

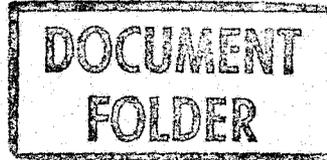


COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P. O. BOX 3265, HARRISBURG, Pa. 17120

September 17, 1987

IN REPLY PLEASE  
REFER TO OUR FILE

C-861119



TO ALL PARTIES  
(See attached list.)

Moscow Borough Council

v.

City of Scranton, Lackawanna County and Pennsylvania department of Transportation  
(Bridge - State Highway Route 35005 - Traffic Route 690)  
TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Recommended Decision prepared by  
Administrative Law Judge Morris Mindlin.

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.

Very truly yours,

*Allison K. Turner*

Allison K. Turner  
Chief Administrative Law Judge

fao  
Enclosures  
Certified Mail  
Receipt Requested

cc: ALJ Mindlin/Office of ALJ/Bureau of S&C-Rail Safety/Law Bureau/Mr. Bramson/  
OSA/Chairman/Commissioners



"The Borough of Moscow is complaining about the condition of the overhead structure of the bridge which is leaking and in a deteriorated condition. There is the possibility of pieces of concrete and icicles (sic) dropping on to autos and pedestrians as they pass under the bridge. On Nov 6, 1986, representatives from the PUC, Steamtown USA, PENNDOT, and Moscow Borough made a cursory inspection of the bridge and agreed that there is no immediate concern for the safety integrity from a structural standpoint. the concern is for future integrity of the structure. There is much evidence that the spalling and scaling of the concrete surfaces may escalate in the near future. There is considerable deterioration to the base on the concrete pier columns at and above roadway level. There is evidence of water leaking through the joints in the deck onto the roadway and sidewalk beneath. There does not appear to be any danger of large pieces of concrete dislodging. PennDot is responsible for the roadway and sidewalk beneath the bridge. The City of Scranton is responsible for the Bridge in that the City has recently purchased the land and track crossing the bridge from CONRAIL. The City of Scranton Engineer has made a survey of the bridge independently and acknowledged the condition. However the City of Scranton is deferring any action to correct the problem." (Complaint, ¶13).

No answers were filed by the Respondents. The absence of answers, in our view, is academic.

The matter came to prehearing conference and evidentiary hearing on May 14, 1987 at Scranton, Pennsylvania. Appearances of counsel were entered on behalf of the several parties.

In the course of evidentiary hearing, Moscow Borough presented the oral testimony of five witnesses and introduced fourteen (14) numbered exhibits. The Borough witnesses were John M. Hart, Jr., General Manager of Steamtown Foundation for the Preservation of Steam and Railroad Americana, Inc. (Steamtown); Dominic T. Surace, a consulting Civil Engineer and Registered Professional Engineer; James Hoover, Moscow Borough Police Chief; Thomas Knol, Borough Fire Chief; and William P. Heim, Borough Councilman.

The City of Scranton presented the oral testimony of John J. Luciani, a Civil Engineer, who serves as Scranton's City Engineer. Milton H. Davis, an Assistant Grade Crossing Engineer and a Registered Professional Engineer, testified on behalf of the Department of Transportation (PennDOT).

The evidentiary hearing aggregated a transcript of two hundred pages. At the end of the hearing, the evidentiary record was not closed. The presiding officer afforded the parties and himself fifteen days after the date of the filing of the transcript to indicate whether and for what purpose additional hearing might be necessary.

By Order, dated June 16, 1987, the presiding officer closed the evidentiary record and set a schedule for briefing. It was noted in the Order that none of the parties had indicated, within the designated time and to the date of the Order, any

necessity for additional hearing. We, also, noted that we saw no indication of such necessity. Thereafter, we entered a Supplemental Order, dated July 1, 1987. For reasons, stated in such order, we extended the briefing schedule.

Moscow Borough and the City of Scranton filed main briefs. The City alone filed a reply brief. Neither Lackawanna County nor PennDOT filed any briefs.

We deem the matter ready for a Recommended Decision.

#### SUMMARY OF EVIDENCE AND DISCUSSION

The bridge, which provides the occasion for the Borough's Complaint, is depicted in photographs, which appear in the record as the Borough's Exhibits 7A-7G. Its general character and dimensions are further delineated in a series of economically makeshift sketches, which constitute the Borough's Exhibit 14. The location of the bridge in the context of an areal complex of public street and highways is shown in two maps, which are the Borough's Exhibits 6 and 9. The bridge is located in the Borough of Moscow, the Complainant herein.

