



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

December 10, 2021

Via E-File

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street 2nd FL
Harrisburg, PA 17120

RE: **A-2020-3020667**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Department's *Main Brief* in the above captioned matter.

I hereby certify that a copy has been sent to all parties of record as indicated by the Certificate of Service.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Eric W. White".

Eric W. White
Assistant Counsel

Cc: Parties of Record
Conrad A. Johnson, Administrative Law Judge, (Email, Word Document, and First-Class Mail)
Nicholas Miskanic, Legal Assistant (Email)
Mark Chappell, P.E., Chief, Highway Delivery Division (Email)
Gregory J. Vaughn, Grade Crossing Engineer, Central Office, KCB 7th Floor (Email)
Philip Mutunga, P.E., District Grade Crossing Engineer, District 11 (Email)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of the Department of Transportation :
of the Commonwealth of Pennsylvania for :
approval to alter the crossings where State Route :
3104 crosses, above grade, the tracks of CSX : A-2020-3020667
Transportation Inc. (DOT 584 825 U), Norfolk :
Southern Railway Company (DOT 507 455 K), :
and the Pittsburgh and Ohio Central Railroad :
Company (DOT Unknown) in the City of :
Pittsburgh, Stowe Township and McKees Rocks :
Borough, Allegheny County. :

**MAIN BRIEF OF THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF
TRANSPORTATION**

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STATEMENT OF THE QUESTIONS INVOLVED

1. Is it just and reasonable to assign the future maintenance of removing snow, ice, and debris from the sidewalks to the Department?

Suggested Answer: No

2. Is it just and reasonable to assign responsibility for highway lighting maintenance and highway lighting energization costs to the Department?

Suggested Answer: No

STATEMENT OF THE CASE

I. PROCEDURAL HISTORY

On or about July 7, 2020, the Pennsylvania Department of Transportation (“Department”) filed an Application for approval to alter the public highway bridge crossing where State Route 3104 crosses, above-grade, the tracks of Norfolk Southern Railway Company (“Norfolk Southern”), the Pittsburgh & Ohio Central Railroad Company (“POCR”), CSX Transportation, Inc. (“CSX”), the Ohio River, and numerous surface streets located in the City of Pittsburgh (“City”), Stowe Township (“Township”), and McKees Rocks Borough (“Borough”) in Allegheny County.

A field conference was held with the Public Utility Commission (“Commission”), Norfolk Southern, POCR, CSX, Peoples Natural Gas Company, Verizon, the City, the Borough, and the Department all in attendance. The issue of sidewalk maintenance and lighting maintenance and lighting energization costs were discussed. Following the field conference, the Department reached out to the City, Township, and Borough multiple times following the field conference to discuss resolving the sidewalk and lighting issues. The City was unresponsive.

To keep the project moving forward, the Commission sent notice of its proposed resolution to the parties. The Commission’s proposal was to assign the costs of sidewalk maintenance, street lighting maintenance, and energization to each municipality in proportions equal to the distance of the bridge in each entity’s borders. Objections to the notice were due prior to February 1, 2021. The City responded objecting to the Commission’s proposed resolution on January 29, 2021 and, as such, the matter was referred to the Office of Administrative Law Judge on February 4, 2021. Thereafter, the Commission’s Bureau of Investigation and Enforcement (“I&E”), the Borough, CSX, Norfolk Southern, and the Department all filed respective Notice of Appearances in this matter.

On or about March 10, 2021, the Commission issued a Secretarial Letter allowing the project to move forward generally but referred the remaining unresolved issues for resolution at hearing.

Thereafter, a Prehearing Conference Notice was issued to the parties on March 10, 2021 and a subsequent Prehearing Conference Order was issued outlining applicable procedural matters and providing a Service List of the interested parties in this matter. The Prehearing Conference Order cautioned that failure to participate in the prehearing conference would result in dismissal of their case and removal from the Service List. Finally, the Prehearing Conference Order directed the parties to file their respective prehearing conference memorandums. The Department, I&E, Borough, CSX, and Norfolk Southern all timely filed their respective prehearing conference memorandums. No submissions from any other party were submitted.

On April 13, 2021, the conference proceeded as scheduled. Respective counsel for the Department, I&E, Borough, CSX, and Norfolk Southern were present and participated in the conference. The City, despite being provided notice, did not have any representative appear on its behalf at the conference. During said conference, a litigation schedule was developed. All written testimony, including direct and rebuttal, was scheduled to be due by August 25, 2021. In addition, a formal telephonic hearing was scheduled.

On September 30, 2021, a telephonic hearing was held. Present at said hearing were the Department, CSX, Norfolk Southern, the Borough, and I&E. The parties presented evidence and argument regarding the potential allocation of future maintenance of the sidewalks and cost for energizing and maintaining the bridge lighting. At the conclusion of the hearing, the parties agreed to submit briefs on the outstanding issues by December 10, 2021.

II. POSITION OF THE PARTIES

CSX and Norfolk Southern both take the position that they should not be assigned any responsibility for the maintenance costs related to the sidewalks and lighting as they have never been assigned maintenance costs at this crossing prior and the lighting and sidewalks confer no

benefit to the railroads. As such, they contend there is no reason to now assign either railroad maintenance costs now.

I&E takes the position that the maintenance of removing snow, ice and debris from sidewalks should be assigned to the local municipalities in a proportion deemed appropriate by this proceeding. Regarding the highway lighting, I&E takes the position that the Department currently bears the costs and there is not sufficient justification to reassign the cost at this time.

The Borough takes the position that it should not be assigned the future maintenance of removing snow, ice, and debris from the sidewalks. It is their position that the Department did not meet its burden in changing the status quo. If costs are to be assigned to them, however, the Borough advocates the most just result would be to divide the costs equally across all three municipalities impacted. The Borough takes the further position that the highway lighting is a key feature of safety for drivers and not solely for pedestrians and that the cost should be assigned to the Department. In the alternative, the Borough takes the position that, if costs are not assigned to the Department, the Borough should have the option of opting out of the lighting and sidewalks entirely.

Finally, the exact position of the Township and the City are unknown as they did not participate fully in the proceeding. The Township's position is completely unknown as it did not file objections to the initial proposal of the Commission. Although the City objected to the initial proposal, it did not participate in the hearing or submit any evidence. As such, it is unclear the City's exact position beyond the initial objection.

SUMMARY OF THE ARGUMENT

The Commission is vested with the exclusive authority to order a highway-rail crossing to be altered, suspended, or abolished and to allocate costs and assign maintenance responsibilities. In evaluating a rail-highway crossing matter, the Commission is not limited to any fixed rule but must take all relevant factors into consideration, with the fundamental requirement being that its order is just and reasonable. The Commission consistently considers the following factors when allocating highway-rail crossing responsibilities and costs: 1) the party that originally built the crossing, 2) the party that owned and maintained the crossing, 3) the relative benefit conferred on each party with the construction of the crossing, 4) whether each party is responsible for the deterioration of the crossing that has led to the need for its repair, replacement, or removal, 5) and the relative benefit that each party will receive from the repair, replacement, or removal of the crossing. The Commission has considered other factors such as the availability of state and/or federal funding for a project and the general equities of the case in its determination. The Commission has wide latitude to determine which factors are relevant when allocating costs within the context of the case before it.

