

July 13, 1978

A. 98061

Application of the 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. 99374

Application of the City of Philadelphia for approval of (1) the alteration of the crossing by the reconstruction of the bridge carrying 58th Street over and above the grade of the tracks of Penn Central Transportation Company in the City of Philadelphia, (2) an exemption from the minimum overhead and side clearance requirements of Part III of the Commission's Railroad Regulations and (3) the allocation of the costs and expenses incident thereto.

W. Scott Armentrout, Assistant
General Counsel
Northeast Corridor AMTRAK
1617 J. F. Kennedy Boulevard
Philadelphia, Pennsylvania 19103

Dear Sir:

Receipt is acknowledged of your letter of July 10, 1978, together with the original and two copies of the Application of AMTRAK for Stay pending action on the Petition for Review submitted in the above docketed proceedings.

Receipt is also acknowledged of proof of service of copies of this "Application" upon the parties as set forth in the affidavit.

The matter will receive the attention of the Commission and you will be advised of its action.

Very truly yours,

for C. J. McELWEE
Secretary

HHH:mpk

DUPLICATE FILED.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

RECEIVED

JUL 12 1978



July 10, 1978

**SECRETARY'S OFFICE
Public Utility Commission**

Application of the City of Philadelphia
Application Docket No. 99374.

Application of the City of Philadelphia
Application Docket No. 98061

APPLICATION FOR STAY
PENDING ACTION ON
PETITION FOR REVIEW

Mr. C. J. McElwee, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, Pa. 17120

Dear Mr. McElwee:

Enclosed for filing with the Commission are original and two copies of National Railroad Passenger Corporation's Application For Stay Pending Action On Petition For Review in the captioned proceedings.

A copy of the Application is being forwarded this date to each party of record and a proof of service is attached hereto.

Very truly yours,

W. Scott Armentrout
W. Scott Armentrout
Assistant General Counsel
Northeast Corridor

WSA:bw

Encs.

cc: with copy of encs., to:

ALL PARTIES OF RECORD

DUPLICATE EC ID.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

JUL 12 1978

SECRETARY'S OFFICE
Public Utility Commission

Application of the City of Philadelphia for approval of (1) the alteration of the crossing by the reconstruction of the bridge carrying 58th Street over and above the grade of the tracks of Penn Central Transportation Company, in the City of Philadelphia, (2) an exemption from the minimum overhead and side clearance requirements of Part III of the Commission's Railroad Regulations and (3) the allocation of the costs and expenses incident thereto.

A. 99374

Application of the 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. 98061

APPLICATION FOR STAY
PENDING ACTION ON
PETITION FOR REVIEW

TO THE HONORABLE, THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

NOW COMES, National Railroad Passenger Corporation and makes application to the Pennsylvania Public Utility Commission for a stay of the final Order issued in the above captioned matter as such order applies to National Railroad Passenger Corporation pending determination by the Commonwealth Court on its Petition for Review filed July 10, 1978.

Applicant further prays that any requirement for the posting of security be waived.

Respectfully submitted,

W. Scott Armentrout
W. Scott Armentrout
Assistant General Counsel
Northeast Corridor

July 10, 1978

DUPLICATE REC'D.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

DOCKETED
Bw

RECEIVED

JUN 1 1978

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE
Public Utility Commission

Application of the City of Philadelphia for approval of (1) the alteration of the crossing by the reconstruction of the bridge carrying 58th Street over and above the grade of the tracks of Penn Central Transportation Company, in the City of Philadelphia, (2) an exemption from the minimum overhead and side clearance requirements of Part III of the Commission's Railroad Regulations and (3) the allocation of the costs and expenses incident thereto.

Docket A. 99374

Application of the 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.

Docket A. 98061

APPLICATION FOR STAY PENDING ACTION
ON PETITION FOR REVIEW

PROOF OF SERVICE

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF PHILADELPHIA :

ALAN H. GELLIS, being duly sworn according to law, deposes and says that he is Counsel for National Railroad Passenger Corporation, and that on July 10, 1978, he forwarded by United States first class mail to each of the following parties a copy of the Application For Stay Pending Action On Petition For Review in connection with the above proceedings on behalf of National Railroad Passenger Corporation:

Rudolph S. Pallastrone, ALJ, for Public Utility Commission,
2700 Lewis Tower Building, Philadelphia, Pa. 19102.

Herbert Smolen, Esq., City of Philadelphia, Deputy City Solicitor,
1518 Municipal Services Building, Philadelphia, Pa. 19107.

