



BOSTON & MAINE CORPORATION
DELAWARE & HUDSON RAILWAY COMPANY
MAINE CENTRAL RAILROAD COMPANY

ORIGINAL

FIFTH STREET
WATERVLIET, NEW YORK 12189
(518) 271-4355

May 22, 1985.

Hon. Jerry Rich
Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, Pennsylvania 17120

RECEIVED

MAY 24 1985
SECRETARY'S OFFICE
Public Utility Commission

RE: GREAT BEND TOWNSHIP v. CONSOLIDATED RAIL
CORPORATION, ET AL. - DOCKET NO. C-79081404

Dear Mr. Rich:

Enclosed are the original and two (2) copies of the
Petition of Delaware and Hudson Railway Company for
Modification of Orders.

Very truly yours,

George H. Kleinberger
Corporate Counsel

cc w/encl.:

All Parties of Record

DOCUMENT
FOLDE

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Great Bend Township :
v. :
Consolidated Rail Corporation, : COMPLAINT
Pennsylvania Department of : DOCKET
Transportation, County of : NO. 79081404
Susquehanna, Pennsylvania :
Electric Company and Common- :
wealth Telephone Company :

PETITION OF DELAWARE AND HUDSON
RAILWAY COMPANY
FOR MODIFICATION OF ORDERS

TO THE HONORABLE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

The petition of Delaware and Hudson Railway Company,
one of the respondents herein, respectfully represents:

1. The name and address of the Petitioner are:
Delaware and Hudson Railway Company, Fifth Street,
Watervliet, New York 12189.
2. The name and address of attorney for the
Petitioner are: George H. Kleinberger, Delaware and Hudson
Railway Company, Fifth Street, Watervliet, New York 12189.
3. Ordering Paragraph 14 of the Order entered August
14, 1980 reads as follows:

That upon completion of the improvement, Consolidated Rail Corporation, at its sole cost and expense, do all work and furnish all material necessary thereafter to maintain its railroad facilities at the crossing including the bridge substructure and superstructure, exclusive of the bituminous roadway wearing surface.

4. Ordering Paragraph 1 of the Order entered February 22, 1985 modified Ordering Paragraph 14 of the Order entered August 14, 1980 so as to read as follows:

That Delaware and Hudson Railway Company, at its sole cost and expense, furnish all materials and perform all work to maintain its railroad facilities at the crossing, including the bridge substructure and superstructure, exclusive of the bituminous roadway wearing surface.

5. Pa. P.U.C. v. Southeastern Pennsylvania Transportation Authority, 21 Pa. Cmwlth. Ct. 106, 343 A.2d 371 (1975) is cited by the Administrative Law Judge on Page 4 of his Recommended Decision of December 18, 1984 for the proposition that it is the presence and ownership of the track involved which places liability on the railroad for maintenance responsibility. The Administrative Law Judge further observes, on Page 5 of his Recommended Decision, that "the railroad benefits because use of the bridge precludes any possible liability for accidents which could occur if the previous two at-grade crossings were presently in service.

If, as the Administrative Law Judge in effect declares, the presence of the track imposes liability upon the railroad for maintenance, then by the same token, the presence of the highway imposes a similar liability upon the general public. Moreover, if, as stated by the Administrative Law Judge, a highway bridge over a railroad benefits the railroad by precluding it from grade crossing accident liability such a bridge is of even greater benefit to the general public, represented in this proceeding by the Pennsylvania Department of Transportation (Penn DOT) Great Bend Township, and the County of Susquehanna, by precluding the individual members thereof from danger to life and limb. It is therefore altogether appropriate for either PennDOT, Great Bend Township, or the County of Susquehanna to bear at least 50% of the subject bridge's maintenance costs and expenses.

