



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

ISSUED: February 3, 1994

IN REPLY PLEASE
 REFER TO OUR FILE

I-00830373

FILED

DOUGLAS
 FOLLER

TO ALL PARTIES

TO WHOM IT MAY CONCERN:

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

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION IN ROOM B-18, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within twenty (20) days of the issuance date of this letter.** The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions.

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

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

CC: ALJ NGUYEN/OFFICE OF ALJ/LAW BUREAU/OSA/PIO/OTS/BCS/S&C/CHAIRMAN/COMMISSIONERS
 NEW FILE/OUR FILE

Very truly yours,

Allison K. Turner

Allison K. Turner
 Chief Administrative Law Judge

meh
 Encls.
 Certified Mail
 Receipt Requested
 SEE ATTACHED FOR PARTIES OF RECORD

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation upon the Commission's own :
motion into the matters pertaining to the :
proper service, accommodation, convenience :
and safety of the traveling public using :
the rail-highway crossing carrying 59th :
Street over and above the 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. :

DOCKETS
FOR
I-830373

RECOMMENDED DECISION

FEB 17 1994

Before
KY VAN NGUYEN
Administrative Law Judge

HISTORY OF THE PROCEEDINGS

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

On April 29, 1983, the Commission instituted this investigation at Docket No. I-830373, to determine the current condition and future disposition of the crossing and to assign future maintenance responsibilities to the parties. On June 29,

1983, the City notified the Commission 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. The work was completed in July 1983.

By order entered May 1, 1984, the Commission directed Amtrak to perform an in-depth inspection of the bridge and to submit a report to the Commission detailing the extent of any deterioration, an engineering analysis of the existing structural members of the bridge, a recommendation of the overall load carrying capacity of the bridge, and an estimate of costs to rehabilitate the bridge to enable it to safely carry HS-20 load. The City was ordered to replace the expansion dams of the bridge. The report was filed with the Commission on March 12, 1985, but did not include the engineering analysis of the bridge. The City spent \$141,642.06 on emergency repairs and the replacement of the two expansion dams. Amtrak spent \$4,016.74.

By order entered November 7, 1985, the Commission again directed Amtrak to perform an engineering analysis of the bridge and to pay half the cost incurred by the City.

On March 16, 1993, the City notified the Commission that three of the five existing deck expansion joints on the above-grade bridge on 59th Street had deteriorated to varying

degrees. The deterioration created open holes in the deck and a potential safety hazard for the public using the bridge. At the City's request, an informal field conference was arranged at the site of the crossing on March 23, 1993 with the representatives of the City, the National Railroad Passenger Corporation (Amtrak), and the Pennsylvania Department of Transportation (PennDOT). All the parties present at the conference agreed that immediate repairs were necessary for the damaged expansion joints. However, none of the parties would voluntarily agree to make such repairs. On March 26, 1993, Chairman Rolka issued, and on April 1, 1993 the Commission ratified, an Emergency Order directing the City, at its initial cost and expense, to perform all work necessary to complete emergency repairs to the deteriorated bridge, leaving the allocation of costs and other responsibilities to be decided after a hearing.

On July 1, 1993, the hearing was held. Present at the hearing were Gerald T. Clark, Esquire, representing the City; Stuart A. Liner, Esquire, representing PennDOT; Scott H. DeBroff, Esquire, representing the Commission; Charles E. Mechem, Esquire, representing the Consolidated Rail Corporation (Conrail); Vincent Walsh, Esquire, representing the Southeastern Pennsylvania Transportation Authority (SEPTA); and Rudolph A. Chillemi, Esquire, representing Philadelphia Electric Company (PECO).

Amtrak responded to the questions posed to it in the Notice of Hearing, but did not appear.

On November 9, 1993, SEPTA moved for admission the Statement of SEPTA witness Michael DiCamillo and its attachments into the record. The motion was granted and these documents will be collectively marked as SEPTA Exhibit 2.

FINDINGS OF FACT

1. In compliance with the Commission's directives in this proceeding, the City of Philadelphia expended \$141,642.06 for emergency repairs and replacement of two expansion dams on the bridge carrying 59th Street over and above Amtrak's tracks. See Findings of Fact Nos. 1 and 2 of Administrative Law Judge Joseph J. Klovekorn's Recommended Decision of September 5, 1985.

2. Contrary to the Commission's directives, Amtrak did not do an engineering analysis of the existing structural members of the bridge to determine the load carrying capacity of the bridge. See Finding of Fact No. 4 of Administrative Law Judge Joseph J. Klovekorn's Recommended Decision of September 5, 1985.

3. No trolley rail was ever installed on the bridge. See Finding of Fact No. 7 of Administrative Law Judge Joseph J. Klovekorn's Recommended Decision of September 5, 1985.

4. The 59th Street bridge was built in 1926 by the Pennsylvania Railroad. The bridge is a through girder with a

jack arch deck system. It has four spans with a total length of 310 feet and two sidewalks with a width of 9 feet each. The roadway on the bridge is 52 feet wide between the curbs. The vertical clearance is 21 feet and 6 inches. (PennDOT Exhibit 1, Report of February 24, 1993; Administrative Law Judge Joseph J. Klovekorn's Recommended Decision of September 5, 1985.

5. The jack arch deck is composed of steel stringers and reinforced cement concrete with a bituminous wearing surface. (PennDOT Exhibit 1, Report of February 24, 1993)

6. The 59th Street bridge is used by the local traffic and city residents. (N.T. 23; PennDOT Exhibit 1; City Exhibit 1)

7. Below the 59th Street bridge, Amtrak and SEPTA run their trains. Amtrak runs about 30 passenger trains a day and SEPTA about 44 scheduled round trips. SEPTA also schedules a route G bus across the bridge. (N.T. 34, 161)

8. Conrail used to run six freight trains a day. It paid Amtrak when it used the trackage. It no longer runs any trains under the bridge. (N.T. 161-166)

9. PECO has distribution wires at the underside of the 59th Street bridge. It does not know the impact of the repairs, removal or reconstruction of the bridge until a plan becomes final. (N.T. 174)

10. Bell does not have any facilities at the bridge.
(Bell letter of July 26, 1983)

11. PennDOT has conducted three inspections of the 59th Street bridge since 1988. The bridge is rated fair to poor under the PennDOT Bridge Management System Coding Manual. (N.T. 177-187; PennDOT Exhibit 1, Report of February 24, 1993)

12. On June 10, 1993, the City completed the plating work on the bridge at the cost of \$4,843.94. (City Exhibit 1)

13. On August 11, 1992, under a quitclaim deed between Amtrak and SEPTA, SEPTA took title to a parcel of railroad property beneath the 59th Street bridge. (SEPTA Exhibit 2)

DISCUSSION

The Commission has jurisdiction over railroad-highway crossings and may assess costs to public utilities, municipal corporations and the Commonwealth. 66 Pa. C.S. §2702 and §2704. This empowers the Commission to authorize not only the construction but also the alteration, suspension or abolition of such crossings. The authority of the Commission is not limited to the crossings themselves but extends to the highway approaches as well. Department of Transportation v. Pennsylvania Public Utility Commission, 64 Pa. Commonwealth Ct. 299, 440 A.2d 657 (1982). The Commission can also, for example, enlarge an application for abandonment into a proceeding for replacement of

a crossing. Pittsburgh Railways Co. v. Pennsylvania Public Utility Commission, 198 Pa. Superior Ct. 415, 182 A.2d 80 (1962).

When it assigns costs, the Commission is not limited to any fixed rule, but takes all relevant factors into account. The only limitation the Commission must observe is that its assignment of costs be just and reasonable. PennDOT v. Pa. P.U.C., 79 Pa. Commonwealth Ct. 266, 469 A.2d 1149 (1983).

How will the costs and other responsibilities in this case be allocated?

The life of a highway overpass bridge is about 70 to 75 years (N.T. 94) and the 59th Street bridge is near the end of that life. The bridge has been the subject of several administrative hearings and emergency reliefs. It has five expansion dams. Two expansion dams, one at the north abutment and the other at the south pier, have been replaced. According to the City, the expansion dams at the south abutment is damaged but does not require any work at this time. The two remaining expansion dams require immediate action from the Commission.

Under the Commission's Emergency Order of April 1, 1993, the City has plated these expansion dams by welding the steel plates. Because of the deteriorated condition of the dams, the steel plates have broken loose and required rewelding. The areas of the curbs, the sidewalks, the piers and the abutments are all deteriorated.

In 1983, the average daily traffic count was 16,800 vehicles. The pedestrian count was about 200 to 800 pedestrians, depending upon the closing or the opening hours of a high school that is located near the bridge. (N.T. 13) These counts may be higher now. This is evidently a benefit to the City.

Amtrak and SEPTA, are the owners and operators of the tracks below the bridge. Further, SEPTA runs a route G bus across the bridge. The structural soundness of the bridge no doubt contributes to the safe operations of these two rail commuters.

Thus, the City, Amtrak and SEPTA benefit from the existence of the bridge. Logically, the cost of repairs or replacement should have been allocated among them. However, because Amtrak and SEPTA are outside the Commission's jurisdiction over the allocation of costs to public utilities by a federal statute, 45 U.S.C. §546(b) and 581(c)(5), National Railroad Passenger Corporation v. Pennsylvania Public Utility Commission, 665 F. Supp. 402 (E.D. Pa. 1987), aff'd 848 F.2d 436 (3rd Cir. 1988), cert. denied 109 S. Ct. 231 (1988), and Southeastern Pennsylvania Transportation Authority v. Pennsylvania Public Utility Commission et al., 826 F.Supp. 1506 (E.D.Pa. 1993), only the City should bear this cost. Although Amtrak and SEPTA are outside the Commission's allocation-of-cost jurisdiction, I strongly believe that they are not outside the

Commission's jurisdiction over the safety of all railroads public highways. Therefore, they cannot ignore this jurisdiction and must participate in the Commission's proceedings which deal with this problem.

PennDOT has made a series of recommendations about rehabilitating the bridge. In making those recommendations, PennDOT has conducted an in-depth investigation and rating analysis, followed by check-ups at a two-year interval to see if there were any changes in the structural members of the bridge. (N.T. 184-186; PennDOT Exhibit 1, Report of February 24, 1992) Therefore no further structural analysis of the bridge is needed and the City's plans for improving the bridge can be based on this analysis. It is noted that, according to the City's testimony, the concrete filled on top of the stringers can crack and the dam now placed at the bridge is still susceptible to water. The City indicated that the best way to avoid the efforts at piecemeal repair is to have a new dam built or to have the deck replaced. (N.T. 150, 151)

CONCLUSIONS OF LAW

1. The Commission has exclusive jurisdiction over the 59th Street bridge.
2. The Commission is authorized to allocate costs incurred and other responsibilities at this crossing.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion filed by the Southeastern Pennsylvania Transportation Authority on November 5, 1993 is granted.

2. That the City of Philadelphia bear the cost of \$141,642.06, the amount expended by it on emergency repairs and replacement of two expansion dams on the bridge.

3. That the City of Philadelphia bear the cost of \$4,843.94, the amount incurred by it in compliance with the Commission's Emergency Order of April 1, 1993.

4. That the City of Philadelphia shall maintain the 59th Street bridge in a safe and satisfactory manner.

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

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

7. That the City of Philadelphia, at its sole cost and expense, furnish all materials and perform all work necessary to establish, mark and maintain any detours or traffic controls that may be required to properly accommodate highway and pedestrian traffic during the time the structure is repaired or replaced, and to remove them after the completion of the work, all in a safe and satisfactory manner.

8. That the National Railroad Passenger Corporation and the Southeastern Pennsylvania Transportation Authority will cooperate fully with each other to furnish flagmen and watchmen, if necessary, to protect their operations during the approved work.

9. That Philadelphia Electric Company, at its sole cost and expense, furnish all materials and do all work necessary, if any, to alter and protect its facilities to accommodate the approved work, all in a safe and satisfactory manner.

10. That any relocation of, changes in, or removal of existing facilities of any public utility other than the Southeastern Pennsylvania Transportation Authority, the National

Railroad Passenger Corporation and Philadelphia Electric Company, which may be required to be done as incidental to the approved work, be made by the said public utility in such a manner that will not interfere with the work performed at the crossing.

11. That all the parties involved herein cooperate fully with each other so that, during the performance of the approved work, neither the traveling public nor the parties' operations or facilities will be endangered or unnecessarily inconvenienced.

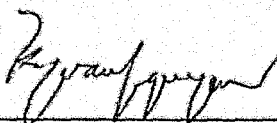
12. That the City of Philadelphia, at least ten (10) days prior to the start of the work, notify this Commission and all parties of record, of the actual starting date.

13. That the City of Philadelphia, at least ten (10) days after the completion of the work, notify this Commission and all parties of record, of the actual completion date.

14. That this Order, insofar as it places the costs of the approved work on the City of Philadelphia, is without prejudice to its rights to recover the said costs from others in accord with any lawful agreements.

