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DOCKETED

MAR 23 2000

March 22, 2000

ORIGINAL

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REPLY TO
LANSDALE

GREGORY F. LEPORE, ESQ.

EXHIBIT
FOLDER

RECEIVED

MAR 22 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-002

Dear Mr. McNulty:

I am writing with regard to the above-captioned matter. A copy of the issuance letter of the Commission dated January 26, 2000 regarding the initial ALJ decision is attached. The Railroad filed Exceptions which were received on February 9, 2000, a time-stamped copy of which is likewise attached.

Apparently, the Commission addressed the matter at a public hearing held on March 16, 2000. Neither myself, nor my client, both of whom are of record, received notice of this public hearing. Our first notice of the Commission's ruling was in a newspaper article, a copy of which is attached. This newspaper article indicates that "the Railroad missed the deadline for filing Exceptions to the decision", which while perhaps inaccurate, gives me great concern given that I have in fact filed Exceptions, and have time-stamped copies to demonstrate the same.

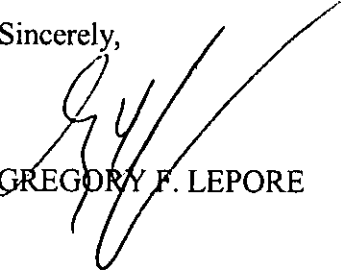
I presume that there was some administrative error which caused the Railroad and its attorney not to receive notice of a duly scheduled hearing on a matter to which we had timely filed the appropriate documentation. I would like to avoid a needless appeal to the Commonwealth Court, and would appreciate it if you would advise whether the Commission is willing to rescind the decision which was apparently entered March 16, 2000 (which I or my client have yet to receive a copy of). I would appreciate it if you would

James McNulty
PUBLIC UTILITY COMMISSION
March 22, 2000

Page 2

promptly reply to this correspondence in order that I can avoid the need to file an immediate appeal.

Sincerely,



GREGORY F. LEPORE

GFL/jmy
Enclosures

cc: John Waters
Donald Matalavage
Jeffrey Bowe, Esquire
Andrew Gordon, Esquire
Jason Sharp, Esquire
Joseph Jones, Esquire
William Pickering
Kenneth McClain
Jean Heffner
David Salapa, Esquire
Honorable David Argall
Wandaleen Poynter-Cole, Esquire
Randal Noe, Esquire

DATE: March 23, 2000

SUBJECT: C-00992533

DOCUMENT
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TO: Office of Special Assistants

FROM: James J. McNulty, Secretary

DOCKETED
MAR 23 2000

LAF

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

Attached is a copy of a Letter-Petition for Reconsideration of the March 16, 2000, 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
TSL

laf

Matalavage, Donald Tamaqua Boro Manag. v. Reading
Blue Mountain and Northern Railroad Company

C-00992533

NOTICE OF PETITION by Reading Blue Mountain and
Northern Railroad Company, at No. 893 C.D. 2000,
Commonwealth Court of Pennsylvania, from the order of
the Commission dated March 20, 2000 in the above-
captioned proceeding.

B-00003825

Filed: April 17, 2000

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MAY 24 2000

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HOLL & ASSOCIATES

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GREGORY F. LEPORE, ESQ.

June 14, 2000

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

DOCKETED
JUN 21 2000

Re: BORO OF TAMAQUA v. READING, BLUE MOUNTAIN & NORTHERN
RAILROAD COMPANY
Complaint Docket No.: C-00992533
Our File No.: BMRR-002

**DOCUMENT
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Dear Mr. McNulty:

In response to a recent inquiry from Commission staff counsel concerning the status of the above matter, we are currently in the process of scheduling a conference between PennDOT officials, the CEO of the Railroad, and PUC officials (including technical staff), as both PennDOT and the Railroad are desirous of reaching a negotiated settlement. We recognize that this will require Commission approval.

With regard to the deadline for submitting plans having passed, I have discussed this matter with my client, who advises that the Railroad has no engineering staff to prepare plans, and that the Reading, Blue Mountain and Northern Railroad has not submitted engineering drawings on any crossing which they have satisfactorily installed or repaired within the Commonwealth.

I am hopeful that we can accomplish a meeting and consummate a settlement before the end of June - my client is at the disposal of various PennDOT personnel who are required to attend such a meeting.

100

EEF

If I can answer any further concerns of the Commission, please contact me.

Sincerely,


GREGORY F. LEPORE

GFL/jmy

cc: Louise Fink Smith, Esquire
John Waters
Donald Matalavage
Jeffrey Bowe, Esquire
Andrew Gordon, Esquire
Jason Sharp, Esquire
Joseph Jones, Esquire
William Pickering
Kenneth McClain
Jean Heffner
David Salapa, Esquire
Honorable David Argall
Wandaleen Poynter-Cole, Esquire
Randal Noe, Esquire

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PLEASE REPLY TO: TAMAQUA OFFICE

THOMAS R. LISELLA
lisella@mail.csrlink.net

JEFFREY P. BOWE
bowejeff@mail.csrlink.net

JAMES R. BOWE
RETIRED

June 20, 2000

SENT CERTIFIED MAIL:

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

Re: Borough of Tamaqua

vs.

