



COMMONWEALTH OF PENNSYLVANIA
 PENNSYLVANIA PUBLIC UTILITY COMMISSION
 P.O. BOX 3265, HARRISBURG, PA 17105-3265

ISSUED: June 28, 1995

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JAMES W PATTERSON ESQ
 RUBIN QUINN MOSS
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C-80011839

Villanova University v. AMTRAK; CONRAIL; SEPTA;
 PennDot; County of Delaware and Radnor Township.

TO WHOM IT MAY CONCERN: _____

Enclosed is a copy of the Recommended Decision of Administrative Law Judge Herbert Smolen. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION IN ROOM B-20, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within twenty (20) days of the issuance date of this letter.** The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions.

Replies to exceptions, if any, must be served on the Secretary of the Commission, in the manner described above, within ten (10) days of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)". Any reference to specific sections of the Administrative Law Judge's Recommended Decision shall include the page number(s) of the cited section of the decision. All timely filed exceptions and replies thereto will be attached to the decision for consideration at Public Meeting. Late filed exceptions and/or late filed replies might not be considered by the Commission.

cc: ALJ SMOLEN/ OFFICE OF
 ALJ/ OSA/ PIO/ LAW BUREAU/ T&S-RAIL/ OUR FILE/ NEW FILE/ CHAIRMAN/
 COMMISSIONERS
 Very truly yours,

Enclosas See attached list *Robert A. Christianson*
 Certified Mail for additional Robert A. Christianson
 Receipt Requested parties of record Acting Chief Administrative Law Judge

the Commission annually of progress made toward replacement of the bridge at the subject crossing.

On August 20, 1990, PennDOT submitted preliminary plans for bridge replacement and approach roadway reconstruction. Thereafter, a field investigation conference was scheduled and held on September 25, 1990 at the site of the crossing. By Order adopted April 23, 1992 and without a hearing, the Commission ordered, inter alia, that PennDOT prepare detailed construction plans; that certain property be appropriated for the purposes of the improvement; that certain property be appropriated for temporary construction easements; that PennDOT construct the improvement at its initial cost and expense; that PennDOT maintain the detours and traffic controls; that Amtrak at the sole cost of PennDOT do all work to alter its facilities required as incidental to construction of the crossing; that non-carrier public utilities relocate at their respective initial cost and expense their facilities within and without the Commission's jurisdiction required as incidental to construction of the crossing; that PennDOT at its initial cost effect the relocation and removal of any non-utility structures located on property required for construction of the crossing; that PennDOT at its initial cost furnish all material necessary to complete the remainder of the project including construction of access roads, extension of passenger platforms and other ancillary features of

the project; that PennDOT notify all parties at least ten days prior to the start of work; that all parties cooperate with each other during construction; that the crossing construction be completed on or before December 31, 1994; that PennDOT at its initial cost and expense pay all compensation for damages due to the owners of property taken; that upon completion of the construction, each non-carrier public utility maintain its respective facilities; that upon completion of the project, Amtrak at its sole cost and expense should maintain its tracks, catenaries, station platforms and other railroad facilities existing or altered located within the limits of the improvement and to maintain the pedestrian tunnel; that PennDOT at its initial cost and expense maintain the remainder of the improvement including substructure, superstructure, highway approaches, proprietary retaining walls, the stairways leading from the bridge deck to the passenger platform and any other ancillary features of the improvement; that upon completion of the work, the proceeding be scheduled for allocation of costs and maintenance responsibilities; that the Order is without prejudice to the rights of the parties to recover costs in accordance with any lawful agreement; and that the previous Order of the Commission adopted December 17, 1982 shall remain in full force and effect.

The project was completed on May 9, 1994 and a further hearing was scheduled and held on December 8, 1994 to take testimony regarding the allocation of costs and maintenance responsibilities. At the hearing, appearances were entered on behalf of PennDOT, Amtrak, Conrail and PECO. Radnor Township and Delaware County submitted written responses to the questions propounded by the Commission's Bureau of Safety and Compliance (N.T. 186- 12/8/94 Hearing). Objection to the content of the responses was made because neither the County nor the Township was present in the hearing room to sponsor their responses and be cross-examined thereon. Accordingly, the submissions by Delaware County and Radnor Township were not received of record but were placed in the file of the proceeding (N.T. 187 - 12/8/94 Hearing).

At the hearing, Conrail presented one witness; PennDOT presented one witness and introduced 17 exhibits; Amtrak presented one witness and introduced one exhibit; and PECO introduced one witness and three exhibits. The record in this phase of the proceeding consists of 77 pages of transcript (N.T. 169-246) and the aforesaid exhibits. Briefs were submitted by Amtrak, PECO and PennDOT. Villanova University did not file a Main or Reply Brief which were due on February 28 and March 7, 1995, respectively, but did submit a letter dated March 27, 1995 to which no party objected.

FINDINGS OF FACT

1. This proceeding arises out of a Complaint filed by Villanova University against Amtrak, Conrail, SEPTA and PennDOT, alleging that the bridge carrying Spring Mill Road above four Amtrak railroad tracks was inadequate and posed a danger to pedestrian traffic (N.T. 206).

2. The Spring Mill Road bridge involved in this proceeding is a grade separated structure carrying State Route 320 over four Amtrak railroad tracks (N.T. 202).

3. Spring Mill Road runs generally in a northeast-southwest direction and connects with Lancaster Avenue (SR 30) on the southwest and County Line Road, a local road, toward the northeast. There are no plans for future highways in this area (N.T. 205).

4. On December 17, 1982, the Commission ordered PennDOT to make annual progress reports on the status of its efforts to replace the bridge (N.T. 206).

5. On August 20, 1990, PennDOT submitted bridge replacement and roadway approach reconstruction plans (N.T. 206).

6. On April 29, 1992, the Commission issued an Order instructing non-carrier public utilities to relocate their facilities located in public and private right-of-way in connection with the reconstruction; all at their initial cost and expense (N.T. 209-210).

7. The demolished structure consisted of a single span, through truss bridge which was erected prior to 1914 (N.T. 203).

8. The new crossing consists of a 26 foot roadway with an eight foot shoulder on the north side and a five foot sidewalk on the south side (N.T. 203).

9. The project resulted in improved vertical alignment, widening of the roadway approaches and elimination of the posted weight limit restrictions (N.T. 204).

10. The bridge structure was changed significantly prior to construction because the contractor opted for engineering redesign which resulted in the correction of right-of-way plans and track descriptions. Corrected right-of-way plans and descriptions are set forth in PennDOT's Exhibits 16 and 17 (N.T. 204-205).

11. PennDOT's late-filed Exhibits 16 and 17 contain revised right-of-way descriptions for various tracks previously appropriated by the Commission.

12. PennDOT has no records of pedestrian traffic on the structure. The average annual daily traffic (AADT) in 1990 was 12,900 vehicles of which 3% was estimated to be trucks. PennDOT's estimates that the AADT will be 13,300 consisting of 3% trucks by the year 2011 (N.T. 207).

13. The bridge reconstruction was completed in May 1994 and is open to the travelling public (N.T. 174-176).

14. On December 8, 1994, a hearing was held with respect to the allocation of costs and expenses incident to construction of the project.

15. PECO Energy Company, PennDOT, Conrail and Amtrak were represented at the hearing.

16. Conrail has trackage rights on Amtrak's line of rail involved in this proceeding, but Conrail has no freight operations. Conrail has the right to operate under Amtrak's dispatch and supervision of the freight trains (N.T. 179-180).

