

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Complaint filed by Reading Blue Mountain & Northern Railroad Company involving the Deteriorated condition of the railroad crossing Surface and roadway approaches at the public Crossing (DOT 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 : C-2020-3016906
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**PROPOSED FINDINGS OF FACT, PROPOSED CONCLUSIONS OF LAW, AND BRIEF
SUBMITTED BY READING BLUE MOUNTAIN AND NORTHERN RAILROAD**

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PROPOSED FINDINGS OF FACT

1. Matthew Johnson is the Vice President Asset Management and Community Affairs for Reading Blue Mountain and Northern Railroad Company (“RBMN”) (RBMR – 1).
2. He has been with RBMN since 2005 (RBMR – 1).
3. Mr. Johnson’s general responsibilities with RBMN are community relations, railroad representation at multi organizational site visits, such as public grade crossing projects and other community projects that impact the railroad (RBMR – 1).
4. Mr. Johnson attends site visits scheduled by the PUC to assist coordinating railroad work at public crossings with PennDOT (RBMR – 1).
5. Mr. Johnson represents the railroad and the railroad’s interests as it pertains to crossing work (RBMR – 1).
6. Mr. Johnson’s understanding of the condition of the Oak Street crossing prior to work in 2021 was that PennDOT’s ongoing failure to maintain the crossing approaches caused damage to the railroad’s crossing. This damage caused panels to crack, bolts to loosen, and an uneven roadway transition (RBMR – 1).
7. Mr. Johnson understands that the railroad filed a complaint against PennDOT citing PennDOT’s failure to maintain their roadway approaches to the Oak Street crossing (RBMR – 1).
8. At the PUC Field Conference held on March 31, 2021, the RBMN agreed to perform track work through the crossing, as well as paving and paying for the base coat of the asphalt through the crossing. The RBMN also agreed to provide a railroad inspector (flagger) for

PennDOT's top coat paving portion of the work at no cost. The RBMN also agreed to detour train traffic (RBMR – 1).

9. At the PUC Field Conference on March 31, 2021, PennDOT agreed to perform roadway top coat paving through the crossing as well as pay and coordinate the detour of roadway traffic for the duration of the crossing work (RBMR – 1).

10. After the work which was completed at the Oak Street crossing in the summer, 2021, PennDOT was not satisfied with the transition of the roadway surface through the crossing (RBMR – 1).

11. After the completion of the work at the Oak Street crossing, there was at least one, perhaps two phone conferences facilitated by the PUC for the RBMN to listen to the concerns of PennDOT and to come to a possible resolution (RBMR – 1).

12. RBMN offered to consult with its Maintenance of Way department to advise what track work can be done at the crossing to level the transition. We advised the raising of the track elevation through the crossing was necessary to accommodate track speeds through this crossing, and that likely additional roadway approach work would need to be done by PennDOT. We were willing during those conversations to pay for and perform any necessary track work through the crossing to maintain our required elevations and alleviate PennDOT's roadway transition concerns. But we would need PennDOT to pay for and perform any necessary approach work. We were seeking PennDOT to pay for and coordinate roadway detour as we would be willing to pay for and coordinate detour of train traffic (RBMR – 1).

13. During those conversations PennDOT was not willing to pay for or perform any additional work. PennDOT expected a total redo of the crossing work at our full expense (RBMR – 1).

14. RBMN expects PennDOT to perform and maintain any asphalt paving outside two feet from edge of rail. The RBMN will detour train traffic, and expects PennDOT to detour roadway traffic (RBMR – 1).

15. It is Mr. Johnson's position that per the PUC, railroads are responsible to maintain the track and surface through a crossing up to two feet outside of rail (RBMR – 1).

16. It is Mr. Johnson's understanding that per the PUC, PennDOT is to maintain the roadway approaches outside two feet from edge of rail outside a railroad crossing (RBMR – 1).

17. Chris Goetz is the Vice President Maintenance of Way (MOW) for RBMN (RBMR – 2).

18. Mr. Goetz has held that position for three and a half years (RBMR – 2).

19. Mr. Goetz's responsibilities are to oversee track construction and maintenance for the RBMN (RBMR – 2).

20. At the request of the RBMN Real Estate department, Mr. Goetz attends site visits with PennDOT and the PUC to assist coordinating crossing work (RBMR – 2).

