

RECEIVED

PENNSYLVANIA PUBLIC UTILITY COMMISSION

73 NOV 15 AM 8:11

Complaint Docket No. 18838

SECRETARY'S OFFICE  
PUBLIC UTILITY  
COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION

v.

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

PETITION OF CITY OF COATESVILLE FOR REHEARING

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

The Petition of the City of Coatesville RESPECTFULLY  
REPRESENTS:

1. The Petitioner is one of the named Respondents in the above captioned matter.
2. Your Honorable Commission by Order dated January 10, 1972, ordered inter alia that the structure carrying State Highway Route 15122 (Graham Avenue) over and above the electrified main tracks of Penn Central Transportation Company in the City of Coatesville, Chester County, be abolished.
3. The Order of the Commission was based upon information and testimony which is no longer relevant, and that changes in circumstances since the hearing and additional information require further hearings to determine facts which would result in a different conclusion from that previously reached.
4. Access to the City from the North was by means of the aforementioned crossing and two (2) underpasses under the same main tracks. Since the grade crossing was closed, there has been such a deterioration in the maintenance of the underpasses resulting in greater traffic congestion and delay, inconvenience to the flow of vehicular travel and the prospect of cutting off all access to the North should the underpasses require even temporary closing.

ALEXANDER ENDY  
ATTORNEY AT LAW  
22 NORTH THIRD AVENUE  
COATESVILLE, PA. 19320

EXTRA COPY

DUPLICATE RECORD.  
ORIGINAL CERTIFIED  
TO COMMONWEALTH COURT.

5. The safety of a portion of the residents of the City living North of the railroad and the convenience of travel of the public requires a consideration of the need for the re-establishment of the crossing at Graham Avenue for public convenience and accomodation and for the safety and welfare of the citizens of the City.

WHEREFORE, Petitioner prays your Honorable Commission to grant a rehearing pursuant to the applicable provisions of the Public Utility Law and following the rehearing to modify or rescind the Order of January 10, 1972.

CITY OF COATESVILLE

BY: Francis E. Regener  
Francis E. Regener, Mayor

STATE OF PENNSYLVANIA

:

SS

COUNTY OF CHESTER

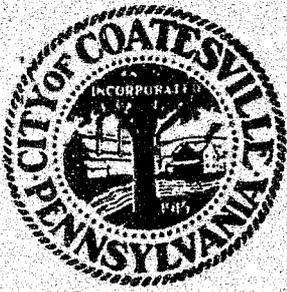
:

FRANCES E. REGENER, being  
duly sworn according to law, deposes and says that she is the  
Mayor of the City of Coatesville, Chester County, Pennsylvania;  
that as such she is authorized to and does make this Affidavit  
for it and that the facts set forth above are true and correct  
to the best of her knowledge, information and belief.

*Frances E. Regener*  
\_\_\_\_\_  
Frances E. Regener, Mayor

Sworn to and Subscribed before me this 9th  
day of November, 1973

*Paul J. Derby*  
\_\_\_\_\_  
City Clerk



58 SOUTH FIRST AVENUE

Zip Code 19320

Phone 215-384-0300

November 26, 1973

FRANCES E. REGENER  
Mayor

H. DONALD LAMBORN  
Accounts & Finance

JAMES SLODY, JR.  
Public Safety

JAMES F. WORTHY  
Streets

ROBERT H. McFALLS  
Parks

S. LEONARD ARBUCKLE  
Treasurer

ROBERT E. RANCK  
Controller

DONALD E. THOMPSON  
Administrative Director

RUTH G. HERLEY  
City Clerk

ALEXANDER ENDY  
Solicitor

JOSEPH R. FOLIO  
Engineer

Will Ketner, Secretary  
Pennsylvania Public Utility Commission  
North Office Building  
Harrisburg, Pennsylvania 17120

RE: Complaint Docket No. 18838  
Petition of City of  
Coatesville for Rehearing

Dear Mr. Ketner:

I hereby certify that copies of the Petition of the City of Coatesville for Rehearing in the above entitled proceeding were served on this date on all parties of record.

Very truly yours,

*Alexander Endy*

Alexander Endy  
City Solicitor

AE/slz

DUPLICATE RECORD.  
ORIGINAL CERTIFIED  
TO COMMONWEALTH COURT.



RECORDED  
FOLIO

FILE  
A. M. H.

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SECRETARY OF THE  
TREASURY

December 21, 1973

C. 20129 -

City of Coatesville

V.  
Penn Central Transportation Company, County  
of Chester and Department of Transportation  
of the Commonwealth of Pennsylvania

✓ C. 18838 - Pennsylvania Public Utility Commission

V.  
Department of Highways of the Commonwealth  
of Pennsylvania, City of Coatesville, County  
of Chester and Penn Central Transportation  
Company

Alexander Indy, Esquire  
City of Coatesville  
22 North Third Avenue  
Coatesville, Pennsylvania 19320

DUPLICATE RECORD.  
ORIGINAL CERTIFIED  
TO COMMONWEALTH COURT.

Dear Sirs:

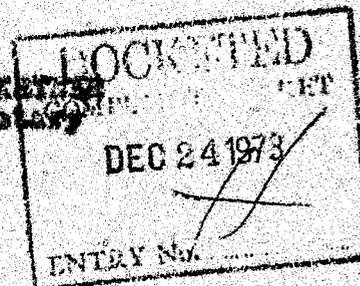
In executive session held December 19, 1973, the Commission directed that the complaint at C. 20129 be set for hearing and further directed that the petition filed by the City of Coatesville for reopening of the record and re-hearing at C. 18838 also be set for hearing.

Accordingly, hearing has been scheduled in the proceedings, to be held on Thursday, January 17, 1974, in the Courthouse, West Chester, commencing at 10:00 a.m.

Please acknowledge receipt of this letter.

Very truly yours,

For WILL KETNER  
Secretary



cc:  
Frances K. Regener, Mayor  
City of Coatesville  
53 South First Avenue  
Coatesville, Pennsylvania 19320

SIMILAR LETTERS AND MEMOS: See attached list.

AMH:js

RECOR.  
FOLDER



53 SOUTH FIRST AVENUE

Zip Code 19320

Phone 215-384-0300

FRANCES E. REGENER  
Mayor  
H. DONALD LAMBORN  
Accounts & Finance  
JAMES SLODY, JR.  
Public Safety  
JAMES F. WORTHY  
Streets  
ROBERT H. McFALLS  
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S. LEONARD ARBUCKLE  
Treasurer  
ROBERT E. RANCK  
Controller  
DONALD E. THOMPSON  
Administrative Director  
RUTH G. HERLEY  
City Clerk  
ALEXANDER ENDY  
Solicitor  
JOSEPH R. FOLIO  
Engineer

Will Ketner, Secretary  
Pennsylvania Public Utility Commission  
North Office Building  
Harrisburg, Pennsylvania 17120

RE: Complaint Docket No. 18838  
Amended Petition of City of  
Coatesville for Rehearing

Dear Mr. Ketner:

Enclosed is an amended Petition of the City of  
Coatesville for rehearing in the above entitled  
proceeding; I hereby certify that copies have been  
served on all parties of record.

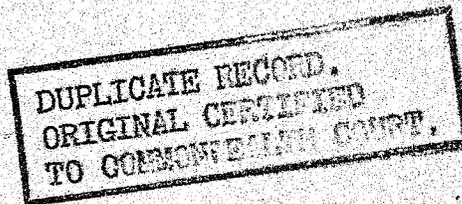
Very truly yours,

*Alexander Endy*

Alexander Endy  
City Solicitor

AE/slz

Enclosure



1974 JUN -8 AM 9:15

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Complaint Docket No. 18838

PENNSYLVANIA PUBLIC UTILITY COMMISSION

v.

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

AMENDED PETITION OF CITY OF COATESVILLE FOR REHEARING

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

The Petition of the City of Coatesville RESPECTFULLY REPRESENTS:

1. The Petitioner is one of the named Respondents in the above captioned matter.
2. Your Honorable Commission by Order dated January 10, 1972, ordered inter alia that the structure carrying State Highway Route 15122 (Graham Avenue) over and above the electrified main tracks of Penn Central Transportation Company in the City of Coatesville, Chester County, be abolished.
3. The Order of the Commission was based upon information and testimony which is no longer relevant, and that changes in circumstances since the hearing and additional information require further hearings to determine facts which would result in a different conclusion from that previously reached.
4. Access to the City from the North was by means of the aforementioned crossing and two (2) underpasses under the same main tracks at Third and Fourth Avenues. Since the said crossing was closed, there has been such a deterioration in the maintenance of the underpasses resulting in greater traffic congestion and delay, inconvenience to the flow of vehicular travel and the prospect of cutting off all access to the North should the underpasses require even temporary closing.

ALEXANDER ENDY  
ATTORNEY AT LAW  
22 NORTH THIRD AVENUE  
COATESVILLE, PA. 19380

DUPLICATE RECORD.  
ORIGINAL CERTIFIED  
TO COMMONWEALTH COURT.

EXTRA COPY

RECEIVED  
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SECRETARY  
PUBLIC UTILITY  
COMMISSION

5. Since the hearing in this matter on September 23, 1970, there has been a substantial increase in home construction and development in the area North of the railroad right-of-way and further development is purposed, all of which requires access under or over the railroad right-of-way by means of the existing underpasses or reconstruction of the bridge in question.

6. The safety of a portion of the residents of the City living North of the railroad and the convenience of travel of the public requires a consideration of the need for the re-establishment of the crossing at Graham Avenue for public convenience and accomodation and for the safety and welfare of the citizens of the City.

7. The City submits that the hearing on September 23, 1970, gave serious consideration to only one of several alternatives and that all parties were in agreement that further hearings would be required as shown by their respective replies in the notes of testimony at pages 70 and 71 in response to a question by the examiner at the bottom of page 69 of the notes of testimony, no further hearings were held however; the Commission issued its Order on January 10, 1972.

8. The City's position has been incorrectly stated. The record does not support a conclusion that "reconstruction does not meet with approval of the City" nor that "the City of Coatesville ... would prefer that the crossing be abolished".

9. The Planning Commission of the City of Coatesville did not recommend abolishing of the bridge at any time. (See Resolution dated June 14, 1970, City Exhibit 2)

10. The only statement regarding abolishing the bridge was made as the personal opinion of the witness, Mr. Woodward, and that he believed that was the position of City Council, (Notes of Testimony pages 54-56), and then only in preference to the proposal of PennDOT Exhibit 1.

11. The Planning Commission and the City both expressed disapproval of PennDOT Exhibit 1, suggesting an alternative plan as described in City Exhibit 2 or reconstruction of the bridge in its existing location.

12. There was insufficient examination of the alternative of rehabilitation or reconstruction of the bridge in its existing location, predicated on PennDOT testimony at page 18 of the notes of testimony: "It is the recommendation of the Department of Transportation that a new super structure be constructed; utilizing the existing sound masonry abutments".

13. The Penn Central Transportation Company testified that "Penn Central Transportation Company is presently responsible for the maintenance of the sub and super structure of the bridge" (Notes of Testimony page 33). The Penn Central Transportation Company has an obligation to provide reasonable access to the traveling public over its right-of-way, however, Penn Central would not agree to bear any costs of an improvement at this location. The City of Coatesville is willing to make a reasonable contribution to rehabilitation or reconstruction of the bridge, as required to do so by the Public Utility Commission.

