

Aaron M. Ponzio  
Attorney at Law  
Admitted in PA, WV

412-392-5506  
Fax: 888-811-7144  
aponzo@dmclaw.com

March 31, 2022

**Via Electronic Filing**

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

Re: Knox Township v. Buffalo & Pittsburgh Railroad, Inc., et al.  
Docket No.: C-2019-3009358  
Our File No.: 0057694.0368163

Dear Secretary Chiavetta:

Enclosed for electronic filing is Buffalo & Pittsburgh Railroad Inc.'s Main Brief. Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Very Truly Yours,

*Aaron M. Ponzio*

Aaron M. Ponzio

AMP/eie

Attachment

cc (via email w/ attachment): Hon. Mary D. Long  
Per Certificate of Service

14211925.1

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Knox Township,

Complainant,

vs.

Docket No. C-2019-3009358

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

Respondents.

**MAIN BRIEF OF BUFFALO & PITTSBURGH RAILROAD, INC.**

AND NOW, comes Respondent, Buffalo & Pittsburgh Railroad Company (“BPRR”), by its attorneys, Dickie, McCamey & Chilcote, P.C., J. Lawson Johnston, Esquire, Scott D. Clements, Esquire, and Aaron M. Ponzio, Esquire, and files its Main Brief, arguing as follows:

**TABLE OF CONTENTS**

	<u>Page</u>
I. HISTORY OF THE PROCEEDING .....	2
II. FACTUAL BACKGROUND .....	4
III. DISCUSSION .....	10
A. Legal Standards.....	10
1. Burden of Proof.....	10
2. Standards Applicable to Railroad Crossing Cases .....	10
3. Allocation of Costs .....	11
B. The Commission should not order any of the three railroad crossings to be removed or altered because the evidence does not establish that they present a public safety hazard. ....	12
C. The Commission must take all relevant factors into consideration in the allocation of costs for any maintenance or alterations of the crossings, and the allocation must be just and reasonable. ....	15
IV. PROPOSED FINDINGS OF FACT .....	18
V. PROPOSED CONCLUSIONS OF LAW .....	25
VI. PROPOSED ORDERING PARAGRAPHS .....	27

## I. HISTORY OF THE PROCEEDING

This matter involves three above-grade railroad crossings located in Knox Township, Jefferson County, Pennsylvania where Ramsaytown Road (T-841), East Bellport Road (T-405), and Harriger Hollow Road (T-420) cross the right of way of the Buffalo & Pittsburgh Railroad, Inc. The crossings consist of two concrete arch structures at Ramsaytown Road and East Bellport Road, and concrete abutments at Harriger Hollow Road which formerly supported a steel superstructure.

On April 10, 2019, Knox Township (“Township”) filed a Complaint before the Pennsylvania Public Utility Commission (“Commission”) against the Pittsburg & Shawmut Railroad.<sup>1</sup> On April 25, 2019, the Commission’s Secretary served the Complaint on BPRR, the Pennsylvania Department of Transportation (“PennDOT”), Jefferson County, and Brookville Borough, naming those parties as Respondents.

The Complaint alleges “[t]here are 3 overpasses on a railroad right-of-way that are creating a traffic and safety problem.” Compl., ¶3. It claims that the overpasses are “too narrow for two-lane traffic and are not wide enough to meet state requirements”, and further that, “[l]arge fire apparatus are concerned with clearances.” *Id.* The Complaint also alleges that “[t]hese overpasses are deteriorating and large pieces of concrete from the ceiling are falling on the roadway.” *Id.* The Township requests as relief that the structures be removed by BPRR. *Id.*, ¶4.

BPRR filed its Answer and New Matter on May 13, 2019, in which it admitted that the crossings are located on BPRR’s right-of-way. BPRR Answer and New Matter, ¶3. BPRR

---

<sup>1</sup> This entity no longer exists. Buffalo & Pittsburgh Railroad, Inc. is the proper respondent. BPRR Answer and New Matter ¶ 2.

further admitted that it owned the crossings. *Id.*, ¶4. However, BPRR denied that the crossings create a traffic and safety problem. *Id.*, ¶3. PennDOT and Brookville Borough filed Answers to the Complaint. Jefferson County did not file an Answer.

On May 16, 2019, the parties were notified by William M. Sinick, P.E. of the Commission's Bureau of Technical Utility Services, Transportation Division Rail Section, that a formal field conference would be held on June 14, 2019. Representatives of each party were in attendance at the field conference, during which the Township's allegations and immediate safety issues were discussed. I&E Statement 1, at 5:21-6:2. The immediate safety issues identified by Mr. Sinick included loose and delaminated concrete at the Ramsaytown and East Bellport Road crossings, as well as the need for appropriate signage on the approach roadways and structures warning of vertical and horizontal restrictions, and roadway clearance markers at the abutments and arch end walls. I&E Statement, at 6:9-12; 17-19; 7:3-4.

The Township agreed to furnish low overhead clearance signs to BPRR, and to install signage as follows: advanced warning signs for vertical clearance restrictions along the approaches of each structure; advanced warning signs and an advisory speed placard for the horizontal clearance along the approaches of Ramsaytown Road; and roadway clearance markers at the edge of the abutments at Harriger Hollow Road and arch end walls at Ramsaytown and East Bellport Road. The Township further agreed to maintain the approach roadways, signs and markers, and BPRR agreed to maintain the structural integrity of its bridge structures and overhead clearance signs. BPRR agreed to remove all loose and delaminated concrete and debris from the concrete structures, and to install low clearance overhead signs on the structures. These items were set forth in the Secretarial Letter dated

September 10, 2019. BPRR's contractor performed chipping and scaling work to address the immediate concerns raised at the field conference. Tr., at 54:13-55:1; Respondent's Statement 1, at 4:18-21. BPRR's contractor also installed signage indicating vertical and horizontal clearances. Tr. at 54:17-18; Respondent's Statement 1, at 4:20-21. The work performed by the parties was observed at an interim field conference on February 21, 2020. Tr., at 220:19-23. No further directives were issued after the interim field conference. Tr., at 221:7-11.

