

**BEFORE THE PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**

Blackwood, Inc.	:	
	:	
v.	:	
	:	
Reading, Blue Mountain and Northern Railroad Company	:	
	:	
In RE: Application of Blue Mountain	:	In Re: C-20078010
For approval of the abolition of the crossing where	:	A-2008-2016324
Township Route T-567 crosses at grade the tracks of	:	
Reading, Blue Mountain & Northern Railroad Company	:	
Located in Reilly Township, Schuylkill County	:	

**PREHEARING CONFERENCE MEMO OF APPLICANT  
READING, BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY**

Applicant Reading, Blue Mountain & Northern Railroad Company (“RBMN”), by and through its counsel, Frederick J. Fanelli, Esquire, submits the following Prehearing Conference Memo pursuant to the Pennsylvania Public Utility Commission’s (“PUC’s”) September 15, 2016 Order.

**I. Current Procedural Status of This and Related Cases**

This matter concerns an abandoned-in-fact Railroad Crossing DOT #592007F, accessed by a former public highway Public Township Road T-567, in Reilly Township, Schuylkill County, Pennsylvania. The crossing no longer exists, and has not existed for many years; however, it was never formally abolished by PUC. RBMN seeks a PUC order declaring the public crossing abolished.

This matter apparently went to hearing many years ago; it is this counsel’s understanding, without the privilege of having yet been able to review a copy of the transcript of that hearing or having represented RBMN at that time, that the Honorable Judge David A. Salapa suspended the

hearing due to the existence of another pending action, namely, RBMN's appeal of its Petition to Vacate Road, which had been filed with Reilly Township; when the Township declined to act, RBMN appealed to the Schuylkill County Court of Common Pleas; this case is described more fully below, and remains pending but inactive. The primary reason it is inactive is that a second action was filed in the trial court by Blackwood in 2008, in the nature of an action to quiet title, and that case is currently before the Pennsylvania Supreme Court on cross-petitions for permission to appeal. This action is also more fully described below.

If the PUC intends the upcoming hearing is to be a continuation of the prior hearing, counsel requests the opportunity to obtain and review the transcript and revise this memorandum accordingly.

By way of background, RBMN's east-west track was originally laid by the Mine Hill & Schuylkill Haven Railroad in approximately 1845-1847, to access the newly-opened Swatara anthracite coal fields, and has remained an active freight rail line since that time. After the coal was mined, the Village of Blackwood was abandoned and completely eliminated, no later than 1946, and the land returned to an unoccupied state, and the Township's public highway T-567 across the railroad crossing was not maintained, and was vacated, in part formally, and in remainder in reality. Of the three railroad lines that were laid on Blackwood's lands, only the east-west line is still active.

The former public highway at issue here, T-567, was built for the purpose of giving the public access to the Village of Blackwood, and its purpose ceased when the mining village ceased to exist. The first 400' of T-567 to the south of the rail line was formally vacated pursuant to court order in 1946, and the road to the north of the rail line was vacated in effect by 1) the fact that the Township has not maintained the road in over 50 years and it is no longer

passable to anything but the most rugged of ATVs and the occasional pedestrian hunter; 2) the fact that the Township did not include T-567 in a 1992 ordinance setting forth the Township's roadways; thus, it has been "deemed vacated" by the Township, and 3) the fact that this Commission has in the past informed the Federal Railroad Administration that this crossing is "private."

Complainant is Blackwood, Inc., a Pennsylvania corporation who in 1999 purchased several parcels of former mining land totaling 2300 acres in Reilly Township, including the land on which the former crossing was located. Blackwood purchased the lands knowing that an active railroad line bisected its parcels east to west. After it purchased the lands in 1999, Blackwood began to operate several commercial ventures on its lands, including a sludge operation.

At first, Blackwood and RBMN agreed that a private crossing could be used and entered into a private lease agreement regarding same. However, after negotiations regarding a side track failed, RBMN terminated the lease. Blackwood began to bring legal actions, including the present, against RBMN to force RBMN to install a crossing for Blackwood's personal use. When its litigation was not immediately successful, Blackwood crossed the tracks illegally, with heavy machinery, resulting in criminal complaints against Blackwood owner Nolan Perin and Neil Harris, which were dismissed, and also a civil complaint for a permanent injunction against Blackwood to cease and desist and to remove the illegal crossing, which remains pending and is more fully described below. Blackwood has access to the north and south portions of its lands via public roads.

