



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

June 9, 2023

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 please find the Joint Petition for Settlement on behalf of the Commonwealth of Pennsylvania, Department of Transportation (PennDOT) and Supporting Statements of Settlement from the interested parties for filing in the above-referenced matter.

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

Respectfully,

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

Eric W. White
Assistant Counsel

cc: Parties per Certificate of Service
Nicholas Miskanic, Legal Assistant (Email: nmiskanic@pa.gov)
Mark Chappell, P.E., Chief, Highway Delivery Division (Email)
Gregory J. Vaughn, Grade Crossing Engineer, Central Office, KCB 7th Floor (Email)
Philip Mutunga, District Grade Crossing Engineer, District 11-0 (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, : A-2020-3020667
the tracks of CSX Transportation Inc. (DOT 584 :
825 U), Norfolk Southern Railway Company :
(DOT 507 455 K), and the Pittsburgh and Ohio : **Electronically Filed**
Central Railroad Company (DOT Unknown) in :
the City of Pittsburgh, Stowe Township and :
McKees Rocks Borough, Allegheny County. :

JOINT PETITION FOR SETTLEMENT

I. PROCEDURAL HISTORY

1. This proceeding concerns the application of the Commonwealth of Pennsylvania, Department of Transportation (PennDOT), filed July 2, 2020, for the alteration of the 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. (CSXT), the Ohio River and numerous surface streets located in the City of Pittsburgh (City), Stowe Township (Township), and McKees Rocks Borough (Borough), all in Allegheny County, referred to herein as the “Crossing.”

2. The Public Utility Commission’s (Commission) Bureau of Technical Utility Services- Rail Safety Section (Rail Safety), Norfolk Southern, POCR, CSXT, Peoples Natural Gas Company, Verizon, the City, the Borough, and the PennDOT attended a project field conference on Wednesday, October 21, 2020.

3. The non-resolution of all issues required referral of the matter to Office of the Administrative Law Judge on or about February 4, 2021.

4. A March 10, 2021 Secretarial Letter granted PennDOT permission to submit final detailed constructions plans of the proposed work and allowed PennDOT to begin construction once the plans were submitted and approved by the Commission. The Secretarial Letter also referred the outstanding future maintenance items and any other unresolved items to the Office of Administrative Law Judge for adjudication.

5. A telephonic evidentiary hearing took place on September 30, 2021 before Administrative Law Judge Conrad A. Johnson. PennDOT, the Commission's Bureau of Investigation and Enforcement (I&E), Norfolk Southern, CSXT, and the Borough were represented by their respective counsel. The City and Township did not participate in the hearing.

6. Administrative Law Judge Johnson issued a Recommended Decision on March 18, 2022.

7. PennDOT filed Exceptions to the Recommended Decision on April 7, 2022.

8. The Commission's June 16, 2022 Order and Opinion granted in part and denied in part PennDOT's Exceptions.

9. Thereafter, PennDOT filed a Petition for Reconsideration and/or Clarification on or about July 1, 2022.

10. The Commission then issued an Order and Opinion on or about October 27, 2022 granting reconsideration and referring the matter back to the Office of Administrative Law Judge for further proceedings regarding the responsibility for the future maintenance and expenses of the traffic signals and signage on the bridge.

11. On November 2, 2022, Norfolk Southern and CSXT submitted a letter to the Commission indicating that the companies would not participate in any further call-in telephonic

prehearing conferences on remand or any further hearings or proceedings in this matter because the companies were not involved in the remaining issue being considered.

12. On November 3, 2022, the ALJ issued a Prehearing Conference Order on Remand scheduling the conference for December 22, 2022 and ordering that the Parties submit Prehearing Conference memoranda prior to said hearing.

13. PennDOT, I&E, the Borough, and the City all timely filed prehearing conference memorandums.

14. The conference proceeded as scheduled.

15. Counsel for PennDOT, I&E, the Borough, and the City were present and participated in the conference (Parties).

16. The Township, despite receiving notice of the conference, did not appear or have counsel present.

17. The parties developed a litigation schedule during the Prehearing Conference with a Telephonic Evidentiary hearing scheduled for May 9, 2023.

18. The Telephonic Evidentiary hearing occurred on May 9, 2023 with the pre-served written testimony offered by the Parties being admitted into the record.

