

1 that statement to me, but you may disagree, is that a trail
2 user would be expected to go down the bank, across the road,
3 and up the other side. Is that what it means to you?

4 A. Yes.

5 Q. And then that's your recommendation, at least for
6 crossing 14.

7 MS. NETTKE: Could I have a minute, please?

8 JUDGE COCHERES: Certainly.

9 (Pause.)

10 BY MS. NETTKE:

11 Q. Crossings nos. 23 and 24 are the Route 72
12 tunnels.

13 MS. D'ALFONSO: 272.

14 MS. NETTKE: 272; that's what I meant to say. Sorry,
15 it's getting late.

16 BY MS. NETTKE:

17 Q. I'd like to better understand your
18 recommendations here. You've evaluated -- well, let's look
19 at no. 23 first, so I don't confuse myself.

20 You've evaluated no. 3 as a stone arch in fair
21 condition and --

22 MR. RANCK: You said 23 or 3?

23 MS. NETTKE: 23.

24 MR. RANCK: You said 3.

25 MS. NETTKE: 23.

1 MR. RANCK: Okay.

2 BY MS. NETTKE:

3 Q. Crossing 23. While we're looking at this
4 photograph, Mr. Oliver, do you have it there?

5 A. Yes.

6 Q. Photograph no. 35?

7 A. Yes.

8 Q. It says Route 222. Should that be Route 272? Or
9 is that my misconception?

10 A. No, you're accurate. It should be say 272.

11 Q. Okay. It's fair to say that's a heavily traveled
12 highway under those tunnels; would you agree?

13 A. Yes.

14 Q. And there you've offered to remove both of those;
15 that's correct? Both that tunnel and the tunnel going the
16 other way, both the 272 tunnels?

17 A. Yes.

18 Q. And you've recommended sloping those back two-to-
19 one. And then in your answer to that same question about
20 could those crossings accommodate trail use, you've said
21 "yes" again. Sloping of the remaining earth embankment
22 would provide continuous use to a potential trail.

23 Again, if your answer's the same as it was for no.
24 14, that would imply going down and crossing the road. But
25 you've alternatively proposed a pedestrian structure.

1 I'd like to try to pursue your thinking here a little
2 bit when you said that that very large bridge is in fair
3 condition. There's been testimony that it's historic,
4 there's a big road under it. Why would you be proposing to
5 take it down with the possibility that then a new bridge
6 would need to be put in place, such as a pedestrian bridge,
7 or alternatively risk the safety of trail users to go across
8 that road?

9 A. You're not involved with the same magnitude of
10 maintenance.

11 Q. When you said that the alternative would be a
12 pedestrian bridge, you put that in the same paragraph where
13 you said you would slope the earth embankment to provide
14 continuous access to a potential trail.

15 Is it fair to say that you perceive the need for some
16 alternative of a structure crossing that road for a
17 potential trail because you recognize that, actually, it
18 wouldn't be safe for trail users to cross that road?

19 A. What page are you on?

20 Q. I'm on page 67 of your testimony, for crossing
21 23. And I do believe it's the same for crossing 24.

22 (Pause.)

23 A. Well, to simply slope the embankment back is one
24 consideration. Depending on what all you would get involved
25 with, you know, in terms of volumes of pedestrian use, so on

1 and so forth, it may be desirable to have a pedestrian
2 walkway there.

3 If just, say, for example, occasionally somebody were
4 to cross the road, which isn't much different than what you
5 could possibly have now, well, then it may not be an
6 alternative that you want to consider.

7 In other words, there's a lot of non-quantifiable
8 things to consider here that, at least I feel as though
9 gives me a little bit of leeway to make more of a
10 generalization.

11 If you can justify a pedestrian walkway, then it's
12 justified. But it'd be theoretical at this point. What am
13 I supposed to say?

14 Q. I can't tell you what you're supposed to say, but
15 I asked you if you concluded that wouldn't be safe for trail
16 users. And I think you have answered that.

17 I'll ask you if you are familiar with Mr. Flink's
18 master plan that he testified about.

19 A. Very vaguely.

20 Q. Okay. When you propose two possible alternatives
21 for these two crossings -- and I think there's another
22 crossing at 222 where you said might need a pedestrian
23 bridge. Is that correct, or not?

24 (Pause.)

25 A. It's a suggested alternative.

1 Q. Doesn't it make sense to recommend that
2 Judge Cocheres decide a comprehensive solution at each
3 crossing so that everybody knows what will be done at that
4 crossing, instead --

5 MR. SALAPA: Objection.

6 JUDGE COCHERES: Let her finish the question.

7 MS. NETTKE: Well, I'll end the question there for
8 ease of remembering it.

9 BY MS. NETTKE:

10 Q. Does it make sense that the Judge can approve a
11 comprehensive solution for each crossing as a final order
12 here?

13 A. I'll say it's desirable. But in order for the
14 Judge to do that, he has to have the information available
15 to him to make a logical decision.

16 Now, whether that will all be presented to him or
17 not, that may remain to be seen.

18 Q. Well, in your effort to be part of the process of
19 giving him the information to make a logical decision --
20 that's what we're all here to try to do -- is it fair to say
21 that you would recommend if he wants to consider the effect
22 on a potential trail, that a pedestrian bridge would be
23 appropriate at 272 if you take that bridge down, that you
24 have to have something going across there?

25 MR. SALAPA: I think that's been asked and answered,

1 Your Honor. I object.

2 MR. WYLAND: I object as to the form of the question.

3 MS. NETTKE: All right, I'll withdraw the question.

4 BY MS. NETTKE:

5 Q. The two alternatives that you mentioned, where
6 you've said an alternative would be to have a bridge there,
7 a pedestrian bridge, or a slope back two-to-one walk across
8 the road. Do you have a preference --

9 MR. SALAPA: Objection. That's a mischaracterization
10 of the testimony. I don't believe anywhere in his answer it
11 says two-to-one slope with regard to a trail. And I believe
12 that Mr. Oliver has already explained that.

13 JUDGE COCHERES: She didn't say that.

14 MR. SALAPA: She did say two-to-one, Your Honor.

15 MS. NETTKE: He said two-to-one.

16 BY MS. NETTKE:

17 Q. Mr. Oliver, let's try to get it clear; and I'll
18 try not to be too long.

19 Where you've offered alternative solutions, the first
20 alternative has been, take it down, slope it two-to-one; is
21 that right? No. 14, we just went over, that was the first
22 alternative; wasn't it?

23 A. That's what the recommendation was.

24 Q. Yes.

25 A. Okay.

1 Q. The same at 272?

2 A. Yes.

3 Q. Okay. The second alternative for 272 was, put in
4 a pedestrian bridge. That alternative recognizes that there
5 would need to be something across the top where the rail
6 line is; am I right there? If you took that alternative,
7 you'd be putting a bridge in place?

8 A. Yes, it's an alternative recommendation.

9 Q. Okay. If you're trying to recommend to the Judge
10 what he ought to do to consider possible trail use, what
11 would be your preference for that crossing, of those two
12 alternatives?

13 (Pause.)

14 A. Under the --

15 MR. SALAPA: Your Honor, I'm going to object again,
16 because I think she's still saying two-to-one slope is one
17 alternative for trail use, and bridge is the other one.

18 JUDGE COCHERES: That's not what I'm understanding
19 her question to be. She's tried to summarize the man's
20 testimony. She said, you've essentially made two
21 suggestions here; pick one as your alternative. And I don't
22 think that's an unfair question at all.

23 THE WITNESS: Let me try answering it this way.

24 JUDGE COCHERES: Fine.

25 THE WITNESS: If the Judge, for whatever rational

1 reason he deems appropriate, decides that the structure
2 should be removed, it would only then be reasonable for him
3 to come up with other rational decisions or reasons as to
4 which alternative should be used.

5 Now, if you're talking in terms of higher volume
6 usage, then obviously the pedestrian structure would be the
7 better alternative. Now, I don't know up to this point
8 whether any of that type of information has been provided
9 him.

10 BY MS. NETTKE:

11 Q. Are you suggesting then that he should make his
12 decision not based on what's been presented to him in
13 general from the other parties as well as from yourself?

14 A. All the parties. I mean, it's information;
15 that's the purpose of this forum, so that he can come up
16 with some sort of rational decision.

17 Q. And you don't want to pick an alternative, and
18 you don't --

19 A. Well, the information isn't available, that I'm
20 aware of.

21 Q. All right.

22 MS. NETTKE: No further questions.

23 JUDGE COCHERES: Thank you.

24 Mr. Ranck.

25 MR. RANCK: Thank you, Your Honor.

CROSS EXAMINATION

1
2 BY MR. RANCK:

3 Q. Mr. Oliver, what criteria were you assigned to
4 take into consideration in reaching your recommendations?

5 A. Safety.

6 Q. Safety was your consideration?

7 A. Yes.

8 Q. Now, help me out a little bit. I have a little
9 trouble sometimes envisioning what slopes look like when
10 they're just in number form. And I would ask you, if you
11 would, could you -- and this is not a pop quiz; I don't know
12 how tall the ceiling is here. What would you estimate the
13 height of that wall from the ceiling to the floor?

14 A. That's twelve feet.

15 Q. Okay.

16 (Laughter.)

17 Q. Well, for the purposes of the question, we'll go
18 with your twelve-foot estimate. How far out from the wall
19 -- well, let's do it visually. Let's assume the top of the
20 wall is the rail height; okay?

21 A. Yes.

22 Q. And the wall is the bridge abutment. And we're
23 going to remove the bridge and we're going to slope that
24 from the base of the floor downward. Okay? We're going to
25 slope it down at two-to-one.

1 How far from the ceiling in this courtroom, out --
2 and you can show us here -- would it --

3 A. It would be twice.

4 Q. Twice the height?

5 A. Horizontally it'd be twice the length that the
6 height is.

7 Q. Okay. So if the starting point was twelve feet
8 above grade, --

9 A. It would be 24 --

10 Q. -- it would be extended 24 feet?

11 A. Right.

12 Q. One-to-one would be basically a --

13 A. Twelve and twelve.

14 Q. -- right angle?

15 A. 45-degree angle.

16 Q. Yes, 45-degree slope. And two-to-one would be
17 half that slope, 22?

18 A. It'd be 24 feet horizontally.

19 Q. All right. Now, let's suppose that instead of
20 building out fill, we're going to cut back to achieve a two-
21 to-one slope. And let's say we're starting with a wall up
22 to the rail height equivalent to this wall here.

23 To get a two-to-one slope going back, assuming that
24 we're standing on the roadway height and we have to go back
25 in that direction, how far back would we have to go?

1 A. Is the height of the embankment that high, or --

2 Q. Yes, that would be the rail height, and this
3 would be the road height that we're standing on.

4 A. And you want to develop a two-to-one slope?

5 Q. Right. We're going to take the bridge of and
6 we're going to go back out the fill, we're going to cut at
7 an angle --

8 A. Okay. Well, then you'd have to go back 24 feet.

9 Q. Okay.

10 A. Assuming --

11 Q. Assuming a twelve-foot height; okay?

12 A. Correct.

13 Q. So, what would be the width of the fill area, to
14 your knowledge, after having reviewed this? What is the
15 general width of the filled area above grade on this Enola
16 line?

17 MR. SALAPA: I'm going to object, Your Honor. I
18 think that has to go individual crossing by crossing as to
19 how wide the right of way is.

20 MR. RANCK: Not specific, just generically.

21 MR. WYLAND: I object to the form of the question,
22 Your Honor, too, because -- are we talking about a narrow
23 ramp that would achieve that slope?

24 MR. RANCK: No, just --

25 MR. WYLAND: Or are you, for some reason I'm not

1 understanding, requiring that the entire --

2 MR. RANCK: Okay. Maybe we can speed it up if I can
3 withdraw and ask another question.

4 JUDGE COCHERES: All right.

5 BY MR. RANCK:

6 Q. Mr. Oliver, I'm trying to get an idea of the
7 magnitude of the earth that would have to be moved in order
8 to slope the end of the current fill to a two-to-one slope.
9 Now, that's a cubic yard measure. And in order to figure
10 out what would have to be moved, you'd have to know how wide
11 the fill area is; wouldn't you?

12 A. No. The width of the right of way varies.

13 Q. Not the right of way, I'm talking about the fill
14 area.

15 A. You decide how wide your corridor is going to be.
16 The width of the right of way could be 100, 200, 300 feet
17 wide. That access point, in order to do what it is that you
18 want to do, maybe you only want a 50-foot-wide corridor, and
19 then those excesses on either side, it's not necessary to
20 include them.

21 Q. Mr. Oliver, I didn't make a survey of the fill
22 area down there; apparently you did. I don't mean a
23 technical survey, but you went down there and you looked at
24 these; right?

25 A. Yes.

1 Q. And you're generally familiar with the length of
2 the tunnel down there on 272?

3 A. Yes.

4 MR. SALAPA: Objection. Which tunnel?

5 MR. RANCK: Either tunnel on 272.

6 BY MR. RANCK:

7 Q. Approximately how long are they from end to end?

8 A. I think you're running about -- I didn't write it
9 down at the time, I but I think it might be about 500 feet.

10 Q. Well, assume that that is representative of the
11 fill width. Do you know what I mean by fill width? The
12 buildup portion to build this Enola line at a one-percent
13 grade. Are you familiar with that?

14 A. Well, what you're calling fill width, or what?

15 Q. Yes, I'm talking about -- there's testimony here
16 that what makes this railroad line very unique is the amount
17 of filling to build it up to a point where the grade maximum
18 of one percent, or a one-percent grade, could be achieved.
19 So they had to do a lot of filling from the surrounding
20 bridge.

21 And what I'm saying is -- you just said that the
22 grade fill down here at 272 would be the length of the
23 tunnels; isn't that correct? The width of the filled area?

24 A. Well --

25 Q. The underlay --

1 MR. RANCK: I don't know, Judge. What --

2 BY MR. RANCK:

3 Q. The underlayment, whatever you want to call it,
4 the structure on which the rail line was laid, was
5 artificially created nearly 100 years ago. And that has a
6 certain width generally throughout that area down there.

7 Now, I understand it may vary from place to place.
8 But I'm just talking generally. Are we talking 500 feet
9 wide, as you just said?

10 A. The length. What the question was was length of
11 the tunnel; I believe it was around 500 feet, yes.

12 Q. Okay. Well, at that point, at least, the width
13 of the fill area from the northern side of the filled area
14 to the southern side of the filled area would be 500 feet;
15 would you agree with that?

16 A. They dealt with an area -- the top surface, it
17 would have sloped up from the ends of the arches.

18 Q. That's what I'm talking about. At the grade
19 level, you start and you make a kind of a pyramid shaped
20 structure with a flat top; correct?

21 A. Correct.

22 Q. And the flat top would be where the roadbed, --

23 A. Correct.

24 Q. -- or the rail line, was laid. What I'm trying
25 to do is figure out how you would compute the square

1 footage, the square yardage -- I mean the cubic yardage, or
2 the tonnage that would have to be moved, in order to achieve
3 this slope that you've described. Have you ever given any
4 thought to that?

5 A. Given it thought? Well. --

6 Q. Have you given thought --

7 A. -- sure.

8 Q. -- to the cost involved in the engineering to
9 remove that amount of earth?

10 MR. ZIELONIS: Your Honor, I'm going to object,
11 again, to the form of the question. Are we talking about
12 for trail design purposes?

13 MR. RANCK: Yes.

14 MR. ZIELONIS: Because the only thing we have in the
15 testimony now in the evidentiary record is the master park
16 plan, which states a 30-foot right of way. So, I think
17 that's the only thing Mr. Oliver can testify to, is to
18 calculate using a 30-foot right of way.

19 MR. EATON: Excuse me, I want to correct something
20 there, if I might. We're talking about a 30-foot corridor,
21 which is what is the subject of the inter-municipal
22 agreement.

23 MR. ZIELONIS: No.

24 MR. EATON: The width of this right of way is as much
25 as 800 feet.

1 MR. ZIELONIS: No, I'm talking about the trail design
2 purposes in the master plan that's only 30 feet.

3 MR. SALAPA: 30-foot-wide trail.

4 MR. ZIELONIS: 30-foot trail.

5 JUDGE COCHERES: Wait a minute. Let me say
6 something.

7 Mr. Ranck, I appreciate what you're trying to do. My
8 interpretation of what you're trying to ask, for whatever
9 it's worth, is that this witness has recommended removing,
10 essentially, both of the tunnels where the corridor passes
11 over Route 272.

12 In order to do that, you have to take out all of the
13 concrete that forms the length of the tunnel. And when you
14 take out all of that concrete and regrade it according to
15 his recommendation, on a two-to-one slope, the nature of the
16 project is that you have a project that is, at a minimum,
17 the length of the tunnel. Which you are then projecting
18 back uphill to the top of the corridor.

19 Am I right?

20 MR. RANCK: You're on target.

21 JUDGE COCHERES: I'm on target here?

22 MR. RANCK: Yes.

23 JUDGE COCHERES: And what he has recommended,
24 gentlemen, is that it be sloped back to two-to-one. And I
25 realize English is an awkward language, but I got that

1 concept from all the efforts that Mr. Ranck just went
2 through. And I think that is a perfectly appropriate line
3 of questioning for a man who has just recommended removing
4 two 500-foot-long tunnels.

5 Now, sir, do you understand those questions?

6 (Pause.)

7 JUDGE COCHERES: It's a simple "yes" or "no."

8 THE WITNESS: Well, could he back up to which --

9 JUDGE COCHERES: No, I'm not talking about him, I'm
10 talking about what I just explained on the record.

11 THE WITNESS: Oh, I understand what you said.

12 JUDGE COCHERES: Fine. He agreed with me. Can you
13 answer the question?

14 THE WITNESS: It's going to include, longitudinally
15 with the road -- okay? Longitudinally with the road. If
16 you take that direction, it's going to include that entire
17 face, vertically, that entire plane vertically.

18 BY MR. RANCK:

19 Q. The line runs generally east and west; can we
20 agree on that?

21 A. Yes.

22 Q. At that area, at 272. Okay?

23 (Pause.)

24 Q. You agree with that?

25 A. Well, yes, we'll agree with that.

1 Q. All right, we're making progress. So, based upon
2 your two-to-one slope, you start from somewhere at road
3 level, some point east and west of 272, and you start going
4 upward at an angle, a two-to-one slope angle; okay? That
5 takes you out to some point up on the rail line.

6 A. Correct.

7 Q. The rail bed height. Okay. From the starting
8 points to the rail bed line points, and everything in
9 between, from that east-west distance and that north-south
10 distance, that comprises a big pile of dirt; right?

11 A. Yes.

12 Q. Have you done any computation to figure out what
13 would be involved in the removal of that big pile of dirt?

14 A. What would be involved in --

15 Q. How much? How much --

16 A. No.

17 Q. -- it would cost?

18 A. I haven't calculated the volumes.

19 Q. Have you calculated that for any of your
20 recommended slopes?

21 A. No, I haven't.

22 MR. RANCK: No further questions.

23 JUDGE COCHERES: Are there any further questions for
24 the witness?

25 MR. EATON: I want to ask Mr. Oliver one question.

1 JUDGE COCHERES: All right.

2 **CROSS EXAMINATION, (Resumed)**

3 BY MR. EATON:

4 Q. Mr. Oliver, you're familiar with the fact that
5 there had been mediation sessions, any number of them, as a
6 matter of fact, among Conrail, PennDOT, representatives of
7 the PUC, representatives of various townships involved, over
8 a number of months in 1995, I think it was? Are you
9 familiar with that?

10 A. Yes.

11 Q. And that those meetings were designed to attempt
12 to effectuate some agreed solution among the various parties
13 that were present?

14 A. Yes.

15 Q. And that those efforts were under the auspices of
16 the Public Utility Commission, through mediators appointed
17 for the purpose, and who attended those meetings; am I
18 correct?

19 A. Yes.

20 Q. Is your position relative to the removal of
21 structures not wholly inconsistent with the position taken
22 by the commission relative to the effort to resolve by
23 mutual accord the issues which developed out of the
24 abandonment of service on this former rail line?

25 A. Well, it's inconsistent to whatever extent.

1 Q. All right.

2 MR. EATON: No other question.

3 JUDGE COCHERES: Mr. Salapa, do you want to do
4 redirect?

5 MR. SALAPA: One question, Your Honor.

6 JUDGE COCHERES: Well, I hope your question is
7 shorter than the one question that Mr. Eaton just asked.

8 (Laughter.)

9 MR. SALAPA: I'll try, Your Honor.

10 **REDIRECT EXAMINATION**

11 BY MR. SALAPA:

12 Q. Mr. Oliver, you've been present during the course
13 of the hearings on this proceeding both days; haven't you?

14 A. Yes.

15 Q. To the best of your knowledge, has there been any
16 evidence introduced as to the potential pedestrian volume
17 that would use a potential trail?

18 A. Not that I'm aware of.

19 MR. SALAPA: Thank you. That's all I have.

20 JUDGE COCHERES: Any recross based on that one
21 question on redirect?

22 MR. RANCK: No, Your Honor.

23 JUDGE COCHERES: There being further examination for
24 the witness, the witness is excused.

25 Thank you for coming, sir.

(Witness excused.)

1
2 MR. SALAPA: Your Honor, may Mr. Oliver leave, unless
3 someone else wants to recall him?

4 JUDGE COCHERES: I have no problems with Mr. Oliver
5 leaving.

6 MR. SALAPA: All right. Thank you.

7 MR. EATON: Do you have the same reaction to
8 Mr. Heebner heading back toward Philadelphia?

9 JUDGE COCHERES: I have no problems with that. We
10 still have other witnesses to finish up today, and we will
11 finish them.

12 MR. EATON: Who else is there?

13 JUDGE COCHERES: We have Ms. Nettke's witnesses.

14 MR. EATON: Oh, that's right, we still have
15 Ms. Nettke yet.

16 MS. NETTKE: Are we taking Mr. Sexton?

17 JUDGE COCHERES: We're not taking a break. The
18 parties, for some reason, mistakenly believed that this
19 hearing was almost over, failing to accord to you the right
20 to present witnesses, which I was simply explaining to them.

21 In any event, I think the last party to present
22 witnesses is Ms. Nettke, and she should call her next
23 witness.

24 MS. NETTKE: I'll call Tom Sexton.

25 JUDGE COCHERES: Mr. Sexton, I only need remind you

1 that you continue to be under oath in this proceeding for
2 the information presented.

3 **Whereupon,**

4 **THOMAS SEXTON**

5 **having previously been duly sworn, testified further as**
6 **follows:**

7 JUDGE COCHERES: Please be seated; good evening to
8 you.

9 THE WITNESS: Thank you.

10 MS. NETTKE: Your Honor, for clarification, when
11 Mr. Sexton testified a year and a half ago, we had not
12 submitted written direct testimony at that time. And the
13 way that hearing progressed on that day, Your Honor didn't
14 require it when we put him on.

15 I don't want to take him back through anything that
16 was involved in what we talked about then, it's already been
17 discussed. I am offering today, though, an exhibit, and
18 I've already given it to all the parties, because the issue
19 came up sooner than I expected. That was the draft of
20 quotes, whatever it is called, with cross of the governor's
21 so-called policy.

22 JUDGE COCHERES: Let me be a little clearer. Up in
23 the upper left-hand corner of the document, the first words
24 on the page are "news release."

25 MS. NETTKE: Yes, that's true.

1 JUDGE COCHERES: So we have referred to it as a press
2 release.

3 MS. NETTKE: Right. And I haven't marked it, but I
4 will mark it as Sexton 1, I suppose, since we didn't submit
5 written testimony before him before. I'll ask the parties
6 to mark it that way.

7 JUDGE COCHERES: I think that's appropriate. We can
8 mark that Sexton Exhibit 1.

9 (Whereupon, the document was marked
10 as Sexton Exhibit No. 1 for
11 identification.)

12 MS. NETTKE: And also, before making Mr. Sexton
13 available for cross, if Your Honor will permit me, since I
14 haven't submitted written direct, I would like to ask him a
15 couple of direct questions to put in context what I hope he
16 will talk about here regarding this policy. May I do that,
17 Your Honor?

18 JUDGE COCHERES: Certainly.

19 **DIRECT EXAMINATION**

20 BY MS. NETTKE:

21 Q. Mr. Sexton, I've just shown you this document
22 which says "news release" at the top, and we've marked it
23 Sexton No. 1. Are you familiar with that document? Have
24 you seen it before?

25 A. Yes, I am.

1 Q. In fact, did you give it to me from your office?

2 A. Yes, I faxed it to you.

3 Q. Okay. And disregarding the first two paragraphs
4 where the quotation marks start, Pennsylvania -- at the
5 third paragraph; Pennsylvania railroads helped form this
6 nation.

7 A. Uh-huh.

8 Q. There's been discussion here before, and I'm not
9 sure whether you've heard it or not. A governor's policy
10 concerning Rails-to-Trails. In fact, the headline up here
11 refers to it that way. Are you familiar with the governor's
12 policy concerning Rails-to-Trails?

13 A. Yes.

14 Q. And can you say whether you've actually seen --
15 let me strike that. Is that policy now in draft form; is
16 that your understanding?

