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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Amended Application to the Department of
Transportation of the Commonwealth of
Pennsylvania for approval to replace the
existing overhead bridge and request
exemptions for horizontal clearances where
S.R. 0072, Section 006 (Fruitville Pike)
crosses over the tracks of National Railroad
Passenger Corporation (Amtrak) (AAR No.
518 172 T) in the City of Lancaster and
Manheim Township, Lancaster County; and
the allocation of costs incident thereto.

Susan Wood

v.

National Railroad Passenger Corporation

DOCUMENT
FOLDER

A-00117798

C-20042702

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EXCEPTIONS OF THE CITY OF LANCASTER
TO RECOMMENDED DECISION

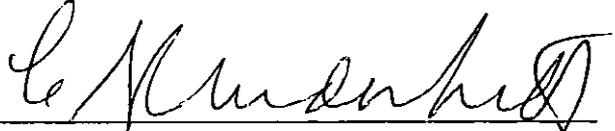
The City of Lancaster objects to that portion of the Recommended Decision that requires the City to "complete all repairs to the sidewalk and create a smooth walking surface on the bridge carrying S.R. 222 (Lititz Pike)" within six months. Because of the budgetary process, the funds for the cost of the repairs cannot be appropriated and the work completed within the recommended time period. The City requests that the time period be enlarged to one year from the receipt of the Commissions Order.

The City points out that the work could not be performed during the winter months and, therefore, extending the time will not have any significant effect on the performance of the repair. The City intends to do the repair work before the 2006-2007 winter season.

The City of Lancaster respectfully requests that the Commission enlarge the period of time to repair the sidewalk on the Lititz Pike Bridge from six months to one year.

Respectfully submitted,

HARTMAN UNDERHILL & BRUBAKER LLP

By: 

Christopher S. Underhill

Attorney I.D. #07013

Attorneys for the City of Lancaster

221 East Chestnut Street
Lancaster, PA 17602
(717) 299-7254

PROOF OF SERVICE

I HEREBY CERTIFY that I am this day serving the foregoing Exceptions of the City of Lancaster to Recommended Decision on the persons and in the manner indicated below.

Service by First Class Mail, addressed as follows:

Kenneth Zielonis, Esquire
Stevens & Lee
4750 Lindle Road
Harrisburg, PA 17111

Dennis Moore, Esquire
60 Massachusetts Avenue NE
Washington DC 20002

PennDOT
Attn: Jason D. Sharp, Esquire
Assistant Counsel
Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105-8212

Benjamin C. Dunlap, Jr., Esquire
Nauman, Smith, Shissler & Hall, LLP
18th Floor
200 North Third Street
P. O. Box 840
Harrisburg, PA 17108-0840

Ms. Susan Wood
1980 Sterling Place
Lancaster, PA 17601

~~RECEIVED~~
~~05 AUG 32 AM 9:24~~
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SECRETARY'S BUREAU

Dated: 08/31/05, 2005

HARTMAN UNDERHILL & BRUBAKER LLP

By: 

Christopher S. Underhill
Attorney I.D. #07013
Attorneys for City of Lancaster

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SEP 01 2005

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

221 East Chestnut Street
Lancaster, PA 17602
(717) 299-7254

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Amended Application of the Department of :
Transportation of the Commonwealth of :
Pennsylvania for approval to replace the :
existing overhead bridge and request :
exemptions for horizontal clearances where :
S. R. 0072, Section 006 (Fruitville Pike) :
crosses over the tracks of National Railroad :
Passenger Corporation (Amtrak) (AAR No. :
518 172 T) in the City of Lancaster and :
Manheim Township, Lancaster County; and :
the allocation of costs incident thereto. :

A-00117798

Susan Wood :

C-20042702

v. :

National Railroad Passenger Corporation :

REPLY OF COMPLAINANT SUSAN WOOD TO EXCEPTIONS
OF THE CITY OF LANCASTER TO RECOMMENDED DECISION

The City of Lancaster has filed exceptions to item # 5 in the Administrative
Law Judge's recommended order. Item # 5 addresses the sidewalk on the Leitz Pike
Bridge. Specifically, it states,

within six (6) months of receipt of the Commission's
Order, the City of Lancaster shall complete all repairs
to the sidewalk and create a smooth walking surface [on
the bridge] and thereafter, the City of Lancaster shall
furnish all material and do all work necessary to
maintain in a safe condition, remove debris and
promptly remove snow from the sidewalk of the
[bridge].

In its exceptions, the City of Lancaster has requested that the time period for
its completion of repairs to the sidewalk and creation of a smooth walking surface be
enlarged to one year.