Reading, Blue Mountain & Northern
Railroad Co.

Complaint Docket No. C-00992533

Dear Mr. McNulty:

Enclosed please find the original Petition For Order To Show Cause Why The Order Of The Public Utility Commission Entered March 20, 2000, Should Not Be Enforced.

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

Very truly yours,

BOWE, LISELLA AND BOWE



Jeffrey P. Bowe

516903

JPB/lls

Enclosure

- 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

DOCUMENT

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SECRETARY'S BUREAU

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Handwritten initials

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

PETITION FOR ORDER TO SHOW CAUSE WHY THE ORDER
OF THE PUBLIC UTILITY COMMISSION ENTERED
MARCH 20, 2000, SHOULD NOT BE ENFORCED

The petition of the Borough of Tamaqua, by and through its attorney, Jeffrey P. Bowe, Esquire, files the following petition requesting that the order of the Pennsylvania Public Utility Commission entered March 20, 2000, be enforced by all appropriate means available to the Public Utility Commission, and in support thereof alleges as follows:

1. As a result of a complaint filed by the Borough of Tamaqua on May 24, 1999, the Pennsylvania Public Utility Commission, by order entered March 20, 2000, required the Reading, Blue Mountain and Northern Railroad Co. to submit detailed construction plans for the removal of a failed rubber crossing surface and reconstruction of the at-grade crossing situate on West Broad Street, Tamaqua, Pennsylvania, within thirty (30) days of the date of issuance of the Public Utility Commission opinion. A copy of said opinion and order is attached hereto, made a part hereof, marked Exhibit "A".

2. The aforesaid order further required the Reading,

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Blue Mountain and Northern Railroad Co., at its sole cost and expense, within three (3) months of the date of approval of the detailed construction plans to furnish all material and to do all work necessary to reconstruct the West Broad Street at-grade crossing in accordance with the approved construction plans.

3. The Reading, Blue Mountain and Northern Railroad Co. appealed the order entered March 20, 2000, to the Commonwealth Court of Pennsylvania on or about April 14, 2000.

4. The Reading, Blue Mountain and Northern Railroad Co. has not filed a petition requesting a supersedeas or stay of the Pennsylvania Public Commission Order entered March 20, 2000; and therefore, the Public Utility Commission has the authority to enforce its order (see Pa. R.A.P. 1701(b)(2)).

5. The Reading, Blue Mountain and Northern Railroad Co. has failed to submit to the Public Utility Commission and to all parties of record and within the specified time period, the detailed construction plans as ordered by the Public Utility Commission Order dated March 20, 2000.

6. Because the Reading, Blue Mountain and Northern Railroad Co. has failed to submit the detailed construction plans for reconstruction of the at-grade crossing, it is becoming increasingly likely that the crossing will not be reconstructed prior to the winter of 2000-2001.

7. Since the hearing held September 21, 1999, the

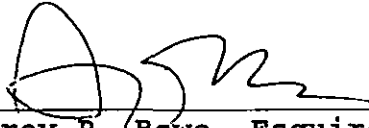
condition of the crossing has only deteriorated even more so that it has become a significant danger to the safety of pedestrians using the sidewalks adjacent to the crossing and to motor vehicles traveling in opposite directions.

WHEREFORE, the Borough of Tamaqua requests that the Public Utility Commission issue an order to show cause why the Reading, Blue Mountain and Northern Railroad Co. should not immediately submit the detailed construction plans as required in the Public Utility Commission Order entered March 20, 2000 and otherwise comply with the Public Utility Commission Order; and order such other relief that may be appropriate under the circumstances.

Respectfully submitted,

BOWE, LISELLA AND BOWE

By: _____


Jeffrey P. Bowe, Esquire
Attorney for Borough of Tamaqua
109 West Broad Street
P.O. Box 290
Tamaqua, PA 18252-0290
Phone: 570-668-1241
Supreme Court I.D. No. 23188

VERIFICATION

The undersigned verifies that the 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
Tamaqua Borough Council

Date: June 20, 2000

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 2ST day of JUNE, 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 petition 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
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Lansdale, PA 19446

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

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Joseph H. Jones, Jr., Esquire
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Pottsville, PA 17901

William Pickering, PE Chief
PennDot Bureau of Design
Row and Utility Division
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Harrisburg, PA 17105-3362

Kenneth McClain
PennDot District 5-0
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Allentown, PA 18103

Jean Heffner, Chief Clerk
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Pottsville, PA 17901

David A. Salapa, Esquire
Pennsylvania Public Utility
Commission
Bureau of Transportation and
Safety
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Harrisburg, PA 17105-3265

Honorable David G. Argall
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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

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held March 16, 2000

Commissioners Present:

Robert K. Bloom, Vice Chairman
Nora Mead Brownell
Aaron Wilson, Jr.
Terrance J. Fitzpatrick

Borough of Tamaqua

C-00992533

v.

