1.	REPORT DATE: November 25, 1981	2.	BUREAU AGENDA NO. DEC-81-TR-417*
3.	BUREAU: Rail Transportation		
4.	SECTION(S): Engineering	5.	PUBLIC MEETING DATE: December 18, 1981
6.	APPROVED BY: Director: Peteritas 3-5941 Supervisor:		
7.	MONITOR: Commissioner Cawley		
8.	PERSON IN CHARGE: Storch 7-5648		
9.	DOCKET NO: A-00098061		

10. (a) CAPTION (abbreviate if more than 4 lines)
(b) Short summary of history & facts, documents & briefs
(c) Recommendation

(a) APPLICATION OF CITY OF PHILADELPHIA RE: (1) ALL CROSSINGS OF THE NEW AIRPORT HIGH SPEED LINE (CONSTRUCTION, ALTERATION, ABOLITION, ET AL.) BETWEEN CENTER-CITY PHILADELPHIA AND PHILADELPHIA INTERNATIONAL AIRPORT, (2) COST ALLOCATIONS, AND (3) CLEARANCE EXEMPTIONS.

(b) City of Philadelphia has filed Objections to Order Nisi entered October 1, 1981 and Petition for Modification of said order, averring that the order and the directives thereof presupposed two conditions, as follows: (1) the tracks and property beneath the subject structure are owned by Consolidated Rail Corporation, and (2) that the track electrification system presently exists; which conditions are incorrect.

In fact, City avers, the property at this crossing has been purchased by the City, from Consolidated Rail Corporation (Conrail does operate over the tracks pursuant to a trackage right agreement with the City), and that the electrification system has not yet been constructed through this portion of the proposed Airport High Speed Line.

Accordingly, City of Philadelphia seeks modification of those selected ordering paragraphs of the Commission's Order Nisi entered October 1, 1978 so as to reflect the actual present status

(continued)

11. MOTION BY: Commissioner Johnson
SECONDED: Commissioner Cawley

Commissioner Chm. Shanaman - Yes
Commissioner Taliaferro - Yes
Commissioner Jones - Yes

CONTENT OF MOTION: Staff recommendation adopted.

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(b, continued)

of the crossing, and to delete any burden of work or costs to Conrail, which now has no obligation at this location. Consolidated Rail Corporation joins the City in its objections and petition.

(c) The Bureau of Rail Transportation has prepared a recommended order approving the City's Petition for Modification, in accordance with the newly-submitted evidence, and recommends the Commission adopt same as its action.

JLS:c

January 6, 1982

A-00098061

Herbert Smolen, Assistant Solicitor
City of Philadelphia
1401 Arch Street
Philadelphia, PA 19107

Application of City of Philadelphia for approval of (1) the construction, alteration or reconstruction of the crossings of Penn Central Transportation, Debtor, Reading, Debtor, The Baltimore and Ohio Railroad Company and SEPTA involved in the construction of a high-speed passenger line from Suburban Station to the Philadelphia International Airport, in the City of Philadelphia, (2) the allocation of the costs and expenses incident thereto and (3) exemptions, from the minimum overhead and side clearance requirements of Part III of the Commission's Railroad Regulations.

To Whom It May Concern:

This is to advise you that an order has been adopted by the Commission in public meeting on December 18, 1981 in the above entitled proceeding.

A copy of this order is enclosed for your records.

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Very truly yours,

Jerry Rich, Secretary

fao
Encls.
Cert. Mail
Receipt Req.

Bureau of Rail Transportation
Law Bureau

See Computer list attached to Secretarial letter dated October 13, 1981

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held December 18, 1981

Commissioners Present:

Susan M. Shanaman, Chairman
Michael Johnson
James H. Cawley
Linda C. Taliaferro
Clifford L. Jones

Application of City of Philadelphia for approval of (1) the construction, alteration or reconstruction of the crossings of Penn Central Transportation Company, Debtor, Reading Company, Debtor, The Baltimore and Ohio Railroad Company and SEPTA involved in the construction of a high-speed passenger line from Suburban Station to the Philadelphia International Airport, in the City of Philadelphia, (2) the allocation of the costs and expenses incident thereto and (3) exemptions, from the minimum overhead and side clearance requirements of Part III of the Commission's Railroad Regulations. A-00098061

SUPPLEMENT TO APPLICATION

Application of City of Philadelphia for approval of the construction of protective barriers on the 84th Street Bridge (L.R. 67280), in the City of Philadelphia, and the allocation of the costs and expenses incident thereto.

(Approved by Order Nisi entered October 1, 1981)

O R D E R

BY THE COMMISSION:

By reason of Supplement to Application to the subject proceeding, as above-noted, filed October 6, 1980 by City of Philadelphia, Pennsylvania Public Utility Commission on October 1, 1981 entered its Order Nisi approving the Supplement to Application, directed construction of the work of altering the 84th Street Bridge above the tracks of the Airport High Speed Line, in the City of Philadelphia, and allocated the costs and expenses thereof.

