

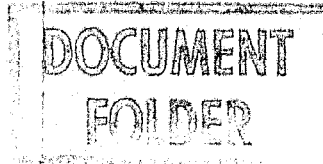


COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120
March 8, 1988

Stephen J. Polaha, Esquire
Ronald J. Klimas, Esquire
Eckell, Spark, Levy, Aurerbach,
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344 West Front Street
Media, PA 19063

IN REPLY PLEASE
REFER TO OUR FILE

C-850414



*Borough of Ridley Park v. Southeastern Pennsylvania Transportation Authority, Pennsylvania Department of Transportation, Consolidated Rail Corporation, National Railroad Passenger Corporation, and Delaware County.

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Recommended Decision prepared by Administrative Law Judge Martin R. Fountain.

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

lg
Enclosures
Certified Mail
Receipt Requested

Very truly yours,
Allison K. Turner
Allison K. Turner
Chief Administrative Law Judge

Similar letter to: See attached list.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

**DOCUMENT
FOLDER**

Borough of Ridley Park

v.

Southeastern Pennsylvania Transportation
Authority, Pennsylvania Department of
Transportation, Consolidated Rail
Corporation, National Railroad Passenger
Corporation, and Delaware County

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C-850414

RECOMMENDED DECISION

Before
Martin R. Fountain
Administrative Law Judge

DOCKETED
MAR 10 1988

History of Proceeding

The Borough of Ridley Park (Borough) filed a complaint on September 18, 1985, alleging a bridge carrying Sellers Avenue over the tracks of the railroad is in a state of disrepair. The Borough alleges (a) that the concrete deck of the bridge is inadequately maintained and has numerous large potholes and severe cracking in both traffic lanes creating a dangerous condition for motorists using the bridge; (b) the highway approach slabs to the bridge have settled causing a vibration in the structure as heavy traffic enters upon the bridge. The Borough requests that immediate repairs be made.

A field investigation and conference was conducted by a Commission engineer on April 9, 1986 at the site of the crossing.

A hearing was held September 18, 1986. The Commission, on December 4, 1986, adopted the undersigned Administrative Law Judge's Recommended Decision which directed that Amtrak obtain core boring samples of the bridge deck and that PennDOT perform testing and analysis of the core borings. Further hearing was held May 28, 1987 to consider the test results and recommendation for repairs. The hearing produced 62 pages of testimony and two (2) exhibits. No briefs were filed.

Findings of Fact

1. Analysis of the core samples of the bridge deck indicate that, in general, the deck concrete is of good quality and high compressive strength. The chloride ion content is moderate; however, there are no indications of re-bar corrosion. The air content is very low. This makes the concrete more susceptible to freeze-thaw deterioration which is discernible by the large measure of surface mortar deterioration. Approximately 50% of the deck surface shows moderate to heavy deterioration (PennDOT Exhibit 1).

2. PennDOT is willing to bear its cost to perform the core sample analysis (N.T. 15).

3. PennDOT testified that there are three feasible options for a bridge deck treatment. The first option is a 3" bituminous overlay with bituminous patching. The second is a 1 1/4" latex modified concrete (LMC) overlay with LMC patching.

The third is complete deck replacement. A summary of the costs and expected life is:

<u>Option</u>	<u>Costs</u>	<u>Expected Life</u>
Bituminous Overlay	\$10,000	5-7 yrs.
L.M.C. Rehab.	\$75-100,000	15-25 yrs.
Deck Replacement	\$200-250,000	30-50 yrs.

(PennDOT Exhibit 1)

4. PennDOT recommends that the bridge deck be rehabilitated with latex modified concrete (N.T. 16, 34).

5. PennDOT is of the opinion that the bridge is adequate in strength and physical dimensions to safely accommodate the class and volume of traffic normally using this highway (N.T. 16).

6. PennDOT is willing to apply latex modified concrete overlay to the deck in conjunction with a highway overlay project that they have scheduled for Sellers Avenue in 1989 (N.T. 17).

7. If PennDOT performs the bridge latex modified concrete overlay in conjunction with the highway overlay, the bridge work could be constructed for \$50,000. This cost is less than that in Finding of Fact 3 because PennDOT would be bearing the cost for mobilization and maintenance of traffic with its highway overlay project (N.T. 17, 33).

8. PennDOT is willing to bear the cost of the bridge latex modified concrete overlay only if it can do this work as part of its highway overlay project (N.T. 18).

