

October 12, 1977

C. 19707

Herbert G. Zahn, Assistant Attorney General
Pennsylvania Department of Transportation
Capital Associates Building
Seventh and Forster Streets
Harrisburg, Pennsylvania 17120

DEPARTMENT OF TRANSPORTATION OF THE COMMONWEALTH OF
PENNSYLVANIA

v.

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

Dear Sir:

We enclose herewith copy of proposed Initial Decision prepared by Administrative Law Judge Rudolph S. Pallastrone for exceptions which must be filed in the Secretary's office within 20 days of the above date, in connection with the above docketed proceeding, subject to final Commission approval.

Very truly yours,

for C. J. McElwee
Secretary

PLS

Encls.

Certified Mail

Return Receipt Requested

cc: Rudolph S. Pallastrone, Esquire
Public Utility Commission
1306 State Office Building
Broad & Spring Garden Streets
Philadelphia, Pennsylvania 19130

Chief ALJ Shane
Cathy Cook, Office of ALJ
Mr. Bramson

RECEIVED
OCT 13 1977
DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

SIMILAR LETTER LIST

C. 19707

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

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

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

Walter Phipps, Jr., Solicitor
Borough of Conshohocken
321 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

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

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

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: :
Department of Transportation : Complaint Docket
of the Commonwealth of : No. 19707
Pennsylvania, :
Complainant :
vs. :
Reading Company, Debtor, :
Borough of Conshohocken, :
Borough of West Conshohocken :
and County of Montgomery, :
Respondents :

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

INITIAL DECISION

DOCKET

COMPLAINT DOCKET
OCT 14 1977
ENTRY No.

RUDOLPH S. PALLASTRONE
ADMINISTRATIVE LAW JUDGE

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: :

Department of Transportation : Complaint Docket
of the Commonwealth of : No. 19707
Pennsylvania, :

Complainant :

vs. :

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

Respondents :

APPEARANCES

Pennsylvania P.U.C. - Candace N. Kreiger, Esquire
PennDot - Herbert G. Zahn, Esquire

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: :
Department of Transportation : Complaint Docket
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Pennsylvania, :
Complainant :
vs. :
Reading Company, Debtor, :
Borough of Conshohocken, :
Borough of West Conshohocken :
and County of Montgomery, :
Respondents :

BRIEFS

Briefs were filed by Pennsylvania Public Utility
Commission and PennDot.

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: :
Department of Transportation : Complaint Docket
of the Commonwealth of : No. 19707
Pennsylvania, :
Complainant :
vs. :
Reading Company, Debtor, :
Borough of Conshohocken, :
Borough of West Conshohocken :
and County of Montgomery, :
Respondents :

INITIAL DECISION

(Subject to the Commissions Approval)

HISTORY OF THE PROCEEDINGS

This matter was first brought to the Commission's attention on September 27, 1972, by Complaint filed at Docket #C.19707 by the Pennsylvania Department of Transportation.

PennDot's Complaint alleged that the Matsonford Bridge located in the Borough of West Conshohocken was in a state of disrepair and that PennDot was in the process of preparing plans to renovate the structure. An answer to PennDot's Complaint was filed by all party Respondents.

On January 15, 1974, the Public Utility Commission issued an Order directing that PennDot's repair plans be approved and that PennDot undertake repair and rehabilitation in accordance with the Public Utility Commission's Order. Further, the Commission ordered that hearings be held on matters concerning cost allocation and future maintenance obligations.

On December 16, 1974, PennDot filed a Petition for Modification of the above mentioned Order, alleging that repairs and renovations of the Matsonford Bridge would not be economically feasible and that the bridge should be reconstructed. Further, that the Public Utility Commission modify its January 15, 1974, Order to provide PennDot with an additional twelve (12) months to submit detail^{ed} plans and estimates of cost for reconstruction of the Matsonford Bridge.

On October 21, 1975, the Public Utility Commission issued an Order approving PennDot's Petition for Modification and directed that within twelve (12) months from said date, that PennDot prepare and submit to the Public Utility Commission and all parties of record, detailed construction plans and costs for the new Matsonford Bridge.

The matter again came before the Public Utility Commission at the request of the Borough of Conshohocken by letter Petition filed on November 12, 1976, and a Petition filed by PennDot on December 16, 1976, praying for a Modification of the Order of October 21, 1975, in the nature of a time extension.

The Borough of Conshohocken stated in its Petition that it had not received from PennDot, detailed construction plans and cost estimates as required by the October 21, 1975, Order. It requested that there be enforcement of that Order against PennDot by the Attorney General for the Commonwealth of Pennsylvania.

PennDot filed an answer to the Borough of Conshohocken's Petition alleging inter alia that the Matsonford Bridge was not on the Commonwealth of Pennsylvania's twelve (12) year highway program nor on the approved Capital Budget and therefore, PennDot was not financially able to proceed with detailed construction plans and cost estimates in accordance with the October 21, 1975, Order. PennDot further requested that the Commission extend the Order of October 21, 1975.

On January 18, 1977, the Commission ordered that a hearing be held on the Borough's Petition and PennDot's Petition for Modification. It also directed the staff of the Public Utility Commission to intervene in this matter.

On February 16, 1977, counsel for the Public Utility Commission filed with your Administrative Law Judge, an application for Subpeona Ad Testificandum requiring the appearance of Paul C. Peterson, Bridge Engineer for District 60, Department of Transportation. Said Petition for subpeona was granted.

On March 10, 1977, a hearing was held on the Borough's Petition and PennDot's Petition for Modification. At the conclusion of the hearing, your Administrative Law Judge, directed that counsel for the Public Utility Commission staff and counsel for PennDot submit briefs on their relative positions.

SUMMARY OF EVIDENCE

Counsel for PennDot presented testimony through James B. Chiles, PennDot's director of Economic Research and Programming and Paul C. Peterson, District Bridge Engineer for PennDot's District 60.

Mr. Chiles testified concerning the twelve (12) year highway program of the Commonwealth of Pennsylvania and matters concerning the Capital Budget. He stated that the Matsonford Bridge reconstruction was not on the approved "Capital Budget" and further, testified as to PennDot's departmental policy concerning budgeted Public Utility Commission projects.

Mr. Peterson, District Bridge Engineer, was cross-examined by counsel for the commission concerning the status and cost of the detailed construction plans as well as the present state of the Matsonford Bridge as effects the safety of pedestrians and vehicular users. During the course of the testimony, certain PennDot exhibits were admitted namely Senate Bill 59, Act 42, PennDot Exhibit 3 and Capital Budget Highway Project Estimate 1976-1977, PennDot Exhibit 4 and a letter to the members of the State Transportation Commission from William A. Sherlock, dated September 13, 1976, PennDot Exhibit 5.

The staff did not present any witnesses on its own behalf.

The Borough of Conshohocken called Frank Moran, Engineer to the Borough of Conshohocken who testified that the bridge is in a state of disrepair and that it presented a present danger to pedestrians as well as vehicular traffic.

Anthony J. Scirica, Representative of the 148th Legislative District, presented evidence that he had several conversations the previous year and that he was under the impression that the Matsonford Bridge was on the Capital Approved Budget. He evidenced his concern as to the condition of the bridge.

DISCUSSION

In reviewing the testimony of the witnesses who appeared at the hearing of March 10, 1977, several pertinent areas of the testimony are worthwhile mentioning. The Matsonford Bridge project was part of the approved Capital Budget for the fiscal year 1972-1973 as a Bridge Rehabilitation Project. That upon review by the District Engineer, at PennDot's St. David's office, it was concluded that rehabilitation was inappropriate and complete reconstruction would be necessary. As a result of this decision, the policy of PennDot was to submit this project to the Commonwealth of Pennsylvania for replacement on the twelve (12) year highway program. That the submission of said project went to the Legislature for approval to the Capital Budget which cannot be done by PennDot but must be done by the Transportation Committee. Further, that a Public Utility Commission project is not submitted on the twelve (12) year highway program and that PennDot cannot honor the directives of the Commission. Although, Montgomery County for the twelve (12) year time period has an allocation of \$40,000,000.00, the Matsonford Bridge project was

not part of that construction allocation. But most importantly, Mr. Chiles, indicated that the twelve (12) year program is flexible enough that any project can be deleted and another one can be added.

Mr. Peterson, District Engineer, further testified that 50% of the plans have been presently completed and that the balance of the construction plans and costs could be completed in approximately one (1) year. Mr. Peterson, agrees with witness Moran, and Representative Scirica that the surface should be repaired immediately. He shared the same concerns as witness Moran who stated that the sidewalks were in such disrepair that it should be immediately repaired.

This matter presents two (2) very interesting issues, they are namely:

a) Whether the mandates of Act 120, Act of May 6, 1970, P.L. 356, requires that all Public Utility Commission projects should be placed on the Commonwealth's twelve (12) year highway program or

b) Whether Sections 409 and 411 of the Public Utility Commission Law, as amended, 66 P.S. Section 1179, (81) vested in the Public Utility Commission exclusive jurisdiction and power of all matters pertaining to public railway highway crossings within the Commonwealth of Pennsylvania.

PennDot alleges that Capital Facilities Debt Enabling Act of July 20, 1968, directs the manner in which all findings for Capital projects be accomplished. They alleged that the Public Utility Commission project i.e., the Matsonford Bridge is a Capital Project and therefore, falls within the mandates of the above act. In support of this position, they state that under Section 2, (1) of the Enabling Act any project in excess of \$100,000.00 must be placed on the Capital Project Budget, and since the Matsonford Bridge reconstruction costs will exceed \$5,000,000.00 and the estimated life is in excess of five (5) years, this must by definition be considered a Capital Project.

The staff's position is contra and they cite Section 22 of Act 120 which provides inter alia:

"Nothing in the Act shall effect in any manner the powers and duties of the Pennsylvania Public Utility Commission".

It is clear from Section 409 (b) and (c) of the Public Utility Commission Law that Legislature has vested exclusive jurisdiction and power in the Public Utility Commission in matters concerning highway crossings., whether they be construction, alterations or relocation as well as abolition.

The crucial question is, does Act 120 affect the powers and duties of the Public Utility Commission and/or are Public Utility Commission projects not Capital Projects within the meaning of the Capital Facilities Enabling Act?

Although, both counsel advanced strong supporting arguments for their position it would appear in reviewing the Act, Section 22, and the Public Utility Commission Law, it would appear that PennDot cannot avoid the clear mandates of the Public Utility Commission Law and the lawful Order of the Commission. Although, it is clear that the construction of the Matsonford Bridge will involve a cost in excess of \$100,000.00 and have a useful life in excess of five (5) years, the requirements and mandates the Commission Order of October 21, 1975, is a valid directive to the PennDot. It would be anomaly under the law if we were to conclude that matters within the exclusive jurisdiction of the Public Utility Commission could be avoided by the Pennsylvania Department of Transportation, merely because the project exceeds a certain dollar amount. To hold otherwise, it would be to accomplish a result which would be absurd and unreasonable. The Commission is charged with the responsibility of preserving and providing for the safety of the public. To hold otherwise, would be placing the public in jeopardy by permitting PennDot to overlook and fail to carry out lawful Orders of the Public Utility Commission.

FINDINGS OF FACT

1. That the Order by the Public Utility Commission dated October 21, 1975, directed PennDot to submit detailed construction plans and cost estimates for the reconstruction of the Matsonford Bridge.

2. That the plans and cost estimates have not been submitted by PennDot.

3. The reconstruction of the Matsonford Bridge is not on the Commonwealth of Pennsylvania's twelve (12) year highway program or on an approved Capital Budget.

4. That the Matsonford Bridge was on the approved Capital Budget for the fiscal year of 1972-1973.

5. That at the request of PennDot, the Public Utility Commission modified its Order and issued a new Order on October 21, 1975, to provide for complete reconstruction of the Matsonford Bridge.

6. That the Matsonford Bridge project was submitted to the Transportation Commission but was deleted at the request of Representative Daniel Beren and the Pottstown Expressway Project was substituted.

7. That the Capital Facilities Debt Enabling Act, Section 3920.2 does not intend that Public Utility Commission projects be considered "Capital Projects".

8. That Act 120, Act of May 6, 1970 P.L. 356, the Act creating PennDot, specifically requires PennDot shall not effect in any manner the powers and duties of the Pennsylvania Public Utility Commission.

9. That the Matsonford Bridge is in a state of disrepair and presents a danger to the pedestrians and vehicular traffic using the bridge.

10. Your Administrative Law Judge adopts the other findings of facts set forth in the staff's brief which appears on pages 35 to 39 inclusive.

CONCLUSIONS OF LAW

1. That Section 409 and 411 of the Public Utility Commission Law confers exclusive jurisdiction to the Public Utility Commission to regulate public rail highway crossings in the Commonwealth of Pennsylvania.

2. That the Public Utility Commission is vested with the power and duty to carry out all provisions of the Public Utility Commission Law and Act 120, May 6, 1970 P.L. 356, does not affect Public Utility Commission projects.

3. The Capital Facilities Debt Enabling Act does not effect nor control lawful Public Utility Commission projects.

4. That the construction of the Matsonford Bridge does not require the approval of the Legislature since it is not a Capital Budgeted Project.

5. That the Order of the Public Utility Commission directing PennDot to make detailed construction plans and cost allocations for the Matsonford Bridge is within the power of the Public Utility Commission.

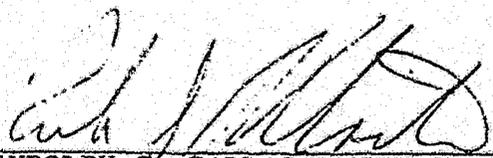
6. That PennDot has avoided performance of its duty in complying with the lawful Order of the Public Utility Commission. That the failure of PennDot to abide by the Order of the Public Utility Commission is detrimental to the safety, accomodation and convenience of the public at the instant rail highway crossing.

INITIAL ORDER

(Subject to Commission Approval)

BY THE COMMISSION:

1. That within sixty (60) days from the approval of the Order by the Commission, PennDot make immediate repairs to the bridge surface paving and adjacent sidewalks as required to effect a safe, smooth and satisfactory condition and upon completion, notify the Commission as to the nature and extent of the said repairs and the cost thereof.
2. That within six (6) months from the approval of this Order by the Commission, PennDot shall submit to the Commission detailed plans and estimates of costs for the reconstruction of the Matsonford Bridge.
3. That the cost of completion of said plans be borne by the PennDot.
4. That every thirty (30) days from the effective date of this Order, PennDot shall submit to the Public Utility Commission a memorandum detailing the status of the plans and cost estimates. Failure to commence the Engineering and/or the failure to submit the above mentioned reports, will constitute a violation of this Order and the Commission will direct the legal staff to institute appropriate legal proceedings for the compliance of this Order.


