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Secretary's Office
Public Utility Commission

NATIONAL RAILROAD PASSENGER CORPORATION

Philadelphia, Pennsylvania

PROPOSED CONSTRUCTION OF BRIDGE NO. 3.21
CARRYING 58th STREET OVER THE NORTHEAST CORRIDOR

PUC DOCKET NO. A. 99374

Estimated Cost of Preliminary Engineering
by Amtrak Forces

(Review of Preliminary Plans and Specifications)

	<u>Structural</u>	<u>Electric Traction</u>	<u>Total</u>
Expenses to Date	\$ 775.00	\$400.00	\$1,175.00
To Complete Review	<u>550.00</u>	<u>275.00</u>	<u>825.00</u>
TOTALS	\$1,325.00	\$675.00	\$2,000.00

Office of Chief Engineer
March 25, 1977

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DUP. IC. E. EC. ED.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

NATIONAL RAILROAD PASSENGER CORPORATION

Philadelphia, Pennsylvania

APR 4 1977
Secretary's Office
Public Utility Commission

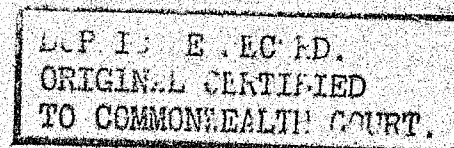
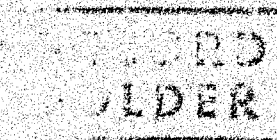
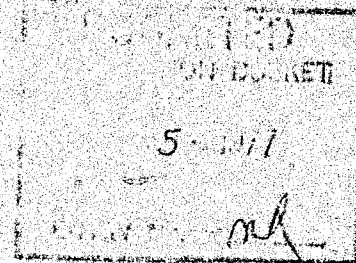
PROPOSED CONSTRUCTION OF BRIDGE NO. 3.21
CARRYING 58th STREET OVER THE NORTHEAST CORRIDOR

PUC DOCKET NO. A. 99374

Estimated Cost of Work to be Performed
by Amtrak Forces

	<u>Labor</u>	<u>Equipment</u>	<u>Materials</u>	<u>Total</u>
Revisions to Cal. and E.T.P. Feeder Circuits	\$12,100	\$5,600	\$ 7,300	\$25,000
Revisions to S.P. Feeders	2,300		2,200	4,500
Install Electric Grounding System	3,500	650	1,250	5,400
E.T. Protection Service	<u>18,500</u>		<u>3,000</u>	<u>21,500</u>
TOTALS	\$36,400	\$6,250	\$13,750	\$56,400

Office of Chief Engineer
March 25, 1977



Amtrak



May 18, 1977

RECEIVED
MAY 23 1977
Secretary's Office
Public Utility Commission

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

Re: Applications of the City of
Philadelphia
Dockets A. 98061 - A. 99374

Dear Mr. McElwee:

Pursuant to leave granted by Judge Pallastrone,
I submit for filing as late filed exhibits in the above
captioned matter, copies of pages 241 and 242 of Volume 1
of the Final System Plan by United States Railway Association
dated July 26, 1975.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Scott Armentrout', written over the typed name.
W. Scott Armentrout
Northeast Corridor Counsel

WSA:bw
Enclosures

Copy, with copy of exhibits:

All Parties of Record

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

DOCUMENT
FOLDER

 United States Railway Association

RECEIVED
MAY 23 1977
Secretary's Office
Public Utility Commission

Final System Plan

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

DOCUMENT
FOLDER

Volume I

VOLUME I (Parts I and II)

**United States Railway Association
FINAL SYSTEM PLAN**

for restructuring

Railroads in the Northeast and Midwest Region

pursuant to the

REGIONAL RAIL REORGANIZATION ACT OF 1973

COPIES RECEIVED
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

JULY 26, 1975

**DOCUMENT
FOLDER**

DOCKETED
APPLICATION DOCKET
MAY 24 1977
ENTRY No. *ml*

ghts that support such activity are not crucial since the very fact that a railroad has operated along the rail line for years is evidence that it possesses enough rail properties to support its operations. And the Act, of course, contemplates the transfer of such properties.

Under section 303(b) of the Act, the railroads in reorganization will convey all their right and interest in rail lines designated for transfer free and clear of any liens and encumbrances. This makes unnecessary, at least for designation and conveyance purposes, the large expenditure of time and money required to survey the land and search title records.

National, state and local needs are best served by honoring existing utility easements, crossing agreements, trackage right and other operating and joint facility agreements insofar as they relate to the particular property designated. These arrangements are therefore generally preserved in the designations under the FSP. It is not intended by these designations, however, to foreclose in any way the exercise by any designee of any termination or renegotiation rights pertaining to such agreements whether arising through operation of law or from the agreement itself.

Inventory of Rail Lines and Related Facilities.—The estates' valuation and real-estate records did not provide a basis for developing an inventory of the railroads' rail lines adequate for USRA's use.

The most complete existing inventory was found to be the Penn Central Engineering Department records, which assign a unique four-digit code, called a line code, to each individual railroad line. Using this system as a basis, USRA and its consultants developed unique line code designations for lines of the other railroads under study which could be easily used with the Penn Central's system.

The line-code descriptions then were compared with existing reference tools, including track charts, valuation maps, United States Geodetic Survey maps, operating timetables and interlocking diagrams.⁴⁰ In some instances physical inspections were used to verify these descriptions. The most useful tool was the railroads' track charts which depict the route of each line of railroad including milepost⁴¹ locations, highway grade crossings, grade crossings with other lines of railroad, connections to other lines of railroad, overhead bridges and other engineering data.

USRA created a computerized file ("User File") listing each individual line of railroad for each estate and showing line-code designations as contained in the Penn Central's Engineering Department records or as desig-

nated for other railroad lines,⁴² including origin and destination (by milepost, geographic reference and branch name). Milepost and line-code locations have been recorded for most facilities installed along the rail line and have been correlated with the User File. While this data base represents a more complete inventory of the estates' rail lines than previously existed, it is not perfect and does not purport to contain a complete inventory of facilities and buildings along the rail lines.

Milepost designations are not always precise and, therefore, milepost designations in the appendix are necessarily approximate. The valuation maps generally reflect historical designations which were made when the lines were built. Through the years, portions of lines have been relocated, and mileposts on some lines have been renumbered. Milepost designations contained in the track charts do not always correlate with the valuation maps, although these discrepancies have been minimized to the extent possible. Further, milepost designations in operating timetables may not always reflect either track charts or valuation maps, particularly where two formerly separate lines are now used as a part of one through route. And, in a few instances, the physical mileposts on the ground may not correspond to any of the above records. There also may be instances where a few small lines now operate as a part of a yard or as an industrial track and may not have been assigned a unique line code.

Designation of Rail Lines.—This FSP designates for transfer to ConRail, for offer to profitable railroads, for acquisition by Amtrak and for option to transportation authorities, the rail lines along the routes specified respectively, for operation by each in Chapter 1, "Industry Structure", and Chapter 2, "Passenger Service."

Unless otherwise specified, each such rail line includes all rail properties (as defined in section 102(10) of the Act) connected with, controlling or in any way pertaining to or used or usable by the designee in connection with the rail line designated including, but not limited to, minerals and mineral rights, franchises, permits, certificates of convenience and necessity, connecting spur and storage tracks, land,⁴³ grading,⁴⁴ tunnels and sub-

⁴⁰ The line codes originally used for Penn Central are those which existed as of January 1, 1974. In a few cases, Penn Central subsequently changed those code designations; however, the USRA data base used the same line code number under which the line was studied originally. Further, in some specific instances, USRA revised line codes in creating its computer data base to accommodate a few unique circumstances.

⁴¹ Land means such properties which can be carried in Account 2 and includes land, roadway, office, shop, and other grounds; for ingress to or egress from such grounds; for borrow pits, waste banks, snow fences, and fences, and other railway appurtenances; and for storage of material adjoining the rail line; land for wharves and docks and the riparian or water rights necessary therefore.

⁴² Grading means such properties which can be carried in Account 3 and includes berm ditches, breakwaters, bulkheading, dikes (including those of eastern construction which are intended to function indefinitely), ditches, dressing slopes, excavation for conversion of tunnels into open cuts, filling, grading outcrops, grubbing land, material taken from borrow pits, retaining walls, revetments, riprap, spoil banks, temporary trestling for fills, tools for grading, and wing dams.

⁴³ Interlocking diagrams are detailed maps showing all lines of railroad and switches associated with an interlocking. An interlocking is a switch or group of switches interconnected and signal controlled to allow the passage of trains from one track to another in proper sequence.

⁴⁴ Mileposts are number markers placed approximately every mile along the line which denote the distance from a given location—usually a former key passenger station.

ays,⁴⁵ bridges, trestles and culverts,⁴⁶ elevated structures,⁴⁷ ties,⁴⁸ rails,⁴⁹ engineering supplies,⁵⁰ other track material,⁵¹ ballast,⁵² fences, snowsheds and signs,⁵³ communications systems,⁵⁴ signals and interplant ma-

chinery,⁵⁵ powerplants,⁵⁶ power transmission systems,⁵⁷ and power plant machinery,⁵⁸ whether in place, on order or not yet installed.

⁴⁵ Tunnels and subways means such properties which can be carried in Account 5 and includes tunnels and subways for the passage of trains, including apparatus for ventilating and lighting and safety devices therein, other than signals.

⁴⁶ Bridges, trestles and culverts means such properties which can be carried in Account 6 and includes substructure and superstructure of bridges, trestles, and culverts which carry the tracks of the carrier over watercourses, ravines, public and private highways, and other railways, including abutments, bridge signs, cofferdams, concrete and masonry ends for culverts, cribs, decking, including gravel for fire protection, dike protection, drainage systems, draw protection, drawbridge, engines and machinery, false work, guard timers, ice breakers, painting (except repainting), pier protection, piers and foundations, pipe culverts, retaining walls, riprap around abutments, riprap at culvert ends, supports, water channels, waterproofing, wing dams and wing walls.

⁴⁷ Elevated structures means such properties which can be carried in Account 7 and includes elevated structures and foundations of elevated railway systems, and structures other than earthwork which are for the purpose of elevating tracks above the grade of streets, and which are not properly classifiable as bridges or trestles.

⁴⁸ Ties means such properties which can be carried in Account 8 and includes cross, switch, bridge and other wood or metal track ties used in the construction of tracks for the movement or storage of locomotives and cars (including tracks in shops, fuel stations, supply yards, etc.).

⁴⁹ Rails means such properties which can be carried in Account 9 and includes rails used in the construction of tracks for the movement or storage of locomotives and cars (including tracks in shops, fuel stations, supply yards, etc.).

⁵⁰ Engineering supplies means such properties which can be carried in Account 1 and includes atlases and maps, barometers, books for office use, cameras, compasses, camp equipage, chains for surveyors, drawing boards, drawing instruments, field glasses, furniture repairs and renewals, magnets and magnifiers, blueprint paper, periodicals and newspapers, photographic supplies, printing and stationery, provisions for business cars, rods for surveyors, sextants and slide rules, and triangles and tripods.

⁵¹ Other track materials means such properties which can be carried in Account 10 and includes angle bars, anticreepers, bumping posts, compromise joints, connecting rods, including foundations or bases crossings, derails, frog blocking, frogs, guard-rail blocking, guard-rail clumps, guard-rail fasteners, switch guard rails and other, main rods, nut locks, nuts, offset bars, rail braces, rail chairs, rail clips, rail joint rail rests, rail shims, rail splices, splice bars, step chairs, switch chairs, switch crossings, switch lamps, switch locks and keys, switch points, switch stands, switch targets, switches, tie plates, tie plugs, tie rods, track bolts, track insulators, and track spikes.

⁵² Ballast means such properties which can be carried in Account 11 and includes gravel, stone, slag, cinders, sand, and like material used in ballasting tracks (including tracks in shops, fuel stations, supply yards, etc.).

⁵³ Fences, snowsheds and signs means such properties which can be carried in Account 13 and includes such fences as right-of-way fences and snow and sand fences, farm gates, cattle guards, wing fences, aprons, and hedges, on property not previously fenced, excluding those around stockyards, fuel stations, stations and shop grounds, and building sites; snowsheds, such signs as boundary signs, bridge-caution signs, crossing signs, curve and elevation markers, division-limit signs, mileposts, monuments, safety-first signs at crossings, section limit signs, slow or stop signs, tunnel-caution signs, whistle signs and yard-limit signs.

⁵⁴ Communication systems means such properties which can be carried in Account 26 and includes telegraph, telephone, radio, radar inductive train communication, and other communication systems, including terminal equipment, including such terminal equipment as batteries, interior cables and wires, interior conduits, connecting wires, current-controlling instruments, electric generators and motors, electric meters, stationary engines, fuses and mechanical protectors, rectifiers, rheostats, sending and receiving instruments, switchboards, telegraph repeaters, telephone repeaters, teletypewriters, testing outfits, transformers, and such outside equipment as aerial attachments, braces, brackets, cable boxes and appurtenances, aerial cables and wires, conduits and appurtenances, cross arms, gas and associated facilities for cables, guy stubs, guy wires, insulators, load coils, poles, submarine cables and connections, telephone pole boxes, towers, underground cables and

connections, and such details of radio, radar, and inductive train communication equipment as aerials, or antenna and attachments, buildings or towers used exclusively for wireless, control units, power generating, converting, or supply equipment, radar console and associated equipment, roadside or office equipment for all wireless systems operated on special channels between train and train, train and tower or office, or between ship and shore, specialized testing and repair equipment, transmitters and receivers, including mobile units.

⁵⁵ Signals and interlockers means such properties which can be carried in Account 27 and includes interlocking and other signal apparatus for governing the movements of locomotives, cars, and trains, and for the protection of traffic at crossings, including towers and other buildings, furniture, fixtures, and machinery in connection therewith; roadway installations for train control and remote control buildings and machinery of power plants used primarily for the production of power for the operation of signals and interlockers, including such items as automatic-train control devices other than on equipment call-bell systems along track to call in flagman, electric call boxes, car-retarder systems, centralized traffic control, crossing flasher-light signals, highway and railway crossing gates, crossing signal bells, crossing warning signals, interlocker buildings and machinery, power apparatus primarily for the operation of signals and interlockers, power-distribution lines primarily for the operation of signals and interlockers, signal buildings, signal machinery, poles and foundations, and train-order signals.

⁵⁶ Power plants mean such properties which can be carried in Account 29 and includes power-plant and substation buildings; all foundations other than those special to particular machines and apparatus; and also dams, canal, pipe lines, and accessories devoted to the utilization of water for power, gas and sewer pipes and their connections, fixtures (including wiring) for lighting and heating, and furniture and miscellaneous fixtures and such power plant structure items as buildings, coal bunkers, pockets and trestles, fences (other than right-of-way boundary fences), fixtures for lighting (including wiring) and heating power-plant buildings, foundations (except special foundations for machines and other apparatus), fuel-oil tanks, furniture, hose and appliances for protecting buildings against fire, pavement within ground limits, permanent rights in water supply, platforms, smoke stacks and chimneys and their foundations where distinct from and not resting on boilers, water, sewer, gas, and drainage pipes and connections, wells (but not pumps) and such dam, canal, and pipeline items as aqueducts, bridges, fences (other than right-of-way boundary fences), footbridges, reservoirs, roadways, sluices, valves, and water rights.

⁵⁷ Power transmission systems means such properties which can be carried in Account 31 and includes systems for conveying electricity, steam, and compressed air from producing plants to place or building where used; also conduits and poles, cross arms, insulator pins, brackets, and other pole fixtures, and other structures for power-transmission and distribution systems, including those for electric railway operation, and lighting systems for general lighting purposes, and such items as air pipeline in car yards, compressed air pipelines, compressed air storage tanks (not at power houses or shops), cut-outs (not at power houses and substations), overhead trolley wires, rail-insulating devices, steam-heating pipelines in car yards, switchboards (not at power houses and substations), third-rail insulation and protection, transformers (not at power houses and substations), underground power tubes, braces and other supports for holding poles in position, brackets, cross arms, and other pole fixtures, conduits for wires and cables, cutting and trimming trees, guy stubs and wires, manholes, poles and towers, sewer traps, and stenciling or painting letters or numbers on poles.

⁵⁸ Power plant machinery means such properties which can be carried in Account 45 and includes machinery and other apparatus in power plants and substations for generating and transforming power used for the operation of trains and cars or to furnish power, heat and light for stations, shops, and general purposes, and also the cost of foundations special to particular machines or other apparatus and such items as air, compressors, ash-conveying machinery, battery-charging apparatus, boiler-room appliances and tools, boilers and fittings, circuit breakers and furnaces, lubricating devices, mechanical stokers, metal attacks on boilers, refrigerating machinery and apparatus, rotary converters, sewer connections for machinery, coal-conveying machinery, condensers, cranes, draft machinery, dynamos, engine-room appliances and tools, feed water heaters, special foundations for machines, steam distribution systems within the plant switchboards, tanks, tractor, trawlers, and trucks, permanently assigned to the power plants, transformers, turbines, water meters, and well pumps.

**Railroads
Further Hearings**

RECORD FOLDER
A. 98061

A. 98061 and A. 98374. City of Philadelphia. Notice is hereby given that application has been made to the Pennsylvania Public Utility Commission under the provisions of the Public Utility Law, by the City of Philadelphia, for an order evidencing the Commission's 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).

Notice is hereby also given that application has been made by the City of Philadelphia, to the Pennsylvania Public Utility Commission, under the provisions of the Public Utility Law, for an order evidencing the Commission's 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. 98374).

Further hearing upon these applications will be held Wednesday, May 18, 1977, at 2 p.m., in Room 1308 State Office Building, Broad and Spring Garden Streets, Philadelphia, when and where all persons in interest may appear and be heard, if they so desire.

Counsel for the applicant: Herbert Smolen, Deputy Solicitor, City of Philadelphia, Fifteenth Floor, Municipal Services Building, Philadelphia, Pa. 19107.

C. J. McELWEE,
Secretary

[Pa. B. Dec. No. 77-938, Filed May 13, 1977, 9:00 a.m.]

PENNSYLVANIA BULLETIN
Volume 7, Number 20

May 14, 1977

DUPLICATE RECORD,
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

RECORD FOLDER

May 31, 1977

A. 98061
A. 99374

Stephen S. Dittman, Esquire
Penn Central Transportation Company
3100 IVB Building
1700 Market Street
Philadelphia, Pennsylvania 19103

Applications of the City of Philadelphia

Dear Sir:

Receipt is acknowledged of your letter of May 24, 1977, together with one copy of the relevant part of Exhibit B of the deed from Penn Central to Philadelphia, Baltimore & Washington Railroad Company to Conrail, "Reserved and Accepted by the Grantor."

We note that you have served a copy of this portion of Exhibit B upon all parties of record.

This submission will be made a part of the record in the above-docketed proceeding.

Very truly yours,

for C. J. McElwee
Secretary

cc: Office of ALJ
Bureau of Transportation

HHH:u

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

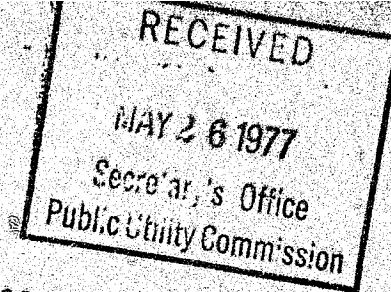
DOCUMENT
FOLDER

**PENN CENTRAL
TRANSPORTATION COMPANY**

ROBERT W. BLANCHETTE ■ RICHARD C. BOND ■ JOHN H. McARTHUR ■ TRUSTEES

3100 IVB Building
1700 Market Street
Philadelphia, Pa. 19103
(215) 972-3011

May 24, 1977



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

Re: Applications of the City of
Philadelphia
Dockets A. 98061 - A. 99374

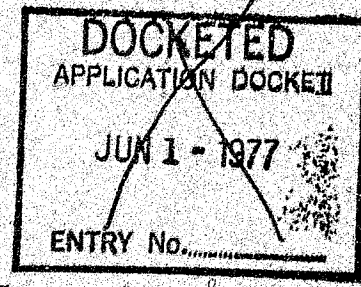
Dear Mr. McElwee:

Pursuant to instruction by Judge Pallastrone, I submit for filing for completeness of the record in the above captioned matter the relevant part of Exhibit B of the Deed from Penn Central to The Philadelphia, Baltimore & Washington Railroad Company to Conrail, "Reserved and Excepted by the Grantor".

Sincerely yours,

A handwritten signature in cursive script that reads "Stephen S. Dittmann".

Stephen S. Dittmann
Attorney for Trustees



SSD:Mdl
Encls.

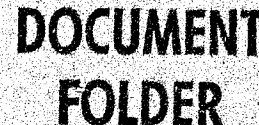
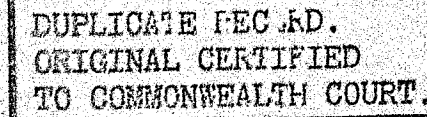
cc: All parties of record

W. S. Armentrout, Esquire
Amtrak Northeast Corridor

Herbert A. Zahn, Esquire
Pennsylvania DOT

Herbert Smolen, Esquire
City of Philadelphia

Robert Szwajkos, Esquire
Penn Central Trustees



Judith Soken, Esquire

W. Preston Granberry, Esquire
Bell Telephone Co.

Stephen Schochman, Esquire

Joel E. Mazor, Esquire
Consolidated Rail Corporation

EXHIBIT B

TO THE DEED BY AND BETWEEN

JOHN C. KOHL,

AS TRUSTEE OF THE PROPERTY OF

THE PHILADELPHIA, BALTIMORE AND WASHINGTON RAILROAD COMPANY, DEBTOR

AND

CONSOLIDATED RAIL CORPORATION

RECEIVED
MAY 26 1977
Secretary's Office
Public Utility Commission

A-98061
Rec'd

DESCRIPTION OF REAL PROPERTY

LOCATED IN

County of Philadelphia, Commonwealth of Pennsylvania

RESERVED AND EXCEPTED BY THE GRANTOR

Each map referred to in this Exhibit B bears the Document Number which appears hereon. A copy of each map is on file in the office of the United States Railway Association and a copy of each map has been certified by the United States Railway Association to the Special Court and filed in the office of the Clerk of the Special Court in the United States District Courthouse in Washington, D.C.

The United States Railway Association has delivered a copy of each such map to both the Grantor and the Grantee and has certified on each such copy that it is a true copy of the map filed in the office of the Clerk of the Special Court.

This Exhibit B consists of pages B-1 through B- inclusive.

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

DOCKETED
APPLICATION DOCKETED
JUN 1 - 1977
ENTRY No. *MA*

DOCUMENT
FOLDER

All that parcel of land situate in the City of Philadelphia, County of Philadelphia, and Commonwealth of Pennsylvania, being designated Parcel No. PA L10g 06-6 on Railroad Valuation Map No. 280-8080-0-ST1A-2, as revised to December 31, 1952, and being all the land of The Philadelphia, Baltimore and Washington Railroad Company, as shown on the Map, which lies southerly and northwesterly of the following described lines:

Beginning at a point distant 45 feet measured southeastwardly and radially from the centerline of a near track of said railroad, as it was located on January 8, 1976, said point being distant 560 feet measured northeastwardly along said centerline from another point therein on the northeasterly line of 49th Street;

Thence, extending in a northeastwardly direction, parallel and concentric to said centerline, 210 feet, more or less, to a point distant 15 feet measured northwestwardly and radially from the centerline of another near track of said railroad, as it was located on January 8, 1976;

Thence, extending in a southwesterly direction, parallel to said centerline of last mentioned near track 535 feet, to a point on the northeasterly line of land of others, the point of ending.

The above described parcel or parcels are identified in the records of the United States Railway Association as Line Code 1101-2.9.



All that parcel of land situated in the City of Philadelphia, County of Philadelphia, and Commonwealth of Pennsylvania, being designated as Parcel No. 1101-2-3 on Railroad Valuation Map Nos: V-1A S.T.1A and V-1.0/2B, as revised to December 31, 1952 and December 31, 1967, and being all of the land of the Penn Central Transportation Company as shown on the Map, which lies southeasterly of the following described line:

Beginning at a point on the southern property line of said railroad property, opposite Station 84+42; thence, northwestwardly 90 feet, more or less, at right angles, from said southern property line to a point 35 feet distant, at right angles, southwardly from the centerline of the main-line tracks;

Thence, southwestwardly 1860 feet, more or less, parallel to said centerline to a point;

Thence, southeastwardly 110 feet, more or less, at right angles to said centerline to an angle point of the northwestern and southern property line of said railroad, the point of ending.

The above described parcel or parcels are identified in the records of the United States Railway Association as Line Code 1101-2-3.

All that parcel of land situate in the City and the County of Philadelphia, Commonwealth of Pennsylvania, being designated Parcel No. PA L10j 01-2 on Railroad Valuation Map No. 281-8081-0-1-2, as revised to December 31, 1959, and being all the land of the Philadelphia, Baltimore and Washington Railroad, as shown on the Map, bounded and described as follows:

Beginning at a point on the southwesterly line of 67th Street 40 feet distant measured southeastwardly and at right angles from the centerline of the near track of the railroad of the Philadelphia, Baltimore and Washington Railroad as it was located on November 4, 1975;

Extending from said beginning point the following four courses and distances: (1) southwestwardly and parallel to said centerline 170 feet to a point; thence, (2) southeastwardly, by land of others, 60 feet, more or less, to the northwesterly line of Glenmore Street; thence, (3) northeastwardly along said line of Glenmore Street, 170 feet to said line of 67th Street; thence, (4) northwestwardly along said line of 67th Street, 60 feet, more or less, to the point of beginning.

The above described parcel or parcels are identified in the records of the United States Railway Association as Line Code 1101-4.5.

All that parcel of land situate in the City and County of Philadelphia and Commonwealth of Pennsylvania, being designated as Parcel No. PAL 130 62-2 on Railroad Valuation Map No. 281-8081-0-2-2, as revised to December 31, 1967, and being all of the land of The Philadelphia, Baltimore and Washington Railroad Company which lies southeasterly of the following described lines:

Beginning at a point in the easterly line of Island Road distant 70 feet, measured southeastwardly and at right angles from the centerline of the near track of said Railroad Company, as it was located on January 20, 1976;

Thence, extending northeastwardly, parallel to and concentric with said centerline of track, 500 feet, to a point; thence, extending northwestwardly and at right angles to said centerline of track, 20 feet, to a point distant 50 feet, measured southeastwardly and at right angles from said centerline of track; thence, extending northeastwardly, parallel to and concentric with said centerline of track, 320 feet, more or less, to a point in the westerly line of 72nd Street, the place of ending.

