



Equitable Gas

420 Boulevard of the Allies
Pittsburgh, Pa. 15219

June 23, 1986

EXPRESS MAIL

Mr. Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

RECEIVED

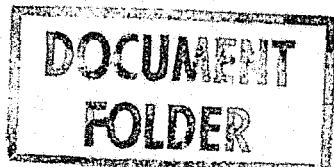
JUN 23 1986

UTILITY COMMISSION
HARRISBURG, PA

Dear Mr. Rich:

Re: Pennsylvania Public Utility Commission vs.
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
Docket No. C-00018922

Enclosed please find an original and fourteen (14) copies of the Exceptions of Equitable Gas Company to the Recommended Decision of Administrative Law Judge John K. Clements dated May 28, 1986 in the above captioned case in accordance with the rules of your Commission, together with a Certificate of Service.



Very truly yours,

Lawrence B. Nydes

Lawrence B. Nydes
Attorney

AMC
Enclosures
CC: All Parties of Record
42/50

RECEIVED

JUN 24 1986

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE
Public Utility Commission

In re: C-00018922 - Pennsylvania Public Utility Commission vs.
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

EXCEPTIONS OF
EQUITABLE GAS COMPANY

DOCKETED
JUN 25 1986

Lawrence B. Nydes
Attorney for Equitable Gas Company
420 Boulevard of the Allies
Pittsburgh, Pennsylvania 15219

Date: June 23, 1986

DOCUMENT
FOLDER

I.

STATEMENT OF EXCEPTION

Equitable Gas Company ("Equitable") hereby excepts to the Recommended Decision of Administrative Law Judge John K. Clements dated May 28, 1986 (and especially paragraph 4 at pages 14-15 of the Decision) ordering that Equitable Gas Company bear its respective cost incurred in furnishing material and performing work to alter its facilities in accordance with the previous Orders of the Commission issued in this proceeding.

II.

STATEMENT OF THE CASE

This proceeding was commenced by an application for approval of the reconstruction of the Thompson Run Bridge, a Bridge owned by the Pennsylvania Department of Transportation ("PennDot") since May 1, 1962 over the tracks of The Union Railroad between Spring Street and Overland Avenue, in the City of Duquesne, Allegheny County, Pennsylvania.

There has been a hearing before the Commission relative to this matter, which was held on October 24, 1985 to determine the allocation of these and other costs associated with the reconstruction of the Bridge.

As testified to by Equitable's witness, Martin M. Mlinarich, at the hearing held on October 24, 1985, Equitable

has an 8" wrought iron low pressure distribution main located on the west side of the Bridge. The main is attached to the Bridge structure by hangers located under the sidewalk. Due to the Pennsylvania Department of Transportation's construction of new back walls on the north and south approaches to the bridge, it was necessary for Equitable to remove sections of the 8" main from service that were located within the construction area of the back walls. However, removing these sections of main would have isolated the remaining portion of the main, located on the Bridge, without a gas feed. This action would have cut off service to a customer, Union Railroad, being fed from the main on the Bridge. Therefore, in order to keep Union Railroad in service during construction it was necessary for Equitable to install approximately 170 feet of 2" steel temporary main between the 8" main at the intersection near Overland Avenue and Union Railroad's service line. This line was placed outside the construction area and is noted in blue on the map. During construction of the back walls, 5 feet of 12" steel pipe was placed in each wing wall as a sleeve for the 8" main renewal. The sections of 8" main taken out of service during construction, approximately 85 feet of 8" steel pipe on the south approach and 173 feet of 8" steel pipe on the north approach, were renewed before resurfacing of the approaches. The temporary line was removed from service. Since the renewal was with the same size pipe, there is no increase or decrease in capacity of the system. Therefore, there is no betterment or improvement to Equitable or its ratepayers as a result of

the renewal (Equitable Statement No. 1, p. 3-4).

Furthermore, in 1982, when the 8" main was renewed, the average service life of Equitable's distribution main was 54.8 years. Any pipe installed in 1982 or prior to 1982 would be depreciated in 54.8 years. However, exceeding the average service life does not require the renewal of pipe since the renewal of pipe is determined by the condition of the pipe and not the age of the pipe. As previously noted, the existing main would not have had to be replaced were it not for this proceeding and the renewed facilities have not resulted in any increase or improvement in Equitable's system capacity over what previously existed (Equitable Statement No. 1, p. 5).

The cost to Equitable in accommodating said reconstruction excluding the costs for the betterment, will be approximately \$20,472.82 (Equitable Statement No. 1, p. 2). If no relocation costs are awarded to Equitable it would mean that in effect all of its approximate 245,000 customers in Pennsylvania would be paying for relocation of facilities in an area that only affects a small percentage of these total customers.

The Commission, in equitably determining the percentage of relocation costs to be awarded to Equitable, should consider the fact that Equitable has not enjoyed the privilege of free occupancy in public right-of-way for a portion of the time its facilities have been located on the Thompson Run Bridge.

As noted in the December 23, 1985 answer of

Equitable's witness Martin M. Mlinarich to the question of counsel for PennDot made at the October 24, 1985 hearing, Equitable has paid an annual bridge rental fee of \$189.70 to Allegheny County (when the bridge was subject to its jurisdiction) for its facilities on the Thompson Run Bridge from October, 1937 through May 1962.

Equitable does not agree to assume the costs of altering its facilities necessitated by the proposed reconstruction [Equitable Statement No. 1, p. 2], but agreed to assume the costs of future maintenance of its facilities [Equitable Statement No. 1, p 2].

It should also be noted that at the hearing in question, counsel for PennDot stated that PennDot had not applied for federal funding for reimbursement of utility relocation costs absent being so instructed to do by Order of the Commission (Tr. 52).

In addition, to the extent that counsel for PennDot admitted not only that PennDot did not attempt to procure as part of its application for federal funds any federal funds for utility relocation costs (Tr. 52), but that any utility relocation costs which PennDot would be required by Commission Order to pay for may be eligible for eighty percent (80%) federal reimbursement (ALJ Finding of Fact No. 5; Tr. 52, 146), the discretionary consideration of the Commission in determining reimbursement should also include such eligibility by PennDot of federal funds for utility relocation.

III.

LEGAL BASIS FOR EXCEPTION

A public utility should not bear the cost of altering its facilities to accomodate bridge and highway crossing improvements where the utility and its ratepaying consumers receive absolutely no benefit from the relocated facilities and the relocation is caused solely by the action of parties other than the utility.

The sole beneficiaries of the bridge replacement are PennDot and the traveling public. Equitable and its ratepaying customers gain nothing. The \$20,472.82 expenditure by Equitable will have no purpose other than to permit it to maintain the same service which it would have provided absent the improvement. It would therefore be unreasonable and inequitable to require Equitable, and, hence, its ratepaying customers to bear the burden of the cost of relocation of the pipeline facilities.

