



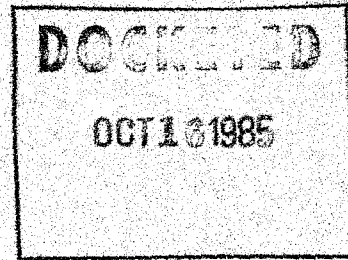
COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120

October 10, 1985

IN REPLY PLEASE
REFER TO OUR FILE

C-79081404

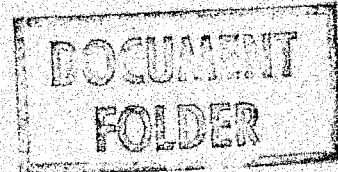
Michael J. Giangrieco, Esquire
22½ Public Avenue
Montrose, PA 18801



Great Bend Township

v.

Consolidated Rail Corporation, Pennsylvania Department of Transportation, Susquehanna County, Pennsylvania Electric Company, Commonwealth Telephone Company and Delaware and Hudson Railway Company



To Whom It May Concern:

This is to advise you that an Order has been adopted by the Commission in Public Meeting on October 3, 1985, in the above entitled proceeding.

An Executed Order has been enclosed for your records.

Very truly yours,

Jerry Rich, Secretary

Jr
Encls.
Cert. Mail
Bureau of S & C - Rail
Law Bureau

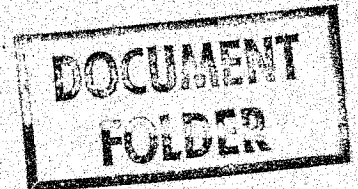
Similar letters to: see attached list

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held October 3, 1985

Commissioners Present:

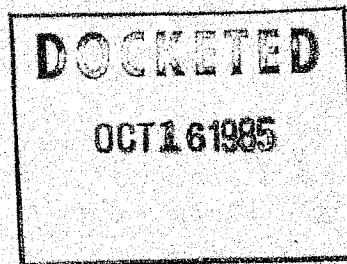
Linda C. Taliaferro, Chairman
Frank Fischl
Bill Shane



Great Bend Township

C-79081404

v.
Consolidated Rail Corporation,
Pennsylvania Department of
Transportation, Susquehanna County,
Pennsylvania Electric Company,
Commonwealth Telephone Company and
Delaware and Hudson Railway Company



O R D E R

BY THE COMMISSION:

On September 6, 1979, Great Bend Township filed a complaint against Consolidated Rail Corporation (Conrail), the Pennsylvania Department of Transportation (PennDOT) 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 this concrete wall had occurred.

A hearing in this matter was held at Montrose, PA on November 1, 1979 before Administrative Law Judge (ALJ) Thomas J. Jones. In his Initial Decision issued February 14, 1980, ALJ Jones directed Conrail, at its initial cost and expense, to prepare and submit, to the parties of record and to the Commission for approval, detailed plans for reconstruction of the southwest wing wall of the bridge which would eliminate the horizontal crack and concrete spalling condition. Conrail was also directed to remove any unsound concrete in the lower portion of the wing wall.

By Order entered August 14, 1980, the Commission adopted ALJ Jones' recommendation but ordered that the completion date be moved forward to July 1, 1981. That Order assigned the responsibility for future maintenance of the entire structure, except for the highway wearing surface, to Conrail.

Conrail submitted the initial plans on March 20, 1981, with an estimated cost of work fixed at \$103,200. After a meeting with P.U.C. staff engineers to find a less expensive alternative, Conrail submitted revised plans which were designed to prevent subsidence of the roadway embankment without the necessity of repairing the wing wall. The alternate method would cost approximately \$20,340. On September 25, 1981, the Commission adopted an Order approving the alternate method of repair. A final inspection of that repair was made on October 13, 1983 by a Commission Staff engineer.

On January 21, 1983, Conrail filed a petition for modification of the Commission order entered August 14, 1980 seeking to have future maintenance transferred to Delaware and Hudson Railway Company (D & H), which now owns the rail line on which the structure is located.

On January 17, 1984, D & H filed an Answer to Conrail's Petition and a Petition seeking to have future maintenance assigned to other parties in interest.

A hearing in this matter was held on July 26, 1984 at Scranton, PA before ALJ Edward R. Casey. In his Recommended Decision issued January 2, 1985, ALJ Casey directed that ordering paragraph 14 of the August 14, 1980 Order which read:

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

be modified to read:

"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."

ALJ Casey's Decision also directed: (1) that D & H's Petition to have parties other than itself assume maintenance responsibility for the bridge be denied; (2) that D & H, 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 the 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; and (3) that the Bureau of Rail Transportation of the Commission monitor the reports submitted and notify the Commission if further repairs or hearings are deemed necessary due to movement of the wing wall or other safety-related considerations.

No exceptions to the Recommended Decision were filed. By Order entered February 22, 1985, the Commission adopted ALJ Casey's recommendation. No appeal of that order was taken by any party.

On May 24, 1985, D & H filed a Petition for Modification of the Commission Order entered February 22, 1985 which modified the Commission Order entered August 14, 1980. D & H seeks to (1) modify ordering paragraph 1 which read:

"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."

to read:

"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."

