



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

IN REPLY PLEASE
REFER TO OUR FILE

October 9, 1997

<A=00111016>
C-00913256

SCOTT WASSERKRUG ASST GEN CNSL
CONSOLIDATED RAIL CORPORATION
LEGAL DEPARTMENT 16-A
2001 MARKET STREET TWO COMMERCE SQ
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Application of Consolidated Rail Corporation for
the abolition of 31 Crossings for the abolition of
31 Crossings of the Enola Branch, LC: 201323 MP 3.5
to MP 27.0, Sub No. 1095X, Harrisburg Division,
Lancaster County

Board of Supervisors of Bart Township
vs.
Consolidated Rail Corporation,
Pennsylvania Department of Transportation,
and Lancaster County, et al.

To Whom It May Concern:

This is to advise you that an Opinion and Order has been adopted
by the Commission in Public Meeting on October 9, 1997 in the above
entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty,
Acting Secretary

DOCKETED
OCT 30 1997

**DOCUMENT
FOLDER**

encls
cert. mail
law

See attached list
for additional
parties of record.

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held October 9, 1997

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
John Hanger
David W. Rolka
Nora Mead Brownell

Application of Consolidated Rail
Corporation for the abolition of 31 Cross-
ings of the Enola Branch, LC: 201323,
MP 3.5 to MP 27.0, Sub No. 1095X,
Harrisburg Division, Lancaster County

CA-00111016

Board of Supervisors of Bart Township

C-00913256

v.

Consolidated Rail Corporation, Pennsylvania
Department of Transportation, and
Lancaster County, et al.

DOCKETED
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**DOCUMENT
FOLDER**

TABLE OF CONTENTS

	<u>PAGE</u>
I. The ALJ's Recommendation.....	3
II. History of the Proceedings.....	4
A. Docket No. C-00913256.....	4
B. Docket No. A-00111016.....	5
III. Findings of Fact.....	8
IV. Discussion.....	9
A. Jurisdiction.....	9
B. The Settlements.....	10
1. Crossing Structures To Be Demolished.....	11
2. Crossing Structures to Remain in Place.....	13
a. Crossings Subject to Prior Orders.....	13
b. Rail Line Crossings Above the Roadway..	16
c. Martic Forge Trestle.....	19
d. Maintenance Versus Demolition.....	20
e. Providence Township and Property In Quaryville Borough.....	21
f. Conestoga Township Subdivision.....	22
g. Fixed Utility Facilities.....	23
(1) Amtrak.....	23
(2) PP&L.....	24
(3) City of Coatesville Authority.....	24
3. Other Utilities.....	25

TABLE OF CONTENTS, Continued

	<u>PAGE</u>
C. Miscellaneous Legal Issues.....	27
1. Rails to Trails Act.....	27
2. Historic Preservation Act.....	29
3. Procedural Issues.....	29
a. Motion to Strike of Bart, Conestoga, Marctic, Providence and Sadsbury Townships.....	29
V. Exceptions and Reply Exceptions.....	31
VI. Order.....	43

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration and disposition are the Exceptions filed to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Louis G. Cocheres, which was issued on September 17, 1997, relative to the above-captioned proceedings. The following Parties filed Exceptions: Pennsylvania Department of Transportation (PennDOT) and Friends of the Susquehanna Trail (FAST) on September 24, 1997, Consolidated Rail Corporation (Conrail) on September 25, 1997, Quarryville Borough (Borough) and the Historic Preservation Trust of Lancaster County (HPT) on September 26, 1997.

Bart, Conestoga, Martic, Providence, and Sadsbury Townships, (Bart et al.), Conrail and PennDOT also filed Reply Exceptions. All Reply Exceptions were filed on October 3, 1997. In addition, also on October 3, 1997, Bart et al. filed a Motion to Strike Appendix A of FAST's Exceptions.

I. THE ALJ'S RECOMMENDATION

The ALJ considered two extensive partial Stipulations of Settlement (Settlements) which resolved all issues regarding the abolition and alteration of 25 Crossings (as well as the sale of the entire rail line) involved herein. The first Settlement (Conrail Ex. No. 6A) was between Conrail and seven Townships, i.e., West Sadsbury, Sadsbury, Eden, Bart, Providence, Martic and Conestoga (Townships). The second Settlement (Conrail Ex. No. 6B) was between Conrail and PennDOT. After reviewing the Settlements, the ALJ concluded that they were in the public interest, and he recommended their approval, with some limited changes.

While these Settlements were signed by the majority of the active Parties, the remaining active parties did not unanimously support the Settlements. Of the remaining non-signatories, only FAST and HPT actively opposed the Settlements. The Pennsylvania Department of Conservation of Natural Resources (DCNR) and Lancaster County (County) supported the Settlements. The Commission's Bureau of Transportation and Safety (BTS) supported the Settlements with modifications.

II. HISTORY OF PROCEEDINGS

A. Docket No. C-00913256

This Opinion and Order concerns two consolidated proceedings at Docket Nos. C-00913256 and A-00111016. The Complaint Docket at No. C-00913256 was initiated on February 25, 1991, at which time the Commission received the Complaint of the Board of Supervisors of Bart Township against Conrail, PennDOT and the County. The Complaint alleged an unsafe condition at the Crossing where Lamparter Road (T-774) crossed above Conrail tracks in Bart Township, Lancaster County. The Parties, which also included FAST and DCNR, entered into a Settlement agreement which required the highway bridge to be replaced with a roadway over fill and a culvert.

The Commission approved that Settlement by a Tentative Decision, entered June 22, 1993. The Tentative Decision was finalized by an Opinion and Order entered on October 25, 1993. Thereafter, Bart Township submitted a Petition For Amendment or Rescission of that Opinion and Order by letter dated May 5, 1995. The Petition alleged; (1) that a related project (Mount Pleasant Road at Docket No. C-00913258) on the same rail line had undermined the Township's financial ability to complete the Lamparter Road project, (2) that the original Settlement upon which the Commission's Order was based required the installation of a culvert under Lamparter Road to insure the continuity of a trail without intersecting the highway, (3) that the trail design as advocated by FAST already included removal of two grade separated Crossings, (4) that elimination of the culvert concept from the Lamparter Road project would result in a pedestrian accessible grade for the proposed trail, (5) that the Township had concerns about FAST's ability to implement a trail on the existing line, and, finally, (6) that the existing culvert installed at Mount Pleasant Road had become an attractive nuisance.

By letter dated April 9, 1995, the Township moved to consolidate its pending Petition, referenced in the immediately preceding paragraph, with the Application of Conrail at Docket No. A-00111016. The Motion was granted by Prehearing Order No. 2, dated September 14, 1995.

During the subsequent Settlement discussions, the Lamparter Road Crossing was designated Crossing No. 7A. That reference number was also used in the subsequent Settlement documents.

B. Docket No. A-00111016

This matter was initiated when Conrail filed an Application with the Commission on September 29, 1993, docketed at No. A-00111016, for approval of the abolition of 31 rail-highway Crossings along its Enola Branch¹ located in Lancaster County.

An engineer from the Commission's BTS conducted a Field Conference at the sites of the various Crossings on April 19-21, 1994. On May 2, 1994, FAST filed a Petition to Intervene, in which it alleged that it wished to convert Conrail's Enola Branch into a recreational trail, and that it requested leave to intervene in order to make the Commission aware of its action upon the proposed trail. FAST's Petition was granted per Order entered on August 31, 1994.

¹ The Parties sometimes refer to the line in question as the Enola Line, Enola Low Grade Line or the Atglen to Susquehanna Line.

On March 7, 1995, the Commission issued an Order abolishing six (6) of the Crossings in Conrail's Application. Ordering Paragraph No. 5 of that Order directed that twenty-four (24) of the Crossings be scheduled for hearing on their disposition. Specifically, Paragraph No. 5 of the Order directed that Crossing Nos. 1, 2, 3, 4, 5, 6, 7, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 21, 23, 24, 26, 27, 28 and 31 be scheduled for hearing. The Order also noted that one of the Crossings contained in Conrail's Application had been abolished in a proceeding at Docket No. C-00913255.

By letter dated August 21, 1995, Conrail requested that the matter be submitted to the Commission's alternative dispute resolution process. By letter dated August 23, 1995, FAST joined in Conrail's request. By Prehearing Order No. 2, dated September 14, 1995, ALJ Cocheres granted the request and referred the consolidated cases to mediation. The Order also required that the Parties file written direct testimony in the proceeding on or before October 13, 1995, and scheduled hearings for November of 1995.

The Commission's mediators were not successful within the allotted time period. However, the Parties continued to negotiate, and two days of hearings in November were canceled in order to allow the process to continue. After protracted negotiations, Conrail reached a Settlement with PennDOT regarding the disposition of the structures involving state highways, and an agreement with the various municipalities regarding the disposition of structures and the rail line. FAST objected to the stipulations.

ALJ Cocheres held hearings on the Settlements on June 11-12, 1997. At the conclusion of the hearings, the ALJ directed the Parties to file only one Brief per party. Reply Briefs were not permitted. Briefs were filed by Conrail, PennDOT, the County, FAST, the Townships, and BTS. By letter dated June 24, 1997, HPT joined the Brief of FAST and

requested the opportunity to file a Reply Brief. The request to file a Reply Brief was refused, consistent with the ALJ's instructions.

Two late filed exhibits were received after the hearings were completed, on June 12, 1997. One exhibit was Sexton Exhibit No. 2 which was sponsored by FAST and provided as a courtesy by DCNR. The other was Conrail Exhibit No. 9 which was a plan of subdivision in Conestoga Township. This survey drawing was the description required by the Township Settlement. (Conrail Ex. No. 6A, pp. 10-11, ¶9.1). Both exhibits were admitted into evidence.

On June 27, 1997, the Commission received Conrail's Motion for Leave To File A Reply Brief. Consistent with the ALJ's instructions at the close of the hearings, that Motion was denied. The Recommended Decision herein was issued on September 17, 1997. Exceptions and Reply Exceptions were filed as noted above.

III. FINDINGS OF FACT

The ALJ made three hundred and fifty-one (351) Findings of Fact in this consolidated proceeding, which are found on pages 6-97 of the Recommended Decision. These Findings of Fact are hereby incorporated herein by reference except to the extent that they are overruled or modified expressly or by necessary implication by this Opinion and Order.

IV. DISCUSSION

A. **Jurisdiction**

The issue of the Commission's subject matter jurisdiction to adjudicate this matter was raised in this consolidated proceeding. Specifically, FAST argued that the Commission's jurisdiction was pre-empted until Conrail completed its railroad abandonment proceedings under Section 106 of the National Historic Preservation Act, 16 U.S.C. §470(f), before the Interstate Commerce Commission, (ICC) now known as the Surface Transportation Bureau (STB).²

Conrail maintained that the stay of the ICC abandonment order was vacated by a subsequent April 19, 1993 ICC Order. Conrail argued that the stay relating to historic preservation was lifted by operation of law or that the Section 106 process of the National Historic Preservation Act, 16 U.S.C. §470(f), had been completed. Conrail took the position that it would complete the administrative task remaining in the 106 process. The Townships, Staff and Lancaster County agreed with Conrail.

The ALJ stated that there is no requirement that the STB formally approve abandonment of a line before the Commission is permitted to authorize abandonment of crossings. The ALJ concluded that Conrail completed its abandonment proceeding before the STB and the Commission could exercise jurisdiction over the grade crossings.

² The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803(the ICC Termination ACT or the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions and proceedings to the Surface Transportation Board.

We note that the issue of Conrail's compliance and completion of the 106 abandonment process is raised in the Exceptions filed to the Recommended Decision. Accordingly, we will address jurisdictional issues as they are presented in the Parties' respective Exceptions, infra.

B. The Settlements

Two Settlement Agreements were reached among the Parties in this proceeding. On February 21, 1997, Conrail and PennDOT reached a Settlement Agreement. On February 25, 1997, Conrail entered into a Settlement Agreement with the following Townships: West Sadsbury; Sadsbury; Eden; Bart; Providence; Martic; and Conestoga. Each Settlement delineates the responsibilities of each party with respect to the individual crossings.