14. There was also insufficient exploration of another alternative suggested by the City, that the southerly approach be oriented westward toward Fourth Avenue and that PennDOT be directed to prepare plans and estimates for that alternative in the same manner as the plans and estimates prepared by PennDOT for its proposal Exhibit 1.

WHEREFORE, Petitioner prays your Honorable Commission to grant a rehearing pursuant to the applicable provisions of the Public Utility Law and following the rehearing to rescind the Order of January 10, 1972, or modify it, providing, inter alia,

that:

- A. Penn Central Transportation Company be required to reconstruct the super structure and rehabilitate the existing bridge so that it is adequate in strength to accommodate safely the class and volume of traffic which would normally use the highway at this location;
- B. PennDOT be directed to prepare a preliminary plan and estimate for a new bridge with the southerly approach oriented westward toward Fourth Avenue;
- C. Further hearing or hearings be held by the Public Utility Commission to examine the relative merits of all of the available alternatives.

CITY OF COATESVILLE

BY: Frances E. Regener  
 Frances E. Regener, Mayor

STATE OF PENNSYLVANIA

:

SS

COUNTY OF CHESTER

:

FRANCES E. REGENER, being  
 duly sworn according to law, deposes and says that she is the  
 Mayor of the City of Coatesville, Chester County, Pennsylvania;  
 that as such she is authorized to and does make this Affidavit  
 for it and that the facts set forth above are true and correct  
 to the best of her knowledge, information and belief.

Frances E. Regener  
 Frances E. Regener, Mayor

Sworn to and Subscribed before me this 7th  
 day of January, 1974.

Rich G. Wesley  
 City Clerk

ALEXANDER ENDY  
 ATTORNEY AT LAW  
 22 NORTH THIRD AVENUE  
 COATESVILLE, PA 19320

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Complaint Docket No. 18838

**RECEIVED**  
MAR 13 1974  
SECRET  
PUBLIC USE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

v.

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

BRIEF SUPPORTING PETITION OF CITY OF COATESVILLE FOR REHEARING

This matter concerns the use and safety of a bridge carrying State Highway Route 15122 (Graham Avenue) over and above the grade of the electrified main tracks of Penn Central Transportation Company, in the City of Coatesville, Chester County. The Commission instituted an investigation on its own motion, by Order issued November 17, 1969. Thereafter a hearing was held September 23, 1970, and an Order was issued by the Commission on January 10, 1972, closing the bridge, and directing the Trustees of Penn Central Transportation Company to take certain actions in executing the Commission's Order; report to the Commission; and making the Order, as it pertains to the Penn Central Transportation Company, subject to the approval of the Reorganization Court (U.S. District Court, Eastern District of Pennsylvania, Fullam, J.), as required. The bridge was closed to traffic and barricaded, but no further action has been taken by Penn Central Transportation Company or the respondent Department of Highways of the Commonwealth of Pennsylvania, now Pennsylvania Department of Transportation.

On November 14, 1973, the City of Coatesville filed a Petition directed to the discretion of the Commission to rescind the Order of January 10, 1972, or modify it based upon changes in circumstances since the hearing and also based on additional

ALEXANDER ENBY  
ATTORNEY AT LAW  
24 NORTH THIRD AVENUE  
COATESVILLE, PA. 19022

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FOLDER**

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MAY 16 1974  
ENTRY No. \_\_\_\_\_

information which would result in a different conclusion from that previously reached. Subsequently, the City filed an Amended Petition on January 7, 1974, to the same substantive effect as the original Complaint, but containing amplification of the basis on which the Petition was offered. The original Petition was served on all of the respondents on November 14, 1973, and copies of the Amended Petition were also served on the respondents, both by mail on January 7, 1974, and by personal service on January 10, 1974, at a field conference held at City Hall in the City of Coatesville. A hearing was set by the Commission for Thursday, January 17, 1974, at 10:00 A.M. in the Court House at West Chester, Pennsylvania, in the course of which the Department of Transportation, by its counsel, Lionel B. Gummit, Esquire, raised a procedural objection to the hearing, and testimony was taken of the City's witnesses in support of the Petition of the City of Coatesville.

With respect to the jurisdiction of the Commission, the Commission has the authority, as in the case of complaints, to amend or rescind any Order after notice and opportunity to be heard. Section 1007 of the Public Utility Law, 66 P.S. §1397. Nor is it necessary that an applicant present new evidence, before the Commission may rescind or amend a prior Order under Section 1007: Tranter v. Pennsylvania Public Utility Commission, 4 Pa. CMWLTH. (1972). In this recent case, it is particularly noteworthy that the Court said, "...we treat the act of granting applicant's Petition to reopen as if the Commission had taken this action on their own initiative under Section 1007, although it was taken through the device of granting the Petition of applicant which could have been filed only under Section 1006 of the Public Utility Law, 66 P.S. §1396. Paradise v. Pennsylvania Public Utility Commission, 184 Super. 8 (1954)".

The objections of PennDOT's counsel at the hearing on

January 17, therefore, had no legal basis, nor do they appear to be well-founded since the Department, by William A. Bethards, Assistant Attorney General, in a letter-answer dated December 3, 1973, advised Secretary Ketner that PennDOT had received the Petition for rehearing in this matter and that "...this Department has no objection to further hearing in this case." This written statement of PennDOT's position prior to the hearing, it is submitted, is binding on PennDOT. It was suggested at the hearing that amendment of the Petition was cause for a change in position. However, the procedural aspect on which counsel made his objection at the hearing is identical whether it involves the original Petition or the Amended Petition. In addition, the Petition was amended only with respect to an amplification of the basis on which the Petition was made, there was no change in the substantive content.

Turning to the factual considerations in this matter, the Penn Central right-of-way bisects the City of Coatesville on an east-west line from the western City limits to the eastern City limits. The portion of the City North of the railroad right-of-way is almost totally residential. This area is virtually devoid of community facilities, but includes almost all of the available land left for development purposes in the City. There are presently between 500 and 600 families living in the area, with additional single homes currently under construction and a proposed condominium apartment project.

The portion of the City South of the railroad right-of-way contains all of the public schools, the library, most of the shopping concentration, both central business district and neighborhood stores as well as food markets. It also contains most of the churches, all public transportation, gas stations, both community hospitals, all municipal services such as police stations, fire stations and ambulance service. The main

east-west artery of the City, U.S. 30, is entirely located South of the railroad right-of-way. The principal industry of Coatesville, Lukens Steel Company, is located in this part of the City South of the right-of-way, as well as practically every other industrial and service establishment.

The extent of the necessary travel and daily movement between the two portions of the City divided by the Penn Central right-of-way is obvious. The only access between these two parts of the City is by means of three underpasses: one at Third Avenue, one at Fourth Avenue and one at Chester Avenue. Until the Graham Avenue bridge was closed by Order of the Commission on January 10, 1972, it afforded an additional means of access. The closing of the Graham Avenue bridge has resulted in a restriction of vehicular traffic both commercial and personal, a limitation of pedestrian traffic and created an additional burden on the three remaining access routes, none of which is completely satisfactory.

At the hearing on September 23, 1970, serious consideration was given only to a plan proposed by PennDOT which involved complete reconstruction of the bridge and the approaches, and which proposal was not favorably received by either the Planning Commission of the City of Coatesville nor the then incumbent administration. While it is true that the City did not endorse the PennDOT proposal, it is not true that the City rejected reconstruction or advocated abolition of the crossing. Specifically, the City requested PennDOT to give consideration to a solution whereby the southern approach would be oriented westward toward the central business district, rather than eastward toward the residential area of the City. Even more to the point, there seems to have been no consideration given at the hearing to the feasibility of rehabilitation or reconstruction of the bridge without major alteration of the approaches.

The City of Coatesville submits to the Commission that such rehabilitation or reconstruction of the bridge would provide the least costly and most expeditious solution, and that by adopting such an approach to the problem, the bridge could be restored to use to serve the safety and welfare of the citizens of Coatesville and the convenience of the traveling public.

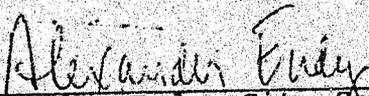
It is also submitted on behalf of the City, that since the hearing in 1970, there has been a substantial increase in development in the portion of the City itself located North of the railroad right-of-way, in the area known as Miller Hill. Since 1970, there have been 25 new houses built, there have been 28 additional lots approved for subdivision, 6 of which are already under construction together with the required public improvements such as streets, sidewalks, sewer and water mains. In addition there is, an application now pending to construct 59 condominiums in the same area. Beyond the City limits but contiguous to the northern area there is prime development ground in Valley and Caln Townships where increased activity has taken place since 1970, and where large scale development is imminent.

It is not only because of the changes in circumstances since 1970 that the City has requested further action by the Commission on this crossing; it is because of the failure or neglect to anticipate the extent of the impact which the closing of Graham Avenue bridge would have on the community, and the realization of how it has affected the entire community which has become apparent only after living with the closed bridge since 1972. We have seen the communication between two parts of our City seriously hampered by the reduction of four points of access to three; we have seen the additional burden placed on the three remaining points of access, none of which were designed for the volume of traffic which they are called on to

handle and each of which have peculiarities which render them less than desirable. The Third Avenue underpass is at the bottom of a steep hill and a 180° curve, it is poorly maintained by Penn Central Transportation Company (See Complaint Docket C 20129), it is frequently damp and wet from water seeping through the underpass which freezes in the winter and forms dangerous icicles, and it conducts traffic into a congested corner of the central business district. The Fourth Avenue underpass is low, narrow and without sidewalks. The need for approximately 1,000 children in the northern area to cross the railroad right-of-way to attend school and to avail themselves of the City parks and other community facilities, underscores the loss of the relatively safe Graham Avenue bridge and the inadequacy and high risk to which the children are exposed by being required to use the remaining underpasses.

It is submitted on behalf of the City that the safety of its people, the convenience of the public, the projected growth and the economy of the City all require restoration of the Graham Avenue bridge and that it is essential to seek to expand the communication and access between the northern and southern parts of the City, rather than restrict them which has been the consequence of closing the bridge. It is therefore respectfully requested that the PUC rescind its Order of January 10, 1972, and direct its attention and that of the respondents to the repair and reconstruction of the bridge.

RESPECTFULLY SUBMITTED

  
Alexander Endy, City Solicitor

ALEXANDER ENDY  
ATTORNEY AT LAW  
22 NORTH THIRD AVENUE  
GATLSVILLE, PA. 15033

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION  
HARRISBURG 17120

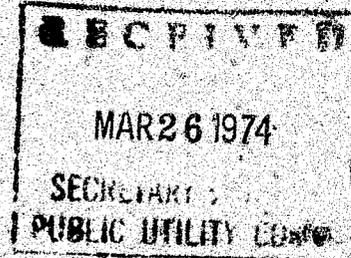


Legal Bureau

IN REPLY REFER TO

March 25, 1974

Will Ketner, Secretary  
Pennsylvania Public Utility Commission  
North Office Building  
Harrisburg, Pennsylvania 17120



Re: Brief of Pennsylvania Department of Transportation  
Complaint Docket No. 18838  
County of Chester

Dear Mr. Ketner:

Enclosed for filing with the Commission are the original and fourteen (14) copies of Brief of Pennsylvania Department of Transportation in the above-captioned case.