The above described parcel or parcels are identified in the records of the United States Railway Association as Line Code 1101-5.5.



CITY OF PHILADELPHIA

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

SHELDON L. ALBERT
City Solicitor

July 13, 1977

RECEIVED

JUL 18 1977

SECRETARY'S OFFICE
PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission
North Office Building
Harrisburg, Pennsylvania

Attn: Secretary

Re: A.98061 and A.99374

Dear Sir:

Enclosed herewith please find original and 14 copies of the Brief of the City of Philadelphia in the above matters.

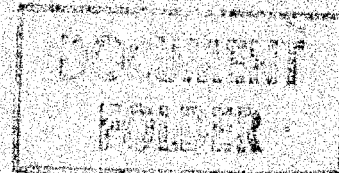
Please note that a copy has been served upon all known parties of record.

Very truly yours,

Herbert Smolen
Deputy City Solicitor

nc/336
encl.

cc: Rudolph S. Pallestrone, A.L.J.
Herbert G. Zahn, Esquire
Preston Granberry, Esquire
Rudolph Chillemi, Esquire
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Judith B. Soken, Esquire
Stephen Schachman, Esquire
W. Scott Armentrout, Esquire
Stephen Dittman, Esquire



JUL 18 1977

SECRETARY'S OFFICE
PUBLIC UTILITY COMMISSION

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

IN RE: Application of CITY OF PHILADELPHIA for : Application
 approval of (1) the construction, alteration or re- : Docket
 construction of the crossings of Penn Central Trans- :
 portation Company, Debtor, Reading Company, Debtor, : No. 98061
 The Baltimore and Ohio Railroad Company and SEPTA :
 involved in the construction of a high-speed passenger :
 line from Suburban Station to the Philadelphia Inter- :
 national 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

IN RE: Application of CITY OF PHILADELPHIA for : Application
 approval of (1) the alteration of the crossing by : Docket
 the reconstruction of the bridge carrying 58th Street :
 over and above the grade of the tracks of Penn Cen- : No. 99374
 tral Transportation Company in the City of Phila- :
 delphia, (2) an exemption from the minimum overhead :
 and side clearance requirements of Part III of the :
 Commission's Railroad Regulations and (3) the allo- :
 cation of the costs and expenses incident thereto

BRIEF OF THE CITY OF PHILADELPHIA
WITH PROPOSED FINDINGS OF FACT,
PROPOSED CONCLUSIONS OF LAW AND
PROPOSED ORDER

DOCKETED
APPLICATION DOCKET
 JUL 21 1977
 ENTRY No. *Bw*

SHELDON L. ALBERT
CITY SOLICITOR

 STEPHEN ARINSON
CHIEF DEPUTY CITY SOLICITOR

 JAMES M. MORAN
DEPUTY IN CHARGE OF LITIGATION

 HERBERT SMOLEN
DEPUTY CITY SOLICITOR

July 15, 1977

SEARCHED
SERIALIZED
INDEXED
FILED

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I. STATEMENT OF ISSUES INVOLVED

1. Ownership of the existing 58th Street railroad bridge, and liability for costs of restorative construction (in Docket A99374 - Stage A)

Answer and position of the City is that the cost of restorative construction and maintenance should be ordered upon parties other than the City of Philadelphia, i.e., upon the owner(s) of said bridge, namely, Consolidated Rail Corporation (Conrail) and/or National Railroad Passenger Corporation (Amtrak).

2. Ownership of and liability for work required to be done on the railroad electrification facilities (in Docket A.99374 - Stage A)

Answer and position of the City is that said costs should be borne by Amtrak, the present owner thereof.

3. Liability for cost of relocation of Bell Telephone Company facilities in Docket A.99374 - Stage A and in Docket A.98061 - Stage B.

Answer and position of the City is that said costs should be borne by Bell Telephone Company.

4. Liability for cost of temporary relocation of SEPTA power line (Docket A.99374 - Stage A)

Answer and position of the City is that said costs should be borne by SEPTA.

5. Cost allocations in Airport High Speed Line crossing (Docket A.98061 - Stage B)

Answer and position of the City is that said costs, exclusive of Bell Telephone Company and SEPTA relocations, should be allocated in accordance with Urban Mass Transportation Administration grant and Pennsylvania legislation and City-State accord.

II. STATEMENT OF THE CASE

The instant matters arise from two distinct and separate applications. One, A.98061, relating to the construction and alteration or reconstruction, etc., of various crossings involved in the construction of the Airport High Speed Line from the Suburban Station to the Philadelphia International Airport in the City of Philadelphia; and the other, A99374, which relates to the construction of the deteriorated railroad-owned bridge carrying 58th Street over and above the grade of certain railroad tracks.

One of the crossings of the Airport High Speed Line (A.98061) involved the construction of a new structure over the proposed tracks of the Airport High Speed Line adjacent to the existing 58th Street railroad-owned bridge. These two items were to be undertaken as separate projects. However, in view of the fact that considerable cost savings could be achieved and the public less inconvenienced, the City thought it was best that both projects proceed contemporaneously.

Accordingly, the work contemplated consists of two separate projects: Stage A (A.99374) which is the railroad-Penn Central-Amtrak-Conrail section, involves the removal and reconstruction of the existing five-span truss and stringer railroad owned structure at 58th Street Bridge and railroad tracks. Stage B (A.98061) involves the construction of a new structure adjacent to Stage A, over the proposed tracks of the Airport High Speed

Line.

For purposes of convenience and brevity, in this brief and in the notes of testimony, the reconstruction of the existing railroad-owned structure at 58th Street is referred to as Stage A construction; and the construction of the new structure adjacent thereto for the Airport High Speed Line is referred to as Stage B construction.

In A.99374, the Commission issued an Order, adopted February 26, 1976, which was entered March 8, 1976, which, in paragraph 4 thereof, ordered further hearings for both phases of construction at 58th Street be consolidated for the purposes of taking testimony. (Prior thereto, these matters had been heard separately with respect to requests for various exemptions from vertical and horizontal clearance requirements, and Orders of the Commission were entered in each of these proceedings, which Orders are not in controversy in the instant matter.)

Consolidated hearings were held on Tuesday, March 22, 1977 and on May 18, 1977, at the expiration of which briefs, findings of fact, conclusions of law and a proposed order were required to be filed within thirty (30) days from the date of the receipt of transcript. This brief, together with the accompanying Findings of Fact, Conclusions of Law and proposed Order, are submitted thereon.

III. ARGUMENT

1. Ownership of Existing Structure and Liability for Costs of Restorative Construction (A.99374 - Stage A)

The uncontroverted testimony of the City at the hearings in the above matter clearly demonstrates that the existing 58th Street Bridge, over the main line of railroad tracks was constructed in approximately 1892 (3/22/77 Notes of Testimony, pp. 13, 15); at the sole cost of the Pennsylvania Railroad (3/22/77 N.T. 13). The bridge has been maintained by and at the sole cost of the railroad (3/22/77 - N.T. 14).

Further testimony, uncontroverted by any other witnesses was that by reason of the poor condition of the existing bridge, it is necessary, in the public interest, that the superstructure be removed and the substructure modified (3/22/77 - N.T. 15). In addition, it was testified that the north abutment of the bridge is only in fair to good condition (3/22/77 - N.T. 13). In later testimony, the City witness, again uncontroverted, testified that the bridge was originally constructed with a rating of 15 tons in 1892 (3/22/77 - N.T. 45, 48, 49 and 52) but that now the bridge is deficient and inadequate because some of its members are rated lower or less than 15 tons (3/22/77 - N.T. 33 and 45). Moreover, the superstructure of the bridge has been permitted by the railroad owners to deteriorate to its present deficient condition (3/22/77 - N.T. 33). Additionally, as a result of reports made by the City to then railroad owner (Penn Central) the railroad

owner did in fact perform maintenance and other work on the bridge for the traveling public (3/22/77 - N.T. 52, 53). Thus the railroad owner in the past has recognized its obligation to maintain the bridge and perform major strengthening of the superstructure (3/22/77 - N.T. 33).

Accordingly, it is submitted and was so testified to, without controversion, that the City of Philadelphia does not have any maintenance responsibilities for the existing 58th Street bridge, but the sole responsibility for same since the construction of the bridge in 1892, has been upon the railroad owner (3/22/77 - N.T. 28 and 29). It is to be further noted with emphasis, that the construction and modifications to the existing bridge are not caused by the construction work for the Airport High Speed Line crossing (A.98061 - Stage B) (3/22/77 - N.T. 54, 55), and thus the parties cannot claim that the Airport High Speed Line crossing is responsible for the defective and deficient condition of the existing 58th Street bridge. In fact, as aforesaid in the History of the Case, these were, at first, considered as two separate items; but in view of the fact that considerable cost savings could be achieved and the public less inconvenienced, it was determined that both proceed contemporaneously.

There is no noted controversy with respect to the fact

that the Pennsylvania Railroad and then its successor Penn Central Transportation Company owned and maintained the said existing 58th Street railroad bridge. The controversy does exist as to whether Conrail or Amtrak now owns it. City Exhibit A-14, which is a deed to Conrail encompassing the rail line and, the City contends, also included the overhead 58th Street Bridge structure (5/18/77 N.T. 174). The Deed itself conveys to Conrail "All of the Grantor's right, title and interest, legal and equitable, in and to the real property located in the County of Philadelphia, Commonwealth of Pennsylvania, as described in Exhibit A attached to this Deed.including but not limited to all real property items that would properly be recorded in Accounts 1 through 45 and 90 of the property accounts prescribed by the Interstate Commerce Commission for Railroad Companies in its Uniform System of Accounts, 49 C.F.R. Part 1201,"

It is to be further noted that at p. 4 of said Deed (Exhibit A-14) Conrail assumes and agrees to perform and observe all obligations of Grantor or Grantor's predecessor in title with respect to the devise.

As aforesaid, the Pennsylvania Railroad and the Penn Central Transportation Company each recognized their obligations of repair and maintenance with respect to the 58th Street Bridge.

Moreover, City Exhibit A-15 which is an excerpt of Page

243 of Volume I of the Final System Plan, U.S. Railway Association, specifically provides, inter alia,

"In the terms customarily used for railroad conveyances, included are all items associated with the rail lines which could be recorded in I.C.C. account numbers 1 through 45 and 90, and not otherwise designated for transfer or offer under this chapter or specifically excluded."

Thus, City Exhibit A-16 which is an excerpt of the Uniform System of Accounts for Railroad Companies, prescribed by the Interstate Commerce Commission, specifically includes in Account 39 "Overhead highway bridges, including approaches."

Accordingly, the Deed to Conrail for the rail line in question (Exh. A-14) unless specifically excluded, includes all items which could be recorded in I.C.C. Accounts 1 through 45 and 90. (Exh. A-15) One of the items in Account No. 39 is Overhead Highway Bridges, including approaches (Exh. A-16).

It is no argument, as Conrail apparently attempts to make, that it, Conrail, did not include this 58th Street Bridge in its Account No. 39. That Conrail may have inadvertently omitted it, or intentionally omitted it, cannot be construed to mean that Conrail did not or does not own it. To accept Conrail's position would lead to the ludicrous result that a person could deny ownership of an item simply by omitting it from his accounting. Clearly the Conrail position cannot be accepted. Moreover, once the City introduced the Deed to Conrail (Exh. A-14) and the other Exhibits, i.e., A-15 and A-16, it is submitted that the City has

met its burden; and that if Conrail wishes to contest ownership, it, Conrail, must go forward affirmatively. As to whether Conrail did so, by introducing its Deed to Amtrak, is a matter for the Administrative Law Judge to determine; and same will be further discussed hereinafter. Suffice it to say at this point: that the City of Philadelphia does not own the 58th Street structure and therefore should not bear any costs for said construction or engineering or planning or maintenance.

As between Conrail and Amtrak, Conrail stated, inter alia, that whatever it received from Penn Central Transportation, it devised to Amtrak by Deed (Conrail Exh. No.1).

Amtrak, in its defense, argues that footnote 46 to Account 6 defines bridges for inclusion in that account, in essence, as bridges carrying railroad tracks. (Amtrak Exhibit No. 1). That may be so, and, accordingly, such type of bridges are to be carried in Account 6. But, overhead highway bridges are also specifically included in such conveyances, as part of the items to be carried in Account 39 (City Exh. A-15).

One thing is certainly clear, as aforesaid, the City does not own the bridge and, either or both of Conrail and/or Amtrak do own it and are responsible for it in all respects.

It is to be further noted, in Note B of Account 39 (Exh. A-16) it is provided "the cost to the carrier of maintaining public improvements shall be included in Operating Expenses."

There can be no doubt that the bridge involved in these proceedings comes within the purview of the aforementioned "Final System Plan" and within the conveyance to Conrail (Exh. A-14).

Under Sections 409 and 411 of the Public Utility Code of Pennsylvania, Conrail and Amtrak are public utilities subject to the jurisdiction of the Public Utility Commission by virtue of their operation and/or ownership of rail facilities.

Moreover, applicable administrative agency decisional law is supportive of the City's position that Conrail and Amtrak are successors in interest and title of the former bankrupt railroad's (Penn Central) property.

Thus, in The Cincinnati, New Orleans & Texas Pacific Railway Company, et al. v. Akron, Canton & Youngstown Railroad Company, et al., a case decided by the Interstate Commerce Commission on December 17, 1976 in Docket No. 34275, (and reproduced for convenience, and attached hereto as Exhibit A), the Interstate Commerce Commission, overruled Conrail's argument that Conrail acquired all rail properties free and clear of any liens or encumbrances (which Conrail contends in the instant matter). The Interstate Commerce Commission stated that such contention is contrary to any inference that Conrail is a successor in interest to the various bankrupt railroads whose operations it has assumed. As to whether Conrail is to be deemed a successor in interest, the Interstate Commerce Commission considered

various factors and concludes in the affirmative. Further, the Interstate Commerce Commission adopted the theory (which is one of the principal holdings in the case) that a successor railroad is bound to observe prospective orders entered by the Commission against a predecessor railroad. Moreover the Commission agreed that there was nothing in the legislative history of the Regional Rail Reorganization Act of 1973 which exempts Conrail from being a successor in interest to the railroads currently in reorganization. Additionally, the Interstate Commerce Commission also agreed that to not consider Conrail as a successor in interest would undermine the orderly reorganization of the northeastern railroads.

In its decision the Interstate Commerce Commission stated:

"Conrail stands, therefore, as a federally created statutory successor to its predecessor corporation, and thus must be, and is, so considered for purposes of this proceeding."

In an analogous situation, cited in the Cincinnati N.O. & T.P. Ry. Co. v. Akron C & Y case, the Interstate Commerce Commission quoted extensively from the case of I.C.C. v. Western N.Y. & P.R.Co., 82 F. 192 (C.C. W.D. Pa. 1897). There, the Commission sought to restrain the violation of a cease and desist order it had entered in 1892 against certain railroads which it had found to have engaged in unjust discrimination in violation

of the Interstate Commerce Act. After the issuance of the Commission's cease and desist order but before the commencement of the court action, ownership, control and operation of the defendant railroads before the Commission had been assumed by new companies. In the court proceedings, the Commission joined as defendants the two new companies which had succeeded to the interests of the railroads against which the 1892 Order had been directed on the ground that the new companies had "wilfully failed and neglected and refused to obey and conform to the requirements of the order of the Commission." Western New York, supra, at 194. The two successor railroads argued that since they were not parties to the proceedings before the Commission, the 1892 order had no application to them. The court flatly rejected the successor railroads' argument, and stated:

"The order, however, here sought to be enforced, was made against the old railroad companies, to which the Western New York & Pennsylvania Railway Company and the Erie Railroad Company, respectively, have since become successors. The question then is, are these succeeding companies to be regarded as strangers to that order? We cannot think so. It would indeed be lamentable if a lawful order against unjust discrimination by a railroad company made by the Interstate Commerce Commission after a protracted investigation, could be nullified by the subsequent reorganization of the company, or transfer of its railroad and franchises to another corporation. It is a settled principle that the purchaser of property in litigation, pendente lite, is bound by the judgment or decree in the suit."

1 Story. Eq. Jur. §405. And the rule is said to be founded upon great public policy, for otherwise alienations made during a suit might defeat its whole purpose and there would be no end to litigation." 82 F. at 194.

The principle cited in Western New York, supra, is equally applicable in the instant matter. Thus, since the existing 58th Street bridge was constructed and owned by the Pennsylvania Railroad; then transferred to Penn Central, both of which companies recognized their duties and obligations, by performance or partial performance, as aforesaid, with respect to said structure; now Conrail, and also Amtrak, as successors in interest, must be held obligated to comply with the duties and obligations of their predecessors in title.

By way of confirmation, it is probative to note that a Bell Telephone Permit Application dated the 25th day of July, 1952 (Exh. A-11), refers to the structure as being owned by the Pennsylvania Railroad. This should be given considerable weight in connection with this matter.

For all of the foregoing reasons, and since the City does not own the structure, it is submitted that all costs of construction with respect to the existing 58th Street Bridge (A. 99374 - Stage A) should be ordered upon parties other than the City of Philadelphia; i.e., upon Conrail and/or Amtrak. Said costs, excluding electrification work, is estimated to be \$660,000.00 (3/22/77 N.T. 20 and City Exh. A-4).

2. Ownership of and Liability For Work on Railroad Catenary and Signal Transmission Attachments to Existing Structures

(A.99374 - Stage A)

At the outset, it is to be noted that the work required on the railroad electrification facilities on the existing bridge (Stage A - Construction A -99374) has nothing to do with and is not required by the construction in Stage B (A.98061) (3/22/77 - N.T. 21). These costs are estimated to be \$176,306 (A.99374 - 3/22/77 N.T. 21 and City Exh. A-5) and these costs do not include certain items of work required to be done by Amtrak forces. (3/22/77 - N.T. 21)

The original railroad catenary and signal transmission attachments which are attached to and adjacent to the existing bridge were installed by the Pennsylvania Railroad at the sole cost of the railroad pursuant to a letter permit issued by the City dated January 14, 1928 (3/22/77 - N.T. 17, 23, 29 - City Exhi. A-7); which permit contains various conditions, undertakings and obligations assumed by the railroad

in accepting the permit by construction of the structure. Those conditions, undertakings and obligations are more fully set forth in said letter permit, but, important to note is that the railroad agreed, inter alia, to be responsible:

"First, for all accidents to persons or damage to property due to your carrying wires under the above bridges. You further agree to remove all wires and attachments upon receiving notice from the Chief of this Bureau.

Second, that at all times the work and location of the said attachments shall be in accordance with plans filed by you with this Bureau and herewith approved.

Third, this permit is granted with the stipulation that should any of the wires, plates or other appurtenances placed on the above bridges in any way damage them, or endanger their safety, you shall repair such damage without cost of expense to the City.

Fourth, any time the City finds it necessary for the safe maintenance of the whole of these structures, part or parts thereof, either by replacement, reinforcement or painting, the City will not be required to bear any expense of making other provisions for supporting or maintaining the attachments temporarily, such expense to be paid for by the Railroad Company; also, in order that such work may be carried on in a safe manner and without danger to the lives of workmen in the City's employ, through coming in contact with such live wires, such precautions as may be deemed necessary by the Chief, Bureau of Highways, shall be taken by the Railroad Company upon notice from him of intention to proceed with work of this character.

Finally, while exercising any privileges under this permit, you shall save the City of Philadelphia harmless from any accident or damage either during the placing of your wires, the necessary attachment to the bridges to carry same, or from any other cause of whatsoever nature."

Moreover, the railroad has been solely responsible for maintenance at its own cost and expense. (3/22/77 - N.T. 29)

As to present ownership of said electrification facilities, there was no controversy, since the City asserted, and Conrail and Amtrak admitted that same are presently owned by Amtrak by succession to the interest of Conrail which, in turn, had acquired same by succession from Penn Central; which was successor to the Pennsylvania Railroad. (3/22/77 - N.T. 20, 21, 24, 25 and City Exh. A-8 and the late filed Conrail Deed to Amtrak - Conrail Exh. No. 1).

It is submitted that the same principles, reasoning and conclusions as were previously proffered in connection with the ownership of the structure and the liabilities and obligations of successors in title and interest, as set forth supra in the discussion of the Western New York case, supra, and Cincinnati N.O. & T.P. Ry. Co. case, supra, is applicable here with the same force and effect. Accordingly, it is submitted that by reason of Amtrak's admitted ownership of said electrification facilities, it took title thereto subject to the original conditions of the permit authorizing initial attachment to the bridge. Moreover, Conrail's Deed to Amtrak (Conrail Exh. No. 1) at pages 5 and 6 specifically states that the conveyance is subject to all existing licenses, easements, of Grantor's predecessor in title.

It is submitted therefore, that any conveyance of the electrification facilities, also carries with it the duties and obligations under the said letter permit of January 14, 1928. Indeed, it appears that Conrail is also arguing that not only did it convey the electrification facilities to Amtrak, but also the entire bridge structure, under the same Deed.

In any event, it is clear that the City does not own the electrification facilities, nor the bridge itself, and therefore, all costs in connection with the electrification work, (and bridge construction itself) should be ordered upon the present owners of said facilities, i.e, Conrail and/or Amtrak.

In addition, by reason of Amtrak's wrongful refusal to proceed with the removal and replacement of said electrification facilities, after request, (3/22/77 - N.T. 26), the City was required to prepare engineering drawings at a cost of \$76,306 (3/22/77 - N.T. 26 and City Exh. A-5); for which the City should also be reimbursed. (Exh. A-5)

For all of the foregoing reasons, it is respectfully requested that all costs in connection with electrification facilities be ordered upon Amtrak and also that Amtrak be required to reimburse the City for aforesaid engineering drawings.

It therefore follows, that all other costs of construction under Stage A (A.99374), including watchmen, flagmen, and

inspectors, should be paid for by the parties requesting them.

(3/22/77 - N.T. 32).

3. Cost of Relocation of Facilities of Bell Telephone Company

In connection with both stages of construction (Stage A-99374; and Stage B - A98061 - Airport High Speed Line Crossing) certain facilities of the Bell Telephone Company must be relocated to accommodate this municipal work and ^{public} purpose. The City has consistently asserted that the Bell Telephone Company be required to bear the expense in making alterations, modifications and relocations of Bell's utility facilities as would become necessary by virtue of the proposed construction (1) which is intended to serve as a crossing for the Airport High Speed Line (A98061) which will expedite transportation of passengers to and from the Airport, and (2) which is also intended to strengthen and modernize the existing structure, 58th Street structure, for the safety and accommodation of the travelling public. That the City seeks reimbursement for costs of construction in A99374 ^{public} does not in any way diminish the municipal purposes and work involved in both stages of construction.

The City supported its position by contending that contracts (Permit Applications and Acceptance of Regulations, City Exh. A9, A10, A11, A12, A13) entered into between the City and Bell in the past was controlling. Those contracts (Exh. A-9

through A-13 inclusive) provide inter alia, as follows:

Exhibit A-9 in Paragraph 22

Exhibit A-10 in Paragraph 22

Exhibit A-11 in Paragraph 22

Exhibit A-12 in Paragraph 22

Exhibit A-13 in Paragraph 25

that in the event of municipal work, the utility (in this case, Bell Telephone Company) would remove and relocate its facilities at its sole cost and expense.

In the instant matter, Bell has admitted that its facilities were installed pursuant to the aforesaid Permits and Permits Applications (3/22/77- N.T. 135). Moreover, Bell has agreed to be responsible for its relocated facilities in the future (3/22/77 - N.T. 134).

It is the position of the City that the Public Utility Commission as did the Supreme Court of Pennsylvania in various cases should recognize and give effect to the contract (Permit and Application) between the City and Bell Telephone Company where no question of public health, welfare or safety is involved. The power of the Public Utility Commission with respect to the compensation for damages occasioned by construction, relocation, protection, alterations, or abolition of crossings, that the PUC can award is expressed in the Act of 1937, May 28, P.L. 1053, Art. IV, Sec. 411, and as amended in 1963, July 3, P.L. 212, Section 1a (66 P.S. 1181). This section provides as follows:

"§1181. Compensation for damages occasioned by construction, relocation, protection, alteration, or abolition of crossings.

(a) The compensation for damages which the owners of adjacent property taken, injured or destroyed may sustain in the construction, relocation, alteration, protection, or abolition of any crossing under the provisions of this act, shall, after due notice and hearing, be ascertained and determined by the commission. Such compensation, as well as the cost of construction, relocation, alteration, protection, or abolition of such crossing, and of facilities at or adjacent to such crossing which are used in any kind of public utility service, shall be borne and paid, as hereinafter provided, by the public utilities or municipal corporations concerned, or by the Commonwealth, in such proper proportions as the commission may, after due notice and hearing determine, unless such proportions are mutually agreed upon and paid by the interested parties. Any party to the proceeding dissatisfied with the determination of the commission may appeal therefrom as provided in section one thousand one hundred one of this act, and for this purpose is hereby authorized to sue the Commonwealth: Provided, however, That the commission may, of its own motion, or upon application of any party in interest, submit to the court of common pleas of the county wherein the property affected is located, the determination of the amount of damages to any property owner due to such condemnation, for which purpose such court shall appoint viewers, from whose award of damages an appeal to said court shall lie on the part of any person aggrieved thereby, under the general law applicable to the appointment of viewers, for the ascertainment of damages due to the condemnation of private property for public use. As amended 1963, July 3, P.L. 212, §1."

However, the area of the administrative activity of the Public Utility Commission is not boundless. The Commission's power is statutory and the legislative grant of the power to act in any

particular case must be clear. The jurisdiction of the Public Utility Commission includes those powers necessary for the exercise of the authority granted in the Public Utility Law. Bessemer and L.E.R. Co. v. Penna. PUC, 210 Pa. Superior Ct. 7 (1967).

Because the Commission derives its authority from legislative action, its powers are confined to those which are expressly granted, or which may be necessary and proper to carry out those specifically declared. Its authority must either arise from the express words of the statute, or be a strong and necessary implication therefrom. Department of Highways v. Penna. PUC, 198 Pa. Superior Ct. 87 (1962).

Prior to the 1963 Amendments to the Act of 1937, May 28, P.L. 1053, Art. IV, Sec. 411, with respect to the powers of the Public Utility Commission in allocating costs, allocations with respect to non-transportation utilities had to be placed entirely upon the non-transportation utility. This became evident in the case of Delaware River Port Authority v. Penna. PUC, 393 Pa. 639 (1958), wherein the Port Authority was ordered by the Public Utility Commission to pay the entire cost of relocating certain facilities of the Philadelphia Electric Company during the construction of the Walt Whitman Bridge. The Court stated on page 643:

"The Commission's authority must either arise from the express words of the Statute, or be a strong and necessary implication therefrom."

