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BUREAU OF TRANSPORTATION & SAFETY
RAIL SAFETY DIVISION

10-27-2000

To: Public Utility Commission

From: David and Beverley Knoebel

Re: Tamaqua West Broad St. Railroad
crossingDOCUMENT
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We are writing to express our concern about the dangerously unsafe condition of the Blue Mountain and Northern Railroad crossing on West Broad St. in Tamaqua. This crossing has been in extremely poor condition for quite some time and continues to deteriorate with every passing month. Too much time has been spent by the Railroad, the Borough, and Penn Dot in trying to avoid responsibility. The court has ended this controversy by decreeing it to be the Railroad's responsibility.

Enough time has gone by and the Railroad should be severely penalized (over)

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if they do not immediately respond
to the court's decision and
properly correct this problem.

This is not just a matter of
inconvenience but of public safety.
Now is the time to act before some
serious tragedy occurs.

Anything you can do to
expedite a solution to this
problem will be deeply appreciated.

Thank you for your
consideration.

HOLL & ASSOCIATES
Attorneys At Law
A PROFESSIONAL CORPORATION

ORIGINAL

P.O. BOX 807
920 SOUTH BROAD STREET
LANSDALE, PENNSYLVANIA 19446

GREGORY F. LEPORE, ESQ.

(215) 362-1015
FAX (215) 362-8530
EMAIL: Hollaw@voicenet.com

November 7, 2000

DOCUMENT
FOLDER

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

Re: BORO OF TAMAQUA v. READING, BLUE MOUNTAIN & NORTHERN
RAILROAD COMPANY
Complaint Docket No.: C-00992533
Our File No.: BMRR-003

Dear Mr. McNulty:

Enclosed please find an original Petition to Modify the PUC's Order of March 2000 relative to the above matter. Also enclosed is one copy to be time-stamped and returned to me in the enclosed self-addressed stamped envelope.

Thank you for your cooperation in this matter.

Sincerely



GREGORY F. LEPORE

GFL/jmy
Enclosures

cc: Andy Muller
Jeffrey Bowe, Esquire
Jason Sharp, Esquire
Louis Fink-Smith, Esquire
Honorable David Argall

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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DONALD MATALAVAGE,
BORO MANAGER, BORO OF TAMAQUA :
:
v. :
READING, BLUE MOUNTAIN & :
NORTHERN RAILROAD COMPANY :

Complaint Docket
No.: C-00992533

PETITION OF THE READING BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY
TO MODIFY THE PUBLIC UTILITY COMMISSIONS ORDER OF MARCH 20, 2000
DUE TO A SUBSTANTIAL CHANGE IN CIRCUMSTANCES

1. The subject matter of the above Petition is a crossing between the Reading Blue Mountain and Northern Railroad Company and Pennsylvania Route 209, also known as Broad Street, in the Borough of Tamaqua.

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2. By Opinion and Order of March 20, 2000, the Commission assessed one hundred percent (100%) of the cost of replacing the subject crossing, a concrete panel crossing, upon the Railroad, including the cost of associated detours.

3. The Railroad subsequently filed a Petition for Review with the Commonwealth Court (Docket No.: 893 CD 2000).

4. On or about June 20, 2000, a large water main belonging to the Borough of Tamaqua, situate underneath the subject crossing, ruptured, requiring replacement.

5. Although this portion of the main is currently bypassed, the Borough is desirous of replacing the same.

6. The Borough, at the least, obtains a benefit from the reconstruction of the crossing in that both projects entail a detour (a cost which could be substantial, given that a state highway is involved). The additional time required by the main

replacement will also increase the cost of the detour and the potential loss of revenue to the railroad.

7. By nature of the date when the fracture of the main occurred, these issues could not have been presented to the Commission prior to its March decision.

8. The Railroad intends to continue to comply with the Commission's Order of March 20, 2000, subject to its modification either by the Commission as a result of the instant Petition, or by the Commonwealth Court as a result of the Petition for Review on issues unrelated to this instant Petition.

9. Additional relief is requested as to time; the Borough submitted plans and specifications to the Railroad for engineering review in mid-October, 2000; on October 24, 2000, the Railroad's engineer found two (2) issues that required addressing by the Borough - first, the existing pipe is below the minimum depth and additional engineering data is required as to the strength of the proposed sleeve assembly for the new water line; second, the proposal submitted called for open excavation, and the Railroad does not permit open excavation below a grade crossing but rather requires boring due to soil compaction/settlement issues. In fact, no utility pipeline laid under the Railroad in recent history has been done by open excavation, and Schuylkill County is routinely boring under the same railline for the purpose of placing sewers.

10. Additionally, it is understood between the parties that although the current Commission Order requires the Railroad to pay the cost of the detour, the Borough would plan the detour given that it is the Borough who would be most directly impacted. The

Railroad has not been notified that a detour plan has been submitted to PennDOT and approved.

11. Given these outstanding issues, the Railroad requests that the Commission forego any additional action in enforcing its outstanding Order until said issues are resolved, as it is in no ones interest to install a new concrete panel crossing only to have it destroyed by excavation for replacement of the water main.

12. Despite the fact that the Commission's prior orders before the Commonwealth Court for review, the Commission nonetheless has jurisdiction to act further in the matter pursuant to Pa.R.A.P. §1701(d).

WHEREFORE, for the above reasons, The Reading, Blue Mountain and Northern Railroad Company respectfully requests the Public Utility Commission to modify its Order of March 20, 2000 and reassess the costs of reconstruction of said crossing and the detour associated therewith in light of the change in circumstances as set forth in this Petition.

Respectfully submitted,

HOLL & ASSOCIATES, P.C.

By: 

GREGORY F. LEPORE, ESQUIRE
920 South Broad Street
P.O. Box 807
Lansdale, PA 19446
(215) 362-1015

V E R I F I C A T I O N

I hereby verify that the statements made in the foregoing document are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. 4904 relating to unsworn falsification to the authorities.



GREGORY F. LEPORE, ESQUIRE

DATED: 11/7/08

CERTIFICATE OF SERVICE

I hereby certify that I have forwarded a true and correct copy of Petition of the Reading, Blue Mountain and Northern Railroad Company to Modify the Public Utility Commission's Order of March 20, 2000 due to a Substantial Change in Circumstances on the 7th day of November, 2000, 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

Honorable David Argall
HOUSE OF REPRESENTATIVES
Room 415, South Office Building
House Post Office
Harrisburg, PA 17120

Jason Sharp, Esquire
Assistant Counsel
PennDOT
Forum Place, 9th Floor
555 Walnut Street
Harrisburg, PA 17101-1900

Jeffrey Bowe, Esquire
109 West Broad Street
P.O. Box 290
Tamaqua, PA 18252

Louis Fink-Smith, Esquire
PENNSYLVANIA PUBLIC
UTILITY COMMISSION
Bureau of Transportation
and Safety
P.O. Box 3265
Harrisburg, PA 17105-3265

Respectfully submitted,
HOLL & ASSOCIATES, P.C.

By:



GREGORY F. LEPORE, ESQUIRE

DATE: November 9, 2000
SUBJECT: C-00992533
TO: Office of Special Assistants
FROM: James J. McNulty, Secretary

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LAF

Borough of Tamaqua
v.
Reading, Blue Mountain & Northern Railroad Company

Attached is a copy of a Petition To Modify Order filed by Reading, Blue Mountain & Northern Railroad Company in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

cc: TSR

laf



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

IN REPLY PLEASE
REFER TO OUR FILE

November 17, 2000

James J. McNulty, Secretary
Pa. Public Utility Commission
2nd Floor,
Keystone Commonwealth Building
P.O. Box 3265
Harrisburg, PA 17105-3265

DOCUMENT
FOLDER

ORIGINAL

RE: Docket No. C-00992533

Dear Secretary McNulty:

Enclosed for filing with the Commission are the original and three copies of the Bureau of Transportation and Safety's Answer in the above referenced matter. With a copy of this letter, I am sending copies of the enclosed to those persons listed on the Certificate of Service.

Very truly yours,

David A. Salapa
Assistant Counsel

Enclosure

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

40

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Borough of Tamaqua :
v. :
Reading, Blue Mountain and : Docket No.
Northern Railroad Company : C-00992533
:

ORIGINAL RECEIVED
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SECRETARY'S BUREAU

**ANSWER OF THE BUREAU OF TRANSPORTATION AND
SAFETY TO THE PETITION TO MODIFY OF
READING, BLUE MOUNTAIN AND NORTHERN RAILROAD COMPANY**

AND NOW, this 17th day of November, 2000, comes the Bureau of Transportation and Safety of the Pennsylvania Public Utility Commission and files this Answer to Reading, Blue Mountain and Northern Railroad Company's Petition to Modify as follows:

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15. Admitted.

6. Denied. The Bureau of Transportation and Safety denies the assertion that replacing the water main will require a detour. Depending on the location of the water line, the Borough of Tamaqua could close one or two lanes of traffic and replace the water line. The Bureau also denies the allegations that replacing the water line will increase the cost of the detour and loss of revenue to the railroad because a detour may not be necessary.

7. Admitted in part, denied in part. The Bureau admits that the water main break occurred after the date of the Commission's order. The Bureau denies that the issue of repairing the water main needs to be included in this proceeding. The Borough can file a separate application with the Commission to obtain approval to replace the water main.

8. Denied. The Bureau denies that the railroad will comply with the Commission's March 20, 2000 order. The railroad has failed to complete the work ordered by the Commission and is now in violation of the Commission's order.

9. Denied. The allegations set forth in paragraph nine of the petition are irrelevant to the March 20, 2000 order. As set forth above, the Borough can file a separate application with the Commission to replace the water main.

10. Denied. The Commission order directs the railroad to prepare and pay for any detour needed during the time it replaces the crossing surface. As set forth above, the Borough may not need to establish a detour in order to replace the water main.

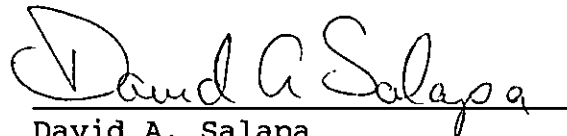
11. Denied. The Bureau denies that the Commission should delay enforcing its March 20, 2000 order. The railroad has had ample time to comply with the Commission's order. The Bureau also denies that replacing the water main will entail destroying the crossing surface. If, as set forth in paragraph nine of its petition, the railroad does not permit open excavation, replacing the water main will not involve excavating in the area where the concrete crossing panels will be installed. If the railroad requires the Borough to install the water main by boring under its tracks, the concrete crossing panels will not be disturbed at all.

12. Denied. The Bureau denies the statement in paragraph twelve as a conclusion of law to which no response is required. By way of further denial, Pa. R.A.P. 1701(d) does not permit the Commission to modify the March 20, 2000 order during the

pendency of the appeal as requested by Reading, Blue Mountain and Northern Railroad Company. Pa. R.A.P. 1701(d) applies to petitions for review filed in the Commonwealth Court's original jurisdiction and specifically excepts appeals from quasijudicial orders. In order for the Commission to modify the March 20, 2000 order, it had to expressly grant reconsideration of that order within thirty days of its entry date. In the absence of a timely express grant of reconsideration, the Commission lacks authority to now modify the order. Pennsylvania Industrial Energy Coalition v. Pa. P.U.C., 653 A. 2d 1336 (Pa. Commw. Ct. 1995)

WHEREFORE, the Bureau of Transportation and Safety respectfully requests that the Commission deny Reading, Blue Mountain and Northern's Petition to Modify for the above stated reasons.

Respectfully submitted,



David A. Salapa
Assistant Counsel
Bureau of Transportation
and Safety

P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 783-2840
Dated: November 17, 2000

CERTIFICATE OF SERVICE

I hereby certify that I am this date serving the foregoing document upon the persons and in the manner indicated below in accordance with 52 Pa. Code §1.54.

