



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, Pa. 17120
September 26, 1985

IN REPLY PLEASE
REFER TO OUR FILE
I-830373

TO ALL PARTIES

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.

TO WHOM IT MAY CONCERN:

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

An original and nine (9) copies of signed exceptions to the decision, if any, MUST BE SERVED ON THE SECRETARY OF THE COMMISSION IN ROOM B-18, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17120 and a copy served on each party of record within 15 days of the date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date the exceptions are deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)).

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

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535, particularly the 40 page limit for exceptions and the 25 page limit for replies to exceptions. Exceptions should be clearly labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

Any reference to specific sections of the Administrative Law Judge's Recommended Decision shall include the page number(s) of the cited section of the Decision.

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

cc: ALJ Klovekorn/Office of ALJ/Bureau of S&C/Law Bureau/Mr. Bramson/OSA/Chairman/
Very truly yours, Commissioners

fao
Enclosures
Certified Mail
Receipt Requested
SIMILAR LETTER LIST ATTACHED.

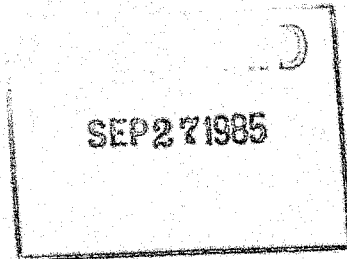
William H. Smith
William H. Smith
Chief Administrative Law Judge

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 :

Docket Number

I-830373



RECOMMENDED DECISION

Before
Joseph J. Klovekorn
Administrative Law Judge



HISTORY OF 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 to determine the current condition and future disposition of the crossing and to assign future maintenance responsibilities to the parties, there being no prior Commission orders doing so. The City, National Railroad Passenger Corporation (Amtrak), Consolidated Rail Corporation (Conrail) and Pennsylvania

Department of Transportation (Department) were made parties to the investigation. Commission Trial Staff (Staff) subsequently entered an appearance to participate in this proceeding.

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

Hearing in this matter was held August 18, 1983 in Philadelphia before the undersigned Administrative Law Judge in which testimony and exhibits were received pertaining to the current condition of the crossing, whether any repairs are necessary, the assignment of maintenance responsibilities and the allocation of costs expended by the parties in complying with the emergency orders.

By order entered May 1, 1984, the Commission adopted my decision of March 1, 1984 and directed Amtrak to perform an in-depth inspection of the bridge and to submit a report to the Commission and all parties of record detailing the extent of any deterioration; 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 Commission also directed that upon completion of the in-depth inspection and report and replacement of the expansion dams, a further hearing be held to receive comments on the report and assignment of maintenance and costs associated with all work performed on the subject bridge.

The subject report was filed with the Commission on March 12, 1985. A hearing was held on June 18, 1985 for the purposes described in the

Commission's May 1, 1984 Order as well as final allocation of future maintenance on the subject bridge. At that hearing, the City, Amtrak, Conrail, the Department, Southeastern Pennsylvania Transportation Authority (SEPTA) and Staff participated. A transcript of 95 pages was adduced and thirteen exhibits were introduced into evidence. No briefs were filed.

SUMMARY OF TESTIMONY

J. Rachel Williams

Ms. Williams is a construction engineer with the City's Streets Department. She was responsible for the work that was performed by the City and City contractor on the subject bridge (Tr. 52). She was also responsible for the emergency work done on the bridge in 1983. She testified that the City contracted with Belbold Construction Company for the replacement of two expansion dams on the bridge - the one at the south pier and the one at the north abutment. Three other expansion dams required no work (Tr. 54). She examined the two failed expansion dams and determined that moisture had gotten into the area adjacent to the dams because the bituminous surface and the concrete were in very poor condition. Salt also got into the area causing corrosion of the steel. In addition, wear caused by the traffic on the bridge caused the dams to fail. She stated that the wearing surface of the bridge is bituminous with concrete below that. When it deteriorates, it forms a permeable surface through which water infiltrates. When the old dams were removed, she inspected the bridge deck and observed that the concrete was crumbled in some areas (Tr. 56). It was in fair to poor condition. She stated that it was not economical to repair only the bituminous wearing surface. The deteriorated concrete should be repaired and restored. There were also pot holes on the bridge deck (Tr. 57).

