



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

May 13, 2013

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: *Pittston Township v. RBMN Co.*
C-2011-2274074

Dear Secretary Chiavetta:

Enclosed please find *Exceptions of the Commonwealth of Pennsylvania, Department of Transportation*, in the above-captioned matter

I hereby certify that a copy has been sent to all parties of record as indicated on the Certificate of Service.

Very truly yours,

A handwritten signature in blue ink, appearing to read "N. D. Mertens".

Nicholas D. Mertens
Assistant Counsel

Enclosures

220/NDM/aca

cc: Ember S. Jandebaur, Administrative Law Judge
Parties of Record
Mark Chappell, P.E., Chief, Utilities and Right-of-Way Division, 7th Floor
Joseph Strok, Grade Crossing Engineer, District 4-0

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|--|---|-----------------------------|
| PITTSTON TOWNSHIP | : | Docket Number |
| | : | |
| v. | : | C-2011-2274074 |
| | : | |
| READING BLUE MOUNTAIN AND NORTHERN RAILROAD | : | Filed Electronically |
| | : | |

**EXCEPTIONS OF THE COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION**

AND NOW, comes the Commonwealth of Pennsylvania, Department of Transportation (“Department”), by and through its counsel, Jason D. Sharp, and offers the following Exceptions to the Recommended Decision issued by the Honorable Ember S. Jandebour on April 24, 2013:

1. The Department excepts Ordering Paragraph Five (5), which directs that “Reading Blue Mountain and Northern Railroad shall have finished all replacement work at the crossing at Oak Street, Pittston Township, Luzerne County on or before August 31, 2014” (Recommended Decision {R.D.}, page 13). It is well established that a primary concern of the Pennsylvania Public Utility Commission (“Commission”), in regards to at-grade rail-highway crossings, is the “promotion of the safety of the public.” 66 Pa. C.S. § 2702(b). As Judge Jandebour correctly noted, the evidence clearly indicates that Reading “maintained inadequate, unsafe or unreasonable facilities” (R.D., pg. 12). However, allowing Reading Blue Mountain and Northern (“Reading”) nearly sixteen (16) months to replace the crossing is unreasonable given the present condition of the crossing.

Joseph Strok, Grade Crossing Administrator and Pavement Manager for the Department, testified that rubber panels are moving under the weight of passing vehicles and that water is pumping underneath the subject crossing (Department Statement Number 3, pg. 2, lns. 38-43). George Steiner, registered Professional Engineer who appeared on behalf of the Commission’s Bureau of Technical Utility Services, testified that “[t]he crossing is in need of a total replacement” and that the “subsurface materials and ties show signs of failure” (Bureau of Technical Utility Services Statement Number 1, pg. 2, lns. 19-20). Additionally, Mr. Steiner testified that the crossing “should be repaired as soon as possible” (Hearing

Transcript, page 25, lines 13-15, Feb. 4, 2013). Given the testimony of the Department and the Commission that the entire crossing is in need of replacement, including the subgrade, allowing such a long time between an adjudication of unsafe conditions and the actual replacement date will only exacerbate the safety concerns. The failure to replace the crossing, before the end of summer 2013, means that school buses will continue to travel over a deteriorating crossing. School buses, along with all vehicles – passenger cars and trucks – are placed at an unnecessary risk by allowing the crossing to potentially go unrepaired for an additional year. Additionally, any water pumping underneath the subject crossing is subject to freezing conditions in the winter time thus leading to additional potential safety concerns during the spring 2014 season.

As such, the Department respectfully requests that the Commission amend Ordering Paragraph Five (5) to read (changes underlined):

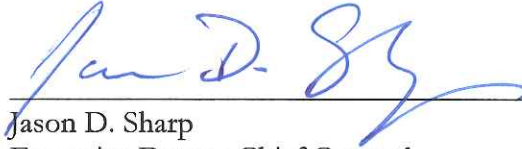
That Reading Blue Mountain and Northern Railroad shall have finished all replacement work at the crossing at Oak Street, Pittston Township, Luzerne County on or before August 31, 2013. Reading Blue Mountain and Northern Railroad shall provide notification to the Commission with [sic] 7 days of finishing all replacement work at the crossing.

2. The Department excepts Ordering Paragraph Six (6), which directs that states “[t]hat failure to meet the August 31, 2014, date may result in an assessment of a civil penalty pursuant to 66 Pa. C.S. § 33041(a) and (b)” (R.D., pg. 13). The Department adopts by reference as if set forth at length Exception number one (1), *supra*. In line with the Department’s requested exception to Ordering Paragraph Five (5), the Department respectfully requests that Ordering Paragraph Six (6) be changed to reflect the date of August 31, 2013 or similar date that the Commission sees fit in regards to Ordering Paragraph Five (5).

WHEREFORE, the Department of Transportation, based upon the foregoing, respectfully requested that the Pennsylvania Public Utility Commission grant its Exceptions to the Recommended Decision issued on April 24, 2013.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



Jason D. Sharp
Executive Deputy Chief Counsel
Pennsylvania Attorney I.D. Number 80488
jsharp@pa.gov



Nicholas D. Mertens
Assistant Counsel
Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105-8212
Telephone No. (717) 787-3128
Pennsylvania Attorney I.D. Number 313998
nimertens@pa.gov

DATED: May 13, 2013

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

PITTSTON TOWNSHIP

Complaint Docket

v.

C-2011-2274074

**READING BLUE MOUNTAIN AND
NORTHERN RAILROAD**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Department's *Exceptions of the Commonwealth of Pennsylvania, Department of Transportation*, was served upon the parties below by first-class mail, postage prepaid this 13th day of May, 2013:

Paul Ober, Esquire
Paul R. Ober & Associates
234 North Sixth Street
Reading, PA 19601
(first class mail)

Stephen Menn, Esquire
County Solicitor
253 South Franklin St
Wilkes-Barre, PA 18701
(first class mail)

John P. Finnerty, Esquire
Borough Solicitor
421 Broad Street
Pittston, PA 18640
(first class mail)

Adam D. Young, Esquire
PUC – BIE
P.O. Box 3265
Harrisburg, PA 17105-3265
(first class mail)



Alicia Adair, Legal Assistant to
Jason D. Sharp
Executive Deputy Chief Counsel, and
Nicholas D. Mertens, Assistant Counsel
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105-8212

DATED: May 13, 2013