21. At the request of the RBMN Real Estate department, Mr. Goetz becomes involved in public crossing projects to advise what track work will be needed to complete the rehabilitation or construction of a public grade crossing (RBMR – 2).

22. Mr. Goetz's understanding is that the Oak Street crossing was in need of rehabilitation due to the condition of the then high type surface and PennDOT's inability to maintain their roadway approaches leading to the then high type surface (RBMR – 2).

23. Mr. Goetz's involvement with the rehabilitation of the crossing was minimal outside of scheduling the crew and equipment needed to complete this crossing's rehabilitation (RBMR – 2).

24. The RBMN rehabilitated the crossing by removing the high type surface panels and tamped and regulated through the crossing. It is also Mr. Goetz's understanding that the RBMN also paved the base coat of the asphalt through the crossing surface (RBMR – 2).

25. 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. The FRA sets these regulations in their Part 213 Track Safety Standards Subpart C Track Geometry that RBMN follows according to AREMA Table 5-3-4-2" for unbalanced superelevation for various speeds on curves. Basically, if you are traveling at "x" speed and the curve is "x" degree that will determine the elevation needed in the curve. RBMN provided these published regulations to counsel for all parties (RBMR – 2).

It was also necessary for RBMN to complete work in the crossing due to the deterioration of the then high type surface panels due to PennDOT's failure to maintain their roadway approaches to the crossing (RBMR – 2).

26. Mr. Goetz is not an engineer, but I believe the Reading & Northern could raise track two higher than its current state (RBMR – 2).

27. The RBMN spent \$54,991.70 on the crossing work at Oak Street in the summer 2021. This includes the track work as well as the base coat asphalt paving (RBMR – 2).

28. Mr. Goetz is not sure why the need to elevate the track beyond the original elevation was not discussed with PennDOT before it was completed. (T., p. 50).

29. The current maximum allowable speed at the Oak Street crossing is 40 miles per hour (T., p. 51).

30. Sarah Fenton is employed by the Pennsylvania Department of Transportation (“PennDOT”) as the District Grade Crossing Administrator for District 4-0 (PennDOT Testimony 1).

31. District 4-0 encompasses the counties of Lackawanna, Luzerne, Pike, Susquehanna, Wayne and Wyoming (PennDOT Testimony 1).

32. Ms. Fenton has been employed by PennDOT for approximately 14 years (PennDOT Testimony 1).

33. Ms. Fenton also held positions with PennDOT as Assistant Permit Engineer, Civil Engineer Trainee, and Engineering Technical Intern (PennDOT Testimony 1).

34. Ms. Fenton’s general duties include providing coordination between railroads and PennDOT. Coordination is also provided between/for railroads and other government entities if state funding/assets/interest are involved (PennDOT Testimony 1).

35. State Route (“SR”) 2019, also known as Oak Street, is located in Pittstown Township, Luzerne County. SR 2019 has the average daily traffic of 12, 178 and the average daily truck traffic of 745 in the vicinity of RBMN’s at-grade crossing. The federal functional class of SR 2019 is Minor Arterial (PennDOT Testimony 1).

36. Exhibit 1 is an aerial photograph of the RBMN at-grade crossing at Oak Street. This photograph was taken prior to the replacement project so it shows a concrete at-grade crossing. The crossing as it exists currently is an asphalt rubber seal at-grade crossing (PennDOT Testimony 1).

37. PennDOT Exhibit 1 fairly and accurately depicts the area of the crossing except for the at-grade crossing surface. The photograph shows a concrete crossing surface; however, it is currently an asphalt and rubber seal surface (PennDOT Testimony 1).

