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January 6, 2026

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

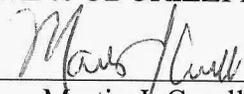
Dear Secretary Homsher:

Enclosed please find Blackwood, Inc.'s Exceptions to the Recommended Decision of ALJ
F. Joseph Brady 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:bm
Enclosures
cc: All Parties of Record

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Blackwood, Inc., :
 :
 v. : Docket No. 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 : Docket No. A-2008-2016324
 Reading Blue Mountain and Northern :
 Railroad Company, located in Reilly :
 Township, Schuylkill County :

BLACKWOOD, INC'S EXCEPTIONS TO THE RECOMMENDED
DECISION OF ALJ F. JOSEPH BRADY

Blackwood, Inc., by and through its attorneys, files these Exceptions to the Administrative Law Judge's Recommended Decision which denied Blackwood's Complaint and granted Reading, Blue Mountain and Northern Railroad Company's ("RBMN") retroactive Application to Abolish Crossing AAR 592 007 F ("Crossing").

Exception No. 1: To the Finding that the physical infrastructure of the Crossing was removed by an unknown actor prior to RBMN's purchase of the railroad tracks in 1990. (Recommended Decision, p. 9, Finding of Fact No. 11).

There was no evidence or even a mere accusation made by RBMN to suggest an unknown actor removed any part of the Crossing prior to 1990. The evidence substantially demonstrates that RBMN most likely removed the infrastructure. RBMN admitted it knew there was a crossing in some capacity and failed to determine its legality. (N.T. June 11, 2008, p.p. 375-76, 380). This is despite RBMN's own track logs and other public documents demonstrating the legality of the Crossing, as well as their testimony that the Crossing was being used. (*Id.* at p. 361); (*See* RBMN's Direct Exhibit 2); (*See* Blackwood's Exhibits 1-4, 7). RBMN also admits to maintenance and construction in the very same area as the Crossing. (*Id.* at p.p. 371-73). After the construction RBMN admitted it created the berms on each side of the Crossing to prevent crossings. (*Id.*).

At no point did RBMN suggest someone else removed the Crossing and the only evidence that nothing existed at the Crossing was its own self-serving and confusing testimony. However, it is clear that there was enough of a crossing for vehicular travel and for RBMN to decide to prevent crossings. The substantial evidence clearly suggests that the Crossing existed, was poorly maintained by RBMN, and was removed sometime before RBMN's construction of the berms.

Even if it were true that the infrastructure was removed by an “unknown actor,” RBMN’s responsibility was either to maintain the Crossing or properly abolish the Crossing with PUC approval. Instead, RBMN further committed abolishing acts after discovering people were still using the Crossing. Nowhere in his Recommended Decision did the ALJ define abolishing acts as solely when parts of a crossing have been removed. RBMN’s actions constitute improper actions and abolishing acts that circumvented PUC authority. Substantial evidence suggests RBMN’s actions should be the subject of a Finding of Fact and the “unknown actor” Finding of Fact should be removed for lack of evidence.

Exception No. 2: To the Finding that 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. (Recommended Decision, p. 9, Finding of Fact No. 13).

There was no evidence presented by either party that the portion of T-567 vacated in 1946 remains vacated and that it is the same portion as the Crossing. First, Mr. Perin, owner of Blackwood, Inc, testified that there were two Orders: one vacating the road and one reinstating the road. (N.T. June 9, 2008, p. 136). Blackwood’s predecessor in title, Blackwood Coal Company, took over maintenance of the road and Township Exhibit 2 identified the road as “public road owned and maintained by Blackwood Coal Company.” (N.T. August 7, 2025, p. 551, lines 7-8). Second, the Orders dealt with a bridge that had been washed out by weather which

rendered the road temporarily impassable. (Id.). Clearly, there is no bridge nor a need for a bridge at the Crossing which shows the 1946 Order did not address the same portion of the road as the Crossing. There was no testimony to suggest that the portion of T-567 where the Crossing existed was what was vacated in 1946.

