



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, Pa. 17120
March 8, 1984

IN REPLY PLEASE
REFER TO OUR FILE
I-830373

To All Parties

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.

TO WHOM IT MAY CONCERN:

Enclosed is a copy of a proposed Initial Decision prepared by Administrative Law Judge Joseph J. Klovekorn.

An original and nine (9) copies of exceptions to the decision, if any, **MUST BE RECEIVED BY THE SECRETARY OF THE COMMISSION IN ROOM B-18, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PENNSYLVANIA 17120** and a copy to each party of record within 15 days of the date of this letter.

Replies to the exceptions, if any, must be filed with the Secretary of the Commission within 20 days of the date of this letter.

Exceptions and reply exceptions shall obey 1 Pa. Code 35.212, particularly the 50 page limit.

Exceptions should be clearly labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)". Do NOT label exceptions as a "Brief" or "Brief on Exceptions".

All timely filed exceptions and replies thereto will be attached to the decision for consideration at Public Meeting. Late filed exceptions and late filed replies will not be attached.

cc:ALJ Klovekorn/Bigelow/Bureau of Rail Trans. Very truly yours, Law Bureau/Mr. Bramson
OSA/Chairman/Commissioners/correspondence our file

lg

Enclosures

Certified Mail

Receipt Requested

Wm H. Smith
William H. Smith

Chief Administrative Law Judge

Similar letter to: See attached list.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

INITIAL DECISION
(Subject to Commission Approval)
of
Joseph J. Klovekorn
Administrative Law Judge

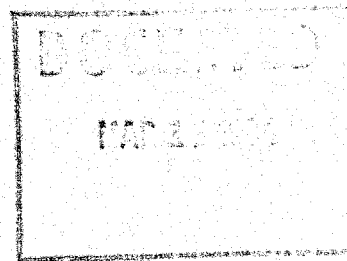
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HISTORY OF THE PROCEEDINGS

On February 22, 1983, the City of Philadelphia (City) notified this Commission that the expansion dams on the 59th Street Bridge in that city were in a state of disrepair. By Emergency Order dated February 25, 1983, at Docket Number 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, since there was 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. The Commission's 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.

A hearing in this proceeding was held August 18, 1983 in Philadelphia before the undersigned Administrative Law Judge. 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. In all some five witnesses testified and some eleven exhibits were introduced into evidence. A transcript of some 45 pages was developed. Initial Briefs were filed October 1, 1983 by the Staff, the City and Amtrak. Reply briefs were filed October 15, 1983 by the City and Amtrak.

On October 14, 1983, the City filed a motion to reopen the record here to receive additional evidence. On October 28, 1983, Amtrak filed a response to the City's motion. On November 7, 1983, the City filed a motion to strike Amtrak's response and on November 17, 1983, Amtrak filed a response to the City's motion to strike. For the reasons stated below, the motion to reopen the record here is denied.

SUMMARY OF TESTIMONY

Lane Fike

Mr. Fike is a staff engineer with the City of Philadelphia, Department of Streets, Bridge Section (Tr. 12).

He testified that the 59th Street Bridge passes over Amtrak's Philadelphia-Pittsburgh main line (U.S. Railway Association, Line Code No. 1102). Approximately 2500 feet west of the bridge the track passes over Woodbine Avenue, approximately 3800 feet east, the tracks pass over 52nd Street. Overbrook High School is adjacent to the southern portion of the span. The present average traffic is 16,800 vehicles per day, about four percent is truck traffic. It is estimated that during the period of the year that Overbrook High School is open, 800 persons a day use the bridge. When the high school is closed, approximately 200 persons per day use the bridge (Tr. 13). He stated that the roadway approaches are paved to a width of 52 feet from curb to curb. They consist of concrete pavements of unknown depth and a bituminous wearing surface. The south approach ascends on a grade of three percent to the first pier on the bridge where a 180 foot vertical curve carries the grade to the third pier of the bridge where the grade descends at a 1.5 percent grade on the north approach. There are nine foot sidewalks on each side of the roadway.

The witness testified that a joint inspection of the bridge by Amtrak and the City was held on November 19, 1982.

The inspection revealed that the expansion dams had numerous loose steel repair plates that vibrated excessively upon vehicular impact. Overall condition of the bridge was judged to be fair to poor (Tr. 14).

He stated that the City believes that the expansion dams on the structure should be replaced as soon as possible and the concrete deck should be replaced within the near future.

