



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

June 22, 1993

IN REPLY PLEASE
REFER TO OUR FILE
C-00923909

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Department of Transportation of
the Commonwealth of Pennsylvania
v.
CSX Transportation

To Whom It May Concern:

This is to advise you that an Opinion and Order has been adopted by the Commission in Public Meeting on May 13, 1993 in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

John G. Alford, Secretary

DOCUMENT
FOLDER

DOCKETED
JUN 30 1993

FOR SIMILAR LETTER SEE RECOMMENDED DECISION DATED MARCH 17, 1993

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PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

DOCUMENT
FOLDER

Public Meeting held May 13, 1993

Commissioners Present:

David W. Rolka, Chairman
Joseph Rhodes, Jr., Vice-Chairman
John M. Quain
John Hanger

Department of Transportation of
the Commonwealth of Pennsylvania

C-923909

v.
CSX Transportation

OPINION AND ORDER

ROCKETED
JUN 30 1993

BY THE COMMISSION:

Before the Commission for review and disposition are the Exceptions ("Exc.") of the Commission's Law Bureau ("Law Bureau") to the Recommended Decision ("R.D.") of Administrative Law Judge ("ALJ") Michael A. Nemeč issued on March 17, 1993, relative to the above-captioned proceeding.

History of the Proceedings

On March 30, 1992, the Department of Transportation of the Commonwealth of Pennsylvania ("PennDOT") filed a Complaint against CSX Transportation ("CSX") in which it alleged that it had contacted CSX concerning repairs to the crossing of SR 3009 over Buffalo Creek and below the grade of the tracks of CSX in Buffalo Township, Washington County. A formal answer was not filed by CSX but an appearance was timely filed by its counsel.

The initial hearing was held on September 15, 1992. Thereafter, both PennDOT and CSX filed supplemental information. Following the initial hearing and a visit to the site, the ALJ determined that an additional hearing at the site would be beneficial in creating a full record. A site hearing was held on

January 23, 1993. The resulting record consists of 91 pages of transcript, six PennDOT exhibits and three CSX exhibits.

On March 26, 1993, the Law Bureau filed Exceptions to the ALJ's Recommended Decision.

Discussion

After reviewing the entire record as developed in this proceeding, ALJ Nemeč issued his Recommended Decision wherein he made the following Findings of Fact:

1. The subject crossing consists of the crossing below grade of a line of railroad tracks owned and operated by CSX Transportation by SR 3009, LR 62135 at Station 418+59, both of which cross above and over Little Buffalo Creek, in Buffalo Township, Washington County.
2. The subject crossing was constructed by the operating railroad in 1907.
3. The subject crossing consists of a concrete arch under a rail roadbed fill some 90 feet long and 30 feet high at the highest point. No horizontal measurements were provided, but roadway consumes the full width of the tunnel. The crossing is unusual in that the roadway is supported above and parallel to the stream below. Entering the crossing from the northern approach requires a sharp turn to the right and then an immediate turn to the left. The interior of the tunnel is not visible during the approach, even on foot as is presently required. Exiting the crossing moving south requires a sharp right turn and then an immediate left turn. Similarly to a northern approach, the interior of the tunnel is not visible as one approaches the crossing from the south.
(Hearing of 1/20/93, Tr. 6-7; PennDOT Exhibit 3)

4. The subject crossing was restricted to loads not to exceed 3 tons in 1987 and finally closed to all traffic in 1989.

5. While PennDOT has located information that 500 vehicles a day used the subject crossing, PennDOT's witness was unable to state the date of the count or to provide any documentation. The crossing is located in a rural area with a low population density and no commercial or industrial activity in the vicinity. I find the count offered by PennDOT questionable given the setting and the restrictiveness of the approaches and the tunnel itself.

6. The approximate road distance from one end of the crossing to the other is about 4 to 4.5 miles. About six individual residences are located within 1/4 mile of the southern end of the crossing; three residences are located within 1/4 mile of the northern end. The northern end is approximately one mile from State Route 221; the southern end is about one mile from U.S. Route 40. (Hearing of 1/20/93, Tr. 5)

7. The line of railroad is not presently being operated. CSX anticipates using the single set of tracks for freight (coal) only at speeds up to 25 mph within the next three years.