Where as here, the equities of the case require it, a non-carrier utility is entitled to compensation for relocation costs upon order of the Pennsylvania Public Utility Commission, as allocation of relocation costs is discretionary with the Commission pursuant to Section 411(a) of the Public Utility Law, Act of May 28, 1937, P.L. 1053, as amended by the Act of July 3, 1963, P.L. 212, Section 1, 66 P.S. 1181(a) (as substantially re-enacted in Section 2704(a) of the Pennsylvania Public Utility Code, Act of July 1, 1978, P.L. 598, No. 116, 66

Pa. C.S. §2704(a)). In this regard, see Philadelphia v. Pennsylvania Public Utility Commission, 449 Pa. 402 (1972); Port Authority of Allegheny County v. Pennsylvania Public Utility Commission, 207 Pa. Superior Ct. 299 (1966); Delaware River Port Authority v. PUC, 393 Pa. 639 (1958). The Commission has recognized this authority as indicated by its action in such cases as: In Re City of Pittsburgh, 51 PUC 299, 315 (1977); Application of the Department of Transportation, 47 PUC 463 (1974); Application of the Department of Transportation of the Commonwealth of Pennsylvania, 47 PUC 566 (1974); Application of the Department of Highways, Docket No. A.86674 (June 24, 1968); Application of Upper Merion & Plymouth Railroad Company, et al., 42 PUC 81 (1965); and Application of the Department of Highways, 41 PUC 781 (1965).

Section 2704(a) of the Public Utility Code (formerly Section 411(a) of the Public Utility Law) expressly confers upon the Commission the power and authority to allocate the cost and expense incident to the relocation of non-transportation utility facilities upon parties other than such utilities. See Redevelopment Authority of City of Scranton v. Pa. P.U.C., 48 Pa. Commonwealth Ct. 238, 409 A.2d 508 (1980); Application of Redevelopment Authority of City of Philadelphia, 48 Pa. P.U.C. 513 (1974).

The Commonwealth Court in Redevelopment Authority of the City of Scranton v. Pennsylvania Public Utility, 48 Pa. Commw. Ct. 238, 409 A.2d. 508 (1980), has recently reaffirmed the Commission's authority to allocate such relocation costs.

In that case, the Commission granted the exceptions of Pennsylvania Gas and Water and of Pennsylvania Power and Light to the Administrative Law Judge's allocation of costs on the grounds that it would be unreasonable and inequitable to make them pay to relocate their facilities. The Commonwealth Court upheld the Commission's decision.

The Commission in making such determination is not limited to any fixed rule, but all factors should be taken into consideration. Erie Lackawanna Railway Company v. Pa. P.U.C., 2 Pa. Commonwealth Ct. 396, 278 A.2d 188 (1971). Obviously, the availability of federal funds is a factor in the allocation of the costs. In addition, however, Equitable would add that in this particular case all the other considerations which have motivated the Commission in ordering that utilities be compensated 100% for their relocation costs in prior cases are present -- including, without limitation, the fact that PennDot and the traveling public are the primary beneficiaries of the highway improvement project; that Equitable did not derive any benefit from the work which it will be required to perform in connection with the reconstruction in question; that the \$20,472.82 expenditure Equitable is faced with will not increase either the quantity or quality of service which Equitable is presently able to provide to its customers; that there is no benefit whatsoever to Equitable's customers; and that the condition of Equitable's line at the time of reconstruction is good and there would not have been any reason to replace the said line if it were not for the reconstruction

in question.

In fact, the Commission in the case of the Application of the City of Wilkes-Barre at A.101606, by order dated April 3, 1981 and entered on April 9, 1981 ordered 100% compensation for utility relocation costs in a factual situation very similar to the facts of this case, clearly controls this case. In that case, the Commission held that it would exercise its discretion in avoiding relocation costs based on the various factors discussed in said case irrespective of the existence of the utility facilities in public right-of-way. The various factors are the same as discussed herein infra relating to the Commission's decision in Herron Avenue Bridge case. Furthermore, the Commission in City of Wilkes-Barre noted with respect to the question of federal funding that under 23 U.S.C. §645.103 the availability of federal funds for utility relocation is dependent upon the assignment of costs to various parties. As the decision held in part at pages 3-4 and in its conclusion at page 7:

"THE ADOPTION OF AN ABSOLUTE RULE APPLICABLE TO EVERY CASE THAT THE PERCENTAGE OF FEDERAL FUNDING AVAILABLE IS THE EXTENT OF LIABILITY UPON A MUNICIPALITY IS UNSOUND.

The ALJ states, 'since 75% Federal funds are available for the project, we would allow them (the fixed utilities) 75% reimbursement of their relocation costs.' (Initial Decision, p. 11).

Section 2704(a) of the Public Utility Code grants to the Commission the power to allocate costs involving the relocation of nontransportation utility facilities in 'crossing proceedings'. The exercise of that power is strictly within the discretion of the Commission, subject to the requirements of due

process. Department of Highways v. Pennsylvania Public Utility Commission, 171 Pa. Superior Ct. 156, 90 A. 2d 853 (1962). 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, A000100270 (1980); (2) the availability of state and/or federal funding for a project, Eire 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). In short, the Commission is not limited to any fixed rule, but may consider any one or more of the above recited factors, depending upon the facts peculiar to each case.

Further, under 23 U.S.C. §645.103, the availability of Federal funds for utility relocation is dependent upon the assignment of costs to various parties. If we do not assign costs, Federal funds may not be readily available, which therefore would cause us to be faced with problems of circularity, viz., no assignment of costs is appropriate until Federal funding is approved, but no Federal funding is available until costs are assigned.

We shall not restrict ourselves to an inflexible policy in determining appropriate percentage allocations, by considering only the amount of State and/or Federal funding, but shall exercise our discretion based upon a consideration of the criteria enunciated above. Accordingly, the ALJ's reasoning specifically is rejected.

Conclusion

After consideration of the facts that: the City and the traveling public are the primary beneficiaries of the highway improvement project; no benefit will accrue to the fixed utilities involved; no betterments of the fixed utility system will occur; partial federal funding is available; and we have previously ordered 100% reimbursement by the Authority of fixed utilities relocation costs on other portions of this project, we find it appropriate to grant the exceptions of PG&W and Bell: Therefore . . . " (Emphasis added)

- 2 However, we recognize that there may be some cases wherein the factual circumstances dictate an allocation according to the percentage of federal funds available.

