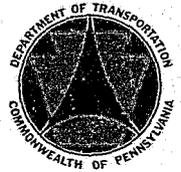


COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION  
Harrisburg, Pennsylvania 17120  
Office of Chief Counsel



March 30, 1982  
MAR 30 3 53 PM '82

IN REPLY REFER TO

RECEIVED  
SECRETARY'S OFFICE  
PUBLIC UTILITY  
COMMISSION

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

Re: Complaint Docket No. C-00018925  
Beaver County

Dear Mr. Rich:

Enclosed for filing with the Commission are the original and <sup>two (2)</sup> ~~nine (9)~~ copies of Petition for Modification of Order or Rehearing for Further Study on behalf of the Pennsylvania Department of Transportation in the above matter.

I hereby certify that copies of said Petition have been sent to all parties of record.

Very truly yours,

Stephen Dittmann  
Assistant Counsel  
(717) 787-6485

220/SD:rmm  
Enclosures

cc: K. W. Walker, P.E. (Attn.: H. Sellers)  
District #11-0  
Parties of record - Page 2



PARTIES OF RECORD

Joel E. Mazor, Esquire  
Consolidated Rail Corporation  
1138 Six Penn Center Plaza  
Philadelphia, Pennsylvania 19104

Louis Martin, Esquire  
Pennsylvania Turnpike Commission  
Box 2531, Harrisburg, Pennsylvania

Carl Helmetag, Jr., General Counsel  
Penn Central Corporation  
3100 IVB Building  
1700 Market Street  
Philadelphia, Pennsylvania 19103

Gene Morris, Esquire  
County Solicitor  
Beaver County  
Beaver, Pennsylvania 15009

David L. Grupp, Esquire  
Solicitor for Boroughs of Homewood & Big Beaver  
240 Commerce Street  
Beaver, Pennsylvania 15009

**ORIGINAL**

Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MAR 30 3 53 PM '82

RECEIVED  
SECRETARY'S OFFICE  
PUBLIC UTILITY  
COMMISSION

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

DUPLICATE RECORD,  
ORIGINAL CERTIFIED  
TO COMMONWEALTH COURT.

COMPLAINT  
DOCKET

NO. C-00018925

DOCKETED  
MAR 31 1982  
AB

PETITION FOR MODIFICATION OF ORDER  
OR REHEARING FOR FURTHER STUDY

TO THE HONORABLE, THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

COMES NOW, Pennsylvania Department of Transportation  
(Department) by its attorney, Stephen Dittmann, and petitions for  
modification of the Order entered March 17, 1982 and requests  
further study of alternatives to reconstruction of the Homewood  
Bridge.

1. Department was ordered by Pennsylvania Public  
Service Commission in its April 17, 1922 Order to maintain paving  
across the subject viaduct. Department relocated Legislative  
Route 77 in the early 1950's and removed a section of Old  
Legislative Route 77, including the subject viaduct, from the  
state highway system and turned the section of roadway over to  
local municipalities.

DOCUMENT

2. By Commission Order entered March 17, 1982, Conrail was ordered to reconstruct the viaduct. Department, in said Order at paragraph 19, was ordered to reimburse Conrail 40% of the actual cost (total present cost is estimated to be \$3,000,000.00, excluding all work on Pennsylvania Turnpike Commission Spans, including a "pedestrian walkway ramp" and bridge lighting, which is for the sole benefit of local residents).

3. Said allocation of cost to the Department is presumably based on the Department's historic legal responsibility for maintaining the paving on the viaduct. Finding of Fact No. 19 referring to use of the subject bridge as a detour is limited to isolated emergencies and the State Police, not the Department, rerouted the traffic. Furthermore, the paving or wearing surface of the viaduct is not an integral part of the superstructure. It is estimated to cost \$20,000.00 to resurface the entire structure with surface material, considerably less than the financial exposure to the Department in excess of \$1 million dollars pursuant to the Order.

4. The 40% allocation of cost on the Department is arbitrary and capricious and is not supported by the record.

5. In view of the long duration of time between May 6, 1970, date of original Complaint and the Commission's Order entered March 17, 1982, it is possible that conditions at the subject bridge have changed enough to reconsider the scope of bridge reconstruction, as ordered, and/or consideration of an alternate crossing solution.

WHEREFORE, the Department petitions your Honorable Commission (a) to modify your Order, entered March 17, 1982, in the subject proceeding to reflect an allocation of cost to the Department consistent with the record and the Department's present maintenance responsibility on the existing bridge which is estimated to cost \$20,000.00 for a new paving surface.

(b) In the alternative, The Department requests Rehearing for Further Engineering Study, of the subject crossing and environs for a feasible and acceptable alternative solution. All parties to the original proceeding have been contacted and none object to further Engineering Study, provided it can be scheduled and completed within the 6 month period during which Conrail is making the ordered revisions to the bridge plans pursuant to the original Order.

