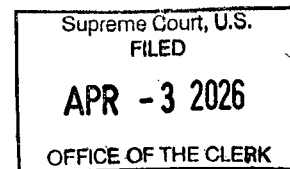


26-11



No. _____

IN THE
Supreme Court of the United States

DAVID A. ROMANOSKI,
Petitioner,

v.

PENNSYLVANIA PUBLIC UTILITY
COMMISSION, et al.,
Respondents.

On Petition for a Writ of Certiorari
to the Commonwealth Court of Pennsylvania

Petition for a Writ of Certiorari

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PETITION FOR A WRIT OF CERTIORARI

QUESTIONS PRESENTED

1. Whether the Due Process Clause of the Fourteenth Amendment is violated when a state administrative agency resolves a case on a dispositive factual premise not developed through an evidentiary process, rejects contrary evidence without a hearing, and denies a party a meaningful opportunity to be heard.
2. Whether due process is violated when a state appellate court affirms on a ground not raised or litigated by the parties, without notice or an opportunity to be heard.
3. Whether due process is violated when a state agency alters its position on appeal and prevails on shifting and inconsistent grounds not subject to adversarial testing.

PARTIES TO THE PETITION

Petitioner:

David Alan Romanoski
243 South Mill Road
Hummelstown, PA 17036-7370

Respondents:

Derry Township
600 Clearwater Road
Hershey, PA 17033

Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Pennsylvania Department of Transportation
1101 South Front Street
Harrisburg, PA 17104

Dauphin County
2 South 2nd Street
Harrisburg, PA 17101

Norfolk Southern Railway Company (NSC)
650 W. Peachtree Street NW
Atlanta, GA 30308

LIST OF PROCEEDINGS BELOW

Pennsylvania Supreme Court

510 MAL 2025

Appeal of David A. Romanoski v.

Pennsylvania Public Utility Commission

Petition for Allowance of Appeal from the Order of
the Commonwealth Court

March 17, 2026

Commonwealth Court of Pennsylvania

663 C.D. 2024

Memorandum Opinion

Appeal of David A. Romanoski v.

Pennsylvania Public Utility Commission

August 7, 2025

Pennsylvania Public Utility Commission

C-2023-3043702

Opinion and Order

David A. Romanoski v.

Pennsylvania Public Utility Commission

Pennsylvania Department of Transportation

Norfolk Southern Railway Company

Dauphin County & Derry Township

May 24, 2024

PA PUC Administrative Law Judge

C-2023-3043702

Initial Decision

David A. Romanoski v.

Pennsylvania Public Utility Commission

Pennsylvania Department of Transportation

Norfolk Southern Railway Company

Dauphin County & Derry Township

February 28, 2024

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, David A. Romanoski, respectfully petitions for a writ of certiorari to review the judgment of the Commonwealth Court of Pennsylvania, for which discretionary review was denied by the Supreme Court of Pennsylvania. Petitioner proceeds pro se.

OPINIONS BELOW

Pennsylvania Supreme Court
510 MAL 2025
Appeal of David A. Romanoski v.
Pennsylvania Public Utility Commission
Petition for Allowance of Appeal from the Order of
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JURISDICTION

The Pennsylvania Supreme Court denied discretionary review on March 17, 2026. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part:

Nor shall any State deprive any person of life, liberty, or property, without due process of law...

INTRODUCTION

This case presents a recurring and important question of federal law: whether a state agency and reviewing court may resolve a case on an untested factual premise, deny any evidentiary process, and affirm on shifting and inconsistent grounds without affording a meaningful opportunity to be heard.

The case arises from a hazardous public structure—a deteriorating retaining wall with a detached handrail—located along an active roadway in Dauphin County, Pennsylvania. Despite known safety risks, no public entity has accepted responsibility for repair.

Rather than address the hazard, the Pennsylvania Public Utility Commission resolved Petitioner's complaint on an unsupported factual premise that the underlying railroad crossing had been abolished, without conducting an evidentiary hearing. When Petitioner submitted evidence demonstrating that the crossing remained in operation, the agency refused to consider it.

On appeal, the agency abandoned its original position and advanced a new jurisdictional theory. The Commonwealth Court nevertheless affirmed while relying on the original factual premise.

The decision below conflicts with this Court's due process precedents and permits procedural practices that evade judicial review while leaving serious public safety hazards unaddressed.

STATEMENT OF THE CASE

In 1921, pursuant to a 1919 order by the Pennsylvania Public Service Commission,¹ the Philadelphia Reading Railroad Company built a retaining wall along PA State Highway Route 139. The wall was built to support a railroad grade-crossing conversion project. The original at-grade crossing was converted into a below-grade crossing

¹ The 1919 order of the Pennsylvania Public Service Commission addressed five at-grade crossings along the Lebanon Valley Branch railway. Three crossings were abolished, while the two crossings over State Highway Route 139 were converted into grade-separated underpasses ("subway" crossings). This case concerns the easternmost State Route 139 crossing, for which the retaining wall was constructed, commonly known at the time and defined in Petitioner's Formal Complaint as "Swatara Station Crossing".

