

HOLL & ASSOCIATES

Attorneys At Law
A PROFESSIONAL CORPORATION

P.O. BOX 807
450 EAST MAIN STREET
LANSDALE, PENNSYLVANIA 19446

GREGORY F. LEPORE, ESQ.

(215) 362-1015
FAX (215) 362-8530
EMAIL: glepore@comcast.net

September 14, 2005

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

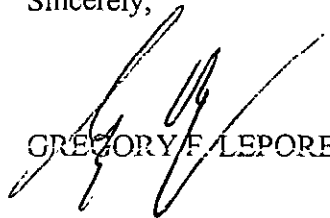
RECEIVED
05 SEP 16 AM 8:51
PA. P.U.C.
SECRETARY'S BUREAU

Re: Whitehaven Boro v. Reading Blue Mountain and Northern Railroad Company
No. C-00004204

Dear Mr. McNulty:

Enclosed please find an original and one copy of my Entry of Appearance on behalf of the Reading Blue Mountain and Northern Railroad Company relative to the above. Copies have been served on the parties of record in accordance with the Certificate of Service.

Sincerely,



GREGORY F. LEPORE

GFL/bac
Enclosures

DOCUMENT
FOLDER

BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION

RECEIVED
05 SEP 16 AM 8:51
PA.P.U.C.
SECRETARY'S BUREAU

White Haven Borough

v.

Reading, Blue Mountain and
Northern Railroad Company

No. C-00004204

DOCUMENT
FOLDER

ENTRY OF APPEARANCE

Please enter my appearance as counsel for the Reading, Blue Mountain and Northern Railroad Company.

All service on and communications to the Reading, Blue Mountain and Northern Railroad Company in this proceeding should be addressed to:

Gregory F. Lepore, Esquire
HOLL & ASSOCIATES. P.C.
450 E. Main Street
P.O. Box 807
Lansdale, PA 19446
(215) 362-1015

DOCKETED
SEP 19 2005



GREGORY F. LEPORE
Attorney I.D. #43779

Dated: September 14, 2005

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document, Praecipe for Appearance, upon the persons listed and in the manner indicated below:

SERVICE BY FIRST CLASS MAIL:

Reading Blue Mountain & Northern Railroad
P.O. Box 218
Port Clinton, PA 19549

Donald G. Karpowich, Esquire
White Haven Borough
85 Drasher Road
Drums, PA 18222

Thomas P. Pizano, Chairman
Luzerne County
Luzerne County Courthouse
200 N. River Street
Wilkes Barre, PA 18711

Sam Macurak, Jr., Chairman
Dennison Township
20 Macorak Lane
White Haven, PA 18661

Gary C. Fawver, Chief
PA DOT Right of Way and Utilities
7th Floor Keystone Bldg.
P.O. Box 3362
Harrisburg, PA 17105-3362

Joseph Stok
PennDOT District 4-0
P.O. Box 111
Scranton, PA 18501

Elizabeth J. Altero, Secretary
White Haven Borough
312 Main Street
White Haven, PA 18661

James P. Blaum, Esquire
Luzerne County
Luzerne County Courthouse

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SECRETARY'S BUREAU

200 N. River Street
Wilkes Barre, PA 18711

Gino Andreuzzi, Esquire
Dennison Township
76 Walnut Street
White Haven, PA 18661

Jason D. Sharp, Esquire
PA. Dept. of Transportation
9th Floor Keystone Building
P.O. Box 8212
Harrisburg, PA 17105-8212


Wayne T. Scott, Esquire
Assistant Counsel
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Wesley Westerhoefer
Reading Blue Mountain and Northern Railroad Company
P.O. Box 218
Port Clinton, PA 19544

Samuel T. Guesto, Jr., Chief Clerk
Luzerne County Courthouse
200 N. River Street
Wilkes Barre, PA 18711

Kathleen Stortz, Secretary
Dennison Township
67 Coallagher Lane
White Haven, PA 18661

Ron Sturgeon
Pennonni Associates
100 N. Wilkes Barre Blvd.
Wilkes Barre, PA 18701



GRÉGORIO F. LEPORE
Attorney ID. # 43779
Reading Blue Mountain and
Northern Railroad Company

Dated: September 14, 2005

DONALD G. KARPOWICH
ATTORNEY-AT-LAW, P.C.

85 Drasher Road • Drums, PA 18222 • (570) 788-6647 • Fax (570) 788-0654 • E-mail: karpowichlaw@hazleton.net

October 6, 2005

James J. McNulty, Jr., Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

ORIGINAL

**RE: White Haven Borough v. Reading, Blue Mountain and Northern Railroad
Company
No. C-00004204**

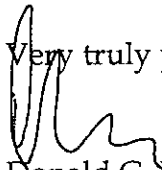
**DOCUMENT
FOLDER**

Dear Mr. McNulty:

Enclosed for filing are an original and three (3) copies of the Entry of Appearance on behalf of the White Haven Borough in the above-referenced case. Copies have been served on the parties of record in accordance with the Certificate of Service.

Thank you.

Very truly yours,



Donald G. Karpowich

DGK/rc

Enc.

cc: Gino Andruzzi, Esq., Wayne T. Scott, Esq., Jason D. Sharp, Esq.,
Gregory F. Lepore, Esq.

SECRETARY'S BUREAU
PA.P.U.C.

05 OCT -7 AM 8:45

RECEIVED



BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

White Haven Borough

:
:
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:
:

v.

Reading, Blue Mountain and Northern
Railroad Company

NO. C-00004204

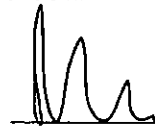
**DOCUMENT
FOLDER**

ENTRY OF APPEARANCE

Please enter my appearance as counsel for White Haven Borough

All service on and communications to White Haven Borough in this proceeding should be addressed to:

Donald G. Karpowich
Attorney At Law
85 Drasher Road
Drums, PA 18222
Phone: 570 788-6647



Donald G. Karpowich
Attorney ID # 78176

Date: 10-6-05

DOCKETED
OCT 07 2005

SECRETARY'S BUREAU
P.A.P.U.C.

05 OCT -7 AM 8:45

RECEIVED

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document, Praecipe for Appearance, upon the persons listed and in the manner indicated below:

Service by First Class Mail:

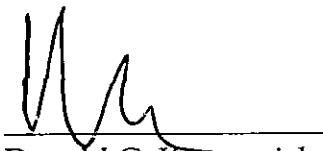
Gino Andreuzzi, Esquire
85 Drasher Road, Suite 2
Drums, PA 18222

Wayne T. Scott, Esquire
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Jason D. Sharp, Esquire
PA. Dept. Of Transportation
9th Floor Keystone Building
P.O. Box 8212
Harrisburg, PA 17105-8212

Gregory F. Lepore, Esquire
Holl & Associates
P.O. Box 807
450 East Main Street
Lansdale, Pennsylvania 19446

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PA.P.U.C.
SECRETARY'S BUREAU



Donald G. Karpowich
Attorney ID. # 78176
White Haven Borough

Date: 10-6-05



COMMONWEALTH OF PENNSYLVANIA
 DEPARTMENT OF TRANSPORTATION
 OFFICE OF CHIEF COUNSEL
 REAL PROPERTY DIVISION
 POST OFFICE BOX 8212
 HARRISBURG, PA 17105-8212
 TELEPHONE: (717) 787-3128
 FACSIMILE: (717) 772-2741



Wednesday, October 12, 2005

ORIGINAL

James J. McNulty, Secretary
 Pennsylvania Public Utility Commission
 P.O. Box 3265
 Harrisburg, PA 17105-3265

In Re: White Haven Borough v. Reading Blue Mountain & Northern Railroad Company
 PUC Complaint Docket # C-00004204

Dear Secretary McNulty:

Enclosed for filing please find the original and three (3) copies of PENNDOT's *Motion to Dismiss* and in the above-captioned matter.

