



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

August 5, 2022

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: C-2020-3016906

Dear Secretary Chiavetta,

Enclosed for filing please find the *Main Brief* of the Pennsylvania Department of Transportation in the above-captioned matter.

Copies have been served on the parties of record in accordance with the Certificate of Service.

Very truly yours,

A handwritten signature in cursive script that reads "Jillian G. Fellows".

Jillian G. Fellows
Assistant Counsel

TABLE OF CONTENTS

I. PROCEDURAL HISTORY..... 1

II. STATEMENT OF THE CASE..... 5

III. SUMMARY OF ARGUMENT..... 6

IV. ARGUMENT..... 6

 1. LEGAL STANDARD..... 6

 2. THE SECRETARIAL LETTERS DID NOT AUTHORIZE RBMN TO RAISE THE ELEVATION OF THE TRACKS AND RBMN FAILED TO ESTABLISH THAT RAISING THE ELEVATION OF THE TRACKS WAS NECESSARY..... 7

 3. THE RAISED ELEVATION OF THE TRACKS CREATES A DANGEROUS AND UNSAFE ROAD CONDITION FOR THE TRAVERSING PUBLIC..... 10

 4. RBMN SHOULD BEAR THE COSTS AND REPAIRS OF REMEDIATION TO MAKE THE CROSSING AND ROADWAY APPROACHES SAFE FOR THE TRAVERSING PUBLIC..... 12

V. CONCLUSION..... 16

PROPOSED FINDINGS OF FACT

PROPOSED CONCLUSIONS OF LAW

PROPOSED ORDERING PARAGRAPHS

I. PROCEDURAL HISTORY

On January 13, 2020, Reading Blue Mountain Northern Railroad (“RBMN”) filed a Complaint against the Pennsylvania Department of Transportation (“PennDOT” or “Department”) alleging that the Railroad crossing (DOT 361 425 J) at SR 2019 (“Oak Street”), Pittston, PA 18640 was in “terrible condition” due to PennDOT’s failure to properly maintain the road surface. RBMN 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 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 conference, the Public Utility Commission (“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.

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.

The Secretarial Letters explained that 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 crossbucks signs with two (2) tracks placard sign underneath, all mounted on single mast poles and directed at each roadway approach to the crossing.

The Secretarial Letter ordered RBMN, at their sole cost and expense, to replace the high type concrete crossing with an asphalt and rubber flangeway crossing and incur all costs (including incidentals) to perform work related to their facilities, including any inspection/flagmen and any construction engineering. RBMN was also ordered to sawcut/mill and remove the existing approach roadway structure to 7 feet on each side of the outermost rail, removing bituminous asphalt material and preparing subgrade area. RBMN was then to furnish, place and compact a 7-inch layer of hot mix bituminous asphalt base course material to within 2 inches of the adjacent sawcut/milled top of roadway on each roadway approach for the full width of the approach and paved shoulder area.

PennDOT was ordered, at its sole cost and expense, to place 2 inches of hot mix bituminous asphalt wearing course material on top of the 7 inches of base placed by RBMN throughout the whole crossing area (approaches, track area, and shoulders). PennDOT was also ordered to provide the detour and MPT plans for the closure of the road for the crossing replacement as well as implement the detour and furnish signage for it. All work was to be completed by July 31, 2021.

The work at the crossing was completed by the deadline.

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 Prehearing Conference Notice, scheduling a telephonic prehearing conference for 2:30 p.m. on January 13, 2022.

On January 12, 2022, Administrative Law Judge ("ALJ") Emily I. DeVoe issued a Prehearing Conference Order.

On January 13, 2022, prior to the convening of the prehearing conference, the Railroad, PennDOT, and the Commissions Bureau of Investigation and Enforcement ("I&E") served prehearing conference memoranda.

The Prehearing Conference was convened as scheduled. The Railroad, PennDOT, I&E, Pittston Township, and Luzerne County were represented by counsel.

On January 14, 2022, ALJ DeVoe issued a Prehearing Order setting the litigation schedule for this matter. Specifically, direct testimony was due on March 14, 2022, rebuttal testimony was due on April 4, 2022, and the evidentiary hearing was scheduled for May 24, 2022.

On March 14, 2022, I&E served written direct testimony. Also on March 14, 2022, Ed Stock Esquire, counsel for RBMN, alerted ALJ DeVoe that he was just retained as counsel for RBMN and requested a seven (7) day extension to file RBMN's written direct testimony. Mr. Stock also requested a seven (7) day extension from the current due date for rebuttal.

On March 15, 2022, ALJ DeVoe issued an Interim Order granting the request to extend the litigation schedule. Specifically, direct testimony was now due on March 22, 2022 and rebuttal testimony was now due on April 11, 2022.

On March 18, 2022, RBMN served its written direct testimony. On March 21, 2022, PennDOT served its written direct testimony.

On April 11, 2022, I&E served written rebuttal testimony.

On May 24, 2022, ALJ DeVoe presided over the evidentiary hearing. Counsel from I&E, PennDOT, RBMN, and Luzerne County were present.

On July 6, 2022, a Briefing Order was issued directing the parties to file Main Briefs by August 5, 2022 and Reply Briefs by August 25, 2022.

On July 7, 2022, I&E filed a written request to correct the transcript.

On July 19, 2022, ALJ DeVoe issued an Interim Order incorporating the nine (9) proposed transcript corrections submitted by I&E.

PennDOT submits this Main Brief, Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Ordering Paragraphs in accordance with the briefing schedule that was established in the July 6, 2022 Briefing Order.

II. STATEMENT OF THE CASE

RBMN initiated this matter on January 13, 2020, by the filing of a complaint against PennDOT for 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 RBMN located in Pittston Township, Luzerne County. RBMN requested that PennDOT be required to repair the roadway approaches at PennDOT's expense. After a field investigation and conference, 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 PennDOT came to an amicable agreement to reconstruct and repair the public crossing and such agreement was laid out in an April 30, 2021 and June 28, 2021 Secretarial Letter. Construction was completed in July 2021.

After completion of the project, it was revealed that RBMN greatly raised the elevation of its tracks beyond its original elevation, contrary to the Secretarial Letters and contrary to the parties agreement. RBMN's raising of the tracks created a "step-like" condition throughout the crossing, resulting in an unsafe, unsmooth, and unsatisfactory crossing for vehicular traffic. After unsuccessful attempts to have RBMN fix the hazard it created at the crossing, PennDOT filed a Motion to Schedule Matter for Hearing on December 14, 2021.

