



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

ISSUED: JANUARY 26, 2000

IN REPLY PLEASE  
 REFER TO OUR FILE  
 C-00992533

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

DOCUMENT  
 FOLDER

Borough of Tamaqua V. Reading, Blue Mountain & Northern Railroad Co.

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Recommended Decision of Administrative Law Judge Herbert S. Cohen. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION IN ROOM B-20, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265**, within twenty (20) days of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

Replies to exceptions, if any, must be served on the Secretary of the Commission, in the manner described above, within ten (10) days of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)". Any reference to specific sections of the Administrative Law Judge's Recommended Decision shall include the page number(s) of the cited section of the decision. All timely filed exceptions and replies thereto will be attached to the decision for consideration at Public Meeting. Late filed exceptions and/or late filed replies might not be considered by the Commission.

Very truly yours,

Encls.  
 Certified Mail  
 Receipt Requested  
 FG

EEF

James J. McNulty  
 Secretary

CC: ALJCOHEN/OFFICE OF ALJ/OSA/PIO/LAW/T&S-LEGAS/T&S-RAIL/OUR FILE/C&A/CHAIRMAN/COMMISSIONERS

See Attached Listing for Additional Parties of Record

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Borough of Tamaqua

v.

Reading, Blue Mountain and  
Northern Railroad Co.

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Docket No. C-00992533

RECOMMENDED DECISION

Before  
HERBERT S. COHEN  
Administrative Law Judge

DOCUMENT  
FOLDER

HISTORY OF THE PROCEEDING

**DOCKETED**  
JAN 28 2000

On May 24, 1999, the Borough of Tamaqua, ("Borough") filed a Formal Complaint at captioned Docket against Respondent, Reading, Blue Mountain and Northern Railroad Company ("Railroad"). The Borough alleged that the condition of an at-grade railroad crossing situate 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 this Commission to order Respondent "to fix the railroad crossing on West Broad Street in the Borough of Tamaqua."

Answers to the Complaint were filed by the Pennsylvania Department of Transportation ("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 10:00 a.m., September 21, 1999, in the Commission's Hearing Room in Harrisburg.

At the time and date for the hearing, appearances were entered by Gregory Lepore, Esquire for Respondent, Railroad, Jason D. Sharp, Esquire for PennDOT, David A. Salapa, Esquire for the Commission's Bureau of Transportation and Safety, and by Mary Kay Bernosky, Esquire for Schuylkill County. The parties collectively offered the testimony of five (5) witnesses. The Borough sponsored six (6) Exhibits, The Bureau of Transportation and Safety sponsored four (4) Exhibits and the County similarly sponsored four (4) Exhibits.

The transcribed record of the instant proceeding consists of sixty-seven (67) pages of testimony. The matter is now before me for disposition thereof.

## II. FINDINGS OF FACT

1. The crossing where West Broad Street crosses the facilities of Reading, Blue Mountain and Northern Railroad Company consists of a single track protected by flashing lights (N.T. 9).
2. The crossing surface consists of a full depth rubber crossing that is four lanes wide (N.T. 9-10).
3. West Broad Street at the crossing consists of four lanes each approximately 12 feet wide with 12-foot wide sidewalks on both sides (N.T. 10).
4. In the westbound lane of the crossing, there is a depression between the rails that is four inches below the height of the rail head (N.T. 10).
5. Due to the depression in the westbound lanes between the rails of the crossing, cars swerve to avoid going through the depression and drive up onto the sidewalk area (N.T. 11).
6. By order entered May 2, 1980, at Docket No. C-79020749, the Commission directed the existing rubber crossing be installed at this location (N.T. 12).
7. There are no subsequent Commission orders to the 1980 order which addressed the construction, reconstruction or maintenance of this crossing (N.T. 12-13).
8. The Commission order entered May 2, 1980, at Docket No. C-79020749, directed Consolidated Rail Corporation to maintain the crossing area between the rails (Staff Exhibit No. 1).

9. The current condition of the crossing is due to its age, traffic volume and possibly poor drainage (N.T. 10-11, 17).

10. The crossing needs to be completely reconstructed at this time (N.T. 13).

11. The Commission order entered May 2, 1980, directed the Pennsylvania Department of Transportation to reimburse Consolidated Rail Corporation 100 percent of its costs incurred in installing the rubber crossing at West Broad Street (N.T. 15, Staff Exhibit No. 1).

