

**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

**PETITION TO INTERVENE OF  
PROTESTANT WABASH PROPERTIES,  
LLC TO EMERGENCY APPLICATION  
OF THE DEPARTMENT OF  
TRANSPORTATION AND THE CITY OF  
PITTSBURGH**

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**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

**PETITION TO INTERVENE OF PROTESTANT WABASH PROPERTIES, LLC TO  
EMERGENCY APPLICATION OF THE DEPARTMENT OF TRANSPORTATION AND  
THE CITY OF PITTSBURGH**

Protestant/Petitioner Wabash Properties, LLC (“Wabash”) submits this Petition to Intervene in the Emergency Application of the Department of Transportation (“PennDOT”) and the City of Pittsburgh (“the City”; with PennDOT “Applicants”), stating as follows:

**INTRODUCTION**

1. The above-captioned Application arises from the joint plan of the City and PennDOT to demolish a City-owned Bridge which spans State Route 51 in the City of Pittsburgh (“the Bridge”).

2. As discussed below, 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.

3. The City has owned the Bridge since its construction nearly a century ago. The City constructed the Bridge to replace Wabash's rocky hillside that was removed when the City extended Saw Mill Run Boulevard over, under and through property owned by Wabash's predecessor in interest, the Pittsburgh & West Virginia Railway Company ("the Railroad").

4. In October of 2022, the City informed Wabash of its intent to close and then raze the Bridge because the Bridge's allegedly deteriorated condition supposedly rendered it unsafe to motorists traveling below on State Route 51.

5. That decision was made after the City had intentionally and willfully neglected its legal duties to maintain the Bridge for decades, and despite ample notice from Wabash and other interested parties, including PennDOT itself, that the Bridge required necessary and routine maintenance.

6. Wabash has a critical interest in these proceedings. That interest is not adequately represented by the existing participants (52 Pa. Code §5.72(a)(2)) and is of such a nature that Wabash's participation is in the public interest (52 Pa. Code §5.72(a)(2)).

**I. FACTS FROM WHICH THE ALLEGED INTERVENTION RIGHT OR INTEREST CAN BE DETERMINED**

7. For twenty years the Bridge is and has remained the critical means of ingress, egress and regress for large delivery vehicles to access the Property and the only location for Wabash's employees and customers to park their vehicles while working at or visiting the Facility, all of which are necessary for the operation of Wabash's business.

8. 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 the Property.

9. As depicted below, the Bridge spans across 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:



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

11. 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.

12. When the City contracted with the Railroad to build Saw Mill Run Boulevard over, under and through 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.

13. The Commission's Order dated June 4, 1929, which establishes the terms by which the Bridge was to be constructed and maintained, obligates the City to forever maintain the Bridge. The entirety of the Pennsylvania Public Service Commission plan and petition which is directly incorporated into the June 4, 1929 Order, to Docket No. 20890-1929 is attached hereto as Exhibit "A".

14. The supporting testimony and exhibits which were incorporated into the Order clearly and unequivocally evidence: (1) that the City is obligated to forever maintain the Bridge; and (2) that the City and Railway considered the bridge to be an easement, and (3) in lieu of condemnation of Protestant's property, the Bridge and a right of way over the Bridge and Route 51 were granted to the Railroad by the City in consideration for the removal of the Protestant's property, which forever altered Wabash's Property.

15. 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.

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

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

18. 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.

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

20. 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 safely and appropriately access the same.

21. In short, the proposed demolition of the Bridge will mean the closure of Wabash's Facility and the significant diminishment of its value.

22. 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.

23. 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.

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

25. To rush that plan to fruition, on May 2, 2024, the City and PennDOT filed the instant Application in which Wabash now Petitions to Intervene.

26. 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.

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

## II. GROUNDS OF THE PROPOSED INTERVENTION

### *a. Failure to comply with legal duties imposed by contract, common law, Ordinance and Order of the Commission*

28. Wabash has grounds to protest the demolition of the Bridge as the adjacent property owner and holder of rights in and to the Bridge. Wabash’s direct property rights will be impacted by any decision made by the Commission.

