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COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Application of PennDOT
and Susan Wood,
v.
National Railroad
Passenger Corp.

Docket No.: A-00117798
C-20042702

DOCKETED

DEC 10 2004

Keystone Building
Hearing Room 3, First Floor
400 North Street
Harrisburg, PA 17105

October 12, 2004
Commencing at 10:00

BEFORE:

.....
LOUIS G. COCHERES, Administrative Law Judge

APPEARANCES:

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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WITNESS

DIRECT

CROSS

REDIRECT

RECROSS

NONE

P R O C E E D I N G S

JUDGE LOUIS G. COCHERES:

Let's go on the record. Good morning ladies and gentlemen. As a vast majority of you know by now, my name is Louis Cocheres and I am the Administrative Law Judge assigned to hear the matters of the 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 State Route 0072, Section 006, Proutville (phonetic) Pike crosses over the tracks of National Railroad Passenger Corporation, Amtrak. That would be AAR Number 518172T in the city of Lancaster and Manhem Township, Lancaster County and the allocation of costs incident thereto. At Commission Docket Number A-00117798 and the case of Susan Wood versus the National Railroad Passenger Corporation, City of Lancaster, Norfolk Southern Railway Company, Commonwealth of Pennsylvania Department of Transportation and Manhem Township, at Commission Docket Number C-20042702.

Unfortunately, the best laid plans of mice and men sometimes go astray, and that's what

1 we've had happen today. We have on the telephone with
2 us Mr. Moore representing Amtrak, and I have in the
3 courtroom with me a large group of people representing
4 all of the rest of the parties. I have decided that,
5 unfortunately, Amtrak has demonstrated today that they
6 actually suffer from human error every once in a while
7 and Mr. Moore was unable to join us in person because
8 his notice got lost in his building somewhere. And I
9 also note that two of the original Counsel who were to
10 be with us today, Mr. Dunlap and Mr. Sharp, were also
11 unavailable for different reasons and have sent
12 representatives.

13 Given that this is a fairly --- that I
14 anticipate that this will be a fairly lengthy hearing,
15 I have decided that there is simply too many
16 substitutes and I don't like conducting what could
17 easily be half a day or longer hearings with one party
18 on the telephone. It gets real awkward and the
19 telephone connections are not particularly good,
20 although I'm fairly certain that we have the best
21 system available right now.

22 With all that in mind, I have decided
23 that I'm going to convert today's hearing into a
24 pre-hearing conference. I do regret not being able to
25 inform you in advance but due to the state holiday

1 yesterday I was unavailable to get some of the
2 messages and would have notified your offices more
3 promptly had I known. But most of this unfolded as I
4 arrived at my office at quarter after 8:00 this
5 morning to be greeted at quarter after 8:00 and 30
6 seconds by a phone call from Ms. D'Alfonso. And that
7 was fine, I had no problem with that. I did actually
8 have my coat off when she called. I had almost got in
9 my desk chair, which is fine.

10 In any event, I want to thank you all for
11 coming. And I think really the most important
12 contributions that we can make here today are of
13 trying to come to some semblance of agreement on when
14 we can actually have this hearing, which we'll do in a
15 moment off the record. And then I will probably close
16 the pre-hearing conference portion of this case and
17 admonish you all to make some more efforts to settle
18 in this case.

19 I have heard via the grapevine that
20 settlement negotiations had been in progress and that
21 they weren't entirely successful, otherwise we
22 wouldn't be here at all today. And I would like you
23 all to make another effort. And since you all have
24 holes in your schedule to be here today and we have
25 Mr. Moore on the phone, perhaps with the witness or at

1 least someone in the building we can authorize it and
2 settle because he feels so guilty. I thought we could
3 better use the time and I do apologize for sort of
4 springing this on you on such short notice.

5 Before I get to the hearing setting
6 portion of this, are there any other procedural
7 matters or points that the parties would like to bring
8 up? Okay. I did have some calls before this hearing
9 on a variety of things. For example, Mr. Dunlap's
10 name got left off the service list and I'm not quite
11 sure how. I don't make up the service list so I could
12 say that was not my job but in any event, I do
13 apologize for some of the confusion that was created
14 because it was created by my office.

