July 1, 1983

I-830373

Mr. A. B. Smythe, P.E.
Senior Director, Engineering Design
National Railroad Passenger Corp.
1617 J.F. Kennedy Boulevard
Philadelphia, PA 19103

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

To Whom It May Concern:

This is to advise you that an Emergency Order has been issued by Chairman Linda C. Taliaferro on June 29, 1983 in the above entitled proceeding.

A copy of this Emergency Order has been enclosed for your records.

Very truly yours,

Jerry Rich, Secretary

fac
Encls.
Cert. Mail

Refer to Service List attached to Emergency Order.

Bureau of Rail Transportation
Law Bureau

DOCUMENT FOLDER

DOCUMENTED
JUL 8 1983

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

IN RE:
Investigation upon the Commission's own motion into 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 grade of the tracks of National Railroad Passenger Corporation in the City of Philadelphia, to determine the condition, disposition and responsibility for maintenance of the existing crossing structure.

DOCKET NO.
I-830373

EMERGENCY ORDER

City of Philadelphia informed the Bureau of Rail Transportation by telephone on June 29, 1983, that the plates which it had placed at the expansion dams on the subject bridge in compliance with the Emergency Order at Docket No. M-830338, have broken loose and should be reattached. In addition, there are other areas where plates should be placed to cover openings in the expansion dams where the dams have broken creating hazardous conditions to the traveling public.

The City agrees to perform additional work at this crossing, if ordered to do so by this Commission, at its initial cost and expense.

In the interest of safety to the traveling public, we find that emergency repairs should be performed as soon as possible and determine that the City of Philadelphia should be directed to perform the work since it has previously performed work at these expansion dams; THEREFORE,

IT IS ORDERED:

1. That City of Philadelphia, at its initial cost and expense, immediately furnish all material and perform all work necessary to complete additional emergency repairs to the expansion dams on the subject bridge and continue to keep these dams repaired to eliminate hazardous conditions that may develope, and upon completion of the immediate repairs, report to the Commission that the work has been completed.

BY: Linda C. Taliaferro
Chairman

DATE: June 29, 1983
TIME: 4:09 PM

DOCUMENT FOLDER

DOCKETED
JUL 6 1983

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

June 30, 1983

IN REPLY PLEASE
REFER TO OUR FILE

Monitor - Commissioner Taliaferro

I-830373

see attached list

DOCUMENT FOLDER

DOCKETED
JUL 8 1983

Investigation upon the Commission's own motion into 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 grade of the tracks of National Railroad Passenger Corporation in the City of Philadelphia, to determine the condition, disposition and responsibility for maintenance of the existing crossing structure.

N O T I C E

This is to advise that a hearing in the above-captioned proceeding will be held Thursday, August 4, 1983, at 10:00 a.m., in Room 1306, Philadelphia State Office Building, Broad and Spring Garden Streets, Philadelphia.

We are enclosing herewith a list of questions prepared by our Bureau of Rail Transportation, indicating information to be developed at the hearing, along with other relevant testimony.

If any party intends to offer prepared written testimony, such testimony must be served upon each participant of record no less than seven (7) days prior to this hearing.

You are advised that if you fail to appear at the hearing, the hearing will proceed without you. In that event, it is possible that you or your client will have issues determined against you and that you might be assigned positive duties or be required to pay money and will have waived any objection thereto.

The presiding officer in this proceeding will be Administrative Law Judge Joseph J. Klovekorn, Room 1302, Philadelphia State Office Building, Broad and Spring Garden Street, Philadelphia, Pennsylvania 19130; telephone (215) 351-2105.

If you intend to file exhibits, please be advised that three copies of all hearing exhibits to be presented into evidence must be submitted to the reporter and an additional copy should be furnished to the presiding officer and each party of record.

Enclosure

ccs: Judge Klovekorn, Law Bureau, Bureau of Rail Transportation, Mr. Bramson
Ms. Dickson, Ms. Crouse, File

PENNSYLVANIA PUBLIC UTILITY COMMISSION

NOTICE TO BE PUBLISHED

Notice is hereby given that the Pennsylvania Public Utility Commission has instituted an investigation into 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 grade of the tracks of National Railroad Passenger Corporation in the City of Philadelphia, to determine the condition, disposition and responsibility for maintenance of the existing crossing structure (I-830373).

A public hearing in this investigation will be held Thursday, August 4, 1983, at 10:00 A.M., in Room 1306, Philadelphia State Office Building, Broad and Spring Garden Streets, Philadelphia, Pennsylvania, when and where all persons in interest may appear and be heard, if they so desire.

JERRY RICH
Secretary

Questions and Procedure

1. City of Philadelphia submit a plan of the general area of the involved crossing showing, among other things, the location of the existing rail-highway crossing in relation to adjacent highways, rail lines and other public rail-highway crossings on the involved rail line; and indicate significant public improvements and facilities, as appropriate.

2. City submit testimony describing the location of the subject rail-highway crossing, above grade, in relation to public improvements, facilities and adjacent public rail-highway crossings.

3. City submit testimony regarding the highway involved at the subject crossing, indicating the name, route number and termini thereof, and indicate its relationship to other existing highways and any planned new highways in the area.

4. City submit testimony indicating the daily volume of pedestrian and vehicular traffic that is using the existing crossing structure, including a breakdown by type of vehicle for vehicular traffic, and the estimated volume of pedestrian and vehicular traffic, including a breakdown by type of vehicle for vehicular traffic, that will use it in the future.

5. City submit testimony describing in detail the type, condition and width of pavement, and the horizontal and vertical alignment, of the roadway approaches to the existing crossing structure and state whether there are sidewalks in existence along the approach roadways.

6. City submit testimony stating its opinion as to the condition of the existing crossing structure and state whether any inspections have been performed or should be performed to determine the condition of the structure.

7. City state whether, in its opinion, the structure is in need of repair, rehabilitation or reconstruction, state its recommendations as to the work required, and state its estimate of the costs and time required to perform the recommended work.

8. City state whether it has complied with Paragraph 1 of the Emergency Order signed by Commissioner Johnson on February 25, 1983, and, if so, submit an itemized, detailed summary of the costs incurred in furnishing material and performing work in complying therewith.

9. City state what maintenance and/or improvements it has performed on the subject crossing structure other than that work which was referred to in the previous question, if any, together with the approximate dates and costs of such work; and state what obligation it has been assigned or has assumed with respect to maintenance of the structure.

10. City state whether it will agree to perform the actual work of any repair, rehabilitation or reconstruction of the existing crossing structure found necessary and ordered by the Commission and, if not, which party or parties, in its opinion, should be required to perform such work, and state its reasons therefor.

11. City state whether it will agree to assume the responsibility for maintenance, and the costs thereof, for the subject crossing structure, and, if not, which party or parties should, in its opinion, be required to perform and assume the costs of maintenance of the structure after any improvements ordered by the Commission have been completed, and state its reasons therefor.

12. National Railroad Passenger Corporation (hereinafter AMTRAK) submit testimony as to the exact corporate name of the owner and operator of the line of railroad involved at the subject rail-highway crossing.

13. AMTRAK submit testimony stating the number of tracks presently located at the crossing site and whether any track is electrified; state the volume, class and approximate speed of all trains operated daily over these tracks; and state whether any changes in such operations are contemplated in the foreseeable future.

14. AMTRAK submit testimony describing the general type of existing crossing structure, including number of spans, principal dimensions, roadway widths, number and width of sidewalks, and the horizontal and vertical clearances of the structure with respect to the railroad tracks; identify the date the existing structure was constructed, the purpose of its construction and who constructed it; submit a copy of plans of the existing bridge, if available; and state the nature and extent of any significant structural changes, alterations and improvements made since the bridge was originally constructed.

15. AMTRAK submit testimony stating its opinion as to the condition of the existing crossing structure and state whether any inspections have been performed or should be performed to determine the condition of the structure.

16. AMTRAK state whether, in its opinion, the structure is in need of repair, rehabilitation or reconstruction, state its recommendations as to the work required, and state its estimate of the costs and time required to perform the recommended work.

17. AMTRAK state what maintenance and improvements it, or any predecessor (for which it has records), has performed on the subject crossing structure, if any, together with the approximate dates and costs of such work; and state what obligation it has been assigned or has assumed with respect to maintenance of the structure.

18. AMTRAK state whether it will agree to perform the actual work of any repair, rehabilitation or reconstruction of the existing crossing structure found necessary and ordered by the Commission and, if not, what party or parties, in its opinion, should be required to perform such work, and state its reasons therefor.

19. AMTRAK state whether it will agree to assume the responsibility for maintenance, and the costs thereof, for the subject crossing structure and, if not, which party or parties should, in its opinion, be required to perform and assume the costs of maintenance of the structure after any improvements ordered by the Commission have been completed, and state its reasons therefor.

20. AMTRAK state whether it will be necesary to maintain railroad watchmen, flagmen or inspectors during the performance of any improvements ordered by the Commission.

21. Southeastern Pennsylvania Transportation Authority (herein SEPTA) submit testimony as to its involvement at the subject rail-highway crossing.

22. SEPTA submit testimony stating whether it has any opinion as to the condition of the structure which might effect its operations through the crossing area.

23. SEPTA submit answers to Questions 9, 10 and 11, as if same were directed to it.

24. Consolidated Rail Corporation (hereinafter Conrail) submit testimony as to its involvement at the subject rail-highway crossing.

25. Conrail submit testimony stating whether it has any opinion as to the condition of the structure which might effect its operations through the crossing area.

26. Conrail submit answers to Questions 9, 10 and 11, as if same were directed to it.

27. Pennsylvania Deaprtment of Transportation submit testimony stating whether it has any opinion as to the condition of the structure and state whether it has performed inspections of the structure.

28. Department state whether any repair, rehabilitation or reconstruction of the existing crossing found necessary and ordered by the Commission would qualify for financing in whole or in part with funds appropriated for work on such projects by the Federal government.

29. Query whether any facilities of any non-carrier public utility company would be affected by any improvements recommended to be made to the existing crossing structure.

30. Query whether any party in interest, or any other party, desires to submit any additional relevant testimony.

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

July 7, 1983

IN REPLY PLEASE
REFER TO OUR FILE

Monitor - Chairman Taliaferro

I-830373

see 6/30/83 letter

DOCUMENT
FOLDER

DOCKETED
JUL 1983

Investigation upon the Commission's own motion into 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 grade of the tracks of National Railroad Passenger Corporation in the City of Philadelphia, to determine the condition, disposition and responsibility for maintenance of the existing crossing structure.

N O T I C E

At the request of counsel for the City of Philadelphia, the hearing in the above-captioned proceeding scheduled for August 4, 1983, has been postponed to Thursday, August 18, 1983, at 10:00 a.m. in Room 1306, Philadelphia State Office Building, Broad and Spring Garden Streets, Philadelphia.

Please mark your records accordingly.

ccs:
Judge Klovekorn
Law Bureau
Bureau of Rail Transportation
Mr. Bramson
Ms. Dickson
Ms. Crouse
File

PENNSYLVANIA PUBLIC UTILITY COMMISSION

NOTICE TO BE PUBLISHED

Notice is hereby given that the Pennsylvania Public Utility Commission has instituted an investigation into 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 grade of the tracks of National Railroad Passenger Corporation in the City of Philadelphia, to determine the condition, disposition and responsibility for maintenance of the existing crossing structure (I-830373).

A public hearing in this investigation will be held Thursday, August 18, 1983, at 10:00 A.M., in Room 1306, Philadelphia State Office Building, Broad and Spring Garden Streets, Philadelphia, Pennsylvania, when and where all persons in interest may appear and be heard, if they so desire.

JERRY RICH
Secretary

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1.	REPORT DATE: June 29, 1983	2.	BUREAU AGENDA NO. JUL-83-TR-202R
3.	BUREAU: Rail Transportation		
4.	SECTION(S):	5.	PUBLIC MEETING DATE: July 8, 1983
6.	APPROVED BY: Director: Peteritas 3-5941 Supervisor:		
7.	MONITOR: Chrm. Taliaferro		
8.	PERSON IN CHARGE: Fleisher 7-5936		
9.	DOCKET NO: I-00830373		

10. (a) CAPTION (abbreviate if more than 4 lines)
(b) Short summary of history & facts, documents & briefs
(c) Recommendation

(a) INVESTIGATION INTO MATTERS PERTAINING TO RAIL-HIGHWAY CROSSING CARRYING 59TH STREET OVER TRACKS OF AMTRAK IN CITY OF PHILADELPHIA.

(b) City of Philadelphia reports that repairs which it performed in compliance with an earlier Emergency Order have failed and additional repair work should be performed to eliminate hazardous conditions that exist.

(c) The Bureau of Rail Transportation recommends that the Commission ratify the Emergency Order signed by Chairman Taliaferro on June 29, 1983, said order directs the City to complete additional emergency repairs immediately and report to the Commission when the work has been completed.

DRF:llr

11.	MOTION BY: Commissioner Johnson	Commissioner Chm. Taliaferro - Yes	
	SECONDED: Commissioner Cawley	Commissioner	
		Commissioner	

CONTENT OF MOTION: Staff recommendation adopted.

DOCUMENT FOLDER

DOCKETED JUL 14 1983

RECEIVED
AUG 2 3 1983
Office of the A. L. J.
Public Utility Commission

The Bell Telephone Company of Pennsylvania

Law Department
One Parkway, 16th Floor
Philadelphia, Pennsylvania 19102
Phone (215) 466-~~8900~~ 5482

July 26, 1983

Honorable Joseph J. Klovekorn,
Administrative Law Judge
Room 1302
Philadelphia State Office Building
Philadelphia, Pennsylvania 19130

Re: Investigation upon the Commission's own motion into 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 grade of the tracks of National Railroad Passenger Corporation in the City of Philadelphia, to determine the condition, disposition, and responsibility for maintenance of the existing crossing structure. I-830373.

Dear Judge Klovekorn:

Please be advised that The Bell Telephone Company of Pennsylvania does not maintain any facilities on this bridge, nor do we plan to place any facilities on this bridge. Therefore, we will not be present at the hearing scheduled for August 18, 1983.

Sincerely,

Mary Ellen Glace

Mary Ellen Glace,
Secretary to General Attorney

RECEIVED
JUL 28 1983
PHILADELPHIA OFFICE
ALJ
PA. P.U.C.

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

August 4, 1983

IN REPLY PLEASE
REFER TO OUR FILE

I-830373

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
Post Office Box 3265
Harrisburg, Pennsylvania 17120

RECEIVED

AUG4 1983

SECRETARY'S OFFICE
Public Utility Commission

Investigation upon the Commission's own motion into 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 grade of the tracks of National Railroad Passenger Corporation in the City of Philadelphia, to determine the condition, disposition and responsibility for maintenance of the existing crossing structure.

Dear Secretary Rich:

Enclosed please find the original and three (3) copies of Notice of Appearance to be filed in the above-captioned matter.

Very truly yours,

Richard S. Herskovitz

Richard S. Herskovitz
Assistant Counsel

RSH/dmw

Enclosures

cc: All parties
Honorable Joseph J. Klovekorn

UNFOLDER

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation upon the Commission's own motion into 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 grade of the tracks of National Railroad Passenger Corporation in the City of Philadelphia, to determine the condition, disposition and responsibility for maintenance of the existing crossing structure.	:	Docket No. I-830373

NOTICE OF APPEARANCE

To The Secretary:

Please enter the appearance of the Trial Staff of the Pennsylvania Public Utility Commission in the above-captioned proceeding.

Counsel for the Trial Staff in this proceeding is:

Richard S. Herskovitz, Assistant Counsel

Non-legal Trial Staff in this proceeding will be under the supervision of:

Ray A. Peteritas, Director
Bureau of Rail Transportation

Participation by Trial Staff in this proceeding will be (check one):

_X_ Full

_____ Partial (argument only)

All service on and communications to the Trial Staff in this proceeding should be addressed to:

Richard S. Herskovitz, Assistant Counsel
Pennsylvania Public Utility Commission
Room G-31 North Office Building
Post Office Box 3265
Harrisburg, Pennsylvania 17120

DOCKETED
AUG 5 1983

Dated: August 4, 1983

Richard S. Herskovitz
Richard S. Herskovitz
Assistant Counsel

CERTIFICATE OF SERVICE

I hereby certify that I am, this 4th day of August, 1983, serving by first class mail the foregoing document upon the persons listed below:

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

W. Scott Armentrout, Esquire
National Railroad Passenger Corp.
400 North Capitol Street, N.W.
Washington, D.C. 20001

Edward H. Huss, Esquire
Southeastern Pennsylvania
Transportation Authority
130 South Ninth Street, 5th Floor
Philadelphia, Pennsylvania 19107

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

Spencer A. Manthorpe, Chief Counsel
Pennsylvania Department of Transportation
521 Transportation & Safety Building
Harrisburg, Pennsylvania 17120

Edward G. Bauer, Jr., General Counsel
Philadelphia Electric Company
2301 Market Street
Philadelphia, Pennsylvania 19101

Gabrielle L. Strich, Corporate Counsel
Philadelphia Gas Works
1800 North Ninth Street
Philadelphia, Pennsylvania 19122

William L. Leonard, General Counsel
The Bell Telephone Company of
Pennsylvania
One Parkway
Philadelphia, Pennsylvania 19102

Richard S. Herskovitz

Richard S. Herskovitz
Assistant Counsel

National Railroad Passenger Corporation, Northeast Corridor Operations, 1617 John F. Kennedy Blvd., Philadelphia, Penna 19103

Amtrak

ORIGINAL

AUG 10 1983

RECEIVED

AUG 15 1983

SECRETARY'S OFFIC
Public Utility Commiss

Pennsylvania Public Utility Commission
North Office Building
Harrisburg, PA 17120

Attention: Secretary

Re: 59th Street above the grade of the tracks of Amtrak in Philadelphia
Former Docket No. M-830338
New Docket No. I-830373

Dear Sir:

This is to notify you formally and for the record that Amtrak contests and disputes the contention by the City of Philadelphia in its letter to you dated May 17, 1983, relative to Amtrak's alleged responsibility to reimburse the City of Philadelphia in the amount of $11,1668.49. If Amtrak has any responsibility for the cost in question, which it denies at this time, that determination can be made only pursuant to a hearing and due process as provided for by the Commission's procedures. Amtrak intends to contest the issue of responsibility for those charges at the hearing currently scheduled for August 18, 1983.

Very truly yours,

Harold K. Cohen
Counsel--NECIP

cc: Herbert Smolen
Deputy City Solicitor
City of Philadelphia
15th Floor, Municipal Services Building
Philadelphia, PA 19102

DOCKETED

AUG 15 1983

DOCUMENT FOLDER

APPEARANCE SHEET

DOCKET NO. I-830373

CASE NAME Investigation upon the Commissioners own motion into the rail-highway crossing carrying 59th St. over and above National Railroad Pass. Corp.

HEARING LOCATION Philadelphia, PA.

HEARING DATE August 18, 1983

ALJ Klovekorn

HEARING REPORT

CHECK THOSE BLOCKS WHICH APPLY:

Hearing concluded

Record closed

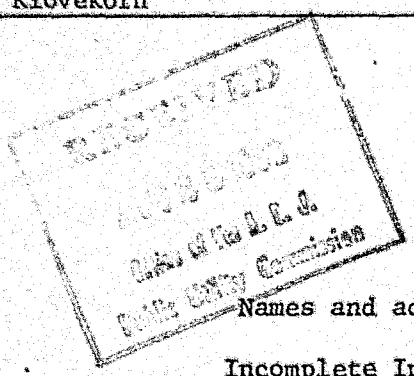
Briefs to be filed

Further hearing

Estimated add'l days

BENCH DECISION

REMARKS:



Names and addresses of parties or counsel of record
Please Print Clearly
Incomplete Information May Result in Delay of Process

NAME	ADDRESS			APPEARING FOR
RICHARD S. HERSKOVITZ	P. O. Box 3265			PUC TRIAL STAFF
	City: HBG	State: PA	Zip: 17120	
JEFF E. MAZER	1315 - 6 Penn Center			Consolidated Rail Corp
	City: Phila	State: Pa	Zip: 19103	
HERBERT SMOLEN	1530 MUNICIPAL SERVICES BLDG			CITY OF PHILA.
	City: PHILA	State: PA	Zip: 19102	
STEPHEN DITTMANN	522 T+S.			PENN DOT.
	City: Hbg.	State: PA.	Zip: 17120	

Check this box if additional parties of counsel of record appear on back. ☑

RAYE-SUE KART
Reporter

National Railroad Passenger Corporation, Northeast Corridor Operations, 1617 John F. Kennedy Blvd., Philadelphia, Penna 19103

Amtrak

SEP 6 1983

The Honorable Joseph J. Klovekorn
1302 State Office Building
Broad and Spring Garden Streets
Philadelphia, PA 19130

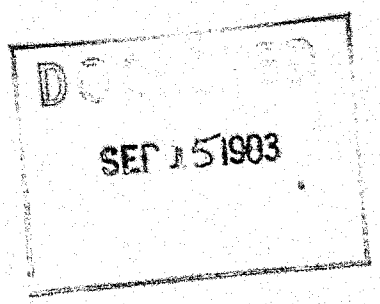
Re: 59th Street Bridge
Docket I-830373

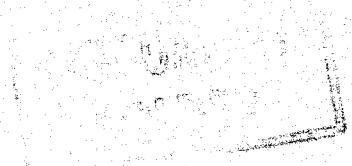
Dear Judge Klovekorn:

This is to inform you, and other parties of record with regard to the above matter, that Amtrak will not desire any further hearing with regard thereto. I thank you for your courtesy in giving me the opportunity and time to consider this option.

Very truly yours,

Harold K. Cohen
Counsel--NECIP





RECEIVED
SEP 09 1983
PHILADELPHIA OFFICE
ALJ
PA. P.U.C.

CITY OF PHILADELPHIA

LAW DEPARTMENT
15th Floor, Municipal Services Building
Philadelphia, Pa. 19107
(215) 686-5251

RECEIVED
SEP 29 1983

September 28, 1983

Pennsylvania Public Utility Commission
North Office Building
Harrisburg, Pa. 17120
Attention: Secretary

Re: Investigation upon the Commission's own motion into 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 grade of the tracks of National Railroad Passenger Corporation in the City of Philadelphia, to determine the condition, disposition and responsibility for maintenance of the existing crossing structure.
Docket No. I-830373

Dear Sir:

I enclose herewith an original and nine (9) copies of the Brief of the City of Philadelphia in the above matter.

Kindly acknowledge receipt of same.

Please note that a true and correct copy of the said Brief will be served upon all known parties of record on or before the due date.

Very truly yours,

HERBERT SMOLEN
Deputy City Solicitor

HS/mrb
Enclosures

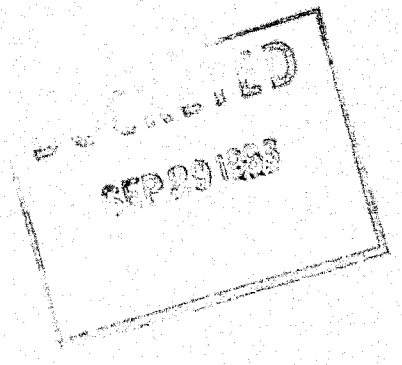
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SEP 29 1983

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Investigation upon the Commission's own motion into 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 grade of the tracks of National Railroad Passenger Corporation in the City of Philadelphia, to determine the condition disposition and responsibility for maintenance of the existing crossing structure.	:	Docket No. I-8303073

BRIEF OF THE CITY OF PHILADELPHIA



MARK A. ARONCHICK
City Solicitor

HERBERT SMOLEN
Deputy City Solicitor
1530 Municipal Services Building
Philadelphia, Pennsylvania 19102
(215) 686-5251

I. STATEMENT OF THE CASE

The instant matter arose as a result of a mailgram sent by the City of Philadelphia (City) to the Commission; which was received by the Commission on February 22, 1983, advising that the expansion dams on the deck of the 59th Street bridge over the tracks of the National Railroad Passenger Corporation (AMTRAK and/or NRPC) in the City of Philadelphia were in a state of disrepair, and that the National Railroad Passenger Corporation had refused to correct the situation. The City requested that the Commission investigate the matter by conducting a field conference without delay and then to order AMTRAK to perform the required repairs.

An emergency field conference was arranged and conducted by a Commission Staff Engineer on February 24, 1983. AMTRAK and the City were requested to be present, but due to a misunderstanding, AMTRAK did not meet at the site with the other parties, although its engineer did visit the site to inspect the condition of the expansion dams.

All parties agreed that the existing condition of the expansion dams created a safety hazard. AMTRAK stated that due to internal budget problems, it would require at least six months to perform any type of repairs. The City stated that it would perform temporary emergency repairs, if ordered to do so, in the interest of safety to the public; however, it would expect to be reimbursed for the cost of such repairs. An Emergency Order, (Docket No. M-830338) signed by Commissioner Johnson, on February 25, 1983 was issued, directing the City, at its initial cost, to complete emergency repairs to the expansion dams and to report to the Commission when the work had been completed.

Thereafter, by Order adopted April 29, 1983, and entered May 12, 1983, the Commission instituted the instant investigation (Docket No. I-830373) for

the purpose of determining all matters relating to the condition and disposition of the rail highway crossing structure carrying 59th Street over and above the grade of the tracks of National Railroad Passenger Corporation in the City of Philadelphia, as well as the assignment of the responsibility of maintenance of the crossing structure.

Thereafter, on June 29, 1983, the City informed the Bureau of Rail Transportation of the Commission that the plates which it had placed at the expansion dams in compliance with the Emergency Order of February 25, 1983, (Docket No. M-830338) had broken loose and should be reattached, and in addition, that there were certain other areas where plates should be placed to cover openings in the expansion dams. By Emergency Order dated June 29, 1983 (Docket No. I-830373), the City was ordered, again at its initial cost and expense, to furnish all material and do all work necessary to complete additional emergency repairs to the expansion dams and to keep the dams repaired to eliminate hazardous conditions. The work was completed.

A hearing was held on August 18, 1983, at which time all parties were afforded the opportunity to present testimony and exhibits. This Brief is submitted thereon.

II. ARGUMENT

A. Ownership of Existing Structure and Liability for Construction, Reconstruction, Repair and Maintenance is the Obligation and Responsibility of the National Railroad Passenger Corporation.

The uncontroverted testimony at the hearing in this matter clearly demonstrates that the bridge was originally constructed by the Pennsylvania Railroad Company (NRPC Statement No. 1, Direct Testimony of Richard H. Cooper, page 4, Answer to Question 14) at its own cost so that trains could travel

unimpeded through the section of the City where the bridge is located, which they still do. (N.T. 17; City Exhibit 4, page 429, §5). Amtrak presently has the plans for the bridge, which it received from the Trustees of the Penn Central via CONRAIL when AMTRAK took over the line of railroad below the bridge (NRPC Statement No.1, Direct Testimony of Richard H. Cooper, page 4, Answer to Question 14).

The succession of title to the line of rail and the bridge itself is discussed hereinafter. It is important to note at this time that when the bridge was built by the Pennsylvania Railroad, said Railroad had the duty of maintenance thereof. Thus, City Exhibit 4 at page 429, §5 provides, inter alia, as follows:

> ...the said the Pennsylvania Railroad Company shall bear the entire cost of constructing and forever maintaining bridges, whether overhead or undergrade, and all tunnels upon the lines of streets, roads, or lanes now legally or physically opened, and the new street to be opened across the main line and yards extending from the intersection of 59th Street and Lancaster Aveuene to 57th Street and Upland Way, ...

Said Exhibit 4 is an Ordinance of the City Council of Philadelphia of July 7, 1926, amending earlier 1915 and 1905 Ordinances which orginally authorized the construction of the bridge and line, and the operation thereof, providing that the entire cost of construction and forever maintaining bridges on the line should be borne by the railroad.

The Pennsylvania Railroad, under the terms and conditions of the Ordinances, constructed the line of rail and the bridge, and thus became and was the owner of the line below the bridge and the bridge itself, and the operating railroad has thereafter always had the maintenance responsibility for the bridge. (N.T. 17). Subsequent to the construction of the bridge by the

Pennsylvania Railroad, as aforesaid, the Pennsylvania Railroad maintained it, and after the Pennsylvania Railroad/ New York Central merger, the resulting Penn Central Company had the maintenance responsibility. This maintenance responsibility is evidenced in City Exhibit 5, which is a list of bridges furnished by the Penn Central Company in July, 1969 to the Public Utility Commission pursuant to its Order of October 28, 1968 in Commission Investigation Docket No. 97.

On the last computer page of City Exhibit 5, which is designated as page number 2 on the lower left hand corner of the page, the 59th Street bridge appears as the seventh item from the top. For purposes of clarity, that item has been circled on the Exhibit. Under the maintenance column, there appears the number one, which designates the party responsible for maintenance of this structure. This number one refers to the Penn Central Company, as is shown on the previous page of the Exhibit where the reference codes are listed; and under maintenance, the number one designates the Penn Central Company. (N.T. 18, 19; City Exhibit 5).

Subsequent to the Penn Central Bankruptcy Reorganization proceedings, the Trustees of Penn Central conveyed various lines of rail, including the United States Railway Association Line 1102, Main Line Philadelphia-Pittsburgh, which is the line of rail under the 59th Street Bridge. (N.T. 19). These conveyances were from the Trustees of Penn Central to the Consolidated Rail Corporation (CONRAIL), and then a portion of them from CONRAIL to the National Railroad Passenger Corporation (AMTRAK). (N.T. 19). Specifically, the line of rail known as United States Railway Association Line 1102, Main Line Philadelphia-Pittsburgh was conveyed to AMTRAK. The aforementioned Deeds of conveyance are marked City Exhibits Nos. 6, 7, and 8.

City Exhibits 6 and 7 are the Deeds from the Trustees of the Penn Central Transportation Company to CONRAIL conveying, inter alia, rail line 1102

(Main Line Philadelphia - Pittsburgh) which is the line of rail beneath the bridge. On page 1 of both Deeds (City Exhibits 6 and 7), it is specifically stated,

> ...the Grantor (Trustees of Penn Central Transportation Company) hereby grants and conveys to the Grantee (CONRAIL):
>
> A. All of the Grantor's right, title and interest, legal and equitable, in and to the real property located in the County of Philadelphia, Commonwealth of Pennsylvania as described in Exhibit A attached to this Deed..., including but not limited to all real property items that would properly be recorded in Accounts 1 through 45 and 90 of the Property Accounts prescribed by the Interstate Commerce Commission for Railroad Companies in its Uniform System of Accounts, 49 C.F.R. Part 1201... (Parenthetical expression supplied for information) (N.T. 19, 20; City Exhibits Nos. 6 and 7). See Footnote 1 below.

City Exhibit 8 is the Deed from CONRAIL to the National Railroad Passenger Corporation, conveying, inter alia, rail line 1102 (Main Line Philadelphia - Pittsburgh), the line of rail below the bridge. On pages 1 and 2 of the Deed (City Exhibit 8), it is specifically provided,

> ...the Grantor, (CONRAIL) for consideration paid, hereby grants and conveys to the Grantee: (AMTRAK)
>
> A. All of the Grantor's right, title and interest, legal and equitable, in and to the real property located in the County of Philadelphia in the Commonwealth of Pennsylvania as described in Exhibit A attached to the Deed..., as well as all real property items that would properly be recorded in Accounts 1 through 45 and 90 of the Property Accounts prescribed by the Interstate Commerce Commission for Railroad Companies in its Uniform System of Accounts, 49 C.F.R. Part 1201... (Parenthetical expression supplied for information) (N.T. 19, 20; City Exhibit No. 8). See Footnote 1 below.

1/ Included among the pages comprising Exhibit A of the various Deeds, is a description of Line 1102 Main Line Philadelphia-Pittsburgh, the line of rail below the 59th Street Bridge.

In addition to receiving title to the aforementioned property and items, it is to be noted that in the first full paragraph appearing on page 4 of City Exhibits Nos. 6 and 7 and in the first full paragraph appearing on page 7 of City Exhibit 8, the respective Grantees therein, by acceptance of the Deed, assumed and agreed to perform and observe all obligations of their respective Grantor or their Grantor's predecessors in title as is more fully set forth in said paragraphs. Thus, CONRAIL by acceptance of the Deed from the Trustees of the Penn Central Company accepted the obligations and conditions of its Grantor and predecessors in title, i.e. the Penn Central and Pennsylvania Railroad; and, in turn, the National Railroad Passenger Corporation (AMTRAK) by acceptance of the Deed from CONRAIL (City Exhibit 8), accepted and assumed and agreed to perform the obligations and conditions of its Grantor and predecessors in title, i.e., CONRAIL, Penn Central and the Pennsylvania Railroad.

City Exhibit 10, which is an excerpt of page 243 of Volume 1 of the Final System Plan of the U.S. Railway Association provides, inter alia, and confirms that,

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

It is to be further noted from City Exhibit 9, which is an excerpt from the Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission, that included in Account No. 39 are such items as,

> ...Overhead highway bridges, including approaches...

Moreover, in Note B of Account No. 39, it is provided that,

> The cost to the carrier of maintaining public improvements shall be included in operating expenses.

It is therefore submitted that in light of the Deeds to CONRAIL and then to AMTRAK, coupled with the interpretive City Exhibits 9 and 10, it is clear that the line of rail and the bridge were conveyed by the Trustees of Penn Central to CONRAIL and then from CONRAIL to AMTRAK which is the present owner of the line and the bridge, and as such, bears responsibility for construction, reconstruction, maintenance and repair thereof, as did its Grantor and predecessors in the title. There can be no doubt that the bridge involved in these proceedings comes within the purview of Account 39, and is within the conveyances previously discussed.

One thing is certainly clear, i.e., the City has had no past maintenance responsibility, and has no present maintenance responsibility for this bridge, other than the work performed by the City under the Emergency Orders of the Public Utility Commission leading to this proceeding. (N.T. 15 and 16). Thus, the City is seeking reimbursement from AMTRAK, for the costs incurred in performing the emergency work pursuant to the Commission Orders, as set forth in City Exhibit 2 in the amount of $11,168.49 and City Exhibit 3 in the amount of $3,911.42; aggregating a total of $15,080.09 plus lawful interest thereon. (N.T 15, 16, 22).

It is important to recognize that there is no controversy with respect to the fact that the Pennsylvania Railroad originally built and was the owner of the bridge and rail line beneath the 59th Street Bridge. (National Railroad Passenger Corporation Statement No.1, Direct testimony of Richard H. Cooper, page 2, Answer to Question 12; N.T. 17; City Exhibit 4, page 429 §5). Moreover, AMTRAK itself has admitted that to its knowledge the bridge was built in approximately 1927 by the Pennsylvania Railroad; and that the plans were transfered to AMTRAK from the Trustees of the Penn Central Company via CONRAIL on April 1, 1976 when AMTRAK took over the line of railroad under the 59th

Street Bridge. (NRPC Statement No. 1, Direct Testimony of Richard H. Cooper, pages 3 and 4, Answer to Question 14)

It is uncontroverted that Pennsylvania Railroad performed maintenance work on the bridge (N.T. 17), and after the merger, that Penn Central had the maintenance obligation (City Statement 5; N.T. 18, 19).

In addition, AMTRAK itself has admitted and recognized its maintenance responsibility and has testified that it actually performed maintenance work on the bridge, namely on January 12, 1979, when AMTRAK placed a steel plate over a 2 foot by 2 foot hole through the deck and attended to loose expansion dams, and on December 18, 1981, AMTRAK replaced a missing cover plate and a 16 foot long loose piece of expansion dam. (NRPC Statement No. 1, Direct Testimony of Richard H. Cooper, page 6, Answer to Questions 17). Further, AMTRAK, in the said Answer to Question 17 also admits that because of manpower and budget problems, it advised the City that it would not be able to attend to those problems in the future. (NPRC Statement No. 1, page 6 and 7).

The controversy at issue in the instant matter is whether AMTRAK as successor in interest and title to the bridge and line of rail below, from CONRAIL, Penn Central, and the Pennsylvania Railroad, respectively, is responsible for the construction, reconstruction, repair and maintenance of the bridge.

The City contends that AMTRAK, as successor in title, and as the present owner of the line of rail below the bridge, and indeed as the owner of the bridge itself, and as a concerned party and user of the bridge (catenary facilities), is and should continue to be responsible for the construction, reconstruction, maintenance and repair of the bridge. All of the testimony and exhibits clearly prove that the Pennsylvania Railroad, the Penn Central, and AMTRAK itself recognized their respective maintenance obligations with respect to the bridge (N.T. 29).

Moreover, applicable law is supportive of the City's position that AMTRAK, owner of the rail line below the bridge, is the successor in interest and title to the bridge, and is responsible for the maintenance and repair and reconstruction thereof.

Thus, in The Cincinnati, New Orleans & Texas Pacific Railway Company, et al. v. Akron, Canton & Youngstown Railroad Company, et al., (a case decided by the Interstate Commerce Commission on December 17, 1976 in Docket No. 34275) the Interstate Commerce Commission overruled CONRAIL's argument that CONRAIL acquired all rail properties free and clear of any liens or encumbrances. The Interstate Commerce Commission considered various factors, and concluded that CONRAIL was the legal successor in interest of the railroads in the proceedings. Moreover, the Commission agreed that there was nothing in the legislative history of the Regional Rail Reorganization Act of 1973 which exempted CONRAIL from being a successor in interest to the railroads then in reorganization. Additionally, the Interstate Commerce Commission also agreed that not to consider CONRAIL as a successor in interest would undermine the orderly reorganization of the northeastern railroads.

