

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**  
**Uniform Cover and Calendar Sheet**

24

<b>1. REPORT DATE:</b> February 1, 2000	<b>2. BUREAU AGENDA NO.:</b> FEB-2000-OSA-0048*
<b>3. BUREAU:</b> Office of Special Assistants	
<b>4. SECTION(S):</b>	<b>5. PUBLIC MEETING DATE:</b> February 10, 2000
<b>6. APPROVED BY:</b> Director: C. W. Davis 7-1827 Supervisor: <i>Call</i>	FEB 17 2000 <b>DOCKETED</b>
<b>7. PERSONS IN CHARGE:</b> R. H. Albert 7-8108	
<b>8. DOCKET NO.:</b> A-00111016; C-00913256	<b>DOCUMENT FILED</b>

**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 31 Crossings of the Enola Branch . . . Harrisburg Division, Lancaster County; Board of Supervisors of Bart Township v. Consolidated Rail Corporation, Pennsylvania Department of Transportation, and Lancaster County, et al.

(b) This proceeding involves two (2) consolidated proceedings at the above-captioned docket numbers. The Complaint proceeding was initiated in 1991 and the Application docket was initiated in 1993, when Consolidated Rail Corporation (Conrail) filed an Application seeking Commission approval to abolish thirty-one (31) crossings along its Enola Branch in Lancaster County. After preliminary proceedings, the Commission substantially adopted, by Opinion and Order entered on October 9, 1997, the Recommended Decision of ALJ Louis G. Cocheres. A Stipulation of Settlement among the Parties was thereby approved. On January 11, 2000, Sadsbury Township, Bart Township and Martic Township (Townships) filed the instant Motion for Extension of Time (Motion). On January 19, 2000, Pennsylvania Department of Transportation (PennDOT) filed the instant Petition to Modify Order (Petition).

(c) The Office of Special Assistants recommends that the Commission adopt a proposed Opinion and Order which: (1) grants the Townships' Motion; (2) grants PennDOT's Petition; and (3) makes the appropriate modifications to the Commission's Order entered on October 9, 1997.

Order Doc. No. 174088v1

Calendar Doc. No. 172218v1

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

Commissioner Brownell - Yes

Commissioner Wilson - Yes

**SECONDED:** Commissioner Bloom

Commissioner Fitzpatrick - Yes

**CONTENT OF MOTION:** Staff recommendation adopted.

SRB



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

IN REPLY PLEASE  
REFER TO OUR FILE

FEBRUARY 16, 2000

A-00111016  
C-00913256

DOCUMENT  
FOLDER

TO ALL PARTIES

Application of Consolidated Rail Corporation of the abolition of thirty-one crossings  
of the Enola Branch, LC: 201323, MP 3.52 to MP 27.0, Sub No. 1095X,  
Harrisburg Division, Lancaster County  
A-00111016

Board of Supervisors of Bart Township  
V.

Consolidated Rail Corporation, Pennsylvania Department of Transportation,  
and Lancaster County, et al.  
C-00913256

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on February 10, 2000 has  
adopted an Opinion and Order in the above-entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

**DOCKETED**  
FEB 29 2000

James J. McNulty  
Secretary

Enclosure  
Certified Mail  
FG

See Attached Listing

SRB

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

Public Meeting held February 10, 2000

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 31 Crossings of the Enola Branch  
LC: 201323, MP 3.52 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.

DOCUMENT  
FOLDER

**OPINION AND ORDER**

**DOCKETED**  
FEB 29 2000

**BY THE COMMISSION:**

Before the Commission for consideration and disposition are the following documents: (1) the Motion to Request Extension of Time (Motion) filed by Sadsbury Township (Sadsbury), Bart Township (Bart) and Martic Township (Martic), collectively, (the Townships) on January 11, 2000; and (2) the Petition to Modify Order (Petition) filed by Pennsylvania Department of Transportation (PennDOT) on January 19, 2000, relative to the above-captioned consolidated proceedings. Both the Motion and the Petition refer

to the Commission's Opinion and Order entered herein on October 9, 1997 (Order). No response opposing the Townships' Motion or PennDOT's Petition has been filed.

### **History of Proceeding**

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

After preliminary proceedings, the Commission, per Opinion and Order entered on October 9, 1997, adopted the Recommended Decision of Administrative Law Judge (ALJ) Louis G. Cocheres, as modified. A Stipulation of Settlement among the Parties was subsequently approved, consistent with the October 9, 1997 Opinion and Order.

