



Eminent Domain and Land Valuation and Litigation

Francis Marion Hotel | Charleston, S.C.
January 25 - 27, 2018

We've Been Working on the Railroad: Utility Crossing Disputes

Thursday, January 25, 2017

4:00-5:00 PM

Your Speakers

Jay Bressler

Assistant General Counsel, SCANA Corporation



Kandice Kerwin Hull

McNees Wallace & Nurick LLC



Moderator:

Dwight Merriam, FAICP

Robinson & Cole LLP



Introduction

- Sounds like a stock joke: “A utility company asks a railroad for an easement to cross. The railroad says...”
- Or the variant: “A railroad asks a utility for an easement to cross. The utility says...”



Great Rivalries in History

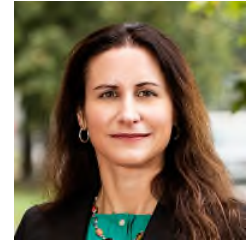
- **Minnesota v. Wisconsin – 128 years**
- **Alabama v. LSU – 123 years**
- **California v. UCLA – 96 years**
- **Ford v. General Motors – over 100 years**
- **Utilities v. Railroads – 180 years**



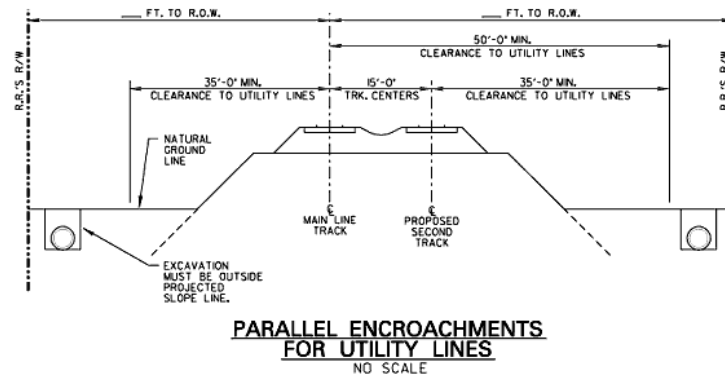
“For over a century, the railroads have been granting rights to utility companies to string cables and run pipelines in their corridors. Ever since the telegraph was invented, rails and wires have moved together across the country, the railroad dependent on the telegraph for communication to upcoming stations and switches, and the telegraph dependent on the railroad's corridor for placement of its poles and wires. Controversy is also not new - the railroads and utilities have often battled each other over concurrent use rights in the corridors”

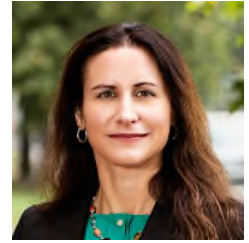
[-Pipes, Wires, and Bicycles: Rails-to-Trails, Utility Licenses, and the Shifting Scope of Railroad Easements from the Nineteenth to the Twenty-First Centuries, 27 Ecology L.Q. 351, 359](#)

What Are the Overarching Concerns of the Railroad?

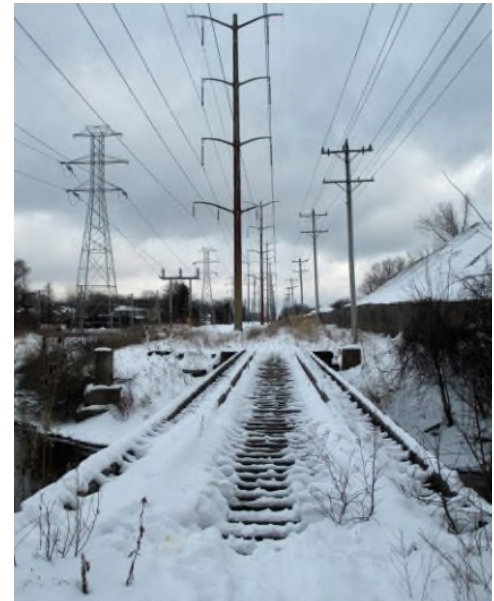


- Railroads were historically favored during the development of the nation and statutes and case law between roughly 1830 and 1930 reflect that view
- Most of this authority has not been explicitly overturned, although more recent case law often interprets railroad statutes less favorably than was done in the past