29. The demolition of the Bridge will be in violation of a multitude of rights vested in Wabash, including but not limited to (a) Wabash’s contractual rights, (b) Wabash’s constitutional rights and (c) a breach of PennDOT’s duty to support their easement for Route 51 which lies upon Wabash’s fee-owned Property.

30. Wabash has standing as the adjacent and underlying landowner and successor in interest to the Railroad to seek enforcement of the Commission's Order dated June 4, 1929, which establishes the terms by which the Bridge was to be constructed and maintained and obligates the City to forever maintain the Bridge. See Exhibit A.

31. The City's duty to maintain the Bridge was memorialized in two City ordinances which explicitly obligated the City to maintain the Bridge "forever."

32. In addition, the City has both contractual obligations and a statutory duty to the public to ensure that the City is maintaining their Bridges in compliance with National Bridge Inspection Standards ("NBIS").

33. The current condition of the Bridge according to NBIS is such that the current closure and future demolition of the Bridge are not warranted.

34. Wabash obtained multiple bids from reputable construction companies that regularly do work for PennDOT and the City, the average of which evidences the cost to repair the Bridge is approximately \$3.1 million. This is not only significantly less than the money currently budgeted to rehabilitate the Bridge, but well below the amount of funding being provided by the federal government to repair the Bridge.

35. The Applicants' current demolition plans will also require encroachment upon part of Wabash's property which will force the closure of the Facility, as delivery vehicles will no longer be able to access the Facility.

***b. Lack of Commission Jurisdiction, Failure to State a Claim and Prior Pending Action***

36. Importantly, the City and PennDOT's refusal to comply with their aforesaid obligations is the subject of litigation currently pending in the Commonwealth Court, No. 279 MD

24, which tribunal has exclusive jurisdiction over the legal dispute between Wabash and the Applicants.

37. 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.

38. 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."

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

40. 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.

41. 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.

42. The Commission does not have jurisdiction to order the demolition of the Bridge. However, the Commission *does* have jurisdiction to enforce its 1929 Order.

43. Jurisdictional barriers aside, the sections of the Code the City and PennDOT rely upon do not authorize the Commission to demolish the Bridge.

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

45. 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.

46. 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.

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

48. 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.

49. 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 City to maintain the Bridge in accordance with the 1929 Order.

50. 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.

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

52. 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.

53. Of course, the Applicants cannot have it both ways by taking a new and contradictory position in front of the Commission than that which Applicants have taken in Court for over a year: 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.

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

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

56. 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").

57. 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.

58. 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.

59. 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.

60. 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.

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

***c. Applicants have not satisfied the requirements of 66 Pa.C.S. §2702 and 52 Pa. Code §§5.12-13 in their Emergency Application***

62. Further, Applicants' Emergency Application must fail because the City and PennDOT have not satisfied the requirements of 52 Pa.Code §5.12 governing "Contents of applications."

63. That section requires that applications must "state clearly and concisely the authorization or permission sought" and "cite by appropriate reference the statutory provisions, regulations or other authority under which the commission authorization or permission is sought".

64. First, the Applicants have failed to clearly and concisely state exactly what is being sought from the Commission, as their Application specifically seeks the following relief pursuant to provisions of 66 Pa.C.S. § 2702 and 52 Pa. Code § 5.13:

- a. Approval to abolish the public above grade crossing;
- b. Approval to alter and remove the railroad Bridge carrying the abandoned cartway of Pittsburgh and West Virginia Railway Company upon which no public right-of-way or railway corridor exists; and,
- c. A conference with all parties of interest. Application, ¶¶5, 14.

65. It is not clear from the Application if the Applicant's seek approval to abolish a railway crossing that has not been in use since the 1960's, or if they seek approval to remove the Bridge, which is a matter currently subject to the jurisdiction of the Commonwealth Court.