Generally, Conrail agreed to convey the entire rail line in segments to the Township through which the line passed. In addition, Conrail will give each township a lump sum of money related to the condition of the crossings. The Parties agreed to retain the majority of the crossings in place. Other structures deemed serious safety hazards by the Parties are scheduled for removal.

The Conrail/Townships Settlement calls for the demolition by Conrail of the structures at Crossing Nos. 4, 10, 15, 16, 21 and 26. The Settlement also states that Bart Township will replace the crossing structure at Crossing No. 7A with a roadway placed on fill. Under the PennDOT Settlement, PennDOT will demolish the crossing structure at Crossing No. 17. If a realignment of the roadway is not achieved, Martic Township will demolish the structure at Crossing No. 27.

FAST and HPT opposed the Settlements and argued that the Settlements allowed too many of the crossings to be replaced. FAST and HPT took the position that the settlements ignored the need to preserve all of the historic structures, as well as the continuity of the right-of-way for trail purposes. Conversely, the Staff maintained that the potential for trail use was too speculative and that it would be in the public interest to remove the all rail over highway structures.

The ALJ recommended the approval of the Settlements.

1. Crossing Structures To Be Demolished

Crossing No. 2 is the bridge carrying over Orchard Buck Road over the former rail line in Sadsbury Township. The Conrail/Townships Settlement states that Sadsbury Township maintain the crossing structure and roadway at its sole cost and expense.

The ALJ recommended that the Sadsbury be required to remove the structure and place the highway on fill at its sole cost and expense within two years of the entry of the final Order in this proceeding.

Crossing No. 4 is a steel girder bridge over State Route 2021, White Oak Road. PennDOT agreed under its Settlement to remove the structure and maintain the roadway at its sole cost and expense.

Reasoning that the crossing was not adequate to safely accommodate traffic, the ALJ concluded that it would be in the public interest to abolish the crossing and remove the structure.

Crossing No. 10 is a masonry arch over S.R. 2015, Pumping Station Road. Under the Conrail/Townships Settlement, Conrail agreed to, within two years of the entry of a final Order in this proceeding, at its sole cost and expense, demolish the crossing structure over Pumping Station Road. PennDOT will remain responsible for the maintenance of the roadway at its sole cost and expense.

The ALJ concluded that no viable alternative plans were presented for the Commission's consideration and recommended the removal of the structure as outlined in the Settlement.

Crossing No. 17 is a state road called Fairview Road located in Providence Township. Under the Settlement, PennDOT agreed to, at its sole cost and expense, remove the crossing structure at Fairview Road and realign and reconstruct the road surface as it deem appropriate. PennDOT also agreed to maintain the structure until such time that it is removed.

The ALJ recommended two modifications to the Settlement with respect to Crossing No. 17. First, the ALJ recommended that PennDOT be required to review the warning signs on the approaches to the bridge and immediately supplement those signs with whatever signs and pavement markings necessary to comply with current PennDOT regulations to warn approaching vehicles of the danger. The ALJ concluded that this recommendation should be implemented within thirty (30) days of the final entry of this Order. The ALJ also recommended that the bridge be removed within two (2) years of the entry of the Commission's final Order in this proceeding.

Crossing No. 27 is a masonry arch over S.R. 0324, Marticville Road in Martic Township. Under the Settlement, the Township would, at its sole cost and expense, maintain

the crossing structure over Route 324. The Settlement also provided that PennDOT would initiate a project for the realignment of Route 324. The Settlements also provide for the removal of the structure to improve safety at the intersection if the realignment is not possible within two (2) years after entry of final Order in this proceeding. The Township would, within one year of notice by PennDOT that the realignment will not happen, remove the structure.

The ALJ recommended that the Township be required to remove the structure within three years of entry of final order of this proceeding, unless a contract for the realignment of S.R. 324 is completed by PennDOT within two years of the entry of the final order. The ALJ concluded that the Township's responsibility will not be obviated unless PennDOT acts within the two (2) year limit.

2. Crossing Structures To Remain In Place

The Settlements allow the remaining Crossing structures to stay in place, designate the Party or Parties responsible for maintenance, and set forth the prior Commission Orders which determined maintenance, when applicable.

a. Crossings Subject To Prior Orders

The following Crossings are subject to prior Orders issued by the Commission: 7, 8, 11, 12, 18, 19, 20, 22, 23, 24, 25, 29, and 30. Four of these Crossings (Nos. 11, 25, 29 and 30) have already been abolished by the Commission's Order at Docket No. A-00111016, entered on March 7, 1995. Therefore, no further action is needed. (Conrail Ex. No. 6A, pp. 5, 9 and 11 ¶¶4.5, 6.14, 9.3 and 9.4).

The proposed Settlements modify the Orders affecting the remaining crossings. More specifically, at Crossings Nos. 12, 18 and 19, PennDOT had shared maintenance responsibilities with Conrail by virtue of the prior Orders. The Settlements now call for PennDOT to assume maintenance responsibility for Conrail's portion. (Conrail Ex. No. 6B, pp. 6-7, ¶¶(a)-(c)). In addition, PennDOT has agreed to assume maintenance responsibility for the roadway structure at Crossing No. 7, Georgetown Road, S.R. 0896, Bart Township. (Conrail Ex. No. 6B, p. 7). All of these Crossings involve state roads.

There was no objection to the abolition of Crossing No. 7, with the structure to remain in place. On this issue, we agree with the proposed Settlements and we, therefore, direct the abolition of the Crossing.

Before Crossings Nos. 18 and 19 can be abolished, maintenance duties thereon must be clarified. Both bridges were recently rebuilt, and their respective roadways were turned back to Providence Township. In fact, the state highway portion of each roadway is limited to the bridges only. The approaches are currently Township roads. Exclusive of snow removal activities, PennDOT and Conrail shared maintenance responsibilities for the bridges. Providence Township was responsible for snow removal activities and the approaches. (PennDOT St. No. 1, pp. 41-50, PennDOT Ex. No. 6, and Commission Order, entered September 8, 1988, at Docket No. A-00104797, pp. 2-3).

Apparently, the Settlements provide that the only change will be that PennDOT will now assume all of the duties and responsibilities which had been formerly the charge of Conrail. Notwithstanding Settlement language which could be construed to the contrary, we hereby direct that Providence Township will continue to be responsible for all snow removal activities and maintenance of the approaches to the structures. (Conrail Ex. No. 6A, pp. 7-8,

¶¶6.7 and 6.8). With these clarifications, we direct that Crossings Nos. 18 and 19 be abolished, with the structures in place.

Before Crossing No. 12 can be abolished, certain arguments will be reviewed below.

With respect to Bart Township, we note that Crossing No. 8, Hollow Road was abolished by prior Commission Order, at Docket Number C-00913225, entered on June 25, 1992. Therefore, no further action is necessary. (Conrail Ex. No. 6A, p. 5, ¶3.7).

Providence Township has agreed to take total responsibility for the structures and roadways at Crossings Nos. 20 and 22. (Conrail Ex. No. 6A, p. 8, ¶¶6.9 and 6.11). There was no objection to these Sections of the Settlements. We accordingly direct that Crossing Nos. 20 and 22 be abolished with the structures in place.

Although PennDOT will be responsible for maintenance of the roadway and some currently needed maintenance of the structures, Providence Township has agreed to be responsible for the continued maintenance of the structures at Crossings Nos. 23 and 24, U.S. Route 272, northbound and southbound. (Conrail Ex. No. 6A, pp. 8-9, ¶¶6.12 and 6.13). However, before we direct the abolition of these Crossings, certain arguments will be reviewed in more detail below.

b. Rail Line Crossings Above The Roadway

We note that Crossings Nos. 1, 3, 5, 6, 9, 13, 14, 23, 24, 28 and 31 all involve structures which carry the former rail line over the roadway. The Settlements do not require the removal of any of these structures.

BTS contended in its Brief that; (1) the potential for converting this line to a trail was speculative, (2) the removal of these structures was not incompatible with the possibility of the construction of a trail in the future, (3) the Settlements were really economic decisions which failed to consider crossing safety and (4) the failure to remove the structures only deferred the decision on their eventual removal. (BTS B, pp. 28-30). FAST agreed with BTS relative to Crossing No. 9.

We agree with FAST and BTS in part. PennDOT provided evidence that the standard minimum vertical clearance for local roads was 14 feet 6 inches. (PennDOT Ex. No. 2). Our review of the record indicates that Crossings Nos. 3, 5, 6 and 9 fail to meet the standard proffered by PennDOT. Further, photos of these Crossing show absolutely no warning signs for any of the clearance problems. (BTS Ex. Nos. 6, 7, 10, 11, 12, 15 and 16). Accordingly, we shall direct the Townships to post appropriate clearance warning signs in advance of and on each structure within thirty (30) days of the date of entry of this Opinion and Order.

Crossing No. 31 presents a slightly different problem. The stone arch vertical clearance exceeds the standard but the horizontal clearance is barely sufficient to allow two (2) cars to pass. This condition is aggravated by the overall length of the structure and the near 90 degree turn on one approach. (BTS Ex. No. 50). In other words, oncoming vehicles cannot be seen until both vehicles are in the arch. On the other hand, the road is

lightly traveled, by fewer than 50 vehicles per day, and only used in the warmer months. After the road leaves the Crossing, it terminates in a cul-de-sac. There are no homes or businesses to be served.

Based on our review of the record as developed, we conclude that the low traffic volume does not excuse the poor sight distances. In consideration of the low traffic volume and the structure's stability, we believe that it is reasonable, appropriate, and in the public interest to direct that Conestoga Township be required to post appropriate warning signs on the approaches and at the entrances to the structure within thirty (30) days of the entry date of this Opinion and Order.

We are not persuaded that it is in the public interest to direct the demolition of all of the Crossings which carried the former rail line over the roadway. Contrary to BTS's assertion, we find that there is some potential for a trail on this line. While the safety of the public at the Crossing is paramount, the mere existence of a bridge, which has a finite life span at the Crossing, does not make the Crossing dangerous or require its removal. BTS' position also is overly restrictive in defining "public" as the motoring public. Also, in this case particularly, we are required to give some consideration to the potential for trail development, and, in trail development, bridge retention is one factor which is relevant to the safety of the trail user at roadway intersections.

With respect to FAST's concern about Crossing No. 9, we find that Bushong Road does not provide critical access to any given area. Our examination of the maps of record indicate that there are alternative roads which serve the same area served by Bushong Road. (Conrail Ex. No. 4A, PennDOT Ex. No. 1). There is no testimony to the effect that bridge demolition is required in order to allow the passage of school buses, emergency vehicles or large delivery vehicles. Vertical clearance is a problem, but compliance with the

direction to post appropriate warning signs should be sufficient to protect the public at the Crossing.

With respect to Crossings Nos. 1 and 14, we note that PennDOT has agreed to perform certain inspections and safety upgrade activities, if needed. (Conrail Ex. No. 6A, p. 4, ¶¶(a) and (b)). There is no time limit specified in the Settlement in which to finish these tasks, but, based on the description of the work, we direct that the work be completed within one year of the entry date of this Opinion and Order.

With respect to Crossings Nos. 23 and 24, we note that the Settlements do not specify a completion date for the work which PennDOT has agreed to do. At each Crossing, PennDOT has agreed to complete specific safety work and to provide cost estimates. Based on the description of the work and the size of the estimates, we direct that the work be completed within two (2) years of the entry date of this Opinion and Order.

There is one final note of clarification which must be added with regard to Crossing No. 23. Both of the Settlements specify that neither Conrail nor PennDOT shall have any further responsibility for sidewalk maintenance. (Conrail Ex. 6A, p. 8, ¶6.12. Conrail Ex. No. 6B, p. 5, ¶(e)). Only PennDOT's testimony explains what will occur. As part of PennDOT's proposed \$280,000.00 rehabilitation and safety related modifications of the Crossing, it will replace the curbs and sidewalks with paved shoulders. (PennDOT St. No. 1, p. 55). No Party has objected to PennDOT's proposal. Accordingly, we direct that, upon removal of the curbs and sidewalks, and their replacement with paved shoulders, there will be no need for further maintenance responsibility.