She stated that the salt would have come from city deicing operations (Tr. 59).

Also introduced were various City exhibits detailing City expenses:

Exhibit 2 was for work performed in March 1983 amounting to \$11,168.49.

Exhibit 3 was for expenses incurred in July 1983 amounting to \$3,911.62.

Exhibit 11 was for work performed for the City by Belbold Construction Company amounting to \$102,024.60.

Exhibit 12 was for work performed by the City from May 1984 through January 1985 totalling \$16,373.54.

Exhibit 13 was for City expenses for April 2, 1984; April 3, 1984; and June 9, 1984 amounting to \$2,625.88.

Exhibit 14 was for expenses incurred by the City's Highway Maintenance District totalling \$2,196.54.

Exhibit 15 was for work performed by the Streets Department in October 1983, March 1984, April 1984 and January 1985 totalling \$2,332.53.

Exhibit 16 was for work performed by the Traffic Engineering Section of the Streets Department totalling \$880.86.

Exhibit 17 was for work performed by the Water Department totalling \$128.

The total amount for all expenses incurred by the City is \$141,642.06 (Tr. 50).

Richard H. Cooper

Mr. Cooper is Engineer of Public Projects for Amtrak's Engineering Design Section. He testified that Amtrak made a detailed inspection of the

underside of the bridge on October 9, 1984. It consisted of a close visual inspection of the bridge's superstructure. The gunite encasement was checked for soundness and the encased beams were checked for deterioration. Amtrak did not remove entirely any encasement from around any of the floor beams to determine actual deterioration of the beams (Tr. 64).

Amtrak did not do an analysis of the bridge. According to Amtrak, the bridge was designed to carry a live load of a 40-ton truck, a 100-pound per square foot live load. The bridge also had two trolley tracks which were designed to carry trolleys that weighed 600 pounds per linear foot. Amtrak believed that this compares favorably with the type of loading that the bridge would be designed for today (Tr. 65). Amtrak believes that the bridge could carry the present day live load that would be applied to the bridge. As a result, it did not perform a numerical rating analysis of the bridge.

Amtrak recommends a rating analysis that would show whether the bridge is capable of sustaining the present day live load based on engineering assumptions (Tr. 66).

He stated that at the time of the inspection Amtrak was not properly equipped to remove the gunite which encased the steel on the bridge.

He stated that Amtrak believes that the bridge is in fair to good condition and is not in immediate need of any major repairs. Amtrak will not agree to do any of the work needed to repair the bridge or bear any of the costs involved (Tr. 68). In a late filed exhibit, Amtrak stated that it has incurred \$4,016.74 in complying with the Commission's May 1984 Order (Amtrak Exhibit B).

Amtrak does not agree to bear any portion of the costs expended to date or any future costs of maintenance of the structure. It does not agree

or disagree at this time to participate in the cost of constructing an improvement at this location.

On cross-examination, he stated that three persons were involved in the inspection and it was performed over the period of one day (Tr. 69). He stated that he did not notify the PUC that Amtrak was unable to comply with the Commission's directive to perform a rating analysis (Tr. 71). He did not know whether the live loads noted on the plans for the bridge were simultaneous live loads. Amtrak observed the main girders of the bridge but the floor beams could not be observed. He did no analysis of the deck condition of the bridge.

He stated that he saw no trolley tracks on the bridge (Tr. 76). He has no information indicating that trolleys ever operated on the bridge (Tr. 77).

He stated that it would take 10 to 15 working days to perform an analysis based on engineering assumptions and come up with a rating for the bridge. It would cost a few thousand dollars (Tr. 79). A detailed inspection would take longer and cost between \$20,000-\$30,000. Amtrak believes that the bridge is now capable of carrying maximum legal loads (Tr. 80).

