

**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 Transportation Inc. : A-2020-3020667
(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 :

RECOMMENDED DECISION

Before
Conrad A. Johnson
Administrative Law Judge

INTRODUCTION

By Secretarial Letter dated March 10, 2021, this matter was assigned to the Office of Administrative Law Judge (OALJ) to schedule a hearing to determine the following: assignment of year-round maintenance of the sidewalks on the McKees Rocks Bridge by removing snow, ice, and debris; assignment of applying anti-skid and de-icing material to the bridge; assignment of maintenance for lighting and providing energization for the lighting on the bridge structure; and any other unresolved issues that may arise among the parties of record.

This decision recommends assignment to the Pennsylvania Department of the Transportation (PennDOT or Department) at the Department's sole cost and expense the following: (1) the maintenance and energization for the navigational lighting and roadway lighting of the McKees Rocks Bridge; (2) year-round maintenance of the sidewalks on the McKees Rocks Bridge including removing snow, ice, and debris; (3) applying anti-skid and

de-icing material to the McKees Rocks Bridge; and (4) maintenance of the signage and signals of the McKees Rocks Bridge.

HISTORY OF THE PROCEEDING

On July 2, 2020, PennDOT submitted an application (Application) to the Pennsylvania Public Utility Commission (Commission) for approval to alter the public highway bridge crossing (McKees Rocks Bridge or bridge) where State Route 3104 crosses the tracks of CSX Transportation, Inc. (CSXT) (DOT No. 584 825 U), Norfolk Southern Railway Company (Norfolk Southern) (DOT No. 507 455 K), and the Pittsburgh & Ohio Central Railroad Company (POCR) (DOT unknown) in the City of Pittsburgh (City), Stowe Township (Township), and McKees Rocks Borough (Borough), Allegheny County. On the same date, PennDOT served its Application upon the parties involved. Specifically, PennDOT sought approval to install new protective fencing at the crossing. Receipt of PennDOT's Application by the Commission was confirmed by Secretarial Letter dated July 6, 2020.

A field investigation and conference were held on October 21, 2020. The Commission's Bureau of Technical Utility Services' Rail Safety Section (Rail Safety), PennDOT, CSXT, Norfolk Southern, POCR, the City, the Borough, Peoples Natural Gas Company, and Verizon attended the field conference. As outlined in the preliminary plans attached to the Application, PennDOT proposed to replace the expansion dam, to repair and replace the bridge deck concrete barriers, replace the protective fencing above the railroads, replace the strip seals, replace some sidewalk with concrete filled steel grate decking, repair miscellaneous steel and concrete, paint some parts of the steel structure relating to the pedestrian railing and sidewalk support, and replace the approach slab. PennDOT agreed to complete the construction project at its sole cost and expense, utilizing 80% federal funds and 20% state funds.

Future maintenance of the bridge lighting and associated bridge lighting electrical costs as well as future maintenance for removal of snow, ice and debris from the sidewalks remained undetermined at the time of the field conference. On February 4, 2021, Rail Safety

requested that the matter be referred to the OALJ to resolve future maintenance and costs associated with the bridge lighting and removal of snow, ice, and debris from the sidewalks of the bridge.

On February 5, 2021, Kayla Rost, Esquire, entered a Notice of Appearance on behalf of the Commission's Bureau of Investigation and Enforcement (I&E). On February 9, 2021, Megan M. Turnbull, Esquire, entered a Notice of Appearance on behalf of the Borough. On February 10, 2021, Jennifer Brown-Sweeney, Esquire, entered a Notice of Appearance on behalf of PennDOT. On March 17, 2021, Benjamin C. Dunlap, Jr., Esquire, entered a Notice of Appearance on behalf of CSXT and Norfolk Southern. No counsel entered an appearance for the Township or the other parties in attendance at the field investigation and conference held on October 21, 2020.

On March 10, 2021, a Secretarial Letter was issued granting PennDOT permission to submit final detailed construction plans of the proposed work and allowing PennDOT to begin construction once the plans were submitted and approved by the Commission. The Secretarial Letter referred the outstanding future maintenance items and any other unresolved items to the OALJ for adjudication. A Prehearing Conference Notice was issued to the parties on March 10, 2021, informing them that a prehearing conference would be conducted by me, as the presiding officer, on April 13, 2021, at 10:00 a.m.

On March 10, 2021, I issued a Prehearing Conference Order, outlining applicable procedural matters and reminding the parties of the date and time of the prehearing conference. A Service List was attached to the Prehearing Conference Order listing interested parties. The Prehearing Conference Order cautioned the parties that failure to participate in the prehearing conference would result in dismissal of their case and removal from the Service List. The parties were also directed to file their respective prehearing conference memorandums by April 9, 2021, outlining the issues they intended to present, a listing of their proposed witnesses and the subject of their testimony, and a list of any exhibits or documents they intended to present at the hearing in this proceeding. PennDOT, I&E, the Borough, CSXT and Norfolk Southern, the active parties, timely filed their respective prehearing conference memorandums.

The conference proceeded as scheduled. Respective counsel for PennDOT, I&E, the Borough, CSXT and Norfolk Southern were present for and participated in the conference. The following were also present for the conference: Daniel R. Helfrich, an engineer with the Commission's Rail Safety Section; Danielle Guarascio, Esquire, the Borough's Assistant Solicitor; and Caleb Merisier from ViTelecom, which is a contractor with Verizon. The City and Township received notice of the conference; however, no counsel appeared to represent the City nor Township at the conference. The litigation schedule was developed during the conference.

On May 27, 2021, I issued a Prehearing Order outlining the litigation schedule.

On June 1, 2021, a Call-In Telephone Hearing Notice was issued, scheduling the telephonic evidentiary hearing for September 30, 2021.

On July 21, 2021, I&E, PennDOT, Norfolk Southern, and CSXT submitted direct testimony. On August 25, 2021, PennDOT submitted rebuttal testimony.

