IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Bessemer and Lake Erie Railroad Company, Petitioner	:	
v.	:	
Pennsylvania Public Utility Commission, Respondent	:	No. 965 C.D. 2025 Argued: June 17, 2026

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE STACY WALLACE, Judge
HONORABLE MATTHEW S. WOLF, Judge

OPINION
BY JUDGE FIZZANO CANNON FILED: September 8, 2026

Petitioner, Bessemer and Lake Erie Railroad Company (Railroad), seeks review of the July 10, 2025 Opinion and Order (Order) of the Pennsylvania Public Utility Commission (PUC) allocating costs of remediation and future maintenance responsibilities for the Blackburn Tunnel, a railroad crossing.[1] The PUC's Order adopted the findings of an Administrative Law Judge (ALJ) and denied the Railroad's exceptions, thereby assigning all costs, including future maintenance, to the Railroad. After careful review, we affirm the PUC's Order.

[1] Originally there were two railroad crossings in question, Brady's Bend and Blackburn Tunnel. However, by way of Joint Stipulation submitted to the PUC on November 12, 2021, all issues related to Brady's Bend were resolved. Because only Blackburn Tunnel remains at issue, Brady's Bend will be discussed herein only where relevant.

I. Background

The Blackburn Tunnel is a railroad tunnel crossed by Pennsylvania State Route 268 (SR0268) in Fairview Township, Butler County. Reproduced Record (R.R.) at 4a, 24a & 114a. In 1967, the Railroad acquired the Western Allegheny Branch railroad line from the Western Allegheny Railroad Company. *Id.* at 298a & 358a-85a. This railroad line included the Blackburn Tunnel. *Id.* at 115a. The Railroad discontinued operation of rail service on the Western Allegheny Branch around 1998. *Id.* at 294a, 306a-09a & 311a-13a.

In 2000, the Railroad filed a notice with the federal Surface Transportation Board (STB)[2] to abandon rail service along approximately 20 miles of rail line in Butler and Armstrong Counties. R.R. at 294a, 306a-09a & 311a-13a. The STB authorized the abandonment of rail service on January 17, 2001. *Id.* at 311a-13a.

On May 31, 2001, the Railroad filed an application with the PUC seeking authorization to abolish 29 crossings, including the Blackburn Tunnel. *See* R.R. at 115a. The PUC granted the Railroad's application to abolish 27 out of the 29 requested crossings on April 30, 2002, via Secretarial letter. *Id.* at 315a-20a. The PUC specifically stated, however, that neither the Blackburn Tunnel nor the Brady's Bend crossing could be abolished at that time because the Railroad and the Pennsylvania Department of Transportation (PennDOT) were negotiating final dispositions regarding those crossings. *Id.* at 318a; *see also id.* at 115a. In March 2009, the PUC issued a letter disposition regarding the Brady's Bend Crossing. *Id.*

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[2] The STB is a federal agency charged with the economic regulation of various modes of surface transportation, primarily freight rail. The STB has jurisdiction over railroad rate, practice, and service issues and rail restructuring transactions, including mergers, line sales, line construction, and line abandonments. *See* https://www.stb.gov/about-stb/ (last visited September 4, 2026).

at 671a-72a. However, the record reflects no further negotiation concerning the Blackburn Tunnel. Thus, the record does not reflect that any resolution was ever reached with PennDOT concerning the Blackburn Tunnel, nor that the PUC ever approved the Railroad's application to abolish that crossing. *See id.* at 215a.

On October 24, 2002, the Railroad conveyed its interest in a 394-acre property containing the Blackburn Tunnel to the Western Allegheny Landowners Association (WALA) via quitclaim deed. R.R. at 95a-96a & 334a-37a. The record does not indicate that the Railroad ever sought or received a certificate of public convenience from the PUC approving that sale. *Accord id.* at 814a (observing that the Railroad "conveyed the property that included the Blackburn Tunnel to WALA on October 24, 2002, without receiving [PUC] authorization to abolish the Blackburn Tunnel after the April 2002 Secretarial Letter and before it conveyed the property") & 986a (observing that the Railroad "was aware of its duty to obtain approval of the abolition of the Blackburn Tunnel crossing in 2001, and instead of giving the required notice and obtaining the necessary approval, it sold the property, thereby depriving the Commission and PennDOT of the ability to fully address the safety of the tunnel"). The deed did not reserve to the Railroad any easement rights over the property. *See id.* at 95a-96a & 334a-37a. The property was thereafter subdivided and conveyed to four different individuals in 2003. *See id.* at 100a-11a. Thereafter, the Blackburn Tunnel was not maintained, and it deteriorated to the point that by July of 2021, it lacked "the structural integrity to prevent future collapsing or any subsidence in the roadway above." *Id.* at 68a.

