



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

ORIGINAL

IN REPLY PLEASE
REFER TO OUR FILE

November 7, 1997

Mr. James J. McNulty, Acting Secretary
Pa. Public Utility Commission
P.O. Box 3265
Room G-05, North Office Building
Harrisburg, PA 17105-3265

RE: Application of Consolidated Rail Corporation for the
abolition of thirty-one crossings of the Enola Branch,
Harrisburg Division, Lancaster County.

Board of Supervisors of Bart Township

v.

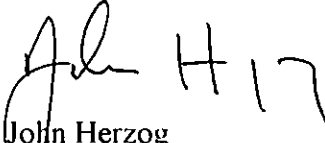
Consolidated Rail Corporation and the Pennsylvania
Department of Transportation and Commissioners of
the County of Lancaster, et al.
Docket Nos. A-00111016 and C-00913256

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PROTHONOTARY'S OFFICE

Dear Acting Secretary McNulty:

Enclosed for filing are an original and three copies of the Bureau of Transportation and Safety's Motion to Dismiss the Application for Supersedeas filed by Friends of the Atglen-Susquehanna Trail, Inc. With a copy of this letter, I am sending copies of the enclosed to those persons listed on the attached Certificate of Service.

Very truly yours,


John Herzog
Assistant Counsel

Enclosures

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64

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Consolidated	:	
Rail Corporation for the	:	
abolition of thirty-one	:	Docket Nos.
crossings of the Enola Branch,	:	A-00111016
Harrisburg Division, Lancaster	:	
County.	:	
	:	
Board of Supervisors of Bart	:	
Township	:	C-00913256
	:	
v.	:	
	:	
Consolidated Rail Corporation	:	
and the Pennsylvania Department	:	
of Transportation and	:	
Commissioners of the County of	:	
Lancaster, et al.	:	

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MOTION TO DISMISS THE
APPLICATION FOR SUPERSEDEAS

AND NOW, comes the Bureau of Transportation and Safety of the Pennsylvania Public Utility Commission ("Bureau") and files this Motion to Dismiss the "Application for Supersedeas" filed by Friends of the Atglen-Susquehanna Trail, Inc. ("FAST"). In support of its Motion, the Bureau avers as follows:

1. On October 9, 1997, the Public Utility Commission entered a final Order in this matter.
2. On or after October 31, 1997, FAST filed with the Commission a "Petition for Supersedeas Pending Proceedings on Petition for Review." This Petition was received by the Commission on November 3, 1997

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3. 52 Pa. Code §5.572 governs the filing of Petitions for Relief following a final Commission decision. That provision provides, in relevant part:

(c) Petitions for...supersedeas...shall be filed within 15 days after the Commission order involved is entered or otherwise becomes final.

4. The final day to file a Petition for Supersedeas of the Commission's October 9, 1997 Order was October 24, 1997.

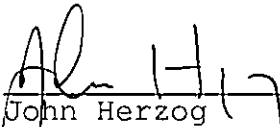
5. FAST's Petition for Supersedeas was filed on or after October 31, 1997, a minimum of twenty-two (22) days after the Commission's October 9, 1997 Order was entered.

6. FAST's "Petition for Supersedeas" was filed beyond the 15 day period prescribed by 52 Pa. Code §5.572.

7. FAST's "Petition for Supersedeas" is untimely and should be dismissed.

WHEREFORE, for the foregoing reasons, the Bureau of Transportation and Safety requests the Commission to dismiss FAST's "Petition for Supersedeas".

Respectfully submitted,



John Herzog
Assistant Counsel
Counsel for the Pennsylvania
Public Utility Commission

P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 783-2840

Dated: November 7, 1997

CERTIFICATE OF SERVICE

I hereby certify that I am this date serving the foregoing document upon the persons and in the manner indicated below in accordance with 52 Pa. Code §1.54.