The measures implemented above did not fully resolve the Township's Complaint. The parties attempted to work towards a long-term solution to resolve the Township's Complaint, to no avail, as the Township simply demanded BPRR to remove all three structures at its sole cost and expense.

On June 8, 2021, a Prehearing Conference Notice was issued, and a Prehearing Conference was held on July 1, 2021, with Administrative Law Judge Mary D. Long presiding. A Prehearing Conference Order followed on June 6, 2021, setting a schedule for the submission of prepared direct and rebuttal testimony, a witness matrix, and an evidentiary hearing. An evidentiary hearing was conducted by telephonic conference on January 25, 2022. An Interim Order was entered on January 26, 2022, striking certain testimony of Mr. Sinick. A Briefing Order was entered on March 2, 2022, directing the parties to file their Main Briefs on or before March 31, 2022, and their Reply Briefs on April 20, 2022.

## **II. FACTUAL BACKGROUND**

This matter involves three railroad bridge structures located in rural Jefferson County which have been in existence for over 100 years. The structures located at Ramsaytown and East Bellport Road were constructed in 1910, and the structure located at Harriger Hollow

Road was constructed in 1906. Tr. at 49:3-6; Respondent Exhibits 1-3. The Ramsaytown and East Bellport Road structures are 16 foot wide concrete arch bridges, and the Harriger Hollow Road structure consists of two concrete abutments. Respondent Statement 1, at 1:11-16.

BPRR currently owns these structures. Tr., at 50:5-7.<sup>2</sup> BPRR also inspects and maintains these structures pursuant to its Bridge Management Program. Respondent's Statement 1, at 1:28-3:13. The structures were inspected on July 29, 2021, by Shawn Baer, BPRR's Director of Structures. Tr., at 50:18-51:17; Respondent's Statement 1, at 3:14-16. The inspections identified spalling, and minor surface cracking in the concrete. Respondent's Statement 1, at 3:23-4:2; Respondent's Exhibits 4-6. These items were assigned a medium or low priority rating, meaning that repairs should be considered in either a three to four, or four to five year repair program. Tr., at 52:5-53:6; Respondent's Exhibits 4-6.

The structures were also inspected on October 4, 2021, by Wayne Duffett. Tr. at 76:4. Mr. Duffett is a professional engineer with a concentration in bridges and structures, and is licensed in several states including Pennsylvania. Tr. at 74:15-75:6. In Mr. Duffett's opinion, the structural integrity of each structure is good, there are no structural issues, and all three are structurally safe. Tr., at 76:23-77:1-3; Respondent's Statement 3, at 2:2-3; Respondent's Exhibits 9-12. The conditions observed by Mr. Duffett such as minor cracking and spalling are surface deterioration due to environmental conditions and are typically addressed

---

<sup>2</sup> These crossings are no longer active as the railroad line has been abandoned and the track has been salvaged. Respondent Statement 1, at 1:16-17. The bridges were left in place to keep the corridor intact in the event that railroad traffic returns to the area, and to preserve the value and utility of the property. Respondent Statement 2, at 1:17-24.

through periodic maintenance. Tr. at 76:14-22; 81:25-82:17. He did not observe any through cracks or settlement. Respondent's Statement at 2:11-12. He also noted that the Ramsaytown and East Bellport Road structures are massive in scale, with abutments having a thickness of 7'10" and 6'7", respectively. Respondent's Statement 3, at 5:12-16.<sup>3</sup>

During the course of his inspection on October 4, 2021, Mr. Duffett observed concrete dust and fine particles on the side of the roadway. Tr. at 90:8-9. He concluded that this was not evidence of a hazard to motor vehicles. Tr., at 88:22-89:13; 90:10-11. He further explained that any concrete potentially falling from the wingwalls of the Ramsaytown Road bridge would not pose a hazard to motor vehicles because it would not be falling from overhead. Tr., at 94:11-95:11. Only concrete falling from the arch barrel or the headwalls could potentially present a hazard, but Mr. Duffett's inspection revealed these areas to be in good condition. Tr. at 96:24-97:11.

A traffic engineering investigation was also performed with respect to each of the structures and roadways by Charles Wooster, a professional traffic engineer. See Respondent's Exhibits 14-16. The investigation documented the physical characteristics of the roadways which, simply stated, are rural back roads. Ramsaytown Road is the only one of the three that is paved, but it has no pavement markings and its width varies from 14 to 20 feet. Respondent's Statement 5, at 3:18-21. East Bellport and Harriger Hollow Road are both unpaved gravel and dirt roadways, with no pavement markings and widths that also vary from 14 to 16 feet and 14 to 18 feet, respectively. *Id.*, at 3:24-36.

The site distances at the Ramsaytown and East Bellport Road locations are 500 and 300 feet, respectively. Tr., at 116:5-16; Respondent's Statement 5, at 4:30-33. The sight

---

<sup>3</sup> The dimensions of all three structures are set forth in the Plans. See Respondent's Exhibits 1-3.

distance at Harriger Hollow Road is 110 feet approaching the structure due to the curvature of the road and the structure itself. Tr., at 116:16-20; Respondent's Statement 5, at 5:3-8. However, this road generally has limited sight distance due to several severe horizontal curves. *Id.*, at 5:1-2; Respondent's Exhibits 15-16.

As part of his investigation, Mr. Wooster gathered data regarding traffic volume which demonstrates that these three roads carry very little traffic. The average daily traffic volume on Ramsaytown Road is approximately 312 vehicles with only 1.3% of that volume consisting of buses and 4% trucks; East Bellport Road has an average daily traffic volume of approximately 30 vehicles per day (0% buses and 6.7% trucks); Harriger Hollow Road's average daily traffic volume is a mere 15 vehicles (0% buses and 0% trucks). Tr., at 115:4-20; Respondent's Statement 5, at 5:10-18.