Reading, Blue Mountain and
Northern Railroad Co.

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration and disposition are the Exceptions¹ filed by Reading, Blue Mountain and Northern Railroad (Railroad) on February 9, 2000, and the Exceptions filed by the Borough of Tamaqua (Borough) on February 10, 2000, to the Recommended Decision of Administrative Law Judge (ALJ) Herbert S. Cohen which was issued on January 26, 2000, in the above-captioned proceeding. The Pennsylvania Department of Transportation (PennDOT) filed Reply

¹ Although styled "Exceptions," the documents filed by both the Railroad and the Borough consisted, in fact, of only one (1) Exception. However, the designation "Exceptions" will be employed in the instant Opinion and Order.

Exceptions on February 18, 2000. On February 23, 2000, the Honorable David G. Argall filed a Letter in support of the Borough's Exceptions.

History of Proceeding

On May 24, 1999, the Borough filed a Formal Complaint at the above-captioned docket against the Railroad. The Borough alleged that the condition of an at-grade railroad crossing situated on West Broad Street (Pennsylvania State Route 209) in the Borough was in such a deteriorated condition that the traffic in the westbound lane swerves either to the left or to the right to avoid significant depressions caused by the deterioration of the rubberized surface of the crossing, thereby endangering the safety of pedestrians using the sidewalks and the motor vehicles traveling in the opposite direction. In its prayer for relief, the Borough requested that the Commission order the Railroad "to fix the railroad crossing on West Broad Street in the Borough of Tamaqua."

Answers to the Complaint were filed by PennDOT, the County of Schuylkill (County), and the Railroad. Thereafter, by written notice dated August 3, 1999, the Parties were advised that an initial hearing on the Complaint was scheduled for September 21, 1999, in Harrisburg.

At the hearing, the Railroad, PennDOT, the Commission's Bureau of Transportation and Safety (BTS), and the County were all represented by counsel. The Parties collectively offered the testimony of five (5) witnesses. The record of the proceeding consists of sixty-seven (67) pages of testimony. The Recommended Decision of ALJ Cohen was issued on January 26, 2000. In his Recommended Decision, the ALJ recommended, *inter alia*, that the entire cost for the reconstruction of the rail-highway

crossing be placed on the Railroad. Exceptions and Reply Exceptions were filed as noted above.

Discussion

In his Recommended Decision, ALJ Cohen made thirty-six (36) Findings of Fact (R. D., pp. 3-7) and drew eight (8) Conclusions of Law (R. D., pp. 16-17). We shall adopt and incorporate herein by reference the ALJ's Findings of Fact and Conclusions of Law to the extent that they are not expressly or by necessary implication overruled or modified by this Opinion and Order.

Initially, we are reminded that we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. *University of Pennsylvania v. Pennsylvania Public Utility Commission*, 86 Pa. 410, 485 A.2d 1217, 1222 (1984). Any Exception or argument which is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

The Railroad filed one (1) Exception to the Recommended Decision. In its Exception, the Railroad objects to Ordering Paragraph No. 3 of the Recommended Decision, wherein, the ALJ recommended as follows:

3. That Reading, Blue Mountain and Northern Railroad Co., at its sole cost and expense, within 6 months of the approval of the detailed construction plans, furnish all material and do all work necessary to reconstruct the West

Broad Street at-grade crossing in accordance with the approved construction plans.

(R.D., p. 18).

The Railroad objects to the foregoing Ordering Paragraph because it places the entire cost of the crossing reconstruction upon the Railroad. The Railroad contends that it is inconceivable that the benefit to a relatively lightly used rail line such as the one here at issue could so outweigh the benefit to the Commonwealth that one hundred percent (100%) of the cost of the project would be assessed to the Railroad.

The Railroad points to the following considerations as mandating that PennDOT be ordered to bear one hundred percent (100%) of the crossing relocation costs: (1) relative benefits accruing to the Railroad versus PennDOT; (2) availability of state/federal funding; (3) responsibility for deferred maintenance at the crossing; (4) the general equities of the situation; and (5) directives of the prior Order herein, issued on May 2, 1980. (Railroad Exc., pp. 1-5).

We note that, in the Opinion of the Commonwealth Court of Pennsylvania in the consolidated proceeding captioned *City of Philadelphia v. Pennsylvania Public Utility Commission* (No. 1999 C.D. 1995, filed May 24, 1996) and *Consolidated Rail Corporation v. Pennsylvania Public Utility Commission* (No. 2100 C.D. 1995, filed May 24, 1996), 676 A.2d 1298, 1301 (Pa. Commonwealth), *alloc. denied* 684 A.2d 558 (1996), *cert. Denied*, 117 S.Ct. 1334 (1997), the standards traditionally applied by the Commission to allocate costs and assign maintenance responsibility in rail/highway crossing matters were reviewed. The Court stated, in pertinent part, as follows:

In exercising this [allocation and assignment] authority, the PUC is not limited to any fixed rate [sic] with respect to the allocation of costs, but instead, may take all relevant factors into consideration. *Department of Transportation v. Pennsylvania Public Utility Commission*, 469 A.2d 1149 (Pa. Cmwlth. 1983). The allocation of costs between the parties is within the discretion of the PUC, but such allocation must be just and reasonable. *Borough of South Greensburg v. Pennsylvania Public Utility Commission*, 544 A.2d 82 (Pa. Cmwlth. 1988). The decision must be based upon some sound legal or factual basis. *Port Authority of Allegheny County v. Pennsylvania Public Utility Commission*, 207 Pa. Superior Ct. 299, 217 A.2d 810 (1966). (Footnote omitted).