The dispute over whether or not RBMN should be forced to install a crossing for Blackwood's private use and enjoyment has generated the following legal actions:

**A. PUC Matter C-20078010, Blackwood, Inc. v. RBMN, Complaint to Reinstat**

On July 20, 2007, Blackwood filed a complaint with PUC alleging that RBMN has denied Blackwood access to its property by refusing to permit Blackwood to use Crossing 592007F over public road &-597, “preventing the Plaintiff from accessing coal reserves or otherwise developing this property under the law.” Complaint at ¶ 6. Blackwood seeks a PUC order directing RBMN to allow access to Blackwood “and any other lawful users” over this crossing and public road, and to compensate Blackwood for any damages. Hearings were suspended pending the outcome of S-1179-08, below.

**B. PUC Matter A-2008-2016324, Petition of RBMN to Vacate Crossing:**

On December 31, 2007, Applicant RBMN filed a Petition to Abolish Crossing with the PUC, alleging that RBMN proposes to remove and abolish a crossing located at the intersection of vacated Township Route T-567 and RBMN’s railway. The only interested parties are the Township of Reilly, County of Schuylkill, Pennsylvania, and property owner Blackwood. The Petition alleges that the crossing is a “crossing to nowhere,” that the former public road T-567 has been partially formally vacated and the remaining parts have either been formally or actually vacated by Reilly Township, and has not been maintained by the Township in over 50 years. The road historically provided a connection from the Village of Blackwood to Route 725. The Village of Blackwood ceased to exist many years ago. A 400’ portion of the road south of the railway was ordered vacated by the Schuylkill County Court of Common Pleas in 1946. To the north, the remaining roadway was effectively vacated by Reilly Township in 1992, specifically Ordinance 92-2, which does not recognize T-567 as a roadway within the Township. The road is not passable as a public highway, and is now little more than a goat track passable only by the

sturdiest of 4-wheel drive vehicles. To the best of RBMN's knowledge, no one uses the crossing except for an occasional hunter (other than the illegal crossing attempted by Blackwood in 2013, see below).

Hearings in this matter were suspended pending the outcome of S-1179-08, below.

**C. RBMN Petition to Vacate Township Route T-567, Schuylkill County, Appeal Docketed at S-1179-2008**

On February 27, 2008, RBMN filed a Petition to Vacate Township Route T-567 (Blackwood Road) From South of Railroad North to End of Road with the Board of Supervisors of Reilly Township ("Township"), Schuylkill County, Pennsylvania. On March 28, 2008, the Township declined to act on RBMN's Petition because Blackwood Road, formerly designated as Township Road T-567, had already been "deemed vacated" by the Township since at least July 4, 1992. The Township informed Blackwood's counsel of the same on April 2, 2008.

On April 28, 2008, RBMN appealed to the Court of Common Pleas of Schuylkill County, Pennsylvania, asking the Court to declare as vacated "that portion of Township Road T-567 (Blackwood Road) beginning at a point approximately 300 feet south and east of the point at which the road intersects with the railroad tracks north to its terminus at T-571 (Black Diamond Road), or, alternatively, to declare that it has been vacated by action of the Township of Reilly, effective on July 4, 1992." No. S-1179-2008, Appeal of RBMN. Blackwood was permitted to intervene on August 19, 2008. After filing an answer to RBMN's appeal in 2008, no further activity occurred, primarily due to a new lawsuit filed by Blackwood in 2008, see below. In 2013, both parties filed statements that they still intend to proceed with the matter.

The appeal therefore remains ongoing.

**D. Blackwood's Quiet Title Action, S-3238-2008**

On November 7, 2008, Blackwood filed a quiet title action against RBMN in the Court of Common Pleas of Schuylkill County, Pennsylvania, based on a theory that because Blackwood could not locate a recorded deed for RBMN's east-west railroad line, RBMN therefore did not own the land under the railroad line. After many years of litigation, the court disagreed and entered summary judgment in favor of RBMN on this issue. Blackwood appealed to the Pennsylvania Superior Court, which affirmed the trial court.

However, on appeal, Blackwood also argued that it was entitled to several private railroad crossings pursuant to the mine Hill & Schuylkill Haven's original 1828 enabling act and subsequent acts, and that it should have been allowed to amend its Fifth Amended Complaint at the 11<sup>th</sup> hour and ask for same. The Superior Court, sitting *en banc*, remanded to the trial court on this issue to determine whether the applicable statute of limitations bars Blackwood from asking for a single private crossing under the Act of March 24, 1828.

Not happy that it was limited to the right to ask for only a single private crossing, Blackwood requested the opportunity to appeal to the Pennsylvania Supreme Court, and RBMN filed a cross-petition against the right to ask for any crossing, and both petitions remain pending. During these appeals, Blackwood abandoned its claim that the trial court erred in concluding that RBMN owned at the very least a right of way over the land by way of eminent domain.