On September 30, 2021, the telephonic evidentiary hearing convened as scheduled and PennDOT, I&E, Norfolk Southern, CSXT, and the Borough were represented by their respective counsel. The City and Township received notice of the hearing; however, no counsel appeared to represent the City nor Township at the hearing.

PennDOT called four witnesses: Philip Mutunga, a grade crossing engineer; Christopher Ciesa, a bridge inspection supervisor; William Lester, a transportation construction manager; and Michael Adams, a district maintenance operations engineer. PennDOT's witnesses sponsored the following written testimonies and exhibits, which were offered into evidence:

Statement 1 – Direct Testimony of Philip Mutunga

Statement 2 – Direct Testimony of Christopher Ciesa

Statement 3 – Direct Testimony of William Lester

Statement 5 – Rebuttal Testimony of Michael Adams

Statement 6 – Rebuttal Testimony of Philip Mutunga

Exhibit 1 – Project Location Map

Exhibit 2 – Various Documents concerning Complaint Docket No. 18734:

Pa. Department of Highways November 24, 1969 Memo

Commission Order dated October 31, 1969

Commission Order dated October 29, 1969

Pa. Department of Highways August 5, 1969 Memo

Commission August 1969 Questions and Procedures

Commission Order dated July 7, 1969

Commission Order dated June 9, 1969

McKees Rocks Answers to Interrogatories

City of Pittsburgh May 29, 1969 Letter.

Pa. Department of Highways April 16, 1969 Letter

Act 615 of 1961, 36 P.S. § 1758-101, *et. seq*

Pa. Department of Highways December 18, 1968 Letter

Pa. Department of Highways July 11, 1973 Memo

Allegheny County Certificate of Public Convenience

Commission September 8, 1931 Order Docket No. 5872-1931

Commission January 10, 1975 Order

Exhibit 3 – PennDOT/Borough January 13, 2021 Winter Service Agreement

Exhibit 4 – Appendix B – Department Responsibilities Beyond Curb Lines

Exhibit 5 – PennDOT Design Manual Chapter 4 Subsection H – Roadway
Lighting

CSXT offered verified Statement 1 – Direct Written Testimony of Derek Mihaly,
a project manager in CSXT’s Design and Construction Department.

Norfolk Southern offered verified Statement 1 – Direct Written Testimony of
Douglas Shawn, a senior public improvements engineer.

I&E called one witness, Rail Safety's civil engineer consultant, Dan Helfrich, who sponsored his written testimony as I&E's Statement 1.

The above written testimonies and exhibits of the respective parties were admitted into evidence. The Borough did not call any witnesses nor offer any evidence.

On December 10, 2021, PennDOT, I&E and the Borough filed their respective Main Briefs. Reply Briefs were due 10 days after December 10, 2021; however, none were filed.

By an interim order entered on December 23, 2021, the record was closed. The record in this proceeding consists of the Application, transcripts of the prehearing conference and evidentiary hearing, written testimonies and exhibits, briefs, Secretarial Letters, and Orders issued herein. This case is procedurally ready for ruling.

FINDINGS OF FACT

McKees Rocks Bridge Ownership and Description

1. The McKees Rocks Bridge was originally constructed by Allegheny County in 1931. PennDOT St. 3 at 2; Exhibit 2 – *Order Dated September 8, 1931*.

2. PennDOT is the current owner of the McKees Rocks Bridge as it was transferred by Allegheny County to the Pennsylvania Department of Highways, PennDOT's predecessor, pursuant to Act 615 of 1961, 36 P.S. § 1758-101, *et. seq.* PennDOT St. 2 at 3.

3. The McKees Rocks Bridge spans the Ohio River, a navigable waterway. PennDOT St. 1 at 2 and Exhibit 1.

4. The McKees Rocks Bridge (SR 3104) provides traffic connection between Ohio River Boulevard (SR 0065) and Island Avenue (SR 0051) through the City of Pittsburgh, Stowe Township, and McKees Rocks Borough in Allegheny County. PennDOT St. 1 at 2.

5. The McKees Rocks Bridge is approximately 5,800 feet long and consists of steel spandrel-braced deck arches, steel-trussed through arches, Warren deck trusses, and an elevated concrete structure. PennDOT St. 1 at 2-3; I&E St.1 at 2.

6. The average daily traffic volume over the McKees Rocks Bridge is 22,180 vehicles for segments 0020 and 0030; 11,509 vehicles for segment 0010; and 10,671 vehicles for segment 0011. PennDOT St. 1 at 3.

Commission Orders Relevant to McKees Rock Bridge

7. At Complaint Docket No. C-18734 (Docket C-18734), the Commission initiated an investigation and issued orders on June 9, 1969, July 7, 1969, October 29, 1969, October 31, 1969, and January 20, 1975 (*1975 Order*), pertinent to assignment of repair work, maintenance and costs associated with the McKees Rocks Bridge. PennDOT St. 1 at 3, St. 4 at 5 and Exhibit 2.

8. The Pennsylvania Department of Highways (Department), the City, Borough, Township, and the predecessors of CSXT, Norfolk Southern, POCR, were parties to the proceedings at Docket C-18734. PennDOT Exhibit 2.

9. The Commission's *1975 Order* noted the Department's position on the proceedings as follows:

- (a) Department "agrees to assume cost of installing the bridge lighting upon the condition that maintenance and energizing be done by others."
- (b) Department "would leave allocation of future maintenance cost of the structure to the discretion of the Public Utility Commission."
- (c) Department "only agrees to assume the cost of highway lighting, not the navigation lighting."

- (d) Department was of the opinion that “Legislative Act 615 puts the responsibility only of the maintenance of the roadway base and surface course between the existing curbs on the department.”

PennDOT Exhibit 2 – *1975 Order* at 2-3 and St. 1 at 4.

