

Borough of Chambersburg

100 South Second Street • P.O. Box 1009
Chambersburg, PA 17201-9909 • (717) 264-5151

ORIGINAL



* INCORPORATED 1803 *

July 18, 1990

Ms. Janet E. Patrick
PA Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17120

RECEIVED

JUL 19 1990

SECRETARYS OFFICE
Public Utility Commission

Re: Revised Formal Complaint Form - PUC-117

Dear Ms. Patrick:

C-912998

Please find enclosed a corrected formal complaint form in accordance with your July 3, 1990 letter. Also provided are copies for all utilities as follows:

Franklin County, 157 Lincoln Way East, Chambersburg, PA 17201

United Telephone Co., 250 Lincoln Way East, Chambersburg, PA 17201

PennDOT, 21st and Herr Streets, Harrisburg, PA 17103-1699

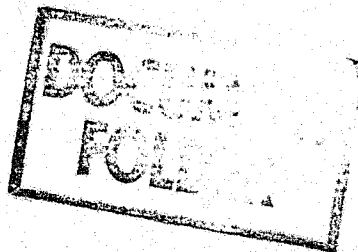
Warner Cable Communications, Inc., 120 Industrial Drive, Chambersburg, PA 17201

I trust this satisfies your request. However, as always, should you need any more information, please feel free to contact me.

Sincerely,

BOROUGH OF CHAMBERSBURG

Robert L. Wagner
Director of Public Works



JUL 20 1990

RLW/tm

PUC1/ENGCOR/TMLIB

RECEIVED
FORMAL COMPLAINT

JUL 19 1990

RECEIVED
JUN 26 1990
SECRETARY'S OFFICE
Public Utility Commission

BEFORE
SECRETARY'S OFFICE
Public Utility Commission
PENNSYLVANIA PUBLIC UTILITY COMMISSION

For Commission Use Only:

COMPLAINT DOCKET NO. C-902998

REF. #

UTILITY CODE

BOROUGH OF CHAMBERSBURG

CONSOLIDATED RAIL CORPORATION DEPT. OF
TRANSPORTATION OF THE COMMONWEALTH OF
PENNSYLVANIA UNITED TELEPHONE CO OF
PENNSYLVANIA, WARNER CABLE COMMUNICATIONS,
INC. and FRANKLIN COUNTY

PLEASE PRINT:

1. YOUR NAME, ADDRESS AND TELEPHONE NUMBER.

Name BOROUGH OF CHAMBERSBURG
Street 100 SOUTH SECOND STREET
City CHAMBERSBURG State PA Zip 17201
County FRANKLIN Home Telephone-Area Code () _____
Work Telephone-Area Code (717) 264-5151

2. COMPANY YOU ARE COMPLAINING ABOUT.

Name CONRAIL , et al.

3. WHAT IS YOUR COMPLAINT (DESCRIBE PROBLEM).

Conrail has sidewalks on three (3) superstructures within the Borough
of Chambersburg that have deteriorated to a point that safety for
pedestrians is of great concern. The three (3) areas are as follows:
(1) Sidewalk on overpass at Railroad and State Route 316;
(2) Sidewalk in underpass at Railroad and Borough's Catherine Street; and
(3) Sidewalk in underpass at Railroad and State Route 30.

Handwritten signature/initials

(More Space On Back)

For Commission Use Only:
DATE FILED 07/19/90

MONITOR BUREAU SCR

(If You Need More Space Attach Paper)

4. WHAT DO YOU WANT US TO DO?
Issue a notice to Conrail to repair the sidewalks before a serious
accident occurs.

(If You Need More Space Attach Paper)

YOU MUST SIGN HERE



Bernard L. Washabaugh

Signature of complainant or attorney for corporate complainant

Bernard L. Washabaugh, President of Town Council

PUT TODAY'S DATE HERE



June 27, 1990

Today's Date

YOU DO NOT NEED A LAWYER If you **DO** have a lawyer PLEASE PRINT the lawyer's name, address and telephone number below.

Lawyer's Name THOMAS J. FINUCANE, BOROUGH SOLICITOR

Street WINGERD AND LONG, BOX 187A

City CHAMBERSBURG State PA Zip 17201

Telephone Number-Area Code (717) 264-4104

**THIS MUST BE COMPLETED BY NOTARY PUBLIC
AFFIDAVIT (Natural Person)**

COMMONWEALTH OF PENNSYLVANIA

County

ss:

_____, being duly sworn (affirmed) according to law, deposes and says that the facts above set forth are true and correct; or are true and correct to the best of his knowledge, information and belief and he expects to be able to prove the same at the hearing hereof.

Signature of Affiant

Sworn and subscribed before me this _____

day of _____ 19 _____

My Commission Expires _____

Signature of Official Administering Oath

AFFIDAVIT (Corporation)

COMMONWEALTH OF PENNSYLVANIA

FRANKLIN

County

ss:

BERNARD L. WASHABAUGH

_____, being duly sworn (affirmed) according to law, deposes and says that he is the President of Council of the Borough of Chambersburg
(Office of Affiant)

(Name of Corporation)

_____; that he is authorized to and does make this affidavit for it; and that the facts above set forth are true and correct; or are true and correct to the best of his knowledge, information and belief and he expects the said Borough of Chambersburg

(Name of Corporation)

to be able to prove the same at the hearing hereof.

Bernard L. Washabaugh
President of Town Council

Bernard L. Washabaugh
Signature of Affiant

Sworn and subscribed before me this 27th

day of June 19 90

My Commission Expires

NOTARIAL SEAL
TANYAGENE MICKEY, Notary Public
Chambersburg Boro, Franklin County, PA
My Commission Expires Feb. 18, 1992

Tanyagene Mickey
Signature of Official Administering Oath

Borough of Chambersburg

100 South Second Street • P.O. Box 1009
Chambersburg, PA 17201-0909 • (717) 264-5151



* INCORPORATED 1803 *

June 28, 1990

Mr. Jerry Rich, Secretary
PA Public Utility Commission
P. O. Box 3265, N.O.B.
Harrisburg, PA 17120

RECEIVED

JUN 29 1990

SECRETARY'S OFFICE
Public Utility Commission

Re: Formal Complaint Form - PUC-117

C-902998

Dear Mr. Rich:

Enclosed is the original and three (3) copies of form PUC-117, Formal Complaint before the Pennsylvania Public Utility Commission. Please forward any questions or correspondence regarding this Formal Complaint to:

Mr. Robert L. Wagner
Borough Engineer
Borough of Chambersburg
100 South Second Street
Chambersburg, PA 17201

Thank you for your consideration.

Sincerely,

BOROUGH OF CHAMBERSBURG

Tanya Mickey
Tanya Mickey,
Borough Secretary

cc: R. L. Wagner, Borough Engineer

PUC/ENGCOR/TMLIB

AN EQUAL OPPORTUNITY EMPLOYER



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

July 3, 1990

IN REPLY PLEASE
REFER TO OUR FILE
C-902998

Borough of Chambersburg
v.
Consolidated Rail Corporation,.....
.....

Bernard L. Washabaugh, President
of Council
Borough of Chambersburg
100 South Second Street
Chambersburg, Pennsylvania 17201

Dear Sir:

We are returning herewith the original notarized and three copies of the Borough of Chambersburg's formal complaint against Consolidated Rail Corporation with the request that you do the following:

1. have Notary Public Tanyagene Mickey put the raised notary seal on the corporate form of affidavit,
2. in addition to Consolidated Rail Corporation, include the names of any public utility companies that may have facilities involved at the crossings involved, as well as Franklin County, (see enclosed rule 3.361)
3. submit an additional copy of the notarized complaint for each additional party-respondent named in numbered paragraph 2 of the complaint form.

Upon receipt of the Borough of Chambersburg's formal complaint, corrected as set forth above, same will receive our consideration.

Very truly yours,

for JERRY RICH
Secretary

Enclosures
mpk



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

July 24, 1990

IN REPLY PLEASE
REFER TO OUR FILE

C-902998

A. J. DiGreggario, Docket Clerk
Consolidated Rail Corporation
1138 Six Penn Center Plaza
Philadelphia, PA 19103

Dear Sir:

A complaint has been filed against you before the Pennsylvania
Public Utility Commission by Borough of Chambersburg
(the complaining party)

To defend yourself against the claims stated in the following pages, you
must act within twenty (20) days, by filing in writing with the Commission,
either personally or through your attorney, your defenses or objections to
the claims stated against you. Or, you may satisfy the complaint by
settling the matter with the Complainant and submitting proof of settle-
ment to the Commission within twenty (20) days.

IF YOU FAIL TO RESPOND WITHIN TWENTY (20) DAYS THE CASE MAY GO
FORWARD IN YOUR ABSENCE AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE
COMMISSION WITHOUT FURTHER NOTICE.

AN ADMINISTRATIVE LAW JUDGE MAY REVOKE OR SUSPEND ANY CERTIFICATE
OR PERMIT HELD BY YOU, OR IMPOSE A FINE, OR ANY OTHER APPROPRIATE PENALTY
OR REMEDY AUTHORIZED BY THE PUBLIC UTILITY CODE. YOU MAY LOSE MONEY OR
PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

Detailed instructions on how to proceed are contained in the attached
pages. You are advised to read them carefully.

Unless you are a corporation or other organization, you may proceed
without a lawyer. However, if you want a lawyer and do not have one or
cannot afford one, the office listed below can tell you where you can
get legal help:

Pennsylvania Lawyer Referral Service
Pennsylvania Bar Association
P.O. Box 186
Harrisburg, Pennsylvania 17108
(800) 692-7375

Very truly yours,

Jerry Rich
Secretary

fao
Attachment

SIMILAR LETTER LIST ATTACHED.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKETED
JUL 27 1990

July 24, 1990

Borough of Chambersburg

v.
Consolidated Rail Corporation,
Dept. of Trans. of the Common-

:
:
: Complaint Docket
: No. C-902998
:

wealth of Pennsylvania, United Telephone
Company of Pennsylvania, Warner Cable Communications, Inc., and Franklin
County

FORMAL COMPLAINT
NOTICE TO RESPONDENT
TO ANSWER OR SATISFY

DOCKETED
FILED

TO: Consolidated Rail Corporation, Dept. of Trans. of the Commonwealth of
Pennsylvania, United Telephone Company of Pennsylvania, Warner Cable
Communications, Inc., and Franklin County.
TAKE NOTICE:

That a complaint in the above entitled matter, of which the attached is a true and correct copy, has been presented and filed of record with the Pennsylvania Public Utility Commission. Section 702 of the Public Utility Code, 66 Pa. C.S. §702, requires the Commission to serve on each party named in a complaint a copy of the complaint and notice calling upon each party to satisfy the complaint, or to answer the same in writing within a specified time; THEREFORE,

1. You have twenty (20) days from the date on which this complaint is served to either satisfy this complaint or to file with the Secretary of the Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17120, an answer (original and two copies), in writing, under oath, which, as required by Section 5.61 of the Commission's Rules of Practice and Procedure, 52 Pa. Code §5.61, either affirms or specifically denies the allegations in this complaint. You must also serve a copy of the answer upon the complainant. The date of service is the mailing date as indicated by the date at the top of this Notice. Section 1.56(a) of the Commission's Rules of Practice and Procedure, 52 Pa. Code §1.56(a).

