

EXTRA COPIES

PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Public Meeting held October 21, 1975
Harrisburg, PA. 17120

COMMISSIONERS PRESENT:

Chairman Carter
Commissioner Kelly
Commissioner Bloom

Department of Transportation of the
Commonwealth of Pennsylvania

Complaint Docket
No. 19707

v.

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

O R D E R

BY THE COMMISSION:

By its order in this proceeding issued January 15, 1974, Pennsylvania Public Utility Commission, acting upon testimony and exhibits submitted by Pennsylvania Department of Transportation in support of its complaint filed September 27, 1972, directed the department to undertake repairs and rehabilitation of the main structural elements, contiguous ramps and highway approaches to the Matsonford Bridge carrying State Highway Route 46140 over and above tracks of Reading Company and the Schuylkill River, between the boroughs of Conshohocken and West Conshohocken, Montgomery County. By the department's estimate, the cost of that work would amount to \$655,500. The Commission's order directed that all costs of the projected improvement be at the initial expense of Department of Transportation, and that the work be completed by December 31, 1975, with further hearing to be had upon the allocation of the costs incurred.

On December 16, 1974, Department of Transportation filed with this Commission a petition seeking modification of our order issued January 15, 1974 so as to direct reconstruction of the subject structure at a foreseeable future date, alleging that additional inspection of the structure conducted in July and August of 1974, resulted in the conclusion that rehabilitation is no longer economically feasible. Following receipt of answers to the petition, the Commission, in Public Meeting held February 24, 1975, directed that the magnitude and import of the modification sought by the department's petition should be more fully explored on the record, and formal hearing upon the necessity for reconstruction was held on April 15, 1975.

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

At that hearing, PennDOT was the only party to submit direct testimony, through P. C. Peterson, District Bridge Engineer. This witness testified that in 1970, the department retained a consulting engineering firm to conduct a comprehensive inspection of the entire structure, resulting in a recommendation that the deteriorated portions of the bridge be repaired. Additional inspections were made by departmental personnel in 1971, to establish specific types and quantities of repairs necessary to be incorporated in the repair plan. Further routine inspections performed in 1972 revealed progressive deterioration taking place, although the proposed program of rehabilitation was still deemed practicable at that time.

Accordingly, preliminary plans and estimates were prepared for the necessary repair work, and the department filed the subject complaint with this Commission on September 27, 1972, seeking allocation of the costs to be thus incurred. Hearing was held on December 20, 1972 and on January 15, 1974 the Commission directed that the repairs be effected, in accordance with the department's plan, with all costs to be allocated following completion of the work.

In July of 1974, the department's continuing program of bridge inspections revealed evidence of extensive deterioration of far greater import than previously noted, in the roadway and sidewalk structural slabs, and at a considerable number of the floorbeams and at the upper portions of several piers. The nature and increased scope of the work necessary to correct these continually-progressing areas of deterioration makes the original scheme for rehabilitation impracticable, and the present repair plan invalid. The department now estimates the costs involved in making effective repairs and/or replacement at all necessary locations, under an expanded program along the lines of its original plan, would be of the magnitude of \$3.3 million dollars, and would entail an excessively prolonged period of construction, disruption of traffic and public inconvenience. PennDOT's rough estimate for complete removal of the existing bridge superstructure, and reconstruction to modern standards of capacity, approximates \$5,000,000 which the department contends will result in a vastly improved cost-benefit ratio, considering the age of the existing bridge, the restricted roadway width, and the geometrics of the present approach roadways and ramps, all of which would be improved under a reconstruction program.

It was brought out during testimony that funds for repair work have been approved by the Legislature, only to the extent of \$655,500 as originally estimated, and that approval must be sought and obtained for any work in excess of this figure, whether that be \$3.3 million for extra rehabilitation work, or the \$5 million required for reconstruction.

The witness further testified that, despite the continuing deterioration, the department's opinion is that the bridge is as yet structurally adequate for legal loadings, and can be expected to remain so for several years, with which opinion the Bridge Engineer for Reading

Company concurs. The department's proposal is, therefore, to begin procedures toward development of plans for a major reconstruction program, in lieu of the original rehabilitation measures, which project can be implemented in approximately two years, following completion of the new river crossing being constructed nearby to carry the Mid-County Expressway, which could then be utilized as a detour route during the reconstruction period. In the interim, the department will continue to periodically inspect the existing structure, at approximately six-month intervals, to assure the adequacy thereof for the 33,000 vehicles presently using the bridge each day.

As a result of developments, as set forth above, Department of Transportation filed a petition with this Commission on December 16, 1974, seeking modification of our order issued January 15, 1974, for approval of a major reconstruction program at this location in lieu of their original proposal for rehabilitation. The sole answer filed to the petition was that of Reading Company, received January 6, 1975, in which the respondent requested opportunity to be heard prior to any action by the Commission. Although present at the hearing held April 15, 1975, Reading Company presented no testimony, but did concur with department's opinion as to the present structural integrity of the bridge and their proposal to conduct periodic inspections.

We have carefully reviewed the record and testimony in this proceeding, and upon full consideration of the matters and things involved, are of the opinion that the department's alternative proposal for major reconstruction will provide an improvement of far greater present and future value than that which would be afforded through a program of extensive repairs. Reconstruction will not only effect increased capacity and accommodation of the high traffic volumes, but will also result in greater safety and an extended future useful life of the structure.

Accordingly, upon careful consideration of all facts and ramifications attendant to the modification as sought, we deem that the public good will be best served through the approval by this Commission of the prayer of department's petition seeking modification of our order issued January 15, 1974, so as to direct a major reconstruction of the subject crossing structure, in lieu of extensive repair work, and we will so order; THEREFORE,

IT IS ORDERED:

1. That the prayer of the petition filed December 16, 1974 by Department of Transportation of the Commonwealth of Pennsylvania, seeking modification of our order in this proceeding issued January 15, 1974, be and is hereby approved.

2. That the directives contained in the ordering Paragraphs Nos. 1 through 16, inclusive, on Pages 9 through 13 of said order, be and are hereby rescinded.

3. That within twelve months of the date of service hereof, Department of Transportation of the Commonwealth of Pennsylvania, at its initial cost and expense, prepare and submit to this Commission and to each party of record hereto, a detail construction plan and estimate of costs providing for the reconstruction of the existing Matsonford Bridge structure carrying State Highway Route 46140 over and above the grade of tracks of Reading Company at two locations and across the Schuylkill River, between Borough of Conshohocken and Borough of West Conshohocken, in Montgomery County, including such reconstruction as is required to be performed on the highway approaches and contiguous ramps to the bridge; said estimate of cost to include all costs incurred to date by the department in accordance with the subject proceeding.

4. That during the time the plan and estimate of costs are being prepared, Department of Transportation undertake the continuing program of inspection of the subject structure, at six month intervals, to determine the current condition thereof; and submit in writing to this Commission a report indicating its findings and recommendations resulting from each such inspection performed.

5. That during the time the plan and estimate of costs are being prepared, and until such time as further order by this Commission may issue to alter same, Department of Transportation, at its initial cost and expense, make appropriate repairs to any component or element of the subject structure, deemed necessary in the opinion of the department's bridge engineer, so as to properly provide for the safety of the traveling public utilizing the facility; the costs thereof to be submitted at future hearing for consideration by this Commission with respect to allocation thereof.

6. That a copy of this order be served upon each party named in the caption of this proceeding; and further, that Philadelphia Suburban Water Company and The Bell Telephone Company of Pennsylvania, having facilities in the vicinity of the subject crossing, be joined as party respondents hereto and be served a copy hereof, together with a copy of our prior order in this matter issued January 15, 1974.

7. That Department of Transportation, within 30 days of the date of service hereof, advise this Commission of any other non-carrier public utility company which may be affected by the proposed reconstruction project, in order that it may also be joined as a respondent and be apprised of the matters and things involved.

8. That upon receipt of the reconstruction plan and estimate of costs herein ordered prepared, this proceeding be scheduled for further hearing upon the adoption thereof, the allocation of the costs of construction, the definition of limits of future maintenance responsibilities at this location; and assignment of the obligation for performance and payment of costs thereof.

BY THE COMMISSION,

C. J. McElwee
Secretary

(SEAL)

ORDER ADOPTED: October 21, 1975

ORDER ENTERED: 10-24-1975

WALTER PHIPPS, JR.
ATTORNEY AT LAW
312 FAYETTE STREET
CONSHOHOCKEN, PA. 19428
TELEPHONE 828-2690

RECEIVED
NOV 12 1976
CIVIL DIVISION
PENNSYLVANIA PUBLIC
UTILITY COMMISSION

November 11, 1976

Hon. Louis Carter, Chairman
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, Pa. 17120

Re: Department of Transportation of the Commonwealth
of Pennsylvania

vs.

Reading Company, Borough of Conshohocken,
Borough of West Conshohocken and County of Montgomery
Complaint Docket No. 19707

Dear Sir:

The Borough of Conshohocken petitions the Pennsylvania Public Utility Commission to request the Attorney General of the Commonwealth of Pennsylvania, under Section 904 of the Public Utility Law, to enforce obedience of the Commission's Order adopted October 21, 1975, and entered October 24, 1975, at the above docket number upon the petition of the Department of Transportation of the Commonwealth of Pennsylvania.

Paragraph 3 of said Order requires that within twelve months of the date of service thereof the Department of Transportation of the Commonwealth of Pennsylvania prepare and submit to the Commission and to each party of record a detailed construction plan and estimate of costs providing for the reconstruction of the existing Matsonford Bridge.

Paragraph 5 of said Order requires that during the time the plan and estimate of costs are being prepared, the Department of Transportation make appropriate repairs to the Matsonford Bridge to provide for the safety of the travelling public.

The Borough of Conshohocken has not received any detailed construction plan or estimate of costs of reconstructing the said bridge and to the best of its knowledge, information and belief, no such construction plan or estimate of costs has been prepared.

DUPLICATE RECORD,
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

DOCKETED
COMPLAINT DOCKET

JAN 24 1977

C

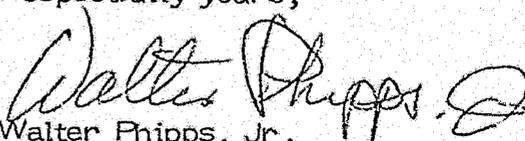
Pennsylvania Public Utility Commission

Nov. 11, 1976

Further, the bridge structure is sorely in need of repairs to make it safe for the travelling public. The curbs, sidewalks, railings, lights and road surface, among other things, are damaged, eroded and badly in need of repair and render the bridge unsafe.

The legislature has given the Public Utility Commission the duty and authority to regulate this bridge and unless your orders are enforced, there can be no effective regulation.

Respectfully yours,



Walter Phipps, Jr.
Solicitor for the Borough of
Conshohocken

mb

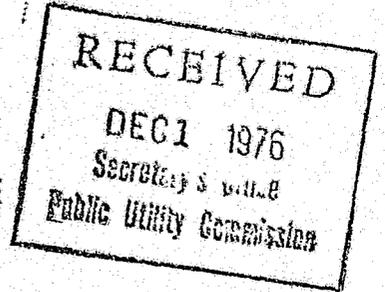
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
HARRISBURG 17120
Office of Chief Counsel



November 30, 1976

IN REPLY REFER TO

C. J. McElwee, Secretary
Pennsylvania Public Utility Commission
North Office Building
Harrisburg, Pennsylvania 17120



Re: Complaint Docket No. 19707
Montgomery County

Dear Mr. McElwee:

Enclosed for filing with the Commission are the original and two (2) copies of Petition of the Pennsylvania Department of Transportation for Modification of Order of October 21, 1975, in the above-captioned case.

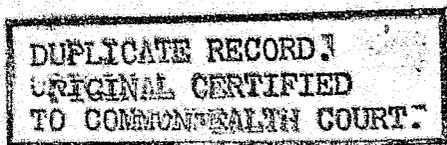
I hereby certify that a copy of said Petition has been sent to all parties of record.

Very truly yours,

Herbert G. Zahn
Assistant Attorney General

220/HGZ:rmn
Enclosures: 3

cc: K. W. Walker, P.E., Grade Crossing
District #6-0
Parties of Record - Page 2



C. J. McElwee, Secretary -2-
C.D. 19707

November 30, 1976

PARTIES OF RECORD

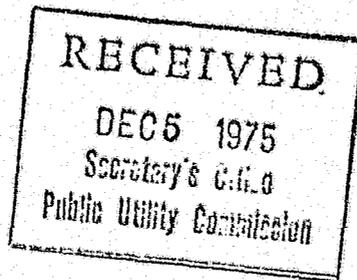
Joel E. Mazor, Esquire
Consolidated Rail Corporation - Law Department
415 Reading Terminal
Philadelphia, Pennsylvania 19107

Walter Phipps, Jr., Solicitor
Borough of Conshohocken
312 Fayette Street
Conshohocken, Pennsylvania 19428

Edward F. Kane, Esquire
Borough of West Conshohocken
Bean, DeAngelis, Kaufman & Kane
522 Swede Street
Norristown, Pennsylvania 19401

Roger B. Reynolds, Solicitor
County of Montgomery
Courthouse
Norristown, Pennsylvania 19404

Sheldon Seligsohn
Attorney



The Bell Telephone Company
of Pennsylvania

Law Department

One Parkway
Philadelphia, Pennsylvania 19102
Phone: (215) 466-3989

December 2, 1975

Department of Transportation of the Common-
wealth of Pennsylvania

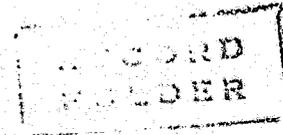
v.

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

Pa. P.U.C. Complaint Docket No. 19707



Mr. C. J. McElwee, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, Pennsylvania 17120

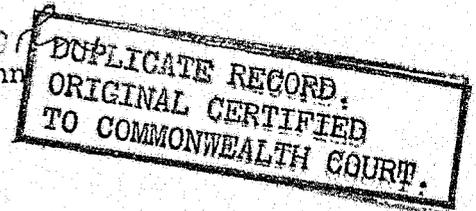


Dear Mr. McElwee:

Herewith for filing with the Commission are the original
and two true copies of the Answer of The Bell Telephone Company
of Pennsylvania to the Complaint in the above captioned proceeding.
I hereby certify that a true copy of the Answer is being forwarded
today to Robert W. Cunliffe, Deputy Attorney General, Capitol
Associates Building, 7th and Forster Streets, Harrisburg, Pa. 17120.

Very truly yours,

Sheldon Seligsohn
Sheldon Seligsohn
Attorney



SS/pc
Enc.

Copy of letter and Answer to:

Joel E. Mazor, Esq., Reading Company, 415 Reading Terminal,
Philadelphia, Pa. 19107

Walter Phipps, Jr., Esq., Borough of Conshohocken, 312 Fayette
Street, Conshohocken, Pa. 19428

Edward F. Kane, Esq., Solicitor for Borough of West Conshohocken
522 Swede Street, Norristown, Pa. 19401

County of Montgomery, Courthouse, Norristown, Pa. 19401

Philadelphia Suburban Water Company, 762 Lancaster Ave.,
Bryn Mawr, Pa.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED
DEC 5 1975
S. J. & C. Co.
Public Utility Commission

DEPARTMENT OF TRANSPORTATION OF :
THE COMMONWEALTH OF PENNSYLVANIA, :
Complainant :

v. :

READING COMPANY, BOROUGH OF :
CONSHOHOCKEN, BOROUGH OF WEST :
CONSHOHOCKEN, AND COUNTY OF :
MONTGOMERY, :
Respondents :

COMPLAINT DOCKET

No. 19707

ANSWER OF
THE BELL TELEPHONE COMPANY OF PENNSYLVANIA

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

The Bell Telephone Company of Pennsylvania (hereinafter "Bell"), in answer to the Complaint filed in the above proceeding, respectfully says:

1. Admitted.
2. Admitted.
3. Admitted.

4. Bell admits that it has equipment and facilities on or about the Matsonford Bridge which is the subject of this Complaint. Bell specifically denies that its equipment and facilities in any way contribute to the creation and/or existence of any hazardous, dangerous or otherwise undesirable condition as averred in Paragraph 4. of the Complaint. Bell takes no position with respect to the remaining averments of said Paragraph.

5. Paragraph 5. of the Complaint contains arguments and statements of relief sought which Bell is not required to either admit or deny.

DOCKETED
COMPLAINT DOCKET
DEC 3 1975
ENTRY No. C

RECORD
FOLDER

DUPLICATE RECORD,
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

WHEREFORE, Bell asks that the costs of any work which may be ordered by the Commission in this proceeding, to eliminate or rectify any undesirable conditions averred in the Complaint, including all nonbetterment costs of any required relocation of telephone facilities, be imposed upon the party or parties responsible for such undesirable conditions.

THE BELL TELEPHONE COMPANY OF
PENNSYLVANIA

BY K. S. Boehm
Vice President

Raymond F. Scully
Donald F. Clarke
Sheldon Seligsohn
Attorneys for The Bell Telephone
Company of Pennsylvania

One Parkway
Philadelphia, Pa. 19102

Date: December 2, 1975

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF PHILADELPHIA)

K. E. BOEHM, being duly sworn according to law,
deposes and says that he is Vice President-Staff of The Bell
Telephone Company of Pennsylvania; that he is authorized to and
does make this affidavit for it; and that the facts set forth
are true and correct to the best of his knowledge, information
and belief, and he expects the said The Bell Telephone Company
of Pennsylvania to be able to prove them at the hearing hereof.

K.E. Boehm

Sworn to and subscribed
before me this 2nd day
of December, 1975.

Jeremy Linton

DEBORAH FITCH
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires December 11, 1978

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED
DEC 1 1976
Secretary's Office
Public Utility Commission

DEPARTMENT OF TRANSPORTATION OF THE
COMMONWEALTH OF PENNSYLVANIA

V.

READING COMPANY, BOROUGH OF CONSHOHOCKEN,
BOROUGH OF WEST CONSHOHOCKEN AND COUNTY
OF MONTGOMERY

:
:
: COMPLAINT DOCKET
:
: NO. 19707
:

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

PETITION OF THE PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION FOR MODIFICATION OF ORDER OF
OCTOBER 21, 1975

TO THE HONORABLE, THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

The Petition of the Pennsylvania Department of Transportation for Modification of the Order of October 21, 1975, so as to extend the time for the Department to prepare and present a detailed construction plan and estimate of costs for the reconstruction of the existing Matsonford Bridge in the above entitled matter, from October 27, 1976, and respectfully represents:

RECEIVED
COMPLAINT DOCKET
DEC 2 1976

1. The name and address of your Petitioner is the Secretary of Transportation of the Department of Transportation of the Commonwealth of Pennsylvania, Harrisburg, Pennsylvania, 17120.

2. The name and address of counsel for the Petitioner is Herbert G. Zahn, Assistant Attorney General and Robert W. Cunliffe, Deputy Attorney General, Office of Chief Counsel

RECEIVED

Department of Transportation, Capitol Associates Building,
7th and Forster Streets, Harrisburg, Pennsylvania, 17120.

3. That your Honorable Commission in the above entitled matter, at Complaint Docket No. 19707, issued its Order dated October 21, 1975, (served upon the Department on October 27, 1975) which required, inter alia, the Department to submit to your Honorable Commission and to each party of record thereto, a detailed construction plan and estimate of costs providing for the reconstruction of the existing Matsonford Bridge structure carrying Legislative Route 46140 over and above the grade of the tracks of Reading Company at two locations and across the Schuylkill River, between the Borough of Conshohocken and the Borough of West Conshohocken in Montgomery County, including such reconstruction as required to be performed on the highway approaches and contiguous ramps to the bridge, within twelve months of the date of service.

4. That because of the present financial situation within the Department, that the construction project for the instant complaint is not on the Commonwealth's twelve (12) year highway program nor on an approved Capital Budget and there are no funds available to proceed with the project, the Department has been unable to complete the detailed construction plan and estimate as ordered by your Honorable Commission.

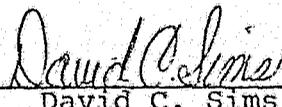
5. That the Department will be able to complete the design and plans for the said bridge when funds are made

available from an approved Capital Budget. Such design and plans can be completed within twelve (12) months from the date such Capital Budget is approved by the Legislature.

WHEREFORE, your Petitioner prays your Honorable Commission to modify Paragraph 3 of the said Order of October 21, 1975, to read:

- "3. That within twelve (12) months from the date of approval by the Legislature of Pennsylvania of a Capital Budget providing for funds for the design of the bridge structure, the subject matter of these proceedings, the Department of Transportation of the Commonwealth of Pennsylvania, at its initial cost and expense, prepare and submit to this Commission and to each party of record hereto a detailed construction plan and estimate of costs providing for the reconstruction of the existing Matsonford Bridge structure carrying State Highway Route 46140 over and above the grade of tracks of Reading Company at two locations and across the Schuylkill River, between Borough of Conshohocken and Borough of West Conshohocken, in Montgomery County, including such reconstruction as is required to be performed on the highway approaches and contiguous ramps to the bridge; said estimate of cost to include all costs incurred to date by the department in accordance with the subject proceeding."

AND, it will ever pray, etc.



David C. Sims

Deputy Secretary for Highway Administration

RECEIVED
JAN 26 1977
Storch & Sons
Public Utility Commission

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

C. 19707 - Department of Transportation of the Commonwealth of Pennsylvania
v.
Reading Company, Borough of Conshohocken, Borough of West Conshohocken and County of Montgomery

COMMISSION STAFF
NOTICE OF INTENTION TO PARTICIPATE

Staff of the Pennsylvania Public Utility Commission hereby provides notice of its intent to participate in the above-captioned matter. Such participation is pursuant to authority contained in the Act of October 7, 1976, Act No. 216, P.L. _____, 66 P.S. §§1101, et seq., as amended.

All communications concerning this Notice should be addressed as follows, and the following individuals should be included in the Commission's official service list:

Candace N. Kreiger, Assistant Counsel
Pa. P.U.C. Law Bureau
P.O. Box 3265
Harrisburg, Pennsylvania 17120

John L. Storch
Pa. P.U.C. Bureau of Transportation
Rail Division
P.O. Box 3265
Harrisburg, Pennsylvania 17120

DOCKETED
COMPLAINT DOCKET
JAN 26 1977

C

RECORD
INDEX

Candace N. Kreiger
Candace N. Kreiger
Assistant Counsel

DUPLICATE RECORD!
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

RECEIVED
JAN 15 1977
SECRETARY'S OFFICE
Public Utility Commission

CERTIFICATE OF SERVICE

I hereby certify that I am, this *25th* day of *January*, serving by first class mail the foregoing document upon the persons listed below:

Joel E. Mazor, General Attorney
415 Reading Terminal
Philadelphia, Pennsylvania 19107

Walter Phipps, Jr., Solicitor
312 Fayette Street
Conshohocken, Pennsylvania 19428
(Borough of Conshohocken)

Edward F. Kane, Esquire
Bean DeAngelis Kaufman and Kane
522 Swede Street
Norristown, Pennsylvania 19401
(Borough of West Conshohocken)

Roger B. Reynolds, Solicitor
County of Montgomery
Courthouse
Norristown, Pennsylvania 19404

Sheldon Seligsohn, Attorney
The Bell Telephone Company of Pennsylvania
Law Department
One Parkway
Philadelphia, Pennsylvania 19102

James M. Ballengee, President
Philadelphia Suburban Water Company
762 Lancaster Avenue
Bryn Mawr, Pennsylvania 19010

Robert W. Cunliffe, Deputy Attorney General
Department of Transportation
Capitol Associates Building
Harrisburg, Pennsylvania 17120

Candace N. Kreiger
Candace N. Kreiger
Assistant Counsel

January 31, 1977

C. 19707

(see list attached)

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

Department of Transportation of the Commonwealth of Pennsylvania
v.
Reading Company, Borough of Conshohocken, Borough
of West Conshohocken and County of Montgomery

Dear Sir:

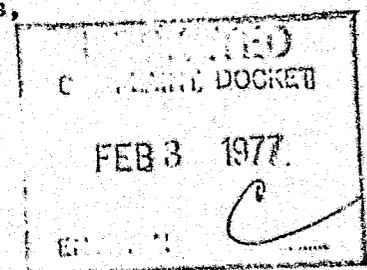
At the Public Meeting held January 18, 1977, the Commission directed that the Borough of Conshohocken's letter-petition for enforcement of the Commission's October 21, 1975 order and the Pennsylvania Department of Transportation's petition for modification of the Commission's October 21, 1975 order at C. 19707 should be set for hearing, so as to afford all parties of record an opportunity to submit testimony on the issues raised therein.

Accordingly, further hearing in the above entitled proceeding has been scheduled to be held Tuesday, February 22, 1977, in the Municipal Building, 700 Belvoir Road, Plymouth Township, Montgomery County, commencing at 10:00 a.m.

Please acknowledge receipt of this letter.

Very truly yours,

C. J. McElwee
Secretary



ccs:
Law Bureau
Bureau of Transportation
Administrative Law Judge
Secretary's Office
Mr. Bramson
Miss Ingalzo
Miss Kauffman
Chairman Carter

Commissioners Bloom, Kelly, Johnson, O'Bannon - Consumer Advocate

C. 19707

Robert W. Cunliffe, Deputy Attorney General
Pennsylvania Department of Transportation
Capital Associates Building
Seventh and Forster Streets
Harrisburg, Pennsylvania

Herbert G. Zahn, Assistant Attorney General
Pennsylvania Department of Transportation
Capital Associates Building
Seventh and Forster Streets
Harrisburg, Pennsylvania

Joel E. Mazor, General Attorney
Consolidated Rail Corporation
Six Penn Center Plaza
Philadelphia, Pennsylvania 19104

Edward F. Kane, Esquire
Bean, DeAngelis, Kaufman & Kane
522 Swede Street
Norristown, Pennsylvania 19401
(for Borough of West Conshohocken)

Walter Phipps, Jr., Solicitor
Borough of Conshohocken
312 Fayette Street
Conshohocken, Pennsylvania 19428

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

James M. Ballengee, President
Philadelphia Suburban Water Company
762 Lancaster Avenue
Bryn Mawr, Pennsylvania 19010

Roger B. Reynolds, Solicitor
County of Montgomery
Courthouse
Norristown, Pennsylvania 19404

Lockwood W. Fogg, Secretary
Trustees of Reading Company
One Plymouth Meeting
Plymouth Meeting, Pennsylvania 19462

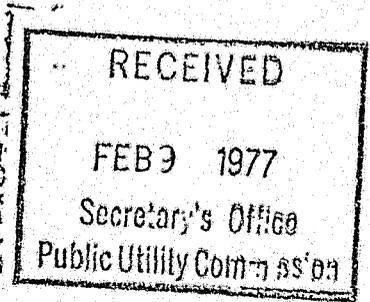
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

HARRISBURG 17120
Office of Chief Counsel
February 9, 1977



IN REPLY REFER TO

C. J. McElwee, Secretary
Pennsylvania Public Utility Commission
Room 111 - North Office Building
Harrisburg, Pennsylvania 17120



RE: Complaint Docket No. 19707
Montgomery County
Answer of the Pennsylvania Department of
Transportation to Letter Petition for
Enforcement of Order

Dear Mr. McElwee:

Enclosed please find an original and two (2) copies
of the Answer of the Pennsylvania Department of Transportation
to Letter Petition for Enforcement of Order.

I hereby certify that copies of the above-named
Answer have been sent to all parties of record.

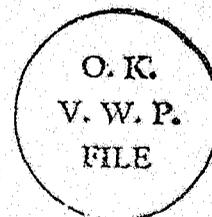
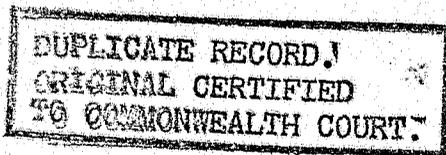
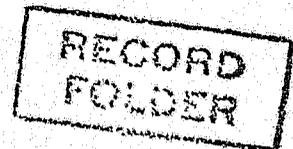
Sincerely,

George D. Wenick
George D. Wenick
Assistant Attorney General

GDW:smm

Attachments (3)

CC: Parties of Record (Page Two)
K. W. Walker, Chief Utility Engineer
District 6-0



PARTIES OF RECORD

Joel E. Mazor, General Attorney
Conrail
610 Penn Center Plaza
Philadelphia, Pennsylvania 19104

Edward F. Kane, Esquire
Bean, DeAngelis, Kaufman, & Kane
522 Swede Street
Norristown, Pennsylvania 19401
(Borough of West Conshohocken)

Walter Phipps, Jr., Solicitor
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312 Fayette Street
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Sheldon Seligsohn
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Philadelphia Suburban Water Company
762 Lancaster Avenue
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Roger B. Reynolds, Solicitor
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Lockwood W. Fogg, Secretary
Trustees of Reading Company
One Plymouth Meeting
Plymouth Meeting, Pennsylvania 19462

Candance N. Kreiger
Pennsylvania PUC
Law Bureau
P.O. Box 3265
Harrisburg, Pennsylvania 17120

John L. Storch
Pennsylvania PUC
Bureau of Transportation
Rail Division
P.O. Box 3265
Harrisburg, Pennsylvania 17120

3. The allegations contained in Petitioner's paragraph three are denied as stated. The Order of October 24, 1975, of your Honorable Commission, entered in the above-captioned proceedings directs PennDOT to make those repairs to any component which PennDOT deems to be necessary.

4. The allegations contained in Petitioner's paragraph four are admitted as stated.

5. The allegations contained in Petitioner's paragraph five are denied as stated. In compliance with paragraph four of the above-mentioned Commission order dated October 24, 1975, PennDOT has inspected the subject structure at six-month intervals. The most recent inspection, conducted on December 2, 1976, revealed that although the concrete continues to deteriorate, the bridge is structurally sound, passable, and not in need of posting. Furthermore, said inspection revealed that one sidewalk on said structure contained holes which ought to be repaired. PennDOT intends to repair the holes as soon as weather permits.

6. The Petitioner's paragraph six contains Conclusions of Law to which a responsive of pleading is not required.

NEW MATTER

7. That on October 24, 1975, the Commission issued its Order in the above-captioned proceeding, which directed inter alia, that PennDOT was to prepare plans and cost estimates for the rehabilitation

of the subject structure within twelve months of the issuance of the Order, conduct a continuing program of inspecting the structure at twelve month intervals, and submit a written report of said inspections to the Commission, and make repairs to any components of the subject structure which PennDOT deems to be necessary.

8. That on April 9, 1976, PennDOT conducted its first inspection of the subject structure.

9. That on December 2, 1976, PennDOT conducted its second inspection of the subject structure.

10. That written results of the above-mentioned inspections were sent to the Commission. The inspections revealed that concrete on the bridge was continuing to deteriorate, but that the bridge was structurally sound, and did not need to be posted. Furthermore, the most recent inspection revealed that the sidewalk on one side of the bridge was badly in need of repair.

11. That PennDOT intends to repair the sidewalk of the structure when weather permits, and it intends to repair other components of the structure as such repair becomes necessary.

12. That on November 29, 1976, PennDOT filed with your Honorable Commission a Petition for Modification of the Order of October 24, 1975, requesting an extension of time within which to submit the detailed plans and cost estimates for the reconstruction of the structure.

13. That only one party to the proceedings responded to PennDOT's petition, and that party, ConRail, stated only that it had no objections to the request for extension of time.

14. That since the time within which to file an answer to PennDOT's Petition for Modification has elapsed, the relevant basic facts have been admitted by all parties as stated under 1 Pa. Code 35.35, as applied to this proceedings by 52 Pa. Code 3.1.

15. That on November 11, 1976, the Borough of Conshohocken filed a letter petition for enforcement of the October 24 Order against PennDOT.

16. That PennDOT was not served with a copy of said letter petition by the Borough of Conshohocken, and did not receive a copy from the Commission until January 24, 1977.