In Scranton Redevelopment Authority (A.100697), the Administrative Law Judge had denied compensation for utility relocation costs, stating:

"Since the facilities of the utility companies are located in the public right-of-way, it is proper that each utility pay for the relocation of its facilities." (Initial Decision, p. 8)

The Commission modified the Initial Decision so as to allocate total relocation costs to the Applicant, holding:

"With regard to the allocation of costs for the relocation of the utility companies' facilities which are affected by the proposed alteration, PG&W and PP&L have excepted to the Administrative Law Judge's assignment of costs and have requested that these costs be reimbursed by the Scranton Redevelopment Authority. They contend that the Judge's assignment of the costs of relocation to the utilities because the facilities are located in the public right-of-way is erroneous since no benefit is derived from the relocation by the utility or its customers and will not result in any improvement in its existing facilities. The companies also contend that Section 411(a) of the Public Utility Law, as amended (66 P.S. 1181*) gives the Commission the discretion to apportion the expense of relocating public utility facilities to other parties involved in the project and does not automatically require the utility to pay where the facilities are on a public right-of-way. (Footnote omitted.) They argue that since all costs will ultimately be borne by its ratepayers, it is improper to require the utility to pay these costs where no benefit is derived from the relocation." (Emphasis added.) (*Now 66 Pa.C.S.A. §2704.)

"While it is within our authority under Section 411(a) to apportion the costs of relocation to the utility companies involved, we find PP&L and PG&W's arguments persuasive. In this instance it would be

unreasonable and inequitable to require the two utilities to bear the costs of relocation." (Emphasis added.) 52 Pa. P.U.C. 381, 382, aff'd, Redevelopment Authority v. Pa. P.U.C., 48 Pa. Cmwlth. 238, 409 A.2d 508 (1980).

In this regard, see also the Recommended Decision of Administrative Law Judge Joseph P. Matuschak dated October 30, 1985 (which was subsequently adopted by the Commission in its Order adopted January 29, 1986 and entered February 10, 1986) awarding relocation costs to The Bell Telephone Company of Pennsylvania in the case of the Rochester Monaca Bridge at A-00105718 based on various factors noted therein especially where federal funds were available and PennDot failed to apply for such for reimbursement to utilities for their relocation costs.

Furthermore, the common law rule that the right to occupy a highway free of cost imposes on the public utility the obligation to pay for relocation costs occasioned by highway improvements has been expressly altered by statute. In Delaware River Port Authority v. Pa. P.U.C., 393 Pa. 639, 645-646, 145 A.2d 172 (1958), the Supreme Court held:

"Historically, in Pennsylvania, non-transportation public utilities have been permitted to occupy highway rights-of-way free of cost, subject and subordinate to the State's police power to control and regulate the highways for the benefit of the public. (Citations omitted.) Such utilities obtain no property rights in the highway and can be ordered by a competent state or municipal agency to relocate their facilities at their own expense. (Citations omitted.) The reason obviously is that since these utilities occupy the highways free of cost they should not be entitled to compensation if they are forced to relocate their facilities because of highway improvements. (Footnote omitted.) This

common law rule, however, can and may be abrogated by a specific statutory mandate directing the payment of relocation costs to the non-transportation utilities involved." (Citations omitted.)

Section 411 of the Public Utility Law (66 Pa.C.S.A. §2704) is such a mandate. It specifically grants the power to allocate expenses, even in cases where the public right-of-way is occupied free of charge by the public utility. City of Pittsburgh and Urban Redevelopment Authority of Pittsburgh v. PA. P.U.C., 45 Pa. Cmwlth. 80, 404 A.2d 786, 788 (1979). Subsequently, the Commission has orderd complete compensation to public utilities when relocating facilities despite the free occupancy of the highway based, inter alia, upon its conclusion that "The city and the traveling public are the primary beneficiaries of the highway improvement project; no benefit will accrue to the fixed utilities involved; no betterments of the fixed utility system will occur" (Application of the City of Wilkes-Barre, A.101606, Order entered April 9, 1981, p. 7).

If the Commission orders PennDot to pay Equitable's relocation costs, PennDot ultimately will bear no part of the burden of such costs. Based on the record in this proceeding, PennDot now may be able to (or at the very least previously could have attempted to but chose not to) obtain federal funds to pay eighty percent (80%) of such costs (ALJ Finding of Fact #5; Tr. 52, 146). The remaining twenty percent (20%) of the costs may ultimately be paid by taxation of Pennsylvania residents. However, various residents are also customers of Equitable. The choice for various Pennsylvania residents who

are Equitable's ratepayers is simple: (1) Pay twenty percent (20%) of the costs through tax revenues paid to the state; or (2) Pay in excess of 100% of the costs through utility bills paid to Equitable, after application of federal and state taxes. The merits of the Commission ordering PennDot to pay Equitable's relocation costs are clear.

As previously noted, the Commission's powers to allow utilities to locate on facilities within its jurisdictional limits, exist pursuant to the Commission's general powers under the Public Utility Law (§401, 413 and 901 (66 P.S. 1171, 1183 and 1341, respectively)) conferring general administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth; and, under Section 902, 66 P.S. 1342, the power and authority is conferred upon the Commission, and it is its duty, to enforce and carry out all and singular the provisions of the Public Utility Law and the full intent thereof and is not superseded or preempted by any other existing law, rule or regulation.

As also previously noted, Equitable will not derive any benefit from the work which it is required to perform in connection with the construction, the \$20,472.82 expenditure Equitable is faced with will not increase either the quantity or the quality of service which Equitable will be able to give its customers or its deliverability of gas, and there will be no benefit whatsoever to Equitable's customers. Also, Equitable has paid for the privilege of locating its facilities on the Bridge for every year from October, 1937 through May,

1962 when the structure in question was subject to the jurisdiction of the County of Allegheny. Also, the condition of Equitable's line at the time of demolition was good and there would not have been any reason to replace the said line if it were not for the demolition (Equitable Statement No. 1, p. 4). The reason Equitable does agree to bear the cost of future maintenance of its new facilities is that the maintenance of these facilities will benefit Equitable and its ratepaying customers.

Therefore, while Equitable is willing to assume the cost of future maintenance, which Equitable does not feel PennDot or the traveling public should bear, Equitable's position is that PennDot should pay Equitable's \$20,472.82 cost of relocation of its facilities due to the fact that the costs are being incurred solely because of the improvement to the facilities of PennDot and are not creating any improvement to Equitable's facilities, capacity, quantity or quality of service, and should not be borne by Equitable's ratepayers but should be borne by PennDot, which is the beneficiary of the improvement, especially in light of the fact that Equitable has always paid for the privilege of locating its facilities on the Bridge from October, 1937 through May, 1962 when the structure was subject to the jurisdiction of the County of Allegheny. And, to the extent that federal funds may be available, the discretionary considerations of the Commission in determining such payment responsibility should also include the availability of any federal funds for utility relocation.

