



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

February 25, 1986

IN REPLY PLEASE  
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C-80092154

To All Parties

DOCUMENT  
 FOLDER

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

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Recommended Decision prepared by Administrative Law Judge Michael A. Nemeec.

An original and nine (9) copies of signed exceptions to the decision, if any, MUST BE FILED WITH THE SECRETARY OF THE COMMISSION IN ROOM B-18, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17120 and a copy served on each party of record within 15 days of the date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date the exceptions are deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)).

Replies to exceptions, if any, must be served on the Secretary of the Commission, in the manner described above, within 10 days of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535, particularly the 40 page limit for exceptions and the 25 page limit for replies to exceptions. Exceptions should be clearly labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

Any reference to specific sections of the Administrative Law Judge's Recommended Decision shall include the page number(s) of the cited section of the Decision.

All timely filed exceptions and replies thereto will be attached to the decision for consideration at Public Meeting. Late filed exceptions and late filed replies will not be attached.

cc:ALJ Nemeec/Office of ALJ/Bureau of S & C/Law Bureau/Mr. Bramson/OSA/Chairman Commissioners/Correspondence/our file

1g  
 Enclosures  
 Certified Mail  
 Receipt Requested

Very truly yours,  
*William H. Smith*  
 William H. Smith  
 Chief Administrative Law Judge

Similar letter to: See attached list.

EXTRA COPY

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

EXTRA COPY

Glenfield Borough :  
 :  
v. :  
 : C-80092154  
Consolidated Rail Corporation, :  
Allegheny County and Pennsylvania :  
Department of Transportation :

FURTHER REPORT AND RECOMMENDED DECISION

Before  
Michael A. Nemeo  
Administrative Law Judge

DUPLICATE RECORD.  
ORIGINAL CERTIFIED  
TO COMMONWEALTH COURT.

History of the Proceedings

A further hearing was held in the above case on November 27, 1985, for the purpose of receiving the report of the Department of Transportation. The Department's report had been ordered to be completed by this Commission within 14 months by its order entered December 13, 1982. An extension to December 1, 1984, was granted by an order entered May 17, 1984. The plans were finally filed and docketed on October 2, 1985.

At a field conference held October 15, 1985, the participants discussed and agreed that the existing 16 ton weight posting on the Glenfield viaduct should be reduced to three tons, based on the recommendation of a Department of Transportation consultant. This Commission subsequently acted in two emergency orders to direct new posting to lower the weight limit and to allow an exception for four ton school vans. The two emergency orders were ratified by Commission Order entered November 18, 1985.

In response to the considerable concern expressed at the hearing because of the reposting of the Glenfield viaduct, an interim report and recommended decision was prepared as of December 2, 1985, and provided to this Commission. The following report presents a review of all the testimony presented at the hearing on November 27, 1985, and presents recommended decisions on all issues raised. The additions to the record resulting from the November 22, 1985, hearing are an 122 page transcript and seven additional exhibits.

#### Summary of the Testimony

Mr. Robert M. Peda, Grade Crossing Engineer, Bureau of Design, Pennsylvania Department of Transportation, testified that the Department of Transportation has prepared plans for a replacement structure in compliance with this Commission's Order of December 3, 1982. He stated that the plans were submitted to the parties of record and filed with the Commission under letter dated September 30, 1985, and sponsored the right of way and structure drawings as PennDOT Exhibit 3. Additionally, he sponsored prepared drawings for construction and traffic control as PennDOT Exhibit 4. He described the documents identified as PennDOT Exhibits 3 and 4 as plans for a project involving reconstruction of Phillips Lane from its intersection with Dawson Avenue and East Beaver Street at Station 0+10.87 to Station 3+91.5 at the beginning of the proposed Glenfield viaduct. The viaduct will consist of a ten-span steel I-Beam and multigirder bridge, terminating at the local access ramp of L.R. 652 at Station 11 + 99.01, a distance of 1,188.14 feet. He described the proposed new construction as having an alignment veering off the existing alignment at Phillips Lane at/or about Station 2 and

paralleling the existing Phillips Lane to the south and continue to parallel the current viaduct to the south and then to the east to its connection with the local access ramp. Typical roadway section would consist of two 12 foot wide lanes with curbs and a five foot sidewalk on the left or north side of the road. The engineering estimate for the cost of construction is 3.25 million dollars with an additional 10% contingency for inspection and administration, bringing the total anticipated construction cost to 3.58 million dollars. (Tr. 200-203, PennDOT Exhibits 3, 4).

Mr. Peda stated that it would not be necessary for this Commission to lay out any new highway, as the proposed plans lay out and show the position of the proposed roads. This Commission is requested to vacate the existing highway or viaduct between Station 8 + 56 and Station 10 + 80, where the existing viaduct will be removed and a right-of-way no longer required for the proposed crossing. Additionally, it will be necessary for the Commission to appropriate a right-of-way for aerial easement across property owned by Consolidated Rail Corporation. He sponsored a property description for the aerial easement as PennDOT Exhibit 5. Finally, it will not be necessary for this Commission to appropriate any other property, as the Department of Transportation will acquire all necessary private property. (Tr. 203-205, PennDOT Exhibit 5).

