

COMMOWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

BLACKWOOD, INC. :
 :
 v. : **Docket Nos.**
 : **C-20078010 and A-20082016324**
 READING, BLUE MOUNTAIN :
 AND NORTHERN RAILROAD :
 COMPANY :
 : **Judge F. Joseph Brady**

**PETITIONER-RESPONDENT READING, BLUE
MOUNTAIN AND NORTHERN RAILROAD
COMPANY'S POST-HEARING BRIEF**

Respectfully Submitted,

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DATE: September 25, 2025

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Petitioner-Respondent, Reading, Blue Mountain and Northern Railroad Company (the “Railroad” or “RBMN”), by and through its undersigned counsel, hereby submits its post-hearing brief in support of its Petition to Abolish Crossing #592007F, and in opposition of Blackwood, Inc.’s Complaint.

I. Procedural and Factual Background.

A. Blackwood’s PUC Complaint.

On July 20, 2007, Blackwood, Inc. (“Blackwood”) filed a formal complaint (the “Complaint”) which was docketed at C-20078010, against Reading, Blue Mountain & Northern Railroad Company (the “Railroad” or “RBMN”) with the Pennsylvania Public Utility Commission (“PUC”). See Blackwood’s Complaint.

The Complaint alleges that Blackwood owns a tract of land in Reilly Township, Schuylkill County, Pennsylvania (the “Property”) which was separated by RBMN’s railroad tracks and facilities. Id. The Complaint further alleges that RBMN has denied Blackwood access to the Property by refusing to allow Blackwood to use the crossing where the road designated as T-597 (also known as Blackwood Road) crossing RBMN’s facilities. Id. The Complaint asserts that RBMN’s alleged refusal has prevented Blackwood from accessing coal reserves or from developing the Property. Id.

The Complaint requests that the PUC order RBMN to allow Blackwood to use the crossing where the road designated as T-597 crosses RBMN’s facilities, to

compensate Blackwood for damages due to the denial of the use of the crossing and to grant any other relief the PUC deemed appropriate. Id.

On September 10, 2007, RBMN filed its answer, new matter and counterclaim in response to the Complaint, denying the allegations and asserting that there was no public road near RBMN's tracks as suggested in the Complaint. See RBMN's answer, new matter and counterclaim.

RBMN asserted in the new matter included in its answer that the road designated as T-597 had been vacated and that the vacation of the road designated as T-597 resulted in the vacation of the crossing by operation of law. Id.

RBMN's counterclaim asserts that the Complaint was without basis in fact or law, and that RBMN has expended significant costs in counsel attorney and expert witness fees responding to the Complaint, requesting that the PUC deny the Complaint, declare the crossing to be vacated or abandoned and to award RBMN damages in the amount of \$50,000. Id.

B. RBMN's Application To Abolish The Crossing.

On December 17, 2007, RBMN filed an application (the "Application") to abolish the crossing in question, which was docketed at A-2008-2016324, alleging that the Court of Common Pleas of Schuylkill County, by order dated May 7, 1946, ordered Township Road T-567 vacated. See RBMN's Application to Abolish.

RBMN attached a copy of the May 7, 1946 Order to its application, which further alleged that south of RBMN's tracks, for a distance of four hundred feet, the road is vacated, and north of RBMN's tracks, the road provided a connection to the village of Blackwood, which no longer exists, and therefore the Township had not maintained the road for a period in excess of fifty years. Id. In the Application, RBMN asserted that no vehicles or pedestrians use the crossing, and requested that the PUC grant the application and order the crossing abolished. Id.

C. Local Agency Appeal.

On June 9, 2008 and June 11, 2008, Administrative Law Judge David A. Salapa conducted two (2) full days of hearings on the PUC matters, and at end of the second day of hearings, Blackwood moved -- and the parties agreed -- to stay the PUC matters until the Court of Common Pleas of Schuylkill County issued a final order in the case captioned Reading, Blue Mountain & Northern Railroad Company v. Township of Reilly at Docket No. S-1179-2008 (the "Local Agency Appeal"). See 2008 Notes of Testimony ("N.T.") at pp. 484-85.

Following a status conference on October 26, 2016, Judge Salapa further stayed the PUC proceedings pending a final order in the Local Agency Appeal. See October 27, 2016 Further Stay Order. Judge Salapa noted that the issue in the Local Agency Appeal addressed whether a Township ordinance was sufficient to vacate Blackwood Road as a public road, and noted that since Blackwood Road is a part of

the crossing that is the subject of the PUC proceedings, a decision issued by the Court of Common Pleas of Schuylkill County could affect the PUC proceedings, and thus the proceedings were stayed.

