

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Knox Township	:	
	:	
v.	:	C-2019-3009358
	:	
Buffalo & Pittsburgh Railroad, Inc.	:	

RECOMMENDED DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

This decision sustains the formal complaint of a municipality and recommends removal of the railroad structures which present a safety hazard to the public, where Buffalo & Pittsburgh Railroad, Inc.'s abandoned rail line previously crossed Ramsaytown Road, Harriger Hollow Road, and East Bellport Road, located in Knox Township, Jefferson County. This decision recommends the allocation of various costs and expenses for the removal of the structures, substructures and grading of the slopes to Buffalo & Pittsburgh Railroad, Inc., Knox Township and Jefferson County. The decision also recommends that the public crossings shall ultimately be abolished.

HISTORY OF THE PROCEEDINGS

A. Complaint and Answers

Knox Township filed a Formal Complaint against Buffalo & Pittsburgh Railroad, Inc. (BPRR) on April 10, 2019, alleging that there are three overpasses¹ that are deteriorating and

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).

that large pieces of concrete are falling on the roadways. Knox Township also alleged that the overpasses are too narrow for two-lane traffic and do not meet state requirements. Knox Township requested the Commission direct the railroad to remove the overpasses. The three crossings are referenced as Ramsaytown Road, East Bellport Road, and Harriger Hollow Road.

On April 25, 2019, the Commission served the complaint on BPRR, the Pennsylvania Department of Transportation (PennDOT), Jefferson County, and Brookville Borough.

On May 6, 2019, PennDOT filed an Answer, which averred that the overpasses are over township roads.

On May 13, 2019, 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.

By letter dated May 16, 2019, the Commission's Rail Section Division, Technical Utility Services, scheduled a field conference at the crossing for Friday, June 14, 2019.

On May 17, 2019, the Borough of Brookville filed an Answer. The Borough admitted that the three (3) overpasses are located within Knox Township, Jefferson County.

Jefferson County did not file an answer to the complaint, but counsel for Jefferson County entered an appearance on May 22, 2019.

B. Field Conference and Secretarial Letter

On June 14, 2019, the Commission convened a field conference at the site of the public crossings. The Commission's field engineer as well as representatives of Knox

Township, Jefferson County, Brookville Borough, BPRR and PennDOT attended. At the field conference, BPRR acknowledged ownership and maintenance of the railroad structures. Knox Township acknowledged maintenance of the approach roadways to the structures.

The parties discussed the conditions at each of the crossings and in the immediate interests of public safety, the parties agreed to mitigation measures. Following the field conference the Commission served a Secretarial Letter dated September 10, 2019, which memorialized the observations and identified safety issues. The September 10, 2019 Secretarial Letter also directed certain parties to perform interim remedial safety work at the crossings. In summary, the Commission directed the following actions:

Knox Township was required to:

- a) furnish and install advance warning signs for the vertical clearance restrictions for each crossing;
- b) furnish low clearance overhead signs which BPRR would install on each structure;
- c) furnish and install advanced warning signs and an advisory speed placard for the horizontal clearance restriction at the Ramsaytown Road crossing;
- d) furnish and install roadway clearance markers at the edge of the abutments and arch end walls;
- e) establish and maintain any detours or traffic controls that may be required during the work of BPRR.

BPRR was required to:

- a) install the low clearance overhead signs provided by Knox Township;
- b) remove all loose and delaminated concrete and debris from the inside and outside of the concrete arch supports at Ramsaytown Road and East Bellport Roads and remove all material that had fallen into or adjacent to the roadways.

The September 10, 2019 Secretarial Letter also required BPRR and Knox Township to coordinate and cooperate with each other to complete the work on or before November 15, 2019. No party filed a petition for reconsideration of staff action.

By letters dated December 13, 2019 and February 10, 2020, BPRR advised the Commission that the work directed by the September 10, 2019 Secretarial Letter had been completed.

A further field conference was held on February 21, 2020, and further settlement discussions commenced. The parties were unable to reach an agreement regarding the resolution of Knox Township's complaint. The Rail Safety Division requested that the complaint be referred to the Office of Administrative Law Judge for hearing.

C. Prehearing Conference and Evidentiary Hearing

By hearing notice dated June 8, 2021, this matter was assigned to me and a telephonic prehearing conference was scheduled for July 1, 2021, at 10:00 a.m.

The Commission's Bureau of Investigation and Enforcement (I&E) entered an appearance on June 10, 2021.

The prehearing conference convened as scheduled. Counsel for Knox Township, BPRR, BIE, the Borough of Brookville, Jefferson County and PennDOT appeared and participated. The parties briefly discussed the conditions at the crossings and also agreed to a litigation schedule. The litigation schedule was memorialized in a prehearing order issued on July 6, 2021, and included the service of prepared written direct and rebuttal testimony. The prehearing order also scheduled an evidentiary hearing to take place on January 25, 2022.

The evidentiary hearing convened on January 25, 2022 and was conducted by telephone. Witnesses for Knox Township, I&E, and PennDOT testified. Counsel for Jefferson

County appeared but did not offer any exhibits or call any witnesses to testify. No one appeared on behalf of Brookville Borough.

The following written testimonies and exhibits were offered for admission into the record:

Party	Testimonies and Exhibits
Knox Township	Direct Testimony of James M. Berry, Jr.
I&E	Direct Testimony of William M. Sinick (portions stricken) ² Rebuttal Testimony of William M. Sinick I&E Exhibits A,B,C, D, E
BPRR	Direct Testimony of Chad Boutet Rebuttal Testimony of Chad Boutet Direct Testimony of Wayne Duffett Rebuttal Testimony of Wayne Duffett Direct Testimony of Charles A. Wooster Rebuttal Testimony of Charles A. Wooster BPRR Documentary Exhibits 1-15 BPRR Video Exhibit 16 (six video files)
PennDOT	Direct Testimony of Charles P. Keilman, IV, P.E.

The testimonies and exhibits were otherwise admitted into the record without objection.

Knox Township, I&E, and BPRR filed Main Briefs on March 31, 2022. PennDOT filed a letter noting that it would not be filing a brief. BPRR filed a Reply Brief on April 20, 2022.

² Certain lines of testimony were stricken from the written testimony of William M. Sinick. *See* Interim Order Memorializing the Striking of Written Testimony entered January 26, 2022.

By interim order entered April 26, 2022, I notified the parties that the September 10, 2019 Secretarial Letter, including factual statements in that letter, would be considered record evidence in this proceeding, to the extent it was not already part of the record. The parties were provided an opportunity to object. BPRR filed an objection on April 28, 2022, noting that certain factual statements in the Secretarial Letter were in conflict with witness testimony. By order entered April 29, 2022, BPRR's objections were overruled and the record was closed.

The record includes the orders I issued, the written testimonies and exhibits which were admitted into the record, the September 10, 2019 Secretarial Letter, the transcript of the prehearing conference and evidentiary hearing totaling 269 pages, and the Main and Reply Briefs filed in this matter.

