



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

July 25, 2022

Via Electronic Filing

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

Re: Knox Township v.
Buffalo & Pittsburgh Railroad Inc.
Docket No. C-2019-3009358
I&E's Reply to Buffalo & Pittsburgh Railroad Company's Exceptions

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Pennsylvania Public Utility Commission's **Bureau of Investigation and Enforcement's Reply to Buffalo & Pittsburgh Railroad Company's Exceptions** in the above-referenced proceeding.

Copies have been served on the parties of record in accordance with the Certificate of Service. If you have any questions, please contact the undersigned.

Sincerely,

A handwritten signature in blue ink that reads 'Kayla L. Rost'.

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**BUREAU OF INVESTIGATION AND ENFORCEMENT’S
REPLY TO EXCEPTIONS OF
BUFFALO & PITTSBURGH RAILROAD COMPANY**

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Dated: July 25, 2022

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I. INTRODUCTION

On June 24, 2022, Administrative Law Judge (“ALJ”) Mary D. Long issued a Recommended Decision in the above-captioned proceeding, which correctly ordered Buffalo & Pittsburgh Railroad Company (“BPRR” or “Buffalo & Pittsburgh”) to remove the three (3) railroad bridge structures at Ramsaytown Road, Harriger Hollow Road, and East Bellport Road at their sole cost and expense, ordered Knox Township to grade the roadway and shoulder approaches following the removal of the bridge structures at their sole cost and expense, and ordered the public crossings to be abolished when the work was completed.

On July 14, 2022, BPRR served its Exceptions to the ALJ’s Recommended Decision.¹

Pursuant to the procedural schedule established in the June 24, 2022 Cover Letter for the Recommended Decision and in accordance with Commission regulations at Section 5.535, I&E now submits this Reply to Buffalo & Pittsburgh’s Exceptions.² For the reasons fully explained below, I&E respectfully requests that the Pennsylvania Public Utility Commission (“Commission”) deny Buffalo & Pittsburgh’s Exceptions and wholly affirm the ALJ’s Recommended Decision without modification.

Pursuant to 52 Pa. Code § 1.33 and to avoid repeating arguments, I&E hereby incorporates the Main Brief, including the Appendices, that it filed in the instant proceeding on March 31, 2022.

¹ BPRR filed a Motion Requesting the Commission to Accept the Filing of Buffalo & Pittsburgh Railroad, Inc.’s Exceptions to Recommended Decision *Nunc Pro Tunc*, or in the Alternative, to Extend the Time Period for Filing on July 15, 2022 after receiving confirmation that its Exceptions were deemed filed on July 15, 2022. Pursuant to Section 1.11 of the Commission’s regulations, BPRR was required to file its Exceptions prior to 4:30 p.m. on July 14, 2022 to be filed timely. 52 Pa. Code § 1.11(a)(4). BPRR completed its filing after 4:30 p.m., and thus the Exceptions were deemed filed as of July 15, 2022, which is untimely. Nevertheless, I&E filed a Letter Answer on July 25, 2022 taking no position regarding BPRR’s Motion.

² 52 Pa. Code § 5.535.

II. SUMMARY OF ARGUMENT

The Commission has “exclusive power to determine and prescribe, by regulation or order, the manner in which highway-rail crossings may be constructed, altered, relocated, suspended or abolished, and the manner and conditions in or under which such crossings shall be maintained, operated and protected to effectuate the prevention of accidents and the promotion of public safety.” *Pittsburgh & Lake Erie R. Co. v. Pa. PUC*, 445 A.2d 851, 853 (Pa. Cmwlth. 1982); *see also* 66 Pa. C.S. § 2702(b); *Pa. Game Commission v. Pa. PUC*, 651 A.2d 596, 603 (Pa. Cmwlth. 1994), *alloc. denied*, 664 A.2d 977 (1995). A Commission Order must be just and reasonable. *Mun. of Monroeville v. Pa. PUC*, 600 A.2d 655, 657 (Pa. Cmwlth. 1991).

In short, BPRR challenges the entirety of the Recommended Decision and requests the Commission to reject the Recommended Decision because the ALJ found the witnesses and evidence presented by Knox Township and I&E to be more credible and ruled accordingly. The Commission should not entertain BPRR’s complete challenge of the Recommended Decision as the presiding officer’s ruling is clearly supported by the record and was rendered to effectuate the prevention of accidents and the promotion of public safety. Moreover, the Commission should not overturn the ALJ’s credibility determinations³

³ BPRR attempts to argue against Mr. William Sinick’s credibility as a witness throughout its Exceptions. However, the record is clear that Mr. Sinick is more than qualified to provide his professional opinions in this matter. *See generally* N.T. pgs. 191-218, 239; I&E Statement No. 1. Notably, Mr. Sinick is the Manager of the Rail Safety Section of the Commission’s Bureau of Technical Utility Services and has worked for the Commonwealth for approximately 23 years, seven (7) of which have been with the Commission. I&E Statement No. 1, pg. 1. He has extensive experience in the design, construction, maintenance, and inspection of highway/rail bridges. *See generally* N.T. pgs. 179-241, I&E Statement No. 1, and I&E Statement No. 2. Mr. Sinick has been a licensed professional engineer in the Commonwealth of Pennsylvania since June 2005 and has been a certified bridge inspector in the Commonwealth of Pennsylvania since 2011. I&E Statement No. 1, pg. 1; N.T. pgs. 187, 193. While Mr. Sinick is a certified bridge inspector, it is not his duty or the Commission’s to complete inspections of bridges. N.T. pgs. 191, 196-198. Rather the Commission, through the Rail Safety

because the ALJ is in the best position to review and evaluate a person's credibility, and the ALJ adequately provided an explanation for her credibility determinations in the Recommended Decision.⁴

III. I&E REPLY EXCEPTIONS

Exceptions must be numbered and identify the finding of fact or conclusion of law to which the exception is taken.⁵ Exceptions must have supporting reasons for each specific exception and must be concise.⁶ As discussed herein, BPRR fails to follow Section 5.533 because it fails to provide supporting reasons for each specific exception. For example, in Exception 20, BPRR excepts to the Finding of Facts which state that there are no guide rails to redirect a vehicle collision with the abutments. To support this Exception, BPRR presents an argument as to the potential angle of the wing walls, and provides no argument or basis to challenge the existence of guide rails at the crossings as specifically stated in the Finding of Fact(s). This common failure to specifically address the exception being made is carried throughout BPRR's Exceptions.

