



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

March 31, 2022

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's Main Brief

Dear Secretary Chiavetta:

Enclosed please find the **Main Brief** of the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement in the above-referenced proceeding.

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'.

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cc: As per Certificate of Service
William Sinick, P.E., C.B.S.I. (via email - wilsinick@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MAIN BRIEF
OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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Dated: March 31, 2022

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I. PROCEDURAL HISTORY

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.

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”),

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).

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 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.

² The line was 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.

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 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 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.

On July 6, 2021, ALJ Long issued a Prehearing Order setting the litigation schedule for this matter. Specifically, direct testimony was due on November 19, 2021, rebuttal testimony was due on December 17, 2021, and the evidentiary hearing was scheduled for January 25, 2022.

On November 19, 2021, I&E, PennDOT, and BPRR served written direct testimony. On December 1, 2021, Knox Township served its written direct testimony.

On December 17, 2021, I&E and BPRR served written rebuttal testimony.

On January 10, 2022, the Borough served its written direct testimony.

On January 25, 2022, ALJ Long presided over the evidentiary hearing. Counsel from I&E, PennDOT, Knox Township, Jefferson County, and BPRR were present.

On January 26, 2022, ALJ Long issued an Interim Order Memorializing the Striking of Written Testimony. Specifically, ALJ noted the specific sections of Mr. William Sinick's testimony that have been stricken and instructed the parties to upload all written testimony and exhibits to the Sharepoint site by noon on January 28, 2022.

On March 2, 2022, a Briefing Order was issued directing the parties to file Main Briefs by March 31, 2022 and Reply Briefs by April 20, 2022.

I&E submits this Main Brief in accordance with the briefing schedule that was established in the March 2, 2022 Briefing Order. Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Ordering Paragraphs are attached as Appendix A, B, and C, respectively.

II. STATEMENT OF THE CASE

Knox Township filed the instant complaint against BPRR after receiving numerous complaints regarding the railroad structures at Ramsaytown Road, Harriger Hollow Road, and East Bellport Road from local residents.³ Some of the complaints received by Knox Township included vertical and horizontal clearance restrictions at the crossings, concrete and debris falling from the structures, and the roads transitioning from two-lane to one-lane through the crossing.⁴

The railroad bridge structure along Ramsaytown Road (T-841) is a concrete closed spandrel arch structure which was constructed in 1910.⁵ Its bridge elements consist of an arch barrel, spandrel walls, abutments, and wings.⁶ The arch barrel is the portion of the bridge that you would drive through.⁷ The abutments are the portion of the bridge located on each side of the roadway that the arch barrel ties into and then extends down to the footing below the ground.⁸ The wings flare out from the abutments and retain the earthen embankment that makes up the entire railroad grade prior to the bridge.⁹ The condition of

³ *See generally* Complaint; Knox Township Statement No. 1, pg. 1; N.T. pg. 148.

⁴ N.T. pgs. 152, 160-161, 164, 166; I&E Exhibit D, Pictures 7 and 11; Knox Township Statement No. 1, pg. 2.

⁵ I&E Statement No. 1, pg. 10; *see generally* I&E Exhibit D, Pictures 5, 9, and 16; BPRR Statement No. 1, pg. 1; N.T. pg. 49.

⁶ I&E Statement No. 1, pg. 10.

⁷ I&E Statement No. 1, pg. 10.

⁸ I&E Statement No. 1, pg. 11.

⁹ I&E Statement No. 1, pg. 11.

the concrete of the arch barrel and spandrel walls show heavy deterioration, delamination, cracking, and spalls.¹⁰ The concrete in the arch barrel is largely in a delaminated condition along the roadway.¹¹ This condition of the concrete is indicative of the structural breakdown in the chemical composition of the concrete itself due to its age, lack of maintenance, and its exposure to water and salt spray.¹²

The approaching roadway to the Ramsaytown Road structure is a two-laned paved roadway with an average width of approximately 16 feet with 3-to-5-foot gravel shoulders on each side of the roadway.¹³ The traversable roadway width within the barrel of the arch is limited, approximately 12 feet.¹⁴

The railroad bridge structure along East Bellport Road (T-405) is a concrete arch structure similar in design to the Ramsaytown Road bridge structure which was constructed in 1910.¹⁵ It is in better condition than the Ramsaytown Road structure, but it also has cracks, delamination, and spalls throughout the concrete structure.¹⁶ The earthen material above the arch barrel and within the spandrel walls at East Bellport Road are heavily wooded and vegetated.¹⁷ The approaching roadway to the East Bellport Road structure is a two-laned gravel roadway with an average width of approximately 15 feet with 3-to-5-foot shoulders on each side of the roadway.¹⁸ The traversable roadway width

¹⁰ I&E Statement No. 1, pg. 11; *see generally* I&E Exhibit D, Pictures 1, 7, and 11.

¹¹ I&E Statement No. 1, pg. 11; *see generally* I&E Exhibit D, Pictures 1, 7, and 11.

¹² I&E Statement No. 1, pg. 11.

¹³ I&E Statement No. 1, pg. 11.

¹⁴ I&E Statement No. 1, pg. 11.

¹⁵ I&E Statement No. 1, pg. 12; *see generally* I&E Exhibit B, Pictures 1-7, and 10; BPRR Statement No. 1, pg. 1; N.T. pg. 49.

¹⁶ I&E Statement No. 1, pg. 12; *see generally* I&E Exhibit B, Pictures 1-7, and 10.

¹⁷ I&E Statement No. 1, pg. 12; *see generally* I&E Exhibit B, Pictures 8, 16-18.

¹⁸ I&E Statement No. 1, pgs. 12-13; *see generally* I&E Exhibit B, Picture 11.

within the barrel of the arch is approximately 13 feet.¹⁹

The railroad bridge structure along Harriger Hollow Road (T-420) is a steel girder simple span bridge structure which was constructed in 1906.²⁰ The clear span between edge of concrete abutment to edge of concrete abutment is 17 feet.²¹ The steel superstructure has been removed and placed adjacent to one of the abutments.²² The concrete condition of the abutments is fair, but there are cracks and spalls on both abutments.²³ The abutments appear to be stable and not in danger of rotating, settling, or overturning.²⁴ However, the concrete abutments are in the roadway clear zone and restrict sight distance.²⁵

The approaching roadway to the Harriger Hollow Road structure is a two-laned gravel roadway with an average width of approximately 15 feet with 3-to-5-foot shoulders on each side of the roadway.²⁶ The traversable roadway width between the abutments is approximately 14 feet.²⁷

The rail line which utilized the three (3) railroad structures was abandoned and service discontinued through the STB in 2005 and 2006, and BPRR has since removed the track, ties, and ballast.²⁸ While the rail line is not active, BPRR still owns the railroad crossing structures.²⁹

¹⁹ I&E Statement No. 1, pgs. 12-13; *see generally* I&E Exhibit B, Picture 11.

²⁰ I&E Statement No. 1, pg. 13; *see generally* I&E Exhibit C, Picture 5; BPRR Statement No. 1, pg. 1; N.T. pg. 49.

²¹ I&E Statement No. 1, pg. 13.

²² I&E Statement No. 1, pg. 13; *see generally* I&E Exhibit C, Picture 5.

²³ I&E Statement No. 1, pg. 13; *see generally* I&E Exhibit C, Pictures 1, 11, 12, 13, and 15.

²⁴ I&E Statement No. 1, pg. 13.

²⁵ I&E Statement No. 1, pg. 13; *see generally* I&E Exhibit C, Pictures 1, 11, 12, 13, and 15.

²⁶ I&E Statement No. 1, pgs. 13-14; *see generally* I&E Exhibit C, Pictures 1, 5, and 10.

²⁷ I&E Statement No. 1, pgs. 13-14.

²⁸ I&E Statement No. 1, pgs. 3-4; BPRR Statement No. 1, pg. 1; N.T. pg. 50.

²⁹ BPRR Statement No. 1, pg. 1; N.T. pg. 50.

BPRR's Bridge Management Program does not have a provision on out-of-service bridges, so BPRR has not inspected or maintained the three (3) railroad structures during the time-period of 2005/2006 to 2019 when an inspection was completed in May 2019 as a result of this Complaint.³⁰

III. BURDEN OF PROOF

Knox Township, as the complainant in this matter, bears the burden of proving, by a preponderance of evidence, that the three (3) subject railroad structures create an unsafe condition for the public and should be removed.³¹ "A preponderance of the evidence means only that one party has presented evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party."³²

IV. SUMMARY OF ARGUMENT

It is well established that in rail-highway crossing cases, the guiding principle for Commission action is the public interest, i.e., to ensure and promote the protection, safety, convenience, and welfare of the travelling public.³³

As discussed in more detail below, the public railroad structures located at Harriger Hollow Road, Ramsaytown Road, and East Bellport Road create an ongoing public safety hazard to the traversing public and require immediate removal. BPRR

³⁰ BPRR Statement No. 1, pg. 3; N.T. pgs. 53, 87-88.

³¹ 66 Pa.C.S. § 332(a). Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding; *see also Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600, 602 n. 1 (Pa. Cmwlth. 1990); *Borough of Bridgewater v. Pa. P.U.C.*, 124 A.2d 165 (Pa. Super. 1956); *N. Lebanon Twp. v. Pa. P.U.C.*, 962 A.2d 1237 (Pa. Cmwlth. 2008).

³² *Energy Conservation Council of Pennsylvania v. Pa. P.U.C.*, 995 A.2d 465, 478 (Pa. Cmwlth. 2010).

³³ *Application of the Dep't of Transportation of the Commonwealth of Pennsylvania for Approval to Abolish the Existing Crossing Where S.R. 0522 Crosses at Grade Two Tracks of E. Broad Top R.R. & Coal Co. (Aar 003 135*) in Cromwell Twp., Huntingdon County; & the Allocation of Costs & Expenses Incident Thereto.*, Docket No. A-00114338, Opinion and Order dated Mar. 14, 2002.

discontinued service at the rail line which uses the three (3) crossings in 2005/2006, and the crossings are not serving their ultimate purpose, i.e., to safely move train traffic and freight over a public road. Moreover, the structures are over 110 years old, are deteriorating, have limited sight distances, and have vertical and horizontal clearance restrictions. Thus, I&E respectfully requests that Your Honor find the three (3) railroad structures to be unsafe and to order their immediate removal at the sole cost and expense of BPRR.

V. ARGUMENT

A. LEGAL STANDARD

It is well settled that the Commission has exclusive jurisdiction over matters involving railroad-highway crossings.³⁴ The Commission also has exclusive authority to assess the costs of any work it orders upon the concerned parties in the proceeding in such proper proportions as the Commission may determine.³⁵

Importantly, the Commission has the exclusive jurisdiction regarding the alteration, relocation, suspension or abolishment at any and all public crossings.³⁶ Thus, the Commission's jurisdiction and the public nature of a crossing is not affected when a party discontinues use or service of a public crossing and can only be impacted if the party files the appropriate application with the Commission.

³⁴ 66 Pa.C.S. §§ 2702, 2704; *AT&T v. Pa. P.U.C.*, 709 A.2d 980 (Pa. Cmwlth. 1998), *appeal granted in part*, 717 A.2d 1022; *Application of the Dep't of Transportation of the Commonwealth of Pennsylvania for Approval to Abolish the Existing Crossing Where S.R. 0522 Crosses at Grade Two Tracks of E. Broad Top R.R. & Coal Co. (Aar 003 135*) in Cromwell Twp., Huntingdon County; & the Allocation of Costs & Expenses Incident Thereto.*, Docket No. A-00114338, Opinion and Order dated Mar. 14, 2002.

³⁵ 66 Pa.C.S. § 2704.

³⁶ 66 Pa.C.S. § 2702.

