



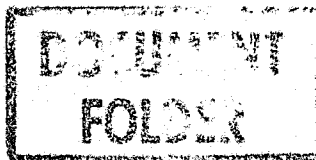
COMMONWEALTH OF PENNSYLVANIA  
 PENNSYLVANIA PUBLIC UTILITY COMMISSION  
 P. O. BOX 3265, HARRISBURG, Pa. 17120  
 June 9, 1986

To All Parties

IN REPLY PLEASE  
 REFER TO OUR FILE  
 C-00018922

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, Duquesne Light Company,  
 Equitable Gas Company, and Keystone Pipe Line Company.



TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Recommended Decision prepared by Administrative Law Judge John K. Clements.

An original and nine (9) copies of signed exceptions to the decision, if any, MUST BE FILED WITH THE SECRETARY OF THE COMMISSION IN ROOM B-18, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17120 and a copy served on each party of record within 15 days of the date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date the exceptions are deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)).

Replies to exceptions, if any, must be served on the Secretary of the Commission, in the manner described above, within 10 days of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535, particularly the 40 page limit for exceptions and the 25 page limit for replies to exceptions. Exceptions should be clearly labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

Any reference to specific sections of the Administrative Law Judge's Recommended Decision shall include the page number(s) of the cited section of the Decision.

All timely filed exceptions and replies thereto will be attached to the decision for consideration at Public Meeting. Late filed exceptions and late filed replies will not be attached.

cc:ALJ Clements/Office of ALJ/Bureau of S & C/Law Bureau/Mr. Bramson/OSA/Chairman Commissioners/Correspondence/our file

Very truly yours,  
 1g  
 Enclosures  
 Certified Mail  
 Receipt Requested

*William H. Smith*  
 William H. Smith  
 Chief Administrative Law Judge

Similar letter to: See attached list.

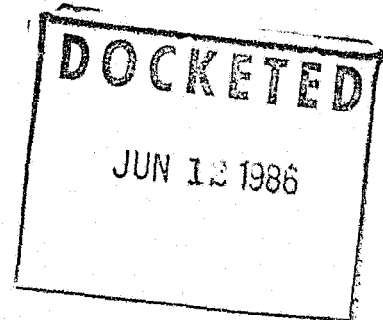
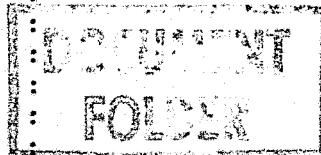
BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility  
Commission

v.

C-00018922

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, Duquesne Light  
Company, Equitable Gas Company,  
and Keystone Pipe Line Company.



RECOMMENDED DECISION

Before

John K. Clements  
Administrative Law Judge

History of the Proceedings

The structure involved in this proceeding, known as Thompson Run Bridge, has been the subject of the Commission's investigation since 1970. Formal investigation was instituted by the Order issued on April 27, 1970. First major repairs to the structure were ordered performed by PennDOT in 1971 and were made by PennDOT at a cost of \$189,397. By the Order issued on May 22, 1975, City of Duquesne was directed to bear 10% of the costs, County of Allegheny 30% of the costs and PennDOT the remaining 60% of the costs. City of Duquesne was also directed to maintain the east sidewalk of the bridge and the 12" water line installed thereon. PennDOT was directed to maintain the remainder of the structure.

Later, by a letter dated February 22, 1982, PennDOT stated that in early 1979, it let a contract for emergency repairs to the structure. Concurrently with the emergency repairs, PennDOT stated that it performed an in-depth inspection of the structure which revealed serious deficiencies in the superstructure requiring replacement of the deck and some structural steel. PennDOT requested issuance of an Order Nisi to permit it to perform the needed repairs as soon as possible.

On March 25, 1982, the Commission entered an Order Nisi permitting PennDOT to rehabilitate the Thompson Run Bridge. PennDOT was directed, at its initial cost and expense, to furnish all materials and do all the work necessary to rehabilitate the involved bridge and the highway approaches thereto in accordance with approved plans. Upon completion of the work, a hearing was to be held for the allocation of costs and the assignment of maintenance responsibilities, etc.

The hearing in the case was conducted on October 24, 1985. The following interested parties were present and represented by counsel: Allegheny County, Bell of Pennsylvania (Bell), Duquesne Light Company (Duquesne), Equitable Gas Company (Equitable), the Pennsylvania Department of Transportation (PennDOT), and Union Railroad Company (Union Railroad).