17. That the Petition of the Borough of Conshohocken did not request a re-hearing, and did not contain a statement of evidence to be adduced if such a hearing were scheduled.

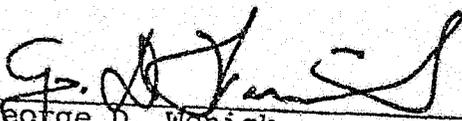
18. That the Commission, at its public meeting held January 18, 1977, scheduled a hearing to be held on PennDOT's Petition for Modification and on the Borough of Conshohocken's letter petition for enforcement of order. The decision to permit the Borough to submit evidence relating to its petition was made at the above-mentioned meeting, which was held prior to the service

upon PennDOT by the Commission of the aforesaid letter petition, and prior to PennDOT's answer thereto.

19. That as stated above, PennDOT has complied with the October 24 Order with respect to the requirement to inspect and requirement to make repairs. Furthermore, PennDOT has filed a petition for modification in order to extend the time within which to submit detailed plans and cost estimates of the reconstruction of the subject bridge, to which the Borough of Conshohocken has not filed an answer.

WHEREFORE, PennDOT respectfully requests your Honorable Commission to dismiss the letter petition of the Borough of Conshohocken and to limit the scope of the hearing scheduled on February 22, 1977, to matters relevant to PennDOT's petition for modification.

Respectfully submitted,



George D. Wenick
Assistant Attorney General

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

RECEIVED
FEB 9 1977
Secretary's Office
Public Utility Commission

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Department of Transportation of :
the Commonwealth of Pennsylvania :

v.

Complaint Docket
No. 19707

Reading Company; Borough of
Conshohocken; Borough of West
Conshohocken and County of
Montgomery

RECORDED
INDEXED

DOCKETED
COMPLAINT DOCKET
FEB 10 1977
ENTRY NO. C

APPLICATION FOR PERMISSION TO TAKE DEPOSITIONS
UPON ORAL EXAMINATION

TO THE HONORABLE RUDOLPH S. PALLASTRONE:

AND NOW comes, The Staff of the Pennsylvania Public
Utility Commission, by its Attorney, Candace N. Kreiger, Assistant
Counsel, and respectfully represents:

1. That the name and address of your petitioner is the
Staff of the Pennsylvania Public Utility Commission, P. O. Box 3265,
Harrisburg, Pennsylvania 17120.
2. That the name and address for the Attorney of your
petitioner is Candace N. Kreiger, Assistant Counsel, P. O. Box 3265,
Harrisburg, Pennsylvania 17120.
3. That a hearing will be held by the Pennsylvania Public
Utility Commission on Tuesday, February 22, 1977, at the Municipal
Building, 700 Belvoir Road, Plymouth Township, Montgomery County.
4. That the purpose of the Commission hearing is to
afford all parties of record an opportunity to submit testimony

FILE

on the issues raised in the Borough of Conshohocken's letter petition for enforcement of the Commission's October 21, 1975 order at C. 19707 and the Department of Transportation of the Commonwealth of Pennsylvania's (Department's) petition for modification of the Commission's October 21, 1975 order at C. 19707.

5. That the Department, by Paragraph No. 4 of its petition for modification, avers that it has been unable to complete the detailed construction plan and cost estimate, as ordered by the Commission in its October 21, 1975 order, because due to the present financial situation within the Department, the construction project for the instant complaint is not on the Commonwealth's twelve (12) year highway program or on an approved Capital Budget and there are no funds available to proceed with the project.

6. That the testimony of James Vovakes, Director of Fiscal Management, Department of Transportation of the Commonwealth of Pennsylvania, regarding the present financial situation within the Department and the funds available to the Department for the purposes of the construction project in the instant complaint proceeding; and the testimony of James B. Chiles, Director of Economic Research and Programming, Department of Transportation of the Commonwealth of Pennsylvania, regarding the procedures for placing projects on the Commonwealth's twelve (12) year highway program and on the Capital Budget and regarding the administration of the Capital Budget,

is unprivileged information which is highly relevant to the issues of whether the Department has been unable to complete the detailed construction plan and cost estimate, as ordered by the Commission, due to lack of funds; and whether the Department will be able to complete the ordered construction plan and cost estimate in the near future.

7. That James Vovakes, as the person responsible for the Department's fiscal management, has knowledge of the present financial situation within the Department, of the funds available to the Department, and of the management of those funds.

8. That James B. Chiles, as the person responsible for the Department's economic research and programming, has knowledge of the procedures for placing projects on the Commonwealth's twelve (12) year highway program and on the Capital Budget and of the administration of the Capital Budget.

9. That the taking of depositions, upon oral examination, of James Vovakes and James B. Chiles is necessary for the purpose of discovering unprivileged information which is highly relevant to the issues involved in the instant complaint proceeding.

10. That the taking of depositions, upon oral examination, of James Vovakes and James B. Chiles will not result in undue delay to this proceeding.

11. That the Department, by its Attorney, Herbert G. Zahn, Assistant Attorney General, has advised your petitioner that it has no objection to the taking of depositions, upon oral examination,

of James Vovakes and James B. Chiles and that it agrees to waive the ten (10) days' notice requirement in accordance with 1 Pa. Code §35.146.

12. That pursuant to Section 7.4 of the Act of October 7, 1976, Act No. 216 P.L. _____, 66 P.S. §458.4, as amended, the presiding officer in a Commission proceeding has the power to order the taking of depositions of witnesses, upon oral examination, for the purpose of discovering relevant, unprivileged information, and further has the power to issue a Subpoena Ad Testificandum to enforce an order to take depositions.

13. That your petitioner will pay all required fees to the deponent whose depositions are taken and to the officer before whom the depositions are taken, upon receipt of notice that its application has been granted and that the requested Subpoena Ad Testificandum has been issued.

WHEREFORE, your petitioner requests your Honorable Rudolph S. Pallastrone, Administrative Law Judge, to grant its application requesting permission to take depositions, upon oral examination, and to issue a Subpoena Ad Testificandum compelling the deposition, upon oral examination, of James Vovakes, Director of Fiscal Management, Department of Transportation of the Commonwealth of Pennsylvania, of Room 1216 Transportation and Safety Building, Harrisburg, Pennsylvania 17120 and of James B. Chiles, Director of Economic Research and Programming, Department of Transportation of the Commonwealth of Pennsylvania, of Room 915 Transportation and Safety Building,

-5-

Harrisburg, Pennsylvania 17120, at Room 117, North Office Building,
Harrisburg, Pennsylvania 17120, on Tuesday, February 15, 1977, at
2:00 P.M., before Nicholas Dobosh, Administrative Law Judge for
the Pennsylvania Public Utility Commission.

Respectfully submitted,

Candace N. Kreiger
Candace N. Kreiger
Assistant Counsel

COMMONWEALTH OF PENNSYLVANIA

:

SS:

COUNTY OF DAUPHIN

:

Before me, the undersigned, personally appeared Candace N. Kreiger, Assistant Counsel, who, being duly sworn according to law, deposes and says that she is authorized to and does make this Affidavit on behalf of the Staff of the Pennsylvania Public Utility Commission, and that the averments contained and set forth in the foregoing Application are true and correct to the best of her knowledge, information and belief.

Candace N. Kreiger
Candace N. Kreiger
Assistant Counsel
Staff of the Pennsylvania
Public Utility Commission

Sworn and subscribed before
me this 9th day of February,
1977.

Beth R. Jones
Notary Public

NOTARY PUBLIC

My commission expires: My Commission Expires October 8, 1979
Harrisburg, Pa.

Dauphin County

(SEAL)

CERTIFICATE OF SERVICE

I hereby certify that I have this 9th day of February, 1977, served a copy of the foregoing, by first class postage pre-paid upon:

Rudolph S. Pallastrone
Administrative Law Judge
Pennsylvania Public Utility Commission
Lewis Tower Building
15th and Locust Streets
Philadelphia, Pennsylvania 19102

Robert W. Cunliffe, Deputy Attorney General
Pennsylvania Department of Transportation
Capital Associates Building
Seventh and Forster Streets
Harrisburg, Pennsylvania

Herbert G. Zahn, Assistant Attorney General
Pennsylvania Department of Transportation
Capital Associates Building
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Philadelphia, Pennsylvania 19104

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(for Borough of West Conshohocken)

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Borough of Conshohocken
312 Fayette Street
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Sheldon Seligsohn, Attorney
The Bell Telephone Company of Pennsylvania
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Philadelphia, Pennsylvania 19102

James M. Ballengee, President
Philadelphia Suburban Water Company
762 Lancaster Avenue
Bryn Mawr, Pennsylvania 19010

Roger E. Reynolds, Solicitor
County of Montgomery
Courthouse
Norristown, Pennsylvania 19404

Lockwood W. Fogg, Secretary
Trustees of Reading Company
One Plymouth Meeting
Plymouth Meeting, Pennsylvania 19462

Candace N. Kreiger
Candace N. Kreiger
Assistant Counsel
Staff of Pennsylvania Public
Utility Commission

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Department of Transportation of the Commonwealth of Pennsylvania

v.

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

:
:
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:
: Complaint Docket No. 19707
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:

DUPLICATE RECORD.
ORIGINAL CLERKED
TO COMMONWEALTH COURT.

Depositions* of James B. Chiles and James Vovakes, taken on behalf of the Pennsylvania Public Utility Commission, before Carolyn A. Sherwood, Certified Shorthand Reporter - Notary Public, Nicholas Dobosh, Esq., Administrative Law Judge, presiding, in Room 118, North Office Building, Harrisburg, Pennsylvania, on Tuesday, February 15, 1977, beginning at 2:00 o'clock, p. m.

DOCKETED
COMPLAINT DOCKET
FEB 23 1977
ENTRY No. 2

FILED

COMMISSION

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*Index is at rear of volume.

APPEARANCES:

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CANDACE N. KREIGER, ESQ.
and
GEORGE KASHI, ESQ.
North Office Building
Harrisburg, Pennsylvania
For - Pennsylvania Public Utility Commission

HERBERT G. ZAHN, ESQ.
Pennsylvania Department of Transportation
Capital Associates Building
Seventh and Forster Streets
Harrisburg, Pennsylvania
For - PennDOT

WALTER PHIPPS, JR., ESQ.
312 Fayette Street
Conshohocken, Pennsylvania 19428
For - Borough of Conshohocken

Also Present:

LOUIS G. COCHERES, ESQ.
KENNETH W. WALKER, P.E.
JOHN STORCH

1 THE ADMINISTRATIVE LAW JUDGE: I under-
2 stand that we are convened today for the purpose of taking
3 depositions upon oral examination of James Vovakes and
4 James Chiles, the Director of Fiscal Management and the
5 Director of the Economic Research and Programming,
6 respectively, of the Department of Transportation of the
7 Commonwealth of Pennsylvania, pursuant to the request
8 of the staff of the Pennsylvania Public Utility Commis-
9 sion and granted by the Honorable Rudolph S. Pallastrone,
10 the presiding Administrative Law Judge. I also understand
11 that the Department of Transportation has no objection to
12 the taking of depositions and has agreed to waive the ten
13 days notice requirement in accordance with 1 Pa. Code
14 Section 135.46.

15 MR. ZAHN: Judge, may I add to that that
16 the Department, in waiving any objection, is only too
17 happy to co-operate with the Commission in bringing out
18 the facts that the staff would like to know in these
19 matters, and we have waived our right of notice and all
20 formalities except that we do not waive our right to make
21 corrections to the transcript of the notes of testimony.

22 THE ADMINISTRATIVE LAW JUDGE: I agree with
23 that concept a hundred per cent. I think that a sister
24 agency should be co-operative.

25 MS. KREIGER: I think we should like to move

for sequestration.

1 MR. ZAHN: You want the witnesses
2 sequestered? No problem.

3 (Off-the-record discussion)

4 (The first witness was duly sworn)

5 ---

6
7 JAMES B. CHILES, called as a witness by
8 the Pennsylvania Public Utility Commission, having been
9 duly sworn, was examined and testified as follows:

10 BY MS. KREIGER:

11 Q Mr. Chiles, I guess probably to begin with
12 maybe, if the reporter does not have it, you would like
13 to state your name and address for the record.

14 A I am James B. Chiles. Do you want my home or
15 my business address?

16 Q Business.

17 A Room 915, Transportation and Safety Building,
18 Harrisburg.

19 Q And what is your position with the Department?

20 A I am the Director of the Bureau of Economic
21 Research and Programming.

22 Q What is your function?

23 A My function is to develop fiscal plans for
24 capital programming and to co-ordinate and set up a
25 twelve-year transportation program for the Commonwealth

for submission to the Secretary and ultimately to the Transportation Commission for approval.

Q Okay. Now --

4 THE ADMINISTRATIVE LAW JUDGE: Were you
5 authorized to appear here today to testify on behalf of
6 the Department?

7 THE WITNESS: I believe so, yes.

8 BY MS. KREIGER:

9 Q Mr. Chiles, how is it determined what projects
10 are placed on the capital budget? What criteria are used?

11 A Our total criteria include, first, the develop-
12 ment of a twelve-year transportation improvement program.
13 This is done in co-operation with the local planning
14 groups. In the case in question, that would be the
15 Montgomery County Planning Commission, under the direction
16 of Arthur Loeben, he representing the arm of the County
17 Commissioners in this instance. With respect to priorities,
18 we ask the planning commissions at the local levels to
19 assign priorities to what we fondly refer to as a "wish
20 list" of projects. The "wish list" is, in fact, statewide
21 and consists of 17 billion dollars worth at the moment.
22 We also ask our district engineers to ascertain and
23 certify the cost estimates for the projects and to assign
24 priorities, which may not be the same as those of the
25 county planning commissions. From this array of projects

1 and based upon our estimate and the resources available,
2 we then develop a list of projects known as the twelve-
3 year program. From this list or program of the priorities
4 agreed to by the district engineers and the county planning
5 commissions and the Transportation Commission, we develop
6 an annual capital budget implementing the projects in
7 systematic and priority order.

8 Q What are your criteria for determining what the
9 priorities are?

10 A The Department, primarily the district engineers,
11 will assign priority according to structural deficiencies,
12 completion of missing links, and so on. For instance, if
13 we have proceeded with a project and we have seven miles
14 of an eight-mile highway built and need one more mile,
15 they will normally assign a relatively high priority to
16 finish the link so that the whole road is usable. The
17 engineers look at not only structural deficiencies but
18 the development of new projects and the development of
19 safety-type projects.

20 Q In determining the priorities, where would a
21 P.U.C. project be placed on that list of priorities
22 where specifically PennDOT has an outstanding obligation?

23 A Normally a structural deficiency -- and the
24 P.U.C. deals primarily in structural deficiencies -- as
25 far as the Department is concerned, would rank relatively

high.

Q What kind of projects would rank higher?

A What we call a safety-type project or a high-
4 accident location, for example, an intersection where
5 we are experiencing from a hundred to a hundred and fifty
6 accidents a year and where we can make some improvement to
7 eliminate that.

8 Q Could you explain in a little more detail this
9 Commonwealth twelve-year highway program?

10 A Yes. In the formation of PennDOT by Act 120
11 of the Session of 1970, it was dictated to the Department
12 to develop on even-numbered years a six-year transportation
13 improvement program. This portion of the Act was amended
14 in 1974 to extend the period to twelve years instead of
15 six. It is by Act of the General Assembly that this is
16 done.

17 Q A request must be placed on the program before
18 it is submitted for approval in the capital budget?

19 A Yes, ma'am.

20 Q Who makes the recommendation as to what pro-
21 jects are so submitted?

22 A It starts with me and proceeds to the Deputy
23 Secretary for Highway Administration to the Secretary to
24 the Budget Secretary and to the Governor.

25 MR. ZAHN: And finally the Legislature?

THE WITNESS: Finally to the General

Assembly.

BY MS. KREIGER:

Q Where does the Transportation Commission come in?

A The Transportation Commission comes in, in the development of the program from which the projects are selected for budget submission.

Q Now, is it also required by this Act of the Legislature that there be a Transportation Commission?

A Yes, ma'am. It clearly defines that there shall be thirteen members of the panel, strictly bipartisan, that is, there is an equal amount from both political parties, and so on. For example, certain members are appointed by virtue of being on transit authorities, and one member must be from Allegheny County and one, from the City of Philadelphia.

Q Who are the other members?

A Two are members of the Senate. One is the chairman of the, I believe it is still called, Highway Committee -- I don't know if they have changed that to Transportation or not -- and the ranking minority member of the Senate, the chairman of the House Transportation Committee and the ranking minority member, and there are two transit members and six members at large, appointed

by the Governor.

4 Q Do the members of the Transportation Commission
5 more or less review the recommendations made to them by
6 PennDOT?

7 A That's right. The Act clearly states that
8 a program can only be adopted after having been first
9 submitted to the Transportation Commission.

10 Q How is it determined how much money you will
11 request to be approved in the capital budget?

12 A That is based upon the estimate of the resources,
13 fiscal resources, available to the Department from, one,
14 the Federal highway apportionment, voted by Congress, and,
15 two, the amount of resources to be made available at the
16 state level.

17 Q And preliminarily to submitting your recommenda-
18 tions, do you normally anticipate your expenses, based upon
19 past experience with P.U.C. orders?

20 A First, one clarification. It is not an expense-
21 type budget. It is an obligation-type budget. The totality
22 of the programming and budgeting process deals solely in
23 obligations, not in cash flow.

24 Q Would you explain to me, just generally, the
25 difference between an obligation- and an expense-type
budget?

A Yes, ma'am. As an example, the Federal

1 government will apportion to the Commonwealth, let's say,
2 130 million dollars for interstate highways. We will
3 go to them with a project to construct a section of
4 I-95 at a total cost of, say, 50 million dollars, of which
5 the Federal government will pay 45 million dollars,
6 which sum is considered as obligated and is not available
7 for anything else. We may take five years to expend that
8 money in cash flow; but as far as the Federal government
9 is concerned, they have obligated the spending of that
10 amount in their apportionment for interstate. That's the
11 difference between an obligation and a cash flow.

12 Q When you say it is obligated for interstate,
13 for instance --

14 A Yes. The same thing occurs in all the Federal-
15 aid projects: It is obligated and reimbursed to the
16 Commonwealth after the expenditure. We spend Commonwealth
17 money and bill the Federal government, and they reimburse
18 us for what we have expended, based upon the obligation
19 that they have agreed to set aside for that project.

20 Q When you say it is obligated, is it obligated
21 for a specific project?

22 A Yes, ma'am.

23 Q Okay. Now, what happens if those funds are
24 not used for that one project?

25 A Should we get into a contract and a portion is,

say, deleted and instead of spending the full 45 million dollars, for which we have a firm bid, at the end of the project, when we close it out, if there is a million dollars left, it goes back into the apportionment and is available for subsequent obligation to another project. That is not normal, incidentally.

Q So if it is not used for that specific project, it is used for another project?

A There are rules for the expenditure of Federal funds on any type project, the rules normally being longer than the money. The State's reimbursement, for the most part, for most capital projects is from bond funds. For example, if there is going to be ultimately Federal aid to us, we bill the Treasurer periodically for expenditures from current revenue, and it is reimbursed from bond funds, and we periodically also make assessments on a history of cash flow to advise the Treasurer we will need a certain amount of bond funds by a certain date. This triggers the Budget Secretary to advertise a bond sale of X million dollars to have the money available when we need it to pay contracts and what-have-you.

Q Okay. How far in advance will a request or recommendation be made for a project to be placed on a capital budget?

A The capital budgets are annual submissions.

We are normally required to prepare the budget in November of the year preceding the budget request.

Q The year preceding?

A Yes. For example, the Governor's message today was for 1977-78. The bulk of the data was prepared late last fall. The current revenue portions or capital portions were sent to the Budget Secretary in gross amounts in early to mid-November. The final submissions are hammered out between then and the date of the Governor's budget message.

Q Has PennDOT recommended this project be placed on a capital budget?

A You are speaking of the Conshohocken project?

Q The Matsonford bridge at Conshohocken.

A It has not.

Q Has it ever been recommended to be placed on any capital budget, not necessarily the upcoming one?

A I can't recall if it was included in any previous capital budget at any time, but I will check that.

Q I will appreciate that.

I asked that because in the testimony previously given in this matter before the Public Utility Commission the engineering witness for PennDOT testified funds were approved for this project at the time this

was a project for rehabilitation and repair.

2 A Yes. That refreshes my recollection. We had
3 it in the '72 budget, I believe, for rehab. at a cost of
4 approximately \$300,000, I believe, for construction.

5 Q For construction?

6 A For construction.

7 Q Well, I would appreciate it if you would verify
8 the budget and the amount.

9 A I will be glad to do so.

10 Q Do you know what happened to that money?

11 A Yes. Inflation. You see, the General Assembly,
12 in approving the capital budget, also approves the total
13 bond amount in an apportionment for those acts, which
14 cannot be exceeded. Over the interval of time since the
15 preparation of that budget to the present day, costs have
16 inflated in the neighborhood of forty per cent. Since
17 the 1972 budget was prepared in 1971, the projects reaching
18 fruition consumed the entire appropriation.

19 Q In other words, you are saying it was used on
20 other projects?

21 A Yes, ma'am.

22 Q So there would be nothing prohibiting the use
23 of funds approved for another project for this project?

24 A I don't know that --

25 Q All right.

1 A -- I understand that question.

2 Q Let me try to clarify it.

3 If there were funds approved in a capital
4 budget for use on a project other than the one involved
5 in this proceeding --

6 A Yes?

7 Q -- could they be reallocated for use on this
8 project?

9 A Providing some other project is deallocated.
10 We have reached full obligation, by the way.

11 Q At this time are there any other projects
12 deobligated?

13 A There are some that were never obligated
14 because we have run out of the total apportionment.

15 Q What I am getting at is: Are there any funds
16 available at this time that could be reallocated for use
17 on this project?

18 A Only in the event that some other project is
19 deobligated, that the authority to expend on that project
20 is removed, though it may be currently underway in some
21 cases.

22 Q All right. If the construction or improve-
23 ment involved in another project has not been started,
24 could you, in turn, reallocate the funds?

25 A Yes. The Transportation Commission is granted

this authority.

Q Okay. Now, you don't know, then, specifically at this time if there are any other projects that have not been undertaken?

A I do know definitely many have not been, ma'am, that have been approved in the capital budget.

Q All right. Then you are saying funds are available that might be reallocated?

A No. You misunderstand me. There are projects included in capital budgets that have not been obligated because of the obligational limits in each of the Acts. For example, the first capital budget under the new Constitution granted authority for 668 million dollars in debt. This is borrowing authority. As of today, several projects in that budget, which was prepared in 1968, have not even been started because we have exhausted the 668 million dollars on projects that did start.

Q Okay. Now, who can make the decision as to reallocation of funds -- you? -- or is that by the Legislature again?

A Normally that process is the Department is through my recommendation to the Deputy Secretary and Secretary.

Q Okay.

A I might point out one thing, just to clarify

1 this capital budget: The capital budget does not give us
2 money. It only gives us the authority to proceed with a
3 line project as identified in that budget.

4 Q Where does the money come from?

5 A Money comes from the sale of bonds down the
6 road to handle the cash flow. The capital budget gives
7 us the authority to proceed with the project with the
8 promise that the bonds will finance it and the authority
9 to go to the Treasurer and seek to float bonds from time
10 to time.

11 Q So that if this project were on a capital
12 budget at one time, you have already been given the
13 authority to proceed?

14 A In this instance, the authority to expend
15 \$300,000 was for the rehabilitation of that bridge.
16 That's the only authority we have in law.

17 Q Now, you say for rehabilitation?

18 A Yes, ma'am.

19 Q Since the nature of the project is now
20 construction --

21 A We have no Legislative authority under that
22 Act.

23 Q You said initially that you thought the funds
24 were approved for construction.

25 A No.

Q Just rehabilitation?

A For the purpose of rehabilitation. Each project in a capital budget is identified as to Legislative route, where it is, and the nature of the improvement being sought. In this instance, we have authority to rehabilitate the structure but not to build a new bridge.

Q What happens if a project has been approved for a certain purpose and then is more or less wiped out because a different type of improvement should take place there?

A In the instance of the Matsonford bridge, we have no Legislative authority to proceed.

Q Have you recommended that this project be placed on any capital budget?

A No, ma'am.

Q Why not?

A It is not part of the twelve-year program.

Q Why not?

A Two factors are involved there. The county planning commission in question assigned no priority to that project. Secondly, the commission reviewed it at the October 6th meeting, and it was discussed at that juncture in time, and a member of the commission from Montgomery County opted for another project.

3 Q So you are saying that if a member of that
4 commission wanted to place something on this twelve-year
5 program instead of a P.U.C. project, the fact that there
6 is an outstanding order has no bearing on the priority
7 assignments?

8 A That plus the fact that the local people,
9 acting through the county planning commission, did not
10 deem it to be more important than other projects they
11 wanted to have built.

12 Q Do you normally, where there is a P.U.C. project
13 involved, explain to them you have an outstanding legal
14 obligation?

15 A Those records of the P.U.C. orders appear on
16 any project list sent to the local people for review.
17 They are well aware of that.

18 Q I will ask you to expand a little bit on the
19 priorities. What, for instance, in this particular
20 instance were the criteria for assigning another project
21 more priority over an outstanding P.U.C. project?

22 A To go back to the point of beginning, it is
23 developed in complete co-operation with the local people.
24 After all, we are spending their money; they are paying
25 for this thing. We afford them a full opportunity to
express their wishes as to which projects should be
included in the program. We go a step further than that

to review with the district to make sure that the wishes of the local people are made known, and the commission is well aware of those.

4 Q In this particular instance, though, evidently
5 a number of projects were placed on the twelve-year
6 program instead of this P.U.C. project.

7 A Several, yes.

8 Q What kind of criteria would have been used by
9 the commission in deciding these projects are more
10 important?

11 A The wishes of the local people.

12 Q But nothing more, just the fact that they
13 wishes these projects, maybe just for the convenience of
14 their cities?

15 A You will not find many convenience projects at
16 the present time.

17 Q Specifically, if you can, will you give me
18 some criteria which would assume priority over an
19 outstanding obligation of PennDOT?

20 A You throw me at a loss with that one.

21 Q Okay.

22 A I'm not sure I understand the question.

23 Q With respect to this particular project,
24 PennDOT has an outstanding legal obligation to proceed
25 to comply with the P.U.C. order --

3 A Yes.

4 Q -- which is, at this point, to prepare detailed
5 construction plans and cost estimates --

6 A Yes.

7 Q -- and in view of that, what I would like to
8 know is: Would I be correct in assuming that something
9 more than only the wishes of the local planning commis-
10 sions of the counties would have to be considered in
11 placing something over this legal obligation of PennDOT?

12 A I am not denying the legal obligation. I think
13 we are solely talking about time.

14 Q What I want to know is: If you --

15 MR. ZAHN: May I suggest the question
16 should be: Can PennDOT insist that this project be
17 incorporated in a twelve-year program?

18 MS. KREIGER: All right.

19 A I think we could so recommend to the commis-
20 sion for their action, yes.

21 BY MS. KREIGER:

22 Q Did you in this particular instance?

23 A The ramifications of the projects under
24 consideration were clearly pointed out, yes.

25 Q What was their basis for denying your
recommendation?

A The basis of the commission's action was the

wish of the commission member from Montgomery County.

Q Is there any kind of review board or higher authority than this Transportation Commission that could overturn their decision or determination?

A Not according to the way I read 120.

MR. ZAHN: In other words, PennDOT does not make the final decision on priorities; it is done by the commission. Is that correct?

THE WITNESS: Correct.

BY MS. KREIGER:

Q When do you anticipate that there will be funding for this project?

A Are you asking me the earliest time?

Q The earliest time, yes.

A All right. The earliest time, I would think, would be if the Montgomery County Planning Commission requested it through a project substitution by removing five million dollars currently programmed for current projects and adding this to the program for subsequent act of the General Assembly to create the necessary authority to expend funds.

Q Has PennDOT reviewed internally whether there would be funds which could be deferred from another project to this project?

A I have no authority to transfer to bridge

replacement. I have no legal authority to do that at the moment. Are you asking about budgeting or programming, now?

Q Budget.

A I have no authority legally by any act of the General Assembly to spend ten cents on the replacement of the Matsonford bridge.

Q Not until it is placed on a capital budget?

A That is correct. Now --

BY MR. KASHI:

Q Let me ask a question here: Are you stating that the mandate given the Public Utility Commission that it may impose orders to be followed by PennDOT for the construction of bridges, restoration and rehabilitation, okay, that Legislative mandate, okay, is superseded by this commission of twelve persons, who are made up of twelve or four, rather, members of the Legislature and various and sundry other commissioners, that their wishes take priority over a Legislative order?

MR. ZAHN: What do you mean by a "Legislative order"?

MR. KASHI: That the Legislature has ordered the P.U.C. That's who really ordered PennDOT to take care of it. It is not the P.U.C. on its own. It is by Legislative action that we are directed to make

these orders. You are saying that Act 120, in effect, supersedes that. Is that what you are telling me?

MR. ZAHN: I think you are asking this witness for a legal conclusion.

MR. KASHI: To the best of his understanding, is that what took place?

MR. ZAHN: I don't know that the witness should give legal conclusions. Now, the P.U.C. is an arm of the Legislature, but --

MR. KASHI: That's right.

MR. ZAHN: -- the Legislature has the final say over incorporating this in the capital budget. But I think the question, as posed, really calls for a legal conclusion.

MR. KASHI: It probably does.

MR. ZAHN: I don't think the witness is qualified to answer it.

MR. KASHI: Okay. I think it poses an interesting question, though, between Act 120 --

MR. ZAHN: Yes. It does.

MR. KASHI: -- and the mandate given the P.U.C. to make orders.

MR. ZAHN: Off the record.

(Off-the-record discussion)

BY MS. KREIGER:

Q When was the last capital budget approved for PennDOT?

A December, 1974. That was a budget that was submitted in 1972.

Q And this project is not included or recommended for inclusion?

A No, ma'am.

Q Has this project ever been recommended?

A The reconstruction project?

Q The reconstruction project.

A No, ma'am.

Q Okay. Mr. Chiles, you did say you would verify as to whether this project was ever on a capital budget for any purpose?

A Yes.

Q You said you thought \$300,000 had been approved.

A But accidentally I didn't bring the budgets with me or the budget, rather, containing the project, but my recollection is that it was \$300,000 plus ten per cent for design and six per cent for construction inspection for bridge rehabilitation.

Q I would appreciate your verifying the exact amount.

MR. ZAHN: I will send you a letter with that information.

MS. KREIGER: Okay. The only reason that I ask that is that PennDOT's engineering witness, Paul Peterson, indicated that money in the neighborhood of \$655,000 was approved in order that PennDOT, at their initial cost and expense, could go ahead with repair.

MR. ZAHN: \$600,000 or so may have been a figure used but only \$300,000 for one portion of the project.

A The \$300,000 -- you see, the capital budget borrowing is bonds and shows only the bond amount but not whether the project is additionally Federally funded. It could be budgeted as a Federal project, in which case an additional amount would have been scheduled, making it higher than the \$300,000 I quoted you, which I think was the amount included in the budget.

BY MS. KREIGER:

Q How do you qualify for Federal funds?

A First, a project has to be on a Federal aid project route and the/ eligible under the Federal criteria.

Q Is this project?

A I would think so, yes. I believe it is on a Federal route.

Q Have Federal funds been applied for?

A No, ma'am. At least, not for the replacement. I am not sure of what we had done under the original

rehabilitation plan. I will have to check on that.

MR. ZAHN: Let me ask this for clarification: To get on as a Federal project, does a project have to be on the twelve-year program?

THE WITNESS: Yes, sir.

MR. ZAHN: Is that part of it?

THE WITNESS: Yes, sir.

BY MS. KREIGER:

Q . Was the money which was approved for the rehabilitation project broken down within that project for specific purposes?