RUDOLPH S. PALLASTRONE
ADMINISTRATIVE LAW JUDGE

POOR ORIGINAL

Sec. Bur. C. 19707

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one):
 Show to whom and date delivered
 Show to whom, date, & address of delivery
 RESTRICTED DELIVERY. Show to whom and date delivered
 RESTRICTED DELIVERY. Show to whom, date, and address of delivery
Fees shown are in addition to postage charges and other fees.

ARTICLE ADDRESSED TO:
Sheldon Seligsohn, Atty.

ARTICLE DESCRIPTION:
REGISTERED NO. 44724 INSURED NO.

(Always obtain signature of addressee or agent)
I have received the article described above:
SIGNATURE Addressee Authorized agent

DATE OF DELIVERY
Alphonse

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

Sec. Bur. C. 19701

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

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 RESTRICTED DELIVERY. Show to whom and date delivered
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Fees shown are in addition to postage charges and other fees.

2. ARTICLE ADDRESSED TO:
Lockwood W. Foggy, Sec.

3. ARTICLE DESCRIPTION:
REGISTERED NO. 44722 INSURED NO.

(Always obtain signature of addressee or agent)
I have received the article described above:
SIGNATURE Addressee Authorized agent

DATE OF DELIVERY
Reading Co.

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

Sec. Bur. C. 19707

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

The following service is requested (check one):
 Show to whom and date delivered
 Show to whom, date, and address of delivery
 RESTRICTED DELIVERY. Show to whom and date delivered
 RESTRICTED DELIVERY. Show to whom, date, and address of delivery
Fees shown are in addition to postage charges and other fees.

ARTICLE ADDRESSED TO:
Lockwood W. Foggy, Secretary
Trustees of Reading Company

ARTICLE DESCRIPTION:
REGISTERED NO. 44515 INSURED NO.

(Always obtain signature of addressee or agent)
I have received the article described above:
SIGNATURE Addressee Authorized agent

DATE OF DELIVERY
Fidelity & Deposit

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

DUPLICATE RECORD.
ORIGINAL CERTIFIED.
OF
COMMONWEALTH COURT.

PS Form 3811, Rev. 1970
RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL
3. ARTICLE DESCRIPTION: REGISTERED NO. 44722 INSURED NO.
4. DATE OF DELIVERY 10/18/77
5. ADDRESS (Complete only if requested)
6. UNABLE TO DELIVER BECAUSE:
Postmark: 1000 1977

PS Form 3811, Nov. 1976
RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL
3. ARTICLE DESCRIPTION: REGISTERED NO. 44722 INSURED NO.
4. DATE OF DELIVERY 10/18/77
5. ADDRESS (Complete only if requested)
6. UNABLE TO DELIVER BECAUSE:
Postmark: 1000 1977

PS Form 3811, Nov. 1976
RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL
3. ARTICLE DESCRIPTION: REGISTERED NO. 44515 INSURED NO.
4. DATE OF DELIVERY 11/17/77
5. ADDRESS (Complete only if requested)
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Postmark: 1000 1977

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

POOR ORIGINAL

Sec. Bur. C. 19707

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

The following service is requested (check one).
 Show to whom and date delivered.
 Show to whom, date, and address of delivery.
 RESTRICTED DELIVERY
 Show to whom and date delivered.
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery.
 (CONSULT POSTMASTER FOR FEES)

ARTICLE ADDRESSED TO:
Edward F. Kane, Esquire
Kane, Fugh, Anderson,
Subers and McBrien

ARTICLE DESCRIPTION:
REGISTERED NO. CERTIFIED NO. INSURED NO.
44510

(Always obtain signature of addressee or agent)
I have received the article described above.
SIGNATURE Address: Authorized agent

DATE OF DELIVERY: 10/14/77 POSTMARK

ADDRESS (Complete only if requested)

UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.
 The following service is requested (check one).
 Show to whom and date delivered.
 Show to whom, date, and address of delivery.
 RESTRICTED DELIVERY
 Show to whom and date delivered.
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery.
 (CONSULT POSTMASTER FOR FEES)

ARTICLE ADDRESSED TO:
Joel E. Mazor, General Attorney
Consolidated Rail Corporation

ARTICLE DESCRIPTION:
REGISTERED NO. CERTIFIED NO. INSURED NO.
44509

(Always obtain signature of addressee or agent)
I have received the article described above.
SIGNATURE Address: Authorized agent

DATE OF DELIVERY: 10-17-77 POSTMARK

ADDRESS (Complete only if requested)

UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

Sec. Bur. C. 19707
 SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.
 1. The following service is requested (check one).
 Show to whom and date delivered.
 Show to whom, date, and address of delivery.
 RESTRICTED DELIVERY
 Show to whom and date delivered.
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery.
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Walter Phipps, Jr., Solicitor
Borough of Conshohocken

3. ARTICLE DESCRIPTION:
REGISTERED NO. CERTIFIED NO. INSURED NO.
44511

(Always obtain signature of addressee or agent)
I have received the article described above.
SIGNATURE Address: Authorized agent

DATE OF DELIVERY: 10-17-77 POSTMARK

5. ADDRESS (Complete only if requested)

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Sec. Bur. C. 19707
 SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.
 1. The following service is requested (check one).
 Show to whom and date delivered.
 Show to whom, date, and address of delivery.
 RESTRICTED DELIVERY
 Show to whom and date delivered.
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery.
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Sheldon Seligson, Attorney
The Bell Telephone Company
of Pennsylvania

3. ARTICLE DESCRIPTION:
REGISTERED NO. CERTIFIED NO. INSURED NO.
44512

(Always obtain signature of addressee or agent)
I have received the article described above.
SIGNATURE Address: Authorized agent

DATE OF DELIVERY: 10-17-77 POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

Sec. Bur. C. 19707
 SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.
 1. The following service is requested (check one).
 Show to whom and date delivered.
 Show to whom, date, and address of delivery.
 RESTRICTED DELIVERY
 Show to whom and date delivered.
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery.
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Roger B. Reynolds, Solicitor
County of Montgomery

3. ARTICLE DESCRIPTION:
REGISTERED NO. CERTIFIED NO. INSURED NO.
44514

(Always obtain signature of addressee or agent)
I have received the article described above.
SIGNATURE Address: Authorized agent

DATE OF DELIVERY: 10-17-77 POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

PS Form 3811, Apr. 1977

★ GPO 1977-O-234-237

★ GPO 1977-O-234-237

★ GPO 1977-O-234-237

October 13, 1977

✓ C. 19707

Joel E. Masor, 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, Philadelphia Suburban
Water Company and The Bell Telephone Company of Pennsylvania

Dear Sir:

Inasmuch as Administrative Law Judge Rudolph Pallastrone
has submitted his decision in the above-entitled proceeding,
the oral argument scheduled for October 21, 1977, at
Philadelphia, will not be necessary and is hereby cancelled.

Will you please mark your records accordingly.

Very truly yours,

William Shane, Chief
Administrative Law Judge

VB/WS/k

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

DOCKETED
COMPLAINT DOCKET
OCT 17 1977
ENTRY No. D

DOCUMENT
FOLDER

CCS:

Law Bureau
Bureau of Transportation
Secretary's Office
Mr. Bramson
Ms. Washington
Complaint Section-Secretary's Bureau
Administrative Law Judge Pallastrone
Chairman Carter
Consumer Advocate

October 17, 1977

C. 19707

Herbert G. Zahn, Assistant Attorney General
Pennsylvania Department of Transportation
Capitol Associates Building
Seventh and Forster Streets
Harrisburg, Pennsylvania 17120

Department of Transportation of
the Commonwealth of Pennsylvania

v.

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

Dear Sir:

We enclose herewith copy of Interim Order prepared by
Administrative Law Judge Rudolph S. Pallastrone, in connect-
ion with the above docketed proceeding, subject to Commission
approval.

Very truly yours,

for C. J. McElwee
Secretary

fao
Encls.
Cert. Mail
Receipt Req.

cc: Rudolph S. Pallastrone, Esquire
Public Utility Commission
1306 State Office Building
Broad & Spring Garden Streets
Philadelphia, PA 19130

Chief ALJ Shane
Cathy Cook, Office of ALJ
Mr. Bramson
Similar letter list attached.

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

DOCUMENT
FOLDER

SIMILAR LETTER LIST

C. 19707

Robert W. Cunliffe, Deputy Attorney General
Pennsylvania Department of Transportation
Capital Associates Building
Seventh and Forster Streets
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Joel E. Mazor, General Attorney
Consolidated Rail Corporation
Six Penn Center Plaza
Philadelphia, Pennsylvania 19104

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

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Borough of Conshohocken
321 Fayette Street
Conshohocken, Pennsylvania 19428

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One Parkway
Philadelphia, Pennsylvania 19102

James M. Ballengee, President
Philadelphia Suburban Water Company
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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

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Harrisburg, Pennsylvania 17120

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

Sec. Bur. C. 19707

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" reverse.

The following service is requested (check one):
 Show to whom and date delivered 25¢
 Show to whom, date, & address of delivery 45¢
 RESTRICTED DELIVERY. Show to whom and date delivered 85¢
 RESTRICTED DELIVERY. Show to whom, date, and address of delivery. . \$1.05
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ARTICLE ADDRESSED TO:
Joel E. Mazor, Gen. Att.

ARTICLE DESCRIPTION:
REGISTERED NO. CERTIFIED NO. INSURED NO.
44722

I have received the article described above.
 Addressee Authorized agent

DATE OF DELIVERY: 10-20-77
POSTMARK: [Stamp]

UNABLE TO DELIVER BECAUSE: _____
CLERK'S INITIALS: _____

Sec. Bur. C. 19707

Sec. Bur. C. 19707

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TO COMMONWEALTH COURT.

Sec. Bur. C. 19707

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28 Form 3811, Nov. 1976 RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

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(Fees shown are in addition to postage charges and other fees).

2. ARTICLE ADDRESSED TO:
James M. Ballengee, Pres.

3. ARTICLE DESCRIPTION:
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(Always obtain signature of addressee or agent)
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2. ARTICLE ADDRESSED TO:
Roger B. Reynolds, Sol.

3. ARTICLE DESCRIPTION:
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1. The following service is requested (check one):
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 RESTRICTED DELIVERY. Show to whom, date, and address of delivery. . \$1.05
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2. ARTICLE ADDRESSED TO:
Edward F. Kane, Esquire

3. ARTICLE DESCRIPTION:
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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
HARRISBURG 17120
Office of Chief Counsel



October 31, 1977

IN REPLY REFER TO

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

RECEIVED
NOV 1 1977
SECRETARY'S OFFICE
PUBLIC UTILITY COMMISSION

Re: Complaint Docket No. 19707
Montgomery County

Dear Mr. McElwee:

Under date of October 12, 1977, a copy of the proposed report of Administrative Law Judge Rudolph S. Pallastrone was sent to the Department of Transportation with notice that exceptions were to be filed with your office within twenty (20) days, in connection with the above entitled matter. Under Section 35.211 of Title 1 of the Pennsylvania Code it provides that exceptions are to be filed within thirty (30) days of notice.

We assume the thirty (30) day period for exceptions is the correct time and our exceptions will be filed with your office on or before November 11, 1977.

A copy of this letter is being sent to the staff of the Commission and Administrative Law Judge Pallastrone.

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

Very truly yours,

Herbert G. Zahn
Herbert G. Zahn
Assistant Attorney General

220/HGZ:rmm

cc: P.U.C., Legal Staff, Candace Kreiger
Rudolph S. Pallastrone, Administrative Law Judge

FILE
C. K. G.

DOCUMENT
FOLDER

November 8, 1977

C. 19707

Herbert G. Zahn, Assistant Attorney General
Pennsylvania Department of Transportation
Capitol Associates Building
Seventh and Forster Streets
Harrisburg, Pennsylvania 17120

DEPARTMENT OF TRANSPORTATION OF
THE COMMONWEALTH OF PENNSYLVANIA

v.

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

Dear Sir:

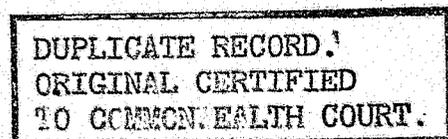
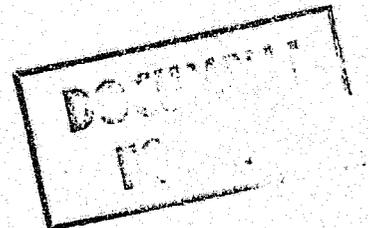
Enclosed herewith is a revised order page from the Initial Decision prepared by Administrative Law Judge Rudolph S. Pallastrone in the above docketed proceeding. In view of the substantive effect of the revised order, there will be an additional 10 days, from the above date, for exceptions which must be filed in the Secretary's office.

Very truly yours,

for C. J. McElwee
Secretary

PLS
Encls.
Certified Mail
Receipt Requested
cc: Rudolph S. Pallastrone, Esquire
Public Utility Commission
1306 State Office Building
Broad & Spring Garden Streets
Philadelphia, Pennsylvania 19130

Chief ALJ Shane
Cathy Cook, Office of ALJ
Mr. Bramson
See attached letter list.



SIMILAR LETTER LIST

C. 19707

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

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

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

Walter Phipps, Jr., Solicitor
Borough of Conshohocken
321 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

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

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

Please incorporate into letter

Enclosed is a revised order
page for the Initial Decision
of Judge Caliastrone in the
proceeding

In view of the substantive ~~change~~ effect
of the revised order there will be an additional
period of 10 days from the above date for
filing exceptions.

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE:

Department of Transportation
of the Commonwealth of
Pennsylvania,
Complainant

:
: Complaint Docket
: No. 19707

vs.

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

:
:
:
:
:
:
:

INITIAL DECISION

DOCKETED
COMPLAINT DOCKET
DEC 9 1977
ENTRY No. *C*

RUDOLPH S. PALLASTRONE
ADMINISTRATIVE LAW JUDGE

[Faint, illegible stamp]

INITIAL ORDER

(Subject to Commission Approval)

BY THE COMMISSION:

1. That within sixty (60) days from the approval of the Order by the Commission, PennDot make immediate repairs to the bridge surface paving and adjacent sidewalks as required to effect a safe, smooth and satisfactory condition and upon completion, notify the Commission as to the nature and extent of the said repairs and the cost thereof.
2. That within six (6) months from the approval of this Order by the Commission, PennDot shall submit to the Commission detailed plans and estimates of costs for the reconstruction of the Matsonford Bridge.
3. That the cost of completion of said plans be borne by the PennDot.
4. That every thirty (30) days from the effective date of this Order, PennDot shall submit to the Public Utility Commission a memorandum detailing the status of the plans and cost estimates. Failure to commence the Engineering and/or the failure to submit the above mentioned reports, will constitute a violation of this Order and the Commission will direct the legal staff to institute appropriate legal proceedings for the compliance of this Order.