Considering the relevant factors, it would not be just or reasonable for the Commission to assign any future costs of the maintenance of removing snow, ice, and debris from the sidewalk on the McKees Rocks Bridge or costs relating to highway lighting maintenance or energization to the Department. Specifically, the Department did not originally construct the crossing; the Department did not benefit from the original construction of the crossing; the Department has consistently maintained the structure of the bridge but has not previously been assigned any responsibility for the maintenance of removing snow, ice, and debris from the sidewalks of the bridge by the Commission or the cost of energization; the City, Township, Borough, and Railroads derived the

greatest benefit from construction of the crossing; the Department is not responsible for the deterioration of the bridge that has led to the need for its repair, replacement, or removal in the relevant portions as it is an Act 615 bridge; the City, Township, Borough, and Railroads will derive all of the benefit from the maintenance of removing snow, ice, and debris from the sidewalks of the bridge and the existence and maintenance of highway lighting; there is no guaranteed state and/or federal funding for the maintenance of removing snow, ice, and debris from the sidewalks. Given the history and nature of the crossing, it would be inequitable to assign any responsibilities or the costs thereof to the Department.

ARGUMENT

I. LEGAL AUTHORITY

It is well established that the Commission has jurisdiction over rail-highway crossings. 66 Pa.C.S. § 2702. The Commission also has the exclusive authority to allocate the costs related to the creation, maintenance, repair, replacement, or removal of a crossing. 66 Pa.C.S. § 2704(a). In evaluating a rail-highway crossing matter, the Commission is not limited to any fixed rule but must consider all relevant factors, with the fundamental requirement being that its order is just and reasonable. *AT&T v. Pa. P. U. C.*, 737 A.2d 201, 213 (Pa. 1999). Reviewing courts will not overturn an allocation of costs or responsibilities unless it is unjust or unreasonable. *Phila. v. Pa. P.U.C.*, 676 A.2d 1298 (Pa. Cmwlth. 1995).

The Commission, while not limited to any fixed rule, has consistently relied upon certain relevant factors for the allocation of highway-rail maintenance responsibilities, repair and replacement, and costs. *N. Lebanon Twp. v. Pa. P.U.C.*, 962 A.2d 1237, 1247 (Pa. Cmwlth. 2008) (citing *Greene Twp. Bd. of Supervisors v. Pa. P.U.C.*, 668 A.2d 615, 619 (Pa. Cmwlth. 1995)). These factors include: 1) the party that originally built the crossing; 2) the party that owned and maintained the crossing; 3) the relative benefit conferred on each party with the construction of the crossing; 4) whether each party is responsible for the deterioration of the crossing that has led to the need for its repair, replacement, or removal; and 5) the relative benefit that each party will receive from the repair, replacement, or removal of the crossing. *Id.*

Despite often using these factors, the Commission is not required to set forth an analysis of these five factors as courts have held such a practice would ultimately infringe upon the discretionary aspect of the Commission's decisions. *Millcreek Twp. v. Pa. P.U.C.*, 753 A.2d 324 (Pa. Cmwlth. 2000) (quoting *AT&T v. Pa. P. U. C.*, 737 A.2d 201 (Pa. 1999)). In addition to these above-listed

factors, the Commission can also consider factors such as the availability of state and/or federal funding and the general equities of a case in reaching its decision. *Erie L.R. Co. v. Pa. P.U.C.*, 278 A.2d 188 (Pa. Cmwlth. 1971); *SEPTA v. Pa. P.U.C.*, 802 F. Supp. 1273, 1273 (E.D. Pa. 1992); *Application of the City of Wilkes-Barre*, Docket No. A-00101606, 1981 Pa. PUC LEXIS 102, *5-*6 (Order entered April 9, 1981).

In short, the Commission has wide latitude “to determine which factors are relevant in assessing costs within the context of the particular case before it.” *Bell Atl. Pa. v. Pa. P.U.C.*, 672 A.2d 352, 355 (Pa. Cmwlth. 1995).

II. IT WOULD NOT BE JUST AND REASONABLE TO ASSIGN THE FUTURE MAINTENANCE OF REMOVING SNOW, ICE, AND DEBRIS FROM THE SIDEWALKS TO THE DEPARTMENT.

Consistent with the relevant factors that the Commission should consider, the law supports a finding that it would not be just and reasonable for the Commission to assign the cost of future maintenance regarding removal of snow, ice, and debris on the sidewalk to the Department.

A. The Department did not originally construct the McKees Rocks Bridge.

The Commission should consider which party that originally built the crossing. *Greene Twp. Bd. Of Supervisors v. Pa. P.U.C.*, 668 A.2d 615, 619 (Pa. Cmwlth. 1995) (citing *Dep’t of Transp. v. Pa. P.U.C.*, 464 A.2d 645 (Pa. Cmwlth. 1983)). In each case, the Commission may consider any one of many factors; however, this factor has been relied upon in numerous cases. *See e.g., Id.*; *Borough of Bridgeville v. Allegheny County.*, Docket No. C-79091518, 1991 Pa. PUC LEXIS 82 (Order entered April 29, 1991); *In Re: Investigation into Montgomery Drive*, Docket No. I-870030, 70 Pa. PUC 321, 1989 Pa. PUC LEXIS 150 (Order entered July 26, 1989).

Here, the bridge was originally constructed by Allegheny County in 1931. (*Department St.*

2, Pg. 2, lines 3-4; Department Exhibit 2 – Order dated September 8, 1931). The initial bridge application was from the County and pursuant to an agreement with The Pennsylvania Railroad Company which had rail lines under the proposed area. (Department Exhibit 2 – September 8, 1931 Order). The bridge was then maintained by the Allegheny County until 1962. (Department Exhibit 2 – PUC Order Dated October 29, 1969, Pg. 3, lines 4-8). Thereafter, the bridge was transferred by the County to the Department under Act 615. (*Id.*).

As the Department was not involved in the construction of the bridge, this factor should weigh against the future assignment to the Department of maintenance of removing snow, ice, and debris from the sidewalks by the Commission.

B. The Department has consistently maintained the structure of the bridge but has not previously been assigned any responsibility for the maintenance of removing snow, ice, and debris from the sidewalks of the bridge by the Commission.

