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C O N T E N T S

WITNESSES

DIRECT   CROSS   REDIRECT   RECROSS

(None.)

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FOR IDENTIFICATION   IN EVIDENCE

(None.)

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P R O C E E D I N G S

1  
2 ADMINISTRATIVE LAW JUDGE LOUIS G. COCHERES: Good  
3 morning, ladies and gentlemen. As most of you know by now,  
4 my name is Louis Cocheres and I am the Administrative Law  
5 Judge who is assigned to hear the matter of the Application  
6 of Consolidated Rail Corporation for the abolition of 31  
7 crossings of the Enola Branch, generally in the Lancaster  
8 County area, at Commission Docket No. A-00111016. We are  
9 also here for a complaint proceeding in the matter of the  
10 Board of Supervisors of Bart Township versus Consolidated  
11 Rail Corporation, the Pennsylvania Department of  
12 Transportation, the Commissioners of Lancaster County, and  
13 others, at Commission Docket C-00913256. We're here for a  
14 prehearing conference. I've lost count, I don't know if  
15 it's our second or third at this point, but basically we're  
16 here in two different formats; I have a group of the parties  
17 on a conference call with me, and I have a large group in  
18 the courtroom with me.

19 Now, in order to facilitate knowing who everyone is,  
20 I'm going to take the appearance sheet and indicate the  
21 parties who have signed in in my presence: Mr. Shirk, who  
22 is the Solicitor for Bart Township, is with me; Mr. DeBroff,  
23 representing the Legal Division of the Pennsylvania Public  
24 Utility Commission, is replacing Mr. Salapa today; we have  
25 Ms. D'Alfonso from the Department of Transportation;

1 Ms. Smith from the Department of Conservation and Natural  
2 Resources, which formerly was the Department of  
3 Environmental Resources until it became schizophrenic, and  
4 by legislation, I might add; we have Mr. Wyland and Ms.  
5 Smith representing the Townships of Conestoga, Providence,  
6 Martic and Sadsbury; we have Mr. Eaton representing Con  
7 Rail; and Mr. Zielonis representing Lancaster County.

8 With me on the phone, I'll go down the list. Ms.  
9 Shirk Gonick, are you there?

10 MS. GONICK: Yes, I am, Your Honor.

11 JUDGE COCHERES: Mr. Newcomer?

12 MR. NEWCOMER: Yes, Your Honor.

13 JUDGE COCHERES: Ms. Nettke, you're there with Mr.  
14 Keating?

15 MS. NETTKE: Right. And Mr. Brossman is here as  
16 well, Your Honor.

17 JUDGE COCHERES: I'll need the spelling of that last  
18 name there.

19 MR. BROSSMAN: Doug Brossman, B-r-o-s-s-m-a-n.

20 MS. NETTKE: Your Honor, our Project Director, Julie  
21 Nettke, is also here.

22 JUDGE COCHERES: All right.

23 Mr. Keen?

24 (No response.)

25 JUDGE COCHERES: Do I have Mr. Keen on the line?

1 (No response.)

2 JUDGE COCHERES: Apparently not.

3 Mr. Halsted?

4 (No response.)

5 JUDGE COCHERES: The conference call operator told me  
6 that Mr. Keen and Mr. Halsted were on the line.

7 Mr. Mylin?

8 (No response.)

9 JUDGE COCHERES: I see. I'm out of names here. I am  
10 concerned. The conference call operator told me I had more  
11 people on the line than I do. He did give me three names  
12 only that were not attached. With that in mind, I'm going  
13 to go off the record. I'm going to have to find a phone and  
14 call the conference call operator to see what the problem  
15 is.

16 We'll be back on the record in just a few more  
17 moments.

18 (Discussion off the record.)

19 JUDGE COCHERES: Back on the record.

20 Thank you for indulging me in my error. We seem to  
21 have had a little equipment failure, perhaps it's an  
22 operator failure; I can never tell. I ask you to remember  
23 that Commonwealth equipment is supplied by, theoretically,  
24 the lowest responsible bidder. Sometimes we only get the  
25 lowest bidder, though.

1           In any event, we're here for several purposes this  
2 morning. I do have an agenda to go through. I would like  
3 to thank Mr. Shirk, representing Bart Township, for having  
4 filed a motion for consolidation. Having been the Judge on  
5 the original complaint case, I can tell you that I was  
6 somewhat surprised to get it back again, but that's fine, I  
7 think it is appropriate that the Bart Township crossings,  
8 which are the subject of Complaint Docket 913256, be  
9 consolidated with the pending application.

10           I have a question for Mr. Shirk, and that is: if I  
11 understand correctly, the application for the abandonment of  
12 31 crossings does not include the two that were the subject  
13 of this complaint proceeding; is that correct, Mr. Shirk?

14           MR. SHIRK: That is correct.

15           JUDGE COCHERES: That's correct. Okay. Which brings  
16 me to another comment for Mr. DeBroff.

17           Mr. DeBroff, it was my understanding that I had asked  
18 Mr. Salapa, the gentleman for whom you are standing in  
19 today, to provide a comprehensive list of all of the  
20 Commission actions associated with this branch line. There  
21 is the application proceeding, there is the complaint  
22 proceeding that we have just joined from Bart Township, and  
23 it's my understanding there are a couple other proceedings.  
24 To the best of my knowledge, Mr. Salapa did not respond to  
25 that. Today is Tuesday. I would like very much to have

1 that list by the end of the week.

2 MR. DeBROFF: Okay. I was not aware in the things  
3 that he and I discussed involving today's session. So what  
4 you're looking for is some kind of history of all of the  
5 proceedings we've had in terms of hearings, prehearing  
6 conferences, in all of the related cases; is that what you  
7 want?

8 JUDGE COCHERES: I'll settle for the docket numbers.  
9 If you can provide the histories, that's fine. But at a  
10 minimum I need to know the docket numbers so I know what  
11 cases are currently pending before the Commission.

12 MR. EATON: Judge, if I may?

13 JUDGE COCHERES: Yes, Mr. Eaton.

14 MR. EATON: I have a list before me of all but three  
15 of those proceedings, at least I think I'm correct that it's  
16 all but three. If it would help you, I'll be glad to read  
17 into the record what I have.

18 JUDGE COCHERES: That's a good start.

19 MR. EATON: On crossing number 2, we've got PUC  
20 proceeding C-80021865. I have a date with that of 4/30/81.

21 On crossing number 7, PUC proceeding A-105671, with a  
22 date of 5/10/90. I assume those dates are the dates of  
23 orders entered.

