**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 ORDER**

**NOTE: Please read this document in its entirety as it provides important information about this case.**

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 signs 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 granted in that Ordering Paragraph 6 was amended, but denied in that Ordering Paragraph 4 was not.

Both PennDOT and the Railroad performed work on the crossing during the summer of 2021.

On December 14, 2021, PennDOT filed a Motion to Schedule Matter for Hearing, averring that RBMN, when performing the replacement work, replaced the tracks and 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 12, 2022, a Prehearing Conference Order was entered.

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

On January 13, 2022, prior to the convening of the prehearing conference, the Railroad, PennDOT, and BIE served prehearing conference memoranda.

The Prehearing Conference was convened as scheduled. The Railroad, PennDOT, BIE, Pittston Township (the Township), and Luzerne County (the County) were represented by counsel. The parties discussed a variety of matters, addressed more fully below.

Litigation Schedule

The following litigation schedule was agreed to by the parties and adopted:

|  |  |
| --- | --- |
| Date | Event |
| March 14, 2022 | Written Direct Testimony |
| April 4, 2022 | Written Rebuttal Testimony |
|  | Witness List/Matrix and Master List of Proposed Exhibits |
| May 24, 2022 @ 10:00 am | Hearing and Oral Rejoinder |
| TBD @ Hearing | Briefing Schedule |

The parties are reminded of the Commission’s requirements for the preparation and filing of written testimony. 52 Pa.Code §§ 5.412 and 5.412a. Written testimony must be accompanied by all exhibits to which it relates. Technical terms and concepts are to be clearly defined and explained in the testimonies and briefs. **No written testimony will be admitted into evidence unless accompanied by a verification or affidavit of the witness**.

The above-stated dates are in-hand dates for service on the parties and the Presiding Administrative Law Judge (ALJ).

The evidentiary hearing will begin promptly at **10:00 a.m. on May 24, 2022**. The parties must confer before commencement of the hearings to schedule their witnesses so as to avoid “holes” or “dead time” during the hearings.

Service

The ALJ agrees to be served by email, and there is no need to follow electronic service with hard copy. The email address of the Presiding ALJ is [edevoe@pa.gov](mailto:edevoe@pa.gov).

Furthermore, all parties agreed to be served solely by email. A current parties’ list is attached to this Order.

PennDOT’s Motion to Schedule Matter For Hearing

In its Motion, PennDOT requested that this matter be scheduled for an evidentiary hearing on an expedited basis. The ALJ questioned the parties regarding their positions on whether this was appropriate in this matter.

Both the Railroad and PennDOT agree that the crossing is currently unsafe, but disagree as to the appropriate remedy and who is to pay for it. Both parties agree it is appropriate to set this matter for a hearing. Therefore, PennDOT’s Motion is granted.

## Issues

In their respective prehearing memoranda, the parties identified various issues they may wish to pursue. The reader is directed to these documents to review a recitation of these issues. Additional issues may arise as the discovery process unfolds.

Discovery

The parties shall engage in informal discovery whenever and wherever possible in an attempt to resolve any discovery disputes amicably. 52 Pa.Code § 5.322. If this process fails, the parties have recourse to the Commission’s procedures for formal discovery, as herein modified. 52 Pa.Code §§ 5.321, *et* *seq*. The parties must not send the Presiding ALJ discovery material or cover letters, unless attached to a motion to compel. **All motions to compel must contain a certification of counsel of the informal discovery undertaken and their efforts to resolve their discovery disputes informally.** If a motion to compel fails to contain such certification, the Presiding ALJ will contact the parties and direct them to pursue informal discovery.

Protective Order

The parties must comply with 52 Pa.Code § 5.362 regarding the preparation and filing of a motion for a protective order. If a party files a motion for a protective order, it must submit a copy of the proposed protective order to the Presiding ALJs by email **in a *Microsoft Office Word* format.**

Settlement

The parties are reminded it is the Commission’s policy to encourage settlements. 52 Pa.Code § 5.231(a). Although all parties agree it is appropriate to move toward an evidentiary hearing at this time, they are encouraged to continue their efforts to work together towards an amicable resolution.

Stipulations

If settlement is not feasible, the parties are encouraged to stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties and conserve precious administrative hearing resources. 52 Pa.Code §§ 5.232 and 5.234.

**Based on the parties’ arguments and representations during the prehearing conference, it appears there may be very little disagreement as to the facts of this case. As such, the undersigned encourages the parties to explore the possibility of agreeing to a set of stipulations.**

All stipulations entered into by the parties must be reduced to writing, signed by the parties to be bound thereby, and moved into the record in this case either orally at an evidentiary hearing or through a motion filed with the Secretary’s Bureau. If submitted via written motion, the motion must be filed with the Commission no later than 4:00 p.m. on Friday, May 20, 2022. If submitted via oral motion at the hearing, the parties must serve the undersigned with a copy of the stipulations no later than 4:00 p.m. on Friday, May 20, 2022.

Cross-Examination

Friendly cross-examination or cumulative cross-examination during hearings will not be permitted. 52 Pa.Code §§ 5.76 & 5.243.

Briefs

The parties must comply with 52 Pa.Code §§ 5.501, *et* *seq*., regarding the preparation and filing of briefs. Page limitations on and due dates for the filing of main and reply briefs will be discussed on or before the last day of hearing. The parties shall submit an electronic copy of all briefs to the Presiding ALJ **in a *Microsoft Office Word*format.**

Modification

Any of the provisions of this Prehearing Order may be modified upon motion and good cause shown by any party in interest.

Date: January 14, 2022 /s/

Emily I. DeVoe

Administrative Law Judge

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

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