The expansion dams repair is estimated to take approximately 30 days and cost \$80,000. The deck replacement is estimated to take approximately six months and cost \$400,000.

The City has complied with the Commission's February 25, 1983 order. The City seeks reimbursement for the cost of these repairs to the bridge. This amounts to \$11,168.49 (City Exh. 2) (Tr. 15).

The City has complied with the Commission's second emergency order here and seeks reimbursement in the amount of \$3,911.42 (City Exh. 3).

The City does not agree to perform any of the actual work of repairing, rehabilitating or reconstructing the existing bridge and will not assume any responsibility for the maintenance of the bridge (Tr. 16). The City believes both should be the responsibility of Amtrak since it is the owner of the bridge, the rail tracks and the approaches to the bridge.

The City is requesting the Commission to order Amtrak to continue to maintain the substructure and superstructure of the bridge and the entire rail/highway crossing, including approaches, at its sole cost and expense.

Second, the City is requesting the Commission to require Amtrak to immediately replace the expansion dams on the structure at its sole cost and expense.

The City is requesting the Commission to require Amtrak to replace or rehabilitate the concrete bridge deck at its sole cost and expense when conditions require such work.

And finally, the City is requesting the Commission to order Amtrak to reimburse the City in the sum of \$15,080.09, plus interest, for work ordered by the Commission and performed by the City.

The witness stated on cross-examination that the expansion dams should be replaced immediately (Tr. 22). Replacement of the deck would include new expansion dams.

He stated that 59th Street is a city highway and that it carries mainly local traffic and city residents. He did not know if there were any federal or state funding available for repair or rehabilitation of the bridge (Tr. 23).

He recommends an in-depth inspection of the bridge before any work is done. It is not necessary to post the bridge for lower than the legal weight limit (Tr. 24). He stated that City Line Avenue is a mile away and that traffic utilizing the bridge could be Montgomery County traffic (Tr. 25).

Richard Cooper

Mr. Cooper is Amtrak's Senior Engineer for Public Projects. He testified that the National Railroad Passenger Corporation is the owner and operator of the railroad beneath the 59th Street bridge. There are currently 13 tracks under the bridge, 11 of which have electric catenary facilities overhead. Amtrak, SEPTA and Conrail run their own equipment over the tracks. Amtrak runs approximately 30 passenger trains per day at speeds up to 70 mph. SEPTA runs 115 commuter trains per day at speeds to 70 mph and Conrail runs about 13 freight trains per day at speeds to 45 mph.

According to Mr. Cooper, the existing bridge carrying 59th Street over Amtrak's tracks was built about 1927 by the Philadelphia Terminal Division of the Pennsylvania Railroad. The bridge is a thru girder bridge with a jack arch deck system. There are four (4) spans, one (1) at 39'-3", two (2) at 89'-4" and one (1) 89'-8", totalling 309' long. The distance between the main steel plate girders which are about 10½' deep is 70 feet; there are two (2) sidewalks, 9 feet wide and a 52' wide roadway between curbs. The vertical clearance from the railroad to the bottom of the girders is about 23 feet. The jack arch deck is composed of steel stringers and reinforced cement concrete with a bituminous wearing surface. The abutments are reinforced cement concrete gravity type abutments.

In Amtrak's opinion, the bridge is in fair to good condition with no immediate major structural problems. There is a need to replace the expansion dams and clean and paint the steel.

Amtrak has no record of maintenance prior to April 1, 1976. Amtrak is not willing to perform the actual work of any repairs, rehabilitation or reconstruction. It is not willing to assume the cost of maintaining the structure. It believes the City should do both the work and the maintenance.

On cross-examination, he stated that an at-grade crossing at this site would not be desirable.

Brian G. Woodburn

Mr. Woodburn is an assistant project engineer for SEPTA (Tr. 30). He stated that SEPTA operates its Route G bus across 59th Street at this location and underneath it operates 44 scheduled round trips by its Paoli/Bryn Mawr commuter rail line. SEPTA has performed no maintenance on the structure and will not agree to make any repairs (Tr. 31).

On cross-examination, he stated that a separated crossing at this location is much safer than an at-grade crossing. Approximately 100 round trips daily are made by the G Bus. The bus operates entirely within the City limits (Tr. 33).