17. PennDOT incurred costs of \$4,048,840.26 in complying with the Order of the Commission adopted April 23, 1992 (N.T. 213; PennDOT Exhibit No. 7). Also included in Exhibit 7 are costs of items performed on behalf of Philadelphia Suburban Water Company, Philadelphia Electric Company, now known as PECO Energy Company, Bell Telephone Company, now known as Bell Atlantic-Pennsylvania, Inc., and Adelphia Cable Company. PennDOT is seeking 100% reimbursement for all items of work performed on behalf of these utilities and does not agree to bear any of those costs (N.T. 214). PennDOT acted as the contractor as required by each utility for their respective work (N.T. 214).

18. PennDOT incurred costs on behalf of Philadelphia Suburban Water Company in the amount of \$40,143.00. PennDOT

incurred costs on behalf of PECO Energy Company in the amount of \$99,486.00. PennDOT incurred costs on behalf of Bell Atlantic-Pennsylvania, Inc. in the amount of \$64,071.00. PennDOT incurred costs on behalf of Adelphia Cable Company in the amount of \$11,988.00 (N.T. 214-215).

19. To date, only Philadelphia Suburban Water Company and Adelphia Cable Company have not reimbursed PennDOT (N.T. 214-215).

20. The project was constructed using 75% Federal funds and 25% Commonwealth of Pennsylvania funds in accordance with the "Billion Dollar Bridge Program" (N.T. 215).

21. PECO Energy agreed to bear the costs associated with that portion of the new 6 duct bank shown from point 3 to point 9A on PECO Energy drawing 504-0532-2 (PECO Exhibit No. 2; PECO Statement No. 1, p. 3 [12/8/94]).

22. The bridge reconstruction project required PECO Energy Company to alter its facilities, including wood pole removal and relocation, partial duct bank reconstruction, and relocation of wires, conductors and transformers (PECO Statement No. 1, Pages 1-3).

23. PECO Energy paid PennDOT \$99,486 (N.T. 217, 219), but seeks reimbursement thereof (PECO Statement No. 1, Page 3; PECO Exhibit 3).

24. It is PECO's position that but for the bridge reconstruction, all of its existing facilities would have remained in service and the reconstruction did not result in any benefit or betterment to PECO Energy's system or customers (PECO Statement No. 1, Page 3).

25. The expected service life of PECO Energy's relocated facilities at the time of installation in 1993 was 50 years for the partial duct banks; 55 years for the underground cables; and 40 years for the wood poles and wire (PECO Statement No. 1, Page 2).

26. PECO is seeking reimbursement in the amount of \$99,302.06 (N.T. 234).

27. PECO had to perform its work due to the reconstruction of the bridge. PECO had to remove and relocate wood poles, reconstruct duct bank and relocate wires, conductors and transformers (N.T. 235).

28. PECO had eight wood poles which were installed between 1961 and 1979 in public right-of-way with an expected service life of 40 years. Five poles were removed; three poles were replaced and relocated (PECO Statement No. 1, Page 2).

29. Aerial wire installed in 1961 and 1963 had an expected service life of 40 years. The wire installed in 1961 had an expected remaining service life of 8 years at the time of relocation. The aerial wire installed in 1963 had an expected

remaining service life of 10 years at the time of relocation (PECO Statement No. 1, Page 2).

30. The three direct buried ducts and one manhole installed under permit and in public right-of-way in 1970 had an expected service life of 50 years. At the time of relocation, the remaining service life was 27 years (PECO Statement No. 1, Page 2).

31. The one three conductor underground cable installed in 1970 with an expected service life of 55 years had 32 years remaining of its expected service life (PECO Statement No. 1, Page 2).

32. Cathodic protection wire which was installed in 1970 with an expected service life of 55 years had 32 years remaining of its expected service life (PECO Statement No. 1, Page 2). The expected service life of the facilities which were relocated in 1993 is as follows: ducts - 50 years; underground cable - 55 years; wood poles and wires - 40 years (PECO Statement No. 1, Page 2).

33. All PECO relocated facilities were in public right-of-way (PECO Statement No. 1, Page 3). PECO did not attribute any salvage value to the facilities which were removed due to their condition. The condition of the facilities did not warrant their reuse (N.T. 240).

34. PECO is mindful of its ratepayers when making a decision as to where to relocate facilities and desires to do what is best for ratepayers. PECO, when locating facilities in public right-of-way, does not have to obtain further permits or acquire right-of-way (N.T. 243).

35. PennDOT has fulfilled all maintenance obligations as prescribed in the Commission's previous Orders (N.T. 211).

36. PennDOT does not seek reimbursement for any maintenance it performed on the demolished structure. PennDOT agrees to assume the responsibility of maintaining the substructure and superstructure including the sidewalk structure of the bridge. PennDOT also agrees to maintain the roadway approaches from curb to curb (N.T. 211) as well as maintenance of the surface of the sidewalks on the bridge from the center line of abutment No. 1, Station 783+72.89 to center line of abutment No. 2, Station 784+74.11 (Affidavit of Daniel C. DeMaria dated December 21, 1994).

37. PennDOT does not agree to assume maintenance responsibility for the stairways leading from the bridge to the railroad passenger platform below the structure. PennDOT does agree to assume responsibility for snow, ice and debris removal from the roadway from curb to curb on the approaches and from curb to parapet on the bridge. PennDOT believes that the local municipality should be responsible for snow, ice, debris and

graffiti removal from the sidewalks and parapets on the bridge and approaches as well as maintenance of the approach sidewalks (N.T. 212).

38. It is PennDOT's position that Amtrak should be ordered to maintain stairs leading from the bridge deck sidewalks to the railroad platform below as well as to remove snow, ice and debris (N.T. 212).

39. Patrons from either the railroad and/or the local municipality receive the benefits from the pedestrian sidewalk and stairway improvements. It is PennDOT's position that parties other than it should be responsible for maintenance and costs of the pedestrian sidewalk and stairway improvements (N.T. 212).

40. It is PennDOT's position that all non-carrier public utilities and all railroads should be responsible for the maintenance and costs of their respective facilities (N.T. 212).

41. It is PennDOT's position that Villanova University should be responsible for the maintenance and cost of service for the lighting and cost of maintenance for the street lighting across the bridge (N.T. 213).

42. PennDOT agrees to bear all costs incurred by SEPTA and Amtrak to construct the project and also agrees to bear costs of utility facilities protected, adjusted or relocated which were located in private right-of-way or which have a compensable interest within the public right-of-way. PennDOT does not agree

to reimburse a privately owned non-carrier utility for costs incurred for the protection, adjustment or relocation of facilities which were located in public right-of-way (N.T. 216-217). PennDOT does not agree to reimburse any utility company for any betterment received from the relocation of its facilities (N.T. 218).

43. Amtrak owns and operates four electrified tracks. There are approximately 20 Amtrak trains and 83 commuter trains that pass by the subject crossing on a daily basis. Amtrak trains travel at speeds of up to 60 m.p.h. Amtrak does not contemplate any changes to its operations in the foreseeable future (N.T. 222-223).

44. Amtrak receives a benefit as does the travelling public who use the bridge since the bridge provides a safe crossing for trains, vehicular and pedestrian traffic (N.T. 223).

45. Amtrak agrees to maintain its railroad owned facilities at the location including electrification, communications and signal facilities and will maintain these facilities at its sole cost and expense (N.T. 224).

46. Amtrak does not agree to bear any items of cost incurred by it or any other party (N.T. 227), and seeks reimbursement from PennDOT in an estimated amount of \$8,062.77 for additional Force Account and material acquisition costs

incurred in connection with the project (Amtrak Exhibit No. 1 [12/8/94]).

DISCUSSION

This matter involves the allocation of final costs and maintenance responsibilities in connection with the completed crossing improvement involved in this proceeding. In this regard, the Commission has exclusive authority, inter alia, to determine and order which parties should perform work at the crossing and which parties should maintain the crossing in the future. See City of Philadelphia v. Philadelphia Electric Co., et al., 504 Pa. 312, 373 A.2d 997 (1984).