SERVICE BY FIRST CLASS MAIL ADDRESSED AS FOLLOWS:

Honorable Louis G. Cocheres
Administrative Law Judge
Pa. Public Utility Commission
North Office Building
P.O. Box 3265
Harrisburg, PA 17105-3265

Scott T. Wyland, Esquire
Susan J. Smith, Esquire
Malatesta, Hawke & McKeon
P.O. Box 1778
Harrisburg, PA 17105

Martha R. Smith, Esquire
Department of Conservation and
Natural Resources
9th Floor RCSOB
P.O. Box 8767
Harrisburg, PA 17105-8767

Joyce A. Nettke, Esquire
Friends of Atglen
Susquehanna Trail, Inc.
10 South Decatur Street
P.O. Box 27
Strasburg, PA 17579

John Fillipowicz
C-TEC Corporation
105 Carnegie Center
Princeton, NJ 08540

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PROTHONOTARY'S OFFICE

Gina M. D'Alfonso, Esquire
Department of Transportation
Forum Place, 9th Floor
555 Walnut Street
Harrisburg, PA 17101-1900

William R. Keen, Jr., Esquire
Solicitor, West Sadsbury Township
1 Bondsville Road
Downingtown, PA 19335

H. Joseph Little, Chairman
Eden Township Board of Supervisors
489 Stony Hill Road
Quarryville, PA 17566

David C. Eaton, Esquire
Consolidated Rail Corporation
Nauman, Smith, Shissler and Hall
18th Floor, 200 N. Third Street
P.O. Box 840
Harrisburg, PA 17108-0840

Dennis Moore, Esquire
National Railroad Passenger
Corporation (AMTRAK)
60 Massachusetts Avenue, NE
Washington, DC 20002

Kenneth Zielonis, Esquire
Stevens and Lee
208 N. Third Street, Suite 310
Harrisburg, PA 17108

Thomas L. Whiteman, Esquire
Solicitor's Office
Chester County Courthouse
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West Chester, PA 19380-3070

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Sue Hinbach
Suburban Cable Company of Lancaster
P.O. Box 120
Lancaster, PA 17608

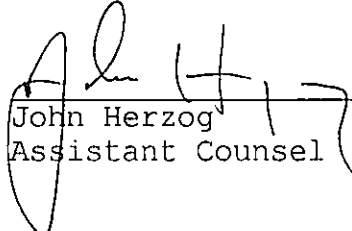
John Chase
Quarryville Water Authority
300 Saint Catherine Street
Quarryville, PA 17566

Samuel Morris, Vice President
Suburban Cable Company
Legal Department
202 Shoemaker Road
Pottstown, PA 19464

Helen Esbenshade, Esquire
Conrad, O'Brien, Gellman & Rohn
Coatesville Water Authority
11-13 South High Street
West Chester, PA 19382

Michael H. Ranck, Esquire
Ranck & Ranck
101 East Chestnut Street
P.O. Box 1524
Lancaster, PA 17608-1524

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PROTHONOTARY'S OFFICE


John Herzog
Assistant Counsel

Dated: November 7, 1997



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

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REFER TO OUR FILE

November 7, 1997

Mr. James J. McNulty, Acting Secretary
Pa. Public Utility Commission
P.O. Box 3265
Room G-05, North Office Building
Harrisburg, PA 17105-3265

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PROTHONOTARY'S OFFICE

RE: Application of Consolidated Rail Corporation for the
abolition of thirty-one crossings of the Enola Branch,
Harrisburg Division, Lancaster County.

Board of Supervisors of Bart Township

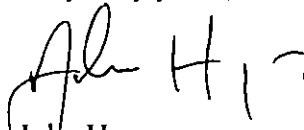
v.

Consolidated Rail Corporation and the Pennsylvania
Department of Transportation and Commissioners of
the County of Lancaster, et al.
Docket Nos. A-00111016 and C-00913256

Dear Acting Secretary McNulty:

Enclosed for filing are an original and three copies of the Bureau of Transportation and Safety's Answer to Friends of the Atglen-Susquehanna Trail, Inc.'s Application for Supersedeas. With a copy of this letter, I am sending copies of the enclosed to those persons listed on the attached Certificate of Service.

