



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

January 13, 2022

Via Electronic Filing

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

Re: 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.
Docket No. C-2020-3016906
I&E Prehearing Conference Memorandum

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Bureau of Investigation and Enforcement's ("I&E") **Prehearing Conference Memorandum** in the above-referenced matter.

Copies have been served on the parties of record in accordance with the Certificate of Service. If you have any questions, please contact the undersigned.

Sincerely,

A handwritten signature in blue ink that reads 'Kayla L Rost'.

Kayla L. Rost
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 322768
(717) 787-1888
karost@pa.gov

KLR/ac
Enclosures

cc: Per Certificate of Service
William Sinick, P.E., C.B.S.I. (via email - wilsinick@pa.gov)
Michael L. Swindler, Deputy Chief Prosecutor (via email - mwindler@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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 : Docket No. C-2020-3016906
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 MEMORANDUM
OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

TO ADMINISTRATIVE LAW JUDGE EMILY I. DEVOE:

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”) Emily I. DeVoe’s Prehearing Conference Order dated January 12, 2022.

I. HISTORY OF THE PROCEEDING

On December 14, 2021, the Pennsylvania Department of Transportation (“PennDOT”) filed a Motion to Schedule Matter for Hearing (“Motion”). PennDOT averred that the work completed by Reading Blue Mountain & Northern Railroad Company (“Reading Blue Mountain”) pursuant to the April 30, 2021 and June 28, 2021 Secretarial Letters were unsatisfactory and created a dangerous condition. Specifically, PennDOT explained that Reading Blue Mountain raised the two tracks located within the crossing

beyond what previously existed, which resulted in a dangerous transition for the traversing public. PennDOT noted that vehicles traversing the crossing are bottoming out and that it has concerns on how plow trucks will clear the road without damaging the tracks or the trucks.

On or about January 5, 2022, Rail Safety requested that the matter be referred to the Office of Administrative Law Judge, noting the Motion filed by PennDOT on December 14, 2021 requesting an expedited hearing on the work completed by Reading Blue Mountain.

On January 12, 2022, Administrative Law Judge Emily DeVoe issued a Prehearing Conference Order, scheduling a telephonic prehearing conference for January 13, 2022. The parties were instructed to provide Prehearing Memoranda no later than 12:30 p.m. on January 13, 2022.

II. I&E PREHEARING CONFERENCE MEMORANDUM

A. Service

All service on, and communication to, I&E in this proceeding should be addressed to:

By Mail: Kayla L. Rost
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

By Telephone: (717) 787-1888

By E-mail: karost@pa.gov

B. Statement Regarding Settlement

I&E is open and willing to discuss settlement of this matter.

C. Plan and Schedule of Discovery

I&E proposes that discovery be conducted consistent with the Commission's regulation at 52 Pa. Code §§ 5.321, *et seq.*

D. Discovery Orders

I&E does not propose any modifications to the Commission's regulations pertaining to discovery at 52 Pa. Code §§ 5.321, *et seq.*

E. Proposed Litigation Schedule

I&E provided a proposed litigation schedule to counsel for Reading Blue Mountain, PennDOT, Luzerne County, and Pittston Township. PennDOT provided its comments/suggestions to the proposed litigation schedule and Reading Blue Mountain provided its agreement to the modified schedule. Accordingly, I&E proposes the following litigation schedule:

1. Written direct testimony due on March 14, 2022.
2. Written rebuttal testimony due on April 4, 2022.
3. Witness schedule due 3 business days before the hearing.
4. Hearing to occur the week of May 23, 2022.
5. Briefing schedule to be established at the hearing.

F. Names and Addresses of Witness(es) to be Presented

William Sinick, P.E.
Pennsylvania Public Utility Commission
Bureau of Technical Utility Services - Rail Safety Section
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 787-5936
wilsinick@pa.gov

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

1. Issues to be Addressed

- 1) Whether the work completed by Reading Blue Mountain was completed unsatisfactory.
- 2) Whether the work completed by Reading Blue Mountain created a dangerous and unsafe road condition for the traversing public
- 3) Whether Reading Blue Mountain should be responsible for the costs associated with fixing the crossing to a safe and satisfactory condition.

2. Statement of Evidence to be Presented

Mr. Sinick will testify to all matters pertaining to the public safety, present conditions, existing maintenance, and future maintenance at the subject public crossing. Mr. Sinick may testify to additional matters based upon the issues identified by the parties.

Respectfully submitted,



Kayla L. Rost

Prosecutor

PA Attorney ID No. 322768

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
Phone: (717) 787-1888
Email: karost@pa.gov

Dated: January 13, 2022

**BEFORE THE
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Blue Mountain & Northern Railroad :
Company, located in the Pittston :
Township, Luzerne County. :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing
Prehearing Conference Memorandum dated January 13, 2022, upon the parties listed
below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by
a party).

Service by Electronic Mail Only

Honorable Emily I. DeVoe
Administrative Law Judge
Pennsylvania Public Utility Commission
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