

In re. Emergency Application of the Department of :  
Transportation of the Commonwealth of Pennsylvania :  
and the City of Pittsburgh for approval to abolish :  
public above grade crossing and remove the bridge :  
carrying the abandoned cartway of Pittsburgh & West : A-2024-3048837  
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. :

**PROTECTIVE ORDER**

Upon consideration of the Petition for a Protective Order by the Department of Transportation, and the proposed order submitted on May 31, 2024, to which no party has objected, it is ORDERED:

1. That a Protective Order is hereby granted with respect to all materials and information identified in Paragraphs 2 and 3 below, which have been or will be filed with the Commission, produced in discovery, or otherwise presented during the above-captioned proceeding and all proceedings consolidated therewith. All persons previously or hereafter granted access to the materials and information identified in Ordering Paragraphs 2 and 3 of this Protective Order shall use and disclose such information only in accordance with this Protective Order.
  
2. That the materials or information subject to this Protective Order includes: any structure inspection report, study, and/or load rating analysis of the subject State Route 51 bridge structure; any reports, surveys, schedules, lists, studies, analyses or data about the subject State Route 51 bridge structure contained in such reports; any testimony and exhibits filed by various witnesses and parties that contains or is based upon any structure inspection report, study and/or load rating analysis of the State Route 51 bridge structure; any financial and/or business materials and information, along with any testimony or exhibits produced during discovery or presented at any proceeding regarding the same, of Respondent Wabash Properties, LLC, and its principals, owner, employees and affiliates; and/or any materials or information received have been marked as Confidential Information. The Parties mutually preserve any objections to the admissibility of any materials or information described in this paragraph.
  
3. That public disclosure of “Confidential” materials are those materials which, if disclosed, could pose a danger to the safety or physical security of the structure and the economic condition of the Parties. Therefore, the Parties agree that the record will be sealed. However, unredacted structure inspection reports, studies and/or analyses are discoverable and must be produced by the Parties. The Parties mutually preserve any objections to the admissibility of any materials or information described in this paragraph.

4. That Confidential Information shall be made available to counsel for the non-producing Party, subject to the terms of this Protective Order. Such counsel shall use or disclose the Confidential Information only for purposes associated with the proceedings before the Public Utilities Commission.
5. That information deemed “Confidential” material shall be made available to a “Reviewing Representative” who is a person who is either (1) an outside expert or an employee of an outside expert retained by a party for the purpose of advising, preparing for or testifying in this proceeding; or (2) employees or other representatives of a party with significant responsibility for the matters associated with this docket. The parties may use the Non-Disclosure Certificate attached hereto as Appendix A.
6. That neither counsel nor the parties, including Commission staff, receiving any structure inspection report, study and/or load rating analysis shall provide access to the inspection report, study and/or load rating analysis to any other person except as authorized by further order of the Commission or the presiding officer or in accordance with this Protective Order.
7. That any party who violates any of the terms of this Protective Order shall be subject to appropriate sanctions from the Commission.
8. The terms of this Protective Order shall continue to apply to any Reviewing Party even if after their employment terminates.
9. That Confidential Information produced in this proceeding shall be made available to the Commission and its Staff. However, any copy and/or testimony based upon a structure inspection report, study, and/or load rating analysis or any of the information contained there that is made part of the official record in this matter shall be placed under seal, and such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Confidential Information is placed in the Commission’s testimony or document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Protective Order. Public inspection of Confidential Information shall be permitted only in accordance with this Protective Order.
10. That the nonproducing Party will consider and treat the Proprietary Information as within the exemptions from disclosure provided in the Pennsylvania Right to Know Law, Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104, effective January 1, 2009, until such time as the information is found to be non-confidential.
11. That any public reference to Confidential Information by a Party shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Confidential Information to fully understand the reference. The Confidential Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

12. That parts of any record of this proceeding containing Confidential Information, shall be sealed for all purposes, including administrative and judicial review, unless such Confidential Information is released from the restrictions of this Protective Order, either through the agreement of the Parties or pursuant to an order of the Administrative Law Judge, the Commission or appellate court.
13. That a non-producing Party shall retain the right to question or challenge the confidential nature of items marked as “Confidential” Information. If a nonproducing Party challenges the designation of a document or information as within the definition established in paragraph 3 of this Protective Order, the Party providing the information retains the burden of demonstrating that the designation is appropriate.
14. That each party shall retain the right to question or challenge the admissibility of Confidential Information; to object to the production of Confidential Information on any proper ground other than confidentiality; to refuse to produce Confidential Information pending the adjudication of the objection; and to seek additional measures of protection of Confidential Information beyond those provided in this Protective Order.
15. The parties agree that the terms and obligations set forth in this Protective Order shall be continuing even after the termination of the proceedings before the Public Utility Commission. The Parties further agree that the terms of this Protective Order shall only be applicable for the proceedings before the Public Utility Commission, and that they shall not affect the admissibility or relevance of any Confidential Information in any other proceeding. The Parties acknowledge that they may use the information gathered from the Confidential Information in subsequent proceedings, but that the admissibility and/or presentation of such evidence shall be subject to further protective orders and/or rulings from such appropriate tribunal.

**WHEREFORE**, based upon the foregoing, the Commission hereby grants the relief sought herein and enters the following Protective Order.

Date: May 31, 2024

\_\_\_\_\_  
/s/  
Mary D. Long  
Administrative Law Judge

**APPENDIX A**

In re. Emergency Application of the Department of :  
Transportation of the Commonwealth of Pennsylvania :  
and the City of Pittsburgh for approval to abolish the :  
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TO WHOM IT MAY CONCERN:

The undersigned is a Reviewing Representative of \_\_\_\_\_  
\_\_\_\_\_, a Party to this proceeding (Party), and the  
undersigned has read and understands the Protective Order in the above-referenced proceeding,  
which Protective Order deals with the treatment of Confidential Information. The undersigned  
agrees to be bound by, and comply with, the terms and conditions of said Protective Order.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
EMPLOYER

**A-2024-3048837 - 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**

*Revised 5/23/2024*

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