



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

IN REPLY PLEASE
REFER TO OUR FILE

ISSUED: August 17, 2005

A-00117798
C-20042702

ANDREW S GORDON CHF CNSL
PENNDOT
P.O. BOX 8212
KEYSTONE BUILDING
400 NORTH STREET 9TH FLOOR
HARRISBURG PA 17105-8212

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:

Enclosed is a copy of the Recommended Decision of Administrative Law Judge Louis G. Cocheres. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within twenty (20) days** of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

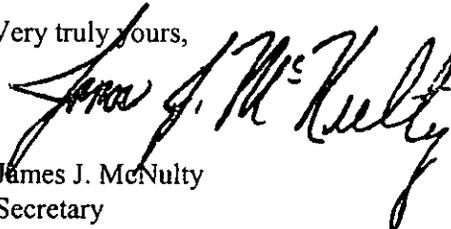
Replies to exceptions, if any, must be served on the Secretary of the Commission, in the manner described above, within **ten (10) days** of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)". Any reference to specific sections of the Administrative Law Judge's Recommended Decision shall include the page number(s) of the cited section of the decision. All timely filed exceptions and replies thereto will be attached to the decision for consideration at Public Meeting. Late filed exceptions and/or late filed replies might not be considered by the Commission.

**DOCUMENT
FOLDER**

Encls.
Certified Mail
Receipt Requested
MB
See Attached List for Additional Parties

Very truly yours,


James J. McNulty
Secretary

RJP

**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	:	A-00117798
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	:	C-20042702
	:	
v.	:	
	:	
National Railroad Passenger Corporation	:	

RECOMMENDED DECISION

Before
Louis G. Cocheres
Administrative Law Judge

BRIEF HISTORY OF THE PROCEEDINGS

A. **PENNDOT'S FRUITVILLE PIKE BRIDGE APPLICATION**

The Application was filed on May 2, 2001, by the Pennsylvania Department of Transportation (Applicant, Department or PennDOT). In its Application, PennDOT 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 of Lancaster and Manheim Township, Lancaster County.

DOCKETED
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**DOCUMENT
FOLDER**

The Applicant 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 that met AMTRAK's clearance requirements.

By Order, entered October 1, 2001 (2001 Order), this Commission 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) ordered, upon completion of the project, PennDOT to maintain the highway facilities at its sole cost and expense, 8) ordered, upon completion of the project, AMTRAK to maintain the railroad facilities at its sole cost and expense, 9) ordered, upon completion of the project, non-carrier utilities to 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 allocation of costs and future maintenance responsibilities.

On October 12, 2004, a Prehearing Conference was held before me for both the Application case and the Complaint case. At that time we agreed on a procedural and a litigation schedule. In addition, I denied a Norfolk Motion for Judgment on the Pleadings pending in the Complaint case because the railroad operated at both crossings and there could be safety issues which would be addressed in both cases. Prehearing Tr. 10-11.

On December 8, 2004, the Initial Hearing was held before me for both the Application case and the Complaint case in Harrisburg, Pennsylvania. The following parties appeared and were represented by counsel: Lancaster County, PennDOT, City of Lancaster, Manheim Township, Norfolk Southern Railway (Norfolk), Pennsylvania Public Utility Commission Bureau of Transportation and Safety (BT&S) and AMTRAK. Ms. Wood, Esquire, appeared pro se.

B. MS. WOOD'S LITITZ PIKE BRIDGE COMPLAINT

On March 23, 2004 Ms. Wood filed her Complaint against AMTRAK regarding the condition of the pedestrian walkway on the bridge carrying PA Route 501 above the tracks of AMTRAK in Manheim Township and the City of Lancaster. She alleged that the sidewalk was unsafe due to the failure to remove snow, ice and debris. She 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 walkway on the Route 501 bridge was in state of disrepair.

