3. PennDOT

contends that, based upon the above-enumerated procedural flaws, the Railroad's Petition should be stricken without consideration of the merits. *Id.* at ¶ 6.

In its Answer to the Motion, the Railroad avers that, while it cannot judge the veracity of the allegation that PennDOT never received the Railroad's Petition, its Petition was filed electronically with the Commission on September 18, 2012. Answer at ¶ 2. The Railroad also notes that counsel for PennDOT is listed on the docket under Parties of Record authorizing service electronically. Pursuant to 52 Pa. Code § 1.32, registration as an e-filing user constitutes an agreement to receive electronic service. *Id.*

On October 9, 2012, the Railroad filed a copy of a certificate of service dated September 18, 2012, which shows that the Railroad served its "Exceptions" on all of the other Parties to this case, including PennDOT.

Finally, the Railroad includes "New Matter" in its Answer to the Motion to Strike. Even if New Matter can properly be raised in an Answer to a Motion (a question we do not address here), we do not believe the Railroad's allegations constitute affirmative defenses that need to be pleaded as New Matter. First, the Railroad reiterates its claims that it made proper service of its Exceptions. *Compare*, Answer ¶¶ 9 with Answer ¶¶ 2, 4. Second, the Railroad alleges that PennDOT's Motion to Strike was filed for an "ulterior motive." *Id.* at 10. We believe PennDOT's motives in filing the Motion to Strike are irrelevant.

On review of PennDOT's Motion to Strike, we conclude that it lacks merit, and it will be denied. Specifically, PennDOT contends that the Railroad's Petition should be stricken without consideration of the merits due to procedural flaws in the service of the Motion. Motion at ¶ 6. However, on review of our records, it appears that the Railroad's Petition was electronically served on PennDOT. Moreover, in the interest of securing the just, speedy and inexpensive determination of this proceeding, 52 Pa. Code

§ 1.2, we will treat the Railroad's "Exceptions" as a Petition for Reconsideration, rather than dismissing the filing because it was improperly labeled as "Exceptions."

Nevertheless, we take this opportunity to remind counsel that practitioners appearing before the Commission are expected to be familiar with our Regulations regarding practice and procedure.

### **The Railroad's Petition**

The Public Utility Code (Code) establishes a party's right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. §§ 703(f) and 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision. Section 5.572(a), 52 Pa. Code § 5.572(a) provides that:

Petitions for rehearing, reargument, reconsideration, clarification, rescission, amendment, supersedeas or the like must be in writing and specify, in numbered paragraphs, the findings or orders involved, and the points relied upon by petitioner, with appropriate record references and specific requests for the findings or orders desired.

The standards for granting a Petition for Reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553, 1982 Pa. P.U.C. LEXIS 4 (1982). *Duick* held that a petition for reconsideration under Subsection 703(g) may properly raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior order, in whole, or in part. Furthermore, such petitions are likely to succeed only when they raise "new and novel arguments" not previously heard or considerations which appear to have been overlooked or not addressed. *Duick* at 559.

The Railroad references the meeting concerning the instant crossing held on July 27, 2012. The Railroad contends that, at that time, it was suggested that the timber of the crossing be removed and that asphalt be laid in its place. Petition at ¶ 3. However, the Railroad stresses that it did not agree to this course of action. *Id.*

The Railroad continues that, subsequently, it agreed to replace the entire crossing, provided that PennDOT and/or the host municipality would provide for the costs of road closure and detour. *Id.* at ¶ 4. The Railroad points out, however, that neither PennDOT nor the host municipality, *i.e.*, the Township, would agree to provide the detour which was a necessary condition for the Railroad's offer to rebuild the crossing. *Id.* at ¶ 5.

The Railroad references the field investigation and conference held on August 10, 2012. *Id.* at ¶ 7. The Railroad continues that, after review by its Maintenance of Way Department, it determined that paving would not sufficiently repair the crossing, and that only a temporary repair could benefit the crossing, in order to insure that the timbers remain in place and also to insure the stability of the rail. The Railroad avers that it did this work without the necessity of a full road closure and detour. *Id.*

The Railroad notes that, at the time, the other Parties expressed dissatisfaction with the Railroad's temporary emergency repairs and that the *August 30 Order* was thereupon issued. *Id.* at ¶ 8.

The Railroad contends that the *August 30 Order* is unsupported by the evidence. *Id.* at ¶ 9. Specifically, the Railroad contends that Ordering Paragraphs Nos. 3, 5, 6, 7 and 9 of the *August 30 Order* are contrary to the agreements made at the two above-referenced meetings. *Id.* at ¶ 10. Additionally, the Railroad asserts that it is without legal authority to close a road or provide for the detouring of traffic. *Id.* at ¶ 11.

