

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

Public Meeting held May 22, 1975  
Harrisburg, PA.

COMMISSIONERS PRESENT:

Acting Chairman Kelly - Approval  
Commissioner Bloom - Approval  
Commissioner Carter - Approval

Complaint Docket No. 18922 - Pennsylvania Public Utility Commission v. Department of Highways of the Commonwealth of Pennsylvania, Union Railroad Company, City of Duquesne, County of Allegheny, The Bell Telephone Company of Pennsylvania, Carnegie Natural Gas Company, Equitable Gas Company and Keystone Pipeline Company

O R D E R

BY THE COMMISSION,

By telegram order dated March 26, 1970, this Commission directed that the bridge carrying State Highway Route 736 Extension (Traffic Route 837) over and above the tracks of Union Railroad Company, and above Thompson Run, in the city of Duquesne, Allegheny County, remain closed to all vehicles weighing in excess of five tons, and directed Pennsylvania Department of Highways (now Department of Transportation) to investigate the condition of the bridge components, and report to the Commission in regard to the extent of repairs necessary to restore the bridge to current highway loading, and the estimated cost of such repairs.

Upon receipt of the information requested, a field conference and inspection, arranged by a Commission staff engineer, was held at the site of the crossing on April 16, 1970, attended by representatives of Department of Transportation, City of Duquesne, Allegheny County, and Union Railroad Company. During the conference, inspection revealed that considerable repairs were required to restore the structure to its capacity for current highway loading. Accordingly,

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by order issued April 27, 1970, the Commission instituted an investigation on its own motion, under the provisions of the Public Utility Law, into the use and safety of the bridge structure, and directed Department of Transportation to prepare and submit to the Commission for approval, within 30 days from the date of service thereof, construction plans showing the details of all work necessary to restore the bridge structure to a capability for current highway loading.

In compliance with the above-mentioned order, the department prepared a detailed plan of the necessary repairs, and an estimate of cost, and a second field conference was held on May 22, 1970, attended by representatives of Department of Transportation, City of Duquesne, Allegheny County, Union Railroad Company, The Bell Telephone Company of Pennsylvania, Carnegie Natural Gas Company, Duquesne Light Company, Equitable Gas Company and Keystone Pipeline Company (now Atlantic Pipeline Company). None of the parties present at the field conference had any objection to the plans prepared by the department, or to the issuance of an order by the Commission approving the plan, and authorizing the department, at its initial cost and expense, to undertake necessary repairs to the bridge structure, but subject to the issuance of a final order by the Commission, after a hearing held following the completion of the repair work, to take testimony upon the allocation of the costs of construction and the responsibilities of future maintenance.

Accordingly, by order issued June 1, 1970, the Commission directed Department of Transportation, at its initial cost and expense, to furnish all material and do all work necessary to effect full and complete restoration and repair to the structure, in accordance with the approved

plan, and directed further, that all costs incurred by any of the parties be subject to allocation by the Commission, after a future hearing, to be held following completion of the repair work.

By letter dated November 17, 1971, the department advised that all work was completed on April 8, 1971, and submitted a copy of its final costs incurred during construction. Subsequently, initial hearing in the subject proceeding was conducted March 22, 1972.

William J. Clements, Civil Engineer, in the Design Bureau of Pennsylvania Department of Transportation, testified, at the hearing held March 22, 1972, that the work was completed April 8, 1971, and that the total costs and expenses incurred by the department in making the necessary repairs to the bridge structure, and paid to the successful bidder on the project, amounted to \$189,397, summarized as follows:

Repairs to structural steel	\$ 84,735
Repairs to concrete piers and abutments	74,632
Resetting rockers	16,000
Misc. bridge repairs	14,030
Total	<u>\$189,397</u>

The witness testified further that the structure was the subject of a proceeding before the Public Service Commission at Complaint Docket No. 6903, and as a result of its investigation, the Public Service Commission, by its order issued October 18, 1926, assigned the responsibilities of maintenance to County of Allegheny, with City of Duquesne to reimburse the county for 40 percent of the cost thereof. According to the witness, there is nothing of record to indicate that the order was ever modified, and based on that order, it is the opinion of the department, that the county is responsible for past maintenance, that the department

should be reimbursed for its costs by the county, and that the county, in turn, should be reimbursed by the city, in accordance with the order.

