



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

ISSUED: September 22, 1989

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FOLDER

IN REPLY PLEASE  
REFER TO OUR FILE

C-861119

John L. Heaton, Chief Counsel  
Pennsylvania Dept. of Trans.  
517 Trans. & Safety Bldg.  
Harrisburg, PA 17120

Moscow Borough Council

v.

City of Scranton, Lackawanna County and  
Pennsylvania Department of Transportation

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Recommended Decision of Administrative Law Judge Richard M. Lovenwirth. This decision is being issued and mailed to all parties on the above specified date.

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 twenty (20) days of the issuance 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 ten (10) days of the date that the exceptions are due.

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

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

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

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

Very truly yours,

Allison K. Turner  
Chief Administrative Law Judge

fao  
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Similar letter list attached.

**DOCUMENT  
FOLDER**

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Moscow Borough Council

v.

City of Scranton,  
Lackawanna County and  
Pennsylvania Department of Transportation

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C-861119

RECOMMENDED DECISION

Before  
Richard M. Lovenwirth  
Administrative Law Judge

**DOCKETED**  
SEP 26 1989

I. History of the Proceedings

By Complaint filed with the Commission on December 9, 1986, Moscow Borough Council (hereinafter "Borough") alleges that the structure carrying railroad tracks over State Highway Route 35005 (T.R. 690) in Moscow Borough, Lackawanna County, is in a deteriorated condition; that there is the possibility of concrete and icicles falling onto the pedestrians and automobiles passing below; that the City of Scranton (hereinafter "City") owns the tracks; and that the City should be directed to make repairs to the structure to eliminate the hazards involved.

The first hearing in this proceeding was held on May 14, 1987, before Administrative Law Judge Morris Mindlin. In his Recommended Decision issued on September 8, 1987, Judge Mindlin

directed, inter alia, that City perform certain acts, including the preparation of both a study and a report pertaining to the condition of the structure. The order directed that the study specify the nature of repairs to be performed, the estimate of costs of repairs, and that the study indicate the load-carrying capacity of the structure. A further hearing was ordered to be held thereafter, upon completion of the study. Judge Mindlin's Decision was adopted by the Commission on October 22, 1987. By Commission Order entered June 15, 1988, City was given an extension until June 27, 1988 to file said study.

On August 26, 1988, the City submitted a study and a report pertaining to the structure. A further hearing in the proceeding was held on March 28, 1989, before the undersigned Administrative Law Judge. The purpose of the further hearing was to consider the City's report, and to determine any further work to be done upon the crossing. Said further hearing produced 152 pages of testimony (203 to 355) and one exhibit. No briefs or reply briefs were filed by any of the parties following the conclusion of said hearing.

## II. Proposed Findings of Fact

1. The City of Scranton, current owner of the rail line, intends to enter into an agreement with the National Park Service (hereinafter "NPS") for the sale of the rail line. The

line had not been turned over to NPS as of the date of the last hearing. NPS wants the City to clear up a number of encumbrances before it takes over the rail line (N.T. 211).

2. The City has no intention of operating trains over the line (N.T. 211).

3. It is expected that NPS, in accordance with its yet unsigned agreement with the City, will take over the maintenance responsibility of the structure (N.T. 213).

4. NPS intends to run excursion trains over the line sometime in the future (N.T. 214).

5. City's Exhibit No. 1 is an engineering report prepared by CECO Associates pertaining to the structure.

6. The structure is in a somewhat deteriorated condition. It has recently been repaired. Some of the deterioration has reappeared (N.T. 223).

7. Out of the four concrete cores taken from the structure, two cores crumbled. Two other cores were tested and showed a strength of about 4100 p.s.i. (N.T. 223). The cores that crumbled may have crumbled due to large aggregate having been used in concrete (N.T. 256, 257, 274).

8. Because the structure is of concrete rather than steel, it is somewhat difficult to perform a structural analysis (N.T. 224).

9. Prior to the operation of trains across the subject crossing, the structure needs to be analyzed to determine its load-bearing capacity (N.T. 224, 228, 264, 339, 345).

10. With no trains running over it, the structure is in no danger of collapsing under its own weight (N.T. 224).

11. There is a possibility that because of freeze-thaw cycles, portions of concrete could fall down upon the traffic (pedestrian and vehicular) passing under the structure (N.T. 231).

12. Abutments of the structure are unreinforced gravity type. Pier stems are unreinforced. Pier cap and pier footings are reinforced (N.T. 232).

13. Deterioration of the substructure is from salt splashing onto the abutments and from freeze-thaw cycles (N.T. 233, 330).

