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Public Utility Commission

Before the

PENNSYLVANIA PUBLIC UTILITY COMMISSION

A 140200

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Application of Interstate Energy Company for approval of the construction of the crossings where an 18-inch products pipeline, constructed as proposed, will cross below the grade of the track or tracks of Reading Company at (1) Mile Post 14+53 in East Whiteland Township, Chester County, (2) Mile Post 39.24 in Richland Township, Bucks County and (3) Mile Post 30.01 in Upper Providence Township and at a point 1047 feet north of Railroad Bridge 7/86 in Perkiomen Township, Montgomery County.

Docket No. A. 98632

BRIEF ON BEHALF OF ANDREW L. LEWIS, JR.  
AND JOSEPH L. CASTLE, TRUSTEES OF THE  
PROPERTY OF READING COMPANY, DEBTOR

DOCKETED  
APPLICATION BOOKLET  
SEP 18 1974  
ENTRY No. *ER*

RECORD  
FOLDER

Joseph M. O'Malley  
Attorney for Reading  
Company, Debtor  
415 Reading Terminal  
Philadelphia, Pa. 19107

September 13, 1974

Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Application of Interstate Energy Company for approval of the construction of the crossings where an 18-inch products pipeline, constructed as proposed, will cross below the grade of the track or tracks of Reading Company at (1) Mile Post 14+53 in East Whiteland Township, Chester County, (2) Mile Post 39.24 in Richland Township, Bucks County and (3) Mile Post 30.01 in Upper Providence Township and at a point 1047 feet north of Railroad Bridge 7/86 in Perkiomen Township, Montgomery County.

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AND JOSEPH L. CASTLE, TRUSTEES OF THE  
PROPERTY OF READING COMPANY, DEBTOR

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I. STATEMENT OF THE CASE

Interstate Energy Company (hereinafter referred to as Interstate) filed an application with your Commission seeking approval of the construction, below grade, of its pipeline facilities across the railroad facilities of Reading Company at four locations. Reading Company after receipt of the application, filed, as provided in the Rules of Practice, a Motion to Dismiss the Application. The Commission has, to date, not ruled on said Motion. On June 4, 1974, Reading Company received notice that a hearing on the application was to be held on June 11, 1974. The hearing was held on June 11, 1974, and at the request of the Applicant the record was held open.

On July 2, 1974, Applicant notified the Commission of its intention to file late filed exhibits in order that the Commission could appropriate the property for the construction of the crossings. On August 8, 1974, Applicant submitted its late filed exhibits and requested that the record be closed. On August 28, 1974, the Commission advised that the record was closed and briefs were to be submitted by September 13, 1974.

## II. STATEMENT OF QUESTION INVOLVED

1. Did the Applicant and the Commission comply with the Rules of Practice in handling the involved application?
2. Whether the Pennsylvania Public Utility Commission has the jurisdiction to approve the application?
3. Whether the Applicant has the right to proceed with the involved application?
4. Whether one public utility company has the right to condemn operating property of another public utility?
5. Does the Pennsylvania Public Utility Commission have jurisdiction over the condemnation of Reading Company property prior to approval by Reading's Bankruptcy Court?

Reading Company, Debtor, respectfully maintains that all of the above questions should be answered in the negative.

### III. ARGUMENT

A. Did the Applicant and the Commission comply with the Commission's Rules of Practice in handling the involved application?

The Commission, after receiving the above application, set the matter down for hearing. Rule 17 of the Rules of Practice before the Pennsylvania Public Utility Commission states that the service sheet, listing applications involving transportation of property, will be served by the Commission at least twenty (20) days before the hearing date of any application listed thereon. The notice of the hearing never appeared in the Commission's Service Sheets.

The Commission notified Reading Company by letter dated June 4, 1974, received June 6, 1974, that a hearing would be held on June 11, 1974. This notice was not in compliance with the Commission's own rules. Applicant filed notice of the hearing with the Pennsylvania Bulletin on June 7, 1974 at 9:00 A.M. This was a mere attempt at compliance with the notice requirements since the Pennsylvania Bulletin containing the notice was not published until June 8, 1974, a mere three days before the hearing, two of those days being Saturday and Sunday.

Rules 31 and 30 (b) of the Commission's Rules

state that the applicant in applications for construction of a crossing under Section 409 of the Public Utility Law "shall publish a concise statement of the proceeding which shall designate the crossing with sufficient particularity to be readily identifiable by owners of property adjacent thereto or affected thereby, with notice of time and place fixed by the Commission for hearing, once a week for two consecutive weeks immediately prior to the date of hearing in at least one newspaper of general circulation, in the county in which the crossing is located. Proof of the publication shall be filed with the Commission on or before the date of hearing." Applicant failed to publish notice in accordance with the above Rules and did not at the time of hearing produce proof of publication. This failure was called to the attention of the Hearing Examiner, and with a Motion to Discontinue the hearing which motion was denied.