DUPLICATE FILED.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

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JUL 11 1978
SECRETARY'S OFFICE
PUBLIC UTILITY COMMISSION
BW

Rudolph A. Chillemi, Esq., Philadelphia Electric Company, One Parkway, 16th Floor, Philadelphia, Pa. 19102.

Joel E. Mazor, Esq., Consolidated Rail Corporation, 1138 Six Penn Center Plaza, Philadelphia, Pa. 19102.

Judith B. Soken, Esq., Southeastern Pennsylvania Transportation Authority, 2028 PSFS Building, Philadelphia, Pa. 19107.

Barton A. Hertzbach, Esq., Philadelphia Gas Works, Packard Building, 14th Floor, Philadelphia, Pa. 19102.

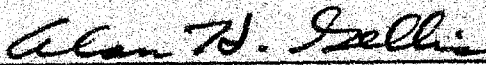
John T. Undergraff, Esq., ARCO Pipe Line Company, Box 2086, Sinking Springs, Pa. 19608.

George P. Wenick, Esq., Pennsylvania Department of Transportation, Commonwealth of Pennsylvania, Harrisburg, Pa. 17120.

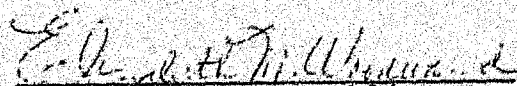
W. Preston Granbery, Esq., Bell Telephone Company, One Parkway, 16th Floor, Philadelphia, Pa. 19102.

Candace Kreiger, Esq., Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, Pa. 17120.

Stephen Dittman, Esq., Estate of Penn Central Transportation Company, IVB Building, 20th Floor, 1700 Market Street, Philadelphia, Pa. 19103.


Alan H. Gellis

Sworn to and subscribed before me
this 16th day of July, 1978.


Notary Public

ELIZABETH M. WOODWARD
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires July 7, 1980

Application of Philadelphia, etc.

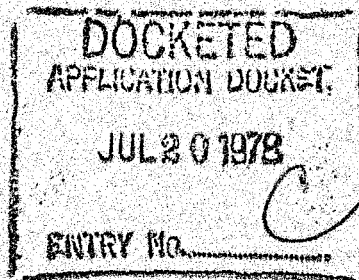
Docket No. A. 99374 and A. 98061

7-14-78

-NOTICE OF PETITION by National Railroad Passenger Corp.
at No. 1608 C.D., 1978, Commonwealth
Court of Pennsylvania, from the order
of the Commission dated June 12, 1978,
in the above application proceeding.

Docket No. B-78072526

Filed: 7-12-78



July 24, 1978

A. 98061

Application of the 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. 99374

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Herbert Smolen, Deputy Solicitor
City of Philadelphia
15th Floor, Municipal Services Building
Philadelphia, Pennsylvania 19107

Dear Sir:

Receipt is acknowledged of your letter of July 21, 1978, together with the original and five copies of the Answer, filed in behalf of the City of Philadelphia, in opposition to the petition for Stay filed by ANTRAK, in connection with the above docketed proceedings.

Receipt is also acknowledged of proof of service of copies of said Answer upon other parties of record.

The matter will receive the attention of the Commission and you will be advised of its action.

Very truly yours,

for C. J. McELWEE
Secretary

CKG:mpk

DOCUMENT
FOLDER

DUPLICATE REC'D.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.



CITY OF PHILADELPHIA

LAW DEPARTMENT
15th Floor, Municipal Services Building
Philadelphia, Pa. 19107

SHELDON L. ALBERT
City Solicitor

RECEIVED

JUL 21 1978

SECRETARY OF THE
PUBLIC UTILITY COMMISSION

July 21, 1978

Pennsylvania Public Utility Commission
North Office Building
Harrisburg, Pa. 17120

Attention: Secretary

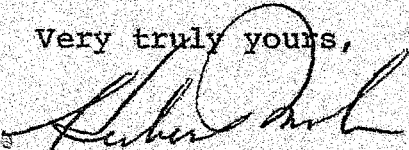
Re: Application of the City - Docket A 99374
Application of the City - Docket A 98061

Dear Sir:

Enclosed herewith please find original and four copies of the Answer of the City of Philadelphia in Opposition to the Petition for Stay Pending Action on Petition for Review, filed by Amtrak in the above matters.

Please note that I have served a true and correct copy thereof upon all known parties of record.