Which party owned and maintained the crossing is also an appropriate factor for the Commission’s consideration. See *Greene Twp. Bd. Of Supervisors* at 619. Ownership alone, however, is rarely dispositive of the issue and is often considered as part of a benefits analysis. Compare *Dep’t of Transp. v. Pa. P.U.C.*, 464 A.2d 645 (Pa. Cmwlth 1983) (Commission may allocate costs onto the Department “regardless of whether the highway involved is a state highway, county road or township road”) with *Dep’t of Transp. v. Pa. P.U.C.*, 469 A.2d 1149 (Pa. Cmwlth. 1983) (Commission may allocate cost for work done to a state route onto the local authorities based upon benefit to the latter).

Here, it is undisputed that the Department is the owner of this highway bridge as it was transferred from Allegany County pursuant to Act 615 of 1961. 36 P.S. § 1758-101 et seq. (*Department St. 2, Pg. 3, lines 8-12*). Pursuant to Act 615, certain highways and bridges were transferred from the local jurisdictions to the Department. 36 P.S. § 1758-101. McKees Rocks

Bridge was specifically named as one of the bridges. *Id.*

Since acquiring the bridge, the Department has performed numerous improvements and structural repairs to both the bridge and the sidewalks. (*Department St. 2, Pg. 2, lines 7-22; Department St. 2, Pg. 2, lines 1-2*). In addition, the Department has agreed to continue to maintain the structural integrity of the sidewalks as part of the overall bridge structure because the McKees Rocks Bridge is an “Act 615 Bridge.” (*Department St. 2, Pg. 3, lines 4-6 and 8-12*). As explained by Christopher Ciesa, the Department’s Bridge Inspector Supervisor for District 11-0, “[o]n Act 615 bridges such as this, the Department’s policy dictates only curb to curb maintenance be provided.” (*Department St. 2, Pg. 3, lines 5-6*). The Department policy, found in Publication 23, provides that general maintenance, such as general cleaning and snow removal from the sidewalks, would not be included in the “curb to curb” requirement. (*Department St. 2, Pg. 3, lines 14-19; See also Department Exhibit 4*).

Although the Department has ownership and maintenance responsibility for the structure of this bridge, the municipality is generally required to perform the maintenance of removing snow, ice, and debris from the sidewalks on Act 615 bridges. (*Department St. 1, Pg. 5, lines 4-8; Department St. 2, pg. 3, line 22*). Further, the Department should not conduct snow removal or maintenance outside of the areas used by vehicular traffic with this type of bridge. 36 P.S. § 1758-103. Act 615 specifically states, within the section discussing “Rights, obligations, liabilities, duties of state, counties, cities” that the Act:

shall not be construed: ... [t]o place upon the Commonwealth any obligation for maintenance, construction, reconstruction or resurfacing of any highway other than the base or surface courses. The maintenance authorized by this article ***shall not include snow removal***, street cleaning or maintenance or replacement of guide rail or drainage facilities and ***shall be limited to the portions available to vehicular traffic regardless of whether there are existing curbs***.

36 P.S. § 1758-103 (emphasis added). Given this, as well as the Department’s policies found in

Publication 23, the Department has never conducted such maintenance on the McKees Rocks Bridge. (*Hearing Transcript, Pg. 78, lines 5-6, Hearing Transcript, Pg. 81, lines 20-25; Hearing Transcript, Pg. 85, lines 9-17; see Department Exhibit 4*).

Although the Department owns the bridge, the nature of transfer and obligations under Act 615 and the fact that the Department has never performed the maintenance of removing snow, ice, and debris from the sidewalks, should weigh against the Commission assigning future responsibilities for the maintenance of removing snow, ice, and debris from the sidewalks of the bridge to the Department.

C. The City, Township, and Borough derived the greatest benefit from construction of the crossing.

The Commission should also consider the benefits derived from the construction of the crossing between the parties. *Greene Twp. Bd. of Supervisors* at 619.

Allegheny County initially sought to construct the bridge. (*See Department Exhibit 2 – Order dated September 8, 1931 and related Agreement*). As noted, the City, Township, and McKees Rocks Borough are all within Allegheny County. (*I&E St. 1, Pg. 2, lines 11-12*). In addition, the bridge was originally constructed to connect the Borough to the City. (*See Department Exhibit 2 – Order dated September 8, 1931 and related Agreement*). Given this connection, the greatest benefit of the crossing is to the residents of all area municipalities as it provided a more direct route between them. This factor should weigh heavily against the Commission assigning the future maintenance of removing snow, ice, and debris from the sidewalks to the Department.

D. The Department is not responsible for the deterioration of the bridge that has led to the need for its repair, replacement, or removal.

The Commission should also consider the party who is responsible for the deterioration of the crossing. *Greene Twp. Bd. of Supervisors* at 619.

The Department has maintained the structural integrity of both the bridge and sidewalk. (*Department St. 2, Pg. 2, lines 7-22; Department St. 2, Pg. 3, lines 1-2*). The 1975 PUC Order required the Department to “furnish all materials and do all work necessary to maintain the substructure and superstructure of the bridge, paving on the bridge structure, including the sidewalks, and the approaches to the bridge, and roadway and navigation lighting.” (*Department Exhibit 2 – PUC Order Dated January 20, 1975, Pg. 6*). Although the Department was specifically Ordered to maintain the structural portion of the bridge and sidewalks, no specific Order was issued regarding snow, ice, and debris removal from the sidewalks. (*See generally Department Exhibit 2 – PUC Order Dated January 20, 1975*). In addition, Mr. Helfrich with I&E stated that at the time of the field conference in this matter no one had information regarding who had historically performed such maintenance. (*Hearing Transcript, Pg. 127, lines 17-20*).

Municipalities are generally required to perform the maintenance of removing snow, ice, and debris from the sidewalks on Act 615 bridges like the McKees Rocks Bridge. (*Department St. 1, Pg. 5, lines 4-8; Department St. 2, Pg. 3, line 22*). As explained by Michael Adams, the Department’s District Maintenance Operations Engineer for District 11-0, sidewalks are considered a function of the municipalities as sidewalks are optional on bridges. (*Hearing Transcript, Pg. 83, lines 8-12*).

Given the nature of the bridge and prior identified Orders of the Commission, the historical maintenance of removing snow, ice, and debris from the sidewalks should have fallen to the municipalities and, as such, the Department has never undertaken such maintenance and should not be required to do so going forward. (*Hearing Transcript, Pg. 81, lines 20-25*). This is particularly true given the dictates of Act 615. *See* 36 P.S. § 1758-103.

The Commission has previously indicated a responsibility of the citizens of the area in the deterioration of the sidewalks. Specifically, the Commission’s 1975 Order stated that, “we are of

the further opinion that since a majority of the repairs are to the sidewalk areas of the bridge used mostly by the county residents and these repairs can be attributed to deferred maintenance, that Allegheny County should pay its share of the reconstruction costs and we shall so order.” (*Department Exhibit 2 – PUC Order Dated January 20, 1975, Pg. 4*). As such, any responsibility for the deterioration of the sidewalks, including that which is caused by winter conditions, should be attributed to the municipalities here as well.

