

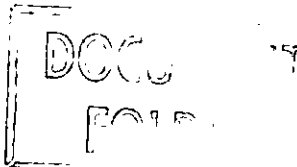


COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120
February 1, 1988

IN REPLY PLEASE
REFER TO OUR FILE

M-870123

John P. Higinbottom, Esquire
CSX Transportation, Inc.
100 North Charles st.
Baltimore, MD 21201



Assignment of Responsibility for maintenance of rail-highway crossings carrying public off-state system highways (local highways) over and above the grade of the tracks of CSX Transportation, Inc., in 16 municipalities, in 10 counties of the Commonwealth of Pennsylvania.

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Recommended Decision prepared by Administrative Law Judge Joseph J. Klovekorn.

An original and nine (9) copies of signed exceptions to the decision, if any, MUST BE FILED WITH THE SECRETARY OF THE COMMISSION IN ROOM B-18, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17120 and a copy served on each party of record within 15 days of the 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 the exceptions are 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)).

Replies to exceptions, if any, must be served on the Secretary of the Commission, in the manner described above, within 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 be clearly 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 late filed replies will not be attached.

Very truly yours,

Allison K. Turner

Allison K. Turner
Chief Administrative Law Judge

fao
Enclosures
Certified Mail

Receipt Requested cc: ALJ Klovekorn/Office of ALJ/Bureau of S&C-Rail Safety/Law Bureau/
Mr. Bramson/OSA/Chairman / Commissioners
Similar letters to: See attached list.

John P. Higinbottom, Esquire
CSX Transportation, Inc.
100 North Charles st.
Baltimore, MD 21201

Kenneth R. Schuster, Esquire
Borough of Darby
1 South Olive Street
Media, PA 19063

R. Lyle Key, Jr., Sr. Gen.
Attorney
CSX Transportation-Law Dept.
P.O. Box 45052
Jacksonville, FL 32208

Francis P. Connors, Solicitor
Delaware Coutny
Government Center Building
Media, PA 19063

John L. Heaton, Chief Counsel
Pennsylvania Department of
Transportation
517 Trans. & Safety Bldg.
Harrisburg, PA 17120

W. J. Clements, Chief Engineer
PennDOT
509 Trans. & Safety Bldg.
Harrisburg, PA 17120

Linda Smith, Assistant Counsel
John J. Gallagher,
Assistant Counsel
P.O. Box 3265
Harrisburg, PA 17120

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKETED
FEB 04 1988

Assignment of responsibility for maintenance of
rail-highway crossings carrying public off-state
system highways (local highways) over and above
the grade of the tracks of CSX Transportation,
Inc., in 16 municipalities, in 10 counties of the
Commonwealth of Pennsylvania.

:
:
:
:
:
:

M-870123

RECOMMENDED DECISION

Before
Joseph J. Klovekorn
Administrative Law Judge

History of Proceedings

By order adopted March 12, 1982, the Commission instituted Investigation Docket No. 820362 for the purpose of determining the safety, structural adequacy, load carrying capacity and the economic impact of all posted public off-state highway system bridges (local bridges) above the grade of tracks of all railroads operating in the Commonwealth.

Potentially hazardous and unsafe situations continued to exist and develop on local bridges above the grade of railroads. Accordingly, by order adopted May 24, 1985, the Commission instituted Investigation Docket No. 850003 for the purpose of determining information for the identification and inventory of all bridges carrying public highways, other than state highways, above the grade of the tracks of all railroads in the Commonwealth.

The Commission received the data from the railroads identifying local bridges over their tracks. Upon review of this data, it found that forty-nine bridges were identified by CSX Transportation, Inc. (hereinafter CSX). There are Commission orders assigning the responsibility for maintenance of twenty-two of these bridges. Another twelve of these bridges are either under active consideration for replacement or are anticipated to be under consideration for replacement in the near future.

The Commission found that there is no outstanding order assigning responsibility for maintenance of fifteen of the crossing structures CSX has identified. The present condition of many of these bridges is noted as being poor and there is a restricted maximum load limit posted for such structures. CSX has indicated that it or some other party acknowledges responsibility for maintenance of these structures.