Thus, 66 Pa. C.S. §2702(b) provides, in pertinent part,

The Commission is hereby vested with exclusive power . . . to determine and prescribe, by regulation or order, the points at which, and the manner in which, such crossings may be constructed, altered, relocated, suspended or abolished, and the manner and conditions in or under which such crossings shall be maintained, operated, and protected to effectuate the prevention of accidents and the promotion of the safety of the public . . . (Emphasis added)

The Commission's jurisdiction also extends to the approaches to rail-highway crossings. Department of Transportation v. Pa. PUC, 64 Pa. Commonwealth Ct. 299, 440 A.2d 657 (1982); Springettsbury v. Pa. PUC, 5 Pa. Commonwealth Ct. 102, 289 A.2d 762 (1972).

Moreover, and particularly significant in this case, the Commission has the exclusive authority to assess and allocate the costs of any work ordered to be performed upon the parties in this proceeding in such proper proportions as the Commission may determine. This authority of the Commission to allocate costs at rail-highway crossings is set forth in 66 Pa. C.S. §2704(a) as follows:

. . . Such compensation . . . (for damages for adjacent property taken, injured or destroyed) . . . as well as the cost of construction, relocation, alteration, protection, or abolition of such crossings, and of facilities at or adjacent to such crossing which is used in any kind of public utility service, shall be borne and paid, as provided in this section, 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. (Parenthetical explanation supplied for clarity.)

Further, in apportioning costs in rail-highway crossing cases, the Commission is not limited to any fixed rule but must consider all relevant factors and render an Order which is just and reasonable. Borough of South Greenberg v. Pa. PUC, 117 Pa. Comwlth 381, 544 A.2d 82 (1988); East Rockhill Township v. Pa. PUC, 115 Pa. Commonwealth Ct. 228, 540 A.2d 600 (1988); Commonwealth Department of Transportation v. Pa. PUC, 464 A.2d 645 (Pa. Cmwlt. 1983). See also Department of Transportation v.

Pa. PUC, 21 Pa. Commonwealth Ct. 407, 346 A.2d 371 (1975) and Conrail v. Pa. PUC, 55 Pa. Commonwealth Ct. 576, 423 A.2d 1108 (1980).

Additionally, the Commission also determines what parties are "concerned" within the meaning of Sections 2702(c) and 2704(a). County of Chester v. Pa. PUC, 47 Pa. Commonwealth Ct. 366, 408 A.2d 552 (1979). It must also be noted that any decision of the Commission must be based upon substantial evidence, which has been defined as such relevant evidence as a reasonable mind can accept as adequate to support a decision. Manchester Township v. Pa. P.U.C., 43 Pa. Commonwealth Ct. 118, 401 A.2d 1237 (1979).

Moreover, the Commission has also enumerated and examined certain factors in determining the allocation of costs. Thus, in Application of the City of Wilkes-Barre, PUC Docket A-101606 (1981), the Commission considered the following:

- (1) the benefits to the utility and its ratepayers;
- (2) the availability of state or federal funding for the project;
- (3) the placing of the costs upon the party responsible for the situation; and
- (4) the equities of a particular situation.

Further, the subject of cost allocation where utility facilities were located in public right-of-way was specifically

addressed in Re Dept. of Transportation of the Comm. of Pa., PUC Docket No. A-101489 (1987), 65 Pa. PUC 340, 349 where the Commission stated, inter alia,

The Commission faces the issue of utility relocation costs in almost every railroad-highway crossing case. The arguments of the utilities or PennDOT are not new. Utilities do not want to bear any of the relocation costs while PennDOT does not want to reimburse them for their facilities located in public right-of-way. The utilities almost never admit that they receive any benefit from the occupancy of the public right-of-way nor do they admit that were it not for the involvement of the Commission, they would not be eligible for any reimbursement. Thus, when necessary, utilities routinely relocate their facilities from public right-of-way in instances where the Commission is not involved and, do so at their own cost and expense. One wonders if facility relocations are so burdensome to utilities, why they locate them in the public right-of-way. The answer is obvious. It is in the utilities interest to locate in the public right-of-way. The utilities do not have to buy the right-of-way. In case of structures over railroad right-of-way, or for that matter over rivers, etc., they do not have to build or maintain a separate structure for their facilities. The utilities weigh those benefits against possible relocation costs when they decide to locate their facilities in the public right-of-way. Their argument that the occupation of the public right-of-way is of no benefit to them, is without merit and should be rejected.

This Recommended Decision is based upon the foregoing principles.

I. PennDOT's Position

1. PECO should bear all of its costs for relocation of its facilities (\$99,486.00). PECO paid PennDOT all of these costs, but seeks reimbursement (N.T. 217, 219, 234);
2. Philadelphia Suburban Water Company (PSWC) should reimburse PennDOT in the amount of \$40,143.00 for work performed by PennDOT on behalf of PSWC;
3. Adelphia Cable Company should reimburse PennDOT in the amount of \$11,988.00 for work performed by PennDOT on behalf of Adelphia Cable Company;
4. Radnor Township should, at its sole cost and expense, be responsible for snow, ice, debris and graffiti removal from the sidewalks and parapets on the bridge and approaches;
5. Amtrak should, at its sole cost and expense, be responsible for the maintenance of the stairway leading from the bridge sidewalks to the Amtrak platform below, as well as for snow, ice, debris and graffiti removal from the stairway;
6. Amtrak should, at its sole cost and expense, maintain all of its railroad facilities at the crossing;

7. Villanova University should continue to maintain and pay for the costs of maintenance of the street lighting facilities located under and on the bridge;
8. All non-carrier facilities should, at their own cost and expense, maintain their facilities at the crossing;
9. PennDOT, at its sole cost and expense, should maintain the substructure and superstructure, including the sidewalk structure on the bridge and sidewalk surface on the bridge from centerline of Abutment No. 1, Station 783 + 72.89 to centerline of Abutment No. 2, Station 785 + 74.11;
10. PennDOT, at its sole cost and expense, should remove snow, ice and debris from curb to curb on the approaches and from curb to parapet on the bridge;
11. Bell Atlantic-Pennsylvania, Inc., at its sole cost and expense, should bear all its costs involved in this proceeding. Bell has already reimbursed PennDOT (N.T. 214-215);
12. PennDOT has agreed to reimburse Amtrak and SEPTA for all of their costs (N.T. 216).

II. PECO's Position

1. PECO has paid PennDOT \$99,486.00, which represents the amount PennDOT incurred on behalf of PECO, and PECO seeks 100% reimbursement thereof (PECO Statement No. 1, p. 3; PECO Exhibit 3);
2. PECO agrees to bear the costs associated with that portion of the new 6 duct bank shown from point 3 to point 9A on PECO Energy drawing 504-0532-2 (PECO Exhibit No. 2; PECO Statement No. 1, p. 3 [12/8/94]).

III. Amtrak's Position

1. Amtrak agrees to maintain its own facilities at the crossing, at its sole cost and expense; but will not be responsible for any other costs (N.T. 224-225);
2. Amtrak seeks reimbursement from PennDOT in an estimated amount of \$8,062.77 for additional force account and material acquisition costs associated with the project (Amtrak Exhibit No. 1).
3. Amtrak should not be responsible for maintenance of the stairway leading from the bridge sidewalk to railroad platform below, nor for snow, ice, debris and graffiti removal therefrom by reason of its federal exemption under 49 U.S.C. §24301(1).

