

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

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GOVERNOR'S OFFICE OF
GENERAL COUNSEL

PA PUC
SECRETARY'S BUREAU

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Monday, March 13, 2006

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

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 *Petition for Reconsideration and Clarification of Order Entered February 23, 2006*, in the above referenced case. The Department's *Petition* 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.

DOCUMENT
FOLDER

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
- Gregory Vaughn, District 8-0

66

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

**DOCUMENT
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SECRETARY'S BUREAU

Susan Wood :

C-20042702

v. :

National Railroad Passenger :
Corporation :

DOCKETED
MAR 16 2006

**PETITION FOR RECONSIDERATION AND CLARIFICATION OF
ORDER ENTERED FEBRUARY 23, 2006**

AND NOW, comes the Commonwealth of Pennsylvania, Department of
Transportation (PENNDOT), by and through its counsel, Jason D. Sharp, and submits
the following *Petition for Reconsideration and Clarification* of the Order entered in this
matter on February 23, 2006, pursuant to 52 Pa. Code ¶ 5.572:

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 of Lancaster (City) and Manheim Township (Township), Lancaster County.
2. 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.
3. 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
4. By Order entered October 1, 2001, the PUC approved PENNDOT's application and directed PENNDOT, *inter alia*, to maintain the highway facilities on the Fruitville Pike at PENNDOT's sole cost and expense.
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

501"¹ 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. The two matters, A-00117798 and C-20042702, were consolidated by the PUC and set for a hearing.
7. On or about August 5, 2005, Administrative Law Judge Louis Cocheres (ALJ), issued a Recommended Decision (RD) in this matter, after holding a hearing.
8. In this case, PENNDOT has agreed to maintain the all highway facilities associated with the construction of the new Fruitville Pike Bridge, excluding sidewalk maintenance and snow, ice and debris removal. RD, Finding of Fact # 10; Department St. No. 1 at 5. Tr. 15. Such maintenance would include snow, ice and debris removal from the roadway.
9. PENNDOT also agreed that would maintain the Lititz Pike roadway surface from curb-to-curb, which would include snow, ice and debris removal from the roadway. RD Finding of Fact # 66; Tr. 17-18.

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

10. The ALJ's Recommended Decision made a clear, just and reasonable recommendation as to the allocation of snow, ice and debris removal from the sidewalks:

- a. Ordering Paragraph # 4. *That Manheim Township shall furnish all material and do all work necessary to maintain in a safe condition, remove debris and promptly remove snow and ice from the sidewalk of the new bridge carrying S. R. 0072, Section 006 (Fruitville Pike) over the tracks of National Railroad Passenger Corporation (AAR No. 518 172 T) in the City of Lancaster and Manheim Township, Lancaster County.*

- b. Ordering paragraph # 5. That, 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 carrying S.R. 222 (Lititz Pike) over the tracks of National Railroad Passenger Corporation in the City of Lancaster and Manheim Township, Lancaster County, 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 Lititz Pike Bridge.*

11. Therefore, the ALJ made a clear recommendation to the PUC as to the issue of snow, ice and debris removal from the bridges. PENNDOT is to remove snow, ice and debris from the roadway, and the affected municipalities are to remove snow, ice and debris from the sidewalks.
12. The City and Township filed Exceptions to the Recommended Decision on August 31, 2005, requesting an enlargement of time within which to complete the requested repairs to the Lititz Pike bridge sidewalk. The Department did not oppose this request.
13. On October 31, 2005, the City and Township served PENNDOT with "Amended" Exceptions to the Recommended Decision of August 17, 2005. The Amended Exceptions requested, *inter alia*, that the PUC specify in its order that PENNDOT was not to plow any snow onto the sidewalks on both bridges.
14. As per the PUC's October 1, 2001 Order, and as per the allegations of Ms. Wood's complaint, the only issue at had was the condition and maintenance of the sidewalks.

