

1. REPORT DATE: January 18, 2006	2. BUREAU AGENDA NO. JAN-2006-OSA-0028*
3. BUREAU: Office of Special Assistants	5. PUBLIC MEETING DATE: January 27, 2006
4. SECTION(S):	
6. APPROVED BY: Director: C. W. Davis 7-1827 Mgr/Spvr: K. G. Sophy 7-8108 Legal Review:	9. EFFECTIVE DATE OF FILING: N/A
7. PERSONS IN CHARGE: M. Knezevich 7-1828	
8. DOCKET NO.: A-00117798; C-20042702	

DOCUMENT FOLDER

DOCKETED
MAR 13 2006

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

(a) Amended Application of PennDOT for approval to replace the existing overhead bridge . . . in the City of Lancaster (City) . . . ; Susan Wood v. Amtrak

(b) PennDOT's Application was filed on May 2, 2001. Susan Wood filed a Complaint against Amtrak on March 23, 2004. The proceedings were consolidated. In the Recommended Decision, the ALJ recommended, *inter alia*, that the City of Lancaster (City) complete all repairs to the sidewalk of the Bridge within six months of the date it receives the Commission's Opinion and Order. The City and Manheim Township (Township) filed Exceptions and Amended Exceptions and Ms. Wood filed Reply Exceptions. PennDOT filed a Motion to Strike the Amended Exceptions (Motion to Strike) to which the City and the Township filed an Answer.

(c) The Office of Special Assistants recommends that the Commission adopt the proposed Opinion and Order which: (1) denies PennDOT's Motion to Strike; and (2) assigns this proceeding to the Office of Administrative Law Judge for further proceedings.

Order Doc. No. 569704v1

Calendar Doc. No. 569716v1

11. **MOTION BY:** Commissioner Chm. Holland
SECONDED: Commissioner Shane
 Commissioner Cawley - Yes
 Commissioner Pizzigrilli - 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 OUR FILE

February 23, 2006

A-00117798
C-20042702

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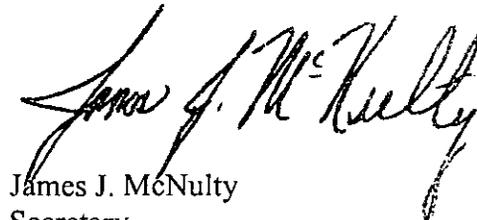
Amended Application of the Commonwealth of Pennsylvania for approval to replace the existing overhead bridge and request exemptions for horizontal clearances where S.R. 0072, Section 006 (Fruitville Pike) crosses over the tracks of National Railroad Passenger Corporation (Amtrak) (AAR No. 518 172 T)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

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on January 27, 2006 has adopted an Opinion and Order in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,



James J. McNulty
Secretary

JS
encls
cert. mail

See attached list for additional parties of record.

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

Public Meeting held January 27, 2006

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Bill Shane
Kim Pizzingrilli
Terrance J. Fitzpatrick

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 (AAR No. 518 172 T) in the City of Lancaster and Manheim Township, Lancaster County; and the allocation of costs incident thereto.

A-00117798
C-20042702

Susan Wood

v.

National Railroad Passenger Corporation

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration and disposition are the Exceptions, filed by the City of Lancaster (City) and Manheim Township (Township) on September 1, 2005, and also the Amended Exceptions also filed by the City and the Township on October 31, 2005, to the Recommended Decision of Administrative Law Judge (ALJ) Louis G. Cocheres issued herein on August 17, 2005.

Ms. Susan Wood (Complainant) filed Reply Exceptions to the Exceptions of the City and Township on September 15, 2005. On November 10, 2005, Pennsylvania Department of Transportation (PennDOT) filed a Motion to Strike Amended Exceptions (Motion to Strike). On November 30, 2005, the City and the Township filed an Answer to PennDOT's Motion to Strike.

History of Proceeding

PennDOT's Application was filed on May 2, 2001, wherein it requested that it be permitted to alter the crossing by reconstructing the bridge that carried State Route 0072, over and above the tracks of National Railroad Passenger Corporation (Amtrak) in the City and the Township, Lancaster County (County). PennDOT also proposed to replace the existing two-span bridge that carried the roadway over five shared electrified passenger/freight tracks and two non-electrified yard tracks with a new two-span bridge which met Amtrak's clearance requirements.