SERVICE BY FIRST CLASS MAIL ADDRESSED AS FOLLOWS:

Herbert S. Cohen
Administrative Law Judge
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265


Jeffrey P. Bowe, Esquire
Bowe, Lisella and Bowe
109 West Broad Street
P.O. Box 290
Tamaqua, PA 18252

Gregory Lepore, Esquire
920 South Broad Street
Lansdale, PA 19446

Jason D. Sharp, Assistant Counsel
Real Property Division
Office of Chief Counsel
555 Walnut Street, 9th Floor
Harrisburg, PA 17101

Mary Kay Bernosky, Esquire
Assistant County Solicitor
Schuylkill County Court House
401 North Second Street
Pottsville, PA 17901

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David A. Salapa
Assistant Counsel
Bureau of Transportation
and Safety

Dated: November 17, 2000

LAW OFFICES

BOWE, LISELLA AND BOWE

109 WEST BROAD STREET

P. O. Box 290

TAMAQUA, PENNSYLVANIA 18252-0290

(570) 668-1241

FAX (570) 668-4511

74 SOUTH KENNEDY DRIVE
MC ADOO, PENNSYLVANIA 18237
(570) 929-3735
FAX (570) 929-2532

PLEASE REPLY TO: TAMAQUA OFFICE

THOMAS R. LISELLA
lisella@mail.csrlink.net

JEFFREY P. BOWE
bowejeff@mail.csrlink.net

JAMES R. BOWE
RETIRED

ORIGINAL

November 17, 2000

SENT CERTIFIED MAIL TO:
James McNulty, Secretary
Commonwealth of Pennsylvania
Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

DOCUMENT
FOLDER

Re: Borough of Tamaqua
vs.
Reading, Blue Mountain & Northern
Railroad Co.
Complaint Docket No. C-00992533

Dear Mr. McNulty:

Enclosed please find the original and one copy of the Answer to the Petition of the Reading Blue Mountain & Northern Railroad Company to Modify the Public Utility Commission's Order of March 20, 2000 and New Matter. Please return time-stamped copy in the enclosed, self-addressed, stamped envelope.

By copy of this letter I am sending a copy of this Answer to all parties in interest.

Very truly yours,

BOWE, LISELLA AND BOWE

Jeffrey P. Bowe

JPB/lls

Enclosures

- cc Andrew Gordon, Esquire
- Joseph H. Jones, Jr., Esquire
- Gregory F. Lapore, Esquire
- Gina D. Alfonso, Esquire
- William Pickering, PE Chief
- Kenneth McClain
- David A. Salapa, Esquire
- Wandaleen Poynter-Cole, Esquire
- Donald Matalavage, Borough Manager
- Jean Heffner, Chief Clerk
- Honorable David G. Argall
- Randal S. Noe, Esquire

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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BOROUGH OF TAMAQUA :
 :
v. : Docket No. C-00992533
 :
READING, BLUE MOUNTAIN and :
NORTHERN RAILROAD CO. :

ANSWER TO THE PETITION OF THE READING BLUE MOUNTAIN
NORTHERN RAILROAD COMPANY TO MODIFY THE PUBLIC UTILITY
COMMISSION'S ORDER OF MARCH 20, 2000

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1 Admitted.

2 Admitted. In further answer hereto, the aforesaid

order required the Reading Blue Mountain & Northern Railroad Company (hereinafter referred to as "Railroad") to submit detailed construction plans for the removal of the failed crossing within thirty (30) days of the date of issuance of the said Public Utility Commission Opinion. The Railroad totally ignored this order and did not submit plans until on or about July 3, 2000. The Public Utility Commission approved the plans on August 9, 2000. Based upon the Public Utility Commission Order of March 20, 2000, the Railroad was to complete the replacement of the railroad crossing within ninety (90) days of PUC approval of the construction plans, November 7, 2000. To date, the replacement of the crossing has not been completed or even started by the Railroad.

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UTILITY COMMISSION

3. Admitted.

4. Admitted.

5. It is admitted that the leaking of the water line under the northern section of the crossing does not prevent the Borough from servicing all water customers, since there is another water line on the southern side of the crossing which is operational. The Borough desires to replace the leaking water line to enable continuity of service, especially if there should be a failure in the other water line.

6. Denied. It is specifically denied that the Borough obtains any benefit from the reconstruction of the crossing given the present posture of the Railroad with regard to the water line replacement. The most practical approach to the water line replacement is to allow the Borough, once the Railroad has removed the rails and the ties, to simply excavate and replace the line and pack the soil to Railroad specifications. It is estimated that this work will take no more than six (6) hours, and can even be done during the nighttime hours to minimize any inconvenience to the Railroad in the replacement project. When the Borough engineer submitted the plans for the water line replacement to the Railroad engineer, the Railroad engineer agreed to the procedure to be utilized by the Borough to open cut for the water main repair, but the Railroad refused to permit

this type of replacement since it was contrary to their policy.

7. It is admitted that the water line leak was not discovered until on or about June 21, 2000, which was subsequent to the PUC hearing. It is further alleged, however, that the Railroad failed to present this petition until the deadline imposed by the Public Utility Commission for the crossing replacement, clearly demonstrating the desire of the Railroad to disobey the Public Utility Commission Order.

8. Denied. The Railroad has shown by its actions in disregarding the Public Utility Commission Order dated March 20, 2000, that it will do anything to avoid its responsibility under the current order.

9. It is admitted that the Borough submitted plans and specifications to perform the water line replacement beneath the crossing which the Railroad is required to replace at its sole cost and expense. As of the date of this response, although the Railroad's engineer had agreed to permit an open excavation at the time the crossing was being replaced by the Railroad, the Railroad ignored the advice of their engineer and has demanded that the Borough bore beneath the crossing to make the water line replacement. In further answer hereto, it is not clear what type of relief the Railroad is requesting in this paragraph; however, the Borough, in New Matter, requests that the Public Utility

Commission intervene to decide how and in what fashion the Borough should be permitted to accomplish the water line replacement.

10. Denied. There was no understanding between the parties that the Borough would plan the detour to enable the Railroad to perform their responsibilities under the current Public Utility Commission Order. There was no such understanding reached in writing or orally, and the Borough demands strict proof of the same. In further answer hereto, the Railroad has given the Borough absolutely no indication as to when or whether it will comply with the March 20, 2000 Public Utility Commission Order and therefore it would be impossible for the Borough to plan such a detour given the lack of such notification by the Railroad.

11. Denied. It is evident based upon the actions of the Railroad in completely ignoring the Public Utility Commission Order of March 20, 2000, that the Petition currently before the Commission is only one further action calculated to delay the crossing replacement. Therefore, the Borough requests that the Public Utility Commission take such actions as are necessary to enforce all aspects of the outstanding Order.

12. Denied. It is specifically denied that Pa. R.A.P. § 1701 (d) permits the Public Utility Commission to act on the

Railroad's Petition to "Modify" the March 20, 2000 Order. In further answer hereto, Pa. R.A.P. § 1701 (b) sets forth the authority of the Public Utility Commission in light of the Railroad's appeal to the Commonwealth Court. Although this appellate rule permits the Commission to take actions necessary to enforce an order, it can only reconsider the Order which is the subject of the appeal if the application for reconsideration is filed within the time prescribed by law. Pursuant to 52 Pa. Code § 5.572, a petition for reconsideration must be filed within fifteen (15) days after the Commission order involved is entered or otherwise becomes final. Since this Petition was not filed within the time period as prescribed, the Commission although enabled to take actions to enforce the Order, is not able to modify the Order as requested by the Railroad.

WHEREFORE, the Borough of Tamaqua respectfully requests the Public Utility Commission to dismiss the Railroad's Petition.

NEW MATTER

REQUEST FOR ENFORCEMENT

13. The Borough incorporates by reference the averments set forth in paragraph one (1) through twelve (12) of its Answer to the Railroad's Petition for Modification.

14. The Railroad has not filed a Petition requesting a supersedeas or stay of the Public Utility Commission Order

entered March 20, 2000; and therefore, the Public Utility Commission has the authority to enforce its Order pursuant to Pa. R.A.P. 1701 (b) (2).

15. The Railroad submitted its plans for the reconstruction plans for the crossing on or about July 3, 2000, which were ultimately approved by the Public Utility Commission on August 9, 2000. Pursuant to the Public Utility Commission Order dated March 20, 2000, the Railroad was required to complete the construction of the replacement of the crossing within ninety (90) days of the approval of the construction plans.

16. The Railroad has not completed or even commenced the work necessary to complete the crossing replacement. It is also evident based upon paragraph ten (10) of the Railroad's Petition to Modify the Order that they have not yet even applied for a detour with the Department of Transportation which would be necessary before any construction could begin.

17. Because the Railroad has wilfully disobeyed the Public Utility Commission Order dated March 20, 2000, it is becoming increasingly unlikely that the crossing will be reconstructed prior to the winter of 2000-2001.

18. Since the hearing held before the Public Utility Commission on September 21, 1999, the condition of the crossing has only deteriorated even more so that it has become a

significant danger to the safety of pedestrians using the sidewalks adjacent to the crossing and to motor vehicles traveling in opposite directions.

WHEREFORE, the Borough of Tamaqua requests that the Public Utility Commission take all necessary actions to enforce the Order of the Commission dated March 20, 2000, and order such other relief as may be appropriate under the circumstances.

REQUEST FOR EMERGENCY RELIEF

19. The Borough of Tamaqua incorporates by reference paragraphs one (1) through twelve (12) of its Answer to the Railroad's Petition for Modification and paragraph thirteen (13) through eighteen (18) of the Borough's New Matter to the Railroad's Petition.

20. On or about June 21, 2000, the Borough of Tamaqua experienced a water leak in a water line which is located under the crossing which is the subject of the current litigation, located in the westbound lane of the crossing and running perpendicular thereto.

21. Since the time the water leak was detected, the Borough took the necessary steps to locate the leak and shut off the water as it runs under the crossing. Because of the other water lines that exist within the Borough of Tamaqua, the water was able to be rerouted so that there is currently no service

interruptions to Tamaqua Borough residents.

22. The Borough of Tamaqua has submitted engineering plans in accordance with Railroad specifications outlining the work that would have to be done to replace this water line including the installation of a sleeve surrounding the water line so that if there is a subsequent leak, no further excavation would be necessary.

23. The composition of the ground beneath the crossing is gravel and rock; therefore, the process that would have to be used to bore the water line as currently demanded by the Railroad, would be prohibitive in expense.

24. Since the crossing is now being replaced by the Railroad, it is only common sense for the Borough to be permitted to excavate in the area of the crossing once the Railroad has removed the ties and the rails and insert the water line assembly to complete their repair. It is estimated that the entire time to perform this project by the Borough of Tamaqua would not exceed six (6) hours and could even be done during nighttime hours.

25. Because the water line is located in the westbound lane of the crossing, it would only tie up traffic for the westbound lane.

26. The Borough's engineer, Gannett Fleming, Inc.,

submitted initial plans for the water line replacement. On October 24, 2000, the Railroad's engineer requested a resubmission because of the depth of the line and whether or not open excavation should be permitted as opposed to having the line bored. A copy of this transmittal to the Borough from the Railroad is attached hereto, made a part hereof, marked Exhibit "A".

27. On or about November 2, 2000, the Borough submitted a narrative as to exactly why the open excavation method should be employed and also provided data to support their contention that the strength of the sleeve was more than enough to withstand the weight to which it would be subjected to underneath the crossing. A copy of that resubmission data by Gannett Fleming is attached hereto, made a part hereof, marked Exhibit "B".

28. The Borough's engineer spoke to the engineer for the Railroad who indicated that he was in agreement with the plan of action as proposed by the Borough but that the Railroad would still not permit open excavation and was insisting that the Borough bore as a means of placing the water line underneath the crossing.

29. The Borough is more than willing to pay the cost for the detour during the time which the water line replacement is being effected.