Very truly yours,


John Herzog
Assistant Counsel

DOCUMENT
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Enclosures

64

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Consolidated	:	
Rail Corporation for the	:	
abolition of thirty-one	:	Docket Nos.
crossings of the Enola Branch,	:	A-00111016
Harrisburg Division, Lancaster	:	
County.	:	
	:	
Board of Supervisors of Bart	:	
Township	:	C-00913256
	:	
v.	:	
	:	
Consolidated Rail Corporation	:	
and the Pennsylvania Department	:	
of Transportation and	:	
Commissioners of the County of	:	
Lancaster, et al.	:	

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PROTHONOTARY

ANSWER OF THE BUREAU OF TRANSPORTATION AND
SAFETY TO FAST'S APPLICATION FOR SUPERSEDEAS

AND NOW, comes the Bureau of Transportation and Safety of the Pennsylvania Public Utility Commission ("Bureau") to file its Answer to the Application for Supersedeas filed by Friends of the Atglen-Susquehanna Trail, Inc. ("FAST"). The Bureau avers as follows:

1. Denied. After reasonable investigation, the Bureau is without sufficient information to form a belief as to the truth of the matter asserted. The Bureau is uncertain exactly when "this day" is, since its copy of FAST's Petition is undated and unsigned.

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2. Denied. The Bureau denies that "FAST has made a substantial case on the merits." To the contrary, the Bureau submits that the Commission properly disposed of this matter in its October 9, 1997 Order, wherein FAST's arguments were rejected.

3. Denied. The Bureau denies that "irreparable harm will result" if a supersedeas is not granted.

4. Denied. The Bureau denies that a jurisdictional issue should be decided by the Commonwealth Court prior to enforcement of the Commission's October 9, 1997 Order. To the contrary, the Commission properly disposed of all jurisdictional issues in its Order. That FAST insists on raising tenuous jurisdictional arguments does not support a grant of supersedeas. See CSX v. P.U.C., 125 Pa. Commw. Ct. 528, 558 A.2d 902 (1989) alloc. denied 657 A.2d 654 (1989).

5. Denied. It is denied that this case would fall within any Mortatorium to be initiated as a result of Chairman Quain's October 23, 1997 motion. To the contrary, FAST made this argument in its Petition for Reconsideration filed October 23, 1997, which the Commission denied at its November 6, 1997 Public Meeting.

6. Denied. The Bureau submits that a supersedeas will harm other parties.

7. Denied. The Bureau denies that the public interest will not be adversely affected by granting supersedeas.

BY WAY OF FURTHER ANSWER, THE BUREAU ALLEGES:

8. The standards to determine whether a supersedeas is warranted were established in Pennsylvania Public Utility Commission v. Process Gas Consumers Group, 502 Pa. 545, 467 A.2d 805 (1983), wherein the Supreme Court held that a stay is warranted if:

1. The Petitioner makes a strong showing that he is likely to prevail on the merits.
2. The Petitioner has shown that without the requested relief, he will suffer irreparable injury.
3. The issuance of a stay will not substantially harm other interested parties in the proceedings.
4. The issuance of a stay will not adversely affect the public interest.

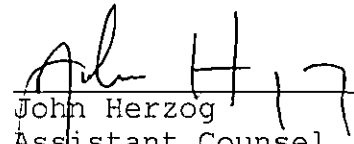
9. The Bureau submits that FAST has failed to meet these criteria. FAST has not made a strong showing that it is likely to prevail on the merits. Nothing in FAST's Petition supports its assertion that it "has made a substantial case on the merits." Further, in its Petition FAST merely alleges that a jurisdictional issue was raised. (See paragraph 4). That FAST raised a jurisdictional issue has no bearing on whether FAST has made a strong showing that it is likely to prevail on the merits.

FAST has not established that it will suffer irreparable harm if a supersedeas is denied. FAST has failed to identify its interest in these proceedings which would be irreparably harmed by the possible demolition of bridges in the future. Further, FAST has failed to establish how the conveyance of property or payment of money provided for in the agreements between Conrail and PennDot/Townships will cause it irreparable harm.

Beyond its unsupported allegation, FAST has not established that granting supersedeas will not substantially harm other interested parties. Further, the issuance of a stay will adversely affect the public interest. The Commission considered the disposition of each of the 31 structures in detail. The public interest and safety was considered for each of the structures. The primary concern in this proceeding is public safety. Granting supersedeas will compromise the public safety by permitting potentially dangerous structures to remain in place pending appellate disposition of the case.

WHEREFORE, for the foregoing reasons, the Bureau of Transportation and Safety requests the Commission to deny FAST's Petition for Supersedeas.