Mr. Peda stated that the Department agrees to bear engineering costs, which would include the costs for the preparation of detailed construction plans and right-of-way acquisition plans. Further, the Department is planning to utilize federal funds on all phases of the project, and in so doing, it is the Department's policy to fund the

project with 80% federal funds, 15% state funds, and 5% from other sources. The 5% other share, it is recommended by the Department, be borne by Glenfield Borough and Allegheny County. Should Conrail agree to pay a portion of the project cost, that portion would be deducted from Glenfield Borough's share. (Tr. 205-206).

Mr. Peda stated that Department agrees to construct the entire project and to perform the necessary right-of-way acquisition. Department also agrees to take care of administration for the project. However, the Department does not agree to bear any responsibility for maintaining the viaduct after it is constructed. The viaduct does not carry a state highway and is not part of the State highway system. He pointed out that Conrail is currently assigned maintenance responsibility for the portion of the viaduct over its railroad tracks, and the 13 southern viaduct spans. The former Highway Department was assigned maintenance responsibility of the steel girder spans and Pier A and the northerly abutment supporting the span north of the railroad crossing by an Order of this Commission at A. 79419, back in 1953. The Department suggested if the Railroad agrees to assist in the funding of the project, that it might be equitable for the Railroad to be relieved of all or a portion of its current maintenance responsibility, and that all maintenance responsibility be assigned to the Borough of Glenfield and Allegheny County. (Tr. 206-208).

Mr. Peda stated that the Department does agree to reimburse any non-carrier Public Utility company for those costs incurred in the alteration or relocation of its facilities which were located in private

right-of-way prior to construction. The Department's opinion is that any involved Public Utility company should be required to alter and/or relocate its facilities located in public right-of-way at its sole cost and expense, because of the benefit received by that utility company by occupying public right-of-way free of charge. (Tr. 208-209).

Mr. Peda continued by stating that the Department will maintain pedestrian and vehicular traffic on the existing bridge during construction. Detours will not be necessary during the time the crossing project is being constructed. Following issuance of an order resolving the unfunded 5% portion of the project cost, the Department will proceed to acquire the private right-of-way for the project. As anticipated, the minimum time required to clear right-of-way is nine months. Upon obtaining the right-of-way, the project must be advertised, bids opened, a contract awarded and the contractor given notice to proceed. This procedure will require an additional three months, with the result that it will require approximately one year from the issuance of an order until the contractor can be given notice to proceed. Construction of the project itself can be completed within 1 to 1 1/2 years after commencement.

On cross-examination, Mr. Peda explained his comments with regard to Conrail making a contribution toward the construction of the project. He agreed he was alluding to regulations of the Federal Highway Administration which provides that where federal funding is used to accomplish a reconstruction of a railroad highway bridge, a railroad need not assume any costs of the construction unless it agrees to. He stated that he had not considered the financial situation of the Borough of Glenfield in stating that the Department recommended that the Borough of Glenfield maintain the new structure after construction. (Tr. 211-214).

On further cross-examination, Mr. Peda stated that the structure would continue to be posted for three tons until further reinforcement of the structure is performed. He stated that PennDOT does not have any present plans or intentions to provide any other access for vehicles in excess of three tons. It will be up to the contractor to determine what the contractor needs to get access to the project. The contractor may have to support the structure to enable it to carry loads in excess of three tons. He agreed that any business needing access across the viaduct with a vehicle in excess of three tons cannot use the structure, and that PennDOT does not intend to provide any alternate access. He agreed that any business operating in the Borough along East Beaver Street that needs to move a load of more than three tons has got to work out some way on its own to stay in business. He stated that there was no PennDOT position or policy on the matter, because the street involved is a local road, and not under the Department's jurisdiction. He identified the problem as being a financial problem, not an engineering or political problem. (Tr. 214-217).

Mr. Peda was cross-examined in considerable more detail by Trial Staff with regard to the present posting and possibilities for strengthening the structure. He stated that he assumed that any strengthening of the structure to enable contractor vehicles to access the job site would be included in the total cost of the construction of the new structure. Further, he agreed that once the new structure is completed, the old one would be demolished. He agreed that the cost of demolishing the old structure would be included in the cost of the project. On my questioning, Mr. Peda stated that the Department's position was that

cost allocation had to be decided by this Commission prior to commencement of the project. That followed from the Department's interpretation of the federal funding guidelines. (Tr. 217-220).

Further cross-examination of Mr. Peda ensued regarding the details of the Department's consultant's evaluation of the structure, which resulted in the reduction of the posted weight limit from 16 tons to three tons. He stated that the major critical condition was a shear crack in one of the pier caps. Because of the type of structure, the consultant engineer could only guess as to the real load-bearing capacity of it. Further, the structure is of such a type that one break could collapse the entire structure. He felt that six tons would not be appropriate, but three tons is probably safe. He agreed that if this Commission would enter an order telling the Department of Transportation to maintain the structure at 16 tons, and direct the Department to take temporary measures to accomplish that, the expense of the work necessary to bring the structure, temporarily, back to safely carrying 16 tons would be eligible as costs for the proposed project. He stated that it would probably require several weeks to prepare a contract, advertise and have the work done. He estimated a total of three months to have construction started. His estimate did not include construction time, which he could not estimate because he did not know what would be required. He stated that the condition of the subject structure results primarily from deterioration over a period of years. (Tr. 220-227).