The department will not agree, on its own initiative, to assume any future maintenance responsibility, but recognizes that the assignment of future maintenance is a responsibility of the Public Utility Commission. The department requests that it be reimbursed for the cost of the repair work, if transfer of maintenance is considered by the Commission. In the opinion of the department, the repairs were necessary as a result of deferred maintenance.

The department has made a projected traffic count, including an origin and destination study. Of the average week day traffic of 17,300 vehicles, it was determined that 95 percent, or 16,435 vehicles, have both origination and destination within the county, and the remaining 5 percent, or 865 vehicles, have either origin or destination within the county. No vehicle trips have both origin and destination outside of the county, and the department requests that this information be considered, in the determination of future maintenance responsibility.

Counsel for the department agreed to furnish any records of work performed by the department since the year 1926, provided the county would agree to produce similar records. Counsel for Allegheny County stated that in all probability the county records would show maintenance up to 1961, at which time Act 615 was passed, which, according to the county, transferred such maintenance responsibility to Department of Highways (now Department of Transportation).

Richard B. Waugh, Engineer, Works Department of Allegheny County, testified, at the hearing held March 22,

1972, that the county had not performed any work on the structure in accordance with the Commission order, and had no costs to submit. The county does not agree to assume any portion of the costs of repairs to the bridge, and does not feel they should bear any part of future maintenance, on advice of counsel that the bridge was turned over to Department of Transportation in 1962.

Vincent F. Manella, a consulting engineer employed by City of Duquesne, testified, at the hearing held March 22, 1972, that no work had been requested of the city by the Commission order, that the city had performed no work, and had no costs to submit into the record. The city cannot agree to bear any portion of the costs of repairs to the bridge, because it is financially unable to do so, and will not agree to accept any future maintenance responsibility, but believes that the responsibility should rest with Department of Transportation.

During cross-examination, the city's witness testified that he had no knowledge of any reimbursement from the city to the county, for maintenance work performed by the county. In further examination, the witness acknowledged the concern of the elected officials of the city for the welfare of the city and the entire valley, and that they were vitally interested in the condition of the bridge involved in this proceeding.

Alfred C. Danks, Engineer-Bridges and Buildings, for Union Railroad Company, testified, at the hearing held March 22, 1972, that the railroad company expended approximately 40 man-hours of electrician labor, and used material in the amount of \$25, to safeguard its high voltage power line adjacent to the bridge during construction. In addition, the company's bridge inspector made regular inspections during the course of the work. The company is making no

requests for reimbursement of these costs; however, flagman services were provided as requested by the bridge contractor, and these costs, in the amount of \$7,088, have been paid in full by the contractor.

The railroad company does not agree to bear any portion of the cost of repairs to the structure, but will agree to bear its own costs related to the protection of the wire lines. The company has no present maintenance obligation, and does not agree to perform any future maintenance, or bear any cost thereof.

The railroad company's witness testified further, in regard to the overall condition of the bridge. In the opinion of the company, the bridge is in need of major repair and rehabilitation of its drainage system, to stop water from dripping and freezing, and the concrete encasement should be removed from the girder faces and the underside of the sidewalks, to prevent any further spalling of concrete from the structure, all in the interest of the safety of the railroad employees who must work under the bridge.

Union Railroad Exhibits Nos. 1 through 5, admitted at the hearing, are photographs taken by the company in support of its testimony regarding the condition of the bridge structure, and Exhibit No. 6 is a letter from V. M. Schwing, Chief Engineer of the railroad company, dated January 6, 1972 and addressed to a Commission staff engineer, expressing the company's concern, and requesting that consideration be given to further rehabilitation, to eliminate the hazards caused by faulty drainage dripping into the railroad work area.

Duquesne Light Company, Equitable Gas Company, Carnegie Natural Gas Company and The Bell Telephone Company

of Pennsylvania were advised of the time and date of the hearing, but did not make an appearance.

At the conclusion of the hearing held March 22, 1972, it was agreed that after an examination by all counsel of the maintenance records to be provided by Department of Transportation, County of Allegheny and City of Duquesne, a request would be made to the Commission to grant a further hearing, if such were deemed necessary.