A Yes. There would have been a breakdown within the project. There would have been so much for construction, so much for land, and so much for design and administration. My recollection is that no land was required under the rehabilitation project, so nothing would have been budgeted for that.

Q Would the funds available or approved for design still be available to this specific project?

A No. The authority to design is to design a rehabilitation, not a reconstruction.

Q At what point in this proceeding, if you know, was PennDOT aware that money was not available for completion of the detailed construction plans and cost estimates pursuant to the Commission's outstanding order?

1 A We had become suspicious in late fall that
2 we were close to the obligation limit. I analyzed the
3 three existing budgets in jeopardy at that time and
4 advised the Deputy in mid-October, 1975, that we had
5 reached the limit on the three existing budgets.

6 Q October of '75 was that?

7 A Yes.

8 Q When would this project have been placed or
9 recommended for placement on the twelve-year program for
10 the upcoming capital budget?

11 A At that time we were in the process of
12 preparing an update of the program, which we completed in
13 October of last year.

14 Q You say you became aware funds were not
15 available in the fall of 1976?

16 A Understand, I am telling you we had exhausted
17 the bond authority on the first three capital budgets.
18 Okay?

19 MR. ZAHN: And on the first three capital
20 budgets, this Matsonford bridge was in there for
21 rehabilitation for \$300,000?

22 THE WITNESS: That's correct.

23 BY MS. KREIGER:

24 Q Let me ask you this question: Since the
25 Department, after conducting the inspection, determined

2 that it would not be economically feasible to rehabilitate
3 the bridge and petitioned the Commission for modification
4 of its order, which was modified, requiring PennDOT to
5 prepare detailed construction plans and estimates in
6 twelve months, where did PennDOT anticipate getting funds
7 for preparation of plans in the upcoming twelve months
8 following the issuance of the order?

9 MR. ZAHN: That's giving him the date it
10 was done? I think you should tell him when that was.

11 MS. KREIGER: PennDOT filed a petition for
12 modification with the Commission on December 16, 1974,
13 and the Commission acted on that request on April 2, 1975.
14 They modified the order to direct PennDOT to prepare
15 detailed construction plans and cost estimates within twelve
16 months.

17 MR. ZAHN: The Commission ordered the twelve
18 months.

19 MS. KREIGER: But PennDOT had suggested
20 that in its petition for modification, if you have it in
21 front of you, specifically in the prayer to the petition
22 for modification.

23 A Presumably, I have to answer to your question,
24 they anticipated capital budget action subsequent to that
25 time, but there has been none.

BY MS. KREIGER:

Q Well, at that time, either December 16, 1974,
or April 2, 1975, could PennDOT have anticipated a
capital budget approval in time to have plans completed
within a year?

A From April?

Q Yes. From April, 1975.

A Not under a normal budgeting cycle, no.

MR. ZAHN: It would be twelve months from
the date of an order of the Commission, which may take
six months or so to come out, but not as of the date of
the hearing.

BY MS. KREIGER:

Q All right. If the order was October 21st,
1975, could PennDOT reasonably have anticipated within
six months --

A That would have been possible if we had a
capital budget, but we did not.

Q But in order to have the project approved on
a capital budget, I would assume that there would be
steps to be taken to have it on a twelve-year program.
How long would that take?

A At the time -- I assume we are talking about
October of '75 --

Q That's right.

A -- at that juncture in time, based upon a

previous fiscal plan, the Matsonford bridge was included on a program at that time.

Q It was included?

A At that particular time. Subsequent to that, we have gone through a fiscal analysis done by the advisory committee, and our fiscal resources were decreased through an analysis that we can't afford this anymore. The State's share in funding was decreased almost seventy per cent.

Q When you talk about this budget, do you mean for 1975-76?

A I am talking about the fiscal analysis made by the advisors to develop a twelve-year program, a combination of anticipated Federal funds and bond funds to be made available by the General Assembly.

Q Going back to the initial question, when PennDOT made this request in December, 1974, anticipating an order not being issued for another six months, changing the nature of the project to construction, where would PennDOT have anticipated that the funds to prepare plans would have come from?

A They would have anticipated a budget submission in the fall of '75, effective at the beginning of fiscal year 1976-77.

Q Okay. Now, why wasn't it submitted?

4 A We didn't have a capital budget from the
5 General Assembly for fiscal years 1974/75, 1975/76, and
6 1976/77.

7 Q Was it recommended that this project be placed
8 On the capital budget?

9 MR. ZAHN: I think he has answered that.
10 The commission didn't place any priority on it or place
11 it on the twelve-year program. Isn't that what you said?

12 THE WITNESS: No. Mr. Zahn, in all fair-
13 ness, I think she means the budget which is pending before
14 the General Assembly, not the previous budgets in 1974,
15 '75, and '76.

16 MR. ZAHN: All right.

17 A You see, we were operating under the pie-in-the-
18 sky philosophy at that period of time. It is conceivable,
19 however, that there was a submission; but I will have to
20 check the records to see if there was a submission made
21 in those years that never reached fruition because the
22 General Assembly never passed the budget for this in those
23 three years.

24 MR. ZAHN: Do you want that information?

25 MS. KREIGER: Yes. I do.

MR. ZAHN: We will search our records, and
I will include that in my letter to you.

MS. KREIGER: Okay.

BY MS. KREIGER:

3 Q Now, at the second Public Utility Commission
4 hearing, when this engineering witness testified that
5 preliminary plans for the construction of the Matsonford
6 bridge were in the process of being prepared, where would
7 funds have come from for the preparation of the preliminary
8 plans if they were for a construction project?

9 A I don't know at this juncture in time. I
10 don't.

11 Q Do you know if any funds were approved for the
12 preparation of the preliminary, detailed, or any other
13 plans for this project when it began?

14 A Specifically itemized funds, I don't know.

15 Q Would you be the person to ask, or would some
16 other witness have the information?

17 A It would depend upon how they were financing.
18 If they were financing under bond, I should know. If it
19 were under cash, then it would have to be Mr. Vovakes.
20 I don't deal in the current revenue projects.

21 Q If it were by cash, where would the funds
22 come from?

23 A Motor license funds.

24 Q And if it were capital project?

25 A If it is a line item, it is approved by the
General Assembly.

Q Has this project been approved by the General Assembly?

A No, ma'am. Not to my knowledge.

Q You don't mean, when you say --

MR. ZAHN: As a construction project?

A Not as a reconstruction project, that is.

BY MS. KREIGER:

Q So what you are saying is that legally, in your opinion, there couldn't be money approved from the cash budget or operating budget or motor license fund?

A On preliminaries, possibly, yes. You have to develop what the project would be, the possibility.

Q But nothing further than that?

A No.

Q Do you know approximately how much money would be needed to complete the detailed construction plans?

A To complete the plans?

Q For this particular project.

A Design is currently programmed at about \$524,000.

Q I mean for the preparation of detailed construction plans for this project.

A Normally we program at about ten per cent of construction to finalize final drawings.

Q So you estimate at this time the construction

of this project would be about \$5 million?

A About 5.2 million dollars.

Q This has increased since the last hearing by about what --

A What was the last hearing date?

Q I guess it was April 2nd, 1975. I guess the estimate then was 3.325 million.

A I am carrying out a program of around 5.2 right now and --

Q I think you said you don't know, then, whether any detailed construction plans have even been started?

A I don't know that. I would think not, but I don't know.

MS. KREIGER: Okay.

BY MR. KASHI:

Q I would like to ask you one thing to get it clear in my mind because I have just come in this case. Here we have a situation where I believe PennDOT says, "We have a bridge out there that needs to be rehabilitated--

MR. ZAHN: Reconstructed.

BY MR. KASHI:

Q -- " -- reconstructed, although initially it was to be rehabilitated and restored," all right, and the P.U.C. order says to go ahead and begin this. All right. And at that time there is money, all right, to accomplish

1 this. All right. But it never goes ahead because
2 PennDOT says, "Wait a minute. We don't want to do this.
3 This should be reconstructed. It shouldn't be restored
4 and rehabilitated but reconstructed." All right. But
5 at the time they ask for that, they do not have the money
6 to do it. Okay. Then the money that was there for the
7 general rehabilitation was diverted to other projects.

8 MR. ZAHN: Within the capital budget.

9 BY MR. KASHI:

10 Q Within the capital budget. All right. But it
11 is diverted to other projects. Okay. You were asking for
12 something to be done at the same time that you knew you
13 didn't have the funds to complete it.

14 MR. ZAHN: I think you are making an
15 assumption.

16 BY MR. KASHI:

17 Q All right. I am wondering: Am I making an
18 assumption that it was known at that time, or was it
19 just that you thought, on the basis of anticipated
20 revenues, which just didn't come forward, that you would
21 be able to complete the project, the construction project?

22 MR. ZAHN: I think that Mr. Chiles in his
23 testimony stated that the budget does not provide the
24 money but only a means to get it.

25 MR. KASHI: To get the money?

3 MR. ZAHN: The Commonwealth or the
4 Treasurer or the Governor is not going to borrow money
5 in advance and pay interest on it until it is needed. I
6 think Mr. Chiles testified that as these things come up,
7 he notifies the Treasurer and says, "We will need so much
8 money," and then the Treasurer has the bonds issued to
9 make the money available for that project.

10 MR. KASHI: What I am trying to get at --

11 MR. ZAHN: Maybe Mr. Chiles --

12 THE WITNESS: I think --

13 BY MR. KASHI:

14 Q I am trying to get your understanding.

15 A I think, if I understand your question --

16 Q When you come in and say, "Let's restore and
17 rehabilitate it," and you have the money, and then you
18 change your mind and say you want to reconstruct --

19 MR. ZAHN: That's an engineering decision,
20 that the most economical use of the money would be to
21 rebuild rather than rehabilitation, which, in this
22 instance, apparently was thought to be a waste of money.

23 A I will have to rely upon Mr. Peterson's judg-
24 ment, and I know he is a splendid bridge engineer. But
25 your question seems to go to our good faith in --

Q I didn't say that.

A I got the implication.

Q I didn't imply that.

A But once it went to a reconstruction project, the authority that may have existed with that budget no longer existed. Therefore, we probably utilized that authority for some other project with which we were proceeding. Secondly, your question was that you wondered why we asked for this when we didn't have the money. We have a contemplated twelve-year program, for which I do not have authority to proceed but with respect to which we anticipate getting authority to proceed. Since at that time we had the Matsonford bridge on the program existing at that time, we would contemplate its remaining on the program and that ultimately we would be granted the authority by the General Assembly to do that. That brings us to the present date. One, the General Assembly has not given us the authority to proceed with the replacement. Two, we do not have the project on the program, due to severe fiscal restraints.

Q But at one time it was on the twelve-year plan?

A Yes.

Q And subsequently it was removed by the wishes of --

A The combined wishes of the local authorities and the Transportation Commission.

1 MR. ZAHN: He referred to PennDOT in the
2 question, though, and it wouldn't have been considered
3 further unless it were in the twelve-year program, would
4 it?

5 THE WITNESS: As I recall, in the early
6 part of my testimony I stated that we have a wish list
7 from all over the Commonwealth, and the amount of that
8 now, estimated, is 18 billion dollars, but now we can
9 only fund approximately 3.6 billion dollars of that over
10 the twelve years.

11 MS. KREIGER: I have one more thing.

12 BY MS. KREIGER:

13 Q I don't know if you know this. But is there
14 any kind of emergency or special fund set up to cover
15 in the budget or by some Legislation of some kind or
16 special approval that can be given in the middle of the
17 fiscal year?

18 A You mean for bond authority?

19 Q Yes.

20 A No. This doesn't exist. Now, I might say
21 at this juncture that the Constitution of 1968 and the
22 Debt Facilities Enabling Act prohibit entry into the
23 capital budget of anything that is not specifically item-
24 ized. We have sought Legislation permitting the entry
25 in the budget with bond authority of something for

emergency-type work but have not been successful in achieving our goal so far. I will agree that would be nice to have, but we don't have it yet.

MS. KREIGER: I have nothing further.

BY MR. PHIPPS:

Q I have a few questions.

Who has final authority for determining the twelve-year program?

A The final authority for that determination rests with the Transportation Commission, based upon the ultimate recommendations of the members themselves and of the Department.

Q Isn't the action of the Transportation Commission only advisory?

A Not according to the way I read Act 120, which states, in part, that programs so adopted by the commission shall not be changed except by the commission.

Q Are you saying that PennDOT or the Governor couldn't order something done, a project started, without the Transportation Commission's approval?

A Not on the twelve-year capital improvement program.

Q Could they in another program?

A Conceivably. But there is no money. Our current revenues are insufficient even for mandates.

3 Q You say that the wishes of the Montgomery
4 County Planning Commission were one factor in determining
5 whether to put the project in the twelve-year program?

6 A That's right.

7 Q But that's an advisory body.

8 A That's right.

9 Q You can take it or leave it, and you do not
10 have to comply with their wishes.

11 A The commission opted to seek their advice and
12 develop the program in accordance with the local wishes.

13 Q But it is just a recommendation that emanates
14 from the Montgomery County Planning Commission. Is that
15 right?

16 A The priorities were as recommended by the agency.

17 Q But does the Transportation Commission, PennDOT,
18 have to accept the Montgomery County Planning Commission's
19 recommendations?

20 A Not PennDOT, no.

21 Q I think you said PennDOT is obligated to accept
22 the recommendations of the Transportation Commission.

23 A The way I read the law, yes.

24 Q That's a legal question, so that may be unfair.

25 A I think it is.

Q Is there any money allocated or projected or
budgeted or available for the repair or rehabilitation of

the bridge?

1 A Not to my knowledge for the rehabilitation.

2 Q How about --

3 A Not the original project as envisioned.

4 Q -- repairs and renovations which are needed?

5 Is there anything allocable for that?

6 A I don't know offhand. I thought we were in
7 the process of talking about attempting to replace the
8 bridge.

9 Q Would you know whether there were funds avail-
10 able for that or not?

11 A No. I do not.

12 Q Would they have to be in the budget?

13 A A maintenance-type budget, such as you are
14 describing, for a repair would have to carry that as a
15 line item project if it involved more than \$500,000 in
16 cost.

17 Q But if it were less?

18 A If it were less, it would not necessarily be
19 made a line item project if it were financed solely as
20 a repair and from current revenue.

21 Q Do you know of any action PennDOT has taken
22 to comply with the P.U.C. reconstruction order?

23 A The record is clear. We initiated the study
24 of the project and concluded by believing rehabilitation
25

was not economically feasible and that we should replace the bridge, and we advised the P.U.C. to that effect.

Q And asked for an order to replace it?

A That's right.

Q After the order of October, 1975, by the P.U.C. to PennDOT to reconstruct the bridge, did PennDOT do anything to comply with the order?

A I will have to search the records to find if when it was on the program, we ever submitted the project for further capital budget action to implement the criteria. I can't answer that at this point in time.

Q Then would it not have been put on the twelve-year program --

A If we had submitted it, it would have been at that time.

Q On a twelve-year program?

A Yes.

Q But you are not sure whether PennDOT --

A In this interval of time, we were operating on a hypothetical of approximately \$500 million dollars a year in lettings, but now we operate on approximately \$220 million dollars in lettings, less than half.

Q If you had wanted to go full blast to implement the P.U.C. order, what would you have done?

A The first thing you have to do to go full blast

is to get Legislative approval to expend money for that particular project, whether it be motor license or bond.

4 Q You do not first have to try to get it on a
twelve-year program?

5 A Presumably you have it on there to try to go
6 full blast.

7 Q But at the time PennDOT came before the P.U.C.
8 and asked for an order to reconstruct the bridge, do you
9 know if it was on a twelve-year program?

10 A As I recall, it was.

11 Q And subsequently it was taken off the twelve-
12 year program?

13 A Yes.

14 Q Do you know how it came to be taken off?

15 A Fiscal restraints.

16 Q Exercised by whom?

17 A Exercised by the Transportation Commission.

18 Q Well, when you exercised that fiscal restraint,
19 there was certain discretion you had.

20 A I don't understand you.

21 Q When you say you exercised fiscal restraint,
22 are you saying PennDOT had the authority or the discre-
23 tion to decide which projects it would be necessary to
24 cut out and which to continue?

25 A In conjunction with the commission. In

setting the ground rules, we would solicit and use the local priorities in the development of the program.

Q But the fiscal restraint you said was exercised by the Transportation Commission.

A Yes. It was analyzed by the advisory commission, said by law to be advisory to the Secretary of Transportation, and the Transportation Commission conducted a review of PennDOT's fiscal resources available, and their advice was that we should expend no more bonds for capital construction since we were already in hock about \$2 billion and that we should give consideration to halting the entire capital program. Subsequent meetings and discussions led to the conclusion that economically, for the well-being of the Commonwealth, we couldn't cut it back to, you know, nothing, but it was agreed to go forward at about \$100 million a year in bond authority for new project starts, and this would allow us to just about match the Federal dollars we anticipate receiving each year.

Q Was this transportation advisory committee which exercised the fiscal restraints apprised of the outstanding F.U.C. order mandating PennDOT to reconstruct this bridge?

A Wait a minute. That commission studied only fiscal resources but not specific projects.

3 Q Was the Transportation Commission made aware
4 of the fact that the P.U.C. had issued this order to
5 reconstruct the Matsonford bridge at the same time that
6 they were developing the twelve-year program?

7 A Yes.

8 Q By whom?

9 A By me.

10 Q Did you directly recommend that this project
11 be carried forward, this reconstruction of the Matsonford
12 bridge?

13 A The original phase of the program that you are
14 talking about involving reconstruction contained twenty-
15 eight projects, of which this was one, for consideration.
16 It was clearly defined as to what it was and the reason
17 for the project.

18 Q Not for consideration. But did you ever
19 affirmatively recommend this Matsonford bridge to be
20 put in the budget?

21 A I am trying to think of just how that was
22 worded to them. First, yes. I have to answer your
23 question "yes". It was pointed out that this was a
24 situation as to the Matsonford bridge that involved a
25 P.U.C. order. The commission deliberated over the price
and considered all of the projects on there and did not
include it on a program.

3 Q And that was the death knell for the project
4 as far as PennDOT was concerned?

5 A As far as that round of programming was concerned.
6 The Matsonford bridge, at the request of the Montgomery
7 County Planning Commission, can be put back on the
8 program March 1st at our next meeting if they so desire
9 and indicate that they believe \$5 million on something
10 else can come off the program to include this project.

11 Q Do I understand that PennDOT does not have
12 the legal authority to carry out the P.U.C. mandate
13 without the concurrence of the Montgomery County Planning
14 Commission or the Transportation Commission?

15 A That's a legal question, and I am not all that
16 familiar with the Public Utility Law, Mr. Phipps --

17 Q Let me get at this in another way.

18 A -- as to just exactly what it does say.

19 Q Let me ask you the question in this way:
20 Are you saying that PennDOT cannot carry out any capital
21 improvement program without the concurrence of the
22 Montgomery County Planning Commission and the Transporta-
23 tion Commission?

24 A We could carry out what the commission decides.
25 The commission has brought in the county planning commis-
sion in partnership. At any meeting the Transportation
Commission, by majority vote, could eliminate the

county planning commission, if they so desired --

Q I see.

A -- but this is their own internal working at the present time.

Q All right. Now, maybe I am repeating myself but again: What affirmative action did PennDOT foster to put this thing in the capital budget?

A I still can't answer without the records.

Q You don't know?

MR. ZAHN: Is it not a fact that you recommended the project to the commission, but they chose not to --

MR. PHIPPS: You mean to be considered by the commission, but my question is anything that PennDOT did to --

A In deference to the orders of the Public Utility Commission, P.U.C. orders are given deference higher than many that are on the program right now.
BY MR. PHIPPS:

Q But not this one. When you recommended to the Transportation Commission, did you assign a priority?

A It was pointed out that there is a structural deficiency in the bridge.

MS. KREIGER: Excuse me for interjecting.
I think it would be very helpful for you to supply us

with a copy of your recommendation to the Transportation Commission regarding the priority to be given to the P.U.C. project.

MR. ZAHN: First, let me find out whether, in making your recommendations, you gave priorities to the commission. In any case, if you recommend eighteen projects, do you give any priority to any of the eighteen that you recommend?

THE WITNESS: The total program, as it went to the commission, was given them in a priority order.

MR. ZAHN: I see.

THE WITNESS: Now, I will have to check just exactly which way this Matsonford bridge was presented to the commission. My recollection is that it was presented to them on October 6th with a group of projects statewide which were under consideration.

MS. KREIGER: Okay.

THE WITNESS: My recollection is that it went to the commission under a separate list of projects for inclusion in the program.

MS. KREIGER: We would appreciate it if you would supply a copy of your list of priorities and your particular recommendation to the commission.

MR. KASHI: That was October 6th?

MS. KREIGER: '76, I guess.

MR. PHIPPS: I have nothing further.

THE ADMINISTRATIVE LAW JUDGE: Are you
through with this witness?

MS. KREIGER: Just a moment.

(Off-the-record discussion)

MS. KREIGER: I have a few more questions.

BY MS. KREIGER:

Q First, this project was initially placed on
the Commonwealth's twelve-year program as a repair and
rehabilitation project?

A Yes, ma'am.

Q What caused or what could have caused this
change of heart or reconsideration by the commission
when it came up for reconstruction? What would have made
them change their minds as to where it should be placed,
when once it was repair and rehabilitation but now
it is reconstruction, to decide, "We do not think it
warrants being placed on the program anymore"?

A You have an interesting --

MR. ZAHN: That asks him to respond as to
the mental processes of the commission members.

MS. KREIGER: Okay.

BY MS. KREIGER:

Q Did they indicate why they changed their minds

with respect to the project being placed on the twelve-year program?

A The only reason why this project was removed from the program currently existing was cost limitations. The commission regrettably removed \$4 billion from the program, among which were many good projects. There was nothing the matter with the Matsonford bridge project, nothing at all.

Q Could PennDOT legally or has it ever requested in a capital budget an open-ended amount of money to apply to P.U.C. work?

A I previously addressed that issue. That would be part of the Legislation we have sought but not been able to get yet.

Q What, if anything, does PennDOT do when an emergency situation comes up on one of its own projects?

A It depends upon the extent. If it is a small amount, we internally have to shift our budget around to provide the necessary funds for maintenance. If it is larger, we have no authority under the law to --

MS. KREIGER: Nothing further.

MR. ZAHN: Thank you.

(The deposition concluded at 3:15

o'clock, p.m.)

(I, James B. Chiles, do hereby acknowledge

1 that I have read the above and foregoing pages and
2 have made any additions, deletions, corrections, or
3 interlineations I deem necessary in my own hand,
4 initialing each such, and I represent that the same,
5 as now added to, deleted from, corrected or interlined,
6 is full, true, and correct.

7
8 James B. Chiles

9 ---

10 JAMES VOVAKES, called as a witness by
11 the Pennsylvania Public Utility Commission, having been
12 duly sworn, was examined and testified as follows:

13 BY MS. KREIGER:

14 Q Would you please state your name and business
15 address for the record?

16 A James Vovakes, 1216 Transportation & Safety
17 Building, Harrisburg, Pennsylvania.

18 Q Are you authorized to testify today on behalf
19 of the Department?

20 MR. ZAHN: Yes. He is.

21 MS. KREIGER: Okay.

22 BY MS. KREIGER:

23 Q Will you briefly state your functions and
24 responsibilities with the Department?

25 A I am Director of the Bureau of Fiscal Management.

1 One of my functions is co-ordination of budget prepara-
2 tion and administration. Some of the budget preparation
3 and administration is in certain specialized hands, also
4 within the Department, such as the capital budget in the
5 Bureau of Economic Research and Programming and the
6 maintenance budget in the hands of the Bureau of
7 Maintenance. But I think that you are interested in
8 the development and administration of the budget.

9 Q Okay. You say you are in charge of the
10 maintenance budget?

11 MR. ZAHN: No. He didn't say that.

12 MS. KREIGER: I'm sorry.

13 A We have certain staff support functions
14 supplied in these areas. We have quite an integrated
15 team in the budgeting system, which requires a great
16 deal of detail, which is administered by the people whom
17 I mentioned.

18 BY MS. KREIGER:

19 Q What funds other than capital budget funds
20 are available for PennDOT's use?

21 A We have appropriations from the general fund,
22 from the motor license fund, from the lottery fund,
23 from the highway beautification fund, from the aviation-
24 restricted revenue account, which I think covers it, in
25 addition to the bond funds.

1 Q Now, are these funds committed to a specific
2 purpose?

3 A The Commonwealth, of course, appropriates the
4 money in appropriations providing that the monies are
5 for a certain purpose.

6 Q By the "Commonwealth", do you mean the
7 Legislature?

8 A The Legislature.

9 Q How general is the specific purpose for which
10 they are appropriated?

11 A Well, in the highway program we have essentially
12 five appropriations: We have a general government
13 appropriation, which takes care of administration, house-
14 keeping services; we have an appropriation that is for
15 highway construction; we have an appropriation for highway
16 maintenance; we have another appropriation for the
17 maintenance of the secondary road system; and we have
18 an appropriation for safety and licensing administration,
19 which is basically to pay the costs of the Bureau of
20 Motor Vehicles and the Bureau of Traffic Safety, the
21 licensing function of the Department.

22 Q Within these general headings, someone in the
23 Department would be responsible for budgeting of these
24 funds for more specific purposes, for specific projects?

25 A Yes. In the budget preparation, we have a

1 decentralized budget system, and each organization,
2 central office, bureau, or district office or county
3 office annually prepares a budget request that comes
4 in to the Bureau of Fiscal Management. That is in
5 accordance with our budget preparation management on our
6 automated system. We assemble the budget and send it
7 to an executive budget committee, which makes decisions
8 and recommendations to the Budget Secretary, and then,
9 of course, to follow through with the procedure, the
10 Budget Secretary makes recommendations to the Governor
11 and the Governor to the General Assembly, and the General
12 Assembly enacts the budget, and then we move off on a
13 spending plan.

14 Q Who sets up the priorities?

15 A Well, we are talking about a very large, complex
16 transportation program. Now I have to ask you: What
17 priorities? You have the highways; you have aviation;
18 you have mass transportation; you have highway beauti-
19 fication. Then we have to consider capital v. operating.
20 So could you narrow your question down a little?

21 MR. ZAHN: Could we confine our questions
22 to capital programs? I think that's what's involved in
23 the Matsonford bridge.

24 MS. KREIGER: I would like to know what
25 other funds are available, too.

MR. ZAHN: I think Mr. Vovakes is trying to answer your question, but it is very broad.

BY MS. KREIGER:

4 Q Okay. Let me ask you this question: For
5 instance, when you internally budget or when you inter-
6 nally determine what uses should be made of the funds,
7 are there any priorities that you consider, for instance,
8 with respect to a highway improvement project?

9 A Well, the highway capital improvements are
10 under the support of or under the control or respon-
11 sibility of the Bureau of Economic Research and Program-
12 ming. Annually we put out a call for our budget. The
13 capital budget laws of the Commonwealth require annually
14 that the Governor submit a capital request to the General
15 Assembly each year to be enacted, which is our authoriza-
16 tion to proceed with the projects. Internally in the
17 Department Mr. Chiles, who testified earlier, has
18 probably told you about his functions, but just to give
19 you a run-through on it, his bureau inventories highway
20 needs and recommends action to the State Transportation
21 Commission, which is a body set up in the law to develop
22 a twelve-year transportation program for the Commonwealth,
23 which is updated every two years, and they inventory the
24 State's needs through the public hearing process and
25 through various methods to determine what the needs are,

1 and annually they select from the twelve-year program
2 adopted what they consider the most urgent in the
3 planning process, which are submitted to the Budget
4 Secretary for inclusion in the capital budget for the
5 next year.

6 Q You mentioned there is a highway maintenance
7 fund.

8 A There is an appropriation.

9 Q An appropriation?

10 A Actually there are two highway maintenance
11 appropriations, one for secondary highways and one for
12 general highway maintenance purposes.

13 Q Are there funds which have been particularly
14 committed for use on the Matsonford bridge project for
15 maintenance?

16 A Would you fly that by again?

17 Q Have there been funds specifically designated
18 or committed by the Department for use on this particular
19 project, the Matsonford bridge, for maintenance purposes?

20 A No.

21 Q No. How does the Department determine their
22 budgeting of this highway maintenance fund?

23 A Well, the highway maintenance process of
24 determining what the annual needs are follows this
25 pattern: We have what we call a highway facilities

1 inventory, so we know how many different lane miles of
2 different types of highways we have to maintain, we
3 know how many acres of right-of-way must be mowed, how
4 many miles of stripes put down the highway and how often,
5 how many miles of drainage features must be cleaned
6 each year, we know the tunnels we have to maintain, and
7 these are the features of the highway system that are
8 inventoried. Next, the engineers have developed a method
9 of determining the annual demand requirements of the
10 highways, such as how often to paint stripes, how often
11 with respect to certain types of surfaces must you go in
12 and resurface roads, how often must you go wash the
13 signs and other activities. From that we have the
14 planned program units, the PPU's, as to what they will
15 accomplish in each year. When you come up with a PPU,
16 you determine how much patch material to put down, how
17 many miles of stripes are necessary, all specific units,
18 which are priced out based upon cost accounting standards,
19 and we have a system that tells us how much it costs
20 per unit to do those things. Then --

21 Q I think --

22 A -- from this methodology we compile the budget
23 for the next year.

24 Q -- I will ask you this question: If there is
25 an outstanding P.U.C. order requiring the Department

maintain a certain portion of highway, is it also budgeted?

A Well, under this method of determining what your needs are, the process at that point does not lend itself to exact identification of what bridge or perhaps what stretch of road you will resurface. We know, mathematically speaking, that certain miles of road must be resurfaced or what-have-you.

Q In other words, once you recommend the amount of money you need, internally you can allocate it to whatever you determine is necessary?

A Yes. This is later in the process, after the initial requesting and determination of the budget. Then the Bureau of Maintenance, with their engineers, has a system of program approaches that they obtain from the county maintenance organizations. We ask them to submit on certain forms the exact, specific work they want to accomplish in the next year. Then we have to identify station to station the locations of the bridges and so forth that are to be done with the repair funds.

Q Okay. Thank you. Now, do you know approximately or exactly how much PennDOT's operating budget was for 1976-77?

A Well --

Q It would have been 1975-76, wouldn't it?

4 A 1975-76 is complete, and we are right now
5 in 1976-77.

6 Q Okay. For 1975-76, then.

7 A For 1975-76 you want the total. Is that right?

8 MR. ZAHN: If you know.

9 A Approximately one and a quarter billion dollars.

10 BY MS. KREIGER:

11 Q And has all that money been used at this time?

12 A It has all been committed to certain activities.

13 Q Internally?

14 A Yes. In the budgeting process, we enter into
15 contracts and purchase orders. We are well underway to
16 spend the budget this year.

17 Q Now, is the upcoming budget 1976-77?

18 A We are in 1977-78.

19 Q Okay. Do you anticipate any uncommitted
20 funds in the 1977-78 operating budget?

21 A The Governor submitted the budget to the
22 General Assembly at 1:00 o'clock today. It says that
23 we require a two cent a gallon increase in the fuel tax
24 effective January 1, 1978, in order to accomplish what
25 we consider to be the M-2 maintenance program level
on our highways and also to be able to initiate highway
construction improvement at the rate of \$100 million
a year in bond funds. In other words, the budget has

1 been constructed so that we will be able to do those
2 things that must be done every year to maintain the
3 highways properly. The M-2 level provides for catching
4 up on a backlog from years past within the next twenty-
5 five-year period. That's the M-2 level.

6 Q Once the money is approved, you determine how
7 it is used within the general and specific headings for
8 which it is designated?

9 A Within the highway maintenance program, the
10 work has to be determined, what specific stretch of
11 highway to resurface and so forth, yes.

