

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Blackwood, Inc.	:	
	:	
v.	:	C-20078010
	:	
Reading Blue Mountain and Northern Railroad Company	:	
	:	
Application of Reading Blue Mountain and Northern Railroad Company for Approval of the Abolition of the Crossing (AAR 592 007 F) where Township Route T-567 Crosses at Grade the Tracks of Reading Blue Mountain and Northern Railroad Company, located in Reilly Township, Schuylkill County	:	A-2008-2016324

RECOMMENDED DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Decision recommends that the Formal Complaint of Blackwood, Inc. (Blackwood or Complainant) be dismissed because it failed to meet its burden of proof demonstrating that Reading Blue Mountain and Northern Railroad Company (RBMN) or Reilly Township (Township) was responsible for the abolishment of a railroad crossing, nor that reconstruction of said railroad crossing would be in the public interest. This Decision also recommends that the Application of RBMN for retroactive approval of the abolition of said railroad crossing be granted as it is in the public interest.

HISTORY OF THE PROCEEDING

On July 20, 2007, Blackwood filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against RBMN alleging that RBMN altered, abolished or suspended the use of railroad crossing (AAR 592 007 F) where Township Route T-567/Blackwood Road crosses at grade the tracks of RBMN, located in Reilly Township, Schuylkill County (Crossing), without order, permission, or authority of the Commission.

The Complaint alleges that Blackwood is the owner of a 2,200-acre tract of land located in Reilly Township, Schuylkill County, Pennsylvania, which is separated by RBMN's railroad tracks and facilities. According to the Complaint, RBMN has denied Blackwood access to its property by refusing to allow Blackwood to use the Crossing where the road designated as T-567/Blackwood Road crosses over RBMN's railroad tracks. The Complaint asserts that RBMN's refusal has prevented Blackwood from accessing coal reserves or otherwise developing its property. The Complaint requests, pursuant to 66 Pa.C.S. § 2702, that the Commission order RBMN to allow Blackwood to use the Crossing, compensate Blackwood for damages due to the denial of the use of the Crossing and grant such other relief as the Commission deems appropriate.

On August 22, 2007, the Pennsylvania Department of Transportation (PennDOT) filed an Answer to the Complaint. PennDOT's Answer admitted the allegations in Blackwood's Complaint and contained no request for relief.

On September 10, 2007, RBMN filed an Answer, New Matter and Counterclaim in response to Blackwood's Complaint. The Answer denies the allegations in Blackwood's Complaint. The New Matter alleges that there is no public road near RBMN's tracks as suggested in Blackwood's Complaint. The New Matter further asserts that the road designated T-567/Blackwood Road has been vacated and that the vacation of the road results in a vacation of the Crossing by operation of law. The Counterclaim asserts that the Complaint is without basis in fact or law and that RBMN has spent significant money in counsel and expert witness fees responding to the Complaint. The Answer, New Matter and Counterclaim request that the Commission deny the Complaint, declare the Crossing to be vacated or abandoned and award RBMN damages in the amount of \$50,000.

Also on September 10, 2007, Reilly Township (Township) filed an Answer and New Matter. The Answer denies the allegations in the Complaint regarding the Crossing due to the Township's lack of knowledge about the interaction between Blackwood and RBMN. The New Matter asserts that the Township has no control over RBMN's actions, that the Commission should dismiss the Township as a party and that the Commission should order Blackwood to reimburse the Township for all the costs associated with the Township's involvement. The Answer and New Matter request that the Commission dismiss it from the action or alternatively award it costs and attorney's fees incurred due to its involvement in the proceeding.

On September 21, 2007, Blackwood filed an Answer to the New Matter filed by the Township. The Answer to New Matter asserts that Blackwood has no

information regarding the Township's relation with RBMN. The Answer to New Matter also asserts that Blackwood did not join the Township as a party to this proceeding.

By hearing notice dated November 5, 2007, the Commission scheduled a hearing for this matter on December 17, 2007, and assigned the case to Administrative Law Judge (ALJ) David A. Salapa.

On November 20, 2007, a Prehearing Order was issued addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

By notice dated December 12, 2007, the Commission converted the December 17, 2007 hearing to a telephonic prehearing conference.

