

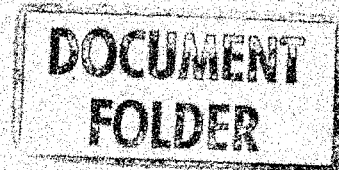


COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, Pa. 17120

January 2, 1985

IN REPLY PLEASE  
REFER TO OUR FILE  
C-79081404

Walter Galloway, Chairman  
Great Bend Township  
R. D. 2  
Box 103  
Susquehanna, PA 18847



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:

Enclosed is a copy of a proposed Recommended Decision prepared  
by Administrative Law Judge Edward R. Casey.

An original and nine (9) copies of signed exceptions to the  
decision, if any, MUST BE RECEIVED BY THE SECRETARY OF THE COMMISSION  
IN ROOM B-18, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH  
AVENUE, HARRISBURG, PENNSYLVANIA 17120 and a copy to each party of  
record within 15 days of the date of this letter.

Replies to the exceptions, if any, must be filed with the  
Secretary of the Commission within 20 days of the date of this letter.

Exceptions and reply exceptions shall obey 1 Pa. Code 35.212,  
particularly the 50 page limit.

Exceptions should be clearly labeled as "EXCEPTIONS OF (name  
of party) - (protestant, complainant, staff, etc.)". Do NOT label  
exceptions as a "Brief" or "Brief on Exceptions".

Any reference to specific sections of the Administrative Law  
Judge's Recommended Decision shall include the page number(s) of the  
cited section of the Decision.

All timely filed exceptions and replies thereto will be  
attached to the decision for consideration at Public Meeting. Late  
filed exceptions and late filed replies will not be attached.

cc: ALJ Casey/Office of ALJ/Bureau of Rail Trans./Law Bureau/Chairman  
Commissioners/OSA/Mr. Bramson

Very truly yours,

jr  
Enclosures  
Certified Mail  
Receipt Requested

*William H. Smith*  
William H. Smith  
Chief Administrative Law Judge

Similar letters to: see attached list



## RECOMMENDED DECISION

### I. HISTORY OF PROCEEDING

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 Thomas J. Jones. In his Initial Decision issued February 14, 1980, Judge Jones directed Conrail to prepare, at its initial cost and expense 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 a horizontal crack and concrete spalling condition, and to remove any unsound concrete in the lower portion of the wing wall. By Order of March 28, 1980, entered August 14, 1980, the Commission adopted the Judge's recommendation but ordered that the completion date be moved forward to July 1, 1981.

That Order, among other things, assigned to Conrail the responsibility for future maintenance of the entire structure, except for the highway wearing surface. It is this responsibility which is the subject of both Petitions addressed in this Decision. Conrail is 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. D & H seeks to have that obligation assigned to other parties in interest.

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. Conrail proposed to drive metal pilings behind the wing wall to relieve the horizontal pressure. 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. All parties were notified in advance and invited to attend.

At its Public Meeting on October 28, 1983, this Commission approved the costs incurred by Conrail for installing the piling, which amounted to \$29,844.01. Of this amount, Township of Great Bend reimbursed Conrail the sum of \$14,922.01 or 50% of the costs incurred. Further hearing was held before the undersigned on July 26, 1984 at Scranton, Pa. to receive evidence concerning the instant petitions.

## II. FINDINGS OF FACT

1. The legal title for the rail line on which the bridge is located is now held by D & H. (N.T. 54)
2. Presently there are two tracks at the crossing over which D & H operates 6 to 8 freight trains per day, with no change contemplated in the foreseeable future. (N.T. 56)
3. The wing wall is still broken loose from the bridge. (N.T. 60)
4. Rather than repairing the wing wall itself, Conrail, with the Commission's approval, installed sheet piling behind the wing wall to relieve the horizontal pressure on the wall. (N.T. 69)
5. Historically, the bridge was built by the original railroad company operating at the crossing and has been maintained by the railroad for the past 75 years. (N.T. 61)
6. While no actual count of highway traffic was made, it appears that a volume of 100 cars per day is a reasonable estimate. (N.T. 80) This consists mainly of local traffic. (N.T. 84)

## III. DISCUSSION

### 1. Assignment of Maintenance Responsibility.

By its Petition of January 21, 1983, Conrail has asked for modification of the P.U.C. Order of August 14, 1980, which assigns to Conrail the responsibility for maintenance of the entire bridge structure except for the highway wearing surface. Conrail desires that this responsibility be reassigned to D & H, to whom it has sold the rail line at the crossing.

