

ORIGINAL

Philadelphia
Suburban
Water Company

762 Lancaster Avenue, Bryn Mawr, Pennsylvania 19010 215/LA5-1400

RECEIVED

JUN 7 1985

SECRETARY'S OFFICE
Public Utility Commission

June 4, 1985

Jerry Rich, Secretary
Pennsylvania Public Utility
Commission
P.O. Box 3265
Harrisburg, Pennsylvania 17120

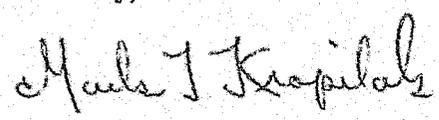
Re: Department of Transportation v. Consolidated Rail Corporation, et al.
(Matsonford Bridge) Docket No. C-00019707

Dear Secretary Rich:

Please note that my address as counsel for Philadelphia Suburban Water
Company in the above-captioned case has changed to the address listed above.

By copy of this letter, I am advising all parties of this change.

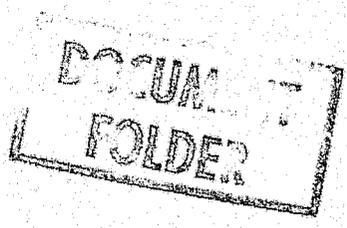
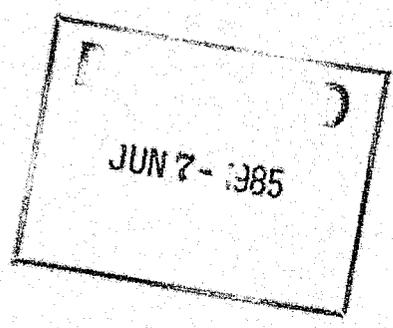
Sincerely,



Mark J. Kropilak
Assistant Corporate Counsel

MJK/sss

cc: Honorable Joseph J. Klovekorn
Administrative Law Judge
ALL PARTIES OF RECORD



ORIGINAL

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
Harrisburg, Pennsylvania 17120
Office of Chief Counsel



June 7, 1985

IN REPLY REFER TO

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, Pennsylvania 17120

RECEIVED

JUN 7 1985

SECRETARY'S OFFICE
Public Utility Commission

Re: Complaint Docket C-19707
Montgomery County

Dear Mr. Rich:

Enclosed please find an original and nine (9) copies of Exceptions of the Department of Transportation to Initial Decision, in the above-captioned matter.

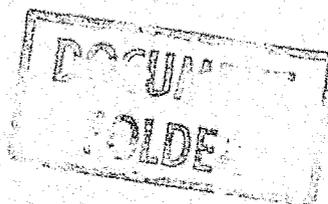
I hereby certify that a copy of the Exceptions have been sent to all parties of record.

Very truly yours,

Herbert G. Zahn
Herbert G. Zahn
Assistant Counsel
(717) 787-5931

220/HGZ: rmm
Enclosures

cc: W. J. Clements, P.E. (Attn.: M. Davis)
District Engineer #6-0
Parties of Record - Pages 2 & 3



Jerry Rich, Secretary
Page 2
June 7, 1985

PARTIES OF RECORD

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P. O. Box 404
Conshohocken, Pennsylvania 19428

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Southeastern Pennsylvania Transportation Authority
130 South Ninth Street, Fifth Floor
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Kane, Pugh, Anderson, Subers & McBrien
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Solicitor for Borough of Conshohocken
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Sheldon Seligsohn, Esquire
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Solicitor for County of Montgomery
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Reading Company
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Arthur Lefkoe, Esquire
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Jerry Rich, Secretary
Page 3
June 7, 1985

PARTIES OF RECORD

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Philadelphia, Pennsylvania 19101

Daniel F. Donovan, Esquire
Consolidated Rail Corporation
1138 Six Penn Center Plaza
Philadelphia, Pennsylvania 19104

John J. Gallagher, Assistant Counsel
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, Pennsylvania 17120

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

JUN 7 1985

Department of Transportation
of the Commonwealth of
Pennsylvania

COMPLAINT

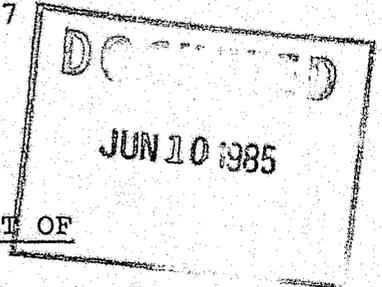
SECRETARY'S OFFICE
Public Utility Commission

DOCKET

v.

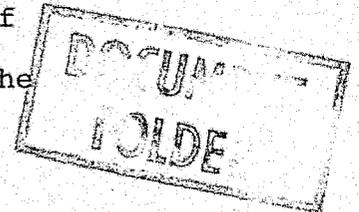
Reading Company, Debtor,
Borough of Conshohocken,
Borough of West Conshohocken
and County of Montgomery

NO. C-19707



EXCEPTIONS OF THE PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION TO INITIAL DECISION

AND NOW, comes the Pennsylvania Department of Transportation (Department) by its under signed attorney and takes exceptions to the proposed Initial Decision of Administrative Law Judge, Joseph J. Klovekorn, in the above-captioned matter, as follows:



The Department is in accord with the Recommended Decision of the Administrative Law Judge with the exceptions that the Recommended Order makes no provision for the maintenance responsibilities for access roads no. 1 and no. 2, or the maintenance of the superstructure of the new bridge. In addition, since the hearing in this matter, the Commonwealth and Southeastern Pennsylvania Transportation Authority (SEPTA), have entered into an agreement whereby SEPTA will do all the work to

install/relocate the automatically operated railroad crossing flashing warning lights and gates and railroad crossbucks at the Harry Street at-grade crossing at the sole cost and expense of the Commonwealth. Consequently, the following exceptions are made:

1. Exception is taken to the omission from the Recommended Order for the maintenance of access road no. 1 and the superstructure of the new bridge. Under the heading of Discussion, Section F - Maintenance of Facilities, it was stated that West Conshohocken Borough is the proper party to maintain the bridge superstructure and the highway approaches thereto. Since Paragraph 2 of the Recommended Order establishes the Commission's jurisdiction over all of access road no. 1, the Borough of West Conshohocken should be directed to maintain all of that access road and the superstructure of the new bridge which includes the highway approaches to the bridge superstructure.

2. Exception is taken to the omission from the Recommended Order for the maintenance of access road no. 2. Since access road no. 2 is in Conshohocken Borough and the Recommended Order establishes the Commission's jurisdiction over all of access road no. 2, Conshohocken Borough should be ordered to maintain access road no. 2 as this will become a borough street upon completion of the project.

3. Exception is made to Paragraph 9 of the Recommended Order which directs the Department to do and pay for the work at the Harry Street at-grade crossing. Because of the agreement between the Commonwealth and SEPTA, Paragraph 9 should be amended to direct SEPTA to do the work at the sole cost and expense of the Commonwealth.

WHEREFORE, the Pennsylvania Department of Transportation respectfully requests your Honorable Commission to provide two additional paragraphs to its Order as follows:

That upon completion of the improvement and its opening to public use, the Borough of West Conshohocken, at its sole cost and expense, maintain the superstructure of the new bridge and access road no. 1.

That upon completion of the improvement and its opening to the public, the Borough of Conshohocken, at its sole cost and expense, maintain access road no. 2.

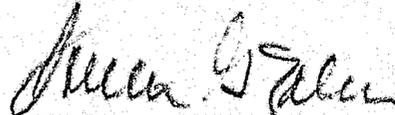
That Paragraph 9 of the Recommended Order be amended to read as follows:

That Southeastern Pennsylvania Transportation Authority, furnish all material and do all work necessary to install/relocate the automatically operated railroad crossing flashing warning lights and railroad crossbucks at the Harry Street at-grade crossing all in accordance with the approved

plans, at the sole cost and expense of
the Pennsylvania Department of
Transportation.

AND, it will ever pray, etc.

Respectfully submitted,



Herbert G. Zahn
Assistant Counsel

CONRAIL

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JUN 11 1985
SECRETARY'S OFFICE
Public Utility Commission

June 10, 1985

Jerry Rich, Secretary
Pennsylvania Public Utility
Commission
New Filing Section, Room B-18
North Office Building
Harrisburg, PA 17120

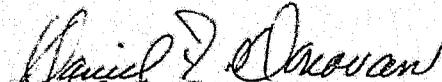


Re: Department of Transportation of the Commonwealth of
Pennsylvania v. Reading Company, Debtor, Borough of
Conshohocken, Borough of West Conshohocken and County
of Montgomery - Complaint Docket No. C-19707
Law Department File No. MPCB-00025

Dear Mr. Rich:

Herewith for the consideration of the Commission are an
original and nine copies of the exceptions of Consolidated
Rail Corporation to the Recommended Decision of Administrative
Law Judge Joseph J. Klovekorn, dated May 13, 1985.

Very truly yours,


Daniel F. Donovan
Senior General Attorney

1138 Six Penn Center Plaza
Philadelphia, PA 19103
(215) 977-5016

DFD/bp

cc: Spencer A. Manthorpe, Chief Counsel
Pennsylvania Department of Transportation
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Harrisburg, Pennsylvania 17120

John J. Gallagher, Assistant Counsel
Pa. P.U.C., Law Bureau
P. O. Box 3265
Harrisburg, Pennsylvania 17120

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Kane, Pugh, Anderson, Subers & McBrien
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Norristown, Pennsylvania 19401
(for Borough of West Conshohocken)

Bernard A. Moore, Solicitor
Borough of Conshohocken
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Conshohocken, Pennsylvania 19428

Sheldon Seligsohn, Attorney
The Bell Telephone Company of Pennsylvania
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Philadelphia, Pennsylvania 19102

John W. Boyer, Jr., President
Philadelphia Suburban Water Company
762 Lancaster Avenue
Bryn Mawr, Pennsylvania 19010

Frederic M. Wentz, Solicitor
County of Montgomery
Courthouse
Norristown, Pennsylvania 19404

Douglas P. Humes, Esquire
Reading Company
Reading Center
Philadelphia, Pennsylvania 19107

Joseph I. Hallman, Esquire
Upper Merion & Plymouth Railroad Co.
P. O. Box 404
Conshohocken, Pennsylvania 19428

Edward H. Huss, Esquire
Southeastern Pennsylvania Transportation
Authority
130 South Ninth Street, Fifth Floor
Philadelphia, Pennsylvania 19107

