

**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

**INTERVENOR/PROTESTANT WABASH PROPERTIES, LLC's REPLY IN OPPOSITION TO THE JOINT MOTION TO QUASH OF THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION AND THE CITY OF PITTSBURGH**

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Intervenor/Protestant Wabash Properties, LLC ("Wabash") submits the following Reply in Opposition to the Joint Motion to Quash of the Pennsylvania Department of Transportation ("PennDOT") and the City of Pittsburgh ("the City"), stating as follows:

**REPLY**

PennDOT and the City's *Joint Motion to Quash Request of Wabash Properties, LLC for Interlocutory Appeal, Determination of Final Order and Stay of Proceedings* is the most recent effort by PennDOT and the City to irreversibly prejudice Wabash's property and contractual rights through expedited proceedings, and without due process or a full trial on the merits. Indeed, PennDOT and the City have moved the Commission for an expedited review of Wabash's *Motion for Certification of Interlocutory Order Pursuant To 52 Pa. Code §5.633, Motion for Determination of Finality Pursuant to Pa.R.A.P. 341(C), and Motion for Stay* while simultaneously rushing to Quash that same *Motion* before it has been given due consideration.

The factual and procedural history that brings the parties to this juncture does not need to be repeated here again. For that reason, Wabash incorporates by reference the averments contained in its June 13, 2024, *Brief in Opposition to Order Granting Interim Emergency Relief and Certifying Material Question* and July 8, 2024, *Motion for Certification of Interlocutory Order Pursuant To 52 Pa. Code §5.633, Motion for Determination of Finality Pursuant to Pa.R.A.P. 341(C), and Motion for Stay*, the latter of which is presently before the Public Utility Commission (“the Commission”) for consideration. In short, PennDOT and the City have employed an interlocutory procedural device—a *Petition for Interim Emergency Order*—to secure authorization for the demolition of the Wabash Bridge (“the Bridge”). In their *Motion to Quash* PennDOT and the City themselves concede that this procedural maneuvering is “not a typical request for interim relief”, and for an obvious reason: an Order to demolish a structure is indeed final, regardless of whether there are other claims pending before the Commission at this Docket. Wabash cannot protect its property rights as *fee* owner of the land above the Bridge if the Bridge is demolished, nor can it enforce PennDOT and City’s common law and/or contractual duties to repair the Bridge if it is gone.

The selection of a *Petition for Interim Emergency Order* to secure authorization to demolish the Bridge was a calculated one. With that form of relief PennDOT and the City obtained what can only be described as a final result—albeit under the guise of an interlocutory one—while erecting barriers to an appeal which now manifest in the instant *Motion to Quash*. To allow PennDOT and City to seek interlocutory relief in an admittedly atypical fashion, and then block Wabash’s attempts to certify that interlocutory relief for review is demonstrably unfair. That insult is particularly egregious when one considers that the “emergency” which PennDOT and the City claim necessitates the demolition of the Bridge is one of their own making: since at least July of

2018, PennDOT and the City became aware of the Bridge's condition yet took no substantive measures to repair it. To allow such poor stewardship of the Bridge to serve as the "emergency" that they now weaponize to demolish is similarly unjust. Moreover, it is directly contrary to the testimony of PennDOT's own consultant at the Commonwealth Court proceedings, who testified that the Bridge can be repaired.

In its *Motion to Quash*, PennDOT and the City suggest that the Commission's July 1, 2024, Opinion and Order does not involve a question of law, a requirement of §5.633, "Certification of interlocutory orders." This is untrue. The entire purpose of the hearing before Administrative Law Judge Long was to determine if the PennDOT and the City could meet their burden of proving whether the Bridge's condition met the legal standards of (1) an "emergency" under the Commission's Rule of Administrative Practice and Procedure 42. Pa.Code §3.1 and §3.6 and (2) an "immediate danger to the safety and welfare of the public" under 66 Pa.C.S. §2702(f). While factual evidence was offered by both sides in the form of expert opinion regarding the Bridge's condition, ultimately the Court made a *legal* conclusion as to whether the burden had been met. For the reasons set forth in its pending Motion, which Wabash incorporates herein by reference, Wabash has established that the Commission's July 1, 2024, *Opinion and Order* "involves a controlling question of law as to which there is a substantial ground for difference of opinion" under §5.633.

PennDOT and the City also rely upon *PUC v. Process Gas*, 467 A.2d 805 (Pa. 1983) to support their position that a stay is not appropriate here. However, the stay sought in *Process Gas* was not requested under Pennsylvania Rule of Appellate Procedure §341(c), but rather Pennsylvania Rule of Appellate Procedure §1732. The standard applied by the Supreme Court in

*Process Gas* are distinct from the standard that under §341(c). Here, the stay *Wabash* seeks is nondiscretionary by rule while its *Motion for Determination of Finality* under §341(c) is pending.

Finally, the certification of the Commission's July 1, 2024, interlocutory order under Rules §5.633 and §341(c), and the mandatory stay that follows, is particularly warranted following testimony from PennDOT's expert witness, who revealed the true reason PennDOT and the City seek the Bridge's demolition. PennDOT and the City refused their common law and contractual duties to maintain the Bridge for economic and political reasons that have nothing to do with the Bridge's condition. Before the Commonwealth Court, PennDOT's engineering expert and District Executive, Jason Zang, PE, testified to the following:

Q.           And do you recall testifying at the PUC that part of the reason why you didn't believe that millions of dollars should be put into the rehabilitation of this bridge is because it doesn't carry any public vehicles and it only benefits one person?

A.           I would have to be told. I would have to be ordered by somebody to spend taxpayer dollars to serve a car dealership before I did that.

This matter has never been about the condition of the Bridge. If that were the case, PennDOT and

the City would have corrected that problem six years ago, when they observed the Bridge's condition. No emergency existed then, nor does one exist now.

WHEREFORE, Wabash respectfully requests that the Commission deny PennDOT and the City's *Joint Motion to Quash* and grant Wabash's *Motion for Certification of Interlocutory Order Pursuant To 52 Pa. Code §5.633, Motion for Determination of Finality Pursuant to Pa.R.A.P. 341(C), and Motion for Stay*.

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by e-mail, this  
22nd day of July, 2024, on the following:

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