

NOTE: SEE RULES PRINTED ON PAGE 4 OF THIS FORM

C-18925

COMPLAINT

DUPLICATE RECORDS
ORIGINAL CERTIFIED

BEFORE

COMMONWEALTH COURT

PENNSYLVANIA PUBLIC UTILITY COMMISSION

BOROUGH OF HOMEWOOD and BOROUGH OF BIG BEAVER,
of Beaver County, Pennsylvania

COMPLAINT DOCKET

VS
PENN-CENTRAL TRANSPORTATION COMPANY; DEPARTMENT OF
HIGHWAYS OF THE COMMONWEALTH OF PENNSYLVANIA; PENNSYLVANIA
TURNPIKE COMMISSION and COUNTY OF BEAVER, PENNSYLVANIA

No. 18125

PENNSYLVANIA PUBLIC UTILITY COMMISSION:

1. The name and address of complainant are BOROUGH OF HOMEWOOD, Racine, Pa. 15010

and BOROUGH OF BIG BEAVER, P. O. Box 184, Koppel, Pa. 16136

2. The name and address of complainant's attorney are David L. Gropp, Beaver Trust Building, Beaver, Pennsylvania 15009.

the
3. Respondent utility is/ PENN-CENTRAL TRANSPORTATION COMPANY, successor to the Pennsylvania Company, maintaining directly, and/or through its subsidiaries, a right-of-way and railroad tracts through the boundaries of the Complainants, the PENNSYLVANIA TURNPIKE COMMISSION, maintaining a right-of-way and toll highway through the boundaries of the Complainants, the DEPARTMENT OF HIGHWAYS OF THE COMMONWEALTH OF PENNSYLVANIA and the COUNTY OF BEAVER, COMMONWEALTH OF PENNSYLVANIA.

4. (This paragraph to contain a succinct statement of the subject matter of the complaint).

(a) The Respondents, the PENN-CENTRAL TRANSPORTATION COMPANY and the DEPARTMENT OF HIGHWAYS OF THE COMMONWEALTH, have failed to maintain, keep in safe repair and condition as the same was originally constructed, a steel and reinforced concrete bridge or viaduct spanning the said right-of-way of the PENN-CENTRAL TRANSPORTATION COMPANY, which bridge or viaduct bears traffic as hereinafter set forth, as said Respondents are required to maintain and repair by Order of the Public Service Commission dated April 17, 1922 and indexed at Complaint Docket No. 1971.

(1) Said bridge or viaduct formerly carried traffic of State Highway Route No. 77 and presently bears traffic of State Highway Route No. 651, also L.R. No. 04057 and A. 680.

(2) Said Order dated April 17, 1922, provided in part:

IT IS FURTHER ORDERED: That the State Highway Department shall maintain the paving over and across the viaduct.

IT IS FURTHER ORDERED: That the Pennsylvania Company shall maintain the viaduct for its entire length.

(b) Due to the failure of the Respondent, PENN-CENTRAL TRANSPORTATION COMPANY, to properly maintain said bridge or viaduct, its condition is such that it creates a hazard for the safety of the public, in that same fails to provide adequate support for persons and vehicles passing over same; and its condition is such that it creates a hazard for the safety of life, limb and property, near and beneath the same as same is crumbling, decaying and resulting in falling concrete and debris upon the area near and beneath the same.

(c) Due to the failure of the Respondent, DEPARTMENT OF HIGHWAYS OF COMMONWEALTH OF PENNSYLVANIA, to properly maintain the paving on said bridge or viaduct the same is rough, in poor condition and a hazard to vehicles traveling on same.

(d) The Respondent, PENNSYLVANIA TURNPIKE COMMISSION, caused and necessitated said bridge or viaduct to be expanded and extended upon its establishing a right-of-way and toll highway and is joined herein as a party-in-interest.

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COMPL
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ENTRY No.

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(e) The Respondent, COUNTY OF BEAVER, is joined herein as party-in-interest as the bridge or viaduct is totally situate within its boundaries.

(f) The said bridge or viaduct was created and is in existence solely for the needs of the Respondents, PENN-CENTRAL TRANSPORTATION COMPANY (its predecessors) and the PENNSYLVANIA TURNPIKE COMMISSION.

5. (This paragraph to contain a succinct statement of the relief sought).

WHEREFORE the Complainants request that: (a) The Respondent, the PENN-CENTRAL TRANSPORTATION COMPANY, be required to repair and recondition without delay the steel and reinforced concrete bridge or viaduct which it constructed to a condition equal to that of when the same was constructed, or to a greater strength than that when the same was constructed if weight of present day motor vehicles passing over said viaduct so necessitate, and (b) The Respondent, the DEPARTMENT OF HIGHWAYS OF THE COMMONWEALTH OF PENNSYLVANIA, be required to repave the bridge or viaduct for its entire length.

Wherefore complainant prays that respondent may be required to answer the above allegations and that upon a final hearing the Commission will make such order in the premises as may seem meet.

ATTEST:

Elaine Buzzelli
Secretary

BOROUGH OF HOMEWOOD

By: Arthur S. [Signature]
Signature of Complainant
President of Council

ATTEST:

W. Paul Cunningham
Secretary

BOROUGH OF BIG BEAVER

By: Sidney A. Mellin
President of Council

AFFIDAVIT (Natural Person)

COMMONWEALTH OF PENNSYLVANIA }
County } ss:

....., being duly sworn (affirmed) according to law, deposes and says that the facts set forth (are true and correct; or are true and correct to the best of his knowledge, information and belief and he expects to be able to prove the same at the hearing hereof).

Signature of Affiant

Sworn and subscribed before me this
..... day of 19.....

My Commission Expires

Signature of Official Administering Oath

AFFIDAVIT (Corporation)

COMMONWEALTH OF PENNSYLVANIA }
BEAVER County } ss:

Alfred DeSanzo, being duly sworn (affirmed) according to law, deposes and says that he is the President of the Council of the Borough of Homewood, Pennsylvania; that he is authorized to and does make this affidavit for it; and that the facts set forth above (are true and correct; or are true and correct to the best of his knowledge, information and belief and he expects the said Respondents to be able to prove the same at the hearing hereof).