- 10. The Commission’s *1975 Order* in relevant part ordered:

- 6. That upon completion of the reconstruction of the improvement and its opening to public use, Department of Transportation, at its sole cost and expense, shall furnish all material 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.

PennDOT Exhibit 2 – *1975 Order* ¶ 6 and St. 1 at 4.

- 11. The Commission does not review a party’s economic status when assigning costs and/or maintenance responsibilities for a highway-railroad crossing. Tr. 94-95.

PennDOT’s Application and Secretarial Letter

- 12. On July 2, 2020, PennDOT submitted an Application for approval to alter the public highway crossing, the McKees Rocks Bridge, where State Route 3104 crosses the tracks of CSXT (DOT No. 584 825 U), Norfolk Southern (DOT No. 507 455 K), and the POCR (DOT unknown) in the City of Pittsburgh, Stowe Township, and McKees Rocks Borough, Allegheny County. Application ¶ 5.

- 13. PennDOT’s Application includes bridge sidewalk repair/replacement at various locations, sidewalk railing paint, full-depth concrete pavement reconstruction of approximately 1145' of mainline SR 3104 and the 4 ramps at Helen Street, ADA ramps at Helen Street, approach slab replacement, approach pavement work at intersections with SR 65 & SR 51, barrier repair, expansion joint repair, deck overhang repair, backwall repair, protective fencing installation above railroads, and miscellaneous construction. PennDOT St 1 at 3.

14. On July 2, 2020, PennDOT served its Application upon the parties involved. July 6, 2020 Secretarial Letter.

15. A field investigation and conference were held on October 21, 2020. March 10, 2020 Secretarial Letter.

16. Rail Safety, PennDOT, CSXT, Norfolk Southern, POCR, the City, Borough, Peoples Natural Gas Company, and Verizon attended the field conference. *Id.*

17. Under its Application, PennDOT will complete the bridge construction project at its sole cost and expense, utilizing 80% federal funds and 20% state funds. Application ¶ 7; I&E St. 1 at 4.

18. PennDOT agrees to maintain the McKees Rocks Bridge structure itself as well as the structural integrity of the sidewalks. Penn DOT St. 2 at 3 and St. 5 at 2.

19. On March 10, 2021, a Secretarial Letter was issued granting PennDOT permission to submit final detailed construction plans of the proposed work and allowing PennDOT to begin construction once the plans were submitted and approved by the Commission. Secretarial Letter dated March 10, 2021; I&E St. 1 at 2-3.

20. The March 10, 2021, Secretarial Letter referred future maintenance and costs associated with the bridge lighting, removal of snow, ice, and debris from the bridge's sidewalks, and any other unresolved issues that may arise to the OALJ for resolution. *Id.*

PennDOT's Winter Maintenance at the McKees Rocks Bridge

21. PennDOT performs winter maintenance on the roadway from segment 0020 offset 0000, at the intersection of state route 3104 and Helen Street, to segment 0030 offset 3864, and at the intersection of state route 3104 and state route 65. PennDOT St. 1 at 4.

22. PennDOT has a winter services agreement with the Borough for the Borough to provide snow removal, ice, and debris from the roadway of the McKees Rocks Bridge. PennDOT St. 1 at 4 and Exhibit 3.

23. PennDOT's winter service agreement with the Borough does not include snow and ice removal from the sidewalks of the bridge. PennDOT St. 1 at 4.

24. The record is silent as to which party currently provides snow, ice, and debris removal from the McKees Rocks Bridge. Tr. 96.

McKees Rocks Bridge Lighting Systems

25. The lighting system for the entire McKees Rocks Bridge is on a contiguous system originating in the Borough and is served by Duquesne Light Company. PennDOT St. 3 at 2, 6.

26. The McKees Rocks Bridge has two types of lighting systems: navigational lighting and roadway lighting. I&E St. 1, at 6; Tr. 90, 97.

27. Navigational lighting relates to river travel or traffic and consists of channel markers, and red and green lights mounted on the piers for river barge traffic or boat traffic. Tr. 90.

28. Highway or roadway lighting are the actual lights which run along the bridge and light the roadway. *Id.*

29. PennDOT currently maintains all roadway and navigational lighting on the McKees Rocks Bridge, including re-lamping of all fixtures, repair and replacement of accident-damaged facilities, and energy costs. PennDOT St. 3 at 3.

30. PennDOT currently pays for maintenance and energization of both the roadway and navigational lighting of the McKees Rocks Bridge. *Id.*

31. As the owner of the McKees Rocks Bridge, PennDOT is responsible for the maintenance and cost of the bridge's navigational lighting and energization. I&E St. 1 at 6; 1975 Order; 33 CFR 118.1.

32. PennDOT admits it is responsible for the maintenance and cost of the McKees Rocks Bridge's navigational lighting. Tr. 89.

33. PennDOT admits that its future maintenance obligations include the substructure, superstructure, parapets, structural sidewalk components, fencing and deck of the McKees Rocks Bridge, as well as the remainder of the improvements including the roadway pavement, highway approaches, roadway surface, and drainage facilities. PennDOT St. 5 at 2.

34. The ancillary features of the bridge that PennDOT admits it is responsible for include the structural integrity of the stairways and stairway railings, the structural integrity of the bridge ramps leading to the surface streets, as well as the longitudinal white and yellow pavement markings. *Id.*

35. Traffic signs and signal signage for the McKees Rocks Bridge are required by the federal Manual on Uniform Traffic Control Devices (MUTCD) based upon the design of the bridge. Tr. 75.

36. Roadway signage is an ancillary feature of the McKees Rocks Bridge. I&E St. 1 at 3.

37. The highway lighting of the McKees Rocks Bridge is a safety feature that benefits the general public. Tr. 101-102.

McKees Rocks Bridge Sidewalks

38. The sidewalks of the McKees Rocks Bridge are available for use by any pedestrian traversing the bridge. Tr. 69, 102-103.

