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July 11, 2023

**Via Electronic Filing**

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

RE: Knox Township v. Buffalo & Pittsburgh Railroad, Inc., et al.  
Docket No.: C-2019-3009358  
Our File No.: 0057694.0368163

Dear Secretary Chiavetta:

Enclosed for filing please find Buffalo & Pittsburgh Railroad, Inc.'s Motion for Stay of Commission Order Dated April 20, 2023, in the above-referenced matter. Copies have been served on the parties of record in accordance with the Certificate of Service.

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

Very Truly Yours,

*Aaron M. Ponzio*

Aaron M. Ponzio

AMP/eie

Attachment

cc: All counsel and parties of record (via email w/ encl. per Certificate of Service)  
Hon. Mary D. Long

16606478.1

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Knox Township,

Complainant,

vs.

Docket No. C-2019-3009358

Buffalo & Pittsburgh Railroad Inc.,  
Pennsylvania Department of  
Transportation, Jefferson County &  
Brookville Borough,

Respondents.

**NOTICE TO PLEAD**

TAKE NOTICE that pursuant to 52 Pa. Code §5.103, Respondent Buffalo & Pittsburgh Railroad, Inc. ("BPRR") has filed a **Motion for Stay of Commission Order Dated April 20, 2023** in the above-captioned matter. Pursuant to 52 Pa. Code § 5103(c), you are hereby notified to file with the Commission and serve upon the undersigned and all parties a written response within twenty (20) days from the date of service of the Amended Motion.

DICKIE, McCAMEY & CHILCOTE, P.C.

By: /s/Aaron M. Ponzo

J. Lawson Johnston, Esquire

PA I.D. #19792

Scott D. Clements, Esquire

PA I.D. #78529

Aaron M. Ponzo, Esquire

PA I.D. 203584

Attorneys for Buffalo & Pittsburgh  
Railroad, Inc.

Dated: July 11, 2023

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**MOTION FOR STAY OF COMMISSION ORDER DATED APRIL 20, 2023**

AND NOW, comes Respondent, Buffalo & Pittsburgh Railroad Company (“BPRR”), by its attorneys, Dickie, McCamey & Chilcote, P.C., J. Lawson Johnston, Esquire, Scott D. Clements, Esquire, and Aaron M. Ponzo, Esquire, and files its Motion for Stay of Commission Order Dated April 20, 2023, stating as follows:

1. This matter involves three above-grade railroad crossings located in Knox Township, Jefferson County, Pennsylvania where Ramsaytown Road (T-841), East Bellport Road (T-405), and Harriger Hollow Road (T-420) cross the right of way of the Buffalo & Pittsburgh Railroad, Inc. The crossings consist of two concrete arch structures at Ramsaytown Road and East Bellport Road, and concrete abutments at Harriger Hollow Road which formerly supported a steel superstructure.

2. On April 10, 2019, Knox Township filed a Formal Complaint against BPRR, in which it averred that three overpasses on a railroad right-of-way were creating a traffic and safety problem.<sup>1</sup>

3. On April 25, 2019, the Pennsylvania Public Utility Commission (“PUC” or “Commission”) served the Complaint on BPRR, the Pennsylvania Department of Transportation (PennDOT), Jefferson County, and Brookville Borough.

4. On May 13, 2019, BPRR filed an Answer and New Matter to the Complaint. 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 New Matter, BPRR stated that it was “assessing” the three overpasses and reserved the right to amend its Answer.

5. On June 14, 2019, the Commission, through its Rail Safety Division, 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.

6. During the field conference, the Parties discussed the conditions at each of the crossings. In the immediate interests of public safety, the Parties agreed to certain mitigation measures for each of the crossings. Following the field conference, the Commission served a

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<sup>1</sup> The overpasses were identified as located on: (1) Harriger Hollow Road (DOT 863 296 J); (2) East Bellport Road (DOT 863 302 K); and (3) Ramsaytown Road (DOT 863 298 X).

Secretarial Letter dated September 10, 2019, (*September 2019 Secretarial Letter*) which memorialized the observations and identified safety issues. The *September 2019 Secretarial Letter* also directed certain Parties to perform interim remedial safety work at the crossings.

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

8. 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 Commission's Rail Safety Division, therefore, requested that the Complaint be referred to the Office of Administrative Law Judge (OALJ) for hearing.

9. On July 1, 2021, a prehearing conference convened as scheduled. Counsel for Knox Township, BPRR, I&E, the Borough of Brookville, Jefferson County and PennDOT appeared and participated. The Parties discussed the conditions at the crossings and 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 for January 25, 2022.

