



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMONWEALTH KEYSTONE BUILDING  
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

November 4, 2020

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Re: Investigation upon the Commission's motion into matters pertaining to the proper safety of the traveling public and disposition of the crossing where State Route SR0268, crosses over a railroad tunnel formally used by Bessemer and Lake Erie Railroad in Fairview Township, Butler County and where State Route SR0068 formerly crossed, below grade, the track of Bessemer and Lake Erie Railroad in Bradys Bend Township, Armstrong County.  
Docket No. I-2019-3012769

**I&E Prehearing Conference Memorandum**

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Bureau of Investigation and Enforcement's ("I&E") **Prehearing Conference Memorandum** in the above-referenced matter.

Copies have been served on the parties of record in accordance with the Certificate of Service. If you have any questions, please contact the undersigned.

Sincerely,

Kayla L. Rost  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney ID No. 322768  
(717) 787-1888  
[karost@pa.gov](mailto:karost@pa.gov)

KLR/ac  
Enclosures

cc: Per Certificate of Service  
Ronald J. Hull, P.E. (*via email - rhull@pa.gov*)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation upon the Commission’s motion into :  
matters pertaining to the proper safety of the :  
traveling public and disposition of the crossing :  
where State Route SR0268, crosses over a :  
railroad tunnel formally used by Bessemer and : Docket No. I-2019-3012769  
Lake Erie Railroad in Fairview Township, Butler :  
County and where State Route SR0068 formerly :  
crossed, below grade, the track of Bessemer and :  
Lake Erie Railroad in Bradys Bend Township, :  
Armstrong County. :

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**PREHEARING CONFERENCE MEMORANDUM  
OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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**TO ADMINISTRATIVE LAW JUDGE MARY D. LONG:**

The Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) files this Prehearing Conference Memorandum in accordance with Deputy Chief Administrative Law Judge (“ALJ”) Mark A. Hoyer’s Prehearing Conference Order dated October 7, 2020.

**I. HISTORY OF THE PROCEEDING**

By Secretarial Letter dated April 30, 2002, Docket No. A-00117858, the Commission abolished 27 of 29 crossings on the abandoned line of Bessemer and Lake Erie Railroad. The two remaining crossings located at SR0268 and SR0068 were to be subject to a future application and Commission action.

In 2018, the Commission was contacted by the Pennsylvania Department of Transportation (“PennDOT”) concerning the disposition of the two crossings. An informal investigative field conference was held on June 26, 2018 and attended by the Commission’s Bureau of Technical Utility Services-Rail Safety (“Rail Safety”), PennDOT, CN/Bessemer and Lake Erie Railroad Company, and six (6) local homeowners located near the SR0068 tunnel.

By Order dated October 3, 2019, the Commission instituted an investigation for the purpose of determining all matters relating to the abolition and safety of the crossings where State Route SR0268 crosses, above grade, a track of Bessemer and Lake Erie Railroad in Fairview Township, Butler County, and where State Route SR0068 crosses, below grade, a track of Bessemer and Lake Erie Railroad in Bradys Bend Township, Armstrong County. The investigation was instituted to determine the future disposition of the crossings, what work shall be performed, and the allocation of cost of any work performed.

On October 5, 2020, an Initial Telephone Prehearing Conference Notice was issued, scheduling a telephonic prehearing conference for November 10, 2020 before Deputy Chief ALJ Mark A. Hoyer. On October 7, 2020, a Prehearing Conference Order was issued, instructing the parties to submit a Prehearing Conference Memorandum prior to 12:00 p.m. on November 9, 2020.

On or about November 3, 2020, this matter was reassigned to ALJ Mary D. Long.

## **II. I&E PREHEARING CONFERENCE MEMORANDUM**

### **A. Service**

All service on, and communication to, I&E in this proceeding should be addressed to:

By Mail: Kayla L. Rost  
Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

By Telephone: (717) 787-1888<sup>1</sup>

By E-mail: [karost@pa.gov](mailto:karost@pa.gov)

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<sup>1</sup> Due to the closure of the Keystone Building, the undersigned currently does not have access to this telephone number and requests that the Parties correspond via email until further notice.

B. Statement Regarding Settlement

I&E is open and willing to discuss settlement of this matter. Currently, I&E is not aware of any settlement discussions at this time.

