

ORIGINAL

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August 9, 1995

John G. Alford, Secretary
Pennsylvania Public Utility Commission
Room B-18, North Office Building
P.O. Box 3265
Harrisburg, PA 17105-3265

**DOCUMENT
FOLDER**

DJB

PA. P. U. C.
INFO. CONTROL DIV.

95 AUG 10 AM 10:45

RECEIVED

RE: C-00913256 and A-00111016 Bart Township

Dear Mr. Alford:


Enclosed for filing are two originals plus two copies each of a Motion for Consolidation in the above-referenced matters.

Should you have any questions, please do not hesitate to contact me.

Respectfully yours,

KENELM L. SHIRK, III LAW OFFICE

BY:



Kenelm L. Shirk, III

KLSIII/jld

Enclosure

cc: Ray Marvin
Bart Township Board of Supervisors
Parties of Record

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

FOR THE ABOLITION OF 31 CROSSINGS :
OF THE ENOLA BRANCH, LC: 201323, :
MP 3.5 TO MP 27.0, SUB NO. 1095X, : DOCKET NO. A-00111016
HARRISBURG DIVISION, LANCASTER :
COUNTY :

DOCUMENT
FOLDER

BOARD OF SUPERVISORS OF BART
TOWNSHIP,

Petitioners,

vs.

CONSOLIDATED RAIL CORPORATION,
Respondent,

and

THE PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION AND COMMISSIONERS
OF THE COUNTY OF LANCASTER, et al.

Additional Respondents.

DOCKET NO. C-00913256

DOCKETED

AUG 22 1995

PA. P. U. C.
INFO. CONTROL DIV.

95 AUG 10 AM 10:14

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MOTION FOR CONSOLIDATION

The Board of Supervisors of Bart Township, by and through its attorney, Kenelm L. Shirk, III, hereby files the following Motion for Consolidation in the above-referenced cases, based on the following averments:

1. Petitioner, Bart Township and the other parties in the proceedings docketed at No. C-00913256, entered into a Stipulation on March 5, 1993 that provided, in part that "Bart Township shall remove and replace Lamparter Road bridge...before December 31, 1996." (Paragraph #2 of Stipulation)

2. On September 29, 1993, Consolidated Rail Corporation ("Conrail") filed an application for the abolition of the 31 remaining above grade and below grade crossings located in various

municipalities along its Enola Branch, which crossings exist on either side of the Lamparter Road bridge.

3. Lamparter Road bridge is instrumental to a comprehensive resolution of the issues surrounding the other crossings and is directly interrelated to the success or failure of a trail.

4. Currently, there is no work being done on the Lamparter Road bridge because a Petition for Amendment or Recision regarding the Lamparter Road bridge was filed with the Pennsylvania Public Utility Commission on May 5, 1995 by Bart Township Board of Supervisors.

5. A decision is currently pending regarding the Petition for Amendment or Recision, the terms of which are attached hereto and are incorporated herein by reference.

6. Petitioner is requesting a comprehensive decision by the Pennsylvania Public Utility Commission regarding Lamparter Road bridge as part of the overall decision with regard to the abolition of the Enola Branch.

WHEREFORE, Petitioner requests that the Pennsylvania Public Utility Commission consolidate the above two cases and order a comprehensive decision regarding this matter.

Respectfully Submitted,

KENELM L. SHIRK, III LAW OFFICE

BY: 

Kenelm L. Shirk, III, Esquire
Attorney For Petitioner
Attorney I.D. #19195
115 S. State Street
Ephrata, PA 17522-2412
(717) 733-7997

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

BOARD OF SUPERVISORS OF BART	:	
TOWNSHIP,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
CONSOLIDATED RAIL CORPORATION,	:	No. C-00913256
Respondent	:	
	:	
and	:	
	:	
THE PENNSYLVANIA DEPARTMENT OF	:	
TRANSPORTATION AND	:	
COMMISSIONERS OF THE COUNTY OF	:	
LANCASTER, et al.	:	
Additional Respondents	:	