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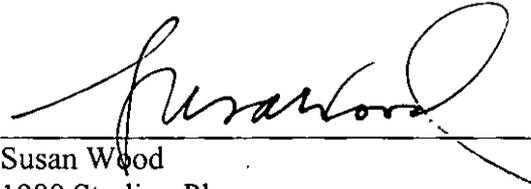
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SEP 29 2005

In reply to the City's exceptions, I request that the Commission require the City to begin removal of the debris and snow from the sidewalk without needless delay, regardless of when the repairs and surface improvements are completed.

Delaying removal of debris and snow until after the completion of the repairs and surface improvements jeopardizes the safety of the public, especially in the winter when the accumulation of ice and snow on the bridge creates treacherous conditions.

WHEREFORE, I respectfully request that the Commission require the City of Lancaster to begin the removal of debris and snow from the Lititz Pike Bridge sidewalk without unnecessary delay, and specifically, without waiting until after completion of the repairs and surface improvements.

Respectfully submitted,



Susan Wood
1980 Sterling Place
Lancaster, PA 17601

September 15, 2005

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PROOF OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the administrative law judge and participants listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Louis G. Cocheres
Administrative Law Judge
PA Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

Christopher S. Underhill, Esq.
Hartman Underhill & Brubaker LLP
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Lancaster, PA 17601

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Harrisburg, PA 17108-0840

David Salapa, Esq.
Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

September 15, 2005


Susan Wood, Complainant

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SECRETARY'S BUREAU

DATE: October 6, 2005

SUBJECT: A-00117798
C-20042702

TO: Cheryl W. Davis, Director
Office of Special Assistants

FROM: James J. McNulty
Secretary
nvl

DOCUMENT FOLDER

Amended Application of the Commonwealth of Pennsylvania for approval to replace the existing overhead bridge and request exemptions for horizontal clearances where S. R.0072, Section 006 (Fruitville Pike) crosses over the tracks of National Railroad Passenger Corporation (Amtrak) (AAR No.518 172 T) in the City of Lancaster and Manheim Township, Lancaster County; and the allocation of cost incident thereto.

Susan Wood

v.

National Railroad Passenger Corporation

Copies of the Recommended Decision have been served upon all parties of interest.

Exceptions have been filed by:

City of Lancaster

Reply Exceptions have been received from:

Complainants'

DOCKETED
OCT 06 2005

cc: Susan Hoffner, ALJ

HARTMAN UNDERHILL & BRUBAKER LLP

ATTORNEYS AT LAW

221 EAST CHESTNUT STREET
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(1911-2002)

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ANDREW F. LUCARELLI
HARRY St. C. GARMAN
WILLIAM C. McCARTY
ALEXANDER HENDERSON, III
ROBERT M. FRANKHOUSER, JR.
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JEFFREY C. GOSS
JOHN A. MATEYAK
THEODORE L. BRUBAKER
BRETT D. JACKSON
ANJANETTE R. WARREN
W. RYAN NEUMYER

October 28, 2005

James J. McNulty, Secretary
Commonwealth of Pennsylvania
Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

ORIGINAL

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2005 OCT 31 AM 11:10
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In re: Susan Wood v. Amtrak, et al.
Complaint Docket No. C-20042702

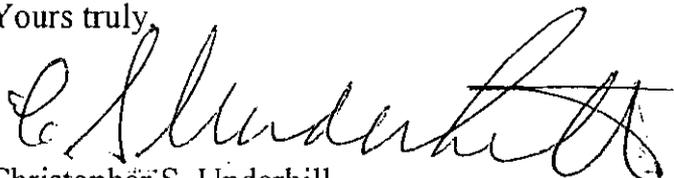
A-00 117798

Dear Mr. McNulty:

I am enclosing an original and nine copies of the amended Exceptions of the City of Lancaster and Manheim Township to the recommended decision of Administrative Law Judge Cocheres. Please return a time-stamped copy to me. I have enclosed a self-addressed, stamped envelope for that purpose.

DOCUMENT
FOLDER

Yours truly,



Christopher S. Underhill

CSU/vl:00418444.WPD

Enclosure

cc (w/encl.): Charles W. Smithgall, Mayor
Carol Roland, Business Administrator
Charlotte Katzenmoyer, Director of Public Works
James M. Martin, Manheim Township
Harry St. C. Garman, Esquire

10

ORIGINAL

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Amended Application to the Department of Transportation of the Commonwealth of Pennsylvania for approval to replace the existing overhead bridge and request exemptions for horizontal clearances where S.R. 0072, Section 006 (Fruitville Pike) crosses over the tracks of National Railroad Passenger Corporation (Amtrak) (AAR No. 518 172 T) in the City of Lancaster and Manheim Township, Lancaster County; and the allocation of costs incident thereto.