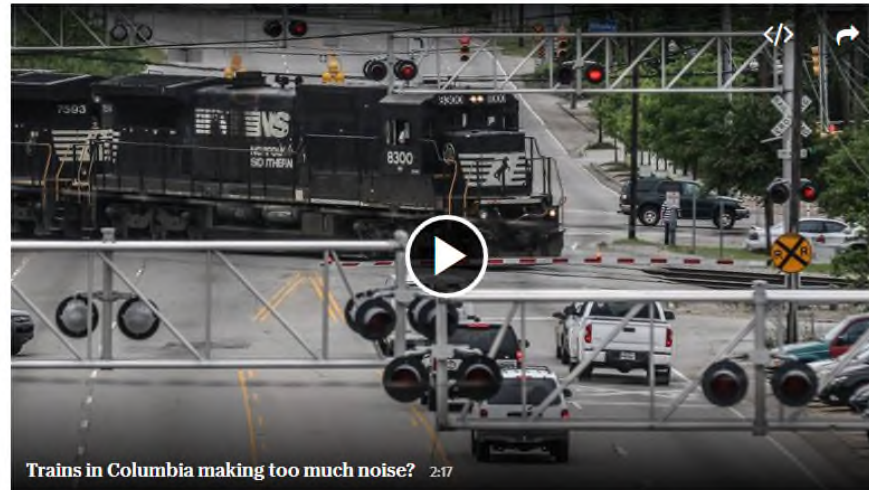
- **As a result, railroads are often relying upon “old” authority**
- **Railroad title is also often a result of acquisitions during the 19th century**
- **Amtrak is an exception, as it’s governing statute and case law is more recent**
- **The railroads want to preserve their power, authority, and rights in title**
- **Railroads also need fair value for the land interest sought by the utilities**



What Are the Overarching Concerns of the Utility?

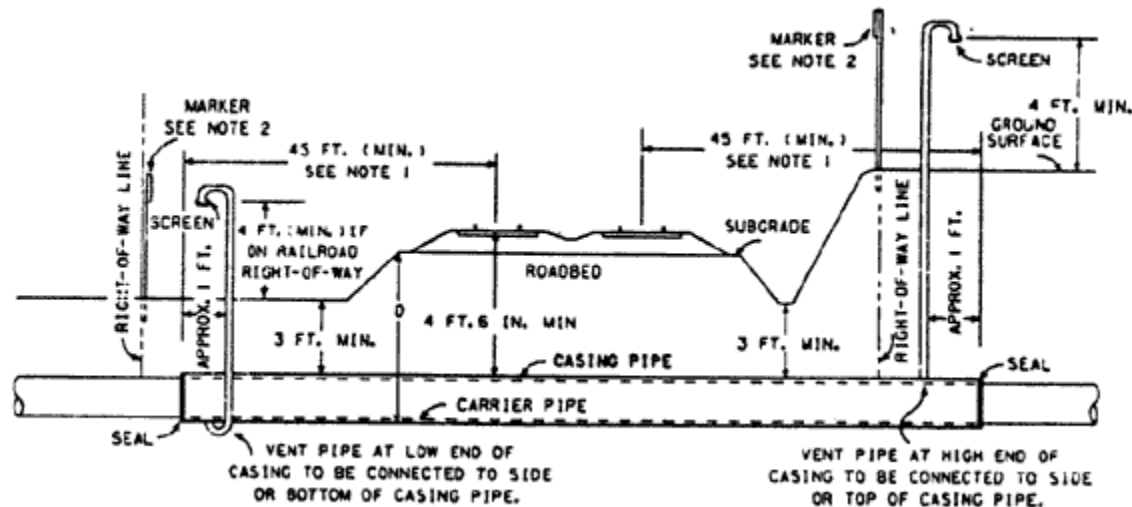


- “Trains have more power than God,”
 - Columbia Mayor Steve Benjamin after trains snarl traffic in Columbia, SC
 - <http://www.thestate.com/news/local/article184720983.html#storylink=cpy>



For decades, Columbians have fallen asleep, abruptly awoken, halted mid-conversation and plugged their ears to the sound of CSX and Norfolk Southern train horns at all hours of the day and night. The city is assembling an 11-person committee to consider establishing “quiet zones” to keep trains from sounding their horns at every street crossing. Read more here: <http://www.thestate.com/news/local/article147738034.html#storylink=cpy> **Matt Walsh** - mwalsh@thestate.com

- Engineering for safety and integrity
- Operational Deadlines
- Cost
- Operational delays such as availability of flagmen or supervision by railroad
- Underground bores can avoid some of these issues but are more costly.



Eminent Domain Authority of the Utility?



