



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

May 29, 2024

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
400 North Street 2nd FL  
Harrisburg, PA 17120

A-2024-3048837

**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.**

Dear Secretary Chiavetta,

Enclosed for filing please find the Department and City of Pittsburgh's *Joint Answer to New Matter of Wabash Properties, LLC* in the above-captioned matter.

I hereby certify that a copy has been sent to all parties of record as indicated by the Certificate of Service.

Very truly yours,

A handwritten signature in blue ink, appearing to read "N. D. Mertens".

Nicholas D. Mertens  
Assistant Chief Counsel

cc: Mary Long, Administrative Law Judge  
Parties of Record  
Mark Chappell, P.E., Utilities and Right of Way Section Chief  
Daniel Leonard, Grade Crossing Engineer, Central Office  
Douglas M. Seeley, P.E., Asst. District Executive, District 11-0  
Sarah Fenton, Grade Crossing Engineer, Central Office  
Michele Acitelli, Manager, District 11-0

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re. Emergency Application of the Department of :  
Transportation of the Commonwealth of Pennsylvania : A-2024-3048837  
and the City of Pittsburgh for approval to abolish the :  
public above grade crossing and remove the bridge : **Electronically Filed**  
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. :

**JOINT ANSWER TO NEW MATTER OF WABASH PROPERTIES, LLC**

AND NOW, comes the Commonwealth of Pennsylvania, Department of Transportation (hereinafter “Department”), by and through Nicholas D. Mertens, Assistant Chief Counsel, the City of Pittsburgh, by and through Krysia M. Kubiak, Solicitor, John F. Doherty, Associate Solicitor, and Kevin T. Freyder, Assistant Solicitor, and files the within Answer to New Matter filed by Wabash Properties, LLC (“Wabash”) in response to Joint Application of the Department and City of Pittsburgh (“City”) (collectively “Applicants”) in the present matter, and averring in support thereof as follows:

14. No response is necessary to Paragraph 14.
15. Admitted.
16. Denied. After reasonable investigation, the Department is without sufficient knowledge or information to form a belief as to the truth of these averments. Strict proof is demanded.
17. Admitted in part. It is admitted that the subject highway-rail crossing / bridge is above grade of State Route 51. It is denied that the subject crossing “traverses Wabash’s property.” Strict proof is demanded.

18. Denied as stated. By way of further explanation, the Application arises out of the City's plan, through the Department's local sponsor agreement process, to demolish the City-owned bridge using federal highway funds.
19. Denied. After reasonable investigation, the Department is without sufficient knowledge or information to form a belief as to the truth of these averments. Strict proof is demanded.
20. Admitted in part. It is denied that the City constructed the subject bridge. By way of further answer, Allegheny County improved Saw Mill Run Boulevard, including the subject bridge. *See Exhibit A, attached to the Wabash's Answer and New Matter.*
21. Denied. After reasonable investigation, the Department is without sufficient knowledge or information to form a belief as to the truth of these averments. As to City's alleged obligation to maintain the bridge, such an allegation constitutes a conclusion of law to which no responsive pleading is required. Strict proof is demanded.
22. Denied. As to City's alleged obligation to maintain the bridge, such an allegation constitutes a conclusion of law to which no responsive pleading is required. As for the 1929 proceeding before the Public Service Commission, such documents speak for themselves. Strict proof is demanded.
23. Admitted in part. It is admitted that the Pittsburgh & West Virginia Railway Company informally abandoned the crossing approximately sixty years ago. However, this is no record of a formal abandonment of the rail line before the Surface Transportation Board or the Interstate Commerce Commission. By way of further answer, it is overt that the within highway-rail crossing was established by an Order issued on June 4, 1929 by the Pennsylvania Public Service Commission issuing a certificate of public convenience. It is further averred that the highway-rail crossing was never formally abolished by the Public Service Commission or the Pennsylvania Public Utility Commission ("PUC"). As such,