RUDOLPH S. PALLASTRONE
/ ADMINISTRATIVE LAW JUDGE

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
Office of Chief Counsel
November 10, 1977



IN REPLY REFER TO

RECEIVED

NOV 10 1977

SECRETARY'S OFFICE
PUBLIC UTILITIES COMMISSION

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

RE: Exceptions to Proposed Initial Decision and
Request for Oral Argument
Complaint Docket No. 19707
PennDOT v. Reading Company, Debtor,
Borough of Conshohocken, Borough
of West Conshohocken and County
of Montgomery

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

Dear Mr. McElwee:

In accordance with Title 1 of the Pennsylvania Code, Section 35.214, The Pennsylvania Department of Transportation hereby moves for Oral Argument before your Honorable Commission on its Exceptions to the proposed Initial Decision of Administrative Law Judge Rudolph S. Pallastrone.

I certify that copies of this Motion have been sent by first class mail to all parties of record listed below.

Sincerely,

Herbert G. Zahn,
Assistant Attorney General

220/HGZ:smm

Attachment

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

DOCUMENT
FOLDER

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

Parties of Record

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

Candice N. Kreiger, Staff Counsel
Pennsylvania Public Utility Commission
North Office Building
Harrisburg, Pennsylvania 17120

Joel E. Mazor, General Attorney
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
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

EXTRA

Before the

PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

NOV 10 1977

SECRETARY'S OFFICE
PUBLIC UTILITY COMMISSION

DEPARTMENT OF TRANSPORTATION OF
THE COMMONWEALTH OF PENNSYLVANIA

vs.

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

COMPLAINT DOCKET NO. 19707

EXCEPTIONS AND BRIEF CONTRA TO THE PROPOSED
REPORT OF THE ADMINISTRATIVE LAW JUDGE

HERBERT G. ZAHN
ASSISTANT ATTORNEY GENERAL

ROBERT W. CUNLIFFE
DEPUTY ATTORNEY GENERAL

COMMONWEALTH OF PENNSYLVANIA
Department of Transportation
Office of Chief Counsel
Harrisburg, Pennsylvania 17120
Phone: 717-787-5931

DUPLICATE RECORD!
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Department of Transportation of the Commonwealth of Pennsylvania	:	
	:	COMPLAINT
vs.	:	
	:	DOCKET
	:	
Reading Company, Debtor, Borough of Conshohocken, Borough of West Conshohocken and county of Montgomery	:	No. 19707
	:	
	:	

EXCEPTIONS AND BRIEF CONTRA TO THE PROPOSED
REPORT OF THE ADMINISTRATIVE LAW JUDGE

AND NOW, to wit: this 10th day of November, 1977, the Pennsylvania Department of Transportation takes EXCEPTIONS to the Proposed Report of Administrative Law Judge Rudolph S. Pallastrone in the above entitled matter as provided by Title 1, Pennsylvania Code, Section 35.211, and respectfully files this Brief in support thereof, as follows:

I. STATEMENT OF THE CASE

These proceedings were instituted by the Pennsylvania Department of Transportation (PennDOT) by Complaint at C. 19707, on September 27, 1972, because of its concern with the condition of the Matsonford Bridge, which averred PennDOT prepared a plan to rehabilitate it in order to insure the life of the structure and the safety of the travelling public.

After Answers were filed and a field conference and investigation was conducted by the staff of the Pennsylvania Public Utility Commission (P.U.C.), the initial public hearing was held on December 20, 1972. A little over a year later, on January 15, 1974, the P.U.C. issued an Order directing, inter alia, that PennDOT's plan be approved and that the Department undertake the ordered rehabilitation repairs at its initial cost and expense, with work to be completed by December 31, 1975. Funds for the rehabilitation were authorized and provided by the Capital Budget Act for the fiscal year 1972-73, Act No. 42, in the amount of \$300,000.00 for the base construction costs and \$48,000.00 for design costs (N.T. 9*).

During the summer of 1974, upon further inspection of the bridge, PennDOT determined that the bridge had deteriorated very significantly between 1972 and the summer of 1974 which precluded the rehabilitation of the bridge and that reconstruction of it was necessary and required (N.T. 77). Accordingly, on December 16, 1974, PennDOT filed a Petition for Modification of the January 15, 1974 Order so as to reconstruct the bridge and requested an additional 12 months to submit new plans and cost estimates for the reconstruction of it.

A further hearing was held on April 15, 1975 on the said Petition for Modification and it was testified, inter alia, that the cost for reconstruction of the bridge was estimated to be \$5,000,000.00. Thereafter, on October 21, 1975, a further Order

*References are to pages in the official transcript of the hearing of March 10, 1977.

was issued approving PennDOT's Petition and directing, inter alia, that PennDOT, within twelve months from the date of service of the said Order, prepare and submit new plans and estimate of costs for the reconstruction of the Matsonford bridge.

Since the improvement project for the said structure changed from "rehabilitation" to "reconstruction", the Legislative authorization for rehabilitation contained in the aforementioned Capital Budget for 1972-73 (Act No. 42) could not and cannot be switched to the reconstruction of the bridge (N.T. 10, 41, 43).

Both the rehabilitation and reconstruction projects were and are Capital Projects which require inclusion in a Legislature approved Capital Budget (explained more fully hereinafter under "Argument"). But in order to be included in a Capital Budget the project, inter alia, must be contained in the State Transportation Commission's Twelve Year Program (N.T. 15). Until October 6, 1976, the reconstruction of the subject bridge was on the said Transportation Commission's said Program and qualified for a Capital Budget, but on that date it was deleted from the said Twelve Year Program (N.T. 7). Due to the said deletion PennDOT was unable, financially or legally, to proceed with the completion of the new plans directed by the Order of October 21, 1975 (N.T. 58).

As a result of the aforesaid deletion, no Capital Budget and the lack of funds on November 30, 1976, PennDOT filed a Petition for Modification of the Order of October 21, 1975, to extend the time for completion of the new plans to reconstruct the subject

bridge to 12 months from the time the Legislature approves a Capital Budget providing the necessary funds for the project.

A further public hearing was ordered by the P.U.C. to be set on, inter alia, PennDOT's said Petition for Modification which was held on March 10, 1977. In the interim, however, on February 15, 1977, the staff of the P.U.C. took the Depositions of James B. Chiles, PennDOT's Director of the Bureau of Economic Research and Programming, in charge of budgeting bond-financed Capital Projects under the 12 Year Program, and James Vovakes, PennDOT's Director of Bureau of Fincial Management, in charge of PennDOT's non-bond financed Budget. These Depositions have been made part of the record in this case.

In both the Depositions and at the public hearing of March 10, 1977, Mr. Chiles testified as to the manner and procedure required to budget and obtain necessary funds for Capital Projects from bond financing (D. 5 to 22*); he also testified the reconstruction project for the subject bridge is not on an approved Capital Budget, hence PennDOT has no funds to complete the new construction plans, because the Montgomery County Planning Commission removed the project from the 12 Year Program (D. 17; T. 19). Mr. Vovakes, on his Depositions, testified there were no funds available to PennDOT for Capital Projects from (non-bond) current revenues (D. 56, 59).

At the March 10, 1977 public hearing, PennDOT's uncontradicted testimony showed the Matsonford Bridge is safe and is inspected

*References are to pages of the Depositions of February 15, 1977.

periodically (T. 76, 77, 78); that the new plans for the reconstruction of the bridge are 50% complete (T. 65) and will require one year to complete them at a cost of approximately \$75,000.00 (T. 72, 74, 75). There was testimony that the sidewalks and curbs of the bridge are in need of repair (T. 98), but it does not affect the structural safety (T. 82) and such repairs would be detrimental since it would increase the dead load of the bridge (T. 83).

Briefs were filed by the Staff of the P.U.C. and by PennDOT. PennDOT has maintained that the Legislature has not appropriated any funds to it in order to proceed with the design for the reconstruction of the bridge since it is a Capital Project, not on the Twelve Year Program and consequently is not qualified for a Capital Budget.

On October 12, 1977, P.U.C. notified PennDOT and sent a copy of Administrative Law Judge Pallastrone's Proposed Initial Decision (received by PennDOT on October 13, 1977), a copy is attached as Exhibit "A", which recommended, inter alia, PennDOT must submit the new plans for reconstruction of the Matsonford Bridge to P.U.C. within six (6) months from approval by the Commission of the proposed Order. The Proposed Order is based upon the conclusion that P.U.C. projects are not the type of Capital Projects under the "Capital Facilities Debt Enabling Act" (which implemented the Pennsylvania Constitution, Article VIII, Section 7(a)). Although the Proposed Order does not specifically

mention, the fact it follows and must be inferred the Administrative Law Judge found that a P.U.C. project of Capital proportions is not required to be on the State Transportation Commission's Twelve Year Program in order to qualify for the Capital Budget.

EXCEPTIONS are therefore taken to Administrative Law Judge Pallastrone's Proposed Report and Initial Order, as follows:

1. The reasoning and conclusion that the funding of P.U.C. Capital Projects is exempt from the laws requiring PennDOT to program for the Capital Budget only those Capital Projects which are included in the State Transportation Commission's Twelve Year Program (Paragraphs 7 & 8 of "Findings of Fact" and Paragraphs 2 and 3 of "Conclusions of Law").

2. The Matsonford Bridge is a present danger to pedestrian and vehicular traffic (Paragraph 9 of "Findings of Fact").

3. PennDOT has avoided performance of its duty in complying with the lawful Order of the P.U.C. and such failure is detrimental to the safety, accommodation and convenience of the public (Paragraph 6 of "Conclusions of Law").

4. The failure to find that the structural integrity of the Matsonford Bridge is presently safe, subject to periodic inspections, and the safety of the travelling public is not presently in jeopardy.

5. The failure to find that at the present time the granting of PennDOT's Petition for Extension of Time will not compromise the safety, accommodation and convenience of the public.

II. BASIC POSITION OF EXCEPTANT

PennDOT has petitioned for a modification of the P.U.C. Order dated October 21, 1975, so as to obtain an extension of time within which it must complete the work it was directed to perform. The petition, which the Proposed Order would deny, does not attack the P.U.C.'s jurisdiction over the crossing, nor does it challenge the P.U.C.'s power to issue the order in question. Rather, it requests an extension of time so that PennDOT will not be in violation of said order for failure to perform work it cannot legally perform. The P.U.C. may extend the time as requested and still fulfill its statutory function of effectuating the prevention of accidents and the promotion of the safety of the public, because at present the bridge in question is safe and is the subject of periodic inspections by PennDOT. In any event, at present, PennDOT cannot proceed with the work in question unless and until it receives the necessary authorization and appropriation from the Legislature.

III. GROUNDS ON WHICH EXCEPTIONS REST

The grounds upon which PennDOT's EXCEPTIONS rest are as follows:

1. There is uncontradicted testimony from PennDOT's expert bridge engineer the subject bridge is presently structurally safe.

2. Act 120, Act of May 6, 1970, P.L. 356, (71 P.S. 511 et seq.), the Act which created PennDOT, controls the funding, powers and duties of PennDOT and established the State Transportation Commission (S.T.C.), 71 P.S. 521, and the Twelve Year Capital Projects Program. Under the said Act, the S.T.C. determines the said Twelve Year Program and recommends it to the Governor, the General Assembly and the Secretary of Transportation. Unless a Capital Project is on the said Program, it cannot be included in the Governor's Capital Budget.

3. The Commonwealth's Capital Budget must be balanced from funds from current revenues and/or by the issuance of bonds.

4. The Capital Facilities Debt Enabling Act of July 20, 1968, P.L. 550, as amended, 72 P.S. 3920.1, et seq., implemented Article 8, Section 7(a)(4) of the Pennsylvania Constitution (procedure for incurring debts) and defines a "Capital Project" for bond financing as one, inter alia, that has an estimated life in excess of 5 years at an estimated cost in excess of \$100,000.00.

5. "Capital Projects" to be funded from operating revenues are not defined by legislation, but the Governor's Budget

Secretary, in his yearly instructions to the various Departments for the preparation of the Capital Budget, defines them, inter alia, as those having an estimated life in excess of 5 years at an estimated cost in excess of \$25,000.00.

6. The estimated cost of a Capital Project includes not only the cost of design, but the cost of construction and acquisition of right-of-way.

7. The Matsonford Bridge reconstruction project is a Capital Project, either for funding from current revenues or the issuance of bonds.

8. P.U.C. projects having an estimated useful life in excess of 5 years and estimated to cost in excess of \$25,000.00 (for current revenue funding) or \$100,000.00 (for bond financing) are Capital Projects controlled by the aforesaid Act 120, the Pennsylvania Constitution, and in regard to such projects financed by bonds the Capital Facilities Debt Enabling Act.

9. The said Act 120 does not, per se, affect the powers and duties of the P.U.C., but it does affect PennDOT's funding of P.U.C. projects.

10. It is the General Assembly which appropriates and provides funds to PennDOT, not the P.U.C., just as the General Assembly appropriates funds to the P.U.C. for its functions.

11. The exclusive jurisdiction of the P.U.C. in crossing cases, defined in Section 409 of the Public Utility Law (66 P.S. 1179), is for the purpose of "prevention of accidents and the

promotion of the safety of the public," not for the accommodation and convenience of the public. The extension of time to prepare the new plans will not presently cause accidents or endanger the safety of the public.

12. Because of PennDOT's financial condition, PennDOT can only undertake projects which can be Federally funded, and the Matsonford Bridge reconstruction project can only be Federally funded when it is included in the Twelve Year Program of the State Transportation Commission.

IV. ARGUMENT

- A. PENNDOT DOES NOT PRESENTLY HAVE THE FUNDS AND WILL NOT HAVE FUNDS TO COMPLY WITH THE P.U.C. ORDER UNTIL THE MATSONFORD BRIDGE PROJECT IS ON A LEGISLATIVE APPROVED CAPITAL BUDGET AS PROVIDED BY LAW.

