

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. <u>REPORT DATE:</u> March 4, 1986	:	2. <u>BUREAU AGENDA NO.</u> MAR-86-OSA-29*
3. <u>BUREAU:</u> Office of Special Assistants:	:	
4. <u>SECTION(S):</u>	:	5. <u>PUBLIC MEETING DATE:</u> March 6, 1986
6. <u>APPROVED BY:</u> Director: C. W. Davis (7-1827) Supervisor:	:	
7. <u>MONITOR:</u>	:	
8. <u>PERSON IN CHARGE:</u> S. E. Brown (7-1660)	:	
9. <u>DOCKET NO:</u> C-80092154	:	
10. (a) <u>CAPTION</u> (abbreviate if more than 4 lines) (b) Short summary of history & facts, documents & briefs (c) Recommendation		

(a) Glenfield Borough v. Consolidated Rail Corporation, Allegheny County and Pennsylvania Department of Transportation

(b) By way of Opinion and Order entered February 4, 1986, the Commission directed, in pertinent part, that the Pennsylvania Department of Transportation (hereinafter "PennDOT") immediately commence an evaluation of the Glenfield viaduct. The Commission further directed that the evaluation was to be completed and filed with the Commission within thirty days of the entry of the February 4, 1986 Opinion and Order. On February 21, 1986, PennDOT filed a Petition for Reconsideration ("Petition") requesting that the Commission "reconsider" its February 4, 1986 Opinion and Order.

(c) The Office of Special Assistants recommends that the Commission adopt an Opinion and Order, denying PennDOT's Petition in accordance with Duick v. PG&W, 56 Pa. P.U.C. 533 (1982).

DOCKETED
MAR 17 1986

DOCUMENT FOLDER

11. MOTION BY: CommissionerChm. Taliaferro Commissioner Shane - Yes
Commissioner
SECONDDED: CommissionerFischl Commissioner
CONTENT OF MOTION: Staff recommendation adopted.



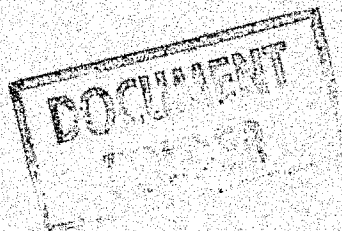
COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120

March 7, 1986

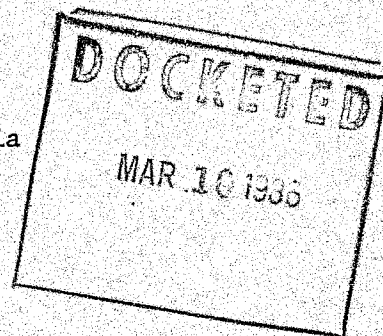
IN REPLY PLEASE
REFER TO OUR FILE
C-80092154

TO ALL PARTIES

(See attached list)



Glenfield Borough
v.
Consolidated Rail Corporation,
Allegheny County and Pennsylvania
Department of Transportation



To Whom It May Concern:

This is to advise you that an Opinion and Order has been adopted by the Commission in Public Meeting on March 6, 1986, in the above entitled proceeding.

A copy of this Opinion and Order has been enclosed for your records.

Very truly yours,

Jerry Rich, Secretary

jr
Encls.
Cert. Mail

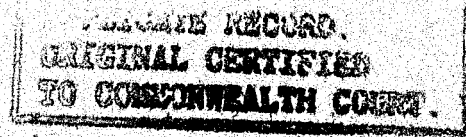
Bureau of S & C - Rail
Law Bureau

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held March 6, 1986

Commissioners Present:

Linda C. Taliaferro, Chairman
Frank Fischl
Bill Shane



Glenfield Borough

v.

C-80092154

Consolidated Rail Corporation,
Allegheny County and Pennsylvania
Department of Transportation

OPINION AND ORDER

BY THE COMMISSION:

Before us for consideration is the Petition for Reconsideration filed by the Pennsylvania Department of Transportation (hereinafter "PennDOT"), in the above-captioned proceeding. For the reasons enunciated hereinbelow, we are of the opinion, and so find, that the subject Petition for Reconsideration shall be denied.

BACKGROUND

By way of Opinion and Order entered February 4, 1986, we ordered, inter alia:

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 purpose of repairing and/or strengthening the structure to carry loads equivalent to a sixteen ton limit until the new proposed structure can be completed. (Emphasis added).
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. (Emphasis added).

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

(Opinion and Order at p. 7). On February 21, 1986, PennDOT filed the instant Petition for Reconsideration ("Petition") requesting that the Commission "reconsider" its February 4, 1986 Opinion and Order.

DISCUSSION

In Duick v. PG&W, 56 Pa. P.U.C. 533 (1982), we stated the criteria which apply in reaching a determination of whether a Petition for rehearing or reconsideration should be granted, to wit:

A petition for rehearing under the provisions of 66 Pa. C.S. §703(f), properly must seek the reopening of the record for the introduction of additional evidence of some sort. As grounds therefore it must allege newly discovered evidence, not discoverable through the exercise of due diligence prior to the close of record....

* * * *

"A Petition for reconsideration under the provisions of 66 Pa. C.S. §703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was said that [p]arties..., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them....

In its Petition, PennDOT asserts: (1) that there is no evidence in the record suggesting that PennDOT is the appropriate party to undertake such an evaluation; (2) that it is simply impossible for PennDOT to perform an evaluation of the structure in less than five months; and (3) that the earliest PennDOT could complete such an evaluation would be four months. (Petition at pp. 2-3).

Having carefully considered these assertions as they specifically relate to the criteria for granting reconsideration enunciated in Duick v. PG&W, supra, we conclude that PennDOT's Petition should be denied. The Petitioner has clearly failed to argue or allege any newly discovered evidence and has clearly failed to raise any new or novel arguments not previously heard by this Commission. In fact, the Petitioner's assertions are merely iterations of those previously considered by this Commission and decided adversely to PennDOT.^{1/} In this regard, the Commission succinctly stated in Duick v. PG&W, supra, that "[p]arties..., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them...."

In accordance with the foregoing discussion pertaining to the criteria for granting reconsideration by this Commission, we find that PennDOT has not presented sufficient grounds nor allegations that would warrant granting reconsideration of our prior action; THEREFORE,

IT IS ORDERED: That the Petition for Reconsideration, filed by the Pennsylvania Department of Transportation on February 21, 1986 in the above-captioned matter, is hereby denied.

BY THE COMMISSION,

Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: March 6, 1986

ORDER ENTERED: March 7, 1986

^{1/} See, e.g., the Exceptions of PennDOT, filed on December 23, 1985, and our February 4, 1986 Opinion and Order wherein we expressed our profound concern regarding the exigent conditions which exist in the Borough of Glenfield and the need for immediate action to ameliorate the present condition of the subject viaduct.