19. The Parties resolved the outstanding issues amicably during the hearing.

20. Administrative Law Judge Johnson concluded the hearing and Ordered that the Parties submit a Petition for Joint Settlement on or before June 9, 2023.

II. PROPOSED STIPULATED FACTS

1. By letter dated July 2, 2020, PennDOT submitted an application (Application) for approval to alter the public highway bridge crossing where State Route 3104 crosses the tracks of CSXT (DOT No. 584 825 U), Norfolk Southern (DOT No. 507 455 K), and the PORC (DOT

unknown) in the City of Pittsburgh, Stowe Township, and McKees Rocks Borough, Allegheny County.¹

2. On February 4, 2021, Rail Safety requested referral of the matter to the Office of Administrative Law Judge, noting that the City of Pittsburgh objected to the proposed resolution of the future maintenance and costs associated with the bridge lighting and removal of snow, ice, and debris from the sidewalks.

3. On March 10, 2021, a Secretarial Letter granted PennDOT permission to submit final detailed constructions plans of the proposed work and allowing PennDOT to begin construction once the plans are submitted and approved by the Commission. The Secretarial Letter referred the outstanding future maintenance items and any other unresolved items to the Office of Administrative Law Judge for adjudication.²

4. An evidentiary hearing occurred on September 30, 2021 whereas representatives from PennDOT, I&E, Norfolk Southern, CSXT, and McKees Rocks Borough attended.

5. On March 18, 2022, Administrative Law Judge Conrad Johnson issued a Recommended Decision. The decision recommended assignment to PennDOT at its sole cost and expense the following items: (1) the maintenance and energization for the navigational lighting and roadway lighting of the McKees Rocks Bridge; (2) the year-round maintenance of the sidewalks on the McKees Rocks Bridge, including removing snow, ice, and debris; (3) the application of anti-skid and de-icing material to the McKees Rocks Bridge; and (4) the maintenance of the signage, signals, and signal energization of the McKees Rocks Bridge.³

¹ See generally *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. (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, A-2020-3020667.*

² See generally March 10, 2021 Secretarial Letter.

³ See generally Recommended Decision dated March 18, 2022.

6. On April 7, 2022, PennDOT filed Exceptions to the Recommended Decision.

7. On June 16, 2022, the Commission issued an Opinion and Order. The Opinion and Order (1) adopted, as modified by the June 16, 2022 Order, the ALJ's Recommended Decision; and (2) granted, in part, and denied, in part, the Exceptions filed by PennDOT. Specifically, the Commission ordered that upon completion of the construction of the project at the McKees Rocks Bridge, the City, the Borough, and the Township would each be responsible for all materials and maintenance of removing snow, ice, and debris from the sidewalks on the bridge within each of their respective municipal boundaries. In addition, the Commission adopted the ALJ's recommendations to assign to PennDOT the costs of the maintenance and energization for the navigational lighting and roadway lighting of the bridge, and the maintenance of the signage and signals of the bridge.⁴

8. On July 1, 2022, PennDOT filed a Petition for Reconsideration and/or Clarification of the June 16, 2022 Opinion and Order.

9. On July 14, 2022, the Commission issued an Opinion and Order granting PennDOT's Petition for Reconsideration pending a review of the merits of the Petition.

10. On October 27, 2022, the Commission issued an Opinion and Order granting PennDOT's Petition and referring the sole issue regarding the responsibility for the future maintenance and expenses of the traffic signals and signage on the bridge to the OALJ to conduct an evidentiary hearing, develop a complete and comprehensive record of the issue, and prepare and issue a Recommended Decision for the Commission's consideration and disposition.⁵

11. On November 2, 2022, Norfolk Southern and CSXT submitted a letter to the Commission indicating that the companies would not be participating in any further call-in

⁴ See generally Opinion and Order dated June 16, 2022.

⁵ See generally Opinion and Order dated October 27, 2022.

telephonic prehearing conference on remand or any further hearing or proceedings in this matter because the companies were not involved in the remaining issue being considered.

12. On November 3, 2022, Administrative law Judge Johnson issued a Prehearing Conference Order on Remand scheduling the conference for December 22, 2022 and ordering the Parties to submit Prehearing Conference memoranda prior to said hearing.