I hereby certify that two (2) copies of PENNDOT's *Motion* have been served on all parties of record, as indicated on the attached Certificate of Service.

Very Truly Yours,

Jason D. Sharp
 Assistant Counsel

220/JDS: be
jsharp@state.pa.us

Enclosures

DOCUMENT
 FOLDER

cc: Parties of Record
 Gary Fawver, P.E., Chief, Right of Way & Utilities
 Joseph Strok, Grade Crossing Administrator, District 4-0

2005 OCT 12 PM 2: 21
 SECRETARY'S BUREAU

2. The PUC has the power to allocate work or costs to any affected public utility, *municipal corporation, appropriate non-profit entity or the Commonwealth.*
66 Pa. C.S. §§ 2702 (c), 2702 (h), 2704 (a).

3. The PUC is further authorized under to determine what parties are “concerned” or “interested” with respect to the construction, alteration, suspension or abolition of crossings and the allocations of costs thereto. 66 Pa. § C.S. 2702 (c) (as to allocation of work); 66 Pa. C.S. § 2704 (a) (as to allocation of costs).

4. PENNDOT is an administrative agency of the Commonwealth with exclusive jurisdiction and control over *State* designated highways throughout the Commonwealth. 71 P.S. § 512 (a) (10); 36 P.S. § 670-420.

5. The PUC’s regulations provide that: “[w]henever a complaint is made under Section 2702 of the Act (relating to the construction, relocation, suspension and abolition of crossings) that a crossing is dangerous or inadequate and requires reconstruction, relocation, alteration or abolition, public utilities and municipal corporations concerned and, *if applicable*, the Department of

Transportation of this Commonwealth, will be made parties respondent.” 52
Pa. Code § 3.361 (a) (emphasis added).

6. To the best of PENNDOT’s information and belief, the PUC has joined PENNDOT as a respondent in all crossing applications, complaints and investigation dockets for at least the last thirteen (13) years.
7. “A railroad-highway crossing is the intersection of a highway with a railroad’s right-of-way upon which railroad tracks lie and can be at, above or below the grade of the railroad tracks.” *City of Philadelphia v. Pennsylvania PUC*, 676 A.2d 1298, 1301 (Pa. Cmwlth. 1996) (citations omitted).
8. The complaint in this case originally involved questions regarding the condition of: a) a railroad retaining wall at the Berwick Street crossing (SR 940); b) the bridge deck structure condition at the Susquehanna Street crossing (a Township Road) and, c) the railroad retaining wall supporting the rail line adjacent to the Susquehanna Street crossing.
9. As stated by counsel at the pre-hearing conference in this case on Tuesday, October 4, 2005, the only remaining issue in this case is the structural

adequacy of the railroad retaining wall adjacent to the Susquehanna Street crossing.

10. PENNDOT has no interest in, and receives no benefit from, the subject crossing or the railroad retaining wall.
11. PENNDOT has no jurisdiction over the subject rail line or Susquehanna Street.
12. This case no longer involves any crossing issues, but rather deals with a railroad retaining wall.
13. Since the PUC's jurisdiction over PENNDOT is derived from its crossing jurisdiction under Sections 2072 and 2704 of the Public Utility Code, the PUC has no further jurisdiction over PENNDOT in this case.
14. Even if the PUC has jurisdiction over the retaining wall adequacy issue under 66 Pa. C.S. § 1501¹, the PUC has no jurisdiction to allocate costs or

¹ 66 Pa. C.S. § 1501 states:

maintenance responsibilities to PENNDOT in actions derived from its utility facilities powers under Section 1501.

15. PENNDOT has no power over, interest in or jurisdiction over the railroad retaining wall facility adjacent to Susquehanna Street.²

16. Cases such as *Com., Department of Transportation v. Pennsylvania Public Utility Commission*, 452 A. 2d 619 (Pa. Cmwlth. 1982); *Com., Department of Transportation v. Pennsylvania Public Utility Commission*, 464 A. 2d 645 (Pa. Cmwlth. 1983); and *City of Chester v. Pa. PUC*, 798 A.2d 288 (Pa. Cmwlth. 2002) ("Lloyd Street") hold that the PUC can allocate costs to PENNDOT for

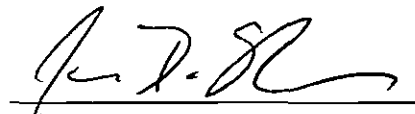
Character of service and facilities - Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service. Any public utility service being furnished or rendered by a municipal corporation beyond its corporate limits shall be subject to regulation and control by the commission as to service and extensions, with the same force and in like manner as if such service were rendered by a public utility. The commission shall have sole and exclusive jurisdiction to promulgate rules and regulations for the allocation of natural or artificial gas supply by a public utility.

² The Public Utility Code definition of "facilities" includes "[a]ll the plant and equipment of a public utility, including *all tangible and intangible real and personal property* without limitation, and any and all means and instrumentalities in any manner *owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with, the business of any public utility*". 66 Pa. C.S. § 102 (emphasis added).

work performed at a local road crossing, if there is a direct benefit to the State highway system from the crossings. However, these cases are not relevant to the instant matter, because they relate to at-grade crossing or highway bridge crossing situations. Here, the main issue is protecting private property from the collapse of a railroad retaining wall.

WHEREFORE, PENNDOT respectfully requests that it be dismissed from the instant case due to lack of jurisdiction.

Respectfully Submitted,



Jason D. Sharp
Assistant Counsel
Pennsylvania Attorney Id. # 80488

Commonwealth of Pennsylvania
Department of Transportation
P.O. Box 8212
Harrisburg, Pa 17105-8212
(717) 787-3128

DATE: Wednesday, October 12, 2005

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

White Haven Borough :
Complainant :
 : Docket Number
v. :
 : C-00004204
Reading Blue Mountain and :
Northern Railroad Company :
Respondent :
 :

CERTIFICATE OF SERVICE

I, Jason D. Sharp, hereby certify that a true and correct copy of the Department of Transportation's *Motion to Dismiss* was served upon the parties listed below by first class mail, postage prepaid this 12th day of October, 2005:

WAYNE SCOTT, ESQUIRE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
BUREAU OF TRANSPORTATION AND SAFETY - LEGAL DIVISION
P.O. BOX 3265
HARRISBURG, PA 17105-3265

READING, BLUE MTN & NORTHERN RR
P.O. BOX 218
PORT CLINTON, PA 19549

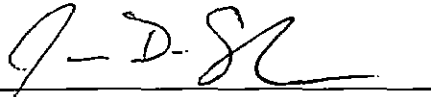
WHITE HAVEN BOROUGH
312 MAIN STREET
WHITE HAVEN, PA 18664

