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BEFORE **DOCKETED**
MAY 13 1998

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: A-00113589, Application of County of Lebanon Transit Authority For approval of the suspension of a series of crossings involving the Cornwall Industrial Track of Consolidated Rail Corporation located in the City of Lebanon, Lebanon County.

C-00970106 South Lebanon Township Board of Supervisors v. Consolidated Rail Corporation Complainant states it has received numerous complaints about the crossing at South Lincoln Avenue, mainly regarding ruts and deep holes causing damage to vehicles.

C-00970107 City of Lebanon v. Consolidated Rail Corporation Complainant is concerned about the condition of crossings on the Cornwall Industrial Track of Conrail at the following locations in the City of Lebanon: Willow Street, Cumberland Street, Chestnut Street, Walnut Street, 12th Street, 10th Street, 9th Street, 8th Street. Complainant states it has received complaints from the public that crossings are causing damage to their vehicles.

C-00970126 Pennsylvania Department of Transportation v. Consolidated Rail Corporation Complainant concerned about the safety of at-grade crossing at State Route 2003, L.R. 38016 at State Drive. Complainant says crossing is sunken with rotting timbers breaking out. Due to location on an over vertical curb, a driver is not aware of the crossing's poor condition until it is too late.

A-00109901 Application of South Lebanon Township For approval of the alteration of the crossing (AAR 591 537 S) where Township Road 705 crosses below the grade of the tracks of the Consolidated Rail Corporation in South Lebanon Township, Lebanon County. Further Hearing.

DOCUMENT FOLDER

Harrisburg, Pennsylvania
April 16, 1998
Pages 257 to 371, inclusive

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CERTIFIED ORIGINAL

BEFORE

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PUBLIC UTILITY COMMISSION

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Stenographic report of hearing held in
Hearing Room 1, North Office Building,
Harrisburg, Pennsylvania,

Thursday,
April 16, 1998
at 10:00 o'clock a.m.

- - - - -
BEFORE

HERBERT S. COHEN, ADMINISTRATIVE LAW JUDGE

APPEARANCES:

JOHN HERZOG, ESQUIRE
P. O. Box 3265
Harrisburg, Pennsylvania 17105-3265
Appearing on behalf of Pennsylvania Public
Utility Commission Bureau of Transportation
& Safety

BENJAMIN DUNLAP, ESQUIRE
200 North Third Street
P. O. Box 840
Harrisburg, Pennsylvania 17108
Appearing on behalf of Consolidated Rail
Corporation

GINA D'ALFONSO, ESQUIRE
Office of Chief Counsel
Pennsylvania Department of Transportation
555 Walnut Street
Forum Place
Harrisburg, Pennsylvania 17120
Appearing on behalf of Pennsylvania
Department of Transportation

PAUL KILGORE, ESQUIRE
522 South 8th Street
Lebanon, Pennsylvania 17042
Appearing on behalf of South Lebanon
Township

APPEARANCES: (Continued)

TIMOTHY D. SHEFFEY, ESQUIRE
1601 Cornwall Road
Lebanon, Pennsylvania 17042
Appearing on behalf of County of Lebanon
Transit Authority

JAMES T. REILLY, ESQUIRE
1601 Cornwall Road
Lebanon, Pennsylvania 17042
Appearing on behalf of City of Lebanon

JOHN B. JOYCE, ESQUIRE
One Gateway Center
Pittsburgh, Pennsylvania 15222
Appearing on behalf of R. J. Corman
Company/Allentown Lines, Inc.

WILLIAM C. MATTHEWS, II, ESQUIRE
2800 Pottsville Pike
Reading, Pennsylvania 19690-0001
Appearing on behalf of GPU Energy

- - - - -

HOLBERT ASSOCIATES
EUGENE W. HOLBERT, RPR
P. O. Box 6144
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1 JUDGE COHEN: Are we ready, ladies and gentlemen?
2 This is the time set for further hearings in the matter of
3 the application of the County of Lebanon Transit Authority
4 for approval of the suspension of a series of crossings
5 involving the Cornwall Industrial Track of Consolidated
6 Rail Corporation located in the City of Lebanon, Lebanon
7 County at Docket Number A-00113589.

8 There are other complaints and applications attached
9 to this proceeding. I'll just recite the docket numbers
10 and the parties are aware of what's involved. This hearing
11 will involve all of the matters heretofore raised at
12 Dockets Numbers A-00113589, C-00970106, 107, 126 and
13 A-00109901.

14 Appearances have been entered this morning by the
15 following:

16 Gina M. D'Alfonso, Esquire on behalf of the
17 Commonwealth of Pennsylvania Department of Transportation;
18 John Herzog, Esquire for the Bureau of Transportation and
19 Safety, Public Utility Commission; Benjamin C. Dunlap, Jr.
20 Esquire for Consolidated Rail Corporation; William C.
21 Matthews, II, Esquire on behalf of GPU Energy; Paul W.
22 Kilgore Esquire on behalf of South Lebanon Township; James
23 T. Reilly, Esquire on behalf of the City of Lebanon and
24 John B. Joyce, Esquire on behalf of R. J. Corman Company
25 slash Allentown Line, Inc.

1 MR. SHEFFEY: Your Honor, If I may interrupt, I was
2 not given the form to sign it. My name is Tim Sheffey. I
3 am here on behalf of the County of Lebanon Transit.

4 (Discussion off the record.)

5 JUDGE COHEN: The purpose of this hearing stems from
6 on order that I issued on January 29, 1998 and in paragraph
7 3 of the order I indicated that, quote, the further hearing
8 will be scheduled to receive evidence concerning R. J.
9 Corman Railroad/Allentown Lines, Inc.'s intent and
10 ability:

11 1. To operate on the involved Cornwall Industrial
12 Track;

13 2. To supply the terms and conditions of the
14 indenture between it and Consolidated Rail Corporation;
15 and

16 3. To operate and maintain any and all railroad
17 facilities at each of the crossings involved, including,
18 but not limited to flashing lights and gates, crossbucks,
19 crossing highway sensors and any structures supporting
20 its track facilities, end quote.

21 Corman was also directed to bring authorized persons
22 to this hearing to testify on those issues. This morning I
23 received a letter that counsel should have received from
24 Janet R. Miller, Esquire, counsel Bell Atlantic,
25 Pennsylvania, Inc., indicating its intent not to

1 participate in today's hearing. And one of the more
2 pertinent paragraphs in that letter as stated by Ms. Miller
3 recited the following:

4 Quote: The effect of the above-captioned project on
5 Bell's facilities will depend on the scope of and the
6 specific work to be done to complete the projects that
7 ultimately result from these proceedings. Bell is willing
8 to perform whatever work may be required to its facilities
9 to accommodate the projects.

10 Bell will perform this work at its initial cost and
11 expense, reserving the right to seek reimbursement of
12 expenses incurred in connection with work done at the
13 completion of the projects should that be appropriate, end
14 quote.

15 We will enter this letter with the accompanying
16 prepared direct testimony of the Paul J. Burke, Assistant
17 Manager Outside Facilities Engineering Department of Bell
18 Telephone Company of Pennsylvania. We'll enter that as an
19 exhibit as requested by counsel for Bell, Ms. Janet R.
20 Miller.

21 **(Bell Exhibit No. 1 was produced and**
22 **marked for identification.)**

23 JUDGE COHEN: Off the record.

24 (Discussion off the record.)

25 JUDGE COHEN: All right. In an off the record

1 discussion, counsel for PennDOT and PUC Bureau of
2 Transportation and Safety indicated they have some
3 preliminary procedural marks to make on the record. Mr.
4 Herzog, or Ms. D'Alfonso?

5 MR. HERZOG: At the last hearing we had indicated
6 that there was a trails group that might have been involved
7 in disposition of Wilhelm Avenue Bridge which was
8 consolidated with these proceedings. At that point in time
9 there was an off the record discussion indicating that they
10 were aware of that hearing and that they had chosen not to
11 participate.

12 Given the Commission's moratorium order on grade
13 separated crossings, we wanted to make sure that that was
14 the -- that the trail group was in fact, not a part and had
15 no interest in this proceeding because that would affect
16 possibly the relief that would be available to that
17 particular crossing.

18 JUDGE COHEN: All right.

19 MS. D'ALFONSO: Subsequent to our off the record
20 discussion I did look at your order that was entered in
21 this case dated January 29, 1998. Mr. Wenger for Lebanon
22 Valley Rails to Trails, Inc. was listed on the parties to
23 receive the order.

24 I don't have a parties of record that was attached
25 to the notice of the hearing to know whether or not they

1 were again included on that list giving them notice of the
2 hearing but it would appear to me that they were on the
3 notice for your order that should have been attached to the
4 notice for the hearing.

5 Additionally, on the moratorium order, Mr. Kilgore
6 can speak for the township but it would be department's
7 opinion that unless that moratorium order was served on the
8 parties to the Wilhelm Avenue case for the Wilhelm Avenue
9 case, it would be our opinion that the moratorium order
10 would not impact the disposition and that would be the
11 position the department will take on that issue.

12 JUDGE COHEN: I believe you mentioned in the off
13 record discussion there were some possible public safety
14 issues that might impact on the moratorium.

15 MS. D'ALFONSO: You are correct, your Honor. There
16 is an exception to the moratorium order if there are public
17 safety situations involved at the grade crossing that the
18 Commission could order that structure to be removed due to
19 public safety. I believe the record in this case would
20 reflect that there are sufficient public safety issues to
21 allow the structure to be removed.

22 JUDGE COHEN: Thank you. Anybody else have anything
23 preliminary?

24 MR. KILGORE: Your Honor, if I can comment on that
25 same issue, is Paul Kilgore for South Lebanon Township.

1 JUDGE COHEN: I appreciate counsel's giving their
2 name.

3 MR. KILGORE: I believe at the last hearing and at
4 the first hearing that the township submitted sufficient
5 testimony that the bridge structure as it exists is unsafe
6 and that is the main reason for the prior order of this
7 Commission to have it removed and replaced. Our position
8 now, of course, is to have it removed because it's our
9 position that the line is not operable but that should be
10 decided. The issue of Rails to Trails they did get a copy
11 of the party listing prior to the last hearing and Rails to
12 Trails was listed on that PUC printout of active parties.

13 JUDGE COHEN: Thank you, Mr. Kilgore.

14 MR. DUNLAP: Your Honor, I just have one comment.
15 If I understood Ms. D'Alfonso's position correctly, that if
16 the moratorium order had not been served on the trail group
17 it would not apply to this case?

18 MS. D'ALFONSO: No, if it had not been served to the
19 parties to the Wilhelm Avenue case for the Wilhelm Avenue
20 case, then the Commission did not intend for that case to
21 be impacted by the moratorium.

22 MR. DUNLAP: I don't know that I would agree with
23 that position, Your Honor. I think it would apply to any
24 case that was in effect at the time of the order.

25 JUDGE COHEN: The overriding issue is the public

1 safety issue creating an exception.

2 MS. D'ALFONSO: Yes, but our point would be if the
3 party weren't given notice of the moratorium to object to
4 the moratorium at this point in their position, they can't
5 now be -- if they weren't served with it in December, how
6 can they -- they weren't given the opportunity to object,
7 but the Commission somewhere has to have a list of what
8 cases they intended to be impacted by the moratorium and we
9 can't sit here and suppose which cases have been and which
10 parties have been served with that moratorium.

11 MR. DUNLAP: But if they didn't receive notice of it
12 and it was supposedly to apply to all cases that were then
13 underway, how could then have objected if they were not
14 served?

15 MS. D'ALFONSO: That's right.

16 MR. DUNLAP: Right.

17 JUDGE COHEN: Anything else of a preliminary
18 nature? If not, we'll proceed directly with the taking of
19 testimony from Corman. Mr. Joyce?

20 MR. JOYCE: Good morning, Your Honor; Attorney John
21 B. Joyce on behalf of R. J. Corman Company, Allentown Lines
22 Incorporated. Within the scope of the Court's order we
23 will call our first witness, which is president of R. J.
24 Corman. For future reference, unless I designate
25 otherwise, my client would be just referred to as R. J.