The Court expressly held therein that non-transportation utilities were excluded from the scope of Section 411(a) of the Act of 1937 and therefore, the common law rule prevailed, wherein inasmuch as

"non-transportation public utilities have been permitted to occupy highway rights of way free of cost, subject and subordinate to the State's police power to control and regulate the highways for the benefit of the public, such utilities obtained no property rights in the highway and can be ordered by a competent State or municipal agency to relocate their facilities at their own expense."

The Court then noted that this common law rule could be abrogated by a specific statutory mandate which directed the payment of relocation costs to the non-transportation utilities involved. Shortly after this case, the 1963 Amendment to Section 411 of the Act of 1937 was adopted.

Nevertheless, the law with respect to private pre-existing contracts between the non-transportation utilities and other parties has remained the same despite the 1963 amendment.

The courts have uniformly held that private agreements may be ignored by the Commission only when the public health, welfare and safety so requires.

In the case of Penn Railroad Company v. Penna. PUC, 136 Pa. Superior Ct. 1 (1939) the Court therein explained the purpose of the Act of May 28, 1937, P.L. 1053, Sections 409-411, 66 P.S. 1179-1181, but nevertheless, the Court stated on pages 5 and 6,

". . . the contracts are not abrogated but after the Public Utility Commission has fixed the liabilities of those concerned to the public, such persons are then referred to a court of law to have adjudicated their contract rights." (emphasis supplied)

The Court then cited the case of Director General v. West Penn R.Y.S. Company, 281 Pa. 309 (1924) which involved the terms of a written contract whereby the street railway company agreed to pay such share of the costs if gates or a watchman should in the future be required. The Court made it clear that since the assertion of the West Penn Railroad Company's contractual rights interfered in no way with the exercise of the police powers, and the public welfare was not adversely affected, and held that

"In this, the public had no interest, the right to annul contracts is limited to the police power, and unless it appears that the contract does, in some measure, affect adversely the welfare of the public, the legislative cannot interfere merely to relieve a party from the burdens of an improvident contract."

In the instant matter, it is to be noted that from a very early date, at various times, the Bell Telephone Company (and other utility companies) requested and received permission from the Board of Highway Supervisors, Department of Public Works and from the Department of Streets of the City of Philadelphia

(City Exh. A-9 through A-13) to install their facilities in the bed of various streets and to attach to highway bridges (Exh. A-11). The City granted permission through the medium of a contract which, as a practical matter, was commonly known as a "permit". Each permit specifically provides, as aforesaid,

"If in the construction of water and gas mains, sewers or any other municipal work, it shall become necessary to change the location of any existing privately-owned structures occupying highways, their location shall be changed, at the sole expense of the owners, to such new locations as shall be directed by the Board."

The aforementioned Permits, including the relevant sections were duly introduced into evidence at the Public Utility Commission Hearings. (Exh. A-9 through A-13).

It is submitted that the Commission must honor the terms of these private permit-contract between the parties, for to ignore it would mean that the PUC would be going beyond protecting the public health, safety and welfare, since, at issue, is only the question of who should bear the costs.

It is evident that the long-standing permit contract between the City and the non-transportation utility involved herein (Bell) has, as its subject matter, merely the allocation of costs by agreement for the relocation of utility facilities. Public interest centers around the fact that certain Bell utility facilities must be relocated to make way for the Airport High Speed crossing and restorative construction on the 58th Street

Bridge. However, after the construction is completed, the question as to who should pay whom, or be reimbursed by whom for the expenses incurred during the relocation process is obviously a private matter directly affecting only the City and Bell Telephone Company

For the Public Utility Commission to direct that the City to reimburse Bell for the expenses of relocation of its utility facilities would not be a legitimate allocation of costs. On the contrary, it would be an attempt to render a valid contract null and void, thus, in effect, disregarding the contractual obligations between the parties even though the public health, safety and welfare could not be adversely affected. This power, which Bell asks the Public Utility Commission to assert, is not provided for by statute nor permitted under the attendant police power concept.

If the Commission would order Bell at its own expense to remove and relocate its utility facilities and then would order the City to reimburse Bell for all or a part of the costs incurred, the City could then proceed in an action to law to enforce the permit-contract, and Bell would be required to return the money to the City pursuant to the aforementioned contract terms. It has always been the law that private contracts between the parties cannot be abrogated by the Public Utility Commission and that the parties could maintain a separate and distinct action at law to recover under the contract. Penn R.R. Company

v. Penna. PUC, 136 Pa. Super. Ct. 1 (1939). Therefore, it is clearly evident that in the final analysis the City could not be required to pay for the removal and relocation of the Bell utility facilities at issue in this case.

It is the further position of the City of Philadelphia that the Public Utility Commission is bound by Philadelphia Electric Company v. City of Philadelphia, 301 Pa. 291 (1930) and Phila. v. Pa. PUC, 449 Pa. 402 (1972). Both cases involved contracts identical to those here involved. In both cases extensive excavations in the construction of the municipal subway under Broad Street required the relocation of underground utility facilities. The question arose therein as to who should bear the cost and expense of the relocation of these conduits. The Courts had before them the identical permits and attached regulations especially the clause aforementioned in Exhibits A-9 through A-13. The Court in the Philadelphia Electric Company case, supra, at page 298 stated:

"The right of the Plaintiff to enter upon Broad Street to lay its conduits beneath the surface, rests accordingly upon contract, subject, however, to the police power of the City and its rights under its Charter, which continued its full control and supervisions over all its thoroughfares.

"We need not go further than to say, in relation to the nature of this contract, that it was a contract for services and the contractual conditions imposed by the City which Plaintiff could either accept or reject, were impositions certainly within the scope of its municipal powers."

It is to be noted that the utility involved herein (Bell), by alleging that it is not responsible for the costs incurred to remove and relocate the utility lines in question, have taken the position that they have the power to repudiate the terms of the permit and the contractual obligations therein created with the City. This position is not legally tenable at this late date, in light of the dictates of Philadelphia Electric Company v. City of Philadelphia, supra, and Phila. v. Pennsylvania P.U.C., supra, cited hereinafter.

The Court in Philadelphia Electric, supra, expressly upheld the provision, as expressed in the Permit applications and regulations which required utilities to remove at their own expense their conduits in the event municipal work so required. Noting on page 300 that:

"This Court has repeatedly held that if a public service corporation accepts imposed municipal conditions in consideration of the right given to construct its work, it must perform as stipulated, or suffer the penalty arising from failure to do so."

Moreover, in grade-crossing cases where the Commission has allocated the costs between parties despite an alleged violation of pre-existing contract rights, the Pennsylvania Supreme Court on appeal has held that a party aggrieved by the Commission's order could seek recovery under alleged contract obligations in a court of law in a separate and distinct action.

Thus, in the case of Pittsburgh and L.E.R.R. v. The McKees Rocks Borough, 287 Pa. 311 (1926) the validity of a contract

was at issue wherein the railroad sued the Borough in assumpsit under a contract in which the railroad agreed to construct and the Borough agreed to maintain a bridge across certain railroad tracks. Subsequent thereto, the bridge fell into disrepair and the Public Service Commission directed the Railroad to repair the bridge at its own cost. The Railroad, under protest, complied with the order. In the above case, the Court noted that:

"The Public Service Commission had no authority, nor did it attempt to adjudicate the contract claim, here sought to be enforced. The Public Service Commission is not vested with power to set aside the contract between the Borough and the Railroad Company."

Additionally, the Superior Court concluded in the case of Pennsylvania Railroad Company v. Pa. P.U.C., 136 Pa. Super. 1 (1939) agreed with the argument that the Commission had no power to abrogate the contract between the railroad and the municipality, and stated,

". . . the contracts are not abrogated but after the Public Utility Commission has fixed the liabilities of those concerned to the public, such persons are then referred to a court of law to have adjudicated their contract rights." Id. at 6.

It is clear therefore, that in a subsequent action by the City on the contract, the utility could not prevail. Thus the effect of an order of the Public Utility Commission requiring the City to reimburse Bell would be a temporary impairment of

Thus, it is the City's position that since the Bell utility facilities were implanted pursuant to permits granted by the City (admitted by Bell, as aforesaid) which permits require utilities to relocate at their own expense when the change in location is necessitated by a public project, the terms of these permits, as hereinabove quoted should apply.

Moreover, in the case of Philadelphia v. Pa. PUC, 449 Pa. 402 (1972) the Supreme Court of Pennsylvania definitively held

"That a valid, binding contractual obligation was created when the utility companies obtained permits for the laying of conduits in the City's streets was decided by this Court in Philadelphia Electric Company v. Philadelphia, 301 Pa. 291, 152 Atl. 23 (1930). 'The contractual conditions imposed by the City, which [appellants] could either accept or reject, were impositions certainly within the scope of its municipal powers.' 301 Pa. at 298, 152 Atl. at 26. Since the permits were granted as part of contractual agreements between the City and the utility companies, there can be no doubt that the covenants of Bell and Electric providing that the cost of facility relocation would be borne by facility owners were part of the quid pro quo which the utility companies proffered in exchange for the City's permit grants."

While it is true that under §§409 and 411 of the Public Utility Code, 66 P.S. 1179 and 66 P.S. 1181 the Commission may allocate costs in rail-highway crossings, the Supreme Court in Philadelphia v. Pa. P.U.C., supra (1972) stated at p. 410:

"The Commission, however, is not authorized to impair pre-existing contractual rights and duties except under limited circumstances."

Thus, the Court continues, (p. 410):

"Unless it appears, however, that these contracts adversely affect the public welfare, the legislature may not interfere with the cost allocation provisions. Director General of Railroads v. West Penn Railways Co., 281 Pa. 309, 126 Atl. 767 (1924). This Court has limited the contract abrogation ambit of the Commission to particular circumstances. The Commission's power to set aside contracts does not apply to a contract which does not affect the common welfare by directly influencing rates or actual operations of the public utility. Pittsburgh and Lake Erie Railroad Co. v. McKees Rocks Borough, 287 Pa. 311, 135 Atl. 227 (1926)."

The Court further held that (p. 410, 411)

"Affirming the permit contracts and their cost allocation provisions does not adversely affect the public welfare."

Accordingly, the Court holds (p. 411, 412)

"We will not abrogate vested contractual rights bargained for in an arm's length transaction between the utility companies and the City of Philadelphia. The doctrine of stare decisis would here dictate that contractual rights should abide except under circumstances where public welfare compels a contrary result. "This doctrine [stare decisis] 'is a salutary one and should not be departed from where the decision is of long standing and rights have been acquired under it, unless considerations of public

policy demand it." Colonial Trust Co. v. Flanagan, 344 Pa. 556, 561, 25 A. 2d 728, 730 (1942). No public policy considerations appear which would justify the Court's departure from the preservation of fundamental contractual rights and obligations."

It is to be further noted that the permits in the Philadelphia v. Pa. P.U.C. case, 449 Pa. 402 (1972) were issued subsequent to enactment of the Public Utility laws (p. 418, Phila., v. Pa. P.U.C., supra), nevertheless the Supreme Court as above quoted, upheld the validity of the permits for the foregoing reasons.

For all of the foregoing reasons the costs of relocation of Bell Telephone facilities should be ordered upon the Bell Telephone Company.

4. Cost of Temporary Relocation of SEPTA Power Line. (Docket A99374 Stage A and Docket A98601 Stage B)

It is the position of the City that SEPTA should be required to bear the cost of the temporary relocation of its power line by reason of the fact that said lines are occupying a right of way over a public thoroughfare. (3/22/77, N.T. 140-141)

It is submitted that SEPTA offered no proof whatsoever to justify its authority to occupy said public right of way. Accordingly, it must be considered to be in its present position at the sufferance or at the will of the City, and therefore should be required to relocate temporarily at its own cost and expense and at no cost to the City.

5. Airport High Speed Line Crossing - A.98061 - Stage B Construction.

In connection with this phase of the consolidated hearing, there was basically no disagreement, except for Bell Telephone Company utility relocations and SEPTA temporary relocation.

The City's position is that costs should be allocated in accordance with the grant from the Urban Mass Transportation Administration and the appropriate Pennsylvania legislation, as testified to by the City witness at the hearing on January 13, 1976 (1/13/76 N.T. 132, 133, 146 - Docket A98061) and (3/22/77 N.T. 38 and 39). This testimony as to funding was uncontroverted by any party to the proceeding. Thus, under the grant and legislation the costs of construction work are to be paid as follows:

Urban Mass Transportation	80 %
Pennna. Dept. of Transportation	16-2/3%
City of Philadelphia	3-1/3%

Accordingly, 16-2/3% of the entire costs should be allocated to PennDOT. At 3/22/77, N.T. 42, the existence of a City-State Agreement for such 16-2/3% funding by PennDOT was confirmed.

For the reasons hereinabove stated, Bell Telephone Company relocation should be borne initially and finally by the Bell Telephone Company.

Maintenance of Stage B construction (A98061) is to be

the responsibility of the City.

Philadelphia Electric relocations are to be paid for in accordance with an Agreement between the parties (City Exhibit A-20)

Philadelphia Gas Works relocation cost is to be paid initially by the Philadelphia Gas Works and finally in accordance with an agreement between the parties (City Exhibit A-18)

It is submitted that the cost of any watchmen, flagmen and/or inspectors, requested by any party should be paid, initially and finally, by the party requesting them.

For the reasons hereinabove stated, any SEPTA temporary relocations should be borne by SEPTA.

IV CONCLUSION

For all of the foregoing reasons, the City of Philadelphia respectfully requests the adoption of the Proposed Findings of Fact and Conclusions of Law and Proposed Order attached hereto.

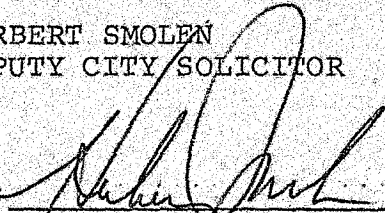
Respectfully submitted,

SHELDON L. ALBERT
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CHIEF DEPUTY CITY SOLICITOR

JAMES M. MORAN
DEPUTY IN CHARGE OF LITIGATION

HERBERT SMOLEN
DEPUTY CITY SOLICITOR

BY: 
HERBERT SMOLEN
DEPUTY CITY SOLICITOR

ATTORNEYS FOR THE CITY OF PHILADELPHIA

PROPOSED FINDINGS OF FACT

1. The existing 58th Street Bridge, over the main line of railroad tracks, was constructed approximately in 1892, at the sole cost of the Pennsylvania Railroad, and has been maintained by it and its successors in title and interest since then (3/22/77, N.T., 13, 14, 15).
2. The bridge when constructed in 1892 was originally designed to carry a 15-ton weight load (3/22/77 N.T. 45, 48, 49 and 52).
3. At the present time, some of the bridge members rate lower than 15 tons (3/22/77 - N.T. 33) and therefore said bridge is deficient and inadequate, because some of its members are rated lower than 15 tons (3/22/77, N.T. 45).
4. The railroad, in the past and as recently as 1952, recognized its obligation to maintain the bridge and performed major strengthening of the superstructure (3/22/77, N.T. 33).
5. The City has, from time to time, requested the Pennsylvania Railroad and the Penn Central Transportation Company to make the bridge safe for the travelling public, and both companies did perform work on the bridge (3/22/77, N.T. 52, 53).
6. The superstructure of the bridge has been permitted, by the railroad owner, to deteriorate into its present deficient condition (3/22/77, N.T. 33).

7. By reason of the present poor condition of the existing bridge, it is necessary in the public interest that the superstructure be removed and the substructure modified in order to have a modern structure (3/22/77, N.T. 15).
8. In addition, the north abutment of the bridge is in fair to good condition, and the highway approaches are in fair to poor condition (3/22/77, N.T. 13)
9. The modifications to the existing bridge are not caused by the construction for the Airport High Speed Line (3/22/77, N.T. 54 and 55).
10. The existing railroad bridge is presently owned either by Conrail (3/22/77, N.T. 25 and City Exhibit A-14) and/or by Amtrak (Conrail Exhibit No. 1). Under any circumstances, said bridge is not owned by the City of Philadelphia.
11. The City presently does not have any maintenance responsibilities for the existing 58th Street Bridge, but the sole responsibility for maintenance has been upon the Pennsylvania Railroad since 1892, and its successor in interest, Penn Central Transportation Company (3/22/77, N.T. 28 and 29) and any successors or assigns of the Penn Central Transportation Company.
12. None of the construction work on Construction Stage A (existing bridge) (A.99374) is necessary for construction of the Airport

High Speed Line crossing in construction Stage B (A.98061),
(3/22/77, N.T. 20).

13. The cost of construction under Stage A (existing bridge), excluding cost of railroad electrification work, is estimated to be \$660,000 (A.99374) (3/22/77, N.T. 20 and Exhibit A-4).
14. The construction work on the existing railroad electrification facilities on the existing bridge under Stage A Construction (A.99374) has nothing to do with and is not required by the Airport High Speed Line (A.98061) (3/22/77, N.T. 21).
15. The Department of Streets, formerly the Department of Public Works, is the agency responsible for issuing permits for the installation of railroad electrification facilities attached to bridges (3/22/77, N.T. 22).
16. In connection with the installation of the railroad electrification facilities on the 58th Street Bridge, the Bureau of Highways, Department of Public Works of the City of Philadelphia, issued a letter permit to the Pennsylvania Railroad under date of January 14, 1928, to install said electrification facilities (3/22/77 - N.T. 17, 23 and Exhibit A-7).
17. The railroad catenary and signal transmission attachments which are attached to and adjacent to the existing bridge

were installed by the Pennsylvania Railroad pursuant to said letter permit issued by the City dated January 14, 1928 (3/22/77, N.T. 17).

18. The electrification facilities attached to said bridge were installed by the Pennsylvania Railroad in 1921, at the sole cost and expense of the railroad and at no cost to the City; and the railroad has been solely responsible for maintenance at its own cost and expense (3/22/77, N.T. 29).
19. The said permit requires the railroad to remove all wires and attachments and to repair any wires, plates or other appurtenances on the bridge without cost to the City (3/22/77, N.T. 24 and Exhibit A-7).
20. The permit also requires the railroad to bear all expenses for supporting or maintaining the attachments temporarily so that maintenance or replacement work could be done on the bridge and, finally, the permit requires the railroad to save the City harmless from any cause whatsoever (3/22/77, N.T. 24 and Exhibit A-7).
21. Penn Central Transportation Co. was the successor in interest to the Pennsylvania Railroad Company and, specifically, in connection with the ownership of the 58th Street Bridge and of the railroad electrification facilities thereon (3/22/77, N.T. 24 and 25).

22. The Penn Central Transportation Company in turn transferred its title and interest in the bridge and electrification facilities to Conrail (3/22/77, N.T. 25 and Exhibit A-14)
23. The electrification facilities on said structure were then transferred by Conrail to Amtrak (3/22/77, N.T. 25 and Exhibit A-8). (Conrail Exh. 1).
24. Penn Central is the successor in interest and title to the Pennsylvania Railroad in connection with said electrification facilities and Conrail was the successor in interest to Penn Central's interest therein (City Exhibit A-14) and same were subject to the terms and conditions of the original permit letter authorizing installation.
25. The presently existing railroad electrification facilities on the 58th Street railroad-owned bridge are owned by Amtrak (3/22/77, N.T. 20 and 21), as successor in interest and title to Pennsylvania Railroad, Penn Central Transportation Company and Conrail, and by reason thereof, it took title thereto subject to the original conditions of the letter permit of January 14, 1928 authorizing initial attachment. (Conrail Exh. 1; City Exh. A-8).
26. The estimated cost for the temporary attachment and reattachment of railroad electrification facilities for Stage A is estimated to be \$176,306 (A.99374) and these costs do not

- include certain items of work required to be done by Amtrak forces (3/22/77, N.T. 21 and Exhibit A-5).
27. Amtrak wrongfully refused to undertake the engineering work for the removal and replacement of its electrification facilities (3/22/77, N.T. 26).
 28. By reason of Amtrak's wrongful refusal, the City was required to prepare drawings in connection with said electrification facilities at a cost of \$76,306.00 (3/22/77, N.T. 26 and City Exhibit A-5).
 29. The cost of bridge reconstruction as well as for work on the electrification facilities, should be the sole responsibility of the present owners of those facilities (3/22/77, N.T. 32 - Stage A construction).
 30. All other costs of construction under Stage A, including watchmen, flagmen, and inspectors, should be paid for by the parties requiring same (3/22/77, N.T. 32).
 31. The line of railroad involved in this proceeding is owned and operated by the National Railroad Passenger Corp., also known as Amtrak (N.T. 107).
 32. Amtrak does not object to the construction plans (3/22/77, N.T. 108).
 33. Amtrak has agreed to maintain its own facilities at the crossing at its own expense (3/22/77, N.T. 110)

34. Amtrak admits that it owns the electrification facilities, having received same by deed from Conrail (3/22/77, N.T. 111 and 113 and Conrail Exh. 1).
35. All engineering work performed by Amtrak in connection with this matter was performed by Amtrak in-house engineers (3/22/77, N.T. 113).
36. The Amtrak cost estimate was not substantiated by the Amtrak witness (3/22/77, n.t. 117-118)
37. All of the Bell Telephone Company facilities affected by the instant matter, were installed in public right-of-way pursuant to permits issued by Board of Highway Supervisors and the Bell Telephone Company specifically accepted the rules and regulations of the Board of Highway Supervisors with each permit for such installation (Exhibit A-9, 10, 11, 12 and 13 and N.T. 73 through 87).
38. Each of the acceptances of the regulations (Exhibit 9 through 13) contain a specific provision providing, inter alia, that the utility (in this case Bell) is responsible for the cost of relocation of its facilities if such relocation is occasioned by the construction of a water or gas main source or any other municipal work (N.T. 83 and Exhibits A-9 through A-13).
39. Bell Telephone Company agreed to be responsible for its relocated facilities in the future (3/22/77, N.T. 134).

40. Bell Telephone Company admitted that its facilities are installed pursuant to permits issued (3/22/77, N.T. 135).
41. All of Bell facilities on Bell Exhibit, which are to be relocated are covered by the permit applications in Exhibit A-9 and 10 (3/22/77, N.T. 154).
42. A SEPTA power line is in public right-of-way, having been installed in approximately 1897 (3/22/77, N.T. 140, 141)
43. SEPTA costs for Stage B (A.98061), Airport High Speed Line crossing is approximately \$11,500 and the balance of its total of \$14,000 costs will be involved in Stage A(A99374) namely, approximately \$2,500.
44. Philadelphia Gas Works' relocation costs are covered under an agreement between the City and PGW (3/22/77, N.T. 34, 151 and Exhibit A-18).
45. Philadelphia Electric Company relocation costs on Stages A and B are covered by an agreement between the City and Philadelphia Electric Company (3/22/77, N.T. 30 and 5/18/77, N.T. 178 and Exh. A-20).
46. If the Airport High Speed Line were not to be built, Philadelphia Electric Company would not be required to relocate its facilities (3/22/77. N.T. 127).
47. The approximate cost of construction of Stage B (Airport High Speed Line, A.98061) is estimated to be \$740,000 (3/22/77, N.T. 22 and City Exhibit A-6).

48. There are two different means of funding for each of the two different stages of construction.
49. Stage B construction costs (Airport High Speed Line, A-98061) are allocable as follows: 80% UMTA; 16-2/3% PennDOT; 3-1/3% City of Philadelphia (3/22/77, N.T. 34).
50. The aforesaid percentages for construction of Stage B (Airport High Speed Line) are determined by a Capital Assistance Grant (3/22/77, N.T. 35)
51. In said Capital Assistance Grant, no provision is made for public utility relocations for the Airport High Speed Line (3/22/77, N.T. 35).

PROPOSED
CONCLUSIONS OF LAW

1. The existing 58th Street bridge was constructed by the Pennsylvania Railroad at its sole cost and expense, and was owned by said railroad.
2. The Penn Central Transportation Company was the successor in interest and title of the ownership interest of the Pennsylvania Railroad with respect to the ownership of the said 58th Street bridge.
3. Consolidated Rail Corporation (Conrail) is the successor in interest and title of the ownership interest of the Penn Central Transportation Company with respect to the ownership of the said 58th Street Bridge.
4. National Railroad Passenger Corporation (Amtrak) is the successor in interest and title of the ownership interest of the Consolidated Rail Corporation with respect to the ownership of the said 58th Street Bridge.
5. Penn Central Transportation Company was the successor in interest and title of the ownership interest of the Pennsylvania Railroad with respect to the ownership of the electrification facilities attached to and adjacent to the 58th Street Bridge.

6. Consolidated Rail Corporation (Conrail) is the successor in interest and title of the ownership interest of the Penn Central Transportation Company with respect to the ownership of the electrification facilities attached to and adjacent to the 58th Street Bridge.
7. National Railroad Passenger Corporation (Amtrak) is the successor in interest and title of the ownership interest of the Consolidated Rail Corporation with respect to the ownership of the electrification facilities attached to and adjacent to the 58th Street Bridge.
8. The duty of maintenance of said 58th Street Bridge and said electrification facilities was originally that of the Pennsylvania Railroad; then, by succession of interest and title, the Penn Central Transportation Company; then, by succession of interest and title, the Consolidated Rail Corporation; then, by succession of interest and title, the National Railroad Passenger Corporation (Amtrak).
9. The City of Philadelphia does not own the said 58th Street Bridge or the electrification facilities attached to and adjacent to said bridge.
10. The City of Philadelphia has no maintenance responsibilities with respect to said 58th Street Bridge or the electrification facilities attached to and adjacent to said bridge.
11. Consolidated Rail Corporation (Conrail) and the National

Railroad Passenger Corporation (Amtrak) are public utilities within the meaning of the Public Utility Code and therefore are subject to the jurisdiction of the Public Utility Commission.

12. The original railroad catenary and signal transmission attachments (electrification facilities) which are attached to and adjacent to the existing bridge were installed by the Pennsylvania Railroad pursuant to a letter permit issued by the City dated January 14, 1928, containing various conditions therein more fully set forth.
13. The Penn Central Transportation Company, as successor in interest and title to the Pennsylvania Railroad took title to said electrification facilities subject to all of the terms and conditions of said letter permit of January 14, 1928.
14. Consolidated Rail Corporation (Conrail) as successor in interest and title to the Penn Central Transportation Company, took title to said electrification facilities subject to all of the terms and conditions of said letter permit of January 14, 1928.