By Order entered October 1, 2001 (2001 Order), the Commission took the following actions: (1) approved the Application; (2) directed PennDOT to prepare

detailed construction plans at its sole cost and expense; (3) granted an exemption from the Commission's horizontal minimum clearance requirements; (4) appropriated property for the project; (5) generally directed PennDOT to complete the project at its sole cost and expense with the exception of relocation costs for the non-carrier utilities; (6) directed the non-carrier utilities to relocate at their initial cost and expense; (7) directed that PennDOT, upon completion of the project, maintain the highway facilities at its sole cost and expense; (8) directed that Amtrak, upon completion of the project, maintain the railroad facilities at its sole cost and expense; (9) directed that the non-carrier utilities, upon completion of the project, maintain their facilities at their sole cost and expense; (10) allowed for appropriate federal reimbursement; and (11) scheduled, upon completion of the project, a hearing for unresolved issues and for the allocation of costs and future maintenance responsibilities.

On March 23, 2004, the Complainant filed a Complaint against Amtrak regarding the condition of the pedestrian walkway on the bridge carrying PA Route 501 above the tracks of Amtrak in the Township and the City. She alleged therein that the sidewalk was unsafe due to the failure to remove snow, ice and debris and made a similar allegation about snow and ice on the sidewalk of the newly-completed bridge carrying Fruitville Pike across the same tracks. As a remedy, she asked that the sidewalk maintenance be assigned to a responsible party. By letter dated June 3, 2004, she added to her Complaint by noting that the walkway on the Route 501 bridge was in state of disrepair.

On April 21, 2004, the City and the Township filed a joint Answer in which they denied responsibility for the condition of the sidewalks. On April 23, 2004, counsel for PennDOT entered his appearance. On April 26, 2004, Norfolk Southern Railway

Company (Norfolk Southern)¹ filed an Answer and New Matter which denied the material allegations and which additionally claimed that it owned no property at the crossings.

On April 29, 2004, PennDOT filed an Answer to the Complaint which alleged that maintenance responsibilities for the new Fruitville Pike Bridge had not yet been assigned and that it could not identify the "PA Route 501" bridge which was referenced in the Complaint. On September 3, 2004, Norfolk Southern filed a Motion for Judgment on the Pleadings and a Brief in Support. On September 21, 2004, counsel for the County entered his appearance.

On October 12, 2004, a Prehearing Conference was held before ALJ Cocheres for both the Application case and the Complaint case. The ALJ denied a Motion for Judgment on the Pleadings made by Norfolk Southern pending in the Complaint case due to the fact that Norfolk Southern operated at both crossings, and there could be safety issues which would be addressed in both cases. (Prehearing Tr. at 10-11).

On December 8, 2004, the Initial Hearing was held before ALJ Cocheres for both the Application case and the Complaint case. The following Parties appeared and were represented by counsel: the County, PennDOT, the City, the Township, Norfolk Southern, the Commission's Bureau of Transportation and Safety (BTS) and Amtrak. The Complainant, who is an attorney, also appeared.

The ALJ's Recommended Decision was issued on August 17, 2005, in which he recommended, *inter alia*, that the City shall complete all repairs to the sidewalk and create a smooth walking surface on the Bridge within six months of the date it receives the Commission's Opinion and Order. (R.D. at 22). Exceptions, Amended

¹ Norfolk Southern operates on the tracks at the pertinent crossings pursuant to a lease with Amtrak.

Exceptions, Reply Exceptions to the Recommended Decision and the Motion to Strike and Answer thereto were filed as above noted.

Discussion

In the Recommended Decision, ALJ Cocheres reached Findings of Fact Nos. 1-62 on the Fruitville Pike Bridge (R.D. at 3-11) and Findings of Fact Nos. 63-99 on the Lititz Pike Bridge (R.D. at 12-17). The ALJ also reached Conclusions of Law Nos. 1-3 (R. D. at 20-21). We shall adopt and incorporate herein by reference the ALJ's Findings of Fact and Conclusions of Law unless they are either expressly or by necessary implication overruled or modified by this Opinion and Order.

PennDOT's Motion to Strike

Initially, we must dispose of PennDOT's Motion to Strike the Amended Exceptions filed by the City and the Township. In its Motion to Strike, PennDOT argues that the Amended Exceptions should be stricken because they are not in conformity with the rules of practice and procedure as set forth in the governing regulations and also because they are untimely. (Motion to Strike at 4-5).

