

DEPARTMENT
57/50 #1
A-00117798
80004
mfw

DOCUMENT

1 Mark Malhenzie, Direct Testimony
2 DOCKET NO. A-00117798; C-20042702
3 HEARING: December 8, 2004
4

5 Q State your name and business address.
6

7 R Mark Malhenzie, PENNDOT, Engineering District 8-0, 2140 Herr Street, Harrisburg
8 PA 17103
9

10 Q By whom are you employed and in what capacity?
11

12 R Pennsylvania Department of Transportation, District 8-0 , Highway Design.
13 Internally classified as a Highway Design Manager, but a Senior Project Manager for
14 purposes of working with the public.
15

16 Q What is District 8-0, in Department terms?
17

18 R Engineering District 8-0 geographically covers 8 counties within Central
19 Pennsylvania and has the primary responsibilities of overseeing the planning, design,
20 construction and maintenance of state owned roads and bridges.
21

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22 Q What geographical area does it cover?
23

24 R Eight counties within Central Pennsylvania
25

26 Q Please describe, generally, your duties as a project manager for the Department?
27

28 R Primary responsibilities include sheparding a design project through the entire project
29 development process. This typically includes developing a consultant agreement to
30 perform a scope of work, funding adjustments, acting as liaison between Department
31 staff, other agencies, public officials and the general public; reviewing preliminary
32 engineering, environmental study and final design documents from the consultant
33 with the ultimate goal of creating a biddable plans, specification and estimate
34 package, and construction consultation until the project is completed.
35

36 Q How long have you been employed by the Department?
37

38 R Approximately 13 years
39

40 Q What other positions have you held with the Department?
41

42 R Prior to being a Senior Project Manager, I was a Project Manager, Consultant Liaison
43 Engineer and Civil Engineer Trainee.
44

45 Q Please give us your educational background.

1 R 1990 graduate of Penn State University with a BS in Structural Design and
2 Constructional Engineering Technology.

3
4 Q In the course of your duties, have you familiarized yourself with the subject of today's
5 proceeding?

6
7 R Yes.

8
9 Q Are you authorized to testify on behalf of the Pennsylvania Department of Transportation
10 for this hearing?

11
12 R Yes

13
14 Q Commission Q&P # 1 (Both bridges): Pennsylvania Department of Transportation
15 submits a plan of the general area of the involved crossings, showing the location thereof
16 in relation to the rail line involved.

17
18 R Submitted in response to Commission Q&P # 1 are Department Exhibits 1 and 2.
19 Department Exhibit # 1 is a map showing the location of both bridges and the
20 surrounding area. Department Exhibit 2 is an aerial photograph from Department
21 records depicting the same area. The aerial photograph was taken prior to the
22 replacement of the Fruitville Pike bridge.

23
24 Q Commission Q&P # 2 (Limiting your response to the Fruitville Pike Bridge). Department
25 state the date when the bridge was built, the purpose of their construction and who
26 constructed them.

27
28 R The Fruitville Pike Bridge was reconstructed between September, 2002 and October,
29 2003. The new bridge is a reconstruction and replacement for the old bridge. The
30 new bridge was constructed by the Department and Allan A. Myers, its contractor.

31
32 Q Commission Q&P # 3 (Limiting your response to the Fruitville Pike bridge) Department
33 submit testimony describing the general type of the existing bridges, including the
34 number of spans, principal dimensions and roadway widths, number and width of
35 sidewalks and horizontal and vertical clearances with respect to the railroad tracks; and
36 state the nature and extent of any significant structural changes, alterations and
37 improvements made since the bridges were originally constructed.

38
39 R The Fruitville Pike Bridge is a two-span, prestressed concrete adjacent box beam
40 bridge. The spans are 112' and 68' long, for an overall bridge length of 180'.
41 Roadway width is 46', with two 5'-6" (approx.) bicycle lanes, and a 5'-8" sidewalk
42 adjacent to the northbound lane. Plan minimum vertical clearance over the railroad
43 tracks is 24.10'. Plan minimum horizontal clearance is 12' - 6" from centerline of
44 track to edge of pier footing.

1 Q Commission Q&P # 4 (Both Bridges): Department submit testimony regarding the
2 highways involved at the subject crossing, indicating the name, route number and termini
3 thereof, and indicate their relationship to other existing highways and any planned new
4 highways in the areas.
5

6 R The Fruitville Pike Bridge carries S.R. 72 over Amtrak. The road at the north of the
7 bridge is known as Fruitville Pike and at the south end as Prince Street. S.R. 72 ends
8 approximately 623 feet south of the bridge and terminates on the north in northern
9 Lebanon County. At the north end of the bridge, there is an intersection of Manheim
10 Pike (S.R. 72), Fruitville Pike, and Keller Avenue. At the south end, there is an
11 intersection with McGovern Avenue (S.R. 222), Lincoln St., and Manheim Ave.
12

13 R The Lititz pike bridge carries SR 222 over Amtrak. The road is know as Lititz Pike
14 and intersects with Keller Avenue and Marshall Avenue at the north side of the bridge
15 and McGovern Avenue and Liberty Street on the south side of the bridge.
16

17 Q Commission Q&P # 5 (Both Bridges): Department submit testimony describing the
18 location of the subject rail-highway crossings above grade, in relation to public
19 improvements, facilities and adjacent public rail-highway crossings.
20

21 R Please refer generally to Department Exhibits 1 and 2. The major quazi-public
22 facility in the area of the bridges is the Lancaster Amtrak Station.
23

24 Q Commission Q&P # 6 (addressing the Department's future plans for the Lititz Pike
25 Bridge.) Department submit testimony stating its opinion as to the condition of the
26 existing crossing structures, state its recommendation as to whether the structures should
27 be repaired, rehabilitated or reconstructed and its reasons for such alteration; and state its
28 estimate of the costs and time required to perform the recommended work.
29

30 R On August 11, 2004, Gannett Fleming was announced as the selected consultant to
31 perform preliminary engineering, final design and construction consultation services
32 for the Lititz Pike Bridge Replacement Project over Amtrak. The consultant will first
33 prepare various bridge replacement and roadway alignment alternatives, and identify
34 and quantify any associated environmental impacts and costs. This information,
35 combined with public outreach efforts will ultimately lead to a selection of an
36 alternative to final design and construction. It has not been determined whether the
37 bridge will be replaced at present location, shifted in either direction, or increased to
38 include two separate bridges. Besides the physical condition of the existing bridge
39 necessitating its replacement, a strong project need is the daily volume of traffic it
40 receives into and out of the City creating a congestion situation, particularly during
41 the AM and PM peak periods. The design will also incorporate multi-modal
42 considerations and aesthetics appropriate to the surrounding community. Anticipated
43 programmed phase costs and schedule are listed on table # 1 and are subject to
44 reaching all approvals, clearances and the availability of funding. Please note that as
45 of this date, right of way, utility and construction costs and schedule have the most
46 opportunity to be modified in future years for both funding estimates and

1 Transportation Improvement Program year depending on the selection of the
2 alternative and its complexity and the earlier availability of programmed funding.
3

4 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.

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13 **Q** Commission Q&P # 7 (Fruitville Pike Only): Department submit into evidence copies of
14 past orders or actions of the Commission, or its predecessors, which may have dealt with
15 the construction, alteration or reconstruction of the subject crossings, and state when,
16 why and how the subject crossings were originally established?
17

18 **R** The Department submits Exhibits # 3, 4, and 5, which are, respectively: #3 – an Order
19 of the Commission entered October 1, 2001, approving, *generally*, the construction of
20 the new Fruitville Pike Bridge; # 4 – Commission Secretarial Letter dated January 27,
21 2003, approving the emergency closing of the old Fruitville Pike Bridge during the
22 replacement project; and, # 5 a Commission Secretarial Letter, dated may 12, 2003,
23 approving the Department's construction and traffic control plans.
24

25 **Q** Commission Q&P # 8 (Both Bridges): Department state whether any Federal funds or
26 Bridge Bill funds were used or might be made available for any improvements and state
27 from what program funds might be available, if any.
28

29 **R** Department Exhibit # 6 is a breakdown of the actual costs for the Fruitville Pike
30 bridge replacement project and a cost projection for the Litiz Pike Bridge
31 Rehabilitation/replacement project.
32
33

34 **Q** Commission Q&P # 9 (Fruitville Pike Only): Department submit testimony indicating
35 which items of estimated cost it agrees to bear and which party should bear the remaining
36 items of cost, with the basis for such suggested assignment of costs.
37

38 **R** The Fruitville Pike bridge replacement project has been completed and the
39 Department bore the construction costs as necessary. The Department does not seek
40 reimbursement for any of the costs of the construction. The Department believes that
41 any non-carrier public utilities must bear their costs incurred to relocate at their sole
42 cost and expense.
43

44 **Q** Commission Q&P # 10: (Fruitville Pike only, referencing that the only issue here is
45 sidewalk maintenance). Department submit testimony indicating what portion of the
46 maintenance of the completed improvement or the existing structures it will agree to

1 perform and what maintenance cost it will agree to assume and, if none, which party or
2 parties should, in its opinion, be required to perform and assume the cost of maintenance
3 after any improvements ordered by the Commission have been completed, and state its
4 reason therefore.
5

6 **R** The Commission should issue an order consistent with its past order in this case,
7 Department Exhibit # 3, which states: "17. That upon completion of the
8 improvement and its opening to public use, Pennsylvania Department of
9 Transportation, at its sole cost and expense, furnish all material and do all work
10 necessary thereafter to maintain the entire substructure and superstructure of the
11 reconstructed bridge, complete, including abutments, piers, structural beams, roadway
12 slabs, structural components of the pedestrian walkway, curbs, railings, fencing
13 located on the top of the bridge, the mechanical stabilized earth retaining wall
14 including the pedestrian walkway, curbing and pedestrian railing supported by the
15 mechanical stabilized earth retaining wall, roadway paving on the bridge and its
16 approach roadways and snow and ice removal from the roadway surface and the,
17 drainage systems, all as constructed in accordance with the approved plans and this
18 order. 18. That upon completion of the improvement and its opening to public use,
19 National Railroad Passenger Corporation, at its sole cost and expense, furnish all
20 material and do all work necessary thereafter to maintain its tracks, catenary system,
21 signals, wire liens, and any other railroad facilities located in the vicinity of the
22 improvement. 19. That upon completion of the alteration or relocation of non-carrier
23 public utility company facilities, each public utility company, at its sole cost and
24 expense, furnish all material and perform all work require thereafter to maintain their
25 respective facilities within the limits of this Commission's jurisdiction."
26

27 **R** The only outstanding item of maintenance is in regard to snow ice, and debris
28 removal from the sidewalk on the bridge and the approaches. The Department
29 believes that local governments are responsible for snow, ice and debris removal from
30 sidewalks because sidewalks primarily benefit local pedestrians, not State highway
31 traffic.
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1 Harivadan R. Parikh – Direct Testimony
2 DOCKET NO. PUC A-00117798; C-20042702
3 HEARING: October 12, 2004
4

DOCUMENT

5 Q State your name and business address.

6
7 R Harivadan R. Parikh , PENNDOT District 8-0, 2140 Herr Street, Harrisburg, PA
8 17109-1699
9

10 Q By whom are you employed and in what capacity?

11
12 R PENNDOT, District 8-0, District Bridge Engineer

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13
14 Q What is District 8-0, in Department terms?

15
16 R PENNDOT is divided in District and each District has geographic area. For example,
17 District 8-0 has contains eight counties covering the South Central part of the State.
18

19 Q Please describe, generally, your duties as a bridge engineer for the Department?

20
21 R Overall management of the Bridge Unit to assure compliance with the Department's
22 goals and legal obligations. Responsible for Bridge Inspection/Maintenance program
23 for the District as well as management of new Bridge Design projects
24

25 Q How long have you been employed by the Department?

26
27 R 35+ years
28

29 Q What other positions have you held with the Department?

30
31 R Assistant Construction Engineer, Structure Co-coordinator, and Project Engineer for
32 the Bridge Engineer
33

34 Q Please give us your educational background.

35
36 R M. S. in Civil Engineering and B. S. in Civil Engineering.
37

38 Q Are you a licensed Professional Engineer in the State of Pennsylvania?

39
40 R Yes.
41

42 Q In the course of your duties, have you familiarized yourself with the subject of today's
43 proceeding?
44

45 R Yes.

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Q Are you authorized to testify on behalf of the Pennsylvania Department of Transportation for this hearing?

R Yes.

Q Will the Department inspect the Fruitville Pike bridge in accordance with the National Bridge Inspection Program in the future?

R Yes.

Q Now in regard to Lititz Pike, what is your relationship to that bridge, generally?

R Assuring that National Bridge Inspection Standards are met. Conduct bridge inspection and maintenance program to assure a safe bridge for the motorists

Q Has the Department been inspecting that bridge?

R Yes.

Q Commission Q&P # 2 (Limiting your response to the Lititz Pike Bridge). Department state the date when the bridge was built, the purpose of their construction and who constructed them.

R In response to this question, the Department provides Exhibit # 7.

Q What is Department Exhibit # 7?

R A Commission order from April 22, 1930.

Q Where did you obtain this order from?

R Our bridge inspection file.

Q Are there any other orders in your file?

R No.

Q Generally, what does the order provide for?

R The order directed the Pennsylvania Railroad Company to remove the old structure and to construct a new superstructure and substructure.

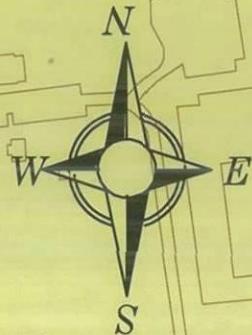
Q What items of work was the Department of Highways ordered to perform?

- 1 R The order directs the Department's predecessor, the Department of Highways, to
2 maintain the roadway paving on the bridge and the approach roadway to the bridge.
3
- 4 Q Commission Q&P # 3 (Limiting your response to the Lititz Pike bridge) Department
5 submit testimony describing the general type of the existing bridges, including the
6 number of spans, principal dimensions and roadway widths, number and width of
7 sidewalks and horizontal and vertical clearances with respect to the railroad tracks; and
8 state the nature and extent of any significant structural changes, alterations and
9 improvements made since the bridges were originally constructed.
10
- 11 R The Lititz Pike Bridge is a two-span steel thru-girder and reinforced concrete T-beam
12 bridge. Span one is a 102' steel girder-floorbeam structure. Span two is a 45.54'
13 reinforced concrete T-beam. Roadway width is 40', with a 10'-9" sidewalk on the
14 left side. The minimum vertical clearance over the railroad tracks is 21'-7".
15
- 16 Q Commission Q&P # 6 (addressing the Lititz Pike Bridge.) Department submit testimony
17 stating its opinion as to the condition of the existing crossing structures, state its
18 recommendation as to whether the structures should be repaired, rehabilitated or
19 reconstructed and its reasons for such alteration; and state its estimate of the costs and
20 time required to perform the recommended work.
21
- 22 R The Lititz Pike Bridge is in fair to poor structural condition mainly due to normal
23 deterioration because of its age. The structure needs to be replaced due to structural
24 and functional deficiencies.
25
- 26 Q Commission Q&P # 7 (Lititz Pike Only): Department submit into evidence copies of past
27 orders or actions of the Commission, or its predecessors, which may have dealt with the
28 construction, alteration or reconstruction of the subject crossings, and state when, why
29 and how the subject crossings were originally established.
30
- 31 R See Department Exhibit # 7.
32
- 33 Q Commission Q&P # 9 (Lititz Pike Only): Department submit testimony indicating which
34 items of estimated cost it agrees to bear and which party should bear the remaining items
35 of cost, with the basis for such suggested assignment of costs.
36
- 37 Q Commission Q&P # 10: (Lititz Pike only, referencing that the only issue here is sidewalk
38 maintenance). Department submit testimony indicating what portion of the maintenance
39 of the completed improvement or the existing structures it will agree to perform and what
40 maintenance cost it will agree to assume and, if none, which party or parties should, in its
41 opinion, be required to perform and assume the cost of maintenance after any
42 improvements ordered by the Commission have been completed, and state its reason
43 therefore.
44
- 45 Q Please respond to Q&P# 9 and 10?

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R The Department will continue to comply with the Commission's prior order. The complaint in this case requests that some party maintain the sidewalks. In regard to snow, ice, and debris removal from the sidewalk on the bridge and the approaches, the Department believes that local governments are responsible for snow, ice and debris removal from sidewalks because sidewalks primarily benefit local pedestrians, *not State highway traffic.*

MANHEIM TOWNSHIP



72 MANHEIM PIKE

222

FRUITVILLE PIKE BRIDGE

PIKE

KELLER AVENUE

DAYS INN HOTEL

LITITZ PIKE

MARSHALL AVENUE

STOCKYARD INN

LITITZ PIKE BRIDGE



MANHEIM AVENUE

AMTRAK STATION

STEVENS AVE

BRUBAKER CHRYSLER JEEP

LINCOLN AVENUE

MCGOVERN AVENUE

DUKE

JACKSON AVENUE

PRINCE STREET

QUEEN STREET

LIBERTY STREET

LIBERTY STREET

WATER STREET

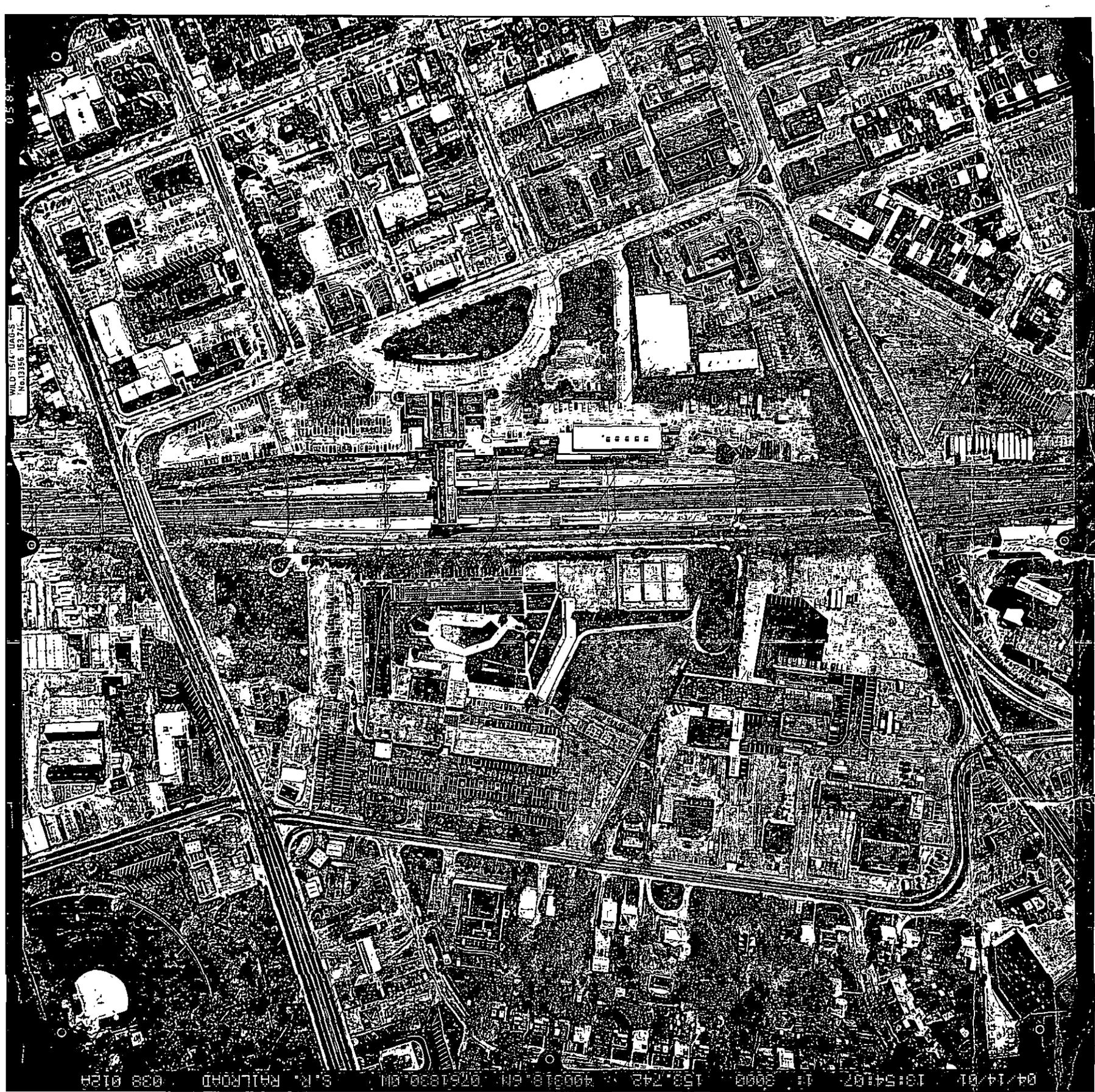
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LANCASTER CITY

A-20117798 12/8/64
PENNDOT EXHIBIT 1 1/16/69
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PENNDOT EXHIBIT 2

A-00117798 12/8/04 LW

Hbg.

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

Public meeting held September 26, 2001

Commissioners Present:

Glen R. Thomas, Chairman
Robert K. Bloom, Vice-Chairman
Aaron Wilson, Jr.
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 (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

ORDER

BY THE COMMISSION:

This matter is before us by reason of an application filed May 2, 2001, by the Pennsylvania Department of Transportation (Department). In its application, it avers that it is desirable to alter the crossing by reconstructing the bridge that carries State Route 0072, over and above the tracks of National Railroad Passenger Corporation (Amtrak) in the City of Lancaster and Manheim Township, Lancaster County.

The applicant further states that it proposes to replace the existing two span bridge that carries the roadway over five shared electrified passenger/freight tracks and two non-electrified yard tracks with a new two-span bridge that achieves AMTRAK's current clearance requirements.

PA. DEPT. OF TRANSPORTATION
EXHIBIT NO. 3
P.U.C. NO. A-00117798, C-20042702
DATE OF HEARING 10/12/04

Preliminary plans attached to the application shows that the proposed horizontal clearance between the centerline of track and the easterly end of the southerly abutment is 7-feet, 4 ½-inches and the horizontal clearance at the easterly end of the northerly abutment is 8-feet, 3 ½-inches. The Department is requesting exemption from the Commission minimum horizontal close clearance requirements. The proposed vertical clearances exceed the Commissions minimum standards.

The existing bridge deck is 30-feet wide between curbs and accommodates two traffic lanes, one for each direction of travel. A single walkway is located on the east side of the bridge deck. The proposed deck will be 52-feet wide between curbs and will accommodate four traffic lanes, two bike lanes and a pedestrian walkway that is all constructed on adjacent concrete box beam superstructure.

The average daily traffic count for State Route 0072 is 19,272 vehicles with 4% trucks. The estimated cost to construct the proposed bridge is \$4,000,000.00. The project is necessary to accommodate the safety and convenience of the public.

A field conference and investigation, arranged and conducted by a Commission staff engineer, was held at the site of the crossing on June 8, 2001, with the following parties in interest represented thereat:

Pennsylvania Department of Transportation - Applicant
Manheim Township
National Railroad Passenger Corporation
Lancaster County
PPL Electric Utilities Corporation
Commonwealth Telcom Services, Inc.

City of Lancaster, Verizon Pennsylvania, Inc. and X O Communications were notified of the time and place of the field conference but were not in attendance.

At the time of the field conference the Department stated that it agrees to bear the cost of furnishing all material and performing all work to reconstruct the proposed above grade crossing, its approach roadways and to demolish the existing bridge. Upon completion of the project it will maintain the bridge superstructure, substructure, the structural components of the pedestrian walkway, paving of the roadway including the approach roadways between the curb faces and snow and ice removal from the roadway surface.

Portions of the approach roadways to the bridge are supported by a mechanical stabilized earth retaining walls. Also, included is a concrete slab that acts as the curbing and pedestrian walkway with pedestrian railing. The Department agreed to

maintain these features and also the protective fencing to be constructed on the bridge superstructure.

The only anticipated modification to AMTRAK's facilities is expected to be its cantenary system. The Department agreed to bear all of the construction costs to alter the system, and the cost of engineering and protective services.

The non-carrier public utility companies present could not determine the extent of their project involvement. Accordingly, they agreed to initially bear their respective cost for any alteration or relocation of their facilities that results from the project. They will determine at a later date whether to seek reimbursement for their costs and if a hearing is needed to resolve any remaining issues.

During construction the Department will maintain traffic through the area of the crossing. It proposes to construct a two-lane bridge, that will be part of the completed work, adjacent to the existing bridge. Roadway traffic patterns will then be shifted over to the partially constructed bridge while the remainder of the proposed bridge will be constructed along the current roadway alignment.

The applicant has not submitted final construction plans and will need to do so prior to the start of construction. It has submitted for approval right-of-way plans and requested the Commission to appropriate 9-plots of property. They consist of two aerial easements, four right-of-way plots and three temporary construction easements.

Proof of service of a copy of the application upon each party in interest has been received. None of the parties has advised the Commission that it objects to the issuance of an order approving the subject application. We have considered the instant application and find that in the interest of public safety, the proposed crossing alteration project should be constructed.

This Commission tentatively establishes its jurisdiction between station 156+88 and station 170+40.56, as measured along the survey and right-of-way base line of State Route 0072.

Upon full consideration of the matter involved, we determine that it is not necessary to schedule a hearing in this proceeding at this time and that issuance of an order without hearing is proper, since the Department has agreed to construct the proposed alteration project, at its sole cost and expense, and none of the parties has expressed any objection to the proposed project.

We also determine that the alteration or relocation of non-carrier public utility companies' facilities should be made by the respective companies, at their initial cost and expense; and that a hearing be scheduled, if necessary, after all work has been completed to consider the allocation of costs and expenses incident to the crossing alteration project.

The record having been certified to this Commission, we issue this order pursuant to Section 335(a) of the Public Utility Code, 66 Pa. C.S. §335(a); THEREFORE,

IT IS ORDERED:

1. That the application of Pennsylvania Department of Transportation for the approval to reconstruct the bridge carrying State Route 0072, over the tracks of National Railroad Passenger Corporation in the City of Lancaster and Manheim Township, Lancaster County, be and is hereby approved.
2. That the existing crossing, above grade, be constructed generally in accordance with the right-of-way plan submitted by the Pennsylvania Department of Transportation on July 12, 2001, and identified as "Drawings Authorizing Acquisition of Right-of-Way For State Route 0072, Section 006 R/W, In Lancaster County," consisting of twenty-five sheets, which plan is hereby approved and made part hereof.
3. That the Pennsylvania Department of Transportation, at its sole cost and expense, and prior to the start of construction, prepare and submit to this Commission for approval and to all parties of record for examination, complete detailed construction plans for the proposed crossing alteration project, the highway approaches and the bridge superstructure and substructure.
4. That exemption from the minimum clearance requirement of 52 Pa. Code §33.122, be and is hereby granted for the easterly end of the southerly and northerly abutments.

5. That in accordance with the provisions of section 2702 of the Public Utility Code, 66 Pa. C.S. §2702, the following described property be and is hereby taken and appropriated for the purpose of the improvement in accordance with the plan approved in Paragraph No. 2 of this order and that Paragraph No. 5 of this order shall be recorded by the Recorder of Deeds in Lancaster County, and shall be indexed under the name of the record owner of said property, grantor, and the Commonwealth of Pennsylvania, grantee, at the sole cost and expense of the Department of Transportation of the Commonwealth of Pennsylvania, applicant herein.

National Railroad Passenger Corporation, Property Owner
30th Street station
4th Floor, South Tower, Box 64
Philadelphia Pennsylvania 19104

ALL THAT CERTAIN track of land situated in the City of Lancaster, Lancaster County, Pennsylvania, bounded and described as follows to wit:

Tract No. 1
(Required Aerial Easement)

BEGINNING at a point on the westerly side of State Route 0072, said point being at the intersection of the westerly legal right-of-way line for State Route 0072 and the northerly line of National Railroad Passenger Corporation right-of-way, distant forty two (42) feet westerly and measured at right angles from the survey and right-of-way baseline of State Route 0072 at or about Station 165+56 thereof; thence in a south easterly direction along the legal right-of-way line of State Route 0072 to a point, distant forty one and seventy nine hundredths (41.79) feet westerly and measured at radially from the survey and right-of-way base line of State Route 0072 at or about Station 164+17.59 thereof; thence in a westerly direction in and across lands of National Railroad Passenger Corporation and along the required right-of-way line of State Route 0072 to a point distant seventy one and nineteen hundredths (71.19) feet westerly and measured radially from the survey and right-of-way baseline of State Route 0072 at or about Station 164+30.19 thereof; thence in a northwesterly direction in and across lands of National Railroad Passenger Corporation along the western boundary of the required aerial easement to a point in the northerly legal right-of-way line of State Route 0072 distant seventy one (71) feet westerly measured at right angles from the survey and right-

of-way baseline at or about Station 165+66 thereof; thence in a southeasterly direction along the said legal right-of-way line to a point and place of beginning and containing 0.094 acres of land more or less.

