

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

PUC Docket No. A-2024-3048837

JOINT STIPULATION OF ALL PARTIES

This Joint Stipulation of All Parties (“Stipulation”) is made on this 12th day of November, 2024, between Wabash Properties, LLC (“Wabash”), the City of Pittsburgh (“the City”), the Pennsylvania Department of Transportation (“PennDOT”) and the Wheeling & Lake Erie Railway Company. Wabash, the City, PennDOT and the Wheeling & Lake Erie Railway Company are collectively referred to herein as “the Parties.”

WHEREAS, 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; and

WHEREAS, 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, Docket No. 20690-1929; and

WHEREAS, the PSC also ratified a contract between the City and Allegheny County dated April 2, 1929; and

WHEREAS, 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; and

WHEREAS, 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 (“PUC”); and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, on May 2, 2024, the City and PennDOT instituted the above-captioned proceedings by filing an *Emergency Application*, seeking abolishment of the highway crossing, authorization to remove the Bridge and an allocation of costs incident thereto; and

WHEREAS, on July 1, 2024, the PUC issued an Opinion and Order authorizing demolition of the Bridge; and

WHEREAS, the demolition of the Bridge commenced on August 1, 2024, and is now complete; and

WHEREAS, the railroad party to these proceedings, the Wheeling & Lake Erie Railway Company, is the successor in interest to the Pittsburgh & West Virginia Railway Company; and

WHEREAS, 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; and

WHEREAS, Now that the demolition of the Bridge is complete, the remaining unadjudicated claims before the PUC 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"); and

WHEREAS, the express purpose of this Stipulation is to resolve the remaining Unadjudicated Claims in these PUC proceedings through express agreement of the parties, subject to the conditions set forth below; and

NOW, THEREFORE, intending to be legally bound hereby, the Parties stipulate and mutually agree as follows:

1. The Parties agree that the crossing, as authorized by the 1929 Order, is hereby abolished.

2. 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. For the purposes of the Commission proceedings, 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. 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 pending at docket No. 279 MD 24.

3. It is the express intent of the Parties that this Stipulation does not constitute failure to exhaust any remedy, nor does it constitute a waiver of any claim or defense against any other Party in any pending or future action, and/or before any other tribunal. To that end, it is the express intent of the Parties that the exclusive purpose of this Stipulation is to resolve the Unadjudicated Claims only. By executing this Stipulation the Parties agree that PUC jurisdiction over all other claims between the Parties is extinguished so the Parties may pursue all claims and defenses in alternative venues before other tribunals. Contemporaneous with the execution of this Stipulation, the Parties shall file with the PUC an agreed-upon *Proposed Findings of Fact, Conclusions of Law and Agreed Order* to effectuate the abolishment of the crossing, allocation of costs in a manner consistent with this Stipulation and relinquishment of jurisdiction by the PUC.

4. In the interest of avoiding all doubt, those claims expressly preserved include, but are not limited to, (1) any present or future claim by Wabash brought under the Eminent Domain Code, 26 Pa.C.S. §101, et. seq. (“Eminent Domain Action”); (2) all those claims currently being prosecuted by Wabash 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 (“Civil Litigation”); and (3) all those claims 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. The

City and PennDOT preserve all defenses to any claim brought in the Eminent Domain Action and the Civil Action, with the express exception that the City and PennDOT will not raise as a defense in either the Eminent Domain Action or the Civil Action that Wabash has failed to exhaust any remedy, statutory or common law, in those actions, due to this stipulation and/or the PUC's Findings of Fact, Conclusions of Law and Agreed Order.

5. The Parties enter into this Stipulation to resolve only the Unadjudicated Claims, and all other claims and/or defenses are hereby preserved. Neither this Stipulation, nor any of its terms or provisions, nor any of the negotiations connected with it shall be construed as an admission or concession by the Parties.

6. It is further understood, and agreed, that this is the complete Stipulation, and that there are no written or oral understandings, or agreements, directly, or indirectly connected with this Stipulation and settlement that are not incorporated herein. This Stipulation shall be binding upon and inure to the successors, personnel, legal or corporate representatives, officers, agents, partners, partnerships, principals, employees, attorneys, heirs and assigns of the respective Parties hereto.

7. The Parties acknowledge and agree that the provisions and language of this Stipulation have been fully negotiated, and no provision of this Stipulation will be construed in favor of any Party or against any Party by reason of such provision having been drafted on behalf of one Party rather than the other Party.

8. This Stipulation may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Stipulation delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Stipulation.

9. By signing below, each Party warrants and represents that the person signing this Stipulation on its behalf has authority to bind that Party and that the Party's execution of this Stipulation is not in violation of any restrictions placed upon them by their respective entities.

10. The effective date of this Stipulation shall be the date on which the last Party executes this Stipulation by placing its signature on this Stipulation and the date of signing next to its signature. If any Party signs, but does not date, this Stipulation next to its signature, then the effective date of this Stipulation shall be the date latest in time present next to a Party's signature (the "Effective Date").

11. This Stipulation shall be governed by and construed in accordance with internal laws of the Commonwealth of Pennsylvania, without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Pennsylvania or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, this Joint Stipulation of All Parties has been duly executed and delivered personally, or by the duly authorized officers or agents of the undersigned, on the date first above written.

Date: 11/13/2024

By: /s/ Jonathan G. Preston, Esq.

WABASH PROPERTIES, LLC

*electronic signature authorized via E-mail
on 11/14/2024:*

Date: 11/14/2024

By: /s/ Kevin T. Freyder, Esq.

THE CITY OF PITTSBURGH

*electronic signature authorized via E-mail
on 11/13/2024:*

Date: 11/13/2024

By: /s/ Karen L. Cummings, Esq.

**THE PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION**

*electronic signature authorized via E-mail
on 11/14/2024:*

Date: 11/14/2024

By: /s/ Bradley J. Kitlowski, Esq.

**WHEELING & LAKE ERIE RAILWAY
COMPANY**