24 JUDGE COCHERES: I hope so.

25 MR. EATON: Crossing number 8, PUC proceeding

1 C-913255, 6/25/92. Let me just see which one that is.

2 (Pause.)

3 MR. EATON: That is Hollow Road, which was one of the  
4 three that I had started to mention, so there will be only  
5 two that I cannot identify.

6 JUDGE COCHERES: All right.

7 MR. EATON: If I didn't give you a date on that, that  
8 was 6/25/92.

9 The next one is crossing number 11, PUC A-107709,  
10 12/28/87.

11 Crossing number 12, PUC A-104032. I do not have a  
12 date on that.

13 (Pause.)

14 MR. EATON: Another list provides me the date of  
15 2/23/87.

16 The next one I have is crossing number 18, PUC  
17 A-104797, and I don't have a date on that. That's a new  
18 bridge, by the way.

19 Crossing number 19, PUC A-104797, again no date, and  
20 that's a new bridge.

21 JUDGE COCHERES: I'm sorry, Mr. Eaton, for crossings  
22 number 18 and 19, you have just given me the same numbers. I  
23 think.

24 MR. EATON: They are the same number. They were  
25 handled as a single proceeding.

1 JUDGE COCHERES: Fine. Thank you.

2 MR. EATON: Crossing number 20, PUC I-870050,  
3 9/30/91, and that's a new bridge.

4 JUDGE COCHERES: Would you give me that number one  
5 more time?

6 MR. EATON: Yes. I-870050.

7 JUDGE COCHERES: All right.

8 MR. EATON: The next one is crossing number 22, the  
9 proceeding is I-870048, with a date of 4/29/92. Again,  
10 that's a new bridge.

11 Crossing number 25, PUC A-105510, the date is 1/3/85.

12 The next crossing is number 29, PUC C-860598, with a  
13 date of 5/23/90.

14 Crossing number 30, PUC C-860598, and that, too, is  
15 5/23/90.

16 Those are the ones of which I have a record here.  
17 The remaining two crossings were the crossings of Providence  
18 Road, on which you confirmed a stipulation by order, I  
19 believe, in -- I forget if it was '93 or '94.

20 JUDGE COCHERES: That sounds about right.

21 MR. EATON: And the last one was Lamparter Road, the  
22 one which is sought to be consolidated with this proceeding.

23 JUDGE COCHERES: All right. Thank you very much. I  
24 appreciate your help, Mr. Eaton.

25 MR. ZIELONIS: Your Honor?

1 JUDGE COCHERES: Yes, Mr. Zielonis.

2 MR. ZIELONIS: On one of the numbers in the crossings  
3 provided by Mr. Eaton, 29 and 30, I have a letter from Mr.  
4 Salapa to you, Your Honor, dated April 20, 1995, and for  
5 crossings 29 and 30 -- at least for crossing number 29, he  
6 has a docket number of M-870130, but he does have the May  
7 23, 1990 order.

8 JUDGE COCHERES: You say he has a letter to me dated  
9 August 20?

10 MR. ZIELONIS: April 20, 1995.

11 MR. EATON: What are those numbers that he has?

12 MR. ZIELONIS: He has M-870130, May 23, 1990, but for  
13 crossing 30 he does have the docket number Mr. Eaton  
14 provided, the C docket number, Your Honor.

15 MR. EATON: I could be in error.

16 MR. ZIELONIS: I have a copy, Your Honor, of the  
17 letter if you want to see that. It covers, Your Honor, some  
18 of the crossings provided by Mr. Eaton, essentially the ones  
19 which the Commission removed from this proceeding in its  
20 March 1995 order.

21 JUDGE COCHERES: Obviously, I am the one who is  
22 confused again. I have no recollection of having seen this  
23 letter, and my file has been combed a couple of times, but  
24 worse things have happened, and I think we'll go on with  
25 that.

1           Thank you very much, Mr. Zielonis. I may actually  
2 have to make a copy of that before we leave today.

3           The next item that's on my agenda is the setting of  
4 hearings. For that I have made it rather clear at the last  
5 prehearing conference that we would use part of this morning  
6 for setting hearings, and that if people wanted to  
7 participate in the alternate dispute resolution process,  
8 they should notify me before today's prehearing conference.  
9 To that end I have received three items. I have received a  
10 request for alternate dispute resolution from Consolidated  
11 Rail Corporation, I have received a request for the same  
12 from F.A.S.T., represented by Ms. Nettke, and I have  
13 received a petition in opposition from the Bart Township  
14 solicitor as well, Mr. Shirk.

15           Our Commission rules do not require that it be  
16 unanimous for the use of alternate dispute resolution, and I  
17 have with me in the courtroom two of the Administrative Law  
18 Judge technical staff who have been assigned to participate  
19 as mediators in the case. The other thing is that this case  
20 has been going on for some time, and understandably, some  
21 parties are beginning to get impatient, and I, as I quite  
22 clearly indicated the last time, was not going to let this  
23 go on forever and that ADR would be the last, how shall I  
24 put it, tolerated delay.

25           In order to bring some closure to the ADR process, I

1 am going to allow the mediators a 60-day period in which to  
2 try to negotiate at least a partial, if not a total,  
3 settlement to all of the problems that are in front of us  
4 today. With that in mind, this being the end of August, I  
5 want to go off the record, because we are going to schedule  
6 hearings in the beginning of November right now.

7 Let's go off the record.

8 (Discussion off the record.)

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

10 During our off-the-record discussion we covered many  
11 topics, a few more than I had intended, but that's all  
12 right. Basically, we have agreed that all parties will  
13 submit their prepared written direct testimony, which at a  
14 minimum will cover the questions and answers to the  
15 questions that were sent to the parties with their notice of  
16 prehearing conference; that material is due to be served, in  
17 hand, on all parties on October 13, 1995, no later than 4:00  
18 in the afternoon, and that my name is among those that  
19 should be included. That's one of the ways I know everybody  
20 got it by 4:00 in the afternoon.

21 The other thing to remember is that it should not be  
22 sent to the Secretary of the Commission. It is not a  
23 document that is to be filed. We will make a determination  
24 as to whether your testimony will be admitted into the  
25 record, but that will be during the hearing process.

1           Second, hearings will be held on November 6, 8 and 9  
2 in this case. There is some disagreement among the parties  
3 whether two or three days will be required. I prefer to err  
4 on the side of caution. The worst that can happen is that  
5 we cancel the third day if we don't need it. We do need to  
6 identify a particular day for Providence Township since we  
7 did tell the parties initially that Providence Township  
8 would be handled on one day, and everybody else would be on  
9 the next day. I'm going to pick November 6 for Providence  
10 Township as the most logical of the days. If Providence can  
11 complete its presentation during that day and Con Rail can  
12 complete its presentation, the majority of the parties who  
13 are not concerned with Providence Township need not show up.  
14 That will put us in the position of having the 8th and 9th  
15 available for everyone else, and using the 9th as a  
16 spillover date.