June 10, 1985
Page 3

Edward G. Bauer, Jr., Vice President and
General Counsel
Philadelphia, Electric Company
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Arthur Lefkoe, Solicitor
Plymouth Township
515 Swede Street
Norristown, Pennsylvania 19401

Mark Kropilak, Esquire
762 Lancaster Avenue
Bryn Mawr, Pennsylvania 19010
(for Philadelphia Suburban Water Company)

RECEIVED

JUN 1 1985

BEFORE THE SECRETARY'S OFFICE
PENNSYLVANIA PUBLIC UTILITY COMMISSION Public Utility Commission

Department of Transportation of	:	
the Commonwealth of Pennsylvania	:	Complaint Docket
	:	No. C-19707
v.	:	
	:	
Reading Company, Debtor,	:	
Borough of Conshohocken, Borough	:	
of West Conshohocken and County	:	
of Montgomery	:	

EXCEPTIONS OF CONSOLIDATED RAIL CORPORATION

DANIEL F. DONOVAN, ESQUIRE
1138 Six Penn Center Plaza
Philadelphia, PA 19103
(215) 977-5016

Attorney for:
Consolidated Rail Corporation

Due Date: June 12, 1985

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

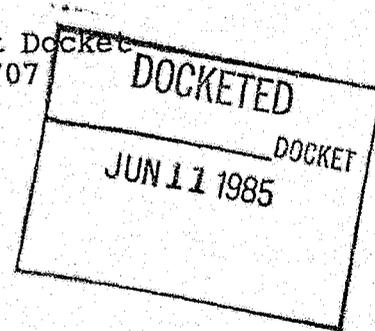


Department of Transportation of
the Commonwealth of Pennsylvania

Complaint Docket
No. C-19707

v.

Reading Company, Debtor,
Borough of Conshohocken, Borough
of West Conshohocken and County
of Montgomery



EXCEPTIONS OF CONSOLIDATED RAIL CORPORATION

Comes now, Consolidated Rail Corporation (Conrail) by its Senior General Attorney, and takes exception to the proposed Recommended Decision of Administrative Law Judge Joseph J. Klovekorn dated May 13, 1985 in the following particulars:

1. Exception is take to proposed ordering paragraph 27 which reads as follows:

That upon completion of the improvement and its opening to public use, Consolidated Rail Corporation, at its sole cost and expense, furnish all materials and due all work necessary to maintain (1) the Matsonford Bridge Piers and entire bridge superstructure spanning over and adjacent to its tracks, (2) access Road No. 1 bridge substructure, and (3) its railroad facilities in the area of the crossings; all in a safe and satisfactory condition.

Initially, Conrail points out that the allocation of maintenance responsibilities for the superstructure of the bridge does not distinguish between the superstructure and the roadway paving thereon. It has been the custom and practice of

your Commission to assign maintenance responsibility for the roadway surfaces of bridges to the governmental entity having jurisdiction over the highway which the bridge carries. In this instance L.R. 46140 is under the jurisdiction of the Pennsylvania Department of Transportation. Obviously, segmentation of maintenance responsibility for the roadway surface is not a workable arrangement. Any necessary repairs to the roadway surface in the future necessitate the performance of that work as a unit. Otherwise, the difficulty in programming the performance of the work by several contractors or by employees of the several parties would probably result in extensive disruption of traffic. Inasmuch as the proposed bridge will carry a highway under the jurisdiction of the Department of Transportation, it should be assigned the obligation of maintaining the entire roadway surface.

Secondly, Conrail takes exception to the proposal that the piers and entire bridge superstructure spanning over and adjacent to Conrail's tracks, as well as the bridge substructure at access Road No. 1 be maintained by Conrail. This is a State highway being constructed solely for the benefit of the highway traveler. Conrail realizes absolutely no benefit as a result of the accomplishment of the project and it should not have to bear any of the costs of future maintenance.

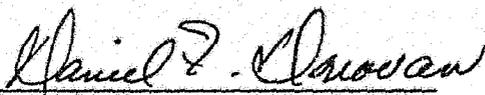
It must also be pointed out that the descriptions of the portions of the bridge for which the several parties are assigned maintenance responsibilities appear to be ambiguous

and could give rise to disputes in the future. The custom and practice of your Commission in the past in situations where assignment responsibilities are divided has been to to define the area of responsibility as that portion of the structure above the tracks of the railroad. Such a description is clear and unambiguous and would avoid any disputes with respect to interpretation of the order in the future. Again, however, Conrail submits that the segmentation of maintenance responsibilities would give rise to programming difficulties and extensive disruption of traffic.

Finally, Conrail observes that although Judge Klovekorn recommended on Page 71 of the Recommended Decision that the Borough of West Conshohocken be obligated to maintain the bridge superstructure at Access Road No. 1, the ordering paragraphs fail to include a provision implementing that recommendation.

WHEREFORE, Conrail respectfully requests your Honorable Commission to modify ordering paragraph 27 so as to direct Conrail to maintain its railroad facilities in the area of the crossings only.

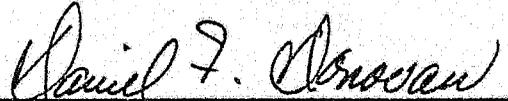
Respectfully submitted,


DANIEL F. DONOVAN
Senior General Attorney
Attorney for
Consolidated Rail Corporation
1138 Six Penn Center Plaza
Philadelphia, PA 19103
(215) 977-5016

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon all parties of record in this proceeding in accordance with the requirements of Section 1.54 of the Rules of Administrative Practice and Procedure.

Dated this 10th day of June, 1985.



DANIEL F. DONOVAN
Counsel for
Consolidated Rail Corporation

ORIGINAL

PHILADELPHIA ELECTRIC COMPANY

2301 MARKET STREET

P.O. BOX 8699

PHILADELPHIA, PA. 19101

EDWARD G. BAUER, JR.
VICE PRESIDENT
AND GENERAL COUNSEL

(215) 841-4000

EUGENE J. BRADLEY
ASSOCIATE GENERAL COUNSEL

DONALD BLANKEN
RUDOLPH A. CHILLEMI

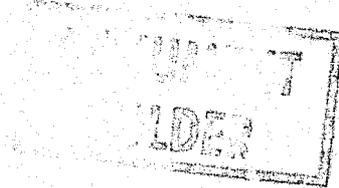
E. C. KIRK HALL
T. H. MAHER CORNELL

PAUL AUERBACH
ASSISTANT GENERAL COUNSEL

EDWARD J. CULLEN, JR.
THOMAS H. MILLER, JR.

IRENE A. MCKENNA
ASSISTANT COUNSEL

June 10, 1985



RECEIVED

JUN 11 1985

SECRETARY'S OFFICE
Public Utility Commission

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
Room B-18 - North Office Building
North Street & Commonwealth Avenue
Harrisburg, Pennsylvania 17120

Re: Complaint No. C-00019707 - Pennsylvania Department of
Transportation vs. Consolidated Rail Corporation, et al. -
Repairs/rehabilitation of the Matsonford Bridge, Boroughs
of Conshohocken and West Conshohocken, Montgomery County

Dear Mr. Rich:

Enclosed please find an original and two copies of Philadelphia Electric Company's Exceptions to Initial Decision dated May 13, 1985 for filing with the Commission, concerning the above-captioned matter.

I hereby certify that I have this day forwarded a copy of the Exceptions to all parties of record listed below.

Very truly yours,

Rudolph A. Chillemi
Rudolph A. Chillemi

RAC:mh
Enclosures

- cc: Hon Joseph J. Klovekorn
- Herbert G. Zahn, Esq.
- Edward S. Sacks, Esq.
- Joel E. Mazor, Esq.
- Jack E. Jerrett, Esq.
- Edward H. Huss, Esq.
- John Gallagher, Esq.
- Edward F. Kane, Esq.
- Arthur Lefkoe, Esq.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

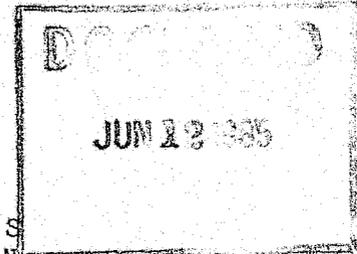
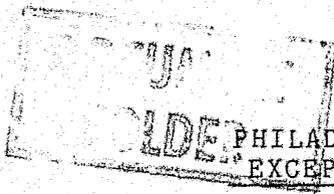
RECEIVED

JUN 11 1985

SECRETARY'S OFFICE
Public Utility Commission

In Re: Pennsylvania Department of
Transportation vs. Consolidated Rail
Corporation, et al. - Repairs/
rehabilitation of the Matsonford
Bridge carrying State Highway 46140
over and above tracks of Reading
Company and Schuylkill River between
the Boroughs of Conshohocken and West
Conshohocken, Montgomery County.

:
:
: Complaint Number
:
: C-00019707
:
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:



PHILADELPHIA ELECTRIC COMPANY'S
EXCEPTIONS TO INITIAL DECISION

By Initial Decision, dated May 13, 1985, Administrative Law Judge Joseph J. Klovekorn ("ALJ"), among other things, ordered at paragraphs 22 and 23 of the Recommended Order, as follows:

"22. That upon completion of the improvement ordered herein, Pennsylvania Department of Transportation, when and as certified by this Commission, pay to Philadelphia Electric Company a sum or sums of money equal to 60% of the actual cost incurred by PECO in furnishing material and performing work to alter its 2 inch gas main along Access Road No. 1.

23. That Philadelphia Electric Company bear the remaining cost it incurred in furnishing material and performing work in accordance with this order."

The Philadelphia Electric Company ("PECo") hereby files exceptions to the provisions of paragraph 22 above because

it contends that the doctrine of "betterment" and the doctrine of future benefits to be obtained from occupancy of the public right of way were improperly applied, so as to result in an award of 60% of relocation costs instead of 100% of relocation costs for facilities located in the private right of way.

PECo files exceptions to paragraph 23 of the Recommended Order because the ALJ gave an excessive and disproportionate amount of weight to the factor of "occupancy of the public right of way," thereby imposing 100% of its relocation costs upon it, being in the estimated sum of \$252,810.00.

PECo accedes to the fact that past occupancy of the public right of way is a factor which should be considered in arriving at an allocation of relocation costs, but it objects and takes exceptions to the notion that it should be charged with all of the alleged benefits of "future" occupancy of the public right of way.

PECo also excepts to finding of fact number 14, at page 26, of the Initial Decision because the finding is based upon an erroneous interpretation of the testimony on the subject of estimated useful life.

