

**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) : **Electronically Filed**  
in the City of Pittsburgh, Stowe Township and :  
McKees Rocks Borough, Allegheny County. :  
:

**EXCEPTIONS OF THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT  
OF TRANSPORTATION TO THE RECOMMENDED DECISION  
ON REMAND OF ADMINISTRATIVE LAW JUDGE ISSUED SEPTEMBER 11, 2023**

Pursuant to 52 Pa. Code § 5.533, the Commonwealth of Pennsylvania, Department of Transportation (“Department”), by its counsel, Karen L. Cummings, files these Exceptions to the Recommended Decision on Remand issued by Administrative Law Judge Conrad A. Johnson (“ALJ”) on September 11, 2023.

1. **Exception No. 1** - The Department takes exception to Paragraph 2 of the Recommended Decision on Remand (RD, pg. 19), and related justification (RD pg. 15-17), and Paragraph 1 (RD, pg. 19) to the extent that it references any modification to the Settlement Terms of the Parties’ Joint Petition for Settlement. Paragraph 2 specifically modifies the Settlement Terms of the Parties’ Joint Petition for Settlement by excluding Paragraphs 4 and 5 related to the Parties’ agreement regarding nearby traffic signals. The Department files this exception for the following reasons:

a. Initially, it should be noted that the determination of maintenance of traffic signals near the subject crossing was not raised as an issue by the Parties to this proceeding and

the Department's construction plans did not propose to modify the signals. Rather, the matter was referred to the ALJ to resolve future maintenance and costs associated with the bridge lighting and removal of snow, ice, and debris from the sidewalks of the bridge (RD, pg. 2). Thereafter, on March 18, 2022, the ALJ issued a Recommended Decision that, in part, assigned the maintenance of the signage and signals of the McKees Rock Bridge to the Department. (RD, pg. 3).

The Department has always maintained that traffic signal maintenance is outside of the scope of these proceedings as they are governed by regulation. "The delegation of responsibilities for the installation and maintenance of traffic-control devices is in accordance with 75 Pa.C.S. §§ 6122 and 6124 (relating to authority to erect traffic-control devices; and erection of traffic-control devices at intersections)." 67 Pa. Code § 212.5(a). "Cities of the first and second class are responsible for the installation, revision, removal, maintenance and operation of all traffic-control devices on the highways within their city boundaries." 67 Pa. Code § 212.5(b)(1)(ii). "Local authorities other than cities of the first and second class shall obtain written Department approval before installing any new, or revising or removing any existing traffic-control device unless noted otherwise in this chapter or as provided in an agreement with the Department." 67 Pa. Code § 212.5(b)(1)(iii). More specifically, local authorities are responsible for installing, maintaining and operating traffic signals, and all associated signs and markings included on the Department-approved traffic signal plan, subject to Department approval prior to any change in the traffic restriction. 67 Pa. Code § 212.5(b)(1)(v)(A).

The Parties recognize that the regulations are clear with regard to the responsibility for traffic control devices. The matter is only an issue in the instant case because, without any indication of a dispute from the parties, the ALJ opted to assign maintenance of the signage and signals. Indeed, the matter is currently on remand from the Commission to determine the sole

issue of “the responsibility for the future maintenance and expenses of the traffic signals and signage on the bridge... .” (Opinion and Order dated October 27, 2022 issued in response to the Department’s Petition for Reconsideration and/or Clarification, pg. 16). It is precisely because of the ALJ’s ad hoc assumption of jurisdiction over traffic signal maintenance that the Parties are compelled to acknowledge the applicable law and explicitly agreed to language documenting their mutual understanding that the traffic signals are not part of their settlement of this matter.

b. The ALJ recommends excluding Paragraph 4 of the parties Settlement Terms, which states that “[t]he 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.” The ALJ asserts that this settlement term is 1. counterintuitive to the Parties’ stipulation and overlooks the Commission’s remand directive to address assignment of responsibility for traffic signals; and that 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 circumstances.” (RD, pg. 16-17).

