



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

October 1, 2012

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: **Docket No. C-2012-2303046**

Dear Secretary Chiavetta:

Enclosed for filing please find the original and one (1) copy of the Department's *Answer to Exceptions of Reading Blue Mountain & Northern Railroad*, in the above-captioned matter.

I hereby certify that a copy has been sent to all parties of record as indicated by the Certificate of Service.

Very truly yours,

A handwritten signature in blue ink that reads "Gina M. D'Alfonso".

Gina M. D'Alfonso
Assistant Counsel in Charge

Enclosure

220/GMD:aca

cc: Parties of Record
Mark J. Chappell, P.E., Chief, Utilities and Right-of-Way Section
Joseph Strok, District Grade Crossing Administrator, District 4-0

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Carl Hill,

Complainant

Complaint Docket

No: **C-2012-2303046**

v.

**Reading Blue
Mountain & Northern Railroad,
Hazel Township,
Luzerne County,
Commonwealth of Pennsylvania,
Department of Transportation
Respondent**

Electronically Filed

**ANSWER TO EXCEPTIONS OF READING BLUE MOUNTAIN & NORTHERN
RAILROAD¹**

AND NOW, comes the Commonwealth of Pennsylvania, Department of Transportation (PennDOT), by and through its counsel, Gina M. D'Alfonso, Assistant Counsel in Charge, in its Answer to Exceptions respectfully represents:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.

¹ By Order entered September 27, 2012, the Public Utility Commission granted the Exceptions which were treated as a Petition for Reconsideration. The Petition was granted, pending further review of, and consideration on, the merits. PennDOT has this same date filed a Motion to Strike the Exceptions, a/k/a Petition for Reconsideration.

7. Admitted that work was performed at the crossing by Reading Blue Mountain & Northern Railroad.
8. Admitted that PennDOT stated its dissatisfaction with the work performed at the crossing.
9. Conclusion of law to which no response is required. To the extent that a response is warranted, it is denied.
10. Conclusion of law to which no response is required. To the extent that a response is warranted, it is denied.
11. Paragraph 11 is a conclusion of law to which no response is required. To the extent that a response is warranted, it is denied. By way of further answer, Reading ignores the Public Utility Commission's ("Commission") exclusive jurisdiction over rail/highway crossings. 66 Pa. C.S. §§ 2702, 2704. It is within the Commission's exclusive power to order the work of construction or alteration of a crossing "to be performed in whole or in part by any public utility or municipal corporation concerned or by the Commonwealth". 66 Pa. C.S. § 2702 (c). Moreover, the Commission may order any concerned party to pay the work to construct or alter a crossing. 66 Pa. C.S. § 2704 (a). Therefore it is clear that the Commission has the power allocate crossing alteration costs, including the detour made necessary by the crossing project, to the railroad ("any public utility"), the Township ("a municipal corporation concerned") or to PennDOT ("the Commonwealth"). The Commission is not bound by the State Highway law. *Millcreek Twp. v. Pennsylvania PUC*, 753 A.2d 324 (Pa. Cmwlth. 2000). Where the State Highway Law conflicts with the Public Utility Law "the latter, giving the Commission exclusive jurisdiction over highway-rail crossing proceedings, must prevail." *Philadelphia v. Pennsylvania Public Utility Com.*, 496 A.2d 924, 926 (Pa. Cmwlth. 1985) (citations omitted).

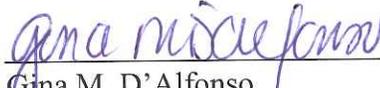
In *Millcreek*, the Township argued that a Commission order violated the State Highway law, because the Commission directed the Township perform maintenance work at a rail/highway crossing. The Township argued that certain maintenance items were PennDOT's responsibility under the State Highway law. The Commonwealth Court stated "the Township ignores the fact that the General Assembly divested DOT of jurisdiction over that portion of a Commonwealth highway that crosses a railroad. 66 Pa. C.S. §§ 2702-2704. The General Assembly granted exclusive jurisdiction over rail-highway crossings to PUC, which applies to the acquisition of property and authority to assign construction responsibility and cost allocation to any concerned public utility, municipality or the Commonwealth." *Millcreek Twp.*, 753 A.2d at 328-329. Therefore, it is clear that the State Highway law does not control in Commission rail/highway crossing cases.

12. Paragraph 12 is a conclusion of law to which no response is required. To the extent that a response is warranted, it is denied. PennDOT incorporates its response to paragraph 11 herein as if set forth at length.
13. Paragraph 13 is a conclusion of law to which no response is required. To the extent that a response is warranted, it is denied.
14. Paragraph 14 is a prayer for relief to which no response is warranted. To the extent that a response is warranted, it is denied.

WHEREFORE, the Department of Transportation respectfully requests the Exceptions

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



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Commonwealth of Pennsylvania
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DATED: October 1, 2012

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Carl Hill,

Complainant
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Complaint Docket
No: C-2012-2303046

**Reading Blue
Mountain & Northern Railroad,
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Respondent

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the *Answer Exceptions* was served upon the parties below by first-class mail; postage prepaid this 1st day of October 2012:

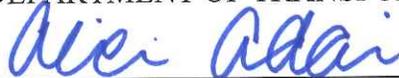
Paul R. Ober, Esquire
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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



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DATED: October 1, 2012