The record consists of 87 pages, including five exhibits and three statements. There were no briefs submitted.

#### Findings of Fact

1. Subject structure is an eight-span steel plate girder bridge approximately 805 feet in length. The bridge cartway, of reinforced concrete construction, had a width of 38 feet between pedestrian

walkways. The bridge carries State Highway Route 736 above the tracks of the Union Railroad. (PennDOT Plan)

2. The deterioration of the bridge structure was due to pollution, chemicals, salt, freeze-thaw cycle, and the passage over time of vehicles on the bridge. (Tr. 147)

3. The reconstructed bridge is a steel bridge with concrete piers and abutments. (Tr. 147) The bridge is eight-span with a total length of 805 feet.

4. The total cost of rehabilitation of the Thompson Run Bridge is \$3,709,461.13. (This total cost does not include costs of privately-owned utility removals and replacements). (Tr. 144; PennDOT Ex. 1)

5. Eighty percent of the PennDOT construction cost was reimbursed to PennDOT out of Federal Highway Administrative Funds. The remaining twenty percent of the cost was provided by the state. (Tr. 146)

6. Due to the construction of new bridge back-walls, it was necessary for Equitable to remove sections of the 8" gas main from service (approximately 85' on the south approach and 173' on the north approach). Equitable, in order to maintain service to one customer during outing of the 8" main, also installed 170 feet of 2" steel main as a temporary connection. Equitable's facilities were installed in 1928 and are all located in public right-of-way. The anticipated service life of the existing line is 54.8 years. Equitable is not willing to bear any of the construction costs (\$20,472.82) associated with this proceeding. (Equitable Stmt. No. 1, pp. 2-4)

7. Union Railroad provided flagging service, temporarily relocated and restored company aerial wires and provided a small amount of labor for train switch and service. Cameron Construction Company, PennDOT's general contractor, reimbursed Union Railroad Company for all of the costs associated with the above services. Union Railroad Company is not willing to bear any costs that are incurred to date with respect to the improvement of the Thompson Run Bridge. (Tr. 155, 157)

8. Bell Telephone Company replaced three (3) of its six (6) conduits on the bridge and dismantled and replaced its two (2) manholes on the highway approaches. Bell replaced the 3 existing cement conduits which were not in use (vacant) with 3 plastic conduits. The conduits are not in use now but are for future use. Bell's conduits were installed on the bridge in 1929 and had a service life at that time of 64 years. Bell is not willing to bear any of the construction costs (\$50,731.38) associated with this proceeding. (Tr. 164, 166, 167-168, 175-176)

9. Duquesne Light Company's existing electrical facilities consisted of a combined overhead and underground system of 23 kv cable, 4 kv cable and street lighting circuits. Duquesne altered its facilities by modifying the underground duct system and replacement of cable. These relocated facilities remained on the bridge during reconstruction. All of Duquesne's facilities are located in public right-of-way. Some of the existing facilities were installed in 1929 and the more recent ones in 1981. It appears that the poles and accessories were installed in the mid-1940's and 1960's. The cables were installed in 1929, mid-1940's, mid-1960's, and late 1970's. Duquesne does not agree to bear the costs, \$89,337.50, of adjusting its electrical facilities to

accommodate the reconstruction of the bridge. (Duquesne Statement No. 1)

10. Duquesne Light Company also has attached to the bridge one (1) 26 pair 19 gage communication cable for use between its McKeesport Customer Operation Headquarters and a terminal box in West Mifflin. These facilities are used for the operation and control of Duquesne's electrical system. Duquesne estimates it will cost \$15,700 to provide one (1) 25 pair 19 gage cable as a temporary facility during reconstruction and install one (1) 25 pair 19 gage cable permanent facility upon completion of the bridge rehabilitation. Duquesne as of the time of the hearing had not completed installation of the permanent facility but expected to have it completed by the end of 1985. The permanent facility will provide a 4% decrease in capacity. Duquesne does not agree to bear the costs, estimated at \$15,700, of adjusting its communication cable facilities to accommodate the reconstruction of the bridge. (Duquesne Statement No. 2).

11. Atlantic Pipeline Company, formerly Keystone Pipeline Company has an 8" diameter petroleum products pipeline under the Thompson Run Bridge. Due to the negligible amount of work involved, no submission is being made for reimbursement.