Based on its arguments, the Railroad requests that the *August 30 Order* be rescinded and that the Commission issue an order which conforms with the Railroad's objections to the *August 30 Order*. *Id.* at ¶ 14.

In its Answer, PennDOT argues that the General Assembly granted exclusive jurisdiction over rail-highway crossings to the Commission. *See*, 66 Pa. C.S. §§ 2702, 2704. That jurisdiction includes the acquisition of property and the authority to assign construction responsibility and cost allocation to any concerned public utility, municipality, or the Commonwealth. Moreover, the Commission is not bound by the State Highway Law in the area of rail-highway crossings. Answer at ¶ 11 (citing *Millcreek Township v. Pa. PUC*, 753 A.2d 324 (Pa. Cmwlth. 2000)).

On review of the Railroad's Petition for Reconsideration, we find that the *Duick* standards are met, and we will grant the Petition. The *August 30 Order* was based on a finding that the Parties had reached an agreement. Therefore, an Order could be entered without a formal hearing. *August 30 Order* at 2. The Railroad, however, contends that the Parties did not agree on certain critical points. As a result, we believe the *Duick* standards are met, and we will vacate our *August 30 Order*.

This conclusion does not end our analysis, however. Section 2702(f) of the Code states:

**(f) Danger to Safety-** Upon the commission's finding of an immediate danger to the safety and welfare of the public at any such crossing, the commission shall order the crossing to be immediately altered, improved, or suspended. Thereafter hearing shall be held and costs shall be allocated in the manner prescribed in this part.

We find that the condition of the subject crossing constitutes an immediate danger to the safety and welfare of the travelling public. Accordingly, in the interest of public safety, it

is our responsibility to direct that the Railroad perform repairs immediately. In addition, consistent with Section 2702(f), we will refer this matter to OALJ for such further proceedings as may be warranted to allocate costs and resolve any outstanding issues.

### **Conclusion**

For the reasons set forth above, we will: (1) deny PennDOT's Motion to Strike; (2) grant the Railroad's Petition for Reconsideration; (3) direct the Railroad to perform repairs to the instant crossing; and (4) refer this matter to OALJ for further proceedings, consistent with this Opinion and Order; **THEREFORE,**

### **IT IS ORDERED:**

1. That the Motion to Strike filed by the Pennsylvania Department of Transportation on October 1, 2012, with reference to the Petition for Reconsideration filed by Reading Blue Mountain & Northern Railroad on September 18, 2012, is denied.

2. That the Petition for Reconsideration filed by Reading Blue Mountain & Northern Railroad on September 18, 2012, with reference to the Commission's Order entered on August 30, 2012, is granted, consistent with this Opinion and Order.

3. That the at-grade crossing where State Route 3019 (Stockton Mountain Road) crosses the track of Reading Blue Mountain & Northern Railroad in Hazel Township, Luzerne County, be repaired.

4. That Reading Blue Mountain & Northern Railroad, at its initial cost and expense, furnish all material and do all work necessary to repair the subject crossing to establish a smooth and satisfactory condition.

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5. That Reading Blue Mountain & Northern Railroad, at its initial cost and expense, establish and maintain any detours or traffic controls that may be required to make the repairs as outlined in Ordering Paragraph No. 4, above.

6. That any relocation of, changes in or removal of any adjacent structures, equipment or other facilities of any non-carrier public utility company or municipal authority located within the limits of the Commission's jurisdiction which may be required as incidental to the execution of the proposed project, be made by the public utility company or municipal authority at its initial cost and expense, and in such manner as will not interfere with the construction of the project.

7. That all work to complete the repairs to the crossing be done in a manner satisfactory to the Commission within twenty days of the date of entry of this Opinion and Order and that, on or before said date, Reading Blue Mountain & Northern Railroad report to the Commission, in writing, the date of actual completion of the work.

8. That Reading Blue Mountain & Northern Railroad, at least five days prior to the start of work, notify all Parties in interest of the actual date on which work will begin.

9. That Reading Blue Mountain & Northern Railroad, at its initial cost and expense, furnish all material and perform all work necessary to maintain its railroad facilities at the instant crossing, including the grade crossing (crossbuck) signs, and to maintain at all times, in a smooth and satisfactory condition, the crossing surface to points located twenty-four inches outside each rail, all in accordance with this Opinion and Order.

10. That the Pennsylvania Department of Transportation, at its initial cost and expense, furnish all material and do all work necessary to maintain its highway approach roadways to the subject crossing to points twenty-four inches beyond each outside rail and, in addition, to maintain the grade crossing advance warning signs and stop lines, all in accordance with this Opinion and Order.

11. That this proceeding be referred to the Office of Administrative Law Judge for such further proceedings as may be required to allocate costs and resolve any outstanding issues, consistent with this Opinion and Order.

BY THE COMMISSION,



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: October 24, 2012

ORDER ENTERED: OCTOBER 24, 2012