

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held August 1, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair, Statement
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Knox Township:
Complaint filed by Knox Township verses
Buffalo & Pittsburgh Railroad Inc. involving
roadway clearance issues and falling concrete
from abandoned railroad overpasses at
public crossings (DOT 863 298 X), (DOT 863 296 J)
and (DOT 863 302 K) where T-841, T-420,
and T-405 cross, below grade, the right of
way of Buffalo & Pittsburgh Railroad Inc.,
located in Knox Township, Jefferson County

C-2019-3009358

v.

Buffalo & Pittsburgh Railroad, Inc.

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Motion for Extension of Time (Motion) filed by Buffalo & Pittsburgh Railroad, Inc. (BPRR or Movant) on July 5, 2024, relative to compliance with time deadlines for completion of work at three above-grade railroad

crossings located in Knox Township, Jefferson County, Pennsylvania, as directed by our Opinion and Order entered April 20, 2023 (*April 2023 Order*).

On consideration of the Motion, we observe that the Commission docket indicates that by Notice dated July 12, 2024 (Amended Notice filed July 15, 2024), counsel for BPRR has advised that the work, as directed by the *April 2023 Order*, has been completed.

On consideration of the Motion, it shall be granted, consistent with the discussion in this Opinion and Order, *Nunc Pro Tunc*.

History of the Proceeding

The matter before the Commission is a formal complaint (Complaint) filed by Knox Township against BPRR regarding three railroad crossings identified as: (1) Harriger Hollow Road (DOT 863 296 J); (2) East Bellport Road (DOT 863 302 K); and (3) Ramsaytown Road (DOT 863 298 X). Field conferences among interested stakeholder parties were held and the matter was, thereafter, referred to the Office of Administrative Law Judge (OALJ) for evidentiary hearings and the issuance of a Recommended Decision (R.D.). Evidentiary hearings were convened and a Recommended Decision was issued, June 24, 2022.

Exceptions (BPRR) and Replies to Exceptions to the R.D. were filed. By our *April 2023 Order*, the Exceptions were denied and the R.D. adopted.

Subsequent to entry of the *April 2023 Order*, BPRR filed a Petition for Review with the Commonwealth Court. See Motion at ¶ 16, citing No. 489 CD 2023 (Middle District). BPRR, in conjunction with the Petition for Review, sought a stay of

proceedings before the Commission. By Opinion and Order entered October 19, 2023, we denied the BPRR request for a stay.

The BPRR Motion further provides the following regarding the appellate procedural history:

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.

Motion at 5; (emphasis supplied).

No answers or replies to the BPRR Motion by the Parties to the proceeding are noted.

Discussion

A. Legal Standards

Section 1.15(a)(1) of the Commission Rules of Practice and Procedure states that an extension of time may be approved upon a motion made after the expiration of the specified period “where reasonable grounds are shown for the failure to act.” See 52 Pa. Code § 1.15(a)(1).¹ Our consideration of the *Motion*, therefore, is based on the existence of reasonable grounds. See *Petition of the Energy Association of Pennsylvania for an Expedited Order Granting an Extension of Time Nunc Pro Tunc and Granting a Temporary Waiver of Annual Reporting Requirement*, Docket No. L-2008-2069115 (Opinion and Order entered April 29, 2011); 2011 WL 2113415 (Pa.P.U.C.).

¹ In our *April 2023 Order*, we engaged in a discussion of relief, *nunc pro tunc*, regarding the procedural filing of Exceptions to the R.D. See *April 2023 Order* at 27:

Generally, *nunc pro tunc*, relief is granted when a delay in filing a document is caused by extraordinary circumstances involving fraud or a breakdown in the operations of the court or administrative agency involved. See *Gloria Scarnati v. Pennsylvania-American Water Company*, Docket No. C-00015273 (Order entered January 10, 2002); 2002 WL 963419 (Pa. P.U.C.), citing *Cook v. Unemployment Comp. Bd. of Review*, 543 Pa. 381, 671 A.2d 1130 (1996) –addressing untimely filing of administrative appeal. Additionally, such relief may be granted when a delay in filing a document is caused by an unforeseeable and unavoidable event, but only if the document is, thereafter, filed as soon as possible and the opposing party is not thereby prejudiced. *Id. also, White Haven Borough v. Reading, Blue Mountain and Northern Railroad Company*, Docket No. C-00004204 (Order entered February 8, 2002) 2002 WL 34560328 (Pa. P.U.C.)

B. BPRR Motion

BPRR advises that it has proceeded with diligence to complete the work directed in the *April 2023 Order*. BPRR additionally explains that the removal of the Ramsaytown Road crossing was on schedule to be completed by the end of June [2024], 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. Motion at ¶ 28.

Counsel for Knox Township and the Commission's Bureau of Investigation and Enforcement (I&E) were advised by BPRR that accommodating the Knox Township request may result in the work not being completed by July 1, 2024. Motion at ¶ 29. The Motion further advises that, 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. Motion at ¶ 30.

Based on the foregoing, BPRR advises that the removal of the Ramsaytown Road crossing should be completed by Monday, July 8, 2024. While BPRR was advised and anticipated that the work will be completed by July 8, 2024, out of an abundance of caution, BPRR filed the instant Motion that the time set forth in Paragraph No. 6 of the *April 2023 Order* be extended to Friday, July 12, 2024.

After the filing of the Motion, counsel for BPRR has provided notice that all work necessary to complete the removal of the railroad structures and grading at

Ramsaytown Road (T-841), Harriger Hollow Road (T-420), and East Bellport Road (T-405) pursuant to the *April 2023 Order*, was completed as of the following dates:

June 14, 2024 – Harriger Hollow Road;

June 21, 2024 – East Bellport Road;

July 11, 2024 – Ramsaytown Road. *See* July 15, 2024 Notice.

C. Disposition

On consideration of the Motion, and finding no answer or reply in opposition, we shall grant the Motion, consistent with the discussion herein. As the completion dates extended beyond the time periods as set forth in the *April 2023 Order*, and finding reasonable grounds presented for such extension beyond the deadlines set forth in our prior Order, we shall grant the Motion, *Nunc Pro Tunc*.

Conclusion

On consideration of the Motion and of the advisement of counsel for BPRR that all work has been completed in accordance with the Commission’s *April 2023 Order*, the Motion is granted and relief afforded, *nunc pro tunc*; **THEREFORE**,

IT IS ORDERED:

1. That the Motion for Extension of Time, filed July 5, 2024, in the matter of Knox Township Knox Township: Complaint filed by Knox Township verses Buffalo & Pittsburgh Railroad Inc. involving roadway clearance issues and falling concrete from abandoned railroad overpasses at public crossings (DOT 863 298 X), (DOT 863 296 J) and (DOT 863 302 K) where T-841, T-420, and T-405 cross, below grade, the right of way of Buffalo & Pittsburgh Railroad Inc., located in Knox Township, Jefferson County versus

Buffalo & Pittsburgh Railroad, Inc. at Docket No. C-2019-3009358 is granted, *Nunc Pro Tunc*, consistent with the discussion in this Opinion and Order.

2. That the formal complaint at Docket No. C-2019-3009358 shall remain open pending any forthcoming final inspection and certification of completion by the Commission's Bureau of Technical Utility Services – Rail Division.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: August 1, 2024

ORDER ENTERED: August 1, 2024