13. The conference proceeded as scheduled.

14. Counsel for PennDOT, I&E, the Borough, and the City attended and participated in the conference.

15. The Township, despite receiving notice of the conference, did not appear or have counsel present.

16. The parties developed a litigation schedule during the Prehearing Conference with a Telephonic Evidentiary hearing scheduled for May 9, 2023.

17. The Telephonic Evidentiary hearing occurred on May 9, 2023 with the pre-served written testimony offered by the Parties being admitted into the record.

18. During that hearing, the Parties were able to resolve the outstanding issues amicably.

19. PennDOT provided the testimony of Philip Mutunga, Seth Michaels, Edward Miller, and Steve Gault.⁶

20. Philip Mutunga is a District 11-0 Grade Crossing Engineer and is a registered professional engineer.⁷

21. Seth Michaels is an Operations Section Supervisor and is responsible for overseeing

⁶ See generally PennDOT Statement Nos. 1, 2, 3, and 4; PennDOT Exhibits AA-EE

⁷ PennDOT Statement No. 1, pgs. 2-3.

pavement marking and signing throughout District 11.⁸

22. Edward Miller is a Senior Civil Engineer Supervisor who supervises professional and technical staff engaged in design, review, and operations of traffic signal systems, traffic impact studies, and highway occupancy permit applications. He is a registered professional engineer in Pennsylvania.⁹

23. Steve Gault is the Chief of Transportation Systems Management and Operations Arterials and Planning Section, and oversees traffic signals, arterial operations, and planning and funding. Mr. Gault is a registered professional engineer in Pennsylvania.¹⁰

24. I&E presented the testimony of Daniel R. Helfrich.¹¹

25. Mr. Helfrich is a licensed professional engineer with the Commission's Bureau of Technical Utility Services, Rail Safety Section.¹²

26. The City of Pittsburgh presented the testimony of Michael Maloch.¹³

27. Mr. Maloch is a Municipal Traffic Engineer for the Department of Mobility and Infrastructure, and is responsible for the engineering, design, operation, and maintenance of all City of Pittsburgh-owned traffic signals, signage, and pavement markings.¹⁴

28. McKees Rocks Borough presented the testimony of Ryan Hughes.¹⁵

29. Mr. Hughes is an employee of McKees Rocks Borough in the Street Department.¹⁶

30. The subject crossing, the McKees Rocks Bridge (SR 3104), provides traffic connection between Ohio River Boulevard (SR 0065) and Island Avenue (SR 0051) through the

⁸ PennDOT Statement No. 2, pg. 2.

⁹ PennDOT Statement No. 3, pgs. 2-3.

¹⁰ PennDOT Statement No. 4, pgs. 2-3.

¹¹ I&E Statement No. 2.

¹² I&E Statement No. 2, pg. 1.

¹³ City Statement No. 1.

¹⁴ City Statement No. 1, pg. 1.

¹⁵ Borough Statement No. 1.

¹⁶ Borough Statement No. 1, pg. 1.

City of Pittsburgh, Stowe Township, and McKees Rocks Borough. It is approximately 5,800 feet long that consists of steel spandrel-braced deck arches, steel-trussed through arches, Warren deck trusses, and an elevated concrete structure.¹⁷

31. State Route 3104 intersects with Ohio River Boulevard (SR 65) on the Pittsburgh side of the bridge and with Island Avenue (SR 51) on the McKees Rocks Borough side of the bridge.¹⁸

32. The McKees Rocks Bridge does not have any traffic signals. Instead, the signals are located within the vicinity of the bridge on the western side by State Route 51 and on the eastern side by State Route 65.¹⁹

33. The March 10, 2021 Secretarial Letter which established the Commission's jurisdiction over this matter did not extend to the traffic signals where the McKees Rocks Bridge intersects with Island Avenue or State Route 65.²⁰

34. The traffic signals located within the vicinity of the Bridge are not within the bounds of Station 2+00 and 58+00.²¹

35. Local municipalities typically own traffic signals as established by the Vehicle Code and PennDOT regulations, specifically Chapter 212.²²

36. PennDOT possesses a Traffic Signal Maintenance Agreement with McKees Rocks Borough that established the future ownership and maintenance of the traffic signal at the intersection of State Route 51 and the McKees Rocks Bridge.²³

¹⁷ PennDOT Statement No. 1, pg. 3.