In their Motion, the Townships point out that, following the entry of the October 9, 1997 Opinion and Order referenced *supra*, Friends of the Atglen-Susquehanna Trail, Inc. (FAST) engaged in efforts to obtain a supersedeas of the Order before the Commission, the Commonwealth Court, and the Pennsylvania Supreme Court. In addition, FAST filed Petitions for Allowance of Appeal of the Order with the Commonwealth Court and Supreme Court.

By Order of the Pennsylvania Supreme Court dated June 28, 1999, at Docket No. 782 M.D. Allocatur Docket 1998, the Supreme Court denied FAST's Petition

for Allowance of Appeal and its Application for review of the Commonwealth Court Order denying supersedeas.<sup>1</sup> (Motion, p. 1).

The Townships point out in their Motion that the Stipulation of Settlement (Settlement) between Conrail and seven (7) named townships (including Sadsbury, Bart and Martic) was approved by the Commission in its Order entered on October 9, 1997. The October 9, 1997 Order anticipated the transfer of ownership of the subject bridges and payment of certain sums of money by Conrail to the Townships. However, the efforts undertaken by FAST referenced *supra*, have delayed the transfer and payment to the Townships, including Sadsbury, Bart and Martic. The Townships note that they do not yet own the subject bridges or the associated real property of the former railway line. (Motion, p. 2).

The Townships' Motion and PennDOT's Petition were filed as noted above. No Party has filed a response opposing these requests.

### **Discussion**

We note that Section 1.15 of our Regulations, 52 Pa. Code §1.15, confers upon us the authority and discretion to grant an extension of time. Section 1.15 provides, in pertinent part, as follows:

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<sup>1</sup> A copy of the Supreme Court's Order is attached to the Townships' Motion as "Exhibit A."

**§1.15. Extensions of time and continuances**

- (a) Extensions of time shall be governed by the following:

Except as otherwise provided by statute, whenever under this title or by order of the Commission, . . . 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 the 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.

In the Motion sponsored by Sadsbury, Bart and Martic, each Township petitioned separately for the grant of an extension of time. We shall address each request as well as PennDOT's Petition separately.

**Motion of Sadsbury Township**

In support of its Motion, Sadsbury represents that the Commission's Order required Sadsbury to perform certain specified work at the Orchard Road Crossing (Crossing No. 2), as detailed in the referenced ordering paragraphs set forth below:

28. That Sadsbury Township, at its sole cost and expense, within two (2) years from the date of entry of this Opinion and Order, furnish all materials and do all work necessary to remove the bridge substructure and superstructure to a point two (2) feet below the grade of the new highway.

29. That Sadsbury Township, within two (2) years from the entry date of this Opinion and Order, at its sole cost and expense, furnish all materials and do all work necessary to construct a new highway on embankment for the class and volume of traffic using the highway. Said construction is to include a pipe(s) at the bottom of the embankment to provide for surface water drainage through the embankment along the ditches or swales. All embankments shall be graded, seeded and mulched to prevent soil erosion.

With respect to both ordering paragraphs referenced above, Sadsbury is requesting an extension of time of two (2) years, until December 31, 2001, in order to complete the work specified in the above-quoted paragraphs. In support of this request, Sadsbury asserts that the efforts of FAST to obtain a supersedeas of the Commission's Order, recounted above, resulted in a period of uncertainty regarding Sadsbury's authority to perform work at any crossing. (Motion, p. 3).

### **Motion of Bart Township**

In support of its Motion, Bart represents that the Commission's Order required Bart to perform certain specified work at the Lamparter Road Crossing (Crossing No. 7A), as detailed in the referenced ordering paragraphs set forth below:

58. That Bart Township, having agreed to do so, at its sole cost and expense, within one (1) year from the date of entry of this Opinion and Order, furnish all materials and do all work necessary to remove the bridge substructure and superstructure to a point two (2) feet below the grade of the new highway.
59. That Bart Township, within one (1) year from the date of entry of this Opinion and Order, at

its sole cost and expense, furnish all materials and do all work necessary to construct a new highway on embankment for the class and volume of traffic using the highway. Said construction is to include a pipe(s) at the bottom of the embankment to provide for surface water drainage through the embankment along the ditches or swales. All embankments shall be graded, seeded and mulched to prevent soil erosion.

With respect to both ordering paragraphs referenced above, Bart is requesting an extension of time of two (2) years, until December 31, 2001, in order to complete the work specified in the above-quoted paragraphs. Like Sadsbury, Bart also asserts that the efforts of FAST to obtain a supersedeas of the Commission's Order, recounted above, resulted in a period of uncertainty regarding Bart's authority to perform work at any crossing. (Motion, p. 4).