IV. Villanova University

Although Villanova University did not attend the hearing held on December 8, 1994 and did not file a Main or Reply Brief which were due February 28, 1995 and March 7, 1995, respectively; by letter dated March 27, 1995 and served on all parties, counsel for the University advised that its position is that the Commission is without power to allocate costs to a private entity because 66 Pa. C.S.A. §2704(a) provides that the cost of construction, relocation or alteration of a crossing "shall be borne and paid . . . by the public utilities or municipal corporations concerned, or by the Commonwealth" No party objected the this late-filed letter.

Based upon all of the foregoing, and the agreement of the parties on certain items, the following issues remain to be determined:

- A. Fixed utility costs.
- B. Maintenance responsibility for snow, ice, debris and graffiti removal from sidewalks and parapets on the bridge and approaches.
- C. Maintenance responsibility for stairway and snow, ice, debris and graffiti removal therefrom.
- D. Maintenance and energization costs for lighting facilities under and on the bridge.

A. Fixed Utility Costs

PennDOT requested that Philadelphia Suburban Water Company (PSWC) reimburse it in the amount of \$40,143.00. PSWC did not appear at the hearing of December 8, 1994 to oppose this request. Accordingly, approval of PennDOT's request will be recommended. The same is true with respect to the \$64,071.00 costs expended by PennDOT on behalf of Bell Atlantic-Pennsylvania, Inc. - which apparently has already reimbursed PennDOT.

With respect to PECO, however, the utility did press its position that it should be reimbursed for its costs, except those associated with that portion of the new 6 duct bank shown from point 3 to point 9A on PECO Energy drawing 504-0532-2 [PECO Exhibit No. 2; PECO Statement No. 1, p. 3 (12/8/94)], and argues that the record in this case reflects that the Wilkes Barre factors [PUC Docket A-101606 (1981)] indicate that the requisite criteria are present in the instant matter for the Commission to order PennDOT to reimburse PECO for its costs of \$99,302.06.

PennDOT argues that PECO should bear all of the costs associated with relocation of PECO's facilities because:

- (1) PECO's facilities were located in public right-of-way with knowledge that PECO was subject to the power of the State to control and regulate the highways for the safety and convenience of the

travelling public and also with knowledge that unless the Commission orders otherwise, the utility must relocate at its sole cost and expense.

- (2) PECO elected to place its facilities in public right-of-way mindful of the best interests and economic advantage to the company and its ratepayers. PECO will continue to enjoy the benefits of location in public right-of-way; such as not having to acquire, maintain and pay taxes on public right-of-way.
- (3) PECO has benefited by relocation of facilities in that their service lives have been extended. In addition, since PECO did not attribute any salvage value to the old facilities, PennDOT contends that replacement was imminent.
- (4) Consideration of outside funding (federal funds in this case) to bear one party's costs diminishes Commission's authority to allocate in a just and reasonable manner because ultimately one party will bear an unjust and unreasonable share of total project costs.
- (5) Use of federal funds to reimburse non-carrier utility relocation costs would come at the expense

of other potential improvements in the Delaware County area.

- (6) Equities of the case and recognition of placement in public right-of-way require utility to bear at least a portion of its relocation costs (PennDOT Main Brief, p. 16). Placing 100% of costs on PECO would be consistent with other Commission Orders.

In considering the Wilkes Barre factors, the contentions of the parties and applicable law, the Administrative Law Judge finds and concludes:

- (1) that PECO and its ratepayers have received and will continue to receive substantial benefit by past, present and future occupancy of the public right-of-way. Additionally, PECO has been able to replace facilities that had remaining service lives at time of relocation in the range of from 8 years to 32 years which after relocation and replacement with new facilities had expected service lives in the range from 40 years to 55 years. Moreover, PECO had the option to utilize state of the art material and equipment in its new facilities. There is, therefore, a benefit to PECO and its ratepayers. The travelling public has also received a substantial benefit from the project in that there is an improved vertical

alignment, a widening of roadway approaches and elimination of posted weight limitations.

(2) that federal and state funds were available for the project (N.T. 215). In this regard, the Commission has observed, ". . . [t]he Commission will allow Pennsylvanians the benefits of the Federal Highway Program, to which they contribute through their taxes, and also will obviate the burden on [the utilities] ratepayers who may obtain no benefit from the highway-railroad project." Re Pennsylvania Dept. of Transportation, 69 Pa. PUC 208, 220 (1989);

(3) that PennDOT is the party responsible for the state highways and for construction of the project which resulted in roadway improvements and the need for utility relocations. However, PECO also contributed to the necessity for utility relocation by original facility placement in public right-of-way. It must also be recognized that by reason of the remaining service lives of PECO's facilities (8 to 32 years), construction of the project required PECO to expend costs for facility replacements prior to the time when same would have become necessary.

- (4) the equities of the situation support some but not full reimbursement by PennDOT to PECO of PECO's relocation cost request.

Upon consideration of all of the foregoing, the Administrative Law Judge finds and concludes and recommends that the Commission find and conclude that it is just and reasonable that PennDOT should reimburse PECO ten percent (10%) of its request of \$99,486.00; excluding, if included therein, those costs associated with that portion of the new six duct bank shown from point 3 to point 9A on PECO Energy Company's drawing 504-0532-2 on PECO Energy Exhibit No. 2 (12/8/94); and that PECO should bear all of its remaining alteration, replacement and relocation costs. Accordingly, an appropriate provision recommending the foregoing will be included in the Recommended Order.

With respect to Philadelphia Suburban Water Company and Bell Atlantic-Pennsylvania, Inc.; to the extent that PennDOT incurred costs on their behalf, it will be recommended herein that they reimburse PennDOT, if they have not already done so, for 100% of any costs expended by PennDOT on their behalf to construct the project since these utilities did not appear at the hearing to oppose PennDOT's request; and that said utilities bear all of said costs, at their respective sole cost and expense.

B. Carrier Utilities

With respect to SEPTA and Amtrak, PennDOT has agreed to bear all costs incurred by them to construct the project. Same will be recommended. Amtrak has requested that it be reimbursed for the balance of its costs in the approximate amount of \$11,370.49 (see Amtrak's Filing of 2/8/95 with copies of Invoices attached). Reimbursement to Amtrak will be recommended. Conrail has trackage rights on Amtrak's line of rail, but has no freight operations. Accordingly, there is no allocation of costs required with respect to Conrail.

C. Lighting and Maintenance Responsibilities

With respect to lighting, PennDOT takes the position that Villanova University should be responsible for the maintenance and costs of electric service for the street lighting below and across the bridge because it is an extension of the University's parking lot (N.T. 213; PennDOT's Main Brief, p. 21).

The University's position is that the Commission is without power to allocate costs to a private entity; citing 66 Pa. C.S.A. §2704(a). The foregoing Section provides, inter alia, that the cost of construction, relocation, alteration, protection or abolition of any crossing "shall be borne and paid . . . by the public utilities or municipal corporations concerned, or by the Commonwealth" Villanova University further states that it will not voluntarily submit to the jurisdiction of the

Commission for purposes of cost allocation. Accordingly, no allocation of maintenance or lighting responsibilities or costs thereof will be allocated to Villanova University. However, with respect to the lighting on Amtrak's platforms and on its other facilities, Amtrak agrees to be responsible therefor (N.T. 185, 187). In addition, the Commission's prior Order in this matter, adopted April 23, 1992 and entered April 29, 1992, states, at page 3 thereof,

Amtrak and SEPTA agree to maintain all railroad owned and operated facilities in the future, including maintenance of the pedestrian tunnel, adjacent to the crossing as assigned to Amtrak by the prior Commission order adopted December 17, 1982.