12. Allegheny County has not expended any funds in the construction or maintenance to the Thompson Run Bridge. The County is not willing to bear any of the costs of prior construction or for future maintenance. (Tr 203-204)

### Discussion

As it appears that all other issues involving the project have been resolved, this decision is limited in scope to the allocation of utility relocation costs and certain future maintenance costs.

### Utility Relocation Costs

The utilities affected by the project are Equitable Gas Company, Bell Telephone Company and Duquesne Light. Equitable Gas has incurred a cost of \$20,472.82 in the alteration of its facilities. The facilities were installed in 1928 and were replaced in 1982 when the bridge was rehabilitated by PennDOT. Equitable estimates its facilities to have an average service life of 54.8 years. Bell Telephone has incurred a cost of \$50,731.38 in the alteration of its facilities. It replaced 3 empty (vacant) cement conduits, with 3 plastic conduits for future use, and reconstructed 2 manholes. Bell's conduits were installed in 1929 and are estimated to have an average service life of 64 years. Duquesne Light Company has incurred a cost of \$89,337.50 in the alteration of its poles, conductors, etc. Those facilities were installed at different times, some as far back as 1929 and some as recently as 1981. Duquesne's Exhibits A and B indicate that some of the work involved relocating facilities on Oliver Street. This area, in my opinion, is outside of any highway construction performed by PennDOT. Therefore, work done in this area and associated costs should be excluded. Duquesne has given a materials only credit of \$4,728.72 for the used service life of its facilities. Its calculations, shown on Exhibit 1, indicate approximately 40% service life left in its relocated facilities. (\$3,104.96 v. \$7,833.68) Duquesne Light has also incurred

a cost of \$9,208 in the alteration of its communication cables. However, the entire work had not been completed at the time of the hearing and was expected to cost a total of \$15,700 when completed. Duquesne did not know when its communication facilities were installed at the crossing and although it promised to provide that information to the Commission within 30 days of the hearing, it has not done so to date.

The criteria to be applied in determining utility relocation cost allocation were enunciated in Application of City of Wilkes-Barre, A-101606 (Order entered April 9, 1981). There, the Commission stated:

The Courts and the Commission have considered various factors in reaching a conclusion regarding the appropriate allocations of costs including: (1) the benefit received by the ratepayers of the particular utility. Delaware River Port Authority v. Pa. P.U.C., 393 Pa. 639, 145 A.2d 172 (1958); Township of Sandy, A-00100270 (1980); (2) the availability of state and/or federal funding for a project, Erie Lackawanna Railway Company v. Pa. P.U.C., 2 Pa. Commonwealth Ct. 396, 278 A.2d 188 (1971); (3) the placing of the costs upon the party responsible for the situation, Manchester Township v. Pa. P.U.C., 43 Pa. Commonwealth Ct. 118, 401 A.2d 1237 (1979); and (4) the equities of a particular situation, Application of the Redevelopment Authority of Philadelphia, 48 Pa. P.U.C. 513 (1974).

. . . .

We shall not restrict ourselves to an inflexible policy of determining appropriate percentage allocations, . . . but shall exercise our discretion based upon a consideration of the criteria enunciated above. (Slip Op. pp. 3-4)

1. Benefit Received By The Ratepayers Of The Utility: Under this heading, it is my view that the ratepayers of the utilities

involved have received a considerable benefit from the occupancy of the structure. If the structure was not there, the utilities would have to acquire the right-of-way for the location of its facilities. They would also have to bear the expense of boring under the tracks for crossing the tracks. The facilities of Equitable, Bell Telephone, and Duquesne Light Company have all been attached to the bridge since 1928-1929. All wires, poles and pipes have a useful service life. Although a utility may state there is nothing wrong with its affected facility at present, in actuality the facility may be at 1/2, 3/4 or near the end of its service life. By replacing it at the time of the highway improvement the utility is only renewing what it would have to do in the future anyway.