III. SUMMARY OF ARGUMENT

It is well established that in rail-highway crossing cases, the guiding principle for Commission action is the public interest, i.e., to ensure and promote the protection, safety, convenience, and welfare of the travelling public.¹

As discussed in more detail below, the crossing located on SR 2019 creates an ongoing public safety hazard to the traversing public and requires immediate reconstruction. Vehicles bounce dangerously and erratically driving through the crossing and some vehicles are scraping on the ground. RBMN is solely responsible for the hazard it created by raising the tracks. Not only did RBMN fail to mention the raising of the tracks prior to construction, it acted contrary to and outside the scope of the Secretarial Letters. Had RBMN identified a need to raise the tracks prior to the replacement project, these issues could have been addressed prior to construction, thus eliminating the need for additional redundant work and expenses.

It would be unjust and unreasonable to order PennDOT to pay for any costs associated to reconstructing the crossing, as PennDOT completed its portion of work consistent with the Secretarial Letters and was not the cause for the hazardous condition existing at the crossing today. Thus, PennDOT respectfully requests that Your Honor find the crossing to be unsafe and to order its immediate reconstruction at the sole cost and expense of RBMN.

IV. ARGUMENT

1. LEGAL STANDARD

Section 2702 of the Public Utility Code vests the Commission with exclusive jurisdiction to

¹ *Application of the Dep't of Transportation of the Commonwealth of Pennsylvania for Approval to Abolish the Existing Crossing Where S.R. 0522 Crosses at Grade Two Tracks of E. Broad Top R.R. & Coal Co. (Aar 003 135*) in Cromwell Twp., Huntingdon County; & the Allocation of Costs & Expenses Incident Thereto., DocketNo. A-00114338, Opinion and Order dated Mar. 14, 2002.*

determine the manner in which a rail-highway crossing is to be constructed, relocated, altered, protected, suspended or abolished, as well as the manner and conditions under which a rail-highway crossing will be maintained, operated and protected to prevent accidents and promote public safety.²

The Commission is also empowered to order the reconstruction of a crossing upon such reasonable terms and conditions as it shall prescribe.³ In allocating costs, the Commission is not limited to any fixed formula, but rather takes all relevant factors into consideration with the fundamental requirement being that its order be just and reasonable.⁴ The financial ability of a concerned party to pay is not determinative of the issue of cost allocation.⁵

2. THE SECRETARIAL LETTERS DID NOT AUTHORIZE RBMN TO RAISE THE ELEVATION OF THE TRACKS AND RBMN FAILED TO ESTABLISH THAT RAISING THE ELEVATION OF THE TRACKS WAS NECESSARY.

I&E presented the testimony of William M. Sinick, Senior Civil Engineer Manager in the Rail Safety Section, who credibly and unequivocally testified that neither the April 30, 2021 Secretarial Letter, nor the June 28, 2021 Secretarial Letter authorized RBMN to raise the elevation of its tracks.

Pursuant to the Secretarial Letters, RBMN agreed to and was thereby ordered to replace the high-type concrete panel railroad crossing surfaces with a rubber flangeway and asphalt crossing surface across both sets of tracks from two (2) feet outside of each outside rail and all area in between both sets of tracks.⁶ In addition, RBMN agreed to and was ordered, at its sole cost and

² 66 Pa.C.S. §§ 2702 and 2704.

³ *Pennsylvania Game Commission v. Pa. P.U.C.*, 651 A.2d 596 (Pa. Cmwlth. 1988).

⁴ *N. Lebanon Twp. v. P.U.C.*, 962 A.2d 1237, 1247 (Pa. Cmwlth. 2008) (citing *Bell Atlantic v. Pa. P.U.C.*, 672 A.2d 352, 355 (Pa. Cmwlth. 1995)).

⁵ *East Rockhill Twp. v. Pa. P.U.C.*, 115 Pa. Commw. 228, 540 A.2d 600 (1988).

⁶ I&E Statement No. 1, pg. 3.

expense, to remove five (5) feet of roadway on each roadway approach and to furnish, place, and compact hot mix bituminous asphalt base material to two (2) inches of existing grade as measured to the existing roadway approaches and to within two (2) inches from top of rail on each set of tracks.⁷ PennDOT agreed to and was ordered, at its sole cost and expense, to establish and maintain the detour and traffic controls for all vehicular traffic necessary for a 7-day roadway closure.⁸ In addition, PennDOT agreed to and was ordered, at its sole cost and expense, to furnish, place, and compact two (2) inches of hot mix bituminous asphalt wearing course material to finish grade across the roadway approaches and railroad crossing surfaces.⁹

In Mr. Sinick's professional engineering opinion, the highway/rail crossing was not constructed in accordance with the Secretarial Letters because RBMN raised the grade of the railroad tracks approximately six (6) inches, or more in places, as compared to the existing grade prior to the reconstruction.¹⁰ RBMN also superelevated each set of tracks.¹¹ Mr. Sinick testified that the raise in grade and change in superelevation were not approved as part of the work to be performed under the Secretarial Letters and was contrary to what was prescribed in the Secretarial Letter dated April 30, 2021, of maintaining a safe, smooth, and satisfactory condition of the crossing surface for the full width of the roadway and paved shoulders located between the rails and area between each set of tracks and for a distance of twenty-four (24) inches beyond the outermost rails.¹² Furthermore, raising of the elevation of the tracks by RBMN was never discussed nor agreed upon by the parties prior to construction.¹³

⁷ I&E Statement No. 1, pg. 3.

⁸ I&E Statement No. 1, pg. 4.

⁹ I&E Statement No. 1, pg. 4.

¹⁰ I&E Statement No. 1, pg. 5.

¹¹ I&E Statement No. 1, pg. 5.

¹² I&E Statement No. 1, pg. 5; I&E Statement No. 2, pg. 3.

¹³ I&E Statement No. 1, pg. 5; I&E Statement No. 2, pgs. 1, 3; PennDOT Statement No. 1, pgs. 10, 16; N.T. pgs. 73, 103, 111.

In fact, RBMN should have filed an application with the PUC prior to raising the elevation of the tracks.¹⁴ While a railroad may be able to adjust the superelevation of its tracks based on the approved speed and the existing degree of curvature of the tracks, if they were to change the superelevation of their tracks going through a crossing across the highway, such as in this case, if that change affects the approach roadway coming into that particular crossing, the Commission would consider that an alteration, and an application is required to be filed.¹⁵ This is so because the highway entity, in this case PennDOT, would have to make an adjustment to their roadway transition, possibly adjust their posted speed limit, and it also affects drainage.¹⁶ So, if the change is more than what the Commission considers a minor correction, which is typically 1.5”, it is considered an alteration and an application is required.¹⁷ Here, RBMN raised the superelevation from two and a half inches to over five inches.¹⁸ Thus, RBMN was required to file an application with the Commission prior to changing the elevation of the tracks.

Lastly, RBMN failed to establish that the raising of the tracks was necessary. RBMN presented written testimony of Chris Goetz, Vice President Maintenance of Way, who stated “it was necessary for [RBMN] to increase the elevation in the curves of track one and track two at the crossing during the rehabilitation according to FRA (Federal Railroad Administration) requirements due to speeds run on both track one and track two of the crossing through the roadway portion of the crossing.”¹⁹ Mr. Goetz stated that the FRA sets these regulations for unbalanced superelevation for various speeds on curves explaining, “basically, if you are traveling at ‘x’ speed and the curve is ‘x’

¹⁴ N.T. pg. 107.