WHEREFORE, the Department respectfully requests your  
Honorable Commission to reconsider said Order entered March 17,  
1982.

AND, it will ever pray.

Respectfully submitted

*Stephen Dittmann*

---

Stephen Dittmann  
Assistant Counsel

DATED: March 30, 1982

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF DAUPHIN

SS

Before me, the undersigned, personally appeared,  
David C. Sims, Deputy Secretary for Highway Administration  
of the Department of Transportation of the Commonwealth of  
Pennsylvania, who, being duly sworn according to law, deposes  
and says that the foregoing facts are true and correct, to the  
best of his knowledge and belief.

*David C. Sims*

David C. Sims  
Deputy Secretary for Highway  
Administration

Sworn and subscribed before me

the 30th day of March, 1982

*Suzanne Marie Miller*  
NOTARY PUBLIC

My Commission Expires:

SUZANNE MARIE MILLER, NOTARY PUBLIC  
My Commission Expires February 17, 1986  
Harrisburg, PA Dauphin County

RECEIVED

APR 2 1982

SECRETARY'S OFFICE  
Public Utility Commission

April 6, 1982

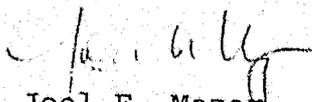
Jerry Rich, Secretary  
Pennsylvania Public Utilities Commission  
P. O. Box 3265  
Harrisburg, PA 17120

Re: Complaint Docket C-00018925  
Beaver County

Dear Mr. Rich:

Reference is made to the petition of the Pennsylvania Department of Transportation for Modification of the Commission's Order or Rehearing for Further Study. Please be advised that Consolidated Rail Corporation joins in this petition.

Very truly yours,

  
Joel E. Mazor  
General Attorney

FCW

cc: Stephen Dittman, Esquire  
Office of Chief Counsel  
Pennsylvania Department of  
Transportation  
Harrisburg, PA 17120

Gene Morris, Esquire  
County Solicitor  
Beaver County  
Beaver, PA 15009

DUPLICATE RECORD.  
ORIGINAL CERTIFIED  
TO COMMONWEALTH COURT.

DOCKETED  
FOLDER

DOCKETED

APR 14 1982

April 6, 1982  
Page 2

David L. Grupp, Esquire  
240 Commerce Street  
Beaver, PA 15009

Borough of Homewood and Borough of  
Big Beaver v. PCTC, PennDOT, Pa.  
Turnpike Commission and County of  
Beaver

C. 18925 /

---

-NOTICE OF PETITION BY COMMONWEALTH  
OF PENNSYLVANIA, DEPARTMENT OF TRANS-  
PORTATION at No. 799 C.D. 1982, Common-  
wealth of Pennsylvania, from the order  
of the Commission dated March 17, 1982,  
in the above complaint proceeding.

B-822822

Filed: April 9, 1982

**DOCUMENT  
FOLDER**

**DOCKETED**  
MAY 13 1982

Borough of Homewood and Borough of  
Big Beaver v. Conrail, Penn Central  
Transportation Company, PennDOT,  
Pennsylvania Turnpike Commission,  
and County of Beaver

C-00018925 /

---

-NOTICE OF PETITION BY BOROUGH OF  
HOMEWOOD AND BOROUGH OF BIG BEAVER  
at No. 814 C.D. 1982, Commonwealth  
Court of Pennsylvania, from the  
order of the Commission dated  
March 17, 1982, in the above  
complaint proceeding.

B-822823

Filed: April 16, 1982

DOCUMENT  
FOLDER

DOCKETED  
MAY 13 1982

Borough of Homewood and Borough of  
Big Beaver v. Penn Central Transpor-  
tation Company, Department of High-  
ways of the Commonwealth of Pennsyl-  
vania, Pennsylvania Turnpike Commission  
and County of Beaver

C-00018925 /

---

-NOTICE OF PETITION BY COUNTY OF  
BEAVER at No. 870 C.D. 1982, Common-  
wealth Court of Pennsylvania, from  
the order of the Commission dated  
March 17, 1982, in the above com-  
plaint proceeding.

B-822825

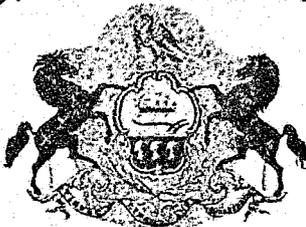
Filed: April 23, 1982

DOCUMENT  
FOLDER

DOCKETED  
MAY 13 1982

JAMES G. CAMP  
ELI G. CORAK  
GEORGE T. PETTIBON  
COUNTY COMMISSIONERS

Beaver County ORIGINAL



DANIEL DONATELLA  
CHIEF CLERK  
EUGENE MORRIS  
SOLICITOR

Beaver, Pennsylvania

TELEPHONE: Area Code 412-728-5700

RECEIVED

October 29, 1982

NOV 3 1982

SECRETARY'S OFFICE  
Public Utility Commission

Commonwealth of Pennsylvania  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, Pennsylvania 17120

ATTENTION: R. A. Peteriatis, Director  
Bureau of Rail Transportation

Gentlemen:

Review of House Bill No. 2716, forwarded to this office by Commissioner Clifford L. Jones, indicates that the only structure included in this bill for Beaver County was the rehabilitation of a bridge in Marion Township (T-649, Old Furnace Road).