In the referenced omitted footnote, the Court (slip. op. at 5-6) noted that it had restated, recently, in *Green Township Board of Supervisors*, 668 A.2d 615, 619 (Pa. Cmwlth. 1995), the factors that have "consistently been viewed as relevant to the Commission's allocation of costs:

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 relative benefit that each party will receive from the repair, replacement or removal of the crossing.
(Citations omitted).

Specific factors that have been considered by the Commission in determining an appropriate allocation of costs associated with the relocation of facilities of non-carrier utilities in connection with the alteration of rail/highway crossings are as follows:

(1) the extent of the benefit to the utility and its ratepayers which results from the alteration of the involved facilities; (2) the placing of the involved costs on the party responsible for the alteration; (3) the availability of state and federal funds; (4) the equities of the situation.
(Footnote omitted.)

Re City of Pittsburgh, 62 Ra. P.U.C. 150, 156 (1986).

However, as we have often had occasion to note, these factors do not present a fixed test, and the Commission is not required to limit itself to any or all factors enumerated. *Bell Atlantic-Pennsylvania v. Pennsylvania Public Utility Commission*, 672 A.2d 352, 354-355 (Pa. Cmwlth 1995). In short, the Commission must take all relevant factors into consideration, and the only fundamental requirement placed on the Commission, as above noted, is that its final Order must be just and reasonable.

The first factor to be considered is the relative benefits accruing to the Railroad and to PennDOT as a result of completion of this project. While we recognize that the reconstructed crossing will provide a benefit to the motoring public, we also recognize that substantial benefits will thereby accrue to the Railroad. We note that the installation of a full depth concrete crossing would provide a longer useful life than a rubber crossing, and would require less maintenance. (R.D., p. 11, citing the testimony of William J. Knerr, a Senior Civil Engineer with the Commission's Bureau of Transportation and Safety). Accordingly, we conclude that the Railroad will benefit from

the reconstructed crossing by experiencing, in the future, fewer service interruptions due to the deteriorated condition of this crossing.

The Railroad asserted that, given its choice, it would have chosen to install a timber and asphalt crossing at the relevant site. (Tr., p. 47). However, we note that the future maintenance of a full depth concrete crossing will not require the replacement of timber and asphalt components. (Tr., p. 56). The Railroad will, as discussed above, thus benefit in the future by incurring fewer maintenance costs due to the installation of the type of crossing herein mandated.

The next factor we consider is the availability of state or federal funding. The Railroad argues that the record supports a finding that state or federal funding is currently available for replacement of the subject crossing. However, our review of the record leads us to a different conclusion. PennDOT's witness, Ken McClain, stated that the subject crossing is not currently programmed under the Federal Rail Safety Program or under any PennDOT state programs. (R.D., p. 12).

Mr. McClain further provided uncontradicted testimony that all current federal and state funding has been programmed and allocated to other crossing projects and that a new four (4)-year program will open starting in the 2001 to 2004 time frame. (Tr., p. 31). Therefore, to take advantage of this program, a plan for replacement of the crossing would have to be submitted, approved and ultimately prioritized within the grade crossing program for the 2001 to 2004 time frame. As will be further discussed below, this time frame is unacceptable due to safety considerations at the crossing. Additionally, we note that we are here discussing only the *potential* for funding of this crossing reconstruction project in the 2001 to 2004 time frame. Even if application were made for

inclusion of this project in the program, there can be no certainty at this point that the subject crossing will actually be chosen for funding under the program.

The next factor to be considered is whether the Railroad deferred maintenance on the subject crossing. The Railroad argues that it did not defer maintenance on the crossing, but our review of the record leads us to a different conclusion. Indeed, the Railroad's own witness indicated that it had never even made a cursory inspection of the crossing and had never inspected the crossing panels, the condition of the sub-base or the condition of the ties. Also, the testimony indicates that the Railroad never replaced any of the rubber panels, even when they began to fail. (Tr., p. 52).

The evidentiary record supports a finding that the deteriorated condition of the crossing stems from the Railroad's failure to conduct any type of investigation or assessment of the problems at the crossing, even though it was aware of trouble with the crossing as far back as 1995. (Tr., p. 54). We note that the Railroad could have pursued replacement of this crossing any time in the last five (5) years. Had the Railroad programmed the crossing for replacement five (5) years ago, there would most likely be a new crossing at this site today.