A. I&E Reply to BPRR Exception 1: The ALJ correctly concluded that falling concrete from the barrel arches of the crossings at Ramsaytown Road and East Bellport Road pose a hazard to the public.

The ALJ's conclusion that falling concrete poses a hazard to the public is supported by the record, namely Mr. James Berry's and Mr. William Sinick's testimony, as well as

Section, orders inspections to be completed and then Rail Safety will review the inspection report. N.T. pgs. 191, 196-198. In short, Mr. Sinick is more than qualified as an expert and his main focus is safety. N.T. pgs. 189-190, 236-237.

⁴ Recommended Decision, pg. 26.

⁵ 52 Pa. Code § 5.533.

⁶ 52 Pa. Code § 5.533.

common sense.⁷ Specifically, Mr. Sinick testified that concrete falling from a bridge structure can cause damage to a vehicle and Mr. Berry stated that he has seen pieces of concrete, sometimes the size of a football, which have fallen from the railroad bridge structures.⁸

Moreover, the ALJ noted that the structures are over 100 years old and have not been inspected for many years.⁹ The ALJ noted that BPRR recently placed the structures on their annual inspection list, but opined that the gesture was too little too late and that the municipality should not have to complain for a utility to take responsibility for its facilities.¹⁰ Thus, the ALJ's conclusion is supported by the record and should not be disturbed.

B. I&E Reply to BPRR Exception 2, Finding of Fact 42: The ALJ correctly found that Township workers removed the concrete from the road and placed it on the side of the headwall.

As Township Supervisor, Mr. Berry credibly stated that Knox Township workers removed the chunk of concrete shown in I&E Exhibit D, pictures 7 and 11 after it had fallen from inside the tunnel.¹¹ Mr. Berry credibly stated that the workers moved the chunk of concrete to the grassy area outside the tunnel and that he could see a hole in the ceiling where the concrete used to be inside the concrete arch.¹² BPRR did not offer any testimony to refute or challenge Mr. Berry's testimony relating to the workers removing the chunk of concrete. Moreover, the pictures provided in I&E Exhibit D show various areas of the concrete bridge

⁷ See generally Knox Township Statement No. 1, pgs. 1-2; N.T. pgs. 152, 164, 166, 183, and 188-189; I&E Statement No. 1, pgs. 6, 11, 15, and 16; I&E Exhibit D, Pictures 1, 2, 3, 5, 7, 8, 11, 12, and 14; I&E Statement No. 2, pgs. 5-6.

⁸ N.T. pgs. 152, 164, 166, and 188-189; I&E Exhibit D, Pictures 7 and 11.

⁹ Recommended Decision, pg. 26.

¹⁰ Recommended Decision, pgs. 26-27.

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

¹² N.T. pgs. 152, 164, 166; I&E Exhibit D, Pictures 7 and 11.

which are missing chunks of concrete.¹³ The concrete bridge is the only concrete structure in the vicinity of the crossing. Accordingly, Finding of Fact 42 is supported by the record and should not be disturbed.¹⁴

C. I&E Reply to BPRR Exception 3, Finding of Fact 43: The ALJ correctly found that Mr. Berry reported seeing concrete the size of a football in the roadway.

As stated above in Reply to Exception 1, Mr. Berry credibly and unequivocally stated that he observed pieces of concrete, sometimes the size of a football, which have fallen from the concrete structures in question.¹⁵ BPRR provides no explanation or basis to challenge Mr. Berry's testimony other than to argue that it does not agree with or believe his observations or testimony. This is not a valid reason to overturn a finding of fact, and thus Finding of Fact 43 is supported by the record and should not be deleted.

D. I&E Reply to BPRR Exception 4, Finding of Fact 44: The ALJ correctly found that Mr. Berry received complaints regarding the railroad bridge structures at Ramsaytown Road, East Bellport Road, and Harriger Hollow Road.

Mr. Berry credibly and unequivocally testified that, in his capacity as Township Supervisor, he has received complaints regarding the overpasses at Ramsaytown Road, East Bellport Road, and Harriger Hollow Road, and, as a result of those complaints, Mr. Berry filed the instant complaint with the Commission.¹⁶ Mr. Berry also testified that he continues to receive complaints from the residents to the date of the hearing.¹⁷ He then provided

¹³ See generally I&E Exhibit D, Pictures 2, 3, 7, 11, 12, 15, and 17.

¹⁴ BPRR attempts to discredit Mr. Berry's testimony by arguing that Mr. Berry is biased. This argument should hold no weight because both Knox Township's and BPRR's witnesses have underlying motives in this proceeding.

¹⁵ N.T. pgs. 152, 164, 166.

¹⁶ Knox Township Statement No. 1, pg. 1; N.T. pg. 148.

¹⁷ N.T. pg. 148.

testimony as to the complaints related to the three railroad structures in support of the complaint.¹⁸ The record is clear that Mr. Berry, as Township Supervisor, received and continues to receive complaints regarding the three railroad structures and thus Finding of Fact 44 should not be deleted.

E. I&E Reply to BPRR Exception 5, Finding of Fact 53 and 54: The ALJ correctly found that Mr. Sinick identified safety issues at the crossings, which include loose and delaminated concrete at the Ramsaytown Road structure which could fall on the roadway.