17           Hearings normally begin at 10:00 in the morning. I'm  
18 certainly going to start with that tradition. There is no  
19 specific hearing time that we finish. Indeed, I have been  
20 known to go well past the dinner hour if it means finishing  
21 up a case on one day rather than spilling it over into two.  
22 I think the latest I've ever gone is 10:00 at night. I see  
23 no reason to be quite that heroic in this case unless it's  
24 absolutely necessary. I might add, by 10:00 at night the  
25 court reporter has reported to me that he was feeling like

1 he wasn't being real accurate, so we stopped. I also had to  
2 drive him home, I think.

3 That aside, several other questions have been raised.  
4 One question posed by Ms. Nettke was that the service list  
5 was somewhat long and it included multiple listings for the  
6 same party; that should testimony be required to be served  
7 on the solicitor as well as the municipal officials who have  
8 indicated their interest? Her interest, of course, was in  
9 minimizing postage costs for sending this material out.  
10 Frankly, for what is involved here, I think it's important  
11 that all parties get copies of the testimony.

12 Ms. Nettke, I understand your position, but it seems  
13 to me that while your presentation may exceed 29 cents worth  
14 of postage, I can't see that it's going to exceed a dollar's  
15 worth of postage, and that makes it about \$35.00, in my  
16 estimate, to send out to all the parties.

17 So I'm going to require that all parties on the  
18 service list be served with the testimony on October 13.

19 Now, Mr. Zielonis raised the question that deals with  
20 discovery. Obviously, if someone receives testimony on  
21 October 13, they may want to ask someone some questions  
22 about their testimony before coming to the hearing. We call  
23 that discovery. The most common format for discovery is  
24 interrogatories. Normally, the Commission rules allow for  
25 20 days to respond to interrogatories. Mr. Zielonis has

1 suggested that we use a slightly abbreviated schedule and  
2 cut that down to 15 days. Now, that is 15 actual calendar  
3 days, not 15 working days.

4 I agree that it is appropriate that we do that in  
5 this instance. Interrogatories are burdensome to answer in  
6 a short turnaround, but they are a necessity for preparation  
7 for trial. I might add that the Commission rules allow for  
8 other forms of discovery, although they're rarely used. I  
9 think that's partially because interrogatories are cheap to  
10 send.

11 In any event, I want to add a few other guidelines  
12 for interrogatories. Commission rules do not require that  
13 copies of interrogatories be sent to the file room; it only  
14 clutters up the file. Instead, the rules provide that a  
15 notice that interrogatories were sent -- that the notice be  
16 sent to the file room. That tells us that someone has sent  
17 out interrogatories. Likewise, answers to interrogatories  
18 need not be sent to the file room. Answers are prepared on  
19 a separate document, which include the questions and a  
20 return to the parties, to all parties, and a notice that the  
21 answers were sent out on time is sent to the file room.

22 Many times the parties want to send the Judge  
23 interrogatories, copies and answers. I assure you, I don't  
24 want to see them. The only reason I will look at  
25 interrogatories is if there is an objection and a motion to

1 quash the objection, at which point I need the interrogatory  
2 and I need the answer to know what the dispute is about.  
3 Insofar as I'm concerned, I have no need to see discovery  
4 after that.

5 MR. WYLAND: Your Honor?

6 JUDGE COCHERES: Mr. Wyland.

7 MR. WYLAND: Will that 15-day response period for  
8 discovery apply to discovery that takes place between now  
9 and October 13 as well?

10 JUDGE COCHERES: I don't see any reason that it  
11 should. I don't know what discovery you had in mind, but  
12 the normal 20-day response period should be adequate. It's  
13 only the trigger of the serving of testimony that makes the  
14 15-day response period necessary.

15 Also while we were off the record, Mr. Peifer from  
16 Martic Township made a statement, and I suspect he's not the  
17 only party here who has some problem with the alternate  
18 dispute resolution process, but for at least this point, Mr.  
19 Wyland, I know that you are the attorney, but Mr. Peifer has  
20 come to each and every prehearing conference that we've had,  
21 and if you don't mind, I'm just going to bypass you and let  
22 the man speak for the township.

23 MR. WYLAND: Thank you, Your Honor.

24 JUDGE COCHERES: Mr. Peifer?

25 MR. PEIFER: Thank you, Your Honor. As a supervisor

1 for Martic, and in an effort to --

2 VOICE: We can't hear you.

3 JUDGE COCHERES: Mr. Peifer, please stand up and come  
4 closer to the phone because the microphone is not good.

5 MR. PEIFER: Thank you.

6 As a supervisor of Martic I have taken this issue  
7 seriously and have become interested, and it has come to my  
8 attention that parties of record over the last few days had  
9 not received information from Mr. Carmines concerning the  
10 mediation process. This I found somewhat alarming. Also,  
11 Martic wants to go on record, as one of the parties of  
12 record, that we are not in favor of the mediation process.  
13 We feel there has been ample time to mediate, and as a  
14 township, we oppose the mediation process. I might suggest  
15 that there may be other parties of record within the room  
16 that may also oppose the mediation process.

17 Thank you.

18 JUDGE COCHERES: Mr. Peifer, before you leave the  
19 area so the people can still hear your responses, I have  
20 some concerns. Assuming that the mediation process goes  
21 on -- first of all, how many crossings are in your township?

22 MR. PEIFER: Well, there's one of real concern, the  
23 Martic Forge Trestle, but there's three crossings, I think.  
24 Two of them are of not as much concern. There's one at 324  
25 at Red Hill; I think there's been some agreement with the

1 PennDOT people and Con Rail, I think, to remedy that  
2 situation. That's my impression. And there's another  
3 crossing, a stone arch crossing, that crosses a stream, and  
4 I don't think it's been a problem, that I'm aware of. The  
5 main problem in our township is the Martic Forge Trestle.