17 A. It's in draft form, right.

18 Q. Okay. Is it your understanding it comes from the
19 governor's office, and at the governor's request?

20 A. Conrail and the Department of Conservation and
21 Natural Resources are working on a -- the essence of the
22 policy is a draft decision tree, or flow chart.

23 Q. Okay. This document here which I've just
24 submitted for your testimony today; are you familiar with
25 the language starting at that third paragraph?

1 A. Pennsylvania railroads?

2 Q. And continuing on the other side. Yes.

3 A. Yes.

4 Q. And can you tell us what's your understanding
5 about how that language relates to the governor draft
6 policy?

7 A. Well, I guess any governor can state that this is
8 their policy, and then it becomes policy. It sometimes will
9 take considerable, if you may, meat on the bones to create
10 the change that's needed. In there there is considerable
11 work still to be done. And the start of it is that decision
12 tree.

13 Q. Besides this document, there was some discussion
14 earlier about a decision tree and flow chart, which was
15 pretty much agreed were one and the same document.

16 A. Right.

17 Q. Is it your understanding that those are part of
18 that governor's policy?

19 A. Right. That has gone out --

20 Q. In draft form now.

21 A. -- for draft form to the public. And I think the
22 final day for -- although it's not a technical deadline like
23 something issued in the Pennsylvania Bulletin, the public
24 has had a chance to respond to it; and the last day is today
25 to respond to that draft policy. So it's not --

1 Q. Probably I should have done this sooner. I'll
2 ask you how you know all this.

3 A. Well, we've been very involved with it, and --

4 Q. Now, who is we, again?

5 A. The Rails-to-Trails Conservancy. And this came
6 out -- this was an outgrowth -- or should I say, really
7 reached its peak for some action to happen at the governor's
8 conference on greenways and trails, which occurred in late
9 April. And that's when the decision tree really sort of hit
10 the streets for review.

11 PennDOT and DCNR have a \$135,000 study underway with
12 the Pennsylvania Transportation Institute. And the
13 Pennsylvania Transportation Institute was at the governor's
14 conference, and that was their first sort of official act
15 under the scope of the agreement with PennDOT and DCNR.

16 And so, they started soliciting comments there. And
17 it's going to be a year-long process of the public giving
18 feedback, the agencies giving feedback, there will be public
19 meetings, and so on and so forth. So it's just a beginning
20 now, but it's a good beginning.

21 Q. Have you personally been involved in discussions
22 relating to the formulation of this policy?

23 A. Yes, I've been an advocate for this policy for a
24 number of years, because before this there wasn't anything
25 that addressed the new phenomenon of Rails-to-Trails in

1 Conrail or DCNR or the PUC. And so this was a first step at
2 that.

3 And I think the reasons that it was -- the primary
4 reasons were money. That is going to save hundreds of
5 millions of dollars if some of these structures do not have
6 to come down.

7 Plus, I think it's fair to say that the state was
8 maybe hanging out a little on this, because they didn't have
9 a well-thought-out process that takes into account
10 pedestrian and bicycle and trail use when a structure is
11 taken out. And that has been told to me by the PUC at field
12 conferences. And field conferences for the --

13 Q. Told you by the PUC is a big --

14 A. Engineers. Engineers at field conferences during
15 the F.A.S.T. field conferences; that they --

16 Q. Can you identify anybody that --

17 A. Mr. Oliver.

18 Q. Mr. Oliver told you what concerning --

19 A. The Quarryville Route 222 structure. I was
20 there. There were a crowd of about 60, I think. And I had
21 asked him if, in his decision, if in the PUC decision-making
22 process, whether the structure comes out or stays in, do
23 they take into consideration that someday this may become a
24 trail and procedure and bicyclists and others will be
25 traveling at the same grade, and crossing traffic, motoring

1 traffic; and he said no.

2 Q. Okay.

3 A. And that made a huge impression on me, and I
4 remembered that.

5 Q. Have you had any discussions with PennDOT about
6 this new policy and procedures?

7 A. Yes, there's an initiative under way between
8 PennDOT, DCNR, of course, because they have this decision
9 tree, but also the Pennsylvania Historic and Museum
10 Commission, and the PUC, to reexamine their current policies
11 and to see if they are adequate to address this new
12 phenomenon which wasn't around ten years ago.

13 Q. Still, I think it's a fair statement that it
14 remains the job of judges like Judge Cocheres to make
15 rulings on the disposition of these crossings.

16 Let me ask you, if you know, whether the PUC Staff
17 will be involved also in considerations of how to preserve
18 bridges as we implement these new policies?

19 A. Sure. They've in my estimation, have been left
20 out of the process too long. Because they don't come under
21 the governor's jurisdiction, there was always this feeling
22 that PennDOT and DCNR should work by themselves on this.
23 And so I'm really happy that for the first time the PUC is
24 very willing to look at their total program. And if new
25 rulemaking is needed, new policies, new law needs to be

1 created within the PUC and other agencies, that they would
2 do that because they want to protect all users of these
3 corridors.

4 Q. To your knowledge, is there any process going on
5 right now to involve the agencies and the PUC in addressing
6 those questions?

7 A. Yes, there's been thought of issuing a moratorium
8 until review of current policy is conducted, and this
9 Pennsylvania Transportation Institute study is completed.
10 It's going to take up to a year. And --

11 Q. And I don't think you mentioned that before.

12 A. Oh, I didn't? Oh. The Pennsylvania
13 Transportation Institute, which is conducting the -- in
14 part, it's part of the policy. There's going to have to be
15 other things, but this is sort of the beginning. That's a
16 year-long study.

17 And if we're conducting the study and in the meantime
18 still taking down bridges, that may not be the best thing to
19 do. So maybe if we just want to stop for now, and then we
20 can -- if we come up with something better, then apply that
21 to all cases, and the decision tree and other things. But
22 it hasn't been applied in a full context to any projects
23 yet. Although this project and others across the state are
24 helping to design policy and the flow chart, and, or
25 decision tree.

1 Q. I'm not sure if you heard Mr. Cassell's testimony
2 earlier; did you?

3 A. What time was that?

4 Q. That was this afternoon sometime. He was here
5 for PennDOT. Perhaps I can tell you to what I'm referring.

6 A. Yes, okay.

7 Q. Mr. Cassell stated that it was his belief that it
8 was the Enola line situation that --

9 A. Oh, oh, oh --

10 Q. -- gave rise to --

11 A. I'm sorry.

12 Q. -- the development of the governor's policy. Is
13 that your take on it?

14 A. In part. It wasn't the only one. There's other
15 very contentious hearings and debates going on.

16 Q. Do you have any knowledge as to whether the Enola
17 line was evaluated according to the new policy and decision
18 tree?

19 A. Well, I don't think it could have been, because
20 the process started so far back. And, as I said, in my
21 asking Mr. Oliver whether, in general, those issues apply,
22 and he's saying no, I don't see how it can be. But it does
23 make sense, if I was a state agency, to try to turn back the
24 clock a bit and cover themselves.

25 Q. I won't ask you to tell us what you believe the

1 governor thinks or feels. But in your discussions about the
2 implementation and development of this policy, were historic
3 considerations a factor?

4 A. In this policy?

5 Q. In the governor's policy.

6 A. Yes, I think there's some school of thought that
7 unless there's a compelling reason to take down these
8 structures, that even if they're not considered for a rail-
9 to-trail, or a reuse again by freight or light passenger,
10 that the historic nature of these structures are so
11 significant; and people come to Pennsylvania to view its
12 history, and these are probably the foremost structures in
13 the landscape pertaining to our heritage.

14 MS. NETTKE: I'll end that there and make the witness
15 available for cross examination.

16 JUDGE COCHERES: Ms. D'Alfonso.

17 MS. D'ALFONSO: Thank you.

18 **CROSS EXAMINATION**

19 BY MS. D'ALFONSO:

20 Q. I think I can say good evening, Mr. Sexton.

21 Has the Rails-to-Trails Conservancy submitted
22 comments regarding the decision tree you were discussing
23 earlier?

24 A. They're probably close to being in the mail now.

25 JUDGE COCHERES: That's like "no"?

1 THE WITNESS: No. Technically, no.

2 JUDGE COCHERES: Thank you.

3 BY MS. D'ALFONSO:

4 Q. Do you intend to?

5 A. Yes.

6 Q. Or your organization intends to.

7 I wrote this down word for word. Someday it may
8 become a trail. In your opinion, how long should people
9 wait for a corridor to become a trail?

10 A. As long as they can muster the support for it. I
11 mean, there's trails that become -- there's abandoned
12 corridors that become a trail in a year, there's some that
13 took 20 years. And, you know -- does that answer the
14 question?

15 Q. That's fine. You also referenced a movement
16 underway, and some of the agencies you included in that
17 movement were the Department of Transportation, DCNR, PHMC,
18 PUC; I'm not sure if you had mentioned anyone else.

19 A. That's it.

20 Q. When did this movement including all of those
21 organizations come underway?

22 A. Oh, I think during the governor's conference. He
23 said that we should have a -- there was a feeling that we
24 should have a sit-down and talk about the bigger picture,
25 not just the decision tree, but other things that may

1 improve the situation.

2 Q. Is that a continuation of comments on the
3 proposed decision tree, flow chart?

4 A. Right. There were meetings today about that.

5 Q. There were?

6 A. Between those agencies, right.

7 Q. Let me ask you another question. Is it your
8 understanding that the governor's policy that has been
9 referenced today is to be retroactive; in other words,
10 applied to abandonment proceedings, abolition proceedings
11 that have already gone through the commission proceedings?

12 A. You mean if an order's been consummated for an
13 abolition?

14 Q. Sure. The PUC has entered an order abolishing
15 the crossing and ordering whatever work that the commission
16 has ordered. Is it your understanding that that policy is
17 to be applied retroactively to those proceedings?

18 A. Yes. If the order's already been given to the
19 take the structures down, and the contract's been awarded to
20 demolition -- I don't know if that could happen. But if
21 there's something in the pipeline, that could be affected.

22 Q. What's the basis of your understanding?

23 A. Just talking to all the parties, talking to the
24 governor's office. They cannot do this in a vacuum. They
25 have to ask the public, they have to ask informed non-

1 governmental entities like myself for input, or we're just
2 back to where we were in the first place.

3 Q. Thank you, Mr. Sexton.

4 JUDGE COCHERES: Let's go off the record for a
5 moment.

6 (Discussion off the record.)

7 (Recess.)

8 JUDGE COCHERES: Back on the record.

9 Is there additional cross examination for this
10 witness?

11 Mr. Wyland.

12 MR. WYLAND: Thank you.

13 **CROSS EXAMINATION**

14 BY MR. WYLAND:

15 Q. Mr. Sexton, I'm Scott Wyland representing the
16 townships.

17 The governor's policy statement that you just spoke
18 about, I wanted to confirm, that is in draft form; is that
19 right? It's not final?

20 A. The policy has been issued, but it's something
21 that would go out to the field is not complete, and it's
22 something to give to engineers so they can stand behind
23 their decision; is not complete.

24 Q. As a matter of fact, you said it was in the
25 beginning stages; just the beginning, I think you said?

1 A. Well, that would be my interpretation.

2 Q. Okay.

3 A. Because it's going to be -- there's at least a
4 year-long process with the Pennsylvania Transportation
5 Institute. That's in their scope of work.

6 Q. And in its draft form, this governor's policy
7 statement is directed to the Pennsylvania Department of
8 Transportation and DCNR; is that right?

9 A. Excuse me?

10 Q. The policy statement in its draft form is
11 directed to the Pennsylvania Department of Transportation
12 and DCNR?

13 A. Sorry; yes, that's right.

14 Q. That's correct? You're aware, are you not, that
15 DCNR is present here through counsel and does not oppose the
16 stipulation of settlement between Conrail and the townships?
17 Are you aware of that?

18 A. Yes.

19 Q. Are you also aware that the Pennsylvania
20 Department of Transportation is represented in these
21 proceedings, and not only does not oppose the stipulation
22 between Conrail and the townships, but in fact is here as
23 proponent of its own stipulation between Conrail and the
24 Department of Transportation? Are you aware of that?

25 A. Yes.

1 Q. You heard Mr. Oliver testified today on behalf of
2 the Public Utility Commission, Bureau of Transportation and
3 Safety; didn't you?

4 (Witness nodding head up and down.)

5 Q. You're generally aware that his approach here is
6 to remove most, if not all, of the crossing structures along
7 this rail line?

8 A. Right, yes.

9 Q. Are you aware that the stipulation of settlement
10 between Conrail and the townships does not, in fact, mandate
11 the removal of many of the structures along the line?

12 A. I think some of them will be kept in place for
13 some time.

14 Q. Right.

15 A. But I don't think it's been determined whether
16 they'll be there after a year. I presume the municipalities
17 will own them, and they can take them down at their own
18 pace.

19 Q. Are you aware of the testimony of the township
20 officials that they had no particular desire to remove the
21 structures immediately?

22 A. Say that again?

23 Q. Were you aware of the townships' testimony in
24 this proceeding that they had no desire to remove crossing
25 structures over which they were taking maintenance

1 responsibility immediately?

2 A. I don't know what immediate means. But --

3 Q. Well, did you hear that testimony in this
4 proceeding, or not?

5 A. I don't think so.

6 Q. Okay.

7 JUDGE COCHERES: He wasn't here yesterday.

8 THE WITNESS: Not all of it, no.

9 MR. WYLAND: Fair enough, fair enough.

10 BY MR. WYLAND:

11 Q. Given a choice between Mr. Oliver's proposal of
12 removing virtually all the crossing structures, and the
13 stipulation between Conrail and the townships here, which at
14 least allows the structures to remain in, which is more
15 favorable for trail use?

16 A. Well, the less structures you remove, the better.

17 Q. So, your answer would be the stipulation between
18 Conrail and the townships?

19 A. Would be better than removing all the bridges?

20 Q. Yes.

21 A. Probably.

22 (Pause.)

23 A. If those are my only choices.

24 Q. Yes, I want you to assume that your only choice
25 is between Mr. Oliver, removing all the structures is his

1 proposal, and the stipulation between Conrail and the
2 townships. Which is better for the potential for trail use?

3 A. The one that has less removal of structures. But
4 again, I don't know what immediate means. And after the
5 Judge makes his decision, the structures still could come
6 down. So the options really aren't too strong.

7 Q. Could you envision circumstances in which you
8 would advocate Mr. Oliver's proposal to remove every single
9 structure along the crossing?

10 A. Could I think of circumstances where the removal
11 of every structure would be appropriate? Gosh, I guess if
12 there was -- at every crossing there were a record of death
13 and injury by the motoring public hitting the embankments or
14 people jumping off the bridges. But that's not happening.

15 Q. So, in giving that answer, you in your own mind
16 weigh safety issues with respect to the rights and
17 convenience of trail users; is that right?

18 A. No.

19 (Pause.)

20 A. I lost you. Could you explain that a little
21 more?

22 MS. NETTKE: He answered it.

23 MR. WYLAND: I don't think he, in fact, answered it.

24 BY MR. WYLAND:

25 Q. When you envision whether or not a crossing

1 structure should be removed, do you agree with me that it
2 should be a balancing test between safety concerns of
3 roadway users and convenience concerns and other safety
4 concerns for trail users?

5 A. Yes, you should consider both uses of the
6 crossing.

7 MR. WYLAND: No further questions.

8 JUDGE COCHERES: Mr. Ranck.

9 MR. RANCK: Thank you, Your Honor.

10 **CROSS EXAMINATION**

11 BY MR. RANCK:

12 Q. To follow up on that line of questioning, does
13 the balancing process, in your familiarity with the
14 development of the governor's policy as articulated to date,
15 invite consideration of preserving, or determining potential
16 future use of structures?

17 A. Yes, I think that would be one of the criteria
18 that the agencies involved will have to look at if it's
19 foreseeable in the future that -- and I think the winds are
20 blowing that way -- that rail use is going to come back;
21 it's going to be a good business to be in. We might be
22 moving freight, might be light rail, and other, mag-lev,
23 something I probably can't even conceptualize. But we need
24 rights of way to do it.

25 Q. Well, you were asked as to whether the balancing

1 test involves weighing safety considerations versus the
2 convenience, I think, of trail users. It's not just limited
3 to those considerations, it's also limited to the possible
4 future reuse of the whole line; and am I not correct that,
5 according to the governor's policy, it's to take into
6 consideration the considerable financial investment made in
7 the past to construct bridges and tunnels, to preserve the
8 rich railroad heritage, and to promoted recreation and the
9 tourists coming into the commonwealth. Aren't those
10 considerations in the balancing test?

11 A. Yes. And then you could be refined so that any
12 engineers in the field have a quantitative method to make
13 their determinations. And at this point, they don't.

14 Q. Were you here for the testimony of Mr. Oliver?

15 A. Yes.

16 Q. Did you hear his testimony regarding the cutting
17 off of bridges and planing down from the rail bed to the
18 roadbed on a two-to-one slope?

19 A. Yes.

20 Q. First of all, in your experience in Rails-to-
21 Trails, is a two-to-one slope usable for pedestrian traffic
22 for such people who would be likely to utilize trails?

23 A. Oh, absolutely not. It's creating a dangerous
24 situation. And those structures that have come down,
25 regrettably, after PUC hearings, are now a liability.

1 Q. Why is that?

2 A. Well, even if they're not an open trail, or they
3 don't have their improved surface, or even if they never
4 become a rail trail, you can't close the corridor. You can
5 put a fence there, but children and other users will always
6 find a way to get around it.

7 So it's informal use or it's formal use, you're
8 coming down a two-to-one slope on a bicycle and entering
9 into traffic. Because you took the structure out, there's
10 no longer a calming of the traffic. It's now at a higher
11 speed. And you just have a very dangerous situation, and
12 it's only a matter of time till somebody is killed, and then
13 this will take on a whole new light.

14 Q. On that two-to-one slope, were you following us
15 when we talked about the amount of excavation that would be
16 required to achieve a two-to-one slope from rail bed to
17 roadbed? Were you with us on that?

18 A. Yes.

19 Q. Can you tell us, from your familiarity, or
20 explain to the Judge how that would impact on the
21 possibility of future reuse of this corridor for rail, light
22 rail, mag-lev, or other transportation purposes?

23 A. Well, it would be very, very difficult, and it
24 will cost the commonwealth an enormous amount of money. But
25 those bridges that have been taken out, and if others are,

1 there will come a time when constituents will go back to
2 their elected officials and ask for millions of dollars to
3 either rebuild it for trail purposes or rebuild it for light
4 rail or some other conveyance purposes.

5 Q. What's your familiarity with other areas of the
6 commonwealth, for example, where rails have been preserved
7 and used in conjunction with railroad use or any other types
8 of uses.

9 A. I think what you're referring to is rails-with-
10 trails. And it's very common in Europe. And of 900 and so
11 rail trails in America, over 40 of them are rails-with-
12 trails where you have a trail immediately adjacent to an
13 inactive freight line or passenger line. Sometimes there's
14 a vegetative berm in between, sometimes there's a fence,
15 sometimes there's nothing. And we've done exhaustive study
16 on that and found not one injury has ever occurred with
17 co-use.

18 And again, it's very common in Europe to use
19 corridors as the highest and best use; not just highways,
20 not just bicycle paths, not just rail lines, but call them
21 transportation corridors, so that all that is happening in
22 one corridor.

23 Q. To follow up on your comment about there possibly
24 being a resurgent time for rail business. Could you give
25 the Judge your thoughts on the appropriateness of even the

1 proposal and the stipulated agreement? Should there be
2 future consideration to getting some of the truck traffic,
3 the truck freight traffic off of our congested highways and
4 through our old villages and towns, and put back on the
5 railroad lines?

6 A. Well, I think that's always a possibility. Let's
7 say if the trail goes in, maybe in 50 years the citizens of
8 Lancaster County decide they need the rail back, they don't
9 need a trail; they could put the rail back and move the
10 trail somewhere else. That might not happen, but it's
11 foreseeable.

12 Q. And if the stipulated proposal is implemented,
13 what impact would that have on the viability of the future
14 reuse of a present corridor for rail traffic?

15 A. It would just make it, I won't say impossible,
16 but it would cost hundreds of millions of dollars to put the
17 line back together so it's viable and contiguous.

18 And I think that has already happened. I think in
19 these proceedings you've talked about ISTEA, the Intermodal
20 Surface Transportation Efficiency Act. That was a radical
21 change in highway -- in transportation away from highway
22 only development of transportation systems. And probably
23 the most amazing thing is that they aren't building any more
24 interstates, because we know that we can't move people fast
25 enough, safe enough, and safe for the environment too, just

1 by automobile. We're going to have to go back to other
2 modes of transportation.

3 So I think there will be a resurgence for Amtrak; and
4 railroad is -- they're making a comeback, seriously.

5 We've also seen excursion trains in Pennsylvania that
6 are bringing millions of dollars. Tourist trains, or
7 excursion trains, that are attracting a lot of tourists.
8 And these are using formerly abandoned railroads sometimes.
9 Sometimes they're never quite abandoned, but they're not
10 used. And those are popping up everywhere.

11 Q. Thank you.

12 MR. RANCK: No further questions.

13 JUDGE COCHERES: Mr. Zielonis.

14 MR. ZIELONIS: Thank you, Your Honor.

15 **CROSS EXAMINATION**

16 BY MR. ZIELONIS:

17 Q. Mr. Sexton, I want to explore your discussion you
18 had this evening regarding a moratorium. Is DCNR proposing
19 a moratorium?

20 A. Well, I don't think I ever said the word
21 "moratorium" before.

22 Q. You were discussing during your testimony that
23 the parties have sat down and said, maybe we ought to stop
24 doing things, in your direct examination.

25 A. Yes, I didn't use the word "moratorium." What I

1 was saying is we should look at procedures in place and
2 maybe change them so they could be stopped.

3 Q. How would we do that?

4 A. Well, come up with new procedures, and as a
5 possibility, until that time, issue a moratorium so we don't
6 do anything we're going to regret.

7 Q. Are you the only proponent pushing that type of
8 concept?

9 A. A moratorium?

10 Q. Yes.

11 A. No. That's being -- I think that's going to be
12 considered by the PUC, I think it's going to be considered
13 by the governor's office, other agencies. I think they can
14 see there may be some wisdom in that. It's not been
15 determined yet, but --

16 Q. Does the DCNR propose that?

17 A. Have they proposed it?

18 Q. Yes.

19 A. They couldn't propose -- well, --

20 (Pause.)

21 A. It would be the PUC that would have to issue it.

22 Q. Now, in my mind, Mr. Sexton, I'm trying to create
23 a continuum of the positions in this case. On one hand I
24 have the proposal and position of the PUC rail staff to
25 remove all the bridges.

1 A. Okay.

2 Q. Next I have the stipulation which keeps most of
3 the bridges in and requests removal of eight bridges. Now,
4 am I to take your position today that you are at the other
5 extreme, that you want to keep all the bridges in?

6 A. Well, if a moratorium was issued, I think that a
7 reexamination with a balanced process, which was never
8 applied to this case, that looks into all uses, future uses,
9 all users, you might come out with a different outcome,
10 because there's other things that are going to come about if
11 you change the way you're doing business; that is, there may
12 be -- this is speculative at this point, but I think any
13 initiative needs money behind it, and there may be some
14 funding created to rebuild or modify or insure some
15 structures if municipalities aren't.

16 But I think the whole issue of money is going to be
17 made more clear when we have different criteria to judge
18 whether these structures are safe or not. And that, what I
19 would refer to as phantom liability, is going to be greatly
20 decreased.

21 Q. Well, we're in this proceeding today, and the
22 Judge must base his decision upon the current record. Have
23 you reviewed the two stipulations that have been presented
24 to the Judge for his review?

25 A. In detail, no.

1 Q. So you have no position on whether you can accept
2 those stipulations as they now stand?

3 MS. NETTKE: Objection. I don't believe, as a non-
4 party, Mr. Sexton is in a position personally to accept or
5 reject a stipulation.

6 MR. ZIELONIS: I'm not asking him to do that, Your
7 Honor, I'm asking him is it his position today, as we are in
8 a hearing to discuss whether you should approve or
9 disapprove the two stipulations, is it his position today
10 that he agrees with the two stipulations; and if he doesn't
11 agree, what is his position. If he's here merely to discuss
12 the benefits of the Rails-to-Trails project, then I move for
13 striking his entire testimony as not relevant to your
14 decision.

15 MS. NETTKE: I'll object further, before we get to
16 the latter part of that. He's already said he isn't very
17 familiar with them. If there is going to be a further
18 question as to whether he would approve personally of them,
19 I would like a moment for him to review those stipulations,
20 if that question is to be allowed.

21 JUDGE COCHERES: Well, let me answer the objection
22 and the response in this fashion.

23 Ms. Nettke, what was your purpose in presenting
24 Mr. Sexton's testimony today?

25 MS. NETTKE: To have the information before the

1 commission concerning the general thrust, at least, of the
2 governor's policy on bridge preservation for trail use. The
3 discussions among the agencies perhaps to take a fresh look
4 at the procedures, and basically to elicit what I did elicit
5 from Mr. Sexton on his direct testimony.

6 JUDGE COCHERES: Well, if that's true, then I think
7 the question Mr. Zielonis asked is relevant, because you are
8 presenting what I will call a general policy overview.
9 Would you agree with that?