Amtrak does not believe any work is required on the bridge at this time (Tr. 81). Inspections should be performed annually or, at least, every two years (Tr. 81).

He stated that Amtrak neither owns nor is responsible for maintaining the overhead highway bridges. He agreed, however, that a grade separated crossing is much safer for both railroad and highway users (Tr. 83).

Amtrak would be willing to share the cost with the City of these inspections (Tr. 85).

Robert Washburn

Mr. Washburn is a bridge engineer with the Streets Department of the City. He stated that Amtrak's report fails to include an engineering analysis

and provides no recommendations for required work necessary to rehabilitate the structure in order to permit it to carry HS-20 loads or a 36-ton truck (Tr. 91). He has seen 40 ton trucks using the bridge. He does not agree that the bridge can continue to safely carry all vehicles now using the bridge (Tr. 92). He stated that it would take between seven and ten working days to do an engineering analysis (Tr. 93).

He estimates the life of a highway overpass bridge to be approximately 70 to 75 years. This would make the life expectancy of the subject bridge approximately 15 years (Tr. 94).

He stated that the City does not agree to assume any costs associated with the maintenance, rehabilitation or replacement of the structure (Tr. 100).

If the structure is in need of major rehabilitation or replacement, the City believes Amtrak should perform all work necessary at its cost (Tr. 103). The City does not agree to bear the costs it already incurred to replace the expansion dams. The City wants the Commission to order Amtrak to comply fully with the May 1984 Order and to direct Amtrak to reimburse the City for the monies already expended on the bridge (\$141,642.06) (Tr. 104). It also wants Amtrak to be responsible for the maintenance, repair, rehabilitation or replacement of the entire structure. The City will agree to be responsible for the maintenance of the approaches to the bridge (Tr. 105).

On cross-examination, he stated that the abbreviated form of analysis proposed in Mr. Cooper's testimony would generally be satisfactory to the City. The City would not agree to perform such an analysis at its initial cost (Tr. 115).

Speaking as an engineer, he stated that there appears to be much corrosion in the bottom flanges of the floor beams. He would remove all of

the loose or poorly sounding encasements from the area of the bottom flanges of the beams to lessen the dead weight. He would expose the bottom of the steel to see how corroded it is and to reduce the moisture level. He would then paint all the exposed areas of the steel (Tr. 119). He would not recommend any new bituminous materials be placed on the deck. He would put on a new concrete deck (Tr. 120). He believes the bridge will last less than 15 years (Tr. 121). He believes the bridge should be inspected every six months (Tr. 123).

He stated that a 40 ton limit refers to two 40 ton trucks coming from opposite directions (Tr. 125).

Brian G. Woodburn

Mr. Woodburn is project engineer for SEPTA (Tr. 129). He stated that no trolley rail was ever installed on the bridge although the bridge was designed to accommodate it (Tr. 130). SEPTA does not agree to do any work or bear any costs for repair, rehabilitation or maintenance, past or future, on the bridge.

Stafford C. Walker

Mr. Walker is a principal engineer for Conrail. Conrail generally agrees with the conclusions in Amtrak's report (Tr. 133). Conrail does not agree to bear any costs involved with the bridge or perform any further maintenance (Tr. 134). He stated that a rating analysis would be helpful and that Conrail has the capability to do the work involved. He stated that the deck is part of the bridge's superstructure and that the expansion dams also are part of the superstructure (Tr. 136).

David C. Hart

Mr. Hart is a civil engineer with the Public Utility Commission (Tr. 137). He stated that an engineering analysis should be performed on the

structure at this time to determine the overall load carrying capacity. He stated that this analysis should be a combination of an "assumed" analysis, where certain assumptions are made, and the more traditional detailed analysis. Such an approach would be feasible in his opinion. Based on his inspection of the bridge, he does not believe that any additional repairs are necessary at this time (Tr. 139). He does not believe that the bridge should be posted for less than the legal load limit at this time. Inspections should be done on an annual basis (Tr. 140).