In its decision the Interstate Commerce Commission stated:

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

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

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

> The order, however, here sought to be enforced, was made against the old railroad companies, to which the Western New York & Pennsylvania Railway Company and the Erie Railraod Company, respectively, have since become successors. The question then is, are these succeeding companies to be regarded as strangers to that order? We cannot think so. It would indeed be lamentable if a lawful order against unjust discrimination by a railroad company made by the Interstate Commerce Commission after a protected investigation, could be nullified by the subsequent reorganization of the company, or transfer of its railroad and franchises to another corporation. It is settled principle that the purchaser of property in litigation, pendente lite, is bound by the judgment or decree in the suit. 1 Story, Eq. Jur. §405. And the rule is said to be founded upon great public policy, for otherwise alienations made during a suit might defeat its whole purpose and there would be not end to litigation. 82 F. at 194.

The principle cited in Western New York, supra, is equally applicable in the instant matter. Thus, since the existing rail line and the 59th Street

Bridge were constructed by the Pennsylvania Railroad, and then owned by the Penn Central, CONRAIL (and now AMTRAK), all of which recognized their duties and obligations, by performance of maintenance, as aforesaid, with respect to said structure; now AMTRAK, as successor in title and interest, must be held obligated to comply with the duties and obligations of its predecessors in title. Under any circumstances, AMTAK is chargeable and responsible for maintenance of its own property, i.e. the 59th Street bridge, and the line of rail below.

For all of the foregoing reasons, and since the City does not own the structure, nor has it had any maintenance obligation during the history of the structure, it is submitted that all costs of maintenance and construction and reconstruction and repair with respect to the existing 59th Street Bridge should be ordered upon AMTRAK.

In addition to the foregoing reasons, there are other cogent and powerful reasons for ordering AMTRAK to continue to be responsible for the construction, reconstruction, maintenance and repair of the bridge. It is submitted that since the bridge was built originally for the benefit of the railroad, AMTRAK should pay for the cost of maintenance, as did its predecessors Penn Central and the Pennsylvania Railroad. This was the precise conclusion reached by the Administrative Law Judge in his Initial Decision, in a case involving similar issues with respect to another bridge in Commission Docket I-78020294. This Initial Decision was adopted as the action of the Commission in the same Docket by Order adopted October 4, 1979 and entered October 19, 1979. Moreover, in the same Initial Decision, adopted by the Commision as aforesaid, the ALJ concluded, inter alia, that the City did not have maintenance responsibility for the bridge at issue in that case; and that CONRAIL, the carrier involved in that case, should reimburse

carrier involved in that case, should reimburse the City for the City's expenses in compliance with the Orders of the Commission, and finally that CONRAIL had the sole responsibility to inspect and maintain the bridge. On appeal, the Order of the Commission was upheld. Thus, in Consolidated Rail Corporation v. Pennsylvania Public Utility Commission, City of Philadelphia and Commonwealth of Pa. Department of Transportation, Commonwealth Court Docket No. 2326 of 1979, 55 Pa. Commonwealth Court 576; 423 A2.d 1108 (1980), CONRAIL argued that it was not the successor in title to its predecessors in title insofar as the obligation of maintenance of the Byberry Road bridge was concerned. CONRAIL contended that it was not responsible for maintenance because (1) when CONRAIL was created by RRRA, the responsibility for maintenance of bridges carrying public highways was not transferred, (2) properties were conveyed "free and clear of all liens and encumbrances," under federal law and (3) the Ordinance did not state it was binding on any assignees. The Court found all of those contentions were without merit. The Court stated as follows:

> Congress passed the RRRA in order to continue essential rail service in the midwest and northeast regions of the country. Many of the railroads in these areas were insolvent. It was Congress' clear intention that this rail service be continued and improved. The RRRA transferred the assets included in Interstate Commerce Commission (ICC) accounts Nos. 1-45 to Conrail. Included in ICC acount No. 39 are above grade bridges. Just because property is transferred free of any liens and encumbrances does not mean that the new owner is not responsible for the continued maintenance of that property. If CONRAIL's assertion were carried to its logical conclusion, CONRAIL would not have to maintain any of its property. This clearly would not comport with the specific intent of Congress.
>
> The PUC's assessment of bridge repair costs between the old and new owners of a railroad was reviewed by this Court in Pennsylvania Public Utility Commission v. Southeastern Pennsylvania Transportation Authority, 21 Pa. Commonwealth Ct. 106, 343, A.2d 371 (1975), (SEPTA). In affirming

> the assessment of the new owner, we stated that 'it is the presence and ownership of the track involved, not any benefit conferred which places liability on the railroad.' (Citations omitted.) Id. at 111, 343, A.2d at 374. SEPTA clearly applies to the case at bar. While CONRAIL may contest ownership of and maintenance responsibilities for the bridge, it can hardly contest ownership of the railroad tracks. (Emphasis supplied.)

Finally, the Court stated:

> The record reveals that the bridge was built at the request of the railroad so that its trains could travel unimpeded through this section of the City. By operation of the RRRA, CONRAIL has become the owner and use of the tracks.

Thus, in the instant matter AMTRAK is the successor in interest and title of the Pennsylvania Railroad, the Penn Central, and CONRAIL, and thus AMTRAK is responsible for the continued maintenance of the bridge, which was the obligation of its predecessors in title and which, together with the line rail and the bridge, were transferred by the Deeds previously discussed. While AMTRAK may continue to contest ownership of the bridge, it can hardly contest ownership of the railroad tracks below. In fact, it admitted ownership thereof. Thus, it is the presence and ownership of the track involved which alone places liability on AMTRAK, notwithstanding its ownership of the bridge.

It must also be recognized that the existence of this bridge is a benefit to AMTRAK as opposed to a grade crossing (N.T. 29) and that a grade crossing would be much more dangerous (N.T. 29). Moreover, the existence of the bridge results in a benefit to the operations of SEPTA (N.T. 31), and that it is much safer than a grade crossing (N.T. 32). It was further disclosed at the hearing, that SEPTA operates 44 round trips daily under the bridge on its commuter lines and that SEPTA is operating via a Trackage Rights Agreement with AMTRAK for which SEPTA makes payment to AMTRAK. (N.T. 33).

It was also testified at the hearings, that CONRAIL operates approximately 6 trains per day under the bridge, which are dispatched by AMTRAK (N.T. 34) and that AMTRAK is paid by CONRAIL under a Trackage Rights Agreement for CONRAIL's privilege of operating over AMTRAK's tracks (N.T. 35). Moreover, CONRAIL receives a benefit from the existence of the bridge as opposed to a grade crossing. (N.T. 35, 36).

B. Present Condition of Bridge

As to the condition of the bridge, the City witness testified that in his opinion the expansion dams on the bridge should be replaced by AMTRAK, at its sole cost and expense, immediately; (N.T. 21-22) and that the concrete bridge deck should be replaced by AMTRAK, at its sole cost and expense, when conditions require such work (N.T. 22), i.e. approximately 2-3 years hence (N.T. 23). The witness further testified that in his opinion the bridge is presently structurally capable of carrying legal loads, but that an in-depth inspection should be performed before any work is done (N.T. 23, 24). In addition, it was the witness's opinion that it is not necessary at this time to post the bridge for lower than legal weight limits (N.T. 24). Finally, the witness testified that traffic utilizing the bridge is not necessarily Philadelphia traffic; but could be Montgomery County traffic since the bridge is located only approximately 1 mile from the Philadelphia City Line and Montgomery County (N.T. 25).

III. CONCLUSION

For all of the foregoing reasons, the City of Philadelphia respectfully requests the Administrative Law Judge to recommend and the Commission order the following:

A. That AMTRAK is, and should continue to be responsible for the maintenance of the substructure and superstructure of the bridge, and the entire rail/highway crossing, including approaches, at its sole cost and expense; and

B. That AMTRAK immediately replace the expansion dams on the structure, at its sole cost and expense; and

C. That AMTRAK be and is required to replace and/or rehabilitate the concrete bridge deck, at its sole cost and expense, when conditions require such work; and

D. That AMTRAK reimburse the City of Philadelphia the sum of $15,080.09, plus lawful interest, for work ordered by the Commission and performed by the City.

Respectfully submitted,

MARK A. ARONCHICK
City Solicitor

HERBERT SMOLEN
Deputy City Solicitor

BY: Herbert Smolen
HERBERT SMOLEN
Deputy City Solicitor

Attorneys for the City of Philadelphia

PROPOSED FINDINGS OF FACT

1. The 59th Street bridge was originally constructed by the Pennsylvania Railroad Company (NRPC Statement No. 1, Direct Testimony of Richard H. Cooper, page 4, Answer to Question 14) at its own cost so that trains could travel unimpeded through the section of the City where the bridge is located, which they still do. (N.T. 17; City Exhibit 4, page 429, §5).
2. Amtrak presently has the plans for the bridge, which it received from the Trustees of the Penn Central via CONRAIL when AMTRAK took over the line of railroad below the bridge (NRPC Statement No.1, Direct Testimony of Richard H. Cooper, page 4, Answer to Question 14).
3. When the bridge was built by the Pennsylvania Railroad, said Railroad had the duty of maintenance thereof. (City Exhibit 4).
4. The Pennsylvania Railroad, under the terms and conditions of the Ordinances, constructed the line of rail and the bridge, and thus became and was the owner of the line below the bridge and the bridge itself, and the operating railroad has thereafter always had the maintenance responsibility for the bridge. (N.T. 17).
5. Subsequent to the construction of the bridge by the Pennsylvania Railroad, as aforesaid, the Pennsylvania Railroad maintained it, and after the Pennsylvania Railroad/New York Central merger, the resulting Penn Central Company had the maintenance responsibility. (City Exhibit 5; N.T. 18 and 19).
6. Subsequent to the Penn Central Bankruptcy Reorgainzation proceedings, the Trustees of Penn Central conveyed various lines of rail, including the United States Railway Association Line 1102, (Main Line Philadelphia - Pittsburgh) which is the line of rail beneath the bridge.

8. City Exhibit 8 is the Deed from CONRAIL to the National Railroad Passenger Corporation, conveying, inter alia, rail line 1102 (Main Line Philadelphia - Pittsburgh), the line of rail below the bridge.

9. The respective Grantees in the Deeds, by acceptance of the Deeds, assumed and agreed to perform and observe all obligations of their respective Grantor or their Grantor's predecessors in title.

10. CONRAIL by acceptance of the Deed from the Trustees of the Penn Central Company accepted the obligations and conditions of its Grantor and predecessors in title, i.e. the Penn Central and Pennsylvania Railroad.

11. The National Railroad Passenger Corporation (AMTRAK) by acceptance of the Deed from CONRAIL (City Exhibit 8), accepted and assumed and agreed to perform the obligations and conditions of its Grantor and predecessors in title, i.e., CONRAIL, Penn Central and the Pennsylvania Railroad.

12. The City has had no past maintenance responsibility, and has no present maintenance responsibility for this bridge, other than the work performed by the City under the Emergency Orders of the Public Utility Commission leading to this proceeding. (N.T. 15 and 16).

13. There is no controversy with respect to the fact that the Pennsylvania Railroad originally built and was the owner of the bridge and rail line beneath the 59th Street Bridge. (National Railroad Passenger Corporation Statement No.1, Direct testimony of Richard H. Cooper, page 2, Answer to Question 12; N.T. 17; City Exhibit 4, page 429 §5).

14. AMTRAK itself has admitted that to its knowledge the bridge was built in approximately 1927 by the Pennsylvania Railroad; and that the plans were transfered to AMTRAK from the Trustees of the Penn Central Company via

CONRAIL on April 1, 1976 when AMTRAK took over the line of railroad under the 59th Street Bridge. (NRPC Statement No. 1, Direct Testimony of Richard H. Cooper, pages 3 and 4, Answer to Question 14)

15. Pennsylvania Railroad performed maintenance work on the bridge (N.T. 17), and after the merger, Penn Central had the maintenance obligation (City Statement 5; N.T. 18, 19).

16. AMTRAK has admitted and recognized its maintenance responsibility and has actually performed maintenance work on the bridge, namely on January 12, 1979, when AMTRAK placed a steel plate over a 2 foot by 2 foot hole through the deck and attended to loose expansion dams, and on December 18, 1981, AMTRAK replaced a missing cover plate and a 16 foot long loose piece of expansion dam. (NRPC Statement No. 1, Direct Testimony of Richard H. Cooper, page 6, Answer to Questions 17). Further, AMTRAK, in the said Answer to Question 17 also admits that because of manpower and budget problems, it advised the City that it would not be able to attend to those problems in the future. (NPRC Statement No. 1, page 6 and 7).

17. All of the testimony and exhibits clearly prove that the Pennsylvania Railroad, the Penn Central, and AMTRAK itself recognized their respective maintenance obligations with respect to the bridge (N.T. 29).

18. The bridge was built originally for the benefit of the railroad.

19. AMTRAK admitted ownership of the line of rail below the bridge.

20. The existence of this bridge is a benefit to AMTRAK as opposed to a grade crossing (N.T. 29) and a grade crossing would be much more dangerous (N.T. 29).

21. The existence of the bridge results in a benefit to the operations of SEPTA (N.T. 31), and it is much safer than a grade crossing (N.T. 32).

22. SEPTA operates 44 round trips daily under the bridge on its commuter lines under a Trackage Rights Agreement with AMTRAK for which SEPTA makes payment to AMTRAK. (N.T. 33).

23. CONRAIL operates approximately 6 trains per day under the bridge, which are dispatched by AMTRAK (N.T. 34) and for which AMTRAK is paid by CONRAIL under a Trackage Rights Agreement for CONRAIL's privilege of operating over AMTRAK's tracks (N.T. 35). Moreover, CONRAIL receives a benefit from the existence of the bridge as opposed to a grade crossing. (N.T. 35, 36).

25. The expansion dams on the bridge should be replaced by AMTRAK, at its sole cost and expense, immediately; (N.T. 21-22) and the concrete bridge deck should be replaced by AMTRAK, at its sole cost and expense, when conditions require such work (N.T. 22), i.e. approximately 2-3 years hence (N.T. 23).

26. The bridge is presently structurally capable of carrying legal loads, but an in-depth inspection should be performed before any work is done (N.T. 23, 24).

27. It is not necessary at this time to post the bridge for lower than legal weight limits (N.T. 24).

28. Traffic utilizing the bridge is not necessarily Philadelphia traffic; but could be Montgomery County traffic since the bridge is located only approximately 1 mile from the Philadelphia City Line and Montgomery County (N.T. 25).

CONCLUSIONS OF LAW

1. When the bridge was built by the Pennsylvania Railroad, said Railroad had the duty of maintenance thereof. (City Exhibit 4).
2. The Pennsylvania Railroad, under the terms and conditions of certain Ordinances, constructed the line of rail and the bridge, and thus became and was the owner of the line below the bridge and the bridge itself, and the operating railroad has thereafter always had the maintenance responsibility for the bridge. (N.T. 17, 18, 19; City Exhibits 4 and 5).
3. Subsequent to the construction of the bridge by the Pennsylvania Railroad, as aforesaid, the Pennsylvania Railroad maintained it, and after the Pennsylvania Railroad/New York Central merger, the resulting Penn Central Company had the maintenance responsibility. (City Exhibit 5; N.T. 18 and 19).
4. Penn Central's maintenance responsibility is evidenced in City Exhibit 5, which is a list of bridges furnished by the Penn Central Company in July, 1969 to the Public Utility Commission pursuant to its Order of October 28, 1968 in Commission Investigation Docket No. 97. (N.T. 18, 19; City Exhibit 5).
5. Subsequent to the Penn Central Bankruptcy Reorganization proceedings, the Trustees of Penn Central conveyed various lines of rail, including the United States Railway Association Line 1102, (Main Line Philadelphia - Pittsburgh) which is the line of rail beneath the bridge.
6. City Exhibits 6 and 7 are the Deeds from the Trustees of the Penn Central Transportation Company conveying, inter alia, rail line 1102 (Main Line Philadelphia - Pittsburgh) which is the line of rail beneath the bridge.

7. City Exhibit 8 is the Deed from CONRAIL to the National Railroad Passenger Corporation, conveying, inter alia, rail line 1102 (Main Line Philadelphia - Pittsburgh), the line of rail below the bridge.

8. The respective Grantees in the Deeds, by acceptance of the Deeds, assumed and agreed to perform and observe all obligations of their respective Grantor or their Grantor's predecessors in title.

9. CONRAIL by acceptance of the Deed from the Trustees of the Penn Central Company accepted the obligations and conditions of its Grantor and predecessors in title, i.e. the Penn Central and Pennsylvania Railroad.

10. The National Railroad Passenger Corporation (AMTRAK) by acceptance of the Deed from CONRAIL (City Exhibit 8), accepted and assumed and agreed to perform the obligations and conditions of its Grantor and predecessors in title, i.e., CONRAIL, Penn Central and the Pennsylvania Railroad.

11. City Exhibit 10, which is an excerpt of page 243 of Volume 1 of the Final System Plan of the U.S. Railway Association provides, inter alia, and confirms that,

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

12. City Exhibit 9, which is an excerpt from the Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission, includes in Account No. 39 such items as,

> ...Overhead highway bridges, including approaches...

In Note B of Account No. 39, it is provided that,

> The cost to the carrier of maintaining public improvements shall be included in operating expenses.

13. The line of rail and the bridge were conveyed by the Trustees of Penn Central to CONRAIL and then from CONRAIL to AMTRAK which is the present owner of the line and the bridge, and as such, bears responsibility for construction, reconstruction, maintenance and repair thereof, as did its Grantor and predecessors in the title.

14. The bridge involved in these proceedings comes within the purview of Account 39, and is within the conveyances previously discussed.

15. The City has had no past maintenance responsibility, and has no present maintenance responsibility for this bridge, other than the work performed by the City under the Emergency Orders of the Public Utility Commission leading to this proceeding. (N.T. 15 and 16).

16. The City is entitled to reimbursement from AMTRAK for the costs incurred in performing the emergency work pursuant to the Commission Orders, as set forth in City Exhibit 2 in the amount of $11,168.49 and City Exhibit 3 in the amount of $3,911.42; aggregating a total of $15,080.09 plus lawful interest thereon. (N.T 15, 16, 22).

17. There is no controversy with respect to the fact that the Pennsylvania Railroad originally built and was the owner of the bridge and rail line beneath the 59th Street Bridge. (National Railroad Passenger Corporation Statement No.1, Direct testimony of Richard H. Cooper, page 2, Answer to Question 12; N.T. 17; City Exhibit 4, page 429 §5).

18. AMTRAK itself has admitted that to its knowledge the bridge was built in approximately 1927 by the Pennsylvania Railroad; and that the plans were transfered to AMTRAK from the Trustees of the Penn Central Company via CONRAIL on April 1, 1976 when AMTRAK took over the line of railroad under the 59th Street Bridge. (NRPC Statement No. 1, Direct Testimony of Richard H. Cooper, pages 3 and 4, Answer to Question 14)

13. The line of rail and the bridge were conveyed by the Trustees of Penn Central to CONRAIL and then from CONRAIL to AMTRAK which is the present owner of the line and the bridge, and as such, bears responsibility for construction, reconstruction, maintenance and repair thereof, as did its Grantor and predecessors in the title.

14. The bridge involved in these proceedings comes within the purview of Account 39, and is within the conveyances previously discussed.

15. The City has had no past maintenance responsibility, and has no present maintenance responsibility for this bridge, other than the work performed by the City under the Emergency Orders of the Public Utility Commission leading to this proceeding. (N.T. 15 and 16).

16. The City is entitled to reimbursement from AMTRAK for the costs incurred in performing the emergency work pursuant to the Commission Orders, as set forth in City Exhibit 2 in the amount of $11,168.49 and City Exhibit 3 in the amount of $3,911.42; aggregating a total of $15,080.09 plus lawful interest thereon. (N.T 15, 16, 22).

17. There is no controversy with respect to the fact that the Pennsylvania Railroad originally built and was the owner of the bridge and rail line beneath the 59th Street Bridge. (National Railroad Passenger Corporation Statement No.1, Direct testimony of Richard H. Cooper, page 2, Answer to Question 12; N.T. 17; City Exhibit 4, page 429 §5).

18. AMTRAK itself has admitted that to its knowledge the bridge was built in approximately 1927 by the Pennsylvania Railroad; and that the plans were transfered to AMTRAK from the Trustees of the Penn Central Company via CONRAIL on April 1, 1976 when AMTRAK took over the line of railroad under the 59th Street Bridge. (NRPC Statement No. 1, Direct Testimony of Richard H. Cooper, pages 3 and 4, Answer to Question 14)

19. Pennsylvania Railroad performed maintenance work on the bridge (N.T. 17), and after the merger, that Penn Central had the maintenance obligation (City Statement 5; N.T. 18, 19).

20. AMTRAK has admitted and recognized its maintenance responsibility and has actually performed maintenance work on the bridge, namely on January 12, 1979, when AMTRAK placed a steel plate over a 2 foot by 2 foot hole through the deck and attended to loose expansion dams, and on December 18, 1981, AMTRAK replaced a missing cover plate and a 16 foot long loose piece of expansion dam. (NRPC Statement No. 1, Direct Testimony of Richard H. Cooper, page 6, Answer to Questions 17). Further, AMTRAK, in the said Answer to Question 17 also admits that because of manpower and budget problems, it advised the City that it would not be able to attend to those problems in the future. (NPRC Statement No. 1, page 6 and 7).

21. AMTRAK, as successor in interest and title to the bridge and line of rail below, of and from CONRAIL, Penn Central, and the Pennsylvania Railroad, respectively, is responsible for the construction, reconstruction, repair and maintenance of the bridge.

22. AMTRAK, as successor in title, and as the present owner of the line of rail below the bridge, and indeed as the owner of the bridge itself, and as a concerned party and user of the bridge (catenary facilities), is and should continue to be responsible for the construction, reconstruction, maintenance and repair of the bridge.

23. All of the testimony and exhibits clearly prove that the Pennsylvania Railroad, the Penn Central, and AMTRAK itself recognized their respective maintenance obligations with respect to the bridge (N.T. 29).

24. Applicable law is supportive of the City's position that AMTRAK, owner of the rail line below the bridge, is the successor in interest and title to the bridge, and is responsible for the maintenance and repair and reconstruction thereof.

25. Since the existing rail line and the 59th Street Bridge were constructed by the Pennsylvania Railroad, and then owned by the Penn Central, CONRAIL (and now AMTRAK), all of which recognized their duties and obligations, by performance of maintenance, as aforesaid, with respect to said structure; now AMTRAK, as successor in title and interest, is obligated to comply with the duties and obligations of its predecessors in title. AMTAK is chargeable and responsible for maintenance of its own property, i.e. the 59th Street bridge, and the line of rail below.

26. The City does not own the structure, nor has it had any maintenance obligation during the history of the structure, and therefore all costs of maintenance and construction and reconstruction and repair with respect to the existing 59th Street Bridge is the responsibility of AMTRAK.

27. The bridge was built originally for the benefit of the railroad.

28. AMTRAK should pay for the cost of maintenance, as did its predessors Penn Central and the Pennsylvania Railroad.

29. AMTRAK is the successor in interest and title of the Pennsylvania Railroad, the Penn Central, and CONRAIL, and thus AMTRAK is responsible for the continued maintenance of the bridge, which was the obligation of its predecessors in title and which, together with the line rail and the bridge, were transferred by the Deeds previously discussed.

30. AMTAK admitted ownership of the line of rail below the bridge.

31. It is the presence and ownership of the track involved which alone places liability on AMTRAK, notwithstanding its ownership of the bridge.

PROPOSED ORDER

1. That AMTRAK is, and should continue to be responsible for the maintenance of the substructure and superstructure of the bridge, and the entire rail/highway crossing, including approaches, at its sole cost and expense; and
2. That AMTRAK immediately replace the expansion dams on the structure, at its sole cost and expense; and
3. That AMTRAK be and is required to replace and/or rehabilitate the concrete bridge deck, at its sole cost and expense, when conditions require such work; and
4. That AMTRAK reimburse the City of Philadelphia the sum of $15,080.09, plus lawful interest, for work ordered by the Commission and performed by the City.

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

September 29, 1983

IN REPLY PLEASE
REFER TO OUR FILE

I-830373

Jerry Rich, Secretary
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

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SEP 29 1983

SECRETARY'S OFFICE
Public Utility Commission

Investigation upon the Commission's own motion into 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 grade of the tracks of National Railroad Passenger Corporation in the City of Philadelphia, to determine the condition, disposition and responsibility for maintenance of the existing crossing structure.

Dear Secretary Rich:

Enclosed please find the original and nine (9) copies of the Brief of Commission Trial Staff to be filed in the above-captioned matter.

Very truly yours,

Richard S. Herskovitz

Richard S. Herskovitz
Assistant Counsel

cc: Administrative Law Judge Klovekorn
All Parties

Enclosure

RECEIVED
SEP 29 1983
SECRETARY'S OFFICE
Public Utility Commission

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation upon the Commission's own motion into 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 grade of the tracks of National Railroad Passenger Corporation in the City of Philadelphia, to determine the condition, disposition and responsibility for maintenance of the existing crossing structure	Investigation Docket No. 830373

DOCKETED
SEP 29 1983

BRIEF OF COMMISSION TRIAL STAFF

Richard S. Herskovitz
Assistant Counsel
Trial Staff

Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

HISTORY OF THE CASE

On February 22, 1983, the City of Philadelphia (City) notified the Pennsylvania Public Utility Commission (Commission) that the expansion dams on the 59th Street Bridge were in a state of disrepair. By Emergency Order dated February 25, 1983, at Docket No. M-830338, the Commission directed the City to repair the expansion dams at its initial cost. The repairs were completed in March 1983.

On April 29, 1983, the Commission instituted this investigation to determine the current condition and future disposition of the crossing and to assign future maintenance responsibilities to the parties, there being no prior Commission orders doing so. The City, National Railroad Passenger Corporation (Amtrak), Consolidated Rail Corporation (Conrail) and Pennsylvania Department of Transportation (Department) were made parties to the investigation. Commission Trial Staff (Staff) subsequently entered an appearance to participate in this proceeding.

The City notified the Commission on June 29, 1983, that additional repairs were required to the expansion dams. On that same date, the Commission issued an Emergency Order under this docket number which again directed the City to perform additional repairs to the expansion dams at its initial cost. This work was performed in July 1983.

Hearing in this matter was held August 18, 1983 in Philadelphia before Administrative Law Judge Klovekorn in which testimony and exhibits were received pertaining to the

current condition of the crossing, whether any repairs are necessary, the assignment of maintenance responsibilities and the allocation of costs expended by the parties in complying with the emergency orders.

ARGUMENT

In matters, the regulation of which has been placed within the jurisdiction of the Commission, the jurisdiction of the Commission is exclusive, and neither the courts nor municipalities nor departments of state government may regulate in such areas. Philadelphia Electric Co. v. Human Relations Commission, 5 Pa. Commonwealth Ct. 329, 290 A.2d 699 (1972).

The Commission has exclusive jurisdiction over all railroad-highway crossings in the Commonwealth. 66 Pa. C.S. §2702. That jurisdiction has been extended to the approaches of a crossing by case law. Department of Transportation v. Pa. P.U.C., 64 Pa. Commonwealth Ct. 299, 440 A.2d 657 (1982); Springettsbury v. Pa. P.U.C., 5 Pa. Commonwealth Ct. 102, 289 A.2d 762 (1972).

The Commission has the exclusive authority to order the construction, reconstruction, alteration, repair or protection of railroad-highway crossings, as well as the exclusive authority to determine and order which parties should perform such work at the crossings and which parties shall maintain the crossings in the future, all to effectuate the prevention of accidents and to promote the safety of the public. 66 Pa. C.S. §2702.

In addition, the Commission has the exclusive authority to assess the costs of any work ordered performed upon the parties to this proceeding in such proper proportions as the Commission may determine. 66 Pa. C.S. §2704(a). In

apportioning costs in rail-highway crossing cases, the Commission is not limited to any fixed rule but takes all relevent factors into consideration, the only requirement being that its order be just and reasonable. Department of Transportation v. Pa. P.U.C., 21 Pa. Commonwealth Ct. 407, 346 A.2d 371 (1975). See also Consolidated Rail Corporation v. Pa. P.U.C., 55 Pa. Commonwealth Ct. 576, 423 A.2d 1108 (1980).

Staff's position in this matter as far as allocation of work, cost and maintenance is concerned is that there should be as near an even split as possible of these items between the City and Amtrak. The existence of a safe bridge is equally important to both the City, whose residents traverse the bridge by both foot and vehicle, and Amtrak, whose own train traffic as well as that of its lessees travel unimpeded below the bridge. Both parties benefit from the existence of the bridge in that the bridge is safer for the operation of the railroad below and vehicles and pedestrians above than would be an at-grade crossing (N.T. 29).

Additional factors supporting a 50% allocation of cost and maintenance to Amtrak follow:

(1) Amtrak is the owner and operator of the line of railroad beneath the bridge (NRPC Statement 1)

(2) the bridge was originally constructed by the railroad so that trains could travel unimpeded (N.T. 17)

(3) the bridge was built by the Pa. Railroad Co. around 1927 (NRPC Statement 1)

(4) the owner of the railroad line originally had maintenance responsibility for the bridge (N.T. 17)

(5) the history of the bridge shows the railroad maintained it (N.T. 18, NRPC Statement 1)

(6) 11 of the 13 tracks have electric catenary facilities overhead (NRPC Statement 1)

(7) railroad traffic is heavy with 30 passenger trains, 13 freight trains and 115 commuter trains per day (NRPC Statement 1).

Additional factors supporting a 50% allocation of cost and maintenance to the City follows:

(1) 59th Street, a City street, traverses the bridge

(2) a City high school is adjacent to the bridge (N.T. 13)

(3) an estimated 800 pedestrians a day cross the bridge when the high school is open; 200 when closed (N.T. 13)

(4) the average daily traffic count is 16,800 vehicles of which a majority are vehicles operated by City residents (N.T. 13, 23).

The evidence in this case reveals two major areas of concern with respect to the current condition of the bridge; the expansion dams and the bridge deck. The witnesses for the City, Amtrak and Staff agree that the expansion dams must be replaced with the City and Staff witnesses recommending they be replaced immediately (N.T. 15, 22, 27, 39-40).

As for the bridge deck, the testimony indicates that the deck is not in such poor condition that it be replaced immediately, but will require replacement in the near future (N.T. 15, 23). There was also agreement among the engineers for the City, Amtrak and Staff that an in-depth inspection of the entire bridge be performed before replacing the deck to determine what other repairs are necessary (N.T. 24, 28, 39).

In line with Staff's position that the City and Amtrak split the work that has to be performed, Staff requests the Commission to direct the City to replace the expansion dams on a permanent basis at its initial cost and Amtrak to perform an in-depth inspection and load carrying analysis at its initial cost. The expansion dam work will take place on the bridge deck and roadway surface upon which 59th Street, a City Street, traverses. The City would therefore be in a better position than any other party to schedule and perform this work and set up necessary detours. Because Amtrak's electrification facilities are attached to the bridge, and because of the heavy train traffic below the bridge, the railroad should perform the inspection as it would appear

that the railroad has the expertise in working around the catenary system as well as being in a better position to schedule the work around its train movements. Six months to complete both the expansion dam replacement and in-depth inspection should be adequate.

Following completion of the in-depth inspection, Staff requests further hearing be held to determine what other repairs need be performed, if any, as indicated in the inspection report.

Staff further requests that the Commission assign maintenance responsibilities on an interim basis at this time with final maintenance to be assigned following hearing on the in-depth inspection. A fair and equitable division of maintenance between the City and Amtrak would be to have the City maintain the deck, roadway surface, sidewalks and approaches (items associated with vehicular and pedestrian traffic) and have Amtrak maintain the substructure and superstructure (items of this bridge historically maintained by the railroad).

Allocation of the costs incurred by the City in complying with the Emergency Orders of February 25, 1983 and June 29, 1983 can be deferred until the Commission's final order in this matter following hearing on the in-depth inspection and completion of the replacement of the expansion dams. Staff does request the Commission, however, to ultimately allocate these costs and any other costs that are incurred

in this proceeding in accordance with Staff's recommendation that the City and Amtrak share all costs as evenly as possible. Additionally, Staff requests the final assignment of maintenance be the same as the requested interim maintenance assignments.

CONCLUSION

The Commission Trial Staff respectfully requests the adoption of an order consistent with the Staff's recommendation set forth herein.

Respectfully submitted,

Richard S. Herkovitz

Richard S. Herkovitz
Assistant Counsel

For the Pennsylvania Public Utility Commission

CERTIFICATE OF SERVICE

I hereby certify that I am, this 29th day of September, 1983, serving by first class mail the foregoing document upon the persons listed below:

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Richard S. Herskovitz
Assistant Counsel

Dated: September 29, 1983

National Railroad Passenger Corporation, Northeast Corridor Operations, 1617 John F. Kennedy Blvd., Philadelphia, Penna 19103

Amtrak

October 3, 1983

ORIGINAL

Jerry Rich, Secretary
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

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OCT 5 1983

SECRETARY'S OFFICE
Public Utility Commission

I-830373

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

Dear Secretary Rich:

I have enclosed the original and nine (9) copies of the Brief of National Railroad Passenger Corporation to be filed in the above-captioned matter.

Very truly yours,

Harold

Harold K. Cohen
Counsel for National Railroad Passenger Corporation

cc: Administrative Law Judge Klovekorn
All Parties

Enclosure

CERTIFICATE OF SERVICE

I hereby certify that I am, this 3rd day of October, 1983, serving by first class mail the foregoing document upon the persons listed below:

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Dated: October 3, 1983

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IN THE PUBLIC UTILITY COMMISSION

OF THE

COMMONWEALTH OF PENNSYLVANIA

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Investigation upon the Commission's own motion into matters pertaining to the proper service, accommodation, convenience and safety of the travelling public using the rail-highway crossing carrying 59th Street over and above the grade of the tracks of National Railroad Passenger Corporation in the City of Philadelphia, to determine the condition, disposition and responsibility for maintenance of the existing crossing structure.	Docket I-830373

BRIEF OF NATIONAL RAILROAD PASSENGER CORPORATION

I. BACKGROUND

As the above caption indicates, this is a matter brought upon the Commission's motion with regard to determining the condition, disposition and responsibility for maintenance of the 59th Street Bridge in the City of Philadelphia over the tracks of the National Railroad Passenger Corporation (Amtrak). According to documents introduced by the City, it has expended approximately $15,000 under this and related docket number M-830338. According to other testimony adduced at the hearing, there is additional repair work relative to replacement of the existing expansion joints which currently needs to be effected and, somewhere in the not-to-distant future, resurfacing of the subject bridge will apparently also be necessary. It was to these issues that the parties addressed themselves at the hearing relating to this matter held on Thursday, August 18, 1983.

II. ARGUMENT

Although the City of Philadelphia offered no comprehensive legal argument encompassing the thrust of its presentation at the subject hearing, it seems fair to assume that the City's argument is in essence that the obligation to maintain the 59th Street Bridge was assumed by the Pennsylvania Railroad by virtue of an agreement between it and the City of Philadelphia. The City introduced, through its Exhibit Number 4, an ordinance that purportedly substantiates the initial portion of the City's argument. The City then proceeds to argue that that maintenance obligation is now appropriately levied against Amtrak through a series of deeds, extracts from ICC documents, and an extract from the United States Railway Association Final System Plan.

A. There is no proof on the record that any such agreement between the Pennsylvania Railroad and the City of Philadelphia was ever executed or what its terms might have been.

The ordinance introduced by the City was an amendment and supplement to two earlier ordinances i.e., those of November, 1905 and July, 1915.

The ordinance of November, 1905 "Granted to the Pennsylvania Railroad Company their consent and authority to the construction, maintenance and operation" of various construction projects and further provided "that an agreement should be made between the City and Pennsylvania Railroad Company conditioned upon the performance by the Railroad Company of the obligations imposed upon it by the said ordinance."

In 1915, apparently not all of the obligations and conditions provided in the 1905 ordinance had been fulfilled, and the City of Philadelphia, on July 8, 1915, did amend and supplement the ordinance of November, 1905 with various provisions and did further provide that the Railroad Company, before the ordinance should become effective, should enter into an amendatory and supplemental agreement with the City for the faithful performance by the Company of the terms and conditions of the obligations and terms of the ordinance.

Finally, in July, 1926, the November, 1905 ordinance was supplemented once again with the ordinance which the City maintains has some bearing upon the instant matter. Section 5 of that ordinance provides that the Pennsylvania Railroad Company had the responsibility for the entire cost of constructing and forever maintaining the structure in question. However, Section 3 of the July, 1926 Ordinance reads as follows:

> Before this ordinance shall become effective. . . the said The Pennsylvania Railroad Company shall enter into a supplemental agreement, satisfactory to the City Solicitor, to comply with the conditions contained in the sections of this ordinance . . . .

