

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Great Bend Twp.

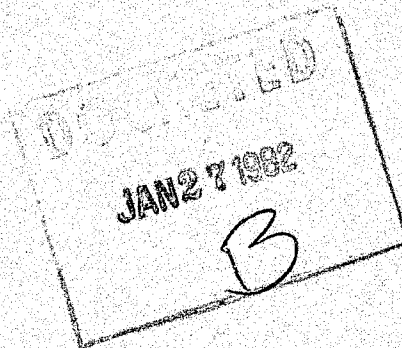
v.

Consolidated Rail Corporation

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C-79081404

ORDER
GRANTING THE PETITION FOR EXTENSION OF TIME



By Thomas Jones
Administrative Law Judge

ORDER
GRANTING PETITION FOR EXTENSION OF TIME

On November 9, 1981, Consolidated Rail Corporation (Conrail) filed a Petition for Extension of Time, requesting that the deadline for completion of work, set by the Commission Order of March 28, 1980 to be July 1, 1981, be changed to October 31, 1982.

HISTORY

Great Bend Township 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.

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 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 completed on or before December 31, 1981. By order of March 28, 1980, the Commission adopted the Judge's decision, except that the time period for submitting of plans was reduced from 6 months to 3 months, and the completion date was moved up to July 1, 1981. The Commission was persuaded to change the dates by the Exceptions of the PUC Staff, which argued that the repairs were of a minor nature and the wing wall was in danger of failing.

Conrail submitted the plans on March 20, 1981, with an estimated cost of work at \$103,200. After a meeting with PUC Staff engineers to find a less expensive alternative, Conrail submitted revised plans which prevent subsidence of the roadway embankment without 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.

On September 16, 1980, Conrail filed a Petition for Modification of the Commission's Order of August 14, 1980, requesting that Conrail be relieved of its obligation to prepare plans and repair the wing wall as specified by the Commission's Order, alleging that the rail line had been sold to Delaware and Hudson Railroad.

On October 16, 1980, the Commission issued an Order to Show Cause to Delaware and Hudson Railroad to show why it should not be made a party to the proceedings. Hearing was held on that Petition on July 29, 1981. As of yet, no order has been issued to decide this issue. In its Petition for Extension of Time Conrail alleges at paragraph 5 that until such time as the Commission renders a decision on that Order to Show Cause, and because of the late date of approval of the revised construction plans, it would be impossible for Conrail to complete the work within the required time.

On December 17, 1981, the Commission Trial Staff filed Exceptions to the Petition for Extension of Time.

Staff argues that the wing wall is severely deteriorated and presents a hazardous condition, especially during spring thaw or heavy rains. Therefore, it should be repaired as soon as possible, but no later than April 1, 1982. Staff further contends that the repairs should not be delayed by Conrail's pending Petition to be relieved of its obligations under the August 14, 1980 order because even if Conrail's responsibilities are ultimately transferred to Delaware and Hudson, the Commission could order Delaware and Hudson to reimburse Conrail for the repair work, should the Commission find it appropriate to do so.

DISCUSSION

Much attention has been given to the establishment of time periods and deadlines, while very little has been done to accommodate or observe them. By its order of March 28, 1980, the Commission shortened the required time for filing of plans from 6 to 3 months, and the final completion date from December 31, 1981 to July 1, 1981. However, that order was not entered and served on the parties until August 14, 1980, a delay of four and a half months to begin with. Since the Order was served on August 14, 1980, Conrail's plans were due by November 14, 1980. However, Conrail did not submit its plans until March 20, 1981, almost a full year after the Order was adopted and more than four months after the due date. Finally it must be noted that the Commission Trial Staff's Answer to the Petition, which urges minimal or no extension of time for completion of work, was itself 28 days late, having been due on November 19, 1981 or 10 days after service of the Petition. 52 Pa. Code 3.291.

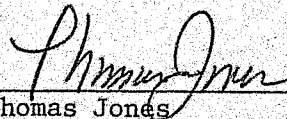
Conrail's position is well taken. The late date of approval of the revised plans has made it impossible for it to comply with the original completion date of July 31, 1981. Therefore, it is necessary to reestablish a more realistic completion date.

In doing so we note that in its Order of March 28, 1980 served on August 14, 1980, the Commission allowed until July 31, 1981 for completion of work. After allowing for a period of 3 months for submission of plans, there is a period of 11 1/2 months for approval of the plans and completion of work. In spite of its claim of hazardous condition as alleged in its Answer, the Commission Staff has presented no new evidence to show that the present danger is any greater than it was at the time the Commission adopted its Order of March 28, 1980. Therefore, there is no compelling evidence to justify ordering the completion of work immediately during the winter season. We shall allow Conrail the benefit of summer construction season for most favorable completion of work.