The length of time a utility has occupied public right-of-way should receive consideration. In some cases, the utilities' facilities have been located in their present position for 20, 40 even 60 years. This long a time period has distinct economic advantages to a utility, i.e. no right-of-way to purchase, no taxes to pay on said property, or maintenance of the right-of-way. This benefit is recognized by the utilities, otherwise they would not continue to locate in public right-of-way. Almost all of the utilities, in fact, admit that the reason for locating in the public right-of-way is economics. Equitable Gas, in its prepared testimony, in response to the question as to why it chose to place its facilities in the public right-of-way, on page 6 stated "In most cases, public right-of-way is the most direct and economically feasible route." On cross-examination, on page 139, Equitable admits that it would have to acquire the right-of-way, and that because of location in public right-of-way, it has direct access to its

facilities. Duquesne Light also, in its written testimony in answer to Question 10, states that Duquesne chose to maintain its facilities on the reconstructed bridge because that "was the most cost effective method of construction". Bell too, undoubtedly, derives the same benefits from the occupancy of the structure as Equitable and Duquesne Light Company. Therefore, I conclude that the ratepayers of the utilities have derived economic benefit from the occupancy of the structure and will continue to do so as long as the utilities remain on the structure.

2. Availability Of State And/Or Federal Funds: In regards to the availability of State and Federal funds, this project has been constructed with 80% Federal and 20% State funds. However, it is uncertain if Federal funds will be available at this late stage for the utility relocation costs. Mr. Zahn, Attorney for PennDOT, explaining about the eligibility of Federal funds, on page 52 of the record of testimony, stated:

The Federal Government does not reimburse the Department of Transportation for relocating utility facilities unless, under State Law, such reimbursement is required. Therefore, no funds are requested for any relocation of utilities that were located in public right-of-way.

. . . . .  
FHA recognizes that if the Public Utility Commission allocates costs, that that is recognized as the State Law and Federal Funds could be used. Whether they could be applied for, whether they could be paid at this late date, I don't know.

Obviously, the funds were not applied for by the utilities. Whether applying for them now will result in reimbursement, is

uncertain. However, as long as such a possibility exists, it is appropriate to consider this factor.

3. Placing Of The Costs On The Party Responsible For The Situation: Before deciding which party is responsible for the situation, a brief review of the history of the structure will be beneficial. The record indicates that the structure was originally built in 1898. It was reconstructed in 1928 in accordance with the Commission's Order issued on October 19, 1926, at Complaint Docket No. C. 6903. Maintenance of the structure was assigned to the County of Allegheny with the City of Duquesne paying 40% of the costs to the county. The highway, in 1926, was a city street. In 1962, it was taken over by the Pennsylvania Department of Highways, now PennDOT. The structure has now been reconstructed, primarily by the replacement of the deck, by PennDOT, in accordance with the Commission's Order issued on March 25, 1982.

Is PennDOT responsible for causing the deterioration of the structure which has resulted in the reconstruction of the structure? I do not think so. It appears that passage of time, usage by vehicles and other factors have contributed to the deterioration of the structure. The age of the bridge structure and the action of the elements are factors beyond the control of any party. These factors may occur as a result of the bridge being constructed but are not determinative of the proper party or parties upon whom cost responsibility should be placed. Of course, reconstruction of the structure, in turn, has caused the alteration of the utilities.

4. Equity Of The Situation: Under equity of the situation, any other related factors not discussed elsewhere will be considered so

that the decision rendered is equitable and fair to all of the parties concerned.

There is no denying the fact that the reconstruction of the structure has resulted in alteration of the utilities' facilities. Primary beneficiaries of the reconstructed structures are highway users who will have safe means of crossing the railroad tracks. (Presence of the railroad tracks is a causative factor but that is a different issue.) Therefore, on the surface of it, it would seem that PennDOT as the entity responsible for the Commonwealth's highways, should pay for the project costs. However, PennDOT has born a major portion of the reconstruction costs of the new bridge. The cost to reconstruct the bridge deck and other related work has been \$3,709,461.13. PennDOT is willing to bear this cost within the limitation and restrictions placed upon the use of any funds available for the project. Utilizing Federal funds for this project at a cost sharing of 80% Federal and 20% State, PennDOT has born \$741,892.23. If PennDOT was ordered to bear all of the utility relocation costs, the utilities who receive benefits from the occupancy of the structure, would end up bearing none of the costs. Historically, the utilities are not asked to bear any of the project construction costs although fairness would dictate that if the structure is of some benefit to the utilities, they should bear some of the project costs. We are not implying in any manner that the utilities have contributed to the condition of the bridge. However, the ability of a utility to attach to and otherwise use a public facility for its facilities is of benefit to the utility and should be given due consideration. On the other hand, it is obvious that the relocation

costs have been brought on the utilities through no fault of their own and the utilities and their ratepayers will eventually bear those costs.

