

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Carl Hill

Electronically Filed.

v.

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

No. C-2012-2303046

REPLY TO ANSWER OF COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION

NOW COMES, Reading Blue Mountain & Northern Railroad, (RBM) by and through its counsel, Paul R. Ober, Esquire and Paul R. Ober & Associates, and states the following Reply to the Answer filed in this matter by the Pennsylvania Department of Transportation (PennDOT).

- 1-10. Reading Blue Mountain & Northern Railroad incorporates herein by reference paragraphs 1 through 10 of the Exceptions filed by it on September 18, 2012.
11. Denied. The answer of PennDOT to the Exception filed by RBM that it is without legal authority to close a road or detour traffic is spurious and based on an erroneous interpretation of the law. PennDOT cites sections 66 Pa.C.S. §2702 and 2704; the former section addresses the construction, relocation, suspension and abolition of railroad crossings; the latter addresses the issue of compensation for damages occasioned by the construction, relocation or abolition of crossings. It is interesting that the Pennsylvania Department of Transportation ignores the Pennsylvania State Highway Law, 36 P.S. sections 670 - 101 *et seq.* which provides, "when **any state highway** shall be closed, it shall be the **duty of the Department to immediately designate or lay out a detour**, on which it **shall erect** or cause to be created and maintained, while such detour is in use, **legible signs** at each public road intersection throughout it's entire length indicating the direction to the main highway. During the period in which detours are used, it shall be the **duty of the Department to maintain such detour in a safe and passable condition.**" 36 P.S §670-423. In fact, there is no single statute that authorizes PennDOT to *delegate* the duty regarding detours to another entity. The only exceptions for which PennDOT is able to **foist** the responsibility of a detour onto others do not apply in this instance. See:
 - a.) 36 P.S. § 2203, which provides when any borough, town or city street which forms a part of a state highway is closed to vehicular traffic, that borough, town or city shall notify PennDOT of the creation of a detour; and
 - b.) 36 P.S. § 2204 regarding public roads, which states that when any public

road or highway is closed it shall be the **duty of the authorities authorizing the closing** to immediately designate or layout a detour; and

c.) 36 P.S. §1758-103 regarding counties which provides that **PennDOT is authorized to close traffic of all highways**, bridges, tunnels, viaducts and approaches when at such time improvements are being made and in such cases the political sub-division where the improvement is located shall establish and maintain a suitable detour; and

d.) 36 P.S. §1758-203 which provides that cities of the first class may establish and maintain a suitable detour; and

e.) 36 P.S. §1758-303 which essentially provides the same for cities of the second class; and

f.) 53 P.S. § 57104 provides that township commissioners authorizing closing may have the duty to layout a detour; and

g.) 53 P.S. §67310 which provides the same authority for townships of the second class; and finally,

h.) 52 P.S. §1505 concerning the Department of Highways which provides that the Department of Highways may enter into agreements with the owner of a coal underlying a State Highway for the establishment of a detour to permit removal of coal. There is no authority which imposes the authority on a railroad to close a road and construct detours. There is, however, ample statutory authority for these powers granted to PennDOT and various municipal entities to do so. There is no statutory authority for PennDOT's position that a railroad some how has the legal authority to close a road and detour traffic. To the contrary, unless one of the exceptions as aforesaid applies, the responsibility rests solely with the Pennsylvania Department of Transportation.

12-14. Reading Blue Mountain & Northern Railroad incorporated herein by reference paragraphs 1 through 10 of the Exceptions filed by it on September 18, 2012.

Respectfully submitted:



Paul R. Ober, Esquire

Date: 10/12/12

VERIFICATION

I, Paul R. Ober, Esquire, verify that the statements made in the foregoing document are true and correct to the best of my knowledge, information and belief, based upon my review of the information supplied to me by the Defendant.

I am making this verification as attorney for the Defendant in that the Defendant is unavailable and his verification cannot be obtained within the time allowed for filing this pleading.

I understand that false statements hereunder are subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read 'P. Ober', is written above a horizontal line.

Paul R. Ober, Esquire