¹⁸ PennDOT Statement No. 1, pg. 5.

¹⁹ PennDOT Statement No. 1, pg. 5; PennDOT Statement No. 3, pg. 4; PennDOT Statement No. 4, pg. 5; PennDOT Exhibits AA, BB, and CC.

²⁰ See generally March 10, 2021 Secretarial Letter.

²¹ PennDOT Statement No. 1, pg. 6; PennDOT Exhibits AA and BB; I&E Statement No. 2, pg. 1; I&E Exhibit A.

²² PennDOT Statement No. 4, pg. 6.

²³ PennDOT Statement No. 4, pg. 8; PennDOT Exhibit DD.

37. PennDOT does not issue permits for traffic signals in cities of the first and second class and therefore does not issue permits in the City of Pittsburgh.²⁴

38. The City currently maintains the traffic signals at the intersection of the McKees Rocks Bridge and State Route 65, and represents it will continue maintaining this infrastructure.²⁵

39. Signage related to traffic signals are the responsibility of the permittee for the traffic signal.²⁶

40. Permits do not exist for other signs on the Bridge.²⁷

41. The McKees Rocks Bridge currently has approximately twenty (20) signs.²⁸

42. The signage currently on the McKees Rocks Bridge (using photos dated May 20, 2021) include overhead signs for the Helen Road ramp, overhead guide signs approaching the intersections at each end of the Bridge, speed limit signs, and overhead lane use control signs approaching the intersections at each end of the Bridge.²⁹

43. The overhead guide signs and river crossings signs on the McKees Rocks Bridge are PennDOT's responsibility.³⁰

44. PennDOT is willing to assume the responsibility for the remaining signs on the McKees Rock Bridge.

III. PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. §§ 2702 and 2704.

²⁴ PennDOT Statement No. 4, pg. 7.

²⁵ City Statement No. 1, pg. 3.

²⁶ PennDOT Statement No. 4, pg. 13.

²⁷ PennDOT Statement No. 4, pg. 13.

²⁸ PennDOT Statement No. 2, pg. 4.

²⁹ PennDOT Statement No. 4, pg. 14.

³⁰ PennDOT Statement No. 2, pg. 4.

2. The Commission has the authority to order the construction, reconstruction, alteration, relocation, repair, maintenance, protection, suspension or abolition of railroad crossings, and the authority to determine and order which concerned parties should perform such work, in order to prevent accidents and promote the safety of the public. 66 Pa.C.S. §§ 2702 and 2704.

3. The jurisdictional limits taken by the Commission in this matter are within the bounds of Station 2+00 and 58+00.

4. The Borough, the City, PennDOT, and I&E, are all concerned parties within the meaning of 66 Pa.C.S. §§ 2702 and 2704.

5. “It is the policy of the Commission to encourage settlements.” 52 Pa. Code § 5.231(a).

6. The Joint Petition for Settlement is in the public interest as its terms provide for the future maintenance of all outstanding matters with respect to the Crossing.

IV. SETTLEMENT TERMS

Pursuant to Section 2702 (relating to “Construction, relocation, suspension and abolition of crossings”) of the Public Utility Code (“Code”), 66 Pa.C.S. § 2702, the undersigned parties to this proceeding agree in this Joint Petition for Settlement as follows:

1. The Parties, by the signatures of their representatives below, stipulate to the facts as presented in the Proposed Stipulated Facts within this Joint Petition for Settlement.

2. The Parties agree to perform their responsibilities specified herein in a combined effort to ensure proper future maintenance at the crossing.

3. PennDOT, at its sole cost and expense, will assume future maintenance of the signage on the McKees Rock Bridge.

4. The Parties agree that the McKees Rock Bridge contains no traffic signals and that the jurisdictional limits established in the March 10, 2021 Secretarial Letter do not extend to include the traffic signals at the intersections of State Route 3104 and Ohio River Boulevard (SR 65) and State Route 3104 and Island Avenue (SR 51). Therefore, no assignment of traffic signals is necessary in this matter.

5. The nearby traffic signals are not part of this agreement and will remain owned and maintained under applicable law or agreement.