FINDINGS OF FACT

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

2. The Township consists of approximately 1,100 people, mostly low income and retired individuals. Tr. 159.

General Description of the Abandoned Rail Line and Crossings

3. The three crossings in Knox Township are:
- a. Harriger Hollow Road (T-420) DOT 863 296, an above-grade crossing consisting of two concrete abutments that supported a steel superstructure;
 - b. Ramsaytown Road (T-841) DOT 863 298 X, an above-grade crossing consisting of a 16-foot-wide concrete arch bridge;
 - c. East Bellport Road (T-405) DOT 863 302 K, and above-grade crossing consisting of a 16-foot-wide concrete arch bridge.

September 10, 2019 Secretarial Letter; BPRR St. 1 at 1.

4. The Harriger Hollow Road, Ramsaytown Road and East Bellport Road crossings are highway/railroad crossings under the Commissions jurisdiction and are part of and along a 40-mile railroad line abandonment that took place in 2005 and 2006 through the Federal Surface Transportation Board (STB) by Pittsburgh & Shawmut Railroad LLC, a subsidiary of Buffalo & Pittsburgh Railroad Inc., under dockets AB-976X and AB 369 (Sub no. 5X).
September 10, 2019 Secretarial Letter.

5. PennDOT has removed three of the overhead railroad structures along this abandoned line, along their roadways in conjunction with a larger federal/state funded roadway project under Commission dockets A-2009-2104031, A-2010-2185469 and A-2012-2338963.
Secretarial Letter, September 10, 2019.

6. The Railroad has removed one overhead structure along this line as ordered under a Commission complaint docket C-2017-2585787³ leaving approximately 13 overhead public crossing railroad structures remaining in place. Secretarial Letter, September 10, 2019; Tr. 65.

7. BPRR currently owns these structures. BPRR St. 1 at 1; Tr. 50.

8. The railroad tracks, ties, and ballast normally would be located on top of the earthen material but have been removed. Tr. 60; BPRR St. 1 at 1; I&E St. 1 at 10.

9. Pittsburgh and Shawmut Railroad constructed the crossings. See BPRR Exhibits 1-3.

10. The crossing at Harriger Hollow Road, located at mile 26.5 on the railway line, was constructed in 1906. BPRR St. 1 at 1.

³ *Mahoning Twp. v. Buffalo & Pittsburgh R.R. Inc.*, Docket C-2017-2585787 (Order adopting Recommended Decision entered August 2, 2018) (*Putneyville Crossing Decision*).

11. The Harriger Hollow Road structure consists of two concrete abutments. BPRR St. 1 at 1.
12. The railroad bridge structure along Harriger Hollow Road was a steel girder simple span bridge structure. I&E St. 1 at 13; *see generally* I&E Exhibit C, Picture 5.
13. The clear span between edges of the concrete abutments is 17 feet. I&E St. 1 at 13.
14. The steel superstructure has been removed and placed adjacent to one of the abutments. BPRR St. 2 at 1.
15. 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. I&E St. 1 at 13-14; *see generally* I&E Exhibit C, Pictures 1, 5, and 10.
16. The operational width between the Harriger Hollow abutments is approximately 13 feet. BPRR St. 5 at 3.
17. The height of the Harriger Hollow abutments above the roadway is approximately 14-15 feet. I&E St. 1 at 13-14; *see generally* I&E Exhibit C, Pictures 1, 5, and 10.
18. The length of the Harriger Hollow abutments/wingwalls in the direction of the roadway is approximately 51 feet. I&E St. 1 at 13-14; *see generally* I&E Exhibit C, Pictures 1, 5, and 10.
19. There is steel fencing affixed to both Harriger Hollow abutments. I&E St, 1 at 13-14; *see generally* I&E Exhibit C, Pictures 1, 5, and 10.

20. The structures located at Ramsaytown and East Bellport Road were constructed in 1910. Tr. 49; BPRR Exs. 1-3.

21. The railroad bridge structure along Ramsaytown Road is a concrete arch structure. BPRR St. 1 at 1; I&E at 1 at 10; *see generally* I&E Exhibit D, Pictures 5, 9, and 16.

22. This type of concrete bridge structure is known as a concrete closed spandrel arch and consists of an arch barrel, spandrel walls, abutments, and wings. I&E St. 1 at 10.

23. The Ramsaytown Road arch barrel is the portion of the bridge that you would drive through. I&E St. 1 at 10.

24. The Ramsaytown Road arch barrel length in the direction of the roadway is approximately 100 feet. I&E St. 1 at 10.

25. The minimum vertical clearance of the Ramsaytown Road arch barrel is 14 feet. I&E St. 1 at 12.

26. The Ramsaytown Road spandrel walls are located above the arch barrel oriented in the direction of the railroad grade and are directly above the roadway. I&E St. 1 at 10.

27. The Ramsaytown Road spandrel walls retain the earthen material above the arch barrel to the top of the railroad grade. I&E St. 1 at 10.

28. The existing railroad structure at Ramsaytown Road is approximately 16 feet from wall to wall. I&E St. 1 at 11; BPRR St. 1 at 1.

29. At Ramsaytown Road the traversable roadway width within the barrel of the arch is limited, approximately 12 feet. I&E St. 1 at 11; *see generally* I&E Exhibit D, Picture 9; BPRR St. 5 at 3.

30. 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. I&E St. 1 at 11; *see generally* I&E Exhibit D, Pictures 2, 3, 5, 8, 12, and 14.

31. The Ramsaytown Road structure wings flare out from the abutments and retain the earthen embankment that makes up the entire railroad grade prior to the bridge. I&E St. 1 at 11.

32. 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. I&E St. 1 at 11; *see generally* I&E Exhibit D, Picture 9.

33. The railroad bridge structure along East Bellport Road is a concrete arch structure similar in design to the Ramsaytown Road bridge structure. I&E St. 1 at 12; *see generally* I&E Exhibit B, Pictures 1-7, and 10.

34. 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. I&E St. 1 at 12-13; *see generally* I&E Exhibit B, Picture 11.

35. The existing railroad structure is approximately 16 feet from wall to wall with an operational width of approximately 12 feet. BPRR St. 5 at 3.

36. 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. I&E St. 1 at 12-13.

37. The total structure height above the roadway to the top of the spandrel wall above the vertical clearance sign is approximately 20 feet. I&E St. 1 at 12-13.

38. The abutments of the Ramsaytown and East Bellport Road structures have a thickness of 7'10" and 6'7", respectively. BPRR St. 3 at 5.

39. There are no guide rails to redirect a vehicle collision with the abutments. Tr. 210; 228-29.

Conditions Observed at the Crossings and the Inspections

40. James M. Berry, Jr. has served as a township supervisor for twenty years. He also works as a farmer and a school bus driver. Knox St. 1 at 1; Tr. 147.

41. Mr. Berry maintains and plows the roads in Knox Township and is very familiar with the roadways. Tr. 148.

42. Township workers removed the concrete from the road and put it on the side by the headwall. Tr. 166. *See* I&E Exhibit D, Pictures 7 and 11.