In its argument against these Findings of Fact, BPRR acknowledges that Mr. Sinick made these observations relating to the condition of the Ramsaytown Road structure on June 14, 2019 during the initial field conference and on February 21, 2020 during the interim field conference, which occurred after BPRR completed its chipping and scaling work in the fall of 2019.¹⁹ BPRR fails to acknowledge that Mr. Sinick, in preparation for the evidentiary hearing, visited the crossing on October 21, 2021 and again noted delaminated concrete at the Ramsaytown Road structure.²⁰ Thus, not only did Mr. Sinick observe loose concrete and delamination at Ramsaytown Road after BPRR completed its chipping and scaling work, but he also observed the loose concrete and delamination more than a year later. Moreover, BPRR's own witnesses testified that they recommended that any loose concrete at the railroad structures be scaled back as there was loose concrete at the Ramsaytown Road crossing.²¹

Moreover, the ALJ found the testimony of Mr. Sinick and Mr. Berry more credible than that of Mr. Wayne Duffett. In rendering this determination, the ALJ noted that Mr.

¹⁸ See generally Knox Township Statement No. 1; N.T. pgs. 145-167.

¹⁹ See generally I&E Statement No. 1, pgs. 6, 8-9; BPRR Statement No. 1, pg. 4; N.T. pg. 54, 200.

²⁰ I&E Statement No. 1, pg. 10; N.T. pg. 219.

²¹ BPRR Statement No. 1, pgs. 3-4; BPRR Statement No. 3, pgs. 2, 5.

Duffett was overly dismissive of the risk of falling concrete damaging vehicles or harming pedestrians and that his testimony was contradicted by the photographic evidence.

Accordingly, Finding of Fact 53 and 54 are supported by the record.

F. I&E Reply to BPRR Exception 6, Finding of Fact 64: The ALJ correctly found that the removal of loose concrete was an ongoing problem.

As explained above in Reply to Exception 5, Mr. Sinick credibly and unequivocally testified that the removal of loose concrete is an ongoing problem.²² This fact is also supported by BPRR's own witnesses: Mr. Wayne Duffett stated that he observed loose concrete on the north abutment and northwest wingwall at the Ramsaytown Road crossing²³ and Mr. Chad Boutet recommended that any loose concrete at Ramsaytown Road (in addition to the other 2 crossings) be scaled back.²⁴

Moreover, Mr. Sinick explained that, prior to a case being referred for formal litigation, the Commission may order a bridge inspection or structural rating if the parties agree to perform such work.²⁵ While Mr. Sinick noted loose and delaminated concrete at the crossings during his October 21, 2021 visit, he was without the ability to act upon this observation because the case was a contested matter currently in litigation and a Secretarial Letter, in rail matters, has to be agreed upon by the parties.²⁶ Mr. Sinick does not have the ability to act on his own without either Commission review/approval or consent from the parties, thus, BPRR's attempts to discredit Mr. Sinick's testimony should not stand.

Accordingly, Finding of Fact 64 is supported by the record.

²² I&E Statement No. 1, pgs. 6, 8-9.

²³ BPRR Statement No. 3, pgs. 2, 5.

²⁴ BPRR Statement No. 1, pgs. 3-4.

²⁵ N.T. pg. 204.

²⁶ N.T. pgs. 212-214.

G. I&E Reply to BPRR Exception 7, Finding of Fact 77: The ALJ correctly found that Mr. Sinick observed falling concrete.

As stated above in Reply to Exception 5, Mr. Sinick credibly and unequivocally testified that he observed falling concrete at the Ramsaytown Road and East Bellport Road structures.²⁷ BPRR again makes a baseless attempt to argue that the testimony of I&E's expert witness, Mr. Sinick, should not be deemed credible. The Commission should not give BPRR's argument credence as Mr. Sinick's testimony, observations, and experience speak for themselves, and BPRR's frustration with the ALJ's credibility determinations is no reason to challenge these facts. Thus, Finding of Fact 77 is supported by the record and should not be disturbed.

H. I&E Reply to BPRR Exception 8, Finding of Fact 79: The ALJ correctly found that there are areas of the Ramsaytown Road structure where concrete is missing.

The ALJ correctly viewed the evidence of record, including the pictures admitted through Mr. Sinick's testimony,²⁸ to find that there are areas of the Ramsaytown Road structure which clearly show missing concrete. Accordingly, Finding of Fact 79 is supported by the record.

I. I&E Reply to BPRR Exception 9, Finding of Fact 80: The ALJ correctly found that there were pieces of concrete along the side of the road inside the arch barrel.

As stated above in Reply to Exception 5, the ALJ correctly viewed the evidence, specifically the pictures admitted through Mr. Sinick's testimony,²⁹ to find that there were pieces of concrete along side the roadway of the crossing. BPRR's witnesses also agreed

²⁷ See generally I&E Statement No. 1, pgs. 6, 8-9, 11; I&E Exhibit D, Pictures 2, 3, 5, 8, 12, and 14.

²⁸ See generally I&E Exhibit D, Pictures 1, 2, 3.

²⁹ See generally I&E Exhibit D.

with Mr. Sinick's observations and pictures.³⁰ Thus, the record is clear that there is fallen concrete along the side of the road and Finding of Fact 80 should not be disturbed.

J. I&E Reply to BPRR Exception 10, Finding of Fact 82: The ALJ correctly found that there were pieces of missing concrete in the arch barrel of East Bellport Road.

The record of evidence, namely I&E Exhibit B, clearly shows pieces of concrete missing from the arch of East Bellport Road.³¹ Thus, Finding of Fact 82 is supported by the record and should not be disturbed.

K. I&E Reply to BPRR Exception 11, Finding of Fact 83: The ALJ correctly found that concrete cobbles were evident on the side of the road.

The photographic evidence clearly shows concrete cobbles on the side of the road in the East Bellport crossing and is supported by the testimony and personal observations of Mr. Sinick.³² BPRR's argument against this finding have no bearing on the finding itself and provide no real basis to challenge or change the finding. Thus, Finding of Fact 83 is supported by the record and should not be disturbed.