39. Maintenance of the sidewalks of the McKees Rocks Bridge includes maintaining the structural integrity of the sidewalks as well as reasonable snow, ice, and debris removal from the sidewalks. Tr. 85; Penn DOT St. 2 at 3 and St. 5 at 2; I&E St. 1 at 5.

40. PennDOT's use of federal funds to alter or repair the McKees Rocks Bridge requires PennDOT to make provisions for the snow, ice, and debris removal from the sidewalks of the bridge. Tr. 112; I&E St. 1 at 4-5; 23 U.S. Code § 116.

41. PennDOT as a public entity and owner of the McKees Rocks Bridge is required to maintain the bridge in a condition accessible to pedestrians. Tr. 108; I&E St. 1 at 4-5; 28 U.S. Code § 35.133.

42. The McKees Rocks Bridge spans the boundaries of the City, Borough, and Township, however, the record is silent as to the exact lengths of the bridge's sidewalks that are within the respective boundaries of the three municipalities. Tr. 105.

Norfolk Southern and CSXT –No Assignments

43. Norfolk Southern is the owner and operator of one of the railroad lines under the McKees Rocks Bridge. Norfolk St. 1 at 1.

44. Norfolk Southern has two tracks under the McKees Rocks Bridge which run an average of 35 trains a day at 40 mph. *Id.* at 2.

45. In proceedings at Docket C-18734, the Commission did not assign Norfolk Southern any responsibility or costs for the sidewalk maintenance or lighting of the McKees Rocks Bridge. PennDOT Exhibit 2 –1975 Order.

46. CSXT is the owner and operator of one of the lines under the subject highway bridge. CXT St. 1 at 1.

47. CSXT has 4 tracks under the subject bridge, 2 main lines, a lead track, and a spur track; an average of 34 trains traverse the crossing each day at a maximum speed of 50 mph. *Id.*

48. In proceedings at Docket C-18734, the Commission did not assign CSXT any responsibility or costs for the maintenance of the sidewalks or lighting of the McKees Rocks Bridge. PennDOT Exhibit 2 –1975 Order.

DISCUSSION

Legal Standards

A. Jurisdiction

Section 2702 of the Public Utility Code (Code), 66 Pa.C.S. § 2702, vests the Commission with exclusive jurisdiction to determine the points at which and the manner in which a rail-highway crossing is to be constructed, relocated, altered, protected, suspended, or abolished, as well as the manner and conditions under which a rail-highway crossing will be maintained, operated, and protected to prevent accidents and promote public safety. The Commission determines which parties are “concerned” or “interested” within the meaning of 66 Pa.C.S. § 2702(c). *County of Chester v. Pa. Pub. Util. Comm’n*, 408 A.2d 552 (Pa. Cmwlth. 1979). The Commission possesses exclusive authority to determine and order which parties should perform such work at a crossing and which parties will maintain the crossing in the future, all to effectuate the prevention of accidents and promote public safety. *SEPTA v. Pa.*

Pub. Util. Comm'n, 592 A.2d 797 (Pa. Cmwlth. 1991). Additionally, the Commission possesses the exclusive authority to assess the costs of any ordered maintenance performance upon the concerned parties in such proper proportions as it may determine. 66 Pa.C.S. § 2704(a). In apportioning maintenance costs, the Commission is not limited to any fixed rule, but takes all relevant factors into consideration; the only requirement is that its order must be just and reasonable. *Pa. Dep't of Transp. v. Pa. Pub. Util. Comm'n*, 346 A.2d 371 (Pa. Cmwlth. 1975). The assignment of future maintenance of any portion of a crossing remaining in place falls logically within the parameters of “reasonable terms and conditions.” 66 Pa.C.S. § 2702(c).

When allocating highway-rail crossing responsibilities and costs, the Commission considers such factors as (1) which party built the crossing; *Pa. Dep't of Transp. v. Pa. Pub. Util. Comm'n*, 464 A.2d 645 (Pa. Cmwlth. 1983); (2) whether the roadway existed before or after the construction of the crossing, *Id.*; (3) relative benefit conferred on each party with the construction of the crossing; *Pa. Dep't of Transp. v. Pa. Pub. Util. Comm'n*, 346 A. 2d 371 (Pa. Cmwlth. 1975); (4) whether a party is responsible for the deterioration of the crossing which has led to the need for its repair, replacement, or removal; *Pa. Dep't of Transp. v. Pa. Pub. Util. Comm'n*, 469 A.2d 1149 (Pa. Cmwlth. 1983); and (5) the relative benefit that each party will receive from the repair, replacement, or removal of the crossing; *Pittsburgh & L. E. R. Co. v Pa. Pub. Util. Comm'n*, 556 A.2d 944 (Pa. Cmwlth. 1989). While the Commission has considered these factors to be relevant in the past, this in no way limits the factors that the Commission can consider. *PECO Energy Co. v. Pa. Pub. Util. Comm'n*, 791 A.2d 1155 (Pa. 2002); *AT&T v. Pa. Pub. Util. Comm'n*, 737 A.2d 201 (Pa. 1999); *Bell Atl.-Pa., Inc., v. Pa. Pub. Util. Comm'n*, 672 A.2d 352 (Pa. Cmwlth. 1996).

B. Burden of Proof

Complainant, as the party seeking affirmative relief from the Commission, bears the burden of proof. *See* 66 Pa.C.S. § 332(a). In the present matter, PennDOT, as applicant, is the party seeking affirmative relief from the Commission and, therefore, is the party with the burden of proof.

The term “burden of proof” means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (October 6, 1976) (*Feinstein*). The term “preponderance of the evidence” means one party must present evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party. *Id.* Accordingly, one must review the record in this case to determine whether PennDOT has satisfied its burden of proof. If the review indicates the burden has been satisfied, one must then determine whether Respondent has submitted evidence of co-equal value or weight to refute Complainant’s evidence. If this has occurred, the burden of proof cannot be satisfied, unless the party bearing the burden of proof presents additional evidence. *Morrissey v. Pa. Dep’t of Highways*, 225 A.2d 895 (Pa. 1967); *Burleson v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *affirmed*, 461 A.2d 1234 (Pa. 1983).