Finally, Conrail's pending Petition for Modification of the Commission Order of March 28, 1980 and the Commission's own Rule to Show Cause are not seen as obstacles to completion of work. Conrail shall proceed with the completion of work as specified in the Commission's Order of March 28, 1980, and within the time specified in this Order, THEREFORE:

IT IS ORDERED: That the Petition of Consolidated Rail Corporation for an Extension of Time be granted and that the date for completion of work be changed from July 31, 1981 to October 31, 1982.

Date: December 29, 1981



Thomas Jones
Administrative Law Judge

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

January 29, 1982

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

IN REPLY PLEASE
REFER TO OUR FILE

RECEIVED
SECRETARY'S OFFICE
PUBLIC UTILITY
COMMISSION

FEB 1 8 54 AM '82

Re: C-79081404 - Great Bend Township v. Consolidated
Rail Corporation, Pennsylvania Department of
Transportation and County of Susquehanna

Dear Secretary Rich:

Enclosed please find the original and nine (9) copies of the
Exceptions of the Commission Trial Staff to Initial Decision to be
filed in the above-captioned matter.

Very truly yours,

Richard S. Herskovitz

Richard S. Herskovitz
Assistant Counsel

RSH:wm

cc: Administrative Law Judge Jones
All Parties

Enclosure

DOCUMENT
FOLDER

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

FEB 1 8 54 AM '82

GREAT BEND TOWNSHIP

V.

CONSOLIDATED RAIL CORPORATION,
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION AND COUNTY OF
SUSQUEHANNA

Docket No.
C-79081404

RECEIVED
SECRETARY'S OFFICE
PUBLIC UTILITY
COMMISSION

EXCEPTIONS OF THE STAFF OF THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
TO INITIAL DECISION

DOCKETED

FEB 3 1982

The Pennsylvania Public Utility Commission staff (Staff) takes timely exception to the proposed Initial Decision of Administrative Law Judge Jones in the captioned matter as follows:

1. Exception is taken to the order granting Consolidated Rail Corporation (Conrail) an extension of time until October 31, 1982 to complete the work required by the Commission's order adopted March 28, 1980 and entered August 14, 1980 in that the condition of the southeast wingwall of the subject bridge is such that repairs should be performed as soon as possible; at least no later than April 1, 1982. The wingwall is severely deteriorated and presents a hazardous condition for both rail and highway users in that the wingwall may collapse during the spring thaw or heavy spring rains. Periodic inspection reports submitted to the Commission in the past few months by Conrail recognizes the potential for collapse of the wingwall, and recommends that the wingwall be given attention. Staff is of the opinion that the necessary repairs

DOCUMENT
FOLDER

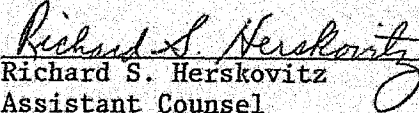
can be completed by April 1, 1982, and in the interest of public safety at rail-highway crossings, the Commission should so order as soon as possible.

2. Exception is taken to the statement in the Initial Decision that the Staff has presented no new evidence to show that the present danger is any greater than it was at the time the Commission adopted its order of March 28, 1980. The burden to submit new evidence is on the petitioner (Conrail) to support its request for an extension of time. Staff has no such burden. In any event, Staff is not contending the danger is greater now than it was at the time of the March 1980 order. Staff has always maintained that the danger of collapse of the wingwall due to spring rains is great. (See Initial Decision issued February 14, 1980, page 11). Staff has contended from the inception of this proceeding that the wingwall creates a hazardous condition and should be repaired as soon as possible, and has made every effort to accelerate the time required to make the necessary repairs and avoid delays. (See, for example, Staff Exceptions filed February 29, 1980). In addition, Administrative Law Judge Jones recognized the potential hazard in leaving the wingwall unrepaired on page 13 of his Initial Decision issued February 14, 1980.

As for delays that did occur (4-1/2 month interval between March 28, 1980 order adoption and August 14, 1980 entry and service, for example), Staff in no way participated in or encouraged such delays. This project has been delayed enough already. To grant an extension of time until October 31, 1982 just to give Conrail the benefit of the summer construction season (and Staff submits the work can be performed in the winter and spring), is to overlook the danger posed by the wingwall if it remains unrepaired through the spring.

The repair plans for the wingwall were approved by the Commission on September 25, 1981. Conrail offers no reasons in its petition why it cannot complete the work until October 31, 1982, more than a year after the plans were approved. To grant Conrail's petition based on its naked allegation that it needs that much time to complete the work is to base its order on less "compelling evidence" than that alleged by Staff in its Answer to the Petition and rejected by the Administrative Law Judge.