The next factor to be considered is the general equities present in this proceeding. The Railroad argues that, on the basis of general equities, it should not be required to bear the cost of replacing the subject crossing. Our review of the record, however, leads us to a different conclusion. We note that the Railroad will benefit from a safe, signalized, smooth crossing area that will prevent accidents and also will promote public safety. Additionally, as noted above, it is the Railroad's lack of prior diligence in maintenance of this crossing that has led to its current deteriorated condition.

Installation of a new concrete crossing surface will provide a smooth riding surface for vehicular traffic, allowing unimpeded travel through the crossing area and, as a result, a safer crossing area. We find that a safer crossing area will be a benefit to the Railroad as well as to the motoring public, because the traffic will then be moving through the crossing in the proper signalized area, and erratic car movements will be prevented. (Tr., p. 11). This will help prevent accidents that could potentially involve vehicles, trains, and pedestrians.

The final factor for consideration herein is our prior Order issued relative to this crossing. The Railroad took the position that the instant Opinion and Order should be consistent with our prior Order herein, which was issued on May 2, 1980 (PennDOT Exh. No. 4), which required Consolidated Rail Corporation (Conrail) to construct the current rubber crossing and further required PennDOT to reimburse Conrail for the work. Our review of the evidentiary record herein, however, leads us to conclude that there have been substantial changes in circumstances in the almost twenty (20) years since the issuance of the May 2, 1980 Order such as to mandate a different result herein.

In our 1980 Order, we determined that the subject crossing should be replaced with a high-type crossing surface. In that case, federal and state funding was available for the reconstruction of the crossing. As such, PennDOT volunteered to submit the project for placement on the statewide high-type crossing surface program. (PennDOT Exh. No. 4, p. 3). Also, we note that, in the prior proceeding herein, the subject crossing was not in such dire need of repair as it is at the present time. Thus, the replacement of the crossing under the 1980 Order could be postponed until funding was available and in place. Finally, we note that PennDOT paid for the last total reconstruction of this crossing and has also fulfilled all of its concurrent maintenance

responsibilities at this crossing. These considerations lead to the conclusion that the Railroad should be directed to undertake the financial responsibility of reconstructing this crossing in the present instance.

Based on consideration of the above-recounted factors, we find that the ALJ's recommended allocation of reconstruction costs herein to the Railroad is just and reasonable and in accord with the evidence of record. Accordingly, the Railroad's Exceptions are denied.

The Borough also filed an Exception to the Recommended Decision in which it objects to Ordering Paragraphs Nos. 2 and 3 therein, which are as follows:

2. That Reading, Blue Mountain and Northern Railroad Co., at its sole cost and expense, within three (3) months of the date of issuance of this Opinion and Order, prepare and submit to all Parties of record for review, and to this Commission for review and approval, detailed construction plans for the removal of the failed rubber crossing surface and the reconstruction of the West Broad Street at-grade crossing with a new concrete surface between the tracks and for a distance of two (2) feet outside of the tracks. Said plan to provide for but not be limited to work related to the track, wooden ties, stone ballast and drainage facilities as necessary to accommodate the new concrete surface.

6. That Reading, Blue Mountain and Northern Railroad Co., at its sole cost and expense, within six (6) months of the date of approval of the detailed construction plans, furnish all material and do all work necessary to reconstruct the West Broad Street at-grade

crossing in accordance with the approved construction plans.

The Borough's objection to the foregoing Ordering Paragraphs is that, according to their terms, the Railroad will be given three (3) months from the date of issuance of this Opinion and Order to submit for approval detailed construction plans. After approval of those plans, the Railroad will be given six (6) months to reconstruct the subject crossing.

The Borough objects to this proposed time frame for the completion of the work because it will mean a delay of nine (9) months plus the time necessary for the Commission to review and approve the plans until the crossing is repaired. The Borough points out that all Parties hereto agree that, because of the significant depressions and defects in the rubberized surface of the crossing, there is a danger to the safety of pedestrians using the sidewalks adjacent to the crossing and to motor vehicles traveling over the crossing itself.

The Borough notes that it first complained about the condition of the crossing in April of 1995. (Tr., pp. 20-23). The Borough states that, from April of 1995 until the present, the Railroad has done nothing to alleviate the danger and hazards attendant to the condition of the crossing. Since the date of the hearing on September 21, 1999, the condition of the crossing has deteriorated even further and has become an even greater hazard to the pedestrians and motor vehicles which use this crossing daily. The Borough posits that it is unacceptable to permit the Railroad to defer final construction of the new crossing for a period of nine (9) months after review of the Recommended Decision by the Commission, such that this project will be delayed until the year 2001.

The Borough concludes by requesting that we shorten the time frame for completion of this project such that the Railroad be directed to prepare and submit detailed construction plans within twenty (20) days of the date of issuance of this Opinion and Order. The Borough further requests that the Railroad be directed to complete the necessary work to reconstruct the crossing within sixty (60) days of the date of approval of the plans. (Borough Exc., pp. 1-3).