Mr. Winfred R. Addison, Senior Civil Engineer, testified for Consolidated Rail Corporation. He stated Conrail has no objections to the proposed construction plans. He stated that construction of Pier

Number 8 will involve driving sheet piling close to the southernmost track, and that the work will have to be coordinated with train movements because it will not be possible to do both at the same time. The solution to that problem will be a matter of agreement between the contractor and Conrail's inspectors. It will be necessary for Conrail to relocate an open communication and signal line on the southerly side of the track in order to permit construction of the new bridge and demolition of the old one. He sponsored Conrail Exhibit 5 which details the labor and material necessary to relocate the signal line at a total cost of \$37,219.00. Conrail does not agree to bear any costs associated with the proposed project. Also, Conrail does not agree to maintain any of the project following construction. Conrail will agree to maintain its own facilities at the construction site after the project is completed. Finally, Conrail agrees to release damages for its operating right of way to permit construction of the project. In other words, Conrail agrees to permit the aerial easement sought by PennDOT for the proposed crossing. He stated that Conrail has incurred expenses of \$12,500 in repairing steps on different occasions, repairing the sidewalk and curb and preparing a structural inventory for the structure. (Tr. 227-233).

On cross-examination, he stated that it was his opinion that the structure at present could carry a 16 ton weight limit. That opinion is based on a structural study done in 1982 or 1983. Conrail has seen nothing develop since then to change its opinion. As to the current three ton posting, Conrail takes the position that it was imposed by PennDOT, and that PennDOT should take temporary measures to

support those portions of the structure it feels necessary to support. If PennDOT refuses to do it, Conrail will agree to install a minimal amount of supports, but only if those costs are included in the total project expense. (Tr. 233-235).

On further cross-examination, Mr. Addison stated that Conrail would volunteer to share the unfunded portion with the County and with the Borough. He disagreed that the relocated communication facilities would be a permanent improvement. He did agree that Conrail had been using the structure to bring its vehicles into the area prior to the present posting. However, Conrail does not need the structure to gain access to its facilities as it has an alternate access point that is not available to the public.

As to the crack noted by Mr. Peda as being the primary cause for reducing weight limit on the structure, Mr. Addison stated that he has found references to the crack as long ago as ten years. He stated that since that time the length of the crack has increased somewhat. He does not know why. If Conrail were required to do some shoring or strengthening of the subject structure, he estimated it would probably take a minimum of 60 days following completion of outstanding orders, which they anticipate taking up until sometime in February. (Tr. 235-242).

On further cross-examination by Trial Staff, Mr. Addison stated that Conrail will volunteer to contribute 2 1/2% of the construction costs, but believes that it should be relieved of any future maintenance obligations of the structure. The 2 1/2% would be 1/2 of the unfunded share. He agreed that if the Commission directed Conrail to maintain the existing structure for 16 tons while the new bridge was

being built, Conrail would take the position that it need not do anything further to strengthen the structure. He also agreed that it would be capable of carrying 28 ton combination loads. (Tr. 243-246).

On redirect examination, Mr. Addison stated that Conrail has made periodic inspections every six months as directed by the Commission. Those inspections have not found any substantial change in the structure since the original rating was developed.

Mr. Addison stated that Conrail would be willing to replace communication lines back on poles after the project was completed, but that would entail more expense than the expense shown in Conrail's Exhibit 5. He stated that it is easier and cheaper to maintain a communications and signal line on poles than it is underground. Further, he reiterated that Conrail would voluntarily make a contribution of 2 1/2% towards the total cost of the project if Conrail is relieved of any maintenance responsibility for the new structure. (Tr. 247-248).

On re-cross-examination, he agreed that even assuming there is room for disagreement over the carrying capacity of the subject structure, it is better and in the interest of the public safety, to err on the side of reducing the load limit, as opposed to keeping it at what some engineers believe is dangerous. He also agreed that it would be safer to undertake a study justifying raising the limit, rather than to undertake a study justifying the reduction. He stated that he agreed with the time estimate of Mr. Peda with regard to how long a study and any required strengthening would take. (Tr. 249-253).

Mr. John Menhart, President of the Glenfield Borough Council, appeared and testified that he's been president for 3 1/2 years, and has served on council for six years. The borough has no objections to the

proposed project, but recommends that steps be taken to restore the prior weight limit during the construction, or provide alternate access. Further, Glenfield does not agree and cannot bear any of the costs associated with the project or maintenance of the completed structure. He stated that the Glenfield Fire Department is on the river side of the Borough and, therefore, must cross the viaduct to service other areas of the Borough. More importantly, however, the present fire equipment is not adequate to handle a residential or business fire on the river side of the viaduct. In order to get assistance in a major fire, any fire company coming to the Borough's assistance would, of necessity, exceed the posted weight limit for the viaduct. (Tr. 254-260).