2005 OCT 12 PM 2: 22
SECRETARY'S BUREAU

RECEIVED

DONALD KARPOVICH, ESQUIRE
SOLICITOR FOR WHITE HAVEN BOROUGH
JAMES P BLAUM ESQUIRE COUNTY SOLICITOR
LUZERNE COUNTY COURT HOUSE
200 NORTH RIVER STREET
WILKES BARRE, PA 18711

GREGORY F LEPORE ESQUIRE
HOLL & ASSOCIATES
920 SOUTH BROAD STREET PO BOX 807
LANSDALE, PA 19446



Jason D. Sharp
Assistant Counsel
Pennsylvania Attorney Id. # 80488

Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel
P.O. Box 8212
Harrisburg, Pa. 17105-8212
(717) 787-3128

DATED: Wednesday, October 12, 2005

OALJ Hearing Report

Please Check Those Blocks Which Apply

Docket No.:	C-00004204		YES	NO
Case Name:	White Haven Borough v. Reading, Blue Mountain & Northern Railroad Company	Prehearing Held:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Location:	SCR	Hearing Held:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Date:	October 4, 2005	Testimony Taken:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ALJ:	Ember S. Jandebeur	Transcript Due:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Reporting Firm:	Sargents Court Reporting	Hearing Concluded:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p style="text-align: center;">DOCUMENT FOLDER</p> <p style="text-align: center;">RECEIVED</p> <p style="text-align: center;">OCT 12 2005</p> <p style="text-align: center;">PA PUBLIC UTILITY COMMISSION SECRETARY'S BUREAU</p>		Further Hearing Needed:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Estimated Add'l Days:		
		RECORD CLOSED:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		DATE:		
		Briefs to be Filed:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		DATE:		
		Bench Decision:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		REMARKS:		

PLEASE PRINT CLEARLY - Incomplete Information may result in delay of processing.

Name and Telephone Number	Address	Who are you representing?
Gregory Lepore Telephone: 215-362-1015	450 E Main St. Lansdale Pa 19446 City State Zip	R B M N R R
Donald G. Karpowich Telephone: 570-788-6647	85 Drasher Road Drumc, PA 18222 City State Zip	White Haven Penn
Jason D. SHARP Telephone: 717-981-3128	PO Box 8212 HBG PA 17110 City State Zip	PENNDOT
	E-mail Address: jsharp@state.pa.us	Fax Number: 717-772-2741

Check this box if additional parties or attendees appear on back of form.

10/11/05
elp.

[Signature]
Reporter's Signature

Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
Office of Administrative Law Judge
P.O. BOX 3265, HARRISBURG, PA 17105-3265
July 13, 2006

IN REPLY PLEASE
REFER TO OUR FILE

In Re: C-00004204

(SEE LETTER DATED 8/9/05)

White Haven Borough v. Reading, Blue Mountain & Northern Railroad
Company

Hearing Notice

This is to inform you that a hearing on the above-captioned case will be held as follows:

Type: Initial Hearing

Date: Wednesday, September 6, 2006

Time: 10:00 a.m.

Location: Room 318
Scranton State Office Building
100 Lackawanna Avenue
Scranton, PA 18503

DOCUMENT
FOLDER

Presiding: Administrative Law Judge Ember S. Jandebeur
Room 317 Scranton State Office Building
100 Lackawanna Avenue
Scranton, PA 18503
Telephone: 570.963.4818
Fax: 570.963.3310

Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.

DOCKETED
JUL 27 2006

If you intend to file exhibits, 2 copies of all hearing exhibits to be presented into evidence must be submitted to the reporter. An additional copy must be furnished to the Presiding Officer. A copy must also be provided to each party of record.

Individuals representing themselves do not need to be represented by an attorney. All others (corporation, partnership, association, trust or governmental agency or subdivision) must be represented by an attorney. An attorney representing you should file a Notice of Appearance before the scheduled hearing date.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call the scheduling office at the Public Utility Commission at least (2) two business days prior to your hearing:

- Scheduling Office: 717.787.1399
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1.800.654.5988

pc: Judge Jandebaur
Cyndi Page - CMU, Keystone 3E
Dave Hart - T&S Rail, Keystone 3N
Cherie Pyle, Scheduling Officer
Beth Plantz
Docket Section
Calendar File



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
Office of Administrative Law Judge
P.O. BOX 3265, HARRISBURG, PA 17105-3265
July 13, 2006

IN REPLY PLEASE
REFER TO OUR FILE

In Re: C-00004204

JOSEPH STROK PENNDOT DISTRICT 4-0
PO BOX 111
SCRANTON PA 18501

DOCUMENT
FOLDER

White Haven Borough v. Reading, Blue Mountain & Northern Railroad
Company

Hearing Notice

This is to inform you that a hearing on the above-captioned case will be held as follows:

Type: Initial Hearing

Date: Wednesday, September 6, 2006

Time: 10:00 a.m.

Location: Room 318
Scranton State Office Building
100 Lackawanna Avenue
Scranton, PA 18503

Presiding: Administrative Law Judge Ember S. Jandebour
Room 317 Scranton State Office Building
100 Lackawanna Avenue
Scranton, PA 18503
Telephone: 570.963.4818
Fax: 570.963.3310

Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.

SECRETARY'S OFFICE

2006 AUG -1 PM 12:06

RECEIVED

If you intend to file exhibits, 2 copies of all hearing exhibits to be presented into evidence must be submitted to the reporter. An additional copy must be furnished to the Presiding Officer. A copy must also be provided to each party of record.

Individuals representing themselves do not need to be represented by an attorney. All others (corporation, partnership, association, trust or governmental agency or subdivision) must be represented by an attorney. An attorney representing you should file a Notice of Appearance before the scheduled hearing date.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call the scheduling office at the Public Utility Commission at least (2) two business days prior to your hearing:

- Scheduling Office: 717.787.1399
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1.800.654.5988



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
Office of Administrative Law Judge
P.O. BOX 3265, HARRISBURG, PA 17105-3265
August 2, 2006

IN REPLY PLEASE
REFER TO OUR FILE

In Re: C-00004204

(SEE LETTER DATED 7/13/06)

White Haven Borough v. Reading, Blue Mountain & Northern Railroad
Company

Hearing Cancellation/Reschedule Notice

This is to inform you that the Initial Hearing on the above-captioned case previously scheduled for Wednesday, September 6, 2006, has been canceled.

The hearing has been rescheduled as follows:

Type: Initial Hearing
Date: Tuesday, September 19, 2006
Time: 10:00 a.m.
Location: Room 318
Scranton State Office Building
100 Lackawanna Avenue
Scranton, PA 18503
Presiding: Administrative Law Judge Ember S. Jandebaur
Room 317
Scranton State Office Building
100 Lackawanna Avenue
Scranton, PA 18503
Telephone: 570.963.4818
Fax: 570.963.3310

DOCUMENT
FOLDER

DOCKETED
SEP 28 2006

Please mark your records accordingly.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call the scheduling office at the Public

Utility Commission at least (2) two business days prior to your hearing:

- Scheduling Office: 717.787.1399
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1.800.654.5988

pc: Judge Jandebaur
Cyndi Page - CMU, Keystone 3E
Dave Hart - T&S Rail, Keystone 3N
Cherie Pyle, Scheduling Officer
Beth Plantz
Docket Section
Calendar File



GOVERNOR'S OFFICE OF
GENERAL COUNSEL

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

Office of Chief Counsel
Real Property Division
Post Office Box 8212
Harrisburg, PA 17105-8212
Telephone 717.787.3128
Facsimile 717.772.2741
www.dot.state.pa.us



Friday, August 11, 2006

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

ORIGINAL

In Re: White Haven Borough v. Reading Blue Mountain & Northern Railroad Company,
PUC Complaint Docket # C-00004204

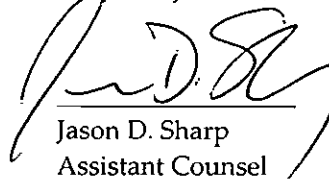
Dear Secretary McNulty:

Enclosed for filing please find the original and three (3) copies of PENNDOT of Transportation's *Amended Motion to Dismiss* and in the above-captioned matter.