WHEREFORE, the Borough of Tamaqua respectfully requests the Public Utility Commission to enter an order for emergency relief by ordering the Reading, Blue Mountain & Northern Railroad Company to permit the open excavation by the Borough for the replacement of its water line after the rails and ties of the crossing have been removed by the Railroad and before the Railroad completes its crossing replacement as ordered by the Commission.

Respectfully submitted,

BOWE, LISELLA AND BOWE

By: 

Jeffrey P. Bowe, Esquire
Attorney for the Borough of
Tamaqua
109 West Broad Street
P.O. Box 290
Tamaqua, PA 18252-0290
Supreme Court I.D. No. 23188

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

BOROUGH OF TAMAQUA :
 :
 v. : Docket No. C-00992533
 :
 READING, BLUE MOUNTAIN and :
 NORTHERN RAILROAD CO. :

CERTIFICATE OF SERVICE

AND NOW, this 16th day of November, 2000, I, Jeffrey P. Bowe, Esquire, of the firm of Bowe, Lisella and Bowe, attorneys for Borough of Tamaqua, hereby certify that I served the within answer and new matter this day by depositing the same in the United States mail, postage prepaid, addressed to:

Commonwealth of Pennsylvania
Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Andrew Gordon, Esquire
PennDot
Forum Place 9th Floor
555 Walnut Street
Harrisburg, PA 17101-1900

Gina D. Alfonso, Esquire
PennDot
Forum Place 9th Floor
555 Walnut Street
Harrisburg, PA 17101-1900

Joseph H. Jones, Jr., Esquire
401 North Second Street
Pottsville, PA 17901

William Pickering, PE Chief
PennDot Bureau of Design
Row and Utility Division
Forum Place 7th Floor
555 Walnut Street
Harrisburg, PA 17105-3362

Kenneth McClain
PennDot District 5-0
1713 Lehigh Street
Allentown, PA 18103

Jean Heffner, Chief Clerk
401 North Second street
Pottsville, PA 17901

DO NOT WRITE IN THESE SPACES
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David A. Salapa, Esquire
Pennsylvania Public Utility
Commission
Bureau of Transportation and
Safety
P.O. Box 3265
Harrisburg, PA 17105-3265

Honorable David G. Argall
Route 415
South Office Building
House Post Office
Harrisburg, PA 17120

Wandaleen Poynter-Cole, Esquire
CSX Transportation, Inc.
100 North Charles Street
Suite 200
Baltimore, MD 21201

Randal S. Noe, Esquire
Norfolk Southern Corp.
Three Commercial Place
Norfolk, VA 23510-9241

Donald Matalavage, Borough Manager
Borough of Tamaqua
320 East Broad Street
Tamaqua, PA 18252

~~BOWE, LISELLA AND BOWE~~

By: 

Jeffrey P. Bowe, Esquire
Attorney for Borough of Tamaqua
Supreme Court I.D. No. 23188
109 West Broad Street
P.O. Box 290
Tamaqua, PA 18252-0290

VERIFICATION

The undersigned verifies that the answers and averments contained herein are true and correct. The undersigned understands that false statements herein are made subject to the penalties of 18 Pa. C. S. § 4904, relating to unsworn falsification to authorities.

Herman F. Lutz
Herman F. Lutz, President
of Tamaqua Borough Council

Date: November 15, 2000

**READING BLUE MOUNTAIN & NORTHERN RAILROAD
REAL ESTATE DEPARTMENT
P.O. BOX 188
PORT CLINTON, PA 19549**

Web Address: www.rbmnr.com

Email Address: rbmnr@early.com

FAX TRANSMISSION COVER SHEET

DATE:

Friday, October 27, 2000

NUMBER OF PAGES

3 (including this page)

TO:

Don Matalavage

COMPANY:

Borough of Tamaqua

FAX NUMBER:

570-668-5818

FROM: Del Jean Saylor, Assistant Director - Real Estate Department

If you have any questions, or this transmission was not successful, I can be reached by telephone at 610-562-2902 or by fax at 610-562-5379

MESSAGE:

Dear Mr. Matalavage,

Attached to this fax please find our Engineer's review findings and our Utility Crossing Procedure.

When all matters have been addressed please follow the procedure.

Thanks,
Del Jean Saylor

737850
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NOV 17 AM 11:30

Date: 10/24/00
Project: Water Line at Broad St., Tamaqua, Pa.

A review of the plans and specifications submitted for the subject project indicates the submittal is not in conformance with the Specifications for Pipeline Occupancy on RBM&N Railroad Property, RB8.

- Since the installation depth will be less than the required 5' - 6" (1.7m) minimum cover, please submit calculations indicating the proposed pipe size and wall thickness is sufficient.
- Open Cut method is not permitted under mainline track within the limits of a grade crossing. Section 5.1.2, c.

Please submit a proposal to the General Manager Transportation indicating rationale for utilizing the open cut method in lieu of boring/jacking. Include operational considerations such as estimated construction schedule indicating maximum time period that railroad operation will be impacted and indicate arrangements regarding track removal and installation.

Re-submit upon satisfaction of above.

004

REQUEST PERMISSION TO OPEN CUT THE BROAD STREET CROSSING
OF THE READING, BLUE MOUNTAIN, NORTHERN RAILROAD
FOR WATER MAIN INSTALLATION

The Borough of Tamaqua requests permission to install a 10-inch water main, by open cut, at the Board Street crossing of the Reading, Blue Mountain, Northern Railroad. It is the Borough's understanding that the railroad will be upgrading this crossing in the very near future. When the railroad removes the tracks for this construction the Borough asks that they be allowed to upgrade their existing 10-inch water main at the same time. The existing 10-inch will be removed and a new 10-inch ductile iron water main in a 20-inch casing pipe will be installed in the same location. The details for upgrading the existing main are shown on Plate's I, II and III of the Pipeline Occupancy Application.

If the tracks are not to be removed, during the upgrading of this crossing, the Borough still would like to request permission to install the 10-inch water main by open cut. The Borough has installed water mains in the past by excavating under the tracks, while the tracks remain in place, install the main and backfill to the existing grade.

From past construction activities at this crossing, it is known that the soil is very gravelly making a boring and jacking operation unlikely at this location.

It is anticipated that the installation of the 10-inch water main will take about 6 hours.

7
051

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Tamaqua Broad St Reading Blue Mountain Northern (RBMN) RR Crossing

Deflection & buckling of Buried Pipe File Calcs for Depth of Cover on Casing Pipe of 2.5 feet (RR: AISI Steel Water Pipe Design Program - Version 1.0.27):

INPUT:

Unit weight of fill:	120 (pcf)
Height of ground surface above top of pipe:	2.5 (ft)
Specific weight of water:	62.4 (pcf)
Height of water surface above top of pipe:	0 (ft)
Internal vacuum pressure:	0 (psi)
Outside diameter of pipe:	20 (in.)
Pipe wall thickness:	0.375 (in.)
Type of live load:	Railroad Cooper E-80 Loading
Multiplier for live load is:	1.75
Deflection lag factor:	1.5
Bedding constant:	0.096
Concrete liner thickness:	0 (in.)
Concrete coating thickness:	0 (in.)
Modulus of soil reaction:	1080 (psi)
Elastic modulus of steel:	30000000 (psi)
Elastic modulus of concrete:	4000000 (psi)
Type of coating and lining:	No coating and lining

OUTPUT:

Dead load of fill on the pipe (WC):	500 (lb/ft)
Dead load of surface water on the pipe:	0 (lb/ft)
Live load pressure on the pipe:	24.77 (psi)
Live load on the pipe (WL):	5944.8 (lb/ft)
Water bouyancy factor:	1
Internal diameter of the pipe:	19.25 (in.)
Pipe wall stiffness:	131835.94 (in.-lb)
Coating stiffness:	0 (in.-lb)
Lining stiffness:	0 (in.-lb)
Total stiffness:	131835.94 (in.-lb)
Horizontal deflection of pipe due to soil weight:	0.03 (in.)
Horizontal deflection of pipe due to soil weight and live load:	0.39 (in.)
Horizontal deflection of pipe due to soil weight and water above pipe:	0.03 (in.)
Horizontal deflection of pipe due to soil weight, water above pipe and live load:	0.39 (in.)
Percentage of Horizontal deflection of pipe due to soil weight:	0.15
Percentage of Horizontal deflection of pipe due to soil weight and live load:	1.96
Percentage of Horizontal deflection of pipe due to soil weight and water above pipe:	0.15
Percentage of Horizontal deflection of pipe due to soil weight, water above pipe and live load:	1.96
Allowable horizontal deflection percent of pipe diameter:	3
Deflection due to soil weight is:	OK
Deflection due to soil weight and live load is:	OK
Deflection due to soil weight and water above pipe is:	OK
Deflection due to soil weight, water above pipe and live load is:	OK
Factor of safety for buckling	3
Empirical coefficient of elastic support	0.23
Allowable buckling pressure	119.92 psi
Stress due to dead weight of soil, water above pipe and internal vacuum	2.08 psi
Stress due to dead weight of soil, water above pipe and live load	26.85 psi
Stress due to dead weight of soil, water above pipe and internal vacuum is:	OK
Stress due to dead weight of soil, water above pipe and live load vacuum is:	OK

Tamaqua Broad St Reading Blue Mountain Northern (RR) Crossing

Deflection & buckling of Buried Pipe File Calcs for Depth of Cover on Casing Pipe of 4.58 feet (RR: AISI Steel Water Pipe Design Program - Version 1.0.27):

INPUT:

Unit weight of fill:	120 (pcf)
Height of ground surface above top of pipe:	4.58 (ft)
Specific weight of water:	62.4 (pcf)
Height of water surface above top of pipe:	0 (ft)
Internal vacuum pressure:	0 (psi)
Outside diameter of pipe:	20 (in.)
Pipe wall thickness:	0.375 (in.)
Type of live load:	Railroad Cooper E-80 Loading
Multiplier for live load is:	1.75
Deflection lag factor:	1.5
Bedding constant:	0.096
Concrete liner thickness:	0 (in.)
Concrete coating thickness:	0 (in.)
Modulus of soil reaction:	1080 (psi)
Elastic modulus of steel:	30000000 (psi)
Elastic modulus of concrete:	4000000 (psi)
Type of coating and lining:	No coating and lining

OUTPUT:

Dead load of fill on the pipe (WC):	916 (lb/ft)
Dead load of surface water on the pipe:	0 (lb/ft)
Live load pressure on the pipe:	18.03 (psi)
Live load on the pipe (WL):	4327.2 (lb/ft)
Water bouyancy factor:	1
Internal diameter of the pipe:	19.25 (in.)
Pipe wall stiffness:	131835.94 (in.-lb)
Coating stiffness:	0 (in.-lb)
Lining stiffness:	0 (in.-lb)
Total stiffness:	131835.94 (in.-lb)
Horizontal deflection of pipe due to soil weight:	0.06 (in.)
Horizontal deflection of pipe due to soil weight and live load:	0.32 (in.)
Horizontal deflection of pipe due to soil weight and water above pipe:	0.06 (in.)
Horizontal deflection of pipe due to soil weight, water above pipe and live load:	0.32 (in.)
Percentage of Horizontal deflection of pipe due to soil weight:	0.28
Percentage of Horizontal deflection of pipe due to soil weight and live load:	1.59
Percentage of Horizontal deflection of pipe due to soil weight and water above pipe:	0.28
Percentage of Horizontal deflection of pipe due to soil weight, water above pipe and live load:	1.59
Allowable horizontal deflection percent of pipe diameter:	3
Deflection due to soil weight is:	OK
Deflection due to soil weight and live load is:	OK
Deflection due to soil weight and water above pipe is:	OK
Deflection due to soil weight, water above pipe and live load is:	OK
Factor of safety for buckling	2.5
Empirical coefficient of elastic support	0.25
Allowable buckling pressure	151.5 psi
Stress due to dead weight of soil, water above pipe and internal vacuum	3.82 psi
Stress due to dead weight of soil, water above pipe and live load	21.84 psi
Stress due to dead weight of soil, water above pipe and internal vacuum is:	OK
Stress due to dead weight of soil, water above pipe and live load vacuum is:	OK