It seems clear from the 1926 Ordinance submitted by the City as its Exhibit 4, as well as from references therein to the two earlier ordinances, that these ordinances were part of a scheme whereby authority was given to City officials to enter into agreements consistent with the terms of those ordinances. The ordinances themselves were not self-executing and did not and could not by themselves establish any obligations on either party. The introduction by the City of Philadelphia of the

ordinance, standing alone, establishes no liability of any sort. The City has failed to submit for the record any purported agreement, consistent with the terms of the ordinance in question, which would establish any responsibility on the part of the Pennsylvania Railroad Company to construct and maintain the subject bridge. It would be speculation of the wildest variety to attempt to determine legal rights and responsibilities with regard to the 59th Street Bridge without reference to a contractual document addressing those issues. At the outset, then, the City has failed to establish the linchpin of its argument, namely that the Pennsylvania Railroad had the responsibility to construct and forever maintain the 59th Street Bridge. Citation to the 1926 Ordinance does nothing to cure that failure. To repeat, there is absolutely no proof on the record of any such agreement between the City of Philadelphia and the Pennsylvania Railroad Company.

B. <u>If such an agreement exists, there is no proof that that agreement has been filed with the Public Utility Commission, then the Public Service Commission, as required by law</u>.

Since 1913, the law of the Commonwealth of Pennsylvania has been substantially as reflected in 66 Pa. C.S.A. 6, Section 507 which provides in part:

> Except for a contract between a public utility and a municipal corporation to furnish service at the regularly filed and published tariff rates, no contract or agreement between any public utility and any

municipal corporation shall be valid unless filed with the commission at least 30 days prior to its effective date....*/

Although the current incarnation of Section 507 was enacted in 1978, its roots can be traced back to Public Law 1374, July 25, 1913.

In Carnegie Nat'l Gas Co. v. Allegheny County, 405 Pa. 134, 176 A.2d 630 (1962), the Company had attempted to recover from Allegheny County the cost of replacing part of its gas lines. It argued that the County's liability stemmed from an agreement between Carnegie and the County entered in August, 1929. Allegheny County defended on the basis that the agreement was invalid since the Company did not seek approval thereof by the Public Service Commission as provided for in the agreement and as required by the Act of 1913. Mr. Justice Cohen, writing for a unanimous Court, held that since approval of the Commission was not obtained, "no recovery may be had... for work done while the contract was unapproved." 406 Pa., at 137. Even though the contract was subsequently approved by the Commission in 1959, that approval was not specifically made nunc pro tunc, and was, even under those conditions, not consistent with the requirements of Section 507, as stated above, and therefore unenforceable against the County.

As stated earlier, since there has been no proof that any agreement was entered between the Pennsylvania Railroad and City of Philadelphia with regard to the controversy here at

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* The filing requirement is most likely to afford the Commission an opportunity to review the terms of any such agreement.

issue, it follows that there can be no proof that such an agreement was filed and approved by the Commission. The City's argument, therefore, fails for a second basic reason, namely that if such an agreement exists, as only implied by the City's argument, there is no evidence that that agreement met the requirements of law by having been filed with and approved by the Commission. Any such agreement is therefore unenforceable.

C. Even if the agreement exists, and had been filed with the Commission pursuant to Section 507, under the circumstances of the case at bar the Public Utility Commission is not the appropriate forum to enforce that agreement.

Even assuming, although the record of this case certainly does not warrant such an assumption, that an agreement existed and had in fact been filed with the Commission as required, it would not be appropriate for the Commission to enforce such an agreement where the parties differ as to any aspect of its interpretation or enforcement. For example, in Pa. RR Co. v. Pa. P.U.C.,136 Pa. Super. 1, 7 A.2d 86 (1939), the Pennsylvania Railroad appealed from an order of the Public Utility Commission requiring repairs to be made to a certain highway bridge at the equal expense of the Railroad and the Department of Highways, arguing that the Cumberland Valley Railroad Company, then merged with the Pennsylvania Railroad Company, and certain interested municipalities had entered an agreement whereby the municipalities agreed to repair and maintain the bridge, portions of which maintenance the Public Utility Commission had assessed against the Pennsylvania Railroad.

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In affirming the order of the Commission, the Superior Court referred to an earlier case relating to agreements between a railroad company and municipality, stating:

> The commission, to promote the safety of the public, is authorized to divide the expense of the elimination of grade crossings among certain designated persons and the Commonwealth. In so doing it is acting on behalf of the public generally and mere private contracts are not permitted to stand in the way. This does not mean...that either the utilities or the municipalities may be deprived of all contract rights as between themselves, but only that they are not relieved by their contracts from performing those public duties imposed on them by virtue of an exercise of the police power. 136 Pa. Super, at 4-5.

The Superior Court then went on to hold that the utilities and municipalities could not escape responsibility for the performance of a public duty, namely to maintain safely a highway bridge over tracks of a railroad, by a private contract between them and that that contract was still effective between them and not abrogated by the Public Utility Commission. The contracts are not abrogated, but after the Public Utility Commission has fixed the liabilities of those concerned to the public, such persons are then referred to a court of law to have their contract rights adjudicated. Id, at 6. See also, P.U.C. v. SEPTA, 21 Com. Ct. 106 (1975).

As will be demonstrated below, the Commission is authorized by law to consider a panoply of factors in determining responsibility in matters of this sort, and issues pertaining to ownership or contractual responsibility, if disputed between the parties, belong in a different forum, one better suited to resolving controversies of that nature.

D. In apportioning costs, the Commission is not limited to any fixed rule but should take into consideration all factors.

The Commission has broad powers to allocate and assess costs in matters pertaining to rail-highway crossings. Section 409 of the Public Utility Law. See also, Pa. RR Co. v. P.U.C., supra. In apportioning costs, the Commission is not limited to any fixed rule, but all factors entering into a division of the costs should be taken into consideration and carefully examined. Pitts., Bess. & Lake Erie RR Co. v. P.S.C, 71 Pa. Super. 15, (1919); Tarentum Borough v. Pa. P.U.C., 171 Pa Super. 156, 90 A.2d 853 (1952). Such orders of the Commission as to costs, made in the exercise of its administrative discretion, will not be reversed if reasonable and in conformity with law. Tarentum Borough, supra.

> The commission could also consider, in the light of present day conditions, the general purpose and circumstances underlying the grant of federal funds for such projects, including the financial position of the railroads and the relative benefit to the railroads as compared to that accruing to users of motor highways.... Construction of new highways to meet modern traffic conditions is a proper objective, but the railroads are not necessarily real beneficiaries in the construction of such competitive facilities. Department of Highways v. Pa. P.U.C., 179 Pa. Super. 376, 385, 116 A.2d 855 (1955)

Benefit to the particular party is certainly a factor to be considered. Tarentum Borough, supra. Dept. of Highways v. Pa. P.U.C., 190 Pa. Super 1, 151 A.2d 850 (1959). It should be manifest that a separated structure at this location benefits many parties, not the least of which is the City of Philadelphia and SEPTA, the former of which has many hundreds of pedestrians and vehicles daily crossing the bridge, many perhaps from

Overbrook High School nearby, the latter of which utilizes the bridge for regular transit traffic.

E. The City has not demonstrated that any alleged obligation of the Pennsylvania Railroad passed to Amtrak.

In the preceding section of this brief, we showed that the City has not discharged its burden of proving that the 1926 Ordinance (City Exhibit 4) became effective. In this section, we will show that whatever the Pennsylvania's obligations may have been, they did not pass to Amtrak. In particular, nothing the City may rely on from the Regional Rail Reorganization Act of 1973 ("3R Act"), the Final System Plan ("FSP") of the U.S. Railway Association or the deeds that implemented the FSP served to saddle Amtrak with the burdens of the 1926 Ordinance.

The 3R Act was the solution of the Congress for the transportation crisis for the Northeast, and the Nation, caused by the threatened college of rail service by Penn Central and six other bankrupt Northeast railroads.[1/] In re Penn Central Transportation Co., 570 F.2d 1189, 1191 & n.1 (3d Cir. 1978) quoting S.Rep. No. 93-601, 93d Cong., 1st Sess., reprinted in

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1/ The other bankrupts were the Erie Lackawanna, The Lehigh Valley, the Reading, the Lehigh and Hudson River, the Ann Arbor and the Central of New Jersey.

(1973) U.S. Cong. & Ad. News 3242, 3248-49; see 45 U.S.C. Section 701. By that statute, Congress created the U.S. Railway Association to restructure the Northeast rail system from the lines of bankrupts, to administer the transfer of selected rail lines from the bankrupts to Conrail, Amtrak and others, and to supply federal funds to rehabilitate and support operations on the redesigned system. Pub. L.93-236, Tit. II, Section 202, 87 Stat. 990 (1974), as amended, 45 U.S.C. Section 712.

As part of its planning mission, the Association was required to publish a Final System Plan as a blueprint for the new system. 45 U.S.C. Section 716. Among other things, the FSP was to provide for improved high-speed passenger service in the Northeast Corridor, (45 U.S.C. Section 716(a)(3)) and was to designate which lines were to be transferred through Conrail to Amtrak for operation of that service. 45 U.S.C. Sections 716(c)(1)(C) and 791 (d).

Congress understood that literally billions of dollars in federal financial assistance would be required to support the that such assistance be limited to "the lowest possible cost to the general taxpayer." 45 U.S.C. Section 701(b)(6). To that end, it required that: restructured rail system.[2/] It expressly provided, however,

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2/ Over time, Congress has authorized more than $3.6 billion for Association purchases of Conrail securities. 45 U.S.C. Sections 726 (a), (g), It has separately authorized more than $2.3 billion for the Northeast Corridor Improvement Project 45 U.S.C. Section 854(a)(1).

> All rail properties conveyed to Conrail . . . or . . . responsible persons under this section shall be conveyed free and clear of any liens or encumbrances. . . . 45 U.S.C. Section 743(b)(2) (emphasis added).

Congress meant to permit Conrail -- and, certainly, the other transferees of rail properties under the 3R Act -- to begin their new operations with "a relatively clean state" (In re Penn Central Transportation Co., 570 F.2d 1189, 1191 (3d Cir. 1978);[3/] thus, they were to be free from "burdensome liabilities insofar as possible ...." Stratford Land & Improvement Co. v. Blanchette, 448 F.Supp. 279, 285 (Sp. Ct. R.R.R.A. 1978). Freedom from such liabilities, of course, maximized the chances that the new rail system would achieve financial health and thereby served the basic Congressional purpose of sustaining rail operations in the Northeast at "the lowest possible cost to the general taxpayer."

Any obligations which the City argues were imposed on the Pennsylvania Railroad by the 1926 Ordinance were, we submit,

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3/ As the court noted in Penn Central, the 3R Act contained a few express exceptions to this general rule. 570 F.2d at 1191; see 45 U.S.C. Section 743(b)(2)-(6). None of these is relevant here.

exactly the sort of "liens and encumbrances" that Congress meant to cut off when the properties of the bankrupts were transferred to Conrail and Amtrak and the new rail system began operation in 1976. Those obligations are burdensome liabilities and were imposed on the Pennsylvania in an era -- long since passed -- when the Railroad was still prosperous. To hold Amtrak liable for such obligations in 1976 or thereafter would make it impossible for it to conduct its new Northeast Corridor operations with a "clean slate" and could only increase Amtrak's need for continuing federal financial aid, all contrary to the stated purpose of Congress. Therefore, the Commission should rule as a matter of law that Amtrak acquired its Northeast Corridor properties free and clear of any encumbrances possibly represented by the obligations of the 1926 Ordinance.4/

Moreover, the City has not carried its burden of proving as a matter of fact that in implementing the 3R Act, the Association sought to saddle Conrail or Amtrak with the obligations of the ordinance. To make its factual case, the City offered page 243 of the FSP (City Exhibit 10). There, the Association designated for transfer from the bankrupts to Conrail, Amtrak or others

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4/ We are not saying, of course, that the 3R Act deprived this Commission of power to allocate repair costs among all interested parties under the statutes the Commission enforces and in light of present day realities. Our position is only that under the 3R Act, Amtrak did not inherit any obligations based on the 1926 Ordinance since the Ordinance is a "lien and encumbrance" on Amtrak's Northeast Corridor properties that Congress intended to cut off.

> All items associated with the rail lines which could be recorded in ICC accounts numbers 1 through 45, and 90, and not otherwise designated for transfer or offered under this Chapter or specifically excluded. (footnote omitted).

The City also offered ICC Account 39 (City Exhibit 9). This is part of the Uniform System of Accounts, which is the accounting system prescribed for railroads by the Interstate Commerce Commission. See 49 C.F.R. pt. 1201 Section (i). Account 39 is entitled "Public Improvements; Construction," and it is to include the construction cost of public improvements (including overhead highway bridges) either assessed against a carrier by governmental authority or incurred under governmental requirements. See City Exhibit 9. Significantly, however, "the cost to the carrier of maintaining public improvements" is not to be included in Account 39; instead, it is to "be included in Operating Expenses." See City Exhibit 9, Note B (emphasis added).

On its face, Account 39 simply prescribes the accounting treatment for construction costs of public improvements; it does not represent an obligation to incur such costs. In this case, those costs were incurred when the 59th Street Bridge was built; therefore, all that the Association

designated for transfer was whatever bookeeping entry might have reflected those one-time costs.[5/] Any notion that, by the FSP passage on which the City relies, the Association meant to transfer some continuing liability under the 1926 Ordinance is contradicted both by the general intent of the 3R Act and by the specific terms of Account 39, which do not include maintenance costs.

The relevance of the rest of the City's evidence is unclear. City Exhibit 5 is a list of bridges attached to what purports to be a letter dated August 4, 1969 to the City's Chief Bridge Engineer from an engineer at Penn Central. The letter describes the list as showing "the bridges involving the Penn Central Company, in the City of Philadelphia," and the list contains the notation "59th Street" under a column headed "Name of Crossing."

Perhaps the City offered its Exhibit 5 to show an essential element of its case, namely that Penn Central succeeded to the obligations of the Pennsylvania in connection with the 59th Street Bridge. If so, the Exhibit does not make that showing. First, its evidentiary quality is extraordinarily

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5/ The 1926 Ordinance required that the construction of the 59th Street Bridge "shall be completed ... within two years from the approval of this ordinance." City Exhibit 4, at 436. This fact confirms the common sense point that construction costs were a one-time expense, not a continuing obligation.

suspect.[6/] Second, a statement that a bridge "involved" Penn Central is simply too vague to constitute an admission by Penn Central of liability to maintain that bridge. Third nothing suggests that the engineer who signed the August 4, 1969 letter had authority to bind the railroad to any admission at all. He may have been furnishing information as an accommodation wholly outside his responsibility or the normal range of his expertise.

Moreover, City Exhibit 5 is at best a list of bridges that "involved" Penn Central in August 1969, and there are at least two reasons why it may not be assumed that the list was accurate on April 1, 1976, when the transfers to Conrail and Amtrak took place. First, the list was apparently revised at least once after its original preparation,[7/] suggesting that it was subject to change. Second, as is well known, Penn Central entered reorganization in mid-1970. Reorganization proceedings invariably involve wholesale scrambling of legal relationships, and the City has offered nothing to show that whatever Penn Central's "involvement" with the 59th Street Bridge may have been in 1969, that involvement remained in effect on April 1, 1976.

6/ Although technical rules of evidence may not apply in Commission proceedings, one cannot ignore the dangers of relying on documents 14 years old that do not authenticate themselves and are offered without any evidence to support their authenticity or to explain their meaning.

7/ Two of the entries on page 2 of the list are crossed through and accompanied by the handwritten notation "deleted 1/30/70."

Finally, the City introduced the deeds that transferred Penn Central's rail properties in Philadelphia from Penn Central to Conrail (City Exhibits 6 and 7) and then from Conrail to Amtrak (City Exhibit 8). These deeds add nothing to the City's case. They contain no reference at all to the 59th Street Bridge. Instead, they describe the interests being conveyed by reference to the same ICC Accounts specified in the FSP passage the City offered as its Exhibits 10[8/] We have demonstrated above that the interest described by those ICC accounts do not embrace an on-going maintenance obligation. Moreover, like the 3R Act itself, the properties were expressly conveyed "free and clear of any liens and encumbrances...."[9/] We also demonstrated above that the intent of such language was to cut off obligations like those of the 1926 Ordinance. And, of course,

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8/ City Exhibit 6 at 1; City Exhibit 7 at 1, City Exhibit 8 at 2.

9/ City Exhibit 6 at 1; City Exhibit 7 at 1; City Exhibit 8 at 5. Conrail's deed to Amtrak was subject to an obligation placed on Amtrak to maintain the real property conveyed by the deed so as to permit Conrail freely to exercise easement rights to provide rail service, as described in Exhibit C to the deed. City Exhibit 8 at 6 and Exhibit C. The City cannot rely on this provision of the Conrail deed, however,if only because there is no evidence (1) that the 59th Street Bridge was real property conveyed by the deed; (2) that the provision was intended to benefit anyone other than Conrail; or (3) that the condition of the 59th Street Bridge limits Conrail's easement rights (or anyone's rail operations).If this aspect of the Conrail deed is relevant at all, it is because it shows that parties to the transfers under the 3R Act did not believe that the general conveyance language of the deeds -- which tracks that of the FSP (City Exhibit 10) -- was sufficient to transfer maintenance obligations and thought instead that additional, specific language was necessary.

the deeds do not purport to convey any interest (or obligation) that Penn Central itself did not posses on March 30, 1976, when the deeds were executed, or April 1, 1976, when the transfers took place.

In sum, the City has not shown that Amtrak inherited whatever maintenance obligations the 1926 Ordinances might have imposed on the Pennsylvania Railroad. Indeed, the very ICC account on which the City relies operated to exclude maintenance obligations from the transfers that took place in 1976. Assuming that the obligations of the 1926 Ordinance were not cut off by the 3R Act as a matter of law, the City has not shown that they passed to Amtrak as a matter of fact.

F. The City has not met its burden of proving any element of its case through evidence adduced by a witness competent to testify on its behalf as to those matters.

It goes almost without saying that the burden was on the City to lay a foundation for its testimony by showing that its witness had either adequate, first-hand experience or knowledge to testify with regard to those elements of the City's case established through the testimony of that witness. The entire case of the City including all of the City's exhibits, was put on through the testimony of Mr. Fike, an employee of the City in its Engineering Department. At the close of Mr. Fike's testimony, counsel for Amtrak objected to that testimony in toto on the ground that no foundation had been laid for that testimony and that the witness was not competent to testify as to interpretation of the documents introduced through his testimony.

The fact that that objection was made at the close of Mr. Fike's testimony only waived the preliminary proof as to those matters, which should have been put on the record before Mr. Fike began to testify on matters of substance. However, as it now appears that the witness lacked any opportunity or experience to have any knowledge concerning the matters contained in his testimony, it should be clear that his entire testimony should be stricken. McCormick, Evidence, 21 (2d Ed., 1972) (All further page references in this Section of the Brief will be to this same basic text). If Mr. Fike was offered as a fact witness, it should be beyond cavil that, as an engineer, he has no first-hand experience with regard to the documents in question, or basis for the conclusions contained in his testimony based on those documents. In any event, even if that conclusion is in fact unwarranted and Mr. Fike does posses that experience, the City laid no foundation to establish it.

If, on the other hand, Mr. Fike was offered as an expert witness, a most unlikely eventuality, the City offered no justification for conclusions or inferences Mr. Fike drew from the City's exhibits.

> To warrant the use of expert testimony, then, two elements are required. First, the subject of the inference must be so distinctively related to some science , profession, business or occupation as to be beyond the ken of the average layman.... Second, the witness must have sufficient skill, knowledge, or experience in that field or calling as to make it appear that his opinion or inference will probably aid the trier in this search for truth. Pages 29-30.

If Mr. Fike was an expert qualified to testify about and draw inferences from the City's exhibits, there was no foundation laid to establish that expertise.

If, on the other hand, Mr. Fike's testimony was in essence based on the exception to the hearsay rule pertaining to regularly kept records, none of the requirements pertaining thereto were established. For example:

1. There was no evidence that the entries were made in the routine of a "business." Page 722.

2. There was no evidence that the entries had been made at or near the time of the transaction recorded. Page 724.

3. There was no proof that the entries had been made upon the personal knowledge of the recorder or of someone reporting to him. Page 725.

In short, then, the attempt by the City to establish its case through the testimony of Mr. Fike and the documents introduced through his testimony does not meet even the most fundamental rules guaranteeing that evidence be admitted through witnesses capable of testifying coherently and of their own personal knowledge as to those documents and events and the meaning thereof and, as such, providing other parties with a meaningful right to cross-examine. It is quite improper in retrospect for the City to attempt to prove its entire case through the testimony of a working engineer, when the case involves issues of complex statutory interpretations, real estate conveyances, the implications of a monumental series of bankruptcy proceedings, and various arcane aspects of the federal government's role in the unprecedented railroad organizations that occurred in the 1970's, all to the suggested conclusion that Amtrak should bear the entire financial responsibility to maintain and repair the 59th Street Bridge. Such an attempt should and must fail.

III. CONCLUSIONS

In conclusion, the City's case fails on one or all of several bases:

A. The City has failed to demonstrate that any agreement ever existed between it and the Pennsylvania Railroad requiring the Pennsylvania to maintain the subject bridge.

B. If such an agreement ever did exist, the City has failed to establish that it was filed with and approved by the Public Utility Commission

C. Even if the existence of such an agreement had been established, the disputes of the parties with regard to the meaning of that agreement are such as should be resolved in a court of law. The Public Utility Commission is not the appropriate forum to deal with complex, technical questions relating to change of title of real estate, federal bankruptcy proceedings and actions of the federal government in reorganizing the railroads in the 1970's

D. The Commission should take into consideration all factors in apportioning maintenance costs with regard to the 59th Street Bridge, benefit to any particular party being a major factor to be considered.

E. The City has failed to establish that any purported obligation of the Pennsylvania Railroad was ever passed to Amtrak. References of the City to ICC accounts and the U.S. Railway Association Final System Plan must be regarded as completely unpersuasive on that account.

F. The City has failed to prove any element of its case through competent testimony. The testimony of Mr. Fike must be stricken in its entirety as being without proper foundation. Furthermore, Mr. Fike was undeniably not competent to testify other than as to basic engineering matters, and the City's entire argument relating to the 1926 Ordinance and the tortured reasoning pertaining to events subsequent to that time must be rejected.

WHEREFORE Amtrak respectfully requests that the City's testimony be stricken, its argument rejected and that the Commission proceed to apportion costs consistent with its normal practice.

Respectfully submitted,

Harold K. Cohen, Counsel for
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524 Suburban Station Building
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CITY OF PHILADELPHIA

LAW DEPARTMENT
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RECEIVED
SECRETARY'S OFFICE
PUBLIC UTILITY
COMMISSION
OCT 13 8 32 AM '83

October 12, 1983

Pa. Public Utility Commission
North Office Building
Harrisburg, Pa. 17120
Attn: Secretary

Re: Investigation upon the Commission's own motion into 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 grade of the tracks of National Railroad Passenger Corporation in the City of Philadelphia, to determine the condition, disposition and responsibility for maintenance of the existing crossing structure.
Docket No. I-830373

Dear Sir:

I enclose herewith for filing an original and nine (9) copies of the Reply Brief of the City of Philadelphia in the above matter; and in addition an original and nine (9) copies of a Motion to Reopen the Record for Admission of Further Evidence.

Please note that a true and correct copy of the foregoing documents are being served upon the other parties of record.

Very truly yours,

HERBERT SMOLEN
Deputy City Solicitor

HS/mrb
c c: Honorable J. Klovekorn, ALJ
All parties

P.S. Kindly acknowledge.

DOCUMENT
FOLDER

Re: Investigation upon the Commission's own motion into 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 grade of the tracks of National Railroad Passenger Corporation in the City of Philadelphia, to determine the condition, disposition and responsibility for maintenance of the existing crossing structure.
Docket No. I - 830373

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the Reply Brief of the City of Philadelphia in the above matter upon those parties listed in the Service List below, by hand delivery or by first class mail, postage prepaid.

HERBERT SMOLEN
DEPUTY CITY SOLICITOR
CITY OF PHILADELPHIA

SERVICE DATE: October 13, 1983

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ORIGINAL

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Investigation upon the Commission's own motion into 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 grade of the tracks of National Railroad Passenger Corporation in the City of Philadelphia, to determine the condition, disposition and responsibility for maintenance of the existing crossing structure.	:	Docket No. I-8303073

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PUBLIC UTILITY
COMMISSION
OCT 13 8 32 AM '83

REPLY BRIEF OF THE CITY OF PHILADELPHIA

DOCKETED
JUL 28 1988

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I. INTRODUCTION

The City of Philadelphia hereby files its Reply Brief to the main Briefs filed by AMTRAK and the Commission Staff.

II. ARGUMENT - REPLY TO AMTRAK BRIEF

A. AMTRAK's contention that there is no proof of agreement and its terms, between the Pennsylvania Railroad and the City, is completely without merit, and indeed, is irrelevant.

This contention completely ignores and overlooks the fact, admitted by AMTRAK itself, that the 59th Street Bridge was originally constructed by the Pennsylvania Railroad (NRPC Statement No. 1, Direct Testimony of Richard H. Cooper, p. 4, Answer to Question 14); that AMTRAK presently has the plans for the bridge, which it received from the Trustees of the Penn Central via CONRAIL when AMTRAK took over the line of railroad below the bridge (NRPC Statement No. 1, Direct Testimony of Richard H. Cooper, p. 4, Answer to Question 14).

Moreover, the testimony is uncontroverted that the bridge was constructed by the Pennsylvania Railroad at its own cost so that trains could travel unimpeded through the section of the City where the bridge is located, which they still do. (N.T. 17).

It is further important to note that Section 5 of 1905 Ordinance provides, inter alia, as follows:

> ...The same Pennsylvania Railroad Company shall bear the entire cost of construction and forever maintaining all bridges, whether overhead or under grade and all tunnels upon the line of streets, roads or lanes now legally or physically open...

Section 6 of the 1905 Ordinance provides, inter alia,

> Before this ordinance shall become effective...the said Pennsylvania Railroad Company shall enter into an agreement, satisfactory to the City Solicitor,...to faithfully comply with all the conditions, requirements and provisions of this ordinance.

AMTRAK, however, in an attempt to cloud the issue of its responsibility for maintenance of the bridge, incorrectly argues that there is no proof that any such agreement exists despite the uncontrovertible physical fact the bridge was actually constructed by the Pennsylvania Railroad, still stands, and was maintained in turn by Pennsylvania Railroad, Penn Central, and AMTRAK itself.

It is significant that AMTRAK, in its own Brief (p. 3) admits that in 1915, the 1905 Ordinance was amended, and required an amendatory and supplemental agreement prior to its becoming effective.

Query, amendatory and supplemental to what? Obviously amendatory and supplemental to an Agreement which was entered into by the parties pursuant to the 1905 Ordinance.

But that is not all; Section 6 of the 1915 amendatory Ordinance, in referring to the original 1905 Ordinance, specifically states, inter alia,

> ...the said Pennsylvania Railroad Company, which has duly entered into an agreement to comply with the conditions contained in Section six (6) of the ordinance to which this is an amendment.

Therefore, there is proof of the existence of the agreement in the form authorized by the 1905 Ordinance, and therefore, the 1905 Ordinance is effective, and the maintenance responsibility, inter alia, of the Pennsylvania Railroad is established in 1905. The terms and conditions of such responsibility are spelled out in the 1905 Ordinance, and the Pennsylvania Railroad entered into an agreement complying with the conditions of Section 6 of the 1905 Ordinance as is recited in the 1915 Ordinance, above quoted.

The 1915 and 1926 Amendatory Ordinances do not alter, change or amend the maintenance obligation of the Pennsylvania Railroad established in the 1905 Ordinance.

Thus, the 1915 Ordinance provides, inter alia, in Section 5,

> ...The said Pennsylvania Railroad Company shall bear the entire cost of constructing and forever maintaining all bridges, whether overhead or undergrade, and all tunnels upon the lines of streets, roads or lanes now legally or physically open...

So too, the 1926 Ordinance provides, inter alia, in Section 5,

> ...The said Pennsylvania Railroad Company shall bear the entire cost of constructing and forever maintaining all bridges, whether overhead or undergrade, and all tunnels upon the lines of streets, roads or lanes now legally or physically open...

An can be seen from the foregoing, no amendment was ever made to the Pennsylvania Railroad's maintenance obligation. This maintenance obligation was established in 1905 and remained unchanged in 1915 and 1926; and indeed, remains unchanged today, in that AMTRAK, as successor in title, from CONRAIL, Penn Central, and the Pennsylvania Railroad, has the current maintenance responsibility for the bridge.

Attached to this Reply Brief, are true and correct copies of the aforesaid 1915 and 1926 Ordinances. They are marked Appendix A and Appendix B, respectively. The hereinafter cited Statute provides that judicial notice of such Ordinances shall be taken.

Thus, the Act of July 9, 1976, P.L. 586 No. 142, §2 effective June 27, 1978, 42 Pa. C.S.A. §6107(a) provides, inter alia,

> (a) General Rule - The ordinances of municipal corporations of this Commonwealth shall be judicially noticed.

Moreover, the Courts have taken judicial notice of ordinances of cities, boroughs, incorporated towns, and first class townships within the Commonwealth of Pennsylvania. 14 Pennsylvania Law Encyclopedia, Evidence §9, p. 293.

In addition, in the case of Swarthmore Borough v. Public Service Commission, 277 Pa. 472 (1923), the Supreme Court of Pennsylvania upheld a contract between a municipality and a railway company utility, which contract

was evidenced by an ordinance. Moreover, it is submitted that all of the foregoing facts, i.e., the 1905, 1915, 1926 Ordinances; the construction of the bridge and rail line by the railroad; the continued maintenance of the bridge by the railroad, at its own costs, etc., give rise to a strong presumption of the existence of the agreement(s) referred to in the 1905 Ordinance and amendments thereto.

Applicable case law supports the foregoing conclusion. Thus, where a ground rent was paid for more than 21 years in accordance with a recital in the title deeds, the Court held that the existence of an ancient ground deed could be presumed. Newman v. Rutter, 8 Watts 51 (1839); Heckerman v. Hummel, 19 Pa. 64 (1852); See also Real Estate Title Ins. Trust Company v. Hodges, 15 Pa. Super 299 (1900). Moreover, once a status or relationship has been shown to exist, it is ordinarily presumed to continue until the contrary is shown. 14 P.L.E. Evidence §28, p. 315.

In the instant matter, maintenance by the railroad has been performed for over 50 years in accordance with the recital in the 1905, 1915 and 1926 Ordinances. This gives rise to the presumption of the existence of the agreement(s) referred to therein. Having established such a presumption, the burden to show the contrary passes to the party opponent (AMTRAK) 14 P.L.E. Evidence §22, pp. 306-307. In no way whatsoever did AMTRAK show the contrary. In fact, AMTRAK did not cross-examine the witness, and offered no direct or rebuttal testimony on the issue.

The foregoing presumptions are further supported by a printed conformed copy of the 1915 Agreement which is attached hereto and marked Appendix C, together with a copy of the City's Motion to reopen the record for the purpose of admitting it into evidence, which is being filed contemporaneously herewith. Further, this document also confirms the existence of a 1905 Agreement and, confirms that the Ordinance terms and conditions are

therein embodied. Inasmuch as the instant matter is a Commission investigation, it is believed that all pertinant information should be presented. Notwithstanding this Ancient document, the record in this case fully supports the City's position as presented in this case.

For all of the foregoing reasons, AMTRAK's contention that there was no agreement is erroneous and has no merit.

However, putting aside the issue of Ordinance and agreements, the plain and simple fact is that the bridge was built and owned by the Pennsylvania Railroad. It being railroad property, the railroad and its successors in title had the duty of maintenance, recognized that duty, and actually performed it. Penn Central's recognition and admission of maintenance responsibility, as demonstrated by City Exhibit 5, is more fully discussed hereinafter. By succession of title, as set forth in the City's main Brief, that duty now rests with AMTRAK. This point of view was upheld in CONRAIL v Pennsylvania Public Utility Commission et. al., 55 Pa. Commonwealth Ct. 576 (1980), which is cited at pages 12 & 13 of the City's main Brief. It bears repetition that the Court, in CONRAIL supra, stated,

> Congress passed the RRRA in order to continue essential rail service in the midwest and northwest regions of the country. Many of the railroads in these areas, were insolvent. It was Congress' clear intention that this rail service be continued and impored. The RRRA transferred the assets included in Interstate Commerce Commission (ICC) accounts Nos. 1-45 to CONRAIL. Included in ICC Account No. 39 are above grade bridges. Just because property is transferred free of any liens and encumbrances does not mean that the new owner is not responsible for the continued maintenance of that property. If CONRAIL's assertion were carried to its logical conclusion, CONRAIL would not have to maintain any of its property. This clearly would not comport with the specific intent of Congress.
>
> The PUC's assessment of bridge repair costs between the old and new owners of a railroad was reviewed by this Court in Pennsylvania Public Utility Commission v. Southeastern Pennsylvania Transportation Authority, 21 Pa. Commonwealth Ct.

> 106, 343 A.2d 371 (1975). In affirming the assessment of the new owner, we stated that it is the presence and ownership of the track involved, not any benefit conferred which places liability on the railroad. (Citations omitted.) Id. at 111, 343, A.2d at 374. SEPTA clearly applies to the case at bar. While CONRAIL may contest ownership of maintenance responsibilities for the bridge, it can hardly contest ownership of the railroad tracks. (Emphasis supplied.)

Finally, the Court stated:

> The record reveals that the bridge was built at the request of the railroad so that its trains could travel unimpeded through this section of the City. By operation of the RRRA, CONRAIL has become the owner and user of the tracks.

Thus, in the instant matter, AMTRAK is the successor in title and interest of the Pennsylvania Railroad, the Penn Central, and CONRAIL, and thus AMTRAK is responsibile for the continued maintenance of the bridge, which was the obligation of its predecessors in title. Moreover, while AMTRAK may continue to contest ownership of the bridge, it can hardly contest ownership of the railroad tracks below. It admitted ownership thereof. Accordingly, it is the presence and ownership of the tracks involved which alone places liability on AMTRAK. Moreover, the above grade crossing is a benefit to AMTRAK. (See pages 13 and 14 of City's main Brief for record references).

Further, AMTRAK's position in the instant matter is clearly inconsistent. On the one hand, AMTRAK states that it is the owner of the rail line below the bridge, having acquired it by Deed from CONRAIL, which acquired it by Deed from Penn Central, which acquired it as a result of the merger of the New York Central and the Pennsylvania Railroad, which constructed, owned the rail line, and the bridge, by authority of the 1905 Ordinance, et al; while on the other hand, AMTRAK denies the validity of the 1905 Ordinance, et al, insofar as it relates to maintenance responsibility of the bridge. Certainly, AMTRAK does not deny that it has the maintenance responsibility for the tracks it owns

under the bridge. AMTRAK is, in essence, claiming title to the tracks by succession of title emanating under the 1905 Ordinance, while at the same time denying the validity thereof.

B. To support its position that it does not have maintenance responsibility, AMTRAK next contends that even if an agreement exists, there is no proof that it was filed with the then Public Service Commission. This contention does not relieve AMTRAK from its maintenance responsibility. The obligation of maintenance by the railroad arose in 1905, as aforesaid, which preceeded the 1913 law. Thus, in Swarthmore Borough v. Public Service Commission et al, 277 Pa. 472 (1923), the Supreme Court of Pennsylvania held that the Public Service Commission had no jurisdiction to vary or modify a contract executed before the effective date of the Public Service Law, between a borough and a street railway company. In that case, the railway company, in consideration of obtaining a franchise in the borough, agreed to pave and keep in repair from curb to curb the roadway of the street occupied by the railway tracks. Moreover, in Middletown Water Co. v. Borough, 26 Dauph 347 (1923), the Court held that the 1913 law was not intended to be retroactive with respect to filing requirements.

The case cited by AMTRAK to support its position, i.e., Carnegie Natural Gas Co. v. Allegheny County, 406 Pa. 134 (1963) is distinquishable on its facts from the instant matter. There, the agreement required the utility to file it with the Commission, but the utility did not. The County resisted liability under the agreement claiming that the utility did not seek approval as provided for in the agreement and as required under the then existing law. The Court, did not decide whether the Agreement would have been

under the bridge. AMTRAK is, in essence, claiming title to the tracks by succession of title emanating under the 1905 Ordinance, while at the same time denying the validity thereof.

B. To support its position that it does not have maintenance responsibility, AMTRAK next contends that even if an agreement exists, there is no proof that it was filed with the then Public Service Commission. This contention does not relieve AMTRAK from its maintenance responsibility. The obligation of maintenance by the railroad arose in 1905, as aforesaid, which preceeded the 1913 law. Thus, in Swarthmore Borough v. Public Service Commission et al, 277 Pa. 472 (1923), the Supreme Court of Pennsylvania held that the Public Service Commission had no jurisdiction to vary or modify a contract executed before the effective date of the Public Service Law, between a borough and a street railway company. In that case, the railway company, in consideration of obtaining a franchise in the borough, agreed to pave and keep in repair from curb to curb the roadway of the street occupied by the railway tracks. Moreover, in Middletown Water Co. v. Borough, 26 Dauph 347 (1923), the Court held that the 1913 law was not intended to be retroactive with respect to filing requirements.