It is noted the County's response to your inquiry of March 24, 1981 listed as number one priority, to the County, the Homewood Viaduct which carries State Street in Homewood over tracks owned by Conrail. It was recommended this structure be replaced at an estimated cost of \$2,300,000.

P.U.C. proceedings have been instituted in reference to this structure under Docket Number 18925. The economic impact to the County, as a result of this share of the replacement costs of this structure, is critical due to the overall economic condition of the County. It is therefore requested that the replacement of this structure be included in the current House Bill.

Very truly yours,

Donald W. Bertram, P.E.  
Staff Engineer

DWB/rz

cc: DWB

DOCUMENT  
FOLDER

DOCKETED  
NOV 4 1982

Beaver County Commissioners  
Courtthouse  
Beaver, PA 15009

MAILED BY  
ITS OFFICE  
UNITED STATES

NOV 19 1971



Commonwealth of Pennsylvania  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA. 17120

171

CONRAIL

ORIGINAL

March 19, 1983

SUBJECT: Homewood and Big Beaver Boroughs, Beaver Co.,  
PA - PUC Docket No. C-18925 - Complaint of  
Boroughs concerning O.H. Bridge No. 34.88,  
State Street over Main Line Tracks, LC 2402,  
MP 34.88, WO #46277, Youngstown Division,  
Central Region. (File: Br. 34.88 - WWP)

Mr. Jerry Rich  
Secretary  
Pa. PUC  
P.O. Box 3265  
Harrisburg, PA 17120

RECEIVED

MAR 29 1983

SECRETARY OF  
Public Utility Commission

Dear Mr. Rich:

We refer to the Commission's Order entered March 17, 1982 requiring Conrail to prepare final construction plans for the reconstruction of the subject structure.

We attached for review and approval three copies of a set of construction plans No. 19862-R revised March 17, 1983 consisting of 16 sheets.

A set of the above plans are being furnished to each of the parties to the proceeding.

Very truly yours,



J. T. Sullivan, P.E.  
Chief Engineer  
Design and Construction

Room 1200

(215) 596-3845

DOCUMENT  
FOUR

March 19, 1983  
Page 2  
Mr. Jerry Rich

CC: Mr. R. A. Peteritas, Director  
Bureau of Rail Transportation  
Pa. PUC  
P.O. Box 3265  
Harrisburg, PA 17120

Set of Plans attached.

Mr. Kenneth W. Walker, P.E.  
Chief Utility Engineer  
Pa. DOT  
1120 T. & S. Bldg.  
Harrisburg, PA 17120

Set of Plans attached.

Mr. Robert H. Klucher, P.E.  
Deputy Executive Director and Chief Engineer  
Pa. Turnpike Commission  
P.O. Box 8531  
Harrisburg, PA 17105

Set of Plans attached.

Mr. David L. Grubb, Solicitor  
Boroughs of Homewood and Big Beaver  
Beaver, PA 15009  
Set of Plans attached.

Mr. Gene Morris  
County Solicitor  
Beaver County  
Beaver, PA 19009  
Set of Plans attached.

C. 18925

PPUC VS. HOMEWOOD AND BIG BEAVER BOROUGHES

Final Construction Plans No. 19862-R(revised March 17, 1983), consisting of 16 sheets) are filed in the first pocket Record Folder.

01

REC

MAR 29 1983

SECRET  
Utility Commission

C.18925

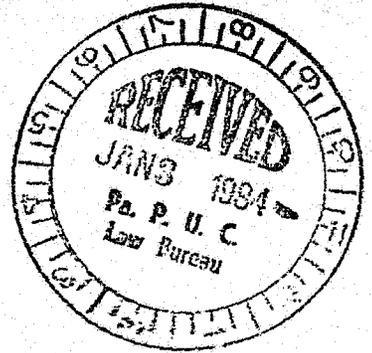
# OVERSIZE DOCUMENT(S)

<b>CONRAIL</b>	
	
CONSOLIDATED RAIL CORPORATION	
CHIEF ENGINEER - DESIGN & CONSTRUCTION, PHILA., PA.	
approved: <i>E. J. Hooley</i>	approved: <i>L. P. Schack</i>
ENGR.-BRIDGES & BUILDINGS.	ASST. CHIEF ENGR.-STRUCTURES

DRAWING TITLE: LOCATION PLAN AND TITLE SHEET.	
des: <i>WKT</i>	dr: <i>LJS</i>
ck: <i>A/BNT</i>	tr:
DATE: <i>APRIL 7 - 1980</i>	
PLAN NUMBER: <i>19862-R</i>	
DRAWING NUMBER: <i>1 OF 16</i>	

File in C-18925

IN THE COMMONWEALTH COURT  
OF  
PENNSYLVANIA



COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF TRANSPORTATION,

Petitioner

v.

