



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

IN REPLY PLEASE
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November 26, 1997

CA-00111016
 C-00913256

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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

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

To Whom It May Concern:

This is to advise you that an Opinion and Order has been adopted
 by the Commission in Public Meeting on November 21, 1997 in the above
 entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty

James J. McNulty,
 Secretary

DOCUMENT
 FOLDER

encls
 cert. mail
 law

DOCKETED

DEC 5 1997

See attached list
 for additional
 parties of record.

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held November 21, 1997

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
John Hanger
David W. Rolka

Application of Consolidated Rail
Corporation for the abolition of 31 Cross-
ings of the Enola Branch, LC: 201323,
MP 3.5 to MP 27.0, Sub No. 1095X,
Harrisburg Division, Lancaster County

A-00111016

Board of Supervisors of Bart Township

C-00913256

v.

Consolidated Rail Corporation, Pennsylvania
Department of Transportation, and
Lancaster County, et al.

DOCKETED
DEC 5 1997

OPINION AND ORDER

BY THE COMMISSION:

DOCUMENT
FOLDER

Before the Commission for consideration and disposition is an Application for Supersedeas Pending Proceedings on Petition for Review (Application) filed by Friends of the Atglen-Susquehanna Trail, Inc., (FAST) on November 3, 1997. Specifically, FAST requests that the Commission enter a Supersedeas of its Opinion and Order entered October 9, 1997, relative to the above-captioned proceeding.

History of the Proceeding¹

This Opinion and Order concerns two consolidated proceedings at Docket Nos. C-00913256 and A-00111016. The Complaint Docket at No. C-00913256 was initiated on February 25, 1991, at which time the Commission received the Complaint of the Board of Supervisors of Bart Township against Consolidated Rail Corporation (Conrail), Pennsylvania Department of Transportation (PennDOT) and Lancaster County (County). The proceeding at Docket No. A-00111016 was initiated when Conrail filed an Application with the Commission on September 29, 1993, for approval of the abolition of 31 rail-highway Crossings along its Enola Branch located in Lancaster County.

After consolidation of the proceedings and after negotiations, Conrail reached a Settlement with PennDOT involving State highways, and Conrail also reached an Agreement with the various relevant municipalities regarding the disposition of structures on the rail line. FAST objected to the Settlements and hearings were held by Administrative Law Judge (ALJ) Louis G. Cocheres.

On September 17, 1997, the Recommended Decision of ALJ Cocheres was issued, recommending the approval of the Settlements. Exceptions to the Recommended Decision were filed by FAST, Conrail, Quarryville Borough, and Historic Preservation Trust of Lancaster County (HPT). By Opinion and Order entered on October 9, 1997, the Commission granted the Exceptions in part, thereby modifying the Recommended Decision. On November 3, 1997, FAST filed the instant Application.

¹ A more detailed recitation of the history of the proceeding may be found on pages 4-7 of the Opinion and Order herein entered October 9, 1997.

Discussion

Applications which seek a stay or supersedeas of this Commission's orders are governed by the standards set forth in Pennsylvania Public Utility Commission v. Process Gas Consumers Group, 502 Pa. 545, 467 A.2d 805 (1983) (Process Gas), and Virginia Petroleum Jobbers Association v. Federal Power Commission, 259 F.2d 921 (D.C. Cir. 1958) (Virginia Petroleum). It is well settled that an applicant seeking a stay or supersedeas of a Commission order pending an appeal therefrom is required to:

- (1) make a showing that it is likely to prevail on the merits;
- (2) make a showing that without the requested relief the applicant will suffer irreparable injury;
- (3) make a showing that the issuance of a stay will not substantially harm other interested parties in the proceeding; and
- (4) make a showing that the issuance of a stay will not adversely affect the public interest.

The Pennsylvania Supreme Court refined the foregoing standards by holding that if the remaining three factors strongly favor a grant of relief, a moving party need only make a substantial case on the merits.

In its Application, FAST asserts that it has filed a Petition for Review of the Commission's October 9, 1997 Order in the Commonwealth Court of Pennsylvania. FAST further asserts that it has made a substantial case on the merits in this proceeding, albeit FAST's position has been rejected by the Commission. FAST alleges that irreparable harm will result if a Supersedeas is not granted in the bridges may be demolished, and also the

property may be conveyed and money paid by Conrail to municipal entities, prior to the conclusion of appellate proceedings.

