

**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, :
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. :

RECOMMENDED DECISION ON REMAND

Before
Conrad A. Johnson
Administrative Law Judge

INTRODUCTION

On October 27, 2022, the Commission entered an Opinion and Order referring “the sole issue regarding the responsibility for the future maintenance and expenses of the traffic signals and signage on the bridge” to the Office of Administrative Law Judge “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.” On June 9, 2023, the active Parties (Parties) to this proceeding filed a Joint Petition for Settlement.

This decision recommends approval of the settlement terms, as modified, thereby resolving the sole issue on remand because with modification, the settlement achieved by the Parties is in the public interest.

HISTORY OF THE PROCEEDINGS

A. The Application and Field Investigation

On July 2, 2020, the Pennsylvania Department of Transportation (PennDOT) submitted an application (Application) to the Commission for approval to alter the public highway bridge crossing (McKees Rocks Bridge or bridge) where State Route 3104 crosses, above grade, 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 the Borough of McKees Rocks (Borough), Allegheny County. PennDOT is the owner of the bridge, and PennDOT specifically sought approval to install new protective fencing at the crossing. Application at ¶ 5. 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 conference was attended by 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 Pennsylvania LLC. As outlined in the preliminary plans attached to the Application, PennDOT proposed to: (1) replace the expansion dam; (2) repair and replace the bridge deck's concrete barriers; (3) replace the protective fencing above the railroads; (4) replace the strip seals; (5) replace some sidewalk with concrete filled steel grate decking; (6) repair miscellaneous steel and concrete; (7) paint some parts of the steel structure relating to the pedestrian railing and sidewalk support; and (8) replace the approach slab. PennDOT agreed to complete the 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 Commission's Office of Administrative Law Judge

(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.

B. Secretarial Letter and Initial Evidentiary Hearing

On March 10, 2021, a Secretarial Letter (March 2021 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 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. The proceeding was assigned to the undersigned ALJ.

On May 27, 2021, a Prehearing Order outlining the litigation schedule was issued to the Parties. On June 1, 2021, a Call-In Telephone Hearing Notice was issued, scheduling the telephonic evidentiary hearing for September 30, 2021. The evidentiary hearing convened as scheduled; PennDOT, I&E, Norfolk Southern, CSXT, and the Borough were represented by their respective counsel. The City and Township did not participate in the hearing. Witnesses were examined, and written testimonies and exhibits were admitted into evidence. Main Briefs were submitted on December 10, 2021; no Reply Briefs were filed. The record was closed on December 23, 2021.

C. Recommended Decision

The ALJ's Recommended Decision was issued on March 18, 2022. 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 and signals of the McKees Rocks Bridge.

D. PennDOT's Exceptions and Commission's *June 2022 Order*

PennDOT filed Exceptions to the Recommended Decision on April 7, 2022. A Letter Reply to PennDOT's Exceptions was filed by I&E on April 15, 2022, and the Borough submitted a late-filed Letter Reply to PennDOT's Exceptions on April 27, 2022.

On June 16, 2022, the Commission issued an Opinion and Order (*June 2022 Order*) in this proceeding. The Commission (1) adopted, as modified by the *June 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. *See, June 2022 Order.*

E. Commission's Reconsideration and Remand Orders

On July 1, 2022, PennDOT filed a Petition for Reconsideration and/or Clarification of the *June 2022 Order*. The Borough filed an Answer to the Petition, and I&E filed a Letter Answer in response to the Petition.

On July 14, 2022, the Commission entered and adopted an Opinion and Order granting PennDOT's Petition pending review of, and consideration on, the merits of the Petition. On October 27, 2022, the Commission entered and adopted an Opinion and Order that 1) granted the Petition for Reconsideration and/or Clarification filed by PennDOT on July 1, 2022; and 2) referred 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.

Norfolk and CSXT submitted a letter on November 2, 2022, informing the Commission that the companies would not be participating in any further call-in 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.

F. Remand Proceedings

On November 3, 2022, the ALJ issued a Prehearing Conference Order on Remand scheduling the conference for December 22, 2022. The parties were instructed to provide Prehearing Memoranda by December 19, 2022. PennDOT, I&E, the Borough, and the City (the Parties) timely filed their respective prehearing conference memorandums.

