

August 10, 1978

SUBJECT: B-78072527  
C. 18838

TO: Secretary McElwee

FROM: Betty R. Jones

In re: Petition of County of Chester  
No. 1691 C. D. 1978  
Commonwealth Court of Pennsylvania

It is the intention of the Law Bureau to certify the record in the above captioned case to the Commonwealth Court of Pennsylvania. Please forward a complete set of the original file for certification. We will assume the Secretary's office has a complete second file.

BRJ

P.U.C. Department of Highways, et al.

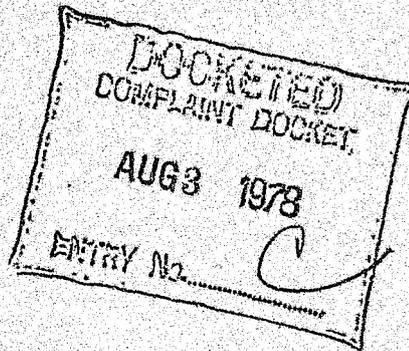
Docket No. C. 18838 ✓

7-25-78

-NOTICE OF PETITION by County of Chester  
at No. 1691 C.D., 1978, Commonwealth  
Court of Pennsylvania, from the order  
of the Commission entered 6-21-78,  
in the above complaint proceeding.

Docket No. B-78072527

Filed: 7-20-78



B-780705

File in C. 18838

~~EXTRA COPY~~

COUNTY OF CHESTER,  
Petitioner

IN THE COMMONWEALTH COURT  
OF PENNSYLVANIA

v.

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION,  
Respondent

NO. 1691 C.D. 1978

BEFORE:

HONORABLE JAMES S. BOWMAN, President Judge  
HONORABLE ROY WILKINSON, JR., Judge  
HONORABLE GENEVIEVE BLATT, Judge  
HONORABLE RICHARD DiSALLE, Judge  
HONORABLE DAVID W. CRAIG, Judge  
HONORABLE JOHN A. MacPHAIL, Judge

DOCUMENT  
FOLDER

DOCKETED  
NOV 28 1979

ARGUED: September 11, 1979

RECEIVED  
NOV 20 1979  
Pa. P. U. C.  
Law Bureau

The County of Chester (County) appeals to this Court from a decision of the Pennsylvania Public Utility Commission (PUC) ordering the reconstruction of a bridge/railroad overpass in the City of Coatesville (City), finding the County to be "interested" and "concerned" with the crossing, and further ordering the County to contribute 25 per cent of the total cost of material and labor used in reconstructing the bridge.<sup>1</sup> On appeal, the County alleges that the PUC lacked the legal authority to determine that it was a "concerned" party and to allocate costs against it because the bridge's only connection with the County was its location<sup>2</sup> and that even if the PUC did have such authority, such allocation on the facts of this case constitutes an abuse of discretion. For the reasons which follow, we affirm the PUC's order.

Section 409 of the Public Utility Law (Law), Act of May 28, 1937, P.L. 1053, as amended, 66 P.S. §1179(c)<sup>3</sup> provided that:

"Upon its own motion or upon complaint, the commission shall have exclusive power after hearing, upon notice to all parties in interest, including the owners of adjacent property, to order any such crossing heretofore or hereafter constructed to be relocated or altered, or to be abolished upon such reasonable terms and conditions as shall be prescribed by the commission. . . . 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 added.)

Section 411 of the Law, 66 P.S. §1181(a)<sup>4</sup> provided that:

"[T]he expense of such construction, relocation, alteration, protection, or abolition of any crossing, shall be borne and paid, . . . by the public utilities or municipal corporations concerned, or by the Commonwealth, in such proper proportions as the commission may, after due notice and hearing, determine, unless such proportions are mutually agreed upon and paid by the interested parties."  
(Emphasis added.)

Section 2 of the Law, 66 P.S. §1102(15) included "county" within its definition of "municipal corporation."<sup>5</sup>

The clear provisions of the Law, then, authorized the PUC to determine who was a "concerned" party and who should bear the costs of a bridge reconstruction. The only remaining issues are whether the PUC erred in determining that the County was a concerned party and in allocating a portion of the reconstruction costs to it.

In a case such as this, we will not exercise our independent judgment on the record or weigh conflicting evidence. Our only inquiry is directed to whether there is substantial evidence on the record to support the PUC's decision. Substantial evidence is competent and relevant evidence having a rational probative force. Findings of fact made by the PUC which are supported by substantial evidence are conclusive and may not be disturbed on appeal. Pittsburgh Railways Co. v. Pennsylvania Public Utility Commission, 198 Pa. Superior Ct. 415, 427, 182 A.2d 80, 85 (1962). See also Department of Transportation v. P.U.C., 3 Pa. Commonwealth Ct. 405, 411, 283 A.2d 313, 317 (1971).

In determining whether a municipality is "concerned," we must look to whether the action ordered by the PUC, here the reconstruction of a bridge, will result in substantial local improvement or a distinct

local benefit for the residents of the municipality. See Somerset County v. Pennsylvania Public Utility Commission, 132 Pa. Superior Ct. 585, 594, 1 A.2d 806, 810 (1938); Schuylkill County v. Public Service Commission, 77 Pa. Superior Ct. 504, 511 (1921); Lancaster County v. Public Service Commission, 77 Pa. Superior Ct. 495, 503 (1921).<sup>6</sup> There was uncontradicted testimony presented at the various hearings that a reconstructed bridge would provide a safer route for school children who currently walk over the bridge as it now stands or through dangerous railroad underpasses, better traffic control, better, safer fire and ambulance service not only to the City but also to outlying County areas which rely on the City's fire department, easier access to the County's second largest employer, a Veteran's Hospital located north of the City, and easier and safer access to City businesses. Of course, any benefit from the reconstructed bridge to the City and its residents is, by definition and location, also a benefit to the County and its residents. In allocating part of the costs of reconstruction to the County, the PUC stated:

"However, because City of Coatesville and the County of Chester have benefited in the past from the existence of the bridge, and will additionally derive future benefit from reconstruction of the bridge structure, the remainder of the reconstruction costs shall be allocated to the city and the county."

The PUC's finding is supported by substantial evidence and its decision to allocate part of the reconstruction costs to the County was not error.

Order affirmed.

  
\_\_\_\_\_  
John A. MacPhail, Judge

## FOOTNOTES

1

This case began in 1969 when the PUC instituted an investigation on its own motion into the use and safety of a bridge located in the City situated over and above the grade of electrified main tracks of the Penn Central Transportation Company (now National Railroad Passenger Corporation or AMTRAK). Following the filing of the parties' answers to the PUC's interrogatories and following a hearing, the PUC ordered Penn Central to remove the bridge and barricade the structure. Penn Central did not comply with the order. In November, 1973, the City filed a petition and in January, 1974 an amended petition with the PUC alleging a change in circumstances since the PUC's demolition order and requesting that the record be reopened. After a hearing, the PUC denied the City's petition but reopened the record sua sponte and directed a further hearing to be held on the status of the crossing. After that hearing, the PUC determined that the bridge should be reconstructed and reopened and ordered the City to prepare plans for the reconstruction. The City did so and following a hearing on the plans the PUC entered the order from which this appeal has been taken.

2

Respondents PUC and City argue that the County failed to raise below the issue of whether or not it was a concerned party and, therefore, cannot raise it on appeal. An exhaustive review of the record indicates that nowhere did the County specifically argue that it was not a "concerned" party. The County did, however, repeatedly contest any responsibility for the work to be done on the bridge or for the cost of such work. Hearings of September 23, 1970, N.T. 60; September 19, 1974, N.T. 250-52; April 28, 1977, N.T. 147-48. We find the County's response on the issue of responsibility adequate to permit it to raise the concerned party issue on appeal.

3

The Public Utility Law of 1937 was in effect when the PUC issued the order on appeal here. It was repealed by Section 2 of the Act of July 1, 1978, P.L. 598. A provision similar to Section 409 of the Law may now be found in the Public Utility Code, 66 Pa. C.S. §2702(c).

4

See note 3 supra. A provision similar to Section 411 may now be found in the Public Utility Code, 66 Pa. C.S. §2704(a).

5

See note 3 supra. A provision similar to Section 2 of the Law may now be found in the Public Utility Code, 66 Pa. C.S. §102.

6

Sections 409 and 411 of the Law are reenactments of the earlier Public Service Company Law so decisions interpreting the law as it existed prior to 1937 continue to be applicable. Pittsburgh and Shawmut Railroad Co. v. Pennsylvania Public Utility Commission, 141 Pa. Superior Ct. 233, 235, 14 A.2d 903, 904 (1940).