6. Subject to a party's right to withdraw from this Joint Petition for Settlement pursuant to Paragraph 8 below, the Parties hereto agree to abide by the responsibilities and financial obligations delineated in this Joint Petition for Settlement.

7. This Joint Petition for Settlement is contingent upon its approval pursuant to Sections 2702 of the Code and the issuance of a Commission Secretarial Letter or Order accepting and approving the same.

8. The Parties agree that any party may petition the Commission for rehearing if the Commission Secretarial Letter or Order substantively modifies the terms of this Joint Petition for Settlement. In that event, any party may give notice to the other parties that it is withdrawing from this Joint Petition for Settlement. Such notice must be in writing and must be given within twenty (20) days of the issuance of any Initial or Recommended Decision or any Commission Order or Secretarial Letter which adopts this Joint Petition for Settlement with substantive modifications of its terms. The consequence of any party withdrawing from this Joint Petition for Settlement as set forth above is that all issues associated with the requested relief presented in the proceeding will be fully litigated unless otherwise stipulated between the parties and all obligations of the parties as set forth above to each other are terminated and of no force and effect.

9. The parties executing this Joint Petition for Settlement agree that its purpose is to act as a General Release, except as specifically noted within, and is to settle, compromise and release all claims, actions, suits and rights whatsoever existing between and on behalf of those respective parties as set forth above, their successors and assigns, including all such claims, actions, suits and rights whatsoever; whether known or unknown to those parties, except to enforce the terms of this Joint Petition for Settlement.

10. The benefits and obligations of this Joint Petition for Settlement shall be binding upon the successors and assigns of the parties to this Joint Petition.

11. This Joint Petition may be signed in counterparts and all signatures attached hereto will be considered as originals.

V. PROPOSED ORDER

In order to effectuate the parties' Joint Petition for Settlement, the undersigned parties request that the Commission issue a Secretarial Letter or Order in substantially the following form. The Commission will serve the public interest by adopting this Joint Petition. The Joint Petition for Settlement will save the parties the time and expense they would incur further litigating this matter before the Commission. Since all of the parties agree to the terms of the Joint Petition for Settlement, adopting it will eliminate the possibility of any appeal from the Commission Secretarial Letter or Order, thus saving the parties the additional time and expense they might incur in such an appeal. Adopting this Joint Petition for Settlement will further the statutory provisions of 66 Pa.C.S. § 2702 *et seq.*, in regard to the public convenience and safety, and further the Commission policy of encouraging settlements. 52 Pa. Code § 5.231(a). The parties hereto therefore request that the Commission adopt the following ordering paragraphs in accordance with the Joint Petition for Settlement of the parties and in furtherance of the public interest and safety:

1. That the Joint Petition for Settlement in this proceeding is hereby approved and adopted.

2. That this Order is without prejudice to the right of any party to enforce any lawful agreement allocating costs among the parties.

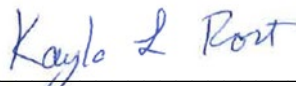
3. The Proposed Stipulated Facts, as stipulated by the Parties in their Joint Petition for Settlement, are hereby adopted.

4. The Commonwealth of Pennsylvania, Department of Transportation, at its sole cost and expense, will assume future maintenance of signage on the McKees Rock Bridge.

5. The McKees Rock Bridge contains no traffic signals within the jurisdictional limits of the Commission.


6. The nearby traffic signals, which are beyond the jurisdictional limits established in the March 10, 2021 Secretarial Letter, will remain owned and maintained under applicable law or agreement.

Date: June 8, 2023



Kayla L. Rost, Esquire
*Counsel for the Commission's Bureau of
Investigation and Enforcement*

Date: June 8, 2023



Eric W. White, Esquire
*Counsel for the Commonwealth of
Pennsylvania, Department of Transportation*

Date: June 8, 2023



Megan M Turnbull, Esquire
McKees Rock Borough Solicitor

Date: June 8, 2023



Lawrence H. Baumiller, Esquire
City of Pittsburgh Department of Law

**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. (DOT 584 825 U), Norfolk Southern	:	Docket No. A-2020-3020667
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.	:	

**THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S
STATEMENT IN SUPPORT OF JOINT PETITION FOR SETTLEMENT**

The Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) offers this Statement in Support of the Joint Petition for Settlement (“Joint Petition” or “Settlement”) in the above-captioned matter. This Settlement is the result of a successful negotiation among all interested parties and resolves the outstanding issues raised in this remanded matter. Specifically, this Settlement resolves the future cost and maintenance responsibilities of the traffic signage on the McKees Rocks Bridge.

