

January 9, 1978

C. 19707

Robert W. Cunliffe, Deputy
Attorney General
Room 200, Capitol Associates Building
Seventh & 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 are an executed and three (3) copies
of order issued by the Commission on November 22, 1977, in
the above entitled proceeding.

Kindly acknowledge receipt in behalf thereof, using
for that purpose the enclosed form.

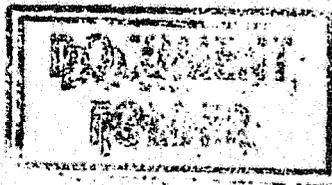
Very truly yours,

C. J. McElwee
Secretary

fao
Encls.

Bureau of Transportation
Law Bureau
Copy of Order to: See attached list.

DUPLICATE RECORD!
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.



Joel E. Mazor, General Attorney (Executed)
Consolidated Rail Corporation
Room 1404, Six Penn Center Plaza
Philadelphia, PA 19104

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

Walter Phipps, Jr., Solicitor (Executed)
Borough of Conshohocken
321 Fayette Street
Conshohocken, PA 19428

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

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

Roger B. Reynold, Solicitor (Executed)
County of Montgomery
Courthouse
Norristown, PA 19404

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

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

Mr. John L. Storch
P.U.C. - Bureau of Transportation, Rail Division
P. O. Box 3265
Harrisburg, PA 17120

Rudolph S. Pallastrone, Esquire
P.U.C., 1306 State Office Building
Broad & Spring Garden Streets
Philadelphia, PA 19130

Chief ALJ Shane
Bruce Bigelow, Office of ALJ



PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Public Meeting held November 22, 1977
Harrisburg, PA 17120

Commissioners Present:

Louis J. Carter, Chairman
Robert K. Bloom
Helen B. O'Bannon
Michael Johnson

Department of Transportation of the
Commonwealth of Pennsylvania

v.

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

Complaint Docket
No. 19707

O R D E R

DUPLICATE RECORD.
ORIGINAL CLASSIFIED
TO COMMONWEALTH COURT.

BY THE COMMISSION:

On December 16, 1976, the Pennsylvania Department of Transportation (PennDOT) filed with the Commission a Petition for Modification of an Order issued on October 21, 1975 in this proceeding. That Order resulted from a complaint filed by PennDOT on September 27, 1972, alleging that the Matsonford Bridge, located in the Borough of West Conshohocken, was in disrepair and stating that the Department wished to rehabilitate the structure. An Order was issued on January 15, 1974, approving the rehabilitation project but, on December 16, 1974, PennDOT petitioned to have the Order modified. The Department requested that it be granted twelve months to submit plans for the reconstruction of the bridge since rehabilitation on the bridge was no longer feasible. Due to the deterioration in the bridge's condition since 1972, the Department concluded that reconstruction was required. On October 21, 1975, the Commission approved the request and directed that, within twelve months from the date of the Order, PennDOT prepare and submit detailed plans and estimates of cost for the reconstruction of the Matsonford Bridge. PennDOT now seeks a modification of that Order to allow it additional time for compliance.^{1/}

On January 18, 1977, the Commission ordered that a hearing be held on the petition so that all parties might submit testimony on the issues raised by the petitions. The hearing was held March 10, 1977, before Administrative Law Judge Rudolph S. Pallastrone. On October 12, 1977, the Administrative Law Judge issued an Initial Decision recommending that PennDOT's petition be denied.

^{1/} By letter-petition filed November 12, 1976, the Borough of Conshohocken seeks enforcement of the October 21, 1975 Order against PennDOT.

Exceptions to the Initial Decision and a petition for oral argument were filed by PennDOT.

PennDOT contends that it is unable to make the repairs to the bridge or to prepare the required plans and estimates as it has insufficient funds and will be unable to obtain the funds until the project is placed on its Twelve Year Program for highway reconstruction. Originally, the bridge was on the Twelve Year Program in 1972-1973 as a rehabilitation project but was removed when reclassified as a reconstruction project. PennDOT later recommended to the State Transportation Commission that it be included in the 1976-1977 program as a reconstruction project but another project was selected instead.

PennDOT claims that since the reconstruction of the Matsonford Bridge is a capital project, it must be placed on the Twelve Year Program in order to be funded. Act 120 of May 6, 1970, P.L. 356 (71 P.S. §521) requires PennDOT to submit its list of proposed capital projects to the State Transportation Commission for placement on the Twelve Year Program. PennDOT contends Public Utility Commission orders to it are subject to this procedure and the Transportation Commission's decision to exclude the Matsonford Bridge Project precludes it from taking action on our order.

PennDOT has requested that it be permitted to present oral argument on the issues involved. We find that the record and briefs filed in the proceedings adequately present the positions of the parties and that any further argument would serve no useful purpose.

