

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Consolidated Rail : Corporation for the abolition of : thirty-one crossings of the Enola: Branch, Harrisburg Division, : Lancaster County. :	Docket Nos. A-00111016
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. :	C-00913256

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INTERIM ORDER NO. 7

The purpose of this order is to grant the Petition Of The Historic Preservation Trust Of Lancaster County, Inc. To Intervene In Proceeding with some limitations and to give notice of the final round of hearings to be held on June 11 and 12, 1997, at 10:00 a.m. in a Commission Hearing Room on the ground floor of the North Office Building, Commonwealth and North Avenues, Harrisburg, Pennsylvania. The hearings will be held in accordance with the instructions contained in Interim Order No. 6.

On April 7, 1997, the Commission received the petition of the Historic Preservation Trust of Lancaster County, Inc. (HPT). In addition, the Commission also received the prepared, testimony of Randolph J. Harris, Executive Director of HPT, on the same day. The petition was signed by Mr. Harris.

On April 21, 1997, the Commission received the Motion Of Bart, Conestoga, Martic, Providence and Sadsbury Townships To

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Dismiss Or Strike The Petition To Intervene By The Historic Preservation Trust Of Lancaster County (Townships motion). By letter dated April 24, 1997, the Commission received the Answer Of Consolidated Rail Corporation To Petition Of The Historic Preservation Trust Of Lancaster County, Inc., To Intervene In Proceeding. By letter dated May 2, 1997, the Pennsylvania Department of Transportation (PennDOT) filed its Response To The Motion Of Bart, Conestoga, Martic, Providence And Sadsbury Townships To Dismiss Or Strike The Petition To Intervene By The Historic Preservation Trust Of Lancaster County.

The petition alleged 1) that HPT was a non profit corporation dedicated to historic preservation in Lancaster County, 2) that the Enola Low Grade Line and its crossing structures were of historic significance, 3) that HPT agreed with the testimony of the Pennsylvania Historical and Museum Commission as submitted by the Friends of the Atglen-Susquehanna Trail (FAST), 4) that Conrail had failed to comply with the National Historic Preservation Act and the Pennsylvania History Code, 5) that the parties had failed to comply with the Pennsylvania History Code, 6) that the pending stipulation agreement between Conrail and the Townships failed to provide for the preservation of the historic structures and 7) that HPT had an interest in the proceeding by virtue of its historic expertise.

The Townships motion alleged 1) that the petition was fatally defective and violative of the Criminal Code for its failure to be submitted by an attorney on behalf of the HPT,

2) that the petition was not timely, 3) that HPT failed to establish its standing, 4) that the petition failed to assert a claim over which the Commission had subject matter jurisdiction and 5) that the late intervention of HPT would prejudice the parties. The Townships requested that the petition be denied and that the HPT testimony be stricken.

The Conrail answer alleged 1) that allegations of HPT about the historic nature of the Enola Low Grade Line and its crossing structures were beyond this Commission's jurisdiction, 2) that FAST had no current or anticipated future ownership of the Enola Low Grade Line, 3) that, even though the issue was not relevant to these proceedings, Conrail had complied with the National Historic Preservation Act and the Pennsylvania History Code, 4) that the HPT petition was not timely, 5) that the HPT intervention would prejudice the parties, 6) that the stipulation agreement adequately provided for preservation of the line and a number of its crossing structures, as well as providing for safety at the crossings and 7) that Conrail joined the motion of the Townships.

The PennDOT response supported and joined the motion of the Townships.

The HPT petition required me to review the History Code, Act 72 of 1988, 37 Pa. C.S. §§101 *et seq.*, and the Historic Preservation Act, Act 72 of 1988, 37 Pa. C.S. §§501 *et seq.*, and the Commission regulations on intervention, 52 Pa. Code §§5.71-

5.76. Having done so, and as noted above, I have concluded that the intervention can be granted with some limitations.

The first objection I analyzed was the question of timeliness. The objecting parties cited no regulation or reservation in the record which restricted the filing of petitions for intervention to any given time period. Accordingly, even the petition was submitted at a late stage of the proceeding, I find that the filing of the petition was not untimely.

