

**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	:	<b>Electronically Filed</b>
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.	:	

**JOINT ANSWER IN OPPOSITION TO WABASH PROPERTY, LLC’S MOTION FOR  
CERTIFICATION OF INTERLOCUTORY APPEAL, MOTION FOR  
DETERMINATION OF FINALITY, AND MOTION FOR STAY**

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 (“City”), by and through Krysia M. Kubiak, Solicitor, John F. Doherty, Associate Solicitor, and Kevin T. Freyder, Assistant Solicitor, and files the within Joint Answer in Opposition to the Motion, filed by Wabash Properties, LLC (“Wabash”) on July 8, 2024, seeking certification of an interlocutory order for appeal, a determination of finality pursuant to Pa. R.A.P. 341(c), and additionally a motion for stay (“Motion”) in response to the Pennsylvania Public Utility Commission’s (“PUC”) July 1, 2024 Order and Opinion in the present matter, and responds as follows:

1. Admitted. By way of further answer, the Department and City incorporates its Joint Motion to Quash, being filed simultaneously with the within Joint Answer, into its response to this and all of the foregoing answers.
2. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.
3. The allegations set forth in this paragraph of the Motion constitute conclusions of law to

which no responsive pleading is required.

4. Denied. It is outright denied that the filing of the Joint Application sought the “rubber stamp” of the PUC—such allegation is preposterous. The Department and City are rapidly advancing a critical highway safety project seeking to demolish a structurally deficient bridge in the interest of protecting the traveling public.
5. Admitted in part. It is admitted Wabash has opposed the Joint Petition filed by the Department and City seeking interim emergency relief. The Department and City specifically deny the allegations made by Wabash herein.
6. Admitted in part. It is admitted Wabash has opposed the Joint Petition filed by the Department and City seeking interim emergency relief. The Department and City specifically deny the allegations made by Wabash herein.
7. Admitted.
8. Admitted.
9. Admitted.
10. Paragraph 10 of Wabash’s Motion contains a prayer for relief to which no response is required. By way of further answer, the Department and City incorporate its Joint Motion to Quash as if set forth herein.
11. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.
12. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.
13. Denied. By way of further answer, the Department has filed Preliminary Objections to the Amended Complaint filed by Wabash in the Commonwealth Court proceedings. Such Preliminary Objections are now moot as Wabash has filed an Amended Petition for

Review—to which the both the Department and City intent to file preliminary objections. Consolidation of the proceedings at this time is inappropriate given that the initial responsive pleading is still due in the Commonwealth Court proceeding.

14. Paragraph 14 of Wabash’s Motion contains a prayer for relief to which no response is required. By way of further answer, the Department and City object to the requested relief as it is not warranted by Rule 341(c) of the Pennsylvania Rules of Appellate Procedure. Additionally, as part of the Commonwealth Court proceeding, Wabash moved for a preliminary injunction which the Court denied after a two-day hearing occurring on July 10-11, 2024. A true and Accurate copy of the Commonwealth Court’s July 12, 2024 Order is attached hereto and marked as **Exhibit 1**.
15. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.
16. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.
17. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.
18. The foregoing paragraphs are incorporated herein by reference as if set forth more fully herein.
19. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required. By way of further answer, the Order involves a mixed question of fact and law—whether the condition of the Bridge constitutes an immediate danger to the safety and welfare of the public under 66 Pa. C.S. § 2702(f) such that immediate removal is necessary.
20. Admitted. By way of further answer, 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. In all three proceedings, Wabash was unsuccessful given, *inter alia*, the risk to the traveling public posed by the Bridge.

21. No response is needed to Wabash's incorporation of its Brief. By way of further answer, the Department and City incorporate both the Joint Motion to Quash and Brief in Support of the Order of Administrative Law Judge Mary D. Long granting the Petition seeking interim emergency relief.
22. Denied as stated. Paragraph 22 ignores the weight of the evidence presented during the June 3-4, 2024 Emergency Hearing (and again during the Commonwealth Court hearing) to cherry pick portions of the testimony presented.
23. Denied as stated. Paragraph 23 ignores the weight of the evidence presented during the June 3-4, 2024 Emergency Hearing (and again during the Commonwealth Court hearing) to cherry pick portions of the testimony presented.
24. Denied as stated. Paragraph 24 ignores the weight of the evidence presented during the June 3-4, 2024 Emergency Hearing (and again during the Commonwealth Court hearing) to cherry pick portions of the testimony presented.
25. Denied as stated. Paragraph 25 ignores the weight of the evidence presented during the June 3-4, 2024 Emergency Hearing (and again during the Commonwealth Court hearing) to cherry pick portions of the testimony presented.
26. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required. By way of further answer, the Order involves a mixed question of fact and law—whether the condition of the Bridge constitutes an immediate danger to the safety and welfare of the public under 66 Pa. C.S. § 2702(f) such

that immediate removal is necessary.

