

HOLL & ASSOCIATES

Attorneys At Law
A PROFESSIONAL CORPORATION

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

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

GREGORY F. LEPORE, ESQ.

DOCUMENT
FOLDER

January 15, 2003

ORIGINAL

RECEIVED
2003 JAN 17 AM 10:29
SECRETARY'S BUREAU

James J. McNulty, Secretary
COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: READING, BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY v.
PENNSYLVANIA PUBLIC UTILITY COMMISSION
Commonwealth Court, No.: ~~60592585~~
Our File No.: BMRR-002 C-00992585

Dear Mr. McNulty:

Enclosed please find an original and one copy of Petitioner Reading Blue Mountain & Northern Railroad Company's Brief on Remand from Commonwealth Court. Also enclosed is a copy to be time-stamped and returned to me in the enclosed self-addressed stamped envelope.

Thank you for your cooperation in this matter.

Sincerely,



GREGORY F. LEPORE

GFL/bac
Enclosures

cc: David Salapa, Esquire
Jason Sharp, Esquire
Charles McCormick, Esquire
Bohdan R. Pankiw, Esquire
Cheryl Walker Davis, Office of Special Assistants

2

RECEIVED

2003 JAN 17 AM 10:29

SECRETARY'S BUREAU

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

DUYREA BUREAU	:	
	:	
v.	:	Complaint Docket
READING, BLUE MOUNTAIN &	:	No.: C-00992585
NORTHERN RAILROAD COMPANY	:	

Brief of Reading, Blue Mountain and Northern RR Co. on Remand From Commonwealth Court

FACTS

There was undisputed testimony presented at the hearing, both by PennDOT's own witness, and the witness for the Public Utility Commission that a primary cause that the deterioration of the crossing was the use of the crossing by heavy triaxle dump trucks coming from a local quarry and its geographic location in a low area. (N.T. at 110, prepared testimony of Joseph Strok, p.6 at line 42-44).

A prior order of the Commission had required that the Railroad and PennDOT share the expense of maintaining the crossing. (N.T. at 111-112).

The necessity of replacing the crossing was not an issue at the hearing below, simply the cost of replacing the crossing. The major cost associated with replacing this crossing is the necessity of the detour, due to a bridge abutment (not the Railroad's) which is immediately adjacent to the crossing, which prohibits the simple control of the

DOCUMENT
FOLDER

DOCKETED
JAN 28 2003

crossing by a flagman during reconstruction, and the nature of the area, which requires a lengthy detour due to the number of extremely heavy trucks using the crossing in question. Additionally, the detour is lengthy, and the majority of the traffic to be detoured, is, ironically, the same truck traffic causing the damage.

The Commission's Administrative Law Judge, after consideration of the above facts, ruled that the cost be borne 65% by PennDOT, 30% by the Railroad, and 5% by Duryea Bureau. (recommended decision, page 44 paragraph 17).

SUMMARY OF ARGUMENT

Undisputed testimony at the hearing established that the crossing is in a low lying area which is close to a nearby quarry. As a result, the crossing subgrade often remains wet, and the crossing is subject to abuse by heavy truck traffic, likely exacerbated by the fact that the area is low-lying. When the Public Utility Commission last addressed the conditions of the crossing, when the crossing was previously owned by the Erie Lackawanna Railroad, the Commission ordered that PennDOT and the Erie Lackawanna Railroad share the cost of maintaining the crossing.

The testimony of both witnesses presented by the PUC and the Department of Transportation established that the primary cause of the problems at the crossing was in fact the heavy truck traffic - heavily loaded tri-axle dump trucks coming from a local quarry-that routinely used the crossing. Additionally, the crossing is located in a geographically low area where water naturally collects. These factors led the ALJ to determine, when considering the overall equities of the situation, to conclude that PennDOT should bear the bulk of the cost of the restoration project (65%) and the Railroad 30%, the Borough to pick up the remaining 5%.

It is admitted by Penndot, and in fact all of the parties, that in not only does the area between the rails need work, but that the approach roadways are potholed and also have an identical subgrade problem. These areas are larger physically than the crossing itself, and are Penndot's responsibility under the prior order. Given that the majority of the cost of this crossing repair project is likely to be the detour, which is exacerbated by the need to route heavy truck traffic over rural roads, it is inequitable to place 100% of the burden of the entire project on the Railroad where even PennDot witnesses admitted that truck traffic, not rail traffic was the cause of the problem, and where the prior Commission Order required Penndot to share maintenance expenses with the crossing.

ARGUMENT

There was absolutely no evidence presented at the hearing below that lack of maintenance was the cause of need to rebuild the Coxton Road crossings or approaches. Further, no evidence was presented at the hearing that any party performed any maintenance, and therefore, even if one assesses lack of maintenance as a cause for the condition of the Coxton Road crossing, equal blame rests with Penndot.

Penndot's own witness, Joseph Strok, a Penndot engineer, testified as follows: "While the approaches are in fair condition that they are in need of repair. One of the major problems with this entire section is the heavy number of trucks from a quarry that this road services. . . ." (prepared testimony of Joseph Strok, p.6., lines 42-44). Furthermore, the witness from the PUC's own Bureau of Public Safety testified that the problems at Coxton Road related to two things. First, "the roadway and the track is like in a low area there is a lot of water that ponds at the crossing and the surrounding areas." (N.T. at 110). The PUC witness further testified "there would be a lot of heavy trucks, a

lot of tri-axle trucks, which is three axle trucks. (N.T. at 110-111). The Commission's witness next noted that the prior order required that the Railroad maintain the crossing and that PennDOT maintain the approaches. No party presented any evidence as to what, if any, maintenance could/should have been performed by any party, nor was there any evidence that a maintenance failure was a cause of the crossing's current condition. From the above testimony, it is clear that there was no evidence at all that any lack of maintenance on the Railroad's part contributed to the problems at the crossing. Rather, the sum total of the actual testimony was that the crossing is situated in a geographically low area where it daily takes the abuse of multiple tri-axle dump trucks hauling stone and gravel from a quarry. To require the Railroad to in effect subsidize this truck traffic by paying 100% of this crossing project is simply and fundamentally unfair.