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As stated earlier, however, in the instant matter, no filing was

required, since the obligation arose in 1905, prior to the 1913 Act. In addition, here, neither the utility nor the municipality is seeking a monetary recovery under the contract from the other. What is being sought, is the continued obligation by a utility to maintain its own property.

It must be further noted with regard to AMTRAK's contention concerning filing in connection with 1915 and 1926 Ordinances that there is a presumption that official acts or duties have been properly performed, and that a public officer has performed that which is essential to the validity of his official acts. 14 P.L.E. Evidence, §35, p. 330. This presumption, coupled with the uncontroverted facts that the railroad owners of the rail line and bridge always maintained the bridge, was not rebutted in any way by AMTRAK. In fact, AMTRAK offered no rebuttal evidence whatsoever on these points. Therefore, by reason of the legally ancient nature of the matter, the foregoing presumptions, and the railroads' past maintenance of the bridge, it must be presumed that all lawful and necessary acts were taken and done in proper and due course.

C. On pages 6 and 7 of its Main Brief, AMTRAK incorrectly argues that, assuming an agreement existed and had been filed, it would not be appropriate for the Commission to enforce such an agreement where the parties are in dispute with respect to the contractual language setting forth cost responsibilities. It must be noted, however, that in the instant matter, AMTRAK is not disputing the interpretation of the language imposing cost and maintenance responsibilities.

Instead, AMTRAK is arguing that the Commission has the authority to order the performance of maintenance by parties other than those originally designated by an agreement, where the public safety is involved. However, AMTRAK fails to distinquish between performance of the maintenance and payment of the costs for performance of the maintenance.

With respect to payment of the costs of maintenance, i.e. allocation

of costs, the Commission's power to abrogate contracts is limited to situations in which such action is compelled by the public health, welfare and safety. City of Philadelphia v. Pennsylvania Public Utility Commission 449 Pa. 402 (1972). There, the Court stated,

> ...the Commission's power to abrogate the subject contracts is limited to situations in which such action is compelled by the public health, welfare and safety. See, Pennsylvania Railroad Company v. Pennsylvania Public Utility Commission, 136 Pa. Superior Ct. 1, 7 A.2d 86 (1939); Director General of Railroads v. West Penn Railways Co., 281 Pa. 309, 126 Atl 767 (1926); Pittsburgh and Lake Erie Railroad Company v. Public Service Commission, 75 Pa. Superior Ct. 282 (1920). It cannot be realistically argued that cost reallocation is necessary to enhance public health, safety or welfare. (Emphasis supplied).

Accordingly, since allocation of costs has been found and declared not to be necessary to enhance public health, safety or welfare, AMTRAK's obligation to pay for maintenance costs cannot and should not be altered.

AMTRAK also cites Public Utility Commission v. SEPTA 21 Comm. Ct. 106 (1975) to support its position. That case however, is distinguishable from the instant matter. In SEPTA, supra, the Southeastern Pennsylvania Transportation Authority entered into an agreement with the Philadelphia Suburban Transportation Company (PSTC) whereby SEPTA contracted to purchase the assets of PSTC including a certain bridge under which ran the rail lines of PSTC. Before the transaction was closed, the Township of Haverford filed a complaint with the Commission alleging that the bridge was hazardous and unsafe. After hearings, the Commission ordered the bridge to be reconstructed, and assessed SEPTA with thirty percent of the cost of that reconstruction. PSTC was not assessed costs. SEPTA argued before the PUC that it could not be held liable for any reconstruction costs under the terms of its agreement of sale with PSTC. But, the terms of that agreement were in dispute between those parties and the PUC refused to interpret the contract.

Thus, in SEPTA supra, the terms of the contract were in dispute. In the instant matter, no contractual terms are disputed.

D. AMTAK next argues that in apportioning costs, the Commission is not limited to any fixed rule. However, as aforesaid, the Supreme Court of Pennsylvania, in Philadelphia v. Pennsylvania Public Utility Commission, supra, in dealing with allocation and apportionment of costs, held that the Commission's power to abrogate contracts is limited to situations involving public health, welfare and safety, and that cost reallocation is not necessary to enhance public health, safety or welfare. See full quotation above. Accordingly, while the Commission does have broad powers, its powers are limited under the facts in instant matter.

Moreover, AMTRAK conspicuously avoids mention of the benefits to it, by the existence of the bridge. These benefits are set forth in the City's main Brief at pages 13 and 14.

E. AMTRAK next incorrectly argues that the obligations of the Pennsylvania Railroad with respect to the bridge did not pass to AMTRAK. The cornerstone of its argument is that the Deeds convey the properties "free and clear of any liens or encumbrances". It is submitted that the duty of maintenance of one's own property is not a lien or encumbrance. It bears repeating again that the Court, in CONRAIL vs. Public Utility Commission et. al. 55 Pa. Comm. Ct. 576 (1980), stated specifically that

> Just because property is transferred free of any liens and encumbrances does not mean that the new owner is not responsible for the continued maintenance of that property. If CONRAIL's assertion were carried to its logical conclusion, CONRAIL would not have to maintain any of its property. This clearly would not comport with the specific intent of Congress.

The full text of the foregoing quotation appears at pages 4 and 5 of this Reply Brief and at pages 12 and 13 of the City's Main Brief. The history of the transfers of ownership of the rail line and the bridge, and the Deeds pertaining thereto, is also fully set at pages 4 through 13 of the City's Main Brief, and is herein incorporated by reference. There is no doubt that the Deeds transfer the line of rail and the bridge to the present owner, AMTRAK. See CONRAIL v. PUC, supra.

In addition, ICC Account No. 39 (City Exhibit 9) clearly demonstrates that this Account is the property account within which the highway bridge is placed. Moreover, maintenance by the railroad carrier (AMTRAK) of the property covered by Account No. 39 is and was taken into consideration by USRA in the Final System Plan, the ICC, and by the carrier parties themselves, because Account No. 39 specifically contemplates maintenance expenditures on items contained in the Account, directing that such maintenance shall be included in operating expenses. The USRA in the Final System Plan, (City Exhibit 10) and the carrier parties by the terms of the Deeds, all included, inter alia, the line of rail below the bridge,

> ...together with all of the appurtenances, hereditaments, franchises, ways, waters, minerals, rights, privileges, improvements, fixtures, licenses, leaseholds, reversions, easements, rights under operating, trackage and joint facility agreement, rents, issues, profits and other interests and items belonging to or in any way appertaining to such real property, including but not limited to all real property items that would properly be recorded in Accounts 1 through 45 and 90 of the Property Accounts presecribed by the Interstate Commerce Commission for Railroad Companies in its Uniform System of Accounts, 49 C.F.R. Part 1201,...

Thus, all affected parties contemplated inter alia, the transfer of the rail lines, and overhead highway bridges, as well as expenditures by the carrier for maintenance of the overhead highway bridges.

Next, AMTRAK questions Penn Central's prior maintenance responsibility for the bridge (p. 14 of AMTRAK Brief). AMTRAK incorrectly assails City Exhibit No. 5 as being unclear and vague. This is another attempt to cloud the facts and issues. City Exhibit No. 5, as its title indicates is a portion of the "List of Bridges Furnished the Pennsylvania Public Utility Commission per Order of October 28, 1968" in Commission Investigation Docket No. 97. This is from an official filing with the Commission, to which the Commission may refer. An administrative tribunal may take judicial notice of other cases by that tribunal. Hoffman, et al., Appellants v. Public Service Commission, 99 Pa. Super 417 (1930); See also, City of Pittsburgh v. Pennsylvania Public Utility Commission, 174 Pa. Super. 4 (1953); City of Philadelphia v. Pennsylvania Public Utility Commission, 162 Pa. Super. 425 (1948). Moreover, City Exhibit 5 constitutes an admission by Penn Central to which AMTRAK is now successor. In addition, Courts will take judicial notice of public records which are the genesis of the subsequent action leading to the controversy before it. Com., Human Relations Commission v. U.S. Steel Corp., 10 Pa. Commonwealth Ct. 408 (1973). In the instant matter, Penn Central's previous maintenance responsibility is one of the issues at the genesis of the proceeding now before the Commission. Here, however, the Penn Central list of bridges for which it had maintenance responsibility, is of record. The Commission and its Administrative Law Judge can properly judicially notice Commission Investigation Docket No. 97. Thus, there is no vagueness, no lack of clarity with respect to City Exhibit No. 5, and Penn Central's admission of, and responsibility for maintenance of the 59th Street bridge.

Finally, it is the uncontroverted evidence of record that the Pennsylvania Railroad performed the maintenance on the bridge (N.T. 17) and after the merger, that Penn Central had the maintenance obligation (N.T. 18, 19). In addition, AMTRAK itself has admitted and recognized to its maintenance

responsibility and testified that it actually performed maintenance work on the bridge (NRPC Statement No. 1, Direct Testimony of Richard H. Cooper, pp. 6 and 7, Answer to Question 17).

Accordingly, it is submitted that it has been conclusively demonstrated as a matter of law and fact that AMTRAK, as successor in title, acquired the line of rail, the bridge and the obligation of maintenance at its own cost.

F. It must be recognized that this proceeding was a Commission Investigation, and that the Commission propounded interrogatories to the parties to be answered at the hearing of August 18, 1983. The City witness did not interpret the documents (City Exibits) offered, he merely identified them. The conclusions, interpretations and implications to be drawn from them are contained in the legal arguments set forth in the Briefs filed by the parties.

The Public Utility Code, 66 Pa. C.S.A. §332(b) specifically provides,

> ...
> (b) Admissiblity of evidence. Any oral or documentary evidence may be received, but the Commission shall as a matter of policy provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence. ...

The City Exhibits, all responses to the Commission's interrogaties, are not irrelevant, immaterial or unduly repetitious. Moreover, the Deeds and other Exhibits, in essence, speak for themselves, and were obtained from the parties themselves and therefore are admissions. The Deed from Penn Central to CONRAIL (Exhibit No. 7) and the Deed from CONRAIL to AMTRAK (City Exhibit 8) were not questioned by CONRAIL or AMTRAK, and were admitted without objection.

The City witness was authorized to appear and testify on behalf of the City (N.T. 12) and stated the City's positions and responses to the Commission's interrogatories. No party to the proceeding filed any objections to those interrogatories, and indeed AMTRAK, itself, through its witness, answered them

and stated AMTRAK's position and opinion as to which party should be responsible for maintenance and the reason therefor. The City merely did the same.

In summary, the purpose of hearings before the Administrative Law Judge, especially in Investigation matters, is to achieve the full development of the facts unhampered by technical rules of evidence. The Administrative Law Judge has wide discretion in admitting or excluding specific evidence, and in the instant matter, the Administrative Law Judge properly exercised that discretion.

AMTRAK seeks to have technical rules of evidence applied, but it is well recognized that strict rules of evidence do not apply in proceedings of this sort, especially where it is a Commission Investigation. The evidence submitted by the City is of the kind which would and should be considered by fair-minded men.

In summary then, since this proceeding is a Commission Investigation, and the Commission Staff propounded interrogatories, to which no objections were made, it was the duty of all parties to supply the requested information in as full and complete a manner as possible. This, the City did. Moreover, AMTRAK did not cross-examine the City witness (N.T. 24) and did not request an additional hearing, although permitted so to do, (N.T. 43-45) to submit rebuttal testimony. It is interesting to note that AMTRAK, itself desired that the Commission have all the evidence available (N.T. 43) and now seeks to have the Commission disregard that evidence.

III. ARGUMENT - REPLY TO STAFF BRIEF

Essentially, Commission Staff argues (p. 3 of its Brief) that under 66 Pa. C.S.A. §2074(a), the Commission has the exclusive authority to the allocate costs of work it orders to be performed, in such proper proportions as the Commission may determine. While this may be true, Staff fails to recognize the long standing railroad obligation to forever maintain the bridge at its own cost

and expense. This obligation, now that of AMTRAK, as aforesaid was originally based upon the 1905 Ordinance previously discussed. The obligation, based upon the 1905 Ordinance, and confirmed by an Agreement as recited in the 1915 Ordinance and in Appendix C, hereto attached, created a valid, binding duty upon the railroad (now AMTRAK as successor in title), all of which has been discussed hereinabove. Moreover, the obligation to pay the costs of performance of that maintenance as set forth in the underlying agreement may not be disturbed by the Commission since allocation of costs is not a matter involving public safety, health or welfare. Philadelphia v. Pennsylvania Public Utility Commission, supra. This argument is fully developed in the Sections of this Reply Brief responding to AMTRAK's Main Brief, and is not repeated here.

Moreover, the Court in Philadelphia, supra, specifically stated,

> "No public interest is served by permitting the Commission to exercise the authority to allocate costs between the parties when the condition precedent to the exercise of the authority, i.e., the failure of these parties to reach an agreement respecting cost allocation, has not transpired." (449 Pa. at 409).

At page 4 of its Main Brief, Commission Staff additionally argues that the Public Utility Commission is to take all relevant factors into consideration when apportioning costs. As authority for this proposition, the Staff cites Consolidated Rail Corporation v. Pennsylvania Public Utility Commission, et. al, 55 Pa. Commonwealth Ct. 576 423 A.2d 1108 (1980), a case also cited by the City of Philadelphia in its main brief at pages 12-13.

This case is directly on point since it involved the same question of maintenance responsibility for a bridge, originally constructed by the railroad over a line of rail. In CONRAIL, supra, the same form of Deed as those involved

in this proceeding, was utilitized by Penn Central in conveying its title to CONRAIL. The Commonwealth Court affirmed the Order of the Public Utility Commission holding that the Railroad (CONRAIL), under the terms of an Ordinance of the Council of the City of Philadelphia which granted the railroad permission to construct the bridge, is responsible for the maintenance of the bridge, as were the railroad's (CONRAIL's) predecessors in title, to whom such permission was originally granted. Accordingly, in the instant matter AMTRAK is responsible for maintenance of the 59th Street Bridge, at its own cost and expense, as were its predecessors in title.

Moreover, it is essential to point out to the Administrative Law Judge and the Commission that in addition to Trial Staff's failure to recognize that historically, maintenance of the entire structure was that of the railroad, Trial Staff's suggestion that "A fair and equitable division of maintenance between the City and AMTRAK would be to have the City maintain the deck, roadway surface, sidewalks and approaches (items associated with vehicular and pedestrial traffic) and have AMTRAK maintain the substructure and superstructure (items of this bridge historically maintained by the railroad), is unfeasible from an engineering and maintenance standpoint. This bridge is of jack-arch construction. The deck in jack-arch construction consists of reinforced concrete and therefore is an integral part of the superstructure, which Staff advocates be the responsibility of AMTRAK. Thus, the deck cannot be replaced without a substantial impact on the floorbeams which are main superstructure roadway members. Moreover, as aforesaid, maintenance of the entire structure should be that of AMTRAK (which is the historical incidence of this responsibility). Further, all AMTRAK costs in the replacement or repair of expansion dams on a permanant basis should be at the sole cost and expense of AMTRAK as well as all other costs incurred by AMTRAK for watchmen, flagman,

inspection and all costs associated with deenergization and reengergization of the effected line.

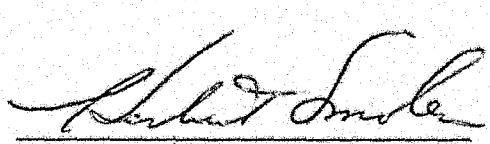
IV. CONCLUSION

For all of the foregoing reasons, the City of Philadelphia respectfully requests the Administrative Law Judge to recommend and the Commission to enter an Order, containing the relief requested in the City's Main Brief and adopting the Findings of Fact and Conclusions of Law therein set forth.

Respectfully submitted,

HERBERT SMOLEN
Deputy City Solicitor

MICHAEL S. CHUHINKA
Assistant City Solicitor

By: 

HERBERT SMOLEN
Deputy City Solicitor

(300) dollars; to Item 4, for repairs to market houses, etc. two hundred (200) dollars; to Item 5½, for repairing Penn Treaty Park wharf, six thousand (6,000) dollars; to Item 7, for labor and other expenses in public squares, seven thousand (7,000) dollars; to Item 14½, for alterations and repairs to City Morgue, one thousand (1,000) dollars. Department of Supplies, for Bureau of Highways: To Item 6, for printing, stationery, etc., six hundred (600) dollars; to Item 8, for lumber, cement, etc., for repairs to bridges, eight thousand (8,000) dollars; to Item 9, for oil, coal, etc., for bridges, one thousand (1,000) dollars. Inspectors of the County Prisons: Reed Street Prison: To Item 2, for beef, mutton and pork, three hundred (300) dollars; to Item 7, for soap, three hundred (300) dollars; to Item 8, for drugs and hospital supplies, one hundred (100) dollars; to Item 10, for stationery and printing, fifty (50) dollars; to Item 11, for brush and broom materials, fifty (50) dollars; to Item 20, for leather, fifty (50) dollars. Holmesburg Prison: To Item 7, for soap, two hundred (200) dollars; to Item 8, for drugs and hospital supplies, one hundred (100) dollars; to Item 17, for repairs and improvements, two hundred (200) dollars. City Commissioners: To Item 11, to pay for keep of prisoners in the Eastern Penitentiary, three thousand seven hundred and eight (3,708) dollars and eighty-one (81) cents; to Item 29, to pay Pennsylvania Reformatory at Huntingdon, four thousand three hundred and fifty-four (4,354) dollars and twelve (12) cents. Board of Public Education: To Item 7, for the enforcement of the provisions of the compulsory education law, five thousand (5,000) dollars; to Item 11, for night schools, fifteen thousand (15,000) dollars; to Item 12, for salaries of janitors, two thousand five hundred (2,500) dollars; to Item 28, for general repairs, etc., ten thousand (10,000) dollars; to Item 29, for furniture and equipments for new school houses, twenty thousand (20,000) dollars; to Item 30, for the removal of ashes, five hundred (500) dollars; to Item 40, for books and stationery, five thousand (5,000) dollars; to Item 89, for the improvement of lot at the corner of Croskey and Lombard streets, joining the Twenty-third and Lombard streets school building, one thousand two hundred (1,200) dollars.

SECT. 2. The City Controller is further authorized to transfer the sum of eighty-two thousand one hundred and ninety (82,190) dollars and eighty-five (85) cents from the amount set aside for the payment of mandamuses to new Item 36 in the annual appropriation to the City Commissioners, to pay for the building of the Juvenile House of Detention, northeast corner of Twenty-second and Arch streets.

This bill is approved, with the exception of item in Section 2. "Transfer of the sum of eighty-two thousand one hundred and ninety (82,190) dollars and eighty-five (85) cents, from the amount set aside for the payment of mandamuses, to new item 36, in the annual appropriation to the City Commissioners, to pay for the building of the Juvenile House of Detention, northeast corner of Twenty-second and Arch streets."

The balance of the bill I approve.

Approved the sixteenth day of November, A. D. 1905.

JOHN WEAVER,
Mayor of Philadelphia.

AN ORDINANCE

Giving authority and consent by the City of Philadelphia to the construction, maintenance and operation of so much of the proposed branch or improved line of the Pennsylvania Railroad Company, extending from a point in the said City on its present main line at or near Fifty-sixth street, Philadelphia, to connections with its low grade line and Trenton Branch, at or near Glen Loch, in Chester County, as is located within the limits of said City, and for the purpose of aiding and enabling the construction thereof, providing upon certain terms

and conditions for change and alteration of certain City plans by revising the lines and grades of certain streets thereon; by striking therefrom and vacating portions of certain streets; by extending certain existing streets; by opening certain new streets, and by making such revision of lines and grades of streets as may be necessary to properly complete the City plans within certain limits of the Thirty-fourth Ward, of the said City.

WHEREAS, The Pennsylvania Railroad Company, has in the exercise of its lawful power and authority duly located and adapted and is about to construct a branch or improved line of its railroad, commencing at a point on its present main line at or near Fifty-sixth street in the City and County of Philadelphia, and extending thence through said City and through the County of Delaware, into the County of Chester, to points of connection with the said Company's low grade line and Trenton Branch at or near Glen Loch, in said last mentioned County, the portion of said branch or improved line located within the said City of Philadelphia beginning at the aforesaid point on its present main line of railroad at or near Fifty-sixth street aforesaid, and thence curving to the westward passing under the intersection of Sixty-second street and Lancaster avenue; thence in a tunnel passing under Malvern avenue, Sixty-third street, Gross street and Sixty-fourth street to a point west of Sixty-fourth street; thence passing under Sixty-sixth street and over Sixty-eighth street and Sixty-ninth street; thence curving to the southward, passing over Seventy-third street and under Haverford avenue, Westminster street and Vine street, and over Race street, Arch street and Ashurst street to the City Line at Cobbs Creek, near Woodbine avenue; and

AND WHEREAS, A revision of the lines and grades of certain streets on said City plans, by striking therefrom and vacating portions of certain streets; by extending certain existing streets, and by opening certain new streets in the Thirty-fourth Ward of said City, is necessary to enable the said Railroad Company to construct its said branch or improved line of railroad in such manner as will accommodate the public convenience and promote the public safety in its operation; now, therefore,

SECTION 1. *The Select and Common Councils of the City of Philadelphia do ordain,* That the authority and consent of the said City of Philadelphia be, and is hereby given to the Pennsylvania Railroad Company to construct, maintain and operate the said line of railroad in the Thirty-fourth Ward of the City of Philadelphia, from a point in the present line of the Pennsylvania Railroad at or near Fifty-sixth street to a point in the boundary line between Philadelphia and Delaware Counties near Woodbine avenue, and to cross by undergrade or overhead bridges, all streets, roads and lanes which are now open or may hereafter be opened across the line of the said Railroad: *Provided,* That nothing herein contained shall authorize the longitudinal occupation at grade crossing at grade of any street, road or lane.

SECT. 2. The location and grade of the said railroad shall be substantially as shown upon a plan and profile which, before this ordinance shall have any effect or confer any authority upon the said railroad company, shall be approved by the proper officials of the Pennsylvania Railroad Company and filed in the Department of Public Works (Bureau of Surveys.)

SECT. 3. The Department of Public Works (Board of Surveyors) is hereby authorized to revise the lines and grades of any and all streets and roads now open or upon the City plan adjacent to the line of the said railroad, or affected by its construction, between Fifty-ninth street and Cobbs Creek, or affected by any changes in the grades of the Pennsylvania Railroad between Fifty-second street and Woodbine avenue, caused by, or made in connection with the construction of the said railroad; to strike from the City plan and vacate the following streets: Malvern avenue as now located, between Lancaster avenue and Sixtieth street; Sixty-second street as now located, between a point about 400 hundred feet south of Woodbine avenue and Lancaster avenue; the Lancaster turnpike road, between Fifty-ninth street and Lancaster avenue and between Fifty-sixth street and Montgomery avenue; and Columbia avenue, between the Lancaster turnpike road and Jefferson street, except such portions of said streets as may lie

within the line of new streets herein authorized: to place upon the City plan the following streets: Malvern avenue, seventy feet wide, between its present intersection with Sixtieth street, and its present intersection with Lancaster avenue; Jefferson street, seventy feet wide, between Fifty-fourth street and Montgomery avenue; Fifty-sixth street, sixty feet wide, between Lancaster avenue and the new line of Jefferson street; Sixty-second street, fifty feet wide, between a point about four hundred feet south of Woodbine avenue and the new line of Malvern avenue; to revise the lines and grades of Upland way, or Sixtieth street, between Coleman avenue and Lebanon avenue, and of Lancaster turnpike road, or Montgomery avenue, between Lebanon avenue and Fifty-seventh street; and to make such other revisions in the lines and grades of streets, and to lay out such new streets within the territory bounded by City avenue on the north, Fifty-fourth street on the east, Lansdowne avenue on the south and Cobb's Creek on the west, as may be necessary to complete the City plan in that vicinity.

SECT. 4. When streets or roads, legally or physically open, are cut off or diverted, or their lines and grades, or both changed, necessary and proper outlets approved by the Board of Surveyors, must be made to other streets or roads, and the said streets or roads, or their substitutes, shall be restored to a condition equal to that existing at the time of the change, at the expense of the railroad company, which shall pay all cost of such changes and all damages occasioned thereby.

SECT. 5. No street now or hereafter placed upon the City plan shall cross the said railroad at grade; and all streets upon the City plan, as revised in accordance with the provisions of this ordinance, and all streets, roads and lanes now open or hereafter opened, shall be carried over or under the said railroad. The said Pennsylvania Railroad Company shall bear the entire cost of constructing and forever maintaining all bridges, whether overhead or under grade and all tunnels upon the lines of streets, roads or lanes now legally or physically open, and upon the lines of Sixty-eighth and Sixty-ninth streets, and shall agree to

pay one-half of the entire cost of construction, and the whole cost of maintenance, of all bridges, whether overhead or undergrade, upon the lines of all streets or roads now upon the City plan or placed thereon under authority of this ordinance, and not otherwise provided for therein, and hereafter opened across the line of the said railroad, whenever Councils, by ordinance, shall direct the construction of said bridges. All bridges for carrying the said railroad over and above streets and roads now opened or hereafter opened shall have a clearance of at least fourteen (14) feet above the confirmed grade of the street, and all bridges for carrying streets or roads over and above the said railroad shall have a clearance of at least twenty (20) feet above the tops of the rails, and shall be designed in accordance with the standard specifications of the Department of Public Works (Bureau of Surveys) for the designing of bridges. No bridge of any kind or character shall be erected until the plans for the same shall have been approved by the Director of the Department of Public Works and the Board of Surveyors. The said railroad company shall keep its road, wherever it crosses the line of any street or road, in good order and condition at all times, and shall save the City of Philadelphia harmless, so far as the said City may be liable therefor, from any liability or responsibility that may arise from the construction or operation of the said railroad over or under any of the streets aforesaid, or for the longitudinal occupation of Malvern avenue with a tunnel.

SECT. 6. Before this ordinance shall become effective or confer any authority upon the said Pennsylvania Railroad Company, and before the Board of Surveyors may confirm any of the revisions or changes of streets and roads herein authorized, the said Pennsylvania Railroad Company shall enter into an agreement, satisfactory to the City Solicitor, to comply with the following conditions: To reconstruct at its own expense such portions of the Mill Creek sewer as the Director of the Department of Public Works may deem necessary, from a point in Sixty-second street, about four hundred (400) feet south of Woodbine avenue, along Sixty-second street, Malvern ave-

nue, Sixtieth street, Montgomery avenue and Jefferson street, and thence across property of the said railroad company to Lancaster avenue near Fifty-sixth street, and such other existing sewers, drainage channels, water pipe, electrical conduits and othe municipal structures as may be affected by the construction of said railroad and the changes of lines and grades of streets herein authorized, together with all necessary appurtenances and connections with existing sewers, in accordance with plans and specifications to be prepared by the Department of Public Works (Bureau of Surveys); to forever maintain said sewer or sewers and appurtenances at its own expense wherever they lie within property owned by the said railroad company; to permit inspection of the same by representatives of the Department of Public Works at any time and to repair same whenever directed to do so by the Director of said department. To construct its railroad in tunnel from a point northeast of Lancaster avenue, under Malvern avenue, Sixty-third street, Gross street, and Sixty-fourth street: *Provided,* That there shall be no openings in the surface of Malvern avenue from the said tunnel to a point west of Sixty-fourth street, and to at once construct steel or masonry bridges with floors paved with asphalt, and to construct satisfactory approaches to the same to the grades established under authority of this ordinance, at its own expense, for carrying Sixty-sixth street and Haverford avenue, of their full width as now confirmed or as confirmed under authority of this ordinance, over and above the said railroad; also to at once construct single span steel or masonry bridges for carrying the said railroad over and above Sixty-eighth street and Sixty-ninth street of their full widths as now confirmed or confirmed under authority of this ordinance, and to forever maintain all the bridges named in this section at its own expense. To dedicate or agree to dedicate to the City as much of the property owned or controlled by it as may be required to widen or open any street or road now upon the City plan or placed upon the City plan under authority of this ordinance, crossing under or over the said railroad; to dedicate or indemnify the City against all damages and costs for the opening of the following streets now upon the City plan

or placed thereon under authority of this ordinance: Jefferson street, between Fifty-fourth street and Montgomery avenue; Malvern avenue, between Sixtieth street and Lancaster avenue; Sixtieth street or Upland way, between Coleman avenue and Montgomery avenue; Sixty-second street, between a point about four hundred feet south of Woodbine avenue and Malvern avenue; the unopened portion of Fifty-sixth street, between Lancaster avenue and Jefferson street; Montgomery avenue, between Sixtieth street and Jefferson street; and so much of Lancaster avenue, between Fifty-sixth street and Malvern avenue, as is owned or controlled by it. To open, grade and macadamize to the lines and grades confirmed under authority of this ordinance, and to construct the necessary bridges upon the following streets at its own expense: Malvern avenue, between Lancaster avenue and Sixtieth street; Sixtieth street, between Coleman avenue and Montgomery avenue; Montgomery avenue between Sixtieth street and Jefferson street; Jefferson street, between Montgomery avenue and Fifty-fourth street; and the unopened portion of Fifty-sixth street between Lancaster avenue and Jefferson street. To maintain travel in a manner satisfactory to the Director of the Department of Public Works upon all streets and roads now open to public use, or upon streets or roads substituted therefor, at all times during the construction of the said railroad. The Pennsylvania Railroad Company shall also agree not to claim any damages for the opening, grading or changing of grade of any street or road now open or upon the City plan, or placed upon the City plan under authority of this ordinance, or upon or across any property owned or controlled by it within the territory covered by this ordinance, and shall file its bond in the sum of two hundred and fifty thousand (250,000) dollars duly executed under its corporate seal, in a form satisfactory to the City Solicitor, conditioned to indemnify the City against any and all damages which may arise by reason of the construction of the said railroad and the consequent changes of lines and grades of any street or road now legally or physically open, and also to faithfully comply with all the conditions, requirements and provisions of this ordinance; and shall pay

into the City Treasury the sum of fifty (50) dollars for printing the same.

SECT. 7. The authority herein granted for the construction of the said railroad shall terminate and become null and void if the said railroad is not completed within ten years from the date of the appoval of this ordinance.

Approved the twenty-third day of November, A. D. 1905.

JOHN WEAVER,
Mayor of Philadelphia.

RESOLUTION

Authorizing the Department of Public Works to issue permits for breaking streets during the months of December, 1905, January and February, 1906, and suspending Joint Rule No. 30 of the Select and Common Councils.

Resolved, by the Select and Common Councils of the City of Philadelphia, That all ordinances or parts of ordinances which forbid or prevent the Department of Public Works from issuing permits or permitting the doing of work in any streets of the City during the winter months (from the first day of December, 1905, to the first day of March, 1906, following, or any other day or date) be, and the same are hereby suspended and declared to be inoperative, at the judgment and discretion of the Mayor and the Director of the Department of Public Works, during the winter months, to the end that the Department of Public Works, as far as possible, permit the carrying on or continuance of all classes of work in said Department which may give employment to our people. And that Joint Rule No. 30 of Select and Common Councils be suspended for the purpose of permitting the Clerks of Councils to present this resolution to the Mayor for his approval or disapproval.

Approved the twenty-third day of November, A. D. 1905.

JOHN WEAVER,
Mayor of Philadelphia.

AN ORDINANCE

To approve the contracts and sureties of The William Cramp & Sons Ship and Engine Building Company, Williamson & McLaughlin, Incorporated, Henderson & Company, Limited, and William J. Smith, and the surety of J. A. Hunter, Chief of the Bureau of Highways.

SECTION 1. *The Select and Common Councils of the City of Philadelphia do ordain,* That the contract of The William Cramp & Sons Ship and Engine Building Company for constructing a steamer intended for ice breaking purposes, for the Bureau of City Ice Boats of the Department of Public Works, be, and the same is hereby approved, and that The United States Fidelity and Guaranty Company, of Baltimore, Md., be, and it is hereby approved as surety of the said The William Cramp & Sons Ship and Engine Building Company, for the faithful performance of the said contract: *Provided,* That the said contract shall in no event exceed the sum of two hundred and thirty-one thousand (231,000) dollars.

That the contract of Williamson & McLaughlin, for placing the sand now in the courts of the Belmont Filters in the following filters, viz.: Numbers 1, 2, 7, 8, 9 and 13, being Contract No. 78, for the Bureau of Filtration of the Department of Public Works, be, and the same is hereby approved, and that National Security Company of New York, be, and it is hereby approved as surety of the said Williamson & McLaughlin, Incorporated, for the faithful performance of the said contract: *Provided,* That the said contract shall in no event exceed the sum of two thousand three hundred (2,300) dollars.

That the contract of Henderson & Company, Limited, for the erection of two (2) wings to the public school house on the west side of Fifty-second street, between Osage avenue and Pine street, in the Twenty-seventh Ward, for the Board of Public Education, be, and the same is hereby approved, and that The Title Guaranty and Trust Company of Scranton, Penna., be, and it is hereby approved as surety of the said Henderson & Company, Limited, for the faithful performance of the said

Boulevard and Tabor road; Chadwick street, between Tasker and Morris streets; Springfield avenue west of Baltimore Central Railroad; sixteen (16) lights from Chestnut street pier to the following locations: two (2) Kensington Recreation Center; Eleventh street, between Ellsworth street and Washington avenue; Haverford and Girard avenues; Twentieth street and Oregon avenue; Twentieth and Johnson streets; Twentieth street and Erie avenue; Snyder avenue and Swanson street; Oxford street, between Sixty-first and Sixty-third streets; Church lane and Twentieth streets; Chelten avenue, west of York road; Broad and Butler streets; Forty-eighth and Spruce streets; Fifty-eighth and Sanson streets; Ludlow street, between Fortieth and Forty-first streets; McKean street, west of Twenty-third street; from Thomas avenue and Ithan street to Fifty-sixth and Thomas avenue; from Sixteenth street north of Chestnut street to Seventeenth and Ranstead streets.

Approved the eighth day of July, A. D. 1915.

RUDOLPH BLANKENBURG,

Mayor of Philadelphia.

AN ORDINANCE

Amendatory of and supplementary to an ordinance entitled "An Ordinance giving authority and consent by the City of Philadelphia to the construction, maintenance and operation of so much of the proposed branch or improved line of the Pennsylvania Railroad Company, extending from a point in the said City on its present main line at or near Fifty-sixth street, Philadelphia, to connections with its low grade line and Trenton Branch, at or near Glen Loch, in Chester County, as is located within the limits of said City, and for the purpose of aiding and enabling the construction thereof, providing upon certain terms and conditions for change and alteration of certain City plans by revising the lines

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and grades of certain streets thereon; by striking therefrom and vacating portions of certain streets, by extending certain existing streets, by opening certain new streets, and by making such revisions of lines and grades as may be necessary to properly complete the City plans within certain limits of the Thirty-fourth Ward of the said City," approved the 23d day of November, 1905.

