

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

White Haven Borough

v.

Reading Blue Mountain & Northern
Railroad Company

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C-00004204

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INTERIM ORDER
Granting Motion to Dismiss Party

This Interim Order grants PennDOT's motion to be dismissed from the remainder of the above captioned action.

HISTORY OF THE PROCEEDINGS

This proceeding commenced when the Borough of White Haven (Borough) filed the Complaint at Docket Number C-00004204, on September 18, 2000. The Borough complained about two specific areas along the tracks of the Railroad in the Borough. The first area involved a collapsed retaining wall near the Berwick Street at-grade crossing. The second area involved the railroad trestle (bridge) over Susquehanna Street and the associated stone wing walls and retaining walls.

Answers to the Complaint were filed by the Railroad on October 2, 2000, Luzerne County (County) and Pennsylvania Department of Transportation (PennDOT) on October 10, 2000.

By Hearing Notice of January 16, 2001, this proceeding was scheduled for a hearing on March 8, 2001 before the ALJ Lovenwirth in the Scranton State Office Building. The following Parties were represented at the hearing: the Borough, the Railroad, PennDOT, the

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Commission's Bureau of Transportation and Safety (BTS), the County and Dennison Township (Township).

The Recommended Decision of ALJ Lovenwirth was issued on October 10, 2001. The Railroad's Exceptions and its Petition were filed as above noted. Exceptions to that decision were filed and considered by the Commission.

On February 7, 2002, adopted February 8, 2002, the Commission entered an Opinion and Order requiring the following:¹

1. That Reading, Blue Mountain and Northern Railroad Company, having agreed to do so, at its sole cost and expense, within nine (9) months of entry of this Opinion and Order, furnish all material and do all work necessary to cut and remove all trees growing around the Susquehanna Street Bridge and between its tracks and the retaining walls along the track approaching the bridge.
2. That Reading, Blue Mountain and Northern Railroad Company, having agreed to do so, at its sole cost and expense, within nine (9) months of entry of this Opinion and Order, furnish all material and do all work necessary to control, support or retain the track ballast from spilling from its intended location. This includes, but is not limited to, areas where existing timber cribbing is supported by live trees or areas where the ballast is supported by the hand railing which is leaning against live trees.
3. That Reading, Blue Mountain and Northern Railroad Company, having agreed to do so, at its sole cost and expense, within nine (9) months of entry of this Opinion and Order, furnish all material and do all work necessary to repair and make safe the hand railing and plank walkway on the East side of the active track; this includes on the bridge and along the track approaches to the bridge.
4. That Reading, Blue Mountain and Northern Railroad Company, at its sole cost and expense, within twelve (12) months from the date of entry of this Opinion and Order: (1) perform an In-Depth Inspection and Load Rating analysis of the railroad bridge over Susquehanna Street in the

¹ These are Paragraphs 5-19 of the Commissions February 2002 Opinion and Order.

Borough of White Haven; and (2) prepare and submit to this Commission and each party of record a written report of the In-Depth Inspection and Load Rating Analysis of the structural members with a recommended load carrying capacity of the subject bridge.

5. That Reading, Blue Mountain and Northern Railroad Company, at its sole cost and expense, with services of an outside consultant engineer, within twelve (12) months from service of the instant Opinion and Order: (1) perform an in-depth inspection and evaluation of the stone retaining walls along its tracks leading from the Susquehanna Street railroad bridge; and (2) prepare and submit to this Commission and each party of record a written report of its in-depth inspection and evaluation of the retaining walls including an evaluation of the stability of the stone walls, locations of failures or potential failures, reasons for failures or bulges in the walls, recommendations for prevention of future problems and recommendations for any necessary repairs including cost estimates for said work.

6. That the Borough of White Haven, Pennsylvania Department of Transportation, County of Luzerne, and the non-carrier utilities involved cooperate with the Reading, Blue Mountain and Northern Railroad Company while it performs the work herein ordered.

7. That Reading, Blue Mountain and Northern Railroad Company, at its sole cost and expense, furnish and maintain flagmen, watchmen and construction inspectors and engineering services, as necessary, while work is being performed above, along and across its tracks in accordance with this Opinion and Order.

8. That the non-carrier utilities involved, if any, each at its initial cost and expense, shall furnish all material and do all work necessary to alter, relocate or protect its facilities as necessary to accommodate construction of the work herein ordered.

9. That Reading, Blue Mountain and Northern Railroad Company, at its sole cost and expense, furnish all material and do all work necessary to establish and maintain traffic controls and/or traffic detours, if required, at the subject crossing to provide a safe condition for pedestrians, vehicular traffic, and construction workers in the crossing area, all in accordance with the Manual of Uniform Traffic Control Devices.