Furthermore, one must exercise care to ensure the decision of the Commission is supported by substantial evidence in the record. *See, e.g.*, Section 704 of the Administrative Agency Law, 2 Pa.C.S. § 704; *Yellow Cab Co. v. Pa. Pub. Util. Comm’n*, 524 A.2d 1069 (Pa. Cmwlth. 1987). The Pennsylvania appellate courts have defined the term “substantial evidence” to mean such relevant evidence that a reasonable mind may accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super, 1961); and *Murphy v. Pa. Dep’t of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984). The Commission has held that a complainant, to establish a sufficient case against a utility and satisfy the burden of proof, must show the utility is responsible or accountable for the problem described in the complaint. *Feinstein*.

Issues Presented

PennDOT, as the owner of the McKees Rocks Bridge since 1962, filed its Application with the Commission on July 2, 2020, proposing and detailing a construction project to perform repairs to the bridge. PennDOT agreed to complete the construction project at its sole

cost and expense, utilizing 80% federal funds and 20% state funds. After the field investigation and conference conducted on October 21, 2020, two issues remained which the parties could not resolve concerning the construction project: (1) assignment of responsibility for bridge's highway lighting maintenance and energization costs and (2) assignment of the future maintenance and cost of removing snow, ice, and debris from the sidewalks of the bridge. *See* I&E St. 1 at 2-3 and Brief at 5-6.

The Parties' Positions – Bridge Lighting and Energization

A. PennDOT – Bridge Lighting and Energization

PennDOT posits the following:

[t]he 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.

PennDOT Brief at 5. The above factors are set forth in *Greene Twp. Bd. of Supervisors v. Pa. Util. Comm'n*, 668 A.2d 615, 619 (Pa. Cmwlth. 1995) (*Greene*). Repeatedly relying on *Greene* in its brief, PennDOT argues it should not be responsible for the bridge's lighting for the following reasons:

(1) It is undisputed that PennDOT is the current owner of the bridge; however, the bridge was originally constructed by Allegheny County in 1931.

(2) The Commission's *1975 Order* assigned responsibility for the bridge's roadway lighting to PennDOT, even though at the time PennDOT had made it clear that it would install lighting if others were made responsible for maintenance and energizations costs.

(3) PennDOT currently maintains the bridges' roadway lighting and pays the energization costs, but the Commission's *1975 Order* did not specifically assign energization costs to PennDOT.

(4) The primary benefit in constructing the crossing was to the City, Township and Borough.

PennDOT Brief at 18-20.

B. Borough – Bridge Lighting and Energization

The Borough argues that “the Department did not meet its burden of proof to establish justification for transferring responsibilities to the local municipalities.” Borough Brief at 5. Under the Commission's *1975 Order*, “the Department was assigned the responsibility, at its sole cost and expense, to maintain and energize the lighting on the roadways and sidewalks for the bridge, along with the navigation lighting system attached to the bridge structure.” *Id.* at 6-7. The Borough points to federal regulations, 33 CFR § 118.1, as requiring PennDOT, as the owner and operator of the bridge, to maintain navigational lighting. *Id.* at 7. The Borough contends that PennDOT is currently maintaining all roadway and navigational lighting on the bridge and pays energization costs of the roadway and navigational lighting systems. *Id.* 7. The Borough submits PennDOT has not provided a justifiable reason for reappointment of these responsibilities to the municipalities, notwithstanding any of PennDOT's internal policies to the contrary. *Id.*

C. I&E – Bridge's Lighting and Energization

“I&E submits . . . PennDOT should remain responsible for the costs and maintenance associated with the navigational lighting, and I&E takes no position regarding whether PennDOT provided enough support or evidence to shift the costs and maintenance of the highway lighting to the local municipalities.” I&E Brief at 6. While I&E took no position on PennDOT establishing its burden of proof, I&E offered the following:

Mr. Helfrich [I&E's witness] opined that lighting on a highway portion of a bridge is a safety feature that benefits the travelling public, and thus, barring any agreement or other legal document, the safety component should be the responsibility of the primary maintainer of the bridge structure. [footnote omitted].

I&E Brief at 12.

Resolution of Bridge Lighting Maintenance and Energization Costs

Initially, PennDOT took the position that it would not have installed the bridge's lighting system had it known it would have to maintain and energize the system under the Commission's *1975 Order*. See Written Testimony of Transportation Construction Manager William J. Lester, St. 3 at 5. Thus, PennDOT asserted, "Based on the Department's Design Manuals [PennDOT's Exhibit 5] and established Lighting Policy it is very clear the local municipalities should be responsible for the maintenance and energy costs of any and all lighting systems." *Id.*

During the evidentiary hearing, PennDOT abandoned its earlier position, in part, and admitted as follows: "According to CFR 118.1, the Department is responsible for the ownership and maintenance costs of the navigation lighting over navigable waters on bridges owned and operated by the Department." Tr. 89.

Section 118.1 of the Code of Federal Regulations, Title 33. Navigation and Navigable Waters provides as follows:

All persons owning or operating bridges over the navigable waters of the United States or any international bridge constructed after March 23, 1906, shall maintain at their own expense the lights and other signals required by this part.

33 CFR 118.1.

Mr. Lester distinguished navigational lighting from roadway lighting:

Well, the - the two different lighting systems on the bridge, there's one system that is navigation lighting, which corresponds to river travel or river traffic. They are - they consist of channel markers, red and green lights that are mounted onto the piers for river barge traffic or boat traffic. There's also the highway lighting, which lights the roadway.

Tr. 90.