On April 21, 2004, the City of Lancaster and Manheim Township filed a joint Answer in which they denied liability for the sidewalks. On April 23, 2004, counsel for PennDOT entered his appearance. On April 26, 2004, Norfolk filed an Answer and New Matter which denied the material allegations and added that it owned no property at the crossings and that it operated on the tracks pursuant to a lease with AMTRAK. On April 29, 2004, PennDOT filed an Answer to the Complaint which alleged that maintenance responsibilities for the new Fruitville Pike Bridge had not been assigned and that it could not identify the "PA Route 501" bridge as referred to in the Complaint. On September 3, 2004, Norfolk filed a Motion for Judgment on the Pleadings and a Brief in Support. On September 21, 2004, counsel for Lancaster County entered his appearance.

FINDINGS OF FACT

A. FRUITVILLE PIKE BRIDGE

1. Department Exhibit No. 1 was a map showing the location of both bridges and the surrounding area. Department St. No. 1 at 2. Department Exh. 1.

2. Department Exhibit No. 2 was an aerial photograph from Department records depicting the same area. The aerial photograph was taken prior to the replacement of the Fruitville Pike Bridge. Department St. No. 1 at 2. Department Exh. 2.

3. The Fruitville Pike Bridge was reconstructed between September, 2002 and October, 2003. The new bridge is a reconstruction and replacement for the old bridge. The new bridge was constructed by the Department and Allan A. Myers, its contractor. Department St. No. 1 at 2.

4. The Fruitville Pike Bridge is a two-span, prestressed concrete adjacent box beam bridge. The spans are 112' and 68' long, for an overall bridge length of 180'. Roadway width is 46', with two 5'-6" (approx.) bicycle lanes, and a 5'-8" sidewalk adjacent to the northbound lane. The plan minimum vertical clearance over the railroad tracks is 24.10'. The plan minimum horizontal clearance is 12' - 6" from centerline of track to edge of pier footing. Department St. No. 1 at 2.

5. The Fruitville Pike Bridge carries S.R. 72 over AMTRAK. The road at the north end of the bridge is known as Fruitville Pike and at the south end as Prince Street. S.R. 72 ends approximately 623 feet south of the bridge and terminates on the north end in northern Lebanon County. At the north end of the bridge, there is an intersection of Manheim Pike (S.R. 72), Fruitville Pike, and Keller Avenue. At the south end, there is an intersection with McGovern Avenue (S.R. 222), Lincoln St., and Manheim Ave. Department St. No. 1 at 3.

6. The major public facility in the area of both bridges was the Lancaster AMTRAK Station. Department St. No. 1 at 3.

7. Department Exhibits Nos. 3, 4, and 5 were, respectively: No.3 – a copy of the 2001 Order, approving, generally, the construction of the new Fruitville Pike Bridge; No. 4 – Commission Secretarial Letter dated January 27, 2003, approving the emergency closing of the old Fruitville Pike Bridge during the replacement project; and, No. 5 – a Commission Secretarial

Letter, dated May 12, 2003, approving the Department's construction and traffic control plans. Department St. No. 1 at 4. Department Exh. Nos. 3, 4, and 5.

8. Department Exhibit No. 6 was a breakdown of the actual costs for the Fruitville Pike Bridge replacement project and a cost projection for the Lititz Pike Bridge Rehabilitation/replacement project. Department St. No. 1 at 4. Department Exh. No. 6.

9. The Fruitville Pike bridge replacement project has been completed, and the Department bore the construction costs as necessary. The Department did not seek reimbursement for any of the costs of the construction. The Department believed that any non-carrier public utilities must bear their costs incurred to relocate at their sole cost and expense. Department St. No. 1 at 4.

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

11. PennDOT opined that AMTRAK should maintain all railroad facilities at the Fruitville Pike crossing. Department St. No. 1 at 5.

12. PennDOT opined that all non-carrier utilities should maintain their respective facilities at the Fruitville Pike crossing. Department St. No. 1 at 5.

13. PennDOT opined that the local municipalities should be responsible for sidewalk maintenance and snow, ice and debris removal at the Fruitville Pike crossing. Department St. No. 1 at 5.

14. PennDOT constructed the Fruitville Pike Bridge with street lights to accommodate a request from the local residents. It was not willing to maintain the lighting system. Tr. 13.

15. Because the original Fruitville Pike Bridge had a sidewalk, PennDOT followed its policy of building the replacement bridge with a sidewalk. Tr. 13-15.