*Reed Smith Townsend & Munson*

*(Formerly Townsend, Elliott & Munson)*

*1600 Western Savings Bank Building*

*Broad and Chestnut Streets*

*Philadelphia, Pennsylvania 19107*

*215-545-3700 Cable: Reed Smith Phil*

ORIGINAL

FEB 26 8 34 AM '81

RECEIVED  
SECRETARY'S OFFICE  
PUBLIC UTILITY  
COMMISSION

REED SMITH SHAW & McCLAY

747 UNION TRUST BUILDING

PITTSBURGH, PA. 15230

412-288-3131

1150 CONNECTICUT AVENUE

WASHINGTON, D. C. 20036

202-457-6100

300 NORTH SECOND STREET

HARRISBURG, PA. 17108

717-234-5988

REED SMITH & CHAPIN

1201 NORTHEAST 8TH STREET

DELRAY BEACH, FL. 33444

305-272-1225

February 23, 1981

Mr. William P. Thierfelder  
Secretary  
Pennsylvania Public Utility Commission  
Post Office Box 3265  
North Office Building  
Harrisburg, Pennsylvania 17120

Re: Pennsylvania Public Utility Commission  
v. Department of Highways of the  
Commonwealth of Pennsylvania, City of  
Coatesville, County of Chester and  
Penn Central Transportation Company,  
Complaint Docket No. C-18838

Dear Mr. Thierfelder:

Enclosed herewith for filing, with your help, is an original and two copies of Petition of City of Coatesville to Set Aside Order of May 31, 1978.

Thank you for your assistance in this matter.

Very truly yours,

*W. G. Frey*

William G. Frey

WGF:lb

Enclosures

cc: All Counsel (w/encl)

FEB 26 8 34 AM '81

RECEIVED  
SECRETARY'S OFFICE  
PUBLIC UTILITY  
COMMISSION

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION :

v. :

Complaint Docket  
No. 18838

DEPARTMENT OF HIGHWAYS OF THE  
COMMONWEALTH OF PENNSYLVANIA, :  
CITY OF COATESVILLE, COUNTY OF  
CHESTER and PENN CENTRAL  
TRANSPORTATION COMPANY :

DOCKETED  
FEB 26 1981  
C

PETITION OF CITY OF COATESVILLE  
TO SET ASIDE ORDER OF MAY 31, 1978

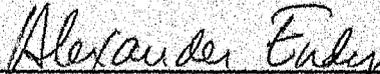
Petitioner City of Coatesville, by its counsel, represents  
as follows:

1. By order issued May 31, 1978, and at the request of your petitioner, the Commission directed the reconstruction, at an anticipated cost of \$100,000, of the Graham Avenue Bridge in the City of Coatesville.
2. Said bridge supports the crossing where State Highway Route 15122 (Graham Avenue) crosses the grade of the electrified tracks now owned and operated by National Railroad Passenger Corporation ("Amtrak", formerly Penn Central Transportation Company).
3. Since at least 1972, the crossing has been and remains closed, as was provided in the Commission's order dated January 10, 1972 under this Complaint docket.
4. The Commission's order directed the reconstruction work be performed at the initial cost and expense of your petitioner, City of Coatesville. Under the order, your petitioner was later to recover certain of the anticipated \$100,000 costs from Pennsylvania Department of Transportation and from the County of Chester.

5. The County of Chester filed an appeal from the Commission's Order of May 31, 1978 with the Commonwealth Court of Pennsylvania. After full briefing and argument, the order was finally affirmed November 19, 1979. The County of Chester thereafter filed a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania. After briefing, said Petition was finally denied June 18, 1980.

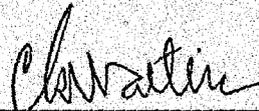
6. During the lengthy period during which said appeals were being pursued in the appellate courts of Pennsylvania, a change of circumstances occurred, in that the anticipated costs of reconstruction of the Graham Avenue bridge have increased dramatically and are now far in excess of \$100,000. Such increased costs have outstripped the net benefits originally sought by your petitioner from the reconstruction and have rendered the contemplated reconstruction financially impractical and no longer feasible.

WHEREFORE, petitioner City of Coatesville requests the Order of May 31, 1978 be rescinded and the previously superceded Order of January 10, 1972, decreeing the closure of the crossing, be reinstated.



---

ALEXANDER ENDY  
Solicitor, City of Coatesville  
53 South First Avenue  
Coatesville, Pennsylvania



---

CHRISTOPHER K. WALTERS  
REED SMITH TOWNSEND & MUNSON  
1600 Western Savings Bank Building  
Philadelphia, Pennsylvania 19107

Attorneys for Petitioner  
City of Coatesville

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION :

v. :

Complaint Docket  
No. 18838

DEPARTMENT OF HIGHWAYS OF THE  
COMMONWEALTH OF PENNSYLVANIA, :  
CITY OF COATESVILLE, COUNTY OF :  
CHESTER and PENN CENTRAL :  
TRANSPORTATION COMPANY :

ORDER

BY THE COMMISSION:

By order issued May 31, 1978, this Commission directed that the crossing, where State Highway Route 15122 (Graham Avenue) crosses over and above the grade of the electrified tracks formerly owned by Penn Central Transportation Company (now owned and operated by National Railroad Passenger Company -- "Amtrak"), in the City of Coatesville, Chester County, be reconstructed at the then-planned cost of \$100,000, to provide two lanes for highway vehicular traffic and a pedestrian sidewalk over the railroad tracks.

Said order required the Graham Avenue bridge reconstruction work be performed at the initial cost and expense of the City of Coatesville, which was permitted under said order to recover 25% of the reconstruction costs from the County of Chester and 50% from the Pennsylvania Department of Transportation (PENNDOT).

The County of Chester appealed said order to the Commonwealth of Pennsylvania, which affirmed the order on November 19, 1979. Thereafter, the County of Chester filed, in the Supreme Court of Pennsylvania, a Petition for Allowance of Appeal, finally denied on June 18, 1980.

In the more than two years during which the Commission's May 31, 1978 order has been under review in the appellate courts of Pennsylvania, the original anticipated costs of reconstruction of the Graham Avenue bridge have increased dramatically, and beyond the ability of the community to realize the anticipated benefits originally contemplated from such work; THEREFORE

IT IS ORDERED:

1. That the Commission's order dated May 31, 1978 be and hereby is revoked;
2. That the Commission's superceded order of January 10, 1972, mandating the closure of the Graham Avenue bridge as a crossing, be and hereby is reinstated.

BY THE COMMISSION

---

Secretary

(SEAL)

ORDER ADOPTED:

ORDER ENTERED:

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION

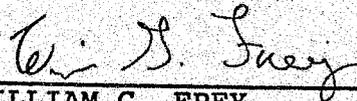
v.

:  
Complaint Docket  
No. 18838

:  
DEPARTMENT OF HIGHWAYS OF THE  
COMMONWEALTH OF PENNSYLVANIA,  
CITY OF COATESVILLE, COUNTY OF  
CHESTER and PENN CENTRAL  
TRANSPORTATION COMPANY

CERTIFICATE OF SERVICE

I hereby certify that I served all counsel for parties in this matter with a copy of the Petition of City of Coatesville to Set Aside Order of May 31, 1978 by mail, postage prepaid, on February 23, 1981.



---

WILLIAM G. FREY  
REED SMITH TOWNSEND & MUNSON  
1600 Western Savings Bank Building  
Philadelphia, Pennsylvania 19107

Attorneys for Petitioner  
City of Coatesville

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

ORIGINAL



March 24, 1981 MAR 25 8 10 AM '81

IN REPLY REFER TO

DOCUMENT  
FOLDER

RECEIVED  
SECRETARY'S OFFICE  
PUBLIC UTILITY  
COMMISSION

William P. Thierfelder, Secretary  
Pennsylvania Public Utility Commission  
112 North Office Building  
Harrisburg, Pennsylvania 17120

DOCKETED  
MAR 27 1981

Re: Complaint Docket C-18838  
Chester County

Dear Mr. Thierfelder:

This is to advise the Pennsylvania Department of Transportation has no objection to the City of Coatesville's Petition to Set Aside the Order of May 31, 1978.

I certify a copy of this letter has been sent to the parties of record.

Very truly yours,

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

220/HGZ:rmm

cc: K. W. Walker, P.E., Chief Utility Engineer  
District 6-0  
Parties of Record - Page 2

William Thierfelder  
C-18838

-2-

March 24, 1981

PARTIES OF RECORD

Alexander Endy, Esquire  
Solicitor, City of Coatesville  
53 South First Avenue  
Coatesville, Pennsylvania

Christopher K. Walters, Esquire  
Reed, Smith, Townsend & Munson  
1600 Western Savings Bank Building  
Philadelphia, Pennsylvania 19107

John S. Halsted, Esquire  
Solicitor for Chester County  
Courthouse, North Wing at  
High and Market Streets  
West Chester, Pennsylvania 19380

Joseph Malatesta, Chief Counsel  
Pennsylvania Public Utility Commission  
North Office Building  
Harrisburg, Pennsylvania 17120

April 13, 1981

IN REPLY PLEASE  
REFER TO OUR FILE

MONITOR: Commissioner Johnson

C-00018838

Pennsylvania Public Utility Commission

v.

