

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

Public Meeting held September 12, 2024

Commissioners Present:

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

Knox Township:

C-2019-3009358

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

v.

Buffalo & Pittsburgh Railroad, Inc.

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for
consideration and disposition is the Joint Motion for Extension of Time (Joint Motion)

filed by Knox Township (Township) and Buffalo & Pittsburgh Railroad, Inc. (BPRR) (collectively, the Joint Movants) on September 4, 2024, relative to compliance with time deadlines established for the 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*).

We shall grant the Joint Motion, finding good cause for extending the time deadlines, consistent with the discussion in this Opinion and Order, noting that, by Opinion and Order entered August 1, 2024, (*Extension of Time Order #1*) an extension of time was previously granted, *Nunc Pro Tunc* in this matter.

History of the Proceeding

The matter before the Commission is a formal complaint (FC or 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 conducted, and a Recommended Decision was issued, June 24, 2022. Exceptions and Replies to Exceptions to the Recommended Decision were filed. By our *April 2023 Order*, the Exceptions were denied and the Recommended Decision adopted.

Subsequent to entry of the *April 2023 Order*, appellate proceedings were filed by BPRR. In conjunction therewith, BPRR also sought a stay of proceedings. *See* Commonwealth Court Docket No. 489 CD 2023 (Middle District). On

November 16, 2023, the Commonwealth Court granted BPRR’s request and stayed the *April 2023 Order* pending disposition of BPRR’s appeal.

On March 1, 2024, the Commonwealth Court entered an Order affirming the *April 2023 Order* and extending the stay of the Order for 120 days. *See Extension of Time Order #1*.

Pursuant to the resolution of the appellate litigation concerning the *April 2023 Order*, the date for BPRR to complete the work to remove the three, subject railroad crossings was July 1, 2024. *See Extension of Time Order #1*.

By our *Extension of Time Order #1*, entered August 1, 2024, we granted an extension of time, *nunc pro tunc*, for completion of the work set forth in the *April 2023 Order* on consideration of the Motion for Extension of Time filed by BPRR. The August 1, 2024 Order noted, however, that “[t]he formal complaint . . . shall remain open pending any forthcoming final inspection and certification of completion by the Commission’s Bureau of Technical Utility Services – Rail Division.” *See Extension of Time Order #1* at ¶ 2.

Discussion

Legal Standards

Our review of the Joint Motion is governed, primarily, by the considerations of 52 Pa. Code § 1.15(a)(1), which provide as follows:

(a) Extensions of time shall be governed by the following:

(1) Except as otherwise provided by statute, whenever under this title or by order of the Commission, or notice given

thereunder, an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, by the Commission, the presiding officer or other authorized person, for good cause be extended upon motion made before expiration of the period originally prescribed or as previously extended. Upon motion made after the expiration of the specified period, the act may be permitted to be done where reasonable grounds are shown for the failure to act.

Section 1.15(a)(1) of the Commission's Rules of Practice and Procedure states that an extension of time may be approved upon motion made, and may be granted upon good cause shown. *See Extension of Time Order #1*, citing *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

Joint Motion

Knox Township and BPRR are the principal stakeholder parties to the instant Complaint. Knox Township and BPRR, as Joint Movants, aver, in pertinent part, that, as of the filing of the Joint Motion, the existing railroad structures have been completely removed and work to backfill and grade the areas has been performed. *See* Joint Motion at ¶ 3.

However, the Joint Movants explain that a further extension of time is requested based on the following considerations: (1) additional time is needed for BPRR to complete the work related to the widths of the roadways and shoulders as well as the

¹ Our *Extension of Time Order #1* discussed considerations for requests for extensions of time after said time period had elapsed, *i.e.*, *nunc pro tunc*.

slopes of the embankments, and for the Township to complete the work related to the roadway and highway approaches (Joint Motion at ¶ 4); and (2) two unexpected issues arose concerning the Ramsaytown Road crossing – (a) there is a residential gas line that is only six inches below the surface of the road that was not identified pursuant to the PA One Call process, and that has to be removed and relocated; and (b) the embankment on one side of Ramsaytown Road consists of a significant amount of rock, thereby making excavation more difficult and time consuming (Joint Motion at ¶ 5).