Although not well developed in the testimony at the hearing below, it is clear from photographs of the crossing, which were admitted into the record as evidence, that the crossing is bordered immediately on one side by a bridge abutment which makes it impossible to conduct repair of the crossing through the use of a flagman and lane restrictions. Rather, the roadway must be shut down for a substantial period of time while both the crossing and the approach roads are dug out the subgrade reconstructed, and the crossing replaced. The cost of such a detour is the major portion of the cost of performing this crossing repair, particularly in light of the fact that the traffic using the crossing is of the heavy nature, and that must be accounted for in routing the truck traffic over nearby roads, keeping into consideration bridge weight restrictions etc.

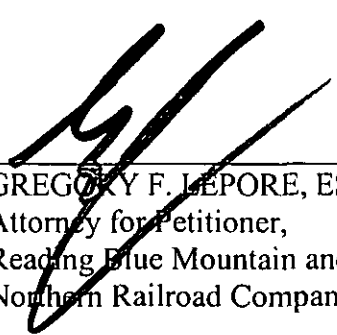
Given that at least part of the cost of this detour is occasioned by the replacement of not only the rail bed but also the approaches, which are and have always been

PennDot's responsibility, and which by their own admission need repair, it is entirely inequitable to place 100% of the cost of the crossing project on the Railroad. The ALJ considered this in his decision. Accordingly, the Commission should adopt the decision of the ALJ, or similarly assess PennDot the lion's share of the costs involved.

Respectfully submitted,

HOLL & ASSOCIATES, P.C.

By:



GREGORY F. LEPORE, ESQUIRE
Attorney for Petitioner,
Reading Blue Mountain and
Northern Railroad Company

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

DUYREA BUREAU :
 :
v. :
READING, BLUE MOUNTAIN & :
NORTHERN RAILROAD COMPANY :

Complaint Docket
No.: C-00992585

SECRETARY'S BUREAU

2003 JAN 17 AM 10:29

RECEIVED

CERTIFICATION OF SERVICE

I, Gregory F. Lepore, Esquire, hereby certify that on January 15, 2003, I caused two true and correct copies of the foregoing Brief and Reproduced Record on behalf of Petitioner, Reading Blue Mountain and Northern Railroad Company to be served by regular, first class mail, postage pre-paid upon the following:

Bohdan R. Pankiw, Esquire
Real Property Division
555 Walnut Street, 9th Floor
Harrisburg, PA 17101

Jason Sharp, Esquire
Assistant Counsel
Real Property Division
555 Walnut Street, 9th Floor
Harrisburg, PA 17101

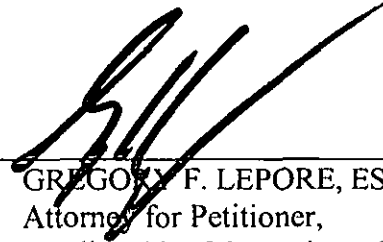
David A. Salapa, Esquire
Assistant Counsel
Bureau of Transportation and Safety
Third Floor, Barto Building
Third & State Streets
Harrisburg, PA 17105-3265

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

Respectfully submitted,

HOLL & ASSOCIATES, P.C.

By:



GREGORY F. LEPORE, ESQUIRE
Attorney for Petitioner,
Reading Blue Mountain and
Northern Railroad Company

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



ORIGINAL

Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105-8212
Tel: 717/787-3128
Fax: 717/772-2741
January 27, 2003

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

DOCUMENT
FOLDER

RECEIVED
03 JAN 27 PM 2:20
PA.P.U.C.
SECRETARY'S BUREAU

RE: Docket No. C-00992585

Dear Secretary McNulty:

Enclosed for filing please find the original and three (3) copies of the **MAIN BRIEF OF THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION ON REMAND**, in the above-captioned matter.

I hereby certify that a copy of the Department's **BRIEF** has been sent to all parties of record as indicated on the **CERTIFICATE OF SERVICE**.

Very truly yours,

Jason D. Sharp
Jason D. Sharp
Assistant Counsel

220/JDS/bdm

cc: Gary C. Fawver, Chief, Right-of-Way & Utilities Division
Joseph Strok, Grade Crossing Engineer, Engineering District 4-0
Parties of Record

66

I. **INCORPORATION.**

The Department incorporates by reference, as if set forth at length, its Main Brief, Reply Brief and Exceptions previously filed in this matter. The Department respectfully requests that the Commission review these documents as well as this Main Brief on Remand, as the Department's previous pleadings thoroughly addressed all of the pertinent facts and issues in this case.

II. **IT IS JUST AND REASONABLE FOR THE PENNSYLVANIA PUBLIC UTILITY COMMISSION TO ENTER AN ORDER REQUIRING READING BLUE MOUNTAIN AND NORTHERN RAILROAD TO COMPLETE THE RECONSTRUCTION OF THE COXTON ROAD CROSSING SURFACE, INCLUDING THE COST OF ANY NECESSARY DETOUR.**

The Commonwealth Court remanded this case based on an unpublished decision dated November 4, 2002 (Opinion and Order). In that opinion, the Commonwealth Court determined, *inter alia*, that the Commission's order failed to take certain facts into consideration. Therefore, the Commonwealth Court determined that the Commission needed to reevaluate the existing record in this case in light of the unpublished opinion. Although not explicitly stated, it is assumed that the Commonwealth Court desires that the Commission focus on two specific areas: 1) what party should bear the cost of the detour necessary to complete the Coxton Road crossing surface replacement; and, 2) the effect of truck traffic on the crossing.

While the Commonwealth Court's order constituted an impermissible reweighing of the

evidence by the reviewing court, the presently existing record still supports a Commission allocation against Reading Blue Mountain and Northern Railroad (Reading) for *all* costs associated with the replacement of the crossing surface, including any necessary traffic control measures. In contrast, the only just and reasonable cost allocation against the Department in this case is for the Department to bear the costs associated with the replacement of the crossing approaches, the advance warning signs, and any traffic control that may be needed for the *Department's* work.

A. The Department Does Not Require A Detour To Complete The Crossing Approach And Advance Warning Sign Work.

The Commission should not lend any credence to the Commonwealth Court's statement that "*both* DOT's and Blue Mountain's repair/rebuilding activities require the use of a detour." (Opinion and Order, p. 7). There is no evidence in the record supporting this conclusion by the Commonwealth Court. Instead, the record reveals that the Department has already completed approach work at the crossing. (*See* Department Main Brief, p.15, n.2; Department's Reply Brief, p.3). No detour was necessary for this work.