6. Ordering Paragraph 3 of the Order entered February 22, 1985 reads as follows:

That the Delaware and Hudson Railway Company, beginning with the date of service of the final Order and each month thereafter, and after consultation with Conrail to ensure uniformity of measurements, periodically submit to this Commission an Inspection Report on the bridge wing wall which gives the width of the crack opening and distance that the top portion of the wall has pushed out from its original position.

7. Since the last on-site inspection of the subject bridge by this Commission the Petitioner has, at its own expense, removed the loose upper portion of the wing wall. As the reference for measuring the crack opening therefore no longer exists, monitoring and reporting on movement of the top portion of the wall is no longer possible.

WHEREFORE Delaware and Hudson Railway Company, the Petitioner herein, respectfully requests this Commission

- a. To further modify Ordering Paragraph 14 of the Order entered August 14, 1980 as modified by Ordering Paragraph 1 of the Order entered February 22, 1985, to read as follows:

That Delaware and Hudson Railway Company, at its initial cost and expense, furnish all materials and perform all work to maintain its railroad facilities at the crossing, including the bridge substructure and superstructure, exclusive of the bituminous roadway wearing surface.

- b. To modify the Order entered February 22, 1985 by adding a new Ordering Paragraph to read as follows:

That upon being billed therefor the Commonwealth of Pennsylvania, acting through the Pennsylvania Department of Transportation reimburse Delaware and Hudson Railway Company for 50% of the cost and expense of materials provided and work performed in connection with the maintenance of the bridge substructure and superstructure;

or in the alternative, to modify the Order entered February 22, 1985 by adding a new Ordering Paragraph, to read as follows:

That upon being billed therefor
Great Bend Township reimburse
Delaware and Hudson Railway
Company for 50% of the cost and
expense of materials provided and
work performed in connection with
the maintenance of the bridge
substructure and superstructure.

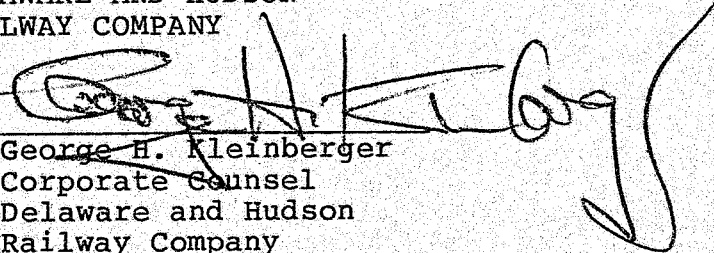
or, in the further alternative, to
modify the Order entered February 22,
1985 by adding a new Ordering Paragraph
to read as follows:

That upon being billed therefor
the County of Susquehanna
reimburse Delaware and Hudson
Railway Company for 50% of the
cost and expense of materials
provided and work performed in
connection with the maintenance of
the bridge substructure and
superstructure.

- c. To modify the Order entered February 22,
1985 by deleting Ordering Paragraphs 3
and 4 thereof.

DELAWARE AND HUDSON
RAILWAY COMPANY

BY


George H. Kleinberger
Corporate Counsel
Delaware and Hudson
Railway Company
Fifth Street
Watervliet, New York 12189

Dated: May 21, 1985

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by first class mail on the parties listed below:

Hon. Edward R. Casey
Administrative Law Judge
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, Pennsylvania 17120

Michael J. Giangrieco, Esq.
22 1/2 Public Avenue
Montrose, Pennsylvania 18801

Herbert Zahn, Esq.
Assistant Counsel
Pa. Department of Transportation
522 Transportation & Safety Building
Harrisburg, Pennsylvania 17120

Mr. Walter Galloway
R. D. #2, Box 103
Susquehanna, Pennsylvania 18847

Joel E. Mazor, Esq.
General Attorney
Consolidated Rail Corporation
1138 Six Penn Center
Philadelphia, Pennsylvania 19130

