



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE
Bp8 2580970

December 12, 2018

VIA ELECTRONIC FILING

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

Re: Joel Royer v. Buffalo & Pittsburgh Railroad, Inc., Pennsylvania
Department of Transportation, County of Indiana, and Borough of Indiana
Docket No. C-2016-2580970
**(Proposed Findings of Fact, Conclusions of Law, and Ordering
Paragraphs in Lieu of Brief)**

Dear Secretary Chiavetta:

Enclosed for electronic filing are the Proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs of the Buffalo & Pittsburgh Railroad Company, Inc., the Pennsylvania Department of Transportation, the County of Indiana, the Borough of Indiana, and the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement in the above matter. These items are being filed in lieu of briefs in the above docket.

Copies have been served on the parties of record in accordance with the enclosed Certificate of Service.

Sincerely,

A handwritten signature in black ink, appearing to read "Bradley R. Gorter", with a long horizontal flourish extending to the right.

Bradley R. Gorter
Prosecutor
PA Attorney ID No. 312666

Enclosure

cc: Parties of record
Administrative Law Judge David A. Salapa
Administrative Law Judge Andrew M. Calvelli

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joel Royer,	:	
	:	
Complainant	:	Docket No. C-2016-2580970
	:	
v.	:	
	:	Electronically Filed
Buffalo & Pittsburgh Railroad, Inc.,	:	
Pennsylvania Department of Transportation,	:	
County of Indiana, Borough of Indiana,	:	
	:	
Respondents	:	

**JOINT PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDERING PARAGRAPHS**

Pursuant to the instruction of Administrative Law Judges David A Salapa and Andrew M. Calvelli during the November 13, 2018, hearing in this matter, Buffalo & Pittsburgh Railroad, Inc. (“B&P”), the Pennsylvania Department of Transportation (“PennDOT”), the County of Indiana (“County”), the Borough of Indiana (“Borough”), and the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) file these Joint Proposed Findings of Fact, Conclusions of Law, and Proposed Ordering Paragraphs.

I. PROPOSED FINDINGS OF FACT

1. Complainant is Joel Royer, an individual residing at 991 Barclay Rd., Indiana, PA 15701. Formal Complaint, 12/20/16, p. 1; Royer St. 1, p. 22.
2. On December 20, 2016, Complainant filed with the Commission a Formal Complaint alleging that the crossing surface through the subject crossing had sunk

between one (1) and one-and-one-half (1.5) inches below the approach roadway surfaces.
Compl., p. 1.

3. In his Formal Complaint, Complainant alleged that the difference in elevation causes significant impacts to vehicle tires and could cause safety hazards due to impacts to the roadway, vehicles, and the railbed. Compl., p. 1-2.

4. Complainant named Buffalo & Pittsburgh Railroad, Inc. ("B&P") as Respondent to his Complaint filed December 20, 2016. Compl., p. 1.

5. The Commission also named PennDOT, the County and the Borough as Respondents.

6. B&P, PennDOT and the Borough all believe that the current condition of the subject crossing is safe for railroad operations and is not a danger to the travelling public. B&P St. 1, pp. 2, 6; PennDOT St.1, p. 4; Borough St. 1, p. 1.

7. B&P is a New York railroad corporation with an office mailing address of 201 North Penn Street, P.O. Box 477, Punxsutawney, PA 15767. B&P St. 1, p. 1.

8. B&P is the owner of the railroad right-of-way through the subject crossing. B&P St. 1, p.3.

9. The crossing that is the subject of this proceeding is located in Indiana Borough, Indiana County, Pennsylvania. I&E St. 1, p. 3; PennDOT St. 1, p. 2.

10. The subject crossing is located where Grant Street and Oakland Avenue and their associated pedestrian sidewalks intersect and cross, at-grade, a single track right-of-way of B&P. I&E St. 1, p. 3; PennDOT St. 1, p. 2.

11. B&P currently operates two trains per day over the crossing, typically between 6:00 PM and 6:00 AM at a maximum speed of 10 mph. B&P St. 1, p. 3.
12. The Average Daily Traffic through the crossing is 8,993, with two (2) percent truck traffic and forty-three (43) buses. PennDOT St. 1, p. 3.
13. The crossing is protected by active warning devices in the form of flashing warning lights, gates, and traffic signal preemption. I&E St. 1, p. 4.
14. The crossing surface is constructed of concrete panels approximately 9 feet long, the center panels being approximately four (4) feet wide and the outside panels being approximately two (2) feet wide, all of which are anchored to the railroad ties. I&E St. 1, p. 4.
15. The concrete panels extend through the entire crossing surface and the pedestrian sidewalks on the outside edges of Grant Street and Oakland Avenue. I&E St. 1, p. 4.
16. The Grant Street approach to the crossing is constructed of bituminous pavement. I&E St. 1, p. 4.
17. The Oakland Avenue approaches are constructed of eight (8) inch thick reinforced concrete pavement. I&E St. 1, p. 5.
18. The June 15, 2004, Commission Order at Docket No. A-00117322 assigns PennDOT maintenance responsibility for the highway approaches on Oakland Avenue and the west approach on Grant Street up to the concrete crossing surface. PennDOT St. 1, p. 4; PennDOT St. 1, Ex. C1.

19. The June 15, 2004, Commission Order at Docket No. A-00117322 assigns Indiana Borough maintenance responsibility for the east highway approach on Grant Street up to the concrete crossing surface. Borough St. 1, p. 1; PennDOT St. 1, Ex. C1.

20. The June 15, 2004, Commission Order at Docket No. A-00117322 assigns B&P maintenance of the railroad crossing surface and B&P's facilities within the limits of the crossing. B&P St. 1, p. 3; B&P St. 1, Ex. 1.