FINDINGS OF FACT

1. By Order entered May 1, 1984 in this proceeding, Amtrak was directed to perform an in-depth inspection of the bridge carrying 59th Street over and above Amtrak's tracks in the City of Philadelphia. That report was submitted March 12, 1985 (Amtrak Exhibit A).

2. Pursuant to the Commission's directives in this proceeding, the City of Philadelphia has spent \$141,642.06 for emergency repairs and replacement of two expansion dams on this bridge (Tr. 50; City Exhibits 2, 3, 11, 12, 13, 14, 15, 16, 17).

3. The two failed expansion dams were located at the south pier and the north abutment of the bridge (Tr. 53). The dams failed because of traffic on the bridge and because moisture and salt had gotten into the area surrounding the dams (Tr. 55).

4. Contrary to the Commission's Order, Amtrak did not do an engineering analysis of the existing structural members of the bridge to determine the load carrying capacity of the bridge (Tr. 64-65).

5. The original bridge plans indicate that the bridge was designed to carry a live load of a 40-ton truck. The bridge designs also indicated

that it was to have two trolley tracks, designed to carry trolleys that weighed 600 pounds per linear foot (Tr. 65).

6. Amtrak has expended \$4,016.74 in complying with the Commission's Order here (Amtrak Exhibit B).

7. No trolley rail was ever installed on the subject bridge (Tr. 129).

DISCUSSION

This proceeding involves the bridge carrying 59th Street over the track of Amtrak in the City of Philadelphia. The bridge has four spans with a total length of 309 feet. The roadway on the bridge is 52 feet wide between curbs. The bridge was built in 1927 by the Pennsylvania Railroad and presently spans over 12 tracks; five tracks are active of which three have energized catenary and the remaining seven tracks are inactive.

Since the Commission's last order in this proceeding, the five expansion dams on the bridge have been inspected. Two expansion dams, one at the north abutment and the other at the south pier, have been replaced. The disrepair of the expansion dams is what precipitated this investigation. However, we are no closer to determining the extent of deterioration of the structure, its present overall load carrying capacity, or any necessary repairs required to allow the bridge to safely carry maximum legal loads. As stated in our last Decision and the Commission's Order in this proceeding, we are concerned about the structural capacity of this bridge. This bridge is over 58 years old. It has not had a structural analysis performed since it was constructed. Such an engineering analysis must be done at this time to insure the safety of the travelling public as well as the operating railroad below. The Commission's order of April 26, 1984 directed such an analysis be performed. We again will recommend that a structural analysis be performed and caution Amtrak that non-compliance will not be tolerated by this Commission.

Amtrak's witness Mr. Cooper suggests that the analysis be done using good engineering assumptions with little or no field measurements. Staff's witness Mr. Hart suggests that something less than a detailed field inspection using good engineering assumptions would be satisfactory. The City's witness Mr. Washburn agrees that a combination of field inspection and engineering assumption would be acceptable. The methodology to be used for the engineering analysis shall use a random sampling of all types of beams, i.e. girder, floor beams, and stringers. Those beams with loose, spalling, or missing encasement can be utilized as samples, but to get a true and accurate assessment might require the removal of some of the encasement from the beams. Based on these field measurements, a good engineering assumption can be made as to the size and condition of all of the components of the structure.

The engineering analysis of the structure shall also include an evaluation of the concrete deck. The deck shall be evaluated as to its structural capacity as well as salt concentration. The bridge piers, abutments and bearings shall also be inspected and evaluated with an eye toward recommendation for maintenance or repair work, if necessary.

Upon completion of its field measurements and engineering analysis, Amtrak shall prepare a detailed report of its inspection and evaluation. Said report shall include recommendation as to any rehabilitation required, estimates of cost for rehabilitation, and load carrying capacity of the bridge. Upon receipt of such report, further hearing will be held.