1 Corman in these proceedings. I will call Mr. Patrick Grubb
2 to the stand.

3 MR. KILGORE: I don't mean to interrupt but the
4 record from prior proceeding was unclear as to which
5 corporation we are talking about. R. J. Corman Allentown
6 Lines or the other R. J. Corman company. I would suggest
7 that it be referred to as Allentown Corman if that's --

8 MR. JOYCE: I don't have a problem with that. I
9 just want to, since the name is quite lengthy, I thought we
10 should find an appropriate abbreviation and there are a
11 number of other entities which Mr. Corman will testify
12 about. So Allentown Lines, Inc. is fine. Corman Allentown
13 is fine.

14 (Discussion off the record.)

15 JUDGE COHEN: Good morning, sir. Would you please
16 state your full name again.

17 MR. GRUBB: Marvin W. Grubb, Jr., G-r-u-b-b.

18 JUDGE COHEN: Would you raise your right hand,
19 please.

20 M. W. GRUBB, JR., called as a witness, having been
21 duly sworn, was examined and testified as follows:

22 JUDGE COHEN: Thank you, sir. Mr. Joyce.

23 DIRECT EXAMINATION

24 BY MR. JOYCE:

25 Q Mr. Grubb, by whom are you employed?

1 A I am employed by R. J. Corman Railroad
2 Construction.

3 Q And are you the president of R. J. Corman Company
4 Allentown Lines, Inc.?

5 A Yes, sir, I am.

6 Q For purposes of my questions I'll refer to that
7 as Corman Allentown Lines. What is your -- I think I
8 stated this in my question but what is your title with that
9 company?

10 A Well, I am president of R. J. Corman Allentown
11 Lines.

12 Q And briefly, could you describe the various
13 companies which you also hold a title in and a position in
14 with respect to R. J. Corman Companies?

15 A Yes, I could. I am president of the R. J. Corman
16 -- actually it's a group of companies although not
17 consolidated into one company. Our companies include R. J.
18 Corman Railroad Construction, of which I am president.

19 They include R. J. Corman Allentown Lines, of which
20 I am president; R. J. Corman Bardstown Line, also
21 president. R. J. Corman Pennsylvania Line, also
22 president. R. J. Corman Cleveland Line, also president.
23 R. J. Corman Western Ohio Line, also president. R. J.
24 Corman Memphis Line, executive vice president. R. J.
25 Corman Material Sales Company, executive vice president.

1 Let's see; R. J. Corman Restaurant Corporation which
2 is a dinner train, My Old Kentucky Dinner Train, also
3 president.

4 JUDGE COHEN: Could you accept your voice up a
5 little, Mr. Grubb, please.

6 THE WITNESS: I am sorry.

7 JUDGE COHEN: Thank you, sir.

8 BY MR. JOYCE:

9 Q What about R. J. Corman Railroad Construction?
10 Is that another company?

11 A It is. R. J. Corman Railroad Construction, I am
12 president of that and under that company we have our
13 Derailment Services Division, we have our Distribution
14 Centers Services Division, and of course, our Track
15 Construction Division is under that.

16 Q And recently, did Corman Allentown Lines purchase
17 what is commonly referred to in these proceedings as the
18 Cornwall Industrial Track?

19 A Yes, sir, we did.

20 Q When did that acquisition take place, sir?

21 A It was in October of '97. The date, exact date I
22 am not clear on, but kind of mid month.

23 Q And did, as part of that acquisition, Corman
24 Allentown Lines take a deed for the respective property on
25 Cornwall?

1 A Yes, we did.

2 MR. JOYCE: I am going to show, Your Honor, the
3 witness what is marked as necessary RJC Exhibit Number 1.
4 It was attached to the petition to reopen as, the amended
5 petition to reopen, as Exhibit A so all counsel has a copy
6 of that and if somebody doesn't I have a few extra copies
7 here. It is -- I'll ask the witness to identify it.

8 JUDGE COHEN: Give the extra copies to the Reporter,
9 please. He needs two.

10 MR. JOYCE: Yes, Your Honor.

11 **(RJC Exhibit No. 1 was produced and**
12 **marked for identification.)**

13
14 BY MR. JOYCE:

15 Q Mr. Grubb, could you identify the document which
16 we have marked as Exhibit Number 1?

17 A Yes. It would appear to be the deed deeding the
18 Lebanon Industrial Track and Cornwall Industrial Track from
19 Conrail ownership to R. J. Corman Allentown Lines'
20 ownership.

21 Q To the best of your knowledge, was that deed
22 recorded?

23 A Yes. I believe it was.

24 Q And was there an acquisition agreement completed
25 and signed conveying the Cornwall Track to R. J. Corman

1 Allentown at somewhere close in time to the deed?

2 A Yes, there was. I, myself, signed that purchase
3 agreement.

4 Q Okay. And so then it's safe to say that you are
5 now the owner of that -- and when I say you, the Allentown
6 Corman Lines is now the owner of the Cornwall Line?

7 A That's correct.

8 Q What is the intent of Corman Allentown with
9 respect to the acquisition of the Cornwall Line?

10 A Our main focus for buying this Lebanon track was
11 in hopes of gaining Alcoa Aluminum business and we feel
12 like that we were looking to the future. We know that
13 Norfolk Southern will, when the STB approves that merger,
14 which I think we feel they will, Norfolk Southern will own
15 the track that connects to this track.

16 Norfolk Southern currently has a very good working
17 relationship with Alcoa Aluminum at other plants they now
18 serve. We were in the hopes to develop jointly with
19 Norfolk Southern the same relationship from this Alcoa
20 plant.

21 Q And when you say you were in hopes, were you in
22 hopes of working with Norfolk Southern on that?

23 A That's correct. Our marketing group has been in
24 discussion with the Norfolk Southern marketing group that
25 calls on Alcoa. Now, obviously we have not been to jointly

1 to call on Alcoa because at the present time Norfolk
2 Southern does not have the line that's awaiting STB
3 approval which should come in July or August of this year.

4 Q Does Allentown Corman Lines have any prior
5 experience with Norfolk Southern in the aluminum industry
6 which it is using as a basically as a backdrop to this and
7 with its experience and know-how?

8 A Well, we don't have experience in the aluminum
9 with Norfolk Southern, our experience in the aluminum is
10 with CSX. We currently handle approximately 400 million
11 pounds of aluminum every year, and have since 1990. We
12 purchased 112 boxcars especially to move finished aluminum
13 products out west as well as into the Southwest and into
14 Mexico. We own those boxcars.

15 Also in this same move we joint ventured on the move
16 with CSX as well as Union Pacific which they put in jointly
17 a hundred boxcars. So we are moving about 200 boxcars a
18 month of aluminum out west.

19 We are handling, as I said, somewhere in the 400
20 million pounds per year of finished product and of raw
21 product, I don't know, 1,200 million pounds (sic) of raw
22 product going into the processing, aluminum processing
23 plant.

24 This is with Logan Aluminum which is one of the
25 largest aluminum finished aluminum manufacturers. They are

1 owned by ARCO and ALCAN. We have a great working
2 relationship. We have been in this relationship since 1990
3 it represents approximately two and a half million dollars
4 a year of our gross revenue so yes, we are in the aluminum
5 business, partnership.

6 We constructed a distribution center close-by to
7 Logan Aluminum specifically to store for Logan Aluminum and
8 handle aluminum into rail cars out of the that distribution
9 center.

10 JUDGE COHEN: Why is that located, sir.

11 THE WITNESS: That's located, our distribution
12 center is located in South Union, Kentucky. It's just
13 south of Bolling Green, Kentucky.

14 JUDGE COHEN: Thank you.

15 THE WITNESS: And we own that line. That railroad
16 is our R. J. Corman Memphis Line that serves Logan Aluminum
17 and we interchange with CSX.

18 BY MR. JOYCE:

19 Q Would some sort of distribution center be a
20 possibility if, in fact, the Alcoa line at Cornwall
21 Industrial Track could be opened? Is that a possibility
22 there?

23 A It's very much a possibility. We, there's a
24 niche that a short line and someone like us can have to
25 develop business on a spur line, if you will, as opposed to

1 your larger railroads which typically do not get into the
2 distribution business per se.

3 We have three distribution centers; currently have
4 three. All three handle aluminum and they are located,
5 one's in Clarksville, Tennessee which handles prime
6 aluminum and that goes into the process of making
7 aluminum.

8 Our South Union distribution center as I said
9 handled finished product aluminum. Our Western Ohio Salina
10 Distribution Center handles aluminum ingots for Reynolds
11 Aluminum. So this is not new to us. And we specifically
12 bought this line with an eye on trying to develop business
13 with Alcoa Aluminum.

14 Q And did I hear you say that there was an existing
15 relationship between Norfolk Southern and Alcoa that you
16 are aware of?

17 A Yes. That's correct.

18 Q Could you explain your knowledge of that
19 relationship?

20 A My knowledge is not direct, only hearsay from
21 Norfolk Southern. They currently serve, I think, three
22 facilities of Alcoa and I am not certain of their
23 location. So all I can say is we have been in discussions
24 with Norfolk Southern and they have represented to us they
25 serve Alcoa at other locations.

1 Q Would it be safe to say, then, sir, that Norfolk
2 Southern and Corman Allentown Lines' discussions have
3 focused on targeting this Alcoa facility on the Cornwall
4 Industrial Track something as a target to market potential
5 service and potential distribution center?

6 A That's correct.

7 Q What time frame, sir, were you hoping ideally to
8 be able to develop a relationship with Alcoa and what is
9 that conditioned upon?

10 A Well, one condition of beginning good
11 relationship, obviously, would be for Norfolk Southern to
12 have had the STB approval to interchange and move material
13 from this plant. We don't expect that to occur till late
14 July, early August.

15 Q Of 1998?

16 A Of 1998, correct. Once that occurs, then we feel
17 like there certainly, as in any relationship, it comes over
18 time. I am aware of Alcoa's statement I think maybe on a
19 local level they do not intend to use rail service. From a
20 corporate standpoint in Alcoa, I would think they would be
21 interested in at least discussing the possibilities.

22 MR. KILGORE: I am going to object to what he thinks
23 Alcoa will do as hearsay.

24 JUDGE COHEN: Sustained.

25 THE WITNESS: I am sorry.

1 BY MR. JOYCE:

2 Q So July and August of 1998 is when the STB
3 decision is to be made only Norfolk Southern merger of CRX
4 (sic). Is that your understanding?

5 A That's my understanding. Getting back to your
6 question, your question was how long would that take and I
7 would think we should know in probably around a 15-18 month
8 time frame if we are going to be able to get into the
9 plant, what kind of services the plant would require, if it
10 required us to build a distribution center here, giving us
11 time to do that and as well as upgrading a few things.

12 Q When you say 15-18 months, sir, do you mean from
13 today?

14 A No, 15 to 18 months from the time the NS gets the
15 approval.

16 Q Okay. So approximately two years from today?

17 A Right. That's correct.

18 Q Have you had an opportunity to inspect and review
19 the Corman Allentown Line, sir?

20 A With respect to the Lebanon Line you are talking
21 about the --

22 Q Yes. The Cornwall Line.

23 A The Allentown Line --

24 Q Cornwall Line. I am sorry. Cornwall Line?

25 A With respect to the Cornwall Track, I personally

1 reviewed every crossing on that line as late as yesterday.
2 I drove across every crossing on that line. I got out of
3 the vehicle and walked every crossing on that line.

4 Q Is Allentown Corman Lines, Inc. a Pennsylvania
5 corporation?

6 A It is.

7 Q And could you briefly describe what the Allentown
8 Line is currently doing in Pennsylvania at this time? What
9 kind of work it's doing?

10 A Currently we are in Allentown, Pennsylvania. We
11 have a short line railroad there which serves several
12 customers and also we have a material sales yard located on
13 the Allentown Line which serves Conrail.

