

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Complaint Filed by Reading Blue Mountain & Northern Railroad Company Involving the Deteriorated Condition of the Railroad Crossing Surface and Roadway Approaches at the Public Crossing (DOT 361 425 J) Where SR 2019 (Oak Street) Crosses, at Grade, the Tracks of Reading Blue Mountain & Northern Railroad Company, Located in the Pittston Township, Luzerne County : C-2020-3016906
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**EXCEPTIONS OF READING BLUE MOUNTAIN AND NORTHERN RAILROAD TO
RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE EMILY DEVOE
DATED DECEMBER 14, 2022**

I. EXCEPTION NO. 1

Reading Blue Mountain and Northern Railroad (“RBMN”) files an exception to the finding on Page 24 of the Recommended Decision that RBMN should have raised the issue of superelevation of the tracks with the Public Utility Commission or filed a separate application regarding superelevation of the tracks with the Public Utility Commission.

The reasons for this exception are:

1. The Administrative Law Judge cites no Public Utility Commission regulation in support of this finding.
2. The record in this case discloses no evidence of any Public Utility Commission regulation, or any other regulation, rule, or authority, in support of this finding. (N.T. 103-108, Testimony of William Sinick; Proposed Findings of Fact, Proposed Conclusions of Law and Brief (hereinafter RBMN Brief) submitted by RBMN, pp. 17-21).

3. The record in this case, absent the existence of any evidence of any Public Utility Commission regulation, or any other regulation, rule or authority, demonstrates this finding is based solely on the personal opinion of William Sinick and basing this finding on the personal opinion of William Sinick, or anyone else, is improper. (N.T. 103-108, Testimony of William Sinick; RBMN Brief, pp. 17-21).

II. EXCEPTION NO. 2

RBMN files an exception to the finding on Page 25 of the Recommended Decision that William Sinick's testimony was clear regarding a railroad's authority to superelevate tracks without filing an application with the Public Utility Commission and when a railroad has to file an application with the Public Utility Commission to superelevate tracks.

The reasons for this exception are:

1. The Administrative Law Judge cites no Public Utility Commission regulation in support of this finding.

2. The record in this case discloses no evidence of any Public Utility Commission regulation, or any other regulation, rule, or authority, in support of this finding (N.T. 103-108, Testimony of William Sinick; RBMN Brief, pp. 17-21).

3. The record in this case, absent the existence of any evidence of any Public Utility Commission regulation, or any other regulation, rule or authority, demonstrates this finding is based solely on the personal opinion of William Sinick and basing this finding on the personal opinion of William Sinick, or anyone else, is improper. (N.T. 103-108, Testimony of William Sinick; RBMN Brief, pp. 17-21).

III. EXCEPTION NO. 3

RBMN files an exception to the finding on Page 30 of the Recommended Decision regarding the testimony of William Sinick and Sarah Fenton and the April 30, 2021 and June 28, 2021 Secretarial Letters.

The reasons for this exception are:

1. The Secretarial Letters dated April 30, 2021 and June 28, 2021 are written documents which speak for themselves.
2. Counsel for RBMN objected to the Preserved Direct Testimony of William Sinick beginning on Page 3, Line 13 through Page 4, Line 6 (N.T. 93-95).
3. Counsel for RBMN objected to the Direct Testimony of Sarah Fenton on Page 8, Line 18 to Page 9, Line 10 (N.T. 62-64) and this testimony was stricken by the Judge (N.T. 65).
4. The Judge erred in allowing the testimony of William Sinick, over counsel's objection, regarding Mr. Sinick's understanding of the responsibilities of the parties in the Secretarial Letters (N.T. 95) and thus the findings on Page 30 of the Recommended Decision regarding Mr. Sinick's testimony and the Secretarial Letters is based on testimony which should not have been allowed into the record.
5. The Judge erred in making findings on Page 30 of the Recommended Decision regarding the testimony of Sarah Fenton and the Secretarial Letters when that testimony, based on counsel's objection, was stricken.

IV. EXCEPTION NO. 4

RBMN files an exception to the findings on Pages 31 and 32 of the Recommended Decision that PennDOT has no responsibility for the condition of the Oak Street crossing.

The reasons for this exception are:

1. Richard Cooper was assigned by Sarah Fenton to inspect the work being performed at the Oak Street crossing (N.T. 75, 81-82).

2. The testimony of Sara Fenton regarding the amount of time Mr. Cooper was inspecting the work at the Oak Street crossing was vague – “But again, I can’t quite recall if he was there for the entire time.” (N.T. 84).

3. Notwithstanding whatever the exact amount of time Richard Cooper was at the Oak Street crossing when the work was being performed, it is error for the Judge to have concluded that there was nothing which PennDOT could have done to fix or remediate the problem especially since I&E and PennDOT provided testimony, which in their view, showed obvious problems with the grading at the Oak Street crossing.

4. If the problems with the grading of the Oak Street crossing were as obvious as suggested by I&E and PennDOT, PennDOT’s failure to bring this problem to the immediate attention of anyone foreclosed any chance of any problems being rectified or addressed while work crews were mobilized and on-site (RBMN Brief, p. 17).

5. It is error for the Judge to have concluded that RBMN is solely the party responsible since PennDOT failed to raise any objections to the manner in which the work was being performed at the time the work was being performed (RBMN Brief, p. 17).

V. EXCEPTION NO. 5

RBMN files an exception to the findings on Page 34 of the Recommended Decision that RBMN should bear the sole cost of reconstructing the Oak Street crossing.

The reasons for this exception are:

1. Numerous factors are relevant for determining the allocation of costs between a railroad and PennDOT. Greene Township v. Pa. Pub. Util. Comm'n, 668 A.2d 615 (Pa. Cmwlth. 1995).

2. The Secretarial Letters dated April 30, 2021 and June 28, 2021 establish that RBMN and PennDOT agreed to repair the Oak Street crossing (Recommended Decision, p. 2).

3. The record unequivocally establishes that RBMN had to increase the elevation in the curves of track one and track two according to Federal Railroad Administration requirements (RBMR-2).

4. Even assuming arguendo that RBMN should have filed an application with the Public Utility Commission, as contended by William Sinick, consideration of the relevant factors as required by applicable law for allocation of costs would still have resulted in an allocation of costs between RBMN and PennDOT. (RBMN Brief, pp. 13-14; 15-16) and therefore placing sole responsibility for costs of the reconstruction of the Oak Street crossing on RBMN is in error.

5. Placing sole responsibility on RBMN for reconstructing the Oak Street crossing ignores all of the relevant factors which should be considered in allocating the costs of reconstruction. Greene, supra. Consideration of all the relevant factors, as required by Greene, supra, and the evidence of record shows that costs for the reconstruction of the Oak Street crossing should be placed on PennDOT.

VI. EXCEPTION NO. 6

RBMN for the reasons hereinbefore set forth, files an exception to Paragraphs 2, 3, 4, 5, and 10 of the Recommended Order (Recommended Decision, pp. 38-42).

Respectfully submitted,

BY:  _____

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CERTIFICATE OF SERVICE

I hereby certify that I have this 3rd day of January, 2023, served a true and correct copy of Exceptions of Reading Blue Mountain and Northern Railroad to Recommended Decision of Administrative Law Judge Emily Devoe Dated December 14, 2022 on the parties as follows:

**Via Email – edevoe@pa.gov
(Word Version)**

Honorable Emily I. DeVoe
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