Both the Commission and the Applicant did not conform to the Commission's Rules of Practice and therefore the Application should be dismissed.

B. Whether the Pennsylvania Public Utility Commission has the jurisdiction to approve the involved application?

The application involved in this proceeding is predicated upon the Commission's jurisdiction under

Section 409 of the Public Utility Law to approve the construction of a pipeline under a railroad. Section 409 grants the Commission the power to approve crossings of utility companies by highways and vice versa. A reading of the Section 409 and cases decided under this section make it clear that Section 409 is limited to those cases involving rail-highway.

A review of all the cases under Section 409 will reveal that they deal with rail-highway crossings and none involve a pipeline. Historically, the railroads and pipelines have considered such matters as crossings to be the subject of private agreements.

The question of the Commission's jurisdiction under Section 409 to regulate pipeline crossings of both railroads and highways was raised in Investigation Docket No. 134 with both the railroads and the Pennsylvania Department of Transportation taking the firm position that the Commission's power under 409 is limited to rail-highway crossings.

The Commission's jurisdiction under Section 409 is limited to those crossings involving a rail-highway and does not extend to a rail-pipeline crossing.

C. Whether the applicant has the right to proceed with the involved application?

The Commission at Application Docket No. 97032, by order dated February 6, 1973, issued to Interstate Energy Company, a Certificate of Public Convenience, evidencing approval of the right to begin to offer, render, furnish or supply service by pipeline in the transportation of petroleum products, subject to certain conditions.

Condition a. of the Order states: "That before any operations are commenced upon the construction of the pipeline, Interstate Energy shall obtain and show evidence to this Commission that it has obtained required approvals from the Delaware River Basin Commission and other agencies having appropriate jurisdiction for all construction and operation to be performed within their respective jurisdictions. At Complaint Docket No. 19914, in answer to a complaint filed by STOPS, et al. v. Interstate Energy Company, the Commission issued an order dated June 29, 1973, directing the Interstate Energy Company to cease and desist from any and all construction of the fuel oil transportation facility until it has obtained and presented to this Commission approvals from the Delaware River Basin Commission and other agencies having appropriate jurisdiction for all construction and operation to be performed within their respective jurisdictions. The applicant

has not secured, to the best of our knowledge, the necessary agency approvals.

It is our position that the applicant is extremely premature in its actions in filing the application. First, the crossing of the railroad by the pipeline is obviously conditioned upon the right to construct the pipeline.

Until final plans are submitted for approval, it is fruitless to consider granting permission to the pipeline to cross the railroad. This is evidenced by the fact that the applicant has already requested location changes on four occasions. On August 28, 1972, Mr. Robert S. Cooper of Interstate Energy submitted a request for permission to cross the railroad at three locations and on September 7, 1972, he requested one additional crossing. On November 1, 1972, Mr. Cooper advised that a change would be necessary in one crossing. On December 21, 1972, Mr. Cooper requested that one crossing be withdrawn and another substituted. On March 12, 1973, Mr. Cooper requested that we destroy the original application on crossing #2 and substitute another crossing. On February 15, 1974, Mr. Cooper applied for a change in crossing #3. As recently as July 25, 1974, Mr. Cooper requested another change in crossing #3. In all, the location of the crossings have been changed four times. This bears out our position that

until Interstate has the right to construct the pipeline and until the final location of the pipeline is determined, it is an exercise in futility to grant permits.

Furthermore, for the Commission to consider appropriating property at this point in time, even assuming their right to do so, is equally fruitless. Consider the dilemma that the railroad and the Commission would now be in as a result of appropriation by the Commission of the four crossings listed in Mr. Cooper's letters of August 28, 1972 and September 7, 1972. There would be no less than eight crossings that would be condemned across our right of way.

Reading is not being critical of Interstate for changing the locations, we are only critical of these efforts when there may be additional changes.

Assuming that Interstate, at some time in the distant future, does obtain the right to construct the pipeline, Reading must comply with and is bound by the restrictions placed on it under the terms of the Regional Rail Reorganization Act of 1973 as to encumbrances on its property.

D. Whether Interstate has the right at this point to exercise the right to appropriate property and whether one public utility company has the right to condemn the operating property of another public utility.

Section 204 of the Public Utility Law states:  
"Neither a proposed domestic public utility hereafter incorporated nor a foreign public utility hereafter authorized to do business in this Commonwealth shall exercise any power of eminent domain within this Commonwealth until it shall have received the certificate of public convenience required by Section 201 of this Act. Section 201 of the Public Utility Law states that a certificate of public convenience must be first had and obtained before the proposed public utility can render service.

Interstate Energy Company received a conditional certificate of public convenience and it cannot commence operations until all conditions are met. It is our position that Interstate does not have the power of eminent domain until it has met all the conditions of the order granting the conditional certificate. Once again, it is quite possible that Interstate through condemnation could acquire property and yet never receive the right to construct the pipeline.