14 Q Does R. J. Corman Companies also operate another
15 company in Pennsylvania?

16 A Yes, we do. We have the Pennsylvania Lines which
17 is headquartered in Clearfield and primarily products on
18 that line is coal. We move approximately three and a half
19 million ton of coal a year on that line to Pennsylvania
20 Power and Light.

21 MR. JOYCE: If I may have a moment, Your Honor. I
22 am just looking for an exhibit here.

23 (Pause.)

24 MR. JOYCE: Your Honor, I am going to hand the
25 witness what I have marked as RJC Number 2. It's already

1 been admitted by Court's prior order into this proceeding.
2 I am going to show the witness it is attached as Exhibit B
3 to the petition to open, the amended petition to open and
4 show the witness this.

5 (RJC Exhibit No. 2 was produced and
6 marked for identification.)
7

8 BY MR. JOYCE:

9 Q Have you ever seen that document before, sir?

10 A Yes, I have.

11 Q And can you identify what that document is?

12 A This is the approval of the Surface
13 Transportation Board for the purchase and acquisition of
14 R. J. Corman purchasing from Conrail the Lebanon Cornwall
15 Industrial Track.

16 Q Is that the Federal Register page indicating the
17 exemption notice of R. J. Corman for that line?

18 A Yes, it does. The 49 CFR 1150.41.

19 Q Mr. Grubb, you indicated that you personally
20 viewed the lines on the Cornwall Track. I am going to show
21 you what we'll mark as Corman Exhibit Number 3. There are
22 12 photographs there. So I guess we'll call it 3 through
23 15. Could you identify -- strike that. Did you take these
24 photographs, sir?

25 A I did.

1 Q And these are as a result of your viewing of the
2 lines?

3 A That's correct.

4 MR. KILGORE: Your Honor, excuse me. I don't mean
5 to delay the situation but at the last hearing Conrail
6 wished to provide testimony as to pictures of the tracks
7 and that was not allowed. I don't know if your new order
8 would allow that further testimony because I don't know if
9 everyone is prepared here to rebut the condition of these
10 tracks.

11 JUDGE COHEN: In view of my statement in the January
12 order, I don't see why these photos can't come in.

13 **(RJC Exhibits Nos. 3 through 13 were**
14 **marked for identification - not supplied)**

15
16 BY MR. JOYCE:

17 Q Mr. Grubb, you indicated that you had visited all
18 the crossings on the Cornwall Track. Before we look at
19 each individual picture, did you have any general
20 impressions of the crossings as a whole? And could you
21 explain those to the Court?

22 A Well, I guess my familiarity with rail crossings,
23 grade crossings, and in reading some of the earlier
24 testimony, which I had not attended some of the hearings,
25 but I had read some of the testimony, quite honestly, I

1 expected to see some crossings in deplorable condition.
2 That was not what I found. In fact, it was the opposite.

3 MS. D'ALFONSO: Excuse me, Your Honor. I am not
4 going to object. I am not sure that we have a basis for
5 Mr. Grubb to make that statement. I don't know if he's an
6 engineer. I recognize he's president of a number of
7 railroad lines.

8 MR. JOYCE: He's not testifying as an expert, Your
9 Honor.

10 JUDGE COHEN: Lay a foundation as to his
11 background.

12 BY MR. JOYCE:

13 Q Mr. Grubb, do you have any engineering background
14 or particularly an education in engineering?

15 A I do not. Only practical experience.

16 Q How long have you been in the railroad business,
17 sir?

18 A Twelve years.

19 Q Is that exclusively in the railroad business?

20 A For 12 years, yes.

21 Q And have you acquired special knowledge and skill
22 regarding railroad crossings or have you dealt with
23 railroad crossings in the past?

24 A Yes, I have.

25 Q And so --

1 JUDGE COHEN: In what way?

2 BY MR. JOYCE:

3 Q In what way, sir?

4 A Improvements of at-grade crossings, determining
5 condition, determining how to correct drainage at
6 crossings, at-grade crossings, I have made those decisions
7 in the past.

8 Q And you have you inspected crossings yourself in
9 the past, sir?

10 A Yes, I did.

11 MR. JOYCE: I'd submit, Your Honor that he can
12 testify as to what he observed on the site. He has
13 sufficient skill and knowledge that he's acquired over the
14 years. Although he doesn't have a formal education, he's
15 not testifying as an expert or engineer as to what he saw
16 on site. It's no different than a lady that might live
17 next to the crossing might testify as to what she views on
18 the site when she is present.

19 JUDGE COHEN: It's his opinion for what it's worth.

20 MR. REILLY: I might just -- I object to the word
21 use of the word deplorable, Your Honor. The pictures speak
22 for themselves. I think he can describe what's there, but
23 his opinion is not be going to be acceptable.

24 JUDGE COHEN: All right.

25 BY MR. JOYCE:

1 Q With respect to the first photograph in the group
2 exhibits, there is a picture of I think on the back of
3 these originals that are shown, is that your handwriting,
4 sir, on the back?

5 A Mr. Pekingill and I went through these.

6 Q Could you identify that crossing, sir?

7 A This is State Route, or State Drive as it's
8 referred to in these hearings, I think.

9 Q And is that an accurate depiction from the
10 photograph that you took yesterday?

11 A Yes, it is.

12 Q And is there anything from Allentown Line's
13 standpoint that you saw at that crossing with respect to
14 repairs or maintenance that you saw an immediate need for?

15 A No, there was not.

16 MR. DUNLAP: Just a clarification point, please,
17 will this be Corman Number 3.

18 MR. JOYCE: Yes, and in subsequent order.

19 MR. DUNLAP: And each subsequent one will be four,
20 five, six, as we go along?

21 MR. JOYCE: Yes. Thank you, counsel. We'll just,
22 if everyone could follow and mark as we go along, I would
23 appreciate it. RJC-3.

24 BY MR. JOYCE:

25 Q Likewise, sir, I'd like to show you the second

1 photograph in the exhibit. Could you identify that
2 crossing?

3 A Yes. That's Lincoln Avenue, which is somewhat
4 out of town kind of I guess a country road or state road
5 maybe outside of town.

6 Q Okay. Did you see any immediate concern from a
7 repair standpoint on that crossing?

8 A No, I did not.

9 Q Did you drive across the crossing, sir?

10 A Yes, I did. I drove across each and every
11 crossing and observed traffic over each and every
12 crossing.

13 Q Did you drive the speed limit or under the speed
14 limit when you drove the crossing?

15 A Well, I have to say I was driving over the speed
16 limit as was the rest of the traffic.

17 Q We appreciate your candor, sir. And I will show
18 you what -- we'll mark that RJC Number 4. Could you
19 identify what is the fourth photograph in the packet?

20 A The next one is 8th Street.

21 Q Now, as president of Corman Allentown, did you
22 see any immediate repair work that you feel would be needed
23 to be done on that line?

24 A I did not.

25 Q Or that crossing?

1 A No.

2 Q And that's RJC Number 5. I show you what the is
3 sixth photograph in the packet, sir and is that a picture
4 you took yesterday of one of the crossings?

5 A It is. This is a picture of 9th Street.

6 Q Did you get out of the car and view that
7 crossing?

8 A I did.

9 Q And did you see anything from Corman's standpoint
10 that would require immediate attention on that?

11 A There was not.

12 Q That's RJC Number 6. Likewise, sir, I'll ask, to
13 move things along the same questions apply as to Exhibit
14 Number 7.

15 A Okay. I did get out and observe. The next one
16 is 10th Street. I observed the crossing. I was out of the
17 vehicle, walked the crossing. There was nothing at that
18 crossing in need of immediate repair.

19 Q That's Number 7. Now, number 8, sir?

20 A Twelfth Street. I was out of the vehicle,
21 observed the crossing. There is nothing there that
22 warrants immediate repair.

23 Q And when I say warrants -- let me ask the
24 question with respect to the exhibits we have reviewed and
25 the exhibits that we are going to review, in any the ones

1 we reviewed, when you say immediate repair, do you mean
2 from the standpoint of traffic?

3 A From the standpoint of the safety of traffic
4 crossing this crossing, from the standpoint of traffic
5 having to slow or hit brakes to go across each crossing,
6 these do not need repairs. Traffic does not stop, does not
7 hit brakes. They move across these crossing in excess of
8 the speed limit.

9 Q So you observed traffic going over the crossing
10 without hitting brakes?

11 A Most definitely.

12 Q And when we say traffic we mean vehicular
13 traffic?

14 A Correct.

15 Q So that this is 12th Street that we looked at as
16 Number 8 in the packet?

17 A Right.

18 Q And is your testimony the same with respect to
19 that crossing?

20 A It is.

21 Q Likewise, sir, with respect to what is the ninth
22 picture in the photograph, could you identify that
23 crossing?

24 A This crossing is Walnut Street.

25 Q And anything as far as the need for immediate

1 repairs for vehicular traffic?

2 A There was not.

3 Q A few more. Number 9 in the -- or Number 10 in
4 the packet, could you identify that?

5 A Number 10 is Chestnut Street.

6 Q Okay. And any feeling, from your -- strike
7 that. Any result from your viewing that that you believe
8 R. J. Corman Allentown may need to do an immediate repair
9 on that crossing?

10 A No, there was not.

11 Q That's number 10, Chestnut Street. Could you
12 also identify the crossing at photograph number 11, sir?

13 A Well, this is another picture of Chestnut
14 Street. Chestnut Street has two tracks crossing it. The
15 first photo was I don't know which direction east and west
16 on these things, but these two represented separately the
17 two tracks that cross through Chestnut Street.

18 Q If I understand your testimony there are two
19 separate sets of tracks that cross. Is that one crossing
20 or two crossings?

21 A It's one crossing.

22 Q On Chestnut Street?

23 A It's got two tracks within the crossing.

24 Q And that is RJC Number 11. Could you identify
25 Number 12 in the packet?

1 A This is Route 422.

2 Q And did you view that crossing yesterday?

3 A I viewed it, yes, I did.

4 Q Any need from R. J. Corman Company's Allentown
5 Lines perspective with respect to immediate repairs for
6 vehicular traffic?

7 A There most definitely is no need on this
8 crossing. This crossing appeared to be the heaviest
9 traveled crossing.

10 Q That's RJC Number 12.

11 Sir, I am going to show you what is a photograph,
12 Number 13, Exhibit Number 13. Could you identify that?

13 A This is the underpass at I believe it's
14 pronounced Blenheim or Blenheim.

15 Q Wilhelm Avenue?

16 A Wilhelm, okay.

17 Q Did you take that photograph?

18 A I did.

19 Q Did you see my immediate safety concern or
20 immediate repair needs with respect to that underpass.

21 MR. KILGORE: I am going to object to that
22 particular question. We are talking about traffic here.
23 This man has no experience or has not testified to any
24 experience about traffic engineering. I am going to object
25 to his testimony as to Wilhelm Avenue.

1 JUDGE COHEN: What was the question, again?

2 MR. JOYCE: The question simply is as far as the
3 immediate area underneath the underpass, did you see any
4 need for a -- I'll qualify the question and make it
5 narrower.

6 BY MR. JOYCE:

7 Q The immediate area underneath the underpass, the
8 roadway surface, did you see any need for immediate road
9 repair there from Corman's perspective?

10 A I looked at it more -- and I am sorry, maybe I'm
11 expanding, but I didn't look at it from a standpoint of did
12 the road need repaired or should it be widened. I looked
13 it at it from current day safety standpoint in my view
14 going through it. You have a clear view going in either
15 direction, whether you should stop or not stop. There is
16 no safety hazard, in my opinion.

17 MR. KILGORE: I'll object to that.

18 JUDGE COHEN: Objection sustained. He's not a
19 traffic safety engineer. He hasn't seen it in the winter
20 time. He hasn't seen it with two people trying to get
21 through it at a time.

22 MR. KILGORE: Or rain.

23 JUDGE COHEN: Or rain.

24 BY MR. JOYCE:

25 Q Just to finish the packet, the 14th photograph in

1 the packet, is that also a photograph that you took of the
2 underpass?