15. That all previous Orders of the Commission in this matter that are not inconsistent with this Order remain in full force and effect.

Date: December 9, 1993



KY VAN NGUYEN
Administrative Law Judge



PECO ENERGY ORIGINAL

Legal Department

PECO Energy Company
2301 Market Street
PO Box 8699
Philadelphia, PA 19101-8699
215 841 5544
FAX 215 568 3389

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Senior Vice President
and General Counsel

Bjarno R. Anderson
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Paul R. Bonney
Ellen M. Cavanaugh
Rudolph A. Chillemi
Edward J. Cullen, Jr.
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Katherine K. Dodd
Aubra S. Gaston
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Gregory Golazeski
John C. Halderman
Elizabeth P. Harris
Mary McFall Hopper
Stephen L. Huntton
Thomas G. Jackson
J. Lindsay Johnston
Conrad O. Kaitner
Kimberly Lewis
Stephanie Whilton Lewis
Jeffrey J. Norton
Christine A. Reuther
Wendy Schermer
Jenny P. Shulbank
Ward L. Smith
Noel H. Trask
Assistant General Counsel

Direct Dial: 841-4257

February 17, 1994

VIA FEDERAL EXPRESS

John G. Alford, Secretary
Pennsylvania Public Utility Commission
North Office Building, Room B-20
Harrisburg, PA 17120-3265

RECEIVED
FEB 17 1994

SECRETARY'S OFFICE
Public Utility Commission

RE: PUC Investigation No. I-830373

Dear Secretary Alford:

Enclosed for filing please find the original and nine (9) copies of Exceptions to the Recommended Decision of Administrative Law Judge Ky Van Nguyen to be filed on behalf of PECO Energy Company.

I have enclosed an extra copy of this letter to be time-stamped and returned to me in the attached self addressed stamped envelope.

I certify that a copy of the Exceptions has been filed on all parties as indicated on the attached Certificate of Service.

Very truly yours,

Rudolph A. Chillemi
Rudolph A. Chillemi

RAC/mgp
Attachment

DOCKETED
FEB 18 1994

cc: The Honorable Ky Van Nguyen
All Parties of Record

w:\rac\59th\alford.exp

OPEN
FOLDER

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED
FEB 17 1994
SECRETARY'S OFFICE
Public Utility Commission

Investigation upon the Commission's :
own motion into the matters pertaining :
to the proper service, accommodation, :
convenience and safety of the traveling :
public using the rail-highway crossing :
carrying 59th Street over and above :
the 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

EXCEPTIONS OF
PECO ENERGY COMPANY
TO THE RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE KY VAN NGUYEN
ISSUED FEBRUARY 3, 1994

DOCKETED
FEB 18 1994

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F
JEN
ER

RUDOLPH A. CHILLEMI
Counsel for
PECO ENERGY COMPANY
2301 Market Street, S23-1
Philadelphia, PA 19101
(215) 841-4257

Dated: February 17, 1994

ORIGINAL

PECO Energy Company ("PECO Energy") files the following exception to the Recommended Decision ("Decision") of Administrative Law Judge Ky Van Nguyen, issued February 3, 1994, in the above-captioned proceeding.

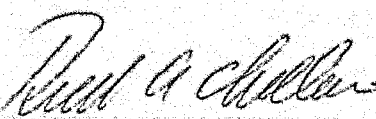
Exception is taken to ordering Paragraph No. 9 on page 11 of the Decision, in which the Administrative Law Judge orders (subject to Commission approval):

"9. That Philadelphia Electric Company, at its sole cost and expense, furnish all materials and do all work necessary, if any, to alter and protect its facilities to accommodate the approved work, all in a safe and satisfactory manner."

PECO Energy takes specific exception to ordering Paragraph No. 9 unless it is accompanied by PECO Energy's right to a final cost allocation hearing after the completion of the required work.

Respectfully submitted,

PECO ENERGY COMPANY

By: 

RUDOLPH A. CHILLEMI
2301 Market Street, S23-1
Philadelphia, PA 19101
(215) 841-4257

Attorney for PECO Energy Company

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Docket No. I-830373

CERTIFICATE OF SERVICE

I, Rudolph A. Chillemi, hereby certify that on this date I caused a true and correct copy of the foregoing Exceptions of PECO Energy Company to be served by first class mail, postage prepaid, upon the following parties:

The Honorable Ky Van Nguyen
Pennsylvania Public Utility Commission
13th Floor State Office Building
Broad and Spring Garden Streets
Philadelphia, PA 19130

Gerald Clark, Esquire
Senior Attorney
City of Philadelphia
8th floor, 1600 Arch Street
Philadelphia, PA 19103-1628

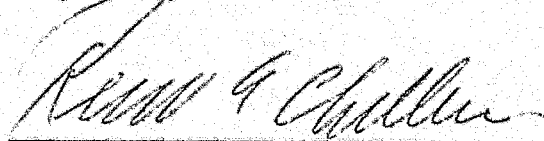
Vincent Walsh, Esquire
SEPTA
Seventh Floor
714 Market Street
Philadelphia, PA 19106-2385

Scott H. DeBroff, Esq.
PUC - Law Bureau
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Stuart A. Liner, Esquire
Pennsylvania Department of Transportation
513 Transportation & Safety Building
Harrisburg, PA 17120

Charles Mechem, Esquire
Consolidated Rail Corporation
Two Commerce Square 16-A
2001 Market Street
P.O. Box 41416
Philadelphia, PA 19101-1416

Respectfully submitted,



RUDOLPH A. CHILLEMI
Counsel for
PECO ENERGY COMPANY
2301 Market Street, S23-1
Philadelphia, PA 19101
(215) 841-4257

Dated: February 17, 1994

714 Market Street
Philadelphia, PA 19106-2385
(215) 580- 7459



Southeastern Pennsylvania Transportation Authority
Safety • Service • Continuous Improvement

ORIGINAL

February 18, 1994

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FEB 19 1994

SECRETARY'S OFFICE
Public Utility Commission

- Office of General Counsel
- James F. Kicior
- G. Roger Bowers
- Norman Hegge
- Eileen Giordano Katz
- Stanley S. Snowitz
- Philip E. Berens
- Brian J. Kandell
- Joan C. Gersch
- Eugene N. Cipriani
- Nicholas J. Staffieri
- C. Neil Petersen
- Leslie G. Dias
- Vincent J. Walsh, Jr.
- Deborah R. Lauer
- Jean Zubras
- William Brown
- Uta Stalidis
- Gladys Buck
- Marjorie Rand
- Charles Pelletreau
- M. Shirley Young
- Robert Walter
- Joseph Devanney
- Adrienne Greenfield
- William Faust
- Raymond Porreca
- Raymond Guier
- Jan Feiman
- Wayne C. Mince
- Clave Walker
- Joyce Deitch
- Susan Lomonick
- Alice Oppenheimer
- Stephen Vedro
- Cynthia Esman
- Marylou Mengucci
- Meryl Naythorn
- Barbara Rosenberg

John G. Alford, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

Re: Investigation upon the Commission's own Motion into the Matters Pertaining to the Proper Service, Accommodation, Convenience and Safety of the Traveling Public Using the Rail-Highway Crossing Carrying 59th Street over and above the 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

RLS

Dear Secretary Alford:

Enclosed herewith for filing are an original and nine (9) copies of the Exceptions of SEPTA in the above-captioned proceeding. Please date-stamp and return to me the extra copy in the enclosed envelope.

The last page of the Exceptions consists of SEPTA's Certificate of Service indicating that copies of this document have been mailed to all parties and to Administrative Law Judge Ky Van Nguyen today.

A U.S. Postal Service form 3817 is also enclosed.

Sincerely,
Vincent J. Walsh, Jr.
Vincent J. Walsh, Jr.
Assistant Deputy Counsel

ENC: dm
Enclosures

cc: Honorable Ky Van Nguyen
Parties of Record

LOCKER
FOLDER

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation upon the Commission's :
own Motion into the Matters Pertaining :
to the Proper Service, Accommodation, :
Convenience and Safety of the Traveling :
Public Using the Rail-Highway Crossing :
Carrying 59th Street over and above the :
Grade of the Tracks of National :
Railroad Passenger Corporation in the :
City of Philadelphia, to Determine the :
Condition, Disposition and Responsi- :
bility for Maintenance of the Existing :
Crossing Structure. :

Docket No. I-830373

RECEIVED
FEB 13 1994
SECRETARY'S OFFICE
Public Utility Commission

EXCEPTIONS OF
SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY

DOE

MAR 04 1994

FULLER

Southeastern Pennsylvania
Transportation Authority

James F. Kilcur
I.D. No. 26768
G. Roger Bowers
I.D. No. 02153
Vincent J. Walsh, Jr.
I.D. No. 28692
714 Market Street
Seventh Floor
Philadelphia, PA 19106-2385
(215) 580-7459

February 18, 1994

1. The Southeastern Pennsylvania Transportation Authority ("SEPTA") hereby excepts to ordering paragraph no. 8 of the Recommended Decision issued February 3 in this proceeding, which reads as follows:

8. That the National Railroad Passenger Corporation and the Southeastern Pennsylvania Transportation Authority will cooperate fully with each other to furnish flagmen and watchmen, if necessary, to protect their operations during the approved work.

SEPTA does not except to having to furnish any necessary flagmen and watchmen to protect SEPTA operations, but insofar as the proposed order does not elsewhere obligate the City to reimburse SEPTA for the costs of such flagmen and watchmen, the proposed order violates SEPTA's exemption from such costs, as established under 49 U.S.C. §546b and 49 U.S.C. §581(c)(5), and by case law set forth at page 8 of the Recommended Decision itself.

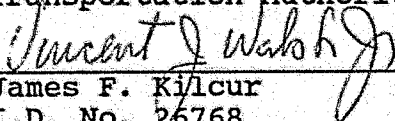
SEPTA therefore proposes an additional sentence be added to proposed ordering paragraph 8 which sentence would read as follows:

The City of Philadelphia shall fully reimburse the National Railroad Passenger Corporation and/or the Southeastern Pennsylvania Transportation Authority for the costs that they or either of them may incur in furnishing such flagmen and watchmen.

Respectfully submitted,

Southeastern Pennsylvania
Transportation Authority

By:


James F. Kilcur

I.D. No. 26768

G. Roger Bowers

I.D. No. 02153

Vincent J. Walsh, Jr.

I.D. No. 28692

714 Market Street

Seventh Floor

Philadelphia, PA 19106-2385

(215) 580-7459

CERTIFICATE OF SERVICE

I hereby certify that this day I have mailed true and correct copies of the foregoing Exceptions to the persons and parties whose names appear below, by first class United States mail, postage prepaid.

Scott H. DeBroff, Esq.
PUC - Law Bureau
G-31, North Office Building
Harrisburg, PA 17105

Gerald T. Clark, Esq.
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1600 Arch St. - 8th Floor
Philadelphia, PA 19103

Charles E. Mechem, Esq.
Conrail - Law Department
2001 Market Street, Suite 16-A
Philadelphia, PA 19101-1416

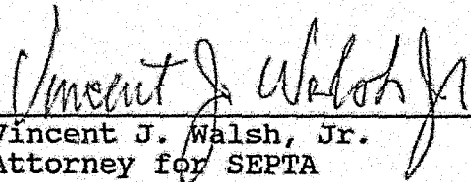
Rudolph A. Chillemi, Esq.
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2301 Market Street
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Stuart A. Liner, Esquire
PA DOT
513 Transportation & Safety
Bldg.
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Hon. Ky Van Nguyen
Administrative Law Judge
Phila. State Office Bldg.
Broad & Spring Garden Sts.
Philadelphia, PA 19130

Dennis Moore, Esquire
National Railroad Passenger
Corporation
60 Massachusetts Avenue, NE
Washington, DC 20002

February 18, 1993



Vincent J. Walsh, Jr.
Attorney for SEPTA



CITY OF PHILADELPHIA

LAW DEPARTMENT
1600 Arch Street
Philadelphia, Pa. 19103-2081

Joseph A. Dworetzky
Acting City Solicitor

Gerald T. Clark
Senior Attorney
(215) 686-7692

February 22, 1994

John G. Alford, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

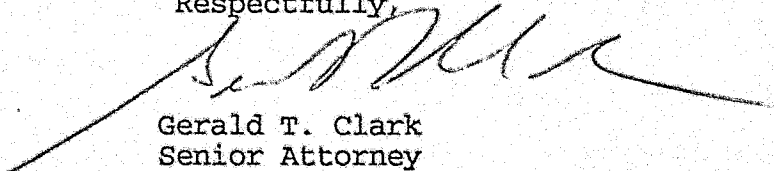
Re: 59th Street over AMTRAK
PUC Docket I-00830373

Dear Secretary Alford:

Enclosed please find the original and nine (9) copies of the City of Philadelphia's Exceptions to the Recommended Decision in the above captioned case.

Two copies of these Exceptions have been mailed this date to each person on the attached Certification of Service.