It is the position of Reading Company, that Interstate Energy as a public utility company does not have the right to condemn the operating property of Reading Company. Never in its history, has the Commission stated that such a right

exists or has granted such right.

5. Does the Pennsylvania Public Utility Commission have jurisdiction over the condemnation of Reading Company property prior to the approval of Reading's Bankruptcy Court?

Condemnation proceedings against the property of a railroad in reorganization under Section 77 cannot be initiated without leave of the reorganization court. In Chicago, R.I. & P. Ry. Co. et al. v. City of Owatonna, 120 F.2d 226 (1941), the court stated that the consent of the bankruptcy court was a jurisdictional prerequisite to initiation and conduct of proceeding by a city to condemn property of a railway undergoing bankruptcy reorganization. The railroad reorganization court has jurisdiction to stay all condemnation litigation involving the debtor's property at least when such condemnation proceedings are not brought by the federal government. New York, New Haven and Hartford Railroad Company, Debtor, 447 F. 2d 428 (1971).

It is our position that the Commission must secure prior approval of Reading's Bankruptcy Court before authorizing any appropriation of Reading Company property.

#### CONCLUSION

The Commission does not have the jurisdiction to

approve the application of Interstate on either approval under Section 409 or under eminent domain powers. The application should be dismissed for the various reasons listed herein.

Respectfully submitted,

*Joseph M. O'Malley.*  
Joseph M. O'Malley  
Attorney for Reading  
Company, Debtor

RECEIVED  
SEP 13 1974  
Secretary's Office  
Public Utility Commission

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Applications of Interstate Energy Company : APPLICATION  
The Baltimore and Ohio Railroad : DOCKET  
Company, Upper Chichester Township, :  
Delaware County : A. 98627  
Erie Lackawanna Railway Company, :  
Lower Mt. Bethel Township, :  
Northampton County : A. 98628  
Lehigh and New England Railway :  
Company, Forks Township, North- :  
ampton County : A. 98629  
Lehigh Valley Railroad Company, :  
Lower Saucon, Bethlehem and :  
Palmer Townships, Northampton :  
County : A. 98630  
Penn Central Transportation Company, :  
Concord and Thornbury Townships, :  
Delaware County, and East Whiteland :  
and East Pikeland Townships, Chester County : A. 98631  
Reading Company, East Whiteland Township, :  
Chester County, Richland Township, Bucks :  
County, and Upper Providence and Perkiomen :  
Townships, Montgomery County. : A. 98632 ✓

BRIEF OF APPLICANT  
INTERSTATE ENERGY COMPANY

DOCKETED  
APPLICATION DOCKET  
SEP 18 1974  
ENTRY No. *ER*

RECORD  
FOLDER

Peter Platten  
Attorney for  
Interstate Energy  
Company

Of Counsel:  
Ballard, Spahr, Andrews & Ingersoll  
1035 Land Title Building  
Philadelphia, Pennsylvania 19110

Dated: September 13, 1974

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Applications of Interstate Energy Company	:	APPLICATION
The Baltimore and Ohio Railroad Company, Upper Chichester Township, Delaware County	:	DOCKET
	:	A. 98627
Erie Lackawanna Railway Company, Lower Mt. Bethel Township, Northampton County	:	
	:	A. 98628
Lehigh and New England Railway Company, Forks Township, Northampton County	:	
	:	A. 98629
Lehigh Valley Railroad Company, Lower Saucon, Bethlehem and Palmer Townships, Northampton County.	:	
	:	A. 98630
Penn Central Transportation Company, Concord and Thornbury Townships, Delaware County, and East Whiteland and East Pikeland Townships, Chester County	:	
	:	A. 98631
Reading Company, East Whiteland Township, Chester County, Richland Township, Bucks County, and Upper Providence and Perkiomen Townships, Montgomery County.	:	
	:	A. 98632

BRIEF OF APPLICANT  
INTERSTATE ENERGY COMPANY

HISTORY OF THE CASE

These cases were filed simultaneously, consolidated by the Examiner without objection by any party for the purpose of hearing (N.T. 5-6), and are before this Honorable Commission on the merits of each.

The cases all concern a single operative fact, viz, the crossing of railroad facilities by the pipeline of Interstate

Energy Company (IEC). This Honorable Commission approved the issuance of a Certificate of Public Convenience and Necessity to IEC by Order dated February 6, 1973, at Docket A. 97032. Those proceedings were incorporated in this record by reference (N.T. 29). Briefly the pipeline will transport low sulphur crude and residual oil from the Marcus Hook area to generating stations of electric public utility companies for the purpose of supplying fuel in the generation of electricity.

All of the railroads in these proceedings had no objection to either the point at, or the method by, which the crossings would be effected.