PLATE I

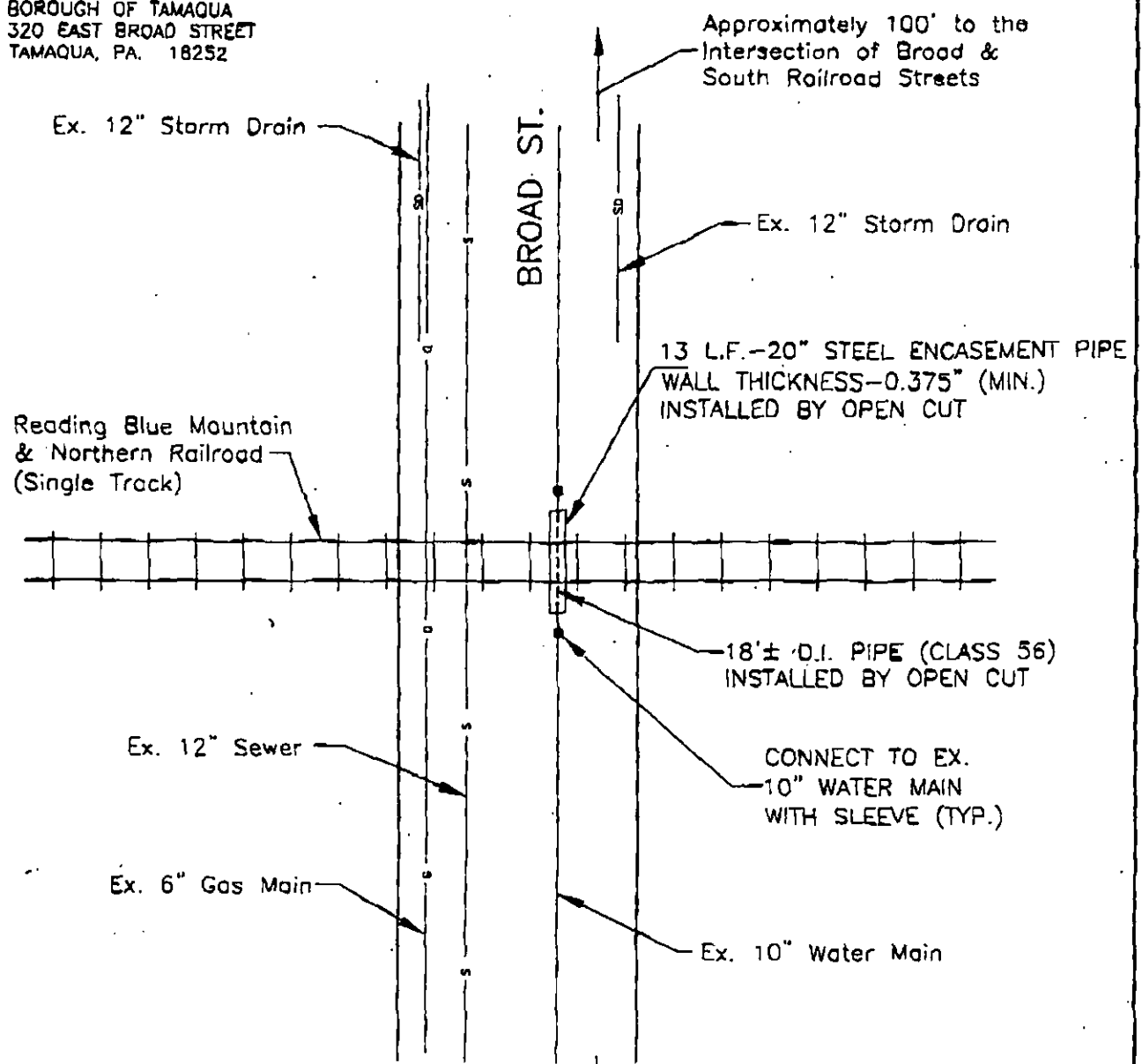
PIPE DATA SHEET

(For crossings and longitudinal occupancy)

	PIPE DATA	
	Carrier Pipe	Casing Pipe
Contents to be handled	Water	D. I. Pipe
Normal operating pressure	100 psi	N/A
Nominal size of pipe	10"	20"
Outside diameter	11.10"	20"
Inside diameter	10.16"	19.25"
Wall thickness	0.47"	0.375"
Weight per foot	48 LBS	219 LBS
Material	Ductile Iron	Steel
Process of manufacture	Cast	Rolled
Specification	ANSI A21.51 AWWA C - 151	ASTM A134
Grade or class	Class 56	Grade B
Test pressure	500 psi	600 psi
Type of joint	Mechanical Joint	Welded
Type of coating	Bituminous	None
Details of cathodic protection	None	None
Details of seals or protection at ends of casings	N/A	Synthetic Rubber Seal
Method of installation	Open Cut	Open Cut
Character of subsurface material at the crossing location	Unknown	Unknown
Approximate ground water level	Unknown	Unknown
Source of information on subsurface conditions (borings, test pits or other)	N/A	N/A

NOTE: Any soil investigation made on railroad property or adjacent to tracks shall be carried on under the supervision of RBMN (See Section 1.4)

INSTALLATION BY
 BOROUGH OF TAMAQUA
 320 EAST BROAD STREET
 TAMAQUA, PA. 18252



NOTE:

MATERIALS FOR DUCTILE IRON PIPE, STEEL CASING PIPE, CASING PIPE END SEALS, BACKFILL AGGREGATE AND COMPACTION REQUIREMENTS TO BE AS SPECIFIED IN THE RBB SPECIFICATIONS FOR PIPELINE OCCUPANCY ON READING BLUE MOUNTAIN & NORTHERN RAILROAD PROPERTY.

Approximately 125' to the Intersection of Broad St., North Railroad St., East Mauch Chunk St., & Center St.

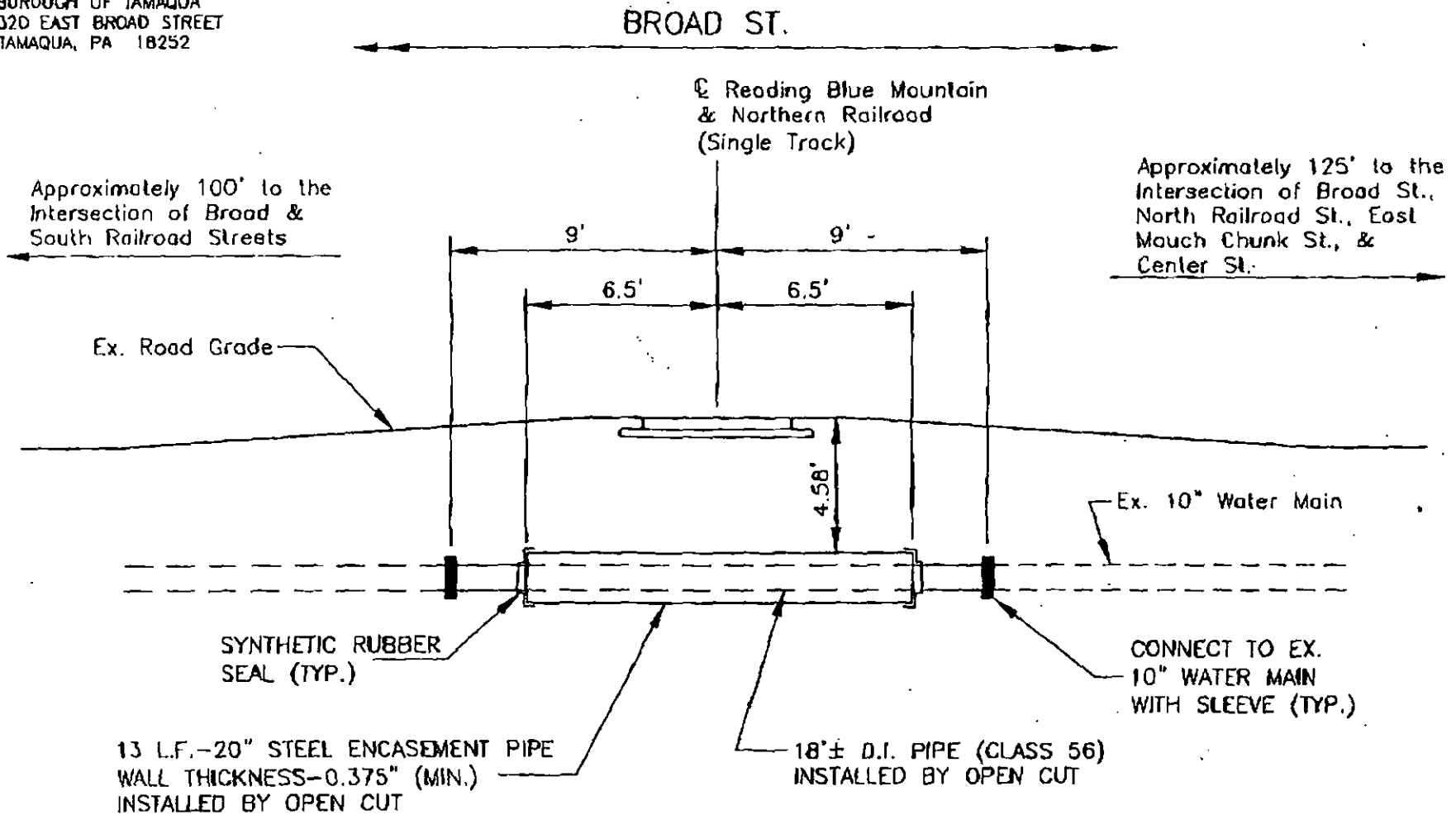
PLAN
 RENEWAL OF EXISTING 10" WATER MAIN

SCALE: 1"=20'

FILE: 10-20-2003-11-10-AM-10-20-2003-11-10-AM-10-20-2003-11-10-AM
 DATE: 10/10/2003 10:20:20 AM

FILE: 44_40287_31 40287 (TAMAQUA) (TAMAQUA) (PA) (18252) (070)
DATE: 02/10/2020 10:02:43 AM

INSTALLATION BY
BOROUGH OF TAMAQUA
320 EAST BROAD STREET
TAMAQUA, PA 18252



PROFILE
RENEWAL OF EXISTING 10" WATER MAIN
(LOOKING NORTH)

SCALE: 1"=5'

PLATE III

HOLL & ASSOCIATES

Attorneys At Law
A PROFESSIONAL CORPORATION

P.O. BOX 807
920 SOUTH BROAD STREET
LANSDALE, PENNSYLVANIA 19446

(215) 362-1015
FAX (215) 362-8530
EMAIL: Hollaw@voicenet.com

ORIGINAL

GREGORY F. LEPORE, ESQ.

November 28, 2000

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VIA FEDERAL EXPRESS
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NOV 28 2000

PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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


Re: BORO OF TAMAQUA v. READING, BLUE MOUNTAIN & NORTHERN
RAILROAD COMPANY
Complaint Docket No.: C-00992533
Our File No.: BMRR-003

Dear Mr. McNulty:

Enclosed please find an original Answer of Reading, Blue Mountain and Northern Railroad Company to New Matter of Boro of Tamaqua relative to the above matter. Also enclosed is one copy to be time-stamped and returned to me in the enclosed self-addressed stamped envelope.

Thank you for your cooperation in this matter.