- Weak statutory authority
- Enabled in most states, if..
 - With consent
 - Doesn't interfere

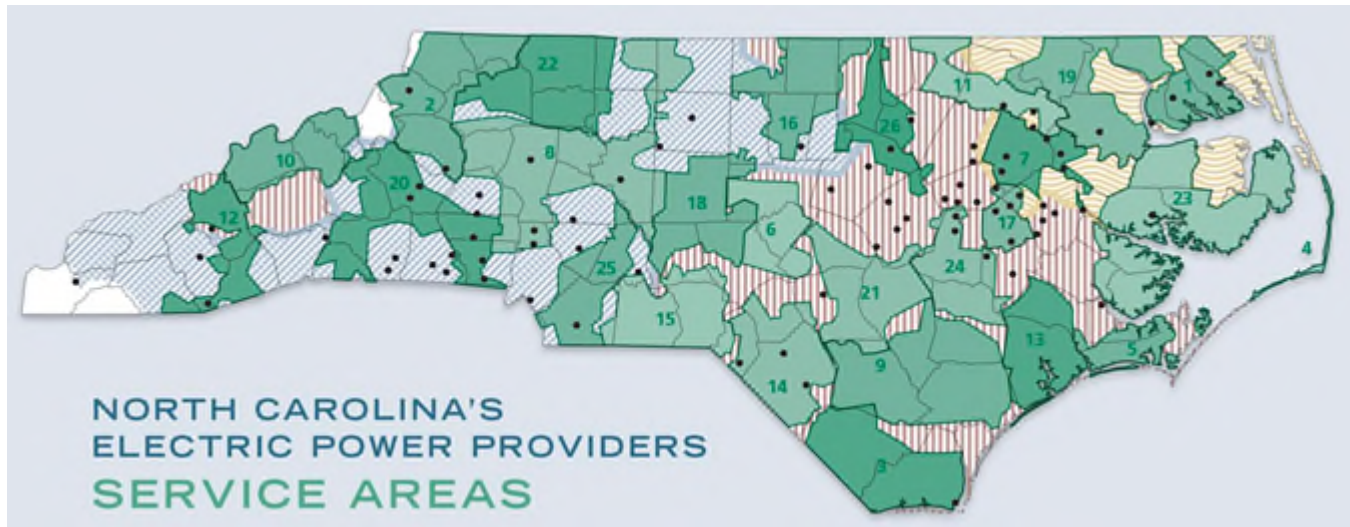
S.C. Code Ann. § 58-9-2030.

Telegraph Condemnation (including railroads).



Authorizes telegraphs to condemn private property for right of way, including condemning railroads “however, in condemning railroad or railway property, the telegraph or telephone company agrees to remove at its own expense, any of its poles, wires, structures, or appurtenances if at any time their existence interferes with the right of the defendant railroad or railway company to construct additional tracks, switches, crossings, warehouses, depots, turntables, water tanks, or any other structures for the use of such railroad or railway company upon reasonable notice given it, at its expense,”

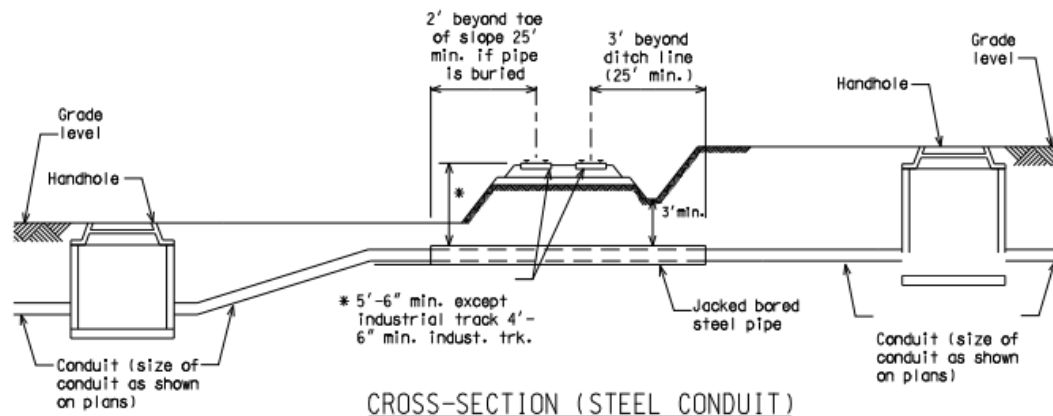
N.C. Gen. Stat. § 40A-5. Utilities can condemn railroads under certain restrictions and caveats. For example, can't condemn a state railroad without consent, and can condemn private railroad, but only if "such property is not in actual public use or not necessary to the operation of the business of the owner."



Eminent Domain Authority of the Utility?



- The railroad may also have eminent domain authority
- It's an interesting question as to whose authority is superior, but as a generalization the utility typically does not have the ability to condemn railroad property



Eminent Domain Authority of the Utility?



- In Pennsylvania the same statute grants eminent domain authority to railroads and utilities
- Amtrak's federal authority trumps utilities' state law power

What the Railroad Needs



- Fair value for the land interest
- Clear plans for the crossing



What the Railroad Needs



- Lack of interference with operations and efficiency
- Consistency in the agreements

What the Utility Needs



- Opportunity to review plans
- \$\$\$\$\$
- Relocation Rights



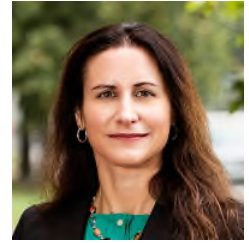
What the Utility Needs



- Quick response on review of plans
- Liability protection or at least not an unreasonable shift
- Reasonable cost
- Onetime payment-on going payments are an administrative nightmare.