12 MR. ZAHN: You are talking about maintenance
13 funds in your question, now, not capital improvements?

14 MS. KREIGER: That's right.

15 MR. ZAHN: Okay. Just so we understand
16 that.

17 MS. KREIGER: Yes. Well, we are not talking
18 about just maintenance funds.

19 BY MS. KREIGER:

20 Q Are there any uncommitted funds that you
21 anticipate in the upcoming budget, for instance, maybe
22 in construction funds?

23 A In construction, the capital budget law requires
24 that the projects be specifically identified under the
25 Capital Budget Act. That prevents surplus or reserves

being placed in there.

Q Okay. One other question: PennDOT's engineering witness at the April 2nd, 1975, hearing, Paul Peterson, testified at that point PennDOT was involved in preparing preliminary construction plans for the purpose of this project.

MR. ZAHN: The rehabilitation project.

MS. KREIGER: No. Reconstruction.

BY MS. KREIGER:

Q I am wondering: Did you specifically approve, or do you know of any specific approval of funds for the purpose of preparing these preliminary plans?

A No. This is an area that is decentralized into the Bureau of Economic Research and Programming. In accord with the projects as approved in the Capital Budget Act, they, then, approve the initiation of the project.

Q I asked that because Mr. Chiles did state that he was not aware of any such approval. I thought that perhaps it had been approved out of some other fund.

A I am not aware of it.

Q In other words, approval for funds for use for preliminary plans, if it is a capital project or even if it is a construction project, must be approved

by the Bureau of Economic Research and Programming?

2 A I suspect he was referring to the fact that --
3
4 before a project gets into that capital budget, you have
5 to make a preliminary feasibility and locality study to
6 come up with a cost estimate and describe the project
7 and so forth. There are engineers on the staff who
8 perform this kind of administrative task in developing
9 the projects. Then they give it to the Transportation
10 Commission, who adopts it on the program, and then it
11 goes into the capital budget account and proceeds to the
12 design stage.

13 Q Where do you get the preliminary funds to do
14 this?

15 A This is out of the internal budget from the
16 motor license funds, current revenues, in an administra-
17 tive step providing for this kind of activity.

18 Q So this internal staff would basically make
19 the determination as to whether funds should be approved
20 for these preliminary --

21 A Well, they do not make that determination.
22 That comes up with the analysis which is submitted to
23 the Transportation Commission. I am sure Mr. Chiles
24 went over the county planning process with you as to
25 projects marked high, low, or medium, and there is an
 obligation by the commission to take the highest-risk

1 priorities and program those. From that group, the
2 projects are selected for capital budgeting.

3 Q I understand that. I am asking you where
4 the preliminary funds, prior to the inclusion in the
5 capital budget, come from.

6 A Those are in-house costs. We have funds on
7 board to do those things. You have to have that kind of
8 administrative step taken to determine the projects you
9 want to consider.

10 Q And the funds for that come from your general
11 operating funds?

12 A That's right.

13 MS. KREIGER: Nothing further.

14 MR. PHIPPS: No questions.

15 MR. ZAHN: I have no questions.

16 (The deposition concluded at 3:45 o'clock,
17 p.m.)

18
19 JAMES VOVAKES

20 I, James Vovakes, acknowledge that I have
21 read the above and foregoing pages and have made any
22 additions, deletions, corrections, or interlineations
23 I deem necessary in my own hand, initialing each such,
24 and I represent that the same, as now added to, deleted
25 from, corrected, or interlined, is full, true, and correct.

THE ADMINISTRATIVE LAW JUDGE: Is there anything further, then?

Do you waive the signatures of the witnesses to the transcript?

MR. ZAHN: No. We do not. I think that Ms. Kreiger will make a statement about that for the record.

THE ADMINISTRATIVE LAW JUDGE: Surely.

MS. KREIGER: I think the parties have agreed that copies of the testimony taken here today will be filed with the Public Utility Commission, an original and one copy, with copies being sent to any parties requesting copies, on Friday. At that point, the parties will --

MR. ZAHN: Review the testimony, and if it is correct, they will sign it.

THE ADMINISTRATIVE LAW JUDGE: I understand. Surely. Shall we have a copy for the Administrative Law Judge presiding, Mr. Pallastrone?

MS. KREIGER: My understanding is that the original and one copy are to be filed with the Public Utility Commission. For discovery I don't think it is appropriate to submit transcript to Judge Pallastrone at this time. It is only for the purpose of discovery.

THE ADMINISTRATIVE LAW JUDGE: I thought he should have an opportunity to review it. But never mind. All right.

MS. KREIGER: But, as I said, this may not be submitted as part of the record.

(Adjourned at 3:46, p.m.)

CERTIFICATE

COMMONWEALTH OF PENNSYLVANIA:
COUNTY OF DAUPHIN :

I, Carolyn A. Sherwood, a notary public in and for the Commonwealth of Pennsylvania and a Certified Shorthand Reporter, do hereby certify that the foregoing depositions of James B. Chiles and James Vovakes were taken on behalf of the Public Utility Commission before me in Room 118, North Office Building, Harrisburg, Pennsylvania, on the 15th day of February, 1977; that the witnesses were duly sworn before the commencement of their testimony; that the testimony of the said witnesses was written out under my direction; that the parties as set forth on page 2 of said transcript were represented by counsel during the taking of said proceeding; that said testimony was taken at the aforementioned place and was commenced at 2:00 o'clock, a.m., on the 15th day of February, 1977, and concluded

1 on the same date at 3:46 o'clock, p.m.; that the signa-
2 tures of the witnesses may be had to the transcript
3 in the file room of the Public Utility Commission,
4 North Office Building, Harrisburg, Pennsylvania; that
5 I am not related to or employed by either or any of the
6 parties of record or their attorneys or agents or inter-
7 ested, directly or indirectly, in the matter in contro-
8 versy, either as counsel, attorney, agent, or otherwise.

9 In witness whereof I have hereunto set my
10 hand and affixed my seal of office at Harrisburg, in
11 Dauphin County, this 17th day of February, 1977.

12 

13 Carolyn A. Sherwood, Certified
14 Shorthand Reporter -- Notary Public

15 My Commission expires March 1, 1978
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Department of Transportation of :
the Commonwealth of Pennsylvania :

v. :

Reading Company; Borough of :
Conshohocken; Borough of West :
Conshohocken and County of :
Montgomery :

Complaint Docket
No. 19707

COMMISSION

APPLICATION FOR PERMISSION TO TAKE DEPOSITIONS

UPON ORAL EXAMINATION

TO THE HONORABLE RUDOLPH S. PALLASTRONE:

AND NOW comes, The Staff of the Pennsylvania Public Utility Commission, by its Attorney, Candace N. Kreiger, Assistant Counsel, and respectfully represents:

1. That the name and address of your petitioner is the Staff of the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, Pennsylvania 17120.
2. That the name and address for the Attorney of your petitioner is Candace N. Kreiger, Assistant Counsel, P. O. Box 3265, Harrisburg, Pennsylvania 17120.
3. That a hearing will be held by the Pennsylvania Public Utility Commission on Tuesday, February 22, 1977, at the Municipal Building, 700 Belvoir Road, Plymouth Township, Montgomery County.
4. That the purpose of the Commission hearing is to afford all parties of record an opportunity to submit testimony

on the issues raised in the Borough of Conshohocken's letter petition for enforcement of the Commission's October 21, 1975 order at C. 19707 and the Department of Transportation of the Commonwealth of Pennsylvania's (Department's) petition for modification of the Commission's October 21, 1975 order at C. 19707.

5. That the Department, by Paragraph No. 4 of its petition for modification, avers that it has been unable to complete the detailed construction plan and cost estimate, as ordered by the Commission in its October 21, 1975 order, because due to the present financial situation within the Department, the construction project for the instant complaint is not on the Commonwealth's twelve (12) year highway program or on an approved Capital Budget and there are no funds available to proceed with the project.

6. That the testimony of James Vovakes, Director of Fiscal Management, Department of Transportation of the Commonwealth of Pennsylvania, regarding the present financial situation within the Department and the funds available to the Department for the purposes of the construction project in the instant complaint proceeding; and the testimony of James B. Chiles, Director of Economic Research and Programming, Department of Transportation of the Commonwealth of Pennsylvania, regarding the procedures for placing projects on the Commonwealth's twelve (12) year highway program and on the Capital Budget and regarding the administration of the Capital Budget,

is unprivileged information which is highly relevant to the issues of whether the Department has been unable to complete the detailed construction plan and cost estimate, as ordered by the Commission, due to lack of funds; and whether the Department will be able to complete the ordered construction plan and cost estimate in the near future.

7. That James Vovakes, as the person responsible for the Department's fiscal management, has knowledge of the present financial situation within the Department, of the funds available to the Department, and of the management of those funds.

8. That James B. Chiles, as the person responsible for the Department's economic research and programming, has knowledge of the procedures for placing projects on the Commonwealth's twelve (12) year highway program and on the Capital Budget and of the administration of the Capital Budget.

9. That the taking of depositions, upon oral examination, of James Vovakes and James B. Chiles is necessary for the purpose of discovering unprivileged information which is highly relevant to the issues involved in the instant complaint proceeding.

10. That the taking of depositions, upon oral examination, of James Vovakes and James B. Chiles will not result in undue delay to this proceeding.

11. That the Department, by its Attorney, Herbert G. Zahn, Assistant Attorney General, has advised your petitioner that it has no objection to the taking of depositions, upon oral examination,

of James Vovakes and James B. Chiles and that it agrees to waive the ten (10) days' notice requirement in accordance with 1 Pa. Code §35.146.

12. That pursuant to Section 7.4 of the Act of October 7, 1976, Act No. 216 P.L. _____, 66 P.S. §458.4, as amended, the presiding officer in a Commission proceeding has the power to order the taking of depositions of witnesses, upon oral examination, for the purpose of discovering relevant, unprivileged information, and further has the power to issue a Subpoena Ad Testificandum to enforce an order to take depositions.

13. That your petitioner will pay all required fees to the deponent whose depositions are taken and to the officer before whom the depositions are taken, upon receipt of notice that its application has been granted and that the requested Subpoena Ad Testificandum has been issued.

WHEREFORE, your petitioner requests your Honorable Rudolph S. Pallastrone, Administrative Law Judge, to grant its application requesting permission to take depositions, upon oral examination, and to issue a Subpoena Ad Testificandum compelling the deposition, upon oral examination, of James Vovakes, Director of Fiscal Management, Department of Transportation of the Commonwealth of Pennsylvania, of Room 1216 Transportation and Safety Building, Harrisburg, Pennsylvania 17120 and of James B. Chiles, Director of Economic Research and Programming, Department of Transportation of the Commonwealth of Pennsylvania, of Room 915 Transportation and Safety Building,

-5-

Harrisburg, Pennsylvania 17120, at Room 117, North Office Building,
Harrisburg, Pennsylvania 17120, on Tuesday, February 15, 1977, at
2:00 P.M., before Nicholas Dobosh, Administrative Law Judge for
the Pennsylvania Public Utility Commission.

Respectfully submitted,

Candace N. Kreiger
Candace N. Kreiger
Assistant Counsel

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF DAUPHIN : SS:

Before me, the undersigned, personally appeared Candace N. Kreiger, Assistant Counsel, who, being duly sworn according to law, deposes and says that she is authorized to and does make this Affidavit on behalf of the Staff of the Pennsylvania Public Utility Commission, and that the averments contained and set forth in the foregoing Application are true and correct to the best of her knowledge, information and belief.

Candace N. Kreiger
Candace N. Kreiger
Assistant Counsel
Staff of the Pennsylvania
Public Utility Commission

Sworn and subscribed before
me this 9th day of February,
1977.

Betty R. Jones
Notary Public

My commission expires October 8, 1979
Harrisburg, Pa. Dauphin County

(SEAL)

CERTIFICATE OF SERVICE

I hereby certify that I have this 9th day of February, 1977, served a copy of the foregoing, by first class postage pre-paid upon:

Rudolph S. Pallastrone
Administrative Law Judge
Pennsylvania Public Utility Commission
Lewis Tower Building
15th and Locust Streets
Philadelphia, Pennsylvania 19102

Robert W. Cunliffe, Deputy Attorney General
Pennsylvania Department of Transportation
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One Parkway
Philadelphia, Pennsylvania 19102

James M. Ballengee, President
Philadelphia Suburban Water Company
762 Lancaster Avenue
Bryn Mawr, Pennsylvania 19010

Roger B. Reynolds, Solicitor
County of Montgomery
Courthouse
Norristown, Pennsylvania 19404

Lockwood W. Fogg, Secretary
Trustees of Reading Company
One Plymouth Meeting
Plymouth Meeting, Pennsylvania 19462

Candace N. Kreiger

Candace N. Kreiger
Assistant Counsel
Staff of Pennsylvania Public
Utility Commission

May 20, 1977

C. 19707

Robert W. Cunliffe, Deputy Attorney General
Pennsylvania Department of Transportation
Capital Associates Building
Seventh and Forster Streets
Harrisburg, Pennsylvania

Department of Transportation of the
Commonwealth of Pennsylvania
v.

Reading Company, Borough of Conshohocken, Borough of West
Conshohocken, County of Montgomery, etc.

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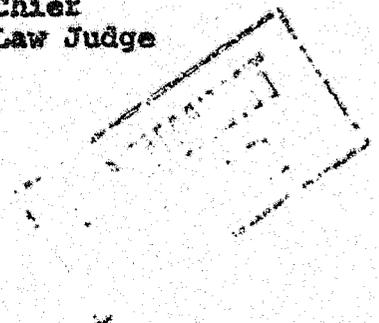
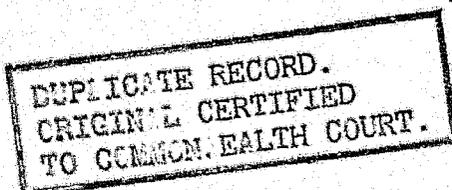
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An original and fourteen copies of each brief must be filed with the Commission and three copies must be served on each party of record.

Very truly yours,

William Shane, Chief
Administrative Law Judge

ML:s



May 20, 1977

C. 19707

Herbert G. Sahn, Assistant Attorney General
Pennsylvania Department of Transportation
Capital Associates Building
Seventh and Forster Streets
Harrisburg, Pennsylvania

Department of Transportation of the
Commonwealth of Pennsylvania

v.

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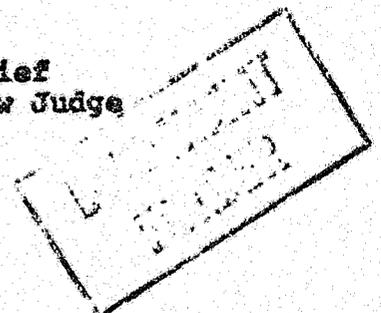
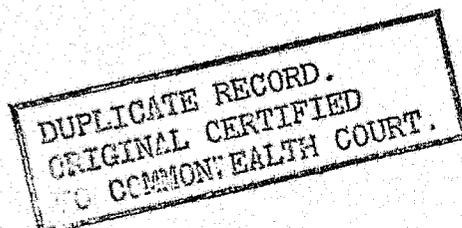
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Very truly yours,

William Shane, Chief
Administrative Law Judge

HL:is



RL

May 20, 1977

C. 19707

Joel E. Mazor, General Attorney
Consolidated Rail Corporation
Six Penn Center Plaza
Philadelphia, Pennsylvania 19104

Department of Transportation of the
Commonwealth of Pennsylvania
v.

Reading Company, Borough of Conshohocken, Borough of West
Conshohocken, County of Montgomery, etc.

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Very truly yours,

William Shane, Chief
Administrative Law Judge

NLS

RECEIVED
MAY 23 1977
NUMBER

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

May 20, 1977

C. 19707

Edward F. Kane, Esquire
Kane, Pugh, Anderson, Subers and McBrien
512 Swede Street
Norristown, Pennsylvania 19401
(for Borough of West Conshohocken)

Department of Transportation of the
Commonwealth of Pennsylvania

v.

Reading Company, Borough of Conshohocken, Borough of West
Conshohocken, County of Montgomery, etc.

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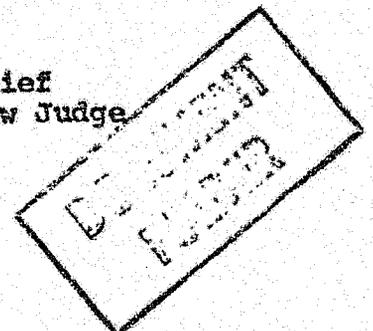
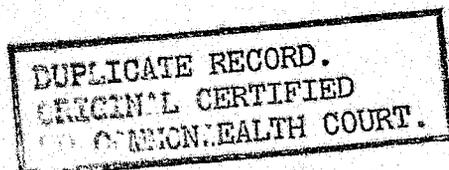
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Administrative Law Judge

NLS



May 20, 1977

C. 19707

Walter Phipps, Jr., Solicitor
Borough of Conshohocken
312 Fayette Street
Conshohocken, Pennsylvania 19428

Department of Transportation of the
Commonwealth of Pennsylvania

v.

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Administrative Law Judge

WLS

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

DOCUMENT
FOLDER

May 20, 1977

C. 19707

Sheldon Seligson, Attorney
The Bell Telephone Company of Pennsylvania
One Parkway
Philadelphia, Pennsylvania 19103

Department of Transportation of the
Commonwealth of Pennsylvania

v.

Reading Company, Borough of Conshohocken, Borough of West
Conshohocken, County of Montgomery, etc.

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William Shane, Chief
Administrative Law Judge

ML:8

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TO COMMONWEALTH COURT.

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FOLDER

May 20, 1977

C. 19707

James M. Ballengee, President
Philadelphia Suburban Water Company
762 Lancaster Avenue
Bryn Mawr, Pennsylvania 19010

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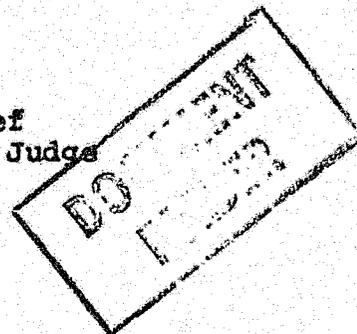
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William Shane, Chief
Administrative Law Judge

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RL

May 20, 1977

C. 19707

Roger B. Reynolds, Solicitor
County of Montgomery
Courthouse
Norristown, Pennsylvania 19404

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v.

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WLS

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May 20, 1977

C. 19707

Lockwood W. Fogg, Secretary
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Administrative Law Judge

NL:s

DUPLICATE RECORD.
ORIGINAL CERTIFIED
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DO NOT
REMOVE

May 20, 1977

C. 19707

Candace N. Kreiger, Assistant Counsel
Pennsylvania Public Utility Commission -
Law Bureau
P.O. Box 3265
Harrisburg, Pennsylvania 17120

Department of Transportation of the
Commonwealth of Pennsylvania

v.

Reading Company, Borough of Conshohocken, Borough of West
Conshohocken, County of Montgomery, etc.

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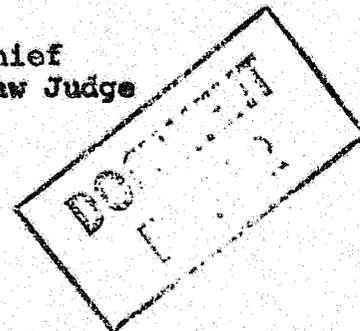
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Very truly yours,

William Shane, Chief
Administrative Law Judge

NLS:R

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ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.



May 20, 1977

C. 19707

Mr. John L. Storch
Pennsylvania Public Utility Commission -
Bureau of Transportation, Rail Division
P.O. Box 3265
Harrisburg, Pennsylvania 17120

Department of Transportation of the
Commonwealth of Pennsylvania

v.

Reading Company, Borough of Conshohocken, Borough of West
Conshohocken, County of Montgomery, etc.

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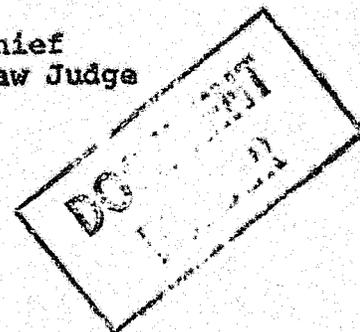
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William Shane, Chief
Administrative Law Judge

NLS:

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ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.



MORGAN, LEWIS & BOCKIUS
COUNSELORS AT LAW
123 SOUTH BROAD STREET
PHILADELPHIA, PENNSYLVANIA 19109

TELEPHONE: (215) 491-9200

CABLE ADDRESS: MORLEDOCK

TELEX: 83-1315

800 WEST SIXTH STREET
LOS ANGELES, CALIFORNIA 90017
TELEPHONE: (213) 627-8900

ASSOCIATED OFFICE:
130, RUE DU FAUBOURG ST. HONORÉ
PARIS 8, FRANCE
TELEPHONE: 333-20-87

1800 M STREET, N.W.
WASHINGTON, D.C. 20036
TELEPHONE: (202) 872-8000

717 FIFTH AVENUE
NEW YORK, NEW YORK 10022
TELEPHONE: (212) 486-7320

800 NORTH THIRD STREET
HARRISBURG, PENNSYLVANIA 17102
TELEPHONE: (717) 238-1787

May 26, 1977

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JUN 1 1977

Office of the A. L. J.
Public Utility Commission

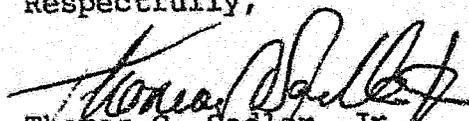
Honorable William Shane
Administrative Law Judge
Pennsylvania Public
Utility Commission
Post Office Box 3265
Harrisburg, PA 17120

Re: Complaint Docket No. 19707
Department of Transportation v. Reading Company, et al.

Dear Judge Shane:

Enclosed is the Statement of Philadelphia Suburban Water Company in Lieu of Brief in this matter. Philadelphia Suburban Water Company takes no position in the issues now before the Commission but desires to remain a party in this matter and to receive notices and otherwise participate for the reason that an ultimate order in this matter may affect the Company's facilities located in the area of possible reconstruction of the bridge, in the event the Commission so orders.

Respectfully,


Thomas C. Sadler, Jr.
Attorney for Philadelphia
Suburban Water Company

lam

cc: All Counsel
Cornelius J. McElwee, Secretary

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

DOCUMENT
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Rec'd
6/11/77

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Department of Transportation of the :
Commonwealth of Pennsylvania :

v.

: Complaint Docket
: No. 19707
:

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

STATEMENT OF PHILADELPHIA SUBURBAN
WATER COMPANY IN LIEU OF BRIEF

DOCKETED
COMPLAINT DOCKET
JUN 15 1977
ENTRY No. *C*

Philadelphia Suburban Water Company will file no brief in this proceeding on the issues presently before the Commission concerning the responsibilities of the Department of Transportation.

The Company is a party to this proceeding for the reason that certain of its facilities are located in the area concerned. While the Company does not have any facilities located on the existing bridge, it does have facilities in close proximity to the bridge that could possibly be affected depending upon the ultimate plan of reconstruction submitted by the Department of Transportation. The Company reserves its rights with regard to its facilities pending the resolution of the above-matter.

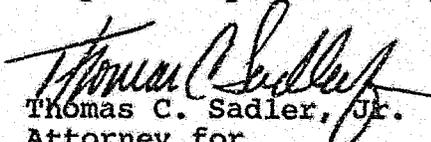
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In the event that the Commission orders the Department of Transportation to proceed with reconstruction of the bridge, the Company also reserves the right to request permission to install a sixteen (16) inch water main on the bridge. The

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ORIGIN & CERTIFIED
TO COMMONWEALTH COURT.

Company had previously submitted a similar statement on April 15, 1975 in this matter.

Respectfully submitted,


Thomas C. Sadler, Jr.
Attorney for
PHILADELPHIA SUBURBAN
WATER COMPANY

Of Counsel:

MORGAN, LEWIS & BOCKIUS
2100 The Fidelity Building
Philadelphia, PA 19107

CERTIFICATE OF SERVICE

I hereby certify that I am this 31st day of May, 1977 serving by first-class mail the foregoing document, Statement of Philadelphia Suburban Water Company in Lieu of Brief, upon the following persons listed below:

Joel E. Mazor, General Attorney
415 Reading Terminal
Philadelphia, Pennsylvania 19107

Walter Phipps, Jr., Solicitor
312 Fayette Street
Conshohocken, Pennsylvania 19428

Edward F. Kane, Esquire
Bean, DeAngelis, Kaufman and Kane
522 Swede Street
Norristown, Pennsylvania 19401
(Borough of West Conshohocken)

Roger B. Reynolds, Solicitor
County of Montgomery
Courthouse
Airy and Swede Streets
Norristown, Pennsylvania 19404

Sheldon Seligsohn, Attorney
The Bell Telephone Company
of Pennsylvania
Law Department
One Parkway
Philadelphia, Pennsylvania 19102

Robert W. Cunliffe,
Deputy Attorney General
Department of Transportation
Capital Associates Building
Harrisburg, Pennsylvania 17120

Candace N. Kreiger, Assistant Counsel
Pa. P.U.C. Law Bureau
Post Office Box 3265
Harrisburg, Pennsylvania 17120

John L. Storch
Pa. P.U.C. Bureau of Transportation
Rail Division
Post Office Box 3265
Harrisburg, Pennsylvania 17120



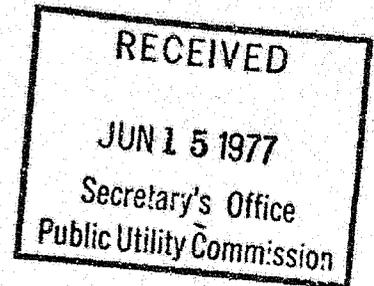
THOMAS C. SADLER, JR.
ATTORNEY FOR
PHILADELPHIA SUBURBAN WATER COMPANY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
HARRISBURG 17120
Office of Chief Counsel



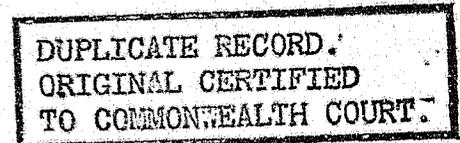
IN REPLY REFER TO

June 13, 1977



C. J. McElwee, Secretary
Pennsylvania Public Utility Commission
North Office Building
Harrisburg, Pennsylvania 17120

Re: Complaint Docket No. 19707
Montgomery County



Dear Mr. McElwee:

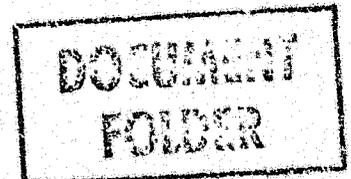
Attached hereto are the original corrected Depositions of James B. Chiles and James Vovakes taken by the Pennsylvania Public Utility Commission in relation to the above-captioned complaint.

I hereby certify that a copy of the said Depositions have been served on the following parties:

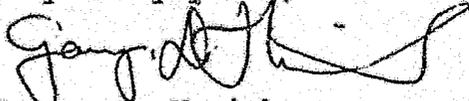
Candace N. Kreiger, Esquire
North Office Building
Harrisburg, Pennsylvania

Walter Phipps, Jr., Esquire
312 Fayette Street
Conshohocken, Pennsylvania 19428

Rudolph S. Pallastrone
Administrative Law Judge
Pennsylvania Public Utility Commission
Lewis Tower Building
15th and Locust Streets
Philadelphia, Pennsylvania 19102



Very truly yours,


George D. Wenick
Assistant Attorney General

220/GDW:rmm
Enclosure

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION RECEIVED

JUL 15 1977
Secretary's Office
Public Utility Commission

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Department of Transportation of the Commonwealth of Pennsylvania

v.

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

Complaint Docket No. 19707

Depositions* of James B. Chiles and James Vovakes, taken on behalf of the Pennsylvania Public Utility Commission, before Carolyn A. Sherwood, Certified Shorthand Reporter - Notary Public, Nicholas Dobosh, Esq., Administrative Law Judge, presiding, in Room 118, North Office Building, Harrisburg, Pennsylvania, on Tuesday, February 15, 1977, beginning at 2:00 o'clock, p. m.

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ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

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JUL 5 1977
ENTRY No.

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*Index is at rear of volume.

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APPEARANCES:

CANDACE N. KREIGER, ESQ.
and
GEORGE KASHI, ESQ.
North Office Building
Harrisburg, Pennsylvania
For - Pennsylvania Public Utility Commission

HERBERT G. ZAHN, ESQ.
Pennsylvania Department of Transportation
Capital Associates Building
Seventh and Forster Streets
Harrisburg, Pennsylvania
For - PennDOT

WALTER PHIPPS, JR., ESQ.
312 Fayette Street
Conshohocken, Pennsylvania 19428
For - Borough of Conshohocken

Also Present:

LOUIS G. COCHERES, ESQ.
KENNETH W. WALKER, P.E.
JOHN STORCH

1 THE ADMINISTRATIVE LAW JUDGE: I under-
2 stand that we are convened today for the purpose of taking
3 depositions upon oral examination of James Vovakes and
4 James Chiles, the Director of Fiscal Management and the
5 Director of the Economic Research and Programming,
6 respectively, of the Department of Transportation of the
7 Commonwealth of Pennsylvania, pursuant to the request
8 of the staff of the Pennsylvania Public Utility Commis-
9 sion and granted by the Honorable Rudolph S. Pallastrone,
10 the presiding Administrative Law Judge. I also understand
11 that the Department of Transportation has no objection to
12 the taking of depositions and has agreed to waive the ten
13 days notice requirement in accordance with 1 Pa. Code
14 Section 135.46.

15 MR. ZAHN: Judge, may I add to that that
16 the Department, in waiving any objection, is only too
17 happy to co-operate with the Commission in bringing out
18 the facts that the staff would like to know in these
19 matters, and we have waived our right of notice and all
20 formalities except that we do not waive our right to make
21 corrections to the transcript of the notes of testimony.

22 THE ADMINISTRATIVE LAW JUDGE: I agree with
23 that concept a hundred per cent. I think that a sister
24 agency should be co-operative.

25 MS. KREIGER: I think we should like to move

1 for sequestration.

2 MR. ZAHN: You want the witnesses
3 sequestered? No problem.

4 (Off-the-record discussion)

5 (The first witness was duly sworn)

6

7 JAMES B. CHILES, called as a witness by
8 the Pennsylvania Public Utility Commission, having been
9 duly sworn, was examined and testified as follows:

10 BY MS. KREIGER:

11 Q Mr. Chiles, I guess probably to begin with
12 maybe, if the reporter does not have it, you would like
13 to state your name and address for the record.

14 A I am James B. Chiles. Do you want my home or
15 my business address?

16 Q Business.

17 A Room 915, Transportation and Safety Building,
18 Harrisburg.

19 Q And what is your position with the Department?

20 A I am the Director of the Bureau of Economic
21 Research and Programming.

22 Q What is your function?

23 A My function is to develop fiscal plans for
24 capital programming and to co-ordinate and set up a
25 twelve-year transportation program for the Commonwealth

1 for submission to the Secretary and ultimately to the
2 Transportation Commission for approval.

3 Q Okay. Now --

4 THE ADMINISTRATIVE LAW JUDGE: Were you
5 authorized to appear here today to testify on behalf of
6 the Department?

7 THE WITNESS: I believe so, yes.

8 BY MS. KREIGER:

9 Q Mr. Chiles, how is it determined what projects
10 are placed on the capital budget? What criteria are used?

11 A Our total criteria include, first, the develop-
12 ment of a twelve-year transportation improvement program.
13 This is done in co-operation with the local planning
14 groups. In the case in question, that would be the
15 Montgomery County Planning Commission, under the direction
16 of Arthur Loeben, he representing the arm of the County
17 Commissioners in this instance. With respect to priorities,
18 we ask the planning commissions at the local levels to
19 assign priorities to what we fondly refer to as a "wish
20 list" of projects. The "wish list" ~~is, in fact,~~ statewide
21 ~~and~~ consists of 17 billion dollars worth at the moment.
22 We also ask our district engineers to ascertain and
23 certify the cost estimates for the projects and to assign
24 priorities, which may not be the same as those of the
25 county planning commissions. From this array of projects

1 and based upon our estimate ^{of} and the resources available, ✓
2 we then develop a list of projects known as the twelve-
3 year program. From this list or program of the priorities
4 agreed to by the District Engineers and the county planning
5 commissions and the Transportation Commission, we develop
6 an annual capital budget implementing the projects in
7 systematic and priority order.