The Honorable David G. Argall, State Representative of the 124th Legislative District, filed a Letter herein in which he offered his support of the Borough's Exceptions. Representative Argall notes that it is imperative that replacement of this dangerous and heavily traveled railroad grade crossing not be permitted to drag on any longer than is absolutely necessary. Representative Argall further notes that the timeline established by the ALJ in his Recommended Decision would allow this long overdue project to continue well into the year 2001. Representative Argall concludes by requesting that we shorten the ALJ's recommended timeline so as to allow for total replacement of this crossing within the calendar year 2000.²

In considering the Borough's Exceptions, we note that it is our statutory responsibility regarding rail-highway crossing matters, to protect and promote the public safety. There is substantial credible evidence in the record which demonstrates that the instant crossing presents a significant hazard to pedestrian and motor vehicle traffic. With this consideration in mind, we agree with the Borough that the timeframe for the submission of the plans and the completion of the work herein ordered should be

² We note that Representative Argall was not a party or participant in these proceedings. Accordingly, his comments shall be afforded only such treatment as permitted by the Public Utility Code and the Commission's Rules of Practice and Procedure under these circumstances. (See, 66 Pa. C.S. §335(b) and 52 Pa. Code §5.533).

shortened, in order that all the relevant work be completed within the current calendar year of 2000.

However, we are also mindful of the need to provide the Railroad with a feasible timeframe for the completion of the relevant work. Accordingly, we direct that the Railroad submit detailed construction plans for this project to all Parties and to the Commission within thirty (30) days of the date of issuance of this Opinion and Order. We further direct that the Railroad complete all the necessary work for this project within three (3) months of the Commission's approval of the detailed construction plans. The Borough's Exceptions are, therefore, granted to the extent consistent with this Opinion and Order.

Conclusion

We have carefully reviewed the record as developed in this proceeding, including the ALJ's Recommended Decision and the Exceptions taken thereto. Premised upon our review, we conclude that: (1) the Railroad's Exceptions are not meritorious, and will be denied; (2) the Borough's Exceptions are meritorious, in part, and will be granted to that extent; and (3) the ALJ's Recommended Decision will be adopted as modified by this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by Reading, Blue Mountain and Northern Railroad on February 9, 2000, to the Recommended Decision of Administrative Law Judge Herbert S. Cohen herein are denied.

2. That the Exceptions filed by the Borough of Tamaqua on February 10, 2000, to the Recommended Decision of Administrative Law Judge Herbert S. Cohen herein are granted, in part, consistent with this Opinion and Order.

3. That the Recommended Decision of Administrative Law Judge Herbert S. Cohen issued herein on January 26, 2000, is adopted, as modified, to the extent that it is consistent with this Opinion and Order.

4. That the Complaint at Docket No. C-00992533, *Borough of Tamaqua v. Reading, Blue Mountain and Northern Railroad Co.*, involving West Broad Street (S.R. 209) where it crosses the tracks of Reading, Blue Mountain and Northern Railroad Co. in the Borough of Tamaqua is hereby sustained.

5. That Reading, Blue Mountain and Northern Railroad Co., at its sole cost and expense, within thirty (30) days of the date of issuance of this Opinion and Order, prepare and submit to all Parties of record for review, and to this Commission for review and approval, detailed construction plans for the removal of the failed rubber crossing surface and the reconstruction of the West Broad Street at-grade crossing with a new concrete surface between the tracks and for a distance of two (2) feet outside of the tracks. Said plan is to provide for, but not be limited to, work related to the track, wooden ties, stone ballast and drainage facilities as necessary to accommodate the new concrete surface.

6. That Reading, Blue Mountain and Northern Railroad Co., at its sole cost and expense, within three (3) months of the date of approval of the detailed construction plans, furnish all material and do all work necessary to reconstruct the West Broad Street at-grade crossing in accordance with the approved construction plans.

7. 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 Pennsylvania Department of Transportation and the Borough of Tamaqua and is to be established in accordance with the Manual on Uniform Traffic Control Devices.

8. That Reading, Blue Mountain and Northern Railroad Co., at its sole cost and expense, furnish all material and do all work necessary to alter or relocate any of its other rail facilities to accommodate construction of the project.

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

10. That, during the time the improvement is being constructed across and adjacent to its tracks, Reading, Blue Mountain and Northern Railroad Co. shall conduct its operations in the vicinity of the crossing in a safe manner and under control.

11. That any relocation of, changes in, or removal of any existing structures, equipment, or facilities of any public utility other than the Reading, Blue Mountain and Northern Railroad Co. located within the limits of any highway within the limits of this Commission's jurisdiction, which may be required as incidental to the execution of the improvement, be made by the said public utility at its initial cost and

expense and in such a manner as will not interfere with the construction of the improvement.

12. That any relocation of, changes in, or removal of any existing structures, equipment, or facilities of any public utility other than the Reading, Blue Mountain and Northern Railroad Co. located beyond the limits of any highway within the limits of this Commission's jurisdiction, which may be required as incidental to the execution of the improvement, be made by the said public utility in such a manner as will not interfere with the construction of the improvement.