At the outset, it is to be noted these proceedings were started on September 27, 1972, by PennDOT for the rehabilitation of the Matsonford Bridge, because of its desire to effectuate the prevention of accidents and promote the safety of the public, and a public hearing was held thereon on December 20, 1972. If all that would have been required for these purposes had been the repair to the structure as had been contemplated by the original plans submitted in 1972 with PennDOT's Complaint, those repairs would have been made sometime ago. However, it was not until January 15, 1974, that an Order was issued and thereafter upon further inspection of the bridge in the summer of 1974 PennDOT was convinced repairs were no longer feasible and reconstruction was necessary (N.T. 68). BUT, since that time and up to the present date, there was and is no danger that the bridge would or will collapse; the bridge is safe at the present time for the present conditions on which it operates (N.T. 76).

The basic problem with which PennDOT is confronted is the lack of appropriated funds to comply with the existing Order of October 21, 1975. A similar situation would exist within the P.U.C. if the Legislature did not appropriate funds to it. PennDOT's lack of funds results from the requirements of the Constitution of

Pennsylvania of 1968, the Capital Facilities Debt Enabling Act of 1968, July 20, P.L. 550, No. 217 (72 P.S. 3920 et seq.) which implemented the said Pennsylvania Constitution, and the Act of 1970, May 6 P.L. 356, No. 120, §11 (71 P.S. 511 et seq.) which created the Department of Transportation.

1. Requirements of Act of 1970, May 6, P.L. 356, No. 120.

The General Assembly created PennDOT by enacting Act 120, and within that Act, in Section 18 (71 P.S. 521), the State Transportation Commission was established. In Section 13(a)(13) of Act 120, as amended, (71 P.S. 512) it is provided:

"(a) The Department of Transportation in accordance with appropriations made by the General Assembly ... shall have the power and its duty shall be:

* * * *

(13) To prepare and submit every even-numbered years ... to the State Transportation Commission for its consideration, a program which it recommends to be undertaken by the Department of Transportation during the twelve fiscal years next ensuing. Each two years thereafter, the Department of Transportation, taking into consideration the recommendations of the State Transportation Commission, and other relevant information, shall review, revise, adjust and extend its construction program for two years. The preparation and consideration of the program shall be coordinated with the preparation and consideration of the Commonwealth's Capital Program by the State Planning Board" (underlining supplied)

Section 18(c) of Act 120, setting up the State Transportation Commission (71 P.S. 521) provides:

"(c) The Commission shall have the power, and its duties shall be to gather and study all available information, data, statistics and reports relating to the needs for highway construction or reconstruction ... and services in the Commonwealth to determine ... and recommend order of priority ... facilities and services should be constructed or reconstructed and to certify from time to time the results of such determination to the Governor, to the General Assembly and to the Secretary of Transportation, for their consideration. Transportation programs so determined shall not be changed, deleted or altered, except by the Commission" (underlining supplied)

While Act 1920 does not impair or suspend the powers and duties of the P.U.C., as set forth in Section 22 of the said Act, the Act does affect the budgeting by and the appropriation of funds to PennDOT. The Act specifically states the Transportation Commission must set the priorities for the budgeting and funding of Commonwealth projects after gathering and studying all available information of the needs for highway construction or reconstruction. There is no distinction made between PennDOT projects and P.U.C. projects.

2. Constitutional Requirements.

The Constitution, in Article II, Section 1, gives the

General Assembly the legislative power of this Commonwealth. Section 12(a) of Article VIII of the Constitution requires the Governor to annually submit to the General Assembly a balanced operating budget:

"(a) ... setting forth in detail (i) proposed expenditures classified by department or agency and by program and (ii) estimated revenues from all sources. If estimated revenues and available surplus are less than proposed expenditures, the Governor shall recommend specific additional sources of revenue sufficient to pay the deficiency"

And in Section 12(b) of said Article VIII the Governor is required to annually submit to the General Assembly:

"(b) a capital budget ... setting forth in detail proposed expenditures to be financed from the proceeds of obligations of the Commonwealth or its agencies or authorities or from operating funds." (underlining supplied)

Thus, the Governor is required not only to submit to the General Assembly, for its approval and passage of legislation, a balanced operating budget based on available funds from all sources, but a capital budget based on proceeds from obligations and from operating funds. In Section 12(c) of said Article VIII, projected operating expenditures in the budget must be classified by department or agency and by program in reasonable detail; projected

Capital Projects must be specifically itemized by purpose. [The annual budget for the Commonwealth, for operations and capital projects, are enacted into law by specific acts of the General Assembly.]

Regarding PennDOT's operating funds, under Section 11 of Article VIII of the Constitution of 1968, which changed the prior law, "all proceeds from gasoline and other motor fuel excise taxes, motor registration fees and license taxes, operators' license fees and other excise taxes imposed on products used in motor transportation after providing therefrom for (a) cost of administration and collection, (b) payment of obligations incurred in the construction and reconstruction of public highways and bridges shall be appropriated by the General Assembly to agencies of the state or political subdivisions thereof; and used solely for construction, reconstruction, maintenance and repair of and safety on public highways and bridges ... and shall not be diverted by transfer or otherwise to any other purpose"

Similar to the P.U.C. which makes assessments to the utility companies under its jurisdiction for its operation of funds and which the Legislature then appropriates to the Commission, PennDOT's current revenues are appropriated to it by specific legislation. Under prior law there was a continuing appropriation of these proceeds to the Secretary of Transportation (Highways) without further legislative action, who used his discretion as to the use thereof, but this is no longer the case.

Furthermore, even with financing from bond revenues, funds are limited. Article VIII, Section 7(a)(4) of the Constitution, which limits the Commonwealth's indebtedness, provides a debt may be incurred for "Capital Projects" specifically itemized on a Capital Budget which will not cause the amount of all net debt outstanding to exceed 1 3/4 times the average annual tax revenues in the previous five years. This portion of the Constitution addresses itself to bond-financed Capital Projects in a Capital Budget.

3. Capital Facilities Debt Enabling Act of 1968

The Capital Facilities Debt Enabling Act of 1968 (72 P.S. 3920) is considered to implement said Section 7(a)(4) of the Constitution and in Section 2(1) of the said Enabling Act (72 P.S. 3920.1) a "Capital Project" for bond-financed projects is defined as having "an estimated useful life in excess of five years and an estimated financial cost in excess of one hundred thousand dollars (\$100,000)." Section 3(a) of the said Enabling Act (72 P.S. 3920.3(a)) provides for a Capital Budget to be prepared in accordance with the said Act and submitted by the Governor each fiscal year to the legislature, and the legislature thereafter is to proceed to consideration of the Capital Budget in accordance with Article III of the Constitution (which sets forth the legislative procedure). The Debt Enabling Act also provides (72 P.S. 3920.7) for the

issuance of Commonwealth bonds to provide the funds for the approved Capital Projects in a Capital Budget.

4. Capital Projects.

"Capital Projects", however, are not only those on a Capital Budget which are funded from bond revenues, they are also funded from operating revenues. Section 12(b) of Article VII of the Constitution, as stated, infra, requires the Governor to submit to the General Assembly each year a Capital Budget showing which of the proposed expenditures are to be financed from bonds or from operating funds. There is no legislation which defines what a Capital Project is that is to be financed from operating funds. However, the Governor's Budget Secretary, in the yearly instructions to the various Departments from the preparation of the Capital Budget, defines a "Capital Project" to include "any building, structure, facility, or physical public betterment or improvement" which "has an estimated useful life in excess of five years and an estimated total cost in excess of twenty-five thousand dollars (\$25,000)." These instructions list Capital Projects into four categories: a) Public Improvement Projects; b) Public Improvements -- Original Furnishings and Equipment; c) Transportation Assistance Projects; and d) Highway Projects. The Highway Projects are defined to include the design, purchase of right-of-way construction, reconstruction, and other improvements to highways and bridges on the state highway system.¹

¹This is a matter of public record and judicial notice should be given it.

As an example of the appropriations from operating funds in the Capital Budget, the Governor's Executive 1977-78 Budget, on page 266¹ programmed \$59,000.00 from current revenues for lighting at Capital City Airport (the total cost being \$230,000.00 of which \$171,000.00 would be federally funded).

A further example of an appropriation from current revenues for Capital Projects is Act No. 352, P.L. 1091,² of 1974-75 Capital Budget approved December 30, 1974, where in the category of "public improvement projects," the General Assembly provided funds from the General Fund, for itemized projects with their respective estimated costs, to the Department of Agriculture in the total sum of \$60,000.00, to the Department of Education in the total sum of \$1,031,500.00, to the Historical and Museum Commission in the total sum of \$218,000.00, to the Department of Military Affairs in the total sum of \$99,000.00, and to the Department of Public Welfare in the total sum of \$466,000.00.

A review of the foregoing demonstrates that Act 120 requires PennDOT to recommend a twelve year program to the State

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- 1 The P.U.C. has a copy of the 1977-78 Budget; it is a public record and judicial notice should be given.
 - 2 Judicial notice of an Act of the General Assembly should be given.

Transportation Commission coordinated with the preparation and consideration of the Commonwealth's capital program (bond and operating fund financed). The State Transportation Commission, in turn, recommends its twelve year program to the Governor, the General Assembly and the Secretary of PennDOT and this program can only be changed by the Transportation Commission. If a project has an estimated life of over five years and has a total cost of over \$100,000.00 to be financed from the issuance of bonds or over \$25,000.00 from operating revenues, it is a Capital Project to be included in the Commonwealth's Capital Budget. The Constitution requires the Governor to submit a balanced budget classified as to departments and programs each year to the General Assembly and the General Assembly enacts the budget into law.

Since PennDOT gets all its funds by appropriations of the General Assembly, the appropriations specify the use to which the funds are to be made, and if a Capital Project, the Capital Project is specifically itemized in the law. Neither in the Constitution nor in the various laws, concerning the appropriation of funds, is the P.U.C. or P.U.C. projects mentioned. A P.U.C. project, if it is classified as a Capital Project, and on the Capital Program, is included in the budget and PennDOT may be appropriated those funds only in the event the General Assembly includes that project in its appropriations. It is not the P.U.C. which provides the funds to PennDOT; it is the General Assembly.

The testimony of James B. Chiles, PennDOT's Director of the Bureau of Economic Research and Programming, clearly shows the instant P.U.C. project was given priority within PennDOT, that the Secretary of Transportation favored the project, recommended it to the Transportation Commission and that the Transportation Commission was aware it was a P.U.C. project (D. 45, 46; N.T. 31, 32). Even if the Secretary had insisted it be placed on the program, he is only one of many members of the said Transportation Commission which could overrule him. It was the Transportation Commission which neglected to place this project on the twelve year program, not PennDOT. Representative Anthony J. Scirica, in his testimony at the hearing of March 10, 1977 (T. 22 to 27, 54), gave a complete resume of the proceedings before the Transportation Commission when PennDOT attempted to place the bridge on the twelve year program and he stated, "From the remarks made by Secretary Sherlock, it was apparent to me that he favored the Matsonford Bridge Project over the other Montgomery projects." (T. 54)

Not only is it required that the said bridge project be placed on the Twelve Year Program in order it be funded with state funds, it is also a requirement in order to be Federally funded (T. 15). It is a well known fact that because of inadequacy of current revenues,¹ PennDOT has only considered capital construction

¹ The Governor, in his Budget message to the General Assembly on February 15, 1977, asked for a two cent a gallon increase of the gasoline tax just to maintain the some 45,000 miles of State Highways and construct highway improvements at the rate of \$100,000,000.00 a year from bond funds.

projects, in the last several years, which are eligible for bond financing and for federal funding. In order to qualify for federal funds the project must be on the twelve year program. The Matsonford Bridge project will qualify for such federal funding when it is placed on the said program.

B. P.U.C. PROJECTS ARE CAPITAL PROJECTS
WITHIN THE CONTEXT OF THE "CAPITAL
FACILITIES DEBT ENABLING ACT".

The Commonwealth of Pennsylvania is limited by Article VIII, Section 7(a), in Clauses 1 through 4 of the Constitution of Pennsylvania, to four methods for bond financing. The Clauses 1 through 4 provide:

"(1) Debt may be incurred without limit to suppress insurrection, rehabilitate areas affected by man-made or natural disaster, or to implement unissued authority approved by the electors prior to the adoption of this article.

(2) The Governor, State Treasurer and Auditor General, acting jointly, may (i) issue tax anticipation notes having a maturity within the fiscal year of issue and payable exclusively from revenues received in the same fiscal year, and (ii) incur debt for the purpose of refunding other debt, if such refunding debt matures within the time of the original debt.

(3) Debt may be incurred without limit for purposes specifically itemized in the law authorizing such debt, if the question whether the debt shall be incurred has been submitted to the electors and approved by a majority of those voting on the question.

(4) Debt may be incurred without the approval of the electors for capital projects specifically itemized in a capital budget if such debt will not cause the amount of all net debt outstanding to exceed one and three-quarters times the average of the annual tax revenue deposited in the previous five fiscal years as certified by the Auditor General. For the purposes of this subsection, debt outstanding shall not

include debt incurred under clauses (1) and (2) (i), or debt incurred under clause (2) (ii) if the original debt would not be so considered, or debt incurred under subsection (3) unless the General Assembly shall so provide in the law authorizing such debt."

Of the four methods which are permitted for bond financing, PennDOT can only conveniently use funds which have been generated by the method permitted under Clause 4 to finance rail-highway projects ordered by the Commission. "The Capital Facilities Debt Enabling Act", Act of July 20, 1968, P.L. 550, as amended, 72 P.S. 3920.1, et seq., has implemented Clause 4 by providing, inter alia, two things: First a detailed procedure for incurring debts pursuant to Clause 4, and second, a definition of "Capital Project". At this point we will consider whether any Commission ordered rail-highway crossing project can meet the requirements of the definition "Capital Project" provided in the Enabling Act. Later, in this Brief, under Argument C, we will consider whether the project in question is a "Capital Project."

The definition of a "Capital Project" provided by the "Capital Facilities Debt Enabling Act" is in two parts, the first part provides a set of criteria and the second a list of nine categories into one of which all "Capital Projects" must fall. Many Commission ordered rail-highway crossing projects clearly meet the criteria set forth in the first part of the definition, namely:

"1. 'Capital Projects' means and included (i) any building, structure, facility, or physical public betterment or improvement; or (ii) any land or rights in land: or (iii) any furnishings, machinery, apparatus, or equipment for any public betterment or improvement; or (iv) any undertaking to construct, repair, renovate, improve, equip, furnish or acquire any for the foregoing, provided that the project is designated in a Capital Budget as a Capital Project, as an estimated useful life in excess of five years at an estimated financial cost in excess of one hundred thousand dollars; provided, that the one hundred thousand dollars limitation shall not apply to original equipment and furnishings for previously authorized public improvement projects and shall include projects to be financed by the incurring of debt"

The question remains whether any Commission ordered rail-highway crossing project can fit into one of the nine categories provided. The most promising candidate category for them is:

"Highway projects, means and includes projects of a type which the State Highway and Bridge Authority is authorized to construct, improve, equip, maintain, acquire, or operate under the provisions of the Act of April 18, 1949 (P.L. 604), known as the 'State Highway and Bridge Authority Act.'" (Emphasis added.)