This case remains pending.

**E. RBMN's Action for Permanent Injunction and Damages, S-764-2013**

On April 24, 2013, RBMN filed a complaint for a permanent injunction and damages to enjoin Blackwood from crossing over its tracks with bulldozers and heavy equipment in the Schuylkill County Court of Common Pleas, docketed at S-764-2013. The complaint stemmed

from an incident on March 20, 2013, during which Blackwood and/or one of its subcontractors drove a bulldozer over the tracks, causing damage as well as risking a catastrophe. Blackwood filed preliminary objections, which were denied and dismissed on August 14, 2013. This matter remains pending.

## **II. Prehearing Information**

a. Requested Service List:

Frederick J. Fanelli, Esquire  
The Necho Allen  
No. 1 Mahantongo Street  
Pottsville, PA 17901  
(570) 622-2455 (office)  
(570)-622-5336 (fax)  
[ffanelli@feplawyers.com](mailto:ffanelli@feplawyers.com)

Counsel for Reading, Blue Mountain and Northern Railroad Company

b. Statement Regarding Possible Settlement:

Prior to these PUC actions, the parties engaged in private negotiations concerning the installation of a private crossing, and entered into a lease for a private crossing, which was shortly thereafter terminated by RBMN. Around the same time, Blackwood instituted litigation against RBMN, which is still active today, in which Blackwood seeks multiple private crossings. There have been no settlement negotiations since Blackwood instituted litigation against RBMN. RBMN does not agree that a public crossing continues to exist or should be reinstated, since no public highway exists at this location.

c. Proposed Plan and Schedule of Discovery:

As this matter was continued mid hearing, a discovery schedule is dependent upon review of the underlying transcript. At a minimum, we believe it would be necessary we depose a representative of Reilly Township.

d. Other Proposed Orders relating to Discovery: [None].

e. Proposed Schedule for Submission of Written Testimony, Hearing and Briefs:

It would be necessary to file post hearing briefs at the completion of all testimony. However, as the case between the parties in the state court which prompted this tribunal to stay its proceedings is still pending, it would make much sense to stay this matter pending resolution of these issues in the state courts. Specifically, the Superior Court remanded the matter to the trial court for additional consideration. A Petition and Cross Petition for Allowance of Appeal has been filed by Blackwood and RBMN, respectfully.

f. Witnesses and Subject Matter of Testimony:

1. [Witnesses from RBMN regarding ownership of rail line; non-existence of railroad crossing since RBMN obtained the line on 12/14/90; why RBMN does not want crossing there]

2. Reilley Township Supervisor (either James Quinn or Robert Butensky), c/o Reilly Township, P.O. Box 1, Spruce Street, Branchdale, Pennsylvania 17923, 570-399-5533 – history of T-567 and railroad crossing, Village of Blackwood, current status of same, Township Ordinance 92-2.

3. [Any other RBMN relevant witnesses][high rail incident 1994 where mud crossed tracks and had to be shoveled off by high rail operator; thereafter Dale Homm instructed

to clear mud from tracks, ditch both sides and create berm; 2013 illegal crossing incident? d/k if relevant]

g. Issues/Sub-Issues and RBMN's Position as to Each:

1. Whether a public crossing still exists or is needed? [no]
2. Whether there is a public highway remaining at the site of the former crossing? [no]
3. Whether the PUC can allocate the costs of constructing or repairing the crossing, when a public road no longer exists? [no]
4. Whether the PUC has already recognized Railroad Crossing DOT #592007F as a private crossing? [yes]

h. Evidence to Be Presented:

1. Maps [of Blackwood land and Reilly Township; historical maps showing town of Blackwood and road; map showing what part abandoned and what part not yet abandoned]
2. Photos [of former crossing location; of former roads in area; of existing area]
3. Documents
  - a. 1946 Petition to Vacate Road by Reilly Township and Court Order, to establish formal abandonment of road south of crossing;
  - b. Ordinance 92-2, Reilly Township, to establish *de facto* abandonment of remainder of T-567;
  - c. Correspondence of Reilly Township to establish *de facto* abandonment of remainder of T-567

d. Deeds [Blackwood, Conrail to RBMN] to establish ownership of land and railroad right-of-way

RBMN hereby reserves the right to update the information contained in this pretrial hearing memorandum prior to hearing.

Respectfully submitted by:

Frederick J. Fanelli /s/  
FREDERICK J. FANELLI, ESQUIRE  
Attorney I.D. #36672  
Fanelli, Evans & Patel, P.C.  
The Necho Allen  
No. 1 Mahantongo Street  
Pottsville, PA 17901  
(570) 622-2455