8 Q What are your criteria for determining what the
9 priorities are?

10 A The Department, primarily the district engineers,
11 will assign priority according to structural deficiencies,
12 completion of missing links, and so on. For instance, if
13 we have proceeded with a project and we have seven miles
14 of an eight-mile highway built and need one more mile,
15 they will normally assign a relatively high priority to
16 finish the link so that the whole road is usable. The
17 engineers look at not only structural deficiencies but
18 the development of new projects and the development of
19 safety-type projects.

20 Q In determining the priorities, where would a
21 P.U.C. project be placed on that list of priorities
22 where specifically PennDOT has an outstanding obligation?

23 A Normally a structural deficiency -- and the
24 P.U.C. deals primarily in structural deficiencies -- as
25 far as the Department is concerned, would rank relatively

1 high.

2 Q What kind of projects would rank higher?

3 A What we call a safety-type project or a high-
4 accident location, for example, an intersection where
5 we are experiencing from a hundred to a hundred and fifty
6 accidents a year and where we can make some improvement to
7 eliminate that.

8 Q Could you explain in a little more detail this
9 Commonwealth twelve-year highway program?

10 A Yes. In the formation of PennDOT by Act 120
11 of the Session of 1970, it was dictated to the Department
12 to develop on even-numbered years a six-year transportation
13 improvement program. This portion of the Act was amended
14 in 1974 to extend the period to twelve years instead of
15 six. It is by Act of the General Assembly that this is
16 done.

17 Q A request must be placed on the program before
18 it is submitted for approval in the capital budget?

19 A Yes, ma'am.

20 Q Who makes the recommendation as to what pro-
21 jects are so submitted?

22 A It starts with me and proceeds to the Deputy
23 Secretary for Highway Administration to the Secretary to
24 the Budget Secretary and to the Governor.

25 MR. ZAHN: And finally the Legislature?

BY WITNESS: Finally to the General

1 Ass. bl.

2 BY MR. KRUEGER:

3 Q Where does the Transportation Commission come
4 in?
5

6 A The Transportation Commission comes in, in the
7 development of the program from which the projects are
8 selected for budget submission.

9 Q Now, is it also required by this Act of the
10 Legislature that there be a Transportation Commission?

11 A Yes, ma'am. It clearly defines that there
12 shall be thirteen members of the panel, strictly bipartisan,
13 that is, there is an equal ^{number} amount from both political
14 parties, and so on. For example, certain members are
15 appointed by virtue of being on transit authorities, and
16 one member must be from Allegheny County and one, from
17 the City of Philadelphia.

18 Q Who are the other members?

19 A Two are members of the Senate. One is the
20 chairman of the, I believe it is still called, Highway
21 Committee -- I don't know if they have changed that to
22 Transportation or not -- and the ranking minority member
23 of the Senate ^{the ranking member,} the chairman of the House Transportation
24 Committee and the ranking minority member, and there are
25 two transit members and six members at large, appointed

by the Governor.

Do the members of the Transportation Commission
more or less review the recommendations made to them by
PennDOT?

A. That's right. The Act clearly states that
a program can only be adopted after having been first
submitted to the Transportation Commission.

Q. How is it determined how much money you will
request to be approved in the capital budget?

A. That is based upon the estimate of the resources,
fiscal resources, available to the Department from, one,
the Federal highway apportionment, voted by Congress, and,
two, the amount of resources to be made available at the
state level.

Q. And preliminarily to submitting your recommenda-
tions, do you normally anticipate your expenses, based upon
past experience with P.U.C. orders?

A. First, one clarification. It is not an expense-
type budget. It is an obligation-type budget. The totality
of the programming and budgeting process deals solely in
obligations, not in cash flow.

Q. Would you explain to me, just generally, the
difference between an obligation- and an expense-type
budget?

A. Yes, ma'am. As an example, the Federal

1 government will apportion to the Commonwealth, let's say,
2 130 million dollars for interstate highways. We will
3 go to them with a project to construct a section of
4 I-95 at a total cost of, say, 50 million dollars, of which
5 the Federal government will pay 45 million dollars,
6 which sum is considered as obligated and is not available
7 for anything else. We may take five years to expend that
8 money in cash flow; but as far as the Federal government
9 is concerned, they have obligated the spending of that
10 amount in their apportionment for interstate. That's the
11 difference between an obligation and a cash flow.

12 Q When you say it is obligated for interstate,
13 for instance --

14 A Yes. The same thing occurs in all the Federal-
15 aid projects: It is obligated and reimbursed to the
16 Commonwealth after the expenditure. We spend Commonwealth
17 money and bill the Federal government, and they reimburse
18 us for what we have expended, based upon the obligation
19 that they have agreed to set aside for that project.

20 Q When you say it is obligated, is it obligated
21 for a specific project?

22 A Yes, ma'am.

23 Q Okay. Now, what happens if those funds are
24 not used for that one project?

25 A Should we get into a contract and a portion is,

say, deleted and instead of spending the full 45 million dollars, for which we have a firm bid, at the end of the project, when we close it out, if there is a million dollars left, it goes back into the apportionment and is available for subsequent obligation to another project. That is not normal, incidentally.

Q So if it is not used for that specific project, it is used for another project?

A There are rules for the expenditure of Federal funds on any type project, the rules normally being longer than the money. The State's reimbursement, for the most part, for most capital projects is from bond funds. For example, if there is going to be ultimately Federal aid to us, we bill the Treasurer periodically for expenditures from current revenue, and it is reimbursed from bond funds, and we periodically also make assessments on a history of cash flow to advise the Treasurer we will need a certain amount of bond funds by a certain date. This triggers the Budget Secretary to advertise a bond sale of X million dollars to have the money available when we need it to pay contracts and what-have-you.

Q Okay. How far in advance will a request or recommendation be made for a project to be placed on a capital budget?

A The capital budgets are annual submissions.

We are normally required to prepare the budget in November of the year preceding the budget request.

Q The year preceding?

A Yes. For example, the Governor's message today was for 1977-78. The bulk of the data was prepared late last fall. The current revenue portions or capital portions were sent to the Budget Secretary in gross amounts in early to mid-November. The final submissions are hammered out between then and the date of the Governor's budget message.

Q Has PennDOT recommended this project be placed on ^{the} capital budget?

A You are speaking of the Conshohocken project?

Q The Watsonford bridge at Conshohocken.

A It has not.

Q Has it ever been recommended to be placed on any capital budget, not necessarily the upcoming one?

A I can't recall if it was included in any previous capital budget at any time, but I will check that.

Q I will appreciate that.

I asked that because in the testimony previously given in this matter before the Public Utility Commission the engineering witness for PennDOT testified funds were approved for this project at the time this

was a project for rehabilitation and repair.

1 A Yes. That refreshes my recollection. We had
2 it in the '72 budget, I believe, for rehab. at a cost of
3 approximately \$300,000, I believe, for construction.

4 Q For construction?

5 A For construction.

6 Q Well, I would appreciate it if you would verify
7 the budget and the amount.

8 A I will be glad to do so.

9 Q Do you know what happened to that money?

10 A Yes. Inflation. You see, the General Assembly,
11 in approving the capital budget, also approves the total
12 bond amount in an ^{appropriation} ~~apportionment~~ for those acts, which
13 cannot be exceeded. Over the interval of time since the
14 preparation of that budget to the present day, costs have
15 inflated in the neighborhood of forty per cent. Since
16 the 1972 budget was prepared in 1971, the projects reaching
17 fruition consumed the entire appropriation.

18 Q In other words, you are saying it was used on
19 other projects?

20 A Yes, ma'am.

21 Q So there would be nothing prohibiting the use
22 of funds approved for another project for this project?

23 A I don't know that --

24 Q All right.

2 A -- I understand that question.

3 Q Let me try to clarify it.

4 If there were funds approved in a capital
5 budget for use on a project other than the one involved
6 in this proceeding --

7 A Yes?

8 Q -- could they be reallocated for use on this
9 project?

10 A Providing some other project is ^{de-obligated} ~~deallocated~~. ✓
11 We have reached full obligation, by the way.

12 Q At this time are there any other projects
13 deobligated?

14 A There are some that were never obligated
15 because we have run out of the total apportionment.

16 Q What I am getting at is: Are there any funds
17 available at this time that could be reallocated for use
18 on this project?

19 A Only in the event that some other project is
20 deobligated, that the authority to expend on that project
21 is removed, though it may be currently underway in some
22 cases.

23 Q All right. If the construction or improve-
24 ment involved in another project has not been started,
25 could you, in turn, reallocate the funds?

A Yes. The Transportation Commission is granted

this authority.

Q Okay. Now, you don't know, then, specifically at this time if there are any other projects that have not been undertaken?

A I do know definitely many have not been, ma'am, that have been approved in the capital budget.

Q All right. Then you are saying funds are available that might be reallocated?

A No. You misunderstand me. There are projects included in capital budgets that have not been obligated because of the obligational limits in each of the Acts. For example, the first capital budget under the new Constitution granted authority for 668 million dollars in debt. This is borrowing authority. As of today, several projects in that budget, which was prepared in 1968, have not even been started because we have exhausted the 668 million dollars on projects that did start.

Q Okay. Now, who can make the decision as to reallocation of funds -- you? -- or is that by the Legislature again?

A Normally that process is the Department is through my recommendation to the Deputy Secretary and Secretary.

Q Okay.

A I might point out one thing, just to clarify

this capital budget: The capital budget does not give us money. It only gives us the authority to proceed with a line project as identified in that budget.

Q Where does the money come from?

A Money comes from the sale of bonds down the road to handle the cash flow. The capital budget gives us the authority to proceed with the project with the promise that the bonds will finance it and the authority to go to the Treasurer and seek to float bonds from time to time.

Q So that if this project were on a capital budget at one time, you have already been given the authority to proceed?

A In this instance, the authority to expend \$300,000 was for the rehabilitation of that bridge. That's the only authority we have in law.

Q Now, you say for rehabilitation?

A Yes, ma'am.

Q Since the nature of the project is now construction --

A We have no Legislative authority under that Act.

Q You said initially that you thought the funds were approved for construction.

A No.

Q Just rehabilitation?

A For the purpose of rehabilitation. Each project in a capital budget is identified as to Legislative route, where it is, and the nature of the improvement being sought. In this instance, we have authority to rehabilitate the structure but not to build a new bridge.

Q What happens if a project has been approved for a certain purpose and then is more or less wiped out because a different type of improvement should take place there?

A In the instance of the Matsonford bridge, we have no Legislative authority to proceed.

Q Have you recommended that this project be placed on any capital budget?

A No, ma'am.

Q Why not?

A It is not part of the twelve-year program.

Q Why not?

A Two factors are involved there. The county planning commission in question assigned no priority to that project. Secondly, the commission reviewed it at the October 6th meeting, and it was discussed at that juncture in time, and a member of the commission from Montgomery County opted for another project.

Q So you are saying that if a member of that commission wanted to place something on this twelve-year program instead of a P.U.C. project, the fact that there is an outstanding order has no bearing on the priority assignments?

A That plus the fact that the local people, acting through the county planning commission, did not deem it to be more important than other projects they wanted to have built.

Q Do you normally, where there is a P.U.C. project involved, explain to them you have an outstanding legal obligation?

A Those records of the P.U.C. orders appear on any project list sent to the local people for review. They are well aware of that.

Q I will ask you to expand a little bit on the priorities. What, for instance, in this particular instance were the criteria for assigning another project more priority over an outstanding P.U.C. project?

A To go back to the point of beginning, it is developed in complete co-operation with the local people. After all, we are spending their money; they are paying for this thing. We afford them a full opportunity to express their wishes as to which projects should be included in the program. We go a step further than that

to review with the district to make sure that the wishes of the local people are made known, and the commission is well aware of those.

4 Q In this particular instance, though, evidently
5 a number of projects were placed on the twelve-year
6 program instead of this P.U.C. project.

7 A Several, yes.

8 Q What kind of criteria would have been used by
9 the commission in deciding these projects are more
10 important?

11 A The wishes of the local people.

12 Q But nothing more, just the fact that they
13 wishes these projects, maybe just for the convenience of
14 their cities?

15 A You will not find many convenience projects at
16 the present time.

17 Q Specifically, if you can, will you give me
18 some criteria which would assume priority over an
19 outstanding obligation of PennDOT?

20 A You throw me at a loss with that one.

21 Q Okay.

22 A I'm not sure I understand the question.

23 Q With respect to this particular project,
24 PennDOT has an outstanding legal obligation to proceed
25 to comply with the P.U.C. order --

3 A Yes.

4 Q -- which is, at this point, to prepare detailed
5 construction plans and cost estimates --

6 A Yes.

7 Q -- and in view of that, what I would like to
8 know is: Would I be correct in assuming that something
9 more than only the wishes of the local planning commis-
10 sions of the counties would have to be considered in
11 placing something over this legal obligation of PennDOT?

12 A I am not denying the legal obligation. I think
13 we are solely talking about time.

14 Q What I want to know is: If you --

15 MR. ZAHN: May I suggest the question
16 should be: Can PennDOT insist that this project be
17 incorporated in a twelve-year program?

18 MS. KREIGER: All right.

19 A I think we could so recommend to the commis-
20 sion for their action, yes.

21 BY MS. KREIGER:

22 Q Did you in this particular instance?

23 A The ramifications of the projects under
24 consideration were clearly pointed out, yes.

25 Q What was their basis for denying your
26 recommendation?

27 A The basis of the commission's action was the

wish of the commission member from Montgomery County.

2 Q Is there any kind of review board or higher
3 authority than this Transportation Commission that could
4 overturn their decision or determination?

5 A Not according to the way I read 120.

6 MR. ZAHN: In other words, PennDOT does
7 not make the final decision on priorities; it is done by
8 the commission. Is that correct?

9 THE WITNESS: Correct.

10 BY MS. KREIGER:

11 Q When do you anticipate that there will be
12 funding for this project?

13 A Are you asking me the earliest time?

14 Q The earliest time, yes.

15 A All right. The earliest time, I would think,
16 would be if the Montgomery County Planning Commission
17 requested it through a project substitution by removing
18 five million dollars currently programmed for current
19 projects and adding this to the program for subsequent
20 act of the General Assembly to create the necessary
21 authority to expend funds.

22 Q Has PennDOT reviewed internally whether there
23 would be funds which could be deferred from another
24 project to this project?

25 A I have no authority to transfer to bridge

replacement. I have no legal authority to do that at the moment. Are you asking about budgeting or programming, now?

4 Q Budget.

5 A I have no authority legally by any act of the
6 General Assembly to spend ten cents on the replacement
7 of the Matsonford bridge.

8 Q Not until it is placed on a capital budget?

9 A That is correct. Now --

10 BY MR. KASHI:

11 Q Let me ask a question here: Are you stating
12 that the mandate given the Public Utility Commission that
13 it may impose orders to be followed by PennDOT for the
14 construction of bridges, reatoration and rehabilitation,
15 okay, that Legislative mandate, okay, is superseded
16 by this commission of twelve persons, who are made up
17 of twelve or four, rather, members of the Legislature
18 and various and sundry other commissioners, that their
19 wishes take priority over a Legislative order?

20 MR. ZAHN: What do you mean by a "Legisla-
21 tive order"?

22 MR. KASHI: That the Legislature has
23 ordered the P.U.C. That's who really ordered PennDOT
24 to take care of it. It is not the P.U.C. on its own.
25 It is by Legislative action that we are directed to make

these orders. You are saying that Act 120, in effect, supersedes that. Is that what you are telling me?

4 MR. ZAHN: I think you are asking this
5 witness for a legal conclusion.

6 MR. KASHI: To the best of his understanding,
7 is that what took place?

8 MR. ZAHN: I don't know that the witness
9 should give legal conclusions. Now, the P.U.C. is an
10 arm of the Legislature, but --

11 MR. KASHI: That's right.

12 MR. ZAHN: -- the Legislature has the final
13 say over incorporating this in the capital budget. But
14 I think the question, as posed, really calls for a legal
15 conclusion.

16 MR. KASHI: It probably does.

17 MR. ZAHN: I don't think the witness is
18 qualified to answer it.

19 MR. KASHI: Okay. I think it poses an
20 interesting question, though, between Act 120 --

21 MR. ZAHN: Yes. It does.

22 MR. KASHI: -- and the mandate given the
23 P.U.C. to make orders.

24 MR. ZAHN: Off the record.

25 (Off-the-record discussion)

BY MS. KREIGER:

1 Q When was the last capital budget approved
2 for PennDOT?

3 A December, 1974. That was a budget that was
4 submitted in 1972.

5 Q And this project is not included or recommended
6 for inclusion?

7 A No, ma'am.

8 Q Has this project ever been recommended?

9 A The reconstruction project?

10 Q The reconstruction project.

11 A No, ma'am.

12 Q Okay. Mr. Chiles, you did say you would verify
13 as to whether this project was ever on a capital budget
14 for any purpose?

15 A Yes.

16 Q You said you thought \$300,000 had been approved.

17 A But accidentally I didn't bring the budgets
18 with me or the budget, rather, containing the project,
19 but my recollection is that it was \$300,000 plus ten per
20 cent for design and six per cent for construction
21 inspection for bridge rehabilitation.

22 Q I would appreciate your verifying the exact
23 amount.

24 MR. ZAHN: I will send you a letter with
25 that information.

MS. KREIGER: Okay. The only reason that I ask that is that PennDOT's engineering witness, Paul Peterson, indicated that money in the neighborhood of \$655,000 was approved in order that PennDOT, at their initial cost and expense, could go ahead with repair.

MR. ZAHN: \$600,000 or so may have been a figure used but only \$300,000 for one portion of the project.

A The \$300,000 -- you see, the capital budget borrowing is bonds and shows only the bond amount but not whether the project is additionally Federally funded. It could be budgeted as a Federal project, in which case an additional amount would have been scheduled, making it higher than the \$300,000 I quoted you, which I think was the amount included in the budget.

BY MS. KREIGER:

Q How do you qualify for Federal funds?

A First, a project has to be on a Federal aid project route and the/ eligible under the Federal criteria.

Q Is this project?

A I would think so, yes. I believe it is on a Federal route.

Q Have Federal funds been applied for?

A No, ma'am. At least, not for the replacement. I am not sure of what we had done under the original

rehabilitation plan. I will have to check on that.

MR. ZAHN: Let me ask this for clarification: To get on as a Federal project, does a project have to be on the twelve-year program?

THE WITNESS: Yes, sir.

MR. ZAHN: Is that part of it?

THE WITNESS: Yes, sir.

BY MS. KREIGER:

Q Was the money which was approved for the rehabilitation project broken down within that project for specific purposes?

A Yes. There would have been a breakdown within the project. There would have been so much for construction, so much for land, and so much for design and administration. My recollection is that no land was required under the rehabilitation project, so nothing would have been budgeted for that.

Q Would the funds available or approved for design still be available to this specific project?

A No. The authority to design is to design a rehabilitation, not a reconstruction.

Q At what point in this proceeding, if you know, was PennDOT aware that money was not available for competition of the detailed construction plans and cost estimates pursuant to the Commission's outstanding order?

3 A We had become suspicious in late fall that
4 we were close to the obligation limit. I analyzed the
5 three existing budgets in jeopardy at that time and
6 advised the Deputy in mid-October, 1975, that we had
7 reached the limit on the three existing budgets.

8 Q October of '75 was that?

9 A Yes.

10 Q When would this project have been placed or
11 recommended for placement on the twelve-year program for
12 the upcoming capital budget?

13 A At that time we were in the process of
14 preparing an update of the program, which we completed in
15 October of last year.

16 Q You say you became aware funds were not
17 available in the fall of ^{1975?} ~~1976?~~

18 A Understand, I am telling you we had exhausted
19 the bond authority on the first three capital budgets.
20 Okay?

21 MR. ZAHN: And on the first three capital
22 budgets, this Matsonford bridge was in there for
23 rehabilitation for \$300,000?

24 THE WITNESS: That's correct.

25 BY MS. KREIGER:

Q Let me ask you this question: Since the
Department, after conducting the inspection, determined

1 that it would not be economically feasible to rehabilitate
2 the bridge and petitioned the Commission for modification
3 of its order, which was modified, requiring PennDOT to
4 prepare detailed construction plans and estimates in
5 twelve months, where did PennDOT anticipate getting funds
6 for preparation of plans in the upcoming twelve months
7 following the issuance of the order?

8 MR. ZAHN: That's giving him the date it
9 was done? I think you should tell him when that was.

10 MS. KREIGER: PennDOT filed a petition for
11 modification with the Commission on December 16, 1974,
12 and the Commission acted on that request on April 2, 1975.
13 They modified the order to direct PennDOT to prepare
14 detailed construction plans and cost estimates within twelve
15 months.

16 MR. ZAHN: The Commission ordered the twelve
17 months.

18 MS. KREIGER: But PennDOT had suggested
19 that in its petition for modification, if you have it in
20 front of you, specifically in the prayer to the petition
21 for modification.

22 A Presumably, I have to answer to your question, *but*
23 they anticipated capital budget action subsequent to that
24 time, but there has been none.

25 BY MS. KREIGER:

3 Q Well, at that time, either December 16, 1974,
4 or April 2, 1975, could PennDOT have anticipated a
5 capital budget approval in time to have plans completed
6 within a year?

7 A From April?

8 Q Yes. From April, 1975.

9 A Not under a normal budgeting cycle, no.

10 MR. ZAHN: It would be twelve months from
11 the date of an order of the Commission, which may take
12 six months or so to come out, but not as of the date of
13 the hearing.

14 BY MS. KREIGER:

15 Q All right. If the order was October 21st,
16 1975, could PennDOT reasonably have anticipated within
17 six months --

18 A That would have been possible if we had a
19 capital budget, but we did not.

20 Q But in order to have the project approved on
21 a capital budget, I would assume that there would be
22 steps to be taken to have it on a twelve-year program.
23 How long would that take?

24 A At the time -- I assume we are talking about
25 October of '75 --

Q That's right.

A -- at that juncture in time, based upon a

previous fiscal plan, the Matsonford bridge was included on a program at that time.

Q It was included?

A At that particular time. Subsequent to that, we have gone through a fiscal analysis done by the advisory committee, and our fiscal resources were decreased through an analysis that we can't afford this anymore. The State's share in funding was decreased almost seventy per cent.

Q When you talk about this budget, do you mean for 1975-76?

A I am talking about the fiscal analysis made by the advisors to develop a twelve-year program, a combination of anticipated Federal funds and bond funds to be made available by the General Assembly.

Q Going back to the initial question, when PennDOT made this request in December, 1974, anticipating an order not being issued for another six months, changing the nature of the project to construction, where would PennDOT have anticipated that the funds to prepare plans would have come from?

A They would have anticipated a budget submission in the fall of '75, effective at the beginning of fiscal year 1976-77.

Q Okay. Now, why wasn't it submitted?

1 A We didn't have a capital budget from the
2 General Assembly for fiscal years 1974/75, 1975/76, and
3 1976/77.

4 Q Was it recommended that this project be placed
5 on the capital budget?

6 MR. ZAHN: I think he has answered that.
7 The commission didn't place any priority on it or place
8 it on the twelve-year program. Isn't that what you said?

9 THE WITNESS: No. Mr. Zahn, in all fair-
10 ness, I think she means the budget which is pending before
11 the General Assembly, not the previous budgets in 1974,
12 '75, and '76.

13 MR. ZAHN: All right.

14 A You see, we were operating under the pie-in-the-
15 sky philosophy at that period of time. It is conceivable,
16 however, that there was a submission; but I will have to
17 check the records to see if there was a submission made
18 in those years that never reached fruition because the
19 General Assembly never passed ^gthe budget for this in those ✓
20 three years.

21 MR. ZAHN: Do you want that information?

22 MS. KREIGER: Yes. I do.

23 MR. ZAHN: We will search our records, and
24 I will include that in my letter to you.

25 MS. KREIGER: Okay.

BY MS. KREIGER:

1 Q Now, at the second Public Utility Commission
2 hearing, when this engineering witness testified that
3 preliminary plans for the construction of the Matsonford
4 bridge were in the process of being prepared, where would
5 funds have come from for the preparation of the preliminary
6 plans if they were for a construction project?
7

8 A I don't know at this juncture in time. I
9 don't.

10 Q Do you know if any funds were approved for the
11 preparation of the preliminary, detailed, or any other
12 plans for this project when it began?

13 A Specifically itemized funds, I don't know.

14 Q Would you be the person to ask, or would some
15 other witness have the information?

16 A It would depend upon how they were financing.
17 If they were financing under bond, I should know. If it
18 were under cash, then it would have to be Mr. Vovakes.
19 I don't deal in the current revenue projects.

20 Q If it were by cash, where would the funds
21 come from?

22 A Motor license funds.

23 Q And if it were capital project?

24 A If it is a line item, it is approved by the
25 General Assembly.

Q Has this project been approved by the General Assembly?

A No, ma'am. Not to my knowledge.

Q You don't mean, when you say --

MR. ZAHN: As a construction project?

A Not as a reconstruction project, that is.

BY MS. KREIGER:

Q So what you are saying is that legally, in your opinion, there couldn't be money approved from the cash budget or operating budget or motor license fund?

A On preliminaries, possibly, yes. You have to develop what the project would be, the possibility.

Q But nothing further than that?

A No.

Q Do you know approximately how much money would be needed to complete the detailed construction plans?

A To complete the plans?

Q For this particular project.

A Design is currently programmed at about \$524,000.

Q I mean for the preparation of detailed construction plans for this project.

A Normally we program at about ten per cent of construction to finalize final drawings.

Q So you estimate at this time the construction

of this project would be about \$5 million?

A About 5.2 million dollars.

Q This has increased since the last hearing by
4 about what --

5 A What was the last hearing date?

6 Q I guess it was April 2nd, 1975. I guess the
7 estimate then was 3.325 million.

8 A I am carrying ~~out a~~ program ^{Cost} of around 5.2 ✓
9 right now and --

10 Q I think you said you don't know, then, whether
11 any detailed construction plans have even been started?

12 A I don't know that. I would think not, but I
13 don't know.

14 MS. KREIGER: Okay.

15 BY MR. KASHI:

16 Q I would like to ask you one thing to get it
17 clear in my mind because I have just come in this case.
18 Here we have a situation where I believe PennDOT says,
19 "We have a bridge out there that needs to be rehabilitated--

20 MR. ZAHN: Reconstructed.

21 BY MR. KASHI:

22 Q -- " -- reconstructed, although initially it
23 was to be rehabilitated and restored," all right, and the
24 P.U.C. order says to go ahead and begin this. All right.
25 And at that time there is money, all right, to accomplish

1 this. All right. But it never goes ahead because
2 PennDOT says, "Wait a minute. We don't want to do this.
3 This should be reconstructed. It shouldn't be restored
4 and rehabilitated but reconstructed." All right. But
5 at the time they ask for that, they do not have the money
6 to do it. Okay. Then the money that was there for the
7 general rehabilitation was diverted to other projects.

8 MR. ZAHN: Within the capital budget.

9 BY MR. KASHI:

10 Q Within the capital budget. All right. But it
11 is diverted to other projects. Okay. You were asking for
12 something to be done at the same time that you knew you
13 didn't have the funds to complete it.

14 MR. ZAHN: I think you are making an
15 assumption.

16 BY MR. KASHI:

17 Q All right. I am wondering: Am I making an
18 assumption that it was known at that time, or was it
19 just that you thought, on the basis of anticipated
20 revenues, which just didn't come forward, that you would
21 be able to complete the project, the construction project?

22 MR. ZAHN: I think that Mr. Chiles in his
23 testimony stated that the budget does not provide the
24 money but only a means to get it.

25 MR. KASHI: To get the money?

MR. ZAHN: The Commonwealth or the Treasurer or the Governor is not going to borrow money in advance and pay interest on it until it is needed. I think Mr. Chiles testified that as these things come up, he notifies the Treasurer and says, "We will need so much money," and then the Treasurer has the bonds issued to make the money available for that project.

MR. KASHI: What I am trying to get at --

MR. ZAHN: Maybe Mr. Chiles --

THE WITNESS: I think --

BY MR. KASHI:

Q I am trying to get your understanding.

A I think, if I understand your question --

Q When you come in and say, "Let's restore and rehabilitate it," and you have the money, and then you change your mind and say you want to reconstruct --

MR. ZAHN: That's an engineering decision, that the most economical use of the money would be to rebuild rather than rehabilitation, which, in this instance, apparently was thought to be a waste of money.

A I will have to rely upon Mr. Peterson's judgment, and I know he is a splendid bridge engineer. But your question seems to go to our good faith in --

Q I didn't say that.

A I got the implication.

Q I didn't imply that.

A But once it went to a reconstruction project, the authority that may have existed with that budget no longer existed. Therefore, we probably utilized that authority for some other project with which we were proceeding. Secondly, your question was that you wondered why we asked for this when we didn't have the money. We have a contemplated twelve-year program, for which I do not have authority to proceed but with respect to which we anticipate getting authority to proceed. Since at that time we had the Matsonford bridge on the program existing at that time, we would contemplate its remaining on the program and that ultimately we would be granted the authority by the General Assembly to do that. That brings us to the present date. One, the General Assembly has not given us the authority to proceed with the replacement. Two, we do not have the project on the program, due to severe fiscal restraints.

Q But at one time it was on the twelve-year plan?

A Yes.

Q And subsequently it was removed by the wishes of --

A The combined wishes of the local authorities and the Transportation Commission.

1 MR. ZAHN: He referred to PennDOT in the
2 question, though, and it wouldn't have been considered
3 further unless it were in the twelve-year program, would
4 it?

5 THE WITNESS: As I recall, in the early
6 part of my testimony I stated that we have a wish list
7 from all over the Commonwealth, and the amount of that
8 now, estimated, is ¹⁷~~18~~ billion dollars, but now we can ✓
9 only fund approximately ^{3.7}~~3.6~~ billion dollars of ^{Construction} ~~that over~~ ✓
10 the twelve years.

11 MS. KREIGER: I have one more thing.

12 BY MS. KREIGER:

13 Q I don't know if you know this. But is there
14 any kind of emergency or special fund set up to cover
15 in the budget or by some Legislation of some kind or
16 special approval that can be given in the middle of the
17 fiscal year?

18 A You mean for bond authority?

19 Q Yes.

20 A No. This doesn't exist. Now, I might say
21 at this juncture that the Constitution of 1968 and the
22 Debt Facilities Enabling Act prohibit entry into the
23 capital budget of anything that is not specifically item-
24 ized. We have sought Legislation permitting the entry
25 in the budget ^{for} with bond authority of ~~something~~ for ✓

emergency-type work but have not been successful in achieving our goal so far. I will agree that would be nice to have, but we don't have it yet.

1 MS. KREIGER: I have nothing further.

5 BY MR. PHIPPS:

6 Q I have a few questions.

7 Who has final authority for determining
8 the twelve-year program?

9 A The final authority for that determination
10 rests with the Transportation Commission, based upon the
11 ultimate recommendations of the members themselves and of
12 the Department.

13 Q Isn't the action of the Transportation Commis-
14 sion only advisory?

15 A Not according to the way I read Act 120, which
16 states, in part, that programs so adopted by the commis-
17 sion shall not be changed except by the commission.

18 Q Are you saying that PennDOT or the Governor
19 couldn't order something done, a project started, without
20 the Transportation Commission's approval?