Roger W. Heebner

Mr. Heebner is a senior civil engineer with Conrail. He stated that Conrail operates approximately six trains daily at the site under a trackage agreement with Amtrak (Tr. 34). Conrail pays Amtrak for the privilege of operating over their tracks. Conrail has not performed any maintenance to the structure and will not do any work or assume any responsibility for future maintenance of this structure (Tr. 35).

David C. Hart

Mr. Hart is a Civil Engineer with the Commission's Trial Staff (Tr. 38). He stated that an in-depth inspection should be performed before any major rehabilitation is done to the bridge. He believed the expansion dams should be replaced immediately before this inspection (Tr. 40).

FINDINGS OF FACT

1. The subject structure carries 59th Street over 13 tracks owned by the National Railroad Passenger Corporation (Amtrak).
2. Amtrak, SEPTA and Conrail run their own equipment over these tracks.
3. The subject structure was built about 1927 by the Pennsylvania Railroad and is a thru girder bridge with a jack arch deck system. The bridge has four spans totalling 309 feet long; there are two sidewalks, 9 feet wide and a 52 foot wide roadway between curbs; the vertical clearance from the

railroad to the bottom of the girders is about 23 feet; the jack arch deck is composed of steel stringers and reinforced cement concrete with a bituminous wearing surface.

4. The present average track is 16,800 vehicles per day; during the period of the year that Overbrook High School, located adjacent to the southern portion of the span, is open, approximately 800 pedestrians per day use the bridge, approximately 200 pedestrians per day during the remainder of the year.

5. 59th Street is a city highway carrying primarily local traffic and city residents.

6. The bridge is in fair condition, although there is a present need to replace the expansion dams and clean and paint the steel structure.

7. SEPTA operates approximately 100 round trips daily of its Route G bus over the subject structure.

8. Pursuant to two emergency orders issued by the Commission, the City has performed certain maintenance on the subject structure amounting to \$15,080.

9. Amtrak has no maintenance records for the structure prior to 1976 but has made certain repairs to the bridge since that date.

10. Conrail and SEPTA have never performed any maintenance on the bridge or its approaches.

DISCUSSION

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 relevant 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).

Here the City has attempted to show through agreements between it and the Pennsylvania Railroad, that that railroad assumed an obligation to maintain the bridge and that this obligation now rests with Amtrak. Amtrak disputes this.

The City has sought to reopen the record to introduce other agreements to buttress its position. As can be seen from the discussion below, these agreements are not relevant to the Commission's function here in allocating work, cost and maintenance. Therefore, the City's request is denied.

In Pennsylvania R. Co. v. P.U.C., 136 Pa. Super 1, 7 A.2d 86 (1939), the Superior Court stated that:

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, as we shall later show, 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.

Now, the appellant argues that "the commission had no jurisdiction to abrogate the contracts" between the railroad company and the municipality and relies upon *Pennsylvania R. Co. v. Pennsylvania-Ohio Elec. Co.*, 296 Pa. 40, 145 A. 686; *Pittsburgh & L. E. R. R. Co. v. McKees Rocks Boro*, supra; *Director General v. West Penn Rys. Co.*, 281 Pa. 309, 126 A. 767; *Swarthmore Borough v. Public S. C.*, 80 Pa. Super. 99.

With that statement of the law as a general proposition we are in entire accord and the cases cited support it, but it does not follow that the utilities and municipalities are not and cannot be made responsible in the first instance for the performance of a public duty--here to safely maintain a bridge over tracks of a railroad. 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 adjudicated their contract rights.

In Pa. P.U.C. v. SEPTA, 343 A.2d 371 (1975), the Commonwealth Court took a similar position. In the instant case, whatever the rights and obligations of the City and Amtrak are, the appropriate forum for their resolution is not before this Commission but in a private action in a court of law.

Since the Commission is free to allocate the work, cost and maintenance here after weighing all relevant factors, and not on the basis of any disputed agreement, Pa. P.U.C. v. SEPTA, supra, a review of the record is in order.

It is clear that Amtrak is the owner and operator of the track under the bridge and that the bridge was originally built by the Pennsylvania

Railroad so that trains could travel unimpeded. The owner of the railroad line originally had maintenance responsibility for the bridge and the railroad has maintained it in the past.

At the same time, the record shows that 59th Street, a City street, traverses the bridge and that Overbrook High School, a City school, is adjacent to the bridge. An estimated 200-800 pedestrians use the bridge daily and 16,800 vehicles use the bridge daily, the majority of which are operated by City residents.

