

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE:

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION)

vs.)

) Complaint Docket
) C. 18616

PENN CENTRAL COMPANY, THE BALTIMORE AND)
OHIO RAILROAD COMPANY, THE COMMONWEALTH)
OF PENNSYLVANIA, COUNTY OF ALLEGHENY)
AND THE DEPARTMENT OF HIGHWAYS OF THE)
COMMONWEALTH OF PENNSYLVANIA.)
FURTHER HEARING.)

TRANSCRIPT OF PROCEEDINGS

BEFORE ALVIN J. LUDWIG, ESQ.
ADMINISTRATIVE LAW JUDGE

Hearing Room, Buhl Building
204 Fifth Avenue, Pittsburgh, Pennsylvania, 15222

Wednesday, February 8, 1978 - 11:00 a.m.

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1 APPEARANCES:

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3 ESQ., Special Assistant Attorney General, Room G-28,
4 North Office Building, Harrisburg, Pennsylvania, 17120,
5 appearing on behalf of the Public Utility Commission.

6 GARY F. SHARLOCK, ESQ., of the firm of Shar-
7 lock, Repcheck, Engel & Mahler, 3090 U.S. Steel Build-
8 ing, Pittsburgh, Pennsylvania, 15219, appearing on be-
9 half of the Baltimore & Ohio Railroad.

10 MARVIN A. FEIN, ESQ., Assistant City Solici-
11 tor, 313 City-County Building, Pittsburgh, Pennsylvania,
12 15219, appearing on behalf of the City of Pittsburgh.

13 SHELDON L. KEYSER, ESQ., Assistant County
14 Solicitor, 919 Jones Law Annex, Pittsburgh, Pennsylvania,
15 15219, appearing on behalf of the County of Allegheny.

16 JEFFREY GILTENBOTH, ESQ., Room 1207 State
17 Office Building, 300 Liberty Avenue, Pittsburgh, Penn-
18 sylvania, 15222, appearing on behalf of PennDOT.

19 W. B. CALDER, Present.

20 JOEL G. MAZOR, ESQ., 1138 #6 Penn Center,
21 Philadelphia, Pennsylvania, 19104, counsel of record
22 for Consolidated Rail Corporation.

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I N D E X

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<u>PENNDOT WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RECROSS</u>	<u>REDIRECT</u>
William J. Clements	34	38 47 52	--	--
<u>CONRAIL WITNESSES</u>				
Stafford C. Walker	57	60	--	--

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1 THE ADMINISTRATIVE LAW JUDGE: I see
2 that there is no one here representing Consolidated
3 Rail, successor to Penn Central Company. Do we have
4 to wait for a counsel or representative of that
5 company?

6 MR. MILLER: Neither will be here to
7 make a statement. He was without counsel. The
8 engineer will be here shortly. He was here a little
9 while ago.

10 THE ADMINISTRATIVE LAW JUDGE: Can we
11 proceed without PennDOT being present at this time?
12 Do you have any statement to make, Mr. Miller?

13 MR. MILLER: Yes. I have a brief open-
14 ing statement.

15 This is PUC Complaint No. 18616 con-
16 cerning the 31st Street Bridge, which is located in
17 the City of Pittsburgh, Allegheny County.

18 This proceeding was commenced on
19 December 23, 1968, when the Commission instituted an
20 investigation upon its own motion into the safety
21 of the 31st Street Bridge.

22 On September 1, 1970, a hearing was
23 held concerning the Complaint; and on October 10,
24 1973, the Commission issued an Order directing
25 PennDOT to rehabilitate the 31st Street Bridge. On

1 September 3, 1976, and March 24, 1977, PennDOT advised
2 the Commission that the work was completed and that
3 a hearing could be held for the purposes of alloca-
4 ting the costs for the project.

5 On December 16, 1977, a hearing notice
6 was sent to all the parties of record with questions
7 and procedures attached to the notice, and all
8 parties of record should have a copy of these ques-
9 tions and procedures.

10 Therefore, the purpose of this hearing
11 will be strictly for allocating the costs for the
12 project which has been completed. The Commission
13 formally moves that the questions and procedures
14 that were submitted to the parties be made part of
15 the record and that they be used as a format for
16 today's hearing.

17 THE ADMINISTRATIVE LAW JUDGE: It is
18 your motion that we incorporate into the record the
19 questions and suggested procedure dated March, 1977,
20 in this case? Does anyone have an objection to
21 that? All right. We'll instruct the reporter to
22 type these right into the record. Do you want them
23 typed in as they run, 1 through 14?

24 MR. MILLER: They can just be attached
25 as part of the record.

1 MR. FEIN: They can be submitted as
2 part of the record.

3 (Discussion held off the record.)

4 THE ADMINISTRATIVE LAW JUDGE: Then,
5 I'm going to instruct the reporter to, at this point
6 in the record, type these in the record.