Furthermore, the record in the proceeding does indicate that federal funds for utility relocation costs presently still may be available and previously may have been available, and that PennDot never attempted to apply for such funds. (ALJ Finding of Fact #5; Tr. 52, 146) Further, the U.S. Department of Transportation Federal Highway Administration Policy and Procedure Manual (PPM) 30-4 (a copy of which is attached hereto as Exhibit 1), does not preclude the availability of federal funds for the relocation of Equitable's facilities.

PPM 30-4, paragraph 3.a.(2) provides for the payment of utility relocation costs when the payment of the costs of relocation are pursuant to State law. Since the Commission has the power pursuant to Section 411 of the Public Utility Law (66 Pa. C.S. §2704) to order PennDot to pay Equitable's relocation costs, payment of the costs by PennDot would in fact be pursuant to State law and within the scope of PPM 30-4, paragraph 3.a.(2). Therefore, the conditions exist for the availability of federal funds under PPM 30-4, paragraph 3.a.(2) for the payment of utility relocation costs.

Furthermore, examples of recent federally funded projects in which Equitable has received funds for reimbursement for its relocation costs in Commission jurisdictional proceedings either through negotiation or as a result of Commission Order are as follows:

1. PAT Busway South (A-99065) - Equitable entered into an agreement with Port Authority for 50% reimbursement. The Commission made no ruling since the agreement took precedence.

2. PAT Busway East (A-100490) - Equitable entered into an agreement with Port Authority for 50% reimbursement. The Commission made no ruling since the agreement took precedence.
3. I-279 and I-579 East Street Valley Expressway (A-94681) - The Commission Order, adopted February 21, 1985, ruled that Equitable receive 90% reimbursement for its facilities located in public right-of-way within the Commission's jurisdictional limits. Approximate costs of Equitable's work within the Commission's jurisdictional limits was \$220,900. Equitable's approximate costs for facilities affected within and beyond the limits of the Commission was \$715,000. Duquesne Light and Equitable asked the Commission to extend the limits to include all the affected facilities, but this motion was denied.
4. South Aiken Avenue Bridge (A-00101033) - Order entered August 10, 1981, where federal funds were involved, the City of Pittsburgh was ordered to reimburse Equitable and Duquesne Light for 75% of their relocation costs.

As stated by ALJ Clements in his May 22, 1981 Recommended Decision which was subsequently adopted by the Commission:

"The City argues that the monies were not originally requested because it was felt that the utilities should absorb their own relocation costs and the amount of money involved would be available to the City and others in the region for other projects. In my opinion, the City has not demonstrated clearly that the City gains any benefit at all from the refusal to apply for such funds. It appears to me that the City had an opportunity to apply for and apparently receive these funds to reimburse same to the utilities. In my view it had a duty to do so to minimize the cost of this project with respect to the utilities involved and their ratepayers. Therefore, this decision requires that the utilities receive a refund for 75% of the cost. With respect to the remaining 25% of the costs involved, it appears fair that the utility should assume these costs in return for the benefit gained from occupying public right-of-way without charge for a period of years." (Emphasis added)

5. Herron Avenue Bridge (A-00100837) - Order entered December 31, 1981, where federal funds were involved, the City of Pittsburgh was ordered to reimburse Equitable and Duquesne Light for 40% of their relocation costs. As held by the Commission at pages 3-4 of its Order:

"Third, the ALJ determines that Equitable is entitled to be reimbursed 40% of its relocation costs. The ALJ characterizes this as an arbitrary reduction from a 70% reimbursement required by the Commission's decision in

Application of Department of Transportation (Berwick, Columbia County) A-99208, Order entered June 26, 1980. The ALJ determined that a reduction from 70% to 40% was appropriate because Equitable was unable to obtain a timely right-of-way from Conrail and the Port Authority and therefore it had to reroute its new line by a less direct but more expensive route than otherwise would have been required.

Although the ALJ does not use the percentage reimbursement found appropriate in the Application of Department of Transportation proceeding, he asserts that the philosophy expressed in that case is controlling the current proceeding. In that case, we stated:

'The realignment and changes in grade of the approaches thereto is primarily for the benefit of the highway users rather than for the benefit of the utility companies which have to incur expenses for facility relocation work to accomodate the project. As a result thereof, we determine that the non-carrier utility companies should not be burdened with the entire cost of its relocation work located in public right-of-way; however, it is our opinion that the non-carrier utility companies should bear a portion of these costs since the majority of the utility companies have enjoyed the privilege of free occupancy in public right-of-way for several years.' (Emphasis added)

Application of Department of Transportation, A-99208, Order entered June 26, 1980.

While we agree with the ALJ that the philosophy expressed in the Application of Department of Transportation is in part controlling the instant proceeding, we do not agree that a 70% reimbursement level always is a starting point to be adjusted up or down depending upon the particular circumstances existing in a given proceeding.

Section 2704(a) of the Public Utility code grants to the Commission the power to allocate costs involving the relocation of nontransportation utility facilities in 'crossing proceedings'. The exercise of that power is within the discretion of the Commission, subject to the requirements of due process. Department of Highways v. Pennsylvania Public Utility Commission, 171 Pa. Superior Ct. 156, 90 A.2d 853 (1962). The Courts and the Commission have considered various factors in reaching a conclusion regarding the appropriate allocation 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).

Application of these four principles to the facts present in this proceeding persuades us to conclude that it is fair and reasonable that Equitable be reimbursed 40% of its relocation costs. Because the reconstruction of Herron Avenue Bridge was primarily for the benefit of the traveling public, the City of Pittsburgh should bear a predominant share of the cost associated with the relocation of Equitable's facilities. However, Equitable should bear some of its relocation costs because now it has the benefit of a new line to serve its customers. A fair balance of these two considerations suggests a fair and reasonable reimbursement to Equitable to be 40%.
(Emphasis added)

In light of the above example situations, it should be clear that sufficient prior precedent exists to require PennDot to pay for the costs incurred by Equitable for relocation of its facilities in this proceeding.

IV.

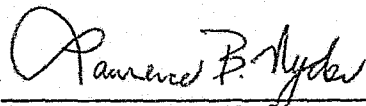
CONCLUSION

The Commission has the power and jurisdiction to allocate upon entities other than Equitable for the costs for the relocation of Equitable's facilities caused by the reconstruction in question. The party to this proceeding who is the beneficiary of the improvement, namely, the Pennsylvania Department of Transportation, should bear these costs. A

complete review of the record will indicate that the Commission would be completely justified in ordering payment by PennDot of all costs incurred by Equitable for work which must be performed on its facilities as a result of the construction in question and which are within the Commission's jurisdictional limits.

Equitable therefore requests that the Commission reverse the Recommended Initial Decision of Administrative Law Judge Clements as expressed at Ordering paragraph 4 on pages 14-15 of such Decision and that the Commission's Order in this proceeding include appropriate provisions for the payment by PennDot of all costs incurred by Equitable for relocating and adjusting all of its facilities within its jurisdictional limits.

