

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CITY OF POTTSVILLE	:	Complaint Docket
Complainant	:	No.
	:	
v.	:	Electronically Filed
	:	
READING BLUE MOUNTAIN &	:	
NORTHERN RAILROAD,	:	
SCHUYLKILL COUNTY,	:	
PENNDOT	:	
Respondents	:	

**MOTION FOR CERTIFICATION OF INTERLOCUTORY ORDER
AND STAY OF PROCEEDINGS PENDING APPEAL**

NOW COMES the Respondent, Reading Blue Mountain & Northern Railroad Company ("Movant"), by and through its attorneys, Paul R. Ober, Esquire, and Paul R. Ober & Associates, and requests that the Order of the Pennsylvania Public Utility Commission dated April 11, 2013 be certified as involving a controlling issue of law to which there is substantial ground for a difference of opinion and that an immediate appeal to Commonwealth Court may materially advance the ultimate determination of this matter; and in support thereof, avers as follows:

1. The Movant, Reading Blue Mountain & Northern Railroad Company (hereinafter "RBMN") has filed Preliminary Objections in this case in which the City of Pottsville (hereinafter "City") alleges RBMN's obligation to repair a certain handrail along its property adjacent to a city street.
2. The Commission has made an Order, which may not be a final Order, which contains a controlling question of law as to which there is a substantial ground for difference of opinion.
3. An immediate appeal to the Commonwealth Court from the Order will materially advance the ultimate determination of this matter.
4. The City of Pottsville filed a formal complaint with the Pennsylvania Public Utility Commission (hereinafter "PUC") on or about October 12, 2012 alleging that RBMN had failed to replace or repair a pedestrian handrail along the City's property on South Center Street.
5. On April 11, 2013 the PUC entered an Order in this matter denying those Preliminary Objections.

6. The PUC found that RBMN had not “sufficiently responded” to the PUC’s request as to prove the location of the handrail in question.
7. RBMN respectfully suggests that it is not its responsibility to show that the subject handrail is **not** on its property; rather it is the responsibility of the City to show that the handrail is on its property.
8. The subject handrail runs parallel to a public street and is not within RBMN’s right-of-way and is **not** located at a railroad crossing.
9. The subject handrail is not part of a plant or equipment of RBMN and is not used in the conduct of Railroad business.
10. The Order of the PUC in this regard is erroneous and it is without legal authority to enter such an Order.
 - a. The PUC lacks statutory authority to adopt said Order; and
 - b. The Order of the PUC is not supported by substantial evidence.
11. RBMN is a railroad operating and doing business as a corporation, organized and existing under the laws of the Commonwealth of Pennsylvania with a mailing address at P.O. Box 218, 1 Railroad Boulevard, Port Clinton, PA 19549.
12. The City is a third class city organized and existing under the laws of the Commonwealth of Pennsylvania with offices located at 401 North Centre Street, Pottsville, Pennsylvania 17901.
13. Schuylkill County is a municipal entity organized and existing under the laws of the Commonwealth of Pennsylvania with office located at 401 North Second Street, Pottsville, Pennsylvania 17901.
14. Pennsylvania Department of Transportation is a governmental unit having its state offices located at Riverfront Office Center, 1101 South Front Street, Harrisburg, PA 17104-2516.
15. The disagreement between the City and RBMN arose in 2010 concerning repairs to an adjacent wall which the City alleged was on Railroad property.
16. The location of the repaired wall, the sidewalk and the handrail were **never** part of the Railroad’s crossing.
17. The handrail is located more than thirty feet (30') from the Railroad’s right-of-way center line.

18. The City alleges this complaint arises out of 66 Pa. C.S. §1501 inasmuch as it has attempted to characterize the issue as one of service and facilities.
19. The Respondent, Railroad, vehemently objects to this characterization which has absolutely no factual foundation.
20. This is not a case of whether or not the Railroad has furnished adequate, efficient, safe and reasonable service to its customers, but rather a complaint about handrails along a public street. Barone v. Pennsylvania Public Utility Commission, 86 Pa. Commw. 393, 485 A.2d. 519 (1984).
21. Because the central issue of the alleged disrepair of the handrail along Railroad property which is adjacent to a city street and because there is no allegation that either the handrail or the land upon which it is erected are owned by RBMN, the handrail cannot be, as a matter of law, a Railroad "facility".
22. This complaint does not deal with a crossing over a state highway or come within the ambit of 66 Pa.C.S. §2702 concerning the construction relocation, suspension and abolition of crossings or 66 Pa.C.S. §2704 concerning compensation for damages occasioned by the construction, relocation, suspension and abolition of crossings.
23. There is no grant of authority to the PUC to exercise any jurisdiction in this matter.

WHEREFORE, Reading Blue Mountain & Northern Railroad Company respectfully requests:

- a. That the Commission find and conclude that the determination of the question set forth above is controlling and one upon which there is no substantial ground for difference of opinion.
- b. That an immediate appeal to the Commonwealth Court for an Order deciding this matter will materially advance the determination of this matter; and
- c. Pending determination, a stay of proceedings of the Commission's Order of April 11, 2013 be Ordered by the Commission that, should it elect to proceed, the

Commission holds an immediate evidentiary hearing concerning the location of the subject handrail.

Respectfully submitted,
Paul R. Ober & Associates



Date: 4/19/13

Paul R. Ober, Esquire
Attorney ID # 17998
Attorney for RBMN
234 North Sixth Street
Reading, PA 19601
(610) 378-0121

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CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2013, I have served a true and correct copy of the foregoing Motion for Certification of Interlocutory Order and Stay of Proceedings Pending Appeal of Reading Blue Mountain & Northern Railroad upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

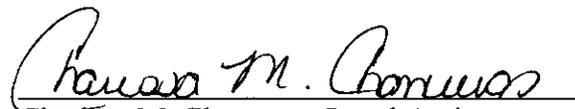
Alvin B. Marshall, Esquire
Schuylkill County Solicitor
Schuylkill County Courthouse
401 N. Second Street
Pottsville, PA 17901
(By: Regular First Class Mail)

Gina M. D'Alfonso, Esquire
Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105
(By: Regular First
Class Mail)

Thomas J. Pellish, Esquire
Solicitor for the City of Pottsville
306 Mahantongo Street, 2nd Floor
Pottsville, PA 17901
(By: Regular First Class Mail)

Adam D. Young, Esquire
Pennsylvania Public Utility Commission
PO Box 3265
Hamsburg, PA 17105-3265
(By: Regular First Class Mail)

Dated: 4/19/13


Charissa M. Chamuras, Legal Assistant
to Paul R. Ober, Esquire