Very truly yours,


Herbert Smolen
Deputy City Solicitor

HS/dm

Enclosures

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

Application of the City of Philadelphia for approval of (1) the alteration of the crossing by the reconstruction of the bridge carrying 58th Street over and above the grade of the tracks of Penn Central Transportation Company, in the City of Philadelphia, (2) an exemption from the minimum overhead and side clearance requirements of Part III of the Commission's Railroad Regulations and (3) the allocation of the costs and expenses incident thereto.

A. 99374

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A. 98061

ANSWER OF THE CITY OF PHILADELPHIA IN
OPPOSITION TO THE PETITION FOR STAY
PENDING ACTION ON PETITION FOR REVIEW

TO THE HONORABLE, THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

The City of Philadelphia opposes the National Railroad Passenger Corporation's Application (hereafter Amtrak) for a Stay Pending Action on Petition for Review for the following reasons:

1. The granting of this stay would adversely effect the City, the other parties and most importantly, the public. The granting of this stay would delay, for a long period, the construction of the 58th Street bridge. This would force the public to continue to use the antiquated present 58th Street bridge and also delay continuing construction of the Airport High Speed Line Project. Any delay in construction could jeopardize funding of the project.

No party to this proceeding, including Amtrak, has argued that the bridge should not be built. The only issue is the allocation of costs in Docket A. 99374. Even assuming

APPLICATION
JUL 26 1978
ENTRY NO. 1700

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ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

Appellate review is obtained and relief granted (which the City believes is unlikely based upon Appellate standards and the Judicial Authority hereinafter more fully set forth, surely the remedy will not be the cancellation of the project, but rather merely the remand to the Commission for further consideration of cost allocation. If the stay is granted, it will delay the entire project. If, however, the stay is denied, the construction can proceed forthwith, and escalation of costs due to inflation and other factors will be avoided. In the unlikely event that Appellate review is obtained and on remand the costs reallocated by the Commission; whatever funds would have been expended by Amtrak would be reimbursed to it; as in case of an Order with initial costs placed upon one party with reimbursement to that party by others upon completion of the project and Certification of the costs. It can thus be seen that great harm will result by the granting of a stay whereas no harm whatsoever result to any party by the denial thereof, and in fact the public and all parties concerned will be benefitted by the construction of the project.

2. It is unlikely that this appeal will be successful or even that it will be heard on the merits. The City intends to file a Motion to Quash the Petition for Review on the grounds that the thirty (30) day appeal period commenced from the date the Commission's Order of February 8, 1978, which was served February 21, 1978 and Amtrak's Petition for Modification did not suspend the running of the 30 Appeal period - established by Rules of Appellate Procedure.

See Pa. P.U.C et al vs Reading Company, 21 Commonwealth Court, 334 (1975). Even if the case is heard on the merits, the probability of success is very low, as the only issue is whether the Commission abused its discretion.

3. Amtrak's Petition for a stay fails to set forth substantial reasons for granting the stay, and falls far short of the standards established by Rules 1781 and 1782 of the Pennsylvania Rules of Appellate Procedure.

4. The City of Philadelphia opposes Amtrak's request to be excused from the filing of security because Amtrak did not demonstrate any compelling reason in its Petition , or any reason whatsoever, why it should be excused from posting security, which is required by applicable law. The City affirmatively requests, that should a stay be granted (which the City opposes, as afore-said), then the Commission should refuse Amtrak's request to be relieved of the obligation to post security, but instead should require Amtrak to post security in an amount equal to 120 % of the costs of the entire project (not Amtrak's portion alone), by reason of the fact that the stay requested, if granted, could adversely affect the funding of the entire project.

WHEREFORE, the City of Philadelphia respectfully requests that this Honorable Commission deny the National Passenger Corporation's Application for a Stay, in all respects. In the event however, that a Stay is granted, the City of Philadelphia requests that Amtrak be required to post security as above set forth, for the costs of the entire project.