Tract No. 2

(Required Aerial Easement)

BEGINNING at a point on the easterly side of State Route 0072, said point being at the intersection of the easterly legal right-of-way line for State Route 0072 and the northerly right-of-way line of National Railroad Passenger Corporation distant sixteen and forty five hundredths (16.45) feet easterly and measured at right angles from the survey and right-of-way baseline of State Route 0072 at or about Station 165+37.53 thereof; thence in and across lands of National Railroad Passenger Corporation the following three (3) courses and distances to viz: In a southeasterly direction to a point, distant sixty two (62) feet easterly and measured at right angles from the survey and right-of-way base line of State Route 0072 at or about Station 165+33 thereof; thence in a southeasterly direction to a point distant sixty two (62) feet easterly and measured radially from the survey and right-of-way baseline of State Route 0072 at or about Station 163+83 thereof; thence in a northwesterly direction to a point in the easterly legal right-of-way line of State Route 0072 distant sixteen and twenty three hundredths (16.23) feet easterly and measured radially from the survey and right-of-way baseline at or about Station 164+99.35 thereof; thence in a northwesterly direction along the said legal right-of-way line to a point and place of beginning and containing 0.151 acres of land more or less.

Tract No. 1

(Required Right-of-Way)

BEGINNING at a point on the westerly side of State Route 0072, said point being at the intersection of the westerly required right-of-way line for State Route 0072 and the easterly right-of-way line of National Railroad Passenger Corporation distant forty and fourteen hundredths (40.14) feet westerly and measured at right angles from the survey and right-of-way baseline of State Route 0072 at or about

Station 161+26.95 thereof; thence in a northwesterly direction along lands of LLM Realty Partners and the said required right-of-way line of to a concrete monument found distant seventy one and nineteen hundredths (71.19) feet westerly and measured radially from the survey and right-of-way base line of State Route 0072 at or about Station 164+27.11 thereof; thence in a southeasterly direction in and across lands of National Railroad Passenger Corporation to a point in the westerly legal right-of-way line of State Route 0072 distant forty one and seventy nine hundredth (41.79) feet westerly and measured radially from the survey and right-of-way baseline at or about Station 164+17.03 thereof; thence in a southeasterly direction along the said legal right-of-way line to a point and place of beginning and containing 0.094 acres of land more or less.

Tract No. 2
(Required Right-of-Way)

BEGINNING at a concrete monument found in line of lands of National Railroad Passenger Corporation distant seventy one and nineteen hundredths (71.19) feet westerly measured radially from the survey and right-of-way baseline at or about Station 164+27.11 thereof; thence in and across lands of National Passenger Railroad Corporation along the Required right-of-way line of State Route 0072 to a point distant seventy one and nineteen hundredths (71.19) feet westerly and measured radially from the survey and right-of-way baseline at or about Station 164+30.19 thereof; thence in and along lands of National Railroad Passenger Corporation and along the required right-of-way line of State Route 0072 to a point in the westerly legal right-of-way line of State Road 0072, distant forty one and seventy nine hundredths (41.79) feet westerly and measured radially from the survey and right-of-way baseline at or about Station 164+17.59 thereof; thence along the easterly legal right-of-way line of State Route 0072 to a point in the southerly right-of-way line of National Railroad Passenger Corporation distant forty one and seventy nine hundredths (41.79) feet westerly and measured radially from the survey and right-of-way baseline at or about Station 164+17.03 thereof; thence in a northwesterly direction along the southerly right-of-way line of National Railroad Passenger Corporation to a

concrete monument and place beginning and containing 0.001 acres more or less.

Tract No. 3
(Required Right-of Way)

BEGINNING at a point on the easterly side of State Route 0072, said point being at the intersection of the easterly legal right-of-way line for State Route 0072 and the southerly right-of-way line of National Railroad Passenger Corporation distant seventeen (17) feet easterly and measured at right angles from the survey and right-of-way baseline of State Route 0072 at or about Station 161+86 thereof; thence in a northwesterly direction along the said legal right-of-way line of to a point sixteen and twenty three hundredths (16.23) feet easterly and measured radially from the survey and right-of-way base line of State Route 0072 at or about Station 163+99.35 thereof; thence in southeasterly direction in and along lands of National Railroad Passenger Corporation and along the required right-of-way of State Route 0072 to a point distant fifty seven and no hundredths (57.00) feet easterly and measured radially from the survey and right-of-way baseline of State Route 0072 at or about Station 163+84.99 thereof; thence in a southeasterly direction in and across lands of National Railroad Passenger Corporation along the required right-of-way of State Route 0072 to a concrete monument, distant fifty seven and no hundredths (57.00) feet easterly and measured radially from the survey and right-of-way baseline at or about Station 163+50.00 thereof; thence in a westerly direction continuing in and across lands of National Railroad Passenger Corporation along the said required right-of-way line to a concrete monument distant thirty nine and no hundredth (39.00) feet easterly and measured radially from the survey and right-of-way baseline at or about Station 163+50.00 thereof, thence in a southeasterly direction continuing in and across lands of National Railroad Passenger Corporation along the required right-of-way line of State Route 0072 the following two (2) courses and distances to wit: (1) to a concrete monument distant thirty six and thirty three hundredths (36.33) feet easterly measured at right angles from the survey and right-of-way baseline at or about Station 162+25.99 thereof; (2) to a point in line of lands of LLM Realty Partners distant thirty six and thirty three hundredths (36.33) feet easterly

and measured at right angles to the survey and right-of-way baseline at or about Station 161+80.26 thereof; thence in a northwesterly direction along lands of LLM Realty Partners to a point the place of beginning and containing 0.118 acres of land more or less.

Tract No. 4

(Required Right-of-Way)

BEGINNING at a point on the easterly side of State Route 0072, said point being at the intersection of the easterly legal right-of-way line for State Route 0072 and the Northerly right-of-way line of National Railroad Passenger Corporation distant twenty six and forty nine hundredths (26.49) feet easterly and measured radially from the survey and right-of-way baseline of State Route 0072 at or about Station 168+87.01 thereof; thence in an easterly direction along the common line between lands of National Railroad Passenger Corporation and lands of Jay S. and Janice R. Martin and the required right-of-way line of State Route 0072 to a point distant forty five and nineteen hundredth (45.19) feet easterly and measured radially from the survey and right-of-way baseline at or about Station 168+73.39 thereof; thence continuing along the required right-of-way line of State Route 0072, partly along lands of Jay S. and Janice R. Martin and partly in and across lands of National Railroad Passenger Corporation to a point distant fifty seven and no hundredths (57.00) feet easterly and measured at right angles from the survey and right-of-way baseline of State Route 0072 at or about Station 165+56.18 thereof; thence in a southerly direction in and across lands of National Railroad Passenger Corporation to a point distant fifty seven and no hundredths (57.00) feet easterly and measured at right angles from the survey and right-of-way baseline at or about Station 165+35.33 thereof; thence in a westerly direction in and across lands of National Railroad Passenger Corporation to a point on the legal right-of-way line of State Route 0072, distant thirteen and forty five hundredths (13.45) feet easterly and measured at right angles from the survey and right-of-way baseline at or about Station 165+37.53 thereof; thence in a northwesterly direction along the easterly right-of-way line of State Route 0072 to a point of curvature, distant twenty five (25) feet easterly and measured radial from the survey and right-of-way baseline at or about Station 168+79 thereof; Thence

along a curve to the right having a radius of 195.2 feet to a point the place of beginning and containing 0.251 acres more or less.

The above six (6) tracts of land shown on the Department of Transportation's drawings Authorizing Condemnation of Right-of-Way for State Route 0072, Section 006 R/W, as required Right-of-Way and Aerial Easement for State Route 0072 and designated and delineated as parts of Parcel No. 3 on sheet Nos. 11 and 20 of the said drawings, as recorded in the office for the recording of deeds, in Lancaster County, Pennsylvania, in Highway Plan Book V-11, Page 36, on June 13, 2001, are portions of real estate which became legally vested in National Railroad Passenger Corporation by deed of Consolidated Rail Corporation, dated October 20, 1978, in Deed Book L-75, page 511, in the Lancaster County Recorder of Deeds Office.

6. That in accordance with provisions of Section 2702 of the Public Utility Code, 66 Pa. C.S. §2702, the following described property be and is hereby taken and appropriated temporarily for use during the construction period only, in accordance with the right-of-way plan approved in Paragraph No. 2 of this order, and that Paragraph No. 6 of this order shall be recorded by the Recorder of Deeds of Lancaster County, and shall be indexed under the name of the record owner of said property, grantor and the Commonwealth of Pennsylvania; said temporary appropriation shall terminate upon completion of the improvement and its opening to public use:

National Railroad Passenger Corporation, Property Owner
30th Street Station
4th Floor South Towner, Box 64
Philadelphia, Pennsylvania 19104

ALL THAT CERTAIN track of land situated in the City of Lancaster, Lancaster County, Pennsylvania, bounded and described as follows to wit:

Tract No. 1
(Temporary Construction Easement)

BEGINNING at a point on the easterly side of State Route 0072, said point being at the intersection of the easterly required right-of-way line of State Route 0072 and the southerly right-of-way line of National Railroad Passenger Corporation distant thirty six and thirty three hundredths (36.33) feet easterly and measured radially from the survey and right-of-way baseline of State Route 0072 at or about Station 161+80.26 thereof; thence in a northwesterly direction along the required right-of-way line of State Route 0072 to a concrete monument, distant thirty six and thirty three hundredths (36.33) feet easterly and measured radially from the survey and right-of-way baseline of State Route 0072 at or about Station 162+25.99 thereof; thence in a westerly direction continuing along the required right-of-way line of state Route 0072 to a concrete monument distant thirty nine (39) feet easterly and measured radially from the survey and right-of-way baseline of State Route 0072 at or about Station 163+50 thereof; thence in a southeasterly direction continuing along the required right-of-way line of State Route 0072 to a point distant forty nine (49) feet easterly and measured radially from the survey and right-of-way baseline at or about Station 163+50 thereof; thence in a southeasterly direction in and across lands of National Railroad Passenger Corporation along the easterly

temporary construction easement (access) line to a point in the northern boundary line of LLM Realty Partners distant forty six (46) feet easterly and measured at right angles from the survey and right-of-way baseline of State Route 0072 at or about Station 161+77 thereof; thence along lands of LLM Realty Partners in a northwesterly direction to a point and place of beginning and containing 0.040 acres of land more or less.

Tract No. 2

(Temporary Construction Easement)

BEGINNING at a concrete monument on the easterly side of State Route 0072, said monument being at an angle point in the easterly required right-of-way line for State Route 0072, distant fifty seven and no hundredths (57.00) feet easterly and measured radially from the survey and right-of-way baseline of State Route 0072 at or about Station 163+50.00 thereof; thence in a northwesterly direction along the easterly required right-of-way line of State Route 0072 to a point distant fifty seven and no hundredths (57.00) feet easterly and measured radially from the survey and right-of-way baseline of State Route 0072 at or about Station 163+84.99 thereof; thence in and across lands of National Railroad Passenger Corporation the following three (3) courses and distances to viz: In a southeasterly direction along the northern boundary of the temporary construction easement (access) to a point, distant seventy nine (79) feet easterly and measured radially from the survey and right-of-way base line of State Route 0072 at or about Station 163+76 thereof; thence in a southeasterly direction along the easterly boundary of the temporary construction easement (access) to a point distant seventy nine (79) feet easterly and measured radially from the survey and right-of-way baseline of State Route 0072 at or about Station 163+50 thereof; thence in a southwesterly direction along the southerly boundary of the temporary construction easement (access) to a point and place of beginning and containing 0.015 acres of land more or less.

Tract No. 3

(Temporary Construction Easement)

BEGINNING at a point on the easterly side of State Route 0072, said point being at the intersection of the easterly required right-of-way line for State Route 0072 and the northerly right-of-way line of National Railroad Passenger

Corporation distant fifty seven (57.00) feet easterly and measured at right angles from the survey and right-of-way baseline of State Route 0072 at or about Station 165+60 thereof; thence in a southeasterly direction along the northerly right-of-way line of National Railroad Passenger Corporation to a point distant seventy nine (79) feet easterly and measured at right angles from the survey and right-of-way baseline of State Route 0072 at or about Station 165+52 thereof; thence in a southeasterly direction in and across lands of National Railroad Passenger Corporation along the eastern boundary of the temporary construction easement (access) to a point, distant seventy nine (79) feet easterly and measured at right angles from the survey and right-of-way base line of State Route 0072 at or about Station 165+12 thereof; thence in a northwesterly direction continuing in and across lands of National Railroad Passenger Corporation along the southerly boundary of the temporary construction easement (access) to a point distant sixty two (62) feet easterly and measured at right angles from the survey and right-of-way baseline of State Route 0072 at or about Station 165+17 thereof; thence in a northwesterly direction along the easterly Required Aerial Easement line to a point distant sixty two (62) feet easterly and measured at right angles from the survey and right-of-way baseline at or about Station 165+33 thereof; thence in a northwesterly direction along the northerly boundary of said Required Aerial Easement to a point distant fifty seven and no hundredths (57.00) easterly and measured at right angles from the survey and right-of-way baseline at or about station 165+33.79 thereof; thence in a northwesterly direction along the easterly required right-of-way line of State Route 0072 to a point distant fifty seven and no hundredths (57.00) feet easterly and measured at right angles from the survey and right-of-way baseline at or about Station 165+56.18 thereof; thence in an northwesterly direction continuing along the easterly required right-of-way line of State Route 0072 to a point and place of beginning and containing 0.019 acres of land more, or less.

The above three (3) tracts of land shown on the Department of Transportation's drawings Authorizing Condemnation of Right-of-Way for State Route 0072, Section 006 R/W, as temporary construction easement (access) for State Route 0072 and designated and delineated as parts of Parcel No. 3 on sheet Nos. 11 and 20 of the said drawings, as recorded in the office for the recording of deeds, in Lancaster

County, Pennsylvania, in Highway Plan Book V-11, Page 36, on June 13, 2001 are portions of real estate which became legally vested in National Railroad Passenger Corporation by deed of Consolidated Rail Corporation, dated October 20, 1978, in Deed Book L-75, Page 511, in the Lancaster County Recorder of Deeds Office.

7. That National Railroad Passenger Corporation, at the sole cost and expense of Pennsylvania Department of Transportation, furnish all material and perform all work relating to its facilities, which may be required as incidental to the performance of the proposed work; furnish construction engineering and inspection services as required as a result of the proposed work; and furnish and maintain flagmen and watchmen necessary to protect its operations during the time the work is being performed above and adjacent to its tracks.

8. That any relocation, changes in or removal of any adjacent structures, equipment or other facilities of any non-carrier public utility company located within or beyond the limits of any highway within the limits of this Commission's jurisdiction, which may be required as incidental to the performance of the proposed work, be made by said public utility company at its initial cost and expense, and in such a manner as will not interfere with the proposed crossing alteration project.

9. That Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and perform all work necessary to affect the vacation, relocation, removal or demolition of any non-utility structures, including dwellings, located on property required for the crossing alteration project, in accordance with this letter.

10. That Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and perform all work necessary to establish and maintain any detours or traffic control devices that may be required to properly accommodate highway traffic during the time the crossing alteration work is being performed in accordance with the approved plans and this order.

11. That Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and perform all work required to complete the remainder of the crossing alteration project in accordance with the approved plans and this order.

12. That the crossing alteration project be completed on or before December 31, 2003, and that on or before said date, Pennsylvania Department of Transportation report the date of actual completion of the work and certify to this Commission that work has been completed satisfactorily in accordance with the approved plans and this order.

13. That Pennsylvania Department of Transportation cooperate with National Railroad Passenger Corporation so that in the construction of the crossing alteration project, the facilities of the railroad company will not be endangered or unnecessarily impeded.

14. That National Railroad Passenger Corporation cooperate with Pennsylvania Department of Transportation and conduct its operations in the vicinity of the crossing alteration project in a safe manner and under control during the time the project is being constructed.

15. That non-carrier public utility companies cooperate with Pennsylvania Department of Transportation so that the alteration and/or relocation of their facilities will not interfere with the completion of the crossing alteration project.

16. That Pennsylvania Department of Transportation pay all compensation for damages due to owners for property taken, injured or destroyed by reason of the construction of the crossing alteration project in accordance with this order.

17. That upon completion of the improvement and its opening to public use, Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the entire substructure and superstructure of the reconstructed bridge, complete, including abutments, piers, structural beams, roadway slabs, structural components of the pedestrian walkway, curbs, railings, fencing located on the top of the bridge, the mechanical stabilized earth retaining wall including the pedestrian walkway, curbing and pedestrian railing supported by the mechanical stabilized earth retaining wall, roadway paving on the bridge and its approach roadways and snow and ice removal from the roadway surface and the, drainage systems, all as constructed in accordance with the approved plans and this order.

18. That upon completion of the improvement and its opening to public use, National Railroad Passenger Corporation, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain its tracks, catenary system, signals, wire liens, and any other railroad facilities located in the vicinity of the improvement.

19. That upon completion of the alteration or relocation of non-carrier public utility company facilities, each public utility company, at its sole cost and expense, furnish all material and perform all work require thereafter to maintain their respective facilities within the limits of this Commission's jurisdiction.

20. That all costs which are to be reimbursed by the Department of Transportation consistent with this order shall be reimbursed pursuant to the provisions of the 23 C.F.R. §§140.646. The aforesaid Federal reimbursement shall not supersede, delay or in any manner postpone the effect of any ordering paragraph contained in this or any related order.

21. That upon completion of the construction of this crossing improvement project and the Commission receiving written notice that there are unresolved issues to be considered, this proceeding be scheduled for hearing at a time and place assigned by this Commission, upon due notice to all parties hereto, to receive evidence relative to the allocation of all costs of construction, responsibility for future maintenance or any other matters relevant to this proceeding.

BY THE COMMISSION,

James J. McNulty

(SEAL)

ORDER ADOPTED: September 26, 2001

ORDER ENTERED: October 1, 2001



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

IN REPLY PLEASE
REFER TO OUR FILE

January 27, 2003

A-00117798

TO ALL PARTIES

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 518 172 T) in the City of Lancaster and Manheim Township, Lancaster County; and the allocation of costs incident thereto.

To Whom It May Concern:

By letter dated December 13, 2002, the Pennsylvania Department of Transportation (Department) informed the Commission that it has closed the above captioned bridge to all vehicular use.

The current docketed proceeding is the result of the Department filing an application on May 2, 2001, for replacement of the bridge structure. The Department states that during the construction process it had been monitoring specific substructure conditions. Cracks that existed in the concrete center pier opened wider and the east portion of the pier footing appeared to have move and opened the previously observed hair line cracks to a width of one inch.

To avoid a catastrophe failure of the bridge the decision was made on November 12, 2002, to close it to public use. Replacement of the bridge continues to progress. The Commission order adopted September 26, 2001, in this proceeding establishes a completion date of December 31, 2003, for replacement of the bridge. The order also provides for any detours or traffic controls that may be needed during reconstruction of the bridge.

Upon full consideration of the matters involved, we find that the action taken by the Department to close the bridge to all vehicular use is proper and in the interest of safety to the public and should be affirmed.

The Commission issues this Secretarial letter in accordance with Section 2702 of the Public Utility Code and finds that:

PA. DEPT. OF TRANSPORTATION
EXHIBIT NO. 4
P.U.C. NO. A-00117798, C-20042762
DATE OF HEARING 10/12/04

1. The action taken by Pennsylvania Department of Transportation to close the bridge carrying State Route 72 (Fruitville Pike) over the tracks of National Railroad Passenger Corporation in the City of Lancaster and Manheim Township, Lancaster County, to all vehicular use, be and is hereby affirmed.

If you are dissatisfied with the resolution of this matter, you may, as set forth in 52 Pa. Code §5.44, file a petition with the Commission within ten (10) days of the date of this letter.

Very truly yours,

James J. McNulty
Secretary



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

IN REPLY PLEASE
REFER TO OUR FILE

May 12, 2003

A-00117798

TO ALL PARTIES

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.

To Whom It May Concern:

Paragraph No. 3, of the Commission order adopted September 26, 2001, directed the Pennsylvania Department of Transportation to submit for approval a detailed construction plan for the bridge replacement involved in this proceeding.

The final construction plan was received April 15, 2003, with proof that a copy was served on all the parties of record. The plans are identified as "Drawings For Construction Of State Route 0072, Section 006," composed of twenty-six (26) sheets of roadway plans, ten (10) sheets of signing and pavement marking plan, six (6) sheets of traffic signal plan, nine (9) sheets of traffic control plan, five (5) sheets of erosion and sediment pollution control plan, fifty-five (55) sheets of structure plans S-24407, six (6) sheets of structure plan S-24439, nine (9) sheets of structure plan S-24440, seven (7) sheets of structure plan S-24441 and seven (7) sheets of structure plan S-24442. No objection to the plan has been received.

The Commission issues this Secretarial letter in accordance with Section 2702 of the Public Utility Code and approves the detailed construction plans submitted by Pennsylvania Department of Transportation.

Very truly yours,

James J. McNulty
Secretary

PA. DEPT. OF TRANSPORTATION
EXHIBIT NO. 5
P.U.C. NO. A-00117798; C-2004-2702
DATE OF HEARING 10/12/04

Fruitville Pike (SR 0072) – Actual Costs

For work associated with the engineering, utility, right of way and reconstruction of the Fruitville Pike Bridge, 80% Federal/20%State Bridge Bill funding was used on the following phases and in the associated amounts:

	80 % Federal	20%state	Total
STUDY	\$105,600	\$26,400	\$132,000
PE	\$108,025	\$27,006	\$135,031
FD	\$453,895	\$113,474	\$567,369
UTIL	\$0	\$0	\$20,000(note: utility phase was 100% state)
R/W	\$1,080,000	\$270,000	\$1,350,000
CON	\$7,569,653	\$1,892,413	\$9,521,301(note: includes \$59,235 from other funding source)

Lititz Pike (SR 222) - Future Bridge Project Estimates

For work associated with the anticipated engineering, utility, right of way and reconstruction of the Lititz Pike Bridge, 80% Federal/20%State Bridge Bill funding is proposed on the following phases and in the associated amounts:

	80 % Federal	20%state	Total
PE	\$1,354,000	\$387,600	\$1,688,000
FD	\$800,000	\$200,000	\$1,000,000
UTIL	\$800,000	\$200,000	\$1,000,000
R/W	\$3,200,000	\$800,000	\$4,000,000
CON	\$18,000,000	\$4,500,000	\$22,500,000

PA. DEPT. OF TRANSPORTATION
EXHIBIT NO. 6
P.U.C. NO. A-00117798; C-20042702
DATE OF HEARING 10/12/04

4. That all property necessary for the improvement, together with all buildings and structures thereon, shall be taken and appropriated for the purpose of this improvement, detailed descriptions thereof with the names and addresses of reputed owners being recited at length in the order to be issued in accordance with this report.

5. That the Commission, finding it necessary to connect the crossing herein ordered constructed with existing highways and to make them more available to public use, will lay out, establish and open the following public highways, to wit:

(a) A new highway beginning in the existing State Highway Route No. 240, at its intersection with old state highway route No. 460, and extending thence in a general northeasterly direction a distance of approximately 6600 feet to a junction with the township road leading eastwardly from the Limekiln grade crossing; alignment, width and grades to be as shown on the approved plans.

(b) A new highway beginning in existing State Highway Route No. 240, at a point 500 feet southwest of the grade crossing at the end of the bridge carrying the tracks of the Williamsport Division of The Pennsylvania Railroad over the West Branch of the Susquehanna River and extending thence in a general northeasterly direction passing under the eastern-most span of said railroad bridge and intersecting the existing state highway again at a point approximately 700 feet northeast of the grade crossing; alignment, width and grades to be as shown on the approved plans.

6. That The Pennsylvania Railroad Company shall furnish all materials and do all work necessary to construct the bridge over its tracks, and the concrete viaduct approach spans thereto, exclusive of the roadway paving thereon, in accordance with the approved plan therefor, the estimated cost of this work being \$88,431.

7. That the Department of Highways of the Commonwealth of Pennsylvania shall furnish all materials and do all work necessary to complete the balance of the improvements herein ordered, in accordance with the approved plans, including the roadway paving on the bridge and concrete viaduct approaches thereto, the estimated cost of this work being \$130,769.

8. That all work herein ordered to be done by The Pennsylvania Railroad Company shall be fully completed on or before November 1, 1930, and all work herein ordered to be done by the Department of Highways shall be completed on or before June 1, 1931.

9. That the Department of Highways shall pay to The Pennsylvania Railroad Company, when and as certified by the Public Service Commission, a sum or sums equal to the portion of the actual cost of materials herein required to be furnished and work herein ordered to be done by said railroad company in excess of \$70,000.

10. That in addition to furnishing the materials and doing the

Company shall pay any money to which it may be entitled as compensation for damages to any of its property taken, injured or destroyed by reason of these improvements.

11. That, the County of Northumberland shall pay all compensation for damages due to the owners of property taken, injured or destroyed in the execution of the improvements; exclusive of damages due to the respondent railroad company for any of its property taken, injured or destroyed.

12. That any relocation, changes in or removal of any adjacent structures, equipment or other facilities of any public service company, which may be required as incidental to the execution of the improvements herein ordered, shall be made by such public service company at its own expense.

13. That upon the completion of the improvements herein ordered The Pennsylvania Railroad Company shall thereafter maintain the substructure and superstructure of the span over its tracks and concrete approach-spans thereto, exclusive of roadway paving thereon; the Township of Delaware shall maintain the new highway constructed under the eastern span of the railroad bridge over the river, and the Department of Highways shall maintain the balance of the improvement, including the roadway paving on the bridge over the railroad and the concrete approach spans thereto.

14. That upon the completion of the improvement, the portion of the old State Highway Route No. 240 at the crossing at the east end of the railroad bridge over the West Branch of the Susquehanna River between points thirty feet on either side of the center line between the tracks of The Pennsylvania Railroad Company and the portions of the existing township highways between the right-of-way lines of The Pennsylvania Railroad Company at the three grade crossings known as Stahl's, Limekiln and Pogebean's crossings, will no longer be necessary for public use and accordingly shall be vacated between said points.

15. That upon the completion of the improvement, The Pennsylvania Railroad Company shall effectively barricade to public travel the four grade crossings here involved, said barricades to be thereafter maintained by said railroad company.

An order will issue in accordance with these findings.

STEIN

v.

PENNSYLVANIA RAILROAD COMPANY, CONESTOGA TRACTION COMPANY, DEPARTMENT OF HIGHWAYS COUNTY OF LANCASTER AND TOWNSHIP OF MANITIM, LANCASTER COUNTY

REMOVED EX # 7

Crossings--Reconstruction--Plans--Apportionment of cost.

A dangerous and inadequate bridge carrying a state highway over main line tracks of a railroad was ordered reconstructed so as to provide a two span structure with 40 foot roadway and one 8 foot sidewalk, the track of a street railway to be located on the west side of the roadway. The cost of the improvement was apportioned.

Chas. W. Eddy and *S. V. Hosterman* for Complainant.

Oliver S. Shaeffer for Commissioners of Lancaster County.

John B. Malone for Conestoga Traction Company.

J. L. Shelley, Jr., for Department of Highways.

Nauman & Smith for The Pennsylvania Railroad Company.

M. M. Harnish for Manheim Township Water Company.

REPORT BY THE COMMISSION, April 22, 1930:

State Highway Route No. 442, generally known as the Lancaster & Lititz Turnpike, and a single track of the Conestoga Traction Company, are carried over the grade of the main tracks of the Philadelphia Division of The Pennsylvania Railroad Company by means of a two-span iron and steel bridge at a point about 600 feet east of Lancaster station in Manheim Township, Lancaster County. The complaint alleges that this bridge is inadequate and dangerous and its reconstruction necessary for the safety, accommodation and convenience of the public.

The evidence which was introduced at the hearings clearly establishes the dangerous condition of the crossing. Following a series of engineering conferences a plan was prepared and submitted by The Pennsylvania Railroad Company which meets the approval of all parties in interest. This plan provides for the construction of a new two-span bridge having a roadway 40 feet in width and one 8-foot sidewalk along the west side. The bridge will be of sufficient length to provide space for two additional tracks of the railroad company. The approaches will be on six per cent grades ascending to the structure, and the single track of the Conestoga Traction Company will be located along the west side of the roadway on the bridge and on the approaches. The pipe line of the Manheim Township Water Company, which is carried on the existing bridge, will be relocated so that it will pass underneath the tracks of the railroad company. Pending the completion of the improvement a temporary detour to existing crossings will be maintained for vehicles and street railway

The estimated cost of this improvement totalling \$209,204, exclusive of property damages, is made up of the following main items:

Bridge	\$107,219
Approaches	88,621
Highway detour	950
Alteration to water line	4,231
Alteration to traction Co's facilities	8,183
	<hr/>
	\$209,204

The damages resulting from the appropriation of property necessary for the improvement are estimated at \$6,850, making the total cost of the work \$216,054.

From a consideration of all the evidence, the Commission finds and determines:

1. That the crossing complained of is dangerous and its reconstruction necessary for the safety, accommodation and convenience of the public; therefore, the complaint will be sustained.

2. That said reconstruction shall be made in accordance with the general plan submitted by The Pennsylvania Railroad Company and Marked "Pennsylvania Railroad Company's Exhibit No. 6" at the hearing of December 11, 1929, which said plan is hereby approved, attached hereto and made part hereof.

3. That The Pennsylvania Railroad Company, within sixty (60) days from date of service hereof, shall submit to this Commission for approval and to the parties of record for examination, detailed plans of the bridge herein ordered reconstructed.

4. That all property necessary for the improvement, together with all buildings and structures thereon, shall be taken and appropriated for the purpose of this improvement; detailed descriptions thereof with the names and addresses of the reputed owners being recited at length in the order to be issued in accordance with this report.

