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March 6, 2026

VIA ELECTRONIC FILING

Matthew L. Homsher, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17120

**RE: Application of D&J Fox Holdings, LLC for approval of the alteration of the crossing (DOT 966 038 R) where State Route 0050 (Millers Run Road) crosses, at grade, the tracks of MarkWest Liberty Midstream & Resources LLC through lease agreement/easement with property owner Montour Trail Council, operated thereon by Wheeling & Lake Erie Railway Company, located in Cecil Township, Washington County**  
**Docket No. A-2023-3043240**

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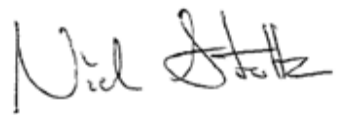
Dear Secretary Homsher:

Enclosed for filing on behalf of D&J Fox Holdings, LLC (“D&J”), please find D&J’s Petition for Reconsideration from Staff Action in the above-referenced matter. A copy has been served upon all interested parties of record, as reflected in the enclosed Certificate of Service.

If you have any questions, please feel free to contact me.

Very truly yours,

STEVENS & LEE



Nicholas A. Stobbe

Enc.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of D&J Fox Holdings, LLC for :  
approval of the alteration of the crossing :  
(DOT 966 038 R) where State Route 0050 :  
(Millers Run Road) crosses, at grade, the : Docket No. A-2023-3043240  
tracks of MarkWest Liberty Midstream & :  
Resources LLC through lease :  
agreement/easement with property owner :  
Montour Trail Council, operated thereon by :  
Wheeling & Lake Erie Railway Company, :  
located in Cecil Township, Washington :  
County :

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**PETITION FOR RECONSIDERATION OF STAFF ACTION  
OF D&J FOX HOLDINGS, LLC**

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D&J Fox Holdings, LLC (“D&J”), Applicant in the above-referenced matter, hereby files this Petition for Reconsideration of the Staff Action reflected in the Secretarial Letter dated February 19, 2026, pursuant to 52 Pa. Code § 5.44, based upon the following:

**I. INTRODUCTION AND BACKGROUND**

1. D&J is a duly organized and validly existing Pennsylvania limited liability company engaged, among other things, in the ownership and leasing of certain real property located at or about 3866 Millers Run Road, McDonald PA 15057 (the “Property”).

2. On January 27, 2011, MarkWest Liberty Midstream & Resources, LLC (“MarkWest”) submitted an application to the Pennsylvania Public Utility Commission (“Commission”) for an at-grade crossing of State Route 0050 (Millers Run Road) (the “Crossing”).

3. On May 3, 2011, the Commission approved MarkWest’s January 27, 2011, application via Secretarial Letter, a copy of which is attached hereto as **Exhibit A**.

4. MarkWest subsequently installed the Crossing in accordance with the May 3, 2011, Secretarial Letter, as later modified by the May 24, 2013, Secretarial Letter authorizing the construction of a bike trail paralleling MarkWest's track.

5. On September 21, 2023, D&J filed an Application to alter the Crossing.

6. At the time D&J's Application was filed with the Commission, D&J had applied for a Highway Occupancy Permit ("HOP") from the Pennsylvania Department of Transportation ("PennDOT") for commercial driveways located near the Property.

7. The HOP Application did not propose any change in usage of the Property but rather sought to formalize an existing usage that predated and survived a prior application made by MarkWest for a crossing in or about the Property at Docket No. A-2011-2223296.

8. Due to the driveways crossing a railroad line owned by Marathon Oil, PennDOT directed D&J to consult with the Commission before it would process the HOP Application.

9. In the Application, D&J did not concede that the crossings identified in the HOP Application were "public crossings" for purpose of the Commission's jurisdiction. *See* 66 Pa. C.S. § 2702.

10. On February 15, 2024, the Commission approved D&J's Application via Secretarial Letter and directed D&J to complete the alteration of the crossing on or before June 30, 2025.

11. On or about February 23, 2024, in accordance with ordering paragraph six (6) of the February 15, 2024, Secretarial Letter, D&J submitted an Updated Low Volume Highway Occupancy Permit Site Plan to the Commission for approval. The Commission approved the updated plan via Secretarial Letter on March 14, 2024.