Township Supervisor Butensky testified that he understood the Court's 1946 decision to "...maintain that – that section of the roadway and the railroad crossing." (N.T. 8/7/25 – p. 556, lines 2-6).

Exception No. 3: To the Finding that Reilly Township enacted an ordinance purporting to vacate the entirety of T-567/Blackwood Road on June 23, 1992. (Recommended Decision, p. 9 , Finding of Fact No. 14).

There was no evidence presented by any party that T-567 was vacated by the Township. At the hearings, the Township presented its 1992 ordinance. (Township Exhibits 2, 4). However, the Township never confirmed that T-567 was properly vacated by its actions. Had it done so, RBMN would not have agreed to stay the proceeding for almost twenty years searching for confirmation through its petition to the Court of Common Pleas. (*See* RBMN Petition, Docket No. S-1179-2008). However, that was not the case and RBMN continued with its petition until withdrawing the Schuylkill County Court case in 2025 without obtaining a Court ruling on whether T-567 was vacated. (*See* RBMN's May 14, 2025, Status Report). This withdrawal not only caused prejudicial delay to Blackwood, to be analyzed further later, but it further demonstrates that it remains unknown to all parties

whether T-567 was properly vacated. Additionally, it is not within the ALJ's jurisdiction to decide whether a road has been properly vacated. See ALJ Salapa's comment during October 26, 2016 conference: "I don't think that the Commission has ever had jurisdiction over vacation of township made under the Public Utility Code, and I'm not aware of any cases holding that it does." N.T. 10/26/16, p. 13, lines 21-25. Thus, the vacation of the road cannot be relied on as a Finding of Fact when the railroad chose to discontinue the Schuylkill County Court action it brought in an attempt to obtain a judicial ruling that the Township's 1992 Ordinance effected vacation of T-567.

Township Supervisor Butensky could not identify any formal Ordinance of abandonment of T-567. (N.T. 8/7/25, p. 573 – lines 9-15).

Exception No. 4: To the Finding that 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. (Recommended Decision, p. 9, Finding of Fact No. 15).

The ALJ cites to a highway map introduced by RBMN from 1990 in support of T-567 being impassable. (*See* RBMN Cross Ex. 14). However, there was no evidence presented as to T-567 conditions at this time and RBMN itself stated vehicles were traveling over the Crossing. (N.T. June 8, 2008, p.p. 371-73). The ordinance purportedly vacating T-567 was not adopted until 1992, thus, T-567 was still subject to maintenance by the Township after 1990. (*See* Township Exhibits 2,

4). To this day, T-567 is still used by Blackwood and other entities. (N.T. June 9, 2008, p.p. 61, 100); (N.T. August 7, 2025, p.p. 558, 579, 611). The U.S. DOT Crossing Inventory Information as of July 6, 2007, still described the crossing as “public at grade”. Blackwood Ex. 9; N.T. 8/7/25, p. 604, line 17 – page 605, line 6).

Although T-567 is in poor condition, these conditions were caused by RBMN’s illegal abolishment of the Crossing coupled with the Township’s invalid attempt to vacate the road. Any reliance on T-567’s conditions after RBMN’s abolishing acts is erroneous and against PUC authority. RBMN presented one piece of evidence from before T-567 was improperly vacated to show its impassability while Blackwood presented substantial evidence to demonstrate T-567 is used and passable. Additionally, the reliance on T-567’s condition after abolishing acts sets an egregious precedent. The Finding of Fact and subsequent reliance on it in the ALJ’s analysis essentially states that an entity may abolish a crossing and delay proceedings until the road and crossing deteriorates. The bad actor may then argue that determination against any opponents to a retroactive application for abolishment.

Gates placed along the road were to help prevent booze parties and swimming, i.e., for safety purposes (N.T. 8/7/25, p. 877, lines 7-11), activities which would be controlled if the road and Crossing were returned to full operational status.

