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September 25, 2025

Via Electronic Filing

Matthew L. Homsher, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

RE: Blackwood, Inc. v. Reading Blue Mountain and Northern Railroad Company
Docket No. C-20078010

Application for Approval of the Abolition of the Crossing where Township Route T5-567
crosses at grade the tracks of Reading, Blue Mountain and Northern Railroad Company,
located in Reilly Township, Schuylkill County
Docket No. A-2008-2016324

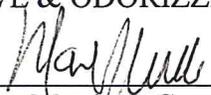
Dear Secretary Homsher:

Enclosed please find Blackwood, Inc.'s Brief in Support of Blackwood, Inc.'s Petition to Reinstall Railroad Crossing and in Opposition to Railroad's Request for Retroactive Approval of Removal of Railroad Crossing for filing in reference to the above-referenced matters.

A copy has been served upon all interested parties of record as shown on the Certificate of Service attached to the Brief. Thank you.

Very truly yours,

BOWE & ODORIZZI LAW, LLC

By 
Martin J. Cerullo

MJC:bmk
Enclosures
cc: All Parties of Record

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

BLACKWOOD, INC.,	:	
	:	Docket Nos.
	:	C-20078010 and A-2008-2016324
	:	
READING, BLUE MOUNTAIN AND	:	
NORTHERN RAILROAD COMPANY	:	

BLACKWOOD, INC.’S BRIEF IN SUPPORT OF BLACKWOOD, INC.’S PETITION TO REINSTALL RAILROAD CROSSING AND IN OPPOSITION TO RAILROAD’S REQUEST FOR RETROACTIVE APPROVAL OF REMOVAL OF RAILROAD CROSSING

Before the Commission is Petitioner/Respondent, Blackwood, Inc., by and through its legal counsel, Bowe & Odorizzi Law, LLC, seeking the reinstallation of a public railroad crossing as well as opposing Reading, Blue Mountain and Northern Railroad Company’s requested retroactive approval of removal of that crossing¹ pursuant to the Public Utilities Code, 66 Pa.C.S. § 101, et seq.

FACTUAL AND PROCEDURAL BACKGROUND

The Petitions being heard together involve railroad crossing No. 592007F (“Crossing”) located in Reilly Township (“Township”). At the time of Blackwood, Inc.’s (“Blackwood”) filing of its initial Petition, Reading, Blue Mountain and Northern Railroad Company (“RBMN”) operated and maintained a railroad which ran through Blackwood’s private property and crossed Blackwood Road (“T-567”) in Reilly Township, Schuylkill County. At its western terminus, T-567 joins Pennsylvania Route 125 south of Tremont. Proceeding east/northeast from Route 125 the road (part of it called Dundash Road and then called Blackwood Road) traversed Blackwood’s property, intersecting RBMN’s railroad at crossing #592007F (the “Crossing”), and continuing to

¹ Each party filed a Petition with the Pennsylvania Public Utility Commission regarding the same railroad crossing: Blackwood’s docketed at C-20078010 and RBMN’s docketed at A-2008-2016324.

T-567's northern terminus at Black Diamond Road. The roadway was maintained as a public roadway by the Township until 1992 when the Township enacted an ordinance which omitted T-567 as a maintained road. (See RBMN Cross Exhibit 10).

Sometime around 1994, RBMN removed the subject Crossing without any formal procedure, without notice to Blackwood or Blackwood's predecessor in title, and most critically, without the approval of the Public Utility Commission. (N.T. June 11, 2008, pp. 380, 382). RBMN filed its Petition seeking the retroactive approval of the removal of the already removed Crossing. On June 11, 2008, during the second day of the hearing on this matter RBMN announced it had filed a civil complaint in the Schuylkill County Court of Common Pleas docketed at S-1179-2008² seeking a judicial determination as to whether T-567 was properly abandoned by the Township.

ISSUES

- I. Whether the public crossing existed?

ANSWER: YES

- II. Whether RBMN was permitted to remove the railroad crossing without prior authorization from the PUC?

ANSWER: NO

- III. Had RBMN properly sought PUC approval of the removal of the Crossing in 1994, would the Commission have permitted abolishment of the crossing prior to RBMN removing it?

ANSWER: NO

- IV. Whether it is RBMN's responsibility to reconstruct and maintain the railroad crossing?