Mr. Menhart testified that the Borough was reduced to its present size by two construction projects. The construction of the expanded Route 65 eliminated approximately 15% of the Borough's buildings and tax base. The construction of the Interstate 79 project removed approximately 50% of the remaining buildings and tax base. About 120 of approximately 200 structures were removed as a result of the two projects. The Route 65 project was in the late 50's, while Interstate 79 was in the late 60's or early 70's.

Mr. Menhart further testified that the river side portion of the Borough contains a river side park, which was constructed with county funds. There is also a river docking facility which has river access for pleasure boats. It is a privately operated facility, but car and boat trailer combinations will not be able to use the subject structure, given the present posting of 3 tons. (Tr. 259-261).

Mr. Menhart was cross-examined on the Borough's capacity or lack of capacity to undertake funding of the proposed project, and any maintenance responsibilities. He agreed that the viaduct in question

is, in essence, a ramp between Legislative Route 652, Traffic Route 65, up above and from the local street below. He agreed that the two for-profit businesses located within the Borough on the river side were, in essence, out of business because of the inability of their vehicles to use the subject structure. As to strengthening the structure for the needs of the Borough itself and its citizens, a ten ton limit would probably suffice. However, the two businesses on the river side would need to have the bridge restored to the prior posting. That prior posting was 16 tons or 28 tons for combination loads. The only alternate to strengthening the present structure that he could conceive of would be some sort of temporary at-grade crossing. (Tr. 261-171).

Mr. Joe Hrabik, Chief Engineer of the Allegheny County Department of Engineering and Construction, testified that Allegheny County has no objections to the proposed project. However, the County does not agree to bear any portion of the cost associated with the project, and does not agree to participate in bearing any portion of the cost for maintenance of the proposed project. (Tr. 271-273). He agreed that the residents of the Borough are County residents, and that County residents use Route 65 and Interstate 79 in and around Glenfield Borough. (Tr. 271-279).

Mr. John Weber, Supervisory Civil Engineer for Columbia Gas Company, testified that Columbia does not object to the proposed crossing improvement. It does not appear at present that Columbia will have to relocate any of its facilities. However, Columbia does have two pipelines that are very close to some of the proposed construction. Any changes in the plans might entail some relocation. He agreed that all of the facilities in question are located within the public right-of-way. (Tr. 279-283, Columbia Exhibit 1).

Mr. Thomas T. Hamilton, Supervising Engineer for the Western Division of Duquesne Light Company, testified that Duquesne has no objection to the proposed project. Mr. Hamilton sponsored Duquesne Exhibit 1, which identified those specific Duquesne facilities affected by the proposed project. He identified those facilities on private right-of-way and those in the public right-of-way. Duquesne agrees to perform all work associated with the relocation, but not to bear the entire cost. He estimated the cost at about \$20,000.00. He also estimated that about 1/3 to 1/2 of the facilities are presently located in private rights-of-way. (Tr. 284-290, Duquesne Exhibit 1).

Mr. Donald R. Fleisher, Civil Engineer in the Rail Safety Division of the Bureau of Safety and Compliance, Public Utility Commission, testified that, in his position, he makes recommendations as to what should be done at rail highway crossings to protect the public interest. He stated his opinion that, given the recommendation of PennDOT's reputable consultant, he believes it is necessary to be certain that a safe situation is presented before increasing the weight limit on the subject structure. The condition of the structure is such that it's very difficult, if not impossible, to actually calculate the capacity of it. He agreed that the bridge should be viewed with the determination to be made on whether additional strengthening is necessary. He agreed with Mr. Menhart that there was a possibility of an at-grade crossing at one location. However, he stated his preference for an adequate strengthening of the existing structure over any at-grade crossing because of potential interference between trains and motor vehicles. Further, any at-grade crossing would have to, in some way, intersect with Traffic Route 65,

which is a major state highway. Finally, he pointed out that, in all probability, the structure would have to be strengthened prior to its demolition in order to permit construction vehicles to get to the work site. Without strengthening, he foresaw the possibility of the need to close the structure entirely. (Tr. 292-299).

On cross-examination, Mr. Fleisher stated that he would reluctantly say that PennDOT should be ordered to make the strengthening repairs. Any strengthening repairs necessary should be thrown into the total project cost. (Tr. 299-304).

Mr. Edward C. Steinhauser, President of C & E Motor and C & E Marina, 200 Dawson Avenue, Glenfield, testified that his business has been in the Borough of Glenfield since the late 1960's. The business survived the demolition of Glenfield and the building of I-79, but now faces its complete closing unless some help is received to raise the load limit of the Glenfield viaduct. He stated his business cannot receive products, such as boats, motors, trailers, and related accessories. His business has the only retail gasoline outlet on the Ohio River between the city of Pittsburgh and Rochester in Beaver County. Without gasoline being available at his establishment, he stated his opinion that there was a possibility that the safety of the general public from Western Pennsylvania utilizing the Ohio River in that vicinity would be in jeopardy. That would be because of the proximity of Glenfield to a navigation control dam and the possibility of a boater running out of fuel. At present, it cannot receive additional gasoline supplies over the Glenfield viaduct. Further, his business cannot have rubbish removed as the big rubbish trucks cannot come across the bridge. He pointed out that his business has equipment and other materials on

hand that constitute fire hazards. He stated his opinion that the Fire Department for the Borough of Glenfield was not adequate to protect his facility in the event of a fire. Because of the change in posting of the subject structure, he was out of business and could not afford to wait for 3 1/2 years for the new structure. (Tr. 304-307).