Respectfully submitted,

SHELDON L. ALBERT
CITY SOLICITOR

RAYMOND KITTY
DEPUTY IN CHARGE OF LITIGATION

HERBERT SMOLEN
DEPUTY CITY SOLICITOR

BARRY GROSSMAN
ASSISTANT CITY SOLICITOR

BY: 
HERBERT SMOLEN

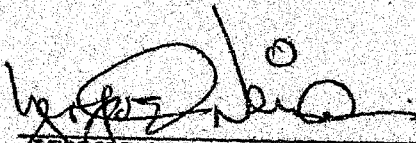

BARRY GROSSMAN

ATTORNEYS FOR THE CITY OF PHILADELPHIA

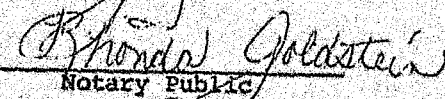
A F F I D A V I T

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF PHILADELPHIA : SS

LEOPOLD NEIMAN, being duly sworn according to law, deposes and says that he is Chief Bridge Engineer of the City of Philadelphia; that he is authorized to and does make this affidavit for it; and that the facts set forth above are true and correct to the best of his knowledge, information and belief.


LEOPOLD NEIMAN
Chief Bridge Engineer

Sworn to and subscribed
before me this 20th day
of July, 1978.


Notary Public

RHONDA GOLDSTEIN
Notary Public, Phila., Phila. Co.
My Commission Expires Jan. 18, 1982

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the Answer of the City of Philadelphia in Opposition to Amtrak's Petition for Stay Pending Action on Petition for Review, by first class mail, postage pre-paid, upon the following:

Herbert G. Zahn, Esquire
Attorney for PennDOT

Preston Granbery, Esquire
Attorney for Bell Telephone

Rudolph Chiliemi, Esquire
Attorney for Philadelphia Electric

Joel E. Mazor, Esquire
Attorney for Conrail

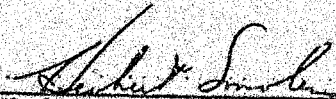
Judith B. Soken, Esquire
Attorney for SEPTA

Stephen Schachman, Esquire
Attorney for Philadelphia Gas Works

W. Scott Armentrout, Esquire
Attorney for Amtrak

Trustees of Penn Central Transportation Company
c/o Blank, Rome, Klaus and Comisky, Esquires
Attorneys for Trustees.

Pennsylvania Public Utility Commission
Attention: Secretary


Herbert Smolen
Deputy City Solicitor

July 21, 1978

July 25, 1978

A. 98061

Application of the City of Philadelphia for approval of (1) the construction, alteration or reconstruction of the crossings of Penn Central Transportation Company, Dabtor, 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. 99374

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Herbert G. Zahn, Assistant
Attorney General
Department of Transportation
Harrisburg, Pennsylvania 17120

Dear Sir:

Receipt is acknowledged of your letter of July 21, 1978, together with the original and two copies of the Answer, filed in behalf of the Department of Transportation, to AMTRAK's "Application" for Stay pending action on the Petition for Review and PennDOT's Motion to Dismiss said "Application" in connection with the above proceedings.

Receipt is also acknowledged of proof of service of copies of said Answer upon all other parties of record.

The matter will receive the attention of the Commission and you will be advised of its action.

Very truly yours,

**DOCUMENT
FOLDER**

for C. J. McELNEE
Secretary

HHH:mpk

DUPLICATE RECORD,
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

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



July 21, 1978

IN REPLY REFER TO

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JUL 24 1978
Secretary's Office
Public Utility Commission

C. J. McElwee, Secretary
Pennsylvania Public Utility Commission
North Office Building
Harrisburg, Pennsylvania 17120

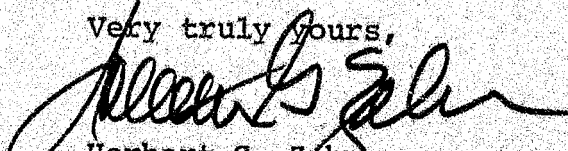
Re: Application Docket No. 99374
Application Docket No. 98061
City of Philadelphia

Dear Mr. McElwee:

Enclosed for filing with the Commission are the original and two (2) copies of Answer and Motion to Dismiss Application for Stay of National Railroad Passenger Corporation on behalf of the Pennsylvania Department of Transportation, in the above-captioned matter.

I hereby certify that a copy of said Answer has been sent to all parties of record.