On May 15, 2025, RBMN submitted a status report to the PUC indicating that the Local Agency Appeal had been discontinued, and thus the stay was lifted.

The PUC matters were listed for a hearing on August 7, 2025 before the Honorable F. Joseph Brady.

D. Blackwood's Quiet Title Action.

On November 6, 2008, Blackwood instituted a lawsuit docketed at S-3238-2008, against RBMN claiming title to land underlying the railroad tracks owned by RBMN (the "Quiet Title Action"). See Blackwood v. Reading, Blue Mountain & Northern Railroad Company, 147 A.3d 594, 595 (Pa. Super. 2016).

Following preliminary objections which were sustained, Blackwood filed a Fifth Amended Complaint in the Quiet Title Action on January 4, 2011, to which the parties filed cross motions for summary judgment. See Blackwood, 147 A.3d at 595.

On May 16, 2014, approximately one week prior to the oral argument on the cross-motions for summary judgment, Blackwood filed a motion requesting leave to amend the Fifth Amended Complaint, seeking leave to assert a right "to between three and five private crossings, depending on whether a public crossing still existed,

over [RBMN's] rail lines." See Blackwood, 147 A.3d at 597. By order dated August 29, 2014, the trial court denied Blackwood's motion for summary judgment, granted RBMN's cross-motion for summary judgment, and denied Blackwood's motion for leave to amend the Fifth Amended Complaint. Id.

Blackwood appealed the August 29, 2014 order of the trial court to the Superior Court, which, by order dated July 15, 2016, affirmed the order granting RBMN's motion for summary judgment, but reversed the order to the extent it denied Blackwood the right to amend its complaint. See Blackwood, 147 A.3d at 601.

The Superior Court noted that Blackwood is seeking a crossing under Section 18 of Act of 1828 which states:

Sect. 18 *And be it further enacted by the authority aforesaid*, That for the accommodation of all persons owning or possessing land through which the said rail road may or shall pass, and to prevent inconveniences to such person in crossing or passing the same, it shall be the duty of the said company when required, to make, or cause to be made, a good and sufficient causeway or causeways, **wherever the same shall be necessary**, to enable the occupant or occupants of said lands, to cross or pass over or under the same with wagons, carts, and implements of husbandry, as the occasion may require: *Provided*, That the said company **shall in no case be required to make, or cause to be made, more than one such causeway** through each plantation or lot of land, **for the accommodation of any one person** owning or possessing land through which the said rail road may or shall pass, and **where any public road shall cross said rail road, the person owning or possessing land through which the said road shall pass, shall not be entitled to make such requisition** on said company....

See Blackwood, 147 A.3d at 598–99 (emphasis in original).

The Superior Court concluded that Section 18 of the Act of 1828 creates a cause of action for a private crossing, explaining:

It thus creates a cause of action for a private crossing. In light of the history of this lawsuit, we carefully set forth the parameters of such an action by examining the above-emphasized language. First, Act 96 plainly states that a private crossing must be constructed by the railroad only if it is necessary. Hence, in order to prevail, Blackwood must prove that a private crossing is necessary within the meaning of Act 96.

The second emphasized portion of Act 96 is clear and unequivocal. As the entity owning land through which the tracks pass, Blackwood can obtain only **one** private crossing. Blackwood's position in its request to amend was that it was entitled to between three and five private crossings. This assertion is wholly unsupported by the terms of Act 96. That enactment provides that a railroad is required to build no more than one private crossing for the accommodation of any one person owning land over which the railroad tracks traverse. Blackwood's fifth amended complaint pertained solely to the Tremont Extension a/k/a the West End Branch, which dissects its property into northern and southern sections. Blackwood, as the owner of land over which the railroad tracks in question traverse, is permitted to amend the complaint to assert its potential entitlement to a single private crossing.

Finally, under the third emphasized portion of § 18, a landowner can obtain a private crossing only if there is not a public crossing on its land. In its request to amend its fifth amended complaint, Blackwood outlined that there might be a public crossing on its land over the railroad tracks. Blackwood's Motion for Leave to Amend its Fifth Amended Complaint, 5/16/14, at ¶ 18 (emphasis added) (“Section 18 of the Act of 1828 requires [Blue Mountain] to afford Blackwood a minimum of three (3) private crossings, and potentially five (5) private crossings, **depending upon whether or not Public Crossing DOT # 592007F still exists.**”). Blackwood can prevail on its claim to a private crossing, under the express language of § 18, only if there is no public crossing on its land. In conclusion, Blackwood can assert a cause of action for one private crossing, seeking to establish that there is no

public crossing, and that such private crossing is necessary, as envisioned by Act 96.