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On October 9, 1981, City of Philadelphia filed Objections to Order Nisi entered October 1, 1981, and Petition for Modification of said Order Nisi. By letter dated October 12, 1981, Consolidated Rail Corporation advised the Commission that it joins in the Objections and Petition filed by the City.

It is averred in the Petition that the Commission's Order Nisi and the directives thereof were based on the erroneous assumption that Consolidated Rail Corporation was still the owner of the line of tracks beneath the subject 84th Street Bridge structure, and that the overhead track electrification system, by which the proposed Airport High Speed Line commuter cars will be powered, is already in place. City of Philadelphia avers that the subject rail line was acquired by it, through agreement and deed from Consolidated Rail Corporation, in July of 1979; and further, that the electrification system does not currently exist at this location, but will be constructed at a future date.

It is stated in the Objections and Petition that, under the terms and conditions of the aforesaid agreement between City and Conrail, that Conrail will retain non-electrified freight operating rights over this track, but will have no obligation for maintenance of the track system. All work and all costs relevant to the alterations at the 84th Street crossing, under the Supplement to Application to which the Order Nisi entered October 1, 1981 related, will be assumed by City of Philadelphia.

Accordingly, City requests modification of the appropriate paragraphs of the Commission's Order Nisi entered October 1, 1981, so as to rectify the erroneous assumptions relevant to track ownership and the electrification system, and to delete any obligation for work, or references to costs, insofar as Consolidated Rail Corporation is concerned.

A copy of the City's Objections and Petition was served upon all parties of record to this proceeding and no objections have been entered.

Upon careful review of the City's Supplement to Application, we note that nowhere therein is it stated that the 84th Street Bridge does, in fact, cross above the tracks of Consolidated Rail Corporation. However, at the time of filing of the original application to this proceeding, A. 98061, on July 5, 1973, the subject rail line was owned and operated by Reading Company, which line was assumed by Conrail on April 1, 1976. The Supplement was filed with this Commission, for approval to erect protective barrier walls along the sidewalks of the existing bridge, by reason of the fact that the Airport High Speed Line will be an electrified railroad. It was not made clear in the wording of the Supplement to Application that no electrification facilities presently existed. Our Order Nisi contained directives providing for necessary protection during construction, in the event such facilities were, in fact, present and energized. Conrail (and Southeastern Pennsylvania Transportation Authority, the proposed operator of the Airport High Speed Line train service) were named in the Supplement to Application as

entities concerned or affected by the proposed construction at 84th Street. Further, the Supplement to Application requested approval of construction and allocation of costs, without making clear that - in this instance - City of Philadelphia would be the only affected party, by reason of sole ownership of the tracks, and its assumption of all obligations relative to the work and payments of costs involved. The Commission assumed that the information set forth in City's Supplement to Application was full and complete; and further, that applicant would logically have set forth any changed circumstances relevant to the additional approval requested, which might differ from the conditions which prevail at the numerous other crossings subject of the original application.

Accordingly, this Commission did err in its Order Nisi, by acting upon the insufficient data presented in the City's Supplement to Application. Fortunately, the Order Nisi dealt with a localized and relatively minor aspect of construction, and no adverse consequence will result therefrom. We will rectify the appropriate paragraphs of that Order Nisi through modifications, thus allaying any anxiety caused by inappropriate references to parties other than City of Philadelphia; THEREFORE,

IT IS ORDERED:

1. That numbered Paragraph 4 of our Order Nisi in this proceeding entered October 1, 1981, which reads as follows, to wit:

> "4. That Consolidated Rail Corporation, at its initial cost and expense, furnish all material and do all work necessary to make any temporary or permanent adjustments, alterations, relocation or modification of its electrification system, tracks, signals, wire lines or other facilities required by reason of the construction of the improvement project in accordance with the approved plan; and in addition, furnish and maintain watchmen and/or flagmen as may be necessary to protect its facilities and operations during the time the project is being constructed over, across or adjacent to its tracks and facilities at the subject location."

be and is hereby modified to read:

> 4. That City of Philadelphia, at its sole cost and expense, furnish all material and do all work necessary to make any temporary or permanent adjustments, alterations, relocation or modification of the tracks, signals, wire lines or other facilities required by reason of the construction of the improvement project in accordance with the approved plan; and in addition, furnish and maintain watchmen and/or

flagmen as may be necessary to protect any rail operations or facilities at the subject location during the time the project is being constructed.