the highway-rail crossing remains subject to the jurisdiction of the PUC. 66 Pa.C.S. § 2702. *See Norfolk S. Ry. Co. v. Pa. PUC*, 875 A.2d 1243 (Pa. Cmwlth. 2005) (an Order of the Public Service Commission remains enforceable until vacated or modified by the PUC); *see also PA Game Comm'n v. Pa PUC*, 651 A.2d 596 (Pa. Cmwlth. 1994) *appeal denied*, 664 A.2d 977 (Pa. 1994) (PUC retains jurisdiction over a highway-rail crossing even when the property is no longer owned by the railroad). The PUC's statutory mandate "to effectuate the prevention of accidents and the promotion of the safety of the public" is critical to the matter *sub judice*. 66 Pa.C.S. § 2702(b).

24. Admitted in part. Admitted to the extent the allegation is consistent with the deed or deeds of record, which speak for themselves. Denied to the extent the allegations are not consistent with the aforementioned deeds of record. Strict proof is demanded.
25. Denied. Paragraph 25 constitutes a conclusion of law to which no responsive pleading is required. Strict proof is demanded.
26. Admitted.
27. Denied. Paragraph 27 constitutes a conclusion of law to which no responsive pleading is required. Strict proof is demanded. By way of further answer, the subject property has reasonable and legal access along State Route 51 which has not been impeded by the closure of the subject highway-rail crossing.
28. Admitted.
29. Admitted.
30. Admitted.
31. Denied. After reasonable investigation, the Department is without sufficient knowledge or information to form a belief as to the truth of these averments. As to the allegation the removal of the bridge will cause "significant diminished of its value"—said allegation

constitutes a conclusion of law to which no responsive pleading is required. By way of further answer, it is averred that Wabash continues uninterrupted operation of their business through reasonable access to the subject property through a pre-existing curb cut locate along State Route 51. Strict proof is demanded.

32. Denied. After reasonable investigation, the Department is without sufficient knowledge or information to form a belief as to the truth of these averments. Strict proof is demanded.

33. Admitted. By way of further answer, portions of the structure have been closed to traffic and/or parking over various times since approximately October 2020. In response to removal of a portion of barriers installed by the City in December 2023 over critical elements, presumably by Wabash or parties acting at the direction of Wabash, the Bridge was closed off entirely by the erection of concrete barriers within the right-of-way, by the Department, on both ends of the structure. The Department avers that the subject bridge is not safe to support vehicular traffic and parking and that the permanent components of the Bridge itself (i.e., the dead load)—without vehicles or other added weight—is significantly compromised due the presence of six feet of dirt fill between the superstructure and the pavement. The Applicants' engineers agree on these points—that the nearly 100-year-old bridge needs to be removed.

34. Denied. By way of further answer, the Department has reviewed the Wabash's bridge repair plans. Said plans are wholly inadequate to address the condition of the bridge, nor would any reasonable transportation agency effectuate repairs which amount to a band aid on a bullet wound. The proposed repair plans are temporary in nature and do not represent a comprehensive rehabilitation of the bridge which would inherently require strengthening and plating due to severe section loss. The proposed steel repairs are insufficient given the extent of the current deterioration. The dirt fill and concrete deck would need to be removed

to mitigate the threat of loose and falling concrete, and this would likely uncover additional losses to steel cross sections, which are not visible at this time. Additional work would also be necessary such as sand blasting and painting of the entire steel superstructure. In order to fully develop a comprehensive repair plan, additional plans and studies would need to be done. Given the current review by the Department's engineers, it is also disputed that the proposed scope of these repairs can be completed for the costs asserted—such a project, which is wholly insufficient, would likely cost significantly more than presented. There is also a significant risk, from the Department's perspective, is that a vehicle collision with any of the steel columns could result in a catastrophic failure of the bridge structure which would lead to its collapse. The present loading ratings, on the subject bridge, are wholly inadequate without major rehabilitation of the nearly 100-year-old structure. Strict proof is demanded.

35. Denied. The Department incorporates its Response to Paragraph 34 herein. Strict proof is demanded.

36. Admitted in part. It is admitted that the Department has filed a joint Emergency Application along with the City to abolish the highway-rail crossing and remove portions of the subject bridge structure which present significant safety concerns to the traveling public on State Route 51 below the crossing. All other allegations made herein are denied. Strict proof is demanded.