5. That The Pennsylvania Railroad Company shall furnish all materials and do all work necessary to construct the substructure and superstructure of the bridge in accordance with the approved plan, including roadway paving thereon, but exclusive of the facilities of the Conestoga Traction Company, and, in addition, shall remove the present structure, the estimated cost of this work being \$107,219.

6. That the Department of Highways of the Commonwealth of Pennsylvania shall furnish all materials and do all work necessary to construct the approaches to the new bridge in accordance with the approved plan, exclusive of the facilities of the Conestoga Traction Company, and in addition shall maintain during the construction period a suitable detour for highway traffic, the estimated cost of this work being \$89,571.

7. That the Manheim Township Water Company shall furnish all materials and do all work necessary to relocate its pipe line over the existing structure in accordance with the approved plan, the estimated cost of this work being \$4,231.

8. That the Conestoga Traction Company shall furnish all materials and do all work necessary to remove its track and facilities from the existing bridge and approaches, and replace same on the new bridge and approaches thereto, in accordance with the approved plan, the estimated cost of this work being \$8,183.

9. That all work herein ordered to be done by the Manheim Township Water Company shall be fully completed on or before July 1, 1930; that all work herein ordered to be done by The Pennsylvania Railroad Company shall be fully completed on or before December 1, 1930, and that all work herein ordered to be done by the Department of Highways and the Conestoga Traction Company shall be fully completed on or before June 1, 1931.

10. That The Public Service Commission of the Commonwealth of Pennsylvania will contribute toward the improvement, out of funds specifically appropriated to it for the reconstruction of grade crossings by the Act of May 1, 1929, Appropriation Act No. 45-A, the sum of Ten thousand dollars (\$10,000) to be paid to The Pennsylvania Railroad Company when and as certified by The Public Service Commission, to apply on the cost of materials to be furnished and work to be done by said railroad company.

11. That the Conestoga Traction Company shall pay to The Pennsylvania Railroad Company, when and as certified by The Public Service Commission, the sum of Three thousand dollars (\$3,000) to apply on the cost of materials to be furnished and work to be done by said railroad company.

12. That the County of Lancaster shall pay to The Pennsylvania Railroad Company, when and as certified by the Public Service Commission, the sum of Seventeen thousand dollars (\$17,000) to apply on the cost of materials to be furnished and work to be done by said railroad company.

13. That the County of Lancaster shall pay to the Department of Highways, when and as certified by The Public Service Commission, the sum of Seven thousand dollars (\$7,000) to apply on the cost of materials to be furnished and work to be done by said Department of Highways.

14. That the County of Lancaster shall pay to the Manheim Township Water Company, when and as certified by The Public Service Commission, the sum of One thousand dollars (\$1,000) to apply on the cost of materials to be furnished and work to be done by said water company.

15. That, in addition to furnishing the materials and doing the work herein ordered to be done by them, The Pennsylvania Railroad Company, the Conestoga Traction Company, and the Manheim Township Water Company shall each pay any money to

to any of their properties taken, injured or destroyed in the execution of this improvement.

16. That the County of Lancaster shall pay all compensation for damages due to the owners of property taken, injured or destroyed in the execution of this improvement, exclusive of compensation due to the respondent railroad, traction, and water companies for any of their property taken, injured or destroyed.

17. That the Township of Manheim shall reimburse the County of Lancaster to the extent of 50 per cent of all sums paid by said county as compensation for damage due to the owners of property taken, injured or destroyed by the improvement.

18. That any relocation, changes in, or removal of any adjacent structures, equipment or other facilities of any public service company which may be required as incidental to the execution of the improvement herein ordered shall be made by said public service company at its own expense.

19. That, upon completion of the improvement herein ordered, The Pennsylvania Railroad Company shall thereafter maintain the substructure and superstructure of the bridge, exclusive of roadway paving thereon, and the facilities of the Conestoga Traction Company; the Township of Manheim shall maintain the approaches to the bridge, exclusive of the roadway paving thereon, and the track and facilities of the Conestoga Traction Company; the Department of Highways of the Commonwealth of Pennsylvania shall maintain the roadway paving on the bridge and the approaches thereto, and the Conestoga Traction Company shall maintain its track and facilities on the bridge and approaches thereto.

An order will issue in accordance with these findings.

FRAME et al.

v.

PENDEL MOTOR EXPRESS
APPLICATION OF PENDEL MOTOR EXPRESS

COMPLAINT DOCKET No. 8194
APPLICATION DOCKET No. 18330

Automobiles—Freight carrier—Violation of restriction—Fine—Amendment of certificate.

A complaint alleging respondent motor carrier was violating its certificate in hauling unauthorized freight was sustained notwithstanding defense on ground of private carriage, and a fine was imposed.

Respondent's certificate was amended on application to also state to haul

CITY - 720 P 4/1
AG-111792
P 1000-1
307-17
mfn

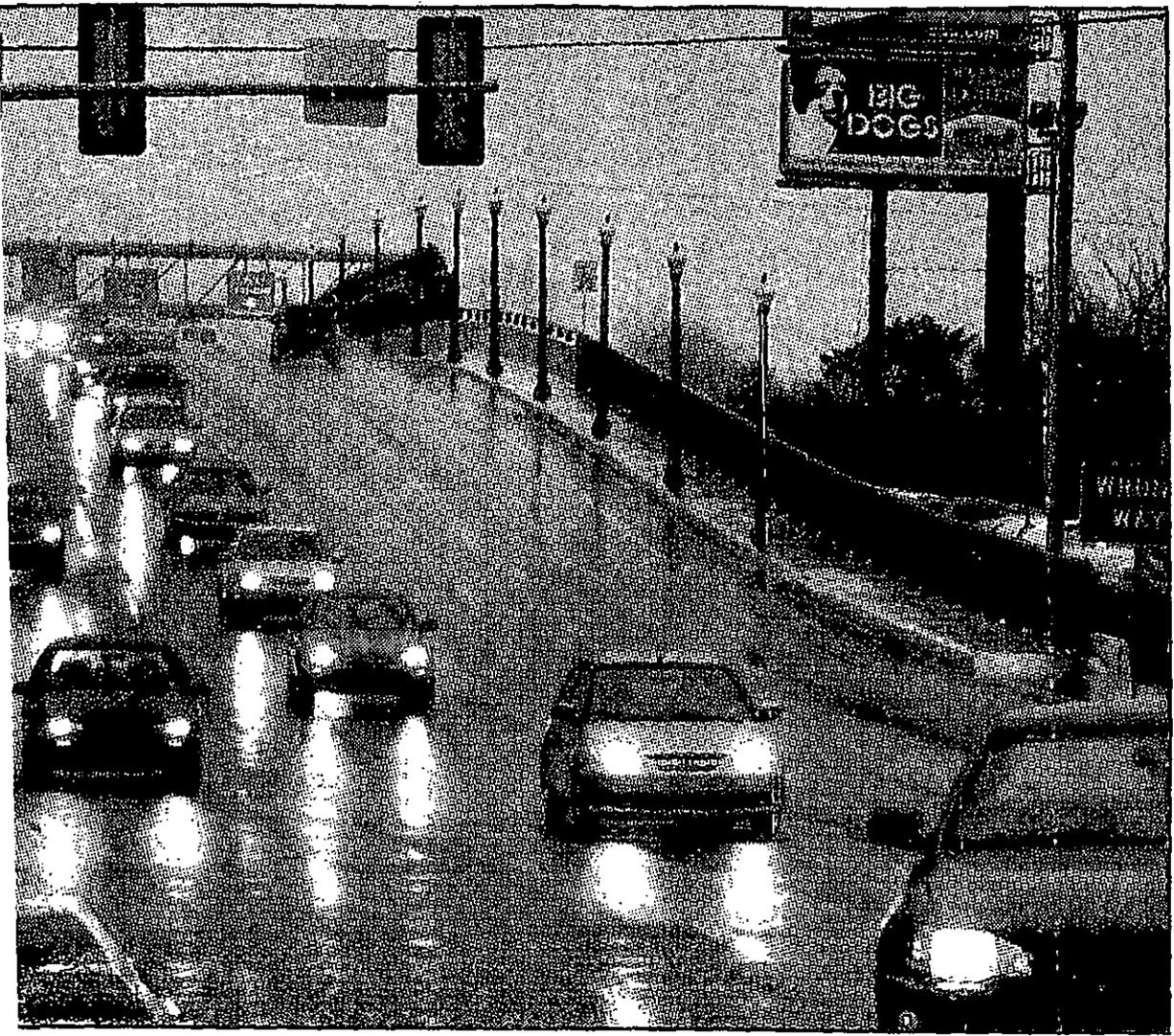
WASTON NEWS

TUESDAY, DECEMBER 7, 2004

Pennsylvania's Largest-Circulation Afternoon Newspaper

DOCUMENT

SECRETED
FEB 09 2005



Richard Hertzler/NEW ERA

CITY-TWP STATEMENT #1
APPEAL PENN P&T
AS 11/17/08
S. DELOACH
JMN

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

SUSAN WOOD,	:	
	:	
Complainant	:	
	:	C-20042702
vs.	:	
	:	
AMTRAK,	:	
CITY OF LANCASTER,	:	
NORFOLK SOUTHERN	:	
RAILWAY COMPANY,	:	
COMMONWEALTH OF PENNSYLVANIA	:	
DEPARTMENT OF TRANSPORTATION,	:	
MANHEIM TOWNSHIP,	:	
Respondent	:	

**WRITTEN TESTIMONY OF CHARLOTTE KATZENMOYER
ON BEHALF OF THE CITY OF LANCASTER AND
JAMES M. MARTIN ON BEHALF OF MANHEIM TOWNSHIP**

The City and the Township were requested to answer question 6 through 10 of the Questions and Procedure document dated June, 2004. The answers on behalf of both the City and the Township follow:

6-8 N/A. The only issues involving the City and the Township are removal of ice and snow and debris from the sidewalks of the Fruitville Pike bridge and the Lititz Pike bridge and the physical maintenance of the sidewalk on the Lititz Pike bridge.

9. See answer to No. 10.

10. A. Removal of Ice, Snow and Debris. Neither the City nor the Township has ever taken responsibility for removal of ice, snow and debris from the sidewalks of these two bridges. The reasons are, primarily, (1) they do not have the

equipment, (2) they do not have the personnel, and (3) they do not have the funds to hire people who could clear off the ice, snow and debris. The City and the Township, therefore, request that they be exempted from this responsibility.

The City and the Township recognize, however, that keeping sidewalks free of ice, snow and debris has frequently been allocated by the PUC to adjacent municipalities. In the alternative, therefore, the City and the Township request that if such an allocation is made that it include Lancaster County. While it is true, as the DOT points out in its testimony, that the sidewalks benefit "local pedestrians" those pedestrians are also residents of the County as well as the City and the Township. The County has the personnel (prisoners on work release) and the equipment (snow blowers and small plows used on park roads). If removal of ice and snow and debris is made the joint responsibility of the City, the Township and the County, an agreement can be worked out regarding transportation and supervision.

B. Physical Maintenance of Lititz Pike Bridge Sidewalk. This should be the obligation of the DOT for the entire length of the sidewalk itself. The Order of April 22, 1930 by the PUC does not specifically identify the approaches to the bridge. The City and the Township have never maintained the sidewalk either approaching or over the bridge while the DOT has traditionally done so. Just recently, the DOT repaired the edge of the sidewalk while it was refinishing the roadway. It is not clear from the DOT testimony if it will voluntarily assume this responsibility. If so, then this issue is

moot. If not, then the City and the Township request that this responsibility be assigned to the DOT for the reasons stated above.

Respectfully submitted,

HARTMAN UNDERHILL & BRUBAKER LLP

By: _____



Christopher S. Underhill
Attorney I.D. #07013
Attorneys for the City of Lancaster
and Manheim Township, Respondent
221 East Chestnut Street
Lancaster, PA 17602
(717) 299-7254

PROOF OF SERVICE

I HEREBY CERTIFY that I am this day serving the foregoing Written Testimony of Charlotte Katzenmoyer on Behalf of the City of Lancaster and James M. Martin on Behalf of Manheim Township on the persons and in the manner indicated below.

Service by First Class Mail, addressed as follows:

Mr. James Richter
Deputy Chief Engineer Structures
30th Street Station 3rd Floor
Philadelphia, PA 19104

Dennis Moore, Esquire
60 Massachusetts Avenue NE
Washington DC 20002

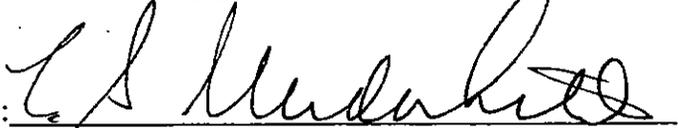
PennDOT
Attn: Andrew Gorden, Esquire
Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105-8212

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

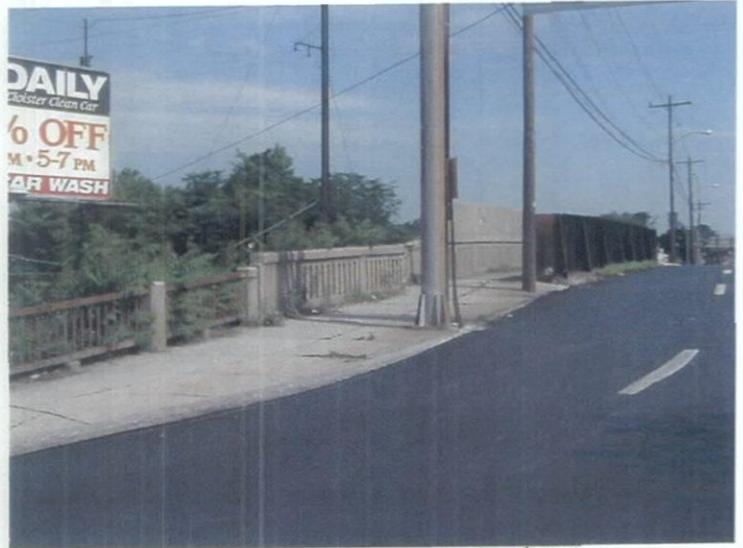
Ms. Susan Wood
1980 Sterling Place
Lancaster, PA 17601

Dated: 10/27, 2004

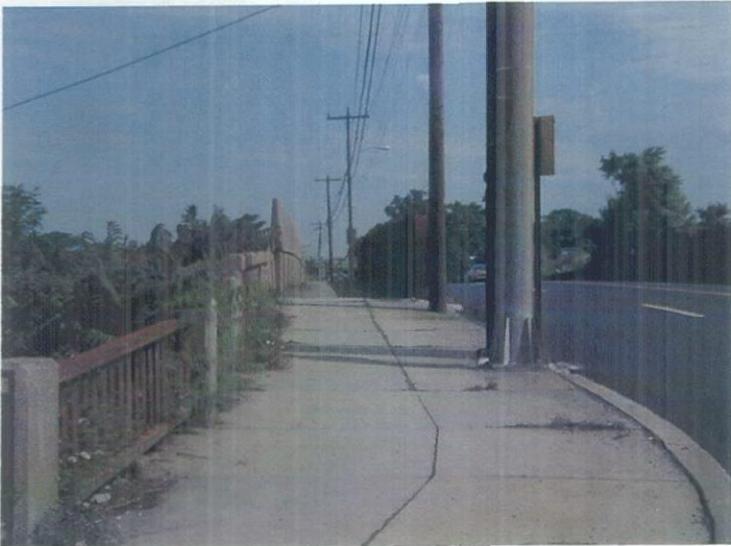
HARTMAN UNDERHILL & BRUBAKER LLP

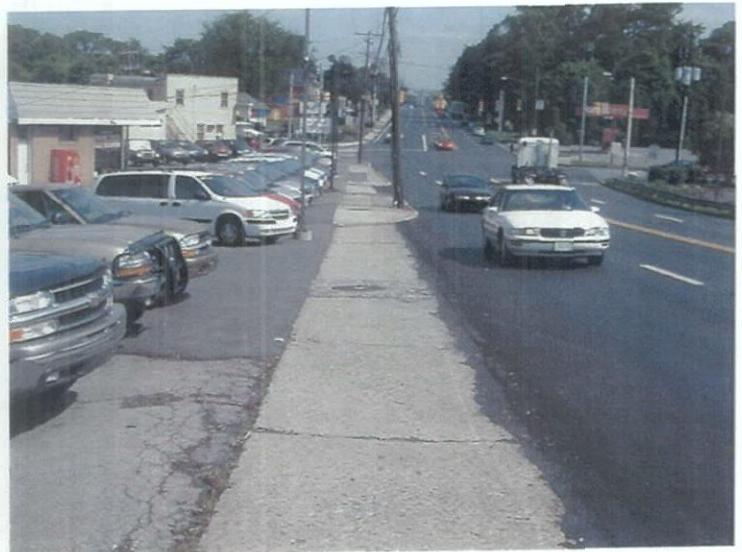
By: 

Christopher S. Underhill
Attorney I.D. #07013
Attorneys for City of Lancaster
and Manheim Township, Respondent
221 East Chestnut Street
Lancaster, PA 17602
(717) 299-7254



CITY - HW A #2
ACCIDENT
SCENARIO
8/20/14
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CITY - 420 A #3
Box 11398
PSNNT
20504 MPN



DOCUMENT

WOOD #1
A-00117798
PENN DOT
D 75-4
MFW

COMMONWEALTH OF PENNSYLVANIA PENNSYLVANIA PUBLIC UTILITY COMMISSION

In Re: A-00117798
C-20042702

Application of PennDOT & Susan Wood
v. National Railroad Passenger Corporation

DOCKETED
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Written Testimony of Susan Wood, Complainant, in Response to Item # 11 in the
Questions and Procedures Dated June 2004

1 *Item 11: Ms. Susan Wood submit testimony describing the nature and extent of your*
2 *complaint with specific reference to what improvements you would recommend be*
3 *constructed or services provided at each of the rail/highway crossings.*

4 Susan Wood's response: My complaint concerning the walkway on the Route 501
5 (also known as Route 222) railway bridge is as follows: Trash, including broken
6 glass, and other debris litter the walkway and are not removed. Weeds grow in the
7 cracks and through the concrete railing. Snow is not removed and becomes icy and
8 rutted. The northern portion of the walkway is deteriorating, broken, crumbling,
9 cracked, and uneven. It has a steep grade and also slants down sideways towards the
10 roadway. The result of all of these conditions is that using the walkway is difficult
11 and hazardous throughout the year. When the snow is deep, the walkway is virtually
12 impassable for the average pedestrian.

13 My complaint concerning the walkway on the Fruitville Pike railway bridge is as
14 follows: The bridge being relatively new, I am not aware of any current problems
15 with the infrastructure. However, as the infrastructure ages, it will probably need
16 maintenance and repairs. To my knowledge, there is no snow removal. Trash and
17 other debris will undoubtedly accumulate.

Susan Wood Statement #1

1 My recommendations: Responsibility should be assigned to a party or parties to 1)
2 regularly and at reasonable intervals remove trash, debris, and weeds from the 501
3 and Fruitville Pike bridge walkways, 2) promptly after precipitation remove snow and
4 ice from the 501 and Fruitville Pike bridge walkways, 3) promptly repair and/or
5 resurface and/or replace the 501 bridge walkway so that it is structurally sound and its
6 surface is even, smooth, intact, and level from side to side, and so that its grade does
7 not exceed the maximum grade allowed under ADA guidelines, 4) continue to
8 monitor and maintain the infrastructure of the 501 and Fruitville Pike bridge
9 walkways so that they may be used safely and without difficulty by pedestrians.
10 After the responsibility for these functions has been assigned, a mechanism should be
11 established to ensure that they are actually carried out by the responsible parties.

10/22/2004


Susan Wood, Complainant
1980 Sterling Place
Lancaster, PA 17601
717-569-7715

NO 02 / 500
ST #1
D. SAWYER
APR 11 7 798
S. D. SAWYER
mfn

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SUSAN WOOD,
Complainant

vs.

Docket No. C-20042702

AMTRAK; CITY OF LANCASTER; NORFOLK
SOUTHERN RAILWAY COMPANY;
COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION; and
MANHEIM TOWNSHIP
Respondents

DOCKETED
FEB 09 2005

DOCUMENT

WRITTEN DIRECT TESTIMONY OF
MARK W. SAWYER, P.E., FOR
NORFOLK SOUTHERN RAILWAY COMPANY

Dated: October 26, 2004

NORFOLK SOUTHERN STATEMENT NO. 1

7 DEC 04
APR 11 7 798
APPL. OF PENNDOT
mfn

1 Q. Please state your full name and business address.

2 A. My name is Mark W. Sawyer, and I am employed by Norfolk Southern Corporation at
3 4600 Deer Path Road, Suite 105, Harrisburg, Pennsylvania 17110.

4 Q. You are employed by Norfolk Southern Corporation, correct?

5 A. Yes.

6 Q. A complaint has been filed by Susan Wood against Amtrak in connection with
7 PennDOT's Application in this proceeding. Please explain the relationship between
8 Norfolk Southern Corporation and Amtrak.

9 A. Norfolk Southern Corporation operates certain rail freight train movements in the
10 crossing areas on the tracks and rail line and facilities owned by Amtrak.

11 Q. What is your position with Norfolk Southern Corporation?

12 A. My title is Public Improvements Engineer.

13 Q. What are your duties in that position?

14 A. I presently have various duties, including review and approval of major public
15 improvement projects which may or do affect Norfolk Southern property operations
16 and/or interests.

17 Q. How long have you held the position of utility engineer with Norfolk Southern
18 Corporation?

19 A. Since 2001.

20 Q. Did you work with a railroad prior to that time?

21 A. Yes. I worked for Conrail for approximately 25 years in a variety of engineering
22 positions. My most recent job with Conrail was in a position entitled Principal Engineer,
23 Public Improvements. In that position, I helped facilitate and coordinate public
24 improvement projects throughout the Commonwealth of Pennsylvania. I held that
25 position for approximately two years. My experience prior to that time includes the
26 design of industry side tracks and related facilities, as well as managing the maintenance
27 of tracks and bridges.

28 Q. What is your educational background?

1 A. I have a B.S. in Civil Engineering from Villanova University.
2 Q. Are you licensed as a Professional Engineer?
3 A. Yes, I am licensed as a Professional Engineer by the Commonwealth of Pennsylvania.
4 Q. Are you authorized to testify on behalf of Norfolk Southern in this Application and
5 Complaint proceeding?
6 A. Yes.
7 Q. Are you familiar with the crossing at issue in this proceeding, and with Norfolk
8 Southern's and Conrail's operations at this crossing?
9 A. Yes.
10 Q. Who is the owner of the railroad facilities at the crossing?
11 A. National Railroad Passenger Corporation, also known as Amtrak.
12 Q. Does Norfolk Southern or Norfolk Southern Corporation have an ownership interest in
13 any real property or railroad facilities at the crossing?
14 A. None whatsoever.
15 Q. Did Conrail have an ownership interest in any real property or railroad facilities at the
16 crossing?
17 A. None whatsoever.
18 Q. Does Norfolk Southern currently operate at the crossing?
19 A. Yes, Norfolk Southern does operate at the crossing.
20 Q. How many days per week and at what speed does Norfolk Southern operate at the
21 crossing?
22 A. Two local freight trains operate five days per week out of Lancaster. In addition, a
23 special dimension load train to Harrisburg operates about once per month. The local
24 freight trains operate at a maximum speed of 30 miles per hour.
25 Q. You have testified that two local freight trains operate five days per week out of
26 Lancaster. Do you mean two movements across a track – up and back?
27 A. Each train has two movements – one going west and one returning east. In total, that's
28 four train movements per day, five times per week.

1 Q. Who is served by these local freight trains?
2 A. Numerous customers are served. Most are grain companies (Kellogg comes to mind), but
3 there are local customers in the Lancaster area who receive service too.
4 Q. You have testified that the local freight trains operate at a maximum speed of 30 miles
5 per hour. At what speed do Amtrak's trains operate?
6 A. Based upon my review of Amtrak's track chart, Amtrak's trains operate through the
7 crossing at a speed of approximately 70 miles per hour.
8 Q. When did Conrail cease operating on the subject rail line?
9 A. June 1, 1999.
10 Q. When did Norfolk Southern begin operating on the subject rail line?
11 A. June 1, 1999.
12 Q. Do you have firsthand knowledge of Conrail's operations in the area of the crossing?
13 A. Yes.
14 Q. How frequently did Conrail operate in the area at the crossing?
15 A. Conrail operated at a frequency similar to Norfolk Southern; that is, Conrail operated two
16 local freight trains out of Lancaster, two times per day, five days per week.
17 Q. Does Norfolk Southern anticipate changing its operations on the line in the vicinity of the
18 crossing?
19 A. No, Norfolk Southern plans to continue the frequency of current operations.
20 Q. To the best of your knowledge, has Amtrak authorized Norfolk Southern's use of the
21 facilities at the crossing?
22 A. Yes.
23 Q. What is the source of that authorization?
24 A. Norfolk Southern operates on Amtrak's facilities at the crossing pursuant to the terms and
25 conditions of the Second Amended and Restated Northeast Corridor Freight Operating
26 Agreement ("Northeast Corridor Agreement"), dated October 1, 1986, and executed by
27 and between the National Railroad Passenger Corporation (Amtrak) and Consolidated
28 Rail Corporation (Conrail).

- 1 Q. I am providing you with a copy of a document which is marked as Norfolk Southern
2 Exhibit No. 1. Please examine the document. Please identify the document for the
3 record.
- 4 A. Norfolk Southern Exhibit No. 1 is a copy of the Northeast Corridor Agreement.
- 5 Q. To the best of your knowledge, under the terms and conditions of the Northeast Corridor
6 Agreement, who has the duty to maintain the facilities along the line?
- 7 A. Amtrak.
- 8 Q. Please identify what you believe to be the section of the Northeast Corridor Agreement
9 that provides Amtrak with the duty to maintain the facilities along the line.
- 10 A. Section 2.2(c) of the Northeast Corridor Agreement provides Amtrak with that duty.
- 11 Q. Please read the pertinent section.
- 12 A. "Amtrak shall provide train dispatching, transportation supervision, maintenance of way,
13 and all other services and facilities necessary for the operation and maintenance of the
14 NEC and its use by Conrail's Freight Service * * *." (Emphasis added.)
- 15 Q. Does Norfolk Southern pay Amtrak for use of the rail line?
- 16 A. Yes.
- 17 Q. To the best of your knowledge, are such payments required by the terms and conditions of
18 the Northeast Corridor Agreement?
- 19 A. Yes.
- 20 Q. What section of the Northeast Corridor Agreement do you believe provides for such
21 payments?
- 22 A. The payments are required by Section 3.1 of the Northeast Corridor Agreement which
23 bears the heading, "Compensation Obligation."
- 24 Q. Please read aloud the language in Section 3.1 of the Northeast Corridor Agreement which
25 causes you to believe that.
- 26 A. "Beginning October 1, 1990 and continuing until changed as provided in Section 3.8 or
27 3.9 of this Agreement or as otherwise agreed by the parties, Conrail shall pay Amtrak
28 60.0 cents (as adjusted pursuant to Section 3.2) per freight car mile. The rates specified

1 in this section (as adjusted pursuant to Section 3.2) shall be referred to as the Car Mile
2 Rates.”

3 Q. You have testified that, under the terms of Section 3.1 of the Northeast Corridor
4 Agreement, Conrail shall pay Amtrak 60.0 cents per freight car mile. Is that the current
5 rate?

6 A. No.

7 Q. What is the current rate?

8 A. The current Car Mile Rate is approximately One Dollar per car, per mile.

9 Q. To the best of your knowledge, does the Northeast Corridor Agreement authorize an
10 increase in such rates?

11 A. Yes.

12 Q. What section of the Northeast Corridor Agreement do you believe authorizes such an
13 increase?

14 A. An annual adjustment in the Car Mile Rate is authorized by Section 3.2 of the Northeast
15 Corridor Agreement which bears the heading, “Adjustment of Car Mile Rate.”

16 Q. You have testified that Section 3.1 of the Northeast Corridor Agreement provides that the
17 Car Mile Rates can be changed under Section 3.8 or 3.9. To the best of your knowledge,
18 has a redetermination of compensation or a substitute of compensation occurred under
19 either Section?

20 A. No.

21 Q. Besides the Car Mile Rates, does Norfolk Southern make other payments to Amtrak in
22 connection with its use of the line?

23 A. Yes.

24 Q. Please identify the payments.

25 A. Norfolk Southern pays Amtrak for a portion of the financial responsibility for liability
26 that Amtrak has assumed pursuant to the terms and conditions of the Northeast Corridor
27 Agreement.