ALJ Salapa conducted a telephonic prehearing conference as scheduled on December 17, 2007. Present were counsel for PennDOT, Blackwood, RBMN, and the Township. At the prehearing conference, the parties agreed to a schedule that would allow time to complete discovery with hearings in March or April. N.T. 15-17.

Also on December 17, 2007, RBMN filed an Application for Approval of the Abolition of the Crossing (AAR 592 007 F) where Township Route T-567 Crosses at Grade the Tracks of Reading Blue Mountain and Northern Railroad Company, located in Reilly Township, Schuylkill County (Application). The Commission docketed this Application at No. A-2008-2016324.

By Notice dated April 11, 2008, evidentiary hearings in this matter were scheduled for June 9 and 11, 2008.

On April 21, 2008, Blackwood filed a Petition for Interim Emergency Relief. Subsequently, on April 29, 2008, Blackwood filed a Petition for Leave to Withdraw its Petition for Interim Emergency Relief pursuant to 52 Pa. Code § 5.94. On April 30, 2008, ALJ Salapa issued an Order granting Blackwood's Petition for Leave to Withdraw.

On June 9, 2008 and June 11, 2008, ALJ Salapa conducted evidentiary hearings as scheduled. Leonard N. Zito, Esquire, appeared on behalf of Blackwood and presented the testimony of Nolan A. Perin, Henry L. Knauber, John F. Beadle, David A. Oliver, and Dale Homm. Blackwood offered seven exhibits (Blackwood Exs. 1-7) that were entered into the record. Paul R. Ober, Esquire, appeared on behalf of the RBMN and presented the testimony of Duane E. Engle, Tyler A. Glass, and Gerald Devine. RBMN offered seventeen exhibits on cross-examination (RBMN Cross Exs. 1-17) and seven exhibits on direct-examination (RBMN Exs. 1-7) that were all entered into the record. Jason D. Sharp, Esquire, appeared on behalf of PennDOT and offered one exhibit (PennDOT Ex. E) that was entered into the record. William C. Reilly, Esquire, appeared on behalf of Reilly Township and offered one exhibit on cross-examination (Twp. Cross Ex. 1) that was entered into the record. Elizabeth Lion Januzzi, Esquire, appeared on behalf of the Commission's Bureau of Transportation and Safety and offered no exhibits for the record.

At end of the second day of hearings, Blackwood moved – and the parties agreed – to stay these 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. N.T. 484-85.

On June 12, 2008, ALJ Salapa issued an Order staying the above-captioned matters until thirty-five (35) days after 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*, Docket No. S-1179-2008.

On October 27, 2016, ALJ Salapa issued an Order extending the stay of the proceedings until thirty-five (35) days after 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*, Docket No. S-1179-2008.

On September 17, 2020, a Judge Change Notice/Further Prehearing Conference Notice was issued in the above-captioned cases setting a further prehearing conference for November 12, 2020, and assigning then Deputy Chief ALJ (DCALJ) Joel H. Cheskis as the presiding officer. The further prehearing conference was held as scheduled.

On May 3, 2021, PennDOT filed a Motion to be Dismissed from the above-captioned matters.

On May 21, 2021, DCALJ Cheskis issued an Initial Decision granting PennDOT's Motion to be Dismissed because these joint proceedings did not involve a rail or highway crossing on a state-designated highway and the Motion was unopposed. In accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa.C.S. § 332(h), this Initial Decision became final without further Commission action on June 22, 2021.

On November 21, 2022, a Judge Change Notice was issued assigning me as the presiding officer.

On December 8, 2022, a Further Call-In Telephonic Prehearing Conference Notice was issued setting a further prehearing conference for January 12, 2023, which

was held as scheduled. N.T. 508-533. During the further prehearing conference, all parties were given an opportunity to discuss the current state of this proceeding as well as what steps could be taken to move this case forward. All parties agreed that these cases cannot move forward until the civil litigation in the Court of Common Pleas of Schuylkill County is resolved. Accordingly, on January 20, 2023, I issued an Order directing the filing of status reports by Blackwood and RBMN every 90 days.

On May 15, 2025, RBMN submitted a status report advising that the case captioned *Reading, Blue Mountain & Northern Railroad Company v. Township of Reilly*, Docket No. S-1179-2008 had been discontinued, and that no appeal or challenge to the discontinuance had been filed. Accordingly, the stay was now deemed lifted.