In furtherance of the foregoing, Ordering paragraph 20 of the April 23, 1992 Order states as follows:

20. That upon completion of construction of the proposed project, National Railroad Passenger Corporation furnish all material and perform all work necessary thereafter to maintain its tracks, catenaries, station, platforms and other railroad facilities, existing or altered, located within the limits of the improvement, and to maintain the pedestrian tunnel in a safe and satisfactory condition.

Therefore, in accordance with Amtrak's agreement with respect to lighting and maintenance of its own property and facilities, the prior Orders of the Commission will remain in full force and effect, including necessary lighting (N.T. 185, 187, 224). Although Amtrak, as aforesaid, has agreed to maintain

its own facilities at the crossing, it argues that the new stairs leading from the bridge to the passenger platform below are not Amtrak facilities; were not part of the prior bridge structure; and that the record does not indicate any request by Amtrak for the addition of the stairway nor any agreement by Amtrak to pay for its maintenance. Thus, continues Amtrak, imposition of maintenance for the new stairs would contravene Amtrak's exemption under 49 U.S.C. §24301(1). The Administrative Law Judge agrees. Thus, persons from the local area, even though they may also be patrons of the railroad, receive the benefit of the new stairway. Accordingly, the maintenance responsibility for the new stairway will be allocated to Radnor Township, at its sole cost, including responsibility for the maintenance and energization of lighting facilities on the new stairway, wherever said lighting facilities are required for the public safety.

It is to be further noted that PennDOT has agreed to assume responsibility for maintaining the bridge substructure and superstructure including the sidewalk structure of the bridge. Additionally, PennDOT has agreed to maintain the roadway approaches from curb to curb (N.T. 211) as well as maintenance of the surface of the sidewalks on the bridge. Same will be recommended.

With respect to the maintenance of the curbs and sidewalks on the approaches to the bridge, same will be allocated

to Radnor Township, at its sole cost, without prejudice to its right to enforce any lawful ordinances and/or agreements pertaining to the maintenance of said curbs and sidewalks on the approaches.

With respect to street lighting facilities and cost of energization; inasmuch as closure and reconstruction of the crossing related centrally to pedestrians and motor vehicles, it is appropriate and reasonable that maintenance of street lighting facilities and the cost of energization thereof, wherever such street lighting is necessary for the protection of the public, on the approaches, sidewalks, bridge (including the sidewalk thereon), stairway (as aforesaid) be allocated to Radnor Township, at its sole cost and expense, as it is in the best position to monitor and perform said work.

PennDOT agrees to assume responsibility for snow, ice and debris removal from the roadway from curb to curb on the approaches and from curb to parapet on the bridge. With respect to snow, ice, debris and graffiti removal from the curbs and sidewalks on the approaches, the sidewalk and parapets on the bridge and the stairway, it is reasonable and appropriate, for the same reason as set forth for street lighting and energization, that such duties be performed by Radnor Township, at its sole cost, without prejudice to its right to enforce any lawful Ordinances and/or agreements pertaining thereto.

All other parties will be required to maintain their respective facilities at their sole cost and expense.

D. Appropriations

During the course of the hearing held on December 8, 1994, it was disclosed that the bridge structure was changed prior to construction because of engineering redesign which resulted in changes of right-of-way plans and track descriptions. PennDOT submitted corrected right-of-way plans and descriptions (PennDOT Exhibits 16 and 17). These corrected descriptions will be set forth in the Recommended Order.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties in this proceeding.
2. Under the provisions of Sections 2702 and 2704 of the Public Utility Code, 66 Pa. C.S.A. §§2702, 2704, the Commission has (1) the authority over all concerned parties in any railroad-highway crossing; (2) the authority to prescribe the manner in which a rail-highway crossing can be constructed, reconstructed or altered; (3) the authority to assign the work of alteration of the crossing; (4) the authority to determine the allocation of the costs for the alteration of the crossing; and (5) the authority to assign maintenance responsibilities.
3. The Commission has the authority as may be necessary to protect the public interest, safety and convenience.

4. The Commission has the authority, inter alia, to allocate costs and maintenance responsibilities upon the concerned public utilities, municipal corporations and/or the Commonwealth of Pennsylvania, as it may justly and reasonably determine.

ORDER

THEREFORE,

IT IS RECOMMENDED (subject to Commission approval) that the following Order be adopted and entered:

1. That the Pennsylvania Department of Transportation, having agreed to do so, at its sole cost and expense, furnish all material and do all work necessary to:

- (a) maintain the substructure, superstructure and sidewalk structure of the bridge; and
- (b) maintain the roadway surface on the bridge between the curb and parapet and on the approaches from curb to curb; and the surface of the sidewalk on the bridge from the center line of Abutment No. 1, Station 783 + 72.89 to center line of Abutment No. 2, Station 784 + 74.11; and
- (c) remove snow, ice and debris from the roadway on the approaches between curb to curb, and from curb to parapet on the bridge;

all in a safe and satisfactory manner and condition.

2. That the Township of Radnor, at its sole cost and expense, furnish all material and perform all work necessary to:

- (a) remove snow, ice, debris and graffiti from the curbs and sidewalks on the approaches and the curb and sidewalk and parapets on the bridge; and
- (b) maintain the stairs leading down from the bridge deck sidewalk to the railroad platform below, including snow, ice, debris and graffiti removal therefrom; and
- (c) maintain the lighting facilities and pay for costs of continuing electric service therefor, wherever same are necessary for the protection of the public, on the approaches, sidewalks, bridge (including sidewalk thereon) and the stairs and stairway leading from the bridge down to the railroad platform; and
- (d) maintain the curbs and sidewalks on the approaches to the bridge;

all in a safe and satisfactory manner and condition, and without prejudice to the Township of Radnor's right to enforce any lawful ordinances and/or agreements pertaining to the foregoing responsibilities.

3. That Philadelphia Suburban Water Company, at its sole cost and expense, bear all of the costs incurred with

respect to the alteration, relocation, replacement and/or adjustment of its facilities necessary to accommodate the construction of the project; and, if it has not already done so, Philadelphia Suburban Water Company, when and as certified by the Commission, shall pay to the Pennsylvania Department of Transportation a sum or sums of money equal to 100% of the costs incurred by the Pennsylvania Department of Transportation for work performed on behalf of Philadelphia Suburban Water Company in connection with the project.

4. That Bell Atlantic-Pennsylvania, Inc., at its sole cost and expense, bear all of the costs incurred with respect to the alteration, relocation, replacement and/or adjustment of its facilities necessary to accommodate construction of the project; and, if it has not already done so, Bell Atlantic-Pennsylvania, Inc., when and as certified by the Commission, shall reimburse the Pennsylvania Department of Transportation a sum or sums of money equal to 100% of the costs incurred by the Pennsylvania Department of Transportation for work performed on behalf of Bell Atlantic-Pennsylvania, Inc. in connection with the project.

5. That the Pennsylvania Department of Transportation, having agreed to do so, at its sole cost and expense, shall bear all of the costs incurred by the Southeastern Pennsylvania Transportation Authority with respect to the alteration, relocation, replacement and/or adjustment of its

facilities necessary to accommodate construction of the project; and if it has not already done so, the Pennsylvania Department of Transportation, when and as certified by the Commission, shall reimburse the Southeastern Pennsylvania Transportation Authority a sum or sums of money equal to 100% of the costs incurred by the Southeastern Pennsylvania Transportation Authority in connection with the construction of the project.

6. That the Pennsylvania Department of Transportation, having agreed to do so, at its sole cost and expense, shall bear all of the costs incurred by the National Passenger Railroad Corporation with respect to the alteration, relocation, replacement and/or adjustment of its facilities necessary to accommodate construction of the project; and if it has not already done so, the Pennsylvania Department of Transportation, when and as certified by the Commission, shall reimburse the National Passenger Railroad Corporation a sum or sums of money equal to 100% of the costs incurred by the National Passenger Railroad Corporation in connection with the construction of the project.