13. That the Pennsylvania Department of Transportation, the Borough of Tamaqua, the Reading, Blue Mountain and Northern Railroad Co., and the involved non-carrier utilities cooperate with each other during the construction of the improvement so that the operations or facilities of any of the Parties will not be endangered or unnecessarily impeded.

14. That Reading, Blue Mountain and Northern Railroad Co., at least ten (10) days prior to the start of work, notify the Pennsylvania Department of Transportation and the Borough of Tamaqua of the actual date the work will be started on the West Broad Street at-grade crossing.

15. That, upon completion of the improvement, Reading, Blue Mountain and Northern Railroad Co., at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain its railroad facilities at the West Broad Street at-grade crossing.

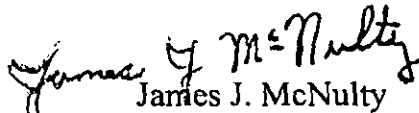
16. That, upon completion of the improvement and its opening to public use, Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the highway approaches to the West Broad Street at-grade crossing to a point two (2) feet from the outermost rail.

17. That upon completion of the improvement and its opening to public use, Reading, Blue Mountain and Northern Railroad Co., at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain its railroad facilities at the West Broad Street at-grade crossing, including but not limited to the crossing surface between the tracks and to a point two (2) feet beyond the outermost rails.

18. That this Opinion and Order, insofar as it imposes the cost of the improvement on the Reading, Blue Mountain and Northern Railroad Co., is without prejudice to it to recover from others the cost so incurred in accordance with any lawful agreement.

19. That this Opinion and Order is binding upon the Parties hereto and their respective successors and assigns.

BY THE COMMISSION,


James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: March 16, 2000

ORDER ENTERED: **MAR 20 2000**

READING RAILROAD MOUNTAIN AND NORTHERN RAILROAD COMPANY

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

P.O. BOX 218

PORT CLINTON, PA 19541

WWW.READINGNORTHERN.COM
OR WWW.RBMNRR.COM

5168550

July 3, 2000

Mr. James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, Pennsylvania 17120

Re: C-00992533

Dear Mr. McNulty:

As requested in the above proceeding, attached for your review and approval is a situation plan for the installation of a concrete grade crossing located in the Borough of Tamaqua, Schuylkill County.

If you have any questions or need additional information, please contact me at (610)562-2100.

Sincerely,

John Waters

John Waters
Senior Vice President
Corporate Development

Attachments

(xngs.wps)

cc: Louise Fink Smith, Esq. - PUC
Gregory F. Lepore, Esq. - Holl & Associates, P.C.

EEF

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ORIGINAL

DOCUMENT
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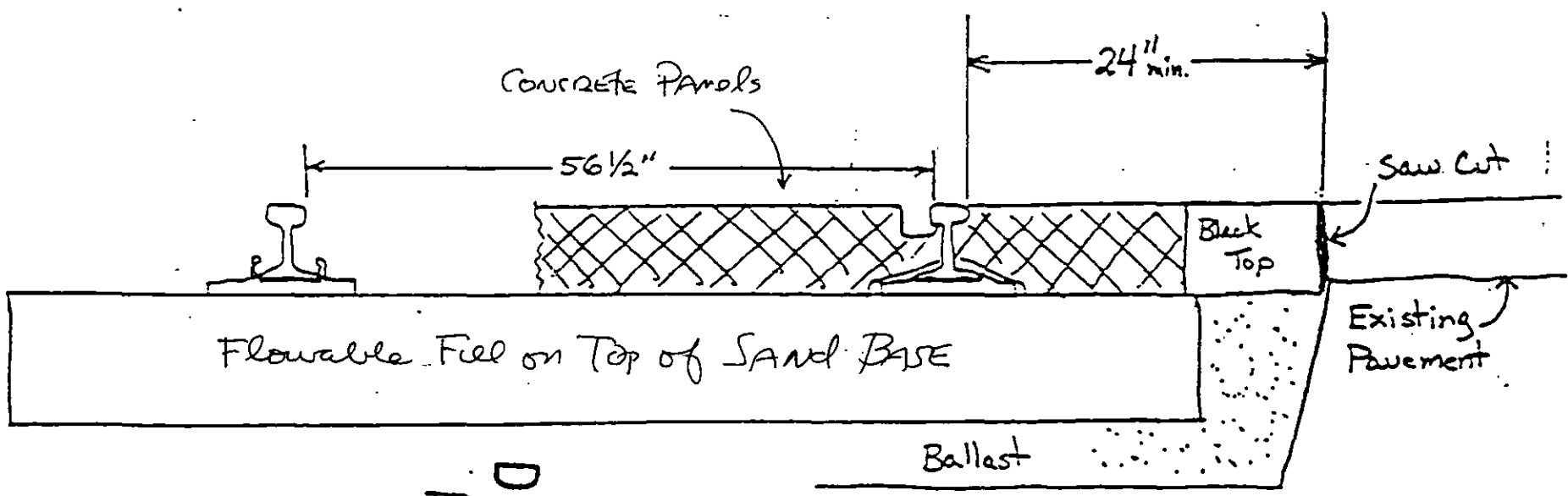
READING BLUE MOUNTAIN & NORTHERN RAILROAD
GRADE CROSSING SPECIFICATIONS