ANSWER: YES

INTRODUCTION

These consolidated proceedings arise from a situation where both RBMN and Reilly Township have essentially determined that they can proceed as they wish, i.e., according to their

² Because of the civil complaint filed regarding the road on both sides of the Crossing, the Public Utility Commission ("PUC") stayed this proceeding in 2008 after two hearings before it, until the conclusion of the civil matter. The civil case was ultimately discontinued by RBMN on April 9, 2025, without any decision by the Court as to whether T-567 was properly vacated or remains a public roadway. (See RBMN's May 14, 2025, Status Report).

own desired rules, separate and apart from applicable law and regulations and completely heedless of the rights of Blackwood and the public.

Regardless of RBMN's and Reilly Township's efforts to characterize the Crossing which was removed as other than a public crossing, there is no question that the Crossing did exist and that it was at one time a public crossing. There has never been PUC approval of the elimination of the public crossing, or PUC approval of a change in the status of the Crossing either from public to private, or to non-existent. RBMN should not be able to avoid the requirement to obtain PUC approval of the removal of a crossing, or obtain long after the fact sanction of the removal of the Crossing, by arguing that the legal status of the Crossing was something other than a public crossing when RBMN or its predecessor Conrail never got any approval to change the status of that Crossing from public.

The absence of a proceeding brought before the PUC prior to the removal of the Crossing denied Blackwood, its predecessor in title, or any members of the public who were affected, the opportunity to participate in a proceeding before the PUC as to the question of whether the Crossing should be removed.

In a very similar vein, the action of Reilly Township in adopting an ordinance by which the Township purports to have abandoned Township Road T-567 simply by virtue of not including it on a list of roads which the Township would continue to maintain, did not provide Blackwood, its processor in title, or the members of the public the opportunity to object to the Township's proposed action. The PUC may not decide the question of whether the Township's Action comported with the appropriate requirements of the Township Code, *see* 53 P.S. § 2304(a), but what the Township has done is to deny Blackwood access from the portion of its property on one side of the railroad tracks to the other side; to deny the public the ability to use the Blackwood

property to cross the railroad tracks; and in many respects prevents the development of Blackwood's property, or any subdivision of Blackwood's property which would allow for lessees or purchasers of portions of the property to be able to develop portions of the land, as the Pennsylvania Municipalities Code requires that parcels to be subdivided must have access to a public road. 53 Pa.C.S. § 10503(2)(ii)

And in a further, final attempt to benefit from a very strained interpretation of the law, RBMN attempts to piggyback on the Township's purported abandonment of the road to justify saying that the Crossing cannot be a public crossing any longer if it does not join two sides of a public road.

This combination of actions by RBMN and Reilly Township ignore, and in fact make a mockery of, PUC's jurisdiction to regulate public crossings over railroad tracks.

ANALYSIS AND ARGUMENT

I. There is No Doubt the Railroad Crossing Existed

The first issue posed by RBMN is the most puzzling. A large portion of RBMN's argument at the two days of hearing in 2008 centered around the existence of the Crossing. Mr. Engle, a witness for RBMN, testified at the 2008 hearings that he believed the Crossing existed. Specifically, he stated that nothing at the Crossing indicated there was a crossing but the area "stuck out to him." (N.T. June 11, 2008, p. 375). However, he then stated he continued to shovel dirt off the area he believed not to be a crossing because he believed it was an illegal crossing. (Id. at p. 376). Mr. Engle later admitted he reviewed a track chart which showed there was a private

crossing³. Several publicly accessible maps acknowledge the crossing as well. (See RBMN Cross Exhibit 14; Blackwood Exhibits 2, 4, and 7). During the August 2025 hearing, Judge Brady acknowledged that it was clear the crossing existed. (N.T. August 7, 2025, p. 569). Additionally, this matter is before the Commission, in part, because RBMN seeks removal of an already removed crossing, which is an acknowledgement by RBMN that the Crossing did exist.

The lack of specificity as to the exact date(s) when the Crossing was physically removed is due to RBMN not producing an updated track chart reflecting the removal, or the failure of its safety engineer to have reported – or RBMN’s failure to produce any such reports which were written – when the cross arms and crossing signage were removed.