I hereby certify that three (3) copies of Brief are being served this day on each party of record.

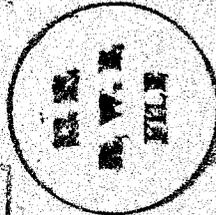
Very truly yours,

Lionel B. Gurnit  
Assistant Attorney General

Enclosures: 15  
LBG:mb

cc: PARTIES OF RECORD - Page 2

RECEIVED  
74 MAR 26 PM 1:48  
SECRETARY'S OFFICE  
PUBLIC UTILITY  
COMMISSION



PARTIES OF RECORD

Alexander Endy, Esquire  
Solicitor  
City of Coatesville  
53 South First Avenue  
Coatesville, Pennsylvania 19320

Norman J. Pine, Esquire  
County of Chester  
First Avenue  
Parkesburg, Pennsylvania 19365

T. H. Maher Cornell, Esquire  
Philadelphia Electric Company  
2301 Market Street  
Philadelphia, Pennsylvania 19104

Robert Szwajkos, Esquire  
Penn Central Transportation Company  
1138 - Six Penn Center  
Philadelphia, Pennsylvania 19104

Francis P. Yanessa, Esquire  
Pennsylvania Public Utility Commission  
North Office Building  
Harrisburg, Pennsylvania 17120

&

Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION

VS.

DEPARTMENT OF HIGHWAYS (NOW DEPARTMENT  
OF TRANSPORTATION) OF THE COMMONWEALTH  
OF PENNSYLVANIA, CITY OF COATESVILLE,  
COUNTY OF CHESTER AND PENN CENTRAL  
TRANSPORTATION COMPANY.

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COMPLAINT  
DOCKET  
NO. 18838

SECRETARY'S OFFICE  
PUBLIC UTILITY  
COMMISSION

74 MAR 26 PM 1:49

RECEIVED

BRIEF OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

The facts recited in the Brief on behalf of the City of Coatesville in support of its Petition and Amended Petition for Rehearing may generally be accepted as correct. The sole issue for the Commission to determine is whether or not under the existing Rules of the Commission and the Statutes of the Commonwealth of Pennsylvania the City of Coatesville is entitled to a rehearing.

The matter may be resolved very simply by looking at the Rules of Practice of the Pennsylvania Public Utility Commission, more particularly Rule 55, which is as follows:

"A copy of every petition covered by Rule 54 shall be served upon each party to the proceeding. Proof of such service shall be attached to the petition. Every petition for rehearing shall be filed within fifteen (15) days after service of the Commission order involved."

Not having filed a Petition for Rehearing within fifteen (15) days of the date of Order of the Commission of January 10, 1972, this Petition and the Amended Petition do not comply with Rule 55.

RECORD  
FOLDER

DOCKETED  
COMPLAINT DOCKET  
MAY 16 1974  
ENTRY No. *A*

There was another avenue open to the City of Coatesville if it was aggrieved by the Order of the Commission and that was an appeal to Courts. The time for taking an appeal is thirty (30) days from January 10, 1972, the date of the Commission's Order.

The statutes that apply to this situation are:

"Direct appeals from administrative agencies. The Commonwealth Court shall have exclusive jurisdiction of appeals from final orders of administrative agencies in any of the following cases:

(1) All appeals from administrative agencies of the Commonwealth under the Administrative Agency Law or otherwise and including appeals from the Pennsylvania Public Utility Commission, the Unemployment Compensation Board of Review and from any department, departmental administrative board of commission, independent board or commission or other agency or administrative officer of this Commonwealth having statewide jurisdiction except: . . . 1970, July 31, P.L. 673, No. 223, Art. IV, §403, as amended 1971, June 3, 17 P.S. 211.403.

The appeal not having been taken within the prescribed time the Order become final and res adjudicata. Nowhere in the Petition or Amended Petition does the City of Coatesville allege that the evidence they wish to produce at a rehearing is based upon new or after discovered evidence. All the facts recited in the Petition or Amended Petition were available to the City of Coatesville at all times prior to September 23, 1970, and were available to the City of Coatesville within thirty (30) days after the final order of the Commission dated January 10, 1972.

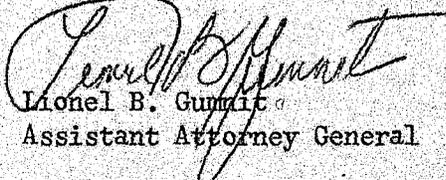
"Time for Appeal; procedure.

(a) Generally. - Except as otherwise provided in this section an appeal under this act from any order shall be filed within thirty (30) days of its entry." . . . 1970, July 31, P.L. 673, No. 223, Art. V, §502, 17 P.S. 211.502.

It is therefore respectfully submitted that the Commission has

no discretionary powers at this time to permit a rehearing in the above-entitled matter on the Petition and Amended Petition of the City of Coatesville.

Respectfully submitted,



Lionel B. Gunnit  
Assistant Attorney General

Before The

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PENNSYLVANIA PUBLIC UTILITY COMMISSION

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COMPLAINT DOCKET NO. 18838

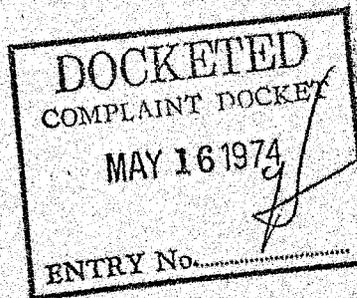
SECRETARY'S OFFICE  
PUBLIC UTILITY  
COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION

vs.

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

REPLY BRIEF OF DEFENDANT  
GEORGE P. BAKER, RICHARD C. BOND,  
AND JERVIS LANGDON, JR., TRUSTEES  
OF THE PROPERTY OF  
PENN CENTRAL TRANSPORTATION  
COMPANY, DEBTOR



March 29, 1974

ROBERT SZWAJKOS

1138 Six Penn Center  
Philadelphia, Pa. 19104

Attorney for Defendant

Penn Central Transportation  
Company, Debtor

Before The  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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COMPLAINT DOCKET NO. 18838

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PENNSYLVANIA PUBLIC UTILITY COMMISSION

vs.

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

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PENN CENTRAL TRANSPORTATION  
COMPANY, DEBTOR

---

NOW COMES, George P. Baker, Richard C. Bond, and  
Jervis Langdon, Jr., Trustees of the Property of Penn Central  
Transportation Company, Debtor (Penn Central) and respectfully  
submit their reply brief and represents:

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I. PRELIMINARY STATEMENT

The Pennsylvania Public Utility Commission (Commission) instituted an investigation on its own motion, by Order dated November 17, 1969 as to the use and safety of a bridge carrying State Highway Route 15122 (Graham Avenue) over and above the grade of the electrified main tracks of Penn Central, in the City of Coatesville, Chester County, Pennsylvania. An evidentiary hearing was held on September 23, 1970. By Order dated January 10, 1972 the Commission abolished the crossing and ordered the bridge removed.

The bridge has been closed to vehicular traffic and barricaded. The bridge is used by unlimited pedestrian traffic.

On November 14, 1973, the City of Coatesville filed a petition with the Commission requesting that the Order of January 10, 1972 be rescinded or modified. The petition argued that a change in circumstances since the September 23, 1974 hearing, together with new information, provide a basis for a different conclusion and order from that reached in the Order of January 10, 1972.

The Commission by letter dated December, 1973 scheduled this matter for an evidentiary hearing on January 17, 1974. At this hearing the procedural argument was raised by counsel for the Pennsylvania Department of Transportation, formerly the Department of Highways (PennDOT) that the time in which a petition to amend or rescind the Order of January 10, 1972 had expired and that the City of Coatesville had waived any rights to file such a petition. This argument was made notwithstanding PennDOT's position that the City of

Coatesville may file, without prejudice for its failure to file a petition to amend or rescind, an application to establish a highway-railroad crossing at the former site of the Graham Avenue crossing.

The City of Coatesville had filed an Amended Petition on January 7, 1974 requesting that the Commission rescind or modify the Order of January 10, 1972. However, it is the position of PennDOT, as appears on the record, that this Amended Petition did not remedy the procedural deficiencies exhibited by the first Petition.

Testimony was taken at the January 17, 1974 hearing in support of the City of Coatesville's Petition. Such evidence was taken only to determine if the Commission should conduct further hearings or deny the Petition. Although the Brief of the City of Coatesville would imply otherwise, the hearing was not conducted to determine the safe and reasonable use of the former Graham Avenue bridge structure as a highway-railroad crossing.

On March 13, 1974 Penn Central received a copy of Brief Supporting Petition of the City of Coatesville filed by counsel for the City of Coatesville. Neither the Brief nor its cover letter contain a date or other indication as to if or when the Brief was docketed with the Commission.

## II. ISSUES

MAY THE STATUTORY TIME PERIOD REQUIREMENT OF SECTION 1996 OF THE PUBLIC UTILITY CODE BE WAIVED WHEREAFTER THE COMMISSION MAY SCHEDULE A REHEARING ON A MATTER FOR WHICH THERE IS AN OUTSTANDING ORDER OF THE COMMISSION?

## III. APPLICABLE STATUTES

### A. 66 P.S. §1396

#### Rehearing

After an order has been made by the commission, any party to the proceeding may, within fifteen days after the service of the order, apply for a rehearing in respect of any matters determined in such proceedings and specified in the application for rehearing, and the commission may grant and hold such rehearing on such matters. No application for a rehearing shall in anywise operate as a supersedeas, or in any manner stay or postpone the enforcement of any existing order, except as the commission may, by order, direct. If the application be granted, the commission may affirm, rescind, or modify its original order. Any order so made after such rehearing shall have the same force and effect as an original order. 1937, May 28, P.L. 1053, art. X, §1006.

### B. 66 P.X. §1397

#### Amendment and rescission of orders

The commission may, at any time, after notice and after opportunity to be heard as provided in the case of complaints, rescind or amend any order made by it. Any order rescinding or amending a prior order shall, when served upon the person, corporation, or municipal corporation affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as is herein provided for original orders; but no such order shall affect the legality or validity of any acts done by such person, corporation, or municipal corporation before service by registered mail upon such person, corporation, or municipal corporation of the notice of such change. 1937, May 28, P.L. 1053, art. X, §1007.

C. 66 P.S. §1431

Appeals to courts; jurisdiction and practice

(a) Within thirty days after the service of any order by the commission, unless an application for a rehearing may be pending, and then within thirty days after the service of the order refusing such application, or the service of an order modifying, amending, rescinding, or affirming the original order, any party to the proceedings affected thereby may appeal therefrom. Such court is hereby clothed with exclusive jurisdiction throughout the Commonwealth for the purpose of hearing and determining any and all such appeals:

.....

(b) All appeals shall be by position, setting forth specifically and concisely the error or errors assigned to the order of the commission, which petition shall be accompanied by a copy of the order appealed from, and shall also be accompanied by affidavit of the appellant, or of the agent or attorney of such appellant, that the appeal is not taken for the purpose of delay, but because the appellant verily believes that injustice has been done. Each error relied on must be specified particularly and set forth in a separate numbered paragraph of the petition.  
As amended 1971, June 3, P.L.\_\_\_\_, No. 6, §1 (§509(a)(115)).

