

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held August 1, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Emergency Application of the Department of Transportation of the Commonwealth of Pennsylvania and City of Pittsburgh for the Approval to Abolish the Public Above Grade Crossing and Remove the Bridge Carrying the Abandoned Cartway of Pittsburgh and West Virginia Railway Company (and West Side Belt Railroad Company) above S.R. 0051 in the City of Pittsburgh, Allegheny County and the Allocation of Costs Incident Thereto

A-2024-3048837

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a single filing titled Motion for Certification of Interlocutory Order Pursuant to 52 Pa. Code § 5.633 (Motion for Certification), Motion for Determination of Finality Pursuant to Pennsylvania Rule of Appellate Procedure 341(c) (Motion for Determination), and Motion for Stay (Motion for Stay)

filed by Wabash Properties, LLC (Wabash) on July 8, 2024, relative to the above-captioned proceeding (collectively, Motion for Certification et al.). On July 15, 2024, the Department of Transportation of the Commonwealth of Pennsylvania (the Department) and the City of Pittsburgh (City) (collectively, the Department et al.) filed a Joint Answer in Opposition to (Answer) and Joint Motion to Quash (Motion to Quash) Wabash’s Motion for Certification et al. On July 22, 2024, Wabash filed a Reply in Opposition to the Motion to Quash (Wabash Reply). For the reasons discussed below, we will deny Wabash’s Motion for Certification et al.¹

I. Background

A. The Parties

The City is the owner of the bridge constructed at an above grade rail crossing, and has been since its construction in 1929. As the owner of the bridge, the City is working in cooperation with the Department, pursuant to a “local project sponsor” agreement in which the Department has agreed to handle the construction contract for removal of the bridge. *See*, Department and City Memorandum in Support of the Section 3.6 Petition (Department and City Memorandum).

Wabash is the owner of the real property above and on each side of the bridge and has been since its purchase in 2004. *See*, Wabash Memorandum in Opposition to the Section 3.6 Petition (Wabash Memorandum).

¹ Also before us for consideration and disposition is a Motion for Expedited Review filed by the Department (Department Motion) on July 17, 2024. No Answer to the Department’s Motion has been filed. In the Motion, the Department requests an expedited review of Wabash’s Motion for Certification et al. and the Department et al.’s Answer and Motion to Quash. We shall grant the Department’s Motion for the reasons discussed below.

B. The Rail Crossing Bridge and Adjoining Property

The bridge in question is a City-owned bridge which spans Saw Mill Run Boulevard, commonly known as State Route 51, (the Bridge).² The Bridge was constructed pursuant to the Application of Allegheny County (the County) to construct the Bridge “under the tracks and right of way” of Wabash’s predecessor in interest, the Pittsburgh and West Virginia Railroad (the Railroad).³ The Commission’s predecessor, the Public Service Commission (the PSC) approved the County’s Application on June 4, 1929. (*See*, Wabash Exhibit G). All rail facilities, including rails, ties, and warning devices, were removed from the Bridge at some point in the 1960’s. However, the Commission’s records reflect that the Railroad never sought Commission approval to abolish the crossing under Chapter 27 of the Code. 66 Pa. C.S. § 2702. The Bridge has not been used for rail service in 80 years. *Interim Emergency Order* at 7; *See*, Petition for Special Relief at ¶¶ 40-44.

Since Wabash’s purchase of the real property above and on either side of the Bridge, until the Department and City’s closing of the Bridge Deck for safety reasons, Wabash has used the Bridge for employee parking and as an entrance access to an automobile parts distribution center on property adjacent to the Bridge. The Bridge served as an intended and preferred, but not exclusive, means of access to the business, which was blocked by the City’s action in closing portions of the bridge in 2020. In December 2023, the Department and City closed the Bridge entirely by erecting concrete barriers at both ends. *Interim Emergency Order* at 3, 7; Wabash Memorandum at 1-2.

² S.R. 0051 traverses the City of Pittsburgh, Allegheny County (Route 51). Route 51 is a major artery in the City’s highway system, carrying nearly 40,000 vehicles per day and connecting to other major highways in the Pittsburgh area, including Interstate 376 and the Liberty Boulevard and Tunnel. *Interim Emergency Order* at 3; Application at ¶¶ 12-14.

³ *See*, Wabash Exhibit A. The Bridge was constructed to replace the hillside through which the City extended Saw Mill Run Boulevard. *See*, Wabash Exhibit H.

C. Litigation Between the Department and City and Wabash

The Bridge became the subject of litigation between the City and Wabash when, on March 1, 2023, Wabash filed a Complaint against the City in the Allegheny County Court of Common Pleas at Docket Number G.D. 23-002842. The Complaint was in response to the October 26, 2022 letter of the City to Wabash, in which the City informed Wabash of the City’s intention to close the Bridge due to its poor condition. Wabash initially requested a preliminary injunction against the City, which was denied following a hearing before the Allegheny County Court of Common Pleas on March 7, 2023. On March 20, 2024, Wabash sought leave of the Court to include the Department as a defendant. After joinder, the Department and City were ordered to inform the Commission of the proceeding to obtain the Commission’s position given the Bridge was a former active railroad crossing. The Common Pleas Court proceeding between Wabash and the Department and City has now been transferred to the Commonwealth Court of Pennsylvania (Commonwealth Court) in its original jurisdiction. Wabash Memorandum at 8.

D. Application to Abolish Crossing and Petition for Interim Emergency Relief

This case was initiated by the request of the Department for Commission approval to abolish the above grade rail crossing and remove the Bridge above Route 51 (Application).⁴ The Department et al. characterized the Application as an “emergency” based upon the alleged unsafe and deteriorating condition of the Bridge. Based upon the alleged emergency, the Department et al. also filed a Petition for Interim Emergency

⁴ Emergency Application of the Department of Transportation of the Commonwealth of Pennsylvania and City of Pittsburgh for the Approval to Abolish the Public Above Grade Crossing and Remove the Bridge Carrying the Abandoned Cartway of Pittsburgh and West Virginia Railway Company (and West Side Belt Railroad Company) above S.R. 0051 in the City of Pittsburgh, Allegheny County and the Allocation of Costs Incident Thereto, Docket No. A-2024-3048837.