Pennsylvania Department of Transportation, City of Coatesville, Chester  
County, Penn Central Transportation Company and National Railroad  
Passenger Corporation

This is to advise that a field investigation and conference  
will be held at the site where Graham Avenue (S.H.R. 15122) crosses  
tracks of National Railroad Passenger Corporation in City of Coatesville,  
Chester County on Tuesday, April 28, 1981 at 11:00 a.m., to discuss  
matters relating to the city's recent petition to rescind the Commission  
order of May 31, 1978 and reinstate the order of January 10, 1972.

Please arrange to have a representative present.

Very truly yours,

Donald R. Fleisher, P.E.  
Bureau of Rail Transportation

**DOCKETED**

APR 15 1981

**DOCUMENT  
FOLDER**

Similar Letters: C-00018838

Mr. A. B. Smythe, P.E., Assistant  
Chief Engineer, Structures  
National Railroad Passenger Corporation  
1617 J. F. Kennedy Boulevard  
Philadelphia, PA 19103

Mr. K. W. Walker, P.E., Chief Utility Engineer  
Pennsylvania Department of Transportation  
1120 Transportation and Safety Building  
Harrisburg, PA 17120

Alexander Endy, Solicitor  
City of Coatesville  
City Hall  
Coatesville, PA 19320

John S. Halstead, Solicitor  
Chester County Commissioners  
119 N. High Street  
West Chester, PA 19380

Mr. J. T. Sullivan, P.E., Chief Engineer  
Consolidated Rail Corporation  
15 North 32nd Street  
Philadelphia, PA 19104

Edward G. Bauer, V.P. and General Counsel  
Philadelphia Electric Company  
1000 Chestnut Street  
Philadelphia, PA 19101

Raymond F. Scully, V.P. and General Counsel  
The Bell Telephone Company of Pennsylvania  
One Parkway, 16th Floor  
Philadelphia, PA 19102

Mr. J. P. Miller, Vice-President  
Octoraro Water Company  
3697 Derry Street  
Harrisburg, PA 17111

Carl Helmetag, Jr., Esquire  
Attorney for Penn Central Corporation  
Suite 3100 - IVB Building  
1700 Market Street  
Philadelphia, PA 19103

May 4, 1981

DOCUMENT  
FOLDER

C-00018838

Monitor: Commissioner Johnson

Mr. A. B. Smythe, P.E., Assistant Chief Engineer  
- Structures  
National Railroad Passenger Corporation  
1617 J. F. Kennedy Boulevard  
Philadelphia, PA 19103

DOCKETED

MAY 6 1981

Pennsylvania Public Utility Commission

v.

Pennsylvania Department of Transportation, City of  
Coatesville, Chester County, Penn Central Trans-  
portation Company and National Railroad Passenger  
Corporation

Dear Mr. Smythe:

A field investigation and conference was conducted by a staff engineer on April 28, 1981, to discuss matters relating to the City's petition to rescind the Commission order of May 31, 1978 and reinstate the order of January 10, 1972.

The order of 1972 directed Penn Central Transportation Company to remove the superstructure of the subject bridge. Penn Central Corporation was notified of the time and place of the field conference but was not represented thereat.

None of the parties to the proceeding object to the abolition of the crossing but no party present was prepared to agree to remove the superstructure.

The staff engineer requested Amtrak and Department of Transportation to go back to headquarters, prepare an estimate of costs to remove the superstructure and submit a letter to the Commission, with copies to all parties involved, stating the amount of the estimated costs, what portion of the work it will perform and what portion of the costs it will agree to bear.

Conrail, City of Coatesville and Chester County were requested to also submit a letter to the Commission, with copies to all parties involved, stating what portion of the work it will perform and what portion of the costs it will agree to bear.

Octoraro Water Company stated that its facilities would not be involved except if the foundation of the south abutment was removed.

The Bell Telephone Company and Philadelphia Electric Company were requested to submit a letter to the Commission, with copies to all parties involved, stating what effect the removal of the bridge would have on each public utility's service to its customers, what costs, if any, would be involved and would it agree to bear any costs involved with removal of its facilities and/or providing alternate means of service for its customers.

Very truly yours,

R. A. Patoritas, P.E., Director  
Bureau of Rail Transportation

Similar Letters - See Attached List.

Mr. K. W. Walker, P.E., Chief Utility Engineer  
Pennsylvania Department of Transportation  
1120 Transportation and Safety Building  
Harrisburg, PA 17120

Mr. Paul Aucker, Manager  
City of Coatesville  
City Hall  
Coatesville, PA 19320

Mr. Robert Box  
Chester County Bridge Engineer  
Chester County Courthouse  
West Chester, PA 19380

Mr. J. T. Sullivan, P.E., Chief Engineer  
Consolidated Rail Corporation  
15 North 32nd Street  
Philadelphia, PA 19104

Edward G. Bauer, V. P. and General Counsel  
Philadelphia Electric Company  
2301 Market Street  
Philadelphia, PA 19101

Raymond F. Scully, V. P. and General Counsel  
The Bell Telephone Company of Pennsylvania  
One Parkway, 16th Floor  
Philadelphia, PA 19102

Mr. J. P. Miller, Vice President  
Octoraro Water Company  
3697 Derry Street  
Harrisburg, PA 17111

Carl Helmetag, Jr., Esquire  
Attorney for Penn Central Corporation  
Suite 3100 - IVE Building  
1700 Market Street  
Philadelphia, PA 19103

6801 - U 1034



# COUNTY OF CHESTER

## COMMISSIONERS

EARL M. BAKER  
ROBERT J. THOMPSON, CHAIRMAN  
PATRICK C. O'DONNELL

OFFICE OF THE COUNTY ENGINEER  
235 W. MARKET STREET  
WEST CHESTER, PENNSYLVANIA 19380  
215-431-6220

R. P. WILKING, COUNTY ENGINEER  
R. A. BOX, COUNTY BRIDGE ENGINEER

May 18, 1981

Norman J. Pine, Esquire  
431 First Avenue  
Parkesburg, PA 19365

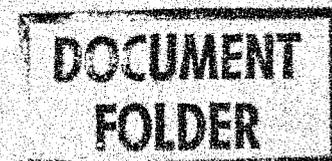
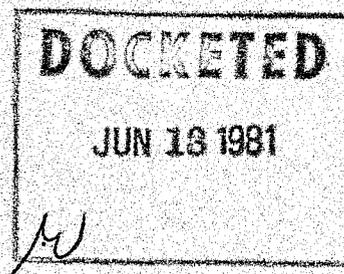
Dear Mr. Pine:

As discussed with you, attached is our proposed response to the questions directed to Chester County regarding the bridge on Gram Avenue in Coatesville. If you agree, please send the response to the Public Utility Commission and those parties listed in the correspondence from the PUC.

Very truly yours,

*R. A. Box*  
R. A. Box

RAB:dvm  
attachment



CONRAIL

ORIGINAL

RECEIVED

MAY 28 1981

SECRETARY'S OFFICE  
Public Utility Commission

DOCUMENT  
FOLDER

May 20, 1981

DOCKETED

MAY 28 1981

William P. Thierfelder, Esq.  
Secretary  
Penna. Public Utility Commission  
Box 3265  
Harrisburg, Pa. 17120

Re: C-00018838, Chester County MPCB 16

Dear Sir:

At a field conference held on April 28, 1981, Conrail and all other parties of record were requested to submit a letter, with copies to all parties, stating what portion of the work of removing the present structure involved in the captioned matter it would agree to perform and what portion of costs it would agree to bear.

Consolidated Rail Corporation will not agree to perform any of the involved work nor bear any of the costs.

I hereby certify that a copy of this letter is being sent to all parties of record.

Very truly yours,



Joel E. Mazor  
General Attorney

JEM:CV

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION  
Harrisburg, Pennsylvania 17120  
781-6934



*Heister*

JUN 10 8 55 AM '81

June 4, 1981

IN REPLY REFER TO

Chester County  
L. R. 15122 (Graham)  
City of Coatesville  
PUC. C. 18838

RECEIVED  
SECRETARY'S OFFICE  
PUBLIC UTILITY  
COMMISSION

BUREAU OF  
JUN 8 1981  
RAIL  
TRANSPORTATION

Mr. R. A. Peteritas, Director  
Bureau of Rail Transportation  
Public Utility Commission  
Harrisburg, Pennsylvania

Dear Mr. Peteritas:

As required by your letter dated May 4, 1981, please be advised that we estimate that it would cost \$48,000.00 to remove the superstructure of the subject bridge.

The city's petition asks that your Commission reinstate the order of January 10, 1972. Said order directed trustees of Penn Central to perform most of the work of removing the bridge structure.

We are of the opinion that the two railroad entities at this location; being Amtrak and ConRail; should assume the responsibilities that were previously assigned to their predecessor.

