

May 7, 2024

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17105-3265

Re: Investigation upon the Commission's motion into matters pertaining to the Proper safety of the traveling public and disposition of the crossing where State Route SR0268, crosses over a railroad tunnel formally used by Bessemer And Lake Erie Railroad in Fairview Township, Butler County and where State Route SR0268 formerly crossed, below grade, the track of Bessemer and Lake Erie Railroad in Bradys Bend Township, Armstrong County, Docket No. I-2019-3012769  
BW File No.: 10684-272312

Dear Secretary Chiavetta:

I am enclosing for filing a Petition of Bessemer & Lake Erie Railroad Company Requesting a Hearing for the purpose of allocating costs associated with the Commission's Order entered December 8, 2022 in the above referenced matter. As evidenced by the attached Certificate of Service, the Petition is being served on all parties of record.

If you have any questions or need additional information, please do not hesitate to contact me.

Very truly yours,



John M. Steidle

JMS/krc  
Enclosure

cc: All Interested Parties of Record (per attached service list)  
Administrative Law Judge Mary D. Long

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation upon the Commission’s motion :  
into matters pertaining to the Proper safety of :  
the traveling public and disposition of the :  
crossing where State Route SR0268, crosses :  
over a railroad tunnel formally used by :  
Bessemer and Lake Erie Railroad in : Docket No. I-2019-3012769  
Fairview Township, Butler County and :  
where State Route SR0268 formerly crossed, :  
below grade, the track of Bessemer and Lake :  
Erie Railroad in Bradys Bend Township, :  
Armstrong County :

**PETITION OF BESSEMER AND LAKE ERIE RAILROAD COMPANY REQUESTING  
A HEARING FOR THE PURPOSE OF ALLOCATING COSTS ASSOCIATED WITH  
THE COMMISSION'S OPINION AND ORDER ENTERED DECEMBER 8, 2022**

AND NOW comes the Bessemer and Lake Erie Railroad Company (“B&LE”), by and through its counsel John M. Steidle, Esquire, Edwin B. Palmer, Esquire, and Burns White LLC, and hereby files this Petition requesting a hearing be held before an Administrative Law Judge of the Pennsylvania Utility Commission for the purpose of allocating the costs incurred by B&LE and future maintenance in connection with the above-captioned matter. In support thereof, B&LE respectfully represents as follows:

1. The name and address of Petitioner is:

Bessemer & Lake Erie Railroad Company  
17641 Ashland Avenue  
Homewood, IL 60403
  
2. The name and address of counsel for the Petitioner is:

John M. Steidle, Esquire  
Edwin B. Palmer, Esquire  
Burns White LLC  
Burns White Center  
48 26<sup>th</sup> Street  
Pittsburgh, PA 15222

3. On October 3, 2019, the Commission instituted an investigation for the purpose of determining all matters relating to the abolition and safety of two crossings on an abandoned line of the B&LE Railroad.

4. One crossing is located in Fairview Township, Butler County where the railroad tracks were laid through a tunnel that is overlain by SR0268 (*herein after* Blackburn Tunnel).

5. The other crossing is located in Brady's Bend Township, Armstrong County, where SR0068 crosses, below grade, the track (Brady's Bend Crossing).

6. The investigation was to examine the safety of the public crossings at the Blackburn Tunnel and Brady's Bend Crossing, and to determine: (1) the safety of the crossings; (2) the future disposition of the crossings upon their abolition; (3) what work shall be performed at these crossings; and (4) the allocation of the costs of any work ordered.

7. The investigation was assigned to the Office of Administrative Law Judge on January 31, 2020.

8. On December 30, 2020 a conference was convened and counsel for all parties agreed that an engineering study of the Blackburn Tunnel would be appropriate.

9. Subsequently, the issues related to the Brady's Bend Crossing was resolved pursuant to a Joint Stipulation.

10. On January 4, 2021, ALJ Mary D. Long issued an Interim Order directing the B&LE to perform certain work, at its initial expense; specifically, the Ordered directed:

1. That Bessemer and Lake Erie Railroad, at its initial cost and expense, on or before July 30, 2021, shall prepare and submit to the Commission and all parties of record for examination, an engineering report detailing the current condition of the tunnel structure at the crossing located in Fairview Township, Butler County. The report shall be completed by a certified professional engineer, shall include the engineer's professional opinion about the current integrity of the structure, a recommended disposition of the

structure, including preliminary cost estimates and any other matter of material or serious concern.