Respectfully submitted,
EQUITABLE GAS COMPANY

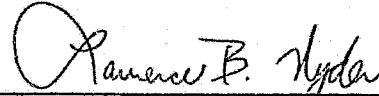
By 
Lawrence B. Nydes
Attorney for Equitable Gas
Company

DATE: June 23, 1986

42/49

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day mailed a true and correct copy of the foregoing Exceptions of Equitable Gas Company to all parties of record in this proceeding.



Lawrence B. Nydes
Attorney for Equitable Gas
Company

DATE: June 23, 1986

42/49

POLICY AND PROCEDURE MEMORANDUM

30-4

June 29, 1973

UTILITY RELOCATIONS AND ADJUSTMENTS

- Par. 1. Purpose and Application
 2. Definitions
 3. Eligibility
 4. Rights-of-Way
 5. Preliminary Engineering and Engineering Services
 6. Construction
 7. Agreements and Authorizations
 8. Recording of Costs
 9. Reimbursement Basis
 10. Labor Costs
 11. Materials and Supplies
 12. Equipment
 13. Transportation of Employees
 14. Utility Bills
 15. Accommodation and Installation
 16. Alternate Procedure

Appendix A - Index

1. PURPOSE AND APPLICATION

a. To prescribe the policies and procedures for the adjustment and relocation of utility facilities on Federal-aid highway projects and projects under the direct supervision of the Federal Highway Administration (FHWA), except Secondary Road Plan projects. It also prescribes the extent to which Federal funds may be applied to the costs incurred by or on behalf of utilities in the adjustment or relocation of their facilities required by the construction of such projects. At the election of the State, an alternate procedure for simplifying the processing of utility relocations and adjustments is provided under paragraph 16.

b. The provisions of this memorandum apply to reimbursement claimed by the State for costs incurred under all State or political subdivision-utility agreements, and for payment of costs incurred under all FHWA-utility agreements, which are entered into after the date of issuance.

c. Where the lines or facilities to be relocated or adjusted by reason of the highway construction are privately owned, located on the owners' land, devoted exclusively to private use and not directly or indirectly serving the public, the provisions of the PPM 80-Series apply. Where applicable, under the foregoing conditions the provisions of this memorandum may be used as a guide to establish a cost-to-cure.

d. Where the utility holds a compensable interest in the land occupied by its facilities, and the relocation involves all or a substantial portion of, or extensive damage to, the utility's physical plant or operating facilities, an analysis shall be made by the State, subject to concurrence by the division engineer, to demonstrate whether the cost of relocation determined under the provisions of this memorandum will exceed the market value of the utility's real property determined by appraisals under PPM 80-3. Any proposed settlement above the amount established by the appraisal process shall require justification as being the most feasible and economical solution available consistent with the public interest, welfare and good.

e. Where State law or regulation provides payment standards more liberal than those established by this memorandum the provisions of this memorandum shall govern FHWA's reimbursement to the State. Conversely, where State law or regulation provides more restrictive payment standards, the State standards shall govern such reimbursement. A determination shall be made by the State subject to the concurrence of the division engineer as to which standards will govern, and the record documented accordingly, for each relocation encountered. In making the determination as to which standard is the most restrictive, the net cost of relocation, excluding any cost sharing arrangement between the State and the utility, shall be computed by obtaining the reimbursable amount under each of the following: (1) the State's standards and (2) the standards provided for by this memorandum. Any cost sharing arrangement required by law or agreement between the State and the utility shall be applied to the lesser of the two sums so obtained to establish the amount eligible for Federal fund participation.

f. Where the highway construction which requires the utility relocation is under the direct supervision of FHWA, all references herein to the State are inapplicable. Under such circumstances, it is intended that FHWA be considered in the relative position of the State.

g. On Secondary Road Plan projects where Federal-aid participation is requested in the costs of utility relocations, the provisions

of PPM 20-5 and the approved Secondary Road Plan agreement will apply.

2. DEFINITIONS

For the purpose of this memorandum, the following definitions shall apply:

a. "Utility" shall mean and include all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, and other similar commodities, including publicly owned fire and police signal systems and street lighting systems, which directly or indirectly serve the public or any part thereof. The term "utility" shall also mean the utility company, inclusive of any wholly owned or controlled subsidiary.

b. The terms "reimburse" and "participate", or their derivatives, shall mean that Federal funds may be used to reimburse the State on Federal-aid projects, or to make payments to the utility on projects under the direct supervision of FHWA to the extent provided by applicable law.

c. "Division Engineer" shall mean the division engineer of the FHWA.

d. "Replacement Rights-of-Way" shall mean the land and interests in land acquired for or by the utility as necessitated by the highway construction.

e. "Preliminary Engineering" shall mean locating, making of surveys, preparation of plans, specifications and estimates and other related preparatory work in advance of construction operations.

f. "Construction" shall mean the actual building and all related work including utility relocation or adjustments, incidental to the construction or reconstruction of a highway project, except for preliminary engineering or right-of-way work which is programed and authorized as a separate phase of work.

g. "Salvage Value" is the amount received for utility property removed, if sold; or if retained for reuse, the amount at which the material recovered is charged to the utility's accounts.

h. "Work Order System" is a procedure for accumulating and recording into separate accounts of a utility all costs to the utility in connection with any change in its system or plant.

i. "Program Approval" shall mean approval by FHWA of programs of projects proposed by the State. Projects involve preliminary engineering, rights-of-way acquisition or construction at specific locations.

j. "Authorization" shall mean authorization to the State by the division engineer to proceed with any phase of a project previously or concurrently given program approval. The date of authorization establishes the date of eligibility for Federal funds to participate in the costs incurred on that phase of work.

k. "Relocation" shall mean the adjustment of utility facilities required by the highway project, such as removing and reinstalling the facility, including necessary rights-of-way, on new location, moving or rearranging existing facilities or changing the type of facility, including any necessary safety and protective measures. It shall also mean constructing a replacement facility functionally equal to the existing facility, where necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

l. "Cost of Removal" is the cost of demolishing, dismantling, removing, or otherwise disposing of utility property and cleaning up required to leave the site in a neat and presentable condition.

m. "Cost of Salvage" is the amount expended to restore salvaged utility property to usable condition after its removal.

n. "Overhead Costs" shall mean those costs not chargeable directly to accounts pertaining to the relocation which are determined on the basis of a rate or percentum factor supported by overhead clearing accounts, or such other means as will provide an equitable allocation of actual and reasonable overhead costs to specific relocation jobs. Such costs may include expenses for general engineering and supervision, general office services, legal services, insurance, relief, pensions, taxes and construction engineering and supervision by other than the accounting utility.

o. "Betterments" shall mean and include any upgrading to the facility being relocated made solely for the benefit of and at the election of the utility, not attributable to the highway construction.

p. "The cost of any improvements necessitated by or in accommodation of the highway construction" shall mean the cost of providing improvements in the relocated or adjusted facility that are needed to protect or accommodate the highway and its safe operation.

q. "Administrator" shall mean the Federal Highway Administrator.