A copy of this letter is being forwarded to the parties of record:

- Alexander Endy, Esquire, Solicitor, City of Coatesville, 53 S. First Ave., Coatesville, Pennsylvania 19320
- Christopher K. Walter, Esquire, Reed, Smith, Townsend & Munson, 1600 Western Savings Bank Bldg., Philadelphia, Pennsylvania 19107
- John S. Halsted, Esquire, Solicitor, Chester County Courthouse, North Wing at High and Market Streets, West Chester, Pennsylvania 19380
- John Malatesta, Chief Counsel, Pa. Public Utility Commission, North Office Bldg., Harrisburg, Pa. 17120
- W. Scott Armentrout, Asst. General Counsel, Northeast Corridor, National Railroad Passenger Corp., 400 N. Capitol St., N.W., Washington, D.C. 20001
- Joel E. Mazor, Commerce Counsel, Consolidated Rail Corporation, 1138 Six Penn Center Plaza, Philadelphia, Pennsylvania 19104

Very truly yours,

*Alfred F. Lyng*

For: Alfred F. Lyng, P. E.  
Chief Highway Engineer

DOCKETED  
attachment  
JUN 10 1981

DOCUMENT  
FOLDER

ORIGINAL

Norman J. Pine

ATTORNEY AT LAW  
431 WEST FIRST AVENUE  
PARKESBURG, PA. 19365

June 16, 1981



215/857-2111



Commonwealth of Pennsylvania  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, Pa. 17120

Re: C-00018838

Dear Sir:

I am hereby enclosing the Chester County letter concerning the Grahm Avenue Bridge.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Norman J. Pine".  
Norman J. Pine

NJP:je

Enc. (1)

RECEIVED  
SECRETARY'S OFFICE  
PUBLIC UTILITY  
COMMISSION

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Amtrak



July 22, 1981

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COMMISSION

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AUG 3 1981  
RAIL  
TRANSPORTATION

Mr. R. A. Peteritas, Director  
Bureau of Rail Transportation  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, Pa. 17120

SUBJECT: OH 38.17 - Graham Avenue - City of Coatesville  
PA PUC Docket #C-00018838

Dear Mr. Peteritas:

On April 28, 1981, Mr. Don Fleisher of your staff conducted a field conference in regard to the City of Coatesville petition to revert to the Commission's order of 1972, to remove the Graham Avenue overhead bridge.

Mr. Fleisher requested Amtrak to prepare and submit a cost estimate to effect the removal. The estimate for \$48,500 to remove the bridge is submitted herewith for your consideration. It does not include any costs to remove or adjust the facilities of other utility companies that would be affected by the removal of the bridge.

Amtrak's current budgetary problems preclude us from volunteering to accept any costs associated with the removal of the structure.

President Reagan's proposed budget for Amtrak prompted our President Boyd to declare there would only be money enough to run the Northeast Corridor. A compromise reached between parties will enable Amtrak to continue National service but with very significant reductions in services, staff, maintenance of way manpower, maintenance programs, etc.

We do not know and will not know what our budget situation will be until October 1981. Our limited forces currently are attending to critical and/or emergency problems and will continue to do so until further notice.

Mr. R. A. Peteritas

OH 38.17 - Graham Avenue - Coatesville - PA PUC Docket #C-00018838

Page 2

We trust you understand our problem and will bear with us in this and other Commission matters. Perhaps after October 1981 Amtrak will be in a more favorable position to perform certain work.

Very truly yours,



A. B. Smythe  
Assistant Chief Engineer  
Structures

cc: Parties of Record

RHC/ks

**ORIGINAL**

**DOCKETED**  
JUL 27 1981

William Posner  
Attorney

*W*

**Bell of Pennsylvania**

Law Department  
One Parkway - 16th Floor  
Philadelphia, Pennsylvania 19102  
Phone (215) 466-8871

July 20, 1981

William P. Thierfelder, Secretary  
Pa. Public Utility Commission  
Box 3265  
Harrisburg, Pennsylvania 17120

**DOCUMENT  
FOLDER**

Re: Pa. Public Utility Commission v. Pa. Department  
of Transportation, City of Coatesville, Chester  
County, Penn Central Transportation Company and  
National Railroad Passenger Corporation  
C- 18838

**RECEIVED**

JUL 24 1981

Dear Mr. Thierfelder:

SECRETARY'S OFFICE  
Public Utility Commission

At a field conference held on April 28, 1981 in Coatesville, all parties of record were requested to submit a letter stating what effect the removal of the bridge in question would have on that party's service to its customers and what costs, if any, would be involved and whether these costs would be borne by the utility.

The Bell Telephone Company of Pennsylvania does not maintain, nor does it anticipate maintaining, its facilities on the above-mentioned bridge. Therefore, Bell does not agree to perform any of the involved work nor bear any of the costs of this project.

Very truly yours,

*William M. Posner*

cc: R. A. Peteritas, P.E.  
All Parties of Record

GRAHAM AVENUE

OH 38.17

COST ESTIMATE TO REMOVE  
SUPERSTRUCTURE

AUG 5 10 35 AM '81  
RECEIVED  
SECRETARY'S OFFICE  
PUBLIC UTILITY  
COMMISSION

75' Thru Truss - 20'+ Wide with Plank Deck - Amesite Wearing Surface

Install Protection Shields (1500 SF)

6 men/2 days	12 mandays @ \$190	\$ 2,280
--------------	--------------------	----------

Remove Wearing Surface and Deck

6 men/3 days	18 mandays @ \$190	3,420
Small tractor with backhoe	3 days @ \$100	300
Dump Truck	3 days @ \$30	90

Remove Stringers

6 men/2 days	12 mandays @ \$190	2,280
Dump Truck	2 days @ \$30	60

Guy Trusses

6 men/1 day	6 mandays @ \$190	1,140
-------------	-------------------	-------

Disconnect Catenary

5 men/4 days	20 mandays @ \$190	3,800
Wire Train	4 days @ \$1,000	4,000

Remove Floor Beams

6 men/2 days	12 mandays @ \$190	2,280
Hydraulic Crane	2 days @ \$750	1,500

Lift Out Trusses

6 men/1 day	6 mandays @ \$190	1,140
2 Cranes	1 day @ \$1500	3,000

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AUG 6 1981  
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Reprofile Catenary (4 Tracks)

5 men/4 days	20 mandays @ \$190	\$3,800
Wire Train	4 days @ \$1000	4,000

Dismantle Trusses

4 men/4 days	16 mandays @ \$190	3,040
Hydraulic Crane	4 days @ \$200	800
Truck	4 days @ \$50	200

Flagging and ET Protection 5,000

Barricades 1,500

---

44,030

Contingency - 10% 4,403

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\$48,433



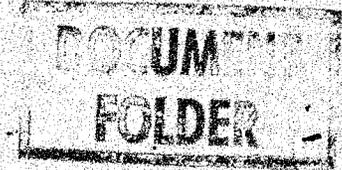
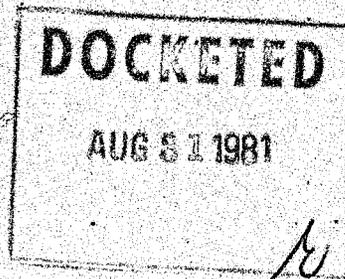
COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P. O. BOX 3265, HARRISBURG, Pa. 17120

August 28, 1981

IN REPLY PLEASE  
REFER TO OUR FILE

C-00018838

(see attached list)



Pennsylvania Public Utility Commission

v.

Pennsylvania Department of Transportation, City of Coatesville,  
Chester County, Penn Central Transportation Company and National  
Railroad Passenger Corporation

Dear Sir:

This letter is to inform you that a further hearing on the above-captioned case will be held Monday, October 5, 1981, at 10:00 a.m. in Room 1306, Philadelphia State Office Building, Broad & Spring Garden Streets, Philadelphia, Pennsylvania.

This further hearing is being held to take testimony pertaining to the issues contained in the petition filed February 26, 1981 by the City of Coatesville to set aside the Commission's order of May 13, 1978.

We are enclosing herewith, a list of questions, prepared by our Bureau of Transportation, indicating information to be developed at the hearing, along with other relevant testimony.

If any party intends to offer prepared written testimony, such testimony must be served upon each participant of record no less than seven (7) days prior to this hearing.

Administrative Law Judge Rudolph S. Pallastrone will be the presiding officer at this hearing. Judge Pallastrone's telephone number is (717) 783-5452. His address is P.O. Box 3265, Harrisburg, Pennsylvania 17120.

If you intend to file exhibits, please be advised that three copies of all hearing exhibits to be presented into evidence must be submitted to the Reporter and an additional copy should be furnished to the presiding officer and each party of record.

Judge Pallastrone:

This hearing is assigned to you under the EXAMINER SYSTEM. You will not be expected to write a decision on the matter.

