

# CLARK HILL

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July 6, 2018

## VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
P.O. Box 3265  
Harrisburg, PA 17105-3265

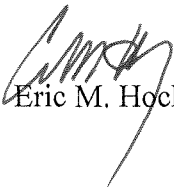
Re: Docket No. C-2016-2580970

Dear Secretary Chiavetta:

Enclosed for electronic filing in the above-referenced proceeding is the Prehearing Conference Memorandum of Buffalo & Pittsburgh Railroad Inc. Copies have been served on Administrative Law Judge David A. Salapa and the parties of record as shown in the Certificate of Service.

Respectfully,

CLARK HILL PLC

  
Eric M. Hocky

EMH/dml  
Encl.

cc: All parties shown on the Certificate of Service

BEFORE THE  
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joel Royer,	:	
Complainant	:	<i>Electronically filed</i>
	:	
v.	:	
	:	
Buffalo & Pittsburgh Railroad, Inc.,	:	No.: C-2016-2580970
Pennsylvania Department of Transportation,	:	
County of Indiana, and Borough of Indiana	:	
	:	
Respondents.	:	
	:	

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**PREHEARING CONFERENCE MEMORANDUM OF  
BUFFALO & PITTSBURGH RAILROAD, INC.**

Respondent Buffalo & Pittsburgh Railroad, Inc. (“BPRR”) files this Memorandum in response to the Prehearing Conference Order issued on May 11, 2018, by Administrative Law Judge David A. Salapa. BPRR states as follows:

**A. Service List**

BPRR will be represented on the service list by its outside counsel whose contact information is as follows:

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**B. Statement regarding possible settlement of the case.**

The alleged “issue” with the crossing is that there is an elevation difference where the concrete crossing panels of the rail line meet the westbound concrete roadway approach slab. Following a field conference, without admitting that the crossing is unsafe or that the elevation

difference poses an immediate danger to the safety and welfare of the travelling public, the Pennsylvania Department of Transportation (“PennDOT”) indicated that it was willing to mill the vertical lip to reduce the abruptness of the approach slab. PennDOT was willing to perform that work at PennDOT’s cost, if BPRR would provide flagging at BPRR’s expense. PennDOT proposed incorporating the work into a 2019 programmed project. As a compromise and to settle this matter, BPRR confirms that it would provide flagging at BPRR’s expense, if PennDOT’s proposal were accepted as a settlement of this matter.

There was also discussion at a field conference, regarding a temporary fix under which PennDOT would install a wedge of asphalt to reduce the abruptness of the approach slab at PennDOT’s cost with BPRR providing flagging at BPRR’s expense. However, BPRR understands that PennDOT did not agree to the proposal. If the proposal would settle the matter, then BPRR would agree to provide flagging at BPRR’s expense.

**C. Proposed plan and schedule of discovery.**

BPRR is not sure whether discovery will be necessary in this proceeding; however, that cannot be finally determined until after the Commission and the Administrative Law Judge issue the Questions and Procedure. BPRR suggests that the parties be provided a 60-day period to complete discovery after the Questions and Procedure are issued.

**D. Other proposed orders with respect to discovery.**

None.

**E. Proposed schedule for submission of written testimony, conducting an in-person hearing, and submission of briefs.**

BPRR suggests the following litigation schedule:

Close of discovery	Day -0-
Direct testimony	Day 42

Rebuttal testimony	Day 56
Hearings	After Day 70, as set by the ALJ
Main Briefs	42 days after transcript of hearings filed
Reply Briefs	28 days after due date for main briefs

BPRR has not had the opportunity to review the litigation schedule with the other parties to this proceeding, but will be prepared to discuss the litigation schedule at the prehearing conference.

**F. Witnesses BPRR expects to call and subject matter of their testimony.**

The following is a listing of proposed witnesses of BPRR and the proposed areas of testimony.