D & H, for its part, objects to such a reassignment on the grounds that the bridge represents a public improvement of only minimal benefit or value to the railroad. Therefore, it has petitioned for reassignment to parties other than itself. To support its position, D & H presented testimony to establish that it only has 6 to 8 train movements per day, while it alleges that hundreds of motor vehicles use the bridge daily. This includes a substantial number of trucks against which D & H must compete for freight hauling business. (N.T. 57-58) Furthermore, D & H contends that it does not have the financial capability to maintain the structure, a statement echoed by Great Bend Township in its testimony concerning its own lack of resources. (N.T. 83)

Since D & H has acquired ownership of the rail line on which the crossing is located, it is clearly the successor to Conrail as the owner and operator of that line. This is at least one compelling reason for reassigning Conrail's maintenance responsibility to D & H. See Conrail v. Pa. P.U.C., 55 Pa. Cmwlth. Ct. 576, 423 A.2d 1108 (1980). Furthermore, the Commonwealth Court has stated that it is the presence and ownership of the track involved, not any benefit conferred, which places liability on the railroad. Pa. P.U.C. v. Southeastern Pennsylvania Transportation Authority, 21 Pa. Cmwlth. Ct. 106, 343 A.2d 371 (1975).

The arguments offered by D & H concerning traffic volume and class and benefit to the railroad were previously considered in making the assignment of maintenance to Conrail under the 1980 Order. Nevertheless, the Commission came to the conclusion that Conrail should be responsible for most of the maintenance of the

structure, especially in light of the fact that the Township was bearing 50% of the cost of the repair to the wing wall.

If D & H had been able to demonstrate that circumstances have changed so much at the crossing since the 1980 decision, so as to warrant reconsideration, we might have been persuaded to reconsider our assignment of maintenance. However, there has been no evidence of significant changes since the prior Order. We note that the bridge was built by the railroad operating there and has historically been maintained by the railroad. Furthermore, contrary to the D & H allegations, the evidence shows no truck traffic and a motor vehicle volume of about 100 cars per day. D & H contends that its traffic of 6 to 8 trains per day is insignificant when compared to the motor vehicle traffic. We disagree. Each train is made up of numerous cars, although no specific number was submitted into evidence, which makes the rail movements more significant when compared to the motor vehicle traffic. Surely the ease of operation to the railroad caused by the presence of the bridge is a substantial benefit, since D & H would have to maintain the crossing and warning devices which would be present if the two "at-grade" crossings had not been replaced by the bridge. This has been admitted. (N.T. 59) Finally, 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. For these reasons, it is appropriate that D & H inherit Conrail's entire maintenance responsibility, and we will so order.

## 2. Safety at the Bridge

Testimony by D & H raises the issue of whether the condition of the bridge is considered safe. Specifically, the witness did not feel it was safe (with respect to the railroad) to leave the broken portion of the wing wall in place. There is some danger that broken material might fall onto the railroad tracks, a concern shared by the Township. (N.T. 60, 78)

In response to this, Conrail's technical witness testified that there is no real danger posed by this situation. In his opinion, even if the wing wall fell down, it would not fall on the track, since the ground at the bottom of the wall is not occupied by a track, and the falling portion of the wall would not reach the two operating tracks. (N.T. 72, 73)

However, that testimony conflicts with information submitted by Conrail in its inspection notices filed prior to the repair work done under the revised plan. We take judicial notice of the report of September 16, 1982 submitted to us by J. T. Sullivan, P.E., on behalf of Conrail, which demonstrates that the top portion of the wing wall could fall and block one of the railroad tracks since it was still leaning out toward the track and was cracked across its entire length approximately nine (9) feet below the top of the wall.