15. National Railroad Passenger Corporation (Amtrak) as successor in interest and title to the Consolidated Rail Corporation, took title to said electrification facilities subject to all of the terms and conditions of said letter permit of January 14, 1928.
16. Said letter permit provides, inter alia, that the City will not be required to bear any expense of making other provisions for supporting or maintaining the attachments temporarily, such expense to be paid for by the Railroad Company.
17. The railroad owners of said 58th Street Bridge have been, and currently are solely responsible for maintenance of said bridge and the electrification facilities at their own expense.
18. The City of Philadelphia does not own said electrification facilities and therefore is not responsible for maintenance thereof.
19. Amtrak wrongfully refused to proceed with removal and relocation of said electrification facilities after request by the City.
20. By reason of the wrongful refusal of Amtrak to proceed with removal and relocation of said electrification facilities, the City was required to prepare engineering drawings at a cost of \$76,306, for which the City should be reimbursed

- by Amtrak.
21. All costs of reconstruction of the existing 58th Street Bridge should be borne by Conrail and/or Amtrak in such proportions as the Commission may determine, but no costs should be allocated to the City since it is not the owner thereof.
 22. All Bell Telephone facilities involved in both proceedings were installed pursuant to validly issued legally binding permits which require Bell Telephone Company to remove and relocate said facilities at Bell's own cost and expense, for, inter alia, municipal or public purpose.
 23. The P.U.C. has no power to impair or abrogate contractual obligations and rights between the parties except where public welfare is involved.
 24. Question of cost allocation and affirmance of the permits and conditions and regulations contained therein, do not adversely affect the public welfare.
 25. Airport High Speed Line (A98061 - Stage A) costs are governed by terms of the Urban Mass Transportation Administration grant and appropriate Commonwealth of Pennsylvania legislation and are to be borne as follows:

Urban Mass Transportation Adm.	80 %
Pa. Dept. of Transportation	16-2/3%
City of Philadelphia	3-1/3%

26. Philadelphia Electric Company facility relocations and Philadelphia Gas Works relocations are governed by the terms of separate agreements pertaining thereto.
27. SEPTA facilities involved are occupying a portion of the public right of way and therefore temporary relocation should be at the cost of SEPTA.

PROPOSED ORDER

1. That the application in Docket No. A.99374 - STAGE A, and that application in Docket No. A.98061 - STAGE B, be and are hereby approved.

2. That the existing crossing in Docket A.99347 - STAGE A, carrying 58th Street in the City of Philadelphia over and above the grade of the existing tracks of the former Penn Central Transportation Company, now succeeded in interest and title by Consolidated Rail Corporation (Conrail) and National Railroad Passenger Corporation (Amtrak), by restorative construction and alteration, be altered and reconstructed;

And that a new crossing, by the construction of new structure over the proposed tracks of the Airport High Speed Line, be approved and be constructed in Docket A.98061 - STAGE B;

All such construction (STAGES A and B) shall be in accordance with the plans admitted at the hearing held March 22, 1977 as applicant's Exhibit Nos. A-1, A-2 and A-3; which plans are attached hereto, made part hereof, and are hereby approved.

3. That applicant City of Philadelphia (hereinafter referred to as CITY), at its initial cost and expense, furnish all material and do all work required to construct the new crossing, STAGE B,

(A.98061) carrying 58th Street over and above the grade of the proposed tracks of the AHSL, and highway approach thereto, and including the relocation of the existing CITY-owned water main facilities both on the STAGE B crossing and on the STAGE B highway approach thereto, estimated to cost \$675,000. exclusive of engineering costs, based upon CITY Exhibit No. A-6, generally in accordance with the approved plans, CITY Exhibit Nos. A-1 and A-2; Final allocation of costs being covered in paragraph 24 hereof.

4. That CITY, at its sole cost and expense, furnish all material and do all work required to alter and reconstruct the STAGE A (A.99374) highway approach, and the relocation of the existing CITY-owned water main facilities, estimated to cost \$116,900. based upon CITY Exhibit No. A-4, generally in accordance with the approved plans, CITY Exhibit Nos. A-1 and A-2.

5. That Conrail and/or Amtrak (in such proportions as determined by the Commission), at their sole cost and expense, in cooperation with CITY, furnish all material and do all work required to alter and reconstruct the existing railroad-owned crossing, STAGE A, carrying 58th Street over and above the grade of the existing tracks of the railroad, excluding the STAGE A highway approach thereto, the total estimated to cost \$483,100. exclusive of engineering costs based upon CITY Exhibit No. A-4, generally in accordance with the approved plans, CITY Exhibit Nos. A-1 and A-2.

6. That Amtrak, at its sole cost and expense, furnish all material and do all work necessary to make temporary and/or permanent alterations, relocations, changes and/or removals of its existing Amtrak-owned electric traction, transmission, signal and communication facilities at and adjacent to the crossing, STAGE A, estimated to cost \$158,400. based upon CITY Exhibit No. A-5 and Amtrak Exhibit Nos. 1 and 2, generally in accordance with the approved plans, CITY Exhibit A-3.

7. That Conrail and/or Amtrak (in such proportions as determined by the Commission), at their sole cost and expense, furnish construction inspectors as required to protect their respective operations and facilities during construction of PROJECT over and adjacent to the railroad tracks and, in addition, furnish such engineering services as may be required to insure the safety of their respective facilities which may be affected by construction of PROJECT.

8. That Conrail and/or Amtrak (in such proportions as determined by the Commission), at their sole cost and expense, maintain watchmen and flagmen to protect their respective operations and facilities during construction of PROJECT over and adjacent to the railroad tracks and, in addition, maintain Class A electric protection employees when work is being performed on, over and adjacent to the electrification facilities.

9. That Philadelphia Gas Works (hereinafter referred to as PGW), at its initial cost and expense, furnish all material and do all work necessary to make temporary or permanent altera-

tions, relocations and/or changes of its existing mains, structures, equipment or other facilities, including additional bridge supports, made necessary or required to permit the completion of PROJECT, estimated to cost \$336,170. based upon CITY Exhibit No. A-18, generally in accordance with the approved plans, CITY Exhibit Nos. A-1 and A-2.

10. That Philadelphia Electric Company (hereinafter referred to as PECO), at its initial cost and expense, furnish all material and do all work necessary to make temporary or permanent alterations, relocations and/or changes of its existing aerial and underground lines, conduits, structures, equipment or other facilities, preliminarily estimated to cost \$60,000 based upon testimony at December 8, 1975, hearing, made necessary or required to permit the completion of PROJECT in accordance with this order, and in such manner as will not interfere with the execution of PROJECT.

11. That PECO, at its sole cost and expense, and in cooperation with CITY and the railroads involved, furnish all material and do all work necessary to install its betterment facilities and to provide for its future facilities on and adjacent to the crossings, generally in accordance with the approved plans, CITY Exhibit Nos. A-1 and A-2.

12. That PECO, at its initial cost and expense, maintain safety inspectors as required to protect its facilities during execution of PROJECT to insure the safety of its facilities, which

may be affected by execution of PROJECT.

13. That Bell Telephone Company of Pennsylvania (hereinafter referred to as BTC) / ^{initially and finally} at its sole cost and expense, furnish all material and do all work necessary to make temporary or permanent alterations, relocations and/or changes of its existing lines, conduits, structures, equipment or other facilities made necessary or required to permit the completion of PROJECT, estimated to cost \$4,000. based upon BTC Exhibit No. 1, in such manner as will not interfere with execution of PROJECT.

14. That Southeastern Pennsylvania Transportation Authority (hereinafter referred to as SEPTA) / ^{initially and finally} at its sole cost and expense, furnish all material and do all work necessary to make temporary or permanent alterations, relocations and/or changes of its existing transmission lines, conduits, structures, equipment or other facilities made necessary or required to permit completion of PROJECT, estimated to cost \$14,000. based upon testimony at March 22, 1977, hearing, generally in accordance with the approved plans, CITY Exhibit Nos. A-1 and A-2, and in such manner as will not interfere with execution of PROJECT.

15. That any relocation of, changes in or removal of any existing adjacent structures, equipment or other facilities of any non-carrier public utility, other than PGW, PECO, BTC and SEPTA as hereinbefore provided, located either within or beyond the limits of PROJECT, which may be required as incidental to completion of PROJECT, be made by said public utility, at its sole cost and expense, and in such manner as will not interfere

with execution of PROJECT.

16. That CITY, at its initial cost and expense, furnish all material and do all work necessary to complete the remainder of PROJECT in accordance with the approved plans, including the installation of CITY-owned utilities and drainage facilities.

17. That CITY, at its sole cost and expense, furnish all material and do all work necessary to establish and maintain any detours that may be required to accomodate properly any pedestrian and highway vehicular traffic during the execution of PROJECT in accordance with this order.

18. That CITY cooperate with the railroads involved so that in the construction of the PROJECT in accordance with this order, the operation of the facilities of the railroads involved will not be endangered or unnecessarily impeded.

19. That the railroads involved cooperate with CITY in the construction of the PROJECT in accordance with this order, and conduct its operations in the vicinity of the crossing in a safe manner and under control.

20. That construction of PROJECT commence on or before one year from the date of this order and be completed in a manner satisfactory to the Commission on or before three years from the date of this order, and that on or before said completion date, CITY, the railroads involved, PGW, PECO, BTC and SEPTA each report to the Commission the date of actual completion of its respective portion of the work at the earliest practicable time

subsequent to said date of completion, submit to the Commission a detailed statement of the actual cost incurred by it in furnishing material and performing work in compliance with this order.

21. That during construction of PROJECT, CITY and railroads involved cooperate with PGW, PECO, BTC and SEPTA so that the service of the existing facilities of the respective utility companies may be maintained, and so that construction equipment operated near high voltage facilities will not endanger construction personnel or disrupt the service of the companies.

22. That Conrail and/or Amtrak (in such proportions as determined by the Commission) promptly pay CITY, when and as certified by the Commission, a sum or sums of money equal to the cost of design engineering work performed by CITY, estimated to cost \$60,000. based upon CITY Exhibit No. A-4, for preparation of the approved plans STATE A, CITY Exhibit No. A-2.

23. That Amtrak promptly pay CITY, when and as certified by the Commission, a sum of money equal to the cost of design and construction engineering work performed by CITY, estimated to cost \$76,306. based upon CITY Exhibit No. A-5, for preparation of the approved plans for Amtrak electrification work, CITY Exhibit No. A-3.

24. That costs initially incurred by CITY in compliance with numbered Paragraphs 3 and 16 of this order not be allocated by the Commission, but be shared in accordance with the terms of a prior lawful agreement in this matter by the parties thereto

and in accordance with the percentages stipulated therein as follows: United States Department of Transportation, Urban Mass Transportation Administration (referred to hereinafter as UMTA) - 80 percent; Commonwealth of Pennsylvania, Department of Transportation (referred to hereinafter as PennDOT) - 16 2/3 percent; CITY - 3 1/3 percent, based upon testimony of March 22, 1977, hearing.

25. That costs initially incurred by PGW in compliance with numbered Paragraph 9 of this order not be allocated by the Commission, but be shared in accordance with the terms of a prior lawful agreement in this matter, CITY Exhibit No. A-18, by the parties thereto in accordance with the percentages and distributions more particularly stipulated therein.

26. That costs initially incurred by PECO in compliance with numbered Paragraphs 10 and 12 of this order not be allocated by the Commission, but be shared in accordance with the terms of a prior lawful agreement in this matter, CITY Exhibit No. A-20, by the parties thereto in accordance with the percentages and distributions more particularly stipulated therein.

27. That upon completion of the crossings and their opening to public use, Conrail and Amtrak (in such proportions as determined by the Commission) at their sole cost and expense, furnish all material and do all work necessary thereafter to maintain the superstructure and substructure of the bridge, STAGE A, including its electric traction, transmission, signal and communication facilities, and including protective barriers attached to the bridge, STAGE A and excluding non-carrier utility facilities.

28. That upon completion of the crossings and their opening to public use, each non-carrier utility, at its sole cost and expense, furnish all material and do all work required thereafter, to maintain its respective facilities within the limits of PROJECT, including hangers and supports installed on the bridge STAGE A and STAGE B to carry its respective facilities.

29. That upon completion of the crossings and their opening to public use, CITY, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the remainder of PROJECT, including the substructure and superstructure of the bridge STAGE B, including the entire North Pier, and including the highway approaches to the crossings, including CITY-owned and/or operated water, sewer, drainage, traffic and street lighting facilities both on the bridge STAGE A and STAGE B and on the approaches thereto.

30. That the Commission's order dated July 24, 1977, in re: Docket No. A.98061, and the Commission's order dated February 26, 1976, in re: Docket No. 99374 in these proceedings insofar as they are not inconsistent herewith, remain in full force and effect.

31. That further hearing(s) and proceeding(s) in re: Docket No. A.98061 (AHSL) be held as and when warranted by matters and things involved therein as requested by applicant.

Served December 17, 1976

30893

INTERSTATE COMMERCE COMMISSION

No 34275

THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY, ET AL. v. AKRON, CANTON & YOUNGSTOWN RAILROAD COMPANY, ET AL.

Decided December 9, 1976

Found, pursuant to the order of the Commission served June 8, 1976, that Consolidated Rail Corporation is a successor in interest to the various official territory defendants in this proceeding whose operations it has assumed, and that Consolidated Rail Corporation is bound by the decision and order of the Commission entered September 19, 1975, affirmed by order served February 13, 1976.

Phil C. Beverly, Richard A. Hollander, Howard D. Koontz, R. Eden Martin, Theodore N. Miller, George L. Saunders, Jr., James L. Tapley, and Howard J. Trienens for complainants.

Andrew C. Armstrong, Edward A. Kaiser, Sr., and Donald M. Tolmie for official territory defendants.

Richard J. Murphy for Consolidated Rail Corporation.

REPORT AND ORDER OF THE COMMISSION

BY THE COMMISSION.

This proceeding is currently before the Commission as the result of an order served June 8, 1976, by the Commission, in which all parties to the above-entitled proceeding, in addition to the Consolidated Rail Corporation (hereinafter referred to as ConRail), were required to show cause (1) why ConRail should not be considered as a successor in interest to the various official territory defendants whose operations it has assumed, and (2) why ConRail should not be bound by the decision and order of the Commission entered September 19, 1975, affirmed by order served February 13, 1976.

Pursuant to the Commission's show cause order, statements were received on July 8, 1976, from the Cincinnati, New Orleans & Texas

EXHIBIT A

Pacific Railway Company, et al. (complainants), the Akron, Canton & Youngstown Railroad Company, et al. (official territory defendants), and ConRail.

BACKGROUND

This proceeding originally came to the Commission by complaint filed May 25, 1963, in which complainant railroads alleged that the divisional bases observed in dividing joint freight rates applicable to carload and less-than-carload traffic, except coal and coke made from coal, moving between specified border points and stations of defendants' lines in official territory, were excessive, unjust, inequitable, and unduly preferential in contravention of sections 1(4), 3(4), and 15(16) of the Interstate Commerce Act. After much protracted adjudication in this and related proceedings, the Commission entered a decision and order on September 19, 1975, affirming the recommended report and order of the hearing examiner (now Administrative Law Judge), served October 23, 1964, and ordering the complainants and defendants, according as they participate in the transportation in question, to establish and apply divisions of joint all-rail interstate rates for the transportation of property between points named in the complaint and points in official territory as prescribed therein. 351 I.C.C. 769 (1975).

Subsequent to the Commission's decision and order of September 19, 1975, the following orders in docket No. 34275 were served by the Commission: (1) October 30, 1975, fixing the compliance date of the preceding decision and order as 120 days from September 29, 1975; (2) December 19, 1975, postponing the compliance date, and granting an extension until February 26, 1976, to allow thorough consideration of the matters raised in defendants' petition for reconsideration, filed November 17, 1975; (3) February 13, 1976, denying defendants' petition for reconsideration, and fixing the compliance date of the preceding decision and order as 90 days from February

The Cincinnati, New Orleans & Texas Pacific Railway Company, Midwest Central Railroad Company, (now merged into the Illinois Central Railroad Company), Southern Railway Company, and the Seaboard Air Line Railroad Company, (now merged into the Seaboard Coast Line Railroad Company)

The defendants are official territory railroads, and those particularly mentioned in the recommended report and order, served October 23, 1964, were Pennsylvania Railroad Company and New York Central Railroad Company (since merged into Penn. Central Transportation Company) and currently under bankrupt reorganization, The Baltimore & Ohio Railroad Company, The Chesapeake and Ohio Railway Company, Chicago & Eastern Illinois Railroad Company, Norfolk and Western Railway, and Richmond, Fredericksburg & Potomac Railroad

13, 1976; (4) May 11, 1976, postponing the compliance date, and granting a 20-day extension from May 11, 1976, to allow thorough consideration of the matters raised in defendants' letter-petition for postponement, filed May 4, 1976, regarding alleged practical problems of compliance if ConRail does not comply with the Commission's decision and order of September 19, 1975; (5) May 28, 1976, postponing the compliance date, and granting an extension until June 10, 1976, by the Commission's own motion; and (6) June 8, 1976, postponing the compliance date until further notice, and issuing of the show cause order which is the subject of this instant proceeding.

ARGUMENT

In response to the Commission's order of June 8, 1976, ConRail contends that it is not a legal successor to any of the defendants in this proceeding, that it is not a party to this proceeding, and that it has never been afforded a hearing in accordance with section 15(6)(a) of the Interstate Commerce Act and the Administrative Procedure Act, 5 U.S.C. § 554. ConRail also contends that even though it adopted all existing rates, routes, and division agreements of those lines which were conveyed to it pursuant to the Final System Plan established by the Regional Rail Reorganization Act of 1973 (hereinafter referred to as the 3R Act), the only obligation of ConRail in respect to rates and divisions is set forth in section 301(b) of the 3R Act, which makes ConRail subject to the Interstate Commerce Act. ConRail reasons, therefore, that the absence of any specific statutory provision to make ConRail bound by rate or division orders entered in proceedings held long before ConRail came into existence implies that ConRail is not subject to orders such as the one under consideration in this proceeding.

ConRail argues in support of their position that they are a new railroad by virtue of the 3R Act, and thus are not a legal successor to the bankrupt estates which owned lines of railroads now operated by ConRail. It is further advanced that there is nothing in the 3R Act which suggests an intention that ConRail is bound by obligations or orders which ran against the bankrupt railroads whose properties were acquired by ConRail, and that the provision in section 303(b) of the 3R Act which provides that ConRail acquire "all rail properties" free and clear of any liens or encumbrances "is contrary to any inference that ConRail is a successor in interest to

show cause why ConRail should not be considered a successor in interest to various defendants whose operations it has assumed pursuant to the 3R Act, and why ConRail should not be bound by the Commission's order.

We conclude that ConRail must be considered a successor in interest to its predecessor corporations, and that it is subject to the Commission's orders herein. Pursuant to special legislation, ConRail was created and designated as the legal entity to take over the assets and operations of various bankrupt railroads within the framework of existing law. ConRail stands, therefore, as a federally created statutory successor to its predecessor corporations, and thus trustee, and is so constituted for purposes of this proceeding. Cf. *Mt. Associates Gas and Electric Co.*, 71 F. Supp. 235, 540-41 (S.D.N.Y. 1947).

The successor-in-interest doctrine was developed to prevent a corporate entity from avoiding legal obligations through amalgamation, consolidation, merger, or other legal means. Historically, the railroads had a contributing role in the development of the corporate law concept of succession in interest, and a corporate successor was often construed to be a corporation which has become invested with the rights, and has assumed the burdens, of its predecessor corporation. *Schmale v. Atlantic City R. Co.*, 110 N.J. Eq. 597, 600, 160 A. 524, 526 (1932).

By authorization contained in section 302(a) of the 3R Act, ConRail was directed to acquire all real properties designated in the Final System Plan to be transferred or conveyed to it. As noted by the complainants in this proceeding, such assets included virtually all of the railroad equipment, substantially all of the yards and right of way, and various other assets, both tangible and intangible. Moreover, a substantial continuity of ownership was created, since ConRail's stock is owned by those entitled to payment for the line segments conveyed to it in accordance with section 303(a) of the 3R Act.

We recognize that while the term "successor in interest" ordinarily indicates statutory succession where a corporation changes its name but retains the same property without a change in ownership, *City of New York v. Turnpike Development Corp.*, 233 N.Y.S. 2d 887, 890 (1962), the total circumstances surrounding the creation, obligations, and duties of ConRail support the conclusion that ConRail is a legal successor in interest to the bankrupt defendant railroads in this proceeding.

Additionally, ConRail has by its own admission adopted, with one exception, all existing rates, routes, and division agreements of the railroads whose operations it has assumed. As stated in an amendment to ConRail's Application for Special Permission No. 1, filed with the Commission on December 17, 1975 (Docket No. 76-2700):

ConRail will adopt all existing joint rates, routes and divisions which are presently applicable from, to or via the lines of railroads which are to be conveyed to its pursuant to the Regional Reorganization Act of 1973, except for the rates and routes with LIRR Amendment to Application, p. 2, filed February 5, 1976.

Accordingly, it would appear that ConRail concedes the Commission's jurisdiction over rates adopted from predecessor railroads, a position we do not believe to be consistent with its contention in this proceeding that it is not subject to the orders in question.

We further conclude that as a successor railroad to the bankrupt defendant railroads in this proceeding, ConRail must also be bound by the decision and order of the Commission entered September 1, 1975, affirmed February 13, 1976. Although the defendant railroads became bankrupt after this original proceeding was commenced, and ConRail succeeded to the properties of the bankrupt defendants between the time the decision and order of the Commission became final and the compliance date, ConRail is nonetheless bound by the decision and order in this proceeding.

A threshold question of whether the Interstate Commerce Commission has jurisdiction to enter an order against the bankrupt defendant railroads has long been resolved in favor of the Commission. *Glens Falls Portland Cement Co. v. Delaware & Hudson Co.*, 66 F. 2d 490 (2d Cir. 1933), cert. denied, 290 U.S. 697 (1933). Since the final order of February 13, 1976, was entered against the defendant railroads prior to the conveyance of their property to ConRail on April 1, 1976, the Commission was clearly within its jurisdiction when it entered the order against the defendant railroads in this proceeding.

ConRail did not adopt trailer-on-flatter (TOFC) rates to or from 31 designated TOFC terminals formerly operated by the Penn Central Transportation Company, the Erie Lackawanna Railroad Company, the Reading Railway System, and the Lehigh Valley Railroad. As noted in the Commission decision in that proceeding, served October 29, 1976, IAS Docket No. 9108, *Consolidation of TOFC Service, Consolidated Rail Corporation*, I.C.C. Although it previously had contended that this Commission lacked statutory jurisdiction to suspend or adjudicate the proposed changes in TOFC services, as provided in its Tariff No. J, ConRail on brief specifically concedes that jurisdiction and it recognizes that the provisions of the Interstate Commerce Act govern the proposal in issue.

The remaining question, therefore, is whether ConRail is bound to observe prospective orders entered by the Commission against a predecessor railroad. We agree with the complainant railroads in this proceeding that the applicable case law supports the conclusion that ConRail is bound to the decision and order in this case.

In *Interstate Commerce Commission v. Western New York & P.R. Co.*, *supra*, the Commission sought to restrain the violation of a cease and desist order it had entered in 1892 against certain railroads which it had found to have engaged in unjust discrimination in violation of the Interstate Commerce Act. After the issuance of the Commission's cease and desist order but before the commencement of the court action, ownership, control and operation of the defendant railroads before the Commission had been assumed by new companies. In the court proceedings, the Commission joined as defendants the two new companies which had succeeded to the interests of the railroads against which the 1892 order had been directed on the ground that the new companies had "willfully failed and neglected and refused to obey and conform to the requirements of the order of the Commission." *Western New York, supra*, at 194. The two successor railroads argued that since they were not parties to the proceedings before the Commission, the 1892 order had no application to them. The court flatly rejected the successor railroads' argument and stated:

The order, however, here sought to be enforced, was made against the old railroad companies, to which the Western New York & Pennsylvania Railway Company and the Erie Railroad Company, respectively, have since become successors. The question then is, are these succeeding companies to be regarded as strangers to that order? We cannot think so. It would indeed be lamentable, if a lawful order against unjust discrimination by a railroad company, made by the Interstate Commerce Commission after a protracted investigation, could be nullified by the subsequent reorganization of the company, or transfer of its railroad and franchises to another corporation. It is a settled principle that the purchaser of property in litigation, pendente lite, is bound by the judgment or decree in the suit. 1 Story, Eq. Jur. § 405. And the rule is said to be founded upon great public policy, for otherwise alienations made during a suit might defeat its whole purpose, and there would be no end to litigation. 82 F. at 194.

The principle cited in *Western New York* is thus applicable and conclusive on the issue of ConRail's obligation to comply with the Commission's decision and order in this proceeding. See also *Behlmer v. Louisville & N.R. Co.*, *supra*.

ConRail's final argument that it has never been afforded a hearing in this case must be dismissed in light of our previous

full hearing during the adjudication of the proceeding in docket No. 34275, and ConRail itself was given an opportunity to be heard in this current part of the proceeding. Under the theory of legal succession, ConRail is thus bound by the decision and order entered against the bankrupt defendant railroads, and is subject to its enforcement without violation of section 15(6)(a) of the Interstate Commerce Act and the hearing requirements of the Administrative Procedure Act.

ULTIMATE FINDINGS AND ORDER

We find that ConRail is a legal successor in interest to the bankrupt defendant railroads in this proceeding whose operations it has assumed.

We further find that as a successor in interest to the bankrupt defendant railroads, ConRail is bound fully to the requirements of the decision and order of the Commission in this proceeding, entered September 19, 1975, affirmed by order served February 17, 1976.

And we further find that this decision is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

It is ordered. That ConRail be, and it is hereby, made a party to this proceeding by virtue of its succession in interest and title to the various official territory defendants whose property and operations it has assumed.

It is further ordered. That ConRail be, and it is hereby, required to comply with the decision and order of the Commission entered September 19, 1975.

It is further ordered. That the compliance date set forth in the Commission's order of February 13, 1976, as modified by orders served May 11, May 28, and June 8, 1976, be, and it is hereby, established as 45 days from the date of service of this order.

And it is further ordered. That this order shall continue in force until further order of the Commission.

By the Commission.

July 20, 1977

file
A. 98061 and A. 99374

Herbert Smolen
Deputy City Solicitor
Law Department
15th Floor, Municipal Services Bldg.
Philadelphia, Pennsylvania 19107

RE: Applications of City of Philadelphia

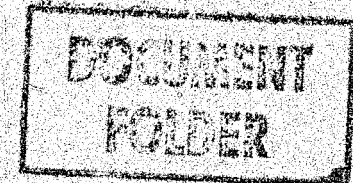
Dear Sir:

This will acknowledge receipt of original and fourteen copies of brief filed by you on behalf of the City of Philadelphia in the above proceeding received in this office July 18, 1977.