Respectfully submitted,



John Herzog
Assistant Counsel
Counsel for the Pennsylvania
Public Utility Commission

P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 783-2840

Dated: November 7, 1997

CERTIFICATE OF SERVICE

I hereby certify that I am this date serving the foregoing document upon the persons and in the manner indicated below in accordance with 52 Pa. Code §1.54.

SERVICE BY FIRST CLASS MAIL ADDRESSED AS FOLLOWS:

Honorable Louis G. Cocheres
Administrative Law Judge
Pa. Public Utility Commission
North Office Building
P.O. Box 3265
Harrisburg, PA 17105-3265

Scott T. Wyland, Esquire
Susan J. Smith, Esquire
Malatesta, Hawke & McKeon
P.O. Box 1778
Harrisburg, PA 17105

Martha R. Smith, Esquire
Department of Conservation and
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9th Floor RCSOB
P.O. Box 8767
Harrisburg, PA 17105-8767

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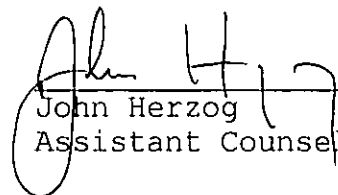
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Lancaster, PA 17608

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Ranck & Ranck
101 East Chestnut Street
P.O. Box 1524
Lancaster, PA 17608-1524


John Herzog
Assistant Counsel

Dated: November 7, 1997

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COMMONWEALTH OF PENNSYLVANIA
Department of Conservation and Natural Resources

November 12, 1997

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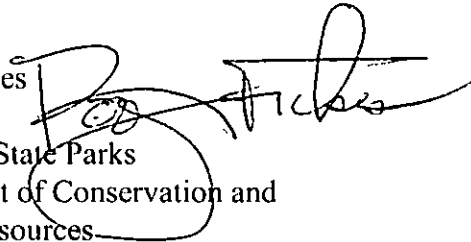
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SUBJECT: A-00111016, C-00913256
Opinion and Order
Public Meeting held November 6, 1997
Board of Supervisors v. Consolidated Rail Corporation,
Pennsylvania Department of Transportation, and
Lancaster County, et al.
Lancaster County

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TO: Office of Prothonotary File Room
Public Utility Commission

FROM: Roger Fickes
Director
Bureau of State Parks
Department of Conservation and
Natural Resources



In response to your recent request, attached is the "Acknowledgement of Receipt & Acceptance of Service" form with my signature along with date acknowledging the Bureau of State Parks' receipt of the subject "Opinion and Order."

If you have any questions, please contact Eric Milliron at 717-783-3343.

ORIGINAL

THE LAW FIRM OF

MALATESTA HAWKE & McKEON LLP

JOSEPH J. MALATESTA, JR.
WILLIAM T. HAWKE
KEVIN J. McKEON
LOUISE A. KNIGHT
THOMAS J. SNISCAK
NORMAN JAMES KENNARD
LILLIAN SMITH HARRIS
SCOTT T. WYLAND
JANET L. MILLER
SUSAN J. SMITH
TODD S. STEWART
PETER W. KOCIOLEK, JR.

HARRISBURG ENERGY CENTER
100 NORTH TENTH STREET
HARRISBURG, PENNSYLVANIA 17101
(717) 236-1300
FAX (717) 236-4841

MAILING ADDRESS:
P.O. BOX 1778
HARRISBURG, PA 17105

<http://www.MHM-LAW.com>

November 10, 1997

James McNulty, Prothonotary
Pennsylvania Public Utility Commission
P.O. Box 3265
Room 206, North Office Building
Harrisburg, PA 17105-3265

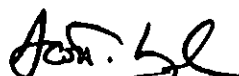
RE: Application of Consolidated Rail Corporation for the Abolition of 31 Crossings of the Enola Branch, LC: 201323, MP 3.5 to MP 27.0, Sub. No. 1095X, Harrisburg Division, Lancaster County; Docket Nos. A-00111016 and C-00913256; **ANSWER TO FAST'S APPLICATION FOR SUPERSEDEAS**

Dear Mr. McNulty:

Enclosed for filing with the Commission are the original and three (3) copies of Bart, Conestoga, Martic, Providence and Sadsbury Townships' ("Townships") Answer to Friends of the Atglen - Susquehanna Trail, Inc.'s Application for Superseideas filed in the above-captioned matter.