The second objection I analyzed was the question of HPT's failure to be represented by counsel. While the unauthorized practice of law may be a violation of the Criminal Code, I have no authority to render a decision on that issue. If the objecting parties want to file charges, that is their decision. Further, I do not regard the submission a petition to intervene by a person not admitted to the bar to be fatally defective to the pleading. The situation is curable. I agree that Commission regulations require a non profit corporation to be represented by an attorney (admitted to the Pennsylvania Bar). 52 Pa. Code §§1.21-1.22. Accordingly, in order for HPT to continue in this proceeding, it must be represented by counsel.

The third objection I analyzed was possible prejudice to the objecting parties by the intervention of HPT at this stage of the proceedings. I note that HPT submitted its prepared testimony at the same time as it submitted its petition. Initially, it would appear that the testimony was served in accordance with my instructions in Interim Order No. 6. However, since HPT was not a

party at that time, it was not subject to discovery until the promulgation of this order. This order could not have been issued before the response time for answering the petition expired. The testimony service schedule was specifically designed to allow the parties to conduct discovery prior to the submission of their rebuttal testimony. Since HPT could not be subject to discovery until this order was issued, I find that the objecting parties have been prejudiced by the lack of opportunity to conduct proper discovery of the HPT.

In addition, I note that the allegations in the petition indicate that HPT was aware of the pendency of this case in February 1996. Had HPT chosen to intervene shortly thereafter, there would have been sufficient time for all parties to conduct any needed discovery. I find that HPT's voluntary delay in requesting intervention unduly restricted the objecting parties' rights to the prejudice of those parties. Accordingly, I will grant the motion to strike the HPT testimony and prohibit the HPT from sponsoring a witness. Consequently, HPT's role will be restricted to the opportunity through counsel to cross-examine witnesses and file briefs and exceptions.

My decision to restrict HPT's participation in this proceeding is enhanced by the allegations in the petition that it supports the testimony of the Pennsylvania Historical and Museum Commission¹ as sponsored by FAST, as well as FAST's position

¹With regard to the Museum Commission witness, I note that I received a telecopy request for the issuance of a subpoena on May 6, 1997 from FAST. No action will be taken to grant or deny this

generally. As a result, I find that the HPT position is substantially like the interest and position of FAST and have deemed it appropriate to limit HPT's presentation. 52 Pa. Code §5.76.

Finally, I analyzed the objection to HPT's standing. I note that the Pennsylvania Historical and Museum Commission is not a party to the proceeding. At this time, the only anticipated Museum Commission participation is as a designated witness by FAST. The question remains whether any other party can raise the issue about historic preservation in addition to the Museum Commission. The answer is found in the Historic Preservation Act which permits any entity to maintain an action in an administrative tribunal for the preservation of any historic resource. 37 Pa. C.S. §512. Accordingly, HPT has statutory standing to submit its petition.

ORDER

NOW THEREFORE, IT IS ORDERED:

1. That the Petition Of The Historic Preservation Trust Of Lancaster County, Inc. To Intervene In Proceeding is hereby granted with some limitations, as noted below.

2. That the Motion Of Bart, Conestoga, Martic, Providence and Sadsbury Townships To Dismiss Or Strike The Petition To Intervene By The Historic Preservation Trust Of Lancaster County, as supported by Consolidated Rail Corporation and the

request until the request conforms to the Commission Rules of Administrative Practice and Procedure, 52 Pa. Code §§1.1 et seq.

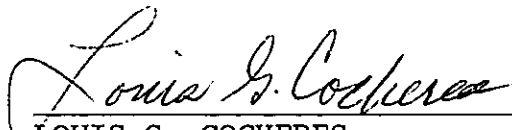
Pennsylvania Department of Transportation, is hereby granted in part.

3. That the Testimony of Randolph J. Harris, Executive Director, of the Historic Preservation Trust Of Lancaster County, Inc. is hereby stricken.

4. That, due to the prejudice caused to the other parties to this case by the intervention of the Historic Preservation Trust Of Lancaster County, Inc., at this time, the Historic Preservation Trust will not be permitted to sponsor a witness on the record of this case.

5. That the Historic Preservation Trust Of Lancaster County, Inc., will not be permitted to participate further in this case until it is represented by an attorney.

6. That the final hearings will be held on June 11 and 12, 1997, at 10:00 a.m. in a Commission Hearing Room on the ground floor of the North Office Building, Commonwealth and North Avenues, Harrisburg, Pennsylvania. The hearings will be held in accordance with the instructions contained in Interim Order No. 6.



LOUIS G. COCHERES
Administrative Law Judge

DATED: May 8, 1997