

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Reading Blue Mountain and Northern Railroad	:	
	:	
v.	:	C-2018-3006389
	:	
Pennsylvania Department of Transportation	:	

**INITIAL DECISION GRANTING PETITION
FOR LEAVE TO WITHDRAW COMPLAINT**

Before
Dennis J. Buckley
Administrative Law Judge

On October 22, 2019, Reading Blue Mountain and Northern Railroad filed a Petition to Withdraw its formal Complaint. For the reasons discussed below, the Petition and requested withdrawal is in the public interest and is granted.

HISTORY OF THE PROCEEDING

On November 26, 2018, a Formal Complaint was filed by Erik Yoder for Reading Blue Mountain and Northern Railroad (RBMN or Complainant) against the Commonwealth of Pennsylvania, Department of Transportation (PennDOT).¹ It is alleged that the crossing where State Route 3015 (Moosic Road, DOT 226 115 F) crosses, at grade, a single track of Complainant's railroad in Old Forge Borough, Lackawanna County was in poor condition. More specifically, the Complaint alleged that the crossing is being adversely affected by water collecting at the crossing along State Route 3015.

¹ While not specified in the Complaint, Mr. Yoder is an Assistant Vice President for the Railroad. As explained, below, RBMN was ultimately represented by counsel, John R. Kantner, Esquire.

On February 21, 2019, a letter was issued by the Secretary of the Public Utility Commission (Commission) as a result of a field investigation and conference held on December 19, 2018. The Secretary's letter set forth the following directives:

1. Pennsylvania Department of Transportation, at its sole cost and expense, shall furnish all material and do all work necessary in order to repair the approach roadways adjacent to the crossing up to the high-type concrete surface to establish a smooth and satisfactory condition.
2. Reading Blue Mountain and Northern Railroad, at its sole cost and expense, shall furnish all material and do all work necessary to repair the high-type concrete surface in order to establish a smooth and satisfactory condition.
3. Pennsylvania Department of Transportation, at its sole cost and expense, shall establish and maintain any detours or traffic controls that may be required in order to make the repairs stated in Paragraphs 1 and 2, herein.
4. Reading Blue Mountain and Northern Railroad, at its sole cost and expense, shall furnish any watch men, flagmen, inspectors, and/or engineering services that are deemed necessary in order to protect the Railroad's operations or facilities during repairs as stated in Paragraphs 1 and 2, herein.
5. All maintenance responsibilities as directed by the September 13, 2001 Secretarial Letter at Docket Number A-00117857 shall remain in full force and effect.
6. This matter shall be referred to the Commission's Office of Administrative Law Judge so that a hearing can be scheduled in order to receive testimony necessary to determine a final resolution to the Formal Complaint.

February 21, 2019 Secretarial Letter, p. 2.

The Secretary's letter also stated that any party dissatisfied with the resolution of this matter may, as set forth in 52 Pa. Code §§ 1.31 and 5.44, file a Petition for Reconsideration from Staff Action with the Commission within twenty days of the date of the letter.

On March 15, 2019, a Prehearing Conference Order was issued. Each party subsequently filed a prehearing Memoranda in conformity with that Order.

On March 21, 2019, John R. Kantner, Esquire, filed an appearance on behalf of RBMN. Also appearing in this proceeding were the Commission's Bureau of Investigation and Enforcement (BIE), Lackawanna County, and PennDOT.

On March 26, 2019, a telephonic prehearing conference was held originating from the Commission's office in Harrisburg, Pennsylvania, with counsel for each party participating. John R. Kantner, Esquire, appeared for RBMN. Jennifer Brown-Sweeney, Esquire, appeared for PennDOT. Bradley Gorter, Esquire, appeared for BIE. Donald J. Frederickson, Esquire, appeared on behalf of Lackawanna County. Discovery and pre-hearing filing dates were established, and it was determined that a hearing date would subsequently be scheduled in early September, 2019.

On June 27, 2019, prior to the filing of direct testimony, I was advised by the parties that a Settlement had been reached in this matter. I verbally agreed that discovery could be suspended. I subsequently issued an Order on August 2, 2019, formalizing that suspension. However, a Settlement was never filed. Instead, by letter dated September 11, 2019, a person named Jolene Busher of AVP Real Estate filed a letter (on RBMN's stationary) with the Secretary of the Commission on October 3, 2019, asking that the Complaint be withdrawn. It did not appear that John R. Kantner, Esquire, counsel for the railroad, nor Kayla L. Rost, Esquire, counsel for BIE, were copied with that letter, and I was not copied nor did I receive a copy of the letter from the Secretary's office. Copies were, therefore, provided to counsel. Attorney Kantner informed me that Ms. Busher is a representative of RBMN, and that as counsel for RBMN, he was aware of the requested withdrawal. Attorney Rost advised me that BIE did not oppose the requested withdrawal. Neither Lackawanna County nor PennDOT objected to the requested withdrawal.