Respectfully submitted,


Richard S. Herskovitz
Assistant Counsel

Pennsylvania Public Utility Commission

Date: 1/29/82

CERTIFICATE OF SERVICE

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

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

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

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

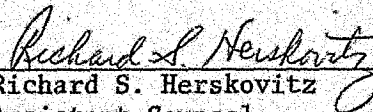
Robert Dean, Esquire
Solicitor, County of Susquehanna
Courthouse
Montrose, PA 18801

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

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, PA 18503


Richard S. Herskovitz
Assistant Counsel

Date: 1/29/82

RAIL

ORIGINAL RECEIVED
MAR 22 1982

SECRETARY'S OFFICE
Public Utility Commission

March 18, 1982

SUBJECT: Great Bend Township, Susquehanna County,
PA - O.H. Bridge 176.25, Eastern Region,
Lehigh Division, PUC NO. C-79081404, LC
63-6201, WO #46568
(FILE: Br. 176.25 - JAS)

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

Dear Mr. Rich:

In the Commission Order of Docket No. C-79081404, Conrail was ordered to monitor the condition of the subject structure.

Attached for your consideration are three copies each of Conrail Bridge Inspection Reports dated January 12, 1982 and February 11, 1982.

Very truly yours,



J. T. Sullivan, P.E.
Chief Engineer
Design and Construction

12th Floor

(215) 596-3608

DOCUMENT
FOLDER

CONSOLIDATED RAIL CORPORATION

BRIDGE INSPECTION REPORT

MAR 22 1982

DIV. Colo BRANCH (Sec) Main Line (D.H. RR) BRIDGE NO. 176.25
 LOCATION Hallstead O.H. U.G. _____
 TYPE OF BRIDGE Truss Girder NO. SPANS 1 SPAN NO. _____
 NO. TRACKS 2 TRACK NO. _____

SECRETARY'S OFFICE
 PUBLIC UTILITIES
 LENGTH _____

WATERWAY _____ (TANGENT
 ROADWAY TRACK ALIGNMENT (CURVE _____

DATE LAST INSPECTION 12/22/81 DATE THIS INSPECTION 1/12/82
 NOTE: USE SEPARATE SHEET FOR EACH SPAN FOR SPECIAL CONDITIONS.

C-19081404

ITEM NO.	GENERAL	A B R			ITEM NO.	MASONRY (CONT.)	A B R			ITEM NO.	FLOOR SYSTEM (CONT.)	A B R		
		A	B	R			A	B	R			A	B	R
1	Paint () yr				25	Previous Gunite				53	Fir Bm Top Flg			
2	Clearance Signs				26	Slab				54	Fir Bm Bot Flg			
3	Highway minimum clearance ()				27	Cleanliness				55	Fir Bm Conn			
4	PC Insignia					GIRDERS, BEAMS OR TRUSSES	A	B	R	56	Str web			
5	Load Limit Signs () Tons				28		Top Flg or Chord				57	Str Top Flg		
6	Fire Protection				29	Bot Flg or Chord				58	Str Bot Flg			
7	Action under trains				30	Bearing Stiffs				59	Str Conn			
8	Approach track				31	Web or Diags				60	Steel Floor			
9	Track on bridge				32	Hangers				61	Conc Floor			
					33	Counters				62	Wood Floor			
					34	Rivets *				63	Waterproofing			
					35	Pins				64	Ties			
10	Paving through bridges				36	Cols or bents				65	Tie Sealing			
11	Sheet piling protection				37	Sole plates				66	Spacer			
12	Scour (Distance top of rail to bed of stream _____)				38	Masonry plates				67	Guard rails			
13	Rip rap				39	Shoes				68	Deck hardware			
14	Fender System				40	Rollers				69	Footwalks			
					41	Shims				70	Handrails			
					42	Anchor bolts				71	Drainage			
					43	Wood blocking				72	Cleanliness			
					44	Cleanliness								
						STEEL BRACING	A	B	R	73	Bulkheads			
15	Abutment N or E				45		Top Lat				74	Piles		
16	Abutment S or W				46	Top Lat Pls				75	Sills			
17	Backwalls				47	Bot Lat				76	Posts			
18	Wingwalls				48	Bot Lat Pls				77	Caps			
19	Timber back walls				49	Sway Frames				78	Corbels			
20	Piers				50	Portals				79	Stringers			
21	Pedestals				51	Towers				80	Cross Brace			
22	Arches					FLOOR SYSTEM	A	B	R	81	Long Brace			
23	Parapet Walls				52		Fir Bm Web				82	Foundations		
24	Pointing									83	Welds			

ENCASED

QUANT FOLDER

DOCKETED
 MAR 22 1982

REMARKS: South wingwall cracked nearly entire length 9' down from top - Top portion of wing wall is pushing in 12" - If this portion falls in it may block east track also
This wingwall serves as a retaining wall for shoulder of road - Crack open to 9 1/2"
Should have photo taken

NOTE: * DESCRIBE UNDER REMARKS LOCATION OF LOOSE RIVETS. USE BACK OF THIS FORM FOR SKETCHES OR NOTES.
 A - GOOD CONDITION
 B - NOT HAZARDOUS - NOTE ANY CHANGE NEXT INSPECTION.
 R - PUT ON REPAIR PROGRAM
 SIGNED _____ INSPECTOR
 REVIEWED _____ SUPVR. B. & B.
 NOTED _____ DIVN. ENGR.

