



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

IN REPLY PLEASE
REFER TO OUR FILE

May 6, 2022

C-2015-2513130

C-2015-2513384

Via Eservice and Email Only
TO ALL PARTIES OF RECORD

Complaint filed by the Borough of Ellwood City verses Buffalo & Pittsburgh Railroad Inc., alleging falling concrete from the railroad overpass onto the public roadway and sidewalks and other issues at the public crossing (DOT 145 827 X) where SR 2017 (Fifth Street) crosses, below grade, the tracks of Buffalo & Pittsburgh Railroad Inc., located in the Borough of Ellwood City, Lawrence County.

To Whom It May Concern:

At a location in the Borough of Ellwood City, Lawrence County, State Route 2017 (Fifth Street) crosses, below grade, the tracks of Buffalo & Pittsburgh Railroad Inc.

By formal complaints filed with the Commission on November 6, 2015, and November 12, 2015, the Borough of Ellwood City (Borough) seeks relief concerning repairs to the Fifth Street Bridge located at the subject captioned public crossing (DOT 145 827 X).

Both formal complaints are identical in requested relief and will be addressed together. However, under C-2015-2513130 the Borough names Buffalo & Pittsburgh Railroad Inc., as the utility (respondent) and under C-2015-2513384, CSX Transportation, Inc. is named as the utility (respondent).

Answers to both complaints were filed by Buffalo & Pittsburgh Railroad Inc., on December 4, 2015, under C-2015-2513130 and by CSX Transportation, Inc., on December 7, 2015, under C-2015-2513384.

Upon receipt of the complaints, a formal field investigation and conference was arranged by a Commission staff engineer and held at the site of the crossing on July 13, 2017, and most recently July 22, 2021. At the July 22, 2021 meeting, representatives of Buffalo & Pittsburgh Railroad Inc., (Buffalo & Pittsburgh), the Borough of Ellwood City and the Pennsylvania Department of Transportation were in attendance. Although notified by letter sent by electronic mail on June 25, 2021, Lawrence County and CSX Transportation, Inc., were not in attendance.

At the meeting it was discussed and agreed to by the parties that a sidewalk protection canopy be designed and installed over both walkways under the bridge. In an effort to improve public safety and to resolve the complaint, Buffalo & Pittsburgh agreed, at their sole cost and expense, to design and install the sidewalk protection canopy.

It was agreed to by the Borough that they would maintain the sidewalk protection canopy, at their sole cost and expense, provided Buffalo & Pittsburgh would draft and submit the plans through the Commission and that they would have an opportunity to review the plans.

On November 22, 2021, Buffalo & Pittsburgh submitted the plans for the sidewalk protection canopy as discussed at the field conference meeting. It was noted by the Commission staff engineer upon the submission, that the plans submitted were not properly sealed by a professional engineer registered in the Commonwealth of Pennsylvania.

On December 1, 2021, Buffalo & Pittsburgh submitted the plans with the proper stamp and seal by a professional engineer registered in the Commonwealth of Pennsylvania.

By Secretarial Letter dated February 2, 2022, the aforementioned plans were approved for the sidewalk protection canopy.

The future maintenance, cost allocation and installation of the sidewalk protection canopy will be addressed with this Secretarial Letter. It outlines the terms agreed to by the parties at the formal field investigation and conference meeting and was outlined in a twenty (20) day notification letter dated February 24, 2022.

The twenty (20) day notification letter was sent to all parties of record by electronic mail on February 24, 2022, in which the parties were requested to review the agreed upon terms and notify the Commission by e-file of any hearing request and/or objection. None of the parties have responded with any objection or hearing request to the terms agreed upon.

Inasmuch as no party has filed a hearing request and/or objection upon due notification cited above the Commission issues this Secretarial Letter consistent with the agreed upon terms for the installation and maintenance of the sidewalk protection canopy.

It will not be necessary for the Commission to appropriate any railroad property to accommodate the sidewalk safety improvement project.

The Commission hereby tentatively establishes its jurisdictional limits at the public crossing (DOT 145 827 X) as the area within the confines of the railroad right-of-way and the highway right-of-way along SR 2017 (Fifth Street) and extended out 100 feet each side from the railroad structure along the SR 2017 (Fifth Street) highway right-of-way.

Upon full consideration of the matters involved and inasmuch as no objection has been filed with the Commission, we find that a Secretarial Letter can be issued approving the sidewalk safety improvements without a formal hearing.

The Commission issues this Secretarial Letter in accordance with Section 2702 of the Public Utility Code and finds that the alteration of the public crossing is necessary and proper for the service, accommodation, convenience, or safety of the public.

Therefore, the sidewalk safety improvement project is approved as herein directed:

1. The caption of the subject proceedings are hereby revised as shown herein.
2. The sidewalk safety improvement project agreed upon by the Borough of Ellwood City and Buffalo & Pittsburgh Railroad Inc., at the public crossing (DOT 145 827 X) where SR 2017 (Fifth Street) crosses, below grade, the tracks of Buffalo & Pittsburgh Railroad Inc., located in the Borough of Ellwood City, Lawrence County, be and is hereby approved to the extent provided herein.
3. Buffalo & Pittsburgh Railroad Inc., at its sole cost and expense, furnish all material and perform all work required to construct and install the sidewalk protection canopy generally in accordance with the approved plans and this Secretarial Letter.
4. Buffalo & Pittsburgh Railroad Inc., at its sole cost and expense, furnish all material and perform all work required to inspect the structure for loose concrete during its annual bridge inspection.
5. Buffalo & Pittsburgh Railroad Inc., at its sole cost and expense, furnish all material and perform all work necessary to establish and maintain pedestrian traffic control signing, closing one sidewalk at a time, in an effort to properly and safely accommodate pedestrian traffic during the time the project is being constructed.
6. Buffalo & Pittsburgh Railroad Inc., at its sole cost and expense, furnish all material and perform all work relating to its facilities which may be required as incidental to the performance of the proposed project work; furnish construction engineering and inspection service if required as a result of the proposed work; and furnish and maintain flagmen and watchmen, as required, to protect its operations during the time the work is being performed across, above and adjacent to its tracks.
7. 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 located within the limits of this Commission's jurisdiction, which may be required as incidental to the execution of the crossing project, be made by said public utility company or municipal authority at its initial cost and expense, and in such manner, as will not interfere with the construction of the project.
8. Borough of Ellwood City cooperate with Buffalo & Pittsburgh Railroad Inc., so that during the construction of the project, the operations and facilities of the railroad company will not be endangered or unnecessarily impeded.

9. Buffalo & Pittsburgh Railroad Inc., cooperate with the Borough of Ellwood City and conduct your operations in the vicinity of the proposed crossing construction project, in a safe manner and under control during the time the project is being constructed.

10. All parties involved herein cooperate fully with each other so that during the time the work is being performed, vehicular and railroad 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.

11. Buffalo & Pittsburgh Railroad Inc., at least fourteen (14) days prior to the start of work, notify local emergency management services and all parties in interest of the actual date on which work will begin.

12. Buffalo & Pittsburgh Railroad Inc., if necessary, contact the Pennsylvania Department of Transportation if the sidewalk safety project may result in any vehicle traffic issues, delays and or traffic controls that may be required to properly and safely accommodate highway traffic during the time the project is being constructed. If necessary, implement such controls at its sole cost and expense.

13. Borough of Ellwood City cooperate with Buffalo & Pittsburgh Railroad Inc., and provide proper notification to the public regarding the sidewalk safety project during the time the project is being constructed.

14. All work necessary to complete the project construction within the Commission's jurisdiction be done in a manner satisfactory to this Commission on or before September 30, 2022, and that on or before said date, Buffalo & Pittsburgh Railroad Inc., notify this Commission in writing the date of actual completed work.

15. Upon completion of the project, a final inspection will be conducted by a Commission staff engineer to determine if the work was completed satisfactorily.

16. Upon completion of the construction of the proposed project, the Borough of Ellwood City, at its sole cost and expense, furnish all material and perform all work necessary thereafter to maintain the sidewalk protection canopy, all in accordance with the provisions of this Secretarial letter.

17. Upon completion of the construction of the proposed project, each non-carrier public utility company and municipal authority, at its sole cost and expense, furnish all material and perform all work necessary thereafter to maintain its respective facilities, existing or altered, located within the limits of the improvements.

18. Upon completion of the work herein directed, and upon a written request by any party hereto, this proceeding be scheduled for a 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.

19. Upon satisfactory completion and inspection of the work completed in accordance with the terms described above both C-2015-2513130 and C-2015-2513384 will be deemed satisfied and the cases will be closed.

20. In all other respects, pertaining to the SR 2017 (Fifth Street) public crossing (DOT 145 827 X), our previous Commission Orders and Secretarial Letters remain in full force and effect.

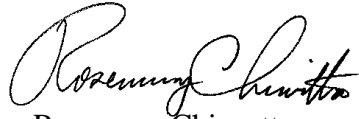
The Parties are reminded that failure to comply with this or any Order or Secretarial Letter in this proceeding may result in an enforcement action seeking civil penalties and/or other sanctions pursuant to 66 Pa. C.S. § 3301.

The Commission has waived certain regulatory service provisions as directed by the Commission's Order at M-2021-3028321. Currently, while the Commission's physical facilities are open for business, some of the operational restraints occasioned by the pandemic remain. It is evident that the pandemic and its changing nature require certain procedural flexibility for the public, the regulated community, and the Commission. Toward this end, the Commission will continue to permit electronic service by the Commission on all parties, regardless of whether a particular party has agreed to electronic service. An exception to this general waiver is where the Public Utility Code requires service by specified means, e.g., Section 702. Additionally, service on Commission staff in proceedings pending before it, whether staff is a party or otherwise, shall be exclusively electronic unless the parties agree otherwise. Filings must be submitted by e-filing with the Secretary of the Commission by opening an e-filing account through the Commission's website and accepting eservice at <https://www.puc.pa.gov/filing-resources/efiling/>. If your filing contains confidential material, you are required to file by overnight delivery to ensure the timely filing of your submission.

If you are dissatisfied with the resolution of this matter, you may, as set forth in 52 Pa. Code §§ 1.31 and 5.44, file a Petition for Reconsideration from Staff Action (Petition) with the Commission within twenty (20) days of the date of this letter. The Petition shall be submitted by e-filing said petition within twenty (20) days, or if no timely request is made, the action will be deemed to be a final action of the Commission.

The Petition MUST include: (1) a written statement (divided into numbered paragraphs) outlining the reasons for the request; (2) the case docket number (it is provided for you at the top right-hand corner of this letter); (3) the party on whose behalf the petition is made; (4) a Certificate of Service on the other parties of record; and (5) a Verification with original signature in accordance with 52 Pa. Code § 1.36.

Very truly yours,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive style with a large initial "R" and a long, sweeping underline.

Rosemary Chiavetta
Secretary