Sincerely,

William R. Shane  
Chief Administrative Law Judge

Enclosure

ccs: Judge Pallastrone, Law Bureau, Bureau Rail Transportation, Mr. Bramson, Ms. Lawrence, Ms. Long, File

QUESTIONS AND PROCEDURE

1. City of Coatesville submit testimony to support its petition filed February 26, 1981. The testimony should explain why the City requests the Commission to rescind its order of May 3, 1978, which directed the subject crossing to be reconstructed (the position assumed by the City in 1972 after the crossing had been abolished) and to reinstate its order of January 10, 1972, which abolished the crossing (the position assumed by the City at the time this investigation was instituted).
2. City state whether the removal of the subject crossing structure would adversely affect the ability of pedestrians to get from one side of the railroad line involved to the other.
3. City state whether it will agree to perform the work of demolition of the subject crossing structure, if the Commission orders demolition; what portion of the costs of such work it will agree to assume; which party or parties should, in its opinion, be allocated a portion of the aforementioned costs; and what portion of such costs it suggests be allocated to each other party.
4. City state whether it will agree to assume any of the costs incurred by non-carrier public utility companies as a result of removal of the subject bridge and abolition of the crossing, if the Commission orders removal and abolition.
5. Pennsylvania Department of Transportation state whether the subject crossing is necessary to provide safe passage of vehicular traffic using State Highway Route 15122 from one side of the involved railroad line to the other.
6. Department submit testimony stating its present position relative to the subject crossing. State whether, in its opinion, the structure should be demolished and the crossing abolished or whether the structure should be rehabilitated or reconstructed.
7. Department submit answers to Question Nos. 3 and 4, as if same were directed to it.
8. National Railroad Passenger Corporation submit answers to Question Nos. 6, 3 and 4, as if same were directed to it.
9. National Railroad Passenger Corporation state whether the abutments of the existing structure should be removed, if the Commission orders the demolition of the subject crossing structure.
10. Consolidated Rail Corporation submit answers to Question Nos. 6, 3 and 4, as if same were directed to it.
11. Penn Central Corporation submit answers to Question Nos. 6, 3 and 4, as if same were directed to it.

12. Chester County state whether, in its opinion, the subject crossing is necessary to provide a safe and adequate transportation system for residents of the County.
13. County submit answers to Question Nos. 6, 3 and 4, as if same were directed to it.
14. Philadelphia Electric Company state whether any of its facilities must be relocated, if the Commission orders the demolition of the subject crossing structure and, if so, state whether it will agree to remove and/or relocate its facilities and whether it will agree to assume the costs of such work.
15. The Bell Telephone Company of Pennsylvania state whether any of its facilities must be relocated, if the Commission orders the demolition of the subject crossing structure and, if so, state whether it will agree to remove and/or relocate its facilities and whether it will agree to assume the costs of such work.
16. Octoraro Water Company state whether any of its facilities will be affected, if the Commission orders the demolition of the subject crossing structure and, if so, state whether it will agree to remove and/or relocate its facilities and whether it will agree to assume the costs of such work.
17. Query whether any party in interest, or any other party, desires to submit any relevant testimony.

**ORIGINAL**

DOCKETED  
OCT 2 1981  
*MJ*

DOCUMENT  
FILE

**The Bell Telephone Company  
of Pennsylvania**

Law Department  
One Parkway, 16th Floor  
Philadelphia, Pennsylvania 19102  
Phone (215) 466-9900

October 2, 1981

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

**RECEIVED**

OCT 6 1981

SECRETARY'S OFFICE  
Public Utility Commission

Re: Pa. Public Utility Commission v.  
Pa. Department of Transportation,  
City of Coatesville, Chester County,  
Penn Central Transportation Company  
and National Railroad Passenger Corporation.  
C-18838

Dear Mr. Rich:

The Bell Telephone Company of Pennsylvania does not maintain any facilities in the area of the above-referenced structure. Therefore, Bell does not intend to actively participate in this case.

Sincerely,

*William M. Posner*  
William M. Posner  
Attorney

cc: Rudolph S. Pallastrone, ALJ

Docket No. C-00018838

DOCUMENT FOLDER

In re: Pennsylvania Public Utility Commission

v.

Pennsylvania Department of Transportation, City of Coatesville, Chester County, Penn Central Transportation Company and National Railroad Passenger Corporation.

Pennsylvania

Public Utility Commission

Harrisburg, Pa.

RECEIVED  
OCT 7 1981  
Office of the A. L. J.  
Public Utility Commission

Following are the names of parties or counsel of record, with their post-office address, appearing at the hearing in the above-entitled proceeding, held in Philadelphia

on Monday, October 5, 1981

Please Print Clearly  
Incomplete Information May Result in Delay of Process

NAME	ADDRESS	APPEARING FOR
CHRISTOPHER K. WALTERS	1600 Western Savings Bank Bldg.	City of Coatesville
	City: Phila State: PA Zip: 19003	
NOEL E. MAZOR	1138 6 Penn Center Plaza	CONSOLIDATED RAIL COAL
	City: Philadelphia Pa Zip: 19104	
CARL HELMUTH JR.	3700 14th Bldg	THE PENN CENTRAL Construction Team
	City: PHILA State: PA Zip: 19103	
HERBERT G. ZAHN	322 TRANSP. & SAFETY BLDG	PENN DOT
	City: HSBG State: PA Zip: 17120	

Check this box if additional parties or counsel of record appear on back.

Carl Dillich  
Reporter

ARMEN TROUT

City WASH DC Zip 20001

T.H. MAHER CORNWELL

Address 2301 MARKET ST  
City PHL State PA Zip 19101

PCO

RECEIVED  
JUL 7 1981

Address  
City State Zip

BERT R. FAH

Address  
City State Zip



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

October 22, 1981

DOCUMENT  
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IN REPLY PLEASE  
REFER TO OUR FILE

C-00018838

DOCKETED  
OCT 23 1981  
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TO ALL PARTIES

Pennsylvania Public Utility Commission

v.

Pennsylvania Department of Transportation, City of  
Coatesville, Chester County, Penn Central Transpor-  
tation Company and National Railroad Passenger  
Corporation

Dear Sirs:

It appears from the transcript of testimony taken at the hearing held October 5, 1981, at Philadelphia, in the above entitled proceeding, that the parties desire to file briefs.

In accordance with the Commission's regulations, main briefs on behalf of the parties will be due to be filed and served within fifteen days after receipt of this letter and reply briefs will be due to be filed and served ten days thereafter.

An original and (9) nine copies of each brief must be filed with the Commission and three copies must be served on each party of record.

Very truly yours,

*Janet E. Long*

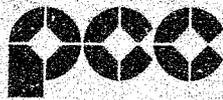
for Jerry Rich  
Secretary

Certified Mail

cc: Law Bureau

Bureau of Rail Transportation - Donald R. Fleisher  
Office of Administrative Law Judge

JEL:bjc



The Penn Central Corporation

1700 Market Street, IVB Building-31st Floor  
Philadelphia, Pa. 19103  
Telephone (215) 972-3053

Carl Helmetag, Jr.  
General Counsel-Litigation

ORIGINAL

DOCUMENT  
FOLDER

November 3, 1981

William P. Thierfelder, Secretary  
Commonwealth of Pennsylvania  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, Pa.

RECEIVED  
SECRETARY'S OFFICE  
PUBLIC UTILITY  
COMMISSION  
NOV 4 9 05 AM '81

Subject: Pennsylvania Public Utility Commission v.  
Pennsylvania Department of Transportation,  
City of Coatesville, Chester County, Penn  
Central Transportation Company, and  
National Railroad Passenger Corporation;  
Pa. P.U.C. Docket No. C-0001 8838

Dear Mr. Thierfelder:

Enclosed are an original and nine copies of the Brief  
On Behalf Of The Penn Central Corporation in respect of  
the above-styled matter.

Sincerely yours,

*Carl Helmetag, Jr.*  
Carl Helmetag, Jr.

Enclosures

cc: Parties of Record

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Nov 4 9 05 AM '81

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PUBLIC UTILITY  
COMMISSION

\_\_\_\_\_  
Docket No. C-001-8833  
\_\_\_\_\_

PENNSYLVANIA PUBLIC UTILITY COMMISSION

v.

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION, CITY OF  
COATESVILLE, CHESTER COUNTY, PENN CENTRAL TRANSPORTA-  
TION COMPANY, NATIONAL RAILROAD PASSENGER CORPORATION

\_\_\_\_\_  
Further Hearing October 5, 1981  
\_\_\_\_\_

BRIEF ON BEHALF OF THE PENN CENTRAL CORPORATION  
\_\_\_\_\_

Carl Helmetag, Jr.  
3100 IVB Building  
1700 Market Street  
Philadelphia, Pa. 19103  
Tel. (215) 972-3053

Counsel for  
The Penn Central Corporation

November 3, 1981

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Docket No. C-001-8833

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PENNSYLVANIA PUBLIC UTILITY COMMISSION

v.