16. City/Township Exhibit No. 1 was a newspaper photograph of the new Fruitville Pike Bridge. Tr. 18-19. City/Township Exh. 1.

17. The design of the new Fruitville Pike Bridge did not have lights on the structure. There was utility pole lighting on the original bridge, but the lights were not attached to the bridge. The existing lights are on the roadway side of the sidewalk. Tr. 20-21.

18. PennDOT did not install the actual lights on the new Fruitville Pike Bridge. The lights were installed by PPL Electric Utilities Corporation. The energy bills for those lights are shared by the City of Lancaster and Manheim Township. Tr. 35-36.

19. The lights were installed in their locations to comply with Americans With Disability Act requirements to permit a 36 inch clearance between the light base and the parapet and to fit the design standards for the bike lanes on the bridge. Tr. 37-38.

20. Ms. Wood had not observed any deterioration or debris on the sidewalk of the new Fruitville Pike Bridge. She was aware there was no snow removal for the sidewalk. Wood St. No. 1 at 1.

21. Norfolk Southern Corporation operated certain rail freight train movements in the crossing areas on the tracks and rail line and facilities owned by AMTRAK at both crossings. N/S St. No. 1 at 2-3, 9. AMTRAK St. No. 1 at 2.

22. Norfolk Southern operated up to four local freight trains seven days per week out of Lancaster. In addition, a special dimension load train to Harrisburg operated about once per month. The local freight trains operated at a maximum speed of 30 miles per hour. Each

train had two movements – one going west and one returning east. In total, there were 10-14 train movements per day, seven times per week at both crossings. N/S St. No. 1 at 3, 9.

23. Based upon AMTRAK's track chart, AMTRAK's trains operated through the crossing at a speed of approximately 70 miles per hour at both crossings. N/S St. No. 1 at 4, 9.

24. Norfolk Southern operated on AMTRAK's facilities at both crossings pursuant to the terms and conditions of the Second Amended and Restated Northeast Corridor Freight Operating Agreement ("Northeast Corridor Agreement"), dated October 1, 1986, and executed by and between National Railroad Passenger Corporation and Consolidated Rail Corporation (Conrail). N/S St. No. 1 at 4, 9.

25. Norfolk Southern Exhibit No. 1 was a copy of the Northeast Corridor Agreement. N/S St. No. 1 at 4. Tr. 68-69. N/S Exh. 1. (The document was subject to very recent revision prior to the Hearing and did not reflect those changes. Tr. 69-72.)

26. The Northeast Corridor Agreement required AMTRAK to maintain the facilities along the line at both crossings. N/S St. No. 1 at 5, 9. N/S Exh. 1.

27. Norfolk Southern pays AMTRAK for use of the rail line at both crossings. N/S St. No. 1 at 5, 9. N/S Exh. 1.

28. Norfolk Southern Exhibit No. 2 was a document entitled The Principles of Cooperation Concerning the Northeast Corridor ("Principles of Cooperation"), dated May 1, 1998, and executed by and between National Railroad Passenger Corporation, CSX Corporation, Norfolk Southern Corporation, and Consolidated Rail Corporation. N/S St. No. 1 at 8. N/S Exh. 2. Tr. 68-69. (The document was subject to very recent revision prior to the Hearing and did not reflect those changes. Tr. 69-72.)

29. Norfolk Southern did not use the catenary facilities at the crossings. N/S St. No. 1 at 8-9.

30. In addition to its catenary facilities, AMTRAK had communications and signal facilities at the crossing areas. N/S St. No. 1 at 9.

31. Norfolk Southern did not own the roadway or the railroad facilities at the crossing and did not want to be allocated any work responsibilities or costs for the sidewalks on the bridges or their approaches. N/S St. No. 1 at 9.

32. Grade separated crossings are a benefit to the pedestrians, motoring public and the railroads. Tr. 75.

33. AMTRAK has seven (7) tracks at this location. Five (5) tracks are electrified, and two (2) are non-electrified industrial tracks. There were 22 scheduled passenger trains per day at this location, and these passenger trains operated at a maximum speed of 70 miles per hour. There were also approximately 14 freight trains per day at this location, and these freight trains operated at a maximum speed of 40 miles per hour. There were no immediate changes in operations contemplated. AMTRAK St. No. 1 at 2.