By Notice dated May 28, 2025, an In-Person Further Evidentiary Hearing was scheduled for August 7, 2025.

On August 7, 2025, an in-person further evidentiary hearing was held as scheduled. Benjamin C. Dunlap, Jr., Esquire, appeared on behalf of Reilly Township and presented the testimony of Robert Butensky. Reilly Township offered six exhibits on direct examination (Twp. Exs. 1-6) that were entered into the record. Martin J. Cerullo, Esquire, appeared on behalf of Blackwood and presented the testimony of Nolan Perin. Blackwood offered five exhibits (Blackwood Exs. 8-11) that were entered into the record. Matthew Carmody, Esquire and Lawrence Moran, Esquire, appeared on behalf of RBMN and presented the testimony of Joseph Matuella. RBMN offered one exhibit on direct examination (RBMN Ex. 8) that was entered into the record. At the conclusion of the hearing, all parties agreed to submit written briefs within thirty days of receipt of the transcript. N.T. 632-633.

On September 25, 2025, written briefs were filed by Blackwood, RBMN, and Reilly Township, and the record closed.

FINDINGS OF FACT

1. On July 18, 2007, Blackwood filed a Formal Complaint against RBMN which was docketed at No. C-20078010.
2. The Complainant in No. C-20078010 is Blackwood.
3. The Respondents in No. C-20078010 are RBMN and Reilly Township.
4. On December 31, 2007, RBMN filed an Application for Approval of the Abolition of the Crossing (AAR 592 007 F) where Township Route T-567 Crosses at Grade the Tracks of Reading Blue Mountain and Northern Railroad Company, located in Reilly Township, Schuylkill County, which was docketed at No. A-2008-2016324.
5. The Applicant in No. A-2008-2016324 is RBMN.
6. Blackwood is the owner of a 2,200-acre tract of land located in Reilly Township, Schuylkill County, Pennsylvania (the "Property"). N.T. 598-599; Blackwood Ex. 8.
7. Blackwood purchased the Property in 1999. N.T. 37.
8. RBMN owns and operates a railroad that crosses the Property into northern and southern sections. N.T. 599-600; Blackwood Ex. 8.
9. RBMN purchased the railroad tracks in 1990 from Conrail. N.T. 403, 424, 580-581.

10. Prior to 1990, a railroad crossing was located on the Property at the intersection of Blackwood Road (formerly Township Rt. T-567) and the rail line. Twp. Ex. 2.; RBMN Cross Ex. 14; Blackwood Exs. 2, 4, 7.

11. The physical infrastructure of the Crossing was removed by an unknown actor prior to RBMN's purchase of the railroad tracks in 1990. N.T. 403, 405, 424, 559, 562, 580-581.

12. The Crossing has been completely abolished in its entirety and no longer exists. RBMN Exhibits 8A-8G, N.T. 42-43.

13. The portion of T-567/Blackwood Road encompassing the Crossing was vacated on May 7, 1946, pursuant to an Order of the Court of Common Pleas of Schuylkill County. N.T. 553-556; Twp. Exs. 2, 4.

14. Reilly Township enacted an ordinance purporting to vacate the entirety of T-567/Blackwood Road on June 23, 1992. N.T. 466-468; Twp. Ex. 4; Twp. Cross Ex. 1.

15. The portion of T-567/Blackwood Road encompassing the Crossing is not maintained for general public use and is impassable on both sides of the Crossing. N.T. 62, 68, 85, 108, 627-629; RBMN Exs. 8A-8G; RBMN Cross Ex. 14 (1990 General Highway Map for Schuylkill County showing that T-567/Blackwood Road is an impassible road).

16. The portion of T-567/Blackwood Road encompassing the Crossing is gated and locked at both ends with no trespassing signage that includes a picture of a man with a gun. Twp. Ex. 6A-F.

DISCUSSION

This case arises from a Complaint filed by Blackwood against RBMN alleging a former railroad crossing owned by RBMN and located at the intersection of T-567/Blackwood Road was abolished without permission from the Commission in violation of 66 Pa.C.S. § 2702(c). Blackwood seeks the Commission to direct RBMN to reconstruct the Crossing at RBMN's expense. In response, RBMN denies that it is responsible for the abolishment of the Crossing. RBMN also contends that T-567/Blackwood Road is no longer a public highway and reconstruction of the Crossing would not be in the public interest. Accordingly, RBMN filed an application for retroactive approval of the abolition of the Crossing.