Relief Under 52 Pa. Code § 3.6 (Section 3.6 Petition)⁵ requesting that the Commission make a finding of immediate danger to the public and order the removal of the Bridge pursuant to the Commission’s authority to direct the abolishment of highway crossings under Section 2702(f) of the Pennsylvania Public Utility Code (Code). 66 Pa.C.S. § 2702(f) (establishing the Commission’s duty to act to address the condition of a crossing upon finding of an immediate danger to the safety and welfare of the public). Application; Section 3.6 Petition.

In the Application and Section 3.6 Petition, the Department et al. alleged that, due to serious structural concerns, the Bridge was scheduled for demolition. To that end, the Department sought and obtained federal funding for the removal of the Bridge, scheduled to be completed by the Department in July and August 2024. The Application included a location map and final structure plans for the project.

The Section 3.6 Petition sought Commission approval to act immediately to remove the Bridge in the interest of public safety, given the existing poor and deteriorating condition of the Bridge and the pending scheduled demolition set to occur in July and August of this year. However, Wabash, the adjacent property owner, opposed the Department et al.’s plans to demolish the Bridge. Wabash asserted that no emergency exists and that the Bridge should be repaired rather than removed. Wabash asserted that the City should be compelled to repair the Bridge because the PSC’s approval of the construction of the Bridge was made in reliance upon certain City Ordinances and an agreement between the County and the City, whereby the City would own the Bridge and exclusively bear the cost to maintain and renew the Bridge “forever”. *See*, Wabash Exhibit A-C, E-G.

⁵ The Section 3.6 Petition was not assigned a separate docket number and was docketed at the Application Docket No. A-2024-3048837.

E. *Interim Emergency Order*

On June 6, 2024, Administrative Law Judge (ALJ) Mary D. Long issued the *Interim Emergency Order* wherein she determined that the Department et al. had proven all four elements required to warrant a grant of emergency relief. *Interim Emergency Order* at 13. As such, the ALJ granted the Department et al.’s Section 3.6 Petition and the emergency relief requested, *i.e.*, authorization for removal of the Bridge as planned in July and August 2024. *Id.* at 13-14. The *Interim Emergency Order* also certified the grant of relief to the Commission as a material question, in accordance with 52 Pa. Code § 3.10(b). *Id.* The ALJ further noted in the *Interim Emergency Order* that “the Commission will conduct further proceedings on the issues raised by the other pleadings after the Commission has ruled on this order granting interim emergency relief pursuant to 52 Pa. Code § 5.305.” *Id.* at 13.

II. History of the Proceeding Before the Commission

As previously noted, on May 2, 2024, the Department et al. filed the Application docketed at A-2024-3048837, seeking permission from the Commission to both abolish the above-grade crossing and remove the Bridge authorized by the PSC’s 1929 order issuing a Certificate of Public Convenience (CPC).^{6 7 8}

⁶ The case caption was amended at the hearing on June 3, 2024, to remove the reference to “DOT Number 472 968G.” Upon investigation, the Department determined that S.R. 51 does not have a DOT number. Tr. 44, 49.

⁷ The Application included a location map and final structure plans for the project. The Department et al. represented that due to serious structural concerns the structure was scheduled for demolition in July and August of 2024.

⁸ As discussed, *supra*, in the course of ongoing litigation between Wabash and the City, the Allegheny County Court of Common Pleas directed that the Department be joined as a necessary party, and that the Department and the City confer with the Commission regarding the status of the crossing. The court also transferred the matter to the Commonwealth Court.

By letter dated May 3, 2024, the Commission's Rail Safety Division scheduled a virtual field investigation for Tuesday, May 7, 2024.

The counsel for Wabash entered an appearance on May 6, 2024, in objection to the Application.

Following the virtual field investigation, the Rail Safety Division referred the Application to the Office of Administrative Law Judge (OALJ) for an "expedited" hearing, noting the objection to the Application by Wabash. By notice dated May 9, 2024, OALJ assigned the Application to Deputy Chief Administrative Law Judge Christopher P. Pell and scheduled a prehearing conference by telephone for May 22, 2024. ALJ Pell issued a prehearing conference order on May 9, 2024.

On May 15, 2024, the Department et al. filed a Petition for Special Relief Under 66 Pa.C.S. § 2702(f) (Petition for Special Relief). In the Petition for Special Relief, the Department et al. represented that the crossing had never been formally abolished by application to the Commission, and that abolishment and removal of the bridge is necessary due to the immediate danger to public safety caused by the poor and deteriorating condition of the Bridge. Accordingly, the Department et al. requested that the Commission make a finding of immediate danger to the public and order the removal of the Bridge pursuant to 66 Pa.C.S. § 2702(f).

As directed by ALJ Pell's prehearing order, the Department and City and Wabash filed prehearing memoranda.

The prehearing conference before ALJ Pell convened as scheduled on May 22, 2024. The counsel for the Department, the City, and Wabash appeared. The counsel for the Railroad also appeared.

The Department et al. filed the Section 3.6 Petition on May 22, 2024.⁹ The Department et al.'s Section 3.6 Petition alleged that abolishment and removal of the bridge is necessary due to the immediate danger to public safety caused by the poor and deteriorating condition of the Bridge. Accordingly, the Department et al. requested that the Commission make a finding of immediate danger to the public and order the removal of the Bridge.

By notice dated May 22, 2024, the matter was reassigned to ALJ Long. ALJ Long scheduled an in-person hearing on the Section 3.6 Petition for June 3, 2024, in Pittsburgh, and served a prehearing order on May 23, 2024.

Also on May 22, 2024, Wabash filed Preliminary Objections to the Application. On May 24, 2024, ALJ Long issued an order striking the Preliminary Objections because Wabash had not made the appropriate filing to become a party to the case. On May 27, 2024, Wabash filed a Protest.

Also on May 27, 2024, Wabash filed an Answer and New Matter to the Section 3.6 Petition. The Department et al. filed a Reply to Answer and New Matter on May 29, 2024.

Wabash filed a Petition to Intervene on May 29, 2024.