IV. ARGUMENT

A. SECTION 1396, REHEARING, PROVIDES FOR THE COMPLETION OF THE ADMINISTRATIVE ADJUDICATIVE PROCESS BY WHICH AN ORDER OF THE COMMISSION CAN BECOME CONCLUSIVE AND FINAL.

The question of conclusiveness and finality of any administrative determination involves many factors, including the terms of the statute, the substance and the effect of the order. 42 Am. Jur. Public Administrative Law, p. 507; West Penn Power Co. v. Pennsylvania PUC, 100 A. 2d 110, 113; 174 Pa. Sup. 123 (1954). While the doctrine of res judicata does not apply, in any strict

or technical sense, to decisions of administrative agencies, there must be a point at which an administrative ruling becomes fixed and definite though subject to change or modification in the future on proper proceedings. (supra)

As an administrative body, the Commission is bound by the due process provisions of constitutional law and fundamental principles of fairness. (supra) Cf. Pittsburgh v. Pennsylvania PUC, 90 A. 2d 850; 171 Pa. Sup. 391, 395. The Commission cannot make a final determination on an ultimate question before it for adjudication and subsequently change such determination without observing the requirements of due process. The substance and not the form of commission ~~action~~ is controlling on the question of whether the Commission has entered a final, definitive order. Columbia Broadcasting System, Inc. v. U.S., 316 U.S. 407, 416; 62 S. CT. 1194, 86 LEd. 1563.

From the above discussion it can be seen that as applied to the case at bar, the Commission is under constitutional restriction to comply with the principles of due process and fundamental principles of fairness. This duty is owed as a matter of right to all of the parties in that particular proceeding, including those which "win" the adjudication as well as those who "lose" the action.

The legislative intent of Section 1396 is to provide an "administrative" review procedure in respect to matters determined by the Commission in any proceeding. Such a provision is an example of due process had by a party adversely affected by the Commission's decision. At the same time the right of review is limited so as to protect the rights of the party benefited by the Commission's order.

The right of review is limited in terms of permitted time in which to apply for a rehearing. This right is limited to insure the principles of conclusiveness and finality described above.

Where the time period for requesting a rehearing has expired, the Commission must deny a late filed petition for rehearing in order to protect the rights of parties other than those disadvantaged by the Commission's adjudication. If the Commission does not deny the petitions for rehearing filed on behalf of the City of Coatesville in this proceeding, it will fail to fulfill its requirements of due process and fair play. If the Commission would grant these petitions for rehearing, then there could never be a final and conclusive order rendered by the Commission and no party could ever justifiably rely on the Commission's orders without the fear that the effectiveness of such orders could be stayed by the late filing of a petition for rehearing by an adversely affected party.

Therefore, having failed to file a petition for rehearing under the authority of Section 1996 within the prescribed period of the statutory language, the City of Coatesville may not seek relief under said Section.

B. SECTION 1431, APPEALS TO COURTS. JURISDICTION AND PRACTICE PROVIDES FOR THE COMPLETION OF THE JUDICIAL REVIEW PROCESS BY WHICH AN ORDER OF THE COMMISSION CAN BECOME CONCLUSIVE AND FINAL.

The decisions of the Commission are subject to the "judicial" review of the Commonwealth Court according to Section 1431. This provision is another example of due process and principles of fair play which are the rights of every party to a proceeding. While this

right to review does exist it also is limited in terms of the permitted time in which an application or petition may be made.

Where the time period for appealing the Commission's decision to the Commonwealth Court has expired, the Court must thereafter deny an appeal petition in order to protect the rights of parties other than those disadvantaged by the Commission's adjudication. If the Court does not deny the appeal petition, it fails to fulfill its requirements of due process and fair play. If the Court would grant the appeal petitions, then there could never be a final and conclusive order rendered by the Commission and no party could ever justifiably rely on the Commission's orders without fear that the effectiveness of such orders could be stayed by a late filed appeal by an adversely affected party.

As can be seen from the above discussion, the Public Utility Code provides for review by the Commission and subsequent review by the Commonwealth Court. The right of review in each instance is limited by the requirement of a timely petition. The Commission and the Court must both deny late filed petitions in order to protect the rights of parties in Commission proceedings. Having failed to timely file for a rehearing under §1996 and having failed to timely file an appeal under Section 1431, the City of Coatesville is precluded from relief under these Sections.

C. SECTION 1397 DOES NOT AUTHORIZE THE COMMISSION TO BREATHE LIFE INTO A BELATED PETITION FOR REHEARING.

Section 1397 provides that the Commission may, at any time, rescind or amend any order made by it. Such language provides the necessary authority by which the Commission may act. This language does not, however, provide the procedural guidelines through which such Commission action may occur. The only limiting language of this Section is: "after notice and after opportunity to be heard".

This language within this Section does not authorize the Commission to breathe life into a belated petition for rehearing where the petition was to be filed within fifteen days after service of order entered by the Commission. This principle has been often cited since its first pronouncement in Paradise vs. Pennsylvania PUC, 132 A. 2d 754, 184 Pa. Sup. 8 (1954). In that case, the Court recognized that:

"...The line of demarcation between a rehearing under Section (1396) and an independent inquiry by the Commission under Section (1397) may frequently be very faint, and we are unwilling to fetter the power of the Commission merely because of unfortunate terminology." (at p. 758)

In that case the Court reviewed the issue whether action under Section 1396 brought Section 1397 into effect, i.e., into play. The Court decided that it did not since to read the two sections together as one would limit the Commission's authority to take independent action under Section 1397. Thus, Section 1396 must be interpreted as applying only to situations where a party seeks redress from an order upon timely petition for rehearing. Section 1396 satisfies the due process right of such a party.

Section 1396 may not be used to bring Section 1397 into play. In Paradise, (supra) the Commission did not act on a belated petition in ordering a rehearing, but its actions were predicated on its own inquiry under Section 1397. In that case, the Commission ordered a hearing to determine if certain evidence existed as a requisite to the granting of carrier operating authority. Although there was a belated petition for rehearing, such petition was not the basis for the subsequent action.

Recently a similar situation was reviewed by the Commonwealth Court in Tranter vs. Pennsylvania PUC, 4 Commonwealth Court 585, 588 (1972). There a belated petition for rehearing was filed. The Court treated the Commission's action in scheduling a rehearing as though the Commission had acted under Section 1997 and not 1396:

"...although it was taken through the device of granting the petition of applicant which could have been filed only under Section (1396) of the Public Utility Law..."

From this language it can be seen that a petition for rehearing will not be permitted to serve as a basis for Commission action if it is belatedly filed. That is, a petition for rehearing will serve as a lawful basis for Commission action only if it is filed within the prescribed time of Section 1396.

As applied to the case at bar, the City of Coatesville may not seek amendment or rescission of the Commission order through the device of a petition for rehearing. The petitions for rehearing should therefore be denied.

D. THE CITY OF COATESVILLE IS NOT PRECLUDED FROM OBTAINING RELIEF FROM THE COMMISSION'S ORDER

Although the City of Coatesville may not obtain relief from the Commission's Order through the filing of a petition for rehearing under Section 1396, it has other available avenues of relief.

First, the Commission may on its own motion schedule a rehearing, according to Section 1397, whereafter it may receive evidence as to the conclusions and determinations the Commission expressed in its Order.

Secondly, the City of Coatesville can initiate action to have a highway-railroad crossing established at the former site of Graham Avenue crossing by filing an Application for Approval of the Construction of a Crossing Above the Grade of a Railroad. If the City of Coatesville had filed such a petition in the first instance and had not filed a petition for a rehearing, this brief would not have been necessary, nor would have the time and expense of the parties to this proceeding been unnecessarily consumed at the hearing on January 17, 1974. Such an application still can be filed by the City of Coatesville without prejudice to any party. See Appendix A.

E. THE CITY OF COATESVILLE HAS PRESENTED AN ERRONEOUS STATEMENT OF FACT.

In support of its petition for rehearing, the City of Coatesville has presented a summary of facts taken from hearings held on September 23, 1970 and January 17, 1974 and allegedly given at various site conferences held at the Graham Avenue site. Such facts are not referenced to any particular transcripts, Commission Orders, statements of witnesses or other authoritative source. Such pernicious hersey taints the record with pejorative trappings to provide the Commission with an incorrect statement of the actual situation.

The City of Coatesville's brief described the Third Avenue crossing, a concrete bridge carrying the mainline tracks of the Penn Central over a highway, as having a 180° curve. This is incorrect. Third Avenue passes under the bridge at 90°, or perpendicular, to the bridge structure and the tracks. Once it has passed under the bridge, Third Avenue ends and connects with a road which runs parallel to the tracks. This road leads up a hill to an area known as Miller Hill.

The brief describes that the Third Avenue bridge is poorly maintained by Penn Central. This bridge has been the subject of an extensive investigation, Complaint Docket C.20129. At the recent evidenciary hearing on this case, the witness for Penn Central, a senior civil engineer, testified that the bridge was the subject of periodic inspection by structural engineers and that repair work had been performed on the bridge during the month of December, 1973. Also

the witness testified, as shown in the transcript of the hearing, that the bridge is structurally sound and not in any danger of collapse. A factual finding that the Third Avenue bridge is unreasonably dangerous is not warranted on the existing record.

While traffic entering the business district of Coatesville via Third Avenue will pass under the bridge if coming from the section of the City north of the tracks, the traffic congestion in the business district has never been shown to have resulted from the inadequacy of the bridge. On the contrary, a feasible inner city traffic pattern plan has not been implemented despite an extensive study which was conducted on behalf of the City of Coatesville. A factual finding that the existing underpasses result in traffic congestion would be unwarranted on the existing record.

The brief describes the danger to children residing in the north section of the City who attend schools south of the tracks. The estimated number of children is undocumented and no evidence is presented by the City as to the availability of school buses. Also, the Graham Avenue bridge is open to pedestrian traffic and does provide a means of passage above the tracks without the threat of automobile or truck traffic. A factual finding that there is an unreasonable risk to the City's children would be unwarranted on the existing record.

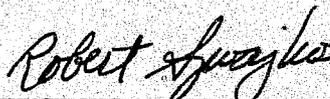
In summary, the factual allegations submitted should not be permitted to serve as a basis for Commission action in amending or rescinding its outstanding order.

V. CONCLUSION

Although the arguments in this brief and the briefs of other parties filed in this proceeding appear to be discussing academic points of law unrelated to the reasonable needs of the City of Coatesville, and the reasonable solution would be for the Commission simply to order a rehearing to hear the evidence of the City of Coatesville, it would be a violation of the constitutional principles of due process and fair play to permit the petitions for rehearing of the City of Coatesville to be the initiating factor for the ordering of a rehearing. The procedural guidelines of the Pennsylvania Public Utility Code have been established by statute and interpreted by courts of law to protect the rights of various parties in proceedings such as this. While the granting of the petition may benefit the citizens of the City of Coatesville, the rights of other parties in this proceeding may be violated according to the constitutional standards that have been set. Therefore, the Commission should deny the petitions for rehearing filed on behalf of the City of Coatesville, without prejudice to the subsequent filing by the City of Coatesville of an APPLICATION FOR APPROVAL OF THE CONSTRUCTION OF A CROSSING ABOVE THE TRACKS OF A RAILROAD.

WHEREFORE, George P. Baker, Richard C. Bond, and Jervis Langdon, Jr., Trustees of the Property of Penn Central Transportation Company, Debtor respectfully pray that the Honorable Commission deny the petitions of the City of Coatesville for rehearing.