DISCUSSION

I. Facilities Located In Private Right of Way

On page 43 of the Initial Decision ("Decision"), the ALJ starts with the proposition that:

"There is no argument that a utility in private right of way receives all legal rights of ownership and is afforded 100% reimbursement if required to relocate or alter its facilities."

Unfortunately, after applying the doctrine of "betterment" and after concluding that future benefits would accrue to PECO for relocating its facility from a private to public right of way, the ALJ decided that PECO was entitled to 60%, and not 100% of its relocation costs for facilities located in the private right of way.

The facility in question is a 2 inch gas line approximately 1000 feet long which PECO expects to relocate from private to public right of way. About 110 feet of the relocated line will consist of a 4 inch and not a 2 inch main. As a result, the ALJ observed that the 4 inch main would have an increased capacity of four times that of a 2 inch main, and concluded that would be a betterment.

It is submitted that the two factors of betterment and future occupancy of the public right of way should not have been employed so as to reduce what should have been 100% reimbursement to 60% reimbursement.

The quantification of the "benefit" to be derived by the ratepayers from the installation of 110 feet of 4 inch gas main is difficult to comprehend, let alone calculate.

The PUC has always heretofore rejected the doctrine of betterment as a factor in making a cost allocation because

it has contended that the benefits derived from betterment are too inconsequential to be quantified. (See Order dated November 6, 1981, Application #00101907 of the City of Philadelphia ("City")).

PECo also contends that the ALJ should not have considered "future" benefits of relocating facilities from a private to a public right of way.

First, no one can tell how long a facility will remain in public right of way. Secondly, when the time comes in the future that this line may have to be relocated out of the public right of way, PECO would probably be saddled with its own relocation costs. Therefore, PECO will, at that time, have been saddled with both past and future relocation costs.

This is a double penalty for occupying the public right of way and should not be permitted by the PUC.

II. Facilities Located In Public Right Of Way

Commencing at page 42 of the Decision, the ALJ begins an analysis of the four main factors to be considered in making an allocation of costs in a highway-rail crossing case.

Pertinent factors to be considered are but not limited to the following:

- 1.) Benefit received by the ratepayers of a particular utility;

- 2.) Availability of state and/or federal funding;
- 3.) Placing of costs upon the party responsible for the situation; and
- 4.) The equities of a particular situation.

III. Benefits received by ratepayers of a particular Utility

Unfortunately, the ALJ, after discussing factor number 1, decided that PECO has derived such great benefit from the past occupancy of the Matsonford Bridge and would derive such great benefit from the future occupancy of the bridge, that it should bear 100% of relocation costs for facilities located in the public right of way, at a total estimated cost of \$252,810.00

It is submitted that this is an error and that the other factors should have impacted on the situation, so as to result in the award to PECO of a certain percentage of relocation costs for facilities located in the public right of way.

Furthermore, in his analysis of factor 1, as it applies to PECO, the ALJ erred in finding that the estimated useful life of gas mains installed in 1931 and 1932, had long expired.

At page 55 of the Decision, the ALJ concluded that the above mains had an anticipated service life of 22 years at the time they were installed.

Instead, a reading of PECO witness, Ed Silver's

testimony shows that he was reading from a table of estimated life of certain steel and cast iron mains, and that the main installed in 1931 and 1932 in this case had a current estimated life of 22 years, (N.T. 138), and not an original estimated life of 22 years. The PECO witness, in attempting to elaborate on the use of the tables as a measuring device of estimated useful life, explained that if you had a steel main that was 83 years old, there would still be a 15 year life expectancy in that main. (N.T. 139).

By starting out with an erroneous premise, the ALJ comes out with an erroneous conclusion when he states that, "we suspect that if it weren't for this complaint proceeding, PECO would be evaluating this line for its remaining service life and possible replacement in the future." (Initial Decision, p. 35).

Further, the fact that a certain facility might have to be replaced in the future is irrelevant.

This is so because the Pennsylvania Department of Transportation ("PennDot") is given a credit in all cases for expired service life of facilities that need to be replaced in any one project. This credit assures against a utility deriving a double benefit from installing a new facility in the place of an old one.

In addition to the aforementioned, the ALJ reflected unfavorably upon PECO's proposed plan to install a new 8 inch gas main on the reconstructed Matsonford Bridge. He felt that

PECo could avoid occupying the public right of way with this 8 inch main by constructing a 12 inch main on its private right of way. (Initial Decision, p. 56).

Unfortunately, construction of one 12 inch main to take the place of two 8 inch mains is not an economical way to insure reliability of service because if one feed is out of service, PECO would need another to continue serving the area involved. This is especially so since PECO has its main gas plant in West Conshohocken!

Another problem with the ALJ's suggestion is that according to his reasoning, the increase in capacity of an 8 inch main to a 12 inch main would be tantamount to a betterment and would lead to the imposition of relocation costs upon PECO anyway!

IV. Availability Of State And/Or Federal Funds

On page 46 of the Decision, the ALJ discusses the availability of state and federal funding as it impacts upon the allocation of cost process.

Unfortunately, after doing so, the ALJ discards federal and state funding as a factor in his decision. He states that considering outside funding would diminish and interfere with the PUC's authority to make a just and reasonable allocation of costs.

PECo contends that the above reasoning is erroneous because it is an inherent contradiction to establish a set

of criteria upon which to make a cost allocation and then proceed to discard the fact that the project will be financed 80% by federal funds and 20% by state funds. The ALJ further contends that consideration of outside funding will ultimately mean that one party will bear an unjust and unreasonable share of the total project cost.

Yet, it is PECO's position that this is what has happened in this case as a result of not taking into consideration the presence of at least the 80% federal funding for this project.

All of the privately owned utilities in this case are federal and state taxpayers and so are their ratepayers. Why then is it unjust or unreasonable to consider them available for some share of said funds for relocation costs?

V. Placing Of Costs Upon The Parties Responsible For The Project

The testimony of the PennDot witness makes it clear that the major cause or perhaps even the only cause for the need to reconstruct the Matsonford Bridge was a lack of maintenance. (N.T. 129). The witness even went so far as to deny that de-icing chemicals would affect the rate of deterioration of a bridge that was well maintained. (N.T. 128). The witness further denied that the use by the traveling public had caused the deterioration of the bridge. (N.T. 127).

Therefore, it is submitted by PECO that, but for the need to reconstruct the Matsonford Bridge, PECO would not

have had to replace or relocate its facilities at this time, and this is a factor which should have been considered in favor of PECO in an award to some degree of relocation costs, even for facilities located in the public right of way.

VI. Equities Of A Particular Situation

On page 47 of the Decision, the ALJ discusses what he considers as inherent differences of utilities and that an allocation of costs should be based on the merits of each utility.

The railroads seem to be singled out for praise because they maintain their own facilities and also a considerable portion of the rail-highway crossing.

First, it should be noted in response thereto, that since railroads own most or all of the property located at a rail-highway crossing, they should be expected to maintain what they own. Secondly, however, when it comes to railroad bridges, the experience of this writer is that the railroads in this region do not maintain them, even after they have been ordered to do so by the PUC.

The railroads in this area now enjoy the benefit of federal laws and federal subsidies in their operations, and in cases such as this, federal regulations prohibit the imposition of project costs where the highway involved is reconstructed with federal funds. (23 C.F.R. §646.200, et. seq.)

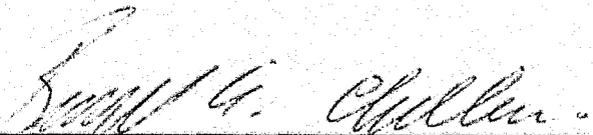
In addition, as the ALJ correctly noted, the presence

of a separated rail highway crossing greatly enhances the speed and safety of a railroad's operations.

Yet, by force of federal law, railroads are deemed to derive no substantial benefit from the reconstruction of such bridges.

Thus, if federal funds can be expended for the benefit of the railroads in projects such as the one involved herein, why is it so inequitable to return some of these same funds to reimburse all or a part of a private utility's relocation costs.

Respectfully submitted,



Rudolph A. Chillemi
Attorney for
Philadelphia Electric Company
2301 Market Street
Philadelphia, PA 19101
841-4257

ORIGINAL
Philadelphia
Suburban
Water Company

762 Lancaster Avenue, Bryn Mawr, Pennsylvania 19010 215/LA5-1400

June 11, 1985

FEDERAL EXPRESS

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
Room B-18
North Office Building
North Street and Commonwealth Avenue
Harrisburg, Pennsylvania 17120

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SECRETARY'S OFFICE
Public Utility Commission

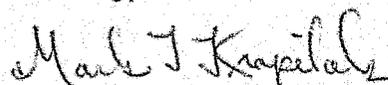
Re: Department of Transportation v.
Reading Company, Debtor, et al.
(Reconstruction of Matsonford Bridge)
Docket No. C-19707

Dear Secretary Rich:

Enclosed are the original and nine copies of the Exceptions of Philadelphia Suburban Water Company to the Recommended Decision issued in the above-captioned proceeding.

I hereby certify that I am this day serving a copy of the Exceptions on each party of record listed below.

Sincerely,

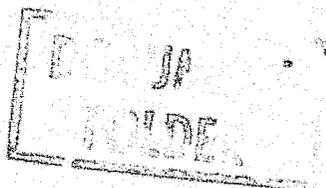


Mark J. Kropilak
Assistant Corporate Counsel

MJK/ss

Enclosure

cc: Honorable Joseph J. Klovekorn
Herbert G. Zahn
Edward S. Sacks
Joel E. Mazor
Edward H. Huss
John J. Gallagher
Edward F. Kane
Arthur Lefkoe
Bernard A. Moore
Frederic M. Wentz
Douglas P. Humes
Joseph I. Hallman
Rudolph A. Chillemi



Philadelphia Suburban Water Company ("Water Company") files these Exceptions with the Pennsylvania Public Utility Commission ("Commission") to the Recommended Decision ("R.D.") issued by Administrative Law Judge Joseph J. Klovekorn ("ALJ") in the above-captioned proceeding.

I. INTRODUCTION

This proceeding involves the proposed reconstruction of Matsonford Bridge carrying Fayette Street across various railroad tracks in the Boroughs of Conshohocken and West Conshohocken. Reconstruction of the bridge will cause changes in grade and other disruptions in the immediate vicinity of the bridge. As a result, the Water Company will be forced to install replacement facilities and to move certain other facilities from their present locations to accommodate the bridge reconstruction. The Water Company is concerned about the methodology used by the Commission in allocating these relocation costs.