37. Admitted.

38. Admitted.

39. Admitted in part. It is admitted that there is a pending action before the Commonwealth Court. The remaining allegations are denied. By way of further response, the PUC is overtly vested with jurisdiction over the abolishment of highway-rail crossings within the

Commonwealth. 66 Pa.C.S. § 2702. The within highway-rail crossing was established by an Order issued on June 4, 1929 by the Pennsylvania Public Service Commission issuing a certificate of public convenience. The PUC is only stripped of its jurisdiction once the highway-rail crossing has been formally abolished by Order and jurisdiction is vacated.

Strict proof is demanded

40. Admitted.

41. Admitted.

42. Admitted.

43. Admitted that Wabash raises the claims listed. It is denied that the Department has any obligations to maintain the bridge or to maintain access to the Wabash property. By way of further answer, the mere filing of Wabash's Amended Complaint does not strip the PUC of jurisdiction pursuant Section 2702 of the Public Utility Code. 66 Pa.C.S. § 2702.

44. Denied. Paragraph 44 constitutes a conclusion of law to which no responsive pleading is required. By way of further response, the PUC is overtly vested with jurisdiction over the abolishment and alteration of highway-rail crossings within the Commonwealth. 66 Pa.C.S. § 2702. The Commonwealth Court lacks jurisdiction over the injunctive relief sought by Wabash, given that such jurisdiction rests exclusively within the PUC as established by statute. However, the Commonwealth Court and/or Court of Common Pleas still retains jurisdiction over Wabash's contractual claims against City, as such claims do not fall within the PUC's expertise (although, such contractual agreement may be a relevant factor in allocating costs). *See CONRAIL v. Harrisburg*, 842 A.2d 369 (Pa. 2004) (the matter of contractual rights and remedies is an entirely separate matter to be addressed beyond the PUC proceeding). As occurred in *CONRAIL*, the PUC has jurisdiction to determine the abolishment of the highway-rail crossing and the Commonwealth Court

(and/or Court of Common Pleas) retains jurisdiction over Wabash's contractual claims and the Court of Common Pleas has exclusive jurisdiction over any potential claims under the Eminent Domain Code, 26 Pa.C.S. §§ 101 *et seq.* The PUC's jurisdiction extends beyond the 1929 Order given that no formal abolishment proceeding has been filed under the matter *sub judice*. See *Norfolk S. Ry. Co. v. Pa. PUC*, 875 A.2d 1243 (Pa. Cmwlth. 2005) (an Order of the Public Service Commission remains enforceable until vacated or modified by the PUC). Strict proof is demanded.

45. Denied. Paragraph 45 constitutes a conclusion of law to which no responsive pleading is required. By way of further answer, the Department incorporates its Response to Paragraph 44 herein. Section 2702 overtly authorizes the PUC to order the alteration and abolishment of a highway-rail crossing. 66 Pa.C.S. § 2702. Strict proof is demanded.

46. Admitted. By way of further answer, the subject bridge was established pursuant to an Order issued on June 4, 1929 by the Pennsylvania Public Service Commission issuing a certificate of public convenience. It is further averred that the highway-rail crossing was never formally abolished by the Public Service Commission or PUC. As such, the highway-rail crossing remains subject to the jurisdiction of the PUC. 66 Pa.C.S. § 2702. Mere removal of the rails, albeit over sixty years ago, does not divest the PUC of its jurisdiction pursuant to Section 2702. It is clear that *abolishment* and *abandonment* are two entirely separate legal concepts—mere abandonment of the rail line does not equate to abolishment of a highway-rail crossing without PUC approval. See *CSX Transp., Inc. v. Pa. PUC*, 558 A.2d 902 (Pa. Cmwlth. 1989), *appeal denied*, 567 A.2d 654 (Pa. 1989) (formal abandonment, which is regulated by the federal government, does not preclude the PUC's authority to order abolishment and the costs associated with the same).