On February 1, 2012, the PUC issued a purportedly final Secretarial letter, captioning the matter as follows:

> Application of [the Railroad] for approval of the abolition of twenty-eight crossings where applicant's former

> Hilliard's Branch and Western Allegheny Branch are intersected by public highways and streets in the Township of Marion, Clay, Concord and Fairview in Butler County and in the Township of Brady's Bend in Armstrong County and ***application for the abolition of one Tunnel located in the Township of Fairview in Butler County.***

R.R. at 673a (emphasis added). Notwithstanding that the PUC had never granted approval for the requested abolition of the Blackburn Tunnel crossing, the Secretarial letter stated that the work in the referenced matter had been completed and the case was closed. *Id.* It further directed that any interested parties dissatisfied with the resolution of the matter could file a petition with the PUC within 20 days. *Id.* There is no evidence of record that any petition was filed in response.

In October 2019, due to concern for public safety, the PUC initiated an investigation into the Blackburn Tunnel prior to a final disposition of the crossing. R.R. at 5a & 1038a. This investigation involved an engineering study to be completed and paid for by the Railroad. *Id.* at 5a. The engineering study revealed that over time, the Blackburn Tunnel presented safety and structural concerns; specifically, the study concluded that the Blackburn Tunnel "does not have the structural integrity to prevent future collapsing or any subsidence in the roadway above." *Id.* at 576a & 634a; *see also id.* at 629a. In December 2022, the PUC determined that the Railroad was responsible for Blackburn Tunnel's deteriorated condition because the Railroad had failed to provide proper maintenance over time. *Id.* at 810a-16a; *see also id.* at 795a-99a.

Meanwhile, in January 2022, the Railroad filed a motion for summary judgment with the PUC concerning the disposition of the Blackburn Tunnel matter, positing that it was not a concerned party before the PUC because the federal STB had granted the cessation of rail service related to the Blackburn Tunnel crossing in

2001 and because the Railroad no longer owned the property in which the Blackburn Tunnel lay. *See* R.R. at 277a-80a. The motion for summary judgment was addressed during an evidentiary hearing before an ALJ. *See id.* at 156a, 168a & 280a. The ALJ entered a recommended decision opining that the Railroad's motion for summary judgment should be dismissed because the Railroad was a concerned party with respect to allocating costs for remediation of the Blackburn Tunnel. *Id.* at 705a-44a.

The Railroad filed exceptions to the ALJ's recommended decision, continuing to assert that it was not a concerned party due to its lack of ownership of the property and the STB's prior abolition of the Blackburn Tunnel. R.R. at 746a-59a. In December 2022, the PUC entered its Final Opinion and Order concluding that the Railroad was a concerned party with respect to the Blackburn Tunnel and would remain a party in subsequent proceedings where costs would be allocated for remediation. *Id.* at 780a-817a. The PUC reasoned that the Railroad remained a concerned party because it had failed to follow the proper procedure to receive PUC approval to abolish the Blackburn Tunnel, and thus, the tunnel remained active and neglected. *Id.* at 814a. Accordingly, the PUC denied the Railroad's motion for summary judgment and adopted the ALJ's recommended decision. *Id.* at 816a.

In July 2024, the Railroad, PennDOT, and the Bureau of Investigation and Enforcement attended a prehearing conference before a different ALJ to determine how to address cost allocations for remediation at the Blackburn Tunnel. At that conference, the ALJ suggested that he would render a recommended decision addressing cost allocations based upon stipulated facts from the record evidence presented in the 2022 proceeding. R.R. at 861a-62a. The parties agreed and submitted their joint stipulation of facts in September 2024. *Id.* at 878a-916a.

