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November 8, 2024

Via Electronic Filing

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

RE: Knox Township v. Buffalo & Pittsburgh Railroad, Inc., et al.
Docket No.: C-2019-3009358
Our File No.: 0002393.0396125

Dear Secretary Chiavetta:

Attached for filing please find Knox Township and Buffalo & Pittsburgh Railroad, Inc.'s Joint Motion for Extension of Time in the above-referenced matter. Copies have been served on the parties of record in accordance with the Certificate of Service.

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

Very Truly Yours,

Aaron M. Ponzio

Aaron M. Ponzio

AMP/eie

Attachment

cc: All counsel and parties of record (via email w/ encl. per Certificate of Service)
Hon. Mary D. Long

32451671.1

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Knox Township,

Complainant,

vs.

Docket No. C-2019-3009358

Buffalo & Pittsburgh Railroad Inc.,
Pennsylvania Department of
Transportation, Jefferson County &
Brookville Borough,

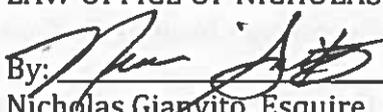
Respondents.

NOTICE TO PLEAD

TAKE NOTICE that pursuant to 52 Pa. Code §1.15 and §5.103, Complainant Knox Township and Respondent Buffalo & Pittsburgh Railroad, Inc. ("BPRR") have filed a **Joint Motion for Extension of Time** in the above-captioned matter. Pursuant to 52 Pa. Code § 5103(c), you are hereby notified to file with the Commission and serve upon the undersigned and all parties a written response within twenty (20) days from the date of service of the Motion.

LAW OFFICE OF NICHOLAS GIANVITO, P.C

DICKIE, McCAMEY & CHILCOTE, P.C.

By:  _____

Nicholas Gianvito, Esquire
PA. I.D. #67190

By: /s/Aaron M. Ponzio _____

Aaron M. Ponzio, Esquire
PA I.D. #203584

Attorney for Knox Township

*Attorney for Buffalo & Pittsburgh Railroad,
Inc.*

Dated: November 8, 2024

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Knox Township,

Complainant,

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Docket No. C-2019-3009358

Buffalo & Pittsburgh Railroad Inc.,
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Transportation, Jefferson County &
Brookville Borough,

Respondents.

JOINT MOTION FOR EXTENSION OF TIME

AND NOW, comes Complainant, Knox Township, and Respondent, Buffalo & Pittsburgh Railroad Company ("BPRR"), by their undersigned attorneys and file their Joint Motion for Extension of Time, stating as follows:

INTRODUCTION

1. This matter involves three above-grade railroad crossings located in Knox Township, Jefferson County, Pennsylvania where Ramsaytown Road (T-841), East Bellport Road (T-405), and Harriger Hollow Road (T-420) cross the right of way of the Buffalo & Pittsburgh Railroad, Inc.

2. BPRR was directed to demolish and remove all three crossings pursuant to an Order of April 20, 2023, entered by the Public Utility Commission ("PUC" or "Commission")), with work to be completed on or before July 1, 2024, and Knox Township (the "Township") was directed to finish grade the roadway and shoulder approaches and to grade and seed the highway approaches with the work to be completed on or before October 1, 2024.

3. As of the filing of this Motion, the existing railroad structures have been completely removed and work to backfill and grade the areas has been performed.

4. Additionally, at the Township's request, BPRR installed drainage culverts on both sides of the Ramsaytown Road crossing in connection with grading the roadway and shoulder at that crossing.

5. However, due to the bedrock in the embankment on one side of the slope, BPRR was limited in where it could position the culvert pipe.

6. This resulted in a slight deviation from the 28-foot-width requirement set forth in the PUC's Order.

7. Because of this, the parties decided the best approach was to remove the culvert pipe creating the issue to comply with the PUC's Order.

8. Consequently, additional time is needed for BPRR to remove the culvert pipe, and for Knox Township to complete the work related to the roadway and highway approaches.

9. BPRR, Knox Township, and I&E have met and conferred and are in agreement with regard to the remaining work and the time needed to complete the same.

10. Accordingly, BPRR and Knox Township file this Joint Motion for Extension of Time to request an extension for each party to complete its respective work.