43. Mr. Berry also reported that he has seen pieces of concrete the size of a football in the roadway. Tr. 152.

44. As a Township Supervisor, Mr. Berry has received complaints regarding the overpasses at Ramsaytown Road, East Bellport Road, and Harriger Hollow Road. Tr. 148.

45. As a result of those complaints, Mr. Berry filed the instant complaint on behalf of Knox Township with the Commission. Knox St. 1 at 1; Tr. 148.

46. On May 17, 2019, after Knox Township filed its complaint, BPRR inspected the crossings. BPRR St. 1 at 4-5; BPRR Exhibit 7.

47. At Harriger Hollow Road, the inspector noted there was spalling at the top corner of the bridge seat and the concrete cap of the north wing wall was separated. BPRR St. 1 at 3-4.

48. There was also spalling on the south backwall, bridge seat, and wingwall. BPRR St. 1 at 3-4.

49. The inspector recommended that loose concrete be scaled back and that the broken section of the concrete cap be removed. BPRR St. 1 at 3-4.

50. William Sinick, P.E. 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 Commonwealth for approximately 23 years and has been with the Commission since June 2015. I&E St. 1 at 1.

51. June 14, 2019, Mr. Sinick convened a field conference to review the condition of the crossings. I&E St. 1 at 5-6.

52. Knox Township, PennDOT, BPRR, Jefferson County and Brookville Borough attended the field conference. I&E St. 1 at 5-6.

53. Mr. Sinick identified public safety issues at the crossings, noting 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. I&E St. 1 at 3.

54. The Ramsaytown Road railroad structure had loose and delaminated concrete on 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. I&E St. 1 at 6.

55. 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. I&E St. 1 at 6.

56. 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. I&E St. 1 at 6-7.

57. Mr. Sinick's last immediate safety concern identified at the June 14, 2019 field 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. I&E St. 1 at 7.

58. Mr. Sinick's recommendations were memorialized in the September 10, 2019 Secretarial letter. I&E St. 1 at 3.

59. BPRR performed remediation work at the crossings which included chipping and scaling work to remove loose concrete. BPRR St. 1 at 4.

60. On February 21, 2020, Mr. Sinick held an interim field inspection to inspect the work completed and continue discussions to resolve the complaint. I&E St. 1 at 7-8.

61. Rail Safety, Knox Township, and BPRR attended the February 21, 2020 field inspection. I&E St. 1 at 7-8.

62. At the conclusion of the February 21, 2020 field inspection, the parties agreed that Knox Township would receive an estimate from a local contractor for the removal of the railroad structures. I&E St. 1 at 7-8.

63. At the February 21, 2020 field inspection, Mr. Sinick confirmed that the directives relating to signage, minus the vertical clearance sign on the Harriger Hollow Road structure, were completed. I&E St. 1 at 8-9.

64. Mr. Sinick also noted that the removal of loose concrete was an ongoing problem. I&E St. 1 at 8-9.

65. Shawn Baer, BPRR's Director of Structures, inspected the structures on July 29, 2021. BPRR St. 1 at 3; Tr. 50-51.

66. Mr. Baer's inspections identified spalling, and minor surface cracking in the concrete. BPRR St. 1 at 3-4; BPRR Exhibits 4-6.

67. BPRR's expert Wayne Duffett inspected the structures on October 4, 2021. Tr. at 76. BPRR St. 3 at 2; BPRR Exhibits 9, 10,11, and 12.

68. Mr. Duffett is a professional engineer with a concentration in bridges and structures, and is licensed in several states including Pennsylvania. BPRR St. 3 at 1; Tr. at 74-75; BPRR Exhibit 8.

69. The structural integrity of each structure is "good," and all three are structurally safe. BPRR St. 3 at 2-3; Tr. 76-77.

70. Each structure has cracking and spalling, which is surface deterioration due to environmental conditions, and is typically addressed through periodic maintenance. Tr. 76, 81-82.

71. There are no through cracks or settlement at any of the structures. BPRR St. 3 at 2.

72. The abutments of Harriger Hollow Road suffer from spalling with cracking and leaching. BPRR St. 3 at 2.
73. There was loose concrete on the north abutment and northwest wingwall of the Ramsaytown Road crossing. BPRR St. 3 at 2.
74. The East Bellport Road crossing has some cracking and spalling on the abutments and minor cracking in the arch. BPRR St. 3 at 4-5.
75. Mr. Sinick visited the crossings on October 21, 2021. I&E St. 1 at 10.
76. The condition of the concrete at the Harriger Hollow Crossing was fair, with some cracks and spalls. I&E St. 1 at 13; I&E Exhibit C, Pictures 1, 11,12,13 and 15.
77. Mr. Sinick observed falling concrete from the inside of the arch barrels at Ramsaytown Road and East Bellport Road. E.g., I&E St. 1 at 9.
78. At Ramsaytown Road he observed heavy deterioration, delamination, cracking and spalls in the concrete. I&E Exhibit D.
79. There are areas at the Ramsaytown Road structure where concrete is missing from the walls of the arch barrel. I&E Exhibit D, Picture 1,2, 3.
80. There were pieces of concrete along the side of the roadway inside the arch barrel. I&E Exhibit D, Picture 1.
81. While the arch barrel at East Bellport Road was in better condition, there were signs of cracks, delamination and spalls. I&E St. 1 at 12; I&E Exhibit B.
82. There were sections of missing concrete in the arch barrel of East Bellport Road. I&E Exhibit B, Pictures, 1,2,4, 5,6, ,10.

83. Concrete cobbles were also evident along the side of the road inside the arches. E.g., I&E Exhibit B, Picture 1.

Roadway Approaches and Traffic

84. As a farmer, Mr. Berry is unable to take farm equipment through the Ramsaytown Road crossing, noting that the equipment is too wide to get through. Tr. 160-61.

85. Mr. Berry was unable to move his farm equipment from his fields on the south side of the Harriger Hollow crossing because he could not get through the underpass. Tr. 160.

86. Mr. Berry is now able to move his combine and corn picker through the Harriger Hollow crossing because BPRR removed the superstructure. Tr. 161.

87. Mr. Berry has not scraped his farm equipment at the Harriger Hollow Road crossing because he knows the equipment is too wide to pass through and won't attempt to use the crossing. Tr. 161.

88. Mr. Berry has been able to use the crossing with his combine after BPRR removed the superstructure. Tr. 161.

89. A concrete obstruction, such as an abutment or concrete arch structure, is a rigid fixed object. I&E St. 1 at 7.

90. 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. I&E St. 1 at 7.

91. Concrete abutments at each crossing constitute an obstruction in the roadway and the roadway "clear zone." I&E St. 1 at 15.

92. 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. I&E St. 1 at 15.

93. The clear zone may consist of a shoulder, a recoverable slope, a non-recoverable slope, and/or a clear run-out area. I&E St. 1 at 15.

94. If left in place, the concrete abutments pose a danger to motor vehicles that may strike them. I&E St. 1 at 15.

95. There are no guide rails to redirect a vehicle collision with the abutments. Tr. 210.

96. The roadways approaching each crossing are two lane roadways that narrow to one lane between the abutments. I&E St. 1 at 17.

