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BEFORE

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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In re: C-902998 Borough of Chambersburg vs.
Consolidated Rail Corporation, et al., Pennsylvania
Department of Transportation, United
Telephone Company of Pennsylvania, Warner
Cable Communications, Incorporated, and
Franklin County. Alleging dangerous
sidewalk conditions. Hearing.

Tuesday,
July 23, 1991
at 2:00 p.m.

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Pages 1 through 17, inclusive

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HOLBERT ASSOCIATES
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Suite 203, Cranberry Court
212 North Third Street
Harrisburg, Pennsylvania

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BEFORE

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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In re: C-902998 Borough of Chambersburg vs.
Consolidated Rail Corporation, Pennsylvania
Department of Transportation, United
Telephone Company of Pennsylvania, Warner
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sidewalk conditions. Hearing.

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Stenographic report of hearing held
in Hearing Room G-08, North Office
Building, Harrisburg, Pennsylvania

Tuesday,
July 23, 1991,
at 2:00 o'clock p.m.

- - - - -

BEFORE

MORRIS SOLOMON, ADMINISTRATIVE LAW JUDGE

APPEARANCES:

THOMAS FINUCANE, ESQUIRE
Box 187A
Chambersburg, Pennsylvania 17201
Appearing on behalf of the Borough of
Chambersburg

H. KAY DALLEY, ESQUIRE
1201 Walnut Bottom Road
Carlisle, Pennsylvania 17013
Appearing on behalf of United Telephone
Company

1 APPEARANCES: (Continued.)

2 STEWART LINER, ESQUIRE
3 521 T and S Building
4 Harrisburg, Pennsylvania 17120
5 Appearing on behalf of PennDOT

6 COLLEEN COMERFORD, ESQUIRE
7 1138 Six Penn Center Plaza
8 Philadelphia, Pennsylvania 19103
9 Appearing on behalf of Consolidated Rail
10 Corporation

11 WELTON FISCHER, ESQUIRE
12 157 Lincoln Way East
13 Chambersburg, Pennsylvania 17201
14 Appearing on behalf of Franklin County
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1 JUDGE SOLOMON: This is a prehearing conference
2 in the matter of the Borough of Chambersburg versus
3 Conrail, PennDOT, United Telephone, Warner Cable and
4 Franklin County which the Commission has docketed to
5 C-902998 and for the record I'm Morris Solomon, the
6 Judge assigned to preside in this case. The basic
7 purpose of this prehearing conference is to clarify
8 the procedural posture of the case and to see where
9 we are going with the matter.

10 I understand from talking to Mr. Finucane that
11 the Borough did not advertise this matter for today
12 so we could not have had a full blown hearing in
13 Chambersburg.

14 Mr. Finucane did file with the Commission
15 initially a request to withdraw the complaint. That
16 was being considered when he filed a reversal of
17 position and wishes to proceed with the case and,
18 very frankly, given the public safety implications of
19 the matter before us I would likely not have
20 permitted a withdrawal in any event.

21 The complaint does allege a dangerous sidewalk
22 condition at the crossing and, of course, the
23 Commission's concern in these matters is the safety
24 of the traveling public both by rail and by highway
25 so I suppose we have to look at this matter in terms

1 of what the public interest really is.

2 United Telephone contacted us earlier concerning
3 their interest in this matter. Miss Dailey, do you
4 want to address your concerns at this point?

5 MS. DAILEY: Yes, Your Honor. United Telephone
6 has reviewed and has had a field investigation of the
7 three sites involved and I had Mr. Gaukinour
8 available today because he supervised the site
9 reviews and he will be able to indicate that United
10 Telephone has no facilities in such a situation or
11 location that would be affected by this proceeding
12 and we would like to so state for the record and then
13 if it's Your Honor's pleasure, we will not need to be
14 involved any further in the proceeding.

15 JUDGE SOLOMON: You are stating then with
16 reference to State Route 316 and Catherine Street and
17 State Route 30 where they cross Conrail tracks you
18 have no facilities affected by any sidewalk repairs
19 or maintenance in that area, is that correct?

20 MS. DAILEY: That's correct, Your Honor and if
21 you'd like, Mr. Gaukinour can be a little more
22 specific as to what was done to verify that there are
23 I believe two telephone poles in the sidewalk area.
24 However, it is beyond the area that's at issue in
25 this proceeding.

1 JUDGE SOLOMON: Yes. I was going to ask, in
2 fact, Mr. Finucane if he would outline for me the
3 extent of affected area, but I'll accept your
4 statement as counsel for United Telephone you have no
5 facilities that would be directly affected by any
6 kind of repairs or maintenance to be done at the
7 crossing with respect to the sidewalks and that's
8 sufficient, Miss Dailey.