14. The structure was built around 1911 (N.T. 241).

15. Some of the recent repairs performed by Steamtown U.S.A. (hereinafter "Steamtown")<sup>1</sup> may not have the bond existing between concrete and the substructure. The repairs were only cosmetic. Such repairs have an anticipated service life of about three years (N.T. 242, 265).

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<sup>1</sup>Steamtown is a non-profit organization involved in Railroad Americana, which formerly operated trains over the crossing.

16. There is evidence of water seepage through the deck joints. The superstructure is not waterproof (N.T. 243).

17. There is a need for some immediate cosmetic repairs to eliminate the danger of concrete falling down upon pedestrians and the traveling public (N.T. 251-253, 273).

18. Load testing analysis will probably cost in the range of \$20,000 to \$25,000 (N.T. 237).

19. The City investigated the possibility of load testing the structure with the biggest engine Steamtown had. However, three other structures along the line were not capable of supporting the engine. Bringing the engine to the site by any other means would be expensive (N.T. 269).

20. City of Scranton was aware that the Commission's last Order required the structure to be analyzed, such as by load testing (N.T. 271).

21. The load testing method of analysis carries with it a possibility of destroying the structure during testing.

22. The areas affected by salt are sidewalks and curb areas adjacent to the abutments and the pier in the middle of the structure (N.T. 282, 283).

23. Borough of Moscow's engineer does not see any need to close the sidewalks under the structure at the present time (N.T. 311, 312).

24. Portions of concrete fell out from the fascia of the structure during the winter prior to the last hearing (N.T. 320).

25. Moscow Borough police check the crossing a number of times each day (N.T. 324).

26. The report prepared by CECO engineers (City Exhibit No. 1) is not an in-depth inspection report (N.T. 326).

27. It may be possible to install some sort of shield over the walkway area underneath the deck of the bridge to protect the pedestrians from falling concrete (N.T. 348).

28. The subject structure is included in the Billion Dollar Bridge Bill (hereinafter "Bridge Bill"), passed in 1988, Senate Bill 515 of 1988. The amount allocated in the Bridge Bill is \$100,000 for engineering and \$1,000,000 for construction (N.T. 349).

29. Salt has less of a detrimental effect on plain cement concrete than on reinforced cement concrete (N.T. 350).

30. Necessary rehabilitation of the structure will probably take about thirty months. A complete reconstruction will probably take about four years (N.T. 350).

### III. Discussion

The issue in this proceeding concerns the condition of and the maintenance responsibilities for the structure carrying

two sets of railroad tracks over State Highway Route 35005 in Moscow Borough, Lackawanna County. The structure was built around 1911 by a railroad. The tracks were acquired by Consolidated Rail Corporation (hereinafter "Conrail") when it came into existence in 1976. The line was later sold by Conrail to the City. The City is in the process of selling the line to National Park Service. At one time, "Steamtown, USA" operated trains over the line. NPS now plans to run excursion trains over the rail line, although it is unclear when the operation of trains will take place.

The structure is in a somewhat deteriorated condition. The main problem with the structure involves the deterioration of concrete. There is a danger of pieces of concrete falling onto the vehicles and pedestrians passing underneath the structure. Portions of the sidewalks also are deteriorated. The piers supporting the structure as well as the deck have deterioration in them. The deterioration appears to have been caused by age, salt and water seepage. Some repairs to the structure have been made by "Steamtown, USA"; however, the repairs were only cosmetic and are not expected to last longer than three years.

The City, through a consultant, has prepared an engineering report pertaining to the structure. The consultant did not determine the load-carrying capacity of the structure which would have required load testing the bridge. The main

recommendation of the consultant is that if the structure is to be used by trains, its load-carrying capacity should be determined. The report points out that the structure is not in any danger of collapse. However, it recommends that a rehabilitation plan for the substructure be developed; cleaning and rehabilitation of the pre-cast concrete deck panels be performed; and the results of the load-carrying analysis be used to determine the economic viability of rehabilitation versus replacement of the structure.

All of the parties agree with the main recommendation of the City's consultant, to wit: that the structure should be analyzed prior to operation of trains. The Borough also recommends that the City put together a maintenance program so that the structural integrity of the bridge is not jeopardized.

The undersigned Administrative Law Judge concurs with the said recommendation of the City's consultant. Since the load-carrying capacity of the structure is unknown, it would be dangerous to run trains over it without determining its load limit. The City, as owner of the tracks, should be directed to determine the load-carrying capacity of the structure prior to operating trains over it. It should inform the Commission and the parties of the results of its analysis. No trains should be allowed to traverse this crossing without Order of this Commission.