A copy of these documents have been served on all parties of record pursuant to the attached Certificate of Service. Please direct any questions regarding this filing to us. Thank you for your attention to this matter.

Very truly yours,


Scott T. Wyland
Susan J. Smith

STW/SJS/bab

Enclosure

cc: Frank Peiffer
John Wiker
Ray Marvin
Nicholas Yoder
Gerald Duvall

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Application of Consolidated Rail Corporation for the :
Abolition of 31 Crossings of the Enola Branch, LC 201323, :
MP 3.5 to MP 27.0, Sub. No. 1095X, Harrisburg, : Docket No. A-00111016
Division, Lancaster County :

Board of Supervisors of Bart Township v. :
Consolidated Rail Corporation, Pennsylvania Department :
of Transportation and Lancaster County, et al. Alleges :
unsafe bridge carrying Township Road T-774 (Lamparter :
Road) over and above the tracks of Conrail. Bart : Docket No. C-00913256
Township requests Respondents immediately make :
repairs. Respondents are: Consolidated Rail Corporation, :
Pennsylvania Department of Transportation and County :
of Lancaster. :

**ANSWER OF CONESTOGA, MARTIC,
PROVIDENCE, BART AND SADBURY TOWNSHIPS
TO FAST'S APPLICATION FOR SUPERSEDEAS**

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AND NOW COMES, Bart, Conestoga, Martic, Providence and Sadsbury
Townships ("Townships") and set forth the following Answer to the Application for
Supersedeas filed by Friends of the Atglen - Susquehanna Trail, Inc. ("FAST"):

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1. The Order in this matter was entered by the Commission on October 9, 1997.

2. FAST's Application for Supersedeas with the Commission was filed on or about October 31, 1997.

3. Petitions for Supersedeas must be filed within fifteen (15) days after the Commission Order involved is entered or otherwise becomes final. 52 Pa. Code §5.572(c).

4. FAST's Petition for Reconsideration was due to be filed no later than Friday, October 24, 1997. FAST's Petition was filed at least one week late.

5. The Commission's October 9, 1997 Order approves, with minor modification, two settlement agreements which, by their own terms become effective only upon entry of a final, unappealable Order.

6. FAST has filed a Petition for Review in the Pennsylvania Commonwealth Court with respect to the Commission's October 9, 1997 Order.

7. Because the settlement agreements approved by the Commission in its Order of October 9, 1997 will not take effect until the completion of the appeal process (i.e., the entry of a final, unappealable Order), FAST's Petition for Supersedeas is unnecessary and should be denied.

WHEREFORE, Conestoga, Martic, Providence Bart and Sadsbury Townships respectfully request that FAST's Application for Supersedeas be dismissed or denied in its entirety.

Respectfully submitted,



Scott T. Wyland
Susan J. Smith
Malatesta Hawke & McKeon, LLP
100 N. 10th Street
P. O. Box 1778
Harrisburg, PA 17105-1778
(717) 236-1300

Counsel for
Bart, Conestoga, Martic, Providence
and Sadsbury Townships

DATED: November 10, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the Conestoga, Martic, Providence Bart and Sadsbury Townships' Answer to FAST's Application for Supersedeas upon the persons named and in the manner indicated below.

VIA First Class Mail:

Honorable Louis Cocheres
Pennsylvania Public Utility Commission
Room G-08, North Office Building
Harrisburg, PA 17120

David C. Eaton, Esquire
Nauman, Smith, Shissler and Hall
18th Floor, 200 N. Third Street
PO Box 840
Harrisburg, PA 17108-0840

Kenneth Zielonis, Esquire
Stevens & Lee
208 North Third Street, Suite 310
PO Box 12090
Harrisburg, PA 17108-2090

David Salapa, Esquire
Pennsylvania Public Utility Commission
Bureau of Transp. & Safety
Barto Building, 3rd Floor
PO Box 3265
Harrisburg, PA 17105-3265

Martha R. Smith, Esquire
Commonwealth of Pennsylvania
DCNR
400 Market Street, 9th Floor
Harrisburg, PA 17102