3. ELIGIBILITY

a. Federal funds may participate, at the pro rata share applicable, in an amount actually paid by a State, or a political subdivision thereof, for the costs of utility relocations under one or more of the following conditions:

(1) Where the utility has the right of occupancy in its existing location by reason of holding the fee, an easement or other real property interest, the damaging or taking of which is compensable in eminent domain subject to the provisions of paragraph 3d below.

(2) Where the utility occupies either publicly or privately owned land or public right-of-way, and the State's payment of the costs of relocation is made pursuant to State law and does not violate a legal contract between the utility and the State, provided an affirmative finding has been made by FHWA that such a law forms a suitable basis for Federal-aid fund participation under the provisions of 23 U.S.C. 123.

(3) Where the utility which occupies publicly owned lands or public right-of-way is owned by an agency or political subdivision of a State, and said agency or political subdivision is not required by law or agreement to relocate its facilities at its own expense, provided the State has furnished a statement to the division engineer establishing and/or citing its legal authority or obligation to make such payments, and an affirmative finding has been made by FHWA that such a statement forms a suitable basis for Federal-aid fund participation under the provisions of 23 U.S.C. 123. This statement should reflect the basis of the State's payment Statewide except where conditions otherwise limit its application to political subdivisions, projects or individual relocations.

b. Where a State enacts a new utility relocation statute or amends an existing statute and requests reimbursement pursuant to the provisions of paragraph 3a(2) or (3) above, the State shall furnish the division engineer copies of the statute, along with a statement reflecting the difference, if any, between the utility relocation payment standards under State law and those established by this memorandum. Before reimbursement is approved, two copies of the statute and statement shall be submitted through the Regional Federal Highway Administrator, along with appropriate comments to the Office of Engineering for review and referral to the Chief Counsel. While such reviews are underway, the division engineer may conditionally authorize utility relocations subject to an affirmative finding by FHWA that the State's submission forms a suitable basis for reimbursement

under 23 U.S.C. 123. Should at any time the utility relocation statute become a matter of litigation, the State shall so inform the FHWA.

c. Federal funds may not participate in payments made by a political subdivision for relocation of utility facilities where State law prohibits a State from making payment for relocation of utility facilities.

d. Where the basis of the State's payment of the cost of relocation is made pursuant to the conditions under paragraph 3a(1), the State shall obtain and have on record suitable evidence of the utility's title to a compensable real property interest. Where the utility's property interest is not a matter of public or private record an affirmative finding by the State's legal counsel of the utility's compensable interest shall be incorporated as part of the State's records. Cases involving the relocation of utilities occupying Federal lands are to be submitted to FHWA for review in accordance with the provisions of paragraph 7m.

e. Where the advance installation of new utility facilities, crossing or otherwise occupying the proposed right-of-way of a future planned highway project, is either underway, or scheduled to be underway, prior to the time such right-of-way is purchased by or under control of the State, arrangements should be made for such facilities to be installed in a manner that will meet the requirements of the future planned highway project. Federal funds are eligible to participate in the additional costs incurred by the utility that are attributable to and in accommodation of the planned highway project, provided such costs are incurred subsequent to authorization of the work by the division engineer. For example, such additional costs may include the cost of providing higher poles or longer spans, encasement of cable or pipes, additional length of facilities and the like, that are needed to protect the planned highway and its safe operation, and which otherwise would not be required by the utility for its own operation. Subject to the other provisions of this memorandum, reimbursement may be approved under the foregoing circumstances when it is demonstrated that the action taken is necessary to protect the public interest, and the adjustment of the facility is necessary by reason of the actual construction of the planned highway project. Emergency situations may be processed in the manner prescribed by paragraph 7p.

4. RIGHTS-OF-WAY

a. Replacement right-of-way to be acquired by or on behalf of a utility shall be programed and authorized either as an

William M. Posner
Attorney

Bell of Pennsylvania

Law Department
One Parkway, 16th Floor
Philadelphia, Pennsylvania 19102
Phone (215) 466-8871

June 24, 1986

RECEIVED

JUN 24 1986

SECRETARY'S OFFICE
Public Utility Commission

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
Post Office Box 3265
Harrisburg, PA 17120

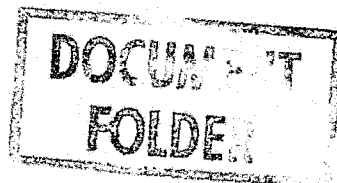
Pa. PUC v. PennDOT, et al., C-00018922.

Dear Mr. Rich:

Enclosed herewith for filing with the Commission are the original and nine true copies of Exceptions of Respondent, The Bell Telephone Company of Pennsylvania, to the Recommended Decision of Administrative Law Judge John K. Clements Dated May 28, 1986, in the above proceeding.

Very truly yours,

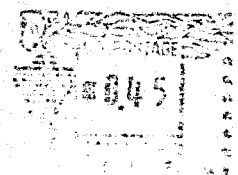
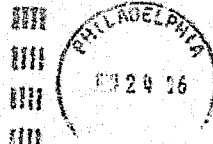
William M. Posner
William M. Posner



encs.

cc: Hon. John K. Clements, ALJ (w/enc.)
Parties of Record (w/enc.)

U.S. POSTAL SERVICE CERTIFICATE OF MAILING	
Received From:	<u>William M. Posner, Esquire</u> <u>Bell of Pennsylvania</u> <u>Law Department, 16th Floor</u> <u>One Parkway, Phila., PA 19102</u>
One piece of ordinary mail addressed to:	<u>Jerry Rich, Secretary-Pa. PUC</u> <u>Post Office Box 3265</u> <u>Harrisburg, PA 17120</u>
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE - POSTMASTER	



RECEIVED

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JUN 24 1986

SECRETARY'S OFFICE
Public Utility Commission

PENNSYLVANIA PUBLIC UTILITY COMMISSION, :

Complainant, :

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. :

Respondents. :

COMPLAINT DOCKET
NO. C-00018922

EXCEPTIONS OF RESPONDENT,
THE BELL TELEPHONE COMPANY OF PENNSYLVANIA,
TO THE RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE JOHN K. CLEMENTS
DATED MAY 28, 1986.