SECTION 1. *The Select and Common Councils of the City of Philadelphia do ordain,* That an ordinance entitled "An Ordinance giving authority and consent by the City of Philadelphia to the construction, maintenance and operation of so much of the proposed branch or improved line of the Pennsylvania Railroad Company, extending from a point in the said City on its present line at or near Fifty-sixth street, Philadelphia, to connections with its low grade line and Trenton Branch, at or near Glen Loch, in Chester County, as is located within the limits of said City, and for the purpose of aiding and enabling the construction thereof, providing upon certain terms and conditions for change and alteration of certain City plans by revising the lines and grades of certain streets thereon, by striking therefrom and vacating portions of certain streets, by extending certain existing streets, by opening certain new streets and by making such revision of lines and grades of streets as may be necessary to properly complete the City plans within certain limits of the Thirty-fourth Ward of the said City," approved the 23d day of November, 1905, be amended and supplemented as follows:

That Section 5 of said ordinance, which reads as follows:

"SECTION 5. No street now or hereafter placed upon the City plan shall cross the said railroad at grade; and all streets upon the City plan, as revised in accordance with the provisions of this ordinance, and all streets, roads and lanes now open or hereafter opened, shall be carried over or under the said railroad. The said Pennsylvania Railroad Company shall bear the entire cost of constructing and forever maintaining all bridges, whether

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overhead or undergrade, and all tunnels upon the lines of streets, roads or lanes now legally or physically open, and upon the lines of Sixty-eighth and Sixty-ninth streets, and shall agree to pay one-half of the entire cost of construction, and the whole cost of maintenance, of all bridges, whether overhead or undergrade, upon the lines of all streets or roads now upon the City Plan or placed thereon under authority of this ordinance, and not otherwise provided for therein, and hereafter opened across the line of the said railroad, whenever Councils, by ordinance, shall direct the construction of such bridges. All bridges for carrying the said railroad over and above streets and roads now opened or hereafter opened shall have a clearance of at least fourteen (14) feet above the confirmed grade of the street, and all bridges for carrying streets or roads over and above the said railroad shall have a clearance of at least twenty (20) feet above the tops of the rails, and shall be designed in accordance with the standard specifications of the Department of Public Works (Bureau of Surveys) for the designing of bridges. No bridge of any kind or character shall be erected until the plans for the same shall have been approved by the Director of the Department of Public Works and the Board of Surveyors. The said railroad company shall keep its road, wherever it crosses the line of any street or road, in good order and condition at all times, and shall save the City of Philadelphia harmless, so far as the said City may be liable therefor, from any liability or responsibility that may arise from the construction or operation of the said railroad over or under any of the streets aforesaid, or for the longitudinal occupation of Malvern avenue with a tunnel," be, and the same is hereby amended so as to read as follows:

SECTION 5. No street now or hereafter placed upon the City plan shall cross the said railroad at grade; and all streets upon the City plan, as revised in accordance with the provisions of this ordinance, and all streets, roads and lanes now open or hereafter opened, shall be carried over or under the said railroad. The said Pennsylvania Railroad Company shall bear the entire cost of

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constructing and forever maintaining all bridges, whether overhead or undergrade, and all tunnels upon the lines of streets, roads or lanes now legally or physically open, and the new street to be opened across the main line and yards extending from the intersection of Fifty-ninth street and Lancaster avenue to Fifty-seventh street and Upland Way, and the bridge from the east side of Sixty-eighth street to the west side of Sixty-ninth street, and shall agree to pay one-half of the entire cost of construction, and the whole cost of maintenance, of all other bridges, whether overhead or undergrade, upon the lines of all streets or roads, now upon the City plan or placed thereon under authority of this ordinance, and not otherwise provided for herein, and hereafter opened across the line of the said railroad, whenever Councils, by ordinance, shall direct the construction of said bridges. All bridges for carrying the said railroad over and above streets and roads now opened or hereafter opened shall have a clearance of at least fourteen (14) feet above the confirmed grade of the street, and all bridges for carrying streets or roads over and above the said railroad shall have a clearance of at least twenty-three (23) feet above the tops of the rails, except the bridge to be constructed across the Main Line and yards at the intersection of Fifty-ninth street and Lancaster avenue to Fifty-seventh street and Upland Way, which shall have a clearance of not less than seventeen and one-half (17½) feet over the Main Line passenger tracks and not less than twenty-three (23) feet over the yard tracks and the bridge on the line of Malvern avenue, which shall have a clearance of not less than seventeen and one-half (17½) feet over the west bound passenger tracks, and shall be designed in accordance with the standard specifications of the Department of Public Works (Bureau of Surveys) for the designing of bridges. No bridge of any kind or character shall be erected until the plans of the same shall have been approved by the Director of the Department of Public Works and the Board of Surveyors. The said railroad company shall keep its road, wherever it crosses the line of any street or road, in good order and condition

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at all times, and shall save the City of Philadelphia harmless, so far as the City may be liable therefor, from any liability or responsibility that may arise from the construction or operation of the said railroad over or under any of the streets aforesaid or for the longitudinal occapation of Malvern avenue with a tunnel.

That Section 6 of said ordinance, which reads as follows:

"SECTION 6. Before this ordinance shall become effective or confer any authority upon the said Pennsylvania Railroad Company, and before the Board of Surveyors may confirm any of the revisions or changes of streets and roads herein authorized, the said Pennsylvania Railroad Company shall enter into an agreement, satisfactory to the City Solicitor, to comply with the following conditions: To reconstruct at its own expense such portions of the Mill Creek sewer as the Director of the Department of Public Works may deem necessary, from a point in Sixty-second street, about four hundred (400) feet south of Woodbine avenue, along Sixty-second street, Malvern avenue, Sixtieth street, Montgomery avenue and Jefferson street, and thence across property of the said railroad company to Lancaster avenue, near Fifty-sixth street, and such other existing sewers, drainage channels, water pipe, electrical conduits and other municipal structures, as may be affected by the construction of said railroad and the changes of lines and grades of streets herein authorized, together with all necessary appurtenances and connections with existing sewers, in accordance with plans and specifications to be prepared by the Department of Public Works (Bureau of Surveys); to forever maintain said sewer or sewers and appurtenances at its own expense wherever they lie within property owned by the said railroad company; to permit inspection of the same by representatives of the Department of Public Works at any time and to repair same whenever directed to do so by the Director of said Department. To construct its railroad in tunnel from a point northeast of Lancaster avenue, under Malvern avenue, Sixty-third street, Gross street and Sixty-fourth street: *Provided,* That there shall be no

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openings in the surface of Malvern avenue, from the said tunnel to a point west of Sixty-fourth street, and to at once construct steel or masonry bridges with floors paved with asphalt, and to construct satisfactory approaches to the same to the grades established under authority of this ordinance, at its own expense, for carrying Sixty-sixth street and Haverford avenue, of their full width as now confirmed or as confirmed under authority of this ordinance, over and above the said railroad; also to at once construct single span steel or masonry bridges for carrying the said railroad over and above Sixty-eighth street and Sixty-ninth street of their full widths as now confirmed or confirmed under authority of this ordinance, and to forever maintain all the bridges named in this section at its own expense. To dedicate or agree to dedicate to the City as much of the property owned or controlled by it as may be required to widen or open any street or road now upon the City plan or placed upon the City plan under authority of this ordinance crossing under or over the said railroad; to dedicate or indemnify the City against all damages and costs for the opening of the following streets now upon the City plan or placed thereon under authority of this ordinance: Jefferson street, between Fifty-fourth street and Montgomery avenue; Malvern avenue, between Sixtieth street and Lancaster avenue; Sixtieth street, or Upland Way, between Coleman avenue and Montgomery avenue; Sixty-second street, between a point about four hundred (400) feet south of Woodbine avenue and Malvern avenue; the unopened portion of Fifty-sixth street, between Lancaster avenue and Jefferson street; Montgomery avenue, between Sixtieth street and Jefferson street, and so much of Lancaster avenue, between Fifty-sixth street and Malvern avenue, as is owned or controlled by it. To open, grade and macadamize to the lines and grades confirmed under authority of this ordinance, and to construct the necessary bridges upon the following streets at its own expense: Malvern avenue, between Lancaster avenue and Sixtieth street; Sixtieth street, between Coleman avenue and Montgomery avenue; Montgomery avenue, between Sixtieth street and Jefferson street; Jefferson street between

Montgomery avenue and Fifty-fourth street, and the unopened portion of Fifty-sixth street, between Lancaster avenue and Jefferson street. To maintain travel in a manner satisfactory to the Director of the Department of Public Works upon all streets and roads now open to public use, or upon streets or roads substituted therefor, at all times during the construction of the said railroad. The Pennsylvania Railroad Company shall also agree not to claim any damages for the opening, grading or changing of grade of any street or road now open or upon the City plan, or placed upon the City plan under authority of this ordinance, or upon or across any property owned or controlled by it within the territory covered by this ordinance, and shall file its bond in the sum of two hundred and fifty thousand (250,000) dollars duly executed under its corporate seal, in a form satisfactory to the City Solicitor, conditioned to indemnify the City against any or all damages which may arise by reason of the construction of the said railroad and the consequent changes of lines and grades of any street or road now legally or physically open, and also to faithfully comply with all the conditions, requirements and provisions of this ordinance, and shall pay into the City Treasury the sum of fifty (50) dollars for printing the same," be, and the same is hereby amended so as to read as follows:

SECTION 6. Before this ordinance shall become effective or confer any authority upon the said Pennsylvania Railroad Company, and before the Board of Surveyors may confirm any of the revisions and changes of streets and roads herein authorized, the said Pennsylvania Railroad Company shall enter into an agreement satisfactory to the City Solicitor, to comply with the following conditions: to reconstruct at its own expense such portions of the Mill Creek sewer as the Director of the Department of Public Works may deem necessary from the intersection of Malvern and Lancaster avenues to a point in the present sewer west of the vacated Fifty-sixth street, about six hundred (600) feet north of Lancaster avenue, and construct a sewer from Sixty-first street and Lebanon avenue along Lebanon avenue to Lancaster avenue, and

along Lancaster avenue to Fifty-ninth street, and construct and maintain at its own expense a channel for drainage, in addition to the sewer system, from Fifty-eighth street and Lebanon avenue to the southeast side of Upland Way, and reconstruct such other existing sewers, drainage channel, water pipes, electrical conduits and other municipal structures as may be affected by the construction of said railroad and the changes of lines and grades of streets herein authorized, together with all necessary new sewers and inlets and appurtenances and connections therewith and with existing sewers, in accordance with plans and specifications to be prepared by the Department of Public Works (Bureau of Surveys); to forever maintain said sewer or sewers and appurtenances at its own expense, wherever they lie within property owned by the said railroad company or cross under the lines of railroad owned by it; to permit inspection of the same by representatives of the Department of Public Works at any time, and to repair same whenever directed to do so by the Director of said Department; those portions of said sewers that are relocated within the lines of any street or streets now on the City plan or placed thereon by authority of this ordinance are to be maintained by the City, except where they cross under the lines of the said railroad company; to construct its railroad in tunnel from a point northeast of Lancaster avenue, under Lancaster avenue, Malvern avenue, Sixty-third street, Gross street and Sixty-fourth street: *Provided,* That there shall be no openings in the surface of Malvern avenue from the said tunnel, between the portal northeast of Lancaster avenue and a point west of Sixty-fourth street, and to construct steel or masonry bridges, with paved floors, and to construct satisfactory paved approaches to the same to the grades established under authority of this ordinance, at its own expense, for carrying Sixty-sixth street, Haverford avenue, Jefferson street and the new street from the proposed intersection of Fifty-ninth street and Lancaster avenue to the proposed intersection of Fifty-seventh street and Upland Way, of their full widths as now confirmed or as confirmed under authority of this ordinance, over and above the said railroad, also to con-

struct a steel or masonry bridge for carrying the said railroad from the east side of Sixty-eighth street to the west side of Sixty-ninth street over and above said streets, and to relocate and reconstruct bridges, with columns on curb lines carrying its tracks, connecting with the Schuylkill Valley Railroad, over Jefferson street, between Fifty-third and Fifty-fourth streets, and to relocate, reconstruct and build additional bridges with columns in the center of the street to carry its main and yard tracks over and above Fifty-second street, between Merion avenue and Monticello street, and to extend the present arch bridge over Woodbine avenue for three tracks, with clearances not less than under the present arch, or build bridges for three additional tracks with clear spans and of clearance of not less than fourteen (14) feet over Woodbine avenue, of their full widths as now confirmed, or confirmed under authority of this ordinance, and to forever maintain all of the bridges named in this section at its own expense. To dedicate to the City as much of the property owned or controlled by it as may be required to widen or open any street or road now upon the City plan or placed upon the City plan under authority of this ordinance, crossing under or over the said railroad; to dedicate the property or indemnify the City against all damages or costs for the opening of the following streets now upon the City plan or placed thereon under authority of this ordinance: Upland Way, between Fifty-fourth street and Woodbine avenue; Malvern avenue, between Upland Way and Lancaster avenue; Sixty-second street, betwen a point about four hundrd (400) feet south of Woodbine avenue and Lancaster avenue; Fifty-ninth street, eighty (80) feet wide, between Nassau street and Lancaster avenue; a new street, seventy (70) feet wide, over the tracks and property of the Pennsylvania Railroad, from the hereinbefore proposed intersection of Fifty-ninth street and Lancaster avenue to the hereinbefore proposed intersection of Fifty-seventh street and Upland Way; Fifty-seventh street, between Upland Way as proposed to be laid out and Lebanon avenue; Columbia avenue, from Fifty-ninth street to Lancaster avenue, including the intersection of Columbia avenue, Fifty-ninth street and Lan-

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caster avenue; and so much of Lancaster avenue, between Fifty-sixth street and Malvern avenue, as is owned or controlled by it; and to indemnify the City against all damages and costs for the changes of lines and grades of the following streets, as authorized by this ordinance: Fifty-seventh street, from Berks street to Lebanon avenue; Lebanon avenue, from Fifty-seventh street to Fifty-ninth street; Fifty-ninth street, from Lebanon avenue to Malvern avenue; Coleman avenue, from Upland Way to a point about five hundred and fifty (550) feet east of Upland Way; Upland Way, between Woodbine avenue and Coleman avenue; Malvern avenue, from Lancaster avenue to Sixty-third street; Sixty-second street, from Woodbine avenue to a point about four hundred (400) feet south of Woodbine avenue, and from Lancaster avenue to a point about five hundred and seventy (570) feet south thereof; Oxford street, from Fifty-seventh street to Sixtieth street; Fifty-sixth street, from the summit north of Berks street to Upland Way; Berks street, from about three hundred (300) feet east of Fifty-sixth street to Fifty-seventh street; Columbia avenue, from Fifty-ninth street to Lancaster avenue; Fifty-ninth street, from Oxford street to Nassau street; Fifty-seventh street, from Lancaster avenue to Nassau street; and Lancaster avenue, from a point about 350 feet west of Fifty-sixth street to Sixtieth street. To open, grade and pave, with materials to be designated by the Director of the Department of Public Works, to the lines and grades confirmed under authority of this ordinance the following streets at its own expense: Malvern avenue, between Sixty-third street and Lancaster avenue, as proposed to be laid out; Lancaster avenue, between Sixty-second street and Sixty-third street; Sixty-second street, between Woodbine avenue and Lancaster avenue, and between Lancaster avenue and a point about five hundred and seventy (570) feet south thereof; Fifty-ninth street, between Nassau street and Lancaster avenue; a new seventy (70) feet wide street over the tracks and property of the Pennsylvania Railroad from the hereinbefore proposed intersection of Fifty-ninth street and Lancaster avenue to the hereinbefore proposed intersection of Fifty-seventh street

and Upland Way; Fifty-seventh street, between Upland Way as proposed to be laid out and Lebanon avenue. To open and grade to the lines and grades as authorized by this ordinance Upland Way, between Woodbine avenue and Fifty-fourth street, and to pave a strip twenty-four (24) feet in width of said Upland Way with bituminous bound macadam. To maintain travel in a manner satisfactory to the Director of the Department of Public Works upon all streets and roads now open to public use, or upon streets or roads substituted therefor, at all times during the construction of the said railroad.

That Section 7 of said ordinance, which reads as follows:

SECT. 7. The authority herein granted for the construction of the said railroad shall terminate and become null and void if the said railroad is not completed within ten years from the date of the approval of this ordinance," be, and the same is hereby, repealed.

SECT. 2. The dedications of property to the City and the work in connection with the opening, grading and paving of streets, building of sewers and other municipal structures, and building of bridges which the said Pennsylvania Railroad Company obligates itself to carry out along its main line from Fifty-fourth street to Sixty-third street and Woodbine avenue, shall be started within three months after the date of confirmation of the City plans by the Board of Surveyors, and completed within two and one-half years from the date of said confirmation, excepting that the widening of the bridge over Woodbine avenue shall be completed within seven years after date of said confirmation. The dedications of property, and the work in connection with the opening, grading and paving of streets and building of sewers and other municipal structures, and building of bridges which the said Pennsylvania Railroad Company obligates itself to carry out along its said branch or improved line from Sixty-third street and Malvern avenue to the City Line at Cobb's Creek, near Woodbine avenue, shall be completed within five years, and the construction of the

tunnel under Malvern avenue shall be completed within eight years from the date of the approval of the amendatory and supplementary ordinances. The relocation of tracks and construction of bridges necessary to permit the City to change the grade of Fifty-fourth street, from Jefferson street to Upland Way, as placed upon the City Plan under authority of this ordinance, and of Jefferson street, from Fifty-third street to Fifty-fourth street, shall be completed within seven years from the date of the approval of this amendatory and supplementary ordinance.

SECT. 3. The Department of Public Works (Board of Surveyors) is hereby authorized to revise the lines and grades of all streets and roads now open or upon the City plan adjacent to the said branch or improved line or affected by its construction between Fifty-ninth street and Cobbs creek, or affected by any changes of the location or grades of the Pennsylvania Railroad between Fifty-second street and Woodbine avenue, caused by or made in connection with the construction of the said branch or improved line; to make the following changes in the City plans. To strike from the City plan and vacate the following streets: Sixty-second street, from a point about four hundred (400) feet south of Woodbine avenue to Malvern avenue; Upland Way, from Woodbine avenue to Malvern avenue; Montgomery avenue, as the same now appears on the City plan, from Malvern avenue to Fifty-fourth street; Jefferson street, from Montgomery avenue to Fifty-fourth street; Lebanon avenue, from Montgomery avenue to Fifty-ninth street; Fifty-seventh street, from Jefferson street to Berks street; Fifty-sixth street, from Lancaster avenue to Berks street; Berks street, from Fifty-sixth street to Fifty-seventh street; Columbia avenue, from Jefferson street, as now located, to Fifty-fourth street; Fifty-ninth street, as now located, from Oxford street to Columbia avenue, except such portions of said streets as may lie within the lines of new streets hereinafter authorized. To place upon the City plan the following streets: Sixty-second street, fifty (50) feet wide, from a point about four hundred (400) feet south of Woodbine avenue to Lancaster avenue; Upland Way,

seventy (70) feet wide, from Woodbine avenue to Malvern avenue; Upland Way, eighty (80) feet wide, from Malvern avenue to Fifty-fourth street; Fifty-seventh street, eighty (80) feet wide, from Upland Way, as hereinbefore proposed to be laid out, to Berks street; Fifty-ninth street, eighty (80) feet wide, from Nassau street to Lancaster avenue; the intersection of Columbia avenue, Fifty-ninth street and Lancaster avenue; a new street seventy (70) feet wide, over the tracks and property of the Pennsylvania Railroad Company, from the hereinbefore proposed intersection of Fifty-ninth street and Lancaster avenue to the hereinbefore proposed intersection of Fifty-seventh street and Upland Way; Berks street, sixty (60) feet wide, from Fifty-sixth street to Fifty-seventh street; Fifty-sixth street, seventy (70) feet wide, from Berks street to Upland Way; Montgomery avenue, seventy (70) feet wide, from Fifty-fourth street to Upland Way. To widen Fifty-fourth street to eighty (80) feet, and revise the grade from Jefferson street to Upland Way, as placed upon the City plan under authority of this ordinance; Upland Way to seventy (70) feet, and revise the grade of same between Woodbine avenue and Malvern avenue; to widen Fifty-ninth street to eighty (80) feet, and revise the grade of same between Nassau street and Oxford street. To revise the grades of Lancaster avenue, from a point about three hundred and fifty (350) feet west of Fifty-sixth street to Sixtieth street; Malvern avenue, from Lancaster avenue to Fifty-ninth street; Sixty-second street, from Woodbine avenue to a point about four hundred (400) feet south of Woodbine avenue; Coleman avenue, from Upland Way to a point about five hundred and fifty (550) feet east of Upland Way; Fifty-ninth street, from Malvern avenue to Lebanon avenue; Lebanon avenue, from Fifty-eighth street to Fifty-ninth street; Fifty-seventh street, from Lebanon avenue to Berks street, and from Lancaster avenue to Jefferson street; Columbia avenue, from Lancaster avenue to Sixtieth street; Jefferson street, from Fifty-third street to Fifty-fourth street; Nassau street, from Fifty-seventh to Fifty-ninth street; Oxford street, from Fifty-seventh street to Sixtieth street; Fifty-sixth street,

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from Montgomery avenue to the summit in Fifty-sixth street, north of Berks street; Berks street, from Fifty-sixth street to a point about three hundred (300) feet east of Fifty-sixth street; and to make such other revisions in the lines and grades of streets, and to lay out such new streets, within the territory bounded by City avenue on the north, Fifty-fourth street on the east, Lansdowne avenue on the south, and Cobb's creek on the west, as may be necessary to complete the City plan in that vicinity.

SECT. 4. The location and grade of the said branch or improved line shall be substantially as shown upon a plan and profile which, before this ordinance shall have any effect or confer any authority upon the said railroad company, shall be approved by the proper officials of the Pennsylvania Railroad Company and the proper officials of the City and filed in the Department of Public Works (Bureau of Surveys), and said plan and profile are hereby substituted for the plan and profile approved and filed pursuant to Section two (2) of the ordinance which this ordinance supplements and amends.

SECT. 5. The Pennsylvania Railroad Company shall covenant, promise and agree to the following conditions:

First. To equip and operate electrically the Malvern Avenue Tunnel and that portion of the proposed branch or improved line of railroad between Fifty-ninth street and City Line at Cobbs Creek.

Second. That, inasmuch as it is claimed by the railroad company that the electrical operation of a classification freight yard of the type proposed is at the present time in more or less of an experimental stage, it will not place in service the new freight yard proposed between Fifty-fourth street and Malvern avenue until four years after the date of the approval of this amendatory and supplementary ordinance, and that before said new freight yard or any part thereof is placed in operation the question of the motive power to be used therein shall be submitted to a board consisting of three members, one member of said board to be the Honorable Edwin S. Stuart, one to be

chosen by the railroad company, and the third by the two so chosen. Vacancies, if any, in said board, shall be filled from time to time by the parties originally selecting them, except that in the case of the office provided herein to be filled by the Honorable Edwin S. Stuart, the vacancy shall be filled by the Mayor of the City from a list of five names presented to him by the Overbrook Club and the Overbrook Association. The decision of the board, or a majority of them, shall be made in the light of information and experience then available, and, subject to the approval of the Public Service Commission of the Commonwealth of Pennsylvania, shall be binding and conclusive upon the railroad company and the City: *Provided, however,* That the decision of the board shall not operate as a waiver of any rights of said City or said railroad company in regard to the motive power which shall thereafter be used in the operation of said yard.

The railroad company will make necessary and reasonable experiments and demonstrations in said yard of systems of motive power for said board to assist it in reaching a decision.

Third. After the passage of this ordinance, no steam locomotive shall be stored or parked, and no roundhouse or railroad coaling plant or repair shop shall be constructed west of Fifty-fourth street to City avenue and along the proposed branch or improved line within the City limits.

SECT. 6. Before this ordinance shall become effective or confer any authority upon the said Pennsylvania Railroad Company, and before the Board of Surveyors may confirm any of the revisions or changes of streets and roads herein authorized, the said Pennsylvania Railroad Company, which has duly entered into an agreement to comply with the conditions contained in Section six (6) of the ordinance to which this is an amendment, shall enter into a supplemental agreement, satisfactory to the City Solicitor, to comply with the conditions contained in said Section six (6) as amended and supplemented by Section one (1) of this ordinance, and with conditions contained in Section five (5) of this ordinance. The Pennsylvania Railroad

Company shall also agree not to claim any damages for the opening, grading or changing of grade of any street or road now open or upon the City plan or placed upon the City plan under authority of this ordinance, or of the ordinance to which this is amendatory, upon or across any property owned or controlled by it within the territory covered by the above recited ordinance, as amended by this ordinance, and having filed its bond in the sum of two hundred and fifty thousand (250,000) dollars, duly executed under its corporate seal, in a form satisfactory to the City Solicitor, as provided in the ordinance to which this is an amendment, shall file an amended bond in the sum of two hundred and fifty thousand (250,000) dollars, duly executed under its corporate seal, in a form satisfactory to the City Solicitor, in lieu of and substitution for the said bond heretofore filed, conditioned to indemnify the City against any and all damages which may arise by reason of the construction of the said branch or improved line and the consequent changes of lines and grades of any street or road now legally or physically open, or opened under authority of this ordinance, and also to faithfully comply with the conditions, requirements and provisions of the said ordinance approved the twenty-third day of November, 1905, as hereby amended and supplemented, and shall pay into the City Treasury the sum of fifty (50) dollars for printing this amendatory and supplementary ordinance.

SECT. 7. It is hereby understood and agreed that neither the purpose nor intent, nor the obligation of this contract, if and when approved by the Public Service Commission of the Commonwealth of Pennsylvania, is such as to impair or in any wise affect the exercise by said commission of any of the powers vested in it by the Public Service Company Law, approved July 26, 1913.

Approved the eighth day of July, A. D. 1915.

RUDOLPH BLANKENBURG,

Mayor of Philadelphia.

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

Investigation upon the Commission's own motion into 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 grade of the tracks of National Railroad Passenger Corporation in the City of Philadelphia, to determine the condition, disposition and responsibility for maintenance of the existing crossing structure.	Docket No. I-830373

MOTION TO REOPEN RECORD
FOR ADMISSION OF FURTHER EVIDENCE

The City of Philadelphia hereby files this Motion to Reopen the Record in this case for admission of further evidence, and in support thereof, avers the following:

1. There is among the records of the Bridge Division of the Streets Department of the City of Philadelphia, a loose leaf book containing approximately 134 pages of highway overpass structure listings, showing therein, inter alia, maintenance obligations and historic documentation supporting those obligations which are in the possession of the Bridge Division and Bridge Maintenance Section of the Highway Division of the Department of Streets. The information in this book has been developed over the years.

2. Prior to the hearing in the instant matter, the aforesaid reference book was searched and the only references to the 59th Street Bridge found therein were references to the Ordinances of 1905, 1915, 1926. In addition, other files, envelopes and records were reviewed.

3. The Hearing in the above matter was held on August 23, 1983, but at the request of AMTRAK, the record was kept open for ten days in order to permit AMTRAK to determine whether it desired an addditional hearing. (N.T. 45).

4. Thereafter, by letter, AMTRAK advised the Administrative Law Judge that it did not desire an additional hearing.

5. Subsequent to the hearing, initial Briefs were filed by the parties, and the existence of an agreement referred to in the City Ordinances of the early 1900's, as aforesaid, was raised by AMTRAK for the first time in the proceeding.

6. Thereafter, another search of the files of the Bridge Division disclosed no specific file under the heading of 59th Steet Bridge.

7. However, on October 6, 1983, in an envelope entitled "Pennsylvania Railroad Branch, Construction of (never built) from 56th Street to Glen Lock, Chester County" two (2) printed copies of Exhibit A, hereto attached were discovered; one of which was a conformed copy.

8. Because the envelope was so titled, there had been no reason to believe that an agreement relating to any existing bridge, was contained therein.

9. By reason of all of the foregoing, the Agreement relating to the 59th Street Bridge prior to the hearing was unknown and not easily discoverable.

10. This document is not contradictory to or unduly repetitious of the testimony and pertinent exhibits.

11. The document, a copy of which is attached hereto, made part hereof and marked Exhibit A, is an Ancient Document; has the appearance of

due antiquity and of genuineness; is corroborated by the acts of the parties as testified to at the hearing; came from proper custody; and therefore is admissible in evidence without direct proof of execution.

Wherefore, the City of Philadelphia respectfully requests that the record in the instant matter be reopened for the purpose of admitting said document into evidence.

Respectfully submitted,

HERBERT SMOLEN
Deputy City Solicitor

COMMONWEALTH OF PENNSYLVANIA :

SS

COUNTY OF PHILADLEPHIA :

AFFIDAVIT

Robert M. Washburn, being duly sworn according to law deposes and says that he is a Staff Engineer II, in the Bridge Division of the Streets Department of the City of Philadelphia; that he is authorized to and does make this affidavit on its behalf, and that the facts set forth in the foregoing Motion are true and correct to the best of his knowledge, information and belief.

ROBERT M. WASHBURN

Sworn to and Subscribed
Before me this day
of 1983.

NOTARY PUBLIC

M. LEE HOLLIDAY
Notary Public, Phila., Phila. Co.
My Commission Expires Sept 2 19[illegible]

WHEREAS, in and by an Ordinance of the Select and Common Councils of the City of Philadelphia, approved the Eighth day of July, A. D. 1915, entitled:

AN ORDINANCE

Amendatory of and supplementary to an ordinance entitled "An Ordinance giving authority and consent by the City of Philadelphia to the construction, maintenance and operation of so much of the proposed branch or improved line of the Pennsylvania Railroad Company, extending from a point in the said City on its present main line at or near Fifty-sixth street, Philadelphia, to connections with its low grade line and Trenton Branch, at or near Glen Loch, in Chester County, as is located within the limits of said City, and for the purpose of aiding and enabling the construction thereof, providing upon certain terms and conditions for change and alteration of certain City plans by revising the lines and grades of certain streets thereon; by striking therefrom and vacating portions of certain streets, by extending certain existing streets, by opening certain new streets, and by making such revisions of lines and grades as may be necessary to properly complete the City plans within certain limits of the Thirty-fourth Ward of the said City;" approved the 23d day of November, 1905. It was ordained as follows:

SECTION 1. *The Select and Common Councils of the City of Philadelphia do ordain,* That an ordinance entitled "An Ordinance giving authority and consent by the City of Philadelphia to the construction, maintenance and operation of so much of the proposed branch or improved line of the Pennsylvania Railroad Company, extending from a point in the said City on its present line at or near Fifty-sixth street, Philadelphia, to connections with its

low grade line and Trenton Branch, at or near Glen Loch, in Chester County, as is located within the limits of said City, and for the purpose of aiding and enabling the construction thereof, providing upon certain terms and conditions for change and alteration of certain City plans by revising the lines and grades of certain streets thereon, by striking therefrom and vacating portions of certain streets, by extending certain existing streets, by opening certain new streets and by making such revision of lines and grades of streets as may be necessary to properly complete the City plans within certain limits of the Thirty-fourth Ward of the said City," approved the 23d day of November, 1905, be amended and supplemented as follows:

That Section 5 of said ordinance, which reads as follows:

"SECTION 5. No street now or hereafter placed upon the City Plan shall cross the said railroad at grade; and all streets upon the City Plan, as revised in accordance with the provisions of this ordinance, and all streets, roads and lanes now open or hereafter opened, shall be carried over or under the said railroad. The said Pennsylvania Railroad Company shall bear the entire cost of constructing and forever maintaining all bridges, whether overhead or undergrade, and all tunnels upon the lines of streets, roads or lanes now legally or physically open, and upon the lines of Sixty-eighth and Sixty-ninth streets, and shall agree to pay one-half of the entire cost of construction, and the whole cost of maintenance, of all bridges, whether overhead or undergrade, upon the lines of all streets or roads now upon the City Plan or placed thereon under authority of this ordinance, and not otherwise provided for therein, and hereafter opened across the line of the said railroad, whenever Councils, by ordinance, shall direct the construction of such bridges. All bridges for carrying the said railroad over and above streets and roads now opened or hereafter opened shall have a clearance of at least fourteen (14) feet above the confirmed grade of the street, and all bridges for carrying streets or roads over and above the said railroad shall have a clearance of at least twenty (20) feet above the tops of the rails, and shall be designed in accordance with the standard specifications of the Department of Public Works (Bureau of Surveys) for the designing of bridges. No bridge of any kind or character shall be erected until the plans for the same shall have been approved by the Director of the Department of Public Works and the Board of Surveyors. The said railroad company shall keep its road, wherever it crosses the line of any street or road, in good order and condition at all times, and shall save the City of Philadelphia harmless, so far as the said City may be liable therefor, from any liability or responsibility that may arise from the construction or operation of the said railroad over or under any of the streets aforesaid, or for the longitudinal occupation of Malvern avenue with a tunnel,"

be, and the same is hereby, amended so as to read as follows:

SECTION 5. No street now or hereafter placed upon the City Plan shall cross the said railroad at grade; and all streets upon the City Plan, as revised in accordance with the provisions of this ordinance, and all streets, roads and lanes now open or hereafter opened, shall be carried over or under the said railroad. The said Pennsylvania Railroad Company shall bear the entire cost of constructing and forever maintaining all bridges, whether overhead or undergrade, and all tunnels upon the lines of streets, roads or lanes now legally or physically open, and the new street to be opened across the main line and yards extending from the intersection of Fifty-ninth street and Lancaster avenue to Fifty-seventh street and Upland Way, and the bridge from the east side of Sixty-eighth street to the west side of Sixty-ninth street, and shall agree to pay one-half of the entire cost of construction, and the whole cost of maintenance, of all other bridges, whether overhead or undergrade, upon the lines of all streets or roads, now upon the City Plan or placed thereon under authority of this ordinance, and not otherwise provided for herein, and hereafter opened across the line of the said railroad, whenever Councils, by ordinance, shall direct the construction of said bridges. All bridges for carrying the said railroad over and above streets and roads now opened or hereafter opened shall have a clearance of at least fourteen (14) feet above the confirmed grade of the street, and all bridges for carrying streets or roads over and above the said railroad shall have a clearance of at least twenty-three (23) feet above the tops of the rails, except the bridge to be constructed across the Main Line and yards at the intersection of Fifty-ninth street and Lancaster avenue to Fifty-seventh street and Upland Way, which shall have a clearance of not less than seventeen and one-half (17½) feet over the Main Line passenger tracks and not less than twenty-three (23) feet over the yard tracks and the bridge on the line of Malvern avenue, which shall have a clearance of not less than seventeen and one-half (17½) feet over the west-bound passenger tracks, and shall be designed in accordance with the standard specifications of the Department of Public Works (Bureau of Surveys) for the designing of bridges. No bridge of any kind or character shall be erected until the plans of the same shall have been approved by the Director of the Department of Public Works and the Board of Surveyors. The said railroad company shall keep its road, wherever it crosses the line of any street or road, in good order and condition at all times, and shall save the City of Philadelphia harmless, so far as the City may be liable therefor, from any liability or responsibility that may arise from the construction or operation of the said railroad over or under any of the streets aforesaid or for the longitudinal occupation of Malvern avenue with a tunnel.