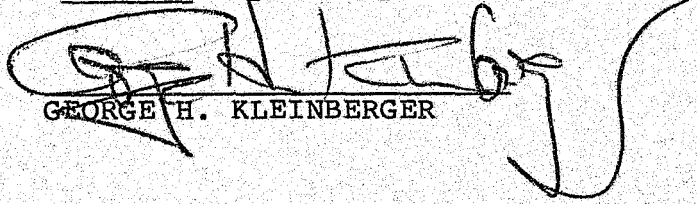
Robert Dean, Esq.
Solicitor, County of Susquehanna
Courthouse
Montrose, PA 18801

W. A. Verochi, President
Pennsylvania Electric Company
1001 Broad Street
Johnstown, PA 15907

Paul W. Mazza, Vice President
Commonwealth Telephone Company
100 Lake Street
Dallas, PA 18612

Richard S. Herskovitz, Esq.
Assistant Counsel
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, Pennsylvania 17120

Dated at Albany, New York this 22nd day of May 1985.


GEORGE H. KLEINBERGER

ORIGINAL

MICHAEL J. GIANGRIECO

ATTORNEY AT LAW

22½ PUBLIC AVENUE

MONTROSE, PENNA. 18801

PHONE: MONTROSE OFFICE

717-278-4026

278-4425

HALLSTEAD OFFICE

717-879-4115

July 26, 1985

RECEIVED

JUL 29 1985

**SECRETARY'S OFFICE
Public Utility Commission**

Hon. Jerry Rich
Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, Pennsylvania 17120

Re: Great Bend Township v. Consolidated Rail
Corporation, et al - Docket No. C-79081404
Petition of Delaware and Hudson Railway Company
for Modification of Orders

Dear Mr. Rich:

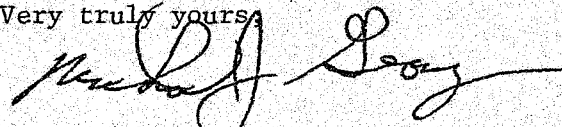
Please be advised that Great Bend Township adamantly opposes the Petition of the Delaware and Hudson Railway Company for Modification of Orders.

Great Bend Township is not financially able to meet the burden of taking care of and maintaining the bridge and substructure. As per the court order of February 22, 1985 at paragraph 14, is not responsible to do so.

The administrative law judge correctly cited the applicable law on page 4 of his recommended decision of December 18, 1984 which places liability on the railroad for maintenance responsibility, Pa. P.U.C. v. Southeastern Pennsylvania Transportation Authority, 21 Pa. Cmwlth. Ct. 106, 343 A.2d 371 (1975). There is no liability on the township for the maintenance of the bridge as the Petition requests.

Therefore the township respectfully requests that the administrative law judge's order of February 22, 1985 be adopted and the Petition for Modification of Orders dismissed.

Very truly yours,



Michael J. Giangrieco, Esquire
Solicitor for Great Bend Township

CC: All parties of record

DOCKETED
JUL 30 1985

**DOCUMENT
FOLDER**

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing letter by first class mail on the parties listed below:

Hon. Edward R. Casey
Administrative Law Judge
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, Pennsylvania 17120

Herbert Zahn, Esq.
Assistant Counsel
Pa. Department of Transportation
522 Transportation & Safety Building
Harrisburg, Pennsylvania 17120

Mr. Walter Galloway
R.D.#2, Box 103
Susquehanna, Pennsylvania 18847

Joel E. Manzor, Esq.
General Attorney
Consolidated Rail Corporation
1138 Six Penn Center
Philadelphia, Pennsylvania 19130

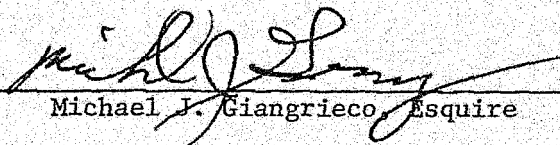
Robert Dean, Esq.
Solicitor, County of Susquehanna
Courthouse
Montrose, PA 18801

W. A. Verochi, President
Pennsylvania Electric Company
1001 Broad Street
Johnstown, PA 15907

Paul W. Mazza, Vice President
Commonwealth Telephone Company
100 Lake Street
Dallas, PA 18612

Richard S. Herskovitz, Esq.
Assistant Counsel
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, Pennsylvania 17120

Dated at Montrose, Pennsylvania this 26th day of July, 1985.