On January 30, 2025, the ALJ entered his recommended decision opining that the Railroad should be responsible for the engineering reports, tunnel fill project costs, traffic control reimbursement, and final closure costs. R.R. at 958a-96a. This reasoning was based on the Railroad's historical ownership of Blackburn Tunnel, the operational benefits, decades of maintenance neglect while enjoying cost savings, failure to follow proper regulatory procedures for tunnel abandonment, and the principle that entities responsible for infrastructure deterioration should bear remediation costs. *Id.* at 987a-90a.

The Railroad filed exceptions to the ALJ's recommended decision. R.R. at 998a-1010a. On July 10, 2025, the PUC entered its Final Order adopting the ALJ's recommended decision and denying all of the Railroad's exceptions. *Id.* at 1069a-70a. Thus, the PUC approved the assignment of costs to the Railroad from the recommended decision in the amount of $2,817,685.15, in addition to future costs and maintenance of the Blackburn Tunnel. *Id.* at 1070a.

On August 4, 2025, the Railroad filed a petition with this Court seeking review of the PUC's July 10, 2025 Order. PennDOT intervened in the matter in support of the proposition that substantial evidence exists to show that the Railroad is a concerned party responsible for Blackburn Tunnel's maintenance costs.

II. Issues

In its petition for review, the Railroad argues that the PUC's Order constituted an error of law[3] under the Public Utility Code (Code), 66 Pa.C.S. §§ 101-

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[3] Our scope and standard of review of PUC decision are as follows:

> On a petition to review a decision of [the] PUC, our standard of review is limited to determining whether substantial evidence

3316. Specifically, the Railroad argues that the plain language of the Code does not support the conclusion that the Railroad is a "concerned party" to which the PUC has statutory authority to allocate costs for the present and future repair, removal, reconstruction, and maintenance of the Blackburn Tunnel, because the Railroad holds no property interest in, or right of access to, the Blackburn Tunnel.

III. Discussion

A. The Railroad Is a "Concerned Party"

Under Section 2704 of the Code,

> [t]he cost of construction, relocation, alteration, protection, or abolition of such crossing, and of facilities at or adjacent to such crossing which are used in any kind of public utility service, ***shall be borne and paid as provided in this section, by the public utilities*** . . . ***concerned***, or by the Commonwealth, 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). The Railroad asserts that it is not a concerned party because it no longer owns the property where the Blackburn Tunnel is located due to the private quitclaim deed executed in 2002. The Railroad further relies on this Court's decision in *City of Chester v. Pennsylvania Public Utility*

> supports the necessary findings of fact, whether [the] PUC erred as a matter of law, and whether constitutional rights were violated. . . . We may not substitute our judgment for that of [the] PUC []when substantial evidence supports the PUC's decision on a matter within [its] expertise. . . . On issues of law, []our standard of review is de novo and our scope of review is plenary. . . .

Johnson v. Pa. Pub. Util. Comm'n, 338 A.3d 203, 207 (Pa. Cmwlth. 2025) (quoting *Retail Energy Supply Ass'n v. Pa. Pub. Util. Comm'n*, 185 A.3d 1206, 1220 (Pa. Cmwlth. 2018) (internal citations and quotation marks omitted)).

Commission, 798 A.2d 288 (Pa. Cmwlth. 2002), in which we posited that "it is the ownership interest at the crossing, not mere usage that gives [the PUC] the authority to allocate costs . . . . [O]wnership of the rail line involved []places liability on the railroad for costs associated with a crossing, including repairs, removal, reconstruction or maintenance." *Id.* at 294.

We disagree with the Railroad's reasoning. As discussed below, we conclude that *Norfolk Southern Railway Co. v. Pennsylvania Public Utility Commission*, 77 A.3d 619 (Pa. 2013) (*Norfolk Southern III*), not *City of Chester*, controls the determination of who is a concerned party.

Section 1501 of the Code provides:

> Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall ***make all such repairs***, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities ***as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public***.