That Section 6 of said ordinance, which reads as follows:

"SECTION 6. Before this ordinance shall become effective or confer any authority upon the said Pennsylvania Railroad Company, and before the Board of Surveyors may confirm any of the revisions or changes of streets and roads herein authorized, the said Pennsylvania Railroad Company shall enter into an agreement, satisfactory to the City Solicitor, to comply with the following conditions: To reconstruct at its own expense such portions of the Mill Creek sewer as the Director of the Department of Public Works may deem necessary, from a point in Sixty-second street, about four hundred (400) feet south of Woodbine avenue, along Sixty-second street, Malvern avenue, Sixtieth street, Montgomery avenue and Jefferson street, and thence across property of the said railroad company to Lancaster avenue, near Fifty-sixth street, and such other existing sewers, drainage channels, water-pipe, electrical conduits and other municipal structures, as may be affected by the construction of said railroad and the changes of lines and grades of streets herein authorized, together with all necessary appurtenances and connections with existing sewers, in accordance with plans and specifications to be prepared by the Department of Public Works (Bureau of Surveys); to forever maintain said sewer or sewers and appurtenances at its own expense wherever they lie within property owned by the said railroad company; to permit inspection of the same by representatives of the Department of Public Works at any time and to repair same whenever directed to do so by the Director of said Department. To construct its railroad in tunnel from a point northeast of Lancaster avenue, under Malvern avenue, Sixty-third street, Gross street and Sixty-fourth street: *Provided*, That there shall be no openings in the surface of Malvern avenue, from the said tunnel to a point west of Sixty-fourth street, and to at once construct steel or masonry bridges with floors paved with asphalt, and to construct satisfactory approaches to the same to the grades established under authority of this ordinance, at its own expense, for carrying Sixty-sixth street and Haverford avenue, of their full width as now confirmed or as confirmed under authority of this ordinance, over and above the said railroad; also to at once construct single span steel or masonry bridges for carrying the said railroad over and above Sixty-eighth street and Sixty-ninth street of their full widths as now confirmed or confirmed under authority of this ordinance, and to forever maintain all the bridges named in this section at its own expense. To dedicate or agree to dedicate to the City as much of the property owned or controlled by it as may be required to widen or open any street or road now upon the City Plan or placed upon the City Plan under authority of this ordinance crossing under or over the said railroad; to dedicate or indemnify the City against all damages and costs for the opening of the following streets now upon the City Plan or placed thereon

under authority of this ordinance: Jefferson street, between Fifty-fourth street and Montgomery avenue; Malvern avenue, between Sixtieth street and Lancaster avenue; Sixtieth street, or Upland Way, between Coleman avenue and Montgomery avenue; Sixty-second street, between a point about four hundred (400) feet south of Woodbine avenue and Malvern avenue; the unopened portion of Fifty-sixth street, between Lancaster avenue and Jefferson street; Montgomery avenue, between Sixtieth street and Jefferson street, and so much of Lancaster avenue, between Fifty-sixth street and Malvern avenue, as is owned or controlled by it. To open, grade and macadamize to the lines and grades confirmed under authority of this ordinance, and to construct the necessary bridges upon the following streets at its own expense: Malvern avenue, between Lancaster avenue and Sixtieth Street; Sixtieth street, between Coleman avenue and Montgomery avenue; Montgomery avenue, between Sixtieth street and Jefferson street; Jefferson street, between Montgomery avenue and Fifty-fourth street, and the unopened portion of Fifty-sixth street, between Lancaster avenue and Jefferson street. To maintain travel in a manner satisfactory to the Director of the Department of Public Works upon all streets and roads now open to public use, or upon streets or roads substituted therefor, at all times during the construction of the said railroad. The Pennsylvania Railroad Company shall also agree not to claim any damages for the opening, grading or changing of grade of any street or road now open or upon the City Plan, or placed upon the City Plan under authority of this ordinance, or upon or across any property owned or controlled by it within the territory covered by this ordinance, and shall file its bond in the sum of two hundred and fifty thousand dollars ($250,000) duly executed under its corporate seal, in a form satisfactory to the City Solicitor, conditioned to indemnify the City against any or all damages which may arise by reason of the construction of the said railroad and the consequent changes of lines, and grades of any street or road now legally or physically open, and also to faithfully comply with all the conditions, requirements and provisions of this ordinance, and shall pay into the City Treasury the sum of fifty (50) dollars for printing the same," be, and the same is hereby amended so as to read as follows:

SECTION 6. Before this ordinance shall become effective or confer any authority upon the said Pennsylvania Railroad Company, and before the Board of Surveyors may confirm any of the revisions and changes of streets and roads herein authorized, the said Pennsylvania Railroad Company shall enter into an agreement satisfactory to the City Solicitor, to comply with the following conditions: to reconstruct at its own expense such portions of the Mill Creek sewer as the Director of the Department of Public Works may deem necessary from the intersection of Malvern and Lancaster avenues to a point in the

present sewer west of the vacated Fifty-sixth street, about six hundred (600) feet north of Lancaster avenue, and construct a sewer from Sixty-first street and Lebanon avenue along Lebanon avenue to Lancaster avenue, and along Lancaster avenue to Fifty-ninth street, and construct and maintain at its own expense a channel for drainage, in addition to the sewer system, from Fifty-eighth street and Lebanon avenue to the southeast side of Upland Way, and reconstruct such other existing sewers, drainage channel, water-pipes, electrical conduits and other municipal structures as may be affected by the construction of said railroad and the changes of lines and grades of streets herein authorized, together with all necessary new sewers and inlets and appurtenances and connections therewith and with existing sewers, in accordance with plans and specifications to be prepared by the Department of Public Works (Bureau of Surveys); to forever maintain said sewer or sewers and appurtenances at its own expense, wherever they lie within property owned by the said railroad company or cross under the lines of railroad owned by it; to permit inspection of the same by representatives of the Department of Public Works at any time, and to repair same whenever directed to do so by the Director of said Department; those portions of said sewers that are relocated within the lines of any street or streets now on the City Plan or placed thereon by authority of this ordinance are to be maintained by the City, except where they cross under the lines of the said railroad company; to construct its railroad in tunnel from a point northeast of Lancaster avenue, under Lancaster avenue, Malvern avenue, Sixty-third street, Gross street and Sixty-fourth street; *Provided*, That there shall be no openings in the surface of Malvern avenue from the said tunnel, between the portal northeast of Lancaster avenue and a point west of Sixty-fourth street, and to construct steel or masonry bridges, with paved floors, and to construct satisfactory paved approaches to the same to the grades established under authority of this ordinance, at its own expense, for carrying Sixty-sixth street, Haverford avenue, Jefferson street and the new street from the proposed intersection of Fifty-ninth street and Lancaster avenue to the proposed intersection of Fifty-seventh street and Upland Way, of their full widths as now confirmed or as confirmed under authority of this ordinance, over and above the said railroad; also to construct a steel or masonry bridge for carrying the said railroad from the east side of Sixty-eighth street to the west side of Sixty-ninth street over and above said streets, and to relocate and reconstruct bridges, with columns on curb lines carrying its tracks, connecting with the Schuylkill Valley Railroad, over Jefferson street, between Fifty-third and Fifty-fourth streets, and to relocate, reconstruct and build additional bridges with columns in the center of the street to carry its main and yard tracks over and above Fifty-second street, between Merion avenue and Monticello street, and to extend the present arch bridge

over Woodbine avenue for three tracks, with clearances not less than under the present arch, or build bridges for three additional tracks with clear spans and of clearance of not less than fourteen (14) feet over Woodbine avenue, of their full widths as now confirmed, or confirmed under authority of this ordinance, and to forever maintain all of the bridges named in this section at its own expense. To dedicate to the City as much of the property owned or controlled by it as may be required to widen or open any street or road now upon the City Plan or placed upon the City Plan under authority of this ordinance, crossing under or over the said railroad; to dedicate the property or indemnify the City against all damages or costs for the opening of the following streets now upon the City Plan or placed thereon under authority of this ordinance: Upland Way, between Fifty-fourth street and Woodbine avenue; Malvern avenue, between Upland Way and Lancaster avenue; Sixty-second street, between a point about four hundred (400) feet south of Woodbine avenue and Lancaster avenue; Fifty-ninth street, eighty (80) feet wide, between Nassau street and Lancaster avenue; a new street seventy (70) feet wide over the tracks and property of the Pennsylvania Railroad, from the hereinbefore proposed intersection of Fifty-ninth street and Lancaster avenue to the hereinbefore proposed intersection of Fifty-seventh street and Upland Way; Fifty-seventh street, between Upland Way as proposed to be laid out and Lebanon Avenue; Columbia avenue, from Fifty-ninth street to Lancaster avenue including the intersection of Columbia avenue, Fifty-ninth street and Lancaster avenue; and so much of Lancaster avenue, between Fifty-sixth street and Malvern avenue, as is owned or controlled by it; and to indemnify the City against all damages and costs for the changes of lines and grades of the following streets, as authorized by this ordinance: Fifty-seventh street, from Berks street to Lebanon avenue; Lebanon avenue, from Fifty-seventh street to Fifty-ninth street; Fifty-ninth street, from Lebanon avenue to Malvern avenue; Coleman avenue, from Upland Way to a point about five hundred and fifty (550) feet east of Upland Way; Upland Way, between Woodbine avenue and Coleman avenue; Malvern avenue, from Lancaster avenue to Sixty-third street; Sixty-second street, from Woodbine avenue to a point about four hundred (400) feet south of Woodbine avenue, and from Lancaster avenue to a point about five hundred and seventy (570) feet south thereof; Oxford street, from Fifty-seventh street to Sixtieth street; Fifty-sixth street, from the summit north of Berks street to Upland Way; Berks street, from about three hundred (300) feet east of Fifty-sixth street to Fifty-seventh street; Columbia avenue, from Fifty-ninth street to Lancaster avenue; Fifty-ninth street, from Oxford street to Nassau street; Fifty-seventh street, from Lancaster avenue to Nassau street; and Lancaster avenue, from a point about 350 feet west of Fifty-sixth street to Sixtieth street. To open, grade and

pave, with materials to be designated by the Director of the Department of Public Works, to the lines and grades confirmed under authority of this ordinance the following streets at its own expense: Malvern avenue, between Sixty-third street and Lancaster avenue, as proposed to be laid out; Lancaster avenue, between Sixty-second street and Sixty-third street; Sixty-second street, between Woodbine avenue and Lancaster avenue, and between Lancaster avenue and a point about five hundred and seventy (570) feet south thereof; Fifty-ninth street, between Nassau street and Lancaster avenue; a new seventy (70) feet wide street over the tracks and property of the Pennsylvania Railroad from the hereinbefore proposed intersection of Fifty-ninth street and Lancaster avenue to the hereinbefore proposed intersection of Fifty-seventh street and Upland Way; Fifty-seventh street, between Upland Way as proposed to be laid out and Lebanon avenue. To open and grade to the lines and grades as authorized by this ordinance Upland Way, between Woodbine avenue and Fifty-fourth street, and to pave a strip twenty-four (24) feet in width of said Upland Way with bituminous bound macadam. To maintain travel in a manner satisfactory to the Director of the Department of Public Works upon all streets and roads now open to public use, or upon streets or roads substituted therefor, at all times during the construction of the said railroad.

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That Section 7 of said ordinance, which reads as follows:

"SECT. 7. The authority herein granted for the construction of the said railroad shall terminate and become null and void if the said railroad is not completed within ten years from the date of the approval of this ordinance," be, and the same is hereby, repealed.

SECT. 2. The dedications of property to the City and the work in connection with the opening, grading and paving of streets, building of sewers and other municipal structures, and building of bridges which the said Pennsylvania Railroad Company obligates itself to carry out along its main line from Fifty-fourth street to Sixty-third street and Woodbine avenue, shall be started within three months after the date of confirmation of the City Plans by the Board of Surveyors, and completed within two and one-half years from the date of said confirmation, excepting that the widening of the bridge over Woodbine avenue shall be completed within seven years after date of said confirmation. The dedications of property, and the work in connection with the opening, grading and paving of streets and building of sewers and other municipal structures, and building of bridges which the said Pennsylvania Railroad Company obligates itself to carry out along its said branch or improved line from Sixty-third street and Malvern avenue to the City Line at Cobb's Creek, near Woodbine avenue, shall be com-

pleted within five years, and the construction of the tunnel under Malvern avenue shall be completed within eight years from the date of the approval of this amendatory and supplementary ordinance. The relocation of tracks and construction of bridges necessary to permit the City to change the grade of Fifty-fourth street, from Jefferson street to Upland Way, as placed upon the City Plan under authority of this ordinance, and of Jefferson street, from Fifty-third street to Fifty-fourth street, shall be completed within seven years from the date of the approval of this amendatory and supplementary ordinance.

SECT. 3. The Department of Public Works (Board of Surveyors) is hereby authorized to revise the lines and grades of all streets and roads now open or upon the City Plan adjacent to the said branch or improved line or affected by its construction between Fifty-ninth street and Cobb's Creek, or affected by any changes of the location or grades of the Pennsylvania Railroad between Fifty-second street and Woodbine avenue, caused by or made in connection with the construction of the said branch or improved line; to make the following changes in the City Plans. To strike from the City Plan and vacate the following streets: Sixty-second street, from a point about four hundred (400) feet south of Woodbine avenue to Malvern avenue; Upland Way, from Woodbine avenue to Malvern avenue; Montgomery avenue, as the same now appears on the City Plan, from Malvern avenue to Fifty-fourth street; Jefferson street, from Montgomery avenue to Fifty-fourth street; Lebanon avenue, from Montgomery avenue to Fifty-ninth street; Fifty-seventh street, from Jefferson street to Berks street; Fifty-sixth street, from Lancaster avenue to Berks street; Berks street, from Fifty-sixth street to Fifty-seventh street; Columbia avenue, from Jefferson street, as now located, to Fifty-fourth street; Fifty-ninth street, as now located, from Oxford street to Columbia avenue, except such portions of said streets as may lie within the lines of new streets hereinafter authorized. To place upon the City Plan the following streets: Sixty-second street, fifty (50) feet wide, from a point about four hundred (400) feet south of Woodbine avenue to Lancaster avenue; Upland Way, seventy (70) feet wide, from Woodbine avenue to Malvern avenue; Upland Way, eighty (80) feet wide, from Malvern avenue to Fifty-fourth street; Fifty-seventh street, eighty (80) feet wide, from Upland Way, as hereinbefore proposed to be laid out, to Berks street; Fifty-ninth street, eighty (80) feet wide, from Nassau street to Lancaster avenue; the intersection of Columbia avenue, Fifty-ninth street and Lancaster avenue; a new street seventy (70) feet wide, over the tracks and property of the Pennsylvania Railroad Company, from the hereinbefore proposed intersection of Fifty-ninth street and Lancaster avenue to the hereinbefore proposed intersection of Fifty-seventh street and Upland Way; Berks street, sixty (60) feet wide, from Fifty-sixth street to Fifty-

seventh street; Fifty-sixth street, seventy (70) feet wide, from Berks street to Upland Way; Montgomery avenue, seventy (70) feet wide, from Fifty-fourth street to Upland Way. To widen Fifty-fourth street to eighty (80) feet, and revise the grade from Jefferson street to Upland Way, as placed upon the City Plan under authority of this ordinance; Upland Way to seventy (70) feet, and revise the grade of same between Woodbine avenue and Malvern avenue; to widen Fifty-ninth street to eighty (80) feet, and revise the grade of same between Nassau street and Oxford street. To revise the grades of Lancaster avenue, from a point about three hundred and fifty (350) feet west of Fifty-sixth street to Sixtieth street; Malvern avenue, from Lancaster avenue to Fifty-ninth street; Sixty-second street, from Woodbine avenue to a point about four hundred (400) feet south of Woodbine avenue; Coleman avenue, from Upland Way to a point about five hundred and fifty (550) feet east of Upland Way; Fifty-ninth street, from Malvern avenue to Lebanon avenue; Lebanon avenue, from Fifty-eighth street to Fifty-ninth street; Fifty-seventh street, from Lebanon avenue to Berks street, and from Lancaster avenue to Jefferson street; Columbia avenue, from Lancaster avenue to Sixtieth street; Jefferson street, from Fifty-third street to Fifty-fourth street; Nassau street, from Fifty-seventh to Fifty-ninth street; Oxford street, from Fifty-seventh street to Sixtieth street; Fifty-sixth street, from Montgomery avenue to the summit in Fifty-sixth street, north of Berks street; Berks street, from Fifty-sixth street to a point about three hundred (300) feet east of Fifty-sixth street; and to make such other revisions in the lines and grades of streets, and to lay out such new streets, within the territory bounded by City avenue on the north, Fifty-fourth street on the east, Lansdowne avenue on the south, and Cobb's Creek on the west, as may be necessary to complete the City Plan in that vicinity.

SECT. 4. The location and grade of the said branch or improved line shall be substantially as shown upon a plan and profile which, before this ordinance shall have any effect or confer any authority upon the said railroad company, shall be approved by the proper officials of the Pennsylvania Railroad Company and the proper officials of the City and filed in the Department of Public Works (Bureau of Surveys); and said plan and profile are hereby substituted for the plan and profile approved and filed pursuant to Section Two (2) of the ordinance which this ordinance supplements and amends.

SECT. 5. The Pennsylvania Railroad Company shall covenant, promise and agree to the following conditions:

First. To equip and operate electrically the Malvern Avenue Tunnel and that portion of the proposed branch

or improved line of railroad between Fifty-ninth street and City Line at Cobb's Creek.

Second. That, inasmuch as it is claimed by the railroad company that the electrical operation of a classification freight yard of the type proposed is at the present time in more or less of an experimental stage, it will not place in service the new freight yard proposed between Fifty-fourth street and Malvern avenue until four years after the date of the approval of this amendatory and supplementary ordinance, and that before said new freight yard or any part thereof is placed in operation the question of the motive power to be used therein shall be submitted to a board consisting of three members, one member of said board to be the Honorable Edwin S. Stuart, one to be chosen by the railroad company, and the third by the two so chosen. Vacancies, if any, in said board, shall be filled from time to time by the parties originally selecting them, except that in the case of the office provided herein to be filled by the Honorable Edwin S. Stuart, the vacancy shall be filled by the Mayor of the City from a list of five names presented to him by the Overbrook Club and the Overbrook Association. The decision of the board, or a majority of them, shall be made in the light of information and experience then available, and, subject to the approval of the Public Service Commission of the Commonwealth of Pennsylvania, shall be binding and conclusive upon the railroad company and the City. *Provided, however,* that the decision of the board shall not operate as a waiver of any rights of said City or said railroad company in regard to the motive power which shall thereafter be used in the operation of said yard.

The railroad company will make necessary and reasonable experiments and demonstrations in said yard of systems of motive power for said board to assist it in reaching a decision.

Third. After the passage of this ordinance, no steam locomotive shall be stored or parked, and no roundhouse or railroad coaling plant or repair shop shall be constructed west of Fifty-fourth street to City avenue and along the proposed branch or improved line within the City limits.

SECT. 6. Before this ordinance shall become effective or confer any authority upon the said Pennsylvania Railroad Company, and before the Board of Surveyors may confirm any of the revisions or changes of streets and roads herein authorized, the said Pennsylvania Railroad Company, which has duly entered into an agreement to comply with the conditions contained in Section Six (6) of the ordinance to which this is an amendment, shall enter into a supplemental agreement satisfactory to the City Solicitor to comply with the conditions contained in said Section Six (6) as amended and supplemented by Section One (1) of this ordinance, and with conditions contained in Section Five (5) of this ordinance. The Pennsylvania Railroad

Company shall also agree not to claim any damages for the opening, grading or changing of grade of any street or road now open or upon the City Plan or placed upon the City Plan under authority of this ordinance, or of the ordinance to which this is amendatory, upon or across any property owned or controlled by it within the territory covered by the above recited ordinance, as amended by this ordinance, and having filed its bond in the sum of two hundred and fifty thousand (250,000) dollars, duly executed under its corporate seal, in a form satisfactory to the City Solicitor as provided in the ordinance to which this is an amendment, shall file an amended bond in the sum of two hundred and fifty thousand (250,000) dollars duly executed under its corporate seal, in a form satisfactory to the City Solicitor, in lieu of and substitution for the said bond heretofore filed, conditioned to indemnify the City against any and all damages which may arise by reason of the construction of the said branch or improved line and the consequent changes of lines and grades of any street or road now legally or physically open, or opened under authority of this ordinance, and also to faithfully comply with the conditions, requirements and provisions of the said ordinance approved the twenty-third day of November, 1905, as hereby amended and supplemented and shall pay into the City Treasury the sum of fifty (50) dollars for printing this amendatory and supplementary ordinance.

SECT. 7. It is hereby understood and agreed that neither the purpose nor intent, nor the obligation of this contract, if and when approved by the Public Service Commission of the Commonwealth of Pennsylvania, is such as to impair or in any wise affect the exercise by said commission of any of the powers vested in it by the Public Service Company Law, approved July 26th, 1913.

NOW, THEREFORE, Pursuant to, and in accordance with the foregoing Ordinance approved the 8th day of July, A. D. 1915, amending and supplementing the Ordinance approved the Twenty-third day of November, A. D. 1905, this Agreement between the City of Philadelphia, party of the one part, and the Pennsylvania Railroad Company, party of the other part, WITNESSETH, that for and in consideration of the premises and of the privileges and advantages to each of them thereunto moving and the mutual covenants hereinafter contained and set forth, the said parties hereto have mutually covenanted and agreed for themselves, their successors and assigns, and do by these presents severally covenant, promise and agree to and with each other as follows, that is to say:

First: The said City of Philadelphia hereby covenants, promises and agrees to and with the said The Pennsylvania Railroad Company that no street now or hereafter placed upon the City Plan shall cross the said railroad at grade; and all streets upon the City Plan, as revised in accordance with the provisions of this ordinance, and all streets, roads and lanes now open or hereafter opened, shall be carried over or under the said railroad.

The Pennsylvania Railroad Company covenants, promises and agrees with the City of Philadelphia that the said Railroad Company shall bear the entire cost of constructing and forever maintaining all bridges, whether overhead or undergrade, and all tunnels upon the lines of streets, roads or lanes now legally or physically open, and the new street to be opened across the main line and yards extending from the intersection of Fifty-ninth street and Lancaster avenue to Fifty-seventh street and Upland Way, and the bridge from the east side of Sixty-eighth street to the west side of Sixty-ninth street, and it shall pay one-half of the entire cost of construction, and the whole cost of maintenance of all other bridges, whether overhead or undergrade, upon the lines of all streets or roads, now upon the City Plan or placed thereon under authority of said Ordinance, and not otherwise provided for in said Ordinance, and hereafter opened across the line of the said railroad, whenever Councils, by Ordinance, shall direct the construction of said bridges. All bridges for carrying the said railroad over and above streets and roads now opened or hereafter opened shall have a clearance of at least fourteen (14) feet above the confirmed grade of the street, and all bridges for carrying streets or roads over and above the said railroad shall have a clearance of at least twenty-three (23) feet above the tops of the rails, except the bridge to be constructed across the Main Line and yards at the intersection of Fifty-ninth street and Lancaster avenue to Fifty-seventh street and Upland Way, which shall have a clearance of not less than seventeen and one-half (17½) feet over the Main Line passenger tracks and not less than twenty-three (23) feet over the yard tracks and the bridge on the line of Malvern avenue, which shall have a clearance of not less than seventeen and one-half (17½) feet over the west-bound passenger tracks, and shall be designed in accordance with the standard specifications of the Department of Public Works (Bureau of Surveys) for the designing of bridges. No bridge of any kind or character shall be erected until the plans of the same shall have been approved by the Director of the Department of Public Works and the Board of Surveyors. And the said Railroad Company covenants, promises and agrees to keep its road, wherever it crosses the line of any street or road, in good order and condition at all times, and shall save the City of Philadelphia harmless, so far as the City may be liable therefor, from any liability or responsibility that may arise from the construction or operation of the said railroad over or under any of the streets aforesaid or for the longitudinal occupation of Malvern avenue with a tunnel, as set forth in Section 5 of the hereinbefore recited Ordinance, and made part hereof.

And the said The Pennsylvania Railroad Company covenants, promises and agrees to and with the said City of Philadelphia that it will reconstruct at its own expense such portions of the Mill Creek sewer as the Director of the Department of Public Works may deem necessary,

from the intersection of Malvern and Lancaster avenues to a point in the present sewer west of the vacated Fifty-sixth street, about six hundred (600) feet north of Lancaster avenue, and will construct a sewer from Sixty-first street and Lebanon avenue, along Lebanon avenue to Lancaster avenue, and along Lancaster avenue to Fifty-ninth street, and construct and maintain at its own expense a channel for drainage in addition to the sewer system from Fifty-eighth street and Lebanon avenue to the southeast side of Upland Way, and reconstruct such other existing sewers, drainage channels, water pipes, electrical conduits, and other municipal structures as may be affected by the construction of the said railroad and the changes of lines and grades of streets herein authorized, together with all necessary new sewers, inlets, appurtenances and connections therewith and with existing sewers in accordance with plans and specifications to be prepared by the Department of Public Works (Bureau of Surveys); and shall and will forever maintain said sewer or sewers and appurtenances at its own expense wherever they lie within property owned by the said railroad company, or cross under the lines of railroad owned by it, and to permit inspection of the same by representatives of the Department of Public Works at any time, and to repair same whenever directed to do so by the Director of the said Department; those portions of the said sewers that are relocated within the lines of any street or streets now upon the City Plan or placed thereon by authority of this Ordinance are to be maintained by the City, except where they cross under the lines of the said Railroad Company. And to construct its railroad in tunnel from a point northeast of Lancaster avenue under Lancaster avenue, Malvern avenue, Sixty-third street, Gross street and Sixty-fourth street; Provided, that there shall be no openings in the surface of Malvern avenue, from the said tunnel between the portal northeast of Lancaster avenue and a point west of Sixty-fourth street; and that it will also construct steel or masonry bridges with paved floors, and to construct satisfactory paved approaches to the same to the grades established under authority of this ordinance, at said Railroad Company's own expense, for carrying Sixty-sixth street, Haverford avenue, Jefferson street, and the new street from the proposed intersection of Fifty-ninth street and Lancaster avenue to the proposed intersection of Fifty-seventh street and Upland Way, of their full widths, as now confirmed or as confirmed under authority of this ordinance, over and above the said railroad; and will also construct a steel or masonry bridge for carrying the said railroad from the east side of Sixty-eighth street to the west side of Sixty-ninth street, over and above said streets; and will relocate and reconstruct bridges with columns on curb lines carrying its tracks, connecting with the Schuylkill Valley Railroad over Jefferson street, between Fifty-third and Fifty-fourth streets, and will relocate, reconstruct and build additional bridges with columns in the center of the street to carry its main and yard

tracks over and above Fifty-second street between Merion avenue and Monticello street, and to extend the present arch bridge over Woodbine avenue for three tracks, with clearances not less than under the present arch, or build bridges for three additional tracks with clear spans and of clearance of not less than fourteen (14) feet over Woodbine avenue, of their full widths as now confirmed or confirmed under authority of this ordinance, and will forever maintain all of the bridges named in section Sixth of said ordinance approved the 23d day of November, A. D. 1905, as amended by said ordinance approved the 8th day of July, A. D. 1915, at its own expense, and shall and will dedicate to the City as much of the property owned or controlled by it as may be required to widen or open any street or road now upon the City Plan or placed upon the City Plan under authority of the hereinbefore mentioned ordinance, crossing under or over the said railroad; and shall and will dedicate the property or indemnify the City against all damages or costs for the opening of the following streets now upon the City Plan or placed thereon under authority of the hereinbefore recited ordinance: Upland Way, between Fifty-fourth street and Woodbine avenue; Malvern avenue, between Upland Way and Lancaster avenue; Sixty-second street, between a point about four hundred (400) feet south of Woodbine avenue and Lancaster avenue; Fifty-ninth street, eighty (80) feet wide, between Nassau street and Lancaster avenue; a new street seventy (70) feet wide over the tracks and property of the Pennsylvania Railroad, from the hereinbefore proposed intersection of Fifty-ninth street and Lancaster avenue to the hereinbefore proposed intersection of Fifty-seventh street and Upland Way; Fifty-seventh street between Upland Way as proposed to be laid out and Lebanon avenue; Columbia avenue, from Fifty-ninth street to Lancaster avenue, including the intersection of Columbia avenue; Fifty-ninth street and Lancaster avenue; and so much of Lancaster avenue, between Fifty-sixth street and Malvern avenue, as is owned or controlled by it; and shall and will indemnify the City against all damages and costs for the changes of lines and grades of the following streets, as authorized by the hereinbefore recited ordinance: Fifty-seventh street, from Berks street to Lebanon avenue; Lebanon avenue, from Fifty-seventh street to Fifty-ninth street; Fifty-ninth street, from Lebanon avenue to Malvern avenue; Coleman avenue from Upland Way to a point about five hundred and fifty (550) feet east of Upland Way; Upland Way, between Woodbine avenue and Coleman avenue; Malvern avenue, from Lancaster avenue to Sixty-third street; Sixty-second street, from Woodbine avenue to a point about four hundred (400) feet south of Woodbine avenue, and from Lancaster avenue to a point about five hundred and seventy (570) feet south thereof; Oxford street, from Fifty-seventh street to Sixtieth street; Fifty-sixth street, from the summit north of Berks street to Upland Way; Berks street, from about three hundred

tracks over and above Fifty-second street between Merion avenue and Monticello street, and to extend the present arch bridge over Woodbine avenue for three tracks, with clearances not less than under the present arch or build bridges for three additional tracks with clear spans and of clearance of not less than fourteen (14) feet over Woodbine avenue, of their full widths as now confirmed or confirmed under authority of this ordinance, and will forever maintain all of the bridges named in section Sixth of said ordinance approved the 23d day of November, A. D. 1905, as amended by said ordinance approved the 8th day of July, A. D. 1915, at its own expense, and shall and will dedicate to the City as much of the property owned or controlled by it as may be required to widen or open any street or road now upon the City Plan or placed upon the City Plan under authority of the hereinbefore mentioned ordinance, crossing under or over the said railroad; and shall and will dedicate the property or indemnify the City against all damages or costs for the opening of the following streets now upon the City Plan or placed thereon under authority of the hereinbefore recited ordinance: Upland Way, between Fifty-fourth street and Woodbine avenue; Malvern avenue, between Upland Way and Lancaster avenue; Sixty-second street, between a point about four hundred (400) feet south of Woodbine avenue and Lancaster avenue; Fifty-ninth street, eighty (80) feet wide, between Nassau street and Lancaster avenue; a new street seventy (70) feet wide over the tracks and property of the Pennsylvania Railroad, from the hereinbefore proposed intersection of Fifty-ninth street and Lancaster avenue to the hereinbefore proposed intersection of Fifty-seventh street and Upland Way; Fifty-seventh street between Upland Way as proposed to be laid out and Lebanon avenue; Columbia avenue, from Fifty-ninth street to Lancaster avenue, including the intersection of Columbia avenue; Fifty-ninth street and Lancaster avenue; and so much of Lancaster avenue, between Fifty-sixth street and Malvern avenue, as is owned or controlled by it; and shall and will indemnify the City against all damages and costs for the changes of lines and grades of the following streets, as authorized by the hereinbefore recited ordinance: Fifty-seventh street, from Berks street to Lebanon avenue; Lebanon avenue, from Fifty-seventh street to Fifty-ninth street; Fifty-ninth street, from Lebanon avenue to Malvern avenue; Coleman avenue from Upland Way to a point about five hundred and fifty (550) feet east of Upland Way; Upland Way, between Woodbine avenue and Coleman avenue; Malvern avenue, from Lancaster avenue to Sixty-third street; Sixty-second street, from Woodbine avenue to a point about four hundred (400) feet south of Woodbine avenue, and from Lancaster avenue to a point about five hundred and seventy (570) feet south thereof; Oxford street, from Fifty-seventh street to Sixtieth street; Fifty-sixth street, from the summit north of Berks street to Upland Way; Berks street, from about three hundred

(300) feet east of Fifty-sixth street to Fifty-seventh street; Columbia avenue, from Fifty-ninth street to Lancaster avenue; Fifty-ninth street, from Oxford street to Nassau street; Fifty-seventh street, from Lancaster avenue to Nassau street; and Lancaster avenue, from a point about three hundred and fifty (350) feet west of Fifty-sixth street to Sixtieth street.

And the said The Pennsylvania Railroad Company further covenants, promises and agrees to open, grade and pave with materials to be designated by the Director of the Department of Public Works, to the lines and grades confirmed under authority of the hereinbefore recited ordinance the following streets, at its own expense: Malvern avenue, between Sixty-third street and Lancaster avenue, as proposed to be laid out; Lancaster avenue, between Sixty-second street and Sixty-third street; Sixty-second street, between Woodbine avenue and Lancaster avenue, and between Lancaster avenue and a point about five hundred and seventy (570) feet south thereof; Fifty-ninth street, between Nassau street and Lancaster avenue; a new seventy (70) feet wide street over the tracks and property of the Pennsylvania Railroad from the hereinbefore proposed intersection of Fifty-ninth street and Lancaster avenue to the hereinbefore proposed intersection of Fifty-seventh street and Upland Way; Fifty-seventh street, between Upland Way as proposed to be laid out and Lebanon avenue; and it shall and will open and grade to the lines and grades as authorized by the hereinbefore recited ordinance Upland Way between Woodbine avenue and Fifty-fourth street; and shall and will pave a strip twenty-four (24) feet in width of said Upland Way with bituminous bound macadam; and shall and will maintain travel in a manner satisfactory to the Director of the Department of Public Works upon all streets and roads now open to public use, or upon streets or roads substituted therefor, at all times during the construction of the said railroad, as provided in Section 6 of the hereinbefore mentioned amended ordinance.

And the Pennsylvania Railroad Company further covenants, promises and agrees to and with the said City of Philadelphia that it will equip and operate electrically the Malvern Avenue Tunnel and that portion of the proposed branch or improved line of railroad between Fifty-ninth street and City Line at Cobb's Creek.

And the said The Pennsylvania Railroad Company further covenants, promises and agrees that it will not place in service the new freight yard proposed between Fifty-fourth street and Malvern avenue until four years after the date of the approval of the said hereinbefore mentioned amendatory and supplemental ordinance:

And it is further agreed between the said parties hereto that before the said new freight yard, or any part thereof, is placed in operation, the question of the motive power to be used therein shall be submitted to a board consisting of three members, as set forth in the second paragraph of the Fifth Section of the hereinbefore mentioned ordinance,

provided, however, that the decision of said board shall not operate as a waiver of any rights of said City, or said Railroad Company in regard to the motive power which shall thereafter be used in the operation of said yard;

And the said Railroad Company covenants, promises and agrees to make necessary and reasonable experiments and demonstrations in said yard of systems of motive power for said board mentioned in the hereinbefore recited ordinance to assist it in reaching a decision.

It is further understood and agreed between the said parties that after the passage of the hereinbefore mentioned amended ordinance no steam locomotive shall be stored or parked, and no roundhouse or railroad coaling plant or repair shop shall be constructed west of Fifty-fourth street to City avenue, and along the proposed branch or improved line within the City limits.

And it is also further covenanted and agreed by The Pennsylvania Railroad Company that it will do and perform each, every and all of the matters and things in the hereinbefore recited amended ordinance stipulated to be done and performed by it and be subject to all liabilities thereof, and fully and faithfully comply with all the provisions, terms and conditions, matters and things of every nature and kind in said ordinance contained so far as the same are to be complied with by The Pennsylvania Railroad Company, with the same force and effect as if the same were herein fully set forth and covenanted to be done and performed by it; and shall file its bond in the sum of Two Hundred and Fifty Thousand ($250,000) Dollars, duly executed under its corporate seal, in form satisfactory to the City Solicitor, conditioned to indemnify the City against any or all damages which may arise by reason of the construction of the said railroad and the consequent changes of grade of any street or road now legally or physically open; and also to faithfully comply with all the conditions, requirements and provisions of said ordinance, and shall pay into the City Treasury the sum of fifty (50) dollars for printing the same.

And the City of Philadelphia covenants, promises and agrees to fully and faithfully perform each and every thing contained in said ordinance on its part to be done and performed;

And it is further agreed between the said parties that all the covenants and agreements in this contract contained shall extend to and bind the successors and assigns of each of the corporation parties hereto with the same force and effect as if the words "successors and assigns" had in each case been particularly mentioned.

It is hereby understood and agreed that neither the purpose nor intent, nor the obligation of this contract, if and when approved by the Public Service Commission of the Commonwealth of Pennsylvania, is such as to impair or in any wise affect the exercise by said commission of any of the powers vested in it by the Public Service Company Law, approved July 26, A. D. 1913.

IN WITNESS WHEREOF, the City of Philadelphia has affixed its corporate seal, duly attested by the Mayor thereof, and the Pennsylvania Railroad Company has also fixed its corporate seal, duly attested by the proper officers thereof, the day and year first written. First day of November A. D. 1915

CITY OF PHILADELPHIA,

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

Rudolph Blankenburg
Mayor of Philadelphia.

PENNSYLVANIA RAILROAD COMPANY.

by W. W. Atterbury
Vice President.

ATTEST:

Lewis Neilson
Secretary.

Approved as to form:
MICHAEL J. RYAN,
City Solicitor.

per J. Temple Hopple
Asst. City Solicitor.

Exhibit A

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

Investigation upon the Commission's own motion into 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 grade of the tracks of National Railroad Passenger Corporation in the City of Philadelphia, to determine the condition, disposition and responsibility for maintenance of the existing crossing structure.	Docket No. I-830373

DOCKETED
OCT 13 1983

RECEIVED
SECRETARY'S OFFICE
PUBLIC UTILITY
COMMISSION
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MOTION TO REOPEN RECORD
FOR ADMISSION OF FURTHER EVIDENCE

The City of Philadelphia hereby files this Motion to Reopen the Record in this case for admission of further evidence, and in support thereof, avers the following:

1. There is among the records of the Bridge Division of the Streets Department of the City of Philadelphia, a loose leaf book containing approximately 134 pages of highway overpass structure listings, showing therein, inter alia, maintenance obligations and historic documentation supporting those obligations which are in the possession of the Bridge Division and Bridge Maintenance Section of the Highway Division of the Department of Streets. The information in this book has been developed over the years.

2. Prior to the hearing in the instant matter, the aforesaid reference book was searched and the only references to the 59th Street Bridge found therein were references to the Ordinances of 1905, 1915, 1926. In addition, other files, envelopes and records were reviewed.

3. The Hearing in the above matter was held on August 23, 1983, but at the request of AMTRAK, the record was kept open for ten days in order to permit AMTRAK to determine whether it desired an addditional hearing. (N.T. 45).

4. Thereafter, by letter, AMTRAK advised the Administrative Law Judge that it did not desire an additional hearing.

5. Subsequent to the hearing, initial Briefs were filed by the parties, and the existence of an agreement referred to in the City Ordinances of the early 1900's, as aforesaid, was raised by AMTRAK for the first time in the proceeding.

6. Thereafter, another search of the files of the Bridge Division disclosed no specific file under the heading of 59th Steet Bridge.

7. However, on October 6, 1983, in an envelope entitled "Pennsylvania Railroad Branch, Construction of (never built) from 56th Street to Glen Lock, Chester County" two (2) printed copies of Exhibit A, hereto attached were discovered; one of which was a conformed copy.

8. Because the envelope was so titled, there had been no reason to believe that an agreement relating to any existing bridge, was contained therein.

9. By reason of all of the foregoing, the Agreement relating to the 59th Street Bridge prior to the hearing was unknown and not easily discoverable.

10. This document is not contradictory to or unduly repetitious of the testimony and pertinent exhibits.

11. The document, a copy of which is attached hereto, made part hereof and marked Exhibit A, is an Ancient Document; has the appearance of

due antiquity and of genuineness; is corroborated by the acts of the parties as testified to at the hearing; came from proper custody; and therefore is admissible in evidence without direct proof of execution.

Wherefore, the City of Philadelphia respectfully requests that the record in the instant matter be reopened for the purpose of admitting said document into evidence.

Respectfully submitted,

Herbert Smolen

HERBERT SMOLEN
Deputy City Solicitor

COMMONWEALTH OF PENNSYLVANIA :

SS

COUNTY OF PHILADLEPHIA :

AFFIDAVIT

Robert M. Washburn, being duly sworn according to law deposes and says that he is a Staff Engineer II, in the Bridge Division of the Streets Department of the City of Philadelphia; that he is authorized to and does make this affidavit on its behalf, and that the facts set forth in the foregoing Motion are true and correct to the best of his knowledge, information and belief.

Robert M Washburn
ROBERT M. WASHBURN

Sworn to and Subscribed
Before me this 17th day
of October 1983.