Given the forgoing, the deterioration of the sidewalks is attributable to the municipalities and, as such, this factor should weigh heavily against the Commission assigning the future maintenance of removing snow, ice, and debris from the sidewalks to the Department.

E. The City, Township, Borough, and Railroads will derive the greatest benefit from the maintenance removing snow, ice, and debris from the sidewalks of the bridge.

“The relative benefit that each party will receive from the repair, replacement or removal of the crossing” is also a relevant factor and is applicable in the instant matter. *Greene Twp. Bd. of Supervisors* at 619.

Here, the primary benefits from the maintenance of removing snow, ice, and debris from the sidewalks will inure to the municipalities. The Department and I&E have both indicated the residents of the City, Township, and Borough will benefit the most from proper winter maintenance of the sidewalks. (*Department St. 5, Pg. 4, lines 13-15; I&E St. 1, Pg. 5, lines 14-20*). The sidewalks are for the commuting and movement of the residents. (*Hearing Transcript, Pg. 84, lines 5-9*). Mr. Helfrich with I&E also opined most regular foot traffic on the sidewalks would likely be by the local residents. (*Hearing Transcript, Pg. 103, lines 4-12*).

In addition, the Railroad will derive a secondary benefit from the proper maintenance of removing snow, ice, and debris from the sidewalks. Courts have previously found that railroads benefit when a bridge is rehabilitated or reconstructed due to the nature of a grade-separated

crossing. *See Pittsburgh & Lake Erie R.R. Co. v. Pa. P.U.C.*, 556 A.2d 944 (Pa. Cmwlth. 1989) (finding the elimination of automatic crossing signals and related maintenance as well as uninhibited use of the rail line as benefits to the railroad); *see also Norfolk & S. Ry. v. PUC*, 971 A.2d 545 (Pa. Cmwlth. 2009) (finding railroad benefited from grade-separated crossing as it eliminated potential impediments by vehicular and pedestrian traffic.). The prior railroads existing in 1969 beneath this bridge all were alleged to agree that proper maintenance of the sidewalks above their rails was in the interest of safety to the public and its employees. (*Department Exhibit 2 – PUC Order Dated October 29, 1969, Pg. 5, Lines 1-8 & 15-25; Pg. 6, Lines 1-2*).

Further, the Department's primary concern during winter events is removal of snow and ice from the roadways to ensure the safe travel of emergency responders and the public. (*Department St. 6, Pg. 1, lines 21-24*). In fact, the Department will typically not construct sidewalks on new bridges if the local jurisdiction will not agree to the maintenance of removing snow, ice, and debris from the sidewalks. (*Department St. 5, Pg. 4, lines 1-5*). As opined by Mr. Helfrich with I&E, "the local people are there and they have the ability to react quickly and appropriately to any kind of an incident which involves snow, ice or debris removal from the sidewalks." (*Hearing Transcript, Pg. 113, lines 4-8*). Further, he indicated that requiring the Department to conduct those maintenance activities would pull resources from its other ongoing work at those times. (*Hearing Transcript, Pg. 113, line 9-11*).

Given the use of the sidewalk by local residents, the secondary benefit to the Railroads, and the ability of the local jurisdictions to act faster without diverting resources from the Department's primary concern for roadway winter maintenance at those times, this factor should weigh heavily against the Commission assigning the future maintenance of removing snow, ice, and debris from the sidewalks to the Department.

F. There is no guaranteed state and/or federal funding for the maintenance of removing snow, ice, and debris from the sidewalks.

Another factor relevant to the Commission's cost allocation analysis is the availability of federal or state funding. *See PECO Energy Co. v. Pa. P.U.C.*, 791 A.2d 1155, 1164 (2002) (affirming the Commission's consideration of the lack of federal funding in allocating utility relocation costs); *Phila. v. Pa. P.U.C.*, 822 A.2d 94 (Pa. Cmwlth. 2003) (holding the Commission adequately considered the funding factor).

Here, the Department is funding the current rehabilitation project with 80% federal funds and 20% state funds. (*I&E St. 1, Pg. 4, lines 8-10*). Mr. Helfrich referenced both 28 C.F.R. § 35.133 and 23 U.S.C. § 116 in reasoning the Department should initially maintain this project as it was constructed with Federal-aid and the sidewalks would be part of that maintenance. (*I&E St. 1, Pg. 4, lines 1-4 & 8-10; Pg. 3, lines 17-22*). Although the Department is receiving federal funds related to the repairs being done, the record does not establish federal funding is available for the maintenance of removing snow, ice, and debris from the sidewalks.

Pursuant to 23 U.S.C. § 116, “[i]t shall be the duty of the State transportation department or other direct recipient to maintain, or cause to be maintained, any project constructed under the provisions of this chapter or constructed under the provisions of prior Acts.” 23 U.S.C. § 116(b). “The term “project” means any undertaking eligible for assistance under this title.” 23 U.S.C. § 101(19). In the relevant section, “[t]he term “maintenance” means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utilization of the highway.” 23 U.S.C. § 101(a)(14). Finally, “[t]he term “highway” includes — (A) a road, street, and parkway; (B) a right-of-way, bridge, railroad-highway crossing, tunnel, drainage structure including public roads on dams, sign, guardrail, and protective structure, in connection with a highway; and (C) a portion of any

interstate or international bridge or tunnel and the approaches thereto, the cost of which is assumed by a State transportation department, including such facilities as may be required by the United States Customs and Immigration Services in connection with the operation of an international bridge or tunnel.” 23 U.S.C. § 101(a)(11). Given this, the Department *may* be eligible for federal money if the sidewalk is to be considered part of the project, but only for maintenance as defined which does not specifically indicate sidewalk maintenance or, more importantly, sidewalk winter maintenance.

In addition, 28 C.F.R. § 35.133 is equally applicable to the municipalities. Pursuant to 28 C.F.R. § 35.133, “[a] public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act or this part.” 28 C.F.R. § 35.133(a). The definition of “public entity” in the relevant section, however, would apply both to State agencies, such as the Department, and any other State or local government. *See 28 C.F.R. § 35.104*. As such, this provision should hold no weight in the analysis as it can be applied equally to the Department and municipalities, especially in light of Mr. Helfrich’s testimony that he was not aware of any such situation where the above-referenced sections have been used to obligate the Department to maintain sidewalks. (*Hearing Transcript, Pg. 126, line 14*).

Because the availability of federal funding, as it relates future maintenance of removing snow, ice, and debris from the sidewalks, is unknown, this factor should not weigh in favor the Commission assigning the future winter maintenance to the Department.