The bridge, the condition of which is the focus of the Complaint, is a railroad bridge, containing two sets of tracks with provision for switching thereon. (T. 145). It has a north-south alignment. (Borough Exhibits 6 and 9). A railroad station is located at some distance north of the bridge in the Borough. (T. 69).

The bridge is of steel and concrete construction. (Borough Exhibits 7 and 14). The bridge deck is about 48' long and about 53' wide. The bridge-deck and slab are about 3' deep; and the deck is lined with parapets about 1 1/2' in height.

The deck rests upon a series of centrally located concrete columns or piers and upon concrete wing-wall structures at either end. The deck contains six longitudinal beams, resting upon the wing-walls and the central columns. The deck is reinforced with re-bars. (T. 71, 106, 150, 152; Borough Exhibits 7, 14). The steel and concrete construction has been described "as a monolithic type pour". (T. 106).

The bridge passes over a public roadway, divided by the bridge's central columns or piers. Along the southern wall of the underpass is a 5' wide pedestrian sidewalk. The roadway clearance at the eastern end of the underpass is 12' 9"; at the western end, 13' 10". (Borough Exhibit 14).

The roadway under the bridge is a state highway, known as Traffic Route 690. Its surface consists of a bituminous pavement over a concrete base. (T. 184).

In the vicinity of the focal bridge, TR 690 approaches the underpass in a southerly direction along Market Street in the Borough of Moscow and turns sharply westwardly into the underpass in proximity to the eastern entrance of the underpass. In proximity to the western exit of the underpass, TR 690

intersects, in a T intersection, another state highway, which is known as Traffic Route 435. TR 435 runs southerly along Main Street in the Borough in proximity to the underpass. From its intersection with TR 435, TR 690 runs northwardly in junction with TR 435 for some distance beyond the underpass.

The railroad line, which traverses the focal bridge, runs, as we have seen, in a north-south direction through the Borough of Moscow and forms a physical division of the Borough. The Borough has a population of about 1,500. (T. 122). PennDOT supplied a traffic count of about 4,000 vehicles per day, passing under the bridge and being divided approximately equally between vehicular travel in each direction. Such count was supplied by PennDOT letter dated February 6, 1987. (Borough Exhibit 13). A pedestrian count, taken by the Borough Police Chief Hoover on May 4, 1987, showed an average use by 22 individuals of the sidewalk in the underpass during an 8-hour period. The pedestrian traffic, generally, varies and is increased seasonally. On the same day of the pedestrian count, an average of 50 school buses traversed the underpass during the 8-hour period. (T. 118-119).

It is undisputed that the underpass provides a vital passage between the east and west sides of the Borough of Moscow. The use of the passage spans a broad spectrum of social, economic, and governmental purposes in service of public

necessity, accommodation, convenience, and safety. The public served transcends the limits of the Borough into the County and the State and beyond. The very passage of a state highway through the underpass in question bespeaks its broad public implications. (T. 100-104, 119-121, 137, and 140).

Any interruption of the passage through the underpass would entail a detour of approximately 12 miles. (T. 103). The implications of such a detour are clear. In the words of the Borough Fire Chief Knol, "it would be devastating". (T. 124).

By quitclaim deed, dated August 16, 1985, wherein Consolidated Rail Corporation (Conrail) was the Grantor, the City of Scranton acquired title to the Grantor's railroad line. The focal bridge within the Borough of Moscow is a part of the railroad line, thus acquired by the City of Scranton. The deed, just noted and recorded in the Office of Recorder of Deeds in Lackawanna County, appears in the record as Borough Exhibit 11.

The referenced deed contained a number of covenants, imposed upon the City of Scranton as Grantee. One of those covenants is, as follows:

"(5) Grantee for itself, its successors and assigns, and by the acceptance and recordation of this Instrument, does hereby accept any and all responsibility for any and all removal and/or restoration costs for any and all bridges, grade and street crossings and their appurtenances that may be located on the property intended herein to be conveyed to the said Grantee; and

Grantee further covenants and agrees that it will also assume any obligation and/or responsibility as may be imposed on Grantor by any Public Utility Commission or any other governmental agency having jurisdiction for any and all bridges, bridge structures, grade and street crossings and their appurtenances, including but not limited to the removal, repairing or restoration of same in accordance with the requirements of said Commission or other governmental agency, and Grantee further agrees to indemnify, defend and hold Grantor harmless from and against any and all costs, expenses, obligations, responsibility and requirements associated with said bridges, bridge structure, grade and street crossings and their appurtenances." (Deed Book 1145, at p. 525).

We have then a first indication of a direction of responsibility for the condition of the focal bridge.