10 MS. NETTKE: Yes, I do, Your Honor.

11 JUDGE COCHERES: Fine. You want me to take into
12 consideration that general policy overview and apply it to
13 the facts of this case; don't you?

14 MS. NETTKE: Yes. Could I be heard further, though?
15 Because I'm not really objecting to the question, only that
16 Mr. Sexton said he isn't familiar with the document. I
17 asked that if the question should be asked, that he could
18 look at it and know what he's answering about.

19 JUDGE COCHERES: In that case we'll go off the record
20 and allow the witness to review the documents.

21 MR. ZIELONIS: Your Honor, how about if I withdraw
22 the question and try to rephrase it?

23 JUDGE COCHERES: That's perfectly acceptable.

24 BY MR. ZIELONIS:

25 Q. Mr. Sexton, at this time, do you have any

1 position on the two stipulations before the Judge?

2 A. My position is that there hasn't been a balanced
3 -- there hasn't been a balancing of the different users and
4 future regarding this case. And I would hope that it
5 wouldn't proceed any further until a new process, that is
6 underway, is conducted and finished.

7 MR. WYLAND: Judge, I would object and move to strike
8 the response. It blatantly mischaracterizes the
9 proceedings. We've sat through probably eight hours of
10 cross examination by F.A.S.T. and a substantial amount of
11 direct examination by F.A.S.T. We've allowed every party to
12 this proceeding ample time, well into the evening, two
13 nights in a row, to put all their concerns on the record.

14 So any characterization of this proceeding as not
15 being balanced or not allowing balanced points of view, I
16 think, is an extreme disservice to the balance in the
17 proceedings that we've had.

18 JUDGE COCHERES: Ms. Nettke?

19 MS. NETTKE: First of all, it was Mr. Zielonis's
20 question, and I assume Mr. Sexton intended to try to meet it
21 with an answer as best he could. Rather than drastically
22 strike it, perhaps we could be given a follow-up question.
23 That's one suggestion.

24 But I would object to striking the testimony. He
25 hadn't suggested that you, Your Honor, was not looking at

1 this case in a balanced fashion.

2 JUDGE COCHERES: Thank you, Ms. Nettke. That was the
3 one part of his analysis that I noticed was missing.

4 (Laughter.)

5 MS. NETTKE: He has suggested perhaps that he meant
6 other parties.

7 THE WITNESS: Could I clarify?

8 JUDGE COCHERES: As in back-fill?

9 (Laughter.)

10 THE WITNESS: Something I know well.

11 MR. ZIELONIS: Your Honor, I think I'm going to have
12 to ask a new question.

13 JUDGE COCHERES: Yes. I thought you had completed
14 your answer. But let me make a ruling here. The ruling is
15 that the objection and motion by Mr. Wyland is overruled,
16 and that the subject that we are just discussing is best
17 handled on redirect.

18 MR. ZIELONIS: I have no further questions, Your
19 Honor. That was the last one.

20 JUDGE COCHERES: All right. I thought it might be.
21 We'll start with Mr. Salapa.

22 MR. SALAPA: Thank you, Your Honor.

23 **CROSS EXAMINATION**

24 BY MR. SALAPA:

25 Q. Mr. Sexton, this policy you've been discussing

1 about between the department and DCNR, that doesn't involve
2 the Public Utility Commission; does it?

3 (Pause.)

4 Q. Let me rephrase that. The Public Utility
5 Commission is not a part of that agreement between DCNR and
6 the department?

7 (Pause.)

8 A. To look at -- to reexamine the process, the DCNR
9 and PennDOT are going to have to work closely with the PUC,
10 even though they're not under -- the PUC is not under the
11 direct control of the governor. And I think that's in the
12 spirit, that's why the PUC is willing to revisit their
13 process.

14 Q. When you say the PUC is willing to revisit their
15 process, who do you mean at the commission? I'm assuming
16 you're talking about specific individuals?

17 A. Who are willing to reexamine the process in place
18 now and see if it could be improved; is that what you're
19 saying?

20 Q. Yes.

21 A. Right. The chairman.

22 Q. The chairman? What is your source of information
23 on this?

24 A. My talking with the chairman.

25 Q. So you have talked to the chairman about Rails-

1 to-Trails in general?

2 A. Sure.

3 Q. Cases in particular?

4 A. Never.

5 Q. Never. Not this case?

6 A. Never.

7 Q. And the chairman has indicated to you that he
8 favors a moratorium?

9 A. He is going to -- he is contemplating whether to
10 take that before the other commissioners for consideration.
11 Because he is sensitive to the other agencies' dilemma with
12 this, and also their new initiative in the governor's
13 policy.

14 Even though the PUC is not under the governor's
15 jurisdiction, the agencies need to work together on this if
16 they're going to come up with a better process. I think he
17 recognizes that the PUC does not act alone.

18 Q. So, by telling you that he would bring this to
19 the other commissions' attention, I am assuming that he has
20 indicated to you that he would be in favor of that
21 moratorium?

22 A. Yes.

23 Q. Have you had discussion with any of the other
24 commissions?

25 A. No.

1 Q. None of their staffs?

2 A. No. Just your general counsel and Chairman Quain
3 and Chairman Quain's assistant. Those are the people that
4 were present in the room the last time we had a
5 conversation.

6 Q. General counsel; do you mean chief counsel?

7 A. Oh, excuse me, chief counsel.

8 Q. That would be John Provolitis (phonetic)?

9 A. That's correct.

10 Q. And the chairman's assistant would be?

11 A. Tom Beene. I don't think this would come as any
12 surprise to anyone.

13 JUDGE COCHERES: I have a lot of reason to disagree
14 with you on that.

15 (Laughter.)

16 BY MR. SALAPA:

17 Q. So, how many of these meetings have you had with
18 the chairman and his assistant?

19 A. I'd say we've talked twice, person to person.

20 Q. Have any of the parties to this proceeding been
21 notified of that, of your meetings with the chairman?

22 A. That I wouldn't know about.

23 Q. You did not notify them?

24 A. No, I'm doing that now, I guess.

25 JUDGE COCHERES: Not even Ms. Nettke?

1 THE WITNESS: Yes. Yes, I did.

2 MS. NETTKE: Your Honor, someone else was speaking to
3 me, and I didn't hear that question. Would you repeat it?
4 I heard my name only.

5 JUDGE COCHERES: I simply asked him if he had
6 notified you of his conversations with the chairman of our
7 commission about the possibility of imposing a moratorium
8 and changing commission policy about Rails-to-Trails cases.

9 MS. NETTKE: You're saying you asked him that?

10 JUDGE COCHERES: Yes, I did.

11 MS. NETTKE: Okay.

12 JUDGE COCHERES: And the answer was?

13 THE WITNESS: Yes, I had a conversation with
14 Ms. Nettke, because the idea of a moratorium was probably
15 the hottest topic at the governor's conference. Which the
16 PUC attended.

17 BY MR. SALAPA:

18 Q. Who from the Public Utility Commission attended;
19 do you know?

20 A. I can't recall the gentleman's name right now.
21 But he's on a list, and I could furnish that.

22 Q. That would be Mr. David Hart, from the Rail
23 Safety Division?

24 A. That's correct.

25 Q. Have you had these conversations with the

1 chairman and his assistant between this day and the time you
2 previously testified?

3 A. Yes.

4 Q. I'm going to venture another question. With
5 regard to these meetings with the chairman and his
6 assistant, have any parties to any pending cases involving
7 Rails-to-Trails been informed of it or invited to it?

8 A. Can you repeat that? I'm sorry.

9 Q. Have any other parties in any other proceedings
10 regarding crossing abolition and Rails-to-Trails been
11 informed of your meetings with the chairman and his
12 assistant?

13 A. Sure. Probably most rail-trail projects that are
14 underway know that as an advocate for Rails-to-Trails we
15 visited with the commissioner to try to advocate our
16 position for a reexamination of the current process. Not a
17 reexamination of any one case, but just the process in
18 general.

19 Q. During the course of your conversations with the
20 chairman or his assistant, did the chairman indicate to you
21 that he favored retaining all of these structures?

22 A. Of course not.

23 (Pause.)

24 A. I think he would have not met with me or told me
25 to leave if he thought it threatened any case.

1 Q. Besides this moratorium, were there any other
2 issues you discussed with the chairman and his assistant?

3 A. Well, the moratorium sort of comes at the end of
4 my belief that the process in place now is not balanced and
5 makes it very difficult for administrative law judges to
6 render a decision that is fair to all parties involved. He
7 didn't say he necessarily believed that or not, but he's
8 willing to reexamine the process, in keeping with the
9 governor's wishes to see if it can be done better. And
10 maybe it can't. Maybe after this the findings will be that
11 everything is fine, and we'll go back to -- we will continue
12 what we're doing now.

13 (Document handed to witness.)

14 Q. Is that a letter that you authored to the
15 chairman?

16 A. Yes.

17 Q. And that discusses the various concerns that you
18 have?

19 A. Some of them, yes.

20 Q. But not all of them?

21 A. No. I wouldn't think so. It's just a one-page
22 letter.

23 Q. What other concerns did you have?

24 A. What other concerns do I have in general about
25 the process?

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Q. Other than what's, yes, listed in that letter.

A. Let me just read it again.

(Witness perusing document.)

A. I'll give you specific, I'm not sure if you call them standards or guidelines or criteria, that needs to be developed for field engineers to make better decisions, is one. I mean, that's just something else that in trying to improve the process I would advocate.

Q. So that letter was authored by you; correct?

A. I did say that.

Q. All right.

MR. SALAPA: Your Honor, could I offer that as an exhibit?

JUDGE COCHERES: Certainly.

MR. SALAPA: Into the record.

JUDGE COCHERES: That would be Staff Exhibit No. 51.

MR. SALAPA: Thank you.

(Whereupon, the document was marked as Commission Staff Exhibit No. 51 for identification.)

MR. SALAPA: I think that's all that I have, Your Honor.

JUDGE COCHERES: Mr. Eaton, did you have further cross?

MR. EATON: Unfortunately.

FORM 2

CROSS EXAMINATION

1
2 BY MR. EATON:

3 Q. Mr. Sexton, you have talked several times about
4 the lack of balance in the proceedings dealing with Rails-
5 to-Trails. What do you have in mind when you say a lack of
6 balance?

7 A. From the very first -- stepping right off at the
8 beginning, presently, PennDOT engineers and PUC engineers,
9 even municipal engineers to a certain extent, don't have
10 training in not only rail-trails, but pedestrian and bicycle
11 issues.

12 Q. Are you suggesting then that in some proceedings
13 the potential use of old rail beds as trails is not given
14 adequate consideration by the parties that are involved?

15 A. Yes. When the Rails-to-Trails Act was past in
16 1990 in Pennsylvania, the Pennsylvania Rails-to-Trails Act,
17 I'm not aware of anything in the PUC or the other agencies
18 where they changed the way they're doing business, they
19 developed a new manual or something documentation for their
20 engineers in the field to get to assess things. Although
21 that is starting to change, because there's been some really
22 good movement afoot.

23 Q. And I see in your letter, which is Staff Exhibit
24 51, that you had talked about some areas which I presume
25 from the context you saw as potential improvements,

1 including alternative dispute resolution.

2 A. Right, that was something that rail-trail groups
3 didn't really know existed. And I thought that might be
4 something that would save rail-trail groups a considerable
5 amount of money in legal fees.

6 Q. Now, are you aware that in this proceeding -- and
7 by this proceeding, I mean the entire process from the time
8 when Conrail first filed its motion to abolish these
9 crossings. Are you aware that the Friends of the Atglen
10 Susquehanna Trail have been most active in promoting their
11 desire to convert this old rail-trail, or old rail bed, to a
12 trail?

13 A. I'm sorry; could you repeat that?

14 Q. Probably not.

15 (Laughter.)

16 Q. In substance, however: Are you aware that from
17 the inception of the proceedings relative to abolition of
18 crossing --

19 A. In this case?

20 Q. In this case.

21 A. Yes.

22 Q. -- F.A.S.T. has been actively and vigorously a
23 proponent of conversion of the old rail bed to a trail?

24 A. Oh, yes.

25 Q. Okay. So that isn't it fair to say that the

1 concept of trail use of this rail bed has been well
2 represented in this proceeding?

3 A. Well represented?

4 Q. Yes.

5 A. I wouldn't agree with that.

6 Q. Why?

7 A. Well, the engineers involved in this case don't
8 have the proper publications, proper background, proper
9 guidelines to reexamine these structures in a different
10 light, and that is for rail-trails.

11 They don't have any other funding sources to think
12 about except for the railroads or the municipalities. And
13 by that I mean, I've made it before, that maybe a fund needs
14 to be established for these structures so they are
15 preserved, so it doesn't fall on the backs of either the
16 municipalities, the railroads, or the rail-trail groups.

17 Q. Are you aware that the Public Utility Commission
18 has statutory limitations on its jurisdiction, such that it
19 may impose maintenance responsibilities upon a public
20 utility subject to its jurisdiction, and upon the
21 commonwealth and upon municipalities within the water
22 company; but that its jurisdiction to impose maintenance
23 responsibilities on other third parties does not exist?

24 A. I'm very aware of that. And that's one of the
25 many reasons why I'm visiting with the agencies and the

1 bridge and Chairman Quain, to see if we can come up with
2 better options.

3 Q. Well, let me suggest to you, however, that that
4 limitation is statutory, it is not within the discretion of
5 the various regulatory and advisory bodies which you've
6 mentioned.

7 A. Who created that statute?

8 Q. The legislature.

9 A. Then the legislature would pass a different law.
10 And that would affect PUC law.

11 Q. Now, are you aware, too, that the alternative
12 dispute resolution which you advance has occurred in this
13 case?

14 A. Yes.

15 Q. In the form of mediators appointed at, I might
16 say, the original instance of F.A.S.T., --

17 A. Yes.

18 Q. -- who have conducted a series of meetings in the
19 various municipalities, including all of the parties
20 represented here today.

21 A. Yes, I'm aware that ADR was applied here, but
22 very late in the process. And I'm hoping that --

23 Q. Well, I would suggest to you that it was not late
24 in the process, since it was before any decisions had been
25 reached relative to disposition of this rail line.

1 A. I still feel it was late in the process. And if
2 it would have begun back in '90 -- I think that's how far;
3 '91 -- then maybe we'd have a different outcome.

4 JUDGE COCHERES: Excuse me. This case didn't begin
5 in '90 and '91. It didn't begin until 1993.

6 MR. WYLAND: September of 1993.

7 MR. EATON: Well, let's be accurate here. I have a
8 copy of the application here; which is dated September 24,
9 1993.

10 JUDGE COCHERES: So, how much earlier would you like
11 it to have begun?

12 THE WITNESS: My mistake, Your Honor. I'd like it to
13 begin right at the onset. One of the problems I foresee in
14 this process, Your Honor, is I think that a lot of this can
15 be settled if the parties are able to speak freely and talk
16 about how to solve the problem in general and specific.

17 Part of the --

18 BY MR. EATON:

19 Q. Isn't that what's happened here? Hasn't there
20 been extensive discussion among the parties with an ultimate
21 agreement leading to a potential settlement here, barred at
22 the moment only by the opposition of F.A.S.T.?

23 A. I can't -- after these proceedings are done -- I
24 mean, I've been frustrated on a number of times where I
25 might have wanted to talk to one of the attorneys in this

1 case and say, how could we get around that; how can we make
2 this a win-win for everybody; why do the bridges all have to
3 come down or all have to stay up? And, you know, you're not
4 able to do that.

5 And that's why I'm suggesting that ADR is one option,
6 but maybe we don't even need to have a forum such as this to
7 settle these cases, if a comprehensive policy was devised.

8 I don't think we're going to save enough structures
9 or make good sound judgment on these hundreds of structures
10 out there by doing it case by case, because there's not
11 enough money for the rail-trail groups to spend on legal
12 fees. They can't protect all that need to be protected.

13 Q. And if that process has occurred here, that is,
14 an opportunity for the various parties to express their
15 views, advance their proposals, and ultimately arrive at a
16 compromise which takes into account the interests of all, if
17 that process has occurred here, you're opposed to the
18 result; am I correct on that?

19 MS. NETTKE: I object to the --

20 MR. RANCK: I have to object to the form, Your Honor.

21 BY MR. EATON:

22 Q. Well, are you opposed to the result?

23 MS. NETTKE: I'll object to the question, Your Honor,
24 in the part that said that the proposal -- I'm assuming that
25 means the stipulation -- takes into account the interests of

1 all. I don't know who's meant by all, but it certainly
2 doesn't take into account the interests of all the parties.

3 MR. EATON: I'll provide you a service list, if you
4 wish it.

5 MS. NETTKE: I don't think the service list would be
6 relevant.

7 JUDGE COCHERES: Mr. Sexton, I'm having a problem
8 here. The case began in September of 1993. Does somebody
9 want to tell me when the notice of hearing which assigned me
10 as the presiding officer was originally sent out? I assure
11 you it was not September of '93.

12 MR. EATON: I can tell you that the on-site
13 inspections occurred in April of 1994. I think you were
14 assigned very shortly thereafter.

15 MR. RANCK: Your Honor, I hate to ask a question, but
16 I'm sort of new to this routine. When did the abandonment
17 in connection with this whole process get -- when did the
18 notice get originally filed? Do you remember?

19 MR. EATON: I think I said September 23, 1993.

20 MR. RANCK: The original.

21 MR. SALAPA: The original abandonment.

22 MR. EATON: Abandonment with the ICC?

23 MR. RANCK: Yes.

24 MR. EATON: Back in 1989.

25 MR. RANCK: That's what I think that the witness is

1 thinking about. That's the date that I was thinking about
2 as the onset of this process.

3 JUDGE COCHERES: Well, I can't control what happens
4 in front of the Federal Government.

5 MR. RANCK: I understand.

6 JUDGE COCHERES: I have certain limitations.

7 MR. RANCK: I knew I had an '89 date in my mind, and
8 I presumed that the witness might be having that, as well.

9 MS. SUSAN SMITH: I don't have the date you were
10 assigned. The date that this was scheduled to the
11 Commission to go to hearing at some point was March 7, 1995.
12 The first prehearing was shortly thereafter.

13 JUDGE COCHERES: All right.

14 Let me enlighten you about how things work, or used
15 to work around here.

16 (Laughter.)

17 JUDGE COCHERES: The case gets filed, as Mr. Eaton
18 just said, in September of '93. I have no idea why, but
19 particularly with rail-highway crossing cases, there has
20 been a real problem in getting them on the judges'
21 schedules.

22 The letter notice that sets forth that a conference
23 of some sort should be held -- the prehearing conference is
24 dated, did you say, April of '95?

25 MS. SUSAN SMITH: March.

1 JUDGE COCHERES: March of '95. That is the first
2 time I was identified as the presiding officer. That may be
3 notice to all of the parties in this room that something is
4 going to happen on a given date. It's also notice to me
5 that it's my case. All right?

6 Now, I just went through my file while we were
7 talking. And by my prehearing order dated September 14th,
8 six months later, I directed, at the request of Conrail and
9 F.A.S.T., that the parties enter into the mediation process.

10 Now, given that I was assigned in April of '95, is it
11 soon enough by your standard that in September I directed
12 this thing to mediation?

13 THE WITNESS: Yes.

14 JUDGE COCHERES: Good. We're making progress.

15 Now, we're now in 1997, and I'd like to be able to
16 tell you that the mediation process was an absolute success.
17 It wasn't. And it took me a long time after the mediators
18 had finished all they could -- they've got to have a
19 settlement. Didn't happen.

20 I am now here in 1997 putting together the pieces of
21 what is a signed stipulation of settlement.

22 Are you telling me that, in your judgment, that the
23 parties to this proceeding in the interim, between September
24 1995 and today, have not had an opportunity to meet among
25 themselves, discuss, and come up with a solution?

1 THE WITNESS: I'm saying that --

2 JUDGE COCHERES: Oh, and by the way, just for your
3 own information, you appeared in front of me in November of
4 1995. November 6th.

5 THE WITNESS: I'm saying that this kind of forum,
6 which is very expensive, can be contentious, and is very
7 difficult for volunteers to take part in, isn't the best way
8 to go about -- I'm talking in general, too, not just this
9 case. But I don't believe the right way to go about
10 disposing of the many hundreds of structures that are out
11 there in Pennsylvania. I think that there may be a better
12 way to do it that doesn't have to entail a legal forum. I
13 don't think it has to be a legal issue in all cases.

14 JUDGE COCHERES: Mr. Eaton, I interrupted your cross
15 examination. Please continue.

16 MR. EATON: Do we have a question on the floor? I
17 don't think we do.

18 JUDGE COCHERES: I don't think we do. If you want to
19 ask one, fine.

20 MR. EATON: Let me just go forward then.

21 BY MR. EATON:

22 Q. I want to look at another aspect of this. There
23 was a comment a few moments ago that Conrail filed with the
24 ICC to abandon service on this line, that is, filed its
25 notice of abandonment, in 1989.

1 From that time forward, the burden of maintenance,
2 the burden of inspection, the burden of potential tort
3 litigation, has been borne by Conrail.

4 For whatever its reasons, Conrail did not elect to
5 seek commission approval for abolition of crossings until it
6 filed its motion or its application for abolition in 1993.

7 Conrail does not wish to incur the expense of further
8 burdens connected with the ownership of this line and its
9 crossings, and sought others who would assume those burdens
10 whose responsibility, financial responsibility, was
11 reasonably certain, and upon whom this commission could
12 impose duties. F.A.S.T. could not be one of those parties
13 under our law.

14 Now, the mediation process produced the result that
15 PennDOT did not wish to take on burdens of maintenance of
16 old structures, but agreed with respect to newer concrete
17 structures that it would assume those burdens.

18 The various municipalities agreed, for whatever
19 reason, trails, park, utility corridor, historic value;
20 those municipalities agreed to assume the burdens of
21 maintenance of these structures in most cases. There were
22 some structures upon which they were unwilling to assume the
23 burden of maintenance.

24 As a part of an overall settlement, Conrail has
25 agreed to transfer significant sums to the municipalities to

1 assist them with their proposed assumption of maintenance
2 burdens.

3 You have sought a moratorium on the process of
4 abolition of crossings. Who do you propose is to bear the
5 financial burdens of that delay?

6 A. The railroads.

7 Q. Thank you.

8 MR. EATON: I don't have any further questions.

9 JUDGE COCHERES: Any more examination for the
10 witness?

11 MS. MARTHA SMITH: Your Honor, I don't have any
12 examination, but I would like to comment on something that
13 he said, for a point of clarification.

14 Mr. Sexton was talking about the policy as not being
15 final. That's not exactly correct. The governor's policy,
16 which we call the Governor's Initiative on Rails-to-Trails
17 Bridges, was a directive to DCNR and PennDOT to cooperate in
18 regard to railroad bridges and tunnels and other crossing
19 structures.

20 That is about a page-and-a-half document which has
21 been finalized. That is not in draft form; it's not going
22 to be changed, and it has been circulated.

23 The decision tree is a way of implementing that
24 policy. And quite frankly, I can't tell you right now
25 whether the decision tree was being worked on prior to or

1 after the policy came out. I think we might have been in
2 the process of working on the decision tree prior to the
3 policy itself. I'm not quite sure.

4 But in any case, the decision tree is in draft form.
5 And that has also been circulated. But the policy itself is
6 final.

7 JUDGE COCHERES: Fine.

8 Okay, Mr. Sexton, you and I have to talk a little
9 more.

10 Consistent with what Mr. Zielonis told you a few
11 minutes earlier, you did use the word "moratorium" in your
12 direct testimony. You may not have intended to. But I
13 heard you say that. And I'd like some idea of what your
14 concept of moratorium is as you understand it.

15 THE WITNESS: So that you understand my concept;
16 okay.

17 JUDGE COCHERES: Yes. You're the one who was brought
18 into this record the concept that there may well be a
19 moratorium imposed. Do you have any idea how long the
20 moratorium will be?

21 THE WITNESS: I think a year, eighteen months would
22 give the agencies that are reexamining their process time to
23 reevaluate that and make recommendations. There may be
24 legislative remedies that may come out of that, maybe
25 internal workings, there may be other consultants that would

1 be brought on line to come up with additional criteria that
2 would help the engineer in the field to balance all the
3 concerns and bring forth to forums such as this more
4 information for you to help make your decision.

5 JUDGE COCHERES: And would you agree with me, to the
6 best of your knowledge, and I assure you, to the best of
7 mine, no moratorium has been imposed at this point in time;
8 has it?

9 THE WITNESS: Has been proposed?

10 JUDGE COCHERES: Has been imposed.

11 THE WITNESS: No.

12 JUDGE COCHERES: Do you have, based on your
13 discussions with my chairman and anyone else, any idea of a
14 suggested start date for a moratorium?

15 THE WITNESS: I guess when the commissioners would
16 vote. This is my own belief that it would be effective
17 immediately. Or maybe it's postponed, I don't know. It's
18 60 days or something like that. I'm not sure how that
19 works, sir.

20 JUDGE COCHERES: No, no, maybe you misunderstood the
21 nature of my question. Today is June 12th. Do you have any
22 date specific for the beginning of a moratorium?