12. There are no records of any accidents at this crossing in the last five years (N.T. 21, 30).

13. West Broad Street in the vicinity of the crossing has a posted speed limit of 25 miles per hour (N.T. 26).

14. For a twelve-hour period, the number of vehicles using the crossing consisted of 3,817 vehicles traveling westbound and 4,943 vehicles traveling northbound (N.T. 28).

15. For a twelve-hour period, the number of pedestrians using the crossing consisted of 317 using the north sidewalk and 467 pedestrians using the south sidewalk (N.T. 28).

16. The existing crossing should be replaced with a concrete crossing (N.T. 13, 30).

17. The Pennsylvania Department of Transportation has maintained the roadway approaches to the Broad Street crossing (N.T. 32).

18. The expected useful life of a Parco rubber crossing is approximately fifteen to twenty years (N.T. 36).

19. The Broad Street crossing is within 200 feet of the intersection with State Route 309 (N.T. 39).

20. The traffic light at the intersection of Routes 390 and Broad Street is interconnected with the railroad flashing lights at the West Broad Street Crossing (N.T. 39).

21. The Reading, Blue Mountain and Northern Railroad Company performed some work at the crossing to improve drainage (N.T. 44-45).

22. The Reading, Blue Mountain and Northern Railroad Company operates four to six trains a day at a speed of about 28 miles per hour through the Broad Street crossing (N.T. 45).

23. The Reading, Blue Mountain and Northern Railroad Company sees no increase in the amount of train traffic in the near future (N.T. 46).

24. The Reading, Blue Mountain and Northern Railroad Company is willing to perform work at the Broad Street crossing (N.T. 48).

25. The Reading, Blue Mountain and Northern Railroad Company does not wish to assume the financial burden of reconstructing the crossing at Broad Street (N.T. 49).

26. No other rail carrier operates on this line other than Reading, Blue Mountain and Northern Railroad Company (N.T. 50).

27. The Reading, Blue Mountain and Northern Railroad Company purchased this line from Consolidated Rail Corporation in December, 1990 (N.T. 50).

28. The cost to install a concrete crossing at this location is approximately \$125,000 to \$150,000 (N.T. 55).

29. The cost to install a timber and asphalt crossing at this location is approximately \$50,000 to \$60,000 (N.T. 56).

30. The life expectancy of a timber and asphalt crossing is approximately five to seven years (N.T. 56).

31. The expected useful life of a concrete crossing is approximately 15 years (N.T. 57).

32. The approaches to the crossing in question have never been ordained as a Borough street (N.T. 22).

33. The Borough does not perform any maintenance to the crossing or to the approaches to the crossing (N.T. 22).

34. The Borough of Tamaqua first notified the Reading, Blue Mountain and Northern Railroad Company as to the dangerous condition at the crossing in April, 1995 (N.T. 23).

35. PennDOT witness William Knerr, a Commission Bureau of Transportation and Safety Senior Civil Engineer, recommended complete reconstruction of the crossing and replacing the rubberized surface with a concrete crossing surface (N.T. 13-14).

36. PennDOT does not have subject crossing currently "programmed" for replacement (N.T. 31).



### III. DISCUSSION

As in all cases before the Commission, the ultimate objective in proceedings which involve rail-highway crossings is to protect the public interest, i.e., to ensure and promote the protection, safety, convenience and welfare of the public. To this end, the Commission has exclusive authority to order the construction, reconstruction, alteration, repair, protection, suspension or abolition of rail-highway crossings, as well as the exclusive authority to determine and order which parties should maintain the crossings in the future.

Section 2702(b) of the Public Utility Code, 66 Pa. C.S. §2702(b), provides in part:

The Commission is hereby vested with exclusive power . . . to determine and prescribe, by regulation or order, the points at which, and the manner in which, such crossings may be constructed, altered, relocated, suspended or abolished, and the manner and conditions in or under which such crossings shall be maintained, operated, and protected to effectuate the prevention of accidents and promotion of the safety of the public . . .

This jurisdiction extends as well to the approaches to rail-highway crossings. Pa. Dept. of Transportation v. Pa. P.U.C., 64 Pa. Cmwlth. Ct. 299, 440 A.2d 657 (1982).