The Department et al. filed a Petition for a Protective Order on May 15, 2024, and a Supplemental Petition for Protective Order on May 22, 2024. By email dated May 31, 2024, Wabash and the Department et al. submitted a revised Petition for Protective Order to which all of the Parties agreed. ALJ Long granted the Petition for Protective Order and issued the Protective Order on May 31, 2024.

⁹ The Section 3.6 Petition incorporates the averments in the Petition for Special Relief.

By email dated May 31, 2024, ALJ Long granted Wabash's Petition to Intervene and advised the parties that the issue for the Emergency Hearing would be limited to the question of whether the condition of the bridge constitutes an "emergency" necessitating its immediate removal within the meaning of the Code and Commission Regulations and would not address the merits of any remaining issues.

Hearings were held on June 3, 2024, and June 4, 2024. Counsel for the Department et al. and Wabash appeared and participated. The Department offered the testimony of three witnesses: Ms. Michele Acitelli, P.E., Mr. Jason Zang, P.E., and Ms. Stephanie Zolnak. The Department Exhibits 1-7 were admitted into evidence.¹⁰ Wabash offered the testimony of two witnesses: Mr. John Schneider, P.E., and Mr. David Rohrich. Wabash Exhibits A, B, C, E, F, G, H, K, L, M, N, O, P, R, S, T, U, and V were admitted into the record.

On June 6, 2024, ALJ Long issued the *Interim Emergency Order* granting the requested emergency relief and certifying the ruling to the Commission as a Material Question, in accordance with 52 Pa. Code § 3.10(b). ALJ Long determined that the Department et al. had proven all four elements required to warrant a grant of emergency relief.

¹⁰ DOT Ex. 6/Wabash Ex. O were identified as Confidential Security Information. The ALJ made every effort to protect the information presented which was marked confidential or proprietary. The ALJ noted that the confidential treatment of information was hampered by the failure of either party to clearly mark which portions of testimony and memoranda should be designated as confidential. The ALJ further noted that a detailed review of Mr. Zang's and Mr. Schneider's initial hearing testimony was not included in the Recommended Decision, as their testimony was marked as proprietary and many of the documents relied upon were marked as Confidential Security Information. R.D. at 8, fn. 8-9. The Department offered a succinct summary of Mr. Zang's testimony regarding the condition of the Bridge in its Memorandum in Support of Emergency Relief at 7-8. Finally, Mr. Zang's rebuttal testimony was not marked as confidential. *Id.*

On June 13, 2024, the Department et al. filed a Brief in Support of Interim Emergency Order and Certifying Material Question, and Wabash filed a Brief Addressing the Merits of the Certified Question Pursuant to 52 Pa. Code §5.305, in opposition to the *Interim Emergency Order*.

By the Opinion and Order entered July 1, 2024 (*July 2024 Order*), the Commission answered the material question in the affirmative and referred this matter to the OALJ for further proceedings. *July 2024 Order* at 36-37.

As previously noted, on July 8, 2024, Wabash filed a Motion for Certification et al. to which the Department et al. filed an Answer and Motion to Quash on July 15, 2024. On July 17, 2024, the Department filed a Motion for Expedited Review of Wabash's Motion for Certification et al. and the Department et al.'s Answer and Motion to Quash. On July 22, 2024, Wabash filed a Reply in Opposition to the Motion to Quash.

III. History of the Proceeding Before the Commonwealth Court

As noted above, the Common Pleas Court proceeding between Wabash and the Department and City was transferred to the Commonwealth Court in its original jurisdiction. Wabash Memorandum at 8. On May 22, 2024, the matter was docketed in the Commonwealth Court at Docket No. 279 M.D. 2024. Joint Motion at 4. On May 22, 2024, Wabash filed an Amended Complaint alleging five separate claims against both the Department and City: (1) a breach of contract claim (against the City only); (2) a request seeking a writ of mandamus; (3) declaratory judgement to void the City's decision to remove the Bridge; (4) claims of various constitutional violations; and (5) a request for injunctive relief seeking to permanently bar the defendants from removing the Bridge which is at the end of its useful life. *Id.* at 4-5. On June 12, 2024, the Department filed its Preliminary Objections in response to the Amended Complaint. On

June 19, 2024, Wabash filed an Application requesting a preliminary injunction seeking to enjoin the Department et al., from proceeding with the proposed project. To that effect, on June 26, 2024, Wabash filed an Application requesting expedited relief regarding its preliminary injunction petition and an emergency hearing. On June 27, 2024, the Commonwealth Court issued an Order scheduling an emergency hearing on July 10, 2024. On July 1, 2024, Wabash filed an Amended Petition for Review in lieu of its Amended Complaint. On July 10-11, 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. On July 12, 2024, Judge Wojcik issued an Order denying Wabash's preliminary injunction request. *Id.* at 5.

IV. Discussion

A. Legal Standards

1. Certification of Interlocutory Orders

Section 5.633 of the Commission's Regulations, which governs the certification of interlocutory orders, provides, in pertinent part, as follows:

(a) When the Commission has made an order which is not a final order, a party may by motion request that the Commission find, and include the findings in the order by amendment, that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal to Commonwealth Court from the order may materially advance the ultimate termination of the matter. The motion shall be filed within 10 days after service of the order, and is procedurally governed by § 5.103(a)-(c) (relating to hearing motions). Unless the Commission acts within 30 days after the filing of the motion, the motion will be deemed denied.

(b) Neither the filing of a motion under subsection (a), nor the adoption of an amended order containing the requested finding, will stay a proceeding unless otherwise ordered by the Commission or Commonwealth Court.

52 Pa. Code § 5.633.

Similarly, Section 702(b) of the Judicial Code, 42 Pa.C.S. § 702(b), provides:

When a court or other government unit, in making an interlocutory order in a matter in which its final order would be within the jurisdiction of an appellate court, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter, it shall so state in such order. The appellate court may thereupon, in its discretion, permit an appeal to be taken from such interlocutory order.

