

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re. Emergency Application of the Department of Transportation of the Commonwealth of Pennsylvania and the City of Pittsburgh for approval to abolish the public above grade crossing and remove the bridge carrying the abandoned cartway of Pittsburgh & West Virginia Railway Company (and the West Side Belt Railroad Company) above S.R. 0051, DOT Number 472 968G in the City of Pittsburgh, Allegheny County and the allocation of costs incident thereto.

PUC Docket No. A-2024-3048837

**INITIAL PREHEARING CONFERENCE MEMORANDUM OF WABASH  
PROPERTIES, LLC**

Wabash Properties, LLC (“Wabash”) submits the following Initial Prehearing Conference Memorandum, stating as follows:

**INTRODUCTION**

The dispute that gives rise to this Application involves the joint plan of the City of Pittsburgh (“the City”) and the Pennsylvania Department of Transportation (“PennDOT”) to abolish a currently unused railway and demolish the Wabash Bridge (“the Bridge”). The Bridge serves as a critical means for Wabash, its employees and numerous vendors, to come and go from its property that abuts both sides of the Bridge. As depicted below, the Bridge spans across Sawmill Run Boulevard/State Route 51, which runs under the Bridge and traverses Wabash’s property. In the aerial view image pasted herein, the approximate location of the Bridge is outlined in yellow:



The City has owned the Bridge since its construction nearly a century ago. The City constructed the Bridge when it extended Sawmill Run Boulevard over and through property owned by Wabash's predecessor in interest, the Pittsburgh & West Virginia Railway Company ("the Railroad"). In its present condition, as depicted in the aerial view above, the surface of the Bridge is incorporated into the access road and parking lot serving Wabash's property. When it was originally constructed, and through to the 1960's, railroad tracks crossed the surface of the Bridge.

When the Railroad contracted with the City to build Sawmill Run Boulevard over the Railroad's property, Railroad received consideration in return including, *inter alia*, (1) the

construction of the Bridge itself, so that the parts of the Railroad's property were not inaccessible; (2) a recorded right of way across the Bridge, so that its railway could cross it; and, *importantly*, (3) the City's agreement to maintain the Bridge in perpetuity. The City's duty to maintain the Bridge was memorialized in two City ordinances which explicitly obligate the City to maintain the Bridge "forever." Wabash purchased the property adjacent to and on both sides of the Bridge in 2004. Therefore, it is a successor in interest to the Railroad and all benefits the Railroad received from the City pursuant to the agreement to build Sawmill Run Boulevard and the Bridge. A Wabash affiliate currently operates an automobile parts distribution center in the entire building, identified as "Rohrich GM Parts Center" in the aerial view above.

At the end of last year, the City and the Pennsylvania Department of Transportation informed Wabash of their intent to close and then raze the Bridge because its allegedly deteriorated condition supposedly rendered it unsafe to motorists traveling below on Sawmill Run Boulevard; presently, access across the Bridge is blocked by *concrete* barriers installed by PennDOT despite assertions by PennDOT the Bridge cannot currently support its own dead load. The "emergency" decision to demolish the Bridge was made after the City had neglected its duties to maintain the Bridge for decades, and despite ample notice from Wabash and other interested parties, including PennDOT itself, that the Bridge required maintenance.

Wabash, as the current holder of the right of way over the Bridge, relies on the Bridge as a critical means of ingress, egress and regress to its property. Without the Bridge and the right of way across it, the automobile parts distribution warehouse cannot operate as desired, nor can the tractor trailer trucks that utilize the warehouse appropriately access the same. In short, the proposed demolition of the Bridge will mean the closure of Wabash's facility, the loss of 60 jobs and impacts to the local automobile part commerce markets.

Frustratingly, the Bridge's condition is *not* beyond repair: Wabash has, at its own expense, obtained engineering expert reports which opine that the Bridge can not only be repaired, but can be repaired at a cost that is less than the proposed cost to demolish it. Nevertheless, the City and PennDOT remain adamant in their decision to abolish the Bridge, despite the reasonable alternatives laid before them.

**A. A proposed plan and schedule of discovery**

60 days for the exchange of documents and the taking of deposition testimony.

**B. Possibility of settlement**

The proposed demolition of the Bridge will prevent Wabash from operating the auto parts distributor at the property entirely. Therefore, any possibility of settlement must include (1) the repair of the Bridge or (2) an alternative measure, such as replacement of the Bridge by the City, that would ensure ingress, egress and regress of all vehicles to Wabash's facility.

**C. Issues**

1. The City denies that it is obligated to maintain the Bridge, despite language in the Ordinances which specifically obligate it to do so.
2. There is litigation arising from this dispute pending in the Commonwealth Court, wherein Wabash seeks, *inter alia*, an order of Mandamus against the City, compelling it to repair the Bridge and a declaration of its right of support and access to/from the Bridge. The Commonwealth Court has jurisdiction over the adjudication of those issues.
3. The stakeholders dispute whether the Bridge can be repaired in a manner that renders it safe to the public. Wabash has produced credible engineering reports from reputable engineers who opine that the Bridge can be restored at a cost comparable to, or less than, the cost to demolish it.