I hereby certify that two (2) copies of PENNDOT's *Motion and Memorandum* have been served on all parties of record, as indicated on the attached *Amended Certificate of Service*.

DOCUMENT
FOLDER

Very Truly Yours,


Jason D. Sharp
Assistant Counsel

220/JDS:_
jsharp@state.pa.us

cc: Parties of Record
Gary Fawver, P.E., Chief, Right of Way & Utilities
Joseph Strok, Grade Crossing Administrator, District 4-0

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2006 AUG 11 PM 2:54
PA PUC
SECRETARY'S BUREAU

32

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

White Haven Borough :
Complainant :
v. :
Reading Blue Mountain and :
Northern Railroad Company, *et al.* :
Respondents :

Docket Number
C-00004204

RECEIVED
2006 AUG 11 PM 2:54
SECRETARY'S BUREAU

ORIGINAL

AMENDED MOTION TO DISMISS

(Amended sections noted as ***bold, italics and underlined.***)

AND NOW, comes the Commonwealth of Pennsylvania, Department of Transportation (PENNDOT), by its undersigned counsel, and submits this Amended Motion to Dismiss¹ pursuant to ***52 Pa. Code §§ 5.91 and 5.102 et seq.***:

¹ On October 12, 2005, PENNDOT filed a *Motion to Dismiss* requesting that "it be dismissed from the instant case due to lack of jurisdiction." The original Motion identified that it was being filed as a preliminary motion under 52 Pa. Code § 5.101. (*Motion to Dismiss*, p.1). The *Motion to Dismiss* is actually in the nature of a motion for summary judgment or motion for judgment on the pleadings, as it requests dismissal of PENNDOT for lack of jurisdiction based upon the pleadings and evidence previously entered in the case.

Additionally, the *Motion to Dismiss* was served on all parties to the matter. However, the address for Attorney Donald Karpovich was inadvertently merged with that of another counsel and he did not receive service of the Motion. Therefore, PENNDOT is serving this Amended Motion. The provisions of Pa. Code § 5.102 *et seq.* provide that an answer may be filed within twenty (20) days of the filing of a motion. Even allowing for the Commission's "three day mail rule" (Pa. Code § 1.56(b)), answers would be due on or before September 5, 2006. Thus, consideration of this Motion will not unduly delay or postpone the proceedings in this matter.

1. The Pennsylvania Public Utility Commission (PUC) is vested with the exclusive jurisdiction to order work and allocate costs among interested parties in rail/highway crossings cases. 66 Pa. C.S. §§ 2702 (c), 2704 (a); *City of Philadelphia v. Pennsylvania Public Utility Commission*, 676 A.2d 1298, 1301 (Pa. Cmwlth. 1996).
2. The PUC has the power to allocate work or costs to any affected public utility, municipal corporation, appropriate non-profit entity or the Commonwealth. 66 Pa. C.S. §§ 2702 (c), 2702 (h), 2704 (a).
3. The PUC is further authorized under to determine what parties are "concerned" or "interested" with respect to the construction, alteration, suspension or abolition of crossings and the allocations of costs thereto. 66 Pa. § C.S. 2702 (c) (as to allocation of work); 66 Pa. C.S. § 2704 (a) (as to allocation of costs).
4. PENNDOT is an administrative agency of the Commonwealth with exclusive jurisdiction and control over *State* designated highways throughout the Commonwealth. 71 P.S. § 512 (a) (10); 36 P.S. § 670-420.
5. The PUC's regulations provide that: "[w]henever a complaint is made under Section 2702 of the Act (relating to the construction, relocation, suspension and abolition of crossings) that a crossing is dangerous or inadequate and requires reconstruction, relocation, alteration or abolition, public utilities and municipal corporations concerned and, *if applicable*, the Department of Transportation of this Commonwealth, will be made parties respondent." 52 Pa. Code § 3.361 (a) (emphasis added).

6. To the best of PENNDOT's information and belief, the PUC has joined PENNDOT as a respondent in all crossing applications, complaints and investigation dockets for at least the last thirteen (13) years.
7. "A railroad-highway crossing is the intersection of a highway with a railroad's right-of-way upon which railroad tracks lie and can be at, above or below the grade of the railroad tracks." *City of Philadelphia v. Pennsylvania PUC*, 676 A.2d 1298, 1301 (Pa. Cmwlth. 1996) (citations omitted).
8. The complaint in this case originally involved questions regarding the condition of: a) a railroad retaining wall at the Berwick Street crossing (SR 940); b) the bridge deck structure condition at the Susquehanna Street crossing (a Township Road) and, c) the railroad retaining wall supporting the rail line adjacent to the Susquehanna Street crossing.
9. As stated by counsel at the pre-hearing conference in this case on Tuesday, October 4, 2005, the only remaining issue in this case is the structural adequacy of the railroad retaining wall adjacent to the Susquehanna Street crossing.
10. PENNDOT has no interest in, and receives no benefit from, the subject crossing or the railroad retaining wall.
11. PENNDOT has no jurisdiction over the subject rail line or Susquehanna Street.

12. This case no longer involves any crossing issues, but rather deals with a railroad retaining wall.
13. Since the PUC's jurisdiction over PENNDOT is derived from its crossing jurisdiction under Sections 2072 and 2704 of the Public Utility Code, the PUC has no further jurisdiction over PENNDOT in this case.
14. Even if the PUC has jurisdiction over the retaining wall adequacy issue under 66 Pa. C.S. § 1501², the PUC has no jurisdiction to allocate costs or maintenance responsibilities to PENNDOT in actions derived from its utility facilities powers under Section 1501.
15. PENNDOT has no power over, interest in or jurisdiction over the railroad retaining wall facility adjacent to Susquehanna Street.³

² 66 Pa. C.S. § 1501 states:

Character of service and facilities - Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service. Any public utility service being furnished or rendered by a municipal corporation beyond its corporate limits shall be subject to regulation and control by the commission as to service and extensions, *with the same force and in like manner as if such service were rendered by a public utility.* The commission shall have sole and exclusive jurisdiction to promulgate rules and regulations for the allocation of natural or artificial gas supply by a public utility.

