



COMMONWEALTH OF PENNSYLVANIA  
 PENNSYLVANIA PUBLIC UTILITY COMMISSION  
 P.O. BOX 3265, HARRISBURG, PA 17105-3265  
 ISSUED: JULY 12, 1999

IN REPLY PLEASE  
 REFER TO OUR FILE  
 A-00114362

SOUTHEASTERN PA TRANS AUTH  
 1234 MARKET ST  
 PHILADELPHIA PA 19107-3780

Application of Southeastern Pennsylvania Transportation Authority (\*SEPTA\*) for an Exemption from the following provisions of Subchapter C of the 52 Pa. Code to Permit the Construction of New High Level Platforms [§33.122 (f)] associated with the New Eastwick Station, Located in the City of Philadelphia, Pennsylvania.

DOCUMENT  
 FOLDER

TO WHOM IT MAY CONCERN:

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

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION IN ROOM B-20, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within fifteen (15) days** of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

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

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

Very truly yours,

Encls.  
 Certified Mail  
 Receipt Requested  
 FG

James J. McNulty  
 Secretary

CC: ALJ/OFFICE OF ALJ/OA/PIO/LAW/T&S KEEZEL/T&S LEGAL/C&A/OUR FILE/CHAIRMAN/COMMISSIONERS

See Attached Listing for Additional Parties of Record

EEF

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Southeastern Pennsylvania :  
Transportation Authority ("SEPTA") for an : Docket Number  
Exemption from the following provisions of :  
Subchapter C of the 52 Pa. Code to Permit : A-00114362  
the Construction of New High Level Platforms :  
(\$33.122(f)) associated with the New Eastwick :  
Station, Located in the City of Philadelphia, :  
Pennsylvania :

DOCKETED

RECOMMENDED DECISION

JUL 14 1999

Before  
CYNTHIA WILLIAMS FORDHAM  
Administrative Law Judge

DOCUMENT  
FOLDER

HISTORY OF THE PROCEEDING

On October 3, 1997, the Southeastern Pennsylvania Transportation Authority ("SEPTA") filed an application with the Pennsylvania Public Utility Commission ("Commission") seeking the Commission's approval for an exemption from certain requirements in 52 Pa. Code §33.122(f) for the construction of two mini high level platforms at the new Eastwick railroad station adjacent to the Airport High Speed Line ("AHSL") in the City of Philadelphia.

The application was assigned to the Office of Administrative Law Judge. Questions and Procedures were distributed with the hearing notice. By correspondence, dated February 1, 1999, Gina M. D'Alfonso, Esquire, informed the presiding officer that the Pennsylvania Department of Transportation ("PennDOT") would not be participating in the

hearing. On February 17, 1999, the City of Philadelphia submitted City Statement 1, the testimony of Christopher Zearfoss, the Assistant Deputy Mayor for Transit Policy for the City of Philadelphia.

A hearing in this matter was held on March 10, 1999, in the Philadelphia State Office Building before Administrative Law Judge Cynthia Williams Fordham. Eugene N. Cipriani, Esquire, represented SEPTA. SEPTA presented one witness, Albert B. Brooke, a registered architect, who is the Director of Engineering in the Bridges and Building Department; SEPTA Statement No. 1 - Mr. Brookes' written direct testimony; and four exhibits. The Consolidated Rail Corporation ("Conrail") was represented by Benjamin C. Dunlap, Jr. PennDOT Exhibit 1 - correspondence from PennDOT's counsel, dated February 1, 1999, was admitted into evidence. The record was held open for the parties to submit SEPTA Exhibit 5 - the Stipulation of Settlement.

SEPTA Exhibit 5 - the Stipulation of Settlement was submitted on June 2, 1999. This exhibit was entered into evidence as a late-filed exhibit pursuant to 52 Pa. Code §5.404(a).

The record in this case consists of 16 pages of transcribed testimony, one statement and six exhibits (including the Stipulation).

A copy of the Stipulation of Settlement is attached to this Initial Decision as Appendix "A."

## DISCUSSION

During the hearing counsel for SEPTA and Conrail stated that they and the counsel for the City of Philadelphia agreed to settle the case. Counsel for PennDOT indicated that she would not be participating in the hearing (PennDOT Ex. 1). Subsequent to the hearing, SEPTA modified the provision in the Stipulation pertaining to the right of way fencing. The Stipulation of Settlement, which was submitted on June 2, 1999 was signed by counsel for SEPTA, Conrail and the City of Philadelphia. Although counsel for PennDOT chose not to sign the Stipulation, she did not object to the Stipulation.