28 Q. Are these additional payments required by the Northeast Corridor Agreement?

- 1 A. Yes.
- 2 Q. Which section of the Northeast Corridor Agreement do you believe requires such
3 payments?
- 4 A. Section 5.15 which bears the heading, "Compensation to Amtrak."
- 5 Q. Besides the Car Mile Rate and the compensation paid for liability that Amtrak has agreed
6 to assume, is Norfolk Southern making other payments to Amtrak in connection with its
7 use of the line?
- 8 A. Not to my knowledge.
- 9 Q. Together, does the Car Mile Rate and the compensation paid for liability that Amtrak has
10 agreed to assume represent a fair and equitable share of the cost to Norfolk Southern of
11 its operation on the line?
- 12 A. Yes.
- 13 Q. Why do you think that?
- 14 A. Under the terms of Exhibit "A" to the Northeast Corridor Agreement, "* * * the Grantor
15 shall pay the fair and equitable share of the cost to the Grantee of operating rail service
16 upon the real property occasioned by exercise of the Freight Service Easement, as
17 determined by agreement between the parties * * *." The Northeast Corridor Agreement
18 is the "agreement between the parties." With respect to Exhibit "A", the Grantor is
19 Norfolk Southern, while the grantee is Amtrak.
- 20 Q. You have testified that, pursuant to the terms and conditions of the Northeast Corridor
21 Agreement, Amtrak has authorized Norfolk Southern's use of the facilities at the
22 crossing. Correct?
- 23 A. Yes.
- 24 Q. Is there another agreement between Amtrak and Norfolk Southern which discusses the
25 terms and conditions applicable to Norfolk Southern's freight operations on Amtrak's
26 facilities throughout the Northeast Corridor?
- 27 A. Yes.
- 28 Q. Please identify this additional agreement.

1 A. The Principles of Cooperation Concerning the Northeast Corridor ("Principles of--
2 Cooperation"), dated May 1, 1998, and executed by and between National Railroad
3 Passenger Corporation, CSX Corporation, Norfolk Southern Corporation, and
4 Consolidated Rail Corporation.

5 Q. I am providing you with a copy of a document which, for identification purposes, is
6 marked as Norfolk Southern Exhibit No. 2. Please examine the document. Please
7 identify the document for the record.

8 A. Norfolk Southern Exhibit No. 2 is a copy of the Principles of Cooperation.

9 Q. To the best of your knowledge, does the Principles of Cooperation acknowledge that
10 Norfolk Southern Corporation, for itself and on behalf of Norfolk Southern Railway
11 Company, and CSX Corporation, for itself and on behalf of CSX Transportation, Inc.,
12 have succeeded to the rights granted to Conrail under the terms and conditions of the
13 Northeast Corridor Agreement?

14 A. Yes, and pursuant to the recent merger of Pennsylvania Lines LLC into Norfolk Southern,
15 Norfolk Southern has succeeded to whatever rights Pennsylvania Lines LLC had under
16 the Northeast Corridor Agreement

17 Q. Does Norfolk Southern have an opinion as to the current condition of the overhead bridge
18 identified in this proceeding?

19 A. No, Norfolk Southern has no opinion as to the overhead bridge's condition.

20 Q. Are catenary facilities present at this location?

21 A. Yes, overhead electrical wires used for propulsion are present over the tracks at both
22 crossings.

23 Q. Does Norfolk Southern currently utilize such catenary facilities?

24 A. No.

25 Q. Did Conrail utilize such catenary facilities?

26 A. Yes, for a limited period of time, Conrail did utilize electric trains. However, Conrail
27 retired such trains from service during the late 70s or early 80s. To the best of my
28 knowledge, the catenary facilities at this site are used by no one other than Amtrak.

- 1 Q. Are signal lines present at this crossing?
- 2 A. Yes, in addition to its catenary facilities, Amtrak has communications and signal facilities
3 at the crossing area.
- 4 Q. Does Norfolk Southern have a position as to which party should be assigned
5 responsibility for sidewalk maintenance and snow, ice and debris removal on the
6 sidewalks?
- 7 A. Norfolk Southern has no position. Norfolk Southern does not own the roadway or the
8 railroad and should be allocated no work responsibilities for the sidewalks on the bridge
9 or the approaches.
- 10 Q. Does Norfolk Southern have an opinion as to who should be pay for any work ordered at
11 the crossing?
- 12 A. No, although residents of the local municipalities usually receive the most benefit from
13 sidewalks or overhead highway bridges.
- 14 Q. What about cost allocations – is Norfolk Southern opposed to receiving an allocation of
15 cost for the maintenance of the sidewalks or snow, ice and debris removal?
- 16 A. Yes, Norfolk Southern opposes any such cost allocation.
- 17 Q. Why?
- 18 A. Because Norfolk Southern owns no property or facilities at this site. Moreover, the
19 payments which Norfolk Southern makes to Amtrak pursuant to the terms and conditions
20 of the Northeast Corridor Agreement are more than sufficient to compensate Amtrak for
21 any costs it incurs with respect to the ownership, maintenance or management of property
22 utilized by Norfolk Southern.
- 23 Q. The Commission asks Norfolk Southern to submit testimony as to the exact corporate
24 name of the owner and operator of the line of railroad involved at the subject rail-
25 highway crossing.
- 26 A. Amtrak is the owner and operator of the railroad facilities at the crossing. This was
27 covered at the beginning of my testimony.
- 28

1 Q. The Commission next asks Norfolk Southern to submit testimony stating the number of
2 tracks presently located at the crossings and whether any tracks are electrified; moreover,
3 Norfolk Southern is asked to state the volume, class and approximate speed of all trains
4 operated daily over these tracks, and it is asked to state whether any changes in such
5 operations are contemplated in the foreseeable future.

6 A. These questions have been partially covered. I have already testified as to the speed of
7 the trains operated by Norfolk Southern and Amtrak, whether the tracks are electrified,
8 and whether changes in operation are being contemplated. Norfolk Southern has no
9 knowledge as to the volume, class and approximate speed of "all trains operated daily
10 over these tracks." Likewise, we do not know the exact number of tracks presently
11 located at the crossing. Amtrak should respond with updated information.

12 Q. The Commission next asks Norfolk Southern what its past and present obligations are
13 with respect to maintenance of the existing bridges at the subject crossings and the
14 highway approaches thereto.

15 A. None. As previously indicated, it is not the owner of the facilities.

16 Q. The Commission next asks Norfolk Southern to submit into evidence copies of past
17 orders or actions of the Commission, or its predecessor, which may have dealt with the
18 construction, alternation or reconstruction of the subject crossings, and Norfolk Southern
19 must state when, why and how the subject crossings were originally established.

20 A. Prior to the October 12, 2004 pre-hearing conference, Norfolk Southern had no
21 knowledge of a past order or action of the Commission which might be relevant to the
22 proceeding. At the pre-hearing conference, counsel for the Commission produced a
23 report of the Public Service Commission of the Commonwealth of Pennsylvania, dated
24 April 22, 1930 and docketed at Complaint No. 7881, which concerns State Highway
25 Route No. 442 and a certain bridge at a point about 600 feet east of Lancaster station in
26 Manheim Township, Lancaster County. Counsel for the Commission responded that the
27 report will be submitted into evidence as PUC Staff Exhibit No. 1. Based on the
28 information in Norfolk Southern's possession, I am not certain that the Lititz Pike bridge

1 is the same bridge constructed as a result of the findings and determinations in the Public
2 Service Corporation's 1930 report.

3 Q. The Commission next asks Norfolk Southern to submit testimony indicating what portion
4 of the maintenance of any completed improvement or the existing structures it will agree
5 to perform and what maintenance cost it will agree to assume and, if none, Norfolk
6 Southern is asked to specify which party or parties should, in its opinion, be required to
7 perform and assume the cost of maintenance after any improvements ordered by the
8 Commission have been completed. Norfolk Southern is asked to state its reasons for
9 answers to the foregoing.

10 A. These questions have been covered. Norfolk Southern opposes receipt of a cost
11 allocation because it owns no property or facilities at the site. It has no opinion as to who
12 should pay for any work ordered at the crossing.

13 Q. You have been testifying as to the PA Route 501 (Lititz Pike) bridge over railroad tracks.
14 This complaint proceeding also concerns the Fruitville Pike bridge over railroad tracks.
15 With respect to both bridges and railroad tracks, is your testimony the same?

16 A. Yes.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SUSAN WOOD,	:	
Complainant	:	
	:	
vs.	:	Docket No. C-20042702
	:	
AMTRAK; CITY OF LANCASTER; NORFOLK	:	
SOUTHERN RAILWAY COMPANY;	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF TRANSPORTATION; and	:	
MANHEIM TOWNSHIP	:	
Respondents	:	

CERTIFICATE OF SERVICE

I hereby certify that this day, I served the Written Direct Testimony of Mark W. Sawyer, P.E., for Norfolk Southern Railway Company, via hand delivery or by depositing the same in the United States mail, postage prepaid, in Harrisburg, Pennsylvania, addressed to:

Via Hand Delivery:

The Honorable Louis G. Cocheres
Administrative Law Judge
Office of Administrator Law Judge
PA Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

Jason D. Sharp, Esquire
Assistant Counsel
PennDOT
P. O. Box 8212
Harrisburg, PA 17105-8212

David A. Salapa, Esquire
PA Public Utility Commission
Bureau of T & S Rail Law
P. O. Box 3265
Harrisburg, PA 17105-3265

Via U.S. Mail:

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Lancaster, PA 17601

Kenneth Zielonis, Esquire
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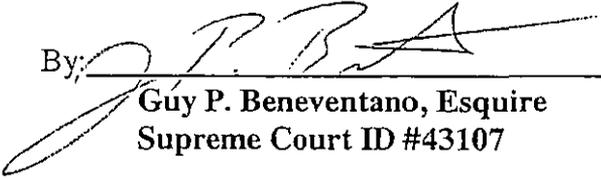
Via U.S. Mail and fax transmission:

Dennis Moore, Esquire
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60 Massachusetts Avenue NE
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Christopher S. Underhill, Esquire
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NAUMAN, SMITH, SHISSLER & HALL, LLP

By:



Guy P. Beneventano, Esquire
Supreme Court ID #43107

200 North Third Street, P. O. Box 840
Harrisburg, PA 17108-0840
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Date: October 26, 2004

DOCUMENT

DOCKETED
FEB 09 2005

SECOND AMENDED AND RESTATED
NORTHEAST CORRIDOR
FREIGHT OPERATING AGREEMENT

Dated October 1, 1986

between

NATIONAL RAILROAD PASSENGER CORPORATION
("Amtrak")

and

CONSOLIDATED RAIL CORPORATION
("Conrail")

NORFOLK SOUTHERN
EXHIBIT NO. 1

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SECOND AMENDED AND RESTATED
NORTHEAST CORRIDOR
FREIGHT OPERATING AGREEMENT

THIS AGREEMENT, dated October 1, 1986, amends and restates in its entirety that certain Amended and Restated Northeast Corridor Freight Operating Agreement dated as of October 1, 1983 (the "Amended Agreement") between NATIONAL RAILROAD PASSENGER CORPORATION (hereinafter referred to as "Amtrak"), a corporation organized under the Rail Passenger Service Act (hereinafter referred to as the "Act") and the laws of the District of Columbia, and CONSOLIDATED RAIL CORPORATION (hereinafter referred to as "Conrail"), a corporation organized under the Regional Rail Reorganization Act of 1973 (hereinafter referred to as the "Rail Act") and the laws of Pennsylvania .

WHEREAS, since April 1, 1976, Conrail has operated local and long-haul freight service on the NEC (as defined below) pursuant to the easement and right in and to the NEC retained by Conrail to operate local and long-haul freight service thereon, a description of which easement and right is set forth in Exhibit A hereto (such easement and right being hereinafter referred to as the "Freight Service Easement") and the Amended Agreement and its predecessor agreement;

WHEREAS, effective October 1, 1983, Amtrak and Conrail entered into the Amended Agreement establishing the costing methodology for determining actual compensation payable by Conrail to Amtrak for prospective Conrail NEC freight service and

concurrently, pursuant to a certain Settlement Agreement effective as of December 31, 1982 and a letter agreement effective October 1, 1983, resolved all retroactive matters relating to adjustment of compensation payable to Amtrak by Conrail for its NEC freight service between April 1, 1976 and September 30, 1983;

WHEREAS, the provisions of Section 402(a) of the Act have been amended to establish new standards for determining compensation payable to Amtrak for NEC freight service and the parties have negotiated a new compensation arrangement contained in Article III of this Agreement for Conrail's NEC freight service operations commencing October 1, 1986;

WHEREAS, the parties have also terminated the Liability Apportionment Agreement, effective October 1, 1978, as amended, governing allocation of financial responsibility for damages and liability for personal injuries or property damages for various services provided between the parties, and have inserted the provisions previously contained therein governing the allocation of such financial responsibility in respect of operations of freight service on the NEC, as such provisions are amended herein, in this Agreement;

WHEREAS, the parties have agreed to waive all rights under the Amended Agreement to seek compensation for or determination by the Commission of an arrangement for quality of performance payments based upon freight service performance as

contemplated by the Amended Agreement in respect of Conrail's NEC freight service from October 1, 1983 to September 30, 1986; and

WHEREAS, the parties desire to amend and restate in its entirety the Amended Agreement, so that the Amended Agreement is superseded in its entirety by this Second Amended and Restated Northeast Corridor Freight Operating Agreement (the "Agreement"),

NOW, THEREFORE, in consideration of the terms and conditions herein contained, Amtrak and Conrail hereby terminate and supersede the Amended Agreement in its entirety and agree to the following new provisions to govern operation of Conrail freight services on the NEC:

ARTICLE I
DEFINITIONS

"NEC" means the rail properties presently owned by Amtrak that were designated for transfer to Amtrak pursuant to Section 206(c)(1)(C) of the Rail Act, exclusive of those rail properties over which the Providence and Worcester Railroad has exclusive operating rights, and certain additional properties designated for such transfer pursuant to Section 206(c)(1)(D) of the Rail Act which such rail properties were acquired by Conrail and conveyed by Conrail to Amtrak pursuant to an Agreement of Purchase dated as of March 31, 1976 between Conrail and Amtrak, and substitutions or additions thereto.

"Freight Service" means the carriage by Conrail of property by rail over the NEC under the provisions of the Rail

Act and the Interstate Commerce Act and under transportation contracts, including necessary switching service with respect thereto.

ARTICLE II
OPERATIONS

Section 2.1. Rights Defined

The Freight Service Easement reserved by Conrail from its conveyance to Amtrak of the NEC (and set forth in Exhibit A) shall, during the term of this Agreement, be exercisable subject to the terms and conditions of this Agreement.

Section 2.2. Operation, Management and Control

(a) Amtrak shall have exclusive control over the operation of the NEC. Neither party shall grant to another railroad or person any right to operate freight service on the NEC or any portion thereof without the agreement of the other party; provided, that the foregoing shall not be construed to limit Amtrak's right to operate its own trains and haul its property and materials thereon.

(b) Conrail shall be responsible for providing fuel (other than electric traction power), train supplies, and labor at its own expense for the operation of the Freight Service, and Amtrak shall have no obligation with respect thereto. The compensation payable to Amtrak pursuant to Article III does not include any compensation for provision of electric traction power, and consequently, if Amtrak supplies Conrail with electric

traction power, Conrail shall reimburse Amtrak for the additional cost of the power consumed as well as for its appropriate share of the costs of maintaining and operating the electric traction power distribution system.

→ (c) Amtrak shall provide train dispatching, transportation supervision, maintenance of way, and all other services and facilities necessary for the operation and maintenance of the NEC and its use by Conrail's Freight Service; provided, that the NEC rail properties, exclusive of those rail properties identified in and governed by the Maintenance of Way Agreement, shall be maintained by Amtrak in a condition that will permit operation of freight trains at speeds no less than freight train speeds in effect on October 1, 1983, subject to temporary slow orders and emergency occurrences.

(d) All personnel, including employees of Conrail, rendering any services which involve responsibility for Amtrak's operating facilities or for the handling or movement of any trains over the NEC, shall be subject to the direction, supervision, and control of Amtrak, and any such services performed by or for Conrail shall be governed by and subject to all then current operating and safety rules, orders and procedures of Amtrak with respect thereto. Amtrak may, for cause, require that any person performing services hereunder be prohibited or removed from performance of such services, subject to the requirement that Amtrak shall support any action defending

such prohibition or removal and bear the cost of any claims growing out of any improper prohibition or removal.

Section 2.3. Freight Service Operations

(a) General. Conrail shall have the right to operate scheduled and unscheduled Freight Service on the NEC. The scheduled Freight Service is as set forth in Conrail's NEC freight service schedule, as amended from time to time in the manner provided in (b) below. Copies of such schedules and all amendments have been or will be delivered to Amtrak.

(b) Modification of Scheduled Freight Service.

Conrail shall have the right from time to time to request, and subject to and in accordance with the terms and conditions of this Agreement, Amtrak hereby agrees to permit changes in or additions to the Scheduled Freight Service. The changes or additions requested shall be subject to the physical limitations of the NEC, to Amtrak's speed, weight and similar operating restrictions and rules or safety standards, and to the needs of, and in particular to the adequacy, safety and efficiency of, Amtrak passenger train operations and commuter service.

(c) Other Freight Service. At any time, Conrail shall have the right to request, and subject to and in accordance with the terms and conditions of this Agreement, Amtrak hereby agrees to permit, the operation of unscheduled Freight Service over the NEC. Unscheduled Freight Service will be subject to the last sentence of subsection (b) above. Subject thereto, Amtrak agrees

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to use its best efforts to accommodate unscheduled Freight Service requested under this Agreement in an expeditious and efficient manner.

Section 2.4. Standards of Performance.

Amtrak agrees to use its best efforts to operate the NEC in an economic and efficient manner, and shall make every reasonable effort, consistent with the expeditious, safe, and efficient operation of Amtrak passenger trains and of commuter service, to permit the operation of scheduled Freight Service in accordance with the agreed-upon schedules, and the operation of Freight Service presented for movement at unscheduled times as expeditiously as possible.

Section 2.5. No Violation of Labor Agreements

Conrail agrees that it will not require the performance of services hereunder by Amtrak, nor will it exercise its rights hereunder, in a manner which would cause Amtrak to violate the terms of or incur penalties, unless reimbursed by Conrail, in connection with any then current labor agreements between Amtrak and any organization representing any of its employees. Amtrak agrees that it shall: (i) as promptly as practicable, notify Conrail of any claim that the requested services or exercise of rights has caused or will cause such violation or the incurrence of such claims or penalties, damages, loss or liabilities; and (ii) at Conrail's request and expense cooperate with Conrail in

resisting in any reasonable manner or settling such claims or penalties.

Section 2.6. Additional Improvements and Facilities

(a) Conrail shall have the right (i) at its sole expense to require Amtrak to improve or otherwise add to the NEC rail properties, or (ii) subject to mutually satisfactory arrangements, to improve or add to such properties; provided that any such improvement or addition shall not unreasonably interfere with the commuter service or the Amtrak passenger trains, that Amtrak shall not be required thereby to acquire additional real estate, that any such requested improvement or addition shall be made as promptly as feasible, and that any increase in costs incurred by Amtrak which is occasioned by such improvement or addition shall be paid by Conrail.

(b) Amtrak shall have the right, at its sole expense, to eliminate, modify, change, relocate, improve, or otherwise add to the NEC rail properties. In the event Amtrak proposes to effect any modifications which would affect Conrail's Freight Service, Amtrak shall give Conrail 60 days prior written notice of such modification. No such modification, change, relocation, improvement, or addition shall unreasonably interfere with the continuity of the tracks being used for the Freight Service or unreasonably interfere with such Service.

Section 2.7. Equipment Rentals

Either party may, from time to time, request the use of locomotives, other rolling stock, or other equipment of the other party, for use on the NEC, at rates to be agreed to from time to time by the parties, plus reimbursement for any labor and other costs incurred by the owner as a result of such use and operation (if not included in such rates). Subject to the capability and limits of the equipment requested, such requests shall be honored unless doing so would interfere with the operations of the owner, violate the terms of any applicable liens or contractual commitments, or require the owner to rent equipment in substitution for the equipment rented.

ARTICLE III
COMPENSATIONSection 3.1. Compensation Obligation

Beginning October 1, 1986, Conrail shall pay Amtrak 52.5 cents per freight car mile operated by Conrail on the NEC. Beginning October 1, 1988, Conrail shall pay Amtrak 57.5 cents (as adjusted pursuant to Section 3.2) per freight car mile. Beginning October 1, 1990 and continuing until changed as provided in Section 3.8 or 3.9 of this Agreement or as otherwise agreed by the parties, Conrail shall pay Amtrak 60.0 cents (as adjusted pursuant to Section 3.2) per freight car mile. The rates specified in this section (as adjusted pursuant to Section 3.2) shall be referred to as the Car Mile Rates.

Section 3.2. Adjustment of Car Mile Rate

The three Car Mile Rates specified in Section 3.1 shall each be adjusted effective April 1 of each year beginning in 1987 on the basis of the change in the AAR Railroad Cost Indexes, Table C - Quarterly Indexes of Chargeout Prices and Wage Rates - East, Line Item - Materials Prices, Wage Rates and Supplements Combined (Excluding Fuel), as in effect for the first quarter of 1986 compared to the index that is in effect for the first quarter of the year in which the adjustment is to take effect. The adjusted Car Mile Rates shall be rounded to the nearest one-tenth of a cent.

Section 3.3. Monthly Payment

Beginning October 1, 1986, on the first day of each month during which the compensation provisions of this Article III are in effect, Conrail shall make a Monthly Payment to Amtrak equal to the product of the Car Mile Rate established by Sections 3.1 and 3.2 times one-sixth (1/6) of the Estimated Car Miles (as defined below) then in effect, plus the additional amount set forth in Section 5.15; provided, however, that the payment for any month commencing with October of 1986 shall not be due until 10 days after execution of this Agreement. The Monthly Payments for October, November, and December of 1986, shall be \$2,704,275 per month.

"Estimated Car Miles" shall mean the parties' good faith estimate of the actual car miles which Conrail will operate

on the NEC in a six-month period, and for the last six months of 1986 shall be 30.6 million car miles. Unless otherwise agreed by the parties, effective on the first day of each calendar quarter, the Estimated Car Miles will be revised to equal the actual freight car miles operated by Conrail for the 6 most recent months for which data is available 15 days prior to the first day of the calendar quarter involved.

Section 3.4. Final Monthly Billing

(a) Subsequent to each month, Conrail shall submit to Amtrak the actual freight car miles operated by Conrail for such month as determined pursuant to the TMS (as defined below). Within 10 days of receipt of such information, Amtrak shall submit a bill (a "Monthly Final Bill") to Conrail for the actual freight car miles operated by Conrail during the month times the applicable Car Mile Rate, plus the additional amount set forth in Section 5.15, which bill shall reflect a credit for the Monthly Payment for that month pursuant to Section 3.3. The party that has been overpaid or has underpaid as stated in a billing under this section shall pay to the other party the amount of such overpayment or underpayment within 30 calendar days after the bill is submitted.

(b) Subject to audit and to continuing reevaluation of the TMS as provided below, the parties agree that Conrail's Train Monitoring System, as supplemented by quarterly special studies of one-week sample data to estimate yard and local freight

activity in lieu of actual recording (collectively, the "TMS"), shall be used to determine actual freight car miles operated by Conrail during the month for purposes of this section.

Amtrak shall have the right, during Conrail's normal business hours, to audit and otherwise inspect the Conrail records relating to the TMS, including all supporting detail and related data, upon reasonable request from Amtrak. Amtrak shall conduct such field verifications of NEC Conrail freight service movements as it deems necessary or appropriate to ensure the continued validity of TMS generated information (e.g. car counts, train origin/destination, and other relevant data). Prior to conducting any such field verifications, Amtrak shall give Conrail written notice and Conrail shall be entitled to participate therein.

If such field verifications do not support the TMS generated data or Amtrak shall otherwise disagree with the actual freight car miles reported by Conrail for any month, Amtrak shall submit to Conrail its proposed adjustments to such data and/or actual freight car miles together with the supporting documentation which provides the basis for said proposed adjustments itemized in the form of the TMS reports. Within 30 days of receipt of such submission, Conrail shall respond to Amtrak by accepting the proposed adjustments or rejecting such proposed adjustments, which rejection shall be accompanied by supporting documentation supporting Conrail's position. If

Conrail rejects all or any portion of Amtrak's proposed adjustments, within 20 days of Amtrak's request, Amtrak and Conrail shall meet to endeavor in good faith to resolve all remaining issues in dispute.

The parties acknowledge and agree that the use of ~~quarterly special studies of one-week sample data to represent~~ yard and local freight service actual car miles in lieu of actual operating statistics presumes a relatively stable yard and local freight volume.

Section 3.5. Performance Payments

The parties agree that notwithstanding the provisions of Section 3.5 of the Amended Agreement respecting quality of performance payments, each party waives any right to quality of performance payments for Conrail's NEC freight service for the period October 1, 1983 through September 30, 1986. The parties further agree that, unless the parties otherwise agree, there shall not be any quality of performance payment provisions for Conrail's NEC freight service during the period that the Car Mile Rates established by Section 3.1 and 3.2 remain in effect or during the period any Substitute Compensation Provisions (as defined below) are in effect unless such Substitute Compensation Provisions incorporate quality of performance payments.

Section 3.6. Inspection of Records

Conrail shall have the reasonable right to inspect, examine, and review all books, records, and accounts of Amtrak

which relate to the operation of the NEC during regular business hours of the location where such records are retained. Amtrak shall retain or record on microfilm all such books, records, and accounts for at least three years following the end of the period covered therein or the period of time required by Commission record retention rules, whichever is longer, except for TMS records which shall be maintained for six months.

Section 3.7. Payment Disputes

In the event that either party shall disagree with a freight cost statement or payment or settlement thereof, the party in disagreement shall promptly notify and provide to the other party a written statement setting forth the nature and basis for the disagreement and enumerating those aspects, if any, of such statement, payment, settlement, or determination which are not in dispute. Unless otherwise agreed, such undisputed amounts shall be promptly paid or refunded, and the parties shall confer promptly for the purpose of resolving the disputed amount. In the event the parties cannot resolve such disputed amounts, the matter shall be submitted to arbitration pursuant to the provisions of Section 4.3. Within 15 days after resolution of such disputed amounts, the amount determined to be payable shall be paid with interest as provided in Section 4.11.

Section 3.8. Redetermination of Compensation

Sections 3.1 through 3.7 shall be the basis for compensation for the services and activities performed for, and the facilities and equipment provided to, Conrail by Amtrak

hereunder, commencing October 1, 1986, and continuing until the parties have reached a new agreement with respect to compensation or until the Interstate Commerce Commission has determined such compensation pursuant to the provisions of this section. At any time after April 1, 1991, either Amtrak or Conrail may notify the other that it wishes to negotiate redetermination of the amount or method of computing the amount of payment for services and use of facilities provided to Conrail hereunder. In such event, the other party shall promptly negotiate with respect to such a redetermination.

If, within 90 days after the date of such notice, Amtrak and Conrail are unable to agree as to a new amount or basis of compensation, Amtrak and Conrail shall, at the request of either, jointly make application to the Commission under Section 402(a)(2) of the Act for an order determining appropriate compensation payable by Conrail for the provision of the services and use of Amtrak facilities as are provided for herein. Until a new basis of compensation is established, Conrail shall continue to make periodic payments to Amtrak in the manner and amount provided in this Article III. Any agreement entered into or determination of compensation made shall take effect on a date which is six months after the date on which notice was first given pursuant to this section; provided, however, that unless the parties specifically agree to the contrary, no such agreement or determination shall apply retroactively for a period that

exceeds 12 months (plus any amount of time that an application is pending in an active status before the Commission pursuant to the first sentence of this paragraph or is pending review from a Commission decision before a court).

Section 3.9. Substitute Compensation

----- So long as the Car Mile Rates established by Sections 3.1 and 3.2 remain in effect, if, subsequent to October 1, 1986, Amtrak enters into an agreement (other than an Excluded Agreement as defined below) with any other railroad or third party permitting such entity to provide rail freight services over any rail properties comprising all or any part of the NEC on which rail freight service is then being operated by Conrail, Amtrak shall give Conrail immediate notice of the Compensation Provisions (as defined below) contained in such agreement. Conrail shall have the right, exercisable by giving written notice to Amtrak no later than 30 days after receipt of such notice, to elect to substitute the Compensation Provisions of such agreement in their entirety for the Compensation Provisions contained in this Agreement (such substituted Compensation Provisions being called the "Substitute Compensation Provisions"). In the event that Conrail elects Substitute Compensation Provisions, Amtrak shall have, commencing April 1, 1991, the right to request a redetermination of compensation as provided in Section 3.8 of this Agreement, regardless of any

inconsistent provisions in the Substituted Compensation Provisions.

The Substituted Compensation Provisions shall take effect the date Amtrak receives notice from Conrail of its election, or, if modifications must be made as provided in the following sentence, shall take effect ninety days after such notice is received or when the parties reach agreement on such modifications or an arbitration decision establishing the modifications is issued, whichever occurs first. If the Substituted Compensation Provisions so elected by Conrail are based on a formula or methodology which is not convertible on a direct basis for determination of compensation by Conrail, Conrail and Amtrak shall endeavor in good faith to negotiate modifications to those aspects of the formula or methodology which are not so convertible on a direct basis, and, if they are unable to reach an agreement on such modifications, the dispute shall be submitted to arbitration under Section 4.3 hereof. By way of example, if only a portion of the compensation due Amtrak from the other entity was based on a specified car mile rate, and therefore not fully variable, then the remainder of the compensation that was stated as a fixed amount would need to be adjusted to reflect differences in the respective freight traffic volumes of Conrail and the other entity.

In the event that Conrail elects Substituted Compensation Provisions contained in an agreement between Amtrak

and a third party, it shall retain the right until October 1, 1991, to elect to adopt in accordance with the provisions of this section an alternative set or sets of Compensation Provisions contained in any subsequent agreement(s) entered into between Amtrak and another entity(ies).

