



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

August 5, 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's Main Brief

Dear Secretary Chiavetta:

Enclosed please find the **Main Brief** of the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement in the above-referenced proceeding.

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'.

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KLR/jfm
Enclosures

cc: As per Certificate of Service
William M. Sinick, P.E. (via email - wilsinick@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	:	Docket No. C-2020-3016906
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.	:	

**MAIN BRIEF
OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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Dated: August 5, 2022

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I. PROCEDURAL HISTORY

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” or “RBMN”) 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, the Commission’s Rail Safety Section requested that the matter be referred to the Office of Administrative Law Judge, noting the Motion filed by PennDOT on December 14, 2021 requested an expedited hearing on the work completed by Reading Blue Mountain.

On January 13, 2022, Administrative Law Judge Emily DeVoe held an initial prehearing conference which was attended by representatives from PennDOT, RBMN, the Commission’s Bureau of Investigation and Enforcement (“I&E”), Pittston Township, and Luzerne County.

On January 14, 2022, a Prehearing Order was issued establishing the litigation schedule. Specifically, written direct testimony was due March 14, 2022, written rebuttal

testimony was due 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, RBMN requested a brief extension to provide written direct testimony. Specifically, RBMN requested a 7-day extension for the submission of written direct and rebuttal testimony.

On March 15, 2022, ALJ DeVoe issued an Interim Order granting RBMN's request for an extension, resulting in written direct being due March 22, 2022 and written rebuttal being due April 11, 2022.

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

On March 21, 2022, PennDOT served its written direct testimony and accompanying exhibits.

On April 11, 2022, I&E served its 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, an Interim Order Setting Briefing Schedule 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 Proposed Corrections to Hearing Transcript.

On July 19, 2022, an Interim Order Correcting Transcript was issued accepting the proposed corrections filed by I&E.

I&E submits this Main Brief in accordance with the briefing schedule that was established at the evidentiary hearing and documented through the July 6, 2022 Interim

Order.¹ Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Ordering Paragraphs are attached as Appendix A, B, and C, respectively.

II. STATEMENT OF THE CASE

The public crossing at Oak Street (State Route 2019) in Pittstown Township is a highway/rail crossing which crosses at-grade two (2) tracks of RBMN.² It has an average daily traffic of 12,178 vehicles and an average daily truck traffic of 745 in the vicinity of the public crossing.³ Oak Street is used to access Interstate 81 and Interstate 476 for interstate and local commerce, and is classified as Minor Arterial.⁴ Oak Street is maintained by PennDOT and the at-grade two sets of railroad tracks are maintained by RBMN.⁵

Prior to the work completed in or around July 2021, the at-grade crossing at Oak Street was a high-type concrete panel railroad crossing service.⁶ The parties agreed to replace the high-type concrete panel crossing surface with a rubber flangeway and asphalt crossing surface, which was memorialized in the Secretarial Letter dated April 30, 2021 and later modified by the Secretarial Letter dated June 28, 2021.⁷

In short, RBMN was 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

¹ N.T. pgs. 45-46; *see also* Interim Order Setting Briefing Schedule, dated July 6, 2022.

² I&E Statement No. 1, pg. 2.

³ PennDOT Statement No. 1, pg. 3.

⁴ PennDOT Statement No. 1, pg. 3.

⁵ I&E Statement No. 1, pg. 2.

⁶ Secretarial Letter dated April 30, 2021; *see also* *Pittston Township v. Reading Blue Mountain & Northern Railroad*, Docket No. C-2011-2274074 (Order attached as PennDOT Exhibit 3).

⁷ Secretarial Letter dated April 30, 2021; *see also* Secretarial Letter dated June 28, 2021.

tracks.⁸ In addition, RBMN was ordered 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.⁹

PennDOT was ordered to establish and maintain the detour and traffic controls for all vehicular traffic necessary for a 7-day roadway closure.¹⁰ In addition, PennDOT was ordered 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.¹¹

The reconstruction of the crossing at Oak Street was completed in or around July 2021.¹² Shortly after Oak Street was re-opened to the public, PennDOT received multiple complaints concerning the crossing, including complaints made by Pittston Township Municipal officials, local fire company, local EMS, the general public, Representative Carole's office, and internal PennDOT employees.¹³ The unsafe condition at the crossing also made local news.¹⁴

PennDOT contacted RBMN to discuss the unsafe condition at the crossing, but

⁸ I&E Statement No. 1, pg. 3; *see also* Secretarial Letter dated April 30, 2021 and Secretarial Letter dated June 28, 2021; RBMN Statement No. 1, pgs. 2-3.

⁹ I&E Statement No. 1, pg. 3; *see also* Secretarial Letter dated April 30, 2021 and Secretarial Letter dated June 28, 2021; RBMN Statement No. 1, pgs. 2-3.

¹⁰ I&E Statement No. 1, pgs. 3-4; *see also* Secretarial Letter dated April 30, 2021 and Secretarial Letter dated June 28, 2021.

¹¹ I&E Statement No. 1, pgs. 3-4; *see also* Secretarial Letter dated April 30, 2021 and Secretarial Letter dated June 28, 2021.

¹² N.T. pg. 72.

¹³ PennDOT Statement No. 1, pg. 14.

¹⁴ PennDOT Statement No. 1, pg. 14; I&E Statement No. 1, pg. 6; *see also* PA Homepage article, <https://www.pahomepage.com/top-stories/recently-completed-railroad-crossing-project-causing-issues-in-pittston-township/>.

after multiple failed attempts, PennDOT erected a “Bump Ahead” sign and “Bump” sign, and filed its Motion for hearing before the Commission.¹⁵

III. BURDEN OF PROOF

Section 2702(c) of the Public Utility Code (“Code”) provides that:

Upon its own motion or upon complaint, the Commission shall have exclusive power after hearing, upon notice to all parties in interest, including the owners of adjacent property, to order any such crossing heretofore or hereafter constructed to be relocated or altered, or to be suspended or abolished upon such reasonable terms and conditions as shall be prescribed by the Commission.

