

**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

**ANSWER AND NEW MATTER OF
WABASH PROPERTIES, LLC TO THE
PETITION FOR INTERIM
EMERGENCY ORDER UNDER PA.
CODE §3.6 OF THE DEPARTMENT OF
TRANSPORTATION AND THE CITY OF
PITTSBURGH**

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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.

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**ANSWER AND NEW MATTER OF WABASH PROPERTIES, LLC TO THE PETITION
FOR INTERIM EMERGENCY ORDER UNDER PA. CODE §3.6 OF THE
DEPARTMENT OF TRANSPORTATION AND THE CITY OF PITTSBURGH**

Respondent Wabash Properties, LLC (“Wabash”) submits this Answer and New Matter to the Petition for Interim Emergency Order under 52 PA Code §3.6 of the Department of Transportation (“PennDOT”) and the City of Pittsburgh (“the City”), stating as follows:

1. Denied as stated. It is admitted that the Petitioners’ *Emergency Application* which instituted this proceeding seeks approval from the Public Utility Commission (“the Commission”) to abolish a long-abandoned railway crossing. As the Petitioners admit in other filings, this approval is an administrative formality that should have occurred more than sixty years ago. The Bridge has not served any railroad since the early 1960’s and all instrumentalities of the railway—rails, tracks, signage, etc.—have been removed. However, it is specifically denied that the abandoned railway crossing and the Bridge are one and the same, as implied by the averments of the corresponding paragraph. The Bridge is owned by the City and was built pursuant to City

Ordinances, and contracts with the County of Allegheny and Wabash's predecessor in interest, the Pittsburgh & West Virginia Railway Company ("the Railroad"). Those Ordinances and contracts obligated the City to maintain the Bridge in perpetuity. Further, PennDOT has a corresponding duty to provide support for Wabash's property above the Bridge, which duty is imposed upon PennDOT as the dominant estate holder of an easement for Saw Mill Run Boulevard/State Route 51 which runs through Wabash' property and under the Bridge. The City and PennDOT's refusal to comply with those obligations is the subject of litigation currently pending in the Commonwealth Court, No. 279 MD 24, which tribunal has jurisdiction over the contractual legal dispute between Wabash and the Petitioners.

2. Denied as stated. It is admitted that the Bridge crosses over State Route (SR) 51. It is specifically denied that the corresponding paragraph properly characterizes Wabash's property abutting the Bridge as a "single private property." The Bridge has been continuously used for commercial purposes to transport goods for sale to and from the facilities located thereon since the 1960's. That facility currently employs approximately 60 employees and facilitates the distribution of automobiles and automobile parts to 1,000 dealerships, auto body and repair shops. Further, the Bridge is not simply "an access point." It is a critical means of ingress, egress and regress for commercial delivery vehicles to access the Wabash facility, the removal of which will force the facility's closure. Every day, over 350 local deliveries, 20 wholesale deliveries, 6 straight truck deliveries and 5 tractor-trailers access the Facility using the Bridge for ingress, egress and regress to and from Wabash's property.

3. Denied. Wabash specifically denies that the Bridge's condition is severely deteriorated and poses an immediate danger to the safety of traffic on SR 51. Upon information and belief, the current condition of the Bridge according to the National Bridge Inspection

Standards (“NBIS”) is such that the current closure and future demolition of the Bridge are not warranted. Wabash’s engineers have determined that repairing the Bridge is not only feasible, but the cost of repairing it is comparable to, or less than, the cost of demolishing it.

4. The corresponding paragraph is an incorporation paragraph to which no response is required.

5. The corresponding paragraph references a writing which speaks for itself. By way of a further response, Wabash denies that the Commission has jurisdiction to provide the relief sought in the *Emergency Application*, the *Petition for Special Relief Under 66 Pa. C.S.A. §2702(f)* or the instant *Petition for Interim Emergency Order under 52 PA Code §3.6*. Specifically, the Commission does not have jurisdiction over the legal dispute between Wabash and the City/PennDOT regarding the ability to demolish the bridge. Wabash does agree that the Commission may have the authority to enforce its 1929 Order to compel the City and/or PennDOT to maintain the Bridge. See Exhibit A. Wabash further avers that the Public Utility Code (“the Code”) does not afford the requested remedy of demolition; and the Commonwealth Court litigation is a prior proceeding which precludes this proceeding before the Commission.

6. Admitted.

7. Admitted.

8. Denied as stated. The corresponding paragraph appears to suggest that Wabash should be deprived of its due process rights to oppose the City’s and PennDOT’s *Emergency Application* and *Petition for Special Relief Under 66 Pa. C.S.A. §2702(f)* by way of the instant *Petition for Emergency Order under 52 PA Code §3.6*. Any “emergency” necessitating such a measure—the existence of which Wabash denies—is of the City’s and PennDOT’s own making. The Bridge has been neglected for decades by the Applicants/Petitioners. Their attempt to force

its expedient demolition by way of this proceeding and the instant Petition—in an improper jurisdiction, without legal basis under the Code and while a prior proceeding is pending—is not grounds to deprive Wabash of its due process rights.

9. Denied as stated. Wabash specifically denies that the Bridge’s condition poses an immediate danger to public safety. Upon information and belief, the current condition of the Bridge according to the NBIS is such that the current closure and future demolition of the Bridge are not warranted. Wabash’s engineers have determined that repairing the Bridge is not only feasible, but the cost of repairing it is comparable to, or less than, the cost of demolishing it.

10. Denied as stated. It is specifically denied that the City and PennDOT are ready, willing and able to address safety concerns. First, Wabash denies that there are any safety concerns which warrant the demolition of the Bridge in the first place. To the contrary, the Bridge can be repaired at a cost comparable to, or less than, demolishing it. Second, if Petitioners are in fact ready, willing and able to address the safety concerns immediately, the repairs necessary to address said concerns, have been known to Petitioners for years, will be far quicker to effectuate than the demolition of the Bridge. Third, the City and PennDOT have refused to comply with their express legal obligations to maintain the Bridge and support Wabash’s property for years, and despite adequate notice. Therefore, they are estopped from seeking the instant emergency relief necessitated by their own dilatory conduct.

11. Denied. 52 Pa.Code §3.6(b)(1)-(4) governing “Petitions for interim emergency orders” require the City and PennDOT prove that (1) their right to relief is clear, (2) the need for relief is immediate, (3) the injury would be irreparable if relief is not granted, and (4) the relief requested is not injurious to the public interest. Contrary to the averments of the corresponding paragraph, the Petitioner’s right to relief is *unlikely* for the following reasons: the Commission

does not have jurisdiction over the contractual legal dispute between Wabash and the City/PennDOT currently pending in the Commonwealth Court, No. 279 MD 24; the Code does not afford any remedy in this proceeding, other than enforcement of the PUC's prior 1929 Order, because the railway crossing was abandoned in the 1960s and there is no utility with a stake in the Bridge subject to the Commission's regulatory hand; and there is a prior pending action currently pending in the Commonwealth Court, No. No. 279 MD 24.

12. Denied. The City and PennDOT cannot prove that their need for relief is immediate as required by 52 Pa.Code §3.6(2) or that any injury would be irreparable under 52 Pa.Code §3.6(3). The Bridge is currently closed to all vehicular traffic by way of concrete barriers placed by the City and PennDOT across the entire expanse of the Bridge. Upon information and belief, the current condition of the Bridge according to the NBIS is such that the current closure and future demolition of the Bridge are not warranted and that the NBIS recommended repairs to the Bridge can be completed in a quicker and safer manner than the demolition of the Bridge. Wabash's engineers have determined that repairing the Bridge is not only feasible, but the cost of repairing it is comparable to, or less than, the cost of demolishing it. Consequently, there is neither an immediate need for relief nor a risk of irreparable harm.

13. Denied. The City and PennDOT are unable to prove that the relief requested is not injurious to the public interest as required by 52 Pa.Code §3.6(4). Removal of the Bridge would have a direct detrimental effect to employment at Wabash's facility, which employs approximately 60 employees and facilitates the distribution of automobiles and automobile parts to 1,000 dealerships, auto body and repair shops. Upon information and belief, the demolition of the Bridge will require the complete closure of and redirection of traffic from Route 51 for a 19 day period, while repair of the Bridge will not require a total closure of Route 51. Additionally, Wabash is

subject to various other agreements with car manufacturers like GM and Toyota that will not permit Plaintiff to relocate the Facility to another location. Considering the readily available options to repair the Bridge, the harm to the public would be greater if the Bridge were demolished.

