

**HOLL & ASSOCIATES**

*Attorneys At Law*  
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GREGORY F. LEPORE, ESQ.

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November 1, 2001

**ORIGINAL**

VIA FEDERAL EXPRESS  
PRIORITY OVERNIGHT

James McNulty, Secretary  
Commonwealth of Pennsylvania  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
2<sup>nd</sup> Floor, Keystone Building  
400 North Street  
Harrisburg, PA 17105-3265

C-00004204

DOCUMENT  
FOLDER

**Re:** Whitehaven Boro v. Reading Blue Mountain and Northern Railroad Company

Dear Mr. McNulty:

Enclosed please find an original and nine copies of the Exception of the Reading, Blue Mountain and Northern Railroad Company to the Proposed Order of January 26, 2001 of Administrative Law Judge Richard Lovenwirth relative to the above matter.

Sincerely,

  
GREGORY F. LEPORE

GFL/

Enclosures

cc: Andy Muller  
Jill Moran  
David A. Salapa, Esquire  
Jason D. Sharp  
Charles McCormick, Esquire  
Gino L. Andreuzzi, Esquire

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NOV 01 2001

PA PUBLIC UTILITY COMMISSIC  
SECRETARY'S BUREAU

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DOCKETED

NOV 05 2001

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCUMENT  
FOLDER

NOV 01 2001

WHITE HAVEN BOROUGH

v.  
READING, BLUE MOUNTAIN &  
NORTHERN RAILROAD COMPANY

Complaint Docket  
No.: C-00004204

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

EXCEPTIONS OF THE READING, BLUE MOUNTAIN AND NORTHERN RAILROAD  
COMPANY TO THE RECOMMENDED DECISION ISSUED ON JANUARY 26, 2000 BY  
ADMINISTRATIVE LAW JUDGE RICHARD LOVENWIRTH

AND NOW, comes the Reading, Blue Mountain and Northern Railroad Company, by and through its counsel, Gregory F. Lepore, and files the following Exceptions to the Recommended Decision, issued September 13, 2001, authored by Administrative Law Judge Richard Lovenwirth, pursuant to 52 Pa.Code, §5.533:

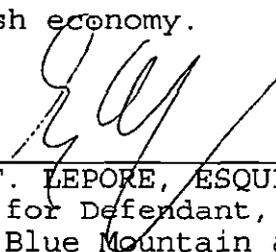
1. The Railroad excepts to the proposed ordering paragraph number five (5) .

The Railroad excepts to the proposed ordering paragraph number five (5) because it requires the Railroad to remove the unused portion steel superstructure of a bridge which formerly carried 2 tracks and now carries one. There was no testimony whatsoever presented at the hearing that the steel superstructure was unsafe or unstable. Also, the vertical clearance of the unused portion of the structure does not present a problem due to a steep grade beyond the crossing which limits the use of large trucks in the area regardless. NT at 87.

The sole testimony presented concerning the removal of the superstructure was that of the PUC staff engineer who stated "some consideration" should be given to removing it, NT at 138, because of a concern about trespassers. NT at 139.

The railroad agreed at the hearing to install barriers at either end of the unused superstructure. NT at 96. This should

address any trespassing concerns at a reasonable cost. To order the railroad to remove the steel superstructure because of speculative concerns about trespassers (which concerns are being addressed) without evidence of any other need to remove the steel creates an unreasonable expense for a short line railroad struggling to survive in a sluggish economy.

