



CITY OF PHILADELPHIA

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SECRETARY'S OFFICE
PUBLIC UTILITY
COMMISSION

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

ALAN J. DAVIS
City Solicitor

July 2, 1980

Pennsylvania Utility Commission
North Office Building
Harrisburg, PA

Attention: Secretary

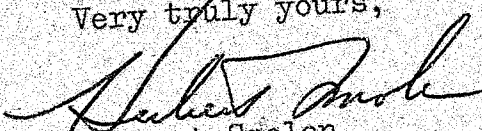
Re: Application of City of Philadelphia
Docket No. 98061

Dear Sir:

I enclose herewith original and 14 copies of Petition for Modification/Rescission/Rehearing of Commission Order adopted May 29, 1980 and Entered June 19, 1980.

Will you kindly acknowledge receipt of same.

Very truly yours,


Herbert Smolen
Deputy City Solicitor
Unit Chief

MU-6-5281

DOCUMENT
FOLDER

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JUL 3 1 02 PM '80

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

RECEIVED
SECRETARY'S OFFICE
DOCKET NO. A-00098061
PUBLIC UTILITY
COMMISSION

PETITION FOR MODIFICATION/RESCISSION/
REHEARING OF COMMISSION ORDER
ADOPTED MAY 29, 1980 AND
ENTERED JUNE 19, 1980

1. Petitioner herein is the City of Philadelphia, applicant in the instant matter.
2. On May 29, 1980, this Honorable Commission adopted an Order in this proceeding; which Order was entered on June 19, 1980.
3. At page 2, line 12 and at page 3 under Findings of Fact in said Order, Elmwood Avenue is referred to as being "a City street". Petitioner avers however that said Elmwood Avenue is a State Highway designated as L. R. 67308, as hereinafter more fully explained. The City therefore requests Modification of said Order to reflect the correct status of said Elmwood Avenue.
4. Paragraph 15 of the Findings of Fact (page 5) states,
"15. City of Philadelphia will furnish all materials and perform all work of construction, at its initial cost and expense, and will be responsible for future maintenance of the completed project, at its ~~same~~ cost and expense."

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For purpose of clarification, the City requests that said Paragraph 15 be modified to read as follows:

"15. City of Philadelphia will furnish all materials and perform all work of construction as shown on Exhibit No. 32 at its initial cost and expense, and will be responsible for future maintenance of the completed project; namely, the aforesaid work shown on Exhibit No. 32, at its sole cost and expense."

5. Ordering Paragraph 9 (page 8) states:

"9. That City of Philadelphia, at its initial cost and expense, furnish all material and do all work necessary to complete the remainder of the railroad-highway crossing improvement project in accordance with the approved plan."

For purpose of clarification, the City requests that said Ordering Paragraph 9 be modified to read as follows:

"9. That City of Philadelphia, at its initial cost and expense, furnish all material and do all work necessary to complete the remainder of the railroad-highway crossing improvement project in accordance with the approved plan, as set forth in Ordering Paragraph 3 hereof."

6. Ordering Paragraph 17 (page 9) states:

"17. That upon completion of the crossing improvement project and its opening to public use, City of Philadelphia, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the remainder of the improvement project within the limits of this Commission's jurisdiction, including all track, roadbed, gabion wingwalls, protective parapets, drainage systems or other ancillary facilities of the Airport High Speed Line as constructed in compliance with this order; including the substructure and superstructure of, and the approaches to, the bridge carrying Elmwood Avenue (a city street) over and above the tracks at this location."

By reason of the fact that Elmwood Ave. is not a City street, but rather, a State Highway designated as L. R. 67308, as hereinafter more fully explained, the City of Philadelphia respectfully requests that the aforesaid Ordering Paragraph 17 be modified to read as follows:

"17. That upon completion of the crossing improvement project and its opening to public use, City of Philadelphia, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the improvement project within

the limits of this Commission's jurisdiction, as set forth in Ordering Paragraph 3 hereof, including all track, roadbed, gabion wingwalls, protective parapets, drainage systems or other ancillary facilities of the Airport High Speed Line, as constructed in compliance with this Order; all in accordance with and as set forth in more detail on the plans hereinabove approved.

That during and after completion of the crossing improvement project and its opening to public use, the Commonwealth of Pennsylvania, Pennsylvania Department of Highways, at its sole cost and expense, shall continue to maintain the substructure and superstructure of, and the approaches to the bridge carrying Elmwood Avenue (a State Highway, L. R. 67308) over and above the tracks at this location."

The justification for the foregoing requested modification is found in 36 P.S. 1758 -201 which provides, inter alia, as follows:

"ARTICLE II - CITIES OF THE FIRST CLASS

Section 201. The following public streets or sections thereof, including bridges thereon, in cities of the first class are adopted by the Commonwealth as State highways to be taken over upon the terms and conditions and subject to the limitations hereinafter contained in Article II and shall thereafter be maintained, constructed, reconstructed and resurfaced in the same manner, with like power and authority as provided by the laws of the Commonwealth applicable to State highways, upon the terms and conditions and subject to the limitations as hereinafter provided in Article II!

Section 202 of the foregoing Statute, 36 P.S. 1758-202 makes reference to those Routes in the City of Philadelphia designated as State Highways, namely, Routes 67278 to 67373. In the Act of September 18, 1961, P.L. 1389, Section 202, it is provided as follows:

"Section 202. The city streets to be taken over in the City of Philadelphia are situate and described as follows:

Route 67308. Beginning at the intersection of Island Avenue, Passyunk Avenue and Elmwood Avenue; thence northeasterly on Elmwood Avenue to the intersection of Elmwood Avenue, Fifty-sixth Street and Lindbergh Blvd., a distance of about 1.9 miles."

It is submitted, and the Commission is requested to take Administrative Notice, of the fact that Elmwood Avenue in the City of Philadelphia, as above described, is a State Highway, as aforesaid, and includes the bridge under consideration herein and therefore, the duty of maintenance of the substructure, superstructure and approaches, under the above cited Statute is upon the Pennsylvania Department of Transportation. If the Commission requires further proof thereof,

then the City respectfully requests a reopening of the record for rehearing of that issue, since said issue did not arise at the hearing in this matter.

WHEREFORE, the City of Philadelphia respectfully requests the Honorable Pennsylvania Public Utility Commission to grant the relief requested herein.

CITY OF PHILADELPHIA

ALAN J. DAVIS
CITY SOLICITOR

ANDRE DASENT
DEPUTY CITY SOLICITOR

HERBERT SMOLEN
UNIT CHIEF, PUBLIC UTILITIES

By: 
HERBERT SMOLEN

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF PHILADELPHIA

AFFIDAVIT

Nicholas Bubewick, being duly sworn according to law deposes and says that he is *Acting Project Manager* of the City of Philadelphia; that he is authorized to and does make this Affidavit on its behalf; and that the facts set forth in the foregoing Petition are true and correct to the best of his knowledge, information and belief.

Nicholas Bubewick (SEAL)

SWORN TO AND SUBSCRIBED

before me this *2nd* day
of July, 1980.

Janet Althouse
Notary Public

JANET ALTHOUSE
NOTARY PUBLIC, PHILA., PHILA. CO.
My Commission Expires Feb. 5, 1981

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a true and correct copy of the foregoing Petition, by first class mail, postage prepaid, upon all known parties of record.

7/2/80
DATE

Herbert Smolen
HERBERT SMOLEN