I. Legal Standard

The Commission possesses exclusive authority in the Commonwealth to order the construction, alteration, protection, suspension, or abolition of a rail-highway crossing, as well as the exclusive authority to determine and order which parties should perform such work at the crossing and which parties must maintain the crossing in the future, all to effectuate the prevention of accidents and promote the public safety. 66 Pa.C.S. §§ 2702, 2704.

“It is the policy of the Commission to encourage settlements.” 52 Pa. Code § 5.231(a). The Commission has stated that “it is not [its] intention to require a hearing if one is not necessary . . . [t]he parties may file a joint petition for settlement.” *Yellow Dog Road*, Docket No. I-2014-2405193 (Order entered May 17, 2018). “Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative hearing resources and are often preferable to those achieved at the conclusion of a fully-litigated proceeding.” *Hamill Road*, Docket No. A-2011-2258876 (Recommended Decision dated July 29, 2014; Order dated Sept. 11, 2014); *see also* 52 Pa. Code § 69.401.

The Commission must review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004); *Pennsylvania Public Utility Commission v. C.S. Water and Sewer Associates*, 74 Pa. P.U.C. 767 (1991). In a rail proceeding, “the basis for the Commission’s action is the public interest, and the standard to be applied is ‘the prevention of accidents and the promotion of the safety of the public.’” *Pittsburgh R. Co. v. Pennsylvania Public Utility Com.*, 182 A.2d 80, 84 (Pa. Super. 1962) (citing *Pennsylvania Railroad Co. v. Pa. P.U.C.*, 35 A.2d 588 (Pa. Super. 1944)).

II. Procedural History

By letter dated July 2, 2020, the Pennsylvania Department of Transportation (“PennDOT”) submitted an application (“Application”) for approval to alter the public highway bridge crossing where State Route 3104 crosses the tracks of CSX Transportation, Inc. (“CSXT”) (DOT No. 584 825 U), Norfolk Southern Railway Company (“NS” or “Norfolk Southern”) (DOT No. 507 455 K), and the Pittsburgh & Ohio Central Railroad

Company (“POHC”) (DOT unknown) in the City of Pittsburgh, Stowe Township, and McKees Rocks Borough, Allegheny County.¹

On March 10, 2021, a Secretarial Letter was issued granting PennDOT permission to submit final detailed constructions plans of the proposed work and allowing PennDOT to begin construction once the plans are submitted and approved by the Commission. The Secretarial Letter referred the outstanding future maintenance items and any other unresolved items to the Office of Administrative Law Judge for adjudication.²

On March 18, 2022, Administrative Law Judge Conrad Johnson issued a Recommended Decision. The decision recommended assignment to PennDOT at its sole cost and expense the following items: (1) the maintenance and energization for the navigational lighting and roadway lighting of the McKees Rocks Bridge; (2) the year-round maintenance of the sidewalks on the McKees Rocks Bridge, including removing snow, ice, and debris; (3) the application of anti-skid and de-icing material to the McKees Rocks Bridge; and (4) the maintenance of the signage, signals, and signal energization of the McKees Rocks Bridge.³ PennDOT filed Exceptions to the Recommended Decision.

On June 16, 2022, the Commission issued an Opinion and Order. The Opinion and Order (1) adopted, as modified by the June 16, 2022 Order, the ALJ’s Recommended Decision; and (2) granted, in part, and denied, in part, the Exceptions filed by PennDOT. Specifically, the Commission ordered that upon completion of the construction of the project at the McKees Rocks Bridge, the City, the Borough, and the Township would each be

¹ See generally *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. (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, A-2020-3020667* (hereinafter “Application”).

² See generally March 10, 2021 Secretarial Letter.