As used in this Section 3.9, the term "Compensation Provisions" shall mean all contractual provisions between Amtrak and another entity governing the provision of rail freight service on the NEC relating to compensation to Amtrak for facilities and services provided to that entity for rail freight operations on the NEC, whether or not those provisions are contained in a single document. Compensation Provisions include, by way of example and without limitation, the following:

(a) Reimbursement for track maintenance, signal and interlocking maintenance and operations, communications systems maintenance, freight car inspections, police, support facilities, depreciation, FELA, supervision (division, regional, and operating), support and management, and return on investment;

(b) Management fee or equivalent;

(c) Significant operating restrictions;

(d) Assignment of responsibility for damages and liability for personal injuries or property damage;

(e) Payments based on quality of performance; and

(f) The duration of the provisions specified in (a) through (e) above and the procedures for modification thereof.

As used in this section, the term "Excluded Agreement" shall mean:

~~(a) through December 31, 1987 only, the agreement dated July 1, 1985 between Amtrak and Delaware and Hudson Railway Company; and~~

(b) any agreement containing Compensation Provisions that are established by the Commission in a proceeding under Section 402(a)(2) of the Act or are otherwise established by law, or an agreement negotiated between Amtrak and a party on the basis of a decision of the Commission in such a proceeding between Amtrak and the party or on the basis of other legal requirements applicable to Amtrak and the party.

ARTICLE IV GENERAL

Section 4.1. Transportation Privileges

(a) Employees of Amtrak designated by Amtrak and approved by Conrail shall be entitled to ride on Conrail's Freight Trains, including locomotives subject to space limitations, without charge, whenever necessary in connection with the inspection, maintenance, or operation of such trains.

(b) The transportation privileges which are described in Sections 7.5(a), 7.5(b), and 7.5(c) of the Off-Corridor

Operating Agreement, shall also apply to the operations of the parties on the NEC.

(c) Notwithstanding the conveyance of rail properties under the Purchase Agreement and ownership of the NEC by Amtrak, for purposes of transportation privileges under Amtrak's Uniform Pass Policies adopted pursuant to Section 405(f) of the Act, the NEC shall be considered as part of the "Home Road" of Conrail as that term is used in the said Uniform Pass Policies, as the same may be amended.

Section 4.2. Information

Either party hereto shall have the right to inspect the books and records of the other party pertaining to the performance of this Agreement, at its usual place of business, on reasonable notice and during regular business hours; provided, that neither Conrail nor Amtrak shall be obligated to retain books or records beyond the period specified in Section 3.6 hereof.

At any reasonable time Conrail or its designated agents shall have the right at reasonable frequencies and upon reasonable conditions, including payment of Amtrak's costs and giving reasonable notice, to examine the tracks of the NEC used in performing Conrail's Freight Service. Such examination may include use of Amtrak locomotives and cars and hi-rail vehicles and track geometry cars, with the understanding that such operation shall be subject to the limitations and conditions of

subsection 2.2(d) hereof and payment of compensation for the use of such equipment in accordance with the provisions of Section 2.7.

Section 4.3. Arbitration Procedures

Except as otherwise provided in this Agreement, any claim or controversy between Amtrak and Conrail concerning the interpretation, application or implementation of this Agreement shall be submitted to binding arbitration in accordance with the provisions of the Arbitration Agreement dated April 16, 1971, among Amtrak and certain other railroads. As between the parties hereto, the term of said Arbitration Agreement shall be deemed to continue during the term hereof and this Agreement shall be deemed to be a "Basic Agreement" under Section 4.5 of said Arbitration Agreement.

Section 4.4. Force Majeure

The obligations of the parties hereunder shall be subject to force majeure (which shall include strikes, riots, floods, accidents, Acts of God, and other causes or circumstances beyond the control of the party claiming such force majeure as an excuse for non-performance), but only as long as, and to the extent that, such force majeure shall prevent performance of such obligations.

Section 4.5. Successors and Assigns

All the covenants and obligations of the parties hereunder shall bind their successors and assigns, whether or not expressly assumed by such successors and assigns.

Section 4.6. Interpretation

The article and section headings herein are for convenience only and shall not affect the construction hereof. This Agreement shall be construed in accordance with and governed by the laws of the District of Columbia. Nothing expressed or implied herein shall give or be construed to give to any person, firm or corporation other than Conrail or Amtrak any legal or equitable right, remedy, or claim under or in respect of this Agreement. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by Conrail and Amtrak.

Section 4.7. Severability

If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

Section 4.8. Notice

Any request, demand, authorization, direction, notice, consent, waiver, or other document provided for or permitted by this Agreement to be made upon, given or furnished to, or filed with one party by the other party, unless otherwise specifically provided, shall be in writing and shall be delivered by hand or by deposit in the mails of the United States, postage prepaid, if to Amtrak in an envelope addressed as follows:

National Railroad Passenger Corporation
400 North Capitol Street, N.W.
Washington, D.C. 20001
Attn: Vice President - Operations and Maintenance

and, if to Conrail, in an envelope addressed as follows:

Consolidated Rail Corporation
Six Penn Center Plaza
Philadelphia, Pennsylvania 19103
Attn: Senior Vice President - Operations

Each party may change the address at which it shall receive notification hereunder by notifying the other of such change.

Section 4.9. Term

This Agreement shall become effective on October 1, 1986, and shall remain in effect so long as Conrail retains the Freight Service Easement, except as shorter periods are provided in particular sections hereof governing the duration of the obligations of such sections.

Section 4.10. Equal Employment Opportunity

Neither Amtrak nor Conrail shall discriminate against any employee or applicant for employment because of race, color,

religion, sex or national origin. Both Conrail and Amtrak will comply with all applicable laws and regulations pertaining to the prevention of such discrimination.

Section 4.11. Interest

In the event either party shall fail to pay any amount payable hereunder when due, the other party shall be entitled to recover interest at the 90-day Treasury Bill Rate in effect on the date such payment was due as published by the Federal Reserve on such unpaid amount from the date such amount was due until the date such amount is paid.

ARTICLE V
LIABILITY APPORTIONMENT

Section 5.0. Applicability

The following provisions shall, from the effective date of this Agreement, govern the apportionment of liability and risk of damage between the parties for incidents which occur on or after such effective date in connection with the rail services being operated and provided under this Agreement.

Section 5.1. Definitions

(a) "Amtrak Trains" means all trains operated by or on behalf of Amtrak.

(b) "Conrail Trains" means all trains operated by or on behalf of Conrail.

(c) "Amtrak Passenger" means (i) any person who is on board an Amtrak Train except for Conrail Employees (and occupants of Conrail business cars) who have not paid Amtrak's applicable passenger fare and are not travelling on personal business pursuant to pass privileges granted by Amtrak, (ii) any person who is not on board any train who either has purchased a ticket valid on an Amtrak Train ("Amtrak Ticket") or holds a pass document reflecting personal pass privileges granted by Amtrak that is valid for travel on an Amtrak Train, and (iii) any person who is on, getting on or alighting from an Amtrak Train for the purpose of accompanying or meeting any person described in (i) or (ii) of this sentence.

(d) "Amtrak Employee" means (i) a person who is an employee of Amtrak and (ii) any agent or contractor of Amtrak at the time in question (other than Conrail or any other entity contracting with Amtrak for operation of rail service on the NEC), including any person who, at the time in question, is acting within the scope of his employment by such agent or contractor.

(e) "Conrail Employee" means (i) a person who is an employee of Conrail and (ii) any agent or contractor of Conrail at the time in question (other than Amtrak), including any person who, at the time in question, is acting within the scope of his employment by such agent or contractor.

(f) "Conrail Property" means any locomotive, railroad car, including the contents thereof, and any other property, real or personal, or equipment owned by, leased to, used by or otherwise in the custody or possession of Conrail or any Conrail Employee, other than Conrail equipment or property being used by Amtrak other than for Conrail's account.

(g) "Amtrak Property" means any locomotive, railroad car, including the contents thereof, and any other property, real or personal, or equipment owned by, leased to, used by or otherwise in the custody or possession of Amtrak or any Amtrak Employee, other than (i) Amtrak equipment or property being used by Conrail other than for Amtrak's account, and (ii) any Amtrak real or personal property which Conrail has agreed to pay Amtrak to maintain under the Maintenance of Way Agreement between Amtrak and Conrail that is in effect on January 1, 1987.

Section 5.2. Conrail Employees

Conrail agrees to indemnify and save harmless Amtrak and Amtrak Employees, irrespective of any negligence or fault of Amtrak or Amtrak Employees, or howsoever the same shall occur or be caused, from any and all liability for injury to or death of any Conrail Employee, or for loss of, damage to, or destruction of the property of any such Conrail Employee. It is expressly understood and agreed that Conrail Employees furnished to Amtrak, and Conrail Employees who are involved in Conrail's provision of services to Amtrak, shall be regarded for purposes of this

Article V as employees of Conrail, and not of Amtrak. It is further agreed that Conrail Employees who are also Amtrak Passengers at the time in question shall be treated as Amtrak Passengers and not Conrail Employees, for purposes of this Article V.

~~Section 5.3. Amtrak Employees~~

Amtrak agrees to indemnify and save harmless Conrail and Conrail Employees, irrespective of any negligence or fault of Conrail or Conrail Employees, or howsoever the same shall occur or be caused, from any and all liability for injury to or death of any Amtrak Employee, or for loss of, damage to, or destruction of the property of any such Amtrak Employee. It is expressly understood and agreed that Amtrak Employees furnished to Conrail, and Amtrak Employees who are involved in Amtrak's provision of services to Conrail, shall be regarded for purposes of this Article V as employees of Amtrak, and not of Conrail.

Section 5.4. Conrail Property

Conrail agrees to indemnify and save harmless Amtrak and Amtrak Employees, irrespective of any negligence or fault of Amtrak or Amtrak Employees, or howsoever the same shall occur or be caused, from any and all liability for loss of, damage to or destruction of any Conrail Property.

Section 5.5. Amtrak Property

Amtrak agrees to indemnify and save harmless Conrail and Conrail Employees, irrespective of any negligence or fault of

Conrail or Conrail Employees, or howsoever the same shall occur or be caused, from any and all liability for loss of, damage to or destruction of any Amtrak Property.

Section 5.6. Amtrak Passengers

Amtrak agrees to indemnify and save harmless Conrail and Conrail Employees, ~~irrespective of any negligence or fault of~~ Conrail or Conrail Employees, or howsoever the same shall occur or be caused, from any and all liability for injuries to or death of any Amtrak Passenger and for loss of, damage to, or destruction of any property of any such passenger.

Section 5.7. Third Parties:
Grade Crossings and Off-Premises - Conrail

Subject to the provisions of Section 5.9, Conrail agrees to indemnify and save harmless Amtrak and Amtrak Employees, irrespective of any negligence or fault of Amtrak or Amtrak Employees, or howsoever the same shall occur or be caused, from any and all liability for injury to or death of any person, or for loss of, damage to, or destruction of any property, other than persons and property for which Amtrak is responsible under Sections 5.3, 5.5 and 5.6 if such injury, death, loss, damage or destruction either (i) arises from a collision of a vehicle or a person with a Conrail Train at the intersection at grade of a street or road, whether public or private, and the NEC, or (ii) is caused by the impact upon a person or property located off of the NEC of a Conrail Train or the impact upon such person or property ^{of the} explosion or release of the contents of such train.

Section 5.8. Third Parties:
Grade Crossings and Off-Premises - Amtrak

Subject to the provisions of Section 5.9, Amtrak agrees to indemnify and save harmless Conrail and Conrail Employees, irrespective of any negligence or fault of Conrail or Conrail Employees, ~~or howsoever the same shall occur or be caused,~~ from any and all liability for injury to or death of any person, or for loss of, damage to, or destruction of any property, other than persons and property for which Conrail is responsible under Sections 5.2, 5.4 and 5.10 if such injury, death, loss, damage or destruction either (i) arises from a collision of a vehicle or a person with an Amtrak Train at the intersection at grade of a street or road, whether public or private, and the NEC, or (ii) is caused by the impact upon a person or property located off of the NEC of an Amtrak Train or the impact upon such person or property ^{of the} explosion or release of the contents of such train.

Section 5.9. Third Parties Off Premises: Joint Accidents

In the event that an accident involving both an Amtrak Train or other equipment which is Amtrak Property ("Amtrak Equipment") and a Conrail Train or other equipment which is Conrail Property ("Conrail Equipment") results in the injury or death of any person, or the loss of, damage to, or destruction of any property, other than persons or property specified in Sections 5.2, 5.3, 5.4, 5.5, 5.6 and 5.10 (or persons or property for which Conrail is responsible pursuant to Section 5.12) and such injury, death, loss, damage or destruction occurs when such

person or property is located off of the NEC, then as between the parties:

(a) Conrail shall bear any and all of the financial responsibility for liability for such injury, death, loss, damage, or destruction, irrespective of any negligence or fault of Amtrak or Amtrak Employees, if, as between the parties, the immediate cause of such injury, death, loss, damage, or destruction was (i) the impact of Conrail Equipment, or the impact or release of the contents thereof, or (ii) the impact of any explosion of Conrail Equipment, or the contents thereof, or (iii) a fire that originated in Conrail Equipment, or the contents thereof;

(b) Amtrak shall bear any and all of the financial responsibility for liability for such injury, death, loss, damage, or destruction, irrespective of any negligence or fault of Conrail or Conrail Employees, if, as between the parties, the immediate cause of such injury, death, loss, damage or destruction was (i) the impact of Amtrak Equipment, or the impact or release of the contents thereof, or (ii) the impact of any explosion of Amtrak Equipment, or the contents thereof, or (iii) a fire that originated in Amtrak Equipment, or the contents thereof; and

(c) If the parties cannot agree whether the immediate cause of the injury, death, loss, damage or destruction in question is covered by subsection (a) or by subsection (b) above, Conrail will assume control of the defense of the action and upon final resolution thereof (whether by settlement or

judgment), the parties shall submit to the National Arbitration Panel the question of the "immediate cause of such injury, death, loss, damage or destruction." If the National Arbitration Panel concludes that neither subsection (a) nor subsection (b) is applicable, then the National Arbitration Panel shall apportion the financial responsibility for such judgment or settlement and all related expenses of the defense of the action, on the basis that the Panel determines the operation of the equipment by or on behalf of each party contributed to the immediate cause of such injury, death, loss, damage or destruction.

Section 5.10. Conrail Business Cars

Conrail agrees to indemnify and save harmless Amtrak and Amtrak Employees, irrespective of any negligence or fault of Amtrak or Amtrak Employees, or howsoever the same shall occur or be caused, from any and all liability for injury to or death of any person or for loss of, damage to or destruction of any property, other than persons or property for which Amtrak is responsible under Sections 5.3, 5.5, 5.6 and 5.8 where such injury, death, loss, damage, or destruction involves the occupant of a Conrail business car or his property.

Section 5.11. Third Parties: Electric Traction Facilities

Amtrak agrees to indemnify and save harmless Conrail and Conrail Employees, irrespective of any negligence or fault of Conrail or Conrail Employees, or howsoever the same shall occur or be caused, from any and all liability for injury to or death

of any person or for loss of, damage to or destruction of any property other than persons and property for which Conrail is responsible under Sections 5.2, 5.4, 5.7, 5.9, 5.10, and 5.12 of this Article V, where such injury, death, loss, damage or destruction results from contact with Amtrak electric traction facilities, ~~except where such contact is made possible by and~~ results from the unauthorized presence of third parties on Conrail Property on the NEC. In the latter event, Conrail shall assume defense of any such claim. Amtrak and Conrail shall each bear one-half of any resulting liability to the third parties, provided that if settlement is reached by Conrail and Amtrak refuses to accept one-half of the settlement cost agreed upon by Conrail, Conrail shall pay to Amtrak one-half of such proposed settlement cost and Amtrak shall assume full responsibility for the defense and payment of the claim and indemnify Conrail and any Conrail Employee therefor, regardless of the amount of any resulting settlement or judgment.

Section 5.12. Hazardous Substances 5/31/82

Conrail agrees to indemnify and save harmless Amtrak and Amtrak Employees, irrespective of any negligence or fault of Amtrak or Amtrak Employees, or howsoever the same shall occur or be caused, from any and all damage and liability for injury to or death of any person or for loss of, damage to or destruction of any property, other than persons and property for which Amtrak is responsible under Sections 5.3, 5.5 and 5.6, where such injury,

death, loss, damage or destruction arises from the transportation in Conrail Trains on the NEC of hazardous or toxic materials as defined in applicable federal or state laws or regulations. Notwithstanding the provisions of Section 5.5 to the contrary, damage for which Conrail is responsible under the preceding sentence shall include clean-up, removal, and remedial action required by law or the lawful directive of any agency having jurisdiction thereof, and restoration of any portion of the NEC that is damaged by Conrail's transportation of hazardous or toxic materials on the NEC to a level commensurate with the existing condition of such property immediately prior to such damage.

Section 5.13. Third Parties: Amtrak Residuals

Amtrak agrees to indemnify and save harmless Conrail and Conrail Employees, irrespective of any negligence or fault of Conrail or Conrail Employees, or howsoever the same shall occur or be caused, from any and all liability for injury to or death of any person or for loss of, damage to or destruction of any property, other than persons or property for which Conrail is responsible under Sections 5.2, 5.4, 5.7, 5.9, 5.10, 5.11 and 5.12; where such injury, death, loss, damage, or destruction arises from activities conducted pursuant to this Agreement.

Section 5.14. No Claims for Other Rail Service

Notwithstanding the provisions of this article, Amtrak and Conrail agree that neither shall look to the other or endeavor to hold the other liable or otherwise seek payment from

the other with respect to any liabilities relating to or arising out of the operation on the NEC of commuter, freight or any other rail service operated by or on behalf of parties other than Amtrak or Conrail. The parties specifically agree that the indemnification with respect to liability to third parties set forth in Sections 5.10, 5.11, 5.12 and 5.13 shall expressly exclude any liabilities with respect to damage, injury, loss, destruction or death of passengers, employees or property of any such third party rail service.

→ Section 5.15. Compensation to Amtrak

As compensation for a portion of the financial responsibility for liability that Amtrak has agreed to assume under this Agreement, Conrail shall pay Amtrak monthly an amount equal to 1% of all other amounts payable by Conrail for such month under Article III of this Agreement.

Section 5.16. Cooperation and Information

In the event of any suit brought against either Conrail or Amtrak asserting a liability against which the other has agreed to indemnify and save harmless the party sued, the indemnifying party shall, at its sole cost and expense, defend such suit and indemnify and save harmless the party sued against all costs and expenses thereof and promptly pay or cause to be paid any final judgment recovered against the party sued. The party sued shall promptly upon the bringing of any such suit against it give notice thereof to the indemnifying party and

hereafter provide all such information as may from time to time be required. Each party shall furnish to the other all such information relating to claims made for injuries, deaths, losses, damage or destruction of the type covered by this Agreement as such other party may from time to time request; all costs incurred in furnishing such information shall be borne by the party requesting such information.

Section 5.17. Renegotiation and Termination.

(a) On or after April 1, 1991, either Conrail or Amtrak may request the other party to renegotiate this Article V in its entirety. If, within 180 days after the date of such request, the parties are unable to agree with respect to any proposed change to this Article V, then either party may submit the matter to arbitration in accordance with Section 4.3 of this Agreement, and the parties shall make all reasonable efforts to expedite such arbitration. During the period of negotiations or arbitration, the provisions of this Article V in effect at the time of the request to renegotiate shall remain in effect.

(b) In the event that Conrail elects Substitute Compensation Provisions pursuant to Section 3.9 of this Agreement which contain provisions governing liability apportionment, the provisions of this Article V shall automatically terminate and shall be superseded by such liability apportionment provisions as of the effective date of such Substitute Compensation Provisions. In such event, Amtrak shall have, commencing April 1, 1991, the

right to request a renegotiation of this Article V pursuant to Section 5.17(a), regardless of any inconsistent provisions in the Substituted Compensation Provisions.

IN WITNESS WHEREOF, Conrail and Amtrak have caused this Agreement to be duly executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

Attest:

Frederick C. O'By

NATIONAL RAILROAD PASSENGER CORPORATION

By: Chas W Hayward
Its: ACTING PRESIDENT

CONSOLIDATED RAIL CORPORATION

Attest:

J. D. [Signature]
ASSISTANT SECRETARY

By: Spencer M. Reed
Its: PRESIDENT

EXHIBIT A

FREIGHT SERVICE EASEMENT

RESERVING AND EXCEPTING TO THE GRANTOR:

1. The easement and right ("Freight Service Easement") contemplated for retention by the Grantor under the Final System Plan certified by USRA exclusive against any and all persons except Grantee, its subsidiaries and successors in interest, to operate upon the real property conveyed by this Deed to the Grantee ("real property") local and long-haul freight service (including mail and express) and special train service to the full extent required by (i) the Act, or (ii) the Interstate Commerce Act or any future law of like import, including, without limitation, to the extent so contemplated and so required, the exclusive easement and right:

(a) to operate freight trains, cars and locomotives;

(b) subject to availability of space in light of the needs of Grantee, except in those facilities occupied by Grantor as of the date of this Deed as to which Grantor has no viable alternative, to occupy and use such portions of stations, buildings and other facilities now upon the real property (and replacements thereof) and subject to the availability of space in light of the needs of Grantee, to construct, operate and maintain additional or substitute stations, buildings and other facilities, which are reasonably necessary or legally required in connection with the provision of freight service;

(c) to use in conjunction with Grantee the presently existing railroad system telephone cable communication equipment and facilities now upon the real property (and replacements thereof) and, subject to the availability of space, to construct, operate and maintain such additions to or substitutions for the ~~presently existing railroad system telephone cable communications~~ equipment and facilities as are reasonably necessary or legally required in connection with the provision of freight service;

(d) to install track connections for rail lines and trackage, now or hereafter owned, leased, controlled or operated by Grantor, contiguous or adjacent to the real property to secure its freight customers or to connect with its rail properties;

(e) to provide all new and additional freight service at any point along the real property;

(f) to use appropriate portions of the maintenance of equipment facilities now upon the real property (and replacements thereof) for the provision of maintenance of equipment service for equipment used in provision of freight service (including mail and express) and special train service; and

(g) to have reasonable access over the real property to permit the exercise of the foregoing easements and rights; the exercise of which such exclusive easement and right shall be subject to such terms, provisions, qualifications and limitations as the Grantor and the Grantee have agreed upon in a certain Northeast Corridor Freight Operating Agreement, dated March 31,

1976, as said agreement may be amended, and as the Operations Review Panel established under Section 702 of the Railroad Revitalization and Regulatory Reform Act of 1976 may impose; in return for which exclusive easement and right, the Grantor shall pay the fair and equitable share of the cost to the Grantee of ~~operating rail service upon the real property~~ occasioned by exercise of the Freight Service Easement, as determined by agreement between the parties, or, in the event of the failure of the parties to so agree, by the Interstate Commerce Commission under Section 402(a) of the Rail Passenger Service Act, as such provision may be amended; provided, that in the event that the Grantor shall elect to abandon or assign the Freight Service Easement in whole or in part, other than to a subsidiary, affiliate or successor entity, the Grantee shall have a first option to acquire such easement, or portion thereof, at the purchase price of one dollar (\$1.00);

PRINCIPLES OF COOPERATION
CONCERNING THE NORTHEAST CORRIDOR

May 1, 1998

WHEREAS, Consolidated Rail Corporation ("Conrail"), CSX Corporation ("CSX"), Norfolk Southern Corporation ("NS"), and certain of their respective affiliates entered into a Transaction Agreement, dated June 10, 1997 ("Transaction Agreement"), which provides, among other things, that CSX and NS will acquire control of Conrail and that Conrail will form two wholly owned limited liability companies (hereinafter for convenience referred to as "NYC" and "PRR") which will acquire certain property of Conrail, including portions of Conrail's freight operating rights on segments of National Railroad Passenger Corporation's Northeast Corridor between Washington and Boston (the "Corridor"), and

WHEREAS, the Transaction Agreement refers to a transaction involving, among other things, acquisition of control of Conrail in common by CSX and NS that requires Surface Transportation Board ("STB") approval under Section 11322 of the Interstate Commerce Commission Transition Act, and

WHEREAS, if the Transaction Agreement receives final regulatory approval, Conrail will retain for its own use and will also convey to NYC and PRR, and NYC and PRR will acquire, certain of Conrail's rights to conduct freight operations on the Corridor as contemplated in the Transaction Agreement, and

WHEREAS, if the Transaction Agreement receives final regulatory approval, NYC and PRR will lease or make available under operating agreements the aforesaid rights to conduct freight operations on the Corridor to or for the use of railroad operating affiliates of CSX and NS, respectively (such affiliates being hereinafter for convenience referred to as "LesseeA" and "LesseeB", respectively), and

WHEREAS, Conrail further seeks the cooperation of National Railroad Passenger Corporation ("Amtrak") in allowing improvements to the Corridor that will enhance the competitiveness of rail freight and will increase revenue to Amtrak from the growth of freight train service, and

WHEREAS, Amtrak supports the addition of freight traffic on Amtrak-owned property that is compatible with existing and future Amtrak and commuter rail traffic, now:

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NORFOLK SOUTHERN

EXHIBIT NO. 2

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THEREFORE, Conrail (for itself and in behalf of NYC and PRR), CSX (in behalf of LesseeA), NS (in behalf of LesseeB), and Amtrak (collectively the Parties) hereby agree that the following terms and conditions will apply for freight operations over the Corridor conducted by LesseeA and LesseeB under leases or operating agreements, and by Conrail itself as operator in certain "Shared Assets Areas", as contemplated in the Transaction Agreement:

1. USE OF AMTRAK'S NORTHEAST CORRIDOR LINES

Subject to satisfaction of the conditions in the Transaction Agreement, the Parties agree the following terms will be effective as of the Closing Date under the Transaction Agreement:

- a. Conrail will assign and convey to NYC and PRR certain of its rights to conduct freight operations on the Corridor all as contemplated in the Transaction Agreement. The assignment and conveyance will be set forth in a separate instrument or instruments to be executed by and among Conrail, PRR, and NYC.
- b. Local Freight Service

As provided in the Transaction Agreement, Shared Assets Areas will be created between Philadelphia (Zoo Tower) and New York Penn Station. The Parties will cooperate in establishing schedules for operation of local freight trains on the Corridor between Philadelphia (Zoo) and New York (Penn Station) to serve existing and new shippers, including new industries built on property adjacent to the Corridor. PRR will be assigned (and LesseeB ultimately will operate under an operating agreement) Conrail's exclusive local freight rights from Washington to Philadelphia for existing and new industries and transloading facilities.

NYC will be assigned (and LesseeA ultimately will operate under an operating agreement) Conrail's exclusive local freight rights north of New York (Penn Station) for existing and new industries and transloading facilities.

- c. Overhead Freight Rights

As provided in the Transaction Agreement, Conrail will assign to NYC and PRR overhead trackage rights to operate trains between New York and Washington, DC as follows:

- (1) Between Washington (Union Station) and Landover, Maryland, between Landover and Baltimore, and between Zoo Tower and New York (Penn Station), rights shall be shared equally and, in the event of an operating conflict, trains will be scheduled alternately.
- (2) Between Baltimore and Zoo Tower, there shall be no limit on the number of trains PRR (or LesseeB) may operate (subject to available capacity); NYC's rights (and those of LesseeA) shall be limited to four (4) trains a day.

d. General Provisions

- (1) Except as otherwise provided herein, Amtrak will neither favor nor discriminate against either NYC or PRR (or LesseeA or LesseeB, respectively) in the scheduling of freight trains, and will afford NYC and PRR (or LesseeA and LesseeB, respectively) impartial consideration for freight train scheduling.
- (2) It is expected that initial freight operations by Conrail, NYC and PRR (or LesseeA and LesseeB, respectively) will be at the level of existing Conrail service; additions to that level of freight service shall be subject to prior agreement with Amtrak, which agreement shall not be unreasonably withheld.
- (3) Amtrak shall cooperate with the other Parties in facilitating the growth and efficient operation of freight train services on the Corridor.
- (4) Except as provided in subparagraph (5) below, Amtrak's approval, not to be unreasonably withheld, will be required prior to operation on the Corridor of "heavyweight" freight cars (meaning freight cars loaded to total weight on rail between 263,000 pounds and 286,000 pounds). Amtrak will work in good faith with the other Parties to identify segments of the Corridor where, without unreasonably interfering with commuter rail operations or with Amtrak's operations or maintenance activities, "heavyweight" freight cars can safely be operated or improvements can be made that would permit such operations. Any additional costs attributable

to such improvements and/or operations shall not be borne by Amtrak. Any such improvements shall be effected in accordance with the existing Amtrak/Conrail agreement, and shall be subject to the provisions of this Agreement and the existing Amtrak/Conrail agreement except as otherwise expressly provided herein.

- (5) Subject to the compensation provisions of the existing Amtrak/Conrail pilot program agreement, Amtrak hereby approves the continued operation of "heavyweight" freight cars between Perryville, Maryland, and Davis, Delaware, but Amtrak reserves the right, after reasonable consultation with PRR (or LesseeB) and NYC, as appropriate, to impose safety-related restrictions on "heavyweight" operations based on specific evidence of potential safety concerns and to impose other operating restrictions if the impact of "heavyweight" cars causes unreasonable wear on the rail line, adversely impacts reliable passenger train operations, or otherwise degrades the rail line condition or capacity.

e. Charges for Northeast Corridor Track Use

- (1) The Parties will endeavor in good faith to negotiate reasonable track use fees that are consistent with applicable statutory and regulatory criteria. The charges (including the process and timing that govern adjustment of those charges) payable by Conrail as provided in the existing Amtrak/Conrail agreement will remain in effect for purposes of determining NYC's and PRR's track use fees payable to Amtrak until a different basis of payment is agreed upon.
- (2) In determining the different basis of payment, the Parties will endeavor to negotiate reasonable track use fees based on differential prices for freight use of the Corridor or portions thereof which may reflect the following criteria:
 - (a) Time of day when a freight train occupies the Corridor.
 - (b) Type and weight of freight train/freight car operated.