34. AMTRAK Exhibit No. 1 was the Commission Order, entered October 1, 2001, at Docket No. A-00117798 which authorized the construction of the new Fruitville Pike Bridge. AMTRAK St. No. 1 at 3. AMTRAK Exh. 1.

35. AMTRAK Exhibit No. 2 was a copy of four drawings of the former Fruitville Pike Bridge which was replaced by the PennDOT project. AMTRAK St. No. 1 at 3. AMTRAK Exh. 2.

36. AMTRAK did not agree to maintain or incur costs for the crossing. It did have the duty to maintain its facilities at the crossing. AMTRAK St. No. 1 at 4. Tr. 79.

37. Lancaster County Exhibit No. 1 was a copy of an Order of the Pennsylvania Public Service Commission, Stein v. Pennsylvania Railroad Company et al, dated April 22, 1930, at Complaint Docket No. 7881. Lancaster Cty. St. No. 1 at 3. Lancaster Cty. Exh. 1.

38. The new Fruitville Pike Bridge was a complete bridge replacement and widening that occurred in 2003. Construction was completed by PennDOT. Funding for the project was 80% federal funding and 20% state funding. The bridge is a new four lane structure with a 5 foot sidewalk on the easterly side of the bridge. Lancaster Cty. St. No. 1 at 4.

39. Lancaster County did not request the installation of street lighting or sidewalks on the Fruitville Pike Bridge. Tr. 85.

40. Lancaster County had not performed any maintenance on either crossing and would not agree to assume maintenance costs for the crossings. Lancaster Cty. St. No. 1 at 6.

41. Lancaster County employees were available to remove snow and ice from the County Courthouse in the City of Lancaster. Tr. 96.

42. Lancaster County wanted the sidewalks on both bridges to remain open. Tr. 96-97.

43. Neither the City nor the Township had ever taken responsibility for removal of ice, snow and debris from the sidewalks of these two bridges. They requested that they be exempted from this responsibility. In the alternative, if they would be assigned this responsibility, they requested that Lancaster County be included so that the three of them could come to an agreement for using a prisoner work force. City/Township St. No. 1 at 1-2. Tr. 138, 141.

44. The position of the light standards on the Fruitville Pike Bridge made it somewhat difficult to remove snow and ice from the sidewalk. In addition, because of the tracks underneath the bridge, snow cannot be blown over the side of the bridge. Tr. 106.

45. The City had no input into the decision to add street lights to the Fruitville Pike Bridge. Tr. 104.

46. The City referred complaints about the failure of the Fruitville Pike Bridge to comply with the Americans With Disabilities Act to PennDOT. Tr. 107.

47. City/Township Exhibit No. 1 is a newspaper photograph which showed the lights on the Fruitville Pike Bridge. Tr. 104. City/Twp. Exh. 1.

48. The City and the Township had agreements with PPL Electric Utilities Corporation that determined the energy and maintenance costs for street lighting in the municipalities. The City and the Township agreed with PennDOT to split those costs for the Fruitville Pike Bridge between the City and the Township. Tr. 107-108, 138, 149.

49. The City believed that PennDOT should be assigned the responsibility of removing snow, ice and debris from the sidewalks of the Fruitville Pike Bridge. Tr. 109.

50. In the alternative the City believed the County should be involved in sidewalk maintenance because the pedestrians using the Fruitville Pike Bridge were likely to be County residents. Tr. 110.

51. If the City were ordered to maintain the sidewalks on the Fruitville Pike Bridge, the City would want to use its City Ordinance to require the adjoining property owners to care for the sidewalk approaches to the bridge. Tr. 111.

52. The City and Township agreed that there should be lighting on the Fruitville Pike Bridge. Tr. 124, 152.

53. The City would not have objected to the inclusion of a sidewalk on the new Fruitville Pike Bridge. Tr. 126.

54. The City has a Bobcat, which is a small front-end loader. Tr. 127.

55. The City has a contract with PennDOT to plow the state highways in the City and uses City pick-up trucks and dump trucks to do the work. Tr. 127-128.