12. On or about June 26, 2025, D&J submitted a Petition to Extend the compliance deadlines set forth in the February 15, 2024, Secretarial Letter. The Commission granted the

extension of time via Secretarial Letter on July 25, 2025. The extension directed D&J to complete the alteration of the crossing on or before June 30, 2026.

13. On September 3, 2025, D&J filed a Petition to Withdraw the above-captioned Application (“Petition to Withdraw”).

14. In the Petition to Withdraw, D&J indicated that it was withdrawing its Application because it had decided not to pursue alteration of the Crossing, as the costs and potential liabilities far exceeds D&J’s reasonable capabilities.

15. There was no opposition to the Petition to Withdraw.

16. On October 1, 2025, the Commission issued a Secretarial Letter scheduling a field investigation and conference on October 16, 2025, at 11:30 a.m. That investigation and conference occurred as scheduled.

17. On February 19, 2026, the Commission issued a Secretarial Letter denying D&J’s Petition to Withdraw.

18. The February 19, 2026, Secretarial Letter also directed D&J, within 15-days and at its initial cost and expense, to close the unprotected area of track/crossing surface along the southern side of State Route 0050 (Millers Run Road) from the existing guiderail end treatment to the existing mast-mounted cantilevered railroad warning device in the southwest quadrant and to close off the unprotected area of track/crossing surface within its property from the existing concrete barrier to the existing mast-mounted cantilevered railroad warning device in the southwest quadrant. *See* Secretarial Letter ¶ 2 (issued Feb. 19, 2026).

19. The February 19, 2026, Secretarial Letter further directed Wheeling & Lake Erie Railway Company, at the sole cost and expense of D&J, to prepare and submit a revised situation and circuitry plan for the Crossing. *See* Secretarial Letter ¶ 3 (issued Feb. 19, 2026). Should those plans be approved by the Commission, the February 19, 2026, Secretarial Letter further directed

D&J to proceed with the alteration of the Crossing in accordance with the February 15, 2024, Secretarial Letter and the revised approval plans noted in Paragraph 18, *supra*. See Secretarial Letter ¶ 4 (issued Feb. 19, 2026). In lieu of those actions, the Commission permitted D&J to submit an alternative plan to address the safety concerns at the Crossing for review and approval. See Secretarial Letter ¶ 5 (issued Feb. 19, 2026).

## II. ARGUMENT

20. D&J submits that reconsideration of the February 19, 2026, Secretarial Letter is warranted here for several reasons.

21. The Commission has only such authority with which it is vested by statute. *Feingold v. Bell of Pennsylvania*, 383 A.2d 791, 794 (Pa. 1977) ("The enforcement and remedial powers of the PUC, although formidable, are not those of a court. ... Since the PUC is a creature of statute, it has only those powers which are expressly conferred upon it by the Legislature and those powers which arise by necessary implication.")

22. The Commission Staff lacks the authority to require D&J to pursue its Application because D&J is not a certificated public utility under the Public Utility Code. See 66 Pa.C.S. § 102.

23. 66 Pa.C.S. §§ 2701, *et seq.*, permits the Commission to regulate “public utility[ies] engaged in a railroad business...”

24. D&J is not a public utility, nor is it engaged “in a railroad business.”

25. While D&J is an owner of property that abuts State Route 0050, D&J does not own the Crossing, did not install it, and does not maintain it.

26. Upon information and belief, MarkWest installed the Crossing, and Wheeling and Lake Erie Railroad Company maintains the Crossing.

27. While 66 Pa.C.S. § 2702(c) grants the Commission the power to order a rail crossing to be relocated or altered, such order may only be issued upon the Commission's own motion or upon complaint, and upon notice to all parties in interest, including the owners of adjacent property, and after a hearing is held.

