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March 31, 2022

**Via Electronic Filing**

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

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

Dear Secretary:

Enclosed please find for electronic filing Knox Township's Certificate of Service for Knox Township's Brief in Support of Removal of Overpasses.

Copies have been served on the parties of record in accordance with the Certificate of Service.

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

Sincerely,



Jeffrey M. Gordon

JMG/mac

cc: Honorable Mary D. Long (via email w/attachment)

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**KNOX TOWNSHIP'S BRIEF IN SUPPORT**  
**OF REMOVAL OF OVERPASSES**

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**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**KNOX TOWNSHIP’S BRIEF IN SUPPORT OF REMOVAL OF OVERPASSES**

AND NOW, comes Knox Township, by and through its attorneys, Gordon & Dennison, Jeffrey M. Gordon, Esquire, and files its Brief in Support of Removal of Overpasses as follows:

**I. HISTORY OF THE PROCEEDINGS**

There exists, within Knox Township, Jefferson County, Pennsylvania, three railroad overpasses owned by Buffalo and Pittsburgh Railroad, Inc. The subject railroad overpasses are located at Ramsaytown Road (T-841), East Bellport Road (T-405) and Harriger Hollow Road (T-420). The overpasses at Ramsaytown Road and East Bellport Road consist of concrete arch structures and the overpass at Harriger Hollow Road consists of concrete abutments and a steel crossover bridge which was removed by Buffalo and Pittsburgh Railroad, Inc. subsequent to the filing of the complaint giving rise to this claim. However, the concrete abutments at Harriger Hollow Road still remain.

Knox Township filed a formal Complaint with the Pennsylvania Public Utility Commission on April 23, 2019 alleging that the overpasses were in poor condition, too narrow for two lane traffic and failed to meet state requirements.

On May 7, 2019, the Pennsylvania Department of Transportation filed an Answer

admitting that the subject railroad overpasses 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 in its right-of-way, but denied the safety problems alleged in the complaint.

On June 14, 2019, a formal field conference was conducted at the sites and representatives of both parties were in attendance. Following the conference, both BPRR and Knox Township agreed to certain improvements and corrective measures to improve public safety at the sites.

On September 10, 2019, a Secretarial Letter outlining the various measures to be taken by both Knox Township and BPRR was agreed to. All work was to be completed by November 15, 2019 and BPRR and Knox Township agreed to work toward a long term solution to resolve the complaint.

On February 21, 2020, a second field inspection was conducted at the site attended by Rail Safety, Knox Township and BPRR. At that meeting, the parties agreed that Knox Township would obtain estimates from local contractors for the removal of the subject structures.

On June 4, 2021, Rail Safety referred the matter to the Office of the Administrative Law Judge because an amicable resolution between Knox Township and BPRR could not be achieved.

An Evidentiary Hearing was conducted in the above-captioned matter on January 25, 2022.

## II. **DISCUSSION/ISSUES TO BE RESOLVED**

(A) Whether the overpasses at issue, located in Knox Township, Jefferson County, Pennsylvania at Harriger Hollow Road (T-420), East Bellport Road (T-405) and Ramsaytown

Road (T-841) and all supporting structures should be removed or altered to improve public safety?

SUGGESTED ANSWER: YES

(B) Whether Buffalo & Pittsburgh Railroad, Inc. should bear the entire cost and expense of removal and/or alteration of the three subject overpasses?

SUGGESTED ANSWER: YES

It is Knox Township's position that the three subject structures constitute a public safety hazard and serve no public purpose. The structures are over 100 years old and are in failing condition. With every passing day it only stands to reason that the overpasses will only continue to deteriorate.

As for allocation of costs for removal of said structures, Buffalo & Pittsburgh Railroad, Inc. originally built the crossings. Buffalo & Pittsburgh Railroad, Inc. maintained the crossings up until the time they were abandoned. Only Buffalo & Pittsburgh Railroad, Inc. is responsible for the current condition and deterioration of the structures. The initial construction and subsequent use of the crossings only benefitted Buffalo & Pittsburgh Railroad, Inc. throughout the many years the structures were in use.

Although Knox Township will benefit from the removal of the subject structures, so will every other individual using the roadway whether a resident of Knox Township or not, public safety will be enhanced by the removal of the structures. The removal of the structures will also benefit Buffalo & Pittsburgh Railroad, Inc. in that they will no longer be responsible for the maintenance and repair of the obsolete and failing structures.

Furthermore, the removal of the structures will immediately alleviate any future liability of Buffalo & Pittsburgh Railroad, Inc. that may arise from the failing nature of the structures.

Wherefore, the structures should be removed to enhance public safety and said costs associated with the removal of the structures should be borne by Buffalo & Pittsburgh Railroad, Inc. solely.