66 Pa. C.S. § 2702(c).

Section 332(a) of the Public Utility Code provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.¹⁶ RBMN, as the complainant, initially held the burden of proof to show that PennDOT was the party responsible for the deteriorated condition of the at-grade crossing at Oak Street in Pittston Township. In light of the progression of the proceeding, PennDOT now has the burden of proving, by a preponderance of evidence, that the work completed by RBMN caused the unsafe and dangerous condition currently existing at the at-grade crossing at Oak Street, and RBMN has the burden of proving, by a preponderance of evidence, that the raising of the railroad tracks was proper and necessary. “A preponderance of the evidence means only that one party has presented evidence that is more convincing, by even the smallest

¹⁵ PennDOT Statement No. 1, pg. 15; *see also* PennDOT Motion to Schedule Matter for Hearing, dated December 13, 2021.

¹⁶ 66 Pa. C.S. § 332(a); *see also Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600, 602 n. 1 (Pa. Cmwlth. 1990); *Borough of Bridgewater v. Pa. P.U.C.*, 124 A.2d 165 (Pa. Super. 1956); *N. Lebanon Twp. v. Pa. P.U.C.*, 962 A.2d 1237 (Pa. Cmwlth. 2008).

amount, than the evidence presented by the other party.”¹⁷

IV. 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.¹⁸

As discussed in more detail below, the public highway crossing at Oak Street provides a step-like transition over the railroad tracks which poses a hazard and unsafe condition to the traversing public. This hazardous condition was caused by RBMN when it unilaterally, and without Commission review and/or approval, raised the tracks and changed the superelevation,¹⁹ thus affecting the grade of the crossing. Accordingly, I&E respectfully requests that Your Honor order RBMN to reconstruct the Oak Street crossing to its prior grade at its sole cost and expense, and to order RBMN to provide construction plans to the Commission for approval prior to the start of construction.

V. ARGUMENT

A. LEGAL STANDARD

Section 2702 of the Public Utility Code (the “Code”) vests the Commission with exclusive jurisdiction to determine the points at which and the manner in which a rail-

¹⁷ *Energy Conservation Council of Pennsylvania v. Pa. P.U.C.*, 995 A.2d 465, 478 (Pa. Cmwlth. 2010).

¹⁸ *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.*, Docket No. A-00114338, Opinion and Order dated Mar. 14, 2002.

¹⁹ Superelevation in railroad tracks is setting one rail higher than the other through a curve to basically bank it like a racetrack based on the speed and curvature of the tracks as it passes across a public highway crossing. I&E Statement No. 1-R, pg. 2. In contrast, the raising of the grade is raising the whole area of the tracks, the elevation of it. N.T. pg. 105.

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.²⁰

The Commission possesses exclusive authority to determine and order which parties should perform such work at a crossing and which parties will maintain the crossing in the future, all to effectuate the prevention of accidents and promote the public safety.²¹

The Commission also is empowered to order the reconstruction of a crossing upon such reasonable terms and conditions as it shall prescribe.²² In apportioning costs, the Commission is not limited to any fixed rule, but takes all relevant factors into consideration; the only requirement is that its order must be just and reasonable.²³

B. THE RECONSTRUCTED CROSSING AT OAK STREET IS A SAFETY HAZARD TO THE PUBLIC

The record is clear that the public crossing at Oak Street poses an ongoing safety hazard to the traversing public. First, PennDOT has received multiple complaints relating to the crossing, namely from Pittston Township Municipal officials, local fire company, local EMS, the general public, Representative Carole's office, and internal PennDOT employees.²⁴ The complaints received by PennDOT relate to the elevation/grade change through the crossing, ranging from vehicle damage to body whiplash to near miss accidents.²⁵ Second, not only is PennDOT receiving complaints regarding the crossing,

²⁰ 66 Pa. C.S. § 2702.

²¹ *SEPTA v. Pa. P.U.C.*, 592 A.2d 797 (Pa. Cmwlth. 1991).

²² *Pennsylvania Game Commission v. Pa. P.U.C.*, 651 A.2d 596 (Pa. Cmwlth. 1994).

²³ *East Rockhill Township v. Pa. P.U.C.*, 540 A.2d 600 (Pa. Cmwlth. 1988).

²⁴ PennDOT Statement No. 1, pg. 14.

²⁵ PennDOT Statement No. 1, pgs. 14-15.

but the crossing has made local news which showed and articulated the hazardous condition currently at the crossing.²⁶

Next, both Sarah Fenton and William Sinick have explained, in great detail, the hazardous condition existing at the crossing. Ms. Fenton testified that the crossing does not have a safe and smooth transition throughout.²⁷ She explained that the existing safety problem/concern was created when the tracks were raised because the change of grade and elevation created a step-like transition through the crossing.²⁸ She further noted that vehicles bounce dangerously and erratically when driving over the crossing.²⁹ Ms. Fenton unequivocally stated that the safety problem currently existing at the crossing did not exist prior to the replacement project, and that the elevation leading up to and throughout the grade crossing previously presented a smooth and safe transition.³⁰

Mr. Sinick corroborates Ms. Fenton's testimony. Mr. Sinick testified that the highway/rail crossing at Oak Street does not provide a smooth and satisfactory condition, even at the posted speed of 35 mph.³¹ Mr. Sinick explained that the crossing was made unsafe when the tracks were raised and superelevated with no regard to the height of the exiting 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.³² The work completed by RBMN created a system of steps built into the crossing, which should

²⁶ PA Homepage article, <https://www.pahomepage.com/top-stories/recently-completed-railroad-crossing-project-causing-issues-in-pittston-township/>.

²⁷ PennDOT Statement No. 1, pg. 12; *see also* PennDOT Exhibits 8 and 9.

²⁸ PennDOT Statement No. 1, pg. 12; *see also* PennDOT Exhibits 8 and 9.

²⁹ PennDOT Statement No. 1, pg. 12.

³⁰ PennDOT Statement No. 1, pg. 12.

³¹ I&E Statement No. 1, pg. 5.

³² I&E Statement No. 1, pg. 5.

never be part of a roadway design.³³ Mr. Sinick explained that roadways and railroad crossing surfaces should be a constant, safe, and smooth transition to the tracks and in between each set of tracks.³⁴ Notably, prior to reconstruction, the tracks maintained a 2.5-inch superelevation from one rail to the other.³⁵ Now, the overall grade of the railroad tracks have been raised to 6 inches with respect to the existing roadway and the superelevation from one rail to the other was changed from 2.5 inches to approximately 5.5 inches without any consideration of the existing roadway grade or approaches.³⁶

Notably, RBMN's witnesses do not challenge or argue against PennDOT's and I&E's assertion that the crossing at Oak Street is unsafe. Rather, both Mr. Johnson and Mr. Goetz stated that it was their understanding that PennDOT is not satisfied with the transition of the roadway and that it was an unsafe surface.³⁷ Accordingly, an unsafe condition exists at the Oak Street crossings that needs to be addressed by the Commission.

