



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

June 29, 2021

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

RE: C-2019-3009358

Dear Secretary Chiavetta,

Enclosed for filing please find the Department's *Prehearing Conference Memorandum* in the above-captioned matter.

I hereby certify that a copy has been sent to all parties of record as indicated by the Certificate of Service.

Very truly yours,

A handwritten signature in cursive script that reads "Karen L. Cummings".

Karen L. Cummings
Senior Assistant Counsel

Cc: Parties of Record
Michelle Adolini, P.E., Acting Highway Delivery Division Chief
Daniel D. Leonard, Grade Crossing Engineer, Central Office, KCB 7th Floor
Jason Barkey, District Grade Crossing Engineer, District 10-0
Ronald Hull, P.E., Rail Safety, Bureau of Technical Utility Services, PUC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Knox Township	:	Docket No.: C-2019-3009358
Complainant	:	Electronically Filed
	:	
v.	:	
	:	
Buffalo & Pittsburgh Railroad, Inc.	:	
Brookville Borough,	:	
Jefferson County,	:	
Pennsylvania Department of	:	
Transportation	:	
Respondents	:	

PREHEARING CONFERENCE MEMORANDUM

In accordance with the June 9, 2021, Prehearing Conference Order of Administrative Law Judge Mary D. Long in the above-referenced matter, the Department of Transportation (Department) offers the following:

1. The Department requests that its sole entry on the service list be:

Karen L. Cummings
Office of Chief Counsel
Pennsylvania Department of Transportation
PO Box 8212
Harrisburg, PA 17105-8212
717-787-3128 (phone)
717-772-2741 (fax)
kcummings@pa.gov

Counsel will accept service electronically.

2. History: The proceedings were initiated by Formal Complaint filed on April 8, 2019 by Knox Township against Respondents, Buffalo & Pittsburgh Railroad, Inc. (BPRR), Jefferson County, Brookville Borough, and the Department alleging that three deteriorating railroad overpasses create traffic and safety problems. A field conference was held, and a Secretarial Letter was issued on September 10, 2019 confirming that BPRR owns the structures at issue and allocating certain responsibilities to address the issues to BPRR and to Knox Township. On June 29, 2021, the PUC Bureau of Investigation and Enforcement filed a Formal Complaint (which has yet to be assigned a docket number) against BPRR seeking civil penalties for violations of the Public Utility Code relating to one of the three overpasses complained of in the instant matter.

3. Issues: The Department believes that the issue relates to safety concerns and cost allocation resulting from three separate deteriorating overhead rail structures owned by BPRR that previously carried railroad tracks over Harriger Hollow Road (DOT 863 296 J), East Bellport Road (DOT 863 302 K), and Ramsaytown Road (DOT 863 298 X) – all local roads. The railroad line was abandoned through the Surface Transportation Board in 2005 and 2006, however, the crossings were not formally abolished through the PUC. The overpasses are not located close enough to any state highway such that the Department has a material interest.

As all three locations are local roads, aside from general concerns for the safety of the traveling public, the Department does not have a position or interest in the resolution of this matter.

Pursuant to 52 a. Code § 3.361(a), “[w]henver a complaint is made under section 2702 of the act (relating to construction, relocation, suspension and abolition of crossings) that a crossing is dangerous or inadequate and requires reconstruction, relocation, alteration or abolition, public utilities, owners of the railroad right-of-way and municipal corporations concerned and, **if applicable, the Department of Transportation, will be made [a party] respondent.**” (*emphasis added*). In the instant case, the Department has no jurisdiction over the structures complained of or the underlying roadways. Therefore, the Department requests that its participation is not applicable in this matter and that it be dismissed as a party.

4. Proposed Schedule: The parties have discussed and agreed to a discovery and litigation schedule.
5. Witnesses: The Department does not intend to offer witnesses to address the specifics of the crossings at issue, however, general crossing questions may be offered by:

Charles P. Keilman IV, P.E.
District Grade Crossing Manager
Pennsylvania Department of Transportation
Engineering District 10-0
2550 Oakland Avenue
Indiana, PA 15701

The Department reserves the right to call any additional witnesses deemed necessary as the case develops.

Respectfully Submitted,
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



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DATED: June 29, 2021

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v.	:	
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Buffalo & Pittsburgh Railroad, Inc.	:	
Brookville Borough,	:	
Jefferson County,	:	
Pennsylvania Department of	:	
Transportation	:	
Respondents	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below by electronic mail pursuant to the Emergency Order at Docket Number M-2020-3019262:

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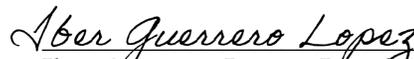
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Respectfully Submitted,
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION


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DATED: June 29, 2021