2. If you fail to either satisfy this complaint or to file an answer or other responsive pleading within twenty (20) days, you will be deemed to have admitted all the allegations in this complaint in accordance with

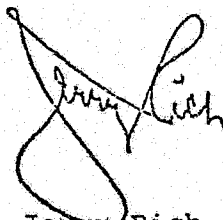
Section 5.61 of the Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code §5.61. In that event, the Commission may, without hearing, enter an order which either revokes or suspends any certificate or permit held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C.S. §101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

3. If you elect to satisfy this complaint you must file, within twenty (20) days from the date on which this complaint is served, affidavits executed by each complainant that this complaint has been satisfied. Such affidavits must describe the basis on which this complaint was satisfied; any settlement agreement between the parties must be reduced to writing and attached to the affidavit. Such affidavits are to be filed with the Secretary of the Commission at the address set forth in paragraph 1. Upon receipt of affidavits of satisfaction from all complainants, this complaint may be dismissed by the Commission in accordance with Section 703(a) of the Public Utility Code, 66 Pa. C.S. §703(a), unless the Commission determines that such dismissal would be contrary to the public interest, in which event the Commission may direct that hearings be held upon the complaint.

4. If you file an answer which admits the allegations in this complaint, or which fails to specifically deny the allegations in this complaint, the Commission may, without hearing, enter an order which either revokes or suspends any certificate held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C.S. §101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

5. If you file a timely answer which specifically denies the allegations in this complaint, or which raises material questions of law or fact, this matter shall be referred to the Office of Administrative Law Judge for hearing and decision. If, after hearing on the issues raised by that answer, you are found to have committed any of the violations alleged in this complaint, the Administrative Law Judge may render a decision which either revokes or suspends any certificate or permit held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C.S. §101, et seq.; and, if you are a customer of a utility,

an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. In the imposition of a penalty after hearing the Administrative Law Judge is not bound by the relief sought by the complainant in paragraph 4 of the attached complaint.

A handwritten signature in black ink, appearing to read "Jerry Rich". The signature is stylized with a large, sweeping loop at the bottom.

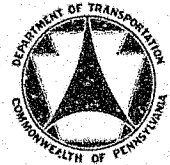
Jerry Rich
Secretary

(SEAL)

Certified Mail
Return Receipt Requested

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

NVL



Office of Chief Counsel
Harrisburg, Pennsylvania 17120

ORIGINAL

DOCUMENT
FOLDER

August 9, 1990

IN REPLY REFER TO

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

RECEIVED

AUG 10 1990

SECRETARYS OFFICE
Public Utility Commission

Chambersburg Banc v. Court

Re: Complaint Docket
No. C-902998

Dear Secretary Rich:

Enclosed for filing are the original and two (2) copies of the Answers with New Matter of the Pennsylvania Department of Transportation in the above-captioned case.

I hereby certify that copies have been sent to all parties of record.

Very truly yours,

Trent Hargrove
Assistant Counsel-in-Charge
Real Property Division
Utility Section

220/TH:mbm
717-787-2819

cc: William Pickering, P.E., (Attn: Milton H. Davis, P.E.)
District 8-0
Parties of Record - Page 2

Enclosure

Jerry Rich, Secretary
Page 2
C-902998

Parties of Record

John B. Wilson, Deputy Chief Counsel
Law Bureau - Rail Division
Pennsylvania Public Utility Commission
G-31, North Office Building
Harrisburg, PA 17120

Bernard L. Washabaugh, President/Council
Borough of Chambersburg
100 South Second Street
Chambersburg, PA 17201

A.J. Degregorio, Docket Clerk
Consolidated Rail Corporation
1138 Six Penn Center Plaza
Philadelphia, PA 19103

Franklin County Commissioners
157 Lincoln Way East
Chambersburg, PA 17201

David E. Freet, Staff Director
1201 Walnut Bottom Road
P.O. Box 1201
Carlisle, PA 17013-0905

Warner Cable Communications, Inc.
120 Industrial Drive
Chambersburg, PA 17201

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

**DOCUMENT
FOLDER**

Borough of Chambersburg :
 :
 v. : Complaint Docket No.
 : C-902998
 Consolidated Rail Corporation, :
 Department of Transportation, :
 United Telephone Company of :
 Pennsylvania, Warner Cable :
 Communications Inc., and Franklin :
 County :

DOCKETED
AUG 13 1990

ANSWER OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

COMES NOW, the Commonwealth of Pennsylvania, Department of Transportation, by its Attorney Trent Hargrove, Assistant Counsel-in-Charge, Utility Section Real Property Division and makes Answer to the Complaint of the Borough of Chambersburg as follows:

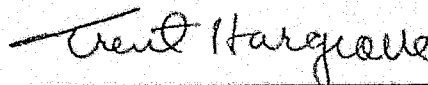
1. Admitted.
2. Admitted.
3. Denied. Respondent, Pennsylvania Department of Transportation avers that after reasonable investigation, it is without knowledge or information sufficient to form a conclusion as to the truth or falsity of the statements contained in paragraph No. 3 and, therefore, proof thereof is demanded.

NEW MATTER

4. In the absence of a Public Utility Commission Order or an agreement entered into by the Department in which it was assigned or assumed maintained obligations, under various sections of the State Highway Law the Department is not responsible for the area beyond the curb line. The Department is not aware of any Public Utility Commission Order or other agreement by which the Department was assigned or by which it assumed maintenance obligations with respect to the sidewalks that are the subject of this Complaint.

WHEREFORE, the Commonwealth of Pennsylvania, Department of Transportation respectfully request this Honorable Commission to dismiss the Complaint of the Borough of Chambersburg or in the alternative enter an Order dismissing Pennsylvania Department of Transportation as a party of this proceeding.

Respectfully submitted,



Trent Hargrove
Assistant Counsel-in-Charge
Real Property Division
Utility Section
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel
Harrisburg, Pennsylvania 17120
(717) 787-2819

Dated: August 9, 1990

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF DAUPHIN :

Before me, the undersigned, personally appeared, Ravi R. Kohli, P.E., Grade Crossing Engineer who, being duly sworn according to law, deposes and says that he is authorized and does make this affidavit on behalf of the Commonwealth of Pennsylvania, Department of Transportation, and the averments contained and set forth in the foregoing Answer with New Matter of Pennsylvania Department of Transportation are true and correct, to the best of his knowledge and belief.

Ravi R. Kohli
Ravi R. Kohli, P.E.
Grade Crossing Engineer
R/W and Utilities Division

Sworn and subscribed before me
this 10 day of Aug., 1990.

Margaret A. DeLuca
Notary Public

My Commission Expires: 2/11/92



CONRAIL

ORIGINAL

VIA AIRBORNE

August 15, 1990

RECEIVED

AUG 15 1990

SECRETARYS OFFICE
Public Utility Commission

57629 3826

Jerry Rich, Secretary
PA Public Utility Commission
Post Office Box 3265
New Filing Section
Room B-18, North Office Building
North Street & Commonwealth Ave.
Harrisburg, PA 17120

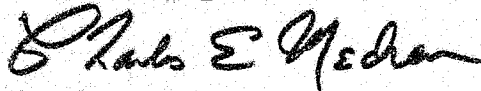
Re: Borough of Chambersburg v. Consolidated Rail
Corporation, et al. - Docket No. C-902998

Dear Mr. Rich:

Enclosed for filing with the Commission are an original and two copies of Conrail's (1) Petition for Leave to Submit a Late Filed Answer to the Complaint, and (2) Conrail's Answer to the Complaint in the above-captioned proceeding. I hereby certify that I have served copies of the two pleadings upon the parties listed on the attached Certificate of Service, via Airborne Express.

This morning I spoke by telephone with the Borough Solicitor, Thomas J. Finucane, who stated that he would not object to Conrail's two day delay in filing the answer.

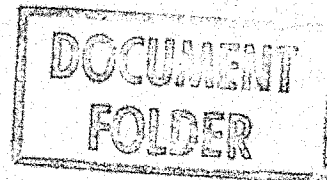
Very truly yours,



Charles E. Mechem
Senior General Attorney
1138 Six Penn Center Plaza
Philadelphia, PA 19103
(215) 977-5017

CEM/bd
enclosures

cc: All Parties of Record



BEFORE
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Borough of Chambersburg v. :
Consolidated Rail Corporation, :
Department of Transportation :
of The Commonwealth of Penn- :
sylvania, Warner Cable :
Communications, Inc., and :
Franklin County. :

C-902998

RECEIVED
AUG 15 1990
SECRETARYS OFFICE
Public Utility Commission

PETITION OF CONSOLIDATED RAIL CORPORATION FOR
LEAVE TO SUBMIT A LATE FILED ANSWER TO THE COMPLAINT

Conrail requests that the Commission grant Conrail leave to file the attached answer to the complaint of the Borough of Chambersburg, which answer was due Monday, August 13.

1. In justification for the delay in filing, Conrail's counsel can offer no extenuating circumstances other than a miscalculation that lead him to believe that the answer was due August 15 rather than August 13.

2. Conrail believes that the interests and rights of no party to this proceeding will be prejudiced by the Commission's acceptance of this delayed reply.

3. In this connection, 52 Pa. Code §1.2 provides that the Commission's Rules

"Shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable. The Commission or presiding officer at any stage of any action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties."

