

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

29

1. **REPORT DATE:** November 8, 1999

2. **BUREAU AGENDA NO.:**
NOV-1999-OSA-0462*

3. **BUREAU:** Office of Special Assistants

4. **SECTION(S):**

5. **PUBLIC MEETING DATE:**

6. **APPROVED BY:**

November 18, 1999

Director: C. W. Davis 7-1827
Supervisor:

7. **PERSONS IN CHARGE:**

R. H. Albert 7-8108

8. **DOCKET NO.:**

A-00111016, C-00913256

DOCUMENT FOLDER
DOCKETED
BEG 7 1999

9. (a) **CAPTION** (abbreviate if more than 4 lines)
(b) **Short summary of history & facts, documents & briefs**
(c) **Recommendation**

(a) Application of Consolidated Rail Corporation for the abolition of thirty-one (31) crossings of the Enola Branch, LC102323, MP 3.5 to MP 27.0, Sub No. 1095X, Harrisburg Division, Lancaster County, Pennsylvania

(b) On October 18, 1999, Consolidated Rail Corporation filed a Motion to Request Extensions of Time (Petition), pursuant to 52 Pa. Code §1.15. No response opposing Conrail's Petition has been filed. This proceeding involves two (2) consolidated proceedings. The above-captioned proceeding at Docket No. C-00913256 was initiated in 1991. The above-captioned proceeding at Docket No. A-00111016 was initiated in 1993. After preliminary proceedings, we adopted, by Opinion and Order entered on October 9, 1997, the Recommended Decision of Administrative Law Judge Louis G. Cocheres, as modified.

(c) The Office of Special Assistants recommends that the Commission grant Conrail's Petition for Extensions of Time to perform work ordered in the Commission's October 9, 1997 Opinion and Order.

EEF

Order Doc. No. 161698v1

Calendar Doc. No. 160252v1

10. **MOTION BY:** Commissioner Chm. Quain

Commissioner Brownell - Yes

SECONDED: Commissioner Bloom

Commissioner Wilson - Yes

Commissioner Fitzpatrick - Yes

CONTENT OF MOTION: Staff recommendation adopted.



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

IN REPLY PLEASE
REFER TO OOB FILE

November 22, 1999

A-00111016
C-00913256

SCOTT WASSERKRUG ASST GEN CNSL
CONSOLIDATED RAIL CORPORATION
LEGAL DEPT 16-A
2001 MARKET STREET 2 COMMERCE SQ
P O BOX 41416
PHILADELPHIA PA 19101-1417

Application of Consolidated Rail Corporation
for the abolition of thirty-one (31) crossings
of the Enola Branch, LC102323, MP 3.5 to
MP 27.0 Sub No. 1095X, Harrisburg Division,
Lancaster County Pennsylvania

Boear of Supervisors of Bart Township

v.

Consolidated Rail Corporation, et al.

DOCUMENT
FOLDER

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 18, 1999 in the above entitled proceeding.

An Order has been enclosed for your records.

DOCKETED Very truly yours,
NOV 30 1999 *James J. McNulty*

James J. McNulty
Secretary

law
encls
cert. mail
See attached
for additional
parties of record

SRB

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held November 18, 1999

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
Nora Mead Brownell
Aaron Wilson, Jr.
Terrance J. Fitzpatrick

Application of Consolidated Rail Corporation for the
abolition of thirty-one (31) crossings of the Enola
Branch, LC102323, MP 3.5 to MP 27.0, Sub
No. 1095X, Harrisburg Division, Lancaster County,
Pennsylvania

A-00111016

Board of Supervisors of Bart Township

C-00913256

v.

DOCKETED
NOV 30 1999

Consolidated Rail Corporation, et al.

**OPINION AND ORDER DOCUMENT
FOLDER**

BY THE COMMISSION:

Before us for disposition is a Motion to Request Extensions of Time
(Petition), filed by Consolidated Rail Corporation (Conrail) on October 18, 1999,
pursuant to 52 Pa. Code §1.15. No response opposing Conrail's Petition has been filed.

History of the Proceedings

This proceeding involves two (2) consolidated proceedings at Docket
Nos. C-00913256 and A-00111016. The Complaint at Docket No. C-00913256 was

initiated on February 25, 1991. Docket No. A-00111016 was initiated when Conrail filed an Application with the Commission on September 29, 1993, for approval of the abolition of thirty-one (31) rail-highway crossings along its Enola Branch located in Lancaster County.

After preliminary proceedings, we adopted, by Opinion and Order entered October 9, 1997, the Recommended Decision of Administrative Law Judge (ALJ) Louis G. Cocheres, as modified.