³ See generally Recommended Decision dated March 18, 2022.

responsible for all materials and maintenance of removing snow, ice, and debris from the sidewalks on the bridge within each of their respective municipal boundaries. In addition, the Commission adopted the ALJ's recommendations to assign to PennDOT the costs of the maintenance and energization for the navigational lighting and roadway lighting of the bridge, and the maintenance of the signage and signals of the bridge.⁴ PennDOT filed a Petition for Reconsideration.

On October 27, 2022, the Commission issued an Opinion and Order granting PennDOT's Petition and referring the sole issue regarding the responsibility for the future maintenance and expenses of the traffic signals and signage on the bridge to the OALJ to conduct an evidentiary hearing, develop a complete and comprehensive record of the issue, and prepare and issue a Recommended Decision for the Commission's consideration and disposition.⁵

On May 9, 2023, ALJ Johnson presided over an evidentiary hearing to address the outstanding issues remanded through the October 27, 2022 Opinion and Order. After much discussion, the Parties reached an amicable resolution of this matter. Accordingly, the Parties were instructed to submit the Joint Petition no later than June 9, 2023.

III. The Settlement is in the Public Interest

In short, the Settlement will save the parties the time and expense they would otherwise incur in further litigating this matter before the Commission. Since all parties agree to the terms of the Settlement, adopting it will eliminate the possibility of any appeal from a Commission Order. This Settlement is the most cost-effective solution for all interested

⁴ See generally Opinion and Order dated June 16, 2022.

⁵ See generally Opinion and Order dated October 27, 2022.

parties and resolves all outstanding issues related to the application to alter the McKees Rocks Bridge.

Specifically, through this Settlement, the Parties agree to the following:

1. The traffic signals near the McKees Rocks Bridge are beyond the jurisdictional limits established in the March 10, 2021 Secretarial Letter, and thus the applicable laws and agreements will govern.
2. PennDOT, at its sole cost and expense, will assume future maintenance of the signage on the McKees Rock Bridge.

The assignment of the future cost and maintenance of the signage on the McKees Rocks Bridge pursuant to the terms of this settlement address the safety concerns to the satisfaction of I&E. Moreover, this Joint Petition resolves the last outstanding issue raised in this docket without the need for litigation, the submission of briefs, and any possible appeal from a Recommended Decision and/or Opinion and Order. I&E therefore submits that the Commission will serve the public interest by adopting and granting this Joint Petition for Settlement.

Respectfully submitted,



Kayla L. Rost
Prosecutor
PA Attorney ID No. 322768

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
Phone: (717) 787-1888
Email: karost@pa.gov

Dated: June 9, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of the Department of Transportation : A-2020-3020667
of the Commonwealth of Pennsylvania for approval :
to alter the crossings where State Route 3104 crosses, :
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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. :

**CITY OF PITTSBURGH’S STATEMENT IN SUPPORT
OF THE JOINT PETITION FOR SETTLEMENT**

The City of Pittsburgh (“City”), by and through its undersigned counsel, hereby files this Statement in Support of the Joint Petition for Settlement. The Pennsylvania Public Utility Commission (“Commission”) will serve the public interested by adopting the Joint Petition for Settlement executed by the parties.

This proposed settlement is the result of successful negotiations between all interested parties regarding the above-captioned matter and would fully resolve outstanding issues related to the crossing if adopted. It will save the parties the potential time and expense that may be incurred through further litigation before the Commission and avoid the possibility of appeal. This settlement also furthers the Commission’s policy of promoting settlements in contested proceedings. *See* 52 Pa. Code § 5.231(a). In short, the proposed settlement promotes finality and certainty.

The Commission’s paramount goals in regulating crossings are to prevent accidents and promote public safety. 66 Pa. C.S. § 2702(b). Adoption of this proposed Settlement will further those goals. The subject crossing is an above-grade crossing spanning multiple local

jurisdictions that has historically not had clear maintenance responsibilities between the jurisdictions and other interested parties. By the terms of this proposed Settlement, all remaining future maintenance of the bridge signage will be accounted for thus completing assignment of all outstanding maintenance matters at the crossing. Given the clear assignments of all maintenance matters, this settlement promotes continued future safety at the crossing. For all the above reasons, the City respectfully requests that the Commission adopt the terms outlined in the Joint Petition for Settlement in this matter.