See Blackwood, 147 A.3d at 598-99 (emphasis in original).

The Superior Court concluded that “Blackwood can prevail on its claim to a private crossing, under the express language of §18, only if there is no public crossing on its land. In conclusion, Blackwood can assert a cause of action for one private crossing, seeking to establish that there is no public crossing, and that such private crossing is necessary, as envisioned by Act 96.” See Blackwood, 147 A.3d at 599.

The Superior Court further stated that “[i]f the public crossing were then removed, the landowner might be entitled to a private crossing under a necessity standard if the lack of a public crossing denied the landowner access to his property due to the existence of the railroad tracks. Under this scenario, a cause of action for a private crossing would arise when the public crossing became unavailable to the landowner.” See Blackwood, 147 A.3d at 599.

The Superior Court concluded:

Thus, in order to successfully assert its claim to a private crossing, Blackwood must establish that it sought to amend the complaint within the applicable statutory period after its right arose. As noted, in its request to amend the fifth amended complaint, Blackwood averred that there was a public crossing on its land. If that crossing still exists, Blackwood has no right to a private one at all. However, if that public crossing is no longer in operation, then Blackwood's cause of action under Act 96 was triggered when it was removed. Blackwood must be

given the opportunity to establish that its request to obtain a private crossing was timely asserted.

See Blackwood, 147 A.3d at 600.

The Superior Court granted Blackwood “the right to amend its fifth amended complaint to assert a claim to a single private crossing,” noting also that the “trial court must decide the applicable statute of limitations and whether Blackwood’s cause of action was timely asserted.” Id. at 600-01. The Superior Court further stated that “[i]f the claim is timely and viable due to the lack of a public crossing, the trial court must then determine whether a private crossing is necessary within the meaning of § 18 of Act 96.” See id. at 601.

Blackwood amended the complaint, preliminary objections were filed, and Blackwood amended again, so the operative complaint in the Quiet Title Action is the Seventh Amended Complaint. The Seventh Amended Complaint remains pending in the Schuylkill County Court of Common Pleas.

In its Seventh Amended Complaint, Blackwood acknowledges that the Superior Court has limited Blackwood to a claim for a single crossing. See Seventh Amended Complaint at ¶ 27. In the Seventh Amended Complaint, Blackwood “seeks a crossing over the main Tremont Extension of the Railroad which generally dissects Blackwood’s property, running east and west.” See Seventh Amended Complaint at ¶ 28.

Blackwood specifically alleges that the “Tremont Extension had a public crossing at one time, Public Crossing DOT #592007F, which was physically removed by the Railroad.” See Seventh Amended Complaint at ¶ 29. Blackwood further alleges that it made a formal written request to the Railroad for a crossing, which was rejected by written response from its Real Estate Director, James G. Raffa, dated January 12, 2007. See Seventh Amended Complaint at ¶¶ 30-31.

Blackwood further asserts that pursuant to Section 18 of the Act of 1828, RBMN should be “required to provide a private crossing for Blackwood, as a crossing is necessary for Blackwood to be able to access all of its property,” requesting that the “crossing be across the Tremont Extension.” See Seventh Amended Complaint at ¶ 33.

The Seventh Amended Complaint seeks the following relief:

- (a) To enter an Order granting Blackwood the right to a private crossing across the Railroad’s Tremont Extension at the location of the former public crossing across the Tremont Extension, or such other location as the Court shall determine appropriate;
- (b) To the extent the Court may determine the Railroad has the legal discretion to decide on the location and type of a crossing over its Tremont Extension, to enter an Order requiring the Railroad to inform the Court of where it proposes to place the crossing, and the type of crossing the Railroad would propose, so that the Court can determine that the type and location meet the need and convenience of Blackwood;
- (c) To enter an Order pursuant to the provisions of Section 18 of the Act of 1828 compelling the Railroad to pay for the cost of the installation

of the private crossing for Blackwood's benefit, and the costs of the ongoing maintenance of that crossing; and

(d) Providing Blackwood such other and further relief as the Court considers appropriate.

See Seventh Amended Complaint.

