

**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 :

SCHEDULING ORDER

On May 29, 2024, the Commission issued a telephonic prehearing conference notice, setting this proceeding for a prehearing conference on July 2, 2024 at 10:00 a.m. Also on May 29, 2024, and in accordance with the provisions of 66 Pa.C.S. §333 and 52 Pa.Code §§5.221-5.223, a prehearing conference order was issued outlining various procedural matters to be addressed at the prehearing conference.

In response to the prehearing conference order, Bessemer and Lake Erie Railroad Company (B&LE), Pennsylvania Commonwealth Department of Transportation (PennDOT), and the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement (I&E) submitted prehearing memoranda outlining their respective positions on procedural matters. The prehearing conference convened on July 2, 2024 as scheduled. The following counsel appeared on the behalf of the parties:

John M. Steidle. B&LE

Leah Jo Bobula PennDOT

Garrett A. Rine I&E

Anthony Cosgrove Fairview Township

Julie Graham Butler County

During the prehearing conference, Mr. Cosgrove and Ms. Graham respectively stated that Fairview Township and Butler County only intended to participate in this proceeding in an observational capacity. Additionally, Kay Barnhart appeared at the prehearing conference, representing herself. Ms. Barnhart also stated that she was only participating in an observational capacity. Therefore, the only active parties to this proceeding are B&LE, PennDOT, and I&E.

During the conference, various procedural matters were discussed. Although the prehearing conference memoranda of B&LE and PennDOT proposed due dates for submission of written testimony, during the prehearing conference, counsel proposed the possibility that parties would be able to agree to the underlying factual basis of this proceeding and therefore provide a Joint Stipulation of Facts in lieu of submission of written testimony. Commission regulations provide that parties may stipulate to relevant matters of fact. 52 Pa. Code § 5.234(a). Therefore, the following procedural schedule was agreed upon by the active parties:

Direct Testimony or Status Report	August 16, 2024
Rebuttal Testimony or Joint Stipulation of Facts	September 13, 2024
Evidentiary Hearing (Virtual) ¹	October 2, 2024

As discussed during the prehearing conference, if the active parties agree to submission of a Joint Stipulation of Facts, a status report should be submitted by the active parties by August 16, 2024. The status report should at least confirm that parties will file a Joint Stipulation of Facts by September 13, 2024. If active parties do not submit a status report by August 16, 2024, active parties shall submit written direct and rebuttal testimony pursuant to the schedule above.

¹ A hearing notice will be issued with details on how to participate in the virtual hearing.

Additionally, there have been no requests to modify the Commission’s discovery rules for this case. The parties have agreed that electronic service shall satisfy service requirements for this case for those parties that are able to receive electronic service.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the active parties to this proceeding are Bessemer and Lake Erie Railroad Company, Pennsylvania Commonwealth Department of Transportation, and the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement.

2. That the following schedule is adopted for the active parties this proceeding:

Direct Testimony or Status Report	August 16, 2024
Rebuttal Testimony or Joint Stipulation of Facts	September 13, 2024
Evidentiary Hearing (Virtual)	October 2, 2024

3. That a briefing schedule will be set in a subsequent briefing order. Parties are advised that they will be prohibited from including extra-record evidence with their briefs.

3. That the observational parties to this proceeding are Fairview Township, Butler County, and Kay Barnhart.

4. That the observational parties shall receive service of documents in this proceeding and may observe any future hearings, but shall not otherwise participate in submission of testimony, status reports, stipulations of facts, hearings, briefing, or other activities

that may arise during this proceeding unless such party has received prior permission of the undersigned.

5. That the parties shall receive all documents and shall copy all other parties on documents they file with the Commission or serve on the presiding officer. The parties shall serve the documents listed above so that the documents are received by the parties and presiding officer no later than 4:30 p.m. on the dates listed, unless otherwise indicated. Parties may serve the documents listed above via e-mail to meet this requirement to those parties that are able to receive e-mail service. The parties shall file a certificate of service and not testimony with the Commission.

6. That written testimony shall comply with the requirements of 52 Pa.Code § 5.412 and shall be marked with numerical, sequential statement numbers.

7. That all parties shall comply with the provisions of 52 Pa.Code §5.243(e) which prohibits the introduction of evidence during rebuttal which should have been included in the party's case-in-chief or which substantially varies from the party's case-in-chief, unless the party is introducing evidence in support of a proposed settlement.

8. That any discovery shall be conducted pursuant to 52 Pa.Code §§5.321-5.372. The parties are encouraged to cooperate and exchange information on an informal basis. The parties shall cooperate rather than engage in numerous or protracted discovery disagreements that require formal resolution. There are limitations on discovery and sanctions for abuse of the discovery process. 52 Pa.Code §§ 5.361, 5.371-5.372. The parties shall use their best efforts to comply with discovery and to promptly communicate if a discover deadline cannot be met.

9. That the evidentiary hearing will be held October 2, 2024 and will commence at 10:00 a.m. unless changed by the presiding officer.

10. That motions with respect to written testimony must be presented in writing no later than three business days prior to the date that the witness sponsoring the testimony is scheduled to testify. Oral motions, other than for good cause, will not be accepted.

11. That the parties shall stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties and conserve administrative hearing resources. 52 Pa.Code §§ 5.232 and 5.234.

12. That the evidentiary hearing in this matter constitutes a formal legal proceeding and will be conducted in accordance with the Commission's Rules of Administrative Practice and Procedure, as well as the rules of evidence as applied to administrative hearings.

13. That any provision of this Order may be modified upon motion and good cause shown by any party in interest in accordance with 52 Pa.Code § 5.223(a).

Date: July 9, 2024

/s/
John M. Coogan
Administrative Law Judge

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

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