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November 5, 2021

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OF COUNSEL

ROBERT P. GRIM
RETIRED

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: Application of Reading Blue Mountain and Northern Railroad for approval of the alteration of the crossing where State Route 0061 crosses, at grade, the single track of Reading Blue Mountain and Northern Railroad (DOT 592 477 N) located in Muhlenberg Township, Berks County
PUC Docket No.: A-2021-3026537
Our File No. 2097-250

Dear Secretary Chiavetta:

This Firm serves as Solicitor to the Muhlenberg Township Authority. Attached for electronic filing please find Muhlenberg Township Authority's Petition to Intervene, Protest, and Seek Reconsideration of Staff Action in connection with the above-referenced proceeding. Copies have been served per the attached Certificate of Service.

Thank you for your attention to this matter.

Very truly yours,

BINGAMAN HESS


Thomas A. Rothermel

TAR/dll
Enclosure

cc: Matthew Johnson, Reading Blue Mountain and Northern Railroad (w/encl., e-mail)
Daniel Leonard, PennDOT (w/encl., e-mail)
Gina D'Alfonso, PennDOT (w/encl., e-mail)
Commissioners Office – Berks County Services Center (w/encl.)
Jason Sharp, PennDOT (w/encl., e-mail)
Rodney Rehnert, PennDOT (w/encl., e-mail)
Muhlenberg Township (w/encl.)
Muhlenberg Township Authority (w/encl.)
RAWA (w/encl., e-mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Reading Blue Mountain and Northern Railroad
for approval of the alteration of the crossing where State Route
0061 crosses, at grade, the single track of Reading Blue Mountain
and Northern Railroad (DOT 592 477 N) located in Muhlenberg
Township, Berks County

A-2021-3026537

**MUHLENBERG TOWNSHIP AUTHORITY'S PETITION TO INTERVENE, PROTEST,
AND SEEK RECONSIDERATION OF STAFF ACTION**

Muhlenberg Township Authority ("Authority") hereby Petitions to Intervene, Protest, and seek Reconsideration of Staff Action in the above-captioned proceeding. In support thereof, the Authority avers the following:

1. The name and contact information of the Petitioner is as follows:

Muhlenberg Township Authority
2840 Kutztown Road
Reading, PA 19605

2. The Authority's attorneys in this matter where all documents should be served:

Bingaman, Hess, Coblenz & Bell, P.C.
Thomas A. Rothermel, Esquire
2 Meridian Boulevard
Suite 100
Wyomissing, PA 19610
#610-374-8377
tarothermel@bingamanhess.com

3. The Authority is a Pennsylvania municipal authority, legally created and validly existing in good standing.

4. The Authority is a legally separate and distinct entity from Muhlenberg Township.

5. The Authority provides municipal water service and municipal sewer service in Muhlenberg Township and surrounding areas, and does so through a significant infrastructure of underground piping.

6. On June 11, 2021, Reading Blue Mountain and Northern Railroad (“RBMNR” or “Applicant”) filed an Application with the Public Utility Commission (“PUC”) seeking, *inter alia*, to reactivate a rail line crossing located at 592 477 N on SR 61 in Muhlenberg Township, Pennsylvania (the “Application”). The Application is incorporated by reference herein as if the same were set forth at length.

7. The Application, at Para. 5, indicates that “PennDOT and Muhlenberg Township as well as any other utilities in the vicinity of the crossing may be affected by this alteration”.

8. Per the Application, at Para. 4, the proposed alteration would entail uncovering the pre-existing rails in the crossing, which presumably would require, among other construction work, earth disturbance and laying new substrate on which new rails would be placed.

9. In preparing for and filing the Application, it is Applicant’s obligation and duty to thoroughly investigate, by PA One Call or other means, all utilities who may be affected by the alteration.

10. The Application fails to identify the Authority as a utility provider affected by the alteration.

11. Upon information and belief, no PA One Call was completed; otherwise, the Authority would have properly been identified as a public utility provider who may be affected by the alteration and therefore subject to notice as a party in interest.

12. The Authority owns and maintains two (2) high-volume service lines that run underneath the SR 61 roadway, over which reactivation of the RBMNR crossing is proposed, specifically as follows:

a. A 12” diameter cast iron water line, of approximate 4’ depth, which provides potable water to a significant population of Muhlenberg Township residents; and

b. An 8” diameter terracotta pipe, situate in a 42” encasement conduit, of approximate 11’ depth, that provides transportation of sewage to the Laurel Run Pump Station, which is the largest sewage processing facility located in Muhlenberg Township.