II. The Railroad Crossing was a Public Crossing Under PUC Jurisdiction

There were exhibits submitted in evidence at the hearings which clearly identified the Crossing as a public crossing at a point in time. (See Blackwood’s Exhibits 1 (“Val” map), 2-4, 7, and the attachment to 9). The railroad provided no evidence of the PUC ever having approved the removal of that crossing – and, in fact, acknowledges that there was no such approval by the filing of its Petition A-2008-2016324 asking the Commission to approve the removal long after the fact. Despite subsequent testimony and exhibits concerning the nature of the Crossing, the critical starting point for analysis of this case should be that the Crossing in question was a public crossing at a point in time, and this Commission has never approved either the removal of the Crossing or any change in its status.

³ The track map was provided to RBMN by Conrail, the prior owner of the railroad and the track in question. (See RBMN Direct Exhibit 2).

a) *Municipal Maintenance and Operation is Not Required.*

Section 2702 of the Public Utility Code vests the Commission with authority over railroad crossings above, under or at grade with a highway. 66 Pa.C.S. § 2701(a). Under Section 102, a highway is defined as “[a] way or place of whatever nature open to the use of the public as a matter of right for purposes of vehicular traffic.” 66 Pa.C.S. § 102. “If a road or street is open to the use of the public, as a matter of right, it is a highway as defined by Section 102 regardless of the number of people who use it. If a road or street is not open to the use of the public as a matter of right, it is not a highway as defined at Section 102.” *City of Bethlehem v. Pennsylvania Pub. Util. Comm'n.*, 627 A.2d 244 (Pa.Cmwlt. 1993); *Township of Swatara v. Pennsylvania Pub. Util. Comm'n.*, 312 A.2d 809 (Pa.Cmwlt. 1973).

Much of the two days of hearing in 2008 considered whether the Township maintained T-567. However, nowhere in its Code does the Commission provide that a road must be under the maintenance of a municipality to be considered a public highway. The only requirement in classifying a road a public highway is that it is “open to the public, as a matter of right” for vehicular traffic. The Department of Environmental Protection, the Mine Safety and Health Administration, and the Game Commission all used and continue to use T-567 to maintain the area and inspect the Blackwood Property. (N.T. June 9, 2008, pp. 61, 100). Mr. Perin testified to his own personal and business-related use of T-567 as well as a neighbor, Mr. Snyder’s, use of it. (Id. at p. 61). At the 2025 hearing there was testimony as to the use of T-567 by Liberty Processing Soils and Gale Mining. (N.T. August 7, 2025, pp. 558, 579, 611).

Although no evidence was presented by Blackwood as to how often the road was used by the public prior to the Crossing’s removal, RBMN failed to provide relevant contrary evidence, asserting in its Petition only that to “its knowledge” the road had not been traveled by the public.

(RBMN's December 17, 2007, Petition to Abolish Crossing). This assertion is purely speculation as it was made many years after the removal of the Crossing.

Mr. Perin testified to Reilly Township not objecting to County zoning approvals, subdivisions, and easements, all of which were premised on public road (over Blackwood Road) access. N.T. pp. 611-613.

RBMN unilaterally removed the Crossing and blocked use of the road with berms which hindered public travel. (N.T. June 11, 2008, p. 361). These berms were allegedly created after removing dirt from the tracks. (Id.). RBMN has not proven that T-567 was not a public highway, nor can it find authority which demonstrates municipal maintenance is a requirement for a road to be a public highway under the Public Utility Code. Blackwood has demonstrated that T-567 was used by the public, which travel was hindered after RBMN removed the Crossing without authorization.

b) *The Township Never Legally Abandoned T-567.*

Should the Commission nonetheless consider municipal maintenance as determinative of what is a public highway under the PUC's regulations, no formal procedure or court order exists which expressly vacated T-567. In the Commonwealth of Pennsylvania, a highway "is the property of the people, not of a particular district, but of the whole state." *Reading Co. v. Pennsylvania Public Utility Commission*, 333 A.2d 525 (Pa.Cmwlt. 1975)(quoting *Pittsburgh v. Epping-Carpenter Co.*, 45 A. 129 (Pa. 1900). "A municipality may be charged with the care of a public highway . . . but cannot dispose of it or relinquish the rights of the public unless specifically authorized by the legislature to do so." *Id.*

T-567 clearly falls within the Township's jurisdiction. The Township acknowledged its jurisdiction when it vacated a portion of T-567 in 1946⁴. There was no evidence presented by RBMN which suggested the Township failed to maintain T-567 during the 46-year period between 1946 and 1992. At the 2008 hearings, RBMN argued that the Township vacated T-567 by omission when it did not include T-567 in its Ordinance 92-2 of 1992. (N.T. June 9, 2008, pp. 248-52). However, RBMN then sought clarification of the effect of that ordinance through its Petition to the Schuylkill County Court of Common Pleas, S-1179-2008. Despite causing this proceeding years of delay waiting for a decision in the Schuylkill County Court case, RBMN this year unilaterally withdrew that Common Pleas case. Because RBMN questioned its own evidence as to whether T-567 was properly vacated, the evidence cannot be properly relied upon by RBMN or the Commission.