Subject to the conditions specified in the above discussion, we direct that Crossing Nos. 1, 3, 5, 6, 9, 13, 14, 23, 24 and 31 be abolished with the structures in place, and we further direct that maintenance responsibilities be allocated as set forth in the Settlements.

c. **Martic Forge Trestle**

The Martic Forge Trestle (Crossing No. 28) is a huge bridge which carried the former rail line over River Road in Conestoga Township, Pequea Creek and Trolley Road, a private road, in Martic Township. The bridge is a 518 foot long, 11-span, steel girder bridge which was last rehabilitated in 1946. The bridge also supports two Amtrak high voltage transmission line structures. (Conrail St. No. 1, Xing 28, ¶4).

The Settlement gave Martic and Conestoga Townships joint maintenance responsibility for the bridge. Conestoga retains responsibility for River Road. In addition, Conrail has agreed to pay the two Townships \$450,000.00, to remove the high voltage lines from the bridge, and to relocate the line Crossing Pequea Creek in a manner satisfactory to Amtrak. (Conrail Ex. No. 6A, p. 10, ¶8). The Townships argued in favor of this Settlement provision. However, FAST was opposed to this provision on the grounds that the Stipulation contains no repair, rehabilitation, maintenance or inspection plans for this structure. (FAST B., pp. 16-17).

Our review of the record leads us to conclude that FAST's argument ignores the contents of the Agreement between Martic and Conestoga Townships in which they agree to "be equally responsible for the maintenance, repair and removal of the Trestle and all costs and expenses related thereto." (Ex. TWP 8, p. 2, ¶1). The Agreement is fully executed by both municipalities and is strong evidence of their commitment to the responsibilities set forth in their agreement with Conrail. (Conrail Ex. 6A, p. 10, ¶8). Contrary to FAST's assertions,

and given the preliminary stages of trail development, the Townships are not required to have a “plan” for the preservation of this bridge. Accordingly, we direct that this portion of the Settlement be approved, and that the Crossing be abolished with the structure in place.

d. Maintenance Versus Demolition

As noted above, the Settlements set forth with some specificity which bridges will be demolished and what Parties are responsible for the maintenance of the remaining bridges. Included in Stipulation with the Townships is the following paragraph:

12.5 The term “maintain” as used in this Stipulation, also includes, at the election of the party having the responsibility to maintain any structure, removal of that structure.

Conrail 6A, p. 14.

FAST found the foregoing provision unacceptable and argued that it is undisputed that all of the bridges are at risk of demolition under Paragraph 12.5 of the Township Stipulation, provided that "maintain" can be read to mean removal of any bridge at the option of a Township after a final Order of the Commission

The Townships, on the other hand, argued that FAST has made much of Paragraph 12.5 of the Townships Stipulation, which includes “demolition” within the ambit of “maintenance.” However, assert the Townships, this explicit provision is necessary to allow the Townships the option to make decisions with due regard to fiscal constraints.

On review of the evidentiary record, we find that FAST’s position is undermined by the evidence produced from its own bridge engineer, Mr. Wilson. Mr. Wilson

projected 50 years as the life cycle for steel superstructures, including the Martic Forge Trestle, and 100 years for stone arch structures and steel super-and substructures, noting that some of the bridges may last longer. In view of the facts that all of the bridges were built just after the turn of the century, and that the Martic Forge Trestle was last rehabilitated in 1946, we feel that we may safely say that these bridges are nearing the end of their life cycles.

Accordingly, we conclude that the inclusion of demolition as an option within the ambit of maintenance to be well founded and in the public interest.

e. **Providence Township and Property In Quarryville Borough**

Part of the Enola Line passes through Quarryville Borough. Since Quarryville chose not to participate in the Settlements, the ALJ determined that Providence Township would be given title to the line within the Borough and would assume responsibility for the Borough Crossings, as well. (Conrail Ex. No. 6A, pp. 5-6, ¶5). The record indicates that Providence Township may accept property in Quarryville Borough provided the acceptance is in the best interest of Providence Township. Also, according to the Township Code, Providence Township may accept title to land conveyed by Conrail to Providence Township even where the land lies within the municipal boundaries of the Borough of Quarryville.

We note initially that there are only three Crossings (12, 13, and 14) in Quarryville. None of the Crossings will be removed. At Crossing No. 12, State Street, the structure and road will become PennDOT's responsibility. (Conrail Ex. 6A, p. 6, ¶5.3). The evidence of record indicates that the bridge was constructed pursuant to Commission Order, entered February 23, 1987, at Docket No. A-00104032, and is in adequate condition. (Conrail St. 1, Xing 12, ¶¶4, 7).

Crossing No. 13 is a steel girder bridge which carried the former rail line over Lime Street. The minimum clearance exceeds the PennDOT standards, and no additional work is needed to protect the public. The bridge is reusable for trail purposes. (Conrail St. 1, Xing 13, ¶¶4, 7; PennDOT Ex. No. 2). The bridge will become the responsibility of Providence Township (Conrail Ex. 6A, p. 6, ¶5.4).

Crossing No. 14 is a ribbed stone arched culvert which carried the former rail line over Church Street (a State highway). The minimum vertical clearance exceeds the PennDOT standards, and no additional work is recommended to protect the public. The bridge is reusable for trail purposes. (Conrail St. 1, Xing 14, ¶¶4, 7; PennDOT Ex. No. 2). The bridge will become the responsibility of Providence Township and the roadway will remain PennDOT's responsibility. (Conrail Ex. 6A, p. 6, ¶5.5.).

Under these circumstances, we find more than sufficient evidence of record to support the conclusion that the Settlements adequately protect the public safety at these Crossings. In addition, we agree with the legal authorities cited by Providence Township which authorize the Township to take ownership of the line in Quarryville, and, accordingly, we believe that it is in the public interest that that portion of the Settlements be adopted.

f. **Conestoga Township Subdivision**

We note that in all of the other Townships, Conrail could limit its description of the land being transferred to the Enola Line. In Conestoga Township, on the other hand, the Enola Line ended with a section which was parallel and adjacent to the Conrail Port Road, an active rail line. In order to fully divest itself of the Enola Line in favor of the Township, Conrail will be required to formally subdivide its property in accordance with Lancaster County's subdivision requirements. To this end, Conrail prepared a plan and boundary

description as a late filed Exhibit. The plan was prepared with the knowledge that technical changes could be needed to meet the Lancaster County requirements. No Party objected to this portion of the agreement. The plan will be accepted into the record in order to demonstrate compliance with the Settlement, and subject to the further actions of Lancaster County.

g. Fixed Utility Facilities

(1) Amtrak

The National Railroad Passenger Corporation (Amtrak) was a party to these proceedings. Its interest in these proceedings stemmed from its easement which carry its electric power transmission facilities along the Enola Line and provide power to Amtrak's Northeast Corridor operation between Washington, D.C. and Philadelphia, Pennsylvania, and also between Philadelphia and Harrisburg. In some cases, the poles for these transmission lines were at or near the Crossings. In addition, Amtrak's easement gives it access to the right-of-way to repair and maintain its facilities. Amtrak agreed to maintain its own facilities, but, consistent with its understanding of its exemption from an assessment of costs, Amtrak would not agree to perform and/or assume any costs of altering its own facilities. (Amtrak St. No. 1, pp. 2-5).

The Parties to the Settlements recognized Amtrak's position and uniformly agreed to pay for any needed relocation of Amtrak's facilities. Those costs were generally assumed by the Party responsible for doing the physical work at the Crossing and access was preserved for Amtrak. (Conrail Ex. No. 6A, passim).

(2) **PP&L**

Pennsylvania Power and Light Company (PP&L) presented evidence that its facilities were located at two Crossings (16 and 27) and its witness stated that PP&L agreed to relocate those facilities, if necessary, at PP&L's expense. (Testimony of Sarah A. McGill, pp. 2-4). However, the Settlement with the Townships specified that costs for protecting and stabilizing all Amtrak, and some fixed utility facilities, should be borne by the Party responsible for doing the physical work at the Crossing.

We note that the language of the Settlement does not quite match that found in PP&L's testimony. In this regard it is noteworthy that PP&L's testimony at the first hearing in this case occurred long before a Settlement was contemplated. Since the structures at both Crossing will be removed, PP&L will be required to move its facilities. Although PP&L was notified of the Settlements and the subsequent hearings, it chose neither to participate nor to change its position. Accordingly, we find that PP&L has waived its right to reimbursement and we will direct that it bear its own costs, as per its testimony.

(3) **City of Coatesville Authority**

When the City of Coatesville Authority (CCA) initially prepared its direct testimony, it indicated that it has a water line which parallels the rail line within the right-of-way at the first twelve Crossings. There was no known impact on the water line at that time. However, CCA explained that its agreement with Conrail required CCA to move its facilities, subject to reimbursement by Conrail. (CCA written Direct Testimony, pp. 2-5). After CCA received the Settlements and Notice of Hearings, it amended its testimony to indicate that its water line would need protection at Crossings 4, 7A, 8 and 11. More specifically, CCA's line needs protection from additional fill, vibration and weight of construction equipment, and also

needs the installation of permanent erosion control and slope stabilization devices. The testimony further notes that CCA would accept reimbursement from Conrail or any other entity in accordance with the Settlements.

We agree with the CCA position, but we find it to be incomplete. This Opinion and Order will direct the removal of the structure at Crossing No. 2. The Settlements provide for the removal of the structure at Crossing No. 10, as well. (Conrail Ex. No. 6A, p. 5, ¶4.4).

With respect to Crossing No. 2, CCA could not have anticipated this disposition. To remedy this potential problem, we will direct that Sadsbury Township coordinate its removal of the structure and replacement of the roadway with CCA in such a way as to protect the integrity of the CCA water line, or to relocate it, as necessary. All of the related CCA costs should be borne by Sadsbury.

With respect to Crossing No. 10, we note that the Township Settlement requires Conrail to protect and stabilize the facilities of any other public utility whose transmission or pipe lines are present within the Crossing. We find that CCA's water line fits within the ambit of this provision. Accordingly, CCA's costs should be reimbursed by Conrail as per the Settlement and its agreement with Conrail. (Conrail Ex. No. 6A, p. 5, ¶4.4, CCA Ex. A, pp. 6-7, ¶ 7).

3. Other Utilities

We note that the Commission's service list includes a multitude of other utilities. All were served with notices of conferences and hearings and chose not to appear. While the record does not reflect their positions, the Township Settlement specifies that at

Crossings Nos. 4, 7A, 10, 16, 21, 26 and 27 Conrail or a specified Township shall provide for the protection of transmission or pipe lines within the Crossing. (Conrail Ex. No. 6A, pp. 4-5, 7-9). Since this determination adds Crossing No. 2 to the list, we direct that Sadsbury Township be required to conform to the same language set forth in the Settlement for the above listed Crossings. (Conrail Ex. No. 6A).

Although the structure at Crossing No. 15 is to be removed, the language in the Settlement places a \$185,000.00 cap on Conrail's liability. Accordingly, in the interest of uniformity and clarity, we direct that Conrail be made responsible for the same protections as were set forth in the Settlement. We further direct that the cap include any utility costs which are incurred. Finally, we note that PennDOT has the responsibility for the removal of the structure at Crossing No. 17, again, with no mention of utility facilities. In order to be consistent, we shall direct that PennDOT be made responsible for the same protections as were previously set forth in the Settlements.

To the extent not already specified above, fixed utilities with facilities which are transmission or pipe lines should be fully reimbursed by Conrail, PennDOT or the specified township at Crossing Nos. 2, 4, 7A, 10, 15, 16, 17, 21, 26 and 27, only. With respect to any utilities which have facilities at any Crossings which are not transmission or pipe lines or are not located at the Crossings named above, and that incur costs pursuant to this Order, we find that they have waived their right to requesting reimbursement. They will accordingly be directed to bear their own costs.