The hearing was continued on November 26, 1973, to take testimony and receive evidence as to maintenance that has been performed on the bridge structure in the past.

William J. Clements testified, on behalf of Pennsylvania Department of Transportation, at the final hearing held November 26, 1973, that the department can find no record of maintenance performed on the bridge by the department, except for the repair work recently completed in accordance with the Commission order issued June 1, 1970.

During cross-examination, the department's witness testified that the repairs made in accordance with the Commission order were emergency repairs intended to permit removal of the load restriction, and that complete rehabilitation of the structure might be necessary in the next three to five years. However, the department does not agree to prepare rehabilitation plans at the present time.

Vincent F. Manella, consulting engineer for City of Duquesne, testified, at the hearing held November 26, 1973, that he was unable to locate any record of the city ever having done any repair work on the bridge involved in this proceeding. In regard to the sidewalk areas of the bridge, City of Duquesne Exhibit A, admitted at the hearing, is a letter dated November 19, 1970 from Department of

Transportation to the city, advising that the department will assume future responsibility for maintenance of the sidewalk areas, and Exhibit B is a letter dated March 10, 1970 from Norman Bartko, Solicitor, City of Duquesne, to Mr. N. Udani, expressing the concern of the people of Duquesne for the condition of the sidewalk areas, and urging the department to take corrective action, with the cooperation of the county, if necessary.

In further testimony, the city's witness testified that the city presently has a 12-inch diameter water main on hangers under the sidewalk area of the bridge. In order to reduce the cost of its replacement, the city requests permission to install a new water main on the sidewalk, on the east side of the structure. The city proposes to close the easterly sidewalk to all pedestrian traffic, and will agree to maintain the barricaded sidewalk area, which is to be occupied by the water main. According to the witness, Department of Transportation has no objection to the proposal, but points out that it is a matter within the Commission's jurisdiction. Further, counsel for Allegheny County stated for the record that the county has no objection to the proposal. The witness agreed to submit a plan of the proposed installation to the Commission, for its approval.

John R. Shafer, Director of Engineering Services for Union Railroad Company, testified, at the hearing held November 26, 1973, that the railroad company can find nothing in its maintenance records to indicate it ever performed any maintenance work on the bridge structure. The witness corroborated the company's testimony presented at the initial hearing held March 22, 1972, that the bridge is in need of

additional repairs and rehabilitation, to eliminate the hazards created by poor drainage, and concrete spalling, in the railroad work area directly beneath the structure.

Richard B. Waugh, Engineer, Works Department of Allegheny County, testified, at the hearing held November 26, 1973, that County Exhibit No. 1, admitted at the hearing, is a single sheet showing the maintenance record of Allegheny County for Bridge No. 1, Thompson Run, South Side, City of Duquesne. The exhibit shows that the bridge was constructed in 1928, and, except for the period between July 1945 and March 1950, was maintained until 1961 by the county. The exhibit shows discontinuance of maintenance after 1961, with the notation thereon that the bridge was taken by the Commonwealth, on May 1, 1962, House Bill #1707, Act 615.

County Exhibit No. 2, admitted at the hearing, is a copy of a resolution, certified March 20, 1962, in which the county agreed to the transfer of certain bridge structures under Act 615, and County Exhibit No. 3 is a copy of a letter to the county commissioners from Secretary of Highways Park H. Martin, dated April 12, 1962, acknowledging receipt of the resolution submitted as Exhibit No. 2, and advising that the resolution would be adopted by the department on May 1, 1962. During cross-examination, the county's witness testified that he had no knowledge whether the city of Duquesne had ever been billed for any portion of the maintenance costs.

In redirect examination, the witness for Department of Transportation testified that sidewalk repairs made by the department, in accordance with the Commission order issued April 27, 1970, were those referred to, in City of Duquesne Exhibit A.

Mr. Lawrence Moreau, of The Bell Telephone Company of Pennsylvania, stated on the record that the company has two telephone cables on the bridge involved in this proceeding, but because of incorrect advice received from its engineering department, counsel for the company did not think it necessary to attend the hearing.

Upon full consideration of the record in the instant proceeding, including the testimony and exhibits presented at the hearings held March 22, 1972 and November 26, 1973, we make the following findings as hereinafter set forth.