B. THE THREE (3) CROSSINGS ARE A PUBLIC SAFETY HAZARD

The record is clear that the three (3) railroad bridges are a hazard to public safety and that neither party benefits from their continued existence. Knox Township presented the testimony of James Berry, a local resident who owns a 150-acre farm on the corner of Harriger Hollow Road and Hunters Grove Road, who is a school bus driver, and who has been the Township Supervisor for twenty (20) years.³⁷

As a school bus driver, Mr. Berry credibly and unequivocally stated that he drives a full-sized school bus, which can carry forty-eight (48) children, under the Ramsaytown Road railroad bridge five (5) days a week, four (4) times a day with both high school and elementary school children.³⁸ He credibly noted that a school bus sits higher than the average vehicle, and thus the sight distance from the school bus is much worse than for the average vehicle.³⁹ He also noted that the underpass is difficult for the bus to travel under and that icicles hanging from the ceiling and concrete falling from the ceiling of the railroad bridge cause him great concern.⁴⁰

As a farmer, Mr. Berry credibly and unequivocally stated that his farm equipment is too wide to pass through the Ramsaytown Road crossing and the Harriger Hollow Road crossing, though he has been able to drive his combine through the Harriger Hollow Road crossing after the superstructure was removed.⁴¹

³⁷ Knox Township Statement No. 1, pg. 1; N.T. pg. 147.

³⁸ N.T. pgs. 149-150, 154.

³⁹ N.T. pgs. 149-150.

⁴⁰ N.T. pgs. 149-150; Knox Township Statement No. 1, pg. 2.

⁴¹ N.T. pgs. 160-161.

As Township Supervisor, Mr. Berry credibly stated that the chunk of concrete shown in I&E's Exhibit D, Pictures 7 and 11, was found in the roadway by Knox Township workers after it had fallen from inside the tunnel.⁴² The Knox Township workers removed the chunk of concrete from the roadway and placed it in the grass as shown in the pictures.⁴³ Mr. Berry himself has seen chunks of concrete, sometimes as large as a football, which have fallen from the railroad structures.⁴⁴

Moreover, Mr. Berry has stated that the Township wants to widen the road at Ramsaytown Road and has tried to schedule improvements as recent as four (4) and two (2) years ago.⁴⁵ However, Mr. Berry explained that the Township does not have a large budget due to its approximately 1,100 residents, mostly low income and retired individuals.⁴⁶ He testified that the Township does not have the budget or funds available to remove the railroad structures.⁴⁷

In addition to Mr. Berry's testimony, Mr. Sinick credibly opined that the three (3) railroad structures created an ongoing safety hazard to the public at large.⁴⁸ Upon his first visit to the crossings, Mr. Sinick noted that the concrete arch structures at Ramsaytown Road and East Bellport Road showed evidence of decay and the potential for debris to fall onto the road.⁴⁹ The Ramsaytown Road railroad structure had loose and delaminated concrete on the interior of the arch barrel ceiling, sidewalls, and end walls which were

⁴² N.T. pgs. 152, 164, 166; I&E Exhibit D, Pictures 7 and 11.

⁴³ N.T. pgs. 152, 164, 166; I&E Exhibit D, Pictures 7 and 11.

⁴⁴ N.T. pgs. 152, 164, 166.

⁴⁵ N.T. pgs. 157-158.

⁴⁶ N.T. pg. 159.

⁴⁷ N.T. pg. 165.

⁴⁸ *See generally* I&E Statement Nos. 1 and 2.

⁴⁹ I&E Statement No. 1, pg. 6.

exposed to vehicle and pedestrian traffic, and which could fall from the structure onto the roadway.⁵⁰ Mr. Sinick personally observed concrete cobbles, concrete pieces, and concrete aggregate along the roadway that had previously fallen from the structures.⁵¹ He further noted the lack of proper signage denoting horizontal and vertical clearance restrictions at the railroad structures which is necessary in light of the roadway transition from two-lane to one-lane within the structures.⁵²

BPRR's witness, Mr. Wooster, agrees with Mr. Sinick's opinions, stating that two (2) vehicles are unable to safely pass under the railroad bridge at Harriger Hollow Road and that vehicles approaching the crossing have a hard time seeing whether a vehicle is approaching in the opposite direction.⁵³ Mr. Wooster also agreed that two (2) vehicles are unable to safely pass under the railroad bridge at Ramsaytown Road.⁵⁴

During his most recent visit to the crossing in October 2021, Mr. Sinick observed delaminated concrete at the Ramsaytown Road structure.⁵⁵

BPRR's own inspection, completed in October 2021 as well, corroborates Mr. Sinick's description of the railroad structures. Mr. Duffett summarized his inspection of the bridge at Harriger Hollow Road by noting minor spalling with cracking and leaching at the north and south abutments, one heavy spalling along the mid-height cold joint at the south abutment, minor spalling at the backwalls, heavy spalling on the coping, and heavy spalling at the northeast, northwest, and southwest wingwalls.⁵⁶

⁵⁰ I&E Statement No. 1, pg. 6.

⁵¹ I&E Statement No. 1, pg. 6.

⁵² I&E Statement No. 1, pgs. 6-7.

⁵³ N.T. pgs. 132-133.

⁵⁴ N.T. pg. 137.

⁵⁵ I&E Statement No. 1, pg. 10; N.T. pg. 219.

⁵⁶ BPRR Statement No. 3, pgs. 2-3.

In reference to Ramsaytown Road, Mr. Duffett noted that the north abutment is chipped over 50%, the south abutment is chipped over 70%, the west headwall is chipped 1" over 80%, the northeast wingwall is chipped, and the northwest wingwall is over 80% chipped.⁵⁷ The East headwall is missing some gunite, there is light cracking and leaching at the arch barrel, there is a crack from the west end that runs from the top of the arch, one of the cold joints at the east end is separating and shows signs of spalling, and one cold joint to the east has minor leaching and spalling.⁵⁸

In reference to East Bellport Road, Mr. Duffett noted that the north abutment is chipped and has light cracking and spalling, the south abutment is chipped and has light cracks in the gunite, there is minor cracking in the headwall, there is minor cracking, leaching, and spalling in the northeast and southeast wingwalls, there is minor spalling along the joint at the northwest wingwall, there is minor spalling and cracking at the southwest wingwall, the arch is gunited with minor cracking and leaching throughout, there is a crack at the top of the arch, there are two small spalled areas south of the crack, and a small area of spalling near the crack at the top of the arch.⁵⁹

Thus, the record is clear that the three (3) railroad structures show heavy signs of deterioration, which is expected from concrete structures over 110 years old. It is also uncontested that concrete is falling from the railroad structures and that the structures have cracks, leaching, spalling, and delamination on all parts of the structures.

⁵⁷ BPRR Statement No. 3, pgs. 3-4.

⁵⁸ BPRR Statement No. 3, pgs. 3-4.

⁵⁹ BPRR Statement No. 3, pgs. 4-5.

1. No party currently benefits from the existence of the structures.

Mr. Sinick testified that BPRR has somehow avoided the responsibility of maintenance and inspection costs at these crossings since service was discontinued through the STB and that BPRR received a benefit when it salvaged its steel track, railroad ties, and ballast, and the lease and/or sale of its land.⁶⁰ Mr. Sinick further noted that BPRR has benefited from the lack of conflict with vehicle or pedestrian traffic due to the existence of the railroad structures when the rail line was active.⁶¹ He explained that BPRR was able to move its freight unopposed to traffic and without the worry of having an accident with a vehicle.⁶²

To the contrary, the existence of the structure has been a detriment to Knox Township.⁶³ Mr. Sinick elaborated that the federally abandoned structures remaining in place have continued to restrict a two-lane public roadway to a one-lane road and has exposed the 90-degree blunt end of concrete obstructions unprotected to vehicular traffic.⁶⁴ Mr. Sinick explained that a concrete obstruction, such as an abutment or concrete arch structure, is described as a rigid fixed object.⁶⁵ A rigid fixed object is an immovable object along the roadside for which if a vehicle impacts the object, it will transfer 100% of the vehicle impact to the driver and the rigid fixed object will not move upon impact.⁶⁶ Rigid fixed objects are dangerous and potentially life-threatening if an

⁶⁰ I&E Statement No. 1, pg. 17.

⁶¹ N.T. pg. 183.

⁶² N.T. pg. 183.

⁶³ I&E Statement No. 1, pg. 17.

⁶⁴ I&E Statement No. 1, pgs. 17-18.

⁶⁵ I&E Statement No. 1, pg. 7.

⁶⁶ I&E Statement No. 1, pg. 7.

accident were to occur, and every effort should be made to lessen the number of roadside obstructions along public roadways.⁶⁷

The lack of maintenance of the three (3) structures have resulted in concrete, stone, and debris falling onto the roadway, and the structures restrict vehicle sight distance and are within the roadway clear zone.⁶⁸ Knox Township is restricted in maintaining its roadways properly because of the concrete obstructions, and farm, trucking, and fire prevention equipment are restricted because of the vertical clearance restrictions caused by the structures.⁶⁹

Mr. Sinick stated that there is no public benefit to keeping the railroad structures intact and he is not aware of any active benefits BPRR receives from the structures remaining in place.⁷⁰

BPRR may attempt to argue that they *may* return service to this abandoned line, but the record suggests otherwise. BPRR's witness, Mr. Boutet, testified that there were no immediate plans to return service to this line and that the railroad line has not been approved for a rail trail nor has a rail trail interest group approached BPRR for trail use.⁷¹ Moreover, along this abandoned line PennDOT removed three (3) of the structures through Docket Nos. A-2009-2104031, A-2010-2185469 and A-2012-2338963, and BPRR removed one structure under Docket No. C-2017-2585787. The record reflects that BPRR would have to undergo a process with the STB to try to reestablish service,

⁶⁷ I&E Statement No. 1, pg. 7.

⁶⁸ I&E Statement No. 1, pgs. 17-18.

⁶⁹ I&E Statement No. 1, pgs. 17-18.

⁷⁰ N.T. pgs. 184, 186.

⁷¹ N.T. pgs. 66-68.

and with portions of the line already abolished through the Commission and existing 110 year old structures at these crossings, it is reasonable to assume that resumption would not occur, or that replacement of the bridges would be required prior to reactivation.⁷²

It is uncontroverted that BPRR abandoned and discontinued service through the STB and has not used the crossings since 2005 or 2006. Thus, BPRR is not operating as a utility at these crossings and the crossing are not fulfilling their true purpose, to safely move freight over the public roadway.⁷³ Indeed, in their current state, the railroad bridge structures are merely planters for trees and vegetation. Accordingly, the three (3) railroad structures are unsafe and should be removed.

2. The traffic data is not conclusive.

Mr. Wooster reviewed the crash data at each crossing, noting that one crash occurred at the Ramsaytown Road structure and one occurred at the Harriger Hollow Road structure.⁷⁴ Mr. Wooster opined that he did not see any evidence of a crash pattern.⁷⁵

According to PennDOT Publication 153, a crash is reportable: (1) if an injury or death occurs; (2) if damage to the vehicle is to the extent that the vehicle cannot be driven under its own power; or (3) if it involves a school bus.⁷⁶ A crash is non-reportable if there

⁷² A discontinuance allows a rail carrier to “cease operating a line for an indefinite period while preserving the rail corridor for possible reactivation of service,” while abandonment removes the line from the national rail system and terminates the railroad’s common carrier obligation for the line. *Preseault v. Interstate Commerce Comm’n*, 494 U.S. 1, 5 n.3 (1990).

⁷³ N.T. pgs. 84, 186-187.

⁷⁴ BPRR Statement No. 5, pg. 5.

⁷⁵ BPRR Statement No. 5, pgs. 2, 7.