DOCKETED
AUG 22 1990

DOCUMENT
FOLDER

WHEREFORE, Conrail requests that the Commission permit the delayed filing of the attached reply of Conrail to the complaint of the Borough of Chambersburg.

Respectfully submitted,



CHARLES E. MECHEM
1138 Six Penn Center Plaza
Philadelphia, PA 19103
(215) 977-5017

Attorney for
CONSOLIDATED RAIL CORPORATION

DATED: August 15, 1990

BEFORE
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Borough of Chambersburg v. :
Consolidated Rail Corporation, :
Department of Transportation :
of The Commonwealth of Penn- : C-902998
sylvania, Warner Cable :
Communications, Inc., and :
Franklin County. :

DOCKETED
AUG 22 1990

CONSOLIDATED RAIL CORPORATION'S
ANSWER TO THE COMPLAINT

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

To the numbered allegations of the complaint, respondent, Consolidated Rail Corporation ("Conrail"), replies as follows.

1. Admitted.
2. Admitted.

DOCUMENT
FOLDER


3. Conrail lacks sufficient information to respond to, and therefore denies, the allegation that "Conrail has sidewalks" on three superstructures and also the allegation that the sidewalks "have deteriorated to a point that safety for pedestrians is of great concern." Accordingly, Conrail demands proof thereof.

4. Conrail denies that the Commission should "issue a notice to Conrail to repair the sidewalks before a serious accident occurs."

WHEREFORE, Conrail requests that the complaint be denied and dismissed. In addition, Conrail suggests that the

Commission schedule a field or site conference among the interested parties to inspect the locations involved in the complaint before taking further formal action.

Respectfully submitted,



CHARLES E. MECHEM
1138 Six Penn Center Plaza
Philadelphia, PA 19103
(215) 977-5017

Attorney for
CONSOLIDATED RAIL CORPORATION

DATED: August 15, 1990

STATE OF PENNSYLVANIA :

: SS

COUNTY OF PHILADELPHIA:

AFFIDAVIT

J. D. COSSEL, being duly sworn according to law, deposes and says that he is Chief Engineer, Design and Construction, of Consolidated Rail Corporation; that he is authorized to and does make this Affidavit for it; that the facts set forth above are true and correct to the best of his knowledge, information and belief; and that he expects Conrail to be able to prove the same, if necessary, at any hearing that may be held in connection with this matter.

J. D. Cossel

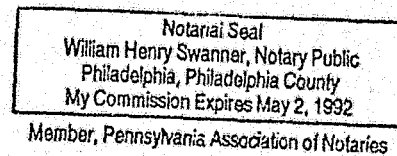
J. D. COSSEL

Sworn to and Subscribed

Before me this 15 Day
of August, 1990

William H. Swanner

Notary Public



CERTIFICATE OF SERVICE

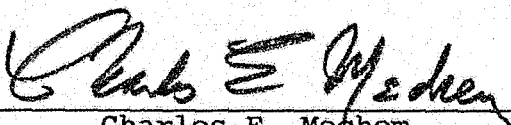
I hereby certify that I, CHARLES E. MECHEM, counsel for Consolidated Rail Corporation, this 15th day of August 1990, served the foregoing Petition and Answer upon the parties listed below, via Airborne Express, addressed as follows:

Office of the Chief Counsel
PennDOT
Transportation & Safety Building
Harrisburg, PA 17129

Commissioners of Franklin County
Chambersburg, PA 17201

Thomas J. Finucane
Borough Solicitor
Wingerd and Long, Box 187A
Chambersburg, PA 17201

Office of Chief Counsel
PA Department of Transportation
513 Transportation & Safety Bldg.
Harrisburg, PA 17120


Charles E. Mechem

August 20, 1990

Mr. Bernard L. Washabaugh
President of Town Council
100 South Second Street
Chambersburg, PA 17201

In re: C-902998 - Borough of Chambersburg v. Consolidated
Rail Corporation, Pennsylvania Department of
Transportation, United Telephone Company of
Pennsylvania, Warner Cable Communications,
Inc., and Franklin County

Dear Mr. Washabaugh:

This is to advise that a field investigation and conference will be held beginning at the crossing where State Route 30 (Lincoln Highway) crosses below tracks of Consolidated Rail Corporation in the Borough of Chambersburg, Franklin County on Friday, September 7, 1990 at 10:00 a.m. to discuss the complaint filed by the borough concerning this crossing and the two other crossings listed in the complaint.

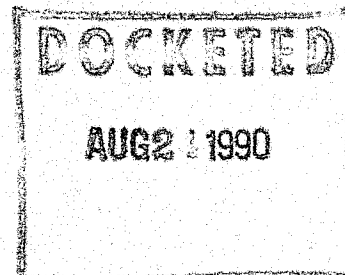
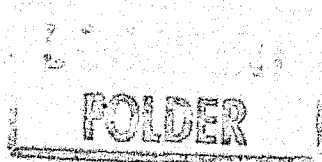
Kindly arrange to have a representative present.

Very truly yours,

W. J. Knerr
Senior Civil Engineer
Rail Safety Division
Bureau of Safety and Compliance

WJK:11

See Attached List



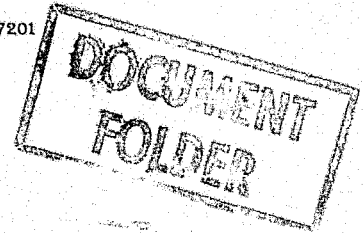
ORIGINAL

TELEPHONE (717) 264-8020
FAX (717) 264-8025

LAW OFFICES
WELTON J. FISCHER

550 CLEVELAND AVENUE
CHAMBERSBURG, PENNSYLVANIA 17201

August 20, 1990



Jerry Rich, Secretary
Pennsylvania Public Utility Commission
Post Office Box 3265
New Filing Section
Room B-18, North Office Building
North Street and Commonwealth Avenue
Harrisburg, Pennsylvania 17120

RECEIVED

AUG 21 1990

SECRETARY'S OFFICE
Public Utility Commission

Dear Mr. Rich:

In Re: Borough of Chambersburg v. Consolidated
Rail Corporation, et al - Docket No. C-902998

Enclosed for filing with the Commission are an original and two copies of Franklin County's Petition for Leave to Submit a Late Filed Answer to the Complaint and Franklin County's Answer to the Complaint in the above-captioned proceeding. I hereby certify that I have served copies of the two pleadings upon the parties listed on the attached Certificate of Service, via ordinary mail.

Today I spoke by telephone with the Borough Solicitor, Thomas J. Finucane, who stated that he would not object to Franklin County's delay in filing the answer.

Very truly yours,

LAW OFFICES OF WELTON J. FISCHER

BY

A handwritten signature in cursive script that reads "Welton J. Fischer". The signature is written in dark ink and is positioned above the typed name.

Welton J. Fischer

Enclosure

Certified Mail Number P 006 653 829

RECEIVED

AUG 21 1990

BEFORE
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE
Public Utility Commission

Borough of Chambersburg v. :
Consolidated Rail Corporation, :
Department of Transportation :
of the Commonwealth of : C-902998
Pennsylvania, Warner Cable :
Communications, Inc., and :
Franklin County :

PETITION OF FRANKLIN COUNTY
FOR LEAVE TO SUBMIT A LATE FILED ANSWER TO THE COMPLAINT

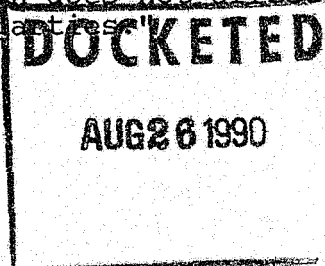
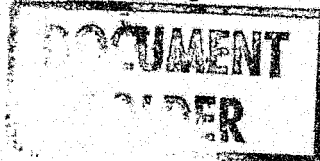
Franklin County requests that the Commission grant Franklin County leave to file the attached answer to the complaint of the Borough of Chambersburg, which answer was due Monday, August 13.

1. In justification for the delay in filing, Franklin County's Solicitor can offer no extenuating circumstances other than the fact that, as a result of a death in the Solicitor's family, several matters have been delayed and this response was among those delayed.

2. Franklin County believes that the interests and rights of no party to this proceeding will be prejudiced by the Commission's acceptance of this delayed reply.

3. In this connection, 52 Pa. Code Section 1.2 provides that the Commission's Rules

"Shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable. The Commission or presiding officer at any stage of any action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties."



WHEREFORE, Franklin County requests that the Commission permit the delayed filing of the attached reply of Franklin County to the complaint of the Borough of Chambersburg.

Respectfully submitted,



Welton J. Fischer
550 Cleveland Avenue
Chambersburg, Pennsylvania 17201
(717) 264-8020

Solicitor for Franklin County

Dated: August 20, 1990

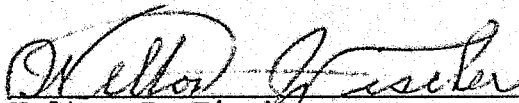
BEFORE
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Borough of Chambersburg v. :
Consolidated Rail Corporation, :
Department of Transportation :
of the Commonwealth of : C-902998
Pennsylvania, Warner Cable :
Communications, Inc., and :
Franklin County :

FRANKLIN COUNTY'S ANSWER TO THE COMPLAINT
TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

In response to the complaint, respondent, Franklin County, replies that it does not own the subject facilities, has no responsibility for repair or maintenance of the same, has no funds available for such purposes and is not willing to make any contribution to the same.

Respectfully submitted,


Welton J. Fischer
550 Cleveland Avenue
Chambersburg, Pennsylvania 17201
(717)264-8020

Solicitor for Franklin County

Dated: August 20, 1990

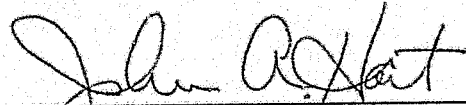
DOCUMENT
FOLDER

DOCKETED
AUG 26 1990

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF FRANKLIN :

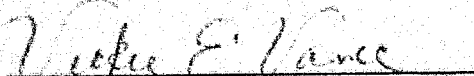
AFFIDAVIT

John Hart, being duly sworn according to law, deposes and says that he is Chief Clerk of Franklin County; that he is authorized to and does make this Affidavit for it; that the facts set forth above are true and correct to the best of his knowledge, information and belief; and that he expects Franklin County to be able to prove the same, if necessary, at any hearing that may be held in connection with this matter.