A-00117798

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Susan Wood

C-20042702

v.

National Railroad Passenger Corporation

DOCKETED
DEC 22 2005

AMENDED EXCEPTIONS OF THE CITY OF LANCASTER AND MANHEIM TOWNSHIP TO RECOMMENDED DECISION

1. The City of Lancaster has performed the repairs to the sidewalk and has created a smooth walking surface on the bridge carrying S.R. 222 (Lititz Pike) as recommended by Administrative Law Judge Cocheres. The Exceptions filed by the City of Lancaster to the Recommended Decision on or about August 31, 2005, are hereby withdrawn as moot.

2. The City of Lancaster and Manheim Township except to the Recommended Decision of Administrative Law Judge Cocheres with respect to the removal of ice and

DOCKETED
DEC 22 2005

DOCUMENT FOLDER

snow from the sidewalks of S.R. 222 (Lititz Pike) and S.R. 0072 (Fruitville Pike) for the reason that the Recommended Decision does not instruct the Pennsylvania Department of Transportation (PennDOT) not to push any snow or ice onto the sidewalks when it clears the streets immediately adjacent thereto.

Finding of Fact #10 with respect to the Fruitville Pike bridge states that, “PennDOT volunteered to maintain the all (sic) highway facilities associated with the construction of the new Fruitville Pike bridge, excluding sidewalk maintenance and snow, ice and debris removal.” This finding of fact does not include a finding that in plowing the street PennDOT should not push snow or ice from the street up on the sidewalk thus making the obligation of Manheim Township to clear the sidewalk significantly more difficult.

Likewise, with respect to the Lititz Pike bridge, Paragraph 66 states, “PennDOT agreed that it would maintain the pavement curb-to-curb and the major structural and sub-structural and approaches, excluding sidewalks, of the Lititz Pike bridge.” Judge Cocheres did not require PennDOT to refrain from pushing ice and snow onto the sidewalk which would make the obligation of the City of Lancaster to clear the sidewalk significantly more difficult.

The City of Lancaster and Manheim Township respectfully request that the obligation of PennDOT to clear ice and snow from the street surfaces of the Fruitville Pike bridge and the Lititz Pike bridge be clarified with an order that PennDOT shall not

push ice and snow on the adjacent sidewalks. The City of Lancaster and Manheim Township otherwise accept the responsibility to clear ice and snow from the sidewalks of the bridges.

Respectfully submitted,

HARTMAN UNDERHILL & BRUBAKER LLP

By: 

Christopher S. Underhill
Attorney I.D. #07013
Attorneys for the City of Lancaster
and Manheim Township

221 East Chestnut Street
Lancaster, PA 17602
(717) 299-7254

PROOF OF SERVICE

I HEREBY CERTIFY that I am this day serving the foregoing Amended Exceptions of the City of Lancaster and Manheim Township to Recommended Decision on the persons and in the manner indicated below.

Service by First Class Mail, addressed as follows:

Kenneth Zielonis, Esquire
Stevens & Lee
4750 Lindle Road
Harrisburg, PA 17111

Dennis Moore, Esquire
60 Massachusetts Avenue NE
Washington DC 20002

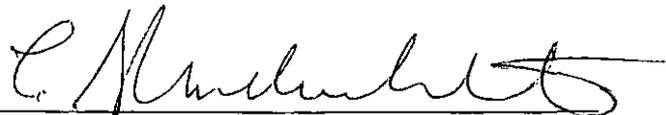
PennDOT
Attn: Jason D. Sharp, Esquire
Assistant Counsel
Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105-8212

Benjamin C. Dunlap, Jr., Esquire
Nauman, Smith, Shissler & Hall, LLP
18th Floor
200 North Third Street
P. O. Box 840
Harrisburg, PA 17108-0840

Ms. Susan Wood
1980 Sterling Place
Lancaster, PA 17601

Dated: 10/28, 2005

HARTMAN UNDERHILL & BRUBAKER LLP

By: 

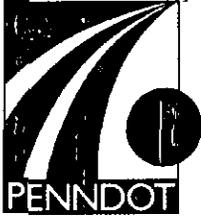
Christopher S. Underhill
Attorney I.D. #07013
Attorneys for City of Lancaster

221 East Chestnut Street
Lancaster, PA 17602
(717) 299-7254

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COMMONWEALTH OF PENNSYLVANIA
 DEPARTMENT OF TRANSPORTATION
 OFFICE OF CHIEF COUNSEL
 REAL PROPERTY DIVISION
 POST OFFICE BOX 8212
 HARRISBURG, PA 17105-8212
 TELEPHONE: (717) 787-3128
 FACSIMILE: (717) 772-2741