At the hearing held on June 11, both Penn Central (PC) and Reading (RDG)\* moved to dismiss the pertinent application on the ground that this Honorable Commission lacked jurisdiction and in any event the application was premature in light of Condition a. of the said Order of February 6, 1973, and of this Honorable Commission's Order of June 29, 1973, at Docket C. 19914. The Examiner denied the motions and completed the hearing.

#### Argument

The first objection pressed by PC and RDG is that this Honorable Commission lacks subject matter jurisdiction. It is insubstantial in light of the plain language of

\*The four other railroads affected did not appear: The Baltimore and Ohio Railroad Company (A. 98627); the Erie Lackawanna Railway Company (A. 98628); the Lehigh and New England Railway Company (A. 98629); and the Lehigh Valley Railroad Company (A. 98630).

Section 409(a) of the Public Utility Law. That Section provides:

"No public utility, engaged in the transportation of passengers or property, shall, without prior order of the commission, construct its facilities across the facilities of any other such public utility or across any highway at grade or above or below grade, or at the same or different levels; and no highway, without like order, shall be so constructed across the facilities of any such public utility, and, without like order, no such crossing heretofore or hereafter constructed shall be altered, relocated or abolished."

This Honorable Commission in its Order of February 6, 1973, found that IEC was a public utility with respect to its proposed transportation of boiler fuel (property) belonging to electric public utility company shippers. The holding was affirmed by an unanimous Commonwealth Court; II Com. Ct. 487 (1973). That PC and RDG are public utility companies engaged in the transportation of property over the railroad facilities here involved is unquestioned. Therefore, all the jurisdictional requirements of the first clause of Section 409(a) are fully met. No other clause divests the jurisdictional basis of this mandate.

Additionally, Condition 1 b of the Order of February 6, 1973, requires:

"That in construction and operation of the proposed pipeline, all pertinent provisions of the proposed transmission pipeline regulations, issued as an order nisi by this Commission on May 17, 1971, shall apply, except as may be later modified by this Commission."

Rule 3 of Part II and Section B 6 of Part II of this Honorable Commission's Proposed Transmission Pipeline Regulations promulgated by its Order Nisi of May 17, 1971, require that IEC secure this Honorable Commission's approval of the crossing by its pipeline of railroad facilities in accordance with the Public Utility Law. This emphasizes the pertinence of Section 409(a).

The second objection concerns the timeliness of the filing of the instant applications. This also is without merit. Indeed, it could be argued that this Honorable Commission's Order of February 6, 1973, was sufficient approval to meet the requirements of Section 409(a) since (a) the route of the pipeline and the crossings here involved were sufficiently depicted on IEC's Exhibit F in that proceeding [USGS Quadrangles (7.5 minutes)] to note the locations here involved; (b) IEC committed itself in that proceeding to follow the criteria established by the Federal Department of Transportation for the design, construction, operation and maintenance of liquid petroleum pipelines and the approved industry code ANSI B31.4, both of which include criteria for pipeline-railroad crossings; (c) both PC and RDG\* were parties to that proceeding and never objected to the jurisdiction of this Honorable Commission over approving a route for the proposed pipeline which obviously required

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\*It is more than passing strange to recall (see p. 18 of the Order of February 6, 1973) that RDG's officer, James Frick, "stipulated that Reading Company stood prepared to negotiate for longitudinal occupancy of its right-of-way, wherever the right-of-way would suit the purposes of the proposed pipeline."

the crossing of each of their railroad facilities by IEC's pipeline; and (d) PC never appealed from the Order of February 6, 1973, and while RDG did appeal, it did not raise any (let alone this) jurisdictional issue on the appeal. In any event, the appeal was decided adversely to RDG. Accordingly, the jurisdictional issue as raised by PC and RDG in these proceedings has already been adjudicated between the same parties and may not now be raised again.

Secondly, the plain language of Section 409(a) requires dismissal of the jurisdictional issue. No decision of either this Honorable Commission or of any Pennsylvania appellate court has excluded from the plain language of Section 409(a) the crossing by an intrastate pipeline transporting property of the railroad facilities used and useful in the transportation of property.

Finally, the Order of February 6, 1973, does not impose any unusual condition affecting the right of IEC to construct and operate its pipeline. The preamble to Section 202, provides:

"Upon the application of any public utility and the approval of such application by the commission, evidenced by its certificate of public convenience first had and obtained, and upon compliance with existing laws, and not otherwise, it shall be lawful:..."

The underscored phrase clearly means that the granting of a certificate is not a license by the certificate holder to avoid all other laws. Applied to this situation,

Condition a. of the February 6, 1973 Order was no more than a reminder to IEC that it must secure, as any public utility company must in constructing operating facilities, various regulatory permits and licenses.