Converting Existing Corridors and Crossings



- In some cases, the predecessors in interest to current railroads and utilities entered into agreements for crossings, often in the form of licenses
- These agreements are often more than half a century old, with outdated terms and payment schemes

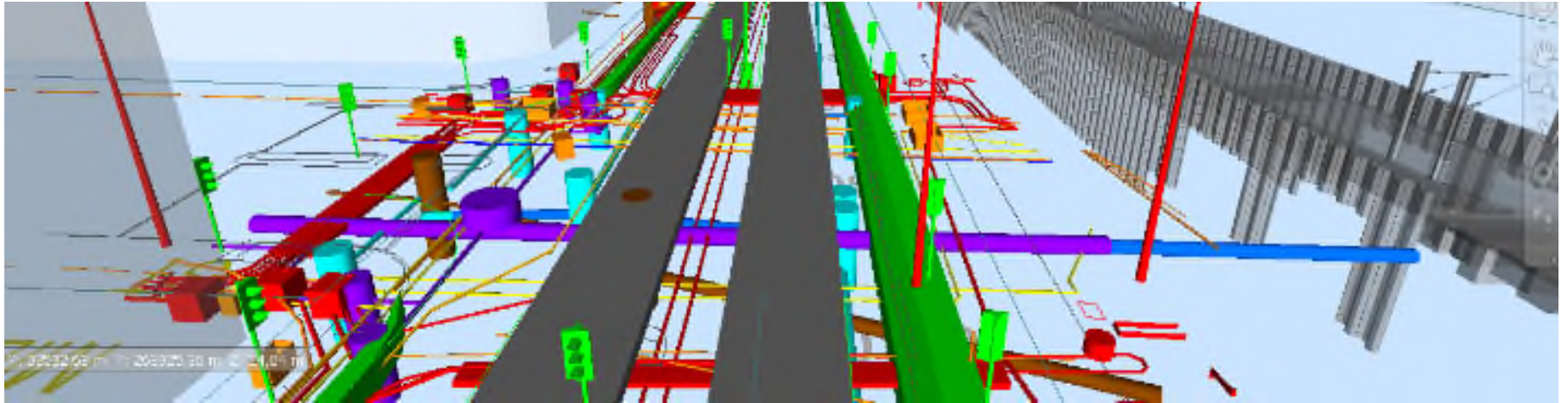
Converting Existing Corridors and Crossings

- **Railroad may not be operating trains across the tracks, but has not abandoned the right of way**
- **The railroads would like to convert these agreements to permanent easements or update the terms and payments under the rental agreements**
- **Title issues make this complicated**
- **Business succession/merger issues can also complicate this**

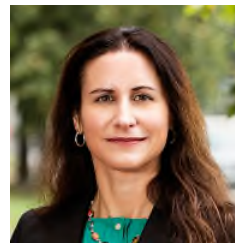
Converting Existing Corridors and Crossings



Summing Up

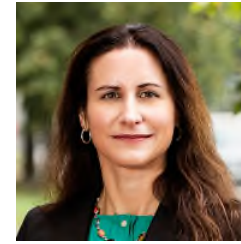


Railroads

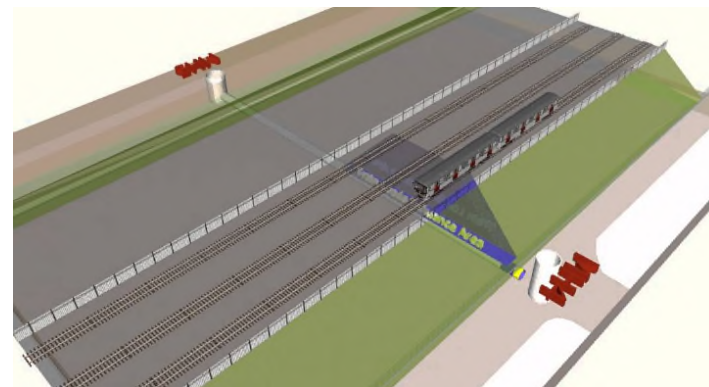


- **Best interests of both sides to negotiate an agreement**
- **Railroad title issues are complex, but often it is in both sides interests to acknowledge the railroad's right to operate in and control the right of way**
- **A single crossing in one location may not appear to be worth a great deal of money, but consideration of the permanency of the arrangement and the need for utilities and railroads to work out multiple crossing across their systems may be a basis for arriving at a larger payment sufficient to satisfy the railroad**