C. Miscellaneous Legal Issues

1. Rails To Trails Act

FAST suggested that the approval of these Settlements did not comply with the Pennsylvania Rails To Trails Act (Act 188 of 1990, 32 Pa. C.S. §§5611 et seq.) and the Governor's recently promulgated Trails Policy. FAST argued that, by offering the two stipulations, Conrail is asking the Commission to find that it adequately addressed safety in and around the Crossings. FAST further asserted that the record does not contain adequate justification for most of the bridge removals contemplated. The Stipulations reflect merely a package deal, addressing Conrail's and the Townships' business and financial goals. (NT 527; NT 692).

The other Parties disagreed. Conrail asserted that adoption of the Settlements would provide for compliance with the Trails Act by virtue of the fact that the Settlements preserve the majority of the structures on the line. In addition, Conrail pointed out that the conveyance of the line to the Townships, pursuant to the Settlements, retained the continuity of the corridor. (Conrail B., pp. 15-17). PennDOT argued that the Settlements conformed with the Trails Act and are consistent with the Governor's Trail Policy. The Townships and Lancaster County generally agreed with Conrail and PennDOT.

We note that the Trails Act does not mandate the retention of all, any, or a maximum number of grade separated Crossings. It does require the Commission to:

consider the impact of such action upon the development, expansion and existing use of recreational trails pursuant to this act and identify and evaluate alternatives which will minimize

any adverse impacts of commission actions upon the development and use of recreational trails.

32 P.S. §5620(b).

We note that there are twenty-five Crossings (1, 2, 3, 4, 5, 6, 7, 7A, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 21, 23, 24, 26, 28 and 31) which have been the subject of these proceedings and the Settlements. Of these twenty-five Crossings, only ten (Crossing Nos. 2, 4, 7A, 10, 15, 16, 17, 21, 26 and 27) will have structures removed as a result of the Settlements or this Opinion and Order. At each of the ten Crossings where the structure will be removed there are valid safety reasons documented in the record which form the basis for the decision on the removal.

With regard to the remaining fifteen Crossings, we have noted that deficiencies exist at some Crossings. In those instances, we have directed the implementation of remedial safety measures to protect the public safety. These Crossings will be retained for the dual benefits of trail development and historic preservation. We note that the governmental agency charged with the initial responsibility to evaluate suitability of the line for trail development is DCNR. (32 P.S. §5620(a)). DCNR was an active party in this proceeding, and it now supports the Settlements.

This line has been extensively considered for trail development. At the end of this process, we find that the decision to remove only those bridges which present a serious safety hazard, and the decision to retain the remaining bridges, with some specific safety enhancements, meets the standards set forth in the Trails Act and the Governor's policy. In addition, these decision have the support of both agencies responsible for trail development in the Commonwealth.

2. Historic Preservation Act

FAST argued that the Parties had failed to comply with the Historic Preservation Act (Act 72 of 1988, 37 Pa. C.S. §§501 et seq.) which is contained in the History Code (Act 72 of 1988, 37 Pa. C.S. §§101 et seq.). The other Parties disagreed. BTS asserted that the Commission did not own or control property at the Crossings and was, therefore, outside the purview of the History Code. BTS further contended that the opinions of the Pennsylvania Historic and Museum Commission (PHMC) are advisory, and are not binding upon this Commission. (BTS B., pp. 13-17).

Lancaster County agreed with BTS, noting in addition that the PHMC witness, who was sponsored by FAST, conceded that the admission of her testimony on the record was sufficient to satisfy the statutes requirements. (County B., pp. 15-19).

The Townships agreed with PennDOT and further asserted that they were also not agencies which fell with the purview of the History Code. They noted that the witness had indicated that retention of the corridor, even without all of the bridges, would preserve the historic nature of the line. The Townships concluded that the approval of the Settlements would satisfy the objectives of the History Code. (Township B., pp. 28-30).

3. Procedural Issues

a. **Motion to Strike of Bart, Conestoga, Martic, Providence and Sadsbury Townships**

As noted above, on October 3, 1997, Bart, Conestoga, Martic, Providence and Sadsbury Township (Bart et al.) filed a Motion to Strike Appendix A of FAST's Exceptions.

In this Motion, Bart et al. noted that the record herein was closed on June 12, 1997, and that, prior to the close of the record, the ALJ had cautioned the Parties regarding the improper attachment of outside-of-the-record documents to their Briefs.

Despite this admonition, asserted Bart et al., FAST filed Exceptions to the Recommended Decision which included Exhibit A as an Attachment. Exhibit A is a two-page letter from the Borough of Quarryville. Bart et al. further noted that Exhibit A was not made a part of the record below, and that the Borough of Quarryville had previously waived its right to participate in this proceeding and to file Briefs. It is the position of Bart et al. that FAST had no standing to assert a position on behalf of the Borough.

On review of this Motion, we find the position of Bart et al. to be meritorious. FAST made no attempt to have the record herein reopened for the reception of Exhibit A, and its attempt to have this Exhibit admitted as an Attachment to FAST's Exceptions is improper and it is also contrary to the express directive of the ALJ. Accordingly, the Motion to Strike Appendix A of FAST's Exceptions filed by Bart et al. is hereby granted and Appendix A of FAST's Exceptions will, therefore, not be considered.

V. EXCEPTIONS AND REPLY EXCEPTIONS

We are reminded that we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. University of Pennsylvania v. Pennsylvania Public Utility Commission, 86 Pa. 410, 485 A.2d 1217, 1222 (1984). Any Exception or argument which is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

FAST filed several Exceptions to the Recommended Decision. In its Exception No. 1, FAST argues that the Settlements are contrary to the Governor's policy favoring preservation of bridges for trail use. FAST asserts that the Governor's Conference on Greenways and Trails was convened in April 1, 1997, to develop the Governor's policy. FAST further contends that while the governor's policy is under development, it is not in the public interest to order the demolition of the bridges in this proceeding absent a bona fide emergency. FAST avers that the Settlements should be rejected.

We disagree with FAST's contention. Our review of the record leads us to conclude that the possible trail use of the various crossings was duly considered by the Parties. This is evident by the fact that the Parties stipulated that a significant number of the structures remain in place. The record is also replete with evidence that some crossings pose safety hazards and should be removed. In our view, a proper balance was applied to the potential trail and historic use of a particular crossing and the safety hazards the crossing posed to the traveling public.

We also note that the ALJ considered the Governor's policy on trail development in reaching his Recommended Decision. See R.D., pp. 150-156. Accordingly, we will deny FAST's Exception.

In Exception No. 3, FAST argues that the ALJ erred in disregarding its Motion to Reopen filed with the STB. In that Motion, FAST sought to offer new information to the STB about the Enola Line and its eligibility for listing on the National Register of Historic places. FAST maintains that the ALJ is preempted from ordering adverse effects while the Motion is pending.

In our view, the ALJ properly considered and concluded that the Commission's jurisdiction is not dependent upon the ICC's authorization of abandonment of the rail line. Moreover, we find that the FAST's Motion to Reopen is not a part of the record in this proceeding. 52 Pa. Code §5.402. The ALJ was not compelled to consider the Motion³ as part of this proceeding. In our view, the STB's recent ruling on FAST's Motion does not preempt the Commission's jurisdiction over this proceeding. FAST's Exception No. 3 is denied.

We note that FAST's Exceptions Nos. 5 and 6 are interrelated and will be considered jointly. In these Exceptions, FAST contends that the ALJ, in his Recommended Decision, did not properly identify and evaluate alternatives to minimize any adverse impacts as mandated by the Trails Act. FAST also maintains that the ALJ erred in placing the burden of production for alternatives solely on the trail group. FAST posits that in instances where evidence was offered that steel girders could be used to raise a bridge at a particular crossing, the ALJ could have imposed the costs on a party rather than order the removal of the crossing.

³ By its Order decided on September 23, 1997, the STB reopened the proceeding at Docket No. AB-167 (Sub. 1095X). The STB denied FAST's petition to broaden the previously imposed historic preservation condition from applying only to the bridges on the line to apply to the entire property as a linear resource. Specifically, the STB modified its February 22, 1990 Decision to include the following language: Conrail shall retain interest in and take no steps to alter the historic integrity of the 32 bridges eligible for the National Register and the potential archaeological sites near 36 of the bridges.

FAST further claims that the Commission is required by the Trails Act to identify as well as evaluate alternatives. FAST contends that while it presented engineering studies and cost estimates, the Commission staff did not offer any alternatives for mitigation. FAST argues that the Parties failed to in their respective Settlements to recognize that where a bridge is removed, the crossing should, at the time of removal, be configured to accommodate the proposed trail. FAST urges the Commission to require that when a bridge is removed, the Parties leave a crossing which could accommodate a future trail.

Based on our review of the voluminous record developed in this proceeding, we note that it is replete with discussion and consideration by the ALJ of the rails-to-trails issue. With respect to the recommended crossings removals, we find that there the ALJ properly concluded that those crossings be removed for valid safety reasons and that the ALJ's recommendations are supported by substantial, competent and probative evidence. See R.D., pp. 104-126; 150-156.

We also disagree with FAST's contention that the burden of production was place solely on it. In our view, FAST was given the opportunity to present its alternative plan as well as oppose the plan outlined by the Parties in the Settlements. The ALJ gave due consideration to the proposals presented by the Parties. After reviewing the evidence as developed in the proceeding, the ALJ concluded that FAST's alternative plan was not viable or in the public interest. The ALJ's recommendation is not flawed and is supported by substantial evidence in the record. Accordingly, we will deny Exceptions No. 5 and 6 of FAST.

In Exception No. 7, FAST contends that the ALJ misinterpreted the testimony of engineer Mark Wilson. FAST further contends that the ALJ improperly determined that Mr. Wilson testified that the bridges were approaching the end of their life cycles. FAST

proffers that Mr. Wilson's testimony revealed that the bridges had a future life span of fifty years.

The ALJ's analysis of Mr. Wilson's testimony was based, in part, on an exhibit introduced into the record by FAST as part of the witness's written testimony. There is no indication that the ALJ misconstrued the witness' testimony or reached a conclusion that is not supported by the record as developed in this proceeding. Therefore, we conclude that the ALJ's interpretation was not arbitrary or capricious but was in accord with the evidence. We will deny this Exception.

FAST argues in Exception No. 8, that the term maintenance as defined and used in the Settlements is not in the public interest. FAST asserts that the Parties failed to apply any criteria to the term maintenance and defined it as to include the removal at the election of the owner. FAST urges the Commission not to approve this provision of the Settlements.

We note at pages 138-141 of the Recommended Decision, the ALJ considered the maintenance versus demolition issue. In addressing this issue, the ALJ stated that:

FAST's position is undermined by the evidence produced from its own bridge engineer, Mr. Wilson. Mr. Wilson recognized that "[a] well run regular maintenance program may forestall... replacements indefinitely." Wilson Ex. B, Future Rehabilitation & Replacements. He continued, "Generally, the following life cycle can be assumed for bridge structures involved in this trail." *Id.* He then projected 50 years for steel structures, including the Martie Forge Trestle and 100 years for stone arch structures and steel super- and substructures. He suggested that some of the bridges were built just after the turn of the century and that the Martie Forge Trestle was last rehabilitated in 1946, I find it safe to say that these bridge are nearing the end of their life cycles

according to Mr. Wilson's criteria. Accordingly, I have conclude that the inclusion of demolition within the ambit of maintenance to be well founded and in the public interest. FAST's concern is simply misplaced.

(R.D., pp. 140-141).

In our view, Paragraph 2.5 of the Townships Settlement is reasonable and supported by substantial evidence of the record. The issue was duly considered by the ALJ in light of the evidence presented by the Parties. We find that the definition and use of the term "maintenance" as set forth in the Settlement is reasonable, appropriate and in the public interest. Therefore, we will deny this Exception.

