

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

BOROUGH OF FOLCROFT

COMPLAINT NO.

VS.

PENN CENTRAL TRANSPORTATION :  
COMPANY, DEPARTMENT OF :  
TRANSPORTATION OF THE :  
COMMONWEALTH OF PENNSYLVANIA :  
COUNTY OF DELAWARE, AND :  
SOUTHEASTERN PENNSYLVANIA :  
TRANSPORTATION AUTHORITY :

C. 20235

Coal Building  
North Orange & 2nd Streets  
Media, Pennsylvania

Thursday, May 10, 1977

BEFORE: HONORABLE MARTIN R. FOUNTAIN  
ADMINISTRATIVE LAW JUDGE

THIRD HEARING

DOCKETED  
COMPLAINT DOCKET

JUN 28 1977

ENTRY No. C

RAPID REPORTING SERVICE, INC.

SUITE 1102-10  
1405 LOCUST STREET  
PHILADELPHIA, PA. 19102  
732-4334-5

DOCUMENT  
FOLDER

NO REPLY  
FILE

1 APPEARANCES:

2 MURRAY S. ECKELL, ESQ.,  
3 Attorney for Complainant.

4 HERBERT G. ZAHN, ESQ.,  
5 Attorney for Department of  
6 Transportation of the Commonwealth  
7 of Pennsylvania.

8 JOEL E. MAZOR, ESQ.,  
9 Attorney for Consolidated  
10 Rail Corporation.

11 T. H. MAHER CORNELL, ESQ.,  
12 Attorney for Philadelphia Electric Co.

13 JUDITH B. SOKEN, ESQ.,  
14 Attorney for Southeastern Pennsylvania  
15 Transportation Authority.

16 JOSEPH A. DEMICO, ESQ.,  
17 Attorney for Borough of Glenolden.

18 RICHARD TINUCCI, ESQ.,  
19 Attorney for Borough of Sharon Hill.

20 MATTHEW J. GREEN, ESQ.,  
21 Attorney for National Railroad  
22 Passenger Corporation.

23  
24

I N D E X

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

WITNESSES

	PAGE			
	DIR.	CR.	REDIR.	RECR.
Howard A. Sellers	4	15	83	86
George Kilmartin	24	41		
Robert Horne	50	55		
Louis Cheifetz	57	63,75		
Stafford C. Walker	69	72		
Edward J. Silver	77			
Robert K. Shimer	79	80		

E X H I B I T S

		<u>MARKED</u>	<u>Rec'd</u>
F-13 ✓	Envelope consisting of sixteen photographs.	28	
*F-13	Sixteen photographs contained A thru P in Complainant's Exhibit F-13	30	
PennDOT EXHIBIT NO. ✓ 7	Single page drawing	12	24
*Note:	Only one set of photographs received by reporter.		

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

(10:00 o'clock A.M.)

THE ADMIN. LAW JUDGE: Let the hearing begin.

This is Complaint No. C 20235. I believe that the parties have a series of questions propounded by the Commission, and you are expected to produce evidence in answer to the queries posed.

Mr. Zahn.

MR. ZAHN: If Your Honor please, the Commission proposed questions and procedures under the date of December 19, 1976 and I ask that the question procedure be transcribed in the record, and we refer to the questions and answer those questions if there are no objections to the other parties?

THE ADMIN. LAW JUDGE: All right, motion granted.

MR. ZAHN: I call Mr. Sellers.

THE ADMIN. LAW JUDGE: Mr. Sellers, please.

HOWARD A. SELLERS, sworn

THE ADMIN. LAW JUDGE: Okay Mr. Zahn.

DIRECT EXAMINATION

BY MR. ZAHN:

Q Would you please state your full name for the record?

1 A Howard A. Sellers.

2 Q And your official office address?

3 A Room 1120, Transportation And Safety Building, Harris-  
4 burg, Pennsylvania.

5 Q And by whom are you employed?

6 A By the Pennsylvania Department of Transportation.

7 Q In what capacity?

8 A Civil Engineer.

9 Q Have you testified in this matter in prior hearings?

10 A Yes, sir, I have.

11 Q And you are familiar with the question procedures  
12 prepared by the Commission?

13 A I am.

14 Q In reference to Question #1, what is the Department's  
15 reply?

16 A The Department of Transportation requires an extension  
17 of time for the following reasons:

18 1. Numerous inaccuracies in the present  
19 preliminary plan are due mostly to plans being placed on  
20 hold for almost ten years. Numerous Department plan pro-  
21 cedures have changed in the past ten years, also, field  
22 physical changes have taken place during the same period  
23 of time.

24 2. The Department is anticipating a small

1 alignment change to the left in hopes of minimizing right-  
2 of-way damages and adverse impact on the involved project  
3 area.

4 3. Alignment change would require re-  
5 surveys for new cross-sections, profiles and to incorporate  
6 additions of any new topographical features built within  
7 the last ten years.

8 4. The Department has until this date been  
9 unable to enter Amtrak's right-of-way lines to complete its  
10 new survey. Railroad protective liability insurance for  
11 entry upon Amtrak's Property Agreement #58499 is presently  
12 being processed to potentially remedy this problem.

13 5. PennDot at the February 25, 1975 hearing  
14 testified as follows, and I quote, "The Pennsylvania  
15 Legislature is approving," actually that should have been  
16 in approving but the record shows is approving, "in approving  
17 the 1973-74 capital budget approved funding legislative  
18 Route 420, Section 2 (Primos Avenue) for design, therefore,  
19 the Department will agree to prepare construction plans for  
20 the proposed four-lane highway generally in conformance with  
21 PennDot Exhibit #1. The anticipated time required by the  
22 Department to complete said plans is a maximum of two years  
23 with a possibility that it might take up to three years.  
24 The environmental impact statement would take one to two

1 years depending on the local governing bodies and the  
2 people. Final design should take a period of one year to  
3 complete."

4 Said direct testimony by myself is found on  
5 Page 94 of the transcript of said hearing. Please note  
6 that the two to three years anticipated by the Department  
7 to complete the required plans did not include a line  
8 shift and changing railroad ownership and/or operations.  
9 The Department's estimate of time was the most accurate  
10 available at the time.

11 Also, note the Public Utility Commission at  
12 its public meeting held May 13, 1975, ordered the Depart-  
13 ment to prepare the plans in a period of fifteen months.

14 MR. ECKELL: If Your Honor please, I would  
15 like at this time to enter an objection to the response.  
16 It is not responsive to the question, and I would move that  
17 it be stricken. Every one of the itemized numbers just  
18 read are excuses for non-performance, they are not reasons  
19 for extensions of time. It is ludicrous, absolutely ludicrous  
20 for the safety of the public in the Borough of Folcroft and  
21 all other people of this Commonwealth who use that facility  
22 to have to wait until someone is killed before action is  
23 taken. None of these are reasons for extension of time.  
24 I submit that they are excuses and are totally unresponsive

1 to the question posed.

2 MR. ZAHN: I am going to reply to that. The  
3 reasons you label "excuses," they are in fact reasons, and it  
4 is beyond the Department's ability to proceed with that  
5 matter because of the matter that was testified to, and I  
6 don't think this is the proper time, Your Honor, to make  
7 any objection to the testimony.

8 MR. ECKELL: I am going to place the maximum  
9 amount of pressure available to me on behalf of the Borough  
10 of Folcroft upon this Commission to compel action, and I  
11 want every Commissioner who reads this report to know they  
12 are subjecting themselves to perhaps personal liability  
13 in the event there are any injuries or deaths due to non-  
14 action. And I want the record to be replete that my in-  
15 sistence that some mandatory directive proceed immediately  
16 from the Commission to PennDot or anyone else who may be  
17 responsible for the bridge replacement, and we will see to  
18 the enforcement of that decree to the Court System.

19 THE ADMIN. LAW JUDGE: Well, I am going to  
20 overrule your objection. I will permit the testimony to  
21 stand. This is an administrative hearing Mr. Eckell.

22 I will note your objection on the record,  
23 but I am here to develop facts and --

24 MR. ECKELL: I submit to you sir, we have

1 not heard any facts, we have heard an excuse. Let us look  
2 at them, let us examine them --

3 MR. ZAHN: All of these are arguments and  
4 something --

5 THE ADMIN. LAW JUDGE: Now wait a minute. I  
6 overruled the objection. I was giving Mr. Eckell my basis,  
7 although I do not have to, but this it is going to provoke  
8 cross-table argument, I am just going to give my ruling,  
9 and you have an exception. All right I overrule the objection,  
10 the objection is overruled. Proceed Mr. Zahn.

11 BY MR. ZAHN:

12 Q Question #2, would you kindly answer that?

13 A As previously stated, the numerous plan inaccuracies  
14 are due mostly to the ten year period since their initiation  
15 and numerous changes in departmental procedures in preparing  
16 highway and structure plans. Some of the department pro-  
17 cedures that have changed and continue to change daily are  
18 the department highway standards, the Department's Form 408  
19 Specifications, also Department and Federal design procedures  
20 have become much more public oriented with public meetings  
21 and environmental impact studies required for Federal and  
22 State funding approval. Probably the last one I just  
23 mentioned is the most important and the most time consuming  
24 the Department has to follow. Also, as previously stated

1 because of an expected small highway alignment shift to  
2 the left to minimize property damage and social and economic  
3 impact on the involved area, the Department will be required  
4 to re-survey the entire area for new cross-sections, profiles,  
5 and to incorporate addition of any new topographical features  
6 built within the last ten years.

7 Q Question #3, would you answer that?

8 MR. ECKELL: I renew my objection for the  
9 same basis.

10 THE ADMIN. LAW JUDGE: Objection is overruled  
11 and you have a continuing exception.

12 THE WITNESS: The Department upon getting  
13 approval to enter railroad right-of-way to complete its  
14 surveying estimates it will take six to eight months in  
15 which to complete its preliminary right-of-way plan. The  
16 construction plan cannot be completed until the Department  
17 justifies the proposed highway alignment shift, which  
18 justification must be based, among other things, on the  
19 outcome of a public meeting at which time the public after  
20 a detailed plan presentation to them by the Department  
21 personnel, may voice its pros, cons and/or comments. The  
22 cost incurred by the Department for plan preparation are  
23 unknown at this time.

24 MR. ECKELL: I renew my objection.

1 THE ADMIN. LAW JUDGE: Objection overruled,  
2 you have an exception.

3 BY MR. ZAHN:

4 Q In connection with Question #4, kindly answer that?

5 A The signs posting the Primos Avenue Bridge for a maximum  
6 weight limit of seven tons are still in existence at the  
7 crossing and on the highway approaches thereto.

8 Q Question #5, would you answer that one.

9 A The Department has not performed an in-depth bridge  
10 inspection of the subject bridge and therefore, is unable  
11 to present testimony on the general condition of the bridge  
12 and whether said bridge should be posted for a maximum  
13 weight limit less than seven tons.

14 Q Question #6, would you answer that?

15 A The Department of Transportation does not agree to make  
16 an in-depth inspection of the Primos Avenue Bridge. It is  
17 the Department's opinion that the party legally responsible  
18 for maintaining the subject structure should be required to  
19 make the in-depth bridge inspection.

20 MR. ECKELL: May I ask at this point who  
21 the Department says the primary responsible party for that is?

22 MR. ZAHN: You have the right to cross-examine  
23 this witness, sir.

24 THE ADMIN. LAW JUDGE: I think he put the

1 question to me Mr. Zahn.

2 I will repeat what Mr. Zahn just said, you  
3 have the right of cross-examination.

4 MR. ECKELL: The question was raised to  
5 merely indicate that the Department is not properly answering  
6 the question. If it says someone else is responsible it  
7 should so state in a direct answer.

8 THE ADMIN. LAW JUDGE: We understand that.

9 MR. ZAHN: Your Honor, I have three copies  
10 of a drawing that I ask be marked as PennDot Exhibit #7.  
11 All parties have received a copy of this, and I have three  
12 copies for the Court Reporter.

13 THE ADMIN. LAW JUDGE: It will be marked  
14 PennDot's Exhibit #7.

15 (Single page drawing marked as PennDot's  
16 Exhibit #7 for identification.)

17 BY MR. ZAHN:

18 Q Question #7, is that the Department submitted evidence--  
19 copies of a plan showing alternate routes, would you answer  
20 that?

21 A PennDot Exhibit #7 consists of one sheet of paper  
22 showing the alternate routes for vehicles weighing in excess  
23 of the posted seven-ton weight limit on the Primos Avenue  
24 Bridge. One, the first crossing to the west is that of

1 South Avenue, L.R. 23091. The railroad tracks pass over-  
2 head with a clearance of eleven feet, ten inches. The  
3 crossing is directly over the intersection of South  
4 Avenue and Chester Pike, L.R. 180, therefore, columns  
5 are situated in the intersection.

6 Two, the second crossing to the west is that  
7 of Amosland Road, L.R. 23113. Amosland Road passes above  
8 grade of the same railroad tracks. There is no weight  
9 limit on this bridge.

10 The third crossing to the west is that of  
11 Lincoln Avenue, L.R. 130A (T.R. 420). Lincoln Avenue  
12 passes below the grade of said railroad tracks. A vertical  
13 clearance of twelve feet exists at this bridge.

14 Four, the first crossing to the east is that  
15 of Sharon Avenue, L.R. 23072. Sharon Avenue passes above the  
16 grade of said tracks. Sharon Avenue is presently being re-  
17 paired and it is estimated by the Department that said  
18 bridge will be opened for traffic by July 1, 1977. Upon  
19 opening this bridge will be posted for fifteen tons.

20 The second crossing to the east is that of  
21 Calcon Hook Road, L.R. 23073. Calcon Hook Road passes  
22 above the grade of said tracks and is posted for a seven-  
23 ton load limit.

24 The third crossing to the east is that of  
Rapid Reporting Service, Inc.

1 Island Avenue, L.R. 67281. Island Avenue crosses below  
2 the grade at said tracks and has a vertical clearance of  
3 14.7 feet to 15.3 feet due to it being an arch type structure.

4 The fourth crossing to the east is that of  
5 65th Street, L.R. 67320. 65th Street crosses above the  
6 grade of the same railroad tracks and has no weight limit.

7 The only crossings evaluated were those of  
8 State Highways.

9 Q And regarding Question #8, would you answer that?

10 A The Department of Transportation has performed routine  
11 highway maintenance on the approaches to the subject crossing,  
12 along with periodical bituminous patching on the structure  
13 itself.

14 Q Now, is there anything further you wish to add at this  
15 time?

16 A No, sir.

17 MR. ZAHN: The witness is available for  
18 cross-examination.

19 THE ADMIN. LAW JUDGE: Mr. Mazor do you have  
20 any questions?

21 MR. MAZOR: No, I have no questions.

22 THE ADMIN. LAW JUDGE: Mr. Cornell, do you  
23 have any questions?

24 MR. CORNELL: I have one question, more of

1 information, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. CORNELL:

4 Q The repair on the Sharon Avenue Bridge, is that a PUC  
5 matter?

6 A Yes, sir, it is.

7 Q Do you know that --

8 A ID 225, let me verify that.

9 MR. MAZOR: That is right, Calcon Hook  
10 and Sharon Avenue both are included under that procedure.

11 BY MR. CORNELL:

12 Q IE 225?

13 A ID 225.

14 THE ADMIN. LAW JUDGE: Is that it?

15 MR. CORNELL: Yes.

16 THE ADMIN. LAW JUDGE: Mr. Eckell do you  
17 have any cross-examination?

18 MR. ECKELL: Yes.

19 BY MR. ECKELL:

20 Q Mr. Sellers, does your Department maintain time records  
21 with particular jobs?

22 A Projects, yes.

23 Q Do you have a maintained time record with respect to  
24 this job, this bridge in question?

1 A Time records, in what respect?

2 Q How much time the Department has spent working on it?

3 A There will be, this will be records showing the amount  
4 of time placed on them, yes they are very cumbersome.

5 Q How much time has the Department spent on this project  
6 since the PUC order directing you to prepare plans?

7 A I do not have that particular time available at this  
8 time. However, there have been delays beyond our control,  
9 one being not being able to get on the railroad right-of-way.

10 MR. ECKELL: Well, may I ask that PennDot  
11 be directed to make a part of this record a detailed state-  
12 ment of all hours spent on this project since the last PUC  
13 order.