13. In addition to the Authority’s two (2) pipes, upon information and belief, Reading Area Water Authority (“RAWA”) owns and maintains two (2) water mains, one (1) 24” in diameter and one (1) 36” in diameter, both of which run underneath SR 61, parallel to the Authority’s lines, which serve the entire City of Reading with potable water.

14. In addition to the Authority’s two (2) pipes, and RAWA’s two (2) pipes, upon information and belief, UGI owns and maintains a 12” gas main that runs underneath SR 61, parallel to the lines of both the Authority and RAWA. A true and correct copy of a drawing of the subject crossing, with the respective lines of the Authority, RAWA, and UGI, is attached hereto and made a part hereof as “Exhibit A”.

15. The Authority’s two (2) lines have been in place, undisturbed, for approximately sixty (60) years.

16. The Application, served July 8, 2021, did not include the Authority (or RAWA or UGI) on the Certificate of Service.

17. The Authority was not served with the Application, either when originally filed on June 11, 2021, or when formally processed for service thereafter per Certificate of Service dated July 8, 2021.

18. The Authority first received notice of this proposed Application and crossing alteration on November 1, 2021, upon receipt of the PUC Secretarial Letter dated October 20, 2021 (the “Secretarial Letter”), which was forwarded to the undersigned through indirect communication from RAWA.

19. The Secretarial Letter indicates, at p.1, that a field investigation and conference was arranged by a PUC staff engineer and held at the site of the crossing on September 27, 2021. The Secretarial Letter is incorporated by reference herein as is the same were set forth at length.

20. The Authority was not notified of the scheduling of the September 27, 2021 field investigation and conference.

21. The Authority did not have an opportunity to attend or otherwise participate in, the September 27, 2021 field investigation and conference.

22. The Secretarial Letter indicates, at pp.1-2, that RBMNR intends to, in part, “3) remove a sufficient area of exiting bituminous roadway surface in order to install a new crossing surface; 4) install a new rubber flangeway/bituminous crossing surface with all new materials (including rails, ties, ballast) for the full width of the new roadway pavement and shoulders...”.

23. The Secretarial Letter further indicates, at p.2, that:

“It does not appear that any facilities of any non-carrier public utility will be affected by the alteration of the crossing. If required, the non-carrier public utilities will be directed to alter or relocate their facilities as necessary to construct the project at their initial cost and expense”.

24. The Secretarial Letter further indicates, at p.2, that Applicant certified that a copy of the Application had been served on each party in interest.

25. Based, in part, on the above factors, the PUC issued the Secretarial Letter without formal hearing.

26. The proposed PUC Order, as contained in the Secretarial Letter at Section 5 (p.3), restates the scope of the proposed alteration and work to be performed on the subject roadway crossing.

27. The proposed PUC Order, as contained in the Secretarial Letter at Sections 10 and 11 (p.4), restates that the facilities of a municipal authority (here, such as the Muhlenberg Township Authority), may be relocated, changed, or removed at the municipal authority's cost and expense should it interfere with construction of this project.

28. Contrary to the findings contained in the Secretarial Letter, the Authority was neither served with a copy of the Application nor served with a copy of the Secretarial Letter.

29. In addition, at no time did the Applicant or PUC contact the Authority about the then-prospective filing of the Application, about the actual filing of the Application, about the site visit, or about the issuance of the Secretarial Letter.

30. Contrary to the findings contained in the Secretarial Letter, the MTA submits that public utilities will be affected by alteration of the crossing.

31. Applicant's proposed reactivation of the subject crossing directly impacts the Authority and its water and sewer service to a large population of Muhlenberg Township residents.

32. Proposed construction on and in the SR 61 roadway, above the Authority's two (2) utility lines, places the Authority's infrastructure at risk of damage including catastrophic failure.

33. Proposed reactivation of rail service on the subject crossing, above the Authority's two (2) utility lines, places the Authority's infrastructure at risk of damage including catastrophic failure.

34. Damage to or failure of, either of the Authority's water or sewer lines would significantly impair, alter, reduce and/or stop water and/or sewer service to a significant portion of Muhlenberg Township residents, for an undetermined and indefinite period of time.

35. For the reasons stated herein, the Authority has standing in these proceedings and must be afforded party status, as it possesses an interest which may be directly impacted and affected by the Application and the outcome of RBMNR's Application.

36. Petitioner's interests in this proceeding are direct, immediate and substantial, and are not adequately represented by any other existing party or parties that may seek to intervene.

37. Petitioner's participation in this proceeding is of public interest to the residents it serves.

38. Petitioner opposes the Application and relief sought because such construction and rail use may, or is reasonably expected to, result in damage to and/or catastrophic failure of, the Authority's water and sewer line service, thereby directly affecting public utility services to a significant population of residents and commercial businesses located in Muhlenberg Township.