L. I&E Reply to BPRR Exception 12, Finding of Fact 120: The ALJ correctly found that BPRR's Bridge Management Program does not include a provision to inspect out-of-service bridges.

BPRR attempts to challenge this Finding of Fact based upon the invalid assumption that BPRR is not currently inspecting the structures should fail. Finding of Fact 120 clearly states:

³⁰ Mr. Charles Wooster noted a buildup of aggregate material on the edges of the travel lane at the Ramsaytown Road structure and East Bellport Road structure. BPRR Statement No. 5, pg. 3. Mr. Duffett noted loose concrete on the north abutment and northwest wingwall at Ramsaytown Road and observed concrete "flakes" along the roadway. BPRR Statement No. 3, pg. 2; BPRR Statement No. 4, pg. 1; N.T. pg. 88.

³¹ *See generally* I&E Exhibit B, Pictures 1, 2, 4, 5, 6, and 10; *see also* BPRR Exhibit 5 (May 17, 2019 Inspection Report) and BPRR Exhibit 10 (October 4, 2021 Inspection Report) which clearly show pieces of missing concrete.

³² *See generally* I&E Exhibit B, Pictures 1, 4, and 15; I&E Statement No. 1, pgs. 6, 17-18.

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

BPRR's witness, Mr. Chad Boutet, clearly stated that BPRR's Bridge Management Program does not have a provision regarding the inspection of bridges on out-of-service lines.³³ BPRR's own witness made this statement and validated this Finding of Fact, and BPRR's attempt to challenge the fact based upon unwarranted assumptions regarding the fact should fail. Accordingly, Finding of Fact 120 is supported by the record and should remain as written.

M. I&E Reply to BPRR Exception 13, Finding of Fact 121, 122, and 123: The ALJ correctly found that BPRR has no inspection records before 2019, a prior inspection is an important tool for inspectors, and that failure to maintain past inspection reports puts the public safety at risk.

First, Mr. Boutet testified that BPRR does not have a provision to inspect bridges on out-of-service lines³⁴ and the railroad bridge structures were abandoned and removed from service by the Federal Surface Transportation Board in 2005 and 2006.³⁵ Thus, the testimony of record shows that BPRR presumably does not possess inspection records from 2005/2006 to 2019, when BPRR inspected the crossings in response to the instant Complaint, based upon the initial testimony provided by Mr. Boutet.

Next, Mr. Duffett testified that he inspected the three railroad bridge crossings from the time Pittsburg & Shawmut Railroad was acquired by BPRR until the line was removed from service.³⁶ During the evidentiary hearing, Mr. Duffett clarified that he has not personally inspected the three railroad bridge crossings since the 1990s and that he has no

³³ BPRR Statement No. 1, pg. 3.

³⁴ BPRR Statement No. 1, pg. 3.

³⁵ Secretarial Letter dated September 10, 2019.

³⁶ BPRR Statement No. 3, pg. 1.

records of the inspections completed in the 1990s.³⁷ Mr. Duffett further stated that his office had not inspected the crossings anytime between 1990 and 2019.³⁸ Since the 1990s, Mr. Duffett inspected the three crossings for the first time on October 4, 2021 when he prepared for this Complaint proceeding.³⁹ Thus, the record clearly shows that BPRR has not inspected the crossings since the 1990s and has no records of prior inspections prior to 2019.

Moreover, the uncontradicted testimony of Mr. Sinick clearly provides that one of the most important tools that a bridge inspector can have prior to an inspection is past bridge inspection reports and the history for that structure.⁴⁰ If an entity does not maintain a file or inventory of record documenting past inspection reports and history for that structure, that alone is putting public safety at risk and is negligent of the bridge owner.⁴¹ Thus, Finding of Fact 121, 122, and 123 are supported by the record and should remain as drafted.

N. I&E Reply to BPRR Exception 14: The ALJ correctly found that the limited sight distance at Harriger Hollow Road is hazardous.

In its argument against this conclusion, BPRR acknowledges that this conclusion is supported, in part, by its own witness, Mr. Charles Wooster. Mr. Wooster stated that the sight distance at Harriger Hollow Road is limited by the curvature of the road and the structure itself, reducing the sight distance available to around 110'.⁴² Mr. Wooster also offered videographic evidence of this limited sight distance and testified that two (2) vehicles are unable to safely pass under the Harriger Hollow Road bridge at the same time and that the vehicles approaching the crossing have a hard time seeing an approaching vehicle in the

³⁷ N.T. pgs. 87-88.

³⁸ N.T. pgs. 87-88; *see also* I&E Statement No. 1, pgs. 4-5.

³⁹ BPRR Statement No. 3, pgs. 1-2.

⁴⁰ I&E Statement No. 2, pg. 5.

⁴¹ I&E Statement No. 2, pg. 5.

⁴² BPRR Statement No. 5, pgs. 4-5.

opposite direction.⁴³ The ALJ, in viewing all of this evidence,⁴⁴ correctly found that the limited sight distance at Harriger Hollow Road is hazardous,⁴⁵ and thus the conclusion should not be disturbed.

O. I&E Reply to BPRR Exception 15, Finding of Fact 99: The ALJ correctly found that the limited sight distance at Harriger Hollow Road is created by the horizontal curvature of the roadway and the structure itself.

As stated above in Reply to Exception 14, the ALJ's determination relating to the limited sight distance at Harriger Hollow Road is supported by both the testimony of Mr. Wooster and of Mr. Sinick, in addition to the photographic and video evidence.⁴⁶ The pictures provided by BPRR in its argument further support the fact that the limited sight distance is caused by the curvature of the road and the structure itself.⁴⁷ Accordingly, Finding of Fact 99 is supported by the record.

P. I&E Reply to BPRR Exception 16: The ALJ correctly utilized PennDOT's Publication 13M Design Manual in rendering the Recommended Decision.