Respectfully,


Gerald T. Clark
Senior Attorney

GTC/fw

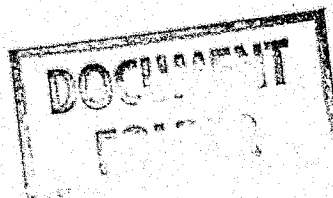
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FEB 22 1994

SECRETARY'S OFFICE
Public Utility Commission

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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RECEIVED
FEB 22 1994

SECRETARY'S OFFICE
Public Utility Commission

In Re:

Investigation upon the Commission's own :
motion into the matters pertaining to the :
proper service, accommodation, convenience : PUC Docket
and safety of the traveling public using :
the rail/highway crossing carrying 59th : I-830373
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 :

EXCEPTIONS OF
THE CITY OF PHILADELPHIA

The City of Philadelphia hereby files these Exceptions to the Recommended Decision.

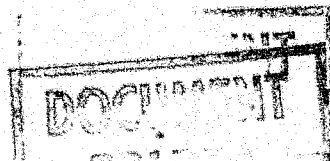
Exception No. 1

The City of Philadelphia files an Exception to Finding of Fact 6. There is no dispute that 59th Street is not a State Highway. This Finding of Fact is misleading as stated because it implies that the bridge is used only for local traffic and by City of Philadelphia residents. This Finding of Fact is incomplete as stated.

This bridge provides a vital link between two heavily traveled State Highways (Lancaster Avenue and City Line Avenue). See City Statement 1, Transcript p. 25 and 149-150. There is no evidence to support the Finding of Fact that the bridge is used for only local traffic or by City residents. Furthermore, all residents of the City of Philadelphia are also residents of the Commonwealth of Pennsylvania.

This Finding of Fact should be revised to accurately reflect the use of the 59th Street bridge and its vital link to the two heavily traveled State Highways.

DOCKETED
MAR 4 1994



Exception No. 2

The City of Philadelphia files an Exception to Ordering paragraph 2 which requires the City to bear the cost of \$141,642.06 for emergency repairs and replacement of two expansion dams. The initial emergency repairs by the City on this structure were performed in 1983 and 1984 pursuant to Commission Orders.

The two expansion dams were replaced between October 1984 and January 1985. The total costs to the City for all work through January 1985 was \$141,642.06.

The Commission held a hearing to allocate these costs and to decide other issues on June 18, 1985. On September 26, 1985, a Recommended Decision was issued and on October 31, 1985, the Commission entered an Order adopting the Recommended Decision. Paragraph 3 of the Commission's October 31, 1985 ordered AMTRAK to reimburse the City \$70,821.03. This was 50% of the costs incurred by the City between 1983 and January 1985. The City received this payment from AMTRAK approximately 8 1/2 years ago.

There is nothing in the record after the Commission's October 31, 1985 Order which supports a reallocation of this money. This Ordering paragraph should be revised to reflect that the prior Commission Order allocating costs has been followed that no further appeal or legal action was initiated on this issue and the allocation of this money is not an unresolved issue.

Exceptions 3 through 7

The remaining City of Philadelphia Exceptions (3 through 7 inclusive) all involve the paragraphs in the Recommended Decision in which the City is required to bear costs or perform work. The City's reasons for its Exceptions are identical for each of these Exceptions and as such will be set forth in detail in the Section labeled Argument.

Exception 3

The City of Philadelphia files an Exception to Ordering paragraph 3 of the Recommended Decision which requires the City to bear \$4,843.94 for emergency repairs as a result of the Commission's April 1, 1993 Order. These costs must be reimbursed 100% to the City by AMTRAK because the record in this case clearly establishes that AMTRAK is the owner of the bridge structure and as such is responsible for maintaining the entire structure.

Ordering paragraph 3 must be revised to require AMTRAK to reimburse the City \$4,843.94.

Exception 4

The City of Philadelphia files an Exception to Ordering paragraph 4 of the Recommended Decision which requires the City to maintain the 59th Street bridge in a safe and satisfactory manner. The record in this case clearly establishes that AMTRAK is the owner of the bridge and responsible for maintaining the entire structure.

Ordering Paragraph 4 must be revised to require AMTRAK to maintain the 59th Street bridge in a safe and satisfactory manner.

Exception 5

The City of Philadelphia files an Exception to Ordering paragraph 5 of the Recommended Decision which requires the City, at its sole cost and expense to prepare and submit final plans, specifications and cost estimates within three months for the replacement of damaged expansion dams on the first pier at the north abutment and on the second pier at the south abutment, and for repair of the deteriorated portions of the concrete curbs, sidewalks, piers and abutments.

The record in this case clearly establishes that AMTRAK is the owner of the bridge. Ordering paragraph 5 must be revised to require AMTRAK to perform the tasks set forth in this Ordering paragraph.

Exception 6

The City of Philadelphia files an Exception to Ordering paragraph 6 of the Recommended Decision which requires the City, at its sole cost and expense, to furnish the material and to all work in accord with the approved plans (Ordering paragraph 5) within six months of Commission approval.

The record in this case clearly establishes that AMTRAK is the owner of the bridge and responsible for maintaining the entire structure. Making the anticipated repairs is part of maintenance. Ordering paragraph 6 must be revised to require AMTRAK to perform the tasks at the railroads sole cost and expense.

Exception 7

The City of Philadelphia files an Exception to Ordering paragraph 7 of the Recommended Decision which requires that the City requires the City, at its sole cost and expense to establish any detour during the construction repairs required in the

preceding Ordering paragraphs. The record in this case clearly establishes that AMTRAK is the owner of the bridge and responsible for maintaining the entire structure. The City does not object to assisting AMTRAK in establishing a detour during repairs but any costs incurred by the City must be paid by AMTRAK. Ordering paragraph 7 must be revised to require that AMTRAK pay the City any and all costs incurred in establishing a detour during repair work.

Exception 8

The City of Philadelphia files an Exception to Ordering paragraph 12 in the Recommended Decision requiring the City to notify the Commission and all parties ten days before beginning work. The record in this case clearly establishes that AMTRAK is the owner of the bridge and as such is responsible for performing any and all work necessary to maintain the bridge. Ordering paragraph 12 must be revised to require AMTRAK to notify the Commission and all parties ten days before the railroad performs any work on their bridge.

Exception 9

The City of Philadelphia files an Exception to Ordering paragraph 13 of the Recommended Decision which requires the City to notify the Commission and all parties ten days after work is completed. The record in this case clearly establishes that AMTRAK is the owner of bridge and as such is responsible for performing any and all work necessary to maintain the bridge. Ordering paragraph 13 must be revised to require AMTRAK to notify the Commission and all parties ten days after the work has been completed.

Argument for Exceptions 3-9

The record in this case contains undisputed evidence that AMTRAK is the current owner of the structure carrying 59th Street over the railroad right-of-way. The complete history and documents were presented in the August 18, 1985 hearing. The original bridge was built by the Pennsylvania Railroad in 1905 (City Exhibit 20) and the current bridge was built in 1927 by the Pennsylvania Railroad. The record contains the deeds transferring this property to AMTRAK from the bankrupt estate of the Penn Central Transportation Company. The record contains City of Philadelphia Ordinances and City/Railroad Agreements stating that Pennsylvania Railroad (and its successors) are responsible for the maintenance of this bridge.

The Commission can not ignore this part of the record. Paragraph 14 of the Order stating that the City is without prejudice to its rights to recover costs from others in accord with any lawful agreements merely requires the City of Philadelphia to continue this long time consuming and costly adjudicative process when the Commission could resolve it now.

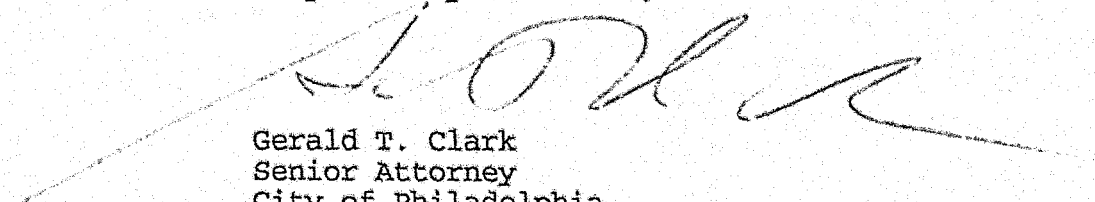
The Recommended Decision has the effect of requiring the City of Philadelphia and its taxpayers to subsidize AMTRAK by making repairs to property owned by the railroad.

As this record clearly shows from the 1984-1985 work, the replacement on the expansion dams will be performed by an independent contractor, not the City's work force. AMTRAK is also capable of letting this type of contract. In the past, the railroad had no problem in hiring contractors to build this bridge and can therefore hire a contractor to repair it.

By failing to order the railroad to maintain property the evidence clearly shows they own, the Commission is violating the law, ignoring binding agreements and failing to fulfill its own statutory obligations to the citizens of Pennsylvania.

For these reasons, the City of Philadelphia respectfully requests that all of the above Exceptions be granted.

Respectfully Submitted,



Gerald T. Clark
Senior Attorney
City of Philadelphia

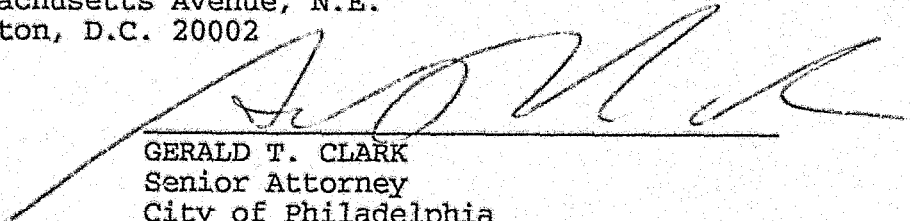
GTC/fw

CERTIFICATION OF SERVICE

I, Gerald T. Clark, Senior Attorney for the City of Philadelphia, hereby certify that I did mail by regular U.S. mail, postage prepaid, two (2) copies of the Exceptions by the City of Philadelphia to each person listed below on February 22, 1994 in PUC Docket I-00830373.

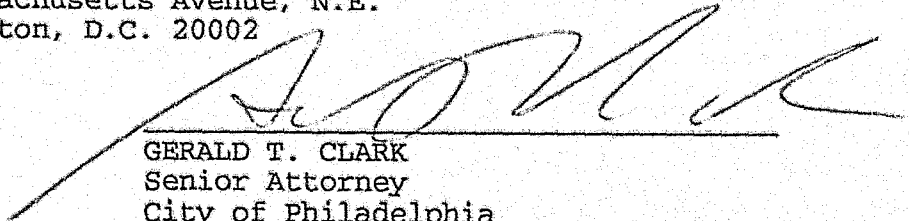
1. Honorable Ky Van Nguyen
Administrative Law Judge
PA Public Utility Commission
Room 1302
State Office Building
Broad and Spring Garden Streets
Philadelphia, PA 19130
2. Vincent J. Walsh, Jr.
Assistant Deputy Counsel
SEPTA
7th Floor
714 Market Street
Philadelphia, PA 19106-2385
3. Scott H. DeBroff
Assistant Counsel
PA PUC Law Bureau
G-31 North Office Building
Harrisburg, PA 17105
4. Stuart A. Liner, Esquire
Office of Chief Counsel
PA Department of Transportation
5th Floor
Transportation and Safety Building
Harrisburg, PA 17120

5. Charles E. Mechem
Associate General Counsel
Consolidated Rail Corporation
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Two Commerce Square
2001 Market Street
P.O. Box 41416
Philadelphia, PA 19101-1416
6. Rudolph A. Chillemi, Esquire
PECO Energy
2301 Market Street
P.O. Box 8699
Philadelphia PA 19101
7. Dennis M. Moore
Assistant General Counsel
National Railroad Passenger Corporation
60 Massachusetts Avenue, N.E.
Washington, D.C. 20002



GERALD T. CLARK
Senior Attorney
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5. Charles E. Mechem
Associate General Counsel
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GERALD T. CLARK
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1600 Arch Street
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(215) 686-7692

February 22, 1994



ORIGINAL

John G. Alford, Secretary
Pennsylvania Public Utility Commission
Room B-18, North Office Building
North Street & Commonwealth Avenue
Harrisburg, PA 17105

RECEIVED
FEB 22 1994

SECRETARY'S OFFICE
Public Utility Commission

Re: 59th Street
Docket No. I-830373

Dear Secretary Alford:

Enclosed please find for filing with the Commission the original and nine copies of the Exceptions Of National Railroad Passenger Corporation To The Recommended Decision Dated December 9, 1993.

Thank you for your assistance.

Very truly yours,

A handwritten signature in cursive script that reads "Dennis M. Moore".