⁷⁶ I&E Statement No. 1, pg. 2.

is no injury or death, no towing of the vehicle involved, and it does not require a Police Crash Report to be submitted.⁷⁷

After personally viewing the three (3) public crossings, Mr. Sinick opined that non-reportable crashes have occurred at the railroad structures.⁷⁸ He explained that statistically, there is a higher chance or probability of someone being involved in a non-reportable accident versus a serious accident in which you are hospitalized or killed.⁷⁹ An example of a common non-reportable accident would be a “fender-bender” or the situation where a vehicle scrapes or strikes any part of the railroad structure.⁸⁰ Mr. Wooster even agreed that if a vehicle had a minor accident at the crossing some time ago that it is possible that evidence of the accident could have been covered by graffiti or erased due to the falling/shedding concrete.⁸¹ Thus, Mr. Sinick credibly opined that there have been non-reportable crashes and strikes at the locations of the abandoned railroad structures.⁸²

3. The inspection reports do not show that the structures are safe to the public.

BPRR offered the testimony of Mr. Duffett and a copy of his firm’s two (2) inspections, completed in 2019 and 2021, which state that the railroad bridges are structurally sound in an attempt to argue that the bridges are safe.⁸³ This argument is a red herring and fully articulates how little thought and attention the railroad has paid to

⁷⁷ I&E Statement No. 1, pg. 2.

⁷⁸ I&E Statement No. 1, pg. 2; *see generally* I&E Exhibit B, Picture 1 and I&E Exhibit C, Picture 15.

⁷⁹ I&E Statement No. 1, pg. 2.

⁸⁰ I&E Statement No. 1, pg. 2.

⁸¹ N.T. pg. 139.

⁸² I&E Statement No. 1, pg. 2; *see generally* I&E Exhibit B, Picture 1 and I&E Exhibit C, Picture 15.

⁸³ BPRR Statement No. 3, pgs. 1-2.

these public railroad crossing structures for a period of thirteen (13) years. Arguably, it could be said that BPRR has not inspected the railroad structures since 1990 because Mr. Duffett testified that his office had not inspected the crossings anytime between 1990 and 2019, and has no records of inspections completed in the 1990s, if any were completed.⁸⁴

First, Mr. Sinick credibly stated that it is problematic that BPRR failed to complete annual inspections on the structures for a period of almost thirteen (13) years and have no documented evidence of bridge safety inspections prior to that.⁸⁵ It is unnerving to hear that an entity responsible for concrete railroad structures over public roadway traffic has not inspected or maintained those structures for thirteen (13) years, it has truly been a disservice to the safety of the public for these structures to exist during this time without proper care.

As a current state and federal bridge safety inspector in Pennsylvania, Mr. Sinick explained that one of the most important tools that a bridge inspector can have prior to an inspection is past bridge inspection reports and the history for that structure.⁸⁶ If an entity does not maintain a file or inventory of record documenting past inspection reports and history for that structure, that alone is putting public safety at risk and is negligent of the bridge owner.⁸⁷ Mr. Sinick posed the question of: How could a bridge inspector charged to inspect a bridge fully complete the inspection and evaluate the bridge without knowing what was discovered or noted in the prior report?⁸⁸ Mr. Sinick explained that if he were

⁸⁴ N.T. pgs. 87-88.

⁸⁵ I&E Statement No. 1, pgs. 4-5.

⁸⁶ I&E Statement No. 2, pg. 5.

⁸⁷ I&E Statement No. 2, pg. 5.

⁸⁸ I&E Statement No. 1, pg. 5.

to inspect a bridge structure and observed a crack in the abutment, he would need to know if (1) the crack existed in the prior year's inspection report and (2) if the crack was present, the notes on the crack to determine if the crack grew in size or depth.⁸⁹

Second, Mr. Sinick noted that the inspections completed by BPRR were not completed by National Bridge Inspection Standards ("NBIS") standards nor were they completed by bridge inspector certified in Pennsylvania.⁹⁰ NBIS inspections are standardized inspection procedures which use uniform codes, the engineer completing the NBIS inspection has no discretion in assessing a code or standard.⁹¹ Moreover, it is common knowledge that holding a certification or qualification, especially in the context of engineering or even law, can be critical to determine the credibility of someone or a person's actions/opinions.⁹²

Last, in response to BPRR's testimony on the structural components of the structures, Mr. Sinick opined that bridges can be structurally sound but very unsafe, the terms are mutually exclusive.⁹³ He explained that structurally sound means that a bridge is at no risk of collapsing under its own weight or from forces acting on the structure, such as wind, water, earth loads, or load the structures are intended to carry.⁹⁴ Just because a structure may be structurally sound does not mean it is safe.⁹⁵ Loose concrete

⁸⁹ I&E Statement No. 1, pg. 5.

⁹⁰ N.T. pgs. 187-188. When asked about whether or not he is certified in Pennsylvania to complete bridge inspections, Mr. Duffett replied "holding a piece of paper stating a qualification versus not holding that piece of paper would not alter my findings." N.T. pg. 253.

⁹¹ N.T. pgs. 187-188, 193.

⁹² I&E notes that Mr. Duffett testified that concrete, in theory, gains strength throughout its life and refused to acknowledge that concrete, after a certain period of time, will start to deteriorate. N.T. pgs. 84-85. This testimony emphasizes the unreliable and not dependable nature of Mr. Duffett and his opinions.

⁹³ I&E Statement No. 2, pg. 6.

⁹⁴ I&E Statement No. 2, pg. 6.

⁹⁵ I&E Statement No. 2, pg. 6.

and debris falling on a roadway or which has the potential to fall on the roadway indicates that the structure is unsafe and an ongoing threat to public safety.⁹⁶ Thus, while BPRR may attempt to argue that the bridges are “safe,” they fail to recognize that the bridges are not safe to the traversing public in light of the falling concrete, vertical and horizontal clearance restrictions, and rigid fixed objects being located in the clear zone.

4. BPRR’s recommendations will not address the public safety hazards.

Mr. Wooster opined that, to make the crossings safe, he would recommend a variety of low-cost improvements, such as installing various signage such as speed signs, adjusting the direction of stormwater runoff, and to paint a centerline at Ramsaytown Road.⁹⁷

In response to BPRR’s testimony, Mr. Sinick explained that adjusting the speed limit at the crossings will not address the safety hazards as the concrete hazards will still exist in the roadway and the clear zone.⁹⁸ The roadway clear zone is defined as the total roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles.⁹⁹ This area may consist of a shoulder, a recoverable slope, a non-recoverable slope, and/or a clear run-out area.¹⁰⁰

The roadways go from two-lane roads to one-lane through the crossings, which is a hazard, and the crossings have unprotected concrete obstructions.¹⁰¹ Additionally, the falling concrete from the structures onto the roadway will also not be addressed by

⁹⁶ I&E Statement No. 2, pg. 6.

⁹⁷ BPRR Statement No. 5, pg. 7; N.T. pgs. 118-119.

⁹⁸ N.T. pg. 183.

⁹⁹ I&E Statement No. 1, pg. 15.

¹⁰⁰ I&E Statement No. 1, pg. 15.

¹⁰¹ N.T. pg. 183.

simply adjusting the speed limits.¹⁰² Nor will paint or adjusting stormwater-runoff actually change the physical presence of the railroad structures and the safety hazards presented by their presence.

In short, BPRR's recommendations are akin to putting a band-aid on a gunshot wound- you can try and make it look pretty and maybe stop the bleeding for a short time, but it isn't going to fix the ultimate issue nor stop the bleeding indefinitely. Accordingly, BPRR's recommendations will not fully address the safety hazards presented by the railroad structures in their current conditions and this argument should be discounted.

C. THE THREE (3) CROSSINGS SHOULD BE REMOVED

As stated above, it is well settled that the Commission has exclusive jurisdiction over matters involving railroad-highway crossings, which jurisdiction includes exclusive authority to determine and order which parties shall perform such work at the crossings and which parties shall maintain the crossings in the future.¹⁰³ The Commission also has exclusive authority to assess the costs of any work it orders upon the concerned parties in the proceeding in such proper proportions as the Commission may determine.¹⁰⁴ Among the factors which the Commonwealth Court noted as relevant to the assignment of costs and maintenance responsibilities, as noted in *Greene Township v. Pa. P.U.C.*, 668 A.2d 615 (Pa. Cmwlth. 1995), are the following:

¹⁰² N.T. pg. 183.

¹⁰³ 66 Pa.C.S. §§ 2702, 2704; *AT&T v. Pa. P.U.C.*, 709 A.2d 980 (Pa. Cmwlth. 1998), *appeal granted in part*, 717 A.2d 1022; *Application of the Dep't of Transportation of the Commonwealth of Pennsylvania for Approval to Abolish the Existing Crossing Where S.R. 0522 Crosses at Grade Two Tracks of E. Broad Top R.R. & Coal Co. (Aar 003 135*) in Cromwell Twp., Huntingdon County; & the Allocation of Costs & Expenses Incident Thereto.*, Docket No. A-00114338, Opinion and Order dated Mar. 14, 2002; *see also Pa. P.U.C. v. Borough of Souderton*, 231 A.2d 875 (Pa. Super. 1967)(“ . . . the commission [has the] power to inquire into the safety, and adequacy of a utility's facilities and order such changes as it finds necessary.”)

¹⁰⁴ 66 Pa.C.S. § 2704.

- (1) which party built the crossing;
- (2) whether a roadway existed before or after the construction of the crossing;
- (3) relative benefit conferred on each party with the construction of the crossing;
- (4) whether either party is responsible for the deterioration of the crossing which has lead 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.¹⁰⁵

However, while the Commission has considered the foregoing factors to be relevant in the past, this in no way limits the factors that it can consider.¹⁰⁶ The factors are neither mandatory nor exclusive of other considerations, and the Commission's allocation of cost will stand as long as the allocation is just and reasonable and has a sound legal and factual basis.¹⁰⁷

As stated previously, Mr. Berry explained that the Township does not have a large budget due to its approximately 1,100 residents, mostly low income and retired individuals.¹⁰⁸ He testified that the Township does not have the budget or funds available to remove the railroad structures.¹⁰⁹

Mr. Sinick stated that he agrees with Knox Township's Complaint that the three (3) public crossings have created and continue to create ongoing traffic and public safety issues.¹¹⁰ He explained that there has been falling concrete on the roadway, sight distance

¹⁰⁵ *Greene Township v. Pa. P.U.C.*, 668 A.2d 615 (Pa. Cmwlth. 1995).

¹⁰⁶ *Bell Atlantic-Pa., Inc. v. Pa. P.U.C.*, 672 A.2d 352 (Pa. Cmwlth. 1996).

¹⁰⁷ *AT&T v. Pa. P.U.C.*, 737 A.2d 201, 209 (Pa. 1999); *Wheeling & Lake Erie Railway Co.*, 778 A.2d at 793.

¹⁰⁸ N.T. pg. 159.

¹⁰⁹ N.T. pg. 165.

¹¹⁰ I&E Statement No. 1, pg. 16.

issues, and restrictive roadway clearances on all three (3) crossings.¹¹¹ Mr. Sinick deduced that the abolishment and complete removal of the railroad structures, with the roadway being reestablished, is the best option to address these public safety concerns.¹¹² Mr. Sinick explained that the Commission must ensure that all public safety issues are addressed at public crossings, and that it would be unconscionable to leave concrete obstructions on three (3) different public roadways built in or around 1910 and in the roadway clear zone for motor vehicles to strike and/or for pedestrian or motor vehicles to be struck by falling concrete or debris.¹¹³

BPRR will try to argue that the PennDOT standards do not require existing roadways to be modified or redesigned to meet current design standards unless a new project is planned for that roadway.¹¹⁴ They will also try to argue that the structures do not need removed.¹¹⁵

However, Mr. Sinick stated that while there may not be a pending roadway improvement or project proposed by Knox Township or any other party at this time, the pending litigation before the Commission is to address the public safety issues posed by the presence of the railroad structures, and thus can be viewed as a roadway or crossing improvement project if the Commission orders the outright removal of the railroad

¹¹¹ I&E Statement No. 1, pg. 16.

¹¹² I&E Statement No. 1, pg. 16.

¹¹³ I&E Statement No. 1, pg. 15.

