



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

July 21, 1999

066698

WILLIAM D PICKERING PE CHIEF
ROW & UTILITY DIVISION
PENNDOT BUREAU OF DESIGN
PO BOX 3362
HARRISBURG PA 17105-3362

99 JUL 22 AM 9:30

RECEIVED
SECRETARY'S BUREAU

DOCKETED

JUL 23 1999

In re: C-00992585

Duryea Borough

v.

Reading, Blue Mountain & Northern Railroad
Delaware & Hudson Railway Company
PennDOT and Luzerne County

DOCUMENT
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Dear Mr. Pickering:

This is to advise that a field investigation and conference will be held at the crossing where Foote Avenue (S.R. 2032) crosses, at grade the track of Reading, Blue Mountain & Northern Railroad on Tuesday, August 17, 1999, at 10:00 a.m., to discuss the matters involved.

Please arrange to have a representative present.

Very truly yours,

Ronald J. Hull, P.E.
Rail Safety Division
Bureau of Transportation and Safety
(717) 787-5582

RJH:lg

BTL

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



www.dot.state.pa.us
ENGINEERING DISTRICT 4-0
P O BOX 111
SCRANTON PA 18501
PHONE 570-963-4995
FAX 570-963-4949
NOVEMBER 8 1999

086709

Luzerne County
Duryea Borough
C-00992585

PA PUBLIC UTILITY COMMISSION

EEF

NOV 16 1999

DAVE HART
BUREAU OF TRANSPORTATION AND SAFETY
P O BOX 2365
HARRISBURG PA 17105-3265

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NOV 19 1999

BUREAU OF TRANSPORTATION & SAFETY
RAIL SAFETY DIVISION

Dear Mr. Hart:

A field investigation conference was held on August 17, 1999 for the subject complaint file. The field conference was conducted by Mr. Ron Hull of your office and attended by, Mr. John Waters, Reading Blue Mountain and Northern Railroad, Jason Sharpe, PennDOT Office of Chief Counsel and myself. Five State Route crossings were field viewed, four of which interface with the Reading, Blue Mountain and Northern Railroad and one with the D&H Railroad. The field view results were that the approaches on all four Blue Mountain and Northern Railroad crossings were in need of maintenance and all four railroad surfaces were also in need of repair. The approach to the crossing with the Delaware and Hudson Railroad was found to be in good condition with no work required by the Department. At the field conference, I did not commit the Department to do any approach maintenance until the crossing timbers were repaired or replaced. I felt this was the best course to meet the final elevation of any crossing material placed by the Railroad.

At the field conference, Mr. Waters stated that the railroad will not voluntarily perform any work to the subject crossing surfaces.

The Department modified its position as willing to perform the maintenance required under PUC regulations. We are willing to perform base repair, milling and approach paving to within 2 ft. to the Reading Blue Mountain and Northern Railroad tracks. The Department has had contact with the Reading, Blue Mountain and Northern Railroad on October 12, October 18, and October 19, 1999 to schedule a flagmen to be present during the maintenance operation. As of this time, the railroad has not scheduled a flagman to provide flagging protection to the Department. Therefore, the Department has not performed any operations.

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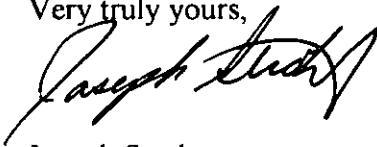
Due to the decline in temperatures, it is anticipated that hot mix bituminous material will not be available after mid-November. If maintenance is not performed with hot mix material, the subject crossings will go unrepaired until approximately May 1 of the year 2000, when hot mix material becomes available.

I contacted Mr. Hull of your office on November 4 to discuss our dilemma. Mr. Hull advised me to notify the Reading, Blue Mountain and Northern Railroad of a date when this work will be performed, and weather permitting, perform the related maintenance activities. Mr. Hull's position is that the interface of the roadway and railroad is a public crossing and the Department may perform the required maintenance activities as required by the PUC.

The Department will not interfere with the operation of the railroad. In striving to provide a smooth roadway to the motoring public, and under direction of the PUC, the Department will perform the required maintenance at the subject crossings on November 15, 1999.

If you have any questions, you can contact me at 570-963-4995.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Joseph Strok".

Joseph Strok
PAVEMENT MANAGEMENT ENGINEER

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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FOLDER

December 20, 1999

Subject: C-00992585

ORIGINAL

To: James J. McNulty
Secretary

DOCKETED
DEC 21 1999

090780

From: David C. Hart, P.E., Manager
Rail Safety Division
Bureau of Transportation and Safety

David C. Hart

In re:

Duryea Borough

v

Reading, Blue Mountain and Northern Railroad; Delaware
and Hudson Railway Company; PennDOT and Luzerne County

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The above captioned complaint was filed June 28, 1999, alleging that the following at-grade crossings are in a deteriorated condition and in need of repair:

<u>Highway</u>	<u>Railroad</u>	<u>AAR No.</u>
Foote Avenue (S.R.2032)	Reading, Blue Mountain and Northern Railroad	361 435 P
New Street	Reading Blue Mountain and Northern Railroad	361 436 W
Phoenix Street (S.R.2027)	Reading, Blue Mountain and Northern Railroad	361 437 D

9

Coxton Road (S.R.2033)	Reading, Blue Mountain and Northern Railroad	266 107 N
Stephenson Street (S.R.2031)	Reading, Blue Mountain and Northern Railroad	266 109 C
Marcy Street	Reading, Blue Mountain and Northern Railroad	266 110 W
Hill Street	Reading, Blue Mountain and Northern Railroad	266 112 K
York Avenue (S.R.2029)	Reading, Blue Mountain and Northern Railroad	265 876 A
York Avenue (S.R.2029)	Delaware and Hudson Railway Company	249 675 T

A field investigation and conference was held at the site of the crossings. The parties disputed the party or parties responsible to fund any repairs to the crossing surfaces. Accordingly, it is suggested that the case be assigned to the Administrative Law Judge and scheduled for a hearing at the earliest convenient date and that the following parties of interest be served notice thereof:

Borough of Duryea (complainant)
 Pennsylvania Department of Transportation
 Luzerne County
 Reading, Blue Mountain and Northern Railroad
 Delaware and Hudson Railway Company

The purpose of the hearing is to receive testimony from all the parties to the complaint, and if the complaint is to be sustained, actions necessary to address the safety issues, including the performance of any work required, the allocation of any costs incurred in connection therewith, and the assignment of future maintenance responsibilities.