97. Two vehicles cannot pass between the abutments at any of the crossings creating an unsafe condition that is not consistent with modern roadway design. I&E St. 1 at 17; Tr. 132,137-.

98. Charles Wooster, a professional traffic engineer performed a traffic engineering investigation of each of the crossings. See BPRR Exhibits 14-16.

99. Harriger Hollow Road generally has limited sight distance due to the horizontal curvature of the roadway and the structure itself. Tr. 116; BPRR Exhibits 15-16.

100. The sight distance at Harriger Hollow Road is 110 feet approaching the structure. Tr.116; BPRR St. 5 at 5.

101. The site distances approaching the Ramsaytown and East Bellport Road structures are 500 and 300 feet, respectively. Tr. 116; BPRR St. 5 at 4.

102. The average daily traffic volume Harriger Hollow Road's average daily traffic volume is 15 vehicles (0% buses and 0% trucks). Tr. at 115; BPRR St. 5 at 5:10-18.

103. The average daily traffic volume on Ramsaytown Road is approximately 312 vehicles (1.3% buses and 4% trucks). Tr. at 115; BPRR St. 5 at 5:10-18.

104. The average daily traffic volume on East Bellport Road is approximately 30 vehicles per day (0% buses and 6.7% trucks). Tr. at 115; BPRR St. 5 at 5:10-18.

105. Accident data from PennDOT for the last ten years for each road revealed that there is no site-specific crash pattern for any of the bridges. Tr. 111.

106. 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. I&E St. 1 at 2.

107. 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. I&E St. 1 at 2.

108. One reportable accident occurred at the Ramsaytown Road structure and one occurred at the Harriger Hollow Road structure, but these were due to snowy conditions and the drivers traveling too fast for conditions, failing to maintain proper speed, and driving on the wrong side of the road. BPRR St. 5 at 5-6.

109. No reportable accidents occurred at the East Bellport structure in the last ten years. BPRR St. 5 at 5.

110. 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. Tr. 183.

Costs of Remediation and Removal

111. BPRR obtained estimates for removal of the crossing structures in March of 2020. Tr. 56.

112. The estimate to remove the abutments at Harriger Hollow Road was \$18,000 for the above grade portion of one abutment, and \$35,000 for both abutments, with an additional \$30,000 estimated for a below grade removal. Tr. 55.

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

114. BPRR anticipates that these estimates would likely increase by 10-20% since the time they were obtained. Tr. 56.

115. The chipping and scaling work completed in the fall of 2019 was \$4,000. BPRR St. 1 at 4.

Other Factors

116. Knox Township would like to widen Ramsaytown Road approximately two feet. Tr. 157-58.

117. BPRR has no immediate plans to return railroad traffic to this abandoned rail line where the structures are located. Tr. 66.

118. To re-establish service on the abandoned railway, among other things, it would cost BPRR several millions of dollars to construct a new bridge at the site where the railroad bridge was removed at Putneyville. Tr. 65, 68.

119. BPRR has not been approached by any rail trail interest group to use the subject crossings for trail use nor has the railroad line where the three structures are located been approved for a rail trail. Tr. 67-68.

120. BPRR's Bridge Management Program does not include a provision to inspect bridges on out-of-service lines. BPRR St. 1 at 3.

121. BPRR has no inspection records before 2019.

122. 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. I&E St. 2 at 5.

123. If an entity does not maintain a file or inventory of record documenting past inspection reports and history for that structure public safety is at risk. I&E St. 2 at 5.

124. None of the crossings are state highways under control of PennDOT. PennDOT St. 1 at 2-3.

DISCUSSION

A. Legal Standards

1. Burden of Proof

Section 701 of the Public Utility Code (Code), provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.⁴ As the complainant, Knox

⁴ 66 Pa.C.S. § 701.

Township bears the burden of proof.⁵ Accordingly, Knox Township must demonstrate that the railroad is responsible or accountable for the problem described in the complaint.⁶ Knox Township has the duty to establish facts that support the complaint by a preponderance of the evidence.⁷ The Commission's Bureau of Investigation and Enforcement has entered an appearance in this matter and has offered evidence in support of the relief requested by Knox Township.

2. Jurisdiction

Section 2702 of the Public Utility Code vests the Commission with the exclusive jurisdiction to determine the points at which, and the manner in which, rail-highway crossings are to be constructed, altered, relocated, suspended or abolished, as well as the manner and conditions under which rail-highway crossings shall be maintained, operated and protected.⁸ The Commission also has the exclusive authority to determine and order which parties should perform such work at the crossings and which parties should maintain the crossings in the future, all to effectuate the prevention of accidents and the promotion of the safety of the public.⁹

3. Allocation of Costs

The Public Utility Code further provides the Commission with the exclusive authority to assess the costs of any work ordered to be performed upon the concerned public utilities or municipal corporations, or the Commonwealth, in such proper proportions as it may

⁵ 66 Pa.C.S. § 332.

⁶ *Dennison Twp. Bd. of Supervisors v. Reading, Blue Mtn. and N. R.R.*, Docket No. C-20031319 (Opinion and Order entered October 20, 2006).

⁷ *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976).

⁸ 66 Pa.C.S. § 2702; *Dep't of Transp. v. Pa. Pub. Util. Comm'n*, 440 A.2d 657 (Pa. Cmwlth. 1982).

⁹ 66 Pa.C.S. § 2702(b); *SEPTA v. Pa. Pub. Util. Comm'n*, 592 A.2d 797 (Pa. Cmwlth. 1991), *alloc. denied*, 611 A.2d 714 (Pa. 1992); *see also, Pa. Game Comm'n v. Pa. Pub. Util. Comm'n*, 651 A.2d 596 (Pa. Cmwlth. 1994), *alloc. denied*, 664 A.2d 977 (Pa. 1995) (the Commission is empowered to order the work performed upon such reasonable terms and conditions it prescribes).

determine.¹⁰ The Commission’s authority to allocate and assess costs in railroad-highway crossing cases is broad.¹¹ The only requirement is that the Commission’s order be just and reasonable.¹²

The Commission is not limited to any fixed rule but takes all relevant factors into consideration.¹³ Some of the factors¹⁴ may include:

1. The party that originally built the crossing.
2. The party that owned and maintained the crossing.
3. The relative benefit conferred on each party with the construction of the crossing.
4. Whether each party is responsible for the deterioration of the crossing that has led to the need for its repair, replacement, or removal.
5. The relative benefit that each party will receive from the repair, replacement, or removal of the crossing.

B. Analysis

Any determination by the Commission pursuant to its broad jurisdiction conferred in the Public Utility Code to regulated rail crossings necessarily requires a balancing of competing interests. As explained above, there are no bright line rules, but a collection of factors that the Commission weighs so that any order issued by the Commission is just and reasonable.¹⁵ It is through this “public interest” lens that I consider the evidence in this record.

¹⁰ 66 Pa.C.S. § 2704(a).

¹¹ *Dep’t of Transp. v. Pa. Pub. Util. Comm’n*, 469 A.2d 1149 (Pa. Cmwlt. 1983).

