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427 WEST MAIN STREET  
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REPLY TO:

Lansdale

## Senate of Pennsylvania

July 19, 2001

Glen Thomas, Chairman  
PA Public Utility Commission  
Keystone Building  
400 North Street - Third Floor  
P. O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Reading Blue Mountain and Northern Railroad Co. (RBMN)**

Dear Chairman Thomas:

This is a follow-up to my letter dated June 29, 2001 concerning a copy of correspondence recently received in this office from T. W. Madeira, Executive Vice-President, Reading Blue Mountain and Northern Railroad Co., with an accompanying editorial submitted for publication to newspapers in Pennsylvania in Schuylkill County, Pennsylvania.

According to the submitted editorial, the PUC was petitioned by the Borough of Tamaqua in Schuylkill County to resolve an issue regarding repairs needed to the Route 209 at-grade crossing on West Broad Street, Tamaqua. This crossing, installed circa 1983, is one of 194 public and private crossings on 342 miles of track owned and operated by the RBMN railroad.

May I please hear from you at your earliest convenience with respect to this matter.

Yours truly,



EDWIN G. HOLL  
Senator

EGH:MMC:LCD

cc: T. W. Madeira, Executive Vice President  
Reading Blue Mountain and Northern Railroad Co.

Andy Muller, Jr., Chairman & CEO  
Reading Blue Mountain and Northern Railroad Co.

### COMMITTEES

BANKING AND INSURANCE, CHAIRMAN  
INTERGOVERNMENTAL AFFAIRS,  
VICE CHAIRMAN  
APPROPRIATIONS  
RULES AND EXECUTIVE NOMINATIONS  
LAW AND JUSTICE

PENNSYLVANIA COUNCIL ON THE ARTS  
PENNSYLVANIA HIGHER EDUCATION  
ASSISTANCE AGENCY (PHEAA)  
PENNSYLVANIA HISTORICAL AND MUSEUM  
COMMISSION  
STATE PLANNING BOARD  
STATE TRANSPORTATION ADVISORY  
COMMITTEE

RECEIVED

JUL 23 2001

CHAIRMAN'S OFFICE

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Glen Thomas, Chairman  
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400 North Street - Third Floor  
P. O. Box 3265  
Harrisburg, PA 17105-3265

Re: Reading Blue Mountain and Northern Railroad Co. (RBMN)

Dear Chairman Thomas:

Enclosed please find a copy of correspondence recently received in this office from T. W. Madeira, Executive Vice-President, Reading Blue Mountain and Northern Railroad Co., with an accompanying editorial submitted for publication to newspapers in Pennsylvania in Schuylkill County, Pennsylvania.

According to the submitted editorial, the PUC was petitioned by the Borough of Tamaqua in Schuylkill County to resolve an issue regarding repairs needed to the Route 209 at-grade crossing on West Broad Street, Tamaqua. This crossing, installed circa 1983, is one of 194 public and private crossings on 342 miles of track owned and operated by the RBMN railroad.

The dispute arose because Tamaqua Borough claimed it was the responsibility of RBMN to repair the crossing, whereas RBMN contended that vehicular traffic, particularly trucks, contributed to the deterioration of the crossing and thus, the cost to repair the crossing should be shared.

It is our understanding that the PUC's decision levied the sole cost of installing a new concrete at-grade crossing on the RBMN.

This office would greatly appreciate the advice and counsel of the PUC on the need for legislation to more equitably apportion the cost of such future railroad crossing repairs. In particular, we are concerned for the adverse financial impact on Pennsylvania businesses which may contribute to decisions to leave Pennsylvania and reestablish job-creating businesses in other states.

Accordingly, at your earliest opportunity would you kindly review the correspondence and advise this office of the feasibility of the introduction of a legislative remedy to address the important issue contained within the correspondence. Thank you for your timely attention to this important matter. We look forward to your response.

Yours truly,

A handwritten signature in cursive script, appearing to read "Edwin G. Holl".