14 MR. ZAHN: I object to that, Your Honor.

15 THE ADMIN. LAW JUDGE: I think that is  
16 a reasonable request.

17 MR. ZAHN: It is unreasonable.

18 THE ADMIN. LAW JUDGE: Why?

19 MR. ZAHN: It would take hours and hours  
20 to get the hours that he wants.

21 MR. ECKELL: I don't want hours, I want  
22 what you have done. I submit it is not going to take you  
23 long at all.

24 MR. ZAHN: I believe that Counsel does not

1 understand the workings of a department like the Department  
2 of Transportation. There are various divisions, many  
3 people involved in these various departments, and it is  
4 just not a simple thing of taking a time sheet and adding up  
5 hours.

6 MR. ECKELL: I do not want a bureaucratic  
7 answer where the life and limb --

8 MR. ZAHN: This is not a bureaucratic  
9 answer.

10 THE ADMIN. LAW JUDGE: I do not want any  
11 gratuitous comments as to what kind of an answer it is,  
12 otherwise this will break down into a shouting match.

13 Off the record.

14 (Discussion off the record.)

15 MR. ECKELL: Can we have a ruling from the  
16 Examiner as to my request for time records?

17 THE ADMIN. LAW JUDGE: Your witness indicated  
18 that there is such a time record in existence, didn't he?

19 MR. ZAHN: No.

20 THE ADMIN. LAW JUDGE: Is there such a time  
21 record in existence from this project, Mr. Sellers?

22 THE WITNESS: There would be a record of  
23 time spent but it doesn't show the problems involved of  
24 following set procedures that we have to follow regardless

1 of what orders or when we have to complete the plans, and  
2 we have to follow set procedures.

3 It wouldn't show a true picture without an  
4 extensive backup of explanation.

5 THE ADMIN. LAW JUDGE: I will reserve my  
6 ruling on your request, Mr. Eckell.

7 MR. ECKELL: Fair enough.

8 BY MR. ECKELL:

9 Q When was the last time you personally examined the  
10 bridge, Mr. Sellers?

11 A I looked at the bridge approximately two to three  
12 weeks ago.

13 Q And when was the last time you examined it prior to  
14 that?

15 A I don't recall it, I would say it was at least a year  
16 ago prior to that.

17 Q Was the condition at the time of your most recent  
18 examination, was the condition of the bridge better than,  
19 the same as, or worse than it was at the time of your  
20 preceeding examination?

21 A What do you mean by condition?

22 Q General condition in terms of the bridge approaches,  
23 the bridge itself, in terms of the understructure, the  
24 surface, and general safety characteristics?

1 A I would say the approaches are generally the same.  
2 The bridge bearing surface is approximately the same-- I  
3 didn't go into any extensive reviewing of the understructure.  
4 I did not see anything different than I had a year ago.

5 Q Are you aware that the Railroad Company has certified  
6 to the PUC the maximum safe tonage for crossing was seven  
7 and one-half tons?

8 A Yes, sir.

9 Q And that the PUC ordered it posted for a maximum of  
10 seven tons?

11 A That is correct.

12 Q Are you aware of the weight of any of the fire  
13 facilities of the Folcroft Fire Company?

14 A I believe that would be up to their testimony. I  
15 think if I recall prior testimony that it is in excess to  
16 seven tons.

17 Q If I told you it was thirteen tons plus, will that  
18 refresh your recollection?

19 A It doesn't, but I could believe that it could be that.

20 Q Does that in itself cause a safety problem?

21 A That would cause a problem, yes, sir.

22 Q Do I understand your testimony to be that the basic  
23 reason for your need of an extension of time is lack of  
24 funds?

1 A We have funding to prepare design, we do not have the  
2 funds for construction. It is a Federally funded project,  
3 therefore, we must follow all the government, Federal  
4 Government and State Government procedures necessary to  
5 get approval for State and Federal funding.

6 Q All right. When you say it is Federally funded, you  
7 mean that because of the road and its certification as  
8 available for Federal funding that you have the ability  
9 on this road to get Federal funds; is that what you mean?

10 A Partial Federal funds, that is correct?

11 Q It does not mean that you could not spend PennDot's  
12 money without Federal funding if you were so inclined?

13 MR. ZAHN: I object to that. That is a  
14 legal matter --

15 THE ADMIN. LAW JUDGE: Objection overruled.  
16 Do you know the answer to the question?

17 THE WITNESS: There is no state funds  
18 available for this project on a 100% basis. We haven't  
19 built any that I know of for a couple of years.

20 MR. ECKELL: Your Honor, this is the  
21 exact reason for my objection. I am stating it very quietly  
22 and very calmly, the excuse for the delay, and it is an  
23 excuse, they do not have the money. I am willing on behalf  
24 of the Borough of Folcroft to take the problem of enforcing

1 a directive to them.

2 Let us worry about where their money comes  
3 from. Give us the vehicle, give us the tool by which to  
4 force this action. We must have your order to do it. Let  
5 us not worry about where the money comes from, let's get  
6 the judgement first, as they say. I will worry about  
7 collecting it, I have faith in the Courts that they will,  
8 because of the safety of the public involved, compel action  
9 in this matter.

10 THE ADMIN. LAW JUDGE: Do you think that is  
11 a matter to be argued before the Commission?

12 MR. ECKELL: The Commission must issue an  
13 order --

14 THE ADMIN. LAW JUDGE: Right, and you have  
15 the opportunity to prepare a brief and oral argument. I  
16 am not going to rule on that question now.

17 MR. ECKELL: Okay.

18 BY MR. ECKELL:

19 Q Do you know when the bridge was first built, Mr.  
20 Sellers?

21 A In the late 1800's according to the records.

22 Q Do you know when the automobile was invented, Mr.  
23 Sellers?

24 MR. ZAHN: Objection.

1 THE ADMIN. LAW JUDGE: Objection sustained.

2 MR. ECKELL: I think it is very relevant  
3 to show how outdated this bridge is to carry thirteen-ton  
4 fire vehicles when it was built prior to the invention of  
5 the automobile.

6 THE ADMIN. LAW JUDGE: I sustain the objection.  
7 Move on Mr. Eckell.

8 MR. ECKELL: I have no further questions, if  
9 I am going to get this kind of treatment, it is in the hands  
10 of the Commission, I have no further questions.

11 THE ADMIN. LAW JUDGE: I do not appreciate  
12 your gratuitous comments. I run this hearing the best way  
13 I can.

14 MR. ECKELL: Well, I'm sorry this Examiner  
15 feels --

16 MR. ZAHN: It's not an Examiner, he is a  
17 Judge, an Administrative Law Judge.

18 MR. ECKELL: I am sorry, I apologize to the  
19 Court.

20 THE ADMIN. LAW JUDGE: No apology necessary.

21 MR. ECKELL: If the Judge doesn't see the  
22 importance of the bridge being originally built for  
23 automobile traffic prior to the invention of the automobile,  
24 if you don't see the relevancy of that --

1 THE ADMIN. LAW JUDGE: You have the date,  
2 you have the date.

3 MR. ECKELL: I have no further questions.

4 THE ADMIN. LAW JUDGE: All right. You have  
5 the opportunity to examine the witness. If you want to  
6 break off because of an adverse ruling, that certainly is  
7 your privilege.

8 MR. ECKELL: No, not because of an adverse  
9 ruling, but because of an attitude that is being demonstrated  
10 both by PennDot and the Judge. I have no further questions.

11 MR. ZAHN: I object to that, Your Honor.

12 THE ADMIN. LAW JUDGE: Yes and I am going  
13 to object to it too. And I am going to ask you to watch  
14 your conduct.

15 MR. ECKELL: Objection overruled.

16 THE ADMIN. LAW JUDGE: I am going to ask  
17 you to watch your conduct.

18 MR. ECKELL: All right. I apologize to the  
19 Court.

20 (Witness excused.)

21 MR. ECKELL: I might add this is the most  
22 action we've had in two years.

23 THE ADMIN. LAW JUDGE: All right Mr. Eckell  
24 call your first witness.

1 MR. ZAHN: Mr. Examiner, before you proceed  
I move for the admission of PennDot's Exhibit #7.

2 MR. ECKELL: I object.

3 THE ADMIN. LAW JUDGE: Objection overruled.  
4 It will be admitted.

5 (PennDot's Exhibit #7 received in evidence.)

6 MR. ECKELL: Councilman Kilmartin, please.

7 THE ADMIN. LAW JUDGE: Councilman, have you  
8 testified before in this matter?

9 THE WITNESS: Yes, sir.

10 THE ADMIN. LAW JUDGE: How long ago was it?

11 THE WITNESS: Approximately two years.

12 THE ADMIN. LAW JUDGE: Then I will swear you  
13 in.

14 GEORGE KILMARTIN, sworn.

15 THE ADMIN. LAW JUDGE: Please state your  
16 name and address for the record, please.

17 THE WITNESS: George Kilmartin, Councilman,  
18 Borough of Folcroft, address 1101 East Ashland Avenue,  
19 Folcroft.

20 DIRECT EXAMINATION

21 BY MR. ECKELL:

22 Q Mr. Kilmartin, what is your capacity with the Borough  
23 of Folcroft?

24 A Councilman in charge of Board of Health.

1 Q And how long have you been a Councilman in the  
2 Borough of Folcroft?

3 A Three years, four months, ten days.

4 THE ADMIN. LAW JUDGE: Off the record.

5 (Discussion off the record.)

6 BY MR. ECKELL:

7 Q Does the Borough of Folcroft have any objection to  
8 granting to PennDot an extension of time of two years in  
9 which to complete detailed construction plans for the  
10 improvement of the Primos Avenue Bridge?

11 A Yes, sir.

12 May I elaborate on that?

13 Q Please do.

14 A Is that permissible?

15 THE ADMIN. LAW JUDGE: Yes, it is.

16 THE WITNESS: Might I say, and I don't --  
17 unaccustomed as I am to this type of a hearing, I have,  
18 which I would like to introduce at the proper time, some  
19 photographs here. As it's been stated previously I was at  
20 a previous hearing. Certain orders were handed down by the  
21 PUC, certain things were going to happen. It never  
22 materialized. Nothing happened. The expense of patching  
23 the holes of the bridge has in most cases fell to the  
24 Borough of Folcroft. We are the guardians, we are the

1 watchers, we have to be concerned that a Metroliner don't  
2 come through there and a cement truck don't fall through.  
3 From time to time the Borough felt under a heavy load and  
4 as much of a load as the bridge has on it now, in that our  
5 responsibility in other words, to the safety and welfare  
6 of our people and to the railroad or anybody else that  
7 bridge collapses on, it is beyond our capabilities to take  
8 that kind of responsibility because there is no action either  
9 on a State level. And I might be so blunt as to say the  
10 PUC orders in my opinion, personally, have not been carried  
11 out. If the PUC cannot get the respect and their orders  
12 cannot be carried out, and we must go into a situation  
13 where everybody has an answer. There are gentlemen here  
14 stacking the room and in my opinion again, the small borough  
15 in which the PUC and everyone wants us to have a responsible  
16 approach to I find no responsibility on the higher level  
17 of government. So be it, thank you.

18 BY MR. ECKELL:

19 Q Now, Mr. Kilmartin, can you give us some testimony  
20 concerning comparative conditions of the bridge in the  
21 past two years. What has happened with it?

22 A Well, the actual structure itself and I am not an  
23 engineer, I make that point known, the only thing that I  
24 have to go on are these photographs that I have here.

1 Q What have you personally observed, and we will let  
2 the engineers tell us what that means. What have you  
3 personally observed?

4 THE ADMIN. LAW JUDGE: Wait a minute. Are  
5 you going to have any technical testimony?

6 MR. ECKELL: No, sir. It is so obvious we  
7 don't really need it.

8 THE WITNESS: I would -- I, -- what I have,  
9 the rock salt and the various agents to keep the bridge  
10 opened in the winter time have deteriorated. The wooded  
11 structure underneath, and this bridge is primarily held up  
12 by wooded structures, its main supports are wood, and I  
13 find a deterioration of the wood. And I find a rust factor  
14 that indicates in-depth that in some places the steel on  
15 this bridge or I don't even know if the word would be steel,  
16 Your Honor, I am not sure of the process of that time. But,  
17 it indicates that it has in some places deteriorated by  
18 a half-inch of its thickness. In other words, over a period  
19 of time in the last two years deterioration, no painting,  
20 no preventative maintenance is indicated. It is fast  
21 decaying at a rapid rate and is accelerating.

22 BY MR. ECKELL:

23 Q Have you brought photographs with you today?

24 A Yes, sir.

1 Q And I have an envelope here, does this describe the  
2 date and the time the photographs were taken?

3 A Yes, sir.

4 Q Were you personally present at the time they were  
5 taken?

6 A Yes, sir, and I am also in the photographs as an  
7 additional backup fact.

8 Q May we have this envelope marked collectively as  
9 Folcroft Exhibit #13, consisting of sixteen photographs.

10 (Envelope consisting of sixteen  
11 photographs marked Complainant's Exhibit #13 for  
12 identification.)

13 BY MR. ECKELL:

14 Q Without taking the time of specifically reviewing  
15 the subject matter in each one of the sixteen photographs,  
16 are there certain photographs upon which you wish to make  
17 specific comment?

18 A Yes, sir.

19 Q Would you please do so by referring to the identifica-  
20 tion on the particular bridge and describing it. Will you  
21 give your comments?

22 A This is a picture of the insulators two years ago,  
23 Your Honor, an order come down from the PUC to fix these.  
24 As far as I know it's never been carried out. Being a man

1 involved in the electrical trade I would like to state I  
2 don't think in any sense that this could pass underwriter's  
3 inspection.

4 Q What are you pointing to Mr. Kilmartin, a picture of  
5 what?

6 A I would call it a shabby attempt at wiring. May I  
7 indicate sir, that there are many children as you will see  
8 in the proceeding photographs that are very available to  
9 grab a hold of these lines.

10 Q Where are those lines located in terms of the bridge  
11 itself?

12 A On the south side.

13 Q Is it below the bridge or the bridge level, where is  
14 it?

15 A It starts at the peeling way embankment and exceeds  
16 underneath and up to some lighting. This is supposed to  
17 light the bridge.

18 Q Do pedestrians cross at about the location of this  
19 wiring?

20 A Yes, sir.

21 Q Okay.

22 A Now, this is a picture that also -- this is a close-  
23 up that is a picture of the same wiring conditions that  
24 prevails, and of course this is the concrete reinforcement

1 deteriorating, and here is part of the roadbed which has  
2 started to deteriorate.

3 THE ADMIN. LAW JUDGE: Don't you think we  
4 should mark these photos each individually like A, B, C  
5 because otherwise --

6 MR. ECKELL: You better mark the first one  
7 A.

8 (Sixteen photographs contained in  
9 Complainant's Exhibit F-13 marked as Complainant's  
10 Exhibit F-13A thru P for identification.)

11 BY MR. ECKELL:

12 Q What does the picture D depict?

13 A It is a shot, a photograph looking straight down on  
14 the bridge. What we see in this photograph, Your Honor,  
15 which is a very difficult position to take, the gentleman  
16 did a nice job. This area in here is patched as of today.  
17 But I must say too, that a Volkswagen going over this area  
18 at the time sagged and brought movement through this area.  
19 Now, from time to time your Honor --

20 THE ADMIN. LAW JUDGE: How do you know that?

21 THE WITNESS: I was there, sir, on the scene.  
22 It is obvious and our Chief of Police, who was with me on  
23 that particular day could back up the statement, that this  
24 is constantly under movement and in other words, that is

1 why we cannot keep patches on it.

2 THE ADMIN. LAW JUDGE: Was that patchwork  
3 done by PennDot or the Borough of Folcroft?

4 THE WITNESS: On many occasions it is done  
5 by the Borough of Folcroft.

6 THE ADMIN. LAW JUDGE: What is the reason  
7 for that?

8 THE WITNESS: Time factors, notifications  
9 and the time period that would transpire to get PennDot to  
10 respond. This is part of the -- I am going to refer to  
11 it for want of a better name, the catwalk or the sidewalk  
12 area of the bridge where there is becoming a definite  
13 separation and a small child could, as I will indicate by  
14 other photos, could put his foot right straightthrough  
15 here.

16 BY MR. ECKELL:

17 Q Now, that's photograph E?

18 A Yes, that is Photograph E.

19 Q Now referring to Photograph F?

20 A This photograph sir, is on the southbank. It's --  
21 I'll refer to it as anchorage of the bridge. In other  
22 words, part of the structure what we see here and as  
23 they indicate by ruler in other words, so there could be  
24 a comparison is that this split has occurred, has increased

1 in the last two years in other words, and it showed no  
2 signs of any stationary, in other words, it shows a  
3 continuous movement away from the main structure.