¹⁵ N.T. pgs. 103-04.

¹⁶ N.T. pg. 104.

¹⁷ N.T. pgs. 104-05

¹⁸ N.T. pgs. 105, 107

¹⁹ RBMN Direct Testimony, pg. 7.

degree that will determine the elevation needed in the curve.”²⁰ However, RBMN failed to present any testimony or evidence as to the existing speed and existing degree of curvature of the tracks to support its contention that the raising of the elevation was necessary. When asked on cross-examination by counsel for I&E, Mr. Goetz was unable to speak for what speeds the trains currently travel through this location.²¹ Mr. Goetz also testified that he did not know what the degree of curvature was at the crossing.²² RBMN also presented the testimony of Matt Johnson, Vice President Asset Management and Community Affairs, who similarly did not know what speed the trains are currently traveling at through the crossing or the degree of curvature at the crossing.²³

Further, Sarah J. Fenton, PennDOT District Grade Crossing Administrator, testified that it wasn’t until after the crossing replacement project was completed in July 2021 and the elevation was already raised that RBMN brought up their concern with safety due to the original alignment/elevation.²⁴ At no point leading up to the crossing replacement was elevation and/or safety brought up, discussed, or mentioned.²⁵ Multiple onsite and offsite meetings, as well as telephone conversations occurred prior to the replacement project and not once was the elevation safety mentioned or identified.²⁶

3. THE RAISED ELEVATION OF THE TRACKS CREATES A DANGEROUS AND UNSAFE ROAD CONDITION FOR THE TRAVERSING PUBLIC.

The record is clear that the raised elevation of the tracks creates a dangerous and unsafe road condition for the traversing public and should be reconstructed. Mr. Sinick provided his professional

²⁰ RBMN Direct Testimony, pg. 7.

²¹ N.T. pg. 51.

²² N.T. pg. 51.

²³ N.T. pgs. 53-54.

²⁴ PennDOT Statement No. 1, pg. 17.

²⁵ PennDOT Statement No. 1, pg. 17.

²⁶ PennDOT Statement No. 1, pg. 17.

opinion that the work performed at the highway/rail crossing does not provide a smooth and satisfactory condition and it also does not provide a safe condition for the traveling public at the posted speed limit of 35 MPH.²⁷ The tracks were raised and superelevated with no regard to the height of the existing roadway or necessary roadway transition to accommodate that elevation grade change prior to the tracks and in the roadway area between each set of tracks.²⁸ This created a system of steps built into the crossing surface and roadway approaches that vehicles must now travel over.²⁹ Steps should never be a part of roadway design. Rather, roadways and railroad crossing surfaces should be a constant, safe, and smooth transition to the tracks and in between each set of tracks.³⁰

Similarly, Ms. Fenton testified that the change of grade and elevation has created a “step-like” transition through the crossing and that the transition is far from smooth and safe.³¹ Vehicles bounce dangerously and erratically when moving through the crossing.³² Drivers were also observed scraping the bottom of their vehicles on the ground when passing through the crossing.³³ These problems did not exist prior to RBMN’s raising of the tracks.³⁴ Additionally, after the construction was completed PennDOT received numerous complaints from Pittston Township municipal officials, the local fire company, local EMS, the general public, Representative Carole’s office, and internal PennDOT employees.³⁵ The local news also covered the issue.³⁶

²⁷ I&E Statement No. 1, pgs. 5-6.

²⁸ I&E Statement No. 1, pg. 6.

²⁹ I&E Statement No. 1, pg. 6.

³⁰ I&E Statement No. 1, pg. 6.

³¹ PennDOT Statement No. 1, pgs. 12-13; PennDOT Exhibits 6-9.

³² PennDOT Statement No. 1, pgs. 12-13; PennDOT Exhibits 6-9.

³³ PennDOT Statement No. 1, pgs. 12-13; PennDOT Exhibits 6-9.

³⁴ PennDOT Statement No. 1, pgs. 12; PennDOT Exhibits 4-5.

³⁵ PennDOT Statement No. 1, pg. 14.

³⁶ PennDOT Statement No. 1, pg. 14; <https://www.pahomepage.com/top-stories/recently-completed-railrod-crossing-project-causing-issues-in-pittston-township/>.

After becoming aware of the safety problem RBMN created by raising its tracks, PennDOT made numerous attempts to ask RBMN to erect signage alerting the traveling public to the hazard it created until the crossing was fixed.³⁷ However, RBMN refused and PennDOT subsequently, at its own cost, erected two signs on each side of the crossing in August 2021.³⁸ One sign is a “Bump Ahead” sign with a flashing light and the second sign, which is closer to the crossing, is a “Bump” sign.³⁹ While RBMN will argue the signage is sufficient to alleviate the hazard, PennDOT continued to receive complaints about the crossing after the signage was erected.⁴⁰ Further, Mr. Sinick made clear that the highway/rail crossing needs to be completely reconstructed in order to make the crossing satisfactory, smooth, and safe at the posted speed limit.⁴¹

4. RBMN SHOULD BEAR THE COSTS AND REPAIRS OF REMEDIATION TO MAKE THE CROSSING AND ROADWAY APPROACHES SAFE FOR THE TRAVERSING PUBLIC.

The Commission, while not limited to any fixed rule, has consistently relied upon certain relevant factors for the allocation of highway-rail maintenance responsibilities, repair and replacement, and costs. *N. Lebanon Twp. v. Pa. P.U.C.*, 962 A.2d 1237, 1247 (Pa. Cmwlth. 2008) (citing *Greene Twp. Bd. of Supervisors v. Pa. P.U.C.*, 668 A.2d 615, 619 (Pa. Cmwlth. 1995)). Among the factors which the Commonwealth Court noted as relevant to the assignment of costs and maintenance responsibilities include (1) the relative benefit initially conferred on each party with the construction of the crossing; and (2) whether each party is responsible for the deterioration of the crossing resulting in the need for its repair, replacement, or removal. *Id.*

³⁷ PennDOT Statement No. 1, pg. 15; N.T. pgs. 70-71.

³⁸ PennDOT Statement No. 1, pg. 15; N.T. pgs. 70-71.

³⁹ PennDOT Statement No. 1, pg. 15.

⁴⁰ N.T. pgs. 86, 88.

⁴¹ I&E Statement No. 1, pg. 6.

In order to make the crossing satisfactory, smooth, and safe, the proper remedy is to completely reconstruct it.⁴² A thorough review of the evidence presented in this matter makes clear that it would be inequitable to assign any costs or responsibilities for the reconstruction of the crossing and highway approaches to PennDOT.