11. The B&LE completed and filed the engineering report on July 30, 2021.
12. The parties subsequently agreed to a litigation schedule and an evidentiary hearing.
13. The evidentiary hearing was convened on January 18, 2022.
14. The record was closed on May 9, 2022.
15. On July 29, 2022, ALJ Mary D. Long issued a Recommended Decision that was adopted by the Commission's December 8, 2022 Order and Opinion directing the B&LE to perform certain work, at its initial expense; specifically, the Ordered directed:

2. That Bessemer & Lake Erie Railroad, at its initial cost and expense, shall furnish all materials and perform all work required to alter the public crossing at State Route 268 by dewatering the subject tunnel structure and portals areas, constructing permanent portal bulkheads, and completely filling the entire tunnel structure, from portal to portal, with suitable material in accordance with the approved plans and this Order.

3. That Bessemer & Lake Erie Railroad, at its initial cost and expense and within six (6) months of an entry of an order approving the work described herein, shall submit to all parties of record for review and to the Commission for approval, complete detailed construction plans for the work proposed to permanently dewater, seal, and fill the entire subject tunnel structure at State Route 268, from portal to portal.

\* \* \*

9. That Bessemer & Lake Erie Railroad, at its initial cost and expense, shall furnish all material and do all work necessary to complete the remainder of the crossing alteration project and any other ancillary features of the project, all generally in accordance with the approved plans and this Order.

\* \* \*

16. That the work ordered herein be completed in a manner satisfactory to the Commission, and upon completion of the construction project, each of the involved Parties report to the

Commission the actual date of completion of its respective work ordered herein and at the earliest practicable time after the said date of completion, submit to the Commission a detailed statement of the actual costs incurred in furnishing material and performing work in accordance with this order.

17. That upon completion of the construction project, and upon a written request by any party hereto, this proceeding be scheduled for a hearing at a time and a place assigned by this Commission, upon due notice to all parties, to receive evidence relative to the allocation of initial costs incurred, assignment of future maintenance responsibilities and costs, and any other matters relevant to this proceeding.

16. The Blackburn Tunnel Project was completed on March 29, 2024.

17. On March 29, 2024, B&LE gave notice that it had completed the work in accordance with the Commission Order.

18. On April 23, 2024, the Commission's Bureau of Technical Utility Services provided B&LE with notice that the final inspection will be held on May 8, 2024.

19. In performing the work required by the Commission Order, B&LE incurred costs totaling \$2,790,496.10.

20. B&LE is not willing to assume any costs incurred in complying with the Commission Order, nor is it willing to assume future maintenance for the Blackburn Tunnel.

21. B&LE is not a "concerned" party as the term is defined under Pennsylvania's Public Utility Code. *See* 66 Pa.C.S. § 2704(a). Accordingly, the Commission may not – as a matter of law – assess any liability for the costs of "construction, relocation, alteration, protection, or abolition" of the SR0268 crossing to B&LE. *See City of Chester v. Pennsylvania Public Utility Comm'n*, 798 A.2d 288, 294 (Pa. Commw. 2002) (*citing Consolidated Rail Corp. v. Pennsylvania Public Utility Comm'n*, 55 Pa.Cmwlth. 576, 423 A.2d 1108 (1980)); *Pennsylvania Public Utility*

*Comm'n v. Southeastern Pa. Transp. Auth.*, 21 Pa.Cmwlth. 106, 343 A.2d 371 (1975); and *Lehigh Valley R.R. v. Pennsylvania Public Utility Comm'n*, 161 A. 422 (Pa. Super. Ct. 1932)).

22. More recently, in *Norfolk Southern Railway Company v. Public Utility Commission*, the Supreme Court of Pennsylvania expanded the definition of a concerned party for purposes of the Commission's cost-allocation jurisdiction and authority:

We hold that a transportation utility need not own facilities at a rail-highway crossing to be a *concerned party* for purposes of the PUC's cost-allocation jurisdiction and authority, *at least where the utility conducts regular operations at the crossing and may enforce an easement-based right of way.*

*See* 77 A.3d 619, 633 (Pa. 2013) (emphasis added).

23. For the reasons set forth above, B&LE respectfully requests that this matter be assigned to the Office of Administrative Law Judge and that a hearing be scheduled to determine the appropriate final allocation all costs incurred by B&LE as a result of the Commission Order in the present matter.

**WHEREFORE**, Bessemer & Lake Erie Railroad Company respectfully requests that the relief sought in this Petition be granted and that a hearing be scheduled to determine the appropriate final allocation of costs incurred by Bessemer & Lake Erie Railroad Company in compliance with the Commission's Opinion and Order, entered December 8, 2022, in the above captioned proceeding.