PROCEDURAL HISTORY

11. On April 10, 2019, Knox Township filed a Formal Complaint against BPRR, in which it averred that three overpasses on a railroad right-of-way were creating a traffic and safety problem.¹

¹ The overpasses were identified as located on: (1) Harriger Hollow Road (DOT 863 296 J); (2) East Bellport Road (DOT 863 302 K); and (3) Ramsaytown Road (DOT 863 298 X).

12. On April 25, 2019, the PUC served the Complaint on BPRR, the Pennsylvania Department of Transportation ("PennDOT"), Jefferson County, and Brookville Borough.

13. On May 13, 2019, BPRR filed an Answer and New Matter to the Complaint admitting that the overpasses are located on its right-of-way but denying any traffic and safety problems.

14. On June 14, 2019, the Commission, through its Rail Safety Division, convened a field conference at the site of the public crossings during which the Parties agreed to certain mitigation measures that were memorialized in a Secretarial Letter dated September 10, 2019 ("*September 2019 Secretarial Letter*").

15. By letters dated December 13, 2019, and February 10, 2020, BPRR advised the Commission that the work directed by the *September 2019 Secretarial Letter* had been completed.

16. A further field conference was held on February 21, 2020, and further settlement discussions commenced. The Parties were unable to reach an agreement regarding the resolution of Knox Township's Complaint. The Commission's Rail Safety Division, therefore, requested that the Complaint be referred to the Office of Administrative Law Judge for hearing.

17. On July 1, 2021, a prehearing conference was held.

18. An evidentiary hearing was conducted via telephone on January 25, 2022, by Administrative Law Judge Mary D. Long.

19. On June 24, 2022, a Recommended Decision was issued by Administrative Law Judge Mary D. Long recommending that all three bridges be removed at BPRR's cost, and that the crossings be abolished.

20. On April 20, 2023, the Commission adopted the Recommended Decision of ALJ Long, denied the Exceptions of BPRR, and entered an Order directing BPRR to, *inter alia*, demolish and remove existing railroad structures, at its sole cost and expense, at the public crossings at Ramsaytown Road (T-841), Harriger Hollow Road (T-420), and East Bellport Road (T-405), within nine (9) months of the Commission's Order. See PUC Order ¶6.

21. On May 18, 2023, BPRR timely filed a Petition for Review with the Commonwealth Court of Pennsylvania at docket No. 489 CD 2023.

22. 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.

23. 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.

24. 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.

25. The Commonwealth Court denied BPRR's Application for Reargument by Order dated April 25, 2024.

26. 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.

27. On July 5, 2024, BPRR filed a Motion for Extension of Time to comply with time deadlines for completion of work at the three railroad crossings, which the PUC granted on August 1, 2024.

28. On September 4, 2024, Knox Township and BPRR filed a Joint Motion for Extension of Time, requesting additional time to complete the work due to unexpected issues that delayed the necessary work, which the PUC granted on September 12, 2024.

REMOVAL OF RAILROAD CROSSINGS

29. BPRR has proceeded with diligence and without delay since the Commonwealth Court denied its Application for Reargument.

30. BPRR served copies of the plans for the removal of the three railroad crossings on all parties on May 15, 2024.

31. No parties filed exceptions or objections to the plans.

32. The plans were approved by the PUC on June 5, 2024.

33. BPRR's contractor began the process of removing the three crossings as soon as the plans were approved.

34. BPRR was advised that the removal of the Harriger Hollow Road crossing was completed on or about June 14, 2024, and the removal of the East Bellport Road crossing was completed on or about June 21, 2024.

35. The removal of the Ramsaytown Road crossing was on schedule to be completed by the end of June, 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.

36. The undersigned advised counsel for Knox Township and the Bureau of Investigation and Enforcement that accommodating this request would result in the work not being completed by July 1, 2024, which was understood and agreed to by the parties.

37. 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.

38. BPRR was advised that the removal of the Ramsaytown Road crossing was completed on Thursday, July 11, 2024.

39. On July 25, 2024, following a field conference in another matter, the crossings were observed by William Sinick, P.E., the PUC's Senior Civil Engineer Manager, Bureau of Technical Utility Services - Rail Safety, along with Jarrod Hutcheson, BPRR's General Manager, and Aaron M. Ponzo, Esquire, counsel for BPRR.