Mr. Wooster also obtained accident data from PennDOT for the last 10 years for each road. This data revealed that there is no site specific crash pattern for any of the bridges. Tr., at 111:17-25. No reported accidents occurred at the East Bellport structure during that time period. Respondent's Statement 5, at 5:33. One reported accident occurred at the Ramsaytown Road structure and one occurred at the Harriger Hollow Road structure, but these were due to snowy conditions and the drivers traveling too fast for conditions, failing to maintain proper speed, and driving on the wrong side of the road. *Id.*, at 5:27-6:2. In addition, Mr. Wooster's investigation did not reveal evidence of non-reported accidents such as skid marks, or contact marks from vehicles on any of the structures. Tr., at 114:23; Respondent's Statement 5, at 7:12-16.

Based on his traffic engineering investigation, Mr. Wooster concluded that there are no applicable roadway design standards that require the alteration, modification, or removal



of any of the three railroad bridge structures. Tr., at 112:10-16; Respondent's Statement 5, at 2:15-21. This would include PennDOT's Highway Design Manual, Publication 13M. Tr., at 117:19-118:4; Respondent's Statement 6, at 1:17-28.

Knox Township presented testimony from only one witness, Jim Berry who is a Township Supervisor. Mr. Berry's prepared written testimony repeated the allegations of the Complaint regarding the conditions that Knox Township claims to be at issue with the structures. Complainant's Statement 1, at 1:18-2:23. His live direct testimony at the evidentiary hearing did little to support these allegations.

Mr. Berry is not only a Township Supervisor, but is also a farmer whose farm is located at the entrance of Harriger Hollow Road. Tr., at 160:2-6. He stated that he owns certain farm equipment that was too large to pass through the crossing, although he is able to now since the removal of the superstructure. Tr., at 160:14-16; 161:13-18. He also claimed that other farmers, who were not identified and did not appear to provide testimony, could not get their combines through the Ramsaytown Road bridge because they are too wide. Tr., at 160:20-161:4. Mr. Berry acknowledged that these farmers are able to use an alternate route, however. Tr., at 160:23. He did not provide any testimony about any farm equipment striking any of the structures or getting stuck within them due to restrictive clearances.

Mr. Berry also testified that he drives a school bus and his daily route takes him through the Ramsaytown bridge four times per day, five times per week. Tr. at 149:18-23. He has been driving this bus route for two years, but the route has existed for a number of years. Tr., at 154:4-7. He claimed that the crossing is "difficult to get under" and that his sight distance is limited because he sits higher up in a bus. Tr. at 149:25-150:4. However,

he admitted that there has never been an occasion when his school bus was unable to fit through the bridge, and there is adequate clearance for the school bus he drives. Tr., at 155:1-11.

With regard to the allegation in the Complaint regarding concerns of fire apparatus, Mr. Berry was unable to provide any testimony regarding incidents, complaints, or the inability of fire trucks to pass through the structures. Instead, he explained that a past Township supervisor had merely raised a question, but Mr. Berry did not elaborate on the issue. Tr., at 155:20-25; 156:7-13.

Finally, he testified about one occasion when a piece of concrete allegedly fell from the Ramsaytown Road structure, was removed from the road by a Township Worker and placed alongside the road. Tr., at 152:8-13. Mr. Berry did not have any first-hand knowledge regarding this particular piece of concrete and could not state with any degree of certainty where it had fallen from, or where it was found. Tr., at 166:19-167:17.

The Township has not had any engineering experts inspect the bridges or roadway approaches. Tr., at 157:12-16; 158:16-21. The Township does not have any records of any accidents occurring at any of the bridges. Tr., at 162:3-6. No evidence was submitted to substantiate the alleged economic impact claimed by the Township.

The Bureau of Investigation and Enforcement (BIE) presented Mr. Sinick's prepared written testimony and limited live testimony. Mr. Sinick is an engineer with the Commission's Bureau of Technical Utility Services, Rail Safety Section. He testified about his observations of the bridges, and generally claimed the abutments obstruct the roadways and concrete could fall from them, both of which he alleges present a hazard to the motoring public.

However, Mr. Sinick did not conduct a formal bridge inspection with respect to any of the structures. Tr., at 191:15-17; 197:23-198:4. He did not perform a structural rating inspection. Tr., at 203:2-5. He conceded that he “did not do an in-depth inspection or structural analysis” of the structures. Tr., at 207:5-6. He did not gather any traffic data or accident data. Tr., at 207:112-14-208:3. He is not aware of any complaints from motorists who have had their vehicles damaged by concrete falling from any of the structures. Tr., at 216:13-18. He is not aware of any instances of debris falling from above the bridges. Tr., at 226:12-22. He was not aware of any accidents at the structures other than the two noted by Mr. Wooster, and could only assume there were more. Tr., at 240:19-241:5-7.

Further, while Mr. Sinick relies on the “clear zone” concept contained within PennDOT’s Highway Design Manual to argue for removal of the bridges, he agreed that bridges with abutments in the clear zone are “all over the place” within the Commonwealth. Tr., at 228:17-20. In fact, he agreed that such abutments do not need to be removed if they serve a public interest. Tr., at 229:6-9.

### **III. DISCUSSION**

#### **A. Legal Standards**

##### **1. Burden of Proof**

Pursuant to 66 Pa. C.S.A. §332(a), the proponent of a rule or order has the burden of proof. Knox Township, as the Complainant, bears the burden of proof in this matter. Tr., at 36:11-14.

