



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

October 8, 2013

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

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**RE: *Pittston Township v. RBMN Co.***  
**C-2011-2274074**

Dear Secretary Chiavetta:

Enclosed for filing please find a *Joint Stipulation of Settlement* in the above-captioned matter

I hereby certify that a copy has been sent to all parties of record as indicated on the attached Certificate of Service.

Sincerely,

Jason D. Sharp  
Executive Deputy Chief Counsel

Enclosures

220/JDS/aca

cc: Ember S. Jandebaur, Administrative Law Judge  
Parties of Record  
Mark Chappell, P.E., Chief, Utilities and Right-of-Way Division, 7<sup>th</sup> Floor  
Joseph Strok, Grade Crossing Engineer, District 4-0

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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OCT 08 2013

PITTSTON TOWNSHIP  
Complainant

Complaint Docket PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

No: C-2011-2274074

v.

READING BLUE MOUNTAIN AND  
NORTHERN RAILROAD

**STIPULATION OF SETTLEMENT**

WHEREAS, Pittston Township ("Township") filed a Formal Complaint on or about November 11, 2011, with the Pennsylvania Public Utility Commission ("Commission") against Reading Blue Mountain and Northern Railroad ("Reading"), alleging that an at-grade crossing, located on SR 2019 (Oak Street; DOT # 361 425) within the Township's borders had "fallen into a state of disrepair and needs to be rebuilt" and that the crossing "presents a serious safety hazard to vehicular traffic"; and,

WHEREAS, the parties have agreed to a solution to address the Township's concerns with the subject crossing and the parties wish to amicably resolve this case pursuant to the terms of this Stipulation of Settlement ("Stipulation"); and,

WHEREAS, the Pennsylvania Department of Transportation ("PennDOT") has provided Commonwealth Rail Freight Grant funding assistance to a shipper on the subject rail line, a portion of which will be utilized for the replacement of the subject crossing; and,

WHEREAS, Reading has agreed to replace the crossing at its sole cost and expense, including the erection and maintenance of a detour for highway traffic during the crossing replacement; and,

WHEREAS, PennDOT has designed the aforementioned detour made necessary by the project and has agreed to provide "in stock" signage if available; and,

WHEREAS, the parties hereto agree that this proposed settlement is in the interest of public safety because it will provide for the replacement of the subject crossing and will establish the obligations of Reading, PennDOT and the Township; and,

WHEREAS, the Township has agreed that these actions will sufficiently satisfy their complaint in this matter and the parties have agreed to the continuance of the present maintenance responsibilities for the crossings, as allocated below.

NOW, THEREFORE, the active parties to this proceeding, Pittston Township, Reading Blue Mountain and Northern Railroad, the Commission's Bureau of Investigation and Enforcement and PennDOT agree as follows:

1. The effective date of this Stipulation shall be the last day upon which it is signed by any of the parties hereto. The parties hereto agree that this Stipulation may be signed in individual counterparts and all signatures hereto shall be considered as original.
2. The parties hereto agree to abide by the work responsibilities and financial obligations delineated in this Stipulation, including any attachments hereto.
3. This Stipulation is contingent upon its approval pursuant to §§ 507 and 2702 *et seq.* of the Public Utility Code, 66 Pa.C.S. § 101 *et seq.*, and the issuance of a Commission Secretarial Letter or Order accepting and approving the same.
4. The parties agree that any party may petition the Commission for hearing if the Commission Secretarial Letter or Order substantively modifies this Stipulation or agreed-upon ordering paragraphs. In that event, any party may give notice to the other parties that it is withdrawing from this Stipulation. Such notice must be in writing and must be given within ten (10) business days of the issuance of any Initial or Recommended

Decision or any Commission Order or Secretarial Letter which adopts this Stipulation or the agreed-upon ordering paragraphs with substantive modifications. The consequence of any party withdrawing from this Stipulation as set forth above will be that all issues associated with the requested relief presented in the proceeding will be fully litigated unless otherwise stipulated between the parties and all obligations of the parties as set forth above to each other are terminated and of no force and effect.