That Condition did not prescribe a schedule by which IEC had to proceed seriatim. To say that the approvals sought here could only be submitted upon the issuance of all other approvals is patently illogical since every other agency could decide the same thereby producing a stymie-- a result which we absolutely reject as this Honorable Commission's intention. Obviously, if a required approval is not received, i.e., that of the Delaware River Basin Commission, the IEC pipeline will not be constructed and the approval (if issued as we here pray) of these applications by this Honorable Commission will be moot. The reference to the Order of June 29, 1973 is merely a reiteration of the timeliness argument. Paragraph 3 of that Order stated:

"Respondent is hereby directed to cease and desist from any and all construction of the fuel oil transportation facility until it has obtained and presented to this Commission approvals from the Delaware River Basin Commission and other agencies having appropriate jurisdiction for all construction and operation to be performed within their respective jurisdictions."

That Order is interlocutory only and therefore is not finally dispositive of the issues in that Complaint proceeding. Even if it were dispositive, it would not require that the present applications must be the last submitted for approval.

RDG questions whether the condemnation by one public utility company of the property of another public utility company is lawful. A series of text authorities and cases establish that one public utility company may condemn property of another such company where the condemned property is not used and useful.\* Even if it be assumed that RDG (or PC) is the fee owner of the realty upon which its railroad facilities are to be crossed, physically no interference or taking of these railroad facilities occurs since the pipeline will cross undergrade with no adverse impact to the continued use by RDG of those facilities, for the subgrade area to be occupied by the pipeline is in a plane not used or useful to the RDG except as it may be necessary for vertical support. As RDG (nor PC) has raised any objection to the design and construction features of each crossing, no issue remains respecting such support.

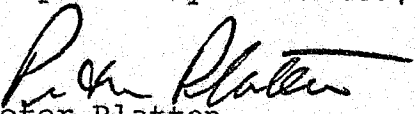
PC asks whether appropriation by this Honorable Commission of its railroad facilities for the effectuation of the pipeline crossing is a granting of an abandonment of the railroad facilities. This patently and erroneously assumes that the railroad facilities are rendered ineffective or inoperative by such appropriation. As neither event will occur as noted just above, no abandonment occurs.

\*See 13 Pennsylvania Encyclopedia of Law §10 and 1 Nichols, Eminent Domain §2.2; Pennsylvania Railroad Company's Appeal, 93 Pa. 150 (1880); Groff's Appeal, 128 Pa. 621 (1889); Scranton Gas & Water Company v. Delaware, Lackawanna and Hudson Railway Company, 225 Pa. 152 (1909); Edgewood Borough Petition, 318 Pa. 268 (1918); Palmerton Borough v. Palmerton School District, 25 D&C 2d 525 (1961).

Conclusion

As Section 409 empowers this Honorable Commission to order the crossing, to appropriate the necessary realty (here a subsurface plane) and to allocate costs engendered thereby, and as no engineering or technical objection has been raised to any crossing by any affected railroad company, we respectfully request this Honorable Commission to approve each application and to appropriate the necessary realty as indicated in the exhibits of record.

Respectfully Submitted,

  
Peter Platten  
Attorney for Applicant,  
Interstate Energy Company

Of Counsel:

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1035 Land Title Building  
Philadelphia, Pennsylvania 19110

Due Date: September 13, 1974

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LAND TITLE BUILDING

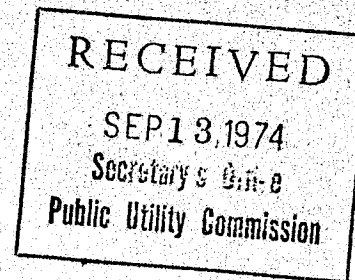
PHILADELPHIA, PA. 19110

215 LOCUST 7-5615

CABLE: BALLARD

ALLEN HUNTER WHITE  
DANIEL MILLER  
D. ALEXANDER WIELAND  
COUNSEL

September 12, 1974



Mr. Will Ketner  
Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, Pennsylvania 17120

Re: Applications of Interstate Energy Company  
Docket Nos. A. 98627-32

Dear Mr. Ketner:

Enclosed please find an original and fourteen copies of the main brief of Interstate Energy Company, Applicant in the above matters.

I certify I have forwarded a copy to all counsel of record.

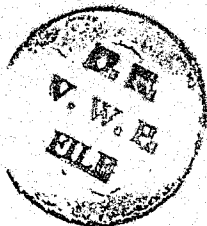
Very truly yours,

Peter Platten

PP/amw

Enclosures

cc: David A. McCormick, Esq. (w/enc.)  
Joseph M. O'Malley, Esq. (w/enc.)  
Philip R. Mann, Esq. (w/enc.)



APPLICATION OF INTERSTATE ENERGY CO.