The Joint Motion advises that Knox Township, BPRR, and the Commission’s Bureau of Investigation and Enforcement (I&E) have met concerning the need for additional time. The Joint Movants represent that I&E is in agreement that additional time is needed for each of the assigned Parties to complete its respective work at the three crossings at issue in the matter. (Joint Motion at ¶ 7).

As additional background to the need for additional time, the Joint Movants state that BPRR served copies of the plans for the removal of the three crossings on all parties, May 15, 2024, and no party filed exceptions or objections to the said plans. (Joint Motion at ¶¶ 26-27). The plans were approved by the Commission June 5, 2024. (Joint Motion at ¶ 28).

Construction and removal of the Harriger Hollow Road and East Bellport Road have been completed. (Joint Motion at ¶ 30; 41). The Ramsaytown Road crossing was on schedule to be completed by the end of June 2024, but was delayed by mutual agreement of the Township and BPRR to accommodate traffic occasioned by a race being held at Thunder Mountain on the weekend. (Joint Motion at ¶ 31; *see also, Extension of Time Order #1*). The Joint Movants aver that the contractor has informed them that removal of the Ramsaytown Road crossing has been completed as of July 11, 2024. (Joint Motion at ¶ 34).

The Joint Movants further explain that on July 25, 2024, following a field conference in a separate matter, the Commission's Senior Civil Engineer Manager, Bureau of Technical Utility Services (TUS) - Rail Safety, along with BPRR's General Manager and counsel, observed that the roadway widths at each crossing were not wide enough to satisfy the directives of the *April 2023 Order* and that the embankments required additional work to meet the 2:1 slope specifications in the Order. (Joint Motion at ¶¶ 35-36).

BPRR, thereafter, contacted its retained contractor to address the roadway width and slope issues identified at the July 25, 2024, conference. On August 5, 2024, representatives of BPRR, the Commission, counsel for the Township, and the contractor met and conferred via telephone conference to discuss the work needed to bring the roadway widths and embankment slopes into compliance with the *April 2023 Order* and how to accomplish same. (Joint Motion at ¶ 38). BPRR's contractor and the Township reached an agreement as to how to resolve the issues identified July 25, 2024, and to complete the work in compliance with the Commission's directives. (Joint Motion at ¶ 40).

Based on the foregoing, the Joint Movants request that an extension of time, until September 20, 2024, be granted to BPRR for completion of its assigned work and that the Township be granted an extension of time of ninety (90) days after completion of BPRR's work. (Joint Motion at ¶¶ 43-44).

Disposition

On consideration of the Joint Motion, it shall be granted, consistent with the discussion herein. We find that good cause, pursuant to our Regulations, has been established and that the responsible Parties have proceeded with due diligence. We note that the extension of time sought is in furtherance of the instruction of the Commission's

Senior Civil Engineer Manager for compliance with our *April 2023 Order*. Therefore, although our disposition is in advance of the time periods for the filing of any response to the Joint Motion, we conclude that TUS' consent to the extension is implicit as cited by participation in the July 25, 2024, conference. We find our grant of the Joint Motion consistent with the directives in our *Extension of Time Order #1*, in that BPRR and the Township have engaged in conference with the Commission's TUS – Rail Division concerning compliance with our *April 2023 Order*.

Conclusion

On consideration of the Joint Motion and finding good cause shown, the Joint Motion is granted; **THEREFORE**,

IT IS ORDERED:

1. That the Joint Motion for Extension of Time, filed September 4, 2024, by Knox Township and Buffalo & Pittsburgh Railroad Inc. in the matter of 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, consistent with the discussion in this Opinion and Order.

2. That Buffalo & Pittsburgh Railroad Inc. is granted an extension of time to September 20, 2024, for completion of the work as directed in our Opinion and Order entered April 20, 2023, at Docket No. C-2019-3009358.

3. That Knox Township is granted an extension of time of ninety (90) days, after completion of the work as directed in our Opinion and Order entered April 20, 2023, at Docket No. C-2019-3009358 by Buffalo & Pittsburgh Railroad Inc.

4. 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: September 12, 2024

ORDER ENTERED: September 12, 2024