

1. <u>REPORT DATE:</u>	December 24, 1985	:	2. <u>BUREAU AGENDA NO.</u>
3. <u>BUREAU:</u>	ALJ	:	JAN-86-ALJ-19
4. <u>SECTION(S):</u>		:	5. <u>PUBLIC MEETING DATE:</u>
6. <u>APPROVED BY:</u>		:	January 10, 1986
Chief ALJ:	William H. Smith	:	
Director:	Ext. 7-6108	:	
Supervisor:		:	
7. <u>MONITOR:</u>		:	
8. <u>PERSON IN CHARGE:</u>		:	
	Nemec 8-645-3550	:	
9. <u>DOCKET NO:</u>		:	
	C-80092154	:	

10. (a) CAPTION (abbreviate if more than 4 lines)
 (b) Short summary of history & facts, documents & briefs
 (c) Recommendation
- (a) Glenfield Borough v. Conrail, Allegheny County and PennDOT.
- (b) By order entered 12/13/82 this Commission directed PennDOT to evaluate and prepare plans for the repair or replacement of the Glenfield viaduct. A hearing to consider the plans was held 11/27/85 in Pittsburgh. At the hearing it developed that a reposting of the current structure from 16 tons to 3 tons was causing serious problems for the Borough of Glenfield.
- (c) ALJ Nemec issued an interim recommended report proposing interim repairs to the existing structure.

Recommended Decision served: December 6, 1985.
 Exceptions filed by: Pennsylvania Department of Transportation,
 December 23, 1985.
 Any Reply Exceptions will be submitted as Additional Information after
 January 2, 1986.

NOTED

JAN 21 1986

DOCUMENT
FOLDER

11. MOTION BY: Commissioner Chm. Taliaferro Commissioner Shane - Yes
 Commissioner
 SECONDED: Commissioner Fischl Commissioner

CONTENT OF MOTION: Postponement to January 17, 1986 for further review by the Commission.

1. <u>REPORT DATE:</u>	December 24, 1985	:	2. <u>BUREAU AGENDA NO.</u>
3. <u>BUREAU:</u>	ALJ	:	JAN-86-ALJ-19
4. <u>SECTION(S):</u>		:	5. <u>PUBLIC MEETING DATE:</u>
6. <u>APPROVED BY:</u>		:	January 17, 1986
Chief ALJ:	William H. Smith	:	
Director:	Ext. 7-6108	:	
Supervisor:		:	
7. <u>MONITOR:</u>		:	
8. <u>PERSON IN CHARGE:</u>		:	
	Nemec 8-645-3550	:	
9. <u>DOCKET NO.:</u>		:	
	C-80092154	:	

10. (a) CAPTION (abbreviate if more than 4 lines)
 (b) Short summary of history & facts, documents & briefs
 (c) Recommendation
- (a) Glenfield Borough v. Conrail, Allegheny County and PennDOT.
- (b) By order entered 12/13/82 this Commission directed PennDOT to evaluate and prepare plans for the repair or replacement of the Glenfield viaduct. A hearing to consider the plans was held 11/27/85 in Pittsburgh. At the hearing it developed that a reposting of the current structure from 16 tons to 3 tons was causing serious problems for the Borough of Glenfield.
- (c) ALJ Nemec issued an interim recommended report proposing interim repairs to the existing structure.

Recommended Decision served: December 6, 1985.
 Exceptions filed by: Pennsylvania Department of Transportation,
 December 23, 1985.
 Any Reply Exceptions will be submitted as Additional Information after
 January 2, 1986.

DOCKETED
 FILED

DOCKETED
 JAN 8 - 1986

11. MOTION BY: CommissionerChm. Taliaferro Commissioner Fischl - Yes
 Commissioner
 SECONDED: CommissionerShane Commissioner

CONTENT OF MOTION: That in order to clarify any ambiguity which may exist, Paragraph 4 of the Judge's Order be modified to provide as follows:

4. Upon completion of the above directed evaluation, the Department shall at its sole and initial expense take all necessary steps to repair and strengthen the Glenfield viaduct to carry loads of a 16 ton limit.

CONTENT OF MOTION: (Continued)

and that the Office of Special Assistants complete the appropriate Order consistent with the terms stated herein.