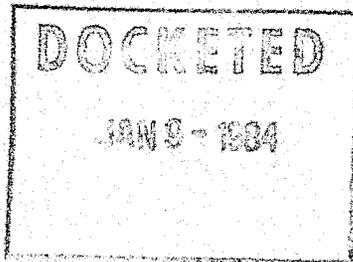
NO. 799 C.D. 1982

~~8-822822~~  
~~8-822823~~  
~~8-822825~~

RH

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION,

Respondent



BOROUGH OF HOMEWOOD and  
BOROUGH OF BIG BEAVER,

Petitioners

v.

NO. 814 C.D. 1982

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION,

Respondent

COUNTY OF BEAVER,

Petitioner

v.

NO. 870 C.D. 1982

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION,

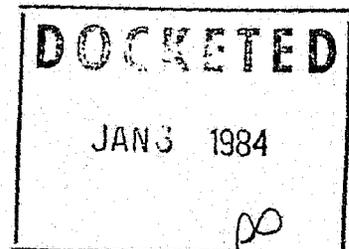
Respondent

BEFORE:

HONORABLE JAMES CRUMLISH, JR., President Judge  
HONORABLE ROBERT W. WILLIAMS, JR., Judge  
HONORABLE ALEXANDER F. BARBIERI, Judge

ARGUED:

May 11, 1983



O P I N I O N

OPINION BY  
PRESIDENT JUDGE CRUMLISH, JR.

FILED: December 30, 1983

The Pennsylvania Department of Transportation (DOT), Borough of Homewood, Borough of Big Beaver and County of Beaver appeal a Pennsylvania Public Utility Commission order assessing costs of reconstruction and future maintenance of the Homewood Viaduct. We affirm.

The Commission determined that the rail-highway crossing was to be demolished and reconstructed, with the cost of said reconstruction to be assessed as follows: 50% against Conrail; 40% against DOT; 10% against Beaver County;<sup>1</sup> minor construction costs assessed to the Pennsylvania Turnpike Commission; and \$15,000 each assessed to Homewood and Big Beaver Boroughs.<sup>2</sup> Homewood, Big Beaver and the County were to share one-third of all future maintenance costs.

On May 6, 1970, Homewood Borough, joined by Big Beaver Borough, initiated these proceedings by complaint, alleging that a rail-highway crossing<sup>3</sup> carrying an un-numbered public highway over and above three tracks of Penn Central Transportation Company (predecessor of Conrail) posed hazardous conditions to the safety of the traveling public.<sup>4</sup> The two boroughs relied on a 1921 Commission order directing the Pennsylvania Company (forerunner of the Pennsylvania Railroad

Company) to construct at its own cost and expense the aforesaid above-grade viaduct to carry former State Highway Route 77 over and above said tracks and to provide a ramp to the then-active Pennsylvania station. Attendant costs of the Highway-approach relocation were allocated to the Pennsylvania Highway Department, with the costs of property damages assessed to Homewood Borough and Beaver County. In a 1922 order, the Commission directed Homewood Borough to maintain the station ramp, Highway Department to maintain the paving across the viaduct, and the Pennsylvania Company to maintain the viaduct.

In 1950, the Public Utility Commission directed the Pennsylvania Turnpike Commission to construct and maintain a three-span extension of the viaduct to pass over the new toll highway. The roadway paving was assigned to the Highway Department.

In 1954, the Commission ordered the deteriorated ramp portion of the structure to be closed to vehicular traffic and directed the Pennsylvania Railroad Company to erect vehicular barricades at each end of the ramp, remove the existing superstructure and construct a replacement pedestrian bridge which Homewood Borough was to maintain.<sup>5</sup> However, the ordered reconstruction work was never completed.

Our Court's scope of review is limited to determine whether constitutional rights have been violated, error of law committed or findings and conclusions are unsupported by

substantial evidence. Pennsylvania Electric Co. v. Pennsylvania Public Utility Commission, 53 Pa. Commonwealth Ct. 186, 417 A.2d 819 (1980).