66. Second, the City and PennDOT's Application misrepresents the following facts regarding relevant current usage of and Petitioner's legal rights in and to the Bridge:

- a. The Bridge is currently closed to all vehicular traffic by way of concrete barriers placed by PennDOT across the entire expanse of the Bridge in December of 2023; however contrary to the Application's assertions, the railway crossing is long abandoned, while until the recent illegal closure by PennDOT, the cartway above S.R. 0051 was used on a daily and extensive basis by the aforementioned vehicular traffic, local traffic accessing Route 51 from Mount Washington, and employees and customers coming to and from the Facility ;
- b. The Bridge is not retired, and is in its current condition because the City has refused to properly care for and maintain the structure and the City has been knowingly in violation of the National Bridge Inspection Standards ("NBIS") and PennDOT's own published Bridge Safety Inspection Manual for years; Application, ¶11.
- c. 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;
- d. 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;

- e. Removal of the Bridge pursuant to the plans attached to the Application would have a direct detrimental effect to employment and commerce at Wabash's facility, including possibly closing the Facility, as the Application's proposed plans will eliminate much-needed space which tractor-trailers are using in the course of their required deliveries to the Facility; and
- f. Wabash is subject to various other agreements with car manufacturers like GM and Toyota that will not permit Petitioner to relocate the Facility to another location.

67. Third, the City and PennDOT's Application miscites or fails to cite to the following statutory provisions, which given the true nature and usage of the Bridge as set forth above, are applicable to the authorization of the Commission as it applies to the instant Emergency Application.

- a. 66 Pa.C.S §2702(c) provides "Upon its own motion or *upon complaint*, the commission shall have exclusive power after hearing, *upon notice to all parties in interest, including the owners of adjacent property*, to order any such crossing heretofore or hereafter constructed to be relocated or altered, or to be suspended or abolished upon such reasonable terms and conditions as shall be prescribed by the commission." Not only have the City and PennDOT failed to file a Complaint, the appropriate pleading contemplated by 2702(c), but they have failed to include the Petitioner as owner of the property adjacent to both sides of the Bridge as a party in interest in their Application.
- b. The Applicants also filed their Application pursuant to 52 Pa. Code §5.13, which provides that Applications for construction, relocation, alteration,

protection or abolition of a crossing under section 2702 of the act must comply substantially with the requirements as to crossing complaints as set forth in §3.361.

- c. 52 Pa. Code §3.361, which further suggests the filing of a complaint instead of an application for actions brought pursuant to 66 Pa.C.S §2702, also mandates that when a complaint alleges that a “crossing is dangerous or inadequate and requires reconstruction, relocation, alteration or abolition, public utilities, *owners of the railroad right-of-way*...will be made parties respondent.” The inappropriately filed Application fails to allege that the nonexistent railway crossing is dangerous and therefore subject to the Commission’s jurisdiction, while admitting at length as to the dangerous condition created by the City at the Bridge, which Wabash seeks to rectify by enforcement of its rights at the Commonwealth Court. Wabash is the current owner of the Railroad’s right-of-way across the Bridge and should be made party to the Complaint, when appropriately filed by the City and PennDOT.

68. Fourth, and most importantly, the City and PennDOT, while attempting to ask for relief outside the jurisdiction of the Commission, have failed to include materials relevant to matters within the direct jurisdiction of the Commission with their Application, namely, the entirety of the Pennsylvania Public Service Commission plan and petition, which is directly incorporated into the June 4, 1929 Order at Docket No. 20890-1929. See Exhibit A.

69. The totality of the Order clearly and unequivocally establishes: (1) that the City is obligated to forever maintain the Bridge; (2) that the City and Railway considered the Bridge to be an easement; and, (3) that the City and the Railroad contemplated the building and forever

maintenance of the Bridge by the City in lieu of condemning/appropriating Wabash's property when Route 51 was built. As such, the entirety of the Order supersedes any other purported jurisdiction alleged by the City and PennDOT in the Application pursuant to 66 Pa.C.S §2702.

70. The Commission does have the power to enforce the Order, upon filing of a Complaint by the City and PennDOT that includes all statutorily required parties in interest.

71. Considering Wabash's direct interest in and to the Bridge, the jobs and commerce at stake, the Applicants continued attempts to thwart the jurisdiction of the Commonwealth Court and the insufficiencies of the pending Emergency Application the Petitioner Wabash Properties LLC should be permitted as an intervening party in the herein matter.

