

**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

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND AGREED ORDER

Applicants the City of Pittsburgh (“the City”) and the Pennsylvania Department of Transportation (“PennDOT”), along with Protestant/Intervenor Wabash Properties, LLC (“Wabash”) and the Wheeling & Lake Erie Railway Company, jointly present the following *Proposed Findings of Fact, Conclusions of Law and Agreed Order*, stating as follows:

FINDINGS OF FACT

1. The above-captioned matter involves the Wabash Bridge (“the Bridge”), a former railroad-highway crossing owned by the City which previously crossed Saw Mill Run Boulevard/State Route 51 in Pittsburgh, Allegheny County, Pennsylvania.
2. The construction of the Bridge was authorized pursuant to a Pennsylvania Service Commission (“PSC”) Order dated June 4, 1929 (“the 1929 Order”), upon application by the County of Allegheny County, Docket No. 20690-1929.
3. The PSC also ratified a contract between the City and Allegheny County dated April 2, 1929.

4. On August 7, 1947, upon application by the Pittsburgh & West Virginia Railway Company, the Interstate Commerce Commission issued a certificate permitting abandonment of the railroad line that crossed the Bridge, styled *Pittsburgh & W.V. Ry. Co. Abandonment*, 267 I.C.C. 814.

5. While the Pittsburgh & West Virginia Railway Company abandoned the railroad line and removed the railroad facilities crossing the Bridge more than sixty years ago, the railroad-highway crossing authorized by the 1929 Order was never formally abolished by either the PSC or its successor, the Pennsylvania Public Utility Commission (“the Commission”).

6. Wabash contends that it is the successor in interest to the Pittsburgh & West Virginia Railway Company as *fee simple* owner of the real property above and on either side of the Bridge.

7. On October 26, 2022, the City informed Wabash that it was closing portions of the Bridge, with the intent to close the Bridge entirely and ultimately demolish it; the Bridge was eventually closed to all vehicular traffic on December 5, 2023.

8. In response to the City’s expressed intent to close and demolish the Bridge, on March 1, 2023, Wabash filed suit against the City in the Court of Common Pleas of Allegheny County (GD-23-2842) seeking, *inter alia*, a preliminary and then permanent injunction prohibiting the demolition of the Bridge.

9. On March 22, 2024, PennDOT was joined as a Defendant in that action and the litigation was transferred to the Commonwealth Court of Pennsylvania at Docket No. 279 MD 24.

10. While that litigation was ongoing, in April 2024, the City and PennDOT negotiated the terms of a “Custom Bridge Reimbursement Grant Agreement,” which provided the City with federal funds, state funds, or a combination of both, for the removal of the Bridge.

11. Pursuant to the “Custom Bridge Reimbursement Grant Agreement,” PennDOT would remove the superstructure, substructure, deck fill and pavement of the Bridge, leaving the Bridge’s abutments in place to act as retaining walls.

12. On May 2, 2024, the City and PennDOT instituted these proceedings by filing an *Emergency Application*, seeking abolishment of the railroad-highway crossing, authorization to remove the Bridge and an allocation of costs incident thereto.

13. On May 22, 2024, the City and PennDOT filed a *Petition for Interim Emergency Order*, seeking emergency expedited authorization to demolish the Bridge pursuant to 66 Pa.C.S. §2702(f) and 51 Pa.Code §3.6.

14. The *Petition for Interim Emergency Order* was heard by Administrative Law Judge Mary D. Long (“ALJ Long) on June 3 and 4, 2024.

15. On June 6, 2024, ALJ Long issued an *Order Granting Interim Emergency Relief and Certifying Material Question*.

16. On July 1, 2024, the PUC issued an *Opinion and Order* authorizing demolition of the Bridge.

17. On August 1, 2024, the PUC issued an *Opinion and Order* denying 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*.

18. The demolition of the Bridge commenced on August 1, 2024, and is now complete.

19. The railroad party to these proceedings, the Wheeling & Lake Erie Railway Company, is the successor in interest to the Pittsburgh & West Virginia Railway Company.

20. The Wheeling & Lake Erie Railway Company has no intention to petition the Commission for the reconstruction of a replacement railroad-highway crossing at the location of the Bridge.

21. Now that the demolition of the Bridge is complete, the remaining unadjudicated claims in the PUC proceedings 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 (“Unadjudicated Claims”). See August 1, 2024, *Opinion and Order*.

22. The Parties have reached a “Joint Stipulation of All Parties” (“the Stipulation”) that extinguishes the Commission’s jurisdiction over the Unadjudicated Claims so that all matters may be resolved before various other tribunals. The “Joint Stipulation of All Parties” is incorporated herein by reference.