EDWIN G. HOLL  
Senator

EGH:MMC:lcd  
Enclosures

cc: T. W. Madeira, Executive Vice President  
Reading Blue Mountain and Northern Railroad Co.

Andy Muller, Jr., Chairman & CEO  
Reading Blue Mountain & Northern Railroad Co.

# READING BLUE MOUNTAIN AND NORTHERN RAILROAD COMPANY

1 RAILROAD BOULEVARD

P.O. BOX 218

PORT CLINTON, PA 19549

FREIGHT DEPT. (610) 562-2100

PASSENGER DEPT. (610) 562-2102

WWW.READINGNORTHERN.COM

OR WWW.RBMNRR.COM

RECEIVED

June 27, 2001

JUN 28 2001

LANSDALE

The Honorable Senator Edwin G. Holl  
427 West Main Street  
Lansdale, PA 19446

Dear Senator Holl:

Recently, our CEO / Chairman of Reading Blue Mountain & Northern Railroad, Andy Muller, Jr., submitted the enclosed editorial to area newspapers for publication in their 'Letters to the Editor' section.

As you read the aforementioned, please note Reading Blue Mountain & Northern Railroad paid 100% of the installation costs on this grade-crossing project.

Sincerely,



T.W. Madeira  
Exec. V.P. - RBMN

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## Setting the Record Straight

An old adage says, "justice is blind." But let us examine that statement. Is she really blind? Looking at her, one will find she is *blindfolded* (not blind), holds a sword in one hand and a balance scale in the other. Why did our forefathers pick this particular statue to represent our judicial system? I'll tell you my thoughts on her. She is blindfolded so her final decision cannot be prejudiced by outside influence, thus enabling impartial judgment on her part. The scale she holds depicts the weighing of facts, both pro and con in preparation of a decision. Finally, the sword. Is it ready to mete out punishment if the facts, once weighed, warrant it? Why all this rhetoric on 'justice?'

For some time, and with increasing regularity, the Reading Blue Mountain & Northern Railroad (RBMN) has come under heavy public criticism in the small Schuylkill County town of Tamaqua, PA because of needed repairs to the Route 209 at-grade crossing on West Broad Street. This crossing, installed in the early 1980s (circa 1983), is one of 194 public and private crossings on 342 miles of track owned and operated by the RBMN railroad.

Simply put, the facts surrounding the Route 209 crossing are as follows: Tamaqua Borough officials claimed it was the responsibility of the RBMN RR to repair the crossing. The railroad took the position that vehicular traffic, namely trucks, contributed to and caused the crossing to deteriorate.

When no solution could be agreed upon by both parties, the Pennsylvania Public Utility Commission was petitioned by Tamaqua Borough to resolve this crossing issue. After meeting at the site, hearing testimony and receiving letters from legislators, the PUC levied the sole cost of installing a new concrete at-grade crossing on the RBMN.

Upon the railroad's excavation of the existing crossing, it was found that a Tamaqua Borough watermain directly underneath the crossing had sprung a leak which washed out the sub-base and caused the crossing to sink.

Discovering this situation, but faced with the PUC order, the RBMN railroad had no choice but to replace the grade-crossing and approaches at a cost of \$60,000.00.

At-grade crossings are viewed by railroads as a potential liability for obvious reasons but beyond that, one of the reasons railroads are torn out, sold off, and diminishing in this country is due to the increased demand for railroads to subsidize their competition, namely trucks, who use the grade-crossings and slowly but surely destroy them.

Where else in business do competitors subsidize each other? Does Macy's subsidize Gimbels? Is it reasonable for railroads to subsidize their competition by bearing the sole cost of grade-crossing repairs? Since grade-crossings are of no beneficial value to railroads, but significant value to vehicular traffic, isn't it reasonable for railroads to expect grade-crossing costs be equally disbursed between highway maintenance departments and railroads?

Just remember, there are two (2) sides to every story, a flip-side to every coin. In this particular case, I feel justice was not fair and equitable for the RBMN railroad. In this particular incident, it seems Justice's blindfold slipped and she *was* influenced.