The only other evidence presented by RBMN to argue T-567 was not a public highway was various maps and logs (*See* RBMN Cross Exhibits 4, 7, 14; RBMN's Direct Exhibit 2) which were contradicted by maps and logs presented by Blackwood. (*See* Blackwood's Exhibits 1-4, 7). Additionally, RBMN presented self-serving testimony regarding the Crossing which was again contradicted by Blackwood testimony. The only certain fact pertaining to T-567 is that it was a public highway at one point. RBMN elected not to have the Schuylkill County Court of Common Pleas bring clarity as to whether that fact has changed. The remaining evidence presented by RBMN post-dates the removal of the Crossing, rendering it irrelevant. (*See* RBMN's Cross

⁴ At the 2008 hearings, RBMN mentioned a Schuylkill County Court of Common Pleas action No. 1 March Term 1946, Township Ex. 4, which vacated a portion of T-567. (N.T. June 9, 2008, p. 136). Mr. Perin provided further context for that action by testifying that two actions were filed with the Court: one which vacated a portion of the road due to a bridge washing out and a second which saw the portion reinstated. (*Id.*). At the August 2025 hearing the findings of the Board of View on which the Court order was based was read into the record which stated the substitute road to T-567 shall "always be open to the public", certainly implying that the road it substituted for, T-567, was a public road. (N.T. August 7, 2025, p. 566-67).

Exhibits 8, 11-13, 15). Because RBMN cannot definitively demonstrate T-567 had its status changed from that of a public highway, T-567 should continue to be treated as a public highway by the PUC.

III. The Commission Would Not have Permitted Abolishment of the Crossing had the Railroad Sought Approval at the Time Removal Occurred

Whether an application should be granted to abolish a crossing 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. *Borough of Bridgewater v. Pennsylvania Public Utility Commission*, 124 A.2d 165 (Pa.Super. 1956). 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. *Pennsylvania Public Utility Commission v. Borough of Souderton*, 231 A.2d 875 (Pa.Super. 1967); *Bueg v. Pennsylvania Public Utility Commission*, 144 A.2d 511 (Pa.Super. 1958).

This is not a case where a crossing connected two very small parcels of land. The Crossing was on a rail line which cuts through 2,300 acres – with significant acreage on each side of the Crossing, significantly separated from each other upon physical removal of the Crossing. Blackwood respectfully submits the Commission would not have approved isolating properties of that size.

Blackwood requests the Commission not be misled into thinking the removal of the Crossing only affects one landowner, albeit the owner of a large tract. The 2,300 acres could well have been divided at some point, for numerous owners of smaller parcels. The Commission would likely not have allowed numerous owners to be negatively affected by the removal of the Crossing.

a) ***RBMN Created a Public Safety Issue.***

The PUC is vested with exclusive power to regulate public railroad crossings and how they 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. 66 Pa.C.S. § 2702(b). This statute is specifically intended to effectuate the “prevention of accidents and the promotion of the safety of the public.” *Id.*

Emphasized throughout but specifically under Section 2702 of the Public Utility Code is public safety. RBMN acted contrary to public safety when it unilaterally decided to remove a railroad crossing from a public road. That removal created two dead ends on a public highway forcing anyone traversing T-567 to either turn around, or have to dangerously cross the tracks. RBMN presented testimony at the 2008 hearings evidencing such crossings. (N.T. June 11, 2008, p. 351-53).

Additionally, the Township and RBMN effectively acted in concert in circumventing the Commission’s authority over the Crossing. The legislative intent of the Public Utility Code was to vest authority in the PUC to regulate public railroad crossings to ensure public safety. The acts taken by RBMN and the Township were in total disregard of this purpose and created a public safety issue. At the 2008 hearings and as evidenced by RBMN’s Court of Common Pleas filing, all parties had doubts as to the efficacy of the Township’s attempt to vacate T-567. At the 2025 hearing, the Township’s sole witness appeared unsure and unreliable when it came to what the Township’s intentions were regarding T-567. (*See* N.T. August 7, 2025, 625-31). The Township’s actions left T-567 unmaintained, creating a hazardous road which can only be traversed by trucks and off-road vehicles. This dangerous condition was further aggravated by RBMN’s removal of the Crossing without following proper procedure to obtain PUC approval.