23 THE WITNESS: No. Date specific, no.

24 JUDGE COCHERES: Do you have any projected timetable
25 for the implementation of a moratorium?

1 THE WITNESS: The duration of it?

2 JUDGE COCHERES: For the beginning of a moratorium.

3 THE WITNESS: I think we're talking within a few
4 months at this point.

5 JUDGE COCHERES: Well, are you aware that I have
6 received testimony yesterday from all of the municipalities
7 and the county that they are committed to retaining the
8 Enola low-grade line as a corridor for use as a greenway?

9 THE WITNESS: You've heard from the county and the
10 municipalities, all involved?

11 JUDGE COCHERES: Yes, until 8:00 last night. Are you
12 aware of that?

13 THE WITNESS: No. Let me just make sure I
14 understand. That they would abandon the thought of taking
15 down the structures?

16 JUDGE COCHERES: No, I didn't say that.

17 THE WITNESS: Oh.

18 JUDGE COCHERES: I said they were committed to using
19 the corridor as a greenway; all right?

20 THE WITNESS: A trail?

21 JUDGE COCHERES: Yes. There were some machinations
22 about whether a greenway and a trail were the same thing.
23 But for me, at least, I believe the operative word that the
24 county used was greenway, and I'm not quite sure whether all
25 the municipalities used the same terminology or not.

1 THE WITNESS: I was not aware of that, and I think
2 that's great. And it would even be a safer trail if we
3 could keep all the structures in place.

4 JUDGE COCHERES: In your job -- you're what, the
5 director of --

6 THE WITNESS: Director of Pennsylvania office of the
7 Rails-to-Trails Conservancy.

8 JUDGE COCHERES: And you work with organizations such
9 as F.A.S.T. to implement the Rails-to-Trails policy?

10 THE WITNESS: Yes, provide technical assistance, be
11 liaison to the administration, to the agencies, to the
12 legislature, be a clearing house for information, be a
13 cheerleader.

14 JUDGE COCHERES: And you also work with
15 municipalities, informing same and implementing policy?

16 THE WITNESS: Yes, sometimes under contract by
17 municipalities for preparing master plans or feasibility
18 studies, or something like that.

19 JUDGE COCHERES: And would you have any problem
20 working with Lancaster County and the various municipalities
21 that have entered into the stipulation that's presently
22 pending before me to implement a greenway in that corridor?

23 THE WITNESS: None whatsoever.

24 JUDGE COCHERES: All right.

25 Is there any further examination of the witness based

1 on my questions?

2 (No audible response.)

3 JUDGE COCHERES: Ms. Nettke, redirect.

4 **REDIRECT EXAMINATION**

5 BY MS. NETTKE:

6 Q. Tom, based on one of the Judge's earlier
7 questions; I consider this a very important question, and
8 you are under oath to answer fairly.

9 When you gave him the information that you had talked
10 to the chairman, and what you just described, and that there
11 was a moratorium imposed, and I'm sure you remember we had a
12 couple discussions about that, and you gave me that
13 information. Do you remember what I also told you about
14 what we were not permitted to do, to influence this Judge in
15 this case in any way?

16 A. Yes.

17 Q. What did we talk about about that? First of all,
18 you remember I told you I was filing for a continuance?

19 A. Right.

20 Q. Okay. Based on your information?

21 A. Right.

22 Q. All right. Do you remember otherwise what we
23 talked about?

24 A. That --

25 (Pause.)

1 A. No.

2 Q. All right.

3 MS. NETTKE: Your Honor, if Ms. Smith was permitted
4 to speak in clarification, I just hope that you will let me
5 put on the record that I never attempted, or asked
6 Mr. Sexton behind the scenes, to try to influence this Judge
7 in this case; and I did point out that we cannot. And if
8 that could be in the record, I'd like to have it there.

9 MR. WYLAND: Your Honor, that borders on the
10 outrageous when there was a motion filed asking you for a
11 continuance on the basis of a proposed moratorium.

12 And furthermore, Ms. Nettke, when she received this
13 information, made no attempt to contact other counsel with
14 that information. I take great offense to that remark.

15 MS. NETTKE: A motion is perfectly proper, Your
16 Honor.

17 MR. WYLAND: Is that not an attempt to influence the
18 outcome of his decision based on --

19 MS. NETTKE: That's perfectly by filing --

20 MR. WYLAND: -- information you received?

21 MS. NETTKE: I'm talking about behind the scenes.

22 JUDGE COCHERES: Well, Ms. Nettke, I can confirm for
23 the record that Mr. Sexton and I have never spoken outside
24 the record of this case. And the rest of his testimony
25 stands as we heard.

1 MS. NETTKE: Thank you, Your Honor.

2 BY MS. NETTKE:

3 Q. There were questions about DCNR's role here. Are
4 you aware, Tom, that DCNR has given a grant to F.A.S.T., and
5 not given us the actual money, but awarded a grant to
6 F.A.S.T. of \$57,000 for the proposed project?

7 A. Yes, I've heard that.

8 Q. And would it be fair to say that this is a fairly
9 political case and has gotten a lot of attention statewide?

10 A. Yes, it's been in the Philadelphia Inquirer a
11 couple of times, I think, and it's been in our national
12 newsletter, and the outcome will bring about even more
13 publicity, I think.

14 Q. In your experience with rail-trail statewide, has
15 DCNR in general supported rail-trail conversions?

16 A. In --

17 Q. In support of rail-trail conversions?

18 A. Oh, yes, yes; in general.

19 Q. Has DCNR told you in this particular case that
20 they can't support the rail-trail -- that they can't oppose
21 this stipulation because of the political nature of this
22 case?

23 A. Say this again?

24 Q. Has DCNR told you that in this particular case
25 they can't oppose --

1 MR. ZIELONIS: Your Honor, I'm going to object.
2 That's beyond the scope of any cross examination by any
3 party here.

4 MS. NETTKE: It was brought to the witness's
5 attention that DCNR is not opposing this stipulation.

6 MR. ZIELONIS: Well, then I would further object that
7 this witness can't speak for DCNR.

8 MS. MARTHA SMITH: Your Honor, I think our position's
9 been made very clear on the record in prior proceedings.
10 I'll be happy to restate it for the record here.

11 JUDGE COCHERES: Ms. Nettke?

12 MS. NETTKE: I was asking Mr. Sexton what somebody
13 from DCNR told him. DCNR is a party, even if they don't say
14 anything. Ms. Smith may not have that information, but --

15 MS. MARTHA SMITH: Perhaps if she had a particular
16 name. DCNR is an organization of several thousand people.

17 MS. NETTKE: I don't choose to say a particular name.
18 I asked him if an individual -- or, I'll say an official,
19 I'll clarify -- from DCNR told him that.

20 JUDGE COCHERES: All right.

21 With all the other stuff we have in this record,
22 answer the question.

23 (Laughter.)

24 THE WITNESS: Repeat the question.

25 (Laughter.)

1 BY MS. NETTKE:

2 Q. Has an official from DCNR ever told you that they
3 can't take a public position in this case at this time
4 because of the political nature of this case? And you don't
5 have to name the name.

6 A. No, not -- no.

7 Q. Okay.

8 (Laughter.)

9 Q. What about an active role? If I said they
10 couldn't take an active role, would that change your answer?

11 A. No, I think they are taking an active role.

12 Q. In this case?

13 A. DCNR?

14 Q. Yes.

15 A. They're here, they've been out in the field
16 conferences, they've been --

17 Q. Okay. Okay, thank you, Tom.

18 MS. NETTKE: I suppose that should prove we're on the
19 up and up here.

20 (Laughter.)

21 BY MS. NETTKE:

22 Q. Are you familiar with the circumstances under
23 which the governor's policy that we've referred to was
24 announced to the public? Were you there when this policy
25 was announced?

1 A. Yes, I introduced the governor, who introduced
2 the policy.

3 Q. Okay. And so, you know that has been announced
4 to the public, in other words?

5 A. Yes.

6 Q. When was that?

7 A. October '96; October 20- --

8 MR. RANCK: It's the press release date.

9 THE WITNESS: It's on the press release.

10 BY MS. NETTKE:

11 Q. Does that mean you were present and introduced
12 the governor?

13 A. Yes.

14 Q. What kind of an event was that at?

15 A. This was during his three-day bike ride to
16 promote tourism.

17 Q. You've been asked if you support or have an
18 opinion about the proposed settlement here. Are you aware
19 that the proposed settlement here has a clause in it which
20 allows the townships, when they take ownerships, to demolish
21 a bridge at their discretion? Any bridge at their
22 discretion, after the PUC case is over.

23 A. If you're asking me do they still have an
24 option --

25 Q. No, I'm asking you if you're aware that that's in

1 the stipulation.

2 A. That they still have that option?

3 Q. Yes.

4 A. Yes. I think I've always -- I've heard that
5 before, yes.

6 Q. Okay. Does that, in your opinion, have any
7 effect on the likelihood of a future trail in this corridor?

8 A. Well, as I said before, I mean, I'm uneasy about
9 the situation because, while it may not happen immediately,
10 it could happen a few years from now and still destroy the
11 trail.

12 Q. Has anybody from any other entity other than
13 F.A.S.T. ever approached you about working with them on a
14 possible greenway on this corridor?

15 A. Anybody else?

16 Q. Any other entity, any other group; the county,
17 any of the townships, for example, about your organization
18 helping them establish a greenway on the trail?

19 A. Sure, I talked to --

20 Q. No, I asked if they've approached you.

21 A. Yes, I've gotten calls from, over the years,
22 since '89, from the county. I can't say I can remember a
23 said municipality, but citizens in those municipalities,
24 regional entities who wanted to know how to go about
25 establishing a greenway or a trail.

1 Q. What did the county want to know when they
2 approached you; do you remember?

3 A. Oh, gosh. No; it was probably the planning
4 commission, wanted to know how these things come about.

5 Q. Okay. Did any of the township officials from any
6 of the affected townships ever approach you or call you?

7 A. The affected townships? I don't think so. I
8 probably got calls from citizens, but not their officials.

9 MS. NETTKE: I'm going to end it there. It's been
10 very long. Thank you very much, as far as I'm concerned.

11 JUDGE COCHERES: Any recross for the witness?

12 MR. RANCK: Could I just ask the witness to clarify
13 the handwriting on Staff Exhibit No. 51, his letter to
14 Chairman Quain? I believe it reads: Joe, I suggest we
15 assign Dave Hart to this. Also talk to Kevin C. about this.

16 **RECROSS EXAMINATION**

17 BY MR. RANCK:

18 Q. Do you know whose writing that is? Or do you
19 know the parties? Are you familiar with the parties
20 identified there?

21 A. I know Dave Hart. I don't think I know Kevin C.

22 Q. Do you know who Joe would be?

23 A. No. And I don't know the signature either.

24 Q. Thank you. Who is Dave Hart?

25 A. He's a rail engineer in the PUC.

1 Q. Thank you.

2 JUDGE COCHERES: There being no further questions for
3 the witness, the witness is excused.

4 THE WITNESS: Your Honor, I had asked to extend a
5 comment that wasn't asked in redirect.

6 JUDGE COCHERES: Please stop. And basically what I
7 did at that point was to recommend to Ms. Nettke, the person
8 who sponsored your testimony, that that be dealt with in her
9 official capacity as a representative of F.A.S.T. She
10 thinks she's adequately presented her case. Your done.

11 THE WITNESS: Thank you, sir.

12 JUDGE COCHERES: Thank you.

13 (Witness excused.)

14 JUDGE COCHERES: Ms. Nettke, I think we have one more
15 witness.

16 MS. NETTKE: Before the other witness, will we be
17 taking a bathroom break or anything?

18 JUDGE COCHERES: If that's a request for a break, we
19 can take a break until 7:10.

20 MS. NETTKE: Thank you.

21 (Recess.)

22 JUDGE COCHERES: Let's go back on the record.

23 Ms. Nettke, I think we have one final .

24 MS. NETTKE: We do. I'll call Julie Nettke; and yes,
25 there is a relationship.

1 Whereupon,

2 JULIE NETTKE

3 having been duly sworn, testified as follows:

4 JUDGE COCHERES: Good evening to you.

5 THE WITNESS: Good evening.

6 JUDGE COCHERES: Thank you for your patience. And
7 whatever advantage there is in talking to the Judge last,
8 you have it.

9 (Laughter.)

10 JUDGE COCHERES: It may not be the honor you've
11 wanted, but it's the only one you're going to get.

12 Ms. Nettke.

13 DIRECT EXAMINATION

14 BY MS. NETTKE:

15 Q. I'm going to call you Julie to avoid confusion in
16 the names.

17 Julie, you have, I believe, filed two statements with
18 the commission as written direct testimony; is that correct?

19 A. That's right.

20 Q. And we've indicated that we'll rely on the first
21 statement as amplified, and updated by the second statement.

22 MS. NETTKE: I will mark these F.A.S.T. Statements 5
23 and 6.

24 JUDGE COCHERES: Fine.

25

1 (Whereupon, the documents were marked as
2 F.A.S.T. Statement No. 5, including
3 Exhibits A through I, and F.A.S.T.
4 Statement No. 6, including Exhibits A
5 through C, for identification.)

6 BY MS. NETTKE:

7 Q. And I'll show you that one first. That will be
8 Statement 5.

9 (Document handed to witness.)

10 Q. Is that your statement; and you submitted that
11 back in 1995?

12 A. Yes, it is.

13 Q. It has some exhibits with it?

14 A. Yes, it does.

15 Q. Can you tell the commission how they're numbered
16 or lettered, and how many of them there are?

17 A. They're Exhibit A-Nettke, B-Nettke --

18 Q. Look at the last one and say A through.

19 A. Okay. It looks like I. And there's something
20 extraneous.

21 Q. Okay.

22 JUDGE COCHERES: So F.A.S.T. Statement No. 5 includes
23 Nettke Exhibits A through I?

24 MS. NETTKE: Right.
25

1 BY MS. NETTKE:

2 Q. And then Statement No. 6, called Supplemental
3 Testimony of Julie R. Nettke; is that your statement?

4 (Document handed to witness.)

5 A. Yes.

6 Q. And that includes exhibits called Nettke
7 Supplemental --

8 A. A through C.

9 Q. Do you have copies of those up there with you?

10 A. No.

11 Q. All right. You can keep them up there with you
12 then for now.

13 A. Thank you.

14 Q. If you were submitting those statements today, is
15 there any way you would correct them or change them?

16 A. I don't know that I have corrections; I do have
17 some supplemental information concerning a Lancaster County
18 Community Parks Initiative grant. That funding was not
19 extended. I believe the commissioners made that decision
20 about two weeks ago, or maybe just a week ago.

21 Q. Is it since the filing of our testimony that that
22 decision was made?

23 A. Yes.

24 Q. Are there any other additions or corrections?

25 A. Not that I'm aware of.

1 MS. NETTKE: Can I have a minute, Your Honor?

2 JUDGE COCHERES: Yes. As a matter of fact, I need
3 one up here, as well.

4 (Pause.)

5 MS. NETTKE: There's another correction that should
6 be made that was just pointed out to me. We might wish it
7 were correct as it stands, but it's not.

8 BY MS. NETTKE:

9 Q. On page 2 of your supplemental testimony, under
10 the paragraph government support, there's a reference to
11 ISTEPA enhancement funds. And it says \$5 million. Is that
12 amount correct?

13 A. No, that should read \$500,000.

14 Q. Okay.

15 MS. NETTKE: May I have another minute?

16 JUDGE COCHERES: Yes.

17 (Pause.)

18 MS. NETTKE: There being no further additions or
19 corrections, I'll make the witness available for cross
20 examination.

21 JUDGE COCHERES: Let's go off the record for a
22 moment.

23 (Discussion off the record.)

24 JUDGE COCHERES: Back on the record.

25 Who has questions for Ms. Nettke?

1 MR. ZIELONIS: Your Honor, I have a motion to strike
2 certain portions of the testimony.

3 JUDGE COCHERES: Okay.

4 MS. NETTKE: Are you referring, Mr. Zielonis, to
5 Statement No. 5 or 6?

6 MR. ZIELONIS: Statement No. 6, the supplemental
7 testimony, yes.

8 MS. NETTKE: Your Honor, may I approach the witness?
9 We're sharing a copy.

10 JUDGE COCHERES: All right.

11 Mr. Zielonis?

12 MR. ZIELONIS: Your Honor, I have several. The first
13 is on the first page of the document, unmarked. It would be
14 the number, the first page. The second sentence, F.A.S.T.
15 has intervened in this proceeding; I move to strike, Your
16 Honor. It sounds more like legal argument or a legal
17 conclusion. This witness, I do not believe, is an attorney.
18 She cannot testify to the mandate, what information the
19 commission must have to carry out its mandate.

20 MS. NETTKE: Before I argue in response; which part
21 of that are you having a problem with, Mr. Zielonis?

22 MR. ZIELONIS: The entire sentence, or the second
23 paragraph.

24 MS. NETTKE: With her stating that F.A.S.T. has
25 intervened in a proceeding?

1 MR. ZIELONIS: Yes. The entire sentence.

2 MS. NETTKE: Well, as to her stating that F.A.S.T.
3 has intervened in the proceeding, Your Honor, that's a fact.
4 It's on this record. If she didn't know that, she'd be too
5 dumb to be called as a witness.

6 (Laughter.)

7 MS. NETTKE: The second part simply states her idea
8 of what the purpose of our participation in this. And it's
9 no different, Your Honor, than Mr. Oliver stating he's here
10 as an agreement for your Bureau, or any other witness
11 stating why they're here.

12 JUDGE COCHERES: Mr. Zielonis, at least at this point
13 I'm going to deny your motion with respect to this first
14 item. I'm not really concerned about Ms. Julie Nettke's
15 description of what she thinks my commission is required to
16 do.

17 MR. ZIELONIS: Your Honor, my next objection is on
18 page 3. I'll have to take some time, Your Honor, since this
19 is unmarked on mine. It would be the third paragraph, Your
20 Honor, the second and third sentences.

21 JUDGE COCHERES: Found in the subtitle, public
22 support?

23 MR. ZIELONIS: Yes. Particularly, received many
24 expressions of support; and in the next sentence, have
25 written and called the county commission's office. I object

1 as hearsay, Your Honor.

2 JUDGE COCHERES: Ms. Nettke?

3 MS. NETTKE: The first part, that there were many
4 expressions of public support; I can have her establish how
5 she knows that.

6 The county is a party here. The county has supported
7 and opposed this project alternately so many times that it's
8 hard to keep track.

9 But I think the county's witness, who is still on the
10 phone somewhere waiting, Ken, probably testified also, if I
11 were to call her, that the county has received many
12 expressions of public support.

13 MR. ZIELONIS: Your Honor, the best witnesses to
14 provide that would be these alleged individuals. And
15 they're not --

16 MS. NETTKE: Your Honor, the county commissioners, if
17 I may say one more thing, have not been offered here. I
18 suppose I could have subpoenaed them has Mr. Zielonis given
19 me any notice that he intended to move to strike this
20 testimony, having had this testimony --

21 JUDGE COCHERES: Why is he required to do that?

22 MS. NETTKE: He isn't required to.

23 JUDGE COCHERES: Okay.

24 MS. NETTKE: Or, I don't know; I mean, I haven't
25 researched the question, so I don't know. But anyway, he

1 didn't, and it's been in his hands for a long time.

2 JUDGE COCHERES: So?

3 MS. NETTKE: Perhaps as a courtesy. But if not as a
4 courtesy, then I don't know if he was required legally to do
5 that. But he didn't do it.

6 And no, the commissioners aren't here. I'm the first
7 to grant that they would be the best witness. The county
8 came in here, Your Honor, with a witness yesterday for the
9 county that didn't know anything, he couldn't testify to
10 anything; and her counsel led her testimony and didn't even
11 show it to her. And then, --

12 JUDGE COCHERES: Now, wait a minute.

13 MS. NETTKE: -- he's having a problem because he
14 doesn't have his best witness here.

15 JUDGE COCHERES: Ms. Nettke, the objection is made to
16 this witness's testimony that it contains hearsay. That is
17 a classic legal objection that we all learned about in law
18 school.

19 My question to you is: There's some reason -- I
20 have, when I teach courses in this subject to the bar
21 association, and I have done that, tell them that I believe
22 that the hearsay rule is nothing more than a definition in
23 about 35 ways to let it in. Tell me one of those 35 ways.

24 MS. NETTKE: It's not offered for its truth. That's
25 usually the first way. I could tell you some more, but you

1 probably don't want to hear it.

2 But she is offering for its truth, there are many
3 statements of public support for this trail. And they're
4 out there, part of the public record in many ways.

5 JUDGE COCHERES: Ms. Nettke, this is classic hearsay.
6 All right? The motion is granted.

7 MR. ZIELONIS: Your Honor, my last concern is page 5,
8 under the topic, the bridges. It is the sixth line. The
9 line starts: line in its stone arch structures. The
10 sentence I would move to strike would be, it is worth noting
11 again, to the end of that sentence, as a legal conclusion.

12 (Pause.)

13 MR. ZIELONIS: Moreover, Your Honor, the witness is
14 unqualified to speak to those procedures. We already had
15 one witness who was qualified to speak today presented by
16 F.A.S.T.

17 JUDGE COCHERES: Ms. Nettke, do you have a response?

18 MS. NETTKE: I don't object to taking that out of the
19 testimony.

20 JUDGE COCHERES: Fine. The motion is granted.

21 MR. EATON: I would just note that I join in
22 Mr. Zielonis's motion with respect to the statement on
23 page 5.

24 JUDGE COCHERES: Fine.

25 Ms. D'Alfonso.

1 MS. D'ALFONSO: Thank you, Your Honor. I would have
2 objections relative to the exhibits, to the F.A.S.T.
3 Statement 6.

4 JUDGE COCHERES: All right.

5 MS. D'ALFONSO: Supplemental A is a newspaper
6 article. And I would object to its admission into the
7 record in that it is a newspaper article. It's hearsay; and
8 if we wanted to get this in, the author of the article
9 should be made available for cross examination.

10 MS. NETTKE: That article is not offered for its
11 truth, Your Honor. And I don't know that I was actually
12 familiar enough with the commission's procedures to know
13 that by attaching an exhibit to the testimony that I was
14 automatically offering that for inclusion in the record.

15 JUDGE COCHERES: You're not offering that exhibit?

16 MS. NETTKE: I found out since I got here that the
17 procedure is that all the exhibits are automatically
18 offered. But in a regular court I wouldn't necessarily have
19 offered it; if you understand what I'm saying.

20 I'm not used to written direct testimony and not
21 signing it or verifying it, and then coming up to the
22 proceeding and -- this procedure is new to me.

23 JUDGE COCHERES: Well, I appreciate that it's new to
24 you, ma'am.

25 MS. NETTKE: Well, it's new to me somewhat. I've

1 been here quite a while now, but I'm still learning.

2 It's not offered for its truth anyway. It was
3 attached to something she referred to. And she can be
4 questioned about it.

5 MS. D'ALFONSO: Your Honor, unless she wrote the
6 article.

7 JUDGE COCHERES: Where in her testimony does she
8 refer to the article?

9 MS. D'ALFONSO: Page 2, under government support, at
10 the end of the fourth line of that subparagraph.

11 JUDGE COCHERES: Let's go off the record for a
12 moment.

13 (Discussion off the record.)

14 JUDGE COCHERES: Let's go back on the record.

15 I once again tried to find my copy of this testimony
16 and was once again not successful.

17 I did note right before we went off the record that I
18 believe Ms. Nettke volunteered to remove Nettke Supplemental
19 Exhibit A from the record. And I think that's a wise move.
20 So I think that's not a problem.

21 I might add that the reference on page 2 to the
22 exhibit should also be removed.

23 MS. NETTKE: Sure.

24 JUDGE COCHERES: All right.

25 MS. D'ALFONSO: Your Honor, I do have one more.

1 And this is a motion to strike Nettke Supplemental C.
2 Ms. Martha Smith from DCNR, and Ms. Nettke and myself did
3 have an off-the-record discussion.

4 Conrail and DCNR will provide the complete final
5 governor's policy that has been referred to. We will make
6 sure that it gets to the parties by facsimile tomorrow, if
7 necessary, and certainly to the court reporter by tomorrow.

8 MS. NETTKE: That's been agreed.

9 JUDGE COCHERES: All right.

10 (Whereupon, the document marked as Nettke
11 Supplemental Exhibit C, (included with
12 F.A.S.T. Statement No. 6), was withdrawn.)

13 MS. NETTKE: And we'll also withdraw Tom Sexton's
14 exhibit consistent with that decision to offer the complete
15 draft; as long as it comes in, but reserve the right to once
16 again offer Tom Sexton's exhibit if the final version
17 doesn't come in.

18 MS. D'ALFONSO: We assure Your Honor there will be a
19 final version provided.

20 JUDGE COCHERES: Ms. Nettke, I recognize that you are
21 not particularly experienced before this commission, but I
22 assure you Ms. D'Alfonso appears in front of me and all of
23 the other judges with some regularity. And when she tells
24 me some document will be provided, I take her at her word.

25 MS. NETTKE: Ms. Smith is providing that.

1 JUDGE COCHERES: I will mark Sexton Exhibit No. 1
2 withdrawn.

3 (Whereupon, the document marked as
4 Sexton Exhibit No. 1 was withdrawn.)

5 MS. MARTHA SMITH: I could get it copied this evening
6 if you'll allow me the time to walk back to my office.

7 JUDGE COCHERES: With all due respect, no.

8 (Laughter.)