Release Date: January 17, 1986
Public Meeting Date: January 17, 1986

E. C. L.
1/17/86
JM

MOTION OF CHAIRMAN LINDA C. TALIAFERRO

Re: Glenfield Borough v. Consolidated Rail Corporation,
Allegheny County and Pennsylvania Department of
Transportation (C-80092154). ALJ-19

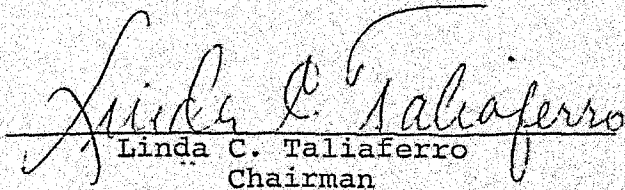
The Pennsylvania Department of Transportation has taken exception to Paragraph 4 of the proposed Order of Administrative Law Judge Michael A. Nemec. The Ordering paragraph is identified as being "vague".

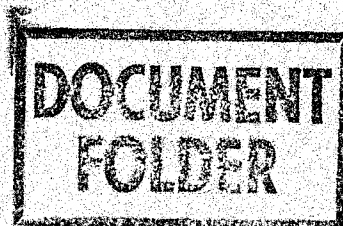
THEREFORE, I MOVE:

(1) That in order to clarify any ambiguity which may exist I will modify Paragraph 4 of the Judge's Order to provide as follows:

4. Upon completion of the above directed evaluation, the Department shall at its sole and initial expense take all necessary steps to repair and strengthen the Glenfield viaduct to carry loads of a 16 ton limit.

(2) That the Office of Special Assistants complete the appropriate Order consistent with the terms stated herein.


Linda C. Taliaferro
Chairman



X-5



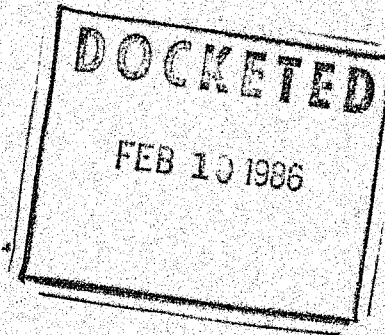
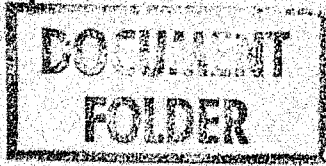
COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120

FEB 4 1986

IN REPLY PLEASE
REFER TO OUR FILE

C-80092154

To All Parties of Record



Glenfield Borough

v.

Consolidated Rail Corporation, Allegheny County
and Pennsylvania Department of Transportation

To Whom It May Concern:

This is to advise you that the Commission at Public Meeting held January 17, 1986 adopted an Opinion and Order in connection with the above entitled proceeding.

A copy of the Opinion and Order is enclosed for your records.

Very truly yours,

Jerry Rich, Secretary

JZ

Encls.

Certified Mail

Receipt Requested

Bureau of S & C--Rail Safety Division

OSA

Law Bureau

Office of ALJ

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held January 17, 1986

Commissioners Present:

Linda C. Taliaferro, Chairman
Frank Fischl
Bill Shane

EXTRA COPY

Glenfield Borough

C-80092154

v.

Consolidated Rail Corporation,
Allegheny County and Pennsylvania
Department of Transportation

OPINION AND ORDER

DEPARTMENT RECORDS
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT

BY THE COMMISSION:

Before the Commission for consideration is the Interim Report and Recommended Decision (Recommended Decision) of Administrative Law Judge ("ALJ") Michael A. Nemeč served on December 6, 1985. Exceptions to the Recommended Decision were filed by the Pennsylvania Department of Transportation ("PennDOT"), and Reply Exceptions were filed by Consolidated Rail Corporation ("Conrail").

Brief History of the Proceedings

By way of Order entered December 13, 1982, the Commission, inter alia, directed PennDOT to commence immediately an in-depth evaluation and to prepare plans for the rehabilitation or replacement of the Glenfield viaduct situated in the Borough of Glenfield, Allegheny County, and to submit a report to the Commission. PennDOT's report was to have been completed and submitted to the Commission within fourteen months of our December 13, 1982 Order. Subsequently, the Commission, on May 17, 1984, granted PennDOT an extension until December 1, 1984, for completion of the plans.

On October 2, 1985, the report was finally submitted to the Commission indicating that the subject viaduct should be replaced.