Sincerely,



GREGORY F. LEPORE

GFL/jmy
Enclosures

cc: Andy Muller
Jeffrey Bowe, Esquire
Jason Sharp, Esquire
Louis Fink-Smith, Esquire
Honorable David Argall

32

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PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

DONALD MATALAVAGE,
BORO MANAGER, BORO OF TAMAQUA

DOCUMENT
FOLDER

DOCKETED
NOV 29 2000

v.
READING, BLUE MOUNTAIN &
NORTHERN RAILROAD COMPANY

Complaint Docket
No.: C-00992533

ANSWER OF READING, BLUE MOUNTAIN AND NORTHERN RAILROAD COMPANY
TO NEW MATTER OF THE BORO OF TAMAQUA

13. No answer required.

14-17. ADMITTED IN PART and DENIED IN PART. It is ADMITTED that construction has not begun. The Railroad is scheduled to commence construction on or about Friday, December 1, 2000 unless the Commission orders otherwise. The work will not require a detour, but rather only a closure of one lane of the roadway.

19. No answer required.

20-21. ADMITTED.

22. ADMITTED IN PART. It is ADMITTED that the pipe is of adequate specification. The Railroad's specifications require that any excavation in the area of a grade crossing be done by boring, and to the extent that the Borough's proposal requests open trench excavation, paragraph 22 is DENIED.

23. DENIED. The Railroad has no knowledge of the composition of the soil under the railbed. Further, even if it is composed of gravel and rock, while boring may be more expensive than in clean soil, it is not "prohibitive" given the relative benefits of the boring method.

24. DENIED. It is not "common sense" that open excavation be permitted. From an engineering standpoint, boring under a rail crossing is the preferred method. It is further DENIED that the Borough could complete the project in six (6) hours inasmuch as if open excavation is permitted proper soil compaction and the number of "lifts" is required; the Borough's time estimate clearly indicates that they intend to do less than an adequate job of compaction.

25-27. ADMITTED.

28. ADMITTED IN PART and DENIED IN PART. It is ADMITTED that the Borough's engineer spoke to the Railroad's engineer. Rather, the Railroad's engineer is of the opinion that while conceivably open excavation with proper backfill, compaction, and testing of the same provide a stable surface, in the real world, such a result rarely occurs. Given the fact that the Railroad is preparing to install a concrete panel crossing, the most expensive type of crossing currently available, and given that the Commission's prior Order requires the Railroad to maintain that crossing, the Railroad is entitled to a means of penetration of its roadbed which provides the least opportunity for settlement and subsequent damage to the crossing.

29. ADMITTED.

WHEREFORE, for the above reasons, the Reading, Blue Mountain and Northern Railroad Company respectfully requests that the Commission DENY the Borough's Petition for Enforcement

and Emergency Relief and permit the Railroad to begin reconstruction of the Crossing on December 1, 2000 as planned.

Respectfully submitted,

HOLL & ASSOCIATES, P.C.

By: 

GREGORY F. LEPORE, ESQUIRE
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 Answer of the Reading, Blue Mountain and Northern Railroad Company to New Matter of the Boro of Tamaqua on the 28th day of November, 2000, 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

Honorable David Argall
HOUSE OF REPRESENTATIVES
Room 415, South Office Building
House Post Office
Harrisburg, PA 17120

Jason Sharp, Esquire
Assistant Counsel
PennDOT
Forum Place, 9th Floor
555 Walnut Street
Harrisburg, PA 17101-1900

Jeffrey Bove, Esquire
109 West Broad Street
P.O. Box 290
Tamaqua, PA 18252

Louis Fink-Smith, Esquire
PENNSYLVANIA PUBLIC
UTILITY COMMISSION
Bureau of Transportation
and Safety
P.O. Box 3265
Harrisburg, PA 17105-3265

Respectfully submitted,

HOLL & ASSOCIATES, P.C.

By:



GREGORY F. LEPORE, ESQUIRE

ORIGINAL

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

DONALD MATALAVAGE,
BOROUGH MANAGER,
BOROUGH OF TAMAQUA,

v.

READING, BLUE MOUNTAIN &
NORTHERN RAILROAD COMPANY.

Docket No. C-0099253

SECRETARY'S BUREAU

00 NOV 29 PM 3:33

**EMERGENCY PETITION OF THE COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION FOR CLARIFICATION AND
ENFORCEMENT OF THE ORDER ENTERED MARCH 20, 2000**

AND NOW, comes the Commonwealth of Pennsylvania, Department of Transportation (Department), by and through its counsel, Jason D. Sharp, Assistant Counsel, and offers the following Emergency Petition to Clarify and Enforce the Public Utility Commission's (Commission) Order entered March 20, 2000, pursuant to 52 Pa. Code § 3.1, et seq; 52 Pa. Code § 5.41; and, 52 Pa. Code § 5.572:

1. On March 20, 2000, the Commission entered an Order requiring, inter alia, that Reading Blue Mountain and Northern Railroad Company (RBMN) replace a failed crossing on State Route 0209 in Tamaqua Borough, Schuylkill County. A copy of the Order in question is attached.
2. The Order in question requires RBMN to replace the existing crossing with a full depth concrete crossing. (Order, p. 14, ¶ 5).
3. The Order in question requires that RBMN, at its sole cost and expense, furnish all material and maintain a detour for vehicular traffic during the reconstruction project. (Order, p. 15, ¶ 7).¹

¹ The paragraph in question reads: "That Reading Blue Mountain and Northern Railroad Co., at its sole cost and expense, furnish all material and do all work necessary to establish, mark and maintain a suitable detour, if necessary, for vehicular traffic desiring to use the West Broad Street at-grade crossing during the time the crossing surface is being reconstructed. Said detour is to be established in cooperation with the Pennsylvania a Department of Transportation and the Borough of Tamaqua and is to be established in accordance with the Manual on Uniform Traffic Control Devices.

DOCUMENT
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4. The Order in question required RBMN to establish any necessary detour in cooperation with the Department. (Order, p. 15, ¶ 7).
5. The Order in question required RBMN to notify the Department and the Borough of Tamaqua ten (10) days prior to the start of work on the crossing reconstruction project. (Order, p. 16, ¶ 14).
6. The Order in question required RBMN to submit construction plans to the Commission and the parties for review within thirty days of entry of the Order in question, which RBMN failed to do. (Order, p. 14, ¶ 5).
7. RBMN did ultimately submit construction plans to the Commission and parties, which were approved by the Commission on August 9, 2000.
8. The Order in question required RBMN to complete the subject reconstruction work within three (3) months of the approval of plans for the ordered work. As the plans were approved on August 9, 2000, the three (3) months within which to complete the work expired on November 7, 2000.
9. RBMN appealed the March 20, 2000 Order to the Pennsylvania Commonwealth Court.
10. The Commonwealth Court affirmed the Commission's determination. (A copy of the Commonwealth Court's Memorandum Opinion is attached).
11. On Tuesday, November 28, 2000, the Department's District 5-0 was notified that RBMN intended to begin the reconstruction project on the subject crossing.
12. RBMN plans to replace the crossing in half widths and to join the rails at the center of the crossing rather than by welding rails outside of the travel lanes.
13. A rail welded in the center of a crossing, as proposed in this case, will result in a flex point, a weak point in the rail, which will necessitate diligent, regular maintenance by RBMN. Further, if the rail should break, the integrity of the operation of the automatic protection devices could be impaired.
14. Maintenance of rail welded at the center of a crossing, as proposed at this location, will necessitate railroad forces working in traffic to maintain the rail.
15. Standard railroad industry practice in a crossing reconstruction indicates that the rail line should be joined by welds outside of the travel lanes.
16. In order to guarantee proper compaction of the subgrade and subballast, standard railroad industry practice is to reconstruct crossings in an entire length rather than the half-width reconstruction proposed at this crossing. Without proper compaction, the integrity of the new crossing is jeopardized.

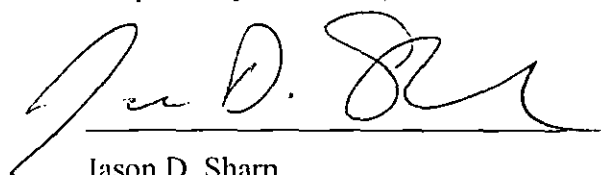
17. RBMN does not plan to detour traffic away from the crossing, but rather desires to close a single lane of traffic as each panel is put in place at the crossing.
18. RBMN has never submitted any detour plan to the Department and the current proposed rerouting of traffic was not planned in cooperation with the Department as per paragraph seven (§ 7) of the subject Order.
19. A full detour of traffic away from the work site is necessary to allow RBMN to complete the subject work. (Recommended Decision, p. 13; N.T., 44, 55).
20. RBMN is proposing a scope of work at the subject crossing that is both inadequate under the subject Order and is dangerous to the safety the motoring public.
21. Allowing RBMN to proceed with the project as currently proposed unnecessarily subjects the motoring public to an inadequate road protection during the project and subjects both the rail cars and motor vehicles to potential safety hazards resulting from splits or breaks in any joints within the travel lanes. This is critical given that the average daily traffic (ADT) is fifteen thousand (15,000) vehicles with six percent (6%) truck traffic.
22. The Commission must clarify the Order in question to indicate that a full detour of traffic, not simply alternate lane closures, is necessary for the safety of the motoring public.

WHEREFORE, this Honorable Commission should clarify the Order entered March 20, 2000, to indicate that a detour necessitating a road closure and a full re-routing of vehicular traffic away from the affected portions of SR 0209 is necessary for the completion of the subject project;

AND, RBMN should be immediately required to submit a detour plan to the Department for concurrence which allows for the complete detour of traffic from the affected area of SR 0209 for the duration of the subject project;

AND, RBMN should be required to provide for welded rail joints outside of the travel lanes on the subject crossing.

Respectfully submitted,



Jason D. Sharp
Assistant Counsel
PA Attorney ID#80488
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel-9th Floor
P.O. Box 8212
Harrisburg, PA 17105-8212
Telephone No. (717) 787-3128

Dated: Wed., November 29, 2000

VERIFICATION

I, Roger S. Aulakh, P.E., Grade Crossing Engineer employed by the Commonwealth of Pennsylvania, Department of Transportation, in this matter, do hereby verify that the statements made in the foregoing *Answer* are true and correct to the best of my knowledge, information and belief. I understand that this statement is made subject to penalties of 18 Pa. C.S. §4904, relating to the unsworn falsification to authorities.



Roger S. Aulakh, P.E.