9 JUDGE COCHERES: Although I appreciate your offer.

10 Are we ready yet to cross-examine the witness?

11 (No audible response.)

12 JUDGE COCHERES: Does anyone have any cross
13 examination for the witness?

14 MS. NETTKE: Your Honor, just as a procedural matter,
15 might it be better if I would ask to substitute the new
16 exhibit for Tom Sexton's exhibit? I think that's what I'd
17 like to do, so that it doesn't in any way affect his
18 testimony that was offered based on the governor's policy.
19 Does that sound good?

20 JUDGE COCHERES: All right. Since we have marked
21 Sexton Exhibit No. 1 withdrawn --

22 And I believe, Ms. Smith, you were the one who has
23 volunteered to provide a copy?

24 MS. MARTHA SMITH: Yes.

25 JUDGE COCHERES: When you provide it, you will

1 provide it as Late-Filed Exhibit Sexton No. 2.

2 MS. NETTKE: That would be great.

3 JUDGE COCHERES: All right.

4 Mr. Wyland.

5 MR. WYLAND: Thank you, Your Honor.

6 **CROSS EXAMINATION**

7 BY MR. WYLAND:

8 Q. Ms. Nettke, how long has F.A.S.T. been in
9 existence, about?

10 A. We were formed as a loose coalition of different
11 organizations and individuals, and started having regular
12 meetings in about 1990. And then we formed as a nonprofit
13 organization in 1993.

14 Q. At what point did you begin to solicit financial
15 contributions from the public or other groups?

16 A. Actually, I think we solicited donations early on
17 before we even were a nonprofit. But we didn't accumulate
18 enough of a contribution to -- I think there's like a \$5,000
19 limit or something as far as tax purposes. So we were just
20 like a loose coalition.

21 And then in 1993 we pretty much had a formal
22 membership fee established through our bylaws, and had a
23 brochure, a member brochure that was published and
24 circulated. So I would say in 1993.

25 Q. As I understand it, F.A.S.T. sort of had two

1 different sources of funding or potential funding. One
2 generally was donations, that is, actual cash money that
3 came to F.A.S.T. that went into F.A.S.T.'s bank account; the
4 other being potential money sources, which were grants, some
5 of which were approved for at least some period of time. Is
6 that generally correct?

7 A. That's correct. Some were approved, and also
8 some money was received from private foundations and private
9 sources that were expended on the project.

10 Q. As to the first group, the cash donations and
11 fund-raising, that sort of thing, about how much money since
12 1990 until now has F.A.S.T. raised in terms of that sort of
13 cash money?

14 A. Can I take a second to think about that?

15 JUDGE COCHERES: Certainly.

16 (Pause.)

17 THE WITNESS: This is just an estimate, because, you
18 know, it's been seven years, and I'd have to think about
19 every financial statement. But I would think that's
20 probably in the neighborhood of \$30,000.

21 BY MR. WYLAND:

22 Q. \$30,000. How much grant money did F.A.S.T.
23 actually receive in hand with discretion to spend, and/or
24 did spend?

25 A. Well, when you receive a grant, you really don't

1 have discretion to spend it, as I would interpret the word
2 "discretion." You have to use it for the purpose that you
3 applied for it.

4 So, we received a \$30,000 grant from the Lancaster
5 County Foundation, which is a private organization, to
6 complete the master plan.

7 And then we also received some smaller grants or
8 contributions from the Access Fund, I believe we got \$1,000
9 or \$2,000 from the DuPont Foundation; we also received
10 \$2,000. And I believe there was a third smaller grant that
11 we received, but I can't tell you the name of it right now,
12 I can't remember.

13 Q. Of the approximately \$63-65,000 that you just
14 described, cash that you actually did receive, how much does
15 F.A.S.T. have today?

16 A. Well, we're just in the middle of our annual
17 fund-raising, the biggest fund-raising event, which is Dream
18 Ride from Lancaster County. And I think just in the last
19 week we've gotten in about \$2,500. So I think probably
20 around \$3,000.

21 Q. Is that the total amount that F.A.S.T. would have
22 available immediately to spend on improvements on this
23 project?

24 A. That's correct. And maybe some of that wouldn't
25 be available because we have to pay for our expert witnesses

1 in the last couple of days.

2 Q. When you undertake fund-raising activity, do you
3 use the money that you had received previously in terms of
4 for postage and printing, that sort of thing?

5 A. That's correct.

6 Q. Okay.

7 A. If it's the private contributions. I wouldn't
8 be, you know, grant funds that we would use for that.

9 Q. Now, as to the grant monies that were, at least
10 for some time, approved, isn't it true that all of the grant
11 funding was contingent upon F.A.S.T. actually owning, taking
12 title to, real estate?

13 A. We had applied for the grants with that in mind,
14 certainly. That was the representation that we made to the
15 agencies.

16 But it's also my understanding that for some of those
17 programs it's not necessary that you have to be the owner of
18 the land. You can still be a sponsor of a project as long
19 as you have the owner's permission and compliance, you know,
20 with what the project would be undertaking, obviously, on
21 the property.

22 Some of the grants actually required restrictive
23 covenants put on it, on the property.

24 MR. WYLAND: May I approach the witness, Your Honor?

25 JUDGE COCHERES: Certainly.

1 BY MR. WYLAND:

2 Q. I'm going to hand you a document that's been
3 marked as Township Exhibit 10 for identification.

4 (Whereupon, the document was marked
5 as Township Exhibit No. 10 for
6 identification.)

7 (Document handed to witness.)

8 Q. Are these F.A.S.T. answers to interrogatories
9 propounded by the townships in this case?

10 (Witness perusing document.)

11 A. I'm sorry. Could you say that again? I thought
12 you were talking to the Judge.

13 Q. Is Township Exhibit 10 a copy of F.A.S.T. answers
14 to interrogatories, Set II?

15 A. It appears to be so.

16 Q. Can you refer to page 2, please, of Township
17 Exhibit 10, question 5. The answer near the bottom of the
18 page. Can you read the sentence, please, that starts, It is
19 our understanding?

20 A. It is our understanding that all of these funds
21 are contingent upon ownership.

22 Q. Thank you.

23 MR. WYLAND: Your Honor, I move for the admission of
24 Township Exhibit 10.

25 JUDGE COCHERES: Admitted.

1 (Whereupon, the document marked as
2 Township Exhibit No. 10 was received
3 in evidence.)

4 BY MR. WYLAND:

5 Q. Ms. Nettke, I'm going to hand you a copy of a
6 document that's been marked as Township Exhibit 11 for
7 identification.

8 (Whereupon, the document was marked
9 as Township Exhibit No. 11 for
10 identification.)

11 (Document handed to witness.)

12 Q. Could you tell me what the cover sheet of this
13 document is?

14 A. It's a financial statement without audit prepared
15 for F.A.S.T. by Stephen Hohenwarter, CPA.

16 MR. WYLAND: I'll note for the record that there are
17 five numbered pages which follow, three introductory pages,
18 for Exhibit 11, and then afterwards are a series of four
19 handwritten pages.

20 BY MR. WYLAND:

21 Q. If I could refer you to the last four pages,
22 Ms. Nettke, the handwritten pages. Could you verify what
23 those documents are?

24 A. These were prepared by our treasurer for our
25 organization in order to -- and I'm assuming this -- to meet

1 your discovery question about what our financial statement
2 was, and up-to-date it. Because the financial statement is
3 done yearly, and I think you wanted an up-to-date account of
4 what our finances was.

5 Q. In fact, all of the documents in Township Exhibit
6 11 were provided by F.A.S.T. in response to interrogatory
7 requests; is that right?

8 A. That would appear to be correct.

9 Q. Okay. If I can refer you to the last two pages
10 of the exhibit, and they're both handwritten pages, is it
11 fair to say that this represents financial information about
12 F.A.S.T. for the calendar year 1996?

13 A. May I have a minute to look at it?

14 Q. Sure.

15 (Witness perusing document.)

16 A. For calendar year 1996?

17 Q. Yes.

18 A. I would not dispute our treasurer's figures, no.

19 Q. Okay. And there's an item near the bottom for
20 payroll. Is that payroll that was paid to you as project
21 director by F.A.S.T.?

22 A. Yes.

23 Q. And the payroll taxes would go along with that
24 payroll entry as well?

25 A. That's correct.

1 Q. Okay. Back up to the 1995 information, which was
2 the handwritten data that immediately precedes the ones we
3 were just looking at.

4 At the bottom of that page there's an similar entry
5 for payroll of \$6,497, and payroll taxes for something like
6 \$3,000; is that right?

7 (Pause.)

8 A. Maybe I'm not looking at the --

9 (Pause.)

10 A. Oh.

11 Q. It would be the first handwritten page of the
12 packet.

13 A. Okay. I was at the second page again. Payroll
14 taxes, \$3,153; payroll \$6,497, yes.

15 Q. Okay. So it's fair to say that of the total
16 expenses for 1995 for F.A.S.T., there's \$22,457 shown.
17 Approximately 78 percent of your expenses for F.A.S.T. was
18 your salary?

19 A. I don't have a calculator here. I wouldn't want
20 to make that calculation in my head.

21 Q. Well, the payroll and payroll taxes then are as
22 shown?

23 A. As \$6,000 and \$3,000, respectively?

24 Q. Yes.

25 A. Yes.

1 Q. Okay.

2 (Pause.)

3 Q. Oh, sorry.

4 JUDGE COCHERES: Is that new math, Mr. Wyland?

5 MR. WYLAND: Yes, Judge.

6 THE WITNESS: And I'm a very poor mathematician, so I
7 should have caught that.

8 MR. WYLAND: Well, apparently I am, as well. Oh, I
9 know.

10 BY MR. WYLAND:

11 Q. What's the design and development entry on there?
12 Can you tell me what that was? An expense of \$8,027.

13 A. Well, I did not prepare this. Our treasurer
14 keeps our financial records.

15 Q. Okay.

16 A. But generally, I believe that she enters, under
17 design and development, costs associated maybe with paying
18 consultants or printing of our master plan. I think those
19 are the type of costs that would be under design and
20 development. Things associated with the actual property and
21 expenditures we were putting into the actual trail itself.

22 Q. Okay. I'll stand corrected in that I
23 inadvertently added the \$8,000 figure in that 78 percent.

24 If we could, let's turn to page 3 of Exhibit 11.
25 That would be numbered page 3. Actually, it's the fourth

1 page.

2 A. I'm sorry, I didn't hear that last part. Where
3 was this?

4 Q. Page 3, the numbered page 3 of Exhibit 11.

5 (Pause.)

6 Q. Are you with me?

7 A. Yes.

8 Q. Okay. There are two columns shown for F.A.S.T.
9 expenses, one for 1994 and one for 1993. In the column for
10 1994 it shows payroll of \$26,923. Was that payroll amount
11 entirely to you as project director?

12 A. Without reviewing this, I would pretty much say
13 that there's no way that I received \$26,923 that year. That
14 was certainly what was owed to me for the work that I did
15 for F.A.S.T. under their employ, but --

16 Q. Would you say then that your accountant's
17 financial statement for 1994 is in error?

18 A. No, I'm saying that although I had entered into
19 an agreement with the board of directors of F.A.S.T. to be
20 compensated for my work, there was not funds available at
21 the time to pay me on a regular basis. And the only payment
22 I received that year was the figures that the treasurer has
23 supplied. Which would have been the \$6,000.

24 Q. But for 1994 this indicates that you received, or
25 payroll expenses were paid, of \$26,923. I guess my question

1 is: Is it your position now, your testimony now, that that
2 figure's in error; and, in fact, you never received \$26,923?

3 A. I think there's a -- on page 5, if I can refer
4 you to note B, there is a notation at the top of the page,
5 accrued expenses, commitments, where the CPA who prepared
6 the financial statement pretty much explained that
7 situation.

8 Q. Right.

9 A. Unpaid salary would be paid as soon as
10 unrestricted funds become available; the accrued expenses
11 figures of \$21,000 represents wages accrued of \$19,000 and
12 related payroll taxes; there are reasonable expectations
13 that funds will become available in the current year and as
14 such, this liability is listed as a current asset.

15 Would that possibly explain your problem with this?

16 Q. I don't think so. Is it your position that you
17 waived -- in addition to the money you've received from
18 F.A.S.T. --

19 A. Yes.

20 Q. -- in salary, it's also your position, is it not,
21 that you have waived an entitlement on your part to an
22 additional nearly \$20,000 in payments from F.A.S.T.?

23 A. I think it's between \$17- and \$18,000. Yes, I
24 realized that there was probably little chance that I would
25 be getting paid for my back salary, and it was time to

1 forgive that debt.

2 Q. In your testimony you talked about governmental
3 support allegedly for a F.A.S.T. position in this case. I
4 wanted to confirm with you that it's now F.A.S.T.'s
5 understanding that the County of Lancaster County supports
6 the stipulation of settlement between Conrail and the
7 townships?

8 A. I didn't hear the question in that. Can you say
9 it again, please?

10 Q. Yes. Do you understand now that the County of
11 Lancaster supports the stipulation of settlement between
12 Conrail and the townships?

13 A. Yes, I do.

14 Q. Okay. When you talk about public support in your
15 testimony, there are no public groups appearing here other
16 than F.A.S.T., I suppose, that are opposing the stipulation
17 of settlement between Conrail and the townships; are there?

18 A. The Historic Preservation Trust.

19 Q. Any public groups?

20 A. They're not a public group? Oh, you mean a
21 public agency?

22 Q. Anybody. You speak about public, you're -- I
23 mean broad-based public support --

24 MS. NETTKE: Objection; that's been answered. She
25 characterized the Trust as a public group.

1 BY MR. WYLAND:

2 Q. Are there any other public groups who are
3 appearing here and opposing the stipulation of settlement?

4 A. No, there are not.

5 Q. Do you realize that today, with Conrail owning
6 the property at issue, that we have private property? The
7 former rail line is private property; do you understand that
8 to be true?

9 A. I certainly am aware of that. I'm an adjacent
10 landowner to the line.

11 Q. Okay. And you've heard Conrail testify that
12 currently there is no authorized use of the railway; is that
13 right?

14 A. I see Amtrak trucks up there, and that kind of
15 thing; Conrail trucks.

16 Q. Okay. Do you understand that if the stipulation
17 of settlement between Conrail and the townships is approved,
18 that the character of that land upon conveyance would change
19 from private Conrail property to publicly owned property?

20 A. Absolutely, I understand that.

21 MR. WYLAND: No further questions.

22 JUDGE COCHERES: Well, let's go off the record for
23 just a moment.

24 (Discussion off the record.)

25 JUDGE COCHERES: Let's go back on the record.

1 Is there any further cross examination of the
2 witness?

3 Mr. Zielonis.

4 MR. ZIELONIS: Thank you, Your Honor.

5 **CROSS EXAMINATION**

6 BY MR. ZIELONIS:

7 Q. Good evening, Ms. Nettke.

8 Do you have Township Exhibit No. 11 in front of you?

9 A. Yes, I do.

10 Q. Would you agree with me that your salary, at
11 least as offered and provided by F.A.S.T., is \$25,000 on an
12 annual basis?

13 A. I was employed by F.A.S.T. from October of 1993
14 to October of 1995. That commitment by the board was, I
15 believe, worded, if and when funds became available. That
16 was always our understanding. But it was based on a salary
17 of \$25,000 a year.

18 Q. Are you no longer employed by F.A.S.T.?

19 A. I'm just a volunteer. And I've only been a
20 volunteer since October, the end of October of 1995.

21 Q. Okay. Now, on that exhibit, for the statement of
22 revenues and expenses for 1995 --

23 A. Can you refer me to the page?

24 Q. It's the unmarked page. It's probably the first
25 handwritten page.

1 JUDGE COCHERES: The fourth page from the back,
2 perhaps?

3 MR. ZIELONIS: Yes, Your Honor.

4 THE WITNESS: Okay.

5 BY MR. ZIELONIS:

6 Q. Now, that, as my copy reads, is from January 1,
7 1995 through September 30, 1995.

8 A. That's right.

9 Q. Is there any reason why the treasurer did not
10 provide documentation for the last three months of that
11 year?

12 MS. NETTKE: Objection; she can't really testify as
13 to what the treasurer did, or as to why the treasurer didn't
14 do that.

15 JUDGE COCHERES: Mr. Zielonis, that's going to be
16 kind of tough.

17 MR. ZIELONIS: I'll withdraw it, Your Honor.

18 JUDGE COCHERES: Okay.

19 BY MR. ZIELONIS:

20 Q. I believe you testified that the \$6,400 for
21 payroll --

22 A. Uh-huh.

23 Q. -- were your salary?

24 A. That's correct.

25 Q. And the payroll taxes of almost 50 percent of

1 that number is also -- is that payroll taxes just for your
2 payroll?

3 A. I have been the only employee of F.A.S.T.; so,
4 yes.

5 Q. And would the design and development expense
6 include any legal costs?

7 A. No. All of our legal costs have been donated.

8 Q. Did you receive an additional salary the last
9 quarter of 1995?

10 A. I have received sporadic payments of my back pay
11 through August of 1996. So there may have been payments
12 made to me at that time. Without weekly records here or
13 monthly records, I don't know.

14 Q. And I am assuming that for the 1996 calendar
15 year, the approximately \$6,000 is your salary?

16 A. For the 1990- --

17 Q. 1996 calendar year.

18 A. And you said, again, what figure?

19 Q. The approximately \$6,000.

20 A. I'm trying to think of my IRS return.

21 Q. \$5,853.77. It's on this exhibit.

22 A. I think it's -- yes, I think that's correct.

23 Q. And I believe that I have read somewhere that you
24 are entitled project director?

25 A. That was my title, yes.

1 Q. As well as executive director of F.A.S.T.?

2 A. Yes. It's the same position. It's just that --
3 the job description's the same. It's just that -- I don't
4 know how it got mixed up that way, but I personally prefer
5 the title "project director."

6 Q. Okay. Now, I believe F.A.S.T. made a request for
7 ISTEA funding of approximately \$500,000; is that correct?

8 A. That's correct.

9 Q. And did that grant have the requirement of a
10 match?

11 A. It did.

12 Q. Of funding by the applicant organization?

13 A. Yes, and I believe it's at least 20 percent.

14 Q. Okay. And you were going to use the value of the
15 real estate conveyed to you by Conrail to F.A.S.T. as that
16 match?

17 A. At the time of application for the ISTEA money,
18 we were told that the value of the donated property would
19 qualify as a match. We were later told that that's
20 considered a soft match as opposed to a hard match, and that
21 we need a hard match, which is cash.

22 Q. And you did not have the 20 percent at that time?

23 A. When we were notified that we had to have the
24 hard match? Yes, because we had already received
25 notification from the county that their Community Parks

1 Initiative grant was awarded to F.A.S.T.

2 And also, I think we may have at that time already
3 heard that we had gotten that PHMC grant, and, who knows,
4 maybe even the DCNR grant. But the point was, these grants
5 would mesh together in a way that they would match.

6 Q. And that's what I'm trying to figure out,
7 Ms. Nettke. The county grant also had a matching
8 requirement; correct?

9 A. That's correct.

10 Q. And did you not provide on a progress report to
11 the county that you were going to use the ISTEA enhancement
12 funds as the 50-percent match requirement of the county
13 grant?

14 A. That's correct. And that was after I had
15 clarification that that would be acceptable from the county
16 planning commission, the department that administers the CPI
17 grant. And I also had conversations with Commissioner
18 Kauffman that that would be acceptable.

19 Q. So you were going to use the county grant to
20 support the ISTEA grant, and also use the ISTEA grant to
21 support the county grant, both of which required matches?

22 A. As well as --

23 MS. D'ALFONSO: Excuse me.

24 THE WITNESS: -- possible other funds. And it's not
25 a grant.

1 MS. D'ALFONSO: Thank you. I was going to object to
2 the form of the question. ISTEAs funds are not a grant.
3 Thank you.

4 MR. ZIELONIS: I'll accept that, Your Honor, not
5 being an expert in that area.

6 BY MR. ZIELONIS:

7 Q. Is that true?

8 A. Can you repeat the question again?

9 Q. You were going to utilize several funds or awards
10 or grants as matching funds for either an award of a grant?

11 MS. NETTKE: Your Honor, I'll object. It's been
12 asked and answered.

13 JUDGE COCHERES: Yes, it was asked. But the answer
14 was obscured by Ms. D'Alfonso's objection.

15 MS. NETTKE: I'll ask the witness to answer then.

16 THE WITNESS: The grants -- my understanding was that
17 the grants could be dovetailed together in such a way that
18 they would support a total project. And there was
19 flexibility in how that would happen.

20 I had a meeting with, for instance, Larry Williamson
21 from DCNR because we were trying to discuss how these
22 matches would occur, because the DCNR grant also requires a
23 match.

24 (Pause.)

25 THE WITNESS: I'm trying to think. And also, our

1 PHMC grant is \$100,000. That also requires a 50-percent
2 match. So every grant that we received, grant or
3 enhancements, funds, approvals that we received, required
4 matching funds.

5 BY MR. ZIELONIS:

6 Q. Ms. Nettke, thank you, that saved me some more of
7 my cross examination.

8 What is your relationship with the legal counsel for
9 F.A.S.T.?

10 A. She's my mother.

11 Q. And who are the board members of F.A.S.T.?

12 A. We have fourteen or fifteen board members.

13 Should I tell you all their names?

14 Q. Is your legal counsel a board member?

15 A. Yes, she is.

16 Q. Do you see any conflict of interests in that
17 process, in terms of your testimony today?

18 MS. NETTKE: Objection. It think that calls for a
19 legal conclusion on her part as it's asked.

20 MR. ZIELONIS: Your Honor, it's a similar question
21 that was asked of, I believe, Mr. Wiker yesterday from the
22 townships, whether the fact that he was an adjacent
23 landowner as well as a government official, whether there
24 was a conflict of interests in his testimony regarding the
25 trail.

1 MS. NETTKE: Your Honor, the question of Mr. Wiker
2 was whether he saw a conflict of interests in the fact that
3 he was interested in buying a piece of the subject property
4 at the same time he was a township supervisor. I see that
5 as different from the question here. But that was the
6 question yesterday.

7 JUDGE COCHERES: Yes, I remember the background and
8 the history of that question.

9 MS. NETTKE: And, Your Honor, I think --

10 JUDGE COCHERES: I'll sustain the objection.

11 MS. NETTKE: -- it does call for a legal conclusion
12 on her part.

13 BY MR. ZIELONIS:

14 Q. Did you state, Ms. Nettke, there are fourteen
15 board members?

16 A. I think at this time there are, yes.

17 Q. Were there always fourteen board members?

18 A. I think we might have started out with ten or
19 twelve. We have flexibility in our bylaws which allows us
20 to have, I think, between ten and fifteen.

21 Q. And I assume you hold monthly meetings?

22 A. Yes, we do. Second Monday of the month.

23 Q. Do all of your board members attend those
24 meetings?

25 A. They really must. If they miss two in a row,

1 then they're kind of off. So, yes, pretty much. Unless
2 they have a good excuse.

3 Q. Have fourteen board members attended every
4 meeting, or has it fluctuated from meeting to meeting?

5 A. Oh, there's usually one or two absentees.

6 Q. Now, if action is to be taken at a board meeting,
7 or F.A.S.T. is going to take any action or promote anything,
8 how is that process initiated?

9 MS. NETTKE: Objection to the vagueness of the
10 question. What type of action are we talking about?

11 MR. ZIELONIS: Your Honor, I'm trying to build a
12 foundation as to what led to the initiation of F.A.S.T.,
13 particularly in this testimony.

14 JUDGE COCHERES: The initiation?

15 MR. ZIELONIS: Well, I could cut directly to the
16 chase and go into --

17 JUDGE COCHERES: Good.

18 MR. ZIELONIS: I will do that, Your Honor.

19 BY MR. ZIELONIS:

20 Q. Who authorized you to testify today, Ms. Nettke?

21 A. The board of directors of F.A.S.T.

22 Q. Did they take a vote to have that authorization?

23 A. Those discussions were done in executive session.

24 Was it a vote?

25 Q. Yes.

1 A. Specifically on whether I should be the one that
2 comes here and faces this?

3 (Laughter.)

4 Q. That F.A.S.T. should testify, and that you would
5 be the witness.

6 A. There wasn't a lot of volunteers, put it that
7 way.

8 (Laughter.)

9 Q. I believe that.

10 A. No, I don't think -- it was pretty obvious that I
11 was coming here. We discussed it as a --

12 Q. How many board members were there?

13 A. Where?

14 Q. At that executive session.

15 A. We have executive sessions every month since
16 these proceedings have begun due to the fact that the
17 townships have requested all of our minutes from our
18 meetings, and we need to discuss confidential things with
19 our attorney, so --

20 Q. How many board members were at that executive
21 session where it was determined that you would testify on
22 behalf of F.A.S.T.?

23 MS. NETTKE: Your Honor, we've submitted two
24 statements of testimony. And I'm not objecting to the
25 question. But I'd like to know if it references the

1 testimony that was submitted in 1995 as well as, or
2 exclusive of the testimony that was submitted a couple
3 months ago.

4 MR. ZIELONIS: Your Honor, I'll have it relate to
5 both statements presented by F.A.S.T. today, both No. 5 and
6 No. 6.