The Department can alternate traffic via flagging while paving to complete the approach work. The Department can pave one side of the roadway at a time, allowing for staggered traffic. In contrast, Reading needs a full detour because it will replace the whole crossing panel, effectively closing the road. It is unknown why the Commonwealth Court misinterpreted this fact, but the Commission should not make the same mistake.

B. The Department And Reading Are Sharing The Costs To Replace The "Crossing."

The Commonwealth Court seemingly requires an explanation as to why the Commission modified the 1970 Order that required the Department and the railroad to "share" costs for the crossing. (Opinion and Order, p. 6). However, the Commission's Order does require the Department and Reading to share both replacement and maintenance responsibilities for different components of the crossing. Specifically, Paragraph 18 of the Commission's January 11, 2002 Order requires that Reading replace the Coxtan Road crossing by rebuilding the entire crossing and providing an adequate subgrade underneath the crossing. Further, Paragraph 19 requires that Reading bear all of its costs incurred with rebuilding the Coxtan Road crossing including the costs of any necessary traffic controls.

Neither the cited paragraphs nor the Order itself ever shifts any of the Department's costs, i.e., the costs of replacing the approaches, the cost of providing for approach signalization or signage, *or* the cost of any necessary traffic controls or detours necessary *for approach work* to Reading. Indeed, what the Commission's Order simply required was that Reading pay the costs to do its work, while the Department pay the costs to do its work.

The only possible difference is that the Department appears to have borne the railroad traffic control costs in the 1970 order.¹ (PUC Staff Exhibit # 1, Ordering Paragraph 8). However, the 1994 PUC Order did not require the Department to pay for Conrail's traffic control costs on a project involving a number of the crossing in this case. (PUC Staff Exhibit # 4). So there are conflicting prior orders regarding which party should bear traffic control costs. Nothing suggests that the Commission was wrong to follow the 1994 Order rather than the 1970 Order.

Moreover, it was just and reasonable in this case to allocate the traffic control costs to Reading because of Reading's deferred maintenance and complete disregard for their maintenance responsibilities at the crossing. It is absurd to require the Department to pay for a crossing replacement job that was known to be necessary by Reading, yet the railroad took no action. (NT 95).

C. The Commission Properly Took Into Account The Cause Of The Crossing Failure - Poor Subgrade Drainage - In Its Opinion And Order In This Case.

Coxton Road suffers mainly from an inadequate subgrade. (NT 110). The roadway and the track are located in a low area where water ponds at the crossing and the surrounding areas.

¹ The 1970 Order is unclear as to just what happened to the traffic detour costs. In the discussion section, the Department of Highways agreed to provide the actual setup of necessary detours, but requested reimbursement. (PUC Staff Exhibit #1, p. 2-3.). The Order does not reveal that any party objected to this request. In the Ordering paragraphs, paragraph 8 required the Department of Highways to set up construction inspectors and traffic control at the crossings, but paragraph 13 only explicitly provides for reimbursement to the Department for the inspectors. One can conclude that this implicitly means that the Department bore the detour costs. But it is curious that none of the cited paragraphs contain the Commission's standard "at the sole cost and expense" language that pervades the rest of 1970 Order. Therefore, the Department was never actually ordered to bear the detour costs. The record does not reveal any final cost allocation hearing on detour costs.

(NT 110). The BTS recommended that the whole crossing be rebuilt from the ties up. The witness for BTS opined that “if you don’t correct the subgrade, no matter what you build on top of it, you’re going to have problems in the future.” (NT 114).

Reading had been aware of the need for a replacement at this crossing site for some time. In fact, Reading admitted that the only reason it had not replaced the crossing was due to a lack of money. (NT 95). However, Reading has a brand new crossing panel located on site to be placed at the Coxton Road crossing. Additionally, Reading could point to no maintenance performed at this crossing.

On Page 6 of its Opinion, the Commonwealth Court states that there was no indication the Commission considered the cause of the deterioration when it modified the ALJ’s recommended decision. However, this is incorrect. Specifically, the Commission explicitly adopted the ALJ’s recommended decision except where modified or overruled. The Commission adopted the ALJ’s detailed discussion of the cause of the problem –subgrade drainage failure coupled with Reading’s lack of maintenance. (*See Recommended Decision, Finding of Fact 9, Finding of Fact 13, generally discussing the fact the crossing has an inadequate subgrade that compromises the entire crossing.*)

In its January 2002 Order at Page 3, the Commission stated “the ALJ made specific findings of fact and conclusions of law (R.D., pp 3-16 and 38-39, respectively), which are adopted herein by reference, unless modified or reversed, expressly or by necessary implication, by this Opinion and Order.” Clearly, the Commission adopted by reference the ALJ’s Findings of Fact and Conclusions of Law. Further in Paragraph No. 2 on page 11 of the Opinion, the Commission stated “the recommended decision of the Administrative Law Judge George M.

Kasai is adopted, as modified by this Opinion and Order.” There is no indication at all in the Commission’s Opinion that it was modifying in any of the findings, discussion or conclusions of the ALJ, other than to reallocate the cost percentages.

Indeed, the Department, in its Exceptions argued that the ALJ’s discussion and findings were in fact correct, but that the cost allocation percentages were not in accordance with the ALJ’s discussion. The ALJ clearly stated that the two most important issues in the case were the inadequate subgrade present at the crossing and the fact that Reading had not done anything to maintain the crossing or to repair any of the problems at the crossing including the subgrade problem. Therefore, by adoption of the ALJ’s specific discussion, the Commission did in fact take into account the cause of the deterioration when it modified the ALJ’s recommended decision. The Commission must now make explicit what it incorporated by reference previously.

What the Commonwealth Court seemed to conclude was that the Commission failed to properly consider other testimony that may have contributed to the deterioration of the crossing. It is conceded that there was significant testimony regarding the amount of trucks used at crossing and size of such trucks. (*See Section D, infra*). However, because the Commission is the ultimate determiner of fact and credibility, it chose to credit testimony regarding the subgrade drainage and lack of maintenance over any purported conclusion that truck traffic had caused any kind of deterioration at the crossing.

