



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

August 15, 2014

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

RE: **Docket No. C-2014-2426416**

Dear Secretary Chiavetta:

Enclosed for filing please find the Department's *Response to Petition for Leave to Withdraw Complaint without Prejudice* in the above-captioned matter.

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

Very truly yours,

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

Nicholas D. Mertens
Assistant Counsel

Enclosure

220/NDM:aca

cc: Parties of Record
Mark J. Chappell, P.E., Chief, Utilities and Right-of-Way Section
Joseph Strok, District Grade Crossing Administrator, District 4-0
Thomas A. Walter, Assistant District Traffic and Operations Manager, District 5-0

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**RESPONSE TO PETITION FOR LEAVE TO WITHDRAW
COMPLAINT WITHOUT PREJUDICE**

AND NOW, comes the Commonwealth of Pennsylvania, Department of Transportation (“Department”), by and through its counsel, Gina M. D’Alfonso, Assistant Counsel in Charge, and Nicholas D. Mertens, Assistant Counsel, files the following Response, pursuant to 52 Pa. Code §5.94(a), to the Petition for Leave to Withdraw Complaint filed by the Reading Blue Mountain and Northern Railroad Company (“Reading”) and, in support of same, states the following:

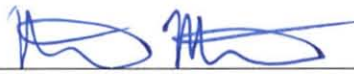
1. The Department has no objection to Reading withdrawing its Complaint but requests that it be withdrawn, with prejudice for the reasons set forth below.
2. On or about April 11, 2013, Reading filed a formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) which was withdrawn after the Department filed an Answer, New Matter and Preliminary Objections and the matter was closed.

3. On or about August 13, 2014, Reading filed a Petition requesting leave to withdraw the present complaint *without prejudice*. A true and accurate copy of Reading's Petition for Leave to Withdraw Formal Complaint is attached hereto and marked as Exhibit A.
4. The Department does not oppose Reading's petition, in so much as it requests to withdraw its Complaint.
5. However, the Department objects to the Complaint being withdrawn or otherwise dismissed, without prejudice.
6. Reading should be precluded from raising any issues, for a third time, regarding the allocation of costs, the Department's vehicle permitting process, or requesting the posting of any bond relative to the subject highway-rail crossing.
7. Any additional frivolous complaints challenging the prior allocation of costs or the Department's permitting process, relative to the subject highway-rail crossing, places an unreasonable burden upon the resources of the Commission, Department, and the local governments.

WHEREFORE, the Commonwealth of Pennsylvania Department of Transportation respectfully requests that the Pennsylvania Public Utility Commission grant the within Objections and dismiss the present Complaint with prejudice.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



Gina M. D'Alfonso
Assistant Counsel in Charge
Nicholas Mertens
Assistant Counsel
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105-8212
Telephone No. (717) 787-3128
Fax Number (717) 772-2741
gdalfonso@pa.gov
nimertens@pa.gov

DATED: August 15, 2014

**BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

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

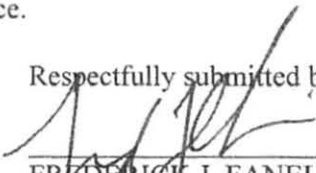
**READING BLUE MOUNTAIN AND NORTHERN RAILROAD COMPANY'S
PETITION FOR LEAVE TO WITHDRAW COMPLAINT**

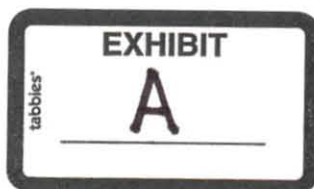
AND NOW, comes Reading Blue Mountain and Northern Railroad Company ("RBM&N"), by and through its undersigned counsel, and files this Petition for Leave to Withdraw Complaint, and in support thereof, states as follows:

1. RBM&N petitions the Pennsylvania Public Utility Commission ("PUC") to withdraw its Complaint in the above-captioned matter without prejudice.

WHEREFORE, Reading Blue Mountain & Northern Railroad Company respectfully requests that the Pennsylvania Public Utility Commission allow the Complaint in the above-captioned matter to be withdrawn without prejudice.

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



**BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

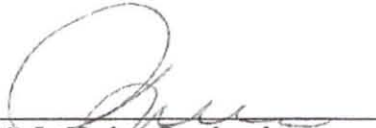
READING BLUE MOUNTAIN	:	
AND NORTHERN RAILROAD	:	Complaint Docket
COMPANY	:	No: C-2014-2426416
	:	
Complainant	:	
	:	
v.	:	
	:	
COMMONWEALTH OF	:	
PENNSYLVANIA, DEPARTMENT OF	:	
TRANSPORTATION	:	
	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby, hereby certify that a true and correct copy of the foregoing document was mailed upon the following parties in accordance with the requirements of Pa. Code Section 1.54 *et. Seq.* (relating to service by participant):

Nicholas D. Mertens, Esquire
PENNDOT
PO Box 8212
Harrisburg, PA 17105-8212

Gina M. D'Alfonso, Esquire
PENNDOT
Office of Chief Counsel
PO Box 8212
Harrisburg, PA 17105-8212



Renée L. Hudec, Paralegal to:
FREDERICK J. FANELLI, ESQUIRE

Dated: 8-13-14

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Department's *Response to Petition for Leave to Withdraw Complaint without Prejudice* was served upon the parties below by first-class mail, postage prepaid this 15th day of August, 2014:

Matthew A. Johnson, Assistant VP
Reading Blue Mountain & Northern Railroad
Company
P.O. Box 218
Port Clinton, PA 19549

Frederick J. Fanelli, Esq.
Riley And Fanelli, P.C.
No 1 Mahantongo Street
Pottsville, PA 17901

Bohdan Pankiw
Chief Counsel, Law Bureau
Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Michael J. Butera, Esquire
121 South Main Street
Pittston, PA 18640

Donald G. Karpowich, Esquire
Donald G. Karpowich Attorney At Law, P.C.
85 Drasher Road
Drums, PA 18222

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



Alicia Adair
Legal Assistant to Nicholas D. Mertens
Assistant Counsel
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105-8212
Telephone No. (717) 787-3128

DATED: August 15, 2014