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION, CITY OF  
COATESVILLE, CHESTER COUNTY, PENN CENTRAL TRANSPORTA-  
TION COMPANY, NATIONAL RAILROAD PASSENGER CORPORATION

---

Further Hearing October 5, 1981

---

BRIEF ON BEHALF OF THE PENN CENTRAL CORPORATION

I. STATEMENT

On January 10, 1972 the Commission ordered (1972 Order) the Penn Central Transportation Company (PCTC) to remove overhead bridge, OH.38.17 (Bridge) which carries Graham Avenue, a State highway, TR. 12<sup>1</sup>, over the then owned main line of PCTC in the City of Coatesville. At the time of the 1972 Order, PCTC was in reorganization proceedings before The United States District Court For The Eastern District of Pennsylvania (Reorganization Court), under the provisions of

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<sup>1</sup> References such as TR. 12 are to the Transcript of the October 5, 1981 hearing.

old Section 77 of the Bankruptcy Act, 11 U.S.C. §205. The 1972 Order, which required the PCTC Trustees to expend funds was not complied with because of the provisions of old Section 77(c)(2) of the Bankruptcy Act were not satisfied by the Commission. TR. 39-42. Section 77(c)(2) reads as follows:

In operating the business of the debtor with respect to safety, location of tracks, and terminal facilities, the trustee or trustees shall be subject to lawful orders of State regulatory bodies of state-wide jurisdiction to the same extent as would the debtor if a petition respecting it had not been filed under subsection (a) of this section except that (A) any such order which would require the expenditure, or the incurring of an obligation for the expenditure, of money from the debtor's estate shall not become effective (a) unless the trustee or trustees, with the approval of the court, shall consent thereto, or (b) unless the Commission, upon appropriate application or applications by an interested party or interested parties, shall find that compliance with the order will not impair the ability of the trustee or trustees to perform his or their duties to the public, will not constitute an undue burden upon interstate commerce, will be compatible with the public interest, and will not interfere with the formulation and approval of a satisfactory plan of reorganization for the debtor, and (B) compliance shall be made with any applicable provision of the Interstate Commerce Act.

Subsequent to the Commission's 1972 Order, the PCTC Trustees were ordered by the Special Court, convened under the provisions of the Regional Rail Reorganization Act of 1973, 45 U.S.C. §§701-93, (Rail Act), to convey a very substantial portion of the PCTC rail lines, rolling stock, inventories of parts, office machines and buildings, and all other things appurtenant to the conveyed-rail lines to the Consolidated Rail Corporation (Conrail). Also, pursuant to

the Rail Act, virtually all of PCTC's employees were transferred to Conrail.

The Bridge and the PCTC main line between Philadelphia and Harrisburg which passes through Coatesville, on April 1, 1976, in compliance with the orders of the Special Court, were conveyed to Conrail. TR. 18-25; Penn Central Exhibit #1. Under the provisions of the Rail Act, some of the rail properties and appurtenant structures which were initially conveyed to Conrail were reconveyed by Conrail to the National Rail Passenger Corporation (AMTRAK). Included in this reconveyance were the Bridge and the former PCTC main line in Coatesville TR. 20, 21, 23. On April 1, 1976, PCTC ceased all rail-carrier operations and from that date forward has not been a rail carrier subject to the jurisdiction of this Commission or any other State or Federal Commission having regulatory jurisdiction over railroads.

On May 31, 1978, the Commission ordered the reconstruction of the Bridge with the costs to be divided among entities other than PCTC or the PCTC Trustees (1978 Order). Shortly after the Commission's 1978 Order, PCTC, effective October 24, 1978, was ordered reorganized under the present name of The Penn Central Corporation (Penn Central). Later, Coatesville petitioned the Commission to vacate the 1978 Order and to reinstate the 1972 Order.

It appears that all parties having any interest in the Bridge are in agreement that it should be demolished and the crossing closed to highway and pedestrian traffic TR. 7-9

and that the only question before the Commission is which entity, or entities, should bear the demolition costs estimated to be about \$50,000.

At the further hearing on October 5, 1981 Penn Central stated that since it has no ownership or other interest in the Bridge it has no concern regarding what is done with the Bridge TR. 20, and that it is unwilling to pay any portion of the demolition costs.

When asked which entity should bear the cost, the Penn Central witness suggested that either Conrail or AMTRAK should do so. TR. 24. The representative of the Department of Transportation concurred in this view TR. 16

Penn Central's position is that the Commission is without power to impose any portion of the demolition costs upon Penn Central and, that even if such power exists it would be unlawful, unfair and inequitable to burden Penn Central with any portion of such costs.

## II. ARGUMENT

- A. Penn Central Having No Ownership In The Bridge And No Rail Carrier Or Other Operations In The Vicinity Of The Bridge Can Not Be Ordered To Bear Any Portion Of The Demolition Costs

No parties at the hearing on October 5, 1981 disputed the evidence offered by Penn Central showing that the Bridge had been conveyed, under the provisions of the Rail Act, to Conrail and through Conrail to Amtrak . Further, the testimony at the hearing demonstrated that the rail operations formerly conducted over its Main Line through Coatesville have been taken over by Conrail for the movements of freight and by Amtrak for intercity passenger traffic. TR. 27-30. In view of the fact that Penn Central has no ownership in the Bridge or the tracks under it, and no rail operations either under the Bridge or anywhere throughout the Commonwealth of Pennsylvania, it is not an interested party with regard to whether the Bridge is demolished or rebuilt. Rather, Penn Central is a complete stranger to the Bridge and therefore this Commission is clearly without power to order Penn Central to pay any portion of the demolition costs.

Assuming the Commission has power over Penn Central it would be legally impermissible for the Commission to attempt to impose any of the demolition costs upon Penn Central. The rule of law is well established that where there has been a governmental taking of property, as was

the case when PCTC was ordered to convey its Main Line and the Bridge to Conrail, all obligations relating to such property are terminated. See Corbin On Contracts §1343, p. 416, Underwood v. Heins, 222 S.W. 1037 (Mo. App. 1920).

Assuming that PCTC, prior to April 1, 1976 when it owned the Bridge, could have been ordered by the Commission to pay the demolition costs (as the 1972 Order required), when the Federal Government ordered the conveyance of the Bridge to Conrail and thence to Amtrak, all obligations which PCTC had regarding the Bridge disappeared. The Commission was fully aware of this because when it vacated its 1972 Order and issued the 1978 Order no portion of the rehabilitation or reconstruction costs were imposed upon Penn Central. Rather, such costs were ordered to be borne by other entities having a direct interest in, or concern, with the Bridge.

There was a suggestion at the hearing on October 5, 1981 that the solution to the problem of which entity should bear the costs of demolishing the Bridge could be resolved by simply restoring the Commission's 1972 Order and thereby placing the costs upon PCTC and its successor Penn Central. TR. 24. This contention has already been answered above but there are additional reasons why it lacks merit.

First, the 1972 Order never became an enforceable Order because the Commission did not satisfy the requirements of old Section 77(c)(2) of the Bankruptcy Act. Under that

Section quoted supra at page 2, since the 1972 Order required the expenditure of funds by the PCTC Trustees for the Order to become enforceable against PCTC one of two things was required, either the Commission had to petition the Reorganization Court for approval of the 1972 Order, or petition the Interstate Commerce Commission for an order to compel the PCTC Trustees to comply with the 1972 Order. Neither of these things was done. The 1972 Order was in a legal effect a nullity. When this Commission issued the 1978 Order the effect was to cancel the inchoate 1972 Order. Having cancelled the 1972 Order this Commission can not revive it since the circumstances which existed in 1972 have completely changed.

Second, assuming contrary to the facts that the Commission might have power to order Penn Central to pay the demolition costs and that the 1972 Order could legally be revived it would be unfair and inequitable to attempt such a revival.

Overhead bridges which carry highways and walkways over railroad tracks in virtually every instance eliminate a former crossing at grade. A grade-crossing separation by an overhead bridge benefits the public using the highway by eliminating a source of danger. Equity and fairness, therefore, require that at least a major portion of the costs of grade crossing separations be borne by the highway users.

The railroad operating over the tracks beneath the bridge is also benefitted by the grade-crossing separation which eliminates danger to its equipment and personnel and more importantly removes the exposure of the railroad to liability for grade-crossing accidents. But the benefit to the railroad is substantially less than the benefits enjoyed by the highway users and therefore none, or only a small portion, of the costs of a grade crossing separation can equitably be imposed upon the railroad.

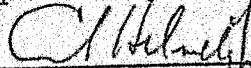
The removal of an overhead bridge presents a somewhat different problem. The benefit to the highway users of removing an overhead bridge are small or non-existent. The real benefit is to the railroad which is freed of all responsibility to maintain the bridge and of the exposure to liability for accidents occurred because of maintenance failures. Equity is served if the costs of removing an overhead bridge are imposed upon the railroad.