42 Pa.C.S. § 702(b).

2. Final Orders

Under Rule 341(a) of the Pennsylvania Rules of Appellate Procedure (Pa.R.A.P.), “an appeal may be taken as of right from any final order of a government unit or trial court.” Pa.R.A.P. 341(a). A final order, under Rule 341(b), is one that “disposes of all claims and of all parties” or “is entered as a final order pursuant to subdivision (c) of [Rule 341].” Pa.R.A.P. 341(b)(1) and (3). Subdivision (c) of Rule 341 provides, in pertinent part, as follows:

(c) Determination of Finality. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when

multiple parties are involved, the trial court or other government unit may enter a final order as to one or more but fewer than all of the claims and parties only upon an express determination that an immediate appeal would facilitate resolution of the entire case. Such an order becomes appealable when entered. In the absence of such a determination and entry of a final order, any order or other form of decision that adjudicates fewer than all the claims and parties shall not constitute a final order.

Pa.R.A.P. 341(c). The Comment to Rule 341(c) identifies four factors to be considered when ruling on a motion for determination of finality:

Subdivision (c) permits an immediate appeal from an order dismissing less than all claims or parties from a case only upon an express determination that an immediate appeal would facilitate resolution of the entire case. Factors to be considered under subdivision (c) include, but are not limited to:

- (1) whether there is a significant relationship between adjudicated and unadjudicated claims;
- (2) whether there is a possibility that an appeal would be mooted by further developments;
- (3) whether there is a possibility that the court or government unit will consider issues a second time; and
- (4) whether an immediate appeal will enhance prospects of settlement.

Pa.R.A.P. 341(c) Comment.

B. *July 2024 Order*

The Material Question certified for the Commission's review is stated as follows:

Did ALJ Long properly issue *Interim Emergency Order* granting the emergency relief requested by the Department of

Transportation of the Commonwealth of Pennsylvania and the City of Pittsburgh?

July 2024 Order at 2. In the *July 2024 Order*, the Commission answered the Material Question in the affirmative, finding that the ALJ properly found that all four elements for emergency relief under 52 Pa. Code § 3.6(b) have been satisfied and supported by substantial evidence and that therefore, the grant of relief requested by the Department et al.’s Section 3.6 Petition was warranted in the circumstances. *Id.* at 2, 34.

The Commission explained that the emergency conditions and the scenario raised by the Department et al.’s Section 3.6 Petition raises the question of the immediate safety of the Bridge, which falls within the Commission’s jurisdiction under Section 2702(f) (establishing the Commission’s duty to act to address the condition of a crossing upon finding of an immediate danger to the safety and welfare of the public). *July 2024 Order* at 35. Lastly, the Commission noted that the *Interim Emergency Order* was focused exclusively on the grant of interim emergency relief, *i.e.*, removal of the Bridge. Therefore, in addition to answering the certified question in the affirmative, the Commission returned the matter to the OALJ for such further proceedings as deemed necessary, “to address the matter of the formal abolishment of the crossing and allocation of associated costs pursuant to Section 2704 of the Code, if any.” *Id.*

C. 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 of Wabash and Joint Answer of the Department and City

1. Motion for Certification of Interlocutory Order Pursuant to 52 Pa. Code § 5.633 and Joint Answer

In the Wabash Motion for Certification, Wabash moves that the Commission certify its interlocutory *July 2024 Order* for appeal to the Commonwealth

Court pursuant to 52 Pa. Code § 5.633. Motion for Certification et al. at 3. Wabash argues that the Commission’s *July 2024 Order* should be certified final under Section 5.633 as it involves controlling questions of law on which there are substantial grounds for difference of opinion between Wabash and the Department et al. *Id.* at 5. In support, Wabash states that Wabash and the Department et al. disagree whether the Bridge’s condition constitutes an “emergency” under § 3.1 and an “immediate danger” as required by § 2702(f) and “[t]hat difference of opinion was determinative in deciding a controlling legal question posed by the Department et al.’s Petition for Interim Emergency Order: does the Bridge’s condition constitute an ‘emergency’ and ‘immediate danger?’” *Id.* at 5-6. Additionally, Wabash contends that the enforcement of the 1929 PSC Order, requiring the City to forever maintain the Bridge, was another controlling question of law for which there is substantial ground for difference of opinion. *Id.* at 6-7.

Noting its Petition for Preliminary Injunction in the Commonwealth Court, Wabash argues that an immediate appeal to the Commonwealth Court from the *July 2024 Order* will materially advance the ultimate termination of the proceeding before the Commission as required by Section 5.633. Motion for Certification et al. at 9. According to Wabash, “the Commonwealth Court is the ultimate arbiter of all controversies between [the] parties.” Wabash concludes that the Parties disagree over a controlling issue of law and the appeal to the Commonwealth Court may advance the ultimate determination of the Commission proceeding. *Id.* at 10.

In the Answer to Wabash’s Motion for Certification et al., the Department et al. contend that the *July 2024 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.” Answer at 3, 4. In response to Wabash’s argument that the enforcement of the 1929 PSC Order, requiring the City to forever maintain the Bridge, was another

controlling question of law for which there is substantial ground for difference of opinion, the Department et al. assert that the Commission remanded the proceeding *sub judice* for adjudication of all remaining issues. *Id.* at 5. The Department et al. further contend that the Commission may consider contractual relationships when ordering the disposition of a crossing and assigning the costs thereof and that the Commission may defer such issues to another tribunal. According to the Department et al., Wabash’s argument is not ripe because the final hearing and order regarding the ultimate disposition of the Bridge has not been issued. *Id.* at 6.

2. Motion for Determination of Finality Pursuant to Pa.R.A.P. 341(c) and Joint Answer

In its Motion for Determination of Finality Pursuant to Pa.R.A.P. 341(c), Wabash moves that the Commission should declare its *July 2024 Order* final “so that Wabash may take those issues on appeal to the Commonwealth Court” and “consolidate that [sic] them with the existing litigation in that forum.” Motion for Certification et al. at 10. Wabash engages in an analysis of the four factors provided under the Comment to Rule 341(c)¹¹ to be considered when determining whether an immediate appeal will facilitate resolution of the entire case. *Id.* at 10.

