

**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 : I-2019-3012769
tunnel formally used by Bessemer and Lake Erie :
Railroad in Fairview Township, Butler County and :
where State Route SR0068 formally crosses, below :
grade, the track of Bessemer and Lake Erie :
Railroad in Brady's Bend Township, Armstrong :
County :

PREHEARING CONFERENCE ORDER

An Initial Call-In Telephonic Prehearing Conference has been scheduled in this case for Tuesday, July 2, 2024, at 10:00 a.m. In anticipation of the prehearing conference, and in accordance with the provisions of 66 Pa.C.S. §333 and 52 Pa.Code §§5.221-5.223, this prehearing conference order is being issued. To participate in the hearing, you must dial the toll-free number listed below. You will be prompted to enter a PIN number, which is also listed below. You will be asked to speak your name, and then the telephone system will connect you to the hearing:

Toll-free Bridge Number: 888-459-7411
PIN Number: 95632432

The parties shall comply with the following:

1. All Parties must serve me at jcoogan@pa.gov with any documents you file in this proceeding. If you send any document or correspondence to me, you must send a copy to all other parties in the case. The current service list is attached to this order.

2. Pursuant to 52 Pa. Code §§1.21-1.23, you may represent yourself if you are an individual or you may have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *pro hac vice*, represent you. However, if you are a partnership, corporation, trust, association, joint venture, other business organization, trust, trustee, legal representative, receiver, agency, governmental entity, municipality or other political subdivision, you must have an attorney licensed to practice law in the Commonwealth of Pennsylvania or admitted *pro hac vice* represent you in this proceeding. Unless you are an attorney, you may not represent someone else. Attorneys shall ensure that their appearance is entered in accordance with the provisions of 52 Pa. Code § 1.24(b).

3. Parties that do not participate in the prehearing conference may be removed from the service list.

4. In preparation for the prehearing conference, parties should review the following Commission regulations regarding non-rate prehearing conferences:

(c) The following matters shall be considered at prehearing conference:

- (1) The possibilities for settlement of the proceeding, subject to the approval of the Commission.
- (2) The amount of hearing time which will be required to dispose of the proceeding and the establishment of a schedule of hearing dates.
- (3) Arrangements for the submission of direct testimony of witnesses in writing in advance of hearing to the extent practicable, and for the submission in advance of hearing or written requests for information which a party contemplates asking another party to present at hearing.
- (4) Other matters that may aid in expediting the orderly conduct and disposition of the proceeding and the furtherance of justice, including the following:
 - (i) The simplification of the issues.
 - (ii) The exchange and acceptance of service of exhibits proposed to be offered in evidence.
 - (iii) The obtaining of admissions as to, or stipulations of, facts not remaining in dispute, or the authenticity of documents which might properly shorten the hearing.
 - (iv) The limitation of the number of witnesses.

- (v) A proposed plan and schedule of discovery which may include specific limitations on the number of written interrogatories and requests for admissions a party may propound on another party.
- (d) Parties and counsel will be expected to attend the conference fully prepared for a useful discussion of all problems involved in the proceeding, both procedural and substantive, and fully authorized to make commitments with respect thereto.
 - (1) The preparation must include submission of a prehearing memorandum and list:
 - (i) The presently identified issues.
 - (ii) The names and addresses of the witnesses.
 - (iii) The proposed area of testimony of each witness.
 - (2) The preparation may include:
 - (i) Development of a proposed procedural schedule.
 - (ii) Advance study of all relevant materials.
 - (iii) Advance informal communication between the parties, including requests for additional data and information, to the extent it appears feasible and desirable.
- (e) Failure of a party to attend the conference, after being served with notice of the time and place thereof, without good cause shown, shall constitute a waiver of all objections to the agreements reached and to an order or ruling with respect thereto.

52 Pa. Code §§ 5.222(c)-(e).

5. **Consistent with 52 Pa. Code § 5.222(d), on or before June 28, 2024, each litigating party shall file and serve a prehearing memorandum.**

6. Parties should review the regulations relating to discovery – specifically 52 Pa. Code § 5.331(b) – which provides, inter alia, that participants try to initiate discovery as early in the proceeding as possible – and 52 Pa. Code § 5.322 – which encourages parties to exchange information on an informal basis. The parties are expected to pursue resolution of discovery issues among themselves; motions to compel should be filed only after such efforts have failed.

7. Any request for a change of the scheduled prehearing conference date shall state the agreement or opposition of other parties, and shall be submitted in writing no later than five (5) days prior to the prehearing conference. 52 Pa. Code §1.15(b). Requests for change must be sent to me, with copies to all parties of record.

8. Parties are reminded that Commission policy promotes settlements. 52 Pa. Code §5.231(a). The parties are encouraged to commence settlement discussions amongst themselves for this proceeding as early as possible. Even if the parties are unable to settle this case, they may still resolve some of the questions or issues during their discussions. If the parties reach an agreement on all issues, a formal hearing will not be necessary. The parties are also reminded that the presiding officer may participate in settlement discussions upon agreement of all parties. 52 Pa. Code § 5.223(c); *see also*, 52 Pa. Code § 5.231(c).

Date: May 29, 2024

/s/

John M. Coogan
Administrative Law Judge

I-2019-3012769 - INVESTIGATION STATE ROUTE SR0268 & SR0068

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