66 Pa.C.S. § 1501 (emphasis added). Nothing in the statutory language authorizes a public utility to abdicate its repair and maintenance obligations unilaterally or to foist those obligations upon a third party by the expedient of transferring the utility's interest in its property to the third party without PUC authorization.

To the contrary, Section 2702(c) of the Code gives the PUC exclusive jurisdiction to determine whether and how a rail-highway crossing should be physically abolished. 66 Pa.C.S. § 2702(c) (referring to the PUC's exclusive jurisdiction over relocation, alteration, suspension, and abolition of crossings, whether upon its own motion or upon complaint). Section 2702(a) of the Code provides:

> ***No public utility***, engaged in the transportation of passengers or property***, shall, without prior order of the* [*PUC*],** construct its facilities across the facilities of any other such public utility or across any highway at grade or above or below grade, or at the same or different levels; and no highway, without like order, shall be so constructed across the facilities of any such public utility, and***, without like order, no such crossing heretofore or hereafter constructed shall be altered, relocated, suspended or abolished.***

Id. § 2702(a) (emphasis added). Notably, Section 2702(f) requires the PUC to "order [a] crossing to be immediately altered, improved, or suspended" upon a finding of an "immediate danger to the safety and welfare of the public." *Id.* § 2702(f). If immediate danger is found, a hearing shall be held, and costs shall be allocated to the concerned parties. *Id.*; *see also Norfolk Southern III*, 77 A.3d at 628-29 (holding that the PUC is vested with the discretion to determine the "'proper proportions' of costs to be allocated to concerned parties"). It has long been established that the PUC takes all relevant factors into consideration when apportioning costs in rail-highway crossing cases, with the fundamental requirement being that the PUC's order be "just and reasonable." *Dep't of Transp. v. Pa. Pub. Util. Comm'n*, 469 A.2d 1149, 1152 (Pa. Cmwlth. 1983).

Here, the Railroad's reliance on *City of Chester* is misplaced. That case was decided in 2002, prior to our Supreme Court's decision in *Norfolk Southern III*, in which the Supreme Court expressly held that "***a transportation utility need not own facilities at a rail-highway crossing to be a concerned party for purposes of the PUC's cost-allocation jurisdiction and authority*** . . . ." 77 A.3d at 633 (emphasis added). In *Norfolk Southern III*, the Pennsylvania Supreme Court considered the limits of the PUC's authority to allocate costs associated with rail-highway crossing projects. There, the Colebrook Road Bridge in Lancaster County carried a local road above train tracks owned and used by Amtrak.[4] *Norfolk Southern III*, 77 A.3d at 621. Norfolk Southern operated freight trains on the same tracks pursuant to an express written easement and operating agreement with Amtrak. *Id.* at 621. Norfolk Southern did not own any property at the crossing in question. *Id.* When the bridge deteriorated, the PUC directed Lancaster Township to remove it at the Township's initial expense, subject to a later final allocation of costs among concerned parties per Section 2704(a) of the Code, 66 Pa.C.S. § 2704(a). *Id.* Norfolk Southern challenged its joinder as a concerned party, arguing that any allocation of costs to it would be unjust and unreasonable because "the company owned no property or facilities at the crossing site and paid Amtrak for the privilege of operating on [the] railroad's line." *Id.* Our Supreme Court disagreed with Norfolk Southern and held, as set forth above, that "a transportation utility need not own facilities at a rail-highway crossing to be a concerned party for purposes of the PUC's cost-allocation jurisdiction and authority, at least where the utility conducts regular operations at the crossing and may enforce an easement-based right of way." *Id.* at 633.

Norfolk Southern III addressed only the concerned party status of a utility whose rights in property arose through a lease and easement rather than outright ownership. It did not speak to the specific situation here, where the Railroad sought to evade its statutory repair and maintenance obligations by means of an unauthorized conveyance through a quitclaim deed. Nonetheless, the analysis and holding of *Norfolk Southern III* indicate clearly that concerned party status does not

[4] The National Railroad Passenger Corporation (Amtrak) was created pursuant to the Rail Passenger Service Act, *as amended*, 45 U.S.C. §§ 501-658. Amtrak "is a corporation created by Congress to compete for the transportation business of the intercity traveller, to the end that the travelling public will have a choice of travel modes." 49 C.F.R. § 700.2.

depend solely on ownership of the property at issue. Thus, although *City of Chester* indicates that ownership will confer maintenance responsibilities, *Norfolk Southern III* clarifies that there may also be non-ownership interests in a railroad crossing that confer concerned party status regarding maintenance expenses. Any suggestion to the contrary in *City of Chester* was overridden by the analysis and holding of *Norfolk Southern III*.