The Commission's exclusive jurisdiction over the construction of railroad-highway crossings in the Commonwealth is set forth in Section 2702(c) of the Public Utility Code, 66 Pa. C.S. §2702(c), as follows:

[U]pon complaint, the commission shall have exclusive power after hearing, upon notice to all parties in interest ... to order 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 ... [or] alteration ... of any crossing aforesaid to be performed in whole or in part by any public utility or municipal corporation concerned or by the Commonwealth. [6]

The Commission has exclusive authority to make determination of allocation of costs involved in providing for the safety and public use of all bridges over railroad tracks within the Commonwealth. Department of Transportation v. Public Utility Commission, 3 Pa. Commonwealth Ct. 405, 410, 283 A.2d 313, 316 (1971). The Commission has broad powers to allocate and assess costs in railroad-highway crossing cases under Section 2704(a) of the Public Utility Code, 66 Pa. C.S. §2704(a), which states:

[C]ost of construction ... [or] alteration ... of such crossing ... shall be borne and

paid, as provided in this section, by the 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. [17]

It has long been established that, in apportioning costs in highway-rail crossing cases, the Commission is not limited to any fixed rate but takes all relevant factors into consideration, with the fundamental requirement being that its order be just and reasonable. Department of Transportation v. Pennsylvania Public Utility Commission, 21 Pa. Commonwealth Ct. 407, 413, 346 A.2d 371, 375 (1975). In a case such as this, our Court will not exercise its independent judgment on the record or weigh conflicting evidence. County of Chester v. Pennsylvania Public Utility Commission, 47 Pa. Commonwealth Ct. 366, 370, 408 A.2d 552, 553 (1979). Our inquiry is directed to whether there is substantial evidence to support the Commission's order as to the allocation of costs of reconstruction and the assignment of responsibility for future maintenance of the subject viaduct. Findings of fact made by the Commission which are supported by substantial evidence are conclusive and may not be disturbed on appeal. County of Chester, 47 Pa. Commonwealth Ct. at 370, 408 A.2d at 553.

DOT asserts that the 40% assessment of reconstruction (exclusive of spans over the Turnpike) is unreasonable because the findings of fact are unsupported by the record. The

Commission found DOT's interest and involvement to be significant since DOT had a past and presently continuing obligation for paving maintenance under the 1921 and 1950 orders. Furthermore, DOT has a continuing responsibility for the safe passageway of the traveling public<sup>8</sup> over the Commonwealth highways<sup>9</sup> arising from its administrative and advisory functions, Department of Transportation, 3 Pa. Commonwealth Ct. at 413, 283 A.2d at 317, and a state highway traversed the subject bridge until 1954 and the new state highway traffic has occasionally been detoured across the subject viaduct because of state highway emergencies.<sup>10</sup>

DOT argues that the Commission's findings of fact are not supported by the substantial evidence because the record shows it has only a paving responsibility and not a construction responsibility according to the 1921 order directing the Pennsylvania Company to maintain the structure. Other cases illustrate that the Commission has placed a duty upon DOT to share in the reconstruction costs of such a structure built by a railroad. Department of Transportation v. Pennsylvania Public Utility Commission, 3 Pa. Commonwealth Ct. 473, 284 A.2d 155 (1971) (PennDOT ordered to pay \$150,000 out of \$368,000); Pennsylvania Public Utility Commission v. Department of Transportation, 21 Pa. Commonwealth Ct. 415, 346 A.2d 376 (1975) (PennDOT assessed 90% of the reconstruction costs).

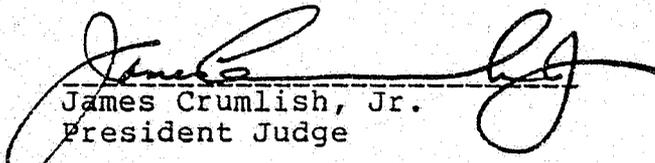
Also, the government bodies and DOT contend that the Commission's findings of fact are not supported by the substantial evidence because the Commission failed to consider the issue of deferred maintenance. However, in the 1971 and 1974 Commission orders,<sup>11</sup> it is shown that the Commission did consider the issue of actual causation for the bridge's deterioration. The record fails to support a conclusion that the need for reconstruction is due solely to deferred maintenance. See Department of Transportation, 3 Pa. Commonwealth Ct. at 409, 283 A.2d at 315.

Homewood and Big Beaver Boroughs and Beaver County contend that the Commission's order was unreasonable and that it abused its discretion when allocating the county 10% of the reconstruction costs and \$15,000 to each borough, along with assigning all three bodies one-third of the future maintenance costs. In resolving this dispute, we must decide whether the Commission order to reconstruct the bridge will result in substantial local improvement or distinct benefit for its residents. County of Chester, 47 Pa. Commonwealth Ct. at 370, 408 A.2d at 554. The record reveals that a reconstructed bridge would provide for the general good of the motorists and pedestrians, who will experience better traffic control with the reduction of traffic congestion, more efficient and safer fire, police, bus and ambulance service, and elimination of the hazard of falling bridge concrete. Because the local

governments will derive future benefits from the reconstruction, the token assessment for reconstruction and future maintenance is just and reasonable. See County of Chester; Pennsylvania Public Utility Commission v. Department of Transportation, 2 Pa. Commonwealth Ct. 144, 276 A.2d 573 (1971).<sup>12</sup> Thus, we find no abuse of discretion in the Commission's action.