PETITION FOR AMENDMENT OR RESCISSION

The Board of Supervisors of Bart Township, by and through its attorney, Kenelm L. Shirk, III, hereby files the following Petition For Amendment or Rescission in the above case, based upon the following averments:

1. Petitioner, Bart Township and the other parties in the above-referenced proceedings entered into a Stipulation on March 5, 1993 that provided, in part that "Bart Township shall remove and replace Lamparter Road Bridge in accordance with sketch plan for Lamparter Road Bridge prepared by N.M. Lake and Associates, Inc., dated March 3, 1993 before December 31, 1996." (Paragraph 2 of Stipulation)

2. Further, the Pennsylvania Public Utility Commission (PUC) entered an Order dated June 22, 1993 which stated the following, regarding Lamparter Road Bridge:

"9. That Bart Township, at its sole cost and expense, prepare final right-of-way and construction plans for the replacement of the Lamparter Road Bridge with a roadway over fill and culvert generally in accordance with the preliminary plan submitted with the Stipulation, including property descriptions and metes and bounds for the railroad property to be

appropriated and submit said plans to the Commission and all parties of record by December 31, 1995.

10. That, upon approval of the plans described in ordering Paragraph 9, Bart Township remove the existing Lamparter Road Bridge and replace it with a roadway over fill and culvert in accordance with the approved plans and this order by December 31, 1996 at its sole cost and expense.

11. That, upon completion of the Lamparter Road project, Bart Township is responsible for future maintenance of the entire improvement at its sole cost and expense which shall thereafter remain within its sole control."

3. Following both the Stipulation and PUC Order, Bart Township timely completed the removal of Mount Pleasant Road Bridge according to the Stipulation and Order specifications.

4. After completing the Mount Pleasant Road Bridge renovation, Bart Township is requesting the Commission to rescind or amend its Order regarding the necessity of placing a culvert under the Lamparter Road Bridge for the following reasons, which were unknown at the time that the original Stipulation was signed and the Order was prepared:

A. The renovations of Mount Pleasant Road Bridge cost substantially more than anticipated due to the placement of the culvert as was required by the Order to accommodate F.A.S.T.'S (Friends of the Atglen Susquehanna Trail) wishes. Bart Township currently does not have the necessary funds to complete the Lamparter Road Bridge renovation with the increased cost of placing the culvert under the road. The substantial costs to install the culvert in Mount Pleasant Road resulted in a serious economic blow to the Township, that may not be restored for many years.

B. Originally, during the negotiations, F.A.S.T. proposed that an at-grade continuance for the entire length of the trail was absolutely necessary and therefore the only way to achieve a continuous at-grade trail was to insert a culvert. This concern of F.A.S.T. is no longer relevant as it was discovered that Bart Township would be able to provide a continuation of the trail without the use of the culvert as was originally believed, because F.A.S.T. has, in its Master Plan, proposed at least two other crossings that are not at current grade (for a total of three already planned or implemented).

C. The valley at this crossing is approximately twenty (20) feet in depth, as opposed to the approximate fifty (50) feet in depth at the Mount Pleasant Road Crossing. Accordingly, a twelve to one (12-1) approach grade for access will present a very unsubstantial modification of a walking or riding grade.

D. Currently, the ultimate ownership of the trail is unknown. Bart Township has serious concerns and questions about the ability of F.A.S.T. to own, finance, manage and maintain the trail with the culvert in place in the future.

E. The Mount Pleasant Road culvert has become an attractive nuisance causing serious liability and safety problems with trespassers.

F. There is a substantial chance that there may never be any trail.

5. In light of the new evidence and change of circumstances as presented above, Bart Township is requesting that the Commission rescind or amend the previous Order to reflect that the culvert is no longer necessary in the Lamparter Road Bridge renovations and that Bart Township need not provide the culvert but will follow the original sketch plans and proceed with the Lamparter Road Bridge renovations according to the time table set in the Stipulation and Order.