In response, the City and the Township contend that the Amended Exceptions are in conformity with the Commission's Regulations, and should also not be deemed untimely, because the Commission permitted them to be filed. (Answer to Motion to Strike at 1-3).

We note that Section 1.2(c) of our Regulations states that the Commission or presiding officer at any stage of an action or proceeding may waive a Commission requirement or Regulation when necessary or appropriate, if the waiver does not

adversely affect a substantive right of a participant. 52 Pa. Code § 1.2(c). Since the City and the Township's late filing of their Amended Exceptions did not adversely affect any substantive rights of the participants, the requirement that the City and Township's Amended Exceptions be filed within twenty days after the issuance of the ALJ's Recommended Decision will be waived.² Accordingly, PennDOT's Motion to Strike the Amended Exceptions of the City and the Township is denied.

Amended Exceptions of the City and Township

Initially, we are reminded that we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. *University of Pennsylvania, et al. v. P.U.C.*, 485 A.2d 1217, 1222 (Pa. Cmwlth. 1984). Any exception or argument that is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

Finding of Fact No. 10 of the Recommended Decision is as follows:

10. 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. Department St. No. 1 at 5. Tr. 15.

(R.D. at 5).

Finding of Fact No. 66 of the Recommended Decision is as follows:

66. PennDOT agreed that it would maintain the pavement curb-to-curb and the major structural and substructural and

² According to Section 5.533(a) of our Regulations, exceptions must be filed within twenty days of the issuance of an initial or recommended decision. 52 Pa. Code § 5.533(a).

approaches, excluding sidewalks, of the Lititz Pike Bridge. Again, PennDOT opined that the sidewalk maintenance and snow, ice and debris removal should be a local responsibility. Tr. 17-18.

(R.D. at 13).

In their Amended Exceptions, the City and the Township request that the Commission direct in its Order that PennDOT not plow any snow onto the sidewalks of both bridges, because that will increase the amount of snow that the City and the Township have to remove from the sidewalks. (Amended Exc. at 23).

PennDOT avers that while it 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 should be 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 plow overly narrow travel lanes. PennDOT's main priority must be the clearing of travel lanes for vehicular traffic. (Motion to Strike at 1-6).

In response to PennDOT's contention that requiring PennDOT to alter its plowing activities could result in a potential public safety hazard, the City and the Township aver that perhaps a hearing should be scheduled on this issue. The City and the Township take the position that a hearing would be preferable to allowing PennDOT to unilaterally increase the burden on the City and the Township with regard to their responsibility to clear the sidewalks. The City and the Township further assert that while they are willing to clear the sidewalks of the "natural" condition thereof, they are not willing to clear manmade accumulations of ice and snow. (Answer to Motion to Strike at 2).

We note that PennDOT, on the one hand, and the City and the Township, on the other hand, have not reached an agreement on the issue of the responsibility for snow and ice removal on the relevant Bridge. Because the relative burdens on PennDOT and the City and the Township must be balanced, we will assign this case to the Office of Administrative Law Judge (OALJ) for further action as deemed appropriate. The ALJ to whom this case is assigned may decide to conduct a hearing so that all Parties may present evidence and testimony on the pertinent issue.

Conclusion

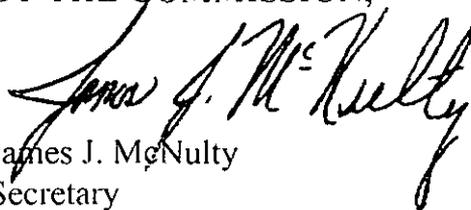
Obviously, there remain significant unresolved issues in this proceeding. Consistent with our discussion *supra*, we will assign this matter to OALJ for further action, as deemed appropriate; **THEREFORE,**

IT IS ORDERED:

1. That the Motion to Strike the Amended Exceptions of the City of Lancaster and Manheim Township filed by Pennsylvania Department of Transportation on November 10, 2005, is denied.

2. That this proceeding is assigned to the Office of Administrative Law Judge for further action, as deemed appropriate.

BY THE COMMISSION,


James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: January 27, 2006

ORDER ENTERED: FEB 23 2006