Positions of the Parties

Blackwood

The crux of Blackwood's argument is that because the Crossing existed in the past as a public crossing, and was abolished without Commission approval, RBMN should be held responsible to reconstruct the Crossing today. Blackwood Brief, pp. 2-4. In support of this position, Blackwood argues that the Commission would have denied approval of the abolishment had such approval been sought at the time the Crossing was abolished. Blackwood Brief, pp. 10-15.

RBMN

RBMN's position is that the Crossing no longer exists as a public crossing and should be formally abolished by the Commission. RBMN Brief, pp. 10-13. In support, RBMN argues that there is no evidence that the public would use said crossing if reconstructed, as the adjacent roadways are private, gated, and unmaintained. *Id.* Thus,

RBMN argues that reconstruction of the Crossing is not necessary and proper for the service, accommodation, convenience, or safety of the public and would effectively be a private crossing. *Id.*

Reilly Township

The Township's position is that neither a railroad or a municipality should be held financially responsible for reconstructing and maintaining a railroad crossing over a privately used, gated road for the sole benefit of a private company. Twp. Brief, p. 3. In support, the Township argues that Blackwood is a private company that is seeking to require a railroad public utility to reconstruct and maintain a crossing over a road that was vacated almost 80 years ago. *Id.* Further, the Township argues that the proposed crossing would have no benefit to the public as there is no evidence that the access road to the Crossing is traversable by vehicular traffic and Blackwood itself prevents the public from accessing the road through its property with locked gates north and south of the former crossing. *Id.* As a result, the Township argues that formally abolishing the Crossing is necessary and proper for the service, accommodation, convenience and safety of the public. *Id.* at 4.

Legal Standards

Commission Jurisdiction

The Commission's authority over railroad crossings can be found in Section 2702 of the Code. The general parameters of the Commission's jurisdiction are set forth in Subsections (a) – (c), which state:

- (a) General rule.**--No public utility, engaged in the transportation of passengers or property, shall, without prior

order of the commission, construct its facilities across the facilities of any other such public utility or across any *highway* at grade or above or below grade, or at the same or different levels; and no *highway*, without like order, shall be so constructed across the facilities of any such public utility, and, without like order, *no such crossing heretofore or hereafter constructed shall be altered, relocated, suspended or abolished.*

(b) Acquisition of property and regulation of crossing.-- The commission is hereby vested with exclusive power to appropriate property for *any such crossing*, ... and to determine and prescribe, by regulation or order, the points at which, and 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.

(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. § 2702(a) – (c)(emphasis added); *see also, Cnty. of Bucks v. Pa. Pub. Util. Comm'n*, 684 A.2d 678, 681 (Pa. Cmwlth. 1996) (*Cnty. of Bucks*).

Pursuant to Section 2702, the Commission’s authority is limited to public highway crossings. *Delaware, Lackawanna & Western Railroad Co. v. Shuman*, 115 A.2d 161, 164 (Pa. 1955) (*Delaware*). Section 102 of the Code defines a highway 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. Thus, a “railroad-highway crossing” is

an intersection of railroad tracks with a public highway. *See, e.g., Southeastern Pa. Transp. Auth. v. Pa. Pub. Util. Comm'n*, 592 A.2d 797, 800 n.2 (Pa. Cmwlth. 1991).

Burden of Proof

The party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a). Thus, Blackwood bears the burden of proof in its Complaint and RBMN bears the burden of proof in its Application. These burdens must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep't. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Application for Abolishment of Crossing

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. Pa. Pub. Util. Comm'n*, 962 A.2d 1237, 1244-45 (Pa. Cmwlth. 2008). In previous crossing abolishment cases, the Commission has held:

There is no fixed rule; the Commission may take into consideration all relevant factors. The order issued must be just and reasonable, however. Factors that may be considered include “traffic congestion, access for emergency responders, any impact on businesses, and the economic feasibility of the proposed change. The decision to abolish a crossing must not be arbitrary or capricious.