We will also direct that Amtrak, until further order by this Commission, perform an annual inspection of said bridge and provide this Commission with the results of its inspection.

One other item can be resolved at this time. The City of Philadelphia has performed work and incurred cost in accordance with the prior Commission

orders in this proceeding. We see no reason why these costs cannot be assessed upon the parties at this time. City of Philadelphia has performed emergency temporary repairs and permanent replacement to two expansion dams. The cost for this work was \$141,642.06. Based on our evaluation, equity of the situation and benefits derived by the parties as more fully described in prior decisions in this proceeding, we are of the opinion that the City of Philadelphia and Amtrak should share equally in this cost, i.e., 50% to each party. The City has argued and probably will continue to put forth its position that Amtrak is totally responsible for the cost based on agreements between the City and Pennsylvania Railroad. Amtrak disputes these agreements. These agreements are not relevant to the Commission's function in allocating costs in the first instance. The Commission shall allocate cost after weighing all relevant factors and not on the basis of any private agreement. The parties may take their disputes concerning those agreements to other, more appropriate forums for their resolution.

Amtrak has incurred costs associated with preparation of its engineering report. We will not allocate this cost at this time but will wait until Amtrak has completed the above requested analysis and report.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding.
2. Under the provisions of Sections 2702 and 2704 of the Public Utility Code (66 Pa. C.S.A. §§2702, 2704), the Commission has (1) the authority over all concerned parties involved in any railroad-highway crossing; (2) the authority to prescribe the manner in which a crossing can be constructed, reconstructed or altered; (3) the authority to assign the work of alteration of

the crossing; (4) the authority to determine the allocation of the costs for the alteration of the crossing; and (5) the authority to assign maintenance.

3. The Commission has the authority as may be necessary to protect the public interest, safety and convenience.

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

RECOMMENDATION

THEREFORE,

IT IS RECOMMENDED:

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.
- 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.

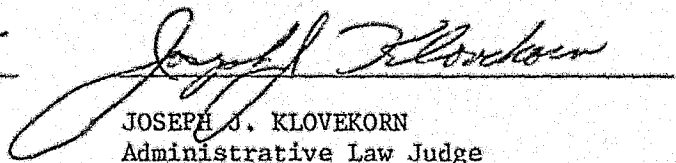
5. That National Railroad Passenger Corporation, until further order of this Commission, perform an annual inspection of the bridge carrying 59th Street over and above its tracks in the City of Philadelphia, and provide this Commission with the results of its inspection.

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.

Date:

September 5, 1985


JOSEPH J. KLOVERKORN
Administrative Law Judge



CITY OF PHILADELPHIA

LAW DEPARTMENT
15th Floor, Municipal Services Building
Philadelphia, Pa. 19102-1692

October 11, 1985

RECEIVED

0011

SECRETARY'S OFFICE
Public Utility Commission

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
Post Office Box 3265
New Filing Section
Room B-18
North Office Building
Harrisburg, Pennsylvania 17120

RE: INVESTIGATION OF THE COMMISSION
59TH STREET OVER THE TRACKS OF
AMTRAK IN THE CITY OF PHILADELPHIA
PUC DOCKET NO. I-830373

Dear Secretary Rich:

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

A copy of these Exceptions have been mailed to each party on the attached Certification of Service.

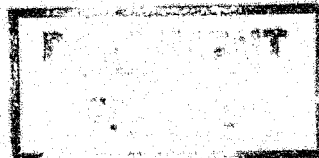
Very truly yours,

GERALD T. CLARK,
Deputy City Solicitor

GTC:ddb

cc: All Interested Parties

Enclosure



Investigation upon the Commission's :
own motion into the matters pertaining :
to the proper service, accommodation, :
convenience, and safety of the travel- :
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crossing carrying 59th Street over :
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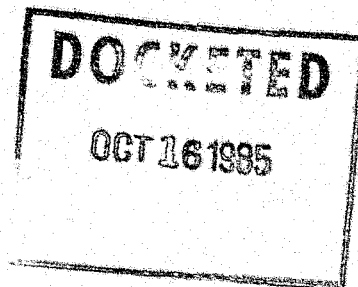
Docket Number: OCT 11
I-830373
SECRET
Public Utility Commission

EXCEPTIONS OF THE
CITY OF PHILADELPHIA
THE RECOMMENDED DECISION

The City of Philadelphia hereby files these exceptions to the
Recommended Decision in this matter.