Respectfully submitted,



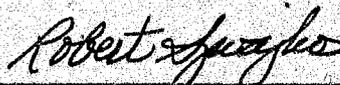
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ROBERT SZWAJKOS  
Counsel for Defendant,  
Penn Central Transportation  
Company, Debtor

CERTIFICATE OF SERVICE

I hereby certify that copies of the aforementioned Brief have been sent to all known parties of record by U. S., first-class, postage prepaid mail.

Dated this *29th* day of March, 1974, Philadelphia, Pennsylvania.



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ROBERT SZWAJKOS

APPLICATION FOR APPROVAL OF THE CONSTRUCTION  
OF A CROSSING ABOVE THE TRACKS OF A RAILROAD

(Public Utility Law, Section 409)

Before

PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of (name of company) for approval of the (construction) of a crossing above a point where the tracks and right of way of said railroad company cross below a public highway (description or name of highway) located in (name of township or borough and county). : Application : Docket No. \_\_\_\_\_ 19\_\_

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

1. The name and address of applicant are \_\_\_\_\_  
\_\_\_\_\_.
2. The name and address of applicant's attorney are \_\_\_\_\_  
\_\_\_\_\_.
3. (This paragraph to contain a general statement of the nature and character of service rendered by the applicant and the corporation right to construct a proposed crossing.)
4. (This paragraph to contain a brief, concise statement of the nature and character of the construction, approval of which is sought, reference being made to plans filed as exhibits.)
5. (This paragraph to contain the names of public utilities, municipalities, corporations, or property owners concerned in or affected by the proposed construction. If consent to the proposed construction, abolition, etc., has been obtained from any municipality or department of the government of the Commonwealth of Pennsylvania, verified copies of such consent should be filed as exhibits.)

6. (This paragraph to contain a statement of the number of persons and vehicles of all kinds using the highway at point of crossing for three days, preferably a Friday, Saturday and Sunday, the count to be taken 24 hours each day, and a classified statement verified by affidavit of the persons making the count must be attached as an exhibit.)

7. (This paragraph to contain a statement of the expenses connected with the proposed construction, alteration or abolition and from what sources it is proposed to provide such funds.)

8. The construction is necessary or proper for the following reasons \_\_\_\_\_

WHEREFORE, applicant prays your Honorable Commission to approve the application as follows:

\_\_\_\_\_  
(Signature of Applicant)

(To be attested by affidavit in form prescribed by Rule 7 of the Commission Rules of Practice.)

(A description by metes and bounds of any property to be appropriated by the Commission shall be attached to the application.)

RECEIVED  
JUN 10 1974  
Public Utility Commission

This.....7.....day of.....June.....1974.....  
the undersigned hereby acknowledges receipt of copy  
of the order rendered by the Commission in Complaint  
Docket No. 18838.....under date of.....June 4, 1974  
and accepts service thereof in behalf of.....  
..CITY OF COATESVILLE.....

*Alexander Eady*

FILE  
A. M. H.

RECORDED

DUPLICATE RECORDED.  
ORIGINAL SENT TO  
COMMONWEALTH SECRETARY

RECEIVED  
JUN 10 1974  
S...  
Public Utility ...

Commonwealth of Pennsylvania  
Department of Transportation

JUN 7 1974

**LEGAL BUREAU**

This 7th day of June, 1974  
the undersigned hereby acknowledges receipt of copy  
of the order rendered by the Commission in Complaint  
Docket No. 18838 under date of June 4, 1974.  
and accepts service thereof in behalf of  
DEPARTMENT OF HIGHWAYS OF THE COMMONWEALTH OF  
PENNSYLVANIA

*Herbert G. Zahn*  
Herbert G. Zahn,  
Assistant Attorney General

DUPLICATE RECORD.  
ORIGINAL CERTIFIED  
TO COMMONWEALTH COURT.

FILE  
A. M. H.

RECEIVED  
JUN 11 1974  
Public Utility

This *7<sup>th</sup>* day of *June* 19 *74*  
the undersigned hereby acknowledges receipt of copy  
of the order rendered by the Commission in Complaint  
Docket No. *18838* under date of *June 4, 1974*  
and accepts service thereof in behalf of.....  
COUNTY OF CHESTER.....

*Norm J. P. [unclear]*  
County Solicitor

DUPLICATE RECORD.  
ORIGINAL CERTIFIED  
TO COMMON PLEAS COURT.

FILE  
A. M. H.

RECEIVED  
JUN 12 1974  
6:11 PM  
Public Utility Commission

This.....11.....day of.....*June*.....1974.....  
the undersigned hereby acknowledges receipt of copy  
of the order rendered by the Commission in Complaint  
Docket No...18838.....under date of....June 4, 1974  
and accepts service thereof in behalf of.....  
.PENN. CENTRAL TRANSPORTATION COMPANY.....

.....*Robert J. Gray*.....

DUPLICATE FILED  
ORIGINAL FILED  
TO COMMONWEALTH COURT.

FILE  
A. M. H.

RECEIVED  
JUNE 1974  
Public Utility Commission

This... *12th* .....day of *June* .....19. *74*....  
the undersigned hereby acknowledges receipt of copy  
of the order rendered by the Commission in Complaint  
Docket No... *18838* .....under date of... *June 4, 1974*....  
and accepts service thereof in behalf of.....  
PHILADELPHIA ELECTRIC COMPANY.....

*[Handwritten Signature]*

DUPLICATE FILED.  
ORIGINAL CERTIFIED  
TO COMMONWEALTH COURT.

FILE  
A. M. H.

RECORD  
FOLDER

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Complaint Docket No. 18838

RECEIVED  
FEB 24 1975  
Secretary's Office  
Public Utility Commission

PENNSYLVANIA PUBLIC UTILITY COMMISSION

v.

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

BRIEF

This matter concerns the use and safety of a bridge carrying State Highway Route 15122 (Graham Avenue) over and above the grade of the electrified main tracks of Penn Central Transportation Company, in the City of Coatesville, Chester County. The Commission instituted an investigation on its own motion, by Order issued November 17, 1969. Thereafter a hearing was held September 23, 1970, and an Order was issued by the Commission on January 10, 1972, closing the bridge, and directing the Trustees of Penn Central Transportation Company to take certain actions in executing the Commission's Order; report to the Commission; and making the Order, as it pertains to the Penn Central Transportation Company, subject to the approval of the Reorganization Court (U.S. District Court, Eastern District of Pennsylvania, Fullam, J.), as required. The bridge was closed to traffic and barricaded, but no further action has been taken by Penn Central Transportation Company or the respondent Department of Highways of the Commonwealth of Pennsylvania, now Pennsylvania Department of Transportation.

On November 14, 1973, the City of Coatesville filed a Petition directed to the discretion of the Commission to rescind the Order of January 10, 1972, or modify it based upon changes

ALEXANDER ENDY  
ATTORNEY AT LAW  
22 NORTH THIRD AVENUE  
COATESVILLE, PA. 19320

RECORD  
FOLDER

DOCKETED  
COMPLAINT DOCKET

APR 15 1975

ENTRY No. ....

in circumstances since the hearing and also based on additional information which would result in a different conclusion from that previously reached. A hearing was set by the Commission for Thursday, January 17, 1974, at 10:00 A.M. in the Court House at West Chester, Pennsylvania, in the course of which the Department of Transportation, by its counsel, Lionel B. Gumnit, Esquire, raised a procedural objection to the hearing, and testimony was taken of the City's witnesses in support of the Petition of the City of Coatesville. The petition of the City for rehearing was denied by the Commission; but upon its own motion under Section 1007 of the Pennsylvania Public Utility Law [66 P.S. §1397], reopened the record for further hearing by Order dated June 4, 1974.

Subsequent hearings were held September 19, 1974, and January 16, 1975. At the September 19 hearing the City presented testimony with respect to the feasibility and cost of reconstruction of the bridge. No testimony was offered by Penn Central or Penn DOT. The hearing was marked by protracted arguments by both Penn Central and Penn DOT objecting to the propriety of the Commissions Order of June 4, 1974, reopening the record in this matter.

With respect to the jurisdiction of the Commission, the Commission has the authority, as in the case of complaints, to amend or rescind any Order after notice and opportunity to be heard. Section 1007 of the Public Utility Law, 66 P.S. §1397. Nor is it necessary that an applicant present new evidence, before the Commission may rescind or amend a prior Order under Section 1007: Tranter v. Pennsylvania Public Utility Commission, 4 Pa. CMWLTH. 585 (1972).

In the course of the September 19, 1974, hearing, with prior notice to all parties on August 19, 1974, the City moved to submit the testimony of its witnesses at the January 17, 1974

hearing, already a part of the record, for further consideration by the Commission on the substantive issue. Penn Central opposed such action on the basis that the purpose of the January 17, 1974 hearing (i.e. the City's petition for rehearing) was different from the purpose for which it was presently being offered. Consequently, a further hearing was ordered, on January 16, 1975, at which the City produced its same witnesses who confirmed their prior testimony, reviewed portions of it with some additional facts and submitted themselves to cross examination on their testimony with respect to the substantive issue of whether the reopening of the bridge is necessary in the interest of the safety, convenience, accommodation and service of the public.

Turning to the factual considerations in this matter, the Penn Central right-of-way bisects the City of Coatesville on an east-west line from the western City limits to the eastern City limits. The portion of the City North of the railroad right-of-way is almost totally residential. This area is virtually devoid of community facilities, but includes almost all of the available land left for development purposes in the City. There are presently between 500 and 600 families living in the area, with additional single homes currently under construction and a proposed condominium apartment project.

The portion of the City South of the railroad right-of-way contains all of the public schools, the library, most of the shopping concentration, both central business district and neighborhood stores as well as food markets. It also contains most of the churches, all public transportation, gas stations, both community hospitals, all municipal services such as police stations, fire stations and ambulance service. The main

east-west artery of the City, U.S. 30, is entirely located South of the railroad right-of-way. The principal industry of Coatesville, Lukens Steel Company, is located in this part of the City South of the right-of-way, as well as practically every other industrial and service establishment.

The extent of the necessary travel and daily movement between the two portions of the City divided by the Penn Central right-of-way is obvious. The only access between these two parts of the City is by means of three underpasses: one at Third Avenue, one at Fourth Avenue and one at Chester Avenue. Until the Graham Avenue bridge was closed by Order of the Commission on January 10, 1972, it afforded an additional means of access. The closing of the Graham Avenue bridge has resulted in a restriction of vehicular traffic both commercial and personal, a limitation of pedestrian traffic and created an additional burden on the three remaining access routes, none of which is completely satisfactory.

At the hearing on September 23, 1970, serious consideration was given only to a plan proposed by PennDOT which involved complete reconstruction of the bridge and the approaches, and which proposal was not favorably received by either the Planning Commission of the City of Coatesville nor the then incumbent administration. While it is true that the City did not endorse the PennDOT proposal, it is not true that the City rejected reconstruction or advocated abolition of the crossing. Specifically, the City requested PennDOT to give consideration to a solution whereby the southern approach would be oriented westward toward the central business district, rather than eastward toward the residential area of the City. Even more to the point, there seems to have been no consideration given at the hearing to the feasibility of rehabilitation or reconstruction of the bridge without major alteration of the approaches.