¹¹ For ease of reference, the Comment to Rule 341(c) states:

Subdivision (c) permits an immediate appeal from an order dismissing less than all claims or parties from a case only upon an express determination that an immediate appeal would facilitate resolution of the entire case. Factors to be considered under subdivision (c) include, but are not limited to:

- (1) whether there is a significant relationship between adjudicated and unadjudicated claims;
- (2) whether there is a possibility that an appeal would be mooted by further developments;

Under the first factor, Wabash contends that the claim adjudicated by the *July 2024 Order* is significantly related to both the unadjudicated claims in the Commission proceeding (*i.e.*, the Application to abolish the Bridge and the Application to abolish the crossing, both arising from Section 2702 of the Code) and the unadjudicated claims in its action before the Commonwealth Court (*i.e.*, enforcement of contractual and common law duties to repair the Bridge). Motion for Certification et al. at 11. Under the second factor, Wabash argues that it is “impossible for future developments in the remaining abolishment claim to render the demolition order moot.” *Id.* at 12. As for the third factor, Wabash notes that the Department et al., have never expressed an intention to reconsider demolition of the Bridge and that ALJ Long and the Commission authorized demolition of the Bridge in consecutive orders. *Id.* at 12-13. Therefore, Wabash argues that there is no reason to believe that the Department, City, or Commission will ever reconsider demolishing the Bridge. Under the fourth factor, Wabash asserts that the Parties cannot reach a settlement on the Department et al.’s duties to repair the Bridge if the Bridge is demolished. According to Wabash, an immediate appeal “not only enhances any prospects of settlement, but it is the only prospect for resolution between the parties that involves repair to the bridge.” *Id.* at 13. Wabash concludes that an examination of all four (4) factors in the Comment to Rule 341(c) weighs in favor of an immediate appeal to Commonwealth Court. *Id.* at 14.

In the Answer in Opposition to Wabash’s Motion for Certification et al., the Department et al. argues that the four factors presented for consideration in Rule 341(c) are not exclusive and that the most important factor in the present matter is “the risk to the traveling public which would incur if a stay of the within [sic] proceeding is granted.”

(3) whether there is a possibility that the court or government unit will consider issues a second time; and

(4) whether an immediate appeal will enhance prospects of settlement.

Pa.R.A.P. 341(c) Comment.

Answer at 8. In addition, the Department et al. contend that they “will not settle on any issue that directly impacts the safety of the traveling public on SR 51 before the Bridge.” *Id.* at 11.

3. Motion for Stay and Joint Answer

In its Motion for Stay, Wabash notes the mandate under Rule 341(c)(1) that “[d]uring the time an application for determination of finality is pending, the action is stayed” and argues that such mandate requires the Commission to stay the *July 2024 Order* authorizing the removal of the Bridge while the instant Motions are pending. Motion for Certification et al. at 14 (citing Pa.R.A.P 341(c)(1)).

In response to Wabash’s Motion for Stay, the Department et al. argue in their Answer that Wabash ignored the elements set forth in *Pa. PUC v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983), *overturned on other grounds by* 511 A.2d 1315 (Pa. 1986) (*Process Gas*) for requesting a stay. Answer at 11. The Department et al. further avers that, to the extent Rule 341(c) authorizes a temporary stay of the *July 2024 Order*, the Department et al. request an expedited review of Wabash’s Motion and the Department et al.’s Motion to Quash. *Id.*

D. Joint Motion to Quash of the Department et al. and Reply in Opposition of Wabash

In the Motion to Quash, the Department et al. reiterate many of the arguments made in its Answer to Wabash’s Motion. First, the Department et al. argue that the Commission’s *July 2024 Order* is not a final order but rather “a granting of the interim emergency relief sought by the Department et al. to effectuate a critical highway safety project.” Motion to Quash at 6. Noting the requirement of 52 Pa. Code § 5.633 “that the order involves a controlling question of law,” the Department et al. contends

that the *July 2024 Order* from which Wabash seeks certification does not involve a question of law. *Id.* (citing 52 Pa. Code § 5.633). According to the Department et al., the *July 2024 Order* concerns a question of fact—“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.” Motion to Quash at 6. Therefore, the Department and City argue that any appeal from the *July 2024 Order* is interlocutory and not as of right. *Id.* (citing 42 Pa.C.S. § 702; Pa.R.A.P. 1311).

The Department et al. reiterates its position that the controlling issue in the *July 2024 Order* “is ultimately a question of fact, as to whether an emergency exists.” Motion to Quash at 8. The Department et al. further argues that an interlocutory appeal from the *July 2024 Order* will be rendered moot when the highway safety project is completed on or shortly after August 10, 2024. *Id.* As such, the Department et al. contends that Wabash’s Motion for Certification et al. cannot meet the plain language of Section 702(b) for the grant of an appeal by permission. *Id.* (citing 42 Pa.C.S. § 702).

In response to Wabash’s Motion for Determination of Finality under Pa.R.A.P. 341(c), the Department et al. argues that the *July 2024 Order* is not a final order because the relief granted was the alteration of the Bridge, on an interim basis, and because the remaining elements of the Application, such as allocation of costs, assignment of responsibility for work, and future maintenance, were remanded to the OALJ for further consideration. Motion to Quash at 9. In its analysis of the four factors in the Comment to Pa.R.A.P. 341(c), the Department et al. contends that the disposition of the Bridge will be considered by the Commission a second time as the *July 2024 Order* remands the matter back to the OALJ for disposition. Additionally, the Department et al. asserts that an appeal would be unlikely to enhance the prospects for settlement. As such, the Department et al. argues that because the *July 2024 Order* is an interim emergency order and because “it does not foreclose the possibility of a new

bridge structure being ordered, a determination of finality under Rule 341(c) is wholly inappropriate.” *Id.* at 10.

Next, in the Motion to Quash, the Department et al. argues that Wabash’s Motion for Stay fails to apply the elements set forth in *Process Gas* regarding whether a stay should be granted. Motion to Quash at 11. Under the first factor, whether the petitioner is likely to prevail on the merits, the Department et al. contends that they dispute the validity of Wabash’s contractual and real property rights and that it is unlikely that Wabash will prevail on the merits, especially when considering the Commonwealth Court’s denial of Wabash’s request for a preliminary injunction. Under the second factor regarding the question of irreparable injury without a stay, the Department et al. asserts that Wabash has remained in business over the past eight months since the closure of the Bridge, which demonstrates that irreparable injury will not occur as the status quo will remain post-demolition. As for the third and fourth factors concerning whether the issuance of a stay will not substantially harm other interested parties and adversely affect the public interest, the Department et al. asserts that the Commission has already determined that “the Bridge constitutes an emergency situation to which the risk of harm to the traveling public far outweighs the potential risk of economic harm to. . . Wabash.” *Id.* According to the Department et al., Wabash cannot meet its burden under *Process Gas*. *Id.* at 12.

