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August 3, 2012

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Prothonotary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
North Office Building  
Harrisburg, PA 17105-3265

Re: Investigation - Fairview Township  
Docket No. I-00970069  
RJ&G File Number 27620-0030

RECEIVED  
2012 AUG -6 AM 10:38  
PA P.U.C.  
SECRETARY'S BUREAU

Dear Sir/Madam:

Enclosed for filing in the above matter are the original and five (5) copies of Fairview Township's Response to the Reply of Reading, Blue Mountain and Northern Railroad Company to Motion of Fairview Township for Extension of Time to Comply With Paragraph 9 of the Commission's May 21, 1999 Order, with an attached Certificate of Service, as well as a United States Postal Service Form 3817 Certificate of Mailing attached to the cover of the original Response.

We would appreciate your time-stamping and returning any unnecessary copies to us in the stamped, self-addressed envelope enclosed for your convenience.

As indicated on the Certificate of Service, one (1) copy of the Response is being served on each party of record, as well as the Honorable Richard M. Lovenwirth, Administrative Law Judge, in accordance with the requirements of 52 Pa. Code § 1.54.

Thank you for your attention to this matter. If you should have any questions, of course, please do not hesitate to contact us at your convenience.

Sincerely,

ROBERT N. GAWLAS, JR.

RNG:vy  
Enclosures

August 3, 2012

Page 2

Copies to: *See Attached Page*

cc: The Honorable Richard M. Lovenwirth (w/encl.)  
Elizabeth Lion Januzzi, Esquire (w/encl.)  
Susan Simms, Esquire (w/encl.)  
Jason D. Sharp, Esquire (w/encl.)  
Michelle A. Bimson, General Counsel (w/encl.)  
Eric M. Hocky, Esquire (w/encl.)  
Benjamin C. Dunlap, Jr., Esquire (w/encl.)  
H. James Brozena (w/encl.)  
Mark J. Boris, E.I.T. (w/encl.)  
Barbara Wasiakowski, Secretary, Fairview Township (w/encl.)

COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Investigation Upon the Commission's Own Motion to determine the condition, disposition, and responsibility for maintenance of the existing crossing structure carrying Mary Street (T439) above-the-grade of the track of the Reading, Blue Mountain and Northern Railroad Company in Fairview Township, Luzerne County (AAR 361 417 S).

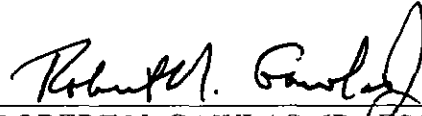
Docket Number

I-00970069

**FAIRVIEW TOWNSHIP'S RESPONSE TO THE REPLY OF READING, BLUE MOUNTAIN AND NORTHERN RAILROAD COMPANY TO MOTION OF FAIRVIEW TOWNSHIP FOR EXTENSION OF TIME**

ROSENN, JENKINS & GREENWALD, L.L.P.

BY:

  
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Attorneys for FAIRVIEW TOWNSHIP

Dated: August 3, 2012

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AUG 6 2012

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**FAIRVIEW TOWNSHIP'S RESPONSE TO THE REPLY OF READING, BLUE  
MOUNTAIN AND NORTHERN RAILROAD COMPANY TO MOTION OF FAIRVIEW  
TOWNSHIP FOR EXTENSION OF TIME**

Fairview Township ("the Township"), through its attorneys, Rosenn, Jenkins & Greenwald, L.L.P., responds as follows to the Reply of Reading Blue Mountain and Northern Railroad Company ("RBMN") to Motion of Fairview Township for Extension of Time:

1. Denied. On the contrary, RBMN's stated belief that "no public interest or need" has been shown to justify the removal of the old bridge and the construction of a new bridge, as ordered by the Commission's May 1999 Order, is meritless. ALJ Lovenwirth's Recommended Decision, adopted by this Honorable Commission and incorporated by reference into the May 1999 Order, found that the removal of the old bridge and the construction of a new bridge are appropriate because, among other things, public safety requires more than just the current access to the Solomon Gap section of the Township, which can now be accessed only by way of a limited easement granted by the Hose Company to the Township. (See e.g. Findings of Fact 33 through 52 of ALJ Lovenwirth's Recommended Decision and Paragraph of 1 of ALJ Lovenwirth's Proposed Order). ALJ Lovenwirth's Recommended Decision was issued after a full evidentiary hearing at which twelve witnesses testified and twenty-six exhibits were moved into the record. The transcript of the hearing consisted of 273 typewritten pages and all of the parties, including RBMN, had a full opportunity to participate at the hearing, to submit briefs for consideration, and to file exceptions to ALJ Lovenwirth's Recommended Decision. RBMN did in fact file exceptions to the Recommended Decision, all of which were rejected by this Honorable Commission. Therefore, the need for the removal of the old bridge and the construction of a new bridge is an issue which has already been decided. With respect to what "RBMN continues to believe," after reasonable investigation, the Township is without

knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, denies it.

2. Admitted in part and denied in part. After reasonable investigation, the Township lacks knowledge or information sufficient to form a belief as to the truth of the allegation regarding RBMN's motivation to make the referenced proposal and, therefore, denies it. By way of further answer, however, as is more fully explained in the Affidavit of Matthew E. Turowski, Esquire, (the "Turowski Affidavit"), attached to the Motion as Exhibit "B," the proposed lease was insufficient, as a recorded easement agreement with RBMN was required approximately two months prior to PennDot's anticipated project bid date, or by March 2012. Mr. Turowski advised Frances Karycki of RBMN that an easement agreement would be required and that there was no benefit to negotiating a short term lease agreement. Ms. Karycki was requested to advise whether RBMN would execute and deliver the Easement Agreement previously provided to it and was advised that, if the Easement Agreement was not delivered, PennDot would proceed to obtain the necessary property through condemnation. After providing Ms. Karycki a Google Earth map requested by Ms. Karycki, however, Mr. Turowski received no further communication from her and RBMN has still not provided the requested right-of-way despite repeated demands. (See Turowski Affidavit, ¶¶ 11 through 25 and Exhibits "A" through "I").

3. Admitted in part and denied in part. It is admitted that the September 2011 e-mails attached to RBMN's Reply were not attached to the Township's Motion. Given the subsequent discussions between representatives of the Township and RBMN, detailed above and in the Turowski Affidavit, it is denied that the September 2011 e-mails are relevant. On the contrary, Paragraph 2 of this Response, above, is incorporated by reference as though fully set forth at length.

4. Denied. On the contrary, as discussed above, Mr. Turowski's November 16, 2011 correspondence to Ms. Karycki of RBMN (attached to his Affidavit as Exhibit "G") clearly and unambiguously advised Ms. Karycki that: "[i]f RBM will not execute and deliver this agreement, PennDot will proceed to obtain the necessary area through condemnation proceedings. Per the PUC Order, no compensation is to be paid to RBM for the cost of its easement area taken." (See Turowski Affidavit, Paragraph 21 and Exhibit "G"). By way of further answer, RBMN was provided full copies of the drawings recorded on March 16, 2012 and fails to indicate any requirement that it be provided notice that those drawings had been recorded.

5. Denied. On the contrary, the Township long ago identified the necessary properties and their owners. The Township has always identified Conrail as having property necessary for the Project. After the Township unsuccessfully reached out to Conrail, the Township was advised that PennDot would take action to condemn the property. By way of further answer, as explained in Paragraph 10 of the Turowski Affidavit, on August 29, 2011, the Kraynaks delivered a Deed in Lieu of Condemnation for that portion of their property necessary for the Project and the same was recorded in the Office of Recorder of Deeds in and for Luzerne County.

6. Denied. On the contrary, see Paragraph 5 of this Response, above, and Paragraphs 26 of 29 of the Turowski Affidavit, all of which are incorporated by reference as though fully set forth at length.

7. Denied as stated. On the contrary, as set forth in the Motion and in the Gribble and Turowski Affidavits, the Township and its agents have been proceeding as expeditiously as possible, but have no control over the actions or inaction of other entities and have been met with a distinct lack of cooperation from RBMN, as set forth in the Turowski Affidavit.

8. Admitted. By way of further answer, it is obvious there would be no need for the Township to have filed the instant Motion if it had completed the Project by June 30, 2012.

9. Denied as conclusions of law. To the extent a response is deemed to be required, denied. On the contrary, the Motion and the Gribble and Turowski Affidavits attached to it demonstrate abundant good cause for the requested extension. By way of further answer, while RBMN opposes a further extension of time, its Reply fails to set forth any supportable reason for its opposition and, further, appears to raise no specific contention that Fairview Township is not proceeding as expeditiously as possible. In any event, such a contention would be without basis.