By: 

\_\_\_\_\_  
GREGORY F. LEPORE, ESQUIRE  
Attorney for Defendant,  
Reading, Blue Mountain & Northern  
Railroad Company  
920 South Broad Street  
P.O. Box 807  
Lansdale, PA 19446  
(215) 362-1015

**CERTIFICATE OF SERVICE**

I hereby certify that I have forwarded a true and correct copy of Exceptions of the Reading, Blue Mountain and Northern Railroad Company to the Proposed Order of January 26, 2001 by Administrative Law Judge Richard Lovenwirth on the 1st day of November, 2001, via the U.S. Postal Service, First Class Mail, Postage Prepaid to the following persons:

Andy Muller  
READING, BLUE MOUNTAIN &  
NORTHERN RAILROAD  
P.O. Box 218  
Port Clinton, PA 19549

Jill Moran  
The Powell Law Group  
123 Warren Street  
West Hazleton, PA 18201-2183

David A. Salapa, Esquire  
Pennsylvania Public Utility Commission  
Barto Building, Third Floor  
Third & State Streets  
Harrisburg, PA 17105-3265

Jason D. Sharp, Assistant Counsel  
Commonwealth of Pennsylvania  
Department of Transportation  
Office of Chief Counsel  
P.O. Box 8212  
Harrisburg, PA 17105-8212

Charles McCormick, Esquire  
Suite 808  
67 Public Square  
Wilkes Barre, PA 18701

Gino L. Andreuzzi, Esquire  
P.O. Box 343  
Drums, PA 18222-0343

HOLL & ASSOCIATES, P.C.

By:

  
\_\_\_\_\_  
GREGORY F. LEPORE, ESQUIRE

DATE: November 1, 2001

DOCUMENT  
FOLDER

SUBJECT: C-00004204

KJR

TO: Office of Administrative Law Judge  
Susan Hoffner

DOCKETED  
NOV 01 2001

FROM: James J. McNulty  
Secretary  
nvl

WHITE HAVEN BOROUGH  
VS  
READING, BLUE MOUNTAIN AND NORTHERN RAILROAD COMPANY

Copies of the Recommended Decision have been served upon all parties.

No exceptions have been received by the Commission. This matter is referred to your office for whatever action you deem necessary.

cc: Office of Special Assistants

P.S. Please note that exceptions or reply exceptions may come in timely with certificate of mailings. A second memo will not be released for these exceptions.

**HOLL & ASSOCIATES**

*Attorneys At Law*  
A PROFESSIONAL CORPORATION

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GREGORY F. LEPORE, ESQ.

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2001 DEC 10 AM 10:05

ORIGINAL

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PA PUC  
SECRETARY'S BUREAU

December 6, 2001

C.00004204

James McNulty, Secretary  
Commonwealth of Pennsylvania  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. Box 3265  
Harrisburg, PA 17105-3265

DOCUMENT  
FOLDER

RE: Whitehaven Boro v. Reading Blue Mountain and Northern Railroad Company

Dear Mr. McNulty:

Enclosed please find the Petition for Leave to File Exception Nunc Pro Tunc relative to the above.

Sincerely,

  
GREGORY F. LEPORE, ESQUIRE

GFL/bac

RECEIVED

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

2001 DEC 10 AM 10:05

WHITE HAVEN BOROUGH :  
:  
v. :  
READING, BLUE MOUNTAIN & :  
NORTHERN RAILROAD COMPANY :

PA PUC  
Complaint Secretary's Bureau  
No.: C-00004204

**DOCKETED**

PETITION FOR LEAVE TO FILE EXCEPTION NUNC PRO TUNC DEC 13 2001

1. Defendant, Reading Blue Mountain and Northern Railroad Company filed a single exception to the recommended decision of A.L.J. Lovenworth in the above matter on November 1, 2001.

2. The recommended decision was sent by facsimile transmission by counsel for the railroad to the railroad on the day that it was received by counsel.

**DOCUMENT FOLDER**

3. Counsel made numerous telephone calls to the responsible person at the railroad in an attempt to ascertain the railroads position on the recommended decision.

4. Due to an ongoing labor dispute at the railroad, management employees at the railroad are engaged in various operational activities, including, in the case of the person responsible for decision making in regard to maintenance of way issues, training become FRA certified as an engineer.