As such, the Department et al. asserts that Wabash failed to establish grounds for certification of the *July 2024 Order* pursuant to 52 Pa. Code § 5.633, or a determination of finality of the *July 2024 Order* pursuant to Pa.R.A.P. 341(c), or a stay of the *July 2024 Order*, and therefore, requests that the Commission grant their Motion to Quash the Wabash’s Motion for Certification et al. Motion to Quash at 12-13.

In its Reply in Opposition to the Motion to Quash, Wabash argues that the *July 2024 Order* to demolish the Bridge is final regardless of whether there are other

claims pending before the Commission. Wabash Reply at 2. According to Wabash, it cannot protect its property rights as fee owner of the land above the Bridge or enforce the Department et al.’s common law and/or contractual duties to repair the Bridge if the Bridge is demolished. *Id.* Wabash contends that the purpose of the hearing on the Emergency Petition was to determine if the Department et al. could meet their burden of proving whether the Bridge’s condition met the legal standards of an “emergency” under 52 Pa. Code §§ 3.1 and 3.6 and an “immediate danger to the safety and welfare of the public” under 66 Pa.C.S. § 2702(f). Noting that “[w]hile factual evidence was offered by both sides in the form of expert opinion regarding the Bridge’s condition,” Wabash asserts that “ultimately the Court made a legal conclusion as to whether the burden has been met.” Therefore, Wabash believes that it established that the *July 2024 Order* “involves a controlling question of law as to which there is substantial ground for difference of opinion” under 52 Pa. Code § 5.633. *Id.* at 3.

Next, Wabash contends that the elements set forth in *Process Gas* for requesting a stay do not apply to the stay that Wabash requested under Pa.R.A.P. 341(c). Wabash Reply at 3. According to Wabash, the stay that it seeks is “nondiscretionary by rule while its Motion for Determination of Finality under [Rule] 341(c) is pending.” *Id.* at 4.

Lastly, Wabash asserts that certification of the *July 2024 Order*, under 52 Pa. Code § 5.633 and Rule 341(c), and the mandatory stay that follows are warranted due to the testimony of the Department’s witness Mr. Zang, which, according to Wabash demonstrates that the Department 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.” Wabash Reply at 4. Therefore, Wabash requests that the Commission deny the Department et al.’s Motion to Quash. *Id.* at 5.

E. Motion for Expedited Review of the Department

In its Motion for Expedited Review, the Department notes that under Pa.R.A.P. 341(c), the Commission has thirty days to consider Wabash’s Motion for Certification et al. which means that a disposition of such motion is due on or before August 8, 2024. Department Motion at 3-4. The Department states that its contractor is ready to proceed with the approved demolition of the Bridge, which is set to begin on July 24, 2024. According to the Department, “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.” The Department further asserts that Wabash’s Motion for Certification et al. ignores the requirements necessary to obtain a stay pending appeal, emphasizing that the requirement that “the issuance of a stay will not adversely affect the public interest” was already answered by the *July 2024 Order*. The Department states that consistent with the *July 2024 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. *Id.* at 4. As such, to resolve the dispute between the Parties, the Department requests an expedited review of this matter which includes Wabash’s Motion for Certification, Motion Determination, and Motion for Stay and the Department et al.’s Answer and Motion to Quash thereto. *Id.* at 4-5.

F. Disposition

Initially, we note that any argument or Exception that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Upon review, we shall deny Wabash's Motion for Certification of our *July 2024 Order*. As noted above, the Commission's certification of interlocutory orders is governed by Section 5.633 of our Regulations, 52 Pa. Code § 5.633. We emphasize that Section 5.633(a) provides the following:

(a) When the Commission has made an order which is not a final order, a party may by motion request that the Commission find, and include the findings in the order by amendment, that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal to Commonwealth Court from the order may materially advance the ultimate termination of the matter. The motion shall be filed within 10 days after service of the order, and is procedurally governed by § 5.103(a)-(c) (relating to hearing motions). Unless the Commission acts within 30 days after the filing of the motion, the motion will be deemed denied.

52 Pa. Code § 5.633(a).

If the Commission grants a request to certify an interlocutory order, the second step to obtain appellate review is set forth in Rule 1311(b) of the Pennsylvania Rules of Appellate Procedure, Pa. R.A.P. 1311(b), which provides that permission to appeal from an amended interlocutory order may be sought by filing a petition for permission to appeal with the prothonotary of the appellate court within thirty days after the entry of such order. *See, Commonwealth of Pennsylvania v. McMurren*, 945 A.2d 194 (Pa. Super. Ct. 2008) (for a detailed discussion of the appellate procedures that apply to appeals from interlocutory orders).

Wabash has not demonstrated that the *July 2024 Order* involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal to the Commonwealth Court from the *July 2024*

Order may materially advance the ultimate termination of the matter as required by 52 Pa. Code § 5.633. The Parties agree in their Motions, that the controlling issue in the *July 2024 Order* is whether an emergency situation exists or in other words, whether the Bridge’s condition constitutes an emergency. *See*, Wabash Motion at 5; Joint Motion at 8. This is not a “controlling question of law” as contemplated by Section 5.633 of our Regulations, but rather a mixed question of law and fact.

Additionally, we find that an immediate appeal of our *July 2024 Order* to the Commonwealth Court would not advance the termination of this proceeding as required by 52 Pa. Code § 5.633. The granting of relief in the *July 2024 Order* was tailored to follow the interim emergency relief the Department et al. requested in its Emergency Relief Petition. As our *July 2024 Order* was interlocutory in nature and focused on the emergency relief requested, we did not make any determinations in the *July 2024 Order* on the remaining elements to the Application as those remaining issues were referred back to the OALJ. In other words, the *July 2024 Order* adjudicated the question as to whether the Bridge’s condition constitutes an emergency and whether the Bridge must be demolished in an expedited manner as requested by the Department. Even if, on an appeal, the Commonwealth Court decided that an emergency situation does not exist, such determination would not advance the termination of this proceeding as the Bridge is still subject to removal by way of the pending Application before the OALJ. Furthermore, the *July 2024 Order* did not dispose of the remaining elements or claims to the Application as the *July 2024 Order* referred those issues back to the OALJ for further proceedings.