Before the conveyance of the railroad line to the City of Scranton, the City entered a written agreement, on May 13, 1983, with Metro Action, Inc., and Steamtown Foundation for the Preservation of Steam and Railroad Americana, Inc. The premises of this agreement will speak for themselves, as follows:

"WHEREAS, STEAMTOWN was founded by the late F. Nelson Blount and is a non-profit corporation and foundation organized for the purposes of establishing and maintaining a museum for the exhibition of steam locomotives, engines and related items of steam and railroad Americana and to perpetuate the development and history of steam locomotives, steam engines, memorabilia; to act as a depository for steam and railroad equipment and other historical data and to maintain in conjunction therewith

the actual operation of historic steam locomotives as part of the concept of a living exhibit; to maintain a library of such documents and items relating to such steam Americana; to establish and maintain an educational institution to provide the public with the educational tools necessary to carry out its historic purposes of education and preservation; and,

"WHEREAS, the CITY has been and is a center for railroad operation, and historically has been a center for the development and operation of steam locomotives, engines, passenger and freight trains and has existing various railroad yards and railroad stations which have a potential to be used for the benefit of STEAMTOWN; and,

"WHEREAS, METRO ACTION is a community development corporation, organized to foster, promote and encourage educational, cultural, recreational, social and economic life in the northeastern Pennsylvania region and as such will assist and cooperate with local government authorities in projects and undertakings to enhance the quality of life to stimulate interest in the social, cultural and economic life of the area and dissemination of information to the general public concerning the objectives of the corporation; and,

"WHEREAS, the CITY and METRO ACTION have determined that the location of the STEAMTOWN museum and exhibition facilities in downtown Scranton, Pennsylvania, at the crossroad of state and interstate highways leading to all points throughout the United States, will attract and stimulate public interest in the purposes of STEAMTOWN and will coincidentally contribute to the economic well-being of the City of Scranton; and,

"WHEREAS, the CITY has made an offer to STEAMTOWN to relocate its exhibits and facilities from Bellows Falls, Vermont to Scranton, Pennsylvania under certain terms

and conditions as hereinafter set forth, and STEAMTOWN, at a meeting of the Trustees held on March 11, 1983, voted to accept the offer of the City of Scranton, subject to the conditions hereinafter set forth." (Borough Exhibit 1).

The agreement between the several parties contained a number of undertakings, including a certain leasing of the railroad line by the City of Scranton to the Borough and certain financial arrangements. Included in the provisions of the agreement was the following:

"(f) The CITY will secure the operational rights for an excursion route to operate the trains of STEAMTOWN upon the former Lackawanna main line of Conrail between the CITY and Moscow, Pennsylvania, and/or other trackage rights of other rail companies on Class II track or better. The rights either through lease or purchase of the track, which shall be available to STEAMTOWN during the term of its lease of the facilities for 99 years in the CITY, all as part of the rental of One (\$1.00) Dollar per year, as is set forth in 1(b) above. It is further agreed that the CITY will provide adequate turning facilities at both Moscow and Scranton." (Borough Exhibit 1, ¶1(f)).

In due course, Steamtown relocated in Scranton in 1984, established its offices and began its operations there. (T. 35-38).

Sometime prior to November, 1986, the Borough registered an informal complaint about the condition of the focal bridge and its danger to the public. An initial site inspection of the bridge took place in November, 1986. Representatives of

the PUC, Steamtown, PennDOT, and the Borough participated. The representatives included Donald R. Fleisher, a Professional Engineer from the Rail Safety Division of the Commission's Bureau of Safety and Compliance. It does not appear that the City of Scranton was then represented. (T. 130).

The Borough's Formal Complaint was filed with the Commission on December 9, 1986. A second field investigation and a conference at Moscow Borough Hall followed upon written notice to the several parties by Mr. Fleisher of the Commission. At this investigation and conference, there appeared John Luciani, the City's Engineer, together with the representatives of the other parties. At such investigation and conference, Mr. Luciani acknowledged the City's ownership of the bridge and acknowledged his own authority to act on behalf of the City. Mr. Fleisher declared "that the Commission will issue a Commission action indicating that Scranton has responsibility for the bridge." (T. 133-134). In his testimony, Mr. Luciani acknowledged his earlier representations of his authority but denied the actuality of his authority. (T. 172).

In a letter, dated February 6, 1987, and addressed to Moscow Borough Counsel and Mayor, with copies to Scranton's Mayor and Mr. Fleisher, Mr. Luciani asserted that "we are in the process of acquiring plans from Conrail for the bridge so that we may begin repair work." (Borough Exhibit 12). The photographs,

which are Borough's Exhibit 7, depict the indicatively exterior aspect of the condition of the bridge, engaging the Borough's concerns and occasioning Mr. Luciani's letter.