Utilities



- **Right of Railroads in property is determined by State Law primarily and whether the Railroad acquired fee ownership or easement. An analysis of the Charter, Deed or Easement is necessary to determine the exact extent of the rights.**
- **This is a herculean task and requires significant research, title work, and interpretation of historical documents.**



Utilities



- **Best case scenario is Railroad only has an easement and Utility can get easement from underlying property owner. Proving this is expensive and hard. Still have to not interfere with Railroad rights**
- **Statutory Authority to Condemn exists, but is typically weak.**
- **WORK IT OUT**
- **MASTER AGREEMENTS**
- **Include payment schedule**
- **The relationship between Utilities and Railroads, although tenuous, has existed for years and will continue to always be a factor in Utilities operation and growth.**
- **Don't burn bridges.**

Questions and Answers

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Resource Materials

For your convenience, this Resource List is also found at:

<https://tinyurl.com/2018-ALI-CLE-Eminent-Domain>

so you can point and click through to the resources.

General Resources:

8A-G21 Nichols on Eminent Domain § G21.01

(Right of Railroad Companies to Take Land by Eminent Domain)

Competing Public Uses and Condemnation. Construction and application of rule requiring public use for which property is condemned to be "more necessary" or "higher

use" than public use to which property is already appropriated -- state takings. 49 A.L.R.5th 769

Pipes, Wires, and Bicycles: Rails-to-Trails, Utility Licenses, and the Shifting Scope of Railroad Easements from the Nineteenth to the Twenty-First Centuries. 27 Ecology L.Q. 351.

Articles:

"Utility Crossing of Railroad Right of Way," American Railway Development Association (August 2014)

<https://www.ntia.doc.gov/legacy/ntiahome/staterow/rowtable.pdf>

<http://www.amraildev.com/files/Newsletters/Real%20Estate%20Feature%20-%20Newsletter%20-%20August%202014.pdf>

"50-State Survey of Right-Of-Way Statutes," NTIA, NARUC, and NATOA (undated)

"FiberLight, Union Pacific reach truce over rights-of-way dispute in Texas," Fierce Telegram (April 2, 2015)

<https://www.fiercetelecom.com/telecom/fiberlight-union-pacific-reach-truce-over-rights-way-dispute-texas>

"Fiber-Optic Cable Project Back On Track," Houston Chronicle (March 31, 2015)

<http://www.houstonchronicle.com/business/local/article/Fiber-optic-cable-project-back-on-track-6171640.php>

Statutes:

Federal Statute

49 USCS § 24311 Acquiring Interests in Property by Eminent Domain

(a) General authority.

(1) To the extent financial resources are available, Amtrak may acquire by eminent domain under subsection (b) of this section interests in property--

(A) necessary for intercity rail passenger transportation, except property of a rail carrier, a State, a political subdivision of a State, or a governmental authority; or

(B) requested by the Secretary of Transportation in carrying out the Secretary's duty to design and build an intermodal transportation terminal at Union Station in the District of Columbia if the Secretary assures Amtrak that the Secretary will reimburse Amtrak.

(2) Amtrak may exercise the power of eminent domain only if it cannot--

(A) acquire the interest in the property by contract; or

(B) agree with the owner on the purchase price for the interest.

Illinois (20 ILCS 70/) Crossing of Railroad Right-of-way Act

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3140&ChapterID=23>

Pennsylvania Statutes:

15 Pa.C.S. § 1511 Additional Powers of Certain Public Utility Corporations

(a) *General rule.* — A public utility corporation shall, in addition to any other power of eminent domain conferred by any other statute, have the right to take, occupy and condemn property for one or more of the following principal purposes and ancillary purposes reasonably necessary or appropriate for the accomplishment of the principal purposes:

- (1) The transportation of passengers or property or both as a common carrier by means of elevated street railway, ferry, inclined plane railway, railroad, street railway or underground street railway, trackless-trolley omnibus or by any combination of such means.
- (2) The transportation of artificial or natural gas, electricity, petroleum or petroleum products or water or any combination of such substances for the public.
- (3) The production, generation, manufacture, transmission, storage, distribution or furnishing of natural or artificial gas, electricity, steam, air conditioning or refrigerating service or any combination thereof to or for the public.
- (4) The diverting, developing, pumping, impounding, distributing or furnishing of water from either surface or subsurface sources to or for the public.
- (5) The collection, treatment or disposal of sewage for the public.
- (6) The conveyance or transmission of messages or communications by telephone or telegraph for the public.
- (7) The diverting, pumping or impounding of water for the development or furnishing of hydroelectric power to or for the public.
- (8) The transportation of oxygen or nitrogen, or both, by pipeline or conduit for the public.