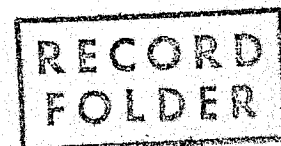
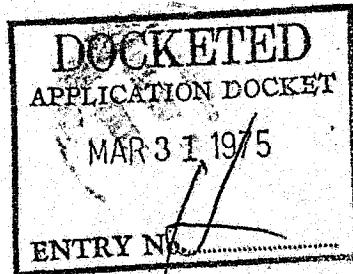
Application Docket No. 98632

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3-10-75 - NOTICE OF APPEAL by Reading Company at No.  
311 C. D. 1975, Commonwealth Court of  
Pennsylvania, from the order of the Commission  
dated February 7, 1975, in the above Application  
proceeding.

Appeal No. 2364

Filed: 3-13-75



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CLERK OF COURT  
1975  
TO

COMMONWEALTH OF PENNSYLVANIA, : IN THE COMMONWEALTH COURT  
PENNSYLVANIA PUBLIC UTILITY : OF PENNSYLVANIA  
COMMISSION :  
and :  
INTERSTATE ENERGY COMPANY, :  
Intervening Appellee :  
v. :  
READING COMPANY, Debtor, :  
Appellant : No. 311 Commonwealth Docket 1975

Before:

HONORABLE JAMES S. BOWMAN, President Judge  
HONORABLE JAMES C. CRUMLISH, JR., Judge  
HONORABLE HARRY A. KRAMER, Judge  
HONORABLE ROY WILKINSON, JR., Judge  
HONORABLE GLENN E. MENCER, Judge  
HONORABLE THEODORE O. ROGERS, Judge  
HONORABLE GENEVIEVE BLATT, Judge

Argued: September 8, 1975

RECORD  
FOLDER

DOCKETED  
APPLICATION DOCKET  
OCT 15 1975  
ENTRY No. [Signature]

## OPINION

OPINION BY JUDGE WILKINSON, October 9 , 1975

This matter is before us on a motion to quash. The issue is a narrow one and turns on whether a petition timely filed by appellant before the Pennsylvania Public Utility Commission, entitled "Petition of ... for Rehearing, Reargument, Modification and Rescission of the Commission's order of November 12, 1974" was in fact and law a petition for "Rehearing and Reargument, Modification and Rescission" or merely a petition for "Modification and Rescission". The point, though narrow and at first impression technical, is critical, for a petition for rehearing under Section 1006 of the Public Utility Law, Act of May 28, 1937, P. L. 1053, as amended, 66 P. S. §1396, invokes the provisions of Section 1101 of the Public Utility Law, 66 P. S. §1431, extending the time for appeal to be timely filed if filed within 30 days after the entry of the order refusing the petition, referred to in the Public Utility Law as an application. On the other hand, a petition for modification and rescission is filed under the provisions of Section 1007 of the Public Utility Law, 66 P. S. §1397, and does not extend the time for appeal.

The facts here involved, as they relate to the motion to quash and as succinctly stated in appellant Reading Company's history of the case, are that on November 12, 1974, the Public Utility Commission issued its order with an entry date of November 18, 1974, approving intervening appellee's applications. Within 15 days of the entry of this order, appellant filed the petition here in dispute. Appellee filed a motion with the Commission to quash the petition on the ground, inter alia, that it was not a proper petition for rehearing. On February 7, 1975, with the exception of minor modifications not here important, the Public Utility Commission refused the appellant's petition. On March 5, 1975, appellant filed this appeal from the

Public Utility Commission's order of November 12, 1974. This appeal from the November 12, 1974 order would be timely if the petition in question were properly characterized as being one for rehearing and would be untimely filed if merely for amendment and rescission. We must hold that it is properly characterized as only a petition for amendment and rescission and, therefore, must grant the motion to quash.

Cases involving whether a petition is properly one for rehearing or merely for amendment and rescission have been before this Court when the petitioner desired it to be considered one for amendment and rescission and the respondent asserted it to be in actuality a petition for rehearing. In those cases, the petition in question has been filed more than 15 days beyond the date of the service of the order and, therefore, untimely as one for rehearing. See Department of Transportation v. P.U.C., 3 Pa. Commonwealth Ct. 554, 284 A.2d 330 (1971). Such is not the case here, for the petition was filed within the 15-day period.

The petition in question does not allege that there is new or even further cumulative evidence to present and, of course, could not allege why it was not available at the time of the hearing. A petition for rehearing presupposes the offering of additional testimony of some sort. See Bucks County Board of Commissioners v. Pennsylvania Public Utility Commission, 11 Pa. Commonwealth Ct. 487, 313 A.2d 185 (1973).

Two points are of considerable persuasion although neither is controlling. Appellant, in its petition, does not specify or identify under which section or sections of the Act it is filing its petition. Further, the prayer of the petition, quoted completely, is:

"WHEREFORE, petitioners pray that your Honorable Commission rescind the order adopted November 18, 1974 and dismiss the application for lack of jurisdiction. Petitioners are prepared to attend further hearings and arguments on the items raised in this petition."