At the 2008 hearings, RBMN testified it removed dirt from beneath the railroad tracks and created berms on each side of the Crossing. (N.T. June 11, 2008, pp. 371-73). This not only created a roadblock on a public highway but also prevented safe crossings; instead, inviting unsafe crossings at the tracks. At the 2008 hearings, RBMN provided contradictory testimony as to its knowledge regarding the Crossing. As mentioned *supra*, at first RBMN stated the crossing was illegal. (*Id.* at p. 375). RBMN then argued the Crossing did not exist at all. (*Id.* at p. 376). Finally, RBMN admitted the Crossing existed, but argued it was a private crossing. (*Id.* at p. 380). Meanwhile, RBMN testified it created berms and removed dirt from under the tracks in the same area as the Crossing despite public documents, including RBMN's own track log, demonstrating the Crossing existed in that area. (*Id.* at p. 361).

Had proper procedures been followed, the PUC would not have approved the removal of the Crossing, or would have ensured abolishment of the Crossing did not create an off-road vehicle stunt ramp on both sides of the tracks. Instead, the Township's improper attempt to vacate T-567 coupled with RBMN's unsafe and unauthorized removal of the Crossing created a public safety hazard where one did not previously exist.

b) *RBMN Would have Failed to Meet its Burden*

66 Pa.C.S. § 332 places the burden on the petitioning party to prove why a railroad crossing must be installed, altered, suspended or abolished. In determining whether a railroad crossing should be abolished, in addition to the factors mentioned under III, *supra*, the Commission's decision must be just and reasonable. *Borough of South Greensburg v. Pennsylvania Public Utility Commission*, 544 A.2d 82 (Pa.Cmwlth. 1988). *See Monroeville v. Pennsylvania Public Utility Commission*, 600 A.2d 655 (Pa.Cmwlth. 1991); *see North Lebanon Township v. Pennsylvania Public Utility Commission*, 962 A.2d 1237 (Pa.Cmwlth. 2008).

As to RBMN's Petition, it is nearly impossible for any reliable evidence to have been presented in this proceeding concerning T-567's condition and use prior to the removal of the Crossing because RBMN failed to follow proper procedure at the time of removal. Although the Township declined to maintain T-567 after 1992, there is no way of knowing T-567's condition when the Crossing was removed, as no actions were filed regarding the Crossing until 2008. No evidence was presented by RBMN to suggest travel on this public highway was not permitted or prevented when it removed the Crossing; nor was there evidence suggesting any public safety issue existed prior to removal. The only evidence asserted by RBMN was its self-serving testimony at the 2008 hearings and its averments in its Petition that T-567 led to nowhere, no vehicles used the Crossing, and the Crossing was dangerous. (RBMN's Petition to Abolish Crossing, ¶6). However, RBMN's Petition spoke only to the conditions as they existed around 2008, not when they removed the Crossing. Nothing presented by RBMN illustrates a necessity to remove the Crossing. As to safety concerns, at the 2008 hearing, RBMN provided brief testimony regarding foliage and other natural barriers preventing sufficient eyesight for vehicles and trains at the Crossing. (N.T. June 11, 2008, pp. 413, 440-41). However, no evidence of accidents or complaints was presented to substantiate this assertion.

Furthermore, any issues regarding condition, safety, or vehicular travel were issues caused by the Township and RBMN's improper maintenance and unauthorized actions in informally vacating T-567 and removing the Crossing. Any evidence regarding the condition and safety of T-567 after abolishment is irrelevant as it was the aforementioned actions of RBMN and the Township which caused any unsafe and unmaintained conditions. RBMN cannot meet its burden of demonstrating the Crossing should have been abolished at the time it was eliminated.