In addition to any other relevant information, it is suggested that testimony be adduced at the hearing upon the appended list of Questions and Procedure and the appropriate action be taken at the hearing to incorporate these Questions and Procedure into the record in this proceeding.

pc: Office of Administrative Law Judge

Legal Division
 Bureau of Transportation and Safety

1. Borough of Duryea (Borough) submit testimony describing the general location of the existing rail-highway crossings involved in this proceeding.
2. Borough submit testimony describing the condition of each crossing, describing in detail what, in its opinion, makes the subject crossing dangerous or a hazardous to the traveling public.
3. Borough submit testimony as to what, in its opinion, should be done to improve the safety of the subject crossings.
4. Borough submit testimony as to whether the subject crossings are a Borough ordained and maintained street or on the state highway system and if a Borough ordained street, submit testimony describing in detail the highway approaches to the subject crossing including the alignment, grades, roadway width, speed limit, sidewalks, and the general physical condition of the approach roadways.
5. Borough submit testimony as to the approximate class and volume of vehicular and pedestrian traffic traversing the crossing daily on the borough ordained streets involved in this proceeding.
6. Borough submit testimony as to whether any accidents involving trains and motor vehicles or motor vehicles and other motor vehicles have occurred at the subject crossings within the past five years and, if so, submit testimony as to the approximate number of such accidents and the nature and cause thereof.
7. Borough state the nature, type, extent date, cost and any other pertinent specific details as to any recorded items of maintenance and/or repairs performed at the crossings by the Borough or the railroad.
8. Borough submit testimony as to what portion, if any, of any construction work that it will agree to perform; what portion, if any, of the cost of same and future maintenance that it will agree to bear; and the portions, if any, of said work or cost thereof which should be performed and borne by each of the other parties hereto. Responses should be specific as to percentage of allocations suggested, and should include the reasons for such allocations.
9. Pennsylvania Department of Transportation (Department) submit testimony describing in detail the highway approaches to the subject crossing involving the state highways in this proceeding, including the alignment, grades, roadway width, speed limit, sidewalks, and the general physical condition of the approach roadways.
10. Department submit testimony as to the approximate class and volume of vehicular and pedestrian traffic traversing the crossings daily on the state highways involved in this proceeding.

11. Department submit testimony as to whether any accidents involving trains and motor vehicles or motor vehicles and other motor vehicles have occurred at the subject crossings in this proceeding within the past five years and, if so, submit testimony as to the approximate number of such accidents and the nature and cause thereof.
12. Department submit testimony as to what, in its opinion, should be done to improve safety of all the subject crossings listed herein.
13. Department submit testimony as to whether federal or state funds would be available for any improvement at the subject crossings listed herein.
14. Reading, Blue Mountain and Northern Railroad Company submit testimony as to the exact corporate name of the owner and operator of the line of railroad at the subject crossings, (excluding York Avenue, AAR 249 675 T).
15. Reading, Blue Mountain and Northern Railroad Company submit testimony as to the number of tracks presently located at the subject crossings (excluding York Avenue, AAR 249 675 T), and the volume, class and approximate speed of all trains operated daily over its track and whether any significant changes to such operations are contemplated in the foreseeable future.
16. Reading, Blue Mountain and Northern Railroad Company submit testimony describing the physical condition and characteristics of the subject crossings (excluding York Avenue, AAR 249 675 T), including the type of warning facilities, roadway width, type of paving intersection angle, condition of the rail, and the general physical condition of the crossings and sidewalk surfaces.
17. Reading, Blue Mountain and Northern Railroad Company submit testimony as to whether any accidents involving a train and a motor vehicle have occurred at the subject crossings, (excluding York Avenue, AAR 249 675 T) within the past years; and, if so, submit testimony as to the number of such accidents and the nature and cause thereof.
18. Reading, Blue Mountain and Northern Railroad Company submit testimony as to whether, in its opinion, the crossings, (excluding York Avenue, AAR 249 675 T) should be altered or reconstructed, and/or whether any additional warning facilities are necessary to effectuate the prevention of accidents and to promote safety for the traveling public.
19. Reading, Blue Mountain and Northern Railroad Company, submit testimony describing the general nature, extent and estimate cost of any repairs, work or changes which it deems necessary or advisable at the subject crossings, (excluding York Avenue, AAR 249 675 T).
20. Reading, Blue Mountain and Northern Railroad Company submit testimony indicating what portion of the work it will agree to perform; what portion of the costs it will agree to assume; and what portion of the completed work it will agree to maintain in the future; in

the event the complaint is sustained and an improvement of the crossings is ordered by the Commission.