7 MS. NETTKE: Then I will object, because she's being
8 asked to recall how many board members were at a board
9 meeting in 1995. And I don't see the relevance of it; and I
10 think it would be very hard to remember.

11 JUDGE COCHERES: Well, part of the purpose of cross
12 examination is to test a witness's memory. However, I too
13 am having some problem with relevance.

14 Mr. Zielonis, do you want to explain to me why this
15 is relevant?

16 MR. ZIELONIS: Your Honor, it goes to whether there
17 is actual authorization to testify on behalf of F.A.S.T.,
18 and whether this witness actually represents F.A.S.T.

19 We have testimony direct, cross examination by
20 Mr. Wyland, regarding a financial interest here as a project
21 director.

22 JUDGE COCHERES: Wait a minute. This lady was the
23 only employee of the organization. You're not trying to
24 tell me that you think that this is a financial interest? I
25 mean, she's admitted she was the only employee. And now

1 she's a volunteer; I believe I did hear her say that. So,
2 do you really think that she was lying when she said no one
3 else would come?

4 (Laughter.)

5 MR. ZIELONIS: No, Your Honor. But my questions are
6 going to the credibility of this witness. Has she actually
7 testified on behalf of a group which has alleged support, or
8 is she testifying because she has a financial gain from this
9 proceeding being overturned if the stipulation's being
10 denied by you.

11 MS. NETTKE: Your Honor, that --

12 MR. ZIELONIS: And it goes to the credibility and
13 integrity of the witness, and her bias.

14 MS. NETTKE: It may go to that. I'll object to the
15 relevance, and I don't see how there could be a suggestion
16 that she would have a financial interest when she hardly
17 ever, she testified, she hadn't been paid for over a year as
18 a volunteer.

19 JUDGE COCHERES: Well, you conceded in your remarks
20 just now that you see the relevance of what Mr. Zielonis
21 says. I agree with you; I do also.

22 Continue with the examination.

23 BY MR. ZIELONIS:

24 Q. If the grants and awards that we were discussing
25 earlier had been approved and provided to F.A.S.T., would

1 those grants and awards have been utilized for your salary?

2 A. I think I know what grant you're talking about.
3 It was an application --

4 Q. No, I'm talking about all of them, all the
5 grants.

6 A. My personal salary?

7 Q. Yes.

8 A. I don't think so, because I had pretty much an
9 understanding with the board that I wasn't going to be the
10 project director once the construction of the trail started.

11 Q. Now, has anyone at F.A.S.T. reviewed this
12 testimony besides yourself?

13 A. Yes, it was circulated among our board.

14 Q. Did all the board review it?

15 A. I think copies are always made to our board, yes.

16 Q. Are you familiar, Ms. Nettke, with the phrase as
17 used in this proceeding, inter-municipal agreement?

18 A. Am I familiar with the phrase --

19 Q. Yes.

20 A. -- of the document?

21 Q. No, with the phrase, inter-municipal agreement.

22 A. I know what that means as a concept, what an
23 inter-municipal agreement is. It's an agreement between
24 municipalities.

25 Q. Does F.A.S.T. oppose an inter-municipal agreement

1 that preserves the continuity of the real estate as one
2 continuous parcel?

3 A. If that was actually the case, I don't believe
4 that we would. But it's my understanding of the inter-
5 municipal agreement that has been alluded to in these
6 proceedings, the continuous parcel of real estate is only a
7 30-foot strip down the center of the Amtrak poles. And as
8 we know, it's an 850-acre parcel of land. So I think that's
9 about ten percent of the acreage.

10 Q. So F.A.S.T. opposes that type of agreement; is
11 that your testimony?

12 A. I don't think it's really our position to oppose
13 it.

14 Q. Well, I'm asking you today, does F.A.S.T. oppose
15 a concept where a 30-foot corridor of real estate is
16 preserved in one continuous parcel?

17 A. We would like that to be expanded to include the
18 entire corridor, because we cannot, first of all, protect
19 the natural resources that are found along the corridor if
20 that's just the strip of stones between the Amtrak poles.
21 And also, the bridges that go under the rail line are much
22 longer than 30 feet. So that wouldn't protect the bridges.

23 Q. Okay. That wasn't my question, but let me ask
24 another one. Would you agree with me that your master park
25 plan had as an example a trail of 30 foot in width?

- 1 A. The trail bed itself?
- 2 Q. Your master park plan.
- 3 A. Yes.
- 4 Q. Did it have as an example, a typical example of a
5 trail section, of 30 foot in width?
- 6 A. I believe you're talking about the trail tread;
7 correct?
- 8 Q. Well, let me get the master park plan out. Do
9 you have that before you?
- 10 A. No, I don't.
- 11 MS. NETTKE: I'll get her a copy.
- 12 (Document handed to witness.)
- 13 BY MR. ZIELONIS:
- 14 Q. It's page 21, typical design detail.
- 15 A. Page 21?
- 16 Q. Yes.
- 17 A. Okay, I have page 21 in front of me.
- 18 Q. Yes. And that shows a 30-foot, as an example?
- 19 A. Actually, that is a stone arch bridge.
- 20 Q. And that shows a 30-foot as an example?
- 21 A. Actually, it's showing how you would put a trail
22 on top of a stone arch bridge --
- 23 Q. Does it show --
- 24 A. -- that's 30 feet long.
- 25 Q. Long or width?

1 (Pause.)

2 Q. Width?

3 A. It depends. If you're going through the tunnel,
4 it would be the length. If you're on the trail, it would be
5 the width.

6 JUDGE COCHERES: Mr. Zielonis, the document is there,
7 it's in evidence.

8 MR. ZIELONIS: I'll stop there, Your Honor.

9 JUDGE COCHERES: Good.

10 BY MR. ZIELONIS:

11 Q. Are you currently an elected local, county or
12 state official, Ms. Nettke?

13 A. No, I am not.

14 Q. Would you agree with me that those types of
15 elected officials must at times perform a balancing act
16 between public safety and other needs?

17 (Pause.)

18 A. I would suppose that's true, although it's a very
19 vague question, and I don't know what those other needs are.

20 Q. So you really have no experience in second-
21 guessing a township official that desires to have a bridge
22 removed for safety purposes; do you?

23 MS. NETTKE: Your Honor, I'll object to that
24 question. What is meant, first of all, by second-guessing?
25 She has probably as much experience at that as any other

FORM 2

1 citizen, second-guessing a public official.

2 JUDGE COCHERES: I agree.

3 (Laughter.)

4 MS. NETTKE: Thank you.

5 BY MR. ZIELONIS:

6 Q. Do you have any transportation background,
7 Ms. Nettke?

8 A. No, I do not.

9 Q. And I assume you oppose Section 12.5 of the
10 stipulation between Conrail and the townships which is
11 pending before the commission?

12 A. I don't have the stipulation in front of me. Can
13 you tell me what that section is?

14 Q. That's the section that deals with maintenance.

15 JUDGE COCHERES: And the removal of bridges.

16 BY MR. ZIELONIS:

17 Q. And the removal of bridges as defined therein.

18 MS. NETTKE: And demolitions.

19 THE WITNESS: Including -- it's the section that says
20 it can also include the future demolition of bridges?

21 MR. ZIELONIS: Yes.

22 THE WITNESS: Yes, I think that that is a very vague
23 way to leave something that's supposed to be decided for
24 safety reasons.

25 My experience is that the township could go in at any

1 time after an order is approved and take down a bridge at
2 their own discretion, and reconfigure that crossing in any
3 way, shape or form, one that might not even be acceptable to
4 highway users.

5 BY MR. ZIELONIS:

6 Q. Now, I'm just trying to understanding in my own
7 mind and for the record, Ms. Nettke --

8 A. I'm not sure I could help you with that.

9 Q. -- what it is that you exactly, or F.A.S.T.
10 exactly wants in this proceeding. Do you oppose -- do you
11 want an inflexible rule inserted in the stipulation which
12 says you can never remove the bridge?

13 MS. NETTKE: Objection to that question, Your Honor.
14 It's never been established with any foundation that my
15 witness has any control at all over what's inserted in that
16 stipulation. If someone wants to tell us right now that she
17 does, that would be wonderful to hear. But I'll object to
18 that question. The stipulation is between other people that
19 she was not even a party to the negotiation.

20 JUDGE COCHERES: That wasn't the question,
21 Ms. Nettke.

22 MS. NETTKE: I beg your pardon?

23 JUDGE COCHERES: I said that wasn't the question.
24 The question -- and I don't mean to put words in
25 Mr. Zielonis's mouth. But as I understood the question, he

1 was asking it in the nature of -- and this is my paraphrase;
2 what would she do to improve the agreement.

3 Now, he didn't say it that way. But he then followed
4 that up with suggesting, would she want an inflexible rule
5 that requires the continued maintenance of the bridges,
6 period.

7 MS. NETTKE: Well, your addition of the terminology,
8 what would she do to improve the agreement, makes the
9 question much more acceptable.

10 JUDGE COCHERES: Mr. Zielonis, will you agree to
11 that?

12 MR. ZIELONIS: Yes, Your Honor.

13 JUDGE COCHERES: Ms. Julie Nettke?

14 THE WITNESS: Can I understand the question now to
15 be, what would I do to improve the agreement?

16 MR. ZIELONIS: No.

17 THE WITNESS: To improve the question?

18 BY MR. ZIELONIS:

19 Q. No. My question was: Do you support an
20 inflexible rule that would actually prohibit bridge removal?

21 (Pause.)

22 A. I think that that's kind of going off the other
23 end. I think there's probably a middle ground there
24 somewhere.

25 Q. And I assume then you would agree with me that

1 for public safety reasons, it may be necessary for a bridge
2 to be removed?

3 A. At this time?

4 Q. Yes.

5 A. I think that it's been established that at a
6 couple of the crossings there are concerns about safety, and
7 I think that's pretty general knowledge.

8 MR. ZIELONIS: Your Honor, if I may have a minute, I
9 have some exhibits I'd like to go over with Ms. Nettke.
10 Your Honor, may I approach the witness?

11 JUDGE COCHERES: Certainly.

12 BY MR. ZIELONIS:

13 Q. Ms. Nettke, I'm going to show you portions of the
14 exhibit presented by the PUC Staff. And I show you PUC
15 Staff Exhibit No. 17 and No. 18.

16 (Documents handed to witness.)

17 A. Is that Pumping Station Road?

18 Q. Yes.

19 A. All right.

20 Q. Now, would you agree with me from that photograph
21 that vehicles may have to straddle the middle of the road to
22 pass underneath that bridge?

23 A. I'm not an engineer. I was out at the site
24 conferences, I know that bridge really well, I know that
25 road really well. And actually, the bridge is not that low.

1 I mean, that's my non-professional opinion.

2 Q. Well, let me ask a hypothetical then. If an
3 emergency vehicle or a school bus could not travel
4 underneath that bridge, would you recommend its removal?

5 A. I would certainly hope that before recommending
6 its removal that other considerations of how that crossing
7 could be configured, maybe by lowering the roadway, would be
8 considered before coming to that conclusion, since it is a
9 historic bridge, and it's a very picturesque setting there,
10 and it's a very low volume road.

11 And I happen to know right in that vicinity there's
12 other restricted bridges, you know, to weight, and that kind
13 of thing. And there's certainly exceptions made on those
14 roads. I don't understand why certain exceptions couldn't
15 be made to save a beautiful, historic stone arch bridge that
16 is part of a continuous trail.

17 Q. Now, I'll show you PUC Staff Exhibits 25 and 26.
18 That's the Oak Bottom Road.

19 (Documents handed to witness.)

20 Q. And I believe you were in the hearing room both
21 the entire day yesterday and the entire day today?

22 A. Yes, I was.

23 Q. And would you agree with me that there has been
24 testimony presented regarding problems of emergency vehicles
25 traveling underneath that bridge?

1 A. I think it was submitted in written form. I
2 didn't hear verbal testimony to that effect.

3 Q. Now, and would you also agree with me that school
4 buses would have a problem traversing underneath that
5 bridge?

6 A. I don't know the height of a school bus; I don't
7 know the height of the bridge off hand, so I don't know.

8 Q. Well, F.A.S.T. would not be here today, would
9 they, supporting a bridge that may present a safety
10 position, or a safety problem; would you?

11 A. Would we be supporting a bridge?

12 Q. Keeping in a bridge that poses a safety problem.

13 A. We are here to try to look at other alternatives
14 besides demolition. And I think for the Oak Bottom one that
15 you were just showing me, our master planner did provide an
16 alternative to demolition there. The access road up and
17 over could certainly be used for school buses also.

18 Q. Yes, there was some discussion about that by
19 several witnesses.

20 Now, I show you PUC Staff Exhibit 27 and 28.

21 (Documents handed to witness.)

22 Q. That is, the PA Route 222?

23 A. Correct.

24 Q. And would you agree with me that vehicles must
25 straddle the centerline of that bridge?

1 A. I will agree with you. I live a half a mile from
2 that bridge and regularly see that.

3 Q. Would you agree with me that school buses would
4 have to straddle that line?

5 A. They do.

6 Q. And you're not here today indicating that
7 F.A.S.T. would support continuation of that type of safety
8 problem; are you?

9 A. I believe we perceived that if that bridge was
10 removed that we would need a pedestrian bridge there because
11 of the high volume on the highway. But we certainly came to
12 the realization that entities, agencies like Conrail, wanted
13 to remove that bridge. And so, we foresaw that and applied
14 for funds to hopefully put in a pedestrian bridge there so
15 it wouldn't sever the trail.

16 Q. Now, were you aware of the fact that PennDOT had
17 offered to place abutments, or construct abutments as part
18 of the removal of that bridge, upon which a pedestrian
19 bridge could be placed at a later date?

20 A. There's been many proposals floated around about
21 how a compromise could be reached at that crossing. I don't
22 know what the latest proposal is. I have not been a party
23 to any of the negotiations.

24 Q. Was that one of the proposals, that you're aware
25 of?

1 A. I've never heard two abutments, I've only ever
2 heard one abutment. And that would only be because catenary
3 poles to the east, and there would need to be retention of
4 the slope that was graded back. And there was some talk
5 about whether that could double as one abutment for a
6 pedestrian bridge. Which really doesn't get too much in the
7 way of a bridge, one abutment.

8 Q. Now, I'll show you as a final exhibit, PUC Staff
9 Exhibits 33 and 34, Hollow Road.

10 (Document handed to witness.)

11 Q. You're familiar with that crossing?

12 A. Again, that's about a half a mile from my house,
13 or a mile from my house.

14 Q. And you heard the testimony today concerning the
15 problem that school buses experience traveling that?

16 A. I heard that testimony, but I can also tell you
17 that the road could be aligned to make the safe distance
18 there much better. And in fact, I thought I heard testimony
19 that that was part of the plan after the bridge would be
20 removed, that they would realign the road. If they just
21 realigned the road, I don't think the bridge would need to
22 be removed.

23 Q. And they would have to cut into this embankment
24 in Staff Exhibit 34?

25 A. Yes.

1 Q. To the right of the bridge?

2 A. As is pictured there, --

3 Q. Yes.

4 A. Yes.

5 Q. Okay. But you're not here today in support of
6 any dangerous condition that now exists at that crossing?

7 A. I'm here in support to offer testimony through
8 our expert witnesses on ways that the safe of trail users
9 can be considered when configuring these crossings, and that
10 removal of a crossing doesn't necessarily make it a safer
11 crossing; and a lot of times it will make it a more
12 dangerous crossing for trail users. Grade separated
13 crossings probably are always going to be the number one
14 choice between highway and trail users.

15 Q. Now, moving to your Statement No. 6, Ms. Nettke.

16 A. My Statement No. 6?

17 Q. F.A.S.T. Statement No. 6.

18 JUDGE COCHERES: The supplemental testimony.

19 THE WITNESS: Okay. I don't have that.

20 (Document handed to witness.)

21 BY MR. ZIELONIS:

22 Q. Do you now have that?

23 A. I have it.

24 Q. Okay. Have or has any other group other than
25 F.A.S.T. promoted development of a trail along this line?

1 A. Promoted?

2 Q. Yes.

3 A. Well, maybe I can just go back a little bit in
4 our history. When F.A.S.T. was formed, we were formed as a
5 coalition of organizations. And up until the present, and
6 including the present, we still pretty much represent a lot
7 of different organizations and user groups, and we have a
8 lot of support from dozens of community organizations from
9 promoting and developing a trail. So they're letting us do
10 their hard work, but there's a lot of groups that are behind
11 us.

12 Q. Now, has the county indicated it supports
13 development of a trail along this line?

14 A. As recently as two weeks ago, F.A.S.T. had a
15 meeting with the county commissioners, and they assured us
16 that that was totally their want. They would -- well, I
17 mean, they told us that they want to see a trail up there,
18 they would love to even own the property, if that was
19 possible, that they wanted an easement, but that was -- the
20 townships wouldn't give them a conservation easement so
21 there could be a trail

22 And so, yes, I'm definitely under the impression that
23 the county would like to see a trail developed up there.

24 Q. Now, you indicate on the first page of that
25 statement that you've garnered nearly a million dollars in

1 funding. Is that actual cash in the bank account of
2 F.A.S.T.?

3 A. No, it's funding.

4 Q. Did that include --

5 A. It's not cash.

6 Q. Did that include the county's CPI funding?

7 A. Yes.

8 Q. You don't have that now, do you?

9 A. I think I said earlier that that grant was not
10 extended due to the fact that the townships, as part of
11 their inter-municipal agreement, demanded that all grants to
12 F.A.S.T. be withdrawn and denied.

13 Q. So, am I correct that your statement is, at one
14 time, in total, F.A.S.T. had the potential of receiving a
15 million dollars in cash, but that no longer is true?

16 A. It was something like \$970,000. I think, you
17 know, all of the grants have pretty much just been on hold
18 until these PUC proceedings are worked out. And
19 unfortunately, our CPI grant expired May 28, 1997.

20 Q. On page 2 of your testimony, you indicate
21 F.A.S.T. was prepared to ask this commission to designate an
22 entity to take secondary responsibility. Do you see that?

23 A. Can you tell me what paragraph?

24 JUDGE COCHERES: Fourth line.
25

1 BY MR. ZIELONIS:

2 Q. It's the fourth line, first paragraph, second
3 sentence.

4 A. Yes, that's correct.

5 Q. Was F.A.S.T. going to take primary
6 responsibility?

7 A. Yes, but we recognized that the commission does
8 not have jurisdiction over nonprofits, and so that we would
9 need basically a backup government entity to take the
10 responsibility. So that's what that means.

11 Q. Okay. So, what you're saying is you were going
12 to ask the commission to designate some government entity to
13 take primary responsibility, not secondary responsibility?

14 A. Well, no, because we had -- I need to clarify, if
15 that's all right. We would be taking primary
16 responsibility, because we had been offered an endowment by
17 Conrail, and we were going to invest that money in a trust
18 fund that the secondary responsible party would have also
19 been a part of that, so that those funds would be guaranteed
20 to back up that secondary party.

21 Q. Who were you going to suggest be primarily
22 responsible for the line, or the bridges?

23 A. The county.

24 Q. The county?

25 (Witness nodding head up and down.)

1 Q. In your opinion, is there anything wrong with
2 Conrail offering to settle this case by offering certain
3 terms regarding bridge maintenance?

4 A. I have a problem with it. I think it's strictly
5 a business decision to them, and I think that there should
6 be more to it than a business decision. But I'm not an
7 employee of their corporation, so --

8 Q. If you know, can the commission force Conrail to
9 see the property to your entity, F.A.S.T.?

10 A. No, and we're not here as a competitor in that
11 regard.

12 Q. Do you know whether the commission can force
13 Conrail to, as indicated in your testimony on page 2, the
14 second paragraph, force Conrail to endow the trail?

15 A. Force them? No, I don't believe so.

16 Q. Would you agree with me that the trail still
17 remains a solid project?

18 A. No, I would not agree with you. If this
19 stipulation is approved, and as things are proceeding right
20 now, I disagree strongly with that. We have not heard any
21 commitments in public meetings from the supervisors that
22 they are going to be building a trail.

23 And a lot of bridges are going to be removed, and we
24 haven't seen any configuration under those crossings that
25 would provide for a trail. We see two-to-one slopes, grade-

1 backs, that kind of thing. So I don't see where there's a
2 trail being considered. I've heard a lot of lip service to
3 that.

4 Q. Does F.A.S.T. have any current funds available
5 for construction of a trail?

6 A. I assume -- we have not received notice from DCNR
7 or PHMC, or, for that matter, from PennDOT, that those funds
8 are still not available to build a trail.

9 Q. I take it your answer is a "no"?

10 (Pause.)

11 A. I have a problem remembering the first question.
12 But, okay, yes. No.

13 (Laughter.)

14 JUDGE COCHERES: We understand.

15 THE WITNESS: I'm sorry, it's really late.

16 MS. NETTKE: Can we ask to have the question repeated
17 for the witness, please, to make sure she remembers what she
18 was answering?

19 THE WITNESS: Yes, I don't remember.

20 JUDGE COCHERES: Mr. Zielonis, can you oblige?

21 MR. ZIELONIS: To rephrase the question?

22 JUDGE COCHERES: No, no, just simply to repeat it.

23 MS. NETTKE: Just repeat it.

24 MR. ZIELONIS: I'm sorry, Your Honor, I didn't hear
25 your statement.

1 JUDGE COCHERES: I said, can you oblige. You asked
2 the witness to specify whether the question was answered
3 "yes" or "no," and the problem is remembering the question.

4 MR. ZIELONIS: I'm having the same problem, too, Your
5 Honor, but I'll try.

6 BY MR. ZIELONIS:

7 Q. I assume then that F.A.S.T. does not have any
8 current funds available in the F.A.S.T. bank account to
9 construct a trail?

10 A. In the bank account, no, we do not.

11 Q. And would your answer be the same; you have no
12 funds available in the F.A.S.T. bank account now for
13 maintenance of those bridges?

14 A. I think I answered before, no, we do not.

15 Q. Okay. Now, the \$250,000 CPI grant from Lancaster
16 County; is it your understanding that another entity, or the
17 county itself, could use that money to develop a trail?

18 A. My understanding is that it's pretty much the
19 sole discretion of the county commissioners as to how they
20 want to proceed with that. I wasn't even privy to that.

21 Q. I assume you wouldn't oppose that, though?

22 A. If they were to expend it on developing a trail?

23 Q. Yes.

24 A. No, I think we'd be very pleased.

25 MR. ZIELONIS: Your Honor, if I could have a minute

1 here, I may be finished.

2 (Pause.)

3 MR. ZIELONIS: Your Honor, that's all the questions I
4 have.

5 JUDGE COCHERES: Is there any further cross
6 examination for the witness?

7 Mr. Salapa.

8 MR. SALAPA: Thank you, Your Honor.

9 **CROSS EXAMINATION**

10 BY MR. SALAPA:

11 Q. Ms. Nettke, I take it that F.A.S.T.'s position in
12 this matter is such that even if the commission were to
13 order all of the bridges left in place to be maintained by
14 the townships, that would be unacceptable to F.A.S.T.; is
15 that correct?

16 A. Well, I think it would have to go a little
17 further than that. It would have to --

18 MR. RANCK: May I just interpose an objection, Your
19 Honor? I think we need clarification, because "maintain,"
20 in the documents that we've seen, includes the word
21 "demolition." So I would object to the form of the question
22 without further clarification.

23 MS. NETTKE: That's a good objection, I'll join in
24 that.

25 MR. SALAPA: Your Honor, the if commission orders the

1 structures to be maintained, that's what maintain means.
2 The commission's statute, or the commission's order does not
3 have a definition of maintenance that includes removal.
4 That is called abolition.

5 MS. NETTKE: I'll object further then, Your Honor.
6 The question implies, though, that this commission would
7 order the bridges to be maintained by the townships along
8 with approval of this stipulation, which does include that
9 term.

10 JUDGE COCHERES: That wasn't Mr. Salapa's question.

11 MS. NETTKE: I know. And that's why we're asking for
12 clarification, I think; in which sense it's meant. In other
13 words, if this commission doesn't approve the stipulation,
14 but makes its own order in some form --

15 JUDGE COCHERES: Well, now wait a minute. Let's
16 establish a real easy basis. In Mr. Salapa's question, he
17 posited that all of the bridges would continue to exist.
18 And as we already know, the stipulation calls for the
19 abolition of some of those bridges.

20 Now, I'd say those two things are different.
21 Mr. Salapa is asking your witness to affirm that even that
22 would not please her. And I think that's fairly clear, and
23 I want to have an answer to the question now.

24 THE WITNESS: You're going to kill me, but I really
25 need it repeated then.

1 MR. SALAPA: It's now what, quarter to nine.

2 BY MR. SALAPA:

3 Q. Is it F.A.S.T.'s position that even if the
4 commission were to order all of the structures left in place
5 to be maintained by the townships, that that would still be
6 unacceptable to F.A.S.T.?

7 A. If those bridges were to actually maintained and
8 kept in place, and not demolishes, I don't know that that
9 would be unacceptable. Every bridge, every crossing?

10 JUDGE COCHERES: What the question just said, ma'am.

11 THE WITNESS: I don't know. It's not something we've
12 contemplated as a board that would even be considered by the
13 commission that they would order all the bridges to be the
14 responsibility of the townships, because, of course, PennDOT
15 is here.