I note that you have served copies of said brief upon all parties of record.

Very truly yours,

William Shane, Chief
Administrative Law Judge



Amtrak



July 20, 1977

RECEIVED

JUL 22 1977

SECRETARY'S OFFICE
PUBLIC UTILITY COMMISSION

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

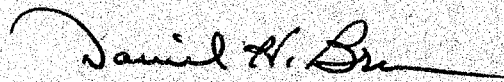
Subject: Application Docket Nos. A. 98061 and
A. 99374

Dear Mr. McElwee:

Enclosed is an original and fourteen copies of a brief filed on behalf of the National Railroad Passenger Corporation in the above-referenced Application Dockets.

I hereby certify that three copies of this brief have been sent to each party of record.

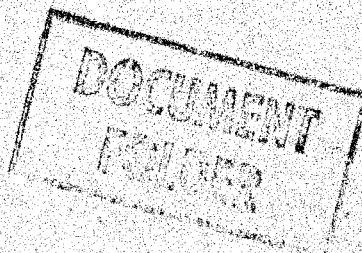
Very truly yours,


Daniel H. Brunner
Counsel

DHB:mm

Enclosures

cc: Parties of Record



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AND
APPLICATION DOCKET A. 99374

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JUL 22 1977

Before the

SECRETARY'S OFFICE

PENNSYLVANIA PUBLIC UTILITY COMMISSION PUBLIC UTILITY COMMISSION

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

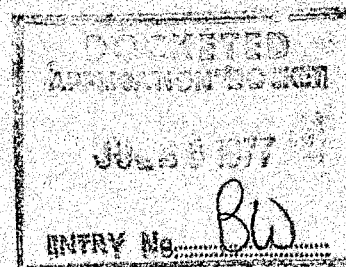
Application of the City of Philadelphia for approval of (1) the alteration of the crossing by the reconstruction of the bridge carrying 58th Street over and above the grade of the tracks of Penn Central Transportation Company in the City of Philadelphia, (2) an exemption from the minimum overhead and 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

BRIEF ON BEHALF OF
NATIONAL RAILROAD PASSENGER CORPORATION

DANIEL H. BRUNNER
National Railroad Passenger Corp.
955 L'Enfant Plaza North, S.W.
Washington, D.C. 20024
(202) 484-2561
Attorney for Respondent
(AMTRAK)

Dated: July 20, 1977



Before the

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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.

Application Docket No. A. 98061

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.

Application Docket No. A. 99374

BRIEF ON BEHALF OF
NATIONAL RAILROAD PASSENGER CORPORATION

NOW COMES, the National Railroad Passenger Corporation (Amtrak) and respectfully presents this brief as follows:

I. STATEMENT OF FACTS

This proceeding concerns an overhead highway bridge in the City of Philadelphia, Pennsylvania, which carries 58th Street

over and above the grade of the tracks which were formerly owned by the Penn Central (PC). The Pennsylvania Railroad (PRR) constructed this bridge in 1892 and has been maintaining the structure since then. During the final years of the PC and its predecessor, PRR, this bridge has fallen into a state of disrepair as maintenance was deferred. On January 14, 1928, the City of Philadelphia issued a permit to the Pennsylvania Railroad which granted the PRR the right to install and maintain certain electrification facilities which are presently attached to this bridge.

In the late 1960s the PRR consummated a merger with the New York Central Company and became the Penn Central. In the early 1970s, the PC entered into bankruptcy proceedings. Subsequently, Congress passed legislation which created a northeast railroad planning group called the United States Railway Association (USRA) and a northeast railroad operating company called Consolidated Rail Corporation (ConRail). The resulting plan led to the purchase of certain rail properties from ConRail by the National Railroad Passenger Corporation (Amtrak).^{1/}

Under the Act, the duties of USRA were, in general, to study the economic and operational conditions under

^{1/} Regional Rail Reorganization Act of 1973, as amended, (the "Act"), 45 USC 701 et seq.

which PC and other northeast bankrupt railroads operated and to prepare a plan pursuant to which the bankrupt carriers would be reorganized. After being drafted by USRA, this plan, called the Final System Plan (FSP), was submitted to Congress for approval and thereupon carried the force and effect of law. The FSP provided the master blueprint for restructuring the bankrupt northeast carriers into a single operating entity - ConRail. Pursuant to the Act, the FSP designated certain rail lines for transfer to ConRail and acquisition by Amtrak.

Effective April 1, 1976, Amtrak purchased from ConRail certain rail properties, including the rail line which passes beneath the bridge which is the subject of this proceeding.

The City ^{of} Philadelphia is now in the early stages of building a high speed rail line connecting the airport to the metropolitan area. This proposed rail line would run north of and parallel to Amtrak's tracks in the area of the 58th Street Bridge and at some point west of this structure would turn to the south and pass beneath Amtrak's lines. As a consequence of constructing the underpass necessary for this southerly turn, the piers on the north end of the 58th Street Bridge must be removed. This will, of course,

necessitate reconstruction work on the bridge itself. The City proposes to pay all costs of reconstruction north of the removed piers but alleges that responsibility for all reconstruction costs south of this point should be borne by Amtrak.

II. WHETHER OR NOT THIS BRIDGE WAS CONVEYED TO CONRAIL

Under the Act any property which was to be acquired by Amtrak first had to be conveyed to ConRail. The first question that presents itself therefore is whether or not this bridge was conveyed to ConRail so that it could subsequently be purchased by Amtrak.

The line of railroad passing beneath this bridge was conveyed to ConRail on April 1, 1976 and is described in Exhibit A to Conveyance Document No. PB&W-CRC-ATK-RP-10 which was prepared as part of the USRA's Final System Plan, attached as Exhibit 1. It has been correctly pointed out, in a separate proceeding,^{2/} that the property conveyed pursuant to the FSP consists of the property "lying in, under, above, along, contingent to, adjacent to or connecting to such line."^{3/} But it should also be pointed out that this language was inserted in the Conveyance Documents by the United States Railway Association pursuant to the following provision of the Act:

"rail properties" means assets
or rights owned, leased or
otherwise controlled by a

^{2/} Borough of Tullytown v. Penn Central Transportation Company, et al., Pennsylvania Public Utility Commission Docket No. C-21424.

^{3/} See Exhibit 1.

railroad which are used or
useful in rail transportation
service;...^{4/}

USRA, in carrying out the congressional mandate,
inserted the quoted language in the Conveyance Documents
to ensure the conveyance of properties that are "used or
useful in rail transportation service," such as the overhead
catenary system and the signal systems.

In designating which lines were to be conveyed to
ConRail, the FSP stated:

Unless otherwise specified, each
such rail line includes all rail
properties (as defined in section
102(10) [45 USC 702 (10)] of
the Act.) connected with, con-
trolling or in any way pertaining
to or used or usable by the
designee in connection with
the rail line designated including,
but not limited to, minerals
and mineral rights, franchises,
permits, certificates of con-
venience and necessity, connecting

^{4/} 45 USC 702(10).

spur and storage tracks, land, grading, tunnels and subways, bridges, trestles and culverts, elevated structures, ties, rails, engineering supplies, other track material, ballast, fences, snow sheds and signs, communications systems, signals and interplant machinery, power plants, power transmission systems, and power plant machinery, whether in place, on order or not yet installed.
(emphasis added)^{5/}

Footnotes are provided to explain more precisely what is intended to be conveyed.

Bridges, trestles and culverts means such properties which can be carried in account 6 and includes substructure and superstructure of bridges, trestles, and culverts which

^{5/} The Final System Plan, July, 1975, Volume 1, P. 241-242.

carry the tracks of the carrier over
watercourses, ravines, public and
private highways....(emphasis added)^{6/}

The FSP goes on to state:

In the terms customarily used for
railroad conveyances, included are
all items associated with the rail
lines which could be recorded in
ICC account numbers 1 through 45,
and 90, and not otherwise designated
for transfer or offer under this
chapter or specifically excluded.^{7/}

It has been pointed out that ICC account 39, Public
Improvements; Construction, includes overhead highway
bridges.^{8/} What is not pointed out is that only those
properties which are "used or are useful in rail transporta-
tion services"^{9/} were intended by Congress to be conveyed.
Thus even a catch-all phrase, such as accounts 1 through

^{6/} Ibid fn. 46.

^{7/} Ibid at 243.

^{8/} 49 CFR 1201.

^{9/} 45 USC 702(10).

45, and 90, includes only "used or useful" properties. The bridge in question could be removed tomorrow, and its removal would in no way interfere with the operation of train service. It is not "used or useful in rail transportation service." How then can it be claimed that this bridge was conveyed to ConRail? Clearly, Congress did not intend for ConRail or Amtrak to be maintaining and repairing overhead highway bridges. If Congress had so intended, it would have specifically included them in its definition of bridges, trestles and culverts, or in a similar definition. Congress could have included them by specifically mentioning them, but it did not. Therefore, Congress deliberately did not intend to include them.

At a similar but separate proceeding ^{10/} Amtrak was requested to furnish information to the Commission as to whether or not Amtrak was taking depreciation on overhead highway bridges under account 39, implying that if such depreciation were taken, it would be indicative of ownership. Attached as Exhibit 2 is an affidavit of Melvin H. Baker,

^{10/} Pennsylvania Public Utility Commission v. the Pennsylvania Railroad Company, et al., Pennsylvania Public Utility Commission Docket No. C-18277.

the Controller for the National Railroad Passenger Corporation, in which Mr. Baker unequivocally states that Amtrak is not now, nor is it planning to take any depreciation on overhead highway bridges under account 39.

This bridge remains the sole property of the Penn Central Trustees. However, since the resulting wear to this bridge is directly caused by the user, and since the user benefits directly from this bridge in that the risk of death or injury in a train/auto accident is eliminated and the possibility of delay due to a blocked crossing is removed, the burden of maintaining this structure should be borne by the direct beneficiary, i.e., the highway user.

It is a fact that bridges, in general, carrying highways over the tracks of a railroad are an integral part of the highway system. The general trend over the last few decades has been that crossings, whether separated or at grade, are unquestionably of more benefit to the highway user than to the railroad. A 1964 ICC report dealing with grade crossing safety pointed out the inequity involved in requiring railroads to repair and maintain crossings when the direct beneficiary of the crossing is someone other than the railroad.^{11/}

^{11/} 322 I.C.C. 1, 80 et seq.

In fact, grade crossing projects in which the Federal Highway Administration and railroads participate jointly usually require no more than a ten percent contribution by the railroad. For the Commission to order a railroad to maintain this structure would not be in concert with the current trend.

As an aside, it is interesting to note, that the Pennsylvania Railroad Company in 1928 sought permission from the City of Philadelphia to install the electrification lines which are presently attached to the bridge. Isn't it strange that PRR would seek permission for such an installation on their own bridge? Could it be that the City of Philadelphia is, in fact, the owner of the structure?

III. THE DEFERRED MAINTENANCE IS THE RESPONSIBILITY OF THE PENN CENTRAL TRUSTEES

On the other hand, should it be held that this bridge was conveyed to ConRail and subsequently purchased by Amtrak, the question which must then be addressed is whether or not a Commission Order or the Acts of the PC or its predecessor prior to April 1, 1976, by which the PC or its predecessor were required to or did in fact repair and maintain this structure is a lien or an encumbrance and, if so, whether or not this obligation was conveyed with the bridge.

The Act mandates that "all rail properties conveyed to the Corporation (ConRail)...shall be conveyed free and clear of any liens or encumbrances..."^{12/} The congressional intent as evidenced by this language is that title to the rail properties affected by this Act should be placed in the grantee without being subject to the debts and obligations incurred by the grantor. Such an Order of the Commission is an obligation incurred by the Grantor. Any property which is conveyed subject to such an obligation would violate the intent of Congress to convey "free and clear of any liens or encumbrances." Such an Order of the Commission would cloud an otherwise free and clear title. It would place an encumbrance on the property to be conveyed.

^{12/} 45 USC 743(b) (2) .

The Deed itself purports to convey the property free and clear of all liens and encumbrances.^{13/} And by the very terms of the Deed the grantee assumes no obligations which accrued prior to April 1, 1976:

By acceptance of this Deed, the Grantee... (b) assumes and agrees to perform and observe all obligations and conditions on the part of the Grantor or the Grantor's predecessor in title to be performed or observed that arise or accrue after the date of delivery of this Deed under all licenses, easements, leases (other than those which may have been created to secure payment of a financial obligation) and operating, trackage right and joint facility agreements (subject, however, to the terms thereof) which are conveyed by this Deed and under those to which this conveyance is made subject, provided that the Grantee assumes no

^{13/} See Exhibit 1, Pg. 3.

obligation or liability that arises after the date of delivery of this Deed out of any event, act or failure to act that occurred prior thereto and, where an obligation or liability is related to a period which is both before and after such date, the Grantee assumes only that portion of the obligation or liability which is reasonably allocable to the part of the period after such date. (emphasis added) 14/

The maintenance of this bridge is an obligation of the Penn Central. It is a continuing obligation, which is related to a period both before and after April 1, 1976. The deteriorated condition of this bridge is a result of the failure of PC to act to maintain it. ConRail is required by the terms of the deed, the provisions of an order of the

14/ Ibid Pg. 4.

Special Court,^{15/} and the intent of Congress to assume only that portion of the obligation which is reasonably allocable to the part of the period after April 1, 1976. Amtrak, as a result of the purchase of this bridge from ConRail, assumed only the obligations that belonged to ConRail. The obligation for the deferred maintenance of this bridge belongs to the PC Trustees. However, since the resulting wear to this bridge is directly caused by the user, and since the user benefits directly from this bridge in that the risk of death or injury in a train/auto accident is eliminated and the possibility of delay due to a blocked crossing is removed, the burden of maintaining this structure should be borne by the direct beneficiary, i.e., the highway user.

^{15/} Section 4, Paragraph A(1) of an Order of the Special Court, MISC #75-3, dated March 25, 1976, reads in part:
As between the Transferor and Transferee identified in any Conveyance Document with respect to rail property conveyed to a Transferee pursuant to this Order, the obligation, if any, for payment of

- (a) any tax, assessment, license fee, or other charge imposed by a governmental authority on or with respect to any such property or any use thereof or thereon for any period of time or term within which the Conveyance date falls,...

shall be adjusted on a pro rata basis to the Date of Conveyance so that

- (i) the Transferor is obligated for any such payment as is attributable to that portion of such period or term preceding the Conveyance Date, and
- (ii) the Transferee is obligated for any such payment as is attributable to the balance of such period or term.

IV. THE FORCED RECONSTRUCTION OF THE 58TH STREET BRIDGE IS IN VIOLATION OF THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

Should it be held that this bridge was in fact conveyed to ConRail and subsequently purchased by Amtrak, the peculiar facts and circumstances surrounding this proceeding necessitate an investigation into the constitutionality of the Acts of the City of Philadelphia in attempting to construct this high-speed rail line. The City of Philadelphia intends to remove the supporting piers at the north end of this structure and reconstruct the bridge at that end. The City intends to pay all costs for the removal of the piers and any construction north of the removed piers. The City insists, however, that the structure is Amtrak's and that any resulting damage to the bridge caused by the removal of the piers is Amtrak's responsibility. They insist that even though by their actions, property which has been adjudged to be owned by Amtrak has been damaged or destroyed, they are in no way responsible. A similar example would be if the State Highway Department were constructing a highway near your home, and, for one reason or another, one wall of your home had to be removed during construction. The Highway Department would, of course, offer to reconstruct the wall which they had to remove, however, the fact that the remaining three walls had collapsed while the fourth wall was removed would be of no consequence to them and, of course,

not their responsibility. The situation is ludicrous and is simply not the law. The Fifth Amendment to the United States Constitution states:

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." (emphasis added)

This means that no governmental entity may exercise its powers of condemnation without paying just and appropriate compensation for the damage caused by the property taken. This is in fact the situation with the 58th Street bridge. The City by its action in removing the piers at one end of the structure has effected a constructive taking and is insisting that

Amtrak is responsible for the damage caused by this taking. This is a violation of the law. The City is required by the Fifth Amendment to compensate the owner for the damage that they are causing to the property. Therefore, the City of Philadelphia must be held responsible for the costs of reconstructing the 58th Street bridge in its entirety.

DEED**THIS DEED IS MADE BY AND BETWEEN****JOHN C. KOHL,****AS TRUSTEE OF THE PROPERTY OF****THE PHILADELPHIA, BALTIMORE AND WASHINGTON RAILROAD COMPANY, DEBTOR**

**("Grantor"), whose address is 408 Kings Highway,
Moorestown, New Jersey 08057**

AND**CONSOLIDATED RAIL CORPORATION,**

**a corporation organized and existing under the laws of the
State of Delaware ("Grantee"), whose address is 1818 Market Street,
Philadelphia, Pennsylvania 19103.**

WHEREAS, the Debtor is a railroad in reorganization under Section 77 of the Federal Bankruptcy Act, 11 U.S.C. Sec. 205, and is a railroad in reorganization as that term is defined in the Regional Rail Reorganization Act of 1973 (Public Law 93-236, 87 Stat. 985), as amended ("Act"); and

WHEREAS, by orders of the United States District Court for the Eastern District of Pennsylvania entered in Docket No. 70-347-K the above-named individual was duly appointed and is now serving as Trustee of the property of the Debtor; and

WHEREAS, the United States Railway Association, pursuant to Section 209 (c) of the Act, has certified to the Special United States District Court established pursuant to Section 209 (b) of the Act ("Special Court"), that the rail properties of the Debtor hereinafter described (except those hereinafter reserved and excepted) are to be transferred by the Grantor to the Grantee; and

WHEREAS, pursuant to Section 303 (b) (1) of the Act, the Special Court has ordered the Grantor to convey to the Grantee all of the Grantor's right, title and interest in such rail properties, free and clear of any liens or encumbrances as provided in Section 303 (b) of the Act;

Now, THEREFORE, pursuant to the Order of the Special Court, the Grantor hereby grants and conveys to the Grantee:

**A. All of the Grantor's right, title and interest, legal and equitable, in and to the real property located in the
County of Philadelphia, Commonwealth of Pennsylvania**

as described in Exhibit A attached to this Deed as a part hereof, together with all of the appurtenances, hereditaments, franchises, ways, waters, minerals, rights, privileges, improvements, fixtures, licenses, leaseholds, reversions, easements, rights under operating, trackage and joint facility agreements, rents, issues, profits and other interests and items belonging to or in any way appertaining to such real property, including but not limited to all real property items that would properly be recorded in Accounts 1 through 45 and 90 of the Property Accounts prescribed by the Interstate Commerce Commission for Railroad Companies in its Uniform System of Accounts, 49 C.F.R. Part 1201, to the extent that such interests and items belong or in any way appertain to such real property, except as those interests and items belong or appertain to the real property hereinafter reserved and excepted.

B. 1. The easements and rights to use, operate, maintain, repair, renew, replace and remove on, under, over and across the real property hereinafter reserved and excepted ("Grantor's Burdened Property"), any and all lines, poles, pipes, appliances, equipment, structures, facilities and appurtenances (each an "Easement Item") existing on and used or useful as of the date of delivery of this Deed as a part of any railroad communication, signal or interlocker system or as a part of any electric, telephone, telegraph, water, gas, steam, sanitary sewer, storm sewer or other utility system, together with the easement of reasonable access over the Grantor's Burdened Property to permit the exercise of the foregoing easements and rights, and the easement for lateral support of the real property conveyed by this Deed.

2. The easements and rights for the specific uses, if any, (each an "Easement Item") particularly described in Exhibit B attached to this Deed as a part hereof and burdening certain real property hereinafter reserved and excepted.

3. The Grantee shall give the Grantor reasonable notice before entering on the Grantor's Burdened Property to exercise the easements and rights conveyed in this Paragraph B, and shall exercise such easements and rights (a) so as not to interfere unreasonably with the use and enjoyment of the Grantor's Burdened Property, (b) in compliance with generally applicable reasonable requirements established from time to time by the Grantor and (c) so as not to increase materially the burden on the Grantor's Burdened Property existing on the date of delivery of this Deed. The Grantee shall indemnify and save the Grantor harmless from any loss, damage or expense arising from the exercise of the foregoing easements and rights, without regard to negligence on the part of the Grantor or the Grantee. Upon request of and at the expense of the Grantor, the Grantee shall execute and deliver to the Grantor a deed or other instrument releasing the Grantee's rights in any part of the Grantor's Burdened Property that is not used or reasonably needed by the Grantee in the exercise of the easements and rights conveyed in this Paragraph B.

4. If the location of any Easement Item would interfere with any proposed use or sale of any part of the Grantor's Burdened Property, the Grantor may, at the Grantor's expense and after obtaining the Grantee's written consent, relocate the interfering Easement Item or cause the same to be relocated. Such consent will be granted unless (a) the Easement Item cannot be relocated as proposed by the Grantor without unreasonable interference to the Grantee's operations or without damage to the integrity of the system of which the Easement Item is a part or (b) the Grantee will not have reasonable access to the relocated Easement Item. If the Grantee has previously released its easements and rights in any real property as provided in Paragraph B. 3. and a relocated Easement Item falls, in whole or in part, within the area that has been so released, the Grantor and the Grantee shall exchange the following instruments promptly after the relocation is completed:

(a) The Grantor shall execute and deliver to the Grantee a supplementary deed of easement which conveys to the Grantee with respect to the relocated Easement Item the easements and rights described in this Paragraph B.

(b) The Grantee shall execute and deliver to the Grantor a deed or other instrument of release as provided in Paragraph B. 3.

5. The Grantor shall bear all expenses and the cost of all transfer and recording taxes, fees and charges in connection with all deeds and other instruments delivered pursuant to this Paragraph B.

RESERVING AND EXCEPTING, HOWEVER, TO THE GRANTOR:

C. All the respective right, title and interest of the Grantor, legal and equitable, in and to the real property described in Exhibit B attached to this Deed as a part hereof, but subject, however, to (a) the limitation of access thereto across the real property conveyed by this Deed as hereinafter provided and (b) the easements and rights conveyed pursuant to Paragraph B above.

D. 1. The easements and rights to use, operate, maintain, repair, renew, replace and remove on, under, over and across the real property conveyed by this Deed ("Grantee's Burdened Property"), any and all lines, poles, pipes, appliances, equipment, structures, facilities and appurtenances (each an "Easement Item") existing on and used or useful as of the date of delivery of this Deed as a part of any railroad communication, signal or interlocker system or as a part of any electric, telephone, telegraph, water, gas, steam, sanitary sewer, storm sewer or other utility system, together with the easement of reasonable access over the Grantee's Burdened Property to permit the exercise of the foregoing easements and rights, and the easement for lateral support of the real property reserved and excepted from this conveyance.

2. The easements and rights for the specific uses, if any, (each an "Easement Item") particularly described in Exhibit B to this Deed and burdening certain real property conveyed by this Deed.

3. The Grantor shall give the Grantee reasonable notice before entering on the Grantee's Burdened Property to exercise the easements and rights reserved and excepted in this Paragraph D, and shall exercise such easements and rights (a) so as not to interfere unreasonably with the use and enjoyment of the Grantee's Burdened Property, (b) in compliance with generally applicable reasonable requirements established from time to time by the Grantee and (c) so as not to increase materially the burden on the Grantee's Burdened Property existing on the date of delivery of this Deed. The Grantor shall indemnify and save the Grantee harmless from any loss, damage or expense arising from the exercise of the foregoing easements and rights, without regard to negligence on the part of the Grantee or the Grantor. Upon request of and at the expense of the Grantee, the Grantor shall execute and deliver to the Grantee a deed or other instrument releasing the Grantor's rights in any part of the Grantee's Burdened Property that is not used or reasonably needed by the Grantor in the exercise of the easements and rights reserved and excepted in this Paragraph D.

4. If the location of any Easement Item would interfere with any proposed use or sale of any part of the Grantee's Burdened Property, the Grantee may, at the Grantee's expense and after obtaining the Grantor's written consent, relocate the interfering Easement Item or cause the same to be relocated. Such consent will be granted unless (a) the Easement Item cannot be relocated as proposed by the Grantee without unreasonable interference to the Grantor's operations or without damage to the integrity of the system of which the Easement Item is a part or (b) the Grantor will not have reasonable access to the relocated Easement Item. If the Grantor has previously released its easements and rights in any real property as provided in Paragraph D. 3. and a relocated Easement Item falls, in whole or in part, within the area that has been so released, the Grantor and the Grantee shall exchange the following instruments promptly after the relocation is completed:

(a) The Grantee shall execute and deliver to the Grantor a supplementary deed of easement which conveys to the Grantor with respect to the relocated Easement Item the easements and rights described in this Paragraph D.

(b) The Grantor shall execute and deliver to the Grantee a deed or other instrument of release as provided in Paragraph D. 3.

5. The Grantee shall bear all expenses and the cost of all transfer and recording taxes, fees and charges in connection with all deeds and other instruments delivered pursuant to this Paragraph D.

E. All mineral rights owned by the Grantor in any parcel as to which an interest in the surface is not conveyed by this Deed.

TO HAVE AND TO HOLD the real property and the easements and rights hereby conveyed to the Grantee, free and clear of (a) any liens or encumbrances as provided in Section 303 (b) of the Act and (b) any and all easements and rights of access to the real property reserved and excepted from this conveyance across the real property conveyed by this Deed (except as otherwise provided in this Deed), even if such easements and rights would otherwise arise by reason of necessity, implication or other operation of law, statute, ordinance, rule or regulation of any governmental entity, **BUT SUBJECT, HOWEVER,** to (i) those easements and rights reserved and excepted in Paragraph D above, (ii) all existing licenses, easements, leases (other than those which may have been created to secure payment of a financial obligation), and operating, trackage right and joint facility agreements and (iii) Operating Rights Grants, if any, from the Grantor to a third party conveyed concurrently with this conveyance and identified in Exhibit B to this Deed.

The Grantor hereby covenants that the Grantor will perform, execute, acknowledge and deliver any and all such further acts, deeds, assignments and other instruments as may be reasonably requested by the Grantee to convey, confirm, clarify, identify or more precisely describe the real property and the easements and rights conveyed by this Deed or intended so to be in order to carry out the intent of this Deed in light of the designations contained in the Final System Plan which has been certified to the Special Court by the United States Railway Association pursuant to the Act, and to effect the recordation of, or otherwise perfect, this Deed and all such other deeds, assignments and instruments under any applicable statute, ordinance, rule or regulation.