When the repair work was delayed in fulfillment, the Borough threatened recourse to injunctive relief. Faced with potential disruption of its opening date on May 2 and the commencement of its excursions, Steamtown undertook to initiate repairs without prejudice to its contractual rights; and the City of Scranton granted permission and provided its guidance. (T. 40-49; Borough Exhibits 2-5).

Steamtown's use of the railroad line, of which the focal bridge is a part, was intended for tourist excursions. (T. 38). These excursions would entail the use of diesel engines and locomotives and passenger-car equipment. The burden upon the bridge through such use has not been described in the record in any technical detail. (T. 56-57, 141).

It appears that the bridge was originally built in 1910. (T. 146, 164). Apart from the recent, temporary repairs, there is no history of repair and maintenance. In general terms, compromise of structural integrity would be an expectable eventuality of the bridge's age, use, conditions of deterioration, and lack of required repair and maintenance. (T. 164).

The recent repairs were limited. "All of the loose facade was removed from the bridge. The bridge then had gunite applied to it. The pillars supporting the middle of the bridge were reinforced . . . with concrete." (T. 47). The concrete pillars, which were originally 2' 6" x 3' 6", were increased in width by 1', that is, by an additional 6" about the perimeter of the pillars. (T. 149). Some chipping was applied to the ceiling of the underpass, from which concrete had otherwise been falling from deterioration. (T. 149).

A more defined consideration of the condition of the focal bridge, which has been the occasion for the Formal Complaint before us, now becomes necessary and appropriate. The testimony of the three engineering witnesses, especially, addresses us. These witnesses included Mr. Surace for the Borough, Mr. Luciani for the City, and Mr. Davis for PennDOT. Mr. Surace and Mr. Luciani are Civil Engineers. Neither claimed expertise for in-depth analysis of the bridge's structure. Mr. Surace and Mr. Davis are both Professional Engineers. Mr. Luciani is not. Mr. Davis' expertise is sparsely characterized by his being an Assistant Grade Crossing Engineer for PennDOT and a Professional Engineer.

Mr. Surace characterized his several inspections of the bridge as being cursory, not in depth, and visual. (T. 61, 90, 107-108). Mr. Luciani characterized his testimony as being

cursory at first, visual, and later, during the repairs, as a little more than cursory. Mr. Davis' testimony gives no evidence of his inspection's being more than cursory. The professional background of Mr. Surace suggests that he is considerably more experienced professionally than Messrs. Luciani and Davis. Mr. Surace has been an Engineer for 31 years. He spent 28 years of his professional career with PennDOT. He has been a Registered Professional Engineer for more than 20 years. He is now a Consulting Engineer. (T. 60, 110).

We find Mr. Surace's inspections and study of the focal bridge to have been careful within its scope, circumspect, and deliberate. His testimony, therefore, forms the major basis of our evaluation of the condition of the bridge, the implications of such condition, and the indications for pertinent action.

The evidence indicates that the focal bridge and its highway underpass encompassed three issues of conditions. As we have noted, the Borough's photographic Exhibit (7A-G) reflects deterioration of structure and lack of maintenance. Mr. Surace testified with commentary upon the photographic evidence. (T. 80-90). In such course, Mr. Surace testified, as follows:

"Well, just by looking at these pictures that we presented here earlier, there are three basic symptoms of distress in this particular structure. There is cracking, spalling and disintegration, which can be defined as a general decay of the surface involved in loss of cement paste and the loosening of the particles of the course aggregate.

"Some of the common causes of this type of deterioration I indicate are as follows. One is the vibration of trains running over it; drying which was causing the shrinkage; temperature stresses; the absorption of moisture by the concrete; corrosion due to chemical agents and salt used to keep the surface from being slippery during winter months; weathering and the lack of maintenance on the structure." (T. 91-92).

He further testified that the decay of the surface led to the hazard that "the concrete was falling down off of the super structure from up above down onto the vehicles below and the pedestrians below." (T. 92).

Thus we have the first aspect of the bridge's condition. This aspect was addressed with the temporary repairs. Such repairs relieved the immediate safety problem of falling concrete fragments. (T. 89, 96).

The second of the issues had to do with the seepage of water, accumulating upon the bridge, through its deck and had to do with the drainage flow of surface water onto the pavement in the underpass. The seepage led to the formation of icicles from the ceiling of the underpass, added to the icy condition of the pavement below, and led to the disintegration of the ceiling and to corrosion of the metal components of the bridge deck. (T. 75-76, 81, 83-85, 93, 161, 178).