47. Admitted. By way of further answer, the Order issued on June 4, 1929 by the Pennsylvania Public Service Commission has not been previously modified nor has the subject highway-rail crossing been *abolished* by the PUC regardless of the informal *abandonment* of the rail by the Pittsburgh & West Virginia Railway Company *circa* 1960. Mere removal of the rails, albeit over sixty years ago, does not divest the PUC of its jurisdiction pursuant to Section 2702. 66 Pa.C.S. § 2702. *See PA Game Comm'n*, 651 A.2d at 603 (PUC retains jurisdiction over a highway-rail crossing even when the property is no longer owned by the railroad).
48. Admitted. By way of further answer, the Department incorporates its Response to Paragraphs 44 and 46 herein.
49. Admitted. By way of further answer, the Department incorporates its Response to Paragraphs 44 and 46 herein.
50. Admitted. By way of further answer, the Department incorporates its Response to Paragraphs 46 herein.
51. Denied. Paragraph 51 constitutes a conclusion of law to which no responsive pleading is required. Strict proof is demanded. By way of further answer, the Department incorporates its Response to Paragraphs 44 and 46 herein.
52. Denied in part. By way for further answer, throughout the various proceedings, Wabash has ignored the repeated concerns raised by the Applicants regarding the condition of the subject crossing and bridge. Governmental bodies, which have been delegated transportation functions by the General Assembly should be given due deference in engineering judgments and transportation planning. The closure of the subject bridge, and request to abolish the crossing and remove portions of the bridge structure, are the result of solid engineering judgment by the Applicants given the present condition and that the

bridge can no longer safely carry a live load. It is admitted that the subject bridge does, in fact, only serve a single property owner. Strict proof is demanded.

53. Denied. By way of further response, the Department has never had through agreement, Order, or otherwise any common law obligations to maintain the subject highway-rail crossing or bridge structure. The Department sole obligation is to protect the traveling public which utilizes State Route 51 below grade of the subject crossing. In the present matter, the Joint Application, submitted by the Applicants, is merely seeking approval to remove the crossing structure in order to ensure the safety of the traveling public. The City also denies that it has/had any obligations to maintain the subject highway-rail crossing or bridge structure to the extent they differ from the language contained in any valid contractual agreement. See also, Paragraphs 44, 46 and 55 herein. Strict proof is demanded.

54. No responsive pleading is necessary in response to Paragraph 54.

55. Denied. Paragraph 55 constitutes a conclusion of law to which no responsive pleading is required. By way of further answer, the Department incorporates its Response to Paragraphs 44 and 46 herein. Questions of use of the subject bridge and jurisdiction to permit the abolishment and removal of the crossing are entirely separate matters. As is the enforcement of any contractual obligations regarding the same. *See CONRAIL*, 842 A.2d at 377 (“substantial reasons support the view that Section 2704 does not divest the common pleas courts of jurisdiction to enforce private agreements, where the Commission has issued its decision without prejudice to such proceedings”). Strict proof is demanded.

56. Denied. Paragraph 56 constitutes a conclusion of law to which no responsive pleading is required. By way of further answer, the Department incorporates its Response to Paragraphs 44 and 46 herein. Strict proof is demanded.

57. Denied. Paragraph 57 constitutes a conclusion of law to which no responsive pleading is required. By way of further answer, the Department incorporates its Response to Paragraphs 44 and 46 herein. There is no adequate support in Wabash's proposition that removal of the rails divests the PUC of its jurisdiction under Section 2702 of the Public Utility Code. 66 Pa.C.S. § 2702. *See PA Game Comm'n*, 651 A.2d at 603 (PUC retains jurisdiction over a highway-rail crossing even when the property is no longer owned by the railroad). Strict proof is demanded.
58. Denied. Paragraph 58 constitutes a conclusion of law to which no responsive pleading is required. By way of further answer, the Department incorporates its Response to Paragraphs 44 and 46 herein. Strict proof is demanded.
59. Admitted in part. It is admitted that the prior action was originally commenced on March 1, 2023. The remainder of the Paragraph 59 constitutes a conclusion of law to which no responsive pleading is required. By way of further answer, the prior proceeding cannot be utilized to otherwise strip the PUC of jurisdiction over the subject crossing under Section 2702 of the Public Utility Code. 66 Pa.C.S. § 2702. It is further admitted that the Commonwealth Court and/or Court of Common Pleas may determine legal obligations *vis-à-vis* contractual requirements or the Eminent Domain Code. However, the PUC's jurisdiction is not divested or altered by such alleged contractual agreements. Wabash is free to assert those claims in the appropriate forum. *See CONRAIL*, 842 A.2d at 377 ("Despite the PUC's and this Court's prior characterizations of the Commission's jurisdiction to allocate facility-relocation costs at rail-highway crossings as exclusive, substantial reasons support the view that Section 2704 does not divest the common pleas courts of jurisdiction to enforce private agreements, where the Commission has issued its