Other provisions of the Public Utility Code authorize the Commission to allocate costs of construction, relocation, alteration, protection or abolition of rail-highway crossings or utility facilities at such crossings among interested parties. 66 Pa. C.S. §2704(a); Pa. Dept. of Transportation v. Pa. P.U.C., 76 Pa. Cmwlth. Ct. 525, 464 A.2d 645 (1983).

It is well-settled that in apportioning costs in rail-highway crossing cases, the Commission is not limited to any fixed rule but must consider all relevant factors in order to arrive at an order which is just and reasonable. Borough of South Greensburg v. Pa. P.U.C., 117 Pa. Cmwlth. Ct. 361, 544 A.2d 82 (1988); East Rockhill Township v. Pa. P.U.C., 115 Pa. Cmwlth. Ct. 228, 540 A.2d 600 (1988); City of Philadelphia v. Pa. P.U.C., 91 Pa. Cmwlth. Ct. 123 (1985). Factors which have been considered by the Commission include prior ownership and maintenance responsibility, the relative benefits which will accrue to the interested parties as a result of the crossing, availability of state or federal funds, deferred maintenance, origin and destination of bridge users, and ownership of the tracks as well as the general equities of each particular case. Re, Pa. Dept. of Transportation, 68 Pa. P.U.C. 116, 127 (1988).

Application of the City of Wilkes-Barre, Docket No. A-101606 (Order entered April 9, 1991) serves as a further guide for the Commission's use in apportioning costs in rail-highway crossing cases. This decision listed the following cost allocation factors which may be considered, namely, (1) the benefits to the utility and its ratepayers from the rail-highway crossing project, (2) the availability of state or federal funding for the project, (3) the placement of costs upon the party responsible for the situation, and (4) the equities of a particular situation.

Recently, in Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission, No. 3132 C.D. 1994, (Order entered March 1, 1996) the Commonwealth Court stated:

Contrary to Bell's arguments, a review of the Commission's decision in Wilkes-Barre reveals that there is no fixed four-part test. The Wilkes-Barre decision merely acknowledges that various factors have been used by the Commission in allocating costs and the Commission is "not

limited to any fixed rule, but may consider any one or more of the above recited factors, depending upon the facts peculiar to each case." Id., slip op. at 4 (emphasis in original). This principle has been also accepted by this Court. See Green Township Board of Supervisors v. Pennsylvania Public Utility Commission, 642 A.2d 541 (Pa. Cmwlth. 1994) (in accessing the costs in rail-highway crossing cases, the Commission is not limited to any fixed rule but takes all relevant factors into consideration, with the fundamental requirement being that its order be just and reasonable).

Because the Commission is not required to limit itself to any or all of the factors enumerated in Wilkes-Barre, Bell's argument that the Commission erred by not analyzing the present case under its "four-part test" is without merit.

(Slip Opinion, pages 6-7).

William J. Knerr, a Senior Civil Engineer with the Commission's Bureau of Transportation and Safety, provided the following pertinent testimony concerning subject crossing:

1. He last observed subject crossing on September 3, 1999, at which time he observed a depression in the rubber surface of the two west-bound lanes, approximately 3-4 inches below the rail head.
2. That, "the crossing has outlived its usefulness . . . having been installed in about 1980,1981 and with the type, amount of traffic the crossing is getting that is about the useful life of a rubber surface."
3. That traffic in the west-bound left turn lane, "swerve" and/or "go out of their way" to avoid the deteriorated area, so that a danger exists of vehicular traffic going up onto the sidewalk which is not differentiated from the roadway surface by any

elevation change, so that they are both at about the same level. This condition poses a hazard to pedestrians that might be walking on the sidewalk.

4. That he recommends removal of the old crossing surface, namely, "rebuilding it from the base all the way up" and installing a new concrete crossing surface. A concrete surface, given the traffic conditions at the crossing, would last longer than a rubber surface and would need less maintenance.

(N.T.12-14)

Kevin Steigerwalt, is Secretary of the Borough of Tamaqua. He was unable to find any record of accidents at subject crossing site. He indicated the Borough has not ordained that portion of the street used as the railroad crossing, nor has it done any maintenance to the crossing and/or the approaches to the crossing. The Borough first complained about the conditions at the crossing in April, 1995 (N.T. 20-23). He confirmed that West Broad Street is a state highway.