The conference proceeded as scheduled. Respective counsel, Eric White for PennDOT, Kayla Rost for I&E, Danielle Guarascio for the Borough, and Lawrence Baumiller for the City were present for and participated in the conference. The following were also present for the conference: Paul Vidmar, an engineer with the Pittsburgh and Ohio Central Railroad Company; and Michael Maloch and Jeffrey Skalican from the City's mobility department. Stowe Township received notice of the conference; however, no counsel appeared to represent the Township. Under the litigation schedule developed during the conference, a telephonic evidentiary hearing was set for May 9, 2023.

The telephonic evidentiary hearing convened as scheduled on May 9, 2023, with respective counsel for PennDOT, I&E, the Borough and the City present for the hearing. Upon stipulation the following pre-served written testimony and exhibits of the respective Parties were admitted into the record:

PennDOT

Statement No. 1 - Direct Testimony of Philip M. Mutunga

Statement No. 2 - Direct Testimony of Seth A. Michaels

Statement No. 3 - Direct Testimony of Edward Miller

Statement No. 4 - Direct Testimony of Stephen Gault

Exhibit AA - Project Location Map

Exhibit BB - Plan and elevation view of part of McKees Rocks Bridge and
Scope of Work

Exhibit CC - Plan and elevation view of part of McKees Rocks Bridge and
Stationing

Exhibit DD - Traffic Signal Maintenance Agreement between PennDOT
and McKees Rocks Borough

Exhibit EE - McKees Rocks Borough's Application to PennDOT for
Permit to Install and Operate Traffic Signals

McKees Rocks Borough

Statement No. 1 - Direct Testimony of Ryan Hughes

Statement No. 2 - Rebuttal Testimony of Ryan Hughes

City of Pittsburgh

Statement No. 1 Testimony of Michael Maloch

I&E

Statement No. 2 – Direct Testimony of Daniel R. Helfrich, P.E

Exhibit A - Plan and elevation views of parts of McKees Rocks Bridge
and Scope of Work and Aerial Photographs of Bridge

Tr. 203-210.

G. Settlement Petition and The Record

The outstanding remand issue was amicably resolved during the hearing. Consequently, the hearing concluded with the ALJ's directive for the Parties to submit a Petition for Joint Settlement on or before June 9, 2023. In compliance with the ALJ's directive, on June 9, 2023, the Parties submitted their Joint Petition for Settlement (Settlement) together with their respective Statements in Support of the Settlement (Supporting Statement), which are hereby admitted into the record through this Recommended Decision on Remand.

By an interim order entered on June 15, 2023, the record was closed. The record in this proceeding consists of the Application, transcripts of the prehearing conferences and evidentiary hearings, written testimonies and exhibits, the Joint Petition for Settlement, Supporting Statements, Secretarial Letters, and Orders issued herein.

FINDINGS OF FACT

In the Settlement, the Parties stipulated to 44 numbered Proposed Stipulations. Proposed Stipulations 1 through 29 are essentially an enumeration of the History of the Proceedings set forth above. Accordingly, Proposed Stipulations 1 through 29 are not repeated here as Findings of Fact. The remaining Proposed Stipulations of the Parties are adopted in part and are renumbered herein as Findings of Fact as follows:

1. 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 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.^[1]

¹ PennDOT Statement No. 1 at 3.

2. 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.^[2]
3. 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.^[3]
4. 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.^[4]
5. 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.^[5]
6. The McKees Rocks Bridge currently has approximately twenty (20) signs.^[6]
7. 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.^[7]
8. The overhead guide signs and river crossings signs on the McKees Rocks Bridge are PennDOT's responsibility.^[8]

² PennDOT Statement No. 1 at 5

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

⁴ PennDOT Statement No. 4 at 8; PennDOT Exhibit DD.

⁵ City Statement No. 1 at 3.

⁶ PennDOT Statement No. 2 at 4.

⁷ PennDOT Statement No. 4 at 14.

⁸ PennDOT Statement No. 2 at 4.

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

Settlement at 7-9.

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 Parties agreed to the following Settlement terms:

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.

Settlement at 10-12.

DISCUSSION

A. Legal Standards

1. Jurisdiction

Section 2702 of the Code 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. 66 Pa.C.S. § 2702. The Commission determines which parties are “concerned” or “interested” within the meaning of 66 Pa.C.S. § 2702(c). *Cnty. 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. *See Pa. Transp. Auth. 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. Dept. 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).

2. Settlements

The Commission encourages parties in contested on-the-record proceedings to settle cases. *See*, 52 Pa. Code §5.231. Settlements eliminate the time, effort, and expense of litigating a matter to its conclusion, which may entail review of the Commission’s decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but

also the Commission, all ratepayers of a utility, and in this specific case taxpayers of the respective municipalities, who otherwise may have to bear the financial burden such litigation necessarily entails.