40. It was determined that the roadway widths at each crossing were not wide enough to satisfy the directives of the PUC's Order, and the embankments required additional work to meet the 2:1 slope specification in the PUC's Order.

41. BPRR immediately contacted its contractor to address the roadway width and slope issues identified on July 25, 2024.

42. On August 5, 2024, the undersigned, PUC representatives, counsel for Knox Township, and BPRR's contractor met and conferred via telephone conference to discuss the work needed to bring the roadway widths and embankments into compliance with the PUC's Order and how to accomplish the same.

43. In addition, two issues were discussed during the telephone conference relating to outstanding work at Ramsaytown Road: (1) there is a residential gas line that is only six inches below the surface on one side of the road, which has to be removed and relocated before any further excavation; and (2) the embankment on one side of the road consists of a significant amount of rock, making excavation more difficult.

44. Over the ensuing days, BPRR's contractor and representatives of Knox Township discussed how to proceed at Ramsaytown Road and reached an agreement to resolve the issues identified above, and to complete the work in a manner compliant with the directives in the PUC's Order.

45. Work to bring the roadway widths and embankments at Harriger Hollow Road and East Bellport Road into compliance with the PUC's Order has been completed.

46. With respect to grading at Ramsaytown Road and the shoulder at that crossing, at the Township's request, BPRR installed drainage culverts on both sides of the crossing.

47. However, due to the bedrock in the embankment on one side of the slope, BPRR was limited in where it could position the culvert pipe.

48. This resulted in a slight deviation from the 28-foot-width requirement set forth in the PUC's Order.

49. Because the drainage culverts were requested by the Township, and in continuing with the spirit of cooperation and collaboration surrounding the work at Ramsaytown Road, BPRR discussed this deviation with the Township, as well as the PUC's Rail Safety Engineer, Mr. Sinick.

50. Ultimately, they decided the best approach was to remove the culvert pipe creating the issue to comply with the PUC's Order.

51. BPRR's contractor has completed this work.

REQUEST FOR EXTENSION OF TIME

52. Based on the foregoing, BPRR and Knox Township request an extension of the timeframe to complete each party's respective scope of work.

53. BPRR requests that its time be extended to October 31, 2024.

54. Given the approaching winter, the fact that asphalt plants will stop producing materials during the week of November 18, and with the Township's legal requirements that the work be put out for bid, it will be virtually impossible for the Township to complete the paving requirements of the current schedule until next year.

55. The asphalt plant does not reopen until mid-April of 2025.

56. Accordingly, Knox Township requests that its time be extended until June 30, 2025, to allow time for the job to be bid on, bids to be opened and accepted, and for the awarded contractor to complete the job.

57. The parties have at all times acted diligently, in good faith, and in cooperation with each other parties with regard to the removal of the three railroad crossings, and have otherwise complied with the PUC's Order.

58. Reasonable grounds exist to extend the time period for completion of the work in paragraph 6 of the PUC's Order pursuant to Pa. Code §1.15.

WHEREFORE, Petitioner Knox Township and Respondent Buffalo & Pittsburgh Railroad, Inc. respectfully requests that the Commission grant its Motion for Extension of Time.

Respectfully Submitted,

LAW OFFICE OF NICHOLAS GIANVITO, P.C

By: 
Nicholas Gianvito, Esquire
PA. I.D. #67190

Attorney for Knox Township

DICKIE, McCAMEY & CHILCOTE, P.C.

By: /s/Aaron M. Ponzo
Aaron M. Ponzo, Esquire
PA I.D. #203584

Attorney for Buffalo & Pittsburgh Railroad, Inc.

Dated: November 8, 2024

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Knox Township,

Complainant,

vs.

Docket No. C-2019-3009358

Buffalo & Pittsburgh Railroad Inc.,
Pennsylvania Department of
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Respondents.

VERIFICATION

I, Aaron M. Ponzo, counsel for Buffalo & Pittsburgh Railroad, Inc., 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: November 8 2024

By: /s/Aaron M. Ponzo
Aaron M. Ponzo, Esquire
PA I.D. #203584

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Second Motion for Extension of Time have been served this 8th day of November, 2024, upon all parties pursuant to 52 Pa. Code § 1.54 (relating to service by a party):

Service by Electronic Mail

Honorable Mary D. Long
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