G. It would be inequitable to assign any responsibilities or the costs thereof to the Department.

Finally, the Commission can also consider the general equities of the case in its determination. *Erie L.R. Co. v. Pa. P.U.C.*, 278 A.2d 188 (Pa. Cmwlt. 1971); *SEPTA v. Pa. P.U.C.*,

at 1273; *Application of the City of Wilkes-Barre*, Docket No. A- 00101606, 1981 Pa. PUC LEXIS 102, *5-*6 (Order entered April 9, 1981). A thorough review of the evidence presented in this matter, and the case law cited herein, makes clear that it would be inequitable to assign any costs or responsibilities for the maintenance of removing snow, ice, and debris from the sidewalks to the Department for this crossing.

First, the City was the only formally objecting party to the initial proposal by I&E to resolve the costs associated with the removal of snow, ice, and debris from the sidewalks in the proportions of the areas in their jurisdictions and, therefore, the reason for the hearing. (*Department St. 1, Pg. 6, Lines 7-20*). Despite this, and as noted at the hearing, the City did not participate in the proceedings despite being provided notice. (*Hearing Transcript, Pg. 43, lines 12-15*).

Further, it appears the City has the greatest portion of the bridge within its boundaries. (*Hearing Transcript, Pg. 120, Lines 13-18*). However, the exact municipal boundaries would typically be established by the municipalities during the process as noted at the hearing. (*See Hearing Transcript, Pg. 106, lines 9-14*). In short, the City appeared likely to have the highest proportion of costs associated with the maintenance of removing snow, ice, and debris from the sidewalks per the initial I&E proposal.

In objecting, however, the City took no affirmative action to let its position be known or provide information to assist the Commission in its determination at the hearing in this matter. The City, by staying silent after its objection, has caused the participating parties' greater expense by litigating a matter in which none of them initially objected. As such, it would be inequitable to relieve the City of all obligations related to the maintenance of snow, ice, and debris from the sidewalk on the portions of the bridge within its boundaries given its failure to participate and present its position for the Commission's consideration. In contrast, the Department participated fully even though it was to its potential detriment. Indeed, Mr. Helfrich of I&E was not even aware

of the PUC Order from 1975, which appears to put the structural maintenance obligations on the Department, until presentation of same by the Department. (*Hearing Transcript, Pg. 113, Lines 16-20*).

In addition, the Department took ownership of this bridge under Act 615. (*Department St. 2, Pg. 3, lines 8-12*). In that circumstance, Department policy provides that municipalities are responsible for sidewalk maintenance. (*Department St. 2, Pg. 3, lines 14-19; See also Department Exhibit 4*). In typical circumstances, the Department would have the option to not install such sidewalks if the local jurisdiction did not agree to take over maintenance after completion. (*Hearing Transcript, Pg. 83, lines 5-25; Pg. 84, lines 1-3*). Here, however, the Department did not have such option as the sidewalk already existed.

For these reasons, the Commission should weigh the equities against assigning the future maintenance of snow, ice, and debris removal from sidewalks to the Department.

III. IT IS NOT JUST AND REASONABLE TO ASSIGN RESPONSIBILITY FOR HIGHWAY LIGHTING MAINTENANCE AND HIGHWAY LIGHTING ENERGIZATION COSTS TO THE DEPARTMENT.

Consistent with the relevant factors that the Commission should consider, the law supports a finding that it would not be just and reasonable for the Commission to assign responsibility for highway lighting maintenance and highway lighting energization costs to the Department.

A. The Department did not originally construct the McKees Rocks Bridge.

As addressed fully above, the evidence demonstrates that the bridge was originally constructed by Allegheny County in 1931 and subsequently transferred to the Department under Act 615. (*Department St. 2, Pg. 2, lines 3-4; Department Exhibit 2 – Order dated September 8, 1931*). As the Department was not involved in the construction of the bridge, this factor should weigh against the Commission assigning future responsibility for highway lighting maintenance

and highway lighting energization costs to the Department.

B. The Department has previously been assigned maintenance responsibility regarding highway lighting by the Commission, but not energization costs.

“The party that owned and maintained the crossing” is a factor that may be considered in analyzing assignment of costs. *Greene Twp. Bd. Of Supervisors* at 619.

It is undisputed that the Department is the owner of this highway bridge. (*Department St. 2, Pg. 3, lines 8-12*). The Department currently provides maintenance of the roadway lighting because it was previously assigned the responsibility by the PUC in 1975. (*Department St. 3, Pg. 3, lines 10-15*). Energization costs were not specifically assigned, but the Department currently pays that expense as well. (*Department St. 3, Pg. 3, lines 15-16; Department Exhibit 2 – PUC Order Dated January 20, 1975, Pg. 6*). Although the Department owns the bridge, the lighting system covers the entire bridge and the electric service that provides the energy to the system, which is a major component, originates in McKees Rock Borough. (*Department St. 3, Pg. 6, lines 7-9*).

The Department’s prior assignment of maintenance of the lighting would generally weigh in favor of continuing such assignment. However, the Department made it clear it would construct install roadway lighting if others were made responsible for maintaining and energization costs. (*Department St. 3, Pg. 5, lines 5-14; Department Exhibit 2 – PUC Order dated October 31, 1969*). As noted in Section II.G., the 1975 PUC Order was only known due to the Department providing same. (*Hearing Transcript, Pg. 113, Lines 16-20*). It is unknown, however, if any appeal or further actions were taken after the 1975 Order as all records, if any, related to the 1975 Order were destroyed due to mold or other issues in the archives of the Commission. (*Department St. 1, Pg. 4, lines 1-2; Hearing Transcript, Pg. 113, lines 21-25*).

Given this and the lack of specific assignment of energization costs, source of energization, and lack of complete records regarding the 1975 Order initially assigning responsibility to the

Department, the Commission should weigh this factor against assignment of the cost of maintenance and energization of the highway lighting system to the Department.

C. The City, Township, and Borough derived the greatest benefit from construction of the crossing.

The Commission should also consider the benefits derived from the construction of the crossing between the parties. *Greene Twp. Bd. of Supervisors at 619*. As discussed fully in Section II of this brief, the primary benefit in constructing the crossing was to the City, Township, and Borough. This factor should also weigh heavily against the Commission assigning the future costs of maintenance and energization of the highway lighting to the Department.

D. The City, Township, and Borough will derive the greatest benefit from the maintenance and energization of the highway lighting.

“The relative benefit that each party will receive from the repair, replacement or removal of the crossing” is also a relevant factor regarding the highway lighting. *Greene Twp. Bd. of Supervisors at 619*.

In the present case, the primary benefits from the highway lighting will inure to the municipalities. It has been established that the sidewalks are for the commuting and movement of the residents. (*Hearing Transcript, Pg. 84, lines 5-9*). Testimony has also established that the lighting on the McKees Rocks Bridge is optional. (*Hearing Transcript, Pg. 74, lines 18-19*). Further, Mr. Helfrich with I&E indicated at the hearing that “[i]n terms of grade separated crossings like this bridge, we typically do not get into a requirement for lighting.” (*Hearing Transcript, Pg. 124, lines 21-23*). Mr. Helfrich with I&E also opined most regular foot traffic on the sidewalks would likely be by the local residents. (*Hearing Transcript, Pg. 103, lines 4-12; and Pg. 83, lines 10-12*). Finally, motor vehicles are required to be equipped with highlights within this Commonwealth, and therefore, the lighting primarily benefits the pedestrians using the

sidewalk. *See 75 Pa.C.S. § 4303.* The fact that the Department considers highway lighting on these bridges further bolsters the primary benefit going to pedestrians over those traveling in motor vehicles. (*Hearing Transcript, Pg. 74, line 20*).