NEW MATTER

14. Wabash incorporates by reference its responses set forth in the preceding paragraphs as if set forth here in their entirety.

15. The above-captioned Application and Petitions arise from the joint plan of the City and PennDOT to demolish the City-owned Bridge.

16. The Bridge serves as a critical means for Wabash, as well as the hundreds of local daily delivery vehicles and customers that access Wabash’s business, to come and go from its property bordering the Bridge, which currently operates as an automobile parts distribution center that employs sixty individuals.

17. As depicted below, the Bridge spans across Saw Mill Run Boulevard/State Route 51, which runs under the Bridge and traverses Wabash’s property. In the aerial view image pasted below, the approximate location of the Bridge is outlined in yellow:





18. There is no dispute that the City owns the Bridge. Application, ¶10.

19. The City has owned the Bridge since its construction nearly a century ago. The City constructed the Bridge when it extended Saw Mill Run Boulevard over and through property owned by Wabash's predecessor in interest, the Pittsburgh & West Virginia Railway Company ("the Railroad").

20. 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 the City originally constructed the Bridge, railroad tracks crossed the surface of the Bridge. Petition ¶18-19.

21. When the Railroad contracted with the City to build Saw Mill Run Boulevard over and under the Railroad's property in 1929, the 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. Petition ¶10 and Exhibit 3.

22. The City's duty to maintain the Bridge was so important to the Railroad that it was memorialized in two City ordinances which explicitly obligated the City to maintain the Bridge "forever." In addition, the City memorialized their understandings and affirmed their obligations in prior proceedings before the PUC in 1929. Copies of the transcript of these 1929 proceedings and the Commission's 1929 Order are attached hereto as Exhibit A and incorporated by reference herein. Petition ¶19 and Petition for Special Relief Exhibit 3.

23. The Railroad abandoned the railway crossing over the Bridge more than sixty years ago. Application ¶9, Petition for Special Relief ¶6.

24. The parcel where the Bridge is located and the property adjacent to the Bridge was sold in 1961 by the Railroad to the Hahn Furniture Company, a non-railroad entity, and was ultimately acquired by Wabash in 2004. Petition ¶7 and Petition for Special Relief Exhibit 2.

25. Wabash is a successor in interest to the Railroad and all benefits and consideration the Railroad received from the City pursuant to the agreement to build Saw Mill Run Boulevard and the Bridge, most importantly the duty to maintain the Bridge.

26. A Wabash affiliate currently operates an automobile parts distribution center there ("the Facility"), identified as "Rohrich GM Parts Center" in the aerial view above. Petition for Special Relief ¶16.

27. Wabash, as the current holder of the recorded right of way over the Bridge, as well as the myriad of employees and businesses relying on the jobs and parts being provided by the Facility, also rely on the Bridge as the critical means of ingress, egress and regress to the Wabash property.

28. On October 26, 2022, the City informed Wabash of its intent to shut down the Bridge.

29. On December 5, 2023, the City informed Wabash that PennDOT would be immediately closing the Bridge to all vehicular and pedestrian traffic.

30. The City and PennDOT have now awarded a bid for the demolition of the Bridge on April 24, 2024.

31. Without the Bridge and the right of way across it, the Facility cannot operate as desired or as intended as it has for decades, nor can the tractor trailer trucks that utilize the Facility appropriately access the same. In short, the proposed demolition of the Bridge will mean the closure of Wabash's facility and the significant diminishment of its value.

32. The decision to demolish the Bridge was made after the City had intentionally and willfully 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.

33. Presently, access across the Bridge is blocked by concrete barriers installed by the City and PennDOT. Petition for Special Relief ¶21 and Petition for Special Relief Exhibit 7.

34. 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 repaired at a cost comparable to the proposed cost to demolish it and in a fraction of the time necessary to demolish the Bridge.

35. Nevertheless, the City and PennDOT remain adamant in their decision to demolish the Bridge, despite the reasonable alternatives laid before them.

36. To rush that plan to fruition, on May 2, 2024, the City and PennDOT filed a joint *Emergency Application* ("the Application") with the Public Utility Commission ("the

Commission”) seeking to (1) abolish the long-abandoned railway crossing and (2) “remove” the Bridge.

37. Shortly thereafter, on May 15, 2024, the City and PennDOT filed a *Petition for Special Relief Under 66 Pa.C.S.A. §2702(f)* (“the Petition for Special Relief”) and then on May 22, 2024, a *Petition for Interim Emergency Order* (“Petition for Emergency Order” and together “the Petitions”) seeking to further expedite removal of the Bridge premised on a theory that there is an “immediate danger to the safety and welfare of the public” because of the Bridge’s condition.

38. A hearing on the Petition for Emergency Order is currently scheduled for June 3, 2024.

39. The Application and Petitions were filed while litigation is pending in the Commonwealth Court over the City’s and PennDOT’s refusal to honor their contractual obligation to maintain the Bridge and the continuing harm caused to Wabash by that refusal.

40. By way of a brief procedural history, on March 1, 2023, Wabash filed suit seeking to enforce those duties in the Court of Common Pleas of Allegheny County (GD-23-2842) seeking, *inter alia*, a declaration of the City’s obligations to repair the Bridge and an injunction prohibiting the Bridge’s demolition.

41. By Order dated March 22, 2024, PennDOT was joined as a Defendant in that action, an act which divested the Court of Common Pleas of jurisdiction under 42 Pa.C.S. §761(a)(1), which vests the Commonwealth Court with original jurisdiction over “all civil actions or proceedings ... [a]gainst the Commonwealth government, including any officer thereof.”

42. By Order dated April 25, 2024, the matter was transferred to the Commonwealth Court, where that litigation is currently pending.

43. In the Commonwealth Court action Wabash asserts claims for breach of contract, Mandamus, Violation of Constitutional Due Process Rights, Declaratory Judgment and an Injunction, seeking enforcement of the City's and PennDOT's obligations to maintain the Bridge, confirmation of Wabash's access rights across the Bridge and the enjoinder of the Bridge's demolition by the City and PennDOT. A copy of the Amended Complaint is attached hereto as Exhibit A.

44. Despite their knowledge that the Bridge's fate will be determined by the Commonwealth Court—which has jurisdiction over that matter—the City and PennDOT have attempted to circumvent that litigation by applying for approval from the Commission for the Bridge's demolition in this proceeding. The Commission does not have jurisdiction to order the demolition of the Bridge. However, the Commission does have jurisdiction to enforce its 1929 Order.

45. Jurisdictional barriers aside, the sections of the Code the City and PennDOT rely upon do not authorize the Commission to demolish the Bridge and for that reason the Application and Petitions fail to state a claim.

46. Specifically, the Application and Petition are founded upon the purported existence of a railway crossing, to which the regulations contained in §2702 apply.

47. Yet, as the City and PennDOT aver in the Application and Petition for Special Relief, the Bridge has not operated as a railroad crossing for more than sixty years. Application ¶9, Petition for Special Relief ¶48.

48. All rail facilities, including rails, ties, and warning devices, were removed from the Bridge at some point in the 1960's. Petition for Special Relief ¶40.

49. No railroad company has had any ownership or operating rights over the Bridge since at least 1961. Petition for Special Relief ¶48.

50. Apparently, the Railroad did not apply to the PUC or its predecessor, the Public Service Commission (PSC”) to abolish the crossing, despite completely abandoning it. Petition for Special Relief ¶8.

51. For that reason, the Commission’s role here is to make official what has been a reality for more than half a century: no railway exists, and therefore no utility has a stake in this dispute, or, alternatively, to compel the Petitioners to maintain the Bridge in accordance with the 1929 Order.

52. The City and PennDOT understand this and, despite the commerce and jobs at stake, as a matter of strategy have consistently claimed both in the pending civil litigation and in this PUC proceeding that the Bridge serves only “one private property owner”. PennDOT Prehearing Memorandum ¶VI.

53. Therefore, the City and PennDOT have argued, their duties to maintain the Bridge have been extinguished.

54. To the extent the City and PennDOT seek a formal abolishment of a railway crossing that, as a practical matter, has not existed for more than sixty years, Wabash does not oppose such a decision.

55. Of course, the Petitioners cannot have it both ways: the City and PennDOT cannot claim in the civil litigation that the Bridge is a private vehicular parking lot for Wabash’s Facility, and at the same time seek the Commission’s approval to demolish a railway crossing in these proceedings.