John Hart, Chief Clerk
Franklin County

Sworn to and subscribed
before me this 27th day
of August, 1990.



Notary Public

NOTARIAL SEAL
VICKIE E. VANCE, NOTARY PUBLIC
CHAMBERSBURG 2100, FRANKLIN COUNTY, PA
MY COMMISSION EXPIRES FEBRUARY 9, 1993

CERTIFICATE OF SERVICE


I hereby certify that I, Welton J. Fischer, Solicitor for Franklin County, this 20th day of August, 1990, served the foregoing Petition and Answer upon the parties listed below, addressed as follows:

Office of the Chief Counsel
PennDOT
Transportation & Safety Building
Harrisburg, Pennsylvania 17129

Thomas J. Finucane, Esquire
Solicitor, Borough of Chambersburg
Wingerd and Long
P. O. Box 187A
Chambersburg, Pennsylvania 17201

Office of Chief Counsel
Pennsylvania Department of Transportation
513 Transportation and Safety Building
Harrisburg, Pennsylvania 17120

Charles E. Mechem
Senior General Attorney
Consolidated Rail Corporation
1138 Six Penn Center Plaza
Philadelphia, Pennsylvania 19103



Welton J. Fischer

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265
April 30, 1991

In Re: C-902998

(See attached list)

Borough of Chambersburg
vs.

Consolidated Rail Corporation, Pennsylvania Department of Transportation,
United Telephone Company of Pennsylvania, Warner Cable Communications,
Incorporated, and Franklin County.

NOTICE

This is to inform you that a hearing on the above captioned case will be held Tuesday, July 23, 1991, at 10:00 a.m., in Franklin County Courthouse, Jury Assembly Room, Third Floor, 157 Lincoln Way East, Chambersburg, Pennsylvania.

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

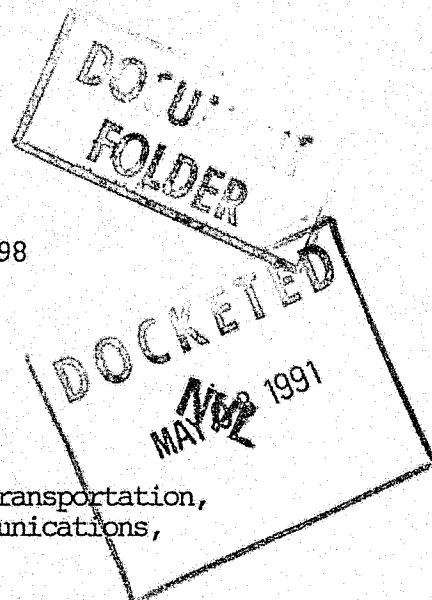
Each party is requested to submit testimony and exhibits with respect to the entire crossing alteration project with the understanding that the Commission may, in adjudicating this matter, take jurisdiction over any desired portion of the project.

If any party intends to offer prepared written testimony, such testimony must be served upon each participant of record no less than twenty (20) days prior to this hearing.

You are advised that if you fail to appear at the hearing, the hearing will proceed without you. In that event, it is possible that you or your client will have issues determined against you and that you might be assigned positive duties or be required to pay money and will have waived any objection thereto.

The Commission's Rules require that all parties (except individuals appearing on their own behalf) be represented by counsel at hearing, therefore, will you please have counsel of your choice file an appearance on your behalf prior to the hearing date herein stated.

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



The presiding officer in this proceeding is Administrative Law Judge Morris Solomon. Judge Solomon can be contacted at P.O. Box 3265, Harrisburg, Pennsylvania 17105-3265; telephone (717) 783-5452.

Enclosures

cc: Judge Solomon
Mr. Bramson
Bur. of Safety/Compliance
Law Bureau
Mrs. Kelly
Mrs. Howell
Docket Room

Certified Mail
Receipt Requested

1. Borough of Chambersburg shall submit testimony describing in detail the conditions presently existing at the subject crossings which, in its opinion, render the crossings dangerous or inadequate for the safety of the users currently traversing the crossing, and to what extent the subject crossings should be altered or reconstructed in the interest of safety and/or accommodation and convenience of the public.
2. Borough of Chambersburg shall submit testimony as to its present obligations with respect to the maintenance of the crossings and the highway approaches thereto.
3. Borough of Chambersburg shall submit testimony as to whether these streets at the crossings are borough streets.
4. Borough of Chambersburg shall submit testimony as to what portion of the work it will agree to perform; what portion of the cost it will agree to bear; and what portion of the improvement it will agree to maintain in the future, in the event the complaint is sustained and an improvement of the crossings is ordered by the Commission.
5. Consolidated Rail Corporation shall submit testimony as to the exact corporate name of the owner and of the operator of the line of railroad involved at the subject crossings.
6. Consolidated Rail Corporation shall submit testimony indicating its future plans with respect to the line of railroad involved at the subject crossings.
7. Consolidated Rail Corporation shall submit testimony as to the number of tracks presently located at the subject crossings, and the volume, class and approximate speed of all trains operated over said track or tracks.
8. Consolidated Rail Corporation shall submit testimony describing in detail the existing bridge structures, including the general physical condition of the structures, and state the date of construction of each structure, the purpose of their construction and the party or parties responsible for their construction.
9. Consolidated Rail Corporation shall submit testimony as to its present obligation with respect to the maintenance of the crossings.
10. Consolidated Rail Corporation shall submit testimony as to whether, in its opinion, the crossings are dangerous or inadequate and, if so, what the corporation recommends to alleviate said situation.

11. Consolidated Rail Corporation shall submit testimony as to what portion of the work it will agree to perform; what portion of the costs it will agree to bear; and what portion of the improvement it will agree to maintain in the future, in the event the complaint is sustained and an improvement of the crossings is ordered by the Commission.
12. Pennsylvania Department of Transportation shall submit testimony as to whether these crossings involved highways that are on the state highway system.
13. Pennsylvania Department of Transportation shall submit testimony describing in detail the existing crossing structures and indicate whether, in its opinion, the crossings are dangerous or inadequate.
14. Pennsylvania Department of Transportation shall submit into the record copies of its detailed inspection reports and submit testimony explaining said reports including its conclusions and recommendations.
15. Pennsylvania Department of Transportation shall submit testimony as to its present obligation with respect to the maintenance of the existing crossings.
16. Pennsylvania Department of Transportation shall submit testimony as to what portion of the work it will agree to perform; what portion of the costs it will agree to bear; and what portion of the improvement it will agree to maintain in the future, in the event the complaint is sustained and an improvement of the crossings is ordered by the Commission.
17. Borough of Chambersburg, United Telephone Company of Pennsylvania, and Warner Cable TV Company each shall submit testimony as to whether they have facilities in the immediate area of the crossings and as to how these facilities may be affected should the Commission sustain the complaint and order an improvement of the crossings.
18. Franklin County shall submit testimony as to whether the crossings lie within the confines of Franklin County and are traversed by county residents.
19. Franklin County shall submit testimony as to whether, in its opinion, the crossings are adequate or pose a hazardous to those using the crossings and, if so, indicate what portion of the work the county will agree to perform; what portion of the costs the county will agree to bear; and what portion of the crossings the county will agree to maintain in the future, in the event the complaint is sustained and an improvement is ordered constructed by the Commission.
20. Query whether any party in interest desires to submit any additional relevant testimony.

WK:kmb

John L. Heaton, Chief Counsel
 Pennsylvania Department of Transportation
 521 Transportation & Safety Bldg. /
 Harrisburg, PA 17120

Warner Cable Communications, Inc.
 120 Industrial Drive
 Chambersburg, PA 17201 ✓

W. D. Pickering, Utility Engineer
 Pennsylvania Dept. of Transportation
 509 Transportation & Safety Bldg. }
 Harrisburg, PA 17120

Charles E. Mechem, Senior General Attorney
 Consolidated Rail Corporation
 1138 Six Penn Center Plaza /
 Philadelphia, PA 19103

Samuel W. Worley, Chairman
 Franklin County Commission
 159 Lincoln Way East (/
 Chambersburg, PA 17201

Robert E. Graham, Jr., Solicitor
 157 Lincoln Way East
 Chambersburg, PA 17201

Bernard L. Washabaugh, President
 Chambersburg Borough Council /
 100 South Second St.
 Chambersburg, PA 17201

Thomas J. Finucane, Esquire
 Box 187-A)
 Chambersburg, PA 17201
 (Boro Solicitor)

I. Benjamin Watson, Vice President
 Finance & Administration
 United Telephone Company of PA
 1201 Walnut Bottom Road
 P.O. Box 1201
 Carlisle, PA 17013

CAPTION

Borough of Chambersburg
 v.
 Consolidated Rail Corporation, Pennsylvania
 Department of Transportation, United Telephone
 Company of Pennsylvania, Warner Cable Communica-
 tions, Incorporated, and Franklin County.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265
April 30, 1991

In Re: C-902998

Thomas J. Finucane, Esquire
Box 187-A
Chambersburg, PA 17201

Borough of Chambersburg
vs.

Consolidated Rail Corporation, Pennsylvania Department of Transportation,
United Telephone Company of Pennsylvania, Warner Cable Communications,
Incorporated, and Franklin County.

NOTICE

This is to inform you that a hearing on the above captioned case will be held Tuesday, July 23, 1991, at 10:00 a.m., in Franklin County Courthouse, Jury Assembly Room, Third Floor, 157 Lincoln Way East, Chambersburg, Pennsylvania.

It will be necessary for you to publish the enclosed notice once during each of the weeks of July 7 and 14, 1991, in a newspaper having a general circulation in the area involved. Proof of publication must be received in the office of the Secretary of the Commission, on or before the date of hearing.

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

Each party is requested to submit testimony and exhibits with respect to the entire crossing alteration project with the understanding that the Commission may, in adjudicating this matter, take jurisdiction over any desired portion of the project.

If any party intends to offer prepared written testimony, such testimony must be served upon each participant of record no less than twenty (20) days prior to this hearing.

You are advised that if you fail to appear at the hearing, the hearing will proceed without you. In that event, it is possible that you or your client will have issues determined against you and that you might be assigned positive duties or be required to pay money and will have waived any objection thereto.

The Commission's Rules require that all parties (except individuals appearing on their own behalf) be represented by counsel at hearing, therefore, will you please have counsel of your choice file an appearance on your behalf prior to the hearing date herein stated.