D. The Commission Already Properly Considered The Volume And Effect Of Truck Traffic At The Coxtan Road Crossing.

The Commonwealth Court seemed concerned that the Commission did not properly consider the effect of truck traffic on the crossing. The Court stated that "there is evidence in the record that large trucks driving over the Coxtton Road rail crossing contributed to the deterioration of the rails, roadbed and approach roads." (Opinion and Order, .p 7). In fact, the Department noted that truck traffic was one of the reasons the crossing has failed over time. (Department Statement # 1, p. 6). However, as noted previously, the main cause of the crossing deterioration is a subgrade drainage problem coupled with Reading's complete lack of maintenance. Certainly, train and vehicle traffic will wear down a crossing over time. However, such traffic is present at every crossing. What was relevant here was Reading's failure to address the root problem with the crossing as part of its overall crossing maintenance responsibility.

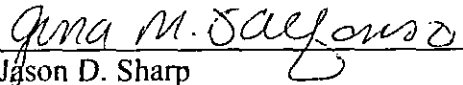
It must be noted that the Commonweal Court cited Reading's testimony - "Mr. Muller stated that extra long trucks that sit low and have a lot of extra weight go across the crossing, get hung up and break the rails." (NT 93). For the Commission to lend any credence to this hearsay testimony would be ludicrous. First, Mr. Muller has no direct or first had experience of what he spoke about. (NT 93-94). Mr. Muller claims that "low boy" trucks are driving over the crossing and breaking up the rails and crossing surface. However, his testimony was not based upon any direct knowledge of the circumstances at the Coxtton Road crossing.

For the Commission to overturn its just and reasonable order based on the self serving testimony of Reading would be an abdication of the Commission's responsibility to ensure that its orders are based upon substantial evidence. *Bowman v. DER*, 700 A.2d 427, 428 (1997), citing *Norfolk & Western Ry. Co. v. Pa. P.U.C.*, 413 A.2d 1037, 1047 (Pa. 1980).

CONCLUSION

For all of the above cited reasons, the Department respectfully requests that the Commission affirm its prior order, in light of the Commonwealth Court's Opinion and Order.

Respectfully Submitted,


Jason D. Sharp
Assistant Counsel
PA Atty. Id # 80488

Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105-8212
(717) 787-3128

Dated: January 27, 2003

RECEIVED
03 JAN 27 PM 2:21
PA.P.U.C.
SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DURYEA BOROUGH

V.

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

Docket Number

C-00992585

RECEIVED
03 JAN 27 PM 2:21
PA PUC
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **BRIEF** was served upon the parties listed below by first-class mail, postage prepaid this 27th day of January, 2003:

James P. Blaum, Esquire
Luzerne County Courthouse
200 N River St.
Wilkes-Barre, PA 18711

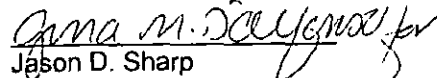
Barry J. Chromey, Esquire
629 S. Main Street
Old Forge, PA 18518

Brian Corcoran, Esquire
400 Third Avenue
Kingston, PA 18704

David Salapa, Esquire
PA PUC
PO BOX 3265
Harrisburg, PA 17105-3265

Gregory F. Lepore, Esquire
Holl & Associates, PC
PO BOX 807
920 South Broad Street
Landsdale, PA 19446

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


Jason D. Sharp
Assistant Counsel
Office of Chief Counsel

Dated: January 27, 2003

RECEIVED
03 JAN 27 PM 2:21
P.A.P.U.C.
SECRETARY'S BUREAU

BARRY J. CHROMEY
ATTORNEY-AT-LAW

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

1016 PITTSTON AVENUE
SUITE 301
SCRANTON, PA 18505

PHONE: 570-341-7088
PHONE: 570-654-3909
FAX: 570-558-2611

March 4, 2003

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

DOCKETED

APR 29 2003

RE: Docket No. C-00992585

Dear Secretary McNulty:

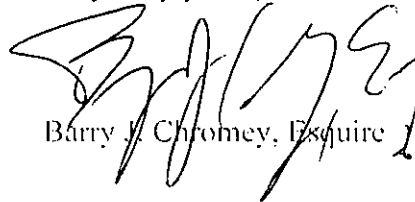
DOCUMENT

Please be advised that I serve as the solicitor for Duryea Borough.

This is to advise you that I will not be providing any further information or further briefs in support of the position of Duryea Borough. I have previously submitted a brief and have nothing further to add on behalf of my client.

Thank you for your attention.

Very truly yours,



Barry J. Chromey, Esquire

BJC/dap
CC: Lois Morreale, Duryea Borough Secretary

SECRETARY'S
BUREAU

2003 MAR -6 AM 9:25

RECEIVED

ORIGINAL

8

C-00992585

ENGINEERING DISTRICT ^{BTL}
P O BOX 111
SCRANTON PA 18501
PHONE 570-963-4995
FAX 570-963-4949
JUNE 30 2003

DOCKETED
JUL 22 2003

DOCUMENT

Duryea Borough
Railroad Crossings

PA PUBLIC UTILITY COMMISSION

MS EMILY ROMANCZEK HARZOWSKI
255 SWETLAND STREET
P O BOX 54
DURYEA PA 18642

JUL 03 2003

BUREAU OF TRANSPORTATION & SAFETY
RAIL SAFETY DIVISION

Dear Ms. Harzowski:

Thank you for your letter regarding the condition of the railroad crossings in Duryea Borough. I agree with you that the condition of these crossings are deplorable and are in need of serious repair.

Although these crossings are on state roads, the maintenance of the crossings is the responsibility of the railroad. Duryea Borough and the Department have both contacted the railroad and requested they repair the crossings, but the railroad has not responded.

The Public Utility Commission has jurisdiction over maintenance of the crossings. Two years ago Duryea Borough filed a formal complaint with the Commission.

The PUC has held field meetings and there have been formal court hearings. Essentially, the outcome has been that the railroad must repair their crossings, with the Department providing the detour on the Coxton Road crossing. Enforcement of the court's decision rests firmly with the Public Utility Commission. The department has been pursuing this problem for two years. We will continue our efforts.