decision without prejudice to such proceedings.”). It is denied that the Department owes any obligations to Wabash, contractual or otherwise. Strict proof is demanded.

60. Denied. Paragraph 60 constitutes a conclusion of law to which no responsive pleading is required. By way of further answer, the Department incorporates its Response to Paragraphs 44, 46, and 59 herein. The Applicants are not attempting to “cut the line”—the Applicants are merely seeking PUC approval based upon correspondence received by the PUC, on April 17, 2024, that the subject crossing was never formally abolished pursuant to the Public Utility Code. A true and accurate copy of the PUC’s April 17, 2024 letter is attached hereto as Exhibit 1. Strict proof is demanded.

61. Denied. Paragraph 61 constitutes a conclusion of law to which no responsive pleading is required. By way of further answer, Section 2702 of the Public Utility Code clearly vests exclusive jurisdiction to the PUC over alterations to highway-rail crossings within the Commonwealth. *See AT&T v. Pa PUC*, 737 A.2d 201 (Pa. 1999) (Section 2702(a) precludes any party from physical alteration of a crossing without PUC approval); *Dep’t of Transp. v. Pa PUC*, 282 A.2d 313, 316 (Pa. Cmwlth. 1971) (the Commission has the exclusive jurisdiction to determine whether and how a rail-highway crossing should, as pertinent to this case, be abolished, as well as to determine which party or parties should bear the costs of such abolition). Strict proof is demanded.

62. Denied. Paragraph 62 constitutes a conclusion of law to which no responsive pleading is required. By way of further response, the PUC has exclusive jurisdiction over the subject crossing. The Department has no obligation to maintain or repair the subject crossing and bridge. The Department’s obligations, relative to the crossing, is to protect the traveling public on State Route 51 (as well, as obligations to ensure the inspection of the structure through the National Bridge Inspection Standards). Strict proof is demanded.

63. Denied. Paragraph 63 constitutes a conclusion of law to which no responsive pleading is required. By way of further response, the PUC has exclusive jurisdiction over the subject crossing; whereas the Commonwealth Court and/or Court of Common Pleas retain jurisdiction over the contractual claims brought by Wabash. The City also denies that it has/had any obligations to maintain the subject highway-rail crossing or bridge structure to the extent they differ from the language contained in any valid contractual agreement. See also, Paragraphs 44, 46 and 55 herein. Strict proof is demanded.
64. Denied. Paragraph 64 constitutes a conclusion of law to which no responsive pleading is required. Strict proof is demanded.
65. Denied. Paragraph 65 constitutes a conclusion of law to which no responsive pleading is required. Strict proof is demanded.
66. Denied. Paragraph 66 constitutes a conclusion of law to which no responsive pleading is required. Strict proof is demanded.
67. Denied. Paragraph 67 constitutes a conclusion of law to which no responsive pleading is required. By way of further answer, the Department incorporates its Response to Paragraphs 44, 46, 55, and 61 herein. Strict proof is demanded.
68. Denied. Paragraph 68 constitutes a conclusion of law to which no responsive pleading is required. By way of further answer, the Department incorporates its Response to Paragraphs 34, 44, 46, 52, 55, and 61 herein. Wabash repeatedly ignores the engineering judgment reached independently by both Applicants that the subject crossing poses a danger to the traveling public on State Route 51. The alleged repair plans, developed by Wabash, are wholly inadequate to address the condition of the bridge, nor would any reasonable transportation agency effectuate repairs which amount to a band aid on a bullet wound. The proposed repair plans are temporary in nature and does not represent a

comprehensive rehabilitation of the bridge which would inherently require strengthening and plating due to severe section loss. Simply put, the subject bridge has reached the end of its useful life and poses a significant safety concern. Strict proof is demanded.