¹¹⁴ BPRR Statement No. 5, pgs. 2, 6; BPRR Statement No. 6, pg. 1.

¹¹⁵ BPRR Statement No. 5, pgs. 2, 6; BPRR Statement No. 6, pg. 1. I&E notes that BPRR might try to argue that the structures do not need removed in light of the rural area where they are located. This argument is meritless because the safety of all the public is at the upmost importance, regardless if the traveler is in the city, a suburb, or rural area. The safety of all the public, especially the citizens and travelers to Knox Township, matter and the location of the structures should not be used as a tool to let an unsafe condition continue and exist.

crossing structures or other remedial measure to address public safety.¹¹⁶ This proceeding is essentially a proposed and/or requested roadway improvement safety project.¹¹⁷

Mr. Sinick elaborated that with any rail proceeding before the Commission, the Rail Safety Section's main purpose is to promote public safety and prevent accidents.¹¹⁸ When an engineer visits a crossing, the engineer is assessing the public safety of the crossing regardless of if it's an application or a complaint docket.¹¹⁹ Mr. Sinick holds the position that there are public safety issues and hazards at these crossings, and thus the Complaint is assessing a possible improvement to the crossings which would require looking at PennDOT's standards.¹²⁰

Accordingly, the three (3) railroad structures at Harriger Hollow Road, Ramsaytown Road, and East Bellport Road must be removed in the name of public safety. This cost should be absorbed and borne by BPRR since they built the structures, are responsible for cost and maintenance of the structures, benefited the most from the existence and presence of the railroad structures, and have not maintained or inspected the structures in thirteen (13) years, a major contributing factor to the deteriorated conditions seen today.

VI. CONCLUSION

I&E respectfully requests that presiding ALJ Long and the Commission find that (1) the Complaint filed by Knox Township be granted; (2) the public railroad bridge

¹¹⁶ I&E Statement No. 2, pg. 4.

¹¹⁷ I&E Statement No. 2, pg. 4.

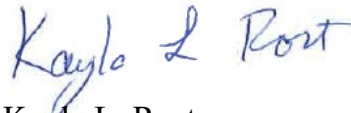
¹¹⁸ N.T. pgs. 189-190.

¹¹⁹ N.T. pgs. 189-190.

¹²⁰ N.T. pgs. 189-190.

crossings at Harriger Hollow Road, Ramsaytown Road, and East Bellport Road are a safety hazard to the public; (3) that Buffalo and Pittsburgh Railroad, at its sole cost and expense, should be ordered to completely remove the railroad bridge structures at Harriger Hollow Road, Ramsaytown Road, and East Bellport Road; and (4) after the removal of the railroad structures and a final inspection by Rail Safety to ensure that the work was completed satisfactorily, that the public crossings at Harriger Hollow Road, Ramsaytown Road, and East Bellport Road be abolished.

Respectfully submitted,



Kayla L. Rost

Prosecutor

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Dated: March 31, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

PROPOSED STATEMENT OF FACTS

1. 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.

2. 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.

3. 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

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).

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.

4. 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.

5. 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.

6. 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 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.

² The line was 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. On July 6, 2021, ALJ Long issued a Prehearing Order setting the litigation schedule for this matter. Specifically, direct testimony was due on November 19, 2021, rebuttal testimony was due on December 17, 2021, and the evidentiary hearing was scheduled for January 25, 2022.

15. On November 19, 2021, I&E, PennDOT, and BPRR served written direct testimony.

16. On December 1, 2021, Knox Township served its written direct testimony.

17. On December 17, 2021, I&E and BPRR served written rebuttal testimony.
18. On January 10, 2022, the Borough served its written direct testimony.
19. On January 25, 2022, ALJ Long presided over the evidentiary hearing.

Counsel from I&E, PennDOT, Knox Township, Jefferson County, and BPRR were present.

20. On January 26, 2022, ALJ Long issued an Interim Order Memorializing the Striking of Written Testimony. Specifically, ALJ noted the specific sections of Mr. William Sinick's testimony that have been struck and instructed the parties to upload all written testimony and exhibits to the Sharepoint site by noon on January 28, 2022.

21. On March 2, 2022, a Briefing Order was issued directing the parties to file Main Briefs by March 31, 2022 and Reply Briefs by April 20, 2022.

22. Knox Township presented the testimony of James M. Berry, Jr.

23. Mr. Berry owns a working 150-acre farm on the corner of Harriger Hollow Road and Hunters Grove Road in Knox Township and drives a school bus. He has also been a Township Supervisor for twenty (20) years.³

24. As a school bus driver, Mr. Berry's bus route includes driving under the Ramsaytown Road railroad bridge five (5) days a week, four (4) times a day with high school and elementary school children. He explained that the underpass is very difficult to get under and that the sight distance is worse than explained by the BPRR witness since a

³ Knox Township Statement No. 1, pg. 1; N.T. pg. 147.

bus sits higher than the average vehicle. He also noted icicles hanging from the ceiling of the railroad bridge where the cracks are located.⁴

25. The school bus route has been in place for years and the bus used is a full-sized bus which carries forty-eight (48) children.⁵

26. As a farmer, Mr. Berry stated that farm equipment is unable to pass through the Ramsaytown Road crossing, noting that the equipment is too wide to get through.⁶

27. Mr. Berry has not scraped his farm equipment at the Harriger Hollow Road crossing because he knows the equipment was too wide to pass through and just won't attempt to use the crossing. He has been able to use the crossing with his combine after the superstructure was removed.⁷

28. In his capacity as Township Supervisor, Mr. Berry has maintained and plowed the roads in Knox Township and is very familiar with the roadways.⁸

29. As a Township Supervisor, Mr. Berry has received complaints regarding the overpasses at Ramsaytown Road, East Bellport Road, and Harriger Hollow Road. As a result of those complaints, Mr. Berry filed the instant complaint with the Commission. Mr. Berry continues to receive complaints from the residents to date.⁹

30. Mr. Berry explained that the three overpasses on a railroad right-of-way create a traffic and safety problem. The overpasses currently do not have railroad tracks on

⁴ N.T. pgs. 149-150.

⁵ N.T. pg. 154.

⁶ N.T. pgs. 160-161.

⁷ N.T. pg. 161.

⁸ N.T. pgs. 147-148.

⁹ Knox Township Statement No. 1, pg. 1; N.T. pg. 148.

them and the railroad has not used the overpasses for about twenty (20) years. The overpasses are deteriorated and large pieces of concrete are falling on the roadway.¹⁰

31. In reference to I&E Exhibit D, Pictures 7 and 11, Mr. Berry stated that the chunk of concrete in the pictures was removed by Knox Township workers after it had fallen from inside the tunnel. He noted that there is a hole in the ceiling where the chunk of concrete come from, and that the workers moved it to the grassy area. He has also seen pieces of concrete, sometimes the size of a football, which have fallen from the railroad bridges.¹¹

32. Mr. Berry further explained that the roadway passing under the railroad overpasses are too narrow for 2-lane traffic and are not wide enough to meet state requirements. Large fire apparatus are concerned with clearances. One of the overpasses is on a school bus route and he has concerns with the large pieces of concrete falling on the roadway.¹²

33. Mr. Berry stated that Knox Township has had road improvements scheduled about four (4) years ago to widen the Ramsaytown Road approximately two (2) feet, and as recently as two (2) years ago to just widen a section of Ramsaytown Road since the Township would like to widen the road.¹³

¹⁰ Knox Township Statement No. 1, pgs. 1-2.

¹¹ N.T. pgs. 152, 164, 166; I&E Exhibit D, Pictures 7 and 11.

¹² Knox Township Statement No. 1, pg. 2.

¹³ N.T. pgs. 157-158.

34. The Township does not have the budget to hire individuals or firms to complete inspections or traffic studies. The Township consists of approximately 1,100 people, mostly low income and retired individuals.¹⁴

35. The Township does not have the budget or funds available to remove the railroad structures.¹⁵

36. Mr. Berry was present during the June 14, 2019 field conference and reviewed the September 10, 2019 Secretarial Letter which was issued in this matter.¹⁶

37. Mr. Berry stated that Knox Township complied with the recommendations in the September 10, 2019 Secretarial Letter but that BPRR did not. He explained that the Township purchased all the signage as instructed but that the signage at Harriger Hollow Road could not be installed since the superstructure was removed.¹⁷

38. Mr. Berry received an estimate from local contractors on the removal of the three (3) structures.¹⁸

39. Mr. Berry testified that the overpasses still exist today and continue to provide a safety hazard to the motoring public.¹⁹

40. I&E presented the testimony of William Sinick, P.E.

41. Mr. Sinick is a Senior Civil Engineer Manager in the Rail Safety Section of the Commission's Bureau of Technical Utility Services. Mr. Sinick has worked for the

¹⁴ N.T. pg. 159.

¹⁵ N.T. pg. 165.

¹⁶ Knox Township Statement No. 1, pg. 2-3.

¹⁷ Knox Township Statement No. 1, pg. 3; N.T. pgs. 162-165.

¹⁸ N.T. pgs. 168-171; I&E Exhibit E.

¹⁹ Knox Township Statement No. 1, pg. 3.

Commonwealth for approximately 23 years and has been with the Commission since June 2015.²⁰

42. Mr. Sinick is a licensed professional engineer in the Commonwealth of Pennsylvania, receiving his license in June 2005.²¹

43. Mr. Sinick is a certified bridge inspector in the Commonwealth of Pennsylvania since 2011 and is certified to conduct National Bridge Inspection Standards (“NBIS”) inspection on public roadways and non-highway bridges over public roadways in Pennsylvania. NBIS inspections are standardized inspection procedures which uses uniform codes so that any engineer or inspector has the ability to review an inspection report and determine what the reports states.²²

44. Mr. Sinick testified that Knox Township’s Complaint alleges that the three (3) railroad structures, Ramsaytown Road, East Bellport Road, and Harriger Hollow Road, were creating traffic and safety problems. Specifically, the Complaint states that the crossings were deteriorating and that large pieces of concrete were falling on the roadway, the crossings were too narrow for two-lane traffic, the crossings were vertically restrictive, and the restrictive clearances were creating an economic impact.²³

45. Mr. Sinick testified that BPRR, through its subsidiary, discontinued service and abandoned a large portion of their railroad line in 2005 and 2006 – an approximate 40-mile-long section of railroad line and railroad bridge structures – through the Federal

²⁰ I&E Statement No. 1, pg. 1.

²¹ I&E Statement No. 1, pg. 1.

²² N.T. pgs. 187, 193.

²³ I&E Statement No. 1, pg. 5.

Surface Transportation Board (“STB”). However, after receiving approval from the STB to discontinue service, BPRR did not file an application with the Commission to abolish the crossings and determine the final disposition of the crossings.²⁴

46. Mr. Sinick explained that the three (3) crossings which are the subject of this proceeding were part of the abandonment and discontinuance of service approved through the STB and which are causing safety issues in Knox Township.²⁵

47. Mr. Sinick noted that the three (3) public crossings were altered prior to the subject Complaint. Specifically, the steel railroad rails (the track), the railroad ties, and the railroad ballast were all removed without a Commission application. In addition, steel fencing was affixed to the concrete abutments at Harriger Hollow Road.²⁶

48. The railroad bridge structure along Ramsaytown Road (T-841) is a concrete arch structure. This type of bridge structure is known as a concrete closed spandrel arch. Its bridge elements consist of an arch barrel, spandrel walls, abutments, and wings. The arch barrel is the portion of the bridge that you would drive through. The arch barrel length in the direction of the roadway is approximately 100 feet. The spandrel walls are located above the arch barrel oriented in the direction of the railroad grade and are directly above the roadway. They retain the earthen material above the arch barrel to the top of the railroad grade. The railroad tracks, ties, and ballast normally would be located on top of the earthen material but have been removed.²⁷

²⁴ I&E Statement No. 1, pgs. 3-4.

²⁵ I&E Statement No. 1, pg. 4.