- (c) Portion of Corridor over which train is operated.
- (d) On-time performance incentive.
- (e) Capital contributions for improvements paid for by freight operators.

- (3) Charges will be kept as simple as possible and will be made available impartially to Conrail, NYC and PRR. Any time after the Closing Date under the Transaction Agreement, and consistent with the provisions of the existing Amtrak/Conrail agreement, any of Conrail, NYC, or PRR may request the Surface Transportation Board to establish reasonable track use fees payable to Amtrak.
- (4) In addition to the foregoing, Amtrak shall be free after the Closing Date to contract with any of Conrail, NYC, and PRR for the installation of improvements and for corresponding adjustments in prevailing charges for freight usage. Notwithstanding the creation of any such new rates for particular usage, charges for freight usage available to Conrail at the Closing Date under any existing Amtrak/Conrail agreement shall remain available to any of Conrail, NYC, or PRR pursuant to the terms of such agreements.

f. Intermodal Service

- (1) Amtrak will endeavor to facilitate the efforts of NYC (or LesseeA) and PRR (or LesseeB) to develop new intermodal and bimodal services on the Corridor.
- (2) PRR (or LesseeB) and Amtrak will cooperate in good faith to evaluate and improve clearances for doublestack container trains between Perryville, MD and Baltimore (Bay View Yard) wherever such trains can be safely operated or improvements can be made that will permit such operations without unreasonably interfering with commuter rail operations or with Amtrak's operations or maintenance activities. Any additional costs attributable to such improvements or operations shall not be borne by

Amtrak. Such improvements shall be permanent. Any such improvements shall be effected in accordance with the existing Amtrak/Conrail agreement, and shall be subject to the provisions of this Agreement and the existing Amtrak/Conrail agreement except as otherwise expressly provided herein.

g. Harrisburg Line and Hellgate Line

- (1) Conrail will assign and convey to PRR its operating and other rights with respect to Amtrak's line known as the Harrisburg Line between Philadelphia and Harrisburg west of the Shared Assets Area. The assignment and conveyance will be set forth in a separate instrument to be executed by and between Conrail and PRR. Amtrak and PRR (or LesseeB) will work cooperatively to encourage use of the Harrisburg Line by such freight traffic of PRR (or LesseeB) as the Line can efficiently accommodate.
- (2) Conrail will assign and convey to NYC its operating and other rights with respect to Amtrak's line north of New York (Penn Station). The assignment and conveyance will be set forth in a separate instrument to be executed by and between Conrail and NYC. Amtrak and NYC (or LesseeA) will work cooperatively to encourage use of the Hellgate Line by such freight traffic of NYC (or LesseeA) as the Line can efficiently accommodate.

2. OTHER TERMS

a. Oversight Condition

In recognition of Amtrak's statutory right to priority over freight trains, after execution of this Agreement NS and CSX shall advise the STB that they do not oppose action by the STB in Finance Docket No. 33388 consistent with the following terms:

The STB should require oversight, for a 3-year period, of the implementation and effect of the transactions subject to STB review and approval in Finance Docket No. 33388 to the extent they may affect the on-time

performance of Amtrak intercity passenger train services. As part of this continuing oversight, the STB should require quarterly reports from NS and CSX and provide Amtrak an opportunity to comment. NS, CSX and Amtrak shall jointly recommend to the STB objective, measurable standards to be used in such reports; on-time performance standards should reflect measurements employed in calculating incentive payments under the applicable Amtrak operating agreements. The foregoing condition is not intended to limit the STB's authority to continue oversight beyond the 3-year period.

b. Amtrak Support

After execution of this Agreement, Amtrak shall file a statement with the STB withdrawing its request for conditions and opposition to, and supporting in all respects, the transactions contemplated in the Transaction Agreement (other than the limited oversight condition described above).

3. GENERAL PROVISIONS

a. Amtrak Consent

Notwithstanding any provisions of the Amtrak/Conrail agreement or of the freight service easement described therein, Amtrak hereby consents to the conveyance by Conrail of portions of its freight operating rights on the Corridor to NYC and PRR, and to the leases, assignments, or other operating arrangements to be made by NYC and PRR and by LesseeA and LesseeB, all as anticipated in the Transaction Agreement, provided the Transaction Agreement and its Ancillary Agreements receive final regulatory approval and the Transaction is consummated.

b. Existing Amtrak/Conrail Agreement

Except as otherwise expressly provided herein, the existing Amtrak/Conrail agreement (the Second Amended and Restated Northeast

Corridor Freight Operating Agreement dated October 1, 1986) is neither amended nor supplanted by this Agreement and shall continue in force.

c. No Third Party Rights

Nothing in this Agreement is intended to confer any rights or remedies upon any person other than the Parties and their permitted assignees (including PRR and NYC), designees and lessees.

d. Governing Law

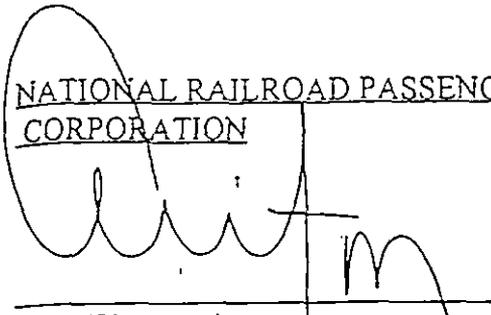
This Agreement shall be construed in accordance with and governed by the laws of the District of Columbia.

e. Dispute Resolution

Except as provided in Section 1(e)(3) hereof, any claim or controversy between or among the Parties concerning the interpretation, application, or implementation of this Agreement shall be submitted to binding arbitration in accordance with the provisions of the National Railroad Passenger Corporation Arbitration Agreement dated April 16, 1971, among Amtrak and certain other railroads.

AGREED:

NATIONAL RAILROAD PASSENGER CORPORATION



(Signature)

Name: George D. Warrington
Title: Acting President and CEO
Date: 5/14/98

Approved as to form: F. C. O'Leary

AGREED:

NORFOLK SOUTHERN CORPORATION
for itself and in behalf of Norfolk Southern Railway Company



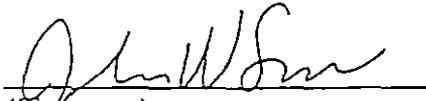
(Signature)

Name: David R. Goode
Title: Chairman, Pres. & CEO
Date: 5/20/98

Approved as to form: [Signature]

AGREED:

CSX CORPORATION, for itself and in behalf of CSX Transportation, Inc.



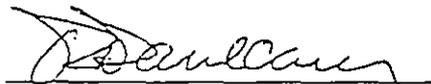
(Signature)

Name: JOHN W. SNOW
Title: Chairman, CEO & PRES
Date: 5/18/98

Approved as to form: _____

AGREED:

CONSOLIDATED RAIL CORPORATION



(Signature)

Name: R. PAUL CAREY
Title: GEN. MGR - CONTRACTS
Date: 5/12/98

Approved as to form: [Signature]

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Amtrak #1
A-11778
97524
AAR. of F. B. W. D. S. T.
MFW

Susan Wood)

v.)

Docket No. C-20042702

National Railroad Passenger Corporation et al.)

DOCUMENT

DOCKETED
FEB 09 2005

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 172T) in the City of Lancaster and Manheim Township, Lancaster County; and the allocation of costs incident thereto.)

Docket No. A-00117798

VERIFIED WRITTEN TESTIMONY OF
NATIONAL RAILROAD PASSENGER CORPORATION ("AMTRAK")

The National Railroad Passenger Corporation ("Amtrak") hereby submits its written direct testimony in the above-captioned matter. Mr. John Youngdahl provides Amtrak's testimony.

- Q. Please state your name, position, and office address for the record.
- A. I am John Youngdahl, and I am employed by Amtrak as Project Development Officer, Engineering. My office address is Amtrak Engineering Department, 30th Street Station, South Tower, 4S033, Philadelphia, PA 19104.
- Q. Are you authorized to testify on Amtrak's behalf?
- A. Yes.

Q. Are you familiar with Amtrak's interests in the proceedings currently before the Pennsylvania Public Utility Commission regarding the public crossing known as Fruitville Pike and the Complaint filed by Susan Wood?

A. Yes.

Q. The Commission has requested testimony from Amtrak on several issues, as set forth in a Hearing Notice dated June 18, 2004. The first question posed to Amtrak by the Commission is number 13, which requests "National Railroad Passenger Corporation (hereafter Amtrak) submit testimony as to the exact corporate name of the owner and operator of the line of railroad involved at the subject rail-highway crossing."

A. National Railroad Passenger Corporation.

Q. Question 14, requested that "Amtrak submit testimony stating the number of tracks presently located at the crossings and whether any track is electrified; state the volume, class and approximate speed of all trains operated daily over these tracks; and state whether any changes in such operations are contemplated in the foreseeable future."

A. Amtrak has seven (7) tracks at this location. Five (5) tracks are electrified, and two (2) are non-electrified industrial tracks. There are 22 scheduled passenger trains per day at this location, and these passenger trains operate at a maximum speed of 70 miles per hour. There are also approximately 14 freight trains per day at this location, and these freight trains operate at a maximum speed of 40 miles per hour. There are no immediate changes in operations contemplated. However, the passenger rail line will be upgraded under the state supported Keystone Corridor Improvement Project, and upon completion of that project additional passenger trains may be added.

Q. Question 15 requested that "Amtrak state what its past and present obligations are with respect to maintenance of the existing bridges and the subject crossings and the highway approaches hereto."

A. None. Since 1981, Amtrak has been exempt from any maintenance obligation at this or other public crossings in Pennsylvania, pursuant to 49 U.S.C. §24301(l), which states:

- (1) Amtrak, a rail carrier subsidiary of Amtrak, and any passenger or other customer of Amtrak or such subsidiary, are exempt from a tax, fee, head charge, or other charge, imposed on levied by a State, a political subdivision, or local taxing authority on Amtrak, a rail carrier subsidiary of Amtrak, or on persons traveling in intercity rail passenger transportation or on mail or express transportation provided by Amtrak or such a subsidiary, or on the carriage of such persons, mail, or express, or on the sale of any such transportation, or on the gross receipts derived therefrom after September 30, 1981. In the case of a tax or fee that Amtrak was required to pay as of September 10, 1982, Amtrak is not exempt from such tax or fee if it was assessed before April 1, 1997.
- (2) The district courts of the United States have original jurisdiction over a civil action Amtrak brings to enforce this subsection and may grant equitable or declaratory relief requested by Amtrak.

Q. Question 16 requested that "Amtrak submit into evidence copies of past orders or actions of the Commission, or its predecessor, which may have dealt with the construction, alteration or reconstruction of the subject crossings; and state when hwy and how the subject crossings were originally established."

A. Amtrak has no copies of past orders or actions of the Commission, or its predecessor relating to the crossing at issue in this proceeding other than a copy of a Commission Order dated October 1, 2001, a true and accurate copies of which is attached. Amtrak also has drawings dated 1928 relating to the old bridge at this location. Attached hereto are true and accurate copies of four (4) 1928 drawings depicting the general plan,

elevation, substructure and superstructure of the old bridge.

Q. Question 17 requests that "Amtrak submit testimony indicating what portion of the maintenance of any completed improvement or the existing structures it will agree to perform and what maintenance cost it will agree to assume and, if none, which party or parties should, in its opinion, be required[d] to perform an assume the cost of maintenance after any improvements ordered by the Commission have been completed, and state its reason therefore."

A. Amtrak will not agree to perform and maintenance or cost relating to this public crossing. Amtrak has no opinion regarding which party or parties, other than Amtrak, should be assigned costs or responsibilities for this crossing.

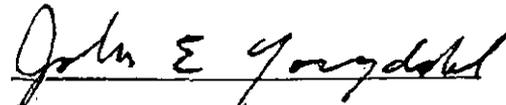
Q. Does Amtrak have any additional relevant testimony at this time?

A. No.

VERIFICATION

The undersigned, having read the foregoing verified written testimony, hereby verifies that the testimony is based on information furnished to the undersigned, which information has been gathered by Amtrak in the course of this proceeding. The language of the pleading is that of counsel and not of signer. I verify that the foregoing testimony is true and correct to the best of my knowledge, information and belief. To the extent that the contents of the pleading are that of counsel, I have relied upon counsel in taking this verification. This verification is made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

Dated: October 25, 2004


John Youngdahl

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dennis M. Moore". The signature is written in a cursive style with a long horizontal stroke extending to the left.

Dennis M. Moore
PA Bar No. 24832
Amtrak Law Department
60 Massachusetts Ave. NE]
Washington, DC 20002
202-906-2750
udma@amtrak.com

Dated: October 25, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of October 2004 in Washington, DC, I caused to be served a true and correct copy of the Verified Written Testimony of National Railroad Passenger Corporation ("Amtrak") by electronic mail and by first class mail postage prepaid, as indicated below, upon each of the following:

David A. Salapa Esq.
T&S Law Bureau
400 North Street, PO Box 3265
Commonwealth Keystone Building
Harrisburg PA 17105-3265

Andrew S. Gordon, Chief Counsel
PENNDOT
PO Box 8212
Harrisburg, PA 17105-8212

Howard 'Pete' Shaub, Chairman
Lancaster County
Commissioners Office
50 North Duke Street
Box 83480
Lancaster, PA 17608

Charles N. Smithgall, Mayor
120 North Duke Street
Lancaster, PA 17603
ATTN: Charlotte A. Katzenmoyer

Harry E. Ritter, President
Manheim Township Commissioners
1840 Municipal Drive
Lancaster, PA 17601
ATTN: James M. Martin

Stephanie Sorenson, Manager
Verizon Pennsylvania
11th floor
Strawberry Square
Harrisburg, PA 17101-1809

Kathy Crispell, Engineering
Associate
Commonwealth Telecom Services
300 A Laird Street
Wilkes-Barre, PA 16702

John Kelhart Agency, Coordinator
PP&L Electric Utilities Corporation
2 North Ninth Street – N3
Allentown, PA 18101-1179

Mike Harrison, Manager/Engineer
XO Communications
925 Berkshire Boulevard
Wyomissing, PA 19610

William Berkey
PENNDOT
2140 Herr Street
Harrisburg, PA 17103-1699

Susan Wood
1980 Sterling Place
Lancaster, PA 17601

Christopher Underhill, Esq.
Hartman Underhill & Brubaker
221 East Chestnut Street
Lancaster, PA 17602

Jason D. Sharp, Assistant Counsel
Department of Transportation
Office of Chief Counsel
PO BOX 8212
Harrisburg, PA 17105-8212

Norfolk Southern Railway Company
110 Franklin Road SE
Roanoke VA 24042-0028

Benjamin C. Dunlap Jr., Esq.
Nauman, Smith, Shissler & Hall
200 North 3rd Street 18th floor
PO BOX 840
Harrisburg, PA 17108-0840

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

Judge Louis G. Cocheres
Administrative Law Judge
PO BOX 3265
Harrisburg, PA 17105-3265



October 25, 2004

DOCUMENT

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

AMTRAK
ST #1
ASND-2T
A-00117798
90504
MP

Public meeting held September 26, 2001

Commissioners Present:

Glen R. Thomas, Chairman
Robert K. Bloom, Vice-Chairman
Aaron Wilson, Jr.
Terrance J. Fitzpatrick

DOCKETED
FEB 09 2005

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

ORDER

BY THE COMMISSION:

This matter is before us by reason of an application filed May 2, 2001, by the Pennsylvania Department of Transportation (Department). In its application, it avers that it is desirable to alter the crossing by reconstructing the bridge that carries State Route 0072, over and above the tracks of National Railroad Passenger Corporation (Amtrak) in the City of Lancaster and Manheim Township, Lancaster County.

The applicant further states that it proposes to replace the existing two span bridge that carries the roadway over five shared electrified passenger/freight tracks and two non-electrified yard tracks with a new two-span bridge that achieves AMTRAK's current clearance requirements.

Preliminary plans attached to the application shows that the proposed horizontal clearance between the centerline of track and the easterly end of the southerly abutment is 7-feet, 4 ½-inches and the horizontal clearance at the easterly end of the northerly abutment is 8-feet, 3 ½-inches. The Department is requesting exemption from the Commission minimum horizontal close clearance requirements. The proposed vertical clearances exceed the Commissions minimum standards.

The existing bridge deck is 30-feet wide between curbs and accommodates two traffic lanes, one for each direction of travel. A single walkway is located on the east side of the bridge deck. The proposed deck will be 52-feet wide between curbs and will accommodate four traffic lanes, two bike lanes and a pedestrian walkway that is all constructed on adjacent concrete box beam superstructure.

The average daily traffic count for State Route 0072 is 19,272 vehicles with 4% trucks. The estimated cost to construct the proposed bridge is \$4,000,000.00. The project is necessary to accommodate the safety and convenience of the public.

A field conference and investigation, arranged and conducted by a Commission staff engineer, was held at the site of the crossing on June 8, 2001, with the following parties in interest represented thereat:

Pennsylvania Department of Transportation - Applicant
Manheim Township
National Railroad Passenger Corporation
Lancaster County
PPL Electric Utilities Corporation
Commonwealth Telcom Services, Inc.

City of Lancaster, Verizon Pennsylvania, Inc. and X O Communications were notified of the time and place of the field conference but were not in attendance.

At the time of the field conference the Department stated that it agrees to bear the cost of furnishing all material and performing all work to reconstruct the proposed above grade crossing, its approach roadways and to demolish the existing bridge. Upon completion of the project it will maintain the bridge superstructure, substructure, the structural components of the pedestrian walkway, paving of the roadway including the approach roadways between the curb faces and snow and ice removal from the roadway surface.

Portions of the approach roadways to the bridge are supported by a mechanical stabilized earth retaining walls. Also, included is a concrete slab that acts as the curbing and pedestrian walkway with pedestrian railing. The Department agreed to

maintain these features and also the protective fencing to be constructed on the bridge superstructure.

The only anticipated modification to AMTRAK's facilities is expected to be its cantenary system. The Department agreed to bear all of the construction costs to alter the system, and the cost of engineering and protective services.

The non-carrier public utility companies present could not determine the extent of their project involvement. Accordingly, they agreed to initially bear their respective cost for any alteration or relocation of their facilities that results from the project. They will determine at a later date whether to seek reimbursement for their costs and if a hearing is needed to resolve any remaining issues.

During construction the Department will maintain traffic through the area of the crossing. It proposes to construct a two-lane bridge, that will be part of the completed work, adjacent to the existing bridge. Roadway traffic patterns will then be shifted over to the partially constructed bridge while the remainder of the proposed bridge will be constructed along the current roadway alignment.

The applicant has not submitted final construction plans and will need to do so prior to the start of construction. It has submitted for approval right-of-way plans and requested the Commission to appropriate 9-plots of property. They consist of two aerial easements, four right-of-way plots and three temporary construction easements.

Proof of service of a copy of the application upon each party in interest has been received. None of the parties has advised the Commission that it objects to the issuance of an order approving the subject application. We have considered the instant application and find that in the interest of public safety, the proposed crossing alteration project should be constructed.

This Commission tentatively establishes its jurisdiction between station 156+88 and station 170+40.56, as measured along the survey and right-of-way base line of State Route 0072.

Upon full consideration of the matter involved, we determine that it is not necessary to schedule a hearing in this proceeding at this time and that issuance of an order without hearing is proper, since the Department has agreed to construct the proposed alteration project, at its sole cost and expense, and none of the parties has expressed any objection to the proposed project.

We also determine that the alteration or relocation of non-carrier public utility companies' facilities should be made by the respective companies, at their initial cost and expense; and that a hearing be scheduled, if necessary, after all work has been completed to consider the allocation of costs and expenses incident to the crossing alteration project.

The record having been certified to this Commission, we issue this order pursuant to Section 335(a) of the Public Utility Code, 66 Pa. C.S. §335(a); THEREFORE,

IT IS ORDERED:

1. That the application of Pennsylvania Department of Transportation for the approval to reconstruct the bridge carrying State Route 0072, over the tracks of National Railroad Passenger Corporation in the City of Lancaster and Manheim Township, Lancaster County, be and is hereby approved.

2. That the existing crossing, above grade, be constructed generally in accordance with the right-of-way plan submitted by the Pennsylvania Department of Transportation on July 12, 2001, and identified as "Drawings Authorizing Acquisition of Right-of-Way For State Route 0072, Section 006 R/W, In Lancaster County," consisting of twenty-five sheets, which plan is hereby approved and made part hereof.

3. That the Pennsylvania Department of Transportation, at its sole cost and expense, and prior to the start of construction, prepare and submit to this Commission for approval and to all parties of record for examination, complete detailed construction plans for the proposed crossing alteration project, the highway approaches and the bridge superstructure and substructure.

4. That exemption from the minimum clearance requirement of 52 Pa. Code §33.122, be and is hereby granted for the easterly end of the southerly and northerly abutments.

5. That in accordance with the provisions of section 2702 of the Public Utility Code, 66 Pa. C.S. §2702, the following described property be and is hereby taken and appropriated for the purpose of the improvement in accordance with the plan approved in Paragraph No. 2 of this order and that Paragraph No. 5 of this order shall be recorded by the Recorder of Deeds in Lancaster County, and shall be indexed under the name of the record owner of said property, grantor, and the Commonwealth of Pennsylvania, grantee, at the sole cost and expense of the Department of Transportation of the Commonwealth of Pennsylvania, applicant herein.

National Railroad Passenger Corporation, Property Owner
30th Street station
4th Floor, South Tower, Box 64
Philadelphia Pennsylvania 19104

ALL THAT CERTAIN track of land situated in the City of Lancaster, Lancaster County, Pennsylvania, bounded and described as follows to wit:

Tract No. 1
(Required Aerial Easement)

BEGINNING at a point on the westerly side of State Route 0072, said point being at the intersection of the westerly legal right-of-way line for State Route 0072 and the northerly line of National Railroad Passenger Corporation right-of-way, distant forty two (42) feet westerly and measured at right angles from the survey and right-of-way baseline of State Route 0072 at or about Station 165+56 thereof; thence in a south easterly direction along the legal right-of-way line of State Route 0072 to a point, distant forty one and seventy nine hundredths (41.79) feet westerly and measured at radially from the survey and right-of-way base line of State Route 0072 at or about Station 164+17.59 thereof; thence in a westerly direction in and across lands of National Railroad Passenger Corporation and along the required right-of-way line of State Route 0072 to a point distant seventy one and nineteen hundredths (71.19) feet westerly and measured radially from the survey and right-of-way baseline of State Route 0072 at or about Station 164+30.19 thereof; thence in a northwesterly direction in and across lands of National Railroad Passenger Corporation along the western boundary of the required aerial easement to a point in the northerly legal right-of-way line of State Route 0072 distant seventy one (71) feet westerly measured at right angles from the survey and right-

of-way baseline at or about Station 165+66 thereof; thence in a southeasterly direction along the said legal right-of-way line to a point and place of beginning and containing 0.094 acres of land more or less.

Tract No. 2

(Required Aerial Easement)

BEGINNING at a point on the easterly side of State Route 0072, said point being at the intersection of the easterly legal right-of-way line for State Route 0072 and the northerly right-of-way line of National Railroad Passenger Corporation distant sixteen and forty five hundredths (16.45) feet easterly and measured at right angles from the survey and right-of-way baseline of State Route 0072 at or about Station 165+37.53 thereof; thence in and across lands of National Railroad Passenger Corporation the following three (3) courses and distances to viz: In a southeasterly direction to a point, distant sixty two (62) feet easterly and measured at right angles from the survey and right-of-way base line of State Route 0072 at or about Station 165+33 thereof; thence in a southeasterly direction to a point distant sixty two (62) feet easterly and measured radially from the survey and right-of-way baseline of State Route 0072 at or about Station 163+83 thereof; thence in a northwesterly direction to a point in the easterly legal right-of-way line of State Route 0072 distant sixteen and twenty three hundredths (16.23) feet easterly and measured radially from the survey and right-of-way baseline at or about Station 164+99.35 thereof; thence in a northwesterly direction along the said legal right-of-way line to a point and place of beginning and containing 0.151 acres of land more or less.

Tract No. 1

(Required Right-of-Way)

BEGINNING at a point on the westerly side of State Route 0072, said point being at the intersection of the westerly required right-of-way line for State Route 0072 and the easterly right-of-way line of National Railroad Passenger Corporation distant forty and fourteen hundredths (40.14) feet westerly and measured at right angles from the survey and right-of-way baseline of State Route 0072 at or about Station 161+26.95 thereof; thence in a northwesterly

direction along lands of LLM Realty Partners and the said required right-of-way line of to a concrete monument found distant seventy one and nineteen hundredths (71.19) feet westerly and measured radially from the survey and right-of-way base line of State Route 0072 at or about Station 164+27.11 thereof; thence in a southeasterly direction in and across lands of National Railroad Passenger Corporation to a point in the westerly legal right-of-way line of State Route 0072 distant forty one and seventy nine hundredth (41.79) feet westerly and measured radially from the survey and right-of-way baseline at or about Station 164+17.03 thereof; thence in a southeasterly direction along the said legal right-of-way line to a point and place of beginning and containing 0.094 acres of land more or less.

Tract No. 2
(Required Right-of-Way)

BEGINNING at a concrete monument found in line of lands of National Railroad Passenger Corporation distant seventy one and nineteen hundredths (71.19) feet westerly measured radially from the survey and right-of-way baseline at or about Station 164+27.11 thereof; thence in and across lands of National Passenger Railroad Corporation along the Required right-of-way line of State Route 0072 to a point distant seventy one and nineteen hundredths (71.19) feet westerly and measured radially from the survey and right-of-way baseline at or about Station 164+30.19 thereof; thence in and along lands of National Railroad Passenger Corporation and along the required right-of-way line of State Route 0072 to a point in the westerly legal right-of-way line of State Road 0072, distant forty one and seventy nine hundredths (41.79) feet westerly and measured radially from the survey and right-of-way baseline at or about Station 164+17.59 thereof; thence along the easterly legal right-of-way line of State Route 0072 to a point in the southerly right-of-way line of National Railroad Passenger Corporation distant forty one and seventy nine hundredths (41.79) feet westerly and measured radially from the survey and right-of-way baseline at or about Station 164+17.03 thereof; thence in a northwesterly direction along the southerly right-of-way line of National Railroad Passenger Corporation to a concrete monument and place beginning and containing 0.001 acres more or less.

Tract No. 3
(Required Right-of Way)

BEGINNING at a point on the easterly side of State Route 0072, said point being at the intersection of the easterly legal right-of-way line for State Route 0072 and the southerly right-of-way line of National Railroad Passenger Corporation distant seventeen (17) feet easterly and measured at right angles from the survey and right-of-way baseline of State Route 0072 at or about Station 161+86 thereof; thence in a northwesterly direction along the said legal right-of-way line of to a point sixteen and twenty three hundredths (16.23) feet easterly and measured radially from the survey and right-of-way base line of State Route 0072 at or about Station 163+99.35 thereof; thence in southeasterly direction in and along lands of National Railroad Passenger Corporation and along the required right-of-way of State Route 0072 to a point distant fifty seven and no hundredths (57.00) feet easterly and measured radially from the survey and right-of-way baseline of State Route 0072 at or about Station 163+84.99 thereof; thence in a southeasterly direction in and across lands of National Railroad Passenger Corporation along the required right-of-way of State Route 0072 to a concrete monument, distant fifty seven and no hundredths (57.00) feet easterly and measured radially from the survey and right-of-way baseline at or about Station 163+50.00 thereof; thence in a westerly direction continuing in and across lands of National Railroad Passenger Corporation along the said required right-of-way line to a concrete monument distant thirty nine and no hundredth (39.00) feet easterly and measured radially from the survey and right-of-way baseline at or about Station 163+50.00 thereof; thence in a southeasterly direction continuing in and across lands of National Railroad Passenger Corporation along the required right-of-way line of State Route 0072 the following two (2) courses and distances to wit: (1) to a concrete monument distant thirty six and thirty three hundredths (36.33) feet easterly measured at right angles from the survey and right-of-way baseline at or about Station 162+25.99 thereof; (2) to a point in line of lands of LLM Realty Partners distant thirty six and thirty three hundredths (36.33) feet easterly and measured at right angles to the survey and right-of-way baseline at or about Station 161+80.26 thereof; thence in a northwesterly direction along lands of LLM Realty Partners

to a point the place of beginning and containing 0.118 acres of land more or less.

