



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

August 21, 2024

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement v.
Buffalo & Pittsburgh Railroad Inc.
Docket No. C-2024-
Formal Complaint (Etna Street Crossing)

Dear Secretary Chiavetta:

Enclosed for electronic filing is the **Formal Complaint** of the Bureau of Investigation and Enforcement ("I&E") of the Pennsylvania Public Utility Commission in the above-referenced matter.

Copies have been served on the parties of record in accordance with the Certificate of Service. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads 'mswindler'.

Michael L. Swindler
Deputy Chief Prosecutor
Bureau of Investigation & Enforcement
PA Attorney ID No. 43319
(717) 783-6369
mwindler@pa.gov

MLS/ac
Enclosures

cc: Per Certificate of Service

Notice

A. **You must file an Answer within 20 days of the date of service of this Complaint.**

The date of service is the mailing date as indicated at the top of the Secretarial Letter. *See* 52 Pa. Code § 1.56(a). The Answer must raise all factual and legal arguments that you wish to claim in your defense, include the docket number of this Complaint, and be verified. You may file your Answer by mailing an original to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Or, you may eFile your Answer using the Commission’s website at www.puc.pa.gov. The link to eFiling is located under the Filing & Resources tab on the homepage. If your Answer is 250 pages or less, you are not required to file a paper copy. If your Answer exceeds 250 pages, you must file a paper copy with the Secretary’s Bureau.

Additionally, please serve a copy on:

Michael L. Swindler, Deputy Chief Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
mwindler@pa.gov

B. If you fail to Answer this Complaint within 20 days, the Bureau of Investigation and Enforcement will request that the Commission issue an Order imposing the request relief.

C. You may elect not to contest this Complaint by paying the civil penalty within 20 days. Send only a certified check or money order made payable to the “Commonwealth of Pennsylvania,” with the docket number indicated, and mailed to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

D. If you file an Answer which either admits or fails to deny the allegations of the Complaint, the Bureau of Investigation and Enforcement will request that Commission to issue an Order imposing the requested relief set forth in this Complaint.

E. If you file an Answer which contests the Complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The Judge is not bound by the penalty set forth in the Complaint and may impose additional and/or alternative penalties as appropriate.

F. If you are a corporation, you must be represented by legal counsel. *See* 52 Pa. Code § 1.21.

G. Alternative formats of this material are available for persons with disabilities by contacting the Commission’s ADA Coordinator at 717-787-8714.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2024-
	:	
Buffalo & Pittsburgh Railroad Inc.,	:	
Respondent	:	

FORMAL COMPLAINT

NOW COMES the Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement (“I&E”), by its prosecuting attorneys, pursuant to Section 701 of the Public Utility Code, 66 Pa.C.S. § 701, and files this Formal Complaint against Buffalo & Pittsburgh Railroad Inc. (“BPRR” or “Railroad” or “Respondent”), alleging violations of the Public Utility Code and/or Pennsylvania Code. In support of its Formal Complaint, I&E respectfully represents the following:

I. Commission Jurisdiction and Authority

1. The Pennsylvania Public Utility Commission (“Commission”), with a mailing address of the Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120, is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth pursuant to the Public Utility Code, 66 Pa.C.S. §§ 101, *et seq.*

2. The Commission has delegated its authority to initiate proceedings that are prosecutory in nature to I&E and other bureaus with enforcement responsibilities. *Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities,*

Docket No. M-00940593 (Order entered September 2, 1994), as amended by Act 129 of 2008, 66 Pa.C.S. § 308.2(a)(11). Complainant's attorneys are as follows:

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Deputy Chief Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 783-6369
mwindler@pa.gov

Grant Rosul
Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

3. Respondent is Buffalo & Pittsburgh Railroad Inc. which maintains a business address of 200 Meridian Centre, Suite 300, Rochester NY 14618 and a local address of 201 North Penn Street, Punxsutawney PA 15767.

4. BPRR is a common carrier railroad and jurisdictional public utility pursuant to 66 Pa.C.S. § 102.

5. The Commission has exclusive jurisdiction over the construction, reconstruction, alteration, relocation, repair, maintenance, protection, suspension or abolition of railroad crossings, and the authority to determine and order which concerned parties should perform such work, in order to prevent accidents and promote the safety of the public. 66 Pa.C.S. §§ 2702 and 2704.

6. The Commission has the exclusive jurisdiction to order the construction, alteration, relocation, suspension, or abolition of railroad crossings. *Pa. Dep't of Transportation v. Pa. Pub. Util. Comm'n*, 440 A.2d 657 (Pa. Cmwlth. 1982); 66 Pa.C.S. § 2702(b).

7. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter and the actions of BPRR related to public crossings.

8. Section 501(a) of the Code, 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code.

9. Section 3301 of the Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation subject to the Commission's authority for violations of the Code or Commission regulations or both. Section 3301 further allows for the imposition of a separate fine of up to \$1,000.00 for each violation and for each day's continuance of such violation(s).

II. Background

10. In or about October 2023, the Commission's Technical Utility Services Rail Safety Division ("Rail Safety") was made aware of a public railroad crossing closure at Etna Street in Butler, Pennsylvania (DOT 149 041 V) ("Etna Street Crossing").