II. Standard.

The Public Utilities Code vests the PUC with the exclusive power “to determine and prescribe, by regulation or order, . . . the manner in which, such crossing may be constructed, altered, relocated, suspended or abolished, and the manner and conditions in or under which such crossings shall be maintained, operated, and protected to effectuate the prevention of accidents and the promotion of the safety of the public.” 66 Pa.C.S. § 2702(b). “Such crossing” is not defined by the Code, but has been defined by our courts as,

A “crossing” is an intersection of two or more public utilities. See, e.g., City of Philadelphia v. Pennsylvania Public Utility Commission, 449 Pa. 402, 296 A.2d 804 (1972). A railroad-highway crossing is the intersection of a highway with a railroad's right-of-way upon which railroad tracks lie and can be at, above or below the grade of the railroad tracks. Because railroad-highway crossings are constructed not only for the convenience of the traveling public but also for the safety of the public, see, e.g., Borough of Bridgewater v. Pennsylvania Public Utility Commission, 181 Pa. Super. 84, 123 A.2d 266 (1956), the applicable standard in railroad-highway crossing cases is “the prevention of accidents and the promotion of safety of the public.” Pennsylvania Railroad Co. v. Pennsylvania Public

Utility Commission, 154 Pa. Super. 86, 91, 35 A.2d 588, 590 (1944).

Se. Pennsylvania Transp. Auth. (SEPTA) v. Pennsylvania Pub. Util. Comm'n, 592 A.2d 797, 800 n.2 (Pa. Cmwlth. 1991). “Highway” is defined as “[a] way or place of whatever nature open to the use of the public as a matter of right for the purposes of vehicular traffic.” 66 Pa.C.S. § 102.

The PUC, *sua sponte* or upon complaint, has the exclusive power after hearing, upon notice to all interested parties, to order any such crossing to be relocated, altered, suspended, or abolished upon such reasonable terms and conditions as prescribed by the PUC. See 66 Pa.C.S. § 2702(c). In determining the plans for any new crossing, the PUC may lay out, establish, and open such new highways that it deems may be necessary to connect such crossing with an existing highway or make available for public use; and may *abandon or vacate such highways or portions thereof that it deems may be rendered unnecessary for public use* by the construction, relocation, or abandonment of such crossings. Id.

Whether an application to abolish a crossing should be granted is dependent upon whether the applicant has established that the abolition is necessary and proper for the service, accommodation, convenience, or safety of the public. N. Lebanon Twp. v. Pub. Util. Comm'n, 962 A.2d 1237, 1244-45 (Pa. Commw. 2008). Public convenience does not require absolute necessity, only reasonable necessity. Borough of Bridgewater, 124 A.2d at 172. “Factors to be considered in applying this standard

include traffic congestion, access for emergency responders, any impact on businesses, and the economic feasibility of the proposed change.” Id. (citing Pennsylvania Public Utility Commission v. Borough of Souderton, 231 A.2d 875 (Pa. Super. 1967), and Bueg v. Pennsylvania Public Utility Commission, 144 A.2d 511 (Pa. Super. 1958)).

III. Argument.

In 1999, Blackwood -- via majority shareholder and president, Nolan Perin (“Mr. Perin”) -- purchased approximately 2300 acres of land adjoining the railroad track. See 2008 N.T., 37. It is undisputed that at some point prior to Blackwood’s purchase of the subject property that the physical infrastructure of crossing #592007F was removed by an unknown actor. See record, generally; see also 2008 N.T., 42-43 (Mr. Perin testifying that before he purchased the property, he could not cross the subject railroad tracks because “there was nothing there[,] and there were no crossing mechanisms, no rubber installations or concrete to drive over, and the railroad ties were nine (9) inches above the ground). T-567, in its entire existence, has never been a paved road, rather “it’s basically dirt” and “dirt north and south” of the purported crossing. See 2008 N.T., 59-60, 65.

Simply put, RBMN has not denied Blackwood the right to use a public crossing, as crossing #592007F no longer exists as a public crossing and should be formally abolished by the PUC. There is no evidence on the record that RBMN

removed the crossing. Id. Nor is there evidence that the public would use said crossing if reconstructed, as the adjacent roadways -- formerly known as Blackwood Road -- are private, gated, and unmaintained. Blackwood Road previously existed to service the now extinct Village of Blackwood, but “there’s nothing there anymore except a couple of building remnants.” Id. at 44, 454:2-6 (the Village of Blackwood ceased to exist in the 1950s and all of the houses are gone). The existence of the crossing is merely a matter of convenience for Blackwood, who does not think it should bear the cost of construction and maintenance of what would effectively be a private crossing. Id. at 126:23-25, 127:1.