Mr. Dave Mayernik, State Representative from the 29th Legislative District, which includes the Borough of Glenfield, testified that Glenfield is the smallest of the municipalities that he represents. As a result of state highway projects, Glenfield has been reduced in size and population by approximately 60%. He provided some details on another business, American Industrial Contractor, which has incurred great expense in renting temporary facilities as a result of the reposting of the Glenfield Viaduct. (Tr. 307-308).

Mr. Peda was recalled. He stated that the Department of Transportation does not have the in-house capability to perform a study and prepare a design to determine what is needed to return this bridge to a 16 ton limit. It would be necessary to engage a consultant, to design any necessary improvements. The design and analysis could be done in about two to three weeks. Then, PennDOT would have to advertise and contract for the work. (Tr. 309-310).

On cross-examination, Mr. Peda agreed that it might be sensible to upgrade the present structure so that the contractor ultimately awarded the construction work would be able to use it. However, he pointed out that the contractor would be able to do the necessary shoring quickly, without putting out a separate contract, and he could strengthen the bridge only for a short period of time in order to get his equipment

across. He agreed that the Department does have emergency procedures that can be used when life and limb are threatened, but felt that the present situation could not be considered such an emergency. If indeed an emergency situation was presented, Mr. Peda stated that perhaps the entire process from start to completion of strengthening work could entail somewhere between a month to six weeks. Mr. Peda was otherwise grilled with regard to the three ton posting and various alternatives for increasing the strength of the subject structure. (Tr. 310-319).

#### Discussion

The November 27, 1985, hearing was held for the purpose of receiving the Pennsylvania Department of Transportation's response to questions propounded to it by the Commission in its order entered December 13, 1982, wherein it adopted a further recommended decision dated October 8, 1982. The questions propounded to PennDOT were as follows:

- A. Is it practical, both in cost and impact on Glenfield Borough to rehabilitate the Glenfield Viaduct?
- B. If the answer to A, above, is yes, then the Department shall prepare plans to accomplish the rehabilitation.
- C. If the answer to A, above, is no, then the Department shall prepare plans for the replacement of the Glenfield Viaduct with another crossing adequate and suitable for the needs of the Borough of Glenfield.

Also, see Transcript 198-199.

The Recommended Decision adopted by the Commission in its Order entered December 13, 1982, contained the following language at the start of the Discussion section:

The situation as presented in both the initial hearing of January 28, 1981, and in the last one of August 24, 1982, has not changed. The Glenfield Viaduct is crumbling, and with it the hopes for the continued

viability of Glenfield Borough. The situation was created by the construction of two major traffic-carrying highways, Traffic Route 65 and Interstate 79. Recommended Decision of March 27, 1981, pp. 3-4. The result of the situation is that surface land ingress and egress to the major portion of the Borough is by a bridge or viaduct. Loss of the structure would strangle the community and the three businesses located in it. Further Recommended Decision dated October 8, 1982, at p. 7.

The basic situation has not changed for the better, it has worsened. The three ton posting permits the use of the bridge by pedestrians and smaller vehicles only. Larger pieces of fire equipment and emergency medical equipment cannot safely use the structure. Two businesses that use larger vehicles to transport various items to and from the places of business cannot use the structure. The need to strengthen the structure was the subject of an interim report and recommendation forwarded by me under date of December 2, 1985, to this Commission. I will not address that matter any further here.

All parties to this proceeding agree with the proposed project as set forth by PennDOT. It is recommended that the project be approved by the Commission. The only sticking point appears to be allocation of costs of the project. PennDOT's position is that the cost must be fully allocated before PennDOT can proceed on this federally funded project.

In apportioning costs in rail-highway crossing proceeding, the Commission is not limited to any fixed rule but must consider all relevant factors and render an order which is just and reasonable. Commonwealth Department of Transportation v. Pennsylvania Public Utility Commission, 464 A.2d 645, Pa. Cmwlth. (1983). Such allocations are primarily within

the administrative jurisdiction of this Commission and will not be reversed if in reasonable conformity with the law. Port Authority of Allegheny County v. Pa. P.U.C., 207 Pa. Super. 299, 217 A.2d 810 (1966). The Commission in making its decision must consider all factors and is not limited in its discretion.

PennDOT is willing to bear 80% of the construction cost utilizing funds apportioned to the state from the federal government for highway projects. PennDOT is also willing to bear another 15% of the construction cost utilizing funds from the "Billion Dollar Bridge Bill", Act 235. Although PennDOT has willingly agreed to bear 95% of the project cost, we are not necessarily bound to apportion cost in this manner but must consider all factors as they relate to each party.

Conrail has volunteered to bear 2 1/2% of the project cost but places a condition upon such payment. Conrail requests that the Commission not assign any maintenance for the new bridge to it. In allocating cost, this Commission must consider all factors and render an order which is just and reasonable based on the evidence for this proceeding. For this Commission to accept a condition would in our opinion diminish this Commission's authority to allocate cost or assign maintenance. Therefore our allocation of cost and assignment of maintenance in this proceeding is based on the evidence of record, consideration of all factors, and is without regard by any party to willingly or volunteering to bear any cost.