¹² *Id.*

¹³ *East Rockhill Twp. v. Pa. Pub. Util. Comm’n*, 540 A.2d 600 (Pa. Cmwlt. 1988).

¹⁴ *Application of CSX Transp., Inc.*, Docket A-2019-3013783 (Opinion and Order entered February 3, 2022) (citing *N. Lebanon Twp. v. Pa. Pub. Util. Comm’n*, 962 A.2d 1237 (Pa. Cmwlt. 2008); *Greene Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm’n*, 668 A.2d 615 (Pa. Cmwlt. 1995)).

¹⁵ *See Application of Buffalo & Pittsburgh R.R.*, Docket A-2015-2514790 (Order entered adopting Recommended Decision May 17, 2018) (citing *N. Lebanon Twp. v. Pa. Pub. Util. Comm’n*, 962 A.2d 1235 (Pa. Cmwlt. 2008) (*North Lebanon Township*)); *Greene Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm’n*, 668 A.2d 615 (Pa. Cmwlt. 1995).

All of the structures that are the subject of Knox Township's complaint were constructed at some point during the first decade of the 20th century. That is, each crossing structure is well over 100 years old. Each crossing consists of concrete abutments on either side of the road. The roadways approaching each crossing are two lane roadways that narrow to one lane between the abutments. The crossings at Ramsaytown Road and East Bellport Road include an above-grade 16-foot-wide concrete arch bridge. The crossing at Harriger Hollow once included a steel superstructure. BPRR removed the steel superstructure and only the abutments remain.

BPRR abandoned the rail service on the line sometime in 2004 or 2005. The crossings are no longer active. The track and ballast have been removed and salvaged.

Knox Township and I&E argue that the crossing structures should be removed in their entirety and the crossings should be abolished. Knox Township contends that the crossings are unsafe because they are too narrow and because concrete falls from the inside of the tunnels at the crossings at Ramsaytown Road and East Bellport Road. Citizens of Knox Township have difficulty moving farm equipment, because some of the modern machinery is too large to fit through the crossings. The Township would like to widen the roadway on Ramsaytown Road, but it cannot do so because of the railway crossing structure.

I&E adds that the crossings are unsafe. According to I&E's witness William Sinick, falling concrete creates a safety issue at the Ramsaytown and East Bellport Road crossings. Further, the fact that two vehicles cannot pass between the abutments at any of the crossings also creates an unsafe condition and is not consistent with modern roadway design. The limited sight distance at the Harriger Hollow Road crossing is also a safety hazard. Finally, Mr. Sinick testified that the abutments, which currently serve no purpose for rail transportation, are a hazard to the motoring public because a vehicle can hit them.

BPRR disputes the claim that the crossings are no longer safe. According to BPRR, recent inspections of the structures at each of the crossings indicates that the structures are sound. BPRR commissioned a traffic study which concludes that there have been very few

accidents at any of the crossings and that none of the roads experience significant vehicle traffic. BPRR further contends that vehicles can travel safely under the bridges and between the abutments, even though the roadways narrow to one lane. Although BPRR admits that the sight distance at Harriger Hollow Road is short because of the curvature of the road, the crossings at Ramsaytown Road and East Bellport Road have adequate sight distances. BPRR takes the position that it is not appropriate to apply modern roadway standards to the crossings for the purposes of evaluating their safety. BPRR points to testimony by Mr. Sinick wherein he concedes that if the rail line was still in use, the abutments would not be considered a safety hazard. According to BPRR's expert witness, many of the safety issues at the crossings can be mitigated with proper signage and a posted speed limit.

1. Condition of the Structures at Ramsaytown and East Bellport Roads

Neither I&E nor Knox Township refute BPRR's contention that the structures themselves are sound. That is, neither the bridges nor the abutments are in any danger of collapse.

Mr. Duffett, BPRR's bridge expert, personally inspected the crossings on October 4, 2021. In his opinion, the structures were sound. He did note that the bridges at Ramsaytown and East Bellport Road had superficial loose concrete and spalling on the surface of the bridge over the roadway. He characterized the condition of the concrete as typical surface deterioration consistent with the age of the bridges.¹⁶ The spalling only concerns the outer 1 to 3 inches of the structure and does not impact the structural integrity of the abutments or the bridges. He believed that the falling concrete is "like dust" or "small flakes" and is not likely to cause damage to vehicles or pedestrians.¹⁷

I&E criticizes the inspections performed by Wayne Duffett, BPRR's engineering expert, because Mr. Duffett did not apply National Bridge Inspection Standards (NBIS)

¹⁶ Tr. 76.

¹⁷ Tr. 88-89, 90, 95.

inspection standards. BPRR contends that NBIS does not apply to the structures at these crossings and that there is no Commission requirement that rail crossings be inspected using these standards. I agree with BPRR that Mr. Duffett's failure to employ NBIS, alone, does not invalidate the quality of his inspections or his conclusion that the structures are not in danger of collapse.

Yet BPRR's argument that if the structures are sound, the structures do not pose a safety issue is too narrow a view and frankly, misses the point. Mr. Duffett's conclusion that the structures are sound because they are unlikely to collapse, is not the same as concluding that the crossings are safe to the public.

James M. Berry, Jr., testified on behalf of Knox Township and described the falling concrete. Mr. Berry has served as a township supervisor for twenty years. He also works as a farmer and a school bus driver. He reported that a large piece of concrete had fallen from the ceiling of the Ramsaytown Road arch into the road. Township workers removed the concrete from the road and put it on the side by the headwall.¹⁸ Mr. Berry also reported that he had seen pieces of concrete the size of a football in the roadway.¹⁹

I&E Witness William Sinick also described the falling concrete from the inside of the arch barrels at Ramsaytown Road and East Bellport Road. At Ramsaytown Road he observed heavy deterioration, delamination, cracking and spalls in the concrete. Mr. Sinick took photographs to support his observations.²⁰ These photographs show areas where concrete is missing from the walls of the arch barrel.²¹ Mr. Sinick observed pieces of concrete along the side of the roadway inside the arch barrel.²²

¹⁸ Tr. 166. *See* I&E Ex. D, Pictures 7 and 11.

¹⁹ Tr. 152.

²⁰ I&E Exs. B and D.

²¹ I&E Ex. D, Picture 1,2, 3.

²² I&E Ex. D, Picture 1.

While the arch barrel at East Bellport Road was in better condition, Mr. Sinick also observed signs of cracks, delamination and spalls. There are sections of missing concrete in the arch barrel of East Bellport Road.²³ Concrete cobbles are also evident along the side of the road inside the arches.²⁴

The testimony of Mr. Berry and Mr. Sinick describing the concrete falling from inside the arch barrels of Ramsaytown Road and East Bellport Road are more credible than the testimony of Mr. Duffett. Mr. Duffett was overly dismissive of the risk of falling concrete damaging vehicles or harming pedestrians and is contradicted by the photographic evidence which clearly shows cobbles of concrete along the roadway which are much larger than “flakes” or “dust.” Moreover, photographs also show sections of concrete which are missing from the walls and ceiling of the arch barrels. Although Mr. Duffett claimed he had inspected the crossings at some point in the 1990s, Mr. Duffett did not have a progression of inspection reports which would support his position that these sections came from the walls gradually over time as “dust” or “flakes.”