A. Removal Of The Crossing.

There is no evidence within the record that RBMN removed the crossing. See record, generally. In fact, the record reflects that the physical infrastructure for the crossing had been removed prior to 1990, when RBMN purchased the railroad. See 2008 N.T., 403:20-405:15, 424:14-17; N.T. 2025, 580:22-581:10. Blackwood did not purchase the adjacent land until 1999, at which point, the crossing had long since been removed by an unknown actor. See 2008 N.T., 37:6-8. Moreover, the only work performed by RBMN in the area of the subject crossing was -- from time-to-time -- remove erosion off the rails of the railroad and create berms to prevent water runoff going into the railroad. Id. at 328:1-25, 329:1-2, 340:10-13. When RBMN

purchased the property, there was no evidence the area was being used as railroad crossing. Id. at 337:1-3, 350:4-6, 370:9-25, 371:1-4.

According to the federal Department of Transportation (“DOT”) crossing inventory information, the crossing in question is a private at-grade crossing. See 2008 N.T., 304:8-10, 312:10-17, 148:23-25, 149:1-13. Further, on August 13, 2003, the Commonwealth of Pennsylvania submitted the change to a private crossing. Id. at p. 314:11-16, 154:5-25, 155:1-18; see also RBMN Cross Exhibit 9.

Moreover, while RBMN did not remove the physical infrastructure of the crossing, they also were not at liberty to reconstruct the crossing. Reconstruction of the crossing would have required application and approval by this Commission. See 66 Pa.C.S. § 2702(a), (c).

As such, it would be unsupported by the record to hold RBMN responsible for removal of crossing #592007F. See 66 Pa.C.S. § 2702(c).

B. Traffic Congestion.

Today, T-567, also known as Blackwood Road, is little more than a goat track. See RBMN’s Application to Abolish. There is no traffic congestion on T-567 or crossing #592007F, nor would any traffic congestion be alleviated if the crossing were rebuilt. See record, generally. T-567 is an abandoned, former highway. See RBMN Exhibits 8A-8G; N.T. 2025, 627:6-629:7. Years of disuse of the crossing

and T-567 have caused any traffic patterns of public motorists to change. See record, generally.

In fact, the only vehicles Mr. Perin has witnessed on the northern portion of the Blackwood property were “apparently stolen vehicles there that are abandoned [] and somebody sets a fire” and “there have been some parties held back there.” See 2008 N.T., 76:13-22.

Assuming, *arguendo*, a crossing was to be constructed over the railroad tracks at the site of the former Blackwood Road, then that same former roadway would be in need of “modifications” and “maintenance” on both the north and south properties of Blackwood because “one could only traverse that roadway with a Humvee.” See testimony of Mr. Perin at 2008 N.T., 108-109.

1. Adjacent Highways Have Been Abandoned And No Longer Meet The Definition Of A “Highway.”

T-567 is not a public road. See RBMN Exhibits 8A-8G. The road was vacated by Reilly Township (the “Township”) in 1946, and again in 1992. See Township Exhibits 4; Township Cross Exhibit 1; RBMN Cross Exhibit 14 (1990 General Highway Mapy for Schuylkill County showing that T-567 or Blackwood Road is an impassible road); and RBMN Cross Exhibit 15 (2008 General Highway Mapy for Schuylkill County showing that T-567 or Blackwood Road is no longer listed as a Township road). It is gated and locked at both ends with no trespassing signage.

See Township Exhibits 6A-6F. It is not maintained for general public use and is impassable on both sides of crossing #592007F. See RBMN Exhibits 8A-8G; 2008 N.T., 68:3-11, 108:15-22; see also 2025 N.T., 627:6-629:7; see also 2008 N.T., 62:5-7, 85:3-4 (Mr. Perin testifying that the Township has never maintained T-567). As such, the Commission should find that T-567 is no longer a highway and is abandoned as it pertains to the crossing under its authority at 66 Pa.C.S. § 2702(c).

To the south, T-567 exits the western edge of Blackwood, Inc.'s property and continues briefly to the border between Reily and Tremont Townships, where it meets State Route 125. See 2025 N.T., 559:25-550:18. T-567 is gated and locked where it meets State Route 125, making it inaccessible for the public to traverse. See 2025 N.T., 558:12-559:19; see also Township Exhibits 6D-6F. At the gate, there is signage for Blackwood's tenant, Liberty Processing, along with no trespassing signage and the image of a man holding a gun. See Township Exhibit 6D.