10. An evidentiary hearing was conducted via telephone on January 25, 2022, by Administrative Law Judge Mary D. Long.

11. BPRR presented testimony from lay and expert witnesses as well as documentary evidence demonstrating that there was no accident history involving the structures, that each structure was structurally sound and only in need of routine maintenance, and could safely accommodate vehicular traffic.

12. On June 24, 2022, a Recommended Decision was issued by Administrative Law Judge Mary D. Long recommending that all three bridges be removed at BPRR's cost, and that the crossings be abolished.

13. On April 20, 2023, the Commission adopted the Recommended Decision of ALJ Long, denied the Exceptions of BPRR, and entered an Order directing BPRR to *inter alia* demolish and remove existing railroad structures, at its sole cost and expense, at the public crossings at Ramsaytown Road (T-841), Harriger Hollow Road (T-420), and East Bellport Road (T-405), within nine (9) months of the Commission's Order.

14. On May 18, 2023, BPRR timely filed a Petition for Review with the Commonwealth Court of Pennsylvania at docket No. 489 CD 2023. A true and correct copy of BPRR's Petition for Review is attached hereto as Exhibit "A".

15. BPRR seeks a stay of the Commission's Order of April 20, 2023, because the nine month time period prescribed by the Order will expire or be close to expired before the Commonwealth Court has an opportunity to review and rule on the Order.

16. BPRR respectfully requests the Commission to stay the proceedings in the present matter pending appeal to the Commonwealth Court. *See Pa. P.U.C. v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983)(discussing factors for consideration when granting a stay of proceedings pending appeal).

17. BPRR is likely to prevail on the merits because the proponent of the Order failed to carry its burden of proof pursuant to 66 Pa. C.S.A. §332(a) and the PUC's determination is not supported by substantial evidence because there was no evidence of any accidents at the crossings and no expert testimony based upon a professional engineering inspection was submitted to support the argument that the existing railroad

structures are unsafe. Further, the PUC arbitrarily and capriciously disregarded competent testimony and relevant evidence in reaching its determination. BPRR presented testimony of qualified engineering experts in the fields of bridge and traffic safety, each of whom performed engineering inspections of the railroad structures and roadways, and whose opinions were ignored or marginalized without any basis or justification. Further, the PUC improperly relied upon PennDOT's Highway Design Manual for its determination despite competent testimony from BPRR's professional traffic engineer that the Manual does not apply to existing structures. Finally, the PUC improperly applied the doctrine of *stare decisis* by following the conclusion reached in a prior decision that was not substantially similar to the instant matter.

18. Without the requested relief, BPRR will suffer irreparable injury because the nine (9) month time period set forth in the PUC's Order will expire or be nearly expired prior to the Commonwealth Court's disposition of BPRR's appeal. BPRR must either begin work to demolish the structures before receiving the Commonwealth Court's ruling, which would require it to incur costs and expenses that could not be recovered, or in the alternative, face the imposition of civil penalties under 66 Pa. C.S.A. §3301 for violation of the PUC's Order if it waits for the Commonwealth Court's ruling to begin work and the PUC's Order is affirmed leaving BPRR without adequate time to perform the work prescribed in the Order before the nine (9) month period expires.

19. Issuing the requested stay will not substantially harm the other interested parties nor will it adversely affect the public interest because it will maintain the status quo as it has been for the 100 or more years the structures have been in place and, as BPRR argued previously, there is no public safety hazard presented by the structures at issue.

WHEREFORE, Respondent Buffalo & Pittsburgh Railroad, Inc. respectfully requests that the Commission grant its Motion for Stay of Commission Order Dated April 20, 2023.

Respectfully Submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

By: /s/Aaron M. Ponzo

J. Lawson Johnston, Esquire

PA I.D. #19792

Scott D. Clements, Esquire

PA I.D. #78529

Aaron M. Ponzo, Esquire

PA I.D. 203584

Attorneys for Buffalo & Pittsburgh  
Railroad, Inc.

Dated: July 11, 2023

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Pennsylvania Department of  
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**VERIFICATION**

I, Dan Pavick, on behalf of Buffalo & Pittsburgh Railroad, Inc., hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Dated: July 10, 2023

By:  \_\_\_\_\_

Dan Pavick, President  
Buffalo & Pittsburgh Railroad, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing Motion for Stay of Commission Order Dated April 20, 2023, has been served this 11<sup>th</sup> day of July, 2023, upon all parties pursuant to 52 Pa. Code § 1.54 (relating to service by a party):

**Service by Electronic Mail**

Honorable Mary D. Long  
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Pittsburgh, PA 15222  
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Respectfully Submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

By: /s/Aaron M. Ponzio

J. Lawson Johnston, Esquire  
Scott D. Clements, Esquire  
Aaron M. Ponzio, Esquire

Attorneys for Buffalo & Pittsburgh  
Railroad, Inc.