The ALJ has correctly cited the law governing allocation of fixed utility relocation costs. At a railroad-highway crossing, the Commission has discretion to allocate these costs to other parties. (66 Pa. C.S.A. §2704(a)). A utility's occupancy of public right-of-way under permit is not a determinative factor in allocating costs. City of Philadelphia v. Philadelphia Electric Company, 473 A.2d 997 (1984).

The allocation of utility relocation costs is a matter for the informed discretion of the Commission. The ALJ enumerated four factors to be weighed by the Commission in exercising its discretion:

- 1) the parties responsible for the situation,
- 2) the benefit received by ratepayers,
- 3) the availability of state and/or federal funding, and
- 4) the equities of the situation.

The Water Company excepts to the underlying premises and ultimate approach used by the ALJ in weighing these factors. The ALJ has created an imbalance among these factors, as evidenced by his decision to provide the Water Company with only 20% reimbursement for the relocation of a facility that was relocated only 4 years ago at ratepayer expense due to a conflict with the construction of a storm sewer as part of another state highway project (R.D. at 52).

The Water Company does not agree with the ALJ's independent factual analysis regarding the necessity of relocating its facilities. For example, his suggestion to retain the 6-inch main and fire hydrant at their current location in Marble Street (R.D. at 52-53) would place the hydrant underground — in the slope required for the five foot grade change of Fayette Street.

More importantly, the Water Company does not agree that the supposed benefits received by ratepayers from occupying public right-of-way at a railroad crossing outweigh all other factors, including the benefits received by the parties responsible for the situation. The Commission should reconsider the significance of these factors as suggested below.

II. EXCEPTIONS

- A. Other parties are responsible for and should pay for the construction of a railroad-highway bridge, including the necessary relocation of utility facilities.

The operation of a railroad at an "at grade" highway crossing presents inherent safety hazards and inconveniences to the highway users and pedestrians. For these reasons, the railroads, the Department of Transportation, the traveling public and local communities seek the construction of grade separation crossings. As noted by the ALJ: "In many cases, highway bridges over railroad tracks have

been built and maintained by the railroads to improve their facilities and eliminate conflict with vehicular traffic," (R.D. at 45).

The parties responsible for the project should be held responsible for the full consequences of their work. This would include reimbursement to adjacent property owners for damages to their property and reimbursement to utilities for relocation of their adjacent facilities. The ALJ's decision does not attribute enough weight to this factor. He concludes that brand-new adjacent facilities are entitled to only minimal reimbursement, while relatively young facilities of 30 to 50 years are entitled to none. This is an unfair result in light of the fact that other parties are responsible for this situation.

A railroad-highway bridge is constructed for reasons independent of the utility. In many cases the construction of a bridge creates new problems for fixed utilities. But for the construction, the utility facility could have followed the original terrain, which is usually the least expensive route. The construction or widening of a bridge and the appropriation of property in a congested area can eliminate available private right-of-way. The addition of bridge retaining walls and steep embankments can eliminate other routes, creating a bottleneck through which the facility must travel. The extension of approaches and the installation of piers can affect otherwise unrelated facilities nearby.

B. Occupancy of a railroad crossing is subject to different considerations than occupancy of public right-of-way elsewhere.

In the normal situation, a utility installs a facility in the public highway and reasonably expects to remain there undisturbed by surface transactions for the service life of the facility. When a railroad crosses the highway, there is an increased risk of relocation because there is an additional party in the area that can create a potential conflict with the utility facility. If the railroad creates a conflict with

the facility, the utility does not necessarily have to relocate at its own expense. The occupant of public right-of-way (under existing law) may be subordinate to the state's police power to regulate highways, but the occupant is not subordinate to the action of a private party, in this case another utility.

The Commission's authority to allocate relocation costs at railroad-highway crossings recognizes the same principle. The construction of a railroad-highway bridge is necessary in large part to solve a problem presented to the public by the operation of a private entity. In the absence of the railroad, the bridge project may not have to be undertaken at all. The distinct private aspects of a railroad-highway bridge crossing merit special consideration in allocating utility relocation costs. This is one justification for abrogation of the common law rule at railroad crossings.

The existence of a railroad-highway bridge presents the utility with an increased risk of relocation from circumstances beyond its control. If the highway department, railroads or local communities do not maintain their bridge, the utility must bear the inconvenience of early relocation. If bridges capable of lasting 100 years deteriorate within 50 years through lack of maintenance, the utility must make an extra relocation of its facilities which would have otherwise lasted 100 years.

The ALJ suggests that early relocation is not a problem for utilities because eventually the facility must be replaced anyway (R.D. at 44). On the contrary, the Commission should recognize that undertaking an expenditure 50 or more years sooner than scheduled imposes a capital burden on the utility and its ratepayers. Under the current 4% compound interest depreciation method used by the Water Company, much less than 1/2 of the original cost is recovered when a facility is half-way through its service life. Since depreciation rates are established only to

recover original investment cost, there is no reserve established to cover the new expenditure.

C. Ratepayers are not the only ones that benefit from utility occupancy of public right-of-way

Admittedly, there are benefits to ratepayers from being able to occupy public streets. Often it is the only place available. The utility avoids the cost of purchasing a private easement, although the cost of a single unreimbursed relocation can exceed the savings achieved by locating in public right-of-way. Occupancy of public right-of-way is not always free, but the fee, if any, is small. There are no taxes paid for public rights-of-way. Then again, there are no taxes paid on private easements. Public streets can provide convenient access for maintenance. On the other hand, the cost of (pavement) restoration in public streets can far exceed restoration of private easements.

The occupancy of public streets by utilities, however, is not merely for the benefit of ratepayers. The Department of Transportation benefits from utility occupancy of public streets, as evidenced by its agreement to pay the Water Company for installing utility facilities in place of private (non-utility) service lines that will be traversed by proposed Access Road No. 1 (R.D. at 12, 50). The Department has a policy that only utility-owned facilities may occupy the cartway of a public highway. In this manner, the Department limits the number of parties with whom it must deal if the road must be excavated to repair water lines. Also, the work can be better regulated to avoid interference with the flow of traffic.

Furthermore, society benefits from utility occupancy of public right-of-way. If the water industry had developed by installing mains exclusively in private property, it is possible that serpentine private service lines would be crisscrossing under highways and through neighboring property (e.g., by easements of necessity) to connect

to the water mains. In addition to increased traffic problems resulting from repair work, this situation could also increase the risk of illegal taps which, among other things, could threaten fire protection to the neighborhood. Moreover, a distribution system with service lines perpendicular to mains in public streets helps enhance property values in a community and avoids conflicts with homeowner improvement projects, municipal construction projects and service lines from other utilities.

The Commission should take these considerations into account in reviewing the benefit to the ratepayers.

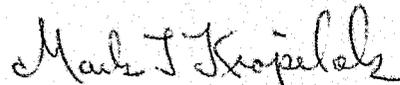
D. Failure to use federal funds for utility relocation places Pennsylvania ratepayers at a disadvantage compared with ratepayers of other states

The Water Company understands that other states include the costs of utility relocation as part of the project cost eligible for federal funding. As federal taxpayers, Pennsylvania ratepayers are paying the utility relocation costs in those states. As a result of the ALJ's decision, Pennsylvania ratepayers are being denied use of their federal tax dollars to pay for the cost of their own relocation work.

III. CONCLUSION

For the reasons set forth above, Philadelphia Suburban Water Company requests the Commission to exercise its discretion in favor of providing utility ratepayers with cost reimbursement from the parties responsible for the origination, maintenance and reconstruction of railroad-highway crossings.

Respectfully submitted,



Mark J. Kropilak
Assistant Corporate Counsel
Philadelphia Suburban Water Company

ORIGINAL



Southeastern Pennsylvania
Transportation Authority

June 11, 1985

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JUN 14 1985

SECRETARY'S OFFICE
Public Utility Commission

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Pennsylvania Public Utility Commission
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- James F. Kilcur
- G. Roger Bowers
- Robert H. Messerman
- Norman Hegge, Jr.
- Edward H. Huss
- Judith B. Soken
- Stanley J. Snowitz
- Stuart A. Schwartz
- Eugene N. Cipriani
- Vincent J. Walsh, Jr.
- Joan L. Gerson
- Mitchell R. Sargen
- Eileen G. Katz
- Leslie Dias
- Delores R. Lanier
- Nicholas J. Stafflari
- Penny J. Scott-Sedley
- Steven M. Lero
- Margery Sickles Preddy
- Ann M. Mau
- Scott K. Wasserkrug
- Charles B. Stokes, Jr.
- Stephen Dittmann
- C. Neil Petersen
- Robert A. Wilson

RE: Complaint Docket C-19707
Montgomery County

Dear Mr. Rich:

Enclosed for consideration by your Honorable Commission are an original and nine (9) copies of Exception of Southeastern Pennsylvania Transportation Authority to Initial Decision, in the above-captioned matter.

I hereby certify that a copy of the Exceptions have been sent to all parties of record.

Very truly yours,

Edward H. Huss
Assistant Deputy Counsel
(215) 574-7320

Enclosures

cc: H. Lupia
Parties of Record (pages attached)

DOCUMENT
FOLDER

Jerry Rich, Secretary
Page 2
June 12, 1985

PARTIES OF RECORD

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Jerry Rich, Secretary
Page 3
June 12, 1985

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ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION **RECEIVED**

JUN 14 1985

Department of Transportation :
of the Commonwealth of :
Pennsylvania :

SECRETARY'S OFFICE
Public Utility Commission

COMPLAINT

v. :

DOCKET

Reading Company, Debtor, :
Borough of Conshohocken :
Borough of West Conshohocken :
and County of Montgomery :

NO. C-19707

EXCEPTIONS OF SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY
TO INITIAL DECISION

AND NOW, comes the Southeastern Pennsylvania Transportation Authority (SEPTA) by its under signed attorney and takes exceptions to the proposed Initial Decision of Administrative Law Judge, Joseph J. Klovekorn, in the above-captioned matter, as follows:

1. Exception is take to proposed ordering paragraph 28 which reads as follows:

That upon completion of the improvement and its opening to public use, Southeastern Pennsylvania Transportation Authority, at its sole cost and expense, furnish all material and do all work necessary to maintain (1) the Matsonford Bridge piers and entire bridge superstructure spanning over and adjacent to its tracks, (2) the stairway, left of highway station 138+78, leading from the bridge to the area near its station, and (3) its railroad facilities in the area of the crossings; all in a safe and satisfactory condition.

