

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**EXCEPTIONS TO THE RECOMMENDED DECISION OF
THE ADMINISTRATIVE LAW JUDGE**

NOW COMES Reading Blue Mountain & Northern Railroad (“hereinafter referred to as “RBMN”) by and through it counsel Paul R. Ober, Esquire states the following:

1. On November 14, 2011, Pittston Township filed a Formal Complaint against RBMN alleging that a railroad crossing at Oak Street in Pittston Township was in disrepair and presented a safety hazard.
2. An Answer was filed by RBMN on December 8, 2011, indicating its intention to replace the crossing in 2012.
3. On June 20, 2012, a hearing was convened at which time RBMN did not appear. The record was closed July 20, 2012.
4. On October 22, 2012, an Interim Order reopening the record and requiring Supplemental Direct Written Testimony was issued by the Administrative Law Judge.
5. On January 7, 2013, counsel for Pittston confirmed by letter that a tentative settlement had been reached between the parties and requested a thirty (30) day continuance.
6. The continuance was granted and the hearing initially scheduled for January 9, 2013 was moved the February 4, 2013.
7. On January 7, 2013 the Administrative Law Judge sent out an email to the parties

indicating that she would continue the matter for thirty (30) days. However, the thirty days would have expired February 6, 2013; not February 4, 2013, the date the hearing was scheduled.

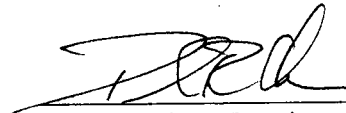
8. On January 8, 2013 notice of the February 4, 2013 hearing was allegedly mailed by US Postal Service to the parties' counsel of record.
9. Neither counsel for RBMN nor RBMN itself received notice as all other parties apparently did.
10. The Administrative Law Judge reached a conclusion that because the notice mailed to counsel for RBMN was "not returned as undeliverable", it was therefore, "presumed received". *See footnote 1 page 3.*
11. The decision rendered as a consequence of the February 4, 2013 hearing resulted in a Recommended Decision to which RBMN takes exception.
12. At each and every proceeding which had taken place up until February 4, 2013, RBMN was either present and participating or had indicated that it would not make an appearance.
13. The lack of notice afforded to RBMN in the February 4, 2013 hearing in which the Administrative Law Judge's decision was based, constitutes a denial of RBMN's due process rights on the part of RBMN to be heard and articulate its position under both the United States and Pennsylvania Constitution.
14. As indicated, the parties had been in negotiations to potentially settle the matter and whereas an approximate date might have been mentioned, RBMN did not appear because it had no notice.
15. There was an administrative breakdown in providing notice of hearing in this matter. *See*

Fischer v. UPMC Northwest, 34 A.3d 115 (2011); Seropian v. State Ethics Commission,
20 A.3d 534 (2011).

WHEREFORE In the interest of fairness and due process, RBMN respectfully requests
that this matter be rescheduled for hearing at which time RBMN may present its position
concerning this matter before any decision becomes final.

Respectfully submitted:

Date: 5/14/13



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

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the Application for Subpoenas 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

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


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

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

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

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

Dated: 5/14/13


Charissa M. Chamuras, Legal Assistant
to Paul R. Ober, Esquire
234 North 6th Street
Reading, PA 19601