



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

IN REPLY PLEASE  
REFER TO OUR FILE

March 22, 2019

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Reading Blue Mountain and Northern Railroad v. Pennsylvania Department  
of Transportation  
Docket No. C-2018-3006389  
**(I&E Prehearing Conference Memorandum)**

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Prehearing Conference Memorandum of the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement in the above-referenced case. Copies have been served on the parties of record in accordance with the Certificate of Service.

Sincerely,

A handwritten signature in black ink, appearing to read "Bradley R. Gorter", with a long, sweeping line extending from the end of the signature.

Bradley R. Gorter  
Prosecutor  
PA Attorney ID No. 312666

Enclosure

cc: As per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Reading Blue Mountain and Northern Railroad,	:	
	:	
Complainant	:	
	:	Docket No. C-2018-3006389
v.	:	
	:	
Pennsylvania Department of Transportation,	:	Electronically Filed
	:	
Respondent	:	

**PREHEARING CONFERENCE MEMORANDUM OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

The Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) files this Prehearing Conference Memorandum in accordance with Administrative Law Judge (“ALJ”) Dennis J. Buckley’s Prehearing Conference Order dated March 13, 2019. This matter is scheduled for a prehearing conference before ALJ Buckley on March 26, 2019, at 10:00 AM.

**Service:**

All service on, and communications to, I&E in this proceeding should be addressed to Deputy Chief Prosecutor Michael L. Swindler as follows:<sup>1</sup>

Michael L. Swindler  
Deputy Chief Prosecutor  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
Phone: (717) 783-6393  
mswindler@pa.gov

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<sup>1</sup> The undersigned prosecutor, Bradley R. Gorter, is leaving I&E effective April 5, 2019. This matter has yet to be permanently reassigned to another prosecutor.

**Settlement:**

I&E is open and willing to discuss settlement of this matter. Currently, I&E is unaware of the status of settlement negotiations between any parties.

**History of the Proceeding:**

On November 29, 2018, Erik Yoder, on behalf of Reading Blue Mountain and Northern Railroad (“Railroad”), filed a Formal Complaint against the Pennsylvania Department of Transportation (“PennDOT”). In its Complaint, the Railroad alleges that PennDOT has failed to maintain the approach roadways at the crossing where State Route 3015 (Moosic Road) crosses the Railroad’s track in Old Forge Borough, Lackawanna County.

Specifically, the Railroad alleges that excessive water runoff from the approach roadways has caused degradation of the crossing surface to the point that train speeds through the crossing must be reduced. The Railroad further alleges that water collecting on the crossing can cause false activation of safety warning signals. The Railroad demands that PennDOT be ordered to: 1) repair the approach roadways; 2) install appropriate water diversion facilities to prevent future water flow damage; 3) adequately maintain the approach roadways going forward; and, 4) repair the crossing, which it alleges was prematurely damaged due to PennDOT’s failure to maintain the approach roadways. On February 13, 2019, PennDOT filed an Answer to the Railroad’s Complaint

generally denying the allegations in the Complaint. On March 7, 2019, Lackawanna County filed an Answer & New Matter to the Railroad's Complaint.

In response to the Railroad's Formal Complaint, the Commission conducted a field conference at the crossing with representatives from the Railroad and PennDOT in attendance. During the field conference, the parties acknowledged that the crossing is currently subject to the assignment of maintenance responsibility as laid out in the Commission's Secretarial Letter issued September 13, 2001, at Docket No. A-00117857. The parties further acknowledge that the crossing is in disrepair and poses a safety hazard to the traveling public and to the Railroad. Despite the acknowledged maintenance responsibility and the condition of the crossing, the parties were unable to resolve this matter at the field conference.

Because the parties were unable to reach a resolution at the field conference, this matter was assigned to ALJ Buckley for hearings and disposition. In the interim, the Commission issued a Secretarial Letter, under the above docket, reaffirming the maintenance responsibilities laid out in the Commission's Secretarial Letter dated September 13, 2001, at Docket No. A-00117857. By way of a letter, the Railroad filed a Petition for Reconsideration From Staff Action on March 6, 2019, to which PennDOT filed an Answer on March 13, 2019.

**Issues to be Addressed:**

- (A) What work, if any, should the Commission order to be done at the crossing;

- (B) Which party or parties should the Commission order to perform any work ordered;
- (C) Which party or parties should be bear the costs of any work ordered;
- (D) Which party or parties should be assigned ongoing maintenance, inspection, and repair responsibility for the crossing; and,
- (E) Which party or parties should bear the responsibility for the costs of ongoing maintenance, inspection, and repair for the crossing.

**Names and addresses of witnesses to be presented:**

- (A) Ronald J. Hull, P.E.  
Rail Safety Section  
Bureau of Technical Utility Services  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

I&E reserves the right to present additional witnesses as it deems necessary based on the issues identified by the parties.

**Proposed area of testimony for each witness:**

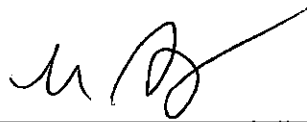
I&E's witness will testify as to the current state of the crossing and the approach roadways. I&E's witness will testify as to which parties bear current maintenance, inspection, and repair responsibilities. I&E's witness will also testify to any safety upgrades that may be necessary to ensure the safety of the traveling public and/or the railroad. I&E's witness may testify to additional matters based on the issues identified by the parties.

**Proposed litigation schedule:**

I&E will work with all parties to develop a mutually agreeable litigation schedule.

**Other matters that may aid in expediting the orderly conduct and disposition of the proceeding, including the following:**

- (A) The exchange and acceptance of service of exhibits proposed to be offered in evidence.
- (B) The obtaining of admissions as to, or stipulations of, facts not remaining in dispute, or the authenticity of documents which might properly shorten the hearing.
- (C) The discovery or production of data or other material.



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Bradley R. Gorter, Esq.  
Prosecutor  
PA Attorney ID No. 312666

Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 783-6150

Dated: March 22, 2019

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Reading Blue Mountain and Northern  
Railroad

v.

Pennsylvania Department of Transportation

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Docket No: C-2018-3006389

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service by First Class Mail:

John R. Kantner, Esquire  
Fanelli, Evans, & Patel, P.C.  
The Necho Allen  
No. 1 Mahantongo Street  
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Gina M. D'Alfonso, Esquire  
PennDOT  
Office of Chief Counsel  
P. O. Box 8212  
Harrisburg, PA 17105-8212

John J. Brazil  
Lackwanna County Solicitor  
200 Adams Avenue  
Scranton, PA 18503

Marylynn Bartoletti  
Borough of Old Forge  
310 South Main Street  
Old Forge, PA 18518

The Honorable Dennis J. Buckley  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105



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Bradley R. Gorter  
Prosecutor  
PA Attorney ID No. 312666

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Bureau of Investigation and Enforcement  
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Dated: March 22, 2019