15 So without further ado I'm going to take
16 us off the record and sort of throw it out for general
17 conversation purposes.

18 OFF RECORD DISCUSSION

19 JUDGE COCHERES:

20 During our extensive off the record
21 discussion, we covered a lot of topics. But the only
22 ones that I think that we need to summarize are that
23 the parties have agreed to prepare direct testimony
24 and serve it on me and each other in hand before 4:00
25 in the afternoon on October 26th. Those parties who

1 desire it may have that service done by e-mail. I
2 will certainly take it in that format. I will tell
3 you that my office uses Word as its word processing
4 system. If you're not able to convert it to Word, at
5 least tell me what you're using and I will maybe be
6 able to convert it into something I can read. And I
7 have other people who can do that for me if I can't.
8 If you're going to use an electronic format for
9 service, I expect that the hard copy should arrive at
10 my office the next day and I require that of the
11 parties as well. So if you're serving everybody by e-
12 mail you have to get copies the next business day into
13 their offices.

14 We will have the hearing on December 9th,
15 Thursday. We have spent some time correcting
16 everyone's service lists so we all know where we are
17 and how to find them. Ms. D'Alfonso has graciously
18 volunteered to send out a comprehensive e-mail message
19 so that everyone has the correct electronic address
20 for everyone else. Is there anything else that I need
21 to deal with in terms of setting up any procedure or
22 making any rulings? I do note that I have pending in
23 front of me --- or did I answer that? Did I send out
24 an order on Mr. Dunlap's motion?

25 ATTORNEY SALAPA:

1 I have not received it, Your Honor.

2 JUDGE COCHERES:

3 Okay. I guess I ought to send one of
4 those out. Actually, just give me a minute. I think
5 I know what I'm ruling on this, I can tell you. Mr.
6 Dunlap previously submitted a motion by letter dated
7 September 3rd of this year, moving for a judgment on
8 the pleadings. And he also submitted a brief. There
9 have been no responses to the motion or the brief and
10 the time for responding has long since passed. I'm
11 going to deny the motion as I believe I might have
12 indicated to Mr. Dunlap in a previous phone call.

13 This case concerns --- these two cases,
14 actually, concern more than simply the allocation of
15 costs. There are safety issues involved here,
16 particularly when we know that Norfolk Southern uses
17 the tracks, albeit they've made it very clear that
18 they don't own the tracks. So I'm going to deny the
19 motion. I will expect Norfolk Southern to participate
20 fully. Yes, I am aware that they do not want any
21 costs. I'm not surprised to hear that. And if I
22 decide that there should be costs assessed --- well,
23 for one thing, they're going to suffer. Well,
24 actually, I'm not positive about this. But there is
25 the possibility that Norfolk Southern may incur some

1 flagmen costs. I don't know exactly what your
2 operations are like. But if we're going to have any
3 kind of construction at the second crossing, or
4 clarification, there may be some things that we need
5 to know about. So Mr. Beneventano, you may take back
6 the message to Mr. Dunlap that this motion has been
7 denied.

8 Is there any other matter that I need to
9 address? All right. Hearing none, I'm going to
10 officially close the record of this particular pre-
11 hearing conference. I will, before I close the
12 record, tell you that this hearing room is reserved
13 for this proceeding all day. If you have holes in
14 your calendars, please stay, negotiate. I would be
15 happy to have a settlement or partial settlement. I'm
16 a judge who likes to see settlements that make sense.
17 This is a case that probably could be settled. Work
18 on it. My offices are upstairs. I will be in and out
19 of my office. I intend to be in my office generally
20 all day. If you have some need for some piece of
21 information from me, do not hesitate to come up and
22 find me. Are there any other questions?

23 Thank you for coming. I'll look forward
24 to hearing that you've settled this case and are
25 canceling the hearing on December 9th. Thank you.

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HEARING CONCLUDED AT 10:50 A.M.

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