C. READING BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY CAUSED THE HAZARDOUS CONDITION AT THE OAK STREET CROSSING

Here, the record clearly shows that RBMN is the party responsible for the hazardous condition existing at the Oak Street crossing today because it failed to discuss the raising of the tracks and altering of the superelevation during the infancy of this proceeding, did not complete its portion of the reconstruction project in accordance with

³³ I&E Statement No. 1, pg. 5.

³⁴ I&E Statement No. 1, pg. 5.

³⁵ I&E Exhibit A.

³⁶ N.T. pg. 105-107.

³⁷ RBMN Statement No. 1, pg. 3; RBMN Statement No. 2, pg. 7.

the Secretarial Letters, and failed to provide any support or justification for raising the tracks and altering the superelevation. First, there is a general consensus among the parties that the raising of the tracks and altering the superelevation was not discussed prior to the replacement project. Ms. Fenton stated that altering the elevation of the tracks by RBMN was never brought up or discussed with PennDOT prior to the replacement project.³⁸ Specifically, RBMN never voiced its intention to raise the tracks at any of the meetings or discussions leading up to the issuance of the Secretarial Letters.³⁹

Mr. Sinick unequivocally stated that the alterations, i.e., the raising of the grade and superelevation of the tracks, were not discussed at the March 31, 2021 field conference nor were they agreed upon by the parties prior to reconstruction.⁴⁰ Mr. Sinick further explained that the alterations were not approved as part of the work to be performed pursuant to the April 30, 2021 and June 28, 2021 Secretarial Letters, and that a change in track geometry was never discussed.⁴¹

When asked what work and contributions RBMN agreed to perform at the crossing, both Mr. Johnson and Mr. Goetz stated that RBMN agreed to perform track work as well as paving through the crossing and to provide a railroad inspector during PennDOT's top coat paving portion.⁴² Neither witness mentioned any agreement among the parties for RBMN to raise the grade of its tracks or change the superelevation.⁴³ At

³⁸ PennDOT Statement No. 1, pg. 10.

³⁹ PennDOT Statement No. 1, pg. 18.

⁴⁰ I&E Statement No. 1, pg. 5; I&E Statement No. 1-R, pg. 3.

⁴¹ I&E Statement No. 1, pg. 5; N.T. pg. 103; *see also* Secretarial Letter dated April 30, 2021 and Secretarial Letter dated June 28, 2021.

⁴² RBMN Statement No. 1, pgs. 2-3; RBMN Statement No. 2, pg. 6.

⁴³ *See generally* RBMN Statement No. 1 and RBMN Statement No. 2.

the evidentiary hearing, Mr. Goetz stated that he wasn't sure why the elevation of the track wasn't discussed or brought up at any time prior.⁴⁴

Next, RBMN unilaterally raised the grade of the tracks and changed the superelevation without Commission review and/or approval. In his professional engineering opinion, Mr. Sinick determined that the highway/rail crossing at Oak Street was not constructed in accordance with the April 30, 2021 and June 28, 2021 Secretarial Letters.⁴⁵ Mr. Sinick explained that RBMN raised the grade of the railroad tracks approximately six (6) inches, or more in some places, as compared to the existing grade prior to reconstruction.⁴⁶ It is Commission practice and general procedure to require construction plans if track geometry of a crossing is going to be altered.⁴⁷ Mr. Sinick elaborated that if a railroad company were to change the superelevation of their tracks through a public crossing, and if that change would affect the approach roadway, then the Commission would consider that change an alteration.⁴⁸ A change in superelevation or raising the grade of the tracks at a public crossing would require the highway entity to make an adjustment to their roadway transition and/or possibly adjust the posted speed limit through that area, and could also affect drainage.⁴⁹ Further, noting the step-like transition existing at the crossing, Mr. Sinick stated that RBMN's actions were contrary

⁴⁴ N.T. pg. 50.

⁴⁵ I&E Statement No. 1, pg. 5.

⁴⁶ I&E Statement No. 1, pg. 5.

⁴⁷ N.T. pg. 103.

⁴⁸ N.T. pg. 104.

⁴⁹ N.T. pg. 104.

to the April 30, 2021 Secretarial Letter which ordered a safe, smooth, and satisfactory condition at the crossing surface.⁵⁰

PennDOT's witness supports Mr. Sinick's testimony. Ms. Fenton testified that the April 30, 2021 and June 28, 2021 Secretarial Letters did not mention anything about RBMN raising the tracks and that the Letters provided a specific pave structure to match the existing pave structure.⁵¹

Lastly, while Mr. Goetz testified that RBMN followed Part 213 Track Safety Standards and the AREMA Table 5-3-4-2 in changing the superelevation of the tracks, neither Mr. Goetz nor Mr. Johnson were able to provide the information needed to use the cited table and regulations to determine the correct superelevation, i.e., the current maximum allowable track speed and curvature.⁵² Mr. Goetz was able to testify that the maximum allowable speed at the crossing is 40 mph, but there is no evidence or testimony from RBMN suggesting that the maximum allowable speed changed from when the reconstruction was completed in 2014 to now.⁵³ Neither witness could testify as to the curvature of the tracks through the crossing.⁵⁴ Accordingly, RBMN failed to prove or justify the need to alter the superelevation of the tracks to its current height of approximately 5 inches from one rail to the other.

Moreover, in his professional engineering opinion and without any credible information to run the calculations himself, Mr. Sinick opined that RBMN superelevated

⁵⁰ I&E Statement No. 1-R, pgs. 2-3.

⁵¹ PennDOT Statement No. 1, pg. 9.

⁵² RBMN Statement No. 2, pg. 7; N.T. pgs. 51, 53-54.

⁵³ N.T. pg. 51.

⁵⁴ N.T. pgs. 51, 53-54.

each set of tracks in excess of what he believes to be required based upon track speed and curvature.⁵⁵

Thus, RBMN is the party responsible for the hazardous condition existing at the Oak Street crossing today because it failed to follow the directives of the April 30, 2021 and June 28, 2021 Secretarial Letters and raised the grade of the tracks and altered the superelevation without any disregard for the existing grade, roadway approaches, and roadway transition between the rails.