To the north, T-567 terminates at T-569, also known as Black Diamond Road. Black Diamond Road is gated and locked, making it inaccessible for the public to traverse. See 2008 N.T. 2008, 78:1-13, 103:6-9, 460:4-462:17; N.T. 2025, 547:17-19; 557:17-558:9; Township Exhibits 6A-6C. Black Diamond Road is weight restricted; although the appropriate bond may be posted so that it may be used by vehicles above the weight restriction. See 2008 N.T., 57:20-58:1, 109:18-110:1, 111:18-113:5, 460:4-13; N.T. 2025, 603:1-4; RBMN Cross Exhibit 2.

Further, T-567 is impassable at crossing #592007F. See RBMN Exhibits 8A-8G. PennDOT has marked T-567 as impassable since at least 1990. See 2008 N.T., 307:6-16. The road in this area, particularly where it would connect to the crossing, has not been maintained. See RBMN Exhibits 8A-8G; N.T. 2025, 627:6-629:7. The road is impassable via an ordinary passenger vehicle and requires a four-wheel drive vehicle. See 2008 N.T., 68:3-11, 108:15-22.

Only private entities maintain T-567. See 2008 N.T., 61:21-62:7, 105:4-5. The Township does not and has not maintained T-567, see 2008 N.T., 462:18-463:17, 468:2-5; which is reflective of Township's previous vacations of the road. See Township Exhibit 4; Township Cross Exhibit. 1; RBMN Cross Exhibit 10 (1992 Township Ordinance vacating T-567 by omission); see also 2008 N.T., 466:10-25, 467:1-18.

Thus, T-567 is no longer a highway and has been abandoned as it pertains to public usage.

2. No Public Use Exists In The Challenged Crossing.

There is no evidence that the public is using crossing #592007F. RBMN Assistant Vice-President in Charge of Field Maintenance Duane Engle ("Mr. Engle") testified he observed ATV tracks near the crossing but never saw ATVs or other vehicles cross. See 2008 N.T., 352:5-353:25. RBMN Vice-President of Operations Tyler Glass ("Mr. Glass") testified that in his [then-]17 years at RBMN, he never

observed vehicles cross the track and only observed one (1) ATV cross. Id. at 408:3-18. In its current state, it is effectively impassable by any vehicle without clearcutting trees and removing large rocks. See RBMN Exhibits 8A-8G; 2008 N.T., 68:3-11, 108:15-22.

In other matters before the PUC with similar public disuse of a crossing, this Commission has decided that that abolishment is proper. See Investigation into Matters Pertaining to Proper Serv., Accommodation, Convenience & Safety of the Traveling Pub. Using the Rail-Highway Crossing State Route 02085 (Cochran's Mill Rd.) over & Above the Grade of the Tracks of Norfolk & W. Ry. Co., in Jefferson Borough, Allegheny Cnty., to Determine the Condition & Disposition of the Existing Crossing Structure., No. I-000830376, 2008 WL 5786640 (Nov. 3, 2008); 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., No. A-00114338, 2002 WL 34558702 (Mar. 14, 2002).

In Cochran's Mill Rd., PennDOT moved to modify a ten (10) year-old 1997 Order directing PennDOT to remove and reconstruct a bridge carrying Cochran's Mill Road over railroad tracks. See No. I-000830376, 2008 WL 5786640 at *1. PennDOT argued that after the Order was entered and the bridge removed, the needs

of transport infrastructure in the community changed as alternative routes were used, and the transportation funding for the region was being utilized to maintain and replace critical structures and roadways. Id. The Commission granted PennDOT's motion, finding that after the crossing was removed for reconstruction ten (10) years prior, traffic patterns changed, and these became the accepted traffic patterns for the area. Id. at *2. Additionally, with PennDOT's budget limitations and increase emphasis on bridge and highway maintenance, the priority of replacing the Cochran's Mill Road crossing bridge became less critical. Id.

Similarly, in Where S.R. 0522 Crosses at Grade Two Tracks of E. Broad Top R.R. & Coal Co., PennDOT and East Broad Top Railroad and Coal Company (the "railroad") filed exceptions to the Administrative Law Judge's recommendation that the application to abolish the crossing should be denied and instead the crossing be relocated at PennDOT's expense. No. A-00114338, 2002 WL 34558702 at *1. PennDOT, who was undertaking a highway project to relocate and reconstruct Route 522, argued there was no legitimate need to retain the existing crossing given that the relevant section of the railroad track had been abandoned, the tracks removed, severely hampering the ability to conduct railroad operations and reverting the right of way to the abutting landowners. Id. The railroad maintained that they retained the right of way and had a lessee who intended to install new tracks. Id. PennDOT suggested that, in the alternative, that if the Commission found the crossing