Under this circumstance, the cost and maintenance of this structure should be split equally, as proposed by Trial Staff. The existence of a safe bridge is equally important to both the City and its residents and Amtrak, whose train traffic and that of its lessees, Conrail and Septa, travel below the bridge. As Trial Staff points out, both parties benefit from the existence of the bridge in that the bridge is safer for the operation of the railroad below and for vehicles and pedestrians above than would be an at grade crossing.

It is clear from the record that there are two major areas of concern with respect to the bridge, the expansion dams and the bridge deck. The expansion dams should be replaced immediately.

With respect to the bridge deck, it would appear that the deck is not in such poor condition so as to require its immediate replacement. There should be an in-depth inspection of the entire bridge before replacing the deck in order to determine what other repairs are necessary.

Trial Staff's proposal that the City be directed to replace the expansion dams on a permanent basis at its initial cost and that Amtrak perform an in-depth inspection and load carrying analysis at its initial cost seems reasonable.

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, 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. Both the expansion dam replacement and in-depth inspection should be completed within six months of the date of entry of this order.

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

Maintenance responsibilities should be assigned on an interim basis now 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 bituminous wearing 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 should 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.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction of the subject matter involved.
2. The Commission has jurisdiction over the parties to this proceeding.

3. The Commission has the authority to assess costs upon the concerned public utilities, municipal corporations, or the Commonwealth of Pennsylvania, as it shall determine.

4. The Commission has the authority to order the construction, relocation, alteration, repair or abolition of the railroad crossing involved in this, as well as the manner and conditions in or under which such crossings shall be maintained, operated and protected.

5. The Commission has the authority as it may deem necessary to protect the public interest, safety, convenience and accommodation.

ORDER

THEREFORE, IT IS ORDERED:

1. That National Railroad Passenger Corporation, at its initial cost and expense, within six (6) months from service of the Commission's order, perform an in-depth inspection of the bridge carrying 59th Street over and above the tracks of National Railroad Passenger Corporation in the City of Philadelphia.

2. That National Railroad Passenger Corporation, at its initial cost and expense, within six (6) months from service of the Commission's order, prepare and submit to this Commission and all parties of record for review, a detailed report of the in-depth inspection performed in accordance with this order. Said report to include but not be limited to the following:

1. The extent and effect of any deterioration, if any, and the necessary work, estimated cost, and construction time to make repairs, if required.
2. An engineering analysis of the existing structural members of the bridge to determine the load carrying capacity of the members and a recommendation as to the overall load carrying capacity of the bridge.

3. Specific recommendations as to work required, estimate of costs and construction time to rehabilitate the bridge to enable it to safely carry HS-20 loads and/or appropriate loads based on the engineering analysis of the overall load carrying capacity.

3. That City of Philadelphia, at its initial cost and expense, within six (6) months from service of the Commission's order, furnish all material and do all work necessary to replace the expansion dams of the subject bridge.

4. That City of Philadelphia, at its initial cost and expense, furnish all material and do all work necessary to establish, mark and maintain a suitable detour, if necessary, for the vehicular and pedestrian traffic desiring to use the subject structure during the time the reconstruction is being performed in accordance with Paragraph No. 3 of this order.

5. That National Railroad Passenger Corporation, at its initial cost and expense, furnish flagmen, watchmen and inspectors, as necessary, to observe the progress of work being performed over and adjacent to its tracks in accordance with this order.

6. That any relocation of, change in, or removal of any existing structure, equipment or facilities of any public utility other than National Railroad Passenger Corporation, which may be required as incidental to the execution of this order, be made by the said public utility at its initial cost and expense and in such a manner so as not to interfere with the construction of the improvement.

7. That upon completion of the improvement, each involved party report to this Commission the actual date of completion of the work ordered

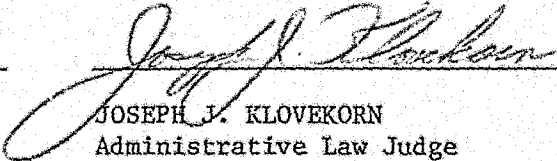
herein, and at the earliest practicable time subsequent to the said date of completion, submit to this Commission a detailed statement of the actual costs incurred in furnishing material and performing work in accordance with this order.

8. That upon completion of the improvement and its opening to public use, City of Philadelphia, at its initial cost and expense, furnish all material and do all work necessary to provide interim maintenance for the bituminous wearing course on the bridge, bridge sidewalks and highway approaches, all in a safe, smooth and satisfactory manner.