38. This present matter was initiated when in 2018-2019 RBMN contacted PennDOT with concerns regarding the condition of the Oak Street at-grade crossing. Eventually the concern became an informal complaint with the PUC. Multiple maintenance repairs were done over the years by both parties. When both parties repaired simultaneously, the Department provided the Maintenance and Protection of Traffic (“MPT”) for the dual work. RBMN did waive flagging fees. From Ms. Fenton’s understanding, at least once PennDOT Luzerne County Maintenance patched RBMN’s area of responsibility. Over this time frame, discussions between RBMN and PennDOT commenced in attempts to find a long-term solution for the crossing. There were also some PUC meetings held over this timeframe to discuss the crossing’s conditions and solutions to it. One of the most notable meetings between all parties was held in 2019. During the meeting, a long-term fix, as well as a temporary fix, was discussed. Due to the timing of when the permanent work could be completed by each party, conflicts in scheduling arose as well as budgeting on the Department’s side. Temporary repairs were discussed and agreed upon. It was also agreed upon that the permanent fix to the crossing would be tabled and revisited in spring of 2020. In or around the date of January 28, 2020, RBMN filed a formal PUC complaint. There was then an official PUC filed meeting held on site to discuss the permanent crossing fix. After a lengthy discussion, RBMN agreed to perform the replacement of the crossing at their sole cost. They indicated that they would be replacing the concrete high type surface with a low type surface of asphalt and rubber seal. RBMN also agreed at their sole cost to prepare the subgrade and place the needed bituminous asphalt base course throughout the

crossing replacement area. PennDOT agreed at their sole cost to design, implement, and buy/erect signage for the detour as well as mill the tie ins and place 2 inches of wearing course. The work was set to take place in 2020; however, Covid-19 delayed the project until 2021. A Secretarial Letter detailing the work and responsibilities was published April 30, 2021. The project started on July 26, 2021 and the road was re-opened on July 31, 2021 (PennDOT Testimony 1).

39. Exhibits 4A and 4B are pictures of the track prior to the replacement project.

40. PennDOT's Exhibits 4A and 4B fairly and accurately depict the area of the crossing prior to the replacement project (PennDOT Testimony 1).

41. The subgrade and base course, which was prepped and done by RBMN and/or their contractor, set the evaluation for the 2 inches of 9.5mm wearing that PennDOT agreed to place (PennDOT Testimony 1).

42. 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 (PennDOT Testimony 1).

43. 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. 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. If a fine grade 9.5mm wearing course was used, which was not part of the agreement, minimum thickness would extend down to 1 inch while its maximum would be 1.5 inches. Even if design minimum and maximum thicknesses were not defined in the publication, placing a thicker wearing course depth beyond the 2 inches would place the track

below the grade of the finished surface. Increasing the depth of the wearing course would cause for the tracks to be covered with the wearing course. Placing less than 2 inches of wearing course would leave the tracks exposed. This was called out as part of the agreement between RBMN and PennDOT (PennDOT Testimony 1).

44. After the work was completed, PennDOT met with the PUC and RBMN to discuss the Oak Street crossing (PennDOT Testimony 1).

45. The first meeting took place on site at the grade crossing on Wednesday, August 18, 2021. Following that there were additional tele-conferences (PennDOT Testimony 1).

46. The work that was done at this crossing occurred between July 26, 2021 through July 31, 2021 (T., p. 72).

47. PennDOT did its work with its own forces (T., p. 73).

48. PennDOT actually installed a detour, so PennDOT's work started first. PennDOT installed the detour for the Railroad (T., p. 73).

49. The sequence of work was, that PennDOT put the detour in place, the Railroad did its portion of the work, and then PennDOT came in and finished the work (T., p. 74).

50. PennDOT did not prepare or provide to the Railroad any specific plans or specifications for PennDOT's portion of the work, other than a detour plan (T., p. 74).

51. There were detour plans drawn up (T., p. 74)

52. There were no specific plans (T., p. 75).

53. Ms. Fenton sent her assistant to inspect the work (T., p. 75).

54. Ms. Fenton's assistant was on scene for some of the ballasts and the rail replacements (T., p. 76).

55. The inspector's name is Richard Cooper (T. p. 80).

56. Mr. Cooper is PennDOT's GSI operator out of Ms. Fenton's unit. Mr. Cooper is Ms. Fenton's assistant on railroad projects (T., p. 80).

57. Ms. Fenton assigned Mr. Cooper as part of his duties, as Ms. Fenton's assistant on railroad projects, to visit the jobsite (T., pp. 81-82).

58. Mr. Cooper did not bring any issues to Ms. Fenton's attention while the work at the Oak Street crossing was being performed (T. p. 83).

59. Ms. Fenton could not recall that any problems or anything of that nature was brought to Ms. Fenton's attention while the project was ongoing (T., p. 85).

