

**STATE OF RHODE ISLAND AND
PROVIDENCE PUBLIC UTILITIES COMMISSION**

IN RE:

**W. MARK RUSSO, RHODE ISLAND SUPERIOR
COURT APPOINTED SPECIAL MASTER FOR
THOSE CERTAIN PARCELS OF REAL ESTATE
LOCATED AT 300 BOURNE AVENUE,
EAST PROVIDENCE, RHODE ISLAND,
ASSESSOR'S MAP 303, BLOCK 13,
PARCELS 4 AND 5 AND ASSESSOR'S MAP 203,
BLOCK 1, LOT 4**

Docket No. _____

**OBJECTION OF PROVIDENCE AND WORCESTER RAILROAD COMPANY TO
PETITION OF W. MARK RUSSO, SPECIAL MASTER
TO ESTABLISH A PRIVATE RAILROAD CROSSING**

The Providence and Worcester Railroad Company ("PWRR"), pursuant to Rule 1.15 of the Commission's Rules, objects to and protests the Petition of W. Mark Russo to establish a private railroad crossing interrupting PWRR's paramount operating rights over the real property located at 300 Bourne Street in East Providence without PWRR's agreement. Setting aside some factual inaccuracies in the Petition, including but not limited to those concerning the particulars of P&W's operating rights and the 1989 and 1996 license and amendments, PWRR does not support this Petition (as Paragraph 16 of the Petition states) as matters presently stand.

PWRR was approached concerning the possibility of establishing a private grade crossing at the location some time last year. PWRR has been cooperative with the court-appointed Special Master and Noble Development in assisting with the planning and design of a potential private railroad crossing. All of these discussions, however, were predicated on the parties reaching mutually agreeable forms of (a) Construction and Maintenance Agreement, and (b) License Agreement for Private Grade Crossing that could be submitted to the Commission for

approval pursuant to RIGL § 39-8-1.3. ¹ To date, the parties have not reached any agreement. Rather, a draft has been prepared and reviewed by RIDOT but the developer has already expressed one point of general disagreement and alluded that other comments that may follow. At this point in time, the parties are in the process of negotiating the terms of the necessary agreements, but there is nothing now for the Commission to approve.

The Petition should be dismissed as premature. Once an understanding is reached with PWRR and there are actually proposed forms of a Construction and Maintenance Agreement and a License Agreement for Private Grade Crossing for the Commission to consider and approve, then P&W will seek permission from the Commission in accordance with applicable State law. See RIGL § 39-8-1.3. (“Authorization for private crossing -- No railroad owning railroad tracks within the state shall enter into any agreement of any nature whatsoever with any private party for the establishment of a private crossing at grade, unless and until *the railroad shall have obtained permission from the commission for the establishment of the private crossing.*”). The Special Master’s Petition, however, should be denied and dismissed.

PROVIDENCE AND WORCESTER
RAILROAD COMPANY,

/s/ Charles D. Blackman

Charles D. Blackman (#5522)
Levy & Blackman LLP
469 Angell Street, Suite 2
Providence, RI 02906
Tel.: (401) 437-6900
Fax: (401) 632-4695
cblackman@levyblackman.com

¹ The Superior Court likewise predicated any filing of a Petition to the Commission upon the parties reaching an agreement. See Amended Order, P.C. 2009-5341, ¶¶3-4 (October 22, 2020) (“The Special Master is authorized to pursue a rail crossing agreement with P&W ... The Special Master shall report back to the Court as to the progress of a proposed rail crossing agreement with P&W as approved by Buyer, prior to filing with PUC.”) (emphasis added).

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the within was e-mailed to the following on this 15th day of October, 2021.

Cindy Wilson-Frias
Chief of Legal Counsel
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888
Cynthia.WilsonFrias@puc.ri.gov

John Spirito
Administrative & Legal Support Services
Administrator
State of Rhode Island
Division of Public Utilities and Carriers
89 Jefferson Boulevard
Warwick, RI 02888
john.spirito@dpuc.ri.gov

Charles Blackman, Esq.
Levy & Blackman, LLP
469 Angell Street, Suite 2
Providence, RI 02906
cblackman@levyblackman.com

Vera Diluglio
Rhode Island Department of Transportation
Two Capitol Hill
Providence, RI 02903
vera.diluglio@dot.ri.gov

Joshua Berlinsky, Esq.
Darrow Everett LLP
One Turks Head Place
12th Floor
Providence, RI 02903
jberlinsky@darroweverett.com

Stephen Almagno
Rhode Island Department of Transportation
Two Capitol Hill
Providence, RI 02903
Stephen.Almagno@dot.ri.gov

Ms. Luly E. Massaro
Commission Clerk
Public Utilities Commission
89 Jefferson Blvd.
Warwick, RI 02888
luly.massaro@puc.ri.gov

Stephen Devine
Rhode Island Department of Transportation
Two Capitol Hill
Providence, RI 02903
stephen.devine@dot.ri.gov

Patricia Lucarelli
Administrative & Legal Support Services
Administrator
State of Rhode Island
Division of Public Utilities and Carriers
89 Jefferson Boulevard
Warwick, RI 02888
Patricia.lucarelli@puc.ri.gov

John Tarantino, Esq.
One Citizens Plaza, 8th Floor,
Providence, RI 02903
jtarantino@apslaw.com

Rob Stolzman, Esq.
One Citizens Plaza, 8th Floor ,
Providence, RI 02903
RStolzman@apslaw.com

Robert Corrente
100 Westminster Street, Suite 710
Providence, RI 02903
rcorrente@whelancorrente.com

Michael Marcello, Esq.
One Citizens Plaza, Suite 1120
Providence, RI 02903
Michael.marcello@lewisbrisbois.com

John Dorsey
55 Pine Street, 3rd Fl.
Providence, RI 02903
jdorsey@frlawri.com

/s/ Charles D. Blackman