2. That numbered Paragraph 5 of our Order Nisi in this proceeding entered October 1, 1981, which reads as follows, to wit:

"5. That Consolidated Rail Corporation, at its initial cost and expense, and as required by reason of the contractor's operations and methods, furnish any construction inspectors as may be required to observe the progress of the work during the time the project is being constructed over, across or adjacent to its tracks and facilities; and, in addition, furnish such engineering services as may be required to ensure the safety of its operations and facilities which may be affected by the design and construction of the crossing improvement project."

be and is hereby modified to read:

5. That City of Philadelphia, at its sole cost and expense, and as required by reason of the contractor's operations and methods, furnish any construction inspectors as may be required to observe the progress of the work during the time the project is being constructed over, across or adjacent to the tracks; and, in addition, furnish such engineering services as may be required to ensure the safety of any rail operations at this location which may be affected by the design and construction of the crossing improvement project.

3. That numbered Paragraph 6 of our Order Nisi in this proceeding entered October 1, 1981, be and is hereby deleted in its entirety.

4. That numbered Paragraph 7 of our Order Nisi in this proceeding entered October 1, 1981, which reads as follows, to wit:

"7. That any relocation of, changes in or removal of any adjacent equipment, structures or other facilities of any public utility, other than Consolidated Rail Corporation, as hereinabove provided, located within or beyond the limits of the subject improvement, which may be required as incidental to the construction of the project, be made by said public utility at its sole cost and expense, and in such manner as will not interfere with the construction of the improvement, and said relocated or changed facilities thereafter be maintained by the respective utility."

be and is hereby modified to read:

> 7. That any relocation of, changes in or removal of any adjacent equipment, structures or other facilities of any public utility, located within or beyond the limits of the subject improvement, which may be required as incidental to the construction of the project, be made by said public utility at its sole cost and expense, and in such manner as will not interfere with the construction of the improvement, and said relocated or changed facilities thereafter be maintained by the respective utility.

5. That numbered Paragraph 11 of our Order Nisi in this proceeding entered October 1, 1981, which reads as follows, to wit:

> "11. That all work of constructing the crossing improvement project be completed in a manner satisfactory to this Commission on or before December 31, 1982; and that on or before said date, City of Philadelphia and Consolidated Rail Corporation each report to this Commission the date of actual completion of its respective portions of the work; and at the earliest practicable time subsequent to said date of completion, submit to this Commission a detailed statement of the actual costs incurred by it in furnishing material and in performing work on its respective portions of the project in compliance with this order."

be and is hereby modified to read:

> 11. That all work of constructing the crossing improvement project be completed in a manner satisfactory to this Commission on or before December 31, 1982; and that on or before said date, City of Philadelphia report to this Commission the date of actual completion of the work; and at the earliest practicable time subsequent to said date of completion, submit to this Commission a detailed statement of the actual costs incurred by it in furnishing material and in performing work in compliance with this order.

6. That numbered Paragraph 14 of our Order Nisi in this proceeding entered October 1, 1981, be and is hereby deleted in its entirety.

7. That numbered Paragraph 15 of our Order Nisi in this proceeding entered October 1, 1981, which reads as follows, to wit:

> "15. That City of Philadelphia, at its sole cost and expense, pay all compensation for damages, if any, due to the owners, other than Consolidated Rail Corporation, as hereinabove provided, for property taken, injured or destroyed by reason of the construction of the crossing improvement project in accordance with this order."

be and is hereby modified to read:

> 15. That City of Philadelphia, at its sole cost and expense, pay all compensation for damages, if any, due to the owners for property taken, injured or destroyed by reason of the construction of the crossing improvement project in accordance with this order.

8. That numbered Paragraphs 16 and 17 of our Order Nisi in this proceeding entered October 1, 1981, be and are hereby deleted in their entirety.

9. That numbered Paragraph 18 of our Order Nisi in this proceeding entered October 1, 1981, which reads as follows, to wit:

> "18. That upon completion of the construction of the improvement and its opening to public use, Consolidated Rail Corporation, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain its existing and/or altered electrification system and all supporting elements therefor, its tracks, wire lines, signal lines and other facilities located at or in the vicinity of the subject improvement, all as constructed in compliance with this order."

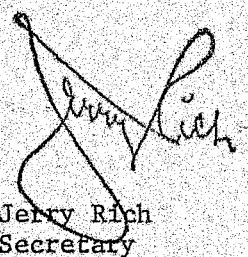
be and is hereby modified to read:

> 18. That upon completion of the construction of the improvement and its opening to public use, City of Philadelphia, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain its existing and/or altered tracks, wire lines, signal lines and other facilities located at or in the vicinity of the subject improvement, all as constructed in compliance with this order.

10. That numbered Paragraphs 22 and 23 of our Order Nisi in this proceeding entered October 1, 1981, be and are hereby deleted in their entirety.

11. That in all other respects not inconsistent herewith, the terms and conditions of our Order Nisi in this proceeding entered October 1, 1981, shall remain in full force and effect.

BY THE COMMISSION,



Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: December 18, 1981

ORDER ENTERED: JAN 6 1982