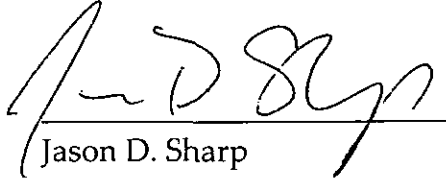
³ The Public Utility Code definition of "facilities" includes "[a]ll the plant and equipment of a public utility, including *all tangible and intangible real and personal property* without limitation, and any and all

16. Cases such as *Com., Department of Transportation v. Pennsylvania Public Utility Commission*, 452 A. 2d 619 (Pa. Cmwlth. 1982); *Com., Department of Transportation v. Pennsylvania Public Utility Commission*, 464 A. 2d 645 (Pa. Cmwlth. 1983); and *City of Chester v. Pa. PUC*, 798 A.2d 288 (Pa. Cmwlth. 2002) (“Lloyd Street”) hold that the PUC can allocate costs to PENNDOT for work performed at a local road crossing, if there is a direct benefit to the State highway system from the crossings. However, these cases are not relevant to the instant matter, because they relate to at-grade crossing or highway bridge crossing situations. Here, the main issue is protecting private property from the collapse of a railroad retaining wall.

means and instrumentalities in any manner *owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with, the business of any public utility*”. 66 Pa. C.S. § 102 (emphasis added).

WHEREFORE, PENNDOT respectfully requests that it be dismissed from the instant case due to lack of jurisdiction.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "J D Sharp", written over a horizontal line.

Jason D. Sharp

Assistant Counsel

Pennsylvania Attorney Id. # 80488

Commonwealth of Pennsylvania

Department of Transportation

P.O. Box 8212

Harrisburg, Pa 17105-8212

(717) 787-3128

DATE: Friday, August 11, 2006

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

White Haven Borough :
Complainant :
 : Docket Number
v. :
 : C-00004204
Reading Blue Mountain and :
Northern Railroad Company :
Respondent :
 :

AMENDED CERTIFICATE OF SERVICE

I, Jason D. Sharp, hereby certify that a true and correct copy of the Department of Transportation's *Amended Motion to Dismiss* was served upon the parties listed below by first class mail, postage prepaid this day, Friday, August 11, 2006:

WAYNE SCOTT, ESQUIRE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
BUREAU OF TRANSPORTATION AND SAFETY - LEGAL DIVISION
P.O. BOX 3265
HARRISBURG, PA 17105-3265

READING, BLUE MTN & NORTHERN RR
P.O. BOX 218
PORT CLINTON, PA 19549

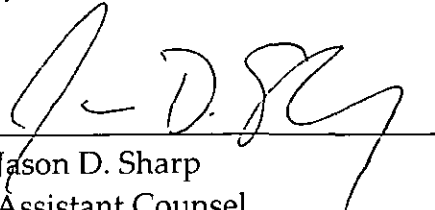
WHITE HAVEN BOROUGH
312 MAIN STREET
WHITE HAVEN, PA 18664

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PA PUC
SECRETARY'S BUREAU

DONALD KARPOVICH, ESQUIRE
SOLICITOR FOR WHITE HAVEN BOROUGH
85 DRASHER ROAD
DRUMS, PA 18222

JAMES P BLAUM ESQUIRE COUNTY SOLICITOR
LUZERNE COUNTY COURT HOUSE
200 NORTH RIVER STREET
WILKES BARRE, PA 18711

GREGORY F LEPORE ESQUIRE
HOLL & ASSOCIATES
920 SOUTH BROAD STREET PO BOX 807
LANSDALE, PA 19446


Jason D. Sharp
Assistant Counsel
Pennsylvania Attorney Id. # 80488

Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel
P.O. Box 8212
Harrisburg, Pa. 17105-8212
(717) 787-3128

DATED: Friday, August 11, 2006



GOVERNOR'S OFFICE OF
GENERAL COUNSEL

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

Office of Chief Counsel
Real Property Division
Post Office Box 8212
Harrisburg, PA 17105-8212
Telephone 717.787.3128
Facsimile 717.772.2741
www.dot.state.pa.us



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Friday, August 11, 2006

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

ORIGINAL

In Re: White Haven Borough v. Reading Blue Mountain & Northern Railroad Company,
PUC Complaint Docket # C-00004204

Dear Secretary McNulty:

Enclosed for filing please find the original and three (3) copies of PENNDOT of Transportation's *Amended Motion to Dismiss* and in the above-captioned matter.

I hereby certify that two (2) copies of PENNDOT's *Motion and Memorandum* have been served on all parties of record, as indicated on the attached *Amended Certificate of Service*.

Very Truly Yours,

Jason D. Sharp
Assistant Counsel

220/JDS:_
jsharp@state.pa.us

cc: Parties of Record
Gary Fawver, P.E., Chief, Right of Way & Utilities
Joseph Strok, Grade Crossing Administrator, District 4-0

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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SECRETARY'S BUREAU
PA PUC

White Haven Borough
Complainant

v.

Reading Blue Mountain and
Northern Railroad Company, *et al.*
Respondents

Docket Number

C-00004204

ORIGINAL

AMENDED MOTION TO DISMISS

(Amended sections noted as *bold, italics and underlined.*)

AND NOW, comes the Commonwealth of Pennsylvania, Department of Transportation (PENNDOT), by its undersigned counsel, and submits this Amended Motion to Dismiss¹ pursuant to *52 Pa. Code §§ 5.91 and 5.102 et seq.*:

¹ On October 12, 2005, PENNDOT filed a *Motion to Dismiss* requesting that "it be dismissed from the instant case due to lack of jurisdiction." The original Motion identified that it was being filed as a preliminary motion under 52 Pa. Code § 5.101. (*Motion to Dismiss*, p.1). The *Motion to Dismiss* is actually in the nature of a motion for summary judgment or motion for judgment on the pleadings, as it requests dismissal of PENNDOT for lack of jurisdiction based upon the pleadings and evidence previously entered in the case.

Additionally, the *Motion to Dismiss* was served on all parties to the matter. However, the address for Attorney Donald Karpovich was inadvertently merged with that of another counsel and he did not receive service of the Motion. Therefore, PENNDOT is serving this Amended Motion. The provisions of Pa. Code § 5.102 *et seq.* provide that an answer may be filed within twenty (20) days of the filing of a motion. Even allowing for the Commission's "three day mail rule" (Pa. Code § 1.56(b)), answers would be due on or before September 5, 2006. Thus, consideration of this Motion will not unduly delay or postpone the proceedings in this matter.

August 25, 2006

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

ORIGINAL

**RE: White Haven Borough v. Reading Blue Mountain & Northern Railroad
Company, PUC Complaint Docket # C-00004204**

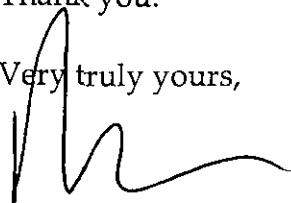
Dear Secretary McNulty:

Enclosed for filing please find the original and three (3) copies of the Answer of Complainant, White Haven Borough, in Opposition to the Amended Motion to Dismiss, filed by the Commonwealth of Pennsylvania, Department of Transportation (Penndot) in regards to the above referenced matter.

I hereby certify that two (2) copies of White Haven Borough's Answer Of Complainant have been served on all parties of record, as indicated on the attach Certificate of Service.

Thank you.