(2) modify same Order by adding a new ordering paragraph to read:

"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, modify same Order by adding a new ordering paragraph to read:

"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, modify same Order by adding a new ordering paragraph to read:

"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."

and (3) modify same Order by deleting ordering paragraphs 3 and 4 thereof. Paragraph 3 requires D&H to submit periodic inspection reports on the condition of the bridge wing wall. Paragraph 4 requires the Commission's Bureau of Rail Transportation to monitor the reports and notify the Commission if further repairs or hearings are necessary.

Answers to D & H's Petition were filed by Susquehanna County on August 1, 1985, PennDOT on August 19, 1985, and Great Bend Township on August 26, 1985, all of which request D & H's Petition be dismissed.

The statutory provisions applicable to requests for rescission and amendment of Commission orders are set forth in Section 703(g) of the Public Utility Code, 66 Pa. C.S. §703(g), which states:

- (g) Rescission and amendment of orders. - The Commission may, at any time, after notice and after opportunity to be heard as provided in this chapter, rescind or amend any order made by it. Any order rescinding or amending a prior order shall, when served upon the person, corporation, or municipal corporation affected, and after notice thereof is given to other parties to the proceedings, have the same effect as is herein provided for original orders.

and Section 501(a) of the Public Utility Code, 66 Pa. C.S. §501(a), which states:

- (a) Enforcement of provisions of part. - In addition to any powers expressly enumerated in this part, the Commission shall have full power and authority, and it shall be its duty to enforce, execute and carryout, by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full intent thereof; and shall have the power to rescind or modify any such regulations or orders. The express enumeration of the powers of the Commission in this part shall not exclude any power which the Commission would otherwise have under any of the provisions of this part.

The Public Utility Code grants the Commission broad discretionary powers concerning the reconsideration, amendment, rescission, or modification of its orders. Such discretion is limited only by the due process considerations of providing notice and an opportunity to be heard by the parties. Pennsylvania Public Utility Commission v. Yellow Cab Co., 51 Pa. P.U.C. 149 (1977). Specifically, the Commission has the power to grant reconsideration of a previous order in light of newly discovered evidence, a change in circumstances justifying modification, or if persuaded that its previous decision was in error. Pennsylvania

Public Utility Commission v. Bell Telephone Co. of Pa., 54 Pa. P.U.C. 473 (1980); Brink's, Inc. v. Pa. P.U.C., 16 Pa. Commonwealth Ct. 300, 328 A.2d 582 (1974); Application of Commonwealth Telephone Co., 24 Pa. Commonwealth Ct. 243, 355 A.2d 611 (1976).

Petitioner has neither submitted a change in circumstances nor new evidence. Any objection to the assignment of maintenance responsibility to D & H should have been raised in Exceptions to ALJ Casey's Recommended Decision or in an appeal to the Commonwealth Court of the Commission's final decision. There is nothing alleged in D & H's petition that the Commission has not already considered. The instant Petition therefore does not warrant granting modification of the Commission's February 22, 1985 order with respect to assignment of maintenance responsibility.

However, with respect to D&H's request to delete paragraphs 3 and 4 of the February 22, 1985 Order, such request will be granted. PennDOT and Great Bend Township admit D&H's allegation in its petition that monitoring and reporting on movement of the bridge wing wall is no longer possible due to the removal of the loose upper portion of the wall. While Susquehanna County denies the allegation because it is without knowledge or information sufficient to form a belief as to the truth of the averment, a Commission staff engineer has also verified that the allegation is true and that the reporting requirement is no longer necessary.

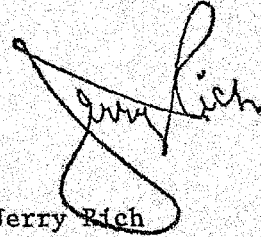
In light of the above change in circumstances since the last Order, we are of the opinion that our February 22, 1985 Order should be modified by deleting paragraphs 3 and 4, and we will grant that portion of the D&H's petition; THEREFORE,

IT IS ORDERED:

1. That the portion of Delaware and Hudson Railway Company's Petition for Modification of the Commission's February 22, 1985 Order, filed on May 24, 1985, at C-79081404, requesting the Commission to modify its Order by directing D&H to maintain the bridge at its initial cost and be reimbursed 50% by another party of record is hereby denied.
2. That the portion of Delaware and Hudson Railway Company's Petition for Modification of the Commission's February 22, 1985 Order requesting the Commission to modify its order by deleting ordering paragraphs 3 and 4 thereof is hereby granted.
3. That paragraphs 3 and 4 of the Commission's order entered February 22, 1985 at C-79081404 are hereby deleted.

4. That all prior orders at C-79081404 not inconsistent herewith remain in full force and effect.

BY THE COMMISSION,

A handwritten signature in cursive script, appearing to read "Jerry Rich". The signature is written in dark ink and is positioned above the typed name and title.

Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: October 3, 1985

ORDER ENTERED: OCT 10 1985