Signature of Affiant

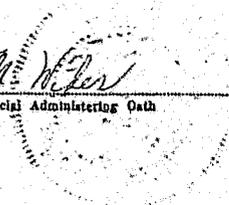
Alfred DeSanzo

Sworn and subscribed before me this
30th day of April 19 70

My Commission Expires
The first Monday of January 1972

Signature of Official Administering Oath

Edith M. Weber



RULES

The Rules of Practice contain the following provisions:

FORMAL COMPLAINTS (Rules 25 to 30 Inclusive)

(A) **CONTENT:**—Each formal complaint shall be divided into numbered paragraphs and shall set forth (1) Name and address of the complainant and the name and address of complainant's attorney, if any; (2) Name and address of the respondent complained against and the nature and character of its business; (3) The interest of the complainant in the subject matter; (4) The act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of any law which the Commission has jurisdiction to administer or of any regulation or order of the Commission, with specific reference to the section of the statute or particular regulation or order of the Commission involved; (5) A clear statement of the relief sought.

(B) **EXECUTION; JOINDER OF CAUSES AND PARTIES:**—Each formal complaint shall be in writing and shall be subscribed and verified; (1) By the party filing such complaint or by one of the parties if there be more than one; (2) By an authorized officer of the party filing the complaint if the party be a corporation or association. The form of the affidavit shall be as prescribed in Rule 7 of these rules. Complaints against rates and service shall not be included in the same document. Two or more grounds of complaint involving the same purpose, subject or state of facts may be included in one complaint, but shall be separately stated, and numbered. Two or more complainants may join in one complaint if their causes of complaint are against the same respondent, involve substantially the same purposes and subjects and are predicated upon like sets of facts.

(C) **FILING; SERVICE:**—An original and three copies of each complaint shall be filed and, in case more than one respondent is named, an additional copy shall be filed for each additional respondent. The Commission will serve a copy of the complaint upon each respondent together with a notice to satisfy the complaint or answer the same in writing, within ten (10) days after such service.

Complaints by a public utility or other person or corporation subject to the public utility law against any regulation or order of the Commission, which the complainant is or has been required to observe or carry into effect, shall be substantially in the form above described and reference shall be made to the particular regulation or order or part thereof complained against and shall quote the pertinent portions thereof.

Crossing Complaints. (a) **Parties Respondent.** Whenever a complaint is made under Section 409 of the Public Utility Law that any crossing is dangerous or inadequate and requires reconstruction, relocation, alteration or abolition, all public utilities and municipal corporations concerned and, where applicable, the Department of Highways of the Commonwealth of Pennsylvania, shall be made parties respondent.

ANSWERS TO COMPLAINTS (Rule 34 to 36 Inclusive)

(D) **FORM AND EXECUTION; CONTENT; FILING AND SERVICE:**—Every answer shall be in writing and shall be subscribed and verified in the form stated in Rule 7 by the party filing such answer or by one of the parties if there is more than one or if the party is a partnership, or by an authorized officer of the party filing the answer if the party be a corporation or association. The answer shall set forth in paragraphs numbered to correspond with the complaint, the facts upon which respondent relies and shall specifically admit or deny the material allegations of the complaint. An original and two copies of each answer shall be filed. Proof of service of one copy of each answer upon each complainant or his attorney shall be attached to such answer.

MOTIONS TO STRIKE OR DISMISS OR FOR AMPLIFICATION (Rule 37 to 39 Inclusive)

(E) Any party deeming a pleading insufficient in form may file with the Commission a motion to strike. Any party deeming a pleading insufficient in substance, or desiring to question the jurisdiction of the Commission, may file with the Commission a motion to dismiss. Any party deeming the allegations of fact in any pleading to be so insufficiently averred that adequate answer to the pleading is impossible, may file with the Commission a motion for amplification of the specific allegations deemed insufficient. An original and two copies of each motion to strike or dismiss or for amplification shall be filed. Proof of service of a copy of the motion upon each party of record shall be attached to such motion.

HEARINGS (Rule 40 to 45 Inclusive)

(F) **PRELIMINARY STATEMENTS, EVIDENCE, CONTINUANCE, CORRECTIONS OF TRANSCRIPT:**—At any initial hearing all persons entering an appearance shall state for the record (before any testimony shall be received) their names, addresses, and for whom they appear. The presiding official may require or allow a factual statement of the scope of any pleading or the position of any party in the case.

All written pleadings and all Commission orders in a case shall constitute a part of the record without formal offer. Facts admitted by the adverse party of record or by testimony, exhibits or in writing need not be proved. Copies of each exhibit shall be submitted in sufficient number to provide one copy for each party and three copies for Commission use.

Only under exceptional circumstances will requests for continuance of a hearing be considered unless submitted at least five (5) days prior to the hearing date.

No correction of any transcript of testimony shall be made except upon: (a) written request within fifteen (15) days after the transcript has been filed with the Commission, such request being accompanied by proof of service upon all parties of record; or (b) upon written stipulation by all parties of record filed within twenty (20) days after the transcript has been filed with the Commission.

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
HARRISBURG

In re Complaint of
Borough of Homewood and Borough of Big Beaver
vs.
Penn Central Transportation Company, Department
of Highways of the Commonwealth of Pennsylvania,
Pennsylvania Turnpike Commission and County of
Beaver

Complaint Docket

No. 18925.....

1970..

TO

Bayard H. Roberts, Secretary
Penn Central Transportation Company
1844 Transportation Center
Philadelphia, Pennsylvania 19104

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

TAKE NOTICE:

That a complaint in the above entitled matter, of which the attached is a true and correct copy, has been presented and filed of record with the Pennsylvania Public Utility Commission.

You are hereby required to satisfy the said complaint or to answer the same in writing, duly verified by affidavit, within.....**TWENTY**.....days from the date hereof.

In Witness Whereof, PENNSYLVANIA PUBLIC UTILITY COMMISSION has caused its seal to be hereunto attached, duly attested by its Secretary, this.....**SIXTH**.....day of.....**MAY**....., 1970

DOCKETED ATTEST:
COMPLAINT DOCKET
MAY 8 1970
ENTRY NO.

.....**J. W. REINHARD**.....
Secretary

NOTE:—Attention is called to Rule..... of the RULES OF PRACTICE before the Pennsylvania Public Utility Commission, reprinted on the reverse hereof.

Enclosure

Certified Mail
Receipt Requested

SIMILAR NOTICES:
Lester F. Burlein, Chairman
Pennsylvania Turnpike Commission
P. O. Box 2531
Harrisburg, Pennsylvania

Robert W. Cunliffe, Deputy Attorney General
Department of Highways
Harrisburg, Pennsylvania

(over)

Samuel R. Pitts, Solicitor
County of Beaver
Courthouse
Beaver, Pennsylvania 15009

CAS:jg

RULE

Complaints—Form

(a) All complaints must be by petition sworn to by the complainant. If complainant is a corporation or association, a duly authorized officer may execute the complaint. No particular form is required; the Commission will, upon request, furnish blank forms.