Michael J. Giangrieco, Esquire

ROBERT G. DEAN
JOHN R. DEAN
ATTORNEYS AT LAW
28 PUBLIC AVENUE
MONTROSE, PA 18801

MARTIN T. DILLON
1946 - 1976

717-278-1828
717-278-2020

July 30, 1985

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AUG 1 1985

SECRETARY'S OFFICE
Public Utility Commission

Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, Pa. 17120

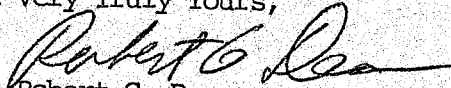
Great Bend Township
vs.

Consolidated Rail Corporation,
Pennsylvania Department of Transportation
Susquehanna County, Pennsylvania
Electric Company, Commonwealth Telephone
Company and Delaware and Hudson Railway
Company
Complaint Docket No. 79081404

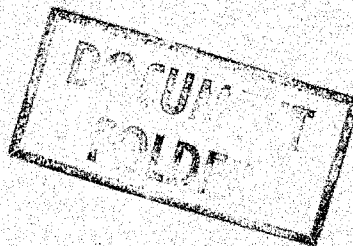
Dear Sir:

I enclose answer of Susquehanna County to petition for modification
filed May 22, 1984.

Very Truly Yours,


Robert G. Dean

RGD:dm
enc.



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BEFORE THE

AUG 1 1985

PENNSYLVANIA PUBLIC UTILITY COMMISSION

SECRETARY'S OFFICE
Public Utility Commission

Great Bend Township

Complaint Docket

vs.

No. C-79081404

Consolidated Rail Corporation,
Pennsylvania Department of Transporta-
tion, County of Susquehanna, Pennsylvania
Electric Company, and Commonwealth
Telephone Company

.....

ANSWER OF SUSQUEHANNA COUNTY
TO PETITION OF DELAWARE AND HUDSON
FOR MODIFICATION OF ORDERS

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Denied. There is no legal responsibility on the County of Susquehanna to maintain a state highway or railroad crossing at a point where state highway crosses the railroad. The County of Susquehanna only is responsible for County Bridges.
6. Admitted.
7. Denied. After reasonable investigation the party is without knowledge or information sufficient to form a belief at to the truth of the averment. Proof is demanded.

WHEREFORE it is requested that the petition of Delaware and Hudson Railway be dismissed as to Susquehanna County.

Robert G. Dean
ROBERT G. DEAN
ATTORNEY FOR RESPONDENT
SUSQUEHANNA COUNTY

DOCKETED
AUG 1 - 1985

EXHIBIT
FOLDER

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF SUSQUEHANNA)

JACK MASTERS being duly sworn according to law does depose and swear that he is the Chairman of the Susquehanna County Commissioners and that the facts set forth in the foregoing Answer are true and correct to the best of his knowledge, information and belief.

Jack M. Masters

JACK MASTERS

SWORN TO AND SUBSCRIBED TO BEFORE
ME THIS 29th DAY OF July 1985.

Francis E. Baker

DEPUTY CLERK
MY COMMISSION EXPIRES
FIRST MONDAY OF JANUARY, 1986

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by first class mail on the parties listed below:

Michael J. Giangrieco, Esquire
22½ Public Avenue.
Montrose, Pennsylvania 18801

Herbert G. Zahn Assistant Counsel
Pa. Department of Transportation
522 Transportation & Safety Building
Harrisburg, Pennsylvania 17120

Joel E. Mazor, General Attorney
Consolidated Rail Corporation
1138 Six Penn Center Plaza
Philadelphia, Pennsylvania 19104