At a field conference held October 15, 1985, the subject of reducing the existing sixteen ton weight posting to three tons was discussed. Based upon the recommendation

of PennDOT's consultant, the participants at the field conference agreed that because of a sheer crack in one of the pier caps, a reduction in the weight limitation was necessary. The Commission, by way of Emergency Orders signed by Chairman Taliaferro on October 18, 1985, and by Commissioner Fischl on October 23, 1985, directed the reposting to three (3) tons.^{1/} The Emergency Orders were ratified by Commission Order entered November 18, 1985.

ALJ Nemec explained the basis for his "Interim Report" as follows:

It is the reposting to 3 tons that has caused a serious public safety situation to arise in the Borough of Glenfield. The reposting and reasons for it was the major matter discussed at the November 27, 1985, hearing. In order to quickly address the reposting matter I have decided to prepare this interim report. A more complete report on all testimony and issues will follow. What follows here is a brief summary of the pertinent testimony on the weight limit posting of three tons. [Emphasis added]

(Recommended Decision at p. 2).

The ALJ recommended that:

1. The Pennsylvania Department of Transportation is assigned maintenance responsibility for the Glenfield viaduct.
2. The Department shall immediately commence an evaluation of the Glenfield viaduct for the purposes of repairing and/or strengthening the structure to carry loads equivalent to a 16 ton limit until the new proposed structure can be completed.

^{1/} The second Emergency Order allowed an exception to the Quaker Valley School District to permit it to use 12-passenger vans which were not to exceed four (4) tons in weight.

3. The evaluation directed in paragraph 2 above shall be completed and filed with this Commission within 30 days after this order is entered.
4. Upon completion of the above directed evaluation, [sic] the Department shall at its initial expense take all feasible steps to repair and strengthen the Glenfield viaduct with the goal being the achieving of an adequate load carrying ability to serve the needs of the residents of the Borough of Glenfield.
5. The Department shall file weekly reports with this Commission detailing its compliance with this order.

(Recommended Decision at p. 6). In its Exceptions filed on December 23, 1985, PennDOT made the following objections to the Recommended Decision:

1. Since the Recommended Decision was issued prior to the filing of the transcript of testimony taken at the November 27, 1985 hearings, the ALJ's determinations were made without benefit of the transcript and the findings of fact and recommendations were made from the ALJ's recollection of the testimony.
2. Issuance of the Recommended Decision prior to the filing of the transcript unduly prejudiced the parties by limiting the preparation period for exceptions to ten days.
3. PennDOT objects to being held responsible for the evaluation and maintenance of the viaduct for the following reasons:
 - a. Prior to December 3, 1982, Conrail's predecessor was responsible for the maintenance of this structure.
 - b. PennDOT is not responsible for the bridge deterioration.
 - c. The viaduct has always caused and continues to carry a local street.

- d. The possibility of including the cost of interim maintenance in the viaduct replacement project is no cognizable justification for shifting maintenance responsibility to PennDOT.
 - e. The fact that access to the Borough of Glenfield was reduced to the subject viaduct by the construction of two other adjacent PennDOT projects offers no justification for shifting maintenance responsibility to PennDOT.
 - f. PennDOT should not be directed to inspect and evaluate the structure since Conrail has performed inspections and a structural inventory of the viaduct.
- 4. PennDOT contends that the evaluation cannot be completed and filed within thirty days, that five months will be required to evaluate the structure.
 - 5. The language under Paragraph No. 4, which directs PennDOT to "take all feasible steps" to repair the viaduct to achieve an "adequate load carrying ability to serve the needs of the residents of the Borough of Glenfield", is vague; and it is not economically feasible for PennDOT to restore the viaduct to sixteen tons on an interim basis.
 - 6. The time frame required for PennDOT to undertake a study and to contract out work to restore the viaduct to a sixteen ton carrying capacity approaches, if not equals, the time needed to begin the reconstruction project itself.
 - 7. It is economically irresponsible to the Legislature which has funded the reconstruction and to the Commonwealth in general to incur the significant costs of engaging a consultant and letting a separate contract to perform work which would be insufficient to accommodate the reconstruction, and which would, in all probability, require nearly as much time to begin as the reconstruction project itself.

8. The most economically feasible solution is to resolve the issue of the allocation of the 5% not funded with federal or state funds and to direct the immediate commencement of the reconstruction project.
9. PennDOT also objects to filing a weekly report.