Contents

(b) The complaint must set forth the name and address of the complainant, and of his attorney, if any, the name and address of the public utility complained against, and the nature and character of its business; a concise statement of all the material facts upon which the complaint is founded; if a violation of any statute or ruling or order of the Commission is complained of, a reference to the section of the statute or particular ruling or order of the Commission must appear.

Additional Copies

(c) In addition to the original verified complaint three copies thereof shall be furnished and in case more than one public utility is named as respondent, an additional copy for each additional respondent.

Service

(d) A copy of the complaint will be forwarded by the Commission to each of the public utilities complained against, accompanied by a notice from the Commission calling upon each such utility to satisfy the complaint or answer the same, in writing under oath, within such time as may be specified in said notice.

Answer

(e) The answer, duly verified, must specifically admit or deny the material allegations of the complaint, and must clearly set forth the facts upon which respondent relies. Three copies of the answer shall be filed with the original, and one copy served by the respondent on the adverse party personally or by registered mail and due proof of such service filed with the Commission.

Demurrer

(f) Any respondent deeming the complaint insufficient to show a breach of legal duty or desiring to set up the absence of power or authority in the Commission to determine such complaint may, instead of answering, serve on the complainant as answers are required to be served and file with the Commission, within the time specified in the notice to satisfy or answer, its claim of insufficiency or absence of such power or authority and, for the purpose of disposing of the questions thereby raised, the facts stated in the complaint will be deemed to be admitted. Proof of service of the demurrer upon the complainant shall be filed with the Commission.

Hearings

(g) If, from a consideration of the complaint and answer, or otherwise, the Commission determines that reasonable ground exists for investigating the complaint and that a hearing is necessary, a time and place for hearing will be fixed and notice thereof given to the complainant and the respondent.

Evidence

(h) The complainant must establish by evidence the facts alleged in the petition unless the respondent admits the same, except where the burden of proof is imposed by law upon the public utility complained against. Verified copies of all documents may be substituted for originals which have been offered in evidence.

Parties

Whenever complaint is made that any grade crossing is dangerous and should be abolished, or that any overhead crossing, subway or underpass is dangerous or inadequate and requires reconstruction, relocation, alteration or abolition, any township, borough, city or county concerned shall be named as a party and shall be given due notice by the Secretary of all hearings of such complaint.

NOTE: The reverse of the enclosed Complaint Notice contains a summary of the principle provisions of the Commission's Rules of Practice. Paragraph (f) thereof, relating to Demurrers, has been superseded by Rules 37-39, which are as follows:

MOTIONS TO STRIKE OR DISMISS OR FOR AMPLIFICATION

37. Any party deeming a pleading insufficient in form may file with the Commission a motion to strike. Any party deeming a pleading insufficient in substance, or desiring to question the jurisdiction of the Commission, may file with the Commission a motion to dismiss.

38. Any party deeming the allegations of fact in any pleading to be so insufficiently averred that adequate answer to the pleading is impossible, may file with the Commission a motion for amplification of the specific allegations deemed insufficient.

39. An original and two copies of each motion to strike or dismiss or for amplification shall be filed. Proof of service of a copy of the motion upon each party of record shall be attached to such motion.

INSTRUCTIONS TO DELIVERING EMPLOYEE
 Show to whom, date, and address where delivered. Deliver ONLY to addressee.
 (Additional charges required for these services)

RECEIPT C. 18925 (SEC)
 Received the numbered article described below.

REGISTERED MAIL: REGISTERED MAIL (check if required)
 SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in):
 BOX 2531

DATE DELIVERED: MAY 2 1944
 SIGNATURE OF ADDRESSSEE'S AGENT, IF ANY: [Signature]

FROM: Penn Central Transportation Co., et al.

INSTRUCTIONS TO DELIVERING EMPLOYEE
 Show to whom, date, and address where delivered. Deliver ONLY to addressee.
 (Additional charges required for these services)

RECEIPT C. 18925 (SEC)
 Received the numbered article described below.

REGISTERED MAIL: REGISTERED MAIL (check if required)
 SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in):
 [Signature]

DATE DELIVERED: [Signature]
 SIGNATURE OF ADDRESSSEE'S AGENT, IF ANY: [Signature]

FROM: Penn Central Transportation Co., et al.

INSTRUCTIONS TO DELIVERING EMPLOYEE
 Show to whom, date, and address where delivered. Deliver ONLY to addressee.
 (Additional charges required for these services)

RECEIPT C. 18925 (SEC)
 Received the numbered article described below.

REGISTERED MAIL: REGISTERED MAIL (check if required)
 SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in):
 [Signature]

DATE DELIVERED: 5-8-44
 SIGNATURE OF ADDRESSSEE'S AGENT, IF ANY: [Signature]

FROM: Penn Central Transportation Co., et al.

**DUPLICATE RECORD.
 ORIGINAL CERTIFIED
 TO COMMONWEALTH COURT.**

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

*Rec'd
5/23/70*

BOROUGH OF HOMEWOOD and BOROUGH OF)
BIG BEAVER)
v.)
PENN CENTRAL TRANSPORTATION COMPANY,)
DEPARTMENT OF HIGHWAYS OF THE COM-)
MONWEALTH OF PENNSYLVANIA,)
PENNSYLVANIA TURNPIKE COMMISSION)
and COUNTY OF BEAVER)

Complaint Docket
No. 18925

ANSWER OF PENN CENTRAL TRANSPORTATION COMPANY

Comes now Penn Central Transportation Company, respondent,
by its attorney, Eugene E. Anderson, and makes the following
answer to the above-captioned complaint:

DUPLICATE RECORD.
ORIGINAL CERTIFIED
COMMONWEALTH COURT.

1. Admitted.
2. Admitted.
3. Admitted, except that Penn Central Transportation Company is successor to The Pennsylvania Railroad Company, not Pennsylvania Company.
4. (a) Denied insofar as the allegations relate to any failure by Penn Central Transportation Company to maintain, repair and keep the bridge in safe condition as the same was originally constructed. The bridge was originally constructed to carry state legal loading, which at that time was 15 tons. The bridge is still capable of carrying this load capacity.
 - (1) Denied for lack of knowledge.
 - (2) Admitted.
- (b) It is denied that the bridge fails to provide adequate support for vehicular and pedestrian traffic passing over the bridge. It is admitted that there has been some spalling

DOCKETED
COMPLAINT DOCKET
MAY 25 1970
ENTRY No.