Since the definition of the category "Highway Projects" refers to the type of project authorized by the "State Highway and Bridge Authority Act", a thorough examination of what type of project can be "Highway

Projects" requires a consideration of the history of the State Highway and Bridge Act and its relationship to the "Capital Facilities Debt Enabling Act".

The Pennsylvania Constitution of 1874 in Article IX, Section 4, restricted the amount of debt which the Commonwealth could incur in its name for the financing of highway projects. In order to avoid the restriction, in 1949 the "State Highway and Bridge Authority" was established with the authority to issue bonds in its own name, rather than in the name of the Commonwealth. As was stated in Adam Eidemiller, Inc. v. Commonwealth, 182 A.2d 911, 913, 408 Pa. 195, 1962, "the authority is nothing more than a vehicle to facilitate financing of state highway projects". Through the Authority, the amount of funds generated by indebtedness with which the then State Highway Department could build projects, could be greater than the constitutionally established limit. The "State Highway and Bridge Authority Act" did not increase the authority of the then Highway Department with respect to the type of project it could construct, but only raised the limit on the amount of funds it could use.

The type of project authorized by the "State Highway Bridge Authority Act" is:

"... constructing, reconstructing, improving, equipping, furnishing, maintaining and operating State highways, bridges, viaducts, toll bridges, tunnels, traffic circles on State highways, maintenance sheds, offices and garages and roadside rests (any and all of the foregoing being herein called 'projects')" 1949, April 18, P.L. 604, as amended, 36 P.S. 3604.

Commission ordered rail-highway crossing projects fit into this description and are authorized under the Act for State Highway and Bridge Authority bond financing. Although the issue was never tested in Court, such projects were considered by the said Authority to be so authorized, and have been routinely financed by bonds issued by the said Authority in the past.

With the adoption of the present Pennsylvania Constitution, the State Highway and Bridge Authority lost its importance due to Article VIII, Section 7(a). The Authority has not issued any new bonds or let any construction contracts since 1968. Its only function at present is to close out construction contracts and right-of-way claims dating from that time. The "Capital Facilities Debt Enabling Act" refers to the "State Highway and Bridge Authority Act" not in order to require that the "Capital Projects" under the first Act be projects which are authorized by the second (at present, no projects are being authorized by the State Highway and Bridge Authority), rather, the "Capital Facilities Debt Enabling Act" permits the financing of the type of project authorized by the "State Highway and Bridge Authority Act" to be accomplished instead under the procedures set forth in the "Capital Facilities Debt Enabling Act". Commission ordered rail-highway crossing projects are that type of project, fit the definition of "Highway Project" in the "Capital Facilities Debt Enabling Act", and can therefore fit the definition of "Capital Project" in the Act.

Again, although the issue has never been tested in the courts, many such projects are considered by PennDOT to be "Capital Projects", and furthermore the legislature itself has routinely approved such projects on its Capital Budget for bond financing as "Capital Projects."

It may be useful to briefly examine the financial situation as it would exist if Commission ordered rail-highway crossing projects could never be "Capital Projects" as defined by the "Capital Facilities Debt Enabling Act". In that event, no Commission ordered rail-highway crossing project could be contained on a Capital Budget as a "Capital Project", and no legislative authority could be obtained for debt financing under the "Capital Facilities Debt Enabling Act" and Article VIII, Section 7(a), Clause 4. As a result, the only way in which the Commonwealth could constitutionally finance a Commission ordered rail-highway crossing project with proceeds from debts would be through the use of one of the three other methods outlined by Article VIII, Section 7(a), Clauses 1 through 4. The method permitted by Clause 1 (quoted above) is not appropriate to such projects by the terms of the clause. Clause 2 (quoted above) imposes conditions on the repayment of debts incurred by that method which are too restrictive to be of practical assistance for such projects. The terms of Clause 3 (quoted above) could be appropriate for such projects and the conditions for repayment established could be sufficiently

flexible, but obtaining the approval of the electors as required by the clause is more difficult and time consuming than obtaining the approval of the legislature. We believe that none of the other three clauses provides a method which can practically be used for the generating of funds from debts to finance Commission ordered rail-highway projects, and that no one would welcome a situation in which one of those alternative methods had to be used.

It is clear from a close reading of the definitions contained in the "Capital Facilities Debt Enabling Act," and the other relevant statutes, that Commission ordered rail-highway crossing projects can be "Capital Projects", and can therefore be approved by the legislature as such on a Capital Budget for bond financing.

C. FUNDS REQUIRED FOR DESIGN OF A CAPITAL PROJECT UNDER THE CAPITAL FACILITIES DEBT ENABLING ACT OR THE GOVERNOR'S CAPITAL BUDGET INSTRUCTIONS REQUIRES LEGISLATIVE APPROVAL.

The position may be taken that since the design costs for the completion of the design for the Matsonford Bridge is only \$75,000.00, which is less than \$100,000.00, legislative approval on a Capital Budget is not required. However, in the said Enabling Act, in Section 2(1) and (6) of the "Definitions" (72 P.S. 3920.2), it is provided:

"(1) 'Capital project' means and includes (i) any building, structure, facility or physical public betterment or improvement ... provided that the project is designated in a capital budget as a capital project, has an estimated useful life in excess of five years and an estimated financial cost in excess of one hundred thousand dollars (\$100,000)" (underling supplied.)

In Section 2(6) of said Enabling Act it is provided:

"(6) 'Financial cost' includes acquisition cost and construction cost where applicable as well as an allocated portion of ... fees and expenses of architects, engineers, and other professionals for ... preparing plans and specifications" (underlining supplied.)

Further, the Governor's instructions, via his Budget Secretary, for the Capital Budget, supra, which relate, inter alia,

to proceeds from operating revenues define an improvement to be a "Capital Project" which includes "any building, structure, facility, or public betterment ... and that the project has an estimated useful life in excess of five years and an estimated total cost in excess of twenty-five thousand dollars (\$25,000)" (underlining supplied.)

Thus, both for bond and current revenue financed projects, it is the total cost of the project that determines whether any of its component parts are determined to be a Capital Project which requires inclusion in the Capital Budget which the Governor is required to submit to the General Assembly for its approval.

In this case, the design of the Matsonford Bridge, being a part of the "financial cost" as defined in the Debt Enabling Act or part of the "total cost" as contained in the Governor's Instructions for the Capital Budget, is a Capital Project and requires legislative approval for funding.

D. PENNDOT IS IN A HELPLESS POSITION
TO COMPLY WITH THE P.U.C.'S ORDER.

The bottom line to PennDOT's position and request for extension of time to comply with the Order of October 21, 1976, is that it just does not have funds to proceed. PennDOT is not testing the Commission's authority to order the plans to be completed or the work to be done, nor is it blatantly trying to avoid it. PennDOT sincerely believes the Matsonford Bridge reconstruction project, including the design, is a Capital Project within the provisions of the Constitution, The Capital Facilities Debt Enabling Act, Act 120 of 1970 and the Governor's instructions for the preparation of his Capital Budget. It is PennDOT's further position that it is basic constitutional law that the power conferred upon the Legislature to make laws cannot be delegated to any other body or authority: Appeal of O'Hara, 389 Pa. 35 (1937); Wm. Penn Parking Garage, Inc. v. City of Pittsburgh, 464 Pa. 168 (1975) What the General Assembly can do is enact a law to delegate a power to another body to determine some facts or state of things upon which it makes or intends to make its own action depend: Pennsylvania Human Relations Commission v. Chester School Dist., 427 Pa. 157 (1967). This is exactly what the General Assembly did in the Public Utility Law in Sections 409 and 411: it gave the power to the P.U.C. to determine the state of things regarding public rail-highway crossings. However, the Legislature did not,

and could not delegate to the P.U.C. the power to budget Capital Projects to be financed from current revenues or bonds.

But, even if PennDOT's position is disregarded, it still does not have available funds to proceed. The testimony of both Mr. Chiles and Mr. Vovakes confirmed this (D. 40, 41, 60). The Department attempted to get funds to comply with the Order. The testimony produced by the Department shows that this project had a greater priority within the Department than other Department projects (N.T. 50) and the Secretary of Transportation recommended to the Transportation Commission that this project be placed on the current Twelve Year Program (N.T. 54). It was the State Transportation Commission, not the Department, which was responsible for deleting this project on the said program (N.T. 54, 55). Representative Scirica confirmed this and stated for the record that he was hopeful of having the rehabilitation of the bridge included in the current twelve year program and in the next Capital Budget (N.T. 25, 26).

PennDOT presently is proposing legislation to amend the Act of July 9, 1976 (P.L. 858, No. 155), known as the Capital Budget Act for Fiscal Year 1976-1977, to authorize \$43,252,000.00 in bond financing so that it can comply with various P.U.C. projects, including the Matsonford Bridge, and to be repaid from the General Fund, a copy of which is attached. Some of these projects in the proposed Act are on the Twelve Year Program, most of them are not. But PennDOT is trying to do everything under the

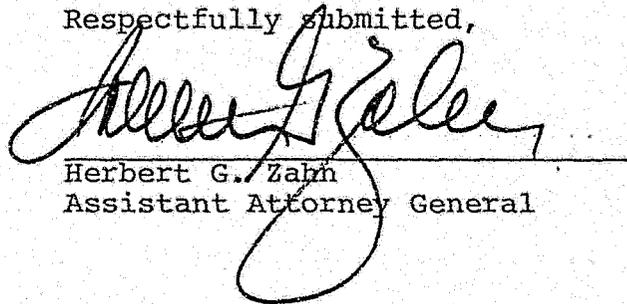
sun to obtain funds to comply with P.U.C. orders. It would be very helpful if the Commission would endorse the proposed legislation to the General Assembly for enactment into law, or any other suggested aid to obtain funds from the General Assembly.

All funds appropriated to PennDOT are "line item" funds for specific purposes, whether for operations or Capital Projects and whether from current revenues or bond financing. PennDOT has no funds for the Matsonford Bridge reconstruction, or any excess funds, and until funds are appropriated to it, PennDOT is in a helpless position.

E. CONCLUSION

As stated before, there is uncontradicted testimony the Matsonford Bridge is safe and not in immediate danger of collapse. Based on the arguments herein and PennDOT being without funds, for one reason or another, the Petition of PennDOT for Extension of Time until it gets the funds should be granted.

Respectfully submitted,



Herbert G. Zahn
Assistant Attorney General

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: :
Department of Transportation : Complaint Docket
of the Commonwealth of : No. 19707
Pennsylvania, :
Complainant :
vs. :
Reading Company, Debtor, :
Borough of Conshohocken, :
Borough of West Conshohocken :
and County of Montgomery, :
Respondents :

INITIAL DECISION

RUDOLPH S. PALLASTRONE
ADMINISTRATIVE LAW JUDGE

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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of the Commonwealth of : No. 19707
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Complainant :

vs. :

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

APPEARANCES

Pennsylvania P.U.C. - Candace N. Kreiger, Esquire
PennDot - Herbert G. Zahn, Esquire

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: :

Department of Transportation : Complaint Docket
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Pennsylvania, :

Complainant :

vs. :

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

BRIEFS

Briefs were filed by Pennsylvania Public Utility
Commission and PennDot.

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: :

Department of Transportation : Complaint Docket
of the Commonwealth of : No. 19707
Pennsylvania,

Complainant :

vs. :

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

Respondents :

INITIAL DECISION

(Subject to the Commissions Approval)

HISTORY OF THE PROCEEDINGS

This matter was first brought to the Commission's attention on September 27, 1972, by Complaint filed at Docket #C.19707 by the Pennsylvania Department of Transportation.

PennDot's Complaint alleged that the Matsonford Bridge located in the Borough of West Conshohocken was in a state of disrepair and that PennDot was in the process of preparing plans to renovate the structure. An answer to PennDot's Complaint was filed by all party Respondents.

On January 15, 1974, the Public Utility Commission issued an Order directing that PennDot's repair plans be approved and that PennDot undertake repair and rehabilitation in accordance with the Public Utility Commission's Order. Further, the Commission ordered that hearings be held on matters concerning cost allocation and future maintenance obligations.

On December 16, 1974, PennDot filed a Petition for Modification of the above mentioned Order, alleging that repairs and renovations of the Matsonford Bridge would not be economically feasible and that the bridge should be reconstructed. Further, that the Public Utility Commission modify its January 15, 1974, Order to provide PennDot with an additional twelve (12) months to submit detail plans and estimates of cost for reconstruction of the Matsonford Bridge.

On October 21, 1975, the Public Utility Commission issued an Order approving PennDot's Petition for Modification and directed that within twelve (12) months from said date, that PennDot prepare and submit to the Public Utility Commission and all parties of record, detailed construction plans and costs for the new Matsonford Bridge.

The matter again came before the Public Utility Commission at the request of the Borough of Conshohocken by letter Petition filed on November 12, 1976, and a Petition filed by PennDot on December 16, 1976, praying for a Modification of the Order of October 21, 1975, in the nature of a time extension.

The Borough of Conshohocken stated in its Petition that it had not received from PennDot, detailed construction plans and cost estimates as required by the October 21, 1975, Order. It requested that there be enforcement of that Order against PennDot by the Attorney General for the Commonwealth of Pennsylvania.

PennDot filed an answer to the Borough of Conshohocken's Petition alleging inter alia that the Matsonford Bridge was not on the Commonwealth of Pennsylvania's twelve (12) year highway program nor on the approved Capital Budget and therefore, PennDot was not financially able to proceed with detailed construction plans and cost estimates in accordance with the October 21, 1975, Order. PennDot further requested that the Commission extend the Order of October 21, 1975.

On January 18, 1977, the Commission ordered that a hearing be held on the Borough's Petition and PennDot's Petition for Modification. It also directed the staff of the Public Utility Commission to intervene in this matter.

On February 16, 1977, counsel for the Public Utility Commission filed with your Administrative Law Judge, an application for Subpeona Ad Testificandum requiring the appearance of Paul C. Peterson, Bridge Engineer for District 60, Department of Transportation. Said Petition for subpeona was granted.