Respectfully Submitted,



Date: June 8, 2023

Lawrence H. Baumiller, Esquire
Assistant City Solicitor
City of Pittsburgh Department of Law
City County Building, Suite 313
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Pittsburgh, PA 15219
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**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 : Electronically Filed
Company (DOT Unknown) in the City of :
Pittsburgh, Stowe Township and McKees Rocks :
Borough, Allegheny County. :

**COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF
TRANSPORTATION’S STATEMENT IN SUPPORT OF THE JOINT PETITION FOR
SETTLEMENT**

The Commonwealth of Pennsylvania, Department of Transportation (“**PennDOT**”), submits this Statement in Support of the Joint Petition for Settlement. The Pennsylvania Public Utility Commission (“**Commission**”) will serve the public interest by adopting the Joint Petition for Settlement in the above-captioned matter.

This proposed settlement is the result of successful negotiations between all interested parties regarding the above-captioned matter and would fully resolve outstanding issues related to the crossing. It will save the parties the potential time and expense that may be incurred through further litigation before the Commission and avoid the possibility of appeal. This settlement also furthers the Commission’s policy of promoting settlements in contested proceedings. *See* 52 Pa. Code § 5.231(a). In short, the proposed settlement promotes finality and certainty.

The Commission’s paramount goals in regulating crossings are to prevent accidents and promote public safety. 66 Pa. C.S. § 2702(b). Adoption of this proposed Settlement will further

those goals. The subject crossing is an above-grade crossing spanning multiple local jurisdictions which has historically not had clear maintenance responsibilities between the jurisdictions and other interested parties. By the terms of this proposed Settlement, all remaining future maintenance of the bridge signage will be accounted for thus completing assignment of all outstanding maintenance matters at the crossing. Given the clear assignments of all maintenance matters, this settlement promotes continued future safety at the crossing.

For all the above reasons, the PennDOT respectfully requests that the Joint Petition for Settlement in the above matter be approved and the matter be resolved by the adoption of the terms outlined in the Joint Petition for Settlement.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



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DATED: June 8, 2023

**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. (DOT 584 825 U), Norfolk : Docket No. A-2020-3020667
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. :

**MCKEES ROCKS BOROUGH'S
STATEMENT IN SUPPORT OF JOINT PETITION FOR SETTLEMENT**

The McKees Rocks Borough, by and through its undersigned counsel, hereby files this Statement in Support of the Joint Petition for Settlement. The Pennsylvania Public Utility Commission ("Commission") will serve the public interest through the adoption of the Joint Petition for Settlement executed by the parties.

This proposed settlement is the result of successful negotiations between all interested parties regarding the above-captioned matter and would fully resolve outstanding issues related to the crossing, if adopted. It will save the parties the potential time and expense that may be incurred through further litigation before the Commission and avoid the possibility of appeal.

This settlement also furthers the Commission's policy of promoting settlements in contested proceedings. See 52 Pa. Code §5.231(a). In short, the proposed settlement promotes finality and certainty.

The Commission's paramount goals in regulating crossings are to prevent accidents and promote public safety. 66 Pa. C.S. §2702(b). Adoption of this proposed Settlement will further those goals. The subject crossing is an above-grade crossing spanning multiple local jurisdictions that has historically not had clear maintenance responsibilities between the jurisdictions and other interested parties. By the terms of this proposed Settlement, all remaining future maintenance of the bridge signage will be accounted for thus completing assignment of all outstanding maintenance matters at the crossing. With this understanding in place, the obligations of the parties relative to the crossing will be resolved and efforts can follow for implementation of the same.

WHEREFORE, for all the foregoing reasons, the McKees Rocks Borough respectfully requests that the Pennsylvania Public Utility Commission adopt the terms outlined in the Joint Petition for Settlement in this matter.

Respectfully Submitted,

By: 
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Pa. I.D. #93333
mturnbull@wbklegal.com

Dated: June 9, 2023

Weiss Burkardt Kramer LLC
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Pittsburgh, PA 15219
412-391-9890

**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, : A-2020-3020667
the tracks of CSX Transportation Inc. (DOT 584 :
825 U), Norfolk Southern Railway Company :
(DOT 507 455 K), and the Pittsburgh and Ohio : **Electronically Filed**
Central Railroad Company (DOT Unknown) 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):

USPS Postage Prepaid and by Email if listed

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

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DATED: June 9, 2023