56. The City has the equipment and manpower to remove snow, ice and debris from the sidewalks of the bridges. Tr. 127-129.

57. The Township has the equipment and manpower to remove snow and ice from the sidewalks of the bridges. Tr. 139-140, 146-148.

58. The Township did not object to the placement of lights on the Fruitville Pike Bridge. Tr. 150-151.

59. The Township did not object to PennDOT's final plan. Tr. 150.

60. The street lights were installed on the sidewalks of the Fruitville Pike Bridge, approximately two feet from the curb. Staff St. No. 1 at 4.

61. The plans approved by the Commission on May 12, 2003, did not indicate that any street lights were to be installed on the bridge. Staff St. No. 1 at 4.

62. The final inspection of the Fruitville Pike Bridge was on February 18, 2004. At that time the street lights were installed on the bridge. Staff St. No. 1 at 3. Tr. 158-159.

B. LITITZ PIKE BRIDGE

63. The Lititz Pike Bridge carries S.R. 222 over AMTRAK. The road is known as Lititz Pike and intersects with Keller Avenue and Marshall Avenue at the north side of the bridge and McGovern Avenue and Liberty Street on the south side of the bridge. Department St. No. 1 at 3.

64. PennDOT's future plans for the Lititz Pike Bridge started on August 11, 2004, when Gannett Fleming was the selected consultant to perform preliminary engineering, final design and construction consultation services for the Lititz Pike Bridge Replacement Project over AMTRAK. The consultant will first prepare various bridge replacement and roadway alignment alternatives, and identify and quantify any associated environmental impacts and costs. This information, combined with public outreach efforts will ultimately lead to a selection of an alternative for final design and construction. It had not been determined whether the bridge will be replaced at present location, shifted in either direction, or increased to include two separate bridges. The physical condition of the existing bridge necessitated its replacement. Another strong project need concerned the daily volume of traffic into and out of the City which created congestion, particularly during the peak periods. The design will also incorporate multi-modal considerations and aesthetics appropriate to the surrounding community. Anticipated programmed phase costs and a schedule are listed on Table 1 and are subject to getting all approvals, clearances and the availability of funding. As of the hearing date, right-of-way, utility and construction costs and the schedule offered the most opportunity to be modified in future years for both funding estimates and the Transportation Improvement Program because these factors depended on the selection of the alternative and its complexity and the earlier availability of programmed funding.

Table 1

	Phase Est.	Program Year
Prelim. Eng. \ Enviro.	\$1,688,000	2004
Final Design	\$1,000,000	2006
Right of Way	\$4,000,000	2009
Utility	\$1,000,000	2009
Construction	\$22,500,000	2013.

Department St. No. 1 at 3-4.

65. The projected cost for the replacement Lititz Pike Bridge project was approximately \$30 million dollars and was scheduled to start construction in 2013. Tr. 15-17.

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

67. PennDOT resurfaced the Lititz Pike Bridge in the summer of 2004. As part of the resurfacing project, PennDOT repaired about 75 feet of concrete on sidewalk to facilitate the resurfacing and repair of an expansion dam. Tr. 28-29, 47-48, 112. City/Township Exhs. 2 and 3. Staff St. No. 1 at 4-5.

68. PennDOT regularly inspects the Lititz Pike Bridge every two years. No immediate repairs were required. Department St. No. 2 at 2. Tr. 50. Staff St. No. 1 at 5, 7-8.

69. Department Exhibit No.7 was a Commission Order from April 22, 1930, which directed the Pennsylvania Railroad Company to remove the old structure and to construct a new superstructure and substructure of the Lititz Pike Bridge and directed the Department's predecessor, the Department of Highways, to maintain the roadway paving on the bridge and the approach roadway to the bridge. Department St. No. 2 at 2-3. Department Exh. 7.

70. The Lititz Pike Bridge is a two-span steel thru-girder and reinforced concrete T-beam bridge. Span one is a 102' steel girder-floor beam structure. Span two is a 45.54' reinforced concrete T-beam. Roadway width is 40', with a 10'-9" sidewalk on the left side. The minimum vertical clearance over the railroad tracks is 21'-7". Department St. No. 2 at 3.