Accordingly, the Commission should weigh this factor against the future assignment to the Department of the maintenance and energization of the highway lighting.

E. It would be inequitable to assign any responsibilities or the costs relating to highway lighting to the Department.

Finally, the Commission should also consider the general equities regarding assignment of responsibilities for highway lighting for the same reasons enumerated in Section II.G. above, relating to winter maintenance. Specifically, the City did not participate in these proceedings beyond filing its objection and it appears the City has the greatest portion of the bridge within its boundaries. (*Hearing Transcript, Pg. 120, Lines 13-18*). The Department typically does not provide lighting maintenance or pay energization costs for Act 615 bridges. (*Department St. 3, Pg. 4, lines 1-17; See Department Exhibit 5*).

As such, it should not be considered equitable to continue to place the maintenance and energization of the highway lighting on the Department.

PROPOSED FINDINGS OF FACTS

1. McKees Rocks Bridge was originally constructed by Allegheny County Department of Public Works, Bureau of Bridges in 1931. (*Department St. 2, Pg. 2, lines 3-4; Department Exhibit 2 – Order dated September 8, 1931*).
2. The initial bridge application was from Allegheny County and in agreement with The Pennsylvania Railroad Company which had rail lines under the proposed area. (*Department Exhibit 2 – September 8, 1931 Order*).
3. The bridge was then maintained by the Allegheny County until 1962. (*Department Exhibit 2*).
4. The bridge was transferred from Allegheny County to the Department under Act 615. (*Department Exhibit 2 – PUC Order Dated October 29, 1969, Pg. 3, lines 4-8*).
5. The Department is the owner of this highway bridge as it was transferred from Allegheny County pursuant to Act 615 of 1961. (*Department St. 2, Pg. 3, lines 8-12*).
6. The Department has performed numerous improvements to the bridge as well as structural repairs to both the bridge and the sidewalks. (*Department St. 2, Pg. 2, lines 7-22; Department St. 2, Pg. 2, lines 1-2*).
7. The Department has agreed to continue to maintain the structural integrity of the sidewalks as part of the overall bridge structure. (*Department St. 2, Pg. 3, lines 4-6*).
8. McKees Rocks Bridge is considered an “Act 615 Bridge” due to the transfer from the county under Act 615. (*Department St. 2, Pg. 3, lines 8-12*).
9. The Department’s policy dictates only curb to curb maintenance be provided on Act 615

bridges. (*Department St. 2, Pg. 3, lines 5-6*).

10. The Department policy is contained within its Publication 23 and states that general maintenance, such as general cleaning and snow removal from the sidewalks would not be included in the “curb to curb” required maintenance on Act 615 bridges. (*Department St. 2, Pg. 3, lines 14-19; See Department Exhibit 4*).
11. On Act 615 bridges, the municipality is generally required to perform the maintenance of removing snow, ice, and debris from the sidewalks. (*Department St. 1, Pg. 5, lines 4-8; Department St. 2, Pg. 3, line 22*).
12. The Department did not provide any snow or debris removal prior to 2020 as it understood McKees Rocks Bridge to be an Act 615 bridge. (*Hearing Transcript, Pg. 78, lines 5-6*).
13. The Department has never conducted the maintenance of snow, ice, and debris removal from the sidewalks on the McKees Rocks Bridge. (*Hearing Transcript, Pg. 81, lines 20-25; Hearing Transcript, Pg. 85, lines 9-17*).
14. The City, Township, and McKees Rocks Borough are all within Allegheny County. (*I&E St. 1, Pg. 2, lines 11-12*).
15. McKees Rocks Bridge was originally constructed from the Borough to the City. (*See Department Exhibit 2 – Order dated September 8, 1931 and related Agreement*).
16. The Department has maintained the structural integrity of both the bridge structure and sidewalk structure. (*Department St. 2, Pg. 2, lines 7-22; Department St. 2, Pg. 3, lines 1-2*).
17. Within the 1975 PUC Order, the Commission ordered the Department, *inter alia*, to “furnish all materials and do all work necessary to maintain the substructure and superstructure of the bridge, paving on the bridge structure, including the sidewalks, and the approaches to the

bridge, and roadway and navigation lighting.” (*Department Exhibit 2 – PUC Order Dated January 20, 1975, Pg. 6*).

18. The 1975 PUC Order contained no specific statement regarding snow, ice, and debris removal from the sidewalks. (*See Department Exhibit 2 – PUC Order Dated January 20, 1975*).

19. At the time of the field conference in this matter, no one had information regarding who had historically performed the maintenance of snow, ice, and debris removal. (*Hearing Transcript, Pg. 127, lines 17-20*).

20. Municipalities are generally required to perform the maintenance of removing snow, ice, and debris from the sidewalks on Act 615 bridges. (*Department St. 1, Pg. 5, lines 4-8; Department St. 2, Pg. 3, line 22*).

21. Given the nature of the bridge and prior identified Orders of the Commission, the historical maintenance of removing snow, ice, and debris from the sidewalks should have fallen to the municipalities and, as such, the Department has never undertaken the maintenance of snow, ice, and debris removal from the sidewalks. (*Hearing Transcript, Pg. 81, lines 20-25*).

22. The Commission has previously indicated the sidewalk deterioration is attributable to the county residents. (*Department Exhibit 2 – PUC Order Dated January 20, 1975, Pg. 4*).

23. Sidewalks are considered a function of the municipalities as sidewalks are optional on bridges. (*Hearing Transcript, Pg. 83, lines 8-12*).

24. The residents of the City, Township, and Borough will benefit the most from the maintenance of removing snow, ice, and debris from the sidewalks. (*Department St. 5, Pg. 4, lines 13-15; I&E St. 1, Pg. 5, lines 14-20*).