The City of Coatesville submits to the Commission that such rehabilitation or reconstruction of the bridge would provide the least costly and most expeditious solution, and that by adopting such an approach to the problem, the bridge could be restored to use to serve the safety and welfare of the citizens of Coatesville and the convenience of the traveling public.

It is also submitted on behalf of the City, that since the hearing in 1970, there has been a substantial increase in development in the portion of the City itself located North of the railroad right-of-way, in the area known as Miller Hill. Since 1970, there have been 25 new houses built, there have been 28 additional lots approved for subdivision, 6 of which are already under construction together with the required public improvements such as streets, sidewalks, sewer and water mains. In addition there is, an application now pending to construct 59 condominiums in the same area. Beyond the City limits but contiguous to the northern area there is prime development ground in Valley and Caln Townships where increased activity has taken place since 1970, and where large scale development is imminent.

It is not only because of the changes in circumstances since 1970 that the City has requested further action by the Commission on this crossing; it is because of the failure or neglect to anticipate the extent of the impact which the closing of Graham Avenue bridge would have on the community, and the realization of how it has affected the entire community which has become apparent only after living with the closed bridge since 1972. We have seen the communication between two parts of our City seriously hampered by the reduction of four points of access to three; we have seen the additional burden placed on the three remaining points of access, none of which were designed for the volume of traffic which they are called on to

handle and each of which have peculiarities which render them less than desirable. The Third Avenue underpass is at the bottom of a steep hill and a 180° curve, it is poorly maintained by Penn Central Transportation Company (See Complaint Docket C 20129), it is frequently damp and wet from water seeping through the underpass which freezes in the winter and forms dangerous icicles, and it conducts traffic into a congested corner of the central business district. The Fourth Avenue underpass is low, narrow and without sidewalks. The need for approximately 1,000 children in the northern area to cross the railroad right-of-way to attend school and to avail themselves of the City parks and other community facilities, underscores the loss of the relatively safe Graham Avenue bridge and the inadequacy and high risk to which the children are exposed by being required to use the remaining underpasses.

It is submitted on behalf of the City that the safety of its people, the convenience of the public, the projected growth and the economy of the City all require restoration of the Graham Avenue bridge and that it is essential to seek to expand the communication and access between the northern and southern parts of the City, rather than restrict them which has been the consequence of closing the bridge. It is therefore respectfully requested that the PUC rescind its Order of January 10, 1972, and direct its attention and that of the respondents to the repair and reconstruction of the bridge.

RESPECTFULLY SUBMITTED

  
Alexander Endy, City Solicitor

Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED  
MAR 6 1975  
Secretary's Office  
Public Utility Commission

PENNSYLVANIA PUBLIC UTILITY COMMISSION :  
vs. : COMPLAINT  
DEPARTMENT OF HIGHWAYS (NOW DEPARTMENT OF : DOCKET  
TRANSPORTATION) OF THE COMMONWEALTH OF PENN- :  
SYLVANIA, CITY OF COATESVILLE AND PENN : NO 18838  
CENTRAL TRANSPORTATION COMPANY :  
:

BRIEF OF THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

I. HISTORY OF THE CASE

This matter comes before the Pennsylvania Public Utility Commission on the basis of an investigation by the Public Utility Commission at Complaint Docket 18838 which resulted from a report of October 28, 1969, by Penn Central Transportation Company of the condition of the bridge under Investigation Docket No. 97. The Commission set this matter for an initial hearing on September 23, 1970. The substance of the Complaint was that the Graham Avenue Bridge (State Highway Route 15122) was in a dangerous and/or inadequate condition to accommodate safely the class and volume of traffic traversing the crossing. At the hearing on September 23, 1970, before your Commission, the City of Coatesville indicated that unless the new proposed bridge could and would be designed in accordance with its demand, the City of Coatesville did not want this bridge.

Thereafter the Commission by Order dated January 10, 1972, abolished the crossing and directed Penn Central Transportation Company to remove the structure. To this date the structure

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COMPLAINT DOCKET  
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ENTRY No. ....

remains, not having been removed by Penn Central as ordered.

On November 14, 1973, the City of Coatesville filed a Petition for Rehearing. An Amended Petition for Rehearing was filed on January 7, 1974, which was almost two years from the date of the Final Order of the Commission directing the abolition of the crossing.

As a result of the request of the City of Coatesville, a rehearing was had. PennDOT appeared and raised substantial objection to the rehearing alleging that a Petition for Rehearing was not filed in accordance with the Rules of Practice of the Commission namely within fifteen (15) days from January 10, 1972. PennDOT advanced the further argument that the Order of the Commission dated January 10, 1972, was a Final Order and no Appeal was taken by any of the parties of record.

Thereafter on June 4, 1974, the Commission issued its Order sustaining the position of PennDOT. However, the Commission issued another Order the same day reopening the record on its own motion. (Emphasis supplied) Thereafter two (2) further hearings were held on September 14, 1974 and January 16, 1975.

It is the position of PennDOT that the City of Coatesville has the burden to show a change of condition other than that which existed on September 23, 1970, which would require the Commission to issue a new Order modifying its Order of January 10, 1972, abolishing this crossing.

## II. QUESTION INVOLVED

Has the City of Coatesville established a change of condition and a need to reopen the above-captioned matter to permit the Commission to enter an Order concerning the crossing herein involved?

### III. ARGUMENT

A careful reading of the entire record of the above-captioned matter will show that the City of Coatesville has not met its burden of proof to show a change of condition from the date of the Commission's Order abolishing the crossing up to and including the date of the last hearing.

Mayor Frances E. Regener, at Page 93 of the Notes of Testimony of January 16, 1975, would seem to disaffirm the authority of her predecessors by her testimony.

"Q So then the City's position is different from what it was prior --

A Sir, I can't speak about 1970; I was not affiliated with the City at that time. I took office in 1972.

Q Well, we are attempting this morning to determine if the official City of Coatesville position has changed, and I am just attempting to establish that it has.

A It has changed, yes."

Mayor Regener was inaugurated into the office of Mayor of Coatesville on January 1, 1972. Query? How can she complain that she knew nothing about this matter when the Commission sent its Order of January 10, 1972 on or after January 10, 1972 - all after Mayor Regener came to office as Mayor of City of Coatesville.

Notwithstanding the fact the City of Coatesville had the opportunity to present additional testimony at further hearings held on September 19, 1974 and January 16, 1975, after the Commission's Order of June 4, 1974, the City did not present any

urther evidence to show any change of condition since the January 10, 1972 Order which abolished the crossing and directed the Railroad to remove the structure. Thus the City failed to meet its legal burden of proof to justify changing the existing Order of January 10, 1972.

The first Paragraph of the preamble of the Order of January 10, 1972, is as follows:

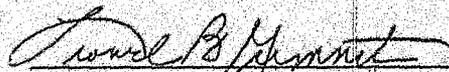
"By its order issued November 17, 1969, this Commission instituted an investigation on its own motion, under the provisions of the Public Utility Law, into the use and safety of the existing structure carrying State Highway Route 15122 (Graham Avenue) over and above the grade of the electrified main tracks of Penn Central Transportation Company, in the City of Coatesville, Chester County, and for the purpose of determining, inter alia, whether the prevention of accidents and the promotion of the safety of the public require changes in the type, location, use or construction of the crossing."

The City of Coatesville has not met its burden in that it has utterly failed to show that the opening of this crossing will prevent accidents and promote the safety of the travelling public.

#### IV. CONCLUSION

It is manifestly evident that the City of Coatesville has not met the burden placed upon it, to wit, to show a change of condition, at any of the hearings commencing with the hearing of January 16, 1974. Not having met its burden, the Commission is duty bound and must find that its Order of January 10, 1972, must remain unchanged.

Respectfully submitted,

  
Lionel B. Sumnit,  
Assistant Attorney General

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MAR 7 1975  
Secretary's Office  
Public Utility Commission

Before The  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Complaint Docket No. 18838

PENNSYLVANIA PUBLIC UTILITY COMMISSION

v.

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

BRIEF OF ROBERT W. BLANCHETTE, RICHARD C. BOND,  
AND JOHN H. McARTHUR, TRUSTEES OF THE PROPERTY  
OF PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR

ROBERT SZWAJKOS  
1138 Six Penn Center Plaza  
Philadelphia, Penna. 19104  
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Attorney for Trustees

Due Date: March 7, 1975

RECORD  
FOLDER

DOCKETED  
COMPLAINT DOCKET  
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I. QUESTIONS INVOLVED

1. HAS THERE BEEN A CHANGE OF CIRCUMSTANCES OR CONDITIONS TO WARRANT THAT THE COMMISSION'S ORDER OF JANUARY 10, 1972 BE RESCINDED AND THE CROSSING REOPENED?
  
2. IS THE GRANTING OF A REHEARING TO DETERMINE WHETHER OR NOT THERE HAS BEEN A CHANGE OF CIRCUMSTANCES OR CONDITIONS ARBITRARY, CAPRICIOUS, UNREASONABLE AND AN ABUSE OF DISCRETION?

II. HISTORY OF PROCEEDING

By an Order issued November 17, 1969, the Pennsylvania Public Utility Commission (Commission) instituted an investigation on its own motion, under the provisions of the Public Utility Law, into the use and safety of the existing structure carrying State Highway Route 15122 (Graham Avenue) over and above the grade of the electrified main tracks of Penn Central Transportation Company (Penn Central), in the City of Coatesville, Chester County, and for the purposes of determining, inter alia, whether the prevention of accidents and the promotion of the safety of the public require changes in the type, location, use or construction of the crossing.

State Highway Route 15122 extends in a general northeasterly direction approximately 1.98 miles from its origin and connection with State Highway Route 142 (former U.S. Traffic Route 30) in the City of Coatesville, through Valley Township to its terminus and connection with State Highway Route 15121, in Caln Township, all in Chester County. At a location within the city limits, the highway, known locally as Graham Avenue and situated between Fifth and Sixth Avenues, crosses above the grade of Penn Central's tracks.

At the original hearing, held September 23, 1970 witnesses testified on behalf of each of the following:

Department of Transportation (PennDot), Penn Central, City of Coatesville, Chester County and Philadelphia Electric. The Township of East Caln, the Bell Telephone Company of Pennsylvania, and Octoraro Water Company were served with notice of the hearing, but did not appear to testify or present any statement in connection with the proceeding.

On January 10, 1972 the Commission issued its Order.

That Order provided:

We have carefully reviewed the record in this proceeding and are of the opinion that the existing bridge is grossly inadequate, in both its physical dimensions and structural capacity, to accommodate safely the class of vehicular traffic normally using the highway at this location. However, we are gravely concerned about the wisdom of authorizing reconstruction of the railroad-highway crossing and its southerly approach, in accordance with the department's proposal, since such reconstruction does not meet with the approval of the city, and does not significantly improve either the horizontal or vertical highway profiles.

The city of Coatesville, in a commendable effort to improve the character of its neighborhood, would prefer that the crossing be abolished rather than risk the possibility of further deterioration due to questionable construction. According to the city, THE CROSSING HAS LITTLE EFFECT ON THE FLOW OF TRAFFIC, since there are two underpasses immediately west of the crossing at Fourth and Third Avenues, one and two city blocks distant, respectively, and an underpass east of the crossing at Seventh Avenue, two city blocks distant, all of which are available for movement of highway traffic.