²⁶ I&E Statement No. 1, pg. 9.

²⁷ I&E Statement No. 1, pg. 10; *see generally* I&E Exhibit D, Pictures 5, 9, and 16.

49. The Ramsaytown Road abutments are the portion of the bridge located on each side of the roadway that the arch barrel ties into and then extends down to the footing below the ground. The wings flare out from the abutments and retain the earthen embankment that makes up the entire railroad grade prior to the bridge. The condition of the concrete of the arch barrel and spandrel walls show heavy deterioration, delamination, cracking, and spalls. This delaminated concrete is most certainly falling on the roadway.²⁸

50. Concrete from the Ramsaytown Road structure was visibly noticed along the roadway within and outside of the arch barrel and spandrel walls. Concrete inside the barrel along the roadway was clearly delaminated and ready to fall off. The delaminated condition was easily determined by sounding the concrete.²⁹

51. In layman's terms, to sound the concrete you tap on the concrete and if you hear a hollow sound the concrete in that area is in a delaminated condition. The concrete in the arch barrel is largely in a delaminated condition along the roadway. This condition of the concrete is indicative of the structural breakdown in the chemical composition of the concrete itself due to its age, lack of maintenance, and its exposure to water and salt spray.³⁰

52. The approaching roadway to the Ramsaytown Road structure is a two-laned paved roadway with an average width of approximately 16 feet with 3-to-5-foot gravel shoulders on each side of the roadway. This shoulder area is part of the roadway clear

²⁸ I&E Statement No. 1, pg. 11; *see generally* I&E Exhibit D, Pictures 2, 3, 5, 8, 12, and 14.

²⁹ I&E Statement No. 1, pg. 11; *see generally* I&E Exhibit D, Pictures 1, 7, and 11.

³⁰ I&E Statement No. 1, pg. 11.

zone. The traversable roadway width within the barrel of the arch is limited, approximately 12 feet.³¹

53. The minimum vertical clearance is 14 feet, 1 inch measured from the top of roadway to the minimum distance of the arch barrel above the traversable roadway. The total structure height above the roadway to the top of the spandrel wall above the vertical clearance sign is approximately 20 feet. The earthen material above the top of the spandrel wall is heavily vegetated and presents a public safety issue of its own. Debris, logs, trees, rocks, and people could fall off the edges of the spandrel walls onto the roadway as there is no preventive measures in place to restrict this from happening.³²

54. The railroad bridge structure along East Bellport Road (T-405) is a concrete arch structure similar in design to the Ramsaytown Road bridge structure. It is in better condition than the Ramsaytown Road structure, but it also has cracks, delamination, and spalls throughout the concrete structure.³³

55. The earthen material above the arch barrel and within the spandrel walls at East Bellport Road are heavily wooded and vegetated which presents its own public safety issues.³⁴

56. The approaching roadway to the East Bellport Road structure is a two-laned gravel roadway with an average width of approximately 15 feet with 3-to-5-foot shoulders on each side of the roadway. This shoulder area is part of the roadway clear zone. The

³¹ I&E Statement No. 1, pg. 11; *see generally* I&E Exhibit D, Picture 9.

³² I&E Statement No. 1, pgs. 11-12; *see generally* I&E Exhibit D, Picture 5, 9, 17, 18, and 19.

³³ I&E Statement No. 1, pg. 12; *see generally* I&E Exhibit B, Pictures 1-7, and 10.

³⁴ I&E Statement No. 1, pg. 12; *see generally* I&E Exhibit B, Pictures 8, 16-18.

traversable roadway width within the barrel of the arch is approximately 13 feet. The minimum vertical clearance is 12 feet-8 inches measured from the top of roadway to the minimum distance of the arch barrel above the traversable roadway. The total structure height above the roadway to the top of the spandrel wall above the vertical clearance sign is approximately 20 feet.³⁵

57. The railroad bridge structure along Harriger Hollow Road (T-420) is a steel girder simple span bridge structure. The clear span between edge of concrete abutment to edge of concrete abutment is 17 feet. The steel superstructure has been removed and placed adjacent to one of the abutments.³⁶

58. The concrete condition of the abutments is fair, there are cracks and spalls on both abutments. The abutments appear to be stable and not in danger of rotating, settling, or overturning. However, the concrete abutments are in the roadway clear zone and restrict sight distance and are a detriment to public safety. There was noticeable scarring on the abutments due to vehicle contact. The steel superstructure is a hazard on the railroad grade for ATV's, snowmobiles, children, etc.³⁷

59. The approaching roadway to the Harriger Hollow Road structure is a two-laned gravel roadway with an average width of approximately 15 feet with 3-to-5-foot shoulders on each side of the roadway. This shoulder area along the roadway is part of the roadway clear zone. The traversable roadway width between the abandoned abutments is approximately 14 feet. The height of the abutments above the roadway is approximately

³⁵ I&E Statement No. 1, pgs. 12-13; *see generally* I&E Exhibit B, Picture 11.

³⁶ I&E Statement No. 1, pg. 13; *see generally* I&E Exhibit C, Picture 5.

³⁷ I&E Statement No. 1, pg. 13; *see generally* I&E Exhibit C, Pictures 1, 11, 12, 13, and 15.

14-15 feet. The length of the abutments/wingwalls in the direction of the roadway is approximately 51 feet. There is steel fencing affixed to both abutments which was installed without a Commission application.³⁸

60. The roadway clear zone is defined as the total roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a non-recoverable slope, and/or a clear run-out area.³⁹

61. Mr. Sinick is not aware of any prior proceedings or Commission action involving the crossings at Harriger Hollow Road, East Bellport Road, and Ramsaytown Road.⁴⁰

62. Once being assigned to this matter, Mr. Sinick scheduled a field conference for June 14, 2019, which was attended by Knox Township, PennDOT, BPRR, Jefferson County, and Brookville Borough. After reviewing the three (3) crossing, Mr. Sinick stated that the conditions of the crossings were unacceptable and that immediate remediation efforts were needed to address the public safety concerns.⁴¹

63. Mr. Sinick explained that the concrete arch structures at Ramsaytown Road and East Bellport Road showed evidence of decay and the potential for debris to fall onto the road. The Ramsaytown Road railroad structure had loose and delaminated concrete on

³⁸ I&E Statement No. 1, pgs. 13-14; *see generally* I&E Exhibit C, Pictures 1, 5, and 10.

³⁹ I&E Statement No. 1, pg. 15.

⁴⁰ I&E Statement No. 1, pg. 14.

⁴¹ I&E Statement No. 1, pg. 5-6.

the interior of the arch barrel ceiling, sidewalls, and end walls which were exposed to vehicle and pedestrian traffic, and which could fall from the structure onto the roadway.⁴²

64. Mr. Sinick personally observed concrete cobbles, concrete pieces, and concrete aggregate along the roadway that had previously fallen from the structures.⁴³

65. Mr. Sinick noted that the structures lacked the appropriate signage denoting clearance restrictions and clearance notifications in advance of the structure to warn motorists of the horizontal and vertical restrictions at the railroad structures. Mr. Sinick explained that the signage is necessary in light of the posted speed limit of 45 mph and the road transition from two-lane to one-lane within the railroad structures.⁴⁴

66. Mr. Sinick's last immediate safety concern identified at the June 14, 2019 filed conference was that all three (3) structures required roadway clearance markers posted at the edge of the concrete obstructions (the abutments and arch end walls) to warn motorists of the obstructions in and along the roadway.⁴⁵

67. Mr. Sinick explained that a concrete obstruction, such as an abutment or concrete arch structure, is described as a rigid fixed object. A rigid fixed object is an immovable object along the roadside for which if a vehicle impacts the object, it will transfer 100% of the vehicle impact to the driver and the rigid fixed object will not move upon impact.⁴⁶

⁴² I&E Statement No. 1, pg. 6.

⁴³ I&E Statement No. 1, pg. 6.

⁴⁴ I&E Statement No. 1, pgs. 6-7.

⁴⁵ I&E Statement No. 1, pg. 7.

⁴⁶ I&E Statement No. 1, pg. 7.

68. Rigid fixed objects are dangerous and potentially life-threatening if an accident were to occur, and every effort should be made to lessen the number of roadside obstructions along public roadways.⁴⁷

69. At the June 14, 2019 field conference, Knox Township agreed to furnish and install the appropriate signage at its sole cost and expense. BPRR recognized the issues with loose and delaminated concrete on the structures, but did not agree to mitigate the issues at that time. BPRR subsequently agreed to remove the loose delaminated concrete from the arch structure at Ramsaytown Road and East Bellport Road and to affix vertical clearance signs on all three (3) structures if Knox Township purchased the signs.⁴⁸

70. The parties also agreed to, within 90-days, work towards a long-term solution which included the Rail Safety Section's recommendation of outright removal and abolition of the crossings.⁴⁹

71. Following the issuance of the September 10, 2019 Secretarial Letter, Mr. Sinick conducted an interim field inspection on February 21, 2020 to see if the work provided in the September 10, 2019 Secretarial Letter was completed.⁵⁰

72. At the February 21, 2020 field inspection, Mr. Sinick noted that the bridge superstructure was removed from its abutments at the Harriger Hollow Road crossing. He confirmed that the directives relating to signage, minus the vertical clearance sign on the

⁴⁷ I&E Statement No. 1, pg. 7.

⁴⁸ I&E Statement No. 1, pgs. 7-8.

⁴⁹ I&E Statement No. 1, pg. 8.

⁵⁰ I&E Statement No. 1, pg. 8.

Harriger Hollow Road structure, were completed. Mr. Sinick also noted that the removal of loose concrete was an ongoing problem.⁵¹

73. A typical bridge, when it is not a concrete or masonry arch, has two main elements: the substructures, which in this case are the concrete abutments, and the superstructure, which is typically the girders, beams, bridge railing/barriers, and deck. The superstructure is what you would travel over and what supports all vehicle and train loading, which in turns transfer that loading to the bridge substructures.⁵²

74. Mr. Sinick last visited the crossings on October 21, 2021. He noted that delaminated concrete still exists at the Ramsaytown Road railroad structure.⁵³

75. Mr. Sinick reviewed the Crash Data Appendix submitted with BPRR's Exhibit 14. He noted that there have been two (2) reportable crashes involving vehicles striking the abandoned concrete substructures in the last ten (10) years, one at Ramsaytown Road and the other at Harriger Hollow Road.⁵⁴

76. According to PennDOT Publication 153, a crash is reportable: (1) if an injury or death occurs; (2) if damage to the vehicle is to the extent that the vehicle cannot be driven under its own power; or (3) if it involves a school bus. A crash is non-reportable if there is no injury or death, no towing of the vehicle involved, and it does not require a Police Crash Report to be submitted.⁵⁵

⁵¹ I&E Statement No. 1, pgs. 8-9.

⁵² I&E Statement No. 1, pg. 9.

⁵³ I&E Statement No. 1, pg. 10; N.T. pg. 219.

⁵⁴ I&E Statement No. 2, pg. 1.

⁵⁵ I&E Statement No. 1, pg. 2.

77. After personally viewing the three (3) public crossings, Mr. Sinick opined that non-reportable crashes have occurred at the railroad structures. He explained that statistically, there is a higher chance or probability of someone being involved in a non-reportable accident versus a serious accident in which you are hospitalized or killed. An example of a common non-reportable accident would be a “fender-bender” or the situation where a vehicle scrapes or strikes any part of the railroad structure. Thus, Mr. Sinick credibly opined that there have been non-reportable crashes and strikes at the locations of the abandoned railroad structures.⁵⁶

78. Mr. Sinick reviewed the bridge inspections reports and commentary submitted by BPRR. He emphasized that BPRR conducted two (2) annual inspections of the three (3) railroad structures since the railroad structures were abandoned in 2005/2006, and both inspections were conducted after the instant Complaint was filed. BPRR does not have any documentation of annual inspections prior to 2019 involving these railroad structures.⁵⁷

79. Mr. Sinick noted that the bridge inspection reports provided by BPRR identified loose delaminated concrete at the structures. He emphasized that the September 10, 2019 Secretarial Letter ordered the removal of all delaminated concrete, which loose delaminated concrete still remains on the structures and will continue to fall onto the roadway.⁵⁸

⁵⁶ I&E Statement No. 1, pg. 2; *see generally* I&E Exhibit B, Picture 1 and I&E Exhibit C, Picture 15.

