

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Consolidated Rail Corporation for the abolition of thirty-one crossings of the Enola Branch, Harrisburg Division, Lancaster County.	:	Docket Nos. A-00111016
Board of Supervisors of Bart Township	:	C-00913256
v.	:	
Consolidated Rail Corporation and the Pennsylvania Department of Transportation and Commissioners of the County of Lancaster, et al.	:	

RECORDED
26 JUL 13 AM 9:15
U.S. INFO. CONTROL DIV.

INTERIM ORDER NO. 5

The purpose of this order is confirm my rulings on the Motion To Compel Answers To Interrogatories And Requests For Production Of Documents Addressed To Bart Township, Sadsbury, Providence, Conestoga, and Martic Townships as filed by the Friends of the Atglen-Susquehanna Trail (F.A.S.T.).

The original motion was received on May 16, 1996. (A corrected motion was received on May 31, 1996.) On May 24, 1996, the Commission received the Answer of Bart, Conestoga, Martic, Providence and Sadsbury Townships To "Motion To Compel" Of FAST (Townships). On June 5, 1996, F.A.S.T. and the Townships presented oral argument to me on a telephone conference call.

JAF

Having reviewed the interrogatories and requests for production, objections, motion to compel, answer, and the oral arguments, I have concluded that the motion to compel must be

DOCKETED
JUN 19 1996

**DOCUMENT
FOLDER**

denied generally. A brief review of my reasoning is set forth below.

Interrogatory No. 2 stated:

State, identify and explain what anticipated use(s) do you contemplate for the subject rail line if you take ownership. Please answer specifically for each municipality.

The objection was based on the concept that the interrogatory sought information for real estate which was not within the Commission's subject matter jurisdiction.

As indicated previously on the record of this proceeding, this Commission's jurisdiction is limited to the safety and design of the crossing. Since the Commission does not have jurisdiction over the entire line, the objection must be sustained. Therefore, the motion to compel with respect to Interrogatory No. 2 was denied because it failed to request information which was relevant or likely to lead to relevant, admissible evidence. 52 Pa. Code §5.321(b).

Interrogatory No. 3 stated:

How will you protect the bridge maintenance funds specified for the crossings in your municipality if you take ownership of the line.

Bart Township answered as follows:

No legal authority for a Second Class Township to "protect bridge maintenance funds." Second Class Townships are governmental units capable of engaging in taxation and capable of extending their full faith and credit to any capital project.

The other townships answered as follows:

Consistent with their status as governmental units, the Responding Townships will handle and, as appropriate, invest these funds in accordance with the law.

F.A.S.T. argued that these answers were insufficient. The Townships argued that these answers reflected their authority pursuant to the Second Class Township Code, 52 P.S. §65902.1. I agree with the Townships. Accordingly, the motion to compel with respect to Interrogatory No. 3 was denied.

F.A.S.T. Request For Production Of Documents No. 4 requested:

Any demolition cost estimates or studies, formal or informal, by whomever prepared, within your possession or control, concerning any of the subject crossing(s).

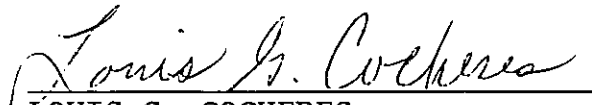
The Townships objected to production because the information sought was subject to confidential settlement negotiations. The Townships did supply all terms of existing written or oral cost estimates, except for bid amounts. With respect to the bid amounts, the Townships offered to supply those numbers promptly after execution of the settlement documents. F.A.S.T. accepted that offer. Consequently, there is no need to rule on the motion or the objection. They are moot.

ORDER

NOW THEREFORE, IT IS ORDERED:

That the Motion To Compel Answers To Interrogatories And Requests For Production Of Documents Addressed To Bart Township,

Sadsbury, Providence, Conestoga and Martic Townships of the Friends of the Atglen-Susquehanna Trail, Inc. is hereby denied for the reasons set forth above.



LOUIS G. COCHERES
Administrative Law Judge

DATED:

June 12, 1996

A-00111016 - Parties of Record

David A. Salapa, Esquire
PA PUC Legal Division
Bureau of Transportation & Safety
Barto Building, 3rd Floor
Box 3265
Harrisburg, PA 17105-3265

Carol K. Palmoski
Lancaster County Planning
Commission
50 N. Duke Street
Lancaster, PA 17608

Scott T. Wyland, Esquire
PO Box 1778
Harrisburg, PA 17105

Martha R. Smith, Esquire
PO Box 8464
Harrisburg, PA 17105-8464

Kathie Shirk-Gonick, Esquire
PO Box 1552
Lancaster, PA 17603

Melvin E. Newcomer, Esquire
Providence Township
339 North Duke Street
PO Box 539
Lancaster, PA 17608-0539

Joyce A. Nettke, Esquire
Friends of Atglen-Susquehanna
Trail POR
PO Box 27
Strasburg, PA 17579

John Phillipowicz
C-TEC Corporation
46 Public Square
PO Box 3000
Wilkes Barre, PA 18703-3000

David Dulick, Esquire
Pennsylvania Power & Light Co.
2 North Ninth Street
Allentown, PA 18101

Bell Atlantic-Pennsylvania, Inc.
Floor 32-N, 1717 Arch Street
Philadelphia, PA 19103

Gina M. D'Alfonso, Esquire
513 Transportation & Safety
Building
Harrisburg, PA 17120

Chester County Commissioners
Karen L. Martynick
2 North High Street
Suite 512
West Chester, PA 19380-3066

William R. Keen, Jr., Esquire
Solicitor, Chester County
1 Bondsville Road
Downingtown, PA 19335

John S. Halsted, Esquire
Solicitor, West Sadsbury Township
20 North Church Street
West Chester, PA 19380

West Sadsbury Township
Board of Supervisors
James Landis
RD 1
Parkesburg, PA 19365

H. Joseph Little Chairman
Eden Township Board of Supervisors
489 Stony Hill Road
Quarryville, PA 17566

David C. Eaton, Esquire
Nauman, Smith, Shissler and Hall
18th Floor, 200 N. Third Street
PO Box 840
Harrisburg, PA 17108-0840

Dennis Moore
National Railroad Passenger
Corporation (Amtrak)
60 Massachusetts Avenue, NE
Washington, DC 20002

cc: Acting Chief ALJ Christianson/Lewis/Scheduler
John Frazier - BPL
Transportation & Safety
Elizabeth Plantz
New Filing