21 A Not on the twelve-year capital improvement
22 program.

23 Q Could they in another program?

24 A Conceivably. But there is no money. Our
25 current revenues are insufficient even for mandates.

1 Q You say that the wishes of the Montgomery
2 County Planning Commission were one factor in determining
3 whether to put the project in the twelve-year program?

4 A That's right.

5 Q But that's an advisory body.

6 A That's right.

7 Q You can take it or leave it, and you do not
8 have to comply with their wishes.

9 A The commission opted to seek their advice and
10 develop the program in accordance with the local wishes.

11 Q But it is just a recommendation that emanates
12 from the Montgomery County Planning Commission. Is that
13 right?

14 A The priorities were as recommended by the agency.

15 Q But does the Transportation Commission, PennDOT,
16 have to accept the Montgomery County Planning Commission's
17 recommendations?

18 A Not PennDOT, no.

19 Q I think you said PennDOT is obligated to accept
20 the recommendations of the Transportation Commission.

21 A The way I read the law, yes.

22 Q That's a legal question, so that may be unfair.

23 A I think it is.

24 Q Is there any money allocated or projected or
25 budgeted or available for the repair or rehabilitation of

the bridge?

A Not to my knowledge for the rehabilitation.

Q How about --

A Not the original project as envisioned.

Q -- repairs and renovations which are needed?

Is there anything allocable for that?

A I don't know offhand. I thought we were in the process of talking about attempting to replace the bridge.

Q Would you know whether there were funds available for that or not?

A No. I do not.

Q Would they have to be in the budget?

A A maintenance-type budget, such as you are describing, for a repair would have to carry that as a line item project if it involved more than \$500,000 in cost.

Q But if it were less?

A If it were less, it would not necessarily be made a line item project if it were financed solely as a repair and from current revenue.

Q Do you know of any action PennDOT has taken to comply with the P.U.C. reconstruction order?

A The record is clear. We initiated the study of the project and concluded by believing rehabilitation

was not economically feasible and that we should replace the bridge, and we advised the P.U.C. to that effect.

Q And asked for an order to replace it?

A That's right.

Q After the order of October, 1975, by the P.U.C. to PennDOT to reconstruct the bridge, did PennDOT do anything to comply with the order?

A I will have to search the records to find if when it was on the program, we ever submitted the project for further capital budget action to implement the criteria. I can't answer that at this point in time.

Q Then would it not have been put on the twelve-year program --

A If we had submitted it, it would have been at that time.

Q On a twelve-year program?

A Yes.

Q But you are not sure whether PennDOT --

A In ^{that} ~~this~~ interval of time, we were operating on a hypothetical of approximately \$500 million dollars a year in lettings, but now we operate on approximately \$220 million dollars in lettings, less than half.

Q If you had wanted to go full blast to implement the P.U.C. order, what would you have done?

A The first thing you have to do to go full blast

is to get Legislative approval to expend money for that particular project, whether it be motor license or bond.

4 Q You do not first have to try to get it on a
twelve-year program?

5 A Presumably you have it on there to try to go
6 full blast.

7 Q But at the time PennDOT came before the P.U.C.
8 and asked for an order to reconstruct the bridge, do you
9 know if it was on a twelve-year program?

10 A As I recall, it was.

11 Q And subsequently it was taken off the twelve-
12 year program?

13 A Yes.

14 Q Do you know how it came to be taken off?

15 A Fiscal restraints.

16 Q Exercised by whom?

17 A Exercised by the Transportation Commission.

18 Q Well, when you exercised that fiscal restraint,
19 there was certain discretion you had.

20 A I don't understand you.

21 Q When you say you exercised fiscal restraint,
22 are you saying PennDOT had the authority or the discre-
23 tion to decide which projects it would be necessary to
24 cut out and which to continue?

25 A In conjunction with the commission. In

setting the ground rules, we would solicit and use the local priorities in the development of the program.

1 Q But the fiscal restraint you said was exercised
4 by the Transportation Commission.

5 A Yes. It was analyzed by the advisory commis-
6 sion, said by law to be advisory to the Secretary of
7 Transportation, and the Transportation Commission conducted
8 a review of PennDOT's fiscal resources available, and
9 their advice was that we should expend no more bonds for
10 capital construction since we were already in hock about
11 \$2 billion and that we should give consideration to
12 halting the entire capital program. Subsequent meetings
13 and discussions led to the conclusion that economically,
14 for the well-being of the Commonwealth, we couldn't cut
15 it back to, you know, nothing, but it was agreed to go
16 forward at about \$100 million a year in bond authority
17 for new project starts, and this would allow us to
18 just about match the Federal dollars we anticipate
19 receiving each year.

20 Q Was this transportation advisory committee
21 which exercised the fiscal restraints apprised of the
22 outstanding P.U.C. order mandating PennDOT to recon-
23 struct this bridge?

24 A Wait a minute. That commission studied only
25 fiscal resources but not specific projects.

3 Q Was the Transportation Commission made aware
4 of the fact that the P.U.C. had issued this order to
5 reconstruct the Matsonford bridge at the same time that
6 they were developing the twelve-year program?

7 A Yes.

8 Q By whom?

9 A By me.

10 Q Did you directly recommend that this project
11 be carried forward, this reconstruction of the Matsonford
12 bridge?

13 A The original phase of the program that you are
14 talking about involving reconstruction contained twenty-
15 eight projects, of which this was one, for consideration.
16 It was clearly defined as to what it was and the reason
17 for the project.

18 Q Not for consideration. But did you ever
19 affirmatively recommend this Matsonford bridge to be
20 put in the budget?

21 A I am trying to think of just how that was
22 worded to them. First, yes. I have to answer your
23 question "yes". It was pointed out that this was a
24 situation as to the Matsonford bridge that involved a
25 P.U.C. order. The commission deliberated over the price
and considered all of the projects on there and did not
include it on a program.

Q And that was the death knell for the project as far as PennDOT was concerned?

A As far as that round of programming was concerned The Matsonford bridge, at the request of the Montgomery County Planning Commission, can be put back on the program March 1st at our next meeting if they so desire and indicate that they believe \$5 million on something else can come off the program to include this project.

Q Do I understand that PennDOT does not have the legal authority to carry out the P.U.C. mandate without the concurrence of the Montgomery County Planning Commission or the Transportation Commission?

A That's a legal question, and I am not all that familiar with the Public Utility Law, Mr. Phipps --

Q Let me get at this in another way.

A -- as to just exactly what it does say.

Q Let me ask you the question in this way: Are you saying that PennDOT cannot carry out any capital improvement program without the concurrence of the Montgomery County Planning Commission and the Transportation Commission?

A We could carry out what the ^{Transportation} Commission decides. The commission has brought in the county planning commission in partnership. At any meeting the Transportation Commission, by majority vote, could eliminate the

county planning commission, if they so desired --

Q I see.

A -- but this is their own internal working at the present time.

Q All right. Now, maybe I am repeating myself, but again: What affirmative action did PennDOT foster to put this thing in the capital budget?

A I still can't answer without the records.

Q You don't know?

MR. ZAHN: Is it not a fact that you recommended the project to the commission, but they chose not to --

MR. PHIPPS: You mean to be considered by the commission, but my question is anything that PennDOT did to --

A In deference to the orders of the Public Utility Commission, P.U.C. orders are given deference higher than many that are on the program right now.

BY MR. PHIPPS:

Q But not this one. When you recommended to the Transportation Commission, did you assign a priority?

A It was pointed out that there is a structural deficiency in the bridge.

MS. KREIGER: Excuse me for interjecting. I think it would be very helpful for you to supply us

with a copy of your recommendation to the Transportation Commission regarding the priority to be given to the P.H.C. project.

1 MR. ZAHN: First, let me find out whether,
2
3 in making your recommendations, you gave priorities to
4 the commission. In any case, if you recommend eighteen
5 projects, do you give any priority to any of the eighteen
6 that you recommend?
7

8
9 THE WITNESS: The total program, as it
10 went to the commission, was given them in a priority
11 order.

12 MR. ZAHN: I see.

13 THE WITNESS: Now, I will have to check
14 just exactly which way this Matsonford bridge was
15 presented to the commission. My recollection is that
16 it was presented to them on October 6th with a group
17 of projects statewide which were under consideration.

18 MS. KREIGER: Okay.

19 THE WITNESS: My recollection is that it
20 went to the commission under a separate list of projects
21 for inclusion in the program.

22 MS. KREIGER: We would appreciate it if
23 you would supply a copy of your list of priorities and
24 your particular recommendation to the commission.

25 MR. KASHI: That was October 6th?

MS. KREIGER: '76, I guess.

MR. PHIPPS: I have nothing further.

THE ADMINISTRATIVE LAW JUDGE: Are you

4 through with this witness?

5 MS. KREIGER: Just a moment.

6 (Off-the-record discussion)

7 MS. KREIGER: I have a few more questions.

8 BY MS. KREIGER:

9 Q First, this project was initially placed on
10 the Commonwealth's twelve-year program as a repair and
11 rehabilitation project?

12 A Yes, ma'am.

13 Q What caused or what could have caused this
14 change of heart or reconsideration by the commission
15 when it came up for reconstruction? What would have made
16 them change their minds as to where it should be placed,
17 when once it was repair and rehabilitation but now
18 it is reconstruction, to decide, "We do not think it
19 warrants being placed on the program anymore"?

20 A You have an interesting --

21 MR. ZAHN: That asks him to respond as to
22 the mental processes of the commission members.

23 MS. KREIGER: Okay.

24 BY MS. KREIGER:

25 Q Did they indicate why they changed their minds

with respect to the project being placed on the twelve-year program?

A The only reason why this project was removed from the program currently existing was cost limitations. The commission regretfully removed \$4 billion from the program, among which were many good projects. There was nothing the matter with the Matsonford bridge project, nothing at all.

Q Could PennDOT legally or has it ever requested in a capital budget an open-ended amount of money to apply to P.U.C. work?

A I previously addressed that issue. That would be part of the Legislation we have sought but not been able to get yet.

Q What, if anything, does PennDOT do when an emergency situation comes up on one of its own projects?

A It depends upon the extent. If it is a small amount, we internally have to shift our budget around to provide the necessary funds for maintenance. If it is larger, we have no authority under the law to --

MS. KREIGER: Nothing further.

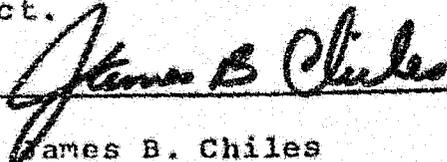
MR. ZAHN: Thank you.

(The deposition concluded at 3:15

o'clock, p.m.)

(I, James B. Chiles, do hereby acknowledge

that I have read the above and foregoing pages and have made any additions, deletions, corrections, or interlineations I deem necessary in my own hand, initialing each such, and I represent that the same, as now added to, deleted from, corrected or interlined, is full, true, and correct.

with correction as noted 
James B. Chiles

JAMES VOVAKES, called as a witness by the Pennsylvania Public Utility Commission, having been duly sworn, was examined and testified as follows:

BY MS. KREIGER:

Q Would you please state your name and business address for the record?

A James Vovakes, 1216 Transportation & Safety Building, Harrisburg, Pennsylvania.

Q Are you authorized to testify today on behalf of the Department?

MR. ZAHN: Yes. He is.

MS. KREIGER: Okay.

BY MS. KREIGER:

Q Will you briefly state your functions and responsibilities with the Department?

A I am Director of the Bureau of Fiscal Management

1 One of my functions is co-ordination of budget prepara-
2 tion and administration. Some of the budget preparation
3 and administration is in certain specialized hands, also
4 within the Department, such as the capital budget in the
5 Bureau of Economic Research and Programming and the
6 maintenance budget in the hands of the Bureau of
7 Maintenance. But I think that you are interested in
8 the development and administration of the budget.

9 Q Okay. You say you are in charge of the
10 maintenance budget?

11 MR. ZAHN: No. He didn't say that.

12 MS. KREIGER: I'm sorry.

13 A We have certain staff support functions
14 supplied in these areas. We have quite an integrated
15 team in the budgeting system, which requires a great
16 deal of detail, which is administered by the people whom
17 I mentioned.

18 BY MS. KREIGER:

19 Q What funds other than capital budget funds
20 are available for PennDOT's use?

21 A We have appropriations from the general fund,
22 from the motor license fund, from the lottery fund,
23 from the highway beautification fund, from the aviation-
24 restricted revenue account, which I think covers it, in
25 addition to the bond funds.

3 Q Now, are these funds committed to a specific
4 purpose?

5 A The Commonwealth, of course, appropriates the
6 money in appropriations providing that the monies are
7 for a certain purpose.

8 Q By the "Commonwealth", do you mean the
9 Legislature?

10 A The Legislature.

11 Q How general is the specific purpose for which
12 they are appropriated?

13 A Well, in the highway program we have essentially
14 five appropriations: We have a general government
15 appropriation, which takes care of administration, house-
16 keeping services; we have an appropriation that is for
17 highway construction; we have an appropriation for highway
18 maintenance; we have another appropriation for the
19 maintenance of the secondary road system; and we have
20 an appropriation for safety and licensing administration,
21 which is basically to pay the costs of the Bureau of
22 Motor Vehicles and the Bureau of Traffic Safety, the
23 licensing function of the Department.

24 Q Within these general headings, someone in the
25 Department would be responsible for budgeting of these
26 funds for more specific purposes, for specific projects?

27 A Yes. In the budget preparation, we have a

decentralized budget system, and each organization, central office^x bureau, or district office or county office annually prepares a budget request that comes in to the Bureau of Fiscal Management. That is in accordance with our budget preparation management on our automated system. We assemble the budget and send it to an executive budget committee, which makes decisions and recommendations to the Budget Secretary, and then, of course, to follow through with the procedure, the Budget Secretary makes recommendations to the Governor and the Governor to the General Assembly, and the General Assembly enacts the budget, and then we move off on a spending plan.

Q Who sets up the priorities?

A Well, we are talking about a very large, complex transportation program. Now I have to ask you: What priorities? You have the highways; you have aviation; you have mass transportation; you have highway beautification. Then we have to consider capital v. operating. So could you narrow your question down a little?

MR. ZAHN: Could we confine our questions to capital programs? I think that's what's involved in the Matsonford bridge.

MS. KREIGER: I would like to know what other funds are available, too.

MR. ZAHN: I think Mr. Vovakes is trying to answer your question, but it is very broad.

BY MS. KREIGER:

4 Q Okay. Let me ask you this question: For
5 instance, when you internally budget or when you inter-
6 nally determine what uses should be made of the funds,
7 are there any priorities that you consider, for instance,
8 with respect to a highway improvement project?

9 A Well, the highway capital improvements are
10 under the support of or under the control or respon-
11 sibility of the Bureau of Economic Research and Program-
12 ming. Annually we put out a call for our budget. The
13 capital budget laws of the Commonwealth require annually
14 that the Governor submit a capital request to the General
15 Assembly each year to be enacted, which is our authoriza-
16 tion to proceed with the projects. Internally in the
17 Department Mr. Chiles, who testified earlier, has
18 probably told you about his functions, but just to give
19 you a run-through on it, his bureau inventories highway
20 needs and recommends action to the State Transportation
21 Commission, which is a body set up in the law to develop
22 a twelve-year transportation program for the Commonwealth,
23 which is updated every two years, and they inventory the
24 State's needs through the public hearing process and
25 through various methods to determine what the needs are,

and annually they select from the twelve-year program adopted what they consider the most urgent in the planning process, which are submitted to the Budget Secretary for inclusion in the capital budget for the next year.

Q You mentioned there is a highway maintenance fund.

A There is an appropriation.

Q An appropriation?

A Actually there are two highway maintenance appropriations, one for secondary highways and one for general highway maintenance purposes.

Q Are there funds which have been particularly committed for use on the Matsonford bridge project for maintenance?

A Would you fly that by again?

Q Have there been funds specifically designated or committed by the Department for use on this particular project, the Matsonford bridge, for maintenance purposes?

A No.

Q No. How does the Department determine their budgeting of this highway maintenance fund?

A Well, the highway maintenance process of determining what the annual needs are follows this pattern: We have what we call a highway facilities

1 inventory, so we know how many different lane miles of
2 different types of highways we have to maintain, we
3 know how many acres of right-of-way must be mowed, how
4 many miles of stripes put down the highway and how often,
5 how many miles of drainage features must be cleaned
6 each year, we know the tunnels we have to maintain, and
7 these are the features of the highway system that are
8 inventoried. Next, the engineers have developed a method
9 of determining the annual demand requirements of the
10 highways, such as how often to paint stripes, how often
11 with respect to certain types of surfaces must you go in
12 and resurface roads, how often must you go wash the
13 signs and other activities. From that we have the
14 planned ^{productive} program units, the PPU's, as to what they will ✓
15 accomplish in each year. When you come up with a PPU,
16 you determine how much patch material to put down, how
17 many miles of stripes are necessary, all specific units,
18 which are priced out based upon cost accounting standards,
19 and we have a system that tells us how much it costs
20 per unit to do those things. Then --

21 Q I think --

22 A -- from this methodology we compile the budget
23 for the next year.

24 Q -- I will ask you this question: If there is
25 an outstanding P.U.C. order requiring the Department

maintain a certain portion of highway, is it also budgeted?

1
2
3
4 A Well, under this method of determining what
5 your needs are, the process at that point does not lend
6 itself to exact identification of what bridge or perhaps
7 what stretch of road you will resurface. We know,
8 mathematically speaking, that certain miles of road must
9 be resurfaced or what-have-you.

10 Q In other words, once you recommend the amount
11 of money you need, internally you can allocate it to
12 whatever you determine is necessary?

13 A Yes. This is later in the process, after the
14 initial requesting and determination of the budget. Then
15 the Bureau of Maintenance, with their engineers, has a
16 system of program ^{approvals} approaches that they obtain from the
17 county maintenance organizations. We ask them to submit
18 on certain forms the exact, specific work they want to
19 accomplish in the next year. Then we have to identify
20 station to station the locations of the bridges and so
21 forth that are to be done with the repair funds.

22 Q Okay. Thank you. Now, do you know approxi-
23 mately or exactly how much PennDOT's operating budget
24 was for 1976-77?

25 A Well --

Q It would have been 1975-76, wouldn't it?

1 A 1975-76 is complete, and we are right now
2 in 1976-77.

3 Q Okay. For 1975-76, then.

4 A For 1975-76 you want the total. Is that right?

5 MR. ZAHN: If you know.

6 A Approximately one and a quarter billion dollars.

7 BY MS. KREIGER:

8 Q And has all that money been used at this time?

9 A It has all been committed to certain activities.

10 Q Internally?

11 A Yes. In the budgeting process, we enter into
12 contracts and purchase orders. We are well underway to
13 spend the budget this year.

14 Q Now, is the upcoming budget 1976-77?

15 A We are in 1977-78.

16 Q Okay. Do you anticipate any uncommitted
17 funds in the 1977-78 operating budget?

18 A The Governor submitted the budget to the
19 General Assembly at 1:00 o'clock today. It says that
20 we require a two cent a gallon increase in the fuel tax
21 effective January 1, 1978, in order to accomplish what
22 we consider to be the M-2 maintenance program level
23 on our highways and also to be able to initiate highway
24 construction improvement at the rate of \$100 million
25 a year in bond funds. In other words, the budget has

1 been constructed so that we will be able to do those
2 things that must be done every year to maintain the
3 highways properly. The M-2 level provides for catching
4 up on a backlog from years past within the next twenty-
5 five-year period. That's the M-2 level.

6 Q Once the money is approved, you determine how
7 it is used within the general and specific headings for
8 which it is designated?

9 A Within the highway maintenance program, the
10 work has to be determined, what specific stretch of
11 highway to resurface and so forth, yes.

12 MR. ZAHN: You are talking about maintenance
13 funds in your question, now, not capital improvements?

14 MS. KREIGER: That's right.

15 MR. ZAHN: Okay. Just so we understand
16 that.

17 MS. KREIGER: Yes. Well, we are not talking
18 about just maintenance funds.

19 BY MS. KREIGER:

20 Q Are there any uncommitted funds that you
21 anticipate in the upcoming budget, for instance, maybe
22 in construction funds?

23 A In construction, the capital budget law requires
24 that the projects be specifically identified under the
25 Capital Budget Act. That prevents surplus or reserves

being placed in there.

Q Okay. One other question: PennDOT's engineering witness at the April 2nd, 1975, hearing, Paul Peterson, testified at that point PennDOT was involved in preparing preliminary construction plans for the purpose of this project.

MR. ZAHN: The rehabilitation project.

MS. KREIGER: No. Reconstruction.

BY MS. KREIGER:

Q I am wondering: Did you specifically approve, or do you know of any specific approval of funds for the purpose of preparing these preliminary plans?

A No. This is an area that is decentralized into the Bureau of Economic Research and Programming. In accord with the projects as approved in the Capital Budget Act, they, then, approve the initiation of the project.

Q I asked that because Mr. Chiles did state that he was not aware of any such approval. I thought that perhaps it had been approved out of some other fund.

A I am not aware of it.

Q In other words, approval for funds for use for preliminary plans, if it is a capital project or even if it is a construction project, must be approved

by the Bureau of Economic Research and Programming?

4 A I suspect he was referring to the fact that --
5 before a project gets into that capital budget, you have
6 to make a preliminary feasibility and ^{location} ~~locality~~ study to
7 come up with a cost estimate and describe the project
8 and so forth. There are engineers on the staff who
9 perform this kind of administrative task in developing
10 the projects. Then they give it to the Transportation
11 Commission, who adopts it on the program, and then it
12 goes into the capital budget account and proceeds to the
13 design stage.

14 Q Where do you get the preliminary funds to do
15 this?

16 A This is out of the internal budget from the
17 motor license funds, current revenues, in an administra-
18 tive step providing for this kind of activity.

19 Q So this internal staff would basically make
20 the determination as to whether funds should be approved
21 for these preliminary --

22 A Well, they do not make that determination.
23 That comes up with the analysis which is submitted to
24 the Transportation Commission. I am sure Mr. Chiles
25 went over the county planning process with you as to
projects marked high, low, or medium, and there is an
obligation by the commission to take the highest-risk

1 priorities and program those. From that group, the
2 projects are selected for capital budgeting.

3 Q I understand that. I am asking you where
4 the preliminary funds, prior to the inclusion in the
5 capital budget, come from.

6 A Those are in-house costs. We have funds on
7 board to do those things. You have to have that kind of
8 administrative step taken to determine the projects you
9 want to consider.

10 Q And the funds for that come from your general
11 operating funds?

12 A That's right.

13 MS. KREIGER: Nothing further.

14 MR. PHIPPS: No questions.

15 MR. ZAHN: I have no questions.

16 (The deposition concluded at 3:45 o'clock,
17 p.m.)



18
19 With corrections and additions
JAMES VOVAKES

20 I, James Vovakes, acknowledge that I have
21 read the above and foregoing pages and have made any
22 additions, deletions, corrections, or interlineations
23 I deem necessary in my own hand, initialing each such,
24 and I represent that the same, as now added to, deleted
25 from, corrected, or interlined, is full, true, and correct.

THE ADMINISTRATIVE LAW JUDGE: Is there anything further, then?

4 Do you waive the signatures of the witnesses
5 to the transcript?

6 MR. ZAHN: No. We do not. I think that
7 Ms. Kreiger will make a statement about that for the
8 record.

9 THE ADMINISTRATIVE LAW JUDGE: Surely.

10 MS. KREIGER: I think the parties have
11 agreed that copies of the testimony taken here today
12 will be filed with the Public Utility Commission, an
13 original and one copy, with copies being sent to any
14 parties requesting copies, on Friday. At that point,
15 the parties will --

16 MR. ZAHN: Review the testimony, and if it
17 is correct, they will sign it.

18 THE ADMINISTRATIVE LAW JUDGE: I understand.
19 Surely. Shall we have a copy for the Administrative
20 Law Judge presiding, Mr. Pallastrone?

21 MS. KREIGER: My understanding is that
22 the original and one copy are to be filed with the
23 Public Utility Commission. For discovery I don't think
24 it is appropriate to submit transcript to Judge
25 Pallastrone at this time. It is only for the purpose
of discovery.

THE ADMINISTRATIVE LAW JUDGE: I thought he should have an opportunity to review it. But never mind. All right.

MS. KREIGER: But, as I said, this may not be submitted as part of the record.

(Adjourned at 3:45, p.m.)

CERTIFICATE

COMMONWEALTH OF PENNSYLVANIA:

C O U N T Y O F D A U P H I N :

I, Carolyn A. Sherwood, a notary public in and for the Commonwealth of Pennsylvania and a Certified Shorthand Reporter, do hereby certify that the foregoing depositions of James B. Chiles and James Vovakes were taken on behalf of the Public Utility Commission before me in Room 118, North Office Building, Harrisburg, Pennsylvania, on the 15th day of February, 1977; that the witnesses were duly sworn before the commencement of their testimony; that the testimony of the said witnesses was written out under my direction; that the parties as set forth on page 2 of said transcript were represented by counsel during the taking of said proceeding; that said testimony was taken at the aforementioned place and was commenced at 2:00 o'clock, a.m., on the 15th day of February, 1977, and concluded

on the same date at 3:46 o'clock, p.m.; that the signatures of the witnesses may be had to the transcript in the file room of the Public Utility Commission, North Office Building, Harrisburg, Pennsylvania; that I am not related to or employed by either or any of the parties of record or their attorneys or agents or interested, directly or indirectly, in the matter in controversy, either as counsel, attorney, agent, or otherwise.

In witness whereof I have hereunto set my hand and affixed my seal of office at Harrisburg, in Dauphin County, this 17th day of February, 1977.

Carolyn A. Sherwood, Certified
Shorthand Reporter -- Notary Public

My Commission expires March 1, 1978

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June 16, 1977

C. 19707

Thomas C. Sadler, Esquire
Morgan, Lewis & Bockius
2100 The Fidelity Building
Philadelphia, Pennsylvania 19107

Department of Transportation of the Commonwealth of
Pennsylvania

v.
Reading Company, Borough of Conshohocken, Borough of West
Conshohocken and County of Montgomery

Dear Mr. Sadler:

Receipt is acknowledged of three copies of a
statement, received in this office June 1, 1977, filed on
behalf of Philadelphia Suburban Water Company in lieu of a
brief in the above entitled proceeding, together with
certificate of service of copies having been mailed to all
parties of record.

The statement will receive the Commission's attention.

Very truly yours,

for C. J. McElwee
Secretary

cc: Law Bureau - w/copy of statement
Bureau of Transportation - w/copy of statement

CKG:cc

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

DOCUMENT
FOLDER

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
HARRISBURG 17120

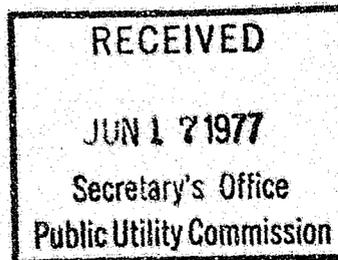


Office of Chief Counsel

IN REPLY REFER TO

June 17, 1977

C. J. McElwee, Secretary
Pennsylvania Public Utility Commission
North Office Building
Harrisburg, Pennsylvania 17120



Re: Complaint Docket No. 19707
Montgomery County

PLP ICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

Dear Mr. McElwee:

Attached hereto is an additional copy of the original, corrected depositions of James B. Chiles and James Vovakes.

I hereby certify that a copy of these original, corrected depositions taken by the Pennsylvania Public Utility Commission in relation to the above-captioned complaint has been sent to the parties of record listed on the attached sheet by mail on this date, or previously with transmittal letter dated June 13, 1977.

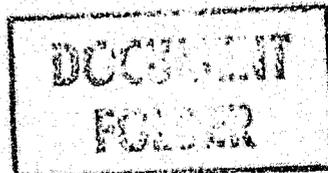
We hereby request that the depositions be marked for identification as PennDOT's Exhibit No. 6 and we further move for their admission into evidence as authorized by 1 Pa. Code §35.128. In order to permit all parties to review depositions before the filing of brief, we concurrently request that the Commission extend the time within which briefs must be filed to within ten (10) days after receipt of said PennDOT Exhibit No. 6.

Very truly yours,

Herbert G. Zahn
Assistant Attorney General

220/HGZ:rmm
Enclosure

cc: K. W. Walker, P.E., Chief Utility Engineer
District #6-0
Parties of Record - Page 2



PARTIES OF RECORD

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Pennsylvania Public Utility Commission

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Norristown, Pennsylvania 19404

Lockwood W. Fogg, Secretary
Trustees of Reading Company
One Plymouth Meeting
Plymouth Meeting, Pennsylvania 19462

John Storch, P.E.
Pennsylvania Public Utility Commission Engineer

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED
1977
CO
PENNSYLVANIA COMMISSION

Department of Transportation of the Commonwealth of Pennsylvania

v.

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

Complaint Docket No. 19707

DUPLICATE RECORD,
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

Depositions* of James B. Chiles and James Vovakes, taken on behalf of the Pennsylvania Public Utility Commission, before Carolyn A. Sherwood, Certified Shorthand Reporter - Notary Public, Nicholas Dobosh, Esq., Administrative Law Judge, presiding, in Room 118, North Office Building, Harrisburg, Pennsylvania, on Tuesday, February 15, 1977, beginning at 2:00 o'clock, p. m.

DOCKETED

DOCKETED
COMPLAINT DOCKET

JUL 15 1977

*Index is at rear of volume.

APPEARANCES:

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CANDACE N. KREIGER, ESQ.
and
GEORGE KASHI, ESQ.
North Office Building
Harrisburg, Pennsylvania
For - Pennsylvania Public Utility Commission

HERBERT G. ZAHN, ESQ.
Pennsylvania Department of Transportation
Capital Associates Building
Seventh and Forster Streets
Harrisburg, Pennsylvania
For - PennDOT

WALTER PHIPPS, JR., ESQ.
312 Fayette Street
Conshohocken, Pennsylvania 19428
For - Borough of Conshohocken

Also Present:

LOUIS G. COCHERES, ESQ.
KENNETH W. WALKER, P.E.
JOHN STORCH

THE ADMINISTRATIVE LAW JUDGE: I understand that we are convened today for the purpose of taking depositions upon oral examination of James Vovakes and James Chiles, the Director of Fiscal Management and the Director of the Economic Research and Programming, respectively, of the Department of Transportation of the Commonwealth of Pennsylvania, pursuant to the request of the staff of the Pennsylvania Public Utility Commission and granted by the Honorable Rudolph S. Pallastrone, the presiding Administrative Law Judge. I also understand that the Department of Transportation has no objection to the taking of depositions and has agreed to waive the ten days notice requirement in accordance with 1 Pa. Code Section 135.46.

MR. ZAHN: Judge, may I add to that that the Department, in waiving any objection, is only too happy to co-operate with the Commission in bringing out the facts that the staff would like to know in these matters, and we have waived our right of notice and all formalities except that we do not waive our right to make corrections to the transcript of the notes of testimony.

THE ADMINISTRATIVE LAW JUDGE: I agree with that concept a hundred per cent. I think that a sister agency should be co-operative.

MS. KREIGER: I think we should like to move

for sequestration.

MR. ZAHN: You want the witnesses sequestered? No problem.

(Off-the-record discussion)

(The first witness was duly sworn)

JAMES B. CHILES, called as a witness by the Pennsylvania Public Utility Commission, having been duly sworn, was examined and testified as follows:

BY MS. KREIGER:

Q Mr. Chiles, I guess probably to begin with maybe, if the reporter does not have it, you would like to state your name and address for the record.

A I am James B. Chiles. Do you want my home or my business address?

Q Business.

A Room 915, Transportation and Safety Building, Harrisburg.

Q And what is your position with the Department?

A I am the Director of the Bureau of Economic Research and Programming.

Q What is your function?