21. Delaware and Hudson Railway Company submit testimony as to the exact corporate name of the owner and operator of the line of railroad at the York Avenue crossing, AAR 249 675 T.
22. Delaware and Hudson Railway Company submit testimony as to the number of tracks presently located at the York Avenue crossing, AAR 249 675 T and the volume, class and approximate speed of all trains operated daily over its tracks; and whether any significant changes to such operations are contemplated in the foreseeable future.
23. Delaware and Hudson Railway Company submit testimony describing the physical condition and characteristics of the York Avenue crossing, AAR 249 675 T, including the type of warning facilities, roadway width, type of paving, intersection angle, condition of the rail, and the general physical condition of the crossing and sidewalk surfaces.
24. Delaware and Hudson Railway Company submit testimony as to whether any accidents involving a train and a motor vehicle have occurred at the York Avenue, AAR 249 675 T, crossing within the past five years; and, if so, submit testimony as to the number of such accidents and the nature and cause thereof.
25. Delaware and Hudson Railway Company submit testimony describing the general nature, extent and estimate cost of any repairs, work or changes which it deems necessary or advisable at the York Avenue crossing, AAR 249 675 T.
26. Delaware and Hudson Railway Company submit testimony as to whether, in its opinion, the York Avenue crossing, AAR 249 675 T, should be altered or reconstructed and/or whether any additional warning facilities are necessary to effectuate the prevention of accidents and to promote safety for the traveling public.
27. Delaware and Hudson Railway Company submit testimony indicating what portion of the work it will agree to perform at the York Avenue crossing, AAR 249 675 T,; what portion of the costs it will agree to assume, and what portion of the completed work it will agree to maintain in the future; in the event the complaint is sustained and an improvement of the crossing is ordered by the Commission.
28. Luzerne County submit testimony as to whether the subject crossings are located within its jurisdiction and whether, in its opinion, the subject crossings are adequate for the prevention of accidents and promotion of safety of the public.
29. Query whether any of the parties desires to submit any additional, relevant testimony.

DATE: December 21, 1999

SUBJECT: C-00992585

TO: Office of Administrative Law Judge

FROM: James J. McNulty, Secretary

LAF

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DEC 21 1999

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IN RE:
Duryea Borough
v.
Reading, Blue Mountain and Northern Railroad et al

Attached is memorandum received from the Bureau of Transportation & Safety - Rail Division suggesting that the above entitled proceeding be reassigned to your Office to be set for hearing and that testimony be adduced at the hearing upon the attached list of questions and procedures.

This matter is assigned to your Office for appropriate action.

Attachment

cc: TSL
TSR

laf

SRB



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Office Of Administrative Law Judge
P.O. Box 3265, Harrisburg, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

March 13, 2000

In Re: C-00992585

(See attached list)

Duryea Borough et al. v. Reading, Blue Mountain & Northern
Railroad

NOTICE

It appears that the above-captioned matter could be processed by mediation between or among the parties. Mediation is an informal, non-adjudicatory process. The mediator does not make a decision. Instead, the mediator serves as an impartial facilitator who helps the parties resolve their disputes. In other words, mediation is a process which allows the parties to control the outcome of their dispute, as opposed to a hearing where the Administrative Law Judge and the Commission control the outcome.

Moreover, mediation is different from a settlement conference which is based on competitive negotiations. In mediation, the parties agree to work together toward a final resolution of their differences considering how any solution must address the interests of all parties.

There is no stenographer at a mediation session and discussions are **confidential**, unless otherwise provided for by law. The mediation is not binding (except for an agreement reached) and any party may withdraw from the mediation at any time. Mediation is an efficient and economical procedure compared to a hearing which is often expensive and time-consuming.

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There can be no mediation unless the party with the burden of proof, and all other necessary parties, consent to mediate. If the party with the burden of proof consents, in proceedings subject to a statutory deadline for adjudication, that party must also agree, in writing, to extend the statutory deadline by, at least, 60 days.

The Commission's file will reflect that you consent to the mediation process, unless the mediator named below hears from you to the contrary, in writing, within 15 days of the date of this letter. The mediator's name and address are as follows:

Mediator: **Charles Hilmer, Jr.**
 Pennsylvania Public Utility Commission
 P.O. Box 3265
 Harrisburg, PA 17105-3265
 Telephone: (717) 783-5413
 Fax: (717) 787-0481

By consenting to mediate, the Commission understands that you have made a commitment to act in good faith toward resolving the dispute in this matter. If you cannot make this commitment, you should not consent to use the mediation process.

If you consent to use the mediation process in this proceeding, please give me your available dates for the latter part of March, 2000 and the entire month of April, 2000. Please reply to:

Mediation Assistant: **Ann M. Humes**
 Pennsylvania Public Utility Commission
 P.O. Box 3265
 Harrisburg, PA 17105-3265
 Telephone: (717) 783-9959
 Fax: (717) 787-0481

If you are a person with a disability, and you wish to attend the mediation session, we may be able to make arrangements for your special needs. Please call Norma Lewis at the Public Utility Commission:

- Scheduling Office: 717-787-1399
- AT&T Relay Service number for persons who are deaf or hearing impaired: 1-800-654-5988.

pc: Mediator Hilmer
Eric Levis - BPL 101
John Wilson - T&S Legal
Dave Hart - T&S Rail
Norma Lewis
Ann M. Humes, Mediation Assitant
Beth Plantz
Docket Section
Calendar File



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Office Of Administrative Law Judge
P.O. Box 3265, Harrisburg, PA 17105-3265
March 28, 2000

IN REPLY PLEASE
REFER TO OUR FILE

In Re: C-00992585

(See attached list)

**Duryea Borough v. Reading, Blue Mountain and Northern Railroad,
Delaware and Hudson Railway Company, Pennsylvania Department of
Transportation and Luzerne County**

Complainant states Duryea Borough Council have received numerous complaints regarding the railroad crossings in Duryea Borough. The crossings are uneven, loose railroad ties and potholes and the conditions are deteriorating constantly. Site includes crossings on Coxton Road, Foote Avenue, Phoenix Street, Marcy Street and York Avenue. They would like crossings inspected and appropriate action taken. Additional respondents are: PENNDOT, Duryea County Solicitor, Luzerne County Solicitor.