First, it is clear that the raising of the tracks solely benefits RBMN. Mr. Johnson and Mr. Goetz testified the raising of the track elevation through the crossing was to accommodate track speeds through this crossing.⁴³ To the contrary, and as explained more thoroughly above, raising the tracks was to the complete detriment of PennDOT and the traveling public.

Second, it is undisputed that RBMN is responsible for the safety hazard of the crossing resulting in the need for its repair, replacement, or removal. PennDOT completed the work they were ordered to complete in accordance with the Secretarial Letters.⁴⁴ The placement by PennDOT of the remaining two inches of bituminous asphalt wearing course was not the cause for the hazardous condition existing at the crossing today.⁴⁵ The hazardous condition was created by RBMN after it raised the tracks and set the elevation of the tracks.⁴⁶ Had RBMN done what was agreed upon and captured in the Secretarial Letters, the safety hazard would not exist and there would be no additional work or costs to undertake.⁴⁷

Third, the safety hazard RBMN created could have been completely avoided had RBMN disclosed to PennDOT or the Commission of its intention to raise the tracks prior to the replacement project, thus eliminating additional redundant work and expenses.⁴⁸ Rather, RBMN went rogue and

⁴² I&E Statement No. 1, pg. 6.

⁴³ RBMN Direct Testimony, pgs. 3, 7.

⁴⁴ I&E Statement No. 2, pg. 3; N.T. pg. 116.

⁴⁵ I&E Statement No. 2, pg. 3.

⁴⁶ I&E Statement No. 2, pg. 3.

⁴⁷ PennDOT Statement No. 1, pg. 18.

⁴⁸ PennDOT Statement No. 1, pg. 18.

took it upon themselves to raise the elevation of the grade crossing which in turn created dramatic grades for the roadway and created the safety issue that exists today.⁴⁹

Fourth, PennDOT has already completely funded an entire crossing upgrade at this location pursuant to an application filed with the Commission in 1997, which included upgrading the timber asphalt crossing to a high type surface.⁵⁰

Fifth, simply fixing the roadway approaches to ensure a safe, satisfactory, and smooth transition is not as simple as RBMN would like the Court to believe. In order to make an adjustment to the roadway transition and change the pave structure, construction plans would be required, property owners would need to be assessed, the posted speed limit may need adjusted, and drainage issues would need to be evaluated.⁵¹

Lastly, RBMN should be required to reimburse PennDOT for the signage it erected at the crossing in August 2021 alerting the traveling public of the safety hazard RBMN created. After being alerted to the issue at the crossing, PennDOT contacted RBMN numerous times to request they install a bump ahead sign at the crossing.⁵² However, upon receiving very little to no correspondence from RBMN, PennDOT took it upon themselves in the interest of the public safety to install four signs so that the public was aware of the dangerous situation that was created by the tracks being raised.⁵³ As such, PennDOT is seeking RBMN reimburse it for the signage at the cost of \$468.36.⁵⁴

RBMN may argue that PennDOT should be responsible for the costs of the reconstruction of the roadway approaches because it should have known the unsafe condition existed prior to

⁴⁹ PennDOT Statement No. 1, pg. 18.

⁵⁰ PennDOT Statement No. 1, pg. 18; PennDOT Exhibits 2A, 2B, 2C.

⁵¹ N.T. pgs. 89, 104; PennDOT Statement No. 1, pgs. 9-10.

⁵² PennDOT Statement No. 1, pg. 15; N.T. pgs. 70-71.

⁵³ PennDOT Statement No. 1, pg. 15; N.T. pgs. 70-71.

⁵⁴ N.T. pg. 70.

completing its portion of construction and therefore should have done something to fix it at that time. This argument fails for many reasons. First, the record is clear that PennDOT was not aware that a safety hazard existed until the project was completed and the roadway was re-opened to the traveling public.⁵⁵ It wasn't until shortly after the road was re-opened that PennDOT started receiving complaints and learned that there was an elevation change.⁵⁶ Obviously PennDOT could have no way of knowing that vehicles were bouncing dangerously and erratically and scraping on the ground until the construction was completed and the road was re-opened to vehicular traffic again.⁵⁷

Second, even if PennDOT was aware of the safety hazard prior to completing its portion of construction, there was nothing PennDOT could do to fix the problem at that time. This is so because the base course, which was prepped and completed by RBMN, sets the elevation of the crossing and roadway approaches.⁵⁸ Once the elevation was set by the base course, there's nothing that PennDOT could do to fix the problem.⁵⁹ As ordered by the Secretarial Letters, PennDOT placed the two inches of wearing course over the base course so that it would be at grade with the tracks.⁶⁰ In order to maintain a smooth and safe transition throughout the crossing and ensure that the rail was protected from traffic impact, the wearing course needed to be placed at the proper grade with the rail.⁶¹ Increasing the depth of the wearing course would cause the tracks to be covered with the wearing course and placing less than two inches of wearing course would leave the tracks exposed.⁶²

⁵⁵ N.T. pgs. 84, 90.

⁵⁶ N.T. pgs. 84, 90; PennDOT Statement No. 1, pg. 11.

⁵⁷ N.T. pg. 90.

⁵⁸ PennDOT Statement No. 1, pg. 13.

⁵⁹ PennDOT Statement No. 1, pg. 13; N.T. 84.

⁶⁰ PennDOT Statement No. 1, pg. 13.

⁶¹ PennDOT Statement No. 1, pg. 13.

⁶² PennDOT Statement Np. 1, pg. 14.

V. CONCLUSION

PennDOT respectfully requests that, based on the foregoing arguments and the evidence presented at the hearing, presiding ALJ DeVoe and the Commission find that (1) the raising of the elevation of the tracks creates a safety hazard to the traversing public; (2) the crossing and roadway approaches thereto need to be reconstructed; and (3) RBMN, at its sole cost and expense, is ordered to reconstruct the crossing and roadway approaches to ensure a safe, smooth, and satisfactory surface for the safety of the public.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



Jillian G. Fellows
Assistant Counsel
Supreme Court I.D. Number 324156
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel
PO Box 8212
Harrisburg, PA 17105-8212
Telephone: (717) 787-3128

DATED: August 5, 2022

PROPOSED FINDINGS OF FACT

1. On January 13, 2020, Reading Blue Mountain Northern Railroad (“RBMN”) filed a Complaint against the Pennsylvania Department of Transportation (“PennDOT” or “Department”) alleging that the Railroad crossing (DOT 361 425 J) at SR 2019 (Oak Street) Pittston, PA 18640 was in “terrible condition” due to PennDOT’s failure to properly maintain the road surface. RBMN requested that PennDOT be required to repair roadway approaches at PennDOT’s expense.

2. 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 roadway approaches.

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

4. 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 conference, the Public Utility Commission (“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.

5. RBMN and the Department came to an amicable agreement to reconstruct and repair the public crossing.

6. 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.

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

8. 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.