Thursday, November 10, 2005

James J. McNulty, Secretary
 Pennsylvania Public Utility Commission
 P.O. Box 3265
 Harrisburg, PA 17105-3265

ORIGINAL

IN RE: A-00117798 and C-20042702

Dear Mr. McNulty:

Enclosed for filing please find an original and three (3) copies of the Department's *Motion to Strike the Amended Exceptions* filed by the City of Lancaster and Manheim Township in the above referenced case. The Department's *Motion* has been served on the Parties of Record as indicated on the attached Certificate of Service.

If you have any questions or need any additional information, please feel free to contact the undersigned counsel. Thank you for your attention to this correspondence.

Very truly yours,

Jason D. Sharp
 Assistant Counsel

220/JDS: _
jsharp@state.pa.us

- cc: Parties of Record
 Gary C. Fawver, P.E., Chief, Right-of-Way and Utilities, 7th Floor, CKB
 Gina M. D'Alfonso, Assistant Counsel-in-Charge
 Mark Malhenzie, District 8-0
 William Berkey, District 8-0

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Amended Application of the :
Department of Transportation of the :
Commonwealth of Pennsylvania for :
approval to replace the existing :
overhead bridge and request :
exemptions for horizontal clearances :
where S. R. 0072, Section 006 (Fruitville :
Pike) crosses over the tracks of :
National Railroad Passenger :
Corporation (Amtrak) (AAR No. 518 :
172 T) in the City of Lancaster and :
Manheim Township, Lancaster :
County; and the allocation of costs :
incident thereto.

A-00117798

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Susan Wood :

C-20042702

v. :

National Railroad Passenger :
Corporation :

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DEC 27 2005

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MOTION TO STRIKE

AND NOW, comes the Commonwealth of Pennsylvania, Department of
Transportation (PENNDOT), by and through its counsel, Jason D. Sharp, and submits
the following *Motion to Strike* the Amended Exceptions of the City of Lancaster (City)
and Manheim Township (Township) to the Recommended Decision (RD) of
Administrative Law Judge Louis Cocheres (ALJ):

Background

1. PENNDOT filed an application on May 2, 2001, requesting that it be permitted to alter a crossing carrying State Route 0072 (Fruitville Pike), over and above the tracks of the National Railroad Passenger Corporation (AMTRAK) in the City and Township, Lancaster County.
2. PENNDOT proposed to replace an existing two span bridge that carried the roadway over the railroad with a new two-span bridge, with a sidewalk on the east side.
3. A field conference regarding the allocation of maintenance for sidewalks on the Fruitville Pike bridge was held in February of 2004. At that time, no party agreed to accept responsibility for the snow, ice and debris removal from the sidewalk.
4. By Order entered October 1, 2001, the Public Utility Commission (PUC) approved PENNDOT's Application, but scheduled a hearing to address the unresolved issue of future maintenance responsibility for the sidewalk.
5. On March 23, 2004, Susan Wood (Wood) filed a Complaint against AMTRAK regarding the condition of the pedestrian walkway on a bridge carrying "PA Route

501¹ above the tracks of AMTRAK in the Township and City, alleging that the sidewalk was unsafe due to the failure to remove snow, ice and debris. Wood reiterated these concerns in regard to the new sidewalk on Fruitville Pike.

6. After a hearing was held, the ALJ's RD as served to the parties on August 17, 2005.
7. The RD recommended that the City remove snow, ice and debris from the sidewalks on the Lititz Pike bridge, and that the Township remove snow, ice and debris from the sidewalk on the Fruitville Pike bridge. RD, p. 21-22.
8. The City was further ordered the repair the sidewalk on the Lititz Pike bridge. RD, p. 21.
9. The City filed Exceptions to the RD on August 31, 2005, requesting an enlargement of time within which to complete the requested repairs to the Lititz Pike bridge sidewalk.
10. On October 31, 2005, PENNDOT was served with "Amended" Exceptions to the RD of August 17, 2005, by the City and the Township.

¹ The roadway on the bridge, while connecting to SR 501, is actually SR 222.

11. The Amended Exceptions request that the PUC clarify in its order that PENNDOT not plow any snow onto the sidewalks on both bridges, as that will increase the amount of snow that the City and Township have to remove from the sidewalks.

12. The PUC must strike the Amended Exceptions because they are: 1) not in conformity with the rules of practice and procedure as set forth in the governing regulations; 2) untimely, and; 3) because requiring PENNDOT to alter its plowing activities is a potential public safety hazard.