9 MS. DAILEY: Then this witness would be
10 dismissed?

11 JUDGE SOLOMON: Yes, he is.

12 MS. DAILEY: Thank you, Your Honor.

13 JUDGE SOLOMON: I'd like to turn to Mr. Finucane
14 if I can, please, and ask Mr. Finucane with respect
15 to the sidewalk area that is in need of repair or
16 replacement or whatever if you could briefly
17 delineate what is to be done and particularly how
18 extensive the area of repair would be, that is how
19 far beyond the trackage to the sidewalk problems
20 persist so I can get some feel for how much
21 jurisdiction the Commission would have to assert
22 over the area.

23 MR. FINUCANE: It would be around the entire
24 sidewalk areas that would be located under the
25 overpass. That's one over and two underpasses and

1 the entire area that would be straddled by
2 construction that the railroad has there at the
3 underpass, the two underpasses and likewise where
4 there is this overpass on what we call Wayne Avenue,
5 the State Route 316. If you are asking me for a
6 rough footage, it would extend from the tracks -- I'd
7 say it's probably 50 feet on either side or something
8 like that.

9 JUDGE SOLOMON: So a 50 foot zone on each side of
10 the trackage would embrace all the concrete that
11 needs work to be done?

12 MR. FINUCANE: Right. We had a preliminary
13 estimate on the total cost to do the repairs of about
14 \$6,000.00. That's on all three together.

15 JUDGE SOLOMON: For all three so perhaps
16 \$2,000.00 worth of work then to each crossing
17 roughly?

18 MR. FINUCANE: They didn't break it down, but I
19 understand the Wayne Avenue one would be a little
20 more expensive because it is a curved situation. In
21 other words, it's not a flat sidewalk.

22 JUDGE SOLOMON: We're not dealing with walls
23 alongside the abutments and so forth. This is purely
24 sidewalk only, is that correct?

25 MR. FINUCANE: Correct.

1 MR. LINER: This is Stewart Liner for the
2 Department of Transportation. It's my understanding
3 -- my expert witness is not available for this call,
4 but he informed me he thought there was some problem
5 with the pier bents.

6 JUDGE SOLOMON: Bents? These are supports of
7 some sort?

8 MR. LINER: Right. My expert is not here, but
9 that's what he imparted to me, that there is some
10 problem with these.

11 JUDGE SOLOMON: So the work may be a matter of
12 more than sidewalk repair then?

13 MR. LINER: That's my understanding.

14 MS. COMERFORD: Your Honor, I don't believe
15 that's part of the complaint, though, as it stands,
16 is that correct?

17 JUDGE SOLOMON: It's not, Ms. Comerford, but in
18 truth we're dealing with a safety situation and if
19 evidence should expose a larger problem, we're not
20 going to ignore it obviously.

21 MS. COMERFORD: But it would be the subject of a
22 separate proceeding?

23 JUDGE SOLOMON: We might expand this one. I
24 don't see a problem with exploring beyond the narrow
25 language of the complaint. If we see the Commission

1 has to deal with a larger problem, we'll amend the
2 complaint and go from there. I'm not really worried
3 about that.

4 MR. FINUCANE: Excuse me. What are the pier
5 bents?

6 JUDGE SOLOMON: They are supporting structures
7 apparently for the underpass, is that correct?

8 MR. LINER: That's my understanding. There is
9 only one with the S.R. 316.

10 MR. FINUCANE: This would be under the sidewalk
11 then?

12 MR. LINER: Right.

13 JUDGE SOLOMON: S.R. 316 goes over the tracks, is
14 that correct?

15 MR. LINER: Correct.

16 JUDGE SOLOMON: And you are saying the supporting
17 structure has a problem apparently?

18 MR. LINER: That's what was imparted to me, yes.

19 MR. FINUCANE: You are saying under the street
20 itself also?

21 MR. LINER: Right. I guess it would be a
22 superstructure, but I'm not really sure.

23 JUDGE SOLOMON: Let me ask this. Does anyone
24 have any information concerning previous Commission
25 orders respecting the maintenance of these crossings?

1 Miss Comerford, do you have something?

2 MS. COMERFORD: I believe John Youngdahl -- as
3 far as I know there was no orders.

4 MR. LINER: I'm not aware of there being any.

5 JUDGE SOLOMON: Then no one has any such
6 information?

7 MR. LINER: Penndot has something for the 316 --
8 that's the Wayne Avenue crossing -- in our order
9 Docket Number 32558.