The record contains evidence that Mr. Butansky admitted to Mr. Perin that T-567 remains a public road (N.T., 8/7/25, p. 612, lines 22-23) and that the Township did not object to County approvals of easements and building permits which required public road access (N.T. 8/7/25, p. 611, line 19 – p. 613, line 4).

Exception No. 5: The ALJ erroneously interpreted the precise nature of the dispute. (Recommended Decision, p. 16).

By way of background, this matter had three total days of testimony, over 600 pages of transcript, at least one related Common Pleas Court case, extensive briefing, and has been ongoing since 2008. That sheer volume of time, effort and documents defeats interpreting Blackwood's position or the matter as "simple". Blackwood's position is that the Crossing existed and RBMN abolished it without PUC authority. Had RBMN properly gone through the PUC to abolish the Crossing when it was removed, it would not have succeeded because there was no evidence presented demonstrating the need for abolishment at the time of the illegal abolishment. Blackwood is not simply asking for a once existing crossing to be reconstructed based solely on the fact it once existed, as the ALJ states. (*See Recommended Decision, p. 16*). Due to this erroneous interpretation of Blackwood's position, the ALJ analyzed the matter as if it were a simple reconstruction matter.

To quote the ALJ, "Blackwood provided very limited evidence of any benefits the public would enjoy today if the Crossing was reconstructed." (*Id.* at p.p. 16-17).

Although reconstruction is the ultimate relief Blackwood is seeking, this matter is not a simple petition to have a crossing reinstalled. Rather, this is about RBMN's unilateral decision to abolish a crossing without PUC authority. Additionally, RBMN prejudiciously delayed the proceeding for almost twenty years only to have the ALJ interpret the current circumstances surrounding the Crossing under the same analysis used for simple reconstruction. Had Blackwood known the ALJ would only look at circumstances surrounding the Crossing in the present, or over thirty years later, Blackwood would have objected to staying the proceeding for almost twenty years. While the Recommended Decision points out, on p. 5, that Blackwood moved to stay the proceeding in light of RBMN's Court filing (of which it had no prior notice), it also notes the parties all agreed, and the railroad's then counsel said the stay was appropriate for judicial economy. N.T., 6/11/08, pp. 482-483.

Of course, people who would have used the road and the Crossing adapted to the change in circumstances over all those years, but RBMN should not be allowed to benefit from its improper abolishment of the Crossing. Blackwood only installed gates – one replacing a gate the Township had installed – to prevent vehicles driving up to a dead end created by the railroad.

The Recommended Decision concludes it is in the public interest to retroactively approve abolishment of the Crossing despite the fact two State agencies utilize the subject property and could benefit from the Crossing – the Pennsylvania

Game Commission and the Pennsylvania Department of Environmental Protection.
p.17 of Recommended Decision.

The ALJ arbitrarily misstated Blackwood's position and analyzed the matter as a simple reconstruction request, and in doing so Blackwood suffered prejudice.

Exception No. 6: The ALJ arbitrarily and capriciously required precedent from Blackwood while ruling with no precedent supporting the Recommended Decision. (Recommended Decision, pp. 16-17).

The ALJ arbitrarily held against Blackwood that it did not present legal authority to support its position regarding how the ALJ should analyze the matter. (Id. at p. 16). However, not only does he indicate he also could not find any precedent, he then creates his own precedent by citing to two irrelevant decisions made by the PUC without any analysis as to how those cases are "similar matters." (Id.). In *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)*, PennDOT was pursuing a modification to a PUC order which stated they were to remove a crossing and replace it after they acquired the funds for it. *Id.* at *2. After the demolition of the bridge, PennDOT returned to the PUC ten years later to modify its order after PennDOT

observed change in the need for the crossing along with no opposition from the community after a public meeting. *Id.*

That case is irrelevant to and distinguishable from the instant matter. First, RBMN never went to the PUC until sixteen years after it abolished the Crossing without any PUC authority to do so. Second, only ten years passed in the case above and the community was properly informed the bridge was being abolished and reconstructed. The community chose not to object to PennDot's request to modify. No one in the instant matter was informed or given an opportunity to object. The Crossing has been abolished for over thirty years. The PUC case above does not stand for the proposition that whenever a railroad crossing is abolished, properly or not, reconstruction is based solely on the circumstances at the time the request for reconstruction is made. The ALJ cannot expect a line of cars to sit at the Crossing for thirty years to demonstrate a need and so cannot rely on the *Cochran's Mill* case to support his analysis.