A Stipulation of Settlement among the Parties was approved, consistent with the October 9, 1997 Opinion and Order.

By Order entered October 9, 1997, Conrail was directed to perform certain specified work at a number of the involved crossings. Conrail states in its Petition that it was hindered from performing the work ordered due to the efforts of the Friends of the Atglen-Susquehanna Trail, Inc. (FAST) to obtain a supersedeas of the Commission's Opinion and Order entered October 9, 1997, before the Commission, the Commonwealth Court and the Pennsylvania Supreme Court. On June 29, 1999, the supersedeas was denied by the Supreme Court of Pennsylvania, Middle District.

In addition, Conrail asserts that it is subject to a Decision of the Interstate Commerce Commission (ICC) served February 22, 1990, which imposed an historic preservation condition. Conrail was required to retain its interest in, and take no steps to alter, the historic integrity of the bridges on the line until completion of the Section 106 process of the National Historic Preservation Act (NHPA), 16 U.S.C. 470f. The 1990 decision of the ICC was modified by Decision of the Surface Transportation Board (STB), served on October 2, 1997, which modified the original stay condition imposed by the ICC, so that it would apply only to those bridges which have been determined by the Pennsylvania Historic Preservation as being eligible for listing in the National Register

and to potential archeological sites near certain bridges, as noted in the September 4, 1991 Letter to J. Mikowychok of the Lancaster County Department of Parks and Recreation. The stay conditions imposed in the 1990 ICC Decision, as modified by the 1997 STB Decision, which prevented Conrail from removing certain structures, remained in effect until a Decision of the STB served August 13, 1999.

On or about October 18, 1999, Conrail filed a Motion to Request Extensions of Time to comply with the October 9, 1997 Order. No party has filed a response opposing the request.

Discussion

In its Petition filed on October 18, 1999, Conrail represents that, due to the STB stay preventing it from performing demolition of Crossings No. 10, 15, 16 and 21, and due to the uncertainty regarding Conrail's authority to perform work at any crossing while FAST's request for a supersedeas was outstanding, Conrail requests the following extensions of time to perform the work ordered in the Commission's Opinion and Order entered on October 9, 1997, for the following reasons:

- a. An extension of time until April 30, 2000, to install fencing along the parapets of the bridge crossing Noble Road partly in East Sadsbury Township, Chester County, and Sadsbury Township, Lancaster County (Crossing No. 2), amending Ordering Paragraph No. 22.
- b. An extension of time until December 31, 2000, to remove the structure at U.S. Route 222 in Providence Township (Crossing No. 16), amending Ordering Paragraph No. 92.
- c. An extension of time until June 30, 2001, to remove Amtrak's transmission line towers from the Martic Forge Bridge in Conestoga Township (Crossing

No. 38) and resuspend the line, amending Ordering Paragraph No. 149.

- d. An extension of time until December 31, 2001, to:
- (i) remove the crossing structure at White Oak Road in Sadsbury Township (Crossing No. 4), amending Ordering Paragraph No. 39;
 - (ii) remove the crossing structure at Pumping Station Road in Eden Township (Crossing No. 10), amending Ordering Paragraph No. 70;
 - (iii) remove the structure at Oak Bottom Road in Providence Township (Crossing No. 15), amending Ordering Paragraph No. 86;
 - (iv) remove the crossing structure at Hollow Road (West) in Providence Township (Crossing No. 21), amending Ordering Paragraph No. 114;
 - (v) remove the crossing structure at Sigman Road in Providence Township (Crossing No. 26), amending Ordering Paragraph No. 136.

Conrail recognizes that the crossing structure at U.S. Route 222 in Providence Township (Crossing No. 16) presents a particular, potential public safety hazard and has addressed this by requesting a more limited extension of time to remove this structure now that the STB's Stay Order prohibiting removal of this and other structures as been lifted.

On June 1, 1999, the subject rail line was conveyed to Pennsylvania Lines, LL., a wholly-owned subsidiary of Conrail. Norfolk Southern Railway Company has the right to operate on lines owned by Pennsylvania Lines, LL.

We note that Section 1.15(a)(1) of our Regulations, 52 Pa. Code §1.15(a)(1), which governs petitions for extension of time within which to comply with an Order of the Commission provides, in pertinent part, as follows:

Except as otherwise provided by statute, whenever under this title or by order of the Commission, or notice given thereunder, an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, by the Commission, the presiding officer or other authorized person, for good cause be extended upon motion made before expiration of the period originally prescribed or as previously extended. Upon motion made after the expiration of the specified period, the act may be permitted to be done where reasonable grounds are shown for the failure to act.