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DOCKETED
JUN 18 1985

SEPTA takes exception to that portion of the Proposed Order placing the maintenance of the Matsonford Bridge piers and the entire bridge superstructure spanning over and adjacent to SEPTA's tracks on SEPTA. The highway in question is a State Highway to be used for the sole benefit of the highway users. It would be inequitable to have SEPTA assigned future maintenance when the direct beneficiaries of the reconstructed bridge will be parties other than SEPTA.

2. SEPTA also takes exception to the portion of the Proposed Order placing the maintenance of the stairway, left of highway station 138+78, leading from the bridge to the area near SEPTA's station upon SEPTA.

3. In addition, historically, your Honorable Commission has assigned responsibility for maintenance of roadway surfaces on bridges to the Pennsylvania Department of Transportation in the case of State Highways or to the local municipality in the event the roadway fell under their jurisdiction. The proposed reconstructed Matsonford Bridge will be under the jurisdiction of the Pennsylvania Department of Transportation and, therefore, the maintenance responsibility for maintaining the entire roadway surface should be assigned to the Department of Transportation.

WHEREFORE, SEPTA respectfully request your Honorable Commission to modify proposed paragraph 28 of the Recommended Order so as to direct SEPTA to maintain only its railroad facilities in the area of the crossings.

Respectfully submitted



EDWARD H. HUSS
Assistant Deputy Counsel

ORIGINAL

Edward S. Sacks
Attorney

Bell of Pennsylvania

Law Department
One Parkway, 16th Floor
Philadelphia, Pennsylvania 19102
Phone (215) 466-8714

June 12, 1985

RECEIVED

JUN 13 1985
SECRETARY'S OFFICE
Public Utility Commission

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
Post Office Box 3265
Harrisburg, PA 17120

PennDOT v. Reading Company, et al.
Complaint Docket No. C-19707.

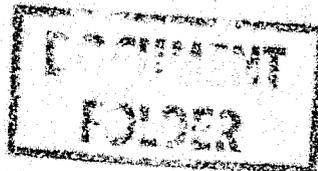
Dear Mr. Rich:

Enclosed herewith for filing with the Commission are the original and nine true copies of Exceptions of The Bell Telephone Company of Pennsylvania in the above proceeding.

Very truly yours,



Edward S. Sacks



encs.

cc: Hon. J. J. Klovekorn, ALJ (w/enc.)
All Parties of Record (w/enc.)

The Bell Telephone Company of Pennsylvania ("Bell"), by its undersigned attorney, hereby files the following Exceptions to the Initial Decision (the "I.D.") of Administrative Law Judge Joseph J. Klovekorn (the "ALJ") dated May 13, 1985, and issued May 28, 1985.

At the outset, it is clear that recently the Pennsylvania Public Utility Commission ("Commission") has been fashioning orders in rail-highway proceedings, which require public utilities to bear the bulk of their relocation costs. See, e.g., Application of the City of Philadelphia, A-104369 (1984). In so ordering, the Commission has stressed the benefit received by the public utilities in occupying the public right-of-way. The I.D. in the instant proceeding, again, stresses the "benefit" factor*, but does so in a way that, in effect, obliterates the other three factors. For example, while the I.D. gives lip service to "the placing of costs upon the parties responsible for the project"**, (I.D. 45), no attempt is made to apply the considerations noted therein to the facts. Thus, the I.D. noted that under the cost-causer factor, the reasons for bridge reconstruction must be considered, including whether there has been a lack of proper maintenance, increased traffic, or use of

*The four factors which the Commission considers in allocating costs include: (1) the benefit received by the ratepayers of the facility; (2) the availability of state and/or federal funding for a project; (3) the placing of the costs upon the party responsible for the situation; and (4) the equities of the particular situation. Application of the City of Wilkes-Barre, A.101606 (1981).

**Hereinafter referred to as "cost-causer factor".

deicing chemicals.* Yet, these considerations are not applied to the facts of this case.** Similarly, the bridge in question was first proposed to be reconstructed at an initial cost of \$655,534.20 (I.D. 1). Thereafter, the Pennsylvania Department of Transportation ("PennDOT") determined that it was "more economical" (I.D. 2) to entirely rebuild the bridge at a cost of \$10,726,602 (I.D. 5). Yet, PennDOT's decision to demolish the bridge on the basis of what was "more economical" for it caused Bell to incur far greater costs than would have been the case had the bridge simply been rehabilitated.*** For due to the demolition of the old bridge, Bell will have to provide temporary facilities during bridge reconstruction that will cost approximately \$129,000 (Bell Ex. 3). (These temporary facilities would not have been necessary had the bridge been rehabilitated, and because they are temporary, will have to be disposed of when Bell places its permanent facilities.) In addition, Bell will have to place new permanent facilities that, in all likelihood, would have been unnecessary, if the bridge simply were rehabilitated. Thus, a large part of Bell's relocation costs

*One question which might be considered in this regard is whether the bridge is being demolished before the end of the service life projected for it at the time of its initial construction, and, if so, which party is responsible for this premature demolition. For although utilities might be deemed to have placed facilities in the bridge expecting the facilities would last for the useful life of the bridge, if the bridge is demolished unnecessarily before the end of that useful life, fairness dictates that utilities be reimbursed some of their relocation costs.

**After the record was closed in this proceeding, Bell was contacted by a Commission Staff Engineer, as were other public utilities, for extra-record facts that were used against Bell in the I.D. (e.g., I.D. 61). Similar use of that procedure could have been made to ascertain facts from PennDOT that would bear on the issue of placing costs on the parties responsible for the project.

***One suspects that the availability of 80% federal critical bridge funds for this project (Tr. 124), plus another \$7.7 million from the State's bridge bill for replacement of the Matsonford bridge (Tr. 131), made it "more economical" for PennDOT to decide to demolish, rather than rehabilitate, the present structure.

are due solely to PennDOT's decision to demolish and rebuild, rather than rehabilitate, the bridge. For this reason, PennDOT should be ordered to bear a portion of Bell's relocation costs.

Another factor which the I.D. mentioned, but then, in effect, ignored is the fact that the reconstruction of the Matsonford bridge will be funded 80% by federal critical bridge funds.*

This factor should be far more significant to the Commission than the I.D. allowed. As indicated earlier, the Commission generally of late has begun to require public utilities to bear their own relocation costs.** Apparently, a major reason -- albeit tacit -- for this direction in Commission policy has been the perception that federal dollars spent on public utility relocation costs reduce the dollars otherwise available for the highway project itself. While this perception is true to a degree for many types of federally-aided projects,*** it is absolutely untrue

*Since the bridge reconstruction also will be funded \$7.7 million by State funds, the bridge appears to be overfunded.

**The important exception to this new general policy is explained at pages 4 and 5, infra.

***For example, this perception is, to a certain degree, true for federally-funded primary, secondary and urban systems, as defined at 23 U.S.C. §§ 103(b)(1), 103(c)(1) and 103(d)(1). For these programs, if a state uses all its federally-apportioned dollars, public utility relocation costs can diminish the overall amounts available for physical reconstruction. This is because there is generally a fixed apportionment allotted to each state for those programs. And the allocations are not based on total costs (including utility relocation costs) of the projects, but on fixed factors such as area and population of the state. However, the perception is not true if the state does not obligate all of its funds within a given amount of time. If there is a portion of unobligated funds, it is to a state's benefit to claim utility relocation costs, since that adds to the federal dollars flowing to the state. In addition, states can get certain reallocations, if other states do not obligate all of their allotted funds. In such cases, again, utility relocation costs add to the federal funds that are given to a state. (See generally United States Department of Transportation Federal Highway Administration, Financing Federal Aid Highways, September 1983 (especially pp. 52-54 appended hereto).)

for two special classes of federally-aided projects -- interstate completion projects and critical bridge projects. In the latter two categories, federal funding is based on the total cost of the project (23 U.S.C. §§ 104(b)(5)(A) and 144(e, f)). And federal regulations include public utility relocation costs as reimbursable costs under such formulas (23 C.F.R. Part 645). Accordingly, where federal reimbursement is based on the total cost of the project, as in interstate completion and critical bridge projects, the state does not lose any federal funds for construction costs, when it is ordered to pay public utility relocation costs. Moreover, in such cases, the citizens of the state are benefited by having utility relocation costs paid for from federal funds, since those costs then need not be borne unnecessarily by utility ratepayers, and there is no diminution in federal funds for the construction project itself.

The Commission has appeared to recognize that interstate completion projects are exceptions to what appears to be its new general policy discussed supra at page 3. For the Commission ordered PennDOT to pay 90% of Bell's relocation costs in A-96481 (adopted February 21, 1985) on the very same day that it ordered Bell to bear 100% of its relocation costs in A-104633 (adopted February 21, 1985). Although not explicitly stated, the only distinguishing factor that explains the 90% reimbursement in the first case, and no reimbursement in the second, is that an interstate completion project was involved in the first case (in which reimbursement costs were awarded), but not in the second (in which reimbursement costs were not awarded). If this is the distinction that the Commission wished to create, it is at least an understandable distinction, so long as the

distinction is maintained in a consistent way.*

Since the Matsonford bridge project is funded with federal critical bridge funds (Tr. 124), and critical bridge funds are awarded to states on a basis like interstate completion projects, this case should follow the Commission's Order in A-96481, in which PennDOT was ordered to pay 90% of Bell's relocation costs. Accordingly, PennDOT, in the instant proceeding, should also be ordered to pay an equitable portion of Bell's relocation costs.

Apart from the larger policy question addressed supra, Bell takes exception to a number of individual issues in the I.D.:

1. Work Done in Private Right-of-Way.

At page 60 of the I.D., the ALJ describes certain work that Bell will be performing relating to facilities in private right-of-way. The I.D. goes on to state:

"However, Bell Telephone has not offered any description of work or estimate of cost for altering its facilities at the temporary entrance ramps."

The I.D. implies that Bell's failure to describe this work or estimate costs for altering its facilities at the temporary entrance ramp formed part of the rationale for the Commission's refusal to reimburse Bell for its relocation costs. To the extent that this was, indeed, a factor in the Commission's decision, Bell submits that it is not usual in rail-highway proceedings for public utilities to present specific evidence of costs of altering facilities in private right-of-way, since public utilities do not ask the Commission to allocate such costs.

*If the Commission did not mean to create the distinction between interstate completion, and other like, projects on the one hand, and other federally-aided projects on the other, then the inconsistency between the two aforementioned Orders creates great uncertainty as to the Commission's real policy.