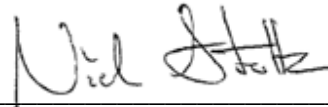
28. 66 Pa.C.S. § 2702(c) further dictates that the Commission “may order the work of construction, relocation, alteration, protection, suspension or abolition of any crossing aforesaid **to be performed in whole or in part by any public utility or municipal corporation concerned or by the Commonwealth or an established nonprofit organization with a recreational or conservation purpose.**”

29. No complaint or motion has been filed to initiate a proceeding related to the relocation or abolishment of the Crossing, and no hearing has been held to determine the appropriateness of any relocation or alteration of the Crossing or the terms and conditions for such relocation or alteration.

30. D&J is not a public utility and has never been certificated by the Commission to engage in “a railroad business.” Further, D&J is not a municipal corporation, the Commonwealth of Pennsylvania, or an established nonprofit organization with a recreational or conservation purpose.

31. For these reasons, the February 19, 2026, Secretarial Letter's directives for D&J to alter the Crossing and bear the “sole cost and expense” of additional studies, planning construction, or alteration related to the Crossing exceed the Commission's statutory authority under 66 Pa.C.S. § 2702(c). The plain language of that statute only permits the Commission to order such actions upon complaint or motion and after notice and hearing, and only permits the Commission to order a public utility, a municipal corporation, the Commonwealth or an established nonprofit organization to take action to relocate or alter a rail crossing.

**WHEREFORE**, for the reasons set forth above, D&J Fox Holdings, LLC respectfully requests that the Commission grant this Petition, direct the Commission's Rail Safety Division to rescind the February 19, 2026 Secretarial Letter, issue an Order granting D&J's Petition to Withdraw its Application in this matter, and Order any such additional action as the Commission deems appropriate.



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[nicholas.stobbe@stevenslee.com](mailto:nicholas.stobbe@stevenslee.com)

*Counsel for D&J Fox Holdings, LLC*

Dated: March 6, 2026

# **EXHIBIT A**



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

May 3, 2011

A-2011-2223296

TO ALL PARTIES

In re: Application of MarkWest Liberty Midstream & Resources LLC (MarkWest) for approval of the construction of a public single track at-grade crossing with SR 0050 (Millers Run Road) within Cecil Township, Washington County.

To Whom It May Concern:

This matter is before us upon application filed January 27, 2011 by MarkWest Liberty Midstream & Resources LLC (MarkWest) seeking Commission approval to construct a crossing where a track of MarkWest operated on by Wheeling and Lake Erie Railroad Company (W&LE) will cross at grade S. R. 0050 (Millers Run Road) in Cecil Township, Washington County.

A field conference, arranged by a Commission staff engineer and held at the site of the crossing was attended by representatives of PennDOT, Mount Pleasant Township, Montour Trail, Cecil Township, MarkWest, W&LE, Columbia Gas Company and Washington Energy Company.

MarkWest is involved with gathering and transporting of natural gas and by products thereof as part of the Marcellus Shale gas fields. To facilitate the transportation of these products, MarkWest proposes to construct a rail line from its processing plant to a connection with the W&LE. The rail line will cross several highways at grade of which S. R. 0050 is one.

At the new S. R. 0050 crossing, MarkWest proposes to install a high type concrete tub style crossing surface for the full width of the highway and shoulders. Automatically operated flashing-light signals and gates will be installed on each approach to the crossing,

MarkWest agrees to construct the project at its sole cost and expense. The non-carrier public utilities agree to alter their facilities as necessary for the project at the sole cost and expense of MarkWest. W&LE, through agreement, will maintain the crossing and signal facilities in the future. The project will be funded by private sources.

The applicant has certified that a copy of the application has been served on each party in interest and none has advised that it objects to the issuance of an order, prior to a hearing, approving the application.

Upon full consideration of the matters involved, we determine that it is not necessary to schedule a hearing in this proceeding at this time and that issuance of a Secretarial Letter without hearing is proper since MarkWest has agreed to construct the project, at its sole cost and expense, and none of the parties has expressed any objections to the proposal.

The Commission issues this Secretarial Letter in accordance with Section 2702 of the Public Utility Code and finds that construction of the crossing is necessary and proper for the service, accommodation, convenience or safety of the public.