M Lee Holliday
NOTARY PUBLIC

M. LEE HOLLIDAY
Notary Public, Phila., Phila. Co
My Commission Expires Sept. 2, 1985

WHEREAS, in and by an Ordinance of the Select and Common Councils of the City of Philadelphia, approved the Eighth day of July, A. D. 1915, entitled:

AN ORDINANCE

Amendatory of and supplementary to an ordinance entitled "An Ordinance giving authority and consent by the City of Philadelphia to the construction, maintenance and operation of so much of the proposed branch or improved line of the Pennsylvania Railroad Company, extending from a point in the said City on its present main line at or near Fifty-sixth street, Philadelphia, to connections with its low grade line and Trenton Branch, at or near Glen Loch, in Chester County, as is located within the limits of said City, and for the purpose of aiding and enabling the construction thereof, providing upon certain terms and conditions for change and alteration of certain City plans by revising the lines and grades of certain streets thereon; by striking therefrom and vacating portions of certain streets, by extending certain existing streets, by opening certain new streets, and by making such revisions of lines and grades as may be necessary to properly complete the City plans within certain limits of the Thirty-fourth Ward of the said City;" approved the 23d day of November, 1905. It was ordained as follows:

SECTION 1. *The Select and Common Councils of the City of Philadelphia do ordain,* That an ordinance entitled "An Ordinance giving authority and consent by the City of Philadelphia to the construction, maintenance and operation of so much of the proposed branch or improved line of the Pennsylvania Railroad Company, extending from a point in the said City on its present line at or near Fifty-sixth street, Philadelphia, to connections with its

low grade line and Trenton Branch, at or near Glen Loch, in Chester County, as is located within the limits of said City, and for the purpose of aiding and enabling the construction thereof, providing upon certain terms and conditions for change and alteration of certain City plans by revising the lines and grades of certain streets thereon, by striking therefrom and vacating portions of certain streets, by extending certain existing streets, by opening certain new streets and by making such revision of lines and grades of streets as may be necessary to properly complete the City plans within certain limits of the Thirty-fourth Ward of the said City," approved the 23d day of November, 1905, be amended and supplemented as follows:

That Section 5 of said ordinance, which reads as follows:

"SECTION 5. No street now or hereafter placed upon the City Plan shall cross the said railroad at grade; and all streets upon the City Plan, as revised in accordance with the provisions of this ordinance, and all streets, roads and lanes now open or hereafter opened, shall be carried over or under the said railroad. The said Pennsylvania Railroad Company shall bear the entire cost of constructing and forever maintaining all bridges, whether overhead or undergrade, and all tunnels upon the lines of streets, roads or lanes now legally or physically open, and upon the lines of Sixty-eighth and Sixty-ninth streets, and shall agree to pay one-half of the entire cost of construction, and the whole cost of maintenance, of all bridges, whether overhead or undergrade, upon the lines of all streets or roads now upon the City Plan or placed thereon under authority of this ordinance, and not otherwise provided for therein, and hereafter opened across the line of the said railroad, whenever Councils, by ordinance, shall direct the construction of such bridges. All bridges for carrying the said railroad over and above streets and roads now opened or hereafter opened shall have a clearance of at least fourteen (14) feet above the confirmed grade of the street, and all bridges for carrying streets or roads over and above the said railroad shall have a clearance of at least twenty (20) feet above the tops of the rails, and shall be designed in accordance with the standard specifications of the Department of Public Works (Bureau of Surveys) for the designing of bridges. No bridge of any kind or character shall be erected until the plans for the same shall have been approved by the Director of the Department of Public Works and the Board of Surveyors. The said railroad company shall keep its road, wherever it crosses the line of any street or road, in good order and condition at all times, and shall save the City of Philadelphia harmless, so far as the said City may be liable therefor, from any liability or responsibility that may arise from the construction or operation of the said railroad over or under any of the streets aforesaid, or for the longitudinal occupation of Malvern avenue with a tunnel,"

be, and the same is hereby, amended so as to read as follows:

SECTION 5. No street now or hereafter placed upon the City Plan shall cross the said railroad at grade; and all streets upon the City Plan, as revised in accordance with the provisions of this ordinance, and all streets, roads and lanes now open or hereafter opened, shall be carried over or under the said railroad. The said Pennsylvania Railroad Company shall bear the entire cost of constructing and forever maintaining all bridges, whether overhead or undergrade, and all tunnels upon the lines of streets, roads or lanes now legally or physically open, and the new street to be opened across the main line and yards extending from the intersection of Fifty-ninth street and Lancaster avenue to Fifty-seventh street and Upland Way, and the bridge from the east side of Sixty-eighth street to the west side of Sixty-ninth street, and shall agree to pay one-half of the entire cost of construction, and the whole cost of maintenance, of all other bridges, whether overhead or undergrade, upon the lines of all streets or roads, now upon the City Plan or placed thereon under authority of this ordinance, and not otherwise provided for herein, and hereafter opened across the line of the said railroad, whenever Councils, by ordinance, shall direct the construction of said bridges. All bridges for carrying the said railroad over and above streets and roads now opened or hereafter opened shall have a clearance of at least fourteen (14) feet above the confirmed grade of the street, and all bridges for carrying streets or roads over and above the said railroad shall have a clearance of at least twenty-three (23) feet above the tops of the rails, except the bridge to be constructed across the Main Line and yards at the intersection of Fifty-ninth street and Lancaster avenue to Fifty-seventh street and Upland Way, which shall have a clearance of not less than seventeen and one-half (17½) feet over the Main Line passenger tracks and not less than twenty-three (23) feet over the yard tracks and the bridge on the line of Malvern avenue, which shall have a clearance of not less than seventeen and one-half (17½) feet over the west-bound passenger tracks, and shall be designed in accordance with the standard specifications of the Department of Public Works (Bureau of Surveys) for the designing of bridges. No bridge of any kind or character shall be erected until the plans of the same shall have been approved by the Director of the Department of Public Works and the Board of Surveyors. The said railroad company shall keep its road, wherever it crosses the line of any street or road, in good order and condition at all times, and shall save the City of Philadelphia harmless, so far as the City may be liable therefor, from any liability or responsibility that may arise from the construction or operation of the said railroad over or under any of the streets aforesaid or for the longitudinal occupation of Malvern avenue with a tunnel.

That Section 6 of said ordinance, which reads as follows:

"SECTION 6. Before this ordinance shall become effective or confer any authority upon the said Pennsylvania Railroad Company, and before the Board of Surveyors may confirm any of the revisions or changes of streets and roads herein authorized, the said Pennsylvania Railroad Company shall enter into an agreement, satisfactory to the City Solicitor, to comply with the following conditions: To reconstruct at its own expense such portions of the Mill Creek sewer as the Director of the Department of Public Works may deem necessary, from a point in Sixty-second street, about four hundred (400) feet south of Woodbine avenue, along Sixty-second street, Malvern avenue, Sixtieth street, Montgomery avenue and Jefferson street, and thence across property of the said railroad company to Lancaster avenue, near Fifty-sixth street, and such other existing sewers, drainage channels, water-pipe, electrical conduits and other municipal structures, as may be affected by the construction of said railroad and the changes of lines and grades of streets herein authorized, together with all necessary appurtenances and connections with existing sewers, in accordance with plans and specifications to be prepared by the Department of Public Works (Bureau of Surveys); to forever maintain said sewer or sewers and appurtenances at its own expense wherever they lie within property owned by the said railroad company; to permit inspection of the same by representatives of the Department of Public Works at any time and to repair same whenever directed to do so by the Director of said Department. To construct its railroad in tunnel from a point northeast of Lancaster avenue, under Malvern avenue, Sixty-third street, Gross street and Sixty-fourth street; *Provided*, That there shall be no openings in the surface of Malvern avenue, from the said tunnel to a point west of Sixty-fourth street, and to at once construct steel or masonry bridges with floors paved with asphalt, and to construct satisfactory approaches to the same to the grades established under authority of this ordinance, at its own expense, for carrying Sixty-sixth street and Haverford avenue, of their full width as now confirmed or as confirmed under authority of this ordinance, over and above the said railroad; also to at once construct single span steel or masonry bridges for carrying the said railroad over and above Sixty-eighth street and Sixty-ninth street of their full widths as now confirmed or confirmed under authority of this ordinance, and to forever maintain all the bridges named in this section at its own expense. To dedicate or agree to dedicate to the City as much of the property owned or controlled by it as may be required to widen or open any street or road now upon the City Plan or placed upon the City Plan under authority of this ordinance crossing under or over the said railroad; to dedicate or indemnify the City against all damages and costs for the opening of the following streets now upon the City Plan or placed thereon

under authority of this ordinance: Jefferson street, between Fifty-fourth street and Montgomery avenue; Malvern avenue, between Sixtieth street and Lancaster avenue; Sixtieth street, or Upland Way, between Coleman avenue and Montgomery avenue; Sixty-second street, between a point about four hundred (400) feet south of Woodbine avenue and Malvern avenue; the unopened portion of Fifty-sixth street, between Lancaster avenue and Jefferson street; Montgomery avenue, between Sixtieth street and Jefferson street, and so much of Lancaster avenue, between Fifty-sixth street and Malvern avenue, as is owned or controlled by it. To open, grade and macadamize to the lines and grades confirmed under authority of this ordinance, and to construct the necessary bridges upon the following streets at its own expense: Malvern avenue, between Lancaster avenue and Sixtieth Street; Sixtieth street, between Coleman avenue and Montgomery avenue; Montgomery avenue, between Sixtieth street and Jefferson street; Jefferson street, between Montgomery avenue and Fifty-fourth street, and the unopened portion of Fifty-sixth street, between Lancaster avenue and Jefferson street. To maintain travel in a manner satisfactory to the Director of the Department of Public Works upon all streets and roads now open to public use, or upon streets or roads substituted therefor, at all times during the construction of the said railroad. The Pennsylvania Railroad Company shall also agree not to claim any damages for the opening, grading or changing of grade of any street or road now open or upon the City Plan, or placed upon the City Plan under authority of this ordinance, or upon or across any property owned or controlled by it within the territory covered by this ordinance, and shall file its bond in the sum of two hundred and fifty thousand dollars ($250,000) duly executed under its corporate seal, in a form satisfactory to the City Solicitor, conditioned to indemnify the City against any or all damages which may arise by reason of the construction of the said railroad and the consequent changes of lines, and grades of any street or road now legally or physically open, and also to faithfully comply with all the conditions, requirements and provisions of this ordinance, and shall pay into the City Treasury the sum of fifty (50) dollars for printing the same," be, and the same is hereby amended so as to read as follows:

SECTION 6. Before this ordinance shall become effective or confer any authority upon the said Pennsylvania Railroad Company, and before the Board of Surveyors may confirm any of the revisions and changes of streets and roads herein authorized, the said Pennsylvania Railroad Company shall enter into an agreement satisfactory to the City Solicitor, to comply with the following conditions: to reconstruct at its own expense such portions of the Mill Creek sewer as the Director of the Department of Public Works may deem necessary from the intersection of Malvern and Lancaster avenues to a point in the

present sewer west of the vacated Fifty-sixth street, about six hundred (600) feet north of Lancaster avenue, and construct a sewer from Sixty-first street and Lebanon avenue along Lebanon avenue to Lancaster avenue, and along Lancaster avenue to Fifty-ninth street, and construct and maintain at its own expense a channel for drainage, in addition to the sewer system, from Fifty-eighth street and Lebanon avenue to the southeast side of Upland Way, and reconstruct such other existing sewers, drainage channel, water-pipes, electrical conduits and other municipal structures as may be affected by the construction of said railroad and the changes of lines and grades of streets herein authorized, together with all necessary new sewers and inlets and appurtenances and connections therewith and with existing sewers, in accordance with plans and specifications to be prepared by the Department of Public Works (Bureau of Surveys); to forever maintain said sewer or sewers and appurtenances at its own expense, wherever they lie within property owned by the said railroad company or cross under the lines of railroad owned by it; to permit inspection of the same by representatives of the Department of Public Works at any time, and to repair same whenever directed to do so by the Director of said Department; those portions of said sewers that are relocated within the lines of any street or streets now on the City Plan or placed thereon by authority of this ordinance are to be maintained by the City, except where they cross under the lines of the said railroad company; to construct its railroad in tunnel from a point northeast of Lancaster avenue, under Lancaster avenue, Malvern avenue, Sixty-third street, Gross street and Sixty-fourth street; *Provided*, That there shall be no openings in the surface of Malvern avenue from the said tunnel, between the portal northeast of Lancaster avenue and a point west of Sixty-fourth street, and to construct steel or masonry bridges, with paved floors, and to construct satisfactory paved approaches to the same to the grades established under authority of this ordinance, at its own expense, for carrying Sixty-sixth street, Haverford avenue, Jefferson street and the new street from the proposed intersection of Fifty-ninth street and Lancaster avenue to the proposed intersection of Fifty-seventh street and Upland Way, of their full widths as now confirmed or as confirmed under authority of this ordinance, over and above the said railroad; also to construct a steel or masonry bridge for carrying the said railroad from the east side of Sixty-eighth street to the west side of Sixty-ninth street over and above said streets, and to relocate and reconstruct bridges, with columns on curb lines carrying its tracks, connecting with the Schuylkill Valley Railroad, over Jefferson street, between Fifty-third and Fifty-fourth streets, and to relocate, reconstruct and build additional bridges with columns in the center of the street to carry its main and yard tracks over and above Fifty-second street, between Merion avenue and Monticello street, and to extend the present arch bridge

over Woodbine avenue for three tracks, with clearances not less than under the present arch, or build bridges for three additional tracks with clear spans and of clearance of not less than fourteen (14) feet over Woodbine avenue, of their full widths as now confirmed, or confirmed under authority of this ordinance, and to forever maintain all of the bridges named in this section at its own expense. To dedicate to the City as much of the property owned or controlled by it as may be required to widen or open any street or road now upon the City Plan or placed upon the City Plan under authority of this ordinance, crossing under or over the said railroad; to dedicate the property or indemnify the City against all damages or costs for the opening of the following streets now upon the City Plan or placed thereon under authority of this ordinance: Upland Way, between Fifty-fourth street and Woodbine avenue; Malvern avenue, between Upland Way and Lancaster avenue; Sixty-second street, between a point about four hundred (400) feet south of Woodbine avenue and Lancaster avenue; Fifty-ninth street, eighty (80) feet wide, between Nassau street and Lancaster avenue; a new street seventy (70) feet wide over the tracks and property of the Pennsylvania Railroad, from the hereinbefore proposed intersection of Fifty-ninth street and Lancaster avenue to the hereinbefore proposed intersection of Fifty-seventh street and Upland Way; Fifty-seventh street, between Upland Way as proposed to be laid out and Lebanon Avenue; Columbia avenue, from Fifty-ninth street to Lancaster avenue including the intersection of Columbia avenue, Fifty-ninth street and Lancaster avenue; and so much of Lancaster avenue, between Fifty-sixth street and Malvern avenue, as is owned or controlled by it; and to indemnify the City against all damages and costs for the changes of lines and grades of the following streets, as authorized by this ordinance: Fifty-seventh street, from Berks street to Lebanon avenue; Lebanon avenue, from Fifty-seventh street to Fifty-ninth street; Fifty-ninth street, from Lebanon avenue to Malvern avenue; Coleman avenue, from Upland Way to a point about five hundred and fifty (550) feet east of Upland Way; Upland Way, between Woodbine avenue and Coleman avenue; Malvern avenue, from Lancaster avenue to Sixty-third street; Sixty-second street, from Woodbine avenue to a point about four hundred (400) feet south of Woodbine avenue, and from Lancaster avenue to a point about five hundred and seventy (570) feet south thereof; Oxford street, from Fifty-seventh street to Sixtieth street; Fifty-sixth street, from the summit north of Berks street to Upland Way; Berks street, from about three hundred (300) feet east of Fifty-sixth street to Fifty-seventh street; Columbia avenue, from Fifty-ninth street to Lancaster avenue; Fifty-ninth street, from Oxford street to Nassau street; Fifty-seventh street, from Lancaster avenue to Nassau street; and Lancaster avenue, from a point about 350 feet west of Fifty-sixth street to Sixtieth street. To open, grade and

pave, with materials to be designated by the Director of the Department of Public Works, to the lines and grades confirmed under authority of this ordinance the following streets at its own expense: Malvern avenue, between Sixty-third street and Lancaster avenue, as proposed to be laid out; Lancaster avenue, between Sixty-second street and Sixty-third street; Sixty-second street, between Woodbine avenue and Lancaster avenue, and between Lancaster avenue and a point about five hundred and seventy (570) feet south thereof; Fifty-ninth street, between Nassau street and Lancaster avenue; a new seventy (70) feet wide street over the tracks and property of the Pennsylvania Railroad from the hereinbefore proposed intersection of Fifty-ninth street and Lancaster avenue to the hereinbefore proposed intersection of Fifty-seventh street and Upland Way; Fifty-seventh street, between Upland Way as proposed to be laid out and Lebanon avenue. To open and grade to the lines and grades as authorized by this ordinance Upland Way, between Woodbine avenue and Fifty-fourth street, and to pave a strip twenty-four (24) feet in width of said Upland Way with bituminous bound macadam. To maintain travel in a manner satisfactory to the Director of the Department of Public Works upon all streets and roads now open to public use, or upon streets or roads substituted therefor, at all times during the construction of the said railroad.

That Section 7 of said ordinance, which reads as follows:

"SECT. 7. The authority herein granted for the construction of the said railroad shall terminate and become null and void if the said railroad is not completed within ten years from the date of the approval of this ordinance," be, and the same is hereby, repealed.

SECT. 2. The dedications of property to the City and the work in connection with the opening, grading and paving of streets, building of sewers and other municipal structures, and building of bridges which the said Pennsylvania Railroad Company obligates itself to carry out along its main line from Fifty-fourth street to Sixty-third street and Woodbine avenue, shall be started within three months after the date of confirmation of the City Plans by the Board of Surveyors, and completed within two and one-half years from the date of said confirmation, excepting that the widening of the bridge over Woodbine avenue shall be completed within seven years after date of said confirmation. The dedications of property, and the work in connection with the opening, grading and paving of streets and building of sewers and other municipal structures, and building of bridges which the said Pennsylvania Railroad Company obligates itself to carry out along its said branch or improved line from Sixty-third street and Malvern avenue to the City Line at Cobb's Creek, near Woodbine avenue, shall be com-

pleted within five years, and the construction of the tunnel under Malvern avenue shall be completed within eight years from the date of the approval of this amendatory and supplementary ordinance. The relocation of tracks and construction of bridges necessary to permit the City to change the grade of Fifty-fourth street, from Jefferson street to Upland Way, as placed upon the City Plan under authority of this ordinance, and of Jefferson street, from Fifty-third street to Fifty-fourth street, shall be completed within seven years from the date of the approval of this amendatory and supplementary ordinance.

SECT. 3. The Department of Public Works (Board of Surveyors) is hereby authorized to revise the lines and grades of all streets and roads now open or upon the City Plan adjacent to the said branch or improved line or affected by its construction between Fifty-ninth street and Cobb's Creek, or affected by any changes of the location or grades of the Pennsylvania Railroad between Fifty-second street and Woodbine avenue, caused by or made in connection with the construction of the said branch or improved line; to make the following changes in the City Plans. To strike from the City Plan and vacate the following streets: Sixty-second street, from a point about four hundred (400) feet south of Woodbine avenue to Malvern avenue; Upland Way, from Woodbine avenue to Malvern avenue; Montgomery avenue, as the same now appears on the City Plan, from Malvern avenue to Fifty-fourth street; Jefferson street, from Montgomery avenue to Fifty-fourth street; Lebanon avenue, from Montgomery avenue to Fifty-ninth street; Fifty-seventh street, from Jefferson street to Berks street; Fifty-sixth street, from Lancaster avenue to Berks street; Berks street, from Fifty-sixth street to Fifty-seventh street; Columbia avenue, from Jefferson street, as now located, to Fifty-fourth street; Fifty-ninth street, as now located, from Oxford street to Columbia avenue, except such portions of said streets as may lie within the lines of new streets hereinafter authorized. To place upon the City Plan the following streets: Sixty-second street, fifty (50) feet wide, from a point about four hundred (400) feet south of Woodbine avenue to Lancaster avenue; Upland Way, seventy (70) feet wide, from Woodbine avenue to Malvern avenue; Upland Way, eighty (80) feet wide, from Malvern avenue to Fifty-fourth street; Fifty-seventh street, eighty (80) feet wide, from Upland Way, as hereinbefore proposed to be laid out, to Berks street; Fifty-ninth street, eighty (80) feet wide, from Nassau street to Lancaster avenue; the intersection of Columbia avenue, Fifty-ninth street and Lancaster avenue; a new street seventy (70) feet wide, over the tracks and property of the Pennsylvania Railroad Company, from the hereinbefore proposed intersection of Fifty-ninth street and Lancaster avenue to the hereinbefore proposed intersection of Fifty-seventh street and Upland Way; Berks street, sixty (60) feet wide, from Fifty-sixth street to Fifty-

seventh street; Fifty-sixth street, seventy (70) feet wide, from Berks street to Upland Way; Montgomery avenue, seventy (70) feet wide, from Fifty-fourth street to Upland Way. To widen Fifty-fourth street to eighty (80) feet, and revise the grade from Jefferson street to Upland Way, as placed upon the City Plan under authority of this ordinance; Upland Way to seventy (70) feet, and revise the grade of same between Woodbine avenue and Malvern avenue; to widen Fifty-ninth street to eighty (80) feet, and revise the grade of same between Nassau street and Oxford street. To revise the grades of Lancaster avenue, from a point about three hundred and fifty (350) feet west of Fifty-sixth street to Sixtieth street; Malvern avenue, from Lancaster avenue to Fifty-ninth street; Sixty-second street, from Woodbine avenue to a point about four hundred (400) feet south of Woodbine avenue; Coleman avenue, from Upland Way to a point about five hundred and fifty (550) feet east of Upland Way; Fifty-ninth street, from Malvern avenue to Lebanon avenue; Lebanon avenue, from Fifty-eighth street to Fifty-ninth street; Fifty-seventh street, from Lebanon avenue to Berks street, and from Lancaster avenue to Jefferson street; Columbia avenue, from Lancaster avenue to Sixtieth street; Jefferson street, from Fifty-third street to Fifty-fourth street; Nassau street, from Fifty-seventh to Fifty-ninth street; Oxford street, from Fifty-seventh street to Sixtieth street; Fifty-sixth street, from Montgomery avenue to the summit in Fifty-sixth street, north of Berks street; Berks street, from Fifty-sixth street to a point about three hundred (300) feet east of Fifty-sixth street; and to make such other revisions in the lines and grades of streets, and to lay out such new streets, within the territory bounded by City avenue on the north, Fifty-fourth street on the east, Lansdowne avenue on the south, and Cobb's Creek on the west, as may be necessary to complete the City Plan in that vicinity.

SECT. 4. The location and grade of the said branch or improved line shall be substantially as shown upon a plan and profile which, before this ordinance shall have any effect or confer any authority upon the said railroad company, shall be approved by the proper officials of the Pennsylvania Railroad Company and the proper officials of the City and filed in the Department of Public Works (Bureau of Surveys); and said plan and profile are hereby substituted for the plan and profile approved and filed pursuant to Section Two (2) of the ordinance which this ordinance supplements and amends.

SECT. 5. The Pennsylvania Railroad Company shall covenant, promise and agree to the following conditions:

First. To equip and operate electrically the Malvern Avenue Tunnel and that portion of the proposed branch

or improved line of railroad between Fifty-ninth street and City Line at Cobb's Creek.

Second. That, inasmuch as it is claimed by the railroad company that the electrical operation of a classification freight yard of the type proposed is at the present time in more or less of an experimental stage, it will not place in service the new freight yard proposed between Fifty-fourth street and Malvern avenue until four years after the date of the approval of this amendatory and supplementary ordinance, and that before said new freight yard or any part thereof is placed in operation the question of the motive power to be used therein shall be submitted to a board consisting of three members, one member of said board to be the Honorable Edwin S. Stuart, one to be chosen by the railroad company, and the third by the two so chosen. Vacancies, if any, in said board, shall be filled from time to time by the parties originally selecting them, except that in the case of the office provided herein to be filled by the Honorable Edwin S. Stuart, the vacancy shall be filled by the Mayor of the City from a list of five names presented to him by the Overbrook Club and the Overbrook Association. The decision of the board, or a majority of them, shall be made in the light of information and experience then available, and, subject to the approval of the Public Service Commission of the Commonwealth of Pennsylvania, shall be binding and conclusive upon the railroad company and the City. *Provided, however,* that the decision of the board shall not operate as a waiver of any rights of said City or said railroad company in regard to the motive power which shall thereafter be used in the operation of said yard.

The railroad company will make necessary and reasonable experiments and demonstrations in said yard of systems of motive power for said board to assist it in reaching a decision.

Third. After the passage of this ordinance, no steam locomotive shall be stored or parked, and no roundhouse or railroad coaling plant or repair shop shall be constructed west of Fifty-fourth street to City avenue and along the proposed branch or improved line within the City limits.

SECT. 6. Before this ordinance shall become effective or confer any authority upon the said Pennsylvania Railroad Company, and before the Board of Surveyors may confirm any of the revisions or changes of streets and roads herein authorized, the said Pennsylvania Railroad Company, which has duly entered into an agreement to comply with the conditions contained in Section Six (6) of the ordinance to which this is an amendment, shall enter into a supplemental agreement satisfactory to the City Solicitor to comply with the conditions contained in said Section Six (6) as amended and supplemented by Section One (1) of this ordinance, and with conditions contained in Section Five (5) of this ordinance. The Pennsylvania Railroad

Company shall also agree not to claim any damages for the opening, grading or changing of grade of any street or road now open or upon the City Plan or placed upon the City Plan under authority of this ordinance, or of the ordinance to which this is amendatory, upon or across any property owned or controlled by it within the territory covered by the above recited ordinance, as amended by this ordinance, and having filed its bond in the sum of two hundred and fifty thousand (250,000) dollars, duly executed under its corporate seal, in a form satisfactory to the City Solicitor as provided in the ordinance to which this is an amendment, shall file an amended bond in the sum of two hundred and fifty thousand (250,000) dollars duly executed under its corporate seal, in a form satisfactory to the City Solicitor, in lieu of and substitution for the said bond heretofore filed, conditioned to indemnify the City against any and all damages which may arise by reason of the construction of the said branch or improved line and the consequent changes of lines and grades of any street or road now legally or physically open, or opened under authority of this ordinance, and also to faithfully comply with the conditions, requirements and provisions of the said ordinance approved the twenty-third day of November, 1905, as hereby amended and supplemented and shall pay into the City Treasury the sum of fifty (50) dollars for printing this amendatory and supplementary ordinance.

SECT. 7. It is hereby understood and agreed that neither the purpose nor intent, nor the obligation of this contract, if and when approved by the Public Service Commission of the Commonwealth of Pennsylvania, is such as to impair or in any wise affect the exercise by said commission of any of the powers vested in it by the Public Service Company Law, approved July 26th, 1913.

NOW, THEREFORE, Pursuant to, and in accordance with the foregoing Ordinance approved the 8th day of July, A. D. 1915, amending and supplementing the Ordinance approved the Twenty-third day of November, A. D. 1905, this Agreement between the City of Philadelphia, party of the one part, and the Pennsylvania Railroad Company, party of the other part, WITNESSETH, that for and in consideration of the premises and of the privileges and advantages to each of them thereunto moving and the mutual covenants hereinafter contained and set forth, the said parties hereto have mutually covenanted and agreed for themselves, their successors and assigns, and do by these presents severally covenant, promise and agree to and with each other as follows, that is to say:

First: The said City of Philadelphia hereby covenants, promises and agrees to and with the said The Pennsylvania Railroad Company that no street now or hereafter placed upon the City Plan shall cross the said railroad at grade; and all streets upon the City Plan, as revised in accordance with the provisions of this ordinance, and all streets, roads and lanes now open or hereafter opened, shall be carried over or under the said railroad.

The Pennsylvania Railroad Company covenants, promises and agrees with the City of Philadelphia that the said Railroad Company shall bear the entire cost of constructing and forever maintaining all bridges, whether overhead or undergrade, and all tunnels upon the lines of streets, roads or lanes now legally or physically open, and the new street to be opened across the main line and yards extending from the intersection of Fifty-ninth street and Lancaster avenue to Fifty-seventh street and Upland Way, and the bridge from the east side of Sixty-eighth street to the west side of Sixty-ninth street, and it shall pay one-half of the entire cost of construction, and the whole cost of maintenance of all other bridges, whether overhead or undergrade, upon the lines of all streets or roads, now upon the City Plan or placed thereon under authority of said Ordinance, and not otherwise provided for in said Ordinance, and hereafter opened across the line of the said railroad, whenever Councils, by Ordinance, shall direct the construction of said bridges. All bridges for carrying the said railroad over and above streets and roads now opened or hereafter opened shall have a clearance of at least fourteen (14) feet above the confirmed grade of the street, and all bridges for carrying streets or roads over and above the said railroad shall have a clearance of at least twenty-three (23) feet above the tops of the rails, except the bridge to be constructed across the Main Line and yards at the intersection of Fifty-ninth street and Lancaster avenue to Fifty-seventh street and Upland Way, which shall have a clearance of not less than seventeen and one-half (17½) feet over the Main Line passenger tracks and not less than twenty-three (23) feet over the yard tracks and the bridge on the line of Malvern avenue, which shall have a clearance of not less than seventeen and one-half (17½) feet over the west-bound passenger tracks, and shall be designed in accordance with the standard specifications of the Department of Public Works (Bureau of Surveys) for the designing of bridges. No bridge of any kind or character shall be erected until the plans of the same shall have been approved by the Director of the Department of Public Works and the Board of Surveyors. And the said Railroad Company covenants, promises and agrees to keep its road, wherever it crosses the line of any street or road, in good order and condition at all times, and shall save the City of Philadelphia harmless, so far as the City may be liable therefor, from any liability or responsibility that may arise from the construction or operation of the said railroad over or under any of the streets aforesaid or for the longitudinal occupation of Malvern avenue with a tunnel, as set forth in Section 5 of the hereinbefore recited Ordinance, and made part hereof.

And the said The Pennsylvania Railroad Company covenants, promises and agrees to and with the said City of Philadelphia that it will reconstruct at its own expense such portions of the Mill Creek sewer as the Director of the Department of Public Works may deem necessary,

from the intersection of Malvern and Lancaster avenues to a point in the present sewer west of the vacated Fifty-sixth street, about six hundred (600) feet north of Lancaster avenue, and will construct a sewer from Sixty-first street and Lebanon avenue, along Lebanon avenue to Lancaster avenue, and along Lancaster avenue to Fifty-ninth street, and construct and maintain at its own expense a channel for drainage in addition to the sewer system from Fifty-eighth street and Lebanon avenue to the southeast side of Upland Way, and reconstruct such other existing sewers, drainage channels, water pipes, electrical conduits, and other municipal structures as may be affected by the construction of the said railroad and the changes of lines and grades of streets herein authorized, together with all necessary new sewers, inlets, appurtenances and connections therewith and with existing sewers in accordance with plans and specifications to be prepared by the Department of Public Works (Bureau of Surveys); and shall and will forever maintain said sewer or sewers and appurtenances at its own expense wherever they lie within property owned by the said railroad company, or cross under the lines of railroad owned by it, and to permit inspection of the same by representatives of the Department of Public Works at any time, and to repair same whenever directed to do so by the Director of the said Department; those portions of the said sewers that are relocated within the lines of any street or streets now upon the City Plan or placed thereon by authority of this Ordinance are to be maintained by the City, except where they cross under the lines of the said Railroad Company. And to construct its railroad in tunnel from a point northeast of Lancaster avenue under Lancaster avenue, Malvern avenue, Sixty-third street, Gross street and Sixty-fourth street; Provided, that there shall be no openings in the surface of Malvern avenue, from the said tunnel between the portal northeast of Lancaster avenue and a point west of Sixty-fourth street; and that it will also construct steel or masonry bridges with paved floors, and to construct satisfactory paved approaches to the same to the grades established under authority of this ordinance, at said Railroad Company's own expense, for carrying Sixty-sixth street, Haverford avenue, Jefferson street, and the new street from the proposed intersection of Fifty-ninth street and Lancaster avenue to the proposed intersection of Fifty-seventh street and Upland Way, of their full widths, as now confirmed or as confirmed under authority of this ordinance, over and above the said railroad; and will also construct a steel or masonry bridge for carrying the said railroad from the east side of Sixty-eighth street to the west side of Sixty-ninth street, over and above said streets; and will relocate and reconstruct bridges with columns on curb lines carrying its tracks, connecting with the Schuylkill Valley Railroad over Jefferson street, between Fifty-third and Fifty-fourth streets, and will relocate, reconstruct and build additional bridges with columns in the center of the street to carry its main and yard

tracks over and above Fifty-second street between Merion avenue and Monticello street, and to extend the present arch bridge over Woodbine avenue for three tracks, with clearances not less than under the present arch, or build bridges for three additional tracks with clear spans and of clearance of not less than fourteen (14) feet over Woodbine avenue, of their full widths as now confirmed or confirmed under authority of this ordinance, and will forever maintain all of the bridges named in section Sixth of said ordinance approved the 23d day of November, A. D. 1905, as amended by said ordinance approved the 8th day of July, A. D. 1915, at its own expense, and shall and will dedicate to the City as much of the property owned or controlled by it as may be required to widen or open any street or road now upon the City Plan or placed upon the City Plan under authority of the hereinbefore mentioned ordinance, crossing under or over the said railroad; and shall and will dedicate the property or indemnify the City against all damages or costs for the opening of the following streets now upon the City Plan or placed thereon under authority of the hereinbefore recited ordinance: Upland Way, between Fifty-fourth street and Woodbine avenue; Malvern avenue, between Upland Way and Lancaster avenue; Sixty-second street, between a point about four hundred (400) feet south of Woodbine avenue and Lancaster avenue; Fifty-ninth street, eighty (80) feet wide, between Nassau street and Lancaster avenue; a new street seventy (70) feet wide over the tracks and property of the Pennsylvania Railroad, from the hereinbefore proposed intersection of Fifty-ninth street and Lancaster avenue to the hereinbefore proposed intersection of Fifty-seventh street and Upland Way; Fifty-seventh street between Upland Way as proposed to be laid out and Lebanon avenue; Columbia avenue, from Fifty-ninth street to Lancaster avenue, including the intersection of Columbia avenue; Fifty-ninth street and Lancaster avenue; and so much of Lancaster avenue, between Fifty-sixth street and Malvern avenue, as is owned or controlled by it; and shall and will indemnify the City against all damages and costs for the changes of lines and grades of the following streets, as authorized by the hereinbefore recited ordinance: Fifty-seventh street, from Berks street to Lebanon avenue; Lebanon avenue, from Fifty-seventh street to Fifty-ninth street; Fifty-ninth street, from Lebanon avenue to Malvern avenue; Coleman avenue from Upland Way to a point about five hundred and fifty (550) feet east of Upland Way; Upland Way, between Woodbine avenue and Coleman avenue; Malvern avenue, from Lancaster avenue to Sixty-third street; Sixty-second street, from Woodbine avenue to a point about four hundred (400) feet south of Woodbine avenue, and from Lancaster avenue to a point about five hundred and seventy (570) feet south thereof; Oxford street, from Fifty-seventh street to Sixtieth street; Fifty-sixth street, from the summit north of Berks street to Upland Way; Berks street, from about three hundred

(300) feet east of Fifty-sixth street to Fifty-seventh street; Columbia avenue, from Fifty-ninth street to Lancaster avenue; Fifty-ninth street, from Oxford street to Nassau street; Fifty-seventh street, from Lancaster avenue to Nassau street; and Lancaster avenue, from a point about three hundred and fifty (350) feet west of Fifty-sixth street to Sixtieth street.

And the said The Pennsylvania Railroad Company further covenants, promises and agrees to open, grade and pave with materials to be designated by the Director of the Department of Public Works, to the lines and grades confirmed under authority of the hereinbefore recited ordinance the following streets, at its own expense: Malvern avenue, between Sixty-third street and Lancaster avenue, as proposed to be laid out; Lancaster avenue, between Sixty-second street and Sixty-third street; Sixty-second street, between Woodbine avenue and Lancaster avenue, and between Lancaster avenue and a point about five hundred and seventy (570) feet south thereof; Fifty-ninth street, between Nassau street and Lancaster avenue; a new seventy (70) feet wide street over the tracks and property of the Pennsylvania Railroad from the hereinbefore proposed intersection of Fifty-ninth street and Lancaster avenue to the hereinbefore proposed intersection of Fifty-seventh street and Upland Way; Fifty-seventh street, between Upland Way as proposed to be laid out and Lebanon avenue; and it shall and will open and grade to the lines and grades as authorized by the hereinbefore recited ordinance Upland Way between Woodbine avenue and Fifty-fourth street; and shall and will pave a strip twenty-four (24) feet in width of said Upland Way with bituminous bound macadam; and shall and will maintain travel in a manner satisfactory to the Director of the Department of Public Works upon all streets and roads now open to public use, or upon streets or roads substituted therefor, at all times during the construction of the said railroad, as provided in Section 6 of the hereinbefore mentioned amended ordinance.

And the Pennsylvania Railroad Company further covenants, promises and agrees to and with the said City of Philadelphia that it will equip and operate electrically the Malvern Avenue Tunnel and that portion of the proposed branch or improved line of railroad between Fifty-ninth street and City Line at Cobb's Creek.

And the said The Pennsylvania Railroad Company further covenants, promises and agrees that it will not place in service the new freight yard proposed between Fifty-fourth street and Malvern avenue until four years after the date of the approval of the said hereinbefore mentioned amendatory and supplemental ordinance:

And it is further agreed between the said parties hereto that before the said new freight yard, or any part thereof, is placed in operation, the question of the motive power to be used therein shall be submitted to a board consisting of three members, as set forth in the second paragraph of the Fifth Section of the hereinbefore mentioned ordinance,

provided, however, that the decision of said board shall not operate as a waiver of any rights of said City, or said Railroad Company in regard to the motive power which shall thereafter be used in the operation of said yard;

And the said Railroad Company covenants, promises and agrees to make necessary and reasonable experiments and demonstrations in said yard of systems of motive power for said board mentioned in the hereinbefore recited ordinance to assist it in reaching a decision.