Dennis M. Moore
Associate General Counsel

DMM:kl

Enclosures

DOCUMENT
FOLDER

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation upon the Commission's own motion into the matters pertaining to the proper service, accommodation, convenience and safety of the traveling public using the rail-highway crossing carrying 59th Street over and above the 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 Number
I-830373

RECEIVED
FEB 22 1994

SECRETARY'S OFFICE
Public Utility Commission

EXCEPTIONS OF NATIONAL RAILROAD PASSENGER CORPORATION
TO THE
RECOMMENDED DECISION DATED DECEMBER 9, 1993

Pursuant to 52 Pa. Code § 5.533, the National Railroad Passenger Corporation ("Amtrak") hereby files its Exceptions to the Recommended Decision dated December 9, 1993, and issued to the parties February 3, 1994, Attachment I hereto. The cover letter addressed to all parties solicited written comments ("Exceptions") within twenty (20) days of the issuance date in accordance with 52 Pa. Code § 1.11.

The Recommended Decision ("RD") is incorrect as a matter of fact and as a matter of law. Amtrak notes the following specific exceptions to the RD, each followed by a brief statement of Amtrak's reason for each exception:

AMTRAK'S EXCEPTIONS

EXCEPTION 1. Amtrak takes exception to paragraph 2 of the "Findings of Fact" (at 4).

Reason: This statement is factually incomplete and incorrect. The findings of fact with respect to Amtrak omit

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material facts that are contained in the record of this proceeding, thereby misrepresenting the actions taken by Amtrak in this case. Amtrak performed a detailed inspection of the 59th Street bridge and submitted a report to the Pennsylvania Public Utility Commission ("PUC" or "the Commission") on March 5, 1985. That inspection was performed in accordance with a PUC order entered May 1, 1985. The March 5, 1985 report also was mentioned in Amtrak's responses to the questions posed to it by the Commission, which responses are acknowledged on lines one and two of page four of the RD. See Verified Written Responses To The Questions Posed To National Railroad Passenger Corporation By The Notice Of Hearing Dated May 24, 1993 ("Amtrak's Verified Responses"), at 1-2, Attachment II hereto. Therefore, the "Findings of Fact" should be amended to include a complete report of the action taken by Amtrak in this case.

EXCEPTION 2. Amtrak takes additional exception to paragraph 2 of the "Findings of Fact" (at 4).

Reason: This statement is factually incomplete and incorrect. The findings of fact with respect to Amtrak omit material facts that are contained in the record of this proceeding. Amtrak has incurred \$4016.74 pursuant to the PUC's May 1, 1984 Order in this proceeding. Paragraph 2 makes no mention of Amtrak's costs, despite the fact that Amtrak has twice submitted as part of the record in this proceeding a Statement Of Costs, representing the costs incurred by Amtrak for performing

material facts that are contained in the record of this proceeding, thereby misrepresenting the actions taken by Amtrak in this case. Amtrak performed a detailed inspection of the 59th Street bridge and submitted a report to the Pennsylvania Public Utility Commission ("PUC" or "the Commission") on March 5, 1985. That inspection was performed in accordance with a PUC order entered May 1, 1985. The March 5, 1985 report also was mentioned in Amtrak's responses to the questions posed to it by the Commission, which responses are acknowledged on lines one and two of page four of the RD. See Verified Written Responses To The Questions Posed To National Railroad Passenger Corporation By The Notice Of Hearing Dated May 24, 1993 ("Amtrak's Verified Responses"), at 1-2, Attachment II hereto. Therefore, the "Findings of Fact" should be amended to include a complete report of the action taken by Amtrak in this case.

EXCEPTION 2. Amtrak takes additional exception to paragraph 2 of the "Findings of Fact" (at 4).

Reason: This statement is factually incomplete and incorrect. The findings of fact with respect to Amtrak omit material facts that are contained in the record of this proceeding. Amtrak has incurred \$4016.74 pursuant to the PUC's May 1, 1984 Order in this proceeding. Paragraph 2 makes no mention of Amtrak's costs, despite the fact that Amtrak has twice submitted as part of the record in this proceeding a Statement Of Costs, representing the costs incurred by Amtrak for performing

the above-referenced inspection of the bridge in accordance with the Commission's Order in this proceeding, dated May 1, 1984. See Attachment II, containing: Amtrak's letter to Secretary Rich, dated June 26, 1985, and Amtrak's Verified Written Responses, dated June 18, 1993. This material fact has been improperly omitted from the RD's Findings of Fact. The decision in this case should be corrected to reflect accurately the costs associated with Amtrak's participation in this case.

EXCEPTION 3. Amtrak takes exception to the first two sentences of third full paragraph on page eight of the "Discussion."

Reason: The RD contains inappropriate dicta that projects a hypothetical situation that is not supported by facts or law.

The "Discussion" presently contains the remarks:

Thus, the City, Amtrak and SEPTA benefit from the existence of the bridge. Logically, the cost of repairs or replacement should have been allocated among them.

RD at 8. This statement about what "should have been" is dicta, is entirely inappropriate, and should be deleted from this decision. Speculation about what "should have been" has no place in a legal opinion. The issue of "benefit" is not any longer pertinent to the Commission's dealings with Amtrak. See infra Amtrak's Exception 5 and the reasons therefore. Consequently, the record is devoid of any factual development on this issue. Finally, the issue is irrelevant as a matter of law. Consequently, these two sentences should be deleted from the Commission's decision in this matter.

EXCEPTION 4. Amtrak also takes exception to the first complete sentence on page nine in the "Discussion" section of the RD, on lines two through four.

Reason: The RD contains the sentence "Therefore, they [referring to Amtrak] cannot ignore this jurisdiction and must participate in the Commission's proceedings which deal with this problem." This sentence misrepresents the facts of this case. In fact, Amtrak has participated in this proceeding and has not ignored the jurisdiction of the Commission. As the record in this case amply demonstrates, Amtrak has inspected the 59th Street Bridge, and it has provided Verified Responses to the questions posed to Amtrak by the Commission. Amtrak's responses to the Commission's questions were submitted subject to the penalties of 28 PA.C.S. §4904, relating to unsworn falsification to authorities. Amtrak's responses were also acknowledged by the RD (at 4, lines 1-2). Therefore, this sentence should be deleted because it is untrue, unwarranted and unnecessary.

EXCEPTION 5. Amtrak takes exception to paragraph eight of the "Order" section of the RD (at 11).

Reason: Paragraph eight of the RD "Order" contains a reference to work to be performed by Amtrak:

That the National Railroad Passenger Corporation and the Southeastern Pennsylvania Transportation Authority will cooperate fully with each other to furnish flagmen and watchmen, if necessary, to protect their operations during the approved work.

RD at 11. This paragraph must be corrected because it is

unlawful in its current form.

Effective October 1, 1981, an amendment to Section 546b of Title 45 of the United States Code exempted Amtrak from the payment of "any taxes or other fees imposed by any State, political subdivision of a State, or local taxing authority which are levied on the Corporation [Amtrak]." This exemption has been construed to include taxes or fees associated with maintaining highway bridges in Pennsylvania. National Railroad Passenger Corp. v. Commonwealth of Pennsylvania Public Utility Commission, 665 F. Supp. 402 (E.D.PA 1987), affirmed, 848 F.2d 436 (3d Cir.), cert. denied, 109 S.Ct. 231 (1988), permanent injunction enforced, Order dated January 2, 1991. See also Southeastern Pa. Transp. Auth. v. Pennsylvania Public Utility Commission, 826 F. Supp. 1506 (E.D.Pa. 1993).

Accordingly, under controlling legal authority, the Commission cannot order Amtrak "to furnish flagmen and watchmen" and "to protect their operations during the approved work" without a corresponding provision ordering a party other than Amtrak to pay the costs of that work. Paragraph eight contains no such provision, nor does any other paragraph of the RD. The City of Philadelphia, or some other party other than Amtrak, must be ordered to reimburse Amtrak in full for any costs Amtrak incurs in furnishing flagmen and watchmen and in protecting Amtrak's operations.

Moreover, the RD Order provisions are inconsistent with numerous recent orders issued by the Commission. The Commission

has not imposed costs on Amtrak even where work on Amtrak's facilities was required. See, e.g., PUC Docket No. A-00110614 (Lumber Street bridge), Order entered May 7, 1993, para. 7, p. 4 (Attachment III hereto); PUC Docket No. A-00109326 (Diamond Street bridge), Order entered May 18, 1992, para. 13, pp. 2-3; PUC Docket No. C-80011839 (Villanova Univ. v. Amtrak), Order entered April 29, 1992, para. 7, p. 11; PUC Docket No. A-00109617 (Lincoln Highway bridge), Order entered May 28, 1991, para. 2, p. 2; PUC Docket No. M-870130 (Colemanville Road), Order entered May 23, 1990, para. 13, p. 3; PUC Docket No. A-108267 (State Rt. 3070), Order entered April 25, 1990, para. 7 and 8, p. 9.

Therefore, paragraph eight of the ordering provisions of any decision in this case must be amended to assign any costs incurred by Amtrak to another party.

EXCEPTION 6. Amtrak takes exception to paragraph 10 of the "Order" section of the RD (at 11-12).

Reason: The RD "Order" section makes no provision for the costs of any alteration or relocation of any Amtrak facilities that may be required incidental to the work ordered for the 59th Street bridge. Indeed, paragraph ten expressly excludes Amtrak. This is contrary to controlling law and prior PUC precedent. Amtrak hereby incorporates, as though fully set forth herein, the reasons stated for Exception 5, above. A paragraph should be added to the ordering provisions of the decision in this case to

assign the costs of any work required on Amtrak's facilities.

EXCEPTION 7. Amtrak takes exception to the "Order" section of the RD (at 10-12).

Reason: The RD "Order" section contains no provision for reimbursement of the costs Amtrak has incurred pursuant to Commission order. Amtrak has incurred \$4016.74 pursuant to the PUC's May 1, 1984 Order in this proceeding. Because the federal courts have ruled that Amtrak was exempt effective October 1, 1981, from impositions ordered by the PUC, Amtrak must be reimbursed for the \$4016.74 the Commission ordered Amtrak to expend in this case. Amtrak hereby incorporates, as though fully set forth herein, the reasons stated for Exceptions 2 and 5, above. Therefore, the decision in this case should be revised to add a paragraph to the Order assigning to another party the repayment of \$4016.74 to Amtrak.

Respectfully submitted,



Dennis M. Moore
Associate General Counsel
Amtrak Law Department
60 Massachusetts Ave., N.E.
Washington, D.C. 20002
202-906-2750
PA Bar Id. No. 24832

Dated: February 22, 1994

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of February, 1994, in Washington, D.C., I caused to be served a true and accurate copy of the foregoing Exceptions of National Railroad Passenger Corporation to the Recommended Decision Dated December 9, 1993 to the following:

The Honorable Ky Van Nguyen
Administrative Law Judge
Pennsylvania Public Utility Commission
Room 1302
State Office Building
Broad and Spring Garden Streets
Philadelphia, PA 19130

Gerald T. Clark, Esq.
Senior Attorney
City of Philadelphia
8th Floor, 1600 Arch Street
Philadelphia, PA 19103-1628

Charles E. Mechem, Sr. Attorney General
Consolidated Rail Corporation
Law Department 16-A
P. O. Box 41416
Philadelphia, PA 19101-1416


Rudolph A. Chillemi, Esq.
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Philadelphia, PA 19101

Vincent J. Walsh, Jr., Esq.
Southeastern Pennsylvania
Transportation Authority
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Philadelphia, PA 19106-2385

James G. Pachulski, Esq.
Bell of Pennsylvania
One Parkway, Floor 16-C
Philadelphia, PA 19102

Scott Debroff, Assistant Counsel
PA PUC
P. O. Box 3265
Harrisburg, PA 17105-3265

Gina M. D'Alfonso, Asst. Counsel
PA Department of Transportation
Room 521, Trans. & Safety Bldg.
Harrisburg, PA 17120



Dennis M. Moore



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265
ISSUED: February 3, 1994

IN REPLY PLEASE
REFER TO OUR FILE

I-00830373

RECEIVED

FEB 8 1994

DENNIS M. MOORE
ASSOCIATE GENERAL COUNSEL

TO ALL PARTIES

TO WHOM IT MAY CONCERN:

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

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION IN ROOM B-18, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265**, within twenty (20) days of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions.

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

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

meh
Encls.
Certified Mail
Receipt Requested

Very truly yours,

Allison K. Turner
Chief Administrative Law Judge

Attachment I

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation upon the Commission's own :
motion into the matters pertaining to the :
proper service, accommodation, convenience :
and safety of the traveling public using :
the rail-highway crossing carrying 59th :
Street over and above the grade of the : I-830373
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. :

RECOMMENDED DECISION

Before
KY VAN NGUYEN
Administrative Law Judge

HISTORY OF THE PROCEEDINGS

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

On April 29, 1983, the Commission instituted this investigation at Docket No. I-830373, to determine the current condition and future disposition of the crossing and to assign future maintenance responsibilities to the parties. On June 29,

1983, the City notified the Commission 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. The work was completed in July 1983.