60. In the last 60 days, no complaints about the Oak Street crossing were brought to Ms. Fenton's attention (T., p. 85).

61. Nobody has brought to Ms. Fenton's attention as the District Grade Crossing Administrator for District 4-0 of PennDOT, any complaints about the Oak Street Crossing since January 1, 2022 (T., p. 86).

62. PennDOT spent \$19,059.24 on its portion of the work at the Oak Street crossing (T., p. 88).

PROPOSED CONCLUSIONS OF LAW

1. The Public Utility Commission has jurisdiction over this matter, pursuant to 66 P.S. §2702(c).
2. Apportioning costs for further alteration of the Oak Street crossing requires taking into consideration all relevant factors with a fundamental requirement that the Order be just and reasonable.
3. I find, taking into consideration all relevant factors, that it would be just and reasonable for Reading Blue Mountain and Northern Railroad Company, at its sole cost and expense, to be responsible for costs relating to any further alteration of the Oak Street crossing underneath the railroad ties and tracks to extend 2' from each outside rail on each set of tracks and all area in between.
4. I find, taking into consideration all relevant factors, that it would be just and reasonable for the Pennsylvania Department of Transportation to be responsible for all costs regarding the further alteration of the Oak Street crossing from the area 2' from the outside rail on each set of tracks and that PennDOT establish and maintain any detours or traffic controls necessary.

BRIEF

The basis of the Commission's authority regarding the Complaint filed by Reading Blue Mountain and Northern Railroad Company is found at 66 Pa. C.S. §2702 (c) which reads in pertinent part as follows:

“(c) **Mandatory relocation alteration, suspension or abolition.** – 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. §2704, in pertinent part, reads:

“(a) **General rule.** [T]he cost of construction, relocation, alteration, protection, or abolition of such crossing and of facilities at or adjacent to such crossing which are used in any kind of public utility service, shall be borne and paid, as provided in this section, by the public utilities or municipal corporations concerned, or by the Commonwealth, in such proper proportions as the commission may, after due notice and hearing determine.”

The law is well settled that the Public Utility Commission has the authority to allocate the costs to PennDOT pursuant to 66 Pa. C.S. §2702(c) and 66 Pa. C.S. §2704(a). DOT v. PUC, 3 Pa. Commw. 473, 284 A.2d 155 (1971); Commonwealth, Dep't of Transp. v. Pa. Pub. Util. Com., 70 Pa. Commw. 128, 452 A.2d 619 (1982). This authority of the PUC to allocate costs to PennDOT extends to PennDOT even if there are not appropriated funds for such costs. Commonwealth, Dep't of Transp. v. Pa. Pub. Util. Com., 76 Pa. Commw. 525, 464 A.2d 645 (1983).

In apportioning costs in cases such as this, there are no fixed rates which apply. Instead, the Public Utility Commission is to take all relevant factors into consideration with the fundamental requirement that the order be just and reasonable. Pennsylvania Dep't of Transp. v. Pub. Util. Com., 79 Pa. Commw. 266, 469 A.2d 1149 (1983).

The Secretarial Letters dated April 30, 2021 and June 28, 2021, of which Judicial Notice has been taken, set forth the initial agreement between PennDOT and RBMN for allocation of the costs to repair the Oak Street crossing. After the work was performed in the summer of 2021 and PennDOT was dissatisfied with the results, no further agreement between PennDOT and RBMN was reached. This matter is now before the Commission on the Complaint of RBMN for allocation of the costs to further alter the Oak Street railroad crossing. It is the position of RBMN that based on all the relevant factors in the record before this tribunal, PennDOT should pay for the work two feet outside of the rails.

A. ALLOCATON OF THE COSTS SHOULD OCCUR BASED ON THE INITIAL AGREEMENT OF THE PARTIES AS SET FORTH IN THE SECRETARIAL LETTERS OF APRIL 30, 2021 AND JUNE 28, 2021.

This initial agreement of the parties reflects the on-the-ground realities at the Oak Street crossing; PennDOT is responsible for the roadway approaches leading to the railroad crossing and RBMN is responsible for the tracks and the area 2' outside the tracks and inside the area of the tracks.

Allocating costs between PennDOT and RBMN for further alteration of the crossing in these same proportions would be the equitable approach. PennDOT's failure to maintain the approaches caused damage to the crossing (Johnson Testimony, RBMR – 1).