4 Q Mr. Kilmartin, Photograph G?

5 A Photograph G is another shot looking down at the  
6 gap that is on the roadbed in between the catwalk, In  
7 other words, still a child could put his foot through  
8 here.

9 Q What does the ruler indicate the width of that gap  
10 to be?

11 A It would indicate by scale about an inch and three-  
12 quarters.

13 Q Photograph H now?

14 A Looking at Photograph H what I, which I find a very  
15 personally interesting photograph, this is a wood support  
16 system, in my opinion, and it's only my opinion, put up  
17 here to support this bridge at a later date. I don't  
18 believe sir, that this was an original part of the bridge.  
19 It was a safety factor probably with someone with a certain  
20 amount of wisdom that decided they better do something.  
21 I do not believe that this support system that we see here  
22 or in the trade, a rig, is anything more than a weight to  
23 help put a girder, or to hold this bridge up for an  
24 extended period of time.

1 Q Picture I, Mr. Kilmartin?

2 A Picture I is merely an indication of myself and to  
3 show the aggravation, if I may at this point, the Borough  
4 of Folcroft goes through from time to time. And I want  
5 it to appear here that this is the Chief of Police, but he  
6 seems to have lost his head about the bridge. It was  
7 eliminated from the photograph by bisection. But what I  
8 would like to say here is this is just an indication of my  
9 rather thick hand being able to go down through the area that  
10 I speak of, for the welfare of children and their safety.

11 Q Photograph J, please?

12 A Photograph J of course brings up the highlights of  
13 the deterioration factors and the general erosion of the  
14 bridge itself.

15 Q Picture H shows a deterioration it appears to be of  
16 cement on the side of the bridge, that is the right  
17 approach?

18 A That's right.

19 Q Is that condition the same as, better than, or worse  
20 than it was two years ago?

21 A I would say that it is deteriorated -- the situation  
22 is worse.

23 Q Photograph K, please, what is that?

24 A Photograph K as it is stated on here is the southern

1 undercarriage of the bridge and in response to a question  
2 previously asked, it indicates the decay. And most of the  
3 area here would indicate the rock salt over a period of time  
4 has infiltrated through the wood and caused a rapid decay.  
5 Your Honor, if you will look here you will find that these  
6 bolts, and they are main ankle bolts that hold the upper  
7 structure together right here and in other words those  
8 showed a total looseness. There is no tightness of this  
9 to its upper structure.

10 Q The bolt was pulled away from --

11 A The bolt has either pulled away or due to facts there  
12 is no wood, no strength left, and the wood has sunk through  
13 it.

14 Q Does it also show a space between the bridge?

15 A Yes, it does. And this is the area that I speak of  
16 life and limb for the children.

17 Q I show you now Photograph L, describe that for us?

18 A That primarily shows the guard or I believe galvanized  
19 metal shield that was set across here so nobody would come  
20 in contact with the electrical wires or fall off the  
21 bridge.

22 Q When was that installed, if you know?

23 A Sir, from time to time I can only talk about its  
24 repairs. Again I would like to state to the Judge that

1 this was supposed to be repaired two years ago. The  
2 situation has deteriorated beyond the point of the original  
3 order.

4 Q There has been no repair that you know of?

5 A Not to my knowledge.

6 Q Photograph M?

7 A This is that south bank again in which we have over two  
8 and one-half inches that it has slid or moved out, and I  
9 used just a standard rule here and I indicated also the  
10 other cracks in the structure, and this is the main  
11 support of the bridge, in other words. And this cracking  
12 condition through here.

13 Q Do you have knowledge as to whether this space has  
14 stayed the same, or increased since the last hearing?

15 A I would say it's in my own opinion, and I haven't  
16 taken any photos of this situation before two years ago,  
17 I would say it has increased about an inch and one-half.

18 Q Photograph N, please Mr. Kilmartin?

19 A Photograph N, Your Honor, is an interesting photograph.  
20 It's a -- down on the deck it is taken down on the deck  
21 of the bridge. This here is the original steel as best  
22 that I can make it out. The original steel riveting that  
23 went across this bridge. Now, the deterioration has taken  
24 place they have now begun to show, and in the normal course

1 of events I would say there was two to four inches of black-  
2 top on this. Here is an indication of the deterioration of  
3 its cross members which is rapid, you can take a penknife  
4 and you can go into these beams, Your Honor, and without  
5 any effort you can just pick it out.

6 Q Photograph O, please?

7 A O is pretty well to the same fact. It's a down  
8 photograph taken from above and it shows some of the areas  
9 or cracks on the cross-walk, catwalk, and these are the  
10 type. We cannot keep blacktop on this bridge, Your Honor.  
11 It is moving so badly that it actually pops the blacktop.

12 Q Now, would you elaborate on what you mean by it's  
13 moving, you refer to the bridge as moving?

14 A Yes, sir, the bridge moves under any type of load. I  
15 mean by that, I say you could put a volkswagen on that  
16 bridge and you will find the whole surface of that bridge  
17 in movement and it will continuously crack out the blacktop.  
18 And from time to time, Your Honor, as I tried to point out  
19 before, I find it very hard to blame the Borough of Folcroft  
20 when a truck on occasion has come over that bridge weighing  
21 thirty tons. That is not the fault of Folcroft when this  
22 happens, we cannot be the guardians on a twenty-four hour  
23 day situation or if we are to be, and you deem it that we  
24 should be, then someone has to find us funding. We cannot

1 be a twenty-four hour guard for the State nor can we be a  
2 twenty-four hour guard for the protection of the people  
3 unless somebody funds it.

4 Q Now, Mr. Kilmartin, on the subject of the movement of  
5 the bridge. Where is the Borough Police Station and the  
6 Borough Hall located relative to this bridge?

7 A On the south side of the bridge and within three  
8 hundred yards of the bridge.

9 Q All right. Associated with the movement, are there  
10 ever any sounds associated with the bridge?

11 A The bridge cries out every time someone goes across  
12 it with a vehicle, it screams for relief of its agony.  
13 Maybe that's a pictured picture but that is the way I feel  
14 about it.

15 Q You can actually hear movement on the bridge?

16 A Yes, sir.

17 Q Every time a vehicle crosses it?

18 A Yes, sir, the noises are -- will probably become  
19 noise hazard or a noise level eventually if the bridge  
20 doesn't cave in with the final noise.

21 Q Photograph P, Mr. Kilmartin?

22 A This is a photograph that we took from a distance to  
23 show the availability or the access of the wiring to any  
24 kid who feels so inclined as to walk along this area, in

1 other words, any kid can walk on and this is from the close  
2 up shot, right here, he can put his hand here and it could  
3 presumably end his life.

4 Q Mr. Kilmartin, do you know when the bridge was  
5 originally constructed?

6 A Being here two years ago it was somewhere between --  
7 and it seems to -- it goes back so far I'm not quite sure,  
8 but I think it was somewhere between 1886 and 1891 when  
9 steel, if I am correct, steel was not a factor, iron was.

10 Q Is this bridge posted as the Commonwealth has stated,  
11 seven-ton limit?

12 A Yes, sir.

13 Q And would you describe where the Borough of Folcroft  
14 lies geographically relative to this bridge, on one side or  
15 the other side, or both sides?

16 A Part of our people in other words, the bridge is  
17 divided -- the railroad is a dividing factor. Our town is  
18 split in half. On the other side of that if a house or  
19 any structure catches on fire it is our duty as having  
20 a volunteer fire company to cross that bridge. It is the  
21 quickest way. I don't know anyone who would want us to  
22 deviate from the quickest way to get to a fire. In  
23 crossing that bridge our equipment exceeds the markings  
24 on the bridge.

1 Q What do you mean by you exceed?

2 A In other words, our equipment, our fire equipment  
3 exceeds those markings. If we were to take an alternate  
4 route it would be less than a safety factor -- you know on  
5 trying to save lives. Every minute counts. If we took an  
6 alternate route we may cause lives -- it would take a  
7 considerable length of time.

8 THE ADMIN. LAW JUDGE: You mean exceeds  
9 the posted limit; is that what you mean?

10 THE WITNESS: Yes.

11 BY MR. ECKELL:

12 Q Where is the Fire Company located relative to this  
13 bridge?

14 A On the south side of the bridge.

15 Q On the same street as the bridge?

16 A Yes, sir.

17 Q And what is the tonnage of some of the fire equipment,  
18 if you know?

19 A I believe that some of our equipment comes in at  
20 around thirteen to fourteen tons.

21 Q One of the questions asked, Question 12, I will leave  
22 Question 11 for the Police Chief who I will call as a  
23 second witness, states whether the Borough of Folcroft has  
24 performed any maintenance on the two bridges and the

1 approaches thereto since the issuance of the Commission  
2 order on May 13, 1975?

3 A Yes, sir, we have. And we have sent bills to PennDot  
4 trying to get paid for those services which are very slow  
5 in coming, and I don't think to this date any reimbursement  
6 has shown up.

7 Q What precipitated, if you know, the Borough doing any  
8 repair work on either the Primos or the Folcroft Avenue  
9 Bridges?

10 A I would say the Government's love for its people  
11 and the fact that we want to see the bridge opened.

12 Q I mean do you have direct complaints of problems?

13 A Yes, sir.

14 Q And have you had those in the past two years?

15 A Yes, sir.

16 Q And have you responded with repairs when called upon?

17 A Yes, sir. But may I indicate to the Solicitor and  
18 the Judge that the time is coming when Folcroft itself will  
19 show an indication of closing the bridge because of the  
20 facts that I now present here as evidence. We have to  
21 take a responsibility. If the State refuses, if PennDot  
22 refuses, then we have to take the responsibility for our  
23 own people, and we may have to close that bridge.

24 Q Do you have anything further you wish to add, Mr.

1 Kilmartin?

2 A Except that, if no action is coming, and I may indicate  
3 I have been on this problem for several years now, if no  
4 action is coming and I mean speedy relief, Your Honor, I  
5 don't mean by environmental impact plans that take two  
6 years, or etc., etc. I find that we need relief from our  
7 problem, and we need it fast. If not, you have condemned  
8 us to an intolerable situation and which I must say that  
9 again I believe that that bridge will fall someday by the  
10 time PennDot finishes this environmental impact plan, etc.  
11 I believe that the bridge is going to fall.

12 MR. ECKELL: The witness is available for  
13 cross-examination.

14 THE ADMIN. LAW JUDGE: Mr. Cornell.

15 I see there are other Counsel here. Ms.  
16 Soken, you are here to represent Septa, is that correct?

17 MS. SOKEN: Yes.

18 THE ADMIN. LAW JUDGE: And I see that Mr.  
19 Demico is here representing the Borough of Glenolden, is  
20 that correct?

21 MR. DEMICO: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. CORNELL:

24 Q Mr. Kilmartin, you have identified in your direct

1 examination certain exhibits containing electric wiring.  
2 Would you please identify them again for the purposes of  
3 this cross-examination?

4 A These wires that we see here --

5 Q Excuse me--

6 THE ADMIN. LAW JUDGE: What do you want  
7 him to identify?

8 THE WITNESS: You mean by number you want  
9 me to call the number out?

10 BY MR. CORNELL:

11 Q Yes.

12 A F-C, F-J, F-P, F-B, F-K.

13 Q Now, you testified to all of those as containing  
14 exposed electrical wiring, is that a fair generalization  
15 of your direct testimony?

16 A If I were alluded -- I would say yes.

17 Q Whose wires are these to the best of your knowledge;  
18 how is this used on the bridge?

19 A From tracing the wires out it appears to be for the  
20 lighting of the bridge.

21 Q Okay. Now, when were those pictures taken?

22 A The pictures were taken on the fourth month, eighteenth  
23 day of '77.

24 Q And that condition has existed for sometime prior to

1 the taking of the pictures; is that correct?

2 A Yes, sir, it was there two years ago.

3 Q Two years?

4 A Yes.

5 Q And I believe in your direct testimony you are --  
6 your specific duties as a Commissioner falls within the  
7 area of health and welfare; is that right?

8 A Using the term Councilman, yes, sir.

9 Q Okay, Councilman, excuse me.

10 Did you ever contact the Philadelphia  
11 Electric Company advising them of the condition of these  
12 wires?

13 A You mean personally, sir?

14 Q Yes, sir.

15 A No, sir.

16 MR. ECKELL: May I point out to Counsel  
17 for the record that the Electric Company participated in  
18 the prior hearing, at which time these conditions were all  
19 described.

20 MR. CORNELL: These pictures were not  
21 submitted.

22 MR. ECKELL: These pictures were not,  
23 but the conditions depicted by those pictures were.

24 THE ADMIN. LAW JUDGE: Please let us not

1 have two or three people talking at one time.

2 BY MR. CORNELL:

3 Q As to the conditions in this exhibit submitted today,  
4 you personally did not contact anyone at the Philadelphia  
5 Electric Company?

6 A No, sir. May I say if it becomes record, or I am  
7 allowed to say, that the observation of the tapeing here  
8 would indicate to me that PE probably was in this neighbor-  
9 hood in a short period of time. The tape is fairly notable  
10 so I presume that, I would only presume that PE was aware  
11 of the situation.

12 Q You cannot presume anything from the "shabby attempt  
13 at wiring".

14 A Well, it's all obvious.

15 THE ADMIN. LAW JUDGE: You mean the pictures  
16 speak for themselves.

17 THE WITNESS: Yes, sir.

18 MR. CORNELL: They do not speak form them-  
19 selves as to who did the shabby part.

20 THE WITNESS: Well, I think these people  
21 have long passed on.

22 BY MR. CORNELL:

23 Q The next question is, while you did not make any  
24 direct contact with the Philadelphia Electric Company, did

1 you direct anyone under your authority in control to make  
2 any contact with the Philadelphia Electric Company?

3 MR. ECKELL: I'm going to object to this  
4 line of cross-examination, because it assumes there is  
5 some obligation on behalf of the Borough of Folcroft to  
6 do so. I submit to you, Your Honor, that this matter was  
7 fully aired at a public hearing and these conditions,  
8 although there weren't pictures for them, they were verbally  
9 described at the proceeding hearing, and were even a subject  
10 of a PUC order. So, there would be no obligation, as a  
11 matter of fact there would be an obligation for the Borough  
12 not to impose itself within the PUC jurisdiction. And I  
13 object to the question because it infers an improper  
14 action.

15 THE ADMIN. LAW JUDGE: Well, it is cross-  
16 examination and I think I am going to permit the question.  
17 I think it should be covered because the questions are  
18 rather broad. I am sure he does not have too many more  
19 questions.

20 MR. CORNELL: Well, it is in within the  
21 scope of direct examination. These exhibits were just  
22 submitted.

23 BY MR. CORNELL:

24 Q My question was, did you direct anyone under your

1 authority and in control to contact the Philadelphia  
2 Electric Company and advise them of these conditions?

3 A No, sir.

4 Q Could I ask you why?

5 MR. ECKELL: I object again.

6 THE WITNESS: Please Solicitor, I would  
7 like to answer that because I think this is paramount.

8 THE ADMIN. LAW JUDGE: Well I will go  
9 along with you.

10 THE WITNESS: Now, what I would like to say  
11 to PE is, that I had no way of knowing that at that time  
12 if PE owned these wires. It is interesting to note that  
13 they do own these wires.

14 BY MR. CORNELL:

15 Q This has not been ascertained yet, the ownership  
16 of the wires. I am just merely asking if you directed  
17 anyone --

18 A When I took these photos in answer to your question --

19 THE ADMIN. LAW JUDGE: Councilman, please  
20 let him finish his question.

21 THE WITNESS: I'm sorry. What I want to  
22 say is that on this particular day which is the 18th of '77,  
23 I was aware personally of this situation. I had no idea  
24 who owned these wires. It doesn't say PE on them and I

1 knew not who to contact.

2 MR. CORNELL: I have no further questions.

3 THE ADMIN. LAW JUDGE: Ms. Soken, do you  
4 have any questions of this witness?

5 MS. SOKEN: No.

6 THE ADMIN. LAW JUDGE: Mr. Demico, do you  
7 have any questions of this witness?

8 MR. DEMICO: No.

9 THE ADMIN. LAW JUDGE: Mr. Zahn?

10 BY MR. ZAHN:

11 Q Have any children actually been hurt as a result  
12 of what you have shown by these exhibits in the last --  
13 since the last hearing?