WHEREFORE, Petitioner requests that the Commission amend or rescind the previous Order by allowing Bart Township to replace the Lamparter Road Bridge without placing a culvert under it.

Respectfully Submitted,

KENELM L. SHIRK, III LAW OFFICE

BY: 

Kenelm L. Shirk, III, Esquire
Attorney For Bart Township
Attorney I.D. #19195
115 S. State Street
Ephrata, PA 17522
(717) 627-0711

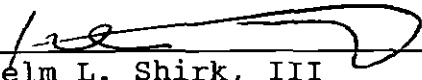
VERIFICATION

I, Valeria Keene, on behalf of Bart Township of which I am the Secretary which party has authorized this verification to be made, have read the foregoing and hereby affirm that it is true and correct to the best of my personal knowledge, or information and belief. This verification and statement is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities. I verify that all the statements made in the foregoing are true and correct and that false statements may subject me to the penalties of 18 Pa. C.S. §4904.

By: Valeria Keene
Valeria Keene

VERIFICATION

I, Kenelm L. Shirk, III, Esquire, of Kenelm L. Shirk, III Law Offices, verify that I am the Solicitor for the Petitioners herein and that I have the permission of the Petitioners to sign this document on his behalf. I further verify that the statements made in this document are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to sworn falsification to authorities.



Kenelm L. Shirk, III
Attorney I.D. No. 19195

Dated: 8/9/95

CERTIFICATE OF SERVICE

I hereby certify that two copies of the Motion for Consolidation were served upon the parties below by First Class Mail:

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Assistant Counsel in Charge
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Department of Transportation
Office of Chief Counsel
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Lancaster, PA 17608

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H. Joseph Little, Chairman
Eden Township Board of Supervisors
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Joseph Duff, Chairman
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Kenelm L. Shirk, III, Esquire

Date: 8/9/95

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August 21, 1995

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CRAIG J. STAUDENMAIER
BENJAMIN C. DUNLAR, JR.
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95 AUG 21 PM 3:13
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INFO. CONTROL DIV.

John G. Alford
Secretary
PA Public Utility Commission
North Office Building
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Harrisburg, PA 17105-3265

DOCKETED

SEP 06 1995

In Re: Conrail Enola Branch - PUC
Docket No. A-00111016
Our File No. 12607
Conrail File No. MPAC-486

In Re: Board of Supervisors of Bart Township v. Consolidated Rail Corporation, Pennsylvania Department of Transportation and Lancaster County
PUC Docket Number C-00913258
Our File No. 12390

DJB

Dear Mr. Alford:

By this letter, Consolidated Rail Corporation formally requests that a mediator be assigned in the above related matters and that the matters be submitted to the Commission's alternative dispute resolution process.

Yours very truly,

David C. Eaton

David C. Eaton / BCD

DCE/ldw

cc: See Attached List

**DOCUMENT
FOLDER**

The Honorable Louis G. Cocheres
Administrative Law Judge
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RECEIVED
95 AUG 21 PM 3:14
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Pennsylvania Department of
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INFO. CONTROL DIV.

ORIGINAL

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(717) 733-7997
(717) 627-0711
TELECOPIER: (717) 733-7991

August 25, 1995

VIA FEDERAL EXPRESS AND FIRST CLASS MAIL

John G. Alford, Secretary
Pennsylvania Public Utility Commission
Room B-18, North Office Building
P.O. Box 3265
Harrisburg, PA 17105-3265

RECEIVED
AUG 25 1995

SECRETARY'S OFFICE
Public Utility Commission

RE: C-00913256 and A-00111016 Bart Township

Dear Mr. Alford:

Enclosed for filing are two originals plus two copies each of a Petition Opposing Conrail and F.A.S.T.'s request for Alternative Dispute Resolution regarding the above-referenced matters.

Should you have any questions, please do not hesitate to contact me.