Gina M. D'Alfonso, Esquire
Assistant Counsel in Charge
Pennsylvania Department of Transportation
9th Floor, Forum Building
555 Market Street
Harrisburg, PA 17101

Roger Fickes, Director
Bureau of State Parks
Dept. of Environmental Resources
PO Box 8551
Harrisburg, PA 17105-8551

W. D. Pickering, Utility Engineer
Pennsylvania Department of Transportation
9th Floor, Forum Building
555 Market Street
Harrisburg, PA 17101

H. Joseph Little, Chairman
Eden Twp. Board of Supervisors
489 Stony Hill Road
Quarryville, PA 17566

Daniel Mylin, Borough Manager
Barbara Tollinger, Secretary
Quarryville Borough
330 St. Catherine Street
Quarryville, PA 17566

Ray Marvin, Chairman
Bart Township
46 Quarry Road
Quarryville, PA 17566

John Chase
Quarryville Water Authority
300 Saint Catherine Street
Quarryville, PA 17566

David Dulick, Esquire
Pennsylvania Power & Light
2 North Ninth Street
Allentown, PA 18101

Joseph J. Kenna, Commissioner
Karen L. Martynick
Chester County
2 North High Street, Suite 512
West Chester, PA 19380-3066

John S. Halsted, Esquire
Courthouse, Suite 150
2 North High Street
West Chester, PA 19380-3070

Scott K. Wasserkrug, Esquire
Associate General Counsel, CONRAIL
2001 Market Street
P.O. Box 41416
Philadelphia, PA 19101-1416

Thomas L. Whiteman, Esquire
Solicitor's Office
Chester County Courthouse
2 North High Street, Suite 7
West Chester, PA 19380-3070

Alan P. Novac, Esquire
Conrad, O'Brien, Gellman & Rohn
11-13 South High Street
West Chester, PA 19382

Samuel Morris, Vice President
Legal Department
202 Shoemaker Road
Pottstown, PA 19464

James Landis, Chairman
Board of Supervisors
West Sadsbury Township
RD 1, Box 404
Parkesburg, PA 19365

Brian MacEwen
Coatesville Water Authority
114 E. Lincoln Highway
Coatesville, PA 19320

Kenelm L. Shirk, III, Esquire
Law Offices of K. L. Shirk, III
115 S. State Street
Ephrata, PA 17522

Kathie Shirk Gonick, Esquire
Shirk, Reist and Wagenseller
132 E. Chestnut Street
PO Box 1552
Lancaster, PA 17603

Robert Chambers, Construction Engineer
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Suburban Cable Company of Lancaster
PO Box 120
Lancaster, PA 17608

Joyce A. Nettke, Esquire
Friends of Atglen-Susquehanna Trail, Inc.
10 South Decatur Street
PO Box 27
Strasburg, PA 17579

Dennis Moore
National Railroad Passenger Corp.
(AMTRAK)
60 Massachusetts Avenue, NE
Washington, DC 20002

William T. Keen, Esquire
Keen, Keen & Good
1 Bondsville Road
Downingtown, PA 19355

James H. Thomas, Esquire
Blakinger, Byler & Thomas, PC
28 Penn Square
Lancaster, PA 17603

Nicholas Yoder, Chairman
Sadsbury Township
1077 White Oak Road
Christiana, PA 17509


Frank Peiffer, Chairman
Martic Township
370 Steinman Farm Road
Pequea, PA 17565

John Wiker, Chairman
Conestoga Township Supervisors
PO Box 98
Conestoga, PA 17516

Gerald Duvall, Chairman
Providence Township Supervisors
216 Clearfield Road
New Providence, PA 17509

William C. Crosswell, Esquire
Morgan, Hallgren, Crosswell & Kane, P.C.
700 North Duke St.
Lancaster, PA 17604-4686

Melvin E. Newcomer, Esquire
Providence Township
339 North Duke Street
P.O. Box 539
Lancaster, PA 17603



Scott T. Wyland

DATED: November 10, 1997

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



Office of Chief Counsel
Forum Place

555 Walnut Street - 9th Floor
Harrisburg, Pennsylvania 17101-1900
Telephone No. (717) 787-3128
Fax No. (717) 772-2741

DOCUMENT
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November 13, 1997

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PAPUC
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James J. McNulty, Acting Prothonotary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265


Re: Application Docket No. A-00111016

Dear Acting Prothonotary McNulty:

Enclosed for filing please find the original and three (3) copies of the Department's Response in the above-captioned matter.