On October 22, 2019, Attorney Kanter filed and served upon all the parties a "Praecipe to Withdraw Complaint" stating, "With concurrence of all Parties, Reading Blue Mountain and Northern Railroad hereby withdraws the Complaint previously filed in this matter." For purposes of this decision, RBMN's Praecipe to Withdraw Complaint will be treated as a Petition for Leave to Withdraw the Complaint. The record closed on October 22, 2019.

The Petition for Leave to Withdraw is ready for decision. For the reasons set forth below, the Petition for Leave to Withdraw the Complaint is in the public interest and will be granted.

FINDINGS OF FACT

1. On November 26, 2018, a Formal Complaint was filed by Erik Yoder for Reading Blue Mountain and Northern Railroad against the Commonwealth of Pennsylvania, Department of Transportation.

2. The Complaint alleged that the crossing where State Route 3015 (Moosic Road, DOT 226 115 F) crosses, at grade, a single track of Complainant's railroad in Old Forge Borough, Lackawanna County is in poor condition in that the crossing was being adversely affected by water collecting at the crossing and flowing along State Route 3015.

3. On February 21, 2019, a directive letter was issued by the Secretary of the Public Utility Commission as a result of a field investigation and conference held on December 19, 2018.

4. On March 26, 2019, a telephonic prehearing conference was held at which time it was determined that a hearing date would be scheduled in early September, 2019.

5. On June 27, 2019, the undersigned was advised by the parties that a Settlement had been reached in this matter, and the undersigned verbally agreed that discovery could be suspended; however, a formal Settlement was never filed.

6. By letter dated September 11, 2019, and filed on October 3, 2019, a person named Jolene Busher of AVP Real Estate filed a letter (on the railroad's stationary) asking that the Complaint be withdrawn.

7. John R. Kantner, Esquire, counsel for the railroad, and counsel for BIE were not copied with that letter. Copies were, therefore, provided to those counsel who subsequently advised the undersigned that there was no objection to the requested withdrawal.

8. On October 22, 2019, Attorney Kanter filed and served upon all the parties a “Praecipe to Withdraw Complaint” stating, “With concurrence of all Parties, Reading Blue Mountain and Northern Railroad hereby withdraws the Complaint previously filed in this matter.”

DISCUSSION

The withdrawal of pleadings in a contested proceeding is governed by the Commission’s regulation at 52 Pa. Code § 5.94(a), which states:

(a) Except as provided in subsection (b), a party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Commission and serve it upon the other parties. The petition must set forth the reasons for the withdrawal. A party may object to the petition within 10 days of service. After considering the petition, an objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted.

52 Pa. Code § 5.94(a).

The Complaint alleged that the crossing where State Route 3015 (Moosic Road, DOT 226 115 F) crosses, at grade, a single track of Complainant’s railroad in Old Forge Borough, Lackawanna County is in poor condition. More specifically, the Complaint alleged that the crossing is being adversely affected by water collecting at the crossing flowing along State Route 3015.

The Complainant’s Praecipe to Withdraw Complaint will be treated as a Petition for Leave to Withdraw the Complaint in the interests of securing the just, speedy and

inexpensive determination of this proceeding.² The Petition to Withdraw is granted only by permission of the presiding officer or Commission. The presiding officer or Commission must consider the petition, any objections thereto and the public interest in determining whether to permit withdrawal of the pleading.

Considering any objections to the withdrawal of the Complaint, I note that no party to this proceeding objects to the Petition to Withdraw the Complaint.

Considering the public interest, the public was represented in this case by BIE, who attended a field investigation and conference on December 19, 2018 at the crossing. Representatives of the Railroad and PennDOT were in attendance. *See*, February 21, 2019 Secretarial Letter. While the September 11, 2019 letter from RBMN does not set forth a reason for the withdrawal, it may be inferred from the Petition to Withdraw filed by RBMN, the June 27, 2019 email from PennDOT's counsel stating that the matter had been settled, and BIE's not objecting to the Petition to Withdraw, that the problem that motivated the Complaint has been addressed, and the public interest is best served by allowing withdrawal of the Complaint. I accept the representation of the parties that there is no longer a matter in controversy that requires the expenditure of resources to try and to adjudicate. The Petition will, therefore, be granted.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa. C.S. § 701.

2. The Commission's Rules of Practice and Procedure at 52 Pa. Code § 5.94 permit parties to withdraw pleadings in a contested proceeding by permission of the presiding officer or Commission.

² See, 52 Pa. Code § 1.2 which states: "This subpart shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable. The Commission or presiding officer may disregard an error or defect of procedure which does not affect the substantive rights of the parties." The substantive rights of the parties are not affected by this Decision.