11. In its response dated January 17, 2024 to I&E Data Requests – Set I, BPRR stated that the Etna Street Crossing was believed to have been closed in or about September 2021 as part of a project wherein the Railroad was engaged in rehabilitating the railroad tracks and track bed.

12. Upon investigation, Rail Safety determined that the Commission had never been notified by BPRR of the intended closure or ultimate closure of the Etna Street Crossing.

13. Upon further investigation, Rail Safety further determined that BPRR had not been granted any Commission approval for the closure of the Etna Street Crossing.

III. Alteration of Railroad Crossing without Commission Approval

14. The foregoing paragraphs are incorporated herein.

15. Rail Safety engineer William Sinick visited the site of the Etna Street Crossing in November 2023 and observed that this public at-grade railroad crossing closed and in its altered condition.

16. Photographs taken by the on-site Rail Safety engineer of the Etna Street Crossing during the November 2023 field inspection confirmed as follows:

- a. The public road (Etna Street) at the Etna Street at-grade crossing remained closed;
- b. Concrete barriers prohibiting traffic from accessing the crossing were in place on both the north and south sides of the railroad track;
- c. Timbers on both the north and south sides of the railroad track had been removed;
- d. Asphalt at the railroad track had been removed; and
- e. Overall, this railroad crossing closure is not safe in that it has no or insufficient signage, no or insufficient reflectivity and no proper barricades.

17. As a result of the unauthorized closing of the Etna Street Crossing to vehicular traffic, vehicles traversing on Etna Street toward Center Avenue have been observed utilizing an unobstructed short cut parallel to the railroad tracks from Strawberry Street to the railroad crossing at Center Avenue, rather than the preferred, safer route from Strawberry Street to Walker Avenue to Center Avenue. Vehicles exiting this shortcut on to Center Avenue are entering Center Avenue directly onto the Center Avenue railroad crossing, resulting in a highly dangerous circumstance should a train approach with vehicular traffic backed up on the track.

18. Despite the claims of BPRR that work being conducted in a project to rehabilitate the railroad tracks at the location of the Etna Street Crossing including closing the crossing and removing the wood timbers and asphalt was “only temporary”, the crossing has been closed for nearly three years.

19. The Commission has not issued an order or Secretarial Letter authorizing Buffalo & Pittsburgh to alter, modify or close the Etna Street Crossing.

IV. Violations

20. An entity may not alter, relocate, suspend or abolish an existing crossing without an order from the Commission. 66 Pa.C.S. § 2702(a).

21. BPRR, by altering the public railroad crossing at Etna Street (DOT 149 041 V) by removing the wooden timbers, removing asphalt and placing concrete barriers obstructing passage without Commission approval, violated 66 Pa.C.S. § 2702(a).

22. Each day that a violation of the Public Utility Code continues is a separate and distinct offense. Section 3301(b), 66 Pa.C.S. § 3301(b). Rail Safety became aware of

the unlawful alteration in or about October 2023. BPRR was put on notice of I&E's investigation into the crossing upon being served I&E Data Requests – Set I dated January 17, 2024. Despite said notice, the Etna Street Crossing remains closed and the rehabilitation incomplete as of the date of this Complaint. A total of 217 days has passed between the January 17, 2024 notice and the date of this filing.

23. I&E proposes a continuous daily civil penalty of \$100 per day, resulting in a proposed civil penalty at present of \$21,700, calculated from the date of BPRR's notice of I&E's investigation of the unlawful alteration to the date of this filing.

V. Requested Relief

24. I&E seeks a continuous daily civil penalty of \$100 per day (compared to the maximum civil penalty allowed of \$1,000.00 per day) resulting in a total civil penalty as of the date of this filing of \$21,700.

25. I&E seeks the completion of the remediation of the tracks at the Etna Street Crossing (DOT 149 041 V) crossing, at BPRR's sole cost and expense, such that the Etna Street crossing may be re-opened within six months of the Commission's order or Secretarial Letter concluding this matter.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement hereby requests that the Commission: (1) find Buffalo & Pittsburgh Railroad Inc., to be in violation of the Public Utility Code for the unlawful alteration of the Etna Street railroad crossing; (2) impose a cumulative civil penalty upon Buffalo & Pittsburgh in the amount of \$21,700; (3) direct that rehabilitation of the Etna Street Crossing be completed and the crossing re-opened for vehicular traffic within six

(6) months of the Commission's order and (4) order other such remedies as the Commission may deem appropriate.

Respectfully,



Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

Pennsylvania Public Utility Commission
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Dated: August 21, 2024

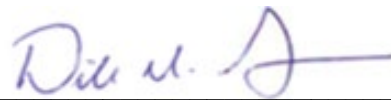
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2024-
	:	
Buffalo & Pittsburgh Railroad Inc.,	:	
Respondent	:	

VERIFICATION

I, William Sinick, P.E. 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: August 21, 2024



William Sinick, P.E.
Pennsylvania Public Utility Commission
Bureau of Technical Utility Services –
Rail Safety Section
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2024-
	:	
Buffalo & Pittsburgh Railroad Inc.,	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Formal Complaint** dated August 21, 2024, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Served by Electronic Mail

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