If you wish to contact the railroad responsible for these crossings, you may write or call:

Reading, Blue Mountain & Northern Railroad
P.O. Box 188
Port Clinton, PA 19549
Attn: Mr. Andrew Muller
Phone - 610-562-2100

SECRETARY'S BUREAU

2003 JUL 15 AM 11:32

RECEIVED

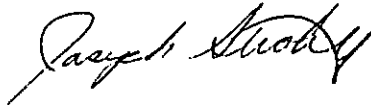
If you would like to contact the presiding Public Utility Commission Engineer, he can be reached at:

Public Utility Commission
Bureau of Transportation Safety
P.O. Box 3265
Harrisburg, PA 17105-3265
Attn: Mr. Ron Hull
Phone – 717 787-1106

I will give a copy of this letter to both the railroad and the PUC for their information.

If I can be of any further assistance, I can be reached at (570) 963-4995.

Very truly yours,



Joseph Strok, Jr.
DISTRICT GRADE CROSSING COORDINATOR

040/JS/jco

CC:

- ✓ Dave Hart – Public Utility Commission (attach copy of original letter)
- John Brown
- Jason Sharp
- H. Fred Daniels

7/7/03

R. Doble

J. STOK - TICKLE
Thurs, 6-24-03

Mr. Robert T. Doble, P.E.,
Commonwealth of Pennsylvania
Engineering District
P.O. Box 111
Scranton, Pa. 18501

Sir,

The railroad crossings are deplorable
in the Borough of Duncas creating
a safety traffic hazard.

Phoenix St. Penn Dot Road

Hoote Ave. Penn Dot Road

Upper Stephenson St. - Penn Dot Road

All three crossings are deplorable

On York Ave. Bridgeline of Ave
and Duncas Borough the

of railroad crossings drivable
and all railroad crossings should
be like York Ave. Railroad Crossing
also, the other railroad crossings
are deplorable. Sir please look
into this serious safety traffic
issue which will if PennDOT
needs to move on this quickly
over a year and Spring has come
and gone and summer is here.

Please York Ave. Crossings are
awesome and safe to drive over.
Thanks

Respectfully

Emily Tomaszek Harzowski
255 Swethers St. P.O. Box 57 Duncansville
16815



DOCUMENT

Duryea Borough

315 Main Street — Duryea, PA 18642

LOIS MORREALE
Borough Secretary-Treasurer

RECEIVED
2004 MAR 18 AM 9:32
SECRETARY'S BUREAU

March 15, 2004

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

Re: C-00992585

Dear Mr. James J. McNulty,

On June 28, 1999, Duryea Borough Council registered a written complaint to the Pennsylvania Public Utility Commission about the unsafe and deteriorating railroad crossing owned by the Reading & Northern Railroad Company. On January 10, 2002, an Order was adopted by the Commission regarding this matter. As of this date, the Order has not been enforced. The only improvement completed as stipulated in the Order was the removal of the York Avenue crossing. Duryea Borough Council has contacted Wes Westenhofer of Reading & Northern numerous times to inquire when improvements to the railroad crossing will be scheduled. Duryea Borough Council receives complaints from residents about the deplorable railroad crossings at every monthly council meeting. Since the original complaint was filed, the railroad crossings have become much worse with loose, broken timbers, uneven rails and huge potholes under the rails. It has become very frustrating that it has been almost five years since the original complaint has been filed, two years since the Order was adopted by the Commission, and yet absolutely no action has been taken to improve the crossings.

Therefore, Duryea Borough Council would like the Pennsylvania Public Utility Commission to enforce the Order that was adopted on January 10, 2002. Our commitment to make Duryea Borough a safe and better place to live cannot be accomplished if we cannot even accomplish improving the railroad crossings. Please take action regarding this matter as soon as possible. The Order must be enforced.

Sincerely,

Lois Morreale
Borough Secretary

DOCKETED

APR 14 2004

39



GOVERNOR'S OFFICE OF
GENERAL COUNSEL

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
Office of Chief Counsel
Real Property Division
Post Office Box 8212
Harrisburg, PA 17105-8212
Telephone 717.787.3128
Facsimile 717.772.2741
www.dot.state.pa.us



ORIGINAL

Monday, June 21, 2004

James J. McNulty, Secretary
Pennsylvania Public Utilities Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

IN RE: C-00992585

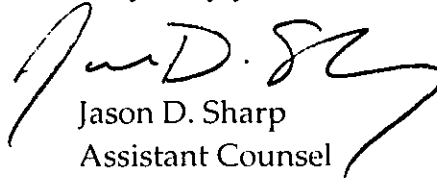
RECEIVED
2004 JUN 21 PM 2:14
SECRETARY'S BUREAU

Dear Mr. McNulty:

Enclosed for filing please find an original and three (3) copies of the Department's *Petition for Reconsideration* in the above referenced case. The Department's *Petition* has been served on the Parties of Record as indicated on the attached *Certificate of Service*.

If you have any questions or need any additional information, please feel free to contact the undersigned counsel. Thank you for your attention to this correspondence.

Very truly yours,


Jason D. Sharp
Assistant Counsel

220/JDS:be
jsharp@state.pa.us

DOCUMENT
FOLDER

cc: Parties of Record
Gary C. Fawver, P.E., Chief, Right-of-Way and Utilities, 7th Floor, CKB
Gina M. D'Alfonso, Assistant Counsel-in-Charge
Joseph Strok, P.E., District 4-0

RJP

10

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DURYEA BOROUGH :
 :
V. :
 :
READING BLUE MOUNTAIN AND :
NORTHERN RAILROAD COMPANY, :
PENNSYLVANIA DEPARTMENT OF :
TRANSPORTATION AND :
LUZERNE COUNTY :

Docket Number

C-00992585

SECRETARY'S BUREAU

2004 JUN 21 PM 2: 14

RECEIVED

PETITION FOR RECONSIDERATION

AND NOW, comes the Commonwealth of Pennsylvania, Department of Transportation (Department), by and through its counsel, Jason D. Sharp, and submits this Petition for Reconsideration of the Commission's Opinion and Order on Remand, entered June 4, 2004, pursuant to 52 Pa. Code § 5.572, because the Commission's allocation of sixty-five percent (65%) of the costs to rebuild the Coxton Road crossing to the Department is not supported by substantial evidence and is unjust and unreasonable:

1. THE COMMISSION ERRED BY RELYING ON A MISINTERPRETATION OF A PRIOR ORDER IN THIS CASE.

- a. In its June 4, 2004 Opinion and Order on Remand (the "2004 Order"), the Commission allocated the costs for the replacement of the Coxton Road crossing as follows: Department – 65%, Reading Blue Mountain and Northern (Reading) – 30% and Duryea Borough - 5 %.
- b. In the ALJ's original cost allocation, he proposed the following language: "[t]he Commission had previously issued an order regarding this crossing (order of May 4, 1970 at Application Docket No. 95397). In keeping with the prior order which directed that the Pennsylvania Department of Highways and the Erie Lackawanna Railway Company share maintenance responsibility for the crossing and considering the current

DOCUMENT
FOLDER

DOCKETED
JUL 13 2004

status as presented in the testimonies, the Department of Transportation at its sole cost and expense, shall bear 65% of the Coxtan Road Crossing project cost it incurred in accordance with this order. Reading, Blue Mountain and Northern Railroad Company, at its sole cost and expense, shall pay sum or sums of money to the Department of Transportation equal to 30% of the cost the Department of Transportation incurred in accordance with this order. The Borough of Duryea at its sole cost and expense, shall pay a sum or sums of money to the Department of Transportation equal to 5% of the cost the Department of Transportation incurred in accordance with this order (i.e., rebuilding the entire crossing at Coxtan Road Crossing). (RD at 44.)

- c. In its Exceptions, the Department accepted responsibility for the highway approaches at the crossing, but argued that an assignment of 65% of the crossing replacement cost to the Department was a significant, improper deviation from the Commission's Order dated May 4, 1970 (the "1970 Order").
- d. The Commission, in its Opinion and Order dated January 10, 2002 (the "2002 Order") modified the ALJ's proposed cost allocation because, *inter alia*, "the ALJ erred by deviating significantly from the Commission's Order dated May 4, 1970, which the ALJ cited as the appropriate guideline regarding this crossing." (2002 Order, pg. 9).
- e. In the 2004 Order, the Commission again cites the 1970 Order, but the Commission has misread and misinterpreted the 1970 Order.
- f. In the 2004 Order, the Commission states: "[i]n its Brief on Remand, RBMN argues that the 1970 Commission Order required the following sharing of the costs of the Coxtan Road crossing: PennDOT, 65%; RBMN, 30%; and the Borough, 5%. This is the sharing recommended by the ALJ in his Recommended Decision. RBMN contends that, in light of the evidence that the crossing is used by heavy truck traffic, the Commission should use the same proportions in assessing costs in this instance. RBMN Brief on Remand at 2-5."
- g. A review of the 1970 Order reveals that the cost allocation as set forth above is simply not there. In fact, the 1970 Order does not allocate any of the relevant cost by percentages, but by the nature of work to be performed.

- h. Reliance on the 1970 Order, as erroneously interpreted by the Commission, is unjust and unreasonable.
- i. While the Department believes that a decision consistent with the 1970 Order would be just and reasonable, the Commission must revise the 2004 Order to actually comply with the 1970 Order. (See Department's Main Brief on Remand, p. 4-5, for a complete discussion of the allocation as set forth in the 1970 Order).
- j. Indeed, Reading itself told the Commission that the terms of the 1970 Order should apply in this case. (2004 Order, p. 10-11; Reading's Brief on Remand, p. 2-5).
- k. *If the Commission has determined that it is just and reasonable to follow the 1970 Order, then it must follow that order, or explain why it has deviated from that order. PECO Energy Co. v. PUC, 791 A.2d 1155, 1166 (Pa., 2002) (citations omitted) ("Administrative agency must render consistent opinions and should either follow, distinguish or overrule its own precedent.")*

2. **NO SUBSTANTIAL EVIDENCE EXISTS TO SUPPORT AN ALLOCATION OF COSTS TO THE DEPARTMENT.**

- a. Under both the facts of this case, and the prior Commission order, there is no basis to allocate any, or even a majority, of the crossing reconstruction costs to the Department.
- b. The Commission cites to no action or inaction on the part of the Department that has led to the deterioration of the Coxtan Road crossing.
- c. The Commission based its decision in the 2004 Order solely on two facts: the existence of truck traffic and the 1970 Order.
- d. As for the 1970 Order, the Department has noted previously that the Commission misread or misapprehended that document. (Section 1, *supra*).

- e. As for the issue of truck traffic, the Department submits that the ALJ and the Commission had already properly considered this issue in its previous rulings on the case. (The Department respectfully directs the Commission to the Department's Main Brief on Remand, p. 3-9, for a full discussion of this issue.)
- f. All of the parties agree that the major problem with the crossing is the drainage under the tracks.
- g. The Bureau of Transportation and Safety's witness, Ronald Hull, PE, said that the roadway and track are in a low area and there is a lot of water that ponds at the crossing and surrounding area, noting that if the subgrade has failed, the whole crossing would need to be need to be rebuilt. He also stated that if that problem were not corrected, whatever is built on top of it would suffer problems in the future. (2004 Order, p. 11, n.6, citing NT 110, 114).
- h. The Commission decided that truck traffic is the problem with the crossing, despite there being no evidence in the record that trucks are actually causing damage to the crossing.
- i. Indeed, the Commission assumes that simply because trucks are passing over the crossing, that they must be causing damage to the crossing and thus the Department is to blame.
- j. However, the same argument can be made against Reading – their heavy trains are passing over the crossing, so they must be damaging the crossing and thus Reading is to blame.
- k. There is no evidence in the record that supports a finding that the truck traffic is the cause of the problems with the crossing.
- l. Indeed, this conclusion by the Commission is in stark contrast to its new ruling regarding the issue of Reading's failure to maintain the crossing. (2004 Order, .p 13). There, the Commission stated that it could not conclude that lack of maintenance contributed to the deterioration of the crossing because no testimony was elicited as to what maintenance could or should have been performed. However, when it comes to the issue of truck traffic, the Commission has reversed itself, because there is no

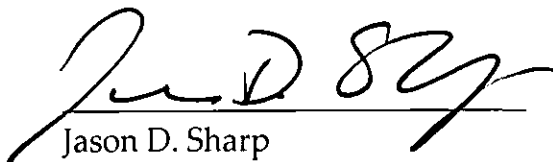
evidence in the record that the trucks are actually causing any damage to the crossing itself.¹ The Commission simply presumes, with no legitimate basis in the record, that the trucks must have caused damage to the crossing.