9. PennDOT seeks a cost sharing of bridge work if it is done as a separate project (N.T. 18).

10. The existing bituminous surface with patches has created an uneven surface on the bridge deck (N.T. 19).

11. Approximately, average daily vehicular traffic on Sellers Avenue Bridge is 7,250 (N.T. 24).

12. Sellers Avenue is a state highway (N.T. 26).

13. PennDOT proposes to reconstruct the Swarthmore Avenue Bridge, one block west of the Sellers Avenue Bridge, in 1989.

14. PennDOT does not know if the bridge work will qualify for federal funds (N.T. 32).

15. PennDOT does not agree to bear the cost of or maintain the bridge in the future (N.T. 32, 33).

16. Amtrak agrees with PennDOT's position that (1) the bridge deck should be rehabilitated with latex modified concrete surface and (2) the bridge is adequate in strength and physical dimensions (N.T. 38, 39).

17. Amtrak does not agree to do any work or bear any cost to alter or reconstruct the crossing (N.T. 39).

18. Amtrak does not agree to maintain the bridge in the future (N.T. 39, 40).

19. Amtrak agrees to bear its cost to obtain the core samples from the bridge deck (N.T. 40).

20. Amtrak owns the rail line beneath the Sellers Avenue Bridge (N.T. 41).

21. SEPTA has no recommendation as to the work required on the bridge since it has not inspected the bridge (N.T. 42, 43).

22. SEPTA does not agree to perform any work, bear any costs or accept any maintenance subsequent to reconstruction (N.T. 43).

23. SEPTA does operate on the rail line below the bridge (N.T. 44).

24. Ridley Park Borough agrees with PennDOT's recommendation that the bridge be rehabilitated with a latex modified concrete overlay (N.T. 46).

25. Ridley Park Borough has no opinion as to the structural integrity of the bridge (N.T. 46).

26. Ridley Park Borough's engineer is of the opinion that the bridge is unsafe because of the potholes in the bridge deck and the highway approaches (N.T. 47).

27. Ridley Park Borough agrees with PennDOT's long term recommendation but feels some immediate work is necessary concerning the potholes and rough surface of the bridge deck (N.T. 47). The borough would like the bridge deck to be overlaid with bituminous material (N.T. 48).

28. Ridley Park Borough does not agree to bear any costs, do any work or perform any maintenance as relates to the bridge (N.T. 49).

29. Ridley Park Borough has filled the potholes on the bridge in the past because of the complaints of the people who use the bridge (N.T. 50).

30. Conrail concurs in PennDOT's recommendation concerning (1) the work necessary for the bridge and (2) that the bridge is adequate for existing vehicular traffic (N.T. 59, 60).

31. Conrail does not agree to perform any work, bear any cost or maintain any portion of the bridge (N.T. 59, 60).

32. Conrail operates trains on the rail line below the Sellers Avenue Bridge (N.T. 60).

Discussion

This proceeding involves the complaint of Ridley Park Borough, alleging a state of disrepair of the Sellers Avenue Bridge over the tracks of Amtrak. By Commission Order of December 4, 1986, Amtrak was directed to obtain core boring samples from the bridge deck. PennDOT was directed to test and analyze the core boring samples.

PennDOT has analyzed the core boring samples and concluded that the deck concrete is of good quality. However, approximately 50% of the bridge deck surface shows moderate to heavy deterioration. PennDOT's engineer, John Miller, testified

that there are three feasible options for rehabilitation of the bridge deck.

<u>Option</u>	<u>Cost</u>	<u>Expected Life</u>
Bituminous overlay	\$10,000	5-7 yrs.
Latex modified concrete overlay	\$75-100,000	15-25 yrs.
Total deck replacement	\$200-250,000	30-50 yrs.

PennDOT recommends that the bridge deck be rehabilitated by the construction of a latex modified concrete overlay. Amtrak, Ridley Park Borough and Conrail all agree with PennDOT's recommendation. Ridley Park Borough also wants some immediate work performed to repair potholes and afford the bridge deck a better riding surface.

There is no disagreement among the parties as to what work is necessary. PennDOT has offered to do the bridge deck rehabilitation in 1989 along with other improvements involving Sellers Avenue. PennDOT is willing to bear the cost of the bridge deck rehabilitation only if it is allowed to do the work along with the Sellers Avenue highway project. PennDOT is of the opinion that the bridge work can be done for \$50,000 if the bridge work is combined with the Sellers Avenue highway project. The savings in costs can be attributed to the cost for project mobilization, maintenance of traffic, highway flagmen, etc.