56. The Bridge has not been a railway crossing for decades, regardless of whether the Railroad applied to have the Commission formally abolish it.

57. Without a railroad interest at stake any relief afforded by §2702(c) or (f) evaporates.

58. What remains is a private legal dispute between Wabash and the City over a contract which the Commission cannot enforce. See *Adams v. PUC*, 819 A.2d 631, 636 (“the PUC lacks jurisdiction over private contractual disputes”).

59. The ongoing civil litigation in the Commonwealth Court is also a prior pending action, wherein the legal obligations owed by the City and PennDOT to Wabash will be determined. In fact, this pending action was originally commenced on March 1, 2023.

60. The relief sought by the City and PennDOT from the Commission is an attempt to “cut the line” in hopes of securing permission to demolish the Bridge before the Commonwealth Court has had an opportunity to take evidence and to conduct a trial on the merits of this matter.

61. The risk of inconsistent judicial determinations is therefore heightened: an outcome favorable to Wabash at the Commonwealth Court would be moot if the Bridge had already been demolished.

62. That is the expedited outcome the City and PennDOT seek here, in hopes of avoiding a declaration that the City and PennDOT must repair the Bridge.

63. Inconsistencies of that variety are precisely what the prior pending action doctrine seeks to avoid.

64. Further, the Petition for Emergency Order must fail because the City and PennDOT cannot satisfy the requirements of 52 Pa.Code §3.6(b)(1)-(4) governing “Petitions for interim emergency orders”.

65. That section requires the City and PennDOT prove that (1) their right to relief is clear, (2) the need for relief is immediate, (3) the injury would be irreparable if relief is not granted, and (4) the relief requested is not injurious to the public interest.

66. These requirements parallel those of an injunction, a very high standard that the City and PennDOT cannot satisfy here.

67. First, the Petitioner's right to relief is *unlikely* for the following reasons:

- a. the Commission does not have jurisdiction over the contractual legal dispute between Wabash and the City/PennDOT currently pending in the Commonwealth Court, No. 279 MD 24;
- b. the Code does not afford any remedy in this proceeding because the railway crossing was abandoned in the 1960s and there is no utility with a stake in the Bridge subject to the Commission's regulatory hand; and
- c. there is a prior pending action currently pending in the Commonwealth Court, No. No. 279 MD 24.

68. Second and third, the City and PennDOT cannot prove that their need for relief is immediate as required by 52 Pa.Code §3.6(2) or that any injury would be irreparable under 52 Pa.Code §3.6(3) for the following reasons:

- a. The Bridge is currently closed to all vehicular traffic by way of concrete barriers placed by the City and PennDOT across the entire expanse of the Bridge;
- b. Upon information and belief, the current condition of the Bridge according to the National Bridge Inspection Standards is such that the current closure and future demolition of the Bridge are not warranted; and

- c. Wabash's engineers have determined that repairing the Bridge is not only feasible but faster than demolition, and the cost of repairing it is comparable to, or less than, the cost of demolishing it.

69. Consequently, there is not an immediate need for relief nor is there a risk of irreparable harm.

70. Fourth, the City and PennDOT are unable to prove that the relief requested is not injurious to the public interest as required by 52 Pa.Code §3.6(4):

- a. Removal of the Bridge would have a direct detrimental effect to employment at Wabash's facility, which employs approximately 60 employees and facilitates the distribution of automobiles and automobile parts to 1,000 dealerships, auto body and repair shops; and
- b. Wabash is subject to various other agreements with car manufacturers like GM and Toyota that will not permit Plaintiff to relocate the Facility to another location.

71. Considering the readily available options to repair the Bridge, the harm to the public would be greater if the Bridge is demolished.

72. In addition to the foregoing, Wabash further avers that PennDOT must post a bond for \$10 million (\$10,000,000.00) as an assurance that Wabash will be justly compensated in the event the Court orders the demolition of the Bridge.

73. Such a bond is contemplated by 52 Pa.Code §3.8(b), which provides that an Order following a hearing on a Petition for Interim Emergency may require the filing of a bond.

74. Given the substantial harm that would be suffered by Wabash should the Court Order demolition of the Bridge, a bond is not only appropriate but should be mandatory under the circumstances.

75. Ordering a bond here is consistent with similar rulings in eminent domain matters, the logic of which applies here even though Wabash seeks equitable relief and specific performance rather than a taking. See *Powell v. Newtown, Bucks Co.*, 34 Bucks Co. L. Rep 305 (1980)(an open-end bond without surety attached to each declaration of taking filed by a condemning sewer authority was held to be sufficient security).

76. Further, Wabash asserts the affirmative defenses of duress, estoppel, laches, failure of consideration, illegality, privilege and waiver.

77. Wabash notes that the relevant PUC Procedural Rules governing Emergency Petitions do not allow for the filing of a responsive pleading in such matter other than an Answer and New Matter.

WHEREFORE, and for the reasons set forth above, Wabash Properties, LLC, respectfully requests that the Commission dismiss the Application and strike all pending Petitions.

Respectfully submitted,

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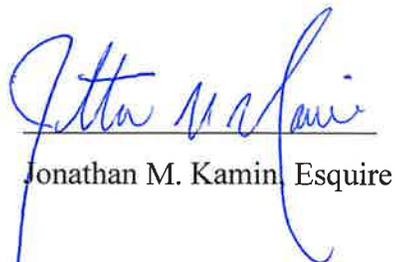
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ATTORNEY VERIFICATION

I, JONATHAN M. KAMIN, attorney at law and counsel of record for Protestant, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 5-27-24


Jonathan M. Kamin, Esquire

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by e-mail, this 27th day of May, 2024, on the following:

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RECORD

Application Docket No. 20890-1929

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

Application by

MICROFILMED

Public Service Company or Municipal Corporation

COMMISSIONERS OF ALLEGHENY COUNTY

Nature of petition

APPROVAL OF THE CONSTRUCTION OF A CROSSING BELOW
GRADE AT POINTS WHERE A PUBLIC HIGHWAY KNOWN AS SAW MILL RUN BOULEVARD
CROSSES UNDER TRACKS & RIGHT-OF-WAY OF THE PITTSBURGH & WEST VIRGINIA
RAILWAY COMPANY IN CITY OF PITTSBURGH.

Date of filing petition

MAY 1, 1929

Date of Hearing

MAY 29, 1929

M. J. W.

Remarks

MICROFILMED

per...

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No. of Test. and Ex. Folders

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FILE NO. 8

MAY 11 1929

STATE OF PENNSYLVANIA

BEFORE THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA.

IN RE:- Application of the County of Allegheny for certificate of public convenience, evidencing the Commission's approval of the construction of a highway crossing on the Saw Mill Run Boulevard, under the tracks and right-of-way of the Pittsburgh & West Virginia Railway Company, in the City of Pittsburgh, Allegheny County, Pennsylvania.

Application Docket No. 20890 1929.

MICROFILMED

PETITION.

TO THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA:

The petition of Joseph G. Armstrong, E. V. Babcock and Charles C. McGovern, respectfully represents:

FIRST: That the names and addresses of your petitioners are

Joseph G. Armstrong, Court House, Pittsburgh, Pa.
E. V. Babcock, Court House, Pittsburgh, Pa.
Charles C. McGovern, Court House, Pittsburgh, Pa.

SECOND: That the names and addresses of your petitioners' attorneys are

W. Heber Dithrich, Esq., 421 Frick Bldg., Pittsburgh, Pa.
B. B. McGinnis, Esq., 908 Park Bldg., Pittsburgh, Pa.

THIRD: That the right to construct the proposed highway crossing below grade is granted your petitioners by an Agreement Ordinance dated April 2d, 1929 between the County of Allegheny and the City of Pittsburgh.

FOURTH: That the proposed highway crossing is to be constructed of concrete slab supported on steel girders with concrete substructure ^{and} crossing below grade, the tracks and right-of-way of the Pittsburgh & West Virginia Railway Company, the south back wall being at Station 46/84 on the center line of the proposed Saw Mill Run Boulevard, and the north back wall at Station 48/46 ^{on} center line of said Boulevard, a distance of one hundred sixty-two (162) feet between said back walls. ~~and the tracks and right-of-way of said crossing shall~~

RECORD FOLDER

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have a width of seventy-two (72) feet and such additional width as may be necessary for the construction of abutments and wing walls, as shown on Plan No. 11,914, attached hereto and marked Exhibit "A". The proposed construction is on the right-of-way of the Pittsburgh & West Virginia Railway Company and the roadway clearance under the Railway bridge is eighteen feet.