Hearing Notice

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

Type: Initial Hearing
Date: Thursday, May 18, 2000
Time: 10:00 a.m.
Location: Room 318
Scranton State Office Building
100 Lackawanna Avenue
Scranton, Pennsylvania
Presiding: Administrative Law Judge Richard M. Lovenwirth
Room 317 Scranton State Office Building
100 Lackawanna Avenue
Scranton, PA 18503
Telephone: (570) 963-4818
Fax: (570) 963-3310

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DOCKETED
MAR 29 2000

We have enclosed a list of questions prepared by the Bureau of Transportation Safety indicating information to be developed at the hearing along with other relevant testimony.

Each party should submit testimony and exhibits with respect to the entire crossing alteration project with the understanding that the Commission may, in determining this manner, take jurisdiction over any portion of the project.

If any party intends to offer prepared written testimony, the testimony must be served on the presiding officer and each party at least 20 days prior to the hearing unless a different schedule has been ordered by the presiding officer.

The Commission's rules require that all parties, except for those individuals appearing on their own behalf, be represented by counsel. Therefore, you should have an attorney of your choice file an entry of appearance before the scheduled hearing.

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

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

- Scheduling Office: 717-787-1399
- AT&T Relay Service number for persons who are deaf or hearing impaired: 1-800-654-5988.

pc: Judge Lovenwirth
Eric Levis - BPL 101
John Wilson - T&S Legal
Dave Hart - T&S Rail
Judy Weaver, Scheduling Officer
Beth Plantz
Docket Section
Calendar File

1. Borough of Duryea (Borough) submit testimony describing the general location of the existing rail-highway crossings involved in this proceeding.
2. Borough submit testimony describing the condition of each crossing, describing in detail what, in its opinion, makes the subject crossing dangerous or a hazardous to the traveling public.
3. Borough submit testimony as to what, in its opinion, should be done to improve the safety of the subject crossings.
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6. Borough submit testimony as to whether any accidents involving trains and motor vehicles or motor vehicles and other motor vehicles have occurred at the subject crossings within the past five years and, if so, submit testimony as to the approximate number of such accidents and the nature and cause thereof.
7. Borough state the nature, type, extent date, cost and any other pertinent specific details as to any recorded items of maintenance and/or repairs performed at the crossings by the Borough or the railroad.
8. Borough submit testimony as to what portion, if any, of any construction work that it will agree to perform; what portion, if any, of the cost of same and future maintenance that it will agree to bear; and the portions, if any, of said work or cost thereof which should be performed and borne by each of the other parties hereto. Responses should be specific as to percentage of allocations suggested, and should include the reasons for such allocations.
9. Pennsylvania Department of Transportation (Department) submit testimony describing in detail the highway approaches to the subject crossing involving the state highways in this proceeding, including the alignment, grades, roadway width, speed limit, sidewalks, and the general physical condition of the approach roadways.
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11. Department submit testimony as to whether any accidents involving trains and motor vehicles or motor vehicles and other motor vehicles have occurred at the subject crossings in this proceeding within the past five years and, if so, submit testimony as to the approximate number of such accidents and the nature and cause thereof.
12. Department submit testimony as to what, in its opinion, should be done to improve safety of all the subject crossings listed herein.
13. Department submit testimony as to whether federal or state funds would be available for any improvement at the subject crossings listed herein.
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18. Reading, Blue Mountain and Northern Railroad Company submit testimony as to whether, in its opinion, the crossings, (excluding York Avenue, AAR 249 675 T) should be altered or reconstructed, and/or whether any additional warning facilities are necessary to effectuate the prevention of accidents and to promote safety for the traveling public.
19. Reading, Blue Mountain and Northern Railroad Company, submit testimony describing the general nature, extent and estimate cost of any repairs, work or changes which it deems necessary or advisable at the subject crossings, (excluding York Avenue, AAR 249 675 T).
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the event the complaint is sustained and an improvement of the crossings is ordered by the Commission.

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28. Luzerne County submit testimony as to whether the subject crossings are located within its jurisdiction and whether, in its opinion, the subject crossings are adequate for the prevention of accidents and promotion of safety of the public.
29. Query whether any of the parties desires to submit any additional, relevant testimony.



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

IN REPLY PLEASE
REFER TO OUR FILE

March 29, 2000

Gary R. Hoffman, Esquire
Director, Pennsylvania Code & Bulletin
Room 647, Main Capitol Building
Harrisburg, PA 17120

DOCUMENT
FOLDER

Re: Notice
Duryea Borough v. Reading, Blue Mountain
and Northern Railroad, Delaware and Hudson
Railway Company, Pennsylvania Department
of Transportation and Luzerne County
Docket No. C-00992585

Dear Mr. Hoffman:

Enclosed please find two (2) copies of a notice as captioned above. The Commission requests that this notice be published in the Pennsylvania Bulletin.

Very truly yours,

Barbara Bruin
Executive Director

Enclosure

cc: Chief Counsel Pankiw
Regulatory Coordinator DelBiondo
New Assignments and Filings

PENNSYLVANIA PUBLIC UTILITY COMMISSION

N O T I C E

Duryea Borough v. Reading, Blue Mountain and Northern Railroad, Delaware and Hudson Railway Company, Pennsylvania Department of Transportation and Luzerne County.

Complainant states Duryea Borough Council has received numerous complaints regarding the railroad crossings in Duryea Borough. The crossings are uneven, loose railroad ties and potholes and the conditions are deteriorating constantly. Site includes crossings on Coxton Road, Foote Avenue, Phoenix Street, Marcy Street and York Avenue. They would like crossings inspected and appropriate action taken. Additional respondents are: PENNDOT, Duryea County Solicitor, Luzerne County Solicitor.