14 MR. ECKELL: Is that a prerequisite to  
15 action? I object on that basis.

16 MR. ZAHN: I think it is very important --

17 MR. ECKELL: I fail to see the relevancy.

18 But --

19 THE ADMIN. LAW JUDGE: Objection overruled.

20 Ask the question.

21 MR. ZAHN: Would you please read the  
22 question back.

23 (The following question was read aloud  
24 by the Court Reporter:

1 "Have any children actually been hurt  
2 as a result of what you have shown by these exhibits  
3 in the last -- since the last hearing?").

4 THE WITNESS: To my knowledge, no. I would  
5 have to trace out the ambulance records.

6 BY MR. ZAHN:

7 Q And you realize, Mr. Councilman, that the maintenance  
8 responsibility for this bridge to the super-structure and  
9 the sub-structure has been under PUC order with the  
10 Railroad, have you not?

11 THE ADMIN. LAW JUDGE: Do you know the  
12 answer?

13 THE WITNESS: All I know -- well all I know  
14 is somebody is supposed to do something.

15 BY MR. ZAHN:

16 Q Okay. But you don't know who had the maintenance  
17 responsibility under the former Public Utility Commission?

18 A No, sir.

19 Q Now, you say that something has to be done immediately  
20 to remedy this situation. Do you have any suggestions?

21 A Yes, sir.

22 Q What is that?

23 A From my own personal experience I think that the Corps --  
24 the Army Corps of Engineering could put a bridge across

1 this in 48 hours that would hold up while this period of  
2 time that you speak of it's going to take you, and you can  
3 bridge across, you have the foundation, the ability to do  
4 it, and I think if the Army Corps of Engineers could throw  
5 a bridge to hold up tanks someone in the State could throw  
6 a temporary bridge across there and go ahead with your plan  
7 and maybe by 1980 we would have a bridge.

8 MR. ECKELL: May I add, that I will be  
9 giving a legal opinion to the Borough of Folcroft that  
10 no environmental impact study is necessary for temporary  
11 emergency bridges. And I am sure PennDot is familiar  
12 with that.

13 BY MR. ZAHN:

14 Q Do you know whether or not the Army have such bridges  
15 available in the State?

16 A At the present time, no, sir. I know they are  
17 available, it is a proven theory. It has been done and I  
18 have seen it done.

19 Q But, the question is, whether or not the bridges are  
20 available, you do not know that?

21 A I think that would be -- someone on the State level  
22 would have to search it out.

23 Q But you do not know that?

24 A No, I see no bearing, I shouldn't have any knowledge

1 of that.

2 Q Has the Borough enforced that posting weight limit  
3 since the Commission order came out?

4 THE ADMIN. LAW JUDGE: Well, I think that  
5 Mr. Eckell was going to call the Chief of Police on that.

6 MR. ZAHN: I have no further questions.

7 (Witness excused.)

8 MR. ECKELL: Police Chief Horne, please.

9 THE ADMIN. LAW JUDGE: Yes. Mr. Horne step  
10 up please.

11 ROBERT HORNE, sworn

12 THE ADMIN. LAW JUDGE: State your full name  
13 and address for the record please.

14 THE WITNESS: Chief Robert Horne, Chief of  
15 Police of the Borough of Folcroft, 1555 Baltimore Avenue.

16 DIRECT EXAMINATION

17 BY MR. ECKELL:

18 Q How long have you been on the Folcroft Police  
19 Department?

20 A Since 1962.

21 Q How long have you been Chief?

22 A Since 1968.

23 Q Has the Borough of Folcroft enforced the posted weight  
24 and speed limits on the two bridges and the approaches

1 thereto involved in these proceedings?

2 A To the best of our ability with the man power we have,  
3 yes, sir.

4 Q Have you made arrests for exceeding weight limit and  
5 for exceeding speed limits?

6 A Yes, sir.

7 Q And have they been prosecuted?

8 A Yes, sir.

9 Q Were you present in this hearing room when Councilman  
10 Kilmartin testified?

11 A Yes, sir.

12 Q Did you hear the questions posed to him and the  
13 answers, his responses?

14 A Yes, sir.

15 Q Particularly with respect to the movement of the  
16 bridge, can you give us any testimony?

17 A Yes, sir.

18 Q Please do.

19 A If you stand on the bridge, either on the walkway or  
20 sitting in a car, you will see the -- if a car is going  
21 northbound the boards on the southbound side will come up  
22 because they run across the bridge, they run across the  
23 bridge this way. (Indicating.)

24 Q The long way?

1 A That's right. If the car is on the southbound, coming  
2 southbound, on the northbound side the opposite side of the  
3 bridge will raise, they rock back and forth, that's it.

4 Q Have you personally observed that condition?

5 A Yes, sir.

6 Q How recently have you observed that condition?

7 A As recently as Friday.

8 Q Now, has this condition been the same as it was at  
9 the time of the preceding PUC hearing on this subject  
10 matter, stayed the same, has it gotten worse, or has it  
11 gotten better?

12 A I would say it hasn't improved any at all.

13 Q Has anything been done since this time to correct the  
14 situation?

15 A Only the fact that they have patched the roadway  
16 and the road surface, that's all.

17 Q What happened to this patchwork?

18 A As the cars go over it and these boards move your  
19 holes -- your potholes move and they flip out and either  
20 your tar or stones, whichever you wish to call it, goes down  
21 onto the tracks or undercarriage of the bridge .

22 Q Are you aware of any repairs or maintenance to the  
23 bridge other than the occasional patchwork that has been  
24 testified to in the past two years?

1 A No, sir.

2 Q Are you aware of any children or property damage  
3 being caused by this bridge?

4 A Not within the last two years.

5 Q Have you ever observed any children playing in the  
6 vicinity of the bridge or the exposed wires?

7 A They have to -- actually playing there, no, I have  
8 not. But they have to walk across that area on top of  
9 the bridge and up those steps that is shown in the photos.

10 Q Do you have any other further testimony you wish to  
11 add?

12 A No, sir.

13 THE ADMIN. LAW JUDGE: Mr. Zahn, do you  
14 have any cross-examination of this witness?

15 MR. ZAHN: No.

16 THE ADMIN. LAW JUDGE: Mr. Mazor, do you  
17 have any cross-examination of this witness?

18 MR. MAZOR: No.

19 THE WITNESS: There's only one thing I  
20 would like to add if I may.

21 MR. ECKELL: Please do.

22 THE WITNESS: We had sent a letter as the  
23 Borough to Septa, or Red Arrow Division which covers that  
24 line, and they changed their route, so that they didn't use

1 those bridges, they now use Glenolden Avenue and go under-  
2 neath it.

3 BY MR. ECKELL:

4 Q Do you know why?

5 A Because of the safety factor.

6 Q I'm glad you added that.

7 THE ADMIN. LAW JUDGE: Mr. Demico, do you  
8 have anything of this witness?

9 MR. DEMICO: No, sir.

10 THE ADMIN. LAW JUDGE: Ms. Soken, do you  
11 have any cross-examination of this witness?

12 MS. SOKEN: No. I just wish you would have  
13 him read back his last statement.

14 (The last answer and questions were  
15 read aloud by the Court Reporter:

16 "A. We had sent a letter as the Borough  
17 to Septa or Red Arrow Division which covers that line  
18 and they changed their route so that they did not use  
19 those bridges. They now use Glenolden Avenue and go  
20 underneath it.

21 Q. Do you know why?

22 A. Because of the safety factor."

23 MR. ZAHN: Your Honor, I just have one  
24 question for the Police Chief.

1 THE ADMIN. LAW JUDGE: Okay.

2 CROSS-EXAMINATION

3 BY MR. ZAHN:

4 Q Do school buses still use this bridge?

5 A School buses if they come across there, we have  
6 notified them to try to stop when possible.

7 MR. ZAHN: I have no further questions.

8 THE ADMIN. LAW JUDGE: Thank you very much  
9 Chief.

10 (Witness excused.)

11 THE ADMIN. LAW JUDGE: I take it that  
12 nobody is here from the County of Delaware. Oh, there is  
13 somebody here, is Counsel here?

14 UNIDENTIFIED MAN FROM THE AUDIENCE: No, sir.

15 THE ADMIN. LAW JUDGE: I have the Borough  
16 of Glenolden represented. Is the Borough of Sharon Hill  
17 represented?

18 MR. TINUCCI: Yes, sir.

19 MR. DEMICO: Your Honor, may I state the  
20 position of the Borough of Glenolden for the record?

21 THE ADMIN. LAW JUDGE: Yes.

22 MR. DEMICO: The Borough of Glenolden  
23 supports its sister Borough of Folcroft with regard to the  
24 position taken in connection with the Primos Avenue Bridge,

1 because the Borough of Glenolden does in fact border that  
2 bridge. The Borough of Glenolden is of the opinion that  
3 the bridge is rapidly, literally falling apart and that the  
4 Borough cannot imagine any further delay of any kind  
5 without some immediate action for safety purposes in con-  
6 nection with the Primos Avenue Bridge. We would move  
7 strongly, urge that if any delay is given in regard to the  
8 reconstruction of that bridge that an immediate engineering  
9 survey be ordered by the Commission with regard to the  
10 present safety of the bridge. And if the findings of the  
11 engineering study are such that the bridge is not safe,  
12 that it be closed. The deterioration of the bridge over  
13 the past two years as indicated by the photographs is one  
14 of progression, and the safety factors of seven tons may well  
15 be an obsolete factor today, and if not today certainly  
16 within the near future.

17 THE ADMIN. LAW JUDGE: Mr. Demico, do you  
18 have any witnesses that you want to call?

19 MR. DEMICO: No, sir, we do not.

20 THE ADMIN. LAW JUDGE: I take it then that  
21 you adopt the testimony offered by the Councilman?

22 MR. DEMICO: That is correct, Your Honor.

23 THE ADMIN. LAW JUDGE: Mr. Tinucci, do you  
24 have the same position or do you want to make a statement?

1 MR. TINUCCI: For the record, can I state  
2 that I do have two Councilmen here, Mr. Woodrow, the  
3 President of the Council of Sharon Hill, and Mr. Kline,  
4 one of the Councilmen in the Borough. They adopt the  
5 same position as taken by Mr. Demico on behalf of Glenolden,  
6 and Mr. Eckell on behalf of Folcroft.

7 If you care to hear testimony, we are  
8 able to present it, but we support their position.

9 THE ADMIN. LAW JUDGE: Well, I think if we  
10 have -- I am not telling you how to run your case, but I  
11 think if you put two Councilmen on, the record will tend  
12 to become cumulative.

13 MR. TINUCCI: They support the position  
14 taken by the two previous gentlemen.

15 THE ADMIN. LAW JUDGE: Now, Mr. Mazor.

16 MR. MAZOR: I think sir, orderly presentation  
17 indicates that Amtrak proceed first and then we will go.

18 THE ADMIN. LAW JUDGE: Mr. Green, please.

19 MR. GREEN: Mr. Cheifetz, please.

20 THE ADMIN. LAW JUDGE: Mr. Cheifetz, please  
21 come up.

22 LOUIS CHEIFETZ, sworn

23 THE ADMIN. LAW JUDGE: Please state your  
24 name and address for the record.

1 THE WITNESS: Louis Cheifetz, C-H-E-I-F-E-T-Z,  
2 Room 560 Suburban Station Building, Philadelphia, Pennsylvania.

3 DIRECT EXAMINATION:

4 BY MR. GREEN:

5 Q Sir, by whom are you employed and in what capacity?

6 A I am employed by the National Railroad Passenger  
7 Corporation, frequently called Amtrak, as a Structural  
8 Engineer.

9 Q Are you authorized to testify in behalf of Amtrak at  
10 this proceeding?

11 A Yes, I am.

12 Q And are you familiar with the bridge which is the  
13 subject of this hearing?

14 A Yes, I am.

15 Q Are you familiar with the questions and procedure  
16 dated December, 1976 promulgated by the Commission which  
17 lists twenty-one items on which answers are elicited?

18 A Yes.

19 Q Referring you therefore to Question #15, which requests  
20 that Amtrak answer Question 9, which requires Amtrak to  
21 state if it has any objections to granting the Department  
22 an extension of time for two years in which to complete  
23 the detailed construction plans for the improvement on  
24 Primos Avenue and, if so, state said objections.

1 A Amtrak acknowledges the fact that it may well take  
2 two years or more for PennDot to produce a detailed set  
3 of plans for the improvement. However, Amtrak recommends  
4 that PennDot be made responsible for the maintenance of  
5 the existing bridge until the new bridge is constructed,  
6 since the delays encountered have been caused by PennDot.

7 Q Question 15 also requests that Amtrak to answer  
8 Question 10, which requests an opinion on the condition of  
9 the existing bridges at Primos Avenue and Folcroft Avenue  
10 and whether the posting should be reduced to a maximum  
11 weight limit of less than seven tons.

12 A Amtrak has not made an inspection of either bridge  
13 in sufficient detail to determine a correct posting.

14 Q Question 12 is included in Question 15, which requests  
15 Amtrak to state whether it has performed any maintenance  
16 on the two bridges or the approaches thereto since the  
17 Commission's order dated May 13, 1975.

18 A Amtrak has not performed any maintenance on either  
19 bridge or their approaches ever.

20 Q Question 16 asks Amtrak if it will agree to make an  
21 in-depth inspection of the two bridges involved in the  
22 proceeding to determine this present load-carrying capacity  
23 and what repairs, if any, are necessary to maintain their  
24 present seven-ton posting?

1 A Amtrak will not volunteer to make an in-depth  
2 inspection of either bridge. It is Amtrak's position that  
3 it has no obligations or responsibilities with respect to  
4 the determination of capacities of overhead highway bridges.  
5 Such determinations are a concern of those with the  
6 responsibility for regulating highway traffic and such  
7 work, if required, should be performed by those with such  
8 regulatory authority.

9 Q Question 17 requests Amtrak to state the name of the  
10 owner and operator of the line of railroad as well as the  
11 number, type, frequency, and speed of trains operating  
12 thereon?

13 A The railroad line here involved is the Northeast  
14 Corridor, owned and operated by the National Railroad  
15 Passenger Corporation. The subject structures pass over  
16 four tracks of the Northeast Corridor. High speed passenger  
17 and freight service usually operates over the center two  
18 tracks, while Conrail operated commuter trains operate over  
19 the outside tracks. There are approximately twenty-four  
20 freight train movements daily, operating at a maximum speed  
21 of fifty miles per hour. There are approximately one hundred  
22 fifty-two passenger train movements per day, both long-haul  
23 Amtrak and Conrail commuter trains operating at a maximum  
24 speed of 90 miles per hour.

1 Q Moving on therefore to Question 19, which asks Amtrak  
2 to state whether it is aware of the incident which led the  
3 Commission to order the installation of shields to protect  
4 the bridge from water which leaks through the bridge and  
5 whether it will agree to install same if this work has not  
6 already been done?

7 A Amtrak is aware that at some time past an icicle  
8 hanging beneath the bridge contacted the pantograph of a  
9 passing train which short-circuited the catenary power  
10 into the bridge. The circuit breakers interrupted the flow  
11 of current almost instantaneously but there was minor  
12 damage to the deck structure of the bridge from the surge  
13 of the current.

14 Based on the long history of electrification  
15 in the area and the infrequency of such occurrences, Amtrak  
16 is of the opinion that a recurrence is extremely unlikely.  
17 Amtrak believes that the necessity for the installation of  
18 the shields has been obviated by the passage of time  
19 without further incident since the original occurrence. We  
20 believe the Commission should reexamine its order taking  
21 into account the fact that the passage of time is showing  
22 the original occurrence may have been something of a freak.

23 In the event the Commission determines that  
24 shields must be installed, Amtrak will not agree to install

1 them. However, Amtrak will provide the necessary prot  
2 for such installation work by arranging power outages and  
3 supplying electrical clearance men and flag men required for  
4 the work. Amtrak expects to be reimbursed for whatever  
5 expenses it incurs in connection with the installation.

6 Q Sir, do you have any further relevant testimony for  
7 this proceeding?

8 A No, I do not.

9 THE ADMIN. LAW JUDGE: I think before we  
10 begin cross-examination of this witness we will take a  
11 five minute recess.

12 (Recess from 11:30 to 11:45 A.M.)

13 THE ADMIN. LAW JUDGE: Mr. Cheifetz, I am  
14 going to ask you to step aside for a few short moments. I  
15 have been requested by Ms. Soken for Septa to have her  
16 witness testify at this juncture because he has another  
17 appointment, and it's going to be a very short statement.