10. That Reading, Blue Mountain and Northern Railroad Company, at its sole cost and expense, furnish all material and do all work necessary to (1) determine the actual vertical clearance at the crossing upon completion of the work ordered herein, and (2) erect and maintain appropriate low clearance signs at the crossing indicating the proper clearance.

11. That upon completion of the work ordered herein, Reading, Blue Mountain and Northern Railroad Company, at its sole cost and expense, furnish all material and do all work necessary to maintain the remaining bridge substructure and superstructure, including any walkways and hand railings associated with the bridge, all in a safe and satisfactory condition.

12. That upon completion of the work herein ordered, Reading, Blue Mountain and Northern Railroad Company, report to this Commission the date of actual completion of the work.

13. That upon completion of the work herein ordered, the Borough of White Haven, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain Susquehanna Street at the subject crossing.

14. That this Opinion and Order, insofar as it places costs on the various parties, is without prejudice to their rights to recover the said cost from others in accordance with any lawful agreement.

15. That upon the submission of the In-Depth Inspection and Load Rating Analysis Report of the bridge and the In-Depth Inspection and Evaluation Report of the retaining walls, a further hearing be held to consider the reports and their recommendations and any other issues involved.

On November 2, 2004, the Commission's Bureau of Transportation & Safety, Rail Safety Division advised Gary Fawver, PE of PennDOT's Bureau of Design that a final inspection would be conducted, and that "[i]f no outstanding matters [were] brought to the Commission's attention, the record [would] be closed following the inspection." This inspection concerned only the retaining wall affected by the above listed paragraphs.

On July 28, 2005, the Commission's Bureau of Transportation & Safety, Rail Safety Division advised the Commission's Secretary by memorandum that the Railroad had conducted and submitted the report required by the Commission's Order and requested that the matter be referred to the Office of the Administrative Law Judge (OALJ) for additional hearing.

On August 9, 2005, the matter was assigned to me and the matter was set for a pre-hearing conference on October 4, 2005. On September 14, 2005, counsel for the Railroad filed an Answer averring that the Railroad complied with the Commission's Order and unaware of any problems.

October 4, 2005, a pre-hearing conference was conducted with the Railroad, Borough, PennDOT, and PUC Bureau of Transportation & Safety, Rail Safety Division participating. At that conference, the Borough and Commission counsel agreed that the only remaining issue was whether the Railroad had complied with the Order (regarding the retaining wall) (Tr. at 16) PennDOT took no position as the retaining wall does not abut a highway over which they have authority. It was concluded at the prehearing conference that the parties would meet at the site, with their respective engineers, to attempt to resolve any outstanding issues. Counsel for the various parties were to submit a settlement proposal or if that could not be accomplished, the various proposals of their respective engineers. (Tr. 38) In the event no proposals could be arrived at, then the matter would be set for hearing.

On October 12, 2005, PennDOT filed a motion requesting they be dismissed from the action for lack of jurisdiction.

The Parties met at the site on December 1, 2005. No Party submitted a proposal subsequent to this site meeting. On June 14, 2006, counsel for the PUC Bureau of Transportation & Safety, Rail Safety Division requested the matter be scheduled for hearing.

On October 18, 2006, an evidentiary hearing was conducted. Three witnesses testified and ten (10) exhibits were accepted into the record for the Borough, and three (3) exhibits for the Railroad were accepted into the record. A transcript comprising one hundred ten

pages (110) was produced. At the conclusion of the hearing, the parties agreed to submit Main Briefs on November 30, 2006, with Reply Briefs due December 15, 2006.

At the October 18, 2006, hearing, counsel for PennDOT renewed their motion to be dismissed from the balance of this proceeding.

DISCUSSION

PennDOT has been a party to this matter since 2000 because of other issues in the issues, unrelated to the retaining wall. The retaining wall that remains an outstanding issue is located on a local, not state road. 52 Pa Code § 2702 requires that PennDOT be made a party “if applicable.” Here, any remedial work performed on the retaining wall will benefit the Railroad, Railroad customers and the adjacent private party. PennDOT has no jurisdiction concerning these remaining issues and therefore, PennDOT, should properly be dismissed from the remainder of this proceeding. PennDOT’s motion to be dismissed will be granted in the ordering paragraphs below.

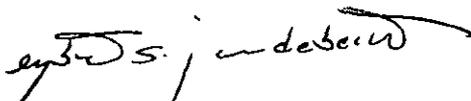
ORDER

THEREFORE,

IT IS ORDERED:

1. Pennsylvania Department of Transportation’s motion to be dismissed from the current proceedings in the above captioned matter is granted. PennDOT is not dismissed from the Docket, as there have been prior issues and actions in which PennDOT was involved.

Date: November 17, 2006



Ember S. Jardebour
Administrative Law Judge