⁵⁷ I&E Statement No. 1, pgs. 4-5.

⁵⁸ I&E Statement No. 2, pgs. 5-6.

80. Mr. Sinick credibly stated that it is problematic that BPRR failed to complete annual inspections on the structures for a period of almost thirteen (13) years and have no documented evidence of bridge safety inspections prior to that.⁵⁹

81. As a current state and federal bridge safety inspector in Pennsylvania, Mr. Sinick explained that one of the most important tools that a bridge inspector can have prior to an inspection is past bridge inspection reports and the history for that structure. If an entity does not maintain a file or inventory of record documenting past inspection reports and history for that structure, that alone is putting public safety at risk and is negligent of the bridge owner.⁶⁰

82. Mr. Sinick posed the question of: How could a bridge inspector charged to inspect a bridge fully complete the inspection and evaluate the bridge without knowing what was discovered or noted in the prior report? Mr. Sinick explained that if he were to inspect a bridge structure and observed a crack in the abutment, he would need to know if (1) the crack existed in the prior year's inspection report and (2) if the crack was present, the notes on the crack to determine if the crack grew in size or depth.⁶¹

83. Mr. Sinick noted that the inspections completed by BPRR were not completed by NBIS standards nor were they completed by bridge inspector certified in Pennsylvania.⁶²

⁵⁹ I&E Statement No. 1, pgs. 4-5.

⁶⁰ I&E Statement No. 2, pg. 5.

⁶¹ I&E Statement No. 1, pg. 5.

⁶² N.T. pgs. 187-188.

84. With his knowledge on the NBIS standards, Mr. Sinick opined that the railroad bridges would receive a priority code of zero, which requires immediate action. A priority code zero would require that the maintenance issue be addressed within seven (7) days or else the bridge would be closed. He noted that there is no discretion allowed to the inspector when using NBIS standards, the standards are uniform.⁶³

85. In response to BPRR's testimony on the structural components of the structures, Mr. Sinick opined that bridges can be structurally sound but very unsafe, the terms are mutually exclusive. He explained that structurally sound means that a bridge is at no risk of collapsing under its own weight or from forces acting on the structure, such as wind, water, earth loads, or load the structures are intended to carry. Just because a structure may be structurally sound does not mean it is safe. Loose concrete and debris falling on a roadway or which has the potential to fall on the roadway indicates that the structure is unsafe and an ongoing threat to public safety.⁶⁴

86. In response to BPRR's testimony relating to speed signs, Mr. Sinick explained that adjusting the speed limit at the crossings will not address the safety hazards as the concrete hazards will still exist in the roadway and the clear zone. The roadways go from two-lane roads to one-lane through the crossings, which is a hazard, and the crossings have unprotected concrete obstructions. Additionally, the falling concrete from the structures onto the roadway will also not be addressed by simply adjusting the speed limits.⁶⁵

⁶³ N.T. pg. 188.

⁶⁴ I&E Statement No. 2, pg. 6.

⁶⁵ N.T. pg. 183.

87. Mr. Sinick stated that he agrees with Knox Township's Complaint that the three (3) public crossings have created and continue to create ongoing traffic and public safety issues. He explained that there has been falling concrete on the roadway, sight distance issues, and restrictive roadway clearances on all three (3) crossings. Mr. Sinick deduced that the abolishment and complete removal of the railroad structures, with the roadway being reestablished, is the best option to address these public safety concerns.⁶⁶

88. Mr. Sinick opined that the best option to provide a safe traversable roadway would be to completely remove the concrete obstructions and railroad bridge structures and to re-establish the roadway, shoulders, and clear zone.⁶⁷

89. Mr. Sinick noted that while he has seen similar railroad structures with abutments or wingwalls in the clear zone, those parts of the structure are typically protected by a guiderail or concrete barrier that flares away from the structure itself.⁶⁸

90. Mr. Sinick explained that the Commission must ensure that all public safety issues are addressed at public crossings, and that it would be unconscionable to leave concrete obstructions on three (3) different public roadways built in or around 1910 and in the roadway clear zone for motor vehicles to strike and/or for pedestrian or motor vehicles to be struck by falling concrete or debris.⁶⁹

91. Mr. Sinick based his recommendations off PennDOT's specifications, policies, and procedures. He explained that Title 75 of the Pennsylvania Consolidated

⁶⁶ I&E Statement No. 1, pg. 16.

⁶⁷ I&E Statement No. 1, pg. 5.

⁶⁸ N.T. pgs. 228-229.

⁶⁹ I&E Statement No. 1, pg. 15.

Statutes- Vehicle Code, Title 67 of the Pennsylvania Consolidated Statutes- Transportation, Title 71 of the Pennsylvania Statutes, and Chapter 23 of the Code of Federal Regulations (“CFR”)- Highways, are the authority for Pennsylvania public highways and public safety along public highways, and to recommend less than mandated or prescribed by PennDOT’s specifications, policies, and procedures would be problematic and could negatively impact public safety.⁷⁰

92. In response to Mr. Wooster’s report and testimony, Mr. Sinick stated that while there may not be a pending roadway improvement or project proposed by Knox Township or any other party at this time, the pending litigation before the Commission is to address the public safety issues posed by the presence of the railroad structures, and thus can be viewed as a roadway or crossing improvement project if the Commission orders the outright removal of the railroad crossing structures or other remedial measure to address public safety. This proceeding is essentially a proposed and/or requested roadway improvement project.⁷¹

93. Mr. Sinick elaborated that with any rail proceeding before the Commission, the Rail Safety Section’s main purpose is to promote public safety and prevent accidents. When an engineer visits a crossing, the engineer is assessing the public safety of the crossing regardless of if it’s an application or a complaint docket. Mr. Sinick holds the position that there are public safety issues and hazards at these crossings, and thus the

⁷⁰ I&E Statement No. 1, pg. 16.

⁷¹ I&E Statement No. 2, pg. 4.

Complaint is assessing a possible improvement to the crossings which would require looking at PennDOT's standards.⁷²

94. Mr. Sinick further explained that a Commission application should have been filed when the subject public crossings were abandoned and service was discontinued on this line by the railroad through the STB. The main purpose of the Commission's involvement after an abandonment and discontinuance of railroad service through the STB is to assess the public safety of the highway/rail crossings and to make improvements to the roadways and/or railroad facilities to improve the safety of the highway/rail crossing for pedestrians and the motoring public. The Commission's involvement is necessary to abolish the public crossing and dissolve the Commission's jurisdiction at that location since the public utility is no longer in service at that location. In short, the final disposition of the crossings, including abolishment, needs to be addressed to ensure the current and future safety of the crossings in light of the railroad's decision to abandon and/or discontinue service at the crossing.⁷³

95. Mr. Sinick testified that BPRR benefited from the railroad crossings remaining in place to the detriment of Knox Township and the general public at large. By not filing for disposition and abolition of the crossings when this rail line was abandoned through the STB, BPRR avoided the responsibility of maintenance and inspection costs and has enjoyed not paying for the cost of removal. Moreover, BPRR received a benefit

⁷² N.T. pgs. 189-190.

⁷³ I&E Statement No. 2, pg. 3.

when it salvaged its steel track, railroad ties, and ballast, and the lease and/or sale of its land.⁷⁴

96. Mr. Sinick explained that BPRR has benefited from the lack of conflict with vehicle or pedestrian traffic due to the existence of the railroad structures. He explained that BPRR was able to move its freight unopposed to traffic and without the worry of having an accident with a vehicle.⁷⁵

97. Mr. Sinick elaborated that the federally abandoned structures remaining in place have continued to restrict a two-lane public roadway to a one-lane road and has exposed the 90-degree blunt end of concrete obstructions unprotected to vehicular traffic. The lack of maintenance of the three (3) structures have resulted in concrete, stone, and debris falling onto the roadway. The structures restrict vehicle sight distance and are within the roadway clear zone. Knox Township is restricted in maintaining its roadways properly because of the concrete obstructions, and farm, trucking, and fire prevention equipment are restricted because of the vertical clearance restrictions caused by the structures.⁷⁶

98. Mr. Sinick stated that there is no public benefit to keeping the railroad structures intact.⁷⁷

99. Mr. Sinick is not aware of any active benefits BPRR receives from the structures remaining in place.⁷⁸

⁷⁴ I&E Statement No. 1, pg. 17.

⁷⁵ N.T. pg. 183.

⁷⁶ I&E Statement No. 1, pgs. 17-18.

⁷⁷ N.T. pg. 186.

⁷⁸ N.T. pg. 184.

100. Mr. Sinick explained that the purpose of a railroad bridge is to safely move freight over a river, stream, swamp, or roadway. The bridges in their current condition do not meet this purpose, the bridges are 110-year-old structures in which BPRR abandoned and is no longer operating as a utility at these locations.⁷⁹

101. In response to BPRR's position on future rail service, Mr. Sinick explained that while BPRR could restart service on this line, BPRR would first have to reactive service through the STB process and then install the track and ties. In short, BPRR could not decide tomorrow to restart service.⁸⁰

102. Mr. Sinick is personally aware of at least four (4) or five (5) crossing on this rail line which were abolished and/or suspended. One of the crossings was located in Putneyville, Docket No. C-2017-2585787.⁸¹

103. In response to Mr. Duffett's testimony on concrete, Mr. Sinick stated that concrete falling from a bridge structure can cause damage to a vehicle. He also explained that concrete which falls from a structure into the roadway can deteriorate over time. The concrete could either break into pieces upon falling onto the roadway or break down after being run over by vehicles.⁸²

104. Mr. Sinick disagreed that loose concrete at the structures is superficial, explaining that delaminated concrete does not affect the structural components until the reinforcement is exposed, and once the reinform nets are exposed, it can corrode.⁸³

⁷⁹ N.T. pgs. 186-187.

⁸⁰ N.T. pg. 184.

⁸¹ N.T. pgs. 184-185.

⁸² N.T. pgs. 188-189.

⁸³ N.T. pgs. 201-202.

105. Mr. Sinick opined that since BPRR benefited the most from the existence of the public railroad crossings and is responsible for the crossings' deteriorated conditions, that BPRR should bear the cost and expense of removing the crossings.⁸⁴

106. In short, Mr. Sinick stated that the Commission must address why these railroad structures still remain in place when the railroad has abandoned its facilities and its ability to operate as a public utility in those areas.⁸⁵

107. PennDOT presented the testimony of Charles Peter Keilman, IV.

108. Mr. Keilman is a Senior Civil Engineer Supervisor at PennDOT and is the Grade Crossing Engineer for District 10-0.⁸⁶

109. Mr. Keilman stated that the three (3) subject crossings are located on local roads maintained by Knox Township and are not under the control of PennDOT.⁸⁷

110. PennDOT has no position or interest in this matter, aside from general concerns for public safety, and does not have any documentation or reports related to the three (3) crossings.⁸⁸

111. BPRR presented the testimony of Chad Boutet, Charles Wooster, and Wayne Duffett.

112. Mr. Boutet is the Director of Engineering Grants for the Northern Region Railroads of Genesee & Wyoming Inc, including BPRR.⁸⁹

⁸⁴ I&E Statement No. 1, pg. 18.

⁸⁵ I&E Statement No. 1, pg. 18.

⁸⁶ PennDOT Statement No. 1, pg. 1.

⁸⁷ PennDOT Statement No. 1, pgs. 2-3.

⁸⁸ PennDOT Statement No. 1, pg. 3.

⁸⁹ BPRR Statement No. 1, pg. 1.