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

The presiding officer in this proceeding is Administrative Law Judge Morris Solomon. Judge Solomon can be contacted at P.O. Box 3265, Harrisburg, Pennsylvania 17105-3265; telephone (717) 783-5452.

Enclosures

cc: Washabaugh, President

NOTICE TO BE PUBLISHED

Notice is hereby given that a complaint, having been filed with the Pennsylvania Public Utility Commission, alleging that the following superstructure sidewalks, 1. overpass at Railroad and State Route 316; 2. underpass at Railroad and Catherine Street; 3. underpass at Railroad and State Route 30, within the Borough of Chambersburg, are in a deteriorated condition and requests the Consolidated Rail Corporation to make repairs, which proceeding is entitled, "Borough of Chambersburg vs. Consolidated Rail Corporation, Pennsylvania Department of Transportation, United Telephone Company of Pennsylvania, Warner Cable Communications, Incorporated, and Franklin County," (C-902998).

The Commission has fixed Tuesday, July 23, 1991, at 10:00 a.m., in Franklin County Courthouse, Jury Assembly Room, Third Floor, 157 Lincoln Way East, Chambersburg, Pennsylvania, as the time and place for hearing when and where all persons in interest may appear and be heard if they so desire.



Franklin County Commissioners' Office

Court House
157 Lincoln Way East
Chambersburg, PA 17201-2211
717-264-4125

COMMISSIONERS
Samuel W. Worley, *Chairman*
Joe W. Ausherman
Dennis A. Zeger
CHIEF CLERK
John A. Hart **AMH**
COUNTY SOLICITOR
Welton J. Fischer

DOCK-ETED
JUL 9 1991

June 28, 1991

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JUL 3 1991

JUL 1 1991

SECRETARY'S OFFICE
Public Utility Commission
Office of A. L. J.
Harrisburg

Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, Pennsylvania 17105-3265
ATTENTION: Administrative Law Judge Morris Solomon

Re: C-902998
Borough of Chambersburg vs.
Consolidated Rail Corporation, et al

Please enter the appearance of Welton J. Fischer as Solicitor on behalf of Franklin County, Pennsylvania in the above referenced matter.

Sincerely yours,

FRANKLIN COUNTY COMMISSIONERS

Welton J. Fischer
County Solicitor

SECRET
FOILER

WINGERD AND LONG
ATTORNEYS AT LAW
CHAMBERSBURG TRUST COMPANY BUILDING
P. O. BOX 167A
CHAMBERSBURG, PENNSYLVANIA
17201

TAMH

DANIEL W. LONG
EDMUND C. WINGERD, JR.
THOMAS J. FINUCANE
MICHAEL B. FINUCANE
EILEEN F. SCHOENHOFEN

TELEPHONE 264-4104
AREA CODE 717

DOCKED

JUL 18 1991

July 11, 1991

Judge Morris J. Solomon
Administrative Law Judge
Public Utility Commission, Room G08
North Office Building
P. O. Box 3265
Harrisburg, PA 17120

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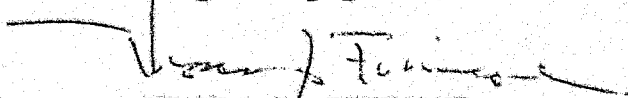
JUL 12 1991

Re: Borough of Chambersburg vs.
Consolidated Rail Corporation, et al. SECRETARYS OFFICE
C-902998 Public Utility Commission

Dear Judge Solomon:

The Borough of Chambersburg would like to withdraw its complaint in the above matter. The Borough understands the parties above are, in fact, not responsible for the maintenance of sidewalks over or under railroad tracks.

Very truly yours,



THOMAS J. FINUCANE
Chambersburg Borough Solicitor

TJF:teb

cc: Kay Dailey, Senior Attorney,
United Telephone Company
John Hart, Franklin County Commissioner
Jerry Rich, PUC Law Bureau
Consolidated Rail Corporation
Pennsylvania Department of Transportation
Warner Cable Communications, Inc.

RECEIVED

JUL 19 1991

Office of A. L. J.
Harrisburg

WINGERD AND LONG
ATTORNEYS AT LAW
CHAMBERSBURG TRUST COMPANY BUILDING
P. O. BOX 187A
CHAMBERSBURG, PENNSYLVANIA
17201

TELEPHONE 264-4104
AREA CODE 717

DANIEL W. LONG
EDMUND C. WINGERD, JR.
THOMAS J. FINUCANE
MICHAEL B. FINUCANE
EILEEN F. SCHOENHOFEN

July 17, 1991

Re. C-902998

Admin. Law Judge Morris Solomon
PUC P.O. Box 3265
Harrisburg, Pa. 17105-3265

RECEIVED

JUL 23 1991

SECRETARYS OFFICE
Public Utility Commission

Dear Judge Solomon,

On behalf of the Borough of Chambersburg, I hereby request that our request to withdraw the complaint be vacated and that the proceedings proceed based on meritorious grounds.

As to the hearing set for July 23, I request that such hearing time be used for proposes of a pre hearing conference for the purpose of simplifying issues.

Very truly yours,


Thomas J. Finucane

Copy furnished all interested parties

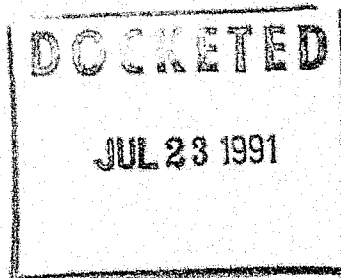
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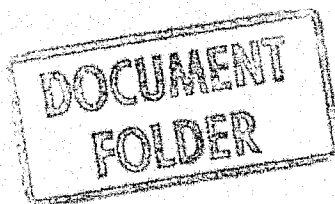
DATE: July 22, 1991

SUBJECT: C-902998
Borough of Chambersbg. v. ConRail, etc.

TO: THE FILE

FROM: Office of Administrative Law Judge *fe*

This is to inform the record that the hearing in the above captioned case now scheduled to take place in Chambersburg, Tuesday, July 23, 1991 has been changed to a telephonic prehearing conference at 2:00 p.m. on the same date.



APPEARANCE SHEET

AMH *Ye*

ALJ HEARING REPORT

DOCKET NO. C-902998

CHECK THOSE BLOCKS WHICH APPLY:

CASE NAME Borough of Chambersburg v.

Hearing held YES NO

Consolidated Rail Corporation, et al.

Testimony taken YES NO

HEARING LOCATION Harrisburg

Hearing concluded YES NO

HEARING DATE July 23, 1991

Further hearing needed YES NO

ALJ Solomon

Estimated add'l days 1

RECORD CLOSED YES NO

Briefs to be filed YES NO

BENCH DECISION YES NO

REMARKS: Schedule evidentiary
hearing in Chambersburg after
September 1 - include United
Telephone

RECEIVED
JUL 23 1991
Office of A. L. J.
Public Utility Commission

DOCKETED
JUL 25 1991

NAMES, ADDRESSES AND TELEPHONE NUMBERS OF PARTIES OR COUNSEL OF RECORD
PLEASE PRINT CLEARLY
INCOMPLETE INFORMATION MAY RESULT IN DELAY OF PROCESS

DC JIM IT
FOLDER

NAME and TELEPHONE NUMBER	ADDRESS			APPEARING FOR
<i>Thomas J. Dawson</i> Telephone No. (717) 291-1114	<i>Box 1876</i> City <i>Chambersburg</i>	State <i>PA</i>	Zip <i>17201</i>	<i>City of Chambersburg</i>
<i>Walter Fischer</i> Telephone No. (717) 291-5001	<i>151 Lincoln Way East</i> City <i>Chambersburg</i>	State <i>PA</i>	Zip <i>17201</i>	<i>Franklin County</i>
<i>Stewart Lines</i> Telephone No. (717) 707-2009	<i>921 Transportation and Safety Building</i> City <i>Harrisburg</i>	State <i>PA</i>	Zip <i>17120</i>	<i>PennDOT</i>

CHECK THIS BOX IF ADDITIONAL PARTIES OR COUNSEL OF RECORD APPEAR ON BACK.

Jan 11 Johnston
Reporter

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265
August 8, 1991

AMH

In Re: C-902998

(See attached list)

Borough of Chambersburg
vs.

Consolidated Rail Corporation, Pennsylvania Department of Transportation,
United Telephone Company of Pennsylvania, Warner Cable Communications,
Incorporated, and Franklin County.

NOTICE

This is to inform you that a hearing on the above captioned case will be held Tuesday, October 8, 1991, at 10:00 a.m., in Franklin County Courthouse, Jury Assembly Room, Third Floor, 157 Lincoln Way East, Chambersburg, Pennsylvania.

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

Each party is requested to submit testimony and exhibits with respect to the entire crossing alteration project with the understanding that the Commission may, in adjudicating this matter, take jurisdiction over any desired portion of the project.

If any party intends to offer prepared written testimony, such testimony must be served upon each participant of record no less than twenty (20) days prior to this hearing.

You are advised that if you fail to appear at the hearing, the hearing will proceed without you. In that event, it is possible that you or your client will have issues determined against you and that you might be assigned positive duties or be required to pay money and will have waived any objection thereto.

The Commission's Rules require that all parties (except individuals appearing on their own behalf) be represented by counsel at hearing, therefore, will you please have counsel of your choice file an appearance on your behalf prior to the hearing date herein stated.

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

**DOCUMENT
FOLDER**

DOCKETED
AUG - 9 1991

The presiding officer in this proceeding is Administrative Law Judge Morris Solomon. Judge Solomon can be contacted at P.O. Box 3265, Harrisburg, Pennsylvania 17105-3265; telephone (717) 783-5452.