1. The bridge carrying State Highway Route 736 Extension (Traffic Route 837) over and above the tracks of Union Railroad Company, and above Thompson Run, in the City of Duquesne, was erected in 1928 at the sole cost and expense of Allegheny County.

2. The structure is an eight span steel plate girder bridge with a concrete deck.

3. The total length of the bridge structure is eight hundred five feet.

4. The structure is thirty eight feet from curb to curb with sidewalks on both sides.

5. By order of the Public Service Commission at Complaint Docket No. 6903 issued October 10, 1926, County of Allegheny was directed to maintain the bridge structure including piers and abutments and City of Duquesne was to reimburse the County forty per cent for all maintenance expenditures.

6. The bridge structure has been maintained by County of Allegheny since its construction, from 1928 until 1961.

7. Allegheny County expended at least \$39,477.68 for maintenance of the bridge from 1944 to 1961.

8. There is no record of any maintenance performed on the bridge by any party since 1961.

9. The bridge in question was transferred to The Department of Highways of the Commonwealth of Pennsylvania (now The Pennsylvania Department of Transportation) on March 20, 1962, pursuant to the provisions of Act No. 615 of September 18, 1961, P.L. 1389 (36 P.S. §1758-101 et seq.).

10. The Bridge in question is a state highway by virtue of the transfer described in Paragraph "9" supra. and the provisions of Act 615 of September 18, 1961, supra.

11. County of Allegheny and Pennsylvania Department of Transportation decline to accept maintenance responsibility of the bridge structure due to conflicting interpretations of Act No. 615 of September 18, 1961, P.L. 1389.

12. In 1970, the Pennsylvania Public Utility Commission was advised of structural damage to several component members of the bridge, which, in the interest of the public, required immediate attention.

13. The structure is posted for a load limit not in excess of five tons.

14. State Highway Route 736 (Traffic Route 837) is the principal highway route serving the southeastern Greater Pittsburgh area.

15. State Highway Route 736 is the only route available to travel from the south side to the north side of the City of Duquesne and points beyond, since the tracks of Union Railroad Company generally bisect the community.

16. The subject bridge carries heavy truck traffic to and from major steel industries located within the community and the greater Monongahela Valley area.

17. Major repairs to the structure will benefit residents of the city and the industries located in the vicinity, as well as residents of the Commonwealth who regularly use the State Highway Route 736.

18. Repairs to the structure are required to permit removal of the existing load restriction of five tons, removal of which is deemed critical to the efficient operation of the industries located within the area as well as to the expeditious and unrestricted movement of traffic utilizing said structure and highway network.

19. Pennsylvania Department of Transportation is responsible for maintenance of the approaches to the subject crossing.

20. The volume of highway traffic currently using the bridge has been estimated by the Department of Transportation to be 17,300 vehicles daily. It was determined that 95 percent, or 16,435 vehicles, have both origination and destination within the county, and the remaining 5 percent, or 865 vehicles, have either origination or destination within the county.

21. The structural condition of the bridge, and the extent of the present deterioration of the bridge has not resulted from short-term neglect of maintenance (that is, since 1961), but is due to deterioration which can be anticipated on any 45 year old structure which has been in constant service since the date of its construction in 1928.

22. Repairs of the bridge structure carrying State Highway Route 736 Extension (Traffic Route 837) over and above the tracks of Union Railroad Company is necessary, in the interest of the safety, convenience and accommodation of the public.

23. The completed repairs will bring the structure to a HS-20 (36 ton gross weight) loading.

24. Repairs to the bridge will reduce future maintenance costs.

25. Repairs to the bridge will provide a safer and more efficient roadway for the highway user.

26. Repairs to the bridge will protect and assure fire and police protection to the city of Duquesne and adjacent area.

27. Repairs to the bridge will enhance local school bus operations and will assure reliable road service to employees in the area as well as for vehicular traffic previously restricted therefrom.