9. The Secretarial Letter ordered RBMN, at their sole cost and expense, to replace the high type concrete crossing with an asphalt and rubber flangeway crossing and incur all costs (including incidentals) to perform work related to their facilities, including any inspection/flagmen and any construction engineering. RBMN was also ordered to sawcut/mill and remove the existing approach roadway structure to 7 feet on each side of the outermost rail, removing bituminous asphalt material and preparing subgrade area. RBMN was then to furnish, place and compact a 7-inch layer of hot mix bituminous asphalt base course material to within 2 inches of the adjacent sawcut/milled top of roadway on each roadway approach for the full width of the approach and paved shoulder area.

10. The Secretarial Letter ordered PennDOT, at its sole cost and expense, to place 2 inches of hot mix bituminous asphalt wearing course material on top of the 7 inches of base placed by RBMN throughout the whole crossing area (approaches, track area, and shoulders). PennDOT was also ordered to provide the detour and MPT plans for the closure of the road for the crossing replacement as well as implement the detour and furnish signage for it.

11. The work was to be completed by July 31, 2021.

12. The work was completed by the completion date, give or take a day or two.¹
13. 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.
14. On May 24, 2022, Administrative Law Judge Emily I. DeVoe held an evidentiary hearing.
15. PennDOT, the Commission, and RBMN participated in the hearing.
16. PennDOT presented the testimony of Sarah J. Fenton.
17. Sarah Fenton is the District 4-0 Grade Crossing Administrator.²
18. I&E presented the testimony of William M. Sinick, P.E.
19. William Sinick is a Senior Civil Engineer Manager in the Rail Safety Section of the Commission's Bureau of Technical Utility Services.³
20. RBMN presented the testimony of Matt Johnson and Chris Goetz.
21. Matt Johnson is the Vice President of Asset Management and Community Affairs for RBMN.⁴

¹ I&E Statement No. 1, pg. 4.

² PennDOT Statement No. 1, pg. 2.

³ I&E Statement No. 1, pg. 1.

⁴ Direct Testimony of RBMN, pg. 2.

22. Christ Goetz is the Vice President of Maintenance of Way for RBMN.⁵
23. The Oak Street public crossing (DOT 361 425 J) is a highway/rail crossing where State Route (“SR”) crosses at-grade two tracks of Reading Blue Mountain & Northern Railroad Company (“RBMN”) in Pittston, Township, Luzerne County.⁶
24. SR 2019 is maintained by PennDOT.⁷
25. The crossing connects to SR 0315 to the southeast and to SR 2021, James Musto By-Pass, to the northeast.⁸
26. SR 2019 is a two lane, two direction, bituminous asphalt roadway that approaches and crosses at-grade two sets of railroad tracks maintained by RBMN.⁹
27. In the vicinity of RBMN’s at grade crossing, SR 2019 has the average daily traffic count of 12,1718 and an average daily truck traffic count of 745.¹⁰
28. Industry uses SR 2019 to access Interstate 81 and interstate 476 for interstate commerce as well as for local commerce.¹¹
29. The crossing is a dual bituminous asphalt and rubber at grade crossing.¹²
30. The roadway leading up to the crossing, and in between the two sets of tracks, is bituminous asphalt.¹³
31. The crossing is subject to two prior PUC dockets: A-00113986 and C-2011-2274074.¹⁴

⁵ Direct Testimony of RBMN, pg. 6.

⁶ I&E Statement No. 1, pg. 2.

⁷ I&E Statement No. 1, pg. 2.

⁸ PennDOT Statement No. 1, pg. 3.

⁹ I&E Statement No. 1, pg. 2.

¹⁰ PennDOT Statement No. 1, pg. 3.

¹¹ PennDOT Statement No. 1, pg. 3.

¹² PennDOT Statement No. 1, pg. 3.

¹³ PennDOT Statement No. 1, pg. 3.

¹⁴ PennDOT Statement No. 1, pgs. 4-5.

32. Prior to any work being done by PennDOT or RBMN under this proceeding, the crossing surface and the roadway approaches were both in a highly deteriorated condition due to lack of maintenance by both RBMN and PennDOT.¹⁵

33. PennDOT completed they work they were ordered to completed consistent with the Secretarial Letters.¹⁶

34. The Secretarial Letter was written to match the existing pave structure.¹⁷

35. In order to maintain a smooth transition through the crossing as the final product, meet PennDOT publication/specifications, and maintain positive drainage in the area so drainage doesn't become an issue, a specific pave structure (and responsibilities) was indicated in the Secretarial Letter.¹⁸

36. There are numerous reasons as to why it is important to match the existing pave structure.¹⁹

37. The first reason it is important to match existing pave structure is to ensure positive drainage under the pavement so that there are no drainage issues that would cause deterioration to the pavement and surrounding areas. Unmatched pavement depths could create permeable or impermeable areas underneath the pavement (or in between the pavement layers) due to the gradation of the different pavement courses, which in turn could create drainage flow issues. This could force water in undesirable directions that could cause the bituminous pavement to deteriorate. This could also create undermining issues as well.²⁰

¹⁵ I&E Statement No. 1, pg. 3.

¹⁶ I&E Statement No. 2., pg. 3.

¹⁷ PennDOT Statement No. 1, pg. 9.

¹⁸ PennDOT Statement No. 1, pg. 9.

¹⁹ PennDOT Statement No. 1, pg. 9.

²⁰ PennDOT Statement No. 1, pgs. 9-10.

38. The second reason it is important to match existing pave structure is to maintain structure integrity of the approaches. Too much or too little pavement could cause premature failure of the approaches.²¹

39. The third reason it is important to match existing pave structure is to maintain the existing elevation of the roadway. Too much or too little pavement depth could create drop-off conditions for the roadway and the surrounding area.²²

40. In fulfilling its obligations under the Secretarial Letters, RBMN raised the elevation of its tracks approximately six inches or more in places as compared to the existing grade prior to the reconstruction.²³

41. The raise in grade and change in superelevation of the tracks were not approved as part of the work to be performed under the Secretarial Letters.²⁴

42. Superelevation in railroad tracks is setting one rail higher than the other through a curve to basically bank it like a racetrack based primarily on speed and curvature of the tracks as it passes across the public highway crossing.²⁵

43. RBMN did not construct the crossing in accordance with the Secretarial Letters.²⁶

44. Raising the grade and superelevation of the tracks was contrary to what was prescribed in the Secretarial Letters.²⁷

²¹ PennDOT Statement No. 1, pg. 10.

²² PennDOT Statement No. 1, pg. 10.

²³ I&E Statement No. 1, pg. 5; PennDOT Statement No. 1, pg. 10.

²⁴ I&E Statement No. 1, pg. 5.

²⁵ I&E Statement No. 2., pg. 2.

²⁶ I&E Statement No. 1, pg. 5.

²⁷ I&E Statement No. 2., pg. 3.