Enclosures

cc: Judge Solomon
Mr. Bramson
Bur. of Safety/Compliance
Law Bureau
Ms. Kelly
Mrs. Howell
Docket Room

Certified Mail
Receipt Requested

1. Borough of Chambersburg shall submit testimony describing in detail the conditions presently existing at the subject crossings which, in its opinion, render the crossings dangerous or inadequate for the safety of the users currently traversing the crossing, and to what extent the subject crossings should be altered or reconstructed in the interest of safety and/or accommodation and convenience of the public.
2. Borough of Chambersburg shall submit testimony as to its present obligations with respect to the maintenance of the crossings and the highway approaches thereto.
3. Borough of Chambersburg shall submit testimony as to whether these streets at the crossings are borough streets.
4. Borough of Chambersburg shall submit testimony as to what portion of the work it will agree to perform; what portion of the cost it will agree to bear; and what portion of the improvement it will agree to maintain in the future, in the event the complaint is sustained and an improvement of the crossings is ordered by the Commission.
5. Consolidated Rail Corporation shall submit testimony as to the exact corporate name of the owner and of the operator of the line of railroad involved at the subject crossings.
6. Consolidated Rail Corporation shall submit testimony indicating its future plans with respect to the line of railroad involved at the subject crossings.
7. Consolidated Rail Corporation shall submit testimony as to the number of tracks presently located at the subject crossings, and the volume, class and approximate speed of all trains operated over said track or tracks.
8. Consolidated Rail Corporation shall submit testimony describing in detail the existing bridge structures, including the general physical condition of the structures, and state the date of construction of each structure, the purpose of their construction and the party or parties responsible for their construction.
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10. Consolidated Rail Corporation shall submit testimony as to whether, in its opinion, the crossings are dangerous or inadequate and, if so, what the corporation recommends to alleviate said situation.

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12. Pennsylvania Department of Transportation shall submit testimony as to whether these crossings involved highways that are on the state highway system.
13. Pennsylvania Department of Transportation shall submit testimony describing in detail the existing crossing structures and indicate whether, in its opinion, the crossings are dangerous or inadequate.
14. Pennsylvania Department of Transportation shall submit into the record copies of its detailed inspection reports and submit testimony explaining said reports including its conclusions and recommendations.
15. Pennsylvania Department of Transportation shall submit testimony as to its present obligation with respect to the maintenance of the existing crossings.
16. Pennsylvania Department of Transportation shall submit testimony as to what portion of the work it will agree to perform; what portion of the costs it will agree to bear; and what portion of the improvement it will agree to maintain in the future, in the event the complaint is sustained and an improvement of the crossings is ordered by the Commission.
17. Borough of Chambersburg, United Telephone Company of Pennsylvania, and Warner Cable TV Company each shall submit testimony as to whether they have facilities in the immediate area of the crossings and as to how these facilities may be affected should the Commission sustain the complaint and order an improvement of the crossings.
18. Franklin County shall submit testimony as to whether the crossings lie within the confines of Franklin County and are traversed by county residents.
19. Franklin County shall submit testimony as to whether, in its opinion, the crossings are adequate or pose a hazardous to those using the crossings and, if so, indicate what portion of the work the county will agree to perform; what portion of the costs the county will agree to bear; and what portion of the crossings the county will agree to maintain in the future, in the event the complaint is sustained and an improvement is ordered constructed by the Commission.
20. Query whether any party in interest desires to submit any additional relevant testimony.

WK:kmb

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265
August 8, 1991

In Re: C-902998

Thomas J. Finucane, Esquire
Box 187-A
Chambersburg, PA 17201

Borough of Chambersburg

vs.

Consolidated Rail Corporation, Pennsylvania Department of Transportation,
United Telephone Company of Pennsylvania, Warner Cable Communications,
Incorporated, and Franklin County.

NOTICE

This is to inform you that a hearing on the above captioned case will be held Tuesday, October 8, 1991, at 10:00 a.m., in Franklin County Courthouse, Jury Assembly Room, Third Floor, 157 Lincoln Way East, Chambersburg, Pennsylvania.

It will be necessary for you to publish the enclosed notice once during each of the weeks of September 22 and 29, 1991, in a newspaper having a general circulation in the area involved. Proof of publication must be received in the office of the Secretary of the Commission, on or before the date of hearing.

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

Each party is requested to submit testimony and exhibits with respect to the entire crossing alteration project with the understanding that the Commission may, in adjudicating this matter, take jurisdiction over any desired portion of the project.

If any party intends to offer prepared written testimony, such testimony must be served upon each participant of record no less than twenty (20) days prior to this hearing.

You are advised that if you fail to appear at the hearing, the hearing will proceed without you. In that event, it is possible that you or your client will have issues determined against you and that you might be assigned positive duties or be required to pay money and will have waived any objection thereto.

The Commission's Rules require that all parties (except individuals appearing on their own behalf) be represented by counsel at hearing, therefore, will you please have counsel of your choice file an appearance on your behalf prior to the hearing date herein stated.

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

The presiding officer in this proceeding is Administrative Law Judge Morris Solomon. Judge Solomon can be contacted at P.O. Box 3265, Harrisburg, Pennsylvania 17105-3265; telephone (717) 783-5452.

Enclosures

cc: B. I. Washabaugh, President

NOTICE TO BE PUBLISHED

Notice is hereby given that a complaint, having been filed with the Pennsylvania Public Utility Commission, alleging that the following superstructure sidewalks, 1. overpass at Railroad and State Route 316; 2. underpass at Railroad and Catherine Street; 3. underpass at Railroad and State Route 30, within the Borough of Chambersburg, are in a deteriorated condition and requests the Consolidated Rail Corporation to make repairs, which proceeding is entitled, "Borough of Chambersburg vs. Consolidated Rail Corporation, Pennsylvania Department of Transportation, United Telephone Company of Pennsylvania, Warner Cable Communications, Incorporated, and Franklin County," (C-902998).

The Commission has fixed Tuesday, October 8, 1991, at 10:00 a.m., in Franklin County Courthouse, Jury Assembly Room, Third Floor, 157 Lincoln Way East, Chambersburg, Pennsylvania, as the time and place for hearing when and where all persons in interest may appear and be heard if they so desire.

John L. Heaton, Chief Counsel
Pennsylvania Department of Transportation
521 Transportation & Safety Bldg.
Harrisburg, PA 17120

Warner Cable Communications, Inc.
120 Industrial Drive
Chambersburg, PA 17201

W. D. Pickering, Utility Engineer
Pennsylvania Dept. of Transportation
509 Transportation & Safety Bldg.
Harrisburg, PA 17120

Charles E. Mechem, Senior General Attorney
Consolidated Rail Corporation
1138 Six Penn Center Plaza
Philadelphia, PA 19103

Samuel W. Worley, Chairman
Franklin County Commission
159 Lincoln Way East
Chambersburg, PA 17201

Welton J. Fischer, Solicitor
Franklin County
550 Cleveland Avenue
Chambersburg, PA 17201

Bernard L. Washabaugh, President
Chambersburg Borough Council
100 South Second St.
Chambersburg, PA 17201

Thomas J. Finucane, Esquire
Box 187-A
Chambersburg, PA 17201
(Boro Solicitor)

CAPTION

Borough of Chambersburg
v.
Consolidated Rail Corporation, Pennsylvania
Department of Transportation, United Telephone
Company of Pennsylvania, Warner Cable Communica-
tions, Incorporated, and Franklin County.

Proof of Publication of Legal Notice

(Under Provisions of "Newspaper Advertising Act" of Pennsylvania and Its Supplements)

AMH

STATEMENT

It is hereby stated and declared that PUBLIC OPINION is a daily newspaper, as defined under the "Newspaper Advertising Act" of the Commonwealth of Pennsylvania approved May 16, 1929, and its several supplements and amendments, published at its place of business in the Borough of Chambersburg, Franklin County, Pennsylvania, and is of a general circulation throughout the County; that it was established as a daily newspaper in the year 1901 and has been issued regularly, continuously circulated and distributed from the date of its establishment to the present time; that said newspaper is owned by Gannett Co., Inc. and published by Gannett Satellite Information Network, Inc., a corporation organized and existing under the laws of the State of Delaware, whose established place of business is located at 77 North Third Street, Chambersburg, Pennsylvania.

THAT a legal notice, a true copy of which exactly as printed and published, is securely attached hereto, was published and appeared in the regular editions and issues of PUBLIC OPINION on the following dates, viz:

September 23 and 30, 1991

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OCT 7 1991

SECRETARY OF PUBLIC UTILITY COMMISSION

Copy of Notice or Publication

NOTICE is hereby given that a complaint, having been filed with the Pennsylvania Public Utility Commission, alleging that the following superstructure sidewalks, 1. overpass at Railroad and State Route 316; 2. underpass at Railroad and Catherine Street; 3. underpass at Railroad and State Route 30, within the Borough of Chambersburg, are in deteriorated condition and requests the Consolidated Rail Corporation to make repairs, which proceeding is entitled, "Borough of Chambersburg vs. Consolidated Rail Corporation, Pennsylvania Department of Transportation, United Telephone Company of Pennsylvania, Warner Cable Communications, Incorporated, and Franklin County," (C-902998).
The Commission has fixed Tuesday, October 8, 1991, at 10:00 a.m., in Franklin County Courthouse, Jury Assembly room, Third Floor, 157 Lincoln Way East, Chambersburg, Pennsylvania, as the time and place for hearing when and where all persons in interest may appear and be heard if they so desire.
700

Gannett Satellite Information Network, Inc.

Phyllis Stewart

Commonwealth of Pennsylvania } ss:
County of Franklin

C-902998

On the 4th day of October, 19 91, before me, the subscriber, a Notary Public in and for said state and County, personally come the above-named Phyllis Stewart who having been by me duly sworn according to law on his oath deposes and says that he/she is the Systems Manager of Gannett Satellite information Network, Inc., a corporation, and is an officer duly authorized by resolution of the Board of Directors of said corporation to make the foregoing statement and this affidavit on its behalf: that the affiant is not interested in the subject matter of the notice or advertising referred to in the foregoing statement and that all of the allegations contained in the foregoing statement as to the time, place and character of publication therein referred to are true.

Phyllis Stewart

Sworn to and subscribed before me the day and year aforesaid.

NO APPEARAL SEAL
DONNA F. HARVILL, Notary Public
Chambersburg, Franklin County,
My Commission Expires July 1, 1995

Donna F. Harvill

Notary Public

My commission expires July 1, 1995
My office is maintained in the borough of Chambersburg, Franklin County, Pa.

Statement of Advertising Costs

To: Gannett Satellite Information Network, Dr.

For publishing notice or advertisement attached hereto on the above dates 8 inches \$ 79.20

Probating same \$ 2.00

TOTAL \$ 81.20

OCT 15 1991

DOCUMENT
FOLDER

DOCKETED

APPEARANCE SHEET

ALJ HEARING REPORT

AMH

DOCKET NO. C-902998

CASE NAME Borough of Chambersburg

vs. Consolidated Rail Corp., etc.

