

(c) Bureau of Rail Transportation recommends the Commission affirm its June 17, 1974 order requiring reconstruction of the viaduct and preparation of detailed plans for such work by the involved railroad company. Further, the Commission should direct Conrail, as owner/operator of the rail line at this location, to comply with all provisions of said order previously directed against the prior owner-operator (Penn Central Transportation Company), and to submit completed detailed reconstruction plans within six months of date of service hereof.

JLS:g

September 19, 1978

C. 18925

David L. Gropp, Solicitor
240 Commerce Street
Beaver, Pennsylvania 15009

Borough of Homewood and Borough of Big Beaver

v.

Penn Central Transportation Company, Department
of Highways of the Commonwealth of Pennsylvania,
Pennsylvania Turnpike Commission, County of
Beaver and Consolidated Rail Corporation

Dear Sir:

Enclosed herewith is an Executed Order issued by
the Commission on August 30, 1978, in the above entitled
proceeding.

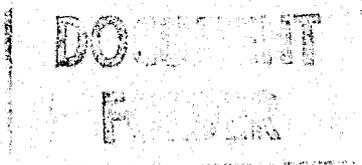
Kindly acknowledge receipt and service in behalf
thereof, using for that purpose the enclosed form.

Very truly yours,

C. J. McElwee
Secretary

fao
Encls.
Cert. Mail
Receipt Req.

Copy of Order: see attached list.



PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held August 30, 1978

Commissioners Present:

Louis J. Carter, Chairman
Robert K. Bloom
Helen B. O'Bannon
W. Wilson Goode

Borough of Homewood and Borough of Big Beaver v. Penn Central Transportation Company, Department of Highways of the Commonwealth of Pennsylvania, Pennsylvania Turnpike Commission, County of Beaver and Consolidated Rail Corporation. Complaint Docket No. 18925

Counsel of Record:

Alvin J. Ludwig, ALJ, for Pennsylvania Public Utility Commission
George D. Wenick, Esquire, for Pennsylvania Department of Transportation
Joel E. Mazor, Esquire, for Consolidated Rail Corporation
David L. Gropp, Esquire, for Boroughs of Homewood and Big Beaver
Candace Kreiger, Esquire, for Pennsylvania Public Utility Commission

ORDER

BY THE COMMISSION:

By reason of complaint filed May 6, 1970 by Boroughs of Homewood and Big Beaver, and following appropriate studies, inspections and investigation of conditions extant at the subject Homewood Viaduct structure, a 16-span steel and reinforced concrete T-beam structure carrying an unnumbered public highway above three tracks of railroad (formerly Penn Central Transportation Company; now Consolidated Rail Corporation) and The Pennsylvania Turnpike, situate partly in each of the complainant boroughs, Pennsylvania Public Utility Commission on June 17, 1974 issued its order directing Penn Central Transportation Company to undertake design and location studies, together with the preparation of detailed construction plans for reconstruction of the subject structure. The existing bridge, originally constructed in 1921 by order of the Public Service Commission, has suffered severe, widespread deterioration to the extent that repairs are impracticable, and the structure is now posted for a 3-Ton maximum vehicular limit. Outstanding maintenance responsibilities at this location, as a result of past

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

orders of this Commission and its predecessor Public Service Commission, are as follows: substructure and superstructure of the southerly 13 spans - Pennsylvania Railroad Company; substructure and superstructure of the northerly 3 spans - Pennsylvania Turnpike Commission; roadway paving throughout - Department of Highways of the Commonwealth of Pennsylvania.

Subsequent to issuance of the June 17, 1974 order, Trustees of Penn Central Transportation Company advised the Commission that they would not comply with the provisions thereof. Accordingly, this Commission on June 24, 1975 filed a joint petition with the other parties hereto, requesting the Interstate Commerce Commission to order the Trustees to expend the funds necessary to comply with the June 17, 1974 order of this Commission. Before disposition could be made by the Interstate Commerce Commission with respect to the petition, Consolidated Rail Corporation, on April 1, 1976, assumed the operations and facilities of the involved rail line, pursuant to the Regional Rail Reorganization Act of 1973, and on April 29, 1976, the Interstate Commerce Commission dismissed the petition for lack of jurisdiction over the Trustees.

Following the April 1, 1976 rail transfers and conveyances, this Commission on June 2, 1976 issued a further order in this proceeding, joining Consolidated Rail Corporation as a party and directing it, as owner-operator of the rail line, to comply with the provisions of the 1974 order, setting December 31, 1976 as the submittal date for the detailed plans. Conrail immediately petitioned for rehearing, contending it had never had opportunity to be heard in this matter. Hearing was granted, and held on June 3, 1977.