18 (Witness excused.)

19 MS. SOKEN: Your Honor, if I may, I would  
20 just like to state for the record that the only change in  
21 fact concerning Septa today is that the contract for purpose  
22 service of commuter rail service is now with Conrail rather  
23 than the Penn Central as it was at the time the original  
24 testimony was presented to this Commission. And the most

1 recent purpose of service contract with Conrail is dated  
2 March 27, 1977.

3 MR. MAZOR: Conrail will stipulate that that  
4 is an accurate statement.

5 THE ADMIN. LAW JUDGE: Thank you. Okay, Mr.  
6 Cheifetz, you may come back.

7 LOUIS CHEIFETZ, previously sworn  
8 CROSS-EXAMINATION

9 BY MR. MAZOR:

10 Q For the record Mr. Cheifetz, as of what date did Amtrak  
11 become the owner and operator of the line of railroad that  
12 is involved in this proceeding?

13 A April 1, 1976.

14 Q Thank you, sir.

15 MR. MAZOR: That is all I have.

16 THE ADMIN. LAW JUDGE: Mr. Demico, do you  
17 have anything of this witness?

18 MR. DEMICO: I have no questions of this  
19 witness.

20 THE ADMIN. LAW JUDGE: Mr. Cornell, do you  
21 have any questions of this witness?

22 MR. CORNELL: Yes, I have a question for  
23 this witness.

24 BY MR. CORNELL:

1 Q Mr. Cheifetz, you testified that you are familiar  
2 the bridge crossings which are the subject of this hearing.  
3 I am going to ask you to look at the exhibits submitted by  
4 the Borough of Folcroft, namely, 13-B, C, J, K, and P, they  
5 are all together there on top.

6 You have examined those exhibits?

7 A Yes, I have.

8 Q Would you tell -- state for the record whether or not  
9 you can determine from those photographs whether that wiring  
10 is to serve the railroad platform lighting?

11 A I cannot determine from those photographs the purpose  
12 of the wires, what they serve.

13 Q Does Amtrak supply service for lighting its facilities?

14 A Yes, it does.

15 Q And does it do so at this location?

16 A I would presume that it does.

17 MR. CORNELL: I have no further questions.

18 THE ADMIN. LAW JUDGE: Mr. Eckell, do you  
19 have any cross-examination of this witness?

20 MR. ECKELL: Yes, sir, I do.

21 BY MR. ECKELL:

22 Q Sir, your statement concerning the unlikelihood of a  
23 recurrence of the shortage, the shorting through the icicle  
24 formation. It was your statement that no further shorting

1 out would occur or no further icicle formations would  
2 occur?

3 A We stated that it was likely that this type of  
4 occurrence that happened before would not occur again.

5 Q What type of occurrence are you stating would not  
6 likely occur again, the icicle forming or a shortage of  
7 power -- a short circuit?

8 A A short circuit.

9 Q Then you are not -- you do not have any testimony  
10 to give us with respect to the likelihood of the formation  
11 of icicles, do you?

12 A I have no direct knowledge of that.

13 MR. ECKELL: That's all I have.

14 BY MR. ZAHN:

15 Q Mr. Cheifetz, you are aware, are you not, that in  
16 planning for a new bridge that it is necessary to take  
17 corbellings for the new piers, track profiles, and elevations?

18 A Yes, sir, that is standard procedure.

19 Q And has the Department been able to come on this  
20 property of Amtrak in order to do that as of this date?

21 A No, sir, they have not.

22 Q And is the reason -- or what is the reason, if you  
23 know?

24 A Evidently Amtrak and PennDot have not concluded the

1 insurance agreement necessary to permit PennDot personnel  
2 entry on Amtrak property.

3 Q And that type of insurance is to protect the railroad  
4 in the event that any damage may occur by the entry on your  
5 property, is it not?

6 A That's correct.

7 Q And are you aware, sir, that under date of April 29,  
8 1977 an agreement which was executed by the Department of  
9 Transportation was sent to your Counsel, Mr. Armentrout  
10 in Washington for execution by Amtrak of that agreement to  
11 provide such insurance?

12 A I am not aware that Mr. Armentrout has received that  
13 agreement.

14 Q Do you know whether or not as of this moment PennDot  
15 could enter upon your property?

16 A No, sir, I can't answer that.

17 Q Could you tell us what the present vertical clearance  
18 is of the existing bridge?

19 A I can't state the clearance, the track top of rail to  
20 structure, I can only state the clearance from the top of  
21 rail to the wires.

22 Q How much is that?

23 A Two years ago it was measured a minimum height of  
24 seventeen foot, six inches.

1 Q And what would be the requirements of Amtrak and/or  
2 the Commission for electrified lines for bridge clearance  
3 or clearance of electrical wiring?

4 A Standard overhead clearance in electrified territory  
5 is twenty-three foot, six inches.

6 Q And in order to get that clearance would it -- it is  
7 obvious it would be necessary to raise the bridge clearance?

8 A That would be one --

9 Q And road approaches?

10 A That would be one way.

11 Q Or lower the tracks, is that the other way?

12 A That would be the other way.

13 Q Would you know in order to raise the bridge or get  
14 the clearance that is required how much of the roadway  
15 approaches would have to be raised in order to get that  
16 clearance?

17 A I have no knowledge of that, that is highway design  
18 work and we are not expertise in that.

19 MR. ZAHN: I have no further questions.

20 MR. ECKELL: Before you excuse the witness  
21 may I get a point of clarification. The Commission's last  
22 order of May 22, 1975 makes certain directives to the  
23 Trustees of Central -- of Penn Central Transportation  
24 Company as Amtrak, now the representatives for purposes of

1 direction or is that --

2 MR. GREEN: No it is not, Your Honor.

3 THE ADMIN. LAW JUDGE: Counsel indicates no.

4 MR. ECKELL: Is the direct party responsible  
5 here today?

6 MR. MAZOR: They are not.

7 MR. ECKELL: At some point I would like the  
8 Commission to respond as to where we stand with respect to  
9 that.

10 MR. ZAHN: Counsel, may I just answer in  
11 one way regardless of what Counsel for Amtrak or Conrail  
12 might say, it is the position of the Pennsylvania Department  
13 of Transportation I believe the Interstate Commerce Commission  
14 that the successor either Conrail or Amtrak is the operation  
15 of this railroad is also the succeeding party and it is our  
16 position that they are responsible for whatever order may  
17 have been issued as against Penn Central. That is our  
18 position.

19 MR. ECKELL: Well, then for the purposes --

20 MR. GREEN: Your Honor, he has made some  
21 statements here in reference to ICC and others that I think  
22 that --

23 THE ADMIN. LAW JUDGE: Mr. Green, I just  
24 look on that as a statement by Counsel. It is certainly not

1 evidence as far as I am concerned.

2 MR. GREEN: I realize that --

3 THE ADMIN. LAW JUDGE: I think that Mr. Zahn  
4 was just trying to clarify the position from his point of  
5 view.

6 MR. ECKELL: I then do have one further  
7 question to ask this witness.

8 BY MR. ECKELL:

9 Q Has Amtrak installed nonconductive shields on the  
10 existing Primos Avenue Bridge between catenary wires and  
11 the underside of the bridge to drain any water leaking through  
12 the bridge deck away from the primary wires to the satisfac-  
13 tion of the Commission?

14 A No, it has not.

15 MR. ECKELL: I have no other questions.

16 (Witness excused.)

17 MR. MAZOR: I would like to call Mr. Walker.

18 THE ADMIN. LAW JUDGE: Mr. Walker, please  
19 come up.

20 STAFFORD C. WALKER, sworn

21 DIRECT EXAMINATION

22 BY MR. MAZOR:

23 Q Please state your name and address for the record?

24 A Stafford C. Walker, 16th Floor, 1528 Walnut Street,

1 Philadelphia, Pa. 19102.

2 Q By whom are you employed, Mr. Walker and in what  
3 capacity?

4 A I am employed by the Consolidated Rail Corporation as  
5 Senior Civil Engineer.

6 Q Are you authorized to testify in behalf of Conrail in  
7 this proceeding?

8 A I am.

9 Q And are you familiar with the crossings which are the  
10 subject matter of this proceeding?

11 A I am.

12 Q Does Conrail have any objection to granting the  
13 Department's petition for an extension of time to prepare  
14 plans?

15 A No, sir.

16 Q Can you tell us about the general condition of the  
17 Primos Avenue and Folcroft Avenue Bridges involved, and  
18 state whether in Conrail's opinion the bridges should be  
19 posted for a maximum weight limit of less than seven tons?

20 A Conrail has no present responsibility for the bridge,  
21 and has made no recent inspection since the -- or made no  
22 inspection of the bridge since the last hearing and there-  
23 fore has no opinion as to whether the bridge should be  
24 posted for less than seven tons.

1 Q Has Conrail performed any maintenance on either  
2 bridges since the Commission's order of May 13, 1975?

3 A No, sir.

4 Q Would Conrail agree to make an in-depth inspection of  
5 the two bridges involved in this proceeding to determine  
6 present load-carrying capacity and what repairs might be  
7 necessary to maintain the present seven-ton posting?

8 A No, sir.

9 Q Do you agree with the testimony given by Mr. Cheifetz  
10 with respect to the name of the owner and operator of the  
11 line of railroad and the traffic as he stated it to be?

12 A Yes, sir.

13 Q And Conrail's function is operation of freight trains  
14 beneath the structure, and on behalf of Septa under a  
15 contract of service to operate the commuter lines that run  
16 under there; is that correct?

17 A That is correct.

18 Q Is Conrail aware of the problems which led to the  
19 Commission directing the Trustees of Penn Central to install  
20 the shields, protective shields that have been discussed  
21 here today?

22 A Conrail is officially aware of it only to the extent  
23 that it was contained in the record which files that Conrail  
24 inherited from Penn Central Transportation Company and

1 subsequently turned over to Amtrak.

2 Q And would Conrail agree to install these shields?

3 A No, sir.

4 Q Thank you, sir.

5 MR. MAZOR: The witness is available for  
6 cross-examination.

7 CROSS-EXAMINATION

8 BY MR. ECKELL:

9 Q Mr. Walker, why is Conrail here?

10 A We were ordered to be here by the Commission as a  
11 party in this proceeding.

12 Q And are you a successor party to Penn Central  
13 Transportation Company?

14 MR. MAZOR: Objection, sir. That calls for  
15 a legal conclusion this witness is unable to make.

16 THE ADMIN. LAW JUDGE: Objection sustained.

17 MR. ECKELL: Can Counsel answer the question  
18 for me?

19 MR. MAZOR: No, sir, Counsel does not need  
20 to answer the question, it is irrelevant.

21 MR. ECKELL: Well, would somebody inform this  
22 stupid lawyer why Conrail is here, why Amtrak is here if the  
23 party named is Penn Central Transportation Company?

24 MR. MAZOR: You will have to ask the

1 Commission which in its last order added both as parties  
2 to this proceeding and asked them to be here and issued  
3 questions for them to answer. The Commission is the only  
4 one that can answer that question, sir, since they made that  
5 determination.

6 MR. ECKELL: As long as the issue is  
7 generated on the record, that's all I am trying to do.

8 BY MR. ECKELL:

9 Q Do I understand that neither Amtrak or Conrail have  
10 anything to do with this railroad crossing and the rail-  
11 road underneath it, is that what your testimony is today?

12 A I don't think I testified to that as such. I did  
13 testify that Conrail has no responsibility for the bridge  
14 structure.

15 Q What about the operation of the railroad or any part  
16 of it underneath, the tracks, commuter lines, freight, etc?

17 A We are not responsible for the operation of tracks.  
18 We do operate freight trains over the tracks on the trackage  
19 right agreement with Amtrak and we operate for Septa under  
20 a service contract commuter trains. But we are not  
21 responsible for the physical aspects of the --

22 Q Could you tell us who is, if you know?

23 A We look -- as Conrail we look to Amtrak as the  
24 responsible party for the facility.

1 Q With respect to all of the directives in the Commission's  
2 last order of May 22, 1975, am I correct in assuming that  
3 you have not performed any of those directives that were  
4 set forth as directives to Penn Central?

5 A That is correct.

6 MR. ECKELL: I have no further questions.

7 THE ADMIN. LAW JUDGE: Mr. Cornell, do you  
8 have any cross-examination of this witness?

9 MR. CORNELL: Yes, sir, I do.

10 BY MR. CORNELL:

11 Q At the previous hearing held in January, 1974, you  
12 were Senior Staff Engineer for the Penn Central Transporta-  
13 tion Company?

14 A I was Senior Civil Engineer.

15 Q Excuse me. I am asking you to look at those exhibits  
16 which you have in your hand introduced by the Borough of  
17 Folcroft. If you can, would you advise the Commission  
18 whether or not those are triplex wires servicing the  
19 platform lighting?

20 A I cannot identify the wires specifically, but from  
21 the general appearance I would say that they do now or  
22 previously have served as part of the wiring system for  
23 the platform lighting on the station platform.

24 Q Thank you, sir.

1 MR. CORNELL: I have no other questions.

2 (Witness excused.)

3 MR. ECKELL: As a result of cross-examination  
4 I now have another question to direct back to Amtrak if you  
5 will just give me that opportunity when you see fit.

6 THE ADMIN. LAW JUDGE: Okay. Mr. Cheifetz,  
7 remain where you are.

8 LOUIS CHEIFETZ, previously sworn

9 CROSS-EXAMINATION, continued

10 BY MR. ECKELL:

11 Q I only want to ask you about the performance of the  
12 Directive #4 in the Commission order of May 22nd. I assume  
13 that Amtrak has not performed any of the directives that  
14 were directed to the Penn Central Transportation Company  
15 in that order?

16 A That is correct.

17 Q And the second question is, you have heard the witness  
18 from Conrail state that they look to Amtrak as a responsible  
19 party. On the assumption that Amtrak will be passing the  
20 buck too, whom do you look to as the responsible party?

21 A Amtrak is responsible for the maintenance of the track,  
22 the right-of-way, and the overhead wires. We do not assume  
23 any responsibility with respect to the overhead bridges.

24 Q Can you tell me since you have accepted responsibility

1 for the wires why you have not complied with the Commission  
2 directives to take repair action to protect those wires?

3 A Amtrak has performed no maintenance with respect to  
4 those wires.

5 Q Can you tell me why, you were directed to by the  
6 Commission?

7 A I cannot tell you why --

8 MR. MAZOR: Sir, on behalf of Amtrak I am  
9 going to object. The Commission did not direct Amtrak to  
10 do it. They directed the trustees of Penn Central to do  
11 it, and that is not Amtrak.

12 BY MR. ECKELL:

13 Q Is Amtrak responsible for maintaining the platforms?

14 A I'm sorry I don't know the answer to that question.

15 Q You don't know whether Amtrak is responsible for  
16 maintaining the platform at the Folcroft Station then?

17 A I'm sorry, I do not know the answer to that.

18 MR. ECKELL: Thank you.

19 THE ADMIN. LAW JUDGE: Thank you, Mr.

20 Cheifetz.

21 (Witness excused.)

22 THE ADMIN. LAW JUDGE: Mr. Cornell, do you  
23 want to call your witness.

24 MR. CORNELL: Yes, sir.

1                   Your Honor, Mr. Silver has already been  
2 sworn at a previous hearing.

3                   EDWARD J. SILVER, previously sworn

4                   DIRECT EXAMINATION

5 BY MR. CORNELL:

6 Q       Would you please state your name?

7 A       Edward J. Silver.

8 Q       And by whom are you employed?

9 A       The Philadelphia Electric Company?

10 Q       In what capacity?

11 A       Senior Engineer, Gas Engineer.

12 Q       Are you authorized to testify at this hearing?

13 A       Yes, sir.

14 Q       Does Philadelphia Electric Company have any objection  
15 to the extension of time requested by PennDot in this  
16 proceeding?

17 A       We do not.

18 Q       Mr. Silver, I direct you to Exhibit 13-B, C, J, K, and  
19 P of the Borough of Folcroft. Could you describe that wire?

20 A       From all appearances it seems to be a part of the  
21 lighting system.

22 Q       Is that the type of wiring that would be normally used  
23 in lighting a railroad platform?

24 A       That, I do not know.

1 Q Is that the type of workmanship normally employed by  
2 the employees of Philadelphia Electric that is depicted in  
3 this one?

4 A No, sir.

5 Q Would you state for the record to the best of your  
6 ability where our facilities are located in the general  
7 area of this rail-highway crossing?