As explained by Mr. Sinick, the Rail Safety Section utilizes PennDOT's specifications, policies, and procedures in rendering its recommendations because to recommend less than mandated or prescribed by PennDOT's specifications, policies, and procedures would be problematic and could negatively impact public safety.⁴⁸ Mr. Sinick stated that while there may not be a pending roadway improvement or project proposed by Knox Township or any other party at this time, the pending litigation before the Commission

⁴³ N.T. pgs. 132-133; *see also* BPRR Exhibit 1.

⁴⁴ *See also* I&E Statement No. 1, pgs. 13, 16-18; *see generally* I&E Exhibit C, Pictures 1, 11, 12, 13, and 15.

⁴⁵ The ALJ accurately used the *Putneyville Crossing* matter to find that a lack of accidents at a crossing is not dispositive of whether a crossing is safe. *Mahoning Twp. v. Buffalo & Pittsburgh R.R. Inc.*, Docket C-2017-2585787 (Order adopting Recommended Decision entered August 2, 2018).

⁴⁶ *See, supra*, footnotes 34-36.

⁴⁷ *See* BPRR Exceptions, pg. 14; *see also* I&E Exhibit C, Pictures 9, 10, 12, and 13.

⁴⁸ I&E Statement No. 1, pg. 16.

is to address the public safety issues posed by the presence of the railroad structures, and thus can be viewed as a roadway or crossing improvement project if the Commission orders the outright removal of the railroad crossing structures or other remedial measure to address public safety.⁴⁹

Mr. Sinick elaborated that with any rail proceeding before the Commission, the Rail Safety Section's main purpose is to promote public safety and prevent accidents, and when an engineer is assessing the public safety of the crossing, he/she is assessing a possible improvement to the crossings which would require looking at PennDOT's standards.⁵⁰ Moreover, the Complaint itself requests the removal of the three (3) railroad bridge structures, and thus is a possible improvement project.⁵¹ Accordingly, the ALJ correctly used PennDOT's standards in rendering the Recommended Decision.

Q. I&E Reply to BPRR Exception 17, Finding of Fact 15: The ALJ accurately found that Harriger Hollow Road is a two-lane gravel roadway.

Mr. Sinick provided uncontroverted testimony as to the description of Harriger Hollow Road.⁵² No other party provided testimony as to the description of the roadway or to challenge Mr. Sinick's statements.⁵³ Accordingly, Finding of Fact 15 is supported by the record.

⁴⁹ I&E Statement No. 2, pg. 4.

⁵⁰ N.T. pgs. 189-190.

⁵¹ *See generally* Formal Complaint dated April 10, 2019 ("What do you want us to do? We want these detriments removed by the railroad.").

⁵² I&E Statement No. 1, pgs. 13-14.

⁵³ Mr. Wooster testified that the road varies from 14' to 18,' which is consistent with Mr. Sinick's description. BPRR Statement No. 5, pgs. 3-4.

R. I&E Reply to BPRR Exception 18, Finding of Fact 32: The ALJ accurately found that Ramsaytown Road is a two-lane paved roadway.

Mr. Sinick provided uncontroverted testimony as to the description of Ramsaytown Road.⁵⁴ No other party provided testimony as to the description of the roadway or to challenge Mr. Sinick's statements.⁵⁵ Accordingly, Finding of Fact 32 is supported by the record.

S. I&E Reply to BPRR Exception 19, Finding of Fact 34: The ALJ accurately found that East Bellport Road is a two-lane gravel roadway.

Mr. Sinick provided uncontroverted testimony as to the description of East Bellport Road.⁵⁶ No other party provided testimony as to the description of the roadway or to challenge Mr. Sinick's statements.⁵⁷ Accordingly, Finding of Fact 34 is supported by the record.

T. I&E Reply to BPRR Exception 20, Finding of Fact 39 and 95: The ALJ correctly found that there are no guide rails at the Ramsaytown Road and East Bellport Road crossings.

The photographic evidence in the record, and referenced by BPRR in its Exceptions, clearly show that there are no guide rails to redirect a vehicle collision at the Ramsaytown Road and East Bellport Road crossings.⁵⁸ Further, Mr. Sinick unequivocally testified:

You have 30 to 40 ton concrete obstructions in the roadway and there's no protection. . . . So if someone was to lose control of their vehicle, they would hit the concrete hazard in the roadway. There's no protections. There's no guiderail to redirect that

⁵⁴ I&E Statement No. 1, pg. 11; *see generally* I&E Exhibit D, Picture 9.

⁵⁵ Mr. Wooster testified that the pavement varies from 14' to 20' and that he noted an aggregate of material on the edges of the travel lane, which is consistent with Mr. Sinick's testimony. BPRR Statement No. 5, pg. 3.

⁵⁶ I&E Statement No. 1, pgs. 12-13; *see generally* I&E Exhibit B, Picture 11.

⁵⁷ Mr. Wooster testified that East Bellport Road varies from 14' to 16,' which is consistent with Mr. Sinick's testimony. BPRR Statement No. 5, pg. 3.

⁵⁸ *See generally* I&E Exhibit B and I&E Exhibit D.

collision from the 90 degree impact with the blunt end of the concrete abutment.⁵⁹

BPRR's attempts to argue that the angle of the concrete abutments somehow affects whether or not guide rails are present should be discredited. Thus, Finding of Fact 39 and 95 are supported by the record.

U. I&E Reply to BPRR Exception 21, Finding of Fact 89, 90, 91, 92, and 93: The ALJ accurately found that a concrete obstruction is a rigid fixed object, a rigid fixed object is an immovable object which transfers 100% of the impact to the driver, and that the concrete obstructions are in the roadway clear zone.

Finding of Fact 89, 90, 91, 92, and 93 are fully supported by the record, specifically Mr. Sinick's expert testimony. Mr. Sinick testified that a concrete obstruction, such as an abutment or concrete arch structure, is described as a rigid fixed object.⁶⁰ 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.⁶¹ Mr. Sinick further explained that rigid fixed objects are dangerous and potentially life-threatening if an accident were to occur, and every effort should be made to lessen the number of roadside obstructions along public roadways.⁶²

In reference to the clear zone, Mr. Sinick credibly testified that 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.⁶³ This area may consist of a shoulder, a recoverable slope, a non-recoverable slope, and/or a clear run-out area.⁶⁴ Mr. Sinick acknowledged that

⁵⁹ N.T. pg. 210.