##### **2. Standards Applicable to Railroad Crossing Cases**

The Commission is authorized to regulate railroad-highway crossings pursuant to Sections 2702 and 2704 of the Public Utility Code (Code). *Southeastern Pa. Transp. Auth. v.*

*Pa. Pub. Util. Comm'n*, 592 A.2d 797, 800 (Pa. Commw. 1991). However, that authority is not unlimited and “may not be exerted arbitrarily or unreasonably”. *Pa. R. Co. v. Pa. Pub. Util. Comm'n*, 35 A.2d 588, 591 (Pa. Super. 1944). Indeed, “the applicable standard in railroad-highway crossing cases is ‘the prevention of accidents and the promotion of safety of the public.’” *Southeastern Pa. Transp. Authority*, 592 A.2d at 800 n. 2 (citing *Pennsylvania R. Co. v. Pa. Pub. Util. Comm'n*, 35 A.2d 588, 590 (Pa. Super. 1944)). “The rationale underlying the Commonwealth's entrustment of broad powers to the PUC to exercise the Commonwealth's police power with respect to railroad-highway crossings is to prevent railroad-highway crossings from becoming unsafe for the public.” *Id.*, (citing *Pittsburgh R. Co. v. Pa. Pub. Util. Comm'n*, 182 A.2d 80, 84 (Pa. Super. 1962); *Tarentum Borough v. Pa. Pub. Util. Comm'n*, 90 A.2d 853, 855 (Pa. Super. 1952)).

### 3. Allocation of Costs

Pursuant to 66 Pa. C.S.A. §2704(a), the Commission has authority to allocate the costs and expenses of altering or removing a railroad crossing among all of the concerned parties. *Norfolk S. Ry. Co. v. Pa. Pub. Util. Comm'n*, 77 A.3d 619, 621 (Pa. 2013).

It is well established that,

[T]he cost of [alterations and protection of a rail-highway] crossing . . . shall be borne and paid . . . by the public utilities, municipal corporations [or] municipal authority . . . concerned, or by the Commonwealth, in such proper proportions as the commission may, after due notice and hearing, determine, unless such proportions are mutually agreed upon and paid by the interested parties.

*Id.*, 77 A.3d at 621 (quoting Pa. C.S.A. §2704(a)).

“Although the allocation of costs between the relevant parties is a matter within the PUC's discretion, such allocation must, nevertheless, be just and reasonable; that is, the decision must be based upon some sound legal or factual basis”. *City of Philadelphia v. Pa.*

*Pub. Util. Comm'n* , 676 A.2d 1298, 1301 (Pa. Commw. 1996). The factors that have consistently been viewed as relevant include: 1) The party that originally built the crossing; 2) The party that owned and maintained the crossing; 3) The relative benefit initially conferred on each party with the construction of the crossing; 4) Whether either party is responsible for the deterioration of the crossing that has led to the need for its repair, replacement or removal; and 5) The relative benefit that each party will receive from the repair, replacement or removal of the crossing. *Greene Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 668 A.2d 615, 619 (Pa. Commw. 1995).

The above notwithstanding, “[t]he PUC, in apportioning these costs, is not limited to any fixed rule but must only consider all relevant factors and render an order which is just and reasonable.” *Commonwealth of Pa. Dep’t of Transp. v. Pa. Pub. Util. Comm’n*, 464 A.2d 645, 649 (Pa. Commw. 1983). Further, “ownership of property is not dispositive”. *Southeastern Pa. Transp. Auth. v. Pa. Pub. Util. Comm’n*, 592 A.2d at 807 (citing *Commonwealth of Pa., Dept. of Transp. v. Pa. Pub. Util. Comm’n*, 469 A.2d 1149 (Pa, Commw. 1983) (PUC assessment against PennDOT of part of the cost of reconstructing a railroad-highway viaduct was permissible even though the road in question was not a designated state highway)).

**B. The Commission should not order any of the three railroad crossings to be removed or altered because the evidence does not establish that they present a public safety hazard.**

The record in this case is clear that the railroad bridges at issue are all reasonably safe for the motoring public. They are all structurally safe and, despite their age, have only superficial deterioration. Further, the bridges safely and efficiently accommodate motor vehicle traffic. Under the circumstances, there is no basis to order BPRR to alter or remove these structures.

Knox Township has not carried its burden of proof. Only Mr. Berry testified in support of the Township's allegations, but his testimony was limited to complaints about farm equipment and one instance in which a piece of concrete was allegedly found on Ramsaytown Road. There was no evidence or testimony submitted by the Township that any accidents have occurred at the structures, that any vehicles have been struck by falling concrete, or that concrete is actually falling from any of the bridges. The Township did not call any experts to testify, nor did it submit reports from any experts.

It appears that the Township decided to rely on Mr. Sinick to establish the requisite safety hazards to justify an order by the Commission directing BPRR to remove or alter the crossings. This reliance was misplaced. Mr. Sinick likewise relies on the one instance in which a piece of concrete was found on Ramsaytown Road, and argues that the specter of more falling concrete presents a risk to motorists. Just like the Township, however, Mr. Sinick lacks any evidence that concrete has either stricken a vehicle or is actively falling from the arch barrels of the bridges at Ramsaytown or East Bellport Road.

Mr. Sinick also relies on the "clear zone" concept found in PennDOT's Highway Design Manual for the argument that the structures should be removed because their abutments constitute obstructions in the clear zone. I&E Statement 1, at 15:8-22. However, as BPRR's expert Mr. Wooster explained, this Manual is not applicable in this context and is not used to review existing structures. Tr., at 119:13-25; Respondent Statement 5, at 6:8-22. There is nothing in the Manual regarding the clear zone concept that requires the removal of these structures. Tr., at 122:22-123:4; Respondent Statement 6, at 1:12-28. Further, Mr. Sinick conceded that it is common for bridge abutments to be in the clear zone on Pennsylvania's roadways and that this factor alone does not require removal of the bridge. Tr., 229:6-9.

Based on his testimony, it is clear that Mr. Sinick's argument for removal of these structures is based purely on the fact that they no longer carry active railroad tracks, and not because they present a public safety issue. Otherwise, he would advocate for removal regardless of whether the railroad was still active. Accordingly, his testimony on this issue should be given little weight.