10 JUDGE SOLOMON: 32558?

11 MR. LINER: Right

12 JUDGE SOLOMON: And the date of that order?

13 MR. LINER: May 7, 1934. The Department had
14 responsibility assigned to it by the PUC by that
15 order.

16 JUDGE SOLOMON: Responsibility to the Highways
17 Department at that time?

18 MR. LINER: Right.

19 MR. FINUCANE: Does that include the sidewalk
20 area?

21 MR. LINER: Roadway paving on the structure and
22 the approaches.

23 JUDGE SOLOMON: So it would be the roadway only?

24 MR. LINER: Right and the approaches. I don't
25 think it deals with the sidewalks. I'd have to look

1 it up.

2 JUDGE SOLOMON: Catherine Street and State Route
3 30, there is no order anybody knows about, is that
4 correct?

5 MR. LINER: Correct.

6 MR. FINUCANE: Correct.

7 MS. COMERFORD: What was the Docket Number on
8 that again?

9 MR. LINER: 32558.

10 MS. COMERFORD: Is that a complaint or an
11 application?

12 MR. LINER: That's an application docket.

13 MR. FINUCANE: Can you give me a copy of that,
14 Stewart?

15 MR. LINER: Yes. I can provide copies to
16 everybody if they need them.

17 MS. COMERFORD: Yes, please.

18 JUDGE SOLOMON: Yes, please do. I'll want a copy
19 also. Then the record indicates that Conrail and
20 Franklin County request permission to late filed
21 answers. I see nothing in the record which addresses
22 that specifically so just to keep things clean I'll
23 approve those requests nunc pro tunc and those
24 answers are considered to be properly filed.

25 I notice in the answer that PennDOT filed it

1 refers to existing state law respecting
2 responsibility for sidewalks, but I'm also aware
3 there are Commonwealth Court decisions and Appellate
4 Court decisions above that that gives the Commission
5 exclusive jurisdiction over such crossings if the PUC
6 code prevails so I'm going to not give any regard to
7 that response. Besides, it's pleading law anyway as
8 opposed to fact.

9 I guess the answer at this point is we're going
10 to have to reset this matter for hearing with proper
11 notice being given to all parties concerned and at
12 that time take testimony concerning the area to be
13 embraced within the Commission's jurisdiction and
14 perhaps by that point the Borough will have some more
15 definitive estimates on construction.

16 Also, at that time PennDOT will be asked to
17 supply its detailed knowledge concerning
18 superstructure and substructure deficiencies and what
19 they will entail in the way of prepare costs and I
20 suppose the Borough is looking toward this repair
21 feeling somebody else is going to bear the brunt of
22 the thing and without prejudging this I guess in the
23 back of my mind would be the thought that this is a
24 city street as opposed to a reconstructed interchange
25 or a major highway of any kind or this sort of thing.

1 We might say this is county traffic or state
2 traffic. I guess a lot is going to be local folks
3 walking to and from the A & P and I kind of wonder if
4 much benefit, if any, runs beyond the Borough and its
5 residents so I have some real reservations and I
6 trust the Borough will be prepared to show from its
7 standpoint how much activity is a benefit beyond the
8 Borough and its Borough residents and I guess I'm
9 thinking in terms of you track the traffic.

10 It's a state highway and all the rest of it.
11 Here we're speaking about sidewalks and at least as
12 to the sidewalk repair work I'm not sure there is
13 much, if anything, that will fall beyond the
14 Borough's burden as far as the bents that were
15 referred to earlier as maybe needing repair. That's
16 a different ball game I suppose.

17 MR. LINER: I would think so.

18 JUDGE SOLOMON: So we'll have to explore that
19 also in detail. I guess at this point we've excluded
20 United Telephone from concern and the remaining
21 parties will have to deal with a further proceeding
22 which we will have our scheduling staff attend to to
23 address all these matters beginning with the hearing
24 notice and the attached questions of procedures which
25 you all have received copies of I assume so be

1 prepared to address those matters. Does anybody have
2 concerns beyond those I've spoken to?

3 MR. FINUCANE: The concern I have is although
4 we're still trying to find out the actual underlying
5 facts here, we believe that the Borough did not
6 construct the sidewalks in areas that we're
7 discussing here, that the initial construction was
8 either by the railroad or in the case of Wayne Avenue
9 overpass --

10 MS. COMERFORD: Those both locations?

11 MR. FINUCANE: Right, the two underpasses and the
12 overpass we're not sure, but we suspect that PennDOT
13 was involved in that but again we're talking about
14 older roads and we'll have to be able to see, but the
15 concept and theory that the Borough is going to be a
16 concern with our understanding -- I understand what
17 the Judge said about relative benefit, but if we can
18 establish that the Borough did not construct these
19 and they were constructed by one of the other
20 parties, then that party should be the one
21 responsible for maintaining it.