7 The Questions and Suggested Procedure
8 is as follows:

- 9 1. Pennsylvania Department of Trans-
10 portation (PennDOT) shall submit
11 into the record a detailed itemized
12 summary of all costs incurred by
13 it in furnishing material and per-
14 forming work in accordance with the
15 Commission Order issued October 10,
16 1973, in this proceeding.
- 17 2. PennDOT shall submit testimony and/
18 or exhibits, in full explanation
19 of its summary of costs, including
20 but not limited to an accounting
21 of the work and materials expended
22 in the rehabilitation of the subject
23 bridge structure, final quantities
24 and prices, and any other informa-
25 tion or costs pertinent thereto.

1 3. PennDOT shall submit testimony as
2 to its opinion which party or
3 parties should bear the costs in-
4 curred in furnishing material and
5 performing work herein above order-
6 ed to be performed, and in what
7 proportions such costs should be
8 allocated thereto; and shall sub-
9 mit copies of any pertinent agree-
10 ments, in support of such testi-
11 mony.

12 4. PennDOT shall submit testimony as
13 to its present obligation at the
14 subject crossing and the highway
15 approaches thereto with the respect
16 to the maintenance thereof; and
17 whether it will agree to perform any
18 future maintenance at this location
19 and bear the costs thereof, and
20 whether it has any opinion as to
21 which party or parties hereto should
22 be required to share in the perfor-
23 mance, and the costs of such future
24 maintenance.

25 5. PennDOT shall submit testimony and

1 produce records to show the dates,
2 extent, costs, and any other per-
3 tinent information relating to any
4 maintenance performed on the cross-
5 ing structure prior to October 10,
6 1973.

7 6. The Baltimore and Ohio Railroad
8 Company shall submit answers to
9 Questions 1 through 5 above, as if
10 same were posed to it.

11 7. Trustees of Penn Central Transpor-
12 tation Company shall submit answers
13 to Questions 1 through 5 above, as
14 if same were posed to it.

15 8. Consolidated Rail Corporation shall
16 submit answers to Questions 1
17 through 5 above, as if same were
18 posed to it.

19 9. County of Allegheny shall submit
20 answers to Questions 1 through 5
21 above, as if same were posed to it.

22 10. City of Pittsburgh shall submit
23 answers to Questions 1 through 5
24 above, as if same were posed to it.

25 11. Bell Telephone Company of Pennsyl-

1 vania shall submit answers to
2 Questions 1 through 4 above, as if
3 same were posed to it.

4 12. Duquesne Light Company shall submit
5 answers to Questions 1 through 4
6 above, as if same were posed to it.

7 13. Equitable Gas Company shall submit
8 answers to Questions 1 through 4
9 above, as if same were posed to it.

10 14. Query whether any of the parties
11 involved herein, or any other party,
12 desires to submit any additional
13 relevant testimony.

14 THE ADMINISTRATIVE LAW JUDGE: All
15 right, Mr. Miller.

16 MR. MILLER: We request that PennDOT
17 respond to Questions 1 through 5, and that the other
18 parties respond to the other questions.

19 MR. GILTENBOTH: Judge, the Department
20 of Transportation is aware of but not in possession
21 of an engineering study which was done prior to the
22 time that PennDOT took over the maintenance of the
23 bridge and which would be vital to the determination
24 as to the allocation of costs. Therefore, we would
25 like to continue this hearing until this is made

1 available to us, and we have told the County we would
2 make a copy of it available to them or the alterna-
3 tive only to proceed with those matters which do not
4 deal with allocation at this time.

5 THE ADMINISTRATIVE LAW JUDGE: What is
6 your position, Mr. Miller?

7 MR. MILLER: I wish they had informed
8 us before we came here today because isn't there
9 anything that they can proceed on with regard --

10 THE ADMINISTRATIVE LAW JUDGE: I think
11 he said he had an alternative. What can you proceed
12 with?

13 MR. GILTENBOTH: We can proceed with
14 the actual costs involved. We would not want to at
15 this time proceed with the opinion as to allocation
16 because this particular engineering study may, in
17 fact, be the entire decision on that matter.

18 MR. MILLER: Did you anticipate you
19 would be able to get ahold of the study?

20 MR. GILTENBOTH: Yes. The engineer is
21 on vacation, as I understand it, and he's in Florida;
22 and when he returns from Florida, he can produce the
23 copy for us.

24 MR. MILLER: Is that the engineer who
25 prepared the report?

1 MR. GILTENBOTH: Right.

2 MR. MILLER: I would suggest that the
3 department contact the Commission as soon as it has
4 the witness who can introduce the report into evi-
5 dence, so that we can set up another hearing as soon
6 as possible and then I'll do that.

7 MR. GILTENBOTH: Certainly.

8 THE ADMINISTRATIVE LAW JUDGE: Are you
9 suggesting, Mr. Miller, that we continue this case
10 until that time?

11 MR. MILLER: I think we will go ahead
12 and at least have the costs that PennDOT expended
13 made part of the record. I think they served a copy
14 to all the parties.

