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|  PUC logo | COMMONWEALTH OF PENNSYLVANIAPENNSYLVANIA PUBLIC UTILITY COMMISSION400 NORTH STREET, HARRISBURG, PA 17120[http://www.puc.pa.gov](http://www.puc.pa.gov/) *E-filing and E-service only per Emergency Order M-2020-3019262* | **IN REPLY PLEASE REFER TO OUR FILE** |

June 28, 2021

C-2020-3016906

TO ALL PARTIES

Complaint filed by Reading Blue Mountain & Northern Railroad Company involving the deteriorated condition of the railroad crossing surface and roadway approaches at the public crossing (DOT 361 425 J) where SR 2019 (Oak Street) crosses, at grade, the tracks of Reading Blue Mountain & Northern Railroad Company, located in the Pittston Township, Luzerne County.

To Whom It May Concern:

At a location in Pittston Township, Luzerne County, SR 2019 (Oak Street) crosses, at grade, the two (2) tracks of Reading Blue Mountain & Northern Railroad Company.

 By complaint filed with the Commission on January 13, 2020, Reading Blue Mountain & Northern Railroad Company (RBMN) avers that the deteriorated condition of the high-type concrete panel railroad crossing surface maintained by RBMN was as a direct result of the deteriorated condition of the SR 2019 (Oak Street) roadway approaches maintained by the Pennsylvania Department of Transportation.

On February 14, 2020, in response to the RBMN complaint, the Pennsylvania Department of Transportation (Department), filed within answer and new matter. The Department within the new matter avers that RBMN failed to maintain or replace its railroad crossing surface which has led to the premature breakdown of the Departments SR 2019 (Oak Street) roadway approaches.

Upon receipt of the complaint, a formal field investigation and conference was arranged by a Commission staff engineer and held at the site of the crossing on September 30, 2020, and most recently March 31, 2021.

At the March 31, 2021 field conference, RBMN and the Department agreed to terms to resolve the complaint and requested that the Commission staff engineer draft and memorialize the terms of the agreement by Secretarial Letter.

On April 30, 2021, the Commission issued a Secretarial Letter approving and memorializing the terms of the agreement, allocation of costs and assignment of the future maintenance responsibilities.

By Petition for Reconsideration of Staff Action filed by the Department and received by the Commission on May 17, 2021. The Department through their counsel, petitioned in part against their own terms agreed to at the field conference and memorialized by the April 30, 2021, Secretarial Letter.

The Department through their Petition requests that Paragraph 6 of the April 30, 2021, Secretarial Letter be amended to reflect the placement of five (5) inches minimum of twenty-five (25) mm of hot mix bituminous asphalt base course material or match existing.

However, RBMN and the Department did not amicably agree to more than seven (7) inches of hot mix bituminous asphalt base course material. Therefore, paragraph 6 will be modified to reflect a 5-inch minimum or match existing to the mutually agreed upon 7-inch maximum limit of twenty-five (25) mm hot mix bituminous asphalt base course material.

The Department through their Petition further requests that Paragraph 4 of the April 30, 2021, Secretarial Letter state more plainly that RBMN provide railroad flagging at their sole cost and expense while the Department is paving.

Paragraph 4 of the Commission’s Secretarial Letter dated April 30, 2021, in fact, does state plainly that RBMN at their sole cost and expense will furnish and maintain flagmen and watchmen, as required, to protect its operations during the time the work is being performed across, above and adjacent to its tracks.

This is the standard paragraph for railroad flagging that the Commission uses for all work conducted across, above and adjacent to railroad tracks and is used for all Commission Secretarial Letters and Orders pertaining to railroad flagging. Paragraph 4 is not just meant for work that the Department may be doing across, above, and adjacent to railroad tracks. It is intended for and with respect to all work being performed across, above and adjacent to the railroad tracks as authorized in the Commission’s Secretarial Letter dated April 30, 2021.

The Department avers that all parties in this proceeding were served with a copy of the petition. None of the parties have responded with any objection to the petition.

We have carefully reviewed the record in this proceeding and will grant the Department in part a modification to paragraph 6 of our Secretarial Letter issued April 30, 2021.

 Accordingly, the petition of the Pennsylvania Department of Transportation received May 17, 2021, requesting a modification to paragraph 6 of our Secretarial Letter dated April 30, 2021, be and is hereby granted in part to the extent herein directed:

1. Paragraph 6 of our Secretarial Letter dated April 30, 2021, which reads as follows, to wit:

“6. Reading Blue Mountain & Northern Railroad Company, at its sole cost and expense, agrees to sawcut/mill and remove the approach roadway bituminous asphalt wearing and base courses measured from two (2) feet from each outside rail on each set of tracks to extend at a minimum five (5) feet back on each roadway approach for a total minimum distance from outside rail of seven (7) feet, removing bituminous asphalt material and preparing subgrade area and to furnish, place and compact a seven (7) inch layer of hot mix bituminous asphalt base course material to within two (2) inches of adjacent sawcut/milled top of roadway on each roadway approach for the full width of the approach and paved shoulder area.”

be and is hereby modified to read:

6. Reading Blue Mountain & Northern Railroad Company, at its sole cost and expense, agrees to sawcut/mill and remove the approach roadway bituminous asphalt wearing and base courses measured from two (2) feet from each outside rail on each set of tracks to extend at a minimum five (5) feet back on each roadway approach for a total minimum distance from outside rail of seven (7) feet, removing bituminous asphalt material and preparing subgrade area and to furnish, place and compact at a minimum five (5) inch hot mix, twenty-five (25) mm bituminous asphalt base course material or match existing to the mutually agreed upon 7-inch maximum limit of hot mix, twenty-five (25) mm bituminous asphalt base course material to within two (2) inches of adjacent sawcut/milled top of roadway on each roadway approach for the full width of the approach and paved shoulder area.

2. In all other respects, our Secretarial Letter dated April 30, 2021, remains in full force and effect.

All parties are being served via email due to the COVID-19 Emergency Closure. Please note that during this period of Disaster Emergency, the Commission shall only accept

e-filings in lieu of paper filings, for all documents. Thus, all parties are to open and use e-filing accounts to file documents and accept service during the pandemic emergency in accordance with the Commission’s Emergency Order at M-2020-3019262.

The Parties are reminded that failure to comply with this or any Order or Secretarial Letter in this proceeding may result in an enforcement action seeking civil penalties and/or other sanctions pursuant to 66 Pa. C.S. § 3301.

If you are dissatisfied with the resolution of this matter, you may, as set forth in 52 Pa. Code §§ 1.31 and 5.44, file a Petition for Reconsideration from Staff Action (Petition) with the Commission within twenty (20) days of the date of this letter. The Petition shall be submitted by e-filing said petition within twenty (20) days, or if no timely request is made, the action will be deemed to be a final action of the Commission.

The Petition MUST include: (1) a written statement (divided into numbered paragraphs) outlining the reasons for the request; (2) the case docket number (it is provided for you at the top right hand corner of this letter); (3) the party on whose behalf the petition is made; (4) a Certificate of Service on the other parties of record; and (5) a Verification with original signature in accordance with 52 Pa. Code § 1.36.

Very truly yours,

Rosemary Chiavetta

Secretary