Discussion

We are here primarily concerned, at this juncture in these proceedings, with the deteriorating condition of the Glenfield viaduct and the impact this condition is having on the residents of this Borough and the businesses located in the Borough.

PennDOT's argument that the issuance of the Recommended Decision by ALJ Nemecek prior to receipt of the hearing transcript was prejudicial to the parties is without merit. The exigencies of the deteriorated condition of the viaduct necessitated the expeditious rendering of a Recommended Decision by the ALJ. We also conclude that the parties did, in fact, have sufficient time, after receipt of the transcript, to prepare exceptions thereto. We further conclude that the parties have been afforded the requisite due process requirements.

Although we have carefully reviewed each of PennDOT's exceptions, we will not address each of these exceptions since the essential issue addressed at the November 27, 1985 hearing was concerned with the plans or report filed by PennDOT on October 2, 1985, and the steps which should be promptly undertaken to ameliorate the present condition of the subject viaduct.

We conclude that because of the urgency of the situation (i.e. the Glenfield viaduct is the only access to the Borough), and our desire to have the rehabilitation costs included in the total project costs which have been approved under the "Bridge Bill", PennDOT should immediately perform the evaluation of the Glenfield viaduct and PennDOT should, at its initial expense, also bear the rehabilitation costs^{2/} incurred in strengthening the Glenfield viaduct to carry a load of sixteen tons.

^{2/} PennDOT's witness testified that in order for the rehabilitation costs to be included in the cost of replacement, PennDOT must be made the responsible party under the federal rules for funding.
(Tr. 223-224).

Our conclusion that immediate action should be taken to ameliorate the exigent conditions in the Borough is premised upon the following Finding of Facts of the ALJ:

Proposed Findings of Fact

1. The present three ton weight limitation on the Glenfield viaduct prohibits the use of the structure by fire, emergency and normal service vehicles.
2. The 3 ton weight posting of the Glenfield viaduct effectively precludes the two existing commercial establishments from conducting business.
3. Replacement of the existing viaduct will not occur for at least two to two and one-half years.
4. The residents and businesses of Glenfield cannot tolerate safely a wait of 2 to 2 1/2 years to gain a means of safe ingress and egress.

(Recommended Decision at p. 5).

Our conclusion to require PennDOT, at its sole and initial expense, to bear the costs of rehabilitation is largely influenced by the fact that PennDOT is responsible for the precarious situation in the Borough; that is, PennDOT, by construction of two other PennDOT projects has effectively reduced access to the Borough to one deteriorating viaduct. The ALJ has poignantly noted that: (1) the situation is one which should have been foreseen by PennDOT; and (2) PennDOT has been less than prompt in complying with prior Orders of this Commission directing studies of the Glenfield viaduct. (Recommended Decision at p. 4).

In response to PennDOT's exception and argument that Paragraph 4 of the Proposed Order is "vague", we shall clarify any ambiguity which may exist by modifying Paragraph 4 to provide as follows:

4. That upon completion of the above directed evaluation, the Pennsylvania Department of Transportation shall at its sole and initial expense take all necessary steps to repair and strengthen the Glenfield viaduct to carry loads of a sixteen (16) ton limit.

In all other respects, the ALJ's Recommended Decision is adopted as the decision of this Commission; THEREFORE,

IT IS ORDERED:

1. That the Recommended Decision of Administrative Law Judge Michael A. Nemec dated December 2, 1985, as modified herein, is adopted as the decision of the Commission.

2. That the Exceptions of the Pennsylvania Department of Transportation are granted to the extent consistent with this Opinion and Order and denied in all other respects.

3. That the Pennsylvania Department of Transportation is assigned maintenance responsibility for the Glenfield viaduct.

4. That the Pennsylvania Department of Transportation shall immediately commence an evaluation of the Glenfield viaduct for the purposes of repairing and/or strengthening the structure to carry loads equivalent to a sixteen ton limit until the new proposed structure can be completed.

5. That the evaluation directed in paragraph 4 above shall be completed and filed with this Commission within thirty days after this Order is entered.

6. That upon completion of the above directed evaluation, the Pennsylvania Department of Transportation shall, at its sole and initial expense, take all necessary steps to repair and strengthen the Glenfield viaduct to carry loads of a sixteen ton limit.

BY THE COMMISSION,



Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: January 17, 1986

ORDER ENTERED: February 4, 1986