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

August 6, 2001

Honorable Edwin G. Holl  
Senate Box 203024  
Harrisburg PA 17120-3024

DOCUMENT  
FOLDER

RE: Borough of Tamaqua v. Reading, Blue Mountain & Northern Railroad Co.,  
PUC Docket No. C-00992533

Dear Senator Holl:

Thank you for your letter of June 29, 2001 and July 19, 2001 follow-up, regarding the outcome of the above-captioned proceeding before the PUC. Since it concerns an on-going proceeding before the Commission, please be advised that all parties of record have been sent a copy of your letter and of this response.

You ask the advice and counsel of the PUC on the need for legislation to more equitably apportion the cost of railroad crossing repairs, citing the concern for the adverse financial impact on Pennsylvania businesses which may contribute to decisions to leave Pennsylvania and reestablish job-creating businesses in other states. Please be assured that the present system ensures that each party to a rail-highway crossing case has an opportunity to present relevant evidence to a tribunal with over eighty years of experience in adjudicating similar matters. The law requires that the PUC consider all relevant evidence and issue a decision which is just, reasonable, and based on substantial evidence. Traditionally, this evidence has included: (1) which party was at the location first; (2) who is responsible for the condition of the crossing; (3) who benefits from the crossing and the improvements; and (4) the availability of state or federal funding.

In the referenced proceeding, a May 2, 1980 PUC Order directed that a rubberized crossing be installed at the West Broad Street Crossing and that the crossing area between the rails be maintained by Consolidated Rail Corporation. The rail line was subsequently purchased by Reading, Blue Mountain and Northern Railroad Company. By law, the duty to maintain the crossing area passed to the Reading, Blue Mountain & Northern when it purchased the rail line.

The prior rubber crossing surpassed its expected useful life and required full replacement. In the interim period, the highway approaches were duly maintained by the Pennsylvania Department of Transportation, also in accordance with the Commission's May 2, 1980 Order. Reading, Blue Mountain and Northern Railroad Company admitted to performing no maintenance on the failing rubber crossing, claiming that such work would not fall under the category of "maintenance." Testimony reveals that the railroad knew that the crossing was failing since 1995, and it knew that it was responsible for its maintenance, yet the railroad did not pursue funding which may have been available through the federal and state programs. The Commission found that the railroad will benefit from a safe, signalized, smooth crossing area that will prevent accidents and promote public safety, and that it is the railroad's lack of diligence in maintaining the crossing that led to its deteriorated condition.

Under these circumstances, the PUC believes that the allocation of costs to the railroad was, in fact, equitable. The Commission, under current law, has the authority to allocate replacement cost responsibility on a shared basis between the parties. However, the allocations are based on the facts of each individual case. In this case, the decision of the PUC was upheld by the Commonwealth Court as fulfilling the required standard of just, reasonable and based on substantial evidence. In many cases, the responsibility for upgrades on rail crossings are assigned on a shared basis. This, however, is determined by the facts of each case after a thorough review by the Commission.

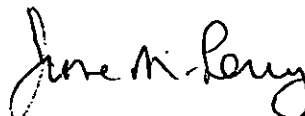
Maintenance of a utility's own facilities, including rail-highway crossings, is an accepted cost of doing business everywhere. Pennsylvania's methods are fair and equitable and should not result in railroads leaving the Commonwealth.

The deteriorated rubber crossing created a hazardous condition which caused the vehicles traversing the crossing to swerve to the left or right to avoid the depressions, thus endangering the safety of pedestrians using the sidewalks and vehicles traveling in the opposite direction. We are pleased that this proceeding will result in a safer situation for all concerned.

August 6, 2001

Please let us know if you would like copies of any of the Commission Orders or pleadings filed in this matter. I trust that I have adequately addressed your concerns, but do not hesitate to contact me if you wish more information or explanations.

Very truly yours,

A handwritten signature in cursive script that reads "June M. Perry".

June M. Perry  
Director of Legislative Affairs

cc: Chairman Thomas  
All parties of record  
Susan D. Colwell, Assistant Counsel