



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

June 29, 2021

Via Electronic Filing

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

Re: Knox Township v. Buffalo & Pittsburgh Railroad Inc.
Docket No. C-2019-3009358

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,

A handwritten signature in blue ink that reads 'Kayla L. Rost'.

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
William Sinick, P.E., C.B.S.I. (via email - wilsinick@pa.gov)
Michael L. Swindler, Deputy Chief Prosecutor (via email - mwindler@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Knox Township	:	
	:	
v.	:	Docket No. C-2019-3009358
	:	
Buffalo & Pittsburgh Railroad Inc.	:	

**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 Prehearing Conference Order dated June 9, 2021.

I. HISTORY OF THE PROCEEDING

By letter dated April 8, 2019, Knox Township filed a Formal Complaint against Buffalo & Pittsburgh Railroad Inc. alleging that there are three (3) overpasses¹ that are deteriorating, resulting in large pieces of concrete to fall on the roadway. Knox Township also alleged that the overpasses are too narrow for two-lane traffic and do not meet state requirements. Knox Township requested the removal of the overpasses. The Complaint was received by the Commission on April 10, 2019.

¹ While not specifically identified, the three (3) overpasses at issue are Harriger Hollow Road (DOT 863 296 J), East Bellport Road (DOT 863 302 K), and Ramsaytown Road (DOT 863 298 X).

On May 6, 2019, the Pennsylvania Department of Transportation (“PennDOT”) filed an Answer. Of importance, PennDOT admitted that the railroad overpasses in question are over township roads.

On May 13, 2019, Buffalo & Pittsburgh Railroad Inc. (“BPRR”) filed an Answer and New Matter. BPRR admitted that the overpasses are located on its right-of-way, but denied that the structures were creating a traffic and safety problem. BPRR admitted that the tracks have not been used for many years and admitted that the overpasses are owned by BPRR. In its New Matter, BPRR stated that it is assessing the three overpasses and reserves the right to amend its Answer.

On May 17, 2019, the Borough of Brookville (“Borough”) filed an Answer. The Borough admitted that the three (3) overpasses are located within Knox Township, Jefferson County.

An initial field investigation and conference was held on June 14, 2019. The Commission’s Bureau of Technical Utility Services, Rail Safety Section (“Rail Safety”), PennDOT, Knox Township, Jefferson County, the Borough, and BPRR attended the field conference.

On September 10, 2019, a Secretarial Letter was issued. The Secretarial Letter explained that the three (3) railroad structures are public crossings which were part of a 40-mile railroad line abandoned in 2005 and 2006 by BPRR² through the Federal Surface Transportation Board under dockets AB-976X and AB 369 (Sub no. 5X). BPRR salvaged a

² The line was actually abandoned by Pittsburgh & Shawmut Railroad LLC, a subsidiary of Buffalo & Pittsburgh Railroad Inc. Pittsburgh & Shawmut Railroad LLC is no longer in existence. *See* BPRR’s Answer and New Matter.

majority of the steel rails, ties, and ballast, but the structures remain. Along the abandoned line, PennDOT removed three (3) of the structures through dockets A-2009-2104031, A-2010-2185469 and A-2012-2338963, and BPRR removed one structure under docket C-2017-2585787. Approximately thirteen (13) structures remain on this abandoned line.

The Secretarial Letter noted that BPRR acknowledged ownership and maintenance of the railroad structures at issue in the complaint and that Knox Township acknowledged maintenance of the approach roadways. BPRR initially did not agree to mitigate the loose concrete issues at the field conference. However, by letter dated July 26, 2019, BPRR agreed to remove the loose and delaminated concrete at the concrete arch structures at Ramsaytown Road and East Bellport Road at its sole cost and expense, and to affix vertical restriction signs on the structures at its sole cost and expense provided that Knox Township furnishes and provides the signs to BPRR. BPRR and Knox Township agreed to work towards a long-term solution to resolve the complaint.