Very truly yours,



Donald G. Karpowich
DGK/rc
Enc.
cc: Parties of Record

**DOCUMENT
FOLDER**

SECRETARY'S OFFICE
AUG 23 4:08 PM '06
22

**IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY, PENNSYLVANIA**

White Haven Borough	:	
	:	
Complainant,	:	
	:	
vs.	:	CIVIL ACTION - LAW
	:	
Reading Blue Mountain and Northern Railroad Company, et al.	:	
	:	
Respondents.	:	No. C-00004204
	:	
	:	
	:	

CERTIFICATE OF SERVICE

I, Donald G. Karpowich, Esquire, do hereby certify that I have served a copy of **Answer of Complainant, White Haven Borough, In Opposition To Amended Motion To Dismiss Of The Commonwealth Of Pennsylvania, Department Of Transportation (Penndot)** thereof, by U.S. Mail, First Class, postage prepaid, on the date indicated below to the following:

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Jason D. Sharp, Esquire
Commonwealth of Pennsylvania
Department of Transportation
P.O. Box 8212
Harrisburg, PA 17105-8212


Wayne Scott, Esquire
Pennsylvania Public Utility Commission
Bureau of Transportation and Safety-Legal Division
P.O. Box 3265
Harrisburg, PA 17105-3265

Reading, Blue Mtn and Northern RR
P.O. Box 218
Port Clinton, PA 19549

James P. Blum Esquire, County Solicitor
Luzerne County Courthouse
200 North River Street
Wilkes-Barre, PA 18711

Gregory F. Lepore, Esquire
Holl & Associates
920 South Broad Street
P.O. Box 807
Lansdale, PA 19446

DATED: 8-25-04

BY: 
Donald G. Karpowich, Esquire
Attorney for Complainant
85 Drasher Road
Drums, PA 18222
(570) 788-6647
ID # 78176



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

Office of Chief Counsel
Real Property Division
Post Office Box 8212
Harrisburg, PA 17105-8212
Telephone 717.787.3128
Facsimile 717.772.2741
www.dot.state.pa.us



Tuesday, September 05, 2006

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

ORIGINAL

In Re: White Haven Borough v. Reading Blue Mountain & Northern Railroad Company,
PUC Complaint Docket # C-00004204

Dear Secretary McNulty:

Enclosed for filing please find the original and three (3) copies of the Department of Transportation's *Answer to the New Matter filed by White Haven Borough* in the above-captioned matter.

I hereby certify that two (2) copies of PENNDOT's *Answer* have been served on all parties of record, as indicated on the attached *Certificate of Service*.

Very Truly Yours,

Jason D. Sharp
Assistant Counsel

DOCUMENT
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220/JDS:_
jsharp@state.pa.us

cc: ALJ Ember Jandebaur
Parties of Record
Gary Fawver, P.E., Chief, Right of Way & Utilities
Joseph Strok, Grade Crossing Administrator, District 4-0

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

White Haven Borough :
Complainant :
 : Docket Number
v. :
 : C-00004204
Reading Blue Mountain and :
Northern Railroad Company, *et al.* :
Respondents :
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ANSWER TO NEW MATTER

AND NOW, comes the Commonwealth of Pennsylvania, Department of Transportation (hereinafter "PENNDOT"), by its undersigned counsel, and submits this Answer to the New Matter filed by the Borough of White Haven (hereinafter "Borough") to PENNDOT's Amended Motion to Dismiss:

1. Denied. It is denied that the motion will prejudice any party and it is denied that consideration of the motion will in any way delay the proceedings. By way of further answer, PENNDOT notes that this issue was raised before your Honor in the presence of counsel for the Borough at the pre-hearing conference held on October 4, 2005. At that time, PENNDOT agreed to file a Motion to Dismiss in writing so as to allow the parties an opportunity to answer the Motion, even though PENNDOT was within its rights to make the motion at the time of the hearing. NT 38-38; 52 Pa. Code § 5.103 (b). Counsel for the Borough, as well as the Public Utility Commission's Bureau of Transportation and Safety and Reading, Blue Mountain and Northern

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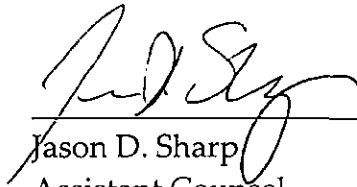
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Railroad were all present at the hearing and were privy to a colloquy between undersigned counsel and your Honor on this issue. NT 4-5, 22-31. Therefore, no party can reasonably argue surprise or prejudice in regard to the Motion. Moreover, consideration of the Motion will not delay the proceedings, as the hearing in question is not scheduled until September 19, 2006. Furthermore, Reading, Blue Mountain and Northern Railroad has already requested a continuance of the matter into mid-October.

2. Denied. It is denied that PENNDOT has any interest, power or jurisdiction over the subject retaining wall. By way of further answer, the retaining wall in question is a railroad facility over which the PENNDOT has no jurisdiction or control. It is further denied that collapse of the retaining wall would have "adverse impacts" to SR 2041 (Towanda Street) and SR 940 (Berwick Street), because State highway users can access both State Routes even if Susquehanna Street were closed in the vicinity of the rail crossing and retaining wall. See Borough Exhibit # 1, Map of White Haven Borough, Hearing held March 8, 2001 (Copy Attached). State Highway users would also have direct means of access to either side of the area of the Susquehanna Street crossing even if that crossing were closed or blocked.
3. Denied. It is denied that failure of the retaining wall would have any direct impact on the State Highway system. PENNDOT incorporates its response to paragraph two (2) above.
4. Denied. It is denied that PENNDOT receives any benefits from the existence of the Susquehanna Street crossing. By way of further answer, PENNDOT incorporates its response in paragraph two (2) above.

WHEREFORE, PENNDOT respectfully requests that it be dismissed from the instant case on the basis of the grounds stated in the aforementioned *Amended Motion to Dismiss*.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "J. D. Sharp", is written over a horizontal line.

Jason D. Sharp
Assistant Counsel
Pennsylvania Attorney Id. # 80488

Commonwealth of Pennsylvania
Department of Transportation
P.O. Box 8212
Harrisburg, Pa 17105-8212
(717) 787-3128

DATE: Tuesday, September 05, 2006

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

White Haven Borough :
Complainant :
 : Docket Number
v. :
 : C-00004204
Reading Blue Mountain and :
Northern Railroad Company :
Respondent :
 :

AMENDED CERTIFICATE OF SERVICE

I, Jason D. Sharp, hereby certify that a true and correct copy of the Department of Transportation's *Answer to New Matter* was served upon the parties listed below by first class mail, postage prepaid this day, Tuesday, September 05, 2006:

WAYNE SCOTT, ESQUIRE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
BUREAU OF TRANSPORTATION AND SAFETY - LEGAL DIVISION
P.O. BOX 3265
HARRISBURG, PA 17105-3265

READING, BLUE MTN & NORTHERN RR
P.O. BOX 218
PORT CLINTON, PA 19549

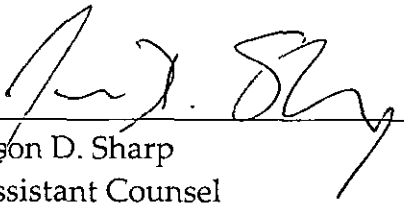
WHITE HAVEN BOROUGH
312 MAIN STREET
WHITE HAVEN, PA 18664

