



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

IN REPLY PLEASE
REFER TO OUR FILE

June 6, 1995

I-00830373

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DOCKETED
JUN 12 1995

**DOCUMENT
FOLDER**


Investigation upon the Commission's own motion into the matters pertaining to the proper service, accomodation, convenience and safety of the traveling public using the rail-highway crossing carrying 59th Street over and above the tracks of the National Railroad Passenger Corporation in the City of Philadelphia, to determine the condition, disposition and resonsibility for maintenance of the existing crossing structure.

To Whom It May Concern:

This is to advise you that an Opinion and Order has been adopted by the Commission in Public Meeting on May 25, 1995 in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,


John G. Alford
Secretary

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encls
cert. mail

See attached for
additional parties
of record.

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
HARRISBURG, PA. 17105-3265

Public Meeting held May 25, 1995

Commissioners Present:

John M. Quain, Chairman
Lisa Crutchfield, Vice Chairman
John Hanger
David W. Rolka
Robert K. Bloom

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Investigation upon the Commission's own motion into the matters pertaining to the proper service, accommodation, convenience and safety of the traveling public using the rail-highway crossing carrying 59th Street over and above the tracks of the National Railroad Passenger Corporation in the City of Philadelphia, to determine the condition, disposition and responsibility for maintenance of the existing crossing structure.

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OPINION AND ORDER

BY THE COMMISSION:

Eefore us for consideration is the Petition to Modify the Commission's Order adopted April 7, 1994, (entered May 24, 1994) (Petition) in the above-captioned proceeding filed by the City of Philadelphia (City) on February 6, 1995. No answer to the Petition has been received.

Background

On February 22, 1983, the City of Philadelphia notified

this Commission that the Expansion dams on the 59th Street Bridge were in a state of disrepair. On February 25, 1983, the Commission issued an Emergency Order at Docket No. M-830338, directing the City to repair the expansion dams at its initial cost. The necessary repairs were completed in March, 1983. (Order entered May 24, 1994, p. 2).

On April 29, 1983, we began the instant investigation at Docket No. I-830373 to determine the current condition of the crossing and to assign future maintenance responsibilities. On June 29, 1983, the City informed us that the expansion dams at issue here required further repairs. On that same date, we issued an Emergency Order directing the City to perform the additional repairs at its initial expense. These repairs were finished in July, 1983.

By Order entered May 1, 1984, we required Amtrak to perform an in-depth inspection of the bridge and to submit: (1) a report describing the extent of the deterioration; (2) an engineering analysis of the existing bridge; (3) a recommendation regarding the overall load-carrying capacity of the bridge; and (4) the estimated cost of rehabilitating the bridge to a load-carrying capacity of HS-20. We directed the City to replace the expansion dams on the bridge.

Amtrak filed the report on March 12, 1985, but without the engineering analysis of the bridge. The City indicated that it expended a sum of \$141,642.06 on the emergency repairs and the replacement of two expansion dams. Amtrak reported that it expended a sum of \$4,016.74 in complying with our Emergency Order. By Order entered November 7, 1985, we once again directed Amtrak to perform an engineering analysis on the bridge structure, and to pay fifty percent of the costs incurred by the city.

On March 16, 1993, the City notified us that three of the deck expansion joints had deteriorated to the point that there were open holes in the deck, posing a safety hazard to the traveling public. Commission Staff arranged an informal field conference with the other parties. All parties agreed that immediate repairs were necessary to the expansion joints, but no party agreed to perform the needed repairs. By Emergency Order issued on March 26, 1993, (ratified by the Commission on April 1, 1993) we directed the City to perform the emergency repairs at its initial cost and expense. We indicated that a further hearing would be conducted to determine the final allocation of the costs among the parties. (Order entered May 24, 1994, pp. 2-3).

In our Order entered May 24, 1994, at pages 10-11, we directed, among other things, that the City: (1) maintain the 59th Street Bridge in a safe and satisfactory manner; (2) submit final plans and cost estimates for the replacement of the damaged expansion dams on the first pier at the north abutment, and on the second pier at the south abutment, as well as the repair of the deteriorated portions of the concrete curbs, sidewalks, piers and abutments; and, (3) at its sole cost, upon approval of the plans, furnish all materials and perform all work in accordance with the approved plans.

Discussion

In its Petition, the City requests modification of our Order entered May 24, 1994, by deleting Ordering Paragraph Nos. 6-7. Those Paragraphs state:

6. That the City of Philadelphia, at its sole cost and expense, prepare and submit final plans, specifications and cost estimates within three (3) months of the

entry date of this Opinion and Order to this Commission and the parties of record for review and approval. The plans may be approved without a hearing. The plans shall include, but are not limited to: replacement of the damaged expansion dams on the first pier at the north abutment, and on the second pier at the south abutment; and repair of the deteriorated portion of the concrete curbs, concrete sidewalks, concrete piers, and concrete abutments.