The existence of icy conditions upon the pavement in the underpass, attributable to weather-action upon the overhead

seepage and the surface drainage, in consequence, has necessitated the use of salt, calcium, or "deicing chemicals" for mitigation. These chemicals, projected from the pavement surface to the columns and walls of the underpass, have constituted a continuing cause of disintegration of the concrete. (T. 80, 156, 197).

The topography of the general area of the bridge's location is such that the bridge is at an areal low-point. (T. 73-76). Mr. Luciani has compared the location of the bridge to "a big soup bowl". (T. 156). The bridge itself is a kind of porous receptacle. Mr. Luciani testified, "The water comes across the top of that bridge. It lays there for a few days and seeps down causing the icicles and the water problem that you're seeing out there right now." (T. 157).

The problem of drainage and water flow was recognized early as a longer-term problem. The hearing testimony placed fresh emphasis on the problem of surface drainage. It was contemplated that this problem or set of problems would be defined during the current summer months. (T. 48-50, 98). Unless more appropriately lasting measures are taken, the City's Engineer, Mr. Luciani, recognized that the water problem "will undo the work we have just done." (T. 156).

The longer-term measures have been tentatively assumed to include inserting a membrane or membrane coating in or on the

bridge deck and otherwise diverting drainage in the area. (T. 48-50, 156-157, 187, 198). In respect of permanent repairs, Mr. Surace forthrightly declared, ". . . personally I'm unable at this particular time to tell you what the permanent repairs are." (T. 99). The simple fact is, the record is a long way from defining the problem of seepage and drainage and providing even a reasonably specific solution.

We turn now to the third and last of the major factual issues. It is that of the bridge's structural integrity and safety. Mr. Luciani and Mr. Davis expressed their opinions that the integrity of the bridge and its safety are unimpaired and that no further study is necessary. Mr. Surace testified to his conviction that the structural integrity of the bridge and its safety require further study in depth by specially qualified and independent engineering expertise.

In an early report of his investigation to the Borough, Mr. Surace saw "symptoms of distress" in the bridge. He found it appropriate to characterize the bridge as "a badly deteriorated structure", "apparently greatly reduced in strength". We infer his judgement that the bridge was presently drawing upon "a margin of safety in the (original) construction", to an unmeasured degree. (Borough Exhibit 8).

The falling concrete was a visible, surface manifestation of a continuing deterioration beyond merely visual

detection. Mr. Surace was "very much concerned about the structural integrity of these beams on top and also the columns". (T. 106). He did not know "whether the repairs have taken care of the problem". He went on to testify, as follows:

". . . What is concerning me is the deterioration of the structure is going to continue. I feel if you cut some part of that concrete and put it into a laboratory they could tell you exactly what is going on.

"From a visual inspection, we know what is going on at the face of the concrete. We don't know what is going on inside that concrete and we don't know what is going on below the railroad.

"As a result of knowing my past history of railroad structures, they had railroad engineers years ago that designed this bridge system with a tremendous safety factor. Based on that is what I'm using to say, "Okay. We can use that bridge."

"There are certain precautions that need to be taken. I wanted to check this out regarding the load and the speed that we're putting on it. We hit on the speed this morning.

"These are some of the concerns I have. As a matter of fact, I told the Borough officials when the train was going over there I wanted a policeman down there to protect people from going under when the train was going over."

In his judgement, "a load study" "by calculations" was advisable to confirm the matter of safety. (T. 107-108). Mr. Surace sought confirmation of his own views in consultation with other professional engineers, "whose expertise is in bridges". They

agreed with his recommendations. His testimony concluded, as follows:

Q "Cracking of the concrete, which occurred on this bridge would it be fair to say that has alerted you that there could definitely be more problems with that bridge and that a study is definitely necessary?"

A "That is correct. I think we need to take a good hard look at what has happened at the wing walls out there. There is a possibility with this extra loading that some of those wing walls could overturn. I am concerned of how badly they are cracked.

Q "Could you have, as a result of an engineering analysis and study, the answers which you need to make this determination?"

A "Could I?"

Q "Could you get them from an engineering study and analysis?"

A "Yes. They are doing it all the time. They are doing it on PennDOT bridges and local bridges all the time." (T. 111-112).

Mr. Luciani and Mr. Davis disagreed summarily. Mr. Luciani testified about his having tested or having had the bridge tested with a so-called "Swiss hammer". He concluded that the test revealed a bearing capacity of the bridge "in the range of about 4,000 pounds per square inch". In our judgement, Mr. Luciani's testimony lacks technical detail and description and professional authoritativeness. (T. 153-154, 168-169).