In view of all the foregoing factors, it is my recommendation that most of the utility relocation costs be borne by the utilities involved. In case of Bell and Equitable, they should bear all of their relocation costs. In case of Duquesne, it will be allowed 20% reimbursement for alteration of its facilities as identified on its exhibits but specifically excluding work and material for electrical facilities altered between Duquesne Light Company Pole No. 128963 on Oliver Street and manhole No. 15068 on Second Avenue. The exclusion is justified because the work beyond manhole No. 15068 is outside of any highway construction performed by PennDOT. Equitable's facilities had been located on the structure for 54 years (since 1928, up to 1982) and have used up most of their useful service life<sup>1/</sup> of 54.8 years. Bell's facilities, too, had been located on the structure for a long time (since 1928) and have used most of their useful service life of 64 years. Furthermore, in case of Bell, the conduits replaced were

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<sup>1/</sup> The utilities contend that useful service life does not necessarily mean the end of the facility's life. They state that it is just a number carried on their books for depreciation purposes. However, the utilities admit that the facilities can have a longer or shorter life than the depreciated life (N.T. 136, 137, 186). In my view, absent any other data, it is a good number on which the useful life of the facilities can be based.

empty, were for 'future use' and would again be for future use. Only in case of Duquesne did the facilities have about 40% of their service life left in them. Duquesne is not being allowed 40% reimbursement because it has benefitted from the occupancy of the structure and because there is uncertainty involved with the reimbursement of Federal Funds.

In case of Union Railroad, the record indicates that Union Railroad has been reimbursed by PennDOT for its costs. As Federal Funds have been expended, I have no objection to those costs being borne by PennDOT.

The record also indicates that PennDOT replaced City of Duquesne's water line on the bridge. See PennDOT's Exhibit 1, Item No. 2000-0003. In a letter attached to PennDOT's letter of February 22, 1982, City of Duquesne gave permission to PennDOT to relocate its water and sewer lines with the cost sharing to be determined at a later date. I have no objection to PennDOT having performed the work and the costs being borne in accordance with the agreed upon manner.

After making allocation of costs in the first instance, the parties are free to enter into any legal contract or agreement to which they may be entitled and to recover the costs from others in accordance with any lawful agreement.

#### Future Maintenance

The Department of Transportation has agreed to maintain the structure in the future, but it requests that it not be required to maintain the sidewalks which had been the City of Duquesne's responsibility. (Tr. 145) City of Duquesne did not attend the hearing (although

the Commission records indicate it received notice). Therefore, it may be assumed that it has no objection to maintaining the sidewalks in the future. This is logical because its citizens are most likely among the parties to use the sidewalks.

ORDER

THEREFORE, IT IS ORDERED (Subject to Commission approval):

1. That Pennsylvania Department of Transportation, bear the costs incurred by it in furnishing material and performing work in accordance with the previous orders of the Commission issued in this proceeding.

2. That Pennsylvania Department of Transportation, when and as certified by this Commission, pay to Duquesne Light Company, 20% of the actual costs incurred by the Duquesne Light Company, in furnishing material and performing work to alter its electrical and communication facilities in accordance with the previous orders of the Commission but specifically excluding work and material for electrical facilities altered between Duquesne Light Company pole No. 128963 on Oliver Street and manhole No. 15068 on Second Avenue.

3. That Duquesne Light Company, bear the remaining 80% of the costs incurred by it in furnishing material and performing work in accordance with the previous orders of the Commission issued in this proceeding.

4. That Equitable Gas Company and Bell Telephone Company of Pennsylvania, each, bear their respective costs incurred in furnishing material and performing work to alter their facilities in accordance with the previous orders of the Commission issued in this proceeding.

5. That the City of Duquesne, at its sole cost and expense, furnish all material and do all work necessary to maintain the sidewalk on the structure in a safe and satisfactory condition.

6. That Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and do all work necessary to maintain the entire structure, except sidewalks, in a safe and satisfactory condition.

7. That the non-carrier utilities involved, including the City of Duquesne, each, at its sole cost and expense, furnish all material and do all work necessary to maintain its respective facilities within the area of the crossing in a safe and satisfactory condition.

8. That the Union Railroad Company, at its sole cost and expense, furnish all material and do all work necessary to maintain its facilities in the area of the crossing in a safe and satisfactory condition.

9. That this Order insofar as it places the costs of the project on the parties involved is without prejudice to their right to recover the said costs from others in accordance with any lawful agreements between the parties.

John K. Clements  
John K. Clements  
Administrative Law Judge

Date: May 28, 1986