Mr. Sinick's testimony regarding the condition of the bridges should also be given little weight. He acknowledged that he did not conduct any formal inspections of the bridges. He did not prepare any written reports, nor did he have any substantive notes to refer to when preparing his testimony. Tr., at 205:3-9. He also argued that he observed conditions that he would assign a priority rating of "zero" based on NBIS standards. Tr., at 188:6-8. However, he did not perform an inspection using NBIS criteria. Tr., at 191:11-19.

The only bridge inspections in this case were performed by BPRR and Mr. Duffett. These inspections revealed that the bridges are in good condition. There is only superficial deterioration which can be addressed by routine maintenance. BPRR and Mr. Duffett rated these conditions as either low or moderate repair priorities. No public safety hazards were identified with respect to the conditions of any of the structures.

Further, the only traffic engineering investigation in this case was performed by BPRR expert Charles Wooster, and he concluded that the roadways can safely and efficiently accommodate their anticipated traffic demand. The lack of accidents is persuasive evidence on this point. Not only is there a dearth of reported accidents, but there also is a lack of evidence that minor accidents have occurred at these structures. Tellingly, no witnesses were called to testify about accidents in which they were involved, nor was any documentary

evidence submitted with regard to any minor accidents. It would be mere speculation to suggest that non-reported accidents occurred at these bridges.

The location and extremely low volume of traffic on these roadways also indicate there is no public safety concern. These are rural back roads that do not provide through routes for outside traffic. They are used primarily by local residents, such as Mr. Berry, who are familiar with them and are aware of the bridges. The average daily traffic volumes reflect low usage, particularly with regard to East Bellport Road (30 vehicles per day) and Harriger Hollow Road (15 vehicles per day).

In addition, there is sufficient horizontal and vertical clearance at each bridge to accommodate the motor vehicles travelling on these roads. The sight distances are adequate for motorists to see the bridges and any oncoming traffic on Ramsaytown and East Bellport Roads. The sight distance at Harriger Hollow Road is 110 feet due to the curvature of the road and the abutment on the north side of the road. However, there are advanced warning signs posted in each direction as well as delineating signs on each side of the abutments.

The totality of the evidence shows that the continued existence of these structures does not present a hazard to public safety. Accordingly, the record does not support an order directing the removal or alteration of the crossings pursuant to 66 Pa. C.S.A. §2702. Rather, the crossings should be allowed to remain in place, with BPRR to be responsible for inspecting and maintaining them.

**C. The Commission must take all relevant factors into consideration in the allocation of costs for any maintenance or alterations of the crossings, and the allocation must be just and reasonable.**

The Commission has discretion to allocate costs, but the allocation must be just and reasonable, and must take all relevant factors into account. *City of Philadelphia v. Pa. Pub.*



*Util. Comm'n*, 676 A.2d 1298, 1301 (Pa. Commw. 1996). As noted above, some of these factors include: 1) the party that originally built the crossing; 2) the party that owned and maintained the crossing; 3) the relative benefit initially conferred on each party with the construction of the crossing; 4) whether either party is responsible for the deterioration of the crossing that has led to the need for its repair, replacement or removal; and 5) the relative benefit that each party will receive from the repair, replacement or removal of the crossing. *Greene Township Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 668 A.2d 615, 619 (Pa. Commw. 1995).

The crossings were not constructed by BPRR. The plans indicate that the crossings were constructed by the Pittsburg and Shawmut Railroad. *See* Respondent's Exhibits 1-3. BPRR currently owns and maintains the crossings. *Tr.*, at 50:5-7. However, the record is without any evidence demonstrating when BPRR took ownership of the crossings. As BPRR did not own the crossings when they were constructed, it would not have received any initial benefit from them. However, Knox Township would have received some benefit from the crossings in that they permitted its residents to travel the respective roadways unobstructed by rail traffic. *Tr.*, at 237:18-21.

BPRR is responsible for maintenance of the bridges. However, as demonstrated by the record, they have not deteriorated to the point that they need to be removed. Superficial deterioration is not a reason to completely remove structures of this type. The conditions identified with respect to each bridge can be addressed through repairs and maintenance. Additionally however, Ramsaytown, East Bellport, and Harriger Hollow Roads are all township roads which Knox Township is responsible to maintain. East Bellport and Harriger Hollow Roads are not paved and lack posted speed limits or advisory speed limits, and all of

the roadways lack pavement markings. Tr., at 118:14-25. These measures, along with improving storm water runoff and repairing vertical pavement deflections and failures, all of which are the responsibility of Knox Township, would enhance safety at and approaching the crossings. Respondent's Exhibit 14, at 8.

BPRR would not benefit from the removal of the crossings. The estimated cost of removal for the three structures would likely reach or exceed \$250,000. Tr., at 56:7-12. Estimates for removal were obtained by BPRR in March of 2020. The estimate to remove the abutments at Harriger Hollow road was \$18,000 for the above grade portion of one abutment, and \$35,000 for both abutments, with an additional \$30,000 estimated for a below grade removal. Tr., at 55:8-24. Removal of the structures at Ramsaytown Road and East Bellport Road were estimated at \$40,000 each for the above grade portions and \$75,000 each for the below grade portions. Tr., at 56:1-3. It is anticipated that these estimates would likely increase by 10-20% since the time they were obtained. Tr., at 56:3-5. In contrast, the chipping and scaling work completed in the fall of 2019 was \$4,000. Respondent's Statement 1, at 4:18-24. Thus, the removal of the structures at the estimated cost without any demonstrated need would be to BPRR's detriment. Not only would the cost of removal be to BPRR's detriment, but the cost to reconstruct new bridges in the event that rail service returns to this line would likely be several million dollars. Tr., at 68:4-9. Further, removal of the bridges would diminish the value and utility of BPRR's property. Respondent Statement 2, at 1:23-24.

In contrast, Knox Township would benefit from the removal of the bridges. Tr., at 238:17-20. It would not need to maintain advance warning signs or signs at the crossings. While BPRR denies that the bridges pose safety hazards, to the extent that Knox Township

alleges that the bridges present issues with sight distances, restrictive clearances, and concrete falling into the roadways, these concerns would be alleviated.