Premised on our review of the record it is apparent to us that Conrail has diligently pursued this project. Our review of Conrail's request leads us to conclude that it is reasonable, appropriate, and in the public interest to grant Conrail additional time to comply with our October 9, 1997 Opinion and Order. Accordingly, we shall grant Conrail's request for extensions of time within which to comply with our Order of October 9, 1997; **THEREFORE,**

IT IS ORDERED:

1. That the Petition for Extensions of Time filed on October 18, 1999, requesting extensions of time within which to comply with the Order entered October 9, 1997, is granted, consistent with this Opinion and Order.

2. That the Order entered October 9, 1997, be modified as follows:

Crossing No. 1 - Paragraph No. 22

That Consolidated Rail Corporation, at its sole cost and expense, by April 30, 2000, furnish all material and do all work necessary to install fencing along the parapets of the bridge.

Crossing No. 16 - Paragraph No. 92

That Consolidated Rail Corporation, having agreed to do so, at its sole cost and expense, by December 31, 2000, furnish all materials and do all work necessary to remove the bridge substructure and superstructure to a point two (2) feet below the surrounding ground line, and to grade the embankments behind the structure to a two-to-one slope, and to grade, seed and mulch the areas thus disturbed to prevent soil erosion, all in a safe and satisfactory condition.

Crossing No. 28 - Paragraph No. 149

That Consolidated Rail Corporation, by June 30, 2001, at its sole cost and expense, furnish all material and do all work necessary to remove the National Railroad Passenger Corporation's transmission line towers from the bridge, and to resuspend the line, in a manner satisfactory to National Railroad Passenger Corporation. That National Railroad Passenger Corporation cooperate with Consolidated Rail Corporation to permit this work, and further that National Railroad Passenger Corporation cooperate with Consolidated Rail Corporation in the removal of said towers and resuspension of the transmission line.

Crossing No. 4 - Paragraph No. 39

That Consolidated Rail Corporation, having agreed to do so, at its sole cost and expense, by December 31, 2001, furnish all materials and do all work necessary to remove the bridge substructure and superstructure to a point two (2) feet below the surrounding ground line, and to grade the embankments behind the

structure to a two-to-one slope, and to grade, seed and mulch the areas thus disturbed to prevent soil erosion, all in a safe and satisfactory condition.

Crossing No. 10 - Paragraph No. 70

That Consolidated Rail Corporation, having agreed to do so, at its sole cost and expense, by December 31, 2001, furnish all materials and do all work necessary to remove the bridge substructure and superstructure to a point two (2) feet below the surrounding ground line, and to grade the embankments behind the structure to a two-to-one slope, and to grade, seed and mulch the areas thus disturbed to prevent soil erosion, all in a safe and satisfactory manner.

Crossing No. 15 - Paragraph No. 86

That Consolidated Rail Corporation, having agreed to do so, at its initial cost and expense, by December 31, 2001, furnish all material and do all work necessary to remove the bridge substructure and superstructure to a point two (2) feet below the surrounding ground line, and to grade the embankments behind the structure to a two-to-one slope, and to grade, seed and mulch the areas thus disturbed to prevent soil erosion, all in a safe and satisfactory condition.

Crossing No. 21 - Paragraph No. 114

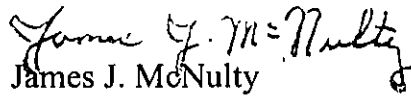
That Consolidated Rail Corporation, having agreed to do so, at its initial cost and expense, by December 31, 2001, furnish all materials and do all work necessary to remove the bridge substructure and superstructure to a point two (2) feet below the surrounding ground line, and to grade the embankments behind the structure to a two-to-one slope, and to grade, seed and mulch the areas thus disturbed to prevent soil erosion, all in a safe and satisfactory condition.

Crossing No. 26 - Paragraph No. 136

That Consolidated Rail Corporation, having agreed to do so, at its initial cost and expense, by December 31, 2001, furnish all material and do all work necessary to remove the bridge substructure and superstructure to a point two (2) feet below the surrounding ground line, and to grade the embankments behind the structure to a two-to-one slope, and to grade, seed and mulch the areas thus disturbed to prevent soil erosion, all in a safe and satisfactory condition.

3. That in all other respects not inconsistent herewith, the Order of October 9, 1997, shall remain in full force and effect.

THE COMMISSION,


James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: November 18, 1999

ORDER ENTERED: **NOV 22 1999**