### **III. WABASH'S POSITION REGARDING THE ISSUES IN THE PROCEEDING**

72. The Commission does not have jurisdiction over the legal dispute between Wabash and the Applicants regarding the demolition of the bridge. The Commonwealth Court, where litigation is currently pending on that issue, has sole jurisdiction to adjudicate that legal dispute.

73. 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.

74. Wabash further avers that the Public Utility Code does not afford the requested remedy of demolition of a bridge and only provides for alteration of a dangerous railway crossing; and the Commonwealth Court litigation is a prior proceeding which precludes this proceeding before the Commission.

75. The Bridge does not carry a railway crossing, nor does the Bridge's condition necessitate its demolition; to the contrary, it can be repaired at a cost comparable to, or less than, the proposed demolition.

76. 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.

77. 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.

78. 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.

79. 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).

80. Wabash's interest in the outcome of this proceeding is not adequately represented by the current participants, the City and PennDOT. In fact, the Applicants' interests are the opposite of Wabash's interests: the Applicants seek approval to demolish the Bridge, which is essential to Wabash's business.

81. Further, given the significant public interest in preserving the employment and commerce Wabash's facility generates, there is a significant public interest in Wabash's participation in this proceeding.

WHEREFORE, and for the reasons set forth above, Wabash Properties, LLC, respectfully requests that the Commission grant its Petition to Intervene in this proceeding.

Respectfully submitted,

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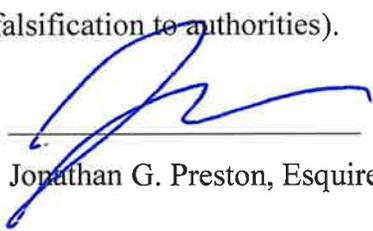
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*Counsel for Wabash Properties, LLC*

**ATTORNEY VERIFICATION**

I, JONATHAN G. PRESTON, attorney at law and counsel of record for Protestant/Petitioner, 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: 5.29.24

  
Jonathan G. Preston, Esquire

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by e-mail, this 29<sup>th</sup> day of May, 2024, on the following:

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*Co-Counsel for Wabash Properties, LLC*

# 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-OFWAY OF THE PITTSBURGH & WEST VIRGINIA  
RAILWAY COMPANY IN CITY OF PITTSBURGH.

Date of filing petition

MAY 1, 1929

Date of Hearing

MAY 29, 1929

*Handwritten initials*

Remarks

# MICROFILMED

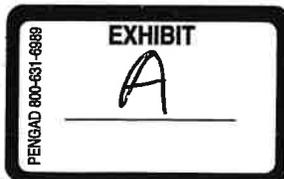
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Arms \$ 10. do need maps*

73 3167  
FILE NO. B  
MAY 7 1929  
OFFICE OF COMMISSIONER

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. 20690 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 <sup>and</sup> 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 <sup>on</sup> center line of said Boulevard, a distance of one hundred sixty-two (162) feet between said back walls. The ~~width~~ <sup>width</sup> of the ~~width~~ <sup>width</sup> of the crossing shall

RECORD FOLDER

DOCKETED  
MAY 12 1929  
FOLDER

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.

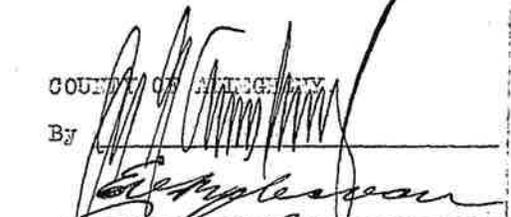
SIXTH: The estimated cost of the construction of said under grade crossing, as furnished by the Director of Public Works of Allegheny County, is the sum of Twenty Thousand (\$20,000.00) Dollars, which includes damages for property taken, injured or destroyed.

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 "E".

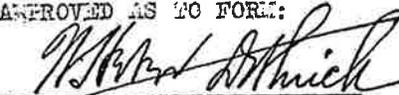
WHEREFORE, the County Commissioners pray your Honorable Commission to issue a certificate of public convenience, evidencing its approval of the location and construction of said crossing on the Saw Mill Run Boulevard under the tracks of the Pittsburgh & West Virginia Railway Company in the City of Pittsburgh,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

COUNTY OF ALLEGHENY

By

  
County Commissioners.