Sections 409 and 411 of the Public Utility Law, as amended, vest in the Commission exclusive jurisdiction over highway crossings and the authority to order PennDOT to perform the required work.^{2/}

Although PennDOT relies generally on the provisions of Act 120 of May 6, 1970 as a basis for its noncompliance with our Order, it clearly has ignored Section 22 of that statute which provides that nothing in the Act shall effect the powers and duties of this Commission.^{3/} PennDOT's claim that P.U.C. projects must be placed on a twelve year highway program before such projects can be budgeted, therefore, is clearly contrary to the express provisions of Act 120.

^{2/} Section 409(c) states in part:

"The Commission may order the work of construction, relocation, alteration, protection, or abolition of any crossing aforesaid to be performed in whole or in part by any public utility or municipal corporation concerned or by the Commonwealth."
(emphasis supplied).

^{3/} Section 22 states:

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

PennDOT also contends that before it can proceed with the preparation of the detailed construction plan and cost estimate, funds for the design of the bridge must be approved by the Legislature. An examination of the Capital Facilities Debt Enabling Act (72 P.S. §3920.1 et seq.), upon which the agency relies, discloses no provision, either expressed or implied, that P.U.C. projects are "capital" projects which require such approval. We find the suggestion of PennDOT that the legislature intended to jeopardize the public's safety by requiring legislative authorization to finance a P.U.C.-ordered project to be untenable. It is clear from the language of Sections 409 and 411 of the Public Utility Law that the legislature, in order to promote the public safety, vested this Commission with exclusive jurisdiction over public railroad highway crossings. Furthermore, even if P.U.C. projects were capital projects, the Act defines these projects as those with a cost in excess of \$100,000. PennDOT itself estimates the cost of these plans at \$75,000.^{4/}

Upon review of the record, we adopt the findings of fact and conclusions of law made by the Administrative Law Judge and deny petitioner's request for modification.

We are directing PennDOT to proceed with the repairs to the road surface and to prepare the plans for reconstruction. Failure to strictly comply, within the time periods prescribed, shall result in the institution of legal proceedings against the petitioner for enforcement of this Order; THEREFORE,

IT IS ORDERED:

1. That within sixty (60) days from the date of service of this Order, PennDOT shall complete repairs to the bridge surface paving and adjacent sidewalks as required to effect a safe, smooth and satisfactory condition and immediately upon completion, notify the Commission as to the extent of the repairs and the cost thereof.
2. That within six (6) months from the date of service of this Order, PennDOT shall submit to the Commission detailed plans and estimates of costs for the reconstruction of the Matsonford Bridge.
3. That the cost of preparation of the plans shall be borne by PennDOT alone.

^{4/} PennDOT points out that it is the Administration's policy to define a "Capital Project" as those projects with a cost in excess of \$25,000 and, therefore, legislative approval is still required. We find this argument unconvincing in light of PennDOT's own actions here. PennDOT has already begun preparation of these plans; they are about 50% completed. Yet, no funds have been approved by the legislature.

4. That every thirty (30) days from the date of service of this Order, PennDOT shall submit to this Commission a memorandum detailing the status of the plans and cost estimates.

BY THE COMMISSION,

C. J. McElwee
Secretary

(SEAL)

ORDER ADOPTED: November 22, 1977

ORDER ENTERED: **JAN 9 1978**

Monitor Commissioner O'Bannon

November 30, 1977

C. 19707

James N. Sebastian, P.E.
Acting Deputy Chief Highway Engineer
Department of Transportation
Harrisburg, Pennsylvania 17120

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

Dear Mr. Sebastian:

Receipt is acknowledged of your letter dated November 23, 1977, enclosing the inspection report dated November 14, 1977, to the Commission's order adopted October 21, 1975 in the above entitled proceeding.

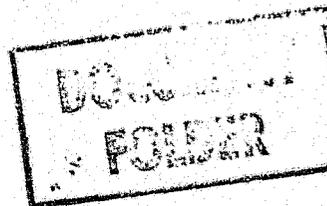
The report will receive the Commission's attention.

Very truly yours,

for C. J. McElves
Secretary

cc: Law Bureau - w/copy of report
Bureau of Transportation - w/copy of report

CKG:cc



DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
HARRISBURG 17120
November 23, 1977



IN REPLY REFER TO
Montgomery County
L. R. 46140
Matonsford Bridge
Gonshohocken-West Gonshohocken Boroughs
PUC. C. 19707

RECEIVED

NOV 25 1977

Mr. C. J. McElwee, Secretary
Public Utility Commission
Harrisburg, Pennsylvania

SECRETARY'S OFFICE
PUBLIC UTILITY COMMISSION

Dear Mr. McElwee:

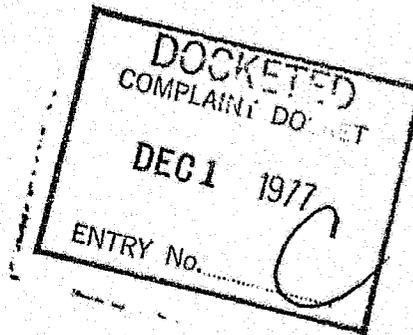
In accordance with Paragraph 4 of your Honorable Commission's Order adopted October 21, 1975; we are attaching the November 14, 1977 inspection report.