The Commission in the first instance will make allocation of costs to the parties. We will hold the named parties responsible for said costs. However, the parties, after allocation of cost by the Commission, are free to recover cost from others in accordance with any lawful agreement.

The existing structure was constructed in 1926 pursuant to Commission Order at Docket C-6297. At that time three at-grade crossings were eliminated and the present structure was constructed. The County of Allegheny and Pennsylvania Railroad Company shared in the cost of construction. Pennsylvania Railroad Company was assigned responsibility to maintain the bridge including the viaduct spans. In 1953, Pennsylvania Department of Highways made improvements to Pa. Traffic Route 65. At that time a new bridge span, pier, and abutment was constructed on the eastern end of the present bridge. This work was done pursuant to Commission Order at Docket A. 79419.

In allocating cost to the parties for construction of the new bridge and highway approaches we have considered many things, some of which are: 1) the reasons why the existing bridge was constructed, 2) which parties were responsible for construction and maintenance at that time, 3) the age and physical condition of the existing bridge at the present time, and 4) the benefit to each party to have and use a new bridge which provides a grade separated crossing.

It is our recommendation that there should be a cost sharing among the parties to fund the improvement. Based on all factors for consideration and the benefit to the parties, we recommend that PennDOT bear the major cost of constructing the new bridge and highway approaches, i.e. 95%, and that the County of Allegheny and Conrail share in the remaining cost, i.e. 2 1/2% each (approximately \$89,500).

As relates to the utilities, it appears at the present time that Columbia Gas Company will not have to relocate any of its facilities. Duquesne Light Company, however, has six (6) poles and aerial lines to

be relocated, 4 poles in public right-of-way and 2 in private right-of-way. These poles were installed at different times, 2 in 1936, 2 in 1958, and 2 in 1972; all with a service life of 30 years. Mr. Hamilton, engineer for Duquesne, was questioned whether the facilities could be relocated to private right-of-way. He stated that the utility preferred to stay in public right-of-way. His reasons were (1) "to serve existing customers" and (2) "its ease of maintenance as far as getting our equipment in, trucks and that to maintain the poles and wires". Mr. Hamilton estimated it would cost approximately \$20,000 to relocate its facilities. We have considered all factors involved as relates to Duquesne and conclude that they should be reimbursed for \$4,000.00 of their relocation cost.

Conrail has an aerial communication and signal line under the existing bridge and proposed new bridge. Mr. Addison testified it would cost \$37,219.00 to relocate these lines underground and denies that this is an improvement to the facilities. Upon review of Conrail's Exhibit 5 we have determined that Conrail proposes to relocate 2,500 feet approximately 1/2 mile, of aerial lines to underground. This would be a permanent installation not just to protect it during construction. In our view only 400-500 feet of line would have to be protected during construction. Therefore, we will direct that Conrail lower its aerial lines in the crossing area and protect it during construction. Then return them to aerial after completion of construction. Mr. Addison testified that Conrail prefers to have its lines aerial for ease of maintenance. If Conrail choses at its discretion to place its aerial lines permanently underground, we feel it should do so but then only receive 20% reimbursement for this work. Five hundred feet is 20% of 2500 feet.

It will be necessary for Conrail to provide flagmen and watchmen as well as construction, inspection, and engineering services while construction is being performed along, across, and above its tracks. Said services are contingent upon the contractor's method of operation. The cost of these protection services should be borne by PennDOT as part of the project cost.

Conrail has incurred initial cost for work performed in accordance with prior orders of this Commission in this proceeding. Conrail has performed an engineering evaluation, safety inspections, and maintenance for the structure. Conrail's initial cost for this work has been \$12,500. Conrail should bear its cost to date for work performed in accordance with prior orders of this Commission in this proceeding.

With construction of the new bridge it will be necessary for this Commission to appropriate some Conrail property for aerial easement. Mr. Addison has stated that Conrail would waive damages for this right-of-way. Also, upon demolition of the old bridge, the right-of-way between Highway Station 8+56 and 10+80 shall be vacated.

Now the existing bridge must be replaced and a new one constructed. Maintenance responsibility for the new bridge must now be assigned. Because of varied conditions that exist at this crossing we are of the opinion that PennDOT, Conrail, and Glenfield Borough should all share in responsibility for maintaining the new bridge and highway approaches. We will assign the maintenance responsibility in the following manner:

1. PennDOT will be assigned responsibility to perform any actual work necessary to maintain the entire bridge including the stairway but excluding the lighting facilities on the stairway. PennDOT will be assigned 50% of the cost, and Conrail will be assigned 50% of the cost.

2. PennDOT will be assigned maintenance, at its cost, for the northern highway approach to the bridge.
3. Glenfield Borough will be assigned maintenance, at its cost, for the western highway approach to the bridge, the electrical energy cost and lighting facilities on the pedestrian stairway, and snow and ice removal on the sidewalks, stairway, bridge, and highway approaches.
4. The utilities, at their respective cost, will be directed to maintain their respective facilities.