The Secretarial Letter dated April 30, 2021, as modified by Secretarial Letter dated June 28, 2021 recites that after the field meeting held on March 31, 2021, the parties come to an amicable agreement to reconstruct and repair the public crossing. The pertinent paragraphs of the April 30, 2021 Secretarial Letter are set forth as follows:

“Reading Blue Mountain & Northern Railroad Company, at its sole cost and expense, agrees to replace the high-type concrete panel crossing surfaces with rubber flangeway and asphalt crossing surfaces and perform all necessary base repair and

subgrade repair underneath the railroad ties and tracks to extend two (2) feet from each outside rail on each set of tracks and all area in between and to finish the hot mix bituminous asphalt base course to within two (2) inches of top of finished grade on the railroad crossing surfaces to extend in width at a minimum the average width of the paved roadway and shoulder approaches.

Reading Blue Mountain & Northern Railroad Company, at its sole cost and expense, agrees to sawcut and or mill and remove the approach roadway bituminous asphalt wearing and base courses measured from two (2) feet from each outside rail on each set of tracks to extend at a minimum five (5) feet back on each roadway approach for a total minimum distance from outside rail of seven (7) feet, removing bituminous asphalt material and preparing subgrade area and to furnish, place and compact a seven (7) inch layer of hot mix bituminous asphalt base course material to within two (2) inches of adjacent sawcut/milled top of roadway on each roadway approach for the full width of the approach and paved shoulder area.

Pennsylvania Department of Transportation, at its sole cost and expense, agrees to furnish, place and compact two (2) inches of hot mix bituminous asphalt wearing course material to finished grade of sawcut/milled roadway approaches and extend through the public crossing and up to each rubber flangeway on each set of tracks and the area in between for the full width and length of each crossing surface, roadway approach and paved shoulder area.

Pennsylvania Department of Transportation, at its sole cost and expense, agrees to 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 roadway approaches and railroad crossing surfaces.

Reading Blue Mountain and Northern Railroad Company, at its sole cost and expense, agrees to 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.”

PennDOT undoubtedly agreed to this resolution because of the deteriorated condition of the state highway which falls within its statutory jurisdiction and because PennDOT was responsible for the deterioration of the state highway within its statutory jurisdiction. Since it appears the parties agree that further work is required at the Oak Street crossing, any allocation of costs for the additional work, on equitable principles alone, should treat the agreement of the

parties regarding allocation of costs and responsibilities as set forth in the original Secretarial Letter, as subsequently modified.

B. PENNDOT'S REFUSAL TO SHARE IN THE COSTS OF FURTHER ALTERATIONS TO THE OAK STREET CROSSING IS UNREASONABLE.

PennDOT refuses to share in the costs of further alterations to the Oak Street crossing, even though PennDOT's failure to properly maintain the roadway approaches to the crossing led to or caused the need for the Oak Street crossing to initially be repaired in the summer of 2021. PennDOT's position in this regard is unreasonable.

PennDOT appears to hinge its refusal to further share in the costs of the work to the Oak Street crossing by blaming the railroad for raising the elevation of the track without informing PennDOT.

As Mr. Goetz testified, RBMN had to raise the tracks. Mr. Goetz's uncontroverted testimony was that 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 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. The Federal Railroad Administration sets these regulations for unbalanced superelevation for various speeds on curves. Mr. Goetz's testimony makes clear that RBMN had to superelevate the tracks, much like PennDOT sets speeds on its roadways.

In analyzing PennDOT's refusal to share in the further costs of altering the crossing, one should ask what would have occurred if RBMN had informed PennDOT of the need to superelevate the tracks.

Had this occurred while the specific work would not have occurred as laid out in the April 30, 2021 Secretarial Letter, it is likely that PennDOT and RBMN would have come to essentially the same agreement regarding allocating the costs, i.e. PennDOT would have done the work from 2' outside the rails and RBMN would have done the work 2' inside the rails. The basic scope of work would have been the same with the only difference being the amount of costs spent.

PennDOT complains that it does not want to be responsible for further work at the site, apparently because of the extensive nature of that work, which includes work on the approaches to the tracks and possibly neighboring properties as well as drainage issues. Well, if PennDOT had been informed that the tracks were to be raised, is it not likely that PennDOT would have been constrained to agree to do this much more extensive amount of work on the approaches leading to the Oak Street crossing.