### III. PROPOSED FINDINGS OF FACT

An Evidentiary Hearing was conducted on the above-captioned matter on January 25, 2022 at which time James Berry testified to the following:

#### TESTIMONY OF JAMES BERRY, KNOX TOWNSHIP SUPERVISOR

1. James Berry is a resident of Knox Township with an address of 962 Hunters Grove Road, Knox Township, Jefferson County, Pennsylvania. (Transcript) (T) p. 147).
2. James Berry is currently a Knox Township Supervisor and has held that position for approximately 20 years. (T. p. 147).
3. In addition to being employed as a farmer, Mr. Berry is also employed as a school bus driver. (T. p. 147).
4. Mr. Berry also works for the Township maintaining roadways and plowing snow. (T. p. 147-148).
5. James Berry, as a resident of Knox Township, and as an employee of the Township, as well as a school bus driver is familiar with the roadways in the Township and also the railroad overpasses that are the subject of this claim (T. p. 148).
6. As a Township Supervisor, Mr. Berry has received complaints about the condition of the roadways and railroad crossings that are the subject of this claim.(T. p. 148-149).
7. As a school bus driver, Mr. Berry testified that the Ramsaytown Road overpass presents certain problems with clearance and site distance. (T. p. 149-150).
8. Mr. Berry testified that he has seen pieces of concrete on the roadway that

had fallen from the overpasses. (T. p. 152).

9. He described the one piece of concrete to be the size of a football. (T. p. 152).

10. James Berry testified that as a farmer, he has had difficulty maneuvering farm equipment through the Harriger Hollow underpass because it was too narrow. (T. p. 160).

11. Berry testified that other farmers have the same difficulty with farm equipment and getting through the underpass and often times must go around to avoid the underpass. (T. p. 160-161).

12. Berry testified that as a Township Supervisor, the Township does not have the funds available to pay for the removal of the subject structures. (T. p. 165).

13. On cross-examination, Mr. Berry testified that the Ramsaytown Road overpass has holes in the concrete ceiling and that concrete has been found on the roadway beneath that structure. (T p. 166).

14. On cross-examination, Mr. Berry testified that he sought estimates from local contractors for the removal of the structures. (T. p. 168).

15. Mr. Berry identified the independent contractors estimates as I&E's Exhibit "E." (T. p. 168-171).

TESTIMONY OF WILLIAM SINICK, PENNSYLVANIA PUBLIC UTILITY COMMISSION  
SENIOR CIVIL ENGINEER, MANAGER RAIL SAFETY SECTION

16. William Sinick testified on behalf of the Bureau of Investigation and Enforcement and as an employee of the Pennsylvania Public Utility Commission. (T. p. 180).

17. Mr. Sinick is a Senior Civil Engineer and Manager of the Pennsylvania Public Utility Commission Rail Safety section. (T. p. 180).

18. When asked about the condition of the subject crossings, Mr. Sinick stated, " You have a two lane road onto a one lane roadway in all three locations, which is a hazard amongst



itself. You have unprotected concrete, 30, 40 ton obstructions in the roadway that, again, are unprotected to the traffic approaching. You have concrete falling from at least one of the structures onto the roadway below, not to mention all of the debris above.” (T. p. 183).

19. The benefits received by the railroad by using the three crossings included no vehicle or pedestrian conflicts. . . they could move their freight unopposed to traffic and pedestrians. (T. p. 183).

20. Sinick testified that to his knowledge that railroad currently receives no benefit from the three subject crossings remaining intact. (T. p. 183 -184). Sinick was asked if the Township or local citizens currently receive any benefit from the three overpasses remaining intact. (T. p. 185). In response, Sinick stated, “there is no public benefit to these crossing remaining in place. In fact, quite the opposite. They are public safety hazards at the detriment of the public currently due to their restrictive clearances, concrete falling off of them onto the roadway potentially striking vehicles and/or pedestrians at least the threat of it, and as I said, unprotected concrete and hazards in the roadway.” (T. p. 186).

21. Sinick testified that these structures are 110 years old and the utility that used to operate them have abandoned the service and they are no longer operating as a utility at that location.( T. p.186-187).

22. Sinick testified that review of the testimony and exhibits offered by the railroad, the inspections completed by the railroad were not to NBIS standards.(T. p. 187-188).

23. Sinick indicated that falling concrete on a bridge would result in a coding of zero (0) using National Bridge Inspection Standards. Meaning they would be in need of immediate action. (Transcript p. 187-188).

24. If immediate action was not taken with seven (7) days, the roadway underneath

would also be closed. (T. p. 188).

25. Concrete falling from bridge structures can cause damage to vehicles.  
(T.p. 188 - 189).

26. When Sinick was asked on cross-examination if it is uncommon to see bridges of similar construction and conditions in the Commonwealth, he indicated that it is actually uncommon to see bridges in the condition of the bridges at issue. (T. p. 199).

27. He stated that the bridges still contained loose concrete and that said condition poses a danger to the public. (T. p. 200-201).

28. Sinick described the overpasses as 30,40 ton concrete structures in the roadway and there is no protection. "You have a 90 degree blunt end concrete end facing traffic. So if somebody was to lose control of their vehicle, they would hit the concrete hazard in the roadway. There is no protections. There is no guide rail to redirect that collision from the 90 degree impact with the blunt end of the concrete abutment." (T. p. 210).