Accordingly, the Secretarial Letter ordered Knox Township to furnish and install advanced warning signs for the vertical clearance restrictions, furnish clearance overhead signs to BPRR, furnish and install advance warning signs and an advisory placard for the horizontal clearance restriction, and furnish and install roadway clearance markers at its sole cost and expense. BPRR was ordered to install and/or mount low clearance overhead signs as provided by Knox Township and furnish all material and do all necessary work to remove all loose and delaminated concrete and debris from the inside and outside of the structures at its sole cost and expense. All work was to be completed by November 15, 2019.

On December 13, 2019, BPRR sent a letter to the Commission advising that BPRR completed the concrete work described in the September 10, 2019 Secretarial Letter and that it is waiting for the signage to be provided by Knox Township.

On February 10, 2020, BPRR sent a supplemental letter to the Commission noting that all the required signage had been installed and all worked completed in accordance with the September 10, 2019 Secretarial Letter.

On February 21, 2020, Rail Safety held an interim field inspection to inspect the work completed and continue discussions to resolve the complaint. Rail Safety, Knox Township, and BPRR attended the field inspection. At the conclusion of the field inspection, the parties agreed that Knox Township would receive an estimate from a local contractor for the removal of the railroad structures.

On June 4, 2021, Rail Safety requested that the matter be referred to the Office of Administrative Law Judge, noting that an amicable resolution of the Complaint could not be reached at the field conference held on June 14, 2019 and February 21, 2020, and subsequent discussions held between and thereafter.

On June 9, 2021, Administrative Law Judge Mary D. Long issued a Prehearing Conference Order and Call-in Telephone Pre-hearing Conference Notice, scheduling a telephonic prehearing conference for July 1, 2021. The parties were instructed to provide Prehearing Memoranda no later than 3:00 p.m. on June 29, 2021.³

³ I&E notes that it filed a complaint against BPRR on June 28, 2021, docket number C-2021-3026819, alleging violations of 66 Pa. C.S. § 2702 for the unlawful removal of the steel structure at Harriger Hollow Road (DOT 863 296 J). A courtesy copy of the complaint was provided to the parties of record and Your Honor.

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) 787-1888⁴

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 aware that Knox Township did receive an estimate from a local contractor for the removal of the railroad structures.

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.*

⁴ 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.

E. Proposed Engineering Study

I&E submits that an engineering study of the railroad structures is not necessary because the outright removal of the abandoned structures is in the best interest of the public and public safety.

F. Proposed Litigation Schedule

I&E provided a proposed litigation schedule to counsel for BPRR, PennDOT, and Knox Township. Counsel responded with their agreement to delay the litigation schedule to allow mediation and/or settlement discussions and to I&E's proposed schedule. Accordingly, I&E proposes the following litigation schedule:

1. Written direct testimony due on November 19, 2021.
2. Written rebuttal testimony due on December 17, 2021.
3. Witness schedule due 3 business days before the hearing.
4. Hearing to occur the week of January 24, 2022.
5. Briefing schedule to be established at the hearing.

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

William Sinick, P.E.
Pennsylvania Public Utility Commission
Bureau of Technical Utility Services - Rail Safety Section
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 787-5936
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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

- 1) Whether the three (3) public crossings should be abolished.
- 2) Whether the three (3) abandoned railroad structures should be removed in their entirety.
 - a) Who should be responsible for the removal of the structures?
 - b) Who should be responsible for the costs associated with the removal of the structures?

2. Statement of Evidence to be Presented

Mr. Sinick will testify to all matters pertaining to the public safety, present conditions, existing maintenance, and future maintenance at the three (3) railroad bridge structures. Mr. Sinick may testify to additional matters based upon the issues identified by the parties.

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: June 29, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Knox Township :
 :
 v. : Docket No. C-2019-3009358
 :
 Buffalo & Pittsburgh Railroad Inc. :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Prehearing Conference Memorandum** dated June 29, 2021, 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
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