RECORD
FOLDER

of concrete on the structure, and Penn Central Transportation Company has from time to time removed loose concrete. This was done most recently in February, 1970. The bridge does not constitute a hazard to public safety on account of the spalling of concrete.

(c) Inapplicable to Penn Central Transportation Company.

(d) Inapplicable to Penn Central Transportation Company.

(e) Inapplicable to Penn Central Transportation Company.

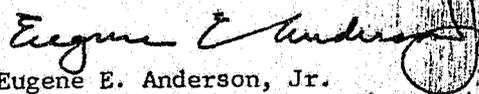
(f) Denied. The bridge serves the needs of the traveling public, including residents of Homewood and Big Beaver.

5. (a) The bridge is still capable of carrying the same loading as when it was constructed. This is the extent of the obligation of Penn Central Transportation Company. If greater strength is desired, parties other than Penn Central Transportation Company should be responsible for the cost of reconstruction.

(b) Inapplicable to Penn Central Transportation Company.

WHEREFORE, Penn Central Transportation Company, respondent herein, prays your Honorable Commission to issue an order dismissing the complaint as to it.

Respectfully submitted,


Eugene E. Anderson, Jr.
Counsel for Penn Central
Transportation Company

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF ALLEGHENY)

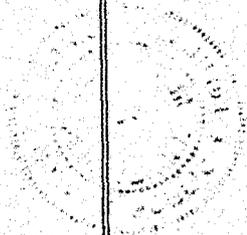
W. D. STREIFF, being duly sworn according to law, deposes and says that he is Regional Engineer - Structures of Penn Central Transportation Company; that he is authorized to and does make this affidavit for it; and that the facts set forth above are true and correct to the best of his knowledge, information and belief; and he expects Penn Central Transportation Company to be able to prove the same at any hearing hereof.

W. D. Streiff

Sworn to and subscribed before me
this 22d day of May, 1970.

Patricia H. Hamilton
Notary Public

My commission expires PATRICIA H. HAMILTON, Notary Public
Pittsburgh, Allegheny County, Pa.
My Commission Expires November 29, 1971



Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED
MAY 23 1970
SECRETARY'S OFFICE
PUBLIC UTILITY COMM.

BOROUGH OF HOMEWOOD and BOROUGH OF)
BIG BEAVER)

v.)

PENN CENTRAL TRANSPORTATION COMPANY,)
DEPARTMENT OF HIGHWAYS OF THE COM-)
MONWEALTH OF PENNSYLVANIA,)
PENNSYLVANIA TURNPIKE COMMISSION)
and COUNTY OF BEAVER)

Complaint Docket

No. 18925

PROOF OF SERVICE

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF ALLEGHENY)

ss:

Eugene E. Anderson, Jr., being duly sworn according to law, deposes and says that he served one copy of answer of Penn Central Transportation Company in the above-captioned proceeding upon each of the following:

David L. Gropp, Esq., Beaver Trust Building,
Beaver, Pennsylvania 15009

Robert W. Cunliffe, Esq., Deputy Attorney General,
Department of Highways, Capital Associates
Building, Harrisburg, Pennsylvania

Pennsylvania Turnpike Commission, Post Office
Box 2531, Harrisburg, Pennsylvania

Commissioners of Beaver County, Courthouse
Beaver, Pennsylvania 15009

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT

Eugene E. Anderson, Jr.

Sworn to and subscribed before me
this 22d day of May, 1970.

Patricia H. Hamilton
Notary Public

DOCKETED
COMPLAINT DOCKET
MAY 25 1970

My commission expires

PATRICIA H. HAMILTON, Notary Public
Pittsburgh, Allegheny County, PENNSYLVANIA
My Commission Expires November 29, 1971

RECORD
FOLDER

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
HARRISBURG 17120



Legal Bureau

IN REPLY REFER TO

July 20, 1970

RECEIVED
JUL 21 11 07 AM '70
SECRETARY'S OFFICE
PENNSYLVANIA PUBLIC UTILITY
COMMISSION

Joseph W. Reinhard, Secretary
Pennsylvania Public Utility Commission
North Office Building
Harrisburg, Pennsylvania 17120

Re: County of Beaver
Answer of the Department of Transportation
P.U.C. 18925

Dear Mr. Reinhard:

Enclosed for filing with the Commission are the original and two (2) copies of the Answer of the Department of Transportation of the Commonwealth of Pennsylvania to the above captioned Complaint.

I hereby certify that copies of this Answer were served on this date on all parties of record.

Very truly yours,

William E. Bethards
William E. Bethards
Assistant Attorney General

Enclosures: 3
WEB/mb

RECORD
FOLDER

O.K.
M. W. P.
FILE

FILED AT HEARING
RECEIVED

OCT 17 11 47 AM '70

PROOF OF PUBLICATION

SECRETARY'S OFFICE
PUBLIC UTILITY
COMMISSION



THE NEWS-TRIBUNE

BEAVER FALLS, PENNSYLVANIA

(Under Act No. 587, approved May 16, 1929)

Beaver Falls, Pa., September 30 196 1970.

State of Pennsylvania, }
County of Beaver, } ss:

No. _____ Term, 196...

James H. March

_____, Publisher of THE NEWS-TRIBUNE of the County and State aforesaid, being duly sworn, deposes and says that THE NEWS-TRIBUNE, a newspaper of general circulation published at 715 Thirteenth Street, City of Beaver Falls, County and State aforesaid, was established Aug. 25, 1884, since which date THE NEWS-TRIBUNE has been regularly issued in said County, and that the printed notice or publication attached hereto is exactly the same as printed and published in the regular editions and issues of the said THE

NEWS-TRIBUNE on the following dates, viz: September 23, and 30, 1970.

_____ and the _____ day of _____ A. D. 19_____.

Affiant further deposes that he is an officer duly authorized by THE TRIBUNE PRINTING COMPANY, a corporation, the publisher of said NEWS-TRIBUNE, a newspaper of general circulation, to verify the foregoing statement under oath, and affiant is not interested in the subject matter of the aforesaid notice or advertisement, and that all allegations in the foregoing statements as to time, place and character of publication are true.

Copy of Notice of Publication

James H. March

Publisher, THE NEWS-TRIBUNE.