Questions have been raised by the parties concerning the Commission's jurisdiction, or the lack thereof, over NPS (N.T. 213). The issue is not before the Commission at this time. The agreement for the sale of the line between the City and NPS has not been concluded. There may be stipulations in the agreement pertaining to maintenance responsibilities of the structure. We feel that it is premature to address the matter of the Commission's said jurisdiction presently. The City, as owner of the tracks, is responsible for the structure. Even if the line is sold to NPS, the City can still be directed by this Commission to continue maintenance of the structure.

Some interim cosmetic repairs will be required to be performed on the structure. The City should be directed to perform the said repairs. The City should remove loose concrete, if any, and perform cement-mortar repairs, if needed, generally making sure that the safety of the pedestrians passing under the structure is not compromised. In order to accomplish this, the City should erect a shield over the pedestrian's walkway. The City should also be directed, we recommend, to maintain both the substructure and superstructure of the bridge at its sole cost and expense without prejudice to its right to recover said costs from others in accordance with any lawful agreements.

The highway under the structure is a state highway and should be maintained by Pennsylvania Department of Transportation

(hereinafter "PennDOT"). We recommend that it be directed to do so. The sidewalks under the structure are for the benefit of area residents and should be maintained by the Borough, which should also maintain the wooden shield to be erected.

We note that the structure is listed on the Bridge Bill (Bridge Bill 3) for reconstruction. Since the structure is old and in eventual need of replacement, it would be in the benefit of all concerned parties to try to secure funding for the project. The City should make efforts to secure the funds through PennDOT, which is the agency responsible for the disbursement of Bridge Bill funds.

The City incurred costs in performing work in accordance with the previous orders of the Commission. It should be directed to bear those costs.

#### IV. Recommended Conclusions of Law

1. The Commission has jurisdiction over the subject matter of this proceeding and over the parties thereto.

2. This Commission is vested with exclusive power to allocate costs of repair to, and assign maintenance responsibilities for, rail-highway crossings. 66 Pa. C.S.A. Section 2702(b); 66 Pa. C.S.A. Section 2704(a). In apportioning costs, the Commission is not limited to any fixed rules, but it must consider all relevant factors. Department of Transportation

v. Pennsylvania Public Utility Commission, 76 Pa. Cmwlth. 525, 464 A.2d 645 (1983).

V. Recommended Order

THEREFORE, it is recommended that the following ORDER be adopted:

1. That the City of Scranton bear the costs incurred by it in furnishing material and performing work, inclusive of the preparation of engineering report, in accordance with the previous Orders of the Commission issued in this proceeding.

2. That the City of Scranton, at its sole cost and expense, within thirty days after the entry of this Order, furnish all material and do all work necessary in the construction of a wooden shield over the walkway area underneath the deck of the bridge, in order to protect pedestrians from falling concrete.

3. That the City of Scranton, at its sole cost and expense, within forty-five days after the entry of this Order and periodically thereafter, furnish all material and do all work necessary to perform any needed repairs to the structure so that the safety and well being of the traveling public are not endangered or compromised.

4. That the City of Scranton, at its sole cost and expense, furnish all material and do all work necessary to maintain the entire substructure and superstructure of the bridge, inclusive of the rail facilities on the bridge, in a safe and satisfactory condition.

5. That the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and do all work necessary to maintain the roadway under the structure, and the highway approaches thereto, in a safe and satisfactory condition.

6. That the Borough of Moscow, at its sole cost and expense, furnish all material and do all work necessary to maintain the sidewalks under the structure in a safe and satisfactory condition, including the wooden shield which is the subject matter of ordering paragraph number two of this Order.

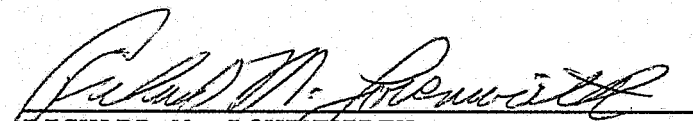
7. That prior to the operation of trains by any entity over the subject crossing, the City of Scranton shall determine the load-carrying capacity of the structure and inform the Commission and the parties to this proceeding of the results of its analysis. The operation of trains over the subject crossing is hereby forbidden without further Order of this Commission.

8. That this Order, insofar as it places the costs of the project on the parties involved, is without prejudice to said parties' rights to recover said costs from others in accordance with any lawful agreements.

9. That this Order and all further Orders and pleadings in this proceeding shall be served upon National Park Service, Upper Delaware Scenic and Recreational River, P. O. Box C, Narrowsburg, New York 12764.

Date

September 6, 1984

  
RICHARD M. LOVENWIRTH  
Administrative Law Judge