Docket No. C-00992585.

An Initial Hearing on this matter will be held Thursday, May 18, 2000 at 10:00 a.m. in Room 318, Scranton State Office Building, 100 Lackawanna Avenue, Scranton, Pennsylvania when and where all persons in interest may appear and be heard, if they so desire.

BY THE COMMISSION

James J. McNulty
Secretary

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DOCKETED

MAR 28 2000

GOLLATZ, GRIFFIN & EWING, P.C.
ATTORNEYS AT LAW

PHILADELPHIA OFFICE:
SIXTEENTH FLOOR
TWO PENN CENTER PLAZA
PHILADELPHIA, PA 19102
(215) 563-9400

DELAWARE COUNTY
CONFERENCE FACILITY:
205 N. MONROE STREET
MEDIA, PA 19063
(610) 565-6040

213 WEST MINER STREET
POST OFFICE BOX 796
WEST CHESTER, PA 19381-0796

Telephone (610) 692-9116
Telecopier (610) 692-9177
E-Mail: ggc@ggelaw.com

WILMINGTON OFFICE:
1901 SUPERFINE LANE
SUITE 2
WILMINGTON, DE 19802
(302) 428-3761

PITTSBURGH OFFICE:
225 ROSS STREET
2ND FLOOR
PITTSBURGH, PA 15219
(412) 434-7930

ERIC M. HOCKY
cmhocky@ggelaw.com

April 27, 2000

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APR 27 2000

FedEx

Prothonotary
Pennsylvania Public Utility Commission
North Office Building
Commonwealth Avenue & North
P.O. Box 3265
Harrisburg, PA 17105-3265

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCUMENT
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Re: Duryea Borough v. Reading, Blue Mountain
and Northern Railroad Company, Pennsylvania
Department of Transportation and Luzerne County
Docket No. C-00992585

Notice of Appearance

Prepared Testimony of Andrew M. Muller, Jr.

Dear Sir or Madam:

Enclosed for filing in the above captioned proceeding are an original and three (3) copies of each of the Notice of Appearance and Prepared Testimony of Andrew M. Muller, Jr. in the above-referenced proceeding. Attached to this letter is the FedEx receipt.

Kindly time stamp the extra copy of each of these documents also enclosed to indicate receipt and return them to me in the

EEF

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Prothonotary
April 27, 2000
Page 2

stamped, self-addressed envelope provided for your convenience.

Respectfully,



Eric M. Hocky

Enclosures

cc: All Persons Shown on the Service List (w/encls.)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Duryea Borough

v.

Reading, Blue Mountain and
Northern Railroad Company,
Pennsylvania Department of
Transportation and Luzerne County

DOCUMENT
FOLDER

ORIGINAL

Docket No. C-00992585

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APR 27 2000

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APR 28 2000

PREPARED TESTIMONY OF
ANDREW M. MULLER, JR.
ON BEHALF OF READING BLUE MOUNTAIN
& NORTHERN RAILROAD COMPANY

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RECEIVED

APR 27 2000

Reading Blue Mountain & Northern Railroad Company
("RBMN"), through Andrew M. Muller, President, hereby responds to
the "Questions and Procedures" directed to RBMN as set forth in
the Commission's hearing notice dated March 28, 2000:

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

14. Reading, Blue Mountain and Northern Railroad Company submit
testimony as to the exact corporate name of the owner and
operator of the line of railroad at the subject crossings
(excluding York Avenue, AAR 249 675 T).¹

Answer:

The exact corporate name of the owner and operator
of the line of railroad at the subject crossings
(excluding York Avenue) is: Reading Blue Mountain &
Northern Railroad Company. RBMN operates over all of

¹ From the hearing notice, RBMN understands the "subject
crossings" to include the crossings at Coxtton Rd., Foote Ave.,
Phoenix St., Marcy St. and York Ave.

the subject crossings (excluding York Avenue).
Additionally, Luzerne & Susquehanna Railway Co. ("LS") operates over the portion of the Lehigh Main that includes the Foote Ave. and Phoenix St. crossings, and Delaware-Lackawanna Railroad Co., Inc. ("DL") operates over the portion of the Taylor Secondary that includes the Marcy St. and Coxtan Rd. crossings.

15. Reading, Blue Mountain and Northern Railroad Company submit testimony as to the number of tracks presently located at the subject crossings (excluding York Avenue, AAR 249 675 T), and the volume, class and approximate speed of all trains operated daily over its track and whether any significant changes to such operations are contemplated in the foreseeable future.

Answer:

There is one track at each of the subject crossings (excluding York Avenue), except for Foote Ave. where there are two tracks.

RBMN operates over the Lehigh Main (including the Foote Ave. and Phoenix St. crossings) six days per week. The trains operate at 10 miles per hour. RBMN handles approximately 6,000 to 7,000 carloads of general merchandise per year over this portion of the Lehigh Main, not counting any short-term changes that have resulted from the Conrail breakup and the resulting service disruptions that have resulted. Additionally, LS operates approximately three to five

times per week over this portion of the Lehigh Main, handling approximately 15 to 25 cars per week.

RBMN operates over the Taylor Secondary (including the Marcy St. and Coxtan Rd. crossings) approximately three times a week to serve its customers in the Kaiser Valley. These trains also operate at 10 miles per hour. The trains can have three to five cars to as many as 20 cars due to the seasonality of some of the business. In addition, DL operates over this portion of the Taylor Secondary five days per week, handling approximately 3 to 5 cars each day.

No significant changes in operations are contemplated in the foreseeable future.