Sworn to and subscribed before me this

30th day of September, 1970.

David L. Gropp

Notary Public.

Beaver Falls, Beaver County
Expires: February 2, 1973

NOTICE
NOTICE is hereby given that a complaint having been filed with the Pennsylvania Public Utility Commission, alleging dangerous conditions existing at crossing where State Highway Route No. 77 (Legislative Route No. 04657) crosses, above grade, the tracks and right-of-way of Penn. Central Transportation Company and the right-of-way of the Pennsylvania Turnpike in the Boroughs of Homewood and Big Beaver, Beaver County, Pennsylvania, which proceeding is entitled "Borough of Homewood and Borough of Big Beaver versus Penn Central Transportation Company, Department of Highways of the Commonwealth

of Pennsylvania, Pennsylvania Turnpike Commission and County of Beaver (C. 18925), the Commission has fixed Thursday, October 8, 1970, at 10:00 a.m., in the Court House at Beaver, Pennsylvania, as the time and place for hearing. All parties interested, including the owners of adjacent property, may appear and be heard in person or by counsel.
David L. Gropp
Attorney for Boroughs of Homewood and Big Beaver
9/23-30

ENT OF ADVERTISING COSTS

n & Gropp, Attys.

Beaver Trust Building

Beaver, Pennsylvania 15009

To THE NEWS-TRIBUNE, Dr.

For publishing the notice or publication attached hereto on the above stated dates, - - - \$ 28.50

Probating same, - - -

Total, - - -

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT

PUBLISHER'S RECEIPT FOR ADVERTISING COSTS

THE TRIBUNE PRINTING COMPANY, publisher of THE NEWS-TRIBUNE, a newspaper of general circulation, hereby acknowledges receipt of the aforesaid notice and publication costs and certifies that the same have been duly paid.

DOCKETED
COMPLAINT DOCKET
OCT 21 1970

THE TRIBUNE PRINTING COMPANY, A Corporation,
Publisher of THE NEWS-TRIBUNE, a Newspaper
of General Circulation.

By _____

*The
cao*

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

BOROUGH OF HOMEWOOD and BOROUGH OF
BIG BEAVER

v.

PENN CENTRAL TRANSPORTATION COMPANY,
DEPARTMENT OF HIGHWAYS OF THE COM-
MONWEALTH OF PENNSYLVANIA,
PENNSYLVANIA TURNPIKE COMMISSION
and COUNTY OF BEAVER

:
:
:
:
: Complaint Docket
:
: No. 18925 /

ANSWER OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

Now comes the Pennsylvania Department of Transportation and makes the following Answer to the above-captioned Complaint.

RECEIVED
JUL 21 11 07 AM '70
PUBLIC UTILITY
COMMISSION

1. Admitted.

2. Admitted.

3. Admitted, except that the Department of Highways of the Commonwealth of Pennsylvania, is now the Pennsylvania Department of Transportation.

4. (a) Denied insofar as the Pennsylvania Department of Transportation is concerned.

(1). Denied that this bridge presently has any State highways traversing it.

(2). Admitted.

(b) The Department of Transportation is without knowledge as to the averments of this paragraph, since it is only applicable to the Penn Central Transportation Company.

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT

RECORD
FOLDER

DOCKETED
COMPLAINT DOCKET
JUL 24 1970
ENTRY No. *[Signature]*

(c) Denied. The Pennsylvania Department of Transportation puts the Complainant upon strict proof of this averment.

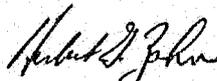
(d) The Pennsylvania Department of Transportation is without knowledge of the averments contained in this paragraph, as it is applicable to the Pennsylvania Turnpike Commission.

(e) Inapplicable to Department of Transportation.

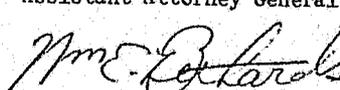
(f) The Pennsylvania Department of Transportation is without knowledge regarding the averments contained in this paragraph, as it is applicable to the Penn Central Transportation Company and the Pennsylvania Turnpike Commission.

WHEREFORE, the Pennsylvania Department of Transportation requests that the Commission scheduled such field conferences and hearings as are necessary to determine the issues involved.

Respectfully submitted,



Herbert C. Zahn
Assistant Attorney General



William E. Bethards
Assistant Attorney General

Dated at Harrisburg this 16th day of July, 1970

A F F I D A V I T

Commonwealth of Pennsylvania :
County of Dauphin : SS

D. C. Sims, being duly sworn according to law, deposes and says that he is Deputy Secretary and Chief Engineer, Department of Transportation, Commonwealth of Pennsylvania; that he is authorized to and does make this Affidavit for and on behalf of the plaintiff above and he is authorized so to do, and that the facts set forth in the foregoing Answer are true and correct to the best of his knowledge, information, and belief.

D. C. Sims
D. C. SIMS,
Deputy Secretary and Chief
Engineer, Department of
Transportation

Sworn and subscribed before me this

20 day of July, 1970.

Margaret I. Albright
Margaret I. Albright, Notary
My Commission Expires: 2/5/72

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Borough of Homewood and Borough of Big
Beaver of Beaver County, Pennsylvania

Complainants

vs.

Penn Central Transportation Company;
Department of Highways of the Common-
wealth of Pennsylvania, now the
Pennsylvania Department of Transporta-
tion; Pennsylvania Turnpike Commission;
and County of Beaver, Pennsylvania

Complaint Docket No. 18925

RECEIVED
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SECRETARY'S OFFICE

REPLY BRIEF OF THE
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

William E. Bethards
Assistant Attorney General

RECORD
FOLDER

DOCKETED
COMPLAINT DOCKET
JAN 20 1971
ENTRY No.

REPLY BRIEF OF THE DEPARTMENT OF TRANSPORTATION

It is admitted that Section 409 of the Public Utility Law grants your Honorable Commission exclusive jurisdiction over the maintenance and a abolition of rail-highway crossings. However, such exclusive jurisdiction only extends to the area of the crossing as determined by your Honorable Commission and to the means of maintenance or, in the event of a possible abolition, to the forum in which the proceeding to abolish must be instituted. Section 409 does not extend to possible parties to any proceeding before your Honorable Commission unless such parties have an interest in the facilities at the particular crossing.

