**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Complaint filed by Reading Blue Mountain & : C-2020-3016906

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 :

**PREHEARING CONFERENCE ORDER**

A Prehearing Conference is scheduled in this case for **Thursday, January 13, 2022, at 2:30 p.m.** To participate in the hearing, you must dial the toll-free number listed below. You will be prompted to enter a PIN number, which is also listed below. You will be asked to speak your name and then the telephone system will connect you to the conference.

**CALL-IN INFORMATION**

Toll-free Bridge Number: 877.653.9972

PIN Number: 29149724

**You must call into the conference on the scheduled day and time. Failure of any party to attend the prehearing conference without good cause shall constitute a waiver of all objections to the agreements reached and matters decided at the prehearing conference. You will not be called by the Administrative Law Judges.**

HISTORY OF THE PROCEEDING

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 (RBMN or the Railroad). SR 2019 (Oak Street) at the public crossing (DOT 361 425 J) is two-lane, two-way bituminous roadway with stop lines, railroad pavement markings and W10-1 advanced railroad warning signs on each roadway approach to the railroad crossing surface. The railroad crossing surface is a high-type concrete panel surface and extends the entire width of the roadway and shoulders across both sets of tracks. There is 3-to-4-foot bituminous area between both sets of tracks and the high-type concrete panel surface. The railroad warning devices at the public crossing consist of two (2) sets of railroad flashing-light warning signals, bell, gates and (R15-1) crossbucks signs with (R-15-2P) two (2) tracks placard sign underneath, all mounted on single mast poles and directed at each roadway approach to the crossing.

On January 13, 2020, RBMN filed a Complaint against the Pennsylvania Department of Transportation (PennDOT) alleging that the Railroad crossing at Oak Street, Pittston, PA 18640 was in “terrible condition” due to PennDOT failing to properly maintain the road surface. The Railroad requested that PennDOT be required to repair roadway approaches at PennDOT’s expense.

On February 14, 2020, PennDOT filed an Answer and New Matter. In the New Matter, PennDOT averred RBMN failed to maintain or replace its railroad crossing surface which has led to the premature breakdown of PennDOT’s SR 2019 (Oak Street) roadway approaches.

On February 19, 2020, Pittston Township filed an Answer to the Complaint.

A field investigation and conference was held at the site of the crossing on September 30, 2020, and March 31, 2021. At the March 31, 2021 field meeting, the Commission staff engineer noted that both the roadway approaches and the railroad crossing surfaces were in poor condition through the public crossing and at the concrete panel/roadway interface.

PennDOT and RBMN recognized their joint maintenance responsibilities and the need for substantial repair and reconstruction through the public crossing beginning with base repair to the roadway approaches and under the railroad tracks and ties beneath the concrete panels.

RBMN and the Department came to an amicable agreement to reconstruct and repair the public crossing (DOT 361 425 J).

On April 30, 2021, the Commission issued a Secretarial Letter detailing the agreement and ordering the parties in twenty (20) Ordering Paragraphs to take various steps to repair the crossing.

On May 17, 2021, PennDOT filed a Petition for Reconsideration from Staff Action, requesting the Commission amend Ordering Paragraphs 6 and 4.

On June 28, 2021, the Commission issued a Secretarial Letter granting in part and denying in part PennDOT’s Petition for Reconsideration. The Petition was grated in that Ordering Paragraph 6 was amended, but denied in that Ordering Paragraph 4 was not.

On December 14, 2021, PennDOT filed a Motion to Schedule Matter for Hearing, explaining that, pursuant to Ordering Paragraph 5 of the Secretarial Letter dated April 30, 2021, RBMN agreed to replace the high-type concrete panel crossing surfaces with rubber flangeway and asphalt crossing surface and perform all necessary base repair. PennDOT avers that RBMN, when performing the replacement work in August 2021, replaced the tracks but greatly raised the two tracks higher than they existed before, resulting in a dangerous transition situation on SR 2019.

PennDOT argues that as a result of RBMN raising the two tracks, the underbody of vehicles are bottoming out on the roadway surface and PennDOT has concerns regarding how its plow trucks will maneuver the raised tracks without damaging or destroying the trucks and the tracks.

PennDOT further avers that RBMN has been unresponsive to PennDOT’s requests for repair and requests expedited review of this matter due to the obvious and apparent safety concerns.

On January 7, 2022, the Commission issued a Notice scheduling a prehearing conference for 2:30 p.m. on January 13, 2022.

On January 10, 2022, the Commission’s Bureau of Investigation and Enforcement (BIE) filed a Notice of Appearance.

ORDER

The parties are hereby directed to comply with the following requirements:

1. Each party must file and serve, **prior to 12:30 p.m. on Thursday, January 13, 2022**, a Prehearing Conference Memorandum which sets forth:

a. The issues you believe are involved in this matter,

b. A proposed plan and schedule of discovery (agreed upon by all parties if possible),

c. A listing of your witnesses and the subject of their testimony, and

d. A proposed litigation schedule (agreed upon by all parties if possible).