⁶⁰ I&E Statement No. 1, pg. 7.

⁶¹ I&E Statement No. 1, pg. 7.

⁶² I&E Statement No. 1, pg. 7.

⁶³ I&E Statement No. 1, pg. 15.

⁶⁴ I&E Statement No. 1, pg. 15.

while he has seen similar railroad structures with abutments or wingwalls in the clear zone, those parts of the structure are typically protected by a guiderail or concrete barrier that flares away from the structure itself.⁶⁵ Such is not the case here.

As explained in Reply to Exception 16, the Rail Safety Section utilizes PennDOT publications, policies, and procedures in rendering their recommendations. Moreover, this Complaint proceeding can be viewed as a roadway or crossing improvement project⁶⁶ because the Complaint itself requested the removal of the three (3) crossings⁶⁷ and the Recommended Decision ordered work to be completed at the three subject crossings.⁶⁸ Thus, the use of PennDOT publications is proper and Finding of Fact 89, 90, 91, 92, and 93 should not be disturbed.

V. I&E Reply to BPRR Exception 22, Finding of Fact 94: The ALJ accurately found that the concrete abutments, if left in place, pose a danger to motor vehicle that may strike them.

As stated in Reply to Exception 20 and Reply to Exception 21, the ALJ correctly found that the concrete abutments pose a danger to motor vehicles if left in place. Mr. Sinick credibly testified that the concrete abutments, if left in place, will transfer 100% of the vehicle impact to the driver, which is potentially life-threatening and dangerous if an accident were to occur.⁶⁹ Accordingly, Finding of Fact 94 is supported by the record of evidence and accurately summarizes the credible testimony placed on the record.

⁶⁵ N.T. pgs. 228-229.

⁶⁶ I&E Statement No. 2, pg. 4.

⁶⁷ *See generally* Formal Complaint dated April 10, 2019 (“What do you want us to do? We want these detriments removed by the railroad.”)

⁶⁸ *See generally* Recommended Decision dated June 24, 2019.

⁶⁹ I&E Statement No. 1, pg. 7.

W. I&E Reply to BPRR Exception 23, Finding of Fact 96: The ALJ accurately found that the road narrows from two-lanes to one through the crossing.

As explained in Reply to Exception 18 and Reply to Exception 19, the roadway at the three (3) crossings narrow from two-lanes to one through the crossings. Finding of Fact 96 is supported by the testimony of all parties: Mr. Berry stated that one of the complaints he received as Township Supervisor was that the road transitioned from two-lane to one-lane through the crossing;⁷⁰ Mr. Sinick testified that the road transitions from two-lanes to one through the crossings and offered photographic evidence evidencing this transition;⁷¹ and Mr. Wooster provided measurements of the approaching roadways and the distance of operational width through the crossings and acknowledged that two (2) vehicles are unable to safely pass through the crossings at the same time.⁷²

BPRR's attempt to discredit the evidence of record by arguing that rural roads deserve less safety considerations than any other roadway in the Commonwealth should not be entertained. Thus, Finding of Fact 96 is supported by the evidence of record.

X. I&E Reply to BPRR Exception 24, Finding of Fact 97: The ALJ accurately found that two vehicles cannot pass under the crossing at the same time, which creates an unsafe condition.

As explained in Reply to Exception 23, the ALJ accurately found that two vehicles cannot pass under the crossing at the same time. Notably, Mr. Wooster testified to the

⁷⁰ N.T. pgs. 160-161; Knox Township Statement No. 1, pg. 2.

⁷¹ I&E Statement No. 1, pgs. 11-14; I&E Exhibit B, Picture 11; I&E Exhibit D, Picture 9; I&E Exhibit C, Pictures 1, 5, and 10.

⁷² BPRR Statement No. 5, pg. 3-4; N.T. pgs. 132-133, 137.

accuracy of this fact,⁷³ which is also supported by the testimony of Mr. Sinick.⁷⁴

Accordingly, Finding of Fact 97 is supported by the record and should not be disturbed.

Y. I&E Reply to BPRR Exception 25, Finding of Fact 116: The ALJ correctly found that Knox Township would like to widen Ramsaytown Road approximately two (2) feet.

Mr. Berry's uncontroverted testimony provides that Knox Township held a discussion with PennDOT to schedule roadway improvements to widen Ramsaytown Road approximately four (4) years ago, and as recently as two (2) years ago just to widen a section of it because the Township would like to widen the road.⁷⁵ Thus, Finding of Fact 116 is supported by the record.

Z. I&E Reply to BPRR Exception 26: The ALJ correctly relied upon prior precedent in rendering the Recommended Decision.

The relevance of the prior PennDOT matters is explained in Reply to Exception 27, *infra*, i.e., that BPRR attempted to argue that the crossings should not be abolished or removed because it *may* return service to the abandoned line. The fact that at least three (3) other structures on this abandoned line were removed,⁷⁶ coupled with the *Putneyville Crossing* matter, clearly show that BPRR has no intention of returning service to this rail line in the immediate future and that there is no reason to keep the structures in place.

Similar to this matter, in the *Putneyville Crossing* matter, Mahoning Township filed a complaint alleging ongoing safety issues with an abandoned railroad overpass, including that

⁷³ N.T. pgs. 132-133, 137.

⁷⁴ I&E Statement No. 1, pgs. 11-14; I&E Exhibit B, Picture 11; I&E Exhibit D, Picture 9; I&E Exhibit C, Pictures 1, 5, and 10.

⁷⁵ N.T. pgs. 157-158.

⁷⁶ *See generally* Docket Nos. A-2009-2104031, A-2010-2185469 and A-2012-2338963. Contrary to BPRR's argument, the dockets do not need to be offered as evidence or marked for identification pursuant to 52 Pa. Code § 5.406.