39. Petitioner opposes the Application and relief sought because having no prior notice, the Authority is unable to accurately ascertain the impact that the proposed construction and reactivated rail use may or will have on the existing underground water and sewer facilities of the Authority.

40. Petitioner opposes the Application and relief sought because as written, the Authority is financially responsible to change, relocate, remove or alter its existing water and sewer lines in order for Applicant to proceed with this project.

41. Petitioner submits that to the extent the Authority's existing water and sewer facilities require modification of any sort, such modifications be performed to within engineering,

PennDOT and railway pipeline occupancy specifications, and that Applicant be solely responsible for the costs of same.

42. Petitioner is concerned that if these issues affecting the Authority are not adequately addressed, the construction and operation of the proposed crossing may or will result in substantial and irreparable harm to the health and quality of the water supply, sewage transportation, and overall, to human health and quality of life.

43. RBMNR has failed to take the Authority's interests into account, and failed to adequately address the impact of the project on the Authority's existing water and sewer facilities.

44. The PUC cannot render the Secretarial Letter a final Order without jeopardizing the interests of the Authority or the public and commercial business it serves.

45. Petitioner files this Petition to Intervene, Protest, and seek Reconsideration of Staff Action for the reasons and on the bases set forth herein.

46. Good cause is shown for the within filing, as the Authority having first received notice of the Application in the form of receipt of the October 20, 2021 Secretarial Letter on November 1, 2021.

47. The Authority joins in the Petition for Reconsideration of Staff Action filed on behalf of RAWA.

48. Petitioner reserves the right to amend or supplement this Petition, or raise other issues as necessary and appropriate during the course of these proceedings, and to respond to issues that may be raised by other parties.

WHEREFORE, Muhlenberg Township Authority, Petitioner herein, respectfully requests that the Public Utility Commission grant this Petition to Intervene, Protest, and Seek Reconsideration of Staff Action, affirming that the Authority has full party status with respect to

all aspects of this proceeding; that the Public Utility Commission investigate and hold full evidentiary hearings; that the Public Utility Commission deny the Application; and that the Public Utility Commission take such other actions as are found to be appropriate and just under the circumstances.

Respectfully submitted:

BINGAMAN HESS

Date: 11-5-21

By: 

Thomas A. Rothermel, Esquire
PA Attorney I.D. No. 92997
Bingaman Hess
2 Meridian Blvd., Ste. 100
Wyomissing, PA 19610
#610-374-8377
tarothermel@bingamanhess.com
Attorneys for Petitioner,
Muhlenberg Township Authority

VERIFICATION

I, John Morganti, a duly authorized officer of the Muhlenberg Township Authority hereby states that the facts set forth herein are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements made herein are subject to the penalties of 18 Pa. C.S. Section 4904 concerning unsworn falsification to authorities.

MUHLENBERG TOWNSHIP AUTHORITY

By:



Name: John Morganti
Title: Chairman

**BEFORE THE
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Application of Reading Blue Mountain and Northern Railroad
for approval of the alteration of the crossing where State Route
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Township, Berks County

A-2021-3026537

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Petition upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Matthew Johnson
Reading Blue Mountain and
Northern Railroad
P.O. Box 218
1 Railroad Boulevard
Port Clinton, PA 19549
mjohnson@readingnorthern.com (via e-mail)

Commissioners Office
Berks County Services Center
633 Court Street, 13th Floor
Reading, PA 19601
(via first class mail)

Jason Sharp
PennDOT
P.O. Box 8212
Harrisburg, PA 17105-8212
jsharp@pa.gov (via e-mail)

Muhlenberg Township
210 George Street
Reading, PA 19605
(via first class mail)

Daniel Leonard
PennDOT
P.O. Box 3362
Harrisburg, PA 17105-3362
danleonard@pa.gov (via e-mail)

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Office of Chief Counsel
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PennDOT
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Allentown, PA 18101
rrehnert@pa.gov (via e-mail)