By order entered May 1, 1984, the Commission directed Amtrak to perform an in-depth inspection of the bridge and to submit a report to the Commission detailing the extent of any deterioration, an engineering analysis of the existing structural members of the bridge, a recommendation of the overall load carrying capacity of the bridge, and an estimate of costs to rehabilitate the bridge to enable it to safely carry HS-20 load. The City was ordered to replace the expansion dams of the bridge. The report was filed with the Commission on March 12, 1985, but did not include the engineering analysis of the bridge. The City spent \$141,642.06 on emergency repairs and the replacement of the two expansion dams. Amtrak spent \$4,016.74.

By order entered November 7, 1985, the Commission again directed Amtrak to perform an engineering analysis of the bridge and to pay half the cost incurred by the City.

On March 16, 1993, the City notified the Commission that three of the five existing deck expansion joints on the above-grade bridge on 59th Street had deteriorated to varying

degrees. The deterioration created open holes in the deck and a potential safety hazard for the public using the bridge. At the City's request, an informal field conference was arranged at the site of the crossing on March 23, 1993 with the representatives of the City, the National Railroad Passenger Corporation (Amtrak), and the Pennsylvania Department of Transportation (PennDOT). All the parties present at the conference agreed that immediate repairs were necessary for the damaged expansion joints. However, none of the parties would voluntarily agree to make such repairs. On March 26, 1993, Chairman Rolka issued, and on April 1, 1993 the Commission ratified, an Emergency Order directing the City, at its initial cost and expense, to perform all work necessary to complete emergency repairs to the deteriorated bridge, leaving the allocation of costs and other responsibilities to be decided after a hearing.

On July 1, 1993, the hearing was held. Present at the hearing were Gerald T. Clark, Esquire, representing the City; Stuart A. Liner, Esquire, representing PennDOT; Scott H. DeBroff, Esquire, representing the Commission; Charles E. Mechem, Esquire, representing the Consolidated Rail Corporation (Conrail); Vincent Walsh, Esquire, representing the Southeastern Pennsylvania Transportation Authority (SEPTA); and Rudolph A. Chillemi, Esquire, representing Philadelphia Electric Company (PECO).

Amtrak responded to the questions posed to it in the Notice of Hearing, but did not appear.

On November 9, 1993, SEPTA moved for admission the Statement of SEPTA witness Michael DiCamillo and its attachments into the record. The motion was granted and these documents will be collectively marked as SEPTA Exhibit 2.

FINDINGS OF FACT

1. In compliance with the Commission's directives in this proceeding, the City of Philadelphia expended \$141,642.06 for emergency repairs and replacement of two expansion dams on the bridge carrying 59th Street over and above Amtrak's tracks. See Findings of Fact Nos. 1 and 2 of Administrative Law Judge Joseph J. Klovekorn's Recommended Decision of September 5, 1985.

2. Contrary to the Commission's directives, Amtrak did not do an engineering analysis of the existing structural members of the bridge to determine the load carrying capacity of the bridge. See Finding of Fact No. 4 of Administrative Law Judge Joseph J. Klovekorn's Recommended Decision of September 5, 1985.

3. No trolley rail was ever installed on the bridge. See Finding of Fact No. 7 of Administrative Law Judge Joseph J. Klovekorn's Recommended Decision of September 5, 1985.

4. The 59th Street bridge was built in 1926 by the Pennsylvania Railroad. The bridge is a through girder with a

jack arch deck system. It has four spans with a total length of 310 feet and two sidewalks with a width of 9 feet each. The roadway on the bridge is 52 feet wide between the curbs. The vertical clearance is 21 feet and 6 inches. (PennDOT Exhibit 1, Report of February 24, 1993; Administrative Law Judge Joseph J. Klovekorn's Recommended Decision of September 5, 1985.

5. The jack arch deck is composed of steel stringers and reinforced cement concrete with a bituminous wearing surface. (PennDOT Exhibit 1, Report of February 24, 1993)

6. The 59th Street bridge is used by the local traffic and city residents. (N.T. 23; PennDOT Exhibit 1; City Exhibit 1)

7. Below the 59th Street bridge, Amtrak and SEPTA run their trains. Amtrak runs about 30 passenger trains a day and SEPTA about 44 scheduled round trips. SEPTA also schedules a route G bus across the bridge. (N.T. 34, 161)

8. Conrail used to run six freight trains a day. It paid Amtrak when it used the trackage. It no longer runs any trains under the bridge. (N.T. 161-166)

9. PECO has distribution wires at the underside of the 59th Street bridge. It does not know the impact of the repairs, removal or reconstruction of the bridge until a plan becomes final. (N.T. 174)

10. Bell does not have any facilities at the bridge.
(Bell letter of July 26, 1983)

11. PennDOT has conducted three inspections of the 59th Street bridge since 1988. The bridge is rated fair to poor under the PennDOT Bridge Management System Coding Manual. (N.T. 177-187; PennDOT Exhibit 1, Report of February 24, 1993)

12. On June 10, 1993, the City completed the plating work on the bridge at the cost of \$4,843.94. (City Exhibit 1)

13. On August 11, 1992, under a quitclaim deed between Amtrak and SEPTA, SEPTA took title to a parcel of railroad property beneath the 59th Street bridge. (SEPTA Exhibit 2)

DISCUSSION

The Commission has jurisdiction over railroad-highway crossings and may assess costs to public utilities, municipal corporations and the Commonwealth. 66 Pa. C.S. §2702 and §2704. This empowers the Commission to authorize not only the construction but also the alteration, suspension or abolition of such crossings. The authority of the Commission is not limited to the crossings themselves but extends to the highway approaches as well. Department of Transportation v. Pennsylvania Public Utility Commission, 64 Pa. Commonwealth Ct. 299, 440 A.2d 657 (1982). The Commission can also, for example, enlarge an application for abandonment into a proceeding for replacement of

a crossing. Pittsburgh Railways Co. v. Pennsylvania Public Utility Commission, 198 Pa. Superior Ct. 415, 182 A.2d 80 (1962).

When it assigns costs, the Commission is not limited to any fixed rule, but takes all relevant factors into account. The only limitation the Commission must observe is that its assignment of costs be just and reasonable. PennDOT v. Pa. P.U.C., 79 Pa. Commonwealth Ct. 266, 469 A.2d 1149 (1983).

How will the costs and other responsibilities in this case be allocated?

The life of a highway overpass bridge is about 70 to 75 years (N.T. 94) and the 59th Street bridge is near the end of that life. The bridge has been the subject of several administrative hearings and emergency reliefs. It has five expansion dams. Two expansion dams, one at the north abutment and the other at the south pier, have been replaced. According to the City, the expansion dams at the south abutment is damaged but does not require any work at this time. The two remaining expansion dams require immediate action from the Commission.

Under the Commission's Emergency Order of April 1, 1993, the City has plated these expansion dams by welding the steel plates. Because of the deteriorated condition of the dams, the steel plates have broken loose and required rewelding. The areas of the curbs, the sidewalks, the piers and the abutments are all deteriorated.

In 1983, the average daily traffic count was 16,800 vehicles. The pedestrian count was about 200 to 800 pedestrians, depending upon the closing or the opening hours of a high school that is located near the bridge. (N.T. 13) These counts may be higher now. This is evidently a benefit to the City.

Amtrak and SEPTA, are the owners and operators of the tracks below the bridge. Further, SEPTA runs a route G bus across the bridge. The structural soundness of the bridge no doubt contributes to the safe operations of these two rail commuters.

Thus, the City, Amtrak and SEPTA benefit from the existence of the bridge. Logically, the cost of repairs or replacement should have been allocated among them. However, because Amtrak and SEPTA are outside the Commission's jurisdiction over the allocation of costs to public utilities by a federal statute, 45 U.S.C. §546(b) and 581(c)(5), National Railroad Passenger Corporation v. Pennsylvania Public Utility Commission, 665 F. Supp. 402 (E.D. Pa. 1987), aff'd 848 F.2d 436 (3rd Cir. 1988), cert. denied 109 S. Ct. 231 (1988), and Southeastern Pennsylvania Transportation Authority v. Pennsylvania Public Utility Commission et al., 826 F.Supp. 1506 (E.D.Pa. 1993), only the City should bear this cost. Although Amtrak and SEPTA are outside the Commission's allocation-of-cost jurisdiction, I strongly believe that they are not outside the

Commission's jurisdiction over the safety of all railroads public highways. Therefore, they cannot ignore this jurisdiction and must participate in the Commission's proceedings which deal with this problem.

PennDOT has made a series of recommendations about rehabilitating the bridge. In making those recommendations, PennDOT has conducted an in-depth investigation and rating analysis, followed by check-ups at a two-year interval to see if there were any changes in the structural members of the bridge. (N.T. 184-186; PennDOT Exhibit 1, Report of February 24, 1992) Therefore no further structural analysis of the bridge is needed and the City's plans for improving the bridge can be based on this analysis. It is noted that, according to the City's testimony, the concrete filled on top of the stringers can crack and the dam now placed at the bridge is still susceptible to water. The City indicated that the best way to avoid the efforts at piecemeal repair is to have a new dam built or to have the deck replaced. (N.T. 150, 151)

CONCLUSIONS OF LAW

1. The Commission has exclusive jurisdiction over the 59th Street bridge.
2. The Commission is authorized to allocate costs incurred and other responsibilities at this crossing.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion filed by the Southeastern Pennsylvania Transportation Authority on November 5, 1993 is granted.

2. That the City of Philadelphia bear the cost of \$141,642.06, the amount expended by it on emergency repairs and replacement of two expansion dams on the bridge.

3. That the City of Philadelphia bear the cost of \$4,843.94, the amount incurred by it in compliance with the Commission's Emergency Order of April 1, 1993.

4. That the City of Philadelphia shall maintain the 59th Street bridge in a safe and satisfactory manner.

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

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

7. That the City of Philadelphia, at its sole cost and expense, furnish all materials and perform all work necessary to establish, mark and maintain any detours or traffic controls that may be required to properly accommodate highway and pedestrian traffic during the time the structure is repaired or replaced, and to remove them after the completion of the work, all in a safe and satisfactory manner.

8. That the National Railroad Passenger Corporation and the Southeastern Pennsylvania Transportation Authority will cooperate fully with each other to furnish flagmen and watchmen, if necessary, to protect their operations during the approved work.

9. That Philadelphia Electric Company, at its sole cost and expense, furnish all materials and do all work necessary, if any, to alter and protect its facilities to accommodate the approved work, all in a safe and satisfactory manner.

10. That any relocation of, changes in, or removal of existing facilities of any public utility other than the Southeastern Pennsylvania Transportation Authority, the National

Railroad Passenger Corporation and Philadelphia Electric Company, which may be required to be done as incidental to the approved work, be made by the said public utility in such a manner that will not interfere with the work performed at the crossing.

11. That all the parties involved herein cooperate fully with each other so that, during the performance of the approved work, neither the traveling public nor the parties' operations or facilities will be endangered or unnecessarily inconvenienced.

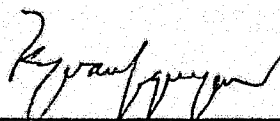
12. That the City of Philadelphia, at least ten (10) days prior to the start of the work, notify this Commission and all parties of record, of the actual starting date.

13. That the City of Philadelphia, at least ten (10) days after the completion of the work, notify this Commission and all parties of record, of the actual completion date.

14. That this Order, insofar as it places the costs of the approved work on the City of Philadelphia, is without prejudice to its rights to recover the said costs from others in accord with any lawful agreements.

15. That all previous Orders of the Commission in this matter that are not inconsistent with this Order remain in full force and effect.

Date: December 9, 1993



KY VAN NGUYEN
Administrative Law Judge

RECEIVED

JAN 07 1991

Office of Public Utility Commissioners

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation upon the Commission's own motion into the matters pertaining to the proper service, accommodation, convenience and safety of the traveling public using the rail-highway crossing carrying 59th Street over and above the 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 Number
I-830373

VERIFIED WRITTEN RESPONSES TO THE QUESTIONS POSED
TO NATIONAL RAILROAD PASSENGER CORPORATION
BY THE NOTICE OF HEARING DATED MAY 24, 1993

The National Railroad Passenger Corporation ("Amtrak") hereby responds to the questions posed to Amtrak in the Notice of further hearing to be held on July 1, 1993. The responses on behalf of Amtrak are provided by Mr. Richard H. Cooper, who states as follows:

I am Richard H. Cooper, and my business address is Amtrak, Engineering Department, 30th Street Station, Philadelphia, PA 19104. I am employed by Amtrak as a Senior Engineer, Structural Design. I am authorized to testify in this proceeding on behalf of Amtrak. I am familiar with the questions directed to Amtrak in the Notice for the hearing scheduled for July 1, 1993, and I have supplied Amtrak's responses to those questions

9. National Railroad Passenger Corporation (hereinafter Amtrak) state whether it has performed a detailed inspection of the subject above-grade crossing structure and prepared a report of its inspection as directed in Paragraph Nos. 1 and 2 of the Commission order adopted October 31, 1985; if not, state the reasons why it has failed to comply with said order, and whether it intends to fulfill its responsibilities as directed.