In consideration of the foregoing, together with the knowledge that school buses and trucks, weighing in excess of five tons, apparently are not being unduly inconvenienced by the restriction of the structure, BECAUSE THERE ARE SATISFACTORY ALTERNATE

ROUTES AVAILABLE IN THE IMMEDIATE VICINITY, it is the opinion of this Commission that ANY expenditure of funds, either public or private, required to reconstruct the existing crossing in its present location, are neither advisable nor necessary, and that the existing crossing may be abolished, in the interest of safety, WITHOUT ANY INCONVENIENCE TO THE TRAVELING PUBLIC; (Emphasis added) (Order, January 10, 1970, pp. 6, 7.)

Following these findings of fact, the Commission ordered that the crossing be abolished and that Penn Central barricade the crossing and thereafter remove the superstructure of the bridge. (Order, January 10, 1970, p. 7.)

On November 14, 1973, the City of Coatesville filed a Petition requesting of Commission a rehearing of its Order of January 10, 1970. The Petition alleged that the Order was

. . . based upon information and testimony which is no longer relevant, and that changes in circumstances since the hearing and additional information require further hearings to determine facts which would result in a different conclusion from that previously reached. (Petition of City of Coatesville for Rehearing, p. 1).

In this Petition and in an Amended Petition for Rehearing, the City cited the following reasons for rescision of the Order of January 10, 1970:

1. deterioration in maintenance of alternative routes and railroad-highway underpasses;
2. increased development of City north of tracks which requires additional access to City south of tracks;
3. safety and welfare of residents of City north of tracks;

- 4. the hearing of September 23, 1969 was incomplete;
- 5. the City's position that "reconstruction does not meet with approval of the City" and "the City ... would prefer that the crossing be abolished" was incorrectly stated;
- 6. the Planning Commission did not recommend abolishment of the bridge;
- 7. the Planning Commission and the City disapproved the proposal of PennDot, but there was insufficient examination of the alternatives of rehabilitation or reconstruction of the bridge.

On January 17, 1974 a hearing was scheduled and held at the order of the Commission. At this hearing Counsel for PennDot properly, as later affirmed by the Commission, brought to the attention of all parties and the Commission that the hearing was predicated upon a Petition for Rehearing which was improperly received by the Commission under the Public Utility Law. Notwithstanding the motion of PennDot to dismiss the hearing continued and testimony was offered from various witnesses on behalf of the City. Also, a witness testified on behalf of Penn Central as to the condition of the bridge structure as of the date of the present hearing.

Thereafter, the various parties filed briefs in respect to the motion of PennDot to dismiss the Petition for Rehearing. The Commission by Order dated June 4, 1974 acknowledged that the purpose of the January 17, 1974 hearing was :

. . . to determine whether the Commission should conduct hearings or deny the petition. (Order of June 4, 1974, p. 1.)

Thereafter, the Commission granted the motion of PennDot to dismiss the Petition of the City:

. . . for failure to file its request for rehearing within the time limitation provided for under Section 1006 (66 P.S. §1396) . . . (Id., pp. 3, 4.)

However, recognizing its own authority under Section 1007, 66 P.S. §1396 to schedule a rehearing whereafter it may receive evidence as to the conclusions and determinations the Commission expressed in its Order of January 10, 1970, the Commission ordered the record reopened and a hearing to be held. (Order of June 4, 1974, pp. 3, 4.)

The next hearing was held on September 19, 1974 where in response to interrogatories of the Commission, witnesses for Penn Central, City of Coatesville, County of Chester, and PennDot testified. The interrogatories were directed to the reconstruction or rehabilitation of the bridge structure, assignment of work responsibilities and allocation of costs.

At the hearing, PennDot again requested that the proceeding be dismissed. The City thereafter attempted to adopt the testimony of the witnesses who testified on January 17, 1974. Penn Central objected arguing that the purpose and intent of that testimony was exclusively on the issue of

granting or denying the Petition for Rehearing; and that the interrogatories of the Commission were not properly directed to the sole legal issue: Has there been a change of conditions or was there a misstatement of fact which would justify a rescission or modification of the Order of January 10, 1970.

Thereafter, the Commission adopted the position of Penn Central and ordered a further hearing:

. . . (a) to determine whether circumstances or conditions have changed to the extent that reopening of the crossing may be necessary in the interest of the safety, convenience, accommodation and service of the public; (b) further, to investigate the safety of the existing bridge structure and the highway approaches thereto. (Letter of Commission, dated October 29, 1974.)

On January 16, 1975, the final hearing in this proceeding was held and all of the testimony was directed to the two questions enunciated in the Letter of Commission dated October 29, 1974.

### III. ARGUMENT

1. THERE HAS NOT BEEN A CHANGE OF CIRCUMSTANCES OR CONDITIONS TO WARRANT THAT THE COMMISSION'S ORDER OF JANUARY 10, 1972 SHOULD BE RESCINDED AND THE CROSSING REOPENED.

In an attempt to determine if the factual environment of this case has changed or been altered since the September 23, 1970 hearing such that rescission or modification of the Order of January 10, 1972 is necessary the facts as contained in the amended Record must be reviewed.

There is no argument as to the geographic descriptions of the bridge location or the railroad location. The historical commercial areas are located south of the railroad tracks. There is a new, small commercial area within driving distance north of the tracks. The schools, police and fire departments and the major industry are all located south of the railroad tracks. In recent years the housing development has been north of the railroad tracks. The railroad tracks are traversed by three underpasses. Two underpasses are each equipped with two lanes for vehicular traffic and two sidewalks for pedestrian traffic. The third underpass is equipped with two lanes for vehicular traffic. There are sidewalks on both sides of the street but do not extend under the underpass. The Graham Avenue bridge has been barricaded since January, 1972 when the Commission ordered the bridge permanently barricaded. Pedestrian traffic on the bridge is possible and does exist despite the barricades. The railroad activity recognized in the Order of January 10, 1972 has not changed. All of these facts are without dispute and no citation is needed.

The condition of the bridge has changed and this is not disputed by any party. In the Order of January 10, 1972 the Commission found, according to the PennDot's witness, that the bridge:

. . . is inadequate for the accommodation of present and future highway traffic at this location . . . (Order of January 10, 1972, p. 3.)

According to this witness the roadway of only 16 feet in width is too narrow and load limitation of five (5) tons is inadequate for present traffic.

The witness for Penn Central had testified that the bridge was in fair to poor condition and although was originally designed for 12-ton loading it was presently posted for loads not exceeding five tons, and not adequate for present day highway load limits. (Id., p. 4.)

The witness for the City of Coatesville testified that:

. . . bridge is inadequate . . . (Id., p. 4.)

The witness also described:

. . . that very little LOCAL traffic uses the crossing, but that the highway principally serves Veterans Administration Hospital and provides a secondary route to and from the Coatesville By-pass. However, this traffic, as well as local traffic from the northeast section of the city, has direct access to and from the center of Coatesville without using the subject crossing. . . (Id., p. 5.)

The witness for Chester County testified that the bridge is inadequate because it is only wide enough for about

one lane of traffic and is posted for a low-load limit. (Id.)

The most recent examination and factual summary of the present condition of the bridge was given by the Penn Central witness at the hearing held September 19, 1974.

He testified that:

(A) No live loads should be permitted on the structure as it presently exists.

. . .

(A) Live load is a moving load superimposed on a standing structure.

(Q) Would that include any vehicular traffic?

(A) Yes, sir.

. . .

(Q) What would be the cost of such alteration?

[To raise the capacity of the bridge structure to ten tons.]

(A) In excess of \$200,000.

(Transcript of Hearing, September 18, 1974, pp. 204, 205.)

The conclusions of the Penn Central witness were shared by the engineering witness of the City of Coatesville.

(Q) Does it have any capacity at the present, in your opinion?

(A) I would not recommend any loading on the bridge as it presently exists.

(Q) Do you agree with [witness of Penn Central] no live loads?

(A) I agree with that.

(Id., p. 16.)

Thus the bridge has experienced a change of condition and circumstance. At the time of the first hearing, the bridge was in fair to poor condition and could support a five (5) ton live load. At the time of the hearing in September, 1974, the bridge could support no live load.

Another fact to which all parties agree is that the official position of the City of Coatesville has changed from that announced at the Hearing held September 23, 1970. At that hearing it was the position of the City that if the bridge was to be rebuilt, consideration should be given to a western connection to Fifth Avenue or Fourth Avenue, rather than to the eastward connection to Sixth Avenue, as proposed by PennDot. The City's reason was that traffic to and from the business district would not be encouraged to use the crossing because of the circuitous route and because construction would tend to further isolate the northeast section of the city from the more integrated community. The keystone of the City's position, however, is shown in its witness' testimony by the following:

(Q) In other words, the City of Coatesville's position is that rather than use the Sixth Avenue approach, instead of the Fourth Avenue as suggested, they would rather have the bridge approach closed altogether?

(A) That's correct.

(Q) Is that correct?

(A) Yes.

(Transcript of Hearing, September 23, 1970, p. 56.)

At the hearing January 16, 1975, the Mayor of the City of Coatesville gave the position of the City:

(A) We would just like to have the bridge repaired, not rebuilt.

. . . .  
(Q) . . . from a structural standpoint?

(A) Yes.

(Q) You would have the bridge location in the same place?

(A) With the proper repairs.

(Q) And would the City want the street direction of Graham Avenue maintained?

(A) Naturally.

(Transcript of Hearing, January 16, 1975, p. 93.)

Thus the position of the City has changed. In 1970, it was opposed to any restoration or reconstruction of the bridge in a direction away from its business commercial zone and which would isolate part of the community. In 1975, the City is concerned with the availability of an additional access between the sections of the City north and south of the railroad tracks. In 1975, the City did not propose that the bridge be relocated in a westerly direction but was agreeable that the bridge be restored in its historical direction. The City did not voice a position as to whether or not the original plan of PennDot remained objectionable, but as it expressed favor of restoration of the bridge in its present direction and remains concerned with a united community, it may be fairly

concluded that reconstruction per that plan is objectionable.

Through the other witnesses which appeared on behalf of the City's position, the concern for a united community was expressed. The availability routing for emergency vehicles and school vehicles was a prime concern. Passage for pedestrian traffic was another. Vehicular traffic to the business commercial zone was also cited.

While these are genuine elements of public interest and the City's present position is commendable, the safety and expense of reconstruction or rehabilitation of the bridge, as well as other alternatives must be considered.

At the time of the hearing in September, 1970 all parties agreed that the existing structure was inadequate for numerous and various reasons. At the hearing in September, 1974, certain witnesses testified that the bridge is presently unable to carry any live loads. At that hearing the PennDot witness testified:

. . . Two other alternatives considered were for connecting Graham Avenue with both Fifth Street and Sixth Street. These alternatives were rejected from further consideration because they were both obviously unfeasible from a property damage, engineering or economic standpoint. . . .  
(Transcript of Hearing, September 19, 1974, p. 257.)

In discussing the original plan, he said:

. . . the department further reviewed PennDot Exhibit Number 1, and at this point PennDot withdraws its recommendation of the same because of the substandard design criteria . . . (Id.)