Accordingly, we affirm.

Date: December 30, 1983

  
James Crumlish, Jr.  
President Judge

#### FOOTNOTES

<sup>1</sup>The percentages allocated are identical to those in Pittsburgh & Lake Erie Railroad Co. v. Pennsylvania Public Utility Commission, 66 Pa. Commonwealth Ct. 609, 445 A.2d 851 (1982).

<sup>2</sup>In 1979, Conrail estimated the reconstruction cost to be \$2,300,000. Conrail has been ordered to perform the reconstruction.

<sup>3</sup>The 1921 construction of the subject viaduct was necessary at this location to alleviate dangerous conditions existing at several at-grade crossings due to heavy train and vehicular traffic.

<sup>4</sup>The original portion of the bridge is located entirely within Homewood Borough, having a length of approximately 567 feet. The Commission has directed this portion to be replaced. Conrail railroad tracks are located beneath this portion and Conrail's freight and passenger trains travel this portion of its main-line interstate commerce business between the eastern seaboard and the midwest. The newer part of the bridge is located partly within Homewood Borough and partly in Big Beaver Borough having a length of approximately 138 feet.

<sup>5</sup>Prior to this order, the Highway Department relocated State Highway Route 77 to the east of the structure and the said state route no longer crossed the viaduct. DOT now avers that the old highway reverted to the borough although the Department of Highways was never relieved of its maintenance obligation. However, since 1954, DOT has made payments to Homewood Borough through the liquid fuel tax reimbursement program for those portions of the abandoned highway.

<sup>6</sup>Sections 2702 and 2704 of the Public Utility Code contain substantially the same language as former sections 409 and 411 of the Public Utility Code, Act of May 29, 1937, P.L. 1053, as amended, 66 P.S. §§1179, 1181. Sections 409 and 411 were in effect when the instant case was instituted.

<sup>7</sup>Since 2704(a) does not clearly authorize the Commission to allocate maintenance costs, the Commission's power to regulate maintenance is limited to effectuating the prevention of accidents and promotion of public safety as stated in 2702(b).

<sup>8</sup>The record reveals that several local and state roads converge on the viaduct. A 1970 two-day traffic count indicated 978 vehicles and 69 pedestrians used the bridge during a 14-hour daytime period.

<sup>9</sup>The Commission's assessment against DOT is permitted even though the road in question is not currently a designated state highway. See Department of Transportation v. Pennsylvania Public Utility Commission, 64 Pa. Commonwealth Ct. 224, 439 A.2d 1301 (1982), allocatur denied May 25, 1982; Department of Transportation, 3 Pa. Commonwealth Ct. at 478, 284 A.2d at 158. Also, Section 2702(c) gives the Commission jurisdiction over the Commonwealth to impose costs under Section 2704 regardless of the highway designation.

<sup>10</sup>Finding of fact 19 erroneously stated that DOT detoured traffic over the viaduct. However, this error is not fatal to the Commission's final allocation of costs. DOT still has a substantial interest in those vehicles re-routed off the state highway because a reduction of congestion results from the detours.

<sup>11</sup>In its August, 1971 order, the Commission concluded:

Neither are we satisfied that an adequate conscientious program of maintenance, pursued over the years in compliance with the obligations imposed in outstanding orders of this Commission and its predecessor body, would have tolerated the progressive deterioration of the various components of the structure to their present state, including the curbs, sidewalks and roadway surface on the traveled way.

In its June 20, 1974 order, the Commission noted that a Penn Central engineer stated that the type of construction involved did not lend itself well to routine maintenance.

<sup>12</sup>Beaver County further contends that the Commission did not consider the ability of the parties to pay the subject costs. The County argues that, since the September 12, 1980 hearing on allocation of costs, they have experienced a deficit which amounts to a change of circumstances. Because the County has raised this issue for the first time on appeal, this issue is waived. City of Pittsburgh v. Department of Transportation, 490 Pa. 264, 270 n. 7, 416 A.2d 461, 464 n. 7 (1980). Moreover, the subject governing bodies have sufficient revenue-raising ability to offset any deficit.

IN THE COMMONWEALTH COURT  
OF  
PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF TRANSPORTATION,

Petitioner

v.

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION,

Respondent

NO. 799 C.D. 1982

BOROUGH OF HOMEWOOD and  
BOROUGH OF BIG BEAVER,

Petitioners

v.

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION,

Respondent

COUNTY OF BEAVER,

Petitioner

v.

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION,

Respondent

NO. 870 C.D. 1982

**CERTIFIED FROM THE RECORD**

DEC 30 1983

NO. 814 C.D. 1982  
*Francis C. Carbone*  
CHIEF CLERK

O R D E R

The order of the Pennsylvania Public Utility Commission at Docket No. C-00018925, dated March 17, 1982, is affirmed.

