

Aaron M. Ponzio
Attorney at Law
Admitted in PA, WV

412-392-5506
Fax: 888-811-7144
aponzo@dmclaw.com

July 5, 2024

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.: 0002393.0396125

Dear Secretary Chiavetta:

Enclosed for filing please find Buffalo & Pittsburgh Railroad, Inc.'s Motion for Extension of Time 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

31686913.1

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 §1.15 and §5.103, Respondent Buffalo & Pittsburgh Railroad, Inc. ("BPRR") has filed a **Motion for Extension of Time** 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 5, 2024

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.

MOTION FOR EXTENSION OF TIME

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 Extension of Time, stating as follows:

INTRODUCTION

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.

2. BPRR was directed to demolish and remove all three crossings pursuant to an Order of April 20, 2023, entered by the Public Utility Commission (“PUC”), with work to be completed on or before July 1, 2024.

3. Two of the crossings have been completely removed and, as of the filing of this Motion, removal of the last crossing is almost completed.

4. The removal of the last crossing was not completed on or before July 1, 2024, because work was stopped for a period of time at the request of Knox Township. In addition, once work resumed the contractor encountered unanticipated subsurface conditions. However, work is expected to be completed on or before July 8, 2024.

5. Accordingly, BPRR files this Motion for Extension of Time to request a brief extension of the time for completion of removal of the three crossings at issue in this matter.

PROCEDURAL HISTORY

6. 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.¹

7. 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.

8. On May 13, 2019, BPRR filed an Answer and New Matter to the Complaint admitting that the overpasses are located on its right-of-way but denying any traffic and safety problems.

9. On June 14, 2019, the Commission, through its Rail Safety Division, convened a field conference at the site of the public crossings during which the Parties agreed to certain mitigation measures that were memorialized in a Secretarial Letter dated September 10, 2019, (*September 2019 Secretarial Letter*).

¹ 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).

10. 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.

11. 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.

12. On July 1, 2021, a prehearing conference was held.

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

14. 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.

15. 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. See PUC Order ¶6.

16. On May 18, 2023, BPRR timely filed a Petition for Review with the Commonwealth Court of Pennsylvania at docket No. 489 CD 2023.

17. On November 16, 2023, the Commonwealth Court granted BPRR's Expedited Application for Stay Pursuant to Pa. R.A.P. 1781 and stayed the PUC's Order pending disposition of BPRR's appeal.

18. On March 1, 2024, the Commonwealth Court entered an Order affirming the PUC's Order and extending the stay of the PUC Order for 120 days.

19. BPRR filed an Application for Reargument with the Commonwealth Court on March 15, 2024, and an Expedited Application for Extension of Stay Pursuant to Pa. R.A.P. 1781 on March 22, 2024.

20. The Commonwealth Court denied BPRR's Application for Reargument by Order dated April 25, 2024.

21. Pursuant to the Commonwealth Court's stay of the PUC Order and subsequent extension of the same, the date for BPRR to complete the work to remove the three railroad crossings was July 1, 2024.

REMOVAL OF RAILROAD CROSSINGS

22. BPRR has proceeded with diligence and without delay since the Commonwealth Court denied its Application for Reargument.

23. BPRR served copies of the plans for the removal of the three railroad crossings on all parties on May 15, 2024.

24. No parties filed exceptions or objections to the plans.

25. The plans were approved by the PUC on June 5, 2024.

26. BPRR's contractor began the process of removing the three crossings as soon as the plans were approved.

27. The removal of the Harriger Hollow Road crossing was completed on or about June 14, 2024, and the removal of the East Bellport Road crossing was completed on or about June 21, 2024.

28. The removal of the Ramsaytown Road crossing was on schedule to be completed by the end of June, but on Thursday June 27, 2024, Knox Township requested that work be stopped so that Ramsaytown Road could remain open through the weekend to accommodate traffic for a race being held at Thunder Mountain Speedway.

29. The undersigned advised counsel for Knox Township and the Bureau of Investigation and Enforcement that accommodating this request may result in the work not being completed by July 1, 2024, which was understood and agreed to by the parties.

30. Upon resuming the work to complete the removal of the Ramsaytown Road crossing, the contractor encountered a greater amount of subsurface concrete than anticipated, which resulted in the complete removal taking more time.

31. BPRR is advised that the removal of the Ramsaytown Road crossing should be completed by Monday, July 8, 2024.

REQUEST FOR EXTENSION OF TIME

32. Based on the foregoing, BPRR is requested a brief extension of the timeframe for removal of the three railroad crossings.

33. While BPRR is advised and anticipates that the work will be completed by July 8, 2024, out of an abundance of caution BPRR requests that the time set forth in paragraph 6 of the PUC's Order be extended to Friday, July 12, 2024.

34. BPRR has at all times acted diligently, in good faith, and in cooperation with the other parties with regard to the removal of the three railroad crossings, and has otherwise complied with the PUC's Order.

35. Reasonable grounds exist to extend the time period for completion of the work in paragraph 6 of the PUC's Order pursuant to Pa. Code §1.15.

WHEREFORE, Respondent Buffalo & Pittsburgh Railroad, Inc. respectfully requests that the Commission grant its Motion for Extension of Time.

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 5, 2024

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.

VERIFICATION

I, Aaron M. Ponzo, counsel for 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).

Date: July 5, 2024

By: /s/Aaron M. Ponzo

Aaron M. Ponzo, Esquire
PA I.D. 203584

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Motion for Extension of Time have been served this 5th day of July, 2024, upon all parties pursuant to 52 Pa. Code § 1.54 (relating to service by a party):

Service by Electronic Mail

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

Knox Township
7525 Knox Dale Road
P.O. Box 41
Knox Dale, PA 15847
KnoxTwp@Windstream.net

Michael L. Swindler, Esquire
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
P.O. Box 3265
Harrisburg, PA 17120
mwindler@pa.gov
Accepts e-Service
Counsel for BI&E

CJ Zwick, Esquire
Zwick & Zwick LLP
171 Beaver Drive
P.O. Box 1126
DuBois, PA 15801
cjz@zwick-law.com
Accepts e-Service
Counsel for Jefferson County

Nicholas Gianvito, Esquire
Law Office of Nicholas Gianvito, P.C.
314 West Mahoning Street
P.O. Box 574
Punxsutawney, PA 15767
Nick@NGLawOffice.com
Counsel for Knox Township

James D. Dennison, Esquire
Brookville Borough Solicitor
18 Western Avenue, Suite A
Brookville, PA 15825
JDennison@Windstream.net
Counsel for Brookville Borough

Jilian G. Fellows, Esquire
Karen Cummings, Esquire
Commonwealth of Pennsylvania,
Department of Transportation
P.O. Box 8212
Harrisburg, PA 17105-8212
jfellows@pa.gov
kcummings@pa.gov
Accepts e-Service
Counsel for PennDOT

Respectfully Submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

By: /s/ Aaron M. Ponzo

J. Lawson Johnston, Esquire

Scott D. Clements, Esquire

Aaron M. Ponzo, Esquire

Attorneys for Buffalo & Pittsburgh
Railroad, Inc.

31686064.1