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PA PUC

DONALD KARPOVICH, ESQUIRE
SOLICITOR FOR WHITE HAVEN BOROUGH
85 DRASHER ROAD
DRUMS, PA 18222

JAMES P BLAUM ESQUIRE COUNTY SOLICITOR
LUZERNE COUNTY COURT HOUSE
200 NORTH RIVER STREET
WILKES BARRE, PA 18711

GREGORY F LEPORE ESQUIRE
HOLL & ASSOCIATES
920 SOUTH BROAD STREET PO BOX 807
LANSDALE, PA 19446



Jason D. Sharp
Assistant Counsel
Pennsylvania Attorney Id. # 80488

Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel
P.O. Box 8212
Harrisburg, Pa. 17105-8212
(717) 787-3128

DATED: Tuesday, September 05, 2006

Borough Encl #1
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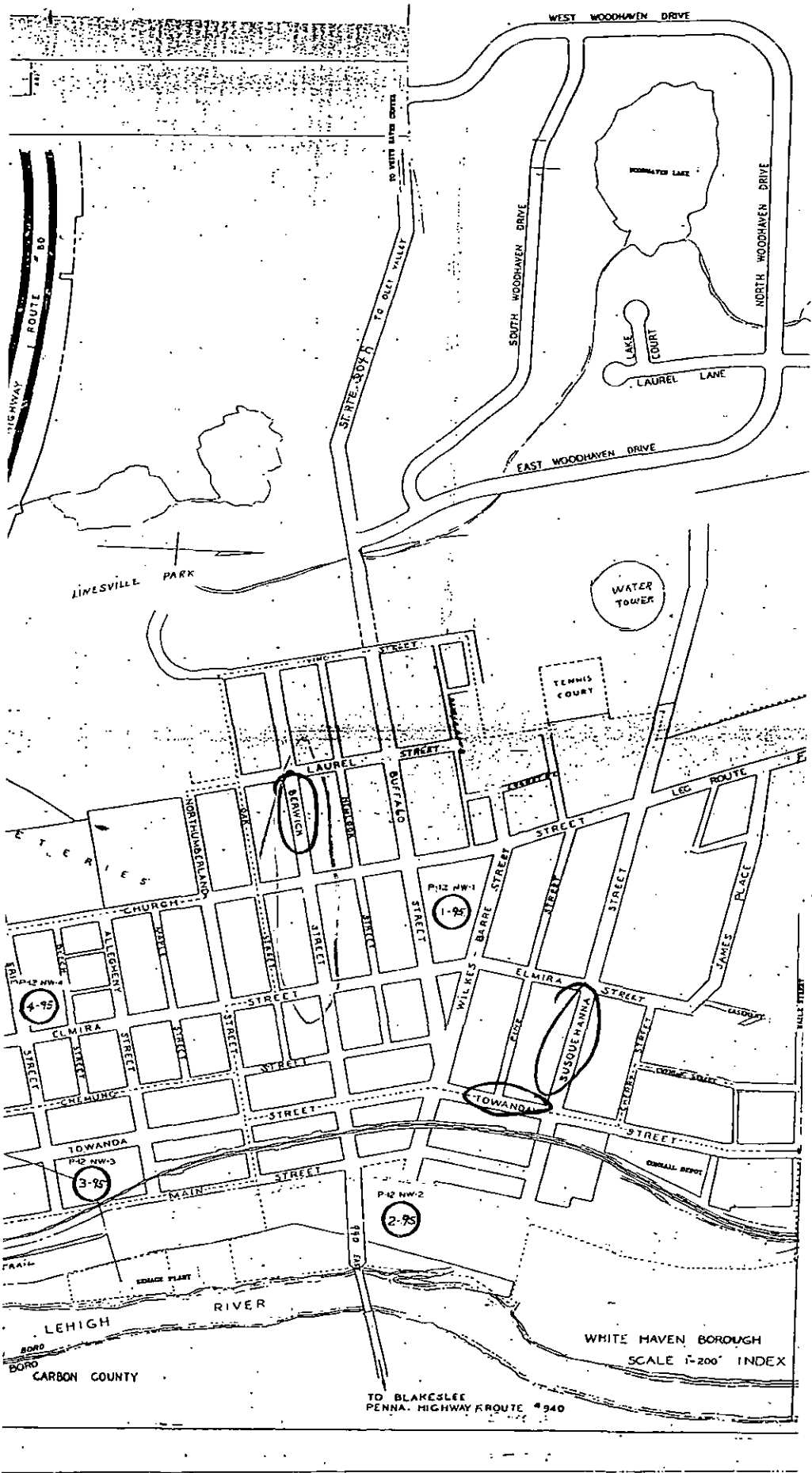
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SECRETARY'S BUREAU

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P.A.P.U.C.
SECRETARY'S BUREAU



DONALD G. KARPOWICH, ATTORNEY AT LAW, P.C.
DONALD G. KARPOWICH, ESQUIRE
I.D.#78176
KRISTEN A. GAUGHAN, ESQUIRE
I.D.#87184
85 DRASHER ROAD
DRUMS, PA 18222
(570) 788-6647

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

White Haven Borough, :
:
Complainant, :
vs. :
:
Reading Blue Mountain and :
Northern Railroad Company, et al., :
:
Respondents. : No. C-00004204

ANSWER OF COMPLAINANT, WHITE HAVEN BOROUGH, IN
OPPOSITION TO AMENDED MOTION TO DISMISS OF THE
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF
TRANSPORTATION (PENNDOT)

AND NOW, comes WHITE HAVEN BOROUGH (Complainant), by and through their undersigned counsel, and submits this Answer in Opposition to the Amended Motion to Dismiss or Motion for Summary Judgment or Motion for Judgment on the Pleadings, and in support thereof avers the following:

1. Denied. The allegations of paragraph 1 are denied since they are conclusions of law to which no response is required.
2. Denied. The allegations of paragraph 2 are denied since they are conclusions of law to which no response is required.
3. Denied. The allegations of paragraph 3 are denied since they are conclusions of law to which no response is required.

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4. Denied. The allegations of paragraph 4 are denied since they are conclusions of law to which no response is required.

5. Denied. The allegations of paragraph 5 are denied since they are conclusions of law to which no response is required.

6. Denied. After reasonable investigation, Complainant White Haven Borough is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained herein. Strict proof thereof is therefore demanded at the time of hearing.

7. Denied. The allegations of paragraph 7 are denied since they are conclusions of law to which no response is required.

8. Admitted.

9. Admitted. However, it is further averred that resolving the remaining issue has a direct benefit on PENNDOT since the crossing has a direct relationship with SR 2041 and SR 940 for the reasons more fully set forth in paragraph 10 below.

10. Denied. It is specifically denied that PENNDOT has no interest in, and receives no benefit from, the subject crossing or railroad retaining wall. On the contrary, if the retaining wall adjacent to the Susquehanna Street Crossing (which is in close proximity to Towanda Street or SR 2041) were to fail, then a train derailment could occur causing hazards or adverse impacts upon the health, welfare and safety of the public. If this happened it would cause traffic congestion and prohibit safe passage on these important state routes. In addition, it could result in dangers to the traveling public and possible exposure to hazardous materials such as diesel fuel and cargo. By way of further response, a train derailment could cause severe and catastrophic hazards such as train car derailment and the train engine could possibly strike the above ground propane storage tank at Albee's Garage, which is adjacent to SR 2041 and in close

proximity to SR 940, both of which are the main arterial roadways within the Borough.