A My function is to develop fiscal plans for capital programming and to co-ordinate and set up a twelve-year transportation program for the Commonwealth

and based upon our estimate ^{of} ~~and~~ the resources available, we then develop a list of projects known as the twelve-year program. From this list or program of the priorities agreed to by the District Engineers and the county planning commissions and the Transportation Commission, we develop an annual capital budget implementing the projects in systematic and priority order.

Q What are your criteria for determining what the priorities are?

A The Department, primarily the district engineers, will assign priority according to structural deficiencies, completion of missing links, and so on. For instance, if we have proceeded with a project and we have seven miles of an eight-mile highway built and need one more mile, they will normally assign a relatively high priority to finish the link so that the whole road is usable. The engineers look at not only structural deficiencies but the development of new projects and the development of safety-type projects.

Q In determining the priorities, where would a P.U.C. project be placed on that list of priorities where specifically PennDOT has an outstanding obligation?

A Normally a structural deficiency -- and the P.U.C. deals primarily in structural deficiencies -- as far as the Department is concerned, would rank relatively

high.

Q What kind of projects would rank higher?

A What we call a safety-type project or a high-accident location, for example, an intersection where we are experiencing from a hundred to a hundred and fifty accidents a year and where we can make some improvement to eliminate that.

Q Could you explain in a little more detail this Commonwealth twelve-year highway program?

A Yes. In the formation of PennDOT by Act 120 of the Session of 1970, it was dictated to the Department to develop on even-numbered years a six-year transportation improvement program. This portion of the Act was amended in 1974 to extend the period to twelve years instead of six. It is by Act of the General Assembly that this is done.

Q A request must be placed on the program before it is submitted for approval in the capital budget?

A Yes, ma'am.

Q Who makes the recommendation as to what projects are so submitted?

A It starts with me and proceeds to the Deputy Secretary for Highway Administration to the Secretary to the Budget Secretary and to the Governor.

MR. ZAHN: And finally the Legislature?

THE WITNESS: Finally to the General

Assembly.

BY MS. KRIGER:

Q Where does the Transportation Commission come in?

A The Transportation Commission comes in, in the development of the program from which the projects are selected for budget submission.

Q Now, is it also required by this Act of the Legislature that there be a Transportation Commission?

A Yes, ma'am. It clearly defines that there shall be thirteen members of the panel, strictly bipartisan, that is, there is an equal ^{number} amount from both political parties, and so on. For example, certain members are appointed by virtue of being on transit authorities, and one member must be from Allegheny County and one, from the City of Philadelphia.

Q Who are the other members?

A Two are members of the Senate. One is the chairman of the, I believe it is still called, Highway Committee -- I don't know if they have changed that to Transportation or not -- and the ranking minority member of the Senate, ^{Highway Committee} the chairman of the House Transportation Committee and the ranking minority member, and there are two transit members and six members at large, appointed

by the Governor.

Q Do the members of the Transportation Commission more or less review the recommendations made to them by PennDOT?

A That's right. The Act clearly states that a program can only be adopted after having been first submitted to the Transportation Commission.

Q How is it determined how much money you will request to be approved in the capital budget?

A That is based upon the estimate of the resources, fiscal resources, available to the Department from, one, the Federal highway apportionment, voted by Congress, and, two, the amount of resources to be made available at the state level.

Q And preliminarily to submitting your recommendations, do you normally anticipate your expenses, based upon past experience with P.U.C. orders?

A First, one clarification. It is not an expense-type budget. It is an obligation-type budget. The totality of the programming and budgeting process deals solely in obligations, not in cash flow.

Q Would you explain to me, just generally, the difference between an obligation- and an expense-type budget?

A Yes, ma'am. As an example, the Federal

government will apportion to the Commonwealth, let's say, 130 million dollars for interstate highways. We will go to them with a project to construct a section of I-95 at a total cost of, say, 50 million dollars, of which the Federal government will pay 45 million dollars, which sum is considered as obligated and is not available for anything else. We may take five years to expend that money in cash flow; but as far as the Federal government is concerned, they have obligated the spending of that amount in their apportionment for interstate. That's the difference between an obligation and a cash flow.

Q When you say it is obligated for interstate, for instance --

A Yes. The same thing occurs in all the Federal-aid projects: It is obligated and reimbursed to the Commonwealth after the expenditure. We spend Commonwealth money and bill the Federal government, and they reimburse us for what we have expended, based upon the obligation that they have agreed to set aside for that project.

Q When you say it is obligated, is it obligated for a specific project?

A Yes, ma'am.

Q Okay. Now, what happens if those funds are not used for that one project?

A Should we get into a contract and a portion is,

say, deleted and instead of spending the full 45 million dollars, for which we have a firm bid, at the end of the project, when we close it out, if there is a million dollars left, it goes back into the apportionment and is available for subsequent obligation to another project. That is not normal, incidentally.

Q So if it is not used for that specific project, it is used for another project?

A There are rules for the expenditure of Federal funds on any type project, the rules normally being longer than the money. The State's reimbursement, for the most part, for most capital projects is from bond funds. For example, if there is going to be ultimately Federal aid to us, we bill the Treasurer periodically for expenditures from current revenue, and it is reimbursed from bond funds, and we periodically also make assessments on a history of cash flow to advise the Treasurer we will need a certain amount of bond funds by a certain date. This triggers the Budget Secretary to advertise a bond sale of X million dollars to have the money available when we need it to pay contracts and what-have-you.

Q Okay. How far in advance will a request or recommendation be made for a project to be placed on a capital budget?

A The capital budgets are annual submissions.

We are normally required to prepare the budget in November of the year preceding the budget request.

Q The year preceding?

A Yes. For example, the Governor's message today was for 1977-78. The bulk of the data was prepared late last fall. The current revenue portions or capital portions were sent to the Budget Secretary in gross amounts in early to mid-November. The final submissions are hammered out between then and the date of the Governor's budget message.

Q Has PennDOT recommended this project be placed on ^{the} capital budget?

A You are speaking of the Conshohocken project?

Q The Matsonford bridge at Conshohocken.

A It has not.

Q Has it ever been recommended to be placed on any capital budget, not necessarily the upcoming one?

A I can't recall if it was included in any previous capital budget at any time, but I will check that.

Q I will appreciate that.

I asked that because in the testimony previously given in this matter before the Public Utility Commission the engineering witness for PennDOT testified funds were approved for this project at the time this

was a project for rehabilitation and repair.

A Yes. That refreshes my recollection. We had it in the '72 budget, I believe, for rehab. at a cost of approximately \$300,000, I believe, for construction.

Q For construction?

A For construction.

Q Well, I would appreciate it if you would verify the budget and the amount.

A I will be glad to do so.

Q Do you know what happened to that money?

A Yes. Inflation. You see, the General Assembly, in approving the capital budget, also approves the total bond amount in an ^{appropriation} ~~apportionment~~ for those acts, which cannot be exceeded. Over the interval of time since the preparation of that budget to the present day, costs have inflated in the neighborhood of forty per cent. Since the 1972 budget was prepared in 1971, the projects reaching fruition consumed the entire appropriation.

Q In other words, you are saying it was used on other projects?

A Yes, ma'am.

Q So there would be nothing prohibiting the use of funds approved for another project for this project?

A I don't know that --

Q All right.

A -- I understand that question.

Q Let me try to clarify it.

If there were funds approved in a capital budget for use on a project other than the one involved in this proceeding --

A Yes?

Q -- could they be reallocated for use on this project?

A Providing some other project is ~~deallocated~~ ^{deobligated}.
We have reached full obligation, by the way.

Q At this time are there any other projects deobligated?

A There are some that were never obligated because we have run out of the total apportionment.

Q What I am getting at is: Are there any funds available at this time that could be reallocated for use on this project?

A Only in the event that some other project is deobligated, that the authority to expend on that project is removed, though it may be currently underway in some cases.

Q All right. If the construction or improvement involved in another project has not been started, could you, in turn, reallocate the funds?

A Yes. The Transportation Commission is granted

this authority.

Q Okay. Now, you don't know, then, specifically at this time if there are any other projects that have not been undertaken?

A I do know definitely many have not been, ma'am, that have been approved in the capital budget.

Q All right. Then you are saying funds are available that might be reallocated?

A No. You misunderstand me. There are projects included in capital budgets that have not been obligated because of the obligational limits in each of the Acts. For example, the first capital budget under the new Constitution granted authority for 668 million dollars in debt. This is borrowing authority. As of today, several projects in that budget, which was prepared in 1968, have not even been started because we have exhausted the 668 million dollars on projects that did start.

Q Okay. Now, who can make the decision as to reallocation of funds -- you? -- or is that by the Legislature again?

A Normally that process is the Department is through my recommendation to the Deputy Secretary and Secretary.

Q Okay.

A I might point out one thing, just to clarify

this capital budget: The capital budget does not give us money. It only gives us the authority to proceed with a line project as identified in that budget.

Q Where does the money come from?

A Money comes from the sale of bonds down the road to handle the cash flow. The capital budget gives us the authority to proceed with the project with the promise that the bonds will finance it and the authority to go to the Treasurer and seek to float bonds from time to time.

Q So that if this project were on a capital budget at one time, you have already been given the authority to proceed?

A In this instance, the authority to expend \$300,000 was for the rehabilitation of that bridge. That's the only authority we have in law.

Q Now, you say for rehabilitation?

A Yes, ma'am.

Q Since the nature of the project is now construction --

A We have no Legislative authority under that Act.

Q You said initially that you thought the funds were approved for construction.

A No.

Q Just rehabilitation?

A For the purpose of rehabilitation. Each project in a capital budget is identified as to Legislative route, where it is, and the nature of the improvement being sought. In this instance, we have authority to rehabilitate the structure but not to build a new bridge.

Q What happens if a project has been approved for a certain purpose and then is more or less wiped out because a different type of improvement should take place there?

A In the instance of the Matsonford bridge, we have no Legislative authority to proceed.

Q Have you recommended that this project be placed on any capital budget?

A No, ma'am.

Q Why not?

A It is not part of the twelve-year program.

Q Why not?

A Two factors are involved there. The county planning commission in question assigned no priority to that project. Secondly, the commission reviewed it at the October 6th meeting, and it was discussed at that juncture in time, and a member of the commission from Montgomery County opted for another project.

6 Q So you are saying that if a member of that
7 commission wanted to place something on this twelve-year
8 program instead of a P.U.C. project, the fact that there
9 is an outstanding order has no bearing on the priority
10 assignments?

11 A That plus the fact that the local people,
12 acting through the county planning commission, did not
13 deem it to be more important than other projects they
14 wanted to have built.

15 Q Do you normally, where there is a P.U.C. project
16 involved, explain to them you have an outstanding legal
17 obligation?

18 A Those records of the P.U.C. orders appear on
19 any project list sent to the local people for review.
20 They are well aware of that.

21 Q I will ask you to expand a little bit on the
22 priorities. What, for instance, in this particular
23 instance were the criteria for assigning another project
24 more priority over an outstanding P.U.C. project?

25 A To go back to the point of beginning, it is
developed in complete co-operation with the local people.
After all, we are spending their money; they are paying
for this thing. We afford them a full opportunity to
express their wishes as to which projects should be
included in the program. We go a step further than that

to review with the district to make sure that the wishes of the local people are made known, and the commission is well aware of those.

Q In this particular instance, though, evidently a number of projects were placed on the twelve-year program instead of this P.U.C. project.

A Several, yes.

Q What kind of criteria would have been used by the commission in deciding these projects are more important?

A The wishes of the local people.

Q But nothing more, just the fact that they wishes these projects, maybe just for the convenience of their cities?

A You will not find many convenience projects at the present time.

Q Specifically, if you can, will you give me some criteria which would assume priority over an outstanding obligation of PennDOT?

A You throw me at a loss with that one.

Q Okay.

A I'm not sure I understand the question.

Q With respect to this particular project, PennDOT has an outstanding legal obligation to proceed to comply with the P.U.C. order --

1 A Yes.

2 Q -- which is, at this point, to prepare detailed
3 construction plans and cost estimates --

4 A Yes.

5 Q -- and in view of that, what I would like to
6 know is: Would I be correct in assuming that something
7 more than only the wishes of the local planning commis-
8 sions of the counties would have to be considered in
9 placing something over this legal obligation of PennDOT?

10 A I am not denying the legal obligation. I think
11 we are solely talking about time.

12 Q What I want to know is: If you --

13 MR. ZAHN: May I suggest the question
14 should be: Can PennDOT insist that this project be
15 incorporated in a twelve-year program?

16 MS. KREIGER: All right.

17 A I think we could so recommend to the commis-
18 sion for their action, yes.

19 BY MS. KREIGER:

20 Q Did you in this particular instance?

21 A The ramifications of the projects under
22 consideration were clearly pointed out, yes.

23 Q What was their basis for denying your
24 recommendation?

25 A The basis of the commission's action was the

wish of the commission member from Montgomery County.

Q Is there any kind of review board or higher authority than this Transportation Commission that could overturn their decision or determination?

A Not according to the way I read 120.

MR. ZAHN: In other words, PennDOT does not make the final decision on priorities; it is done by the commission. Is that correct?

THE WITNESS: Correct.

BY MS. KREIGER:

Q When do you anticipate that there will be funding for this project?

A Are you asking me the earliest time?

Q The earliest time, yes.

A All right. The earliest time, I would think, would be if the Montgomery County Planning Commission requested it through a project substitution by removing five million dollars currently programmed for current projects and adding this to the program for subsequent act of the General Assembly to create the necessary authority to expend funds.

Q Has PennDOT reviewed internally whether there would be funds which could be deferred from another project to this project?

A I have no authority to transfer to bridge

replacement. I have no legal authority to do that at the moment. Are you asking about budgeting or programming, now?

Q Budget.

A I have no authority legally by any act of the General Assembly to spend ten cents on the replacement of the Matsonford bridge.

Q Not until it is placed on a capital budget?

A That is correct. Now --

10 BY MR. KASHI:

11 Q Let me ask a question here: Are you stating
12 that the mandate given the Public Utility Commission that
13 it may impose orders to be followed by PennDOT for the
14 construction of bridges, restoration and rehabilitation,
15 okay, that Legislative mandate, okay, is superseded
16 by this commission of twelve persons, who are made up
17 of twelve or four, rather, members of the Legislature
18 and various and sundry other commissioners, that their
19 wishes take priority over a Legislative order?

20 MR. ZAHN: What do you mean by a "Legisla-
21 tive order"?

22 MR. KASHI: That the Legislature has
23 ordered the P.U.C. That's who really ordered PennDOT
24 to take care of it. It is not the P.U.C. on its own.
25 It is by Legislative action that we are directed to make

these orders. You are saying that Act 120, in effect, supersedes that. Is that what you are telling me?

MR. ZAHN: I think you are asking this witness for a legal conclusion.

MR. KASHI: To the best of his understanding, is that what took place?

MR. ZAHN: I don't know that the witness should give legal conclusions. Now, the P.U.C. is an arm of the Legislature, but --

MR. KASHI: That's right.

MR. ZAHN: -- the Legislature has the final say over incorporating this in the capital budget. But I think the question, as posed, really calls for a legal conclusion.

MR. KASHI: It probably does.

MR. ZAHN: I don't think the witness is qualified to answer it.

MR. KASHI: Okay. I think it poses an interesting question, though, between Act 120 --

MR. ZAHN: Yes. It does.

MR. KASHI: -- and the mandate given the P.U.C. to make orders.

MR. ZAHN: Off the record.

(Off-the-record discussion)

BY MS. KREIGER:

Q When was the last capital budget approved for PennDOT?

A December, 1974. That was a budget that was submitted in 1972.

Q And this project is not included or recommended for inclusion?

A No, ma'am.

Q Has this project ever been recommended?

A The reconstruction project?

Q The reconstruction project.

A No, ma'am.

Q Okay. Mr. Chiles, you did say you would verify as to whether this project was ever on a capital budget for any purpose?

A Yes.

Q You said you thought \$300,000 had been approved.

A But accidentally I didn't bring the budgets with me or the budget, rather, containing the project, but my recollection is that it was \$300,000 plus ten per cent for design and six per cent for construction inspection for bridge rehabilitation.

Q I would appreciate your verifying the exact amount.

MR. ZAHN: I will send you a letter with that information.

MS. KREIGER: Okay. The only reason that I ask that is that PennDOT's engineering witness, Paul Peterson, indicated that money in the neighborhood of \$655,000 was approved in order that PennDOT, at their initial cost and expense, could go ahead with repair.

MR. ZAHN: \$600,000 or so may have been a figure used but only \$300,000 for one portion of the project.

A The \$300,000 -- you see, the capital budget borrowing is bonds and shows only the bond amount but not whether the project is additionally Federally funded. It could be budgeted as a Federal project, in which case an additional amount would have been scheduled, making it higher than the \$300,000 I quoted you, which I think was the amount included in the budget.

BY MS. KREIGER:

Q How do you qualify for Federal funds?

A First, a project has to be on a Federal aid project route and the/ eligible under the Federal criteria.

Q Is this project?

A I would think so, yes. I believe it is on a Federal route.

Q Have Federal funds been applied for?

A No, ma'am. At least, not for the replacement. I am not sure of what we had done under the original

rehabilitation plan. I will have to check on that.

MR. ZAHN: Let me ask this for clarification: To get on as a Federal project, does a project have to be on the twelve-year program?

THE WITNESS: Yes, sir.

MR. ZAHN: Is that part of it?

THE WITNESS: Yes, sir.

BY MS. KREIGER:

Q Was the money which was approved for the rehabilitation project broken down within that project for specific purposes?

A Yes. There would have been a breakdown within the project. There would have been so much for construction, so much for land, and so much for design and administration. My recollection is that no land was required under the rehabilitation project, so nothing would have been budgeted for that.

Q Would the funds available or approved for design still be available to this specific project?

A No. The authority to design is to design a rehabilitation, not a reconstruction.

Q At what point in this proceeding, if you know, was PennDOT aware that money was not available for competition of the detailed construction plans and cost estimates pursuant to the Commission's outstanding order?

A We had become suspicious in late fall that we were close to the obligation limit. I analyzed the three existing budgets in jeopardy at that time and advised the Deputy in mid-October, 1975, that we had reached the limit on the three existing budgets.

Q October of '75 was that?

A Yes.

Q When would this project have been placed or recommended for placement on the twelve-year program for the upcoming capital budget?

A At that time we were in the process of preparing an update of the program, which we completed in October of last year.

Q You say you became aware funds were not available in the fall of ^{1975?} ~~1976?~~

A Understand, I am telling you we had exhausted the bond authority on the first three capital budgets. Okay?

MR. ZAHN: And on the first three capital budgets, this Matsonford bridge was in there for rehabilitation for \$300,000?

THE WITNESS: That's correct.

BY MS. KREIGER:

Q Let me ask you this question: Since the Department, after conducting the inspection, determined

that it would not be economically feasible to rehabilitate the bridge and petitioned the Commission for modification of its order, which was modified, requiring PennDOT to prepare detailed construction plans and estimates in twelve months, where did PennDOT anticipate getting funds for preparation of plans in the upcoming twelve months following the issuance of the order?

MR. ZAHN: That's giving him the date it was done? I think you should tell him when that was.

MS. KREIGER: PennDOT filed a petition for modification with the Commission on December 16, 1974, and the Commission acted on that request on April 2, 1975. They modified the order to direct PennDOT to prepare detailed construction plans and cost estimates within twelve months.

MR. ZAHN: The Commission ordered the twelve months.

MS. KREIGER: But PennDOT had suggested that in its petition for modification, if you have it in front of you, specifically in the prayer to the petition for modification.

A Presumably, I have to answer to your question, that they anticipated capital budget action subsequent to that time, but there has been none.

BY MS. KREIGER:

Q Well, at that time, either December 16, 1974, or April 2, 1975, could PennDOT have anticipated a capital budget approval in time to have plans completed within a year?

A From April?

Q Yes. From April, 1975.

A Not under a normal budgeting cycle, no.

MR. ZAHN: It would be twelve months from the date of an order of the Commission, which may take six months or so to come out, but not as of the date of the hearing.

BY MS. KREIGER:

Q All right. If the order was October 21st, 1975, could PennDOT reasonably have anticipated within six months --

A That would have been possible if we had a capital budget, but we did not.

Q But in order to have the project approved on a capital budget, I would assume that there would be steps to be taken to have it on a twelve-year program. How long would that take?

A At the time -- I assume we are talking about October of '75 --

Q That's right.

A -- at that juncture in time, based upon a

previous fiscal plan, the Matsonford bridge was included on a program at that time.

Q It was included?

A At that particular time. Subsequent to that, we have gone through a fiscal analysis done by the advisory committee, and our fiscal resources were decreased through an analysis that we can't afford this anymore. The State's share in funding was decreased almost seventy per cent.

Q When you talk about this budget, do you mean for 1975-76?

A I am talking about the fiscal analysis made by the advisors to develop a twelve-year program, a combination of anticipated Federal funds and bond funds to be made available by the General Assembly.

Q Going back to the initial question, when PennDOT made this request in December, 1974, anticipating an order not being issued for another six months, changing the nature of the project to construction, where would PennDOT have anticipated that the funds to prepare plans would have come from?

A They would have anticipated a budget submission in the fall of '75, effective at the beginning of fiscal year 1976-77.

Q Okay. Now, why wasn't it submitted?

A We didn't have a capital budget from the General Assembly for fiscal years 1974/75, 1975/76, and 1976/77.

Q Was it recommended that this project be placed on the capital budget?

MR. ZAHN: I think he has answered that. The commission didn't place any priority on it or place it on the twelve-year program. Isn't that what you said?

THE WITNESS: No. Mr. Zahn, in all fairness, I think she means the budget which is pending before the General Assembly, not the previous budgets in 1974, '75, and '76.

MR. ZAHN: All right.

A You see, we were operating under the pie-in-the-sky philosophy at that period of time. It is conceivable, however, that there was a submission; but I will have to check the records to see if there was a submission made in those years that never reached fruition because the General Assembly never passed ^q the budget for this in those three years.

MR. ZAHN: Do you want that information?

MS. KREIGER: Yes. I do.

MR. ZAHN: We will search our records, and I will include that in my letter to you.

MS. KREIGER: Okay.

BY MS. KREIGER:

Q Now, at the second Public Utility Commission hearing, when this engineering witness testified that preliminary plans for the construction of the Matsonford bridge were in the process of being prepared, where would funds have come from for the preparation of the preliminary plans if they were for a construction project?

A I don't know at this juncture in time. I don't.

Q Do you know if any funds were approved for the preparation of the preliminary, detailed, or any other plans for this project when it began?

A Specifically itemized funds, I don't know.

Q Would you be the person to ask, or would some other witness have the information?

A It would depend upon how they were financing. If they were financing under bond, I should know. If it were under cash, then it would have to be Mr. Vovakes. I don't deal in the current revenue projects.

Q If it were by cash, where would the funds come from?

A Motor license funds.

Q And if it were capital project?

A If it is a line item, it is approved by the General Assembly.

Q Has this project been approved by the General Assembly?

A No, ma'am. Not to my knowledge.

Q You don't mean, when you say --

MR. ZAHN: As a construction project?

A Not as a reconstruction project, that is.

7 BY MS. KREIGER:

Q So what you are saying is that legally, in your opinion, there couldn't be money approved from the cash budget or operating budget or motor license fund?

A On preliminaries, possibly, yes. You have to develop what the project would be, the possibility.

Q But nothing further than that?

A No.

Q Do you know approximately how much money would be needed to complete the detailed construction plans?

A To complete the plans?

Q For this particular project.

A Design is currently programmed at about \$524,000.

Q I mean for the preparation of detailed construction plans for this project.

A Normally we program at about ten per cent of construction to finalize final drawings.

Q So you estimate at this time the construction

of this project would be about \$5 million?

A About 5.2 million dollars.

Q This has increased since the last hearing by about what --

A What was the last hearing date?

Q I guess it was April 2nd, 1975. I guess the estimate then was 3.325 million.

A I am carrying ~~out a~~ program ^{Cost} of around 5.2 right now and --

Q I think you said you don't know, then, whether any detailed construction plans have even been started?

A I don't know that. I would think not, but I don't know.

MS. KREIGER: Okay.

BY MR. KASHI:

Q I would like to ask you one thing to get it clear in my mind because I have just come in this case. Here we have a situation where I believe PennDOT says, "We have a bridge out there that needs to be rehabilitated--

MR. ZAHN: Reconstructed.

BY MR. KASHI:

Q -- " -- reconstructed, although initially it was to be rehabilitated and restored," all right, and the P.U.C. order says to go ahead and begin this. All right. And at that time there is money, all right, to accomplish

8 this. All right. But it never goes ahead because
9 PennDOT says, "Wait a minute. We don't want to do this.
10 This should be reconstructed. It shouldn't be restored
11 and rehabilitated but reconstructed." All right. But
12 at the time they ask for that, they do not have the money
13 to do it. Okay. Then the money that was there for the
14 general rehabilitation was diverted to other projects.

15 MR. ZAHN: Within the capital budget.

16 BY MR. KASHI:

17 Q Within the capital budget. All right. But it
18 is diverted to other projects. Okay. You were asking for
19 something to be done at the same time that you knew you
20 didn't have the funds to complete it.

21 MR. ZAHN: I think you are making an
22 assumption.

23 BY MR. KASHI:

24 Q All right. I am wondering: Am I making an
25 assumption that it was known at that time, or was it
26 just that you thought, on the basis of anticipated
27 revenues, which just didn't come forward, that you would
28 be able to complete the project, the construction project?

29 MR. ZAHN: I think that Mr. Chiles in his
30 testimony stated that the budget does not provide the
31 money but only a means to get it.

32 MR. KASHI: To get the money?

MR. ZAHN: The Commonwealth or the Treasurer or the Governor is not going to borrow money in advance and pay interest on it until it is needed. I think Mr. Chiles testified that as these things come up, he notifies the Treasurer and says, "We will need so much money," and then the Treasurer has the bonds issued to make the money available for that project.

MR. KASHI: What I am trying to get at --

MR. ZAHN: Maybe Mr. Chiles --

THE WITNESS: I think --

BY MR. KASHI:

Q I am trying to get your understanding.

A I think, if I understand your question --

Q When you come in and say, "Let's restore and rehabilitate it," and you have the money, and then you change your mind and say you want to reconstruct --

MR. ZAHN: That's an engineering decision, that the most economical use of the money would be to rebuild rather than rehabilitation, which, in this instance, apparently was thought to be a waste of money.

A I will have to rely upon Mr. Peterson's judgment, and I know he is a splendid bridge engineer. But your question seems to go to our good faith in --

Q I didn't say that.

A I got the implication.

Q I didn't imply that.

A But once it went to a reconstruction project, the authority that may have existed with that budget no longer existed. Therefore, we probably utilized that authority for some other project with which we were proceeding. Secondly, your question was that you wondered why we asked for this when we didn't have the money. We have a contemplated twelve-year program, for which I do not have authority to proceed but with respect to which we anticipate getting authority to proceed. Since at that time we had the Matsonford bridge on the program existing at that time, we would contemplate its remaining on the program and that ultimately we would be granted the authority by the General Assembly to do that. That brings us to the present date. One, the General Assembly has not given us the authority to proceed with the replacement. Two, we do not have the project on the program, due to severe fiscal restraints.

Q But at one time it was on the twelve-year plan?

A Yes.

Q And subsequently it was removed by the wishes of --

A The combined wishes of the local authorities and the Transportation Commission.

MR. ZAHN: He referred to PennDOT in the question, though, and it wouldn't have been considered further unless it were in the twelve-year program, would it?

THE WITNESS: As I recall, in the early part of my testimony I stated that we have a wish list from all over the Commonwealth, and the amount of that now, estimated, is ¹⁷~~18~~ billion dollars, but now we can only fund approximately ^{3.7}~~3.6~~ billion dollars of ^{Construction}~~that~~ over the twelve years.

MS. KREIGER: I have one more thing.

BY MS. KREIGER:

Q I don't know if you know this. But is there any kind of emergency or special fund set up to cover in the budget or by some Legislation of some kind or special approval that can be given in the middle of the fiscal year?

A You mean for bond authority?

Q Yes.

A No. This doesn't exist. Now, I might say at this juncture that the Constitution of 1968 and the Debt Facilities Enabling Act prohibit entry into the capital budget of anything that is not specifically itemized. We have sought Legislation permitting the entry in the budget ^{for} with bond authority ~~of something~~ for

emergency-type work but have not been successful in achieving our goal so far. I will agree that would be nice to have, but we don't have it yet.

MS. KREIGER: I have nothing further.

BY MR. PHIPPS:

Q I have a few questions.

Who has final authority for determining the twelve-year program?

A The final authority for that determination rests with the Transportation Commission, based upon the ultimate recommendations of the members themselves and of the Department.

Q Isn't the action of the Transportation Commission only advisory?

A Not according to the way I read Act 120, which states, in part, that programs so adopted by the commission shall not be changed except by the commission.

Q Are you saying that PennDOT or the Governor couldn't order something done, a project started, without the Transportation Commission's approval?

A Not on the twelve-year capital improvement program.

Q Could they in another program?

A Conceivably. But there is no money. Our current revenues are insufficient even for mandates.

Q You say that the wishes of the Montgomery County Planning Commission were one factor in determining whether to put the project in the twelve-year program?

A That's right.

Q But that's an advisory body.

A That's right.

Q You can take it or leave it, and you do not have to comply with their wishes.

A The commission opted to seek their advice and develop the program in accordance with the local wishes.

Q But it is just a recommendation that emanates from the Montgomery County Planning Commission. Is that right?

A The priorities were as recommended by the agency.

Q But does the Transportation Commission, PennDOT, have to accept the Montgomery County Planning Commission's recommendations?

A Not PennDOT, no.

Q I think you said PennDOT is obligated to accept the recommendations of the Transportation Commission.

A The way I read the law, yes.

Q That's a legal question, so that may be unfair.

A I think it is.

Q Is there any money allocated or projected or budgeted or available for the repair or rehabilitation of

the bridge?

A Not to my knowledge for the rehabilitation.

Q How about --

A Not the original project as envisioned.

Q -- repairs and renovations which are needed?

Is there anything allocable for that?

A I don't know offhand. I thought we were in the process of talking about attempting to replace the bridge.

Q Would you know whether there were funds available for that or not?

A No. I do not.

Q Would they have to be in the budget?

A A maintenance-type budget, such as you are describing, for a repair would have to carry that as a line item project if it involved more than \$500,000 in cost.

Q But if it were less?

A If it were less, it would not necessarily be made a line item project if it were financed solely as a repair and from current revenue.

Q Do you know of any action PennDOT has taken to comply with the P.U.C. reconstruction order?

A The record is clear. We initiated the study of the project and concluded by believing rehabilitation

1 was not economically feasible and that we should replace
2 the bridge, and we advised the P.U.C. to that effect.

3 Q And asked for an order to replace it?

4 A That's right.

5 Q After the order of October, 1975, by the P.U.C.
6 to PennDOT to reconstruct the bridge, did PennDOT do
7 anything to comply with the order?

8 A I will have to search the records to find if
9 when it was on the program, ^{if} we ever submitted the project ✓
10 for further capital budget action to implement the criteria.
11 I can't answer that at this point in time.

12 Q Then would it not have been put on the twelve-
13 year program --

14 A If we had submitted it, it would have been at
15 that time.

16 Q On a twelve-year program?

17 A Yes.

18 Q But you are not sure whether PennDOT --

19 A In ^{that} ~~this~~ interval of time, we were operating on ✓
20 a hypothetical of approximately \$500 million dollars a
21 year in lettings, but now we operate on approximately
22 \$220 million dollars in lettings, less than half.

23 Q If you had wanted to go full blast to implement
24 the P.U.C. order, what would you have done?

25 A The first thing you have to do to go full blast

is to get Legislative approval to expend money for that particular project, whether it be motor license or bond.

Q You do not first have to try to get it on a twelve-year program?