66 Pa.C.S. § 2702. Construction, relocation, suspension and abolition of crossings.

(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, except as to such property as has been or may hereafter be condemned by the Department of Transportation for projects financed entirely by the Commonwealth and for Federal Aid Projects under section 1004 of the act of June 1, 1945 (P.L.1242, No.428), known as the “State Highway Law,” in which case the provisions of that statute shall be in effect, 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. The commission shall require every railroad the right-of-way of which crosses a public highway at grade to cut or otherwise control the growth of brush and weeds upon property owned by the railroad within 200 feet of such crossing on both sides and in both directions so as to insure proper visibility by motorists.

(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. In determining the plans and specifications for any such crossing, the commission may lay out, establish, and open such new highways as, in its opinion, may be necessary to connect such crossing with any existing highway, or make such crossing more available to public use; and may abandon or vacate such highways or portions of highways as, in the opinion of the commission, may be rendered unnecessary for public use by the construction, relocation, or abandonment of any of such crossings. The commission may order the work of construction, relocation, alteration, protection, suspension or abolition of any crossing aforesaid to be performed in whole or in part by any public utility or municipal corporation concerned or by the Commonwealth or an established nonprofit organization with a recreational or conservation purpose.

(d) *Procedure for appropriation of property.* — When any real property is appropriated by the commission under this section, each parcel of such property so

appropriated, shall be accurately described by metes and bounds, and the record owner of each such parcel shall be named in the order of appropriation. Unless otherwise recorded, the commission shall file with the recorder of deeds of the proper county, a copy of that portion of the order of the commission which appropriates such property, and such plans and other detailed information as the commission may deem necessary. Such portion of the commission's order dealing with the specific property appropriated shall be recorded and indexed under the name or names of the record owners of such specific property at the expense of the utility or utilities, political subdivision, municipality or municipalities, governmental agency, including the Department of Transportation and Public Utility Commission, corporation or persons upon whose instigation, petition or complaint the said crossing was constructed, reconstructed, relocated, altered, suspended or abolished, as may be ordered, to bear such expense or recording by the commission. When such appropriation of real property has been recorded under the provisions of any other statute, such recording shall not be duplicated under the terms of this subsection.

(e) *Reactivation.* — The commission may, within its discretion upon petition by any railroad, the Commonwealth, a political subdivision or any other affected party by order reactivate any crossing suspended under this section.

(f) *Danger to safety.* — Upon the commission's finding of an immediate danger to the safety and welfare of the public at any such crossing, the commission shall order the crossing to be immediately altered, improved, or suspended. Thereafter hearing shall be held and costs shall be allocated in the manner prescribed in this part.

(g) *Suspensions.* — Any order of suspension under this section shall require the following for the protection of the motoring public:

- **(1)** Removal or covering of crossing warning devices.
 - **(i)** Paving over the tracks; or
 - **(ii)** removal of the tracks and paving over of the area formerly occupied by said tracks; or
 - **(iii)** barricading the crossing.

(h) *Assignment of crossing responsibilities to certain nonprofit organizations.*

(1) The commission may order the work of abolition of any crossing in whole or in part, including any future obligations, to be performed by a municipal authority created to advance recreation or conservation purposes or a nonprofit organization with a recreation or conservation purpose if:

(i) the municipal authority or nonprofit organization provides adequate security for the work or demonstrates financial responsibility to the satisfaction of the commission; and

(ii) the commission does not order any Commonwealth agency to bear ancillary responsibility for the work of abolition of any crossing, or the cost

associated with the work, without the prior written consent of the head of the Commonwealth agency.

(2) In accordance with the provisions of section 2704 (relating to compensation for damages occasioned by construction, relocation or abolition of crossings), the commission may order the municipal authority or nonprofit organization assuming responsibility for the abolition of the crossing to bear all or a portion of the costs associated with the work. This section shall not apply to any proceeding wherein the commission has issued a final order prior to the effective date of its enactment.

16 P.S. § 2402. Certain property not to be taken by eminent domain

The power conferred by this article shall not be exercised to enter upon, appropriate, take, injure or destroy any church property, graveyard or cemetery, and the right-of-way of a railroad company shall not be acquired or occupied without the consent of the company owning or operating or in possession of said railroad.

Of note:

Mainline railroads in Pennsylvania were generally incorporated by special act. Such special acts granted powers of eminent domain. See for example the act incorporating the Pennsylvania Railroad Company, Act of April 13, 1846, P.L. 312, especially §§ 11, 12, 21 and the supplementary Act of March 27, 1848, P.L. 273 which follows it. See also the General Railroad Laws Acts of February 19, 1849, P.L. 79 and of April 4, 1868, P.L. 62 which were enacted to govern special railroad acts.