3 A It's correct. That's -- I took one on each
4 side.

5 Q Okay.

6 Now, your testimony has been you didn't see any
7 immediate need for repairs to the crossing with respect to
8 vehicular traffic and safety. Is R. J. Corman Companies,
9 however, willing to take any action as a result of the
10 concerns that the township and city and COLT and the
11 Pennsylvania Department of Transportation have expressed in
12 these proceedings and stated in their complaints, is there
13 something Corman Allentown is willing to do with respect to
14 these crossings?

15 A Well, yes, there is. And these crossings have
16 been repaired, have been repairs made over I guess the
17 years. I am not sure whether it's done by the township or
18 whether it's done by Conrail. I think what may be helpful
19 at these crossings at least in the interim, that we
20 understand Alcoa and where we are going to be able to go
21 with Alcoa, it would be to put a continuous piece of
22 pavement across these crossings over what's been patched
23 which may make it more a continuous layer of asphalt and
24 not have this patching.

25 Q And that includes the rails?

1 A That's right.

2 Q Is Corman Allentown willing to temporarily
3 suspend the crossings and agree to that and cover the
4 signage and any signals at each crossing?

5 A Yes, we would. While we are working on
6 developing this business with the Norfolk Southern in this
7 area we would be willing to cover, if you would, I guess,
8 the signal systems, probably take down crossbucks -- I
9 think that was on Lincoln -- and take out of service, if
10 you will, the crossings in the interim.

11 Q In the interim. And that would be in the time
12 period that you indicated the 15, 18 months from August of
13 98 until that time period elapsed. What if, in fact, you
14 were unable and Allentown Corman Lines is unable to strike
15 a deal, so to speak, with Alcoa. What would be the intent
16 of Corman Allentown at that time?

17 A Well, I believe our intent -- and again, I don't
18 want to speak for Mr. Corman, but I believe our intent
19 would be to --

20 MR. SHEFFEY: Your Honor, I am going to object
21 because at this points he's beyond the limit of his
22 authority to speak for the company and whatever he says is
23 perfectly worthless at this set of hearings.

24 MR. JOYCE: Well, I think he can testify, Your
25 Honor, as president, what his view would be within the

1 company. He certainly can do that. And he is the
2 president of the company. He's speaking, as any president
3 of or any representative from PennDOT, there's certainly
4 corporate procedure that would go through.

5 JUDGE COHEN: Have you and Mr. Corman discussed this
6 issue?

7 THE WITNESS: We have discussed the issue, Your
8 Honor, with regard to why are we here, and which is Alcoa.
9 Mr. Corman's feelings is if there is no business here, we
10 don't need this track. We are not a holding company of
11 just tracks.

12 BY MR. JOYCE:

13 Q What has the company done in the past.

14 MR. SHEFFEY: Your Honor, I'd ask you to rule on
15 this because he's effectively said he and Mr. Corman have
16 not talked about it and because of his answer, in my
17 opinion he's taking himself out of his position as
18 president for these series of questions because he's said I
19 have got to listen to what Mr. Corman says. His answers on
20 these other issues has been, I am president, this is what's
21 going to happen. Here he's saying I can't tell because I
22 haven't talked do Mr. Corman and Mr. Corman calls the
23 shots.

24 MR. JOYCE: He has not said that. He has said I
25 have talked with Mr. Corman.

1 MR. SHEFFEY: Okay.

2 MR. JOYCE: He conferred as you with with the
3 board. Let me establish this. Maybe we can correct the
4 issue. We'll let your objection stand on the record until,
5 and let the judge decide.

6 BY MR. JOYCE:

7 Q What is Mr. Corman's role within the Allentown
8 Lines corporation?

9 A He is the chairman as well as the sole
10 stockholder.

11 Q And would it be a decision that would you
12 approach the board with if, in fact, the Alcoa line was not
13 being -- relationship was not being able to be established,
14 would you then approach the board with a decision as to
15 what to do with this line?

16 A It would be my recommendation to re-file or to
17 file for an abandonment of this line, remove all track
18 material from this line.

19 Q And have you done that perhaps somewhere in the
20 past where a relationship maybe didn't occur?

21 A Well, we are, in fact, getting ready to do that
22 now on another Pennsylvania piece of property which is
23 known as the Black Lick Secondary on our Pennsylvania
24 line. We filed for an abandonment of that line. There was
25 an offer for financial assistance for 50 percent of it. We

1 went through that proceeding and now have received
2 permission to abandon the balance of that line, the other
3 50 percent. So yes, we have done that and --

4 Q Abandonment would entail --

5 A An abandonment would entail removal of all the
6 materials.

7 Q And replacement of the road surface?

8 A Right. Total replacement. We would remove
9 everything in the crossing and then, of course, whatever is
10 required from --

11 JUDGE COHEN: How would that affect the Wilhelm
12 Bridge? Would you have a need to go that far, one?

13 THE WITNESS: No.

14 JUDGE COHEN: Would you be operating a track on that
15 line.

16 THE WITNESS: No.

17 BY MR. JOYCE:

18 Q Is there anything that concerns you from the
19 safety standpoint currently at this time with respect to
20 crossings?

21 A Not with what I viewed yesterday.

22 MR. KILGORE: Again, I am going to ask for a
23 clarification. If he's talking about Wilhelm Avenue I am
24 going to object.

25 MR. JOYCE: I said the crossings. I will refer to

1 Wilhelm as an underpass, just strictly to crossings.

2 THE WITNESS: The at-grade crossings.

3 BY MR. JOYCE:

4 Q Have you -- has the company made a decision as to
5 how it would -- the recommendation it would like the Court
6 to consider with respect to the Wilhelm Avenue Bridge?

7 A Well, I think we would like the Court to grant us
8 the 18 months from the STB approval of the NS take over of
9 Conrail in that area. I'd like to have 18 months beyond
10 that to see if we are able to develop business on this
11 line, more particularly, the Alcoa business on this line
12 and certainly I would like the bridge to remain in until a
13 decision is reached at the end of that 18-month period to
14 see if there is business that warrants us operating the
15 line or should we abandon.

16 Q I don't have any -- I am sorry. Just as another
17 backdrop question with respect to the company, is it your
18 belief that if the line is operable that R. J. Corman
19 Allentown Lines is able to properly operate and maintain
20 this Cornwall Track if it was to become operable again?

21 A Yes, it is. We are more than capable to not only
22 repair, upgrade do what's necessary track structure-wise,
23 but also we operate six railroads and have for 12 years.

24 Q Are any of the companies within the R. J. Corman
25 sphere of companies specifically focused on track repair

1 and replacement?

2 A Yes. In fact, that was the very basis of our
3 group of companies today. R. J. Corman has been in the
4 track construction business as well as highway grade
5 crossing construction for 25 years. This is not something
6 new to our company.

7 Q And I guess my question specifically is are there
8 specific companies that within the R. J. Corman family of
9 companies which work on track replacement?

10 A Yes. That is our R. J. Corman Construction
11 Company. That the --

12 Q Has that company recently laid track, fresh track
13 anywhere in the country?

14 A We are continually every day laying track and
15 working on track for someone in the country. We just did a
16 hundred miles of track a year go for DM&E out in North
17 Dakota. We are currently, on the Belt Railroad up in
18 Chicago which handles about four million cars a year. We
19 are doing switches and track work in their yards.

20 Q What, from a company standpoint, do you feel
21 Corman offers to its customers that's different, maybe,
22 from, say, a large company such as Conrail?

23 A Well, I think what has spawned short lines is
24 what we are today, and it's customer oriented customer
25 service and being willing to look for unique joint ventures

1 with customers to help them as well as help ourselves
2 develop the business. And that is something short line
3 operators can do versus class one operators, railroads.

4 Q And what is approximately the gross revenue of
5 R. J. Corman annually?

6 A Last year, it was 58 million.

7 MR. KILGORE: Your Honor, I'd like a clarification
8 if we are talking what Company. R. J. Corman --

9 MR. JOYCE: No problem.

10 BY MR. JOYCE:

11 Q Was that all the family of companies as a whole?

12 A Oh, yes. That was all the family of companies as
13 far the 58 million.

14 MR. KILGORE: The order reflects as to Allentown
15 Corman. That's the one who bought this line. Not all the
16 companies.

17 BY MR. JOYCE:

18 Q Mr. Grubb, in line with what counsel just stated
19 do the companies continually work together to achieve
20 common goals and purposes?

21 A The companies, in fact, only work together. That
22 is what really makes our companies cost effective, being
23 able to interchange employees, interchange segments of our
24 business within each railroad. As far as the gross
25 revenues, only of the Allentown Line, I don't recollect

1 that number. The reason I gave the total number is all of
2 these companies are owned by R. J. Corman, Inc.
3 consolidated into one tax return. This is all viewed as
4 one company.

5 JUDGE COHEN: If some expenditures have to be made
6 vis a vis the Allentown Line and there's a shortfall of
7 funds to meet that need, do the other companies chip in?

8 THE WITNESS: Oh, most definitely. Most
9 definitely.

10 BY MR. JOYCE:

11 Q And along those lines, sir --

12 MR. REILLY: Let me object to this whole line of
13 questioning. If he's making that conclusion, I think we
14 are entitled to know are these subsidiaries, are these
15 stand alones, who the shareholders are because your
16 assumption, if this is a stand alone company, those other
17 companies have no obligation at all to make a
18 contribution.

19 So before we get into this whole line of
20 questioning, I think we need to establish a basis for it
21 and I object on relevancy until we establish are they
22 wholly owned subsidiaries, Mr. Corman own them all how
23 their operation is because if they're stand alones, this
24 company can walk away at any time it wants from this and
25 there's no obligation.

1 MR. JOYCE: I would maintain, Your Honor, that
2 counsel can address that on cross examination. He's
3 testified it's consolidated for purposes of tax reasons and
4 they work together in accomplishing common goals and they
5 exclusively work together, as I understand his testimony.

6 So if you want to develop that on cross examination,
7 you certainly can. I think it's entirely relevant because
8 he's testifying that the companies will work -- I'll ask
9 the question.

10 BY MR. JOYCE:

11 Q Is it -- you are the president of all these
12 companies, sir?

13 A Yes, except for Memphis Line and Material Sales,
14 of which I am executive vice president.

15 Q And in that role, is it your understanding that
16 to the extent any of these other companies have either work
17 force resources or anything else, would that be committed
18 toward accomplishing your objective here which is to open a
19 relationship with Alcoa via Norfolk Southern after the
20 merger. Is that correct?

21 A That's correct.

22 Q And is what that the objective and the intent
23 here?

24 A The objective and intent here is to develop the
25 Alcoa business. We will use resources from our track

1 construction, from our distribution center, our sales and
2 marketing is, encompasses sales and marketing for all
3 companies, although our aluminum business is specifically
4 Memphis Line business. I mean we are a company that is so
5 intertwined and intermingled that --

6 Q Now, you indicated that distribution center was a
7 possibility with respect to this area. The Cornwall area.
8 Have you discussed that as a company and amongst the
9 companies?

10 A Yes, we have.

11 Q And what goal or vision is, would that -- what
12 would that involve? Could you give a little more detail as
13 to what a distribution center would involve?

14 A Well, typically what we have -- it's usually been
15 about a million dollar expenditure for us to build a
16 distribution center, to accommodate both trucks and rail,
17 whether it's inbound rail, outbound truck or vice versa.
18 It helps develop other business in the area as well as
19 allows for storage facilities because when you ship by
20 truck, one truckload is not a rail carload.

21 So you have some gathering to do in order to inbound
22 or outbound rail/truck situations.

23 Q So the distribution center involves working with
24 the truck carriers to enhance the distribution of a
25 customer such as Alcoa or such as Logan?

1 A Not generally with the truck carrier, himself.
2 They are also contracted by a shipper but we work with the
3 shipper.