The relevant factors indicate that each party has benefitted from the existence of the crossings. However, it is clear that Knox Township will realize a significantly greater benefit than BPRR if the crossings are ordered to be removed.

#### **IV. PROPOSED FINDINGS OF FACT**

1. Complainant is Knox Township, a municipality located in Jefferson County, Pennsylvania, with a mailing address of 7525 Knox Dale Rd., P.O. Box 41, Knox Dale, Pennsylvania 15847. Compl, ¶3.

2. On April 10, 2019, Knox Township filed a Complaint before the Pennsylvania Public Utility Commission (“Commission”) against Pittsburgh & Shawmut Railroad.

3. On April 25, 2019, the Commission’s Secretary served the Complaint on Buffalo and Pittsburgh Railroad, Inc., the Pennsylvania Department of Transportation (“PennDOT”), Jefferson County, and Brookville Borough, naming those parties as Respondents.

4. The Complaint alleges “[t]here are 3 overpasses on a railroad right-of-way that are creating a traffic and safety problem.” Compl., ¶3. It claims that the overpasses are “too narrow for two-lane traffic and are not wide enough to meet state requirements”, and further that, “[l]arge fire apparatus are concerned with clearances.” *Id.* The Complaint also alleges that “[t]hese overpasses are deteriorating and large pieces of concrete from the ceiling are falling on the roadway.” *Id.*

5. The Township requests that the structures be removed. Compl., ¶4.

6. The overpasses identified in the Complaint are railroad bridge structures located at public crossings (DOT 863 298 X), (DOT 863 296 J) and (DOT 863 302 K) where Ramsaytown Road (T-841), Harriger Hollow Road (T-420) and East Bellport Road (T-405) cross, below grade, the right of way of Buffalo & Pittsburgh Railroad Inc., located in Knox Township, Jefferson County. Secretarial Letter, September 10, 2019, at 1.

7. These crossings are no longer active as the railroad line has been abandoned and the track has been salvaged. Respondent Statement 1, at 1:16-17.

8. The bridges were left in place to keep the corridor intact in the event that railroad traffic returns to the area, and to preserve the value and utility of the property. Respondent Statement 2, at 1:17-24.

9. The structures located at Ramsaytown and East Bellport Road were constructed in 1910, and the structure located at Harriger Hollow Road was constructed in 1906. Tr. at 49:3-6; Respondent Exhibits 1-3.

10. The plans indicate that the crossings were constructed by the Pittsburg and Shawmut Railroad. *See* Respondent's Exhibits 1-3.

11. The Ramsaytown and East Bellport Road structures are 16 foot wide concrete arch bridges, and the Harriger Hollow Road structure consists of two concrete abutments. Respondent Statement 1, at 1:11-16.

12. BPRR currently owns these structures. Tr., at 50:5-7.

13. BPRR also inspects and maintains these structures pursuant to its Bridge Management Program. Respondent's Statement 1, at 1:28-3:13.

14. The structures were inspected on July 29, 2021, by Shawn Baer, BPRR's Director of Structures. Tr., at 50:18-51:17; Respondent's Statement 1, at 3:14-16.

15. The inspections identified spalling, and minor surface cracking in the concrete. Respondent's Statement 1, at 3:23-4:2; Respondent's Exhibits 4-6.

16. These items were assigned a medium or low priority rating, meaning that repairs should be considered in either a three to four, or four to five year repair program. Tr., at 52:5-53:6; Respondent's Exhibits 4-6.

17. The structures were also inspected on October 4, 2021, by BPRR's expert Wayne Duffett. Tr. at 76:4.

18. Mr. Duffett is a professional engineer with a concentration in bridges and structures, and is licensed in several states including Pennsylvania. Tr. at 74:15-75:6.

19. The structural integrity of each structure is good, there are no structural issues, and all three are structurally safe. Tr., at 76:23-77:1-3; Respondent's Statement 3, at 2:2-3; Respondent's Exhibits 9-12.

20. There is minor cracking and spalling, which is surface deterioration due to environmental conditions, and is typically addressed through periodic maintenance. Tr. at 76:14-22; 81:25-82:17.

21. There are no through cracks or settlement at any of the structures. Respondent's Statement at 2:11-12.

22. The abutments of the Ramsaytown and East Bellport Road structures have a thickness of 7'10" and 6'7", respectively. Respondent's Statement 3, at 5:12-16.

23. The dimensions of all three structures are set forth in the Plans. Respondent's Exhibits 1-3.

24. Any concrete potentially falling from the wingwalls of the Ramsaytown Road bridge would not pose a hazard to motor vehicles because it would not be falling from overhead. Tr., at 94:11-95:11.

25. Only concrete falling from the arch barrel or the headwalls could potentially present a hazard, but these areas are in good condition. Tr. at 96:24-97:11.

26. A traffic engineering investigation was performed with respect to each of the structures and roadways by Charles Wooster, a professional traffic engineer. See Respondent's Exhibits 14-16.

27. Ramsaytown Road is paved, but it has no pavement markings and its width varies from 14 to 20 feet. Respondent's Statement 5, at 3:18-21.

28. East Bellport and Harriger Hollow Road are both unpaved gravel and dirt roadways, with no pavement markings and widths that vary from 14 to 16 feet and 14 to 18 feet, respectively. *Id.*, at 3:24-36.

29. The site distances approaching the Ramsaytown and East Bellport Road structures are 500 and 300 feet, respectively. Tr., at 116:5-16; Respondent's Statement 5, at 4:30-33.

30. The sight distance at Harriger Hollow Road is 110 feet approaching the structure due to the curvature of the road and the north abutment. Tr., at 116:16-20; Respondent's Statement 5, at 5:3-8.

31. Harriger Hollow Road generally has limited sight distance due to several severe horizontal curves. *Id.*, at 5:1-2; Respondent's Exhibits 15-16.