The Grantee hereby covenants that the Grantee will perform, execute, acknowledge and deliver any and all such further acts, deeds, assignments and other instruments as may be reasonably requested by the Grantor to confirm, clarify, identify or more precisely describe the real property and the easements and rights reserved and excepted from this conveyance or intended so to be in order to carry out the intent of this Deed in light of the designations contained in such Final System Plan, and to effect the recordation of, or otherwise perfect, this Deed and all such other deeds, assignments and instruments under any applicable statute, ordinance, rule or regulation.

EXHIBIT A

TO THE DEED BY AND BETWEEN

JOHN C. KOHL,

AS TRUSTEE OF THE PROPERTY OF

THE PHILADELPHIA, BALTIMORE AND WASHINGTON RAILROAD COMPANY, DEBTOR

AND

CONSOLIDATED RAIL CORPORATION

DESCRIPTION OF REAL PROPERTY

LOCATED IN

County of Philadelphia, Commonwealth of Pennsylvania

For the purpose of each description contained in this Exhibit A (and solely by way of illustration and not by way of limiting the generality of the term "adjacent"), adjacency shall be deemed to exist without regard to the existence of any public or private street, highway, alley or other way between one part of the Grantor's real property and another.

This Exhibit A consists of pages A-1 through A- inclusive.

Document No.

PB&W-CRC-ATK-RP-10

Situate in the County of Philadelphia, Commonwealth of Pennsylvania, and being The Philadelphia, Baltimore and Washington Railroad Company's line of railroad known as Penn Central's Philadelphia-Washington Main Line, and being all the real property in the County lying in, under, above, along, contiguous to, adjacent to or connecting to such line.

Such line originates in the County near University Avenue, in Philadelphia, connecting to another line of railroad known as Penn Central's New York-Philadelphia Main Line, and leaves the County at Darby Creek, near Island Road, in Philadelphia.

The line of railroad described herein is identified as Line Code 1101 in the records of the United States Railway Association.

AFFIDAVIT OF MELVIN H. BAKER

DISTRICT OF COLUMBIA :
:
CITY OF WASHINGTON :

I, Melvin H. Baker being duly sworn according to law do depose and say that I am the Controller for the National Railroad Passenger Corporation (Amtrak); that I have the legal power and am a proper officer designated to execute this affidavit on behalf of Amtrak and that the facts therein are true and correct to the best of my knowledge, information and belief.

In performing my duties as Controller, I act as Amtrak's chief accounting officer and am responsible for maintaining the detailed property records which support the financial statements of the National Railroad Passenger Corporation. I have held this position since August 1, 1975.

On April 1, 1976, pursuant to the Regional Rail Reorganization Act of 1973, as amended, certain rail lines commonly known as the Northeast Corridor were purchased from ConRail by Amtrak. As a result of this purchase, Amtrak has not made any depreciation

accruals on overhead highway bridges or on any other property includable in ICC Account 39, Public Improvements - Construction. I am not aware of any investment nor of any intent of investment by Amtrak in such properties.

Melvin H. Baker
Melvin H. Baker

Sworn and subscribed before
me this 26 day of August 1976.

James H. Fitzgerald
Notary Public

My Commission expires 1-1-77

July 26, 1977

file
A. 98061 and
A. 99374

Daniel H. Brunner
Attorney at Law
955 L'Enfant Plaza North, S.W.
Washington, D.C. 20024

RE: Applications of the City of Philadelphia etc.

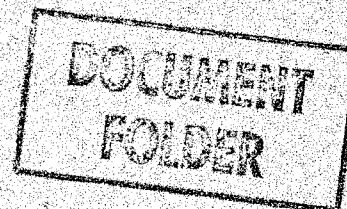
Dear Sir:

This will acknowledge receipt of original and fourteen copies of brief filed by you on behalf of the National Railroad Passenger Corporation in the above proceeding received in this office on July 22, 1977.

I note that you have served copies of said brief upon all parties of record.

Very truly yours,

William Shane, Chief
Administrative Law Judge



PENN CENTRAL
TRANSPORTATION COMPANY

ROBERT W. BLANCHETTE ■ RICHARD C. BOND ■ JOHN H. McARTHUR ■ TRUSTEES

3100 IVB Building
1700 Market Street
Philadelphia, Pa. 19103

July 29, 1977

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

Subject: Application Docket Nos. A. 98061 and A. 99374

Dear Mr. McElwee:

Enclosed is an original and fourteen copies of a brief filed on behalf of the Penn Central Transportation Company in the above Application Dockets.

I certify that a copy of this brief has been sent to each party of record.

Very truly yours,



Stephen S. Dittmann
Attorney for Trustees

SSD:tdb

Enclosures

cc: Parties of Record

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Office of the A. L. J.
Public Utility Commission

PARTIES OF RECORD - APPLICATION DOCKET A. 98061
AND
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SECRETARY'S OFFICE
PUBLIC UTILITY COMMISSION

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

IN RE: Application of CITY OF PHILADELPHIA for approval of (1) the construction, alteration or re-construction 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

: Application
: Docket
: No. 98061
:
:
:

IN RE: Application of 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

: Application
: Docket
: No. 99374
:
:

REPLY BRIEF OF THE PENN CENTRAL TRUSTEES
TO BRIEF ON BEHALF OF AMTRAK WITH PROPOSED
FINDINGS OF FACT, PROPOSED CONCLUSIONS
OF LAW AND PROPOSED ORDER

STEPHEN S. DITTMANN
Attorney for Trustees
3100 IVB Building
Philadelphia, PA 19103
215-972-3011

DATED: July 29, 1977

DOCKETED
APPLICATION DOCKET
AUG 18 1977
ENTRY No. *ml*

**DOCUMENT
FOLDER**

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I. STATEMENT OF ISSUES INVOLVED

Have the Trustees of Penn Central Transportation Company been relieved of ownership and maintenance/rehabilitation responsibility with respect to the existing 58th Street highway-railroad separation structure?

II. STATEMENT OF THE CASE

This consolidated case concerns the proposed Airport High-Speed Line (A. 98061) and the restorative construction of the 58th Street highway-railroad separation structure (the "structure"). (A. 99374).

The structure carries highway traffic over a line of railroad formerly owned by the Penn Central. On April 1, 1976, the Trustees of the Penn Central conveyed this line of railroad to Conrail.

Hearings were held on March 22 and May 18 relative to the structure and briefs were submitted thereafter, including one by Amtrak dated July 20, 1977.

This reply brief is in response to that brief.

III. Argument

THE TRUSTEES CONVEYED THE RIGHT, TITLE AND INTEREST IN RESPECT TO THE LINE OF RAILROAD INCLUDING THE HIGHWAY-RAILROAD SEPARATION STRUCTURE ON APRIL 1, 1976 AND ACCORDINGLY HAVE BEEN RELIEVED OF ANY RESPONSIBILITY INCLUDING OWNERSHIP AND MAINTENANCE/REHABILITATION.

By execution of deed on April 1, 1976, the Trustees conveyed the line of railroad and, it is argued, the highway-railroad structure to Conrail. The language of the deed conveys all real property items in ICC accounts 1 through 45 including account 39, "Public Improvements", which encompasses the structure of this inquiry.

Amtrak denies this conveyance in its brief and offers two arguments in support of their position:

1. An overhead highway bridge is not "used or useful in rail transportation service." (Amtrak Brief, p.6)
2. No depreciation on overhead bridges is taken by Amtrak in its Financial Accounting.
(Amtrak brief, Exhibit 2:
Affidavit of Melvin H. Baker)

Addressing first the argument of Amtrak that the structure in question is not "used or useful in rail transportation service", a closer look at the Final System Plan (FSP) is recommended.

Chapter 8, "Designations", describes the theory behind the property transfers. Within the chapter is a section "Rail properties subject to conveyance". Concerning the quantity of title conveyed, it is stated:

what is important
what is important to the public interests to be served and to the transferees is the ability to run a railroad along the rail line...the Act, of course, contemplates the transfer of such properties.
(FSP, pp. 20.-241).

An enumeration of items either "pertaining to" or "used or useful" with respect to the designated lines states:

each such rail line includes all properties connected with, controlling or in any way pertaining to or used or usable by the designee in connection with the rail line including, but not limited to...bridges, etc.
Id., p. 241-242

In summary:

In the terms customarily used for railroad conveyances, included are all items associated with the rail lines which could be recorded in ICC account numbers 1 through 45, and 90, and not otherwise designated for transfer or offer under this chapter or specifically excluded. Id., p. 243

The Trustees submit that as such highway railroad separation structures were not so "specifically excluded", the most reasonable interpretation of the Deed would convey them out of the Penn Central Estate.

The second argument of Amtrak is likewise without merit. It is grounded on the logic that if such overhead highway bridges are not accounted for in the financial books, then Amtrak doesn't own them. It is submitted that financial accounting does not govern what legal interest may have been conveyed to Amtrak.

Moreover, upon information and belief from Penn Central's Property Accounting Department, it is further submitted that with respect to the Accounting Statements filed

with the ICC known as "R-1's", Amtrak has conformed with the prior practice of Penn Central: depreciating these overhead highway bridges in Account 39.

Furthermore, Amtrak is in the process of preparing detailed property records which will ultimately, it is argued, precisely identify the 58th Street bridge as having been designated to Amtrak.

Finally, funds were appropriated to Amtrak for identical purposes under §704(a) of the Railroad Revitalization and Regulatory Reform Act of 1976. Title VII, "Northeast Corridor Project Implementation" authorized Amtrak to:

acquire, construct, improve, and install... public and private highway and pedestrian crossings...and any other facilities or equipment which it determines are necessary to enable improved high-speed rail passenger service to be provided over the railroad rights-of-way to be improved under paragraph (4) of this subsection [includes Philadelphia to Washington Corridor].
Id. §701(a)(5)

The language of this 1976 legislation, it is submitted, corroborates the Trustees' interpretation of the Final System Plan as to what items are customarily included in a railroad conveyance. State otherwise, improvements cannot be made to highway-railroad separation structure not owned by Amtrak.

Moreover, the Trustees submit they are not a concerned party under the provisions of Section 1181 of the Public Utility Code, which limits the

Commission's power of assessment in highway-railroad crossing proceedings to those public utilities, municipal corporations, or agencies of the Commonwealth which are CONCERNED with the highway-railroad crossing under consideration. Section 1181 provides, inter alia,

...the expense of such construction, relocation, alteration, protection, or abolition of any crossing, and of facilities at or adjacent to such crossing which are used in any kind of public utility service, shall be borne and paid, as hereinafter provided, by the public utilities or municipal corporations CONCERNED, or by the Commonwealth, in such proportions as the commission may, after due notice and hearing, determine... (Emphasis added) (66 P.S. 1181) [§411].

This principle was affirmed by the Pennsylvania Supreme Court in Allegheny Co. Port Auth. v. Pa. P.U.C., 427 Pa. 562, 237 A.2d 602 (1967) where the Court said:

We believe that the law has been firmly established in this Commonwealth that a transportation utility has no concern with any crossing for purposes of assessment under §411 [§1181] of the Public Utility Law, where it does not have a rail facility situated at such crossing. Jennings v. Pa. P.U.C., 140 Pa. Sup. 569, 14 A.2d 882 (1940); Pa.R.R.Co. v. Pa. P.U.C. 154 Pa. Sup. 272, 35 A.2d 584 (1944). As we noted in Delaware River Port Auth. v. Pa. P.U.C., supra, §411, empowering the Commission to allocate costs in a highway-railroad crossing situation, must be read in connection with §409 [§1179]. Section 409(a) defines the crossing with respect to which the Commission can assess certain costs under §411. Such crossings are those which involve the facilities of a "a Public Utility engaged in the transportation of passengers or property",

i.e., a railroad or railway. The transportation utilities CONCERNED for purposes of assessment under §411 are those whose facilities are constructed or located at such crossing. (Emphasis by court.) (Allegheny, supra, at pages 568, 569.)

Section 1179 provides, inter alia,

...The commission may order the work of construction, relocation, alteration, protection, or abolition of any crossing aforesaid to be performed in whole or in part by any public utility or municipal corporation concerned or by the commonwealth. (66 P.S. §1179.)

As applied to the crossing situation of concern to this proceeding, the Commission may order that the expenses of rehabilitation of the bridge structure in question be borne and paid ONLY by persons concerned with the crossing. Persons concerned with the crossing are those persons with facilities constructed or located at the crossing. More specifically, the transportation utilities concerned for purposes of assessment are those whose facilities are constructed or located at such crossing. Conversely, those transportation utilities without facilities constructed or located at the crossing may not be subject to the assessment of the Commission for any work to be done at the crossing.

On April 1, 1976 the rail facilities constructed or located at the crossing in question were conveyed to the Consolidated Rail Corporation. Since that time Penn Central no longer had, directly or indirectly, any facilities at the crossing.

IV CONCLUSION

For the foregoing reasons, the Penn Central Transportation Company requests the Commission find that the Deed conveyed all its interest in the rail line including the 58th Street highway-railroad separation structure and, accordingly, relieve the Trustees of further maintenance/rehabilitation responsibility for the subject structure.

Respectfully submitted,

Penn Central Transportation Company

By: _____

Stephen Dittmann

Stephen S. Dittmann
Attorney for Trustees



RECEIVED

AUG 1 1977

SECRETARY'S OFFICE
PUBLIC UTILITY COMMISSION

July 29, 1977

Re: Application Docket Nos. A. 98061 and A. 99374

C. J. McElwee, Secretary
Penna. Public Utility Commission
Box 3265
Harrisburg, Pa. 17120

Dear Sir:

Enclosed are the original and 14 copies of a brief filed on behalf of Consolidated Rail Corporation in the above-referenced Application Dockets.

I hereby certify that three copies of this brief have been sent to each party of record.

Very truly yours,

Joel E. Mazor
Joel E. Mazor
Commerce Counsel

JEM:CV
Encl.

CC: Parties of Record

RECEIVED
AUG - 2 1977
Office of the
Public Utility Commission

DOCUMENT
FOLDER

AUG 1 1977

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SECRETARY'S OFFICE
PUBLIC UTILITY COMMISSION

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

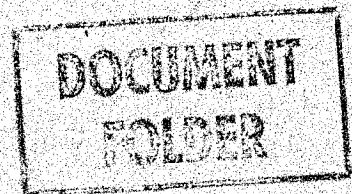
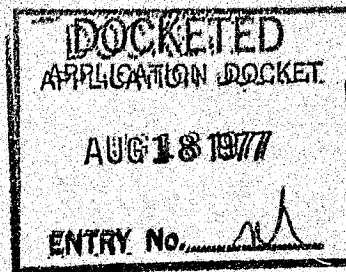
Application of the City of Philadelphia for approval of (1) the alteration of the crossing by the reconstruction of the bridge carrying 58th Street over and above the grade of the tracks of Penn Central Transportation Company in the City of Philadelphia, (2) an exemption from the minimum overhead and 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

BRIEF ON BEHALF OF
CONSOLIDATED RAIL CORPORATION

JOEL E. MAZOR
Consolidated Rail Corporation
1138 Six Penn Center Plaza
Philadelphia, Pa. 19104

Dated: July 29, 1977



Before the

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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 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. 99874

I. STATEMENT OF THE CASE

This proceeding was commenced by an application for approval of the alteration of the crossing where 58th Street in the City of Philadelphia crosses above the grade of the former P,B&W Railroad, which at the time the application was filed was operated by Penn Central. Commission approval was sought for reconstruction of the existing structure and approaches, to provide for a wider roadway and legal load capacity. It is interesting, initially, to note that this was not a complaint, which is the usual method by which parties aggrieved commence such a proceeding.

An initial hearing was held December 8, 1975, on the

request for exemption from the Commission's overhead and side clearance requirements. At that hearing it developed that the southerly spans of the existing structure, when rebuilt, would have added an additional span over the proposed Airport High Speed line and that new span was the subject to Application 98061. (N.T. 16)^{*/}

The bridge was constructed during the 1890's (N.T. 19) and the southernmost approach span added around 1951. (N.T. 19)

As a result of inspection made by the City, the bridge was posted for 15 tons, because of the rated capacity of the main span floor beams, the interior truss diagonals and the steel bent columns. (N.T. 19)

It appears the bridge was originally designed for 15 tons (N.T. 34), its present posting, and that traffic studies project increased frequency of heavy motor vehicles over the bridge (N.T. 35). The City's witness further stated that reconstruction of the subject bridge was on the City's six-year capital program. (N.T. 49)

By order dated February 26, 1976 and entered March 8, 1976, the Commission, to the extent noted in the order, granted the City's request for exemptions and, further, consolidated this application with that at A. 98061, for allocation of costs and expenses and future maintenance.

^{*/} References are to pages of official transcript.

Consolidated hearing was held March 22, 1977. The plans were introduced, as well as cost estimates. The City's witness claimed the railroad, since 1892, had sole responsibility for maintenance (N.T. 28)^{*/} of the structure and the electrification facilities thereon (N.T. 29). The witness further stated that maintenance responsibility of the new bridge and electrification facilities should remain the "responsibilities of Amtrak and/or Conrail and/or Penn Central." (N.T. 36)

On Cross-examination the witness admitted the bridge was designed for 15 tons and is so presently posted. (N.T. 45) He also admitted more than 50% of the traffic is trucks. (N.T. 46) The witness admitted further that Conrail did not build the bridge. (N.T. 47)

A witness for Amtrak stated the line of railroad involved was owned and operated by it. (N.T. 107) There are Conrail freight trains operating over the tracks of Amtrak (N.T. 108). At the conclusion of this hearing no party reserved the right to file briefs.

After the March 22, 1977 hearing, counsel for the City by letter dated March 28, 1977, submitted certain late file exhibits and made certain arguments, which prompted Conrail's attorney to demand further hearing. That hearing was held May 18, 1977.

*/ Reference to official transcript of March 22, 1977 hearing.

Counsel for applicant introduced as exhibits copy of a deed from the Trustee of P,B&W Railroad to Conrail, excerpt of page 243 of Volume I, Final System Plan, excerpt from I.C.C. Uniform System of Accounts (and other exhibits not relevant to the issue to be argued), and Conrail's counsel objected to the deed above mentioned (N.T. 178). Counsel for the City claimed the purpose of the exhibit was to show transfer of ownership of the bridge to Conrail.

Counsel for Conrail requested leave to file, and did file as late-file exhibit copies of the deed from Conrail to Amtrak, by which the identical properties involved were conveyed to Amtrak. All parties reserved the right to file briefs.

II. STATEMENT OF QUESTIONS INVOLVED

1. Does transfer of ownership of a structure, even if such is proved, carry with it the responsibility for maintenance of that structure?

2. Who should bear the cost of reconstruction and maintenance of the subject bridge?

III. ARGUMENT

The question of ownership of the bridge is moot. Who owns the bridge is not controlling. What is important here is that there is no provision, either in the Regional Rail Reorganization Act of 1973 or in the deeds which have been introduced into evidence, by which the responsibility for maintenance was transferred from Penn Central to either Conrail or Amtrak. The law in Pennsylvania is clear. Our Supreme Court, in Allegheny County Port Authority vs. Pa.P.U.C., 427 Pa. 562 (1967), held (p. 572):

"The Commission has argued in this case that the Authority's mere act of acquiring and operating Railway's transportation system imposes upon it transferee liability for the obligations of Railways in connection with Black's Bridge. An examination of the Port Authority Act shows, beyond question, that the Authority, in acquiring Railway's transportation system by condemnation did not thereby assume any obligations of Railways with respect to the Black's Bridge crossing. Nowhere in the Act are there provisions imposing such liability upon the Authority. In this regard, it should be noted that the Authority did not acquire the Railway Company including its liabilities, but merely acquired specific properties of Railways as described in Section 2(13) of the Port Authority Act."

That, of course, is precisely the situation here. Conrail and/or Amtrak acquired only specific properties as designated in the Final System Plan pursuant to the Regional Rail Reorganization Act. Nothing in the Act or the Plan transferred any obligation for maintenance of overhead bridges

to Conrail or Amtrak. The City's own exhibit (the deed) clearly shows (Note B to Item 39 of Part 1201, 49 C.F.R.) that the cost to the carrier of maintaining public improvements shall be included in Operating Expenses. The City does not claim, nor could it, that such operating expenses were transferred from the bankrupt estates in absence of clear, unequivocal language in the Act.

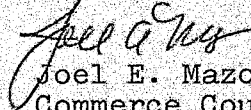
It is obvious that if the bridge is in a state of disrepair by which it can no longer carry the traffic for which it was designed (and all the evidence is to the contrary), that responsibility still rests with the former operators -- the Trustees of Penn Central, who are still parties to this proceeding. There is no statute, order or agreement by which the responsibility for deferred maintenance transferred to the present owner of the line. There is no basis on the record, or under the law, to impose any costs on Conrail or Amtrak.

IV. CONCLUSION

We are not submitting requests for findings of fact or conclusions of law. This proceeding was commenced prior to the 1976 amendments to the Public Utility Law and must be decided by the Bureau of Transportation, and not the Administrative Law Judge. For all the reasons above stated, the cost of

reconstruction of the bridge and of future maintenance should be borne by parties other than Conrail.

Respectfully submitted,



Joel E. Mazor

Commerce Counsel

Consolidated Rail Corporation

1138 Six Penn Center Plaza

Philadelphia, Pa. 19104

August 9, 1977

A. 98061 ✓
~~A. 98374~~

Rudolph A. Chilesi, Esq.
Philadelphia Electric Company
2301 Market Street
Philadelphia, PA 19101

In re:

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.

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.

Dear Sir:

Receipt is acknowledged of your letter of August 3, 1977 advising that Philadelphia Electric Company will not file a responsive brief to the brief of the City of Philadelphia filed in the above proceedings but that the company objects to a number of statements made in the City's proposed order (which was included with that brief).

Receipt is also acknowledged of proof of service of a copy of your letter upon all parties of record.

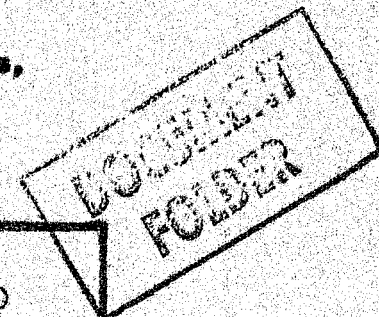
Your objections to specified paragraphs of the proposed order will receive the attention of the Commission.

Very truly yours,

For C. J. McElwain
Secretary

DUP TO BE RECORDED.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

cc: Bureau of Transportation
ALJ
Law



PHILADELPHIA ELECTRIC COMPANY

RECEIVED

AUG 4 1977

SECRETARY'S OFFICE
PUBLIC UTILITY COMMISSION

EDWARD G. BAUER, JR.
VICE PRESIDENT
AND GENERAL COUNSEL

2301 MARKET STREET

EUGENE J. BRADLEY
ASSOCIATE GENERAL COUNSEL

PHILADELPHIA, PA. 19101

DONALD BLANKEN
RUDOLPH A. CHILLEM
E. C. KIRK HALL
T. H. MAHER CORNELL
PAUL AUERBACH
ASSISTANT GENERAL COUNSEL

(215) 841-4000

August 3, 1977

EDWARD J. CULLEN, JR.
ASSISTANT COUNSEL

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

Re: Application #98061 - Airport High Speed Line and
Application #99374 - 58th Street Bridge

Dear Mr. McElwee:

Philadelphia Electric Company has reviewed the Brief of the City of Philadelphia, together with its Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order; and in view of the fact that there is a written Agreement outstanding between the Philadelphia Electric Company and the City of Philadelphia, concerning reimbursement to the Company for the alteration and relocation of its facilities in stages A & B of the above-captioned Project, it is the Company's opinion that the filing of a responsive brief will not be necessary.

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

However, it is the Company's opinion that certain paragraphs of the City's Proposed Order do not properly state the understanding arrived at in the Agreement between the parties, which is a part of the record and known as City Exhibit "A-20".

Philadelphia Electric Company takes issue with the wording of Paragraph 10 of the City's Proposed Order and recommends that it be restated as follows:

"That the Philadelphia Electric Company, at the initial cost and expense of the City of Philadelphia, as per the Agreement dated March 28, 1977, between the Philadelphia Electric Company and the City of Philadelphia, furnish all material and do all work necessary to make temporary or permanent alterations, and or changes of its existing aerial and underground lines, conduits, structures and equipment or other facilities necessary and required for the completion of the Project in accordance with the terms of this Order, and in such manner as will not interfere with the completion of the Project, and

said payment of initial costs by the City of Philadelphia shall exclude any betterment to the Philadelphia Electric Company's plant."

The reason for the Company's suggested change in wording is that the work should be done, not at our initial cost and expense, but rather at the initial cost and expense of the City of Philadelphia. It is common knowledge that projects of this nature may take many years to complete and sometimes may never even be completed, and therefore, the Company should not be compelled to wait an unreasonable length of time in order to obtain reimbursement for work that it has completed in compliance with the Agreement of the parties and the orders of the Commission.

An additional change suggested in Paragraph 10 of the City's Proposed Order makes it clear that the City should not be responsible for payment of any betterment resulting to the Company's plant herein. It is better to word it in the fashion submitted by the Company because facility betterment is not a separate phase of construction as is implied in Paragraph 11 of the City's Proposed Order. Therefore, under

the circumstances, it is requested that Paragraph 11 of the City's Proposed Order be eliminated.

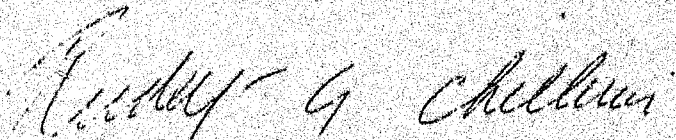
With respect to Paragraph 12 of the City's Proposed Order, it is the opinion of the Philadelphia Electric Company that in order to provide for the work to be done at the initial cost and expense of the City of Philadelphia, the aforementioned paragraph be reworded as follows:

"That the Philadelphia Electric Company, at the initial cost and expense of the City of Philadelphia, shall furnish such safety inspectors as are necessary and required to protect and safeguard personnel and Philadelphia Electric Company facilities which may be affected by construction of the Project; and the City of Philadelphia and its contractors shall conform to the requirements of the Philadelphia Electric Company, as included in the specifications for the Project, regarding the safety of personnel and facilities."

Finally, it is recommended that Paragraph 26 of the City's Proposed Order be omitted or eliminated because the Agreement, known as City Exhibit "A-20" provides for reimbursement to the Philadelphia Electric Company by the City of Philadelphia for all of the work of relocating and altering the Company's facilities in both stages A & B of the Project. Therefore, the concept of sharing of costs as stated in Paragraph 26 of the City's Proposed Order should not be construed to mean that the Philadelphia Electric Company would have to look to anyone other than the City of Philadelphia for payment of its relocation costs in this case.

