

MAR 29 1999

COMMONWEALTH OF PENNSYLVANIA PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION SECRETARY'S BUREAU

Application of Southeastern
Pennsylvania Transportation
Authority ("SEPTA")

Docket #:

Initial Hearing

A-00114362

Pages 1 through 16

ORIGINAL

State Office Building
Broad and Spring Garden
Streets
13th Floor
Hearing Room 3
Philadelphia, PA 19107

Tuesday, March 10, 1999
Commencing at 9:56 a.m.

BEFORE:

CYNTHIA W. FORDHAM, Administrative Law Judge

APPEARANCES:

BENJAMIN C. DUNLAP, JR., ESQUIRE
Nauman, Smith, Shissler & Hall
18th Floor
200 North Third Street
P.O. Box 840
Harrisburg, PA 17108-0840

EUGENE N. CIPRIANI, ESQUIRE
Assistant Deputy Counsel
Southeastern Pennsylvania Transportation
Authority
1234 Market Street
5th Floor
Philadelphia, PA 19107-3780

Any reproduction of this transcript
is prohibited without authorization
by the certifying agency.

DOCKETS DOCUMENTS
MAR 29 1999 FOLDER

INDEX TO WITNESSES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Albert B. Brooke	9	10		

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUDGE CYNTHIA W. FORDHAM: Good morning.
I'm Administrative Law Judge Cynthia Williams
Fordham and this is the time and place set for a
hearing in the matter of the Application of
Southeastern Pennsylvania Transportation Authority,
otherwise known as SEPTA, at Docket Number
A-00114362.

At this time I would ask Counsel to enter their
appearance, beginning with Mr. Cipriani.

ATTORNEY CIPRIANI: Thank you, Your Honor.
My name is Eugene N. Cipriani. I'm Assistant
Deputy Counsel for SEPTA. I have with me a witness
for SEPTA, Albert B. Brooke, B-R-O-O-K-E, a
registered architect. And we have matters of
interest to Your Honor after the introduction of
Counsel to discuss.

JUDGE: Thank you.

ATTORNEY DUNLAP: Good morning, Judge
Fordham. I'm Benjamin C. Dunlap, Jr., and I'm with
the law firm of Nauman, Smith, Shissler and Hall,
and we are Counsel for Consolidated Rail
Corporation.

JUDGE: Thank you. I would note that by

1 letter dated February 1st, 1999, Gina M. D'Alfonso,
2 Assistant Counsel in charge with the Pennsylvania
3 Department of Transportation sent a letter
4 indicating that the Department of Transportation
5 would not be participating in the hearing, however,
6 they ask to be copied on all documentation in this
7 matter and I'll introduce it as PennDOT Exhibit
8 One. And I believe Counsel has copies but I have
9 additional copies if you would like those.

10 The Applicant has asked the Commission for an
11 exemption from the provisions in 52 Pennsylvania
12 Code Section 33.122(F) for the construction of new
13 high-level platforms at the New Eastwick Station in
14 Philadelphia.

15 Questions and procedures were forwarded with the
16 hearing notice and I asked that prepared written
17 testimony be served on the Presiding Officer and
18 other parties on or before February 18th, 1999. I
19 did receive testimony from the City of
20 Philadelphia, and in a conversation with Mr. Dunlap
21 and Mr. Cipriani yesterday they asked whether I
22 thought that the witness for the City needed to be
23 present and I indicated no.

24 And I believe at this time Mr. Cipriani has a
25 statement to make.

1 ATTORNEY CIPRIANI: Yes. Your Honor, SEPTA
2 did not get its prepared testimony in time for the
3 February 18th deadline but we did prepare written
4 testimony and it was FAXed around to the Counsel
5 for Consolidated Rail Corporation, the City of
6 Philadelphia, Commonwealth of Pennsylvania and the
7 Pennsylvania Public Utility Commission Law Bureau.

8 I do have at this hearing the SEPTA Statement
9 Number One. But in addition, SEPTA and Conrail
10 together worked on a stipulation of settlement
11 since the only question that was remaining was the
12 various agreements as to the implementation of a
13 high level platform, both as to the distance of the
14 edge of the high level platform from the center
15 line of the rail track and other issues that were
16 of importance to Conrail and SEPTA.

17 A stipulation of settlement has been prepared.
18 It has been executed by SEPTA Counsel, by Conrail
19 Counsel, and I have a FAX that I received this
20 morning from the City of Philadelphia Counsel. I
21 spoke with Ms. D'Alfonso, the Counsel for the
22 Pennsylvania Department of Transportation, and she
23 indicated that she would have no objection to this
24 case. As you have indicated, she will not be
25 participating in this matter. I've heard nothing

1 back from the Counsel for the Public Utility
2 Commission Law Bureau, although whether they do or
3 do not sign the stipulation of settlement, it's
4 clear that the parties in interest that do have a
5 concern have agreed to settle the case.