APPROVED AS TO FORM:

  
County Solicitor.

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

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 G. 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. Rutley*  
Notary Public.  
J. E. RUTLEY, Notary Public  
101 COURT HOUSE  
MY COMMISSION EXPIRES  
FEBRUARY 10, 1931

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

OVERSIZE  
DOCUMENTS

**DATA**  
 FOR  
**THE PUBLIC SERVICE COMMISSION**  
**OF THE**  
**COMMONWEALTH OF PENNSYLVANIA**  
 (FORM P.S.C. - CIRCULAR NO. 2, 1921-22)

**TRACK DATA.**

Railroad Company, **THE PITTSBURGH & WEST VIRGINIA RAILROAD**  
 Steam or Electric, **STEAM**  
 Name of Division, **WEST SIDE BR. - MONROE BRANCH LINE, PA.**  
 Character of Trains, **FREIGHT & PASSENGER**  
 Number of main tracks, **2** Number of side tracks, **2**  
 Alignment, **CURVE** Approximate degree, **4°**  
 Grade of tracks, **1.10% TO AREA PITTSBURGH**  
 Number of trains per day  
     Passenger, **6** Freight, **6** Switching movements, **12**  
 Average speed of Passenger train per hour, **10**  
     Freight trains per hour, **1**  
 Distance from crossing approaching trains can be seen, **(b)**  
 Width of Railroad Right-of-Way, **IRREGULAR, 200'**  
 Width of Private Right-of-Way, **70'**  
 Topographical conditions in vicinity of crossing: *(Supplement by sketch)*  
 Distance top rail to natural ground line,

**HIGHWAY DATA.**

Nearest railroad station, **KELLY** Distance, **1 mi.** Direction, **WEST**  
 Name of road, **5th Mill Run Boulevard**  
 State Highway, **State-aid Road** Township road, **County Road**  
 Borough street, **City street** Private road,  
 Relative importance, **Main Highway**  
 Road Profile 500 ft. each side of crossing, **1.5% DOWN**  
 Kind of road, **Surfaced or paved** **PAVED** Drainage, **SURFACE**  
 Electric railway, **NO** Number of tracks,  
 Angle road with track (approximate), **25°**  
 Grade of approaches, (a) (b)  
 Width approaches, (a) **10' LOWER CURVE** (b) **REGULAR HEIGHT**  
 Condition of approaches, **GRASS CUT** **Cut or fill**  
 Condition of crossing between rails, **Width crossing**  
 Accidents at crossing during past 5 years,  
 Right-of-Way of road, **70'** Traveled or surfaced width, **20'**

**GENERAL DATA.**

Distance to nearest public crossings, (a) (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** **70'**  
 Remarks: **Proposed 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 Hill 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. Kee....., 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.....

*K. I. Kee*

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

*Wm. H. Gish*  
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 20890-29.  
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 BY [Signature]  
STENOGR. [Signature]  
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

[Signature]  
Chairman

[Signature]  
Secretary

ENTRY NO. 4  
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**

APPLICATION )  
OF )  
COMMISSIONERS OF ALLEGHENY )  
COUNTY. )

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 Pitts-  
burgh:

Charles P. Lang, Esq.,  
Pittsburgh, Penna.

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

File 2  
DOCKETED  
APPLICATION 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?

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 Pennsylvania and that this is a correct transcript thereof.

Willard E. Arnold.

Reporter  
For The Misses Beatty.

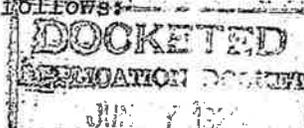
A G R E E M E N T,

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:

F. L. Swaney  
Mayor's Secretary.  
Leo K. Kuch  
Chief Clerk.

ATTEST:

W. H. Zickel  
Chief Clerk.

COUNTERSIGNED: MAY 25 1929

Henry P. Wanda  
City Controller.

CITY OF PITTSBURGH,

By Charles H. Kline  
Mayor.  
Edward G. Lang  
Director, Department of Public Works.

COUNTY OF ALLEGHENY,

By James H. [Signature]  
Charles M. [Signature]  
County Commissioners.