EXCEPTIONS

1. The Administrative Law Judge erred if failing to Order National Railroad Passenger Corporation (hereafter referred to as AMTRAK) to supply the City of Philadelphia a copy of the annual inspection of the bridge carrying 59th Street over and above its tracks in the City of Philadelphia. (Ordering paragraph 5 of the Recommended Decision, page 14).
2. The Administrative Law Judge erred in ordering AMTRAK to reimburse the City of Philadelphia only 50% of the costs (\$70,821.03) by the City of Philadelphia in performing emergency temporary repairs and permanent temporary repairs and permanent replacement of two expansion dams. The City should have been reimbursed 100% of these costs (\$141,642.06). Ordering paragraph 3 of the Recommended Decision, page 14).



ARGUMENT FOR EXCEPTIONS

I. Annual Inspection Report

Paragraph 5 of the Recommended Decision stated:

"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."

The City of Philadelphia respectfully requests that AMTRAK be Ordered to supply a copy of this annual inspection report to the City of Philadelphia at the same time a copy is sent to the Commission.

The City of Philadelphia avers that requiring AMTRAK to supply it with the same document supplied to the Commission will not be a hardship on anyone and will not cause any financial burden on AMTRAK. Giving the City of Philadelphia a copy of this annual inspection report will aid the City in monitoring the physical integrity of this bridge.

Therefore the City of Philadelphia respectfully requests that its Exception #1 be granted.

II. Reimbursement to the City of Philadelphia for the Costs of Emergency and Permanent Repairs.

The City of Philadelphia avers that the Administrative Law Judge erred in failing to order AMTRAK to reimburse 100% of the costs incurred by the City in making temporary and permanent repairs to the 59th Street bridge. The City spent substantial sums, \$141,642.06, in making emergency and permanent repairs to AMTRAK's bridge. By ordering AMTRAK to reimburse the City only 50% of these costs (\$70,821.03) the Administrative Law Judge has failed to consider that these repairs and improvements were made to a structure which is wholly owned by AMTRAK.

There can be absolutely no question that AMTRAK is the present owner of the entire substructure and superstructure of the 59th Street bridge. With ownership, AMTRAK also has the exclusive duty to maintain its property. A full and complete detail of the history, ownership, and maintenance responsibilities is in the record of the case. (Notes of testimony/or the hearing on August 18, 1983).

The City of Philadelphia has also previously submitted a detailed and thorough argument on the issue of ownership and present maintenance responsibility in its exceptions to the Initial Decision of the Administrative Law Judge, submitted March 24, 1984. Pursuant to 52 Pa. Code section 5.533(d) the City of Philadelphia hereby incorporates by reference pages 4 through 32 of the argument contained in the exceptions.

The Commission itself has, recognized that AMTRAK has the maintenance responsibility for the substructure and superstructure on this bridge.

In paragraph 9, of the Commissioner's Order entered May 1, 1984, AMTRAK was ordered to provide the interim maintenance for the substructure and superstructure, (exclusive of the approaches, sidewalks, and bituminous wearing surface).

Surely this Commission did not assign this maintenance responsibility to AMTRAK without recognizing that the bridge is owned by AMTRAK.

It is therefore entirely inconsistent for the Administrative Law Judge, in the recommended decision to refuse to order AMTRAK to reimburse the costs incurred by the City to make the superstructure safe.