9. That upon completion of the improvement and its opening to public use, National Railroad Passenger Corporation, at its initial cost and expense, furnish all material and do all work necessary to provide interim maintenance for the substructure and superstructure of the bridge exclusive of the items assigned to City of Philadelphia, all in a safe and satisfactory manner.

10. That upon completion of the in-depth inspection and report and replacement of the expansion dams, a further hearing be held to receive comments on the report, assignment of maintenance and costs associated with all work performed on the subject bridge.

Date: March 1, 1984


JOSEPH J. KLOVEKORN
Administrative Law Judge

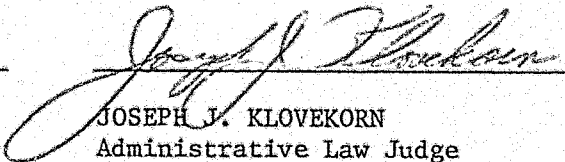
herein, and at the earliest practicable time subsequent to the said date of completion, submit to this Commission a detailed statement of the actual costs incurred in furnishing material and performing work in accordance with this order.

8. That upon completion of the improvement and its opening to public use, City of Philadelphia, at its initial cost and expense, furnish all material and do all work necessary to provide interim maintenance for the bituminous wearing course on the bridge, bridge sidewalks and highway approaches, all in a safe, smooth and satisfactory manner.

9. That upon completion of the improvement and its opening to public use, National Railroad Passenger Corporation, at its initial cost and expense, furnish all material and do all work necessary to provide interim maintenance for the substructure and superstructure of the bridge exclusive of the items assigned to City of Philadelphia, all in a safe and satisfactory manner.

10. That upon completion of the in-depth inspection and report and replacement of the expansion dams, a further hearing be held to receive comments on the report, assignment of maintenance and costs associated with all work performed on the subject bridge.

Date: March 1, 1984


JOSEPH J. KLOVEKORN

Administrative Law Judge

ORIGINAL



CITY OF PHILADELPHIA

LAW DEPARTMENT
15th Floor, Municipal Services Building
Philadelphia, Pa. 19102

RECEIVED

MAR 22 1984

March 21, 1984

Pennsylvania Public Utility Commission
North Office Building
Harrisburg, Pa. 19102

SECRETARY'S OFFICE
Public Utility Commission

Attention: Secretary

Re: 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-8303/73

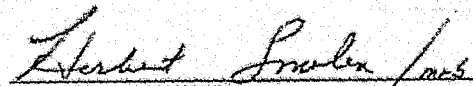
Dear Sirs:

Enclosed please find an original and nine (9) copies of the Exceptions of the City of Philadelphia to Initial Decision of the Administrative Law Judge 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.

Kindly acknowledge receipt of same.

Very truly yours,


HERBERT SMOLEN
Deputy City Solicitor

HS/mrb

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Investigation upon the Commission's own : Docket No. I-8303~~7~~73
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.

RECEIVED

MAR 22 1981

SECRETARY'S OFFICE
Public Utility Commission

EXCEPTIONS OF THE CITY OF PHILADELPHIA
TO INITIAL DECISION OF
THE ADMINISTRATIVE LAW JUDGE

DOCKETED

MAR 23 1981

BARBARA W. MATHER
City Solicitor

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

EXCEPTIONS OF THE CITY OF PHILADELPHIA TO INITIAL DECISION

The City of Philadelphia (City) hereby respectfully files the following Exceptions to the Initial Decision of the Administrative Law Judge.

EXCEPTIONS

1. The Administrative Law Judge erred in ordering, subject to Commission approval, that the City, at its initial cost and expense, furnish all material and do all work necessary to replace the expansion dams of the subject bridge (Ordering paragraph 3 of Initial Decision, p. 13).
2. The Administrative Law Judge erred in ordering that upon completion of the improvement and its opening to public use, the City, at its initial cost and expense, furnish all material and do all work necessary to provide interim maintenance for the bituminous weary course on the bridge, bridge sidewalks and highway approaches (Ordering paragraph 8, p. 14).
3. The Administrative Law Judge erred in failing to consider and uphold the Ordinance Agreement of 1926 (City Exhibit 4) and in failing to take judicial notice of and consider the Ordinance Agreements of 1905 and 1915 attached as Appendices A & B respectfully to the City's Reply Brief, and in failing to consider and uphold the conformed copy of the 1915 Agreement attached to Appendix C of the City's Reply Brief.
4. The Administrative Law Judge erred in failing to order Amtrak to reimburse the City in the amount of \$15,080.09 plus interest for work ordered by the Commission and performed by the City.