SEPTA has requested that the Commission exempt it from certain requirements set forth in 52 Pa. Code §33.122(f) for construction of two mini high level platforms at the Eastwick railroad station adjacent to the Airport High Speed Line in the City of Philadelphia. The Commission regulation at 52 Pa. Code §33.122(f) reads as follows:

### §33.122. Side Clearances

(f) Low passenger platforms not over 8 inches above the top of the rail may be 5 feet, 1 inch, from the center line of the track. High passenger platforms not over 4 feet above the top of the rail may be 5 feet, 7 inches, from the center line of the track.

SEPTA has already constructed the platforms. The minimum horizontal dimension between the mini high-level station platform and the trains passing through the station area is seven

feet zero inches (7'0") from the center line of the nearest track. (SEPTA Statement No. 1, p. 3). After SEPTA addressed Conrail's concerns, Conrail agreed that the seven foot zero inch (7'0") distance between the edge of the mini high-level platforms and the center line of the nearest rail is acceptable. (Stipulation of Settlement, p. 2).

SEPTA has agreed at its sole cost and expense to maintain the Eastwick Station and all facilities constructed or altered in conjunction with the project; to place and maintain close clearance signs; and to perform any additional work deemed necessary by the Commission relating to this project.

To determine whether the parties' settlement should be approved, one must decide whether the settlement promotes the public interest. See Pennsylvania Public Utility Commission v. C.S. Water and Sewer Associates, 74 Pa. P.U.C. 767 (1991).

The two carriers that utilize the relevant two tracks at the new Eastwick Station agree that the station's physical dimensions can safely accommodate the class and volume of SEPTA and Conrail trains using the rail line. The City of Philadelphia supports the project. SEPTA has agreed to maintain the station and the facilities related to this project.

After considering the Stipulation of Settlement, including SEPTA's agreement to perform any additional work that the Commission deems necessary concerning this project, it is my opinion that the settlement is fair, just, reasonable and in the

public interest. Accordingly, the Stipulation of Settlement is approved.

ORDER

THEREFORE,

IT IS RECOMMENDED (subject to Commission approval):

That the Stipulation of Settlement submitted by the parties at Docket No. A-00114362 is hereby approved.

1. That the Southeastern Pennsylvania Transportation Authority's application shall be granted pursuant to its revised final plans.

2. That the Southeastern Pennsylvania Transportation Authority, at its sole cost and expense, shall maintain the new Eastwick Station and all facilities constructed or altered in conjunction with the Project, including the low-level station platforms, the mini-high level station platforms and the cross walk as shown on the construction drawings submitted with Southeastern Pennsylvania Transportation Authority's Statement No. 1 as Southeastern Pennsylvania Transportation Authority's Exhibits 1, 2 and 3.

3. That the Southeastern Pennsylvania Transportation Authority, at its sole cost and expense, shall place and maintain those close clearance signs that the Commission deems necessary (to the extent not already existing).

4. That the Southeastern Pennsylvania Transportation Authority, at its sole cost and expense, shall perform any

additional work deemed necessary by the Commission in conjunction with the Project which is the subject of this proceeding.

5. That the record in this proceeding be marked closed.

Date: June 21, 1999

Cynthia Williams Fordham

CYNTHIA WILLIAMS FORDHAM  
Administrative Law Judge

APPENDIX A

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Southeastern	:	Docket No.
Pennsylvania Transportation	:	A-00114362
Authority ("SEPTA") for an	:	
Exemption from the following	:	
provisions of Subchapter C of	:	
the 52 Pa. Code to Permit the	:	
Construction of New High Level	:	
Platforms (§33.122(f)) associated	:	
with the New Eastwick Station,	:	
Located in the City of	:	
Philadelphia, Pennsylvania	:	

STIPULATION OF SETTLEMENT

**WHEREAS,** the Southeastern Pennsylvania Transportation Authority ("SEPTA") filed, on October 3, 1997, an application with the Pennsylvania Public Utility Commission ("Commission") seeking the Commission's approval for an exemption from certain requirements found in 52 Pennsylvania Code §33.122(f) to place two (2) mini high level platforms at new Eastwick railroad station adjacent to the Airport High Speed Line ("AHSL"), owned by the City of Philadelphia ("City") and operated by SEPTA, in the City of Philadelphia (hereinafter called the "Project"); and