Mr. Davis' testimony is more summary and less detailed than Mr. Luciani's. It may be characterized by the following colloquy:

Q "You would agree with his (Mr. Surace's) conclusion that an engineering study and analysis is required because of the condition of this bridge?

A "I would disagree with him that an engineering study is necessary to determine the integrity of the structure.

Q "Can you point out the specific factors which Mr. Surace used and which his opinion was based upon which are incorrect?

A "No, I can't.

Q "Even though you disagree with his findings and his conclusions, you can't specify exactly what basis he used which is faulty in his reasoning and logic?

A "No, I can't." (T. 189).

It is our conviction and conclusion that both Mr. Luciani and Mr. Davis are much too cavalier about their judgements. We find little or no safety factor in the structure and adequacy of their testimony.

Mr. Davis earlier testified, as follows:

"In the Department's opinion, the existing structure is in good condition, except for the substandard clearances provided by the underpass. We are of the opinion that it is not necessary to employ a consultant to test the integrity of the structure. The structure, from looking at all the pictures and all the evidence provided here today,

does not show any distress that would call for a consultant to be retained.

"I would imagine that it would cost upward from 20 to 30 thousand dollars for a consultant to be placed on board to jeopardize his expertise and consider this structure to be safe.

"Normally any review of concrete structures such as this, if the structure is carrying traffic adequately and is not showing any signs of distress, we would not consider the structure to need inspection for its structural integrity.

"If water is permitted to continually pond at the structure, the Department is of the opinion that in itself would cause acceleration in the deterioration of the structure. We are of the opinion that drainage should be addressed as one (sic) the prime concerns in assuring the integrity of the life expectancy of this structure.

"The spalling concrete that was originally addressed as part of the complaint from our inspection of it has been alleviated.

"If the swales and the drainage situation at the structure is improved, we are of the opinion that water would be removed from the area that could cause any damage to the structure." (T. 186-187).

We find no reinforcement between the testimony of Mr. Davis and Mr. Luciani. Mr. Davis' just quoted testimony is, as we have described it, cavalier. It is highly dubious to imply that a retained engineering expert would be reluctant to jeopardize his expertise by declaring the bridge-structure in question to be safe.

It is dubious in its reference to the structure's ability to carry traffic adequately. The traffic is barely described prospectively in the record. Certainly, until an accident occurs, crossing rail traffic might be deemed, currently or momentarily, adequate. It would tell us nothing of imminent jeopardy.

Mr. Davis' testimony is obviously at variance with Mr. Surace's. It is just as much at variance with our previous quotation of his testimony, wherein he was unable to "point out the specific factors which Mr. Surace used and which his opinion was based upon which are incorrect". In all events, the record is dubious in respect of the causal circumstances of the harmful seepage and drainage and their remedy in the absence of further engineering study.

We need now to address the legal issues of the matter. We turn to the source of the Commission's jurisdiction and powers, the Public Utility Code of 1978. Section 2702(c) and (f), 66 Pa. C.S. §2702(c) and (f), provides pertinently, as follows:

"(c) . . . Upon its own motion or upon complaint, the Commission shall have exclusive power after hearing, upon notice to all parties in interest, including the owners of adjacent property, to order any such crossing heretofore or hereafter constructed to be relocated or altered, or to be suspended or abolished upon such reasonable terms and conditions as shall be prescribed by the Commission. . . The Commission may

order the work of construction, relocation, alteration, protection, suspension, or abolition of any crossing aforesaid to be performed in whole or in part by any public utility or municipal corporation concerned or by the Commonwealth."

"(f) . . . Upon the commission's finding of an immediate danger to the safety and welfare of the public at any such crossing, the Commission shall order the crossing to be immediately altered, improved, or suspended. Thereafter hearings shall be held and costs shall be allocated in the manner prescribed in this part."

A railroad bridge, such as the one under our consideration, is such a crossing as is contemplated in the just cited statute.

The guiding principle for the Commission's jurisdiction and powers is the public interest. A standard to be applied is the prevention of accidents and a promotion of the safety of the public. Pittsburgh Railways Company v. Pa. P.U.C., 198 Pa. Super. 415, 424, 182 A.2d 80(1962).