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. Briefs and Reply Briefs were filed. In addition, the City filed a Motion to Reopen the Record. Amtrak filed a response to which the City filed a Motion to Strike. The Administrative Law Judge rendered his Initial Decision on March 1, 1984 which was served under date of March 8, 1984.

II. SUMMARY OF POSITION OF THE CITY OF PHILADELPHIA

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.

III. ARGUMENT AND GROUNDS FOR EXCEPTIONS

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

The uncontroverted testimony at the hearing in this matter clearly demonstrated 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 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 (the 1926 Ordinance) 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 Avenue 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 originally 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.

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

^{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.

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.

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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 submitted that the Administrative Law Judge erred in failing to order reimbursement to the City in said amount.

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 transferred 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. (NRPC 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 Railroad 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 and the Administrative Law Judge erred in failing to so find.

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 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 Commission 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 A.2d 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 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), (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).

Accordingly, the Administrative Law Judge erred in recommending that the Commission enter an Order requiring the City, at its initial cost and expense to furnish all material and do all work necessary to replace the expansion dams of the bridge, and that upon completion thereof to do all work necessary to provide interim maintenance of the bituminous wearing course on the bridge, bridge sidewalks and highway approaches.

- B. AMTRAK's contention that there was 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 ignored and overlooked 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 argued 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 Main Brief (p. 3) to the Administrative Law Judge admitted 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 was 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 did 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...

As 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 these Exceptions are true and correct copies of the aforesaid 1915 and 1926 Ordinances of which the Administrative Law Judge was requested to judicially note. 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 was further supported by a printed conformed copy of the 1915 Agreement which was attached to the City's Reply Brief and is also attached hereto in Appendix C, together with a copy of the City's Motion to reopen the record for the purpose of admitting it into evidence, which was filed contemporaneously therewith. 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 pertinent 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.

Thus, in the instant matter, AMTRAK is the successor in title and interest of the Pennsylvania Railroad, the Penn Central, and CONRAIL, and accordingly AMTRAK is responsible 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. Accordingly, the Administrative Law Judge erred in failing to consider and uphold the 1905, 1915 and 1926 Ordinances and the conformed copy of the 1915 Agreement.

C. To further support its position that it did not have maintenance responsibility, AMTRAK next contended that even if an agreement existed, there was 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 distinguishable 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 upheld had the Commission's subsequent approval, been made nunc pro tunc.

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. Accordingly, the Administrative Law Judge erred in failing to consider and uphold the 1905, 1915, 1926 Ordinances and the conformed copy of the 1915 Agreement.

D. AMTRAK also incorrectly argued 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 were in dispute with respect to the contractual language. It must be noted, however, that AMTRAK did not dispute the interpretation of the language imposing maintenance responsibilities upon the Railroad, and did not allege that it (AMTRAK) could not perform those maintenance duties, but argued that the City should be required to perform despite the fact that the railroad was, by agreement, to do the work. Accordingly, there is no justification why AMTRAK was not ordered to perform the required maintenance.

AMTRAK also cited 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. Accordingly, the Administrative Law Judge erred in failing to consider and uphold the 1905, 1915, 1926 Ordinance Agreements and the conformed copy of the 1915 Agreement.

E. AMTAK next argued that in apportioning costs, the Commission is not limited to any fixed rule. In the instant matter however, we are dealing with maintenance responsibilities, not utility relocation costs. These maintenance responsibilities have been performed in the past by the railroad. Accordingly, while the Commission may have broad powers, there is no valid reason to disturb the historic maintenance responsibility of the railroad. Accordingly, the Administrative Law Judge erred in requiring the City, at its initial cost, to replace the expansion dams, and to provide interim maintenance of bituminous wearing course, bridge sidewalks and highway approaches.

F. AMTRAK next incorrectly argued that the obligations of the Pennsylvania Railroad with respect to the bridge did not pass to AMTRAK. The cornerstone of its argument was 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 12 and 13 of these Exceptions. 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 through of these Exceptions. 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 prescribed 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 questioned Penn Central's prior maintenance responsibility for the bridge (p. 14 of AMTRAK's Main Brief to the Administrative Law Judge). AMTRAK incorrectly assailed City Exhibit No. 5 as being unclear and vague. This was 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 and should 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 constituted 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, and the Administrative Law Judge erred in failing to so find and in imposing certain initial costs and duties upon the City, as aforesaid.