6 JUDGE COCHERES: Okay.

7 MR. WYLAND: Your Honor?

8 JUDGE COCHERES: Mr. Wyland.

9 MR. WYLAND: Thank you. I wanted an opportunity to  
10 echo the comments of Mr. Peifer. Actually, all the  
11 townships that I represent have the same problem, and that  
12 is it's an expense for these parties to engage in the  
13 mediation process. They've been very good about meeting in  
14 person with all the principals here numerous times up to  
15 today's date in order to discuss a resolution of the case.  
16 Of course, for these townships the main issue is whether or  
17 not they want to assume secondary maintenance  
18 responsibility, and at this point they don't want to. So I  
19 think what they're facing is the added expense of engaging  
20 in conversations and a mediation process that really has  
21 already had the opportunity to take place. They don't want  
22 to be seen as interfering with the process, of course, but  
23 really, if the question is simply are they going to be in a  
24 position to take over secondary maintenance responsibility  
25 for these crossings, the answer has always remained no.

1           It is a burden for these townships to participate in  
2 the process, so I think what Mr. Peifer has said applies to  
3 all the townships, and for that reason I think that they  
4 don't want to voluntarily engage in the mediation process;  
5 again, not for any obstructionist reasons, but rather,  
6 because of the burden of participating in it and the fact  
7 that they've spent a lot of time and effort thus far  
8 engaging in, really, the same process already.

9           JUDGE COCHERES: Mr. Shirk, I know you have some  
10 strong feelings on this. Let me deal with the Martic  
11 Township people and the other related townships, because I  
12 need some pieces of information here.

13           Please, I don't want to misunderstand your position,  
14 and I'm not going to generally deal with the mediation  
15 problem, but I think for the benefit of the men who are here  
16 as mediators, we need some very basic ground rules here.

17           One, are you telling me that they will absolutely  
18 refuse to participate in at least talking to the mediators?

19           MR. WYLAND: At this point my clients have made it  
20 clear to me that they don't want to participate in the  
21 mediation process; therefore, I feel that I'm not authorized  
22 to represent them in that process. There are  
23 representatives of the townships here individually, though,  
24 who could answer your questions as well, but I think they've  
25 made their position clear to me.

1 JUDGE COCHERES: I can understand where there is a  
2 legitimate reason behind your position, but what I'm only  
3 trying to understand is if our mediators call, are they even  
4 going to be able to talk to anyone?

5 Mr. Peifer, you're here in the room, from Martic  
6 Township, will you at least accept the initial phone call  
7 from our mediator?

8 MR. PEIFER: I think that would be fair for us to do  
9 that, yes.

10 JUDGE COCHERES: Okay; fine. Is someone here from  
11 Conestoga Township? Yes, sir.

12 MR. WIKER: I'm John Wiker, Conestoga Chairman.

13 JUDGE COCHERES: Sir, you're going to have to come up  
14 close to the microphone so that the people on the phone can  
15 hear you. You're John Wiker?

16 MR. WIKER: John Wiker, Chairman of the Board of  
17 Supervisors, Conestoga Township. Really, as far as the  
18 township goes, we are not really interested in mediation,  
19 but we would entertain the call.

20 JUDGE COCHERES: Then you will at least talk to the  
21 mediator?

22 MR. WIKER: Right.

23 JUDGE COCHERES: All right; fine. Thank you, sir.

24 Is someone here from Providence Township? Yes, sir.  
25 Are you authorized to give me a position?

1 MR. WYLAND: Mr. Newcomer is on the phone as well,  
2 Your Honor, I believe, but I believe that the position is  
3 the same with Providence Township.

4 JUDGE COCHERES: Mr. Newcomer?

5 MR. NEWCOMER: Yes. I think Mr. Wyland has  
6 accurately stated the feeling of Providence Township. There  
7 have been at least two meetings that have taken place in  
8 addition to the settlement conferences which were held in  
9 May, and I think it's probably accurate to say that  
10 Providence Township would feel that these are just almost  
11 spinning their wheels, but I suspect that the supervisors  
12 would at least accept the initial phone call, although I am  
13 certain that they are really not in favor of the mediation  
14 process.

15 JUDGE COCHERES: All right. And I'm getting the  
16 clear feeling, Mr. Newcomer, that you are willing to allow  
17 the mediators to contact the supervisors directly; that you  
18 do not want to be involved in the process.

19 MR. NEWCOMER: I think that that would be accurate  
20 for the reasons that Mr. Wyland just stated, yes.

21 JUDGE COCHERES: And finally, who is here  
22 representing Sadsbury Township?

23 Yes, ma'am?

24 MS. GOOD: This is Kathy Good. I'm here representing  
25 West Sadsbury Township.

1 JUDGE COCHERES: No. I'm going through Mr. Wyland's  
2 clients first, if you're looking for a logical manner.

3 Ma'am, I'm sorry, I don't recognize you.

4 MS. SWIFT: My name is Linda Swift.

5 JUDGE COCHERES: Ms. Swift, yes.

6 MS. SWIFT: I'm assistant secretary for the township.

7 JUDGE COCHERES: Would you be at least amenable to  
8 being the contact person for our mediation people?

9 MS. SWIFT: I would prefer that they talk to the  
10 supervisors also, but I am in the office and we would accept  
11 a call from them.

12 JUDGE COCHERES: All right; fine. Thank you. I  
13 appreciate your input. If I've finished with Mr. Wyland's  
14 clients, Mr. Shirk has patiently been waiting to get our  
15 attention.

16 Mr. Shirk.

17 MR. SHIRK: I think I'll let the Chairman of my Board  
18 of Supervisors speak.

19 JUDGE COCHERES: All right. Sir, I don't recognize  
20 you.

21 MR. MARVIN: My name is Ray Marvin. I'm Chairman of  
22 the Bart Township Board of Supervisors. We are opposed to  
23 the mediation process. We have spent numerous years in  
24 negotiation processes to try to resolve numerous problems  
25 and we have gotten nowhere. We feel it would be a waste of

1 time. We would reluctantly receive a phone call, but we  
2 have invested numerous, and I must specify, numerous hours  
3 trying to resolve this, and we seem to get a resolution that  
4 is never satisfactory to our municipality. We are one  
5 municipality who has been financially burdened and possibly  
6 devastated by what has happened so far, so we would probably  
7 accept a phone call, but I'm not sure how much further than  
8 that it would go.

9 JUDGE COCHERES: Okay; fine.

10 Mr. Shirk, while I have Bart Township on my mind, I'm  
11 puzzled. Historically, as I recall the last case I had with  
12 you, the township had two crossings, Lamparter Road, and  
13 I've lost the name of the second.

14 MR. SHIRK: Mt. Pleasant.

15 JUDGE COCHERES: Mt. Pleasant Road. And while we had  
16 hearings, we ultimately resolved the case, or you did, in a  
17 settlement, which I approved, which allowed for an expedited  
18 schedule and construction of -- was it construction? I  
19 don't remember now.

