

**BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

READING BLUE MOUNTAIN	:	
AND NORTHERN RAILROAD	:	Complaint Docket
COMPANY	:	No: C-2014-2426416
	:	
Complainant	:	
	:	
v.	:	
	:	
COMMONWEALTH OF	:	
PENNSYLVANIA, DEPARTMENT OF	:	
TRANSPORTATION	:	
	:	
Respondent	:	

**READING BLUE MOUNTAIN AND NORTHERN RAILROAD COMPANY'S
REPLY TO RESPONDENT'S NEW MATTER**

AND NOW, come Reading Blue Mountain and Northern Railroad Company ("RBM&N"), by and through its undersigned counsel, and replies to the New Matter of the Commonwealth of Pennsylvania, Department of Transportation ("PennDOT") as follows:

11. No response required.
12. The Commission's prior Orders speak for themselves. It is admitted that the Commission has placed the responsibility to maintain and repair the crossing subject to this dispute on RBM&N. Given that the damage and deterioration of the subject crossing is attributable to PennDOT, RBM&N has filed a Complaint seeking to shift this repair and maintenance responsibility to PennDOT.
13. It is admitted that RBM&N alleged similar claims in 2013. To the extent these averments suggest that RBM&N is not entitled to the relief sought in its Complaint, these averments are specifically denied.

14. It is admitted that RBM&N filed a petition to withdraw its 2013 Complaint; that the Commission had subject matter of the 2013 proceeding and the parties to the proceeding; and that RBM&N's petition was granted. To the extent that the averments of this paragraph suggest that RBM&N is not entitled to the relief sought in its Complaint, these averments are specifically denied.

15. The averments of this paragraph are conclusions of law for which no answer is required. To the extent an answer is required, it is specifically denied that PennDOT enjoys sovereign immunity with respect to this litigation.

16. The averments of this paragraph are conclusions of law for which no answer is required. To the extent an answer is required, it is specifically denied that PennDOT enjoys sovereign immunity with respect to this litigation.

17. The averments of this paragraph are conclusions of law for which no answer is required. To the extent an answer is required, it is specifically denied that PennDOT enjoys sovereign immunity with respect to this litigation.

18. The averments of this paragraph are conclusions of law for which no answer is required. To the extent an answer is required, it is specifically denied that PennDOT enjoys sovereign immunity with respect to this litigation.

19. It is admitted that the Commission has jurisdiction to allocate costs for construction, repair, protection and maintenance costs for rail crossings pursuant to 66 Pa.C.S. § 2704(a). This construction, repair, protection and maintenance allocation to PennDOT is precisely what RBM&N seeks in its Complaint.

20. Denied.

21. The averments of this paragraph are conclusions of law for which no answer is required. To the extent an answer is required, it is specifically denied that PennDOT enjoys sovereign immunity with respect to this litigation. It is also specifically denied that the Commission does not have jurisdiction over this dispute for the reasons explained in RBM&N's Brief in Opposition to PennDOT's Preliminary Objections.

22. The averments of this paragraph are conclusions of law for which no answer is required. To the extent an answer is required, it is specifically denied that the Commission cannot allocate maintenance, replacement or repair costs. As admitted by PennDOT in Paragraph 19 of its New Matter, the Commission has exclusive jurisdiction to allocate these costs pursuant to 66 Pa.C.S.A. § 2702 and 2704.

23. It is admitted that RBM&N seeks to have PennDOT assume responsibility for the construction, repair, protection and maintenance costs for the crossing subject to this dispute. By way of further answer, the \$100,000 estimate was taken from RBM&N's costs to repair the subject crossing in 2009.

24. The averments of this paragraph are conclusions of law for which no answer is required. To the extent an answer is required, it is specifically denied that PennDOT enjoys sovereign immunity with respect to this litigation. It is also specifically denied that the Commission does not have jurisdiction over this dispute for the reasons explained in RBM&N's Brief in Opposition to PennDOT's Preliminary Objections.

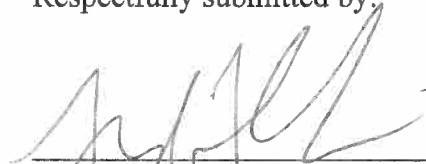
25. The averments of this paragraph are conclusions of law for which no answer is required. To the extent an answer is required, it is specifically denied that PennDOT enjoys sovereign immunity with respect to this litigation. It is also specifically denied that the

Commission does not have jurisdiction over this dispute for the reasons explained in RBM&N's Brief in Opposition to PennDOT's Preliminary Objections.

26. RBM&N has filed a timely response to PennDOT's Preliminary Objections and agrees that the Commission has jurisdiction to rule on PennDOT's Preliminary Objections and RBM&N's responses and that the Commission should first address the Preliminary Objections before this matter moves forward.

WHEREFORE, Reading Blue Mountain & Northern Railroad Company respectfully requests that judgment is granted in its favor and against the Commonwealth of Pennsylvania, Department of Transportation consistent with the relief requested in the Complaint.

Respectfully submitted by:



FREDERICK J. FANELLI, ESQUIRE
Attorney I.D. #36672
Fanelli, Evans & Patel, P.C.
The Necho Allen
No. 1 Mahantongo Street
Pottsville, PA 17901
(570) 622-2455