5. The benefits and obligations of this Stipulation shall be binding upon the successors and assigns of the parties to this Stipulation.

In order to effectuate the parties' Stipulation, the undersigned parties request that the Commission issue a Secretarial Letter or Order including the following terms. The Commission will serve the public interest by adopting this Stipulation. The Stipulation will save the parties the time and expense they would incur further litigating this matter before the Commission. Since all of the parties agree to the terms of the Stipulation, adopting it will eliminate the possibility of any appeal from the Commission Secretarial Letter or Order, thus saving the parties the additional time and expense they might incur in such an appeal. Adopting this Stipulation will further the statutory provisions of 66 Pa.C.S. § 2702 *et seq.*, in regard to public convenience and safety. The parties hereto therefore request that the Commission take the following actions to effectuate the Stipulation of Settlement among the parties:

1. Approve and adopt the Stipulation of Settlement entered into by the parties to this proceeding.
2. Adopt and enter an Order with the following ordering paragraphs:
  - a. PennDOT, at its sole costs and expense:
    - i. Design a highway detour including all necessary plans, schematics, and other

documents in conformance with PennDOT Publication Thirteen (13) for the purpose of detouring traffic from the area of the subject at-grade crossing on SR 2019 in Pittston Township, Luzerne County, during the crossing replacement;

- ii. Submit the aforementioned detour plan to the Commission for its review and approval within thirty days of the date of this Order.
- iii. Provide Reading with roadway signage, free of cost, for the implementation of the detour, if available “in stock,” during the scheduled detour dates, at PennDOT’s Luzerne County Maintenance District 4-3. It is understood that PennDOT may have all, some, or none of the necessary signage in stock during the time of the scheduled detour; and
- iv. Provide Reading with an inventory of the available “in stock” PennDOT’s Luzerne County Maintenance District 4-3 signage thirty (30) days prior to the beginning of construction of the subject crossing;

b. Reading will, at its sole cost and expense:

- i. Design plans, schematics, and other documents for the replacement of the subject crossing with a full depth concrete crossing surface, including provisions for placement of new ballast, ties, tie plates and appropriate condition rail; ensuring that there is no change from the existing crossing elevations at the approach roadways when the new crossing is installed; and providing for a crossing width exceeding the total roadway and shoulder width as per PennDOT Pub. 72.
  
- ii. Prior to construction, submit said plans for the replacement of the subject crossing to the Commission for approval within sixty (60) days of the issuance of a Secretarial Letter or Order approving this Stipulation;
  
- iii. Acquire any and all necessary signage, through creation or rental of said signage, necessary for the implementation of the *detour*, except for any signage provided by PennDOT in accordance with Paragraph (2) (a) (iii) above;
  
- iv. Erect the detour signage, monitor the detour signage as necessary, and remove the detour signage when the project is completed;

- v. Fully implement PennDOT's detour plan, in accordance with the plan and all applicable statutes and regulations; and
  - vi. Fully replace the subject crossing, in accordance with the approved plan on or before April 15, 2014.
- c. Pittston Township agrees that upon completion of the aforementioned obligations of PennDOT and Reading that their complaint in this matter shall be marked satisfied and closed.
- d. All non-carrier public utilities, if any, will relocate and/or adjust their facilities at their initial cost and expense.
- e. The parties agree that all maintenance responsibilities for the existing crossing remain unchanged by these proceedings from prior determinations by the Commission and future maintenance responsibilities shall remain the same after construction of the new crossing. Such maintenance responsibilities are as follows:
- i. Reading, at its sole cost and expense, shall furnish all material and perform all work necessary to maintain its facilities at the subject crossing, including the flashing warning lights and high-type crossing surface up to two (2) feet from the outer most rail;

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- ii. PennDOT, at its sole cost and expense, shall furnish all material and perform all work necessary to maintain the highway approaches to the subject crossing up to the two (2) feet beyond the outer most rail and the advance railroad-highway crossing warning signs; and
  - iii. The maintenance responsibilities of the parties shall continue through the implementation of this Stipulation and indefinitely until a subsequent Secretarial Letter or Order.
- f. This Stipulation shall not be construed to condition any party's obligation or performance upon receipt of funding and/or grant money provided by PennDOT's Bureau of Rail Freight, Ports and Waterways.