8 A I believe you're mentioning the servicing of the  
9 station?

10 Q Yes.

11 A The best that we can find without an actual field trip  
12 at the present time is that our services enter from  
13 Baltimore Avenue which is south of the rails and east of  
14 Primos Avenue. And there are two aerial services going to  
15 the platform building.

16 Q Will you have an on-sight inspection made of these  
17 facilities referred to in the exhibit to determine whether  
18 or not they are owned -- and to be maintained by the  
19 Philadelphia Electric Company?

20 A Yes.

21 MR. CORNELL: Your Honor, I propose upon  
22 receipt of that information to so notify the Commission by  
23 letter to determine this particular area of questioning.

24 MR. ZAHN: And parties of interest.

1 MR. CORNELL: Of course, that is procedure.  
2 I have no further questions.

3 THE ADMIN. LAW JUDGE: You are excused, Mr.  
4 Silver.

5 (Witness excused.)

6 THE ADMIN. LAW JUDGE: Mr. Shimer.

7 ROBERT K. SHIMER , sworn

8 THE ADMIN. LAW JUDGE: State your name and  
9 address for the record please.

10 THE WITNESS: Robert K. Shimer , I am  
11 Assistant Director of the Public Works, Thomas  
12 Building, 2nd and Orange Street, Media, Pennsylvania.

13 THE ADMIN. LAW JUDGE: What is your position?

14 THE WITNESS: Assistant Director of Public  
15 Works.

16 THE ADMIN. LAW JUDGE: For where?

17 THE WITNESS: For Delaware County.

18 THE ADMIN. LAW JUDGE: And apparently there  
19 is nobody present to represent Delaware County, so you  
20 indicated to me that you have a statement to make.

21 THE WITNESS: Yes, I think we were directed  
22 to answer Questions 9, 10 and 12.

23 Question 9, the answer to that was prepared  
24 by Mr. Leon Levine, Executive Director of the Delaware

1 County Planning Commission and his response is as follows:

2 "Regarding Question #9, with regard to  
3 a request for an extension of time which PennDot has  
4 to formulate a design for the bridge is unacceptable.  
5 The State funds which would permit design work to  
6 commence were budgeted in 1973. Any extension may  
7 jeopardize funding already secured as well as the  
8 Federal matching monies which are now being applied  
9 for. The project would then require re-budgeting.  
10 As it is indicated in our program we recommend that  
11 the engineering be undertaken within the upcoming  
12 State fiscal year. That is Delaware County's  
13 Planning Commission's response to #9."

14 Question #10:

15 "The answer is, the County has no  
16 knowledge what the maximum weight limit should be  
17 posted."

18 Question #12:

19 "The County does not maintain the  
20 subject bridges."

21 And that is all the responses to those three  
22 questions.

23 CROSS-EXAMINATION

24 BY MR. ZAHN:

1 Q You are reading a statement from someone who is not  
2 present here today?

3 A That is correct.

4 Q Would you know, sir, what he meant by "jeopardize  
5 funding ?

6 A I don't think I should answer that question.

7 THE ADMIN. LAW JUDGE: Well, you mean you  
8 can't answer that question?

9 THE WITNESS: Yes, I can't answer that  
10 question.

11 MR. ZAHN: If Your Honor please, since we  
12 are unable to cross-examine the person who is making that  
13 statement, I move that it be stricken from the record  
14 because I certainly would want to know what he means by  
15 "jeopardize funding."

16 MR. ECKELL: If Your Honor plans to  
17 consider acting favorably upon that request I will then  
18 submit to you a request that all the testimony of PennDot's  
19 Engineer with respect to the fiscal matters also be stricken.

20 MR. ZAHN: Well, the basis -- I have a witness  
21 here who can answer --

22 MR. ECKELL: I am sorry. He qualified him-  
23 self as an Engineer, not as a Fiscal Officer of PennDot.

24 THE ADMIN. LAW JUDGE: I am going to sustain  
Rapid Reporting Service, Inc.

1 your objection, and I am going to overrule your's.

2 MR. ECKELL: Does Your Honor fully under-  
3 stand what you are saying?

4 THE ADMIN. LAW JUDGE: Yes, as I said.

5 BY MR. ZAHN:

6 Q Do you know anything about the status of this project  
7 regarding the twelve year program?

8 MR. MAZOR: Objection, that is irrelevant  
9 totally to this proceeding.

10 THE ADMIN. LAW JUDGE: Objection, sustained.

11 BY MR. ZAHN:

12 Q Do you know sir, whether or not the County has set  
13 up a priority of this program to the State Transportation  
14 Commission?

15 A The Planning Commission may have but as far as the  
16 Department of Public Works which I represent, they have not.

17 Q And you would not know anything about the priority  
18 set up by the Planning Commission?

19 A No, sir.

20 MR. ZAHN: I have no further questions.

21 THE ADMIN. LAW JUDGE: Thank you for coming,  
22 you are excused.

23 (Witness excused.)

24 MR. ZAHN: If Your Honor please, if there

1 are no more witnesses I would like to call Mr. Sellers for  
2 one or two statements.

3 THE ADMIN. LAW JUDGE: Okay.

4 HOWARD A. SELLERS, previously sworn

5 REDIRECT EXAMINATION

6 BY MR. ZAHN:

7 Q You heard the witness for Amtrak testify as to what  
8 the present day clearances are for electrified lines bridges--  
9 bridges over electrified lines. What is entailed in order to  
10 meet those requirements as to present day standards?

11 A Whether the existing vertical clearance is somewhere  
12 in the vicinity of eighteen feet, raising the structure to  
13 twenty-three feet six inches requires most likely, the  
14 most feasible, economically feasible methods is to raise the  
15 bridge, it would be a considerable expense solely because  
16 the railroad is there and there is crossing there of various  
17 parties not only as it is an additional cost in structure,  
18 it is a very large additional cost in the approaches and  
19 the approaches physically extend out with their slopes  
20 and causing considerable increase cost in right-of-way  
21 damages. So, there is quite a bit involved and it is in-  
22 volved mostly because there is a rail-highway crossing at  
23 that location. Had there not, and there was just a highway  
24 project, we could get by with probably 25% of the estimated

1 \$4,000,000.00 that this particular project is going to cost  
2 at today's estimates.

3 Q And how high would the approaches have to be raised  
4 in order to meet these requirements?

5 A Well, the approaches would have to be raised to meet  
6 the structure itself, an additional five feet or so.

7 Q Be raised five feet?

8 A Yes, and extended outward because the present structure  
9 is -- has very steep approaches and we do not build highways  
10 with those present day approaches, we flatten them for  
11 increase sight distance and for the traveling public which  
12 is definitely a safety precaution.

13 Q Now you heard Councilman Kilmartin state that he  
14 thought that one of the immediate remedies to this problem  
15 would be to have the Army construct a bridge across this  
16 crossing. What would be PennDot's position on that?

17 MR. ECKELL: Just for the purpose of  
18 clarification, that is not my recollection of his testimony.  
19 My recollection of his testimony was that the Army could, if  
20 they were the responsible party, construct the temporary  
21 bridge in forty-eight hours. The purpose of his testimony  
22 was to show that a temporary structure could be done whether  
23 it be by the Army or anyone else.

24 MR. ZAHN: That may be your recollection, sir.

1 MR. ECKELL: I state that is my recollection.

2 MR. ZAHN: I asked Mr. Kilmartin if he knew  
3 whether or not the Army had any such equipment.

4 MR. ECKELL: Yes, and he said he did not  
5 know.

6 THE WITNESS: Well, there is a lot of  
7 qualifications that have to be answered before I can even  
8 answer that. We would have to know at what capacity we  
9 would want to reconstruction that temporary bridge. It is  
10 not a normal bridge with the electrified lines. There is  
11 a lot of unanswered questions. I don't know if there is  
12 such a structure for this particular case. Now, I know in  
13 one instance where during the flood the Army did construct  
14 a temporary bridge across a washed out bridge over a small  
15 stream, but that is an entirely different case.

16 BY MR. ZAHN:

17 Q You previously testified as to the railroad protective  
18 insurance. Do you know whether or not as of this date the  
19 Department and Amtrak have a concluded agreement for entry  
20 on railroad property?

21 A To the best of my knowledge it has not been fully  
22 executed as to this date.

23 Q Has it been executed by the Department of Transportation?

24 A Yes, I believe it has.

1 Q And has the Department been able to get onto Amtrak's  
2 property in order to take the various

3 THE ADMIN. LAW JUDGE: I think that was  
4 brought out by the other witness, Mr. Zahn. I think that  
5 was elicited from Mr. Cheifetz.

6 BY MR. ZAHN:

7 Q Now, regarding this project as far as the priorities  
8 set by the State Transportation Commission, are you able  
9 to tell us what priorities has been set for this project?

10 MR. MAZOR: Objection to irrelevancy.

11 THE ADMIN. LAW JUDGE: Objection sustained.

12 MR. ZAHN: If Your Honor please, I do not  
13 want to get into the mechanics of it but one of the reasons  
14 stated in our direct testimony has been the funding of this  
15 project and the witness was cross-examined and Counsel for  
16 the Township has made quite a few statements regarding it.

17 THE ADMIN. LAW JUDGE: Well, Mr. Zahn, let  
18 me cut you off here. I am going to stand on that ruling  
19 and my objection is sustained because in my opinion it is  
20 irrelevant.

21 MR. ZAHN: I have no further questions.

22 RE-CROSS EXAMINATION

23 BY MR. MAZOR:

24 Q With respect to the overhead clearance just for a

1 minute Mr. Sellers, it is true, is it not that under Part  
2 3 of the Commission Railroad Regulations the Commission has  
3 the power to grant an exemption from the requirements of  
4 its own minimum clearance requirements in a proper case?

5 A I do not recall the section, but your general question,  
6 yes, that is true.

7 Q So, that it would not have to have a twenty-three foot,  
8 six inch clearance if the Commission found that less  
9 clearance was desirable?

10 A Yes, sir, that would be true.

11 MR. MAZOR: I have no further questions.

12 BY MR. ECKELL:

13 Q When did PennDot first learn that it could not gain  
14 access to Amtrak's property for purposes of complying with  
15 the Commission order?

16 A I'd say shortly after April 1, or after April 1, 1976  
17 when Amtrak became -- Amtrak took over the should I say  
18 ownership of the right-of-way.

19 Q What was done for the proceeding that with respect  
20 to gaining access, where the Trustees of Penn Central were  
21 involved?

22 A We have done surveying on the general terrain, other  
23 than the right-of-way, we haven't gotten to that point yet.

24 Q Are you aware that the Commission's order directed

1 the other parties to cooperate with you in obtaining this?

2 A Yes, sir.

3 Q And you took no remedial action to obtain this  
4 cooperation through the Commission?

5 A Such as what remedial action?

6 Q Petitioning the Commission to compel compliance with  
7 its order?

8 A Normal procedure from my experience is to --

9 Q Just answer my question, did you do that?

10 A No, sir, we followed our usual procedure.

11 MR. ECKELL: I have no further questions.

12 (Witness excused.)

13 THE ADMIN. LAW JUDGE: Before I adjourn  
14 the hearing something concerns me here that was -- apparently  
15 there was no rebuttal of the Councilman's testimony on  
16 these wires and I should think that responsibility should  
17 be fixed, be fixed in a hurry. I don't know whether -- I'm  
18 not -- whether -- we're going to be in a "Catch 22" situation  
19 here, where Amtrak says it's Conrail and Conrail says it's  
20 Amtrak and PE says it isn't their responsibility. I think  
21 there should be a determination and a determination on an  
22 immediate basis, and some remedial action be undertaken as  
23 soon as possible.

24 MR. MAZOR: I think the Electric Company

1 indicated it was going to do that.

2 MR. CORNELL: We are going to inspect --

3 THE ADMIN. LAW JUDGE: I know you are going  
4 to make a field inspection. But supposing those are not  
5 your wires, those complained of.

6 MR. CORNELL: Well, we cannot repair someone  
7 else's wiring.

8 THE ADMIN. LAW JUDGE: I understand that,  
9 that is why I think some thought of a determination should  
10 be made because I think this is a dangerous condition  
11 existing here. I am not --

12 MR. GREEN: If those are our wires we will  
13 correct it. We have no problem with that.

14 THE ADMIN. LAW JUDGE: How long will it  
15 take you? Would you report back to me or the Commission  
16 within seven days?

17 MR. GREEN: Yes, sir, we would if it is--  
18 if it is formally determined that it is our wires.

19 MR. CORNELL: We will advise him this  
20 afternoon as soon as we get somebody there.

21 THE ADMIN. LAW JUDGE: I want this situation  
22 remedied without having to report this to the Commission,  
23 and maybe see some unnecessary passage of time elapse. This  
24 thing is urgent.

1 MR. CORNELL: It might be that these wires  
2 are not serviceable.

3 THE ADMIN. LAW JUDGE: Well, that's what I  
4 want determined. But I think that thing should be looked  
5 into and repaired as soon as possible, not because of the  
6 legal responsibility but on the chance that somebody might  
7 get hurt.

8 MR. GREEN: Your Honor, we will work with  
9 the Utility here and determine what has to be done and  
10 whom is responsible.

11 THE ADMIN. LAW JUDGE: I certainly appreciate  
12 that, Mr. Green and thank you.

13 I take it there is no more testimony to  
14 be offered. Are briefs to be filed?

15 MR. CORNELL: Not by us.

16 THE ADMIN. LAW JUDGE: Well then, the  
17 hearing is adjourned.

18 (Concluded at 12:20 P.M.)  
19  
20  
21  
22  
23  
24

Photos by: John SADDIC  
P.O. Box 52  
Prospect Park, Pa. 19076

SUBJECT: Primos Ave.  
Bridge, Holcroft, Pa.  
PHOTOS TAKEN: 04/18/77  
TIME: 11:00 am