Argument

Amendment of exceptions is not allowed under the regulations covering practice and procedure of the PUC. Simply put, exceptions are not pleadings, and the applicable regulations only allow for amendments to pleadings. Under 52 Pa. Code §. 5.1, the PUC allows for the following pleadings: applications, protests, formal complaints, answers, rules/orders to show cause, petitions and preliminary motions. Amending these pleadings is allowed under 52 Pa. Code §. 5.91-94. Exceptions, in contrast, are governed by a separate provision, which makes no allowance for amendments. *See* 52 Pa. Code §. 5.533.

Even assuming that the "Amended" Exceptions are allowed, they are untimely. The regulations are clear that exceptions must be filed within twenty days after service of the RD. 52 Pa. Code § 5.533 (a). Also, the PUC attached a cover letter to the RD reiterating the twenty day time frame within which to file exceptions. The notice stated that the regulations could not be used to enlarge the timeframe at all. *See* 52 Pa. Code § 1.56. Clearly in this case, the Amended Exceptions have been filed well beyond the due date, September 6, 2005.

Also, this issue, plowing snow onto the sidewalk, should have been self evident to the City and Township at the time of the hearing. To allow them to raise it now presents an unpermitted second bite at the apple. There is no reason that the issue could not have been raised in their initial exceptions. There has been no intervening change in law or fact that would support the need for an amendment. Allowing the amendment here only serves to improperly expand the time frame within which to file exceptions. Having not raised the issue at the proper time, it should be deemed waived. *See Pennsylvania Public Utility Commission, et al. v. PECO Energy Company*, Docket Nos. R-00973877C0001, R-00973877C0002, 1997 Pa. PUC LEXIS 26 (Pa. PUC 1997) (Commission deemed argument on standing by PECO waived where issue should have been raised in PECO's exceptions and not in PECO's reply to opposing

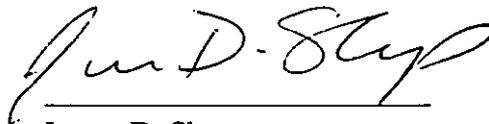
party's exceptions).

As to the merits, the Amended Exceptions must be rejected. While PENNDOT understands that some snow from plowing operations may end up on the sidewalk, this situation exists along thousands of miles of highways in the Commonwealth and is dealt with by the sidewalk maintainer. Moreover, requiring PENNDOT to avoid pushing or plowing snow on to the sidewalk could compromise traffic safety, if the requested restriction forces PENNDOT to pave narrow travel lanes. In general, the main priority of PENNDOT is to clear a travel lane for vehicular traffic. *See generally, Department Publication 23, Maintenance Manual, Chapter 4.5*. Lessening the paved travel lane to make it easier for the local party to shovel snow could result in head on collisions, a clearly unacceptable result.

CONCLUSION

Wherefore, PENNDOT requests, based upon the foregoing, that the PUC strike, or deny, the Amended Exceptions filed by the City and Township in this matter.

Respectfully submitted,



Jason D. Sharp
Assistant Counsel
Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105-8212
Telephone No.: 717/787-3128
Fax No.: 717/772-2741

Dated: Thursday, November 10, 2005

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Amended Application of the :
Department of Transportation of the :
Commonwealth of Pennsylvania for :
approval to replace the existing :
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Susan Wood : C-20042702
v. :
National Railroad Passenger :
Corporation :

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **Motion to Strike** was served upon the parties below by first-class mail; postage prepaid this 10th day of November, 2005:

LOUIS G COCHERES
ADMINISTRATIVE LAW JUDGE
OFFICE OF ADMINISTRATIVE LAW JUDGE
PA PUBLIC UTILITY COMMISSION
PO BOX 3265
HARRISBURG PA 17105-3265

DAVID A SALAPA ESQUIRE
PA PUBLIC UTILITY COMMISSION
BUREAU OF TRANSPORTATION & SAFETY
RAIL LAW
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CHRISTOPHER S UNDERHILL ESQUIRE
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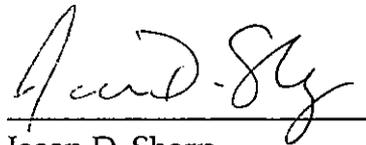
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DENNIS MOORE ESQUIRE
NATIONAL RAILROAD PASSENGER
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SUSAN WOOD
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PA PUBLIC UTILITY COMMISSION
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KENNETH ZIELONIS ESQUIRE
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Fax No.: 717/772-2741

Dated: Thursday, November 10, 2005