

DECISIONS OF

Pennsylvania Public Utility Commission

VOLUME 48



Reported by
NICHOLAS B. DOBOSH
Administrative Law Judge

HARRISBURG, PENNSYLVANIA

1977

BOROUGH OF EAST STROUDSBURG

v.

ERIE LACKAWANNA RAILWAY COMPANY, ET AL.

COMPLAINT DOCKET No. 20391

Crossing Improvement Costs—Railroad-Highway Crossings—Bridges and Viaducts.

An order directing the Pennsylvania Department of Transportation to repair and maintain a railroad-highway bridge was upheld despite the Department's previous lack of maintenance responsibility for the bridge on the grounds that the roadway was an important feeder state highway, the Department used deicing chemicals on the crossing which accelerated the deterioration of reinforced concrete, and no new or after-discovered evidence was submitted to support the Department's averments that it should be relieved of most repair and maintenance costs of the structure.

Robert G. Williamson for Borough of East Stroudsburg.

R. K. Smith for Public Utility Commission.

Daniel F. Donovan for Erie Lackawanna Railway Company.

Herbert G. Zahn for Pennsylvania Department of Transportation.

BY THE COMMISSION, *March 25, 1975*:

This matter is before us on petition filed February 11, 1975, of Department of Transportation of the Commonwealth of Pennsylvania seeking modification of our order at this docket dated January 20, 1975, sustaining the complaint of Borough of East Stroudsburg.

In this petition, the department prays that it be relieved of all costs and maintenance for the repair of the involved structure, except for the wearing surface, as ordered by Paragraphs 2, 3 and 4 of the January 20, 1975 order, which reads as follows, to wit:

"2. That Department of Transportation of the Commonwealth of Pennsylvania, at its initial cost and expense, furnish all material and do all work necessary to repair the deteriorated bridge sidewalk areas; remove the existing bridge roadway wearing surface; prepare the exposed concrete deck slab for repaving, including making any repairs necessary to the deck slab; and placing thereon an asbestos-asphalt or other suitable impermeable membrane overlain with a bituminous concrete wearing surface constructed to provide a smooth riding surface.

"3. That Department of Transportation, at its sole cost and expense, furnish all material and do all work necessary to establish and maintain such detours as may be required to accommodate properly, highway traffic during the time the work is being performed in accordance with numbered Paragraph 2 of this order.

"4. That Department of Transportation, at its sole cost and expense, furnish all material and do all work required to repair the drainage pipe and the east abutment in the area of said pipe together with any soil erosion around the abutment."

The department, in its petition, avers that it has never been assigned any maintenance responsibility nor has it ever performed maintenance work to the structure and that the evidence adduced at the September 24, 1974 hearing shows that the present condition of the involved bridge was caused by failure of Erie Lackawanna Railway Company to adequately maintain the bridge and the wearing surface.

The department further avers that the order of January 20, 1975 obligated the department to perform work and expend funds for deferred maintenance which was the sole responsibility of the railroad company, the expenditure of funds therefor being in violation of Article VIII of the Constitution of Pennsylvania.

Borough of East Stroudsburg, in answer to the petition, avers that it reasonably believes that Department of Transportation has performed routine maintenance of salting and snow removal of the bridge for a period in excess of 20 years and the borough denies the department's averment that the department can not expend funds to repair, maintain or reconstruct the involved bridge.

In regards to the department's averments, our review of the record of this proceeding, including the testimony adduced at the September 24, 1974 hearing, indicates the following:

- A. That on August 1, 1929, at Application Docket No. 21205, The Public Service Commission of the Commonwealth of Pennsylvania issued a Certificate of Public Convenience evidencing the

Commission's approval of the petition of The Delaware, Lackawanna and Western Railroad Company (successor to Erie Lackawanna Railway Company), to construct the bridge involved in this proceeding, and also approved the ordinance passed June 10, 1929 of Borough of East Stroudsburg, granting consent to said construction, at Municipal Contract Docket No. 4871-1929. Said ordinance authorized the railroad company, at its sole cost and expense, to remove an existing bridge at this location and construct the bridge involved in this proceeding. Neither the borough ordinance nor the Commission's order allocates the maintenance responsibility of the bridge or the approaches thereto to any party. The record does not indicate the presence of any agreement between any parties for said maintenance responsibility.