The Commission determined that to provide for the safety of the traveling public using these bridges until some major rehabilitation or reconstruction is done, a tentative decision should be issued assigning the interim responsibility for maintenance of these bridges to the party that has been identified as the party responsible for maintenance.

Since the local municipalities have greater expertise in placing and maintaining bituminous paving and will be, from time to time, resurfacing the roadway surface on the approach highways, the Commission assigned the responsibility for maintaining any bituminous surface course currently or subsequently placed on the bridge decks to the local

government entity responsible for maintenance of the highway approaching the involved crossing structures. This Tentative Decision was adopted on April 2, 1987 and provided that unless exceptions were filed within twenty days, the tentative decision shall become final.

Exceptions were filed by the Borough of Darby (Delaware County) with respect to Bridge No. 86-A on Pine Street in that Borough. The Borough believes that CSX should maintain the approaches and surface of the bridge.

By order adopted July 16, 1987, the Commission directed that a hearing be held to receive evidence relative to the assignment of maintenance responsibility for the crossing (AAR 140643F) structure carrying Pine Street over and above the grade of the tracks of CSX Transportation, Inc. in Borough of Darby (Delaware County).

This hearing was held December 1, 1987 before the undersigned Administrative Law Judge with the Commission's Law Bureau, CSX, the Borough of Darby and the Pennsylvania Department of Transportation (PennDOT) participating. One witness presented testimony and one exhibit was introduced into evidence. A transcript of ten pages was adduced. All parties reached an agreement as to the responsibility for the maintenance of the bridge.

Summary of Testimony

David L. Houchin

Mr. Houchin is employed by CSX Transportation, Inc. (Tr. 4). He is Director of Public Projects and Contracts. He stated that the Pine

Street Bridge is owned and maintained by CSX (Tr. 5). That maintenance and ownership includes the substructure and superstructure. The superstructure includes the deck, girders, planking, bituminous wearing surface, and walkways. CSX owns and maintains the entire bridge from the face of the back wall to the face of the back wall. The face of the back wall is the substructure supports on each end of the supporting spanned bridge. The approaches to the bridge, or roadway approaches, are not the responsibility of CSX (Tr. 6).

The Borough of Darby agreed to assume responsibility for the approaches to the bridge (Tr. 9).

Discussion

Under an agreement worked out by the parties here, CSX Transportation, Inc. agrees to maintain the entire bridge. The Borough is willing to maintain the approaches. This should settle the issues raised by the Borough in their exceptions.

THEREFORE,

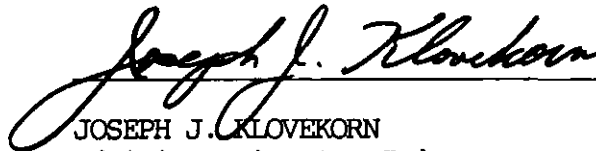
IT IS RECOMMENDED (Subject to Commission Approval):

1. That CSX Transportation, Inc., at its sole cost and expense, furnish all material and perform all work required to maintain the complete substructure and superstructure of the crossing (AAR 140643F) carrying Pine Street over the tracks of CSX Transportation, Inc. in the Borough of Darby, Delaware County, so that it may continue safely to carry the current posted maximum load limits, if any.

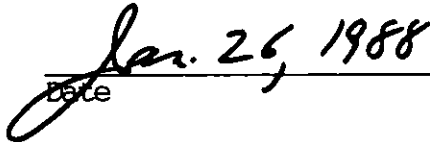
2. That the Borough of Darby, at its sole cost and expense, furnish all material and perform all work required to maintain the highway approaches to the subject crossing structure.

3. That this Order insofar as it imposes costs on any party is without prejudice to that party to recover costs from others in accordance with any lawful agreement.

Recommended to the Pennsylvania
Public Utility Commission,



JOSEPH J. KLOVEKORN
Administrative Law Judge



Date