ANSWER: Amtrak performed a detailed inspection of the 59th Street bridge and submitted a report to the Pennsylvania Public Utility Commission on March 5,

Attachment II

1985. The inspection was performed in accordance with a Commission order entered May 1, 1984. Subsequent to the submission of the report, the Commission conducted a hearing on June 18, 1985. The report did not include an analysis of the structure. Amtrak did, however, state that the bridge was designed to carry a live load of a 40 ton truck, a 100 pound per square foot live load and two trolley tracks designed to carry trolleys that weighed 600 pounds per linear foot. Pursuant to the hearing, Amtrak was ordered to supply an analysis of the structure. See Order adopted October 31, 1985, attached as Amtrak Exhibit A.

Effective October 1, 1981, an amendment to Section 546b of Title 45 of the United States Code exempted Amtrak from the payment of "any taxes or other fees imposed by any State, political subdivision of a State, or local taxing authority which are levied on the Corporation [Amtrak]." This exemption has been construed to include taxes or fees associated with maintaining highway bridges in Pennsylvania. See National Railroad Passenger Corp. v. Commonwealth of Pennsylvania Public Utility Commission, 665 F. Supp. 402 (E.D.PA 1987), affirmed, 848 F.2d 436 (3d Cir.), cert. denied, 109 S.Ct. 231 (1988), permanent injunction enforced, Order dated January 2, 1991. Accordingly, Amtrak did not comply with the October 31, 1985 order and does not intend to bear the costs of performing the work required by the order.

10. Amtrak submit into the record a detailed, itemized summary of all costs and expenses initially by it, if any, which were not previously allocated by Commission order, in furnishing material and performing work in accordance with prior orders of this Commission pertaining to the subject crossing, and submit testimony explaining in full its summary of all costs.

ANSWER: On June 26, 1985, Amtrak submitted a statement of costs to the Secretary of the Public Utility Commission. A copy of that statement is submitted herewith, marked as Amtrak Exhibit B.

11. Amtrak state which items of costs incurred initially by it, if any, and by others it agrees to bear and which party or parties it suggests should bear the remaining items of costs, stating the basis for such suggested assignment of costs.

ANSWER: Amtrak does not agree to bear any costs it has incurred since October 1, 1981, nor does Amtrak agree to bear costs incurred by others. Amtrak takes no position

regarding which parties other than Amtrak should bear costs assigned pursuant to this proceeding.

12. Amtrak state what portions of the subject above-grade crossing it agrees to maintain in the future, and/or assume the costs therefore, and which party or parties it suggests should be required to maintain the remaining portions, being specific in its suggested assignment of responsibilities, and state the basis for such suggested assignment of responsibilities.

ANSWER: Amtrak does not agree to maintain any portion of the above grade crossing nor does Amtrak agree to bear any of the costs related thereto. The responsibility and costs should be borne by parties other than Amtrak. Amtrak will continue to maintain its railroad facilities under and/or over the subject crossing, at Amtrak's cost and expense.

25. Query whether any party in interest, or any other party, desired to submit any additional relevant testimony.

ANSWER: Amtrak has no further testimony at this time.

VERIFICATION

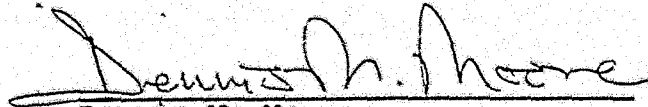
The undersigned, having read the foregoing answers, hereby verifies that the answers are based on information furnished to the undersigned, which information has been gathered by Amtrak in the course of this proceeding. The language of the pleading is that of counsel and not of signer. I verify that the foregoing answers are true and correct to the best of my knowledge, information and belief. To the extent that the contents of the pleading are that of counsel, I have relied upon counsel in taking this verification. This verification is made subject to the penalties of 28 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Dated: June 18, 1993

Richard H. Cooper
Richard H. Cooper

— original filed with FCC —

Respectfully submitted,

A handwritten signature in cursive script, reading "Dennis M. Moore". The signature is written in dark ink and is positioned above a horizontal line.

Dennis M. Moore
Associate General Counsel
Amtrak Law Department
60 Massachusetts Ave., N.E.
Washington, D.C. 20002
202-906-2750
PA Bar Id. No. 24832

Dated: June 18, 1993

Harrisburg, PA 17120

Public Meeting held October 31, 1985

Commissioners Present:

- Linda C. Taliaferro, Chairman
- Frank Fischl
- Bill Shane

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

I-830373

ORDER

BY THE COMMISSION:

We adopt as our action the Recommended Decision of Administrative Law Judge Joseph J. Klovekorn dated September 5, 1985; THEREFORE,

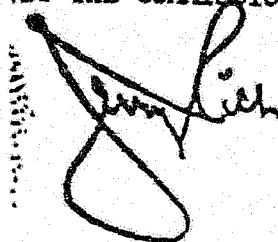
IT IS ORDERED:

1. That National Railroad Passenger Corporation, at its initial cost and expense, within one month from the date of service of the Commission's order, perform a detailed inspection utilizing the methodology and extent of investigation as described in the discussion portion of the Recommended Decision, 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 2 months from the date of service of the Commission's Order, prepare and submit to this Commission and to all parties of record for review, a detailed report of its inspection performed in accordance with this order. Said report to include but not be limited to the following:
 - A. The extent and effect of any deterioration, if noted, and the extent of corrective work, if needed, estimated cost, and construction time to complete the said work.

Amtrak Exhibit A

- B. 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.
 - C. Specific recommendation as to work required, estimated cost, and construction time to rehabilitate the bridge to enable it to safely carry maximum legal loads and/or appropriate loads based on the engineering analysis of the overall load carrying capacity.
3. That National Railroad Passenger Corporation, pay to City of Philadelphia a sum or sums of money equal to \$70,821.03 as its share of the cost of the work performed by the City in accordance with the orders of this Commission issued in this proceeding.
 4. That City of Philadelphia bear the remaining 50% of the costs incurred by it in furnishing material and performing work in accordance with the orders of this Commission issued in this proceeding.
 5. That National Railroad Passenger Corporation, until further order of this Commission, perform an annual inspection of the bridge carrying 59th Street over and above its tracks in the City of Philadelphia, and provide this Commission with the results of its inspection.
 6. That the previous orders of the Commission in this proceeding that are not inconsistent with this order remain in full force and effect.
 7. That upon completion of the inspection and engineering report, a further hearing be held to receive comments on said report, and resolve any other matter relevant to this proceeding.

BY THE COMMISSION,



Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: October 31, 1985

ORDER ENTERED: NOV 7 1985



JUN 26 1985

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

RE: OH 4.77 59th Street
Philadelphia, PA
PA P.U.C. I-830373

Dear Mr. Rich:

At the hearing into the matter of the condition of the 59th Street bridge, held on Tuesday, June 18, 1985, Amtrak was asked to submit a statement of costs incurred to date to comply with the Commission's orders.

Herewith, marked as Amtrak's Exhibit B, is our statement of costs to inspect the bridge and prepare the report requested by the Commission.

We hereby certify that a copy of Exhibit B was sent to all parties of record in this matter by First Class, prepaid, U.S. Postage.

Very truly yours,

James N. Michel, P.E.
Senior Director
Engineering Design

Enclosures: Statement of Costs
List of Parties of Record - Service List

cc: Parties of Record - (Service List)

RHC/Bar

bcc: H. K. Cohen
W. V. Conaty (Memo #952120)
M. E. Dunn
M. Sabato
A. R. Shaw, Jr.

Amtrak Exhibit B

PENNSYLVANIA PUBLIC UTILITY COMMISSION
DOCKET I-830373
OH 4.77 59TH STREET BRIDGE
CITY OF PHILADELPHIA

STATEMENT OF COSTS

OCTOBER 9, 1984

Driver	\$ 509.11
Lineman	341.77
Inspector	185.85
Platform Truck	100.00
Subtotal	<u>\$1136.74</u>

OCTOBER 1984 - FEBRUARY 1985

Engineering	\$2880.00
TOTAL COSTS	<u>\$4016.74</u>

All Labor Costs Include Additives for Fringe Benefits.

AMTRAK EXHIBIT B
JUNE 1985

Ex. B p.

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of June, 1993, I caused to be served a true and accurate copy of the foregoing Verified Written Responses to the Questions Posed To National Railroad Passenger Corporation By The Notice of Hearing Dated May 24, 1993, by first-class mail, postage prepaid to the following:

The Honorable Ky Van Nguyen (VIA FEDERAL EXPRESS)
Administrative Law Judge
Pennsylvania Public Utility Commission
Room 1302
State Office Building
Broad and Spring Garden Streets
Philadelphia, PA 19130

Gerald T. Clark, Esq.
Senior Attorney
City of Philadelphia
8th Floor, 1600 Arch Street
Philadelphia, PA 19103-1628

Charles E. Mechem, Sr. Attorney General
Consolidated Rail Corporation
Law Department 16-A
P. O. Box 41416
Philadelphia, PA 19101-1416

Rudolph A. Chillemi, Esq.
Philadelphia Electric Company
2301 Market Street
Box 8699
Philadelphia, PA 19101

Vincent J. Walsh, Jr., Esq.
Southeastern Pennsylvania
Transportation Authority
7th Floor, 714 Market Street
Philadelphia, PA 19106-2385

James G. Pachulski, Esq.
Bell of Pennsylvania
One Parkway, Floor 16-C
Philadelphia, PA 19102

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of June, 1993, I caused to be served a true and accurate copy of the foregoing Verified Written Responses to the Questions Posed To National Railroad Passenger Corporation By The Notice of Hearing Dated May 24, 1993, by first-class mail, postage prepaid to the following:

The Honorable Ky Van Nguyen (VIA FEDERAL EXPRESS)
Administrative Law Judge
Pennsylvania Public Utility Commission
Room 1302
State Office Building
Broad and Spring Garden Streets
Philadelphia, PA 19130

Gerald T. Clark, Esq.
Senior Attorney
City of Philadelphia
8th Floor, 1600 Arch Street
Philadelphia, PA 19103-1628

Charles E. Mechem, Sr. Attorney General
Consolidated Rail Corporation
Law Department 16-A
P. O. Box 41416
Philadelphia, PA 19101-1416

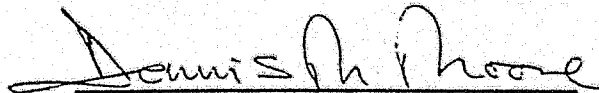
Rudolph A. Chillemi, Esq.
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2301 Market Street
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Philadelphia, PA 19101

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Southeastern Pennsylvania
Transportation Authority
7th Floor, 714 Market Street
Philadelphia, PA 19106-2385

James G. Pachulski, Esq.
Bell of Pennsylvania
One Parkway, Floor 16-C
Philadelphia, PA 19102

Scott Debroff, Assistant Counsel
PA PUC
P.O. Box 3265
Harrisburg, PA 17105-3265

Gina M. D'Alfonso, Asst. Counsel
PA Department of Transportation
Room 521, Trans. & Safety Bldg.
Harrisburg, PA 17120


Dennis M. Moore

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held April 29, 1993

Commissioners Present:

David W. Rolka, Chairman
Joseph Rhodes, Vice-Chairman
John M. Quain
John Hanger

Application of the Borough of Mount Joy
for approval of the abolition of the Lumber
Street bridge over and above the grade of
the tracks of National Railroad Passenger
Corporation (AAR 518 018 V) in the Borough
of Mount Joy, Lancaster County.

A-00110614

O R D E R

At the Commission:

This matter is before us by reason of an application filed December 17, 1992 by the Borough of Mount Joy seeking Commission approval to abolish the above-grade crossing where Lumber Street, a borough street, crosses over and above two tracks of National Railroad Passenger Corporation (AMTRAK) in said borough, Lancaster County.

Upon receipt of the application, a field investigation and conference was arranged by a Commission staff engineer and held on February 10, 1993 at the site of the crossing. Representatives of Mount Joy Borough (Borough), Mount Joy Borough Authority, AMTRAK, Pennsylvania Department of Transportation, Lancaster County, UGI Corporation, and United Telephone Company were in attendance.

Consolidated Rail Corporation, Pennsylvania Power and Light Company and Warner Cable Company were notified of the time and place of the conference but did not attend.

The existing bridge at the subject crossing is a five-span, steel and concrete structure having a total length of approximately 99 feet. The bridge spans two electrified tracks which are owned and operated on by AMTRAK. Consolidated Rail Corporation has trackage rights by agreement with AMTRAK to operate freight trains over the tracks.

The bridge superstructure supports an insulated water line owned by Mount Joy Borough Authority and a gas line owned by UGI Corporation. In addition, there are overhead telephone cables, parallel to the bridge and accessible therefrom, owned by United Telephone Company.

Attachment III

Due to severe deterioration, the bridge was closed to all vehicular traffic in accordance with a Commission order adopted May 17, 1976 under proceeding I-00000181. According to the instant application, removal of the bridge is necessary to prevent its eventual collapse onto the tracks below.