4 Q And you have about three of these centers
5 established already?

6 A That's correct.

7 Q And is it Corman company's practice to, as part
8 of that, to hire people in the local area if there --

9 A Oh, it is.

10 Q And you have people in the local area of those
11 three distribution centers hired?

12 A We do.

13 Q Is it Corman's expectation that the PennDOT
14 funding for the bridge and Wilhelm Avenue be available for
15 purposes of reconstruction of that bridge if, in fact, the
16 line is being able to be operated again?

17 A Yes. Yes, it is.

18 MR. JOYCE: I don't have any further questions on
19 direct at this time, Your Honor.

20 JUDGE COHEN: All right. Let's take ten minutes and
21 we'll begin with cross.

22 (Whereupon, a brief recess was taken.).

23 JUDGE COHEN: Let's go on the record.

24 MR. JOYCE: Your Honor, during the recess, the
25 parties had an opportunity to explore the practical

1 concerns of a company like R. J. Corman coming into the
2 community and attempting to work a business arrangement
3 with Alcoa and so on, as Mr. Grubb put on the record and we
4 have resolved the issues with respect to the crossings so
5 that to the satisfaction of the parties and at the same
6 time allowing Corman to go about attempting to resolve and
7 accomplish its business purposes, which we would maintain
8 would be beneficial to everybody.

9 The stipulation as outlined would be, would involve
10 the following, Your Honor. The rail has been disconnected
11 by Conrail, at least that's what I understand, at some
12 point along that track which qualifies it as my
13 understanding to be open to suspension. Just one rail's
14 out of place, so technically a train can't go down there.

15 So with that backdrop, the R. J. Corman Company
16 would have all of the crossings paved over with cooperation
17 of the city and their engineer would be done and completed
18 by September 30 of 1998 and in conjunction with that, Your
19 Honor, Corman will cooperate with the city, township and
20 authorities, PennDOT and to accomplish that pave-over from
21 the -- allowing them to have the time period that Mr. Grubb
22 outlined in his testimony for the CSX and Norfolk Southern
23 merger to go through and to see if they can work something
24 out.

25 The signage and signals, whatever, Corman will also

1 have those either covered or removed, depending on each
2 individual crossing, and what particular sign or signal is
3 there so that in effect, we will have suspension on these
4 rails during the time period that Corman will be attempting
5 to work something out with Alcoa and Norfolk Southern which
6 is 18 months from the merger date between Norfolk Southern
7 an and CRX (sic) is that correct.

8 THE WITNESS: CSX.

9 MR. JOYCE: CSX.

10 THE WITNESS: Right.

11 MR. REILLY: I thought it was 18 months from today?

12 JUDGE COHEN: No.

13 MR. REILLY: When is that expected to take place?

14 THE WITNESS: Expected to take place either in late
15 July or early August of this year.

16 MR. REILLY: Pardon?

17 THE WITNESS: Late July or early August a decision
18 from the STB is expected.

19 MR. REILLY: Then we'd like to have a condition on
20 this. I mean, that could go on for some period of time. I
21 think we ought to have a date from today. My understanding
22 maybe it's my fault, I wasn't paying attention to the
23 discussion, at least I thought it was 18 months from
24 today. I think we need a date certain other than 18 months
25 from a probable time to --

1 MR. JOYCE: How about 18 -- from within 18 -- well
2 just say, yeah, no longer than two years.

3 JUDGE COHEN: On or before a certain date.

4 MR. JOYCE: On or before the 24th month from today.

5 MR. DUNLAP: April 16, 2000; right?

6 MR. JOYCE: Is that acceptable?

7 THE WITNESS: Yes.

8 MR. JOYCE: April 16 and Conrail's mathematics
9 counsel said is that 2000 even?

10 MR. DUNLAP: Yes.

11 MR. JOYCE: Even.

12 JUDGE COHEN: What date?

13 MR. JOYCE: April 16, the year 2000. Twenty-four
14 months from today. Is that acceptable?

15 MR. REILLY: Twenty-four month period of suspension
16 we are going to tolerate that, and then after that if we
17 are going to come back in and establish the conditions for
18 abandonment or are you deciding to do that beforehand.

19 MR. JOYCE: I think before reactivation.

20 MR. REILLY: Then we'll be back in here to discuss
21 the terms of that. Because the pave-overs are only
22 considered to be temporary at this stage.

23 THE WITNESS: Correct.

24 MR. JOYCE: Yes. And if, in fact, they are
25 successful with Alcoa then those crossings will have to be

1 rehabilitated and brought up with crossings which we
2 discussed which I believe the city engineer on one of
3 those, I think your engineer on one of those and suggestion
4 was rubber but he suggested concrete which I believe the
5 engineer said as long as it's done right that would be
6 acceptable.

7 MR. REILLY: If you decide to rehabilitate and put
8 it back in service if we can't come to some agreement on
9 the terms of how that's to be done, we want the option of
10 coming back in here assuming it will be necessary to have
11 an order.

12 THE WITNESS: I guess I don't understand.

13 MR. JOYCE: He is saying if we can't agree on
14 rehabilitation that the process here would be open for
15 adjudicating that issue.

16 THE WITNESS: If we can't agree during or up until
17 the 24 months period then we would come back here and set
18 it down?

19 MR. REILLY: Right.

20 THE WITNESS: Okay.

21 MR. JOYCE: That would encompass the salient points,
22 Your Honor, of the agreement stipulation.

23 JUDGE COHEN: Please -- go ahead.

24 MS. D'ALFONSO: I had a couple things I want to make
25 sure we are clear on. When is R. J. Corman going to either

1 remove the crossbucks or the bag the signals. I heard a
2 June 1 date for that?

3 THE WITNESS: That's acceptable.

4 JUDGE COHEN: Procedurally, of course this is going
5 to have to be reduced to writing in the form of a
6 stipulation, whatever counsel deems appropriate and
7 circulated amongst all the parties prior to sending it to
8 my, then is it my understanding I am to make an order
9 approving the stipulation?

10 MR. JOYCE: Yes, Your Honor.

11 MS. D'ALFONSO: I have a few more statements to make
12 sure we are clear. Is R. J. Corman Company agreeing to
13 continue to maintain that surface during that 24 month
14 period until April 16, 2000 and thereafter till such time
15 as it's either removed or the crossings are restored to
16 active status?

17 THE WITNESS: I think we are obligated to.

18 MS. D'ALFONSO: And R. J. Corman's agreement is to
19 work with the highway entity in whatever municipality or
20 locale and the Department of Transportation on state routes
21 for the restoration and the paving over the crossings?

22 MR. JOYCE: We are willing to cooperate with them in
23 that process, yes. In fact, they may even ask some of the
24 city and townships to even bid on the project since they
25 are familiar with it. They may, they have obviously, a

1 right to contract with anybody. But whoever they contract
2 with, either the city, township or some other private
3 entity for that pave-over you will cooperate.

4 THE WITNESS: We will cooperate. If, for an
5 example, we have the City or Township of Lebanon to do this
6 work for us, we work with them to do it, would they then
7 work with your department to be sure that what they have
8 done or what they are going to do or is that something we
9 would be obligated to do?

10 MS. D'ALFONSO: My most specific concern is on the
11 one state route which is State Drive.

12 MR. JOYCE: 2003.

13 MS. D'ALFONSO: Whatever it is, 2000' --

14 MR. JOYCE: Right.

15 MS. D'ALFONSO: That R. J. Corman work with the
16 Department of Transportation for the manner in which that
17 pave-over will be accomplished.

18 THE WITNESS: Yes. Okay.

19 MS. D'ALFONSO: Thank you.

20 JUDGE COHEN: Just so I am clear, when is the pave-
21 over to take place?

22 MR. JOYCE: On or before September 30, Your Honor,
23 1998. This year. They can start, they are willing to
24 start sooner. That's the outside deadline.

25 JUDGE COHEN: Then the 2000, the 24-month period,

1 that's within that period either the line's going to be
2 reactivated or abandoned.

3 THE WITNESS: Or we'll petition for abandonment.

4 JUDGE COHEN: Okay. Do I assume that Mr. Joyce, you
5 are going to prepare the stipulation?

6 MR. JOYCE: Yes, I can, Your Honor. I can prepare a
7 stipulation and circulate it to counsel. I think I have
8 everybody's -- I probably have it on the -- I can probably
9 get the Court's appearance sheet. If anybody wants to
10 leave me a fax number, though, I'll leave a piece of paper
11 and they can leave fax numbers. Otherwise, I'd have to
12 call everybody as I circulated by facsimile I believe Mr.
13 Dunlap, do you have something?

14 MR. DUNLAP: There is one point, one at-grade
15 crossing that concerns Conrail and that is the Willow
16 Street crossing and Conrail and the city have reached
17 agreement that Conrail will repair the Willow Street
18 crossing at its sole cost and expense to bring the crossing
19 to acceptable standards and that Conrail will cooperate
20 with the city for the development and appropriate repairs.

21 MR. REILLY: Is there going to be a time limit on
22 that?

23 MR. DUNLAP: He wants to know about a time limit
24 when would you do that?

25 FROM THE FLOOR: Oh, I guess if the order is issued

1 by mid summer should be able to do it by the end of the
2 year.

3 JUDGE COHEN: You an submit an agreement and I'll
4 issue an order ratifying the agreement.

5 MR. DUNLAP: Yes.

6 FROM THE FLOOR: Just note that in the winter we
7 can't do that.

8 JUDGE COHEN: You draw up an appropriate agreement
9 and even a proposed order and I'll just sign the order.

10 MR. HERZOG: Are we on the record?

11 JUDGE COHEN: We are on the record.

12 MR. HERZOG: Can we go off one second.

13 JUDGE COHEN: Off the record.

14 (Discussion off the record.)

15 JUDGE COHEN: Back on the record.

16 MR. JOYCE: With the elements and salient points of
17 the stipulation outlined on the record as the Court
18 suggested, I will prepare the proposed order and
19 stipulation, circulate it amongst counsel and have it filed
20 with the Court for the Court's final review.

21 We would ask, then, with respect to Wilhelm Avenue
22 underpass that we be given an opportunity to further
23 discuss that today and adjourn at a time that's convenient
24 for the Court this afternoon to resolve that or let the
25 Court know where we stand on that complaint and

1 application.

2 JUDGE COHEN: Off the record.

3 (Discussion of the record.)

4 JUDGE COHEN: Back on the record.

5 MR. JOYCE: The stipulation and proposed order will
6 be drafted and circulated to all counsel and concluded to
7 be filed with the Court in 30 days from today, April 16th.

8 THE WITNESS: I'd like 30 days -- in answer to the
9 question can we bag the signals, I'd like 30 days from the
10 date the order is given because I am not sure by the time
11 everything gets circulated and has your approval, Your
12 Honor --

13 MR. JOYCE: His concern is he doesn't want to act
14 starting to --

15 JUDGE COHEN: Precipitously.

16 MR. JOYCE: Yeah, starting to cover signage and I
17 don't know. He's kind of looking for definition there. Is
18 that acceptable? 30 days from filing of the order and
19 entry of the order to remove and cover the signage.

20 MR. REILLY: That's fine.

21 MS. D'ALFONSO: So instead of June 30, 30 days from
22 whenever.

23 MR. SHEFFEY: That's fine.

24 MR. JOYCE: So all of the signage and signals with
25 respect to the suspension will be completed within 30 days

1 from the order, entry of the order and just to clarify,
2 counsel for PennDOT stated and I don't know if it was on
3 the record that R. J. Corman will maintain the signage and
4 the coverage of those crossings during the time period 24
5 months set forth in the other portions of the stipulation.

6 THE WITNESS: Yes.

7 JUDGE COHEN: Off the record.

8 (Discussion off the record.)

9 JUDGE COHEN: Back on the record.

10 MR. JOYCE: Thirty days from the filing in and this
11 Court's signing the order an entry.

12 JUDGE COHEN: Entry of the order.

13 MR. JOYCE: Entry of the order.

14 MS. D'ALFONSO: Thirty days from the recommended
15 order you will issue.

16 JUDGE COHEN: From the date of my recommended
17 order. Let's come back at 2:00 o'clock).

18 This hearing is adjourned until 2:00 o'clock.

19 (Whereupon, at 12:45 p.m., the hearing recessed to
20 reconvene at 2:00 p.m. the same day.)