69. Denied. Paragraph 69 constitutes a conclusion of law to which no responsive pleading is required. By way of further answer, the Department incorporates its Response to Paragraphs 34, 44, 46, 52, 55, 61, and 68 herein. Strict proof is demanded.

70. Denied. Paragraph 70 constitutes a conclusion of law to which no responsive pleading is required. By way of further answer, the Department incorporates its Response to Paragraphs 34, 44, 46, 52, 55, and 61 herein. Wabash ignores the elephant in the room—granting the relief sought by the Applicants is in the public interest, as both entities are tasked with ensuring the safety of the traveling public and have made a reasonable determination that the subject bridge is unsafe. Even assuming the alleged harm—which is denied—when the dualling public interests are weighed against each other, the scales tip significantly to the protection of the traveling public as a whole. Strict proof is demanded.

71. Denied. Paragraph 71 constitutes a conclusion of law to which no responsive pleading is required. By way of further answer, the Department incorporates its Response to Paragraphs 34, 52, and 70 herein. Strict proof is demanded.

72. Denied. Paragraph 72 constitutes a conclusion of law to which no responsive pleading is required. By way of further answer, the posting of a bond is wholly inappropriate in the present matter. The Department is an executive agency of the Commonwealth which has the power of taxation. Furthermore, Wabash's alleged compensation claim is not ripe as they have failed to file a petition seeking the appointment of a board of viewers under the Eminent Domain Code. 26 Pa.C.S. §§ 101 *et seq.* The Department does not own the bridge and has never had any obligation to maintain the subject highway-rail crossing or bridge

structure. The Department sole obligation is to protect the traveling public which utilizes State Route 51 below grade of the subject crossing. The City is the owner of the bridge and is removing the bridge through a local sponsor project agreement. Strict proof is demanded.

73. Denied. Paragraph 73 constitutes a conclusion of law to which no responsive pleading is required. By way of further answer, the Department incorporates its Response to Paragraph 72 herein. Strict proof is demanded.

74. Denied. Paragraph 74 constitutes a conclusion of law to which no responsive pleading is required. By way of further answer, the Department incorporates its Response to Paragraphs 72 herein. Strict proof is demanded.

75. Denied. Paragraph 75 constitutes a conclusion of law to which no responsive pleading is required. By way of further answer, the Department incorporates its Response to Paragraphs 72 herein. Additionally, Wabash cites to concepts applicable in eminent domain proceedings to support its theory that a bond is appropriate. However, Wabash entirely ignoring a statutory provision in the Eminent Domain Code directly on this point—Section 303(b) of the Eminent Domain Code which states that: “Where a condemnor has the power of taxation, ***it shall not be required to file a bond*** with the declaration of taking.” 26 Pa.C.S. § 303(b) (emphasis added). Strict proof is demanded.

76. Denied. Paragraph 76 constitutes a conclusion of law to which no responsive pleading is required. By way of further answer, there is no privity of contract between Wabash and the Department. Furthermore, all affirmative defenses cited by Wabash are wholly irrelevant and inapplicable to the matter *sub judice*. Strict proof is demanded.

77. Admitted. By way of further answer, Wabash is not presently a party to the above captioned proceeding. While Wabash has filed a formal protest to the within Joint Application, they have failed to file a petition seeking intervention in the present matter pursuant to Section

5.72. See 52 Pa. Code §§ 5.71-5.76. “Every person who files a protest in a proceeding pending before the Commission, and who is given an opportunity to testify, is not ipso facto a party to the proceedings with a right to maintain an appeal from the Commission’s order.” *Arsenal Bd. of Trade v. Pa PUC*, 72 A.2d 612, 614 (Pa. Super. 1950). Without the submission, review, and approval of a petition seeking intervention in the present matter, Wabash is not a party in the present matter. By filing a Protest to the Joint Application and Answer and New Matter to the Petition for Interim Emergency Order, Wabash has put the cart before the horse.

