

THOMAS J. PELLISH
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April 5, 2013

Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Attn: Secretary
P.O. Box 3265
Harrisburg, PA 17105-3565

RE: City of Pottsville V. Reading Blue Mountain & Northern Railroad
No. C-2012-2330567

Dear Secretary:

Enclosed please find my Brief of the City of Pottsville In Opposition of the Preliminary Objections of Reading Blue Mountain & Northern Railroad, as well as a Certificate of Service in connection with the above matter. Kindly file the same in your usual manner and return one (1) copy to me in the enclosed self-addressed stamped envelope.

Very truly yours,



THOMAS J. PELLISH,
Solicitor for The City of Pottsville

TJP:ram
Enclosures (4)

cc: Ember S. Jandebeur, Adm. Law Judge, w/enc.
(Via e-mail: ejandebeur@pa.gov)
Adam D. Young, Esq., w/enc. (via Reg. 1st Class Mail)
PA Public Utility Comm. Law Bureau
Alvin B. Marshall, Esq., w/enc. (via Reg. 1st Class Mail)
Office of County Solicitor
Gina M. D'Alfonso, Esq., w/enc. (via Reg. 1st Class Mail)
Office of Chief Counsel, PA Dept. of Transp./R.P. Div
Paul R. Ober, Esq., w/enc. (via Reg. 1st Class Mail)

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

City of Pottsville

V.

C-2012-2330567

Reading Blue Mountain & Northern Railroad

**BRIEF OF THE CITY OF POTTSVILLE IN OPPOSITION OF THE
PRELIMINARY OBJECTIONS OF
READING BLUE MOUNTAIN & NORTHERN RAILROAD**

The City of Pottsville, by and through its Solicitor, Thomas J. Pellish, Esquire, states in opposition to the Preliminary Objections of the Respondent, Reading Blue Mountain & Northern Railroad as follows:

I. **FACTS:**

This dispute arises per complaint filed by the City of Pottsville for the continued disrepair of handrails along the Reading Blue Mountain & Northern Railroad property adjacent to a city street (South Centre) of the City of Pottsville.

II. **ISSUE:**

Whether the City of Pottsville has stated a cause of action upon which relief can be granted.

SUGGESTED ANSWER: YES

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ARGUMENT:

The City of Pottsville in its Complaint before the Public Utility Commission stands by the allegation as set forth in the Argument of the Railroad. The Railroad does in fact continue to fail to replace and/or repair pedestrian guiderails along their property on South Center Street in the City. And, it does in fact threaten the safety and welfare of pedestrians using the sidewalks.

The City maintains pedestrians are the public.

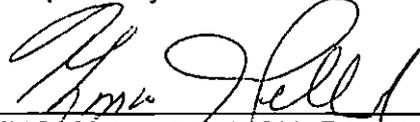
Every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities, and shall make all such repairs, changes...improvements in or to such service and facilities as shall be necessary or proper for the accommodations, convenience, and safety of its patrons, employees, and public. 66 Pa. CSA 1501.

The word "public" as used in PUC rules and regulations could not be limited to those who use the services of the utility since such limitation would render the term "patrons" superfluous and meaningless. West Penn Rys. Co. v. Pa. P.U.C. 15 A2d 539, 142 Pa. Super. 140 (Super. 1940).

Owner or tenant in possession is primarily liable and responsible for keeping sidewalks in front of property owned or occupied by him in repairs. Ignatowilz v. City of Pittsburg, 100 A. 2d. 608, 375 Pa. 352, (Sup. 1953). As respects to sidewalks, public has right to use whole of unoccupied portion from building line to curbside and primary duty of keeping sidewalk in repair rests upon owner of abutting premise. Fisher v. City of Philadelphia 170 A. 875, 112 Pa. Super 226 (Super 1936).

For the foregoing reasons, the PUC does by law and in fact have jurisdiction to hear and render the appropriate orders to the Railroad in the current matter.

Respectfully Submitted:



THOMAS J. PELLISH, ESQUIRE

ID No. 38496

Solicitor for the City of Pottsville

306 Mahantongo St., 2nd Fl.

Pottsville, PA 17901

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City of Pottsville :
 :
 V. : C-2012-2330567
 :
 Reading Blue Mountain & Northern Railroad :

CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2013, I have served a true and correct copy of the foregoing Brief of the City of Pottsville in Opposition of the Preliminary Objections of Reading Blue Mountain and Northern Railroad, upon the parties, listed below, in accordance with the requirements of §1.54 (relating to service by a party).

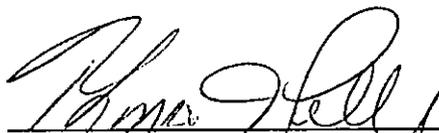
Ember S. Jandebaur,
Administrative Law Judge
(Via e-mail: ejandebaur@pa.gov)

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