7. That the City of Philadelphia, at its sole cost and expense, within six (6) months of the approval of the final plans, furnish all materials and do all work necessary in accordance with the approved plans, all in a safe and satisfactory manner.

(Order entered May 24, 1994, p. 10).

The City contends that in June, 1993, it completed the following repairs to the expansion dams which were deteriorated: (1) removal of defective or deteriorated steel angles; (2) removal of deteriorated asphalt and concrete down to the top of the floor beams; (3) the installation of a three-quarter inch by nine inch plate across the opening between the floor beams for the full length of the deteriorated area; and (4) installation of bituminous concrete (ID-2) and sealing of the edges with hot asphaltic cement. (Petition, p. 2).

The City further asserts:

These repairs made by the City in 1993 have been successful and the broken/deteriorated steel expansion dams are no longer a safety problem to the public.

The City agrees to be responsible for inspecting these repairs and for making any additional repairs to the expansion dams if conditions warrant. The City believes that it is not necessary to replace the three (3) expansion dams that were not replaced in 1985

because such work [is] not necessary nor is it financially prudent at this time. When it becomes appropriate, the superstructure and/or deck of the 59th Street bridge will be replaced and existing expansion dams will be either replaced or eliminated with the new design and construction.

(Petition, p. 3).

The City, therefore, requests that we modify the Order entered May 24, 1995, by deleting the foregoing Ordering Paragraph Nos. 6 and 7. The City asserts that Ordering Paragraph No. 5, which assigns maintenance responsibility for the entire bridge to the City, is sufficient. The City submits that neither public safety nor the interests of any other party will be adversely affected by the modification it proposes in its Petition.

In considering this matter, we note that a petition for reconsideration or rescission can be filed pursuant to Sections 5.541 and 5.572 of our regulations at 52 Pa. Code §§ 5.541 and 5.572. The legal requirements for granting such a petition for reconsideration were established in our decision at Duick v. Pennsylvania Gas And Water Company, ("Duick") 56 Pa. PUC 553 (1982). The standards which we have delineated are the following:

A Petition for Reconsideration, under the provisions of 66 Pa. C.S. §703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part.

In this regard, we agree with the court in the Pennsylvania Railroad Company [v. Pennsylvania Public Service Commission, 118 Pa. Super. 380 (1935)] case, wherein it was said that:

Parties... cannot be permitted by a second motion to review and reconsider, raise the same questions, which were specifically considered and decided against them.

What we expect to see raised in such petitions are new and novel arguments not previously heard or considerations which appear to have been overlooked or not addressed by the Commission.

(Duick, at p. 559).

We note that the City's Petition contains new information not available at the time our Order entered May 24, 1994, was issued. This information is the City's representation that the City's measures to repair the deteriorated expansion dams were successful. Accordingly, we conclude that the City has presented new information consonant with the standards delineated in Duick, supra, regarding the filing of such petitions.

With respect to whether the Petition should be granted, we note that none of the other parties to this proceeding have filed comments or answers to the Petition. While we acknowledge our ultimate responsibility for the condition of the expansion dams on the bridge, we are persuaded by the City's assertions that the earlier repairs were so successful as to make unnecessary the measures we required in Ordering Paragraph Nos. 6 and 7 of our Order entered May 24, 1994. We rely heavily on the City's commitment, as articulated at page 3 of the Petition, that the City will maintain the entire bridge in a safe and satisfactory manner, as it is obligated to do, under our outstanding orders.

Accordingly, we conclude that the Petition should be granted; **THEREFORE:**

IT IS ORDERED:

1. That the Petition to Modify the Commission's Order entered May 24, 1994, at Docket No. I-00830373 filed by the City of Philadelphia on February 6, 1995, is granted.

2. That the Order entered May 24, 1994, at Docket No. I-00830373, is modified so that Ordering Paragraph Nos. 6 and 7, which read:

6. That the City of Philadelphia, at its sole cost and expense, prepare and submit final plans, specifications and cost estimates within three (3) months of the entry date of this Opinion and Order to this Commission and the parties of record for review and approval. The plans may be approved without a hearing. The plans shall include, but are not limited to: replacement of the damaged expansion dams on the first pier at the north abutment, and on the second pier at the south abutment; and repair of the deteriorated portion of the concrete curbs, concrete sidewalks, concrete piers, and concrete abutments.

7. That the City of Philadelphia, at its sole cost and expense, within six (6) months of the approval of the final plans, furnish all materials and do all work necessary in accordance with the approved plans, all in a safe and satisfactory manner.

are deleted.

3. That the Order entered May 24, 1994, as well as any other Orders of this Commission which may be outstanding

regarding this crossing, remain in full force and effect in all other respects, to the extent that they are consistent with this Opinion and Order.

BY THE COMMISSION

John G. Alford
John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: May 25, 1995

ORDER ENTERED: JUN 6 1995