**D. Amount of Hearing Time Needed**

2 days

**E. Witnesses**

- Mr. David Rohrich, Principal of Wabash
- James Pugliese, Wabash Facilities Manager
- Dan Deiseroth, Gateway Engineers
- William Armstrong, WEC Engineers
- Michele Acitelli, District Utility Manager Pennsylvania Department of Transportation
- Shane Szalankiewicz, District Bridge Engineer, Pennsylvania Department of Transportation
- Stephanie Zolnak, District Traffic Engineer, Pennsylvania Department of Transportation
- Eric Setzler, Chief Engineer, City of Pittsburgh, Department of Mobility and Infrastructure

**F. Schedule for Submission of Testimony, Hearings and Briefs**

30 days after discovery

**G. Any other appropriate matter.**

On May 15, 2024, PennDOT and the City jointly filed two Petitions seeking the following relief: (1) a protective order against production of the Bridge’s inspection reports and other documents, and (2) an order that the Bridge be “immediately removed,” among other things. Wabash opposes those Petitions and is preparing Preliminary Objections to them. The Bridge inspection reports are discoverable and central to the dispute between the parties. Further, the request for an order that the Bridge be “immediately removed” is an attempt to circumvent the jurisdiction of the Commonwealth Court, which has exclusive jurisdiction over the legal dispute between Wabash and the Petitioners.

Respectfully submitted,

GOLDBERG KAMIN & GARVIN, LLP

By: /s/ Jonathan M. Kamin  
JONATHAN M. KAMIN, ESQUIRE  
PA ID # 81958  
[jonathank@gkgattorneys.com](mailto:jonathank@gkgattorneys.com)

JONATHAN G. PRESTON, ESQUIRE  
PA ID # 209493  
[jpreston@gkgattorneys.com](mailto:jpreston@gkgattorneys.com)

1806 Frick Building  
437 Grant Street  
Pittsburgh, PA 15219  
P – 412-281-1119

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by e-mail, this 17<sup>th</sup> day of May, 2024, on the following:

Karen L. Cummings, Esq.  
Senior Counsel  
Pennsylvania Department of Transportation  
Office of Chief Counsel  
PO Box 8212  
Harrisburg, PA 17105-8212  
*Counsel for applicant PennDOT*  
*kcummings@pa.gov*

Michele Acitelli, P.E.  
Utility & Grade Crossing Manager  
Department of Transportation  
Engineering District 11-0  
45 Thoms Run Road  
Bridgeville, PA 15017  
*miacitelli@pa.gov*

Krycia Kubiak, Esq.  
City Solicitor  
City of Pittsburgh, Department of Law  
City-County Building, Suite 313  
PO Box 8212  
Pittsburgh, PA 15219  
*krycia.kubiak@pittsburghpa.gov*  
*Counsel for applicant the City of Pittsburgh*

Mr. Jeffrey Skalican, Deputy Director  
City of Pittsburgh  
Department of Mobility and Infrastructure  
City County Building, Suite 301  
414 Grant Street  
Pittsburgh, PA 15219  
*jeff.skalican@pittsburghpa.gov*

Mr. Eric J. Setzler, P.E., Chief Engineer  
Department of Mobility and Infrastructure  
City County Building | Room 301  
414 Grant Street  
Pittsburgh, PA 15219

*eric.setzler@pittsburghpa.gov*

Mr. Kasey O'Connor.  
Wheeling & Lake Erie Railway Company  
100 East First Street  
Brewster, OH 44613  
*koconnor@wlerwy.com*

Mr. Jeffrey A. Davis Jr.  
Wheeling & Lake Erie Railway Company  
100 East First Street  
Brewster, OH 44613  
*jdavisjr@wlerwy.com*

Ms. Amie Downs  
Allegheny County  
101 County Courthouse  
436 Grant Street  
Pittsburgh, PA 15219  
*Amie.Downs@AlleghenyCounty.US*

Mr. Jim Runatz  
Duquesne Light Company  
1901 Edison Street  
Glenshaw, PA 15116  
*jrunatz@duqlight.com*

Mr. Chris Hornstein  
City of Pittsburgh  
Director of Public Works  
414 Grant St  
Pittsburgh, PA 15219  
*chris.hornstein@pittsburghpa.gov*

Mr. Theodore Toth  
Verizon Pennsylvania, LLC  
27 West Church Street  
Uniontown, PA 15401  
*theodore.m.toth@verizon.com*

Mr. Adam Bromley  
PA American Water Company.  
300 Galley Road  
McMurray, PA 15317

*Adam.bromley@amwater.com*

Mr. Anthony Francioni  
Comcast Cable Communications  
1530 Chartiers Ave  
Pittsburgh, PA 15204  
*Anthony\_Francioni@comcast.com*

Mr. Michael Lichte  
ALCOSAN  
3300 Preble Avenue  
Pittsburgh, PA 15233  
*michael.lichte@alcosan.org*

Mr. Ben Grunauer  
Pittsburgh Water & Sewer Authority  
1200 Penn Avenue  
Pittsburgh, PA 15222  
*BGrunauer@pgh2o.com*

Ms. Stephanie Lewis  
Columbia Gas of PA, Inc.  
501 Technology Drive  
Canonsburg, PA 153017  
*Sklewis@nisource.com*

*/s/ Jonathan M. Kamin*  
JONATHAN M. KAMIN, ESQUIRE  
*Co-Counsel for Wabash Properties, LLC*