### **Motion of Martic Township**

In support of its Motion, Martic represents that the Commission's Order required Martic to perform certain specified work at the Marticville Road Crossing (Crossing No. 27), as detailed in the referenced ordering paragraph set forth below:

142. That, if Pennsylvania Department of Transportation has not within two (2) years from the date of entry of this Opinion and Order let a contract to reconstruct and realign S.R. 0324, Marticville Road, then Martic Township, having agreed to do so, at its sole cost and expense, within three (3) years from the date of entry of this Opinion and Order, furnish all materials and do all work necessary to remove the bridge substructure and superstructure to a point two (2) feet below the surrounding groundline, and to grade the embankments behind the

structure to a 2-to-1 slope, and to grade, seed and mulch the areas thus disturbed to prevent soil erosion, all in a safe and satisfactory condition. [Emphasis in original].

With respect to paragraph no. 142, quoted *supra*, Martic is requesting an extension of time of three (3) years, until December 31, 2002, in order to complete the work specified in the above-quoted paragraph. In support of its request, Martic represents that the efforts of FAST to obtain a supersedeas of the Commission's Order, recounted above, resulted in a period of uncertainty regarding Martic's authority to perform work at any crossing. (Motion, p. 6).

On review of the Townships' Motion, we find it to be meritorious. We are persuaded by the Townships' assertions that the efforts of FAST to obtain a supersedeas of the Commission's Order herein resulted in uncertainty as to their authority to perform the required work, and as a result, there was a concomitant delay in completing the work in a timely manner. (Motion, pp. 3, 4, 6).

Additionally, the Townships have adduced, and we accept, the following factors which militate toward a grant of the instant Motion: (1) the grant of the Motion will not cause any decrease in safety or any additional threat of harm to the public through the duration of the requested periods of time extension; (2) the Townships have asserted reasonable grounds for a grant of the time extensions requested; and (3) counsel for PennDOT, Conrail and the additional Townships of Conestoga and Providence have informed the Townships that they do not oppose the requests for extensions of time.

## **PennDOT's Petition**

In support of its Petition, PennDOT represents that the Commission's Order required PennDOT to perform certain specified work at numerous crossings within certain specified timeframes. However, PennDOT asserts that it has not at this juncture completed the work assigned due to the pendency of the appeal process initiated by FAST, as outlined above. The issue of the supersedeas was finally determined by Order of the Pennsylvania Supreme Court dated June 28, 1999, at Docket No. 782 M.D. Allocatur Docket 1998.

Accordingly, PennDOT requests that the Commission modify the timeframes within its Order with respect to the following crossings: Nos. 1, 14, 17, 23, 24, and 27.<sup>2</sup> The numbered ordering paragraphs of our October 9 Order are as follows: Nos. 23, 82, 99, 100, 124, 129, and 142.<sup>3</sup>

On review of PennDOT's Petition, we find it to be meritorious. As discussed above, the efforts of FAST to obtain a supersedeas of the Commission's Order herein resulted in a delay in PennDOT's ability to proceed with the timely completion of the work which it had been assigned. (Petition, p. 2).

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<sup>2</sup> We note that the modifications requested by PennDOT with regard to the timeframe for completion of the work involved at Crossing No. 27 has already been made in response to the Motion of Martic Township, *supra*. Accordingly, we will make no further modification to the relevant ordering paragraph, which is Ordering Paragraph No. 142.

<sup>3</sup> See Footnote No. 2, *supra*.

Accordingly, the Townships' Motion and PennDOT's Petition will be granted, and the requisite changes will be made to the relevant Ordering Paragraphs in the Opinion and Order entered on October 9, 1997; **THEREFORE,**

**IT IS ORDERED:**

1. ( That the Motion to Request Extension of Time filed by Sadsbury Township, Bart Township and Martic Township (collectively, the Townships) on January 11, 2000, requesting extensions of time within which to comply with the Opinion and Order entered on October 9, 1997, is granted, consistent with this Opinion and Order. )

2. ( That the Petition to Modify Order filed by Pennsylvania Department of Transportation on January 19, 2000, requesting an extension of time within which to comply with the Opinion and Order entered on October 9, 1997, is granted, consistent with this Opinion and Order. )

3. ( That the Opinion and Order entered herein on October 9, 1997, be modified ) as follows with respect to the work to be performed by the Townships:

Crossing No. 2 – Paragraph Nos. 28 and 29 (Orchard Road)

28. ( That Sadsbury Township, 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 grade of the new highway. )

29. ( That Sadsbury Township, by **December 31, 2001**, at its sole cost and expense, furnish all materials and do all work necessary to construct

a new highway on embankment for the class and volume of traffic using the highway.) Said construction is to include a pipe(s) at the bottom of the embankment to provide for surface water drainage through the embankment along the ditches or swales. All embankments shall be graded, seeded and mulched to prevent soil erosion.