At that hearing, S.C. Walker testified for Consolidated Rail Corporation in his capacity as Senior Civil Engineer. According to this witness, Conrail does not consider itself a successor, in the usual sense, to the former Penn Central Transportation Company. Even though it has acquired certain of the former company's properties, Conrail contends that these acquisitions did not include maintenance responsibility for overhead bridges carrying highways above the tracks. Conrail further avers it does not have staff adequate to design a new structure at the site of the viaduct subject of this proceeding, nor does it believe that obligation rests with the railroad. In the opinion of Conrail, the circumstances at this location, including geometrics, possible relocation, and all other aspects pertinent to a proper highway facility, could better be made by agencies responsible for highway traffic, rather than by Conrail.

Mr. Walker testified that for these reasons, Consolidated Rail Corporation is of the position that the Commission's order imposing upon Penn Central Transportation Company the responsibility to undertake design and location studies and preparation of detailed construction plans, is not binding upon Conrail, nor does Conrail volunteer to assume such responsibility.

On cross-examination, Mr. Walker agreed that while Conrail itself may not have appropriate staff or expertise to perform the noted studies and plans preparation, it could have such work done through contract with an appropriate consulting engineering firm; however, the witness was not aware of any comparable circumstances wherein Conrail has engaged consultants for the design of an overhead highway structure. Further, the witness admitted that there is inherent benefit to the railroad in a grade separation structure, if the alternative is a crossing, at grade.

Mr. Walker identified the line of tracks at this location as the Pittsburgh-Chicago main line of the Consolidated Rail Corporation system, further categorizing it as the most vital of its main lines, serving rail traffic throughout the eastern seaboard area as a funnel to and from regions to the west, including the Chicago area. As such, he stated that the track's importance is not limited only to Pennsylvania, nor to the immediate area of Beaver County in which it is located.

The witness, in explanation of the particulars of conveyance to Conrail of certain items of the former bankrupt railroads, dwelt upon that aspect known as I.C.C. Account 39, and concurred that under the terms of the Final System Plan, Conrail is now responsible for all items included in said account. Further, the witness stated that Account 39 is not a maintenance account, and that expenses relative to maintenance of overhead bridges had likely been carried under Account 273. In addition, the witness testified that a capital expenditure such as would have been incurred by the then Pennsylvania Railroad Company when the bridge was built, would have been carried under Account 39, and would remain in that account for depreciation. It was further stated by the witness that a capital item involves costs pertinent to an improvement of the vested interests of the railroad.

In the opinion of the witness, while the bridge is presently safe for the current 3-Ton posted load limit, its condition is very poor, making any projection of remaining useful life a difficult proposition. Mr. Walker suggested that he considers the best solution to the present bridge crisis to be improvement of an existing at-grade crossing of the tracks, approximately one and one-half miles to the west, and abolition of the above-grade crossing. He stated that certain improvements to that at-grade crossing are apparently under consideration, by reason of the 1973 Federal Highway Safety Act, and the witness is of the opinion that by expending some additional monies, the overall safety at that crossing, and the approaches thereto, could be improved to a level commensurate with present rail and highway traffic densities.

Counsel for Borough of Big Beaver took exception to this testimony of Mr. Walker, stating that to his knowledge the referenced grade crossing improvement project was no longer on an active program. Mr. Walker then suggested it would be his prime recommendation that it be reactivated and placed on the current priority program for improvements.

On cross-examination by counsel for PennDOT, the witness concurred that the railroad's policy regarding at-grade crossings remains unchanged, in that it considers them undesirable and less preferential than separated crossings. However, Conrail would not object to the improvement of an existing at-grade crossing and the resultant increase in vehicular traffic thereat, provided such improvements encompass all aspects pertinent to the total enhancement of safety thereat, and the abolition of the existing crossing, above grade, subject hereof. Mr. Walker stated that a major reason for Conrail's position is the relative costs of bridge reconstruction vis-a-vis improvements of the at-grade crossing.

H. A. Sellers, Civil Engineer for Pennsylvania Department of Transportation, testified that traffic counts conducted in September of 1970 showed an average of approximately 1,150 vehicles using the bridge in a 24-hour period, and approximately 70 pedestrians during the day-light hours, as cited in the Commission's order in this proceeding issued August 23, 1971.