Very truly yours,

James N. Sebastian

For: James N. Sebastian, P. E.
Acting Deputy Chief Highway Engineer

Attachment



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
200 Radnor-Chester Road
St. Davids, Penna. 19087
November 16, 1977



RECEIVED

NOV 25 1977

SECRET/
PUBLIC UTIL. OFFICE
MISSION

IN REPLY REFER TO

PGP-JJM
Montgomery County
LR 46140, Sta. 134+49
Conshohocken Bridge over Schuylkill River
P.U.C. C-19707

Mr. C.J. McElwee, Secretary
Public Utilities Commission
P.O. Box 3265
Harrisburg, Pa. 17120

Dear Mr. McElwee:

On 14 November 1977, engineers from PennDOT inspected the subject bridge as ordered by the PUC.

As noted in the last report there is substantial deterioration to Pier #8. This condition has created the potential for a localized failure in the deck slab in the bays adjacent to the pier. One steel bent was erected in October 1977 at the worst location (see photo). The erection of 3 more bents is scheduled for this winter.

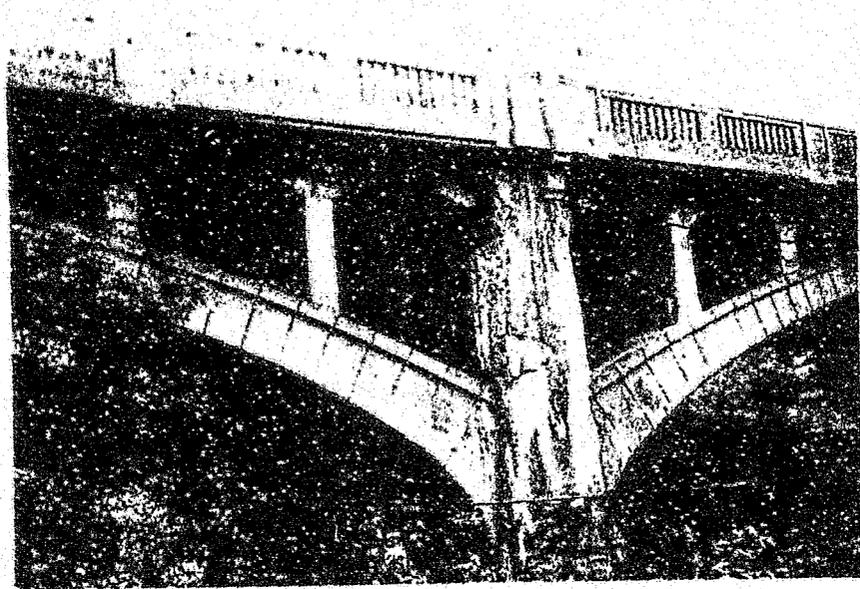
The remainder of the structure is stable with only minor increases in the extent of deterioration.

Very truly yours

Paul Peterson

Robert L. Rowland, P.E.
District Engineer

for



November 30, 1977

C. 19707

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

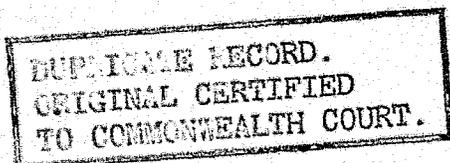
DEPARTMENT OF TRANSPORTATION OF
THE COMMONWEALTH OF PENNSYLVANIA
V.
READING COMPANY, DEBTOR, BOROUGH OF CONSHOHOCKEN,
BOROUGH OF WEST CONSHOHOCKEN AND COUNTY OF MONTGOMERY

Dear Sir:

Please be informed that the corrected page you received from the Commission on November 8, 1977, is the corrected page.

If you have any further questions concerning this matter please be informed that since it is not a finalized decision adopted by the Commission you may make any inquiries concerning the matter to William Shane, Chief, Office of Administrative Law Judge at (717) 787-1191.

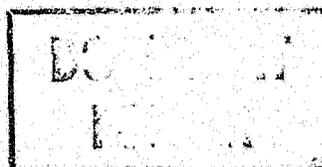
Very truly yours,



C. J. McElwee
Secretary

JEC
Enclosure
Certified Mail
Receipt Requested

Chief ALJ Shane
Office of ALJ
Bruce Bigelow, Office of ALJ
Mr. Bramson
Bureau of Transportation
Law Bureau
see attached list



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, DESTON, BOROUGH OF CONSBOROCCEN,
BOROUGH OF WEST CONSBOROCCEN 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.



Department of Transportation v. Reading
Company, et al.

Docket No. C. 19707

2-9-78

-NOTICE OF PETITION by Department of Transportation
at No. 212 C.D., 1978, Commonwealth Court of
Pennsylvania, from the order of the Commission
entered 1-9-78, in the above complaint proceeding.

Docket No. B-78022492

Filed: 2-8-78