BPRR has neglected these crossings for many years. There is no evidence that any of the structures had been inspected before 2019, shortly after Knox Township filed its complaint. There is no evidence of any inspection done when rail service was abandoned sometime in 2005 or 2006. Although Mr. Duffett testified that he recalls inspecting the crossings in the 1990s, he did not have copies of any reports.²⁵ Further, it is not credible that, given the thousands of bridge inspections that Mr. Duffett performs, he would have a reliable memory of two crossings in a rural area of Pennsylvania.

I conclude that falling concrete from the barrel arches of the crossings at Ramsaytown Road and East Bellport Road pose a hazard to the public. These structures are over 100 years old. BPRR has failed to inspect or maintain these structures for many years. Mr.

²³ I&E Ex. B, Pictures, 1,2,4,5,6,10

²⁴ E.g., I&E Ex. B, Picture 1.

²⁵ Tr. 87-88. In the 1990s Pittsburgh and Shawmut owned the railway.

Boutet's claim that the crossings are now on BPRR's annual inspection schedule and his claim that BPRR will now maintain and inspect the structures is too little, too late. A municipality should not have to complain to the Commission before a utility takes responsibility for maintaining its facilities. Although BPRR did conduct some scaling and chipping work inside the barrel arches in 2019, the risk of falling concrete still remains even if the structures are inspected once per year.

2. Line of Sight at the Harriger Hollow Crossing

BPRR removed the steel superstructure at the Harriger Hollow crossing. Only the abutments remain. BPRR's traffic expert Charles Wooster testified that the sight distance at this crossing is limited.²⁶ This limited sight distance at each approach is caused by the horizontal curvature of the roadway and by the structure itself. The sight distance to a motorist as they drive through the structure is 110 feet.²⁷ This limited sight distance is hazardous.

3. Safety of the Roadways and Abutments

There is no dispute that two cars cannot safely pass one another through any of the crossing structures. There are no guiderails to redirect a vehicle collision with the abutments. Ramsaytown Road, East Bellport Road and Harriger Hollow Road all narrow from two lanes of travel to one lane of travel through the crossing structures. According to I&E, this is an unsafe condition.

I&E also takes the position that the abutments themselves are an obstruction to the roadway and pose a safety hazard to the travelling public. Mr. Sinick explained that the concrete abutments at each crossing constitute an obstruction in the roadway and the roadway "clear zone." If left in place, the concrete abutments pose a danger to motor vehicles that may

²⁶ BPRR St. 5 at 4-5.

²⁷ BPRR St. 5 at 5; Tr. 116.

strike them. Mr. Sinick, relying on a PennDOT *Design Manual*,²⁸ defined the “clear zone” as “the total roadside border area starting at the edge of the traveled way, available for safe use by errant vehicles.”²⁹ Mr. Sinick went on to explain that this “area may consist of a shoulder, a recoverable slope, a non-recoverable slope, and/or a clear run-out area.”³⁰

BPRR counters that I&E’s reliance on a PennDOT *Design Manual* for its conclusion that the abutments are an unsafe obstruction is misplaced. Further, according to BPRR, Mr. Wooster’s traffic study notes that there have been few reportable accidents at any of the crossings. In BPRR’s view, Knox Township should post speed limits on each of the roadways, add curve warning signage and other roadway improvements to address any safety concerns at the crossings.

Mr. Wooster explained his position that the *Design Manual* does not require existing roadways to be modified to meet the design criteria set forth in the *Design Manual*. Instead, the design criteria, including the criterion that there should not be obstructions in the clear zone of the roadway, apply only to new roadway improvement projects.³¹ Therefore, according to Mr. Wooster, Mr. Sinick’s reliance on the *Design Manual* to advocate for the removal of the concrete abutments is misplaced.

Mr. Sinick explained that the Commission’s Rail Safety Division uses the PennDOT *Design Manual* as a general reference to assess the public safety of public highways as those highways impact railway crossings.³² If the crossings are eventually abolished, the *Design Manual* is used by the Commission as a tool on reestablishing the roadway geometry to ensure public safety. In this context, the removal of the structures creates a roadway

²⁸ *Design Manual Part 2 Highway Design Publication 13M*-March 2015 Edition, September 2018 Change No. 3, p. 12-1.

²⁹ I&E St. 1 at 15.

³⁰ I&E St.1 at 15.

³¹ BPRR St. 5 at 6-7; Tr. 19.

³² I&E St. 1 at 16; I&E St. 2 at 3-4.

improvement project to which the *Design Manual* criteria are relevant, and supports I&E’s position that the abutments should be removed as well as the bridges.³³

Mr. Wooster also testified that his investigation did not reveal site-specific crash patterns at any of the crossings. He based this conclusion on 1) the low traffic volume on each of the roadways; 2) the small number of reportable accidents at each crossing over the last 10 years; 3) his physical inspection of the crossing structures for signs of crashes.

Neither Knox Township nor I&E performed any crash investigation or other traffic study at the crossing. Mr. Sinick testified that, based on logic, there had likely been more accidents at the crossings than those identified by Mr. Wooster because other accidents did not meet the threshold of a “reportable” accident.

4. Disposition

The history of other crossings abandoned along the railway at issue here was addressed by the Commission in the *Putneyville Crossing Decision* and referenced in the September 10, 2019 Secretarial Letter. As explained below, I conclude that there is no compelling reason to treat the Knox Township crossings differently than the Putneyville Crossing or the PennDOT crossings described in that decision.

The September 10, 2019 Secretarial Letter noted that PennDOT had “removed three (3) of the overhead railroad structures along their roadways in conjunction with a larger federal/state funded roadway project under Commission dockets A-2009-2104031, A-2010-2185469 and A-2012-2338963.”³⁴ In the *Putneyville Crossing Decision*, the Commission explained that PennDOT had removed overhead railroad structures, including the concrete abutments “to enhance the safety for motorists by providing improved visibility and less

³³ I&E St. 2 at 3-4.

³⁴ September 10, 2019 Secretarial Letter at 2.

restrictive clearances through the former crossings.”³⁵ The Commission found this factor was persuasive in concluding that the Putneyville Crossing, including the abutments, was not safe for the motoring public.³⁶

The Commission also relied, in part, on the “clear zone” concept described in the PennDOT *Design Manual*. The Commission concluded that the abutments at the Putneyville Crossing “are designated as hazardous structures in the roadway clear zone.”³⁷

Finally, the Commission held the lack of accidents is not dispositive of the determination of whether a crossing is safe³⁸ and observed:

[t]he Superior Court’s holding in *Pennsylvania Railroad Company v. Pa. Pub. Util. Comm’n*, 202 Pa.Super. 114, 195 A.2d 162 (1963) (Pennsylvania Railroad), is dispositive of B&P’s argument. . . . In *Pennsylvania Railroad*, the crossing included seven tracks: two main lines of track and five lines of the railroad’s yard tracks. The Commission determined that the crossing, which was primarily utilized by the railroad’s employees to walk to and from the railroad-provided parking lot, was hazardous to the employees. Consequently, the Commission ordered the railroad to install a pedestrian walkway. In affirming the Commission’s decision, the Superior Court held, “Although there is no substantial evidence of the occurrence of any serious accidents at this crossing, we do not believe that fact limits the power of the Commission to correct a condition which it believes may lead to the injury or death of persons subjected to such condition.” 202 Pa.Super. at 117, 195 A.2d at 164. Considering the holding in *Pennsylvania Railroad*, the absence of any accidents at the Putneyville Crossing does not establish that the crossing is safe. Therefore, B&P’s argument, that is, the Putneyville Crossing is safe because of a lack of accidents at the site, is without merit.