G. It must also 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 Exhibits) 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 and in these Excpetions.

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, were 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 sought 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 thereafter sought to have the Commission disregard that evidence. Accordingly, the Administrative Law Judge erred in failing to consider and uphold the 1905, 1916 Ordinances and conformed copy of the 1915 Agreement, and is imposing certain initial costs and duties upon the City, as aforesaid.

H. Essentially, the Commission Staff argued (p. 3 of its Main 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 failed to recognize the long standing railroad obligation to forever maintain the bridge. 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 hereinabove discussed.

Commission Staff additionally cited the case of Consolidated Rail Corporation v. Pennsylvania Public Utility Commission, et. al, 55 Pa. Commonwealth Ct. 576 423 A.2d 1108 (1980), to support its position. That 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 utilized by Penn Central in conveying its title to CONRAIL. The Commonwealth Court affirmed the Order of the Public Utility Commission holding that under the terms of an Ordinance of the Council of the City of Philadelphia which granted the Railroad permission to construct the bridge, the Railroad (CONRAIL) 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, as were its predecessors in title, and the Administrative Law Judge erred in failing to so find.

IV. CONCLUSION

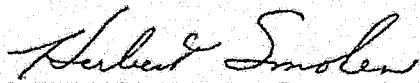
For all of the foregoing reasons, the City of Philadelphia respectfully requests that the Commission order the following:

- 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,

BARBARA W. MATHER
City Solicitor

HERBERT SMOLEN
Deputy City Solicitor

BY: 
HERBERT SMOLEN
Deputy City Solicitor

Attorneys for the City of Philadelphia

APPENDIX A

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 the 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. *And* 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, 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 underground 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 be

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, Lamedowne 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 out 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-

ue, 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 Maverford 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

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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 approval of this ordinance.

JOHN WEAVER,
Mayor of Philadelphia.

ORDINANCE

OF

1915

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.

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 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, Cross 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 (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, 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 Lan-

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, 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 three 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, grading and municipal structures, and building of bridges and other said Pennsylvania Railroad Company obligates itself to carry out along its said branch or improved line to 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 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,

Y (70) feet wide, from Woodbine avenue to Malvern avenue; Upland Way, eighty (80) feet wide, from Fifty-fourth street; Fifty-seventh street (80) feet wide, from Upland Way, as here proposed to be laid out, to Berks street; Fifty-first street, eighty (80) feet wide, from Nassau street to Lancaster avenue; the intersection of Columbia avenue, seventh street and Lancaster avenue; a new street Y (70) feet wide, over the tracks and property of 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, 60) feet wide, from Fifty-sixth street to Fifty-ninth street; Fifty-sixth street, seventy (70) feet wide, to Berks street to Upland Way; Montgomery avenue, Y (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 street; to widen Fifty-ninth street to eighty (80) feet, and revise the grade of same between Nassau street and Upland Way. To revise the grades of Lancaster avenue, point about three hundred and fifty (350) feet from Fifty-sixth street to Sixtieth street; Malvern street from Lancaster avenue to Fifty-ninth street; Second street, from Woodbine avenue to a point about hundred (100) feet south of Woodbine avenue; Volman avenue, from Upland Way to a point about hundred and fifty (150) feet east of Upland Way; Fifth street, from Malvern avenue to Lebanon street; Fifty-seventh street, from Lebanon street to Berks street, and from Lancaster avenue to Upland Way; Columbia avenue, from Lancaster street to Sixtieth street; Jefferson street, from Fifty-fourth street to Fifty-ninth street; Nassau street, from Fifty-ninth street to Fifty-ninth street; Oxford street, from Fifty-ninth 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 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.

AGREEMENT

between

THE CITY OF PHILADELPHIA

and

PENNSYLVANIA RAILROAD COMPANY

For the construction, maintenance and operation of so much of the proposed branch or improved line of the Pennsylvania Railroad Company, extending from a point on the said railroad to or near Main Line, at or near Forty-sixth Street, Philadelphia, to connections with its low grade line and Union Branch, at or near Glen Echo in Chester County, as is located within the limits of the said City, and for the purpose of using and enabling the construction, erect, providing upon certain terms and conditions for change and alterations in City Plans by revising the lines and grades of certain streets thereon, etc., as provided in Ordinance of Councils approved the Twenty-third day of November, 1905, as amended by the Ordinance of Councils approved the Fourth day of July, 1915.