28. Repairs to the bridge will provide for a better north-south flow of traffic for a period of many years.

29. Repairs to the bridge will serve the interests of the entire community, at local, county and state levels.

30. In accordance with the provisions of Section 409(b) of the Public Utility Law of May 28, 1937, P.L. 1053, (66 P.S. §1179(b)) as amended, the Public Utility Commission is vested with the exclusive power to determine and prescribe the manner in which public railroad-highway crossings within the Commonwealth may be constructed, altered, relocated or abolished, and the manner and conditions in or under which such crossings shall be maintained, operated, and protected to effectuate the prevention of accidents and the promotion of the safety of the public.

31. In accordance with the provisions of Section 411(a) of the Public Utility Law of May 28, 1937, P.L. 1053, (66 P.S. §1181(a)) as amended, the Public Utility Commission is vested with exclusive power after due notice and hearing, to determine the compensation for damages to adjacent property owners, as well as the cost of construction, relocation, alteration, protection or abolition of a public railroad-highway crossing within the Commonwealth, and to allocate such compensation and costs to the public utilities, or municipal corporations concerned, or to the Commonwealth, in such proper

proportions as the Commission may, after due notice and hearing, determine, unless such proportions are mutually agreed upon and paid by the interested parties.

32. The provisions of Act No. 615, Act of September 18, 1961, P.L. 1389, as amended (36 P.S. §1758-101 et seq.), do not repeal nor impinge on the comprehensive and exclusive grade crossing powers vested in the Commission by the provisions of the Public Utility Law, Act of May 28, 1937, P.L. 1053, as amended, including Sections 409 and 411 aforesaid (66 P.S. §§1179, 1181).

33. The parties, Pennsylvania Department of Transportation, City of Duquesne and Allegheny County, are properly before the Commission pursuant to its comprehensive grade crossing powers conferred by Sections 409 and 411 of the Public Utility Law (66 P.S. §§1179, 1181).

34. The aforesaid parties are individually "concerned" and "interested" in the current proceeding within the context of the aforesaid specific provisions of the Public Utility Law and as denoted by the record of this proceeding.

Upon full consideration of all specific findings of facts aforesaid, we hereby determine and conclude that the bridge structure carrying State Highway Route 736 Extension (Traffic Route 837) over and above the tracks of Union Railroad Company, and above Thompson Run, requires repairs principally to meet the transportation needs of all segments of the motoring public including city, county and state residents. Inasmuch as the repaired bridge structure forms an integral part of State Highway Route 736 and will primarily benefit all types of vehicular traffic traversing this state highway, we deem it fair and equitable for Pennsylvania Department of Transportation to bear the major share of costs and expenses for repairs. Because the city and the county have derived in the past and, in the future, will

additionally derive benefit from the repaired bridge structure, we allocate the remaining costs against them. In our allocation of the project costs and future maintenance herein involved, in addition to the other matters considered herein, we have given due consideration as urged by the parties to the pertinent provisions of Act No. 615 of September 18, 1961, P.L. 1389, as amended, including Art. I, Section 101-104 and the subsequent resolutions and related correspondence introduced by the parties in the present record.

Of special significance to the Commission is the fact that by the transfer of the bridge by the County to the Department of Highways in 1962 pursuant to the provisions of Act 615, the bridge is, and has been since March 20, 1962, a state highway. We note that although there is some question between the parties as to the appropriate interpretation of the provisions of Act 615, the Department of Transportation has responsibilities conferred on it by the general statutory provisions concerning the maintenance, construction and operation of all state highways, of which, as we have found previously, this bridge is a part. See the State Highway Law, Act of June 1, 1945, P.L. 1242, Section 401 (36 P.S. §670-401) and Act of May 6, 1970, Act No. 120, P.L. 918, §3, (71 P.S. §512(a)(8)). In view of the responsibilities conferred on the Department of Transportation by the State Highway Law and Administrative Code of 1929 as amended we need not, at this time, decide the issues of conflicting interpretations of Act 615. We only take cognizance of the fact that the legislature chose to make this bridge a part of the state highway system. This expression of public policy by the Legislature of the Commonwealth further persuades us that the Department of Transportation must and should bear a substantial portion of the cost of repairs for this bridge.

However, because much of the traffic flow over the bridge (95% approximately) has both its origin and destination within the County improvements to the bridge will have a decidedly local impact. As a consequence we deem it fair and appropriate to allocate a sufficient portion of the costs of repairs to the County and City of Duquesne, 30% and 10% respectively. The resulting apportionment of the burden of the cost of repairs, 60% for PennDOT, 30% for the County and 10% for the City of Duquesne, in view of the factors described above, in our view is fair and proper.