C. Plan and Schedule of Discovery

I&E proposes that discovery be conducted consistent with the Commission's regulation at 52 Pa. Code §§ 5.321, *et seq.*

D. Discovery Orders

I&E does not propose any modifications to the Commission's regulations pertaining to discovery at 52 Pa. Code §§ 5.321, *et seq.*

E. Proposed Litigation Schedule

I&E proposes the following litigation schedule:

1. Written direct testimony due on March 1, 2021.
2. Written rebuttal testimony due on April 1, 2021.
3. Witness schedule due 3 business days before the hearing.
4. Hearing to occur the week of May 3, 2021 or May 17, 2021.
5. Briefing schedule to be established at the hearing.

F. Names and Addresses of Witness(es) to be Presented

Ronald J. Hull, P.E.  
Senior Civil Engineer Manager  
Pennsylvania Public Utility Commission  
Bureau of Technical Utility Services - Rail Safety Section  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
(717) 418-3585  
[rhull@pa.gov](mailto:rhull@pa.gov)

I&E reserves the right to modify the identified witness and/or present additional witnesses as it deems necessary based on the issues identified by the parties.

1. Issues to be Addressed

- a) The current condition of the crossings located at SR0268 and SR0068.
- b) Whether the two crossings should be abolished.
  - 1) Any plan for abolishment of the SR0068 tunnel should account for drainage and access to the tunnel's openings.
- c) Whether the two crossings pose a safety risk to the public, and, if so, what repairs or work must be completed to address those safety concerns.
  - 1) Whether any portion of the SR0068 tunnel collapsed and, if so, what work must be completed to address the collapse and any potential future collapses.
- d) Which party or parties are responsible for completing any work at the two crossings?
- e) Which party or parties are responsible for paying for any work that needs completed at the subject crossings?
- f) Which party or parties have future maintenance of the subject crossings?

2. Statement of Evidence to be Presented

Mr. Hull will testify to all matters pertaining to the public safety, present conditions, existing maintenance, future maintenance, and the disposition of the crossings located at SR0268 and SR0068. Mr. Hull may testify to additional matters based upon the issues identified by the parties.

G. Other

In light of the unknown condition of the SR0068 tunnel and its impact on public safety, I&E suggests that the parties take this opportunity to 1) discuss whether an engineering study of the tunnel should be performed in order to fully evaluate its current condition, stability, and any safety hazards present; and 2) determine the party that should conduct and bear the cost of such study.

Respectfully submitted,



Kayla L. Rost  
Prosecutor  
PA Attorney ID No. 322768

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
Phone: (717) 787-1888  
Email: [karost@pa.gov](mailto:karost@pa.gov)

Dated: November 4, 2020

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation upon the Commission's motion into :  
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County and where State Route SR0068 formerly :  
crossed, below grade, the track of Bessemer and :  
Lake Erie Railroad in Bradys Bend Township, :  
Armstrong County. :

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing **Prehearing Conference Memorandum** dated November 4, 2020, upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**Service by Electronic Mail Only**

Honorable Mary D. Long  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
301 Fifth Avenue  
Suite 220, Piatt Place  
Pittsburgh, PA 15222  
[malong@pa.gov](mailto:malong@pa.gov)

Jennifer Brown-Sweeney, Esquire  
Pennsylvania Department of Transportation  
Office of Chief Counsel  
P.O. Box 8212  
Harrisburg, PA 17105-8212  
[jbrownswee@pa.gov](mailto:jbrownswee@pa.gov)

Bradys Bend Township Supervisors  
1004 State Route 68  
East Brady, PA 16028  
[bbtownship@gmail.com](mailto:bbtownship@gmail.com)

Armstrong County Commissioners  
Armstrong County Courthouse  
450 East Market Street  
Kittanning, PA 16201  
[aspoole@co.armstrong.pa.us](mailto:aspoole@co.armstrong.pa.us)

**Service by First Class Mail Only**

Tracy Miller, General Manager  
CN/Bessemer & Lake Erie Railroad  
Company  
2800 Livernois Road  
Suite 220  
Troy, MI 48083

Ronald and Madeline Stitt  
1281 Kittanning Pike  
Chicora, PA 16025

Bruce and Rebecca Rodgers  
P.O. Box 429  
Chicora, PA 16025

Maria Thomas  
Planning Department  
P.O. Box 1208  
124 West Diamond Street  
5<sup>th</sup> Floor County Government Center  
Butler, PA 16003

Dean and Patricia Tascarella  
1270 Kittanning Pike  
Chicora, PA 16025

Paul R. Dorr, Chairman  
Fairview Township Supervisors  
1571 Hooker Road  
Karns City, PA 16041

Ann Marie Sherwin  
1276 Kittanning Pike  
Chicora, PA 16025

William and Kay Barnhart  
136 Boosel Road  
Chicora, PA 16025



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