In Exception No. 9, FAST contends that the ALJ's approval of the Settlements is not supported by substantial evidence in the record. FAST posits that there is no evidence establishing the relationship between the sum of money to be paid by Conrail to the individual Townships and the actual maintenance and demolition costs. FAST avers that there is insufficient evidence upon which the Commission can find that the Settlements are reasonable and in the public interest.

We disagree. Through the Settlement, the Townships have agreed to assume maintenance/demolition responsibilities for the crossing structures allowed to remain in place. There is no evidence in the record to indicate that the Townships are or will be unable to meet their respective obligations. We hasten to add that if the Settlements are approved by order of this Commission, we will retain jurisdiction to enforce the provisions of the approved Settlement in the event a party does not fulfill its obligation under the Settlements.

We see no reason at this juncture to question the financial ability of any Township to fulfill its obligations under the Settlement. Moreover, there is no evidence in the record to indicate that the amounts to be paid by Conrail to the Townships relating to maintenance responsibilities are unreasonable or contrary to the public interest. FAST's Exception No. 9 is without merit and is denied.

In Exception No. 10, FAST asserts that Quarryville objected to the Settlements. FAST suggests that although Quarryville's letter of objection dated September 15, 1997, is procedurally untimely, the Commission should not disregard it.

The ALJ noted in his Recommended Decision that Quarryville Borough chose not to participate in the Settlements and was given notice and an opportunity to object to the conveyance by Conrail to Providence Township. R.D., pp. 141-142. Quarryville did not file timely objections to the conveyance and is not precluded from raising the issue after the close of the record. The Quarryville letter is not part of the record of this proceeding, having been presented after the close of the record of this proceeding. FAST has not presented any compelling reasons to convince us to reopen the record for purpose of admitting new evidence. Accordingly, we will deny Exception No. 10.

In Exception No. 11, FAST contends that the ALJ improperly approved the Settlement provision regarding the Martic Bridge. FAST asserts that although under the Settlements, Martic and Conestoga Townships have joint maintenance responsibility of the bridge, the Townships did not submit any plans or estimates for the structure. FAST further argues that the ALJ erred in rejecting its objection to this provision of the Settlements. FAST submits that the approval of this provision is not in the public interest.

In the Recommended Decision., the ALJ discussed the terms of the Inter-municipal Agreement between Martic and Conestoga Townships concerning the future maintenance of the Martic Forge Trestle. The ALJ determined that the townships were not required to have a plan for the preservation of the bridge in light of the preliminary stages of trail development reported in the record. The ALJ concluded that the Agreement between Martic and Conestoga Townships represented their commitment to the responsibilities set forth in the Townships Settlement. The ALJ recommended approval of the subject provision.

We concur with the ALJ's finding. In our view, the Agreement between Martic and Conestoga Townships is reasonable and in the public interest. The provision allows for the future preservation of the Martic Forge Bridge as well as a \$450,000.000 grant from Conrail to help defray the two townships' maintenance costs for the structure. FAST's Exception is without merit and is denied.

In Exception No. 12, FAST objects to those provisions referring to Eden Township. FAST avers that because Eden's provision of the Settlements was not introduced through a witness subject to cross-examination, those provisions should not be approved.

FAST's argument is flawed. Eden Township participated in the Settlement and adopted the Stipulation through official government action. The fact that Eden chose not to present a witness at the hearing does not warrant rejection of the Townships Settlement as it relates to Eden. Inasmuch as FAST did not raise this objection during the evidentiary stages of this proceedings, it has waived its right to make this objection. We hasten to add that FAST was not precluded from calling a witness from Eden Township during the hearing to address its concerns, but failed to do so. We will deny FAST's Exception No. 12.

FAST challenges, in Exception No. 13, the ALJ's determination to grant Bart's request to vacate the Commission's October 25, 1994 Order. FAST posits that there is no evidence to support the ALJ's conclusion that the Order should be rescinded because the Parties believed at the time of the Settlements and related hearing that FAST intended to own the line.

FAST's contention is without merit. The ALJ gave proper consideration to Bart Township's request to the Commission's October 15, 1993 Order to accommodate the removal of the Lamparter Road structure and its replacement with fill, pursuant to the Townships' Settlement with Conrail. R.D., pp. 107-114. The ALJ properly found that Bart presented substantial evidence to support its request for modification. Specifically, the ALJ determined that the changed circumstances such as ownership of the line by Bart and other townships and the deteriorated condition of the bridge warranted relieving Bart of its earlier obligation under the October 23, 1993 Order to install a culvert under the roadway. In our view, the ALJ applied the proper legal standard in granting Bart's request. FAST's Exception No. 13 is denied.

In Exception No. 14, FAST contends that the interest in the trail concept by the Townships is not supported by the record evidence. FAST opines that the genuineness of the Parties' interest is a relevant issue in this proceeding.

In our view, ALJ Cocheres properly considered the issue of potential future use of the Enola line as a trail in his Recommended Decision. R.D., pp. 150-156. Specifically, ALJ reasoned that:

...Conrail asserted that adoption of the settlements demonstrated compliance with the Trails Act by virtue of the fact that the settlements preserved the majority of the structures on

the line. In addition, Conrail pointed out that the conveyance of the line to the Townships, pursuant to the settlements, retained the continuity of the corridor. Conrail B., pp. 15-17.

PennDOT added that the Trails Act did not require the Commission to abandon its legislative mandate to protect public safety and to leave the structures in place. PennDOT B., pp. 4-6. Further, PennDOT noted that approval of the settlements did not preclude the future use of the corridor for recreational purposes. Indeed, the Townships, Lancaster County and PennDOT indicated on the record interest in rearranging the funding to continue trail development. PennDOT B., pp. 16-17. Finally, PennDOT asserted that the settlements were consistent with the Governor's Trails Policy. PennDOT B., pp. 18-19.

We are reminded that the Commission is not required to direct the retention of all of the subject crossings. Moreover, we are obliged under 32 P.S. §5620, to consider the impact of our actions upon the development, expansion and existing use of recreational trails and identify and evaluate alternatives which serve to minimize adverse impacts of our actions upon the development and use of recreational trails. We conclude that the ALJ gave due consideration to the proposals outlined in the Settlements by the Parties, thus fulfilling his obligation consistent with the Governor's policy and the Trails Act. We will deny FAST'S Exception No. 14.

HPT filed two Exceptions to the Recommended Decision, which can be summarized as follows:

1. The ALJ erred when he failed to acknowledge the historic significance of the entire property at issue.
2. The Recommended Decision is in error in that it fails to comply with the Pennsylvania History Code (the History Code).

Based on a review of the evidentiary record, we note that ALJ Cocheres duly considered the historical importance of the Enola line and the structures located thereon in his Recommended Decision. (R.D., pp. 98-103 and 156-159). In addition, we note that the ALJ recommended that the majority of the relevant crossings be retained, and that demolition be ordered only for those crossings which pose a threat to the public safety. (R.D., p. 154). Accordingly, we find HPT's first Exception to be without merit, and it is denied.

In its second Exception, HPT contends that the ALJ erred in that he failed to comply with the PA History Code. We disagree. It is evident from the record as developed that the note that the PHMC was afforded the opportunity to participate and otherwise have input in the Commission's decision-making process relative to the Abandonment Application. (Tr. p. 779). Furthermore, it is well settled that the opinions of the PHMC are not binding on the Commission, nor on other Commonwealth agencies.

Based on our review of the record as developed, we conclude that we have complied with the applicable provisions of the History Code. Therefore, the Exceptions of HPT are denied.

The Borough of Quarryville filed one Exception to the Recommended Decision, which can be summarized as follows:

The ALJ erred by concluding that the transfer of Conrail's property located in Quarryville Borough to Providence Township was in the public interest.

On review of the evidentiary record developed herein, we find that the ALJ provided a thorough and well-reasoned discussion of this issue, found on pages 141-144 of his Recommended Decision. We note that part of the Enola line passes through Quarryville. The ALJ recommended, after his discussion of the applicable legal authority, that Providence Township be given the title to the line within Quarryville Borough, and that Providence Township should assume responsibility for the Borough Crossings, as well. (Conrail Ex. No. 6A, pp. 5-6, ¶5).

We have discussed this issue, supra, and we note in this regard that the Borough had every opportunity to participate in the negotiations leading up to the Settlements, as well as in the proceedings leading up to the issuance of the instant Recommended Decision, and chose not to do so. Having waived its right to participate, the Borough cannot now be heard to complain about the Recommended Decision. Accordingly, the Exception of Quarryville is denied.

PennDOT filed two Exceptions, specifically excepting to Ordering Paragraphs Nos. 118 and 123 of the Recommended Decision. We hasten to point out that PennDOT did not object to doing any of the work itemized in those Paragraphs, but it did assert that the one (1) year time limit imposed for the completion of the work therein ordered was overly restrictive. PennDOT requested that, in both instances, it be granted two (2) years within which to complete the relevant work.

On review, we find PennDOT's request to be reasonable, and, accordingly, PennDOT's Exceptions are granted. The relevant Ordering Paragraphs of this Opinion and Order will be modified to reflect this adjustment of the time designated in Ordering Paragraphs Nos. 118 and 123 of the Recommended Decision.

Conrail filed two Exceptions which specifically excepted to certain aspects of Ordering Paragraphs Nos. 9 and 143 of the Recommended Decision. In the case of Ordering Paragraph No. 9, which concerns the duties of a Party responsible for the removal of a structure, Conrail requests that language be added to that Paragraph which would provide for an exception for instances where there is an agreement of the Parties to the contrary, as contemplated in the Stipulation of Settlement between Conrail and PennDOT. (Appendix B to the R.D., p. 4, Paragraph (c)).

Conrail's second Exception was to Ordering Paragraph No. 143 of the Recommended Decision, which concerns the work to be performed in connection with the Martic Forge Bridge. Conrail objects that the Ordering Paragraph fails to require that Amtrak, which owns the transmission lines and towers thereat, cooperate with Conrail to permit, and cooperate in, the removal of the towers and in the resuspension of the transmission line. See City of Philadelphia v. Pa. PUC, 676 A.2d 1298 (Pa. Commonwealth Ct. 1996).

On review of Conrail's Exceptions, we find them to be meritorious in that the additional language proposed by Conrail is reasonable and in accord with prior agreements. Accordingly, Conrail's Exceptions are granted, and the appropriate modifications will be made to the Ordering Paragraphs herein.

VI. ORDER

THEREFORE, IT IS ORDERED:

1. That the Exceptions filed by the Pennsylvania Department of Transportation on September 24, 1997, to the Recommended Decision of Administrative Law Judge Louis G. Cocheres, which was issued on September 17, 1997, are granted.

2. That the Exceptions filed by the Friends of the Atglen-Susquehanna Trail, Inc., on September 24, 1997, to the Recommended Decision are denied.

3. That the Exceptions filed by Consolidated Rail Corporation on September 25, 1997, to the Recommended Decision are granted.

4. That the Exceptions filed by Quarryville Borough on September 26, 1997 to the Recommended Decision are denied.

5. That the Exceptions filed by the Historic Preservation Trust of Lancaster County, Inc., on September 26, 1997, to the Recommended Decision are denied.

6. That the Recommended Decision of Administrative Law Judge Louis G. Cocheres is adopted, as modified, by this Opinion and Order.

7. That the Motion of Bart, Conestoga, Martic, Providence and Sadsbury Township to Strike Appendix A of the Exceptions filed by the Friends of the Atglen-Susquehanna Trail, Inc., which was filed on October 3, 1997, is hereby granted.

8. That the Application of Consolidated Rail Corporation for the abolition of 31 Crossings where its Enola Branch, Harrisburg Division, crossed above and below certain highways in West Sadsbury Township, Chester County; Sadsbury Township, Bart Township, Eden Township, Quarryville Borough, Providence Township, Martic Township, and Conestoga Township, Lancaster County is hereby approved consistent with this Opinion and Order.