FIFTH: That the public service company concerned in or affected by the proposed construction of said crossing is the Pittsburgh & West Virginia Railway Company, and the municipalities concerned in or affected by the proposed construction are the County of Allegheny and the City of Pittsburgh, in the County of Allegheny.

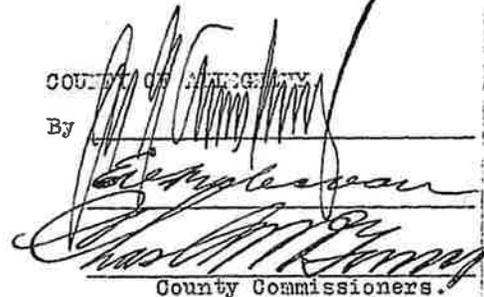
SIXTH: The estimated cost of the construction of said under grade crossing, as furnished by the Director of Public Works of Allegheny County, is the sum of Twenty Thousand (\$20,000.00) Dollars, which includes damages for property taken, injured or destroyed.

SEVENTH: The construction of said crossing is necessary and proper for the service and accommodation of the travelling public. Attached hereto is a summary of track, highway and general data of the Pittsburgh & West Virginia Railway Company, marked Exhibit "B".

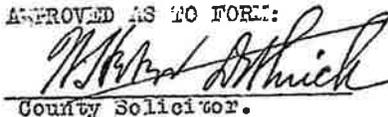
WHEREFORE, the County Commissioners pray your Honorable Commission to issue a certificate of public convenience, evidencing its approval of the location and construction of said crossing on the Saw Mill Run Boulevard under the tracks of the Pittsburgh & West Virginia Railway Company in the City of Pittsburgh, Allegheny County, Pennsylvania.

COUNTY OF ALLEGHENY

By


County Commissioners.

APPROVED AS TO FORM:


County Solicitor.

COUNTY OF ALLEGHENY,)
SS:
STATE OF PENNSYLVANIA.)

Before me, the undersigned authority, a Notary Public, duly commissioned within and for said County and State, personally appeared Joseph G. Armstrong, E. V. Babcock and Charles C. McGovern, who being duly sworn according to law, depose and say that they are the Commissioners of Allegheny County and that the facts set forth in the foregoing Petition are true and correct.

Sworn to and subscribed before me)

this 24 day of April, 1929.)

J. E. Routley
Notary Public.

J. E. ROUTLEY, Notary Public
101 COURT HOUSE
MY COMMISSION EXPIRES
FEBRUARY 10, 1931

Joseph G. Armstrong
E. V. Babcock
Charles C. McGovern

OVERSIZE
DOCUMENTS

DATA
 FOR
THE PUBLIC SERVICE COMMISSION
 OF THE
COMMONWEALTH OF PENNSYLVANIA
 (FORM ORIGINAL ISSUE NO. 8, 1935)

TRUCK DATA

Railroad Company: **THE PITTSBURGH & WEST VIRGINIA RAILROAD**
 Steam or Electric: **STEAM**
 Name of Division: **WEST SIDE BUT** Main branch line **IND.**
 Character of Traffic: **HEAVY & FREIGHT**
 Number of main tracks: **2** Number of sub tracks: **8**
 Alignment: **CURVE** Approximate degree: **45** No. of curves: **1**
 Grade of tracks: **1.10% TOWARDS PITTSBURGH**
 Number of trains per day:
 Passenger: **3** Freight: **6** Special: **none**
 Average speed of passenger train per hour: **40**
 Freight train per hour: **30**
 Distance from crossing approaching trains can be seen: **100**
 Width of Railroad Right-of-Way: **IRREGULAR 5 200**
 Width of Private Right-of-Way: **70**
 Topographical conditions in vicinity of crossing: **See ground for sketch**
 Distance top rail to natural ground line:

HIGHWAY DATA

Nearest railroad station: **KELLY** Distance: **1 1/2** Direction: **WEST**
 Name of road: **SNY MAN RUN BOULEVARD**
 State Highway: **State-aid Road** Township road: **CO. RD. 120**
 Borough/Street: **City street** Private road:
 Relative importance: **MAIN HIGHWAY**
 Road Profile: **SLOPE** each side of crossing: **1.5% NORTH**
 Kind of road: **Surfaced or paved** **ASPH.** Drainage: **SURFACE**
 Electric railway: **NO** Number of tracks:
 Angle road with track (approximate): **25**
 Grade of approaches: (a) **1.5** (b)
 Width approaches: (a) **10** BETWEEN CURVES (b) **REG. CURVE** **HEAVY**
 Condition of approaches: **OWN CUT** **Cut or fill**
 Condition of crossing between rails: **Width crossing**
 Accidents at crossing during past 3 years:
 Right-of Way of road: **20** Traveled or surfaced width: **20**

GENERAL DATA

Distance to nearest public crossings: (a) **1.5** (b)
 Distance trains can be seen at various points along highway
 (Supplement by sketch):
 Crossing signs: How many: **Properly located**
 Advance signs: How many: **Location**
 Flagmen, gates or bells: **Kind** **7** **per**
 Remarks: **PROMISED UNDER-GRADE CROSSING**
 Recommendations:

1.
 5.
 8.
 4.

Application Docket No. _____
1929.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE COMMONWEALTH OF PENNSYLVANIA.

IN RE:- Application of the County of Allegheny for certificate of public convenience, evidencing the Commission's approval of the construction of a highway crossing on the Saw Mill Run Boulevard, under the tracks and right-of-way of the Pittsburgh & West Virginia Railway Company, in the City of Pittsburgh, Allegheny County, Pennsylvania.

PETITION.

W. HEBER DITTRICH,
County Solicitor,
421 Frick Bldg.

B. B. MCGINNIS,
Asst. County Solicitor,
908 Park Bldg.,
Pittsburgh, Pa.

PROOF OF PUBLICATION

Commonwealth of Pennsylvania }
County of Allegheny } ss.

Personally before me, the undersigned authority, in and for said County and Commonwealth appeared..... K. I. Keefe....., who being duly sworn according to law, says that he is Bookkeeper of THE PITTSBURGH SUN-TELEGRAPH, a public newspaper published in said County, and that the notice, of which the annexed clipping from said newspaper is a copy, was printed and published for..... two (2)..... successive weeks in the regular editions and issues of said newspaper on the following dates, viz:.....
May 13 - 20 - A. D. 1929

Sworn to and subscribed before me this..... 20th..... day of..... May..... A. D. 1929

K. I. Keefe
Notary Public.

NOTICE is hereby given that application has been made to the Public Service Commission of the Commonwealth of Pennsylvania, under the provisions of the public service company law, by the County of Allegheny for a certificate of public convenience evidencing the Commission's requisite approval of the construction of a crossing below grade at points where a public highway known as Saw Mill Run boulevard crosses under the tracks and right of way of the Pittsburgh and West Virginia Railway Company in the City of Pittsburgh, Allegheny County, File No. A 20890-20.
A public hearing upon this application will be held in rooms on the seventh floor, City-County Building, Pittsburgh, Pa., on Wednesday, the 29th day of May, 1929, at 8:30 a. m. (Standard time), 9:30 a. m. (daylight saving time), when and where all persons in interest may appear and be heard, if they so desire.
JOSEPH G. ARMSTRONG,

PREPARED my
 STENOGR. my
 FORM CHECK _____
 RECORD CHECK _____
 EXAMINED AND APPROVED _____
 BUREAU OF P. C.

THE PUBLIC SERVICE COMMISSION
 OF THE
 COMMONWEALTH OF PENNSYLVANIA

A. 20890-1929.

IN THE MATTER OF THE APPLICATION OF

COUNTY OF ALLEGHENY,
 under Section 5, Article III, and
 Sections 12, 18 and 19, Article V, of
 The Public Service Company Law, for
 the approval of the construction of a
 highway crossing on the Saw Mill Run
 Boulevard, under the tracks and right
 of way of the Pittsburgh & West Virginia
 Railway Company in the City of Pitts-
 burgh, Allegheny County, Pennsylvania.

CERTIFICATE
 OF
 PUBLIC CONVENIENCE

The Public Service Commission of the Commonwealth of Pennsylvania hereby certifies that after an investigation and hearing had on the above entitled application, it has, by its report and order made and entered, a copy of which is hereto attached and made a part hereof, found and determined that the granting of said application is necessary and proper for the service, accommodation, convenience and safety of the public, and this certificate is issued evidencing its approval of the said application as set forth in said report and order.