21 JUDGE COHEN: We are back on the record. The
22 witness has been sworn; the witness being Mr. Grubb who
23 previously testified on crossing issues and he is under
24 oath.

25

1 M. W. GRUBB, JR., the witness on the stand at the
2 time of recess, resumed the stand, was examined and
3 testified further as follows:

4 DIRECT EXAMINATION (Continued)

5 BY MR. JOYCE:

6 Q Mr. Grubb, the issue with respect to the Wilhelm
7 Avenue underpass and bridge, what intent did Corman have
8 with respect to that, given its knowledge that various
9 parties to this proceeding have safety concerns and have
10 presented evidence and allegations with respect to their
11 safety concerns there?

12 MR. HERZOG: Your Honor, could you have him repeat
13 that? I am not sure I caught that question or understand
14 the question. It's pretty convoluted.

15 MR. JOYCE: I'll break it down, Your Honor.

16 BY MR. JOYCE:

17 Q Generally speaking, what's Corman Allentown
18 Lines' intent with respect -- immediate intent with respect
19 to the Wilhelm Avenue Bridge?

20 A I think, well, I have to say we did not have an
21 immediate solution. We did not consider an immediate
22 solution to the bridge when purchasing the line. It was
23 may understanding when we purchased this from Conrail that
24 there was an obligation, a potential obviously of
25 \$50,000.00 that we would be contributing and stepping into

1 Conrail's role to put forth towards this widening, bridge
2 replacement project, if you will.

3 That was the extent of what I believed we were in
4 for on the widening of the underpass. Never did I think we
5 would be without a bridge because when -- I mean, we bought
6 the line. I think we are somewhat obligated for service on
7 the line if the customer wants service on the line but
8 again, we are trying to develop the Alcoa business and if
9 that could happen tomorrow, we'd work hard towards seeing
10 that it began very quickly.

11 Q And what would occur if the customer, say Alcoa
12 placed an order tomorrow? You are obligated to service
13 that order?

14 A I feel we are obligated to service that order.
15 The only that would discourage service of that order
16 probably would be a rate that we might set that would
17 prohibit that by moving rail. If we are after Alcoa's
18 business I would not think we would want to go in and
19 prohibit the movement of some cars at this stage.

20 Q So your understanding of what Conrail's
21 obligation was and what the prior order was with respect to
22 the Wilhelm Avenue Bridge is that no matter under any
23 circumstances you would have the ability to service any
24 customers?

25 A Right. I was never -- it was never my thought

1 that we would be without a bridge.

2 Q Okay. What, if any, repairs or efforts would
3 Corman Allentown make or cooperate with the township or
4 Department of Transportation as to Wilhelm?

5 A Repeat that, please.

6 Q What would you do in efforts to, if anything, to
7 help with the safety concerns that they have as to Wilhelm
8 at this time?

9 A Well, at this time, I can understand their
10 concern. If they would like to tomorrow, remove the
11 bridge, start the widening process, build the abutments and
12 wait the 24 months or whatever time it's going to be before
13 they put back the bridge, but I need a time frame on how
14 quickly the bridge can go back because if Alcoa says
15 tomorrow yes, we are interested, how quickly can we put a
16 bridge back and I need that answer from whoever would be
17 constructing the bridge.

18 Q And that's different from the there's current
19 order that's in place because that requires constant --

20 A The constant traffic. That's correct.

21 Q In other words, Corman's concern is some
22 flexibility with respect to the bridge even being removed,
23 however, desire to see the reasonable time frame for a
24 bridge to be put back in place?

25 A Right. I do not see pursuing Alcoa's business

1 until after the STB ruling. I think if the process on
2 removing the bridge and widening and all started
3 immediately, they would have full use of the track. We
4 have no plans of operating at this time on that track. We
5 have no business on that track today. We are counting on
6 Alcoa for this and I think any other customers, it's a rate
7 differential whether they would want to move freight
8 tomorrow or not.

9 Q What effect would it have on Corman if you
10 obtained Alcoa work and the bridge couldn't be replace had
11 or you couldn't get a definite answer on replacement of the
12 bridge?

13 A Well, then all efforts could be lost on gaining
14 in that business.

15 Q So from a business standpoint it would be
16 throwing time and effort into the wind?

17 A Right. And the real reason for buying the line.

18 MR. JOYCE: I don't have anything further for the
19 witness. I would just guess -- well, I don't have anything
20 further, Your Honor.

21 JUDGE COHEN: Mr. Matthews? Cross examine?

22 MR. MATTHEWS: No, Your Honor. I have no nothing.

23 JUDGE COHEN: Mr. Herzog?

24 MR. HERZOG: Just a few.

25

CROSS EXAMINATION

1

2 BY MR. HERZOG:

3

Q Good afternoon, Mr. Grubb.

4

A Good afternoon.

5

6 Q You indicated that when you bought the bridge or
7 bought the line that you never thought you would be without
8 a bridge. Is that correct?

8

A That's correct.

9

10 Q Now, were you involved in negotiations in the
11 purchase and sale of the line?

11

A Of the line from Conrail?

12

Q The Cornwall Industrial Track?

13

A Yes, I was.

14

Q Who else was involved?

15

A In our company?

16

Q For R. J. Corman?

17

A Mr. Corman.

18

19 Q Did he know whether the bridge would be an
20 issue? Whether or not it would be --

20

21 MR. JOYCE: Objection, Your Honor. I don't know if
22 he can testify as to his knowledge.

22

MR. HERZOG: I think when he spoke --

23

BY MR. HERZOG:

24

25 Q Are you talking just to your knowledge? You
never thought? You said you never thought the bridge would

1 be -- you would be without a bridge. Were you referring to
2 you personally or to R. J. Corman Allentown?

3 A As R. J. Corman Allentown Railroad, president of
4 that railroad.

5 Q So you are speaking that Mr. Corman also never --
6 MR. JOYCE: Now he's speaking for the company, not
7 the chairman of the board.

8 BY MR. HERZOG:

9 Q Did anybody -- okay. You are speaking for the
10 company. Did anybody -- and you base that opinion on your
11 own personal knowledge, not on knowledge of anybody else?

12 A Right.

13 Q Is that correct?

14 A That's correct. It was if it --

15 Q That's all, then.

16 A Okay.

17 Q At this point you indicate that all of R. J.
18 Corman revenues are \$58 million per year. Is that correct?

19 A Right, gross revenue.

20 Q All the companies?

21 A That's correct.

22 Q Have you had any talks with Alcoa regarding this
23 line?

24 A No, we have not had direct discussion. We have
25 only talked with Norfolk Southern and met with their

1 marketing people to strategize what might be able to occur
2 once the STB rules on the Conrail-CSX merger.

3 Q But no direct talks with Alcoa?

4 A No, sir. No.

5 Q And you don't anticipate on pursuing any of those
6 talks for an extended period of time until the STB rules on
7 the merger. Is that correct?

8 A That's correct. I have to say that we are
9 somewhat on Norfolk Southern's time frame with that. That
10 could be a week or two or so earlier than that STB ruling.
11 I think it depends on how comfortable the NS feels that the
12 ruling will be and then I think they would probably start
13 discussions.

14 Q Do you know what they produce there?

15 A No, sir. Aluminum. Finished goods of some
16 product. I'm not --

17 Q It could be pens, it could be car fenders, could
18 be whatever?

19 A Well, it could be.

20 Q Cylinders, whatever?

21 A Yes.

22 Q You don't know?

23 A No.

24 Q Do you -- you know nothing about their
25 transportation needs?

1 A No. The only thing that I recall was that they
2 left Conrail and went to trucking because of the service
3 they received from Conrail. So they did ship rail --

4 Q How do you know that?

5 A I know that from a letter I have seen that was
6 written to I believe someone in Conrail.

7 Q By whom?

8 A I am not sure. I just don't remember. This is a
9 long time ago.

10 Q So it's basically based on hearsay?

11 A Basically the --

12 Q So you saw a letter that you don't know who wrote
13 to Conrail saying they were dissatisfied with their
14 service?

15 A I can't recall. I can't remember who it was.

16 Q You did go out and personally visit these sites,
17 correct?

18 A Yes, sir.

19 Q The Wilhelm Avenue site?

20 A Yes.

21 Q You are not an engineer?

22 A No.

23 Q You are not a safety engineer or anything of that
24 sort.

25 A That's correct.

1 Q Your experience is solely in the field, what you
2 picked up on the job?

3 A Yes, sir.

4 Q Is it correct that you said you would agree that
5 the bridge should be removed?

6 A No, I didn't say that.

7 Q You did not say that?

8 A No.

9 Q I guess I misunderstood you?

10 MR. JOYCE: His testimony, I believe, directly said
11 that under the condition that they could have a commitment
12 as to when a replacement would be put in, the time
13 specific --

14 BY MR. HERZOG:

15 Q Under those circumstances -- okay. That's fine.
16 I am we'll clarify. I am many not trying to trap you.
17 Why, under those circumstance, do you think it would be
18 beneficial to remove the bridge?

19 A I don't know what circumstances. Under what
20 circumstances?

21 Q That you would have the abutments sitting there
22 and when Alcoa would potentially snap their fingers in the
23 future, you would be able to provide service. Why under.
24 Those circumstance, do you think it would be wise to remove
25 the bridge right now?

1 A I think the reason it's wise to remove the bridge
2 now I think is because if I understand right you have had
3 testimony that it's a safety issue today.

4 Q That's correct.

5 A Okay. Being a safety issue today if it's your
6 feeling that it's a safety issue that cannot wait for 24
7 months or whatever time period it takes for us to see if we
8 cannot develop this business, then I have only said that it
9 would be ideal to move it today, remove it today.

10 You don't have to put the other bridge in today
11 before removing it as originally proposed because we are
12 not operating the line. But I would need a commitment how
13 quickly you could put the other bridge in.

14 Q So basically you were relying on our safety
15 concerns saying yes --

16 A Yes.

17 Q -- that given those safety concerns, it would be
18 a smart decision to go this route if you put the abutments
19 in, to protect our interests.

20 A Right.

21 Q Would you have any idea how much revenue would
22 result from the Alcoa business?

23 A No, I couldn't say.

24 Q Do you have any idea how much money R. J. Corman
25 would expend to rehabilitate the line?

1 A No.

2 MR. HERZOG: That's all the questions I have, Your
3 Honor.

4 JUDGE COHEN: Thank you, Ms. D'Alfonso?

5 MS. D'ALFONSO: I didn't hear the answer to the last
6 question.

7 MR. HERZOG: He said yes.

8 BY MS. D'ALFONSO:

9 Q You mentioned that R. J. Corman Allentown would
10 want abutments in place now if the structure were removed.
11 Do you have any idea how much it would cost to put
12 abutments in?

13 A No. Not right off, I don't.

14 Q Would you argue if I told you about a quarter of
15 a million dollars, ballpark estimate?

16 A Probably not, no.

17 Q So would you can asking that public funds,
18 approximately a quarter of a million dollars be expended
19 for business that might not happen in the future?

20 A Well, I guess I saw it as a twofold thing and I
21 understand that if you put it in there's a possibility of
22 doing a two to one slope which again, I think comes back on
23 our property. The two to one would butt. But if you put
24 the abutment in, I think it can also act as a retaining
25 wall even if the bridge would not go in.

1 So that may be somewhat the 250,000 may be a good
2 number that I would agree with but of that 250 you are
3 going to spend so much of that, some of that same money to
4 do your two to one slope so it's not a true \$250,000.00
5 differential to put the abutments in, I don't think. I
6 could be wrong.