(underpass). The retaining wall was required to support land from subsiding onto the highway.

Petitioner initiated proceedings before the Pennsylvania Public Utility Commission by filing a formal complaint seeking assignment of maintenance responsibility for the retaining wall.

It is well established that in rail-highway crossing cases, the guiding principle for Commission action is the public interest, *i.e.*, to ensure and promote the protection, safety, convenience and welfare of the travelling public. Accordingly, the Commission has (*Emphasis added*) *exclusive* authority, under 66 Pa. C.S. §2702, to order the construction, reconstruction, alteration, repair, protection, suspension or abolition of rail-highway crossings. The Commission also has exclusive authority to determine and order which parties shall perform such work at the crossings and which parties shall maintain the crossings in the future. (*SEPTA v. Pa. P.U.C.*, 592 A.2d 797 (Pa. Cmwlth. 1991).

It is jurisdiction of the Commission to determine which parties are concerned within the meaning of 66 Pa. C.S. §§2704(a) and 2702(c). (*County of Chester v. Pa. P.U.C.*, 408 A.2d 552 (Pa. Cmwlth. 1979)).

Moreover, the Commission's jurisdiction also extends to the (*Emphasis added*) *approaches* to rail-highway crossings. (*Department of Transportation v. Pa. P.U.C.*, 440 A.2d 657 (Pa. Cmwlth. 1982); *Springettsbury v. Pa. P.U.C.*, 289 A.2d 762 (Pa. Cmwlth. 1972)).

In support of the complaint, Petitioner submitted the 1919 order, which authorized the conversion of the at-grade crossing and construction of the wall.

Petitioner also submitted original engineering drawings depicting the crossing and retaining wall as integral components of the project, and photographs of the wall's current condition.

The 1919 order allocated maintenance responsibility for the crossing to the Philadelphia Reading Railroad Company. The 1919 order allocated maintenance responsibility for the roadway below the crossing to the Commonwealth of Pennsylvania Department of Highways. However, the 1919 order was silent on assigning maintenance responsibility for the retaining wall.

Petitioner's complaint requested the Commission to interpret the 1919 order and exercise its statutory authority, as listed above, to determine responsibility for maintaining infrastructure constructed pursuant to that order but not expressly addressed within it.

During the proceedings, Respondents—Derry Township, Dauphin County, the Pennsylvania Department of Transportation, and Norfolk Southern Railway—asserted that the railroad crossing had been abolished, although no substantial evidence was developed in the record to support that conclusion.

The Administrative Law Judge (ALJ), without a hearing,² adopted the conclusion that the crossing

² A hearing is necessary only to resolve disputed questions of fact, and when the question presented is one of law, the Commission need not hold a hearing. *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa. Cmwlth.

had been abolished in his initial decision.³ This determination was made without an evidentiary hearing and without development of a factual record addressing the status of the crossing:

The 1919 Order of the PSC abolished the railroad-highway crossing for which the retaining wall in question was built. Therefore, the Commission lacks jurisdiction over the Complaint. *Administrative Law Judge's Initial Decision* (February 28, 2024).

Following the initial decision, Petitioner submitted additional evidence, including a photograph of the crossing and a United States

1989); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth 1993).

In this case, a hearing was necessary to resolve a disputed fact, *i.e.* whether the Swatara Station Crossing was abolished or not.

³ The Administrative Law Judge's Initial Decision rests on a fundamental factual error: it conflates the Hockersville Road Crossing, which was abolished and replaced with a pedestrian tunnel, with the Swatara Station Crossing, which is the subject of this proceeding.

In 1920, there were two points in Derry Township where the Lebanon Valley [Branch] Railroad crossed Pennsylvania State Highway Route No. 139. The first was located at Swatara Station (*Emphasis added*) near modern day Old West Chocolate Avenue and Hockersville Road, Hershey, PA (hereinafter referred to as Swatara Station Crossing). The other point was located midway between Hershey and Hummelstown, near modern day Old West Chocolate Avenue & Mae Road, Hershey, PA. *Petitioner's Formal Complaint* (September 28, 2023).

Department of Transportation crossing inventory report. Both the photograph and inventory report proved that the crossing remains in operation.

The Commission rejected this evidence based on Application of Apollo Gas Co.

It is well-established that parties cannot introduce new evidence at the exceptions stage. *Application of Apollo Gas Co.*, 1994 Pa. PUC LEXIS, at *8-14 (Order entered February 10, 1994) (*Apollo Gas*). The items labeled as “Exhibit # 24” and “Exhibit # 25” are introduced for the first time in the Exceptions stage of the proceeding and are not in the record. The Complainant’s extra-record evidence cannot be admitted into the record at this current procedural stage of the case. *PUC Opinion and Order* (May 23, 2024).