Respectfully yours,

KENELM L. SHIRK, III LAW OFFICE

BY:

Kenelm L. Shirk, III

KLSIII/jld

Enclosure

cc: Ray Marvin
Bart Township Board of Supervisors
Parties of Record

DOCUMENT
FOLDER

DUB

FILED

SEP 22 1995

2. On August 10, 1995, Petitioner filed a Motion for Consolidation requesting consolidation of the Lamparter Road Bridge and Enola Branch abolition issues.

3. A telephone conference is scheduled for August 29, 1995 in order to discuss consolidation matters and to set a date listing all these matters in these two dockets for trial.

4. On August 21, 1995, Conrail submitted a letter requesting that the matter be submitted to Alternative Dispute Resolution ("ADR").

5. On August 23, 1995, Friends of the Atglen-Susquehanna Trail, Inc. ("F.A.S.T.") also requested that the cases be submitted to ADR.

6. Bart Township avers that submitting the matter to ADR will serve no useful purpose, except to delay the litigation process.

7. The parties involved in these matters have engaged in almost a year of negotiations and held many meetings in order to try to resolve this matter all to no avail.

8. The location is in a state of disrepair, overgrown, and creates a danger to Bart Township property owners and the public.

9. Bart Township avers that this matter should be listed for a trial in a timely manner in order to expedite the resolution of these matters.

10. Therefore, Bart Township for the above reasons opposes Conrail's request for ADR.

WHEREFORE, Petitioner requests that the Pennsylvania Public Utility Commission deny Conrail and F.A.S.T.'s request for Alternative Dispute Resolution.

Respectfully Submitted,

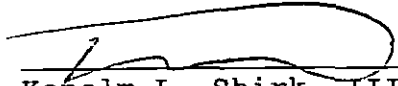
KENELM L. SHIRK, III LAW OFFICE

BY: 

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Attorney For Petitioner
Attorney I.D. #19195
115 S. State Street
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(717) 733-7997

VERIFICATION

I, Kenelm L. Shirk, III, Esquire, of Kenelm L. Shirk, III Law Offices, verify that I am the Solicitor for the Petitioners herein and that I have the permission of the Petitioners to sign this document on his behalf. I further verify that the statements made in this document are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to sworn falsification to authorities.



Kenelm L. Shirk, III
Attorney I.D. No. 19195

Dated: 8/25/95

CERTIFICATE OF SERVICE

I hereby certify that two copies of the Motion for Consolidation were served upon the parties below by First Class Mail:

Gina M. D'Alfonso
Assistant Counsel in Charge
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel
Room 513, Transportation & Safety Building
Harrisburg, PA 17120

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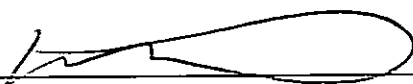
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Kenelm L. Shirk, III, Esquire

Date: 5/25/90

DJB

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September 29, 1995

VIA HAND DELIVERY

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Honorable Louis Cocheres
PA Public Utility Commission
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Building
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Harrisburg, PA 17105

BUCKETED

RE: Enola Branch Case; Docket No. A-00111016

OCT 13 1995

Dear Judge Cocheres and Secretary Alford:

The purpose of this letter is to inform you of two name and address corrections to be made on the official Certificate of Service in the above-referenced matter.

Conestoga Township

Providence Township

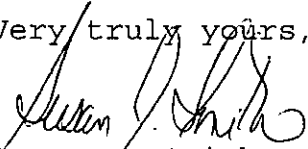
John Wiker, Chairman
Conestoga Township
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Conestoga, PA 17516

Robert Findley
Providence Township
Secretary/Treasurer
200 Mount Airy Road
New Providence, PA 17560

A copy of this letter has been sent to all parties of record.

Thank you for your attention to this matter.

Very truly yours,


Susan J. Smith
Scott T. Wyland

SJS/STW/c11
Enclosure

cc: All Parties of Record
Pa. PUC Scheduling Office

DOCUMENT
FOLDER