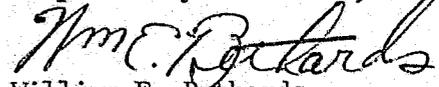
It is the Department's view that your Honorable Commission only has jurisdiction over the Commonwealth if there is a State highway traversing the particular crossing. Such is not the situation in this case because in the mid-1950's the State highway route over the bridge was relocated and the road on the bridge then reverted to the Borough.

The record clearly shows that the Borough of Homewood applied for and is receiving money from the Liquid Fuel Tax Fund for the purpose of maintaining its roads, including the road on the structure in question. It is this money which should be applied to maintaining the road on this bridge.

In brief, it is the Department's position that:

1. Since there is no longer a State highway on the bridge, your Honorable Commission has no jurisdiction over the Commonwealth. Therefore, this Complaint should be dismissed as to the Commonwealth.
2. Since money from the Liquid Fuel Tax Fund is being allocated by the Department to the Borough for road maintenance, including maintenance of the road on the bridge under consideration, the Department has no authority to expend further State funds thereon. Such an expenditure, even pursuant to an Order of your Honorable Commission, would constitute a double tax and would clearly be unconstitutional.

Respectfully submitted,


William E. Bethards
Assistant Attorney General

Dated at Harrisburg, Pennsylvania this 31ST day of Dec., 1970

PENNSYLVANIA PUBLIC UTILITY
COMMISSION
COMPLAINT DOCKET No. 18925.

BOROUGH OF HOMEWOOD and BOROUGH
OF BIG BEAVER of Beaver County,
Pennsylvania, Complainants

vs.

PENN CENTRAL TRANSPORTATION
COMPANY; DEPARTMENT OF HIGHWAYS
OF THE COMMONWEALTH OF PENNSYL-
VANIA, now the PENNSYLVANIA TURN-
PIKE COMMISSION; and COUNTY OF
BEAVER, PENNSYLVANIA

BRIEF ON BEHALF OF COMPLAINANTS

BALDWIN AND GROPP
ATTORNEYS AT LAW
BEAVER TRUST BUILDING
BEAVER, PENNSYLVANIA 15009

JAN 20 1971

PENNSYLVANIA PUBLIC UTILITY COMMISSION

BOROUGH OF HOMEWOOD and
BOROUGH OF BIG BEAVER of Beaver
County, Pennsylvania,
Complainants

vs.

PENN CENTRAL TRANSPORTATION COMPANY;
DEPARTMENT OF HIGHWAYS OF THE
COMMONWEALTH OF PENNSYLVANIA, now
the PENNSYLVANIA DEPARTMENT OF TRANSPORTATION;
PENNSYLVANIA TURNPIKE COMMISSION; and
COUNTY OF BEAVER, PENNSYLVANIA

COMPLAINT DOCKET

No. 18925

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PENNSYLVANIA PUBLIC UTILITY COMMISSION

BRIEF ON BEHALF OF COMPLAINANTS

This matter is presently before the Public Utility Commission pursuant to a Complaint filed by the Complainants and received by the Public Utility Commission on or about May 7, 1970. The subject matter of this proceeding is an above grade viaduct or bridge crossing approximately 705 feet in length which spans the tracts and right-of-way of Penn Central Transportation Company and roadbed and right-of-way of the Pennsylvania Turnpike in the Boroughs of Homewood and Big Beaver, Beaver County, Pennsylvania.

HISTORY

Pursuant to orders of the Public Service Commission issued May 10, 1921 and April 17, 1922 at Complaint Docket No. 1971 (Decisions of the Public Service Commission of the Commonwealth of Pennsylvania; Vol. III, pages 986-991 and Vol. V, pages 231-236) a viaduct consisting of 12 spans and 11 intermediate piers, approximately 567 feet in length, with a 2 span and earth fill ramp extending from the easterly side thereof to the grade of the street below, was constructed with construction commencing approximately in the year 1922. Then pursuant to an order of the Public Utility Commission issued October 16, 1950 at Application Docket No. 76051 an addition to the aforesaid viaduct was authorized to be constructed by the Pennsylvania Turnpike Commission, which addition was to consist of three spans, the southerly end to be supported by existing northerly pier of the original viaduct and then 2 other new inter-

BALDWIN AND GROPP
ATTORNEYS AT LAW
BEAVER, PENNSYLVANIA

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COMPLAINT DOCKET
JAN 20 1971

mediate piers for the rest of the additional spans, totalling approximately 138 feet in length. Subsequently, it resulted from a proceeding before the Public Utility Commission and order issued July 26, 1954 at Complaint Docket 15932 that the ramp from the easterly side of the original viaduct was closed to vehicular traffic and left open only to pedestrian traffic, in which condition it exists today.

Said viaduct formerly carried traffic of State Highway Route No. 77 (Pennsylvania Traffic Route 18), which Route was subsequently relocated some distance east of the viaduct. The same bears traffic of L.R.04057, also known or formerly known as State Highway Route 651, and T.680 (The Respondent, Pennsylvania Department of Transportation alleges that said L.R.04057 ends a few feet south of the viaduct and does not transverse the same). The viaduct provides a vital and necessary link of travel to the residents and children of the Complainants and surrounding communities, and for services provided by the Complainants and said communities.

ISSUES

I. Has the Respondent, the Penn Central Transportation Company failed to maintain, keep in safe repair and condition the original constructed viaduct as required by Orders of the Public Utility Commission or its successor, the Pennsylvania Service Commission, as to prevent hazard to the public?

II. Has the Respondent, the Department of Highways of the Commonwealth of Pennsylvania, now known as and hereinafter referred to as the Pennsylvania Department of Transportation, failed to maintain, keep in safe repair and condition the road surface of the entire viaduct?

ARGUMENT

I. The aforesaid Order of the Public Service Commission dated April 17, 1922 provided the Penn Central Transportation Company (as successor) shall maintain the viaducts original length. Section 921 of Art. IX of the "Public Utility Law" (Act of 1937, May 28, P.L.1053; 66 P.S.1361) provides that:

In any case involving any alleged violation by a public utility, contract carrier by motor vehicle, or broker or any lawful determination or order of the commission, the burden of proof shall be upon the public utility, contract carrier by motor vehicle, or broker complained against, to show that the determination or order of the commission has been complied with.