By definition, a “settlement” reflects a compromise of the parties’ positions and arguably fosters and promotes the public interest. When parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest. *Pa. Pub. Util. Comm’n v. CS Water and Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991).

B. Positions of the Parties

1. PennDOT’s Position

PennDOT submits the proposed Settlement is the result of successful negotiations between all interested Parties, and the Settlement will fully resolve outstanding issues related to the crossing.⁹ According to PennDOT the Settlement saves the Parties the potential time and expense that may be incurred through further litigation before the Commission and avoid the possibility of appeal. PennDOT argues that the Settlement furthers the Commission’s policy of promoting settlements in contested proceedings. *See* 52 Pa. Code § 5.231(a).

PennDOT asserts that the Commission’s paramount goals in regulating crossings are to prevent accidents and promote public safety. 66 Pa.C.S. § 2702(b). As a result, PennDOT contends that adoption of the Settlement will further those goals.¹⁰ According to PennDOT, 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.¹¹ PennDOT claims that by the terms of the Settlement, all remaining future

⁹ PennDOT Support Statement at 1.

¹⁰ *Id.* at 1-2.

¹¹ *Id.* at 2.

maintenance of the bridge signage will be accounted for thus completing assignment of all outstanding maintenance matters at the crossing, thereby promoting continued future safety at the crossing.¹² For the above reasons, PennDOT respectfully requests that the Commission approve the Settlement.

2. I&E's Position

In support of the Settlement, I&E argues the following:

“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)).

I&E Supporting Statement at 2.

¹² *Id.*

Like PennDOT's position, I&E submits that the Settlement will save the Parties the time and expense they would otherwise incur in further litigating this matter before the Commission and eliminates the possibility of an appeal.¹³ I&E adds that the Settlement is the most cost-effective solution for all interested 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.

I&E Supporting Statement at 5.

Continuing with its position, I&E asserts that the assignment of the future cost and maintenance of the signage on the McKees Rocks Bridge pursuant to the terms of the Settlement addresses the safety concerns to the satisfaction of I&E.¹⁴ I&E contends that the Settlement resolves the last outstanding issued raised in this proceeding, and Commission approval of the Settlement will serve the public interest.¹⁵

3. The Borough's and the City's Positions

In their respective Supporting Statements, the Borough and the City mirror or track the assertions set forth in PennDOT's Supporting Statements and both request that the Commission adopts the terms outlined in the Settlement.¹⁶

¹³ I&E Supporting Statement at 4.

¹⁴ I&E Supporting Statement at 5.

¹⁵ *Id.*

¹⁶ Borough Supporting Statement at 1-2; City Support Statement at unnumbered 1-2.

C. Analysis of the Settlement

As noted above, it is the policy of the Commission to encourage parties to contested on-the-record proceedings to settle the dispute.¹⁷ The Commission has explained that parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest.¹⁸ In order to approve a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest.¹⁹

The Settlement specifically addresses the sole issue that the Commission remanded this case to the OALJ, that is, the responsibility for the future maintenance and expenses of traffic signals and signage on the bridge. As set forth in the above Findings of Fact, under the Settlement the Parties stipulate to the following:

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.

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.

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

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.

¹⁷ See 52 Pa. Code § 5.231(a).

¹⁸ *Pa. Pub. Util. Comm'n v. MXenergy Elec. Inc.*, Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013).

¹⁹ *Pa. Pub. Util. Comm'n v. Windstream Pa., LLC*, Docket No. M-2012-2227108 (Opinion and Order entered Sept. 27, 2012); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assoc.*, Docket No. R-00881147 (Opinion and Order entered July 22, 1991).

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

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

Settlement at 8-9.

Here note is taken that the Settlement Terms contain two provisions, which are conclusions of law, unnecessary or contradictory, to wit:

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.

Joint Settlement Petition at 11.

Paragraph 4 of the Settlement Terms asserts a conclusion of law as to the Commission's jurisdictional limits over traffic signals and further asserts that "no assignment of traffic signals is necessary in this matter." However, the Parties in their stipulations agree that the Borough on one end of the bridge and the City on the other end of the bridge will be responsible for assignment and maintenance of the nearby traffic signals.²⁰ Consequently, Paragraph 4 of the Settlement Terms is counterintuitive to the Parties' stipulation and overlooks the Commission's remand directive to address assignment of responsibility for the traffic signals. More importantly the Commission should exercise restraint in approving a conclusion of law as to its jurisdictional limits when jurisdiction need not be addressed nor approved under the

²⁰ See Findings of Fact 4 and 5 above, which renumbered and adopted the Parties' Proposed Stipulations 36 and 38; Settlement at 8-9.

circumstances. Accordingly, in the ordering paragraphs below, I will recommend that the Settlement be modified to exclude Paragraph 4 from the Settlement Terms.