DATED: Wednesday, November 29, 2000

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Emergency Petition of the Commonwealth of Pennsylvania, Department of Transportation for Clarification and Enforcement of the Order Entered March 20, 2000 was served upon the parties listed below by the manner indicated below, this day, Wednesday, November 29, 2000:

VIA UPS OVERNIGHT DELIVERY AND FAX TRANSMISSION

HONORABLE DAVID G ARGALL
PENNSYLVANIA HOUSE OF REPRESENTATIVES
ROOM 415 SOUTH OFFICE BLDG
HOUSE POST OFFICE
HARRISBURG, PA 17120

JOHN WATERS
READING BLUE MOUNTAIN AND NORTHERN RAILROAD COMPANY
PO BOX 218
PORT CLINTON, PA 19549

JEFFREY P. BOWE, ESQUIRE
109 WEST BROAD STREET PO BOX 290
TAMAQUA, PA 18252

JOSEPH H. JONES, JR., ESQUIRE
MARY KAY BERNOSKY, ESQUIRE
OFFICE OF THE SOLICITOR
401 NORTH SECOND STREET
POTTSVILLE, PA 17901

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

VIA HAND DELIVERY

DAVID A. SALAPA, ESQUIRE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P O BOX 3265
HARRISBURG, PA 17105-3265

VIA FIRST CLASS MAIL

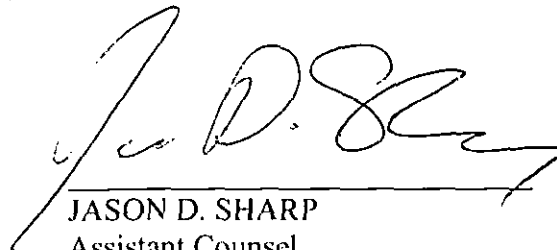
DONALD MATALAVAGE, BOROUGH MANAGER
320 EAST BROAD STREET
TAMAQUA, PA 18252

JEAN HEFFNER, CHIEF CLERK
401 NORTH SECOND STREET
POTTSVILLE, PA 17901-2528

CSX LEGAL DEPARTMENT
100 NORTH CHARLES STREET SUITE 200
BALTIMORE, MD 21201

RANDALL S. NOE, ESQUIRE
THREE COMMERCIAL PLACE
NORFOLK, PA 23510-9241

DAVID & BEVERLY KNOEBEL
28 PURNELL AVENUE HOMETOWN
TAMAQUA, PA 18252-9802



JASON D. SHARP
Assistant Counsel
PA Attorney ID#80488
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel-9th Floor
P.O. Box 8212
Harrisburg, PA 17105-8212
Telephone No. (717) 787-3128

DATED: Wednesday, November 29, 2000

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

www.dot.state.pa.us

Office of Chief Counsel

P.O. BOX 8212

Harrisburg, PA 17105-8212

Telephone No. (717) 787-3128



ORIGINAL

Thursday, November 30, 2000

James McNulty, Secretary
Pennsylvania Public Utility Commission
Harrisburg, PA 17108

IN RE: Borough of Tamaqua v.
Reading Blue Mountain and Northern Railroad Company, et al.
Docket # - C-00992533

Dear Secretary McNulty:

Enclosed for filing are an original and three (3) copies of the attachments that were inadvertently omitted from the Department's Emergency Petition for Clarification and Enforcement filed in the above captioned matter yesterday. All parties of record have been served with the attachments.

Very Truly Yours,

Jason D. Sharp
Assistant Counsel

DOCUMENT
FOLDER

RECEIVED
NOV 30 4:20 PM '00
SECRETARY'S BUREAU

220/JDS:_
jdsharp@justice.com

cc: All parties of record
Gary C. Fawver, P.E., Chief, Right-of-Way and Utilities
Ken McClain, Grade Crossing, District 5-0

40

Arts

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

READING BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY, Petitioner
v.
PENNSYLVANIA PUBLIC UTILITY COMMISSION, Respondent

DOCUMENT FOLDER
No. 893 C.D. 2000
Argued: October 2, 2000

Bill FMT

BEFORE: HONORABLE JAMES GARDNER COLINS, Judge
HONORABLE JAMES R. KELLEY, Judge (P.)
HONORABLE CHARLES P. MIRARCHI, JR., Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY SENIOR JUDGE MIRARCHI

DOCKETED
DEC 06 2000

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P.A. JUDGE
SECRETARY'S BUREAU

FILED: November 17, 2000

Reading Blue Mountain & Northern Railroad Company (the Railroad) petitions this Court to review an order of the Public Utility Commission (PUC) that directed the Railroad to pay the entire cost of reconstructing an at-grade highway-railroad crossing (Crossing) located along State Route 209 in the Borough of Tamaqua (Borough). Intervening in this matter in support of the PUC's order are the Borough, the Pennsylvania Department of Transportation (DOT), and Schuylkill County (collectively Intervenors). We affirm.

On May 24, 1999, the Borough filed a complaint with the PUC against the Railroad alleging that the condition of the Crossing was in such a deteriorated condition that the Crossing constituted an endangerment to motor vehicle traffic and pedestrians. Specifically, the road surface in the westbound lane had depressed three to four inches below the height of the railhead. The

Borough had allegedly been asking the Railroad to fix the Crossing since 1995 to no avail. At a hearing before an administrative law judge, at which the Intervenors attended, all parties agreed that the Crossing must be replaced. The Railroad agreed to perform the actual work for the replacement and to maintain the new Crossing during its useful life. The existing Crossing was constructed with rubber panels in 1980. It is these panels that have deteriorated causing the present problem with the Crossing.

On January 26, 2000, the ALJ issued a decision recommending, among other things, that the Railroad bear the total cost of the replacement of the Crossing, using concrete surface materials to replace the deteriorated rubber ones. The Railroad filed exceptions to the PUC.¹ The PUC, with modification not relevant to this petition for review, denied the Railroad's exceptions and adopted the recommendation of the ALJ, issuing an order placing the total cost for repairing the Crossing upon the Railroad. In coming to this conclusion, the PUC evaluated five factors. First, the PUC noted that although both the travelling public and the Railroad would benefit from the Crossing reconstruction, the greater benefit, in the PUC's opinion, would be conferred upon the Railroad. Second, the PUC concluded that state and federal funds are not presently available for the replacement, and that there is no certainty that they will be in the future. Third, the PUC found that it is uncontroverted that the Railroad has exclusive control over the Crossing, its condition, and its maintenance. In 1990, the Railroad succeeded in ownership of the Crossing from Conrail, which by prior agreement was responsible for the maintenance of the Crossing. The Railroad, however, has performed no

¹ The Borough also filed exceptions regarding the timeframe for the completion of the project. The PUC modified the timeframe for completion; however, that matter is not before us.

maintenance to the Crossing during its ownership other than periodic inspections and some drainage work. The PUC found that no other entity has the right-of-way to perform work there. Fourth, the PUC found that the travelling public has lost “virtually all” benefit of the Crossing and has suffered the greatest risk from it since 1995. Fifth, the PUC found that the situation in 2000 is considerably different from that in 1980 when it ordered DOT to underwrite the costs of installation for the existing rubber Crossing.

In its petition for review from the PUC’s order, the Railroad makes the following arguments: (1) that it was not just and reasonable for the PUC to order the Railroad to bear the total costs for the replacement of the Crossing that allegedly bears “relatively light rail traffic and relatively heavy highway traffic”, and (2) that several of the PUC’s necessary findings of fact are not supported by substantial evidence.

Our scope of review of a PUC order is limited to determining whether a constitutional violation or error in procedure occurred, whether the order is in accordance with law, and whether necessary findings of fact are supported by substantial evidence. Rohrbaugh v. Pennsylvania Public Utility Commission, 556 Pa. 199, 727 A.2d 1080 (1999). Sections 2702(b) and 2704(a) of the Public Utility Code (Code), as amended, 66 Pa. C.S. §§2702(b) and 2704(a), vest the PUC with the authority to determine who shall bear the costs associated with the repair or maintenance of a railroad crossing. Section 2702(b) provides in pertinent part:

The [PUC] is hereby vested with exclusive power to appropriate property for any [rail-highway] crossing ... and to determine and prescribe, by regulation or order, the points at which, and the manner in which, such crossing may be constructed, altered, relocated, suspended or abolished, and the manner and conditions in or under which such crossing shall be maintained,

operated and protected to effectuate the prevention of accidents and the promotion of the safety of the public.

Section 2704(a) provides in pertinent part:

[T]he cost of construction, relocation, alteration, protection, or abolition of such crossing ... shall be borne and paid, as provided by this section, by the public utilities or municipal corporations concerned, or by the Commonwealth, in such proper proportions as the [PUC] may, after due notice and hearing, determine, unless such proportions are mutually agreed upon and paid by the interested parties.

In determining which party or parties shall bear the costs of the construction or repair of a crossing, and in what proportions, the PUC is not limited to a specific formula or list of considerations, but must simply take all relevant factors into consideration. City of Philadelphia v. Pennsylvania Public Utility Commission, 676 A.2d 1298 (Pa. Cmwlth. 1996). Although the allocation of costs between the relevant parties is a matter within the PUC's discretion, such allocation must nevertheless be just and reasonable, that is, the decision must be based upon some sound legal or factual basis. Id. We have noted, however, that there appear to be several factors that have been consistently viewed to be relevant to the PUC's decision to allocate costs. These are:

1. The party that originally built the crossing.
2. The party that owned and maintained the crossing.
3. The relative benefit initially conferred on each party with the construction of the crossing.
4. Whether either party is responsible for the deterioration of the crossing that has led to the need for its repair, replacement or removal.

5. The relevant benefit that each party will receive from the repair, replacement or removal of the crossing.

Id., at 1301, n.5 (quoting Greene Township Board of Supervisors v. Pennsylvania Public Utility Commission, 668 A.2d 615, 619 (Pa. Cmwlth. 1995)).

The Railroad does not argue that the PUC failed to consider certain relevant factors; rather, it argues that three of the major factors examined by the PUC led the PUC to draw findings of fact that were not supported by substantial evidence. First, the Railroad argues that the finding that the Railroad would experience fewer service interruptions as a result of a reconstructed Crossing is not based on any evidence at all. The Railroad argues that no evidence was introduced to show that the Railroad suffered any service interruptions because of the condition of the Crossing; indeed, the rail surface has remained perfectly intact—it is only the rubber panels between the rails that have deteriorated. Thus, the Railroad appears to be arguing that there is a problem only for the pedestrians and vehicle traffic going over the Crossing, not for the trains that use the Crossing because the tracks are in good condition.

By making this argument, the Railroad is disregarding several important factors. First, there is no question that the Railroad is responsible for the maintenance of the Crossing. This maintenance pertains not only to the easy flow of rail traffic but also for the safe flow of vehicular and pedestrian traffic at the Crossing. It is therefore rather cavalier for the Railroad to argue that the repairs will not be highly beneficial to the Railroad, as the PUC concluded, because its trains continue to ride smoothly through the Crossing. The Railroad is also responsible for the Crossing's condition as far as vehicular and pedestrian traffic is concerned, as well. The Railroad also does not dispute that the Crossing requires immediate repair. The PUC essentially found that a reconstruction of the Crossing

using concrete materials will provide a longer-lasting surface than a rubber-paneled one that is in need of more frequent repair or replacement. This is simple logic. Finally, because the Railroad is responsible for the maintenance at the Crossing, it is exposed to liability for damages caused by its deteriorated condition. Testimony was introduced at the hearing that drivers would swerve to avoid the deep gaps between the rail surface and the road surface caused by the deterioration. Should a catastrophe occur at the Crossing because of this forced behavior, the Railroad will not only suffer from service interruptions but also, perhaps, legal liability as well. The PUC's findings and conclusions are therefore well-founded that the Railroad, in light of its responsibility to maintain the Crossing for the safety of all users, would derive the greater benefit from an immediate and longer-lasting Crossing repair than the travelling public.

The Railroad next challenges the finding that the deteriorated condition of the Crossing is a result of its failure to perform any maintenance. The Railroad argues that the evidence shows that the Crossing has deteriorated only because it has reached the end of its useful twenty-year life, not because of any lack of maintenance. The Railroad contends that the witnesses at the hearing were unaware of how maintenance could be performed on a rubber-panel crossing. The Railroad takes too narrow a view of the PUC's findings on this matter, however. It is undisputed that the Railroad, who is liable for the maintenance of the Crossing pursuant to its succession in ownership from Conrail, has not even attempted to rectify the situation at the Crossing during its ownership, despite requests by the Borough for rectification. The Railroad did not explore any option, including any attempt to replace the deteriorated rubber panels or setting a plan into motion for the repair or reconstruction of the Crossing, which plan may have secured

government funding for the project before the Crossing deteriorated to the point of requiring immediate replacement. Instead, the Railroad did nothing until the Borough forced its participation by filing the present action with the PUC. As a result of such delay, the Crossing now requires immediate attention. The PUC did not therefore act in an arbitrary or capricious manner when it determined that the present immediate need for the replacement of the Crossing to avoid harm to persons and property was caused by the Railroad's failure to fulfill its obligation of maintaining the Crossing.