15 THE ADMINISTRATIVE LAW JUDGE: All
16 right.

17 MR. MILLER: If no one else objects.

18 - - -

19 WILLIAM J. CLEMENTS

20 called as a witness on behalf of PennDOT, having
21 been first duly sworn, was examined and testified as
22 follows:

23 MR. KEYSER: If Your Honor please, Mr.
24 Miller indicated that copies of the expenditures
25 have been submitted to all the parties. I don't

1 believe, although I may be mistaken, at least I'm
2 not in possession of one for the County of Allegheny.

3 MR. MILLER: There's a letter sent on
4 March 24, 1977, from James B. Wilson when he was
5 Department Chief Highway Engineer which contained
6 costs.

7 MR. KEYSER: May we have a copy, please.
8 Mr. Clements, do you have a copy that you can read?

9 THE WITNESS: I had to look at it and
10 write over it. I have the original copy that we can
11 read. It's readable.

12 - - -

13 DIRECT EXAMINATION

14 BY MR. GILTENBOTH:

15 Q Mr. Clements, you have heard that questions
16 and suggestions of procedure have already been in-
17 corporated into the record. In order to save me
18 reading the questions, would you respond to question
19 number one.

20 A First of all, the final cost the department
21 has expended for engineering, that is to prepare the
22 rehabilitation plan was \$99,946.10. The total cost
23 expended by the department for rehabilitation of the
24 structure in accordance with the proven plan was
25 \$2,227,316.69. The department intends to paint the

1 the structure and that has not been done yet but will
2 be completed when the weather changes. That will
3 cost an additional half a million dollars, estimate.

4 Q Do you have with you a copy of the payment or
5 the cost schedule?

6 A Yes. I have a copy of our project payment
7 estimate, the last one or the most recent one that
8 was made.

9 Q Has that been identified by an exhibit number?

10 A That is identified as Exhibit No. 4 and it
11 consists of 13 pages of the cost indicating the item,
12 a description of the contract item, number of units,
13 the bid price of each unit and the quantity.

14 Also attached to that is a list of three extra
15 work items that have not yet been included in the
16 13 pages, the final estimate or final payment esti-
17 mate.

18 (Discussion held off the record.)

19 THE WITNESS: This is a computer print-
20 out of Exhibit No. 4 and, as I said, it indicates the
21 contract item, its description, the number of units
22 to be constructed, the bid price and the total quan-
23 tity. It also contains any additional work that was
24 done after the contract was let and any deductions
25 from the original proposed work.

1 If you look at sheet number 12, you can
2 see the contract amount as it was awarded was
3 \$1,360,707.10. The amount of additional work that
4 was added after the initial letting was \$968,866.82.
5 That was work that was discovered during the progress
6 of the rehabilitation, and there were some items
7 that were intended in the original letting that were
8 deducted and their total was \$102,056.83. That would
9 make a net additional work to the original contract
10 of \$866,809.99, and adding that onto the contract
11 amount as awarded gives the \$2,227,516.60 to date.

12 THE ADMINISTRATIVE LAW JUDGE: Mr. Gil-
13 tenboth, I know that you're explaining some of these
14 figures through your witness, but this isn't legible
15 to me. It's going to be of importance to people on
16 the Commission's staff to have the exact figures.
17 Is it possible for you to retype this exhibit?

18 MR. GILTENBOTH: Yes, it's possible
19 to have that done.

20 THE ADMINISTRATIVE LAW JUDGE: And sub-
21 mit it so it can be read? I don't know how your
22 copies are, but I can't read these figures.

23 MR. KEYSER: Yes.

24 THE ADMINISTRATIVE LAW JUDGE: All
25 right. We understand that you will submit new Ex-

1 hibit 4's that are legible.

2 BY MR. GILTENBOTH:

3 Q Mr. Clements, in regard to the present obliga-
4 tion of the department, do you have any information
5 with you today?

6 A I believe it was stated in previous testimony
7 of the department that prior hearings -- the bridge
8 was constructed under a Public Service Commission
9 Complaint Docket No. 6902. Under Order of the
10 Commission of March 15, 1927, that particular Order,
11 the bridge was constructed by the County of Allegh-
12 eny and that Order assigned maintenance responsibility
13 of the bridge and viaduct to the County of Allegh-
14 eny. In 1961 the Legislature passed Act 619 which
15 placed this structure on the state highway system;
16 and according to the Commonwealth Court the mainten-
17 ance of the structure was transferred to the Depart-
18 ment of Highways, now the Department of Transporta-
19 tion, with the exception of any deferred maintenance
20 that may have existed.

21 Q Do you have any other testimony you would like
22 to offer in matters dealing with anything other than
23 the allocation?