32. The average daily traffic volume on Ramsaytown Road is approximately 312 vehicles with only 1.3% of that volume consisting of buses and 4% trucks; East Bellport Road

has an average daily traffic volume of approximately 30 vehicles per day (0% buses and 6.7% trucks); Harriger Hollow Road's average daily traffic volume is a mere 15 vehicles (0% buses and 0% trucks). Tr., at 115:4-20; Respondent's Statement 5, at 5:10-18.

33. Accident data from PennDOT for the last 10 years for each road revealed that there is no site specific crash pattern for any of the bridges. Tr., at 111:17-25.

34. No reported accidents occurred at the East Bellport structure during that time period. Respondent's Statement 5, at 5:33.

35. One reported accident occurred at the Ramsaytown Road structure and one occurred at the Harriger Hollow Road structure, but these were due to snowy conditions and the drivers traveling too fast for conditions, failing to maintain proper speed, and driving on the wrong side of the road. *Id.*, at 5:27-6:2.

36. There is no evidence of non-reported accidents such as skid marks, or contact marks from vehicles on any of the structures. Tr., at 114:23; Respondent's Statement 5, at 7:12-16.

37. There are no applicable roadway design standards, including PennDOT's Highway Design Manual, Publication 13M, that require the alteration, modification, or removal of any of the three railroad bridge structures. Tr., at 112:10-16; 117:19-118:4; Respondent's Statement 5, at 2:15-21; 6, at 1:17-28.

38. Knox Township has not had any engineering experts inspect the bridges or roadway approaches. Tr., at 157:12-16; 158:16-21.

39. Knox Township does not have records of any accidents occurring at any of the bridges. Tr., at 162:3-6.

40. Mr. Sinick did not conduct a formal bridge inspection with respect to any of the structures. Tr., at 191:15-17; 197:23-198:4.

41. Mr. Sinick did not perform a structural rating inspection. Tr., at 203:2-5.

42. Mr. Sinick did not do an in-depth inspection or structural analysis of the structures. Tr., at 207:5-6.

43. Mr. Sinick did not gather any traffic data or accident data. Tr., at 207:112-14-208:3.

44. Mr. Sinick is not aware of any complaints from motorists who have had their vehicles damaged by concrete falling from any of the structures. Tr., at 216:13-18.

45. Mr. Sinick is not aware of any instances of debris falling from above the bridges. Tr., at 226:12-22.

46. Mr. Sinick is not aware of any accidents at the structures other than the two noted by BPRR's expert Mr. Wooster, and could only assume there were more. Tr., at 240:19-241:5-7.

47. Mr. Sinick agreed that bridges with abutments in the clear zone are "all over the place" within the Commonwealth. Tr., at 228:17-20.

48. Bridges do not need to be removed solely because their abutments are in the clear zone. Tr., at 229:6-9.

49. Knox Township received some benefit from the crossings in that they permitted its residents to travel the respective roadways unobstructed by rail traffic. Tr., at 237:18-21.



50. East Bellport and Harriger Hollow Roads are not paved and lack posted speed limits or advisory speed limits, and all of the roadways lack pavement markings. Tr., at 118:14-25.

51. Implementing these measures, along with improving storm water runoff and repairing vertical pavement deflections and failures, all of which are the responsibility of Knox Township, would enhance safety. Respondent's Exhibit 14, at 8.

52. BPRR would not benefit from the removal of the bridges. The estimated cost of removal for the three structures would likely reach or exceed \$250,000. Tr., at 56:7-12.

53. Estimates for removal were obtained by BPRR in March of 2020. The estimate to remove the abutments at Harriger Hollow road was \$18,000 for the above grade portion of one abutment, and \$35,000 for both abutments, with an additional \$30,000 estimated for a below grade removal. Tr., at 55:8-24.

54. The costs for removal of the structures at Ramsaytown Road and East Bellport Road were estimated at \$40,000 each for the above grade portions and \$75,000 each for the below grade portions. Tr., at 56:1-3.

55. It is anticipated that these estimates would likely increase by 10-20% since the time they were obtained. Tr., at 56:3-5.

56. The chipping and scaling work completed in the fall of 2019 was \$4,000. Respondent's Statement 1, at 4:18-24.

57. The cost to reconstruct new bridges in the event that rail service returns to this line would likely be several million dollars. Tr., at 68:4-9.

58. Removal of the bridges would diminish the value and utility of BPRR's property. Respondent Statement 2, at 1:23-24.

59. Knox Township would benefit from the removal of the bridges. Tr., at 238:17-20.

## V. PROPOSED CONCLUSIONS OF LAW

1. Pursuant to 66 Pa. C.S.A. §332(a), the proponent of a rule or order has the burden of proof.

2. The Commission is authorized to regulate railroad-highway crossings pursuant to Sections 2702 and 2704 of the Public Utility Code (Code). *Southeastern Pa. Transp. Auth. v. Pa. Pub. Util. Comm'n*, 592 A.2d 797, 800 (Pa. Commw. 1991).

3. The Commission's authority is not unlimited and "may not be exerted arbitrarily or unreasonably". *Pa. R. Co. v. Pa. Pub. Util. Comm'n*, 35 A.2d 588, 591 (Pa. Super. 1944).

4. "The applicable standard in railroad-highway crossing cases is 'the prevention of accidents and the promotion of safety of the public.'" *Southeastern Pa. Transp. Auth.*, 592 A.2d at 800 n. 2 (citing *Pa. R. Co. v. Pa. Pub. Util. Comm'n*, 35 A.2d 588, 590 (Pa. Super. 1944)).

5. "The rationale underlying the Commonwealth's entrustment of broad powers to the PUC to exercise the Commonwealth's police power with respect to railroad-highway crossings is to prevent railroad-highway crossings from becoming unsafe for the public." *Southeastern Pa. Transp. Auth.*, 592 A.2d at 800 (citing *Pittsburgh R. Co. v. Pa. Pub. Util. Comm'n*, 182 A.2d 80, 84 (Pa. Super. 1962); *Tarentum Borough v. Pa. Pub. Util. Comm'n*, 90 A.2d 853, 855 (Pa. Super. 1952)).