The Department disagrees with this rationale. First, Paragraph 4 is not “counterintuitive” to the Parties’ stipulation. The Stipulations referred to, numbers 36 and 38, state that there is 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; and that the City currently maintains and will continue to maintain the signal on its side of the bridge. (RD, pg. 17). Paragraph 4 contains a statement of fact – the traffic signals are outside of the established jurisdictional limits, and the Parties’ agreement that,

therefore, no assignment of traffic signals is necessary. Stipulations 36 and 38 do not contradict Settlement Term Paragraph 4 and the statements are not mutually exclusive. The fact that there is a maintenance agreement with the Borough and that the City is and will continue to maintain the signal on its side of the bridge wholly supports the Parties' agreement in Paragraph 4 that assignment of the traffic signals is unnecessary. Further, Paragraph 4 does not overlook the Commission's remand directive to address assignment of responsibility for the traffic signals. Indeed, that is exactly what the Parties are agreeing to with the proposed Settlement Term.

Finally, Paragraph 4 does not purport to contain a conclusion of law with regard to the PUC's jurisdictional limits that would warrant an exercise of restraint by the Commission, rather, it merely represents the Parties' understanding of the location of the signals and the natural consequence thereof. A review of the record clearly indicates that the ALJ explicitly made jurisdictional limits an issue throughout this case and, where the Parties have expressly agreed to terms of settlement for this extracted litigation, it is only reasonable that all matters in dispute be addressed as part of any settlement stipulation. Here, the jurisdictional limits are a matter of fact and not a question of law. The traffic signals associated with the McKees Rocks Bridge are beyond Station 2 + 00 and Station 58 + 00 as shown on the Plans submitted as Exhibit "B" to the Department's application in this matter. This is the tentative jurisdiction taken by the Commission in its Secretarial Letter assigning the ALJ on March 10, 2021. Based on this Secretarial Letter, there is no dispute that the traffic signals are outside of those limits. Nonetheless, the Recommended Decision issued on March 18, 2022 recommended assignment of responsibility for facilities outside of those physical limits. The Department's request for reconsideration of this assignment is based on the factual determination related to the Commission's jurisdiction made by the March 10, 2021 Secretarial Letter. As such, it is appropriate, and even necessary, for the final

order to include the Parties' explicit and agreed upon understanding of their responsibilities going forward as stated in their proposed Settlement Term Paragraph 4.

c. The ALJ further recommends excluding Paragraph 5 of the parties Settlement Terms, which states that “[t]he nearby traffic signals are not part of this agreement and will remain owned and maintained under applicable law or agreement.” (RD, pg. 17). The ALJ asserts that Paragraph 5 of the Settlement Terms contradict, and would therefore negate the Parties' Proposed Stipulations 36 and 38, discussed above, which state in full:

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. (RD, pg. 17).

The Department disagrees with this rationale because noting that traffic signals are not part of the Parties' settlement agreement in no way contradicts the agreed upon statements of fact relating to the existence of a previous agreement with the Borough and the current status quo regarding maintenance by the City. Stipulations 36 and 38 are not terms of an agreement, they are simply stipulated facts that are necessary to provide history and give context to the Settlement Terms. In other words, they explain why the Parties have agreed to Paragraph 5 of the Settlement Terms.

WHEREFORE, the Department of Transportation respectfully requests the Public Utility Commission consider its exceptions to the Recommended Decision on Remand of Administrative Law Judge Conrad A. Johnson and enter an Order approving the Parties' Joint Petition for Settlement in its entirety, without modification.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

*/s/ Karen L. Cummings*

Karen L. Cummings

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DATED: 9/20/2023

**BEFORE THE**  
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document, upon the parties listed below, in accordance with the requirements of 52 Pa.Code § 1.54 (relating to service by a party):

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Respectfully submitted,  
COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

*Is/ Erica Smith-Simmons*

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DATED: September 20, 2023