At the field conference, the Borough stated that the crossing is no longer necessary and proposed to abolish the crossing by removing the existing bridge superstructure and pier bents at its initial cost and expense, leaving the existing abutments in place to support the approach roadway embankments. The Borough agreed to install chain link fence parallel to the rear face of the abutments, matching the existing AMTRAK fencing adjacent to the bridge, to deter access to the abutments, and to erect permanent barricades on the roadway approaches at each end of the bridge.

Since the length of the roadway approaches from the end of the bridge to the nearest cross streets is very short, advance signing was not considered necessary.

The Borough also agreed to bear, at its sole cost and expense, all costs incurred by AMTRAK. Accordingly, AMTRAK agreed to re-profile the electric traction catenaries, which are currently attached to the existing bridge, and to provide protective services as required during bridge demolition.

Mount Joy Borough Authority and UGI Corporation agreed to disconnect and relocate their respective pipelines located in public right-of-way, as required to accommodate the project, at their own sole cost and expense. United Telephone Company stated at the field conference that it was undecided as to what action it would take concerning its overhead lines. On February 18, 1993, United Telephone contacted the Commission and verbally agreed to remove and relocate its facilities from the crossing at its sole cost. It is not anticipated that the facilities of any other non-carrier public utility company will be affected by the proposed abolition.

Because the crossing is in a residential area and has been closed for many years, a posted detour route will not be necessary. The Borough will establish and maintain any traffic controls necessary during demolition operations. In addition, the Borough avers that all proposed work will be accomplished within the Borough's existing legal right-of-way and that it will not be necessary to appropriate any additional railroad right-of-way to complete the project.

All of the affected parties have agreed to accept future maintenance responsibilities for their respective facilities remaining at the crossing, at their sole cost and expense. In addition, AMTRAK agrees to maintain the proposed chain link fence installed behind the abutments, and the Borough will maintain the permanent barricades on each roadway approach.

The Commission has tentatively established jurisdiction over the entire area affected by construction associated with the proposed project. The estimated cost of the project is \$220,000.

The applicant has certified that a copy of the application has been served on each party in interest. None of the parties has advised this Commission in writing, or the staff engineer at the field conference, that it objects to the issuance of an order, prior to hearing, approving the application.

Since no objections have been filed concerning the proposed abolition and since the Borough of Mount Joy agrees to initially bear the costs involved, and the non-carrier utility companies agree to relocate their facilities located in public right-of-way at their sole cost and expense, this Commission is of the opinion that an order can be issued for the abolition of the crossing subject to final allocation of those costs and expenses incurred initially by the Borough, if requested, and we will so order.

The record having been certified to this Commission, we issue this order pursuant to Section 335(a) of the Public Utility Code, 66 Pa. C.S. §335, and find that the proposed abolition of the subject crossing is necessary and proper for the safety of the public; THEREFORE,

IT IS ORDERED:

1. That the instant application filed by the Borough of Mount Joy on December 17, 1992 be and is hereby approved.
2. That the Borough of Mount Joy, National Railroad Passenger Corporation, Consolidated Rail Corporation, Pennsylvania Department of Transportation, Lancaster County, Mount Joy Borough Authority, UGI Corporation, United Telephone Company of PA, Pennsylvania Power and Light Company and Warner Cable Company be and are hereby made parties to this proceeding.
3. That upon completion of all work ordered herein, the former grade-separated crossing (AAR 518 018 V) where Lumber Street crosses above the grade of the tracks of National Railroad Passenger Corporation in the Borough of Mount Joy, Lancaster County, be and is hereby abolished.
4. That the Borough of Mount Joy, at its initial cost and expense, and prior to the start of construction, prepare and submit to this Commission for approval and to all parties of record for examination, complete detailed plans for the work proposed to be performed within the limits of this Commission's jurisdiction.
5. That the Borough of Mount Joy, at its initial cost and expense, furnish all material and perform all work necessary to demolish and remove the superstructure and piers of the existing bridge at the subject crossing generally in accordance with the approved detailed plans and this order.
6. That the Borough of Mount Joy, at its initial cost and expense, furnish, install and maintain any temporary traffic control devices that may be required to properly and safely accommodate vehicular and pedestrian traffic in the vicinity of the crossing during demolition.

7. That National Railroad Passenger Corporation, at the sole cost and expense of the Borough of Mount Joy, furnish all material and perform all work required to alter or relocate its facilities which may be required as incidental to the abolition of the crossing, including alteration of the electric traction catenaries; furnish construction engineering and inspection services required as a result of the abolition of the crossing; and furnish and maintain flagmen and watchmen, when necessary, to protect railroad operations during the time the structure is being demolished above and adjacent to its tracks.

8. That any relocation of, changes in or removal of any adjacent structures, equipment or other facilities of any non-carrier public utility company located within the limits of public right-of-way, within the limits of this Commission's jurisdiction, which may be required as incidental to the execution of the crossing project, be made by said public utility company at its sole cost and expense, and in such manner as will not interfere with the abolition of the crossing.

9. That any relocation of, changes in or removal of any adjacent structures, equipment or other facilities of any non-carrier public utility company located beyond the limits of public right-of-way, within the limits of this Commission's jurisdiction, which may be required as incidental to the execution of the crossing project, be made by said public utility company in such manner as will not interfere with the abolition of the crossing.

10. That the Borough of Mount Joy, at its initial cost and expense, furnish all material and perform all work necessary to complete the remainder of the project, including installation of chain link fence behind and parallel to each abutment for the full width of the highway right-of-way, installation of adequate, permanent traffic barricades on each roadway approach to the former crossing, and any other ancillary features of the project, generally in accordance with the approved plans and this order.

11. That the Borough of Mount Joy, at least ten (10) days prior to the start of work, notify all parties in interest of the actual date on which work will begin.

12. That the non-carrier public utility companies affected hereby cooperate with the Borough of Mount Joy so that the alteration or relocation of their facilities does not interfere with the abolition of the crossing in accordance with this order.

13. That National Railroad Passenger Corporation and Consolidated Rail Corporation each cooperate with the Borough of Mount Joy and conduct their operations in the vicinity of the crossing in a safe manner and under control during the time the structure is being demolished.

14. That the Borough of Mount Joy cooperate with the railroad companies so that during the abolition of the crossing, the operations and facilities of the railroad companies will not be endangered or unnecessarily impeded.

15. That the crossing abolition project be completed in a manner satisfactory to this Commission on or before December 31, 1994, and that on or before said date, the Borough of Mount Joy report to this Commission the date of actual completion of the work.

16. That the Borough of Mount Joy, at its initial cost and expense, pay all compensation for damages, if any, due to owners of property taken, injured or destroyed by reason of the abolition of the crossing in accordance with this order.

17. That upon completion of the abolition of the subject crossing, each non-carrier public utility company, at its sole cost and expense, furnish all material and perform all work necessary thereafter to maintain its respective facilities, existing or altered, located within the limits of the project.

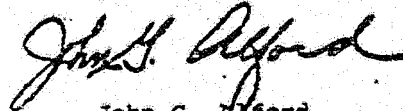
18. That upon completion of the abolition of the subject crossing, National Railroad Passenger Corporation, at its sole cost and expense, furnish all material and perform all work necessary thereafter to maintain its tracks, catenaries, wire lines and other railroad facilities at the abolished crossing, existing or altered, and including the new chain link fence installed behind and parallel to the abutments in accordance with this order.

19. That upon completion of the abolition of the subject crossing, the Borough of Mount Joy, at its sole cost and expense, furnish all material and perform all work necessary thereafter to maintain Lumber Street in the vicinity of the abolished crossing including the permanent traffic barriers installed in accordance with this order.

20. That upon completion of the work herein ordered, and upon receipt of written request by any party hereto, this proceeding be scheduled for hearing at a time and place assigned by this Commission, upon due notice to all parties, to receive evidence relative to the allocation of initial costs incurred by the Borough of Mount Joy and any other matters relevant to this proceeding.

21. That this order, insofar as it imposes certain costs initially upon the Borough of Mount Joy, is without prejudice to said Borough's right to recover part or all of such costs in accordance with any lawful agreement between parties.

BY THE COMMISSION,



John G. Hifford
Secretary

(SEAL)

ORDER ADOPTED: April 29, 1993

ORDER ENTERED: MAY 07 1993



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

February 23, 1994

RLS
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REFER TO OUR FILE

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PA. P. U. C.
INFO. CONTROL DIV.

ORIGINAL

John G. Alford, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

I-00830373

Dear Secretary Alford:

Enclosed herewith, please find the original and nine copies of the Pennsylvania Public Utility Commission Law Bureau's Exceptions to the Recommended Decision Of Administrative Law Judge Ky Van Nguyen in the above-captioned matter.

Copies have been served on the parties as stated on the attached Certificate of Service.

Very truly yours,

Scott H. DeBroff
Assistant Counsel

DOCUMENT
FOLDER

SHD/1st

Enclosures

cc: As per Certificate of Service

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation upon the Commission's own	:	
motion into the matters pertaining to	:	
the proper service, accommodation,	:	
convenience and safety of the traveling	:	
public using the rail-highway crossing	:	Docket No.
carrying 59th Street over and above the	:	I-00830373
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.	:	

EXCEPTIONS OF THE LAW BUREAU OF THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
TO THE RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE KY VAN NGUYEN

AND NOW COMES the Law Bureau of the Pennsylvania Public Utility Commission, by and through its counsel, Scott H. DeBroff, and sets forth the following exception to Administrative Law Judge (ALJ) Nguyen's Recommended Decision issued on February 3, 1994:

1. The Law Bureau takes exception to ordering Paragraph No. 8 on Page 11 of the Recommended Decision which reads as follows:

8. That the National Railroad Passenger Corporation and the Southeastern Pennsylvania Transportation Authority will cooperate fully with each other to furnish flagmen and watchmen, if necessary, to protect their operations during the approved work.

The Law Bureau does not except to the ALJ's recommendation that AMTRAK and SEPTA cooperate with each other to furnish flagmen and

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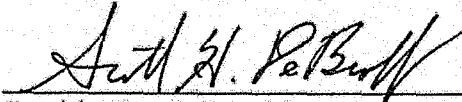
MAR 09 1994

watchmen to protect their operations during the approved work.

However, in ALJ Nguyen's Discussion section on Page 8 of the Recommended Decision, he writes that AMTRAK and SEPTA are outside the Commission's jurisdiction pertaining to the allocation of costs to public utilities under 45 U.S.C. §546(b) and §581(c)(5). In order to be consistent with the ALJ's interpretation of Federal law, the Law Bureau proposes that an additional paragraph be added following ordering Paragraph No. 8 to reflect the current state of the law and will read as follows:

That the costs for any flagmen or watchmen furnished by National Railroad Passenger Corporation and/or the Southeastern Pennsylvania Transportation Authority to protect their operations during the approved work will be paid by the City of Philadelphia at its sole cost and expense.

Respectfully submitted,



Scott H. DeBroff
Assistant Counsel

Counsel for Pennsylvania
Public Utility Commission

P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 783-2840

DATED: February 23, 1994

CERTIFICATE OF SERVICE

I hereby certify that I am this date serving the foregoing document upon the persons and in the manner indicated below:

SERVICE BY FIRST CLASS MAIL ADDRESSED AS FOLLOWS:

Honorable Ky Van Nguyen
Administrative Law Judge
Pennsylvania Public Utility Commission
1302 Philadelphia State Office Building
Broad and Spring Garden Streets
Philadelphia, PA 19130

Stuart A. Liner, Assistant Counsel
PA Department of Transportation
521 Transportation & Safety Building
Harrisburg, PA 17120

Charles E. Mechem, Esquire
Consolidated Rail Corporation
Two Commerce Square
2001 Market Street
P.O. Box 41416
Philadelphia, PA 19101-1416

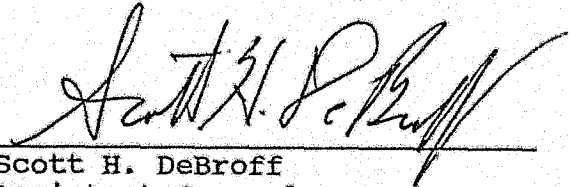
Vincent J. Walsh, Jr., Esquire
Southeastern Pennsylvania
Transportation Authority
7th Floor
714 Market Street
Philadelphia, PA 19106-2385

Rudolph A. Chillemi, Esquire
PECO Energy Company
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101-8699

Dennis M. Moore, Esquire
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, D.C. 20002

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PA. RAILROAD DIV.
INFO. CONTROL

Gerald T. Clark, Esquire
Senior Attorney
City of Philadelphia
8th Floor - 1600 Arch Street
Philadelphia, PA 19103-1628



Scott H. DeBroff
Assistant Counsel

Counsel for Pennsylvania
Public Utility Commission

P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 783-2840

DATED: February 23, 1994



CITY OF PHILADELPHIA

LAW DEPARTMENT
1600 Arch Street
Philadelphia, Pa. 19103-2081

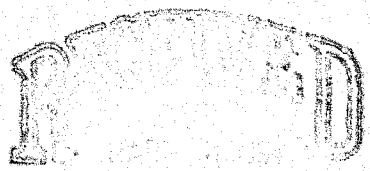
Joseph A. Dworetzky
Acting City Solicitor

Gerald T. Clark
Senior Attorney
(215) 686-7692

ORIGINAL

March 3, 1994

John G. Alford, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265



SECRETARY'S OFFICE
Public Utility Commission

Re: 59th Street over AMTRAK
PUC Docket I-00830373


Dear Secretary Alford:

Enclosed please find the original and nine (9) copies of the City of Philadelphia's Reply Exceptions in the above captioned case.

