

**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 in the	:	
City of Pittsburgh, Allegheny County	:	
and the allocation of costs incident thereto.	:	

MOTION FOR EXPEDITED REVIEW

AND NOW, comes the Commonwealth of Pennsylvania, Department of Transportation (hereinafter “Department”), by and through Nicholas D. Mertens, Assistant Chief Counsel, hereby files the within Motion respectfully seeking expedited review regarding the Motion filed by Wabash Properties, LLC (“Wabash”) on July 8, 2024 and the Joint Motion to Quash filed by the Department and the City of Pittsburgh (“City”) regarding the same and avers as follows:

1. The within proceeding involves a Joint Application submitted by the Department and City at the above referenced docket number on May 2, 2024.
2. The Joint Application requested the approval of the Pennsylvania Public Utility Commission (“PUC”), on an emergency basis, to alter a highway-rail crossing by the removal of the bridge which is utilized as an access drive and parking lot (“Bridge”) by the adjacent property owner, Wabash.
3. On May 7, 2024, a virtual field investigation was held by the PUC’s Rail Safety Division.
4. At the field investigation, Wabash raised an objection to the Joint Application; as such, the proceeding was referred to the Office of Administrative Law Judge on an expedited basis.
5. On May 15, 2024, the City and Department jointly filed a Petition for Special Relief pursuant to Section 2702(f) of the Public Utility Code. 66 Pa.C.S. § 2702(f). The relief

sought the alteration, by removal, of the highway-rail crossing Bridge because its condition poses an immediate danger to the safety and welfare of the traveling public.

6. An initial prehearing conference was held on May 22, 2024 before Deputy Chief Administrative Law Judge (“ALJ”) Christopher Pell.
7. Also on May 22, 2024, the City and Department jointly filed a Petition for Interim Emergency Order pursuant to 52 Pa. Code § 3.6.
8. The matter was then reassigned to ALJ Mary D. Long.
9. On June 3 and 4, 2024, an emergency hearing was held before ALJ Long.
10. On June 6, 2024, ALJ Long granted the Petition for Interim Emergency Order Under 52 Pa. Code §3.6 which authorized the Department to remove the Bridge and former highway-rail crossing. However, the crossing was not abolished as part of the Order.
11. The Order additionally certified the material question to the PUC as to whether the Bridge must be removed, on the proposed schedule, to protect the traveling public.
12. On July 1, 2024, the PUC issued an Opinion and Order affirming the ALJ’s June 6, 2024 Order.
13. On July 8, 2024, Wabash filed a Motion seeking a request for certification of an interlocutory appeal of the PUC’s July 1, 2024 Opinion and Order to the Commonwealth Court, a determination by the PUC that the July 1, 2024 Opinion and Order is a final order for purposes of Rule 341(c) of the Pennsylvania Rules of Appellate Procedure, and a stay of the subject proceedings.
14. On July 16, 2024, the Department and City filed both a Joint Answer in Opposition and a Joint Motion to Quash Wabash’s aforementioned Motion.
15. In addition to the within proceeding, Wabash also moved for a preliminary injunction in a parallel proceeding before the Commonwealth Court seeking to enjoin the Department and

City from proceeding with the demolition of the Bridge despite the PUC's July 1, 2024 Opinion and Order permitting the same.

16. To that effect, on June 26, 2024, Wabash filed an Application requesting expedited relief regarding its preliminary injunction petition and an emergency hearing.
17. On June 27, 2024, the Commonwealth Court issued an Order scheduling an emergency hearing on July 10, 2024.
18. On July 10 and 11, 2024, a two-day hearing was held on Wabash's request for preliminary injunction before the Honorable Judge Michael H. Wojcik of the Commonwealth Court, during which the parties essentially re-litigated the issues presented to PUC in the matter *sub judice*.
19. On July 12, 2024, Judge Wojcik issued an Order denying the preliminary injunction.
20. The question of the harm to the traveling public has now been litigated three separate times before three separate tribunals: (1) the Allegheny County Court of Common Pleas; (2) the PUC; and (3) the Commonwealth Court.
21. In all three proceedings, Wabash was unsuccessful and the within project was permitted to move forward.
22. Wabash now seeks a fourth bite of the apple, through procedural grounds which arguably, at least, grants a temporary stay of these proceedings during the pendency of the review and consideration of its Motion pursuant to Rule 341(c) of the Rules of Appellate Procedure. Pa. R.A.P. 341(c)(1).
23. Pursuant to Rule 341(c)(2), the trial court or other government unit, such as the PUC, has thirty (30) days to consider an application or motion seeking a determination of finality otherwise said motion is deemed denied.

24. If left to run its course, review of Wabash's Motion would be due on or before August 8, 2024.
25. Whereas, the Department's contractor is ready to proceed with the approved work with demolition set to begin on July 24, 2024.
26. It is averred that Wabash's appeal is not a final order but an interlocutory appeal to which no temporary stay is permitted under the Rules of Appellate Procedure.
27. Wabash's Motion further ignores the requirements necessary to obtain a stay pending appeal—most importantly, whether “the issuance of a stay will not adversely affect the public interest” which question has already been answered by the PUC's July 1, 2024 Order and Opinion. *See Pennsylvania Public Utility Com'n v. Process Gas Consumers Group*, 467 A.2d 805, 808-09 (Pa. 1983), *overturned on other grounds by* 511 A.2d 1315 (Pa. 1986).
28. It is further averred that the aforementioned Motion merely seeks to delay the start date of the critical highway project previously approved by the PUC and further reviewed and permitted by the Commonwealth Court as well.
29. Whereas, demolition of the Bridge, as approved by the PUC's July 1, 2024 Opinion and Order, will effectuate a major safety improvement on SR 51 by removal of a significant safety concern.
30. In accordance with the PUC's Order and the Commonwealth Court's denial of Wabash's request for a preliminary injunction, the Department intends to proceed with demolition of the Bridge as scheduled on July 24, 2024.
31. In order to resolve the dispute between the Department, City, and Wabash, the Department respectfully requests an expedited review of this matter which includes: (1) Wabash's July 8, 2024 Motion seeking certification of an interlocutory appeal, determination of finality,

and a stay of the within proceedings; (2) the Joint Answer submitted by the Department and City; and (3) the Joint Motion to Quash Wabash's July 8, 2024 Motion submitted by the Department and City.

32. Furthermore, the PUC's July 1, 2024 Opinion and Order, which affirms the question certified in ALJ Long's June 6, 2024 Order, is based upon substantial evidence and is both just and reasonable.

33. As such, the Department respectfully requests expedited review and denial of Wabash's Motions on or before July 19, 2024 in order to permit the necessary mobilization of the project thus ensuring the timely completion of a critical highway safety project.

WHEREFORE, based on the foregoing, the Department respectfully requests an expedited review of the present matter and that the *Joint Motion to Quash*, filed by the Department and City on July 16, 2024, is hereby granted.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

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DATED: July 16, 2024

CERTIFICATE OF SERVICE

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

FOR EXPEDITED REVIEW upon the participants listed below on:

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