Additionally, Section 1102(a)(3) of the Code requires a utility to obtain a certificate of public convenience from the PUC authorizing a transfer of utility property before any such conveyance may occur. 66 Pa.C.S. § 1102(a)(3); *see also Pub. Serv. Water Co. v. Pa. Pub. Util. Comm'n*, 645 A.2d 423, 427 (Pa. Cmwlth. 1994) (quoting Section 1102(a)(3)). Here, the Railroad conveyed its interest in the 394-acre property containing Blackburn Tunnel to WALA via quitclaim deed in 2002, ***after*** the PUC had already denied the Railroad's request to abolish the crossing. ***The Railroad did not seek or receive the requisite PUC approval for the conveyance.*** Nonetheless, because the Railroad had purported to convey its interest in the property through the quitclaim deed, the Railroad did not maintain the Blackburn Tunnel thereafter. Indeed, given that the PUC had denied the Railroad's request to abolish the Blackburn Tunnel just one year earlier, the quitclaim deed appears to have been intended to circumvent the PUC abolition procedure.

As our Supreme Court has observed, "'[t]he distinguishing characteristic of a quitclaim deed is that it is a conveyance of the interest or title of the grantor in and to the property described, rather than of the property itself.'" *Greek Cath. Congregation of Borough of Olyphant v. Plummer*, 12 A.2d 435, 437 (Pa. 1940) (quoting 16 Am. Jur. *Deeds* § 219). Thus, "the law is that 'a quitclaim deed is one which purports to convey, and is understood to convey, nothing more than the interest or estate of which the grantor is seised or possessed, if any, at the time.'" *Id.* (quoting 18 C.J. *Deeds* § 32). Our Supreme Court recently elaborated:

> A quitclaim deed does not warrant or profess that the grantor's title is valid. . . . Therefore, if there is any doubt as to the validity of the grantor's ownership, the grantee bears the risk. In sum, a quitclaim deed "excludes any implication that [the grantor] has good title, or any title at all. Such a deed in no way obligates the grantor. If he has no interest, none will be conveyed." . . . It is as though the grantor "quits" making any "claim" to the property, and gives the grantee the right to assert that claim.

Grant v. Grant, 341 A.3d 685, 689 (Pa. 2025).

Thus, there is nothing about the nature or function of a quitclaim deed that would make it effective to transfer a grantor's statutory obligations owed to a third party, as opposed to merely conveying, without any warranty, the grantor's potential rights. Accordingly, here, the Railroad possessed no authority to convey to a third party the repair and maintenance responsibilities imposed on the Railroad under the Code. A quitclaim deed, therefore, was ineffective to transfer such responsibilities.

Section 1102(a)(3) of the Code provides, in pertinent part, that

> [u]pon the application of any public utility and the approval of such application by the commission, evidenced by its certificate of public convenience first had and obtained, . . . it shall be lawful . . . to transfer to, any person or corporation, including a municipal corporation, by any method or device whatsoever, . . . any tangible or intangible property used or useful in the public service.

66 Pa.C.S. § 1102(a)(3). Thus, although the Code requires PUC approval through a certificate of public convenience before a public utility conveys its property, the Code does not provide that any conveyance without such approval is automatically void. Section 2102(a) similarly provides that a contract or arrangement for sale of a

public utility's property is not "valid or effective unless and until such contract or arrangement has received the written approval of the [PUC]." 66 Pa.C.S. § 2102(a). The language of this provision also does not suggest that a sale not preapproved by the PUC is void *ab initio*. Rather, Section 2102(b) provides, in pertinent part, that "[i]f at the end of 30 days after the filing of a contract or arrangement, no order of rejection has been entered, such contract or arrangement, whether written or unwritten, shall be deemed, in fact and law, to have been approved." 66 Pa.C.S. § 2102(b).