- B. That Erie Lackawanna Railway Company, to some extent, has performed maintenance on the bridge, including the wearing surface, and that the railroad company, in response to our order at Investigation Docket No. 97, stated that it was responsible for the maintenance of the substructure and superstructure of the involved bridge.
- C. That the highway, involved in this proceeding, is on the State highway system and is an important feeder route to Interstate Route 80 in addition to providing access to East Stroudsburg State College, a major shopping center and other community businesses, all of which have caused a considerable increase in vehicular traffic since the bridge was constructed in 1932. At the present time the department estimates the daily average volume of traffic to be 7200 motor vehicles of which four percent is truck traffic.
- D. That Department of Transportation, in removing snow and placing deicing chemicals on the approaches to the crossing, continued said operations across the bridge. The deterioration of the concrete of the bridge sidewalk slab adjacent to the abutments has resulted from the surface drainage from the bridge roadway seeping through the joint between the deck slab and the abutment backwalls.
- E. That the bridge deck was designed and constructed to provide an asphalt block wearing surface, separated from the concrete deck slab, to facilitate periodic wearing surface replacement. Approximately 60 to 70 percent of the original wearing surface, placed at the time the bridge was constructed in 1932, remained

at the date of hearing on this proceeding, said surface showing considerable traffic wear in addition to deterioration.

While the record does not show that any party, including Department of Transportation, was ever assigned any maintenance responsibility for the structure, the respondent railroad company's predecessor constructed the bridge and the company or its predecessor has maintained the bridge to some extent and, as such, the railroad should be responsible for the maintenance of the major portion of the bridge as directed in our order of January 20, 1975. However, it is our opinion that due to the involved highway being an important feeder State highway for Interstate Route 80, which has caused a considerable increase in vehicular traffic at the crossing, that due to the department placing deicing chemicals on the crossing, which experience shows rapidly accelerates the deterioration of reinforced concrete, neither of which can be considered as within the control of the railroad company; and that the original 40 year old wearing surface has exceeded its life expectancy, Department of Transportation is not without obligation to expend funds to repair the deteriorated concrete sidewalk slab and replace the wearing surface as described in Paragraph 2 of our order of January 20, 1975, for which the same order directed other parties to reimburse the department 60 percent of the cost it incurs, and to establish and maintain highway detours as directed in Paragraph 3 of the same order.

It is also our opinion that the work ordered performed by the department, at its sole cost and expense, to repair the drainage in the area of the east abutment as directed in Paragraph 4 of our order of January 20, 1975, is the obligation of the department in that the involved drainage originates from the department maintained highway approaches to the crossing and, as such, contains corrosive deicing chemicals placed on the approaches by the department.

It is our further opinion that the petitioner has not submitted any new or after-discovered evidence or additional information supporting its averments that the department should be relieved of all costs and maintenance for the repair of the structure, except for the wearing surface, which was not given thorough or proper consideration by this Commission in reaching its findings in the order on January 20, 1975.

Upon full consideration of the matters and things involved, we find and determine that the instant prayer of petition of Department of Transportation should be denied and, as such, our order at this docket dated January 20, 1975, should not be disturbed; **THEREFORE,**

IT IS ORDERED:

1. That the prayer of petition of Department of Transportation of the Commonwealth of Pennsylvania filed February 11, 1975, seeking modification of this Commission's order of January 20, 1975, be and is hereby denied.

2. That in all respects, our order of January 20, 1975 remain in full force and effect.

Commissioner Carter dissented.

MATILDA LEWIS

v.

ATLAS TRANSPORTATION COMPANY

COMPLAINT DOCKET No. 20188

Freight Rates—Estimated Freight Charges—Overcharges—Shipments (relinquishment of) (necessity for)—General Order No. 29, Rule 702, Part VII.

Under Part VII, Rule 702 of the Commission's General Order No. 29, where actual charges exceed the amount shown in the carrier's estimate, the carrier upon request must relinquish possession of the full and complete shipment at destination upon payment of the estimated amount plus ten percent over the estimate or \$25 whichever is greater.

Freight Rates—Overcharges—Rebates—Public Utility Law, Section 313.

Section 313 of the Public Utility Law authorizes the Commission to order a rebate of any unreasonable rate received by a public utility, regardless of whether such rate is extortionate or oppressive.

Freight Rates—Overcharges—Rebates.

A Class D common carrier of freight was penalized and directed to refund the amount of overcharge paid by a shipper in excess of the trucker's estimated rate.