unnecessary but determined that future rail operations may be necessary, that their application be granted, but the crossing in question be suspended until the railroad filed the appropriate application to rebuild the tracks in the future. Id. The Commission agreed and granted PennDOT's exception, suspending the crossing and directing the railroad to file bi-annual updates on the status of any plans it may have to reactivate the crossing, and, if after three (3) years, no feasible plans have been presented, the crossing is to be abolished. Id. The railroad's exceptions were ultimately deemed moot. Id. Material to the instant analysis, the railroad argued that the crossing, *though paved over*, was still in place, and PennDOT should bear the cost of relocating and installing the crossing. Id. PennDOT, in response, argued that the railroad's exception was without merit because the railroad and its lessee would be the sole beneficiaries of the crossing retention proposed by the ALJ. Id. In dicta, the Commission agreed that PennDOT and the motoring public would receive no benefit from the crossing retention and noted that PennDOT's project was intended to meet public safety needs, to which the inactive crossing served no benefit. Id. In that respect, the instant matter is analogous: the public, RBMN, and the Township would receive no benefit from the crossing retention, nor would it benefit public safety. Id.; see RBMN Exhibits 8A-8G; N.T. 2025, 627:6-629:7. See also record, generally.

In both of the above cited cases, like here, this Commission was asked to consider whether to abolish crossings that had long fallen out of public use. Similarly, in all of these matters, no infrastructure of the crossings exists. See RBMN Exhibits 8A-8G; N.T. 2008, 68:3-11, 108:15-22. In Cochran’s Mill Rd., the crossing had not been used in 10 years. No. I-000830376, 2008 WL 5786640 at *2. “With the passage of time, the need to replace this bridge or to reestablish a rail crossing in this location has diminished to the point of not being a necessity or even being a significant desire of the community.” Id. Here, the record reflects that the challenged crossing has not been used by the public in at least thirty-five (35) years. See RBMN Exhibits 8A-8G; N.T. 2008, 352:5-353:25, 403:20-405:15, 408:3-18; see also 2025 N.T., 580:22-581:10. In line with the above cited cases, the crossing should be abolished as it benefits neither the public nor their safety.

Moreover, if this crossing were rebuilt, it would likely pose a hazard to the public. The train track, from east to west, descends downgrade, which decreases the conductor’s visibility of the crossing traveling in either direction. See 2008 N.T., 412:2-413:15. Mr. Glass’s un-rebutted testimony reflects that a train would not have enough time to make an emergency stop at the crossing while traveling in either direction. See 2008 N.T., 413:16-415:6.

Given the foregoing, no traffic congestion would be alleviated by rebuilding crossing #592007F. Furthermore, such a crossing would be a potential hazard to the public.

3. Access for Emergency Responders.

For many of the same reasons that crossing #592007F would not alleviate traffic congestion, it would add no convenience for emergency responders. There is no evidence in the record that there would be any utility for emergency responders in using the crossing. See record, generally. In fact, the record is devoid of any evidence that emergency responders have ever used the purported crossing. Id.; see also Cochran’s Mill Rd., No. I-000830376, 2008 WL 5786640 at *2 (the 10-years of absence of the crossing prompted emergency responders to utilize different routes based on the quickest routes).

4. Impact on Business.

The only alleged business hardship on the record is that of Blackwood. According to Mr. Perin, there is no “commercially viable” way for him to develop the northern side of Blackwood’s property. See 2008 N.T., 57:18-58:1. Blackwood’s allegation is belied by the record.

Foremost, Blackwood’s property is not landlocked in the absence of crossing #5920007F. See 2008 N.T., 50:8-10 (Mr. Perin testifying that other public roadways access the Blackwood property). To the north, the property has an ingress and egress

on Black Diamond Road. See 2008 N.T., 78:1-13, 103:6-9, 460:4-462:17; N.T. 2025, 547:17-19; 557:17-558:9; Township Exhibits 6A-6C. To the south, the property has an ingress and egress, on the western edge of the property, from Blackwood Road to Route 125. See, N.T. 2025, 558:12-559:19, 559:25-550:18; Township Exhibits 6D-6F.