DOCKETED  
COMPLAINT DOCKET  
JUN 28 1977  
ENTRY NO. 2

DOCKET  
FOLIO

JUN 28 1977

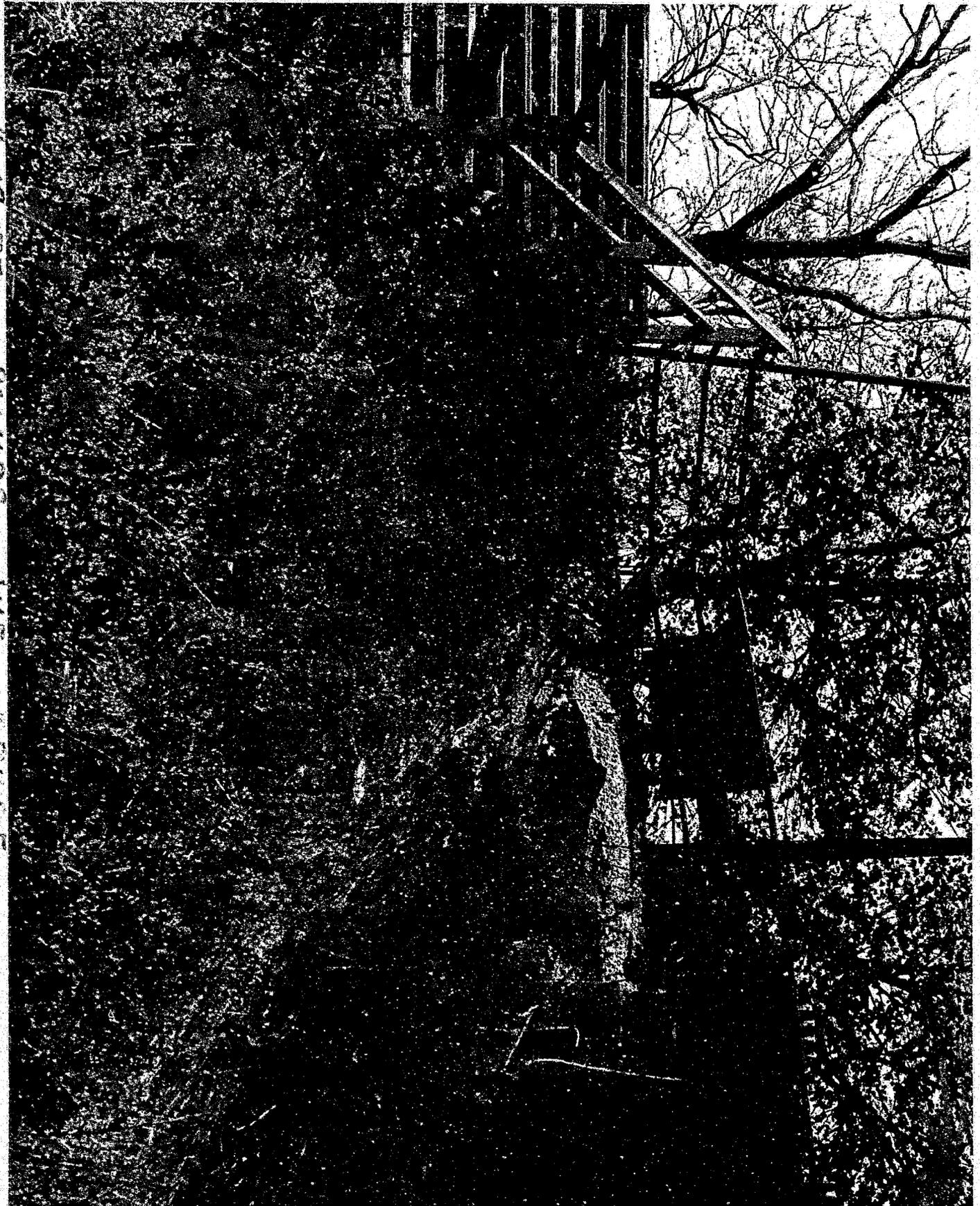
4-18-77

PRIMOS

AV

AVENUE

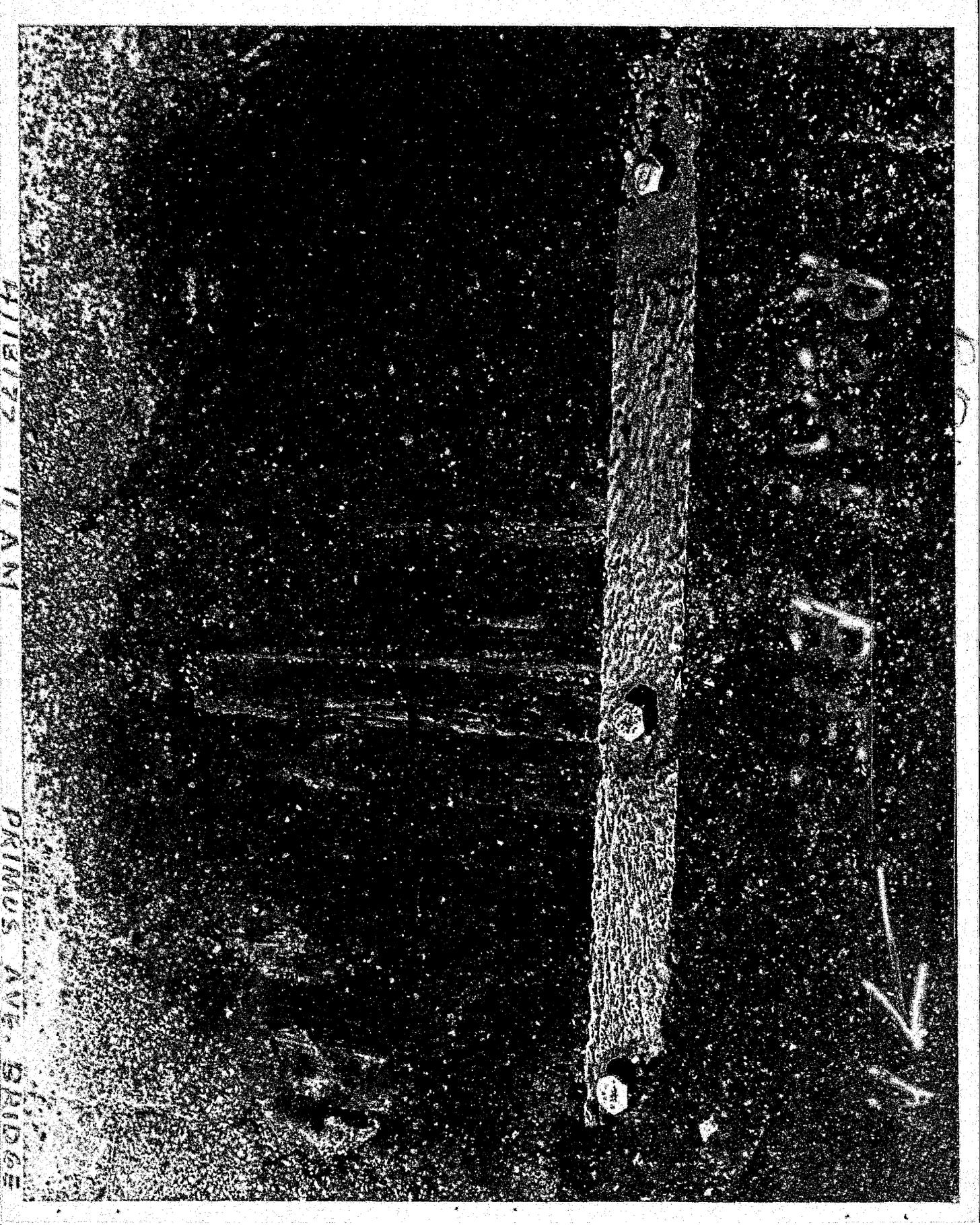
AVENUE





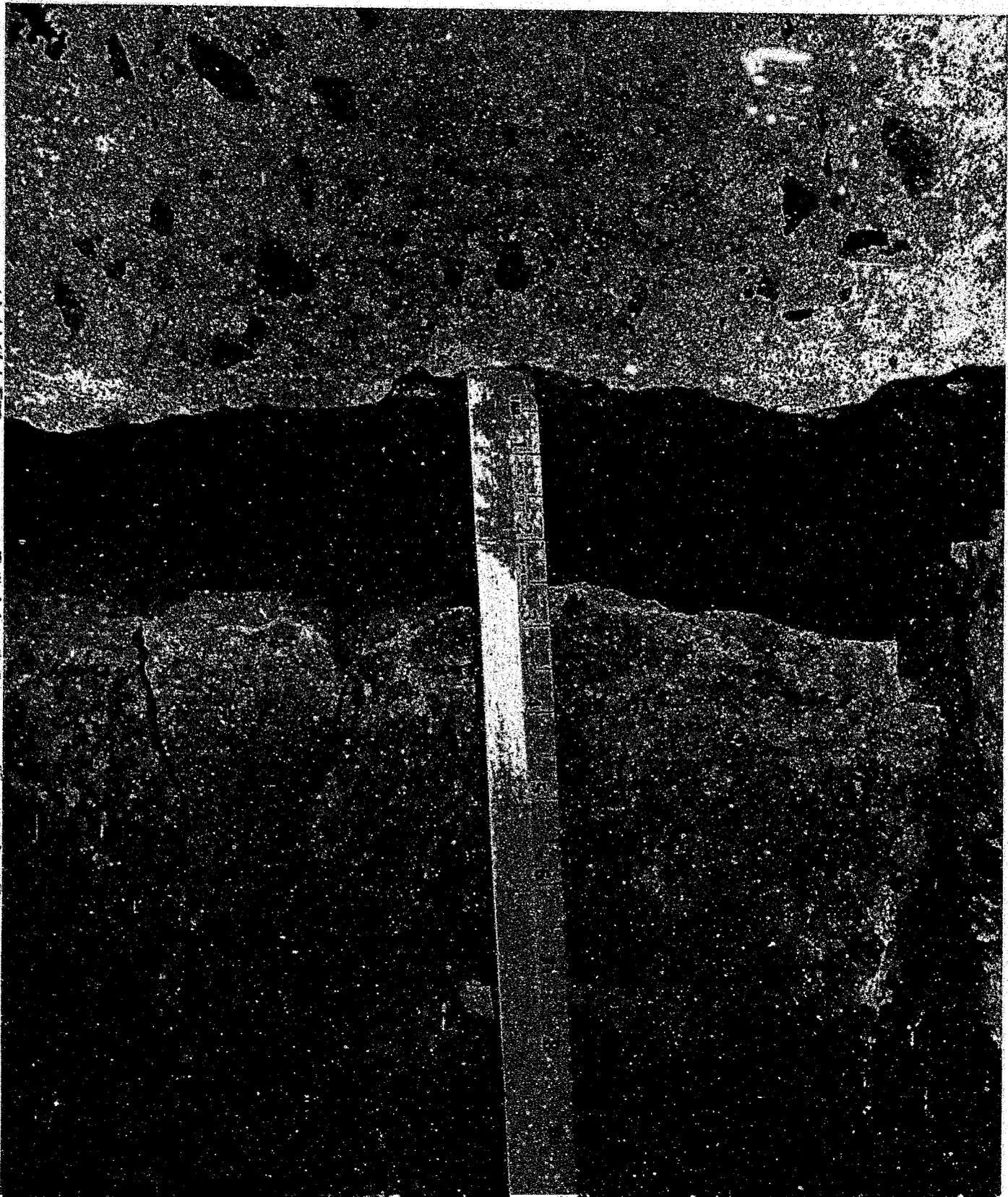
4/11/57 11 AM

PRIMOS AVE. BRIDGE



1418177

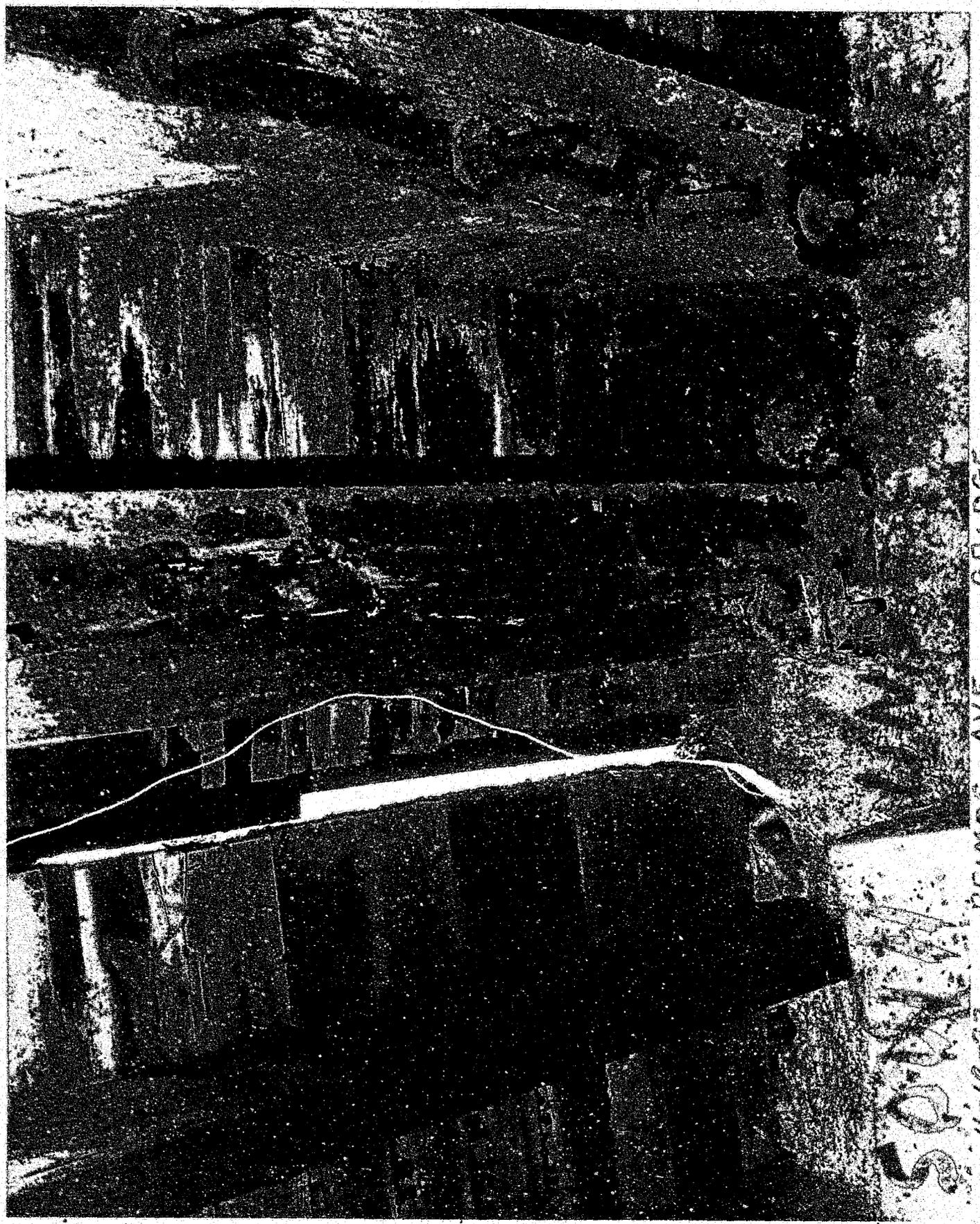
PRIMOS AVE BRIDGE



GUARD

PRIMOS AVE. BRIDGE

HUBBETT

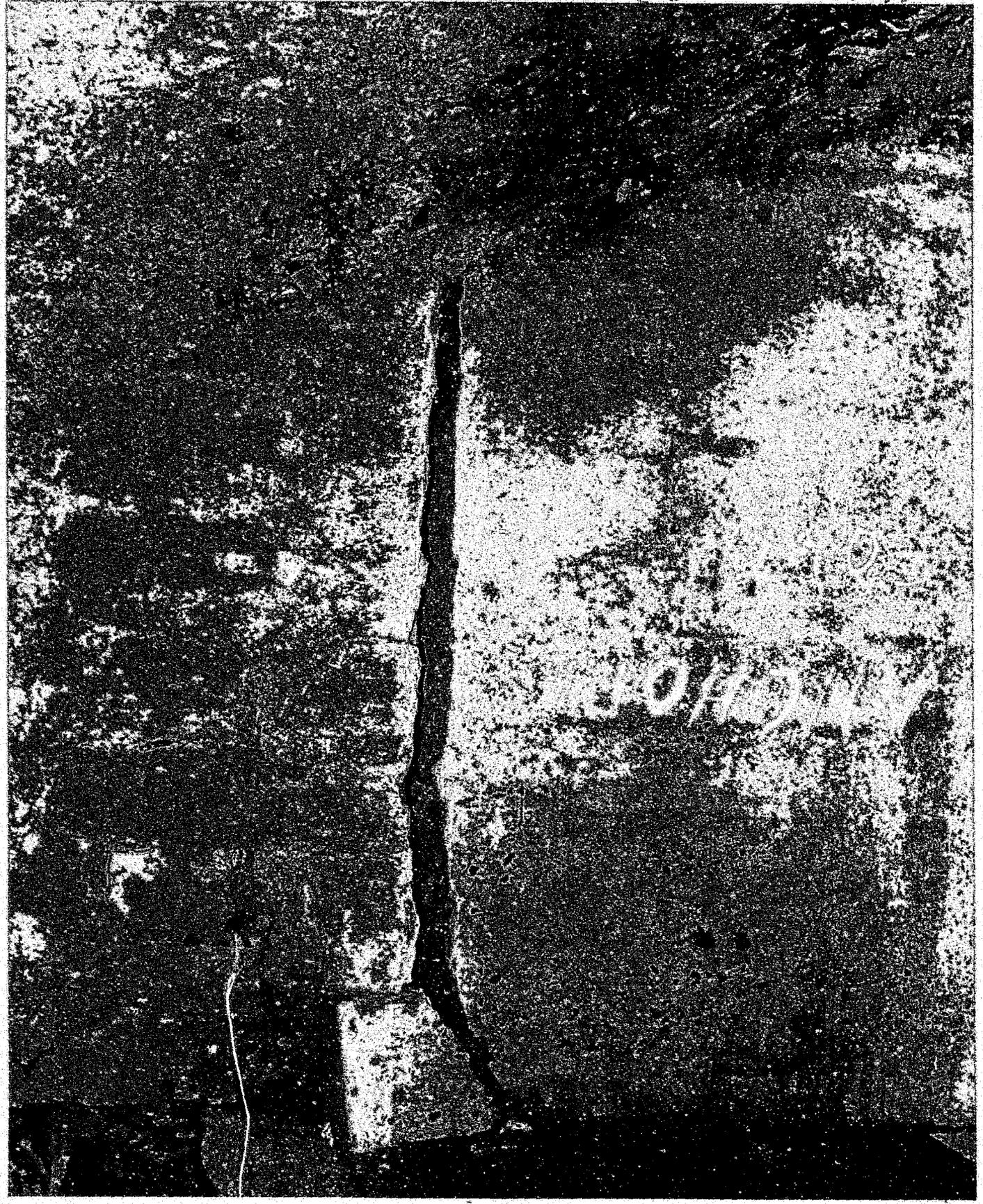


H-18-77  
SQUAW  
PRIMPS AVE. BRIDGE



PRIMOS AVE. PRINCE

11-12-77 PNMOS AVE. BRIDGE



4-13-77

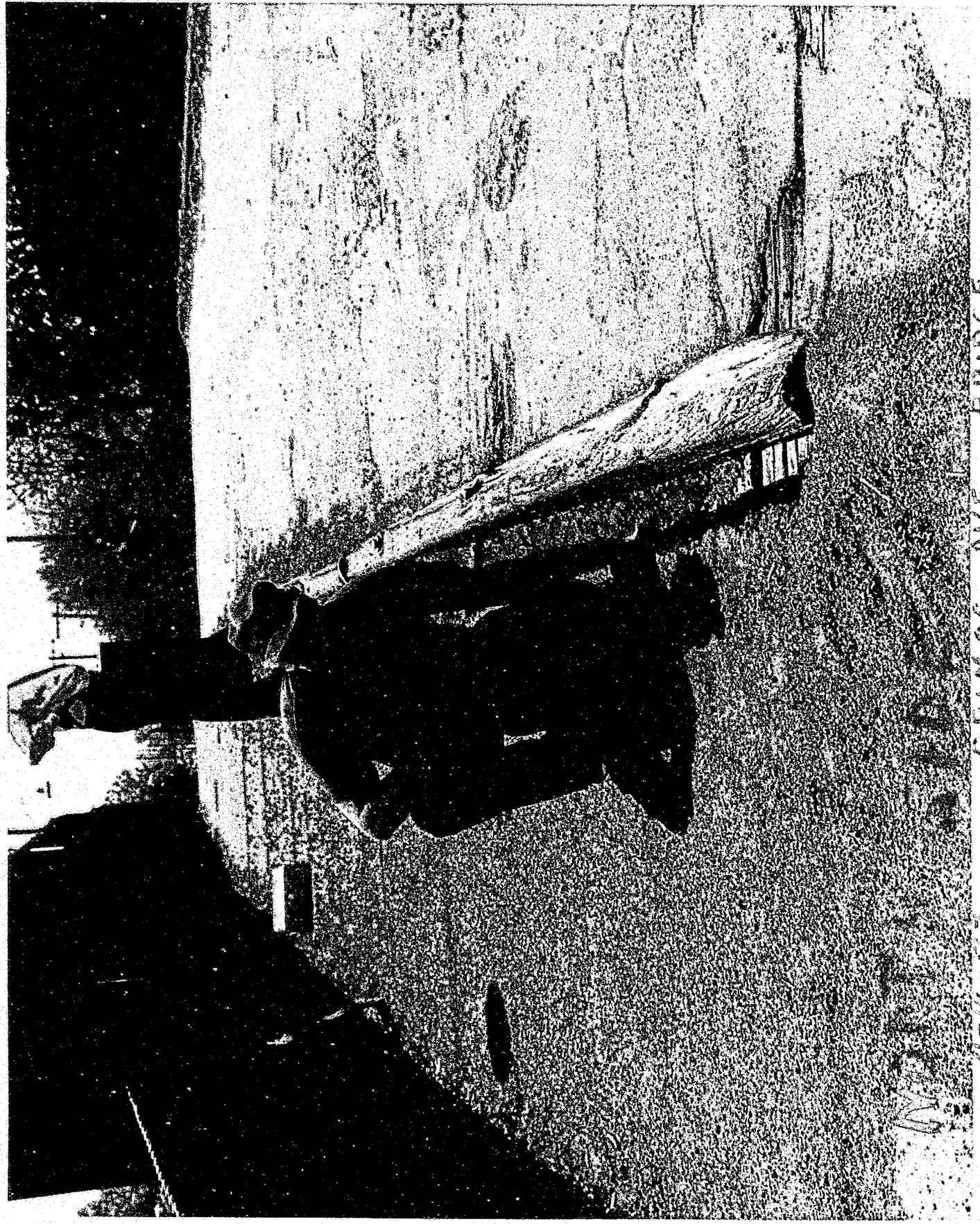
PRIMOS AVE. BRIDGE



4/19/37

PRIMOS AVE. BRIDGE