- m. Moreover, no party presented any evidence at all to prove that the drainage problem is the result of any action or inaction by the Department.
- n. Therefore, there is no substantial evidence in the record to support the present allocation of costs against the Department.

¹ For a discussion of Mr. Muller's hearsay testimony regarding the issue of "low boy" trucks, please see the Department's Main Brief on Remand, p. 8.

Wherefore, the Department respectfully requests that this Commission: a) vacate the 2004 Order and reinstate the cost allocation rendered in its 2002 Order, based upon the arguments made herein; or, B) issue an order consistent with the 1970 Order referenced herein.

Respectfully Submitted

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

Jason D. Sharp
Assistant Counsel
Office of Chief Counsel
Keystone Building – 9th Floor
P.O. Box 8212
Harrisburg, PA 17105-8212
Telephone No. (717) 787-3128

DATED: Monday, June 21, 2004

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DURYEA BOROUGH

: Docket No. C-00992585

v.

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

.....

RECEIVED
2004 JUN 21 PM 2: 14
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I, Jason D. Sharp, hereby certify that a true and correct copy of the *Petition for Reconsideration*, was served upon the parties listed below by first-class mail, postage-prepaid this 13th day of November, 2001.

BARRY CHROMEY, Esquire
126 South Main Street – Suite 201
Pittston, PA 18640
Counsel for Duryea Borough

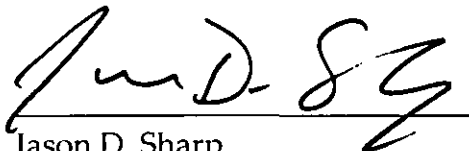
GREGORY F. LEPORE, Esquire
Holl & Associates, P.C.
PO Box 807
920 South Broad Street
Lansdale, PA 19446
Counsel for Reading, Blue Mountain and Northern Railroad Company

DAVID A. SALAPA, Esquire
Pennsylvania Public Utility Commission
Bureau of Transportation & Safety
Keystone Building – 3rd Floor
400 North Street
P.O. Box 3265

Harrisburg, PA 17105-3265
Counsel for Bureau of Transportation and Safety

CHARLES McCORMICK, Esquire
PNC Bank Building
76 Public Square
Wilkes-Barre, PA 18701
Counsel for Luzerne County

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



Jason D. Sharp
Assistant Counsel
Office of Chief Counsel
Keystone Building – 9th Floor
P.O. Box 8212
Harrisburg, PA 17105-8212
Telephone No. (717) 787-3128

DATED: Monday, June 21, 2004

ORIGINAL

RECEIVED

2001 JUN 25 01 9: 57

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

SECRETARY'S OFFICE

DUYREA BUREAU :
:
v. :
READING, BLUE MOUNTAIN & :
NORTHERN RAILROAD COMPANY :

Complaint Docket
No.: C-00992585

DOCUMENT
FOLDER

ANSWER OF READING BLUE MOUNTAIN AND NORTHERN RAILROAD COMPANY

TO PENNDOT'S PETITION FOR RECONSIDERATION

1A-1C. Admitted.

1D-1K. Denied. The Commission has appropriately interpreted the 1970 Order, taking into account the facts as they currently exists.

2A-2N. Denied. Clear evidence exists in the record to support a finding that the truck traffic is a major factor in the deterioration of the crossing. Penndot's petition for reconsideration conveniently ignores the written testimony of its own witness, Penndot engineer Joseph Strok, who testified (written testimony of page 6, lines 42-44) "one of the major problems with this entire section is the heavy number of trucks from a quarry that this road service." This admission alone would justify the Commissions determination. Further, this testimony is bolstered by the testimony of Ronald Hull (N.T. at 110) to the effect that there was a significant subgrade problem which not only effected the crossing, but also the approach roadways which are "rutted and potholed" and that there was a lot of heavy truck traffic in the area. This testimony, when read together, clearly implicates the heavy truck traffic, when coupled with the subgrade problem, which exist not only under the railroads bed, but also under the roadbed, is being a significant factor in the failure of the crossing. Accordingly, the Commissions determination ons remand was correct.

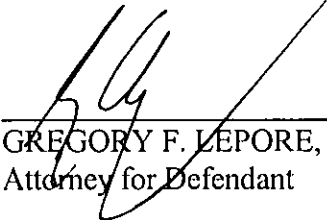
DOCKETED
JUL 06 2004

Wherefore, for the above reasons, Reading Blue Mountain and Northern Railroad Company respectfully request this Commission to deny Penndot's request for reconsideration.

Respectfully submitted,

HOLL AND ASSOCIATES, P.C.

By:



GREGORY F. LEPORE, ESQUIRE
Attorney for Defendant

RECEIVED

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

2004 JUN 25 AM 9:57

DUYREA BUREAU

:
:
:
:
:

v.

READING, BLUE MOUNTAIN &
NORTHERN RAILROAD COMPANY

Complaint Docket
No.: C-00992585

SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Answer of Reading Blue Mountain and Northern Railroad Company's to PennDot's Petition for Reconsideration was served upon the parties listed below by first-class mail, postage prepaid this 24th day of June, 2004.

Jason D. Sharp, Assistant Counsel
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105-8212

James P. Blaum, Esquire
Luzerne County Court House
200 N. River Street
Wilkes-Barre, PA 18711

Barry J. Chromey, Esquire
629 S. Main Street
Old Forge, PA 18518

Brian Corcoran, Esquire
400 Third Avenue
Kingston, PA 18704


David Salapa, Esquire
PA PUC
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Respectfully submitted,

HOLL & ASSOCIATES, P.C.

By:



GREGORY F. LEPORE, ESQUIRE
Attorney for Defendant
Reading Blue Mountain and Northern
Railroad Company

DATE: July 1, 2004

SUBJECT: C-00992585

TO: Office of Special Assistants

FROM: James J. McNulty, Secretary *KB*

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

Attached is a copy of a Petition for Reconsideration, filed by Commonwealth of Pennsylvania, Department of Transportation in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

cc: TSR
TSL

**DOCUMENT
FOLDER**

KSB

DOCKETED
JUL 13 2004

RJP

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Public Utility Commission

DATE: September 8, 2004
SUBJECT: C-00992585
TO: B. R. Pankiw, Chief Counsel
Law Bureau
FROM: David C. Hart, P.E., Manager
Rail Safety Division
Bureau of Transportation & Safety

DOCKETED
NOV 10 2004

DC Hart

In re:

**DOCUMENT
FOLDER**

Borough of Duryea

v.