23. Pursuant to the Stipulation, the Parties agree that the railroad-highway crossing, as authorized by the 1929 Order, is hereby abolished.

24. Further, and pursuant to the terms of the Stipulation, the City and PennDOT acknowledge that they do not seek allocation of costs against Wabash or the Wheeling & Lake Erie Railway Company for the demolition or removal of the Bridge as part of these Commission proceedings.

25. Therefore, the Parties mutually agree and propose that that, for the purposes of these Commission proceedings, the costs for demolition and removal of the Bridge will be borne by the City and PennDOT pursuant to the May 29, 2024, “Custom Bridge Reimbursement Grant Agreement,” as amended.

26. The Commission shall assess no such costs for demolition and removal of the Bridge to the Wheeling & Lake Erie Railway Company or Wabash. However, the City preserves

all claims for relief set forth in its Counterclaim against Wabash, currently being prosecuted by the City in the Court of Common Pleas of Allegheny County and/or the Commonwealth Court of Pennsylvania, formerly at docket No. GD-23-2842 and presently at docket No. 279 MD 24.

27. The Parties have mutually agreed that all claims and defenses between them are preserved, as set forth more fully in the Stipulation.

28. From these Findings of Fact the Commission renders the following Conclusions of Law.

CONCLUSIONS OF LAW

1. The Bridge was authorized pursuant to Pennsylvania Service Commission (“PSC”) Order dated June 4, 1929 (“the 1929 Order”), upon application by the County of Allegheny County, Docket No. 20690-1929.

2. The Commission, as successor to the PSC, is granted the power to regulate certain highway crossings.

3. Pursuant to the authority invested in the Commission pursuant to 66 Pa.C.S. §2702, and consistent with the Stipulation, the Commission concludes that the crossing authorized by Order of the Pennsylvania Service Commission dated June 4, 1929, Docket No. 20690-1929, is abolished.

4. The cost of construction, relocation, alteration, protection, or abolition of a crossing shall be borne and paid in such proper proportions as the commission may, after due notice and hearing, determine, unless such proportions are *mutually agreed upon* and paid by the interested parties. 66 Pa.C.S. §2704(a)(emphasis added).

5. So long as the Commission's allocation of the costs is just and reasonable and has a sound legal and factual basis, it must be affirmed. *Millcreek Township v. Pennsylvania Public Utility Commission*, 753 A.2d 324 (Pa.Cmwlth.2000).

6. Section 2704(a) divests the Commission of jurisdiction when costs are paid by agreement between the parties. *AT&T v. Pennsylvania Public Utility Commission*, 709 A.2d 980, 986-987 (Pa.Cmwlth.1998).

7. The City and PennDOT have not sought allocation of costs against Wabash or the Wheeling & Lake Erie Railway Company for the demolition or removal of the Bridge as part of these Commission proceedings.

8. Therefore, the Commission concludes that, for the purposes of these Commission proceedings only, costs of the demolition and removal of the Bridge shall be assessed to the City and PennDOT, and in a manner consistent with the May 29, 2024, "Custom Bridge Reimbursement Grant Agreement," as amended. No such costs shall be allocated to the Wheeling & Lake Erie Railway Company or Wabash for the purposes of these Commission proceedings only.

9. By operation of the abolishment of the crossing and mutually agreed-upon allocation of costs associated therewith, the Commission concludes that its jurisdiction is hereby extinguished.

10. The Commission concludes that its jurisdiction over any and all other claims between the parties is hereby relinquished, consistent with the Stipulation.

AGREED ORDER

And now, this ____ day of _____, 2024, upon consideration of the foregoing Findings of Fact and Conclusions of Law, it is hereby Ordered that:

1. The crossing authorized by Order of the Pennsylvania Service Commission dated June 4, 1929, Docket No. 20690-1929, is hereby **ABOLISHED**;

2. For the purpose of these Commission proceedings only, costs for the demolition of the railroad crossing bridge which previously crossed Saw Mill Run Boulevard/State Route 51 in Pittsburgh, Allegheny County, Pennsylvania, commonly referred to in these proceedings as the “Wabash Bridge,” shall be borne by the City of Pittsburgh and the Department of Transportation of the Commonwealth of Pennsylvania, pursuant to the May 29, 2024, “Custom Bridge Reimbursement Grant Agreement,” as amended. No such costs shall be allocated to the Wheeling & Lake Erie Railway Company or Wabash Properties, LLC for the purposes of these proceedings only;
3. The Commission’s jurisdiction over any and all other claims between the parties is hereby relinquished, consistent with the Stipulation of the Parties.

BY THE COMMISSION,

(SEAL)

ORDER ADOPTED: _____, 2024

ORDER ENTERED: _____, 2024