Kenneth M. McClain, is a District Grade Crossing Engineer, for PennDOT District 5. He described the details concerning the approaches to State Route 209, also known as West Broad Street. From photographs, he described the deteriorated condition of the rubber high-type surface of the grade crossing. He noted the highway approaches were "in fairly good condition." He announced the results of a 12-hour traffic count made on August 12 and 13, 1999 at the crossing site, namely, from 6:00 a.m. to 12:00 p.m. and from 12:00 p.m. to 6:00 p.m., on the referenced dates, showing 3,817 vehicles traveling west-bound, plus an additional 241 trucks. 3,943 vehicles traveled northward-bound, plus, an additional 199 trucks. The total percent of truck traffic from both directions was 5.7 percent. Also, for the same study period 317 pedestrians utilized the north sidewalk and 467 utilized the south sidewalk. He agreed that " a full deck

concrete crossing is the preferred way of solving the problem at that crossing.” When asked, he advised “the subject crossing is not currently programmed under the federal rail safety program or under any PennDOT state programs at the moment.” However, he opined it “possibly” could get put on these programs starting in 2001.

Mr. McClain referenced a prior Commission Order at Docket No. C-79020749, and particularly ordering paragraph 23, where, in pertinent part, the Commission stated the following:

Order in paragraph number 23 states, 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 the work necessary thereafter to maintain the highway approaches to the crossings at West Broad Street, East Broad Street and Center Street to within two feet of the outermost rails at each crossing.

He also referenced paragraph 25 of said Order, which states:

Order in paragraph number 25 states, that Consolidated Rail Corporation, at its sole cost and expense, do all the work and provide all materials to maintain the crossings at West Broad, Rose, Vine, Elm, East Broad, Spruce, Greenwood and Center Streets, including the paved portion of the crossing to a distance of two feet beyond the outermost tracks.

He said PennDOT had no record of either Consolidated Rail Corporation or the Reading, Blue Mountain and Northern Railroad performing any maintenance at subject West Broad Street Crossing. PennDOT, however, has maintained the highway approaches to said crossing. PennDOT is not willing to assume any maintenance or repair cost associated with said crossing. In his opinion, the Railroad should perform the

work and assume the costs for replacement/repair of subject crossing. Reconstruction of the crossing would not affect any other public utilities. PennDOT is willing to maintain the highway approaches to the crossing in the future.

(N.T. 24-35)

John Waters is Vice-President for Government Affairs for the Reading, Blue Mountain and Northern Railroad Company. He advised the useful life of a rubberized crossing such as is in place at instant crossing, is between 15 and 20 years, depending on the traffic level, especially, truck traffic. He indicated it would take about a day to remove the individual rubber panels to examine the underlying physical conditions causing their depression. Traffic at the site would have to be rerouted to accomplish this. The railroad had performed some drainage work in the area in 1993 and 1994 consisting primarily of ponding of the water on either side of West Broad Street and installing "some" drainage on either side of the street. However, he said "there was a problem there when we first took ahold of the railroad, and did address it, I believe in '93, '94." He testified to the existence of one track through the crossing where trains traverse at approximately 28 miles an hour. Four to six trains a day go through the crossing. He foresees no significant increase or decrease of train traffic through the crossing. He opined the current signaling at the crossing was adequate.

He submitted the rubber panels obviously had to be replaced, but you had to "dig down to the very ground level to replace the ties and the ballast and start from scratch." The least expensive remedy would be to do the repairs by timber and asphalt, which he claimed was the least expensive process. When asked, he indicated the railroad not only was agreeable to performing the needed work in question, but, would insist on doing any needed work within its right-of-way.

He said there wasn't much that could be done regarding maintenance of the rubber panels, namely, "about the only thing you can do is just reconstruct and replace them, which I don't think is maintenance." Finally, he submitted, "As opposed to what Conrail agreed to in 1980, we would obviously agree to maintain the crossing assuming it's concrete and level during the useful life of that crossing, not forever." He did not believe the railroad should bear the ultimate financial responsibility for the reconstruction of the crossing, because, in his opinion, vehicular, not rail, traffic led to the present problems with the rubber panels. He claimed the railroad had maintained the crossing and made it safe for train traffic.