As regards the future maintenance of the repaired bridge structure, we conclude that the facts as found warrant the transfer of the structure's maintenance to Pennsylvania Department of Transportation. Inasmuch as the bridge carries State Highway Route 736 over it is per se a state highway as discussed above, and serves this vital north-south state highway, we deem it fair and equitable that Pennsylvania Department of Transportation should accept responsibility for future maintenance of the bridge structure; THEREFORE,

IT IS ORDERED:

1. That Department of Transportation, at its initial cost and expense, furnish all material and do all work necessary to effect repair and restoration of the bridge structure carrying State Highway Route 736 Extension over and above the tracks of Union Railroad Company, and over Thompson Run, in the city of Duquesne, Allegheny County, to permit current highway loading, in accordance with the plan approved in numbered Paragraph 2 of our order issued June 1, 1970 in this proceeding.

2. That Union Railroad Company, having agreed to do so, at its sole cost and expense, furnish all material and do all work necessary to make any temporary or permanent

alterations or relocations of its facilities, required to permit the emergency repairs to the structure, in accordance with numbered Paragraph 4 of our order issued June 1, 1970 in this proceeding.

3. That City of Duquesne, within 60 days from the date of service of this order, prepare and submit to the parties of record for examination and to this Commission for approval, a plan showing details of the construction of a 12-inch diameter water main by the city, to be constructed within the limits of the sidewalk on the east side of the bridge structure.

4. That City of Duquesne, at its sole cost and expense, furnish all material and do all work necessary to install a 12-inch diameter main within the limits of the sidewalk on the east side of the bridge structure, in accordance with the approved plan.

5. That any relocation of, changes in or removal of any adjacent structures, equipment or other facilities of any public utility, other than Union Railroad Company, located within the limits of any highway within the limits of this Commission's jurisdiction, which may be required as incidental to the execution of the repairs, be made by said public utility, at its sole cost and expense, and in such manner as will not interfere with the completion of the crossing project.

6. That Department of Transportation, at its sole cost and expense, pay all compensation for damages due to the owners, for property taken, injured or destroyed by reason of the construction of the crossing project, in accordance with this order.

7. That Department of Transportation pay Union Railroad Company a sum or sums of money equal to the actual

cost of watchman and flagman services rendered by the company to protect its operations and facilities, contingent solely upon the work and operations of Department of Transportation and/or its contractors during the time the railroad-highway project is being constructed.

8. That County of Allegheny pay Department of Transportation, when and as certified by Pennsylvania Public Utility Commission, a sum or sums of money equal to 30 percent of the actual cost of material furnished and work performed by the department, in compliance with numbered Paragraph 1 of this order.

9. That City of Duquesne pay Department of Transportation, when and as certified by Pennsylvania Public Utility Commission, a sum or sums of money equal to 10 percent of the actual cost of material furnished and work performed by the department, in compliance with numbered Paragraph 1 of this order.

10. That upon completion of the repairs to the crossing structure and its opening to public use, each non-carrier utility, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain its respective facilities within the limits of the project.

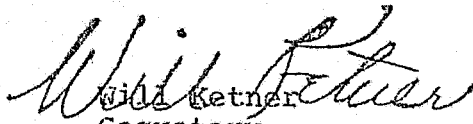
11. That upon completion of the repairs to the crossing structure and its opening to public use, Union Railroad Company, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain its tracks and other facilities located upon its right-of-way.

12. That upon completion of the repairs to the crossing structure and its opening to public use, City of Duquesne, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the sidewalk

on the east side of the bridge structure, and the 12-inch water main installed thereon.

13. That upon completion of the repairs to the crossing structure and its opening to public use, Department of Transportation, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the remainder of the crossing, including the substructure and superstructure of the bridge carrying State Highway Route 736 Extension above the tracks of the railroad company and over Thompson Run, and the highway approaches thereto.

BY THE COMMISSION,

  
Will Kethner  
Secretary

ORDER ADOPTED: May 22, 1975

ORDER ENTERED:

MAY 29 1975