6 I am prepared to offer a copy of SEPTA's
7 statement, number one, into evidence and, in
8 addition, my witness, Mr. Brooke, is available for
9 cross examination.

10 JUDGE: Okay. Would you distribute the
11 copies at this time?

12 ATTORNEY CIPRIANI: May I make a further
13 statement, Your Honor?

14 JUDGE: Yes.

15 ATTORNEY CIPRIANI: In addition, Your Honor
16 directed that the notice for this hearing be
17 published in a newspaper of general circulation the
18 two weeks prior to the hearing. And I have
19 submitted to the Court Reporter an original copy of
20 a proof of publication that notice of this hearing
21 was published in the Philadelphia Inquirer and the
22 Philadelphia Daily News on February 26th, 1999 and
23 March 2, 1999. And that is the last page of the
24 document that I've handed to Your Honor with the
25 SEPTA Statement One.

1 JUDGE: Okay. Thank you. Let's go off the
2 record for a minute.

3 ATTORNEY CIPRIANI: I also, Your Honor, will
4 this day send a copy of SEPTA Statement Number One
5 along with the proof of publication of the hearing
6 to the parties of record who are not at the hearing
7 so that they might also have it.

8 JUDGE: Thank you. We'll go off the record
9 for a minute so I can review SEPTA Statement Number
10 One.

11 SHORT BREAK TAKEN

12 JUDGE: Mr. Cipriani, are you going to
13 distribute the settlement prior to cross
14 examination of your witness or are you going to do
15 that afterwards?

16 ATTORNEY CIPRIANI: Well, Your Honor, the
17 witness is available for cross examination. The
18 statement will be distributed today. The
19 settlement paper, there's a copy on your desk from
20 the City of Philadelphia Law Department cover sheet
21 because I FAXed it out to Mr. Clark last evening
22 and he signed in the appropriate spot. I currently
23 have the original stipulation of settlement and I'd
24 like to wait until I have at least Ms. D'Alfonso's
25 signature and I'll call up Mr. Salavas to send you

1 a stipulation with the original signatures along
2 with those of the FAX pages to you so that you have
3 a complete record.

4 JUDGE: Thank you. Mr. Dunlap, do you have
5 any questions for Mr. Brooke?

6 ATTORNEY DUNLAP: Your Honor, I'd like to
7 suggest that the stipulation be made an exhibit and
8 I do have, while we're here, just a couple
9 questions on cross examination for SEPTA's witness.

10 JUDGE: Okay. Mr. Brooke, would you take
11 the stand, please? I need to swear you in before
12 you sit down. Please raise your right hand.

13 ALBERT B. BROOKE, CALLED AND SWORN TO TESTIFY

14 JUDGE: You may be seated. Would you state
15 your name for the record, please?

16 A My name is Albert B. Brooke.

17 JUDGE: You may continue.

18 ATTORNEY CIPRIANI: Yes.

19 DIRECT EXAMINATION

20 BY ATTORNEY CIPRIANI:

21 Q Mr. Brooke, did you assist in the preparation of
22 SEPTA Statement Number One which has been filed
23 with the Commission this morning?

24 A Yes.

25 Q And you're familiar with the contents of it?

1 A Yes.

2 Q You would adopt this as SEPTA's testimony?

3 A Yes. I just reread it.

4 ATTORNEY CIPRIANI: Thank you. The witness
5 is available for cross examination.

6 JUDGE: Thank you.

7 ATTORNEY DUNLAP: Were you going to make the
8 stipulation an exhibit?

9 ATTORNEY CIPRIANI: I'll move it at the end
10 of the hearing. We'll move it at the end of the
11 hearing for the stipulation to be an exhibit, if we
12 can.

13 JUDGE: That's fine.

14 ATTORNEY DUNLAP: Thank you, Your Honor.

15 JUDGE: You're welcome.

16 CROSS EXAMINATION

17 BY ATTORNEY DUNLAP:

18 Q Mr. Brooke, are you familiar with the
19 stipulation of settlement between the parties in
20 this matter?

21 A Yes.

22 Q You have a copy there in front of you?

23 A Yes.

24 Q On the first page and the second page is
25 outlined work that SEPTA has performed at this

1 location. Would you agree that SEPTA has performed
2 the installation of close clearance signs on both
3 the mini high-level platforms at both the entering
4 and departing ends?

5 A Yes, that's been done.

6 Q And the installation of an inner track fence
7 that's 400 feet long, centered between the tracks?

8 A Yes, that's been done also.

9 Q How about modification of the right-of-way
10 fencing, including a gate and switch lock so the
11 Conrail crews cannot pass behind the platforms?