16. Reading, Blue Mountain and Northern Railroad Company submit testimony describing the physical condition and characteristics of the subject crossings (excluding York Avenue, AAR 249 675 T), including the type of warning facilities, roadway width, type of paving intersection angle, condition of the rail, and the general physical condition of the crossings and sidewalk surfaces.

Answer:

The right-of-way at each of the subject crossings (excluding York Avenue) is one track wide, and each of the crossing streets is two lanes wide. There are no sidewalks at any of the subject crossings.

The crossings have the following protection: Marcy St. (flashing lights); Foote Ave. (flashing lights and

gates); Phoenix St. (flashing lights); and Coxton Rd. (flashing lights and gates).

All of the crossings are constructed of asphalt and timber. All of the tracks are safe for current rail operations. (There is a split rail at Coxton, however, it is currently safe for railroad operations, and does not impact on highway operations.) As RBMN understands it, Duryea Borough is complaining about the condition of the paving at the crossings and its impact on highway operations.

17. Reading, Blue Mountain and Northern Railroad Company submit testimony as to whether any accidents involving a train and a motor vehicle have occurred at the subject crossings (excluding York Avenue, AAR 249 675 T) within the past years; and, if so, submit testimony as to the number of such accidents and the nature and cause thereof.

Answer:

There have been no accidents at the subject crossings (excluding York Avenue) involving an RBMN train since RBMN acquired the rail lines in August, 1996.

18. Reading, Blue Mountain and Northern Railroad Company submit testimony as to whether, in its opinion, the crossings (excluding York Avenue, AAR 249 675 T) should be altered or reconstructed, and/or whether any additional warning facilities are necessary to effectuate the prevention of accidents and to promote safety for the traveling public.

Answer:

As RBMN understands it, only paving is being requested. There is no need to alter the type of crossing, nor is there a need for additional warning protection.

19. Reading, Blue Mountain and Northern Railroad Company, submit testimony describing the general nature, extent and estimate cost of any repairs, work or changes which it deems necessary or advisable at the subject crossings (excluding York Avenue, AAR 249 675 T).

Answer:

No repairs are currently required for continued safe rail operations. The repairs required by Duryea Borough would entail paving and possibly some timber replacement. Although RBMN has not obtained proposals, it believes the cost of fully reconstructing a crossing of this type would cost approximately \$15,000 to \$20,000. Flagging and detours would be additional costs. Because of the location of these crossings, detouring costs could be substantial if RBMN were required to bear the costs.

20. Reading, Blue Mountain and Northern Railroad Company submit testimony indicating what portion of the work it will agree to perform; what portion of the costs it will agree to assume; and what portion of the completed work it will agree to maintain in the future; in the event the complaint is sustained and an improvement of the crossings is ordered by the Commission.

Answer:

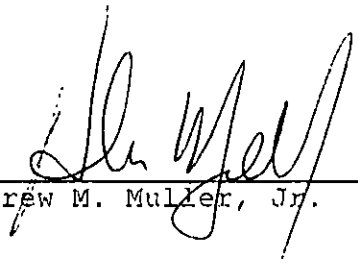
RBMN purchased these light density rail lines in August, 1996. The low traffic volume on the lines, and the revenues earned from such traffic, do not provide sufficient benefit to RBMN to justify the imposition of maintenance or rehabilitation costs on RBMN. Because the crossings are currently safe for rail operations, RBMN would not receive any benefit from the proposed repairs. The costs of repairs should be borne by the parties receiving the most benefit and not by RBMN.

RBMN is willing to perform all work to the tracks and track structures that may be ordered by the Commission, but does not agree to bear any of the costs of such repairs. Similarly, RBMN is willing to perform future maintenance that is necessary to keep the tracks in safe working order for its trains, but not to perform future maintenance that is for the benefit of the traveling public.

VERIFICATION

I, Andrew M. Muller, Jr., President of Reading Blue Mountain & Northern Railroad Company, have reviewed the foregoing document and verify that the facts set forth therein are true and correct to the best of my information and belief, and that this verification is made subject to the penalties of 18 Pa.C.S. 4904.

Dated: April 26, 2000



Andrew M. Muller, Jr.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below, in accordance with the requirements of §1.54 (relating to service by a participant):

Administrative Law Judge
Richard M. Lovenwirth
Room 317
Scranton State Office Building
100 Lackawanna Avenue
Scranton, PA 18503

Lois Morreale, Secretary
Borough of Duryea
315 Main Street
Duryea, PA 18642

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

James P. Blaum
County Solicitor
Luzerne County
Luzerne County Court House
200 North River Street
Wilkes Barre, PA 18711-1001

Barry J. Chromey, Solicitor
126 South Main Street
Suite 201
Pittston, PA 18640

Brian Corcoran, Esquire
400 Third Avenue
Kingston, PA 18704


William Pickering, PE Chief
PennDOT Bureau of Design
ROW and Utility Division
P.O. Box 3362
Harrisburg, PA 17105-3362

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

Kevin Carr
Delaware & Hudson Railway Company
P.O. Box 8002
200 Clifton Corporate Park
Clifton Park, NY 12065

David Salapa, Esquire
PA PUC Trans & Safety
Rail Division
P.O. Box 3265
Harrisburg, PA 17105-3265

Dated this 27th day of April, 2000.