“the height (eleven feet and ten inches) and width (sixteen feet and four inches) of the crossing prohibit many larger vehicles such as fire apparatus, delivery trucks, farm equipment and tractor trailers from passage to the village of Putneyville,” and requested the removal of the railroad structure.⁷⁷ The matter was litigated and a Recommended Decision was issued noting similar facts to this matter: BPRR is the owner of the railroad right-of-way and the structure, and was the operator of the rail line (Pittsburg & Shawmut Railroad is the predecessor); the above grade railroad bridge on Putneyville Road was constructed approximately 108 years ago; BPRR received authority from the STB to abandon the railroad line at the Putneyville crossing; BPRR salvaged the steel tracks which rendered the rail line unusable for freight shipping; BPRR removed the superstructure from the railroad bridge; and there are no guide rails around the abutments at the crossing and the abutments are fixed objects in the roadway clear zone.⁷⁸

ALJ Conrad Johnson found that it was in the public interest to remove the abutments for the safety and protection of the traveling public.⁷⁹ The Recommended Decision ordered BPRR, at its sole cost and expense, to demolish the existing railroad substructures, backfill and grade the area, slope the embankment, and grade and seed the area disturbed.⁸⁰ The Recommended Decision further ordered the abolishment of the railroad overpass after the work was completed.⁸¹ The Recommended Decision was adopted by the Commission on August 2, 2018.⁸²

⁷⁷ *Mahoning Twp. v. Buffalo & Pittsburgh R.R. Inc.*, Docket C-2017-2585787 (Order adopting Recommended Decision entered August 2, 2018) (hereinafter “*Putneyville Crossing*”).

⁷⁸ *Putneyville Crossing*, *supra*, fn. 77, Recommended Decision Finding of Fact, pgs. 10-14.

⁷⁹ *Putneyville Crossing*, *supra*, fn. 77, Recommended Decision, pg. 27.

⁸⁰ *Putneyville Crossing*, *supra*, fn. 77, Recommended Decision, pg. 32.

⁸¹ *Putneyville Crossing*, *supra*, fn. 77, Recommended Decision, pg. 35.

⁸² *Putneyville Crossing*, *supra*, fn. 77, Opinion and Order dated August 2, 2018.

Thus, the facts presented in this matter are similar to the *Putneyville Crossing* matter and the ALJ accurately relied upon prior case precedent in rendering the Recommended Decision.⁸³

AA. I&E Reply to BPRR Exception 27, Finding of Fact 5: The ALJ accurately found that PennDOT removed three overhead railroad structures along the abandoned line in three (3) prior Commission dockets/matters.

Finding of Fact 5 is relevant to this instant proceeding and properly relied upon by the ALJ. As discussed in I&E's Main Brief, BPRR attempted to argue and present evidence that the three (3) railroad bridge crossings should not be abolished because BPRR *may* return service to the abandoned line. This Finding of Fact clearly contradicts and challenges BPRR's reasoning and/or defense against abolishing the three (3) crossings and is thus relevant and in support of the ALJ's Ordering Paragraphs. Thus, Finding of Fact 5 is relevant and proper, and should not be disturbed.

BB. I&E Reply to BPRR Exception 28, Finding of Fact 6: The ALJ accurately found that BPRR removed an overhead structure along this line in a prior Commission proceeding.

Similar to Reply to Exception 27, Finding of Fact 6 is relevant and properly relied upon by the ALJ in the Recommended Decision.⁸⁴ Moreover, the *Putneyville Crossing* matter, as discussed in Reply to Exception 26, clearly stated that BPRR was ordered to remove a railroad bridge structure which crossed Putneyville Road at its sole cost and expense.⁸⁵ A Commission Opinion and Order was issued on August 2, 2018 adopting the

⁸³ Pennsylvania generally follows the rule of *stare decisis*, under which "a conclusion reached in one matter should be applied to future substantially similar matters." *Pa. Indep. Oil & Gas Ass'n v. Commonwealth*, 146 A.3d 820 (Pa. Cmwlth. 2016)(citing *Ario v. Reliance Ins. Co.*, 980 A.2d 588, 597 (Pa. 2009)).

⁸⁴ See generally Secretarial Letter dated Sept. 10, 2019 ("The Railroad has removed one overhead structure along this line as ordered under a Commission complaint docket C-2017-2585787 leaving approximately 13 overhead public crossing railroad structures remaining in place.").

⁸⁵ *Putneyville Crossing*, *supra*, fn. 77, Opinion and Order dated August 2, 2018.

June 12, 2018 Recommended Decision, and no appeals or petitions challenging the Opinion and Order were filed.⁸⁶ By Secretarial Letter dated March 12, 2020, the work ordered in the August 2, 2018 Opinion and Order was completed and the matter was marked closed.⁸⁷ Thus, Finding of Fact 6 is supported by the record⁸⁸ and should not be disturbed.

CC. I&E Reply to BPRR Exception 29, Conclusion of Law 4: The ALJ correctly concluded that the abutments are fixed objects in the roadway clear zone and hazardous to the travelling public.

As stated in Reply to Exception 21 and Reply to Exception 22, the record clearly supports the ALJ’s conclusion that the abutments of the crossings are fixed objects in the roadway clear zone. Moreover, the ALJ properly used prior Commission precedent in concluding that these fixed rigid objects in the roadway clear zone are hazardous to the public.⁸⁹ As ALJ Conrad Johnson found in the *Putneyville Crossing* matter:

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).⁹⁰

As the ALJ explained in the Recommended Decision, “the abutments themselves, as immovable objects in the roadway clear zone, pose a crash risk regardless of their placement

⁸⁶ See generally *Putneyville Crossing*, *supra*, fn. 77.

⁸⁷ *Putneyville Crossing*, *supra*, fn. 77, Secretarial Letter dated March 12, 2020.

⁸⁸ I&E notes that the *Putneyville Crossing* filings discussed herein are public documents and need not to be introduced or marked as exhibits. 52 Pa. Code § 5.406.

