

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pittston Township :  
 : Docket No. C-2011-2274074  
 v. :  
 :  
 Reading Blue Mountain & Northern :  
 Railroad Crossing :

**ANSWER TO MOTION TO PRECLUDE TESTIMONY OF READING BLUE  
MOUNTAIN AND NORTHERN RAILROAD WITH NEW MATTER**

Now Comes the Reading Blue Mountain and Northern Railroad (RBM&NR) and files this Answer with New Matter to Pennsylvania Department of Transportation's (PennDOT's)

Motion to Preclude Testimony:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.
9. Admitted.
10. Admitted.
11. Admitted.
12. Admitted.
13. RBM&NR incorporates herein by reference its Answers to Paragraphs 1-12 of

PennDOT's Motion as though the same were herein set forth at length.

14. Denied. The allegations of Paragraph 14 are denied as they are conclusions of law to which no responsive pleading is required.
15. Denied. The allegations of Paragraph 15 are denied as they are conclusions of law to which no responsive pleading is required.
16. Denied. The allegations of Paragraph 16 are denied as they are conclusions of law to which no responsive pleading is required.
17. Denied. The allegations of Paragraph 17 are denied as they are conclusions of law to which no responsive pleading is required.
18. Denied. The allegations of Paragraph 18 are denied as they are conclusions of law to which no responsive pleading is required.
19. Denied. The allegations of Paragraph 19 are denied as they are conclusions of law to which no responsive pleading is required.
20. Denied. The allegations of Paragraph 20 are denied as they are conclusions of law to which no responsive pleading is required.
21. RBM&NR incorporates herein by reference its Answers to Paragraphs 1-20 of PennDOT's Motion as though the same were herein set forth at length.
22. Denied. The allegations of Paragraph 22 are denied as they are conclusions of law to which no responsive pleading is required.
23. Denied. The allegations of Paragraph 23 are denied as they are conclusions of law to which no responsive pleading is required.
24. Denied. The allegations of Paragraph 24 are denied as they are conclusions of law to

which no responsive pleading is required.

25. Denied. The allegations of Paragraph 25 are denied as they are conclusions of law to which no responsive pleading is required.
26. Admitted, except for Footnote 2. The allegations of Footnote 2 are denied as they are conclusions of law to which no responsive pleading is required. Alternatively, the use of a footnote in a pleading is improper, and as such no response is required.
27. Denied. The allegations of Paragraph 27 are denied as they are conclusions of law to which no responsive pleading is required.
28. Denied. The allegations of Paragraph 28 are denied as they are conclusions of law to which no responsive pleading is required.
29. Denied. The allegations of Paragraph 29 are denied as they are conclusions of law to which no responsive pleading is required.

**NEW MATTER**

30. RBM&NR incorporates herein by reference its Answers to Paragraphs 1-29 of PennDOT's Motion as though the same were herein set forth at length.
31. The Commission by its Order of October 22, 2012, expressly granting reconsideration, reopened the hearing in this matter without limitation as to testimony:

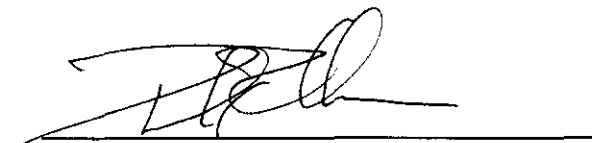
"It is Ordered:

1. That the record in Pittson Township v. Reading Blue Mountain & Northern Railroad at Docket No. C-2011-2274074 is reopened
2. That on or before November 30, 2012, the Parties shall submit Direct Written Testimony responsive to the questions attached herewith."

32. No appeal was taken by Petitioner, Pennsylvania Department of Transportation or any other party from said Order, nor were exceptions filed.
33. As a consequence, the record is fully opened as though never closed and Penn DOT's Motion is untimely and improvident.

WHEREFORE, Reading Blue Mountain & Northern Railroad respectfully requests that Pennsylvania Department of Transportation's Motion to Preclude Testimony be denied.

Respectfully submitted:  
**PAUL R. OBER & ASSOCIATES**

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

Paul R. Ober, Esquire  
Attorney for Reading, Blue Mountain  
& Northern Railroad Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pittston Township :  
 :  
 : Docket No. C-2011-2274074  
 v. :  
 :  
 :  
 Reading Blue Mountain & Northern :  
 Railroad Crossing :

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of RBM&NR's Answer to New Matter to PennDOT's Motion to Preclude Testimony in accordance with the requirements of 52 Pa. Code Section 1.54 *et. Seq.* (relating to service by participant):

**VIA FIRST CLASS MAIL:**

John P. Finnerty, Esquire  
Pittston Township Solicitor  
421 Broad Street  
Pittston, PA 18640

Stephen Menn Esquire  
Solicitor Luzerne County  
Vinsko Law LLC  
253 South Franklin Street  
Wilkes Barre Pa 18701


Gina M. D'Alfonso, Esquire  
Commonwealth of Pennsylvania  
Department of Transportation  
Office of Chief Counsel  
P.O. Box 8212  
Harrisburg, PA 17105-8212

Jason Sharpe, Esquire  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Adam Young, Esquire  
PA PUC Law Bureau  
PO Box 3265  
Harrisburg, PA 17105-3265

Administrative Law Judge Jandebour  
Room 317, Scranton State Office  
Building  
100 Lackawanna Avenue  
Scranton, PA 18503

Dated: 1/3/13



Paul R. Ober, Esquire  
234 North 6<sup>th</sup> Street  
Reading, PA 19601