D. READING BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY SHOULD BEAR THE COST TO RECONSTRUCT THE CROSSING AT OAK STREET

As the party responsible for the unsafe condition existing at the Oak Street crossing, RBMN should bear the cost and expense of reconstructing the crossing to its prior grade. Among the factors which the Commonwealth Court noted as relevant to the assignment of costs and maintenance responsibilities, as noted in *Greene Township v. Pa. P.U.C.*, 668 A.2d 615 (Pa. Cmwlt. 1995), are the following:

- 1) The party that originally built the crossing, and whether the roadway existed before the construction of the crossing;
- 2) The party that owned and maintained the crossing;
- 3) The relative benefit initially conferred on each party with the construction of the crossing;
- 4) Whether either party is responsible for the deterioration of the crossing resulting in the need for its repair, replacement or removal;
- 5) The relative benefit that each party will receive from the repair, replacement or removal of the crossing.⁵⁶

⁵⁵ I&E Statement No. 1, pg. 5.

⁵⁶ *Greene Township v. Pa. P.U.C.*, 668 A.2d 615 (Pa. Cmwlt. 1995); *see also AT&T v. Pa. P.U.C.*, 558 Pa. 290, 737 A.2d 201 (1999)(when allocating costs of constructing, removing or altering a rail-highway crossing, the PUC is not confined to any one rate or formula; it must consider all relevant factors).

In addition, the Commission has considered the following: (1) the benefits to the utility and its ratepayers; (2) the availability of state or federal funding for the project; (3) the placing of the costs upon the party responsible for the situation; and (4) the equities of a particular situation.⁵⁷ These factors are neither mandatory nor exclusive of other considerations, 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.⁵⁸

As explained above, RBMN caused the unsafe condition at the crossing by unilaterally raising the grade of the tracks and changing the superelevation without any consideration of the existing grade or roadway approaches, which in turn caused a step-like condition through the crossing. RBMN is responsible for the maintenance and costs associated with maintaining the two (2) sets of railroad tracks through the crossing.⁵⁹ Further, RBMN failed to take any remedial measures to alleviate the hazard or at least warn the public of the hazard when it did not respond to PennDOT's requests to install signage leading up to and at the crossing.⁶⁰ Based upon these facts, RBMN should be ordered to reconstruct the crossing to its original grade at its sole cost and expense.

Noting that PennDOT is the party most adept at handling detours on public roadways, it is I&E's position that PennDOT should be ordered to create and implement the roadway detour at RBMN's sole cost and expense. PennDOT is not at fault in this matter, it simply followed the directives outlined in the Secretarial Letters and its

⁵⁷ *Application of the City of Wilkes-Barre*, Docket No. A-00101606 (Order entered April 9, 1981).

⁵⁸ *AT&T v. Pa. P.U.C.*, 737 A.2d 201, 209 (Pa. 1999); *Wheeling & Lake Erie Railway Co.*, 778 A.2d at 793; *Bell Atlantic-Pa., Inc. v. Pa. P.U.C.*, 672 A.2d 352 (Pa. Cmwlth. 1996)..

⁵⁹ I&E Statement No. 1, pg. 2.

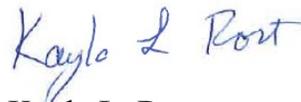
⁶⁰ PennDOT Statement No. 1, pg. 15; N.T. pgs. 70, 88.

placement of the remaining bituminous asphalt did not create the hazardous condition existing at the crossing.⁶¹

VI. CONCLUSION

I&E respectfully requests that presiding ALJ DeVoe and the Commission find that (1) Reading Blue Mountain & Northern Railroad Company created an unsafe condition at the Oak Street crossing when it raised the tracks and changed the superelevation; (2) that Reading Blue Mountain & Northern Railroad Company's raising of the tracks and changing of the superelevation was not discussed or authorized by the Secretarial Letters; and (3) that Reading Blue Mountain & Northern Railroad Company be ordered to reconstruct the crossing at its sole cost and expense to the safety of the public.

Respectfully submitted,



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Prosecutor

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Dated: August 5, 2022

⁶¹ I&E Statement No. 1-R, pg. 3.

the Motion filed by PennDOT on December 14, 2021 requested an expedited hearing on the work completed by Reading Blue Mountain.

3. On January 13, 2022, Administrative Law Judge Emily DeVoe held an initial prehearing conference which was attended by representatives from PennDOT, RBMN, the Commission's Bureau of Investigation and Enforcement ("I&E"), Pittston Township, and Luzerne County.

4. On January 14, 2022, a Prehearing Order was issued establishing the litigation schedule. Specifically, written direct testimony was due March 14, 2022, written rebuttal testimony was due April 4, 2022, and the evidentiary hearing was scheduled for May 24, 2022.

5. On March 14, 2022, I&E served written direct testimony. Also, on March 14, 2022, RBMN requested a brief extension to provide written direct testimony. Specifically, RBMN requested a 7-day extension for the submission of written direct and rebuttal testimony.

6. On March 15, 2022, ALJ DeVoe issued an Interim Order granting RBMN's request for an extension, resulting in written direct being due March 22, 2022 and written rebuttal being due April 11, 2022.

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

8. On March 21, 2022, PennDOT served its written direct testimony and accompanying exhibits.

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

10. On May 24, 2022, ALJ DeVoe presided over the evidentiary hearing. Counsel from I&E, PennDOT, RBMN, and Luzerne County were present.
11. On July 6, 2022, an Interim Order Setting Briefing Schedule was issued directing the parties to file Main Briefs by August 5, 2022 and Reply Briefs by August 25, 2022.
12. On July 7, 2022, I&E filed Proposed Corrections to Hearing Transcript.
13. On July 19, 2022, an Interim Order Correcting Transcript was issued accepting the proposed corrections filed by I&E.
14. The public crossing at Oak Street (State Route 2019) in Pittstown Township is a highway/rail crossing which crosses at-grade two (2) tracks of Reading Blue Mountain. Oak Street is maintained by PennDOT and the at-grade two sets of railroad tracks are maintained by RBMN.¹
15. Prior to the worked completed in or around July 2021, the at-grade crossing at Oak Street was a high-type concrete panel railroad crossing service.²
16. Pursuant to the previous matter, C-2011-2274074, the Commission approved the construction plans submitted by RBMN on March 17, 2014 which detailed the plans to construct the high-type concrete crossing. The superelevation approved by the Commission was 2.5” throughout the crossing.³
17. The parties agreed to replace the high-type concrete panel crossing surface with a rubber flangeway and asphalt crossing surface, which was memorialized in the

¹ I&E Statement No. 1, pg. 2.