9. That the Stipulation of Settlement among Consolidated Rail Corporation and West Sadsbury Township, Sadsbury Township, Bart Township, Eden Township, Providence Township, Martic Township and Conestoga Township, dated February 25, 1997, is hereby approved, consistent with this Opinion and Order.

10. That the Stipulation of Settlement between Consolidated Rail Corporation and Commonwealth of Pennsylvania, Department of Transportation, dated February 21, 1997, is hereby approved, consistent with this Opinion and Order.

11. That Consolidated Rail Corporation, in accordance with the terms and conditions of the Stipulation of Settlement among it and the named townships, shall pay the following sums of money to:

Sadsbury Township	\$50,000.00
Sadsbury Township and West Sadsbury Township, jointly	\$60,000.00
Bart Township	\$150,000.00
Eden Township	\$90,000.00
Providence Township (property in Quarryville Borough)	\$150,000.00

Providence Township	\$165,000.00
Martic Township	\$100,000.00
Martic Township and Conestoga Township, jointly	\$450,000.00
Conestoga Township	\$100,000.00

12. That this Commission establishes its jurisdictional limits at each Crossing as the area within the confines of the railroad right-of-way and the highway right-of-way.

13. That Consolidated Rail Corporation, Pennsylvania Department of Transportation, the involved municipalities, involved non-carrier utilities cooperate with each other during the abolition of the Crossings.

14. That all Parties assigned work responsibility, at least ten (10) days prior to the start of work, inform all Parties of record of the date when the work will be started at the Crossing in accordance with this Opinion and Order.

15. That all work necessary to complete the construction of the improvement be done in a manner satisfactory to this Commission, and that each party report to this Commission the date of actual completion of its respective work in compliance with this Opinion and Order.

16. That, except in those instances where there is an Agreement of the Parties to the contrary, as contemplated in the Stipulation of Settlement between Conrail and PennDOT, the Party responsible for removal of a structure, at its sole cost and expense, furnish all material and do all work necessary to establish, mark and maintain a suitable

detour in accordance with the Manual on Uniform Traffic Control Devices, if necessary for the vehicular traffic using the Crossing during the time the structure is being removed.

17. That the transmission or pipe line non-carrier utilities may be reimbursed in accordance with the terms and conditions of the Consolidated Rail Corporation and Township Stipulation of Settlement (Conrail Ex. No. 6A).

18. That while work is being performed in accordance with this Opinion and Order, the Parties shall provide reasonable access to the former rail line from the public roads involved to National Railroad Passenger Corporation for motor vehicles to enable National Railroad Passenger Corporation to conduct necessary maintenance upon its electric pole line and, in Conestoga Township, to provide access for Consolidated Rail Corporation to its remaining property to the west.

19. That upon completion of the work herein ordered, the non-carrier utilities involved in this proceeding, each, at its sole cost and expense, furnish all material and do all work necessary to maintain its respective facilities at the abolished Crossing in a safe and satisfactory condition.

20. That this Opinion and Order insofar as it assigns costs to the parties involved, is without prejudice to their rights to recover said costs from others in accordance with any lawful agreements between the Parties.

Crossing No. 1

21. That the Crossing where Noble Road crosses under the right-of-way of Consolidated Rail Corporation partly in Sadsbury Township, Lancaster County and partly in

West Sadsbury Township, Chester County is hereby abolished, with the structure remaining in place, and upon the completion of the work herein ordered.

22. That Consolidated Rail Corporation, at its sole cost and expense, within 120 days after the date of entry of this Opinion and Order, furnish all material and do all work necessary to install fencing along the parapets of the bridge.

23. That Pennsylvania Department of Transportation, at its sole cost and expense, within one (1) year from the entry date of this Opinion and Order, furnish all material and do all work necessary to perform safety related modifications at the Crossing location, including, but not limited to, installation of guide rail and any required signs that Pennsylvania Department of Transportation shall deem necessary for the safety of the traveling public.

24. That the non-carrier utilities involved, if any, each, at its sole cost and expense, except as noted in Ordering Paragraph No. 17, furnish all materials and do all work necessary to alter or relocate its facilities as necessary to accommodate abolition of the Crossing.

25. That Pennsylvania Department of Transportation, at its sole cost and expense, upon completion of the work herein ordered, furnish all materials and do all work necessary to maintain the highway under the structure and the highway approaches to the abolished Crossing, in a safe and satisfactory condition.

26. That Sadsbury Township and West Sadsbury Township, jointly and severally, at their sole cost and expense, furnish all materials and do all work necessary to

maintain the substructure and superstructure of the bridge, at the abolished Crossing in a safe and satisfactory condition.

Crossing No. 2

27. That the Crossing where Orchard Road crosses over the right-of-way of Consolidated Rail Corporation in Sadsbury Township, is hereby abolished upon completion of the work herein ordered.

28. That Sadsbury Township, at its sole cost and expense, within two (2) years from the date of entry of this Opinion and Order, furnish all materials and do all work necessary to remove the bridge substructure and superstructure to a point two (2) feet below the grade of the new highway.

29. That Sadsbury Township, within two (2) years from the entry date of this Opinion and Order, at its sole cost and expense, furnish all material and do all work necessary to construct a new highway on embankment for the class and volume of traffic using the highway. Said construction is to include a pipe(s) at the bottom of the embankment to provide for surface water drainage through the embankment along the ditches or swales. All embankments shall be graded, seeded and mulched to prevent soil erosion.

30. That Sadsbury Township, at its sole cost and expense, in the removal of the structure and construction of the new highway on embankment, shall make any necessary provisions for protection and stability of the National Railroad Passenger Corporation's electrical system poles.

31. That Sadsbury Township, at its sole cost and expense, in the construction of the new highway on embankment, shall, if required, make any necessary provisions for protection and/or relocation of the City of Coatesville Authority water line near the Crossing.

32. That the non-carrier utilities involved, except City of Coatesville Authority, if any, each at its sole cost and expense, except as noted in Ordering Paragraph No. 17, furnish all materials and do all work necessary to alter or relocate its facilities as necessary to accommodate abolition of the Crossing.

33. That Sadsbury Township, at its sole cost and expense, upon completion of the work herein ordered, furnish all materials and do all work necessary to maintain the highway on embankment at the abolished Crossing, in a safe and satisfactory condition.

Crossing No. 3

34. That the Crossing where Brick Mill Road crosses under the right-of-way of Consolidated Rail Corporation in Sadsbury Township, be and is hereby abolished, with the structure remaining in place and upon completion of the work herein ordered.

35. That Sadsbury Township, at its sole cost and expense, within thirty (30) days of the date of entry of this Opinion and Order, perform all work and provide all materials to install warning signs of the low clearance at the bridge on each highway approach to the Crossing, and a second set of signs at each highway intersection on the approaches to the Crossing.

36. That Sadsbury Township, at its sole cost and expense, furnish all materials and do all work necessary to maintain the substructure and superstructure of the bridge at the abolished Crossing in a safe and satisfactory condition.

37. That the Sadsbury Township, at its sole cost and expense, furnish all material and do all work necessary to maintain the roadway under the structure, and the highway approaches thereto, in a safe and satisfactory condition.

Crossing No. 4

38. That the Crossing where White Oak Road crosses under the right-of-way of Consolidated Rail Corporation in Sadsbury Township, is hereby abolished, upon completion of the work herein ordered.

39. That Consolidated Rail Corporation, having agreed to do so, at its sole cost and expense, within two (2) years from the date of entry of this Opinion and Order, furnish all materials and do all work necessary to remove the bridge substructure and superstructure to a point two (2) feet below the surrounding ground line, and to grade the embankments behind the structure to a two-to-one slope, and to grade, seed and mulch the areas thus disturbed to prevent soil erosion, all in a safe and satisfactory condition.

40. That Consolidated Rail Corporation, having agreed to do so, at its sole cost and expense, in the removal of the structure, shall make any necessary provisions for protection and stability of the National Railroad Passenger Corporation's electrical system poles.

41. That Consolidated Rail Corporation, at its sole cost and expense, in the removal of the bridge, shall, if required, make any necessary provisions for protection and/or relocation of the City of Coatesville Authority water line near the Crossing.

42. That the non-carrier utilities involved, except City of Coatesville Authority, if any, each at its sole cost and expense, except as noted in Ordering Paragraph No. 17, shall furnish all materials and do all work necessary to alter or relocate its facilities as necessary to accommodate abolition of the Crossing.

43. That Pennsylvania Department of Transportation, at its sole cost and expense, upon completion of the work herein ordered, furnish all materials and do all work necessary to maintain the highway approaches to the abolished Crossing, in a safe and satisfactory condition.

Crossing No. 5

44. That the Crossing where Quaker Church Road crosses under the right-of-way of Consolidated Rail Corporation in Bart Township, is hereby abolished, with the structure remaining in place and upon completion of the work herein ordered.

45. That Bart Township, at its sole cost and expense, within thirty (30) days of the date of entry of this Opinion and Order, perform all work and provide all materials to install warning signs of the low clearance, at the bridge on each highway approach to the Crossing, and a second set of signs at each highway intersection on the approaches to the Crossing.

46. That Bart Township, at its sole cost and expense, furnish all materials and do all work necessary to maintain the highway approaches to the abolished Crossing, in a safe and satisfactory condition.

47. That Bart Township, at its sole cost and expense, furnish all materials and do all work necessary to maintain the substructure and superstructure of the bridge at the abolished Crossing in a safe and satisfactory condition.

Crossing No. 6

48. That the Crossing where Vintage Road crosses under the right-of-way of Consolidated Rail Corporation in Bart Township is hereby abolished, with the structure remaining in place and upon completion of the work herein ordered.

49. That Bart Township, at its sole cost and expense, within thirty (30) days of the date of entry of this Opinion and Order, perform all work and provide all materials to install warning signs of the low clearance at the bridge on each highway approach to the Crossing, and a second set of signs at each highway intersection on the approaches to the Crossing.

50. That Bart Township, at its sole cost and expense, furnish all materials and do all work necessary to maintain the highway approaches to the abolished Crossing, in a safe and satisfactory condition.

51. That Bart Township, at its sole cost and expense, furnish all materials and do all work necessary to maintain the substructure and superstructure of the bridge, at the abolished Crossing in a safe and satisfactory condition.

Crossing No. 7

52. That the Crossing where Georgetown Road crosses over the right-of-way of Consolidated Rail Corporation in Bart Township is hereby abolished, with the structure remaining in place.

53. That the Pennsylvania Department of Transportation, in accordance with the Commission's Order at Docket No. A-105671, entered on May 16, 1990, at its sole cost and expense, furnish all materials and do all work necessary to maintain the substructure and superstructure of the bridge at the abolished Crossing in a safe and satisfactory condition.

54. That the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and do all work necessary to maintain the highway approaches to the abolished Crossing in a safe and satisfactory condition.

Crossing No. 7A

55. That the Petition For Amendment or Rescission of Bart Township is hereby granted.

56. That the Commission's Order at Docket No. C-00913256, entered October 25, 1993, concerning this Crossing is hereby modified consistent with this Opinion and Order.

57. That the Crossing where Lamparter Road crosses over the right-of-way of Consolidated Rail Corporation in Bart Township is hereby abolished, upon completion of the work herein ordered.

58. That Bart Township, having agreed to do so, at its sole cost and expense, within one (1) year from the date of entry of this Opinion and Order, furnish all materials and do all work necessary to remove the bridge substructure and superstructure to a point two (2) feet below the grade of the new highway.

59. That Bart Township, within one (1) year from the date of entry of this Opinion and Order, at its sole cost and expense, furnish all material and do all work necessary to construct a new highway on embankment for the class and volume of traffic using the highway. Said construction is to include a pipe(s) at the bottom of the embankment to provide for surface water drainage through the embankment along the ditches or swales. All embankments shall be graded, seeded and mulched to prevent soil erosion.