Moreover, it is PennDOT's policy to always agree to pay utility relocation costs for facilities in private right-of-way. Indeed, PennDOT's witness in this proceeding reiterated PennDOT's usual undertaking to bear the costs of utility relocations in private right-of-way (Tr. 121). Accordingly, the fact that Bell did not present costs for relocating facilities in private right-of-way should have no bearing on the allocation of costs in this proceeding.

2. Philadelphia Suburban Water Company's ("PSW") Willingness to Pay the Cost of Betterment Facilities Should Not Have Been the Basis for Imposing Costs on Bell for Altering Existing Facilities.

The ALJ noted that he would be persuaded to grant Bell reimbursement because of the newness of the cables Bell must replace (I.D. 63). However, as part of the reason for refusing to grant this reimbursement, the ALJ referred to PSW's willingness to bear the cost to attach its facilities to the new bridge (I.D. 63). However, the facilities that PSW intends to place are entirely new facilities -- they are not preexisting facilities as in Bell's case, which must be moved to accommodate the project. Because PSW's new facilities represent betterment, it is fair that PSW bear their costs.* The situation in Bell's case is, however, very different. Bell had existing facilities in the bridge -- most of recent vintage, which it would not have moved or replaced absent the bridge project. It is thus fair that parties other than Bell should pay Bell's relocation costs.

*No other party to this proceeding should bear the costs of wholly-betterment facilities, because no other party is responsible for the need for those new facilities. The persons, in effect, responsible for PSW's betterment facilities are PSW's present or future rate-payers, and thus it is fair that they alone pay the costs thereof.

3. The fact That Some Betterment Will Occur in Bell's Facilities Should Not Be the Basis for Complete Disallowance of Reimbursement.

Presently, Bell has five cables with 3,400 pairs of working cables on the Matsonford bridge. Some of these are for voice (26-gauge), and some for data (24-gauge). Bell determined, in replacing these cables, to consolidate them into two standard size cables of 2,100 pairs each.

While it is true that the cable capacity on the bridge theoretically increases, Bell's witness testified that there would be no benefit to Bell by reason of the additional pairs. The reason for this belief was that, in order to give any real effect to the capacity of the additional pairs in the bridge, cable to feed the additional pairs in the bridge would have to be extended from the nearest central office to the bridge. Since this would involve considerable expense, and Bell had no plans to add cable pairs from the central office to the bridge in the foreseeable future, as a practical matter, Bell's witness earnestly felt there was no increase in capacity. Moreover, if Bell had replaced its old facilities strictly like-for-like, the estimate of the cost for like-for-like replacement is even higher than the cost of replacement in the manner indicated by Mr. Thomas' testimony.*

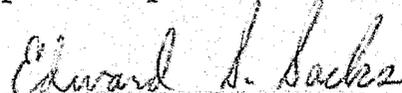
*Actually, if Bell had presented costs for replacement of its former facilities on a like-for-like basis, with no increase in capacity (betterment) in the cables on the bridge, paradoxically, those costs would far exceed those set forth on Bell Exhibit 3. The reason for this is that like-for-like replacement of the present 3,400 pairs would be accomplished by two 1,500 pair cables (one 26-gauge and one 24-gauge), and two 200 pair cables (one 26-gauge and one 24-gauge). However, this, in turn, would require four conduits and splicing of four cables, instead of two conduits and splicing of two cables, which formed the basis of Bell's costs on Bell Exhibit 3. Bell, perhaps, should have presented its estimated relocation costs in the latter (theoretical) manner, even though these costs would be greater than the estimated costs for relocating facilities in the manner that will actually be employed. Bell felt it was more accurate, however, to present an estimate of its costs in the actual manner it will be relocating facilities.

In presenting its cost estimate, Bell was not seeking a Commission Order for reimbursement of a specific number of dollars. Rather, Bell was seeking -- and Commission Orders concerning reimbursement are always given in -- a percentage of its costs as they actually turn out to be. When reimbursement is granted by the Commission, Bell seeks, from the party ordered to pay, reimbursement of only like-for-like facilities, with all costs of betterment borne by Bell. Such was intended to be, and would have been, the case here.

Bell is entirely willing, as fairness dictates, to bear the full cost of betterment of its facilities. However, the fact that there may be some betterment to Bell's facilities should not preclude reimbursement of costs for that portion of Bell's replacement facilities which will duplicate the prior facilities on a like-for-like basis. The non-betterment facilities would not have been replaced absent the rail-highway crossing project. This is especially true in the instant case, where so much of the money Bell must expend is for temporary facilities necessitated by the decision to demolish, rather than reconstruct, the bridge.

Accordingly, Bell respectfully requests that the Commission amend paragraph 24 of its Order (at page 91), and order PennDOT to reimburse Bell an equitable share of Bell's relocation costs.

Respectfully submitted,



EDWARD S. SACKS

Attorney for:
THE BELL TELEPHONE COMPANY
OF PENNSYLVANIA
One Parkway
Philadelphia, PA 19102

DATED: June 12, 1985



U.S. Department
of Transportation
**Federal Highway
Administration**

FINANCING FEDERAL-AID HIGHWAYS

September 1983

APPENDIX C - 2

ALLOCATED FUNDS

Not all authorizations are coupled with legislative apportionment formulas. Several of the major national programs do not have distributions specified by Congress. These are shown below.

Funds and Statutory Reference

Distribution

Interstate Discretionary
23 U.S.C. 118(b)(2)

Discretionary but Secretary is to give priority to: (1) high cost projects which contribute to opening Interstate segment; and (2) projects of high cost relative to a State's apportionment. States must apply for funds and be able to use the funds on a ready-to-commence project and begin work within 90 days of obligation. To be eligible for funds States must have already used available authority.

Interstate 4R Discretionary
23 U.S.C. 118(b)(3)

State applying for funds must have obligated all of its I-4R funds (except for an amount insufficient to pay for the Federal share of a project submitted for approval) and must be able to use the funds on a ready-to-commence project and begin work within 90 days of obligation.

Bridge Discretionary
P.L. 97-424, Section 161

Secretary to develop formula resulting in a rating factor based on the following criteria:

1. Sufficiency rating
2. Average daily traffic
3. Average daily truck traffic
4. Defense highway system status
5. Funds available under bridge replacement and rehabilitation program
6. Total project cost
7. Special consideration to bridges closed to all traffic or restricted to loads less than 10 tons. Also consider other unique considerations and the need to administer the program from a balanced national perspective.

Emergency Relief

Project-by-project

Federal Lands Highways

Needs basis

- Forest Highways
- Indian Reservation Roads
- Parkways and Park Highways
- Public Lands Highways

APPENDIX D-1

EFFECTIVE DATES OF CHANGES IN THE FEDERAL HIGHWAY TRUST FUND USER FEES

- o Motor Fuels (increase) April 1, 1983
- o Lubricating Oil (removal) January 7, 1983
- o Tires, Tubes, Tread Rubber (all provisions) January 1, 1984
- o New Trucks, Trailers
 - o Exempting trucks below 33,000 lbs. GVW and trailers below 26,000 lbs. GVW January 7, 1983
 - o Raising tax rate to 12 percent at retail April 1, 1983
- o Truck Parts and Accessories January 7, 1983
- o Heavy Vehicle Use
 - o Exempting vehicles below 33,000 lbs. GVW July 1, 1984
 - o Raising rates (first phase, except small owner-operators) July 1, 1984
 - o Raising rates (first phase, small owner-operators) July 1, 1985

APPENDIX D-2
 REVENUE BY VEHICLE TYPE
 (1985)
 (In millions of dollars)

<u>Vehicle Type</u>	<u>Old Tax Rates</u>	<u>New Tax Rates</u>	<u>Percent Change</u>
Passenger Vehicle	\$4,333.5	\$ 8,056.7	+86
Autos	2,909.4	5,552.0	+91
Large	2,039.5	3,842.8	+86
Small	869.9	1,709.2	+96
Motorcycles	21.5	34.0	+58
Pickups and Vans	1,401.0	2,470.7	+76
Buses	1.6	0.0	-100
Intercity	1.6	0.0	-100
Other	0.0	0.0	--
Trucks	2,872.5	4,494.7	+56
Single-Units	1,063.5	1,106.2	+4
Under 26 kips*	403.9	447.0	+11
Over 26 kips	659.6	659.2	--
Combinations	1,809.0	3,388.5	+87
Under 50 kips	231.6	318.4	+37
50-70 kips	438.1	790.6	+80
70-75 kips	497.3	979.1	+97
Over 75 kips	642.0	1,300.4	+103
All Vehicles	\$7,206.0	\$12,551.4	+74

* Kips = 1,000 lbs. of registered gross vehicle weight.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties in accordance with the requirements of 1 Pa. Code § 1.54 (relating to service by a participant).

Dated at Philadelphia, Pennsylvania, this twelfth day of June 1985.



EDWARD S. SACKS

Attorney for Respondent,

THE BELL TELEPHONE COMPANY
OF PENNSYLVANIA

One Parkway
Philadelphia, PA 19102

LAW OFFICES
KANE, PUGH, BONNER & KNOELL
510 SWEDE STREET
NORRISTOWN, PENNSYLVANIA 19401-4886

NORRISTOWN
(215) 275-2000
PHILADELPHIA
(215) 242-1452

EDWARD F. KANE

June 12, 1985

RECEIVED

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
Room B-18 - North Office Building
North Street & Commonwealth Avenue
Harrisburg, PA 17120

JUN 17 1985

SECRETARY'S OFFICE
Public Utility Commission

RE: Complaint No. C-00019707 - Pennsylvania Department
of Transportation vs. Consolidated Rail Corpora-
tion, et al--Repairs/rehabilitation of the Matson-
ford Bridge, Boroughs of Conshohocken and West
Conshohocken, Montgomery County

Dear Mr. Rich:

Enclosed please find an original and two copies of the
Borough of West Conshohocken's Exceptions to Initial Deci-
sion dated May 13, 1985 for filing with the Commission,
concerning the above-captioned matter.

I hereby certify that I have this day forwarded a copy
of the Execptions to all parties of record.