In other words, PennDOT spent \$19,059,24 performing its share of the work in the summer of 2021, instead of a much larger amount had the work been more extensive because of the tracks being raised. Allocating the full amount of the costs to PennDOT for the further more extensive work regarding the approaches to the Oak Street crossing would place PennDOT in the exact same position it would have been in at the time the parties were discussing the matter which leads to the agreement encapsulated in the Secretarial Letters.

C. PENNDOT SHOULD HAVE ASKED IF THE TRACKS WERE GOING TO BE RAISED.

William Sinick testified:

“Q. And during that conference, did you ask any representative of the railroad, who was in your attendance at that conference, whether or not any alterations to

the elevation of the track or the track geometry was contemplated?

A. It was never discussed. And I did not ask if - .

Q. The – the question was, you – you didn't – okay.

You – you did not ask.

A. I did not.”

(T., p. 111).

Coordination of any construction job is a two-way street. It requires communication from all parties. PennDOT wants to blame RBMN for not saying anything about elevating the tracks. Why should not PennDOT be blamed for not asking about the tracks?

D. PENNDOT WAS INSPECTING THE WORK WHILE THE WORK WAS BEING PERFORMED BUT RAISED NO OBJECTIONS REGARDING THE WORK.

The testimony of Sarah Fenton proves that her assistant, Richard Cooper, was on-site at the Oak Street crossing during the performance of the work. Yet, Mr. Cooper did not raise any complaints or objections regarding the work at the crossing with Ms. Fenton. Standing by and saying nothing, while workmen and contractors are mobilized and onsite, thereby precluding any possibility of mitigating any potential problems with the work should preclude PennDOT from refusing to share in the allocation of costs for further alterations of the crossing

E. TESTIMONY OF WILLIAM SINICK REGARDING RAISING THE TRACKS IS VAGUE AND INCONCLUSIVE.

The PUC Investigations and Enforcement division relies on the testimony of William Sinick, essentially trying to use Mr. Sinick's testimony to cast blame on RBMN. Mr. Sinick's testimony is contradictory. He states the Commission does not control tracks RBMN raises at a

crossing and then later says the opposite. An examination of Mr. Sinick's testimony, actually as adduced by the Judge, discloses the following:

1. A railroad can superelevate its tracks, without further permission from the PUC.
2. Later he states that a railroad needs PUC authority to elevate its tracks.
3. Contrary to his claims that at some point a railroad would have to seek permission from the PUC to elevate tracks, Mr. Sinick produced no written regulations or standards which identify when a railroad would have to file an application with the PUC to raise its tracks.
4. Mr. Sinick's testimony establishes there are no clear written standards as to when a railroad is required to obtain PUC authority to raise tracks.

William Sinick testified:

JUDGE: Is it the Commission's practice to require plans, such as what's depicted in I&E Exhibit A, if track geometry is going to be altered at a crossing?

THE WITNESS: When it's part of an application, absolutely, Your Honor. If track geometry changes, everything changes. Because that's what sets the final elevation of what's going to be out there when it's completed.

JUDGE: Are there circumstances under which a railroad can change the track geometry at a crossing without submitting an application?

THE WITNESS: They may be able to adjust the superelevation based on their approved speed and the existing degree of curvature.

In other words, that particular alteration is not under the Commission's jurisdiction per se. It – it is based on the allowable train speed and the existing geometry of the tracks.

But when we're talking about superelevation changes, it's usually a minor adjustment.

JUDGE: Well, if a train – or if a railroad is – had – is able to change the elevation of their tracks at a crossing without seeking Commission approval, what is the criteria that – that needs to be met?

THE WITNESS: If they were to change the superelevation of their tracks going through a crossing across the highway such as this – if – if that change affects the approach roadway coming into that particular crossing, it would – the Commission would consider that an alteration.

Because then the party, the highway entity would have to make an adjustment to their roadway transition and/or possibly adjust their posted speed limit that's allowed through that area. And it also affects drainage.

So if it's a – more than what I would consider – or we would consider a minor correction, and that's typically inch and a half, then we would consider that an alteration.

JUDGE: And how – how much was the tracks in this case? How much were they raised?

WITNESS: Based on my field of observations, Your Honor, it looks like the superelevation was changed from two and a half inches to over five inches.