Significantly, it does not pray that the record be opened and additional testimony admitted, nor does it pray for a further hearing. Importantly, it does not state that if a further hearing is held, appellant will present any testimony much less identify such testimony. Indeed, it merely states that appellant is prepared to attend further hearings and arguments. Surely, such a prayer of a petition cannot seriously be characterized as asking for a rehearing.

Appellant argues that since the appellee had filed a motion with the Public Utility Commission to dismiss the petition because it could not be considered as in proper form to request a rehearing and the Commission did not grant the motion to dismiss, but rather dismissed the petition on its merits, the Commission must have considered it as a proper petition for rehearing. Not so. The Commission need not have considered the motion to dismiss on procedural grounds when it dismissed the petition on the merits. Here, we do not have the merits before us, but only the procedural question.

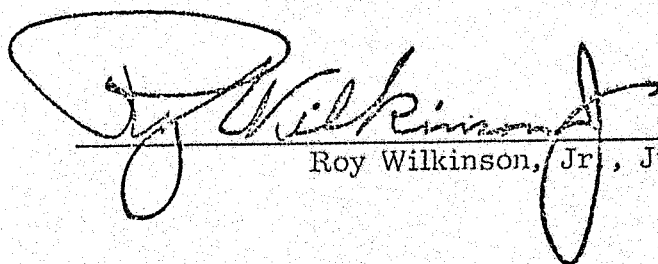
The appellant's reliance on Brinks, Inc. v. Pennsylvania Public Utility Commission, 16 Pa. Commonwealth Ct. 300, 328 A.2d 582 (1974), is misplaced. In Brinks, the appellant asserted that the petition filed with the Commission more than 15 days after the entry of the order and, therefore, too late to be one for rehearing, was one for amendment and rescission which can be filed at any time. However, it then wanted to have the Commission reconsider its original order as though it were a petition for rehearing. It is to that point that Judge Crumlish spoke when he said that the appellant was raising the arbitrary and capricious nature of the short form order which should be raised on a petition for rehearing or on an

appeal to this Court. These issues could have been raised on a petition for rehearing in Brinks and in the instant case if, but only if, new evidence was alleged in the petition. Lacking that new evidence, the alleged arbitrary and capricious nature of the order in both Brinks and this case must be raised on appeal taken within the time limit which is not extended by a pending petition for amendment and rescission. This is the holding of Brinks and is our holding here.

Accordingly, we enter the following

ORDER

NOW, October 9, 1975, intervening appellee's motion to quash is granted and this appeal dismissed.

  
Roy Wilkinson, Jr., Judge

# READING COMPANY

ANDREW L. LEWIS, JR. AND JOSEPH L. CASTLE, TRUSTEES

ENGINEERING DEPARTMENT

ROOM 505, READING TERMINAL

PHILADELPHIA, PA. 19107

RECEIVED

DEC 13 1975

Secretary's Office

Public Utility Commission

AREA CODE 215  
WALNUT 2-6100

E. C. LAWSON, P. E.  
CHIEF ENGINEER

Application of Interstate Energy Company, a Delaware corporation, for an order or orders approving the construction, below grade, of its pipeline facilities to cross below the tracks of the various railroads in Upper Chichester Township, Delaware County; Lower Mount Bethel Township, Northampton County, Forks Township, Northampton County, Lower Saucon, Bethlehem and Palmerton Townships, Northampton County; Concord and Thornbury Townships, Delaware County; East Whiteland and East Pikeland Townships, Chester County; East Whiteland Township, Chester County; Richland Township, Bucks County; and Upper providence and Perkiomen Townships, Montgomery County.

Docket No. A. 98632

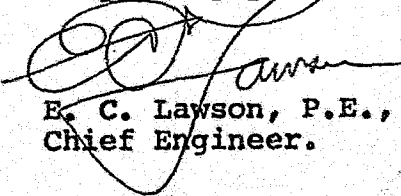
December 12, 1975.  
Marcus Hook 5.

Mr. C. J. McElwee, Secretary,  
Pennsylvania Public Utility Commission,  
P. O. Box 3265,  
Harrisburg, Pennsylvania 17120.

Dear Mr. McElwee:

This is to certify that all work to be performed by Reading Company, as required by P.U.C. Order, Docket No. A. 98632, dated November 12, 1974, was completed as of December 12, 1975.

Very truly yours,

  
E. C. Lawson, P.E.,  
Chief Engineer.

FOLDER

DEC 13 1975



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

March 16, 1976

IN REPLY PLEASE  
REFER TO OUR FILE

Louis A. Grafman  
Ballard, Spahr, Andrews and Ingersoll  
United Engineers Building  
30 South 17th Street  
Philadelphia, Pennsylvania 19103

Interstate Energy Company - Pa. P.U.C. -  
I.A.C. - Notice of Withdrawal of Petition

Dear Mr. Grafman:

At public meeting held on Thursday, February 26, 1976, the Pennsylvania Public Utility Commission agreed to the withdrawal by joint I.A.C. - P.U.C. Petition in the above captioned matter. Please find attached hereto and execute copy of same. I trust you will serve all parties of record and file this document with the Court.