7 Q But you will recognize there is some additional
8 cost associated with installing it?

9 A There would be, question. I would agree.

10 MS. D'ALFONSO: Thank you. I have no --

11 BY MS. D'ALFONSO:

12 Q Do you have any idea how high the abutments would
13 have to be?

14 A No. I haven't seen the drawings. I have no
15 idea.

16 JUDGE COHEN: Do you know.

17 MS. D'ALFONSO: I am told that they would have to be
18 about 20 feet high based on the current preliminary plans.

19 THE WITNESS: What are the current abutments now?

20 MS. D'ALFONSO: I don't know, but I know the road is
21 being raised. Therefore the abutments would be taller.

22 THE WITNESS: Which creates additional work on track
23 structure, too, because then you've got all the approaches
24 to raise probably back for 150, 250 foot area both sides.

25 JUDGE COHEN: Mr. Kilgore?

1 MR. KILGORE: I represent South Lebanon Township in
2 today's proceeding.

3 BY MR. KILGORE:

4 Q What, part of the issue today is the ability,
5 feasibility to comply with the terms and conditions of the
6 indenture between it, the R. J. Corman Allentown, Inc. and
7 Consolidated Rail Corporation? Are there any outstanding
8 financial issues between a R. J. Corman Allentown, Inc. and
9 Conrail?

10 A As in what, now? I mean, what kind of financial
11 issues?

12 Q Are there any financial obligations, does
13 Allentown Corman have any financial obligations to Conrail?

14 A None.

15 Q It's fully paid for?

16 A It's fully paid for.

17 Q You haven't testified as to the assets of
18 Allentown Corman. Do you have an estimate of the assets of
19 Allentown Corman?

20 A As far as the valuation or value of the assets?

21 Q Yes.

22 A No, I don't. I really don't. I can't give you
23 an idea on that.

24 Q You have testified already that you have had no
25 contact with Alcoa?

1 A That's correct.

2 Q Or your company?

3 A That's correct.

4 Q You talked about, the prior to the break this
5 morning -- earlier today that if Alcoa doesn't come through
6 then you would petition to abandon the line and that's part
7 of that stipulation that was entered into as to the
8 at-grade crossing?

9 A Right.

10 Q And at that particular time you were going to
11 cooperate with the removal of the tracks, if that occurs,
12 what steps would R. J. Corman do with respect to the
13 bridge?

14 A I think if that occurs R. J. Corman will remove
15 that bridge.

16 JUDGE COHEN: Excuse me. The bridge or just the
17 track?

18 THE WITNESS: Well, again, I guess it depends on if
19 we totally abandon the line, Your Honor, and do not give it
20 over to a Rails to Trails, then I think, you know, the
21 entire structure would come out. We would scrap the
22 structure or use it elsewhere. If we would give it over to
23 a Rails to Trails then I think we would probably not remove
24 any of the structure.

25 BY MR. KILGORE:

1 Q You have testified to the potential abutment
2 costs and you feel that that's necessary to implement at
3 this point in time if the bridge is removed?

4 A Well, I think it would be very helpful toward the
5 setting a time frame to quickly put a bridge back in
6 place. As you are aware I guess this would be either
7 continuous pour concrete or --

8 Q It wouldn't have any safety issue as to the
9 roadway, though. Correct?

10 A Whether the abutments are or put back now or
11 not?

12 Q Right.

13 A I guess it depends on how far you go back with
14 your slope.

15 Q Well, a two to one slope normal slope along a
16 highway. Is that correct?

17 A Well, yeah. Generally that's what it is.

18 Q So it is your opinion that the abutments don't,
19 that cost is an additional cost that you want the public
20 funds to be used for to facilitate your getting the
21 contract with Alcoa. Is that correct?

22 A The difference between the installation of a two
23 to one slope and putting retaining wall abutments in.

24 Q So you'd be talking about a time frame of 30
25 days, 45 days to put in that?

1 A To put a bridge back in?

2 Q Yes -- no, to put the abutments in?

3 A Well, it depends. If it's the middle of
4 December, I'd say you are not talking about 30 days.

5 Q But let's say we're in a situation where you
6 can't do much anyway, other than that?

7 A Well, you can put a bridge on abutments in
8 December but you can't pour concrete.

9 Q Let's say not in December. You are asking a
10 quarter of a million dollars to be spent of public funds
11 for saving what? Thirty days? Time frame in the
12 construction period?

13 A Well, I don't know. It could be longer than 30
14 days. It depends on when you can pour concrete. I guess
15 if we, if Alcoa says okay we are ready to start with you
16 January 1 and I come to --

17 Q Okay. Well, let's look at the time frame you
18 have given us. You are looking at July or August for this
19 STB approval; right?

20 A Correct.

21 Q That's construction period. Let's say they give
22 you the approval right then. Do you want those abutments
23 in so you save 30 days; right?

24 A I beg your pardon, now. I don't --

25 Q Let's say you give the go-ahead in July or August

1 like you are thinking the time frame is going to be, you
2 still want us to put the abutments in?

3 MR. JOYCE: Could I ask for a clarification? The
4 go-ahead for what? The merger or the Alcoa?

5 MR. KILGORE: The merger.

6 THE WITNESS: Well, I don't know that they have --
7 they are one and the same. The time frame on merger has to
8 do with being aggressive with marketing to Alcoa and
9 proceeding then to try to gain favor with Alcoa and gain
10 their business.

11 BY MR. KILGORE:

12 Q And you want these abutments put in even though
13 you have no idea of the cost to rehabilitate that line,
14 that would be purely Corman Allentown's responsibility. Is
15 that correct?

16 A To rehabilitate the line?

17 Q You want these abutments to be put in despite
18 your lack of knowledge as to what it would cost to
19 rehabilitate the line, even supply rail service to Alcoa?

20 A I guess I don't see where something has something
21 to do with the other.

22 MR. KILGORE: I have no further questions.

23 JUDGE COHEN: Mr. Dunlap?

24 MR. DUNLAP: Yes. Just a few points of
25 clarification, Mr. Grubb.

1 BY MR. GRUBB:

2 Q Would you agree that the portion of the former
3 Cornwall Industrial Track and Lebanon Line I believe it's
4 called, that the portion conveyed to Corman in the
5 indenture and the deed, that that includes all the subject
6 crossings at issue in this proceeding except for Willow
7 Street in the City of Lebanon?

8 A That's correct.

9 Q And would you agree that the notice in the
10 Federal Register which has been marked as Conrail Exhibit
11 Number 3 or Corman Exhibit --

12 MR. JOYCE: I believe number 2.

13 MR. DUNLAP: Number 2 --

14 BY MR. DUNLAP:

15 Q That that authorizes Corman Allentown Lines to
16 operate on the line as a Class 3 rail carrier under the
17 finance docket number on that document?

18 A That's correct.

19 Q Okay. And would you agree that the indenture
20 between Corman and Conrail which has been entered as
21 Conrail Exhibit Number 3 and Corman Exhibit Number 1, that
22 that obligates on paragraph 4 on page 3, Corman, that
23 Corman agreed within that document in paragraph 4 on page 3
24 to, quote, accept all existing and prospective
25 responsibility for removal and/or restoration costs for any

1 and all railroad bridges and grade crossings and their
2 appurtenances that may be located on, over or under the
3 premises and grantee further covenants and agrees that it
4 will also assume any obligation and/or responsibility as
5 may have been or may hereafter be imposed on grantor by any
6 public utility commission or any other governmental agency
7 having jurisdiction for any and all bridge structures and
8 grade crossings and their appurtenances including, but not
9 limited to the removal, repairing or restoration of same in
10 accordance with the requirements of said commission or
11 other governmental agency, unquote.

12 A If that was in our Exhibit 1, then yes, we agreed
13 to that and I am aware of it and we recorded that.

14 Q And finally, Mr. Grubb, is Corman Allentown Lines
15 prepared to and does it agree to do any work that may be
16 ordered by this Commission on the portion of the lines
17 conveyed to Corman Allentown Lines?

18 A Ask the question again.

19 Q Is Corman Allentown Lines prepared to and does it
20 agree to do any work that may be ordered by the Commission
21 in this proceeding on those portions of the line conveyed
22 to it? Whatever -- if the Commission orders you to do
23 something, are you prepared to do it?

24 A Aren't we obligated if they order something?

25 Q Well, that's basically my next --

1 MR. JOYCE: I object. It's getting into a legal
2 question.

3 MR. DUNLAP: Not were you I am not asking whether
4 you are obligated.

5 BY MR. DUNLAP:

6 Q Are you prepared to and will you agree to do any
7 work ordered by the Commission in this proceeding on those
8 portions of the line conveyed to it?

9 A Well, I guess I don't know what it is, but I
10 think we feel like we are legally bound by what the
11 Commission --

12 MR. JOYCE: Subject of course --

13 JUDGE COHEN: We acknowledge that they have the
14 right to take exceptions.

15 MR. JOYCE: Subject to whatever.

16 THE WITNESS: Not being a lawyer, I am not able to
17 answer that.

18 MR. KILGORE: That's all right. Okay. I have
19 nothing further.

20 JUDGE COHEN: Before redirect, the first thing,
21 something that's going around in my mind. Right now, Alcoa
22 is using trucks.

23 THE WITNESS: Correct.

24 JUDGE COHEN: And they're satisfied with the
25 trucking service apparently?

1 THE WITNESS: That's correct.

2 JUDGE COHEN: So what's the big deal? Why the
3 rush? Assuming that you get a deal with them and the
4 bridge is down, why can't they wait until the bridge is
5 up? They are not expecting train service the next day
6 after they sign an agreement with you. Can't you make the
7 agreement contingent on the bridge being restored or
8 erected or whatever the circumstances are?

9 THE WITNESS: I guess the only thing, Your Honor,
10 that might enter into that would be if they wanted to see
11 if the service of Norfolk Southern and R. J. Corman has
12 improved over that of Conrail, they originally shipped
13 Conrail. They went to truck because of service.

14 It was my understanding -- again, hearsay -- my
15 understanding they have a trucking contract. It has some
16 expiration date on it. If they wanted to be on rail versus
17 renewing a trucking contract, then that would play a role,
18 I guess, in a definitive date that you would have to be up
19 and running.

20 But I think what would happen, generally it's been
21 my experience that people, shippers who have had service
22 problems and you make promises, they want to see if you can
23 fulfill your promises. Generally there is a trial period
24 before they will enter into a long term contract or a joint
25 line, if you will, long term contract. I am not sure. I

1 hope I answered the question. But I --

2 REDIRECT EXAMINATION

3 BY MR. JOYCE:

4 Q Just to the follow-up on that I understand one of
5 your major concerns would be you are not certain when the
6 expiration that truck contract is and you would like to be
7 able to opportune-ize at that time frame as it falls in --
8 jump on the opportunity to service at that point instead of
9 having them enter into another truck contract?

10 A That's correct.

11 Q Or enter into an interim deal, like you said,
12 where you could prove yourself?

13 A And again, if you are pursuing someone you really
14 strike while they are hot. You can't pursue them, they say
15 well, okay we'll give you a try and say how about waiting
16 six months, you know. And they'll say what are you doing
17 here today. So I guess that's that kind of --

18 Q Mr. Grubb, under the prior Commission order with
19 respect to the Wilhelm Avenue Bridge which was entered, I
20 believe, in 1992 or '93, is it your understanding when you
21 purchased the line that there would be always service
22 available on the Cornwall Industrial Track while a bridge
23 was being deconstructed and reconstructed.

24 MR. HERZOG: Objection, Your Honor. I don't know
25 who you refers to, your understanding when you purchased

1 the line.

2 MR. JOYCE: The company.

3 MR. HERZOG: Is it his understanding or the
4 company's understanding when the company purchased the
5 line?

6 MR. JOYCE: The company. He speaks here for the
7 company. If he's going to speak for himself personally --

8 MR. HERZOG: Then I am going to have to object,
9 again Your Honor, because he indicated earlier that R. J.
10 Corman is the CEO and he has no idea what R. J. Corman knew
11 or didn't know or what about it. So he can't really speak
12 for the company. He can speak as his capacity as president
13 for the company. That's it.

14 JUDGE COHEN: A president can do a lot of talking
15 for their company.

16 MR. HERZOG: I agree with that but that doesn't
17 necessitate that that's the extent of the company's
18 knowledge, either.