Finally, the Railroad challenges the finding that DOT does not have the funds available to repair the Crossing. The Railroad contends that the evidence at the hearing demonstrated only that DOT has not "programmed" the Crossing for replacement. The Railroad argues that this circumstance has nothing to do with whether or not DOT actually has the available funds. The evidence presented at the hearing, however, is sufficient to support the PUC's finding. DOT's evidence demonstrated that there is no money set aside to immediately undertake work at the Crossing, that any funding would come no sooner than the 2001-2004 timeframe, and that there was no guarantee of the availability of such future funding. The PUC was responsible for determining the appropriate action to resolve an immediate safety problem in a just and reasonable manner. No evidence was placed before the PUC that could permit it to conclude that appropriate government funding was immediately available for such action. Because of the Railroad's failure to act during the time this problem developed, no effort was made to explore a source of government funding. It was therefore just and

reasonable for the PUC to allocate the costs of rectifying the problem upon the Railroad.²

The Railroad argues that it was not just and reasonable for the PUC to allocate total cost of repair upon the Railroad when the Crossing allegedly bears relatively light rail traffic and relatively heavy traffic. The PUC, however, did not base its decision on this single factor, but on the five relevant considerations stated above. Throughout its argument, the Railroad appears to attempt to create an impression that it is simply one of several users of the Crossing rather than the party responsible for the Crossing's maintenance with exclusive control over the site. Again, this responsibility and concern applies not just to its rail traffic but to all members of the public using the Crossing. In sum, our review of the testimony indicates clearly that the PUC did not act in an arbitrary or capricious manner when it allocated the costs of the Crossing replacement upon the Railroad, and that the PUC's decision has a sound factual and legal basis. See City of Philadelphia.

Accordingly, the order of the PUC in this matter is affirmed.


CHARLES P. MIRARCHI, JR., Senior Judge

² The Railroad also argues that the PUC determined that it was the Railroad's "turn" to pay for the Crossing repair because the 1980 Crossing replacement was funded entirely from government sources. There is nothing in the PUC's decision, however, that supports the Railroad's allegation that the PUC considered such an idea.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

READING BLUE MOUNTAIN &
NORTHERN RAILROAD
COMPANY,

Petitioner

No. 893 C.D. 2000


v.

PENNSYLVANIA PUBLIC UTILITY
COMMISSION,

Respondent

ORDER

AND NOW, this 17th day of November, 2000, the order of the Pennsylvania Public Utility Commission in the above-captioned matter is hereby affirmed.



CHARLES P. MIRARCHI, JR., Senior Judge

Certified from the Record

NOV 17 2000

and Order Exit

JOHN WATERS
READING BLUE MOUNTAIN AND NORTHERN RAILROAD COMPANY
PO BOX 218
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DONALD MATALAVAGE BORO MANAGER
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TAMAQUA, PA 18252

JEFFREY P BOWE, ESQUIRE
109 WEST BROAD STREET PO BOX 290
TAMAQUA, PA 18252

JOSEPH H JONES JR, ESQUIRE
MARY KAY BERNOSKY ESQUIRE
OFFICE OF THE SOLICITOR
401 NORTH SECOND STREET
POTTSVILLE, PA 17901

JEAN HEFFNER CHIEF CLERK
401 NORTH SECOND STREET
POTTSVILLE, PA 17901-2528

GREGORY F LEPORE, ESQUIRE
HOLL & ASSOCIATES
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PENNSYLVANIA HOUSE OF REPRESENTATIVES
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HOUSE POST OFFICE
HARRISBURG, PA 17120

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DAVID & BEVERLY KNOEBEL
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TAMAQUA, PA 18252-9802

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PENNSYLVANIA PUBLIC UTILITY COMMISSION
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RECEIVED
NOV 30 PM 4:20
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SECRETARY'S BUREAU

HOLL & ASSOCIATES

Attorneys At Law
A PROFESSIONAL CORPORATION

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ORIGINAL

GREGORY F. LEPORE, ESQ.

November 30, 2000

VIA FEDERAL EXPRESS
PRIORITY OVERNIGHT

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NOV 30 2000

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

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: BORO OF TAMAQUA v. READING, BLUE MOUNTAIN & NORTHERN
RAILROAD COMPANY
Complaint Docket No.: C-00992533
Our File No.: BMRR-003

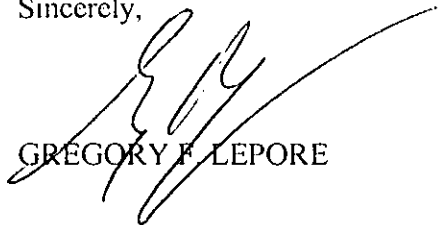
**DOCUMENT
FOLDER**

Dear Mr. McNulty:

Enclosed please find an Answer of the Reading, Blue Mountain and Northern Railroad Company to Emergency Petition of the Department of Transportation relative to the above matter. Also enclosed please find one copy to be time-stamped and returned to me in the enclosed self-addressed stamped envelope.

Please note that I take exception to the manner in which PennDOT characterizes the proceedings to date. The plans for the Crossing were submitted to the Commission and approved. In any event, the pleadings speak for themselves. To the extent that the Commission believes that entertaining this Emergency Petition is even appropriate, the Railroad requests a Factual Hearing as to whether the manner of construction proposed by the Railroad is appropriate and acceptable.

Sincerely,



GREGORY F. LEPORE

GFL/jmy
Enclosures

cc: Andy Muller
Louise Fink Smith, Esquire
Jeffrey Bowe, Esquire
Jason Sharp, Esquire
Honorable David Argall

SRB

59

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NOV 30 2000

PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

ORIGINAL

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

DONALD MATALAVAGE,
BORO MANAGER, BORO OF TAMAQUA

v.
READING, BLUE MOUNTAIN &
NORTHERN RAILROAD COMPANY

DOCUMENT
FOLDER

DOCKETED
DEC 4 2000

Complaint Docket
No.: C-00992533

ANSWER OF READING, BLUE MOUNTAIN AND NORTHERN RAILROAD COMPANY
TO EMERGENCY PETITION OF THE DEPARTMENT OF TRANSPORTATION

1-8. The record in this matter speaks for itself, as does the Order in question.

9-11. ADMITTED.

12-15. ADMITTED IN PART and DENIED IN PART. It is ADMITTED that the Railroad intends to only close one lane of the highway at a time. It is DENIED that any portion of the installation will not be in accordance with standard industry practice. To the contrary, the panels have been purchased from OMNI, a leading manufacturer of grade crossing components. A representative from the manufacturer will be on site during the installation to guide the Railroad's installation of the Crossing. By way of further answer, no specific construction method was required by the Commission previously, nor is any of the work not in accordance with the plans previously approved by the Commission.

16. DENIED. The subgrade and subballast will not be disturbed. No excavation is taking place. The project entails merely removing the existing wooden ties, replacing them with concrete ties, and putting the concrete panels in place. It is

not anticipated that any of the grade or subgrade will be disturbed.

17. ADMITTED.

18. DENIED. The referred paragraph of the Order required cooperation between the Railroad and the Department in a detour. Because only a lane closure, not a detour, is contemplated, the Railroad is not in violation of the Order.

19. DENIED. Again, the Crossing is being installed at the direction and supervision of its manufacturer.

20. DENIED. None of the work in question will jeopardize anyone, including the motoring public.

21. DENIED. The manner in which the work is proposed to be carried out will create minimal inconvenience to the public and absolutely no safety hazard. The Department's position that the Railroad would knowingly risk the safety of its mainline, trains, crew, and the motoring public through an inadequate installation procedure is patently offensive.

22. DENIED. The Commission has ordered the Railroad to bear one hundred percent (100%) of all costs associated with the replacement of this Crossing, including the detour, construction, and future maintenance. The Railroad is proceeding in a manner which is consistent with public safety, and in a manner approved by the manufacturer of the Crossing. This should adequately assure both PennDOT and the Commission that the work is being done appropriately. Further, given that the Railroad is bearing all of the costs associated with this Crossing, some deference should be given to its judgment in that regard. The Railroad is prepared to immediately proceed to construction and wishes to do so.

WHEREFORE, for the above reasons, the Reading, Blue Mountain and Northern Railroad Company respectfully requests that the Commission DISMISS the Emergency Petition of the Department of Transportation.

Respectfully submitted,

HOLL & ASSOCIATES, P.C.

By: 

GREGORY E. LEPORE, ESQUIRE
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 Answer of the Reading, Blue Mountain and Northern Railroad Company to Emergency Petition of the Department of Transportation on the 30th day of November, 2000, 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

Honorable David Argall
HOUSE OF REPRESENTATIVES
Room 415, South Office Building
House Post Office
Harrisburg, PA 17120

Jason Sharp, Esquire
Assistant Counsel
PennDOT
Forum Place, 9th Floor
555 Walnut Street
Harrisburg, PA 17101-1900


Jeffrey Bowe, Esquire
109 West Broad Street
P.O. Box 290
Tamaqua, PA 18252

Louis Fink-Smith, Esquire
PENNSYLVANIA PUBLIC
UTILITY COMMISSION
Bureau of Transportation
and Safety
P.O. Box 3265
Harrisburg, PA 17105-3265

Respectfully submitted,

HOLL & ASSOCIATES, P.C.

By:



GREGORY F. LEPORE, ESQUIRE

DATE: November 30, 2000

SUBJECT: C-00992533

LAF

TO: Office of Special Assistants

FROM: James J. McNulty, Secretary

Borough of Tamaqua
v.
Reading, Blue Mountain & Northern Railroad Company

Attached is a copy of a Emergency Petition for Clarification and Enforcement of the Order Entered March 20, 2000, filed by the Commonwealth of Pennsylvania Department of Transportation, in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

cc: TSR
TSL

laf

DOCKETED

DEC 1 2000

DOCUMENT
FOLDER

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
www.dot.state.pa.us



DOCUMENT
FOLDER

Office of Chief Counsel
P.O. BOX 8212
Harrisburg, PA 17105-8212
Telephone No. (717) 787-3128

Monday, December 04, 2000

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

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RECEIVED

James McNulty, Secretary
Pennsylvania Public Utility Commission
Harrisburg, PA 17108

ORIGINAL

IN RE: Borough of Tamaqua v.
Reading Blue Mountain and Northern Railroad Company, et al.
Docket # - C-00992533

DOCKETED

DEC 13 2000

Dear Secretary McNulty:

Please allow this letter to serve as a response to the Answer filed by the Reading Blue Mountain and Northern Railroad Company to the Department's Emergency Petition in the above captioned matter. One specific contention in that answer is problematic, requiring further consideration.

In paragraph 16 of its Answer, Reading states:

"16. DENIED. The subgrade and subballast will not be disturbed. No excavation is taking place. The project entails merely removing the existing wooden ties, replacing them with concrete ties, and putting the concrete panels in place. It is not anticipated that any of the grade or subgrade will be disturbed."


However, in the Order entered March 20, 2000, the Commission specifically indicated that scope of work would include work related to the "stone ballast and drainage facilities as necessary to accommodate the new concrete surface." (Order entered March 20, 2000, p. 14, ¶ 6). The Commission's own witness indicated that proper replacement of this crossing would include "rebuilding it from the base all the way up." (Recommended Decision, p. 11; N.T. 14-15). In fact, Reading's own witness stated that to replace the crossing properly, you would have to "dig down to the very ground level to replace the ties and the ballast and start from scratch." (Recommended Decision, p. 13; N.T. 47).

There is no question that the Order envisioned work to replace the base materials and ballast at this crossing. Allowing Reading to replace the crossing on a potentially faulty subsurface defeats the purpose of replacing the crossing in the first place. The Department respectfully requests that the Commission take these facts into consideration in ruling on the merits of the Department's Emergency Petition.

105

Of greater importance, it has been brought to my attention that Reading has begun work on the crossing this morning, despite the pending Emergency Petition filed by the Department. It is respectfully requested that the Commission issue an immediate stop work order to prevent Reading from proceeding with this work until a disposition on the Emergency Petition is reached.