25. The sidewalks are for the commuting and movement of the residents. (*Hearing Transcript, Pg. 84, lines 5-9*).
26. The most regular foot traffic on the sidewalks would be from the local residents. (*Hearing Transcript, Pg. 103, lines 4-12*).
27. The prior railroads existing in 1969 beneath this bridge all were alleged to agree that proper maintenance of the sidewalks above their rails was in the interest of safety to the public and its employees. (*Department Exhibit 2 – PUC Order Dated October 29, 1969, Pg. 5, Lines 1-8 & 15-25; Pg. 6, Lines 1-2*).
28. The Department is funding the current rehabilitation project with 80% federal funds and 20% state funds. (*I&E St. 1, Pg. 4, lines 8-10*).
29. Mr. Helfrich was not aware of any such situation where 28 C.F.R. § 35.133 and 23 U.S.C. § 116 have been used to obligate the Department to maintain sidewalks. (*Hearing Transcript, Pg. 126, line 14*).
30. The City was the only party to formally object to the initial proposal by I&E to resolve the costs associated with the removal of snow, ice, and debris from the sidewalks in the proportions equal to the areas in each of the municipalities' jurisdictions. (*Department St. 1, Pg. 6, Lines 7-20*).
31. The City did not participate in the proceedings despite being provided notice. (*Hearing Transcript, Pg. 43, lines 12-15*).
32. It appears the City has the greatest portion of the bridge within its boundaries. (*Hearing Transcript Pg. 120, Lines 13-18*).
33. The exact municipal boundaries would typically be established by the municipalities during

the process as noted at the hearing. (*See Hearing Transcript, Pg. 106, lines 9-14*).

34. I&E was not aware of the PUC Order from 1975 until presentation of same by the Department. (*Hearing Transcript, Pg. 113, Lines 16-20*).

35. It is unknown if any appeal or further actions were taken after the 1975 Order as all records, if any, related to the 1975 Order were destroyed due to mold or other issues in the archives of the Commission. (*Department St. 1, Pg. 4, lines 1-2; Hearing Transcript, Pg. 113, lines 21-25*).

36. The Department will typically not construct sidewalks on new bridges if the local jurisdiction will not agree to the maintenance of removing snow, ice, and debris from the sidewalks. (*Department St. 5, Pg. 4, lines 1-5; Hearing Transcript, Pg. 83, lines 5-25; Pg. 84, lines 1-3*).

37. The Department currently provides maintenance of the roadway lighting as it was previously assigned the responsibility by the PUC in 1975. (*Department St. 3, pg. 3, lines 10-15*).

38. The Department currently pays energization costs although they were not specifically assigned to the Department. (*Department St. 3, Pg. 3, lines 15-16; Department Exhibit 2 – PUC Order Dated January 20, 1975, Pg. 6*).

39. The lighting system on McKees Rocks Bridge covers the entire bridge and the electric service that provides the energy to the system, which is a major component, originates in McKees Rock Borough. (*Department St. 3, Pg. 6, lines 7-9*).

40. The sidewalks on McKees Rocks Bridge are primarily for the commuting and movement of the residents. (*Hearing Transcript, Pg. 84, lines 5-9*).

41. The lighting on the McKees Rocks Bridge is considered an optional feature. (*Hearing*

Transcript, Pg. 74, lines 18-19).

42. I&E does not typically get into a requirement for lighting at grade separated crossings like the McKees Rocks Bridge. (*Hearing Transcript, Pg. 124, lines 21-23*).

43. The Department does not typically engage in the maintenance or energization costs of highway lighting on bridges such as this per the Departments policies. (*Department St. 3, Pg. 4, lines 1-17; See Department Exhibit 5*).

PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. §§102, 501, 2702 et seq.
2. The Commission has exclusive authority to allocate the costs related to the creation, maintenance, repair, replacement, or removal of this crossing. 66 Pa.C.S. § 2704(a).
3. In appropriating costs in railroad crossing cases, the Commission is not limited to any fixed rule but must take all relevant factors into consideration, with the fundamental requirement being that it is just and reasonable. *AT&T v. Pa. P. U. C.*, 737 A.2d 201, 213 (Pa. 1999); *Greene Twp. Bd. of Supervisors v. Pa. P.U.C.*, 668 A.2d 615 (Pa. Cmwlth. 1995).
4. The Commission, while not limited to any fixed rule, has consistently relied upon certain relevant factors for the allocation of highway-rail maintenance responsibilities, repair and replacement, and costs: the party that originally built the crossing; the party that owned and maintained the crossing; the relative benefit conferred on each party with the construction of the crossing; whether each party is responsible for the deterioration of the crossing that has led to the need for its repair, replacement, or removal, and; the relative benefit that each party will receive from the repair, replacement, or removal of the crossing. *N. Lebanon Twp. v. Pa. P.U.C.*, 962 A.2d 1237, 1247 (Pa. Cmwlth. 2008) (*citing Greene Twp. Bd. Of Supervisors v. Pa. P.U.C.*, 668 A.2d 615, 619 (Pa. Cmwlth. 1995)).
5. The Commission is not required to set forth an analysis of these five factors as courts have held such a practice would ultimately infringe upon the discretionary aspect of the Commission's decisions. *Millcreek Twp. v. Pa. P.U.C.*, 753 A.2d 324 (Pa. Cmwlth. 2000) (*quoting AT&T v. Pa. P. U. C.*, 737 A.2d 201 (Pa. 1999)).
6. The Commission can consider other factors such as the availability of state and/or federal

- funding for a project and the general equities of the case in reaching its decision. *Erie L.R. Co. v. Pa. P.U.C.*, 278 A.2d 188 (Pa. Cmwlt. 1971); *SEPTA v. Pa. P.U.C.*, 802 F. Supp. 1273, 1273 (E.D. Pa. 1992); *Application of the City of Wilkes-Barre*, Docket No. A-00101606, 1981 Pa. PUC LEXIS 102, *5-*6 (Order entered April 9, 1981).
7. The Commission has wide latitude “to determine which factors are relevant in assessing costs within the context of the particular case before it.” *Bell Atl. Pa. v. Pa. P.U.C.*, 672 A.2d 352, 355 (Pa. Cmwlt. 1995).
 8. Pursuant to Act 615, certain highways and bridges were transferred from the local jurisdictions to the Department. 36 P.S. § 1758-101.
 9. McKees Rocks Bridge was specifically named under Act 615. 36 P.S. § 1758-101.
 10. Act 615 specifically states, within the section discussing “Rights, obligations, liabilities, duties of state, counties, cities” that the Act: “shall not be construed: ... [t]o place upon the Commonwealth any obligation for maintenance, construction, reconstruction or resurfacing of any highway other than the base or surface courses. The maintenance authorized by this article shall not include snow removal, street cleaning or maintenance or replacement of guide rail or drainage facilities and shall be limited to the portions available to vehicular traffic regardless of whether there are existing curbs.” 36 P.S. § 1758-103.
 11. Ownership of a bridge alone is rarely dispositive of the issue and is often considered as part of a benefits analysis. *Compare Dep’t of Transp.*, 464 A.2d 645 (Pa. Cmwlt. 1983) (Commission may allocate costs onto the Department “regardless of whether the highway involved is a state highway, county road or township road”) *with Dep’t of Transp. v. Pa. P.U.C.*, 469 A.2d 1149 (Pa. Cmwlt. 1983) (Commission may allocate cost for work done to a state route onto the local authorities based upon benefit to the latter).
 12. Railroads have been generally held to benefit when a bridge is rehabilitated or reconstructed

due to the nature of a grade-separated crossing. *See Pittsburgh & Lake Erie R.R. Co. v. Pa. P.U.C.*, 556 A.2d 944 (Pa. Cmwlth. 1989) (finding the elimination of automatic crossing signals and related maintenance as well as uninhibited use of the rail line as benefits to the railroad); *See also Norfolk & S. Ry. v. PUC*, 971 A.2d 545 (Pa. Cmwlth. 2009) (finding railroad benefited from grade-separated crossing as it eliminated potential impediments by vehicular and pedestrian traffic.).