**WHEREAS,** the work to construct the Project has been completed; and

**WHEREAS,** the City is in support of the Project; and

**WHEREAS,** the Commonwealth of Pennsylvania ("PA DOT") does not object to the Project; and

**WHEREAS,** at the hearing held on March 10, 1999, SEPTA, Conrail and the City of Philadelphia agreed to settle this case; and

**STIPULATION OF SETTLEMENT FOR  
HEARING ON MARCH 10, 1999  
P.U.C. DOCKET NO. A-00114362**

**WHEREAS**, subsequent to the hearing held on March 10, 1999, SEPTA informed Conrail that a provision dealing with the right of way fencing needs to be modified; and

**WHEREAS**, the parties to this Stipulation of Settlement are agreeable to the modification of paragraph c. in the clause set forth below; and

**WHEREAS**, in response to safety concerns expressed by Consolidated Rail Corporation ("Conrail"), the operator of freight service on the AHSL at this location, SEPTA has performed the following work:

- a. installed "Close Clearance" signs on both mini high-level platforms on both the entering and departing ends; and
- b. installed an inner track fence 400'-0" long centered between the tracks; and
- c. modified the right of way fencing by creating two openings from the station to Mario Lanza Boulevard behind the outbound to the Airport railroad platform so that Conrail crews can now pass behind the platforms; and
- d. altered its timetable to show the mini high-level platforms as "Close Clearance" conditions; and
- e. well illuminated the station at night; and

**WHEREAS**, following SEPTA's addressing of its concerns, Conrail has agreed that the configuration of the new station with a seven foot zero inch (7'0") distance between the edge of the mini high-level platforms and the center line of the nearest rail is acceptable to it.

**STIPULATION OF SETTLEMENT FOR  
HEARING ON MARCH 10, 1999  
P.U.C. DOCKET NO. A-00114362**

NOW THEREFORE, the parties hereto stipulate and agree to the entry of an Order by Commission as follows;

1. That SEPTA's application shall be granted pursuant to its revised final plans.

2. That SEPTA, at its sole cost and expense, shall maintain the new Eastwick Station and all facilities constructed or altered in conjunction with the Project, including the low-level station platforms, the mini-high level station platforms and the cross walk as shown on the construction drawings submitted with SEPTA's Statement No. 1 as SEPTA Exhibits 1, 2 and 3.

3. That SEPTA, at its sole cost and expense, shall place and maintain those close clearance signs the Commission deems necessary (to the extent not already existing).

4. That SEPTA, at its sole cost and expense, shall perform any additional work deemed necessary by the Commission in conjunction with the Project which is the subject of this proceeding.

WHEREFORE, the undersigned parties hereto respectfully request that an Order be entered by the Commission consistent with this Stipulation of Settlement.

STIPULATION OF SETTLEMENT FOR  
HEARING ON MARCH 10, 1999  
P.U.C. DOCKET NO. A-00114362

SOUTHEASTERN PENNSYLVANIA  
TRANSPORTATION AUTHORITY

Date: April 22, 1999

Eugene N. Cipriani  
Eugene N. Cipriani, Esquire

CITY OF PHILADELPHIA

Date: May 23, 1999

Gerald T. Clark  
Gerald T. Clark, Esquire

CONSOLIDATED RAIL  
CORPORATION

Date: May 6, 1999

Benjamin C. Dunlap, Jr.  
Benjamin C. Dunlap, Jr.,  
Esquire

DATE: August 13, 1999

SUBJECT: A-00114362

DOCUMENT  
FOLDER

TO: Office of Administrative Law Judge  
Annette Shelley

FROM: James J. McNulty  
Secretary  
nvl

DOCKETED  
AUG 16 1999

Application of Southeastern Pennsylvania Transportation Authority (\*SEPTA\*) for an Exemption from the following provisions of Subchapter C of the 52 Pa. Code to Permit the Construction of New High Level Platforms [§33.122 (f)] associated with the New Eastwick Station, Located in the City of Philadelphia, Pennsylvania.

Copies of the Recommended Decision have been served upon all parties.

Neither exceptions nor requests for review from the Commissioners have been received by the Commission. This matter is referred to your office for whatever action you deem necessary.

cc: Office of Special Assistants

P.S. Please note that exceptions or reply exceptions may come in timely with certificate of mailings. A second memo will not be released for these exceptions.

SRB