Based on our review of 52 Pa. Code § 5.633, regarding certification of an interlocutory order, we are convinced that certification of this matter to the Commonwealth Court is not appropriate. Accordingly, we will deny Wabash’s Motion for Certification to permit an immediate appeal.

Similarly, we shall deny Wabash’s Motion for Determination of Finality under Pa.R.A.P. 341(c).

As previously mentioned, Pennsylvania Rule of Appellate Procedure 341(a) states that an appeal may be taken “as of right from any final order of a government unit or trial court.” Pa.R.A.P. 341(a). A “final order” is defined in Rule 341(b)(1) and (3) as an order that:

(1) disposes of all claims and of all parties; or

* * *

(3) is entered as a final order pursuant to subdivision (c) of this rule.

Pa.R.A.P. 341(b)(1) and (3).

On its face, the *July 2024 Order* has not disposed of all claims or all parties in the proceeding as the *July 2024 Order* adjudicated the claims as to whether the Bridge’s condition constitutes an emergency and whether the Bridge must be demolished in an expedited manner. The other elements or claims to the Application remain outstanding before the Commission. As such, the *July 2024 Order* is an interlocutory order and not a final order within the meaning of Rule 341(b)(1). Therefore, we must determine whether the *July 2024 Order* is properly appealable under Rule 341(c), as argued by Wabash.

As noted above, Rule 341(c) permits a trial court or government unit “to enter a final order as to one or more but fewer than all of the claims and parties” by making an “express determination that *an immediate appeal would facilitate resolution of the entire case.*” Pa.R.A.P 341(c) (emphasis added). Under a plain reading of Rule 341(c), we find that an immediate appeal of the *July 2024 Order* would not resolve the entire case, as the only claim that would be certified for appeal is the emergency

question, which leaves the remaining elements and claims to the Application outstanding. Stated differently, even if the *July 2024 Order* was appealed to the Commonwealth Court, the Application is still pending before the OALJ and the Commonwealth Court’s review of the *July 2024 Order* would not resolve those issues pending before the OALJ.

We further note that although Wabash requests, at the end of its Motion for Certification et al., that the Commission certify that “[a]n immediate appeal [from the *July 2024 Order*] would facilitate resolution of the entire case,” nowhere in its argument does Wabash substantiate how the certification would resolve the *entire* case. Motion for Certification et al. at 14; see, Pa.R.A.P. 341(c). Rule 341(c) provides that “[i]n the absence of such a determination and entry of a final order, any order or other form of decision that adjudicates fewer than all the claims and parties *shall not constitute a final order.*” Pa.R.A.P. 341(c) (emphasis added). The fact that Wabash fails to argue under Rule 341(c) how the certification would resolve the *entire* case illustrates the deficiency of Wabash’s Motion for Determination.

Accordingly, we conclude that an immediate appeal from our *July 2024 Order* would not facilitate resolution of the entire case as required by Pa.R.A.P. 341(c). Our conclusion is bolstered by our examination of the four factors provided in the Comment to Rule 341(c), which is set forth below.

We preface our analysis of the factors provided in the Comment to Rule 341(c) by noting a general rule that piecemeal interlocutory appeals of non-final orders that do not resolve all claims of an appellant should only be allowed in the rarest of circumstances. *See, Liberty State Bank v. Northeastern Bank of Pennsylvania*, 683 A.2d 889, 890 (Pa. Super. 1996) (although an exception to the general rule exists “it is not necessarily appropriate to certify a case” for immediate appeal); *Robert H. McKinney, Jr. Assoc. v. Albright*, 632 A.2d 937, 939 (Pa. Super. 1993) (“an immediate appeal of a non-final order. . . should be made only in the most extraordinary

circumstances”). In an endeavor to provide clarity to our analysis and consistent with what we believe to be the vision of Rule 341(c), our examination of the four factors is properly focused on the pending litigation before this Commission and not the parallel litigation ensued by Wabash before the Commonwealth Court.

As stated above, the Comment to Rule 341(c) identifies four (4) factors to be considered when ruling on a motion for determination of finality. The first factor is whether there is a significant relationship between the adjudicated and unadjudicated claims. *See*, Pa.R.A.P. 341(c) Comment. West's Pennsylvania Practice explains:

The degree to which adjudicated and unadjudicated claims are related bears directly upon the decision of whether an appeal under Rule 341(c) is proper. Undesirable tension is created where the trial court and the appeals court simultaneously consider similar factual or legal issues in the context of the same action. Where the adjudicated and unadjudicated claims are closely related, either factually or legally, certification normally should not be granted.

20 West's Pennsylvania Practice, Appellate Practice § 341:6.

This Commission, by the *July 2024 Order*, adjudicated the following claims: (1) the emergency nature of the Bridge; (2) the condition of the Bridge warranting removal; and (3) the removal of the Bridge as being in the public interest. The remaining, unadjudicated claims before the Commission are as follows: (1) the ultimate resolution of the abolishment of the crossing; (2) the allocation of costs; (3) the rights and duties of the parties associated with the final resolution.

A significant nexus exists between the adjudicated and unadjudicated claims in this case. The unadjudicated claims all relate to the adjudication or determination that the Bridge should be removed. The issues within the Application as to the demolition of the Bridge and abolishment of the crossing both arise from

Section 2702 of the Code, as well as the allocation of costs for the same, which is a matter within the sole discretion of the Commission to determine. Furthermore, Wabash concedes that the adjudicated and unadjudicated claims before the Commission and the Commonwealth Court are significantly related. *See*, Wabash Motion at 11. As such, the examination of this factor disfavors certification.