Thus it appears that concern about possible collapse is warranted.

In weighing that possibility, we note the following facts:

This condition has existed since at least 1974. (See Initial Decision dated January 29, 1980, p. 14, adopted by Commission

in its Order of March 28, 1980) The installation of sheet piling by Conrail in 1982 should have relieved the horizontal pressure on the wall, thereby eliminating the force which would lead to a collapse. Therefore, we would anticipate that the horizontal movement of the wall has been arrested, and the danger of collapse reduced. Unfortunately, there has been no current data submitted into evidence by which we could properly evaluate this condition. Accordingly, it appears the best course of action would be to order D & H to inspect the wing wall and report to this Commission the measurements of the width of the crack opening, (10-3/4" on Conrail's last report) and the distance which the top of the wall has pushed out from the bottom, which was typically given as 14 inches in Conrail's reports. We will order D & H to make these measurements monthly for one whole year, after having consulted with Conrail's inspector who made the original reports, to insure that the measurements are made in the same location and manner. We will then evaluate this information to determine if the cracking and shifting at the wall has stabilized or is continuing to propagate and move, thus requiring further action.

### 3. Permanency of the Repair

The final issue raised at the hearing which must be addressed is the permanency of the repair made by installing piling behind the wing wall, which has been characterized as a "temporary fix." (N.T. 60) No figures or opinions were entered into the record to show the estimated life expectancy of the repair. Certainly the piling cannot be expected to last as long as a solid

concrete wall in good repair. On the other hand, there is no apparent reason why it would not provide adequate retention for an extended period of time. As one witness observed, it is holding the road satisfactorily and appears to be a good job. (N.T. 78) Furthermore, in view of the fact that the repair cost incurred was only about one-fourth the expense of repairing the wing wall, it would appear that the method used was justifiable unless further inspections reveal that the wing wall is still moving.

#### IV. CONCLUSIONS OF LAW

1. This Commission has jurisdiction over the parties and the subject matter of this proceeding.

2. The bridge involved in this proceeding was originally constructed by a railroad company approximately 75 years ago and that railroad or its successors and assigns have traditionally retained responsibility for maintenance of the entire bridge structure, with the exception of the highway wearing surface.

Therefore, absent tangible evidence of some substantial change in the facts, circumstances and conditions relating to the use and the purpose served by the subject bridge, this Commission has no real basis upon which to order any departure from "status quo" with respect to whose duty it is to continue to maintain this above-grade rail crossing in a reasonably safe condition.

3. Any alteration or repair to a bridge which is either shown by competent evidence or conceded to be "temporary" in nature gives rise to a duty to closely monitor and inspect the structure for future defects and this responsibility must be faithfully performed in the interest of public safety.

V. RECOMMENDED ORDER

THEREFORE:

IT IS HEREBY RECOMMENDED:

1. That the Petition of Consolidated Rail Corporation for Modification of the Order entered on August 14, 1980 is hereby granted, and that ordering paragraph 14 of that Order, which now reads:

"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."

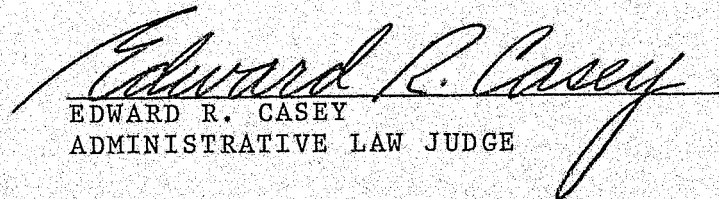
be modified so that it will henceforth read as follows:

14. 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.

2. That the Petition of Delaware and Hudson Railway Company, dated January 13, 1984, to have a party or parties other than itself assume maintenance responsibility for the bridge is hereby denied.

3. 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.

4. That the Bureau of Rail Transportation of this Commission monitor the reports submitted pursuant to paragraph 3 of this Order and notify the Commission if further repairs or hearings are deemed necessary due to movement of the wing wall or other safety-related considerations.

  
EDWARD R. CASEY  
ADMINISTRATIVE LAW JUDGE

DATED: December 18, 1984