- (a) A corporate representative of BPRR, 201 North Penn Street, Punxsutawney, PA 15767. The representative of BPRR will provide testimony regarding BPRR's use of the rail line at the crossing, the safety of the crossing for railroad operations, the construction and maintenance of the crossing, and why any repairs and costs related to repair of the crossing will not benefit BPRR and should be allocated to a party other than BPRR.
- (b) BPRR reserves the right to present additional witnesses as it determines necessary based on the evidence and issues presented by other parties.

**G. List of issues and sub-issues of this proceeding, and statement of BPRR's position.**

- (a) This is a formal complaint proceeding brought by Mr. Royer who will have the burden to establish that the crossing is not safe for the traveling public.

**BPRR's position:** The crossing is safe for railroad operations. BPRR takes no formal position on the safety of the crossing for the travelling public, but supports

PennDOT's position that the crossing does not appear to pose an immediate danger to the safety and welfare of the travelling public.

(b) If it were determined that the crossing is not safe for the travelling public, then the following additional issues would need to be addressed:

(1) What repairs are necessary to make the crossing safe for the travelling public.

**BPRR's position:** BPRR takes no position on what repairs would make the crossing safe for the travelling public.

(2) What party or parties will benefit from the repairs.

**BPRR's position:** BPRR will not benefit from the repairs to the crossing. Any repairs would benefit PennDOT as the party responsible for the roadway (it is a state highway) and for the users of the roadway including local residents. To the extent local residents would benefit, the Borough of Indiana ("Borough") and the County of Indiana ("County") would also benefit.

(3) What party or parties should perform the repairs.

**BPRR's position:** Since the roadway is a state highway, PennDOT should perform the repairs. BPRR should provide flagging to protect railroad operations during the performance of the repair work.

(4) What party or parties should bear the cost of the repairs.

**BPRR's position:** PennDOT should be assigned the cost of the repairs, including reimbursement of BPRR's flagging costs. It would not be unreasonable for the Commission to assign a portion of the costs to the

Borough and the County. BPRR should not be assigned any of the costs of repairs as it will receive no benefit from the repairs. Further, BPRR has properly maintained the crossing, and any safety issues at the crossing were not caused by BPRR's maintenance of or operations over the crossing.

**H. Statement of evidence BPRR intends to present on each of the issues.**

(a) This is a formal complaint proceeding brought by Mr. Royer who will have the burden to establish that the crossing is not safe for the traveling public.

**BPRR's evidence:** BPRR will present testimony regarding the construction of the crossing and the safety of the crossing for railroad operations. Cross-examination of witnesses of other parties.

(b) If it were determined that the crossing is not safe for the travelling public, then the following additional issues would need to be addressed:

(1) What repairs are necessary to make the crossing safe for the travelling public.

**BPRR's evidence:** None other than cross-examination of witnesses of other parties.

(2) What party or parties will benefit from the repairs.

**BPRR's evidence:** BPRR will present evidence regarding the safety of the crossing for railroad operations, and how BPRR will not receive any benefit from the repairs to the crossing to make it safe for the travelling public. Cross-examination of witnesses of other parties.

(3) What party or parties should perform the repairs.

**BPRR's evidence:** None other than cross-examination of witnesses of other parties.

(4) What party or parties should bear the cost of the repairs.

**BPRR's evidence:** BPRR will present evidence that has properly maintained the crossing, and any safety issues at the crossing were not caused by BPRR's maintenance of or operations over the crossing. Cross-examination of witnesses of other parties.

Respectfully submitted,



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Attorneys for  
Buffalo & Pittsburgh Railroad, Inc.

Dated: July 6, 2018

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document by U.S. first class mail, postage prepaid, upon the participants listed below, in accordance with the requirements of Section 1.54 (relating to service by a participant). Copies have also been sent by email to the parties shown below with an email address.

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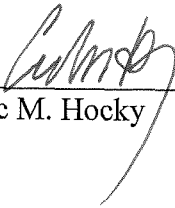
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Eric M. Hocky

Dated: July 6, 2018