The second factor is whether there is a possibility that an appeal would be mooted by further developments. *See*, Pa.R.A.P. 341(c) Comment. Section 341:7 of West’s Pennsylvania Appellate Practice explains, “[t]o the extent that disposition of pending related claims in the trial court may render moot the issue on appeal, certification should not be granted.” 20 West's Pennsylvania Practice, Appellate Practice § 341:7. The pending related claim or question before the Commission is the abolishment of the crossing. *See*, *July 2024 Order* at 35. A determination on the abolishment of the crossing has not yet been made, as such question was remanded to the ALJ for further proceedings. *See*, *Id.* Should the ALJ determine that the crossing be abolished, such determination or disposition would render the issue on appeal, regarding the emergency question or whether the Bridge constitutes an emergency, moot. Accordingly, this factor disfavors certification.

The third factor is whether there is a possibility that this Commission will consider the issues a second time. *See*, Pa.R.A.P. 341(c) Comment. According to West’s Pennsylvania Practice:

There is a possibility that resolution of legal issues by the appellate court will aid the trial court in resolving the same legal issue in the same or other cases. For instance, if the appeal involves the interpretation of a statutory provision, review by the appellate court may aid the trial court in ruling upon the same provisions in the future.

20 West’s Pennsylvania Practice, Appellate Practice § 341:8.

A resolution on the emergency issue by the Commonwealth Court will not aid our determination in resolving: (1) the same issue in this case, (2) the unadjudicated issues in this case, or (3) the same issue in other cases. As discussed above, the question regarding whether the condition of the Bridge constitutes an emergency is a mixed question of law and fact. Even if the Commonwealth Court were to reverse the Commission regarding the emergency question, we find that all other unadjudicated claims on the Application would remain, including whether the Bridge should be removed. Therefore, this factor disfavors certification.

The fourth factor to be considered under the comment to Rule 341(c) is whether an immediate appeal will enhance the prospects for a settlement of the case. While an immediate appeal will place the emergency question before the Commonwealth Court, the question as to the removal of the Bridge would remain and is subject to the authority of the Commission to direct removal under Section 2702 of the Code. The factors to consider when making a determination as to the removal of the Bridge are within the sole discretion of the Commission and out of the hands of the Parties. As such, the determination as to the removal of the Bridge is not an item that lends itself to settlement and is distinguishable from typically litigated issues that are more suitable and appropriate for settlement. Moreover, the Department et al. states, in their Answer to Wabash's Motion, that they "**will not settle on any issue that directly impacts the safety of the traveling public on SR 51 below the Bridge**" (emphasis in original). Answer at 11.

Therefore, we find that all four factors disfavor an immediate appeal. However, the four factors to be considered under the Comment to Rule 341(c) are not exclusive. An additional factor that we shall consider is the subject matter of the proceeding. The subject matter of this proceeding is encompassed primarily by the Code and involves a complex, technical matter requiring the special expertise of this Commission to resolve. The proceeding also raises questions about how the Bridge in

question affects the general public and draws the safety of the Bridge into question, as we have found that its removal is in the public interest. As stated in our *July 2024 Order*:

[T]he Commission’s authority to direct removal of the Bridge in the interest of public safety is established as [a] general matter under Chapter 27 of the Code, and our authority to act in response to the demonstrated immediate danger to public safety and welfare is specifically established under Section 2702(f), including directing removal of the Bridge.

July 2024 Order at 19. Furthermore, the resolution of the Application proceeding depends upon a statute predicated on the particular expertise and authority of this Commission (*i.e.*, our discretion to direct removal of the Bridge pursuant to Section 2702 of the Code). As such, we find that an examination of these additional factors disfavors certification.

Based on our review of Pa.R.A.P. 341(c), regarding a determination of finality, we find that the *July 2024 Order* did not dismiss all claims pertaining to the Application, and nothing on the face of this record indicates the kind of extraordinary circumstances that merit immediate appellate review of the *July 2024 Order*. Further, we are not convinced that an immediate appeal from our *July 2024 Order* would facilitate resolution of the entire case. Accordingly, we will deny Wabash’s Motion for Determination.

In its Motion for Stay, Wabash argues that the *July 2024 Order* must be stayed while its Motions are pending under Rule 341(c)(1), which states, “[d]uring the time an application [or motion] for determination of finality is pending, the action is stayed.” Motion for Certification et al. at 14 (citing Pa.R.A.P. 341(c)(1)). We have previously denied Wabash’s Motion for Certification of Interlocutory Order Pursuant to 52 Pa. Code § 5.633 and Motion for Determination of Finality Pursuant to

Pa.R.A.P. 341(c). Given our action here, we deem Wabash's Motion for Stay to be moot. Accordingly, Wabash's Motion for Stay is denied.

Finally, we shall grant the Department et al.'s Motion to Quash, to the extent that we are denying Wabash's Motion for Certification et al.

We shall also grant the Department's Motion for Expedited Review. The purpose of granting emergency relief in the *July 2024 Order* was so that removal of the Bridge could be completed on an expedited basis and the Department et al. have already obtained the Commission's approval for removal. In addition, we acknowledge that the date for commencement of the highway safety project has already passed, as well as the scheduled date for removal of the Bridge. As such, the Department et al. are at risk of losing the ability to complete the project consistent with the timeline set for its completion. Moreover, all Parties accepted the basic premise that time is of the essence in this proceeding, and Wabash did not file an Answer contesting the Department's Motion for Expedited Review. These factors warrant expedited treatment of the Motions before us. Accordingly, we will grant the Department's Motion for Expedited Review.

V. Conclusion

For the reasons set forth above, we shall: (1) deny the Motion for Certification et al. of Wabash; (2) grant the Joint Motion to Quash of the Department et al.; and (3) grant the Motion for Expedited Review of the Department, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the 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 filed by Wabash Properties, LLC, on July 8, 2024, at Docket No. A-2024-3048837, is denied, consistent with this Opinion and Order.

2. That the Joint Motion to Quash Request of Wabash Properties, LLC for Interlocutory Appeal, Determination of Final Order, and Stay of Proceedings filed by the Department of Transportation of the Commonwealth of Pennsylvania and the City of Pittsburgh, on July 15, 2024, at Docket No. A-2024-3048837, is granted, consistent with this Opinion and Order.

3. That the Motion for Expedited Review filed by the Department of Transportation of the Commonwealth of Pennsylvania, on July 17, 2024, at Docket No. A-2024-3048837, is granted, consistent with this Opinion and Order.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: August 1, 2024

ORDER ENTERED: August 1, 2024