



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

November 23, 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

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. :

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

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 Administrative Law Judge (“ALJ”) Mary D. Long’s Interim Order on Further Prehearing Conference dated November 13, 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 4, 2020, this matter was reassigned to ALJ Mary D. Long.

On November 10, 2020, ALJ Long conducted the prehearing conference which was attended by I&E and PennDOT. After some discussion, ALJ Long scheduled a further prehearing conference so that an attorney of the Bessemer and Lake Erie Railroad Company could be directly notified of the proceeding and given an opportunity to participate.

On November 12, 2020, counsel for the Bessemer and Lake Erie Railroad Company entered his appearance in this matter.

On November 13, 2020, an Interim Order on Further Prehearing Conference was issued, scheduling the further prehearing conference for December 1, 2020 and instructing the parties to submit prehearing conference memos by 3:00 p.m. on November 30, 2020.

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) 787-1888¹

By E-mail: karost@pa.gov

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.*

¹ 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.

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 May 3, 2021.
2. Written rebuttal testimony due on June 3, 2021.
3. Witness schedule due 3 business days before the hearing.
4. Hearing to occur the week of June 21, 2021 or June 28, 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

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 currently pose a safety risk to the public, and, if so, what repairs or work must be immediately 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

Dated: November 23, 2020

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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 23, 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

Jennifer Brown-Sweeney, Esquire
Pennsylvania Department of Transportation
Office of Chief Counsel
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Harrisburg, PA 17105-8212
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Armstrong County Commissioners
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Kittanning, PA 16201
aspoole@co.armstrong.pa.us

Bradys Bend Township Supervisors
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East Brady, PA 16028
bbtownship@gmail.com

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Service by First Class Mail Only

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Maria Thomas
Planning Department
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5th Floor County Government Center
Butler, PA 16003

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

William and Kay Barnhart
136 Boosel Road
Chicora, PA 16025

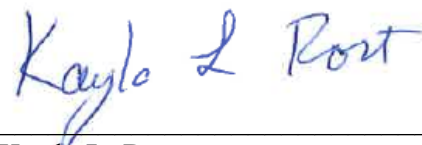
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