60. That Bart Township, having agreed to do so, at its sole cost and expense, in the removal of the structure and construction of the new highway, shall make any necessary provisions for the protection and stability of the National Railroad Passenger Corporation's electrical system poles.

61. That Bart Township, at its sole cost and expense, in the construction of the new highway on embankment, shall, if required, make any necessary provisions for protection and/or relocation of the City of Coatesville Authority water line near the Crossing.

62. That the non-carrier utilities involved, except City of Coatesville Authority, if any, each, at its sole cost and expense, except as noted in Ordering Paragraph

No. 17, furnish all materials and do all work necessary to alter or relocate its facilities as necessary to accommodate abolition of the Crossing.

63. That Bart Township, at its sole cost and expense, upon completion of the work herein ordered, furnish all materials and do all work necessary to maintain the highway on embankment at the abolished Crossing in a safe and satisfactory condition.

Crossing No. 8

64. That the maintenance responsibilities assigned to the Parties by the Commission's Order at Docket No. C-00913225, entered on June 25, 1992, remain in full force and effect.

Crossing No. 9

65. That the Crossing where Bushong Road crosses under the right-of-way of Consolidated Rail Corporation in Eden Township is hereby abolished, with the structure remaining in place and upon completion of the work herein ordered.

66. That Eden Township, at its sole cost and expense, within thirty (30) days of the date of entry of this Opinion and Order, perform all work and provide all materials to install warning signs of the low clearance at the bridge on each highway approach to the Crossing, and a second set of signs at each highway intersection on the approaches to the Crossing.

67. That Eden Township, at its sole cost and expense, furnish all materials and do all work necessary to maintain the substructure and superstructure of the bridge at the abolished Crossing in a safe and satisfactory condition.

68. That Eden Township, at its sole cost and expense, furnish all material and do all work necessary to maintain the highway approaches to the abolished Crossing in a safe and satisfactory condition.

Crossing No. 10

69. That the Crossing where Pumping Station Road crosses under the right-of-way of Consolidated Rail Corporation in Eden Township is hereby abolished, upon completion of the work herein ordered.

70. That Consolidated Rail Corporation, having agreed to do so, at its sole cost and expense, within two (2) years from the date of entry of this Opinion and Order, furnish all materials and do all work necessary to remove the bridge substructure and superstructure to a point two (2) feet below the surrounding ground line, and to grade the embankments behind the structure to a two-to-one slope, and to grade, seed and mulch the areas thus disturbed to prevent soil erosion, all in a safe and satisfactory condition.

71. That Consolidated Rail Corporation, having agreed to do so, at its sole cost and expense, in the removal of the structure, shall make any necessary provisions for protection and stability of the National Railroad Passenger Corporation's electrical system poles.

72. That Consolidated Rail Corporation, at its sole cost and expense, in the removal of the bridge, shall, if required, make any necessary provisions for protection and/or relocation of the City of Coatesville Authority water line near the Crossing.

73. That the non-carrier utilities involved except City of Coatesville Authority, if any, each at its sole cost and expense, except as noted in Ordering Paragraph No. 17, furnish all materials and do all work necessary to alter or relocate its facilities as necessary to accommodate abolition of the Crossing.

74. That the Pennsylvania Department of Transportation, at its sole cost and expense, upon completion of the work herein ordered, furnish all materials and do all work necessary to maintain the highway approaches to the abolished Crossing in a safe and satisfactory condition.

Crossing No. 11

75. That the maintenance responsibilities assigned to the Parties by the Commission's Order at Docket No. A-00107709, entered on December 28, 1987, remain in full force and effect.

Crossing No. 12

76. That the Crossing where State Street crosses over the right-of-way of Consolidated Rail Corporation in Quarryville Borough is hereby abolished, with the structure remaining in place.

77. That the maintenance responsibilities assigned to the Parties by the Commission's Order at Docket No. A-00104032, entered on June 21, 1990, is hereby modified in accordance with the following two Paragraphs:

- A. That the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all materials and do all work necessary to maintain the substructure and superstructure of the bridge, at the abolished Crossing in a safe and satisfactory condition.
- B. That the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and do all work necessary to maintain the highway approaches to the abolished Crossing, in a safe and satisfactory condition.

Crossing No. 13

78. That the Crossing where Lime Street crosses under the right-of-way of Consolidated Rail Corporation in Quarryville Borough is hereby abolished, with the structure remaining in place.

79. That Providence Township, at its sole cost and expense, furnish all materials and do all work necessary to maintain the substructure and superstructure of the bridge at the abolished Crossing in a safe and satisfactory condition.

80. That Quarryville Borough, at its sole cost and expense, furnish all material and do all work necessary to maintain the highway approaches to the abolished Crossing in a safe and satisfactory condition.

Crossing No. 14

81. That the Crossing where Church Street crosses under the right-of-way of Consolidated Rail Corporation in Quarryville Borough is hereby abolished, with the structure remaining in place and upon completion of the work herein ordered.

82. That Pennsylvania Department of Transportation, at its sole cost and expense, within one (1) year from the date of entry of this Opinion and Order, furnish all material and do all work necessary to perform safety related modifications at the Crossing location, including, but not limited to, installation of guide rails and repair of loose stone.

83. That Providence Township, at its sole cost and expense, furnish all materials and do all work necessary to maintain the substructure and superstructure of the bridge at the abolished Crossing in a safe and satisfactory condition.

84. That Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and do all work necessary to maintain the highway approaches to the abolished Crossing in a safe and satisfactory condition.

Crossing No. 15

85. That the Crossing where Oak Bottom Road crosses under the right-of-way of Consolidated Rail Corporation in Providence Township is hereby abolished, upon completion of the work herein ordered.

86. That Consolidated Rail Corporation, having agreed to do so, at its initial cost and expense, within one (1) year from the date of entry of this Opinion and Order,

furnish all materials and do all work necessary to remove the bridge substructure and superstructure to a point two (2) feet below the surrounding ground line, and to grade the embankments behind the structure to a two-to-one slope, and to grade, seed and mulch the areas thus disturbed to prevent soil erosion, all in a safe and satisfactory condition.

87. That Consolidated Rail Corporation, having agreed to do so, at its initial cost and expense, in the removal of the structure, shall make any necessary provisions for protection and stability of the National Railroad Passenger Corporation's electrical system poles.

88. That the non-carrier utilities involved, if any, each at its sole cost and expense, except as noted in Order Paragraph No. 17, furnish all materials and do all work necessary to alter or relocate its facilities as necessary, in order to accommodate abolition of the Crossing.

89. That Providence Township, at its sole cost and expense, upon completion of the work herein ordered, furnish all materials and do all work necessary to maintain the highway approaches to the abolished Crossing in a safe and satisfactory condition.

90. That Consolidated Rail Corporation and Providence Township bear the cost for work performed at this Crossing, in accordance with the terms and condition of their Settlement Agreement.

Crossing No. 16

91. That the Crossing where U.S. Route 222 crosses under the right-of-way of Consolidated Rail Corporation in Providence Township is hereby abolished, upon completion of the work herein ordered.

92. That Consolidated Rail Corporation, having agreed to do so, at its sole cost and expense, within one (1) year from the date of entry of this Opinion and Order, furnish all materials and do all work necessary to remove the bridge substructure and superstructure to a point two (2) feet below the surrounding ground line, and to grade the embankments behind the structure to a two-to-one slope, and to grade, seed and mulch the areas thus disturbed to prevent soil erosion, all in a safe and satisfactory condition.

93. That Consolidated Rail Corporation, having agreed to do so, at its sole cost and expense, shall, in the removal of the structure, make any necessary provisions for protection and stability of the National Railroad Passenger Corporation's electrical system poles.

94. That Consolidated Rail Corporation, at its sole cost and expense, in the removal of the bridge, shall, if required, make any necessary provisions for protection of Pennsylvania Power & Light Company's underground facilities in the Crossing area.

95. That the non-carrier utilities involved, including Pennsylvania Power & Light Company, each at its sole cost and expense, except as noted in Ordering Paragraph No. 17, furnish all materials and do all work necessary to alter or relocate its facilities as necessary to accommodate abolition of the Crossing.

96. That Pennsylvania Department of Transportation, at its sole cost and expense, upon completion of the work herein ordered, furnish all materials and do all work necessary to maintain the highway approaches to the abolished Crossing in a safe and satisfactory condition.

Crossing No. 17

97. That the Crossing where Fairview Road (S.R. 3016) crosses over the right-of-way of Consolidated Rail Corporation in Providence Township is hereby abolished, upon completion of the work herein ordered.

98. That Pennsylvania Department of Transportation, at its sole cost and expense, within thirty (30) days of the date of entry of this Opinion and Order, perform all work and provide all materials to install warning signs of the sharp turn in the highway on each highway approach to the Crossing.

99. That Pennsylvania Department of Transportation, at its sole cost and expense, within two (2) years from the date entry of this Opinion and Order, furnish all materials and do all work necessary to remove the bridge substructure and superstructure to a point two (2) feet below the surrounding ground line, and to grade, seed and mulch the areas thus disturbed to prevent soil erosion, all in a safe and satisfactory condition.

100. That Pennsylvania Department of Transportation, at its sole cost and expense, within two (2) years from the date of entry of this Opinion and Order, furnish all materials and do all work necessary to construct a new highway, on partial embankment if necessary, on a new alignment so as to remove the sharp turns in the existing highway. The new highway is to be constructed for the class and volume of traffic using the highway. Said

construction is to include a pipe(s) to provide for surface water drainage under the highway along the existing ditches or swales. All areas thus disturbed shall be graded, seeded and mulched to prevent soil erosion.

101. That the non-carrier utilities involved, each at its sole cost and expense, furnish all materials and do all work necessary to alter or relocate its facilities as necessary to accommodate abolition of the Crossing.

102. That until the bridge is removed, the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all materials and do all work necessary to maintain the substructure and superstructure of the bridge, in a safe and satisfactory condition.

103. That until the bridge is removed, the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and do all work necessary to maintain the highway approaches to the bridge, in a safe and satisfactory condition.

104. That Pennsylvania Department of Transportation, at its sole cost and expense, upon completion of the work herein ordered, furnish all materials and do all work necessary to maintain the highway approaches to the abolished Crossing, in a safe and satisfactory condition.

Crossing No. 18

105. That the Crossing where Cinder Road crosses over the right-of-way of Consolidated Rail Corporation in Providence Township is hereby abolished, with the structure remaining in place.

106. That the maintenance responsibilities assigned to Consolidated Rail Corporation by the Commission's Order at Docket No. A-00104797, entered on September 8, 1988, Ordering Paragraph No. 11, is hereby modified in accordance with the following Paragraph:

- A. That the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all materials and do all work necessary to maintain the substructure and superstructure of the bridge, at the abolished Crossing in a safe and satisfactory condition.

107. That the maintenance responsibilities assigned to the Parties by the Commission's Order at Docket No. A-00104797, entered on September 8, 1988, which are not inconsistent herewith, remain in full force and effect.

Crossing No. 19

108. That the Crossing where Truce Road (formerly known as Rawlinsville Road) crosses over the right-of-way of Consolidated Rail Corporation in Providence Township is hereby abolished, with the structure remaining in place.

109. That the maintenance responsibilities assigned to Consolidated Rail Corporation by the Commission's Order at Docket No. A-00104797, entered on September 8, 1988, Order Paragraph No. 11, is hereby modified in accordance with the following Paragraph:

- A. That the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all materials and do all work necessary to maintain

the substructure and superstructure of the bridge,
at the abolished Crossing in a safe and satisfactory
condition.

110. That the maintenance responsibilities assigned to the Parties by the Commission's Order at Docket No. A-00104797, entered on September 8, 1988, which are not inconsistent herewith, remain in full force and effect.

Crossing No. 20

111. That the Crossing where Hollow Road (East) (formerly known as Sawmill Road) crosses over the right-of-way of Consolidated Rail Corporation in Providence Township is hereby abolished, with the structure remaining in place.