BRIDGE INSPECTION REPORT

RECEIVED

BRIDGE NO. 176.25 BRANCH Inner Line (D.H. RD) DATE THIS INSPECTION 2/11/82

LOCATION Helix O.H. U.G. LENGTH 88'

TYPE OF BRIDGE Thru Girder NO. SPANS 1 SPAN NO. 1 TRACKS 2 TRACKS 2 TRACKS 2 TRACKS 2

WATERWAY ROADWAY TANGENT CURVE

DATE LAST INSPECTION 07/12/80 TRACK ALIGNMENT Left CURVE Right

NOTE: USE SEPARATE SHEET FOR EACH SPAN FOR SPECIAL CONDITIONS.

C-79081404

GENERAL	A B R			ITEM NO.	MASONRY (CONT.)	A B R			ITEM NO.	FLOOR SYSTEM (CONT.)	A B R		
	A	B	R			A	B	R			A	B	R
1 Paint () yr			✓	25	Previous Gunite				53	Fir Bm Top Flg			
2 Clearance Signs				26	Slab				54	Fir Bm Bot Flg			
3 Highway minimum clearance ()				27	Cleanliness				55	Fir Bm Conn			
4 PC Insignia					GIRDERS, BEAMS OR TRUSSES	A	B	R	56	Str web			
5 Load Limit Signs () Tons				28	Top Flg or Chord	✓			57	Str Top Flg			
6 Fire Protection				29	Bot Flg or Chord	✓			58	Str Bot Flg			
7 Action under trains				30	Bearing Stiffs	✓			59	Str Conn			
8 Approach track				31	Web or Diagnls	✓			60	Steel Floor			
9 Track on bridge				32	Hangers				61	Conc Floor			
				33	Counters				62	Wood Floor			
				34	Rivets *			✓	63	Waterproofing			
0 Paving through bridges				35	Pins				64	Ties			
1 Sheet piling protection				36	Cols or bents				65	Tie Sealing			
2 Scour (Distance top of rail to bed of stream)				37	Sole plates	✓			66	Timber or bar Spacer			
3 Rip rap				38	Masonry plates	✓			67	Guard rails			
4 Fender System				39	Shoes	✓			68	Deck hardware			
				40	Rollers				69	Footwalks			
				41	Shims				70	Handrails			
				42	Anchor bolts	✓			71	Drainage			
				43	Wood blocking				72	Cleanliness			
				44	Cleanliness					TRESTLES	A	B	R
					STEEL BRACING	A	B	R	73	Bulkheads			
				45	Top Lat				74	Piles			
				46	Top Lat Pls				75	Sills			
				47	Bot Lat				76	Posts			
				48	Bot Lat Pls				77	Caps			
				49	Sway Frames				78	Corbels			
				50	Portals				79	Stringers			
				51	Towers				80	Cross Brace			
					FLOOR SYSTEM	A	B	R	81	Long Brace			
				52	Fir Bm Web	✓			82	Foundations			
									83	Welds			

ENCASED

DOCUMENT FOLDER DOCKETED MAR 22 1982

CONRAIL-LEHIGH DIV. BETHLEHEM, PA. FEB 23 1982

IMMEDIATE ATTENTION: (12) south end wing wall cracked nearly entire length, 9' down from top. - Top portion of wing wall is pushing in 14" - if this portion falls in it may block east track. Also this wing wall marks serves as a retaining wall for shoulder of highway, crack open to 93.4"

Should have mitigation

NOTE: * DESCRIBE UNDER REMARKS LOCATION OF LOOSE RIVETS. USE BACK OF THIS FORM FOR SKETCHES OR NOTES.

A - GOOD CONDITION
B - NOT HAZARDOUS - NOTE ANY CHANGE NEXT INSPECTION.
R - PUT ON REPAIR PROGRAM

SIGNED [Signature] INSPECTOR
REVIEWED [Signature] SUPVR. B. & G.
NOTED _____ DIVN. ENGR.

RECEIVED

APR 15 1982

SECRETARY'S OFFICE
Public Utility Commission

This Thirteenth day of April, 1982

the undersigned hereby acknowledges receipt of

FOUR COPIES OF OPINION AND ORDER

rendered by the Commission in Docket No. C-79081404

Under date of March 12, 1982 and accepts service

in behalf of PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

Herbert G. Zahn

Herbert G. Zahn
Assistant Counsel

DOCUMENT
FOLDER