A Presumably you have it on there to try to go full blast.

Q But at the time PennDOT came before the P.U.C. and asked for an order to reconstruct the bridge, do you know if it was on a twelve-year program?

A As I recall, it was.

Q And subsequently it was taken off the twelve-year program?

A Yes.

Q Do you know how it came to be taken off?

A Fiscal restraints.

Q Exercised by whom?

A Exercised by the Transportation Commission.

Q Well, when you exercised that fiscal restraint, there was certain discretion you had.

A I don't understand you.

Q When you say you exercised fiscal restraint, are you saying PennDOT had the authority or the discretion to decide which projects it would be necessary to cut out and which to continue?

A In conjunction with the commission. In

setting the ground rules, we would solicit and use the local priorities in the development of the program.

Q But the fiscal restraint you said was exercised by the Transportation Commission.

A Yes. It was analyzed by the advisory commission, said by law to be advisory to the Secretary of Transportation, and the Transportation Commission conducted a review of PennDOT's fiscal resources available, and their advice was that we should expend no more bonds for capital construction since we were already in hock about \$2 billion and that we should give consideration to halting the entire capital program. Subsequent meetings and discussions led to the conclusion that economically, for the well-being of the Commonwealth, we couldn't cut it back to, you know, nothing, but it was agreed to go forward at about \$100 million a year in bond authority for new project starts, and this would allow us to just about match the Federal dollars we anticipate receiving each year.

Q Was this transportation advisory committee which exercised the fiscal restraints apprised of the outstanding P.U.C. order mandating PennDOT to reconstruct this bridge?

A Wait a minute. That commission studied only fiscal resources but not specific projects.

Q Was the Transportation Commission made aware of the fact that the P.U.C. had issued this order to reconstruct the Matsonford bridge at the same time that they were developing the twelve-year program?

A Yes.

Q By whom?

A By me.

Q Did you directly recommend that this project be carried forward, this reconstruction of the Matsonford bridge?

A The original phase of the program that you are talking about involving reconstruction contained twenty-eight projects, of which this was one, for consideration. It was clearly defined as to what it was and the reason for the project.

Q Not for consideration. But did you ever affirmatively recommend this Matsonford bridge to be put in the budget?

A I am trying to think of just how that was worded to them. First, yes. I have to answer your question "yes". It was pointed out that this was a situation as to the Matsonford bridge that involved a P.U.C. order. The commission deliberated over the price and considered all of the projects on there and did not include it on a program.

Q And that was the death knell for the project as far as PennDOT was concerned?

A As far as that round of programming was concerned The Matsonford bridge, at the request of the Montgomery County Planning Commission, can be put back on the program March 1st at our next meeting if they so desire and indicate that they believe \$5 million on something else can come off the program to include this project.

Q Do I understand that PennDOT does not have the legal authority to carry out the P.U.C. mandate without the concurrence of the Montgomery County Planning Commission or the Transportation Commission?

A That's a legal question, and I am not all that familiar with the Public Utility Law, Mr. Phipps --

Q Let me get at this in another way.

A -- as to just exactly what it does say.

Q Let me ask you the question in this way: Are you saying that PennDOT cannot carry out any capital improvement program without the concurrence of the Montgomery County Planning Commission and the Transportation Commission?

A We could carry out what the ^{Transportation} Commission decides. The commission has brought in the county planning commission in partnership. At any meeting the Transportation Commission, by majority vote, could eliminate the

county planning commission, if they so desired --

Q I see.

A -- but this is their own internal working at the present time.

Q All right. Now, maybe I am repeating myself, but again: What affirmative action did PennDOT foster to put this thing in the capital budget?

A I still can't answer without the records.

Q You don't know?

MR. ZAHN: Is it not a fact that you recommended the project to the commission, but they chose not to --

MR. PHIPPS: You mean to be considered by the commission, but my question is anything that PennDOT did to --

A In deference to the orders of the Public Utility Commission, P.U.C. orders are given deference higher than many that are on the program right now.

BY MR. PHIPPS:

Q But not this one. When you recommended to the Transportation Commission, did you assign a priority?

A It was pointed out that there is a structural deficiency in the bridge.

MS. KREIGER: Excuse me for interjecting. I think it would be very helpful for you to supply us

with a copy of your recommendation to the Transportation Commission regarding the priority to be given to the P.U.C. project.

MR. ZAHN: First, let me find out whether, in making your recommendations, you gave priorities to the commission. In any case, if you recommend eighteen projects, do you give any priority to any of the eighteen that you recommend?

THE WITNESS: The total program, as it went to the commission, was given them in a priority order.

MR. ZAHN: I see.

THE WITNESS: Now, I will have to check just exactly which way this Matsonford bridge was presented to the commission. My recollection is that it was presented to them on October 6th with a group of projects statewide which were under consideration.

MS. KREIGER: Okay.

THE WITNESS: My recollection is that it went to the commission under a separate list of projects for inclusion in the program.

MS. KREIGER: We would appreciate it if you would supply a copy of your list of priorities and your particular recommendation to the commission.

MR. KASHI: That was October 6th?

MS. KREIGER: '76, I guess.

MR. PHIPPS: I have nothing further.

THE ADMINISTRATIVE LAW JUDGE: Are you through with this witness?

MS. KREIGER: Just a moment.

(Off-the-record discussion)

MS. KREIGER: I have a few more questions.

BY MS. KREIGER:

Q First, this project was initially placed on the Commonwealth's twelve-year program as a repair and rehabilitation project?

A Yes, ma'am.

Q What caused or what could have caused this change of heart or reconsideration by the commission when it came up for reconstruction? What would have made them change their minds as to where it should be placed, when once it was repair and rehabilitation but now it is reconstruction, to decide, "We do not think it warrants being placed on the program anymore"?

A You have an interesting --

MR. ZAHN: That asks him to respond as to the mental processes of the commission members.

MS. KREIGER: Okay.

BY MS. KREIGER:

Q Did they indicate why they changed their minds

with respect to the project being placed on the twelve-year program?

A. The only reason why this project was removed from the program currently existing was cost limitations. The commission regrettably removed \$4 billion from the program, among which were many good projects. There was nothing the matter with the Matsonford bridge project, nothing at all.

Q. Could PennDOT legally or has it ever requested in a capital budget an open-ended amount of money to apply to P.U.C. work?

A. I previously addressed that issue. That would be part of the Legislation we have sought but not been able to get yet.

Q. What, if anything, does PennDOT do when an emergency situation comes up on one of its own projects?

A. It depends upon the extent. If it is a small amount, we internally have to shift our budget around to provide the necessary funds for maintenance. If it is larger, we have no authority under the law to --

MS. KREIGER: Nothing further.

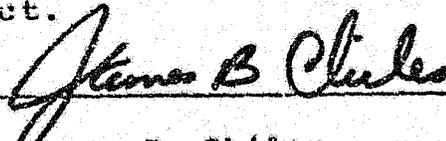
MR. ZAHN: Thank you.

(The deposition concluded at 3:15

o'clock, p.m.)

(I, James B. Chiles, do hereby acknowledge

that I have read the above and foregoing pages and have made any additions, deletions, corrections, or interlineations I deem necessary in my own hand, initialing each such, and I represent that the same, as now added to, deleted from, corrected or interlined, is full, true, and correct.

with corrections as noted 
James B. Chiles

JAMES VOVAKES, called as a witness by the Pennsylvania Public Utility Commission, having been duly sworn, was examined and testified as follows:

BY MS. KREIGER:

Q Would you please state your name and business address for the record?

A James Vovakes, 1216 Transportation & Safety Building, Harrisburg, Pennsylvania.

Q Are you authorized to testify today on behalf of the Department?

MR. ZAHN: Yes. He is.

MS. KREIGER: Okay.

BY MS. KREIGER:

Q Will you briefly state your functions and responsibilities with the Department?

A I am Director of the Bureau of Fiscal Management

One of my functions is co-ordination of budget preparation and administration. Some of the budget preparation and administration is in certain specialized hands, also within the Department, such as the capital budget in the Bureau of Economic Research and Programming and the maintenance budget in the hands of the Bureau of Maintenance. But I think that you are interested in the development and administration of the budget.

Q Okay. You say you are in charge of the maintenance budget?

MR. ZAHN: No. He didn't say that.

MS. KREIGER: I'm sorry.

A We have certain staff support functions supplied in these areas. We have quite an integrated team in the budgeting system, which requires a great deal of detail, which is administered by the people whom I mentioned.

BY MS. KREIGER:

Q What funds other than capital budget funds are available for PennDOT's use?

A We have appropriations from the general fund, from the motor license fund, from the lottery fund, from the highway beautification fund, from the aviation-restricted revenue account, which I think covers it, in addition to the bond funds.

Q Now, are these funds committed to a specific purpose?

A The Commonwealth, of course, appropriates the money in appropriations providing that the monies are for a certain purpose.

Q By the "Commonwealth", do you mean the Legislature?

A The Legislature.

Q How general is the specific purpose for which they are appropriated?

A Well, in the highway program we have essentially five appropriations: We have a general government appropriation, which takes care of administration, house-keeping services; we have an appropriation that is for highway construction; we have an appropriation for highway maintenance; we have another appropriation for the maintenance of the secondary road system; and we have an appropriation for safety and licensing administration, which is basically to pay the costs of the Bureau of Motor Vehicles and the Bureau of Traffic Safety, the licensing function of the Department.

Q Within these general headings, someone in the Department would be responsible for budgeting of these funds for more specific purposes, for specific projects?

A Yes. In the budget preparation, we have a

decentralized budget system, and each organization, central office^x bureau, or district office or county office annually prepares a budget request that comes in to the Bureau of Fiscal Management. That is in accordance with our budget preparation management on our automated system. We assemble the budget and send it to an executive budget committee, which makes decisions and recommendations to the Budget Secretary, and then, of course, to follow through with the procedure, the Budget Secretary makes recommendations to the Governor and the Governor to the General Assembly, and the General Assembly enacts the budget, and then we move off on a spending plan.

14 Q Who sets up the priorities?

15 A Well, we are talking about a very large, complex
16 transportation program. Now I have to ask you: What
17 priorities? You have the highways; you have aviation;
18 you have mass transportation; you have highway beauti-
19 fication. Then we have to consider capital v. operating.
20 So could you narrow your question down a little?

21 MR. ZAHN: Could we confine our questions
22 to capital programs? I think that's what's involved in
23 the Matsonford bridge.

24 MS. KREIGER: I would like to know what
25 other funds are available, too.

MR. ZAHN: I think Mr. Vovakes is trying to answer your question, but it is very broad.

BY MS. KREIGER:

Q Okay. Let me ask you this question: For instance, when you internally budget or when you internally determine what uses should be made of the funds, are there any priorities that you consider, for instance, with respect to a highway improvement project?

A Well, the highway capital improvements are under the support of or under the control or responsibility of the Bureau of Economic Research and Programming. Annually we put out a call for our budget. The capital budget laws of the Commonwealth require annually that the Governor submit a capital request to the General Assembly each year to be enacted, which is our authorization to proceed with the projects. Internally in the Department Mr. Chiles, who testified earlier, has probably told you about his functions, but just to give you a run-through on it, his bureau inventories highway needs and recommends action to the State Transportation Commission, which is a body set up in the law to develop a twelve-year transportation program for the Commonwealth, which is updated every two years, and they inventory the State's needs through the public hearing process and through various methods to determine what the needs are,

and annually they select from the twelve-year program adopted what they consider the most urgent in the planning process, which are submitted to the Budget Secretary for inclusion in the capital budget for the next year.

Q You mentioned there is a highway maintenance fund.

A There is an appropriation.

Q An appropriation?

A Actually there are two highway maintenance appropriations, one for secondary highways and one for general highway maintenance purposes.

Q Are there funds which have been particularly committed for use on the Matsonford bridge project for maintenance?

A Would you fly that by again?

Q Have there been funds specifically designated or committed by the Department for use on this particular project, the Matsonford bridge, for maintenance purposes?

A No.

Q No. How does the Department determine their budgeting of this highway maintenance fund?

A Well, the highway maintenance process of determining what the annual needs are follows this pattern: We have what we call a highway facilities

1 inventory, so we know how many different lane miles of
2 different types of highways we have to maintain, we
3 know how many acres of right-of-way must be mowed, how
4 many miles of stripes put down the highway and how often,
5 how many miles of drainage features must be cleaned
6 each year, we know the tunnels we have to maintain, and
7 these are the features of the highway system that are
8 inventoried. Next, the engineers have developed a method
9 of determining the annual demand requirements of the
10 highways, such as how often to paint stripes, how often
11 with respect to certain types of surfaces must you go in
12 and resurface roads, how often must you go wash the
13 signs and other activities. From that we have the
14 planned ^{productive} program units, the PPU's, as to what they will
15 accomplish in each year. When you come up with a PPU,
16 you determine how much patch material to put down, how
17 many miles of stripes are necessary, all specific units,
18 which are priced out based upon cost accounting standards,
19 and we have a system that tells us how much it costs
20 per unit to do those things. Then --

21 Q I think --

22 A -- from this methodology we compile the budget
23 for the next year.

24 Q -- I will ask you this question: If there is
25 an outstanding P.U.C. order requiring the Department

maintain a certain portion of highway, is it also budgeted?

A Well, under this method of determining what your needs are, the process at that point does not lend itself to exact identification of what bridge or perhaps what stretch of road you will resurface. We know, mathematically speaking, that certain miles of road must be resurfaced or what-have-you.

Q In other words, once you recommend the amount of money you need, internally you can allocate it to whatever you determine is necessary?

A Yes. This is later in the process, after the initial requesting and determination of the budget. Then the Bureau of Maintenance, with their engineers, has a system of program ^{approvals} ~~approaches~~ that they obtain from the county maintenance organizations. We ask them to submit on certain forms the exact, specific work they want to accomplish in the next year. Then we have to identify station to station the locations of the bridges and so forth that are to be done with the repair funds.

Q Okay. Thank you. Now, do you know approximately or exactly how much PennDOT's operating budget was for 1976-77?

A Well --

Q It would have been 1975-76, wouldn't it?

A 1975-76 is complete, and we are right now in 1976-77.

Q Okay. For 1975-76, then.

A For 1975-76 you want the total. Is that right?

MR. ZAHN: If you know.

A Approximately one and a quarter billion dollars.

BY MS. KREIGER:

Q And has all that money been used at this time?

A It has all been committed to certain activities.

Q Internally?

A Yes. In the budgeting process, we enter into contracts and purchase orders. We are well underway to spend the budget this year.

Q Now, is the upcoming budget 1976-77?

A We are in 1977-78.

Q Okay. Do you anticipate any uncommitted funds in the 1977-78 operating budget?

A The Governor submitted the budget to the General Assembly at 1:00 o'clock today. It says that we require a two cent a gallon increase in the fuel tax effective January 1, 1978, in order to accomplish what we consider to be the M-2 maintenance program level on our highways and also to be able to initiate highway construction improvement at the rate of \$100 million a year in bond funds. In other words, the budget has

been constructed so that we will be able to do those things that must be done every year to maintain the highways properly. The M-2 level provides for catching up on a backlog from years past within the next twenty-five-year period. That's the M-2 level.

Q Once the money is approved, you determine how it is used within the general and specific headings for which it is designated?

A Within the highway maintenance program, the work has to be determined, what specific stretch of highway to resurface and so forth, yes.

MR. ZAHN: You are talking about maintenance funds in your question, now, not capital improvements?

MS. KREIGER: That's right.

MR. ZAHN: Okay. Just so we understand that.

MS. KREIGER: Yes. Well, we are not talking about just maintenance funds.

BY MS. KREIGER:

Q Are there any uncommitted funds that you anticipate in the upcoming budget, for instance, maybe in construction funds?

A In construction, the capital budget law requires that the projects be specifically identified under the Capital Budget Act. That prevents surplus or reserves

being placed in there.

Q Okay. One other question: PennDOT's engineering witness at the April 2nd, 1975, hearing, Paul Peterson, testified at that point PennDOT was involved in preparing preliminary construction plans for the purpose of this project.

MR. ZAHN: The rehabilitation project.

MS. KREIGER: No. Reconstruction.

BY MS. KREIGER:

Q I am wondering: Did you specifically approve, or do you know of any specific approval of funds for the purpose of preparing these preliminary plans?

A No. This is an area that is decentralized into the Bureau of Economic Research and Programming. In accord with the projects as approved in the Capital Budget Act, they, then, approve the initiation of the project.

Q I asked that because Mr. Chiles did state that he was not aware of any such approval. I thought that perhaps it had been approved out of some other fund.

A I am not aware of it.

Q In other words, approval for funds for use for preliminary plans, if it is a capital project or even if it is a construction project, must be approved

1 by the Bureau of Economic Research and Programming?

2 A I suspect he was referring to the fact that --
3 before a project gets into that capital budget, you have
4 to make a preliminary feasibility and ^{location} locality study to
5 come up with a cost estimate and describe the project
6 and so forth. There are engineers on the staff who
7 perform this kind of administrative task in developing
8 the projects. Then they give it to the Transportation
9 Commission, who adopts it on the program, and then it
10 goes into the capital budget account and proceeds to the
11 design stage.

12 Q Where do you get the preliminary funds to do
13 this?

14 A This is out of the internal budget from the
15 motor license funds, current revenues, in an administra-
16 tive step providing for this kind of activity.

17 Q So this internal staff would basically make
18 the determination as to whether funds should be approved
19 for these preliminary --

20 A Well, they do not make that determination.
21 That comes up with the analysis which is submitted to
22 the Transportation Commission. I am sure Mr. Chiles
23 went over the county planning process with you as to
24 projects marked high, low, or medium, and there is an
25 obligation by the commission to take the highest-risk

priorities and program those. From that group, the projects are selected for capital budgeting.

Q I understand that. I am asking you where the preliminary funds, prior to the inclusion in the capital budget, come from.

A Those are in-house costs. We have funds on board to do those things. You have to have that kind of administrative step taken to determine the projects you want to consider.

Q And the funds for that come from your general operating funds?

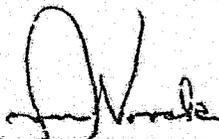
A That's right.

MS. KREIGER: Nothing further.

MR. PHIPPS: No questions.

MR. ZAHN: I have no questions.

(The deposition concluded at 3:45 o'clock,
p.m.)



WITNESSES
JAMES VOVAKES

I, James Vovakes, acknowledge that I have read the above and foregoing pages and have made any additions, deletions, corrections, or interlineations I deem necessary in my own hand, initialing each such, and I represent that the same, as now added to, deleted from, corrected, or interlined, is full, true, and correct.

THE ADMINISTRATIVE LAW JUDGE: Is there anything further, then?

Do you waive the signatures of the witnesses to the transcript?

MR. ZAHN: No. We do not. I think that Ms. Kreiger will make a statement about that for the record.

THE ADMINISTRATIVE LAW JUDGE: Surely.

MS. KREIGER: I think the parties have agreed that copies of the testimony taken here today will be filed with the Public Utility Commission, an original and one copy, with copies being sent to any parties requesting copies, on Friday. At that point, the parties will --

MR. ZAHN: Review the testimony, and if it is correct, they will sign it.

THE ADMINISTRATIVE LAW JUDGE: I understand. Surely. Shall we have a copy for the Administrative Law Judge presiding, Mr. Pallastrone?

MS. KREIGER: My understanding is that the original and one copy are to be filed with the Public Utility Commission. For discovery I don't think it is appropriate to submit transcript to Judge Pallastrone at this time. It is only for the purpose of discovery.

THE ADMINISTRATIVE LAW JUDGE: I thought he should have an opportunity to review it. But never mind. All right.

MS. KREIGER: But, as I said, this may not be submitted as part of the record.

(Adjourned at 3:46, p.m.)

CERTIFICATE

COMMONWEALTH OF PENNSYLVANIA:

C O U N T Y O F D A U P H I N :

I, Carolyn A. Sherwood, a notary public in and for the Commonwealth of Pennsylvania and a Certified Shorthand Reporter, do hereby certify that the foregoing depositions of James B. Chiles and James Vovakes were taken on behalf of the Public Utility Commission before me in Room 118, North Office Building, Harrisburg, Pennsylvania, on the 15th day of February, 1977; that the witnesses were duly sworn before the commencement of their testimony; that the testimony of the said witnesses was written out under my direction; that the parties as set forth on page 2 of said transcript were represented by counsel during the taking of said proceeding; that said testimony was taken at the aforementioned place and was commenced at 2:00 o'clock a.m., on the 15th day of February, 1977, and concluded

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on the same date at 3:46 o'clock, p.m.; that the signatures of the witnesses may be had to the transcript in the file room of the Public Utility Commission, North Office Building, Harrisburg, Pennsylvania; that I am not related to or employed by either or any of the parties of record or their attorneys or agents or interested, directly or indirectly, in the matter in controversy, either as counsel, attorney, agent, or otherwise.

In witness whereof I have hereunto set my hand and affixed my seal of office at Harrisburg, in Dauphin County, this 17th day of February, 1977.

Carolyn A. Sherwood, Certified
Shorthand Reporter -- Notary Public

My Commission expires March 1, 1978

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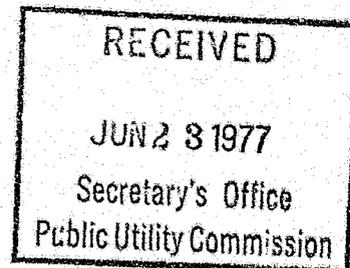
25

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
HARRISBURG 17120
Office of Chief Counsel



IN REPLY REFER TO

C. J. McElwee, Secretary
Pennsylvania Public Utility Commission
North Office Building
Harrisburg, Pennsylvania 17120



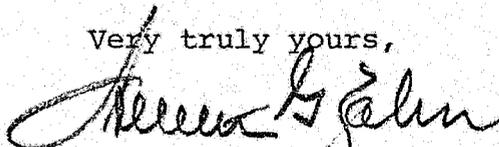
Re: Complaint Docket No. 19707
Montgomery County

Dear Mr. McElwee:

Enclosed for filing with the Commission are the original and fourteen (14) copies of Conclusions of Law and Findings of Fact which were omitted from PennDOT's Reply Brief filed in the above matter.

I hereby certify that three copies of the said papers are being served this day on each party of record.

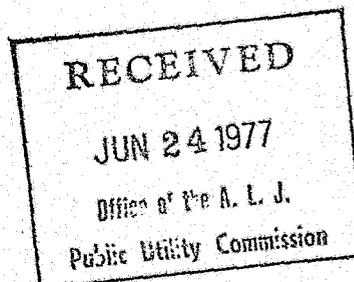
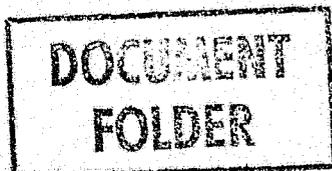
Very truly yours,



Herbert G. Zahn
Assistant Attorney General

220/HGZ:rmm
Enclosures

cc: K. W. Walker, P.E., Chief Utility Engineer
District #6-0
Parties of Record-Page 2



PARTIES OF RECORD

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Trustees of Reading Company
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Plymouth Meeting, Pennsylvania 19462

John Storch, P.E., Pennsylvania Public
Utility Commission Engineer

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED
JUL 28 1977
Secretary's Office
Public Utility Commission

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

V. CONTRA REQUEST FOR FINDINGS OF FACT
AND CONCLUSIONS OF LAW

FINDINGS OF FACT

PennDOT is in accord with the Staff's following proposed Findings of Fact as numbered and contained in the Staff's Brief: Paragraphs 1, 2, 4, 5, 6, 7, 8, 10, 13, 19, 21, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, & 36.

PennDOT is not in accord with the Staff's proposed Findings of Fact as numbered and contained in the following paragraphs of its Brief: 3, 9, 11, 12, 14, 15, 16, 17, 18, 20, 22, 23, 29, 35, 37 and 38, and in their place and stead requests the following Findings of Fact numbered similar to the Staff's Brief:

3. PennDOT's instant petition for extension of time to complete the plans and estimates for the Matsonford Bridge results

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FOLDER

DOCKETED
COMPLAINT DOCKET
JUL 28 1977
ENTRY No. C

from lack of funds because the project: a) is not on the Commonwealth twelve year program; and b) is not on an approved Capital Budget.

(See Petition for Modification.)

9. PennDOT's policy of not budgeting Capital Projects which are not on the twelve year program is based upon Constitutional requirements that there be sufficient estimated fiscal resources to fund the project and that the budget be balanced (T. 29).

11. The Transportation Commission adopts a twelve year highway program and recommends it to the Governor, to the General Assembly and the Secretary of Transportation (Act 120, May 6, 1970, P.L. 356, Sec. 18(c)) (71 P.S. 521)

12. In this proceeding, the State Transportation Commission used the priorities of the Montgomery County members of the said Commission to determine whether this bridge project be placed on the current twelve year program (T. 49).

14. The Governor annually submits a Capital Budget to the legislature. (Constitution, Article VIII, Sec. 12(b))

15. The twelve year program can only be changed by the State Transportation Commission (T. 35).

16. PennDOT gave priority to the instant P.U.C. crossing project (T. 54, 60).

17. PennDOT cannot proceed with a P.U.C. Capital Project if it is not included in the twelve year program (T. 39).

20. The twelve year program can be modified at any time, but only by the Transportation Commission (T. 61).

22. PennDOT completed fifty percent (50%) of the plans with funds from operations as in house costs. (Vovakes Testimony p. 63)

23. PennDOT's bridge engineer did not know from where the funds came to complete fifty percent (50%) of the plans (T. 67).

29. P.U.C. projects are Capital Projects within the categories of the Capital Facilities Debt Enabling Act.

35. PennDOT will not do any restoration or repairs to the sidewalks or curbs because it would add no structural benefit and the extra dead load would be detrimental to the structure (T. 82).

37 & 38. While the Engineer for the Borough of Conshohocken observed deficiencies in the sidewalks and other parts of the bridge by visual inspection on February 18, 1977 (T. 91), he certified that since that time repairs were made to the curb and sidewalks (T. 97). He also stated that he could not estimate the cost or length of time it would take to make the repairs he recommended (T. 97-100), or whether the repairs would prevent a truck from going onto the sidewalk (T. 101).

CONCLUSIONS OF LAW

PennDOT is in accordance with the following conclusions of law in the Staff's Brief in the paragraphs numbered 1, 2 and 5.

PennDOT is not in accord with the conclusions of law in the Staff's Brief in paragraphs numbered 3, 6, 7, 8, 9 and 10, in their place and stead, together with additional conclusions of law, requests the following conclusions of law to be made:

3. P.U.C. projects, which are capital improvements, are required by Act 120 to be placed on the Transportation Commission's twelve year highway program.

6. P.U.C. projects, which have a life expectancy of more than five years and a total cost of over \$100,000.00, are Capital Projects within the context of the Capital Facilities Debt Enabling Act.

7. Since the total cost for the Matsonford Bridge project is over \$100,000.00 and the preparation of detailed plans and cost estimates are part of the total cost, legislative approval is required before PennDOT can proceed to complete said plans and cost estimates.

8. PennDOT has taken all reasonable steps to comply with the P.U.C.'s Order and the safety of the public at the present time is not jeopardized.

9. PennDOT has proven the Matsonford Bridge project must be contained in an approved Capital Budget before it can complete the construction plans and cost estimates.

10. Granting of PennDOT's petition for extension of time will not at the present time compromise the accommodation, safety and convenience of the public.

The following conclusions of law be added:

11. While the P.U.C. has exclusive jurisdiction over rail-highway crossings and the power to determine and prescribe the manner in which they are to be constructed, altered, relocated, abolished and suspended, it does not have the power to appropriate Commonwealth funds for Capital Projects.

12. Funds for Capital Projects are only provided by the General Assembly under an approved Capital Budget. Such funds may come from the Commonwealth's current revenues and/or the issuance of Commonwealth bonds.

13. A Capital Project is any improvement having a life expectancy of more than five years and, for bond proceeds, a total cost of more than \$100,000.00; or, from current revenues, a cost in excess of \$25,000.00.

14. The cost of a Capital Project includes acquisition costs, construction costs and the cost of preparing plans and specifications.

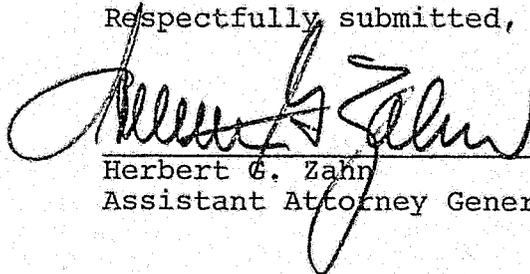
15. The reconstruction of the Matsonford Bridge in these proceedings is a Capital Project.

16. In order for the Matsonford Bridge project to qualify for federal funding, the project must be on the state's twelve year highway program.

17. Because the Matsonford Bridge rail-highway crossing is a "type" of project which the State Highway and Bridge Authority is authorized to construct, such a project is a Capital Project within the context of the Capital Facilities Debt Enabling Act.

18. Because of the requirements of the Constitution of Pennsylvania, Act 120 and the Capital Facilities Debt Enabling Act, PennDOT cannot proceed to complete the final construction plans and estimates of costs for the Matsonford Bridge until the project is on an approved Capital Budget.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Herbert G. Zahn", is written over a horizontal line.

Herbert G. Zahn
Assistant Attorney General

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
HARRISBURG 17120
Office of Chief Counsel



IN REPLY REFER TO

C. J. McElwee, Secretary
Pennsylvania Public Utility Commission
North Office Building
Harrisburg, Pennsylvania 17120

RECEIVED
JUN 28 1977
Secretary's Office
Public Utility Commission

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Very truly yours,

Herbert G. Zahn
Assistant Attorney General

220/HGZ:rmm
Enclosures

cc: K. W. Walker, P.E., Chief Utility Engineer
District #6-0
Parties of Record-Page 2

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

DOCUMENT
FOLDER

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JUN 24 1977
Office of the A. L. J.
Public Utility Commission

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Lewis Tower Building
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10. Granting of PennDOT's petition for extension of time will not at the present time compromise the accommodation, safety and convenience of the public.

The following conclusions of law be added:

11. While the P.U.C. has exclusive jurisdiction over rail-highway crossings and the power to determine and prescribe the manner in which they are to be constructed, altered, relocated, abolished and suspended, it does not have the power to appropriate Commonwealth funds for Capital Projects.

12. Funds for Capital Projects are only provided by the General Assembly under an approved Capital Budget. Such funds may come from the Commonwealth's current revenues and/or the issuance of Commonwealth bonds.

13. A Capital Project is any improvement having a life expectancy of more than five years and, for bond proceeds, a total cost of more than \$100,000.00; or, from current revenues, a cost in excess of \$25,000.00.

14. The cost of a Capital Project includes acquisition costs, construction costs and the cost of preparing plans and specifications.

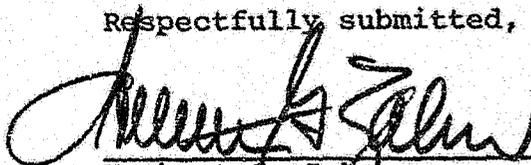
15. The reconstruction of the Matsonford Bridge in these proceedings is a Capital Project.

16. In order for the Matsonford Bridge project to qualify for federal funding, the project must be on the state's twelve year highway program.

17. Because the Matsonford Bridge rail-highway crossing is a "type" of project which the State Highway and Bridge Authority is authorized to construct, such a project is a Capital Project within the context of the Capital Facilities Debt Enabling Act.

18. Because of the requirements of the Constitution of Pennsylvania, Act 120 and the Capital Facilities Debt Enabling Act, PennDOT cannot proceed to complete the final construction plans and estimates of costs for the Matsonford Bridge until the project is on an approved Capital Budget.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Herbert G. Zahn', written over a horizontal line.

Herbert G. Zahn
Assistant Attorney General