As of the date of this letter, I have mailed two copies of this document to each person listed on the attached Certification of Service.

Respectfully,

**DOCUMENT
FOLDER**


Gerald T. Clark
Senior Attorney
City of Philadelphia
(215) 686-7692

GTC/fw

enclosure

cc: All persons on the Certification of Service

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In Re:

Investigation upon the Commission's own motion into the matters pertaining to the proper service, accommodation, convenience and safety of the traveling public using the rail - highway crossing carrying 59th Street over and above the 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.

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SECRETARY'S OFFICE
Public Utility Commission

REPLY EXCEPTIONS OF THE
CITY OF PHILADELPHIA

The City of Philadelphia files these Reply Exceptions to the Exceptions to the Recommended Decision by SEPTA, the PUC Law Bureau, PECO Energy Company and AMTRAK.

The City of Philadelphia's Reply Exceptions to each of the above is listed below.

I. SEPTA Exception

SEPTA has filed an Exception to Ordering Paragraph 8 of the Recommended Decision. If SEPTA, through the purchase of one of AMTRAK's tracks or a portion of railroad right-of-way also purchased or became obligated for a portion of AMTRAK duty to maintain this bridge, then there is no need to require the City of Philadelphia to reimburse SEPTA any of its costs. As set forth in the City's Exceptions, all costs associated with work on this project must be paid for by AMTRAK as the owner of the bridge. If SEPTA has become a partial owner of the bridge, then it must also bear a proportional share of the railroad costs and maintenance costs with AMTRAK.

SEPTA's Exception must be denied.

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II. PUC Law Bureau

The PUC Law Bureau has filed an Exception to Ordering Paragraph 8 of the Recommended Decision.

This is an Exception to the same Ordering Paragraph that is discussed above and below (Part IV). The Law Bureau's proposed additional paragraph must be rejected. As set forth in the City's Brief (filed in 1985) the record, and the current law, AMTRAK is the owner of this bridge. The citation to 45 U.S.C. §546 (b) and §581 (c) (5) are not relevant to the owner of a structure being responsible for the costs of maintaining their property. If SEPTA and AMTRAK now both have an ownership interest in this bridge then both railroads should be responsible for these costs. If AMTRAK has retained full ownership with respect to SEPTA, then AMTRAK should bear all costs including those of SEPTA.

III. PECO

PECO has filed an Exception to Ordering Paragraph 9 of the Recommended Decision. This Exception must be rejected. If any work on the expansion dams or the sidewalk has an affect on PECO facilities, then the Commission has the right to require the utility to do whatever is necessary to alter or protect its facilities at its sole cost and expense. At the hearing, PECO was unaware of any impact expansion dam repairs would have on its facilities. When the two expansion dams were replaced in 1985, there was no impact on PECO facilities and there is no reason to believe that there will be any impact on electric facilities when the remaining three expansion dams are replaced. There is no need to allocate non existent PECO costs on an initial basis. Furthermore, if any party other than the fixed utility is to bear these costs, then the railroads are the appropriate parties.

Ordering Paragraph 9 of the Recommended Decision should not be altered.

IV. AMTRAK

AMTRAK has filed a number of Exceptions to portions of the Recommended Decision. In the latest hearing on July 1, 1993, AMTRAK chose not to participate. The fact that responses to the Questions and Procedures of the Commission were sent to participants does not mean that AMTRAK is a participant or that the responses became part of the record. The attempt by AMTRAK to use the Exception process to have evidence made part of the record is contrary to 52 PA Code §5.533.

A reading of the hearing transcript from June 18, 1985 (the last hearing in which AMTRAK participated) and the Recommended Decision of the late Administrative Law Judge Joseph Klovlson makes it abundantly clear that AMTRAK never performed the inspection required by the Commission. See page 65 of the June 18, 1985 transcript where AMTRAK's witness stated the railroad did not do an analysis of the bridge which the Commission ordered it to do.

AMTRAK's Exception 1 must be denied because it is untrue based on the complete 10-year record of this proceeding.

AMTRAK Exception 2

AMTRAK Exception 2 must be denied. The alleged costs of \$4016.74 incurred by AMTRAK prior to 1984 were previously considered by the Commission during the June 18, 1985 hearing. The September 5, 1985 Recommended Decision clearly states that AMTRAK's alleged costs are not being allocated to any other party and that the railroad must bear these costs..

The Commission adopted the Recommended Decision on October 31, 1985. No further legal appeal was filed by any party. It is well beyond the applicable statute of limitation to raise this issue again by way of Exceptions to the current Recommended Decision. Furthermore, by failing to participate in the hearing, AMTRAK has waived the right to reopen the deposition of this matter. 52 PA Code §5.245.

AMTRAK Exception 2 must be denied.

AMTRAK Exception 3

AMTRAK Exception 3 is an inaccurate statement. The complete record in this proceeding clearly shows that the highway bridge is owned by AMTRAK and or SEPTA as the successors in interest to the Pennsylvania Railroad. No court has ever declared that separated grade crossings are of no benefit to the railroad. In this case the Administrative Law Judge is clearly within his right to state an opinion that AMTRAK, SEPTA and the City receive a benefit from this separated grade crossing. It is inappropriate for AMTRAK to attempt to limit the Commission's expression of its opinion.

AMTRAK Exception 3 must be denied.

AMTRAK Exception 4

AMTRAK's Exception 4 is inaccurate. AMTRAK did participate in previous hearings. There is absolutely no dispute that AMTRAK did not appear or participate in the July 1, 1993 hearing.

Circulating proposed testimony to participants is not participation in the hearing process.

No legislative Act nor any Court ruling states that the Commission lacks jurisdiction over AMTRAK. To be a participant, AMTRAK must appear at Commission hearings. The circulated statement of AMTRAK was quite properly not admitted into the record of this proceeding at the July 1, 1993 hearing. The AMTRAK statement does not become part of the record merely because it improperly attached to AMTRAK's Exceptions.

AMTRAK Exception 4 must be denied.

AMTRAK Exception 5

AMTRAK Exception 5 is an Exception to Ordering paragraph 8 of the Recommended Decision. Both, the PUC Law Bureau and SEPTA, have filed an Exception to the same ordering paragraph. The City of Philadelphia's position on AMTRAK's Exception is the same as set forth above. AMTRAK and or SEPTA, as the current owners of this bridge, are responsible for all costs to maintain the structure owned by the railroad(s). Nothing in any federal case permits the owner of property to be relieved of the costs for maintaining their property.

If AMTRAK and SEPTA have a binding agreement between themselves whereby these costs are allocated or shared, the agreement should be made part of the record.

AMTRAK's reference to prior Commission Orders on other projects lists only one project within the City of Philadelphia. In the Diamond Street bridge over AMTRAK (PUC Docket A-00109326) the City and the railroad entered into a binding reimbursement agreement. It is this reimbursement agreement that is reflected in the Commission's Order.

AMTRAK's Exception 5 must be denied or the railroad costs must be allocated to the owner of the bridge (which is AMTRAK and or SEPTA).

AMTRAK Exception 6

AMTRAK Exception 6 alleges that there is no provision within the Recommended Decision to cover any alleged alterations to AMTRAK facilities. No such provision could be included in the Recommended Decision or any decision by the Commission because there is nothing on the record to support such a conclusion.

Circulating proposed testimony to participants is not participation in the hearing process.

No legislative Act nor any Court ruling states that the Commission lacks jurisdiction over AMTRAK. To be a participant, AMTRAK must appear at Commission hearings. The circulated statement of AMTRAK was quite properly not admitted into the record of this proceeding at the July 1, 1993 hearing. The AMTRAK statement does not become part of the record merely because it improperly attached to AMTRAK's Exceptions.

AMTRAK Exception 4 must be denied.

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AMTRAK's Exception 5 must be denied or the railroad costs must be allocated to the owner of the bridge (which is AMTRAK and or SEPTA).

AMTRAK Exception 6

AMTRAK Exception 6 alleges that there is no provision within the Recommended Decision to cover any alleged alterations to AMTRAK facilities. No such provision could be included in the Recommended Decision or any decision by the Commission because there is nothing on the record to support such a conclusion.

It was solely AMTRAK's decision to not participate in the July 1, 1993 hearing. A review of the record from this hearing clearly shows that not one participant raised the issue AMTRAK sets forth in this Exception and as such there is no evidence to support AMTRAK's position.

If AMTRAK wants to raise this type of issue, it must participate in the hearing. AMTRAK's attempt to submit evidence through the Exception process is unauthorized under Pennsylvania law and a violation of the due process of every party that did participate in the hearing.

AMTRAK's Exception 6 must be denied because there is no evidence on the record to support the allegation contained therein.

AMTRAK Exception 7

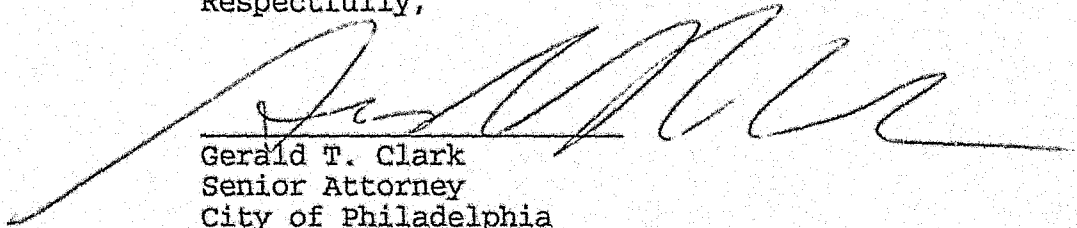
AMTRAK Exception 7 alleges that there is no provision to reimburse AMTRAK costs incurred in 1984. This issue of allocating AMTRAK's 1984 cost was the subject of a hearing on June 18, 1985. A Recommended Decision and a Commission Decision in 1985 denied AMTRAK's request. There was no appeal from the 1985 Commission Order. The Order is now final.

No party, including AMTRAK has the right to litigate issues ad infinitum. Furthermore, there is not one shred of evidence to support AMTRAK's claim for reimbursement. AMTRAK did not appear at the July 1, 1993 hearing and therefore, there is nothing in the record of proceeding which can justify AMTRAK's position.

For the reasons set forth in these Reply Exception, AMTRAK's Exception 7 must be denied.

WHEREFORE, the City of Philadelphia respectfully requests that all the Exceptions by SEPTA, the PUC Law Bureau, PECO and AMTRAK be denied.

Respectfully,



Gerald T. Clark
Senior Attorney
City of Philadelphia

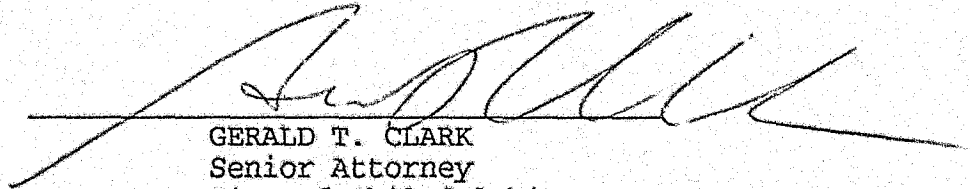
GTC/fw

CERTIFICATION OF SERVICE

I, Gerald T. Clark, Senior Attorney for the City of Philadelphia hereby certify that I did mail by regular U.S. mail, postage prepaid, two (2) copies of the Reply Exceptions of the City of Philadelphia to each person listed below on March 3, 1994 in PUC Docket I-00830373.

1. Honorable Ky Van Nguyen
Administrative Law Judge
PA Public Utility Commission
Room 1302
State Office Building
Broad and Spring Garden Streets
Philadelphia, PA 19130
2. Vincent J. Walsh, Jr.
Assistant Deputy Counsel
SEPTA
7th Floor
714 Market Street
Philadelphia, PA 19106-2385
3. Scott H. DeBroff
Assistant Counsel
PA PUC Law Bureau
G-31 North Office Building
Harrisburg, PA 17105
4. Stuart A. Liner, Esquire
Office of Chief Counsel
PA Department of Transportation
5th Floor
Transportation and Safety Building
Harrisburg, PA 17120

5. Charles E. Mechem
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Consolidated Rail Corporation
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6. Rudolph A. Chillemi, Esquire
PECO Energy
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7. Dennis M. Moore
Assistant General Counsel
National Railroad Passenger Corporation
60 Massachusetts Avenue, N.E.
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GERALD T. CLARK
Senior Attorney
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