Date: 9-17-2013

John P. Finnerty  
John P. Finnerty, Esquire  
Counsel for Pittston Township

Date: \_\_\_\_\_

\_\_\_\_\_  
Jason D. Sharp, Esquire  
Counsel for Commonwealth of Pennsylvania  
Department of Transportation

Date: \_\_\_\_\_

\_\_\_\_\_  
Adam Young, Esquire  
Counsel for Commonwealth of Pennsylvania  
PA Public Utility Commission- Bureau of  
Investigation & Enforcement

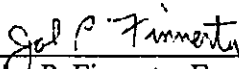
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Wayne A. Michel  
President of Reading and Northern Railroad

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\_\_\_\_\_  
John P. Finnerty, Esquire  
Counsel for Pittston Township

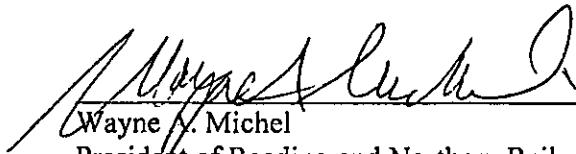
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\_\_\_\_\_  
Jason D. Sharp, Esquire  
Counsel for Commonwealth of Pennsylvania  
Department of Transportation

Date: \_\_\_\_\_

\_\_\_\_\_  
Adam Young, Esquire  
Counsel for Commonwealth of Pennsylvania  
PA Public Utility Commission- Bureau of  
Investigation & Enforcement

Date: 9-19-2013

  
\_\_\_\_\_  
Wayne A. Michel  
President of Reading and Northern Railroad

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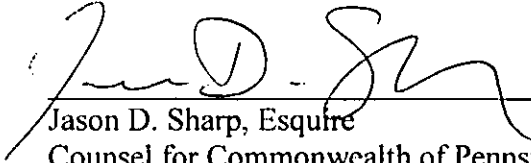
- ii. PennDOT, at its sole cost and expense, shall furnish all material and perform all work necessary to maintain the highway approaches to the subject crossing up to the two (2) feet beyond the outer most rail and the advance railroad-highway crossing warning signs; and
  - iii. The maintenance responsibilities of the parties shall continue through the implementation of this Stipulation and indefinitely until a subsequent Secretarial Letter or Order.
- f. This Stipulation shall not be construed to condition any party's obligation or performance upon receipt of funding and/or grant money provided by PennDOT's Bureau of Rail Freight, Ports and Waterways.

Date:

\_\_\_\_\_  
John P. Finnerty, Esquire  
Counsel for Pittston Township

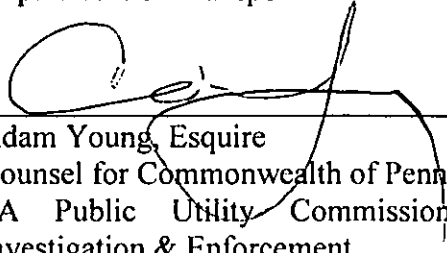
Date:

10-7-2013

  
\_\_\_\_\_  
Jason D. Sharp, Esquire  
Counsel for Commonwealth of Pennsylvania  
Department of Transportation

Date:

10/7/2013

  
\_\_\_\_\_  
Adam Young, Esquire  
Counsel for Commonwealth of Pennsylvania  
PA Public Utility Commission- Bureau of  
Investigation & Enforcement

Date:

\_\_\_\_\_  
Wayne A. Michel  
President of Reading and Northern Railroad

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NORTHERN CROSSING

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Department's *Joint Stipulation of Settlement* was served upon the parties below by first-class mail; postage prepaid this day,

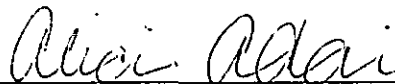
October 8, 2013:

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DATED: October 8, 2013