10. Denied. On the contrary, see Paragraph 1 of this Response, above, which is incorporated by reference as though fully set forth at length.

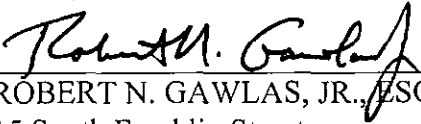
11. Denied. On the contrary, this Honorable Commission, after a full evidentiary hearing, briefing, and exceptions to ALJ Lovenwirth's Recommended Decision, ordered the removal of the old bridge and the construction of a new bridge. None of the factual or legal bases for the Commission's Order have changed in any relevant way and denying the requested extension will not obviate the need to replace the bridge. By way of further answer, Paragraph 1 of this Response, above, is incorporated by reference as though fully set forth at length.

12. Denied as conclusions of law. To the extent a response is deemed to be required, denied. On the contrary, the Commission has determined the necessity of the Project and abundant good cause has been shown for the requested extension.

13. Admitted in part and denied in part. It is admitted that RBMN continues to oppose further extensions; however, it is denied there is any merit to RBMN's opposition. On the contrary, see Paragraphs 1 through 12 of this Response, above, which are incorporated by reference as though fully set forth at length.

WHEREFORE, Fairview Township respectfully requests that the Commission grant its Motion and extend until December 31, 2013 the time within which Fairview Township is to accomplish the requirements set forth in Paragraph 9 of the Commission's May 21, 1999 Order, entered May 24, 1999, as previously extended by the Commission.

ROSENN, JENKINS & GREENWALD, LLP

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COMMONWEALTH OF PENNSYLVANIA

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation Upon the Commission's Own Motion to determine the condition, disposition, and responsibility for maintenance of the existing crossing structure carrying Mary Street (T439) above-the-grade of the track of the Reading, Blue Mountain and Northern Railroad Company in Fairview Township, Luzerne County (AAR 361 417 S).

Docket Number

I-00970069

**CERTIFICATE OF SERVICE**

The undersigned certifies that on August 3, 2012, he filed the original and three (3) copies of Fairview Township's Response to the Reply of Reading, Blue Mountain and Northern Railroad Company to Motion of Fairview Township for Extension of Time, by First Class U.S. Mail addressed to:

Prothonotary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
North Office Building  
Harrisburg, PA 17105-3265

The undersigned certifies that on August 3, 2012, he served one (1) true and correct copy of Fairview Township's Response to the Reply of Reading, Blue Mountain and Northern Railroad Company to Motion of Fairview Township for Extension of Time, upon each of the following, by First Class U.S. Mail in accordance with the requirements of §1.54 (relating to service by a participant):

The Honorable Richard M. Lovenwirth  
Administrative Law Judge  
Room 317, State Office Building  
100 Lackawanna Avenue  
Scranton, PA 18503

Elizabeth Lion Januzzi, Esquire  
Pennsylvania Public Utility Commission  
Bureau of Transportation and Safety  
P.O. Box 3265  
Harrisburg, PA 17105

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Thorp, Reed & Armstrong, LLP  
One Commerce Square  
2005 Market Street, Suite 1000  
Philadelphia, PA 19103

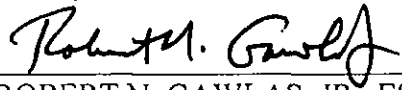
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H. James Brozena  
County of Luzerne  
Luzerne County Courthouse  
200 North River Street  
Wilkes-Barre, PA 18711

ROSENN, JENKINS & GREENWALD, LLP

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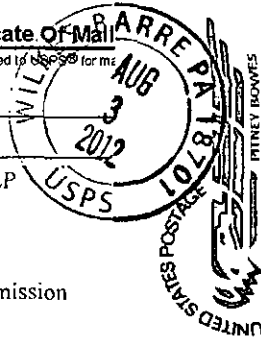
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From:

From: Rosenn, Jenkins & Greenwald, LLP  
15 S. Franklin Street  
Wilkes-Barre, PA 18711

To: Prothonotary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
North Office Building  
Harrisburg, PA 17105-3265



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