In Testimony Whereof, THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA has caused these presents to be signed and sealed, and duly attested by its Secretary at its office in the city of Harrisburg this fourth day of June 1929.

Attest:

THE PUBLIC SERVICE COMMISSION
 OF THE
 COMMONWEALTH OF PENNSYLVANIA

W. D. B. ...
 Chairman

[Signature]
 Secretary

RECORD
 FOLDER

Testimony and Exhibits

Consecutive No. _____

File No. 20890

THE PUBLIC SERVICE COMMISSION
OF THE COMMONWEALTH OF PENNSYLVANIA

MICROFILMED

Application by

Public Service Company or Municipal Corporation

Commissioners of Allegheny County
Nature of petition

MICROFILMED

THIS FOLDER HAS BEEN MICROFILMED.
UNDER NO CIRCUMSTANCE SHOULD YOU REMOVE
ANY DOCUMENTS OR FILE ANY ADDITIONAL
DOCUMENTS IN THIS FOLDER. THIS ENTIRE
FOLDER WILL SOON BE DESTROYED. ANY
QUESTIONS CONCERNING THIS, PLEASE CALL
VINCE PUGLIESE AT 7-5608 OR LEO STAUB
AT 7-6982.

No. of Record Folders

No. of Correspondence Folders

No. of Test. and Ex. Folders

8377
A. 20890

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE COMMONWEALTH OF PENNSYLVANIA.

MICROFILMED

A P P L I C A T I O N)
OF)
C O M M I S S I O N E R S O F A L L E G H E N Y)
C O U N T Y .)

NO. A. 20890-1929.

** for approval of the construction of a crossing below grade at points where a public highway known as Saw Mill Run Boulevard crosses under the tracks and right-of-way of the Pittsburgh and West Virginia Railway Company in the City of Pittsburgh, Allegheny County. Initial Hearing.

TRANSCRIPT

HEARING HELD AT PITTSBURGH, PA., MAY 29, 1929.

For the Commission: Hon. Samuel Walker, Commissioner,
The Public Service Commission,
Harrisburg, Penna.

For the Commissioners of Allegheny County: B. B. McGinnis, Esq., Assistant
County Solicitor, Pittsburgh, Pa.

For the City of Pittsburgh: Charles P. Lang, Esq.,
Pittsburgh, Penna.

The Misses Beatty,
Shorthand Reporters,
862 Frick Annex Bldg.,
Pittsburgh, Penna.

2
DOCKETED
JUN 17 1929
INDEX No. 3

RECORD
FOLDER

INDEX TO WITNESSES

Jordan, James O. 2

INDEX TO EXHIBITS

✓ Applicant's Exhibits

✓ Exhibit No. 1 -- Agreement between the County of Allegheny and the City of Pittsburgh. 2

✓ Exhibit No. 2 -- Data sheet for the Public Service Commission, in connection with the structure. 4

0 Exhibit No. 3 -- Blue print of the drawing which was attached to the petition submitted to The Public Service Commission. 6

City of Pittsburgh Exhibit

✓ Exhibit "A" -- Ordinance No. 157, Bill No. 4262. 5

The Misses Beatty,
Reporters,
862 Frick Annex,
Pittsburgh, Pa.

COMMISSIONER WALKER: Have proofs of publication been filed?

MR. MCGINNIS: They were mailed on the 22nd (May)

--oOo--

JAMES C. JORDAN, called as a witness in behalf of Applicant, and duly sworn, testified as follows, in response to,-

DIRECT EXAMINATION by Mr. McGinnis:

Q Mr. Jordan, what is your occupation?

A Civil Engineer.

Q By whom are you employed?

A Department of Works, Allegheny County.

Q What is your work in that Department?

A I am engineer of bridge records in charge of the drafting room.

Q Who are the County Commissioners of Allegheny County?

A Joseph G. Armstrong, Chairman; E. V. Babcock, and Charles E. McGovern.

(Applicant's Exhibit No. 1 Marked)

Q I show you Applicant's Exhibit No. 1 and ask you what it is.

A Agreement between the County of Allegheny, of the first part, and the City of Pittsburgh, in relation to the Saw Mill Run Boulevard.

Q That is in relation to the construction thereof?

A Yes.

Q Is that the original?

A This is a photostatic copy.

James C. Jordan

MR. MCGINNIS: I have one of the originals here, and this is a photostatic copy; they have the approval of the City Solicitor, that is the only difference, and I think, with Mr. Lang's consent we could file that as an exhibit.

COMMISSIONER WALKER: Offer the original.

MR. LANG: The City of Pittsburgh desires copy of the certificate of the Commission and with that intent I would like to file at this time a duplicate original, so that when the order of the Commission issues, there will be one attached to each of the copies filed, one going to the County and one to the City.

By Mr. McGinnis:

- Q Under this contract, Exhibit No. 1, who is to do the construction of the boulevard?
- A The County of Allegheny.
- Q In the construction of this boulevard is there a bridge crossing the tracks and right-of-way of the Pittsburgh & West Virginia Railway?
- A Yes; there is a bridge or underpass crossing underneath the tracks of the Pittsburgh & West Virginia Railway Company.
- Q Can you give us a brief description of this bridge or underpass?
- A It provides another pass with a forty (40) foot clear roadway to the curb and two sidewalks eight (8) two (2) from curb to the face of the concrete sidewalls underneath the tracks, with a head room of eighteen (18) feet on the roadway. The structure

has concrete walls with steel columns located on the curb line, supporting girders across the roadway, and with a concrete slab on top of the girders and to the side walls upon which the ballast and ties of the railroad tracks are supported.

Q What is the roadway clearance?

A Eighteen feet (18') vertically.

Q Is there any other railway concern except the Pittsburgh & West Virginia on this structure?

A Not to my knowledge.

Q And what municipalities are concerned?

A The City of Pittsburgh are concerned in the construction within the city limits.

Q What is the estimated cost of the underpass?

A My recollection is it was two hundred thousand dollars.

Q Do you have any figures to substantiate that?

A I don't have the figures.

Q Is the construction of this crossing necessary for the service and accommodation of the traveling public?

A It is necessary in order to pass the roadway under these tracks.

(Applicant's Exhibit No. 2 Marked)

Q I show you Applicant's Exhibit No. 2 and ask you what it is.

A It is a data sheet for The Public Service Commission, giving the data required in track, highway and generally, in connection with this structure.

CROSS EXAMINATION by Mr. Lang:

Q Mr. Jordan, do you know about the ordinance that authorized

this agreement (handing witness paper)? Just state when this ordinance was passed.

A It was enacted the 18th day of March, 1929.

Q When was it approved by the Mayor?

A March 21, 1929.

Q Where was it recorded?

A In the Ordinance Book Vol. 41, page 141.

Q What is the number of the ordinance?

A Number one hundred and fifty-seven (157).

MR. LANG: We offer in evidence this ordinance, with the right to have it later withdrawn and a certified copy presented, being marked City of Pittsburgh Exhibit "A", being Ordinance No. 157, Bill No. 4262.

RE-DIRECT EXAMINATION by Mr. McGinnis:

Q Refreshing your recollection now, will you state what the cost of the proposed construction is?

A Two hundred thousand dollars (\$200,000.00) is the estimated cost of the structure.

MR. MCGINNIS: If your Honor please, the sixth paragraph of the petition, I would ask leave to amend to read as follows:-

"The estimated cost of the construction of the said undergrade crossing as furnished by the Director of Public Works of Allegheny County, is the sum of two hundred thousand dollars, which includes damages for property taken, injured or destroyed," to take the place of the sixth paragraph in the petition

James C. Jordan

which states that the estimated cost is twenty thousand dollars (\$20,000.00).

COMMISSIONER WALKER: We will permit the amendment.

(Applicant's Exhibit No. 3 marked)

By Mr. McGinnis:

Q I show you Applicant's Exhibit No. 3 and ask you what it is.

A Blue-print of the drawing which was attached to the petition submitted to The Public Service Commission.

Q What does it show?

A It shows the structure and the proposed roadway of the Saw Mill Run Boulevard and sidewalks as they affect the property of the Pittsburgh & West Virginia Railway.

Q What property does it show as being taken for the construction of this underpass?

A The property of the Pittsburgh & West Virginia Railway Company.

Q I believe according to the Agreement, Exhibit No. 1, the City of Pittsburgh is to furnish the right-of-way for this new boulevard?