² Secretarial Letter dated April 30, 2021; *see also* PennDOT Exhibits 4A and 4B, and I&E Exhibit A.

³ N.T. pg. 97; *see also* I&E Exhibit A.

Secretarial Letter dated April 30, 2021 and later modified by the Secretarial Letter dated June 28, 2021.⁴

18. The replacement project at the Oak Street crossing was completed from July 26, 2021 through July 31, 2021.⁵

19. RBMN presented the testimony of Matt Johnson and Chris Goetz.

20. Matt Johnson is the Vice President of Asset Management and Community Affairs at RBMN. His general responsibilities include community relations and railroad representation at multi organizational site visits, such as public grade crossing projects.⁶

21. Mr. Johnson confirmed that, at the March 31, 2021 field conference, RBMN agreed to perform track work through the crossing in addition to paving and paying for the base coat of asphalt. RBMN also agreed to provide a railroad inspector (flagger) for PennDOT's application of the top coat at no cost, and to detour train traffic while the work was being completed.⁷

22. Mr. Johnson's understanding of the agreement was that PennDOT would perform the roadway top cost paving through the crossing and pay for and coordinate the detour of roadway traffic.⁸

⁴ Secretarial Letter dated April 30, 2021; *see also* PennDOT Exhibits 4A and 4B.

⁵ N.T. pg. 72.

⁶ RBMN Statement No. 1, pg. 2.

⁷ RBMN Statement No. 1, pgs. 2-3.

⁸ RBMN Statement No. 1, pg. 3.

23. After the completion of the work, Mr. Johnson confirmed that the Commission's Rail Safety Section facilitated one to two phone calls with PennDOT to potentially address PennDOT's concerns with the crossing.⁹

24. It is RBMN's position that the raising of the tracks was necessary to accommodate track speeds and that additional roadway approach work would need to be done by PennDOT. RBMN was willing to pay for its track work but wanted PennDOT to pay for and perform any necessary approach work and to coordinate the roadway detour.¹⁰

25. Mr. Johnson has no knowledge of the speed of the trains traversing the crossing nor the degree of curvature at the crossing.¹¹

26. Chris Goetz is the Vice President of Maintenance of Way at Reading Blue Mountain. Mr. Goetz is responsible for overseeing track construction and maintenance.¹²

27. Mr. Goetz's involvement with the replacement of the crossing at Oak Street was minimal outside of scheduling the crew and equipment needed to complete the work.¹³

28. Mr. Goetz stated that RBMN removed the high-type surface panels at the crossing and paved the base coat of asphalt through the crossing.¹⁴

⁹ RBMN Statement No. 1, pg. 3.

¹⁰ RBMN Statement No. 1, pg. 3.

¹¹ N.T. pgs. 53-54.

¹² RBMN Statement No. 2, pg. 6.

¹³ RBMN Statement No. 2, pg. 6.

¹⁴ RBMN Statement No. 2, pg. 6.

29. Mr. Goetz stated that RBMN increased the elevation in the curves of the tracks during the replacement project.¹⁵

30. Mr. Goetz testified that the maximum allowable speed at the crossing is 40 miles per hour.¹⁶

31. Mr. Goetz has no knowledge of the degree of curvature at the crossing.¹⁷

32. Mr. Goetz is not an engineer.¹⁸

33. PennDOT presented the testimony of Sarah J. Fenton.

34. Ms. Fenton is the District Grade Crossing Administrator for District 4-0. Ms. Fenton has worked for PennDOT for approximately 14 years, holding various positions.¹⁹

35. Oak Street (State Route 2019) connects State Highway 0315 to the southeast and to State Route 2021 to the northwest. It has an average daily traffic of 12,178 vehicles and an average daily truck traffic of 745 in the vicinity of the public crossing. Oak Street is used to access Interstate 81 and Interstate 476 for interstate and local commerce. It is classified as Minor Arterial.²⁰

36. Ms. Fenton stated that PennDOT and RBMN reached an agreement as to the replacement of the crossing at Oak Street and that the agreement was memorialized in the April 30, 2021 and June 28, 2021 Secretarial Letters.²¹

¹⁵ RBMN Statement No. 2, pg. 7.

¹⁶ N.T. pg. 51.

¹⁷ N.T. pg. 51.

¹⁸ RBMN Statement No. 2, pg. 7.

¹⁹ PennDOT Statement No. 1, pg. 2.

²⁰ PennDOT Statement No. 1, pg. 3.

²¹ PennDOT Statement No. 1, pg. 8.

37. The cost of the work completed by PennDOT at the Oak Street crossing was \$19,059.24.²²

38. It is PennDOT's position that the April 30, 2021 and June 28, 2021 Secretarial Letters did not mention anything about RBMN raising the tracks and that the Letters provided a specific pavement structure to match the existing pave structure.²³

39. Ms. Fenton explained that matching existing pavement structure is important to ensure positive drainage under the pavement to prevent deterioration to the pavement or surrounding areas, to maintain structure integrity of the approaches, and to maintain existing elevation of the roadway to prevent the creation of drop-off conditions.²⁴

40. Ms. Fenton first became aware of the condition at the crossing after the replacement was completed after being contacted by Mr. Paul Menendez on August 2, 2021.²⁵

41. PennDOT has received multiple complaints concerning the status of the crossing, which has made local news. Specifically, PennDOT has received complaints from Pittston Township Municipal officials, local fire company, local EMS, the general public, Representative Carole's office, and internal PennDOT employees.²⁶

²² N.T. pg. 88.

²³ PennDOT Statement No. 1, pg. 9.

²⁴ PennDOT Statement No. 1, pgs. 9-10.

²⁵ PennDOT Statement No. 1, pg. 11.

²⁶ PennDOT Statement No. 1, pg. 14.