Moreover, after Mr. Perin initially purchased the property in 1999, he entered into an easement agreement with RBMN for a private crossing. See 2008 N.T., 118:13-121:3; RBMN Cross Exhibit 3. The annual rent for the easement was a mere \$100. RBMN Cross Exhibit 3 at ¶ 2(b). This agreement contemplated the construction of crossing infrastructure at Blackwood's expense. Id. at ¶ 3. Mr. Perin even entered into a subsequent agreement with RBMN for construction of a sidetrack. See RBMN Cross Exhibit 5. Neither the crossing nor sidetrack were ever constructed, and the easement was subsequently rescinded. See 2008 N.T., 133:7-9.

Despite not having use of crossing #592007F, Mr. Perin has successfully used and leased the property over the years. Mr. Perin has operated a mining operation on the north side of the property. See 2008 N.T., 71:21-73:2, 73:22-74:1, 74:21-25; see also 2025 N.T., 613:11-12. Although Mr. Perin testified that he had coal miners who wanted to mine the property, such is unsupported by any other evidence and is contradicted by his own testimony. See 2008 N.T., 72:22-72:2, 74:2-14; see also

2025 N.T., 613:24-614:10. The scheme that Mr. Perin describes in terms of mixing good coal with waste coal to sell, which he contends would need crossing #592007F to be commercially viable, is not unlike the biosolids processing operation currently being operated on the southern property. Id.

On the southern portion of Blackwood's property, there is a biosolids processing operation, wherein the Class A biosolids are then transported to the northern portion of Blackwood, Inc.'s property and used to maintain Black Diamond Road. See Blackwood Exhibits 11-12. Notably, the Deed of Restriction for the biosolids processing operation restricted ingress and egress to the southern gate that meets State Route 125. Id., ¶¶ 1-2. For the Class A biosolids to be transported to the northern portion of the property, they must be driven from State Route 125 to Route 209, then to Black Diamond Road. See 2008 N.T., 101:8-103:6; N.T. 2025, 614:11-16. According to Mr. Perin's testimony, this is the same route that a putative coal mining operation would have to take to mix good coal with coal waste.

Additionally, Mr. Perin has leased the property out to timbering operations. See 2025 N.T., 619:5-25. And Mr. Perin is planting hay in the mine reclamation areas on the northern portion of the property. See 2008 N.T., 544:22-545:1.

Under these circumstances, the record reflects that Blackwood has developed the property "commercially" in the absence of crossing #592007F. In Where S.R. 0522 Crosses at Grade Two Tracks of E. Broad Top R.R. & Coal Co., the railroad's

sole financial benefit in a crossing that served no public benefit was not a sufficient economic benefit to survive PennDOT's application to abolish. See No. A-00114338, 2002 WL 34558702 at *1. Moreover, Blackwood did not provide any evidence as to the amount of business lost in the absence of the crossing. See record, generally. Thus, any impact on business, if any, should be considered *de minimus*.

5. Economic Feasibility.

It is not economically feasible for RBMN or the Township to bear the cost of rebuilding and maintaining crossing #592007F for what will effectively be a private crossing for Blackwood. See 66 Pa.C.S. § 2702(c); 66 Pa.C.S. § 2704(a); see also Wheeling & Lake Erie Ry. Co. v. Pennsylvania Pub. Util. Comm'n, 778 A.2d 785, 791-92 (Pa. Commw. 2001)(states have the authority to allocate the costs of constructing, maintaining, and improving crossings).

The record does not reflect what it would cost to rebuild the crossing. However, the record is clear that there is not currently any physical infrastructure for crossing #592007F, nor have the adjacent roadways been maintained. See RBMN Exhibits 8A-8G; 2008 N.T., 68:3-11, 108:15-22; see also 2025 N.T., 627:6-629:7. Furthermore, Blackwood previously had the opportunity to bear the cost of building a private crossing themselves and chose not to do so. See 2008 N.T., 118:13-121:3; RBMN Cross Exhibits 3 and 5.

IV. Conclusion.

For the foregoing reasons, RBMN is liable for the removal of crossing #592007F or the alleged denial of a public crossing to Blackwood, Inc. Additionally, Crossing #592007F should be formally abolished and to the extent T-567 is considered a highway, with respect to a public crossing, it should be deemed abandoned.

Respectfully Submitted,

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DATE: September 25, 2025

COMMOWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

BLACKWOOD, INC. :
 :
 v. : **Docket Nos.**
 : **C-20078010 and A-20082016324**
 READING, BLUE MOUNTAIN :
 AND NORTHERN RAILROAD :
 COMPANY :
 : **Judge F. Joseph Brady**

CERTIFICATE OF SERVICE

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a true and correct copy of the foregoing Post-Hearing Brief via email as follows:

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DATE: September 25, 2025