I hereby certify that a copy of this letter has been forwarded to each party of record.

Very truly yours,


Rudolph A. Chillemi

RAC:mh

PARTIES OF RECORD

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

Herbert G. Zahn, Esq.
PennDot
Office of Chief Counsel
Harrisburg, Pa. 17120

Sheldon Seligsohn, Esq.
Bell Telephone Company
One Parkway, 16th Floor
Philadelphia, Pa. 19102

Joel E. Mazor, Esq.
ConRail
1138 Six Penn Center
Philadelphia, Pa. 19102

Judith B. Soken, Esq.
Septa
2028 PSFS Building
Philadelphia, Pa. 19107

Stephen Schachman, Esq.
Philadelphia Gas Works
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Philadelphia, Pa. 19102

W. Scott Armentrout, Esq.
Amtrack
532 Suburban Station Bldg.
1617 JFK Boulevard
Philadelphia, Pa. 19103

August 17, 1977

fil
A. 98061
A. 99374

Jeal E. Mazon
Commerce Counsel
Consolidated Rail Corporation
1138 Six Penn Center Plaza
Philadelphia, Pennsylvania 19104

Re: Applications of the City of Philadelphia

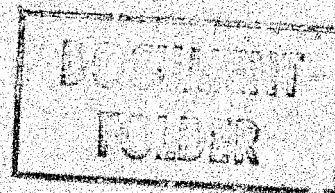
Dear Sir:

This will acknowledge receipt of original and fourteen copies of brief filed by you on behalf of Consolidated Rail Corporation in the above proceeding received in this office on August 2, 1977.

I note that you have served copies of said brief upon all parties of record.

Very truly yours,

William Shane, Chief
Administrative Law Judge



August 17, 1977

Shane
A. 98061
A. 99374

Stephen S. Dittmann
Attorney for Trustees
3100 IVB Building
1700 Market Street
Philadelphia, Pennsylvania 19103

Re: Applications of City of Philadelphia

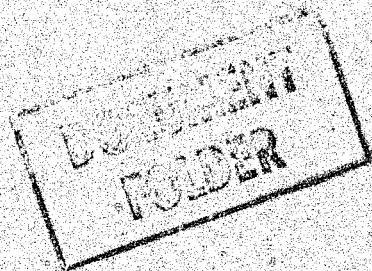
Dear Sir:

This will acknowledge receipt of original and fourteen copies of brief filed by you on behalf of the Penn Central Transportation Company in the above proceeding received in this office August 1, 1977.

I note that you have served copies of said brief upon all parties of record.

Very truly yours,

William Shane, Chief
Administrative Law Judge



SEP 8 1977

W. Preston Granbery
Attorney

SECRETARY'S OFFICE
PUBLIC UTILITY COMMISSION

The Bell Telephone Company
of Pennsylvania
Law Department
One Parkway
Philadelphia, Pennsylvania 19102
Phone: (215) 466-4717

September 2, 1977

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

Re: A. 98061 and A. 99374

Dear Mr. McElwee:

Enclosed herewith please find an original and 14 copies
of the Brief of The Bell Telephone Company of Pennsylvania in
the above matters.

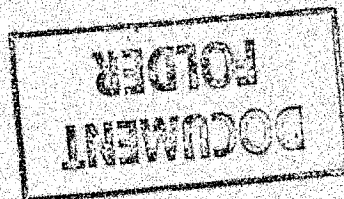
Very truly yours,

W. Preston Granbery

W. Preston Granbery

WPG/ger
Enclosures

cc: Rudolph S. Pallestrone, A.L.J.
Herbert G. Zahn, Esquire
Herbert Smolen, Esquire
Rudolph Chillemi, Esquire
Joel E. Mazor, Esquire
Judith B. Soken, Esquire
Stephen Schächman, Esquire
W. Scott Armentrout, Esquire
Stephen Dittman, Esquire



SEP 8 1977

SECRETARY'S OFFICE
PUBLIC UTILITY COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon counsel of each party of record active in this proceeding, in accordance with the requirements of 1 Pa. Code § 33.32 (relating to service by a participant).

Dated at this 2nd day of September, 1977.

W. Preston Grubbery

Of Counsel for
THE BELL TELEPHONE COMPANY
OF PENNSYLVANIA

DOCUMENT
FOLDER



CITY OF PHILADELPHIA

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

SHELDON L. ALBERT
City Solicitor

FILE

RECEIVED

OCT 14 1977

SECRETARY'S OFFICE
PUBLIC UTILITY COMMISSION

October 11, 1977

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

OCT 14 1977
Office of the A. L. J.
Public Utility Commission

Re: P.U.C. A-98061

Dear Sir:

We respectfully request the prompt scheduling of further hearings in the above matter as expeditiously as possible.

It is contemplated that the crossings involved at 60th, 61st, 63rd and 70th Streets, Philadelphia will be covered at covered at these hearings.

Your prompt attention and cooperation will be greatly appreciated.

Very truly yours,

Herbert Smolen
Deputy City Solicitor

HS:m

cc: Chief Adm. Law Judge William Shane

DUPLICATE REC'D.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

RECEIVED
OCT 14 1977
PUBLIC UTILITY COMMISSION

November 21, 1977

FILE

A. 98061

Herbert Smolen, Deputy
City Solicitor
City of Philadelphia
15th Floor - Municipal Service Building
Philadelphia, PA 19107

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

Dear Sir:

The purpose of this letter is to inform you that a further hearing on the above captioned case will be held Friday, January 13, 1978, commencing at 10:00 a.m., in the Conference Room, 13th Floor, State Office Building, Philadelphia.

It is not necessary to acknowledge receipt of this letter.

Very truly yours,

DUPLICATE RECORD,
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

William R. Shane, Chief
Administrative Law Judge

ccs: ALJ Pallastrone
Bureau of Transportation
Law Bureau
Mr. Bramson
Ms. Lawrence
Ms. Washington

DOCUMENT
FOLDER

DOCKETED
APPLICATION DOCKETED
NOV 21 1977
ENTRY No. *1000000000*

Similar Letters - A. 98061

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

cc: Kenneth W. Walker, Chief
Utility Engineer
Department of Transportation
Harrisburg, PA 17120

Joel E. Mazor, Commerce Counsel
Consolidated Rail Corporation
1138 Six Penn Center Plaza
Philadelphia, PA 19104

W. Preston Granberry, Attorney
The Bell Telephone Company of
Pennsylvania
One Parkway
Philadelphia, PA 19102

Richard P. Randall, Attorney
The Gulf Companies
P.O. Box 8056
Philadelphia, PA 19101

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

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

W. Scott Armentrout, Esquire
AMTRAK
Room 560, 532 Suburban Station Building
1617 J. F. Kennedy Boulevard
Philadelphia, PA 19103

December 13, 1977

A. 90061

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

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

Dear Sir:

Receipt is acknowledged of your letter of December 6, 1977, together with four copies of an agreement dated November 23, 1977, between The Bell Telephone Company of Pennsylvania and the City of Philadelphia, forwarded to the Commission as a late-filed Exhibit in connection with the above entitled proceeding.

The agreement will be made a part of the record in this case.

Very truly yours,

for C. J. McILWINE
Secretary

cc: Bureau of Transportation
Law Bureau
copy of agreement attached to each
HRE:mpk

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.



CITY OF PHILADELPHIA

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

SHELDON L. ALBERT
City Solicitor

December 6, 1977

Pennsylvania Public Utility Commission
North Office Building
Harrisburg, Pennsylvania 17120

Attn: Secretary

RE: Application Docket No. A 98061

RECEIVED

DEC 9 1977

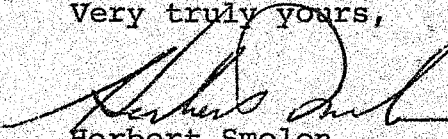
SECRETARY'S OFFICE
PUBLIC UTILITY COMMISSION

Dear Sir:

I enclose herewith as a late-filed Exhibit in the above matter 4 copies of an Agreement dated the 23rd day of November, 1977 between The Bell Telephone Company of Pennsylvania and the City of Philadelphia relating, inter alia, to allocation of costs in the above proceeding.

Will you kindly acknowledge receipt of same.

Very truly yours,


Herbert Smolen
Deputy City Solicitor

hs/pk

DUPLICATE REC. RD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

AGREEMENT

SECRETARY'S OFFICE
PUBLIC UTILITY COMMISSION

THIS AGREEMENT entered into this *23rd* day of *November*, 1977,

by and between THE BELL TELEPHONE COMPANY OF PENNSYLVANIA, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, and having its principal office in the City of Philadelphia, Pennsylvania, (hereinafter referred to as "Bell") and the CITY OF PHILADELPHIA, a municipal corporation of the first class, organized and existing under the laws of the Commonwealth of Pennsylvania (hereinafter referred to as "City").

WITNESSETH THAT:

WHEREAS, City is actively engaged for the public welfare in the promotion and improvement of local public mass transportation service to, from, and within its corporate limits; and

WHEREAS, in order to improve the existing regional mass transportation railroad passenger service, it is desirable that commuter service be extended to Philadelphia International Airport (hereinafter sometimes referred to as "Project"); and

WHEREAS, because of the uniqueness and nature of Project, which is estimated to cost \$68,800,000.00, the City desires to proceed as expeditiously as possible so that any delay which might jeopardize the commencement and/or completion of project may be avoided; and

WHEREAS, in pursuance of the construction of said Project, it will be necessary that Bell remove, relocate, construct and/or alter various of its equipment and facilities in order to accommodate the construction of said Project; and

WHEREAS, Bell represents that its presently existing equipment and facilities in the Project area are now, and will be for the foreseeable future, adequate to serve the needs of its ratepayers and Bell would not alter or modify said equipment and facilities were it not for the construction of the Project; and

ENTRY BY *BW*

EX-115-100 RD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

et alia, the issue as to liability for payment of the costs of removal, relocation, construction and/or alteration of Bell's facilities, as set forth generally in Exhibit "A", (consisting of 4 pages marked A-1, A-2, A-3 and A-4), hereto attached; and

WHEREAS, in order to avoid costly and time-consuming regulatory and legal proceedings, the parties hereto desire to amicably adjust and settle their differences and disputes without prejudice to either party to assert their respective rights and contentions in other and future matters.

NOW THEREFORE, the parties hereto, their successors and assigns, in consideration of the mutual promises, covenants, terms, agreements and conditions herein contained, do mutually agree as follows:

1. Bell, in order to accommodate the construction of the Project, agrees to remove, relocate, construct and/or alter its equipment and facilities, shown generally in Exhibit "A", attached hereto and made a part hereof, presently located in, at or adjacent to the Project areas at 58th Street, Lindbergh Boulevard, 63rd Street and 70th Street (hereinafter referred to as "the Areas"), if and when requested in writing by the City, and upon meeting the requirements of Section 911 of the Pennsylvania Public Utility Law, (Act of May 28, 1937, P.L. 1053, as amended), and upon the issuance of an appropriate Order by the Pennsylvania Public Utility Commission in Application Docket No. 98061 specifically approving the City's then available construction plans for the Project and allocating costs in accordance with the terms and conditions of this Agreement. The general nature of said work is indicated in Exhibit "A". The cost of the aforesaid removal, relocation, construction and/or alteration of Bell's equipment and facilities is, at present, estimated by Bell to be \$150,000.00.

This estimate assumes that Bell will be permitted to utilize its employees and contractors on a normal work day, normal work week basis and Bell shall not be required to perform work on an overtime basis without prior written request by the Commissioner of Public Property. It is agreed that "overtime work", for purposes of this Agreement, shall not include those situations or work activities which Bell is presently required by the City or Commonwealth or other authority to perform outside normal business hours or on weekends.

equipment and facilities when performed on a normal work day, normal work week basis in, at or adjacent to the Project Areas, necessary to accommodate the construction of the Project or any portion thereof, including, but not limited to, costs of engineering, overheads, materials furnished and work performed by Bell or by others on Bell's behalf, but exclusive of betterment or salvage, if any. City agrees to pay Bell one hundred percent (100%) of the actual premium time differential costs for all overtime hours where the work involved was requested to be performed on an overtime basis by the Commissioner of Public Property. In addition, City agrees to pay Bell fifty percent (50%) of the actual straight time costs associated with the requested overtime work. Bell agrees to pay the remaining fifty percent (50%) of said costs except as further provided in Sections 3 and 17 hereinafter.

3. Should City desire, or should it become necessary for any reason, to abandon or discontinue the construction of the Project, or any portion thereof, City agrees to pay Bell one hundred percent (100%) of Bell's actual costs, as defined in Section 2 above, which Bell has expended or will be required to expend for the removal, relocation, construction and/or alteration of Bell's equipment and facilities, including the cost of completing any section of work then in progress, in order to restore the system to a whole and reliable operating condition, guarantee continuation of service to Bell's customers and protect Bell's facilities and equipment and make them safe to the public.

4. (a) Before any partial or final payment by City shall be made under this Agreement, Bell shall submit copies of its ledger sheets and contractor invoices to City. It is understood that Bell will submit its bills substantially in the form attached hereto and marked Exhibit "B", consisting of 2 sheets marked "B-1" and "B-2."

All requests for reimbursement shall be certified by Bell to be true and correct and that all costs included therein are fair and reasonable and have actually been incurred pursuant to this Agreement.

(b) Payment under this Agreement for City's share of the actual costs may, at the option of Bell, be made by City to Bell upon completion of the removal, relocation, construction and/or alteration of Bell's equipment

for same, provided that each such periodic prorated bill shall be submitted by Bell at intervals of not less than sixty (60) days with the understanding and agreement that each such periodic bill is merely a partial payment subject to adjustment in a final statement of costs to be submitted by Bell to City and Pennsylvania Public Utility Commission for certification by Pennsylvania Public Utility Commission and upon certification, the parties will make necessary adjustments and payments, if any, between themselves in accordance with the terms of this Agreement.

(c) In the event the parties fail to agree with respect to any amount(s) to be reimbursed in either interim payments or the final statement of costs, the matter shall be submitted to the Pennsylvania Public Utility Commission for determination and certification.

(d) Exhibit "B" shall reflect the cost of materials, engineering and plant labor, transportation and other general loading amounts that are recorded on Bell's books at the time the work is done as well as other applicable costs that will be added to the computer print-out manually, and, to the extent they have not already been included in the periodic billing, any other applicable costs will be added in the final billing.

(e) The City agrees that Bell shall have the right to stop work on this Project under the provisions of Section 17(b) if any bill presented to the City by Bell in accordance with Section 4(a) hereof is not paid within sixty (60) days after presentation. Said obligation of the City to pay Bell within sixty (60) days of presentation of bills by Bell shall not be contingent upon outcome of any audits made prior to the final audit. Any claim by City that any bill submitted by Bell is not in accordance with Section 4(a) above, shall be submitted to Bell within fifteen (15) days after receipt of the bill. Bell shall have fifteen (15) days after receipt of any such claim to provide a satisfactory answer or explanation in response to the City's claim. In any event the City shall pay any amounts included in such bill(s) that are not in dispute within the aforementioned sixty (60) day period, in which case Bell shall not have the right to stop work.

, or on behalf of Bell by City under this Agreement shall not exceed \$125,000.00 under Section 2, and shall not exceed \$250,000.00 under Section 3. Said amounts are based upon design drawings submitted by City to Bell on or before November, 1977 as shown in Exhibit "A," and are contingent upon Bell being permitted to commence its said relocation work at each of the Project Areas on or before October 1, 1979 in accordance with this Agreement. If said work cannot be commenced on or before said date in accordance with this Agreement, or in the event that City makes any design changes with respect to the Project or any portion thereof which materially alters Bell's relocation work, the parties agree that Bell has the right to revise its estimate of costs in which case the amounts in Sections 1 and 4(f) hereof shall be changed by appropriate written revisions to this Agreement. Any revision thereof shall be subject to review and approval by the City. If the parties shall fail to agree to an appropriate revision within 60 days of the submission thereof by Bell, the matter shall be submitted to the Pennsylvania Public Utility Commission for determination.

5. City hereby grants permission to Bell to enter all City streets necessary for the removal, relocation, construction and/or alteration of Bell's equipment and facilities set forth generally in Exhibit "A" and City agrees to issue, under and subject to the terms and conditions of this Agreement, to Bell upon Bell's application, any necessary permits incident to Bell's aforesaid work, provided such application(s) are in conformity with applicable City Codes.

6. Barring causes beyond its control, including but not limited to strikes, Acts of God, and material shortages, and subject to the City's cooperation in furnishing information and approvals in a timely manner, Bell will undertake to perform and complete, in an efficient manner, the removal, relocation, construction and/or alteration of its affected equipment and facilities so as to conform to the City's construction schedule for the Project.

7. City agrees to join with Bell in filing an executed copy of this Agreement with the Pennsylvania Public Utility Commission in accordance with Section 911 of the Public Utility Law of 1937, P.L. 1053, as amended, and that this Agreement shall become valid and effective when it has been on file

All institute proceedings under Section 911 of the Public Utility Law of 1937, P.L. 1053, as amended, in which case this Agreement shall become effective if and when the Commission approves this Agreement whether before or after the expiration of the aforementioned thirty (30) day period.

8. City agrees that it shall, as soon as practicable, petition the Pennsylvania Public Utility Commission and request that, with or without the necessity of a hearing, an Order be issued in Application Docket No. 98061 specifically (1) approving City's then available construction plans for the Project and (2) allocating the costs thereof as between City and Bell in accordance with the terms and conditions of this Agreement.

9. City will, immediately upon the effective date of this Agreement, pay to Bell the sum of \$15,000.00 which sum shall be credited toward any sums later determined to be due Bell under the terms and conditions of this Agreement. It is understood and agreed that unless and until Bell receives said amount it is under no obligation to and will not in fact undertake to perform any relocation work in connection with this Project.

10. The parties hereto further covenant and agree that this Agreement relates to this Project only, and that this Agreement is made without prejudice or waiver of the rights of the parties in any other project, and that neither party shall, in the future, cite this Agreement as legal or other precedent in any other proceeding or matter whatsoever.

11. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

12. Wherever, in this Agreement, there shall appear a reference to relocation work or any Bell removal, relocation, construction and/or alteration of its equipment and facilities in connection with the Project, it shall mean all Bell removals, relocations, constructions and/or alterations of its equipment and facilities located in, at, or adjacent to the Project Areas, which may be required as a result of approved construction plans for the Project including, but not limited to, the relocations specified in Exhibit "A"; and approved construction plans shall mean construction plans which shall have received the necessary approval of any appropriate federal, state or local governmental agency.

13. In the performance of this Agreement, Bell shall not discriminate nor permit discrimination against any person because of race, color, religion or national origin.

the Philadelphia Home Rule Charter and other applicable Acts of Assembly and Ordinances. City will provide Bell, in writing, on or before the execution of this Agreement, an Opinion of Counsel stating that the Commissioner of Public Property has full authority to bind the City to this Agreement and that no further approval is necessary by City Council or any City Official, other than the Director of Finance, who shall approve this Agreement as to the availability of appropriated funds, and the Pennsylvania Public Utility Commission.

15. It is further agreed that this Agreement and the monies due hereunder shall not be assignable by operation of law or by action of Bell, without the written consent of Commissioner of Public Property.

16. City, through its duly authorized representatives, shall have the right to inspect Bell's work as it progresses to verify quantities of materials and audit Bell's books of account and other records pertaining directly to this Agreement at Bell's principal office at all reasonable times during the term of this Agreement and for a period of three years after final payment.

17. (a) It is understood and agreed that Bell will not proceed with the relocation, removal, construction and/or alteration of its facilities, pursuant to this Agreement, nor permit others so to proceed, without prior written notice to proceed from the Commissioner of Public Property and, subsequent to such notice, upon receipt of a written notice from the Commissioner to stop or otherwise delay work, Bell will cause the work to be stopped until further notice except for such work as may be necessary to guarantee continuation of service to Bell's customers and to protect Bell's facilities and make them safe to the public, in which case City will reimburse Bell for one hundred percent (100%) of the actual costs incurred by Bell for this work.

(b) If for any reason such interruption or stoppage of work should continue for a period of sixty (60) days or more, Bell shall have the right to revise its estimate of costs in which case the amounts in Sections 1 and 4(f) hereof shall be changed by appropriate written revisions to this Agreement. Any such revision shall be subject to review and approval by the City. If the parties fail to agree to an appropriate revision within thirty (30) days of the submission thereof by Bell:

ity Commission for determination; and

(ii) Bell shall have the option, pending final determination of the question of an appropriate revision of costs and the issuance by the Commissioner of Public Property of a written order to resume work, to take such steps as shall be necessary to guarantee continuation of service to its customers and to protect its facilities and make them safe to the public, in which event, City agrees to reimburse Bell for one hundred percent (100%) of the actual costs incurred by Bell by reason of such steps, subject to review and approval by the Commissioner and final determination by the Pennsylvania Public Utility Commission as to the reasonableness of said costs.

No work performed or materials purchased in violation of this section shall be reimbursed by City, but all such costs shall be the responsibility of Bell.

18. All approvals, consents, expressions of satisfaction, and the like, or their contraries, on behalf of the City, shall be in writing signed by the Commissioner of Public Property.

19. All notices, demands, requests, payments, consents, approvals and other instruments required or permitted to be given pursuant to the terms hereof, shall be in writing, and shall be deemed to have been properly given if sent by registered or certified United States Mail, postage prepaid, return receipt requested, addressed:

if to Bell, to

THE BELL TELEPHONE COMPANY OF PENNSYLVANIA
District Plant Engineer - South City
1911 Arch Street
3rd Floor
Philadelphia, Pennsylvania 19103

and, if to City, to

Commissioner of Public Property
c/o Project Manager - Airport High Speed Line
Architecture and Engineering Division
Department of Public Property
City of Philadelphia
1122 City Hall Annex
Philadelphia, Pennsylvania 19107

Bell and City shall, at any time and from time to time, have the right to specify as its proper address for purposes of this Agreement any other address or addresses by giving fifteen (15) days written notice to the other party.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound,
set their hands and seals the day and year first above written.

Attest:

THE BELL TELEPHONE COMPANY OF PENNSYLVANIA

Francis D. Jones
Assistant Secretary

By: *W. H. ...*
Vice President and General Manager
Eastern Region

Attest:

CITY OF PHILADELPHIA

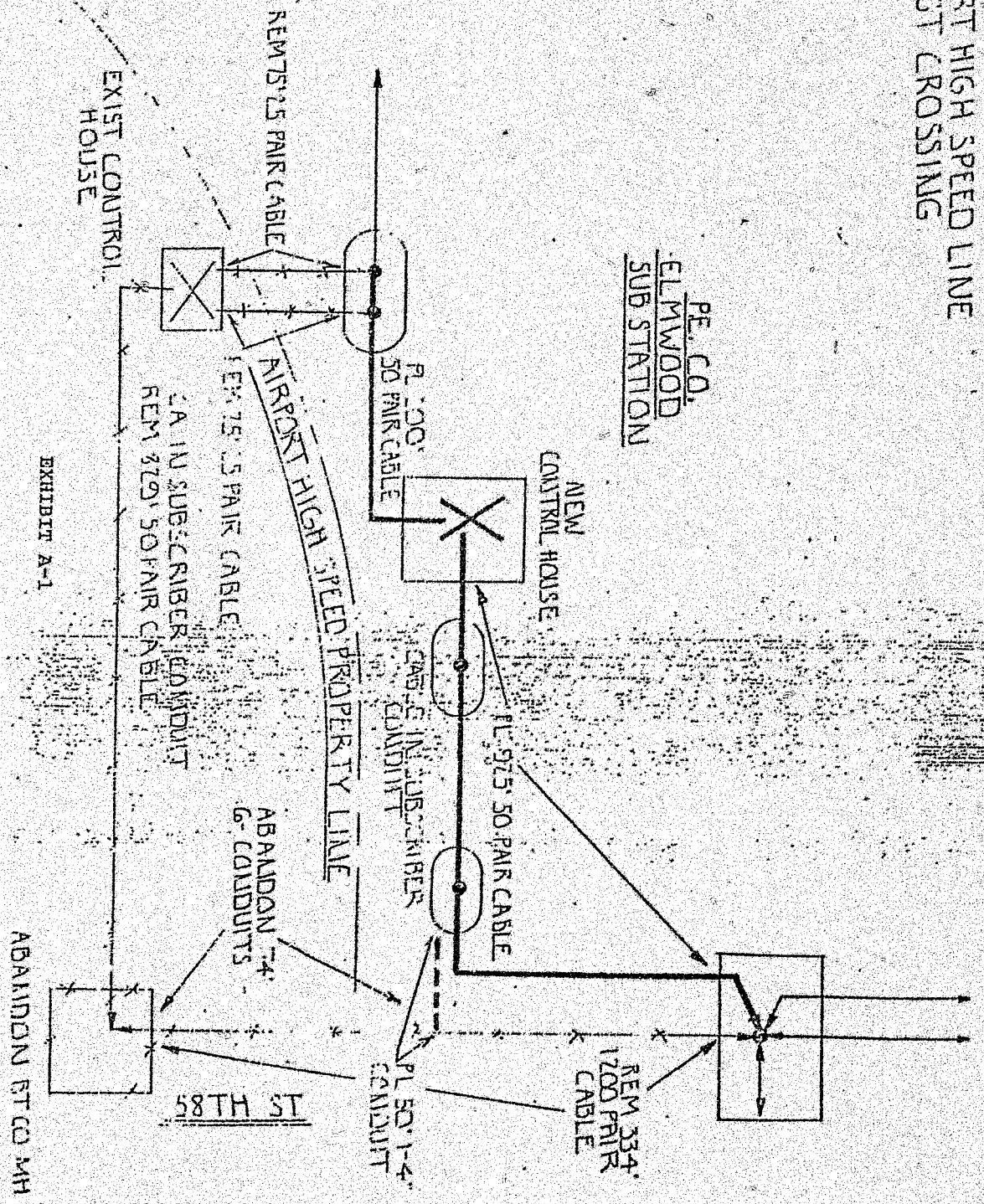
By: *Robert ...*
Commissioner of Public Property