POOR ORIGINAL

Appendix 3

POOR ORIGINAL

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 Maivern avenue with a tunnel."

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

mandatory 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

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 ($17\frac{1}{2}$) 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 ($17\frac{1}{2}$) 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 Harverford 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 8. 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 ($17\frac{1}{2}$) 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 ($17\frac{1}{2}$) 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. 1903, as amended by said ordinance approved the 8th day of July, A. D. 1913, 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.

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

Investigation upon the Commission's own : Docket No. I-8303073
motion into matters pertaining to the :
proper service, accomodation, conven- :
ience and safety of the traveling :
public using the rail-highway crossing :
carrying 59th Street over and above the :
grade of the tracks of National Rail- :
road Passenger Corporation in the City :
of Philadelphia, to determine the con- :
dition, disposition and responsibility :
for maintenance of the existing crossing :
structure. :

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 additional 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 PHILADELPHIA :

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.

/s/
ROBERT M. WASHBURN

Sworn to and Subscribed

Before me this 12th day
of Oct. 1983.

/s/
NOTARY PUBLIC

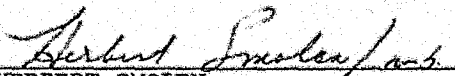
M. LEE POLLIDAY
Notary Public, Phila. Pa.
My Commission Expires Sept 2 1985

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation upon the Commission's own : Docket No. I-8303073
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.

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the
Exceptions of the City of Philadelphia to Initial Decision of the Administrative
Law Judge 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
Deputy City Solicitor

CITY OF PHILADELPHIA

DATED: March 21, 1984

Service List

Honorable Joseph J. Klovekorn, ALJ
13th Floor, State Office Building
Broad & Spring Garden Street
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 Building
Philadelphia, Pa. 19102

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

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

ORIGINAL

Amtrak



APR 05 1984

RECEIVED

APR 11 1984

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
North Office Building
Harrisburg, PA 19102

SECRETARY'S OFFICE
Public Utility Commission

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

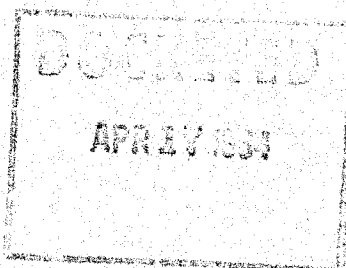
Dear Secretary Rich:

In lieu of formal Reply Exceptions to the Exceptions of the
City of Philadelphia with regard to the above, and consonant
with the Commission's desire that Exceptions be brief and to the
point, please accept this statement by Amtrak that it is content
to rely on its Brief and other submissions to Administrative Law
Judge Klovekorn and already incorporated into the record.

Very truly yours,

Harold K. Cohen
Counsel - NECIP

cc: Honorable Joseph J. Klovekorn, ALJ
All Parties of Record

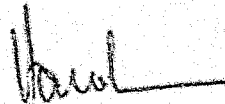


BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation upon the Commission's : Docket No. I-8303073
own motion into matters pertaining to :
the proper service, accommodation, :
convenience and safety of the traveling :
public using the rail-highway crossing :
carryng 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. :

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct
copy of the Letter of the National Railroad Passenger
Corporation, dated April 5, 1984 in the above matter upon those
parties listed in the attached Service List, by hand delivery or
by first class mail, postage prepaid.



Harold K. Cohen
Counsel - NECIP

DATED: April 5, 1984

NATIONAL RAILROAD
PASSENGER CORPORATION

COMMONWEALTH OF PENNSYLVANIA

April 17, 1984

SUBJECT: Party of Record -
Philadelphia Gas Works

TO: Aggie Brewster, Supv.
Docket Section

FROM: Elaine Deichmiller *J.D.*
Secretary's Office

Per our telephone conversation, please change the addressee from Mr. James McKee, Chief Executive Officer to: Gabrielle L. Stritch, Corporate Counsel, Philadelphia Gas Works, 1800 N. 9th Street, Philadelphia, PA 19122 on the following cases:

A-0093617
A-00099182
A-00104892
A-00104633
A-00104719
A-00104897
A-00104898
A-00104633
A-00104887

I-00000256

I-820360

I-830373

Thanks.