EXAMINED BY:

Charles P. Lang  
Special Assistant City Solicitor.

APPROVED AS TO FORM:

Shirley A. [Signature]  
City Solicitor.

APPROVED AS TO FORM:

W. H. [Signature]  
County Solicitor.

ARTICLES OF AGREEMENT

Between

COUNTY OF ALLEGHENY

And

CITY OF PITTSBURGH.

---

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA	
<i>A</i>	Docket No. <i>20,890</i> <i>1929</i> (Year)
<i>App.</i>	Exhibit No. <i>1</i>
Hearing Held <i>May 29, 1929</i> (Date)	
<i>Beatty</i>	Reporter

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

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

313 City-County Bldg.,  
Pittsburgh, Pa.

ENTRY 1 3 L

**DATA**  
 FOR  
**THE PUBLIC SERVICE COMMISSION**  
**OF THE**  
**COMMONWEALTH OF PENNSYLVANIA**  
(Form No. 1, October 1928, Rev. 1931)

**TRACK DATA.**

Railroad Company, **THE PENNSYLVANIA & WEST VIRGINIA RAILWAY**  
 Steam or Electric, **STEAM**  
 Name of Division, **W. VA. DISTRICT** Main or Branch Line, **Main**  
 Character of Train, **EXPRESS & FREIGHT**  
 Number of main tracks, **2** Number of side tracks, **2**  
 Alignment, **Approximate degree 42** How far?  
 Grade of track, **1.5 to 2.5 PERCENT**  
 Number of freight, **6** Switching movements, **12**  
 Ave. passenger train per hour, **40**  
 Freight train per hour, **12**  
 Distance from crossing approaching trains can be seen, **(b)**  
 Width of Railroad Right-of-Way, **IRREGULAR** **200 FT.**  
 Right-of-Way, **To**  
 Geographical conditions in vicinity of crossing: *(supplement by sketch)*  
 Distance top rail to natural ground line,

**HIGHWAY DATA.**

Name of railroad station, **KELLY** Distance, **1 mi.** Direction, **West**  
 Name of road, **SWIMM RUN BOULEVARD**  
 State Highway, **State-aid Road** Township road, **COUNTY ROAD**  
 Borough street, **City street** Private road,  
 Relative importance, **MAIN HIGHWAY**  
 Road Profile 500 ft. each side of crossing, **145' NORTH**  
 Kind of road, **5' surfaced or paved** **PAVED** Drainage, **SURFACE**  
 Electric railway, **NO** Number of tracks,  
 Angle road with track (approximate), **22**  
 Grade of approaches, (a) (b)  
 Width approaches, (a) **12' BETWEEN CURBS** (b) **12' CLEAR HEIGHT**  
 Condition of approaches, **OPEN CUT** **Cut or fill**  
 Condition of crossing between rails, **Width crossing**  
 Accidents at crossing during past 5 years,  
 Right-of-Way of road, **52'** Traveled or surfaced width, **30'**

**GENERAL DATA.**

Distance to nearest public crossings, (a) (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** **Type**  
 Remarks: **PROPOSED UNDER-GRADE CROSSING**  
 Recommendations:

890

2079

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)

Betty Reporter

DOCKETED  
 APPLICATION DOCKET  
 JUN 17 1929  
 3

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OVERSIZE  
DOCUMENTS

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20890

8377

20890

Dep Est City of Pgh  
Ed. A.

May 29/19.

OFFICE OF THE  
CITY ENGINEER  
THE PUBLIC WORKS DEPARTMENT

No. 157.

Bill No. 4867.

927  
a-3  
3  
1929

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. 347) and Saw Mill Run Boulevard - McKinley Park Branch, from Saw Mill Run Boulevard to Baumlin 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: \* \* \* \*

3/20/27

## 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-

ward—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. Swaney  
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. 157, Series 1929, as the same appears of record in the  
office of the city clerk.

*Robt. Clark*  
City Clerk.

**MICROFILMED**

DOCKETED  
APPLICATION BOOK  
JUN 17 1929  
ENTRY NO. 34

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. Miley*, Chairman.

ATTEST:

*J. B. Johnson*  
Secretary.

**MICROFILMED**