The Public Utility Commission must be consistent in its decisions. In the Commissioner's own investigation, Docket-I 78020294 (Byberry Road over Conrail) the Commission recognized the railroad's ownership and maintenance responsibility of the highway bridge. In Byberry Road case, the initial repairs

were ordered to be performed by Conrail. The Commission's decision in Docket-I 78020294 was upheld by the Commonwealth Court in Consolidated Rail Corporation vs. Pa. PUC, 55 Commonwealth Court 576 (1980).

This present case is exactly the same except the initial work for repairs was ordered performed by the City.

However, even though the City was ordered to perform the initial work, the ultimate ownership and maintenance responsibility has remained with the railroad, in this case AMTRAK. Therefore, the City should be reimbursed 100% of its costs.

These emergency repairs and permanent replacement of 2 expansion dams does nothing to change maintenance responsibility or ownership.

The City did not receive any funds from Federal Highway Administration or from Urban Mass Transit Administration or from the Commonwealth of Pennsylvania's Billion Dollar Bridge Bill.

If the City had received funds from any of these sources, it would of course, been responsible future maintenance and taken over ownership of the structure. Because none of the above funding sources, participated in the emergency repair and permanent replacement of the expansion dams, the City of Philadelphia should not be required to subsidize the repair and maintenance of AMTRAK's property.

If the City is not reimbursed 100% of the costs it incurred in making necessary repairs the Commission will be requiring the City to improperly subsidize improvements contrary to the Commissions previous orders and the law of this Commonwealth (see Docket I 78020294, and Conrail v. Pa. PUC, 55 Cmlth Ct. 576).

The City of Philadelphia has not and does not seek to obtain ownership of the subject bridge and as such the City must be reimbursed 100% for bettering AMTRAK's property.

It is also not a legitimate reason to deny 100% reimbursement of the City's costs because AMTRAK claims it does not have the funds or the capability to perform needed maintenance on their property. The City of Philadelphia also does not have unlimited funds to perform repairs to other persons property. The City must use its resources to repair and or maintain property that it is legally obligated to maintain.

The problems with the 59th Street bridge were brought to everyone's attention by the City of Philadelphia. Failure to reimburse the City 100% of its cost in making other party's property safe, may have a chilling effect on the City's willingness to raise these issues.

The City of Philadelphia is as concerned about safety to the traveling public as the Commission. However, in these days of limited resources available to the City, the City of Philadelphia cannot be made the funding source for improvements to non City Property.

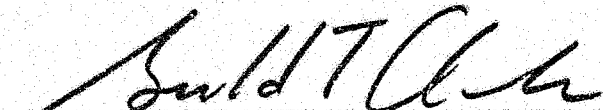
This Commission has in the past and must continue in the future recognize that railroads own certain bridges. With this ownership, also goes the responsibility to maintain.

The City of Philadelphia does not shirk from its responsibility for its property, but does not and cannot undertake maintenance and repair responsibility for non City property.

Therefore, the City of Philadelphia respectfully urges that the Commission grant exception 2 and that by doing so the final decision will be

consistent with the ruling in Docket I-78020294.

WHEREFORE, THE City of Philadelphia respectfully requests that these exceptions be granted for the reasons set forth above.

A handwritten signature in cursive script, appearing to read "Gerald T. Clark", written over a horizontal line.

GERALD T. CLARK
Deputy City Solicitor
Attorney for the City of Philadelphia.

CERTIFICATION OF SERVICE

I hereby certify that I have this day served a true copy of the City of Philadelphia's Exceptions to the Recommended Decision upon all parties of record in this proceeding in accordance with the requirements of 1 Pa. Code 33.36.

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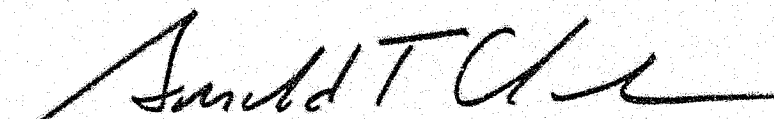
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Honorable Joseph Klovekorn
Administrative Law Judge
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GERALD T. CLARK,
Deputy City Solicitor

Dated: October 11, 1985