Very Truly Yours,

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

Jason D. Sharp
Assistant Counsel

220/JDS:_
jdsharp@justice.com

cc: All parties of record
Gary C. Fawver, P.E., Chief, Right-of-Way and Utilities
Ken McClain, Grade Crossing, District 5-0



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

IN REPLY PLEASE
REFER TO OUR FILE

March 14, 2001

DOCUMENT
FOLDER

DOCKETED
MAR 19 2001

GARY C FAWVER PE CHIEF
ROW & UTILITY DIVISION
PENNDOT BUREAU OF DESIGN
PO BOX 3362
HARRISBURG PA 17105-3362

In Re: C-00992533

Borough of Tamaqua

v.

Reading, Blue Mountain and Northern Railroad

Dear Mr. Fawver:

This is to advise that a final inspection will be held at the site of the subject crossing where Broad Street (S.R. 0209) crosses, at grade, a track of Reading, Blue Mountain and Northern Railroad in Tamaqua Borough, Schuylkill County, on Monday, March 26, 2001 at 10:00 a.m. to discuss completion of the project and any other related issues.

Kindly arrange to have a representative present.

Very truly yours,

W. J. Knerr, Senior Civil Engineer
Rail Safety Division
Bureau of Transportation and Safety
717-787-1106

WJK:lg

HOLL & ASSOCIATES

Attorneys At Law
A PROFESSIONAL CORPORATION

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E-MAIL - Hollaw@voicenet.com

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May 22, 2001

MAY 24 2001

David A. Salapa, Esquire
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Bureau of Transportation and Safety Rail Law
Keystone Building
3rd Floor
P.O. Box 3265
Harrisburg, PA 17105-3265

BUREAU OF T & S
LEGAL DIVISION

DOCKETED
JUN 01 2001

Re: BORO OF TAMAQUA v. READING, BLUE MOUNTAIN & NORTHERN
RAILROAD COMPANY
Complaint Docket No.: C-00992533
Our File No.: BMRR-003

PA P.U.C.
SECRETARY'S BUREAU

2001 MAY 30 PM 8:41

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Dear David and Jason:

My client has recently contacted me to advise there had been numerous discussions between Penn Dot and the borough concerning completion of the acroach work at this crossing. I have been advised that the panels have been in place since initial installation, and that the exterior edge of the panel extends 27" from the edge of the rail. There is apparently a 10" gap beyond that where the pavement was cut to facilitate installation, which the railroad is willing to pave. They have been advised by Penn Dot district personnel that if they do so Penn Dot will "stop" their work.

I would like to avoid filing yet another petition with the Commission regarding this matter. I recall that when the three of us last informally discussed this we essentially agreed that the "order says what the order says", and what the order says is that we are only responsible for the distance of 2 feet from the rail.

I would like to see these issues resolved within the next two weeks. I understand that may not take place in that time frame due to other issues involving the borough (their desire to cut and cap the water main).

BTL

Letter to David Salapa, Esquire

May 22, 2001

Page 2

I feel that we have always did enough in time energy and resources on this issue that we should be able to put this to bed immediately.

Sincerely,

A handwritten signature in cursive script that reads "Greg Lepore" followed by a circled "Bac".

GREGORY F. LEPORE

GFL/bac

cc: Jason Sharp
West Westenhoffer

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
www.dot.state.pa.us

McClain
Fleumer
✓ Salapa



OFFICE OF CHIEF COUNSEL
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FAX (717) 772-2741

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June 6, 2001

JUN 8 2001

Gregory F. Lepore, Esquire
HOLL & ASSOCIATES
P.O. Box 807
Lansdale, Pennsylvania 19446

DOCKETED

JUN 29 2001 PA PUBLIC UTILITY COMMISSION

BUREAU OF T & S
LEGAL DIVISION

JUN 15 2001

BUREAU OF TRANSPORTATION & SAFETY

RE: Borough of Tamaqua v. Reading, Blue Mountain & Northern Railroad Company
Public Utility Commission Docket No. C-00992533

DOCUMENT
FOLDER

PA P.U.C.
SECRETARY'S OFFICE
JUN 25 AM 10:50

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Dear Greg:

I am in receipt of your letter dated May 22, 2001 regarding the Reading, Blue Mountain & Northern's latest efforts to complete a paving work to the approaches at the subject crossing. At the outset, I want to note that you, myself, and Mr. Salapa all agree that the Commission Order requires the Department to maintain the highway approaches at the crossing. However, the instant issue is whether or not the leveling out of the approach grade is true maintenance work, or simply the result of an installation deficiency.

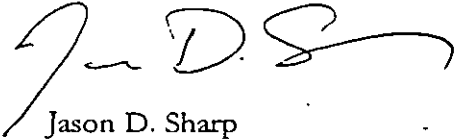
At the last field conference held in this matter, the Department did indicate that it was satisfied with the installation of the actual crossing itself. Indeed, it appears that the construction of the crossing, despite everyone's concerns, provided a quality concrete rail/highway crossing. However, it was also evident that the transition from the approach roadway to the crossing is fairly steep. Although the Department would certainly agree to be responsible for the approaches in the future, it is not the Department's responsibility to engage in approach grading work to feather in the existing crossings approaches, where the Department did not complete the work to the subject crossing, nor was the Department given any opportunity to review crossing construction plans, maintenance and protection of traffic plans or even invited to coordinate that work with Reading when it was completed. The District is simply requesting in this case that the approaches be properly tied into the existing roadway before the Department would be asked to take maintenance responsibility in the future.

All the parties would agree that filing more petitions and expending any additional time or money on this case is imprudent at this point. However, that does not change the position that the Department should not be responsible for what is tantamount to a construction defect caused by Reading.

WJK
FYI
DAS

Please give me a call at your earliest convenience so that we can discuss this matter and hopefully reach some resolution that would satisfy all the parties once and for all.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jason D. Sharp". The signature is fluid and cursive, with the first name "Jason" written in a larger, more prominent script than the last name "D. Sharp".

Jason D. Sharp

220/JDS:sld
jdsharp@dot.state.pa.us

cc: Keri McClain, Grade Crossing Administrator, District 5-0
Gary C. Fawver, P.E., Chief, Right of Way and Utilities
David A. Salapa, Esquire, Pennsylvania Public Utility Commission, Bureau of
Transportation and Safety Rail Law, Keystone Building, 3rd Floor

READING BLUE MOUNTAIN AND NORTHERN RAILROAD COMPANY

1 RAILROAD BOULEVARD
FREIGHT DEPT. (610) 562-2100
PASSENGER DEPT. (610) 562-2102

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OR WWW.RBMNRR.COM

ORIGINAL

June 25, 2001

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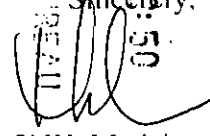
C-00992533

Public Utility Commission
ATTN: **James J. McNulty**
Secretary
206 North Office Building
Harrisburg, PA 17105-3265

Dear Mr. McNulty:

Recently, our CEO / Chairman of Reading Blue Mountain & Northern Railroad, Andrew Muller, Jr., submitted the enclosed editorial to area newspapers for publication in the 'Letters to the Editor' section.

I thought you would be interested in what Mr. Muller, Jr. had to say.

RECEIVED
STAFF'S BUREAU
JUN 26 AM 11:50
Sincerely,


T.W. Madeira
Exec. V.P. - RBMN

DOCUMENT FOLDER

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READING BLUE MOUNTAIN AND NORTHERN RAILROAD COMPANY

1 RAILROAD BOULEVARD

P.O. BOX 218

PORT CLINTON, PA 19549

FREIGHT DEPT. (610) 562-2100

WWW.READINGNORTHERN.COM

PASSENGER DEPT. (610) 562-2102

OR WWW.RBMNRR.COM

Setting the Record Straight

An old adage says, "justice is blind." But let us examine that statement. Is she really blind? Looking at her, one will find she is *blindfolded* (not blind), holds a sword in one hand and a balance scale in the other. Why did our forefathers pick this particular statue to represent our judicial system? I'll tell you my thoughts on her. She is blindfolded so her final decision cannot be prejudiced by outside influence, thus enabling impartial judgment on her part. The scale she holds depicts the weighing of facts, both pro and con in preparation of a decision. Finally, the sword. Is it ready to mete out punishment if the **facts**, once weighed, warrant it? Why all this rhetoric on 'justice'?

For some time, and with increasing regularity, the Reading Blue Mountain & Northern Railroad (RBMN) has come under heavy public criticism in the small Schuylkill County town of Tamaqua, PA because of needed repairs to the Route 209 at-grade crossing on West Broad Street. This crossing, installed in the early 1980s (circa 1983), is one of 194 public and private crossings on 342 miles of track owned and operated by the RBMN railroad.

Simply put, the **facts** surrounding the Route 209 crossing are as follows: Tamaqua Borough officials claimed it was the responsibility of the RBMN RR to repair the crossing. The railroad took the position that vehicular traffic, namely trucks, contributed to and caused the crossing to deteriorate.

When no solution could be agreed upon by both parties, the Pennsylvania Public Utility Commission was petitioned by Tamaqua Borough to resolve this crossing issue. After meeting at the site, hearing testimony and receiving letters from legislators, the PUC levied the **sole** cost of installing a new concrete at-grade crossing on the RBMN. JUL 16 2001

Upon the railroad's excavation of the existing crossing, it was found that a Tamaqua Borough watermain directly underneath the crossing had sprung a leak which washed out the sub-base and caused the crossing to sink.

Discovering this situation, but faced with the PUC order, the RBMN railroad had no choice but to replace the grade-crossing and approaches at a cost of \$60,000.00.

At-grade crossings are viewed by railroads as a potential liability for obvious reasons but beyond that, one of the reasons railroads are torn out, sold off, and diminishing in this country is due to the increased demand for railroads to subsidize their competition, namely trucks, who use the grade-crossings and slowly but surely destroy them.

Where else in business do competitors subsidize each other? Does Macy's subsidize Gimbels? Is it reasonable for railroads to subsidize their competition by bearing the **sole** cost of grade-crossing repairs? Since grade-crossings are of no beneficial value to railroads, but significant value to vehicular traffic, isn't it reasonable for railroads to expect grade-crossing costs be equally disbursed between highway maintenance departments and railroads?

Just remember, there are two (2) sides to every story, a flip-side to every coin. In this particular case, I feel justice was not fair and equitable for the RBMN railroad. In this particular incident, it seems Justice's blindfold slipped and she *was* influenced.



Borough of Tamaqua

320 East Broad Street

011 7382

Tamaqua, Pennsylvania 18252 AM 11:10

Phone 570-668-3444 or 668-0300

June 29, 2001

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RECEIVED PUBLIC UTILITY COMMISSION SECRETARY'S OFFICE

JUL 02 2001

Mr. William J. Knerr
Commonwealth of Pennsylvania
Public Utility Commission
Bureau of Transportation and Safety
Rail Safety Division
P. O. Box 3265
Harrisburg, PA 17105-3265

BUREAU OF TRANSPORTATION & SAFETY
RAIL SAFETY DIVISION

DOCKETED
JUL 11 2001

RE: Complaint # C - 00992533

Dear Mr. Knerr:

Please be advised that the Reading Blue Mountain and Northern Railroad Company recently completed repairs to its railroad crossing located on West Broad Street in Tamaqua. It is the opinion of the Tamaqua Borough Council that the repairs to the railroad crossing are acceptable and the borough's complaint has been resolved.

Although the crossing was finally repaired, please note that the borough was unable to reach an agreement with the railroad to repair a broken water main under the crossing. After considerable time and expense, the water main was abandoned and the borough is seeking alternatives in order to provide adequate water service and fire protection to its customers.

Should you have any questions, please contact me.

Sincerely,

BOROUGH OF TAMAQUA

KEVIN A. STEIGERWALT
BOROUGH MANAGER

KAS/em

CC: Jeffrey P. Bowe, Solicitor
Representative David G. Argall
Kenneth McClain, Pennsylvania Department of Transportation