

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

Public Meeting held December 19, 2024

Commissioners Present:

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

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 November 8, 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*). No Answers to the Joint Motion are noted.¹

On consideration of the Joint Motion, it shall be granted. We find that good cause has been shown for extending the time deadlines originally established in the *April 2023 Order*. We note that, by Opinion and Order entered August 1, 2024, (*Extension of Time Order #1*) and September 12, 2024, (*Extension of Time Order #2*) extensions of time were previously granted in this matter. The Joint Motion presently before the Commission requests a further extension of time, on or before June 2025, to comply.

Background

The matter before the Commission is a formal complaint (Complaint) filed by the 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).²

¹ The Joint Motion was endorsed with a Notice to Plead and includes a Certificate of Service evidencing service upon the Parties to this proceeding.

² The Complaint averred that the three overpasses involved were creating a traffic and safety problem. The Complaint alleged, in pertinent part, that, *inter alia*, there are no railroad tracks and the overpasses had not been used by the railroad for twenty

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, on June 24, 2022. Exceptions and Replies to Exceptions to the R.D. were filed. By our *April 2023 Order*, the Exceptions were denied and the R.D. adopted. The *April 2023 Order* granted the Complaint of the Township and ruled:

5. That the public crossings, Ramsaytown Road (T-841) - (DOT 863 298 X); Harriger Hollow Road (T-420) - (DOT 863 296 J); and East Bellport Road (T-405) - (DOT 863 302 K) cross, below grade, the right of way of Buffalo & Pittsburgh Railroad Inc., in Knox Township, Jefferson County, shall be altered in accordance with the work ordered herein.

April 2023 Order at Ordering ¶ 5.³

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*,

years; the overpasses are deteriorating and large pieces of concrete from the ceiling are falling on the roadway; and the overpasses are too narrow for two-lane traffic and are not wide enough to meet state requirements. Also, it was averred that large fire apparatus are concerned with clearances, and one of the overpasses is a school bus route and large pieces of concrete are falling on the roadway and the narrow width and height are creating an economical impact on the community. *See, April 2023 Order*. For relief, the Township requested that the Commission direct BPRR to remove the overpasses. (*Id.* citing Complaint at 2).

³ Pursuant to the *April 2023 Order*, BPRR was directed to demolish and remove the crossings with the work to be completed on or before, July 1, 2024, and 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. *See*, Joint Motion at ¶ 2.

Commonwealth Court Docket No. 489 CD 2023 (Middle District). On November 16, 2023, the Commonwealth Court granted BPRR's requested, "Expedited Application for Stay . . ." 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 *April 2023 Order* for 120 days. *See, Extension of Time Order #1.*

Pursuant to the resolution of the appellate litigation concerning the Commission's *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.*

On August 1, 2024, we issued our *Extension of Time Order #1*, wherein 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 *Extension of Time Order #1* noted, however, that ". . . the 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.

On September 12, 2024, we entered our *Extension of Time Order #2*, wherein we granted a second extension of time, based upon a joint motion filed by the Joint Movants. In pertinent part, we observed that the Joint Movants noted the following:

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).

See, Extension of Time Order #2 at 6.

Pursuant to the Joint Motion that is currently before the Commission, the Township and BPRR aver that a further extension of time, until on or before June, 2025, is needed to complete certain work specific to the Ramsaytown Road crossing.⁴

⁴ Plans for the three crossings were submitted and approved on June 15, 2024. *See, Motion at ¶ 30; 32.*

Discussion

A. Legal Standards

Our review of the Motion is governed, primarily, by the considerations of 52 Pa. Code § 1.15(a)(1). 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.).⁵

B. Joint Motion

The Township and BPRR are the principal stakeholder Parties to the instant Complaint. *See Extension of Time Order #1*.

The Joint Movants explain that they have proceeded with due diligence in the implementation of the *April 2023 Order's* directives. The Joint Movants advise that the Harriger Hollow Road and East Bellport Road removal and construction work has been completed, on June 15, 2024 and June 21, 2024, respectively. Joint Motion at ¶ 34.

However, Joint Movants explain that a further extension of time is requested pertaining to the Ramsaytown Road crossing based on the following considerations. The Ramsaytown Road crossing work was on schedule to be completed

⁵ 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*.

by the end of June, 2024. However, upon request of the Township due to a desire to keep the crossing open for traffic during a race held the last weekend of June, 2024, at the Thunder Mountain Speedway, work was delayed. Joint Motion at ¶ 35.

Upon resuming work at the Ramsaytown Road crossing, BPRR, in consultation with Commission Staff, concluded that additional time was needed for BPRR to complete the work related to the widths of the roadways and shoulders as well as the slopes of the embankments, and for the Township to complete the work related to the roadway and highway approaches. Joint Motion at ¶¶ 39-50.

The request for a further extension is now related to drainage culverts at the Ramsaytown Road crossing, which, due to bedrock on the embankment at one of the slopes of the crossing, limited BPRR as to where it could position the pipe and further resulted in a “slight” deviation from the 28-foot width requirement set forth in the *April 2023 Order*. Joint Motion at ¶¶ 46-51.

The Joint Movants advise that the work has been completed. Joint Motion at ¶ 51. However, given the approaching winter, the fact that asphalt plants will stop producing the weekend of November 28, 2024, and the Township’s legal requirement to place the work out for bid, it is not possible for the Township to complete the paving requirements of the *April 2023 Order* until next year, *i.e.* in 2025. Joint Motion at ¶ 54.

The Joint Motion advises that the 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 ¶ 9; *see also, Extension of Time Order #1; Extension of Time Order #2*

C. 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 continued to proceed with due diligence in this matter. The Parties, in active discussions with the I&E, have advised of unanticipated occurrences that, as a practical matter, and in furtherance of the public interest, support a need for additional time.

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 on November 8, 2024, by Knox Township and Buffalo & Pittsburgh Railroad Inc. in the matter of Knox Township: Complaint filed by Knox Township versus 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. and Knox Township are granted an extension of time, until on or before June 30, 2025, for completion of the work

as directed in our Opinion and Order entered April 20, 2023, at Docket No. C-2019-3009358.

3. 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 fluid and cursive, with the first name being more prominent.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 19, 2024

ORDER ENTERED: December 19, 2024