The witness testified in clarification of the department's position relative to the availability and application of funds for improvements of at-grade crossings, through Federal assistance programs qualifying under the Highway Safety Acts of 1973, No. 230 and of 1976, No. 203-C. According to the witness, the intent of these acts was to promote and enhance the safety of at-grade crossings through 90% Federal fund financing; Act 203 monies being applicable at crossings of highways on the Federal Aid System, and Act 230 monies at crossings of highways not on that system. It is PennDOT's administrative policy to apply these monies to the installation or upgrading of protection devices only; thereby excluding the costs of improvements to crossing approaches, sight distances, et al, from qualifying for Federal assistance. In the opinion of the department, this policy derives the most benefit to the greatest number of crossings with the monies available under the 203/230 programs.

According to the witness, the at-grade crossing previously mentioned by Mr. Walker in his testimony was, at one time, scheduled for certain improvements to the protection devices under the 230 program, but was withdrawn. Subsequently, all monies available under that program have been expended on other projects; however, the witness testified that in the event the viaduct structure should be closed and traffic diverted to the at-grade crossing, the department would again consider allocating Federal-aid monies to the extent of 90% of the necessary protection devices, and improvements of the actual crossing area proper, from the 1976 Act 203-C allocations. It is the department's position that the other 10% of protection and crossing improvement costs, as well as 100% of any costs for approach improvements, should be borne by others than PennDOT.

On cross-examination, the witness denied any knowledge of other programs through which funding assistance could be obtained. Further, it was conceded that PennDOT would benefit to some extent by relief from its present obligation for maintenance of the wearing surface on the viaduct, in the event the subject crossing, above grade, were ordered abolished.

Counsel for Boroughs of Homewood and Big Beaver offered no witnesses, and the hearing was concluded.

This Commission, in its review of the complete record in this proceeding, finds that nothing of import in the form of new matter or changed circumstances has been presented for consideration. The hearing of June 3, 1977 was held at the request of Consolidated Rail Corporation in order to present its position on the record. It is evident that Conrail's operations at the crossing differ little from that of the former rail operator at this location, Penn Central Transportation Company.

By the Commission's order issued in this proceeding on June 17, 1974, Penn Central Transportation Company was directed, at its initial cost and expense, to undertake the preparation of design and location studies, together with the preparation of detailed construction plans for reconstruction of the subject structure. Penn Central was the operating railroad company at that time, hence the order against the company. In April 1976, Consolidated Rail Corporation acquired the tracks and property of the former railroad company and thus became a "concerned" and interested party at the crossing within the context of Section 409 and 411 of the Public Utility Law, 66 P.S. §§1179, 1181.

Accordingly, we deem it fair and equitable that since Conrail is the present owner and operator of the line of railroad at the crossing, said line being the Pittsburgh-Chicago main line of the Conrail system, the most vital of its main lines serving rail traffic throughout the eastern seaboard as a funnel to and from regions to the west, and since Conrail derives substantial benefit from the grade separation of the involved crossing, Conrail, at its initial cost and expense, should prepare design and location studies, together with a detailed construction plan for the reconstruction of the subject structure, and we so order. The allocation of the costs and expenses incurred by Conrail in the preparation of these studies and plans will be determined at a later date after further hearing has been held.

Neither has any new evidence been presented nor changed circumstances been demonstrated regarding the alternate proposal of upgrading an adjacent at-grade crossing. Since the inception of this proceeding, this Commission has been fully aware of the existence of that crossing, and others within the general area (reference Order issued August 23, 1971), as well as the conditions thereof, the extent of protection thereat, the deficiencies on the approaches thereto, the relative levels of safety and/or hazard presented thereby, and the

general condition of the roadways providing access to same. It was with all such factors at its disposal for consideration that this Commission made the determinations contained in its Order issued June 17, 1974, wherein it was directed that plans be prepared for an alternate crossing, above grade, at the location subject of this proceeding. After careful review of all evidence of record it is clear to this Commission that neither conditions at the existing viaduct nor at the suggested at-grade crossing have changed since issuance of the 1974 order.

Accordingly, we conclude that the directives and intent of the June 17, 1974 order should be affirmed, together with the directives contained in our subsequent letter-order issued June 8, 1976, wherein Consolidated Rail Corporation was directed to prepare design and location studies and detailed construction plans for reconstruction of the subject structure, and we so order. Further, we require submittal of the plans for reconstruction within six months of the date of issuance hereof; THEREFORE,

IT IS ORDERED:

1. That our order in this proceeding issued June 17, 1974 be and is hereby affirmed.

2. That our letter-order in this proceeding issued June 8, 1976 be and is hereby affirmed, with the exception that the submittal date for completed detailed construction plans shall be within six months of the date of service hereof.

BY THE COMMISSION,

C. J. McElwee
Secretary

ORDER ADOPTED: August 30, 1978

ORDER ENTERED:

SEP 19 1978