Crossing No. 7A – Paragraph Nos. 58 and 59 (Lamparter Road)

58. ( That Bart Township, 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 grade of the new highway.)
59. ( That Bart Township, by **December 31, 2001**, at its sole cost and expense, furnish all materials and do all work necessary to construct a new highway on embankment for the class and volume of traffic using the highway.) Said construction is to include a pipe(s) at the bottom of the embankment to provide for surface water drainage through the embankment along the ditches or swales. All embankments shall be graded, seeded and mulched to prevent soil erosion.

Crossing No. 27 – Paragraph No. 142 (Marticville Road)

142. ( That, if Pennsylvania Department of Transportation has not, within two (2) years from the date of entry of this Opinion and Order, let a contract to reconstruct and realign S.R. 0324, Marticville Road, then Martic Township, having agreed to do so, at its sole cost and expense, by **December 31, 2002**, furnish all materials and do all work necessary to remove the bridge →

substructure and superstructure to a point two (2) feet below the surrounding groundline, and to grade the embankments behind the structure to a 2-to-1 slope, and to grade, seed and mulch the areas thus disturbed to prevent soil erosion, all in a safe and satisfactory condition. )

4. ( That the Opinion and Order entered herein on October 9, 1997, be modified) as follows with respect to the work to be performed by PennDOT:

Crossing No. 1 – Paragraph No. 23

23. ( That Pennsylvania Department of Transportation, at its sole cost and expense, by **June 30, 2000**, furnish all materials and do all work necessary to perform safety related modifications at the Crossing location,) <sup>LC</sup> including, but not limited to, installation of guide rail and any required signs that Pennsylvania Department of Transportation shall deem necessary for the safety of the travelling public.

Crossing No. 14 – Paragraph No. 82

82. ( That Pennsylvania Department of Transportation, at its sole cost and expense, by **June 30, 2000**, furnish all materials and do all work necessary to perform safety related modifications at the Crossing location,) <sup>LC</sup> including, but not limited to, installation of guide rails and repair of loose stone.

Crossing No. 17 – Paragraph Nos. 99 and 100

99. ( That Pennsylvania Department of Transportation, 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) <sup>etc</sup> to a point two (2) feet below the surrounding ground line, and to grade, seed and mulch the areas thus disturbed to prevent soil erosion, all in a safe and satisfactory condition.
100. ( That Pennsylvania Department of Transportation, at its sole cost and expense, by **December 31, 2001**, furnish all materials and do all work necessary to construct a new highway, on partial embankment if necessary,) <sup>etc</sup> on a new alignment so as to remove the sharp turns in the existing highway. The new highway is to be constructed for the class and volume of traffic using the highway. Said construction is to include a pipe(s) to provide for surface water drainage under the highway along the existing ditches or swales. All areas thus disturbed shall be graded, seeded and mulched to prevent soil erosion.

Crossing No. 23 – Paragraph No. 124

124. ( That Pennsylvania Department of Transportation, by **June 30, 2000**, at its sole cost and expense, furnish all materials and do all work necessary to: (1) undertake any currently needed maintenance and repair of the structure,) <sup>etc</sup>. (2) remove the existing sidewalks and curbs and to construct new paved shoulders in this area, and (3) undertake such additional work as it may deem desirable for the safety of highway

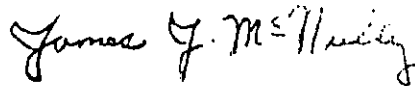
travelers, including installation of guide rails and signage.

Crossing No. 24 – Paragraph No. 129

129. ( That Pennsylvania Department of Transportation, by **June 30, 2000**, at its sole cost and expense, furnish all materials and do all work necessary, as it may deem desirable, for the safety of highway travelers, including installation of guide rails and signage. )

5. ( That in all other respects not inconsistent herewith, and except as it has been otherwise modified by order of this Commission, our Opinion and Order entered herein on October 9, 1997, shall remain in full force and effect. )

**BY THE COMMISSION,**



James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: February 10, 2000

ORDER ENTERED: **FEB 16 2000**