To meet this legislatively imposed burden of proof, the Respondent Penn Central Transportation Company provided one of its engineers to testify that from visual inspection from the ground below it was his opinion that nothing more need be done to the original viaduct span and piers, except that concrete be peeled from same as was done in January of 1970 as more scales loose in the future, and that in the next 3 or 4 years that the bridge get a coat of concrete plaster. On cross-examination the engineer of said Respondent admitted that approximately 2 inches of concrete had to ^{have} spalled off of the viaduct so as to expose primary and secondary support rods, that such exposure of the support rods, along with deterioration of such rods by exposure to climatic conditions caused support loss to the viaduct. The Complainants to the contrary offered into evidence the fact that a lady pedestrian while walking across the sidewalk area stepped into a hole through the viaduct, that large and small hunks of concrete are continually falling from the original viaduct span, endangering pedestrians, vehicles and other property below this above grade crossing and continually weakening the load bearing capabilities of the same, and resulting in gaps and holes in the structure.

Also the said Respondent admitted through its engineer that as to the viaduct here in question it has not complied with the Order of the Public Utility Commission issued October 28, 1968, recognizing the potential dangers of the weakening of such old constructions, requiring inspection and re-evaluation of the load capacity rating with such data, and other information as required, to be completed and filed with the Public Utility Commission not later than September 1, 1969.

The Respondent, Penn Central Transportation Company has not adequately maintained the portion of the original viaduct and the public is continually endangered by same through falling chunks of concrete, exposed support rods and inadequate support bearing capabilities.

II. The aforesaid Order of the Public Service Commission dated April 17, 1922 and Order of the Public Utility Commission dated October 16, 1950 provide that the Respondent, the Pennsylvania Department of Transportation (as successor) shall maintain the paving over the entire viaduct span. Said Respondent asserts that it no longer has such duty or obligation due to a relocation by it about the mid-1950's of State Highway Route 77 (Pennsylvania Traffic Route 18) and that its nearest roadway (L.R.04057) ends a few feet to the southerly end of the viaduct. Section 409 of Art. IV of the "Public Utility Law", as amended (Act of 1937, May 28, P.L.1053; 1938, Sp.Sess., Sept. 28, P.L.44 § 1; 1945, May 25, P.L.1012, § 1; 66 PS 1179) governs this issue of responsibility as once the jurisdiction of the Public Utility Commission attaches the problem of a grade crossing, it has exclusive power in dealing with maintenance or abandonment of same. Department of Highways v. Pennsylvania Public Utility Commission, 198 Pa. Super.87, 182 A.2d 267 (1962); Pittsburgh Railways Co. v. Pennsylvania Public Utility Commission, 198 Pa. Super.415, 182 A.2d 80 (1962).

Subparagraph (b) of said Section 409 provides:

The commission is hereby vested with exclusive power to determine and prescribe, by regulation or order, the points at which, and the manner in which, such crossing may be constructed, altered, relocated or abolished, and the manner and conditions in or under which such crossings shall be maintained, operated, and protected to effectuate the prevention of accidents and promotion of the safety of the public.

Said Orders of April 17, 1922 and October 16, 1950 are still in effect; the said Respondent has not been relieved by Order of the Public Utility Commission of any responsibility of maintenance, but merely claims abandonment.

Section 210 of Art. II, as amended (Act of 1945, June 1, P.L.1242; 1947, June 20; P.L.677, § 1; 1949, May 14, P.L.1391, § 1; 36 PS 670. 210) and Section 703 of Art. VII (Act of 1945, June 1, P.L.1242; 36 P.S.670. 703) of the "State Highway Law" otherwise legislatively control said Respondents abandonment rights and maintenance of the viaducts or bridges. Said latter Section 703 deals only with once county bridges of which the responsibility for construction and maintenance was assumed by the Commonwealth and then is subsequently abandoned, and as such is not herein applicable. The former Section 210 which

authorizes the Secretary of the Respondent to relocate and abandon highways, the wording of which existed in prior legislation and which wording has been judicially interpreted so that when bridges are involved in a relocation abandonment, the bridge is determined to revert to its original status, thus imposing construction and maintenance on the party that originally had responsibility for same. Commonwealth v. Lehigh Coal & Navigation Company, 285 Pa. 551, 132 A. 705 (1926); Commonwealth v. Navigation Co., 20 North. 89 (1925). Such would infer that the Respondent, the Pennsylvania Department of Transportation could not abandon its original responsibility, or in the alternative, if it can by such Section such duty of construction and maintenance would come to rest upon the Respondents, the Penn Central Transportation Company and the Pennsylvania Turnpike Commission, as to the respective portions of the viaduct that each had created. In no event, should the Respondent, the Pennsylvania Department of Transportation, be released from repairing and resurfacing the potted and dangerous paving conditions that have resulted from its failure to maintain the viaduct paving since the mid 1950's.

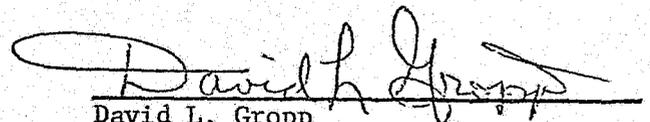
CONCLUSION

As the existence of the viaduct here involved came into existence, first to accommodate the passage of "...a daily average of 100 trains, half of them passenger, many of them running at a high rate of speed.", (Decisions of the Public Service Commission of the Commonwealth of Pennsylvania, Vol. III, page 988, Complaint Docket No. 1971) for the benefit of the predecessor of the Respondent, the Penn Central Transportation Company, and then added onto for the benefit of the Pennsylvania Turnpike Commission in that both divided and cut through the boundaries of the Complainants with their rights-of-way in such a physical manner so as to make it impossible to eliminate the viaduct, those two Respondents must adequately maintain and repair the viaduct. It is imperative that this viaduct receive immediate attention and repair, especially now that the above grade crossing (Penn Central Transportation Company bridge O.H. Bridge 37.50, Main Line, Valley Division) on L.R.04012-1 is closed and the subject matter of Complaint Docket No. 19018, to enable the Complainants

to continue to provide fire and police protection, to provide safe and convenient travel for residents of the Complainants and surrounding communities, including school bused children. Due to the present dangers of personal and property injury by falling spalling concrete and debris from the original 567 feet of the viaduct, including passengers, employees and property of the Respondent, and the weakened condition of said portion of the viaduct, and the rugged and potted paving and dangerous curbing over the entire length of the viaduct, the blunt of this proceeding is directed by the Complainants towards the Respondents, the Penn Central Transportation Company and the Pennsylvania Department of Transportation.