45. Elevating the tracks beyond the original crossing elevation was never discussed nor agreed upon by the parties prior to construction.²⁸

46. Chris Goetz testified it was necessary for RBMN to increase the elevation in the curves of track one and track two due at the crossing according to Federal Railroad Administration due to speeds run on both track one and track two of the crossing through the roadway portion of the crossing.²⁹

47. Matt Johnson testified that the raising of the track elevation through the crossing was necessary to accommodate track speeds through the crossing.³⁰

48. The speed and degree of curvature determines the elevation needed.³¹

49. Chris Goetz does not know the train running speed or degree of curvature at the crossing.³²

50. Matt Johnson does not know the train running speed or degree of curvature at the crossing.³³

51. If a grade elevation change is more than what the Commission considers a minor correction, which is typically 1.5", it is considered an alteration and an application is required to be submitted to the Commission.³⁴

52. RBMN raised the superelevation from 2.5" to over 5".³⁵

²⁸ I&E Statement No. 1, pg. 5; I&E Statement No. 2, pgs. 1, 3; PennDOT Statement No. 1, pgs. 10, 16; N.T. pgs. 73, 103, 111.

²⁹ Direct Testimony of RBMN, pg. 7.

³⁰ Direct Testimony of RBMN, pg. 3.

³¹ Direct Testimony of RBMN, pg. 7.

³² N.T. pg. 51.

³³ N.T. pgs. 53-54.

³⁴ N.T. pgs. 104-05.

³⁵ N.T. pgs. 105, 107

53. If a railroad changes the superelevation of their tracks going through a crossing across a highway and that change affects the approach roadway coming in that particular crossing, the Commission considers that an alteration, and an application is required to be filed.³⁶

54. This is so because the highway entity would have to make an adjustment to their roadway transition, possibly adjust their speed limit, and it also affects drainage.³⁷

55. The raise in grade and change in superelevation directly affects PennDOT's roadway approaches.³⁸

56. RBMN was required to file an application with the Commission prior to raising the elevation of the tracks.³⁹

57. The American Railway Engineer and Maintenance-Of-Way Association and the Federal Highway Association address the need for the traveling public's safety when railroads are involved.⁴⁰

58. The raising of the tracks created a safety hazard for the traveling public.⁴¹

59. The work performed at the crossing does not provide a smooth and satisfactory condition.⁴²

60. The work performed at the crossing does not provide a safe condition for the traveling public at the posted speed limit of 35 MPH.⁴³

61. The safety hazard did not exist prior to the replacement project.⁴⁴

³⁶ N.T. pgs. 103-04.

³⁷ N.T. pg. 104.

³⁸ I&E Statement No. 1, pg. 5; PennDOT Exhibit 7

³⁹ N.T. pg. 107.

⁴⁰ PennDOT Statement No. 1, pg. 12.

⁴¹ PennDOT Statement No. 1, pg. 12.

⁴² I&E Statement No. 1, pg. 5; PennDOT Statement No. 1, pg. 12.

⁴³ I&E Statement No. 1, pg. 5.

⁴⁴ PennDOT Statement No. 1, pg. 12.

62. PennDOT is not the cause for the hazardous condition existing at the crossing today.⁴⁵

63. The hazardous condition was created by RBMN after it raised the tracks and set the elevation of the rails.⁴⁶

64. The tracks were raised and superelevated with no regard to the height of the existing roadway or necessary roadway transition to accommodate the elevation grade change prior to the tracks and in the roadway area between each set of tracks.⁴⁷

65. RBMN raised the tracks and superelevated the tracks independent of each set of tracks with no thought to the existing roadway approaches, roadway in between the tracks, or the traveling public.⁴⁸

66. The raise in grade and superelevation created a system of steps built in the crossing surface and roadway approaches that vehicles must now travel over.⁴⁹

67. Steps should never be a part of roadway design.⁵⁰

68. Rather, roadways and railroad crossing surfaces should be constant, safe, and smooth transition to the tracks and in between each set of tracks.⁵¹

69. Prior to the grade crossing replacement, the elevation leading up to and throughout the grade crossing was a much smoother transition and was not an issue.⁵²

⁴⁵ I&E Statement No. 2., pg. 3.

⁴⁶ I&E Statement No. 2., pg. 3.

⁴⁷ I&E Statement No. 1, pg. 6.

⁴⁸ I&E Statement No. 2., pg. 3.

⁴⁹ I&E Statement No. 1, pg. 6; PennDOT Statement No. 1, pg. 12; PennDOT Exhibits 6, 8-9.

⁵⁰ I&E Statement No. 1, pg. 6.

⁵¹ I&E Statement No. 1, pg. 6.

⁵² PennDOT Statement No. 1, pg. 12.

70. Now, vehicles bound dangerously and erratically when moving through the crossing.⁵³

71. In some instances, drivers were observed scraping the bottom of their vehicle on the ground when passing through the crossing.⁵⁴

72. Sarah Fenton became aware that the tracks were raised on August 2, 2021.⁵⁵

73. PennDOT was not aware that a safety hazard existed until the project was completed and the roadway was re-opened to the traveling public.⁵⁶

74. It wasn't until shortly after the road was re-opened that PennDOT started receiving complaints and learned that there was an elevation change.⁵⁷

75. The subgrade and base course, which was prepped and done by RBMN and/or their contractor, set the elevation for the 2 inches of 9.5mm wearing that PennDOT agreed to place.⁵⁸

76. In fulfilling its obligation under the Secretarial Letter, RBMN set the elevation of the crossing and roadway approaches.⁵⁹

77. PennDOT could not have fixed the safety hazard after RBMN laid the base course.⁶⁰

78. RBMN laid the base course out so that when PennDOT placed the 2 inches of wearing course it would be at grade with the tracks.⁶¹

⁵³ PennDOT Statement No. 1, pg. 12; PennDOT Exhibits 8-9.

⁵⁴ PennDOT Statement No. 1, pg. 12.

⁵⁵ PennDOT Statement No. 1, pg. 11.

⁵⁶ N.T. pgs. 84, 90.

⁵⁷ N.T. pg. 84, 90.

⁵⁸ PennDOT Statement No. 1, pg. 13.

⁵⁹ PennDOT Statement No. 1, pg. 13.

⁶⁰ PennDOT Statement No. 1, pg. 13.

⁶¹ PennDOT Statement No. 1, pg. 13.