Date: December 30, 1983

*James Crumlish, Jr.*  
James Crumlish, Jr.  
President Judge



"SIMILAR LETTER LIST"

Mrs. Elaine Buzzelli, Secretary  
Borough of Homewood  
Box 87  
Racine, PA 15010

Paul B. Rayl, Secretary  
Borough of Big Beaver  
R.D. 3, Box 183  
Beaver Falls, PA 15010

Robert W. Cyphert, Chief Clerk  
Beaver County  
Court House, Third Street  
Beaver, PA 15009

Mr. W. J. Clements, P.E.  
Right-of-Way and Utility Division  
Pennsylvania Department of Transportation  
509 Transportation and Safety Building  
Harrisburg, PA 17120

Mr. J. T. Sullivan, P.E.,  
Chief Engineer  
Consolidated Rail Corporation  
15 North 32nd Street  
Philadelphia, PA 19104

Mr. Neal Wood  
Pennsylvania Turnpike Commission  
Box 8531  
Harrisburg, PA 17105

CONRAIL

ORIGINAL

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DEC 12 1985

SECRETARY'S OFFICE  
Public Utility Commission

December 9, 1985

Mr. Jerry Rich  
Secretary  
Pa. PUC  
P.O. Box 3265  
Harrisburg, PA 17120

SUBJECT: Homewood and Big Beaver Boroughs, Beaver Co.,  
PA - PUC Docket No. C-18925 - Complaint of  
Boroughs concerning O.H. Bridge No. 34.88,  
State Street over Main Line Tracks, LC 2402,  
MP 34.88, WO #46277, Youngstown Division,  
Central Region. (File: Br. 34.88 - WRA)

Dear Mr. Rich:

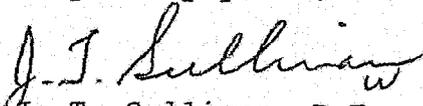
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my letter of Aug. 17, 1983.

Therefore we are submitting a set of plans to all parties of record,  
as promised at the site conference.

Should you have further questions covering this matter, please  
contact this office.

Very truly yours,



J. T. Sullivan, P.E.  
Chief Engineer -  
Design and Construction

Room 1200

(215) 596-3848



December 9, 1985

Mr. Jerry Rich

PAGE TWO

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cc: Mr. G. S. Lehman, Chief Engineer  
Rail Safety Division  
Bureau of Safety and Compliance  
P. O. Box 3265  
Harrisburg, PA 17120

Attention: D. A. Oliver, P.E.  
Set of Plans attached.

Mr. W. J. Clements, P.E.  
Chief, Right of Way and Utility Division  
Pennsylvania Department of Transportation  
509 T & S Building  
Harrisburg, PA 17120  
Set of Plans attached.

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Deputy Executive Director and Chief Engineer  
Pa. Turnpike Commission  
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Harrisburg, PA 17105  
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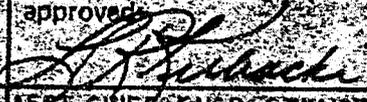
Mr. David L. Grubb, Solicitor  
Boroughs of Homewood and Big Beaver  
Beaver, PA 15009  
Set of Plans attached.

Mr. Gene Morris  
County Solicitor  
Beaver County  
Beaver, PA 19009  
Set of Plans attached

BIG BEAVER TOWNSHIP AND HOMEWOOD BOROUGH  
BEAVER COUNTRY, PENNSYLVANIA  
RECONSTRUCTION OF VIADUCT  
CARRYING  
STATE STREET  
OVER  
CONRAIL MAIN LINE

Doc Retool  
Dec 12/85

# OVERSIZE DOCUMENT(S)

<b>CONRAIL</b> 	
CONSOLIDATED RAIL CORPORATION	
CHIEF ENGINEER - DESIGN & CONSTRUCTION PHILA., PA.	
approved:  ENGR. BRIDGES & BUILDINGS	approved:  ASST. CHIEF ENGR. STRUCTURES

DRAWING TITLE: LOCATION PLAN AND TITLE SHEET	
des: WKT	dr: LJS
ck: A/BNT	tr:
DATE: APRIL 7, 1980	
PLAN NUMBER: 19862-R	
DRAWING NUMBER 1 OF 16	

*Original to file*

*Oliver*

**CONRAIL**

December 9, 1985

Mr. Jerry Rich  
Secretary  
Pa. PUC  
P.O. Box 3265  
Harrisburg, PA 17120

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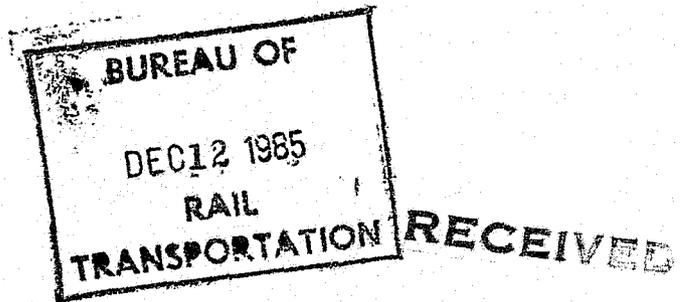
Should you have further questions covering this matter, please contact this office.