ERIC M. HOCKY
GOLLATZ, GRIFFIN & EWING, P.C.
213 West Miner Street
P.O. Box 796
West Chester, PA 19381-0796
(610) 692-9116
Counsel for Reading Blue Mountain
& Northern Railroad Company

OALJ Hearing Report

Please check Those Blocks Which Apply

Docket No.:	C-00992585		YES	NO
		Prehearing Held:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Case Name:	Duryea Borough v. Reading, Blue Mountain and Northern Railroad, Delaware and Hudson Railway Company, Pennsylvania Department of Transportation and Luzerne County	Hearing Held:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Testimony Taken:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Transcript Due:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Hearing Concluded:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Location:	Scranton	Further Hearing Needed:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		Estimated Add'l Days:		

Date:	May 18, 2000		RECORD CLOSED:	<input type="checkbox"/>	<input type="checkbox"/>
ALJ:	George M. Kashi	Receipt of Transcript DATE: 5/21/00			

Reporting Firm:	Sargents Reporting		BRIEFS TO BE FILED:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
				DATE: 5/25/00 (5 days after transcript)	
			Bench Decision:	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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DOCUMENTS
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 Docketed JUN 01 2000

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

Name and Telephone Number	Address	Who are you representing?
Jason D. Sharp Telephone: (717) 787-3128	855 Walnut St. P.O. Box 8212	Bureau of Transportation + Safety
	City: Hbg. State: PA Zip: 17105-8212	
David Salaga Telephone: (717) 783-2840	P.O. Box 3265	Bureau of Transportation + Safety
	City: Hbg. State: PA Zip: 17105-3265	
Eric Hockey Telephone: (610) 692-9116	213 West Miner Street P.O. Box 796	Reading Blue Mountain + Northern Railroad
	City: West Chester State: Pa. Zip: 19381-0796	
	E-mail Address:	Fax Number:

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

Reporter's Signature

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

Name and Telephone Number	Address			Who are you representing?
<i>Barry Chromey</i>	<i>126 South main St. Suite 201</i>			<i>Dunwoody Borough</i>
Telephone: <i>(570) 341-7088</i>	City <i>Pittston</i>	State <i>Pa.</i>	Zip <i>18640</i>	E-mail Address: Fax Number:
<i>Charles Mc Cormick</i>	<i>Suite 808 PNC Bank Bldg. 67 Public Square</i>			<i>Luzerne County Solicitor</i>
Telephone:	City <i>Hilkes-Barre</i>	State <i>Pa.</i>	Zip <i>18701</i>	E-mail Address: Fax Number:
Telephone:	City	State	Zip	E-mail Address: Fax Number:
Telephone:	City	State	Zip	E-mail Address: Fax Number:
Telephone:	City	State	Zip	E-mail Address: Fax Number:
Telephone:	City	State	Zip	E-mail Address: Fax Number:
Telephone:	City	State	Zip	E-mail Address: Fax Number:
Telephone:	City	State	Zip	E-mail Address: Fax Number:
Telephone:	City	State	Zip	E-mail Address: Fax Number:
Telephone:	City	State	Zip	E-mail Address: Fax Number:



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

IN REPLY PLEASE
REFER TO OUR FILE

June 5, 2000

TO ALL PARTIES OF RECORD

DOCKETED
JUN 09 2000

DOCUMENT
FOLDER

Re: Duryea Borough v. Reading, Blue Mountain
and Northern Railroad, Delaware and Hudson
Railway Company, Pennsylvania Department
Of Transportation and Luzerne County
Docket No. C-00992585

Dear Sir or Madam:

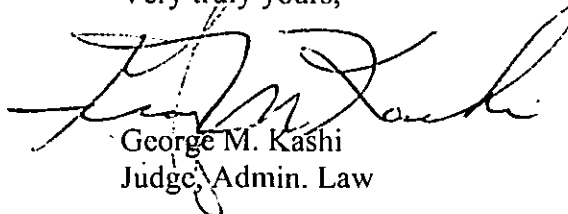
The transcript of testimony taken in the above entitled proceeding indicates that the parties will file briefs.

Main Briefs shall include proposed findings of fact and shall be filed within forty-five (45) days of receipt of transcript (June 5, 2000). Therefore, simultaneous Main Briefs shall be filed by July 20, 2000. If briefs are not received within the allotted time, they shall not be accepted for filing, except by special permission of the presiding officer.

An original and nine (9) copies of each main brief must be filed with the Secretary of the Commission, a copy must be served on the presiding Administrative Law Judge and three copies on each party of record.

The parties also shall serve on me a copy of each brief on a computer disk in Microsoft Word format.

Very truly yours,



George M. Kashi
Judge, Admin. Law

GMK/ad

EEF

BARRY J. CHROMEY
ATTORNEY - AT - LAW

MAILING ADDRESS:
P.O. BOX 3387
SCRANTON, PA 18505

126 SOUTH MAIN STREET
SUITE 201
PITTSBURGH, PA 15222

PHONE: 717-341-7088
PHONE: 717-654-3909
FAX: 717-654-5021

July 13, 2000

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

DOCUMENT
FOLDER

620294

RE: Duryea Borough v. Reading, Blue Mountain and Northern Railroad, Delaware
And Hudson Railway Company, Pennsylvania Department of Transportation and
Luzerne County Docket No. C-00992585


Dear Judge Kashi:

Enclosed please find a Petition for Extension of Time Pursuant to 52 PA. Code 5.502 ©
on behalf of Duryea Borough. As was explained during your telephone conversation yesterday
with my office, the transcript of proceedings from Sargent's Court Reporting Service was not
received until Monday, July 10, 2000. Therefore, I am respectfully requesting an extension of
time of thirty (30) days within which to file a brief in this matter.

By copy of this correspondence I am advising all parties of record of this request.

Thank you in advance for your professional courtesies and assistance.

Very truly yours,


BARRY J. CHROMEY, ESQUIRE

cc: Eric M. Hocky, Esq. W/Encl.
Jason D. Sharp, Esq. W/Wncl.
David A. Salapa, Esq. W/Encl.
Charles D. McCormick, Esq. W/Encl.