21. PennDOT, as part of PennDOT's maintenance responsibility, currently has scheduled a resurfacing project for Oakland Avenue through the crossing. PennDOT St. 1, pp. 4-5.

22. As part of the resurfacing project, PennDOT agrees, at PennDOT's expense, to address the elevation differences on the Oakland Avenue approaches and the west approach to Grant Street. PennDOT St. 1, pp. 4-5.

23. PennDOT further agrees, at PennDOT's expense, to address the elevation differences on the sidewalks on Oakland Avenue to bring the sidewalks into compliance. PennDOT St. 1, pp. 4-5.

24. The Borough agrees, as part of the Borough's maintenance responsibility and at the Borough's expense, to mill the road surface [of Grant Street] on the east and west side of the railroad tracks south of the Oakland Avenue right of way, repave the milled surface to the level of the concrete railroad crossing, and grade the sidewalk to meet the concrete railroad crossing on the southernmost portion of the crossing. Borough St. 1, p. 1.

25. B&P agrees, at B&P's expense, to provide flagging for the resurfacing work of PennDOT and the Borough. B&P St. 1, p. 7; PennDOT St. 1, p. 5.

26. As part of its regular maintenance, B&P agrees, at B&P's expense, to replace two (2) concrete panels in the crossing surface. B&P St. 1, p. 4.

27. PennDOT agrees, at PennDOT's expense, to provide traffic control in connection with B&P's maintenance work. PennDOT St. 1, p. 5; B&P St. 1, p. 7.

II. PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa. C.S. §§ 2702 and 2704.

2. The Commission has the authority to order the construction, reconstruction, alteration, relocation, repair, maintenance, protection, suspension or abolition of railroad crossings, as well as the authority to determine and order which concerned parties should perform such work, in order to prevent accidents and promote the safety of the public. 66 Pa. C.S. §§ 2702 and 2704.

3. In apportioning costs in railroad crossing cases, the Commission is not limited to any fixed rule but takes into consideration all relevant facts, the only requirement being that its order be just and reasonable. Bell Atlantic-Pa, Inc. v. Pa. Pub. Util. Comm'n, 672 A.2d 352 (Pa. Cmwlth. 1996), Greene Twp. Board of Supervisors v. Pa. Pub. Util. Comm'n, 668 A.2d 615 (Pa. Cmwlth 1995).

4. Among the relevant facts the Commission may consider in allocating costs

are the following: (1) which party built the crossing Pennsylvania Dept. of Trans. v. Pa. Pub. Util. Comm'n, 464 A.2d 645 (Pa. Cmwlth. 1983); (2) whether the roadway existed before or after the construction of the crossing Pennsylvania Dept. of Trans. v. Pa. Pub. Util. Comm'n, 464 A.2d 645 (Pa. Cmwlth. 1983); (3) relative benefit conferred on each party with the construction of the crossing Pennsylvania Dept. of Trans. v. Pa. Pub. Util. Comm'n, 346 A.2d 371 (Pa. Cmwlth. 1975); (4) whether a party is responsible for the deterioration of the crossing which has led to the need for its repair, replacement or removal Pennsylvania Dept. of Trans. v. Pa. Pub. Util. Comm'n, 469 A.2d 1149 (Pa. Cmwlth. 1983); and (5) the relative benefit that each party will receive from the repair, replacement or removal of the crossing Pittsburgh and L. E. R. Co. v. Pa. Pub. Util. Comm'n, 556 A.2d 944 (Pa. Cmwlth. 1989).

5. The Commission is not limited to the facts it can consider in allocating costs. Bell Atlantic-Pa, Inc., v. Pa. Pub. Util. Comm'n, 672 A.2d 352 (Pa. Cmwlth. 1996); AT&T v. Pa. Pub. Util. Comm'n, 737 A.2d 201(Pa. 1999); PECO Energy Co. v. Pa. Pub. Util. Comm'n, 791 A.2d 1155 (Pa. 2002); Norfolk Southern Rwy Co. v Pa. Pub. Util. Comm'n, 971 A.2d 545 (Pa. Cmwlth. 2009).

III. PROPOSED ORDERING PARAGRAPHS

1. That PennDOT shall continue to maintain the approach roadways on Oakland Avenue and the west approach of Grant Street pursuant to the Commission's June 15, 2004, order at docket A-00117322.

2. That B&P shall continue to maintain the crossing surfaces pursuant to the Commission's June 15, 2004, order at docket A-00117322.

3. That the Borough shall continue to maintain the east approach roadway on Grant Street pursuant to the Commission's June 15, 2004, order at docket A-00117322.

4. That any relocation of, changes in and/or removal of any adjacent structures, equipment or other facilities of any non-carrier public utility company or municipal authority, which may be required as incidental to the removal of the abutment substructures, shall be made by said public utility company or municipal authority, at its initial cost and expense, and in such a manner as will not interfere with the alteration of the crossing; and such relocated or altered facilities thereafter shall be maintained by said public utility company or municipal authority, at its sole cost and expense.

5. That PennDOT, the Borough and B&P shall each notify the Commission's Bureau of Technical Utility Services when it has completed its planned maintenance work at the subject crossing.

6. That, upon completion of the planned maintenance work by PennDOT, the Borough and B&P, the Commission's Bureau of Technical Utility Services shall notify the Commission and the Complaint of Joel Royer at Docket No. C-2016-2580970 shall be deemed satisfied and the matter closed.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joel Royer,	:	
Complainant	:	
	:	
v.	:	
	:	Docket No. C-2016-2580970
Buffalo & Pittsburgh Railroad, Inc.,	:	
Pennsylvania Department of	:	
Transportation, County of Indiana, and	:	
Borough of Indiana,	:	
Respondents	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

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Dated: December 12, 2018