³⁵ *Putneyville Crossing Decision* at 24.

³⁶ *Id.* at 27.

³⁷ *Id.* at 25.

³⁸ *Id.* at 21.

Like the Commission in the *Putneyville Crossing Decision*, I also conclude that the evidence weighs in favor of the conclusion that the three railway crossings in Knox Township are unsafe in their present condition. First, the potential for falling concrete from the arch barrels of Ramsaytown Road and East Bellport Road poses a hazard to both the motoring public and to pedestrians who may be struck by falling cobbles or larger pieces of concrete as the barrel arches continue to deteriorate. After decades of neglect, I find BPRR's promise to inspect the crossings annually is not sufficient to alleviate this risk.

Second, the sight distance at the Harriger Hollow crossing clearly poses a hazard. Although Mr. Wooster cites the curvature of the road as a cause, he also concedes that the existence of the abutments also plays a role in the narrow sight distance.

Third, there is also no dispute that two cars cannot pass safely through any of the crossings. As explained above, the abutments themselves, as immovable objects in the roadway clear zone, pose a crash risk regardless of their placement in relation to the roadway. The Commission reached a similar conclusion in its disposition of the *Putneyville Crossing Decision*, relying in part on I&E's recommendation that the railroad should remove the abutments because they are located in the roadway clear zone.³⁹

BPRR points out that Mr. Sinick conceded that if there were rail traffic on the line, he would not take the position that the abutments should be removed. It is important to keep in mind that the risk posed by the abutments as a vehicle hazard is not offset by any public benefit.⁴⁰ Indeed the Commission is not limited to any fixed formula in evaluating any crossing that safety can be broadly construed and considers many relevant factors.⁴¹

In Mr. Wooster's opinion, Knox Township should make several low-cost improvements, including posting speed limits on each of the roadways, adding curve warning

³⁹ See *Putneyville Crossing Decision* at 25-26.

⁴⁰ See Tr. 229.

⁴¹ See *N. Lebanon Township*, cited above.

signage and other roadway improvements to address any safety concerns at the crossings. Knox Township, supported by I&E, recommend that the crossing structures, including the abutments, be removed in their entirety.

I agree with Knox Township and I&E that the railway structures should be removed, including the abutments, and the roadways should be returned to their original geometry.

As has been stated before, the Commission's overarching mandate in railway crossing matters is the public interest, particularly the public's interest in safety.⁴² Measuring the public interest necessarily entails a balancing of the interests of all of the public stakeholders involved. Here, I have considered the interests of Knox Township and its citizens, as well as the interests of BPRR as a public utility.

These crossings do not serve any railway service which benefits the public. BPRR has not used the rail line for rail service since 2004 or 2005. BPRR claims that it does not want to abandon the crossings because it *may* wish to reactivate rail service at some point in the future. Alternatively, BPRR wants to maintain the value of the property as a rail trail. These plans are speculative at best. To reactivate rail service on the line, BPRR would have to file the appropriate application which would have to be approved by the relevant federal agencies. Furthermore, Mr. Boutet conceded that the removal of the bridge at Putneyville is a further impediment to resurrecting rail traffic and would cost several million dollars.⁴³ Mr. Boutet also conceded that no specific rail trail interest has approached BPRR about using this particular rail line for that purpose. BPRR's lack of attention to the inspection and maintenance of these crossings further bolsters the ephemeral nature of BPRR's intention to possibly resurrect rail service on this line.

⁴² *Pittsburgh Ry. Co. v. Pa. Pub. Util. Comm'n*, 182 A.2d 80 (Pa. Super. 1962).

⁴³ The Commission ordered the Putneyville Crossing to be abolished. *See* Ordering Paragraph 15.

It is generally less expensive for BPRR to inspect and maintain the crossings than it is for BPRR to remove the crossing structures. BPRR does not explain how this factor inures to the public benefit.

Maintaining the crossings, as proposed by BPRR, would be a detriment to Knox Township. In addition to the risks to Knox Township's travelling citizens as described above, the existence of the Ramsaytown Road Crossing prevents Knox Township from widening Ramsaytown Road. Further, farm equipment must be detoured because the crossings are not wide enough to accommodate certain types of modern farming machines. Knox Township no longer enjoys the benefit of avoiding rail traffic because BPRR does not use the rail line for rail service.

Weighing these factors, I see no reason to reach a different result than the result reached by the Commission in directing removal of the rail structures at Putneyville:

The public interest is the standard that the Commission applies to issues concerning the safety of a rail-highway crossing. The prevention of accidents and the promotion of public safety is paramount. *Pittsburgh Railways Co. v. Pa. Pub. Util. Comm'n*, 198 Pa.Super. 415, 182 A.2d 80 (1962). Applying the relevant legal standards to the findings of fact, I find that the abutments present a hazardous condition at the crossing. In view of the evidence, the Commission does not want to be in the position of allowing the abutments to remain, and shortly thereafter a personal injury or death results from a vehicular collision at the crossing. "[T]here would indeed be a red-faced court." *Monongahela Connecting Railroad Company v. Pa. Pub. Util. Comm'n*, 206 Pa.Super. 17, 22, 211 A.2d 113, 116 (1965). I conclude that for the safety and protection of the traveling public, as discussed above, it is in the public interest to recommend removal of the abutments and a grading of the road and the adjacent embankments at the crossing.^[44]

⁴⁴ *Putneyville Crossing Decision* at 27.

C. Allocation of Costs

Having determined that the railway crossing structures are a safety hazard, I will now address the allocation of costs and expenses to the responsible parties. Both BPRR and Knox Township presented general estimates for the removal of the crossings.⁴⁵

As explained in more detail below, I find that it is just and reasonable for BPRR, Knox Township and Jefferson County to bear the costs and expenses for the removal of the railroad crossing structures at Ramsaytown Road, East Bellport Road and Harriger Hollow Road. None of the crossings impact highways over which PennDOT has any jurisdiction or responsibility.⁴⁶ Therefore, no costs will be assessed to PennDOT.

Similar to the Commission's order regarding the *Putneyville Crossing Decision*, I find it just and reasonable to assess the costs for the removal of the crossing structures, including the removal of the abutments and the grading as set forth in more detail in my order.

In recommending removal of the abutments and grading of the crossing, Knox Township and Jefferson County will receive the benefit of a safer highway running through the township and county.⁴⁷ Therefore, I find it just and reasonable that the township and county bear some of the costs and expenses associated with removing the railroad substructure at the crossing and grading of the crossing.