13. “It shall be the duty of the State transportation department or other direct recipient to maintain, or cause to be maintained, any project constructed under the provisions of this chapter or constructed under the provisions of prior Acts.” 23 U.S.C. § 116(b).
14. “The term “project” means any undertaking eligible for assistance under this title.” 23 U.S.C. § 101(19).
15. In the relevant section, “[t]he term “maintenance” means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utilization of the highway.” 23 U.S.C. § 101(a)(14).
16. “The term “highway” includes — (A) a road, street, and parkway; (B) a right-of-way, bridge, railroad-highway crossing, tunnel, drainage structure including public roads on dams, sign, guardrail, and protective structure, in connection with a highway; and (C) a portion of any interstate or international bridge or tunnel and the approaches thereto, the cost of which is assumed by a State transportation department, including such facilities as may be required by the United States Customs and Immigration Services in connection with the operation of an international bridge or tunnel.” 23 U.S.C. § 101(a)(11).
17. 28 C.F.R. § 35.133 is equally applicable to the Department and municipalities.
18. “A public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities

- by the Act or this part.” 28 C.F.R. § 35.133(a).
19. The definition of “public entity” as it relates to 28 C.F.R. § 35.133(a) applies to the Department and municipalities. See 28 C.F.R. § 35.104.
 20. The Commission can also consider the general equities of the case in its determination. *Erie L.R. Co. v. Pa. P.U.C.*, 278 A.2d 188 (Pa. Cmwlth. 1971); *SEPTA v. Pa. P.U.C.*, 802 F. Supp. 1273, 1273 (E.D. Pa. 1992); *Application of the City of Wilkes-Barre*, Docket No. A-00101606, 1981 Pa. PUC LEXIS 102, *5-*6 (Order entered April 9, 1981).
 21. Motor vehicles are required to be equipped with highlights within this Commonwealth. 75 Pa.C.S. § 4303.
 22. It would not be just and reasonable to assign the Department the future maintenance of snow, ice, and debris removal from the McKees Rocks Bridge. *Greene Twp. Bd. Of Supervisors v. Pa. P.U.C.*, 668 A.2d 615, 619 (Pa. Cmwlth. 1995); *Erie L.R. Co. v. Pa. P.U.C.*, 278 A.2d 188 (Pa. Cmwlth. 1971); *SEPTA v. Pa. P.U.C.*, 802 F. Supp. 1273, 1273 (E.D. Pa. 1992); *Application of the City of Wilkes-Barre*, Docket No. A-00101606, 1981 Pa. PUC LEXIS 102, *5-*6 (Order entered April 9, 1981).
 23. It would not be just and reasonable to assign the Department the future maintenance of the highway lighting and related energization costs on the McKees Rocks Bridge. *Greene Twp. Bd. Of Supervisors v. Pa. P.U.C.*, 668 A.2d 615, 619 (Pa. Cmwlth. 1995); *Erie L.R. Co. v. Pa. P.U.C.*, 278 A.2d 188 (Pa. Cmwlth. 1971); *SEPTA v. Pa. P.U.C.*, 802 F. Supp. 1273, 1273 (E.D. Pa. 1992); *Application of the City of Wilkes-Barre*, Docket No. A-00101606, 1981 Pa. PUC LEXIS 102, *5-*6 (Order entered April 9, 1981).

PROPOSED ORDERING PARAGRAPHS

IT IS ORDERED:

1. Upon completion of the construction of the project, the Pennsylvania Department of Transportation, at its sole cost and expense, shall continue to maintain and energize the navigational lighting for the entire span of the bridge.
2. Upon completion of the construction of the project, the City of Pittsburgh, McKees Rocks Borough, and Stowe Township, at their sole cost and expense, shall furnish all material and perform all work necessary thereafter to perform the maintenance of removing snow, ice, and debris from the sidewalks on the entire span of the bridge in proportions equal to the percentage of the bridge located in each respective jurisdiction.
3. Upon completion of the construction of the project, the City of Pittsburgh, McKees Rocks Borough, and Stowe Township, at their sole cost and expense, shall furnish all material and perform all work necessary thereafter to maintain the highway lighting on the entire span of the bridge in proportions equal to the percentage of the bridge located in each respective jurisdiction.
4. Upon completion of the construction of the project the City of Pittsburgh, McKees Rocks Borough, and Stowe Township, at their sole cost and expense, shall furnish all material and perform all work necessary energize the highway lighting on the entire span of the bridge in proportions equal to the percentage of the bridge located in each respective jurisdiction.
5. The Commission's Secretarial Letter, dated March 10, 2021, shall remain in full force and effect subject to the amendments regarding future maintenance, and the cost thereof, contained herein and any subsequent amendments.
6. That to the extent this Order is in conflict with Commission Secretarial Letter, dated March 10, 2021, those parts are hereby superseded.

7. That this order, insofar as it imposes costs on any of the parties, is without prejudice to a party's right to recover all or part of such costs incurred from others in accordance with any lawful agreement.

Date: _____

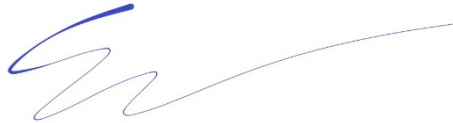
Conrad A. Johnson
Administrative Law Judge

CONCLUSION

The Department respectfully requests, that based on the foregoing arguments and the evidence presented at the hearing, the Public Utility Commission determine that it would not be just and reasonable to allocate any items of work, or the cost thereof, to the Department. Those responsibilities and costs are more properly borne by the City, Township, Borough, and or Railroads consistent with the factors discussed above.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



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DATED: December 10, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of PENNDOT for approval to : Docket No. A-2020-3020667
install new protective fence on the structure :
where State Route 3194 crosses the tracks of : Electronically Filed
CSX Transportation Inc (DOT # 584 825 U), :
Norfolk Southern Railway Company (DOT # :
507 455 K), and the Pittsburgh and Ohio :
Central Railroad Company in the City of :
Pittsburgh, Stowe Township and McKees :
Rocks Borough, Allegheny County. :

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):

Via Electronic Mail and First-Class Mail

Honorable Conrad A. Johnson
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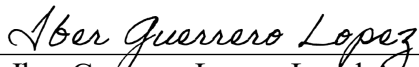
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Respectfully submitted,
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



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DATED: December 10, 2021