I hereby certify that a copy of the Department's Response has been sent to all parties of record, as indicated on the Certificate of Service.

Very truly yours,


Jason Sharp
Assistant Counsel

220/GMD:sls

cc: William D. Pickering, P.E. (Attn: Harvey I. Cassell)
District 8-0 (Attn: Raymond W. Britcher)
Parties of Record

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Consolidated Rail Corporation for the abolition of thirty-one crossings of the Enola Branch, LC:201323, MP 3.5 to MP 27., Sub. No. 1095X, Harrisburg Division, Lancaster County, Pennsylvania

Docket No. A-00111016

DOCUMENT FOLDER

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Board of Supervisors of Bart Township v. Consolidated Rail Corporation, Pennsylvania Department of Transportation and Lancaster County et al.

Docket No. C-00913256

RESPONSE OF THE COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION TO THE APPLICATION OF FAST FOR SUPERSEDEAS PENDING PROCEEDINGS ON PETITION FOR REVIEW

AND NOW COMES, the Pennsylvania Department of Transportation (Department), and moves this Honorable Commission to deny the application of The Friends of the Atglen-Susquehanna Trail, Inc., (FAST) for supersedeas in the instant case. The Department states in support of its response the following:

1. The Public Utility Commission entered an Order and Opinion on October 9, 1997, in the above-captioned consolidated cases.

2. This Honorable Commission may grant a supersedeas in accordance with the Pennsylvania Rules of Appellate Procedure 1701(b).

3. The Public Utility Code of 52 Pa. Code §5.572 governs petitions for supersedeas to the Public Utility Commission.

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4. The Public Utility Code of 52 Pa. Code § 5.572 (c) requires that petitions or applications for supersedeas be filed within fifteen (15) days after any order of the Commission is entered or becomes final.

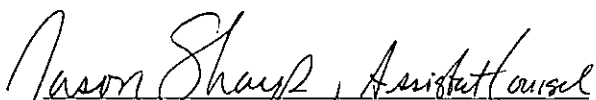
5. The subject order was entered on October 9, 1997. The application for supersedeas of FAST was filed on or about October 31, 1997. Therefore, the application was filed more than fifteen (15) days after the order was entered.

6. Since the application for supersedeas was filed beyond fifteen (15) days of the date the order was entered, this Honorable Commission must deny the request for supersedeas due to the untimely filing. In the alternative, if the Commission were to review the application for supersedeas on its merits, the standard for review is set forth Pennsylvania Public Utility Commission v. Process Gas Consumers, 467 A.2d 805 (Pa. 1983).

7. FAST is unable to make a strong showing that it will prevail on the merits on appeal.

WHEREFORE, the Department of Transportation respectfully requests that this Honorable Commission deny the application of FAST in the above-captioned matter.

Respectfully submitted,

for  *Assistant Counsel*
Gina M. D'Alfonso
Assistant Counsel in Charge
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel-9th Floor
Forum Place, 555 Walnut Street
Harrisburg, Pennsylvania 17101-1900
Telephone No. (717) 787-3128
Fax No. (717) 772-2741

Dated: November 13, 1997

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Response, was served upon the parties listed below by first class mail, postage prepaid this 13th day of November, 1997.

Office of Special Assistants
Room 210
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

David A. Salapa, Esquire
PA PUC Legal Division
Bureau of Transportation & Safety
Box 3265
Harrisburg, PA 17105-3265

Martha R. Smith, Esquire
Department of Conservation and Natural Resources
9th Floor RCSOB
P.O. Box 8767
Harrisburg, PA 17105-8767

David C. Eaton, Esquire
Consolidated Rail Corporation
Nauman, Smith, Shissler and Hall
18th Floor, 200 N. Third Street
P.O. Box 840
Harrisburg, PA 17108-0840

Kenneth Ziclonis, Esquire
Lancaster County
Stevens and Lee
208 N. 3rd Street, Suite 310
P.O. Box 12090
Harrisburg, PA 17108-2090