The Commission’s reliance on Application of Apollo Gas Co., 1994 Pa. PUC LEXIS 45, to exclude Petitioner’s evidence is misplaced. Apollo Gas addresses the exclusion of late-filed evidence after a full evidentiary record has been developed. Here, no evidentiary hearing was conducted and no record was meaningfully developed.

Petitioner’s submissions were not attempts to introduce new evidence, but rather to rebut the dispositive factual premise—first introduced in the Initial Decision—that the crossing had been abolished. The exclusion of this evidence left the agency’s conclusion unsupported by any developed evidentiary record since no record was ever developed.

Procedural rules governing the timing of evidence cannot be applied in a manner that deprives

a party of any meaningful opportunity to challenge the factual basis of a decision. Where no evidentiary hearing was conducted and no record was developed, strict application of such rules results in a denial of due process.

The Commission Opinion and Order found:

To the extent that the Complainant challenges the ALJ's conclusion that the Commission does not have jurisdiction over the retaining wall at issue in the Complaint, we agree with the ALJ that the Commission's power over crossings applies only to railroad-highway crossings and the Commission has no jurisdiction over the structure(s) built in place after a railroad-highway crossing has been abolished. *PUC Opinion and Order* (May 23, 2024).

On appeal, Petitioner challenged whether the Commission's determination that the crossing had been abolished was supported by substantial evidence or any evidence of record.

Respondents—Derry Township, Dauphin County, the Pennsylvania Department of Transportation, and Norfolk Southern Railway—continued to assert that the crossing had been abolished.

The Commission, however, altered its position on appeal. In its brief, it acknowledged that the crossing remained in existence:

While there is no dispute that a [railroad] crossing exists at Swatara Station, Mr. Romanoski did not establish that the Wall is a part of or a component of the Swatara Station

crossing⁴ when all of the evidence provided showed that the Wall is physically separated from the crossing.⁵ *Brief of Respondent Pennsylvania Public Utility Commission* (October 17, 2024).

In its brief, the Commission also changed its reasoning why the retaining wall fell outside the Commission's jurisdiction:

The complaint Mr. Romanoski submitted to the Commission sought to determine the responsible party for the Wall's maintenance and repair. However, the Wall is clearly outside of the Commission's jurisdiction as it does not fall under the definition of a crossing as it is not within the Swatara Station subway crossing's right-of-way.⁶ *Brief of Respondent Pennsylvania Public Utility Commission* (October 17, 2024).

⁴ This statement is inconsistent with the 1919 order and engineering drawings, which show and describe the wall as an integral component of the crossing. *Petitioner's Formal Complaint Exhibit 11, 12 & 13* (September 28, 2023)

⁵ The retaining wall is located approximately 400 feet from the underpass and lies within the approaches to the rail-highway crossing. The Commission's jurisdiction extends to such approaches. *Id.*

⁶ A "crossing" under the Code is an intersection of two or more public utilities. *SEPTA v. Pa PUC* 592 A.2d 797 (Pa. Cmwlth. 1991).

A "railroad-highway crossing" is an intersection of a highway with a railroad right-of-way, upon which railroad tracks lie, and can be at, above or below the grade of the railroad tracks. *SEPTA v. Pa PUC* 592 A.2d 797 (Pa. Cmwlth. 1991)

This position is inconsistent with over seventy-five years of precedent establishing that the Commission's jurisdiction extends to the approaches to rail-highway crossings and the crossing themselves. The Commission's jurisdiction concerning railway crossings has never been limited by right-of-way boundaries.

In its brief, the Commission also changed its reasoning for not accepting new evidence at the exception phase adding 52 Pa. Code 5.401(b)(2)(i) and 52 Pa. Code § 5.431:

The Commission properly rejected these exhibits from consideration because they were introduced after the record was closed and after any of the parties involved could have addressed their admissibility. *See* 52 Pa. Code § 5.431 and *see also Application of Apollo Gas Co.*, 1994 Pa. PUC LEXIS 45, *8-10. Under the Commission's regulations evidence will be excluded if there is a danger of unfair prejudice. *See* 52 Pa. Code 5.401(b)(2)(i). *Brief of Respondent Pennsylvania Public Utility Commission* (October 17, 2024).

The Commission's reliance on 52 Pa. Code § 5.431 is misplaced. 52 Pa. Code § 5.431 prevents addition material from being added to the record after it has been closed at the end of a hearing. This case never involved an evidentiary hearing.