Very truly yours,


Edward F. Kane, Solicitor
Borough of West Conshohocken

EFK/rmg
enclosure

cc: Honorable Joseph J. Klovekorn
Counsel of Record
(with enclosure)



RECEIVED

JUN 17 1985

SECRETARY'S OFFICE
Public Utility Commission

KANE, PUGH, BONNER & KNOELL
BY: Edward F. Kane, Esquire
Identification No. 09433
510 Swede Street
Norristown, PA 19401-4886
(215) 275-2000

ATTORNEY FOR:
Borough of West Conshohocken

IN RE: Pennsylvania Department	:	BEFORE THE PENNSYLVANIA
of Transportation vs. Consolidated	:	PUBLIC UTILITY COMMISSION
Rail Corporation, et al. - Repairs/	:	
rehabilitation of the Matsonford	:	
Bridge carrying State Highway	:	
46140 over and above tracks of	:	
Reading Company and Schuylkill	:	
River between the Boroughs of	:	
Conshohocken and West Consho-	:	
hocken, Montgomery County	:	Complaint No. C-00010707

**BOROUGH OF WEST CONSHOCKEN'S
EXCEPTIONS TO INITIAL DECISION**

Although the Recommended Order of Administrative Law Judge Joseph J. Klovekorn does not direct the Borough of West Conshohocken to maintain the superstructure of the bridge over the Conrail tracks on Access Road No. 1, the discussion in "Maintenance of Facilities" at page 71 of the Recommended Decisions reads as follows:

"We are of the opinion that West Conshohocken Borough is the proper party to maintain the bridge superstructure and the highway approaches thereto."

To the extent that the statement quoted above is intended to place with the Borough of West Conshohocken the burden of maintenance of the superstructure of the bridge, exception is hereby taken for the following reasons:

1. At a meeting between Borough officials and the Pennsylvania Department of Transportation approximately two (2) years ago

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JUN 18 1985

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(the exact date will be provided), Robert L. Rowland, P.E., District Engineer for the Pennsylvania Department of Transportation, agreed that the Pennsylvania Department of Transportation would accept the responsibility for the maintenance for the superstructure in the event said obligation was imposed on the Borough of West Conshohocken.

2. The financial condition of the Borough of West Conshohocken is such that it cannot possibly afford to undertake an obligation of this magnitude.

3. The attempt to impose this obligation on the Borough of West Conshohocken is unlawful and exceeds the authority of the Administrative Law Judge.

RESPECTFULLY SUBMITTED,
Kane, Pugh, Bonner & Knoell

BY: 

EDWARD F. KANE, ESQUIRE
Solicitor for the
Borough of West Conshohocken

Dated: June 12, 1985

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
Harrisburg, Pennsylvania 17120
Office of Chief Counsel



June 17, 1985

IN REPLY REFER TO

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, Pennsylvania 17120

RECEIVED

JUN 17 1985

SECRETARY'S OFFICE
Public Utility Commission

Re: Complaint Docket C-19707
Montgomery County

Dear Mr. Rich:

Enclosed please find an original and nine (9) copies of Reply of Pennsylvania Department of Transportation to Exceptions of Consolidated Rail Corporation to Initial Decision, in the above-captioned matter.

I hereby certify that a copy of the Reply has been sent to all parties of record.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Herbert G. Zahn".

Herbert G. Zahn
Assistant Counsel
(717) 787-5931

220/HGZ:rmm
Enclosures

cc: W. J. Clements, P.E. (Attn.: M. Davis)
District Engineer #6-0
Parties of Record - Pages 2 & 3



Jerry Rich, Secretary
Page 2
June 17, 1985

PARTIES OF RECORD

Joseph I. Hallman, Esquire
Upper Merion & Plymouth Railroad Company
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Edward H. Huss, Esquire
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Bernard A. Moore, Esquire
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Edward S. Sacks, Esquire
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John W. Boyer, Jr., President
Philadelphia Suburban Water Company
762 Lancaster Avenue
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Frederic M. Wentz, Esquire
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Arthur Lefkoe, Esquire
Solicitor for Plymouth Township
515 Swede Street
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Jerry Rich, Secretary
Page 3
June 17, 1985

PARTIES OF RECORD

Edward G. Bauer, Jr., Vice President and
General Counsel
Philadelphia Electric Company
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Daniel F. Donovan, Esquire
Consolidated Rail Corporation
1138 Six Penn Center Plaza
Philadelphia, Pennsylvania 19104

John J. Gallagher, Assistant Counsel
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, Pennsylvania 17120

RECEIVED

JUN 17 1985

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE
Public Utility Commission

Department of Transportation	:	
of the Commonwealth of	:	COMPLAINT
Pennsylvania	:	
	:	DOCKET
v.	:	
	:	
Reading Company, Debtor,	:	NO. C-19707
Borough of Conshohocken,	:	
Borough of West Conshohocken	:	
and County of Montgomery	:	

REPLY OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION TO
EXCEPTIONS OF CONSOLIDATED RAIL CORPORATION TO INITIAL DECISION

AND NOW, comes the Pennsylvania Department of Transportation (Department) by its undersigned attorney and makes reply to the exceptions of the Consolidated Rail Corporation (Railroad) to the Recommended Decision of Administrative Law Judge, Joseph J. Klovekorn, in the above-captioned matter, as follows:

1. Railroad has taken exception to ordering Paragraph 27 which requires the Railroad, inter alia, to maintain the Matsonford Bridge piers and the entire superstructure spanning its tracks. The Railroad's exception is based on its allegation that it receives "absolutely no benefit" from the project. This is the old argument that a railroad receives no benefits from a

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separated crossing which has, time and again, been refuted by the Department and recognized by the Commission. The benefits a railroad receives by a separated crossing are:

(a) it is relieved of maintenance of automatic protection,

(b) it is relieved of any possible negligence actions and the cost of insurance for the same,

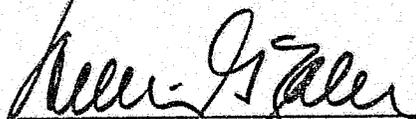
(c) if a fill was used to support the roadway the railroad could not operate on that line of railroad, and,

(d) it adds to the safety of its employees and passengers.

In addition, a railroad can more safely maintain the piers and substructures of a bridge since they are close to its operating right of way; if other parties were directed to maintain such facilities, it would require notification to the railroad that such work was contemplated and the work would be done by workmen unskilled in railroad operations. The Judge's Recommended Order

is fair and reasonable, not only for the foregoing reasons, but because the Railroad is not allocated any costs for the construction of the new bridge.

Respectfully submitted,



Herbert G. Zahn
Assistant Counsel

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
Harrisburg, Pennsylvania 17120
Office of Chief Counsel



June 17, 1985

IN REPLY REFER TO

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, Pennsylvania 17120

RECEIVED

JUN 17 1985

Re: Complaint Docket C-19707
Montgomery County

SECRETARY'S OFFICE
Public Utility Commission

Dear Mr. Rich:

Enclosed please find an original and nine (9) copies of Reply of Pennsylvania Department of Transportation to Exceptions of Philadelphia Electric Company to Initial Decision, in the above-captioned matter.

I hereby certify that a copy of the Reply has been sent to all parties of record.

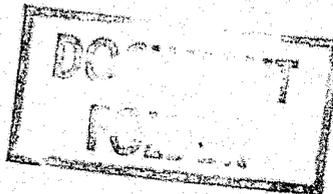
Very truly yours,

A handwritten signature in cursive script, appearing to read "Herbert G. Zahn".

Herbert G. Zahn
Assistant Counsel
(717) 787-5931

220/HGZ:rmm
Enclosures

cc: W. J. Clements, P.E. (Attn.: M. Davis)
District Engineer #6-0
Parties of Record - Pages 2 & 3



Jerry Rich, Secretary
Page 2
June 17, 1985

PARTIES OF RECORD

Joseph I. Hallman, Esquire
Upper Merion & Plymouth Railroad Company
P. O. Box 404
Conshohocken, Pennsylvania 19428

Edward H. Huss, Esquire
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Philadelphia Suburban Water Company
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515 Swede Street
Norristown, Pennsylvania 19401

Jerry Rich, Secretary
Page 3
June 17, 1985

PARTIES OF RECORD

Edward G. Bauer, Jr., Vice President and
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Philadelphia, Pennsylvania 19101

Daniel F. Donovan, Esquire
Consolidated Rail Corporation
1138 Six Penn Center Plaza
Philadelphia, Pennsylvania 19104

John J. Gallagher, Assistant Counsel
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, Pennsylvania 17120

RECEIVED

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JUN 17 1985

SECRETARY'S OFFICE
Public Utility Commission

Department of Transportation
of the Commonwealth of
Pennsylvania

v.

Reading Company, Debtor,
Borough of Conshohocken,
Borough of West Conshohocken
and County of Montgomery

COMPLAINT

DOCKET

NO. C-19707

DC FILED
JUN 18 1985

REPLY OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION TO
EXCEPTIONS OF PHILADELPHIA ELECTRIC COMPANY TO INITIAL DECISION

AND NOW, comes the Pennsylvania Department of Transportation (Department) by its undersigned attorney and makes reply to the exceptions of the Philadelphia Electric Company (PECO) to the Recommended Decision of Administrative Law Judge, Joseph J. Klovekorn, in the above-captioned matter, as follows:

1. Reply to PECO Exception to ordering Paragraph 22:

The Administrative Law Judge (ALJ) is fair and correct in ordering PECO reimbursement of 60% of its costs for relocating and replacing its two inch gas line. His reasoning was based upon the facts that in replacing and relocating the line, 110 feet of 4-inch main, which has a capacity 4 times that of a 2-inch main, will be used along Access Road No. 1 and across the

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FOLDER

new bridge. PECO recognizes that the 4-inch main is a betterment but argues, relying on only one case (A-00101907 of the City of Philadelphia), that such betterment is not to be considered. In the great majority of cases a utility has been ordered to bear the cost of a betterment. The other factor considered by the ALJ is the occupation of the new bridge by PECO's line; the use of the bridge relieves PECO of otherwise locating, paying for and occupying private right of way. In addition, PECO has the benefit of extended life of a new main which will replace one built in 1931/1932.

2. Reply to PECO's Exception to Ordering Paragraph 23:

The ALJ's Recommended Decision that PECO bear 100% of the costs of construction two eight-inch mains along its existing right of way and on the new Matsonford Bridge is fair and reasonable. His decision was based upon the fact that the 8-inch main to be constructed in PECO's right of way could have been increased to a 12-inch main which would supply all the capacity necessary to maintain service but because of a management decision this was not done. While the ALJ has accepted PECO's management decision, which he did not feel was necessary, he has ordered PECO to bear such costs. In addition, the ALJ has ordered PECO to bear its own costs for relocating its two poles supporting 13,000 volt aerial electric facilities. One of the poles is outside of the Commission's jurisdiction and the other

pole has been in the public right of way for some time and will be relocated in public right of way at an estimated cost of \$2,000; because of the benefits PECO receives by locating in public right of way at no cost and expense, such allocation of costs is fair and reasonable.