42. The complaints received by PennDOT are related to the elevation/grade change throughout the crossing, ranging from vehicle damage to body whiplash to near miss accidents.²⁷

43. Ms. Fenton stated that RBMN undoubtedly raised the tracks at the Oak Street crossing and that altering the elevation of the tracks by RBMN was never brought up or discussed with PennDOT prior to the replacement project.²⁸

44. Ms. Fenton stated that the crossing does not have a safe and smooth transition throughout. She explained that a safety problem/concern was created when the tracks were raised because the change of grade and elevation created a step-like transition through the crossing. She further noted that vehicles bounce dangerously and erratically when driving over the crossing.²⁹

45. Ms. Fenton unequivocally stated that the safety problem currently existing at the crossing did not exist prior to the replacement project, and that the elevation leading up to and throughout the grade crossing previously presented a smooth and safe transition.³⁰

46. Ms. Fenton explained that the subgrade and base course, which was prepped and completed by RBMN, set the elevation for the 2 inches of 9.5 mm wearing that PennDOT agreed to place. Thus, RBMN set the elevation of the crossing and the roadway approaches.³¹

²⁷ PennDOT Statement No. 1, pgs. 14-15.

²⁸ PennDOT Statement No. 1, pg. 10.

²⁹ PennDOT Statement No. 1, pg. 12; *see also* PennDOT Exhibits 8 and 9.

³⁰ PennDOT Statement No. 1, pg. 12.

³¹ PennDOT Statement No. 1, pg. 13.

47. Ms. Fenton elaborated that PennDOT could not have fixed the elevation issue after RBMN laid the base course because the base course was laid so that PennDOT placed the 2 inches of wearing course it would be at grade with the tracks. Wearing courses needs to be placed at a proper grade to the tracks to protect the tracks from traffic impact and to maintain a smooth and safe transition throughout the crossing.³²

48. Ms. Fenton noted that PennDOT Publication 242 has strict placement and thickness requirements for 9.5 mm wearing course.³³

49. Ms. Fenton explained that the minimum design thickness for 9.5 mm wearing course is 1.5 inches and the maximum design thickness is 2 inches. Placing a thicker wearing course beyond 2 inches would place the track at a below grade finished surface and placing less than 2 inches would leave the tracks exposed.³⁴

50. If tracks are exposed, vehicles could bottom out at the crossing, causing pieces of the vehicles to get caught up or cause damage to the vehicle and/or the tracks. Additionally, tire rims could bend, tires could be flattened, and riders/passengers of motorcycles and bike could be thrown upon impact. Such impacts or damage to the rails could cause the rail to fracture and create a blunt end.³⁵

51. After becoming aware of the condition of the crossing, PennDOT first attempted to raise the issue with RBMN, and after no action was taken by RBMN, PennDOT contacted the Commission.³⁶

³² PennDOT Statement No. 1, pg. 13.

³³ PennDOT Statement No. 1, pg. 13.

³⁴ PennDOT Statement No. 1, pgs. 13-14.

³⁵ PennDOT Statement No. 1, pg. 14.

³⁶ PennDOT Statement No. 1, pg. 15.

52. In their attempts to contact RBMN, PennDOT requested that RBMN erect a bump sign at the crossing. Since RBMN did not erect the sign, PennDOT subsequently installed the signage.³⁷

53. Specifically, PennDOT erected 4 signs, 2 on each side of the crossing sometime in August 2021. One side is a “Bump Ahead” sign with a flashing light and the second sign is a “Bump” sign. The signs were installed at PennDOT’s cost.³⁸

54. The cost associated with installing the “Bump Ahead” sign and “Bump” sign was \$468.36.³⁹

55. PennDOT is seeking reimbursement from RBMN for the costs to install the “Bump Ahead” sign and “Bump” sign.⁴⁰

56. PennDOT met with RBMN on August 18, 2021 and again through additional teleconferences to discuss the status of the crossing and to try to resolve the outstanding issues.⁴¹

57. PennDOT’s position is that the crossing should be restored to its original elevation/grade to accommodate both public and rail traffic safely.⁴²

58. PennDOT does not agree to bear any of the costs associated with any repairs ordered at the crossing. Instead, PennDOT believes that RBMN should bear the costs.⁴³

³⁷ PennDOT Statement No. 1, pg. 15.

³⁸ PennDOT Statement No. 1, pg. 15; N.T. pgs. 70, 88.

³⁹ N.T. pg. 70.

⁴⁰ N.T. pgs. 70-71.

⁴¹ PennDOT Statement No. 1, pg. 16.

⁴² PennDOT Statement No. 1, pg. 17.

⁴³ PennDOT Statement No. 1, pgs. 17-18.

59. It is PennDOT's position that since it was not aware of RBMN's intention to raise the elevation of the tracks and that RBMN never voiced its intention to raise the tracks at any of the meetings or discussions leading up to the issuance of the Secretarial Letters, that RBMN should bear the costs to fix the elevation/grade issue. If RBMN had identified its issues or intentions to change the elevation previously, then the issues could have been addressed prior to the replacement project being completed in 2021.⁴⁴

60. Ms. Fenton stated that the raising of the tracks only benefits RBMN.⁴⁵

61. I&E presented the testimony of William M. Sinick, P.E.

62. Mr. Sinick is a Senior Civil Engineer Manager in the Rail Safety Section of the Commission's Bureau of Technical Utility Services. Mr. Sinick has worked for the Commonwealth for approximately 23 years and has been with the Commission since June 2015.⁴⁶

63. Mr. Sinick is familiar with the at-grade crossing located at Oak Street in Pittston Township as he was assigned the matter after the retirement of the previous assigned engineer.⁴⁷

64. The at-grade crossing at Oak Street consists of two (2) train tracks which cross a two (2) lane, two (2) direction bituminous asphalt roadway. PennDOT is responsible for maintaining Oak Street and RBMN is responsible for maintaining the two (2) sets of railroad tracks.⁴⁸

⁴⁴ PennDOT Statement No. 1, pg. 18.

⁴⁵ PennDOT Statement No. 1, pg. 18.

⁴⁶ I&E Statement No. 1, pg. 1.

⁴⁷ I&E Statement No. 1, pg. 3.

⁴⁸ I&E Statement No. 1, pg. 2.

65. Prior to any work being done in this matter, the highway/rail crossing surface and roadway approaches were both in a highly deteriorated condition due to lack of maintenance by both RBMN and PennDOT.⁴⁹

66. Mr. Sinick held a field conference on March 31, 2021 with the parties and was able to have the parties reach an agreement on the reconstruction of the crossing at Oak Street. The terms of the agreement were memorialized in the Secretarial Letters issued on April 30, 2021 and June 28, 2021.⁵⁰

67. Mr. Sinick explained that RBMN was 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. In addition, RBMN was ordered 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.⁵¹

68. Mr. Sinick explained that PennDOT was ordered to establish and maintain the detour and traffic controls for all vehicular traffic necessary for a 7-day roadway closure. In addition, PennDOT was ordered to furnish, place, and compact two (2) inches

⁴⁹ I&E Statement No. 1, pg. 3.