Weidner v. LeTort Regional Authority, 1983 Pa. Dist. & Cnty. Dec. LEXIS 345, *10, 26 Pa. D. & C.3d 726, 733

Cases:

Louisville & Indiana Railroad Company v. Indiana Gas Company (Ind. 2005)

<http://www.in.gov/judiciary/opinions/pdf/06150501rts.pdf>

10 Frontage Road LL v. Carver (USDC SC 2013)

<https://www.bjwsa.org/wp-content/uploads/2013/08/01-main.pdf>

Fiberlight, LLC V. Nat. Railroad Passenger Corp., 81 F. Supp. 3d 93 (D.C. 2015)

https://scholar.google.com/scholar_case?case=13794700815126521081&q=FIBERLIGHT,+LLC+V.+UNION+PAC.+R.R.+CO.&hl=en&scisbd=2&as_sdt=8006

Carolina & NW Ry. v. Piedmont Wagon & Mfg. Co., 229 N.C. 695, 51 S.E.2d 301 (1949).

“Where a railroad company acquires a right of way either by condemnation or operation of law, the fee remains in the original owner and he may use the land for any purpose not inconsistent with the easement and to the extent that the land is not actually used for railroad purposes, subject to the right of the railroad company to extend its use of the right of way to the full width whenever in its judgment its business necessitates.” Harris v. Southern Railway Co., 100 N.C. App. 373, 396 S.E.2d 623 (1990)

“Plaintiff is correct that when a person's land is subject to an easement, he may use the land in any manner and for any purpose which does not interfere with the full and free use of the easement, including railroad easements.”

Only an easement passes to a railroad if the right of way is conveyed by condemnation or statutory presumption.

Pennsylvania Cases

Though the federal Surface Transportation Board authorized a railroad to abandon its rail line, and the railroad discontinued service and removed the rails and ties, it continued to assert property interests in its right-of-way; therefore, pursuant to 16 P.S. § 2402, a county could not exercise eminent domain over the right-of-way because the rail line had not been abandoned.

In re County of Lancaster, 909 A.2d 913, 2006 Pa. Commw. LEXIS 557 (Pa. Commw. Ct. 2006).

We first examine the provision of Act 96 upon which Blackwood relies, § 18, providing (emphases added):

Sect. 18 *And be it further enacted by the authority aforesaid*, That for the accommodation of all persons owning or possessing land through which the said rail road may or shall pass, and to prevent inconveniences [**10] to such person in crossing or passing the same, it shall be the duty of the said company when required, to make, or cause to be made, a good and sufficient causeway or causeways, **wherever the same shall be necessary**, to enable the occupant or occupants of said lands, to cross or pass over or under the same with wagons, carts, and implements of husbandry, as the occasion may require: *Provided*, That the said company **shall in no case be required to make , or cause to be made, more than one such causeway** through each plantation or lot of land, **for the accommodation of any one person** owning or possessing land through which the said rail road may or shall pass, and **where any public road shall cross said rail road, the person owning or possessing land through which the said road shall pass, shall not be entitled to make such requisition** on said company

Act 96 of the Session of 1827-1828, enacted March 14, 1828. The statute has not been repealed. It thus creates a cause of action for a private crossing. In light of the history of this lawsuit, we carefully set forth the parameters of such an action by examining the above-emphasized language. First, Act 96 plainly states that a private [**11] crossing must be constructed by the railroad only if it is necessary. Hence, in order to prevail, Blackwood must prove that a private crossing is necessary within the meaning of Act 96.

Blackwood, Inc. v. Reading Blue Mt. & Northern R.R. Co., 147 A.3d 594, 598-599, 2016 Pa. Super. LEXIS 382, *9-11, 2016 PA Super 152

The interest acquired by a railroad was unknown to the common law. This comparatively new interest in land is without a technical legal name. Some of the early cases refer to it as an easement, while later cases call it a base or conditional fee: *Pa. Schuylkill Val. R.R. v. Reading Paper Mills*, 149 Pa. 18, 24 A. 205; *Pittsburgh, Ft. Wayne & Chicago Ry. v. Peet*, 152 Pa. 488, 490; *Tilts v. Plumville R. Co.*, 222 Pa. 516, 528; *Lazarus v. Morris*, 212 Pa. 128, 131, 61 A. 815; *Citizens Elec. Co. v. Susquehanna Boom Co.*, 270 Pa. 517, 522, 523, 113 A. 559. Mr. Justice SIMPSON pertinently said in *Hall et al. v. Delaware, Lackawanna & Western Railroad Co.*, 270 Pa. 468, 471, 113 A. 669: "The vital thing, however, is not the name given to the estate acquired by the railroad company ... but what are the rights acquired by reason of the taking?" The interest which the railroad acquires does not include the subsoil for the title to the minerals remains in the landowner (*Lyon v. Gormley, etc.*, supra; *Laurence and Others' Appeal*, 78 Pa. 365; *Ricev. Clear Spring Coal Co.*, 186 Pa. 49, 61, 40 A. 149; *Hall et al. v. Delaware, Lackawanna & Western Railroad Co.*, supra), water in a spring within the right of way (*Dilts v. Plumville R. Co.*, supra; *Cambria and Clearfield Ry. Co. v. Water Co.*, 226 Pa. 402, 75 A. 595), the right to grant to a telephone company the right to erect poles and wires on the right of way for the telephone company's purposes (*Pittock v. Central District & Printing Telegraph Co.*, 31 Pa. Superior Ct. 589) nor the right to sell gravel, etc. Excavated from the right of way which is not needed for railroad purposes (*Lyon v. Gormley*, supra; *Hall et al. v. Railroad Co.*, supra).