27. Denied. By way of further answer, the PUC has remanded the proceeding *sub judice* for consideration and disposition of all remaining elements.
28. Denied. By way of further answer, the PUC has remanded the proceeding *sub judice* for consideration and disposition of all remaining elements.
29. Admitted in part. It is admitted Wabash has raised such affirmative defenses. The Department and City specifically deny the same. In the Commonwealth Court proceeding, it is anticipated that preliminary objections will be filed asserting that the PUC has jurisdiction over the within matter.
30. Admitted in part. It is admitted that Wabash has raised said claim. However, such allegations are denied by the Department and City herein.
31. Admitted in part. The Department and City incorporate its response to Paragraph 30.
32. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.
33. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.
34. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.
35. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.
36. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.
37. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.

38. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required. By way of further answer, Wabash ignores that the fact that the PUC may consider contractual relationships and other elements when ordering the disposition of a crossing and assigning the costs thereof. The PUC may also defer such issues to another tribunal. Since the final hearing and order regarding the ultimate disposition of the Bridge has not been issued, Wabash's argument is not ripe.
39. Admitted. By way of further answer, the Commonwealth denied Wabash's Application for Preliminary Injunction by an Order issued July 12, 2024. *See Exhibit 1.*
40. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required. The Department and City incorporate its response to Paragraph 38.
41. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required. The Department and City incorporate its response to Paragraph 38.
42. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.
43. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.
44. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.
45. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.
46. Admitted. By way of further answer, the Commonwealth denied Wabash's Application for Preliminary Injunction by an Order issued July 12, 2024. *See Exhibit 1.*

47. Admitted. By way of further answer, the Commonwealth Court denied Wabash's Application for Preliminary Injunction by an Order issued July 12, 2024. *See Exhibit 1.*
48. Admitted.
49. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required. By the way of further answer, the PUC's July 1, 2024 Opinion and Order is not a final order but the granting of an interim emergency petition in order to ensure the protection of the traveling public and preventing the closure of SR 51. The final disposition of the Bridge is still pending before the PUC—to which, Wabash may take an appeal.
50. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required. By way of further answer, the Department and City both intend to file preliminary objections in the Commonwealth Court proceeding.
51. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required. By way of further answer, the Commonwealth Court has already opined, on a preliminary basis, on the question of the demolition of the Bridge through its denial of Wabash's Application for Preliminary Injunction by an Order issued July 12, 2024. *See Exhibit 1.*
52. Paragraph 52 of Wabash's Motion contains a prayer for relief to which no response is required. By way of further answer, the Department and City incorporate its Joint Motion to Quash as if set forth herein.
53. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.
54. Paragraph 54 of Wabash's Motion contains a prayer for relief to which no response is required. By way of further answer, the Department and City incorporate its Joint Motion

to Quash as if set forth herein.

55. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required. By way of further answer, the four factors set forth in Rule 341(c) are not exclusive. In the present matter, the most important factor for consideration is the risk to the traveling public which would incur if a stay of the within proceeding is granted.
56. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.
57. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required. By way of further answer, the Department and City both intend to file preliminary objections in the Commonwealth Court proceeding.
58. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.
59. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required. By way of further answer, the claims raised before the PUC and the Commonwealth Court are only significantly related because Wabash has raised claims, in the Commonwealth Court, which directly encroach into the PUC's exclusive jurisdiction. 66 Pa.C.S. § 2702.
60. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.
61. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.
62. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.

63. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.
64. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.
65. Denied as stated. By way of further answer, the relief sought by the Department and City is alteration by removal and abolishment of the crossing.
66. Admitted.
67. Admitted.
68. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required. By way of further answer, the plain language of the Public Utility Code and supporting case law demonstrates that there is no means, method, or procedure to unilaterally divest the PUC of its exclusive jurisdiction through an informal abandonment of the subject highway-rail crossing.
69. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required. By way of further answer, Wabash fails to acknowledge that the PUC, which retains jurisdiction over the Bridge, also has authority pursuant to Section 2702 of the Public Utility Code, to order a replacement structure if “just and reasonable” and supported by sufficient evidence.
70. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.
71. Admitted. By way of further answer, the Bridge presents a safety risk to the traveling public and the Department and City have stressed throughout these proceedings that safety is their primary concern. Furthermore, Wabash entirely misinterprets the third element found in the comments to Rule 341(c)—the analysis is not whether the litigants will reconsider their

possession, but the tribunal. In the present matter, a potential course of action before the ALJ is a request, presumably by Wabash, for replacement and/or reestablishment of a Bridge.

72. Denied. By way of further answer, the PUC’s exclusive jurisdiction is not divested given the existence of private contractual agreements or property rights, assuming either exist in the matter *sub judice*. The PUC may take such factors into consideration when reaching its ultimate decision on the Bridge—or such issues may be deferred to the appropriate forum. *See Conrail v. Harrisburg*, 842 A.2d 369, 377 (Pa. 2004) (“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.”).
73. Admitted.
74. Admitted.
75. Admitted. By way of further answer, the Department and City incorporate their answer to Paragraph 71, above.
76. Admitted in part. It is admitted that the demolition remains scheduled to being on or shortly after July 24, 2024.
77. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.
78. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required. By way of further answer, the parties still have the opportunity and incentive to settlement depending on rulings before the PUC and/or

Commonwealth Court on the various contractual and real property arguments raised by Wabash. **However, the Department and City will not settle on any issue that directly impacts the safety of the traveling public on SR 51 below the Bridge.**

79. Denied.

80. Denied.

81. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required. By way of further answer, the four factors set forth in Rule 341(c) are not exclusive. In the present matter, the most important factor for consideration is the risk to the traveling public which would incur if a stay of the within proceeding is granted.

82. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.

83. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.

84. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required.

85. The allegations set forth in this paragraph of the Motion constitute conclusions of law to which no responsive pleading is required. To the extent that Rule 341(c) authorizes a temporary stay of the PUC's July 1, 2024, the Department and City respectfully request an expediated review of both Wabash's Motion for Interlocutory Appeal and the responsive Motion to Quash the same. By way of further answer, Wabash selectively ignores the elements set for in *Pennsylvania Public Utility Com'n v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983), *overturned on other grounds by* 511 A.2d 1315 (Pa. 1986).

**WHEREFORE**, based on the foregoing, the Department respectfully requests that the *Joint Motion to Quash* is hereby Granted and that Wabash’s Motion seeking certification of interlocutory appeal, determination of finality, and request for a stay pending appeal is Denied. The July 1, 2024 Opinion and Order is not a final order nor is Wabash entitled to a stay of these proceedings—thus permitting the Department and City to proceed with a critical highway safety project.

Respectfully submitted,

CITY OF PITTSBURGH

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

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DATED: July 15, 2024

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Wabash Properties, LLC,	:	
Petitioner	:	
	:	
v.	:	
	:	
City of Pittsburgh and	:	
Commonwealth of Pennsylvania,	:	
Pennsylvania Department	:	
of Transportation,	:	
Respondents	:	No. 279 M.D. 2024

**ORDER**

AND NOW, July 12, 2024, upon review of Wabash Properties, LLC’s (Petitioner) “Petition for Preliminary Injunction,” and “Application for Expedited Relief,” as well as Respondent, City of Pittsburgh’s Answer in opposition, Petitioner’s brief in support and Respondent, Commonwealth of Pennsylvania, Department of Transportation’s Brief in opposition, and following a hearing held before a single Judge of this Court on July 10-11, 2024, the Petition for Preliminary Injunction is hereby DENIED.

Opinion to follow.

*Michael H. Wojcik*  
\_\_\_\_\_  
MICHAEL H. WOJCIK, Judge

Order Exit  
07/12/2024

**CERTIFICATE OF SERVICE**

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

**MOTION TO QUASH** upon the participants listed below on:

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Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

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DATED: July 15, 2024