

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CITY OF POTTSVILLE	:	Complaint Docket
Complainant	:	No. C-2012-2330567
	:	
v.	:	
	:	
READING BLUE MOUNTAIN &	:	
NORTHERN RAILROAD,	:	
SCHUYLKILL COUNTY,	:	
PENNDOT	:	
Respondents	:	

**SUPPLEMENTAL BRIEF OF READING BLUE MOUNTAIN & NORTHERN RAILROAD'S  
PRELIMINARY OBJECTIONS**

**NOW COMES** the Defendant Reading Blue Mountain & Northern Railroad by and through its counsel, Paul R. Ober, Esquire and Paul R. Ober & Associates and states the following in supplement of its Brief filed November 22, 2012 in support of preliminary objections and states:

**I. FACTS.**

This dispute is before the Commission pursuant to the Complaint of the City of Pottsville for the alleged disrepair of certain handrails which are located adjacent to, not on, Defendant's property which runs parallel to a city street. This proceeding was filed by the Plaintiff following a prior disagreement between the City and the Railroad concerning repairs to a wall adjacent to the street. There had been an agreement between the City and the Railroad that the Railroad would complete its repairs to the wall, replace the sidewalk and thereafter the City would maintain the sidewalk including the subject handrails. The location of the repaired wall, the sidewalk and handrails **are not located at a railroad crossing.** The subject handrails in no way even assist the public to cross Railroad property.

The Defendant's rail lines which pass through the City of Pottsville are located at the point where these guide rails are located. At this point where these handrails are located, there is a sixty feet (60') right-of-way granted to the Railroad, originally consisting of three tracks, only one of which remains. Nonetheless, these handrails are located more than thirty feet (30') from the Railroad's right-of-way center

line.

They are outside Railroad property and run parallel to a public street. Clearly, the location of the right-of-way clearly indicates that the location of the handrails is not within the thirty foot (30') distance to the center line of the Railroad's right-of-way.

## II. ISSUE.

Whether or not the City of Pottsville has stated a cause of action upon which relief can be granted inasmuch as it lacks jurisdiction to require the Defendant to maintain handrails located outside its property and which are not located at a crossing.

## III. ARGUMENT.

Pursuant to the Court's Order of November 27, 2012, the Commission specifically requested the location of the guide rails at issue. The handrails, as indicated previously, are along a city street. The City presumably is attempting to characterize the issue as one of services and facilities. However, this is not a case of whether the Railroad has furnished adequate, efficient, safe and reasonable service to its customers, but is rather one of facilities.

Section 102 of the Pennsylvania Public Utility Code, 66 Pa. C.S.A. §102 defines "facilities" as:

"All the plant and equipment of public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or **supplied by or in connection with, the business of any public utility.** Property owned by the Commonwealth *or any of its municipal corporations* prior to its June 1, 1937 shall **not** be subject to the Commission or any of the terms of this part, except as elsewhere expressly provided in this part." (Emphasis added).

Defendant further relies upon those case authorities cited in its Brief in Support of Preliminary Objections.

The street in question has existed at least since 1937. The handrails are not part of a plant or "equipment" of the Railroad and are not used in the conduct of business of the Railroad. Consequently,


if they are not part of the service of the Railroad and certainly not part of its facilities, this Commission has no jurisdiction to adjudicate the City's claim. Specifically, the answer to the question of the location is that it is **not** on Railroad property.

In answer to the specific question of the legal responsibility to repair the handrails at issue, the Defendant would point out that if they are not located on the Defendant's property and do not constitute a facility of the Railroad, there is no legal authority to support the Plaintiff's position that Reading Blue Mountain & Northern Railroad has any responsibility to repair the handrails at issue.

The third issue of the applicable rights-of-way has been addressed above. As indicated by the facts, these handrails are not on Railroad property. Consequently, the City of Pottsville has not stated a cause of action upon which relief can be granted.

Respectfully submitted:

Dated: 4/5/19

  
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