113. Mr. Boutet noted that the crossings are no longer active because the railroad line is abandoned and the track has been salvaged. However, BPRR still owns the structures.⁹⁰

114. According to BPRR's records, the Harriger Hollow Road structure was constructed in 1906, the Ramsaytown Road structure was constructed in 1910, and the East Bellport Road structure was constructed in 1910.⁹¹

115. BPRR's Bridge Management Program does not have a provision on bridges on out-of-service lines, so BPRR recently added the three (3) subject bridges to its inventory and annual inspection program.⁹²

116. BPRR's most recent inspection of the structures occurred on July 29, 2021. With regard to the structure at Ramsaytown Road, it was found that the concrete overhead arch appears to be sound. There was some minor spalling along the sidewalls, shallow spalling along the spandrel wall, and shallow spalling along the wingwall. It was recommended that any loose concrete be scaled back.⁹³

117. With regard to the structure at East Bellport Road, there was one spot of deep spalling found on the concrete arch that was about 1' in diameter and 8" deep, there was minor spalling found throughout the sidewalls, minor surface cracking on the wingwall, minor surface cracks on the spandrel walls and strike damage on the west side. It was recommended that any loose concrete be scaled back.⁹⁴

⁹⁰ BPRR Statement No. 1, pg. 1; N.T. pg. 50.

⁹¹ BPRR Statement No. 1, pg. 1; N.T. pg. 49.

⁹² BPRR Statement No. 1, pg. 3.

⁹³ BPRR Statement No. 1., pg. 3.

⁹⁴ BPRR Statement No. 1, pg. 3.

118. With regard to the structure at Harriger Hollow Road, there was spalling at the top corner of the bridge seat and the concrete cap of the north wing wall was separated. There was also spalling on the south backwall, bridge seat, and wingwall. It was recommended that loose concrete be scaled back and that the broken section of the concrete cap be removed.⁹⁵

119. Bridge strike susceptible means that the bridge has a restricted roadway vertical clearance where it could be struck by a standard height 13'-6" truck.⁹⁶

120. After receiving the September Secretarial Letter, BPRR instructed its contractor, Thornbury, Inc., to perform chipping and scaling work to remove loose concrete, which was completed in the fall of 2019. Thornbury also installed signs that were provided by Knox Township indicating vertical and horizontal clearances.⁹⁷

121. Mr. Boutet admitted that BPRR removed the superstructure at Harriger Hollow Road and that the September 10, 2019 Secretarial Letter did not provide any action or directive regarding the superstructure. The superstructure currently rests on BPRR's right of way.⁹⁸

122. Mr. Boutet stated that BPRR left the railroad structures in place in the event the railroad returned services to that corridor, for possible trail use interests, and to preserve value and utility of the property.⁹⁹

⁹⁵ BPRR Statement No. 1, pgs. 3-4.

⁹⁶ BPRR Statement No. 1, pg. 4.

⁹⁷ BPRR Statement No. 1, pg. 4; N.T. pg. 54.

⁹⁸ BPRR Statement No. 2, pg. 1.

⁹⁹ BPRR Statement No. 2, pg. 1.

123. Mr. Boutet testified that BPRR removed and abolished a railroad bridge in Putneyville which was a part of the abandoned rail line that includes the subject railroad structures. He stated that, to re-establish service in that area, it would cost several millions of dollars to construct a new bridge at the site where the railroad bridge was removed.¹⁰⁰

124. BPRR has no immediate plans to return railroad traffic to this abandoned rail line where the structures are located.¹⁰¹

125. BPRR has not been approached by any rail trail interest group to use the subject crossings for trail use. The railroad line where the three (3) structures are located has not been approved for a rail trail.¹⁰²

126. Mr. Wooster is a Professional Engineer, a Professional Traffic Operations Engineer, and the President of David E. Wooster and Associates, Inc.¹⁰³

127. Mr. Wooster completed a traffic engineering investigation at the three (3) railroad overpass structures.¹⁰⁴

128. Mr. Wooster stated that Ramsaytown Road's pavement width varies between 14' to 20' and that the existing railroad structure is approximately 16' from wall to wall with an operational width of approximately 12'. He noted a buildup of aggregate material on the edges of the travel lane.¹⁰⁵

¹⁰⁰ N.T. pgs. 65, 68.

¹⁰¹ N.T. pg. 66.

¹⁰² N.T. pgs. 67-68.

¹⁰³ BPRR Statement No. 5, pg. 1.

¹⁰⁴ BPRR Statement No. 5, pg. 2.

¹⁰⁵ BPRR Statement No. 5, pg. 3.

129. Mr. Wooster stated that East Bellport Road's width varies between 14' to 16' and that the existing railroad structure is approximately 16' from wall to wall with an operational width of approximately 12'. He noted a buildup of aggregate material on the edges of the travel lane.¹⁰⁶

130. Mr. Wooster stated that Harriger Hollow Road's width varies between 14' to 18' and that the existing railroad structure is approximately 17' from wall to wall with an operational width of approximately 13'. He noted buildup of aggregate material on the eastern edge of the travel portion and a drainage swale on the western edge.¹⁰⁷

131. Mr. Wooster also provided information on the signage at each crossing and noted that the posted speed limit at Ramsaytown Road is 45 mph while East Bellport Road and Harriger Hollow Road do not have a posted speed limit.¹⁰⁸

132. When a road does not have a posted speed limit, the statutes provide that the speed limit is 55 mph.¹⁰⁹

133. Mr. Wooster described the sight distance for each crossing as follows: 500' of available stopping sight distance at Ramsaytown Road, 300' of available stopping sight distance at East Bellport Road, and several severe horizontal curves with very limited sight distance at Harriger Hollow Road. He explained that the sight distance at Harriger Hollow Road is limited on each approach caused by the curvature of the road and the structure itself, which reduces the sight distance available to around 110'.¹¹⁰

¹⁰⁶ BPRR Statement No. 5, pg. 3.

¹⁰⁷ BPRR Statement No. 5, pgs. 3-4.

¹⁰⁸ BPRR Statement No. 5, pg. 4.

¹⁰⁹ N.T. pg. 118.

¹¹⁰ BPRR Statement No. 5, pgs. 4-5.

134. Mr. Wooster completed a study to find the average daily traffic (“ADT”) volume at each crossing. He found that Ramsaytown Road had approximately 312 vehicles, with 4 being busses and 12 being trucks. East Bellport Road had approximately 30 vehicles, with 2 being trucks, and Harriger Hollow Road had approximately 15 vehicles.¹¹¹

135. Mr. Wooster reviewed the crash data at each crossing, noting that one crash occurred at the Ramsaytown Road structure and one occurred at the Harriger Hollow Road structure.¹¹²

136. Mr. Wooster opined that he did not see any evidence of a crash pattern and that the low traffic volumes at the roadway suggest that each roadway can meet their anticipated traffic demand. He is not aware of any roadway projects planned by Knox Township to improve the roadways.¹¹³

137. Mr. Wooster agreed that if a vehicle had a minor accident at the crossing some time ago that it is possible that evidence of the accident could have been covered by graffiti or erased due to the falling/shedding concrete.¹¹⁴

138. Mr. Wooster agrees that two (2) vehicles are unable to safely pass under the railroad bridge at Harriger Hollow Road and that vehicles approaching the crossing have a hard time seeing whether a vehicle is approaching in the opposite direction.¹¹⁵

¹¹¹ BPRR Statement No. 5, pg. 5.

¹¹² BPRR Statement No. 5, pg. 5.

¹¹³ BPRR Statement No. 5, pgs. 2, 7.

¹¹⁴ N.T. pg. 139.

¹¹⁵ N.T. pgs. 132-133.

139. Mr. Wooster agrees that two (2) vehicles are unable to safely pass under the railroad bridge at Ramsaytown Road.¹¹⁶

140. Mr. Wooster holds the position that the PennDOT standards do not require existing roadways to be modified or redesigned to meet current design standards unless a new project is planned for that roadway. Mr. Wooster also holds the position that the three (3) railroad structures do not need removed.¹¹⁷

141. Mr. Wooster opined that the PennDOT design manuals are meant for projects, either a new construction, reconstruction, resurfacing, restoration, rehabilitation, or preservation projects.¹¹⁸

142. Mr. Wooster acknowledged that if Knox Township were to implement his recommendations that the PennDOT design manuals may come into play, especially if the Township were to pave the road.¹¹⁹

143. Mr. Wooster opined that, to make the crossings safe, he would recommend a variety of low-cost improvements, such as installing various signage, adjusting the direction of stormwater runoff, and to paint a centerline at Ramsaytown Road.¹²⁰

144. Mr. Duffett is a licensed engineer and the President of TEC Associates, the entity which provides engineer consulting services to BPRR.¹²¹

¹¹⁶ N.T. pg. 137.

¹¹⁷ BPRR Statement No. 5, pgs. 2, 6; BPRR Statement No. 6, pg. 1.

¹¹⁸ N.T. pg. 117.

¹¹⁹ N.T. pgs. 127-128.

¹²⁰ BPRR Statement No. 5, pg. 7; N.T. pgs. 118-119.

¹²¹ BPRR Statement No. 3, pg. 1.

145. In response to Mr. Sinick’s statement that Mr. Duffett is not certified as a bridge inspector in Pennsylvania, Mr. Duffett stated that “holding a piece of paper stating a qualification versus not holding that piece of paper would not alter my findings.”¹²²

146. Mr. Duffett inspected the three (3) subject railroad bridges from the time Pittsburg & Shawmut Railroad was acquired by BPRR until the line was removed from service.¹²³

147. To prepare for this case, Mr. Duffett completed an inspection on October 4, 2021. He opined that the bridges are structurally safe.¹²⁴

148. Mr. Duffett noted that the bridges had some light cracking and spalling, and that there was loose concrete on the north abutment and northwest wingwall at Ramsaytown Road.¹²⁵

149. Mr. Duffett summarized his inspection of the bridge at Harriger Hollow Road by noting minor spalling with cracking and leaching at the north and south abutments, one heavy spalling along the mid-height cold joint at the south abutment, minor spalling at the backwalls, heavy spalling on the coping, and heavy spalling at the northeast, northwest, and southwest wingwalls.¹²⁶

150. Mr. Duffett summarized his inspection of the bridge at Ramsaytown Road by noting that the north abutment is chipped over 50%, the south abutment is chipped over 70%, the west headwall is chipped 1” over 80%, the northeast wingwall is chipped, and

¹²² N.T. pg. 253.

¹²³ BPRR Statement No. 3, pg. 1.

¹²⁴ BPRR Statement No. 3, pgs. 1-2.

¹²⁵ BPRR Statement No. 3, pg. 2.

¹²⁶ BPRR Statement No. 3, pgs. 2-3.

the northwest wingwall is over 80% chipped. The East headwall is missing some gunite, there is light cracking and leaching at the arch barrel, there is a crack from the west end that runs from the top of the arch, one of the cold joints at the east end is separating and shows signs of spalling, and one cold joint to the east has minor leaching and spalling.¹²⁷

151. Mr. Duffett summarized his inspection of the bridge at East Bellport Road by noting that the north abutment is chipped and has light cracking and spalling, the south abutment is chipped and has light cracks in the gunite, there is minor cracking in the headwall, there is minor cracking, leaching, and spalling in the northeast and southeast wingwalls, there is minor spalling along the joint at the northwest wingwall, there is minor spalling and cracking at the southwest wingwall, the arch is gunited with minor cracking and leaching throughout, there is a crack at the top of the arch, there are two small spalled area south of the crack, and a small area of spalling near the crack at the top of the arch.¹²⁸

152. Mr. Duffett noted that there is no reinforcing in the concrete at these structures but that there is galvanized wire mesh in the arches.¹²⁹

153. Prior to the October 4, 2021 inspection, Mr. Duffett had not personally inspected the three (3) crossings since the 1990s. He has no records of the inspections completed in the 1990s. His office had not inspected the crossings anytime between 1990 and 2019.¹³⁰

¹²⁷ BPRR Statement No. 3, pgs. 3-4.

