



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

September 23, 2013

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

RE: **Docket No. C-2013-2380662**

Dear Secretary Chiavetta:

Enclosed for filing please find the Department's *Answer to Letter/Motion Filed by Butler County* 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,

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
Lawrence M. Cernansky, District Grade Crossing Engineer, District 10-0

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2013 SEP 23 PM 3:09

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ALEX MCCLINCHIE,

Complainant,

v.

BUFFALO & PITTSBURGH RAILROAD
INC., BUTLER COUNTY, BOROUGH
OF VALENCIA, DEPARTMENT OF
TRANSPORTATION,

Respondents.

Complaint Docket
No. C-2013-2380662

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ANSWER TO LETTER/MOTION FILED BY BUTLER COUNTY

AND NOW, comes the Commonwealth of Pennsylvania, Department of Transportation (“Department”), by and through its counsel, Nicholas D. Mertens, Assistant Counsel, and states the following in support of its Answer to the Letter/Motion of the Butler County Board of Commissioners submitted to the Pennsylvania Public Utility Commission (“Commission”) Secretary’s Bureau on September 9, 2013:

1. On August 26, 2013, U.S. Representative Mike Kelly (Third District, Pennsylvania), on behalf of constituent Alex McClinchie (“Complainant”), initiated the present matter, before the Commission, by filing a Formal Complaint.
2. The Complainant alleges that the subject crossing, where SR 3007 (Three Degree Road) crosses, at-grade, a single track of the Buffalo and Pittsburgh Railroad, Inc. (“Railroad”) in the Borough of Valencia (“Borough”), Butler County (“County”), is in a “deplorable

condition” and demands that the crossing be repaired to the condition of a similar timber crossing in the neighboring Mars Borough.

3. The Commission named the Department, Railroad, County, and the Borough as Respondents in the present matter.
4. On September 9, 2013, the Department received correspondence from the County’s Board of Commissioners stating that the County “is not named as a Respondent” to the Complaint and that the Complaint does not involve “any County-owned or maintained facility.” A true and correct copy of the County’s Letter is attached hereto and marked as “Exhibit A.”
5. Inasmuch as the County’s Letter is deemed as an Answer to the Complaint and Motion to Dismiss itself as a concerned party in the present matter, the Department files the foregoing Answer.

The County is a Concerned Party to the Present Complaint

6. Paragraphs One (1) through Five (5) are incorporated herein as if set forth at length.
7. The Commission has subject matter jurisdiction over the Complaint pursuant to 66 Pa.C.S. § 701.
8. The Commission has the exclusive jurisdiction over the construction, relocation, alteration, suspension, and abolition of highway-rail crossings. 66 Pa.C.S. § 2702.
9. Additionally, the Commission has exclusive authority to allocate costs, occasioned by the construction, relocation, alterations, protection, or abolition of public highway-rail crossings, upon specific concerned parties including, but not limited to, municipal corporations. 66 Pa.C.S. § 2704(a).

10. The Commission determines which parties are “concerned” or “interested” within the meaning of 66 Pa.C.S. §§ 2704 & 2702. *City of Chester v. Pa. P.U.C.*, 408 A.2d 552, 553 (Pa. Cmwlth. 1979).
11. The Public Utility Code defines “municipal corporation” as “[a]ll cities, boroughs, towns, townships, or **counties of this Commonwealth**, and also any public corporation, authority, or body whatsoever created or organized under any law of this Commonwealth for the purpose of rendering any service similar to that of a public utility.” 66 Pa.C.S. § 102 (emphasis added).
12. Pursuant to 52 Pa. Code § 3.361(a), the Commission properly named the Department, Railroad, Borough, and County as respondents in the present.¹
13. The subject crossing is located within the Borough of Valencia, Butler County—the County does not dispute this fact.
14. The Commission has routinely determined that a county is a “concerned” party by virtue that a subject crossing is located within the county despite the fact that the county does not maintain the subject highway. *See City of Chester*, 408 A.2d at 554. *See also PennDOT v. Pa. P.U.C.*, 469 A.2d 1149 (Pa. Cmwlth. 1983); *In re: Colebrook Road*, 2010 Pa. PUC LEXIS 1592 (Commission Opinion and Order entered Sept. 17, 2010).
15. As such, the County is a concerned party within the meaning of the Public Utility Code and Title 52 of the Pennsylvania Code.