A Yes.

Q Do you know whether there is any agreement between the Railroad Company and the City of Pittsburgh?

A There is an agreement between the City of Pittsburgh and the Railroad Company, in regard to the right-of-way.

Q Then, it will not be necessary under these proceedings to condemn any land for the purpose of this structure?

James C. Jordan

A No, sir.

Further sayeth not.

---ooOoo---

MR. MCGINNIS: We offer in evidence Applicant's
Exhibits Nos. 1, 2 and 3.

COMMISSIONER WALKER: They will be received.

---ooOoo---

Testimony Concluded.

Submitted on Record.

---ooOoo---

C E R T I F I C A T E

I hereby certify that the proceedings and evidence
in the cause first stated are fully and accurately contained
in the shorthand notes taken by me during the hearing before
The Public Service Commission of the Commonwealth of Pennsyl-
vania and that this is a correct transcript thereof.

Willard E. Arnold.

Reporter
For The Misses Beatty.

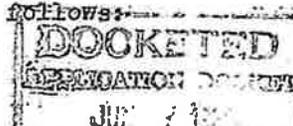
A G R E E M E N T,

MADE this 2nd day of April, A. D. 1929,
between the County of Allegheny, a public corporation of Pennsylvania, hereinafter called "County", party of the first part, and the City of Pittsburgh, a municipal corporation of the State of Pennsylvania, within the limits of said County, hereinafter called the "City", party of the second part.

WHEREAS, The Saw Mill Run Boulevard, in the City of Pittsburgh, consisting of the North Branch, from Warrington Avenue to Woodruff Street, the South Branch, from West Liberty Avenue to the City of Pittsburgh - Borough of Overbrook line, and from the Borough of Overbrook and former Carrick Borough line to Library Road (State Highway Route No. 247), and the McKinley Park Branch, from the South Branch to Bausman Street, as located and opened by City Ordinance, is to be a principal thoroughfare; and,

WHEREAS, The County Commissioners of Allegheny County deem it advisable and necessary to improve said Saw Mill Run Boulevard, in said City between the points mentioned, and are of the opinion that the County should bear a portion of the cost, and the corporate authorities of the City of Pittsburgh believe it will be greatly to the interest and advantage of said City and a great saving of expense thereto, if said improvement of said Boulevard within its corporate limits be made, and the cost and expense thereof be paid jointly by the City and the County as hereinafter specified;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That for the consideration hereinafter mentioned, the parties hereto do covenant and agree to and with each other, as follows:



FIRST. The name "Library Road" as located and opened by ordinances of the City of Pittsburgh, shall be changed by ordinance of the City to "Saw Mill Run Boulevard", from Woodruff Street to Library Road; and to "Saw Mill Run Boulevard - McKinley Park Branch", from Saw Mill Run Boulevard to Bausman Street.

SECOND. The parties hereto agree that the Saw Mill Run Boulevard, within the limits of said City, for a distance of approximately 13,640.0 feet shall be improved between the following terminal points:

BEGINNING at Warrington Avenue and extending to Woodruff Street, comprising the North Branch; beginning at West Liberty Avenue and extending to the City of Pittsburgh - Borough of Overbrook line, and from the Borough of Overbrook and former Carrick Borough line to Library Road (State Highway Route No. 247), comprising the South Branch, and from the South Branch to Bausman Street, comprising the McKinley Park Branch. The consent of the City of Pittsburgh is hereby given to the County of Allegheny to carry out the provisions herein set forth.

THIRD. Said Saw Mill Run Boulevard between the terminal points shall be improved by the County to the following widths: North and South Branches, thirty (30') feet of paving and forty-two (42') feet of grading, and the McKinley Park Branch, twenty (20') feet of paving and thirty-three (33') feet of grading, all exclusive of slopes. The work shall be done to lines and grades established by the City and in conformity with plans and specifications prepared by the Department of Public Works of Allegheny County and approved by the Commissioners of said Allegheny County and the Director of the Department of Public Works of the City of Pittsburgh, to the limits shown on said plans.

FOURTH. The improvement of said Saw Mill Run Boulevard as set forth in the first and second paragraphs under this agreement, shall be done by a contract or contracts awarded therefor by the County of Allegheny after approval of the plans and specifications by the Mayor and the Director of the Department of Public Works of the City of Pittsburgh, pursuant to the Acts of Assembly relating to same. The County shall have charge of the work and the City may, at its own cost and expense, furnish whatever engineering and inspectional service it so desires. Any complaint which the City may have as to the manner of construction or the materials or methods used shall be made in writing to the Director of the Department of Public Works of Allegheny County, within three (3) days; otherwise all work and materials shall be considered by the County as being done and furnished, placed or erected, satisfactory to the City.

FIFTH. The City agrees, at its own cost and expense, to construct all sanitary sewers or storm water drains, including house or other connections required within the limits of this improvement, prior to or during the construction work to be done by the County under this agreement, exclusive, however, of the storm water drains shown on the Boulevard plans as approved. The City also agrees to require the construction of any water lines with the necessary house or other connections, fire hydrants, gate boxes, etc., within the limits of this improvement, at the cost or expense of the City, individuals or public utility companies, prior to or during the construction work to be done by the County under this agreement. All work on sanitary sewers, storm water drains and water lines, shall be done by the City or utility company in such manner that no interference or delay shall be occasioned to the County's contractor on this work. The altering, resetting or reconstructing of existing catch basins or storm inlets within the limits of this improvement shall be included in the construction work to be performed by the County under the terms of this agreement.

SIXTH. The City agrees to enact any ordinance which may be necessary to locate, relocate, open or widen, establish or re-establish the grade and curb lines of said Saw Mill Run Boulevard, as shown on the plans as approved, as well as any existing streets or alleys affected by this improvement to condemn or otherwise secure all private or public property necessary for this purpose.

SEVENTH. The City agrees to assume and become liable for all damages occasioned by reason of this improvement by the opening, locating, relocating, widening, establishing or re-establishing of grades required for the aforesaid improvement of the Saw Mill Run Boulevard, as shown on the plans as approved, between the terminal points hereinbefore mentioned. The City agrees that it will assume and become liable for all damages to property, including surface and subsurface structures, caused by said improvement of the Saw Mill Run Boulevard, including damages to person or property occasioned from any obstruction on said roadway or part thereof, not due to the negligence of the said County or its contractor or contractors. The City agrees to effect the reconstruction of the bridge of the Pittsburgh Railways Company so that no bents or supports of said bridge shall be located within or encroach upon the lines of the Saw Mill Run Boulevard - McKinley Park Branch, and further agrees to relieve the County of any cost or expense whatsoever occasioned thereby.

EIGHTH. The City agrees to light the Boulevard and maintain the necessary lighting system. It is further agreed that after the completion of the improvement aforesaid, the City shall maintain and keep the Saw Mill Run Boulevard, including all structures incidental to the improvement, between the terminal points hereinbefore described

in good repair, and the County shall be forever afterwards relieved of any responsibility for the maintenance or repair thereof.

NINTH. The City agrees to give all notices to fully advise all parties concerned of the proposed improvement, and to require all service companies and private parties to make the necessary repairs and connections to existing utilities and to install any new utilities with their house or other connections to points outside the limits of this improvement, prior to or during the construction of the Boulevard.

TENTH. In case the City installs either water or sewer lines on this highway after the signing of this agreement, the City agrees to backfill the trench or trenches in a workmanlike manner and place any concrete over the same that may be required to reinforce the sub-grade to permit the paving of the street. Where public service corporations or individuals open such trenches, the City shall require said corporations or individuals to backfill the trenches in a workmanlike manner and provide any concrete necessary to reinforce the sub-grade to permit the paving of the street; or the City may require said corporations or individuals to pay for said work, which shall be done by the City of Pittsburgh's forces. The City agrees to relieve the County of the responsibility for the failure of any part of the paving of the roadway or any structures occasioned by the subsidence of any trenches opened by the City, public service corporations or individuals, whether said trenches are opened before or after the paving of this Boulevard by a contract or contracts let by Allegheny County.

ELEVENTH. The City agrees to pay to the County the additional cost of backfilling any trenches with slag and the cost of removing and replacing concrete slabs for pavement over said trenches, when trenches opened by either the City or others are found in such condition as to endanger the strength or stability of the work to be done by the County.

In case such trenches are found their condition shall be brought to the attention of the Director of Public Works of the City by letter, and if the condition is not corrected by the City within three days after the delivery of such letter, the County shall correct the condition and bill the City for the actual construction cost of the same.