FAST further asserts that it has argued in the prior proceedings herein that the Commission is preempted by federal law from entering the relevant Opinion and Order. FAST notes that this argument has been rejected by the Commission. However, proffers FAST, the Order should not be carried out until the Commonwealth Court has ruled on the jurisdictional issue. FAST also proffers that the issuance of a Supersedeas will not substantially harm the other interest Parties, nor will it adversely affect the public interest.

We note that Rule 1701(b)(1) of the Pennsylvania Rules of Appellate Procedure, reads, in pertinent part, as follows:

(b) Authority of Trial Court or Agency After Appeal. After an appeal is taken or review of a quasijudicial order is sought, the trial court or other governmental unit may:

(1) Take such action as may be necessary to preserve the status quo, correct formal errors in papers relating to the matter, cause the record to be transcribed, approved, filed and transmitted, grant leave to appeal in forma pauperis, grant supersedeas and take other action permitted or required by these rules...(Emphasis added)

Accordingly, it is evident that we do retain jurisdiction of this matter pursuant to the above-quoted Rule.

In order to prevail on an Application for supersedeas, the first criterion under Process Gas, cited supra, is that the applicant must satisfy us that it is likely to prevail on the

merits. In this regard, FAST points to its position that the Commission is preempted by federal law from entering the relevant Opinion and Order. However, as FAST itself notes, this argument has been previously rejected by the Commission. The ALJ stated that there is no requirement that the Surface Transportation Board (STB) must formally approve abandonment of a line before the Commission is permitted to authorize abandonment of crossings. The ALJ concluded that Conrail completed its abandonment proceeding before the STB and that the Commission could exercise jurisdiction over the grade crossings. On this record, we are of the opinion that it is unlikely that FAST will prevail on the issue of jurisdiction in Commonwealth Court.

The second criterion that must be satisfied under Process Gas is a showing that without the grant of the requested relief, the applicant will suffer irreparable injury. In this regard, FAST asserts that it will suffer irreparable injury if a supersedeas is not granted in that the bridges at issue may well be demolished, along with the conveyance of property and payment of money by Conrail to municipal parties, prior to the conclusion of appellate proceedings.

On this issue, we are not persuaded that FAST has established that it will suffer irreparable injury in the absence of the requested relief. In this regard, we note primarily, as discussed extensively in the prior proceedings herein, that FAST does not own the property in question and, therefore, has no direct interest in the properties here at issue. We consider that FAST, without a direct property interest, will not suffer irreparable harm by a decision of this Commission to deny its Application for supersedeas.

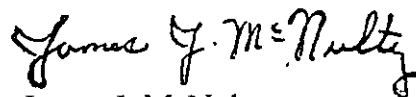
The final two criteria are that the applicant must make a showing that the issuance of a stay (1) will not substantially harm other interested parties, and (2) will not adversely affect the public interest. In this regard, FAST alleges both of these positions, as

Paragraph Nos. 6 and 7 of its Application. With regard to the public interest, FAST asserts that the public interest will be protected by the grant of this Application since "this is a public case with public questions of law involved, including but not limited to adverse effects on historic properties, interpretation of state statutes, and taxpayers' assumption of liabilities through the acquisition of land and bridges by local municipalities. (Application, p. 2).

On review of this issue, however, we find that FAST's bald allegations that neither other interested parties nor the public interest will be adversely affected by our grant of supersedeas do not satisfy the criteria. More is required for satisfaction of these criteria than simply the applicant's statements that a grant of supersedeas will harm neither the public interest nor the interest of the other interested parties. Accordingly, since FAST has failed to satisfy at least three (3) of the criteria as outlined in Process Gas and Virginia Petroleum, supra, its Application will be denied; **THEREFORE,**

IT IS ORDERED: That the Application for Supersedeas Pending Proceedings on Petition for Review filed by Friends of Atglen-Susquehanna Trail, Inc. on November 3, 1997, is denied consistent with this Opinion and Order.

BY THE COMMISSION,


James J. McNulty
Acting Secretary

(SEAL)
ORDER ADOPTED: November 21, 1997
ORDER ENTERED: **NOV 26 1997**