



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

September 19, 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-2024-3050823  
**I&E Reply to New Matter**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Reply to New Matter of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission in the above-referenced matter.

Copies are being served on the parties of record in accordance with the attached Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'G. Rosul', written in a cursive style.

Grant Rosul  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney ID No. 318204  
(717) 783-5243  
[grosul@pa.gov](mailto:grosul@pa.gov)

GR/ac  
Enclosures

cc: Michael L. Swindler, Deputy Chief Prosecutor, I&E-Enforcement (*via email*)  
As per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
Complainant	:	
	:	
v.	:	Docket No. C-2024-3050823
	:	
Buffalo & Pittsburgh Railroad, Inc.	:	
Respondent	:	

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**BUREAU OF INVESTIGATION AND ENFORCEMENT  
REPLY TO NEW MATTER OF  
BUFFALO & PITTSBURGH RAILROAD, INC.**

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NOW COMES the Pennsylvania Public Utility Commission’s (“Commission”), Bureau of Investigation and Enforcement (“I&E”), by its prosecuting attorney, and files this Reply to New Matter of the Buffalo & Pittsburgh Railroad, Inc. (“Respondent”), pursuant to 52 Pa. Code § 5.63(a). The purpose of New Matter in response to a Complaint is to “set forth ... another material fact which is not merely a denial of the averments of the preceding pleading” or to raise affirmative defenses. 52 Pa. Code § 5.62(b). In support thereof, I&E avers as follows:

1. Denied. To the extent that Respondent attempts to incorporate any and all assertions made in Paragraphs 1-25 of its Answer as “New Matter,” this is denied. Pursuant to 52 Pa. Code § 5.62(b), affirmative defenses must be set forth under the heading of “New Matter.” New Matter is limited to material facts that are not merely

denials of averments of the preceding pleadings. Respondent cannot simply incorporate by reference all paragraphs of its Answer as “New Matter.”

2. Denied. This averment is a legal conclusion to which no response is required. To the extent a response is required, it is denied. By way of further response, Respondent’s ongoing violation of 66 Pa.C.S. § 2702 is a continuing violation that is subject to the per-day civil penalty set forth in 66 Pa.C.S. § 3301(b).

3. Admitted in part and Denied in part. It is admitted that 217 days elapsed from the day Respondent submitted its Response to I&E’s Data Request to the day I&E filed the Complaint in this matter. The conclusion that this is somehow grounds to deny I&E’s requested relief is denied, however, as it is a legal conclusion to which no response is required. To the extent that a response is required it is denied.

4. Denied. This averment is a legal conclusion to which no response is required. To the extent a response is required, it is denied.

5. Denied. To the extent that Respondent attempts to incorporate any and all assertions made in its Preliminary Objections, this is denied. Pursuant to 52 Pa. Code § 5.62(b), affirmative defenses must be set forth under the heading of “New Matter.” New Matter is limited to material facts that are not merely denials of averments of the preceding pleadings. Respondent cannot simply incorporate by reference another pleading as “New Matter.”

**WHEREFORE**, for all the foregoing reasons, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission respectfully requests that the Office of Administrative Law Judge and the Commission reject the New Matter raised by

the Buffalo & Pittsburgh Railroad, Inc., dismiss Respondent's Answer, and sustain I&E's Complaint.

Respectfully submitted,



Grant Rosul

Prosecutor

PA Attorney ID No. 318204

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
(717) 783-5243  
[grosul@pa.gov](mailto:grosul@pa.gov)

Date: September 19, 2024


**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
Complainant	:	
	:	
v.	:	Docket No. C-2024-3050823
	:	
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 that the Bureau of Investigation and Enforcement will be able to prove the same at any 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: September 19, 2024

  
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William Sinick, P.E.  
Pennsylvania Public Utility Commission  
Bureau of Technical Services  
Rail Safety Division  
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-2024-3050823
	:	
Buffalo & Pittsburgh Railroad, Inc.	:	
Respondent	:	

**CERTIFICATE OF SERVICE**

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

**Service by Electronic Mail**

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*Counsel for Buffalo & Pittsburgh Railroad, Inc.*



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Dated: September 19, 2024