Here, the PUC was aware of the quitclaim deed from the Railroad to WALA as soon as the Railroad began asserting that the quitclaim deed eliminated the Railroad's concerned party status. The PUC took no action to disapprove the conveyance or void the quitclaim deed within 30 days or at any other time thereafter. Thus, the transfer effected by the quitclaim deed was deemed approved. *See* 66 Pa.C.S. § 2102(b). However, nothing in the Code required the PUC to void the quitclaim deed or the conveyance it purported to accomplish in order to retain discretionary authority to determine and allocate costs for repair and maintenance of the Blackburn Tunnel. In that regard, we observe that a public transportation utility's repair and maintenance responsibilities imposed by the Code do not constitute "tangible or intangible property" so as to be subject to possible conveyance under Section 1102(a)(3) of the Code.

Because, as explained above, the Railroad possessed no authority to convey to a third party the repair and maintenance responsibilities imposed on the Railroad under the Code, the quitclaim deed was ineffective to transfer those responsibilities. Therefore, the PUC retained its discretion to determine and allocate repair and maintenance costs notwithstanding the execution of the quitclaim deed.

As we observed above, it appears the Railroad executed the quitclaim deed here in an attempt to avoid future repair and maintenance costs after the PUC originally denied the Blackburn Tunnel abolition request. However, that attempt was legally ineffective. The Railroad remains a concerned party for purposes of the PUC's allocation of remediation costs associated with the Blackburn Tunnel.

B. The Doctrine of Laches and the Statute of Limitations

The Railroad also contends that, even if it is properly deemed a concerned party, either the doctrine of laches or the applicable statute of limitations bars the PUC from seeking to set aside the 2002 conveyance of the property by the Railroad. We disagree. As discussed in the previous section, the PUC is not seeking to set aside the quitclaim deed; it is merely exercising its statutory authority to allocate remediation costs.

Moreover, the Railroad failed to preserve these issues, as neither was raised in the exceptions to the ALJ's recommended decision. *See* R.R. at 998a-1010a. Rule 1551(a) of the Pennsylvania Rules of Appellate procedure provides that "[r]eview of quasijudicial orders shall be conducted by the court on the record made before the government unit" and states, as a general rule, that "[o]nly questions raised before the government unit shall be heard or considered . . . ." Pa.R.A.P. 1551(a); *McKnight v. Pub. Util. Comm'n*, 313 A.3d 337, 341 (Pa. Cmwlth. 2024) (concluding that the petitioner waived review by this Court of issues not raised in exceptions before the PUC) (quoting *HIKO Energy, LLC v. Pa. Pub. Util. Comm'n*, 209 A.3d 246, 261 (Pa. 2019) (observing that "[g]enerally, a party waives appellate review of a claim when it fails to raise the issue before an administrative tribunal rendering a final decision")). Therefore, issues concerning laches[5] and the statute of limitations[6] are not subject to review by this Court.

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[5] In any event, if we were to consider the laches issue, we would reject the Railroad's argument. "Laches is an equitable doctrine that bars relief when a complaining party is guilty of want of due diligence in failing to promptly institute an action to the prejudice of another." *Peden v. Gambone Bros. Dev. Co.*, 798 A.2d 305, 312 (Pa. Cmwlth. 2002). The party asserting laches as a defense must present evidence demonstrating prejudice from the lapse of time. *Cmwlth. ex rel. Baldwin v. Richard*, 751 A.2d 647 (Pa. 2000).