Application of CSX Transportation, Inc. for Approval of the Abolition of the Crossing (Dot 140 634 g) Where Cemetery Ave. Crosses Above Grade the Tracks of CSX Transportation, Inc. Located in the City of Philadelphia, Philadelphia Cnty., & the Allocation of Cost Thereto, Docket No. A-2019-3013783, p. 7 (Opinion and Order entered Feb. 3, 2022)(citing, *N. Lebanon Twp., supra*; *Mun. of Monroeville v. Pa. Pub. Util. Comm’n*, 600 A.2d 655, 657 (Pa. Cmwlth. 1991); and *Bueg v. Pa. Pub. Util. Comm’n*, 144 A.2d 511 (Pa. Super. 1958)).

Disposition

Initially, it should be noted that whether the Commission retained jurisdiction over this matter has been a concern from its inception. The law is clear that the Commission’s authority is limited to public highway crossings. 66 Pa.C.S. § 2702; *see also, Cnty. of Bucks; Delaware*. Here, the evidence showed that the portion of T-567/Blackwood Road encompassing the Crossing is not “open to the use of the public as a matter of right” in any capacity, let alone vehicular traffic, and therefore, not a “public highway” as defined by the Code. 66 Pa.C.S. § 102.

First, it has been seventy-nine (79) years since this portion of T-567/Blackwood Road was recognized as a public road. *See* Twp. Ex. 4; Twp. Cross Ex.1; RBMN Cross Ex. 15 (2008 General Highway Map for Schuylkill County showing that T-567/Blackwood Road is no longer listed as a Township road). This portion was vacated on May 7, 1946, pursuant to an Order of the Court of Common Pleas of

Schuylkill County. *Id.* Then, Reilly Township enacted an ordinance vacating the entirety of T-567/Blackwood Road on June 23, 1992. *Id.* Further, the purported road is not maintained for general public use and is impassable on both sides of the Crossing. *See* RBMN Exs. 8A-8G; N.T. 62, 68, 85, 108, 627-629; RBMN Cross Ex. 14 (1990 General Highway Map for Schuylkill County showing that T-567/Blackwood Road is an impassible road). Finally, the purported road is gated and locked at both ends with no trespassing signage that includes a picture of a man with a gun. *See* Twp. Exs. 6A-6F.

Accordingly, since T-567/Blackwood Road is no longer a “public highway” as defined by the Code, the Commission would lack jurisdiction over the Crossing as it is a private crossing. However, unless and until the Commission grants the abolition of a crossing, it retains jurisdiction over the crossing for the purpose of imposing any conditions upon abolition in the interest of public safety. *West Penn Rys. Co. v. Pa. Pub. Util. Comm’n*, 142 Pa. Super. 140, 147-150, 15 A.2d 539, 543-545 (1940). Here, it is undisputed that a public crossing previously existed, but there is no evidence that the Commission ever formally abolished said crossing. Therefore, the Commission retains jurisdiction to do so at this time. *Id.*

In this case, I find that Blackwood failed to prove by a preponderance of the evidence that RBMN or the Township was responsible for the abolishment of the Crossing or that reconstruction of the Crossing would be in the public interest.

The evidence shows two things conclusively: (1) that a crossing in fact existed at one point in time (*see* Twp. Ex. 2.; RBMN Cross Ex. 14; Blackwood Exs. 2, 4, and 7); and (2) that Crossing has been completely abolished in its entirety (*see* RBMN Exs. 8A-8G, N.T. 42-43). Blackwood failed to present any evidence of when it was abolished or by whom. Contrarily, RBMN and the Township presented credible evidence that the Crossing was removed by an unknown actor prior to RBMN’s purchase of the railroad tracks in 1990. N.T., 403, 405, 424, 559, 562, 580-581. Thus, I find there is

insufficient evidence to hold RBMN liable for the abolishment of the Crossing by some other actor. Additionally, I concur with RBMN that they were not at liberty to reconstruct the crossing as reconstruction would have required application and approval by the Commission pursuant to Section 2702 of the Code.