5. Accordingly, counsel and his client had difficulty communicating.

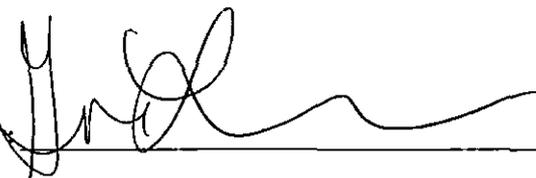
6. Counsel was finally able to reach his client on November 1, 2000, at which time it was decided that single exception to a multi paragraph order would be filed, concerning a matter that is ancillary to the primary dispute. Counsel drafted and filed, via Federal Express, the Exception that same date.

7. The delay of two days (the Exception was otherwise due October 30, 2000) is not prejudice to any party. Further, by way of mitigation, at least one item required by the proposed order, the placement of concrete barriers at either end of the inactive bridge (see proposed ordering paragraph 5), has been completed.

8. The PUC has the authority to exercise its discretion and consider exceptions filed nunc pro tunc. There is a citation in Millcreek Twp. v The PUC, 753 A.2d 324 (PA. Cmwlth. 2000).

Wherefore, for the above reasons, Reading Blue Mountain and Northern Railroad Company respectfully requests that the PUC consider its exception Nunc Pro Tunc.

Respectfully submitted

By: 

GREGORY F. LEPORE, ESQUIRE  
Attorney for Defendant,  
Reading, Blue Mountain & Northern  
Railroad Company  
920 South Broad Street  
P.O. Box 807  
Lansdale, PA 19446  
(215) 362-1015

CERTIFICATE OF SERVICE

I hereby certify that I have forwarded a true and correct copy of Petition For Leave To File Exceptions Nunc Pro Tunc of the Reading, Blue Mountain and Northern Railroad Company to the Proposed Order of January 26, 2001 by Administrative Law Judge Richard Lovenwirth on the 4th day of December, 2001, via the U.S. Postal Service, First Class Mail, Postage Prepaid to the following persons:

Andy Muller  
READING, BLUE MOUNTAIN &  
NORTHERN RAILROAD  
P.O. Box 218  
Port Clinton, PA 19549

Jill Moran  
The Powell Law Group  
123 Warren Street  
West Hazleton, PA 18201-2183

David A. Salapa, Esquire  
Pennsylvania Public Utility Commission  
Barto Building, Third Floor  
Third & State Streets  
Harrisburg, PA 17105-3265

Jason D. Sharp, Assistant Counsel  
Commonwealth of Pennsylvania  
Department of Transportation  
Office of Chief Counsel  
P.O. Box 8212  
Harrisburg, PA 17105-8212

Charles McCormick, Esquire  
Suite 808  
67 Public Square  
Wilkes Barre, PA 18701

Gino L. Andreuzzi, Esquire  
P.O. Box 343  
Drums, PA 18222-0343

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Administrative Law Judge Richard M. Lovenwirth  
Room 317 Scranton State Office Building  
100 Lackawanna Avenue  
Scranton, PA 18503

HOLL & ASSOCIATES, P.C.

By:



GREGORY F. LEPORE, ESQUIRE

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

November 5, 2001

IN REPLY PLEASE  
REFER TO OUR FILE

C-00004204

Gregory F. Lepore Esquire  
Holl & Associates  
920 South Broad Street Po Box 807  
Lansdale Pa 19446

DOCKETED

NOV 08 2001

<sup>KJR</sup>  
Whitehaven Boro

v.

Reading Blue Mountain and Northern Railroad Company

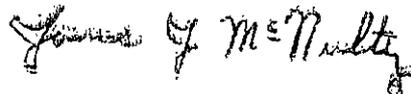
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FILED

Dear Mr. Lepore:

Your Exceptions in the above referenced proceeding were received by the Commission on November 1, 2001. This was not within 20 days of the mailing to you of the Initial Decision of the Administrative Law Judge, as prescribed in the cover letter transmitting that Initial Decision, and the Commission's Rule at 52 Pa. Code §5.533.

Accordingly, your Exceptions were not timely filed and will not be considered by the Commission.

Very truly yours,



James J. McNulty  
Secretary

cc: All Parties of Record  
Susan Hoffner  
Law Bureau  
Office of Special Assistants  
Office of Trial Staff  
Chairman  
Commissioners

nvl