12 A I believe that work has been done. We will do
13 that work if it has not been done, but I believe
14 that it already has been done.

15 Q All right. Has SEPTA altered its timetable to
16 show the mini high-level platforms as close
17 clearance conditions?

18 A Yes.

19 Q And is the station now well illuminated at
20 night?

21 A Yes.

22 Q Does this work that SEPTA has performed and all
23 other work performed at the Eastwick Station
24 conform with SEPTA's revised final plans as
25 submitted in this proceeding?

1 A Yes, it does.

2 Q Does SEPTA agree to maintain the new Eastwick
3 Station and all facilities constructed or altered
4 in conjunction with this project including the low-
5 level station platforms, the mini high-level
6 station platforms and the crosswalk as shown on the
7 construction drawing submitted with SEPTA's
8 Statement Number One and SEPTA Exhibit Numbers One,
9 Two and Three?

10 A Yes.

11 Q And does SEPTA agree, at its sole cost and
12 expense, to perform any additional work deemed
13 necessary by the Commission in conjunction with the
14 project which is the subject of this proceeding?

15 A Yes.

16 Q And the maintenance of the facility, that will
17 be done at SEPTA's sole cost and expense?

18 A Yes, also.

19 ATTORNEY DUNLAP: I have nothing further,
20 Your Honor.

21 JUDGE: Thank you. I think you've asked the
22 questions that I was going to ask, whether the work
23 had been performed. Just could you give me
24 timetable of when the work was performed?

25 A All the items except for what I'm not sure about

1 were done before the station opened, I believe,
2 which was a year and a half ago. We delayed
3 installing the fence and the gate. And like I
4 said, I believe now it's installed, but if not, we
5 will be installing it within two weeks.

6 JUDGE: And does SEPTA feel that any other
7 work has to be done at this point?

8 A No.

9 JUDGE: Mr. Dunlap, does Conrail feel that
10 any other work has to be done?

11 ATTORNEY DUNLAP: No, Your Honor. On behalf
12 of Conrail, we feel that all of Conrail's concerns
13 have been addressed or will be addressed as Mr.
14 Brooke stated.

15 JUDGE: Thank you. And no one else has
16 indicated to me, and in fact, the City of
17 Philadelphia's witness indicated that they were in
18 agreement with what SEPTA had proposed. And I have
19 heard nothing else. Therefore, I assume that no
20 one else has any problems with the work that has
21 already been accomplished.

22 You may be excused from the stand. Mr.
23 Cipriani, do you have anything further?

24 ATTORNEY CIPRIANI: Yes, I do, Your Honor.
25 I would like to ask Your Honor to admit into the

1 record SEPTA Statement One submitted to Your Honor
2 and to the Court Reporter, and along with that
3 SEPTA Exhibits One, Two and Three that are attached
4 to the SEPTA Statement Number One.

5 JUDGE: Do you have any objections, Mr.
6 Dunlap?

7 ATTORNEY DUNLAP: No objection, Your Honor.

8 JUDGE: SEPTA Statement One and SEPTA
9 Exhibits One, Two and Three will be admitted
10 without objection.

11 ATTORNEY CIPRIANI: I would also ask Your
12 Honor to admit into the record the proof of
13 publication as SEPTA Exhibit Four.

14 JUDGE: Any objection?

15 ATTORNEY DUNLAP: No, Your Honor.

16 JUDGE: Proof of publication will be marked
17 SEPTA Exhibit Four and admitted without objection.

18 ATTORNEY CIPRIANI: And finally, and this
19 will be an exhibit that will be delayed but we have
20 the outline, the stipulation of settlement will be
21 submitted as SEPTA Exhibit Five. And by the delay,
22 Your Honor, I would simply ask that I have all of
23 the signatures back that I'm going to get back
24 before I submit it into Your Honor in roughly two
25 weeks, if that's acceptable to Your Honor.

1 JUDGE: That's fine.

2 ATTORNEY CIPRIANI: Thank you.

3 JUDGE: So SEPTA Exhibit Five is marked and
4 it will be submitted after receiving all of the
5 appropriate signatures and I'm holding the record
6 open for two weeks for that submission.

7 Do you have anything further?

8 ATTORNEY CIPRIANI: No, I do not, Your
9 Honor.

10 JUDGE: Thank you. Mr. Dunlap, do you have
11 anything further?

12 ATTORNEY DUNLAP: No, Your Honor.

13 JUDGE: If not, I'd like to thank the
14 parties for their work prior to the hearing so that
15 this was an abbreviated hearing. Thank you very
16 much.

17 * * * * *

18 HEARING CONCLUDED AT 10:15 A.M.

19 * * * * *

20

21

22

23

24

25