Carol K. Palmoski
Lancaster County Planning Commission
50 N. Duke Street
Lancaster, PA 17608

Scott T. Wyland, Esquire
Susan J. Smith, Esquire
Malatesta Hawke & McKcon
P.O. Box 1778
Harrisburg, PA 17105

Joyce A. Nettke, Esquire
Friends of Atglen Susquehanna Trail, Inc.
10 S. Decatur Street
P.O. Box 27
Strasburg, PA 17579

John Phillipowicz
C-TEC Corporation
Rte. 309 DPA Building
Dallas, PA 18612-1015

David Dulick, Esquire
Pennsylvania Power & Light Co.
2 North High Street
Allentown, PA 18101

John S. Halsted, Esquire
Kate Connor-Barand, Esquire
Solicitor, West Sadsburg Township
20 North Church Street
West Chester, PA 19380

James Landis, Chairman
West Sadsburg Township
Board of Supervisors
R.D. 1, Box 404
Parkesburg, PA 19365

H. Joseph Little Chairman
Eden Township Board of Supervisors
489 Stony Hill Road
Quarryville, PA 17566

Dennis Moore
National Railroad Passenger Corporation (AMTRAK)
60 Massachusetts Avenue, NE
Washington, DC 20002

Scott K. Wasserkrug, Esquire
Consolidated Rail Corporation
2001 Market Street 16A
P.O. Box 41416
Philadelphia, PA 19101-1416

Roger Fickes, Director
Bureau of State Parks
Department of Environmental Resources
P.O. Box 8551
Harrisburg, PA 17105-8551

Christopher Arfaa, Esquire
Bell Atlantic-PA, Inc.
Law Department
1717 Arch Street
Floor 32N
Philadelphia, PA 19103

Thomas L. Whiteman, Esquire
Solicitor's Office
Chester County Courthouse
2 North High Street, Suite 7
West Chester, PA 19380-3070

Robert Chambers, Construction Engineer
Sue Hinbach
Suburban Cable Company of Lancaster
P.O. Box 120
Lancaster, PA 17608

Brian MacEwen
Coatesville Water Authority
114 E. Lincoln Highway
Coatesville, PA 19320

John Chase
Quarryville Water Authority
300 Saint Catherine Street
Quarryville, PA 17566

Samuel Morris, Vice President
Legal Department
202 Shoemaker Road
Pottstown, PA 19464

Daniel Mylin, Borough Manager
Barbara Tollinger, Secretary
Borough of Quarryville
330 St. Catherine Street
Quarryville, PA 17566

Nicholas Yoder, Chairman
Sadsbury Township
1077 White Oak Road
Christiana, PA 17509

John Wiker, Chairman
Conestoga Township Supervisors
P.O. Box 98
Conestoga, PA 17516

Ray Marvin, Chairman
Bart Township Supervisors
46 Quarry Road
Quarryville, PA 17566

Alan P. Novac, Esquire
Conrad, O'Brien, Gellman & Rohn
Coatesville Water Authority
11-13 South High Street
West Chester, PA 19382

Joseph J. Kenna, Commissioner
Karen L. Martynick
Chester County
2 North High Street
Suite 512
West Chester, Pa 19380-3066

William T. Keen, Esquire
Keen, Keen & Good
1 Bondsville Road
Downingtown, Pa 19355

James H. Thomas, Esquire
Blakinger, Byler & Thomas, PC
28 Penn Square
Lancaster, PA 17603

Frank Peiffer, Chairman
Martic Township
370 Steinman Farm Road
Pequca, PA 17565

Gerald Duvall, Chairman
Providence Township Supervisors
216 Clearfield Road
New Providence, PA 17509

Melvin E. Newcomer, Esquire
Providence Township
339 North Duke Street
P.O. Box 539
Lancaster, PA 17603

William C. Crosswell, Esquire
Morgan, Hallgren, Crosswell & Kane, P.C.
700 North Duke Street
Lancaster, PA 17604-4686



Jason Sharp
Assistant Counsel
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel-9th Floor
Forum Place, 555 Walnut Street
Harrisburg, Pennsylvania 17101-1900
Telephone No. (717) 787-3128
Fax No. (717) 772-2741

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