On cross-examination, he stated Reading purchased subject line from Conrail in 1990 and was unaware of any maintenance it may have done at the crossing. He advised Reading never replaced any of the rubber panels when they first started to fail and that a mere visual examination of the crossing does not disclose the condition of the underlying ties. Again, he stated he did not consider replacement of a failed panel as maintenance. He estimated the cost for the installation of a new concrete crossing, involving a detour, at approximately \$125,000 to \$150,000. A timber and asphalt crossing would cost between \$50,000 to \$60,000 and have a useful life of five to seven years. Reading would be willing to maintain it through its useful life. If it has to, Reading prefers to pay for a timber and asphalt-type crossing. He admitted that you would have to install two timber and asphalt-type crossings as opposed to one, concrete crossing within the same fifteen (15) year time span for the useful life of a concrete crossing at that particular site.

(N.T. 42-63)

George W. Parker is a civil engineer employed by Schuylkill County. He agreed the crossing was in need of repair or replacement, but had no suggestions what the

best course might be. He submitted the County had no control over either the highway over which vehicles travelled, or the sidewalk area adjacent to the crossing site.

Likewise, he claimed the County had no responsibility for the rehabilitation of the crossing. When asked, he noted, non-County residents also utilized both pedestrian and vehicular traffic at subject crossing.

( N.T. 63-65)

Accordingly, upon my consideration of the facts and testimony presented in the evidentiary hearing of September 21, 1999, I conclude the complaint should be sustained and the responsibilities of the parties shall be determined in the manner hereinafter set forth in my Order.



#### IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and the subject matter of this proceeding. 66 Pa. C.S. §2702.

2. The Commission has the power to rescind or modify any of its orders. 66 Pa. C.S. §501.

3. The Commission has exclusive jurisdiction over all rail-highway crossings in the Commonwealth and the approaches thereto. 66 Pa. C.S. §2702; Department of Transportation v. Pa. P.U.C., 440 A.2d 657 (Pa. Cmwlth. 1982); Springettsbury v. Pa. P.U.C., 289 A.2d 762 (Pa. Cmwlth. 1982).

4. The Commission has the exclusive authority to order the construction, reconstruction, alteration, repair, protection or abolition of rail-highway crossings, as well as the exclusive authority to determine and order which parties should perform such work at the crossings and which parties shall maintain the crossings in the future, all to effectuate the prevention of accidents and to promote the safety of the public. 66 Pa. C.S. §2702.

5. The Commission is empowered to order the alteration and reconstruction of rail-highway crossings upon such reasonable terms and conditions, including the assignment of future maintenance of any portion of the crossing remaining in place, as it shall prescribe. 66 Pa. C.S. §2704(a).

6. The Commission has the exclusive authority to assess the costs of the work ordered performed upon the parties to this proceeding in such proper proportions as it may determine. 66 Pa. C.S. §2704(a).

7. In apportioning costs in rail-highway crossing cases, the Commission is not limited to any fixed rule, but takes into consideration all relevant facts, the only requirement being that its Order must be just and reasonable. Greene Twp. v. Pa. P.U.C., 668 A.2d 615 (Pa. Cmwlth. 1995); Municipality of Monroeville v. Pa. P.U.C., 600 A.2d 655 (Pa. Cmwlth. 1991); East Rockhill Township v. Pa. P.U.C., 540 A.2d 600 (Pa. Cmwlth. 1988).

8. The allocation of costs for this project and the assignment of future maintenance as set forth in the following Recommended Order are fair, just and equitable to each party.

V. ORDER

THEREFORE, IT IS ORDERED (Subject to Commission approval):

1. 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 be and is hereby sustained.
2. That Reading, Blue Mountain and Northern Railroad Co., at its sole cost and expense, within 3 months of the service of the Commission 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 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.
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.
4. 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 to be established in cooperation with Pennsylvania Department of

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

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

6. 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 Order.

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

8. 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.

9. 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.

10. That 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.

11. 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 Borough of Tamaqua of the actual date the work will be started on the West Broad Street at-grade crossing.


12. 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.

13. 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 feet from the outermost rail.

14. 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 feet beyond the outermost rails.

15. That this 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.

  
\_\_\_\_\_  
HERBERT S. COHEN  
Administrative Law Judge

Date: 1-19-00