On March 10, 1977, a hearing was held on the Borough's Petition and PennDot's Petition for Modification. At the conclusion of the hearing, your Administrative Law Judge, directed that counsel for the Public Utility Commission staff and counsel for PennDot submit briefs on their relative positions.

SUMMARY OF EVIDENCE

Counsel for PennDot presented testimony through James B. Chiles, PennDot's director of Economic Research and Programming and Paul C. Peterson, District Bridge Engineer for PennDot's District 60.

Mr. Chiles testified concerning the twelve (12) year highway program of the Commonwealth of Pennsylvania and matters concerning the Capital Budget. He stated that the Matsonford Bridge reconstruction was not on the approved "Capital Budget" and further, testified as to PennDot's departmental policy concerning budgeted Public Utility Commission projects.

Mr. Peterson, District Bridge Engineer, was cross-examined by counsel for the commission concerning the status and cost of the detailed construction plans as well as the present state of the Matsonford Bridge as effects the safety of pedestrians and vehicular users. During the course of the testimony, certain PennDot exhibits were admitted namely Senate Bill 59, Act 42, PennDot Exhibit 3 and Capital Budget Highway Project Estimate 1976-1977, PennDot Exhibit 4 and a letter to the members of the State Transportation Commission from William A. Sherlock, dated September 13, 1976, PennDot Exhibit 5.

The staff did not present any witnesses on its own behalf.

The Borough of Conshohocken called Frank Moran, Engineer to the Borough of Conshohocken who testified that the bridge is in a state of disrepair and that it presented a present danger to pedestrians as well as vehicular traffic.

Anthony J. Scirica, Representative of the 148th Legislative District, presented evidence that he had several conversations the previous year and that he was under the impression that the Matsonford Bridge was on the Capital Approved Budget. He evidenced his concern as to the condition of the bridge.

DISCUSSION

In reviewing the testimony of the witnesses who appeared at the hearing of March 10, 1977, several pertinent areas of the testimony are worthwhile mentioning. The Matsonford Bridge project was part of the approved Capital Budget for the fiscal year 1972-1973 as a Bridge Rehabilitation Project. That upon review by the District Engineer, at PennDot's St. David's office, it was concluded that rehabilitation was inappropriate and complete reconstruction would be necessary. As a result of this decision, the policy of PennDot was to submit this project to the Commonwealth of Pennsylvania for replacement on the twelve (12) year highway program. That the submission of said project went to the Legislature for approval to the Capital Budget which cannot be done by PennDot but must be done by the Transportation Committee. Further, that a Public Utility Commission project is not submitted on the twelve (12) year highway program and that PennDot cannot honor the directives of the Commission. Although, Montgomery County for the twelve (12) year time period has an allocation of \$40,000,000.00, the Matsonford Bridge project was

not part of that construction allocation. But most importantly, Mr. Chiles, indicated that the twelve (12) year program is flexible enough that any project can be deleted and another one can be added.

Mr. Peterson, District Engineer, further testified that 50% of the plans have been presently completed and that the balance of the construction plans and costs could be completed in approximately one (1) year. Mr. Peterson, agrees with witness Moran, and Representative Scirica that the surface should be repaired immediately. He shared the same concerns as witness Moran who stated that the sidewalks were in such disrepair that it should be immediately repaired.

This matter presents two (2) very interesting issues, they are namely:

a) Whether the mandates of Act 120, Act of May 6, 1970, P.L. 356, requires that all Public Utility Commission projects should be placed on the Commonwealth's twelve (12) year highway program or

b) Whether Sections 409 and 411 of the Public Utility Commission Law, as amended, 66 P.S. Section 1179, (81) vested in the Public Utility Commission exclusive jurisdiction and power of all matters pertaining to public railway highway crossings within the Commonwealth of Pennsylvania.

PennDot alleges that Capital Facilities Debt Enabling Act of July 20, 1968, directs the manner in which all fundings for Capital projects be accomplished. They alleged that the Public Utility Commission project i.e., the Matsonford Bridge is a Capital Project and therefore, falls within the mandates of the above act. In support of this position, they state that under Section 2, (1) of the Enabling Act any project in excess of \$100,000.00 must be placed on the Capital Project Budget, and since the Matsonford Bridge reconstruction costs will exceed \$5,000,000.00 and the estimated life is in excess of five (5) years, this must by definition be considered a Capital Project.

The staff's position is contra and they cite Section 22 of Act 120 which provides inter alia:

"Nothing in the Act shall effect in any manner the powers and duties of the Pennsylvania Public Utility Commission".

It is clear from Section 409 (b) and (c) of the Public Utility Commission Law that Legislature has vested exclusive jurisdiction and power in the Public Utility Commission in matters concerning highway crossings., whether they be construction, alterations or relocation as well as abolition.

The crucial question is, does Act 120 affect the powers and duties of the Public Utility Commission and/or are Public Utility Commission projects not Capital Projects within the meaning of the Capital Facilities Enabling Act?

Although, both counsel advanced strong supporting arguments for their position it would appear in reviewing the Act, Section 22, and the Public Utility Commission Law, it would appear that PennDot cannot avoid the clear mandates of the Public Utility Commission Law and the lawful Order of the Commission. Although, it is clear that the construction of the Matsonford Bridge will involve a cost in excess of \$100,000.00 and have a useful life in excess of five (5) years, the requirements and mandates the Commission Order of October 21, 1975, is a valid directive to the PennDot. It would be anomaly under the law if we were to conclude that matters within the exclusive jurisdiction of the Public Utility Commission could be avoided by the Pennsylvania Department of Transportation, merely because the project exceeds a certain dollar amount. To hold otherwise, it would be to accomplish a result which would be absurd and unreasonable. The Commission is charged with the responsibility of preserving and providing for the safety of the public. To hold otherwise, would be placing the public in jeopardy by permitting PennDot to overlook and fail to carry out lawful Orders of the Public Utility Commission.

FINDINGS OF FACT

1. That the Order by the Public Utility Commission dated October 21, 1975, directed PennDot to submit detailed construction plans and cost estimates for the reconstruction of the Matsonford Bridge.

2. That the plans and cost estimates have not been submitted by PennDot.

3. The reconstruction of the Matsonford Bridge is not on the Commonwealth of Pennsylvania's twelve (12) year highway program or on an approved Capital Budget.

4. That the Matsonford Bridge was on the approved Capital Budget for the fiscal year of 1972-1973.

5. That at the request of PennDot, the Public Utility Commission modified its Order and issued a new Order on October 21, 1975, to provide for complete reconstruction of the Matsonford Bridge.

6. That the Matsonford Bridge project was submitted to the Transportation Commission but was deleted at the request of Representative Daniel Beren and the Pottstown Expressway Project was substituted.

7. That the Capital Facilities Debt Enabling Act, Section 3920.2 does not intend that Public Utility Commission projects be considered "Capital Projects".

8. That Act 120, Act of May 6, 1970 P.L. 356, the Act creating PennDot, specifically requires PennDot shall not effect in any manner the powers and duties of the Pennsylvania Public Utility Commission.

9. That the Matsonford Bridge is in a state of disrepair and presents a danger to the pedestrians and vehicular traffic using the bridge.

10. Your Administrative Law Judge adopts the other findings of facts set forth in the staff's brief which appears on pages 35 to 39 inclusive.

CONCLUSIONS OF LAW

1. That Section 409 and 411 of the Public Utility Commission Law confers exclusive jurisdiction to the Public Utility Commission to regulate public rail highway crossings in the Commonwealth of Pennsylvania.

2. That the Public Utility Commission is vested with the power and duty to carry out all provisions of the Public Utility Commission Law and Act 120, May 6, 1970 P.L. 356, does not affect Public Utility Commission projects.

3. The Capital Facilities Debt Enabling Act does not effect nor control lawful Public Utility Commission projects.

4. That the construction of the Matsonford Bridge does not require the approval of the Legislature since it is not a Capital Budgeted Project.

5. That the Order of the Public Utility Commission directing PennDot to make detailed construction plans and cost allocations for the Matsonford Bridge is within the power of the Public Utility Commission.

6. That PennDot has avoided performance of its duty in complying with the lawful Order of the Public Utility Commission. That the failure of PennDot to abide by the Order of the Public Utility Commission is detrimental to the safety, accomodation and convenience of the public at the instant rail highway crossing.

INITIAL ORDER

(Subject to Commission Approval)

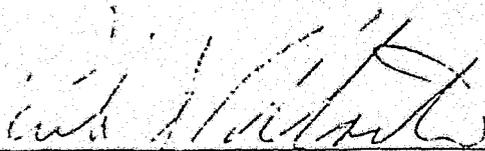
BY THE COMMISSION:

1. That within sixty (60) days from the approval of the Order by the Commission, PennDot make immediate repairs to the bridge surface paving and adjacent sidewalks as required to effect a safe, smooth and satisfactory condition and upon completion, notify the Commission as to the nature and extent of the said repairs and the cost thereof.

2. That within six (6) months from the approval of this Order by the Commission, PennDot shall submit to the Commission detailed plans and estimates of costs for the reconstruction of the Matsonford Bridge.

3. That the cost of completion of said plans be borne by the PennDot.

4. That every thirty (30) days from the effective date of this Order, PennDot shall submit to the Public Utility Commission a memorandum detailing the status of the plans and cost estimates. Failure to commence the Engineering and/or the failure to submit the above mentioned reports, will constitute a violation of this Order and the Commission will direct the legal staff to institute appropriate legal proceedings for the compliance of this Order.


RUDOLPH S. PALLASTRONE
ADMINISTRATIVE LAW JUDGE

AN ACT

1 Amending the act of July 9, 1976 (P.L.858, No.155), entitled "A
2 supplement to the act of July 9, 1976 (P.L.857, No.154),
3 entitled 'An act providing for the capital budget for the
4 fiscal year 1976-77,' itemizing public improvement projects
5 of the Department of General Services, together with their
6 estimated financial cost, authorizing the incurring of debt
7 for the projects without approval of the electors to complete
8 projects in the category of public improvements by
9 acquisition of original furniture and equipment to be
10 acquired by the Department of General Services, stating the
11 estimated useful life of such projects and making an
12 appropriation," providing for highway and bridge projects
13 ordered by the Public Utility Commission.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. The act of July 9, 1976 (P.L.858, No.155), known
17 as the "Capital Budget Act for Fiscal Year 1976-1977, Public
18 Improvement Project Itemization Supplement - Department of
19 General Services," is amended by adding a section to read:

20 Section 2.1. Itemization and Authorization of Highway and
21 Bridge Projects.--The Department of Transportation has been
22 ordered to proceed with the following itemized highway and
23 bridge construction projects by the Public Utility Commission

1 under authority of the act of May 28, 1937 (P.L.1053, No.286),
 2 known as the "Public Utility Law," therefore, additional capital
 3 projects in the category of highway and bridge projects to be
 4 constructed by the Department of Transportation, its successors
 5 or assigns, and to be financed in part by the incurring of debt,
 6 are hereby itemized, together with their respective estimated
 7 financial costs to be financed by debt as follows:

8 A. Total Project Authorization..... \$43,252,000

9 B. Capital Highway and Bridge Projects

	<u>Amount to be Financed by Debt</u>				
	<u>Base</u>				
	<u>Construction</u>	<u>Land</u>	<u>Design</u>		
	<u>and Administrative</u>				
<u>Project</u>	<u>Costs</u>	<u>Costs</u>	<u>Costs</u>		<u>Total</u>

15 I. Allegheny County

16	<u>(1) I.F.188: Vicinity</u>				
17	<u>cf New Kensington,</u>				
18	<u>New Kensington Bridge,</u>				
19	<u>T.R.28 to 3rd Ave.,</u>				
20	<u>Bridge Rehabilitation,</u>				
21	<u>FUC.I.D.153: Length</u>				
22	<u>0.1 mile.</u>	<u>1,094,000</u>		<u>103,000</u>	<u>1,197,000</u>

23 (2) I.F.02270: City

24	<u>of Pittsburgh,</u>				
25	<u>Liberty Bridge</u>				
26	<u>over Monongahela</u>				
27	<u>River,</u>				
28	<u>Bridge Rehab-</u>				
29	<u>ilitation,</u>				
30	<u>FUC.C.20227:</u>				

1 Length 0.5
 2 miles. Proj.
 3 No. 111. 3,708,000 16,000 593,000 4,317,000
 4 (Combined total
 5 project cost =
 6 14,931,000)
 7 (Federal share =
 8 10,074,000).

9 II. Beaver County

10 I.R. 04015:
 11 Borough of
 12 Monaca, Four-
 13 teenth Street
 14 Eckert Street
 15 to Twelfth
 16 Street, Grade
 17 Separation,
 18 PUC.C. 19030:
 19 Length 0.4
 20 miles. 1,343,000 220,000 127,000 1,690,000

21 III. Berks County

22 (1) I.P. 06100 (A01):
 23 Berkley Road,
 24 Berkley Bridge
 25 over Conrail
 26 RR., Relo-
 27 cated and Re-
 28 construct to
 29 24 ft., PUC.
 30 C. 18565:

1	<u>Length 0.5</u>				
2	<u>miles, Prop.</u>				
3	<u>No.16.</u>	<u>505,000</u>			<u>505,000</u>
4	<u>(2) I.R.06148 (A02):</u>				
5	<u>North Elm Street</u>				
6	<u>Borough of</u>				
7	<u>Wernersville,</u>				
8	<u>Bridge over</u>				
9	<u>tributary to</u>				
10	<u>Spring Creek</u>				
11	<u>and RR., Bridge</u>				
12	<u>Replacement,</u>				
13	<u>PUC.C.17935</u>				
14	<u>Length 0.6</u>				
15	<u>miles.</u>	<u>1,494,000</u>	<u>100,000</u>	<u>141,000</u>	<u>1,735,000</u>
16	<u>IV. Bradford County</u>				
17	<u>I.R.08120:</u>				
18	<u>Cayuta Street,</u>				
19	<u>Borough of</u>				
20	<u>Sayre, Mill-</u>				
21	<u>town Bridge,</u>				
22	<u>Bridge Rehab-</u>				
23	<u>ilitation, PUC.</u>				
24	<u>I.D.141, Length</u>				
25	<u>0.2 miles.</u>	<u>1,025,000</u>	<u>10,000</u>	<u>83,000</u>	<u>1,118,000.</u>
26	<u>V. Bucks County</u>				
27	<u>I.E.A104 (A05):</u>				
28	<u>South Main</u>				
29	<u>Street, Borough</u>				
30	<u>of Yardley,</u>				