In this instance Penn Central has no railroad operations under the Bridge and maintains no railroad operations anywhere. It has no property in the vicinity of the Bridge and other than being a Pennsylvania corporation "is a stranger to Coatesville. To impose any of the demolition costs upon Penn Central because it at one time owned the Bridge would be contrary to every dictate of equity and fairness.

III. THE RELIEF REQUESTED

For the reasons stated more fully above it is most respectfully submitted that the costs of demolition of the Graham Avenue Bridge in the City of Coatesville should not be imposed upon The Penn Central Corporation.

Respectfully submitted,



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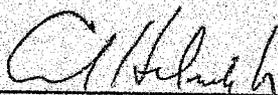
Carl Helmetag, Jr.  
Suite 3100 IVB Building  
1700 Market Street  
Philadelphia, Pa. 19103  
Tel. (215) 972-3053

Counsel for  
The Penn Central Corporation

November 3, 1981

CERTIFICATE OF SERVICE

I hereby certify that copies of the above Brief On Behalf Of The Penn Central Corporation were served, by first-class mail, postage prepaid, to those parties listed on Exhibit A attached hereto.

  
\_\_\_\_\_  
Carl Helmetag, Jr.

William P. Thierfelder, Secretary  
Commonwealth of Pennsylvania  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, Pa. 17120

The Honorable Rudolph S. Pallastrone  
Administrative Law Judge  
Commonwealth of Pennsylvania  
Pennsylvania Public Utility Commission  
1302 State Office Building  
Broad & Spring Garden Streets  
Philadelphia, Pa. 19130

Joel E. Mazor, Esquire  
Consolidated Rail Corporation  
1138 Six Penn Center Plaza  
Philadelphia, Pa. 19104

Donald R. Fleisher, P.E.  
Bureau of Rail Transportation  
Pennsylvania Public Utility Commission  
Harrisburg, Pa.

W. Scott Armentrout, Esquire  
National Railroad Passenger Corporation  
400 North Capitol Street  
Washington, D.C. 20001

T. H. Cornell, Esquire  
Philadelphia Electric Company  
2301 Market Street  
Philadelphia, Pa.

Christopher K. Walters, Esquire  
Counsel for City of Coatesville  
1600 Western Savings Bank Bldg.  
Broad & Chestnut Streets  
Philadelphia, Pa.

Herbert G. Zahn, Esquire  
Pennsylvania Department of  
Transportation  
522 Transportation & Safety Building  
Harrisburg, Pa.

ORIGINAL

Nov 9 1 32 PM '81

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
RECEIVED  
SECRETARY'S OFFICE  
PUBLIC UTILITY  
COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION

v.

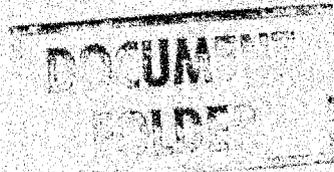
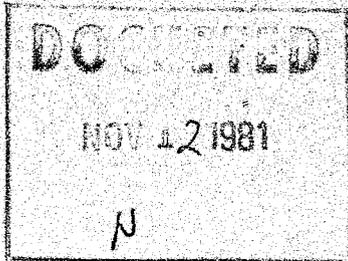
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION, CITY OF  
COATESVILLE, CHESTER COUNTY, PENN CENTRAL TRANSPORTATION  
COMPANY, NATIONAL RAILROAD PASSENGER CORPORATION

DOCKET NO. ~~C-0001-8838~~

C-18838

Further Hearing October 5, 1981

BRIEF ON BEHALF OF CITY OF COATESVILLE



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## I. SHORT SUMMARY OF CASE

By Order of January 10, 1972 in this matter, i.e. Docket No. C-0001-8833 (the "1972 Order"), the Commission after review of much evidence ordered Penn Central Transportation Company ("PCTC"), at its sole cost and expense, to demolish and remove the Graham Avenue Bridge ("Bridge") which carried a state highway over the PCTC's trackage in the City of Coatesville. At that time, PCTC owned the Bridge (constructed by a predecessor in 1891) and operated trains under it.

Today, it is the National Rail Passenger Corporation ("Amtrak") which owns the Bridge and tracks (TR. 18-25\*) and it is both Consolidated Rail Corporation ("Conrail") and Amtrak which carry on regular freight and intercity passenger train operations (respectively) on the tracks under the Bridge. TR. 27-30.

The Graham Avenue Bridge today is still undemolished, in large measure because PCTC was in reorganization proceedings from 1972 until October of 1978.

At the hearing of October 5, 1981, no party in interest objected to the thrust of the City of Coatesville's present Petition

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\* TR. will be used as an abbreviation for Transcript of October 5, 1981 Proceedings.

-- that the Bridge should be demolished. To the contrary, all concurred that such action seemed appropriate, and Amtrak agreed to perform the actual demolition work. See written Testimony of N.R.P.C., via Richard Cooper, at pp. 1-2, referenced to at TR. 26-27. Amtrak however declined, as did Conrail, to bear the costs of demolition, citing the uncertainties of its further budgets.

II. The Demolition of the Graham Avenue Railroad Overpass Bridge Benefits the Railroad Interests and, As Ordered by the Commission in 1972, Demolition Costs Should be Borne by the Railroad

It was uncontested at the hearing of October 5, 1981 that the Bridge should be demolished and the highway closed. It is also uncontested that the Commission's 1972 Order, which had ordered demolition of the same Bridge, placed the entire costs of demolition on the railroad company -- that is, on the then-owner and operator of the tracks and Bridge itself.

It is the position of the City of Coatesville that the Commission acted correctly in 1972 in placing the demolition costs on the then-owner and operator of the tracks and Bridge and that no sound reason exists why the railroad interests which now own and regularly operate trains on the tracks and under the Bridge should not, consistent with the 1972 Order, bear the present demolition costs.

In this regard, it was not disputed at the October 5, 1981 hearing that the Bridge and trackage in question were conveyed to Conrail, by operation of the Regional Rail Reorganization Act of 1973, §101 et seq., 45 U.S.C.A. §701 et seq., and thereafter to Amtrak by deed in 1976. TR. 18-25. Further, it appeared that the rail operations now conducted over the line through Coatesville are conducted by Conrail as to freight traffic and Amtrak as to intercity passenger traffic. TR. 27-30.

Under these circumstances, prior decisions of this Commission and of the courts show that either Amtrak or Conrail or both are the proper parties to bear the demolition costs.

Thus, in an instructive similar case involving abolition of several non-grade railroad crossing bridges, this Commission's order allocated demolition costs primarily to the concerned railroad. This decision was upheld by the Commonwealth Court in Erie Lackawanna Rwy. Co. v. Pennsylvania Public Utility Commission, 2 Pa. Cmwth. 396, 278 A.2d 396 (1971). In upholding the Commission's order, the Court noted that, as in this case, the proposed abolition would benefit the railroad by relieving the railroad of its duty to maintain the bridges. The Court rejected the railroad's suggestion that abolition costs be imposed on the public.

Just as in the Erie Lackawanna case, supra, allocating to the railroad the costs of demolishing a railroad crossing bridge, and just as in this Commission's 1972 Order allocating to the

railroad the demolition costs of abolishing the same Bridge involved here, it is the railroad parties concerned which are the appropriate parties to bear such costs now.

The question of course arises as to which of the railroad parties should be allocated such demolition costs given the facts set forth above. A similar question recently arose in Consolidated Rail Corp. v. Pennsylvania Public Utility Commission, \_\_\_\_ Pa. Cmwth. \_\_\_\_, 423 A.2d 1108 (1980). There, the Commission's decision to allocate all costs to the owner of the trackage, Conrail (as successor-in-interest to the Reading Railroad by reason of the same Rail Reorganization Act of 1973 which conveyed the lines running through Coatesville from the Penn Central Transportation Company to Conrail) was upheld by the Commonwealth Court. In that case, emphasis was placed on ownership of the bridge, and of the rail lines under the bridge in question (here Amtrak is the owner as to both), as the most important factor in allocation of costs. See also Pennsylvania Public Utility Commission v. SEPTA, 21 Pa. Cmwth. 106, 343 A.2d 371, 374 (1975).

At the October 5, 1981 hearing, it was suggested that the Commission's 1978 Order allocating costs of bridge reconstruction might somehow be relevant to allocating costs of the bridge's total abolition. Of course the total removal of a railroad crossing bridge presents quite different considerations than are presented by reconstruction of such a bridge. Whereas reconstruction will permit

use by the public, abolition obviously will not. Whereas the public and highway users derive a benefit from a bridge's reconstruction, the beneficiary of an overhead bridge's demolition is the railroad company, which is relieved of bridge maintenance responsibilities. As pointed out in the Brief on Behalf of the Penn Central Corporation, abolition further benefits the railroad by reducing its exposure to liability for accidents if the railroad's maintenance is inadequate.