¹ Section 3.361(a) reads:

Whenever a complaint is made under section 2702 of the act (relating to construction, relocation, suspension and abolition of crossings) that a crossing is dangerous or inadequate and requires *reconstruction, relocation, alteration or abolition, public utilities, owners of the railroad right-of-way and **municipal corporations concerned*** and, if applicable, the Department of Transportation, will be made parties respondent.

52 Pa. Code § 3.361(a) (emphasis added).

WHEREFORE, the Department of Transportation respectfully requests that the Pennsylvania Public Utility Commission deny the Letter/Motion, dated September 9, 2013, filed by the Butler County Board of Commissioners in above captioned matter.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



Nicholas D. Mertens
Assistant Counsel
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel
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Harrisburg, PA 17105-8212
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Fax Number (717) 772-2741
Pennsylvania Attorney I.D. Number 313998
nimertens@pa.gov

DATED: September 23, 2013

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County of Butler Board of Commissioners

124 W. Diamond Street, PO Box 1208, Butler, PA 16003-1208
Phone 724.284.5100 Fax 724.284.5400 TDD 724.284.5473

Commissioners

William L. McCarrier, *Chairman*
A. Dale Pinkerton, *Vice Chairman*
James Eckstein, *Secretary*



Dir. of Adm./Chief Clerk
Amy Wilson

Solicitor
Michael K. English

September 9, 2013

Secretary of the Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

IN RE: Alex McClinchie vs. Buffalo & Pittsburgh Railroad and Penndot
Complaint # C-2013-2380662 – Date Served: August 29, 2013

Dear Secretary Chiavetta:

The County of Butler is in receipt of the above-referenced Complaint. Please be advised that Butler County is not named as a Respondent in this Complaint filed on behalf of Alex McClinchie. None of the allegations within the Complaint involve any County-owned or maintained facility.

Therefore, the County of Butler will not be appearing in this matter and we are notifying you and all named respondents as a courtesy.

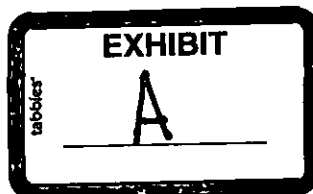
Should you have any questions, please do not hesitate to contact me.

Very truly yours,


Michael K. English
Butler County Solicitor

cc: Buffalo & Pittsburgh Railroad, Inc.
Penndot
Alex McClinchie
Borough of Valencia – Attn: Douglas Weinrich

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ALEX MCCLINCHIE,

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v.

BUFFALO & PITTSBURGH RAILROAD
INC., BUTLER COUNTY, BOROUGH
OF VALENCIA, DEPARTMENT OF
TRANSPORTATION,

Respondents.

Complaint Docket
No. C-2013-2380662

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Department's *Answer to Letter/Motion Filed by Butler County* was served upon the parties below by First-Class mail; postage prepaid this 23rd day of September, 2013:

Eric M. Hocky, Esq.
Clark Hill Thorp Reed
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103

Marci Mustello
House of Representatives
Representative Mike Kelly
101 East Diamond Street
Suite 218
Butler, PA 16001

Michael English
Butler County Solicitor
P.O. Box 1208
Butler, PA 16003

Alex McClinchie
1776 Fredow Way
Valencia, PA 16059

Borough of Valencia
61 Almira Street
Valencia, PA 16059

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



Alicia Adair
Legal Assistant to Nicholas D. Mertens
Assistant Counsel
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Harrisburg, PA 17105-8212
Telephone No. (717) 787-3128

DATED: September 23, 2013

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