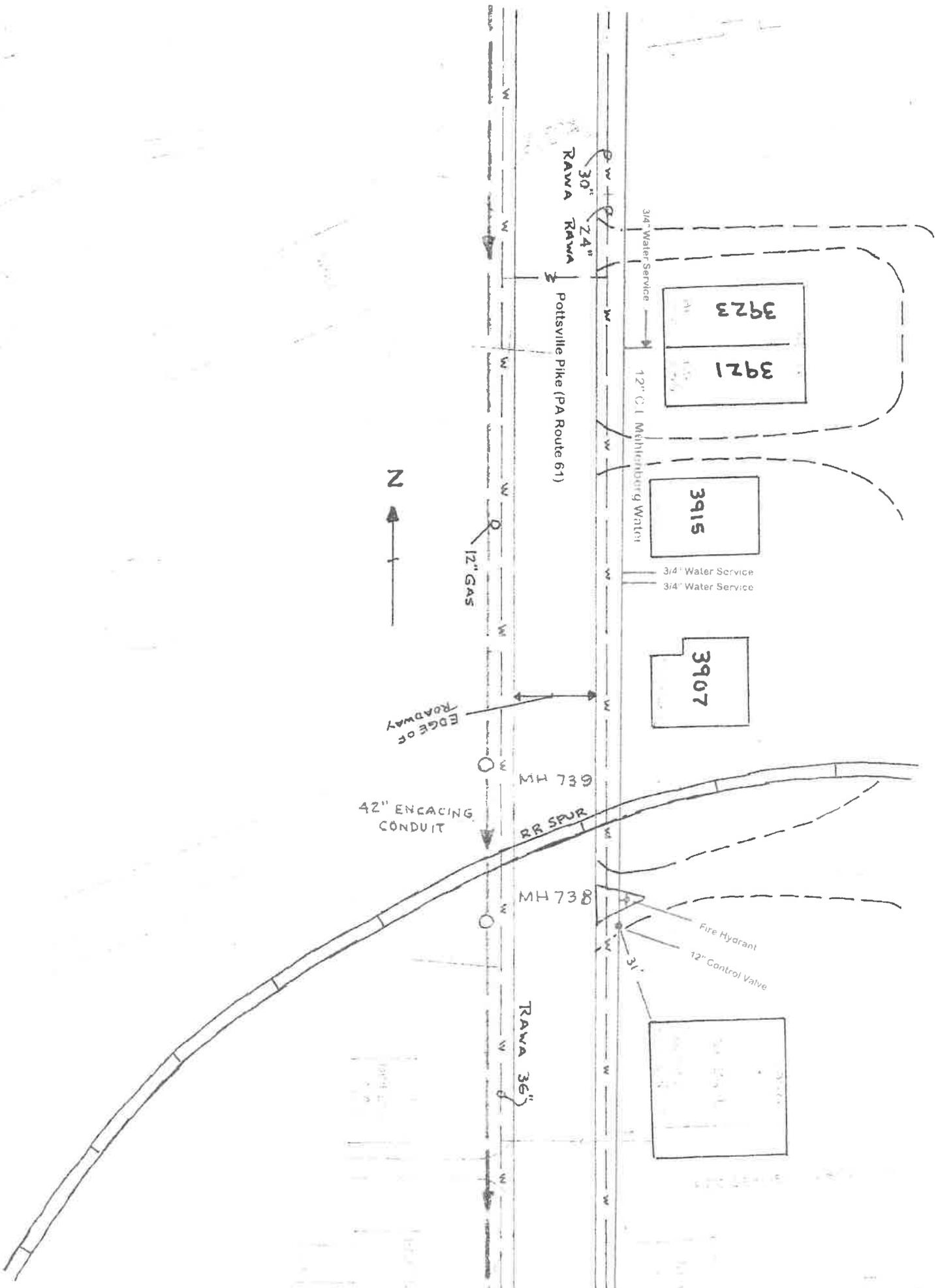
Reading Area Water Authority
c/o Edwin L. Stock, Esquire
estock@rrslegal.com (via e-mail)

BINGAMAN HESS

Date: 11-5-21

By: 
Thomas A. Rothermel, Esquire
Attorneys for Petitioner,
Muhlenberg Township Authority

EXHIBIT "A"



RAWA 30"
RAWA 24"

Pottsville Pike (PA Route 61)



EDGE OF ROADWAY

42" ENCACING CONDUIT

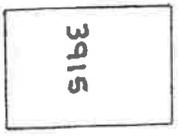
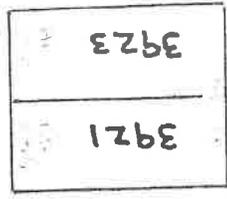
MH 739

MH 738

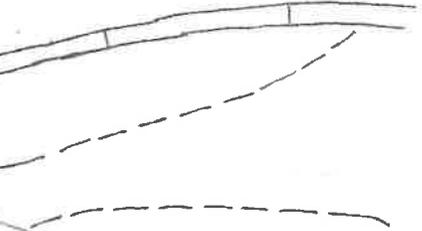
TRAWA 36"

3/4" Water Service

12" C.I. Mahanuddy Water



3/4" Water Service
3/4" Water Service



Fire Hydrant

12" Control Valve

Berks County



11/4/2021, 8:51:22 AM

Parcels

Address Point

1:1,128

0 0.0075 0.015 0.03 0.06 mi

0 0.015 0.03 0.06 km

PEMA
County of Berks

Berks County
Berks County