IN WITNESS WHEREOF, on the day and year first above written, the County has caused its common and corporate seal to be affixed hereto, duly attested by the Chief Clerk of the County Commissioners, and this agreement to be signed by its County Commissioners pursuant to a resolution of the County Commissioners, passed on the 2 day of April, 1929, and this agreement is signed and executed in the name of the City of Pittsburgh, by the Mayor and the Director of the Department of Public Works, and the seal of the City is by its proper officers hereto affixed, they being duly authorized so to do by Ordinance No. 157 of said City, approved the 21st day of March, 1929, recorded in Ordinance Book, Vol. 41, Page 141.

ATTEST:

J. L. Swaney
Mayor's Secretary.
Leslie Ruch
Chief Clerk.

ATTEST:

W. H. Zickel
Chief Clerk.

COUNTERSIGNED: MAY 25 1929

Henry P. Evans
City Controller.

CITY OF PITTSBURGH,

By Charles H. Kline
Mayor.

Edward G. Lang
Director, Department of Public Works.

COUNTY OF ALLEGHENY,

By Charles M. Evans
County Commissioners.

EXAMINED BY:

Charles P. Lang
Special Assistant City Solicitor.

APPROVED AS TO FORM:

Charles P. Lang
City Solicitor.

APPROVED AS TO FORM:

W. H. Zickel
County Solicitor.

ARTICLES OF AGREEMENT

Between

COUNTY OF ALLEGHENY

And

CITY OF PITTSBURGH.

THE PUBLIC SERVICE COMMISSION
OF THE
COMMONWEALTH of PENNSYLVANIA

A Docket No. *20,890*
1929 (Year)

App. Exhibit No. *1*

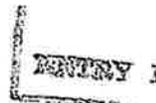
Hearing Held *May 29, 1929*
(Date)

Beatty Reporter

Chas. A. Waldschmidt, Esq.,
City Solicitor.

Charles P. Lang, Esq.,
Special Ass't City Solicitor,

313 City-County Bldg.,
Pittsburgh, Pa.



DATA
FOR
THE PUBLIC SERVICE COMMISSION
OF THE
COMMONWEALTH OF PENNSYLVANIA
(Form P. S. C. 100-100)

TRAFFIC DATA

Railroad Company: THE PENNSYLVANIA & WEST VIRGINIA RAILROAD
 Station or Location: OLYMPIA
 Name of District: WITH STATIONS: MATTHEW BROSCH LINE, NINA
 Character of Traffic: PASSENGER & FREIGHT
 Number of tracks: 2 Number of sidings: 2
 Alignment: L Approximate degree: 6 How far?
 Grade of track: 10% APPROX. PENNSYLVANIA
 Number of crossings: Freight: 6 Switched movements: 12
 A.M.: Passenger loads per hour: 45
 Freight trains per hour:
 Dist. from crossing: Approaching trains can be seen, km: (5)
 Width of right-of-way: Right-of-Way: REGULAR: 200 ft.
 of Private Right-of-Way: To
 Special conditions in vicinity of crossing: (expressed by sketch)

Distance top rail to natural ground line:

HIGHWAY DATA

Name of railroad station: KELLY Distance: 1/2 mi. Direction: West
 Name of road: SAN MAR, RAY BOULEVARD
 State Highway: State-aid Road Township road: COUNTY ROAD
 Borough street: City street Private road:
 Relative importance: Major Highway
 Road Braille 500 ft. each side of crossing: 600 ft. each
 Kind of road: 6 paved or packed EXCA Drainage: SURFACE
 Electric railway: NO Number of tracks:
 Angle road with track (approximate): 25
 Grade of approaches: (a) (b)
 Width approaches: (a) 20 ft. between CURB (b) 10 ft. CLEAR HIGH
 Condition of approaches: GRASS CUT or FILL
 Condition of crossing: broken rails Width crossing:
 Accidents at crossing during past 5 years:
 Right-of-Way of road: 75 Traveled or surfaced width: 30'

GENERAL DATA

Distance to nearest public crossings: (a) (b)
 Distance trains can be seen at various points along highway:
 (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z)
 Crossing signs: How many: Properly located
 Advance signs: How many: Location:
 Flagmen, gates or bells: Kind: Type:
 Remarks: SPECIAL LIGHT GRADE CROSSING
 Recommendations:

890

2087

THE PUBLIC SERVICE COMMISSION
 OF THE
 COMMONWEALTH of PENNSYLVANIA

A Docket No. 20,890
 1929 (Year)

App Exhibit No. 2

Hearing Held May 29, 1929
 (Date)

Bentley Reporter

DOCKETED
 APPLICATION DOCKETED
 JUN 27 1929
 3

OVERSIZE
DOCUMENTS

20890

8377
20890

Exp Est City of Pgh
J. A.

May 29/19.

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1929

THE PUBLIC WORKS DEPARTMENT

No. 157.

Bill No. 4662.

AN ORDINANCE authorizing and directing the Mayor and the Director of the Department of Public Works for and in behalf of the City of Pittsburgh to enter into an Agreement with the County of Allegheny, relating to the change of name of Library road to Saw Mill Run Boulevard, the improvement of Saw Mill Run Boulevard, from Woodruff street to Library road (State Highway Route No. 247) and Saw Mill Run Boulevard - McKinley Park Branch, from Saw Mill Run Boulevard to Bausman street, including the locating and re-locating, opening and widening, establishing and re-establishing the grades and fixing the lines of said Saw Mill Run Boulevard and McKinley Park Branch and providing for the payment of the costs, damages and expenses thereof.

SECTION 1. Be it ordained and enacted by the City of Pittsburgh, in Council assembled, and it is hereby ordained and enacted by the authority of the same, that the Mayor and the Director of the Department of Public Works be and they are hereby authorized and directed to make, execute and deliver in the name of and on behalf of the City of Pittsburgh, an Agreement granting the consent of the City to the County in the following form, to-wit: * * * *

3/20/29

AGREEMENT

MADE THIS day of A. D. 1929,
between the County of Allegheny, a public corporation of Pennsylvania, hereinafter called "County", party of the first part, and the City of Pittsburgh, a municipal corporation of the State of Pennsylvania, within the limits of said County, hereinafter called the "City", party of the second part.

WHEREAS—The Saw Mill Run Boulevard, in the City of Pittsburgh consisting of the North Branch, from Warrington Avenue to Woodruff Street, the South Branch, from West Liberty Avenue to the City of Pittsburgh—Borough of Overbrook line, and from the Borough of Overbrook and former Carrick Borough line to Library Road (State Highway Route No. 247), and the McKinley Park Branch, from the South Branch to Bausman Street, as located and opened by City Ordinances, is to be a principal thoroughfare, and

WHEREAS—The County Commissioners of Allegheny County deem it advisable and necessary to improve said Saw Mill Run Boulevard, in said City between the points mentioned, and are of the opinion that the County should bear a portion of the cost, and the corporate authorities of the City of Pittsburgh believe it will be greatly to the interest and advantage of said City and a great saving of expense thereto, if said improvement of said Boulevard within its corporate limits be made, and the cost and expense thereof be paid jointly by the City and the County as hereinafter specified.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, That for the consideration hereinafter mentioned, the parties hereto do covenant and agree, to and with each other as follows:

FIRST. The name "Library Road" as located and opened by ordinances of the City of Pittsburgh, shall be changed by ordinance of the City, to "Saw Mill Run Boulevard", from Woodruff Street to Library Road; and to "Saw Mill Run Boule-

vard—McKinley Park Branch”, from Saw Mill Run Boulevard to Bausman Street.

SECOND. The parties hereto agree that the Saw Mill Run Boulevard, within the limits of said City, for a distance of approximately 13,640.0 feet shall be improved between the following terminal points:

BEGINNING at Warrington avenue and extending to Woodruff Street comprising the North Branch, beginning at West Liberty Avenue and extending to the City of Pittsburgh-Borough of Overbrook line, and from the Borough of Overbrook and former Carrick Borough line to Library Road (State Highway Route No. 247), comprising the South Branch, and from the South Branch to Bausman Street, comprising the McKinley Park Branch. The consent of the City of Pittsburgh is hereby given to the County of Allegheny to carry out the provisions herein set forth:

THIRD. Said Saw Mill Run Boulevard between the terminal points, shall be improved by the County to the following widths: North and South Branches, thirty (30') feet of paving and forty-two (42') feet of grading, and the McKinley Park Branch, twenty (20') feet of paving and thirty-three (33') feet of grading, all exclusive of slopes. The work shall be done to lines and grades established by the City and in conformity with plans and specifications prepared by the department of Public Works of Allegheny County and approved by the Commissioners of said Allegheny County and the Director of the Department of Public Works of the City of Pittsburgh, to the limits shown on said plans.