20 MR. SHIRK: Construction of a tube for the trail and  
21 a road over top of it.

22 JUDGE COCHERES: Okay. So there was essentially some  
23 sort of underpass permitted for the trail. And also as I  
24 understand it, that has not changed. You're still obligated  
25 to provide that and --

1 MR. SHIRK: That is complete now.

2 JUDGE COCHERES: That is completed.

3 MR. SHIRK: In fact, it was certified to the PUC as  
4 complete about a month ago.

5 JUDGE COCHERES: Good. For both crossings?

6 MR. SHIRK: No. Just for this one. This was the  
7 only one that was required to be done at this time, Mt.  
8 Pleasant.

9 JUDGE COCHERES: Mt. Pleasant Road. Okay. Now, for  
10 Lamparter Road, please tell me what the problem is now with  
11 Lamparter Road?

12 MR. SHIRK: The problem with Lamparter Road is the  
13 cost -- one of the problems is that the cost for Mt.  
14 Pleasant came in at about five times that that we were told  
15 it would be by the various parties who entered into or who  
16 did not oppose the stipulation. Then we still have never  
17 received the compensation from PennDOT that at least we were  
18 alleged that we were going to receive. So we ended up with  
19 a project -- Ray, how much was it supposed to cost?

20 MR. MARVIN: Two hundred and fifty thousand, and it  
21 went over \$400,000.

22 MR. SHIRK: So with that type of cost, we just cannot  
23 afford to do Lamparter in the same fashion.

24 JUDGE COCHERES: But you at least at this point are  
25 obligated by your agreement to do so.

1 MR. SHIRK: That's correct. That cost would exceed  
2 the annual budget of the municipality.

3 JUDGE COCHERES: Well, I can understand your  
4 reluctance to just jump right in, and that was the subject  
5 of your petition for modification of the Commission order.

6 MR. SHIRK: That is correct.

7 JUDGE COCHERES: All right. So, I essentially have  
8 two problems then. One is the failure for PennDOT to, in  
9 your opinion, timely reimburse the township for expenses  
10 that it has incurred.

11 MR. SHIRK: Correct.

12 MR. MARVIN: That's not necessarily correct.

13 MR. SHIRK: Okay.

14 JUDGE COCHERES: All right. I don't want to put  
15 words in your mouth, but I do want to understand your  
16 position, because I have just consolidated --

17 MR. MARVIN: I don't want to misrepresent PennDOT; I  
18 don't want them to be misrepresented in this. They never  
19 guaranteed any reimbursement. It's just part of the 12-year  
20 plan. It didn't get qualified correctly. Ninety-four it  
21 didn't get moved up. In '95 that decision was postponed  
22 until November, so we don't know what's going to happen with  
23 it this year. So in all fairness to PennDOT, there was  
24 never a guarantee of reimbursement. Although it was  
25 supposed to have a high priority and we had taken all the

1 steps to get it the absolute highest priority rating, the  
2 process that was supposed to take place in July was  
3 postponed till November; therefore, we do not have an answer  
4 whether it will be funded or not. Meanwhile, the bills had  
5 to be paid, so the township paid those bills, therefore,  
6 depleting our cash. We have an annual budget of less than  
7 \$350,000 to start with. So it posed numerous problems.

8 There's also quit a bit of history related to this  
9 which would indicate that the stipulation on Lamparter Road  
10 is uncalled for and certainly not economically feasible to  
11 the township, the county or the state.

12 JUDGE COCHERES: We'll deal with that problem as part  
13 of the litigation. It was a settlement, as far as I  
14 remember, voluntarily entered into. But at least I want to  
15 understand what your position is, and I think your  
16 clarification is excellent.

17 MR. SHIRK: I appreciate that. They were not a part  
18 of the stipulation, but there were verbal assurances made  
19 that they would use their best efforts to move us up in the  
20 funding schedule.

21 JUDGE COCHERES: Yes.

22 MR. SHIRK: You may recall that.

23 JUDGE COCHERES: I remember the stipulation. I was  
24 certainly not here for the negotiations. I almost never am.  
25 But my concern is that we at least have some definition of

1 the issue here.

2 Okay. Now, --

3 MS. D'ALFONSO: That was the first.

4 MR. EATON: Judge, I --

5 JUDGE COCHERES: Excuse me for just a minute. Ms.  
6 D'Alfonso said -- I was recapping the Bart Township  
7 position. The first was the problem with funding, and the  
8 second was that they want to modify the preexisting  
9 Commission order so as to excuse them from performance on  
10 Lamparter Road, or at least substantially modify it.

11 MR. SHIRK: Modify it, Your Honor.

12 JUDGE COCHERES: Modify it. Well, that leads me to  
13 the question: if modification is what you're seeking, then  
14 that's always a wonderful weasel word for negotiation, and  
15 that's what our mediators are here and designed to do.

16 MR. SHIRK: But if I can, Your Honor, the whole issue  
17 relates to the whole issue of the trail, because if there is  
18 going to be a trail, then the issue of whether it's going to  
19 be a tube or embankments or what becomes critical. If there  
20 is not going to be a trail, we can fill that whole with dirt  
21 for what, about \$35,000?

22 MR. MARVIN: Half of that.

23 MR. SHIRK: Half that, for half the cost.

24 MR. MARVIN: We've got history on another crossing to  
25 prove that.

1 JUDGE COCHERES: I understand. I understand your  
2 point is that Lamparter Road currently is designed for a  
3 special accommodation for the trail.

4 MR. SHIRK: That's correct.

5 JUDGE COCHERES: And if there is going to be no  
6 trail, then we don't need the special costlier design.

7 MR. SHIRK: Correct.

8 JUDGE COCHERES: All right. That's prudent, and I  
9 understand your point.

10 MR. SHIRK: Or if there is going to be a trail, the  
11 circumstances have changed, also, because when we entered  
12 into the stipulation we were told if there was a trail, all  
13 the crossings would be such as Mt. Pleasant. We're now  
14 informed that a number of the crossings are going to be  
15 removed, filled, whatever.

16 JUDGE COCHERES: I don't know that, but I'll take  
17 your word for it. Mr. Eaton had asked for some attention.

18 Sir?

19 MR. EATON: Simply this; I was not going to say  
20 anything until those who opposed mediation had concluded  
21 their remarks, if there are others.