HEARING LOCATION Chambersburg, PA.

HEARING DATE Oct. 8, 1991

ALJ Solomon

CHECK THOSE BLOCKS WHICH APPLY:

Hearing held YES NO

Testimony taken YES NO

Hearing concluded YES NO

Further hearing needed YES NO

Estimated add'l days _____

RECORD CLOSED YES NO

Date _____

Briefs to be filed YES NO

Date _____

BENCH DECISION YES NO

REMARKS: Record to close after receipt of Reply Briefs. Late-filed where possible.

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OCT 09 1991

Office of A. L. J.
Public Utility Commission

DOCKETED

OCT 21 1991

NAMES, ADDRESSES AND TELEPHONE NUMBERS OF PARTIES OR COUNSEL OF RECORD
PLEASE PRINT CLEARLY
INCOMPLETE INFORMATION MAY RESULT IN DELAY OF PROCESS

RECORD FOLDER

NAME and TELEPHONE NUMBER	ADDRESS	APPEARING FOR
COLLEEN COMERFORD Telephone No. (315) 977-5129	1138 SIX PENN CENTER City: PHIZA State: PA Zip: 19103	CONSOLIDATED RAIL CORP
Tom Timmes Telephone No. (717) 264-4164	P.O. Box 187 A City: C-Sun State: Pa. Zip: 17201	Borough of Chambersburg
Stuart Linsen Telephone No. () 717-787-2063	Harrisburg 513 700 1514 City: Harrisburg State: Pa. Zip: 17120	Penn DOT

CHECK THIS BOX IF ADDITIONAL PARTIES OR COUNSEL OF RECORD APPEAR ON BACK.

Gene W. Baker
Reporter



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

AMH

November 5, 1991

IN REPLY PLEASE
REFER TO OUR FILE

TO ALL PARTIES OF RECORD

Re: Borough of Chambersburg vs.
Consolidated Rail Corporation,
Pennsylvania Department of Transportation,
United Telephone Company of Pennsylvania,
Warner Cable Communications, Inc., and
Franklin County
Docket No. C-902998

Dear Sir or Madam:

The transcript of testimony taken in the above entitled proceeding indicates that the parties will file briefs.

In accordance with the Commission's Rule of Practice, main briefs shall be filed within thirty (30) days after the date of this letter and reply briefs, if any, shall be filed within twenty (20) days thereafter. If briefs are not received within the allotted time, they shall not be accepted for filing, except by special permission of the presiding officer.

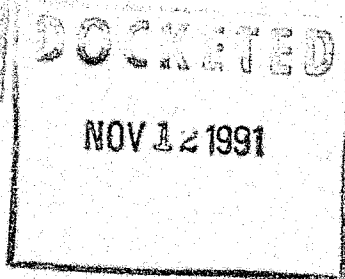
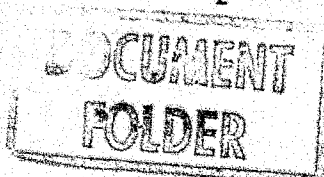
An original and nine (9) copies of each main and reply brief must be filed with the Secretary of the Commission, a copy must be served on the presiding administrative law judge and three copies on each party of record.

The filing of briefs and the service of same upon the presiding administrative law judge shall be accomplished not later than 3:00 P.M. on the dates designated hereinabove.

Any party citing an unreported decision in any brief shall attach to such brief a copy of the cited decision for the benefit of the presiding administrative law judge and the other parties.

Sincerely yours,

Morris J. Solomon
Administrative Law Judge



MJS/ad



WARNER CABLE
COMMUNICATIONS INC.

AMH

120 Industrial Drive, P.O. Box A
Chambersburg, Pennsylvania 17201 717/263-8591

November 8, 1991

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NOV 12 1991

Office of A. L. J.
Harrisburg

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

RE: Borough of Chambersburg vs.
Consolidated Rail Corporation,
Pennsylvania Department of Transportation,
United Telephone Company of Pennsylvania,
Warner Cable Communications, Inc., and
Franklin County
Docket No. C-902998

Dear Judge Solomon:

As per your letter dated November 5, 1991, please find the enclosed copy of a letter we received July 11, 1991 stating that Warner Cable is not responsible for the maintenance of sidewalks over or under railroad tracks.

I thank you for your cooperation in this matter.

If you should require any additional information on this matter, please contact me at (717) 263-8591.

Sincerely yours,

Robert A. Peters
Construction Technician

RAP:agg

Enclosures

DOCUMENT
FOLDER

RECEIVED

NOV 15 1991

WINGERD AND LONG
ATTORNEYS AT LAW
CHAMBERSBURG TRUST COMPANY BUILDING
P. O. BOX 187A
CHAMBERSBURG, PENNSYLVANIA
17201

DANIEL W. LONG
EDMUND C. WINGERD, JR.
THOMAS J. FINUCANE
MICHAEL B. FINUCANE
EILEEN F. SCHOENHOFEN

TELEPHONE 264-4104
AREA CODE 717

July 11, 1991

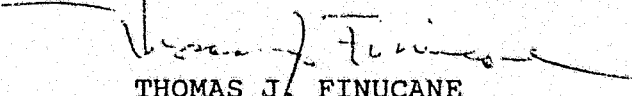
Judge Morris J. Solomon
Administrative Law Judge
Public Utility Commission, Room G08
North Office Building
P. O. Box 3265
Harrisburg, PA 17120

Re: Borough of Chambersburg vs.
Consolidated Rail Corporation, et al.
C-902998

Dear Judge Solomon:

The Borough of Chambersburg would like to withdraw its complaint in the above matter. The Borough understands the parties above are, in fact, not responsible for the maintenance of sidewalks over or under railroad tracks.

Very truly yours,


THOMAS J. FINUCANE
Chambersburg Borough Solicitor

TJF:teb

cc: Kay Dailey, Senior Attorney,
United Telephone Company
John Hart, Franklin County Commissioner
Jerry Rich, PUC Law Bureau
Consolidated Rail Corporation
Pennsylvania Department of Transportation
Warner Cable Communications, Inc.



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

November 5, 1991

IN REPLY PLEASE
REFER TO OUR FILE

NOV - 7 1991

TO ALL PARTIES OF RECORD

Re: Borough of Chambersburg vs.
Consolidated Rail Corporation,
Pennsylvania Department of Transportation,
United Telephone Company of Pennsylvania,
Warner Cable Communications, Inc., and
Franklin County
Docket No. C-902998

Dear Sir or Madam:

The transcript of testimony taken in the above entitled proceeding indicates that the parties will file briefs.

In accordance with the Commission's Rule of Practice, main briefs shall be filed within thirty (30) days after the date of this letter and reply briefs, if any, shall be filed within twenty (20) days thereafter. If briefs are not received within the allotted time, they shall not be accepted for filing, except by special permission of the presiding officer.

An original and nine (9) copies of each main and reply brief must be filed with the Secretary of the Commission, a copy must be served on the presiding administrative law judge and three copies on each party of record.

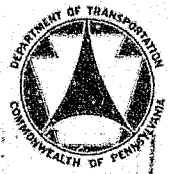
The filing of briefs and the service of same upon the presiding administrative law judge shall be accomplished not later than 3:00 P.M. on the dates designated hereinabove.

Any party citing an unreported decision in any brief shall attach to such brief a copy of the cited decision for the benefit of the presiding administrative law judge and the other parties.

Sincerely yours,

Morris J. Solomon
Administrative Law Judge

MJS/ad



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
Office of Chief Counsel
Room 513
Transportation and Safety Building
Harrisburg, Pennsylvania 17120
(717) 787-2063

IN REPLY REFER TO

December 5, 1991

AMH

RECEIVED

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

DEC 5 1991

SECRET
Public Utility Commission

Re: Complaint Docket
No. C-902998

Dear Secretary Rich:

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

I hereby certify that a copy of the Department's Brief has been sent to all parties of record.

Very truly yours,

Stuart A. Liner
Assistant Counsel

220/SAL:sls

cc: William Pickering, P.E., (Attn: Milton H. Davis, P.E.)
District 8-0
Parties of Record - Page 2

Enclosure

ORIGINAL
ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Borough of Chambersburg	:	Complaint Docket No.
	:	C-902998
v.	:	
	:	
Consolidated Rail Corporation,	:	
Department of Transportation,	:	
United Telephone Company of	:	
Pennsylvania, Warner Cable	:	
Communications, Inc. and	:	
Franklin County	:	

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BRIEF OF THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

ARGUMENT

DOCUMENT
FOLDER

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DEC 03 1991

At the hearing held on July 23, 1991, the Borough of Chambersburg presented testimony indicating deterioration of the condition of sidewalks on bridges located within the Borough limits. One sidewalk was located on an overpass bridge on State Route 316, another sidewalk was located on an underpass bridge on State Route 30, and the third sidewalk was located on an underpass bridge on Catherine Street, a local road.

The essential issue is which party is responsible for the repair and continued maintenance of the aforesaid sidewalks.

With respect to the Catherine Street Bridge, it is the position of the Department that, since the bridge is located on a

local road, repair and maintenance responsibility should be that of either the Borough or the Consolidated Rail Corporation ("Conrail"). The Borough could be assigned this responsibility as it is responsible for the roadway paving on the structure and the approaches. Conrail could be assigned this responsibility as it admitted that it is the owner of the tracks at the subject bridge and thus would be the owner of the bridge structure itself. Since sidewalks are an inherent part of the bridge structure, Conrail should have the primary responsibility for repair and maintenance responsibility of the sidewalks.

With respect to the bridge structure located on State Route 0316, a prior Commission Order is controlling. This Order was dated May 7, 1934 for Application Docket No. 32558 and involved the subject bridge located on S.R. 0316. As indicated in its testimony at the hearing, the Department accepts the responsibilities assigned to it by this Commission Order for the roadway paving on the structure and the approaches.

The same Order also directed the Pennsylvania Railroad Company to maintain, at its own cost and expense, the substructure and superstructure of the bridge. Since a sidewalk is an inherent part of the bridge structure, it is obviously a part of the substructure and superstructure of a bridge.