FOURTH. The improvement of said Saw Mill Run Boulevard as set forth in the first and second paragraphs under this agreement, shall be done by a contract or contracts, awarded therefor, by the County of Allegheny, after approval of the plans and specifications by the Mayor and the Director of the Department of Public Works, of the City of Pittsburgh, pursuant to the Acts of Assembly relating to same. The County shall have charge of the work and the City may,

at its own cost and expense, furnish whatever engineering and inspectional service it so desires. Any complaint which the City may have as to the manner of construction or the materials or methods used, shall be made in writing to the Director of the Department of Public Works of Allegheny County, within three (3) days, otherwise all work and materials shall be considered by the County as being done and furnished, placed or erected, satisfactory to the City.

FIFTH. The City agrees at its own cost and expense, to construct all sanitary sewers or storm water drains, including house or other connections required within the limits of this improvement, prior to or during the construction work to be done by the County under this agreement, exclusive, however of the storm water drains shown on the Boulevard plans as approved. The City also agrees to require the construction of any water lines with the necessary house or other connections, fire hydrants, gate boxes, etc., within the limits of this improvement, at the cost or expense of the City, individuals or public Utility Companies, prior to or during the construction work to be done by the County under this Agreement. All work on sanitary sewers, storm water drains and water lines, shall be done by the City or Utility Company in such a manner that no interference or delay shall be occasioned to the County's contractor on this work. The altering, resetting or reconstructing of existing catch basins or storm inlets within the limits of this improvement shall be included in the construction work to be performed by the County under the terms of this agreement.

SIXTH. The City agrees to enact any ordinance which may be necessary to locate, relocate, open or widen, establish or re-establish the grade and curb lines of said Saw Mill Run Boulevard, as shown on the plans as approved, as well as any existing streets or alleys affected by this improvement to condemn or otherwise secure all private or public property necessary for this purpose.

SEVENTH. The City agrees to assume and become liable for all damages occasioned by reason of this improvement by the opening, locating, relocating, widening, establishing or re-establishing of grades required for the aforesaid improvement of the Saw Mill Run Boulevard, as shown on the plans as approved, between the terminal points hereinbefore mentioned. The City agrees that it will assume and become liable for all damages to property, including surface and sub-surface structures, caused by said improvement of the Saw Mill Run Boulevard, including damages to person or property occasioned from any obstruction on said roadway or part thereof, not due to the negligence of the said County or its contractor or contractors. The City agrees to affect the re-construction of the bridge of the Pittsburgh Railways Company, so that no bents or supports of said bridge shall be located within or encroach upon the lines of the Saw Mill Run Boulevard,—McKinley Park Branch, and further agrees to relieve the County of any cost or expense whatsoever occasioned thereby.

EIGHTH. The City agrees to light the Boulevard and maintain the necessary lighting system. It is further agreed that after the completion of the improvement aforesaid, the City shall maintain and keep the Saw Mill Run Boulevard, including all structures incidental to the improvement, between the terminal points hereinbefore described, in good repair, and the County shall be forever afterwards relieved of any responsibility for the maintenance or repair thereof.

NINTH. The City agrees to give all notices to fully advise all parties concerned of the proposed improvement, and to require all service companies and private parties to make the necessary repairs and connections to existing utilities and to install any new utilities with their house or other connections to points outside the limits of this improvement, prior to or during the construction of the boulevard.

TENTH. In case the City installs either water or sewer lines on this highway after the signing of this agreement, the City agrees to backfill the trench or trenches in a workmanlike manner and place any concrete over the same that may be required to reinforce the sub-grade to permit the paving of the street. Where public service corporations or individuals open such trenches, the City shall require said corporations or individuals to backfill the trenches in a workmanlike manner and provide any concrete necessary to reinforce the sub-grade to permit the paving of the street; or the City may require said corporations or individuals to pay for said work, which shall be done by the City of Pittsburgh's forces. The City agrees to relieve the County of the responsibility for the failure of any part of the paving of the roadway or any structures occasioned by the subsidence of any trenches opened by the City, public service corporations or individuals, whether said trenches are opened before or after the paving of this Boulevard by a contract or contracts let by Allegheny County.

ELEVENTH. The City agrees to pay to the County the additional cost of backfilling any trenches with slag and the cost of removing and re-placing concrete slabs for pavement over said trenches, when trenches opened by either the City or others are found in such condition as to endanger the strength or stability of the work to be done by the County. In case such trenches are found, their condition shall be brought to the attention of the Director of Public Works of the City by letter, and if the condition is not corrected by the City within three days after the delivery of such letter, the County shall correct the condition and bill the City for the actual construction cost of the same.

IN WITNESS WHEREOF, The County has caused its common and corporate seal to be affixed hereto, duly attested by the Chief Clerk of the County Commissioners, and this agreement to be signed by its County Commissioners, and this agreement is signed and executed in the name of the City of Pittsburgh, by

the Mayor and the Director of the Department of Public Works, and the Seal of the City is by its proper officers hereto affixed, they being duly authorized so to do by Ordinance of said City, all done this day and year aforesaid.

ATTEST:

CITY OF PITTSBURGH

.....

By.....

Mayor's Secretary.

Mayor

.....

.....

Chief Clerk

Director, Department of Public Works.

ATTEST:

COUNTY OF ALLEGHENY

.....

By.....

Chief Clerk

.....

.....

County Commissioners.

Approved as to form:

Approved as to form:

County Solicitor

City Solicitor

1. SECTION 2. That any Ordinance or part of Ordinance, conflicting with the
- 2 provisions of this Ordinance, be and the same is hereby repealed so far as the
- 3 the same affects this Ordinance.

Ordained and enacted into a law in Council, this 15th day
of March, A. D. 1929.

Jas. F. Malone
President of Council.

Attest: Robt. Clark
Clerk of Council.

Mayor's Office, March 21st, 1929.
Approved: Charles H. Kline
Mayor.

Attest: F. L. Swansy
Mayor's Secretary.

Recorded in Ordinance Book, Vol. 41, page 141, 21st day
of March, 1929.

Pittsburgh, March 21st, 1929.
I do hereby certify that the foregoing is a true and correct copy
of Ordinance No. 357, Series 1929, as the same appears of record in the
office of the city clerk.

R. W. Kellogg
City Clerk.

MICROFILMED

DOCKETED
APPLICATION BOOK
JUN 17 1929
ENTRY No. 3

RECORD
FOLDER

THE PUBLIC SERVICE COMMISSION
OF THE
COMMONWEALTH of PENNSYLVANIA

A Docket No. 20,890
(Year)

City of Pgh Exhibit No. "A"

Hearing Held May 29, 1929
Pittsburgh (Date)

Beatty Reporter

THE PUBLIC SERVICE COMMISSION
OF THE
COMMONWEALTH OF PENNSYLVANIA

Application Docket No. 20890-1929.

In re: Application of the COUNTY OF ALLEGHENY for the approval of the construction of a highway crossing on the Saw Mill Run Boulevard, under the tracks and right of way of the Pittsburgh & West Virginia Railway Company, in the City of Pittsburgh, Allegheny County, Pennsylvania.

REPORT & ORDER

BY THE COMMISSION:

This matter being before the Commission upon petition of the COUNTY OF ALLEGHENY, dated April 30, 1929, for the approval of the construction of a highway crossing on the Saw Mill Run Boulevard, under the tracks and right of way of the Pittsburgh & West Virginia Railway Company, in the City of Pittsburgh, Allegheny County, Pennsylvania, in accordance with the plan and petition filed; and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, the Commission finds and determines that the approval of the construction of highway crossing, in accordance with plan and petition filed, and the issuance of a certificate of public convenience in evidence thereof, is necessary and proper for the service, accommodation, convenience and safety of the public;

NOW, to-wit, June 4, 1929, IT IS ORDERED:
That a certificate of public convenience issue evidencing the Commission's approval of the construction of highway crossing, as above determined.

THE PUBLIC SERVICE COMMISSION
OF THE
COMMONWEALTH OF PENNSYLVANIA

Wm. B. Diney, Chairman.

ATTEST:

John B. ...
Secretary.

MICROFILMED