

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KNOX TOWNSHIP,)	
)	
V.)	DOCKET NO. C-2019-3009358
)	
BUFFALO & PITTSBURGH RAILROAD, INC.)	

PREHEARING MEMORANDUM OF JEFFERSON COUNTY

Pursuant to the Prehearing Conference Order of Administrative Law Judge (“ALJ”) Mary D. Long, issued on June 9, 2021, Jefferson County, Pennsylvania (“County”) hereby submits this Prehearing Memorandum in the above-captioned proceeding.

I. HISTORY OF THE PROCEEDING

By letter dated April 8, 2019, Knox Township (“Township”) filed a Formal Complaint against Buffalo & Pittsburgh Railroad Inc. alleging that three overpasses – namely, Harriger Hollow Road (DOT 863 296J), East Bellport Road (DOT 863 302 K), and Ramsaytown Road (DOT 863 298 X) – are deteriorating and causing large pieces of concrete to fall on the roadway. The Township also alleged that the overpasses do not meet state requirements and should be removed.

On May 6, 2019, Buffalo & Pittsburgh Railroad Inc. (“BPRR”) filed an Answer and New Matter. BPRR denied that the structures were creating a traffic and safety problem. According to BPRR, the tracks have not been used for many years.

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, the 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 railroad structures are public crossings that are part of a 40-mile railroad line abandoned in 2005 and 2006 by BPRR through the Federal Surface Transportation Board under dockets AB-976X and AB 369 (Sub no. 5X). BPRR salvaged a majority of the steel rails, ties, and ballast, but the structures remain. Along the abandoned line, PennDOT removed three 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 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 the 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 the Township furnishes and provides the signs to BPRR. BPRR and the Township agreed to work towards a long-term solution to resolve the complaint.

Accordingly, the Secretarial Letter ordered the Township to furnish and install advance 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 the Township and furnish all material and do all necessary work to removal 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 the Township.

On February 10, 2020, BPRR sent a supplemental letter to the Commission noting that all the required signage had been installed and all work 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 continued discussions to resolve the complaint. Rail Safety, the Township, and BPRR attended the field inspection. At the conclusion of the field inspection, the parties agreed that the 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 a Prehearing Memoranda no later than 3:00 p.m. on June 29, 2021.

II. ANTICIPATED ISSUES AND SUB-ISSUES

1. Whether the three public crossings should be abolished.

2. Whether the three 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?

III. PROPOSED WITNESSES

The County is still evaluating whether it will call any witnesses in this proceeding. To the extent the County determines to call one or more witnesses and submit testimony in this proceeding, the County will promptly inform the ALJ and other parties of the details of any such witness(es) and testimony. Notwithstanding whether the County calls any witnesses, however, the County reserves the right to participate in this proceeding and serve discovery on the BPRR and other parties; cross-examine witnesses of the BPRR and other parties; submit briefs to the Commission on issues of concern; and submit exceptions and reply exceptions, as necessary, to the Commission.

IV. PROPOSED SCHEDULE AND DISCOVERY RULES

The County will cooperate with the ALJ and parties at the Prehearing Conference to develop an appropriate procedural schedule and discovery rules in accordance with the Commission's regulations and any directives given by the ALJ.

V. POSSIBILITY OF SETTLEMENT

The County is willing to participate in discussions with the other parties to amicably resolve the issues in this proceeding.

Respectfully submitted,

ZWICK & ZWICK LLP



C.J. Zwick, Esquire
Attorney for Jefferson County

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **PREHEARING**

MEMORANDUM OF JEFFERSON COUNTY filed on behalf of Jefferson County, was

served on the 29th day of June, 2021, by email to the addresses listed herein:

Honorable Mary D. Long
Administrative Law Judge
PA Public Utility Commission
301 Fifth Ave.
Suite 220, Piatt Place
Pittsburgh, PA 15222
malong@pa.gov

Jeffrey M. Gordon, Esquire
Gordon & Dennison
293 Main Street
Brookville, PA 15825
jgordon@293law.com
Attorney for Complainant

J. Lawson Johnston, Esquire
Scott D. Clements, Esquire
Dickie, McCamey & Chilcote, P.C.
Two PPG Place, Suite 400
Pittsburgh, PA 15222
ljohnston@dmclaw.com
sclements@smclaw.com
Attorneys for Buffalo & Pittsburgh Railroad,
Inc.

Karen L. Cummings, Esquire
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105-8212
kcummings@pa.gov
Attorney for DOT

Kayla L. Rost, Esquire
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
karost@pa.gov
Attorney for I&E

James Dennison, Esquire
Brookville Borough
18 Western Avenue, Suite A
Brookville, PA 15825
jdennison@windstream.net
Attorney for Brookville Borough

Knox Township Supervisors
7225 Knox Dale Road
P.O. Box 41
Knox Dale, PA 15847
KNOXTWP@WINDSTREAM.NET

Aaron M. Ponzo, Esq.
Dickie, McCamey & Chilcote, P.C.
Two PPG Place, Suite 400
Pittsburgh, PA 15222
aponzo@dmclaw.com
Attorney for Genesee & Wyoming Inc.



C.J. Zwick, Esquire