7. That the Pennsylvania Department of Transportation, at its sole cost and expense, when and as certified by the Commission, shall reimburse PECO Energy Company a sum or sums of money equal to 10% of the costs incurred with respect to the alteration, relocation, replacement and/or

adjustment of facilities of PECO Energy Company necessary to accommodate construction of the project; excluding those costs associated with that portion of the new six duct bank shown from point 3 to point 9A on PECO Energy Company drawing 504-0532-2 on PECO Energy Company Exhibit No. 2 (12/8/94) in this proceeding.

8. That PECO Energy Company bear all of the remaining costs, including those costs associated with that portion of the new six duct bank shown from point 3 to point 9A on PECO Energy Company drawing 504-0532-2 on PECO Energy Company Exhibit No. 2 (12/8/94), incurred in furnishing material and performing work in connection with the alteration, replacement, relocation and/or adjustment of PECO Energy Company facilities in connection with the project.

9. That the Adelphia Cable Company, at its sole cost and expense, bear all of the costs incurred by the Pennsylvania Department of Transportation with respect to the alteration, relocation, replacement and/or adjustment of the facilities of Adelphia Cable Company necessary to accommodate construction of the project; and if it has not already done so, shall reimburse the Pennsylvania Department of Transportation, when and as certified by the Commission, a sum or sums of money equal to 100% of the costs incurred by the Pennsylvania Department of Transportation for work performed on behalf of Adelphia Cable Company in connection with construction of the project.

10. That except as otherwise provided in this Order, the Pennsylvania Department of Transportation, Philadelphia Suburban Water Company, Bell Atlantic-Pennsylvania, Inc., PECO Energy Company, National Railroad Passenger Corporation and any utility, non-utility party, municipality, Township, Borough, County involved, each respectively, at their sole cost and expense, furnish all material and do all work necessary to maintain their respective facilities and property; all in a safe and satisfactory manner and condition.

11. That late-filed Pennsylvania Department of Transportation Exhibits 16 and 17 are hereby received of record and approved.

12. That the appropriations of parcels of property and aerial easements for the construction of the crossing and approaches previously made in prior Commission Orders pertaining to Tract No. 1, Tract No. 2, Tract No. 3, Tract No. 4, Tract No. 5, Tract No. 9, Temporary Construction Easement No. 1, Temporary Construction Easement No. 2 and Temporary Construction Easement No. 7, be and the same are hereby revoked and rescinded; and in accordance with the provisions of Section 2702(b) of the Public Utility Code, 66 Pa. C.S.A. §2702(b), the following revised described parcels of property and easements together with additions thereto are hereby appropriated, nunc pro tunc, for the construction of the crossing and approaches in accordance with

the revised final plans approved by the Commission; and that this paragraph be recorded in the Office for the Recording of Deeds in the County of Delaware, Commonwealth of Pennsylvania, indexed under the name or names of the record owners of said property, as grantor(s), and the Pennsylvania Department of Transportation, as Grantee, at the sole cost and expense of the Pennsylvania Department of Transportation;

ALL THOSE CERTAIN TRACTS OF LAND, situated in the Township of Radnor, Delaware County, Pennsylvania, bounded and described as follows, to wit:

TRACT NO. 1 (REVISED)
(Required Right-of-Way)

Beginning at a point on the northerly side of State Route 0320, said point being the intersection of the southerly AMTRAK right-of-way line and the northerly legal right-of-way line for State Route 0320 distant thirteen (13) feet northwesterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 783+56; thence in a northeasterly direction along the right-of-way line of AMTRAK to a point distant thirty (30) feet northwesterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 783+47; thence in a northeasterly direction along the required right-of-way line of State Route 0320 to a point distant thirty (30) feet northwesterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 783+61.1; thence in a southeasterly direction along the aerial easement line to a point distant thirteen (13) feet northwesterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 783+69.7; thence in a southwesterly direction along the legal right-of-way line of State Route 0320 to a point and place of beginning and containing two-hundred thirty-six (236) square feet more or less.

TRACT NO. 2 (REVISED)
(Required Right-of-Way)

Beginning at a point on the southerly side of State Route 0320, said point being the intersection of the required right-of-way line for State Route 0320 and the southerly temporary construction easement line for AMTRAK distant twenty-eight (28) feet southeasterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 783+77; thence northwesterly along the projected required right-of-way line to a point distant twenty (20) feet southeasterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 783+73; thence northeasterly along the legal right-of-way of State Route 0320 to a point distant twenty (20) feet southeasterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 783+86.2; thence southeasterly along required aerial easement line to a point distant twenty-eight (28) feet southeasterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 783+90.3; thence continuing southwestward along the temporary construction easement line to a point and place of beginning and containing one-hundred and six (106) square feet more or less.

TRACT NO. 3 (REVISED)
(Aerial Easement)

Beginning at a point on the northerly side of State Route 0320, said point being the intersection of the northerly legal right-of-way line for State Route 0320 and the southerly required aerial easement line of State Route 0320 distant thirteen (13) feet northwesterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 783+69.7; thence in a northwesterly direction along the required aerial easement line to a point distant thirty-seven (37) feet northwesterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 783+57.6; thence in a northeasterly direction along the required aerial easement line to a point distant thirty-seven (37) feet northwesterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 784+62; thence in a southeasterly direction along the AMTRAK northern right-of-way line to a point distant thirteen and one-half (13.5) feet northwesterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 784+72.5;

thence in a southwesterly direction along the legal right-of-way line for State Route 0320 to a point and place of beginning and containing two thousand four hundred sixty (2460) square feet more or less.

TRACT NO. 4 (REVISED)
(Aerial Easement)

Beginning at a point on the southerly side of State Route 0320, said point being the intersection of the southerly legal right-of-way line for State Route 0320 and the required aerial easement line of State Route 0320 distant twenty (20) feet southeasterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 783+86.2; thence in a northeasterly direction along the legal right-of-way line of State Route 0320 to a point distant nineteen and one-half (19.5) feet southeasterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 783+44.5; thence in a southeasterly direction along the temporary construction easement line to a point distant thirty-five (35) feet southeasterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 785+52.3; thence in a southwesterly direction along the required aerial easement line to a point distant thirty-five (35) feet southeasterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 783+93.8; thence in a northwesterly direction along the required aerial easement line to a point and place of beginning and containing two thousand four hundred and sixteen (2416) square feet more or less.

TRACT NO. 5
(Retainment of Aerial Easement, Conveyance of Surface Easement to AMTRAK Excluding Pier Footing Area)

Beginning at a point on the southerly side of State Route 0320, said point being the intersection of the southern legal right-of-way line of State Route 0320 and the southern aerial easement line of State Route 0320 distant nineteen and one-half (19.5) feet southeasterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 784+57; thence in a northwesterly direction along the aerial easement line to a point distant three (3) feet southeasterly and measured at right angles from the right-of-way

centerline of State Route 0320 at or about Station 784+50; thence in a northeasterly direction along the AMTRAK property line to a point distant three (3) feet southeasterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 785+25; thence in a southeasterly direction along the temporary construction easement line to a point distant nineteen and one-half (19.5) feet southeasterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 785+34.5; thence in a southwesterly direction along the legal right-of-way line for State Route 0320 to a point and place of beginning and containing one thousand two hundred and thirteen (1213) square feet more or less.