1	<u>Conrail Under-</u>				
2	<u>pass, Bridge</u>				
3	<u>Replacement,</u>				
4	<u>FUC.C.18681,</u>				
5	<u>Length 0.1</u>				
6	<u>mile.</u>	<u>424,000</u>	<u>14,000</u>	<u>40,000</u>	<u>478,000</u>
7	<u>VI. Butler County</u>				
8	<u>I.R.10070 (A02):</u>				
9	<u>Forestville to</u>				
10	<u>I.R.8, Harris-</u>				
11	<u>ville Station,</u>				
12	<u>Mercer Town-</u>				
13	<u>ship, two-lane</u>				
14	<u>relocation,</u>				
15	<u>FUC.C.19193</u>				
16	<u>Length 0.5</u>				
17	<u>miles.</u>	<u>429,000</u>	<u>80,000</u>	<u>41,000</u>	<u>550,000</u>
18	<u>VII. Delaware County</u>				
19	<u>I.F.23041, I.R.</u>				
20	<u>23042: King of</u>				
21	<u>Prussia Road,</u>				
22	<u>Porough of</u>				
23	<u>Radnor, Con-</u>				
24	<u>Rail Under-</u>				
25	<u>pass, Bridge</u>				
26	<u>Replacement,</u>				
27	<u>FUC.C.19265</u>				
28	<u>(Phase II),</u>				
29	<u>Length 0.1</u>				
30	<u>mile, Proj.</u>				

1	<u>No. 48.</u>	<u>568,000</u>	<u>322,000</u>	<u>54,000</u>	<u>944,000</u>
2	<u>(Combined total</u>				
3	<u>project cost =</u>				
4	<u>3,144,000)</u>				
5	<u>(Federal share =</u>				
6	<u>2,200,000).</u>				
7	<u>VIII. Huntingdon County</u>				
8	<u>I.R. 46 (A07):</u>				
9	<u>Penn Street,</u>				
10	<u>Borough of</u>				
11	<u>Huntingdon,</u>				
12	<u>ConRail</u>				
13	<u>Underpass,</u>				
14	<u>Bridge Re-</u>				
15	<u>placement,</u>				
16	<u>two-lane re-</u>				
17	<u>location,</u>				
18	<u>FUC.C. 18169,</u>				
19	<u>length 0.2</u>				
20	<u>miles.</u>	<u>3,731,000</u>	<u>357,000</u>	<u>352,000</u>	<u>4,440,000</u>
21	<u>IX. Lancaster County</u>				
22	<u>I.R. 344 (A07):</u>				
23	<u>Bridge Street,</u>				
24	<u>Borough of</u>				
25	<u>Christiana,</u>				
26	<u>Bridge over</u>				
27	<u>Amtrak,</u>				
28	<u>Bridge Re-</u>				
29	<u>placement,</u>				
30	<u>FUC.C. 18241,</u>				

1	<u>length 0.1</u>				
2	<u>mile.</u>	<u>737,000</u>	<u>134,000</u>	<u>70,000</u>	<u>941,000</u>
3	<u>X. Lehigh County</u>				
4	<u>I.R. 39035:</u>				
5	<u>Front Street,</u>				
6	<u>City of</u>				
7	<u>Allentown,</u>				
8	<u>Bridge over</u>				
9	<u>Allentown</u>				
10	<u>Terminal</u>				
11	<u>Railroad,</u>				
12	<u>Bridge Re-</u>				
13	<u>moval, PUC.</u>				
14	<u>C. 20793,</u>				
15	<u>length 0.1</u>				
16	<u>mile.</u>	<u>112,000</u>	<u>90,000</u>	<u>11,000</u>	<u>213,000</u>
17	<u>XI. Luzerne County</u>				
18	<u>(1) I.R. 5: River</u>				
19	<u>Road, Jenkin</u>				
20	<u>Township,</u>				
21	<u>Bridge over</u>				
22	<u>ConRail,</u>				
23	<u>Bridge Re-</u>				
24	<u>placement,</u>				
25	<u>PUC.C. 20768,</u>				
26	<u>length 0.1</u>				
27	<u>mile, Proj.</u>				
28	<u>No. 3.</u>	<u>95,000</u>	<u>5,000</u>	<u>9,000</u>	<u>109,000</u>
29	<u>(Combined total</u>				
30	<u>project cost =</u>				

1 364,000)
 2 (Federal share =
 3 255,000) -
 4 (2) I.R. 665 (A07):
 5 Suscon Road,
 6 one mile south
 7 of Dupont,
 8 Pittston
 9 Township,
 10 ConRail
 11 underpass,
 12 Construct
 13 Underpass,
 14 FUC.C. 18541,
 15 length 0.3
 16 miles. 761,000 98,000 72,000 931,000
 17 XII. Montgomery County
 18 (1) I.R. 143 (15):
 19 DeKalb Street,
 20 Borough of
 21 Bridgeport,
 22 Bridge over
 23 SEPTA, Bridge
 24 Rehabilitation,
 25 FUC.C. 19036,
 26 length 0.2
 27 miles, Proj.
 28 No. 1. 72,000 10,000 7,000 89,000
 29 (Combined total
 30 project cost =

1	<u>296,000)</u>				
2	<u>(Federal share =</u>				
3	<u>207,000).</u>				
4	<u>(2) I.R. 201 (B10),</u>				
5	<u>I.R. 225, L.R.</u>				
6	<u>46141: Swede-</u>				
7	<u>land Road,</u>				
8	<u>Upper Merion</u>				
9	<u>Township, west</u>				
10	<u>of West Consho-</u>				
11	<u>hocken, Recon-</u>				
12	<u>struct and Re-</u>				
13	<u>locate Highway,</u>				
14	<u>PUC.C. 18094,</u>				
15	<u>length 1.4</u>				
16	<u>miles.</u>	<u>6,433,000</u>	<u>1,204,000</u>	<u>607,000</u>	<u>8,244,000</u>
17	<u>(3) I.F. 46139 (A1),</u>				
18	<u>I.R. 46145:</u>				
19	<u>Henderson and</u>				
20	<u>Church Roads,</u>				
21	<u>in King of</u>				
22	<u>Prussia, Con-</u>				
23	<u>Rail Grade</u>				
24	<u>Crossings,</u>				
25	<u>Construct</u>				
26	<u>Grade Separ-</u>				
27	<u>ations, PUC.</u>				
28	<u>C. 18222,</u>				
29	<u>length 0.4</u>				
30	<u>miles.</u>	<u>6,383,000</u>	<u>2,007,000</u>	<u>602,000</u>	<u>8,992,000</u>

1	<u>(4) I.P. 46140 (A):</u>			
2	<u>Ford Street,</u>			
3	<u>West Consho-</u>			
4	<u>hocken Borough,</u>			
5	<u>Bridge over</u>			
6	<u>Schuylkill</u>			
7	<u>River and</u>			
8	<u>Railroad,</u>			
9	<u>Bridge Re-</u>			
10	<u>placement,</u>			
11	<u>FUC.C.</u>			
12	<u>19707,</u>			
13	<u>length 0.1</u>			
14	<u>mile.</u>	<u>5,300,000</u>	<u>500,000</u>	<u>5,800,000</u>
15	<u>XIII. Venango County</u>			
16	<u>I.P. 581:</u>			
17	<u>Rockland</u>			
18	<u>Road, south</u>			
19	<u>of Cranberry,</u>			
20	<u>Bridge over</u>			
21	<u>ConRail,</u>			
22	<u>Bridge Re-</u>			
23	<u>placement,</u>			
24	<u>FUC.I.D. 174,</u>			
25	<u>length 0.2</u>			
26	<u>miles, Proj.</u>			
27	<u>No. 7.</u>	<u>160,000</u>	<u>3,000</u>	<u>15,000</u> <u>178,000</u>
28	<u>(Combined total</u>			
29	<u>project cost =</u>			
30	<u>592,000)</u>			

1 (Federal share =
 2 414,000).
 3 XIV. Westmoreland County
 4 I.F. 302:
 5 Seward Bridge,
 6 Seward Borough
 7 and St. Clair
 8 Township,
 9 Bridge Re-
 10 habilitation,
 11 PUC.C. 19575
 12 Length 0.1
 13 mile. 337,000 32,000 369,000
 14 XV. York County
 15 I.F. 66105 (1):
 16 Glen Rock
 17 Road, Glen
 18 Rock to Rail-
 19 road, two-lane
 20 Relocation,
 21 PUC.C. 17810
 22 Length 1.0
 23 mile, Proj.
 24 No. 27. 353,000 26,000 33,000 412,000
 25 (Combined total
 26 project cost =
 27 1,376,000)
 28 (Federal share =
 29 264,000).

30 Section 2. Sections 3 and 5 of the act are amended to read:

1 Section 3. Debt Authorization.--The Governor, Auditor
2 General and State Treasurer are hereby authorized and directed
3 to borrow, from time to time, in addition to any authorization
4 heretofore or hereafter enacted, on the credit of the
5 Commonwealth, subject to the limitations provided in the current
6 capital budget, money not exceeding in the aggregate the sum of
7 [\$7,521,600] \$50,773,600 as may be found necessary to carry out
8 additional capital projects in the category of highway and
9 bridge projects and public improvements, consisting of the
10 acquisition of original furniture and equipment to complete
11 public improvement projects specifically itemized in a capital
12 budget.

13 Section 5. Appropriation.--The net proceeds of the sale of
14 obligations herein authorized are hereby appropriated from the
15 Capital Facilities Fund to the Department of General Services in
16 the maximum amount of \$7,521,600 to be used by it exclusively to
17 defray the financial costs of public improvement projects
18 consisting of the acquisition of original furniture and
19 equipment, and to the Department of Transportation in the
20 maximum amount of \$43,252,000 to be used exclusively by it to
21 defray the costs of the highway and bridge projects,
22 specifically itemized in this capital budget. After reserving or
23 paying the expenses of the sale of the obligations, the State
24 Treasurer shall pay out to the Department of General Services
25 the moneys as required and certified by it to be legally due and
26 payable.

27 Section 3. The debt incurred pursuant to this act for the
28 purposes of the highway and bridge projects shall be repaid out
29 of General Fund revenues and not from the Motor License Fund.

30 Section 4. This act shall take effect immediately.

November 14, 1977

C. 19797

Herbert S. Kahn, Assistant Attorney
General
Pennsylvania Department of Transportation
Office of Chief Counsel
Harrisburg, Pennsylvania 17120

POOR ORIGINAL

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

DUPLICATE RECORD!
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT

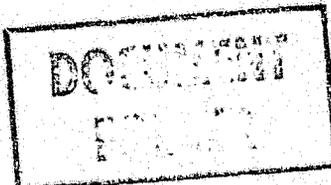
Dear Mr. Kahn:

Receipt is acknowledged of your letter dated November 10, 1977, enclosing an original and five copies of a brief on exceptions filed on behalf of Pennsylvania Department of Transportation to the proposed initial decision prepared by Administrative Law Judge Fallastrom in the above entitled proceeding.

We note your statement that copies have been sent to all parties of record.

The brief on exceptions will receive the Commission's attention.

Very truly yours,



for C. J. Hillman
Secretary

cc: Bureau of Transportation - your Bureau has copy
Chief Administrative Law Judge Shans - w/copy of brief
Cathy Cook - w/copy of brief
Mr. Bronson - w/copy of brief
Eudolph S. Fallastrom - you have copy of brief

Similar Letter: Law Bureau - Candice Kreiger - you have copy of brief
CKJ:jl

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
HARRISBURG 17120
Office of Chief Counsel
November 10, 1977



RECEIVED

NOV 10 1977

SECRETARY'S OFFICE
PUBLIC UTILITY COMMISSION

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

RE: Complaint Docket No. 19707
Montgomery County
Brief on Exceptions

Dear Mr. McElwee:

Enclosed for filing with the Commission are the original and five (5) copies of Brief on Exceptions, dated November 9, 1977, of the Pennsylvania Department of Transportation, in the above-captioned matter.

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

Sincerely,

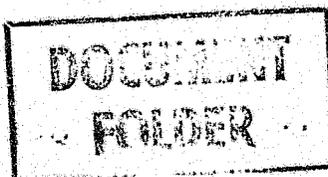
A handwritten signature in cursive script, appearing to read "Herbert G. Zahn".

Herbert G. Zahn
Assistant Attorney General

220/HGZ:smm

Enclosures

CC: K. W. Walker, P.E., Chief Utility Engineer
District 6-0
Parties of Record (page two)



Parties of Record

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

Candice N. Kreiger, Staff Counsel
Pennsylvania Public Utility Commission
North Office Building
Harrisburg, Pennsylvania 17120

Joel E. Mazor, General Attorney
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
One Parkway
Philadelphia, Pennsylvania 19102

James M/ Ballengee, President
Philadelphia Surburban 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

November 14, 1977

C. 19707

Herbert G. Zahn, Assistant Attorney
General
Pennsylvania Department of Transportation
Office of Chief Counsel
Harrisburg, Pennsylvania 17120

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

POOR ORIGINAL

Dear Mr. Zahn:

Receipt is acknowledged of your letter dated November 10, 1977 requesting oral argument before the Commission on Pennsylvania Department of Transportation's exceptions to the proposed initial decision prepared by Administrative Law Judge Fallastromo in the above entitled proceeding.

We note your statement that copies have been sent to all parties of record.

Your letter will receive the Commission's attention, and you will be further advised.

Very truly yours,

for C. J. McIlwain
Secretary

DOCUMENT
FOLDER

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

POOR ORIGINAL

Sec. Bur. C. 19707

SENDER: Complete Section 1, 2, and 3. Add your address to the "RETURN TO" space on reverse.

1. The following service is requested (check one):

Show to whom and date delivered

Show to whom, date, and address of delivery

RESTRICTED DELIVERY
Show to whom and date delivered

RESTRICTED DELIVERY
Show to whom, date, and address of delivery

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Lockwood W. Fogg, Secretary
Trustees of Reading Company

3. ARTICLE DESCRIPTION:
REGISTERED NO. | CERTIFIED NO. | INSURED NO.
| 44825 |

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE Addressee Authorized agent
Patricia Nove

DATE OF DELIVERY *11/14/77* POSTMARK

3. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

★ GPO : 1977-O-234-337

Sec. Bur. C. 19707

SENDER: Complete Section 1, 2, and 3. Add your address to the "RETURN TO" space on reverse.