Thank you.

Very truly yours,

Jay Rosenbluth  
Assistant Counsel

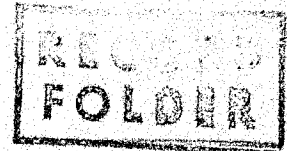
FILED  
FOLDER

RR  
G.W.R.  
MID

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In the Matter of : In Proceedings for the  
READING COMPANY, : Reorganization of a  
Debtor : Railroad  
: Bky. No. 71-828

NOTICE OF WITHDRAWAL OF  
PETITION OF THE PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
AND INTERSTATE ENERGY COMPANY  
TO IMPLEMENT, MAKE EFFECTIVE  
AND HAVE RECORDED AN ORDER  
OF THE PUBLIC UTILITY COMMISSION  
(ORDER NO. 798)



TO: Andrew L. Lewis, Jr., and  
Joseph L. Castle, Trustees of  
The Property of Reading Company,  
Debtor



1. On April 21, 1975, a hearing was held before the Honorable William J. Ditter on the Petition of the Pennsylvania Public Utility Commission ("PaPUC") and Interstate Energy Company ("IEC") to Implement, Make Effective and Have Recorded An Order of the Public Utility Commission (Order No. 798 in these proceedings).

2. At that time, the Court suggested that IEC and Reading continue to negotiate and reach a settlement.

3. Such a settlement was reached between IEC

and Reading.

4. The PaPUC is willing to withdraw the petition at IEC's request and hereby does so because of such request.

5. Notice is hereby given that the petitioners withdraw their petition.

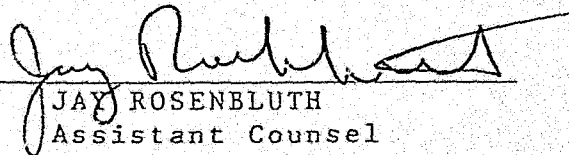
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PETER PLATTEN  
Attorney for Interstate  
Energy Company



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EDWARD J. MORRIS  
Counsel



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JAY ROSENBLUTH  
Assistant Counsel

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION

Of Counsel:

BALLARD, SPAHR, ANDREWS  
& INGERSOLL  
1035 Land Title Building  
Philadelphia, Pa. 19110

(215) L07-5615

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION  
118 North Office Building  
Harrisburg, Pennsylvania 17120

(717) 787-5000

May 13, 1980

Peter Platten, Esquire  
Ballard, Spahr, Andrews and Ingersoll  
United Engineers Building  
Philadelphia, PA 19103

A-00098627  
A-00098628  
A-00098629  
A-00098630  
A-00098631  
A-00098632 ✓

Application of Interstate Energy Company for approval  
of the construction, below grade, of pipelines across  
various railroad facilities.

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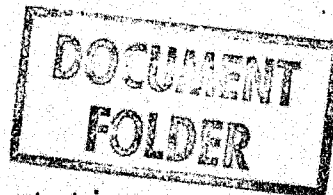
Dear Sir:

You are hereby advised that the Commission, at its  
Public Meeting of May 1, 1980 directed that the record in  
the instant proceeding be marked closed.

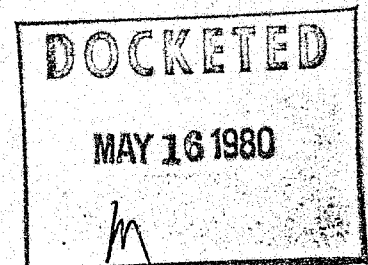
Very truly yours,

William P. Thierfelder  
Secretary

vm  
Certified Mail



cc: Bureau of Transportation  
Similar letter list attached



May 13, 1980

Similar letter list:

Interstate Energy Company  
930 Americana Bldg.  
P.O. Box 1916  
Houston, Texas 77001

Trustees of Reading Company  
c/o Lockwood W. Fogg, Esquire  
One Plymouth Meeting  
Plymouth Meeting, PA 19462

Trustees of Penn Central Trans. Co.  
Robert Sz wajkos, Esquire  
Suite 3100, I.V. B. Building  
Philadelphia, PA 19103

Robert W. Cunliffe  
Deputy Attorney General  
Rm. 511  
Transportation & Safety Bldg.

J.T. Clark, Attorney  
1323 Midland Building  
Cleveland, Ohio 44115  
for: Trustees of Erie Lackawanna Railway Corp.

Joel E. Mazor, Commerce Counsel  
1138 Six Penn Center Plaza  
Philadelphia, PA 19104  
for: Penn Central Trans. Co. & Reading Co.  
Now none as Conrail

Rene' Gunning, General Attorney  
Two North Charles Street  
Baltimore, Maryland. 21201  
for: Chessie System