Tract No. 4
(Required Right-of-Way)

BEGINNING at a point on the easterly side of State Route 0072, said point being at the intersection of the easterly legal right-of-way line for State Route 0072 and the Northerly right-of-way line of National Railroad Passenger Corporation distant twenty six and forty nine hundredths (26.49) feet easterly and measured radially from the survey and right-of-way baseline of State Route 0072 at or about Station 168+87.01 thereof; thence in an easterly direction along the common line between lands of National Railroad Passenger Corporation and lands of Jay S. and Janice R. Martin and the required right-of-way line of State Route 0072 to a point distant forty five and nineteen hundredth (45.19) feet easterly and measured radially from the survey and right-of-way baseline at or about Station 168+73.39 thereof; thence continuing along the required right-of-way line of State Route 0072, partly along lands of Jay S. and Janice R. Martin and partly in and across lands of National Railroad Passenger Corporation to a point distant fifty seven and no hundredths (57.00) feet easterly and measured at right angles from the survey and right-of-way baseline of State Route 0072 at or about Station 165+56.18 thereof; thence in a southerly direction in and across lands of National Railroad Passenger Corporation to a point distant fifty seven and no hundredths (57.00) feet easterly and measured at right angles from the survey and right-of-way baseline at or about Station 165+35.33 thereof; thence in a westerly direction in and across lands of National Railroad Passenger Corporation to a point on the legal right-of-way line of State Route 0072, distant thirteen and forty five hundredths (13.45) feet easterly and measured at right angles from the survey and right-of-way baseline at or about Station 165+37.53 thereof; thence in a northwesterly direction along the easterly right-of-way line of State Route 0072 to a point of curvature, distant twenty five (25) feet easterly and measured radial from the survey and right-of-way baseline at or about Station 168+79 thereof; Thence along a curve to the right having a radius of 195.2 feet to a point the place of beginning and containing 0.251 acres more or less.

The above six (6) tracts of land shown on the Department of Transportation's drawings Authorizing Condemnation of Right-of-Way for State Route 0072, Section 006 R/W, as required Right-of-Way and Aerial Easement for State Route 0072 and designated and delineated as parts of Parcel No. 3 on sheet Nos. 11 and 20 of the said drawings, as recorded in the office for the recording of deeds, in Lancaster County, Pennsylvania, in Highway Plan Book V-11, Page 36, on June 13, 2001, are portions of real estate which became legally vested in National Railroad Passenger Corporation by deed of Consolidated Rail Corporation, dated October 20, 1978, in Deed Book L-75, page 511, in the Lancaster County Recorder of Deeds Office.

6. That in accordance with provisions of Section 2702 of the Public Utility Code, 66 Pa. C.S. §2702, the following described property be and is hereby taken and appropriated temporarily for use during the construction period only, in accordance with the right-of-way plan approved in Paragraph No. 2 of this order, and that Paragraph No. 6 of this order shall be recorded by the Recorder of Deeds of Lancaster County, and shall be indexed under the name of the record owner of said property, grantor and the Commonwealth of Pennsylvania; said temporary appropriation shall terminate upon completion of the improvement and its opening to public use:

National Railroad Passenger Corporation, Property Owner
30th Street Station
4th Floor South Towner, Box 64
Philadelphia, Pennsylvania 19104

ALL THAT CERTAIN track of land situated in the City of Lancaster, Lancaster County, Pennsylvania, bounded and described as follows to wit:

Tract No. 1
(Temporary Construction Easement)

BEGINNING at a point on the easterly side of State Route 0072, said point being at the intersection of the easterly required right-of-way line of State Route 0072 and the southerly right-of-way line of National Railroad Passenger Corporation distant thirty six and thirty three hundredths (36.33) feet easterly and measured radially from the survey and right-of-way baseline of State Route 0072 at or about Station 161+80.26 thereof; thence in a northwesterly direction along the required right-of-way line of State Route 0072 to a concrete monument, distant thirty six and thirty three hundredths (36.33) feet easterly and measured radially from the survey and right-of-way baseline of State Route 0072 at or about Station 162+25.99 thereof; thence in a westerly direction continuing along the required right-of-way line of state Route 0072 to a concrete monument distant thirty nine (39) feet easterly and measured radially from the survey and right-of-way baseline of State Route 0072 at or about Station 163+50 thereof; thence in a southeasterly direction continuing along the required right-of-way line of State Route 0072 to a point distant forty nine (49) feet easterly and measured radially from the survey and right-of-way baseline at or about Station 163+50 thereof; thence in a southeasterly direction in and across lands of National Railroad Passenger Corporation along the easterly

temporary construction easement (access) line to a point in the northern boundary line of LLM Realty Partners distant forty six (46) feet easterly and measured at right angles from the survey and right-of-way baseline of State Route 0072 at or about Station 161+77 thereof; thence along lands of LLM Realty Partners in a northwesterly direction to a point and place of beginning and containing 0.040 acres of land more or less.

Tract No. 2

(Temporary Construction Easement)

BEGINNING at a concrete monument on the easterly side of State Route 0072, said monument being at an angle point in the easterly required right-of-way line for State Route 0072, distant fifty seven and no hundredths (57.00) feet easterly and measured radially from the survey and right-of-way baseline of State Route 0072 at or about Station 163+50.00 thereof; thence in a northwesterly direction along the easterly required right-of-way line of State Route 0072 to a point distant fifty seven and no hundredths (57.00) feet easterly and measured radially from the survey and right-of-way baseline of State Route 0072 at or about Station 163+84.99 thereof; thence in and across lands of National Railroad Passenger Corporation the following three (3) courses and distances to viz: In a southeasterly direction along the northern boundary of the temporary construction easement (access) to a point, distant seventy nine (79) feet easterly and measured radially from the survey and right-of-way base line of State Route 0072 at or about Station 163+76 thereof; thence in a southeasterly direction along the easterly boundary of the temporary construction easement (access) to a point distant seventy nine (79) feet easterly and measured radially from the survey and right-of-way baseline of State Route 0072 at or about Station 163+50 thereof; thence in a southwesterly direction along the southerly boundary of the temporary construction easement (access) to a point and place of beginning and containing 0.015 acres of land more or less.

Tract No. 3

(Temporary Construction Easement)

BEGINNING at a point on the easterly side of State Route 0072, said point being at the intersection of the easterly required right-of-way line for State Route 0072 and the northerly right-of-way line of National Railroad Passenger

Corporation distant fifty seven (57.00) feet easterly and measured at right angles from the survey and right-of-way baseline of State Route 0072 at or about Station 165+60 thereof; thence in a southeasterly direction along the northerly right-of-way line of National Railroad Passenger Corporation to a point distant seventy nine (79) feet easterly and measured at right angles from the survey and right-of-way baseline of State Route 0072 at or about Station 165+52 thereof; thence in a southeasterly direction in and across lands of National Railroad Passenger Corporation along the eastern boundary of the temporary construction easement (access) to a point, distant seventy nine (79) feet easterly and measured at right angles from the survey and right-of-way base line of State Route 0072 at or about Station 165+12 thereof; thence in a northwesterly direction continuing in and across lands of National Railroad Passenger Corporation along the southerly boundary of the temporary construction easement (access) to a point distant sixty two (62) feet easterly and measured at right angles from the survey and right-of-way baseline of State Route 0072 at or about Station 165+17 thereof; thence in a northwesterly direction along the easterly Required Aerial Easement line to a point distant sixty two (62) feet easterly and measured at right angles from the survey and right-of-way baseline at or about Station 165+33 thereof; thence in a northwesterly direction along the northerly boundary of said Required Aerial Easement to a point distant fifty seven and no hundredths (57.00) easterly and measured at right angles from the survey and right-of-way baseline at or about station 165+33.79 thereof; thence in a northwesterly direction along the easterly required right-of-way line of State Route 0072 to a point distant fifty seven and no hundredths (57.00) feet easterly and measured at right angles from the survey and right-of-way baseline at or about Station 165+56.18 thereof; thence in an northwesterly direction continuing along the easterly required right-of-way line of State Route 0072 to a point and place of beginning and containing 0.019 acres of land more or less.

The above three (3) tracts of land shown on the Department of Transportation's drawings Authorizing Condemnation of Right-of-Way for State Route 0072, Section 006 R/W, as temporary construction easement (access) for State Route 0072 and designated and delineated as parts of Parcel No. 3 on sheet Nos. 11 and 20 of the said drawings, as recorded in the office for the recording of deeds, in Lancaster

County, Pennsylvania, in Highway Plan Book V-11, Page 36, on June 13, 2001 are portions of real estate which became legally vested in National Railroad Passenger Corporation by deed of Consolidated Rail Corporation, dated October 20, 1978, in Deed Book L-75, Page 511, in the Lancaster County Recorder of Deeds Office.

7. That National Railroad Passenger Corporation, at the sole cost and expense of Pennsylvania Department of Transportation, furnish all material and perform all work relating to its facilities, which may be required as incidental to the performance of the proposed work; furnish construction engineering and inspection services as required as a result of the proposed work; and furnish and maintain flagmen and watchmen necessary to protect its operations during the time the work is being performed above and adjacent to its tracks.

8. That any relocation, changes in or removal of any adjacent structures, equipment or other facilities of any non-carrier public utility company located within or beyond the limits of any highway within the limits of this Commission's jurisdiction, which may be required as incidental to the performance of the proposed work, be made by said public utility company at its initial cost and expense, and in such a manner as will not interfere with the proposed crossing alteration project.

9. That Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and perform all work necessary to affect the vacation, relocation, removal or demolition of any non-utility structures, including dwellings, located on property required for the crossing alteration project, in accordance with this letter.

10. That Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and perform all work necessary to establish and maintain any detours or traffic control devices that may be required to properly accommodate highway traffic during the time the crossing alteration work is being performed in accordance with the approved plans and this order.

11. That Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and perform all work required to complete the remainder of the crossing alteration project in accordance with the approved plans and this order.

12. That the crossing alteration project be completed on or before December 31, 2003, and that on or before said date, Pennsylvania Department of Transportation report the date of actual completion of the work and certify to this Commission that work has been completed satisfactorily in accordance with the approved plans and this order.

13. That Pennsylvania Department of Transportation cooperate with National Railroad Passenger Corporation so that in the construction of the crossing alteration project, the facilities of the railroad company will not be endangered or unnecessarily impeded.

14. That National Railroad Passenger Corporation cooperate with Pennsylvania Department of Transportation and conduct its operations in the vicinity of the crossing alteration project in a safe manner and under control during the time the project is being constructed.

15. That non-carrier public utility companies cooperate with Pennsylvania Department of Transportation so that the alteration and/or relocation of their facilities will not interfere with the completion of the crossing alteration project.

16. That Pennsylvania Department of Transportation pay all compensation for damages due to owners for property taken, injured or destroyed by reason of the construction of the crossing alteration project in accordance with this order.

17. That upon completion of the improvement and its opening to public use, Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the entire substructure and superstructure of the reconstructed bridge, complete, including abutments, piers, structural beams, roadway slabs, structural components of the pedestrian walkway, curbs, railings, fencing located on the top of the bridge, the mechanical stabilized earth retaining wall including the pedestrian walkway, curbing and pedestrian railing supported by the mechanical stabilized earth retaining wall, roadway paving on the bridge and its approach roadways and snow and ice removal from the roadway surface and the drainage systems, all as constructed in accordance with the approved plans and this order.

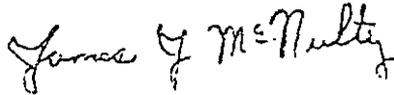
18. That upon completion of the improvement and its opening to public use, National Railroad Passenger Corporation, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain its tracks, catenary system, signals, wire liens, and any other railroad facilities located in the vicinity of the improvement.

19. That upon completion of the alteration or relocation of non-carrier public utility company facilities, each public utility company, at its sole cost and expense, furnish all material and perform all work require thereafter to maintain their respective facilities within the limits of this Commission's jurisdiction.

20. That all costs which are to be reimbursed by the Department of Transportation consistent with this order shall be reimbursed pursuant to the provisions of the 23 C.F.R. §§140.646. The aforesaid Federal reimbursement shall not supersede, delay or in any manner postpone the effect of any ordering paragraph contained in this or any related order.

21. That upon completion of the construction of this crossing improvement project and the Commission receiving written notice that there are unresolved issues to be considered, this proceeding be scheduled for hearing at a time and place assigned by this Commission, upon due notice to all parties hereto, to receive evidence relative to the allocation of all costs of construction, responsibility for future maintenance or any other matters relevant to this proceeding.

BY THE COMMISSION,

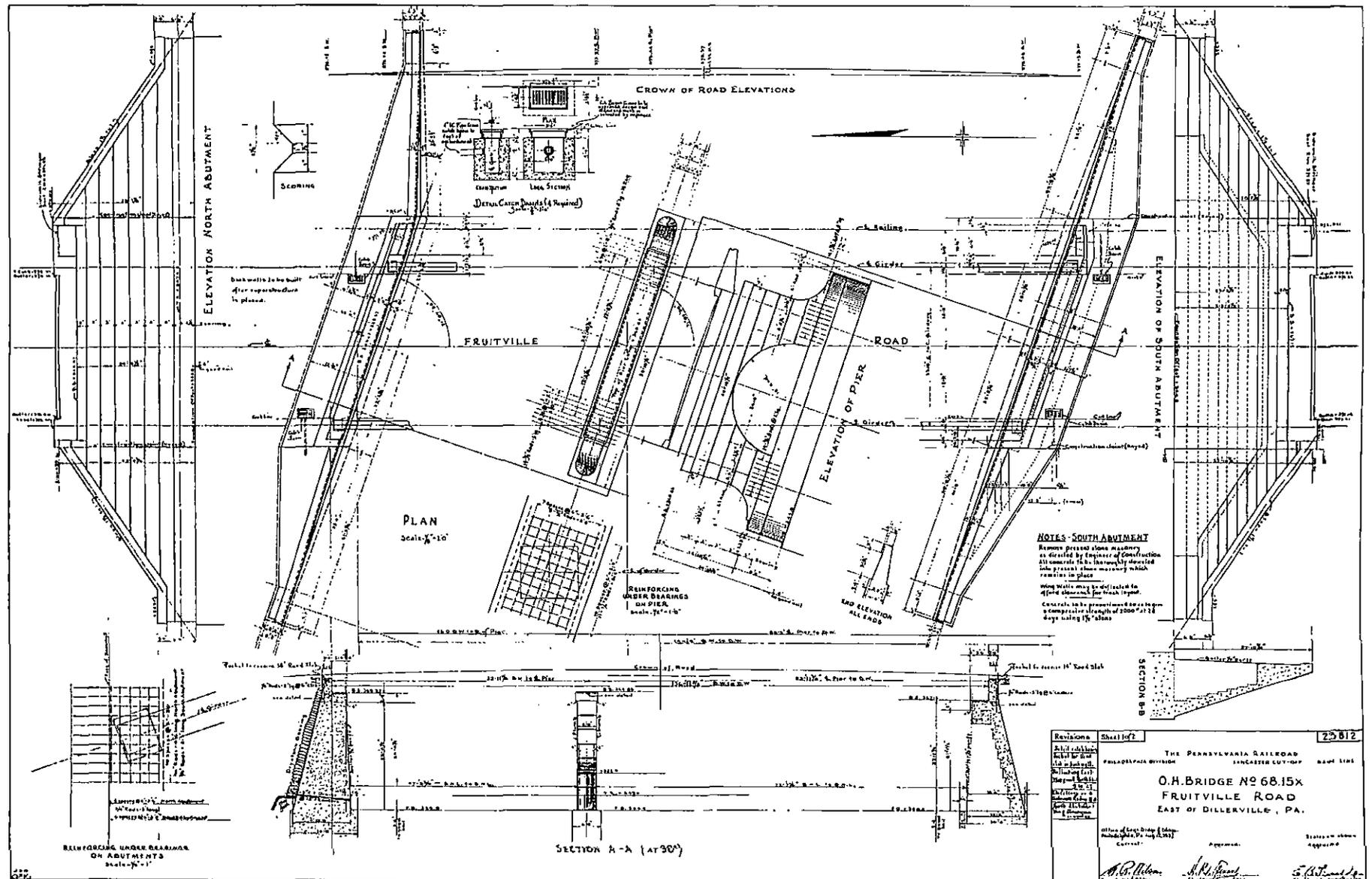


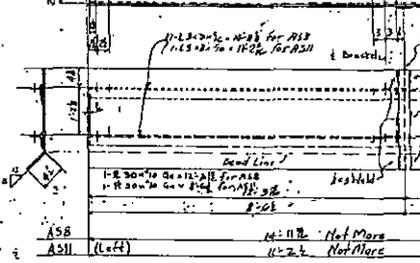
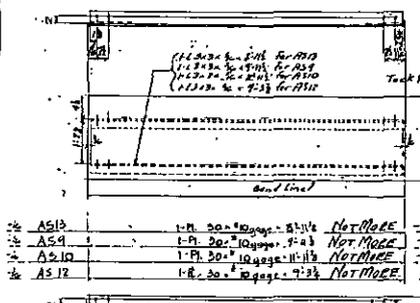
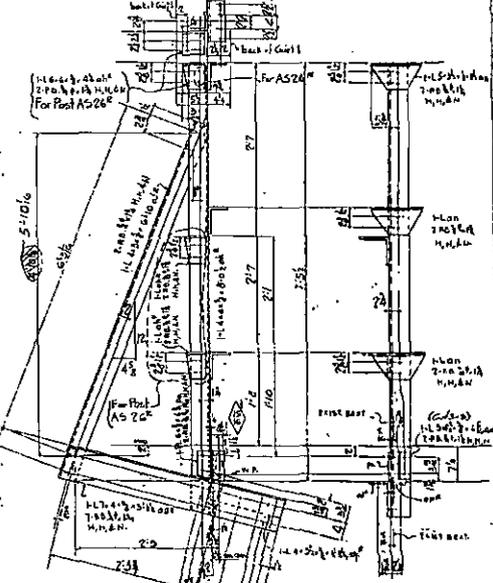
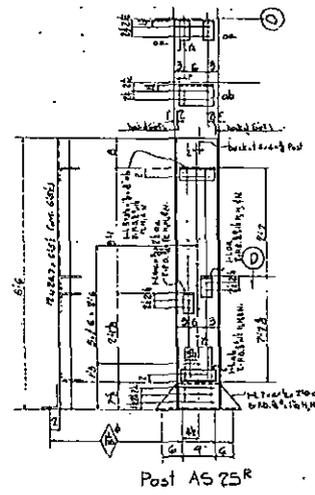
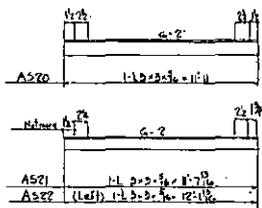
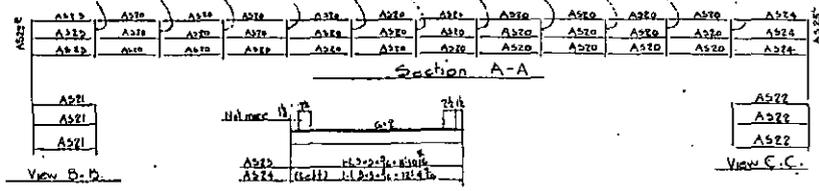
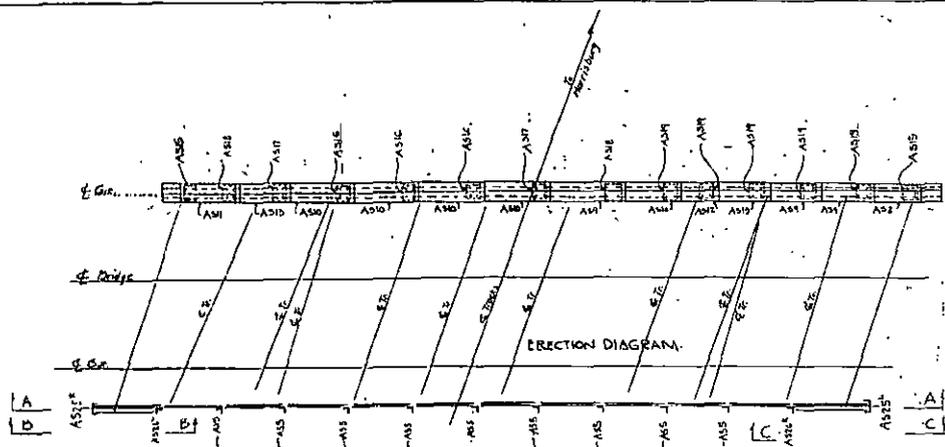
James J. McNulty

(SEAL)

ORDER ADOPTED: September 26, 2001

ORDER ENTERED: OCT 01 2001





MATERIAL: G. H. Steel A36
 MATERIAL GALVANIZED: Place to be assembled after galvanizing. Work finished.
 SPECIFICATIONS: ASME A581
 DIMENSIONS: P. & S.
 CONNECTION: Bolted
 BOLTS: 1/2" dia. 11.5" long
 OVER HOLE: 1/8" under used
 FIELD CONNECTIONS to be bolted. See sheet EP 51 for list of bolts & washers.
 All fastenings on erection drawings for erection must be used as they furnished quantities will work out properly.
 One eighth inch washers to be used only where bolts cannot be drawn tight.

No.	Description	Quantity
1	Plate	AS25
2	"	AS26
3	"	AS27
4	"	AS28
5	"	AS29
6	"	AS30
7	"	AS31
8	"	AS32
9	"	AS33
10	"	AS34
11	"	AS35
12	"	AS36
13	"	AS37
14	"	AS38
15	"	AS39
16	"	AS40

Note: In addition to duplicate piece marks and assembly plates to have part mark 1 & 0.15

The Pennsylvania Railroad
 Harrisburg Electric Division
 FRUITVILLE PIT ON BRIDGE # 68-5
 Protection Screens
 CUSTOMER'S DRAWING NO. 5-1152-1
 LDI NO. A10

Phila. Div. M.C.
 Shop and Shipping Bill No. 344001-010
 Customers Drawing No. 779-0331-1

DATE: No. 1-1-17
 CONTRACT SURVIVANCE No. 1-1-17
 SHEET No. 26

1-P. 10x2-2 1/2 AS16 1-P. 10x4-2 1/2 AS17
 1-P. 10x4-2 1/2 AS18 1-P. 10x4-2 1/2 AS19

Rev. 11-12-37

Lancaster County St. No. 1

*PENNDOT
ACC 117798
DD 204
MJD*

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCUMENT

Wood v. AMTRAK, et.al.

Docket Nos. A-00117798
C-20042702

DOCKETED
FEB 09 2005

DIRECT TESTIMONY OF LAURI P. ASHLKOG
ON BEHALF OF LANCASTER COUNTY

Dated: October 2004

1 Q. Please state your full name.

2 A. My name is Lauri P. Ashlkog.

3

4 Q. Provide a short synopsis of your educational background.

5 A. I graduated from with a Bachelor of Science degree in Environmental Resource

6 Management from the Pennsylvania State University in 1995.

7

8 Q. By whom are you employed and in what capacity?

9 A. I am employed by the Lancaster County Planning Commission as a Bicycle and

10 Pedestrian Planner.

11

12 Q. Please provide a limited description of your role as Director of Transportation Planning.

13 A. I am responsible for coordinating the Lancaster County Bicycle & Pedestrian Advisory

14 Council which is an recommending body to Lancaster County's Metropolitan Planning

15 Organization Metropolitan Planning Organization (MPO)for bicycle, pedestrian, and non-

16 motorized transportation issues. I also oversee the Transportation Enhancements

17 Program and review traffic impact studies and subdivision and land development plans.

18

19 Q. Please describe the function of the Lancaster County Planning Commission ("LCPC").

20 A. The main role or function of the planning commission is to plan for and guide growth and

21 development in Lancaster County so that development occurs in an orderly, rational, and

22 reasonable manner. Additionally, LCPC staff also serves as staff for the County's

23 Metropolitan Planning Organization, MPO, (the Lancaster County Transportation

24 Coordinating Committee). The main role or purpose of the MPO is to conduct a

1 continuing, cooperative, and comprehensive transportation planning and programming
2 process. The two most visible activities to the public eye are conducting corridor studies
3 and prioritizing regionally significant transportation projects that will receive federal,
4 state, and local funds through the MPO's Transportation Improvement Program (TIP).

5
6 Q. On whose behalf are you testifying today?

7 A. I am testifying on behalf of Lancaster County.
8

9 Q. Are the existing crossings included in any highway improvement plan or are they
10 currently programmed for replacement or removal?

11 A. As I will explain in more detail later, the existing crossings are included in highway
12 improvement plans and have been and/or are programmed for replacement and/or
13 removal.
14

15 Q. Do you have copies of any past orders or actions of this Commission, or its predecessor,
16 which may have dealt with the construction, alteration, reconstruction or maintenance of
17 the crossing involved herein to submit into the record?

18 A. The County does not have any information. The County Solicitor's Office, however, has
19 located a Commission Order from 1931 dealing with the construction of the current Lititz
20 Pike Bridge. It was completed in 1939. I submit a copy of that Commission Order as
21 Lancaster County Exhibit No. 1.
22

23
24 Q. How many bridges are involved in this proceeding?

1 A. There are two bridges involved in this matter. The first is the Route 72 bridge over
2 AMTRAK's Main Line. This bridge is located to the west of the Lancaster Train station.
3 The second is the Lititz Pike Bridge also over AMTRAK's Main Line. This bridge is
4 located to the east of the Lancaster Train station.

5
6
7 Q. Please describe the condition of the Route 72 bridge.

8 A. The Fruitville Pike Bridge is a complete bridge replacement and widening that occurred
9 in 2003. Construction was completed by the Pennsylvania Department of Transportation,
10 (PennDOT). Funding for the project was 80% federal funding and 20% state funding.
11 The bridge is a new four lane structure with a 5 foot sidewalk on the easterly side of the
12 bridge. As this is a new structure, no repairs are necessary to the structure, the roadway
13 or the sidewalks.

14
15 Q. Please describe the condition of the Lititz Pike Bridge.

16
17 A. The roadway surface is in good condition since it was repaved in July 2004. There is a
18 eight (8) foot sidewalk on the western side of the structure. This sidewalk is in a state of
19 disrepair; the majority of the sidewalk surface is crumbling. There are loose stones
20 where the concrete is crumbling and grass/weeds are growing in the seams of the
21 sidewalk. A repair has been made to a portion of the sidewalk on the northern part of the
22 bridge near the south bound traveling lane. I cannot offer any opinion on the condition of
23 the substructure or superstructure of the bridge. I would defer to the other parties
24 regarding the physical condition of these portions of the structure.

25
26 Q. Does Lancaster County have a recommendation regarding this structure?

1 A. The sidewalk on the Lititz Pike Bridge should be repaired to keep the pedestrian walkway
2 accessible for all users. Because this bridge is subject to replacement in the short term, it
3 does not make any fiscal sense to replace the sidewalk. Repairs to smooth out the surface
4 of the walking area should be sufficient to make the pedestrian area accessible to the
5 public in a safe manner. The County has no recommendation as to the substructure or
6 superstructure of this bridge. Finally, since the roadway surface has been recently
7 repaved, there is no need for any work in that regard.

8
9 Q. Can you shed any light on the replacement of this structure?

10
11 A. The entire bridge is scheduled for replacement with \$1,688,000 federal/state funding
12 programmed for the preliminary engineering and \$1,000,000 federal/state funding for the
13 final design phase. These cost estimates were obtained from PennDOT. The bridge is on
14 the Bridge Bill. The federal funds allocated for this project are from the MPO's FFY
15 2005-2008 Transportation Improvement Program.

16
17 Q. Will the County agree to perform the actual work, including plan preparation, if required,
18 and assume the cost for any repairs to the existing crossing found necessary and ordered
19 by the Commission?

20 A. No the County will not agree to perform any work or to assume the costs for any repairs.
21 As I said earlier, the Lititz Pike Bridge is on the Bridge Bill and on the MPO's
22 Transportation Improvement Program and funds will be available for the replacement of
23 the bridge.

24
25 Q. Will the facilities of any non-carrier public utility company be affected by the
26 recommended repair work? Please explain the extent of the improvement.

1 A. The County has no knowledge of who or what companies would be affected by these
2 projects. I have no information on the extent of their improvements.

3
4
5 Q. What maintenance and/or improvements has the County performed at the existing
6 crossings, if any, together with approximate date and cost of such work; and state what
7 the County's past and present obligations are with respect to maintenance of the
8 structures and the highway approaches thereto?

9 A. Since the County has no obligation for either of these structures, the County has never
10 completed any maintenance and/or improvements at these sites. The County has not had
11 in the past and does not presently have any obligation for maintenance of the structures or
12 the highway approaches thereto.

13
14 Q. What portions of the involved crossings will the County agree to maintain in the future
15 and what maintenance costs will the County agree to assume?

16 A. The County has never maintained either of these crossings and has no desire to accept
17 any responsibility to maintain the crossings. The County will not assume any
18 maintenance costs for the crossings.

19
20 Q. Does this complete your testimony?

21 A. Yes it does.

A-00117798

DOCUMENT

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Company shall pay any money to which it may be entitled as compensation for damages to any of its property taken, injured or destroyed by reason of these improvements.

11. That the County of Northumberland shall pay all compensation for damages due to the owners of property taken, injured or destroyed in the execution of the improvements; exclusive of damages due to the respondent railroad company for any of its property taken, injured or destroyed.

12. That any relocation, changes in or removal of any adjacent structures, equipment or other facilities of any public service company, which may be required as incidental to the execution of the improvements herein ordered, shall be made by such public service company at its own expense.

13. That upon the completion of the improvements herein ordered The Pennsylvania Railroad Company shall thereafter maintain the substructure and superstructure of the span over its tracks and concrete approach-spans thereto, exclusive of roadway paving thereon; the Township of Delaware shall maintain the new highway constructed under the eastern span of the railroad bridge over the river, and the Department of Highways shall maintain the balance of the improvement, including the roadway paving on the bridge over the railroad and the concrete approach spans thereto.