1. The following service is requested (check one):

Show to whom and date delivered

Show to whom, date, and address of delivery

RESTRICTED DELIVERY
Show to whom and date delivered

RESTRICTED DELIVERY
Show to whom, date, and address of delivery

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Roger B. Reynolds, Solicitor
County of Montgomery

3. ARTICLE DESCRIPTION:
REGISTERED NO. | CERTIFIED NO. | INSURED NO.
| 44824 |

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE Addressee Authorized agent

4. DATE OF DELIVERY

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

★ GPO : 1977-O-234-337

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

DUPLICATE RECORD.
CRIMINAL DIVISION
COURT

POOR ORIGINAL

Sec. Bur. C. 19707

SENDER: Complete items 1, 2, and 3, and 4. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one):
 Show to whom and date delivered.
 Show to whom, date, and address of delivery.
 RESTRICTED DELIVERY
 RESTRICTED DELIVERY
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery.
 Show to whom, date, and address of delivery.
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 Sheldon Seligsohn, Attorney
 The Bell Telephone Company
 of Pennsylvania

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 44822

(Always obtain signature of addressee or agent)
 I have received the article described above.
 SIGNATURE Addressee Authorized agent

4. DATE OF DELIVERY
 11/14/27

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

Sec. Bur. C. 19707

SENDER: Complete items 1, 2, and 3, and 4. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one):
 Show to whom and date delivered.
 Show to whom, date, and address of delivery.
 RESTRICTED DELIVERY
 RESTRICTED DELIVERY
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery.
 Show to whom, date, and address of delivery.
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 Walter Phipps, Jr., Solicitor
 Borough of Conshohocken

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 44822

(Always obtain signature of addressee or agent)
 I have received the article described above.
 SIGNATURE Addressee Authorized agent

4. DATE OF DELIVERY
 11/15/27

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

1. The following service is requested (check one):
 Show to whom and date delivered.
 Show to whom, date, and address of delivery.
 RESTRICTED DELIVERY
 RESTRICTED DELIVERY
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery.
 Show to whom, date, and address of delivery.
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 Edward F. Kane, Esquire
 Kane, Pugh, Anderson, Subers
 and McBristan

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 44822

(Always obtain signature of addressee or agent)
 I have received the article described above.
 SIGNATURE Addressee Authorized agent

4. DATE OF DELIVERY
 11/14/27

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

1. The following service is requested (check one):
 Show to whom and date delivered.
 Show to whom, date, and address of delivery.
 RESTRICTED DELIVERY
 RESTRICTED DELIVERY
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery.
 Show to whom, date, and address of delivery.
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 Joel E. Mazor, General Attorney
 Consolidated Rail Corporation

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 44822

(Always obtain signature of addressee or agent)
 I have received the article described above.
 SIGNATURE Addressee Authorized agent

4. DATE OF DELIVERY
 11-14-27

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

1. The following service is requested (check one):
 Show to whom and date delivered.
 Show to whom, date, and address of delivery.
 RESTRICTED DELIVERY
 RESTRICTED DELIVERY
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery.
 Show to whom, date, and address of delivery.
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 James M. Ballengee, President
 Philadelphia Suburban Water
 Company

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 44822

(Always obtain signature of addressee or agent)
 I have received the article described above.
 SIGNATURE Addressee Authorized agent

4. DATE OF DELIVERY
 NOV 14 1927

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS



WALTER PHIPPS, JR.
ATTORNEY AT LAW
312 FAYETTE STREET
CONSHOHOCKEN, PA. 19428
TELEPHONE 628-2890

RECEIVED

NOV 15 1977

SECRETARY'S OFFICE
PUBLIC UTILITY COMMISSION

November 14, 1977

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

Re: Department of Transportation of
the Commonwealth of Penna.

Vs.

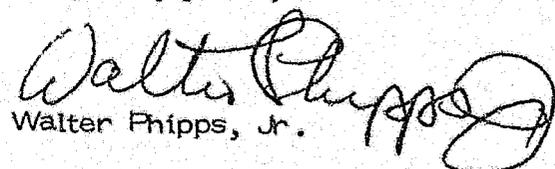
Reading Company, debtor, et al
C. 19707

Dear Sir:

Receipt of your letter of November 8, 1977, purportedly containing a revised order page from the initial decision prepared by Administrative Judge Rudolph Pallastrone in the above matter is acknowledged.

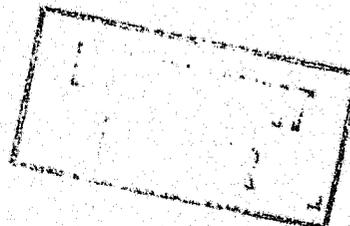
However, the copy of the order which was enclosed, was exactly the same as the proposed initial order of Judge Pallastrone. I do not know whether a copy of the original order was mistakenly enclosed. In any event, it is requested that you send me a copy of the revised order.

Very truly yours,


Walter Phipps, Jr.

mb

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.



RECEIVED

NOV 17 1977

SECRETARY'S OFFICE
PUBLIC UTILITY COMMISSION

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMPLAINANT :

Complaint Docket
No. 19707

v.

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

RESPONDENTS

EXCEPTIONS TO INTERIM ORDER
OF ADMINISTRATIVE LAW JUDGE

Candace N. Kreiger
Assistant Counsel

For Staff of Pennsylvania Public
Utility Commission

North Office Building
P.O. Box 3265
Harrisburg, Pennsylvania 17120

RECEIVED
COMPLAINT DOCKET

NOV 28 1977

H.

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

NOV 28 1977

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DEPARTMENT OF TRANSPORTATION OF :
THE COMMONWEALTH OF PENNSYLVANIA :
V. : Complaint Docket
READING COMPANY, DEBTOR, BOROUGH : No. 19707
OF CONSHOHOCKEN, BOROUGH OF WEST :
CONSHOHOCKEN, AND COUNTY OF :
MONTGOMERY :

EXCEPTIONS TO INTERIM ORDER
OF ADMINISTRATIVE LAW JUDGE

COMES NOW, the Staff of the Pennsylvania Public Utility Commission, by its attorney, Candace N. Kreiger, and takes Exception to the Interim Order issued on October 17, 1977 (Service Date October 18, 1977) by Administrative Law Judge Rudolph S. Pallastrone, subject to the Commission's approval, in the complaint proceeding docketed at C. 19707.

SHORT STATEMENT OF THE CASE

On September 27, 1972 the Department of Transportation of the Commonwealth of Pennsylvania (PennDOT) initiated this proceeding by filing with the Pennsylvania Public Utility Commission (P.U.C.) a complaint docketed at C. 19707.

PennDOT's complaint alleged, inter alia, that repair is necessary to insure the life of the Matsonford Bridge.

Following hearing, the P.U.C., acting upon the specific request of PennDOT, issued an order on October 21, 1975, approving PennDOT's Petition for Modification of the

scope of the project and directed, inter alia, that PennDOT within twelve (12) months of service of the modified order prepare and submit to the P.U.C. and each party of record a detailed construction plan and cost estimate providing for reconstruction of the Matsonford Bridge.

On December 16, 1976, PennDOT filed a Petition for Modification of the October 21, 1975 order, in the nature of a time extension.

At the Public Meeting held January 18, 1977 the P.U.C. directed that PennDOT's Petition for Modification be set for hearing.

On February 15, 1977, the Staff of the Pennsylvania Public Utility Commission (Staff) took the depositions of James B. Chiles, PennDOT's Director of Economic Research and Programming and James Vovakes, PennDOT's Director of Fiscal Management.

On March 10, 1977, further hearing was held on PennDOT's Petition for Modification. At the hearing, PennDOT did not move to have the February 15, 1977 depositions admitted into evidence; did not request permission to file the depositions as a late filed exhibit; and did not have James Vovakes available at the hearing for cross-examination.

On June 6, 1977, the time for filing Main Briefs expired, at which time the Staff filed its brief in this proceeding. A Reply Brief was filed by PennDOT on June 17, 1977.

PennDOT also filed on June 17, 1977 (Service Date June 21, 1977) a letter petition requesting that the depositions of James B. Chiles and James Vovakes be marked for identification as PennDOT's Exhibit No. 6 and admitted into evidence. PennDOT also requested by its letter petition that the P.U.C. extend the time within which briefs must be filed to within ten (10) days after receipt of the depositions in order to permit the parties to review the depositions before filing of briefs.

On June 28, 1977 the Staff filed an answer in opposition to PennDOT's letter petition requesting that it be denied.

On October 12, 1977, Administrative Law Judge Pallastrone issued his Initial Decision in this proceeding.

On October 17, 1977 (Service Date October 18, 1977) Administrative Law Judge Rudolph S. Pallastrone issued an Interim Order, subject to the Commission's approval, ordering, among other things, that PennDOT's letter petition of June 17, 1977 be granted. (Interim Order, Paragraph No. 1). See: Exhibit No. 1, attached hereto.

EXCEPTIONS

EXCEPTIONS are taken to Administrative Law Judge Pallastrone's October 17, 1977 Interim Order, Paragraph No. 1, insofar as it grants PennDOT's letter petition requesting the deposition of James Vovakes be admitted into evidence as PennDOT's Exhibit No. 6.

1. The admission into evidence of James Vovakes' deposition is contrary to the Rules of Administrative Practice and Procedure for the following reasons:

a. 1 Pa. Code §35.131 specifically provides, inter alia:

"After the closing of the record, there shall not be received in evidence or considered as part of the record, any document after the close of testimony."
(Emphasis Supplied)

At the March 10, 1977 hearing in this proceeding, PennDOT did not move to have the deposition of James Vovakes admitted into evidence. It is significant that the deposition was available at the time of hearing and further that no part of a deposition is to be considered part of the record unless received into evidence. See: 1 Pa. Code §35.151.

b. 1 Pa. Code §35.128 provides in pertinent part:

"At the hearing, the . . . presiding officer may, if deemed advisable, authorize any participant to file documentary evidence as part of the record within a fixed time, expiring not less than ten days before the date fixed for filing and serving briefs." (Emphasis Supplied)

PennDOT made no request at the March 10, 1977 hearing in this proceeding for permission to file a late-filed exhibit and, therefore, received no authorization from the presiding office to file additional evidence in accordance with 1 Pa. Code §35.128.

Even, assuming arguendo, that the Administrative Law Judge had granted PennDOT permission at the hearing to file additional evidence, the evidence filed by PennDOT on June 17, 1977 was not timely filed due to the requirement of 1 Pa. Code §35.128 that such evidence be filed not less than ten days before the date fixed for filing and service of briefs, which in this case was June 6, 1977. PennDOT's request that the P.U.C. extend the time for filing briefs to within ten (10) days after receipt of depositions was meaningless since the depositions were received on or about June 17, 1977, eleven (11) days after the time for filing of Main Briefs expired.

2. PennDOT's letter petition alleged no material changes of fact or law which have occurred since the conclusion of the March 10, 1977 hearing which would constitute grounds for reopening the proceeding. The depositions were available at the time of hearing and PennDOT should not now be permitted to attempt to bolster its position by admitting additional evidence after the close of testimony and the filing of and the filing of Main Briefs.

3. It is highly prejudicial to the parties of record to permit PennDOT at this late date to submit into the record evidence which was available at the time of the March 10, 1977 hearing and which PennDOT neglected to offer into evidence.

POOR ORIGINAL

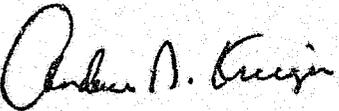
Further, PennDOT did not even have Mr. Vovakes available at the March 10, 1977 hearing. Clearly, a procedural right would be violated by the admission of his deposition into evidence due to a lack of opportunity to the parties of record to cross-examine the witness on the record with regard to the statements contained in the deposition. It is well established that the principle of due process is fully applicable to hearings before administrative tribunals: Gonestoga National Bank of Lancaster, et al v. Patterson, 442 Pa. 289, 295 (1971); Pittsburgh v. Pennsylvania Public Utility Commission, 171 Pa. Super. Ct. 391, 395 (1952); Interstate Commerce Commission v. Louisville & Nashville R. Co., 227 U.S. 88 (1913).

Additionally, while it may be true that Administrative Law Judge Pallastrone in his October 12, 1977, Initial Decision gave little weight to James Vovakes' deposition. The admission of the deposition into evidence could affect either the P.U.C.'s decision or the Appellate Court's decision or review.

WHEREFORE, Staff of the Pennsylvania Public Utility Commission respectfully submits that there is error in Administrative Law Judge Pallastrone's October 17, 1977 Interim Order, Paragraph No. 1, and requests that the P.U.C. deny PennDOT's Letter Petition of June 17, 1977, insofar as

it requests the P.U.C. to admit James Vovakes' deposition into evidence as PennDOT's Exhibit No. 6.

Respectfully submitted,



Candace N. Kreiger

Candace N. Kreiger
Assistant Counsel

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: :
Department of Transportation : Complaint Docket
of the Commonwealth of : No. 19707
Pennsylvania, :
Complainant :
vs. :
Reading Company, Debtor, :
Borough of Conshohocken, :
Borough of West Conshohocken :
and County of Montgomery, :
Respondents :

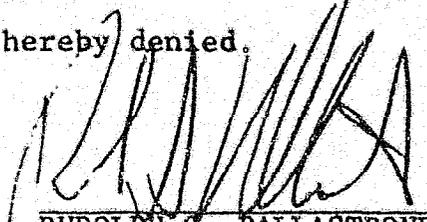
ORDER

(Subject to the Commission's Approval)

BY THE COMMISSION:

AND NOW, to wit, this day of , 1977,
it is hereby ORDERED as follows:

1. That PennDot's Letter Petition of June 17, 1977,
Letter Petition requesting that depositions of James B. Chiles
and James Vovakes be marked for identification as PennDot's
Exhibit No. 6 and admitted into evidence is hereby granted.
2. That Commission Staff's Motion to Strike PennDot's
Reply Brief of June 28, 1977, is hereby denied.


RUDOLPH S. PALLASTRONE
ADMINISTRATIVE LAW JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document, by first class postage prepaid upon all parties of record in this proceeding. Service has been made upon the following:

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

William R. Shane, Chief
Administrative Law Judge
Room G-6
North Office Building
Harrisburg, Pennsylvania 17120

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

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

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

Herbert G. Zahn, Assistant Attorney General
Robert W. Cunliffe, Deputy Attorney General
Pennsylvania Department of Transportation
Capital Associates Building
Seventh and Forster Streets
Harrisburg, Pennsylvania 17120

Edward F. Kane, Esquire
Kane, Pugh, Anderson, Subers and McBrien
512 Swede Street
Norristown, Pennsylvania 19401

State Representative Anthony Scirica
Room B-6, House of Representatives
Main Capitol Building
Harrisburg, Pennsylvania 17120

Dated at this 17th day of November, 1977.

Candace N. Kreiger (ss)
Candace N. Kreiger

Of Counsel for
Staff of the Pennsylvania Public Utility Commission