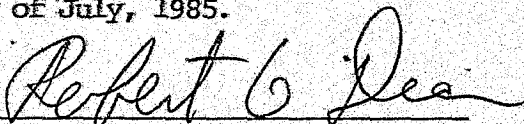
W. A. Verochi, President
Pennsylvania Electric Company
1001 Broad Street
Johnstown, Pennsylvania 15907

Paul W. Mazza, Vice President
Commonwealth Telephone Company
100 Lake Street.
Dallas, Pennsylvania 18612

George H. Kleinberger, General Attorney
Delaware & Hudson Railway Company
40 Beaver Street
Albany, New York 12207

Thomas J. Jones
Administrative Law Judge
436 Spruce Street
Scranton, Pennsylvania 18503

Dated at Montrose, Pennsylvania this 29th day of July, 1985.


ROBERT G. DEAN, Esquire

ORIGINAL

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
Harrisburg, Pennsylvania 17120
Office of Chief Counsel



August 19, 1985

IN REPLY REFER TO

RECEIVED

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, Pennsylvania 17120

AUG 19 1985

SECRETARY'S OFFICE
Public Utility Commission

Re: Complaint Docket No. C-79081404
Susquehanna County

Dear Mr. Rich:

Enclosed please find an original and two (2) copies of Answer of the Pennsylvania Department of Transportation to the Petition of Delaware and Hudson Railway Company for Modification of Orders, in the above-captioned matter.

I hereby certify that a copy of the Answer has been sent to all parties of record.

Very truly yours,

Stephen F. J. Martin
Assistant Counsel
(717) 787-6485

220/SFJM:rmm
Enclosures

cc: W. J. Clements, P.E.
District Engineer #4-0
Parties of Record - Page 2

DOCUMENT
FOLDER

Jerry Rich, Secretary
Page 2
August 19, 1985

PARTIES OF RECORD

Honorable Edward R. Casey
Administrative Law Judge
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, Pennsylvania 17120

George H. Kleinberger, Corporate Counsel
Delaware & Hudson Railway Company
Fifth Street
Watervliet, New York 12189

Richard Herskovitz, Esquire
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, Pennsylvania 17120

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Mr. Walter Galloway
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Susquehanna, Pennsylvania 18847

Daniel F. Donovan, Esquire
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1138 Six Penn Center Plaza
Philadelphia, Pennsylvania 19103

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Solicitor for Susquehanna County
Courthouse
Montrose, Pennsylvania 18801

W. A. Verochi, President
Pennsylvania Electric Company
1001 Broad Street
Johnstown, Pennsylvania 15907

Paul W. Mazza, Vice President
Commonwealth Telephone Company
100 Lake Street
Dallas, Pennsylvania 18612

5. Denied. The Administrative Law Judge, and the Commission correctly assigned maintenance responsibility of the substructure and superstructure of the bridge to the Delaware and Hudson Railway. The separated crossing is of significant benefit to the railroad because it virtually eliminates any liability of the railroad arising from train/vehicle collisions. The Administrative Law Judge and the Commission noted that the bridge replaced two at-grade crossings which were then in service, and which greatly exposed the railroad to possible tort liability. In addition the elimination of the two at-grade crossings relieved the railroad of significant maintenance responsibility for warning devices at those crossings.

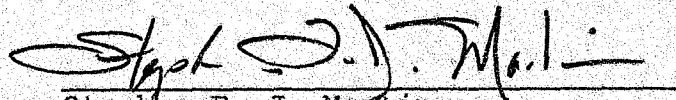
Any objection to the assignment of maintenance responsibility to the railroad should have been raised in Exceptions to the Recommended Decision of Administrative Law Judge Edward R. Casey or in appeal to the Commonwealth Court of the Commission's final decision. Judge Casey noted in his Recommended Decision that the Delaware and Hudson had been unable to demonstrate any change of circumstances justifying relief from maintenance responsibility for the subject structure. Similarly here the Delaware and Hudson's Petition for Modification avers no change in circumstance which would warrant alteration of the terms of the Order not excepted to nor appealed.