24 A We have been made aware of an inspection re-
25 port made by a Mr. Fertig on this structure prior

1 to our report that we had submitted as Exhibit No. 1,
2 and we have asked him if we could obtain a copy.
3 Unfortunately, he had gone to Florida for his vaca-
4 tion before we could obtain a copy of the report,
5 and we would like to defer any testimony on alloca-
6 tion of costs for the rehabilitation work or any
7 testimony of future maintenance until such time as
8 we obtain a report. We can give it to all parties
9 of record and review it. It will have some bearing
10 on that testimony.

11 MR. GILTENBOTH: I would like to offer
12 Mr. Clements for cross-examination at this time.

13 THE ADMINISTRATIVE LAW JUDGE: Do you
14 have any order in which you would like to proceed?

15 MR. MILLER: I think we'll defer to
16 the other parties first.

17 THE ADMINISTRATIVE LAW JUDGE: Do you
18 have any questions?

19 MR. KEYSER: Yes, I have some ques-
20 tions.

21 THE ADMINISTRATIVE LAW JUDGE: All
22 right.

23 - - -

24 CROSS-EXAMINATION

25 BY MR. KEYSER:

1 Q Mr. Clements, the contract which you intro-
2 duced and testified to was originally for \$1.3
3 million, I believe; is that correct?

4 A That's correct.

5 Q How was that contract let, by competitive
6 bidding?

7 A Yes.

8 Q It was by competitive?

9 A Yes.

10 Q And the extras are almost the equivalent of
11 the contract itself; is that correct?

12 A Pretty close, maybe 60 percent, 70 percent.

13 Q How were those extras proved? I presume, first
14 of all, that they were not let by competitive bid-
15 ding?

16 A It's indicated on each of these sheets of Ex-
17 hibit No. 4 where there was an addition, okay, and
18 it indicates the unit bid price and the quantity.
19 In most cases I reviewed this. The unit bid price
20 was accepted for the additional work and it wasn't
21 relet, no.

22 Q It was done by the same party who had obtained
23 the original contract?

24 A Yes. If he accepted it under the same bid
25 price that he had bid under the item before. There

1 was an item placed before. There was an item placed
2 in. He came up with a price to do that particular
3 type of work under that item; and if there was more
4 work like that discovered during the course of re-
5 habilitation, then if he expected the same bid price
6 and the additional work was required, then it was
7 done under the same bid price. That's the common
8 method of doing it.

9 Q Under the items identified as extra, were
10 there any new items that were not contained in the
11 original contract or bidding in the original con-
12 tract?

13 A Yes, there were, I believe. There were a few
14 items such as payment for overtime.

15 Q Well, let me ask you this, Mr. Clements.
16 Were the items that were not bid originally that
17 came under the extras, was that a large or a small
18 amount of money?

19 A Probably wasn't a large amount of money.

20 Q Do you have any approximate figures of what
21 was bid?

22 A No, I don't, but it wouldn't have been a large
23 amount of money. Most of the additional work was
24 done under items that were included in the contract
25 and were increased.

1 Q Are the items which were not originally bid
2 identified, without going back and attempting to
3 locate the original items bid and checking it against
4 the extras? Is there any other way to identify them?

5 A Yes. If you look at sheet number six, the
6 item numbers are marked EW, that would be extra work,
7 and would probably be the last six from page six to
8 page eleven, those items.

9 Q Are you indicating now that all of those --

10 A But there were additional items, where in the
11 other one where you have an item number. Let's look
12 at page number one, Class AA, Cement Contract special
13 would be item No. 0704, I believe 000. There was an
14 addition there. See the addition. The original bid
15 called for 67, and the actual quantity was 90.19.

16 Q But that's an item that was originally bid?

17 A Right. There were some of those, and then
18 there were some extra work items.

19 Q And by extra work items, you mean which were
20 new items and not originally bid?

21 A Yes.

22 Q And where are those? Where are you indicating?

23 A They would be indicated from page six to page
24 ten.

25 Q Everything identified as EW under the item

1 number column --

2 A That's correct.

3 Q -- would be work which was not originally --

4 A Correct. But, now, all of that work is not
5 necessarily for the structure. There was some work
6 in there that was on the approaches, which we want
7 to go into in our testimony later on after we see
8 the other report.

9 Q When was the contract originally let, on what
10 date?

11 A The letting date was August. It's on Exhibit
12 No. 4 up on the top of every page. The letting date
13 is August 24, 1973.

14 Q And when was it designed?

15 A The Commission approved the plan on October
16 10, 1973.

17 Q Was it designed immediately upon the approval
18 by the Commission?

19 A It was designed immediately prior to --

20 Q I mean prior to the approval of the Commission?

21 A Yes.

22 Q And when did work begin on this structure?

23 A The contract was awarded on October 18, 1973,
24 and a notice to proceed was given on April 1, 1974.

25 THE ADMINISTRATIVE LAW JUDGE: Mr.

1 Clements, is that contract you are referring to,
2 which was awarded on, I think, October 18, 1973,
3 is that one of these exhibits you said you submitted
4 for this record?