14. That upon the completion of the improvement, the portion of the old State Highway Route No. 240 at the crossing at the east end of the railroad bridge over the West Branch of the Susquehanna River between points thirty feet on either side of the center line between the tracks of The Pennsylvania Railroad Company and the portions of the existing township highways between the right-of-way lines of The Pennsylvania Railroad Company at the three grade crossings known as Stahl's, Limekiln and Fogelman's crossings, will no longer be necessary for public use and accordingly shall be vacated between said points.

15. That upon the completion of the improvement, The Pennsylvania Railroad Company shall effectively barricade to public travel the four grade crossings here involved, said barricades to be thereafter maintained by said railroad company.

An order will issue in accordance with these findings.

STEIN

v.

PENNSYLVANIA RAILROAD COMPANY, CONESTOGA TRACTION COMPANY, DEPARTMENT OF HIGHWAYS COUNTY OF LANCASTER AND TOWNSHIP OF MANHEIM, LANCASTER COUNTY

Crossings—Reconstruction—Plans—Apportionment of cost.

A dangerous and inadequate bridge carrying a state highway over main line tracks of a railroad was ordered reconstructed so as to provide a two span structure with 40 foot roadway and one 8 foot sidewalk, the track of a street railway to be located on the west side of the roadway. The cost of the improvement was apportioned.

Chas. W. Eaby and *S. V. Hosterman* for Complainant.

Oliver S. Shaeffer for Commissioners of Lancaster County.

John E. Malone for Conestoga Traction Company.

J. I. Shelley, Jr., for Department of Highways.

Nauman & Smith for The Pennsylvania Railroad Company.

M. M. Harnish for Manheim Township Water Company.

REPORT BY THE COMMISSION, April 22, 1930:

State Highway Route No. 442, generally known as the Lancaster & Lititz Turnpike, and a single track of the Conestoga Traction Company, are carried over the grade of the main tracks of the Philadelphia Division of The Pennsylvania Railroad Company by means of a two-span iron and steel bridge at a point about 600 feet east of Lancaster station in Manheim Township, Lancaster County. The complaint alleges that this bridge is inadequate and dangerous and its reconstruction necessary for the safety, accommodation and convenience of the public.

The evidence which was introduced at the hearings clearly establishes the dangerous condition of the crossing. Following a series of engineering conferences a plan was prepared and submitted by The Pennsylvania Railroad Company which meets the approval of all parties in interest. This plan provides for the construction of a new two-span bridge having a roadway 40 feet in width and one 8-foot sidewalk along the west side. The bridge will be of sufficient length to provide space for two additional tracks of the railroad company. The approaches will be on six per cent grades ascending to the structure, and the single track of the Conestoga Traction Company will be located along the west side of the roadway on the bridge and on the approaches. The pipe line of the Manheim Township Water Company, which is carried on the existing bridge, will be relocated so that it will pass underneath the tracks of the railroad company. Pending the completion of the improvement a temporary detour to existing crossings will be maintained for vehicles and street railway traffic will be rerouted.

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The estimated cost of this improvement totalling \$209,204, exclusive of property damages, is made up of the following main items:

Bridge	\$107,219
Approaches	88,621
Highway detour	950
Alteration to water line	4,231
Alternation to traction Co's facilities	8,183
	\$209,204

The damages resulting from the appropriation of property necessary for the improvement are estimated at \$6,850; making the total cost of the work \$216,054.

From a consideration of all the evidence, the Commission finds and determines:

1. That the crossing complained of is dangerous and its reconstruction necessary for the safety, accommodation and convenience of the public; therefore, the complaint will be sustained.

2. That said reconstruction shall be made in accordance with the general plan submitted by The Pennsylvania Railroad Company and Marked "Pennsylvania Railroad Company's Exhibit No. 6" at the hearing of December 11, 1929, which said plan is hereby approved, attached hereto and made part hereof.

3. That The Pennsylvania Railroad Company, within sixty (60) days from date of service hereof, shall submit to this Commission for approval and to the parties of record for examination, detailed plans of the bridge herein ordered reconstructed.

4. That all property necessary for the improvement, together with all buildings and structures thereon, shall be taken and appropriated for the purpose of this improvement; detailed descriptions thereof with the names and addresses of the reputed owners being recited at length in the order to be issued in accordance with this report.

5. That The Pennsylvania Railroad Company shall furnish all materials and do all work necessary to construct the substructure and superstructure of the bridge in accordance with the approved plan, including roadway paving thereon, but exclusive of the facilities of the Conestoga Traction Company, and, in addition, shall remove the present structure, the estimated cost of this work being \$107,219.

6. That the Department of Highways of the Commonwealth of Pennsylvania shall furnish all materials and do all work necessary to construct the approaches to the new bridge in accordance with the approved plan, exclusive of the facilities of the Conestoga Traction Company, and in addition shall maintain during the construction period a suitable detour for highway traffic, the estimated cost of this work being \$89,571.

RECORDED IN VOLUME 100 PAGE 100

7. That the Manheim Township Water Company shall furnish all materials and do all work necessary to relocate its pipe line over the existing structure in accordance with the approved plan, the estimated cost of this work being \$4,231.

8. That the Conestoga Traction Company shall furnish all materials and do all work necessary to remove its track and facilities from the existing bridge and approaches, and replace same on the new bridge and approaches thereto, in accordance with the approved plan, the estimated cost of this work being \$8,183.

9. That all work herein ordered to be done by the Manheim Township Water Company shall be fully completed on or before July 1, 1930; that all work herein ordered to be done by The Pennsylvania Railroad Company shall be fully completed on or before December 1, 1930, and that all work herein ordered to be done by the Department of Highways and the Conestoga Traction Company shall be fully completed on or before June 1, 1931.

10. That The Public Service Commission of the Commonwealth of Pennsylvania will contribute toward the improvement, out of funds specifically appropriated to it for the reconstruction of grade crossings by the Act of May 1, 1929, Appropriation Act No. 45-A, the sum of Ten thousand dollars (\$10,000) to be paid to The Pennsylvania Railroad Company when and as certified by The Public Service Commission, to apply on the cost of materials to be furnished and work to be done by said railroad company.

11. That the Conestoga Traction Company shall pay to The Pennsylvania Railroad Company, when and as certified by The Public Service Commission, the sum of Three thousand dollars (\$3,000) to apply on the cost of materials to be furnished and work to be done by said railroad company.

12. That the County of Lancaster shall pay to The Pennsylvania Railroad Company, when and as certified by the Public Service Commission, the sum of Seventeen thousand dollars (\$17,000) to apply on the cost of materials to be furnished and work to be done by said railroad company.

13. That the County of Lancaster shall pay to the Department of Highways, when and as certified by The Public Service Commission, the sum of Seven thousand dollars (\$7,000) to apply on the cost of materials to be furnished and work to be done by said Department of Highways.

14. That the County of Lancaster shall pay to the Manheim Township Water Company, when and as certified by The Public Service Commission, the sum of One thousand dollars (\$1,000) to apply on the cost of materials to be furnished and work to be done by said water company.

15. That, in addition to furnishing the materials and doing the work herein ordered to be done by them, The Pennsylvania Railroad Company, the Conestoga Traction Company, and the Manheim Township Water Company shall each pay any money to which they may severally be entitled as compensation for damage

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to any of their properties taken, injured or destroyed in the execution of this improvement.

16. That the County of Lancaster shall pay all compensation for damages due to the owners of property taken, injured or destroyed in the execution of this improvement, exclusive of compensation due to the respondent railroad, traction, and water companies for any of their property taken, injured or destroyed.

17. That the Township of Manheim shall reimburse the County of Lancaster to the extent of 50 per cent of all sums paid by said county as compensation for damage due to the owners of property taken, injured or destroyed by the improvement.

18. That any relocation, changes in, or removal of any adjacent structures, equipment or other facilities of any public service company which may be required as incidental to the execution of the improvement herein ordered shall be made by said public service company at its own expense.

19. That, upon completion of the improvement herein ordered, The Pennsylvania Railroad Company shall thereafter maintain the substructure and superstructure of the bridge, exclusive of roadway paving thereon, and the facilities of the Conestoga Traction Company; the Township of Manheim shall maintain the approaches to the bridge, exclusive of the roadway paving thereon, and the track and facilities of the Conestoga Traction Company; the Department of Highways of the Commonwealth of Pennsylvania shall maintain the roadway paving on the bridge and the approaches thereto, and the Conestoga Traction Company shall maintain its track and facilities on the bridge and approaches thereto.

An order will issue in accordance with these findings.

FRAME et al.

v.

PENDEL MOTOR EXPRESS
APPLICATION OF PENDEL MOTOR EXPRESS

COMPLAINT DOCKET No. 8194
APPLICATION DOCKET No. 18330

Automobiles—Freight carrier—Violation of restriction—Fine—Amendment of certificate.

A complaint alleging respondent motor carrier was violating its certificate in hauling unauthorized freight was sustained notwithstanding defense on ground of private carriage, and a fine was imposed.

Respondent's certificate was amended on application to give right to haul specified kinds of freight for designated shippers.

PENNSYLVANIA PUBLIC UTILITY COMMISSION
STAFF'S STATEMENT #1

DOCUMENT

A-00117798
C-20042702

AGC 117798
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B.D. 2-4
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TESTIMONY OF DAVID A. OLIVER

1 Q: Please state your name and business address.

2 A: David A. Oliver, P.O. Box 3265, Third Floor, Keystone
3 Commonwealth Building, 400 North Street, Harrisburg, PA 17105-
4 3265.

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5
6 Q: By who are you employed and in what capacity?

7 A: I am employed by the Pennsylvania Public Utility Commission,
8 Bureau of Transportation and Safety, as a Civil Engineer.

9
10 Q: How long have you been employed by the Public Utility
11 Commission?

12 A: I have been employed by the Public Utility Commission for
13 approximately 19 years.

14

15 Q: What are your duties as staff engineer?

1 A: I schedule and conduct field investigations and conferences at
2 rail-highway crossings. I also prepare recommendations for
3 Commission approval regarding rail-highway crossings. I
4 monitor proceedings assigned to me in order to ensure
5 compliance with Commission orders. I testify at proceedings
6 such as this one on behalf of the Commission's Bureau of
7 Transportation and Safety.

8
9 Q: Prior to your employment with the Pennsylvania Public Utility
10 Commission, by who were you employed and in what capacity?

11 A: I was employed by Consolidated Rail Corporation as a
12 supervisor of structures.

13
14 Q: How long were you employed by Consolidated Rail Corporation?

15 A: Approximately 9 ½ years.

16
17 Q: What were your duties as supervisor of structures?

18 A: I was responsible for maintenance and construction of all
19 railroad buildings and bridges within the division to which I
20 was assigned. I supervised a crew that repaired railroad and
21 highway bridges and other structures.

22

1 Q: Are you licensed as a professional engineer in the
2 Commonwealth of Pennsylvania?

3 A: Yes, I am.

4

5 Q: Are you authorized to testify on behalf of the Commission's
6 Bureau of Transportation and Safety in this proceeding?

7 A: Yes, I am.

8

9 Q: Are you familiar with the crossings having AAR numbers 518 172
10 T and 518 171 L located partially in the City of Lancaster and
11 partially in Manheim Township, Lancaster County, where
12 Fruitville Pike (S.R. 0072) and Lititz Pike (S.R. 0222) cross
13 over the facilities of National Railroad Passenger
14 Corporation?

15 A: Yes, I am.

16

17 Q: When was the last time you visited the site of these
18 crossings?

19 A: February 18, 2004 when I conducted a final inspection of the
20 work performed at the Fruitville Pike crossing pursuant to the
21 Commission's October 1, 2001 order in the proceeding at A-
22 00117798. I also conducted a field conference at the Lititz

1 Pike crossing on May 25, 2004 regarding the issues raised in
2 the complaint filed at C-20042702.

3

4 Q: When you were at the site of the crossings did you visually
5 inspect the crossing areas and the structures?

6 A: Yes, I did. I could not gain access to the underside of the
7 structures so I was unable to observe conditions on the
8 underside of the bridges.

9

10 Q: What did you observe?

11 A: I observed from the top side of the Fruitville Pike bridge
12 that a new bridge has been constructed in accordance with the
13 construction plans approved by the Commission on May 12, 2003.

14 I observed that street lights were installed on the sidewalks
15 of the bridge, approximately two feet from the curb. The
16 plans approved by the Commission on May 12, 2003 do not
17 indicate that any street lights were to be installed on the
18 bridge.

19 I observed from the top side of the Lititz Pike bridge that
20 the bridge is an older structure. The bridge is a through
21 girder bridge with a sidewalk on the west side. The sidewalks
22 show some deterioration, primarily on the northern walkway

1 approach, due to the scaling and irregular surface of the
2 concrete. These conditions do not compromise the structural
3 integrity of the sidewalks or the bridge but the loose scaled
4 concrete creates a hazardous walking surface. The main
5 girders of the bridge show some rust but from what I could
6 observe on the top side of the bridge, the rust does not
7 appear to compromise the structural integrity of the bridge.
8 I saw no signs on either approach indicating that the weight
9 carrying capacity of the bridge was below legal load limits.
10 I do not have a copy of any inspection report for this bridge
11 so I am not aware of any conditions on the under side of the
12 Lititz Pike bridge that would compromise its structural
13 integrity or limit its weight carrying capacity.

14
15 Q: Are you aware of any Commission orders involving these
16 crossings?

17 A: Yes, I am. With regard to the Fruitville Pike crossing, the
18 Commission issued an order on October 1, 2001 directing the
19 Pennsylvania Department of Transportation to replace the
20 bridge. Ordering paragraph 17 assigns maintenance
21 responsibility for the new bridge to the Pennsylvania
22 Department of Transportation. Ordering paragraph 8 directs

1 that any fixed utilities with facilities within the limits
2 of the Commission's jurisdiction affected by construction of
3 the new bridge should relocate their facilities at their
4 initial cost and expense. The October 1, 2001 order does not
5 assign responsibility for debris, snow and ice removal from
6 the sidewalks. The October 1, 2003 order does not assign
7 responsibility for the maintenance and electrification of
8 the street lights installed on the bridge.

9 With regard to the Lititz Pike bridge, there is a previous
10 order of the Pennsylvania Public Service Commission dated
11 April 22, 1930 at Complaint Docket No. 7881. The order
12 directed the Pennsylvania Railroad Company, then the
13 railroad operating at this location, to replace the then
14 existing bridge with a new structure. From the description
15 of the new bridge contained in that order, the now existing
16 bridge appears to be the structure constructed by the
17 Pennsylvania Railroad Company pursuant to the Pennsylvania
18 Public Service Commission order. I could not locate a copy
19 of the plans mentioned in the Pennsylvania Public Service
20 Commission order in the Commission's records so I cannot
21 confirm that this is the same bridge that now exists at this
22 location. Ordering paragraph 19 of the Pennsylvania Public

1 Service Commission order directs the Pennsylvania Railroad
2 Company to maintain the substructure and superstructure of
3 the bridge. Ordering paragraph 19 directs Manheim Township
4 to maintain the approaches to the bridge and directs the
5 then Pennsylvania Department of Highways to maintain the
6 roadway paving on the bridge and approaches.

7
8 Q: Could you please identify the documents marked as Staff
9 Exhibit No. 1?

10 A: Staff Exhibit No. 1 is a three page document and is a copy of
11 the Pennsylvania Public Service Commission's April 22, 1930
12 order at Complaint Docket No. 7881 regarding the Lititz Pike
13 bridge.

14
15 Q: Have you reviewed any inspection reports addressing the
16 condition of the Lititz Pike bridge prior to this hearing?

17 A: No, I have not. I am aware that as a condition of the
18 Commonwealth of Pennsylvania receiving federal highway funds,
19 every highway bridge in the Commonwealth of Pennsylvania over
20 twenty feet in length must be inspected at least once every
21 two years. Since this bridge carries a state highway, I
22 assume that the Pennsylvania Department of Transportation has

1 carried out an inspection of the Lititz Pike bridge within the
2 last two years.

3
4 Q: Do any repairs need to be made to the Lititz Pike bridge at
5 this time?

6 A: From my observations, the side walk should be cleaned and
7 repaired so that a smooth walking surface is established that
8 eliminates tripping hazards. Repair of the sidewalk could be
9 accomplished by placing a layer of bituminous material over
10 the existing sidewalk. Since I could not observe the under
11 side of the bridge and have not reviewed any inspection report
12 addressing the condition of the bridge, I do not know what
13 additional repairs may need to be made to the under side of
14 the bridge.

15
16 Q: What issues should the Commission address with regard to the
17 outstanding orders governing the maintenance of these
18 crossings?

19 A: With regard to the Fruitville Pike crossing, the Commission
20 should modify the October 1, 2003 order to assign maintenance
21 responsibility for the street lights that have been installed
22 in the sidewalk area. The Commission should also direct that
23 a party be responsible for energizing the lights. In addition

1 the Commission should direct a party to remove debris, snow
2 and ice from the sidewalk on a regular basis.

3 With regard to the Lititz Pike crossing, the Commission should
4 modify the April 22, 1930 Pennsylvania Public Service
5 Commission order to assign maintenance responsibility for the
6 bridge to an entity other than the Pennsylvania Railroad
7 Company. Since the Pennsylvania Railroad Company no longer
8 operates at this location, none of the current concerned
9 parties is responsible for maintaining the structure. In
10 addition, the Commission should direct a party to be
11 responsible for removing debris, snow and ice from the
12 sidewalk on the Lititz Pike bridge and approaches.

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4. That all property necessary for the improvement, together with all buildings and structures thereon, shall be taken and appropriated for the purpose of this improvement, detailed descriptions thereof with the names and addresses of reputed owners being recited at length in the order to be issued in accordance with this report.

5. That the Commission, finding it necessary to connect the crossing herein ordered constructed with existing highways and to make them more available to public use, will lay out, establish and open the following public highways, to wit:

(a) A new highway beginning in the existing State Highway Route No. 240, at its intersection with old state highway route No. 460, and extending thence in a general northeasterly direction a distance of approximately 6600 feet to a junction with the township road leading eastwardly from the Limekiln grade crossing; alignment, width and grades to be as shown on the approved plans.

(b) A new highway beginning in existing State Highway Route No. 240, at a point 500 feet southwest of the grade crossing at the end of the bridge carrying the tracks of the Williamsport Division of The Pennsylvania Railroad over the West Branch of the Susquehanna River and extending thence in a general northeasterly direction passing under the eastern-most span of said railroad bridge and intersecting the existing state highway again at a point approximately 700 feet northeast of the grade crossing; alignment, width and grades to be as shown on the approved plans.

6. That The Pennsylvania Railroad Company shall furnish all materials and do all work necessary to construct the bridge over its tracks, and the concrete viaduct approach spans thereto, exclusive of the roadway paving thereon, in accordance with the approved plan therefor, the estimated cost of this work being \$88,431.

7. That the Department of Highways of the Commonwealth of Pennsylvania shall furnish all materials and do all work necessary to complete the balance of the improvements herein ordered, in accordance with the approved plans, including the roadway paving on the bridge and concrete viaduct approaches thereto, the estimated cost of this work being \$130,769.

8. That all work herein ordered to be done by The Pennsylvania Railroad Company shall be fully completed on or before November 1, 1930, and all work herein ordered to be done by the Department of Highways shall be completed on or before June 1, 1931.

9. That the Department of Highways shall pay to The Pennsylvania Railroad Company, when and as certified by the Public Service Commission, a sum or sums equal to the portion of the actual cost of materials herein required to be furnished and work herein ordered to be done by said railroad company in excess of \$70,000.

10. That in addition to furnishing the materials and doing the work herein ordered to be done by it, The Pennsylvania Railroad

Company shall pay any money to which it may be entitled as compensation for damages to any of its property taken, injured or destroyed by reason of these improvements.

11. That the County of Northumberland shall pay all compensation for damages due to the owners of property taken, injured or destroyed in the execution of the improvements; exclusive of damages due to the respondent railroad company for any of its property taken, injured or destroyed.

12. That any relocation, changes in or removal of any adjacent structures, equipment or other facilities of any public service company, which may be required as incidental to the execution of the improvements herein ordered, shall be made by such public service company at its own expense.

13. That upon the completion of the improvements herein ordered The Pennsylvania Railroad Company shall thereafter maintain the substructure and superstructure of the span over its tracks and concrete approach-spans thereto, exclusive of roadway paving thereon; the Township of Delaware shall maintain the new highway constructed under the eastern span of the railroad bridge over the river, and the Department of Highways shall maintain the balance of the improvement, including the roadway paving on the bridge over the railroad and the concrete approach spans thereto.

14. That upon the completion of the improvement, the portion of the old State Highway Route No. 240 at the crossing at the east end of the railroad bridge over the West Branch of the Susquehanna River between points thirty feet on either side of the center line between the tracks of The Pennsylvania Railroad Company and the portions of the existing township highways between the right-of-way lines of The Pennsylvania Railroad Company at the three grade crossings known as Stahl's, Limekiln and Fogelman's crossings, will no longer be necessary for public use and accordingly shall be vacated between said points.

15. That upon the completion of the improvement, The Pennsylvania Railroad Company shall effectively barricade to public travel the four grade crossings here involved, said barricades to be thereafter maintained by said railroad company. An order will issue in accordance with these findings.

STEIN

v.

PENNSYLVANIA RAILROAD COMPANY, CONESTOGA TRACTION COMPANY, DEPARTMENT OF HIGHWAYS COUNTY OF LANCASTER AND TOWNSHIP OF MANHEIM, LANCASTER COUNTY

DOCUMENT

DOCKETED

FEB 09 2005

Crossings—Reconstruction—Plans—Apportionment of cost.

A dangerous and inadequate bridge carrying a state highway over main line tracks of a railroad was ordered reconstructed so as to provide a two span structure with 40 foot roadway and one 8 foot sidewalk, the track of a street railway to be located on the west side of the roadway. The cost of the improvement was apportioned.

Chas. W. Eady and *S. V. Hosterman* for Complainant.

Oliver S. Shaeffer for Commissioners of Lancaster County.

John E. Malone for Conestoga Traction Company.

J. L. Shelley, Jr., for Department of Highways.

Nauman & Smith for The Pennsylvania Railroad Company.

M. M. Harnish for Manheim Township Water Company.

REPORT BY THE COMMISSION, April 22, 1930:

State Highway Route No. 442, generally known as the Lancaster & Lititz Turnpike, and a single track of the Conestoga Traction Company, are carried over the grade of the main tracks of the Philadelphia Division of The Pennsylvania Railroad Company by means of a two-span iron and steel bridge at a point about 600 feet east of Lancaster station in Manheim Township, Lancaster County. The complaint alleges that this bridge is inadequate and dangerous and its reconstruction necessary for the safety, accommodation and convenience of the public.

The evidence which was introduced at the hearings clearly establishes the dangerous condition of the crossing. Following a series of engineering conferences a plan was prepared and submitted by The Pennsylvania Railroad Company which meets the approval of all parties in interest. This plan provides for the construction of a new two-span bridge having a roadway 40 feet in width and one 8-foot sidewalk along the west side. The bridge will be of sufficient length to provide space for two additional tracks of the railroad company. The approaches will be on six per cent grades ascending to the structure, and the single track of the Conestoga Traction Company will be located along the west side of the roadway on the bridge and on the approaches. The pipe line of the Manheim Township Water Company, which is carried on the existing bridge, will be relocated so that it will pass underneath the tracks of the railroad company. Pending the completion of the improvement a temporary detour to existing crossings will be maintained for vehicles and street railway traffic will be rerouted.

The estimated cost of this improvement totalling \$209,204, exclusive of property damages, is made up of the following main items:

Bridge	\$107,219
Approaches	88,621
Highway detour	950
Alteration to water line	4,231
Alteration to traction Co's facilities	8,183
	\$209,204

The damages resulting from the appropriation of property necessary for the improvement are estimated at \$6,850, making the total cost of the work \$216,054.

From a consideration of all the evidence, the Commission finds and determines:

1. That the crossing complained of is dangerous and its reconstruction necessary for the safety, accommodation and convenience of the public; therefore, the complaint will be sustained.

2. That said reconstruction shall be made in accordance with the general plan submitted by The Pennsylvania Railroad Company and Marked "Pennsylvania Railroad Company's Exhibit No. 6" at the hearing of December 11, 1929, which said plan is hereby approved, attached hereto and made part hereof.

3. That The Pennsylvania Railroad Company, within sixty (60) days from date of service hereof, shall submit to this Commission for approval and to the parties of record for examination, detailed plans of the bridge herein ordered reconstructed.

4. That all property necessary for the improvement, together with all buildings and structures thereon, shall be taken and appropriated for the purpose of this improvement; detailed descriptions thereof with the names and addresses of the reputed owners being recited at length in the order to be issued in accordance with this report.

5. That The Pennsylvania Railroad Company shall furnish all materials and do all work necessary to construct the substructure and superstructure of the bridge in accordance with the approved plan, including roadway paving thereon, but exclusive of the facilities of the Conestoga Traction Company, and, in addition, shall remove the present structure, the estimated cost of this work being \$107,219.

6. That the Department of Highways of the Commonwealth of Pennsylvania shall furnish all materials and do all work necessary to construct the approaches to the new bridge in accordance with the approved plan, exclusive of the facilities of the Conestoga Traction Company, and in addition shall maintain during the construction period a suitable detour for highway traffic, the estimated cost of this work being \$89,571.

7. That the Manheim Township Water Company shall furnish all materials and do all work necessary to relocate its pipe line over the existing structure in accordance with the approved plan, the estimated cost of this work being \$4,231.

8. That the Conestoga Traction Company shall furnish all materials and do all work necessary to remove its track and facilities from the existing bridge and approaches, and replace same on the new bridge and approaches thereto, in accordance with the approved plan, the estimated cost of this work being \$8,183.

9. That all work herein ordered to be done by the Manheim Township Water Company shall be fully completed on or before July 1, 1930; that all work herein ordered to be done by The Pennsylvania Railroad Company shall be fully completed on or before December 1, 1930, and that all work herein ordered to be done by the Department of Highways and the Conestoga Traction Company shall be fully completed on or before June 1, 1931.

10. That The Public Service Commission of the Commonwealth of Pennsylvania will contribute toward the improvement, out of funds specifically appropriated to it for the reconstruction of grade crossings by the Act of May 1, 1929, Appropriation Act No. 45-A, the sum of Ten thousand dollars (\$10,000) to be paid to The Pennsylvania Railroad Company when and as certified by The Public Service Commission, to apply on the cost of materials to be furnished and work to be done by said railroad company.

11. That the Conestoga Traction Company shall pay to The Pennsylvania Railroad Company, when and as certified by The Public Service Commission, the sum of Three thousand dollars (\$3,000) to apply on the cost of materials to be furnished and work to be done by said railroad company.

12. That the County of Lancaster shall pay to The Pennsylvania Railroad Company, when and as certified by the Public Service Commission, the sum of Seventeen thousand dollars (\$17,000) to apply on the cost of materials to be furnished and work to be done by said railroad company.

13. That the County of Lancaster shall pay to the Department of Highways, when and as certified by The Public Service Commission, the sum of Seven thousand dollars (\$7,000) to apply on the cost of materials to be furnished and work to be done by said Department of Highways.

14. That the County of Lancaster shall pay to the Manheim Township Water Company, when and as certified by The Public Service Commission, the sum of One thousand dollars (\$1,000) to apply on the cost of materials to be furnished and work to be done by said water company.

15. That, in addition to furnishing the materials and doing the work herein ordered to be done by them, The Pennsylvania Railroad Company, the Conestoga Traction Company, and the Manheim Township Water Company shall each pay any money to which they may severally be entitled as compensation for damage

to any of their properties taken, injured or destroyed in the execution of this improvement.

16. That the County of Lancaster shall pay all compensation for damages due to the owners of property taken, injured or destroyed in the execution of this improvement, exclusive of compensation due to the respondent railroad, traction, and water companies for any of their property taken, injured or destroyed.

17. That the Township of Manheim shall reimburse the County of Lancaster to the extent of 50 per cent of all sums paid by said county as compensation for damage due to the owners of property taken, injured or destroyed by the improvement.

18. That any relocation, changes in, or removal of any adjacent structures, equipment or other facilities of any public service company which may be required as incidental to the execution of the improvement herein ordered shall be made by said public service company at its own expense.

19. That, upon completion of the improvement herein ordered, The Pennsylvania Railroad Company shall thereafter maintain the substructure and superstructure of the bridge, exclusive of roadway paving thereon, and the facilities of the Conestoga Traction Company; the Township of Manheim shall maintain the approaches to the bridge, exclusive of the roadway paving thereon, and the track and facilities of the Conestoga Traction Company; the Department of Highways of the Commonwealth of Pennsylvania shall maintain the roadway paving on the bridge and the approaches thereto, and the Conestoga Traction Company shall maintain its track and facilities on the bridge and approaches thereto.

An order will issue in accordance with these findings.

FRAME et al.

v.

PENDEL MOTOR EXPRESS
APPLICATION OF PENDEL MOTOR EXPRESS

COMPLAINT DOCKET No. 8194

APPLICATION DOCKET No. 18330

Automobiles—Freight carrier—Violation of restriction—Fine—Amendment of certificate.

A complaint alleging respondent motor carrier was violating its certificate in hauling unauthorized freight was sustained notwithstanding defense on ground of private carriage, and a fine was imposed.

Respondent's certificate was amended on application to give right to haul specified kinds of freight for designated shippers.