6. Admitted.

7. Admitted.

WHEREFORE, the Department of Transportation prays your Honorable Commission dismiss the Petition of the Delaware and Hudson Railway Company for Modification of Orders, dated August 14, 1980 and February 22, 1985.

Respectfully submitted,



Stephen F. J. Martin
Assistant Counsel

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMPLAINT DOCKET
NO. C-79081404

GREAT BEND TOWNSHIP
VS.
CONSOLIDATED RAIL CORPORATION,
PENNSYLVANIA DEPARTMENT OF TRANSPORT-
ATION, COUNTY OF SUSQUEHANNA, PENN-
SYLVANIA ELECTRIC COMPANY and COMMON-
WEALTH TELEPHONE COMPANY

ANSWER OF GREAT BEND TOWNSHIP TO THE
PETITION OF DELAWARE AND HUDSON
RAILWAY COMPANY FOR MODIFICATION OF
ORDERS

GIANGRIECO & ALIANO
ATTORNEYS AT LAW
22½ PUBLIC AVENUE
MONTROSE, PENNSYLVANIA 18801

MICHAEL J. GIANGRIECO
ATTORNEY AT LAW
22½ PUBLIC AVENUE
MONTROSE, PENNA. 18801

PHONE: MONTROSE OFFICE

717-278-4026

278-4425

HALLSTEAD OFFICE

717-879-4115

August 22, 1985

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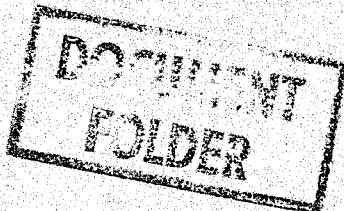
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SECRETARY'S OFFICE
Public Utility Commission

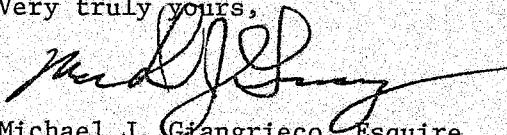
Re: Great Bend Township v. Consolidated
Rail Corporation, et al -
Docket No. C-79081404

Dear Mr. Rich:

Enclosed please find Answer of Great Bend Township to the Petition of Delaware and Hudson Railway Company for Modification of Orders, in the above captioned matter.



Very truly yours,


Michael J. Giangrieco, Esquire

MJG:dlt

Enc.

CC: All parties of record

Court of the Commission's final decision. Judge Casey noted in his Recommended Decision that the Delaware and Hudson had been unable to demonstrate any change of circumstances justifying relief from maintenance responsibility for the subject structure. Similarly here the Delaware and Hudson's Petition for Modification avers no change in circumstance which would warrant alteration of the terms of the Order not excepted to nor appealed.

6. Admitted.

7. Admitted.

WHEREFORE, Great Bend Township prays your Honorable Commission dismiss the Petition of the Delaware and Hudson Railway Company for Modification of Orders, dated August 14, 1980 and February 22, 1985.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Michael J. Giangrieco".

Michael J. Giangrieco, Esquire
Attorney for Great Bend Township

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Answer by first class mail on the parties listed below:

Hon. Edward R. Casey
Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, Pennsylvania 17120

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Pa. Department of Transportation
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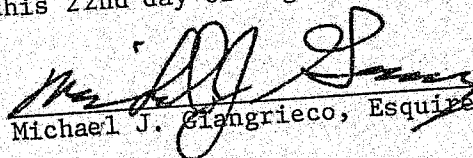
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Assistant Counsel
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, Pennsylvania 17120

George H. Kleinberger, Corporate Counsel
Delaware & Hudson Railway Company
Fifth Street
Watervliet, New York 12189

Dated at Montrose, Pennsylvania this 22nd day of August, 1985.


Michael J. Giangrieco, Esquire