71. The Lititz Pike Bridge is in fair to poor structural condition mainly due to normal deterioration because of its age. The structure needs to be replaced due to structural and functional deficiencies. Department St. No. 2 at 3.

72. The Department will continue to comply with the Commission's prior order. Department St. No. 2 at 3. Tr. 50-51.

73. The Complaint in this case requested that some party be directed to maintain the sidewalks. The Department believed that local governments should be responsible for maintenance and snow, ice and debris removal from sidewalks because sidewalks primarily benefit local pedestrians, not State highway traffic. Department St. No. 2 at 3. Tr. 50-51.

74. The existing deterioration on the sidewalk on the Lititz Pike Bridge itself was cosmetic. Tr. 52.

75. The existing deterioration on the sidewalks on the approaches to the Lititz Pike Bridge was not cosmetic. Tr. 53, 141-142, 163. City/Township Exhs. 2 and 3.

76. Ms. Wood, the Complainant, lived at 1980 Sterling Place, Lancaster, PA. Tr. 55.

77. Ms. Wood observed trash and other debris that littered the sidewalk on the Lititz Pike Bridge which had not been removed. In addition, she observed weeds growing in the cracks and through the railing. Portions of the sidewalk were deteriorating, crumbling, cracked, uneven and broken. Further, snow was not removed and became icy; when the snow was deep, the sidewalk was impassable. In her opinion, the sidewalk was difficult and hazardous throughout the year. Wood St. No. 1 at 1. Tr. 60-61. Township Exh. 2, bottom right and left photos. Township Exh. 3, top left and middle left photo.

78. She recommended that for both bridges that a party should be made responsible for 1) debris and weed removal, 2) prompt snow removal, 3) prompt maintenance and repair of the sidewalk and 4) regrading to comply with the Americans With Disabilities Act. Wood St. No. 1 at 2.

79. Ms. Wood lived in Manheim Township about two miles north of the bridges. She had personally walked across the new Fruitville Pike Bridge. Tr. 57.

80. Ms. Wood had not seen anyone ever doing maintenance on either bridge. Tr. 58.

81. In addition to Ms. Wood, other pedestrians use the Lititz Pike Bridge. Tr. 58-59, 99.

82. There are residential and commercial areas near the bridges. Tr. 62-64.

83. Ms. Wood occasionally walked across the Lititz Pike Bridge to access the AMTRAK station. Tr. 59.

84. The roadway surface of the Lititz Pike Bridge is in good condition since it was repaved in July 2004. There is a sidewalk on the western side of the structure. This sidewalk is in a state of disrepair; the majority of the sidewalk surface is crumbling. There are loose stones where the concrete is crumbling and grass/weeds are growing in the seams of the sidewalk. A repair has been made to a portion of the sidewalk on the northern part of the bridge near the south bound traveling lane. Lancaster Cty. St. No. 1 at 4.

85. Lancaster County recommended that the sidewalk on the Lititz Pike Bridge should be repaired to keep the pedestrian walkway accessible for all users. The County reasoned that because this bridge was subject to replacement in the short term, it did not make any fiscal sense to replace the sidewalk. Repairs to smooth out the surface of the walking area should be

sufficient to make the pedestrian area accessible to the public in a safe manner. The County had no recommendation as to the substructure or superstructure of this bridge. Finally, since the roadway surface was recently repaved, there was no need for any work in that regard. Lancaster Cty. St. No. 1 at 5.

86. Lancaster County explained that the entire bridge was scheduled for replacement with \$1,688,000 federal/state funding programmed for the preliminary engineering and \$1,000,000 federal/state funding for the final design phase. These cost estimates were obtained from PennDOT. The bridge was on the Bridge Bill. The federal funds allocated for this project were from the Metropolitan Planning Organization's (MPO) FFY 2005-2008 Transportation Improvement Program. Lancaster Cty. St. No. 1 at 5.

87. Lancaster County would not agree to perform any actual work on or pay for any repairs to the Lititz Pike Bridge. Lancaster Cty. St. No. 1 at 5.

88. Lancaster County had never removed snow, ice and debris from or done any repair to the Lititz Pike Bridge. Tr. 111-112.