As to Blackwood's Petition, there was simply no safety, traffic, or necessity issue present at the time the Crossing existed which would justify the Crossing's removal. To the contrary, the removal of the Crossing has caused substantial hardship to Blackwood's business and property. The Blackwood property was only accessible in its entirety when the Crossing existed. Without the Crossing, RBMN has effectively partitioned Blackwood's property. Not only has Blackwood leased to a coal mining business, but it has had contracts with the Pennsylvania Game Commission and the Pennsylvania Department of Environmental Protection, and has prospects of future business. (N.T. June 9, 2008, pp. 61, 100). Other businesses, such as Liberty Processing Soils, could make use of the Crossing. (N.T. August 7, 2025, pp. 558, 579, 611). Blackwood's own use of the property has been severely infringed by the partitioning. Blackwood cannot access most of its property without travelling forty minutes around the east or west side of its property to enter the northern or southern parts. (N.T. August 7, 2025, pp. 614-15). Potential uses of the property such as a landfill, as testified to by Mr. Perin require public road and access across the tracks. (N.T. June 9, 2008, pp. 55-58, 70).

IV. **RBMN or the Township Should be Responsible for Costs to Reinstall the Crossing, not Blackwood**

Section 2704(a) of the Public Utility Code vests the Commission with exclusive jurisdiction to allocate costs and maintenance responsibility of railroad-highway crossings to any public utility or municipal corporation concerned, or to the Commonwealth. 66 Pa.C.S. §2704(a). The relevant factors traditionally considered in allocating the costs include, but are not limited to: (1) the party who originally built, owned and maintained the crossing; (2) the relative benefits initially conferred by the construction of the crossing; (3) the party who is responsible for the deterioration of the crossing; and (4) the benefits accrued from the reconstruction of the crossing.

Wheeling & Lake Erie Railway Co. v. Pennsylvania Public Utility Commission, 778 A.2d 785, 793 (Pa.Cmwlth. 2001). These factors are neither mandatory nor exclusive of other considerations as long as the Commission's allocation of costs is just and reasonable and has a sound legal and factual basis. *Id.*; *AT&T v. Pennsylvania Public Utility Commission*, 737 A.2d 201, 209 (Pa. 1999).

In *Investigation upon the Commission's own Motion to determine the condition and disposition Of the existing crossing structure carrying Colebrook Road (T-374) above the grade of the tracks of National Railroad Passenger Corporation in East Hempfield Township, Lancaster County (AAR 518 001 S)*, 2010 Pa.PUC LEXIS 1592, the Commission considered the cost allocation for the removal of a bridge which crossed a railroad. *Id.* at *2. The bridge crossing was severely deteriorated because East Hempfield Township failed to maintain it. *Id.* In its determination as to costs, the Commission allocated 70% of the costs to the Township because it "did not significantly invest in improvements . . . [t]herefore, the Township bore considerable responsibility for the need to remove the [b]ridge in 2003, and the costs associated therewith . . ." *Id.* at *18.

In *Investigation upon the Commission's motion into matters pertaining to the proper safety of the traveling public and disposition of the crossing where State Route SR0268, crosses over a railroad tunnel formally used by Bessemer and Lake Erie Railroad in Fairview Township, Butler County and where State Route SR0068 formally crosses, below grade, the track of Bessemer and Lake Erie Railroad in Brady's Bend Township, Armstrong County*, 2025 Pa.PUC LEXIS 231, the Commission reviewed an Administrative Law Judge's ("ALJ") decision to allocate costs to Bessemer and Lake Erie Railroad ("B&LE"). B&LE argued the ALJ had no jurisdiction over it because it was no longer a concerned party after selling the land on which the relevant crossing existed. *Id.* at *15. The Commission disagreed because B&LE failed to secure authorization from

the Commission to abolish the crossing and could not escape liability by selling the property. *Id.* at *14. In agreeing with the ALJ's decision to allocate costs to B&LE, the Commission cited the ALJ's Recommended Decision which stated "B&LE benefited from cost savings resulting from failure to maintain the crossing; and B&LE is responsible for the deterioration to the [crossing] because it failed to secure Commission authority to abandon the tunnel." *Id.* at *15. The ALJ also stated B&LE failed to maintain the crossing for the past twenty years prior to abolishing it and that its failure to maintain the crossing permitted it to benefit from cost savings by not expending resources to maintain the crossing. *Id.* The Commission adopted the ALJ decision "[i]n order to satisfy the Commission's mandate to ensure the safety of rail-highway crossings" by finding it "necessary that the Commission hold B&LE accountable for its failure to complete the process to properly abolish the Blackburn Tunnel."