¹²⁸ BPRR Statement No. 3, pgs. 4-5.

¹²⁹ BPRR Statement No. 3, pg. 5.

¹³⁰ N.T. pgs. 87-88.

154. Mr. Duffett opined that the three (3) bridges continue to receive annual inspections and that concrete removal be scheduled.¹³¹

155. Mr. Duffett stated that he did not see any evidence of rock or debris falling onto the roadways during his October 4, 2021 inspection. Rather, Mr. Duffett stated that he observed concrete flakes and dust along the roadway.¹³²

156. Mr. Duffett agreed that a piece of concrete which falls from a structure will eventually turn into dust.¹³³

157. Mr. Duffett would not agree that a small piece of concrete falling from a railroad structure could damage a vehicle.¹³⁴

158. Mr. Duffett agreed that he cannot attest to what concrete has fallen from the structure since he was not present when any concrete may have fallen. He did agree that I&E Exhibit D shows a picture of concrete chips along the roadway and a large piece of concrete is shown in Picture 7.¹³⁵

159. Mr. Duffett agreed that the railroad is currently not using the railroad bridges for railroad purposes.¹³⁶

160. Mr. Duffett agreed that the purpose of a railroad bridge is to carry railroad freight. He also stated that the purpose of a railroad bridge is to carry fiber optic cable.¹³⁷

¹³¹ BPRR Statement No. 3, pg. 5.

¹³² BPRR Statement No. 4, pg. 1; N.T. pg. 88.

¹³³ N.T. pg. 90.

¹³⁴ N.T. pg. 89.

¹³⁵ N.T. pgs. 90, 93-94.

¹³⁶ N.T. pg. 84.

¹³⁷ N.T. pgs. 97-98.

161. Mr. Duffett agreed that vehicles will be able to use the three (3) roadways regardless of whether the railroad bridges structures are left intact or removed.¹³⁸

162. Mr. Duffett testified that while typically concrete ages over time, that is not always the case. He stated that concrete in theory gains strength throughout its life.¹³⁹

163. Mr. Duffett refused to acknowledge that concrete, after a certain period of time, starts to deteriorate.¹⁴⁰

164. Mr. Duffett also refused to agree that the structures will deteriorate over time to the point that they will need to be removed. He explained “[a]nd if it ever - I don’t think you would see that kind of deterioration in our lifetime.”¹⁴¹

¹³⁸ N.T. pg. 102.

¹³⁹ N.T. pgs. 84-85.

¹⁴⁰ N.T. pgs. 84-85.

¹⁴¹ N.T. pg. 85.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

PROPOSED CONCLUSIONS OF LAW

1. The Pennsylvania Public Utility Commission (“Commission”) has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. §§ 2702 and 2704.

2. The Commission has the authority to order the construction, reconstruction, alteration, relocation, repair, maintenance, protection, suspension or abolition of railroad crossings, and the authority to determine and order which concerned parties should perform such work, in order to prevent accidents and promote the safety of the public. 66 Pa.C.S. §§ 2702 and 2704.

3. The Commission possesses the exclusive authority to assess the cost of the work to be performed upon the concerned parties in such proper proportions as it may determine. 66 Pa. C.S. § 2704.

4. The Commission’s Bureau of Investigation and Enforcement, the Pennsylvania Department of Transportation, Knox Township, Buffalo & Pittsburgh Railroad Inc., Brookville Borough, and Jefferson County are all concerned parties within the meaning of 66 Pa.C.S. §§ 2702 and 2704.

5. Pursuant to Section 332(a) of the Public Utility Code, Knox Township bears the burden of proving that the public crossings at Harriger Hollow Road, Ramsaytown Road, and East Bellport Road are unsafe.¹

6. Among the factors which the Commonwealth Court noted as relevant to the assignment of costs and maintenance responsibilities, as noted in *Greene Township v. Pa. P.U.C.*, 668 A.2d 615 (Pa. Cmwlt. 1995), are the following:

- (1) which party built the crossing;
- (2) whether a roadway existed before or after the construction of the crossing;
- (3) relative benefit conferred on each party with the construction of the crossing;
- (4) whether either party is responsible for the deterioration of the crossing which has lead 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.

7. While the Commission has considered the foregoing factors to be relevant in the past, this in no way limits the factors that it can consider. The factors are neither mandatory nor exclusive of other considerations, and the Commission's allocation of cost will stand as long as the allocation is just and reasonable and has a sound legal and factual basis. *Bell Atlantic-Pa., Inc. v. Pa. P.U.C.*, 672 A.2d 352 (Pa. Cmwlt. 1996); *AT&T v. Pa. P.U.C.*, 737 A.2d 201, 209 (Pa. 1999); *Wheeling & Lake Erie Railway Co.*, 778 A.2d at 793.

¹ Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

PROPOSED ORDERING PARAGRAPHS

1. That 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., in Knox Township, Jefferson County, shall be altered in accordance with the work ordered herein.

2. That Buffalo & Pittsburgh Railroad, Inc., at its sole cost and expense, within nine (9) months of the date of service of the Commission’s Order, shall furnish all material and perform all work necessary to alter the public crossings at Ramsaytown Road (T-841), Harriger Hollow Road (T-420), and East Bellport Road (T-405) by (1) demolishing and removing the existing railroad structures, which includes the reinforced concrete arch structures, reinforced concrete abutments, and/or bridge structure material, in their entirety from the public crossing locations and surrounding areas; (2) backfilling and grading the area thus disturbed; (3) providing 28-foot minimum of graded roadway and shoulder area between the embankments at Ramsaytown Road (T-841) before sloping the embankments

behind the removed structures to a safe 2:1 grade; (4) providing a 24-foot minimum of graded roadway and shoulder area between the embankments at Harriger Hollow Road (T-420) and East Bellport Road (T-405) before sloping the embankments behind the removed structures to a safe 2:1 grade; and (5) grading and seeding the area thus disturbed on the embankments and surrounding areas to prevent soil erosion, all in safe and satisfactory condition.

3. That Buffalo & Pittsburgh Railroad, Inc., at least thirty (30) days prior to the start of work, shall prepare and submit to the Commission's Bureau of Technical Utility Services for approval, and to all parties of record for examination, complete and detailed final plans that include proposed final grading dimensions, slope of embankments, and dimensioned area available for roadway and shoulders between toe of embankments at the crossing locations.

4. That Knox Township at its sole cost and expense, within twelve (12) months of the date of service of the Commission's Order, shall furnish all material and perform all work necessary (1) to finish grade the roadway and shoulder approaches to the crossings in a safe manner by widening the one-lane roadway crossings to two-lanes to match, at a minimum, the existing roadway approaches in dimension and with in-kind roadway and shoulder material once the bridge structures are removed, and (2) to grade and seed the highway approaches to the crossing and areas disturbed to match the surrounding existing topography, all in safe and satisfactory condition.

5. That Knox Township, at its sole cost and expense, shall furnish all material, and perform all work necessary to establish and maintain any detours or traffic controls

that may be required to properly and safely accommodate highway and pedestrian traffic during the time of the removal of the railroad bridge structures and reestablishment of the roadway and shoulder areas at the crossings.

6. That Knox Township and Buffalo & Pittsburgh Railroad, Inc., at their sole cost and expense, perform all work necessary to identify, locate, and provide notification to all non-carrier public utility companies, municipal authorities or other entities that may have facilities located above or below the public crossings that may be impacted by all work described herein in accordance with the PA One Call system.

7. That any non-carrier public utility company or municipal authority, upon notification from Buffalo & Pittsburgh Railroad, Inc., and Knox Township of this proceeding and work prescribed herein, which may be required to relocate, change or move their facilities or structures in accordance with ordering paragraphs specified here within, shall immediately efile under this docket number C-2019-3009358 as a party of record to this proceeding including a contact name, address, phone number, email address and include a brief narrative description of the facilities impacted.

8. That any relocation of, changes in and/or removal of any adjacent structures, equipment or other facilities of any non-carrier public utility company or municipal authority, which may be required as incidental to the removal of the bridge structures, shall be made by said public utility company or municipal authority, at its initial cost and expense, and in such a manner as will not interfere with the alteration of the crossing; and such relocated or altered facilities thereafter shall be maintained by said public utility company or municipal authority, at its sole cost and expense.

9. That all Parties involved herein shall cooperate fully with each other so that during the time the work is being performed, vehicular and pedestrian traffic will not be endangered or unnecessarily inconvenienced, and so that the requirements of each of the Parties will be provided for and accommodated insofar as possible.

10. That all work necessary to complete the removal of the railroad structures and grading at the subject crossings shall be done in a manner satisfactory to the Commission within nine (9) months of the date of this Order, and that on or before said date, Buffalo & Pittsburgh Railroad, Inc., shall notify the Commission's Bureau of Technical Utilities, Rail Safety Section by electronic mail, as to the date of actual completed work. Buffalo & Pittsburgh Railroad shall also file with the Commission's Secretary's Bureau, under Docket No.C-2019-3009358, notice of the date of actual completion of their work, with a copy of the notice to all parties.

11. That all work necessary to complete the re-establishment of the roadway and shoulder areas with in-kind material at the subject crossings shall be done in a manner satisfactory to the Commission within twelve (12) months of the date of this Order, and that on or before said date, Knox Township shall notify the Commission's Bureau of Technical Utilities, Rail Safety Section by electronic mail, as to the date of actual completed work. Knox Township shall also file with the Commission's Secretary's Bureau, under Docket No.C-2019-3009358, notice of the date of actual completion of their work, with a copy of the notice to all parties.

12. Buffalo & Pittsburgh Railroad, Inc., pay all compensation for damages, if any, due to owners of property taken, injured, or destroyed by reason of their construction activities at the crossings described herein.

13. Knox Township pay all compensation for damages, if any, due to owners of property taken, injured, or destroyed by reason of their construction activities at the crossings described herein.

14. That upon completion of all work described herein, Knox Township, at its sole cost and expense, furnish all material and perform all work necessary thereafter to maintain the roadways, shoulders, drainage facilities, signing, guiderail if necessary, and any other roadway ancillary features of the improvement constructed herein, including snow, debris and ice removal on the roadways.

15. That upon completion of all work described herein, Buffalo & Pittsburgh Railroad Inc., at its sole cost and expense, furnish all material and perform all work necessary thereafter to maintain its property, railroad grade, embankments, drainage facilities, and any other railroad facilities of the improvement constructed herein.

16. That upon completion of the removal of the railroad bridge structures and re-establishment of the roadway and shoulder areas, each non-carrier public utility company and municipal authority, at its sole cost and expense, shall furnish all material and perform all work necessary thereafter to maintain its respective facilities, existing or altered, located within the limits of the public right-of-way.

17. That upon completion of the work herein directed, and upon a written request by any Party hereto, this proceeding shall be scheduled for a further hearing at a time and

a place assigned by this Commission, upon due notice to all Parties, to receive evidence relative to the allocation of initial costs incurred, if any, by the public utility companies and municipal authorities, and any other matters relevant to this proceeding.

18. That upon the Commission receiving notice from both Buffalo & Pittsburgh Railroad, Inc., and Knox Township of the completion of work ordered herein and after a final inspection of the work has been completed and deemed satisfactory by the Commission's Bureau of Technical Utilities, Rail Safety Section, and there are no outstanding issues, the Complaint of Knox Township filed at Docket No. C 2019-3009358 shall be deemed satisfied.

19. That upon the Commission findings that all work has been satisfactorily completed as described herein, all three public crossings (DOT 863 298 X), (DOT 863 296 J) and (DOT 863 302 K) at Ramsaytown Road (T-841), Harriger Hollow Road (T-420), and East Bellport Road (T-405), respectively, shall hereby be abolished.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day, March 31, 2022, served a true copy of the foregoing **Main Brief of the Bureau of Investigation and Enforcement**, 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:

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