1. All material such as crossties, rail, ballast, joint bars, track bolts, tie plates, track spikes, ~~concrete~~ crossing material, and weld kits will be provided by the Railroad. This material will be installed as outlined in Exhibits A - B.
2. The width of the crossings will extend a minimum of 2 feet beyond the outside of the outermost rail.
3. Welded rail will be installed within the crossing and to a point, at least, 20 feet distance from either side of the crossing. Any compromise rail joints shall be welded also.
4. The track will be undercut to a distance of 20 feet beyond the edge of the crossing.
5. All crossties within the limits of the crossings will be removed and properly disposed of. New crossties (7x9) will be installed in their place, 20" on center with 25 new ties on each end of the crossing. Any relays removed from track must be taken to Port Clinton.
6. Excavate under the base of the crossties to remove undesirable material to a minimum of 4 inches and a maximum of 10 inches.
7. New ballast shall be roll tamped and compacted. The crossing will be tamped and surfaced with new ballast to the grade and elevation higher than the adjacent track and roadway. Ties shall be tamped with an automatic tamping machine and be consistent for a minimum of 200 feet from each end before run off.
8. New ~~concrete~~ crossing material will be placed between the rails in the crossings and 2 feet beyond the outside of the outer most rail as reflected on Exhibit A.
9. Roadway shoulder should be graded and dressed. Proper drainage must be maintained and controlled.
10. Conduit shall be placed through the width of the crossing at a depth of 30" below the ties and extend 3' beyond the edge of the crossing. See Exhibit B.
11. All scrap material will be disposed of at completion of the renewals. All scrap metal will be delivered to Port Clinton.

READING BLUE MOUNTAIN & NORTHERN RAILROAD
CROSSING SPECIFICATIONS

EXHIBIT - A

DOCKETED
JUL 07 2000



DOCUMENT
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CONDUIT PLACEMENT

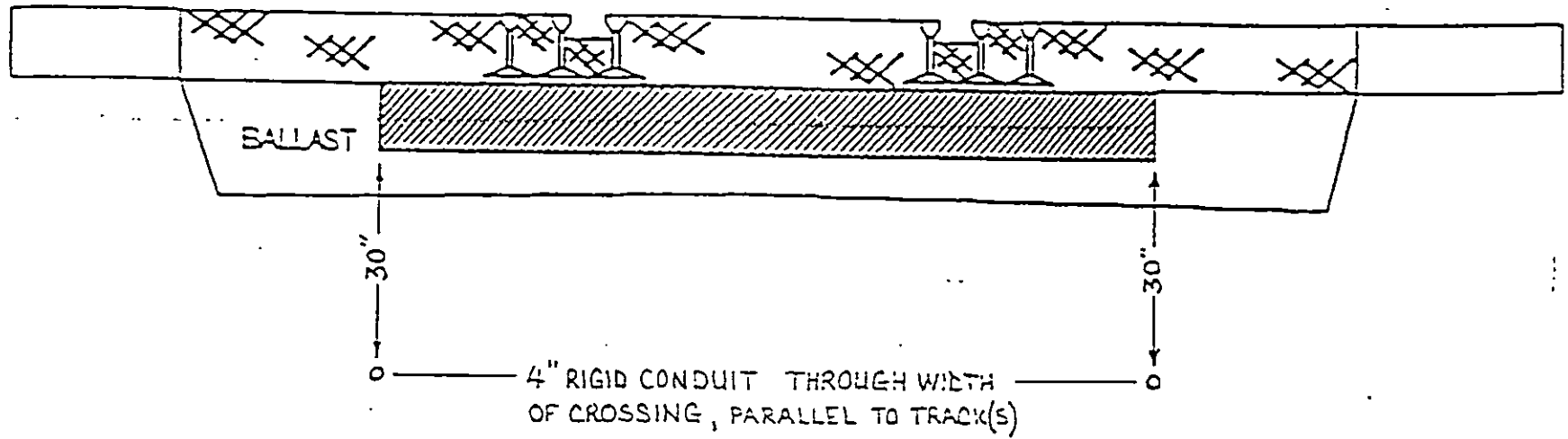



EXHIBIT - B

OVER SIZED DOCUMENTS

NORTH TO
E. MAHANAY JCT. →

MAIN LINE	W. BROAD STREET	
		
The Reading & Northern RR TAMAQUA, PA. HIGHWAY CROSSING SITUATION PLAN		
PLAN NO. SK-0000-0982		SHEET 1
ISSUE DATE:		JUNE 29, 2000
REV.	DATE:	
DGN: J.A.S.	CHK:	APP:

* NOT TO SCALE