22 JUDGE COCHERES: There may be.

23 MR. EATON: It may be better that I withhold any  
24 comment yet.

25 JUDGE COCHERES: All right; fine.

1 Mr. DeBroff?

2 MR. DeBROFF: Then if there are no other parties, I  
3 guess I might be the last.

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

5 MR. DeBROFF: Well, maybe there might be another  
6 party, and maybe I'll hold my tongue for a minute.

7 JUDGE COCHERES: Mr. Zielonis?

8 MR. ZIELONIS: Your Honor, on behalf of the County of  
9 Lancaster, our concern and my concern is that mediation was  
10 designed as an alternative to litigation to eliminate the  
11 high cost of litigation, the delay and uncertainty of  
12 litigation. We've already had at least three settlement  
13 conferences in this case, and three prehearing conferences.  
14 I am concerned that ADR is going to be used here for the  
15 purpose -- the result will be a higher cost, further delay  
16 and uncertainty. My comfort level, though, has been greatly  
17 reduced by the fact that we have set a procedural schedule;  
18 that was going to be one of my points today, to at least do  
19 that.

20 I have not talked to my clients as to whether we will  
21 participate in ADR. For some reason, the notice was sent to  
22 our Lancaster office, I got the notice yesterday, but I need  
23 to talk to my clients to see if they are willing to  
24 participate in ADR.

25 JUDGE COCHERES: I'll need, for the benefit of our

1 mediators, I will need at least a contact person if that  
2 person is not going to be you.

3 MR. ZIELONIS: My recommendation will be that if they  
4 do participate, that I be the contact person, and I will let  
5 Mr. Carmines know, hopefully by the end of today, as to the  
6 result of my discussions with the County Commissioners.

7 JUDGE COCHERES: All right. Do I have anyone else  
8 who wants to speak against the idea of mediation for a party  
9 that I have not heard from so far?

10 MS. GONICK: Your Honor, this is Kathie Gonick with  
11 Quarryville Borough and Quarryville Borough Authority. I'm  
12 not going to necessarily speak against mediation. I would  
13 just like to comment that because of the timing of the  
14 request, we did not have time to meet with our Borough  
15 Council and get an opinion one way or the other.

16 JUDGE COCHERES: All right. I appreciate that  
17 qualification.

18 Is there any other party who wishes to speak against  
19 the concept of mediation?

20 (No response.)

21 JUDGE COCHERES: Let me move over to those who are in  
22 favor of mediation -- well, I'm getting a signal here from  
23 Mr. DeBroff that he's somewhere in the middle.

24 Mr. DeBroff?

25 MR. DeBROFF: Thank you, Your Honor. I appreciate

1 your indulgence.

2 It would be our position that there has been an  
3 extremely lengthy record put on in this case; that in terms  
4 of the negotiations that have taken place so far with Con  
5 Rail, that there have been extensive conversations where the  
6 idea, at least, and maybe initial conversations involving  
7 money to the various townships, boroughs and the county to  
8 facilitate some type of resolution has been limited, and as  
9 a result, has, I think, turned our position, the Legal  
10 Division's, into one of basically opposing mediation for  
11 that reason; that since these negotiations have already  
12 taken place and they really have not progressed anywhere  
13 through three or four or five conferences and meetings, both  
14 on the phone and in person, both here and in Lancaster  
15 County, I think at this time our position would be let's  
16 just go to the hearing and settle it there. And apparently,  
17 it also appears that if you have most of these townships and  
18 boroughs opposing this, it apparently will be --

19 JUDGE COCHERES: A brief mediation process.

20 MR. DeBROFF: -- a very brief mediation, if any at  
21 all.

22 Thank you, Your Honor.

23 JUDGE COCHERES: All right. Let me turn the page and  
24 move on to those who are in favor of mediation.

25 Mr. Eaton, I might as well start with you.

1 MR. EATON: At an earlier meeting with you, you  
2 raised the issue of mediation and inquired whether, at that  
3 time, any party was interested in it. Con Rail rejected  
4 mediation at that time because, based upon information we  
5 then had, there was a relatively consistent grass roots  
6 opposition to the concept of a trail, a problem that  
7 mediation could not overcome. In the course of numerous  
8 discussions, both in groups and between representatives of  
9 Con Rail and individual municipality representatives, it has  
10 seemed more that the greater problem is one of the financial  
11 comfort of the municipalities that will be affected by the  
12 prospect of a trail. The problem has been one of seeing  
13 whether there can be a solution so that the financial well  
14 being of the municipalities -- and Bart Township is  
15 certainly an example of the harm that can result if it's not  
16 done carefully -- but trying to coordinate those concerns  
17 with a general notion that a trail is probably a good idea.

18 The corridor that we're talking about extending  
19 through Lancaster County is a relatively level, cleared  
20 pathway covering a distance of, what is it, 26 or 30 miles,  
21 something like that, without, at the present time, grade  
22 crossings where traffic would be a concern. There is a  
23 current trend in the land in favor of two objects: one,  
24 preserving rail corridors for potential future use, and  
25 secondly, offering reasonable areas for hiking and outdoor

1 use. This seemed to be ideal for that purpose.

2 There are so many different, disparate interests here  
3 with the multiple municipalities, F.A.S.T. which very much  
4 wants a trail and Lancaster County, which has taken the  
5 position that it wants no trail, that we thought there was  
6 no hope of getting anywhere with the notion. With the  
7 discussions that have occurred over the summer, there has  
8 been some hope that we can solve the financial problems that  
9 motivate most of you. The problem is one of balancing among  
10 the multiple interests.

11 I had thought ultimately that a neutral person, who  
12 can hear the various positions and come back and offer  
13 objective feedback to each of us, might very well offer a  
14 solution that we can't arrive at ourselves. For that  
15 reason, only recently did I become satisfied, and did Con  
16 Rail become satisfied, that mediation might offer a benefit  
17 here.

18 I don't see mediation as a panacea, and I don't think  
19 that it's an answer to all problems, but if there's a  
20 possibility that this process can resolve the issues, at  
21 least as to most crossings, we may find ourselves left with  
22 a hearing here on two or three crossings, which, in the long  
23 run, will save you all time and money in the ultimate  
24 process.

25 This is a process that I have never gone through

1 before. In over 30 years of law practice, I have not ever  
2 recommended mediation. I recommend it in this case. I  
3 think it's worthwhile pursuing, provided all of us can  
4 approach it with an open mind and with an honest effort to  
5 seeing whether our respective interests can be protected in  
6 some manner other than requiring the total destruction of  
7 all of the structures along this line, many of which have  
8 significant historic and artistic merit.

9 JUDGE COCHERES: Thank you very much, Mr. Eaton.

10 Ms. Nettke, do you also have some words?

11 MS. NETTKE: Your Honor, we, too, had thought that  
12 the mediation process could be helpful and that a neutral  
13 facilitator, as Mr. Eaton said, can sometimes bring people  
14 to clarifying what the issues are and what their positions  
15 are and then later coming toward agreement.

