*Via electronic service only due to Emergency Order at M-2020-3019262*

**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Knox Township :

:

v. : C-2019-3009358

:

Buffalo & Pittsburgh Railroad Inc. :

**PREHEARING ORDER**

By letter dated April 8, 2019, Knox Township filed a Formal Complaint against Buffalo & Pittsburgh Railroad Inc. alleging that there are three (3) overpasses[[1]](#footnote-1) 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.

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 filed an Answer. The Borough admitted that the three (3) overpasses are located within Knox Township, Jefferson County. Following a number of field visits and settlement discussions, the complaint was referred to the Office of Administrative Law Judge on June 4, 2021.

By hearing notice dated June 8, 2021, this matter was assigned to me and a call-in prehearing conference was scheduled for July 1, 2021, at 10:00 a.m. The prehearing conference convened as scheduled. Counsel for Knox Township, BPRR, BIE, the Borough of Brookville, Jefferson County and PennDOT appeared and participated. Although settlement discussions are ongoing, the parties agreed to a litigation schedule as set forth below.

THEREFORE,

IT IS ORDERED:

1. That the following schedule is adopted:

All parties’ prepared direct testimony November 19, 2021

All parties’ prepared rebuttal testimony December 17, 2021

Witness matrix January 20, 2022

Evidentiary hearings in Pittsburgh January 25, 2022[[2]](#footnote-2)

2. That a briefing schedule shall be established at the conclusion of the evidentiary hearings.

3. That the parties will receive all documents and shall copy all other parties on documents they file with the Commission or serve on me. Any documents must be e-filed with the Secretary’s Bureau shall also be emailed to me at [malong@pa.gov](mailto:malong@pa.gov).

4. That written testimony shall comply with the requirements of 52 Pa.Code § 5.412 and shall be marked with numerical, sequential statement numbers.

5. That all parties shall comply with the provisions of 52 Pa.Code § 5.243(e) which prohibits the introduction of evidence during rebuttal which should have been included in

the party’s case-in-chief or which substantially varies from the party’s case-in-chief unless the party is introducing evidence in support of a proposed settlement.

6. That the parties shall conduct discovery pursuant to 52 Pa.Code §§ 5.321‑5.373. I encourage the parties to cooperate and exchange information on an informal basis. I prefer that the parties cooperate rather than engage in numerous or protracted discovery disagreements that require my participation to resolve. **All motions to compel shall contain a certification by counsel setting forth the specific actions the parties have undertaken to resolve their discovery disputes informally.** If a motion to compel does not contain this certification, I shall contact the parties and direct them to resolve the matter informally and provide the certification if they are unsuccessful. There are limitations on discovery and sanctions for abuse of the discovery process. 52 Pa.Code §§ 5.361, 5.371-5.372.

7. That the parties shall stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties and conserve precious administrative hearing resources. 52 Pa.Code §§ 5.232 and 5.234.

8. That parties intending to subpoena witnesses for the evidentiary hearing, shall review the procedures established in 52 Pa.Code §5.421 and shall submit any written application to me sufficiently in advance of the evidentiary hearing date so that the other parties will have the required ten (10) days’ notice to answer or object, and so that the party requesting the subpoena shall have enough time to receive the subpoena and serve it.

9. That Commission policy is to encourage settlements. 52 Pa.Code § 5.231(a). Therefore, you are urged to discuss informally between yourselves the possible settlement of this case at least one week before the hearing. If you are unable to settle this case, you may still resolve as many questions or issues as possible during your informal discussion.

10. That any provision of this prehearing order may be modified upon motion and good cause shown by any party in interest in accordance with 52 Pa.Code § 5.223(a).

Date: July 6, 2021 \_\_\_\_\_\_\_\_\_\_\_\_/s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Mary D. Long

Administrative Law Judge

**C-2019-3009358 - KNOX TOWNSHIP V. BUFFALO & PITTSBURGH RAILROAD INC.**

KNOX TOWNSHIP7525 KNOX DALE RDPO BOX 41KNOX DALE PA 15847**814.849.0160**[**KNOXTWP@WINDSTREAM.NET**](mailto:knoxtwp@windstream.net)

JEFFREY M GORDON ESQUIRE293 MAIN STREETBROOKVILLE PA 15825**814.849.8316**[**JGORDON@293LAW.COM**](mailto:JGORDON@293LAW.COM)

JAMES DENNISON BOROUGH SOLICITORBROOKVILLE BOROUGH18 WESTERN AVE   
SUITE A BROOKVILLE PA 15825  
[JDENNISON@WINDSTREAM.NET](mailto:JDENNISON@WINDSTREAM.NET)

CATHERINE PUSHCHAK

BUFFALO & PITTSBURGH RAILROAD INC201 NORTH PENN STREETPUNXSUTAWNEY PA 15767 [CATHERINE.PUSHCHAK@GWRR.COM](mailto:catherine.pushchak@gwrr.com)

AARON PONZO, ESQUIRE

J LAWSON JOHNSTON ESQUIRE\*SCOTT CLEMENTS ATTORNEYDICKIE MCCAMEY & CHILCOTE PCTWO PPG PLACE STE 400PITTSBURGH PA 15222**412.392.5506**

**412.281.7272**APONZO@DMCLAW.COM

LJOHNSTON@DMCLAW.COM  
\*Accepts e-Service

CJ ZWICK ATTORNEYLAW OFFICE OF CJ ZWICK171 BEAVER DRIVEDUBOIS PA 15801**814.371.6400**Accepts e-Service

KAREN CUMMINGSPENNDOTPO Box 8212HARRISBURG PA 17105-8212**717.787.3128**Accepts e-Service

MICHAEL L SWINDLER ESQUIREKAYLA L ROST ESQUIRE

BI&E400 NORTH STREETPO BOX 3265HARRISBURG PA 17105-3265**717.783.6369**Accepts e-Service

karost@pa.gov

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). [↑](#footnote-ref-1)
2. The format for the evidentiary hearing will be established at a later date, pending the status of Commonwealth buildings following the COVID-19 pandemic. [↑](#footnote-ref-2)