Under federal regulation, PennDOT, as the owner and operator of the bridge, is required to maintain the bridge's navigational lighting. Implicit in the federal regulation is PennDOT's duty to energize the lighting. It would be absurd to conclude that PennDOT is only required to affix and maintain the lighting equipment and not energize that lighting at PennDOT's expense. Accordingly, in the ordering paragraphs below, I will recommend as just and reasonable the assignment of McKees Rocks Bridge's navigational lighting maintenance and energization costs to PennDOT.

Turning to the bridge's roadway lighting, the Commission's *1975 Order* specifically assigned the maintenance of the bridge's roadway light to PennDOT at its sole cost and expense. PennDOT Exhibit 2 –*1975 Order* at ¶ 6. PennDOT's witness, Mr. Lester, claims, “[i]t is unclear why the Department pays to energize the lighting system.” St. 3 at 3. However, PennDOT concedes, “[t]he Department's prior assignment of maintenance of the lighting would weigh in favor of continuing such assignment.” PennDOT Brief at 19. Notably, PennDOT is currently paying for the maintenance and energization costs of the bridge's roadway lighting. PennDOT St. 3 at 3.

PennDOT claims the *1975 Order* did not specifically assign energization costs to the Department. PennDOT St. 3 at 3 and Brief at 19. As noted above, the *1975 Order* did not specifically reference energization costs of the navigational lighting. So too here, it would be an absurd result to construe the *1975 Order* as not requiring PennDOT to be responsible for bearing the costs of energizing the bridge's highway lighting. Thus, the absence of a specific assignment

of energization costs for the bridge's highway lighting to PennDOT in the *1975 Order* does not warrant reassignment to the municipalities.

PennDOT also argues that the municipalities and their residents benefit the most from the bridge's lighting and the bridge's roadway lighting is optional. Tr. 66-67, 74-75. Therefore, the maintenance and energization costs of the bridge's lighting should be reassigned to the municipalities. PennDOT's argument overlooks three important factors: (1) PennDOT is the owner of the bridge; (2) the bridge's roadway lighting is a safety feature for pedestrians and motorists; and (3) the general public traverses the bridge not just local residents. PennDOT St. 2 at 3; Tr. 101-102. Additionally, the Commission's prior orders state that the bridge's reconstruction projects, including the roadway lighting, "are necessary or proper for the service, accommodation, convenience, or safety of the public." PennDOT's Exhibit 2 –October 29, 1969 Order at 6 and October 31, 1969 Order at 4.

Here, note is taken of PennDOT's reliance on *Greene* to reallocate the bridge's maintenance and costs. In *Greene* the township appealed the Commission's decision directing the township to pay the railroad 50% of the costs of removing an existing bridge and constructing a new roadway. *Greene* was decided under Section 2704(a) of the Code, 66 Pa.C.S. § 2704(a), which authorizes the Commission to determine who shall bear the costs associated with the construction, relocation, alteration, protection, or abolition of a railroad crossing and the facilities at or adjacent to such crossing. In the present case, PennDOT is not seeking reallocation of construction costs. PennDOT has agreed to complete the bridge construction project at its sole cost and expense, utilizing 80% federal funds and 20% state funds. Application ¶ 7; I&E St. 1 at 4. Instead PennDOT is seeking reassignment of the bridge's lighting maintenance and sidewalk maintenance, that is snow removal, and the costs associated with those maintenances.

Since PennDOT raises issues related to the assignment and costs of the bridge's lighting and sidewalks, the factors that PennDOT advances under the court's decision in *Greene* are not dispositive. Rather, the provisions of Section 2702(b) of the Code 66 Pa.C.S. § 2702(b) control the outcome.

Section 2702(b) provides, in relevant part, as follows:

The Commission is hereby vested with exclusive power to . . . determine and prescribe by . . . order . . . the manner in which such crossings may be constructed, altered, relocated, suspended or abolished, and *the manner and conditions in or under which such crossings shall be maintained, operated, and protected to effectuate the prevention of accidents and the promotion of the safety of the public.*

66 Pa.C.S. § 2702(b) (emphasis added).

The overarching purpose of Section 2702(b) is “*to effectuate the prevention of accidents and the promotion of the safety of the public.*” (emphasis added). Again, the roadway lighting of the bridge is a safety feature not just for the local residents of the municipalities. The general public benefits from the bridge’s roadway lighting. In 1975, after considering PennDOT’s opposition to the assignment, the Commission assigned the maintenance of the bridge’s roadway lighting to PennDOT, as the owner of the McKees Rocks Bridge. While not specifically delineated in the *1975 Order*, a reasonable inference may be drawn that the Commission assigned the maintenance of the bridge’s roadway lighting to PennDOT to prevent accidents and promote the public safety.

The Commission has discretion to review and amend its *1975 Order*. However, as an administrative agency, the Commission must render consistent opinions and should either follow, distinguish, or overrule its own precedent. *Bell Atl.-Pa, Inc. v. Pa. Pub. Util. Comm'n*, 672 A.2d 352 (Pa. Cmwlth. 1996). Here PennDOT, as the party with the burden of proof, has not provided substantial evidence or a rationale for the Commission to distinguish or overrule its earlier assignment of the bridge’s roadway lighting to PennDOT. PennDOT having failed to establish its burden of proof, in the ordering paragraphs below, I will recommend as just and reasonable the assignment of McKees Rocks Bridge’s roadway lighting maintenance and energization costs to PennDOT.

The Parties' Positions – Bridge Sidewalk Maintenance

A. PennDOT – Bridge Sidewalk Maintenance

PennDOT argues “the municipality is generally required to perform maintenance of removing snow, ice, and debris from the sidewalks of Act 615 bridges.” PennDOT St. 1 at 5 and St. 2 at 3. In support of this argument PennDOT submits the following:

[f]urther, 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*).

PennDOT Brief at 10-11.