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

By Commission Order entered June 3, 2004, Reading, Blue Mountain and Northern Railroad Company, within ninety (90) days of our order, was directed to make repairs to the several crossings involved in this proceeding.

We have been informed by Pennsylvania Department of Transportation (Department) personnel today that no work has commenced at the crossings.

A review of the record reveals that the railroad company has been allowed ample time to complete the repairs. State representatives, Borough of Duryea officials and Department personnel continue to inquire regarding the status of this proceeding, but receive no time table from the railroad. Therefore, I am referring this matter to the Law Bureau for enforcement and appropriate fines for non-compliance.

Your attention in this matter is appreciated.

cc: Michael Hoffman, Director
Bureau of Transportation and Safety

Robert Longwell, Deputy Chief Counsel
Law Bureau

Ronald J. Hull, P. E.
Rail Safety Division

READING & NORTHERN RAILROAD

2002 Regional Railroad of the Year

1 Railroad Blvd., P.O. Box 218, Port Clinton, PA 19549

Phone: 610-562-2100 Fax: 610-562-1920 www.READINGNORTHERN.com

March 3, 2005

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

C-00992585
DOCKETED
JUL 25 2005

Re: Borough of Duryea v. Reading Blue Mountain & Northern Railroad

Dear Ron,

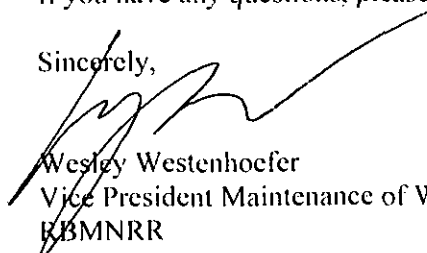
This letter serves as a status update on Coxton Road Crossing, Hill Street Crossing, Stephenson Street Crossing, Marcy Street Crossing, Phoenix Street Crossing, and Foote Avenue Crossing.

Coxton Road Crossing is scheduled for full replacement with either timber and asphalt or rubber and asphalt surface the last week of June into the first week of July at this time. The timing of this project is a result of eliminating the need to detour school buses 18 miles around the project.

The remaining crossings are all scheduled to have the surfaces replaced with either timber and asphalt or rubber and asphalt during the months of April, May and June. These crossings will be done in half width to avoid detours.

If you have any questions, please call me at (610) 562-0227.

Sincerely,


Wesley Westenhofer
Vice President Maintenance of Way
BBMNRR

CC: All Parties of Record

RECEIVED

MAR 8 2005

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

PA PUBLIC UTILITY COMMISSION

MAR 04 2005

BUREAU OF TRANSPORTATION & SAFETY
RAIL SAFETY DIVISION

**DOCUMENT
FOLDER**

"The Road of Anthracite"

SERVING OUR CUSTOMERS AND THE ENVIRONMENT

Jason D. Sharp, Assistant Counsel
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel
PO Box 8212
Harrisburg, PA 17105

James P. Blaum, Esquire
Luzerne County Court House
200 N. River Street
Wilkes-Barre, PA 18711

Barry J. Chromey, Esquire
400 Third Avenue
Kingston, PA 18704

David Salapa, Esquire
PA PUC
PO Box 3265
Harrisburg, PA 17105

Gregory E. Lepore, Esquire
Holl & Associates
PO Box 807
Lansdale, PA 19446



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

September 28, 2005

IN REPLY PLEASE
REFER TO OUR FILE

C-00992585

WESLEY WESTENHOEFER
READING BLUE MOUNTAIN AND
NORTHERN RAILROAD
PO BOX 218
PORT CLINTON PA 19549

DOCKETED
OCT 25 2005

In re:
Borough of Duryea
v.

Reading, Blue Mountain and Northern Railroad

**DOCUMENT
FOLDER**

Dear Mr. Westenhofer:

A final inspection was conducted by a Commission staff engineer on September 8, 2005. As a result of the inspection it was noted that two deficiencies still exist in this proceeding. First it was noted that the timber flangeway is already shown movement at the Phoenix Street crossing. The second deficiency regards the bituminous pavement placed at the Marcy Street crossing. A hump was created on the north approach causing vehicles to drag on the approach roadway.

Please rectify these two conditions within thirty (30) days. If you fail to complete the repairs by this date, this matter will be referred to an Administrative Law Judge for resolution.

Your attention to this matter is appreciated.

Very truly yours,

David C. Hart, P.E., Manager
Rail Safety Division
Bureau of Transportation and Safety
717-787-9732

DCH:RJH:lg



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

IN REPLY PLEASE
REFER TO OUR FILE

June 1, 2006

C-00992585

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

In re:
Borough of Duryea
v.
Reading, Blue Mountain and Northern Railroad

Dear Mr. Fawver:

A final inspection on September 8, 2005, revealed several deficiencies at Phoenix Street and Marcy Street in the Borough of Duryea. A further final inspection will be held on Thursday, June 29, 2006 at 1:30 p.m. to determine if the deficiencies have been rectified.

If no outstanding matters are brought to the Commission's attention, the record will be closed following the inspection.

Very truly yours,

Ronald J. Hull, P.E.
Rail Safety Division
Bureau of Transportation and Safety
717-787-1106

RJH:lg

DOCUMENT
FOLDER

DOCKETED
DEC 21 2006



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

IN REPLY PLEASE
REFER TO OUR FILE

June 14, 2006

C-00992585

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

DOCUMENT
FOLDER

In re:
Borough of Duryea
v.
Reading, Blue Mountain and Northern Railroad

Dear Mr. Fawver:

This is to advise the dual final inspection originally scheduled on Thursday, June 29, 2006 has been rescheduled for Thursday July 6, 2006 at 11:00 a.m. at the site of the Phoenix Street crossing.

Please Mark your schedule accordingly

Very truly yours,

Ronald J. Hull, P.E.
Rail Safety Division
Bureau of Transportation and Safety
717-787-1106

RJH:lg