**WHEREFORE**, based on the foregoing, the Department respectfully requests that the *Joint Application* and *Petition for Special Relief Under 66 Pa. C.S.A. § 2702(f)* are granted, that the crossing is ordered as abolished by removal of the subject bridge, and that jurisdiction is relinquished.

Respectfully submitted,

CITY OF PITTSBURGH

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

/s/ John F. Doherty  
Krysia M. Kubiak, Solicitor  
John F. Doherty, Associate Solicitor  
Kevin T. Freyder, Assistant Solicitor  
City of Pittsburgh, Department of Law  
City-County Building, Suite 313  
414 Grant Street  
Pittsburgh, PA 15219

/s/ Nicholas D. Mertens  
Nicolas D. Mertens  
Assistant Chief Counsel  
Supreme Court ID # 313998  
Commonwealth of Pennsylvania  
Department of Transportation  
301 5th Avenue, Suite 210  
Pittsburgh, PA 15222  
Telephone No. (412) 565-7555  
Fax Number (412) 565-7778  
[nimertens@pa.gov](mailto:nimertens@pa.gov)

DATED: May 29, 2024



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

**April 17, 2024**

Nicholas D. Mertens  
Assistant Chief Counsel  
Pennsylvania Department of Transportation, Office of Chief Counsel, Western Region  
301 5th Avenue, Suite 210  
Pittsburgh, PA 15222

Re: *Wabash Properties LLC v. City of Pittsburgh & Department of Transportation*; Allegheny County No. GD 23-002842; Notice of Proceeding pursuant to Order of Court

Dear Mr. Mertens:

Your letter dated April 1, 2024, notifying the Commission of the pending litigation in the above referenced matter, was referred to me for response. In that letter, you indicate that the Department of Transportation is a party to a pending action in the Allegheny County Court of Common Pleas, seeking injunctive relief barring the City of Pittsburgh and/or the Department from the removal of a public bridge over State Route 51. Pursuant to an Order issued by the Allegheny County Court of Common Pleas, entered on March 22, 2024, the Department was directed to notify the Commission of this legal action.

According to your letter, the proceeding involves a highway and parking lot bridge which formerly carried tracks of the Pittsburgh & West Virginia Railway above grade of Saw Mill Run Boulevard in the City of Pittsburgh. The crossing was established pursuant to an Order of the Pennsylvania Public Service Commission on June 4, 1929, at Docket Number 20890-1929. You indicate that the rails were subsequently removed circa 1961 or earlier by the West Side Belt Railroad Company when the adjacent property was sold to a private business.

Your letter further indicates that the subject line was never a main line and has been “informally, at least, abolished by the West Side Belt Railroad Company and/or the Pittsburgh & West Virginia Railway well sixty or more years ago.”

Following receipt of your letter, Commission staff confirmed the allegations regarding the Commission’s approval of the establishment of the rail/highway crossing in 1929. However, Commission staff was unable to locate documentation that dispositively

**EXHIBIT 1**

establishes that the subject crossing was abolished or that the relevant portion of the line was abandoned.

In light of the above, the Department of Transportation and the City of Pittsburgh should take appropriate action to ensure proper disposition of the crossing. Further, the Department and the City should take all immediate necessary safety measures to ensure public safety and convenience.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

*Paul Diskin*

Paul Diskin,  
Director of Technical Utility Services

cc: Jennifer Berrier, Executive Director  
David Screven, Chief Counsel

**VERIFICATION**

I, Nicholas D. Mertens, Pennsylvania Department of Transportation, Office of Chief Counsel, Assistant Chief Counsel, does hereby verify that the statements made in the foregoing document are true and correct to the best of my knowledge, information, and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: May 29, 2024