Brookbank v. Benedum-Trees Oil Co., 389 Pa. 151, 166, 131 A.2d 103, 111, 1957 Pa. LEXIS 360, *21, 7 Oil & Gas Rep. 1473

Applications:

The Aberdeen Carolina & western Railway

<https://acwr.app.box.com/s/1fd8f8cfcf4cb92f007b>

Pipeline specifications

<https://acwr.app.box.com/s/f5d88d1f70026987f9df>

"Permitting: Utility Installations and Rights of Entry," CSX (undated)

<https://www.csx.com/index.cfm/customers/value-added-services/property-real-estate/permitting-utility-installations-and-rights-of-entry/>

“Right of Entry and Utility Forms,” North Carolina Railroad Company (undated)
<http://www.ncrr.com/corridor-access/best-practices-for-utilities/>

“RTD Utility Agreements Process,” Colorado Department of Transportation (May 5, 2016)

<https://codot.gov/content/projects/I-70-East-Addendum-3-June-2016/Schedule%2029%20Reference%20Documents/Section%2010%20-%20Railroads/29.10.10.13%20Railroad%20Permit%20Information.pdf>

South Carolina Statutes:

S.C. Code Ann. § 58-9-2020. Authorizes telegraphs to construct, maintain and operate lines in State owned right of way, including railroad right of way provided the line is constructed so as not to endanger the safety of persons or to interfere with the operation and running of the engines and cars of such railroads or railways and that just compensation is first paid such landowners and railroad or railway companies for such right and privilege.

S.C. Code Ann. § 58-9-2030. Telegraph Condemnation (including railroads). Authorizes telegraphs to condemn private property for right of way, including condemning railroads “however, in condemning railroad or railway property, the telegraph or telephone company agrees to remove at its own expense, any of its poles, wires, structures, or appurtenances if at any time their existence interferes with the right of the defendant railroad or railway company to construct additional tracks, switches, crossings, warehouses, depots, turntables, water tanks, or any other structures for the use of such railroad or railway company upon reasonable notice given it, at its expense,”

S.C. Code Ann. § 58-27-130 – Electric Utilities Condemnation. all the rights, powers, and privileges conferred upon telegraph and telephone companies to acquire rights-of-way for the construction, maintenance, and operation of lines under [Sections 58-9-2020 to 58-9-2030](#) granted to electric companies incorporated under laws of South Carolina.

S.C. Code Ann. § 58-7-10- Gas Utilities Condemnation. All the rights, powers, and privileges conferred upon telegraph and telephone companies under Article 17, Chapter 9 of this title are hereby granted to pipeline companies incorporated under the laws of this State.

North Carolina Statutes

N.C. Gen. Stat. § 40A-5. Utilities can condemn railroads under certain restrictions and caveats. For example, can’t condemn a state railroad without consent, and can condemn private railroad, but only if “such property is not in actual public use or not necessary to the operation of the business of the owner.”

N.C. Gen. Stat. § 62-180 – Use of railroads and public highways – This statute allows “[a]ny person operating electric power, telegraph or telephone lines or authorized by law to establish such lines, has the right to construct, maintain and operate such lines along any railroad or public highway” Note that this statute says “along” and not

“across;” also, this statute is silent with respect to the terms and conditions under which a person operating such lines may construct, maintain and operate them. Case law indicates that includes condemnations, but it is not clear whether it would include condemning the railroad (versus the underlying fee owner). Since it is vague on that issue and 40A-5 is more specific, we didn’t put much stock in it. Also, it says “along” instead of “across.”

N.C. Gen. Stat. § 62-183 – Grant of eminent domain – “Such telegraph, telephone, electric power or lighting company shall be entitled, upon making just compensation therefore, to the right-of-way over the lands, privileges and easements of other persons and corporations . .