5 THE WITNESS: No. We never submitted
6 the contract. We sent these blanks to the Commission,
7 which we approved.

8 BY MR. KEYSER:

9 Q Mr. Clements, you have referred to a report
10 that was done for you. Was that commissioned by
11 PennDOT?

12 A That's Exhibit No. 1 in the proceeding?

13 Q No. I'm talking about the report for which
14 you're asking for a continuance here today.

15 A As far as we can determine, it wasn't. I'm
16 not sure.

17 Q It was not commissioned by PennDOT?

18 A Yes, but I'm not sure.

19 Q Who would it have been commissioned by?

20 A According to Mr. Fertig, he had indicated it
21 was commissioned by the city.

22 Q By the City of Pittsburgh?

23 A Right.

24 Q When was that report done?

25 A Maybe 1961.

1 Q You're guessing? You don't know, I take it?

2 A I'm not sure, right. I'm going from what he
3 told me, what he told us. We haven't seen it.

4 Q Is this design which you ultimately have been
5 authorized to proceed with based upon that report,
6 do you know?

7 A That, I couldn't tell you. It was based upon
8 a report made in 1969 by Richardson Gordon which was
9 put into the record as our Exhibit No. 1, primarily
10 based on that, now. Whether Richardson Gordon had
11 that other report available, I don't know.

12 Q Have you done any work on the bridge from the
13 time you took it over and became responsible for it
14 in 1961 until the time that this contract was let?

15 A There's no record available, but I have been
16 available to inquire that would show that we did.

17 Q All right. So the obvious difference is that
18 you didn't; is that correct? No work has been done
19 since 1961 until the present?

20 A I reiterate my statement, that I have not been
21 able to have any statement of any work performed.

22 Q I assume that that means you found no record
23 of painting the bridge or any other type of work
24 maintenance or --

25 A That's correct, yes. We're still searching.

1 Q What type of deicing chemicals do you use on
2 the bridge?

3 A What type?

4 Q Yes. What do you use?

5 A I imagine salt is used. I don't know what
6 type.

7 Q But salt is what is used?

8 A Yes.

9 Q Did Richardson Gordon do the design work for
10 you?

11 A Yes.

12 Q They did the design work, and they did it pur-
13 suant to their report of 1969?

14 A Let me see here. Yes, Richardson Gordon com-
15 pared the plans pursuant to the engineering report.

16 Q And the report was done in 1969?

17 A Yes.

18 Q And the actual construction was done in 1973;
19 is that correct?

20 A That's correct. No. The notice to proceed
21 was given in 1974, April of 1974.

22 Q Excuse me?

23 A The notice to proceed was given in April of
24 1974.

25 Q Mr. Clements, I was very interested in your

1 legal interpretation of the Commonwealth Court
2 decision. I would just like to know where in that
3 Opinion, as you testified, it indicates that the
4 Commonwealth shall be responsible for everything but
5 deferred maintenance. Where is the deferred mainten-
6 ance referred to in that opinion?

7 MR. GILTENBOTH: I object to that. The
8 opinion speaks for itself.

9 THE ADMINISTRATIVE LAW JUDGE: Over-
10 ruled. Explain your answer, Mr. Clements.

11 THE WITNESS: It's my understanding it
12 was --

13 BY MR. KEYSER:

14 Q You have no direct understanding? In other
15 words, you were testifying from what you heard from
16 someone else; is that correct?

17 A Yes.

18 MR. KEYSER: I have no further questions
19 at this time, and I would respectfully request and
20 assume that Mr. Clements will be available for fur-
21 ther conversation at the continued hearing.

22 THE WITNESS: Not for conversation.

23 THE ADMINISTRATIVE LAW JUDGE: Well,
24 counsel, are you going to have the witness present?

25 MR. GILTENBOTH: Yes.

1 MR. FEIN: Before cross-examining,
2 though, I would like to move to strike the witness's
3 answer with respect to Act 615, the interpretation
4 of that Act, the interpretation of the Commonwealth
5 Court Opinion, both for the reason he isn't a lawyer
6 and isn't qualified to give legal opinions; and,
7 number two, it wasn't responsive to any of the five
8 questions which the Commission wished to have
9 answered in both proceedings.

10 THE ADMINISTRATIVE LAW JUDGE: The
11 Opinion will speak for itself, Marvin. The record
12 is clear. Go on with your questions.

13 - - -

14 CROSS-EXAMINATION

15 BY MR. FEIN:

16 Q Is this project eligible for federal funding?

17 A The only answer I can give you to that is I
18 see no federal project number on the contract.

19 Q Well, I see the same thing. My question was
20 whether the project was eligible for federal funding.

21 A I couldn't answer that.

22 Q Can you get that answer for me by the next
23 hearing?

24 A Yes.

25 Q And also when you check to see whether it was

1 eligible for federal funding, will you also find
2 out, if so, why no federal funding was applied for?

3 A I will.

4 Q You submitted plans to the Commission prior
5 to the time that you built this bridge. Do you also
6 have as built drawings or final drawings after the
7 completion of the work on the bridge?