The undersigned may be served by email at [edevoe@pa.gov](mailto:edevoe@pa.gov) and there is no need to follow email service by hard copy until further notice. **Parties represented by multiple attorneys should designate in their prehearing memorandum a lead representative for the purposes of the prehearing conference.**

1. A request for a change of the scheduled Prehearing Conference date must state the agreement or opposition of other parties and must be submitted by email to the undersigned no later than three (3) days prior to the Prehearing Conference. 52 Pa.Code § 1.15(b). Only the undersigned Administrative Law Judges or the Office of Administrative Law Judge Scheduling Unit may grant a request for a change of a prehearing conference. Such changes are granted only in rare situations where sufficient cause exists. Requests for changes of subsequent prehearing conferences or hearings, if any, should also be served directly on the presiding Administrative Law Judges.

In accordance with the foregoing, absent a continuance for good cause, all parties must be prepared to participate in the scheduled Prehearing Conference.

3. Please review the regulations pertaining to prehearing conferences, 52 Pa.Code § 5.221-§ 5.224, and in particular, § 5.222(d) which provides, in part:

(d) Parties and counsel will be expected to attend the conference fully prepared for a useful discussion of all problems involved in the proceeding, both procedural and substantive, and fully authorized to make commitments with respect thereto.

(1) The preparation must include submission of a prehearing memorandum and list:

(i) The presently identified issues.

(ii) The names and addresses of the witnesses.

(iii) The proposed area of testimony of each witness.

(2) The preparation may include:

(i) Development of a proposed procedural schedule.

(ii) Advance study of all relevant materials.

(iii) Advance informal communication between the parties, including requests for additional data and   
information, to the extent it appears feasible and desirable.

(Emphasis added.)

4. Parties should review the regulations relating to discovery, specifically 52 Pa.Code § 5.331(b), which provides, *inter alia*, that “a party shall endeavor to initiate discovery as early in the proceedings as reasonably possible,” and 52 Pa.Code § 5.322, which encourages parties to exchange information on an informal basis. All parties are urged to cooperate in discovery, and advise us at the prehearing conference as to discovery problems which have not been resolved. There are limitations on discovery and sanctions for abuse of the discovery process. 52 Pa.Code §§ 5.361, 5.371‑5.372.

5. Pursuant to 52 Pa.Code §§ 1.21 & 1.22, if you are an individual, you may represent yourself or you may be represented by an attorney licensed to practice law in the Commonwealth of Pennsylvania or admitted *Pro Hac Vice*. However, if you are a partnership, corporation, trust, association, or governmental agency or subdivision, you must be represented in this proceeding by an attorney licensed to practice law in the Commonwealth of Pennsylvania or admitted *Pro Hac Vice*. Unless you are an attorney, you may not represent someone else. Attorneys shall insure that their appearance is entered in accordance with the provisions of 52 Pa.Code § 1.24(b).

6. Failure of a party to attend the prehearing conference without good cause shown shall constitute a waiver of all objections to the agreements reached and matters decided at the prehearing conference, including, but not limited to, any special discovery rules and the litigation schedule established for this case. 52 Pa.Code §§ 5.222(e) & 5.224.

7. **You must serve the presiding Administrative Law Judge directly with a copy of any document that you file in this proceeding.** If you send the undersigned any correspondence or document, you must send a copy to all other parties. For your convenience, a copy of the Commission’s current service list of the parties to this proceeding is enclosed with this Order.

Date: January 12, 2022 /s/

Emily I. DeVoe

Administrative Law Judge

**C-2020-3016906 - READING BLUE MOUNTAIN & NORTHERN RAILROAD C/O JOLENE BUSHER v. PENNDOT***Updated 1-10-22*

JOLENE BUSHERREADING BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY1 RAILROAD BLVDPORT CLINTON PA 19549jbusher@readingnorthern.com

ROMILDA CROCAMO - CHIEF COUNTY SOLICITOR ESQUIRELUZERN COUNTY OFFICE OF LAW200 NORTH RIVER STWILKES BARRE PA 18711  
romilda.crocamo@luzernecounty.org

JOHN P FINNERTY SOLICITOR PITTSTON TOWNSHIP 421 BROAD STREET PITTSTON PA 18640

KAREN CUMMINGSJILLIAN FELLOWS  
JASON SHARP ESQUIRE  
JENNIFER BROWN SWEENEY ESQUIREPENNDOTPO Box 8212HARRISBURG PA 17105-8212**717.787.3128**Accepts EService

DANIEL LEONARD ENGINEERPENNDOTPO BOX 3362HARRISBURG PA 17105-3362**717.214.4522**Accepts EService

LEONARD ANGELO SANGUEDOLCE ATTORNEYSANGUEDOLCE LAW OFFICES PC159 SOUTH MAIN STREETPITTSTON PA 18640**570.905.7941**Accepts EService

KAYLA ROST ESQUIRE  
BUREAU OF INVESTIGATION  
AND ENFORCMENT  
400 NORTH STREET  
HARRISBURG PA 17120  
**717.787.1888**  
karost@pa.gov  
Accepts eService  
  
JOHN R KANTER ESQUIRE  
ONE MAHANTONG STREET  
POTTSVILLE PA 17901  
570.622.2455  
jkanter@feplawyers.com  
*Representing Reading Blue Mountain and Northern Railroad Company*