Statutory provision is made for the allocation of costs. Section 2704(a), 66 Pa. C.S. §2704(a), provides, as follows:

"(a) . . . the cost of construction, relocation, alteration, protection, or abolition of such crossing, and of facilities at or adjacent to such crossing which are used in any kind of public utility service, shall be borne and paid, as provided in this section, by public utilities or municipal corporations concerned, or by the Commonwealth, in such proper proportions as the commission may, after due notice and hearing, determine, unless such proportions

are mutually agreed upon and paid by the interested parties."

The Commission's jurisdiction and its power and authority to order work to be done and costs to be allocated, upon a just and reasonable basis in the public's interest in safety, are basically clear. Pennsylvania Department of Transportation v. Pennsylvania Public Utility Commission, 3 Pa. Cmwlth. Ct. 405, 283 A.2d 313(1971).

We see no legal issue in respect of the status of the Respondents upon the Complaint herein. Particularly, we see no legal issue in respect of the status of the City of Scranton as a "municipal corporation concerned" with the focal bridge and, indeed, with public utility service by virtue of its ownership of the railroad line, of which the focal bridge is a part. Public Utility Code Sections 102, 1501 and 2702(c), 66 Pa. C.S. §§102, 1501 and 2702(c). The status of the City of Scranton before the Commission is unaffected by its leasing arrangement with Steamtown. Octoraro Railway, Inc. v. Pennsylvania Public Utility Commission, 85 Pa. Cmwlth. Ct. 283, 482 A.2d 278, 280(1984). The Borough of Moscow's right to file its Complaint against the several Respondents is unchallenged. Public Utility Code Section 701, 66 Pa. C.S. §701.

Having filed a Complaint, the Complainant herein had a burden of proof. Section 332(a) of the Public Utility Code, 66 Pa. C.S. §332(a), provides, as follows:

"Except as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof."

There is no exception, applicable to the Complainant herein.

One of the bases of the Complaint before us was the concrete, falling from the bridge. That condition was relieved by the temporary repairs and is presently moot.

The existence of a problem of seepage and drainage, as we reviewed these conditions earlier, is not in basic dispute. All the parties agree that the problem needs to be addressed. What is undetermined is the defined nature of the problem or collection of problems, the solution, and the responsibilities for the work to be done and the costs to be incurred.

What is in factual dispute is the need for a professional study of the structural integrity of the focal bridge, the existence of any inherent danger to public safety, the existing limits of safe use of the bridge, and, again, responsibility for the study and its cost.

We are convinced that the Complainant has carried its burden of proof, factually and legally, for its recommendation of a study. We are convinced that the question of public safety is so far engaged that a study is necessary to provide assurance of public safety and to determine requirements, if any, for the

public's safety. We do not deem the provision of such a study as having been a part of the Complainant's burden of proof.

The bridge in question is old. The evidence of long neglect is clear. It has been marked with decay and deterioration.

Timely inspection of such a bridge is only a reasonable requirement of maintenance and safety. There is no evidence of any such recent inspection. The recent repairs are only temporary expediciencies. In circumstances where reasonable safe practice requires technical inspection and study, such inspection and study are as much a duty of ownership as the provision of safe construction.

Study will be necessary to address, as we have indicated, the problem of seepage and drainage. We see no sense in studying this problem without, at the same time, studying the structural integrity of the bridge.

The City of Scranton was and is a prime mover in bringing the operations of the Steamtown Foundation to the Scranton area. Its agreement with Steamtown is premised upon the City of Scranton's social and economic interest. The Conrail quitclaim deed is a manifestation not only of the City of Scranton's interest but of its willingness to undertake covenantal obligations.

In our judgement, a reasonable determination of the Complaint herein requires a course of action by logical agendum. Our Recommended Order hereinafter will reflect this judgement.

#### FINDINGS OF FACT

1. The City of Scranton, a Respondent herein, is the owner of a certain railroad line, acquired by a quitclaim deed, dated August 16, 1985, and duly recorded in the Office of Recorder of Deeds in Lackawanna County, from Consolidated Rail Corporation.

2. A certain railroad bridge is a part of the aforesaid railroad line and is located in the Borough of Moscow, Lackawanna County, in the area of the intersection of State Traffic Routes 690 and 435.

3. The aforesaid bridge is a basically concrete structure with concrete-enclosed steel beams and re-bars in its deck.

4. The said bridge passes over State Traffic Route 690 in its aforesaid location in the Borough of Moscow.

5. By written agreement, entered May 13, 1983, by and between the City of Scranton, Media Action, Inc., and Steamtown Foundation for the Preservation of Steam and Railroad Americana, Inc. (Steamtown), the City of Scranton entered upon a number of undertakings between the parties, whereby Steamtown was to establish a railroad museum in the City of Scranton and was to

operate trains for excursions of passengers over the aforesaid rail line, which was to be leased, together with other real property, to Steamtown by the City of Scranton.