Thus the facts before the Commission today are that the bridge is presently unsafe. Reconstruction of the bridge in an easterly or westerly direction is prohibitive because of economic or engineering disabilities. Rehabilitation of the bridge in its present design is proposed by the City. This design, however, was inadequate according to each and every party as shown by their testimony at the original hearing. This design also raised safety problems to certain parties and repair of the bridge according to its original design would cost more than reconstruction of a new bridge. Construction of a new bridge in the present direction would, however, according to the engineering witnesses, present problems. The geography of the area would create clearance problems for the railroad operations; would create a very steep grade of Graham Avenue for north-south traffic flow which may in turn create an unsafe condition for heavy vehicles; would create an unsafe traffic intersection north of the bridge and a potentially dangerous traffic intersection south of the bridge; and finally would create problems in respect to compliance with engineering standards created by state law.

Considering all of the above, has the Record presented a change in the factual environment which necessitates revision or modification of the Order of January 10, 1972 and the opening of the crossing? The answer to this question is No. However, the Commission is not without recourse to assist any public need demonstrated by the additions to the Record. If a need for improved vehicular and pedestrian

traffic is found, perhaps separate solutions may be recommended. As to vehicular traffic, especially emergency vehicles and school buses, perhaps the remedy is for the development of traffic programs to direct and better regulate the traffic as it enters and leaves the sections of the City divided by the railroad tracks. Also, standardized routes with traffic lights and signs may be established to facilitate vehicular passage and movement. If the present underpass crossings are unsafe the Commission should continue its investigation. There has been no showing in any past hearing that the City and the railroad have not cooperated in attempting to keep these underpasses structurally sound and safe for passage. If the present Graham Avenue bridge is needed primarily for pedestrian traffic so that other crossings can be better utilized for vehicular traffic, then perhaps a pedestrian crossing at Graham Avenue should be recommended. Considering the tremendous cost of a new vehicular and pedestrian bridge together with the engineering problems and economic plight of the parties, perhaps traffic flow patterns and a pedestrian walkway are the proper remedies in this situation. While there may be a public need, that need should closely be analyzed to determine the most safe and economical remedy.

The Record as developed by the additional testimony does not warrant that the Commission order a new vehicular-pedestrian railroad-highway bridge to be constructed nor order the rehabilitation of the present bridge structure. Other remedies should be fashioned, if necessary, to satisfy all concerned interests.

2. THE GRANTING OF A REHEARING TO DETERMINE WHETHER OR NOT THERE HAS BEEN A CHANGE OF CIRCUMSTANCES OR CONDITIONS IS ARBITRARY, CAPRICIOUS, UNREASONABLE AND AN ABUSE OF DISCRETION.

The granting of a rehearing to determine whether or not there has been a change of circumstances or conditions which would justify a rescission or modification of the Order of January 10, 1972 is arbitrary, capricious, unreasonable and an abuse of discretion.

While the Commission has the authority to amend or rescind any order after notice and opportunity to be heard, the reopening of the docket in the present proceeding is unreasonable as the action of Commission was based on giving new breath and life to the belated petition of the City of Coatesville. The authority granted by Section 1007 of the Public Utility Code, 66 P.S. 1397 does not permit such action on the part of the Commission. Department of Highways v. PA P.U.C., 178 A. 2d 820, 197 Pa. Super. 350 (1962).

The initial Order of the Commission was based upon a hearing held September 23, 1970. The Order was dated January 10, 1972. The Public Utility Code, Section 1006, 66 P.S. 1396 provides that a petition for rehearing of an order be filed within 15 days after service of the order. Thus, any party in the present proceeding had until January 25, 1972 in which to file a petition for rehearing. The City of Coatesville filed its Petition for Rehearing on November 14, 1973 and on January 7, 1974 filed an Amended Petition. The Commission denied this Petition by Order of June 4, 1974

which found that the time limitation provided by Section 1006 had expired. However, in the same breath, the Commission said:

After review of the record we find that the City of Coatesville's request may have merit and may require further investigation and review of our order of January 10, 1972 by this Commission. . .  
(Order of January 10, 1972, p. 3.)

The action of the Commission in reopening the record of the proceeding was in satisfaction of plea of the City of Coatesville. The pejorative nature of this action is further amplified by the two additional facts. The City of Coatesville was not without an opportunity to effect a timely petition for rehearing. While the official position of the City changed with the installation of a new governmental administration, this installation occurred prior to the entry of the Order of January 10, 1972. The present administration was inaugurated on January 1, 1972, nine days prior to the date of the Order. The expiration of the period for filing a proper petition occurred twenty-four days after the administration came into office. The second important fact is that, notwithstanding the change of administration, the counsel for the City has remained the same for entire duration of proceeding.

The City had the opportunity to file a timely petition. The City failed to do so and the present action of the Commission, which only occurred in response to the improper pleading, serves only to breathe new life to a belated petition.

While the Commission may dismiss this argument as being without merit and inequitable, such action would be arbitrary, capricious, unreasonable and an abuse of discretion and therefore an error of law. Dublin Water Co. v. Pa. P.U.C., 206 Pa. Sup. 213, 180 A. 2d 139 (1965).

As an administrative body, the Commission is bound by the due process provisions of constitutional law and fundamental principles of fairness. 42 Am. Jur. Public Administrative Law, p. 507; West Penn Power Co. v. Pa. P.U.C., 100 A. 2d 110, 113; 174 Pa. Sup. 123 (1954). The Commission cannot make a final determination on an ultimate question before it for adjudication and subsequently change such determination without observing the requirements of due process. Columbia Broadcasting System Inc. v. U.S., 316 U.S., 407, 416; 62 S. Ct. 1194, 86 L. Ed. 1563 (1942). The Commission's duty to comply with the principles of due process and fundamental fairness is owed as a matter of right to all of the parties in the particular proceeding, including those which "win" the adjudication as well as those who "lose" the action.

The right to petition for rehearing is an example of due process had by the party adversely affected by the Commission's decision. Concurrently, the right of review is limited so as to protect the rights of the other parties. The right of review is limited in time to insure the principles of conclusiveness and finality which are basic to the concept of due process.

The present administration of the City of Caatesville failed to exercise its right of petition for rehearing within the prescribed time. The Commission should not now breathe new life into belated action of a dilatory party.

A rescission or modification of the outstanding order based on the procedural history of this situation would set an unjust and unreasonable precedent. The harm involved in the Commission's actions can be exemplified by assuming that the Graham Street Bridge had been removed. If the Order requiring the removal of the bridge was erroneous and if the Commission rescinded its Order and required that the crossing be reestablished, other parties would be prejudiced in both expense and legal right. If the party removing the bridge was ordered to replace it, then no party would ever consider a Commission order final and act thereon without the fear of suffering the economic harm of returning the situation to the former status quo only because of erroneous action of the Commission.

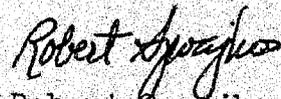
The present procedural error could have been avoided and equity served if the Commission denied reopening the proceeding without prejudice to the filing of an application of the City to establish a new crossing at the site of the former crossing. Having failed to heed the repeated suggestion, the City has led the Commission to a situation where rescission or modification of the Order, while arguably equitable, is

procedurally erroneous and violative of the principles of due process.

The Commission should deny any request to rescind or modify the Order of January 10, 1972. Such action would recognize the procedural defects in any other action. Failure to affirm the original Order will only result in the appeal to a reviewing court which would consume extensive judicial resources and would delay any establishment of any new crossing. While there may be equities to rescind or modify the Order, procedural equities must also be considered. A speedy filing of an application for approval of the construction of a crossing above the tracks of a railroad and adoption of the present Record could rectify the current procedural defect if the equities demand any remedial action. The Commission must subscribe to its mandate of procedural due process. Failure or avoidance of this duty will only result in establishing a precedent which will ultimately be found arbitrary, capricious, unreasonable, an abuse of discretion, and therefore an error of law.

WHEREFORE, it is requested that the Commission make findings of facts and conclusions consistent with the above arguments.

Respectfully submitted,



Robert Szwajkos  
Attorney for Trustees

March 7, 1975

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION  
HARRISBURG 17120

Legal Bureau

HTK-15-3-77  
RECEIVED  
MAR 12 1975  
Sec. Ltry. & Off. e  
Public Utility Commission  
4/5/75

IN REPLY REFER TO

March 11, 1975

Will Ketner, Secretary  
Pennsylvania Public Utility Commission  
North Office Building  
Harrisburg, Pennsylvania 17120

RECEIVED  
MAR 12 1975  
Sec. Ltry. & Off. e  
Public Utility Commission

Re: Pennsylvania Public Utility Commission

vs.

Department of Highways of the Commonwealth  
of Pennsylvania, City of Coatesville,  
County of Chester and Penn Central Trans-  
portation Company

C. 18838

Dear Mr. Ketner:

I received copies of Briefs with regard to the above-captioned matter from Alexander Endy, Esquire, Solicitor for the City of Coatesville, and Robert Sz wajkos, Counsel for Penn Central Transportation Company.

It is respectfully requested that the Commission grant Oral Argument in this matter notwithstanding the fact that more than five (5) days have passed since the record was closed. It is further respectfully requested that the Commission waive its Rule 49.

If the Commission sees fit to waive Rule 49, the following questions will be argued at the time of Oral Argument:

1. Was there a change of circumstances or conditions sufficient to warrant the Commission rescinding its Order of January 10, 1972, and reopen the crossing?
2. Did the Commission act in an arbitrary, capricious and unreasonable manner and abuse its discretion in granting a rehearing to determine whether or not there was a change of circumstances or conditions?

DOCKETED  
COMPLAINT  
APR 11 1975  
ENTRY NO. *[Signature]*

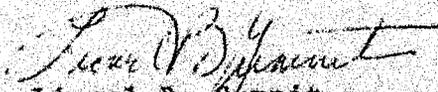
DUPLICATE FILED.  
ORIGINAL FILED  
TO COMMONWEALTH COURT.

Will Ketner, Secretary

March 11, 1975

Copies of this letter are being sent to Alexander Endy, Esquire,  
and Robert Szwajkos, Esquire.

Very truly yours,

  
Lionel B. Gurnit,  
Assistant Attorney General

LBG:mb

April 16, 1975

C. 18838

Lionel B. Gurnit, Assistant Attorney General  
Pennsylvania Department of Transportation  
Capitol Associates Building  
Harrisburg, Pennsylvania 17120

Pennsylvania Public Utility Commission  
v.  
Department of Highways of the Commonwealth of Pennsylvania,  
City of Coatesville, County of Chester and Penn Central  
Transportation Company

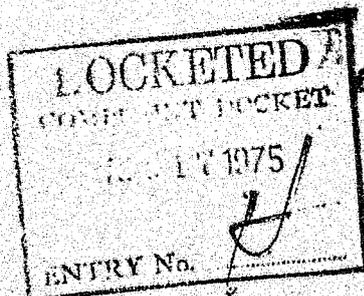
Dear Sir:

This is to advise that at the public meeting held April 8, 1975, the Commission granted the request of counsel for Pennsylvania Department of Transportation to present oral argument in the above entitled proceeding.

Accordingly, the argument has been scheduled to be held Tuesday, April 29, 1975 in the Commission's Hearing Room No. 1, Ground Floor, North Office Building, Harrisburg, Pennsylvania, commencing at 10:00 a.m.

Please acknowledge receipt of this letter.

Very truly yours,



for Will Ketner  
Secretary

DUPLICATE RECORDED.  
ORIGINAL CERTIFIED  
TO COMMONWEALTH COURT.