15. The ALJ's Recommended Decision dealt with the issue of sidewalks fully and completely.
16. Despite the fact that PENNDOT voluntarily agreed to remove snow, ice and debris from the roadways, and despite the fact that the ALJ made the clear, just and reasonable recommendation that the City and Township remove snow ice and debris from the sidewalks, the PUC inexplicably concluded that "*there remain significant unresolved issues in this proceeding.*" February 23, Opinion and Order, p. 8. The PUC remanded the case for further action by the ALJ.
17. The only issue that could be considered on remand to the ALJ would be the City and Township's last minute request for the PUC to micromanage PENNDOT's plowing operations, something the PUC has never done before. *See Millcreek Township v. Pa.PUC*, 753 A.2d 324 (Pa. Cmwlth. 2000), *alloc. denied* 767 A.2d 1252; *Tredyffrin Twp. v. Public Util. Com'n*, 539 A.2d 925 (Pa. Cmwlth. 1988) *In Re: Pennsylvania Department of Transportation*, 70 Pa PUC 103 (1989); *Application of the Pa.DOT, State Highway Route 250 (Third Street), Borough of Lemoyne, Cumberland County*, 1991 Pa. PUC Lexis 148 (1991) (all cases allocating snow, ice and debris removal from roadways to the highway owner and allocating snow, ice and debris

removal to the local municipalities, but not dictating the manner or specifics of such maintenance).

18. The PUC should reconsider its Order in light of the fact that the issues in this case have been litigated and addressed, and returning the matter to the ALJ at this point is unnecessary.

19. The PUC should reconsider its Order because defining maintenance responsibilities down to minute levels invites the opportunity for error and omission. Once the PUC begins defining specific, discreet maintenance responsibilities, parties will question whether or not other omitted items of maintenance are ordered or required. Furthermore, the City and the Township are inviting the PUC to micromanage the maintenance operations of PENNDOT, which is an area that the PUC has never ventured into. This would set a dangerous precedent whereby the PUC would virtually be required to manage the day-to-day maintenance and inspection operations of PENNDOT. The PUC is neither empowered by law nor equipped with resources to do so.

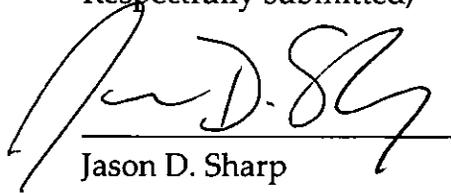
20. The PUC should reconsider its February 23, 2006 Order and adopt the Recommended Decision of the ALJ in total, without modification.

21. If the Commission choose not to reconsider its opinion, it must clarify the issue or issues being remanded to the ALJ.

CONCLUSION

Wherefore, PENNDOT requests, based upon the foregoing, that the PUC reconsider its February 23, 2006 Order, and adopt the Recommended Decision as its action, or in the alternative, the PUC must clarify the issue(s) on remand.

Respectfully submitted,



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

Dated: Monday, March 13, 2006

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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where S. R. 0072, Section 006 (Fruitville	:	A-00117798
Pike) crosses over the tracks of	:	
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Susan Wood	:	C-20042702
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v.	:	
	:	
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National Railroad Passenger	:	
Corporation	:	

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SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **Petition for Reconsideration and Clarification** was served upon the parties below by first-class mail; postage prepaid this day, Monday, March 13, 2006:

LOUIS G COCHERES
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OFFICE OF ADMINISTRATIVE LAW JUDGE
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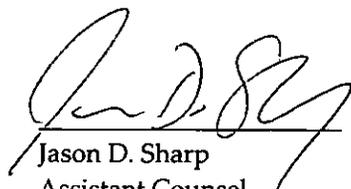
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Dated: Monday, March 13, 2006

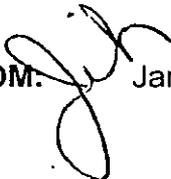
COMMONWEALTH OF PENNSYLVANIA

DATE: March 14, 2006

SUBJECT: A-00117798 & C-20042702

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TO: Office of Special Assistants

FROM:  James J. McNulty, Secretary

PENNDOT & AMTRAK

Attached is a copy of a Petition for Reconsideration and Clarification of the Order entered February 23, 2006, filed by PENNDOT, in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

cc: TAS

jih

DOCKETED
MAR 16 2006