8 A I'm not sure. Normally we do keep an as
9 built.

10 Q If you so, will you supply a copy to the City
11 of Pittsburgh?

12 A Yes.

13 MR. KEYSER: The County would also like
14 a copy.

15 BY MR. FEIN:

16 Q If you don't have drawings of that, what in-
17 formation do you have from which the city could as-
18 certain where the work was done on these bridges and
19 the approaches?

20 A Probably from the inspector's records and --
21 you mean the exact spot that --

22 Q Yes.

23 A Probably from the inspector's records if that
24 would indicate on what spans and what members he was
25 working on it at the time.

1 MR. FEIN: The City of Pittsburgh would
2 also like a copy of these records.

3 (Discussion held off the record.)

4 MR. GILTENBOTH: The bill, would you
5 explain that?

6 THE WITNESS: I stated from the informa-
7 tion that would be in the project engineer's diaries
8 and records would be voluminous, so what we could do
9 is review the first records and place it on the plan
10 and make you an added bill plan to that. Would that
11 be sufficient?

12 MR. FEIN: That would be sufficient.

13 THE WITNESS: If we haven't already
14 done that.

15 BY MR. FEIN:

16 Q Have you ever seen Mr. Fertig's record as
17 commissioned assumably by the City of Pittsburgh or
18 some other person or party around 1961?

19 A No, sir.

20 Q Has it ever been submitted to this Commission?

21 A No, sir.

22 Q Is it ever used by PennDOT in consideration
23 of its original design plans in 1969?

24 A That, I don't know.

25 Q Did your engineers ever report to you that

1 they had seen that report?

2 A Not that I know of.

3 Q How do you know it's relevant to any of the
4 issues before this Commission?

5 A Under question number five it would be rele-
6 vant to submit testimony of these records to show
7 dates, changes and costs of any other pertinent
8 information relating to any maintenance performed
9 on the structure prior to October 10.

10 Q Never seen the report. Do you have any idea
11 that it contains any of that information?

12 A No.

13 MR. FEIN: I have no further questions,
14 but I'm going to oppose the continuance of this case
15 for the purpose of supplying that record to this
16 Commission.

17 THE ADMINISTRATIVE LAW JUDGE: You
18 oppose the continuance?

19 MR. FEIN: Yes. It obviously was not
20 considered by this Commission, it was not considered
21 by PennDOT, and this witness doesn't even know what's
22 in it and whether it's relevant to anything in this
23 proceeding. All that has happened is that they've
24 come in here at the 11th hour, and said: we've just
25 heard there's a report somewhere out in the blue

1 that was done 16 years ago and we now want a contin-
2 uance.

3 THE ADMINISTRATIVE LAW JUDGE: Does
4 anybody else want to make any remarks concerning Mr.
5 Fein's statement?

6 MR. KEYSER: The county would join in
7 that.

8 THE ADMINISTRATIVE LAW JUDGE: How
9 about the Commission or Mr. Sharlock?

10 MR. SHARLOCK: Whatever the report
11 decides is satisfactory.

12 THE ADMINISTRATIVE LAW JUDGE: How
13 about the Commission?

14 MR. MILLER: The Commission objects, I
15 guess, to the delay in this proceeding; but if the
16 report has some bearing on the cost allocation, we
17 won't object to the continuance.

18 THE ADMINISTRATIVE LAW JUDGE: The
19 objection is overruled, Mr. Fein.

20 You may cross-examine now, Mr. Shar-
21 lock. Do you have any questions?

22 MR. SHARLOCK: I have no questions.

23 THE ADMINISTRATIVE LAW JUDGE: I guess
24 back to you, Mr. Miller.

25 MR. MILLER: I just have a few

1 questions.

2 - - -

3 CROSS-EXAMINATION

4 BY MR. MILLER:

5 Q Mr. Clements, was the repainting of the
6 structure originally contemplated when the plans
7 were prepared?

8 A It was, but it was removed because there
9 wasn't enough money available to do the painting.

10 Q Why was the painting included now?

11 A The district panel had written a letter to
12 the Deputy Chief Engineer and convinced him since we
13 have invested \$2.2 million dollars in the rehabilita-
14 tion of this structure, it would be very wise to
15 include the painting of it, and he agreed.

16 Q If you hadn't painted the bridge, what would
17 have been --

18 A Well, we would have had a rehabilitated
19 bridge that would need painting, obviously.

20 Q So your statement is that the painting will be
21 done as soon as the weather can accommodate it?

22 A Right.

23 Q Is there any other work which would be classi-
24 fied as an extra that wasn't originally contemplated
25 of major proportions which you decided to add on

1 after the original processing was submitted? Was
2 the scope of the project changed since the original?

3 A No, it wasn't. The additional work, the
4 additional structural steel, additional built up,
5 rivet heads, these are the sort of things that you
6 would find after you started working.

7 Q Did you have a breakdown of the construction
8 costs for the bridge separate and apart for those
9 doing the approach work to the bridge?