6. In ostensible pursuance of its agreement with the City of Scranton, Steamtown scheduled the commencement of train excursions for May 2, 1987.

7. Shortly prior to the commencement of the train excursions, the Borough of Moscow, first by informal complaint and then by Formal Complaint, complained about the deteriorated condition of the aforesaid bridge and its danger to public pedestrian and vehicular traffic through its underpass.

8. Included among the elements of danger was falling concrete debris, occasioned by the process of deterioration of the bridge's concrete structure.

9. Under threat of injunctive action by the Borough of Moscow, potentially disruptive of its scheduled operations, Steamtown, at its expense, administered temporary repairs to the concrete of the bridge in the area of the underpass, without prejudice to its rights against the City of Scranton, with the permission of the City of Scranton, and with specifications by the City of Scranton for the nature of the temporary repairs.

10. The bridge was originally constructed in 1910 and evidences neglect of maintenance upon a record, which discloses

no history of programmed inspection, use, and maintenance and repair.

11. For an undisclosed period, the bridge has been subjected to a process of deterioration, marked by the ravages of water seepage through its deck and exposure of its underpass-structure to deicing chemicals, which have had to be applied to at times of icy conditions of the pavement in the underpass, aggravated by areal seepage and drainage.

12. The aforesaid problem of seepage and drainage constitutes a continuing source of deteriorative action upon the bridge; and because it is undefined upon the record, a remedial solution is undetermined and only surmised.

13. A study of the seepage and drainage problem, affecting the focal bridge, is necessary.

14. By reason of the deterioration, which the bridge has evidenced and to which it has been subjected and continues to be subjected, the structural integrity of the bridge is in question, as is the safety of the public from its intended use, so that reasonable caution dictates further technical study in depth of its condition, the safe limits of its use and loading, and the nature and necessity of repair and restoration.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter herein.

2. The Commission has exclusive authority, in the public interest and for the promotion of public safety, in appropriate circumstances, to order a municipal corporation, principally concerned with the use of a railroad bridge or crossing over a public highway, to take reasonable action to investigate, to promote and to assure the safety of such use.

3. In circumstances where the structural integrity and the safe use of a railroad-bridge or crossing over a public highway has become and is problematical, the Commission may order appropriate technical study of the conditions, affecting the bridge structure and the factors of safety of its use, in order better to determine the need for and the nature of remedial protection, reconstruction, rehabilitation, restoration, or maintenance and repair of the said bridge.

4. In respect of the Commission's authority, just set forth, the Commission may determine the application of its authority to order work to be done and the costs thereof to be allocated in appropriate stages of hearing and order.

THEREFORE, THE FOLLOWING ORDER IS RECOMMENDED FOR THE COMMISSION'S APPROVAL:

1. That the City of Scranton, a Respondent herein, at its initial cost and expense, arrange for a preliminary technical study of the subject bridge herein and a report thereon, to be

conducted and prepared by an independent and pertinently qualified, professional bridge-engineering consultant.

2. That the study and the report, herein ordered, take account of and include the following without being limited thereto:

- (a) the nature of the consultant's qualifications;
- (b) the existing and continuing structural integrity of the focal bridge;
- (c) any areal conditions of seepage and drainage, affecting the structural integrity;
- (d) any existing and continuing conditions of deterioration or other distress, affecting the structural integrity;
- (e) the nature of any need for remedial protection, reconstruction, rehabilitation, restoration, or maintenance and repair of the focal bridge;
- (f) the appropriate safety factors and limits for the intended use of the said bridge, including the type and volume of train traffic and loading;
- (g) an estimate or estimates of the range of

costs for alternative measures to render the bridge safe for its intended use; and

(h) a program and policy for future inspection and maintenance of the bridge.

3. That the scope of study and the report thereon, herein ordered, need not extend beyond affording a reasonable basis, in accordance with sound engineering principle and practice, for taking safe account of the intended use of the bridge in the immediate and reasonably projected future.

4. That, as herein ordered, the study shall be conducted and the report thereon shall be prepared and two (2) copies each thereof shall be served upon the Commission and the other parties hereto within six (6) months from the service date of the Commission's Order herein.

5. That there shall be scheduled further hearings hereafter to consider the study and report, herein ordered, to determine any work to be done, the further responsibilities of the parties, future maintenance, costs to be allocated, and such further action as the Commission may deem appropriate in the circumstances.

  
MORRIS MINDLIN  
Administrative Law Judge

Date: September 8, 1987