The remainder of Blackwood's position can be summarized as the Commission should direct RBMN to reconstruct the Crossing because the Crossing existed in the past as a public crossing and was abolished without Commission approval. Blackwood Brief, pp. 4-9. In further support of this position, Blackwood argues that the Commission would have denied approval of the abolishment had such approval been sought at the time the Crossing was abolished. *Id.* at 9-11. However, Blackwood did not provide, nor could be found, any legal authority or precedent to support the position that the Crossing should be reconstructed today simply because it existed in the past. Rather, in similar matters where the Commission has been tasked with determining whether a crossing should be reconstructed, the Commission analyzed current facts and circumstances in deciding whether the crossing was necessary and proper for the service, accommodation, convenience, or safety of the public. *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.*, Docket No. I-000830376 (Opinion and Order entered Nov. 3, 2008) (*Cochran's Mill Rd*); *Application of the Dep't of Transportation of the Commonwealth of Pennsylvania for Approval to Abolish the Existing Crossing Where S.R. 0522 Crosses at Grade Two Tracks of E. Broad Top R.R. & Coal Co. (Aar 003 135*) in Cromwell Twp., Huntingdon County; & the Allocation of Costs & Expenses Incident Thereto.*, Docket No. A-00114338 (Opinion and Order entered Mar. 14, 2002) (*Where S.R. 0522 Crosses at Grade Two Tracks of E. Broad Top R.R. & Coal Co.*).

In this regard, Blackwood provided very limited evidence of any benefits the public would enjoy today if the Crossing was reconstructed. In fact, the majority of arguments about benefits went to how it would benefit Blackwood or other private business interests. Blackwood Brief, p.13. Blackwood argued that it leased to a coal mining business, had contracts with the Pennsylvania Game Commission and the Pennsylvania Department of Environmental Protection, and has prospects of future business. N.T. 61, 100. In addition, Blackwood pointed out that other businesses, such as Liberty Processing Soils, could make use of the Crossing. N.T. 558, 579, 611. Moreover, Blackwood argued that its own use of the property has been infringed by the lack of a crossing since it 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. 614-615. I find these arguments unpersuasive as protection of private economic interests and competitive positions is not a purpose of the Public Utility Code. *See, Crown American Corp. v. Pa. Pub. Util. Comm'n*, 463 A.2d 1257, 1260 (Pa. Cmwlth. 1983) (“Any economic disadvantage which may be the result of the rule is not unreasonable, because the protection of Crown's economic interest and competitive position, and those similarly situated, is neither an objective of Section 1502 *nor of the regulatory scheme of the Code in general.*”) (emphasis added).

Contrary to Blackwood, RBMN and the Township gave ample reasons why reconstruction of the Crossing would not be in the public interest today. First and foremost, there would be no public access to the Crossing. As discussed, prior, T-567/Blackwood Road is no longer a public highway, but rather, a private road that is not maintained for general public use and is impassable on both sides of the Crossing. In addition, Blackwood erected locked gates on either side of T-567/Blackwood Road that prevent the public from accessing both its property and the Crossing. Thus, it is not in the public’s interest to order the reconstruction of what would be a private crossing that it could never access.

Likewise, consideration of factors such as traffic congestion, access for emergency responders, impact on businesses, and economic feasibility, result in the same conclusion that reconstruction of the crossing is not necessary or proper for the service, accommodation, convenience, or safety of the public. For example, there is no traffic congestion on T-567/Blackwood Road, nor would any traffic congestion be alleviated if the crossing were reconstructed because T-567/Blackwood Road is a private, gated, abandoned, former highway. Plus, decades of disuse of T-567/Blackwood Road have caused any traffic patterns of public motorists to change. Similarly, there is no evidence that a crossing here would be any utility for emergency responders or that emergency responders have ever used the purported crossing. *See Cochran's Mill Rd.* (recognizing that the 10 years of absence of the crossing prompted emergency responders to utilize different routes based on the quickest routes).

In regard to any impact on business, the Blackwood property is situated in a rural area that was in the past mined for coal north of the rail line. For about the past 15 years, the Blackwood property south of the rail line has been used for a biosolid processing operation and the area north of the rail line has been used solely for the spreading and disposal of the processed biosolids materials. N.T. 613-615; Blackwood Ex. 11. Thus, a crossing would only benefit Blackwood directly (or indirectly through other private business interests who lease from Blackwood) and not the public, which is insufficient to justify its reconstruction. *See Where S.R. 0522 Crosses at Grade Two Tracks of E. Broad Top R.R. & Coal Co.* (Commission held that 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).