The Commission's reliance on 52 Pa. Code § 5.401(b)(2)(i) to exclude Petitioner's evidence is also misplaced. 52 Pa. Code 5.401(b)(2)(i) states that evidence, even if relevant, will be excluded if its probative value is outweighed by the danger of unfair prejudice. With the absence of a full evidentiary record

or hearing, unfair prejudice was never developed nor proven.

On appeal, the Commonwealth Court of Pennsylvania did not resolve the evidentiary question presented by Petitioner. Instead, it reframed the appeal as a question of jurisdiction without notice to Petitioner. It did so without a hearing, thereby depriving Petitioner of any opportunity to challenge the basis for the decision.

In his Statement of the Question Involved, Romanoski presents one issue:

“Did [t]he [Commission] have substantial evidence or any evidence at all in determining Swatara Station Crossing was converted into a pedestrian bridge or otherwise abolished not subject to its jurisdiction?” This Court has rephrased the issue for clarity. *Commonwealth Court of Pennsylvania Memorandum Opinion by Judge Covey* (August 7, 2025).

Despite the Commission’s acknowledgment that the crossing remained in existence, the Commonwealth court nevertheless accepted and relied upon the premise that the crossing had been abolished in affirming the denial of relief.⁷

Here, notwithstanding that the PSC ordered the Wall’s construction in [sic] 1917 as part of Swatara Crossing’s abolishment, as in *Bucks*, once it was abolished, the PSC (and the

⁷ The error identified in the ALJ’s Initial Decision was not corrected on appeal. Instead, the Commonwealth Court repeated and relied upon the same fundamental misidentification between the Swatara Station Crossing and the Hockersville Road Crossing.

Commission) lost jurisdiction over the area of the Wall, which is located up the road from the current Swatara Station Subway Crossing and is not within Swatara Station Subway Crossing's right of way. *Commonwealth Court of Pennsylvania Memorandum Opinion by Judge Covey* August 7, 2025.

As a result, the case was resolved on shifting and inconsistent grounds, without an evidentiary hearing, and without affording Petitioner a meaningful opportunity to address the dispositive issues. Petitioner was thereby denied due process of law in violation of the Fourteenth Amendment to the United States Constitution.

REASONS FOR GRANTING THE WRIT

These issues arise in administrative proceedings where agencies resolve dispositive factual questions without evidentiary hearings and reviewing courts affirm on grounds not subject to adversarial testing.

I. The Decision Below Conflicts with This Court's Due Process Precedents Requiring a Meaningful Opportunity to Challenge Dispositive Factual Premises

This Court has long recognized that procedural fairness requires a meaningful opportunity to challenge dispositive factual determinations.

In *Ohio Bell Tel. Co. v. Public Utilities Comm'n*, 301 U.S. 292 (1937), this Court explained that "the right to such a hearing is one of the rudiments of fair play assured to every litigant by the Fourteenth Amendment as a minimal requirement."

II. The Decision Below Conflicts with This Court's Due Process Precedents Requiring Notice Before Dispositive Issues Are Reframed on Appeal

Due process requires notice and an opportunity to be heard before a tribunal resolves a case on dispositive grounds. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

Here, the Commonwealth Court relied on a jurisdictional rationale different from the one developed and argued during the administrative proceedings.

The Commonwealth Court affirmed on grounds different from those presented below, without notice or opportunity for Petitioner to address the dispositive basis for affirmance.

III. The Decision Below Conflicts with This Court's Prohibition on Agency Decisionmaking Based on Shifting Grounds

This Court has long held that reviewing courts may not affirm agency action on grounds different from those relied upon by the agency itself.

"[A] reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency." *SEC v. Chenery Corp.*, 332 U.S. 194 (1947).

Here, the Commission initially relied on the premise that the crossing had been abolished, but later acknowledged on appeal that the crossing remained in existence and advanced a different jurisdictional

theory. The Commonwealth Court nevertheless affirmed while relying on the earlier rationale.

IV. The Case Presents an Important Question of Public Safety and Administrative Accountability

This case involves a known hazardous condition affecting public infrastructure. The decision below permits government entities to avoid responsibility through procedural maneuvering, leaving the public exposed to preventable harm.

Respondents consistently asserted that the crossing had been abolished; however, that premise was never subjected to evidentiary testing. The agency accepted that premise without a hearing and excluded contrary evidence, resulting in a decision unsupported by any developed record.

The question presented has broader implications for administrative accountability and the procedural rights of individuals seeking relief from unsafe conditions created by government-directed infrastructure projects.

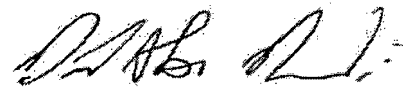
CONCLUSION

The decision below permits a state agency to resolve a case on an untested factual premise, exclude contrary evidence without a hearing, and prevail on shifting and inconsistent grounds—while leaving a known public safety hazard unaddressed.

Such a process is incompatible with the fundamental requirements of due process.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "D. H. L.", is written in dark ink.