6. Pursuant to 66 Pa. C.S.A. §2704(a), the Commission has authority to allocate the costs and expenses of altering or removing a railroad crossing among all of the concerned parties. *Norfolk S. Ry. Co. v. Pa. Pub. Util. Comm'n*, 77 A.3d 619, 621 (Pa. 2013).

7. “[T]he cost of [alterations and protection of a rail-highway] crossing . . . shall be borne and paid . . . by the public utilities, municipal corporations [or] municipal authority . . . concerned, or by the Commonwealth, in such proper proportions as the commission may, after due notice and hearing, determine, unless such proportions are mutually agreed upon and paid by the interested parties.” *Id.*, 77 A.3d at 621 (quoting Pa. C.S.A. §2704(a)).

8. “Although the allocation of costs between the relevant parties is a matter within the PUC’s discretion, such allocation must, nevertheless, be just and reasonable; that is, the decision must be based upon some sound legal or factual basis”. *City of Philadelphia v. Pa. Pub. Util. Comm’n*, 676 A.2d 1298, 1301 (Pa. Commw. 1996).

9. The factors that have consistently been viewed as relevant in allocating costs include: 1) The party that originally built the crossing; 2) The party that owned and maintained the crossing; 3) The relative benefit initially conferred on each party with the construction of the crossing; 4) Whether either party is responsible for the deterioration of the crossing that has led to the need for its repair, replacement or removal; and 5) The relative benefit that each party will receive from the repair, replacement or removal of the crossing. *Greene Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm’n*, 668 A.2d 615, 619 (Pa. Commw. 1995).

10. “The PUC, in apportioning these costs, is not limited to any fixed rule but must only consider all relevant factors and render an order which is just and reasonable. *Commonwealth of Pa. Dep’t of Transp. v. Pa. Pub. Util. Comm’n*., 464 A.2d 645, 649 (Pa. Commw. 1983).

11. Ownership of property is not dispositive on the issue of allocating costs. *Southeastern Pa. Transp. Auth. v. Pa. Pub. Util. Comm'n*, 592 A.2d at 807 (citing *Commonwealth of Pa. Department of Transp. v. Pa Pub. Util. Comm'n*, 469 A.2d 1149 (Pa, Commw. 1983)).

**VI. PROPOSED ORDERING PARAGRAPHS**

1. The public crossings (DOT 863 298 X), (DOT 863 296 J) and (DOT 863 302 K) where Ramsaytown Road (T-841), Harriger Hollow Road (T-420) and East Bellport Road (T-405) cross, below grade, the right of way of Buffalo & Pittsburgh Railroad Inc., located in Knox Township, Jefferson County shall not be altered or removed.

2. The Buffalo & Pittsburgh Railroad, Inc. shall, at its sole cost and expense, continue to inspect the bridges at the crossings pursuant to its Bridge Management Program and maintain the bridges as necessary and appropriate.

3. Knox Township shall, at its sole cost and expense, maintain the roadways and any existing advanced warning signs posted along the roadways and roadway clearance markers installed at the bridges.

4. The Complaint of Knox Township is hereby dismissed.

Respectfully Submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

By: /s/Aaron M. Ponzo

J. Lawson Johnston, Esquire

PA I.D. #19792

Scott D. Clements, Esquire

PA I.D. #78529

Aaron M. Ponzo, Esquire

PA I.D. 203584

Attorneys for Buffalo & Pittsburgh  
Railroad

**CERTIFICATE OF SERVICE**

I, Aaron M. Ponzo, Esquire, hereby certify that true and correct copies of the foregoing have been served this 31<sup>st</sup> day of March 2022 upon the parties listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

Honorable Mary D. Long  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
301 Fifth Avenue  
Suite 220, Piatt Place  
Pittsburgh, PA 15222  
[malong@pa.gov](mailto:malong@pa.gov)

Michael L. Swindler, Esquire  
Kayla L. Rost, Esquire  
Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
Commonwealth Keystone Building  
400 North Street  
P.O. Box 3265  
Harrisburg, PA 17120  
[mwindler@pa.gov](mailto:mwindler@pa.gov)  
[karost@pa.gov](mailto:karost@pa.gov)  
Accepts e-Service  
*Counsel for BI&E*

Knox Township  
7525 Knox Dale Road  
P.O. Box 41  
Knox Dale, PA 15847  
[KnoxTwp@Windstream.net](mailto:KnoxTwp@Windstream.net)

Jeffrey M. Gordon, Esquire  
Gordon & Dennison  
293 Main Street  
Brookville, PA 15825  
[JGordon@293Law.com](mailto:JGordon@293Law.com)  
*Counsel for Knox Township*

Jilian G. Fellows, Esquire  
Karen Cummings, Esquire  
Commonwealth of Pennsylvania,  
Department of Transportation  
P.O. Box 8212  
Harrisburg, PA 17105-8212  
[jfellows@pa.gov](mailto:jfellows@pa.gov)  
[kcummings@pa.gov](mailto:kcummings@pa.gov)  
Accepts e-Service  
*Counsel for PennDOT*

James D. Dennison, Esquire  
Brookville Borough Solicitor  
18 Western Avenue, Suite A  
Brookville, PA 15825  
[JDennison@Windstream.net](mailto:JDennison@Windstream.net)  
*Counsel for Brookville Borough*

CJ Zwick, Esquire  
Zwick & Zwick LLP  
171 Beaver Drive  
P.O. Box 1126  
DuBois, PA 15801  
[cjz@zwick-law.com](mailto:cjz@zwick-law.com)  
Accepts e-Service  
*Counsel for Jefferson County*

/s/ Aaron M. Ponzo  
Aaron M. Ponzo, Esquire