The application is approved as herein directed:

1. The caption of the subject proceeding is hereby revised as shown herein.
2. The crossing where S. R. 0050 (Millers Run Road) will cross at grade a track of MarkWest Liberty Midstream and Resources, LLC operated over by Wheeling and Lake Erie Railroad Company in Cecil Township, Washington County, be constructed generally in accordance with the approved plans and the construction criteria of Pennsylvania Department of Transportation.
3. MarkWest Liberty Midstream and Resources, LLC, having agreed to do so, at its sole cost and expense, prepare and submit prior to start of construction a construction plan for the proposed crossing and a situation plan and circuitry plan for the proposed signals to the parties of record for review and to this Commission for approval.
4. MarkWest Liberty Midstream and Resources, LLC, having agreed to do so, at its sole cost and expense, furnish all material and do all work necessary to construct the proposed crossing by installing a high type concrete (tub style) crossing surface for the full width of the roadway and shoulders and installing post-mounted flashing-light signals with gates and any ancillary features required. All work to be done generally in accordance with the approved plans, the construction requirements of Pennsylvania Department of Transportation and Part 8 of the Manual on Uniform Traffic Control Devices.
5. MarkWest Liberty Midstream and Resources, LLC, having agreed to do so, at its sole cost and expense, furnish all material and do all work necessary to repave the approaches to provide a smooth transition up to the high-type crossing surface and install advance warning signs (W10 Series), stop lines and pavement markings at proper locations on the approaches thereto, generally in accordance with the approved plans and Part 8 of the Manual on Uniform Traffic Control Devices.

6. MarkWest Liberty Midstream and Resources, LLC, having agreed to do so, at its sole cost and expense, furnish all material and do all work necessary to establish and maintain any detours or traffic controls that may be necessary to properly and safely accommodate highway traffic during the construction of the crossing.

7. Any relocation of, changes in and/or removal of any adjacent structures, equipment or facilities or any non-carrier public utility, which may be required as incidental to the alteration of the crossing, be made by said public utility, at the sole cost and expense of MarkWest Liberty Midstream and Resources, LLC, and in such manner as will not interfere with the alteration of the crossing; and such relocation or altered facilities thereafter be maintained by said public utility at its sole cost and expense.

8. MarkWest Liberty Midstream and Resources, LLC, notify all parties of record at least ten (10) days prior to performing work in accordance with this Secretarial Letter.

9. Construction of the crossing project shall be completed in a manner satisfactory to this Commission, on or before December 31, 2012, and that on or before said date, MarkWest Liberty Midstream and Resources, LLC, report to this Commission the actual date of completion of work.

10. MarkWest Liberty Midstream and Resources, LLC, pay all compensation for damages due to the owners of property taken, injured or destroyed by reason of the alteration of the subject crossing in accordance with this Secretarial Letter.

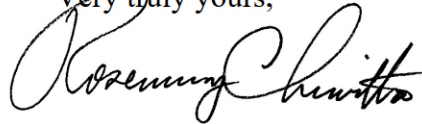
11. Upon completion of the construction of the subject crossing, Wheeling and Lake Erie Railroad Company at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the railroad facilities at the subject crossing, including the post-mounted flashing-light signals and gates and all appurtenant equipment, and to maintain at all times in a smooth and satisfactory condition the high-type concrete crossing surface.

12. Upon completion of the construction of the subject crossing, Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the highway approaches to the subject crossing up to the new high-type concrete crossing surface and, in addition, maintain the railroad advance warning signs, stop lines and pavement markings on the approaches thereto.

13. This Secretarial Letter, insofar as it imposes certain costs upon any party, is without prejudice to their right to recover part or all of said costs in accordance with any lawful agreement between it and any of the other parties hereto.

If you are dissatisfied with the resolution of this matter, you may, as set forth in 52 Pa. Code §5.44, file a petition with the Commission within twenty (20) days of the date of this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive style with a large initial "R".

Rosemary Chiavetta  
Secretary

**VERIFICATION**

I, Daryl Heiser holding the position of Vice President with D&J Fox Holdings, LLC., verify that the information provided in the attached Petition are true and correct to the best of my knowledge, information, and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. § 4904, relating to unsworn falsifications to authorities.