79. In order to maintain a smooth and safe transition throughout the crossing and ensure that the rail was protected from traffic impact, wearing course needed to be placed at the proper grade with the rail.⁶²

80. PennDOT Publication 242 Pavement Policy Manual has strict placement and thickness requirements for 9.5mm wearing course. The minimum design thickness for 9.5mm wearing course is 1.5 inches and the maximum design thickness for 9.5mm wearing course is 2 inches.⁶³

81. Placing a thicker wearing course depth beyond the 2 inches would place the track below the grade of the finished surface and would cause for the tracks to be covered with the wearing course.⁶⁴

82. Placing less than 2 inches of wearing course would leave the tracks exposed. This was the reason it was called out as part of the agreement between RBMN and PennDOT.⁶⁵

83. PennDOT received numerous complaints about the crossing from Pittston Township Municipal Officials, the local fire company, local EMS, the general public, Representative Carole's office, and internal PennDOT employees.⁶⁶

84. The local news station also covered the issue.⁶⁷

85. Complaints received were regarding the elevation/grade change throughout the crossing. Complaints ranged from vehicle damage, body whiplash, to near miss accidents.⁶⁸

86. The crossing needs to be completed reconstructed.⁶⁹

⁶² PennDOT Statement No. 1, pg. 13.

⁶³ PennDOT Statement No. 1, pg. 13.

⁶⁴ PennDOT Statement No. 1, pg. 14.

⁶⁵ PennDOT Statement No. 1, pg. 14.

⁶⁶ PennDOT Statement No. 1, pg. 14.

⁶⁷ PennDOT Statement No. 1, pg. 14.

⁶⁸ PennDOT Statement No. 1, pg. 15.

⁶⁹ I&E Statement No. 1, pg. 6.

87. In order to make an adjustment to the roadway transition and change the pavement structure, construction plans would be required, property owners would need to be assessed, the posted speed limit may need adjusted, and drainage issues would need to be evaluated.⁷⁰

88. PennDOT contacted RBMN numerous times to address the safety concerns, however RBMN declined or were unresponsive.⁷¹

89. PennDOT asked RBMN numerous times to erect signage for the bump until the crossing was fixed.⁷²

90. RBMN did not erect any signage.⁷³

91. Subsequently, in August 2020, PennDOT, at its sole costs and expense, erected four signs—two installed on each side of the crossing.⁷⁴

92. One sign is a “Bump Ahead” sign with a flashing light and the second sign, which is closer to the crossing, is a “Bump” sign.⁷⁵

93. The total cost of the signage was \$468.36.⁷⁶

94. PennDOT continued to receive complaints about the crossing after the signage was erected.⁷⁷

95. PennDOT met with the Commission and RBMN to discuss the issue.⁷⁸

96. The first meeting took place on site at the grade crossing on Wednesday, August 18, 2021. Following that there were additional tele-conferences.⁷⁹

⁷⁰ N.T. pgs. 89, 1049.

⁷¹ PennDOT Statement No. 1, pg. 15; N.T. pgs. 70-71.

⁷² PennDOT Statement No. 1, pg. 15; N.T. pgs. 70-71.

⁷³ PennDOT Statement No. 1, pg. 15.

⁷⁴ PennDOT Statement No. 1, pg. 15; N.T. pgs. 70-71.

⁷⁵ PennDOT Statement No. 1, pg. 15.

⁷⁶ N.T. pg. 70.

⁷⁷ N.T. pgs. 86, 88.

⁷⁸ PennDOT Statement No. 1, pg. 15.

⁷⁹ PennDOT Statement No. 1, pg. 15; I&E Statement No. 1, pg. 4.

97. RBMN did not have any engineering plans for the crossing replacement.⁸⁰
98. No engineering was done by RBMN to verify if the increase of elevation was needed or was safe for the users of the grade crossing.⁸¹
99. PennDOT wants the crossing restored back to the original grade and elevation.⁸²
100. RBMN expects PennDOT to perform and maintain any asphalt paving outside two feet from edge of rail.⁸³
101. PennDOT is not willing to cost share or perform any work since the dangerous crossing condition was created solely by RBMN and for their benefit.⁸⁴
102. Rail safety concerns with the original elevation was never brought up or discussed with PennDOT prior to the replacement project.⁸⁵
103. It wasn't until after the crossing replacement project was completed and the elevation raised that RBMN brought up their concern with safety due to the original alignment/elevation.⁸⁶
104. Had RBMN identified the need to raise the tracks to address safety concerns prior to the replacement in 2021, the issues could have been addressed during the replacement project, thus eliminating the need for additional redundant work and expenses.⁸⁷

⁸⁰ PennDOT Statement No. 1, pg. 16.

⁸¹ PennDOT Statement No. 1, pg. 16.

⁸² PennDOT Statement No. 1, pg. 17.

⁸³ Direct Testimony of RBMN, pg. 4.

⁸⁴ PennDOT Statement No. 1, pgs. 17-18.

⁸⁵ PennDOT Statement No. 1, pgs. 16-17.

⁸⁶ PennDOT Statement No. 1, pg. 17.

⁸⁷ PennDOT Statement No. 1, pg. 17.

PROPOSED CONCLUSIONS OF LAW

1. The Pennsylvania Public Utility Commission (“Commission”) has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. §§ 2702 and 2704.

2. The Commission has the authority to order the construction, reconstruction, alteration, relocation, repair, maintenance, protection, suspension or abolition of railroad crossings, and the authority to determine and order which concerned parties should perform such work, in order to prevent accidents and promote the safety of the public. 66 Pa.C.S. §§ 2702 and 2704.

3. The Commission possesses the exclusive authority to assess the cost of the work to be performed upon the concerned parties in such proper proportions as it may determine. 66 Pa.C.S. §§ 2702 and 2704.

4. Among the factors which the Commonwealth Court notes as relevant to the assignment of costs and maintenance responsibilities include (1) the relative benefit initially conferred on each party with the construction of the crossing; and (2) whether each party is responsible for the deterioration of the crossing resulting in the need for its repair, replacement, or removal. . *N. Lebanon Twp. v. Pa. P.U.C.*, 962 A.2d 1237, 1247 (Pa. Cmwlth. 2008) (citing *Greene Twp. Bd. of Supervisors v. Pa. P.U.C.*, 668 A.2d 615, 619 (Pa. Cmwlth. 1995)).

5. While the Commission has considered the foregoing factors to be relevant in the past, this in no way limits the factors that it can consider and the Commission’s allocation of cost will stand as long as the allocation is just and reasonable and has a sound legal and factual basis. *Bell Atlantic-Pa., Inc. v. Pa. P.U.C.*, 672 A.2d 352 (Pa. Cmwlth. 1996); *AT&T v. Pa. P.U.C.*, 737 A.2d 201, 209 (Pa. 1999); *Wheeling & Lake Erie Railway Co.*, 778 A.2d at 793.

6. The financial ability of a concerned party to pay is not determinative of the issue of cost allocation. *East Rockhill Twp. v. Pa. P.U.C.*, 115 Pa. Commw. 228, 540 A.2d 600 (1988).

7. The Commission can also consider the general equities of the case in its determination. *Erie L.R. Co. v. Pa. P.U.C.*, 278 A.2d 188 (Pa. Cmwlth. 1971); *SEPTA v. Pa. P.U.C.*, 802 F. Supp. 1273, 1273 (E.D. Pa. 1992); *Application of the City of Wilkes-Barre*, Docket No. A- 00101606, 1981 Pa. PUC LEXIS 102, *5-*6 (Order entered April 9, 1981).