Finally, PECO complains that because the railroads cannot be allocated costs where federal funds are used, it also should not be allocated any costs. When the Federal Regulations were put into effect it was recognized that the railroads were not operating profitably and federal funds were and are being used to subsidize the railroads. PECO, however is a profit-making private corporation which the government does not support. Thus, under the Federal Regulations, PECO's argument is without foundation.

Respectfully submitted,



Herbert G. Zahn
Assistant Counsel

ORIGINAL

COMMONWEALTH OF PENNSYLVANIA
 DEPARTMENT OF TRANSPORTATION
 Harrisburg, Pennsylvania 17120
 Office of Chief Counsel



June 17, 1985

IN REPLY REFER TO

Jerry Rich, Secretary
 Pennsylvania Public Utility Commission
 P. O. Box 3265
 Harrisburg, Pennsylvania 17120

RECEIVED

JUN 17 1985

Re: Complaint Docket C-19707
 Montgomery County

SECRETARY'S OFFICE
 Public Utility Commission

Dear Mr. Rich:

Enclosed please find an original and nine (9) copies of Reply of Pennsylvania Department of Transportation to Exceptions of the Bell Telephone Company to Initial Decision, in the above-captioned matter.

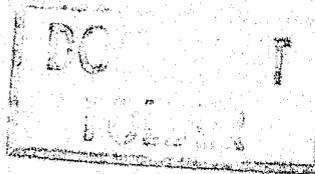
I hereby certify that a copy of the Reply has been sent to all parties of record.

Very truly yours,

Herbert G. Zahn
 Herbert G. Zahn
 Assistant Counsel
 (717) 787-5931

220/HGZ:rmm
 Enclosures

cc: W. J. Clements, P.E. (Attn.: M. Davis)
 District Engineer #6-0
 Parties of Record - Pages 2 & 3



Jerry Rich, Secretary
Page 2
June 17, 1985

PARTIES OF RECORD

Joseph I. Hallman, Esquire
Upper Merion & Plymouth Railroad Company
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Conshohocken, Pennsylvania 19428

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130 South Ninth Street, Fifth Floor
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Jerry Rich, Secretary
Page 3
June 17, 1985

PARTIES OF RECORD

Edward G. Bauer, Jr., Vice President and
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Philadelphia, Pennsylvania 19101

Daniel F. Donovan, Esquire
Consolidated Rail Corporation
1138 Six Penn Center Plaza
Philadelphia, Pennsylvania 19104

John J. Gallagher, Assistant Counsel
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, Pennsylvania 17120

RECEIVED

BEFORE THE

JUN 17 1985

PENNSYLVANIA PUBLIC UTILITY COMMISSION

SECRETARY'S OFFICE
Public Utility Commission

Department of Transportation
of the Commonwealth of
Pennsylvania

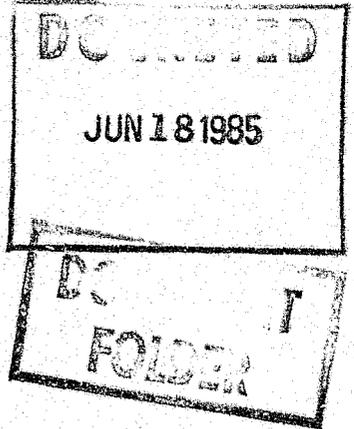
COMPLAINT

DOCKET

v.

NO. C-19707

Reading Company, Debtor,
Borough of Conshohocken,
Borough of West Conshohocken
and County of Montgomery



REPLY OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION TO
EXCEPTIONS OF BELL TELEPHONE COMPANY TO INITIAL DECISION

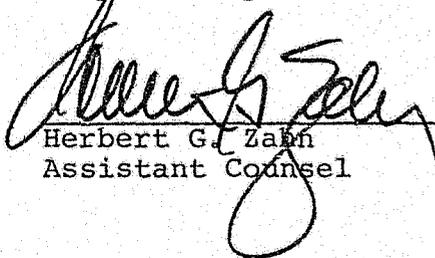
AND NOW, comes the Pennsylvania Department of Transportation (Department) by its undersigned attorney and makes reply to the exceptions of the Bell Telephone Company (Bell) to the Recommended Decision of Administrative Law Judge, Joseph J. Klovekorn, in the above-captioned matter, as follows:

1. Bell has taken exception to ordering Paragraph 24 wherein it was ordered to bear all of the costs to relocate and install its facilities to accommodate the construction of the new bridge. Bell's two main arguments to support its exceptions are that Bell would not have had to relocate its facilities if the Matsonford Bridge was not rebuilt and since federal funds are being used to defray the costs of rebuilding the bridge Bell should benefit from the use of federal funds. In directing that

Bell not be reimbursed for any of its costs, the Administrative Law Judge (ALJ) fairly and reasonably took into consideration that most of Bell's existing facilities are in public right of way and have been there as early as 1953, although others were installed in 1958, 1962, 1968 and 1980. Further, the ALJ stated that he had reason to believe that some of the facilities were installed in the early 1920's. The service life of Bell's facility is 60 years and by replacing the existing facilities Bell has the advantage of an extended life for them. Bell has cited the four factors to be considered in allocating costs, but any one or two of those factors may take precedence and outweigh the others. Here, Bell's ratepayers have received benefits resulting from the facilities being in public right of way for which Bell had no acquisition costs; since Bell is not required to contribute to the estimated cost of \$10,726,602.00 to rebuild the bridge, which costs will come from the Department's share of federal funds plus some \$2,000,000.00 from state funds, and the fact that Bell is ordinarily required to relocate its facilities at its own cost out of public right of way where the Commission's jurisdiction is not involved, the equities in this case dictate that Bell share its own relocation costs. An added factor is that Bell can continue to use the public right of way in the future at no cost to itself. Bell's argument that federal funds are being used and it should share in that advantage is a weak argument for the following reasons. The federal regulations do not require utility companies to be reimbursed for relocating

their facilities out of public right of way; it is only when the Commission orders utility costs to be reimbursed that federal funds can be applied. In this respect, Bell argues that where interstate and critical bridge projects are involved federal regulations provide for full reimbursement to utility relocation costs. Here, neither of these factors are present; the costs of the bridge project is included in the so-called "Billion Dollar Bridge Bill" which may or may not be federally funded. In any event, the Department only receives a limited amount of federal funds for all of its projects and if utility costs are ordered to be reimbursed funds may not be available for another Department project not under the Commission's jurisdiction.

Respectfully submitted,



Herbert G. Zahn
Assistant Counsel

ORIGINAL

COMMONWEALTH OF PENNSYLVANIA
 DEPARTMENT OF TRANSPORTATION
 Harrisburg, Pennsylvania 17120
 Office of Chief Counsel



June 17, 1985

IN REPLY REFER TO

Jerry Rich, Secretary
 Pennsylvania Public Utility Commission
 P. O. Box 3265
 Harrisburg, Pennsylvania 17120

RECEIVED

JUN 17 1985

Re: Complaint Docket C-19707
 Montgomery County

SECRETARY'S OFFICE
 Public Utility Commission

Dear Mr. Rich:

Enclosed please find an original and nine (9) copies of Reply of Pennsylvania Department of Transportation to Exceptions of Southeastern Pennsylvania Transportation Authority to Initial Decision, in the above-captioned matter.

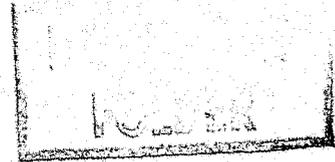
I hereby certify that a copy of the Reply has been sent to all parties of record.

Very truly yours,

Herbert G. Zahn
 Assistant Counsel
 (717) 787-5931

220/HGZ:rmm
 Enclosures

cc: W. J. Clements, P.E. (Attn.: M. Davis)
 District Engineer #6-0
 Parties of Record - Pages 2 & 3



Jerry Rich, Secretary
Page 2
June 17, 1985

PARTIES OF RECORD

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Jerry Rich, Secretary
Page 3
June 17, 1985

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John J. Gallagher, Assistant Counsel
Pennsylvania Public Utility Commission
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Harrisburg, Pennsylvania 17120

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

JUN 17 1985

SECRETARY'S OFFICE
Public Utility Commission

Department of Transportation
of the Commonwealth of
Pennsylvania

v.

Reading Company, Debtor,
Borough of Conshohocken,
Borough of West Conshohocken
and County of Montgomery

COMPLAINT

DOCKET

NO. C-19707

DOCKETED

JUN 18 1985

REPLY OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION TO
EXCEPTIONS OF SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY TO INITIAL DECISION

AND NOW, comes the Pennsylvania Department of
Transportation (Department) by its undersigned attorney and makes
reply to the exceptions of the Southeastern Pennsylvania
Transportation Authority (SEPTA) to the Recommended Decision of
Administrative Law Judge, Joseph J. Klovekorn, in the
above-captioned matter, as follows:

1. SEPTA has taken exception to ordering Paragraph 28
which requires SEPTA, inter alia, to maintain the Matsonford
Bridge piers and bridge superstructure spanning over its tracks
and maintenance of its stairway leading from the bridge to the
area near its station. SEPTA's exception is based upon the
allegation that the bridge carries a state highway solely for the

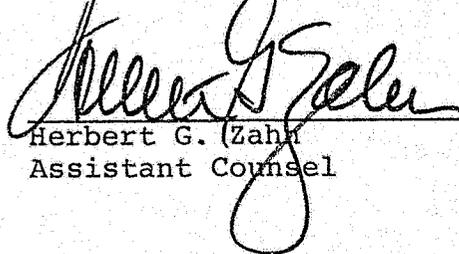
benefit of the highway users. This is the old argument that a railroad receives no benefits from a separated crossing which has, time and again, been refuted by the Department and recognized by the Commission. SEPTA is benefited by a separated crossing as follows:

- (a) it is relieved of maintenance of automatic protection,
- (b) it is relieved of any possible negligence actions and the cost of insurance for the same,
- (c) if a fill was used to support the roadway the railroad could not operate on that line of railroad, and,
- (d) it adds to the safety of its employees and passengers.

In addition, SEPTA can more safely maintain the piers and substructures of a bridge since they are close to its operating right of way; if other parties were directed to maintain such facilities, it would require notification to the railroad that such work was contemplated and the work would be done by workmen unskilled in railroad operations. The Judge's Recommended Order

is fair and reasonable, not only for the foregoing reasons, but because SEPTA is not allocated any costs for the construction of the new bridge.

Respectfully submitted,



Herbert G. Zahn
Assistant Counsel