89. The City believed that PennDOT should be assigned the responsibility of maintaining and removing snow, ice and debris from the sidewalk of the Lititz Pike Bridge. Tr. 113.

90. The task of removing snow and ice from the Lititz Pike Bridge would be difficult because of the inability to throw snow over the parapet and onto the tracks below. Tr. 113-114.

91. The City had not received a bridge inspection report for the Lititz Pike Bridge from PennDOT. Tr. 115.

92. If the City were ordered to maintain the sidewalks on the Lititz Pike Bridge, the City would want to use its City Ordinance to require the adjoining property owners to care for the sidewalk approaches to the bridge. Tr. 115, 119.

93. The City owned snow shovels which were used by City employees to clear snow and ice from City Hall. Tr. 116-117.

94. The City and Township agreed that the sidewalks on both bridges were a benefit to all citizens. Tr. 123, 151.

95. City/Township Exhibit Nos. 2 and 3 are photographs of the sidewalk on the Lititz Pike Bridge. City/Township Exhs. 2 and 3.

96. The Township had never taken responsibility for repair and maintenance of the Lititz Pike Bridge. Tr. 141.

97. The Township had not received any Lititz Pike Bridge inspection reports from PennDOT. Tr. 143.

98. Staff Exhibit No. 1 is a three page document and is a copy of the Pennsylvania Public Service Commission's April 22, 1930 Order at Complaint Docket No. 7881 regarding the Lititz Pike Bridge. Staff St. No. 1 at 7.

99. The BT&S Staff recommended that the sidewalk on the Lititz Pike Bridge should be cleaned and repaired so that a smooth walking surface was established and eliminated tripping hazards. Repair of the sidewalk could be accomplished by placing a layer of bituminous material over the existing sidewalk. Staff St. No. 1 at 8.

DISCUSSION

A. PENNDOT'S FRUITVILLE PIKE BRIDGE APPLICATION

After reviewing the 2001 Order there appear to be only two residual cost allocation issues remaining: Which party(ies) should be allocated the responsibility for repairing, maintaining and removing snow, ice and debris from the sidewalk of the new bridge and which party(ies) should pay for the relocation of non-carrier public utility company facilities?

The latter issue is most easily resolved. The 2001 Order directed all of the non-carrier utilities to change or remove their facilities to accommodate the crossing alteration project at their initial cost and expense. Even though notice of the December 8, 2004 hearing was sent to all parties (including the non-carrier utilities), no one appeared on behalf of any of the non-carrier utilities at the hearing. There was no evidence of what, if any, costs they might have incurred. There was no request for reimbursement. Accordingly, there were no costs of record to allocate any party. I will recommend that to the extent there may have been any costs incurred that they should be borne by the respective non-carrier utilities.

The question of which party should bear the responsibility for sidewalk maintenance and snow removal was much more contentious. Not surprisingly, no party wanted the responsibility. Part of the problem with this issue was the location of the bases for the lights on the bridge. In the original proposal there were no the lights physically located on the bridge. Instead, there were lights at the ends of the bridge which were designed to illuminate the whole traveled area. Sometime thereafter, PennDOT responded to a request from local organizations and replaced the original proposal with multiple, single pole and globe lights along the sidewalk curblines for the length of the bridge. City/Township Exh. 1. This design format aggravated snow removal problems in particular. Given that a party could not use a snowblower to blow snow onto the roadway or over the railing and onto the tracks, the obvious solution would have been to blow or shovel it into a truck at the curblines. The light poles and their bases added another obstacle to the

task. The bottom line was that the task was labor intensive and did not lend itself to any mechanized or automated format.

Four parties were the most likely candidates to be given the responsibility, PennDOT, Lancaster County, Lancaster City and Manheim Township. None had been assigned the historic responsibility for the sidewalk on the former structure. The County, City and Township each had locally available manpower and equipment to do the job. One of the more common ways to assign cost and maintenance responsibility is on the basis of benefit derived from the improvement. No one disputed the concept that the bridge sidewalk carried local pedestrian traffic. PennDOT Exh. 1 demonstrated that the Fruitville Pike Bridge was technically within the City of Lancaster. However, it essentially linked two portions of Manheim Township. Given its location, the bridge sidewalks will more likely be used by the Township's residents, than the City's. Under these circumstances, I will recommend that the responsibility for sidewalk maintenance and cleaning (snow, ice and debris) be assigned to Manheim Township.