10 A We would have to pull them out of sheet
11 number 13, but I can do that.

12 Q Well the --

13 A Sheet number 13 indicates the operation and
14 the different phases of work that were completed.
15 Structures, of course, being the largest. The re-
16 mainder number 10 under controlling operation was the
17 structure. I could do that.

18 Q Could you prepare that for the next hearing?

19 A Yes, since this is -- when I get better copies
20 of this, I'll prepare it in conjunction with those
21 exhibits.

22 Q Were there any other items such as painting
23 which were deleted in the original plan?

24 A There were some deletions that were made in
25 the contract items that are indicated in Exhibit No.

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MR. MILLER: I have no further questions.

THE ADMINISTRATIVE LAW JUDGE: All right. Any other questions of this witness?

MR. FEIN: I have a request I would like to make.

THE ADMINISTRATIVE LAW JUDGE: All right.

MR. FEIN: We have come into this hearing which was supposedly for the purpose of allocation, and all that's been submitted has been an estimate of costs that no one can read. It isn't broken down in any way at all. None of the questions except number one were answered. Even number one wasn't answered all that well, and we're having a continuance now for the purpose of submitting some report that no one knows anything about. I think that prior to the next hearing that PennDOT ought to be under an obligation to submit an exact request as to how they want the costs allocated by this Commission and serve it with a breakdown of those costs in various parts of the structure. I know we've come in here blind. The county has come in here blind and so have the railroads. I think

1 PennDOT does have that obligation.

2 THE ADMINISTRATIVE LAW JUDGE: Mr.
3 Giltenboth, can you prepare testimony in advance?

4 MR. GILTENBOTH: Yes. By the time the
5 next hearing has come about, sure. We can try to
6 have it as soon as possible.

7 THE ADMINISTRATIVE LAW JUDGE: You will
8 comply with Mr. Fein's request, then; is that right?

9 MR. GILTENBOTH: Sure.

10 THE ADMINISTRATIVE LAW JUDGE: That will
11 facilitate matters at the hearing, I'm sure.

12 Any other questions of this witness?

13 MR. FEIN: No.

14 We would like to move for the admission
15 of No. 4 with the understanding it's going to be
16 redone and resubmitted and in a more readable fashion.

17 THE ADMINISTRATIVE LAW JUDGE: If there
18 is no objection, it will be admitted into evidence.

19 MR. KEYSER: I take it that I may
20 cross-examine when we reconvene?

21 THE ADMINISTRATIVE LAW JUDGE: Well,
22 then we'll submit it into evidence. Do you want to
23 make it deferred until you cross? All right. We'll
24 reverse that ruling and make the ruling after cross-
25 examination. I didn't hear your objection to it.

1 All right.

2 Are you through with this witness? Do
3 you have any other witnesses?

4 MR. GILTENBOTH: No. I don't have
5 any others.

6 (Witness excused.)

7 THE ADMINISTRATIVE LAW JUDGE: Do you
8 have anything to put in at this time?

9 MR. SHARLOCK: We'll defer our testi-
10 mony until the time of final hearing.

11 THE ADMINISTRATIVE LAW JUDGE: How
12 about ConRail?

13 MR. WALKER: We're prepared to proceed
14 without an attorney, but our testimony is brief, and
15 I think understandable.

16 Mr. Mazor, our attorney, would like to
17 be kept as an attorney of record. He made an attempt
18 to get the train this morning to get on the plane,
19 but Philadelphia is in the throes of its worse snow
20 storm in 16 years, and we're not accustomed to having
21 snow like the Pittsburgh area is. I talked to him
22 on the phone and he is apologetic to the group as-
23 sembled here and to you especially, sir, but we are
24 prepared to proceed without him.

25 THE ADMINISTRATIVE LAW JUDGE: What is

1 your suggestion, Mr. Miller? Do you think we should
2 defer testimony of ConRail?

3 MR. MILLER: We have no objection to
4 proceeding.

5 THE ADMINISTRATIVE LAW JUDGE: If you
6 want to proceed, come up.

7 - - -

8 STAFFORD C. WALKER

9 called as a witness on behalf of Consolidated Rail
10 Corporation and, having been first duly sworn, was
11 examined and testified as follows:

12 EXAMINATION

13 BY THE ADMINISTRATIVE LAW JUDGE:

14 Q State your name, address and position with
15 ConRail for the reporter.

16 A Stafford C. Walker. I'm employed by Consoli-
17 dated Rail Corporation as a civil engineer. My
18 address is 16th floor, 1528 Walnut Street, Phila-
19 delphia, 19102.

20 The questions and procedures as propounded by
21 the Commission indicate that the trustees of Penn
22 Central Transportation Company and ConRail in Ques-
23 tions 7 and 8 are to answer Questions 1 through 5.
24 I'm authorized to appear here today on behalf of
25 ConRail Corporation and to some extent, as an agent

1 for Penn Central Transportation Company. However,
2 I am not authorized to testify on behalf of Penn
3 Central other than to act as their agent in the
4 collection of any funds that may have been expended
5 here.