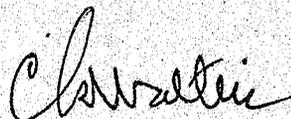
For these reasons, both under the decided cases and upon principles of logic and fairness, the costs of demolition should not be borne by the public but by the railroads which are responsible for the Bridge and the trackage beneath it, and which will benefit from the Bridge's demolition. This approach is entirely consistent with the Commission's 1972 decision and Order as to demolition of the same bridge.

### III. CONCLUSION AND RELIEF REQUESTED

For the reasons and in light of the authorities set forth above, it is requested that the City of Coatesville's present Petition be granted with the modification that the work necessary to

demolish the Graham Avenue bridge be performed by Amtrak, and paid for by either Amtrak or Conrail or both.

Respectfully,



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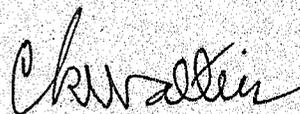
CHRISTOPHER K. WALTERS  
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Dated: November 6, 1981

Attorneys for  
City of Coatesville

CERTIFICATE OF SERVICE

I hereby certify that copies of the above Brief on Behalf of City of Coatesville were served, by first-class mail, postage prepaid, to those parties listed on Exhibit "A" attached hereto.



---

CHRISTOPHER K. WALTERS

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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

Harrisburg, Pennsylvania 17120  
Office of Chief Counsel

ORIGINAL

November 4, 1981

IN REPLY REFER TO

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

Re: Complaint Docket C-00018838  
Chester County

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PUBLIC UTILITY  
COMMISSION

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Dear Mr. Rich:

Enclosed for filing with the Commission are the original and nine (9) copies of Brief of the Pennsylvania Department of Transportation, in the above-captioned matter.

I hereby certify that copies of the said Brief have been sent to the parties of record.

Very truly yours,

*Herbert G. Zahn*  
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(717) 78-7-5931

220/HGZ: rmm  
Enclosures

cc: K. W. Walker, P.E. (Attn.: M. Davis)  
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Parties of Record - Page 2

DOCUMENT  
FOLDER

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COMMONWEALTH OF PENNSYLVANIA

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PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PUBLIC UTILITY

COMMISSION DOCKET NO. C-00018838

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Pennsylvania Public Utility Commission

v.

Pennsylvania Department of Transportation,  
City of Coatesville, Chester County, Penn  
Central Transportation Company and National  
Railroad Passenger Corporation

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BRIEF OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

---

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Department of Transportation

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STATEMENT OF QUESTION INVOLVED

1. Should the Pennsylvania Department of Transportation be allocated any of the costs to abolish the subject crossing and remove the superstructure and substructure of the existing bridge?

STATEMENT OF THE CASE

These proceedings go back to 1969 and involve many hearings and orders. For the purposes of this brief, therefore, only the germane facts will be stated.

These proceedings were instituted by the Pennsylvania Public Utility Commission (Commission) on its own Motion, at Complaint Docket No. 18838, to determine whether the bridge carrying Legislative Route 15122 (Graham Avenue) over the railroad facilities then owned and operated by Penn Central Transportation Company (Penn Central) was dangerous or inadequate. Respondents to the Complaint were the then Department of Highways, now Department of Transportation, (Department), City of Coatesville (City), Chester County (County) and Penn Central Transportation Company (Penn Central).

By Order of the Commission dated January 10, 1972, the crossing was directed to be abolished and Penn Central, at its sole cost and expense, was directed to remove the superstructure of the bridge and install and maintain permanent type barricades thereafter. Penn Central took no further action to remove the bridge.

On November 14, 1973, the City filed a Petition to Rescind the Order of January 10, 1972 and the Commission, on its own Motion, issued its Order of June 4, 1974, to reopen the record and set a

further hearing. On January 16, 1975, a hearing held at which time the City presented testimony of its compelling need for the Graham Avenue crossing to remain in existence and the Commission, by its Order of October 21, 1975, amended its Order of January 10, 1972 by directing that the Graham Avenue Bridge be reconstructed and ordered the City to prepare and submit complete construction plans for the replacement of the superstructure of the bridge.

After further hearing the Commission issued its Order of May 31, 1978, approving the City's plan of reconstruction of the bridge and directed the City to remove the old superstructure and build the new superstructure, the Department was ordered to reimburse the City 50% of its costs and the County to reimburse it for 25% of the costs.

The bridge was not reconstructed due to delays caused by the appeals of the County to the Commonwealth Court and the Supreme Court of Pennsylvania from the Commission's Order of May 31, 1978. Due to the delay and the escalation of costs, the City, on February 23, 1981, filed a Petition with the Commission to rescind its Order of May 31, 1978 and reinstate the original Order of January 10, 1972 abolishing the crossing and removing the superstructure. A hearing was held October 5, 1981 at which time the National Railroad Passenger Corporation (Amtrak), the present owner of the facilities which were formerly owned by Penn Central, requested that not only the superstructure be removed but also the abutments for the safety of its

railroad operations. None of the parties objected to the abolition of the crossing or the removal of the complete bridge structure, the only question was and is who is to pay the costs.

ARGUMENT I

THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION SHOULD NOT BE ALLOCATED ANY OF THE COSTS TO ABOLISH THE CROSSING AND REMOVE THE SUBSTRUCTURE AND SUPERSTRUCTURE OF THE SUBJECT BRIDGE SINCE NOTHING HAS MATERIALLY CHANGED FROM THE DATE OF THE ORIGINAL ORDER.

Under the Order of January 10, 1972, Penn Central, the then owner of the railroad facilities beneath the bridge, was ordered to remove the superstructure of the subject bridge at its own cost and expense. Since that time the ownership of the railroad facilities was conveyed to Amtrak and nothing else has materially changed. The City reversed itself and is now again recommending that the crossing be abolished and the bridge removed. The same railroad facilities exist beneath the bridge and when the 1972 Order was issued it was abundantly fair that the railroad company was ordered to remove the structure at its cost and expense. Referring back to the Order of 1972 and the testimony at prior hearings, the record shows that Penn Central's predecessor company constructed the bridge in 1891 and all modifications to it since that time have been made by the railroad. The Commission found in 1972 that the bridge was grossly inadequate both as to physical dimensions and structural capacity to accommodate the traveling public. At that time the Commission also found that reconstruction of the bridge was not desirable since it would neither improve the horizontal or vertical highway alignments. The foregoing was obviously the basis for ordering the railroad to remove the structure at its own expense. The same reasoning is valid today and the Department should not be ordered to do any work or pay any of the costs to remove any or all parts of the bridge.

ARGUMENT II

THE RAILROAD SHOULD BE ORDERED TO PAY  
ALL COSTS TO REMOVE ALL PARTS OF THE  
SUBJECT BRIDGE STRUCTURE.

Amtrak, the present owner and operator of the facilities beneath the subject bridge, has requested the Commission to direct that not only the superstructure be removed but also the abutments, or substructure. Removal of the abutments can be of no benefit except to the railroad, since their removal is for the safety of the operation of its trains. Likewise, the removal of the structure is of great benefit of the railroad because the vertical clearance above the tracks was and is sub-standard and the catenary system attached to the underside of the bridge causes a further sub-standard condition.

Clearly, the removal of the bridge structure and the abutments are a great advantage to the railroad. On the other hand, the removal of the bridge severs a state highway which will be discussed in the following argument.

### ARGUMENT III

THE DEPARTMENT OF TRANSPORTATION SHOULD NOT BE ALLOCATED ANY COSTS FOR REMOVAL OF A BRIDGE ESPECIALLY WHERE SUCH REMOVAL SEVERS THE CONTINUATION OF A STATE HIGHWAY.

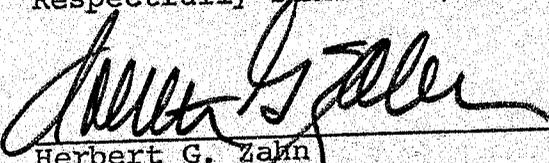
The record in this case will clearly indicate that the removal of the subject bridge severs a State Legislative route. By doing so, traffic that normally would have used the crossing is and will be diverted both east and west on city streets through underpasses which have substandard clearances in order to again pick up a legislative route. To avoid the sub-standard clearance of these underpasses, a motorist using a State highway would be required to travel many extra miles to again connect to another State highway. This certainly cannot be said to be of an advantage or benefit to the Department.

For such severance of a state legislative route it would appear eminently unfair to allocate any costs to the Department for removing the bridge and the abutments. But, because the City has taken the position it no longer needs the bridge, the Department has made no vigorous objections to the abolition of the crossing and the removal of the structure. Because it made no objection should not be a basis for allocating any costs to the Department.

CONCLUSION

For the foregoing reasons, which clearly demonstrate there is no material benefit to it, the Pennsylvania Department of Transportation earnestly requests your Honorable Commission to allocate the costs for the abolition of the crossing and the removal of the substructure and superstructure of the subject bridge to parties other than the Department.

Respectfully submitted,



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Herbert G. Zahn  
Assistant Counsel