16 We met this summer with seven different parties, I  
17 believe. We met with Amtrak. Amtrak clarified for us their  
18 position in these hearings will be that the bridges ought to  
19 stay, that service along this line is essential to their  
20 system. I don't think Amtrak is on the phone today.

21 We also met with PennDOT, Your Honor, and I can point  
22 out that some of the most crucial bridges for the future  
23 trail are state bridges. We had a very helpful meeting with  
24 PennDOT the beginning of August. We gave them a proposal.  
25 We talked through the bridges crossing by crossing, and we

1 felt, I do believe Ms. D'Alfonso would agree with me, that  
2 we made progress on figuring out what ought to happen at  
3 each of the state bridges. There was only one that we  
4 actually went away from, I believe, with a difference of  
5 opinion on how that bridge would be handled. We came a lot  
6 closer to finding the solutions for those state bridges.

7 With the township bridges, it was a little more  
8 difficult because, as Mr. Eaton said, the issue of financial  
9 responsibility always came to the floor, when that is  
10 actually only one component of this case. The case, as Your  
11 Honor knows, has a couple components. The Rails-to-Trails  
12 statute mandates and you, yourself, have recognized, and  
13 also recognized in the Bart Township cases, that the ALJ  
14 needs to consider alternatives to accommodate a future trail  
15 at each of these crossings. We're going to have to present  
16 testimony, and the other parties are going to have to be  
17 involved in listening to testimony for each crossing as to  
18 those alternatives.

19 We felt that through meetings and through mediation,  
20 some of these alternatives could be considered in a less  
21 costly and more efficient way. The first component of the  
22 case is actually figuring out what would be the best  
23 solution for the crossing, and the financial responsibility  
24 is, of course, the other component in this case. We felt  
25 that through the mediation process we could address this, we

1 could make progress on it, and of course, there may have to  
2 be hearings and we may have to submit that we will reach no  
3 solution at the end of the process.

4 Another thing I might point out is that we had  
5 understood that it is not compulsory and a township would  
6 not need to show up, I submit, would not need to show up on  
7 any day when there was nothing at issue for their township.  
8 They would not need to show up, perhaps, when a state bridge  
9 within their township was being discussed, although they  
10 might want to. So the burden on the townships is not  
11 necessarily as heavy as it might have first appeared.

12 Also, a lot of these bridges are historic, and the  
13 entire line is historic. We'll be presenting witnesses, if  
14 there are hearings, as to the historic value of these  
15 bridges. I submit that the thrust of the case needs to be  
16 how we can save these bridges, if possible, for the public  
17 safety, for the future trail, and for the good of all. And  
18 I think we can get closer to that if we go through a little  
19 bit of mediation on this.

20 JUDGE COCHERES: This is not a subject that I'm going  
21 to allow much debate on. Let me make a few points here.  
22 Mediation is designed to save expenses. It's not designed  
23 to be cheap. We have a case involving 31 crossings. That  
24 is synonymous with being complex litigation. You cannot  
25 come into this courtroom and not expect to spend money just

1 to be here. That's what 31 crossings does for us. We don't  
2 have any choice.

3 I made it clear at the last prehearing conference  
4 that I would allow mediation to go forward if I was notified  
5 prior to today's prehearing conference. The main player in  
6 this application proceeding, and now complaint proceeding,  
7 is the railroad. They have done a 180 degree about face in  
8 their position. That's significant. Ms. Nettke, at the  
9 previous prehearing conference, made it clear that her  
10 organization has the wherewithal to at least initially  
11 purchase the line and, not to minimize a very important  
12 subject, there is the question of subsequent maintenance of  
13 the trail and secondary maintenance of the trail. She had,  
14 at that time, certain constructive suggestions regarding a  
15 nonprofit agency being willing to monitor and be a part of  
16 this process.

17 I intentionally allowed the entire summer to go by so  
18 as to allow the parties to attempt to negotiate among  
19 themselves, but I'm not going to change what I set forth at  
20 the prehearing conference the last time we met, and that was  
21 that I thought, even though we have 31 crossings and it does  
22 make it, by definition, a big case and complex, you can also  
23 think about it as 31 pieces of the same case, and each one  
24 of those pieces is unique and need not be a sticking point  
25 for the whole process. If the men who are with me today,

1 Mr. Carmines and Mr. Hilmer, are able to resolve some of the  
2 crossing problems, that is that much less that we have to  
3 litigate, and your clients and you folks will benefit.

4 I am not an engineer. I must rely on the engineers'  
5 testimony in this case, when it is presented, to understand  
6 how much things cost. I will tell you, part of my personal  
7 biography is that I once had Gina D'Alfonso's job and  
8 represented PennDOT in front of the Public Utility  
9 Commission at grade crossing cases. My experience from that  
10 job tells me, and it's been confirmed as a judge on the  
11 bench, that estimates are not absolutely accurate. They're  
12 usually worse when they're going to repair something,  
13 because then they take off the top layer and discover there  
14 is no bottom layer, and that has to be fixed, too. But in  
15 any event, it's the best we can do.

16 So I want folks to keep this in mind. I'm sorry, but  
17 we have 31 crossings to deal with in this case, and that  
18 makes it complex. You folks are involved because you're the  
19 people who are there. I would urge you to at least hear  
20 what the mediators have to say. I know, for example, they  
21 did tell me that they went out and viewed some of the  
22 crossings already, about half of them, so they've already  
23 made an honest effort to save you folks some money. I think  
24 it's worth it to have them try to save you a little more.  
25 I'm not guaranteeing that you're going to get a rebate on

1 your taxes here, I'm just simply saying we can make the  
2 amount smaller.

3 Now, is there any other subject that I must deal with  
4 as a part of this prehearing conference?

5 MR. NEWCOMER: Your Honor, if I may, this is Mel  
6 Newcomer on behalf of Providence. When we were talking  
7 about scheduling off the record and when you went onto the  
8 record, you referenced the fact that you will, on occasion,  
9 depending on the circumstances involving the case, go beyond  
10 regular business hours.

11 JUDGE COCHERES: Yes.

12 MR. NEWCOMER: The only concern that I have is that  
13 the first Monday of each month is the regularly scheduled  
14 meeting for the Board of Supervisors in Providence Township.  
15 As we have identified the hearing sequence for November, it  
16 appears that Providence would be first. The day poses no  
17 problem. If we were in a situation, I would want you to be  
18 aware in advance that the supervisors who will most probably  
19 be in attendance do have their regularly scheduled meeting  
20 that night, on the 6th of November. So that if that will  
21 pose a problem for Your Honor, either moving Providence to  
22 Wednesday or maybe, if we know in advance that we need to  
23 potentially cut off having the third day, that we need to  
24 cut off on the first day about 5:00 or perhaps 5:30 at the  
25 latest to allow them to be back for their 7:30 meeting. I

1 didn't have a good opportunity to mention that up till now,  
2 but it's something I'd like Your Honor to be aware of.