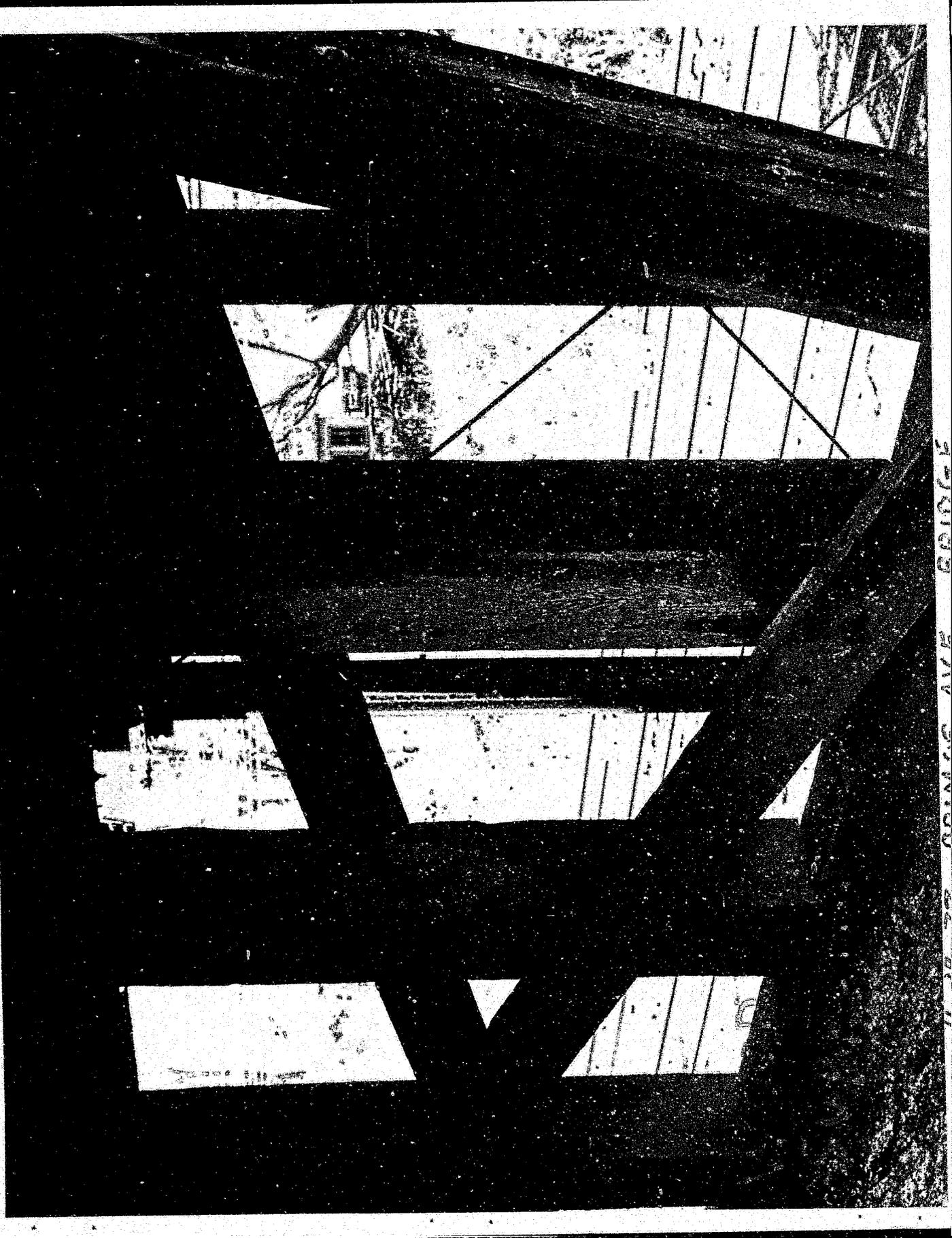
100



GRIMES AVE. BRIDGE

4-14-77

W



BRIDGE

15-1  
MAY 1 1977  
MAY 2 1977

4-18-77 PRIMOS AVE. BRIDGE

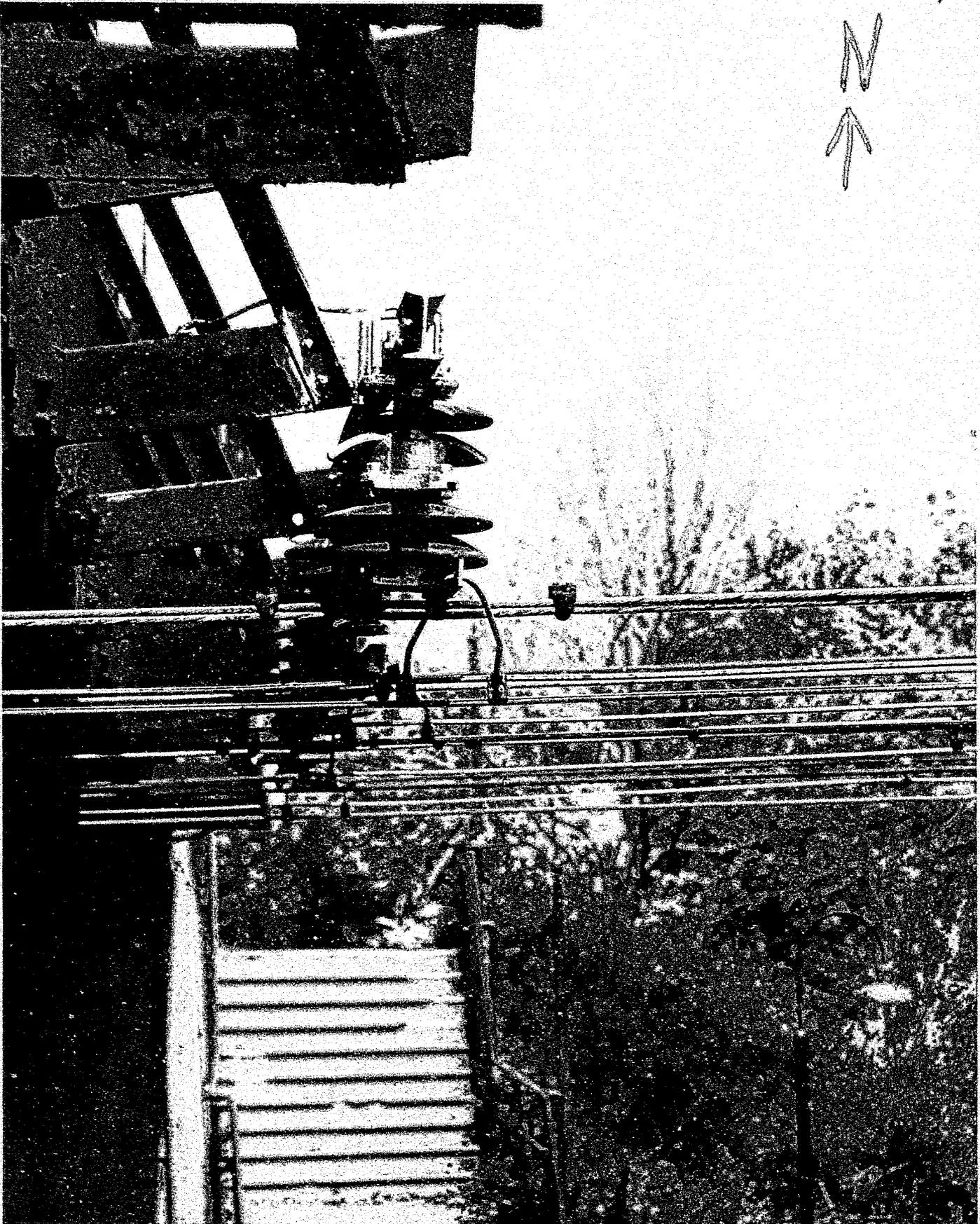
1-1-77

PRIMOS AV



4-13-72 PALMOS AV. BRIDG

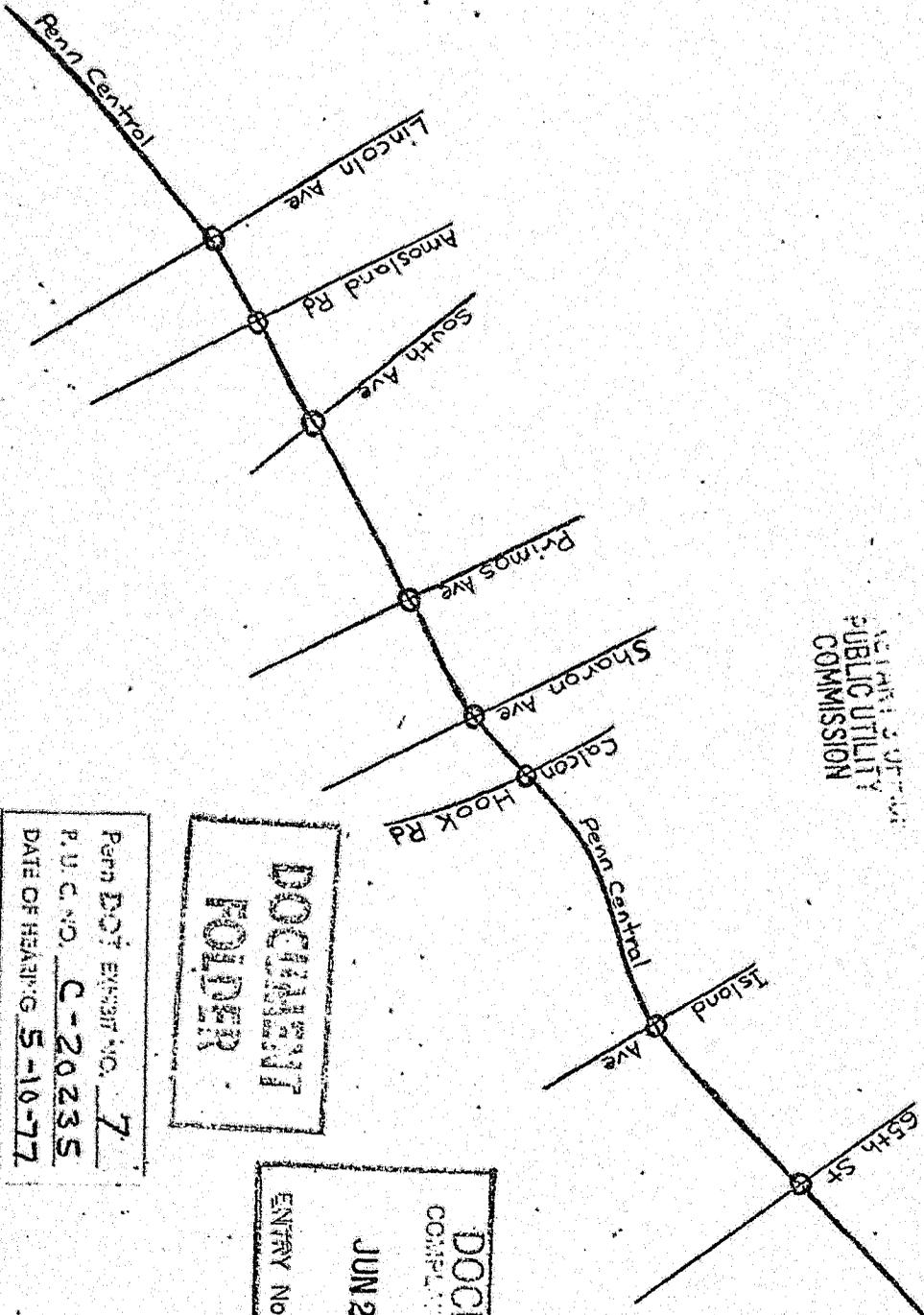




4-18-77 PRIMOS AVE. BRIDGE

DELAWARE  
PUBLIC UTILITY  
COMMISSION

177 JUN 23 AM 10:39



DOCUMENT  
FOLDER

DOCKETED  
COMPLAINT DOCKET  
JUN 28 1977  
ENTRY No. *[Signature]*

Penn DOT EXHIBIT NO. 7  
P.U.C. NO. C-20235  
DATE OF HEARING 5-10-77

Delaware County  
LR 420  
Primos Ave  
Borough of Folcroft  
PUC 020235  
No Scale