The Administrative Law Judge sees no reason to insist that this work be completed in 1988, except for problems with potholes. Therefore, PennDOT's offer to do the work in 1989 and

bear the cost is acceptable. The Administrative Law Judge notes that if it were not for PennDOT's offer, the cost for this work would be assigned to other parties, probably Amtrak.

As relates to the rough surface and potholes on the bridge deck, the Administrative Law Judge will direct that PennDOT immediately fill all existing potholes and continue to maintain the bridge deck until PennDOT can perform the rehabilitation. Upon completion of the rehabilitation, the Commission's Order at Docket C-13677 will be reaffirmed as to maintenance assignment. Amtrak will be assigned the maintenance responsibility of the prior railroad, i.e., Pennsylvania Railroad.

The Sellers Avenue Bridge was constructed by the Pennsylvania Railroad Company in 1873. The bridge superstructure was replaced in 1904 by the railroad. The Sellers Avenue Bridge was reconstructed in 1951 pursuant to Commission Order at Docket C-13677. Pennsylvania Railroad Company performed the work of reconstructing the new bridge and was assigned 40% of the cost. Pennsylvania Railroad Company was also assigned, at its sole cost and expense, the responsibility to maintain the bridge substructure and superstructure, including the roadway paving, curbs and sidewalk located on the superstructure. There is no reason to change the maintenance responsibility for the bridge

from that which was assigned in the prior Commission Order at Docket C-13677, i.e., prior railroad to current railroad, Amtrak.

The Administrative Law Judge is aware of the case of National Railroad Passenger Corporation v. Commonwealth of Pennsylvania Public Utility Commission, 665 F. Supp. 402 (E.D. Pa. 1987) concerning the issue that, under the terms of 45 U.S.C. 5466, no state or local authority may levy any taxes or fees on Amtrak. The Commission has pending an appeal of this cited case before the U.S. Court of Appeals for the Third Circuit. The instant proceeding assigns future maintenance of the completed project to Amtrak. Amtrak is not assigned any cost of the ordered improvement. Assignment of future maintenance to Amtrak in the instant proceeding is consistent with the Commission action in A-105258, Order adopted October 2, 1987 and C-87040294, Order adopted January 15, 1988. In these two cases, Amtrak filed exceptions to the decision of the Administrative Law Judge concerning assignment of future maintenance. The Commission denied Amtrak's exceptions on this issue.

THEREFORE,

IT IS ORDERED (Subject to Commission Approval):

1. That the Complaint be and is hereby sustained.
2. That Pennsylvania Department of Transportation, having agreed to do so on or before December 31, 1989, at its sole cost and expense, furnish all material and do all work

necessary to (1) rehabilitate the Sellers Avenue Bridge by the construction of a latex modified concrete overlay on the bridge deck and (2) rehabilitate the highway approaches to the Sellers Avenue Bridge to accommodate the grade profile on the bridge.

3. That Pennsylvania Department of Transportation, at its sole cost and expense, within 30 days from service of the Commission Order, furnish all material and do all work necessary to temporarily patch all existing potholes on the Sellers Avenue Bridge. Thereafter, to maintain the bridge deck surface in a smooth and satisfactory condition until Pennsylvania Department of Transportation performs the ordered improvement.

4. That Pennsylvania Department of Transportation, having agreed to do so, bear all its costs incurred in performing work in accordance with order paragraph 2 of the Commission's Order entered December 9, 1986 in this proceeding.

5. That National Railroad Passenger Corporation, having agreed to do so, bear all its costs incurred in performing work in accordance with order paragraph 1 of the Commission's Order entered December 9, 1986 in this proceeding.

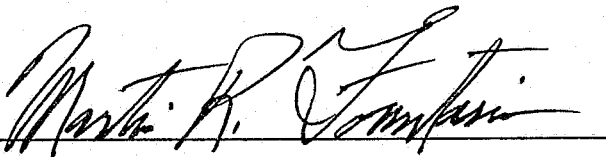
6. That National Railroad Passenger Corporation, at its sole cost and expense, upon completion of the improvement ordered herein, furnish all material and do all work necessary thereafter to maintain its facilities, including the substructure and superstructure of the bridge carrying Sellers Avenue over and

above the tracks of the railroad Corporation, including bituminous roadway paving, if any, and curbs and sidewalks located on the superstructure.

7. That in all respects not inconsistent herewith, the Commission's Order dated May 16, 1949 at Docket C-13677, as relates to assignment of maintenance, remains in full force and effect.

Date: _____

2/24/88



MARTIN R. FOUNTAIN
Administrative Law Judge