Conrail admitted at the hearing that all right, title, and interest in the tracks, and thus the bridge structure, were transferred by operation of law from the Pennsylvania Railroad Company to Conrail. However, it denied being the successor in interest to the Pennsylvania Railroad Company. As noted in Black's Law Dictionary, "transfer" is defined as "An act of the parties, or of the law, by which the title to property is conveyed for one person to another." "Successor in interest" is defined in Black's Law Dictionary as "One who follows another in ownership or control of property." It is therefore without question that Conrail has the same right, title and interest in the subject bridge as did the Pennsylvania Railroad Company. Accordingly, this would include the maintenance responsibilities set forth in the Commission Order noted above.

A similar argument was presented by Conrail in Consolidated Rail Corporation v. Pennsylvania Public Utility Commission, et al., 55 Pa. Commonwealth 576, 423 A.2d 1108 (1980). The Court held that where the railroad's predecessor in interest had been authorized to construct and maintain a bridge structure, at its sole cost and expense, the railroad remained liable for that maintenance and the railroad was not absolved of its maintenance obligation. The Court stated that it was the presence and ownership of the track involved that placed liability on the railroad and that, while Conrail could contest

ownership of maintenance responsibilities for the bridge, it could hardly contest ownership of the railroad tracks.

It is the position of the Department that, when reviewing all of the factors relating to the maintenance of the substructure and superstructure of the subject bridge, it is clear that Conrail could be assigned maintenance responsibility for the sidewalks.

The Department also contends that repair and maintenance responsibility could also be assigned to the Borough. In the absence of Commission jurisdiction, State law limits maintenance obligation of the Department to that part of the roadway between the curb lines and the adoption of S.R. 0316 as a State highway does not otherwise modify the statutory prohibition against departmental maintenance of curbs and sidewalks.

State highway law has clearly and consistently limited maintenance responsibility of the Department to the area between the curbs. Statutory law clearly points out that departmental maintenance responsibility lies solely on the roadway paving and that the area beyond the curb lines remains the responsibility of the city, townships and boroughs. See 36 P.S. §670-513, §670-542, and §1758-204. In O'Brien v. Borough of Jeanette, 128 Pa. Superior Ct. 443, 194 A. 314 (1937), the Court held that designating a borough street as a part of a State highway does

not necessarily include the bordering sidewalk as a part of that highway so as to relieve the borough of maintenance responsibility for the sidewalk.


It is clear that State Law limits the Department's obligation for maintenance to that area between the curb lines. The Department is not statutorily authorized to maintain any area beyond the curb lines. Obviously, however, whenever the Commission assumes jurisdiction over a structure, the Commission may order maintenance in accordance with the provisions of the Public Utility Code.

The third bridge structure is the subject bridge located on State Route 0030. With the exception that there is no previous Commission Order relating to this particular bridge structure, the arguments set forth by the Department as to the maintenance responsibilities of the Borough and Conrail for the sidewalks located on the bridge structure on State Route 0316 also pertain to the maintenance responsibilities of the Borough and Conrail concerning maintenance responsibilities for the sidewalks on the bridge structure located on S.R. 0030.

CONCLUSION

For the reasons stated herein, the Department respectfully requests that the Commission assign maintenance responsibilities to either the Borough of Chambersburg or Conrail.

Respectfully submitted,



Stuart A. Liner
Assistant Counsel
I.D. No. 15290
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel
Harrisburg, Pennsylvania 17120
Telephone No. (717) 787-2063

ORIGINAL

WINGERD AND LONG
ATTORNEYS AT LAW
CHAMBERSBURG TRUST COMPANY BUILDING
P. O. BOX 187A
CHAMBERSBURG, PENNSYLVANIA
17201

AMH

DANIEL W. LONG
EDMUND C. WINGERD, JR.
THOMAS J. FINUCANE
MICHAEL B. FINUCANE
EILEEN F. SCHOENHOFEN

TELEPHONE 264-4104
AREA CODE 717

December 6, 1991

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
New Filing Section
Room B-18, North Office Building
North Street and Commonwealth Avenue
Harrisburg, PA 17120

RECEIVED
DEC 9 1991
SECRETARY'S OFFICE
PUBLIC UTILITY COMMISSION

Re: Borough of Chambersburg v.
Consolidated Rail Corporation, et al.
Docket No. C-902998

Dear Mr. Rich:

Enclosed for filing are the original and nine (9) copies of
Complainant's Brief in the above matter.

Very truly yours,

Thomas J. Finucane
THOMAS J. FINUCANE

TJF:cms
Enclosures
cc: Morris J. Solomon,
Administrative Law Judge

December 6, 1991

Morris J. Solomon,
Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

RECEIVED
DEC 9 1991

SECRETARY'S OFFICE
Public Utility Commission

Re: Borough of Chambersburg vs.
Consolidated Rail Corporation, et al.
Docket No. C-902998

Dear Judge Solomon:

Enclosed is a copy of Complainant's Brief in the above matter. We request special permission for the inadvertent late filing of our brief which was due December 5, 1991.

Very truly yours,

THOMAS J. FINUCANE

TJF:cms

Enclosure

cc: Jerry Rich, Secretary,
Public Utility Commission
Office of Chief Counsel, PennDOT
Charles E. Mechem, Esquire
Franklin County Commissioners
Eric Oyer, Assistant Borough Manager

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In Re: Borough of Chambersburg vs.
Consolidated Rail Corporation,
Pennsylvania Department of Transportation,
United Telephone Company of Pennsylvania,
Warner Cable Communications, Inc., and
Franklin County
Docket No. C-902998

COMPLAINANT'S BRIEF

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DEC 9 1991
SECRETARY'S OFFICE
Public Utility Commission

DEC 10 1991

1. Sidewalk on Wayne Avenue Overpass: The responsibility for the sidewalk repairs is on PennDot, pursuant to the report and order of the Commission of May 7, 1934 to docket 32558. The state constructed the sidewalk, the highway overpassing the railroad is a state highway, and no material change of condition as to the responsibility for maintenance and repair of the sidewalk has been presented by PennDot. The said order was not appealed. The order did not place any responsibility on the Borough but only on the Pennsylvania Railroad and PennDot. PennDot testified that it has no record of complaining to the Borough about the condition of the sidewalk PennDot had constructed.

2. Sidewalk along Lincoln Way East underpass: The responsibility for the sidewalk should be on Conrail and PennDot. The highway is a state highway. By analogy, where the state highway passes over a stream, there was testimony that the state constructed and maintained the sidewalk. There is no record that the Borough

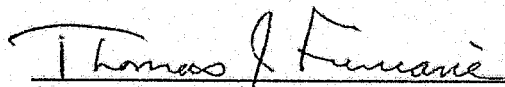
constructed the sidewalk. Furthermore there was no record that the land did not belong to conrail.

The underpass provides in the words of Conrail witness, a "lesser detriment" (aka, we suggest "benefit") when compared to an at grade passage of the tracks through Chambersburg.

3. Sidewalk along Catherine Street underpass: The responsibility for the sidewalk should be on Conrail and the Borough. The highway is a Borough street. There is no record the Borough constructed the sidewalk. The underpass was constructed by Conrail predecessor in title. We suggest the sidewalk is part of the underpass construction.

Furthermore, just as we said above, the underpass provides in the words of Conrail witness, a "lesser detriment" (aka, we suggest "benefit") when compared to an at grade passage of the tracks through Chambersburg.

Respectfully submitted,


Thomas J. Finucane, Borough
Solicitor
Wingerd and Long
Room 500 - 14 North Main Street
P.O. Box 187A
Chambersburg, PA 17201
(717) 264-4104
Attorney I.D. No. 07290

CERTIFICATE OF SERVICE

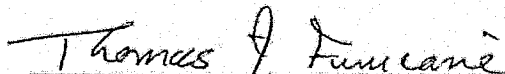
On this 6th day of December, 1991, I, Thomas J. Finucane, an attorney in the law offices of Wingerd and Long, hereby certify that I have served this day the foregoing document in the above captioned case, by depositing same in the United States First Class Mail, postage prepaid, in Chambersburg, Pennsylvania, to those persons and addresses indicated below:

Office of the Chief Counsel
PennDOT
Transportation and Safety Building
Harrisburg, PA 17129

Office of the Chief Counsel
PennDOT
513 Transportation and Safety Building
Harrisburg, PA 17120

Charles E. Mechem, Esquire
Senior General Attorney
Consolidated Rail Corporation
1138 Six Penn Center Plaza
Philadelphia, PA 19103

Franklin County Commissioners
Franklin County Courthouse
Chambersburg, PA 17201


Thomas J. Finucane, Boro. Solicitor <
Wingerd and Long
Room 500 - 14 North Main Street
P.O. Box 187A
Chambersburg, PA 17201
(717) 264-4104
Attorney I.D. No. 07290



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

December 12, 1991

IN REPLY PLEASE
REFER TO OUR FILE

AMH

Thomas J. Finucane, Esq.
Wingerd and Long
Chambersburg Trust Company Building
P. O. Box 187A
Chambersburg, Pennsylvania 17201

RECEIVED
DEC 13 1991
SECRETARY'S OFFICE
Public Utility Commission

Re: Borough of Chambersburg v.
Consolidated Rail Corporation, et al.
Docket No. C-902998

Dear Mr. Finucane:

This is to acknowledge receipt of your letter of December 6, 1991, requesting permission for the late filing of your Main Brief in the above-captioned matter.

Your request is approved and your brief will be accepted for filing.

Sincerely yours,

Morris J. Solomon
ad

Morris J. Solomon
Administrative Law Judge

DEC 16 1991

MJS/ad

cc: All Parties of Record
Secretary Rich



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

AMH

December 12, 1991

IN REPLY PLEASE
REFER TO OUR FILE

Thomas J. Finucane, Esq.
Wingard and Long
Chambersburg Trust Company Building
P. O. Box 187A
Chambersburg, Pennsylvania 17201

Re: Borough of Chambersburg v.
Consolidated Rail Corporation, et al.
Docket No. C-902998

Dear Mr. Finucane:

This is to acknowledge receipt of your letter of December 6, 1991, requesting permission for the late filing of your Main Brief in the above-captioned matter.

Your request is approved and your brief will be accepted for filing.

Sincerely yours,

Morris J. Solomon
ad

Morris J. Solomon
Administrative Law Judge

MJS/ad

cc: All Parties of Record
Secretary Rich

DEC 13 1991