8. It is just and reasonable for Reading Blue Mountain Northern Railroad Company to be required to reimburse the Department for costs already for the installation of warning signs.

9. It is just and reasonable that Reading Blue Mountain Northern Railroad Company, at its sole cost and expense, furnish all material and do all work necessary to repair, replace, and/or rehabilitate the crossing and roadway approaches thereto.

10. It would not be just and reasonable to assign any costs or responsibilities associated with reconstructing the crossing to the Pennsylvania Department of Transportation.

PROPOSED ORDERING PARAGRAPHS

1. Reading Blue Mountain Northern Railroad Company, at its sole cost and expense, shall furnish all materials and perform all work required to reconstruct the public crossing (DOT 361 425 J) at State Route 2019, including the roadway approaches thereto.

2. Reading Blue Mountain Northern Railroad Company shall coordinate with the Department of Transportation on preparation of construction plans to ensure the reconstruction of the crossing and roadway approaches results in a safe, smooth, and satisfactory condition for the traveling public.

3. Reading Blue Mountain and Northern Railroad Company, at its sole cost and expense and within three (3) months of an entry of an order approving the work described herein, shall submit to all parties of record for review and to the Commission for approval, complete detailed construction plans for the work proposed.

4. Reading Blue Mountain and Northern Railroad Company, at its sole cost and expense, shall obtain an amicable construction easement with any affected property owners, for use during the construction period only, to facilitate construction of the project as necessary.

5. Reading Blue Mountain and Northern Railroad Company, if an amicable construction easement with any affected property owners could not be obtained, at its sole cost and expense, shall prepare and submit to all parties for review and to the Commission for approval, all right-of-way plans and property descriptions necessary to be taken and appropriated temporarily, for use during the construction period only, to facilitate construction of the project as necessary.

6. Reading Blue Mountain Northern Railroad Company, at its sole cost and expense, shall furnish all material and perform all work which may be required as incidental to the

performance of the proposed work; furnish construction engineering and inspection service if required as a result of the work; and 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.

7. Reading Blue Mountain Northern Railroad Company, at its sole cost and expense, shall furnish all material and do all work necessary to establish and maintain any detours or traffic controls that may be required to properly and safely accommodate highway traffic and pedestrian traffic during the reconstruction of the roadway approaches and railroad crossing surfaces.

8. Reading Blue Mountain Northern Railroad Company, at its sole cost and expense, shall provide a roadway closure of State Route 2019 at the public crossing while reconstruction takes place, all in accordance with the Manual on Uniform Traffic Control Devices.

9. All parties shall cooperate with each other so that during the time the work is being performed, vehicular, pedestrian and railroad traffic will not be endangered or unnecessarily inconvenienced, and so that the requirements of each of the parties will be provided for and accommodated insofar as possible.

10. All State requirements must be adhered to for the design and construction of the crossing and roadway approaches.

11. Reading Blue Mountain Northern Railroad Company shall complete all work necessary to complete the reconstruction of the subject crossing and roadway approaches at State Route 2019 in a matter satisfactory to this Commission within six (6) months of the entry of an Order approving the work described herein, and that on or before said date, Reading Blue

Mountain Northern Railroad Company shall report to all parties of record and this Commission in writing the date of actual completion of the work.

12. Reading Blue Mountain Northern Railroad Company shall, at least thirty (30) days prior to the state of work, notify local emergency management services and all parties of interest of the actual date on which work will begin.

13. Reading Blue Mountain Northern Railroad Company shall reimburse the Department of Transportation \$468.36 for costs incurred to install signage at the crossing.

14. Reading Blue Mountain Northern Railroad Company, at its sole cost and expense, shall pay all compensation for damages, if any, due to owners of property taken, injured or destroyed by reason of the construction directed herein.

15. Upon completion of the work described herein, Reading Blue Mountain & Northern Railroad Company, at its sole cost and expense, shall furnish all material and perform all work necessary thereafter to maintain its railroad facilities at the public crossing (DOT 361 425 J) including the railroad flashing-light warning signals, gates, bell, crossbucks, circuitry, tracks and all appurtenant equipment and to maintain at all times in a safe, smooth and satisfactory condition the crossing surface for the full width of the roadway and paved shoulders located between the rails and area between each set of tracks and for a distance of twenty-four (24) inches beyond the outermost rails, all in accordance with the Manual on Uniform Traffic Control Devices.

16. Upon completion of the work described herein, the Department of Transportation, at its sole cost and expense, shall furnish all material and perform all work necessary thereafter to maintain the highway approach roadways and paved shoulders to the public crossing (DOT 361 425 J) to points twenty-four (24) inches beyond each outside rail in a safe, smooth and

satisfactory condition, and in addition to maintain the railroad advance warning signs, stop lines and railroad pavement markings on the SR 2019 approaches thereto, all in accordance with the Manual on Uniform Traffic Control Devices and approved plans.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Complaint filed by Reading Blue Mountain	:	
& Northern Railroad Company involving	:	
the deteriorated condition of the railroad	:	C-2020-3016906
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 &	:	Electronically Filed
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 **Main Brief of the Commonwealth of Pennsylvania, Department of Transportation** dated August 5, 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:

Honorable Emily I. DeVoe
Administrative Law Judge
Pennsylvania Public Utility Commission
301 Fifth Avenue
Suite 220, Piatt Place
Pittsburg, PA 15222
edevoe@pa.gov

Jolene Busher
Reading Blue Mountain & Northern Railroad
Company
1 Railroad Blvd.
Port Clinton, PA 19549
jbusher@readingnorthern.com

Romilda Crocamo, Esq.
Chief County Solicitor
Luzerne County Office of Law
200 North River St.
Wilkes Barre, PA 18711
romilda.crocamo@luzernecounty.org

John P. Finnerty, Esq.
Pittston Township
421 Broad Street
Pittston, PA 18640
pitttown@comcast.net

Leonard Angelo Sanguedolce, Esq.
Sanguedolce Law Offices PC
159 South Main Street
Pittston, PA 18640
lsanguedolce@yahoo.com

Kayla J. Rost, Esq.
PA Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
karost@pa.gov

John G. Dean, Esq.
Corey J. Calpin, Esq.
Elliott Greenleaf & Dean
15 Public Square, Suite 310
Wilkes-Barre, PA 18701
jgd@elliottgreenleaf.com
cjc@elliottgreenleaf.com
Counsel for Luzerne County

Edwin L. Stock, Esq.
Rick Stock Law
50 N. 5th Street
4th Floor
Reading, PA 19601
estock@rrslegal.com
*Counsel for Reading Blue Mountain and
Northern Railroad Company*

Respectfully Submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



Jillian G. Fellows
Assistant Counsel
Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105-8212
Telephone No.: 717/787-3128
Fax No.: 717/772-2741

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