Paragraph 5 of the Settlement Terms asserts the nearby traffic signals are not part of the agreement and applicable law will apply to the maintenance of the traffic signals. This Settlement Term essentially contradicts the Parties' Proposed Stipulations 36 and 38, which state as follows:²¹

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.

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.

Settlement at 8-9 (footnotes omitted). Here, Commission approval of Paragraph 5 of the Settlement Terms, i.e., nearby traffic signals are not part of this agreement, would negate the Parties' Proposed Stipulations. Such a result is illogical. Additionally, as stated above the Parties have agreed to the assignment for responsibility for the maintenance of the bridge's nearby traffic signals. Accordingly, in the ordering paragraphs below, I will recommend that the Settlement be modified to exclude Paragraph 5 from the Settlement Terms.

Recommendation on Remand

Upon due consideration of the terms and conditions of the Settlement, including the Supporting Statements of the respective Parties and the above analysis, I conclude that the Settlement Terms, with modifications, constitute a fair, just, and reasonable resolution of the issue presented on remand in this proceeding. As a result, I conclude and will recommend to the Commission that the Settlement Terms of the Joint Petition for Settlement, as modified, be approved because with modification the Settlement Terms are in the public interest.

²¹ *Id.*

CONCLUSIONS OF LAW

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

2. 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.

3. The Commission possesses the exclusive authority to assess the cost of the work to be performed upon the concerned parties in such proper proportions as it may determine. 66 Pa.C.S. § 2704.

4. In apportioning costs in a rail crossing case, 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. Dept. of Transp. v. Pa. Pub. Util. Comm'n.*, 346 A. 2d 371 (Pa. Cmwlth. 1975).

5. The assignment for the responsibility and maintenance of the bridge signage as set forth in the following Recommended Order is fair, just, and equitable for each party. *Pa. Dept. of Transp. v. Pa. Pub. Util. Comm'n.*, 346 A. 2d 371 (Pa. Cmwlth. 1975).

6. Commission policy promotes settlements. 52 Pa. Code § 5.231.

7. 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 the results achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401.

8. To determine whether the parties' settlement should be approved, one must decide whether the settlement promotes the public interest. *See Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa.P.U.C. 1 (1985).

9. Approving the Settlement Terms, as modified, which includes the assignment of the maintenance of the signage on the McKees Rocks Bridge to the Pennsylvania Department of Transportation and acknowledgment of the responsibility for the nearby traffic signals within their jurisdictional limits by McKees Rocks Borough and the City of Pittsburgh, respectively, will serve the public interest.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That consistent with the Commission's Opinion and Order entered in this proceeding on October 27, 2022, the Settlement Terms of the Joint Petition for Settlement filed on June 9, 2023, by the Commonwealth of Pennsylvania, Department of Transportation, the Commission's Bureau of Investigation and Enforcement, McKees Rocks Borough, and the City of Pittsburgh in this proceeding at Docket No A-2020-3020667 are hereby approved as modified.

2. That the Settlement Terms of the Parties' Joint Settlement Petition be modified to exclude the following provisions:

(a) 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.

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

3. That the Commonwealth of Pennsylvania, Department of Transportation, at its sole cost and expense, will assume responsibility for future maintenance and expense of the signage on the McKees Rock Bridge.

4. That the Commonwealth of Pennsylvania, Department of Transportation possesses a Traffic Signal Maintenance Agreement with McKees Rocks Borough, dated August 16, 1999, that establishes McKees Rocks Borough's future ownership and maintenance at its expense of the traffic signals at the intersection of State Route 51 and the McKees Rocks Bridge.

5. That the City of Pittsburgh currently maintains the traffic signals at the intersection of the McKees Rocks Bridge and State Route 65 and represents it will continue at its expense to maintain the infrastructure of the traffic signals.

6. That this Order is without prejudice to the right of any Party to enforce any lawful agreement allocating costs among the Parties.

7. That the Secretary shall mark this matter as closed.

Date: September 11, 2023

/s/
Conrad A. Johnson
Administrative Law Judge