⁵⁰ I&E Statement No. 1, pg. 3; *see also* Secretarial Letter dated April 30, 2021 and Secretarial Letter dated June 28, 2021.

⁵¹ I&E Statement No. 1, pg. 3; *see also* Secretarial Letter dated April 30, 2021 and Secretarial Letter dated June 28, 2021.

of hot mix bituminous asphalt wearing course material to finish grade across the roadway approaches and railroad crossing surfaces.⁵²

69. Mr. Sinick noted that the work was to be completed by July 31, 2021, and that he believes the work was completed on or around that date.⁵³

70. Upon the request by PennDOT, Mr. Sinick arranged and conducted an on-site field conference on August 18, 2021 with PennDOT and RBMN to discuss the failed reconstruction of the crossing and to address the immediate safety concerns with the step-like transition created within the roadway.⁵⁴

71. Mr. Sinick also held a follow-up teleconference with the parties on August 30, 2021.⁵⁵

72. In his professional engineering opinion, Mr. Sinick determined that the highway/rail crossing at Oak Street was not constructed in accordance with the April 30, 2021 and June 28, 2021 Secretarial Letters. Mr. Sinick explained that RBMN raised the grade of the railroad tracks approximately six (6) inches, or more in some places, as compared to the existing grade prior to reconstruction. Mr. Sinick noted that RBMN also superelevated each set of tracks in excess of what he believes to be required based upon track speed and curvature.⁵⁶

⁵² I&E Statement No. 1, pgs. 3-4; *see also* Secretarial Letter dated April 30, 2021 and Secretarial Letter dated June 28, 2021.

⁵³ I&E Statement No. 1, pg. 4.

⁵⁴ I&E Statement No. 1, pg. 4.

⁵⁵ I&E Statement No. 1, pg. 4.

⁵⁶ I&E Statement No. 1, pg. 5.

73. Prior to the reconstruction project, the tracks maintained a 2.5-inch superelevation between the rails.⁵⁷

74. Superelevation in railroad tracks is setting one rail higher than the other through a curve to basically bank it like a racetrack based on the speed and curvature of the tracks as it passes across a public highway crossing.⁵⁸

75. Raising the grade means the whole area of the tracks, the elevation of it, has been raised.⁵⁹

76. Mr. Sinick unequivocally stated that the alterations, the raising of the grade and superelevation of the tracks, were not discussed at the March 31, 2021 field conference nor were they agreed upon by the parties prior to reconstruction.⁶⁰

77. Mr. Sinick further explained that the alterations were not approved as part of the work to be performed pursuant to the April 30, 2021 and June 28, 2021 Secretarial Letters.⁶¹

78. In his professional opinion, Mr. Sinick stated that the highway/rail crossing at Oak Street does not provide a smooth and satisfactory condition, even at the posted speed of 35 mph.⁶²

79. Mr. Sinick explained that the crossing was made unsafe when the tracks were raised and superelevated with no regard to the height of the exiting roadway or

⁵⁷ I&E Exhibit A.

⁵⁸ I&E Statement No. 1-R, pg. 2 (while originally labeled as I&E Statement No. 2, the testimony was admitted as I&E Statement No. 1-R and will be labeled as such for consistency purposes).

⁵⁹ N.T. pg. 105.

⁶⁰ I&E Statement No. 1, pg. 5; I&E Statement No. 1-R, pg. 3.

⁶¹ I&E Statement No. 1, pg. 5; *see also* Secretarial Letter dated April 30, 2021 and Secretarial Letter dated June 28, 2021.

⁶² I&E Statement No. 1, pg. 5.

necessary roadway transition to accommodate that elevation grade change prior to the tracks and in the roadway area between each set of tracks. The work completed by RBMN created a system of steps built into the crossing, which should never be part of a roadway design. Mr. Sinick explained that roadways and railroad crossing surfaces should be a constant, safe, and smooth transition to the tracks and in between each set of tracks.⁶³

80. Mr. Sinick noted that PennDOT completed the work as ordered in the April 30, 2021 Secretarial Letter, and that the placement of the remaining two (2) inches of bituminous asphalt by PennDOT was not the cause for the hazardous condition existing at the crossing. He explained that the hazardous condition was created by RBMN after it raised its tracks and set the elevation of the rails.⁶⁴

81. In his professional opinion, Mr. Sinick opined that the highway/rail crossing at Oak Street should be completely reconstructed, starting with final construction plans submitted to the Commission for approval by a specific date. The new plans for the highway/rail crossing reconstruction should include grade and profile plans, cross-section typical plans, elevation and plan views, all with detailed elevations, material specifications and dimensions indicated on the plans.⁶⁵

⁶³ I&E Statement No. 1, pg. 5.

⁶⁴ I&E Statement No. 1-R, pg. 3.

⁶⁵ I&E Statement No. 1, pg. 6.

82. Mr. Sinick opined that RBMN should be responsible for the design and reconstruction of the highway/rail crossing at Oak Street, including the cost of the reconstruction project.⁶⁶

83. Mr. Sinick supported his opinion by noting that RBMN raised the tracks and superelevated the tracks independent of each set of tracks, which created the steplike condition, with no thought to the exiting roadway approaches, the roadway in between the tracks, or the travelling public. He further noted that RBMN's actions were contrary to the April 30, 2021 Secretarial Letter which ordered a safe, smooth, and satisfactory condition at the crossing surface.⁶⁷

84. Mr. Sinick testified that plans were not submitted in this matter because a change in the track geometry was never discussed. If the change was discussed, then the Commission would have required a submission of construction plans to be reviewed by the parties and approved by the Commission prior to construction.⁶⁸

85. It is Commission practice and general procedure to require construction plans if track geometry of a crossing is going to be altered.⁶⁹

86. If a railroad company were to change the superelevation of their tracks through a public crossing, and if that change would affect the approach roadway, then the Commission would consider that change an alteration.⁷⁰

⁶⁶ I&E Statement No. 1-R, pg. 2.

⁶⁷ I&E Statement No. 1-R, pgs. 2-3.