In the instant matter, RBMN failed to maintain the Crossing it had acquired when it purchased the railroad. RBMN admitted it failed to do any research as to whether the Crossing was public, private, or illegal and, instead, elected to remove the Crossing without seeking authorization to do so. (N.T. June 11, 2008, p. 374-80). This was despite the fact RBMN's own tracking logs as well as several publicly accessible maps illustrated the existence of the Crossing and were readily available. (*See* RBMN's Direct Exhibit 2);(*See* Blackwood's Exhibits 1-4, 7). Although RBMN presented minimal testimony as to visibility issues and lack of safety features regarding the Crossing, it was its responsibility to either maintain the Crossing since it benefitted from it, or properly secure authorization to abolish it. Instead, RBMN further deteriorated the Crossing by digging out the dirt from under the tracks and creating berms to prevent any crossings.

Although RBMN presented evidence as to the public road and Crossing's condition as it existed several years after the Crossing was removed, this evidence is irrelevant. RBMN's burden

is to demonstrate why abolishment could have been permitted when it improperly removed the Crossing. Any evidence of deterioration after removal was caused by RBMN's violation of the PUC's regulations. Any deterioration prior to removal of the Crossing was derivative from RBMN's abdication of responsibility to maintain and not further the deterioration. Instead, RBMN knowingly decided to circumvent the Commission's authority and deteriorate and remove a public Crossing, creating a public safety issue.

RBMN should be allocated most, if not all, costs associated with the reinstallation of the Crossing and its future maintenance. The Commission may consider some allocation of such costs to the Township, though Blackwood is not arguing for that allocation.

CONCLUSION

A finding in favor of Blackwood on its Petition C-20078010 is a straightforward proposition, requiring only that the Commission find (i) the Crossing was at one time a public crossing, which is clear, and (ii) that the PUC never authorized the removal of the Crossing, which is undisputed. Nor were there any PUC approvals to reclassify the Crossing from public to private.

RBMN has failed to demonstrate any necessity to remove the Crossing. No evidence was presented to illustrate the Crossing's condition prior to its removal other than self-serving testimony referencing alleged personal knowledge from almost twenty years ago. Although Reilly Township presented an ordinance that suggests T-567 was vacated, RBMN itself does not fully believe in that evidence, having questioned its reliability by its Schuylkill County Court of Common Pleas filing which RBMN later decided not to pursue. Although RBMN has presented evidence that suggests the Crossing was at various times denoted as private or not existing, it has failed to present any evidence of any proper procedure in vacating T-567 or abolishing a Crossing

which undeniably was at one time a public crossing. In fact, RBMN assumed the Crossing was public when it filed its own Petition A-2008-2016324 with the Commission seeking retroactive approval of removal.

Finally, although RBMN presented evidence suggesting the Crossing was in poor condition, that evidence is irrelevant as it merely demonstrates RBMN's failure to maintain the Crossing and the results of its own improper actions, but does not justify removal of the Crossing. The Township's and RBMN's responsive improper actions in the legally ineffective attempt to abandon T-567 and abolishing the Crossing created the deterioration and public safety problems the PUC was vested with jurisdiction to prevent.

RBMN has failed to meet its burden in demonstrating why the Crossing should have been abolished. Rather, it relied on post-abolishment conditions it caused. Its actions cannot be excused and rewarded by the belated approval of the removal of the Crossing on a public road that served and can continue to serve both Blackwood and the travelling public. Blackwood has established that what was undoubtedly at one time a public crossing was removed without the approval of this Commission. Thus, Blackwood respectfully requests the reinstatement of the Crossing and that the costs of construction and future maintenance be allocated to RBMN in their entirety.

Respectfully submitted,

By Marty Cerullo

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Date: September 25, 2025

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

BLACKWOOD, INC. : DOCKET No.: C-20078010
 : A-2008-2016324
vs. :
 :
READING, BLUE MOUNTAIN AND :
NORTHERN RAILROAD COMPANY :

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I have today caused a true and correct copy of the Blackwood, Inc.'s Brief in Support of Blackwood, Inc.'s Petition to Reinstall Railroad Crossing and in Opposition to Railroad's Petition to Retroactive Approval of Removal of Railroad Crossing, to be served on the following via e-mail or mail:

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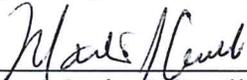
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Respectfully submitted,

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Date: September 25, 2025