I believe that the Findings of Fact and Conclusions of Law stated in the Further Recommended Decision dated October 8, 1982, and in the interim report and Recommended Decision dated December 2, 1985, are adequate to support the Recommended Order which follows.

#### Recommended Order

In consideration of the foregoing IT IS HEREBY ORDERED:

1. That the Pennsylvania Department of Transportation, at its initial cost and expense, within three (3) months of the date of service of the Commission's Order, submit to all parties of record for review and to this Commission for review and approval, detailed construction plans for replacement of the Glenfield Viaduct, and highway approaches thereto, generally in accordance with the preliminary engineering plans submitted as Pennsylvania Department of Transportation Exhibits 3 and 4.
2. That, in accordance with provisions of Section 2702(b) of the Public Utility Code, 66 Pa. CSA §2702(b), the following described parcel of property be, and is hereby appropriated for the construction of the crossing in accordance with the plans approved by the Commission, and that this paragraph be recorded with the Recorder of Deeds of Allegheny County, indexed under the name or names of the record owners of the said

property, grantor, and the Pennsylvania Department of Transportation, grantee, at the sole cost and expense of the Pennsylvania Department of Transportation.

Record Owner - Consolidated Rail Corporation  
c/o J. T. Sullivan, P.E.  
Consolidated Rail Corporation  
Room 1200  
15 N. 32nd Street  
Philadelphia, Pa. 19104

All that certain tract of land, together with all buildings, structures, or parts thereof, of any description or use whatsoever, erected or located thereon, situated in the Borough of Glenfield, Allegheny County, bounded and described as follows:

TRACT NO. 1

(REQUIRED RIGHT OF WAY FOR AERIAL EASEMENT)

Beginning at point on the southerly side of the Glenfield viaduct said point being at the intersection of the westerly required right-of-way line for aerial easement and the northerly legal right-of-way line for East Beaver Street distant twenty-five (25) feet northwesterly and measured at right angles from the survey and right-of-way base line of Glenfield Viaduct at or about Station 10+02 thereof; thence in a northeasterly direction along the said westerly required right-of-way line for aerial easement to a point and intersection with the southerly legal right-of-way line for limited access for Ramp B1 of Legislative Route 652 Eastbound distant twenty-five (25) feet northwesterly and measured at right angles from the survey and right-of-way base line of said viaduct at or about Station 10+80 thereof; thence in an easterly direction along the said legal right-of-way line for said ramp to a point and intersection with the easterly required right-of-way line for aerial easement distant twenty (20) feet northeasterly and measured at right angles from the survey and right-of-way base line of said viaduct at or about Station 10+80 thereof; thence in a

southwesterly direction along the said required right-of-way line for aerial easement to a point on the northerly legal right-of-way line for East Beaver Street distant twenty (20) feet northeasterly and measured at right angles from the survey and right-of-way base line of said viaduct at or about Station 10+02 thereof; thence in a westerly direction along the said legal right-of-way line for said street to the point and place of beginning and containing three thousand five hundred ten square feet of land more or less.

The above tract of land shown on the Borough of Glenfield's Drawings Authorizing Acquisition of Right of Way for Glenfield Viaduct, as recorded in the office of the recording of deeds, etc., in Allegheny County, Pennsylvania, in \_\_\_\_\_ on \_\_\_\_\_, is a portion of real estate, which became legally vested in Consolidated Rail Corporation by deed of Pittsburgh, Ft. Wayne and Chicago Railways Company, dated March 21, 1976, and recorded \_\_\_\_\_, in Deed Book Volume 6029, Page 21, in the Allegheny County Courthouse.

3. That the Pennsylvania Department of Transportation, at its initial cost and expense, within 24 months of the date of approval of the construction plans, furnish all material and do all work necessary to construct the improvement in accordance with the approved construction plans.

4. That Pennsylvania Department of Transportation at least ten (10) days prior to the start of work notify all parties of record of the actual date when work will be started on this project.

5. That Consolidated Rail Corporation, at the initial cost and expense of Pennsylvania Department of Transportation, furnish and

maintain flagmen, watchmen, and engineering and construction inspection services, as necessary, while work is being performed above, along, and across its tracks in accordance with this order.

6. That Consolidated Rail Corporation, at its initial cost and expense, furnish all material and do all work necessary to temporarily lower its aerial lines in the area of the crossing and protect it during construction and then return it to an aerial position upon completion of the improvement. That Consolidated Rail Corporation at its option may relocate its aerial lines to a permanent location underground.

7. That Duquesne Light Company and Columbia Gas Company, each respectively, at its initial cost and expense, furnish all material and do all work necessary to make alteration to its respective facilities, as necessary to permit the construction of the improvement.

8. That any relocation of, changes in, or removal of any existing structure, equipment or facilities of any public utility other than Consolidated Rail Corporation, Duquesne Light Company, and Columbia Gas Company, which may be required as incidental to the execution of this order, be made by the said public utility at its initial cost and expense and in such a manner so as not to interfere with the construction of the highway improvement.

9. That Pennsylvania Department of Transportation, County of Allegheny, Glenfield Borough, Consolidated Rail Corporation, and the involved non-transportation utilities cooperate with each other during the construction of the improvement so that the operations or facilities of either of the parties will not be endangered or unnecessarily impeded.