TRACT NO. 6 (Added)

(Retainment of Aerial Easement, Conveyance of Surface Easement to AMTRAK Excluding Abutment Footing Area)

Beginning at a point on the northerly side of State Route 0320, said point being the intersection of the northern legal right-of-way line of State Route 0320 and the northern aerial easement line of State Route 0320 distant thirteen (13) feet northwesterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 783+69.7; thence in a northeasterly direction along the aerial easement line to a point thirteen (13) feet northwesterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 783+80; thence in a southeasterly direction along the existing aerial easement line to a point distant twenty (20) feet southeasterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 783+96; thence in a southwesterly direction along the aerial easement line to a point distant twenty (20) feet southeasterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 783+86.2; thence in a southwesterly direction along the legal right-of-way line for State Route 0320 to a point and place of beginning and containing three hundred and fifteen (315) square feet more or less.

TRACT NO. 9

(Retainment of Aerial Easement, Conveyance of Surface
Easement to AMTRAK Excluding Pier Footing Area)

Beginning at a point on the northerly side of State Route 0320, said point being the intersection of the southern aerial easement line of State Route 0320 and the northern legal right-of-way line of State Route 0320 distant thirteen and one-half (13.5) feet northwesterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 784+41.5; thence in a northeasterly direction along the legal right-of-way line to a point thirteen and one-half (13.5) feet northwesterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 784+72.5; thence in a southwesterly direction along the AMTRAK right-of-way line to a point distant three (3) feet southeasterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 704+00; thence in a southwesterly direction along the AMTRAK property line to a point distant three (3) feet southeasterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 784+50; thence in a northwesterly direction along the aerial easement line to a point and place of beginning and containing five hundred and three (503) square feet more or less.

The above seven (7) tracts of land shown on the Department of Transportation's Drawings Authorizing Acquisition of Right-of-Way for State Route 0320 Section 12S R/W and designated and delineated as part of Parcel No. 5 on Sheet 11 of said drawings as recorded in the office for the recording of deeds, etc., in Delaware County, Pennsylvania, in Volume 17, Page 243, on January 17, 1992, and re-recorded in Volume 17, Page 432 on February 2, 1993, are portions of real estate which became legally vested in National Railroad Passenger Corporation by deed of Consolidated Rail Corporation, dated October 11, 1978 and recorded October 20, 1978 in Deed Book 2670, Page 988 in the Delaware County Courthouse.

TEMPORARY CONSTRUCTION EASEMENT NO. 1

(Revised)

Beginning at a point on the southerly side of State Route 0320, said point being the intersection of the southerly required legal right-of-way line of S.R. 0320 and the line for

the Temporary Construction Easement distant twenty-eight (28) feet and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 783+77; thence in a northeasterly direction along the required right-of-way line for State Route 0320 to a point distant twenty-eight (28) feet and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 90.3; thence in a southeasterly direction along the required aerial easement line for State Route 0320 to a point distant thirty-five (35) feet and measured at right angles from the right-of-way centerline for State Route 0320 at or about Station 783+93.8; thence continuing in a northeasterly along the required aerial easement line for State Route 0320 to a point distant thirty-five (35) feet and measured at right angles from the right-of-way centerline for State Route 0320 at or about Station 784+12.5; thence in a southeasterly direction along the front of the AMTRAK/SEPTA platform for the eastbound trains to a point distant four hundred and ninety-seven (497) feet and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 785+44.5; thence in a southwesterly direction to a point distant five hundred and ten (510) feet and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 785+20; thence in a northwesterly direction along the AMTRAK property line (projected as necessary) to a point and place of beginning and containing ten thousand two hundred and seventy (10,270) square feet more or less.

TEMPORARY CONSTRUCTION EASEMENT NO. 2

Beginning at a point on the southerly side of State Route 0320, said point being the intersection of the temporary construction easement line and AMTRAK property line distant one hundred and thirty (130) feet southeasterly and measured at right angles from the right-of-way centerline for State Route 0320 at or about Station 786+70.5; thence in a southwesterly direction to a point distant one hundred and thirty (130) feet southeasterly and measured at right angles from State Route 0320 at or about Station 785+88; thence in a northwesterly direction to a point of intersection with the existing right-of-way line for State Route 0320 distant nineteen and one-half (19.5) feet southeasterly and measured at right angles from the right-of-way centerline for State Route 0320 at or about Station 785+34.5; thence in a northeasterly direction along the existing right-of-way line for State Route 0320 to a point distant nineteen and one-half (19.5) feet southeasterly and measured at right angles from the right-of-way centerline for State Route 0320 at or about Station

785+44.5; thence in a southeasterly direction to a point distant ninety-seven (97) feet southeasterly and measured at right angles from the right-of-way centerline for State Route 0320 at or about Station 785+80; thence in a northeasterly direction along the temporary construction easement line to a point and place of beginning and containing two thousand one hundred and ninety-four (2194) square feet more or less.

TEMPORARY CONSTRUCTION EASEMENT NO. 4

Beginning at a point on the northerly side of State Route 0320, said point being the intersection of the northerly required right-of-way line for State Route 0320 and the AMTRAK right-of-way line distant thirty (30) feet northwesterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 783+47; thence in a northwesterly direction along the right-of-way line of AMTRAK to a point distant fifty (50) feet northwesterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 783+36.4; thence in a northeasterly direction along the Temporary Construction Easement line for AMTRAK to a point distant fifty (50) feet northwesterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 783+51; thence in a southeasterly direction along the Temporary Construction Easement line for AMTRAK to a point distant thirty (30) feet northwesterly and measured at right angles from the right-of-way centerline of State Route 0320 at or about Station 783+61.1; thence in a southwesterly point and place of beginning and containing two hundred and thirty-six (236) square feet more or less.

The above three (3) tracts of land shown on the Department of Transportation's Drawings Authorizing Acquisition of Right-of-Way for State Route 0320 Section 12S R/W and designated and delineated as part of Parcel No. 5 on Sheet 11 of said drawings as recorded in the office for the recording of deeds, etc., in Delaware County, Pennsylvania, in Volume 17, Page 243, on January 17, 1992, and re-recorded in Volume 17, Page 432 on February 2, 1993, are portions of real estate which became legally vested in National Railroad Passenger Corporation by deed of Consolidated Rail Corporation, dated October 11, 1978 and recorded October 20, 1978 in Deed Book 2670, Page 988 in the Delaware County Courthouse.

13. That the Pennsylvania Department of Transportation take all appropriate steps and action forthwith to accomplish the rescissions, revocations, and recording of record provided for in Ordering paragraph 12 of this Order.

14. That the Pennsylvania Department of Transportation, at its sole cost and expense, pay all compensation for damages, if any, for property and easements taken, injured or destroyed by reason of the construction of the crossing improvement.

15. That to the extent not inconsistent with the provisions of this Order, all parties concerned in this proceeding, at their respective sole cost and expenses, shall bear all remaining costs incurred by them respectively.

16. That this Order, insofar as it places costs on various parties, is without prejudice to their respective rights to recover said costs from others in accordance with any lawful agreements.

17. That to the extent not inconsistent with the provisions of this Order, the prior orders of the Commission shall remain in full force and effect.

18. That this Order is binding upon the parties hereto and their respective successors and assigns.

May 17, 1995

Date

Herbert Smolen

HERBERT SMOLEN
Administrative Law Judge

3RD

DAY OF

July, 1995

THE UNDERSIGNED HEREBY ACKNOWLEDGES RECEIPT OF

1 COPY OF RECOMMENDED DECISION

UNDER DATE OF JUNE 28, 1995 IN DOCKET NUMBER C-80011839

ON BEHALF OF DAVID SALAPA ESO

PA PUC TRANS & SAFETY - LEGAL DIVISION

3RD FLOOR BARTO BLDG

David A. Salapa

SIGNATURE

Kindly sign and date this form and return to:

PUC-FILE ROOM
B-20

NORTH OFFICE BLDG
HARRISBURG PA

JUL 10 1995

DOCUMENT
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05 JUL -5 PM 8:17
INFO. CONTROL DIV.