However, this Court has repeatedly held that laches, an equitable doctrine, cannot be invoked as a shield against liability by a party who does not come to court with "clean hands." *Hurwitz v. City of Phila. (In re Pres. of FDR Park Richard Garella)*, 344 A.3d 461, 471 (Pa. Cmwlth. 2025); *Superior Lawn Care & State Workers' Ins. Fund v. Workers' Comp. Appeal Bd. (Hoffer)*, 878 A.2d 936, 941 n.7 (Pa. Cmwlth. 2005); *Mrkich v. Workers' Comp. Appeal Bd. (Allegheny Cnty. Child. & Youth Servs.)*, 801 A.2d 668, 673 (Pa. Cmwlth. 2002); *Giddings v. State Bd. of Psychology*, 669 A.2d 431, 434 (Pa. Cmwlth. 1995). This Court has elucidated the doctrine of clean hands as follows:

> The doctrine of clean hands is grounded in the historical notion of a court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith, and thus any willful act concerning the cause of action which rightfully can be said to transgress equitable standards of conduct is sufficient cause for closing the doors of a court of equity to one tainted with inequitableness. *Precision Instrument* [*Mfg.*] *Co. v. Auto*[.] *Maint*[.] *Mach*[.] *Co.*[,] 324 U.S. 806 . . . (1945); *In re: Est*[.] *of Pedrick*, . . . 482 A.2d 215 ([Pa.]1984). The clean hands doctrine . . . applies where the wrongdoing directly affects the relationship subsisting between the parties and is directly connected to the matter in controversy. *Est*[.] *of Pedrick*.

Giddings, 669 A.2d at 434-35.

Here, the Railroad purported to convey to a third party the property containing the Blackburn Tunnel, despite the PUC's refusal to authorize abolition of the tunnel and without seeking the requisite PUC approval of the conveyance. That wrongful conduct was directly connected to the controversy presented here. *See Giddings*, 669 A.2d at 435. Accordingly, the Railroad lacks clean hands and cannot invoke the doctrine of laches. *See Hurwitz*, 344 A.3d at 471 (explaining that the city could not invoke the doctrine of laches because it lacked clean hands

IV. Conclusion

Based on the foregoing discussion, the PUC Order is affirmed.

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CHRISTINE FIZZANO CANNON, Judge

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where it failed to seek requisite legal approval before engaging in the conduct that subjected it to liability).

[6] Similarly, even if the Railroad had properly preserved its statute of limitations argument, we would reject it. Section 3314(a) of the Code sets forth the applicable statute of limitations, which provides:

> No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor arose, except as otherwise provided in this part.

66 Pa.C.S. § 3314(a). The portion of Section 3314(a) that applies to "action[s] for the recovery of any penalties or forfeitures," *id.*, is not implicated here because remediation and abolition are discretionary regulatory functions, not punitive measures or forfeitures. *See City of Phila. v. Pa. Pub. Util. Comm'n*, 676 A.2d 1298, 1301 (Pa. Cmwlth. 1996) (explaining that the imposition of costs is a discretionary function of the PUC as a matter of regulating public safety).

Regarding any "prosecution" involved in this matter, the Code does not define that term, and research has not revealed any judicial decisions addressing its applicability to PUC proceedings. However, to the extent that proceedings alleging failure to maintain railroad crossings may properly be called "prosecutions" under Section 3314(a), we observe that failures to maintain railroad crossings are ongoing violations of the Code to which no statute of limitations has previously been applied. *See, e.g.*, *Norfolk S. Ry. Co. v. Pa. Pub. Util. Comm'n*, 875 A.2d 1243 (Pa. Cmwlth. 2005) (*Norfolk Southern I*) (a proceeding for failure to maintain a crossing under a 1930 order of the PUC's predecessor, based on the crossing's deteriorated condition, with no suggestion that the three-year limitations period barred the PUC's action); *Norfolk S. Ry. Co. v. Pa. Pub. Util. Comm'n*, 971 A.2d 545 (Pa. Cmwlth. 2009) (*Norfolk Southern II*) (a proceeding for failure to maintain a retaining wall at a crossing under a 1938 PUC order, with no assertion of the three-year statute of limitations).

Here, as in *Norfolk Southern I* and *II*, the issue is the Railroad's failure to perform its maintenance responsibilities. Those responsibilities were ongoing. Thus, there is no statute of limitations issue.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Bessemer and Lake Erie Railroad Company, Petitioner	:	
v.	:	
Pennsylvania Public Utility Commission, Respondent	:	No. 965 C.D. 2025

O R D E R

AND NOW, this 8th day of September, 2026, the July 10, 2025 Order of the Public Utility Commission is AFFIRMED.

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CHRISTINE FIZZANO CANNON, Judge