⁸⁹ Recommended Decision, pg. 31; see also *Mahoning Township v. Buffalo & Pittsburgh Railroad Inc., Pennsylvania Department of Transportation, Armstrong County, and New Bethlehem Borough*, Docket No. C-2017-2585787 (Order entered August 2, 2018)(Recommended Decision Finding of Fact 27 and 28, Conclusion of Law 4).

⁹⁰ *Mahoning Township v. Buffalo & Pittsburgh Railroad Inc., Pennsylvania Department of Transportation, Armstrong County, and New Bethlehem Borough*, Docket No. C-2017-2585787, pg. 27 (Order entered August 2, 2018).

in relation to the roadway” and that “[i]t is important to keep in mind that the risk posed by the abutments as a vehicle hazard is not offset by any public benefit.”⁹¹ Thus, Conclusion of Law 4 is supported by the evidence and is proper.

DD. I&E Reply to BPRR Exception 30, Conclusion of Law 5: The ALJ correctly found that the absence of accidents at a railroad crossing does not establish that the crossing is adequate, efficient, safe, and reasonable.

In *Pennsylvania Railroad Company v. PA. Pub. Util. Comm’n*, 195 A.2d 162 (Pa. Super. 1963), the Superior Court found that “[a]lthough 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.”⁹² This principle has been affirmed by the Commission: “The Commission need not wait until an accident actually occurs before it takes steps to prevent or correct a condition it believes may lead to injury.”⁹³ Therefore, Conclusion of Law 5 is accurate and proper.

EE. I&E Reply to BPRR Exception 31, Ordering Paragraphs 1-21: The Ordering Paragraphs are fully supported by the record and were rendered to address a public safety hazard presented by the existence of the three (3) abandoned railroad bridge crossings.

As provided in I&E’s Main Brief and discussed herein, the Recommended Decision, including Ordering Paragraphs 1-21, are fully supported by the record and have a factual and legal basis in the promotion of safety and the prevention of accidents at these crossings.

⁹¹ Recommended Decision, pg. 31.

⁹² *Pennsylvania Railroad Company v. PA. Pub. Util. Comm’n*, 195 A.2d 162, 164 (Pa. Super. 1963).

⁹³ *Application of Springettsbury Township for the approval of the construction of the crossing where Davies Drive crosses, at grade, the tracks of Norfolk Southern Railway Company located in Springettsbury Township, York County*, Docket No. A-00124146 (Recommended Decision entered July 6, 2009, Order entered Sept. 24, 2009)(citing *Pennsylvania Railroad Company v. PA. Pub. Util. Comm’n*, 195 A.2d 162, 164 (Pa. Super. 1963)).

FF. I&E Reply to BPRR Exception 32, Ordering Paragraph 2: The three public crossings were correctly ordered to be altered.

As provided in I&E's Main Brief and discussed herein, the record fully supports the alteration of the three (3) public crossings because the crossings are abandoned, 100-year-old structures which provide an ongoing public safety hazard to the traversing public. Thus, their removal will prevent accidents and promote safety, namely to address the vertical and horizontal clearances, the sight distance, and to prevent concrete from falling from these deteriorating structures onto vehicles or pedestrians.

GG. I&E Reply to BPRR Exception 33, Ordering Paragraph 3: The ALJ correctly ordered that the alterations to the three (3) crossing shall be completed at the sole cost and expense of BPRR.

As provided in I&E's Main Brief and the Recommended Decision,⁹⁴ the ALJ correctly found, after providing a detailed analysis of the cost allocation and properly citing to the relevant case law,⁹⁵ that BPRR is the owner of the right of way and the structures at the crossings, BPRR was the operator of the rail line when it was active, and that BPRR (or its predecessor) benefited from the 100-year-old structures.⁹⁶ Moreover, the ALJ found that the three (3) crossings did pose a public safety hazard to the public,⁹⁷ and thus the outright removal of the entirety of the crossings is appropriate and necessary for public safety.

HH. I&E Reply to BPRR Exception 34, Ordering Paragraph 4: The ALJ correctly ordered BPRR, at its sole cost and expense, to take all actions necessary, such as furnishing watchmen or flagmen, during the removal of the abutments.

As stated in Reply to Exception 31, 32, and 33, the Recommended Decision correctly

⁹⁴ Recommended Decision, pgs. 34-35.

⁹⁵ Recommended Decision, Conclusion of Law 10 and 11.

⁹⁶ Recommended Decision, pgs. 34-35.

⁹⁷ Recommended Decision, Finding of Fact 110, pgs. 23, 26-27, 31, and Conclusion of Law 4.

ordered the removal of the three (3) public crossings to effectuate the promotion of safety and prevention of accidents at these crossings.

II. I&E Reply to BPRR Exception 35, Ordering Paragraph 5: The Recommended Decision accurately provided a timeframe for BPRR to submit construction plans to the Bureau of Technical Utility Services for review and approval.

As stated in Reply to Exception 31, 32, and 33, the Recommended Decision is supported by the evidence of record and fully promotes public safety at the three (3) crossings. Ordering Paragraph 5 is necessary and appropriate to ensure the timely submission of construction plans for the Bureau of Technical Utility Services' ("TUS") review so that TUS can confirm compliance with the Recommended Decision.

IV. CONCLUSION

I&E respectfully requests that the Commission reject the Exceptions of Buffalo & Pittsburgh for the reasons discussed above, reject Buffalo & Pittsburgh's proposed Findings of Fact and ordering paragraphs, and approve, in its entirety, the ALJ's Recommended Decision.

Respectfully submitted,



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Dated: July 25, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day, July 25, 2022, served a true copy of the foregoing **Bureau of Investigation and Enforcement’s Reply to Buffalo & Pittsburgh Railroad Company’s Exceptions**, upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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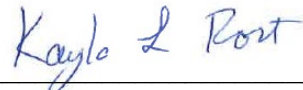
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