10. That upon completion of the improvements, each of the involved parties report to this Commission the actual date of completion of its respective work ordered herein and at the earliest practicable time subsequent to the said date of completion, submit to this Commission a detailed statement of the actual costs incurred in furnishing material and performing work in accordance with this Order.

11. That upon completion of the improvement ordered herein, County of Allegheny, when and as certified by this Commission, pay to Pennsylvania Department of Transportation a sum or sums of money equal to two and one-half (2 1/2%) percent of the actual cost incurred in furnishing material and performing work in accordance with paragraphs 1, 3, and 5 of this order.

12. That upon completion of the improvement ordered herein, Consolidated Rail Corporation, when and as certified by this Commission, pay to Pennsylvania Department of Transportation a sum or sums of money equal to two and one-half (2 1/2%) percent of the actual cost incurred in furnishing material and performing work in accordance with paragraphs 1, 3, and 5 of this order.

13. That Pennsylvania Department of Transportation bear the remaining ninety-five (95%) percent of the actual cost incurred in furnishing material and performing work in accordance with paragraphs 1, 3, and 5 of this order.

14. That upon completion of the improvement ordered herein, Pennsylvania Department of Transportation, when and as certified by this Commission, pay to Duquesne Light Company a sum or sums of money equal to \$4,000.00 for work performed and material furnished in accordance with paragraph 7 of this order.

15. That Duquesne Light Company bear the remaining cost it incurred in furnishing material and performing work in accordance with paragraph 7 of this order.

16 That upon completion of the improvement ordered herein, Pennsylvania Department of Transportation, when and as certified by this Commission, pay to Consolidated Rail Corporation a sum or sums of money equal to 100% of the actual cost incurred in furnishing material and performing work to temporarily lower, protect, and reestablish the communication and signal aerial lines in accordance with paragraph 6 of this order; or if Consolidated Rail Corporation chose to permanently locate its aerial lines underground, then pay to Consolidated Rail Corporation a sum or sums of money equal to 20% of the actual cost incurred in furnishing material and performing work to relocate the communication and signal lines permanently underground in accordance with paragraph 6 of this order.

17. That Consolidated Rail Corporation, if it chose to locate its aerial lines permanently underground, bear the remaining eighty (80%) percent of the actual cost incurred in furnishing material and performing work in accordance with paragraph 6 of this order.

18. That Consolidated Rail Corporation bear the cost it incurred in complying with the Commission's orders of May 29, 1981 and December 3, 1982 issued in this proceeding.

19. That Pennsylvania Department of Transportation bear the cost it incurred in complying with the Commission's Order of December 3, 1982 issued in this proceeding.

20. That Pennsylvania Department of Transportation, at its sole cost and expense, pay all compensation for damages due to the owners of property, excluding Consolidated Rail Corporation, taken, injured or destroyed by reason of the construction of the improvement in accordance with this order.

21. That Consolidated Rail Corporation, having agreed to do so, bear any cost it would be entitled to as compensation for damages due to its property taken, injured or destroyed by reason of the construction of the improvement in accordance with this order.

22. That upon completion of the improvement and its opening to public use, Consolidated Rail Corporation, at its sole cost and expense, furnish all material and do all work necessary to maintain its railroad facilities in the area of the crossing all in a safe and satisfactory condition.

23. That upon completion of the improvement and its opening to public use, the non-transportation utilities, each respectively, at its sole cost and expense, furnish all material and do all work necessary to maintain its facilities in the area of the crossing.

24. That upon completion of the improvement and its opening to public use, Pennsylvania Department of Transportation, at its initial cost and expense, furnish all material and do all work necessary to maintain the bridge substructure and superstructure, including the pedestrian stairway but excluding the lighting facilities on the stairway; all in a safe and satisfactory condition; that Consolidated Rail Corporation pay to Pennsylvania Department of Transportation 50% of the

cost of said maintenance; that Pennsylvania Department of Transportation bear the remaining 50% of the cost of said maintenance.

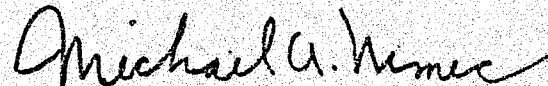
25. That upon completion of the improvement and its opening to public use, Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and do all work necessary to maintain the northern highway approach to the bridge in a safe and satisfactory condition.

26. That upon completion of the improvement and its opening to public use, Glenfield Borough, at its sole cost and expense, furnish all material and do all work necessary to maintain the western highway approach to the bridge; the electrical energy cost and lighting facilities on the pedestrian stairway; and snow and ice removal on the sidewalks, stairway, bridge, and both highway approaches, all in a safe and satisfactory condition.

27. That upon completion of the improvement and its opening to public use, the right-of-way for aerial easement between Highway Station 8+56 to 10+80 over Consolidated Rail Corporation's property for the old bridge be and is hereby vacated.

28. That this order insofar as it places the cost of the improvement on the various parties is without prejudice to their right to recover the said cost from others in accordance with any lawful agreement.

Date: 2-11-86

  
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Michael A. Nemecek  
Administrative Law Judge