In 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.),*

two parties had slightly opposing views as to a crossing. The ALJ ultimately decided to retain the crossing and move it somewhere else.

It is rather confusing how this case is relevant to the instant matter. The crossing in the E. Broad Top R.R. & Coal Co. case was not removed and later reconstructed nor was it removed improperly. In fact, the crossing was never removed at all until PUC granted abolishment. The case certainly does not set precedent for the ALJ to analyze an already abolished crossing in the present rather than at the time of improper abolishment.

In the instant matter, the ALJ arbitrarily and capriciously determined that the appropriate analysis is to look at circumstances as they are today, thirty years later, without precedent while simultaneously holding it against Blackwood for the lack of precedent to support its argument. Under the ALJ's determination, all cases regarding improper abolishment must be looked at in the present rather than at the time of abolishment. This then permits any entity to do the same acts RBMN committed here: remove a crossing without any authority to do so or any investigation as to its use or status, then delay any PUC matter long enough for the community to find other means of travel and for the crossing and road to deteriorate, and then have an ALJ analyze the matter "x" amount of years later in the lens of the present.

It is simply egregious for the instant matter to be analyzed as it was by the ALJ without due consideration of what the circumstances and public interest would be if the road and Crossing were open and available today.

Exception No. 7: To the Finding on p. 19 of the Recommended Decision that RBMN satisfied its burden of proof that it is in the public interest to formally recognize the abandonment of the Crossing.

Despite Conclusion of Law No. 7 indicating the Commission's decision must be supported by "substantial evidence" and Conclusion of Law No. 9 indicating economic feasibility of the proposed closure is one of the factors to be considered, the Recommended Decision would approve the abolishment of the Crossing despite the statement on p. 18 that "In regard to economic feasibility, there is nothing in the record about the cost to reconstruct the Crossing...".

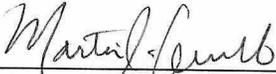
CONCLUSION

The ALJ failed to hold RBMN accountable by erroneously placing blame on an unknown actor without any evidence of such an actor. Even if there was an unknown actor, this "fact" cannot extinguish RBMN's own abolishing actions which it admitted through testimony. The ALJ also arbitrarily found T-567 to be vacated despite substantial evidence to the contrary, including Mr. Perin's testimony and the Township's lack of confirmation at any of the hearings. The ALJ arbitrarily relied on one piece of evidence to demonstrate T-567 was impassable against logic and substantial evidence to the contrary. Finally, the ALJ arbitrarily and capriciously

determined the matter was a simple reconstruction request by misinterpreting Blackwood's position in the matter and setting forth irrelevant precedent while holding against Blackwood for not having precedent for a novel issue. Analyzing the matter in the present coupled with RBMN's delay caused incredible prejudice to Blackwood.

Blackwood respectfully takes exceptions to the ALJ's above Findings of Facts and Conclusions of Law and requests the PUC reject his Recommended Decision and instead grant Blackwood's requested relief of an Order compelling the Crossing be reinstalled.

Respectfully submitted,

By 

Date: January 6, 2026

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COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

BLACKWOOD, INC. : DOCKET No.: C-20078010
 : A-2008-2016324
v. :
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 foregoing Blackwood, Inc.'s Exceptions to the Recommended Decision of ALJ F. Joseph Brady, to be served on the following via e-mail:

The Honorable F. Joseph Brady
Administrative Law Judge
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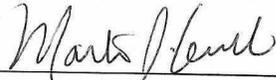
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