6 In answer to Question Number 1 -- Have the
7 questions been entered into the record?

8 MR. MILLER: Yes.

9 THE WITNESS: In answer to questions
10 number one, our costs are as follows, and these
11 figures include payroll additives, transportation
12 and personal expenses of the employees involved:

13 For the trustees of Penn Central Trans-
14 portation Company for engineering and construction
15 inspection the cost was \$1,096.32. Consolidated
16 Rail Corporation had engineering and construction
17 costs of \$410.41. These costs have been reimbursed
18 to Penn Central or to ConRail by PennDOT and no
19 further reimbursement is sought. For flagmen services
20 the trustees of Penn Central Transportation Company
21 expended \$1,002.40. Consolidated Rail Corporation
22 expended \$583.80, and these costs have been fully
23 reimbursed by the contractor Sofis Contracting Com-
24 pany, Incorporated.

25 The reason for the split between the

1 trustees of Penn Central Transportation Company and
2 Consolidated Rail Corporation is the fact that this
3 job overlapped the date of April 1, 1976, in which
4 Consolidated Rail Corporation came into being.

5 In answer to question number two, we
6 have no additional testimony other than what has
7 been given in question number one.

8 Consolidated Rail Corporation is of
9 the opinion in answer to question number three that
10 the entire costs should be borne by the parties
11 responsible for the traveler on the highway.

12 In answer to question number four,
13 Consolidated Rail Corporation has no obligation for
14 the maintenance of the structure or the approaches
15 thereto. Consolidated Rail Corporation does maintain
16 its structure below the bridge. We will not agree
17 to perform any maintenance in the future on the
18 structure, superstructure, substructure or the ap-
19 proaches to the crossing; and Consolidated Rail Cor-
20 poration performed no maintenance on this structure
21 prior to October 10, 1973, since obviously it could
22 not have done so since it was created on April 1, 1976.

23 Other than stating for the record that
24 our attorney made a good-faith attempt to get here
25 this morning by standing on the platform at Narberth

1 Station for three hours waiting for a train, and he
2 sends his apologies. That concludes our testimony.

3 THE ADMINISTRATIVE LAW JUDGE: Thank
4 you.

5 Any cross-examination of Mr. Walker?

6 MR. KEYSER: I have no questions.

7 - - -

8 CROSS-EXAMINATION

9 BY MR. FEIN:

10 Q This contract with Sofis, is that a contractor
11 of PennDOT?

12 A We assume that it was, yes.

13 MR. FEIN: I have no further questions.

14 MR. GILTENBOTH: I have no questions.

15 MR. MILLER: Just a second.

16 (Discussion held off the record.)

17 THE ADMINISTRATIVE LAW JUDGE: You don't
18 have any, do you, Mr. Sharlock?

19 MR. SHARLOCK: No.

20 - - -

21 CROSS-EXAMINATION

22 BY MR. MILLER:

23 Q Mr. Walker, how many tracks does ConRail have
24 at the crossing?

25 A I don't recall.

1 Q Is it the same number as when the trustees of
2 Penn Central operated the line?

3 A Yes, sir.

4 MR. MILLER: I have no further questions.

5 THE ADMINISTRATIVE LAW JUDGE: Any other
6 questions of this witness?

7 Baltimore and Ohio Railroad wishes
8 to defer their testimony to the continued hearing;
9 is that correct, Mr. Sharlock?

10 Thank you, Mr. Walker. You're excused.

11 (Witness excused.)

12 MR. SHARLOCK: That's correct.

13 THE ADMINISTRATIVE LAW JUDGE: The
14 County of Allegheny?

15 MR. KEYSER: The County of Allegheny
16 will likewise defer its testimony.

17 THE ADMINISTRATIVE LAW JUDGE: City of
18 Pittsburgh?

19 MR. FEIN: The City of Pittsburgh would
20 like to defer its testimony.

21 THE ADMINISTRATIVE LAW JUDGE: Is any-
22 one here representing Bell Telephone Company, Du-
23 quesne Light Company, or Equitable Gas?

24 No response.

25 All right, Mr. Miller, is there anything

1 further today or shall we continue the hearing?

2 MR. MILLER: The Administrative Law
3 Judge's office should be requested to set a hearing
4 as soon as it hears from PennDOT, when their witness
5 is available and the report. So I think the burden
6 is on the department to inform the Commission when
7 they are available to proceed.

8 MR. GILTENBOTH: Will do.

9 THE ADMINISTRATIVE LAW JUDGE: Yes.
10 I think that will show in the record that PennDOT
11 will advise the Commission it has the report and the
12 information requested by Mr. Fein.

13 (Whereupon, the hearing was adjourned
14 generally.)

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C E R T I F I C A T E

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me in the proceedings of the above cause and that this copy is a correct transcript of the same.

Linda D. Hughes
Linda D. Hughes
Shorthand Reporter