It is further understood and agreed between the said parties that after the passage of the hereinbefore mentioned amended ordinance no steam locomotive shall be stored or parked, and no roundhouse or railroad coaling plant or repair shop shall be constructed west of Fifty-fourth street to City avenue, and along the proposed branch or improved line within the City limits.

And it is also further covenanted and agreed by The Pennsylvania Railroad Company that it will do and perform each, every and all of the matters and things in the hereinbefore recited amended ordinance stipulated to be done and performed by it and be subject to all liabilities thereof, and fully and faithfully comply with all the provisions, terms and conditions, matters and things of every nature and kind in said ordinance contained so far as the same are to be complied with by The Pennsylvania Railroad Company, with the same force and effect as if the same were herein fully set forth and covenanted to be done and performed by it; and shall file its bond in the sum of Two Hundred and Fifty Thousand ($250,000) Dollars, duly executed under its corporate seal, in form satisfactory to the City Solicitor, conditioned to indemnify the City against any or all damages which may arise by reason of the construction of the said railroad and the consequent changes of grade of any street or road now legally or physically open; and also to faithfully comply with all the conditions, requirements and provisions of said ordinance, and shall pay into the City Treasury the sum of fifty (50) dollars for printing the same.

And the City of Philadelphia covenants, promises and agrees to fully and faithfully perform each and every thing contained in said ordinance on its part to be done and performed;

And it is further agreed between the said parties that all the covenants and agreements in this contract contained shall extend to and bind the successors and assigns of each of the corporation parties hereto with the same force and effect as if the words "successors and assigns" had in each case been particularly mentioned.

It is hereby understood and agreed that neither the purpose nor intent, nor the obligation of this contract, if and when approved by the Public Service Commission of the Commonwealth of Pennsylvania, is such as to impair or in any wise affect the exercise by said commission of any of the powers vested in it by the Public Service Company Law, approved July 26, A. D. 1913.

IN WITNESS WHEREOF, the City of Philadelphia has affixed its corporate seal, duly attested by the Mayor thereof, and the Pennsylvania Railroad Company has also fixed its corporate seal, duly attested by the proper officers thereof, the day and year first written. First day of November A. D. 1915

CITY OF PHILADELPHIA,

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

Rudolph Blankenburg
Mayor of Philadelphia.

PENNSYLVANIA RAILROAD COMPANY.

by W. W. Atterbury
Vice President.

ATTEST:

Lewis Neilson
Secretary.

Approved as to form:
MICHAEL J. RYAN,
City Solicitor.

per J. Temple Hopple
Asst. City Solicitor.

Exhibit A

Re: Investigation upon the Commission's own motion into 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 grade of the tracks of National Railroad Passenger Corporation in the City of Philadelphia, to determine the condition, disposition and responsibility for maintenance of the existing crossing structure.
Docket No. I - 830373

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the Motion of the City of Philadelphia in the above matter upon those parties listed in the Service List below, by hand delivery or by first class mail, postage prepaid.

Herbert Smolen

HERBERT SMOLEN
DEPUTY CITY SOLICITOR
CITY OF PHILADELPHIA

SERVICE DATE: October 13, 1983

Service List

Honorable Joseph J. Klovekorn, ALJ
13th Floor, State Office Building
Broad & Spring Garden Streets
Philadelphia, Pa.

Richard S. Herskovitz, Esquire
P.O. Box 3265
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522 Transportation & Safety Bldg.
Harrisburg, Pa. 17120

Harold K. Cohen, Esquire
524 Suburban Station Building
Philadelphia, Pa. 19102

Edward H. Huss, Esquire
130 South 9th Street
Philadelphia, Pa. 19107

Rudolph A. Chillemi, Esquire
2301 Market Street

National Railroad Passenger Corporation, Northeast Corridor Operations, 1617 John F. Kennedy Blvd., Philadelphia, Penna 19103

ORIGINAL

Amtrak

OCT 14 1983

RECEIVED

OCT 18 1983

SECRETARY'S OFFICE
Public Utility Commission

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17120

I-830373

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

Dear Secretary Rich:

I have enclosed the original and nine (9) copies of the Reply Brief of National Railroad Passenger Corporation to be filed in the above-captioned matter.

Very truly yours,

Harold K. Cohen
Counsel for National Railroad
Passenger Corporation

cc: Administrative Law Judge Klovekorn
All Parties

Enclosure

CERTIFICATE OF SERVICE

I hereby certify that I am, this 14th day of October, 1983, serving by first class mail the foregoing document upon the persons listed below:

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Philadelphia, Pennsylvania 19107

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Harold K. Cohen
Counsel for National Railroad Passenger Corporation

Dated: October 14, 1983

IN THE PUBLIC UTILITY COMMISSION

OF THE

COMMONWEALTH OF PENNSYLVANIA

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OCT 1 8 1983

SECRETARY'S OFFICE
Public Utility Commission

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

Docket I-830373

DOCKETED

OCT 18 1983

REPLY BRIEF

OF

NATIONAL RAILROAD PASSENGER CORPORATION

I. INTRODUCTION

The issue in this proceeding is how to allocate costs for maintaining the 59th Street Bridge in Philadelphia among the four parties who, the record shows, benefit from its existence. The Commission's Trial Staff argues that Amtrak and the City should split these costs equally. Relying on an ordinance enacted in 1926, the City contends that Amtrak alone should bear the costs. In this reply brief, we primarily respond to the extreme position taken in the City's brief. We do not reargue several points made in Amtrak's opening brief that showed the absence of any evidentiary basis for the City's positions; the City has made no effort to justify the evidentiary void underlying its case. These points, and the others made in this and our opening brief, require that the City's case be rejected.

II. THE CITY HAS NOT DEMONSTRATED THAT AMTRAK SHOULD BEAR THE EXTRA COST OF MAINTENANCE

In Amtrak's opening brief, [1/] we explained why the Regional Rail Reorganization Act of 1973 (the "3R Act"), precluded saddling Amtrak with the entire, substantial expense of maintaining the 59th Street Bridge on the basis of the 1926 Ordinance (City Exhibit 4). [2/] We made clear, however, that in this case, Amtrak does not dispute the Commission's power to allocate repair costs among all interested parties in light of present day realities. NRPC Brief 12 n.4.

Among the realities that we suggest the Commission consider are these:

1. SEPTA runs approximately 100 bus round trips daily across the bridge (N.T. 32) and about 115 commuter trains per day under it. NRPC Statement 1, Question

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1/ Amtrak's opening brief is cited herein as "NRPC Bf.___."The City's Brief is cited as "City Bf.___." The Brief of the Commission Trial Staff is cited as "Trial Staff Bf. ___."

2 If the City's witness, Mr. Pike, is correct, the expense is substantial. Mr. Pike believed that repairs at an estimated cost of nearly one half million dollars should be made within the near future. N.T. 15.

The Commission Trial Staff proposes that final assignment of matinenance responsibilities should await an in-depth inspection of the bridge and a hearing on that inspection. Trial Staff Bf. 7. Amtrak concurs in this suggestion. See N.T. 28.

13.[3] (Amtrak runs approximately 30 trains per day over the same line. Id.)

2. Conrail operates at least six trains per day under the bridge (N. T. 34) and perhaps as many as 13. NRPC Statement 1, Question 13. [4]

3. Some 16,800 vehicles, most of which probably belong to City residents, cross the bridge each day; during the school year, an estimated 800 pedestrians per day use it as well. N.T. 13, 23.

Despite the reality that the City, Amtrak, SEPTA and Conrail all benefit from this bridge, the City insists that Amtrak alone should bear the cost of maintaining it.[5] In fact, although the City relies on the 1926 Ordinance (City Exhibit 4), it actually goes well beyond the ordinance by arguing that Amtrak bears responsibility for reconstructing the

---

[3] SEPTA's witness testified that SEPTA operates 44 scheduled round trips by its Paoli/Bryn Mawr commuter rail service over the line. N.T. 31.

[4] Freight trains typically consist of many more cars than do passenger trains. Therefore, it would be wrong to conclued that Conrail's volume on the line in question is necessarily lower than Amtrak's or SEPTA's simply because Conrail operates fewer trains.

[5] The Trial Staff believes that because the City and Amtrak both benefit from the bridge, they should split the maintenance costs. Trial Staff Br. 4-5, 7-8.

bridge [6/] and for maintaining its approaches.[7/] The City claims that "AMTRAK . . .is the present owner of the line and the bridge and as such, bears responsibility for construction, reconstruction, maintenance and repair thereof, as did its Grantor and predecessors in the Title." City Bf. 7.

The City's contentions fail at each step of the way. In the first place, the City has failed to prove that Amtrak "owns" the 59th Street Bridge, much less its approaches. Over objection (N.T. 17,20), Mr. Pike did so testify, but as an engineer (N.T. 12), he was clearly not competent to deliver the complex legal opinions inherent in that testimony.[8/] His testimony on this point is therefore entitled to no weight at all. NRPC Bf. 17-19.

We also showed in our opening brief that the City's documentary evidence--in particular, its Exhibit 5--permits no rational inference that Penn Central possessed an obligation to maintain, or any other interest in, the 59th Street Bridge on

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6/ City Bf. 7. We agree that work of the scope Mr. Pike thought required is more than simply maintenance. However, the 1926 Ordinance imposed no obligation on the Pennsylvania Railroad or anyone else to rebuild the 59th Street Bridge. its terms are limited to maintenance.

7/ Paragraph 1 of the City's proposed order impermissibly seeks to expand the scope of this investigation to include approaches. The Commission's Notice of Investigation was limited to "the existing crossing structure" and therefore did not put any approaches to the structure in issue.

8/ Probably no witness is competent to do so. The City apparently believes that its legal conclusions gain force by being argued in the form of testimony, but the legal argument must stand (or fall) on its own.

April 1, 1976, the date of the conveyances to Conrail and Amtrak under the 3R Act. NRPC Bf. 14-16.[9/] The City's brief makes no effort to explain why a document prepared no later than January 1969, as Exhibit 5 purportedly was, shows anything at all about conditions more than seven years later. In short, if Penn Central had an interest in the bridge to convey to Amtrak in 1976, the City has not shown it.

Moreover, under the 1926 Ordinance, the real owner of the bridge may well be the City itself. The ordinance required that any implementing agreement between the Pennsylvania and the City obligate the railroad

> To dedicate to the City as much of the property owned or controlled by it as may be required to widen or open any street or road now upon the City plan or placed upon the City plan under authority of this ordinance, crossing under or over said railroad .... City Exhibit 4, at 433-34.

It specifically required the railroad to dedicate the property for

> a new street, seventy feet wide, over the tracks and property of The Pennsylvania Railroad Company, from the hereinbefore proposed intersection of Fifty-Ninth Street and Lancaster Avenue to the hereinbefore proposed intersection of Fifty-Seventh Street and Upland Way .... Id. at 434.

Assuming that the ordinance was complied with--a further

9/ The City implies that Penn Central owned the 59th Street Bridge (City Bf. 7), but City Exhibit 5 does not support the suggestion that Penn Central had an ownership interest in the bridge at any time. See NRPC Bf. 14-15.

essential fact the City failed to show (NRPC Bf. 2-4)--these provisions of City Exhibit 4 place a heavy burden on the City to prove its claim that Amtrk owns the bridge. The City has not discharged that burden.

The City is also wrong in claiming that Amtrak is the successor to whatever responsibilities for the bridge that Penn Central may have possessed. The City relies on two decisions which applied common law "successorship" principles to hold that a new entity was subject to orders of the Interstate Commerce Commission entered against a corporate predecessor. City Bf. 9-10, citing Cincinnati, New Orleans & Texas Pac. Ry. v. Akron, Canton & Youngstown R.R., 353 I.C.C. 165 (1976), aff'd sub nom. Consolidated Rail Corp. v. ICC, 590 F.2d 937 (D.C. Cir. 1978): ICC v. Western N.Y. & P.R. Co., 82 Fed. 192 (C.C.W.D. Pa. 1897). The law is clear, however, that successorship questions under the 3R Act are controlled by the legislative intent of that unique statuts, not be the general common law principles that the City invokes.

In Stratford Land & Improvement Co. v. Blanchette, 448 F.2d 279 (Sp. Ct. R.R.R.A. 1978), the special three-judge

federal court that Congress created specifically to determine questions under the 3R Act (see 45 U.S.C. & 719 (e) expressly rejected an argument that a common law principles controlled successorship questions presented by the conveyances under the 3R Act. The Special Court said:

> However such an argument might stand if we were simply applying the common law, ...the care with which Congress delineated the rights and obligations to be conveyed, see, e.g., § 303 (b)(2),(3),(4), and the intent ... that ConRail should begin operations without burdensome liabilities insofar as possible, belie the notion that common law doctrines were to apply under the Rail Act. 10/ 448 F. Supp. at 285 (footnote omitted).

Even in Cincinnati, New Orleans & Texas Pac. Ry., the appellate court that reviewed the Commission decision cited by the City rejected the Commission's application of "the common law doctrine of successor in interest" in the context of the 3R Act. Consolidated Rail Corp. v. ICC, 590 F.2d 937, 941 (D.C. Cir. 1978). Ignoring that common law doctrine, the court held that Conrail was subject to an ICC order against the Northeast

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10/ The court also distinguished the ICC's decision in Cincinnati, New Orleans & Texas Pac. Ry. on the ground that it held only that "ConRail is subject to the regulatory authority binding its predecessors ...." 448 F. Supp. at 235 n.6. Amtrak does not dispute that it is subject to the regulatory authority of this Commission in this case, but the Commission apparently has never issued an order fixing maintenance responsibility for the 59th Street Bridge. See N.T. 43. Moreover, as the text that follows shows, the ICC did not have the last word in the Cincinnati, New Orleans case.

bankrupts, but only on the ground that an "overriding objective" of the 3R Act--to maintain continuity of rail service in the Northeast--would be frustrated if Conrail could relitigate every such order. Id. at 942. In short, the final decision in one of the very cases the City has cited also established that the intent of the 3R Act, not common law rules, controls the issue here. 11/

The City here has identified no purpose of the 3R Act that would be served by imposing the obligations of the 1926 Ordinance on Amtrak. To the contrary, our opening brief showed that Congress meant to free Conrail and other transferees of such liabilities in order to serve a fundamental legislative purpose of restructuring the Northast rail system "at the lowest possible cost to the general taxpayer." 45 U.S.C. Section 701(b)(6); NRPC Bf. 10. 12/

11/ The decision in ICC v. Western New York & P. R. Co., 82 Fed. 192 (C.C.W.D. Pa. 1867), would be irrelevant even if common law principles applied. As the passage quoted by the City shows, it applied the principle that a buyer of property in litigation, pendente lite, is bound by the judgement or decree in the suit. Id. at 194. That is plainly not this case.

12/ The last six lines of text on page 10 of Amtrak's opening brief were garbled in typing. They should read as follows:

> Congress understood that literally billions of dollars in federal financial assistance would be required to support the restructured rail system.[2/] It expressly provided, however, that such assistance be limited to "the lowest possible cost to the general taxpayer." 45 U.S.C. Section 701 (b) (6). To that end, it required that:

The City relies finally on Consolidated Rail Corp. v. Pennsylvania Public Utility Commission, 55 Pa. Commonwealth Ct. 576, 423 A.2d 1108 (1980), where the court affirmed the Commission's application of the successor-in-interest doctrine to Conrail in a bridge maintenance case. There are several basic distinctions between that decision and the City's position here, however. First, the court made clear at the outset that it was conducting only a limited review of the Commission's decision and was not approaching the issue of maintenance responsibility de novo, as the Commission does. 55 Pa. Commonwealth Ct. at 579-80. Second, the court concluded that the Commission's order was based on all relevant factors and that the successorship question "was just one factor considered by the PUC." Id. at 581.

The City's position that Amtrak is liable as Penn Central's successor would make that factor controlling. Third, the court found it significant that the Commission had apportioned maintenance responsibilities between Conrail and the City, Id. at 583, whereas the City denies any responsibility for maintenance of the 59th Street Bridge and seeks to place it entirely on Amtrak.

For these reasons, the decision in Conrail is inapposite to this case. But, if the Commission disagrees, we respectfully submit that the Commonwealth Court's reliance on common law successorship principles should yield to the authoritative federal decisions, discussed above, the construe the federal statute that governs this issue.

The City fares no better on the facts of the successorship issue than it does on the law. The City relies principally on the Penn Central and Conrail deeds (City Exhibits 6-8) for the proposition that ownership of (or, at least, the maintenance obligation for) the 59th Street Bridge was actually conveyed to Amtrak. City Brief 4-6. It reads these deeds as conveying "all obligations" of the Grantor or its predecessors in title. Id. at 6 (emphasis added). The deeds do not convey all obligations, however, but only those (a) imposed by the terms of the deed[13/] or (b) arising, after conveyance, under certain specified sorts of agreements, none of which include the 1926 Ordinance or any agreement that might have implemented it. City Exhibits 6 and 7, at 4; City Exhibit 8, at 7.[14/]

13/ An example of such an obligation was the obligation placed on Amtrak by the Conrail deed to maintain the real property conveyed by the deed so as to permit Conrail freely to exercise its easement rights over the rail lines involved. City Exhibit 8 at 6; see NRPC Bf. at 16 n.9. The record confirms that the condition of the 59th Street Bridge does not affect Conrail's operations. N.T. 35.

14/ The deeds conveyed only obligations arising under licenses, easements, certain leases, or operating, trackage rights or joint facility agreements. The 1926 Ordinance is none of these.

Whatever the scope of the deeds might have been, however, the general rule is that "what is ultimately controlling is designation in the FSP, its errata sheets and supplements, rather than the conveyance documents ...." Matter of Regional Rail Reorganization Proceedings, 421 F Supp. 1076, 1081 (Sp. Ct. R.R.R.A. 1976). 15/ The City quotes relevant parts of its Exhibits 9 (ICC Account 39) and 10 (FSP page 243), but misses their significance. City Bf. 6; see NRPC Bf. 12-14. Note B to Account 39, makes crystal clear that maintenance obligations for public improvements (including highway bridges) are not covered by that account. See NRPC Bf. 13.16/ They therefore could not have been conveyed to Conrail or Amtrak by the only portion of the FSP that the City has offered.

The City also contends that Amtrak alone should pay to maintain the bridge because "the bridge was built originally for the benefit of the railroad ...." City Bf. 11. The contention ignores the fact that, as the Trial Staff points out, this bridge is equally for the benefit of the public,

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15/ Although it does not help the City's case to do so, the City has stood the relationship between the conveyance documents and the FSP on its head, relying principally on the former and calling the latter (its Exhibit 10) merely "interpretive." City Bf. 7.

16/ Note B specifies that maintenance costs are to "be included in Operating Expenses." At the time of the FSP, such costs were carried in Account 273 (see 49 C.P.R. 135 (1982)), which was not designated for conveyance by City Exhibit 10, the only provision of the FSP the City relies on, or by anything else in the FSP that we know of.

which daily crosses over active railroad tracks on it in large numbers, in vehicles and on foot. Trial Staff Bf. 4-5; see N.T. 29-30.

The contention is also misleading for its implication that Amtrak is the only railroad that benefits from the existence of the bridge. The record shows that pursuant to trackage rights it owns (N.T. 31,33), SEPTA is by far the heaviest user of the line beneath the bridge (NRPC Statement, Question 13) and that it operates 100 round trip buses per day across it. N.T. 31-32. The record also shows that, as contemplated by the FSP, Conrail's deed to Amtrak reserved to Conrail the easement and right to operate freight service, as required by law, upon the real property conveyed by the deed. City Exhibit 8, at 5, para. E and Exhibit C thereto, at 1 para. 1.[17/] In fact, ConRail operates at least six and perhaps as many as 13 freight trains a day over the line beneath the bridge. N.T. 34; NRPC Statement, Question 13.[18/] On this record, the 59th Street Bridge benefits SEPTA and Conrail just as much as it benefits Amtrak and the City. See N.T. 31,36.

17/ The easements and rights reserved to Conrail by Exhibit C to its deed "burden ... all of the real property conveyed by (the) ... Deed." City Exhibit 8, at 5, para. E.

18/ The City points out (City Bf. 13-14) that SEPTA and Conrail pay Amtrak for their right to operate on the line but does not explain the relevance of the point.

III. CONCLUSION

Amtrak agrees with the Trial Staff's recommendation that the expansion dams of the 59th Street Bridge require replacement and that an inspection of the bridge is appropriate to determine what other repairs are necessary. Trial Staff Bf. 6. It also agrees that no matter who, technically, "owns" the bridge, the City is a direct beneficiary of the bridge. Id., at 5-6. Together with all other beneficiaries, the City should be required to share the cost of maintaining the bridge to the extent of its portion of the benefit.

Respectfully submitted,

Harold K. Cohen
Counsel for National Railroad
Passenger Corporation

October 14, 1983

National Railroad Passenger Corporation, Northeast Corridor Operations, 1617 John F. Kennedy Blvd., Philadelphia, Penna 19103

Amtrak

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OCT 31 1983

SECRETARY'S OFFICE
Public Utility Commission

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17120

I-830373

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

Dear Secretary Rich:

I have enclosed the original and nine (9) copies of the Response of National Railroad Passenger Corporation to City's Motion to Reopen the Record.

Very truly yours,

Harold K. Cohen
Counsel for National Railroad
Passenger Corporation

cc: Administrative Law Judge Klovekorn
All Parties

Enclosure

DOCUMENT
FOLDER

RECEIVED
OCT 31 1983
SECRETARY'S OFFICE
Public Utility Commission

CERTIFICATE OF SERVICE

I hereby certify that I am, this 27th day of October, 1983, serving by first class mail the foregoing document upon the persons listed below:

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Harold K. Cohen
Counsel for National Railroad
Passenger Corporation

Dated: October 27, 1983

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

Investigation upon the Commission's own motion into 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 grade of the tracks of National Railroad Passenger Corporation in the City of Philadelphia, to determine the condition, disposition and responsibility for maintenance of the existing crossing structure.	Docket No. I-830373

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OCT 3 1 1983

SECRETARY'S OFFICE
Public Utility Commission

RESPONSE OF NATIONAL RAILROAD PASSENGER CORPORATION TO CITY'S MOTION TO REOPEN THE RECORD

National Railroad Passenger Corporation ("Amtrak") files this response in objection to the City's Motion to Reopen the Record and in support thereof states the following.

1. The record was held open for 10 days beyond August 18, 1983, the date of the hearing in this matter, to provide time for Amtrak to determine whether it desired an additional hearing to oppose the City's case.

2. Within the said 10 day period, i. e., by August 28, 1983, Amtrak advised the Administrative Law Judge by telephone that it did not desire an additional hearing and confirmed that call subsequently in writing.

3. Except for the filing of Briefs, the record has been closed for evidentiary matters for approximately two months.

NOV 1

4. Amtrak opposes the City's Motion on the basis of timeliness and other reasons as stated below.

5. The City's contention that Amtrak raised the issue of an agreement for the first time in its Brief ignores the fact that such an agreement seems to be the cornerstone of the City's position. For Amtrak to object that there is no evidence on the record of such an agreement only seeks to emphasize the City's failure to produce said agreement as part of its own case. Moreover, the City made no legal argument prior to that contained in its Brief and to hold Amtrak responsible for "raising the issue" seems inappropriate, at best.

6. However, even if there were a plausible justification for admitting the document submitted by the City, it appears manifestly irrelevant to the instant controversy.

a. The 59th Street Bridge was constructed pursuant to the 1926 Ordinance, not the 1915 Ordinance submitted by the City.

b. In Section 5 of the 1915 Ordinance (page 3 of the Ordinance), it states that the Pennsylvania Railroad had certain designated responsibilities pertaining to bridges "now upon the City Plan or placed thereon under authority of this ordinance..."

c. As we all know, the 59th Street Bridge was constructed pursuant to the provisions of the 1926 Ordinance, if any.

d. The 1915 Ordinance in Section 6 provides (page 5 of the Ordinance) that an agreement with the Pennsylvania Railroad satisfactory to the City Solicitor shall be entered and further provides in Section 2 (page 8 of the Ordinance) that

"the building of bridges...shall be started within three months...and completed within two and one-half years..."

e. Indeed, the recitals in the 1926 Ordinance state quite specifically that

> "certain bridges and tunnels still are to be constructed, and the City is willing to extend the time for the completion and to modify the terms with respect to the construction of the bridge from the intersection of Fifty-ninth Street and Lancaster Avenue to the intersection of Fifty-seventh Street and Upland Way."

Clearly, the 59th Street Bridge was constructed pursuant to the provisions of the 1926 Ordinance.

f. Section 7 of the 1915 Ordinance (Page 12 of the Ordinance) states that,

> It is hereby understood and agreed that neither the purpose nor intent, nor the obligation of this contract, if and when approved by the Public Service Commission....is such as to impair or in any wise affect the exercise by said commission of any of the powers vested in it....

and goes on to state in the section of the conformed Ordinance which the City offers as an Agreement, that

> Pursuant to...the foregoing Ordinance [of July 8, 1915],...The Pennsylvania Railroad Company...agrees... [to certain construction and maintenance responsibilities with regard to] all bridges...now legally or physically open. (pp.12-13).

The "Agreement" then continues to require the work to be accomplished consistent with the provisions of "Section 6 of the hereinbefore mentioned ordinance" (Page 16), in which Section is contained the language quoted in subparagraph 6(d) above.

g. The language of Section 7 of the Ordinance, relating to approval of the Agreement by the Public Service Commission, quoted in subparagraph 6(f) above, is also reproduced in the "Agreement" at Page 17, emphasizing once again the failure of the City to produce an Agreement relevant to the instant matter.

7. Amtrak therefore objects to the evidence offered by the City, in that:

a. It is offered two months after the record has been closed for evidence

b. It should have been part of the City's case in chief in the first place.

c. It is irrelevant to the case at bar in that the bridge in question was not constructed pursuant to the provisions of the 1915 Ordinance.

Respectfully submitted,

Harold

Harold K. Cohen
Counsel for National Railroad
Passenger Corporation

ORIGINAL

CITY OF PHILADELPHIA

LAW DEPARTMENT
15th Floor, Municipal Services Building
Philadelphia, Pa. 19107
(215) 686-5251

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SECRETARY'S OFFICE
Public Utility Commission

November 4, 1983

Pa. Public Utility Commission
North Office Building
Harrisburg, Pa. 17120

Attention: Secretary

Re: Investigation upon the Commission's own motion into 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 grade of the tracks of National Railroad Passenger Corporation in the City of Philadelphia, to determine the condition, disposition and responsibility for maintenance of the existing crossing structure.
Docket No. ~~I-8303073~~ I-830373

Dear Sir:

I enclose herewith for filing an original and nine (9) copies of the Motion to Strike Response of the National Railroad Passenger Corporation To The Motion To Reopen The Record Filed By The City Of Philadelphia, in the above-captioned matter.

Please note that a true and correct copy of the foregoing document is being served upon the other parties of record, and that a Certificate of Service is attached.

Kindly acknowledge receipt of the enclosed.

Very truly yours,

Herbert Smolen /mrb

HERBERT SMOLEN
Deputy City Solicitor

HS/mrb
Enclosure
cc: Administrative Law Judge Joseph J. Klovekorn
All parties of record

DOCUMENT FOLDER

ORIGINAL

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

Investigation upon the Commission's own motion into 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 grade of the tracks of National Railroad Passenger Corporation in the City of Philadelphia, to determine the condition, disposition and responsibility for maintenance of the existing crossing structure.	Docket No. ~~I-8303073~~ I-830373

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Public Utility Commission

MOTION TO STRIKE RESPONSE
OF THE NATIONAL RAILROAD PASSENGER CORPORATION
TO THE MOTION TO REOPEN THE RECORD
FILED BY THE CITY OF PHILADELPHIA

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1. On October 12, 1983, the City of Philadelphia, pursuant to 1 Pa. Code §35.231(a), filed with the Public Utility Commission an original and nine (9) copies of a Motion (Petition) to Reopen the Record of Docket No. I-830373.

2. On October 13, 1983, the City of Philadelphia caused copies of said Motion (Petition) to Reopen the Record to be served upon all parties of record and Administrative Law Judge Joseph J. Klovekorn by hand delivery or by first class mail, postage prepaid. A copy of the Certificate of Service is attached hereto as Exhibit "A."

3. The National Railroad Passenger Corporation ("AMTRAK") filed with the Public Utility Commission its Response to the City's Motion (Petition) to Reopen the Record on October 31, 1983.

4. 1 Pa. Code §35.231(b) provides:

> (b) Responses. Within ten days following the service of such petition, any other participant

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> may file with the presiding officer or the agency head, his answer thereto, and in default thereof shall be deemed to have waived any objection to the granting of such petition.

5. A copy of the City's Motion (Petition) to Reopen the Record would have been served on AMTRAK on October 13, 1983, if by hand delivery, and no later than October 17, 1983, if by first class mail, since the office of AMTRAK's Counsel is located in Center City Philadelphia, One (1) block from the office of counsel for the City of Philadelphia.

6. Even assuming that AMTRAK's counsel did not receive a copy of the City's Motion (Petition) to Reopen the Record until October 17, 1983, the date on which AMTRAK filed its Response thereto with the Public Utility Commission, October 31, 1983, is thirteen (13) days (computed pursuant to 1 Pa. Code §31.12) after October 17, 1983, and, therefore, in excess of the time (ten days) allowed for responses by 1 Pa. Code § 35.231(b).

7. AMTRAK is, by the terms of 1 Pa. Code § 35.231(b), in default thereof, and any objections to the City's Motion (Petition) to Reopen the Record by AMTRAK are, therefore, waived.

8. The response of the National Railroad Passenger Corporation ("AMTRAK") to the City of Philadelphia's Motion (Petition) to Reopen the Record of Docket No. I-830373 should be stricken for failure to comply with the applicable rules of procedure, specifically 1 Pa. Code § 35.231(b).

WHEREFORE, the City of Philadelphia respectfully requests that the Response of the National Railroad Passenger Corporation to the City of Philadelphia's Motion to Reopen the Record by stricken, and any objections contained within said Response be deemed waived.

Respectfully submitted,

HERBERT SMOLEN
Deputy City Solicitor
City of Philadelphia

COMMONWEALTH OF PENNSYLVANIA :

SS

COUNTY OF PHILADLEPHIA :

AFFIDAVIT

Herbert Smolen, being duly sworn according to law deposes and says that he is a Deputy City Solicitor for the City of Philadelphia; that he is authorized to and does make this affidavit on its behalf, and that the facts set forth in the foregoing Motion are true and correct to the best of his knowledge, information and belief.

Herbert Smolen

HERBERT SMOLEN

Sworn to and Subscribed
Before me this 14 day
of December, 1983.

Mary Jane Tolic

NOTARY PUBLIC

vestigation upon the Commission's own motion into 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 grade of the tracks of National Railroad Passenger Corporation in the City of Philadelphia, to determine the condition, disposition and responsibility for maintenance of the existing crossing structure.
Docket No. I - 830373

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the Motion of the City of Philadelphia in the above matter upon those parties listed in the Service List below, by hand delivery or by first class mail, postage prepaid.

Herbert Smolen

HERBERT SMOLEN
DEPUTY CITY SOLICITOR
CITY OF PHILADELPHIA

SERVICE DATE: October 13, 1983

Service List

Honorable Joseph J. Klovekorn, ALJ
13th Floor, State Office Building
Broad & Spring Garden Streets
Philadelphia, Pa.

Richard S. Herskovitz, Esquire
P.O. Box 3265
Harrisburg, Pa. 17120

Joel E. Mazor, Esquire
1138 - 6 Penn Center
Philadelphia, Pa. 19103

Stephen Dittman, Esquire
522 Transportation & Safety Bldg.
Harrisburg, Pa. 17120

Harold K. Cohen, Esquire
524 Suburban Station Building
Philadelphia, Pa. 19102

Edward H. Huss, Esquire
130 South 9th Street
Philadelphia, Pa. 19107

Rudolph A. Chillemi, Esquire
2301 Market Street

Exhibit A

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re:

Investigation upon the Commission's own motion into 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 grade of the tracks of National Railroad Passenger Corporation in the City of Philadelphia, to determine the condition, disposition and responsibility for maintenance of the existing crossing structure.	:	Docket NO. I-83036 73

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Public Utility Commission

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the City of Philadelphia's Motion To Strike Response Of The National Railroad Passenger Corporation To the Motion To Reopen The Record Filed By The City Of Philadelphia in the above matter upon those parties listed in the attached Service List, by hand delivery or by first class mail, postage prepaid.

Herbert Smolen

HERBERT SMOLEN
Deputy City Solicitor

Dated: November 4, 1983

Service List:

Honorable Joseph J. Klovekorn
13th Floor, State Office Building
Broad & Spring Garden Streets
Philadelphia, Pa.

Richard S. Herskovitz, Esquire
P.O. Box 3265
Harrisburg, Pa. 17120

Joel E. Mazor, Esquire
1138 - Six Penn Center
Philadelphia, Pa. 19103

Stephen Dittman, Esquire
522 Transportation & Safety Bldg.
Harrisburg, Pa. 17120

Harold K. Cohen, Esquire
524 Suburban Station Bldg.
Philadelphia, Pa. 19102

Edward H. Huss, Esquire
130 Soth 9th Street
Philadelphia, Pa. 19107

Rudolph Chillemi, Esquire
2301 Market Street
Philadelphia, Pa. 19102

National Railroad Passenger Corporation, Northeast Corridor Operations, 1617 John F. Kennedy Blvd., Philadelphia, Penna 19103

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SECRETARY'S OFFICE
Public Utility Commission

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

I-83033173

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

Dear Secretary Rich:

I have enclosed the original and nine (9) copies of the Response of National Railroad Passenger Corporation to City's Motion to Strike.

Very truly yours,

Harold K. Cohen
Counsel for National Railroad
Passenger Corporation

cc: Administrative Law Judge Klovekorn
All Parties

Enclosure

DOCUMENT

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COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

Investigation upon the Commission's own motion into 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 grade of the tracks of National Railroad Passenger Corporation in the City of Philadelphia, to determine the condition, disposition and responsibility for maintenance of the existing crossing structure.

Docket No. I-830073

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SECRETARY'S OFFICE
Public Utility Commission

RESPONSE OF NATIONAL RAILROAD PASSENGER CORPORATION OF CITY'S MOTION TO STRIKE

1. The City's Motion (Petition) to Reopen the Record was received by Amtrak on October 17, 1983.

2. On October 27, 1983, Amtrak sent its Motion in response thereto by first class mail to all parties of record and Administrative Law Judge Joseph J. Klovekorn.

3. The action of Amtrak was, as stated, consistent with 1 Pa. Code, Section 35.231(b).

4. In the event that it was not consistent with the said provision, no harm or prejudice was caused thereby to any party.

5. It bears noting that the City, in filing its Motion to Strike directed at such an alleged hypertechnical failure to comply with applicable procedures, undercuts its own request of the Commission for permission to reopen the record to permit the introduction of exhibits, however irrelevant to the instant matter, that were available to it, and should have been submitted into evidence, at the date and time of the hearing in this matter.

WHEREFORE, Amtrak respectfully requests that the City's Motion to Strike be denied and further that the City's Motion to Reopen the Record be denied as well.

Respectfully submitted,

Harold K. Cohen
Counsel for National Railroad
Passenger Corporation

COMMONWEALTH OF PENNSYLVANIA :

SS

COUNTY OF PHILADELPHIA :

AFFIDAVIT

Harold K. Cohen, being duly sworn according to law deposes and says that he is a Counsel for the National Railroad Passenger Corporation; that he is familiar with the facts pertinent to this Motion; that he is authorized to and does make this affidavit on its behalf, and that the facts set forth in the foregoing Motion are true and correct to the best of his knowledge, information and belief.

Harold K. Cohen

Sworn to and Subscribed
Before me this 16th day
of November, 1983

Elizabeth M. Woodward
NOTARY PUBLIC

ELIZABETH M. WOODWARD
Notary Public, Phila., Phila. Co.
My Commission Expires July 7, 1984

CERTIFICATE OF SERVICE

I Hereby certify that I am, this 16th day of November, 1983, serving by first class mail the foregoing document upon the persons listed below:

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

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

Richard S. Herskovitz, Asst. Counsel
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

Stephen Dittman, Assistant Counsel
Pennsylvania Department of
Transportation
522 Transportation & Safety Bldg.
Harrisburg, PA 17120

Edward H. Huss, Esquire
Southeastern Pennsylvania
Transportation Authority
130 South Ninth Street, 5th Floor
Philadelphia, PA 19107

Rudolph A. Chillemi, Esquire
Philadelphia Electric Company
2301 Market Street
Philadelphia, PA 19101

Joseph J. Klovekorn
Administrative Law Judge
State Office Building
Broad and Spring Garden Street
Philadelphia, PA 19122

Harold K. Cohen
Counsel for National Railroad
Passenger Corporation

Dated: November 16, 1983