Very truly yours,

*F. T. Sullivan*  
F. T. Sullivan, P.E.  
Chief Engineer -  
Design and Construction

Room 1200

(215) 596-3848



DEC 16 1985  
SECRETARY'S OFFICE  
Public Utility Commission

December 9, 1985

Mr. Jerry Rich

PAGE TWO

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cc: Mr. G. S. Lehman, Chief Engineer  
Rail Safety Division  
Bureau of Safety and Compliance  
P. O. Box 3265  
Harrisburg, PA 17120

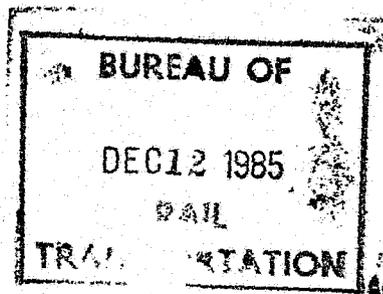
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Harrisburg, PA 17120  
Set of Plans attached.

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Deputy Executive Director and Chief Engineer  
Pa. Turnpike Commission  
P.O. Box 8531  
Harrisburg, PA 17105  
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Mr. David L. Grubb, Solicitor  
Boroughs of Homewood and Big Beaver  
Beaver, PA 15009  
Set of Plans attached.

Mr. Gene Morris  
County Solicitor  
Beaver County  
Beaver, PA 19009  
Set of Plans attached





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

January 8, 1986

IN REPLY PLEASE  
REFER TO OUR FILE  
C-00018925

In re:

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.

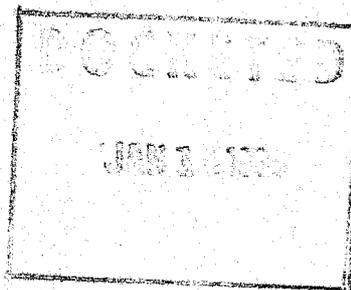
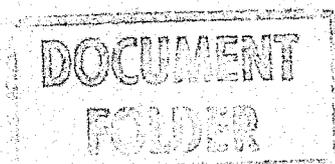
On November 14, 1985, the Pennsylvania Public Utility Commission arranged and conducted a field conference, at the site of the above captioned docket, for the purpose of approving final construction plans to replace the Homewood Viaduct Bridge.

As discussed at the time of the conference, Consolidated Rail Corporation has distributed final construction plans to the involved parties for their review.

So that the proceeding continues in a timely manner, the Commission intends to approve the plans within 30 days from the date of this letter unless objections to the final bridge design are received by the Commission.

Very truly yours,

G. S. Lehman, P.E., Manager  
Rail Safety Division  
Bureau of Safety and Compliance



DOCKETED  
JAN 21 1986

DAVID L. GROPP  
ATTORNEY AT LAW  
240 COMMERCE STREET  
POST OFFICE BOX 220  
BEAVER, PENNSYLVANIA 15009

ORIGINAL

AREA CODE 412  
774-2453

January 13, 1986

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JAN 21 1986

Commonwealth of Pennsylvania  
Pennsylvania Public Utility Commission  
Post Office Box 3265  
Harrisburg, Pennsylvania 17120

Attention: D. A. Oliver, P.E.  
Civil Engineer  
Rail Safety Division  
Bureau of Safety and Compliance

SECRETARY'S OFFICE  
Public Utility Commission

Re: C-00018925

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

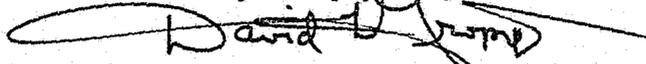
DOCUMENT  
FOUNDER

Dear Mr. Oliver:

The Consolidated Rail Corporation mailed out and same was received by the undersigned late December, 1985, a copy of the design plans prepared for replacement/reconstruction of the overhead bridge involved in the above captioned matter. Said plans were turned over to the Engineering Firm retained by the Borough of Big Beaver for general engineering purposes; the Borough of Homewood can not afford to retain general engineering services. Neither Borough can afford to retain engineering services that specialize in bridge design and/or construction.

As to the inquiry placed to the representatives at the site conference of November 14, 1985, it is now possible to answer on behalf of the Borough of Homewood and the Borough of Big Beaver that the final bridge design plans as prepared by Consolidated Rail Corporation have been seen. No critique as to the properness or soundness of the design is being rendered, and of course at this point time, the Public Utility Commission has already ruled upon other positions and/or objections of the Boroughs, and has been affirmed by the Commonwealth Court of Pennsylvania.

Very truly yours,



David L. Gropp, Solicitor  
for Homewood Borough and  
Big Beaver Borough

DLG:mmi

cc: Borough of Homewood  
Borough of Big Beaver