22 There are a number of areas in the Borough of
23 Chambersburg which do not have sidewalks. Some of
24 them on property that the Borough owns. Some of them
25 are right -- the intersection of U.S. 30 and

1 Interstate 81 have no sidewalks to in effect place
2 the Borough in a situation where someone could
3 construct a sidewalk and then place the burden of
4 maintaining it on the Borough.

5 JUDGE SOLOMON: I think those are matters you'll
6 want to argue at the appropriate time in terms of
7 research into ownership and maintenance history. Of
8 course, you'll explore your own Borough's records,
9 but of course the Commission as you know has
10 discovery procedures in its regulations and in our
11 hearing rules and you may wish to address specific
12 discovery to the other parties where you are able to
13 ascertain the need for certain documents and records.

14 I would only ask this. Please do not engage in
15 the voluminous discovery we get into in other cases
16 where 300 interrogatories flow this way and 500 flow
17 that way and there is motions to compel. I do not
18 want to get bogged down with discovery hassles in
19 this case. I have two other cases that are swamping
20 me in discovery issues.

21 I haven't the energy to cope with more right now
22 so please try to work this out among you as the
23 professionals that you are rather than burdening the
24 Presiding Officer, but as I said, I would direct your
25 attention all of you to the discovery procedures and

1 where you feel there are certain documents you can
2 get your hands on that would shed some light on this,
3 work with each other in developing those materials
4 and to flesh out the record.

5 And as far as whether prior ownership carries
6 with it maintenance responsibilities, you'll argue
7 that at the appropriate time to what extent that
8 bears upon benefit and all the rest of it, but for
9 the time being I think at this point we'll have our
10 scheduling staff proceed to set it down for further
11 hearing which I take it the Borough will take care to
12 advertise as required.

13 MR. FINUCANE: Yes, we will.

14 MS. COMERFORD: Is there any specific reason we
15 need to have it in Chambersburg versus Harrisburg?

16 MR. FINUCANE: Well, it's closer to the site if
17 anybody wants to take an additional view.

18 MS. COMERFORD: Could we hold it in Harrisburg
19 before Judge Solomon instead of -- I mean for us to
20 get there for a 10:00 hearing, it would be --

21 MR. FINUCANE: If it's appropriate to have it
22 here, we'd prefer to have it here.

23 JUDGE SOLOMON: We can do it either way. I'll
24 tell you what we'll do in this respect. We normally
25 --

1 MR. FISCHER: Judge, this is Welton Fischer with
2 Franklin County. In order for me and appropriate
3 county staff to be present, it's going to be a
4 tremendous inconvenience if we have to take the
5 office to Harrisburg.

6 JUDGE SOLOMON: Well, we normally have crossing
7 cases in the county seat where the crossing is
8 located. That's our usual rule. All I can suggest,
9 Miss Comerford, you may want to -- off the record.

10 (Discussion off the record.)

11 JUDGE SOLOMON: We'll have our scheduling staff
12 set it and we'll do it in Chambersburg because all of
13 the parties are down in that area and all I can say
14 is take the train up and get a rental car and get a
15 pleasant day out of it down there. Okay?

16 MS. COMERFORD: Okay.

17 JUDGE SOLOMON: Anything else anybody has for me
18 at this time?

19 MR. FINUCANE: Do you know whether this will be
20 scheduled in 60 days or 90 days?

21 JUDGE SOLOMON: I don't know. Whatever our
22 scheduling staff can do. It's depends on my
23 availability. Right now I'm swamped with a number of
24 rate cases and other matters that are coming to
25 closure and my availability is a real problem. I

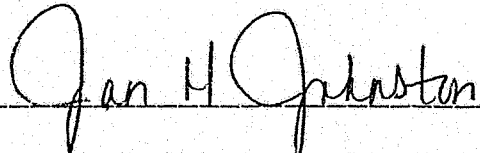
1 just had to set a water rate case and it was a
2 nightmare to schedule that so it will be as soon as
3 we can do it. August is a bad month because of
4 vacation so you can expect it will probably be after
5 Labor Day all things considered. Okay?

6 MR. FINUCANE: Thank you, Your Honor.

7 JUDGE SOLOMON: We're concluded then with the
8 hearing.

9 (Whereupon, at 2:45 p.m., the hearing was
10 concluded.)

11 I hereby certify that the proceedings and
12 evidence are contained fully and accurately in the
13 notes taken by me during the hearing of the within
14 cause, and that this is a true and correct transcript
15 of the same.

16
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18 JAN H. JOHNSTON
19 Court Reporter

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