BJC/LAW/bh

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SECRETARY'S BUREAU
JUL 17 AM 9:15

Barry j. Chromey, Esquire
Pa. Supreme Court ID No.
LAW OFFICE OF BARRY J. CHROMEY, ESQUIRE
Greater Pittston Professional Center
126 S. Main Street, Suite 201
Pittston, PA 18640-1719
(570) 654-3355

**COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

DURYEA BOROUGH :

vs. :

READING BLUE MOUNTAIN AND, :
AND NORTHERN RAILROAD :
COMPANY, PENNSYLVANIA :
DEPARTMENT OF TRANSPORTATION :
AND LUZERNE COUNTY :

: Docket No. C-00992585

ORDER

AND NOW, the ____ day of _____, 2000, upon consideration of the within
PETITION FOR EXTENSION OF TIME PURSUANT TO 52 PA CODE 5502 ©) by Barry J.
Chromey, Esquire, the deadline to file a Main brief with the Pennsylvania Public utility
commission is hereby extended until the ____ day of _____, 2000.

BY THE COURT:

J.

Barry J. Chromey, Esquire
Pa. Supreme Court ID No.
LAW OFFICE OF BARRY J. CHROMEY, ESQUIRE
Greater Pittston Professional Center
126 S. Main Street, Suite 201
Pittston, PA 18640-1719
(570) 654-3909

**COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

DURYEA BOROUGH :
vs. :
READING BLUE MOUNTAIN AND, :
AND NORTHERN RAILROAD :
COMPANY, PENNSYLVANIA :
DEPARTMENT OF TRANSPORTATION :
AND LUZERNE COUNTY : Docket No. C-00992585

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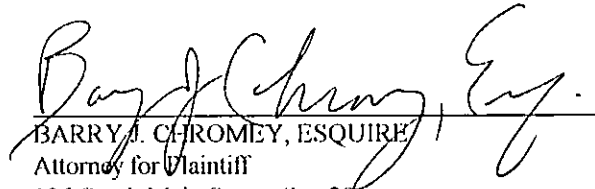
PETITION TO EXTEND TIME PURSUANT TO 52 PA CODE 5.502 (C)

Now comes Plaintiff's counsel, Barry J. Chromey, Esquire, and respectfully requests this Honorable Court to extend the time to file a main brief scheduled for July 20, 2000 for the following reasons:

1. Plaintiff's counsel, did not receive the transcript of testimony from the hearing held May 18, 2000 until Monday, July 20, 2000.

WHEREFORE, Barry J. Chromey, Esquire, respectfully requests this Honorable Court to grant an extension of time of thirty (30) days from July 20, 2000 within which to file a main brief on behalf of Duryea Borough.

Respectfully Submitted,


BARRY J. CHROMEY, ESQUIRE
Attorney for Plaintiff
126 South Main Street, Ste. 201
Pittston, PA 18640-1719
570/654-3909

Barry J. Chromey, Esquire
Pa. Supreme Court ID No.
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**COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

DURYEA BOROUGH :
vs. :
READING BLUE MOUNTAIN AND, :
AND NORTHERN RAILROAD :
COMPANY, PENNSYLVANIA :
DEPARTMENT OF TRANSPORTATION :
AND LUZERNE COUNTY : Docket No. C-00992585

620295

CERTIFICATE OF SERVICE

I, Barry J. Chromey, Esquire, do certify on the 13th day of July, 2000
I served a true and correct copy of **Plaintiff's Petition to Extend Time Pursuant to 52**
PA Code 5.502, upon the following counsel of record by United States first class mail,
postage prepaid.

RECEIVED
SECRETARY'S BUREAU
JUL 11 AM 9:16

Eric M. Hocky, Esq.
Gollatz, Griffen, Ewing, P.C.
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Real Property Division
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David Salapa, Esquire
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Harrisburg, PA 17105-3265

Charles McCormick, Esquire
PNC Bank Building
76 Public Square
Wilkes-Barre, PA 18701

Harrisburg, PA 17105-3265

A handwritten signature in black ink, appearing to read 'BAC Esq', written over a horizontal line.

BARRY J. CHROMEY, ESQUIRE
Greater Pittston Professional Center
126 South Main Street, Ste. 201
Pittston, PA 18640-1719
570/654-3909

GOLLATZ, GRIFFIN & EWING, P.C.

ATTORNEYS AT LAW

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PITTSBURGH OFFICE:
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2ND FLOOR
PITTSBURGH, PA 15219
(412) 434-7930

ERIC M. HOCKY
emhocky@ggelaw.com

July 17, 2000

DOCKETED

JUL 21 2000

620487

By fax; original by mail

Hon. George M. Kashi
Judge, Admin. Law
Pennsylvania Public Utility Commission
North Office Building
Commonwealth Avenue & North
P.O. Box 3265
Harrisburg, PA 17105-3265

DOCUMENT
FOLDER

Re: Duryea Borough v. Reading, Blue Mountain
and Northern Railroad Company, Pennsylvania
Department of Transportation and Luzerne County
Docket No. C-00992585

Dear Judge Kashi:

I am writing in response to the petition filed on behalf of
Duryea Borough requesting an extension of time for the filing of
its brief.

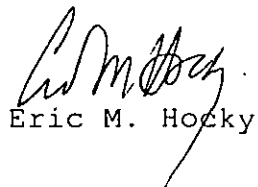
Reading Blue Mountain and Northern Railroad Company does not
object to the extension request. However, it believes that
simultaneous Main Briefs should still be required, and therefore,
that any extension granted apply to all parties.

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BUREAU
JUL 19 AM 7:34

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Thanks you for your consideration.

Respectfully,



Eric M. Hocky

cc: Prothonotary, PUC
Barry J. Chromey, Esq. (by fax)
David A. Salapa, Esq. (by fax)
Jason D. Sharp, Esq. (by fax)
Charles D. McCormick, Esq. (by fax)