DOCKETED
JUN 26 1986

**DOCUMENT
FOLDER**

WILLIAM M. POSNER

Attorney for Respondent,

THE BELL TELEPHONE COMPANY
OF PENNSYLVANIA

One Parkway
Philadelphia, PA 19102

Respondent, The Bell Telephone Company of Pennsylvania ("Bell"), hereby excepts generally to the Recommended Decision of Administrative Law Judge John K. Clements ("the ALJ") dated May 28, 1986, and, specifically, to Ordering Paragraph 4 (p. 14), in which the ALJ recommends:

"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."

The recommendation of the ALJ to the Pennsylvania Public Utility Commission ("the Commission") that Bell be required to bear its own expenses in relocating three ducts located along the Thompson Run Bridge is inconsistent with recent decisions of the Commission in other grade-crossing, cost-allocation proceedings. In addition, the ALJ has incorrectly assumed that public utilities apply for federal funds, and that the "uncertainty" with respect to the availability of federal funds for public utilities' cost reimbursement should be considered a factor in this proceeding in denying Bell's request for reimbursement. Each of these grounds for exception will be discussed in greater detail below.

THE INCONSISTENCY OF THE INSTANT RECOMMENDED DECISION WITH RECENT COMMISSION DECISIONS IN COST-ALLOCATION PROCEEDINGS.

In recommending that Bell be denied any reimbursement whatsoever for the relocation of its facilities, the ALJ has apparently given weight to: (1) the fact that Bell's facilities were installed in 1929 with an estimated average service life of 64 years (see Recommended Decision, p. 6); (2) the fact that if the structure had not been present, Bell would have had to acquire the right-of-way for the location of its facilities (see Recommended Decision, p. 8); (3) the occupancy by Bell of the public right-of-way (see Recommended Decision, p. 8); and (4) the fact that the three ducts replaced by Bell were not currently in use, but were for "future use" (see Recommended Decision, pp. 12-13).

In an Order entered February 6, 1986, in Borough of Ashley v. ConRail, et al., Pa. PUC Complaint Docket No. C-812687, the Commission, acting upon Exceptions to the Recommended Decision of ALJ George M. Kashi, refused to accept the ALJ's denial to Bell of any cost reimbursement. In that case, as in the case at bar, the ALJ placed great emphases upon Bell's occupancy of the public right-of-way in recommending that cost reimbursement be denied. In his Recommended Decision, ALJ Kashi stated (p. 20):

"However, when a utility occupies public right-of-way it receives benefits, i.e., free use of said right-of-way, no taxes to pay on said property, or property to maintain, and usually easy access to the property; no cost to purchase private right-of-way; and attachment to existing public facil[i]ties." (Emphasis in original.)

Again, as in the case at bar, ALJ Kashi justified non-cost reimbursement to Bell on the basis of the benefit to Bell of having its facilities renewed and remain in place as a result of the bridge reconstruction. At Pages 21 and 22 of his Recommended Decision, ALJ Kashi stated:

"We are of the opinion that a utility which attaches to a highway bridge and occupies right-of-way to gain access across a railroad does receive a benefit. Also, a utility does receive a benefit by having its facilities renewed and remain in public right-of-way. In considering the benefit to a utility, we feel that all this is a distinct advantage to the utility and we will allocate cost accordingly."

In ruling upon Bell's and Pennsylvania Gas and Water Company's ("PG&W") Exceptions, the Commission reversed, in part, ALJ Kashi's Recommended Decision. In its Order entered February 6, 1986, the Commission stated (p. 2):

"Since this project will benefit the traveling public, we will allocate the other 25% of Bell's and PG&W's remaining costs to PennDOT."

In Application of the Pennsylvania Department of Transportation ("PennDOT"), A-00096943 (Order entered April 7, 1986), involving public utilities' facilities relocation to accommodate the construction of Interstate 95 within the City of Philadelphia, this Commission ordered reimbursement to Bell (by PennDOT) of 90% of its relocation costs for facilities located within the public right-of-way.

That 90% reimbursement was ordered notwithstanding the Commission's recognition that Bell enjoyed the privilege of free occupancy of the public right-of-way, plus a certain amount of betterment of the extended life of its facilities due to construction of the improvement (see Order, p. 7). Admittedly, the Commission pointed out that the project in question in Application Docket No. A-00096943 was not a simple alteration rehabilitation or reconstruction project, but, rather, the construction of a major new limited access interstate highway. Nevertheless, the Commission's Order supports the conclusion that cost reimbursement in excess of that recommended by the ALJ in the instant case is clearly warranted.

Finally, in Application of the Pennsylvania Department of Transportation, A-00105718 (Order entered February 10, 1986), the Commission adopted the Recommended Decision of ALJ Joseph P. Matuschak, in which ALJ Matuschak recommended reimbursement of 50% of the costs incurred by Bell in relocating its facilities from a bridge spanning the Allegheny River. Again, Bell's facilities were located in the public right-of-way, and, to the extent that a public utility enjoys the benefit of occupying a bridge structure, Bell certainly enjoyed such benefit in that case.

THE ALJ GAVE IMPROPER WEIGHT TO THE FACT THAT
FEDERAL FUNDS MIGHT NOT BE AVAILABLE AT THIS TIME.

At Page 9 of the Recommended Decision, the ALJ
stated:

"However, it is uncertain if Federal
funds will be available at this late
stage for the utility relocation costs."

In support of this statement, the ALJ quoted a representation
made by counsel for PennDOT (p. 9):

"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."

Immediately after the quotation stated above, the ALJ makes
a curious statement (pp. 9-10):

"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."

The Commission should note that the ALJ suffers
from the apparent misconception that it is public utilities
which apply for federal funds. Such is clearly not the case,
nor has it ever been the case. Federal funds can only be
applied for by PennDOT; and, those federal funds are only
available for use in reimbursing public utilities' facilities
relocation costs if they are required to be paid as a matter
of state law.

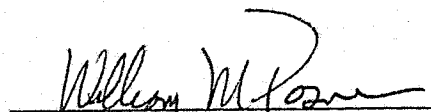
The Commission surely recognized the "CATCH-22" faced by public utilities in these situations in Application of the City of Wilkes-Barre, A-00101606 (Order entered April 9, 1981), wherein the Commission ordered that 100% of Bell's relocation costs be reimbursed by PennDOT notwithstanding the fact that Bell's facilities were located in the public right-of-way. Obviously, if occupancy of the public right-of-way is of such benefit to a public utility that it compels self-assumption of costs, then Bell should not have been awarded reimbursement in the Wilkes-Barre case. One simply cannot reconcile the widely disparate result between this case and Wilkes-Barre. The Commission recognized, in Wilkes-Barre, the need to allocate costs in order to take advantage of federal funding (Order, p. 4):

"Further, under 23 U.S.C. § 645.103, the availability of Federal funds for utility relocation is dependent upon the assignment of costs to various parties. If we do not assign costs, Federal funds may not be readily available, which therefore would cause us to be faced with problems of circularity, viz., no assignment of costs is appropriate until Federal funding is approved, but no Federal funding is available until costs are assigned."