Very truly yours,


Herbert G. Zahn
Assistant Attorney General

220/HGZ:rmn
Enclosures

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

DOCUMENT
FOLDER

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

July 21, 1978

PARTIES OF RECORD

Herbert Smolen, Assistant Solicitor
City of Philadelphia
1580 Municipal Services Building
Philadelphia, Pennsylvania 19107

W. Preston Granbery, Esquire
Bell Telephone Company
One Parkway
Philadelphia, Pennsylvania 19102

Rudolph A. Chillemi, Esquire
Philadelphia Electric Company
2301 Market Street
Philadelphia, Pennsylvania 19104

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

Judith B. Soken, Esquire
Southeastern Pennsylvania Transportation Authority
2028 PSFS Building
12 South 12th Street
Philadelphia, Pennsylvania 19107

W. Scott Armentrout, Esquire
Northeast Corridor Counsel
National Railroad Passenger Corporation
Northeast Corridor Operations
1617 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19103

Stephen Schachman, Esquire
Philadelphia Gas Works
14th Floor, Packard Building
Philadelphia, Pennsylvania 19102

Stephen Dittman, Esquire
Trustees of Penn Central Transportation Company
20th Floor, IVB Building
1700 Market Street
Philadelphia, Pennsylvania 19103

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED
JUL 24 1978
Secretary's Office
Public Utility Commission

Application of the City of Philadelphia for approval of (1) the alteration of the crossing by the reconstruction of the bridge carrying 58th Street over and above the grade of the tracks of Penn Central Transportation Company, in the City of Philadelphia, (2) an exemption from the minimum overhead and side clearance requirements of Part III of the Commission's Railroad Regulations and (3) the allocation of the costs and expenses incident thereto.

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A. 98061

ANSWER AND MOTION TO DISMISS APPLICATION FOR
STAY OF NATIONAL RAILROAD PASSENGER CORPORATION

TO THE HONORABLE, THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, the Pennsylvania Department of Transportation (PennDOT), by its undersigned attorney answers and moves your Honorable Commission to dismiss the Application of the National Railroad Passenger Corporation (Amtrak) for a stay of the Order of February 8, 1978 in the joint Docket Nos. A. 99374 and A. 98061 in the above entitled matters for the following reasons:

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ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

APPL. NO. 1000
JUL 24 1978
ENTRY NO. 1000

1. Amtrak's Application fails to show that irreparable harm will result in the event a stay order is not issued.

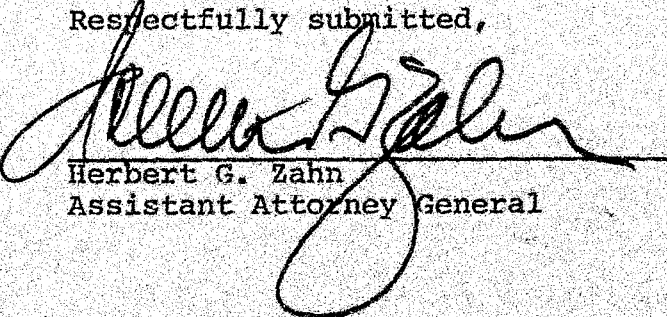
2. Amtrak's Petition for Review to the Commonwealth Court is primarily based on the Commission's lack of jurisdiction to order Amtrak to contribute funds to the reconstruction of the 58th Street Bridge. However, because Amtrak has facilities at the rail-highway crossing it is a concerned party subject to the jurisdiction of your Honorable Commission.

3. There is no error of law or abuse of discretion by the Commission in its Order of February 8, 1978 in denying Amtrak's Petition for Modification or Rehearing of the Order of February 8, 1978, requiring Amtrak to pay 25% of the costs of the project.

WHEREFORE, the Pennsylvania Department of Transportation respectfully requests your Honorable Commission to deny the Application of Amtrak for a stay in these proceedings.

And, it will ever pray, etc.


Respectfully submitted,



Herbert G. Zahn
Assistant Attorney General

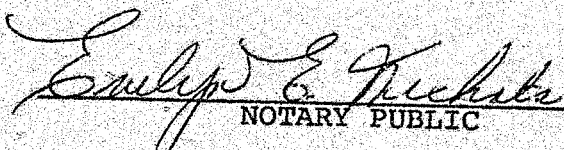
COMMONWEALTH OF PENNSYLVANIA: : SS
COUNTY OF DAUPHIN :

Before me, the undersigned, personally appeared, David C. Sims, Deputy Secretary for Highway Administration of the Department of Transportation of the Commonwealth of Pennsylvania, who, being duly sworn according to law, deposes and says that the foregoing facts are true and correct, to the best of his knowledge and belief.



DAVID C. SIMS
DEPUTY SECRETARY FOR HIGHWAY ADMINISTRATION
DEPARTMENT OF TRANSPORTATION

Sworn and subscribed before me
this 21st day of July, 1978



NOTARY PUBLIC

MY COMMISSION EXPIRES:

NICHOLS NOTARY PUBLIC
Pa. Dauphin County
Commission Expires March 3, 1979