Respectfully submitted,

BURNS WHITE LLC



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

John M. Steidle, Esquire  
Edwin B. Palmer, Esquire  
Burns White Center  
48 26th Street  
Pittsburgh, PA 15222  
(412) 995-3000  
[jmsteidle@burnswhite.com](mailto:jmsteidle@burnswhite.com)  
[ebpalmer@burnswhite.com](mailto:ebpalmer@burnswhite.com)

Attorneys for Bessemer & Lake Erie Railroad  
Company

Dated: May 7, 2024

**VERIFICATION**

I, Mark A. Paull do state that I am authorized to make this statement on behalf of Bessemer & Lake Erie Railroad Company and verify that I have read the attached Petition requesting a hearing for the purpose of allocating costs associated with the Commission's Opinion and Order entered December 8, 2022 and that the within information is true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

*Mark A. Paull*

\_\_\_\_\_  
Mark A. Paull

Date: 5/6/24

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing **Petition of Bessemer and Lake Erie Railroad Company Requesting a Hearing for the Purpose of Allocating Costs Associated with the Commissioner’s Opinion and Order Entered December 8, 2022**, dated May 7, 2024, upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (related to service by a party).

**Service by Electronic Mail Only:**

Honorable Mary D. Long  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
301 Fifth Avenue  
Suite 220, Piatt Place  
Pittsburgh, PA 15222  
[malong@pa.gov](mailto:malong@pa.gov)

Michael L. Swindler  
PA PUC Bureau of Investigation and  
Enforcement  
400 North Street  
Harrisburg, PA 17120  
[mwindler@pa.gov](mailto:mwindler@pa.gov)

Julie Graham, Esquire  
Butler County Commissioners’ Office  
124 West Diamond Street  
P.O. Box 1208  
Butler, PA 16003-1208  
[jgraham@co.butler.pa.us](mailto:jgraham@co.butler.pa.us)  
*Solicitor for the County of Butler*

Bradys Bend Township Supervisors  
1004 State Route 68  
East Brady, PA 16028  
[bbtownship@gmail.com](mailto:bbtownship@gmail.com)

Melissa J. Noyes  
Assistant Counsel  
Pennsylvania Department of Transportation  
Office of Chief Counsel  
P. O. Box 8212  
Harrisburg, PA 17105-8212  
[mnoyes@pa.gov](mailto:mnoyes@pa.gov)

Armstrong County Commissioners  
Armstrong County Courthouse  
450 East Market Street  
Kittanning, PA 16201  
[aspoole@co.armstrong.pa.us](mailto:aspoole@co.armstrong.pa.us)

Matthew F. Marshall, Esquire  
Dillon McCandless King Coulter &  
Graham, LLP  
600 Cranberry Woods Drive, Suite 175  
Cranberry Township, Pa 16066  
[mmarshall@dmkcg.com](mailto:mmarshall@dmkcg.com)  
*Counsel for Fairview Township*

Nick Andreassi  
Andreassi Gas Company  
1073 Kittanning Pike  
Chicora Pa 16025  
724-445-3606  
[N.Andreassi@Yahoo.Com](mailto:N.Andreassi@Yahoo.Com)

**Service by First Class United States Mail Only:**

Maria Thomas  
Planning Department  
P.O. Box 1208  
124 West Diamond Street  
5<sup>th</sup> Floor County Government Center  
Butler, PA 16003

Paul R. Dorr, Chairman  
Fairview Township Supervisors  
1571 Hooker Road  
Karns City, PA 16041

William and Kay Barnhart  
136 Boosel Road  
Chicora, PA 16025

Bruce and Rebecca Rodgers  
P.O. Box 429  
Chicora, PA 16025

Ann Marie Sherwin  
1276 Kittanning Pike  
Chicora, PA 16025

Ronald and Madeline Stitt  
1281 Kittanning Pike  
Chicora, PA 16025

Dean and Patricia Tascarella  
1270 Kittanning Pike  
Chicora, PA 16025

Respectfully submitted,

BURNS WHITE LLC



---

John M. Steidle, Esquire  
Edwin B. Palmer, Esquire  
Burns White Center  
48 26<sup>th</sup> Street  
Pittsburgh, PA 15222  
(412) 995-3000  
[jmsteidle@burnswhite.com](mailto:jmsteidle@burnswhite.com)  
[ebpalmer@burnswhite.com](mailto:ebpalmer@burnswhite.com)

Attorneys for Bessemer & Lake Erie Railroad  
Company