112. That the maintenance responsibilities assigned to the Parties by the Commission's Order at Docket No. I-00870050, entered on September 30, 1991, remain in full force and effect.

Crossing No. 21

113. That the Crossing where Hollow Road (West) crosses under the right-of-way of Consolidated Rail Corporation in Providence Township, is hereby abolished, upon completion of the work herein ordered.

114. That Consolidated Rail Corporation, having agreed to do so, at its initial cost and expense, within one (1) year from the date of entry of this Opinion and Order, furnish all materials and do all work necessary to remove the bridge substructure and superstructure to a point two (2) feet below the surrounding ground line, and to grade the

embankments behind the structure to a two-to-one slope, and to grade, seed and mulch the areas thus disturbed to prevent soil erosion, all in a safe and satisfactory condition.

115. That Consolidated Rail Corporation, having agreed to do so, at its initial cost and expense, shall, in the removal of the structure, make any necessary provisions for protection and stability of the National Railroad Passenger Corporation's electrical system poles.

116. That Consolidated Rail Corporation, within one year of the date of entry of this Opinion and Order, at its initial cost and expense, furnish all material and do all work necessary to reconstruct the highway on a new alignment.

117. That the non-carrier utilities involved, if any, each at its sole cost and expense, except as noted in Ordering Paragraph No. 17, above, furnish all materials and do all work necessary to alter or relocate its facilities as necessary, in order to accommodate abolition of the Crossing.

118. That Providence Township, at its sole cost and expense, bear the costs of the right-of-way damages incurred to reconstruct the highway on a new alignment.

119. That Providence Township, at its sole cost and expense, upon completion of the work herein ordered, furnish all materials and do all work necessary to maintain the highway approaches to the abolished Crossing in a safe and satisfactory condition.

120. That Consolidated Rail Corporation and Providence Township bear costs for work performed at this Crossing in accordance with the terms and conditions of their Stipulation Of Settlement.

Crossing No. 22

121. That the Crossing where Sawmill Road crosses over the right-of-way of Consolidated Rail Corporation in Providence Township, is hereby abolished, with the structure remaining in place.

122. That the maintenance responsibilities assigned to the Parties by the Commission's Order at Docket No. I-00870048, entered on April 29, 1992, remain in full force and effect.

Crossing No. 23

123. That the Crossing where U.S. Route 272 (northbound) crosses under the right-of-way of Consolidated Rail Corporation in Providence Township, is hereby abolished, with the structure remaining in place and upon completion of the work herein ordered.

124. That Pennsylvania Department of Transportation, within two (2) years of the date of entry of this Opinion and Order, at its sole cost and expense, furnish all material and do all work necessary to; (1) undertake any currently needed maintenance and repair of the structure, (2) remove the existing sidewalks and curbs and to construct new paved shoulders in this area, and (3) undertake such additional work as it may deem desirable for the safety of highway travelers, including installation of guiderails and signage.

125. That the non-carrier utilities involved, if any, shall each, at its sole cost and expense, furnish all materials and do all work necessary to alter or relocate its facilities as necessary to accommodate abolition of the Crossing.

126. That the maintenance responsibility assigned to the Parties by the Commission's Order at Docket No. A-0080721, entered July 26, 1954, to the extent not inconsistent with this Opinion and Order, remain in full force and effect.

127. That Providence Township, at its sole cost and expense, shall furnish all materials and do all work necessary to maintain the substructure and superstructure of the bridge, at the abolished Crossing in a safe and satisfactory condition.

Crossing No. 24

128. That the Crossing where U.S. Route 272 (southbound) crosses under the right-of-way of Consolidated Rail Corporation in Providence Township is hereby abolished, with the structure remaining in place and upon completion of the work herein ordered.

129. That Pennsylvania Department of Transportation, within two (2) years of the date of entry of this Opinion and Order, at its sole cost and expense, furnish all material and do all work necessary, as it may deem desirable, for the safety of highway travelers, including installation of guiderails and signage.

130. That the non-carrier utilities involved, if any, shall, each at its sole cost and expense, furnish all materials and do all work necessary to alter or relocate its facilities as necessary to accommodate abolition of the Crossing.

131. That the maintenance responsibility assigned to the Parties by the Commission's Order at Docket No. A-0080721, entered July 26, 1954, to the extent not inconsistent with this Opinion and Order, remain in full force and effect.

132. That Providence Township, at its sole cost and expense, furnish all materials and do all work necessary to maintain the substructure and superstructure of the bridge, at the abolished Crossing in a safe and satisfactory condition.

Crossing No. 25

133. That the Crossing where Rawlinsville Road crosses over the right-of-way of Consolidated Rail Corporation in Providence Township was abolished in accordance with Commission Order at Docket No. A-00105510, entered January 3, 1985, with the structure remaining in place.

134. That the maintenance responsibilities assigned to the Parties by the Commission's Orders at Docket Nos. A-00105510 and A-00111016, entered March 7, 1995, shall remain in full force and effect.

Crossing No. 26

135. That the Crossing where Sigman Road crosses under the right-of-way of Consolidated Rail Corporation in Providence Township, is hereby abolished, upon completion of the work herein ordered.

136. That Consolidated Rail Corporation, having agreed to do so, at its initial cost and expense, within two (2) years from the date of entry of this Opinion and Order,

furnish all materials and do all work necessary to remove the bridge substructure and superstructure to a point two (2) feet below the surrounding ground line, and to grade the embankments behind the structure to a two-to-one slope, and to grade, seed and mulch the areas thus disturbed to prevent soil erosion, all in a safe and satisfactory condition.

137. That Consolidated Rail Corporation, having agreed to do so, at its initial cost and expense, shall, in the removal of the structure, make any necessary provisions for protection and stability of the National Railroad Passenger Corporation's electrical system poles.

138. That the non-carrier utilities involved, if any, shall each at its sole cost and expense, except as noted in Ordering Paragraph No. 17, above, furnish all materials and do all work necessary to alter or relocate its facilities as necessary to accommodate abolition of the Crossing.

139. That Providence Township, at its sole cost and expense, upon completion of the work herein ordered, furnish all materials and do all work necessary to maintain the highway approaches to the abolished Crossing, in a safe and satisfactory condition.

140. That Consolidated Rail Corporation and Providence Township bear costs for work performed at this Crossing in accordance with the terms and condition of their Stipulation Of Settlement.

Crossing No. 27

141. That the Crossing where Marticville Road crosses under the right-of-way of Consolidated Rail Corporation in Martic Township, is hereby abolished, upon completion of the work herein ordered.

142. That, if Pennsylvania Department of Transportation has not within two (2) years from the date of entry of this Opinion and Order let a contract to reconstruct and realign S.R. 0324, Marticville Road, then Martic Township, having agreed to do so, at its sole cost and expense, within three (3) years from the date of entry of this Opinion and Order, furnish all materials and do all work necessary to remove the bridge substructure and superstructure to a point two (2) feet below the surrounding ground line, and to grade the embankments behind the structure to a two-to-one slope, and to grade, seed and mulch the areas thus disturbed to prevent soil erosion, all in a safe and satisfactory condition.

143. That Martic Township, at its sole cost and expense, if the highway realignment project is constructed, may, at its option, allow the structure to remain in place and barricade both entrances, or may, at its option, remove the structure.

144. That Martic Township, at its sole cost and expense, shall, in the removal of the structure, make any necessary provisions for the protection and stability of the National Railroad Passenger Corporation's electrical system poles.

145. That Martic Township, at its sole cost and expense, shall, in the removal of the bridge, if required, make any necessary provisions for protection of Pennsylvania Power & Light Company's facilities in the Crossing area.

146. That the non-carrier utilities involved, including Pennsylvania Power & Light Company, shall each, at its sole cost and expense, and except as noted in Ordering Paragraph No. 17, furnish all materials and do all work necessary to alter or relocate its facilities as necessary to accommodate abolition of the Crossing.

147. That Pennsylvania Department of Transportation, at its sole cost and expense, upon completion of the work herein ordered, furnish all materials and do all work necessary to maintain the highway approaches to the abolished Crossing, in a safe and satisfactory condition.

Crossing No. 28

148. That the Crossing where River Road crosses under the right-of-way of Consolidated Rail Corporation in Conestoga Township, is hereby abolished, with the structure remaining in place and upon completion of the work herein ordered.

149. That Consolidated Rail Corporation, within eighteen (18) months of the date of entry of this Opinion and Order, at its sole cost and expense, furnish all material and do all work necessary to remove the National Railroad Passenger Corporation's transmission line towers from the bridge, and to resuspend the line, in a manner satisfactory to National Railroad Passenger Corporation. That National Railroad Passenger Corporation cooperate with Consolidated Rail Corporation to permit this work, and further that National Railroad Passenger Corporation cooperate with Consolidated Rail Corporation in the removal of said towers and resuspension of the transmission line.

150. That Consolidated Rail Corporation, within 120 days following removal of National Railroad Passenger Corporation's facilities, at its sole cost and expense, furnish all

material and do all work necessary to assure that the present barriers to access to the bridge deck are in good operating order. That Consolidated Rail Corporation shall further provide keys to any barrier gate locks to Martic Township and to Conestoga Township.

151. That Conestoga Township, at its sole cost and expense, furnish all material and do all work necessary to maintain River Road under the structure, and to maintain the highway approaches thereto, in a safe and satisfactory condition.

152. That Martic Township and Conestoga Township, jointly and severally, at their sole cost and expense, furnish all materials and do all work necessary to maintain the substructure and superstructure of the bridge at the abolished Crossing in a safe and satisfactory condition.

Crossing No. 29

153. That the Crossing where Colemanville Road crossed over the right-of-way of Consolidated Rail Corporation in Conestoga Township, was abolished in accordance with Commission Order at Docket No. C-00860598, entered May 23, 1990, with the structure being removed.

154. That the maintenance responsibilities assigned to the Parties by the Commission's Orders at Dockets Nos. C-00860598 and A-00111016, entered March 7, 1995, remain in full force and effect.

Crossing No. 30

155. That the Crossing where River Hill Road crosses over the right-of-way of Consolidated Rail Corporation in Conestoga Township, is hereby abolished, with the structure remaining in place.

156. That the maintenance responsibilities assigned to the Parties by the Commission's Order at Docket No. C-00860598, entered May 23, 1990, remain in full force and effect.

Crossing No. 31

157. That the Crossing where Greenhill Road, also known as Shenk's Road, crosses under the right-of-way of Consolidated Rail Corporation in Conestoga Township is hereby abolished, with the structure remaining in place and upon completion of the work herein ordered.

158. That Conestoga Township, at its sole cost and expense, within thirty days of the date of entry of this Opinion and Order, perform all work and provide all materials to install warning signs of the "close clearance," at the bridge on each highway approach to the Crossing.

159. That Conestoga Township, at its sole cost and expense, furnish all materials and do all work necessary to maintain the substructure and superstructure of the bridge at the abolished Crossing in a safe and satisfactory condition.

160. That Conestoga Township, at its sole cost and expense, furnish all material and do all work necessary to maintain the roadway under the structure, and the highway approaches to the abolished Crossing, in a safe and satisfactory condition.

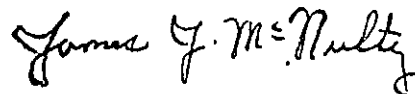
Miscellaneous

161. That consistent with the Decision issued by the Service Transportation Board on September 23, 1997, at Docket No. AB-167 (Sub. No. 1095X) Consolidated Rail Corporation is hereby directed, consistent with its willingness and agreement to complete the Section 106 Process, to satisfy and otherwise comply with the requirements of the Service Transportation Board's Decision.

162. That the Motion Of Consolidated Rail Corporation For Leave To File A Reply Brief is denied.

163. That late filed Exhibits, Sexton Exhibit No. 2 and Conrail Exhibit No. 9, are hereby admitted into the record.

BY THE COMMISSION,



James J. McNulty
Acting Secretary

(SEAL)

ORDER ADOPTED: October 9, 1997

ORDER ENTERED: **OCT 09 1997**