

October 24, 1980

C-79081404

Francis X. O'Connor, Esquire
P. O. Box 591
310 Main Street
Great Bend, PA 18821

Great Bend Township
v.
Consolidated Rail Corporation, et al.

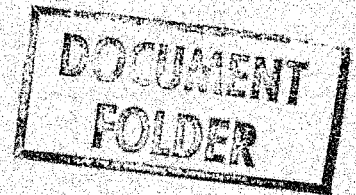
Dear Sir:

This is to advise you that an order to show cause has been adopted by the Commission in public meeting on October 16, 1980, in the above entitled proceeding.

A copy of this order has been enclosed for your records.

Very truly yours,

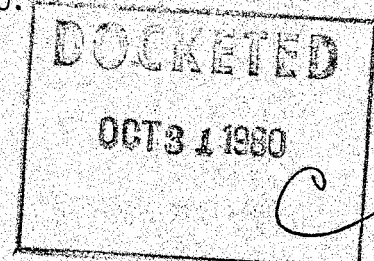
William P. Thierfelder
Secretary



ts
Enclosure
Certified Mail
Receipt Requested

Refer to similar letter list dated February 14, 1980.

Similar letter to:
Delaware & Hudson Railway Company
40 Beaver Street
Albany, New York 12207
for: self



PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held October 16, 1980

Commissioners Present:

Susan M. Shanaman, Chairman
Michael Johnson
James H. Cawley
Linda C. Taliaferro

Great Bend Township

C-79081404

v.

Consolidated Rail Corporation, et al.

ORDER TO SHOW CAUSE

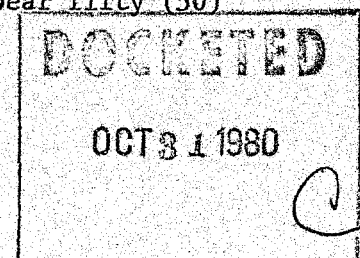
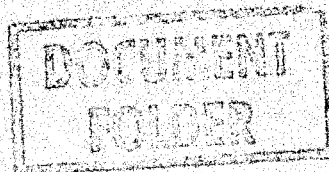
BY THE COMMISSION:

On September 16, 1980, Consolidated Rail Corporation (Conrail), filed a petition with the Commission, requesting modification of our order adopted March 28, 1980, entered August 14, 1980, to substitute either another party to this proceeding or the Delaware & Hudson Railway Company (Delaware & Hudson) for Conrail with respect to the obligation imposed by ordering paragraph No. 2 of said order.^{1/}

BRIEF HISTORY OF PROCEEDINGS

Great Bend Township (Great Bend) filed with the Commission on September 6, 1979, a complaint against Conrail, the Pennsylvania Department of Transportation, and Susquehanna County, alleging that respondents had failed to properly maintain a bridge, carrying Township Road 821 (old U.S. Route 11) over and above the tracks of Conrail situated in Great Bend Township, Susquehanna County, located approximately two (2) miles south of the Hallstead - Great Bend Township border. The complaint alleged that the southwest wing wall of the bridge had a shearing and horizontal crack and that a spalling of the wall had occurred.

^{1/} The order entered August 14, 1980 directed Conrail, inter alia, (i) at its initial cost and expense, to prepare and submit detailed plans for the reconstruction of the southwest wing wall of the railroad-crossing bridge which was the subject of the complaint filed by Great Bend Township on September 6, 1979, (ii) to do all the work and furnish all material, at its initial cost and expense, to reconstruct the bridge wing wall, and (iii) to bear fifty (50) percent of the cost thereof.



Hearings in this matter were held at Montrose on November 1, 1979 before Administrative Law Judge Thomas J. Jones who, by initial decision issued February 14, 1980, directed Conrail, inter alia, to prepare at its initial cost and expense, and submit to the parties of record and to the Commission for approval, within six (6) months of the date of service of the Commission order, detailed plans for reconstruction of the southwest wing wall of the bridge which will eliminate a horizontal crack and concrete spalling condition, and to remove any unsound concrete in the lower portion of the wing wall. ALJ Jones directed that the repairs be made by ConRail and be completed on or before December 31, 1981.

Our order entered August 14, 1980 adopted the initial decision of Administrative Law Judge Jones, modified only to the extent of expediting the repair work by requiring Conrail to submit plans within three (3) months of the date of service of the order and to complete the bridge repair on or before July 1, 1981.

Conrail states in its petition for modification, that on September 8, 1980 the line of railroad underneath the structure which was the subject matter of the complaint was sold and transferred to Delaware & Hudson. ConRail also states that all obligations for maintenance which had previously belonged to ConRail were transferred to Delaware & Hudson.

CONCLUSION

Based upon the allegation of Conrail that the line of railroad underneath the subject bridge was sold and transferred to Delaware & Hudson on September 8, 1980, subsequent to entry of our August 14, 1980 order, we conclude that Delaware & Hudson should be ordered to show cause why it should not be joined as a party in these proceedings, and we will so order.

We will also direct Delaware & Hudson to show cause why it should not be determined to be a concerned and interested party in these proceedings, in accordance with Section 2702(c) of the Public Utility Code, 66 Pa. C.S.A. 2702(c), and therefore responsible either alone as a successor in interest of ConRail, or jointly with ConRail for performing the obligations imposed upon Conrail under the August 14, 1980 order. We will therefore remand this matter to the Office of Administrative Law Judges for the purpose of conducting a hearing for receipt of evidence regarding the obligations of Conrail assumed by Delaware & Hudson under provisions of the September 8, 1980 sale and transfer, supra, and such other evidence as the Administrative Law Judge shall consider material and relevant in order to reach a determination as to the concerned and interested parties who are properly responsible for performing the obligations imposed by the August 14, 1980 Order; THEREFORE,

IT IS ORDERED:

1. That the petition of ConRail is hereby denied without prejudice and with the right to pursue rights it may have under the September 8, 1980 sale and transfer to Delaware & Hudson.

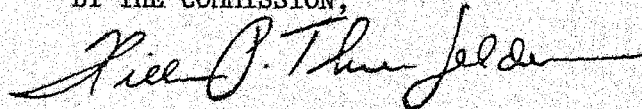
2. That Delaware & Hudson Railway Company is hereby ordered to show cause why it should not be joined as a party to these proceedings.

3. That Delaware & Hudson Railway Company is hereby directed to show cause why it should not be determined to be a concerned and interested party responsible for performing the obligations imposed upon Conrail, either alone or jointly with ConRail, under order of the Commission entered August 14, 1980, and otherwise determined to be a concerned and interested party in these proceedings under Section 2702(c) of the Public Utility Code.

4. That this matter be remanded to the Office of Administrative Law Judges for the purpose of conducting a hearing for receipt of evidence regarding the obligations of Conrail assumed by Delaware & Hudson under provisions of the September 8, 1980 sale and transfer discussed in this order and such other evidence material and relevant to a determination of the proper party or parties, as concerned and interested parties, in accordance with Section 2702(c) of the Public Utility Code, 66 Pa. C.S.A. 2702(c).

5. That ConRail is hereby directed to serve a copy of its petition on Delaware & Hudson.

BY THE COMMISSION,



William P. Thierfelder
Secretary

(SEAL)

ORDER ADOPTED: October 16, 1980

ORDER ENTERED: OCT 24 1980