In regard to economic feasibility, there is nothing in the record about the cost to reconstruct the Crossing, but it is clear that there is not currently any physical infrastructure for the Crossing and the adjacent roadways have not been maintained. *See RBMN Exs 8A-8G*; N.T. 68, 108, 627-629. Under these circumstances, I concur with

RBMN and the Township that it is not economically feasible for RBMN, or the Township, to bear the cost of rebuilding and maintaining roadways for what will effectively be a private crossing for Blackwood with no public access.

Based on the foregoing, I find that Blackwood failed to satisfy its burden of proof that RBMN or the Township was responsible for the abolishment of the Crossing or that reconstruction of the Crossing would be in the public interest. I also find that RBMN did satisfy its burden of proof that it is reasonable and in the public interest to formally recognize the abolishment of the Crossing and grant retroactive approval of its abolition. Accordingly, it shall be recommended that Blackwood's Complaint be dismissed and RBMN's Application be granted.

CONCLUSIONS OF LAW

1. The Commission has exclusive jurisdiction to regulate the construction, relocation, suspension, abolition, or alteration of railroad facilities that cross any other public utility or a public highway either at grade or above or below grade as well as the authority to determine and order which concerned parties should perform such work, in order to prevent accidents and promote the safety of the public. 66 Pa.C.S. §§ 502, 2702; *Cnty. of Bucks v. Pa. Pub. Util. Comm'n*, 684 A.2d 678 (Pa. Cmwlth. 1996), *Delaware, Lackawanna & Western Railroad Co. v. Shuman*, 115 A.2d 161 (Pa. 1955).

2. 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.

3. A “railroad-highway crossing” is an intersection of railroad tracks with a public highway. *Southeastern Pa. Transp. Auth. v. Pa. Pub. Util. Comm’n*, 592 A.2d 797, 800 n.2 (Pa. Cmwlth. 1991).

4. Blackwood bears the burden of proof in its Complaint. 66 Pa.C.S. § 332(a).

5. RBMN bears the burden of proof in its Application. 66 Pa.C.S. § 332(a).

6. Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

7. The Commission’s decision must be supported by “substantial evidence,” which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere “trace of evidence or a suspicion of the existence of a fact” is insufficient. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980).

8. 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. Pa. Pub. Util. Comm’n*, 962 A.2d 1237 (Pa. Cmwlth. 2008).

9. While there is no fixed rule, the Commission may take into consideration all relevant factors including traffic congestion, access for emergency responders, any impact on businesses, and the economic feasibility of the proposed

change. *Application of CSX Transportation, Inc. for Approval of the Abolition of the Crossing (Dot 140 634 g) Where Cemetery Ave. Crosses Above Grade the Tracks of CSX Transportation, Inc. Located in the City of Philadelphia, Philadelphia Cnty., & the Allocation of Cost Thereto*, Docket No. A-2019-3013783 (Opinion and Order entered Feb. 3, 2022) (citing, *N. Lebanon Twp., supra*; *Mun. of Monroeville v. Pa. Pub. Util. Comm'n*, 600 A.2d 655 (Pa. Cmwlth. 1991); and *Bueg v. Pa. Pub. Util. Comm'n*, 144 A.2d 511 (Pa. Super. 1958)).

10. Any order by the Commission granting abolishment of a crossing must be just and reasonable and not arbitrary or capricious. *Application of CSX Transportation, Inc. for Approval of the Abolition of the Crossing (Dot 140 634 g) Where Cemetery Ave. Crosses Above Grade the Tracks of CSX Transportation, Inc. Located in the City of Philadelphia, Philadelphia Cnty., & the Allocation of Cost Thereto*, Docket No. A-2019-3013783 (Opinion and Order entered Feb. 3, 2022) (citing, *N. Lebanon Twp., supra*; *Mun. of Monroeville v. Pa. Pub. Util. Comm'n*, 600 A.2d 655 (Pa. Cmwlth. 1991); and *Bueg v. Pa. Pub. Util. Comm'n*, 144 A.2d 511 (Pa. Super. 1958)).

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Complaint of Blackwood, Inc. in *Blackwood, Inc. v. Reading Blue Mountain and Northern Railroad Company*, at Docket No. C-20078010, be dismissed.