PennDOT suggests it has no obligation under Act 615 to remove snow for the bridge’s sidewalks. PennDOT argues that this lack of obligation combined with “the fact that the Department has never performed 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.” PennDOT Brief at 11. PennDOT adds the following:

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*).

PennDOT Brief at 13.

B. Borough – Bridge Sidewalk Maintenance

Concerning the bridge’s sidewalk maintenance, the Borough submits the following:

[g]enerally, municipalities are not responsible for sidewalk snow, ice, and debris removal throughout their boundaries, except for their own property. The Department’s Application does not address the dedication of the sidewalks in municipalities. There is no evidence of record that the Borough has ever maintained the snow, ice, or debris on bridge sidewalks. Furthermore, the sidewalks should not be the responsibility of the Borough of McKees Rocks.

Alternatively, should the Commission decide to transfer the responsibilities and costs onto the three (3) municipalities, it should be done so equally. Per Section 2702(a) of the Public Utility Code, the Commission has jurisdiction over construction, alteration, relocation, suspension, and abolishment (collectively, “alterations”) of rail-highway crossings. 66 Pa. C.S. § 2702 cited by *Norfolk S. Ry. Co. v. Public Utility Commission*, 77 A.3d 619, 620–21 (Pa. Cmwlth. 2013). It has long been established that, in apportioning costs in highway-rail crossing cases, the Commission is not limited to any fixed rate but takes all relevant factors into consideration, with the fundamental requirement being that its order be just and reasonable. *Department of Transportation v. Public Utility Commission*, 346 A.2d 371, 375 (Pa. Cmwlth. 1975).

McKees Rocks Brief at 7-8.

C. I&E – Bridge Sidewalk Maintenance

Relying upon the testimony of its witness, Mr. Helfrich, I&E posits the municipalities should be responsible for snow, ice, and debris removal from the sidewalks of the bridge. Mr. Helfrich testified as follows:

[t]wo provisions provide the FHWA (Federal Highway Administration) with authority to require snow removal from pedestrian facilities. The maintenance requirements of 23 U.S. Code § 116 apply to all transportation facilities that are constructed with federal funds. Section 116 requires a State DOT to maintain projects constructed with Federal-aid funds or enter into a maintenance agreement with the appropriate local officials where such projects are located. The second provision involves a pedestrian accessibility issue for which FHWA has oversight responsibility. In accordance with 28 CFR § 35.133, [*sic*] a public agency must maintain its sidewalks in an accessible condition for all pedestrians with only isolated or temporary interruptions in accessibility. Part 4 of the maintenance obligation includes reasonable snow removal efforts.

Based on the significant federal funding for this project, initially PennDOT should bear that responsibility for snow, ice, and debris removal from the sidewalks until a final resolution is reached among the parties or a Commission order directs future maintenance for snow, ice, and debris removal from the sidewalks on the McKees Rocks Bridge.

In this case, the bridge is located in the City of Pittsburgh, Stowe Township and McKees Rocks Borough, and their residents will benefit the most from the proper winter maintenance of the sidewalks. Therefore, it is incumbent upon those parties to bear their respective share of the future costs and future responsibility for snow, ice, and debris removal from the sidewalks to the extent of their respective municipal boundaries for the accommodation, convenience, and safety of the public.

I&E St. 1 at 4-6. I&E's position relies upon Mr. Helfrich's opinion that most of the people walking over the bridge would be residents of the municipalities. Tr. 103.

Resolution of Bridge Sidewalk Maintenance and Costs

In *Pennsylvania Dep of Transp. v. Pa. Pub. Util. Comm'n*, 346 A. 2d 371 (Pa. Cmwlth. 1975) (*PennDOT v. PUC*), the Commonwealth Court addressed PennDOT's first argument that it has no obligation under Act 615 to provide snow removal from the bridge. In *PennDOT v. PUC*, the Department claimed that its obligation for bridge maintenance was limited to the base of surfaces of the bridges, that is, curb to curb. The court ruled, "[t]he provision relied upon by the Commonwealth in our view obviously refers to the Commonwealth's obligation with respect to the maintenance of highways, not bridges." *Id.* at 374. Accordingly, PennDOT's first argument is without merit.

Next both PennDOT and I&E contend that the municipalities must be responsible for the maintenance and cost of snow, ice, and debris removal from the sidewalks of the bridge because residents of the municipalities benefit the most from such maintenance. Here, the contention of PennDOT and I&E is outweighed by other relevant factors.

PennDOT is the owner of the McKees Rocks Bridge. PennDOT received federal funding for the construction project for the McKees Rocks Bridge. As the recipient of this federal funding, PennDOT is required to comply with Section 116 of the Federal-Aid Highways Act, 23 U.S. Code § 116(b), which provides as follows:

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 [23 USC §§ 101 *et seq.*] or constructed under the provisions of prior Acts.

23 U.S. Code § 116(b). Maintenance of the sidewalks of the McKees Rocks Bridge includes maintaining the structural integrity the sidewalks as well as reasonable snow, ice, and debris removal from the sidewalks. Tr. 85; Penn DOT St. 2 at 3 and St. 5 at 2; I&E St. 1 at 5.

Under federal regulation, PennDOT, as a public entity and owner of the bridge, is required to maintain the bridge in a manner that is accessible to persons with disabilities. Federal law provides as follows:

(a) 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 this part.

28 C.F.R. § 35.133(a). Here “the Act” refers to the Americans with Disabilities Act, (ADA) 42 U.S.C. 12101-12213 and 47 U.S.C. 225 and 611.

PennDOT argues that the federal regulation equally applies to municipalities as follows:

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*).

PennDOT Brief at 16.