16 BY MR. SALAPA:

17 Q. Well, what more would you want the commission to
18 do, other than to order all of the structures left in place
19 with the township to maintain them?

20 A. I want them to look at each crossing and make
21 sure that there isn't conditions there that exist that would
22 be unsafe for trail users as well as the motoring public;
23 and after examining each crossing, to make recommendations
24 about what needs to be done.

25 (Pause.)

1 A. I guess you're asking me to suppose something
2 that I just don't really think is in the cards. It's not
3 realistic. I don't --

4 Q. With all due respect, I think the man on the
5 bench there is the one that makes that decision.

6 A. Well, I meant no disrespect.

7 JUDGE COCHERES: I know. I don't think you do. My
8 commission, at my recommendation or without it, has the
9 authority to direct that none of the crossings be abolished.

10 THE WITNESS: Okay.

11 JUDGE COCHERES: Do you understand that?

12 THE WITNESS: Yes.

13 JUDGE COCHERES: All right. They have also the
14 authority to disregard any recommendation I make about the
15 abolition of a particular crossing.

16 They have the authority to require the parties to
17 upgrade all of the crossing structures to whatever
18 specifications they wish.

19 I don't believe that they have the authority, short
20 of denying the application for abolition, of continuing
21 jurisdiction over these crossings. If they deny the
22 application, you never get a trail because it's always going
23 to be railroad property.

24 So I think we can assume safely that the logical
25 outcome of this proceeding is that they're going to grant

1 the application. The next question becomes what conditions
2 are going to be premised in the grant of the application.

3 They have the authority to make all of those bridges
4 capable of carrying railroads again, if they want to.

5 THE WITNESS: Okay.

6 JUDGE COCHERES: I sincerely doubt that they'll do
7 that.

8 Now, with that explanation, can you answer and --

9 THE WITNESS: Yes, I can better elaborate on what we
10 would like to see. We'd like to see that the maintenance
11 that's required at the bridges be performed, that they be --
12 for instance, the Martic Forge Bridge; that it be cleaned
13 and repaired, and that it be made safe for public use, with
14 the proper modifications needed, hand railings and things
15 like that.

16 And also, at all the crossings, to take into the
17 recommendations the design plans that are in the master park
18 plan on how to retrofit bridges so that they're not just
19 sitting there not being used, and so that their historic
20 value is maintained, and they don't deteriorate any further.

21 So I think we would like the commission to recommend
22 -- or, I guess you can do more than recommend -- order that
23 they be rehabilitated and maintained and be made safe for
24 public use.

25 JUDGE COCHERES: You asked the question, you got the

1 answer.

2 MR. SALAPA: Thank you. I don't think I have any
3 more questions, Your Honor.

4 JUDGE COCHERES: Ms. D'Alfonso.

5 **CROSS EXAMINATION**

6 BY MS. D'ALFONSO:

7 Q. Does F.A.S.T. right now have any kind of
8 agreement with any of the proposed owners of the former
9 railroad right of way for F.A.S.T. to be an operator of the
10 trail?

11 A. No, we do not.

12 Q. Does F.A.S.T. have an agreement with anyone for
13 F.A.S.T. to be -- I'm using the term "operator." Is that --

14 A. Well, the --

15 Q. The person who would run the trail, the group
16 that would run the trail.

17 A. Run the trail or develop it? I mean, just
18 specifically run the trail?

19 Q. No; run, develop, get a trail moving; how's that?

20 A. Okay.

21 Q. Does F.A.S.T. have an agreement with any party --

22 A. No, we do not at this time.

23 MS. D'ALFONSO: I have nothing else. Thank you.

24 MR. EATON: I have no questions, Judge.

25 JUDGE COCHERES: I like it.

1 Mr. Ranck?

2 **CROSS EXAMINATION**

3 BY MR. RANCK:

4 Q. There have been some questioning about how long
5 F.A.S.T. has been involved in this project and when the
6 whole transition concern arose. How far back in your life,
7 personally, does this concern go about the abandonment of
8 the line and your awareness of it and your concern about it?

9 A. I would say ever since 1988 when I moved to the
10 property that -- when I bought the property I now own.

11 Q. You indicated you're pretty familiar with a lot
12 of the crossings at issue here; is that right?

13 A. Yes, I am.

14 Q. Since 1988, have you seen any indication of
15 efforts on the part of PennDOT or Conrail to in any way
16 alter the grade of the roads that pass through tunnels that
17 are deemed of historic character, to alleviate the problems
18 that we've heard about in this hearing?

19 A. No, I have not.

20 Q. Have you, in your experience since 1988, had
21 floated to you in your capacity with F.A.S.T., or in any
22 other connection in the voluminous record here, any
23 proposals for the regrading or changing of the grade of the
24 roadways as they pass through structures that have been
25 labeled historically significant?

1 A. Something that came to us, you mean, from these
2 agencies?

3 A. No, never seen that.

4 Q. Did you hear the testimony of Mr. Oliver today
5 regarding the removal of the bridges at 272?

6 A. Yes, I did.

7 Q. Did you hear the discussion that this would be an
8 enormous amount of cubic yards, miles, or what have you, of
9 earth?

10 A. Yes, and I would say that until I became
11 personally involved in the project, I always thought that
12 that was just a natural hillside or a mountain there. I
13 mean, it's that much earth that exists up at the 272
14 tunnels.

15 Q. Okay. Now, I didn't happen to have the numbers
16 involved, but while we were here all this time I just did a
17 little calculator figuring. And see if I'm somewhat on
18 target.

19 The Martic Forge Bridge, as I understand it, is about
20 215 feet above -- the track level is about 125 feet above
21 the highway level.

22 A. Correct.

23 Q. Okay. As I recall from Mr. Oliver's testimony, a
24 two-to-one slope, if you were going to cut off the bridge
25 and grade that land down to the roadway level, to achieve

1 even a two-to-one slope you'd have to go 250 west of the
2 west end, and 250 feet east of the east end of the bridge.
3 Would that make sense?

4 A. That makes sense.

5 Q. Before I get into it, would a two-to-one slope be
6 commensurate with the recommendations for pedestrian usage
7 and so forth, to your knowledge?

8 A. Absolutely not. It would be a very unsafe way in
9 which to cross a road.

10 Q. Okay. I recall some testimony that perhaps a 20-
11 or a 25-to-one slope would be more appropriate for
12 utilization by pedestrians and other trail users.

13 A. I think that's correct.

14 Q. But just to use the two-to-one slope, by my
15 calculations, for that example I just gave, and using the
16 figure of 500 feet that Mr. Oliver gave us as far as the
17 north-sough width of the fill at the bottom, that comes up
18 to a figure of more than fifteen and a half million cubic
19 feet of earth.

20 Can you imagine that any of the concerns that we've
21 heard so much about could be rectified by moving earth to
22 lower road grades under the historic bridges for far less
23 cubic footage than that?

24 MR. SALAPA: Your Honor, is there a question being
25 asked, or is counsel testifying?

1 MR. RANCK: I asked if she could imagine that any of
2 the grades could be altered to alleviate the safety problems
3 that have been addressed for considerably less than that
4 amount of cubic footage.

5 JUDGE COCHERES: He did ask that question.

6 THE WITNESS: Absolutely. I think it's pretty
7 obvious that what actually makes this an engineering marvel
8 is how much fill was brought to the line to construct it. I
9 mean, it was an incredible amount of earthmoving.

10 And I know I've heard the Panama Canal kind of joked
11 about here. But up until the building of the Panama Canal,
12 this was the largest earthmoving project in American
13 history.

14 And when I say that at the 272 tunnels I always
15 thought it was a tunnel blasted through a natural hillside,
16 I didn't realize all that fill was brought there over many
17 years. And it would be a tremendous engineering project to
18 remove that fill. And certainly to regrade the roadway
19 underneath the tunnel would make a lot more sense.

20 BY MR. RANCK:

21 Q. Are you familiar with the ICC condition that no
22 structures be altered, modified or destroyed until all
23 Section 106 provisions were complied with?

24 A. Yes, I've seen all those documents. And in fact,
25 with Wendy Tibbetts, who was formerly with the Historic

FORM 2

1 Preservation Trust, we supplied additional information to
2 PHMC which Conrail never supplied in order to get a better
3 evaluation of the line and its historic value. And they
4 came back with the determination that the entire corridor
5 was eligible for listing in the national register.

6 Q. Thank you.

7 MR. RANCK: That's all.

8 (Pause.)

9 MR. RANCK: Oh, I have one other question. I'm
10 sorry.

11 BY MR. RANCK:

12 Q. Following up on that 106, if the commission would
13 approve a transfer along the lines suggested in the
14 stipulation, with the additional condition that subsequent
15 owners would have to comply with all Section 106
16 requirements before removal of any of the bridges, do you
17 have an opinion on how F.A.S.T. would react to that?

18 MS. NETTKE: Objection, I think, to the question.
19 I'm not sure this commission would have the authority to
20 order an entity to comply with a federal law.

21 MR. RANCK: Okay.

22 JUDGE COCHERES: Thank you, Ms. Nettke.

23 MS. NETTKE: Which otherwise had no responsibility
24 under that law.

25 MR. RANCK: I'll withdraw it.

1 JUDGE COCHERES: Yes, good. All right.

2 Before I ask whether there is redirect for the
3 witness, let me caution the parties that even if there is no
4 redirect for the witness, I have an agenda to discuss with
5 you on the record after we have completed the examination of
6 this witness. Don't be in a hurry to leave.

7 Ms. Nettke, do you have redirect for the witness?

8 MS. NETTKE: Yes.

9 **REDIRECT EXAMINATION**

10 BY MS. NETTKE:

11 Q. Were you here, in a different courtroom, when
12 Mr. Sexton testified back in November of '95?

13 A. Yes, I was.

14 Q. Now, I won't try to tell you verbatim what he
15 said. But do you recall that he was asked a lot of
16 questions, and testified about how trail groups and grass
17 roots groups leverage money and funding to match one grant
18 with another, and the kind of thing that was brought up here
19 tonight?

20 A. I remember generally that he talked about that
21 kind of thing, yes.

22 Q. Have you ever talked with him and his
23 organization about those types of issues?

24 A. Probably on several occasions, because Mr. Sexton
25 actually sits on one of the enhancements advisory board, and

1 is very familiar with the regulations of those federal funds
2 and that kind of thing, and how they're distributed.

3 Q. You explained that F.A.S.T. did intend to match
4 one grant with another, with another; and you explained that
5 better than I will now. Did you make that up out of your
6 own head, or did you have some basis for believing that?

7 A. No, I didn't make it up. You mean that that --

8 Q. That idea of leveraging the money that way.

9 A. No, I think it's commonly done that way. And in
10 a project this size -- in fact, I think the bureaucratic
11 term is an "aggregate" of grants. And the idea is that you
12 kind of can put them all together and mesh or dovetail them
13 so that they enhance each other, and that you get a bigger
14 bang for your buck.

15 Q. And how did you come to the understanding that
16 this was the way it's commonly done?

17 A. Through conversations with the granting agencies.

18 Q. Does that include some of the agencies that are
19 here in this proceeding right now?

20 A. I don't recall --

21 Q. Not the individuals, but the agencies.

22 A. Okay. Well, I recall having conversations with
23 people in these different agencies about would, you know, a
24 certain grant be able to be matched with another grant, and
25 that kind of thing.

1 Q. You were asked a question about an inter-
2 municipal agreement that, I believe the word used was
3 "preserve;" would preserve a strip of land down the center
4 of this parcel that we're talking about today. Have you
5 seen that inter-municipal agreement?

6 A. I have seen it. I don't know that I know it word
7 for word, but I've seen it.

8 Q. Did you get a sense of how that term "preserve"
9 was used in that agreement?

10 A. It wouldn't be my definition of "preserve." I
11 think they excluded all the bridge -- specifically excluded
12 all the bridges from that term "preserve," and that the
13 agreement also said that none of the townships would have a
14 duty to maintain that 30-foot strip in any shape, way or
15 form, or protect against erosion or --

16 Q. Or spend any money?

17 A. Or spend any money.

18 Q. You said it's your understanding that the grants
19 are basically on hold, except for the county grant, which
20 has been not extended. Was anything told to you by any of
21 the agencies administering these grants as to why they were
22 on hold?

23 A. Well, I think a couple of different reasons
24 arose. Basically, we were going into these proceedings, and
25 it was only a fair representation to make to those agencies

1 that there would be time delay in getting the project up and
2 going.

3 But also, we were told that there was pressure from a
4 very powerful state legislator to make sure that those funds
5 didn't flow to F.A.S.T.

6 Q. Did you receive that same message from more than
7 one agency that's a party to this proceeding?

8 A. I think it was common knowledge within quite a
9 few of the agencies in this proceeding.

10 Q. Well, you can't really testify as to what they
11 knew. But you were said that you were told that by the
12 agencies here. Was it more than one agency that's a party
13 here?

14 A. I personally was told by one of the agencies, and
15 I think others in our organization had knowledge from some
16 of the other agencies.

17 Q. Are you aware of any contacts made by any of the
18 township supervisors to any of the agencies concerning your
19 grant award?

20 A. Yes, we've been told by the county commissioners
21 that there was an awful lot of pressure applied from the
22 townships to withdraw our funding.

23 And also, I know that there were specifically letters
24 written by a couple of the townships to, I think it was
25 DCNR, basically implying that Joyce and Julie Nettke were

1 getting rich off the project, and to deny funds to us, to
2 F.A.S.T.

3 MS. NETTKE: May I approach the witness, Your Honor?

4 JUDGE COCHERES: Certainly.

5 BY MS. NETTKE:

6 Q. I'm going to show you a letter signed by
7 Nicholas Yoder here to the Department of Environmental
8 Protection, Patrick Salano, counsel for Governor for
9 Environmental Policy, dated August 9, 1995.

10 (Document handed to witness.)

11 Q. Have you ever seen that letter before?

12 A. Yes, a couple years ago.

13 Q. Will you read the first paragraph there, starting
14 with, this letter is in regards?

15 MS. MARTHA SMITH: Excuse me, Your Honor. I'd like
16 to see a copy of that, for a couple reasons. One, I'm not
17 familiar with the letter; and also, the Department of
18 Environmental Protection is different than the Department of
19 Conservation and Natural Resources. It's not the Department
20 of Environmental Resources, which is what we used to be.

21 MS. NETTKE: I haven't brought copies. I didn't
22 realize that this was going to be offered. And I'm not
23 offering it as an exhibit, but I'd be glad to show it to
24 her.

25 MR. WYLAND: Your Honor, I would object on the basis

1 of relevance. The status of the funding has been testified
2 to, and I think it's obvious from the record that F.A.S.T.
3 has applied for funding.

4 MS. NETTKE: Your Honor, in answer to the objection,
5 every single cross-examiner, with perhaps one or two
6 exceptions here -- Mr. Ranck didn't -- asked my witness
7 about grants in a very extensive way; how much they were,
8 what she could do with them, how they were approved. I feel
9 I have a right to follow up on that.

10 JUDGE COCHERES: You certainly do. But I have a
11 question about how deep we're going to go. All right? I
12 don't care that F.A.S.T. submitted a petition to the Surface
13 Transportation Board questioning the agency on whether the
14 Section 106 requirements had been met, nor do I care, on the
15 other side of the coin, that another party, Mr. Yoder -- and
16 I don't even remember which township at this point that he
17 was associated with -- has written to a state agency making
18 any representation that F.A.S.T. should not be granted funds
19 from either a grant project or some other funding mechanism.

20 I have to deal with reality, that the primary issue
21 being raised by F.A.S.T. is whether or not Conrail completed
22 its ICC abandonment process correctly, and with the reality
23 that F.A.S.T. had grant money, and some of it has already
24 been withdrawn. How we got to that point is not real
25 important.

1 MS. NETTKE: Your Honor, as to what you said, it
2 wasn't my idea to question that extensively about the
3 grants. But if I can make an offer as to what these letters
4 are about; the townships here have testified, I believe,
5 several of the supervisors, that they do not oppose a trail
6 in their townships, and might, in fact, be interested in
7 one.

8 JUDGE COCHERES: That's true, they did.

9 MS. NETTKE: There is substance in this letter that
10 both of these townships were strongly against the concept of
11 having a trail in their township; that they not only felt
12 against it, but made an effort to make sure no funds were
13 given for it, and contacted a state agency to make sure that
14 that didn't happen. And that's what I'm trying to introduce
15 here.

16 MR. ZIELONIS: Your Honor, I'm going to object then
17 that it's hearsay as well as beyond the scope of cross
18 examination. If Ms. Nettke wanted to do that, she could
19 have cross-examined the witnesses yesterday and presented
20 the letter to them.

21 MS. NETTKE: It's a party opponent. They're here in
22 the room.

23 MR. WYLAND: Mr. Yoder is not in the room.

24 MS. NETTKE: I beg your pardon?

25 MR. WYLAND: The letter can't be authenticated; and I

1 agree with Mr. Zielonis that it should have been presented,
2 if at all, to Mr. Yoder.

3 Furthermore, we'll stipulate, for the record, that
4 indeed the townships have testified that they're not, in
5 fact, in opposition to the trail. That testimony was given
6 yesterday.

7 I think that the fact that F.A.S.T. has alienated the
8 townships and has a poor relationship as a group with the
9 townships is something that we'd be able to stipulate to.

10 JUDGE COCHERES: Ms. Nettke, I haven't seen these
11 letters. You told me you're not offering them. That's how
12 we started this.

13 MS. NETTKE: I wasn't going to enter them into the
14 record as an exhibit, I was going to question the witness
15 about them.

16 I could ask to call the supervisors on cross who
17 signed these letters. But the substance that I believe I
18 have a fair right to get into the record is that the
19 townships are not credible when they support a trail that
20 they've that they don't support a trail.

21 MR. WYLAND: Mr. Yoder should have been cross-
22 examined on that basis, but he's not here.

23 MS. NETTKE: He's not here. Mr. Wiker's here.

24 JUDGE COCHERES: Now wait a minute.

25 MS. NETTKE: He wrote the same letter, so I could do

1 it with Mr. Wiker.

2 JUDGE COCHERES: No, no, no. Right now we're dealing
3 with the issue of redirect of your witness. You started by
4 telling me that during cross examination the question of the
5 viability of the funding for your organization was examined.
6 I agreed, it was.

7 MS. NETTKE: It was. And I did extend that. But the
8 same argument applies, the --

9 JUDGE COCHERES: If, Ms. Nettke, you had wished to
10 present rebuttal testimony to the question of whether the
11 townships were actually in favor of the trail, that is
12 something that should have been in the direct testimony of
13 your witness. And I'm not going to allow you to go down
14 that trail now.

15 I think there is one refinement that neither one of
16 the parties who are objecting, and F.A.S.T., have really
17 faced up to. And it's been alluded to by Julie Nettke just
18 a moment ago. And that is, it is apparent to me that the
19 townships, as a group, are opposed to F.A.S.T.'s
20 organization, development, leadership in having a trail
21 through their municipalities. That is different from saying
22 that they are opposed to having a trail.

23 MS. NETTKE: I wouldn't quarrel with that, but the
24 letters don't say.

25 JUDGE COCHERES: Ah-ha. Well, then that is something

1 that should have been in your direct testimony. And as it
2 is, we actually have a regulation on that.

3 MS. NETTKE: Your Honor, please, you don't have to.
4 I accept your ruling, and I understand.

5 JUDGE COCHERES: Fine. Please continue.

6 BY MS. NETTKE:

7 Q. On the same basis as we were discussing the way
8 that organizations dovetail grants together and leverage
9 them and put them together, and so on, and you said you had
10 discussed that with Mr. Sexton and with other agencies. And
11 that's how you learned that that's the way it's done.

12 How did you learn -- strike that. You were asked if
13 F.A.S.T. actually had funds in the bank.

14 A. Yes.

15 Q. Is it your understanding that an agency proposing
16 to use funding for a project commonly keeps that money in
17 the bank before the process is started?

18 A. No. In fact, sometimes -- well, it's different
19 under different funding programs. Some can be a
20 reimbursement agreement program, or some can advance you
21 money and you then spend it, and they advance you another
22 draw, and that kind of thing. So it's different for each
23 grant.

24 Q. What is ISTEAA?

25 A. ISTEAA is a reimbursement program.

1 Q. When Mr. Salapa asked you if it would be
2 acceptable to you to have an order that the bridges would be
3 maintained, you went on then, I think, with your answer, and
4 he asked you maybe a follow-up question about what you would
5 like to see happen here. You said you'd like to see bridges
6 upgraded, the necessary work done on them; from my notes,
7 the historic value of them preserved, and then made safe for
8 public use.

9 And you're here opposing this stipulation between
10 Conrail and the townships, provides for the townships to
11 take the bridges.

12 Can you comment on how those things go together, and
13 why you don't feel that under this stipulation those things
14 that you asked for would be brought about?

15 A. Well, my understanding of the stipulation is that
16 the stipulation between the townships and Conrail is that
17 there isn't any real specific plans to do any of the
18 upgrading that's needed at the crossings, any of the
19 cleaning of the steel or the repointing of the mortar
20 between the stones, that kind of thing; or placing of
21 railings on the bridges, or appropriate signage; and of the
22 work that would enable the bridges to be used for public
23 use.

24 And it also doesn't take into consideration the
25 Americans With Disabilities Act and how the crossings would

1 have to be configured in order to conform to trail design
2 standards.

3 And I think my biggest problem with it is that the
4 idea that they could be demolished the next day after the
5 commission orders them down, or approves the stipulation,
6 excuse me.

7 And the reason I have that worry is from a
8 conversation I had with one of the township supervisors, who
9 told me that that was the plan in their township.

10 Q. Was that with regard to a particular bridge?

11 A. Yes, it was in regard to Bushong Road.

12 Q. You said you've had conversations with
13 Commissioner Kauffman about his interest in a trail, I
14 believe?

15 A. Many times.

16 Q. And did Commissioner Kauffman then indicate to
17 you that he was supportive of a trail?

18 MR. ZIELONIS: Your Honor, I'll object. It calls for
19 a hearsay answer. We'll stipulate that the county is in
20 support of trail development.

21 MS. NETTKE: That was my second question. Thank you
22 for the stipulation.

23 BY MS. NETTKE:

24 Q. Has the county commissioner, Kauffman or other
25 county commissioners, indicated to you or said to you that

1 they were in support of the trail plan as proposed by
2 F.A.S.T. at any time?

3 A. We certainly reviewed the plan with them when it
4 was completed about two years ago. We had meetings with the
5 full planning commission and invited the commissioners, and
6 later viewed it. And they seemed quite pleased with the
7 design.

8 Q. And that's Mr. Flink's proposal?

9 A. That's correct. And, you know, I also had
10 assistance from the Lancaster County Planning Commission in
11 applying for ISTEPA funds. I went in there, they showed me
12 how to fill out the application, they helped us move up on
13 the tip, or whatever; other things needed to be done in
14 preparation for getting that funding.

15 So there was quite a bit of assistance that I got
16 from the county throughout this whole time, because we were
17 basically a nonprofit doing something that's called for in
18 their open space plan and their comprehensive plan. And
19 they were pleased to see that an organization would
20 undertake that effort.

21 Q. During the period of time that, the most recent
22 period of time, when the county had indicated it would not
23 support this stipulation, did you have any conversations
24 with any of the commissioners about the idea, the concept of
25 an inter-municipal agreement by the townships?

1 MR. ZIELONIS: Your Honor, I'm going to object. It's
2 hearsay testimony.

3 MS. NETTKE: Your Honor, again, the county is a very
4 important party here. The county's witness that they've
5 offered was not satisfactory, and yet the county has asked
6 many questions later of my witness about the county grant
7 that came to her organization, and her understanding of it
8 and her understanding of the county's position on the
9 stipulation of the trail.

10 MR. ZIELONIS: Your Honor, she can't testify as to
11 what a commissioner said or what was in his mind.

12 MS. NETTKE: And also, it's not offered for its
13 truth. I'm only asking her to tell what she was told.

14 MR. ZIELONIS: Your Honor, she could have subpoenaed
15 a witness, if she wanted someone to testify who made the
16 statement.

17 JUDGE COCHERES: Your objection is overruled. There
18 actually is an exception to the hearsay rule that allows for
19 statements against interest to be admitted.

20 So to the extent that I have not heard her answer at
21 this point, don't know yet whether she's heard anything, I'm
22 going to allow the witness to answer the question.

23 THE WITNESS: Can you repeat it?

24 BY MS. NETTKE:

25 Q. You had conversations with the county

1 commissioners about the concept of an inter-municipal
2 agreement between the townships?

3 A. This was prior to --

4 Q. During the time that the county was not on record
5 as supporting this stipulation.

6 A. I had -- I don't recall whether it was about an
7 inter-municipal agreement. It was about trying to obtain a
8 conservation easement for the property, an agreement from
9 the townships that would grant the county an easement for
10 the property so that it could be used for a public
11 recreation trail or kind of an open space. And the
12 townships wouldn't allow that.

13 MS. NETTKE: No further questions.

14 JUDGE COCHERES: Is there any recross examination of
15 this witness?

16 (No audible response.)

17 JUDGE COCHERES: Hearing none, the witness is
18 excused.

19 And thank you for coming. Thank you for your
20 patience in waiting for two whole days to come up.

21 (Witness excused.)