WHEREFORE, the Complainants request that the Respondent, Penn Central Transportation Company, be ordered and directed to repair and recondition without delay the steel and reinforced concrete bridge or viaduct which it constructed to a condition equal to that of when the same was constructed, or to a greater strength than that when the same was constructed if weight of present day motor vehicles passing over said viaduct so necessitate; that pending such repair and reconditioning that temporary filling and patching of holes and weakened areas be made and that the area beneath said portion of the viaduct be protected by net shielding to catch falling objects or said area be fenced off to prevent harm to persons and property, especially children; and in conjunction with such repair and reconstruction, to make a complete and detailed engineering examination of the viaduct with a report of same with submission of proper and adequate plans for such repair and reconstruction at sole costs and expense to it. As to the Respondent, the Pennsylvania Department of Transportation, it is requested that it be ordered and directed to make all necessary repairs to the paving, including curbing of said viaduct, and hereafter repair and maintain said paved surface at its costs and expense.

BALDWIN AND GROPP
ATTORNEYS AT LAW
BEAVER, PENNSYLVANIA


David L. Gropp
Solicitor for Complainants

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
HARRISBURG 17120
Legal Bureau

Cost Street


IN REPLY REFER TO

December 31, 1970

• Mr. C. J. McElwee, Acting Secretary
Pennsylvania Public Utility Commission
North Office Building
Harrisburg, Pennsylvania 17120

Borough of Homewood and Borough of Big
Beaver of Beaver County, Pennsylvania

Complainants

vs.

Penn Central Transportation Company;
Department of Highways of the Common-
wealth of Pennsylvania, now the Pennsyl-
vania Department of Transportation;
Pennsylvania Turnpike Commission; and
County of Beaver, Pennsylvania

Complaint Docket No. 18925

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1971 JAN -4 AM 10:46
SECRETARY'S OFFICE
DEPARTMENT OF TRANSPORTATION
HARRISBURG, PENNSYLVANIA

Dear Mr. McElwee:

Enclosed for filing with the Commission are the original and fourteen (14) copies of Reply Brief of the Department of Transportation in the above captioned case.

I herby certify that three (3) copies of said Reply Brief are being served this day on each party of record.

Very truly yours,

William E. Bethards
William E. Bethards
Assistant Attorney General

WEB:egs
Enc. Parties of record

O. K.
V. W. P.
FILE

RECORDED
INDEXED

Parties of Record

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925 Penn Central Station
Pittsburgh, Pennsylvania 15222

Pennsylvania Turnpike Commission
Post Office Box 2531
Harrisburg, Pennsylvania 17120

County of Beaver
Attention: Robert J. Masters, Esquire
Courthouse at Beaver
Beaver, Pennsylvania 15009

Borough of Big Beaver
Mr. W. Paul Cunningham
P.O. Box 184
Koppel, Pennsylvania 16115

Borough of Homewood
Miss Elaine F. Buzzelli
Box 12
Racine, Pennsylvania 15010

Baldwin & Gropp
Attorneys at Law
Beaver Trust Company
Beaver, Pennsylvania 15009

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

BOROUGH OF HOMEWOOD and BOROUGH OF
BIG BEAVER,

Complainants

v.

PENN CENTRAL TRANSPORTATION COMPANY,
PENNSYLVANIA DEPARTMENT OF HIGHWAYS,
PENNSYLVANIA TURNPIKE COMMISSION and
COUNTY OF BEAVER

Complaint Docket

No. 18925

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REPLY BRIEF OF RESPONDENTS GEORGE P. BAKER,
RICHARD C. BOND, JERVIS LANGDON, JR. AND
WILLARD WIRTZ, TRUSTEES OF THE PROPERTY OF
PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR

DOCKETED
COMPLAINT DOCKET
JAN 20 1971
ENTRY No. _____

Eugene E. Anderson, Jr., Counsel for
Respondent Trustees in this
proceeding

925 Penn Central Station
Pittsburgh, Pennsylvania
15222

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

BOROUGH OF HOMEWOOD and BOROUGH OF
BIG BEAVER,

Complainants

v.

PENN CENTRAL TRANSPORTATION COMPANY,
PENNSYLVANIA DEPARTMENT OF HIGHWAYS,
PENNSYLVANIA TURNPIKE COMMISSION and
COUNTY OF BEAVER,

Respondents

Complaint Docket

No. 18925

REPLY BRIEF OF RESPONDENTS GEORGE P. BAKER,
RICHARD C. BOND, JERVIS LANGDON, JR. AND
WILLARD WIRTZ, TRUSTEES OF THE PROPERTY OF
PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR

I. INTRODUCTION

The Trustees accept the statement of the case and the history of the proceeding as contained in complainants' brief.

II. ARGUMENT

The original portion of the bridge involved in this proceeding (being the only portion for which Penn Central is responsible) was constructed in 1921 or 1922 (17, 18)* with an effective load limitation of 15 tons. While certain members of

* Numbers in parentheses indicate pages of transcript of testimony.

the bridge were designed for a 20-ton limit, the beams, the girders and the piers were designed for a 15-ton limit, from which it follows that the weight limit for the entire structure was 15 tons, the weakest members being the governing factor (55-58).

Respondents' bridge engineer, Warren D. Streiff, who is well qualified in his field and has some 6,000 bridges under his jurisdiction (45, 46, 65), explained at length the condition of the bridge, but his testimony can be boiled down to this, namely, that there is some spalling of concrete on various members and that, in some places, certain secondary reinforcing rods are partially exposed (59-64, 66-72). His evaluation of the bridge is that neither the spalling of concrete nor the exposure of portions of the reinforcing rods has reduced the weight-carrying capacity of the bridge below the 15-ton limit for which it was designed (75-76).

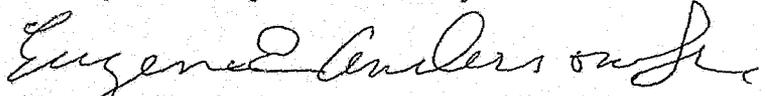
Mr. Streiff testified as to the maintenance of sub-structure and superstructure which would be required in the next few years: scaling of loose concrete and applying concrete by shotcrete within three or four years (55).

Mr. Streiff's testimony was not rebutted by any witness. In fact, complainants presented no engineering testimony whatever.

Respondents intend to discharge their maintenance responsibility for this bridge along the lines of Mr. Streiff's testimony. The record is devoid of any convincing evidence

that additional measures -- or different measures are required. If additional or different measures are to be undertaken, they should be the responsibility of others than respondent Trustees.

Respectfully submitted,



Eugene E. Anderson, Jr., Counsel
for Respondent Trustees in this proceeding