11. Denied. The allegations of paragraph 11 are denied since they are conclusions of law to which no response is required. In the event that a response may be appropriate, then it is denied that PENNDOT has no jurisdiction over the subject rail line or Susquehanna Street since if that part of the rail line were to fail it would have a direct impact on two major state routes (SR 940 and SR 2041) within the Borough.

12. Denied. The allegations of paragraph 12 are denied since the case does involve crossing issues. If the retaining wall were to collapse it would have an immediate and adverse impact upon the Susquehanna Street crossing as well as SR2041 and SR940. Strict proof to the contrary is demanded at the time of hearing.

13. Denied. The allegations of paragraph 12 are denied since they are conclusions of law to which no response is required. In the event that a response may be appropriate, then the allegations are denied for the reasons already stated in paragraph 12 above.

14. Denied. The allegations of paragraph 14 are denied since they are conclusions of law to which no response is required. In the event that a response may be appropriate, then the allegations are denied since the PUC could allocate costs to PENNDOT for work performed at a local road crossing where as in this case there is a direct benefit to the State Highway system (specifically SR 940 and SR 2041) and the State Highway system is connected to or near the subject crossings.

15. Denied. The allegations of paragraph 15 are denied since they are conclusions of law to which no response is required. In the event that a response may be appropriate, then it is specifically denied that PENNDOT has no power over, interest in or jurisdiction over the railroad retaining wall facility. On the contrary, PENNDOT has power over, an interest in and jurisdiction in this

matter since if the retaining wall were to fail or collapse it would have an adverse impact upon two major state thoroughfares (SR 940 and SR2041) in the Borough.

16. Denied. The allegations of paragraph 16 are denied since they are conclusions of law to which no response is required. In the event that a response may be appropriate, then the allegations are denied since the cases cited are the same or similar to this case in that if the railroad retaining wall were to collapse, it would not only harm life and property, but also state routes within the Borough.

WHEREFORE, the BOROUGH respectfully requests that the MOTION of PENNDOT be denied and dismissed, and PENNDOT remain a party to this action.

NEW MATTER


1. The untimely Motion filed by PENNDOT to dismiss itself from the instant case should not be considered because it is prejudicial to the parties and would unduly delay the proceedings in this matter.

2. PENNDOT has an interest, power and jurisdiction in this matter since the railroad retaining wall is in imminent danger of collapse which would cause catastrophic injury to life and property, and would have adverse impacts to SR 2041 and SR940.

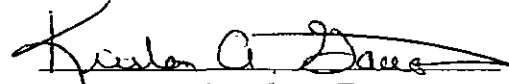
3. PENNDOT should remain a party to this action since they will be receiving a direct benefit by way of their State Highway system in that the failing retaining wall would have a direct impact on SR 2041 and SR940, which state routes are connected to and directly related with and close proximity to the Susquehanna railroad crossing.

4. PENNDOT should remain a party to this action since the PUC may have to allocate costs to PENNDOT for the work to be performed at the railroad crossing since PENNDOT will receive a direct benefit to the state highway system.

WHEREFORE, the BOROUGH respectfully requests that the MOTION of PENNDOT be denied and dismissed, and PENNDOT remain a party to this action.



Donald G. Karpowich, Esquire



Kristen A. Gaughan, Esquire
Attorneys for Complainant

DATE: 8-25-06



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
Office of Administrative Law Judge
P.O. BOX 3265, HARRISBURG, PA 17105-3265
September 5, 2006

IN REPLY PLEASE
REFER TO OUR FILE

In Re: C-00004204

(SEE LETTER DATED 8/2/06)

White Haven Borough v. Reading, Blue Mountain & Northern Railroad
Company

Hearing Cancellation/Reschedule Notice

This is to inform you that the Initial Hearing on the above-captioned case previously scheduled for Wednesday, September 19, 2006, has been canceled.

The hearing has been rescheduled as follows:

Type: Initial Hearing
Date: Wednesday, October 18, 2006
Time: 10:00 a.m.
Location: Room 318
Scranton State Office Building
100 Lackawanna Avenue
Scranton, PA 18503
Presiding: Administrative Law Judge Ember S. Jandebaur
Room 317
Scranton State Office Building
100 Lackawanna Avenue
Scranton, PA 18503
Telephone: 570.963.4818
Fax: 570.963.3310

DOCUMENT
FOLDER

DOCKETED
OCT 3 2006

Please mark your records accordingly.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call the scheduling office at the Public

Utility Commission at least (2) two business days prior to your hearing:

- Scheduling Office: 717.787.1399
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1.800.654.5988

pc: Judge Jandebaur
Cyndi Page - CMU, Keystone 3E
Dave Hart - T&S Rail, Keystone 3N
Cherie Pyle, Scheduling Officer
Beth Plantz
Docket Section
Calendar File

OALJ Hearing Report

Please Check Those Blocks Which Apply

Docket No.:	C-00004204		YES	NO
Case Name:	White Haven Borough v. Reading, Blue Mountain & Northern Railroad Company	Prehearing Held:	<input type="checkbox"/>	<input type="checkbox"/>
Location:	SCR	Hearing Held:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Date:	October 18, 2006	Testimony Taken:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
ALJ:	Ember S. Jandebaur	Transcript Due:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Reporting Firm:	Sargents Court Reporting	Hearing Concluded:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		Further Hearing Needed:	<input type="checkbox"/>	<input type="checkbox"/>
		Estimated Add'l Days:		
		RECORD CLOSED:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		DATE:		
		Briefs to be Filed:	<input type="checkbox"/>	<input type="checkbox"/>
		DATE:		
		Bench Decision:	<input type="checkbox"/>	<input type="checkbox"/>
		REMARKS:		

DOCUMENT FOLDER

RECEIVED

NOV - 2 2006

PLEASE PRINT CLEARLY - Incomplete Information may result in delay of processing.

Name and Telephone Number	Address	Who are you representing?
Wayne Scott Telephone: (717) 783-6150	City: Hbg State: Pa Zip: 17105 E-mail Address: wscott@state.pa.us	PUC Fax Number: (717) 783-3458
KARPOWICH Donald Co. Karpowich Telephone: (570) 788-6647	85 Drasher Road City: Drums State: PA Zip: 18222 E-mail Address: karpowichlaw@koleb.com	White Haven Borough Fax Number: (570) 788-0654
JASON D. SHARP Telephone: (717) 787-3128	PO Box 8212 City: HBG State: PA Zip: 17105-8212 E-mail Address: jsharp@state.pa.us	PENNDOT Fax Number: (717) 772-2741

Check this box if additional parties or attendees appear on back of form.

elp

Richard J. Ryan
Reporter's Signature

BTL

Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.

Name and Telephone Number	Address			Who are you representing?
Gregory Lepore 215-362-1015	PO Box 807 Lansdale Pa 19446 <small>City State Zip</small>			RBMNR 215-679-5713
Telephone:	E-mail Address:			Fax Number:
Telephone:	E-mail Address:			Fax Number:
Telephone:	E-mail Address:			Fax Number:
Telephone:	E-mail Address:			Fax Number:
Telephone:	E-mail Address:			Fax Number:
Telephone:	E-mail Address:			Fax Number:
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