22 MR. RANCK: Your Honor, may I make a request?

23 JUDGE COCHERES: I have some unfinished business to
24 take care of. Just a moment.

25 (Pause.)

1 JUDGE COCHERES: As my notes reflect, Ms. Nettke,
2 F.A.S.T. Statement No. 5 is admitted, as are Nettke Exhibits
3 A through I.

4 (Whereupon, the document marked as
5 F.A.S.T. Statement No. 5, including
6 Exhibits A through I, were received in
7 evidence.)

8 JUDGE COCHERES: F.A.S.T. Statement No. 6 is
9 admitted, subject to the portions which have been stricken
10 and/or withdrawn. And that also impacts Nettke Supplemental
11 Exhibit A, which I'm not quite sure at this point whether it
12 was withdrawn or that there was no opposition to the request
13 for dismissal. But in any event, I want it to be clear on
14 the record that Nettke Supplemental Exhibit B and C are most
15 certainly admitted.

16 (Whereupon, the document marked as
17 F.A.S.T. Statement No. 6, including
18 Supplemental Exhibits B and C were
19 received in evidence.)

20 JUDGE COCHERES: Township Exhibit No. 1, I believe I
21 have already admitted. Township Exhibit No. 11, I have not
22 heard a motion.

23 MR. WYLAND: We would move for the admission of
24 Township Exhibit 11, Your Honor.

25 JUDGE COCHERES: It is admitted.

1 (Whereupon, the document marked as
2 Township Exhibit No. 11 was received
3 in evidence.)

4 MS. D'ALFONSO: Your Honor, a point of clarification.
5 I believe Nettke Supplemental C is excerpts from the policy,
6 so that the objection with Sexton 1 was going to be
7 substituted with Sexton Late-Filed 2.

8 MS. NETTKE: That's right, Your Honor. That was at
9 the time we were discussing having a real policy other than
10 quotes from a draft, which had been offered several times.

11 JUDGE COCHERES: All right.

12 MS. NETTKE: And I agreed to withdraw Supplemental C.

13 JUDGE COCHERES: I appreciate your clarification.
14 And that means that the record should reflect that only
15 Nettke Supplemental Exhibit B has been admitted, and that
16 Supplemental C as well as Sexton No. 1 will be replaced by
17 Late-Filed Sexton Exhibit No. 2.

18 MS. NETTKE: And I'm not sure I've moved for the
19 admission of Ms. Barrett's testimony and accompanying
20 exhibits. I can't remember whether you admitted them.

21 JUDGE COCHERES: I thought I had, but that would be
22 F.A.S.T. Statement No. 3, as well as Barrett Exhibits A and
23 B. They are admitted.

1 (Whereupon, the document marked as
2 F.A.S.T. Statement No. 3, including
3 Exhibits A and B, were received in
4 evidence.)

5 MS. NETTKE: The same with Mr. Wilson's.

6 JUDGE COCHERES: In an abundance of caution, and
7 given the late hour, F.A.S.T. Statement No. 4, as well as
8 Exhibits A-Wilson and B-Wilson, are admitted.

9 MS. NETTKE: Thank you, Your Honor.

10 JUDGE COCHERES: All right.

11 Mr. Ranck?

12 MR. RANCK: I would like to call as on cross
13 examination, Your Honor, the author of the following
14 language: We have been opposed to the trail from the very
15 beginning, and our position is that we do not want to accept
16 any -- underline any -- liability for the proposed trail,
17 and feel it would be a tax burden to the taxpayers of our
18 township. Copies to Representative John Barley, Martic
19 Township, Providence Township and Sadsbury Township. The
20 apparent signer is John T. Wiker, who is identified as
21 chairman of Conestoga Township Board of Supervisors, who I
22 believe is still here. I would ask permission to call him
23 as on cross.

24 MR. WYLAND: I object, Your Honor, on the basis that
25 it's irrelevant and it's out of time.

1 (Laughter.)

2 MR. RANCK: The offer was a letter dated August 14,
3 1995.

4 MR. WYLAND: I also move to strike reference to the
5 contents of the letter as it was read by counsel.

6 JUDGE COCHERES: Well, that doesn't make it evidence
7 that's admissible at this point, Counselor.

8 (Pause.)

9 MR. WYLAND: After conferring with counsel, I would
10 also add to my objection that it is not, in fact, rebuttal
11 testimony, but in the nature of cross examination, and thus,
12 again, out of time. It should have been offered as cross
13 examination of Mr. Wiker.

14 MR. RANCK: We do appreciate the indulgence of the
15 Court in allowing us to appear here. We are under
16 instructions we would not be able to call witnesses on
17 direct, and we wouldn't be able to cross-examine witnesses.
18 And in the interests of fairness and clarity of the record,
19 I would ask the Court to indulge me for just a moment to
20 establish that Mr. Wiker did, in fact, append his name to
21 that language.

22 (Pause.)

23 JUDGE COCHERES: In the break here I did review my
24 Interim Order No. 7, and confirmed that what Mr. Ranck has
25 just represented is true, about his client not being

1 permitted to sponsor a witness. I did at that time make it
2 clear that his client would be allowed to cross-examine
3 other witnesses.

4 And owing to the lateness of the hour, Mr. Ranck, I
5 think I must deny it. I mean, there are still some
6 unfinished business we have to deal with administratively.
7 It is now 9:25. My court reporter is excellent, but he and
8 I are both tired. And there's got to be an end to this.

9 MR. RANCK: I won't question the witness, Your Honor,
10 I'll just have him identify it as his signature and ask
11 leave to late-file a copy of this letter as part of the
12 record.

13 JUDGE COCHERES: I'm sorry, sir, your request is
14 simply denied.

15 MR. RANCK: Thank you, Your Honor.

16 JUDGE COCHERES: As I indicated yesterday, that there
17 would be some limitations placed on the examination of
18 witnesses, I thought I was pretty flexible. I think there's
19 a time that we have to stop.

20 And I think it would be appropriate now to stop for a
21 very short break. Be back in your seats in ten minutes or
22 less.

23 (Recess.)

24 JUDGE COCHERES: Let's go back on the record.

25 Ladies and gentlemen, I want to thank you for your

1 cooperation that you really have extended to each other.
2 Yes, I know you've been contentious at times, and that's
3 fine, that's what you get paid to do. But we have covered a
4 lot of territory in the last two days; an awful lot of
5 territory. Frankly, more than I expected the sense of more
6 witnesses that I actually anticipated, and more subject
7 matters than I anticipated.

8 But something that has developed today on the record
9 I wanted to talk to you all about on the record. And that
10 is Mr. Sexton's testimony about the possible imposition of a
11 moratorium.

12 I was very interested to hear that, but I really --
13 and give me credit for being a human being here -- I really
14 want to get this case off my docket. And frankly, I was
15 tempted, when I first looked at this case before we started
16 the hearing process, to do a bench decision.

17 MS. NETTKE: I'm sorry; to do a what?

18 JUDGE COCHERES: Bench decision.

19 That would not have been easy. But I realized when I
20 went through the testimony that I did, that there were too
21 many issues to do what I consider a competent job in that
22 regard.

23 And I had thought also, as a way of expediting this
24 case, to dispense with briefs. And as I heard the
25 testimony, I realize that there were more than a few nuances

1 than simply this stipulation.

2 For example, and this is an easy one, I must make
3 some ruling on the pending petition of Bart Township to
4 amend an existing commission ruling.

5 So I have decided that briefs can serve a function.
6 I have also decided to exercise my authority to abbreviate
7 the briefing process.

8 The most popular way to do the briefs before this
9 commission is for parties to file a main brief and a reply
10 brief. That takes a lot of time, and I'm not certain that
11 that is necessary in this instance.

12 And actually, in our rules, that is the secondary
13 method for briefing before the commission. The primary
14 method is the one that most civil litigators are familiar
15 with, and that is, one side does a brief and the other side
16 does a brief. And I'm not sure I want to take that much
17 time.

18 What I want is one set of main briefs. And I want
19 them by close of business June 24th, served in my office.
20 June 24th; today is the 12th, you have twelve days.

21 And the reason for that is, as I've indicated
22 earlier, I'm going on leave starting tomorrow and I will not
23 be back until the 23rd.

24 I'm sorry, I won't be back the 23rd. I'm supposed to
25 be off the 23rd, although I have serious doubts as to

1 whether I'll be able to take that day.

2 But on the 24th, the day your briefs are due, I have
3 two hearings scheduled. So, as far as I'm concerned, my
4 first opportunity to think about this case starts on
5 June 25th. And I want all the briefs by that time.

6 I said earlier, and I assume -- perhaps I shouldn't;
7 but I assume that one issue is whether Conrail properly
8 abandoned and completed the federal processes for abandoning
9 the line. I'm not going to make a decision on that tonight,
10 but I recognize it as an issue.

11 While I found Mr. Sexton's testimony very interesting
12 in terms of the potential for policy changes in this
13 commission, the fact of the matter is, the statutes that I
14 must operate under that are currently in effect. And I have
15 no expectation of having changes in them, and I have no
16 knowledge of a three-vote majority in the commission
17 entering an order requiring a moratorium.

18 So, at least at this point, I am required to analyze
19 this case in the traditional manner that cases are normally
20 brought before this commission.

21 And I might add that I have already reviewed the
22 Rails-to-Trails Act and the Historic Preservation Act, and I
23 realize that the parties who are here with those interests
24 have a valid right to be here. And that's why I asked
25 Ms. Barrett earlier this morning if she thought that her

1 testimony was for the fulfilled purpose that is required in
2 the Act that the commission consider the position of the
3 Pennsylvania Historical and Museum Commission, I believe it
4 is; PHMC. And she said yes.

5 And I certainly believe that we have an abundance of
6 evidence on this record about the historic value of the
7 Enola grade line, and of the wonderful potential for it to
8 become a trail for recreational use, and other uses.

9 So I can assure you that my analysis of this case
10 will consider both of those issues. And that is what is
11 mandated by my reading of those statutes.

12 I should also give you this view from the top. And I
13 do this in many of my cases. I was pleasantly surprised
14 that the parties who were signatory to the stipulations, and
15 the county, were still testifying in front of me, albeit
16 subject to some cross examination to the contrary, that they
17 were supporting the trail concept. It was not apparent to
18 me from the documents alone that that was still true.

19 However, I think Ms. Pomosky, on behalf of the
20 county, was particularly articulate in her support for the
21 continued availability of this corridor as a greenway. And
22 I do note that each of the township supervisors who
23 testified late last night supported the trail concept.

24 Although I will grant you, Ms. Nettke, that I have
25 some question of how Mr. Wiker can support the trail concept

1 and have no real plans to do anything with the Martic Forge
2 Bridge.

3 So it's not like this is an absolute airtight case.
4 But I am talking to you because I want you to understand
5 that I think I have a fairly decent grasp of the issues that
6 I'm facing in this case.

7 I noted, for example, among those little details that
8 Mr. Salapa had this way of questioning certain witnesses
9 about whether they'd post the appropriate warning signs on
10 either side of the crossing. I didn't miss those things.

11 So I'm not looking in your briefs to receive
12 substitutes for the phone directory. Indeed, you have a
13 somewhat short period of time by normal commission
14 standards.

15 I also took the precaution of directing that the
16 transcript be transcribed by our court reporters on a three-
17 day turnaround. Today being Thursday, all of you who buy or
18 have access to copies of the transcript will have them by no
19 later than Tuesday of next week, as I understand. I think
20 he has three business days to turn it around.

21 So I think you all have the opportunity to brief the
22 subject. As far as I'm concerned, I am still responsible
23 for writing a recommended decision in this case. And that
24 very clearly means in all rail-highway crossing cases, for
25 those of you, particularly from the townships, who may not

1 have quite as much experience as many of the other people
2 here, that means that that decision must be reviewed by my
3 commission.

4 If they decide to impose a moratorium, they will
5 review it when they get it. And that would have been true
6 with or without the moratorium.

7 But as far as I'm concerned, this case now occupies
8 the highest priority on my decision due list. And I have a
9 very short list. I like to keep it that way. It's not
10 always been true. I've gotten in trouble for that little
11 fact.

12 Now, does anyone have any question about what's
13 expected of them or what the parameters are that I'm dealing
14 with?

15 Oh, let me add my usual briefing schpiel. Every
16 judge has his list of pet peeves. Some of you have heard
17 this speech before. But as of this evening, the record, the
18 evidentiary record in this case, with the exception of two
19 late-filed exhibits, that of Sexton Exhibit 2, and I believe
20 Conrail Exhibit 9, are the last pieces of physical evidence
21 that I am anticipating using to make a decision in this
22 case.

23 I have had the unfortunate occasion to encounter
24 attorneys who, for what I will call, for lack of a better
25 way of putting it, the brilliant afterthought, and seek to

1 attach additional material to their briefs.

2 As I've been quoted before in certain Philadelphia
3 newspapers, you do that in my courtroom, you will not like
4 what I say about you, your client, or your mother.

5 (Laughter.)

6 JUDGE COCHERES: It's one of my pet peeves.

7 There are ways to reopen the record. They're set
8 forth in our regulations. There are standards. And I've
9 had people use them; and that's fine. I'll consider those
10 standards if it is absolutely necessary. But don't just
11 simply staple it to the brief.

12 And I have no reason -- I always try to add this, and
13 I can say this with confidence. I have no reason to believe
14 that anyone in this room has ever violated that rule;
15 certainly not before me. But the last thing you want to do
16 is get on one of the judges' lists. And we all have them.

17 Now, I appreciate the fact that earlier in this
18 proceeding, Mr. Eaton identified as a Conrail exhibit the
19 ICC decision that he used to cross-examine one of the
20 witnesses.

21 Because I often tell the parties that many times they
22 are more familiar with the law and with commission
23 decisions, particularly that may not be published, than I
24 am. And -- it's true in this case -- some of the parties do
25 not have easy access to our file room in Harrisburg.

1 Consequently, if you find yourself quoting a
2 commission decision that is not published, I require that
3 you attach a copy to the brief. People, particularly like
4 Ms. Nettke, would have no way of knowing what that decision
5 says without someone providing a copy to her. Because I
6 have been to the file room, I know these things are on
7 microfilm, and I know they are very difficult to find. And
8 I am done going to the movies in the file room.

9 So when you prepare your briefs, if you are going to
10 cite commission decisions that are now published -- I
11 emphasize the words "not published." Because, Ms. Nettke,
12 for your benefit, we do have a court reporter system; the
13 Pennsylvania Public Utility Commission Reporter.

14 To put it gently, our commission does not always have
15 funding available to keep it current. But within a year or
16 two I'm sure it's available. And it normally is available
17 in the various law libraries around the state. And I am not
18 requiring the parties to provide you, particularly, copies
19 of any decision that is reported in there.

20 There is also a Public Utility Commission reporter
21 that is a national series that will report some of our
22 cases; and I might add that I believe for more than a couple
23 years now, all of our cases are probably on Lexis. So it's
24 not impossible to get some of this material. But I have to
25 be sensitive to the fact that people in Lancaster County may

1 not have ready accessibility to it.

2 Does anyone have any questions?

3 Yes, Ms. Smith.

4 MS. SUSAN SMITH: Your Honor, I understand that
5 briefs are due in-hand to you. But do I also understand
6 they can be mailed to all the other parties?

7 JUDGE COCHERES: Yes. We do have a mailbox rule.
8 That is not in-hand to me, but the mailbox rule for the rest
9 of the parties is fine. Particularly since no reply briefs
10 are acceptable.

11 MS. SUSAN SMITH: My second question follows up on
12 your comment about decisions of the commission being
13 available on Lexis. That may be the only way we can access
14 some of these. Will a copy of a Lexis printout of a
15 decision be acceptable?

16 JUDGE COCHERES: Yes, certainly.

17 Are there any other questions?

18 Mr. Zielonis.

19 MR. ZIELONIS: Your Honor, do you want a disk with
20 the brief?

21 JUDGE COCHERES: Thank you. Yes.

22 Currently -- and we are in a state of flux here --
23 my office mostly uses a word processing program called
24 Word 6.0. I don't use that one. My secretary does. I use
25 WordPerfect 5.1.

1 (Laughter.)

2 JUDGE COCHERES: It's insane, and only promises to
3 get worse.

4 MR. EATON: Let me ask a totally stupid question,
5 because I am computer-illiterate.

6 JUDGE COCHERES: Sometimes it's a consummation
7 devoutly to be wished.

8 MR. EATON: Our office has recently thrown away,
9 deleted, disposed of and otherwise destroyed our WordPerfect
10 5.1 for DOS. We now have WordPerfect whatever the heck it
11 is for Windows.

12 JUDGE COCHERES: It's like to be 6.0 or 6.1.

13 MR. EATON: Can you handle those?

14 JUDGE COCHERES: Yes.

15 (Laughter.)

16 JUDGE COCHERES: My preference would be that if you
17 can make available a copy of your brief on WordPerfect 5.1,
18 that's the way I would like to see it. However, I recognize
19 that 5.1 is becoming an outdated system. And indeed, I am
20 scheduled eventually to be switched over to Word 6.0 myself.
21 We still have the capability of converting WordPerfect 6.0
22 and 6.1 to either WordPerfect 5.1 or to Word 6.0. It
23 scrambles it a bit. But I can make sense out of it.

24 Please tell me with the disk what it's recorded in,
25 or my secretary will be calling your secretary, because my

1 screen is blank.

2 (Laughter.)

3 JUDGE COCHERES: And that has happened. And it
4 happens within the agency. For example, our Pittsburgh
5 office used WordPerfect 6.1; they sent me a disk, didn't
6 tell me, and I thought I'd lost the material. Once they
7 told me what it was, I could find it. But I have to know,
8 because the machine on my desk doesn't do the conversions.
9 I think it's just typical state procedure.

10 Please, if you can, WordPerfect 5.1; if you can't,
11 tell me what it is, and I will try to work with it.

12 Ms. Nettke?

13 MS. NETTKE: I have no problem with 5.1, as I too am
14 somewhat behind the times, and that's what I have. But I'm
15 not sure whether you're saying that's what you want in hand,
16 or whether you also want a hard copy. I'm not familiar.

17 JUDGE COCHERES: Yes, I want both.

18 MS. NETTKE: You want both?

19 JUDGE COCHERES: I do want both. And for your
20 edification, Ms. Nettke, when you serve a brief to this
21 commission, I get one copy, the commission gets nine copies.

22 MS. NETTKE: I did see that in the rules. It made me
23 sick.

24 (Laughter.)

25 JUDGE COCHERES: Yes, I thought it might. But I

1 wanted you to make sure you understood that, because there
2 will be some problems raised if you don't comply.

3 MS. NETTKE: Your Honor, I have another question
4 along the lines of F.A.S.T. compliance. I'm sure this
5 transcript is going to be expensive. It's a great shock to
6 me that we're going to have to get it this soon. I had
7 looked at the rules also on how briefs are normally done in
8 terms of time and thought there was a lot of time.

9 If it becomes prohibitive, if I find out how much
10 it's going to cost and F.A.S.T. can't afford, is there a way
11 that I could travel up here for a day and go through a
12 transcript?

13 JUDGE COCHERES: Yes.

14 MS. NETTKE: Is there one available somewhere? Or if
15 I want to save F.A.S.T. the money.

16 JUDGE COCHERES: Yes, certainly. The transcript is
17 on file in our file room along with the exhibits that had
18 been introduced yesterday and today.

19 MS. NETTKE: And will it be there as soon as it's --

20 JUDGE COCHERES: Yes. Yes, that's what the court
21 reporter contract calls for. And the file room is open to
22 the public, I believe between the hours of 8:00 a.m. and
23 4:30 p.m., so that you could certainly come up and squirrel
24 yourself away in one of the cubbyholes that we have
25 available down there, and work on it, if that's what you

1 need to do. And I appreciate that that may be the only way
2 you can get it done, unless you can persuade somebody to
3 share the cost with you.

4 MS. SUSAN SMITH: Can I also forewarn you that you
5 cannot make copies of transcripts in the file room.

6 JUDGE COCHERES: That's true.

7 MS. NETTKE: I assumed you couldn't.

8 JUDGE COCHERES: The contract with our court reporter
9 specifies that they are the source of all copies. That's
10 how they make their money.

11 MS. NETTKE: I can understand that.

12 MR. EATON: And I presume -- I hope I'm correct --
13 that our service of briefs may need be only upon those
14 parties that have been represented during the course of
15 these two days? Otherwise, about 41 copies got to go out.
16 With this group here, there's about ten.

17 JUDGE COCHERES: It is our normal custom to serve all
18 parties with all documents. And I think I'm going to leave
19 that requirement with you.

20 As far as I'm concerned, some parties have pretty
21 much indicated that they're not particularly interested.
22 For example, PP&L and, I think, Bell Telephone maybe, were
23 not particularly interested in these proceedings.

24 If you can simply get them to waive it in writing --
25 I'm going to look to see that there's a certificate of

1 service, that it covers everyone, unless I get some
2 indication from a specific party that they didn't want it.
3 I know this is a big service list.

4 Did I answer your question?

5 MR. EATON: Yes, you have, sir.

6 JUDGE COCHERES: Fine.

7 And now let me move to Ms. Smith, the other
8 Ms. Smith, who has patiently waited to be recognized.

9 MS. MARTHA SMITH: In the event a party chooses not
10 to file a brief, will a letter to you to that effect
11 suffice?

12 JUDGE COCHERES: That would be perfect.

13 MS. SUSAN SMITH: Actually, I have a follow-up on
14 Mr. Eaton's question. All of our townships are on your
15 service list.

16 JUDGE COCHERES: Right.

17 MS. SUSAN SMITH: We don't need to have all of our
18 townships served, so they can come off that service list.
19 In addition, I believe Bart Township's prior counsel appears
20 on that service list. I'm not sure that a copy would need
21 to go to him.

22 JUDGE COCHERES: It has been very difficult for me to
23 keep up with the shifting solicitors. I was very glad that
24 Mr. Wyland was able to consolidate so many clients in one
25 law office. And I'm glad, too, that you can waive that

1 requirement on behalf of your clients. That certainly takes
2 a substantial number of people off the list.

3 I note that for Ms. D'Alfonso there are some other
4 people listed for PennDOT beyond you, and I would think that
5 service on her would be sufficient for the department, as
6 well as for Ms. Smith of DCNR.

7 MS. MARTHA SMITH: Yes.

8 MS. D'ALFONSO: Absolutely.

9 MR. EATON: And you may skip service on Mr. Heebner,
10 Mr. Washercurb (phonetic), and anybody else down at Conrail.
11 Service on me will be sufficient.

12 JUDGE COCHERES: Fine. I appreciate that we can pare
13 the list down for service of these briefs. That does not
14 mean that we can omit Chester County, West Sadsbury
15 Township, Eden Township, and folks like that. Is it C-TEC
16 that's still on the list?

17 MS. SUSAN SMITH: Yes.

18 JUDGE COCHERES: Those folks still have to be served
19 with copies, unless you can get them to waive them.

20 MR. EATON: Is Ms. Gonick (phonetic) still on the
21 record?

22 MR. ZIELONIS: I don't think she ever withdrew her
23 appearance.

24 JUDGE COCHERES: But, Mr. Zielonis, you did enter
25 your appearance for Quarryville Borough?

1 MR. ZIELONIS: Yes. If you want to serve me, Your
2 Honor. Carol Palmoski, I believe is listed on there, too.

3 JUDGE COCHERES: Right.

4 MR. ZIELONIS: Probably someone from the planning
5 commission.

6 JUDGE COCHERES: I think she is the representative
7 from the county.

8 MR. ZIELONIS: Anything relating to the county you
9 can just serve me.

10 MS. NETTKE: There are some other people from
11 Quarryville that are on the list. Do we know them all, or
12 do we need to serve anyone from Quarryville other than you,
13 Ken?

14 MR. ZIELONIS: Just serve me.

15 MS. NETTKE: All right.

16 MS. D'ALFONSO: Some lists also have Mr. Carmine and
17 Mr. Hilmer on it. Can we safely assume that they can come
18 off the list?

19 JUDGE COCHERES: They can be omitted, yes,
20 absolutely.

21 MS. D'ALFONSO: I have a request. Everything I sent
22 to C-TEC is coming back as a wrong address. I need a more
23 current address than the one that's on my service list.
24 Does anyone else have that problem?

25 MR. SALAPA: I think so. I think the last thing I

1 sent out came back.

2 JUDGE COCHERES: I'm going to ask you to coordinate
3 that in my absence.

4 MS. D'ALFONSO: That's fine. Thank you.

5 JUDGE COCHERES: Are there any other questions that I
6 need to deal with?

7 (No audible response.)

8 JUDGE COCHERES: Thank you all for coming, and I'll
9 look forward to hearing from you on the 24th.

10 (Whereupon, the documents marked as
11 Conrail Exhibit No. 8 and Commission Staff
12 Exhibit No. 51 were received in evidence.)

13 (Whereupon, at 10:05 p.m., the hearing was
14 concluded.)

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C E R T I F I C A T E

I hereby certify, as the stenographic reporter,
that the foregoing proceedings were taken stenographically
by me, and thereafter reduced to typewriting by me, or under
my direction; and that this transcript is a true and accu-
rate record to the best of my ability.

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