3 JUDGE COCHERES: I thank you for that clarification.  
4 That is an excellent point. I'll just simply move  
5 Providence to Wednesday, the 8th. We'll be somewhat  
6 disjointed in our presentation, but it doesn't matter; we're  
7 all flexible enough to understand what's going on.

8 MR. NEWCOMER: Thank you, Your Honor.

9 JUDGE COCHERES: I appreciate your bringing up that  
10 point. I know from having dealt with the Sunshine Law, once  
11 you've set a schedule, you don't have much in the way of  
12 good opportunities to change it without having to  
13 readvertise, and I don't want you to be in that position.

14 MR. NEWCOMER: Thank you.

15 JUDGE COCHERES: Are there any other problems that I  
16 have to deal with?

17 MS. GONICK: Your Honor, Kathie Gonick, Quarryville  
18 Borough. Will you then be moving Quarryville to Monday,  
19 November 6th? Because I believe that Borough Council meets  
20 the first Monday of the month, and unless they change that  
21 particular date, we may have a similar problem, not being  
22 sure one way or the other whether any members of Borough  
23 Council, in fact, want to attend the hearing.

24 JUDGE COCHERES: How many crossings are in  
25 Quarryville Borough?

1 MS. GONICK: Three, Your Honor.

2 JUDGE COCHERES: Three. Fine. We can solve that  
3 easier than Providence Township by taking Quarryville first.

4 MS. GONICK: Okay.

5 JUDGE COCHERES: That will get us through -- well,  
6 let me think about that for a moment. We can't do that. We  
7 can get your witnesses on first, but you may well want -- do  
8 you anticipate any necessity for Council members to be  
9 present during your cross-examination of other parties'  
10 witnesses who may testify about Quarryville Borough?

11 MS. GONICK: I'm not sure at this point, Your Honor.  
12 I'm not even sure at this point that any Council members  
13 would be interested in testifying. In our discussions that  
14 has not in fact been the case. I just can't say at this  
15 point if they're going to change their minds and want to be  
16 a part of the proceedings. So far, no.

17 JUDGE COCHERES: All right; fine. Then I'm going to  
18 proceed on the assumption that we will hear your witnesses  
19 first on Monday morning, and that the only person that  
20 stands to be inconvenienced will be you, if you have to stay  
21 later on Monday than you might ordinarily wish.

22 Is there any other comment? Mr. Zielonis.

23 MR. ZIELONIS: Your Honor, will your prehearing order  
24 establish a schedule of witnesses or a schedule of parties  
25 as to their presentation of their witnesses?

1 JUDGE COCHERES: I was not intending to do that  
2 because we had previously relegated Providence Township to  
3 one day of hearing and everybody else to be lumped in to the  
4 other day of hearing. Now, I'm willing to use the  
5 possibility of a third day as a spillover day. What I  
6 suggest, and Mr. Zielonis, you have the experience to do  
7 this, and that is that the parties, among themselves, agree  
8 on the order of presentation of witnesses. I have just told  
9 Quarryville Borough they can be the first one. After that  
10 I'm not going to try and keep track of it. You have, by  
11 virtue of your many appearances in front of me, substantial  
12 awareness that the parties can agree as to what order the  
13 presentation will be in and what days they will proceed.

14 MR. ZIELONIS: I only mention that, Your Honor,  
15 because 30 of the crossings are in Lancaster. I think the  
16 county will present a witness covering all of the crossings.

17 JUDGE COCHERES: That would not be a surprise to me.  
18 I would hope so.

19 MR. WYLAND: Your Honor?

20 JUDGE COCHERES: Yes. Mr. Wyland.

21 MR. WYLAND: Crossing number 28, the Martic Forge  
22 Trestle, of course, is a big structure, and I think  
23 accordingly we can expect a longer period of time to be  
24 devoted to the issues surrounding that. I think it  
25 naturally lends itself to be last on the list, but I wonder

1 if Your Honor had considered perhaps saving that for the  
2 last day. I think there are also a number of other parties  
3 who would not be interested in that particular crossing. It  
4 may make sense from a scheduling standpoint to set aside a  
5 block of time devoted to that issue.

6 JUDGE COCHERES: I am certainly willing to do that.  
7 Mr. Wyland, I know that your firm has appeared in front of  
8 me, not necessarily you, but in complex party litigation in  
9 the past. I am certainly willing to use that third day  
10 spillover for that Martic Township problem.

11 MR. EATON: Judge?

12 JUDGE COCHERES: Yes, Mr. Eaton.

13 MR. EATON: Just one observation. We apparently will  
14 be going forward with a mediation process here, which may  
15 change considerably the complexion of this problem before we  
16 get to the end of October. It would seem to me to make  
17 sense to withhold any firm decisions at this time as to  
18 sequence and the timing and the rest of it until we have a  
19 little better feel for how much time and what kind of  
20 sequence will seem logical as we approach our hearing date.

21 JUDGE COCHERES: I agree with you, Mr. Eaton. I am  
22 confident that this is a problem that the parties can  
23 resolve without my necessarily becoming involved. I would  
24 certainly hope, for example, that if Quarryville Borough, to  
25 use them as an example, could settle out all of their

1 problems, then that they need not show up at all. It's  
2 always been my experience that the parties are best suited  
3 to developing their own presentation of witnesses for  
4 hearing dates just a few days before the hearing, so that  
5 should be the appropriate time period.

6 Is there anyone else who has a comment on the  
7 prehearing format for this morning?

8 (No response.)

9 JUDGE COCHERES: In that case I want to thank you all  
10 for coming. I'm going to actually physically leave the room  
11 at this point and allow you to discuss with Mr. Hilmer and  
12 Mr. Carmines what their agenda is. I don't know that they  
13 have a particularly long agenda. I think it's more in the  
14 nature of some scheduling, but I'm going to let that up to  
15 them.

16 Let's go off the record.

17 (Discussion off the record.)

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

19 Thank you for attending this prehearing conference.  
20 I intend to prepare a prehearing order that will summarize  
21 the points, particularly with scheduling and discovery, and  
22 I will allow this meeting now to be taken over by Mr.  
23 Carmines.

24 (Whereupon, at 11:59 a.m., the prehearing conference  
25 was adjourned.)

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 accurate record to the best of my ability.

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