At the risk of repetition, I emphasize that all remaining cost and maintenance responsibilities were comprehensively assigned in the 2001 Order.

B. MS. WOOD'S LITITZ PIKE BRIDGE COMPLAINT

The primary issue raised in Ms. Wood's Complaint was the safety and maintenance responsibilities for the sidewalk on the Lititz Pike Bridge. The analysis of this issue will be nearly identical to the analysis above. Again, no party wanted the responsibility. As with the Fruitville Pike Bridge, the bottom line was that the maintenance responsibilities and the tasks of removing snow and debris were labor intensive and did not lend itself to any mechanized or automated format. Unlike the Fruitville Pike Bridge, however, the Lititz Pike Bridge was not brand new. Instead, it was not in good condition, and preliminary engineering was already in progress for eventual replacement in 2013. Some repairs were needed to make the sidewalk safe for pedestrian traffic. The BT&S Staff recommended that the sidewalk on the bridge should be cleaned and repaired so that a smooth walking surface could be established that eliminated tripping hazards.

The Staff further suggested that the repair of the sidewalk could be accomplished by placing a layer of bituminous material over the existing sidewalk. Photographs of the sidewalk by the City and Township independently confirmed the Staff position. City/Township Exhs. 2 and 3. I agree.

The same four parties were the most likely candidates to be given the responsibility, PennDOT, Lancaster County, Lancaster City and Manheim Township. None had been assigned the historic responsibility for the sidewalk on the existing structure. The County, City and Township each had locally available manpower and equipment to do the job. One of the more common ways to assign cost and maintenance responsibility is on the basis of benefit derived from the improvement. No one disputed the concept that the bridge sidewalk carried local pedestrian traffic. PennDOT Exh. 1 demonstrated that the Lititz Pike Bridge was technically within the City of Lancaster. It essentially linked the edge of the City with Manheim Township. Given its location, the bridge sidewalk will just as likely be used by the Township's residents, as the City's. Under these circumstances, I will recommend that the responsibility for sidewalk maintenance and cleaning (snow and debris) be assigned to the City of Lancaster. Because there is a need for prompt remedial action, I will further recommend that the repairs of the sidewalk be completed within six months of receipt of the Commission's Order which assigns the sidewalk responsibility.

CONCLUSIONS OF LAW

1. The Commission has exclusive jurisdiction to regulate the design of rail-highway crossings. Public Utility Code. 66 Pa. C.S. §2702.
2. The Commission has exclusive jurisdiction to allocate the costs of altering rail-highway crossings. Public Utility Code. 66 Pa. C.S. §2704.
3. After being notified, a participant who fails to be represented at a scheduled hearing in a proceeding shall be deemed to have waived the opportunity to participate in the hearing, and shall not be permitted thereafter to reopen the disposition of a matter accomplished at

the hearing, or to recall for further examination of witnesses who were excused. 52 Pa. Code §5.245(a).

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That each of the involved non-carrier utilities shall bear 100% of their respective costs for completion of all necessary work done to alter or relocate their facilities to accommodate construction 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..

2. That, upon completion of the highway improvement project and its opening to public use, the non-carrier utilities involved, each, at its sole cost and expense, shall furnish all material and do all work necessary to maintain their respective facilities at the subject crossing, all in a safe and satisfactory condition.

3. That the Complaint of Susan Wood versus National Railroad Passenger Corporation at Docket No. C-20042702 is hereby sustained.

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.

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.

6. That the City of Lancaster shall report the date of actual completion of the work and certify to this Commission's Secretary, Bureau of Transportation and Safety, Pennsylvania Department of Transportation and Susan Wood that the work was completed satisfactorily in accordance with the Commission's Order. Upon receipt of certification, the Secretary shall mark the proceedings as Docket Nos. A-00117798 and C-20042702 closed.

DATED: August 5, 2005


Louis G. Cocheres
Administrative Law Judge