Here, PennDOT’s argument would require the Commission (1) to overlook the fact that PennDOT owns the bridge and (2) to construe the federal regulation as not intended to refer to the public entity that owns the facilities and equipment. Such a construction would be contorted and unreasonable. Clearly, the public entity intended in the federal regulation, 28 C.F.R. § 35.133(a), is the entity that owns the facilities and equipment and not just any public entity that may be in the vicinity of the facilities and equipment. Accordingly, to comply with the federal regulation, PennDOT would be required to maintain the bridge by providing for snow, ice, and debris removal in order for the bridge to be “readily accessible to and usable by persons with disabilities.”

Considering the above analysis, in the ordering paragraphs below, I will recommend as just and reasonable the assignment of McKees Rocks Bridge's sidewalk maintenance, including removal of snow, ice and debris to PennDOT at its sole costs and expense.

Bridge Signals and Signage

In their respective Prehearing Memorandums neither PennDOT nor the Borough specifically raised the bridge's signals and signage as an issue. Instead PennDOT identified the issues as follows:

The Department believes that the outstanding issues in this case are 1) which entity or entities will be responsible for future maintenance of the sidewalk, and 2) which entity or entities will be responsible for lighting maintenance and lighting energization costs.

PennDOT Prehearing Memorandum ¶ 9. The Borough identified the issues as follows:

The Borough anticipates the need to negotiate terms associated with maintenance of the right-of-way and the related separation of duties associated with this project. The Borough also reserves the right to raise further issues and to respond to all matters raised by other parties.

Borough Prehearing Memorandum ¶ II.

I&E identified multiple issues, including "which party or parties shall be assigned future maintenance and costs associated with road signage and supports" I&E Prehearing Memorandum ¶ 1(1)g.

In this case the evidence on the signals and signage is scant. In his written testimony, PennDOT's engineer, Michael Adams, stated the municipalities should be responsible for the bridge's ancillary features, which would include traffic signals and signage because the municipalities are responsible for the ownership and maintenance of the traffic signals. PennDOT St. 5 at 2-3. During the hearing, Mr. Adams testified that, based upon the design of

the bridge, traffic signs and signals for the McKees Rocks Bridge are required by the federal Manual on Uniform Traffic Control Devices (MUTCD). Tr. 75. However, Mr. Adams did not know whether PennDOT had ever paid for any energy costs for the bridge. Tr. 81.

I&E's witness Mr. Helfrich, in his written testimony, stated roadway signage is an ancillary feature of the McKees Rocks Bridge. I&E St. 1 at 3. Mr. Helfrich testified that future maintenance of the bridge's ancillary features was assigned to PennDOT under Paragraph 18 of the March 10, 2021 Secretarial Letter. *Id.* At the hearing, Mr. Helfrich testified that PennDOT had not provided any justification for transferring responsibility for the bridge's ancillary features. Tr. 101. In the briefs, only I&E mentions the traffic lights and signals by summarizing PennDOT's limited testimony on signals and signage. PennDOT's Brief at 11.

Without any substantial evidence on the issue of bridge's signals and signage, I am compelled to conclude that PennDOT failed to carry its burden of proof. Thus the Secretarial Letter assigning future maintenance of the bridge's ancillary features to PennDOT must remain in effect. Accordingly in the ordering paragraphs below, I will recommend as just and reasonable the assignment of McKees Rocks Bridge's signals, signage and signal energization maintenance and costs to PennDOT.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and the subject matter of this proceeding. 66 Pa. C.S. § 2702.
2. The Pennsylvania Department of the Transportation as the proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a).
3. The Commission has exclusive jurisdiction over all rail-highway crossings in the Commonwealth and the approaches thereto. 66 Pa.C.S. § 2702; *SEPTA v. Pa. Pub. Util. Comm'n*, 592 A.2d 797 (Pa. Cmwlth. 1991).

4. The Commission has the exclusive authority to order the construction, reconstruction, alteration, repair, protection or abolition of rail-highway crossings, as well as the exclusive authority to determine and order which parties should perform such work at the crossings and which parties shall maintain the crossings in the future, all to effectuate the prevention of accidents and to promote the safety of the public. 66 Pa.C.S. § 2702.

5. The Commission has the exclusive authority to assess the costs of the work ordered performed upon the parties to this proceeding in such proper proportions as it may determine. 66 Pa.C.S. § 2702(c).

6. In apportioning costs in rail-highway crossing cases, the Commission is not limited to any fixed rule, but takes into consideration all relevant facts, the only requirement being that its order must be just and reasonable. *Pa. Dep't of Transp. v. Pa. Pub. Util. Comm'n*, 346 A. 2d 371 (Pa. Cmwlt. 1975).

7. The allocation of costs for this project and the assignment of future maintenance to PennDOT as set forth in the following Recommended Order is fair, just, and equitable to each party. *Id.*

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That upon completion of the construction project at the crossings where State Route 3104 (McKees Rocks Bridge) crosses, above-grade, the tracks of Norfolk Southern Railway Company (DOT 507 455 K), the Pittsburgh & Ohio Central Railroad Company (Unknown DOT), CSX Transportation, Inc. (DOT 584 825 U), the Ohio River and numerous surface streets located in the City of Pittsburgh, Stowe Township and McKees Rocks Borough, all in Allegheny County, the Pennsylvania Department of Transportation, at its sole cost and

expense, shall continue to maintain and energize the navigational lighting and roadway lighting for the entire span of the bridge.

2. That upon completion of the construction of the project at the McKees Rocks Bridge, the Pennsylvania Department of Transportation, at its 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.

3. That upon completion of the construction of the project, the Pennsylvania Department of Transportation, at its sole cost and expense, shall furnish all material and perform all work necessary thereafter to maintain the signals, signage, and signal energization of the McKees Rocks Bridge.

4. That upon completion of the construction of the project at the McKees Rocks Bridge, the Pennsylvania Department of Transportation, at its sole cost and expense, shall furnish all material and perform all work necessary for applying anti-skid and de-icing material to McKees Rocks Bridge

5. That 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 of the Secretarial Letter 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: March 17, 2022

/s/
Conrad A. Johnson
Administrative Law Judge