BPRR is the owner of the rights-of-way and structures at the crossings and was the operator of the rail line that had been located there. The railway bridges were constructed

⁴⁵ BPRR St. 1 at 5-6; I&E Ex. E; Tr. 56, 170-71.

⁴⁶ PennDOT St. 1 at 2.

⁴⁷ *Pittsburgh & Lake Erie R.R. Co. v. Pa. Pub. Util. Comm'n*, 556 A. 2d 944 (Pa. Cmwlth. 1989).

more than 100 years ago. BPRR (or its predecessors) had the benefit of the rail line for over a century.⁴⁸

BPRR and Knox Township will benefit from the removal of the structures because there will no longer be any danger of vehicular collision into the abutments. Removal of the abutments allows Knox Township to enhance safety for motorists by providing improved visibility and a less restrictive clearance through the roadway. Knox Township will benefit from the removal of the crossings because it will be able to develop the roadways. The removal of the crossings will also ease the movement of school buses and farm equipment. The benefit to each party and traffic safety is a factor that the Commission may consider in allocating costs.⁴⁹

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Parties and subject matter of this proceeding. 66 Pa.C.S. §§ 102, 501, 2702, 2704; *Norfolk Southern Railway Company v. Pa. Pub. Util. Comm'n*, 875 A.2d 1243 (Pa. Cmwlth. 2005); *Springettsbury v. Pa. Pub. Util. Comm'n*, 289 A.2d 762 (Pa. Cmwlth. 1972).

2. The Commission has exclusive jurisdiction over all rail-highway crossings in the Commonwealth and the approaches thereto. 66 Pa.C.S. § 2702; *Department of Transportation v. Pa. Pub. Util. Comm'n*, 440 A.2d 657 (Pa. Cmwlth. 1982); *Springettsbury v. Pa. Pub. Util. Comm'n*, 289 A.2d 762 (Pa. Cmwlth. 1972).

3. The abutments at issue are “facilities” as defined in 66 Pa.C.S. § 102.

⁴⁸ *Putneyville* (citing *Dep't of Transp. v. Pa. Pub. Util. Comm'n*, 464 A.2d 645 (Pa. Cmwlth. 1983); *Consol. Rail Corp. v. Pa. Pub. Util. Comm'n*, 423 A.2d 1108 (Pa. Cmwlth. 1980)).

⁴⁹ *D&H Corp. v. Pa. Pub. Util. Comm'n*, 613 A.2d 622 (Pa. Cmwlth. 1992), *alloc. denied*, 626 A.2d 1160 (Pa. 1994), *Norfolk S. Ry. Co. v. Pa. Pub. Util. Comm'n*, 971 A.2d 545 (Pa. Cmwlth. 2009).

4. Buffalo & Pittsburgh Railroad, Inc.'s abutments at the subject public crossing are fixed objects in the roadway clear zone as designated in PennDOT's *Design Manual Part 2 Highway Design* and therefore the abutments are hazardous to the traveling public. 67 Pa. Code § 459.1.

5. The absence of any accidents at a railroad crossing does not establish that the crossing is adequate, efficient, safe and reasonable. *Pennsylvania Railroad Company v. Pa. Pub. Util. Comm'n*, 195 A.2d 162 (Pa. Super. 1963).

6. The Commission has the exclusive authority to order the construction, reconstruction, alteration, repair, protection or abolition of rail-highway crossings, as well as the exclusive authority to determine and order which parties should perform such work at the crossings and which parties shall maintain the crossings in the future, all to effectuate the prevention of accidents and to promote the safety of the public. 66 Pa.C.S. § 2702.

7. The Commission is empowered to determine and prescribe the manner in which rail-highway crossings may be altered, reconstructed or abolished. 66 Pa.C.S. §§ 2702 (a), (c) and 2704(a).

8. The Commission is empowered to order the alteration, reconstruction or abolishment of rail-highway crossings upon such reasonable terms and conditions as it shall prescribe. 66 Pa.C.S. §§ 2702 (a), (c) and 2704(a).

9. The Commission has the exclusive authority to assess the costs of the work to be performed upon the parties to this proceeding in such proper proportions as it may determine. 66 Pa.C.S. §§ 2702 (a), (c) and 2704(a).

10. In apportioning costs in rail-highway crossing cases, the Commission is not limited to any fixed rule, but takes into consideration all relevant facts, the only requirement being that its Order must be just and reasonable. *East Rockhill Township v. Pa. Pub. Util. Comm'n*, 540 A.2d 600 (Pa.Cmwlt. 1988); *Municipality of Monroeville v. Pa. Pub. Util.*

Comm'n, 600 A.2d 655 (Pa. Cmwlth. 1991); *Greene Twp. v. Pa. Pub. Util. Comm'n*, 668 A.2d 615 (Pa. Cmwlth. 1995); *City of Philadelphia v. Pa. Pub. Util. Comm'n*, 676 A.2d 1298, 1301 (Pa. Cmwlth. 1996), *alloc. denied*, 684 A.2d 558 (Pa. 1996), *cert. denied*, 520 U.S. 1155 (1997); *AT&T v. Pa. Pub. Util. Comm'n*, 737 A.2d 201 (Pa. 1999).

11. The allocation of costs as recommended in the below Order is fair, just and equitable to each party. *East Rockhill Township v. Pa. Pub. Util. Comm'n*, 540 A.2d 600 (Pa.Cmwlth. 1988); *Municipality of Monroeville v. Pa. Pub. Util. Comm'n*, 600 A.2d 655 (Pa. Cmwlth. 1991); *Greene Twp. v. Pa. Pub. Util. Comm'n*, 668 A.2d 615 (Pa. Cmwlth. 1995); *City of Philadelphia v. Pa. Pub. Util. Comm'n*, 676 A.2d 1298, 1301 (Pa. Cmwlth. 1996), *alloc. denied*, 684 A.2d 558 (Pa. 1996), *cert. denied*, 520 U.S. 1155 (1997); *AT&T v. Pa. Pub. Util. Comm'n*, 737 A.2d 201 (Pa. 1999).

ORDER

THEREFORE;

IT IS RECOMMENDED:

1. That the formal complaint of Knox Township versus Buffalo and Pittsburgh Railroad, Inc. at Docket No. C-2019-3009358 is sustained.
2. 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.
3. 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.

4. That Buffalo & Pittsburgh Railroad, Inc., at its initial cost and expense, shall furnish all material and perform all work relating to its facilities which may be required as incidental to the performance of the proposed work by furnishing any watchmen, flagmen and/or inspectors that may be deemed necessary to protect the railroad's operations or facilities during the time of the removal of the abutment substructures.

5. 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 the toe of embankments at the crossing locations.

6. 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.

7. That Knox Township and Jefferson County, at their equally shared 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.

8. 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.

9. 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 file under Docket No. 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.

10. 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.

11. 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.

12. 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 the final Commission 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.

13. 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 final Commission 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

Date: June 24, 2022

_____/s/_____
Mary D. Long
Administrative Law Judge