And that's just the superelevation we're talking about. The Commission does have jurisdiction over raising the tracks. Which the superelevation is just the change with one rail with respect to the other rail on that set of tracks. It's almost like a banking.

If you consider a tabletop, and you – and a flat surface and you angle that tabletop, that is the banking and what we consider superelevation. Raising of the tracks means the whole – the whole area that the tracks are coming through, the elevation of the tracks were raised in – in – in concert.

In this – in this case, there's two sets of tracks. And they're roughly 24 feet wide from one outside rail to the other.

So you know a railroad just can't come through and raise those tracks. I mean, they could raise them two feet. And you – you – you can't – you can't do that without, you know, a Commission application where all parties were involved with that proceeding.

Okay?

And – you know that raising of the tracks will certainly affect the roadway approaches coming into it.

The superelevation is, like I said, based on train speed and the degree of curvature of their tracks. It should not change substantially because the track geometry isn't changing.

And I doubt the FRA – but I don't know this. And I doubt the FRA would make a substantial enough change to the speed of the train to – to affect that kind of difference in superelevation that was approved in 2014 and then what is out there now.

JUDGE: Mr. Sinick, is it your position, that the alterations that the Railroad made to the track should have been made part of the application – a separate application to the Commission?

THE WITNESS: It should have been discussed at the field conference, Your Honor, for – for changing the concrete panels to asphalt and Rail Seal, which we do consider an alteration. Because it's changing a high-type crossing, which is the concrete panels, to one that we don't consider is a high-type crossing, which is asphalt and Rail Seal. But it changes the maintenance limits of the crossing between the Railroad and the highway entity.

And that's the main reason we consider an alteration.

JUDGE: Well, if you take -?

THE WITNESS: But yes, Your Honor.

JUDGE: I mean, if you take the field visits out and you take the – you know, the maintenance that needed to be done on the crossing – if those wouldn't have been an issue and the only issue was that the railroads wanting to, you know, superelevate the track or to change the geometry of the track at the crossing – if that was the only issue, is it your position that the Railroad would have needed to submit an application to the Commission to do that?

THE WITNESS: It is my position, that they would – they would have to come through the Commission with an application for a change in track geometry and/or an excess raise of superelevation, which was done in this case, it appears, from two and a half inches – to five and a half.

Because again, it changes the roadway transition into that crossing. And if you were to change the track geometry, as far as the curvature of the tracks, that would move – that would move the rails on – on the crossing, where it crosses the roadway.

In other words, the position of the rails going across the roadway will change if they change the degree of curvature of the tracks.

And yes, that – that would be an alteration they would need to apply through the Commission for.

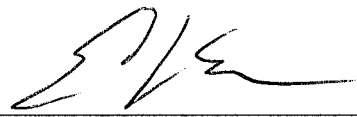
Regulations by the government cannot be based on the personal opinions of the regulators. Regulations governing conduct of individuals or businesses must be in writing and be clear enough to be understood, so that the behavior and actions of the individual or businesses can be properly adjusted.

As the aforesaid testimony of Mr. Sinick shows, and based on the record, there are no clear written regulations, or certainly nothing produced, which would have provided guidance to RBMN as to when RBMN could superelevate its tracks without PUC approval and when supposedly superelevating the tracks would require PUC approval. Without reliance on any such written regulation, the testimony of Mr. Sinick should be given no weight, to the extent Mr. Sinick's testimony was proffered to support the proposition that RBMN acted wrongfully in superelevating its tracks.

Respectfully submitted,

RICK STOCK LAW

BY: _____



Edwin L. Stock, Esquire
*Attorneys for Reading Blue
Mountain & Northern Railroad
Company*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Complaint filed by Reading Blue Mountain & Northern Railroad Company involving the Deteriorated condition of the railroad crossing Surface and roadway approaches at the public Crossing (DOT 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 : C-2020-3016906
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CERTIFICATE OF SERVICE

I hereby certify that I have this 5 day of August, 2022 served a true and correct copy of Findings of Fact, Conclusions of Law and Brief of Reading Blue Mountain & Northern Railroad Company, on the parties as follows:

**Via Email – e devoe@pa.gov
(Word Version)**

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Administrative Law Judge
Pennsylvania Public Utility Commission
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Pittsburgh, PA 15222

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