29th

DAY OF

June 95

Commonwealth of Pennsylvania
Department of Transportation
JUN 29 1995

OFFICE OF
CHIEF COUNSEL

THE UNDERSIGNED HEREBY ACKNOWLEDGES RECEIPT OF

1 COPY OF RECOMMENDED DECISION

UNDER DATE OF JUNE 28, 1995 IN DOCKET NUMBER C-80011839

ON BEHALF OF JOHN L HEATON CHIEF CNSL

PENNDOT

521 TRANS AND SAFETY BLDG

Jana M. Dalton

SIGNATURE

Kindly sign and date this form and return to:

PUC-FILE ROOM
B-20
NORTH OFFICE BLDG
HARRISBURG PA

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TO FILE

JUN 29 1995
MFG. CONTROL DIV.

5th

DAY OF

July, 1995

THE UNDERSIGNED HEREBY ACKNOWLEDGES RECEIPT OF

1 COPY OF RECOMMENDED DECISION

UNDER DATE OF JUNE 28, 1995 IN DOCKET NUMBER C-80011839

ON BEHALF OF W D PICKERING UTILITY ENGINEER

PENNDOT

509 TRANS AND SAFETY BLDG

Roger Aulakh

SIGNATURE

Kindly sign and date this form and return to:

PUC-FILE ROOM
B-20
NORTH OFFICE BLDG
HARRISBURG PA

JUN 29 1995
REC'D CONTROL DIV.

DOCUMENT
FOLDER

JUN 29 1995

7th

DAY OF

July 95

THE UNDERSIGNED HEREBY ACKNOWLEDGES RECEIPT OF

1 COPY OF RECOMMENDED DECISION

UNDER DATE OF JULY 5, 1995 IN DOCKET NUMBER C-80011839

ON BEHALF OF GINA D'ALFONSON ESQ

PENNDOT

513 TRANS & SAFETY BLDG

Gina M. D'Alfonso

SIGNATURE

Kindly sign and date this form and return to:

PUC-FILE ROOM
B-20
NORTH OFFICE BLDG
HARRISBURG PA

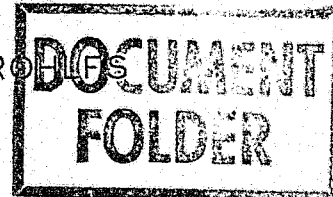
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GOLDBERG, EVANS, MALCOLM, DONATONI & ROHLFS

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
135-137 WEST MARKET STREET
WEST CHESTER (CHESTER COUNTY), PA. 19382

(610) 436-6220
FAX (610) 436-0628



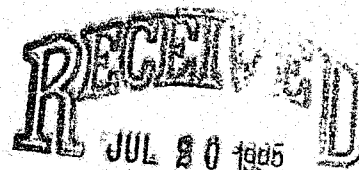
C. 80011839

LAWRENCE A. GOLDBERG
EUGENE H. EVANS
THOMAS O. MALCOLM
ROBERT J. DONATONI
WALTER M. ROHLFS
WILLIAM R. NOLL

July 20, 1995

DELAWARE COUNTY OFFICE
2 EARLE'S LANE
NEWTOWN SQUARE, PA. 19073

Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265



Re: Villanova University vs. AMTRAK,
CONRAIL, SEPTA, PennDot, County
of Delaware and Radnor Township

SECRETARY'S OFFICE
Public Utility Commission

Gentlemen:

Enclosed herewith for filing, kindly find an original and nine copies of our Exceptions to Recommended Decision and Proposed Order in the above-captioned matter.

Sincerely yours,

Eugene H. Evans

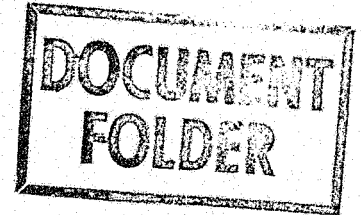
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Encl.

cc: AMTRAK, CONRAIL, SEPTA, PennDot,
County of Delaware, Radnor Township

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION



Villanova University :

- vs - :

National Railroad Passenger Corporation : Docket Number
(Amtrak); Consolidated Rail Corporation
(Conrail); Southeastern Pennsylvania : C-80011839
Transportation Authority (SEPTA);
Pennsylvania Department of Transportation:
(PennDOT); County of Delaware and
Radnor Township :

DOCKETED
JUL 24 1995

EXCEPTIONS TO RECOMMENDED DECISION
AND PROPOSED ORDER

AND NOW COMES Radnor Township, by and through its ~~Solicitor~~, Eugene H. Evans, Esquire, and files the following Exceptions to the Findings of Fact and Proposed Order:

FINDINGS OF FACT

39. Denied. Radnor Township is of the opinion that the stairway improvements will not be used to any great extent, especially not by residents of Radnor Township. It is further felt that the cost of replacing the stairs, sometime in the future, will exceed \$1,000,000 and, therefore, that should not be part of maintenance.

ORDER

2. (a) Denied. On the contrary, it is believed that Villanova University is best suited to remove snow, ice debris and graffiti from the curbs and sidewalks on the approaches and parapets on the bridge in that the University's maintenance crew will be present and will be removing the snow or ice on its sidewalk leading up to the

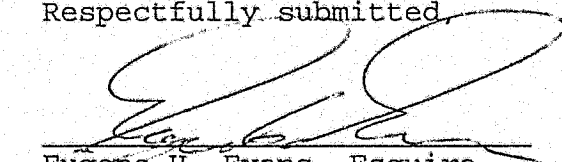
bridge.

(b) Denied. Once again, Villanova's maintenance crew will be on site and it is felt that they could best maintain the stairs leading from the bridge to the railroad platform. In addition, it should be specified that maintenance does not include replacement of the stairs in that the stairs are a very large substantial structure, the cost of which will approximate \$1,000,000 at the expiration of their life expectancy, some twenty to 30 years from now. The stairs will not be used to any extent by Radnor residents.

(c) Agreed.

(d) Agreed.

Respectfully submitted,



Eugene H. Evans, Esquire
Solicitor, Radnor Township

VERIFICATION

I, Eugene H. Evans, Esquire, verify that as Solicitor of Radnor Township, I have authority to take this Verification and a fuller and more complete understanding of the facts contained in the foregoing Exceptions. I hereby verify that the statements made herein are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.



EUGENE H. EVANS, ESQUIRE

Date: July 20, 1995



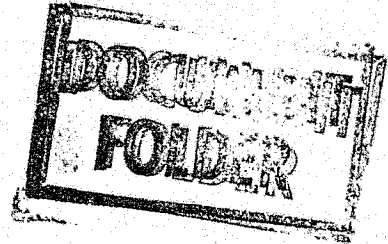
COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

July 24, 1995

C-80011839

EUGENE H. EVANS
GOLDBERG, EVAN, MALCOLM
DONATONI & ROHLFS
135-137 W. MARKET STREET
WEST CHESTER PA 19382



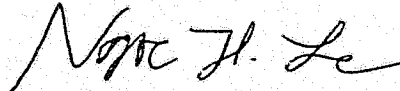
VILLANOVA UNIVERSITY
v.
NATIONAL RAIROAD PASSENGER CORPORATION

Dear Ms. Evan:

Your Exceptions in the above referenced proceeding were received by the Commission on July 20, 1995. This was not within 20 days of the mailing to you of the Initial Decision of the Administrative Law Judge, as prescribed in the cover letter transmitting that Initial Decision, and the Commission's Rule at 52 Pa. Code §5.533.

Accordingly, your Exceptions were not timely filed and will not be considered by the Commission.

Very truly yours,


for John G. Alford
Secretary

cc: All Parties of Record
Annette Shelley
Law Bureau
Office of Special Assistants
Chairman
Commissioners

nvl