



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

February 7, 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 *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,

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

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 January 23, 2014:

1. On or about January 14, 2014, the Evans City Borough (“Complainant”) initiated the present matter, before the Commission, by filing a Formal Complaint.
2. The Complainant alleges that the subject crossing, where SR 0068 (West Main Street) crosses, at-grade, a single track of the Buffalo and Pittsburgh Railroad, Inc. (“Railroad”) in the Evans City Borough, Butler County (“County”), “constitutes an immediate danger to safety as set forth in 66 Pa. C.S.A. §2702(f).”
3. The Commission named the Department, Railroad, and County as Respondents in the present matter.

4. On January 28, 2014, 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, and County as respondents in the present matter.¹
13. The subject crossing is located within Butler County—the County does not dispute this fact.
14. The Commission has routinely determined that a county government constitutes a “concerned” party by virtue that a subject crossing is located within its boundaries despite the fact that it 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*, PUC Docket No. I-00000088, 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 January 23, 2014, 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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Pennsylvania Attorney I.D. Number 313998
nimertens@pa.gov

DATED: February 7, 2014

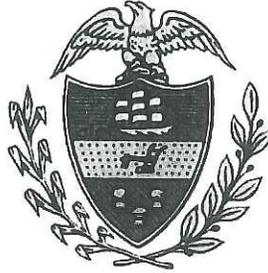
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County of Butler Board of Commissioners

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

January 23, 2014

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

IN RE: Evans City Borough vs. Buffalo & Pittsburgh Railroad, Penndot, Butler County
Complaint # C-2014-2400626 – Date Served: January 14, 2014

Dear Secretary Chiavetta:

I am in receipt of the above-referenced Complaint served upon Butler County, James Eckstein County Solicitor. Please be advised that Butler County is not named as a Respondent in this Complaint filed on behalf of Evans City Borough. None of the allegations within the Complaint involve any County-owned or maintained facility.

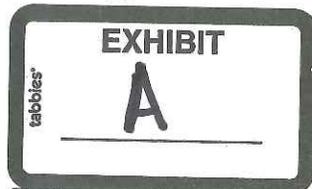
Therefore, the County of Butler will not be appearing in this matter and we are notifying you and all named respondents as a courtesy.

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
Evans City Borough Council – Kim Armstrong, President
Michael D. Gallagher, Esquire



DOT-2014-5611 42

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Complainant,	:	Complaint Docket
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	:	
v.	:	
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BUFFALO & PITTSBURGH RAILROAD	:	Electronically Filed
INC., BUTLER COUNTY,	:	
DEPARTMENT OF	:	
TRANSPORTATION,	:	
	:	
Respondents.	:	

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 listed below, in accordance with the requirements of § 1.54, by first-class mail, postage prepaid this 7th 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

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



Alicia Adair
Legal Assistant to Nicholas D. Mertens

February 7, 2014