Daryl Heiser

Date: March 4, 2026

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of D&J Fox Holdings, LLC for :  
 approval of the alteration of the crossing :  
 (DOT 966 038 R) where State Route 0050 :  
 (Millers Run Road) crosses, at grade, the : Docket No. A-2023-3043240  
 tracks of MarkWest Liberty Midstream & :  
 Resources LLC through lease :  
 agreement/easement with property owner :  
 Montour Trail Council, operated thereon by :  
 Wheeling & Lake Erie Railway Company, :  
 located in Cecil Township, Washington :  
 County :

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing Petition for Reconsideration of Staff Action upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**VIA FIRST-CLASS MAIL**

William M. Sinick, P.E., C.B.S.I Rail Safety Division Pennsylvania Public Utility Commission Commonwealth Keystone Building 400 North Street Harrisburg, PA 17120	Donald Gennuso Manager Cecil Township 3599 Millers Run Road Cecil, PA 15321
Rachel D. Duda, P.E. Assistant District Executive – Design Pennsylvania Department of Transportation 825 Gallatin Avenue Uniontown PA 15401-2105	Sam Papa Right Of Way Manager MPLX G&P 4600 J. Barry Court, Suite 500 Canonsburg PA 15317
Karen Cummings, Esq. Assistant Counsel Pennsylvania Department of Transportation Office of Chief Counsel P.O. Box 8212 Harrisburg, PA 17105-8212	Tyler Geisert Counsel Marathon Petroleum Company 539 S. Main St. Findlay, OH 45840
Jeffrey M. Spotts, Esq. Pennsylvania Department of Transportation Office of Chief Counsel	Deborah Thompson Montour Trail Council 2589 Boyce Plaza Rd, Suite 4

P.O. Box 8212 Harrisburg, PA 17105-8212	Pittsburgh, PA 15241
Mark Chappell, P.E. Chief Pennsylvania Department of Transportation Bureau of Design and Delivery Right-of-Way, Utilities, & Grade Crossing Division P.O. Box 3362 Harrisburg, PA 17105-3362	Kathleen Meeks Engineer III-Spec Ntwk Eng & Ops- Right of Way Verizon Pennsylvania LLC 40 S. Mercer Street New Castle, PA 16101
Sarah Fenton Grade Crossing Engineer Pennsylvania Department of Transportation Bureau of Design and Delivery Right-of-Way, Utilities, & Grade Crossing Division P.O. Box 3362 Harrisburg, PA 17105-3362	Suzan D. Paiva Associate General Counsel Verizon Pennsylvania LLC 900 Race St., 6th Floor Philadelphia, PA 19107
Tim Hann, P.E. Grade Crossing Engineer Pennsylvania Department of Transportation Bureau of Design and Delivery Right-of-Way, Utilities, & Grade Crossing Division P.O. Box 3362 Harrisburg, PA 17105-3362	Windstream 4001 N. Rodney Parham Rd, Suite 101 Little Rock, AR 72212-2490
Jeff Davis, Jr. Director of Real Estate Wheeling & Lake Erie Railway Company 100 East First St Brewster, Ohio 44613	Columbia Gas of Pennsylvania 121 Champion Way, Suite 100 Canonsburg, PA 15317-5817
Diana Irely Vaughan President / Chairperson Washington County Crossroads Center Building, Suite 605 95 West Beau St Washington, PA 15301	West Penn Power 76 South Main Street Akron, OH 44308
Gary Sweat, Esquire Solicitor for Washington County 95 West Beau Street Suite 605 Washington, PA 15301	West Penn Power 800 Cabin Hill Drive Greensburg, PA 15601-1689
Comcast Cable Communications, Inc. 1701 John F. Kennedy Blvd. Philadelphia, PA 19103	Pennsylvania American Water 852 Wesley Drive Mechanicsburg, PA 17055

*Nich Stobbe*

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Nicholas A. Stobbe

Dated: March 6, 2026