8. PennDOT has apparently expended a sum in excess of \$12,000 for lighting of some sort at the site. I saw no evidence of any lighting devices on my two visits to the site.

9. CSX has provided a detailed breakdown of its expenditure of in excess of \$30,000 to make necessary repairs to the structure.

(R.D., pp. 10-12)

Based on his evaluation and analysis of the record, the ALJ reached the following Conclusions of Law:

1. The parties to and subject matter of this proceeding are subject to the jurisdiction of this Commission.

2. The record here does not support a finding that the repair and/or rehabilitation of the subject crossing is in the public interest or will result in protecting or enhancing the safety and/or convenience of the traveling public. The Complainant Pennsylvania Department of Transportation has not met its burden of proof under 66 Pa. Stat. Ann. §332(a).

(R.D., p. 15)

The Law Bureau takes exception to ALJ Nemeč's Ordering Paragraph No. 2 wherein he stated as follows:

2. That the conditions and situation at the crossing where State Route 3009 crosses below the grade of the tracks of CSX Transportation and above Buffalo Creek in Buffalo Township, Washington County, would still be unsafe even if the proposed repairs were made. The result is that the crossing should be abolished and the road permanently closed.

(R.D., p. 10)

Specifically, the Law Bureau objects to Ordering Paragraph No. 2 of the Recommended Decision to extent that it directs that the crossing be abolished. The Law Bureau contends that the legal ramification of abolishing the crossing and leaving the structure intact is that the Commission would be, in effect, relinquishing jurisdiction over the structure. As an alternative, the Law Bureau suggests that we order that the crossing be suspended rather than abandoned. The suspension of the crossing, the Law Bureau maintains, would allow us to retain jurisdiction over the crossing.

We agree with the Law Bureau. We believe that the abolition of the crossing, at this time, would extinguish our jurisdiction over the crossing. Without jurisdiction, we would have no authority over CSX to direct the removal of the structure should CSX decide to abandon its line in the future. In our view, the preservation of our jurisdiction over the crossing would be in the public interest; **THEREFORE,**

IT IS ORDERED:

1. That the Recommended Decision of Administrative Law Judge Michael A. Nemec be, and hereby is, adopted, as modified, consistent with this opinion and order.
2. That the Exceptions of the Law Bureau be, and the same are hereby granted.
3. That the complaint of the Pennsylvania Department of Transportation at Docket No. C-923909 be, and hereby is, sustained to the extent of this Commission assuming jurisdiction of the crossing where State Route 3309 crosses below the grades of the tracks of CSX Transportation and above Buffalo Creek in Buffalo Township, Washington County.
4. That the conditions and situation at the crossing where State Route 3009 crosses below the grade of the tracks of CSX Transportation and above Buffalo Creek in Buffalo Township, Washington County, would still be unsafe even if the proposed repairs were made. The result is that the crossing should be suspended and the road temporarily closed.
5. That the Pennsylvania Department of Transportation be, and hereby is, directed at its sole expense to erect permanent barricades to close the road at the structure.

6. That the Pennsylvania Department of Transportation be, and hereby is, directed to construct turnarounds at appropriate locations on the highway approaches.

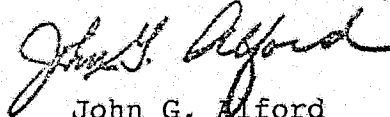
7. That the Pennsylvania Department of Transportation be, and hereby is, directed to erect "No Outlet" signs at appropriate intersections of SR 3009 to alert the traveling public to the closed road.

8. That the Pennsylvania Department of Transportation be, and hereby is, directed to maintain all signs and barricades erected in compliance with this Order.

9. That CSX Transportation be, and hereby is, directed to maintain the remaining structure.

10. That all parties be, and hereby are, directed to bear those costs they have or will incur in complying with this Order.

BY THE COMMISSION,



John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: May 13, 1993

ORDER ENTERED: JUN 22 1993