⁶⁸ N.T. pg. 103.

⁶⁹ N.T. pg. 103.

⁷⁰ N.T. pg. 104.

87. A change in superelevation at a public crossing would require the highway entity to make an adjustment to their roadway transition and/or possibly adjust the posted speed limit through that area. It could also affect drainage.⁷¹

88. If the change in superelevation was minor, such as an inch and a half, then the Commission is unlikely to view the change as an alteration.⁷²

89. In this case, the superelevation of the tracks were raised from 2.5 inches to over 5 inches.⁷³

⁷¹ N.T. pg. 104.

⁷² N.T. pg. 104.

⁷³ N.T. pg. 105.

4. 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. § 2704.

5. The Commission's Bureau of Investigation and Enforcement, the Pennsylvania Department of Transportation, Reading Blue Mountain & Northern Railroad Company, Pittston Township, and Luzerne County are all concerned parties within the meaning of 66 Pa.C.S. §§ 2702 and 2704.

6. Pursuant to Section 332(a) of the Public Utility Code, Reading Blue Mountain & Northern Railroad Company, as the complainant, initially held the burden of proof to show that the Pennsylvania Department of Transportation was the party responsible for the deteriorated condition of the at-grade crossing at Oak Street in Pittston Township.¹ In light of the progression of the proceeding, the Pennsylvania Department of Transportation now has the burden of proving that the work completed by Reading Blue Mountain & Northern Railroad Company caused the unsafe and dangerous condition currently existing at the at-grade crossing at Oak Street, and Reading Blue Mountain & Northern Railroad Company has the burden of proving that the raising of the railroad tracks was proper and necessary.

7. Among the factors which the Commonwealth Court noted as relevant to the assignment of costs and maintenance responsibilities, as noted in *Greene Township v. Pa. P.U.C.*, 668 A.2d 615 (Pa. Cmwlth. 1995), are the following:

- (1) which party built the crossing;

¹ Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.

- (2) whether a roadway existed before or after the construction of the crossing;
- (3) relative benefit conferred on each party with the construction of the crossing;
- (4) whether either party is responsible for the deterioration of the crossing which has lead to the need for its repair, replacement or removal; and
- (5) the relative benefit that each party will receive from the repair, replacement or removal of the crossing.

8. 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. The factors are neither mandatory nor exclusive of other considerations, 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.

tracks and area in between both sets of tracks for the full width of the roadway and shoulders, and to establish a safe, smooth, and satisfactory transition from the roadway approaches to the asphalt/rail seal crossing surfaces as per and in accordance with the approved plans and this Order.

3. That the Pennsylvania Department of Transportation, at Reading Blue Mountain & Northern Railroad Company's 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 and pedestrian traffic during the reconstruction of the highway/railway public crossing at Oak Street (DOT 361 425 J).

4. That Reading Blue Mountain & Northern Railroad Company, at its sole cost and expense, shall furnish all material and perform all work relating to its facilities which may be incidental to the reconstruction 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.

5. That the Pennsylvania Department of Transportation and Reading Blue Mountain & Northern Railroad Company, at their sole cost and expense, shall perform all work necessary to identify, locate, and provide notification to all non-carrier public utility companies, municipal authorities, or other entities that may have facilities located above or below the public crossings that may be impacted by all work described herein in accordance with the PA One Call system.

6. That Reading Blue Mountain & Northern Railroad Company, at least twenty (20) days prior to the start of work, shall notify the Pennsylvania Department of Transportation the actual date on which work will begin.

7. That the Pennsylvania Department of Transportation, at least fourteen (14) days prior to the start of work, shall notify local emergency management services and all parties in interest of the actual date on which work will begin.

8. That any relocation of, changes in and/or removal of any adjacent structures, equipment or other facilities of any non-carrier public utility company or municipal authority located within the limits of this Commission's jurisdiction, which may be required as incidental to the execution of the public crossing and intersection project, be made by said public utility company or municipal authority at its initial cost and expense, and in such manner, as will not interfere with the construction of the project.

9. That Reading Blue Mountain & Northern Railroad Company, at its sole cost and expense, shall pay all compensation for damages, if any, due to the owners of any property taken, injured or destroyed by reason of the construction work described herein, in accordance with this Secretarial Letter.

10. All parties involved herein shall cooperate fully 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.

11. All work necessary to complete the work at the subject public crossing be done in a manner satisfactory to this Commission within six (6) months from the date of

this Order, and that on or before said date, the Pennsylvania Department of Transportation and Reading Blue Mountain & Northern Railroad Company notify this Commission, in writing, the date the work is completed.

12. That upon completion of the 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 at Oak Street (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 at 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, and shall provide the Pennsylvania Department of Transportation at least ten (10) business days advance notice when performing any work that may affect their facilities, as directed by this paragraph.

13. That upon completion of work described herein, the Pennsylvania Department of Transportation, at its sole cost and expense, shall furnish all material and do all work necessary thereafter to maintain the highway approach roadways and paved shoulders to the public crossing at Oak Street (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 (Oak Street) approaches thereto, all in accordance with the Manual on Uniform Traffic Control Devices, and shall provide Reading Blue Mountain &

Northern Railroad Company at least ten (10) business days advance notice when performing any work that may affect their facilities, as directed by this paragraph.

14. That upon completion of all repairs herein ordered, each non-carrier public utility company and municipal authority, at its sole cost and expense, furnish all material and perform all work necessary thereafter to maintain its respective facilities located within the limits of the improvement.

15. That upon completion of the work herein directed, and upon a written request by any party hereto, this proceeding be scheduled for a hearing at a time and a place assigned by this Commission, upon due notice to all parties, to receive evidence relative to the allocation of initial costs incurred, if any, by the public utility companies and municipal authorities, and any other matters relevant to this proceeding.

16. That upon the Commission receiving written notice from Reading Blue Mountain & Northern Railroad Company of the completion of the work ordered herein and after a final inspection of the work has been completed and deemed satisfactory by the Commission's Bureau of Technical Utilities, Rail Safety Section, and there are no outstanding issues, the Complaint filed at Docket No. C 2020-3016906 shall be deemed satisfied and marked closed.

**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 : Docket No. C-2020-3016906
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. :

CERTIFICATE OF SERVICE

I hereby certify that I have this day, August 5, 2022, served a true copy of the foregoing **Main Brief of the Bureau of Investigation and Enforcement**, upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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