The range of equitable public utility reimbursement can, under the facts of the given case, be from zero to 100%. While the ALJ, in the instant case, has focused on some of the appropriate factors to be considered in making a fair and equitable cost allocation, it is Bell's position that undue weight has been given by the ALJ to Bell's occupancy of the public right-of-way and the benefit obtained by Bell and its ratepayers from occupancy of the subject bridge.

The Commission, in issuing a final Order in the instant case, should modify the ALJ's Recommended Decision through the award of a fair and equitable cost-allocation percentage consistent with its recent decisions in the herein-cited (and other) rail-highway crossing proceedings.

Respectfully submitted,



WILLIAM M. POSNER

Attorney for Respondent,

THE BELL TELEPHONE COMPANY
OF PENNSYLVANIA

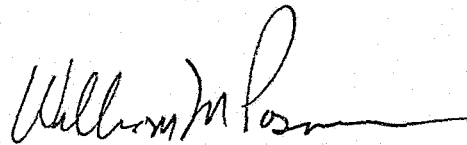
One Parkway
Philadelphia, PA 19102

DATED: June 24, 1986

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Dated at Philadelphia, Pennsylvania, this twenty-fourth day of June 1986.



WILLIAM M. POSNER

Attorney for Respondent,

THE BELL TELEPHONE COMPANY
OF PENNSYLVANIA

One Parkway
Philadelphia, PA 19102



Duquesne Light Company

General Counsel
Richard S. Christner

Corporate Attorney
Larry R. Crayne
Gerard F. Hickel
John A. Lee

Senior Attorney
Gene C. Bertsch

Attorney and
Assistant Secretary
A. William Stein

Associate Attorney
Laura Lane Amelio
Peter Speaks
Anne H. Lewis

Legal Unit
One Oxford Centre
301 Grant Street
Pittsburgh, Pennsylvania 15279
(412) 393-6000

ORIGINAL

RECEIVED
JUN 19 1986
PITTSBURGH OFFICE OF A.L.J.
PUBLIC UTILITY COMMISSION

Writer's DIRECT DIAL Number:

412/393-6049

June 18, 1986

The Honorable John K. Clements
Administrative Law Judge
Pennsylvania Public Utility Commission
State Office Building
300 Liberty Avenue - Room 1103
Pittsburgh, PA 15222

RECEIVED
JUL 25 1986
SECRETARY'S OFFICE
Public Utility Commission

Re: C-0⁹118922 -- Thompson Run Bridge

Dear Judge Clements:

I have received a copy of your recommended decision in the above-captioned proceeding. I note on page 7 of the decision you indicate that Duquesne did not provide you with the date the communications facilities were installed at the crossing.

In my letter to you dated December 19, 1985 (copy enclosed for your convenience), I indicated that Duquesne agreed to bear the costs of the adjustments to its communications facilities. Since Duquesne was agreeing to bear the costs, an analysis of the final project costs was not prepared. I did not believe it necessary for Duquesne to expend further time and effort to do an analysis of the final costs which would have determined the date that the facilities were installed.

DOCKETED
JUL 28 1986

Very truly yours,

Larry R. Crayne
Larry R. Crayne

LRC/jlh

**DOCUMENT
FOLDER**



Duquesne Light Company

General Counsel
Richard S. Christner

Corporate Attorney
Larry R. Crayne
Gerard F. Hickel
John A. Lee

Senior Attorney
Gene C. Bertsch

Attorney and
Assistant Secretary
A. William Stein

Associate Attorney
Laura Lane Amelio
Peter Speaks
Anne H. Lewis

Legal Department
One Oxford Centre
301 Grant Street
Pittsburgh, Pennsylvania 15279
(412) 393-6000

RECEIVED

JUN 20 1986

Office of A. L. J.
Public Utility Commission

Writer's DIRECT DIAL Number:
412/393-6049

December 19, 1985

The Honorable John K. Clements
Administrative Law Judge
Pa. Public Utility Commission
State Office Building
300 Liberty Avenue - Room 1103
Pittsburgh, PA 15222

Re: C-00018922 -- Thompson Run Bridge

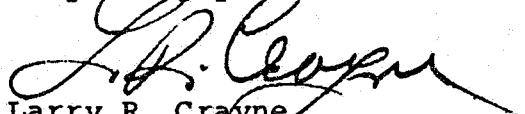
Dear Judge Clements:

At the hearing in the above-captioned proceeding which was held on Thursday, October 24, 1985, counsel for PennDOT requested Duquesne to advise the parties whether it was paying rental for the location of its facilities on the Thompson Run Bridge.

Please be advised that Duquesne Light Company has paid rental to the Commonwealth of Pennsylvania for the use of the Thompson Run Bridge since at least November of 1974. A copy of Duquesne's application for bridge occupancy license is enclosed which indicates that Duquesne paid an initial installation fee of \$144, a license fee of \$10 and has paid an annual rental of \$21.60 thereafter. Copies of Department of Transportation billings are also enclosed with this letter.

Concerning the communications facilities affected by the bridge construction, Duquesne has not been able to complete its work within 60 days subsequent to the October 24, 1985 hearing. Duquesne is not able to provide the Commission with a final cost figure and, therefore, agrees to bear the cost of the adjustments to its communications facilities as described in the testimony of its witness, John R. Schaukovitch.

Very truly yours,


Larry R. Crayne

LRC/cmr
Enclosure

cc: Spencer A. Menthorpe, Chief Counsel
Pennsylvania Department of Transportation

(w/enc.)

hcc: Mr. E. N. Neal

"

7/8/86

SUBJECT: C-000 18902

TO: Office of Administrative Law Judge
Betty McAllister

FROM: Jerry Rich, Secretary *JER*

Puc.

*PENNDOT, Union RR Co., City of Duquesne, County
of Allegheny, Bell Telephone Co. of PA., Carnegie
NATURAL GAS Co., Duquesne Light Co., Equitable
GAS Co. + Keystone Pipe Line Co.*

By letter dated 6/9/86 copies of a proposed initial decision in the above entitled proceeding were served upon all parties in interest. The order was prepared by ALJ Clements with exceptions thereto, if any, to be filed within 15 days of the date of said letter.

Exceptions and reply exceptions have been received from the following:

*exceptions of Equitable Gas Co.
" Bell Telephone*

cc: Law Bureau
Office of Special Assistants
SAC- RAIL DIV.

P.S. Please note that exceptions or reply exceptions may come in timely with certificates of mailings. A second memo will not be released for these exceptions.

**DOCUMENT
FOLDER**

**DOCKETED
JUL 11 1986**