/s/ Nicholas D. Mertens  
Nicholas D. Mertens  
Assistant Chief Counsel

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the within *Joint*

*Answer to New Matter of Wabash Properties, LLC* upon the participants listed below on:

Krysia Kubiak, City Solicitor  
John F. Doherty, Esq.  
Kevin T. Freyder, Esq.  
City of Pittsburgh, Department of Law  
City-County Building, Suite 313  
414 Grant Street  
Pittsburgh, PA 15219  
[krysia.kubiak@pittsburghpa.gov](mailto:krysia.kubiak@pittsburghpa.gov)  
[john.doherty@pittsburghpa.gov](mailto:john.doherty@pittsburghpa.gov)  
[kevin.freyder@pittsburghpa.gov](mailto:kevin.freyder@pittsburghpa.gov)

Jonathan Preston, Esq.  
Jonathan M. Kamin, Esq.  
Goldberg Kamin & Garvin, LLP  
1806 Frick Building  
437 Grant Street  
Pittsburgh, PA 15219  
[jpreston@gkgattorneys.com](mailto:jpreston@gkgattorneys.com)  
[jonathank@gkgattorneys.com](mailto:jonathank@gkgattorneys.com)

Jenna R. DiFrancesco, Esq.  
Cipriani & Werner, P.C.  
650 Washington Road, Suite 700  
Pittsburgh, PA 15228  
[jdifrancesco@c-wlaw.com](mailto:jdifrancesco@c-wlaw.com)

Adam Bromley  
PA American Water Company  
300 Galley Road  
McMurray, PA 15317  
[Adam.bromley@amwater.com](mailto:Adam.bromley@amwater.com)

Kathleen Jones Goldman, Esq.  
Bradley J. Klitowski, Esq.  
Buchanan Ingersoll & Rooney PC  
Union Trust Building  
501 Grant Street, Suite 200  
Pittsburgh, PA 15219  
[kathleen.goldman@bipc.com](mailto:kathleen.goldman@bipc.com)  
[bradley.kitlowski@bipc.com](mailto:bradley.kitlowski@bipc.com)

Amie Downs  
Allegheny County  
101 County Courthouse  
436 Grant Street  
Pittsburgh, PA 15219  
[Amie.downs@alleghenycounty.us](mailto:Amie.downs@alleghenycounty.us)

Anthony Francioni  
Comcast Cable Communications, Inc.  
1530 Chartiers Avenue  
Pittsburgh, PA 15204  
[Anthony\\_francioni@cable.comcast.com](mailto:Anthony_francioni@cable.comcast.com)

Jim Runatz  
Duquesne Light Company  
1901 Edison Street  
Pittsburgh, PA 15116  
[jrunatz@duqlight.com](mailto:jrunatz@duqlight.com)

Benjamin Grunauer  
PWSA  
Penn Liberty Plaza 1  
1200 Penn Avenue, 2<sup>nd</sup> Floor  
Pittsburgh, PA 15222  
[bgrunauer@pgh20.com](mailto:bgrunauer@pgh20.com)

Stephanie Lewis  
Columbia Gas of Pa.  
501 Technology Drive  
Canonsburg, PA 15317  
[sklewis@nisource.com](mailto:sklewis@nisource.com)

Theodore Toth  
Verizon Pa, LLC  
27 West Church Street  
Uniontown, PA 15401  
[Theodore.m.toth@verizon.com](mailto:Theodore.m.toth@verizon.com)

Michael Lichte  
Alcosan  
3300 Preble Avenue  
Pittsburgh, PA 15233  
[Michael.lichte@alcosan.org](mailto:Michael.lichte@alcosan.org)

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

/s/ Nicholas D. Mertens  
Nicolas D. Mertens  
Assistant Chief Counsel  
Supreme Court ID # 313998  
Commonwealth of Pennsylvania  
Department of Transportation  
301 5th Avenue, Suite 210  
Pittsburgh, PA 15222  
Telephone No. (412) 565-7555  
Fax Number (412) 565-7778  
[nimertens@pa.gov](mailto:nimertens@pa.gov)

DATED: May 29, 2024