Approved as to form

SHELDON L. ALBERT
City Solicitor

Per *Joseph ...*
Assistant City Solicitor

ALHFORT HIGH SPEED LINE
58TH ST CROSSING



AIRPORT HIGH SPEED LINE
LINDBERGH BLVD CROSSING

PL 1-12x6x7'
CONCRT MH

PL 1-12x6x7'
CONCRT MH

PL 1-12x6x7'
CONCRT MH

PL 1-12x6x7'
CONCRT MH

PL 300' 20-4" CONDUITS
2-1800 PAIR CABLES
1-1500 PAIR CABLE
1-1100 PAIR CABLE
1-900 PAIR CABLE

AROUND 225' 20-4" CONDUITS
2-1800 PAIR CABLES
1-1500 PAIR CABLE
1-1100 PAIR CABLE
1-900 PAIR CABLE

AROUND 187' 60 MH

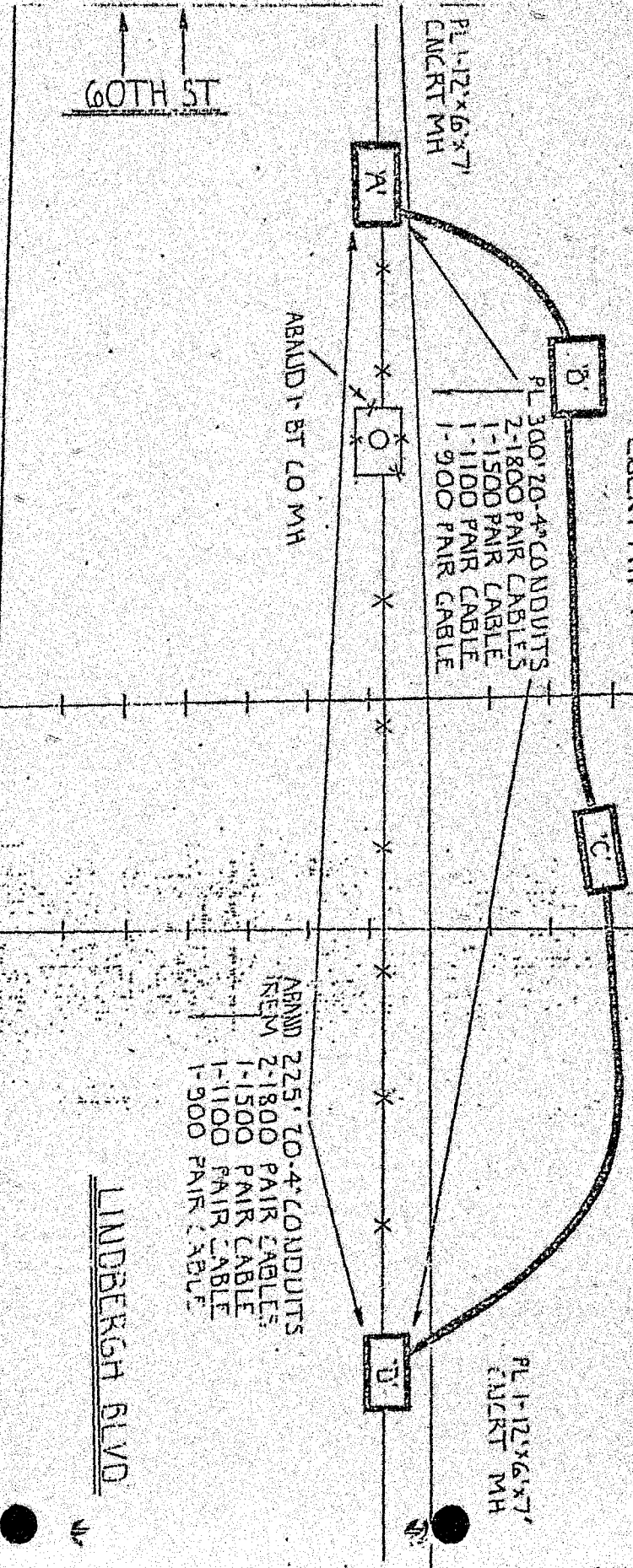
GOTH ST

HIGH SPEED LINE
TRACK #1

P.C. PK.
GOTH ST BRANCH

LINDBERGH BLVD

EXHIBIT A-2



AIRPORT HIGH SPEED LINE
LINDERBEGH BLVD CROSSING

PL 1-12x6x7'
CONCRT MH

PL 1-12x6x7'
CONCRT MH

PL 1-12x6x7'
CONCRT MH

PL 1-12x6x7'
CONCRT MH

PL 300' 20-4" CONDUITS
2-1800 PAIR CABLES
1-1500 PAIR CABLE
1-1100 PAIR CABLE
1-900 PAIR CABLE

ABAND 225' 20-4" CONDUITS
1-1800 PAIR CABLES
1-1500 PAIR CABLE
1-1100 PAIR CABLE
1-900 PAIR CABLE

ABAND 1-BT CO MH

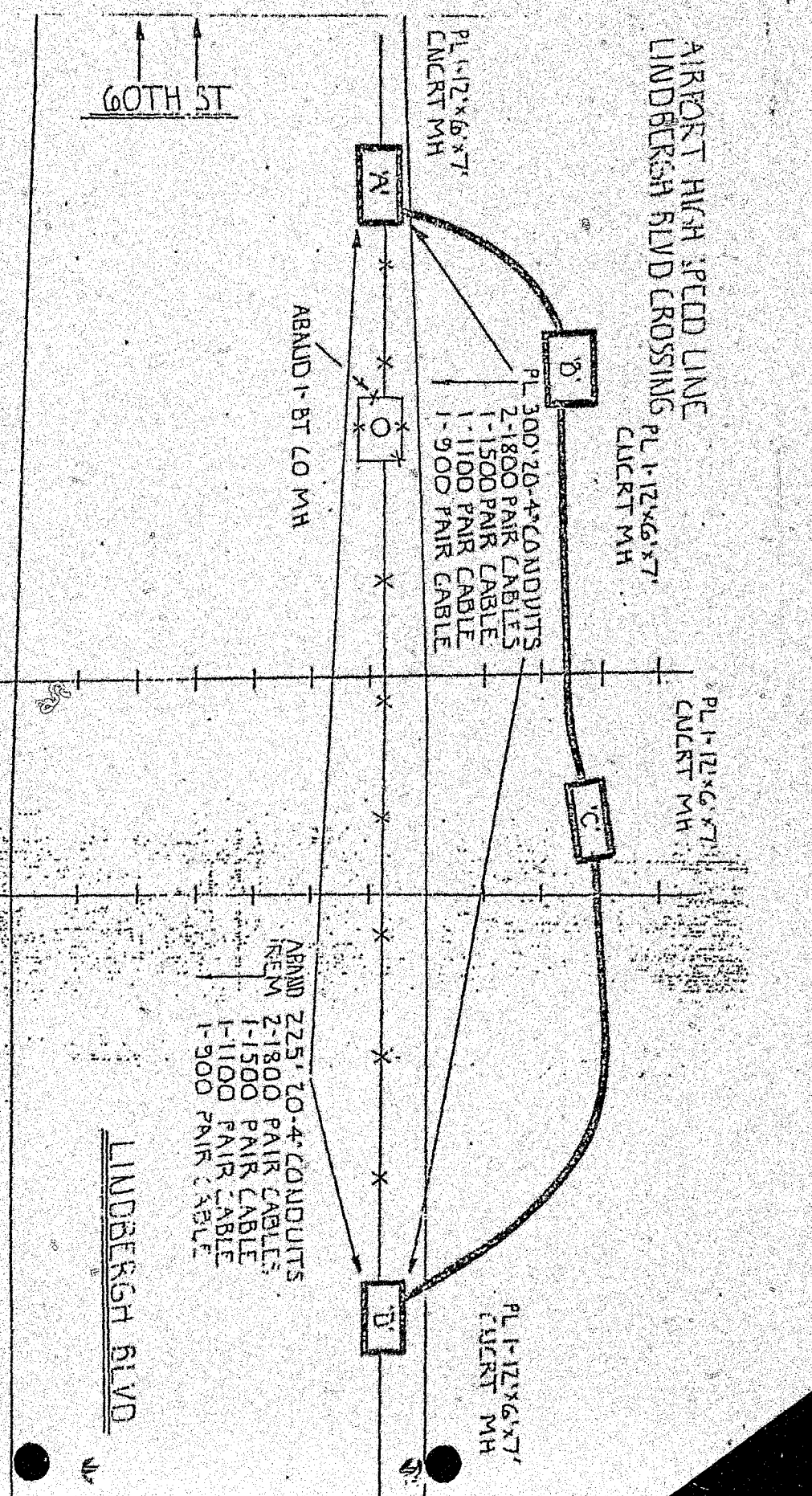
60TH ST

HIGH SPEED LINE
TRACK #1

P.C. RR.
60TH ST BRANCH

LINDERBEGH BLVD

EXHIBIT A-2



AIRPORT HIGH SPEED LINE
63RD ST. CROSSING

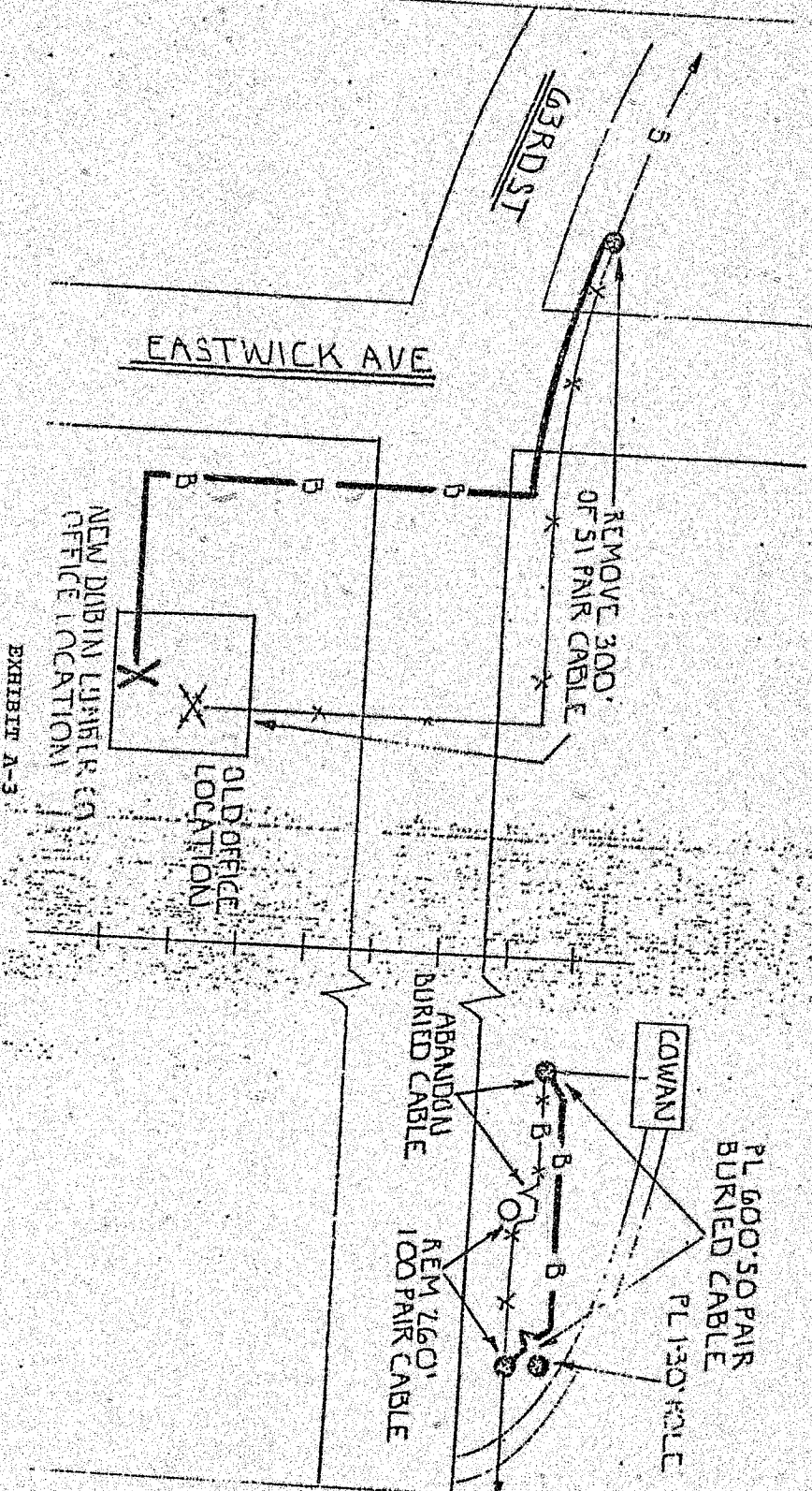


EXHIBIT A-3

AIRPORT HIGH SPEED LINE
LINDBERGH BLVD CROSSING

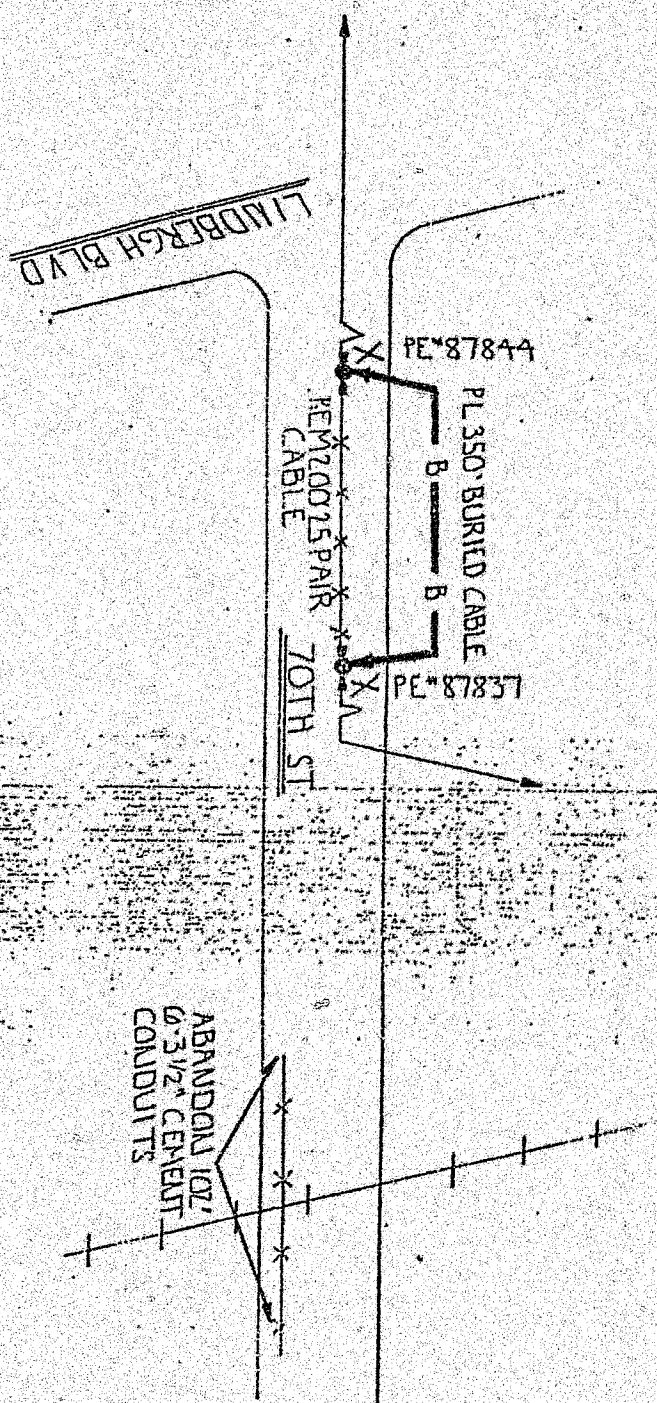


EXHIBIT A-4

3-DIP

AREA

ESTIMATE DETAIL TABULATION

PAGE NO.

EST/CRD/RCD/PROJ

LOCATION

ACCOUNT

HAIL CODE EQUITY

NET QTY

NET AMOUNT

DR. QTY

DR. AMOUNT

CR. QTY

CR. AMT.

HISC. HAIL

EXEMPT

TOTAL HAIL/DEPR

LABOR GROUP

FOR HOURS

LAB. AMOUNT

TOTAL LABOR

PLANT RETIRED

BASIC HAIL

SUPPLY EXP

BASIC LABOR

LABOR LDNG

TOTAL ENGR

LINE TOTAL

HOIR VEHICLE

WESTERN ELEC

AFFILIATED

CONTRACT

OTHER SVND

DILLING

HISC TOTAL

M.E. INST. HAIL

SPECIFICATIONS

INST. CHARGES

TRANSPORTATION

OTHER

SPECIAL J.E.

MONTHLY TOTAL

INTEREST

AMOUNT TRANS.

CUMULATIVE TOTAL

EXHIBIT B 2

LAW DEPARTMENT

The attached bid and award described below is referred to you for certification as to form, and where no annual surety bond is on file, to have Contractor post satisfactory bond.

FINANCE CONTRACT NO.	CONTRACTOR	AMOUNT OF AWARD	ANNUAL SURETY BOND
8.633	Bell Telephone of Pa.		
LAW DEPT. NO. 8.3294			
BID NO.			
DESCRIPTION	PERIOD COVERED		
REQUISITION NOS.			

ENDORSEMENT

OFFICE OF THE DIRECTOR OF FINANCE-ACCOUNTING DIVISION Examined: <i>James B. Pleida</i> 11.25.77 (For the Director of Finance) (Date)	OFFICE OF THE CITY CONTROLLER Examined: _____ (For the City Controller) (Date)
Funds being available under appropriations to the following agencies to pay the amounts indicated, viz., I approve this contract as to availability of funds for the purchase orders listed below.	
<i>Francis J. Lindinger</i> 11.30.77 (For the Director of Finance) (Date)	_____ (For the City Controller) (Date)

P. O. NO.	ACCOUNT CODES	DEPARTMENT OR AGENCY	AMOUNT
7781282	2578 20 41 41 250 100	Public Property	125,000.00
<p>Contract limit is 125,000.00 under section 2, and 250,000.00 under section 3. Section 3 will go into effect only if project is discontinued or abandoned.</p>			

FILE

December 13, 1977

A. 98061

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

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.

Dear Mr. Smolen:

This is to supplement the letter-notice of November 21, 1977 (copy attached) advising of hearing to be held in the above-captioned proceeding on Friday, January 13, 1978 at 10:00 a.m., in the Conference Room, 13th Floor, State Office Building, Philadelphia.

The scheduled hearing was requested by the applicant, City of Philadelphia, and will be limited in scope to the changes to be effected to those crossings of the Airport High Speed Line located at 60th St., 61st St., 63rd St., and 70th St. According to the city, all necessary plans and attendant documents have been finalized, and will be presented for the record at the hearing, together with detailed testimony on the particulars of construction, costs, et al, involved at each of the four noted locations.

We are advised by the city that it will furnish to each party of record to this proceeding, within approximately fifteen days, copies of general plan sheets pertaining to each of the subject locations, for review and familiarization with these specific isolated portions of the overall AHSR project, prior to the hearing date.

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

Should any questions arise or problems develop with regard to your interests at any of these locations, please contact John L. Storch, Engineer with the Railroad Division of the Public Utility Commission, at 717/787-5648. Every effort will be made to resolve any such issues, so that the record to be developed at the scheduled hearing will be full and complete, allowing the Commission to issue final orders relating to the designated crossings.

Very truly yours,

William R. Shane, Chief
Administrative Law Judge

Attachment

cc: ALJ Pallastrone
Bureau of Transportation
Law Bureau
Mr. Erenson
Ms. Lawrence

A. 98061.

Similar Letters to:

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

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

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

W. Preston Granberry, Attorney
The Bell Telephone Company of Pennsylvania
One Parkway
Philadelphia, Pennsylvania 19102

Richard P. Randall, Attorney
The Gulf Companies
P.O. Box 8056
Philadelphia, Pennsylvania 19101

Judith Soken, Esquire
Southeastern Pennsylvania Transportation Authority
2028 PSFS Building
13 South Twelfth Street
Philadelphia, Pennsylvania 19107

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

W. Scott Armentrout, Esquire
National Railroad Passenger Corporation
560, 532 Suburban Station Building
1617 J. F. Kennedy Boulevard
Philadelphia, PA 19103

Legal Department
The Baltimore and Ohio Railroad Company
Reading Terminal
Twelfth and Market Streets
Philadelphia, PA 19107

Legal Department
Philadelphia Electric Company
2300 Market Street
Philadelphia, PA 19103

Legal Department
American Telephone & Telegraph Company
900 Race Street
Philadelphia, PA 19106

Legal Department
ARCO Pipe Line Company
P. O. Box 989
Philadelphia, PA 19107

Legal Department
Mobil Pipeline Company
P. O. Box 989
Plainfield, New Jersey

Legal Department
Texas Eastern Transmission Corporation
P.O. Box 3655
Harrisburg, Pennsylvania 17101

Mr. C. J. Sludden, State Legislative Director
United Transportation Union
2107 North Sixth Street
Harrisburg, Pennsylvania 17110

Gunther C. Holpp, Secretary
Trustees of Penn Central Company
3100 I.V.B. Building
1700 Market Street
Philadelphia, PA 19103

A. W. Hesse, Chief Executive Officer
Trustees of Reading Company
Room 515, No. 1 Plymouth Meeting Mall
Plymouth Meeting, PA 19462



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

November 21, 1977

IN REPLY PLEASE
REFER TO OUR FILE

A. 98061

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

Dear Sir:

The purpose of this letter is to inform you that a further hearing on the above captioned case will be held Friday, January 13, 1978, commencing at 10:00 a.m., in the Conference Room, 13th Floor, State Office Building, Philadelphia.

It is not necessary to acknowledge receipt of this letter.

Very truly yours,

William R. Shane, Chief
Administrative Law Judge

FILED
L. P. ISSUE RECORD,
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

December 27, 1977

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, Delaware, Reading Company, Debuter, The Baltimore and Ohio Railroad Company and ARTA 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 18th 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.

David J. Daniels, Commissioner
City of Philadelphia,
Department of Streets
840 Municipal Services Building
Philadelphia, Pennsylvania 19107

Dear Sir:

In reply to your letter of December 19, 1977, relative to the status of the above entitled applications, we wish to advise that these matters are receiving active consideration and it is anticipated that disposition of these cases will be made by the Commission in the near future.

Very truly yours,

for C. J. NEELMEY
Secretary

cc: Bureau of Transportation, J. Storch
Law Bureau
copy of letter attached to each
CKG:mpk

DUPLICATE RECORD.
ORIGINAL CERTIFIED
TO COMMONWEALTH COURT.

RECEIVED
DEC 28 1977



CITY OF PHILADELPHIA

DEPARTMENT OF STREETS
840 Municipal Services Building
Philadelphia, Pa. 19107

DAVID J. DAMIANO
Commissioner

RECEIVED December 19, 1977
DEC 22 1977

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

SECRETARY'S OFFICE
PUBLIC UTILITY COMMISSION

Re: PUC A98061 and A99374 - 58TH STREET BRIDGE OVER AMTRAK
AND PROPOSED AIRPORT HIGH SPEED LINE
CITY OF PHILADELPHIA

Dear Secretary McElwee:

Hearings for this project were held March 22 and May 18, 1977, at the expiration of which briefs, findings of fact, conclusions of law and a proposed order were required to be filed within 30 days from date of receipt of transcript.

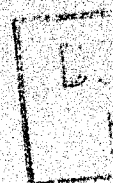
City filed with the PUC in Harrisburg brief, findings of fact, conclusions of law and proposed order in July, 1977. On October 25, 1977, City also sent copy of the above material directly to Administrative Law Judge R. Pallastrone, Esq., at his Philadelphia office, as requested.

In view of the fact that this project will be jointly funded through UMTA and City, and utility coordination severely restricts the time allowed for their shutdowns, it is imperative that work commence in early 1978. If this date is not met, the funds will require transfer into next fiscal year, but even more important is that the project start may then have to be delayed until 1979 because of utility coordination.

We would appreciate your advice regarding the time when an Order from the Commission will be forthcoming.

Very truly yours,

David J. Damiano
Commissioner



René J. Gunning
General Attorney
Law Department

FILE
Chessie System

2 North Charles Street
Baltimore, Maryland 21201
Phone 301 237 3813

January 4, 1978
Commission

File L-2011-2-520

Honorable William R. Shane
Chief Administrative Law Judge
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, Pennsylvania 17120

Re: 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 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 No. A. 98061 ✓

Dear Judge Shane:

We have just received your letter of December 13, 1977, which is a supplement to the letter notice of November 21, 1977, advising that a hearing will be held in the above captioned proceeding on Friday, January 13, 1978, at 10:00 AM, in the Conference Room, 13th Floor, State Office Building, Philadelphia.

No one here has any record of having received the November 21, 1977, notice, which is possibly due to the fact that it was misaddressed, as was your letter of December 13, 1977, to "Reading Terminal, Twelfth and Market Streets, Philadelphia, PA 19107."

I would therefore greatly appreciate it if you would note your records and the Commission's records to reflect our correct

DUPLICATE RECORD.
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**DOCUMENT
FOLDER**

Honorable William R. Shane:
Page 2
January 4, 1978

address, which is —

2 North Charles Street
Baltimore, Maryland 21201

Very truly yours,

Rein J. Lanning

RJG:awc

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



CITY OF PHILADELPHIA

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

SHELDON L. ALBERT
City Solicitor

January 19, 1978

Rudolph S. Pallastrone, Esquire
Adm. Law Judge, P.U.C.
13th Floor
State Office Building
Broad & Spring Garden Streets
Philadelphia, Pa.

RE: Application Docket A.98061

Dear Sir:

At the conclusion of the hearing in the above matter on January 13, 1978, a question arose as to whether or not City Exhibit 29 was reproduced in its entirety for Exhibit purposes.

We have reviewed the document in our office and find that a portion of Exhibit 29 was not attached to the distributed document.

Accordingly, I am enclosing herewith a copy of the addition to City Exhibit 29 which should be attached to said Exhibit 29 so that it will be complete.

I am forwarding copies to the other parties of record and four (4) copies to the Court Reporter for the Commission.

Very truly yours,

Herbert Smolen
Deputy City Solicitor

cc: Vincent Varrallo, Associates, Inc.
Joel Mazor, Esquire
Herbert C. Zahn, Esquire
W. Scott Armentrout, Esquire
Stephen Dittman, Esquire
Judith Soken, Esquire
W. Preston Granbery, Esquire
Barton A. Herzback, Esquire
Rudolph Chillemi, Esquire

hs/pk

Also: *Richard Krueger, Esq.*
John Storch

PUBLIC UTILITY
COMMISSION

78 JAN 19 AM 10:51

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FOLDER