#### **IV. PROPOSED CONCLUSIONS OF LAW**

The testimony of Mr. Berry and Mr. Sinick establishes the public safety hazards associated with the exposed concrete abutments to vehicular traffic requiring the removal of the same. Additionally, their testimony establishes that the subject overpasses are deteriorated to the point that they are in need of removal.

An analysis of the applicable statutory law and case law regarding the allocation of costs in these circumstances supports the conclusion that Buffalo & Pittsburgh Railroad, Inc. should bear the entire cost of said removal.

Pursuant to Section 2704 (a) of the Public Utility Code, 66 Pa. C.S. Section 2704 (a), the Commission is vested with the authority to determine who shall bear the cost associated with

the relocation or abolition of a railroad crossing and the facilities at or adjacent to such crossing.

In exercising this authority, the Commission is not limited to any fixed rate with respect to the allocation of costs, but instead, may take all relevant factors into consideration. Department of

Transportation v. Pennsylvania Public Utility Commission, 79 Pa. Cmwlth. 266, 469 A.2d 1149 (1983). The allocation of cost between the parties is within the discretion of the Commission.

Borough of South Greensburg v. Pennsylvania Public Utility Commission, 117 Pa. Cmwlth. 361, 544 A.2d 82 (1988).

The Commonwealth Court of Pennsylvania held in the case of Greene Township Board of Supervisors v. Pennsylvania Public Utility Commission, 668 A.2d 615.:

While there is no Pennsylvania case law or statutory law clearly delineating the factors that are relevant to the allocation of costs among the parties, a review of the numerous cases involving challenges to the reasonableness of the Commissions decisions indicates that several factors have consistently been viewed as relevant. They include:

1. The party that originally built the crossing. *See Department of Transportation v. Pennsylvania Public Utility Commission*, [76 Pa. Cmwlth, 525] 464 A.2d 645 (Pa. Cmwlth. 1983). Related to this factor is the issue of whether the road existed before or after the crossing;
2. The party that owned and maintained the crossing. *Id.*;
3. Relative benefit initially conferred on each party with the construction of the crossing. *See Department of Transportation v. Pennsylvania Public Utility Commission*, [21 Pa. Cmwlth. 407] 346 A.2d 371 (Pa.Cmwlth.1975);
4. Whether either party is responsible for the deterioration of the crossing that has led to the need for its repair, replacement or removal. *Id.*; See also *Department of Transportation v. Pennsylvania Public Utility Commission*, [79 Pa. Smwlth. 266] 469 A.2d 1149 (Pa. Cmwlth.1983); and
5. The relative benefit that each party will receive from the repair, replacement or removal of the crossing. *See Pittsburgh and Lake Erie Railroad Co. v. Pennsylvania Public Utility Commission*, [124 Pa. Cmwlth.611] 556 A.2d 944 (Pa. Cmwlth.1989).

Applying the analysis set forth above, Buffalo & Pittsburgh Railroad, Inc. originally built the crossing.

Buffalo & Pittsburgh Railroad, Inc. maintained the crossings at issue up until the time they were abandoned approximately 20 years ago.

The relevant benefit initially conferred on each party with the construction of the crossings clearly weighs in favor of Buffalo & Pittsburgh Railroad, Inc. allowing them to operate unimpeded for nearly 90 years.

The responsibility for the deterioration of the crossing that has led to the repair, replacement or removal of the subject overpasses clearly falls upon Buffalo & Pittsburgh Railroad, Inc., the parties who owned and operated the railway for nearly 90 years.

Finally, the relative benefit that each party will receive from the repair, replacement or removal of the subject crossings is probably equal. The Township will benefit by the improvement in public safety and Buffalo & Pittsburgh Railroad, Inc. will benefit by no longer needing to repair and maintain the structures together with the added benefit of removing the potential and probable liability for the company going forward.

Weighing all of the above-referenced factors, Buffalo & Pittsburgh Railroad, Inc. should bear the sole responsibility for the necessary removal of the subject railroad crossings.

Respectfully submitted,

GORDON & DENNISON

By:/s/Jeffrey M. Gordon  
Attorney for Knox Township

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PROPOSED ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2022, upon consideration of the evidence presented in the Hearing conducted on January 25, 2022, together with submissions of all parties, it is the ORDER of this Court that the railroad crossings existing within Knox Township, Jefferson County, Pennsylvania identified as crossings at Harriger Hollow Road (T-420), East Bellport Road (T-405) and Ramsaytown Road (T- 841) shall be removed within 180 days from the date of this Order and all costs associated with said removal shall be the sole responsibility of the Buffalo & Pittsburgh Railroad, Inc.

BY THE COURT:

\_\_\_\_\_  
Mary D. Long, Administrative Law Judge

**CERTIFICATE OF SERVICE**

I, Jeffrey M. Gordon, Esquire, do hereby certify that on the 31<sup>st</sup> day of March, 2022, I served true and correct copies of the foregoing Certificate of Service of Knox Township's Brief in Support of Removal of Overpasses upon all parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**Service by Electronic Mail:**

Honorable Mary D. Long  
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Respectfully submitted,

GORDON & DENNISON

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