



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

February 4, 2014

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

RE: **Docket No. C-2014-2400626**

Dear Secretary Chiavetta:

Enclosed for filing please find the Department's *Notice of Appearance and Answer to Complaint*, 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 "N. D. Mertens".

Nicholas D. Mertens
Assistant Counsel

Enclosure

220/NDM:aca

cc: Parties of Record
Eric M. Hocky, Esq.
Mark J. Chappell, P.E., Chief, Utilities and Right-of-Way Section
Lawrence M. Cernansky, P.E., District Grade Crossing Engineer, District 10-0

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

EVANS CITY BOROUGH,	:	
	:	
Complainant,	:	Complaint Docket
	:	No. C-2014-2400626
	:	
v.	:	
	:	
BUFFALO & PITTSBURGH RAILROAD	:	Electronically Filed
INC., BUTLER COUNTY,	:	
DEPARTMENT OF	:	
TRANSPORTATION,	:	
	:	
Respondents.	:	

NOTICE OF APPEARANCE

Please enter the appearance of Nicholas D. Mertens, Assistant Counsel, on behalf of the Commonwealth of Pennsylvania, Department of Transportation, in the above-referenced action. I am authorized to accept service on behalf of the Department in this matter. On the basis of this notice, I request a copy of each document hereafter issued by the Commission in this matter. I will accept service on behalf of the individual at the address below which may be deleted from the service list:

PENNDOT, OFFICE OF CHIEF COUNSEL
WILLIAM CRESSLER, ESQUIRE
P.O. BOX 8212
HARRISBURG, PA 17105-8212

Respectfully submitted,



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
Fax Number (717) 772-2741
Pennsylvania Attorney I.D. Number 313998
nimertens@pa.gov

DATED: February 4, 2014

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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	:	
Complainant,	:	Complaint Docket
	:	No. C-2014-2400626
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TRANSPORTATION,	:	
	:	
Respondents.	:	

ANSWER TO COMPLAINT

AND NOW, comes the Commonwealth of Pennsylvania, Department of Transportation (“Department”), by and through its counsel, Nicholas D. Mertens, Assistant Counsel, answers the Complaint of the Evan City Borough as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Denied. Specific proof thereof is demanded.
7. Paragraph Seven (7) contains conclusions of law and not factual allegations to which an answer is required. By way of further answer, the Department denies that the crossing constitutes an immediate danger to safety pursuant to 66 Pa.C.S. § 2702(f). Specific proof thereof is demanded.
8. Paragraph Eight (8) is a prayer for relief to which no response is required.

- a. Admitted. By way of further answer, the Department avers that the Respondent, Buffalo & Pittsburgh Railroad, Inc., is responsible for all maintenance of the crossing, including, but not limited to, the rail seal and asphalt crossing surface to points located twenty-four (24") inches outside the rails. *See* PUC Docket No. A-2009-2093111 (Secretarial Letter, dated July 29, 2009); PUC Docket No. A-00108898 (Commission Order, entered Jan. 28, 1993).
- b. Neither Admitted nor Denied. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph Eight-b (8b) of the Complaint.
- c. Denied. Specific proof thereof is demanded.
- d. Neither Admitted nor Denied. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph Eight-d (8d) of the Complaint.

WHEREFORE, the Department of Transportation respectfully requests that a field conference be scheduled in this matter.

Respectfully submitted,



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
Fax Number (717) 772-2741
Pennsylvania Attorney I.D. Number 313998
nimertens@pa.gov

DATED: February 4, 2014

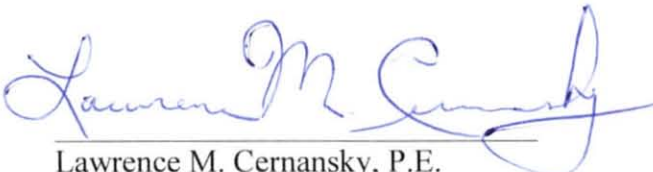
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TRANSPORTATION,	:	
	:	
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VERIFICATION

I, Lawrence M. Cernansky, P.E., District Grade Crossing Engineer, Commonwealth of Pennsylvania, Department of Transportation, in the foregoing document, make the following statement subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authority, and do state that as the District Grade Crossing Engineer for the Commonwealth of Pennsylvania, Department of Transportation, I am authorized to make this statement on behalf of the Commonwealth of Pennsylvania, Department of Transportation, and that the facts set forth in the foregoing document are true and correct to the best of my information, knowledge and belief.

DATED: 1-29-2014


Lawrence M. Cernansky, P.E.
District Grade Crossing Engineer

Commonwealth of Pennsylvania
Department of Transportation

JAN 31 2014

Office of Chief Counsel

BEFORE THE		
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CERTIFICATE OF SERVICE

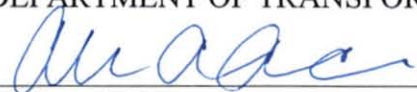
I hereby certify that a true and correct copy of the Department's **Notice of Appearance and Answer to Complaint** was served upon the parties listed below, in accordance with the requirements of § 1.54, by first-class mail, postage prepaid this 4th day of February, 2014:

Michael D. Gallagher, Esq.
Murrin, Taylor, Flach, Gallagher & May
Diamond Park Place
110 East Diamond Street
Butler, PA 16001-5999

Michael K. English, Esq.
Solicitor, County of Butler
124 West Diamond Street
P.O. Box 1208
Butler, PA 16003-1208

Buffalo & Pittsburgh Railroad, Inc.
201 North Penn Street
Punxsutawney, PA 15767

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



Alicia Adair
Legal Assistant to Nicholas D. Mertens
Assistant Counsel
Commonwealth of Pennsylvania
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P.O. Box 8212
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Telephone No. (717) 787-3128

DATED: February 4, 2014