19 MR. JOYCE: I think the issue was with the use of
20 the line going forward and the intent of the use of the
21 line going forward and this is an issue of a past matter.
22 There could have been a formal board meeting and he knows
23 exactly what they had --

24 JUDGE COHEN: My recollection from one of the
25 previous hearings was there was some testimony that

1 somebody said Alcoa was using trucks and they didn't intend
2 to go back to rail.

3 MR. KILGORE: That's on the record as of this
4 witness, Your Honor.

5 MR. JOYCE: It is but I think getting back to the
6 issue of knowledge, I mean, he's speaking for the company.
7 If you want to follow up on --

8 MR. HERZOG: I'll follow up.

9 MR. JOYCE: -- recross and ask if he is that's only
10 limited to him and not to the company as a whole or he
11 doesn't have authority, that's, I think you are entitled.
12 But I think the question is -- I'll ask the question again.

13 BY MR. JOYCE:

14 Q With respect to the company when you purchased
15 it, did you believe there would be, the company believe
16 that there would be alternative -- always a line of service
17 open with respect to the Wilhelm Avenue Bridge?

18 A I thought I understood that there would be a
19 bridge constructed alongside of this bridge to maintain
20 service prior to taking the existing bridge out of service.

21 JUDGE COHEN: And what led to that belief?

22 THE WITNESS: I think there was something in some
23 documentation that we had received.

24 MR. JOYCE: I think there's a court order I think
25 it's a matter of this record.

1 JUDGE COHEN: 1992 order.

2 MR. JOYCE: Yeah, the 1992 order which states, and I
3 am paraphrasing -- the order states what it states, but I
4 think if I understand it that there would always be an
5 avenue to be operating on and that entailed specifically in
6 that order, the deconstruction of the current bridge but an
7 alternative avenue provided; right.

8 THE WITNESS: Right.

9 BY MR. JOYCE:

10 Q An alternative bridge. So would that require, to
11 your knowledge and understanding, would that require the
12 construction of four abutments?

13 A No, I don't think it would be four abutments. It
14 was my understanding, I guess when I talked to the
15 gentleman earlier, was we were to continue to use the
16 bridge you are on now while the other bridge is being
17 constructed. But that no, it would be two new abutments
18 put in for the new bridge and you would remain operating
19 over, it was my understanding, the old bridge until that
20 was completed.

21 Q And when counsel asked you on cross examination,
22 would you be willing to expend in their characterization,
23 \$250,000.00 of public money, is it your statement and
24 testimony that earlier that you, that would be less what
25 the grading costs would be?

1 A No. That wasn't my testimony. My testimony,
2 when I was asked did 250,000 sound like a reasonable number
3 for those abutments, I said yes, that probably was a
4 reasonable number. If you used the abutments as retaining
5 walls, then you do not have the expense of the two to one
6 sloping, grading putting the rip rap on. This kind of
7 thing.

8 So my comment was there is some offset against that
9 250,000 for work that was not performed in lieu of the
10 walls.

11 Q Do you believe that it would be less expensive to
12 build the abutment walls versus having as you testified to
13 previously, one line being constructed alongside while the
14 other line was being deconstructed? Do you think that
15 would be less cost expensive and if so, why?

16 A Say that again, sir.

17 Q You indicated that there were -- you stated
18 earlier in your testimony that there was, when you
19 purchased this line, that there would always be a line
20 operating there, one would be reconstructed next to the
21 existing -- right on top next to the existing line on top
22 of the same abutments. Is that right? Break it down?

23 A Well, you'd be operating on the same abutments
24 until the new bridge went in, and then it was my
25 understanding that the track was going to be pulled over and

1 you would go across the new bridge and the old bridge would
2 be removed.

3 Q Do you believe that that is more expensive or
4 less expensive than just putting in two abutments at this
5 point in time? That whole process?

6 A I think there is probably some added expense to
7 that. You have the flagging involved. You have, if we
8 were operating today, there is more expense to try to put
9 this bridge and underpass and all in under operation just
10 from the sheer fact of the delays that you might encounter
11 in not on the state work but the railroad work, I think
12 there's a savings.

13 To put a number on that, a dollar number on that, I
14 can't put a dollar number on it. But without question
15 there is some savings. I don't know the dollar number.

16 Q Would it, do you believe from a business and
17 president's standpoint with R. J. Corman Allentown Lines
18 that having not talked with Alcoa at this point in time in
19 any way impedes your ability later to speak with them?

20 A No, I do not.

21 JUDGE COHEN: Impedes what?

22 MR. JOYCE: Impedes your ability later to speak with
23 them or to strike a deal with them. I'd like --

24 MR. HERZOG: Objection, Your Honor. It takes two to
25 tango. He can only speak for R. J. Corman. Alcoa may have

1 committed to a long term contract with --

2 MR. JOYCE: I'm asking him from his personal
3 standpoint.

4 JUDGE COHEN: Salesmen can always go in and pitch.

5 MR. HERZOG: They can always make a pitch, but that
6 wasn't the question. The question was it impedes the
7 ability to do it.

8 MR. JOYCE: No, your ability to do that.

9 MR. HERZOG: His ability to walk through the door,
10 maybe not, but the actual consummation of a deal could be
11 impeded by delaying the contract.

12 JUDGE COHEN: Well, you don't know what kind of deal
13 can be struck. I'll overrule your objection.

14 BY MR. JOYCE:

15 Q Now, Mr. Grubb, you indicated that you had worked
16 with Logan Aluminum Company?

17 A Yes.

18 Q And Norfolk Southern previously?

19 A CSX.

20 Q CSX, I am sorry and you are doing --

21 MR. KILGORE: I am going to object to this. This is
22 going beyond cross examination by us. This is further
23 testimony going into some new issues.

24 MR. JOYCE: No. I think this is to the issue of
25 being able to develop a business opportunity with a

1 customer. I raised it on direct. On cross examination
2 counsel raised the issue of whether or not they could work
3 with a customer they haven't spoken with yet and I am
4 trying to find out if he pitched to other customers and
5 raising in this examination, whether he's pitched other
6 customers by first meeting with CRX.

7 THE WITNESS: CSX.

8 MR. JOYCE: CSX team and then putting together a
9 strategy and pitching it and whether that was successful in
10 the past. That's all I am simply trying to establish. If
11 you'll stipulate to that it's --

12 MR. KILGORE: It's still in the record. It's
13 speculative.

14 MR. JOYCE: It's not speculative if you do it in the
15 past with somebody else or not.

16 MR. KILGORE: Whether it's relevant or not. I'm
17 sorry. Whether it's relevant.

18 JUDGE COHEN: The final outcome it might be
19 speculative. Go ahead.

20 BY MR. JOYCE:

21 Q Have you in the past planned strategy to market
22 customers in the aluminum industry and met with other
23 railroads and put together strategy and then pitched it and
24 it become successful?

25 A Yes, we have. And I might add one of the reasons

1 that that is so important to first work with your
2 interchanging carrier, it's a must when you go in to quote
3 a rate, which typically, money moving to the bottom line is
4 what encourages companies to ship one mode or the other and
5 service certainly enters into it.

6 But when you go in to make your pitch, if you will,
7 to an Alcoa, you certainly need to know that the NS, you
8 need to know that they, as well as yourself jointly, with
9 the rate you are offering is attractive enough jointly to
10 move that traffic where the trucks are now moving that
11 traffic and without first working hand in hand with your
12 connecting carrier, only then are you able to know what you
13 can offer and service-wise the number of days movement, and
14 so son.

15 So it's not unusual and it's almost mandatory that
16 you do that first before calling on a customer. And yes,
17 we have done that successfully with Logan Aluminum, their
18 terminal at Bridgefield as well as ALCAN which are two of
19 the largest aluminum people in the world.

20 Q With respect to the abutments, are they as
21 important as being able to know definitively when a bridge
22 could be put up if the bridge, in fact, is taken down in
23 the interim?

24 A Ask that again.

25 Q Is it -- why is it important that the abutments

1 be in place at this point in time?

2 A Well, again, I think there's factors that enter
3 into putting abutments in versus putting in a steel bridge
4 or I beams, if you will, on these abutments. They can be
5 done any time of year. Abutments typically I guess it
6 would be I don't know if it's continuous is what's
7 proposed. I don't know what's proposed, but in the middle
8 of the winter, I think we all know you can't pour concrete
9 and there is a certain amount of cure days that are
10 required for whatever concrete you are pouring. So it's a
11 weather factor.

12 Q What if the assurance was made that the abutments
13 could be put up and the bridge replaced, would that appease
14 R. J. Corman if you knew a definitive date when all that
15 could be done, so that if Alcoa said yes you could act, and
16 use that line?

17 A That's right. If we could -- if somebody could
18 say to us -- and that would be have to be a reasonable
19 time. This can't be well, we can do all this in a year. A
20 year is not an acceptable number and at this point I don't
21 know exactly what's an acceptable number but it certainly
22 has to be a much tighter frame than that. Even tighter
23 than six months.

24 Q For the whole bridge to be constructed?

25 A For it to be abutments up, bridge in time in and

1 ready for rail traffic.

2 Q So as opposed to having one track being
3 deconstructed and one riding next to it with the potential
4 additional costs which you are open to is a deconstruction
5 of the bridge, but a definitive date from when you give
6 notice that the bridge could be up and operating. So you
7 are willing to have some flex. Is that correct?

8 A That's correct.

9 Q And that's what you are open to, sir?

10 A That's correct and I think that's what was
11 offered.

12 MR. JOYCE: I don't have anything further, Your
13 Honor.

14 JUDGE COHEN: Mr. Matthews.

15 MR. MATTHEWS: No questions.

16 JUDGE COHEN: Mr. Herzog?

17 MR. HERZOG: No, Your Honor.

18 MS. D'ALFONSO: Nothing, thank you.

19 JUDGE COHEN: Mr. Kilgore?

20 MR. KILGORE: No questions, Your Honor.

21 JUDGE COHEN: Mr. Dunlap?

22 MR. DUNLAP: No questions, Your Honor.

23 JUDGE COHEN: Mr. Joyce?

24 MR. JOYCE: Your Honor, if I may, I'd just like to
25 call on behalf of Corman, an engineer Mark Sawyer to

1 testify briefly just with respect to the abutments and some
2 of the issues on the bridge.

3 JUDGE COHEN: Very well. Briefly.

4 MR. JOYCE: I think we can accomplish that, Your
5 Honor.

6 JUDGE COHEN: Good afternoon. Mr. Sawyer, state
7 your full name.

8 MR. SAWYER: Pardon me.

9 JUDGE COHEN: Please state your full name.

10 MR. SAWYER: Mark W. Sawyer, S-a-w-y-e-r.

11 JUDGE COHEN: Raise your right hand, sir.

12 **MARK W. SAWYER**, called as a witness, having been
13 **duly sworn, was examined and testified as follows:**

14 JUDGE COHEN: Thank you.

15 **DIRECT EXAMINATION**

16 BY MR. JOYCE:

17 Q Mr. Sawyer, could you please briefly describe and
18 state your education?

19 MR. KILGORE: I believe that's on the record, Your
20 Honor. It's on the record from prior testimony.

21 JUDGE COHEN: Just state what your job duties are.

22 THE WITNESS: Graduate of Villanova University,
23 Bachelor's in Civil Engineering, and I am licensed as a
24 Professional Engineer in the State of -- Commonwealth of
25 Pennsylvania.

1 BY MR. JOYCE:

2 Q And where are you currently employed, sir?

3 A I am employed by Consolidated Rail Corporation in
4 Philadelphia, Pennsylvania.

5 Q And what is your position there?

6 A I am a Principal Engineer-Public Improvements.

7 Q And what does that entail?

8 A Basically a facilitator, coordinator of public
9 improvement projects as it affects Conrail's operations and
10 property.

11 Q Does that include, sir, engineering work with
12 respect to bridge overpass, railroad bridge overpasses?

13 A Correct.

14 Q How long have you held that position?

15 A I have held -- the duties I have done in the
16 1980's. I have been reassigned to the current duties as I
17 did in the '80s with a new title so a year as a principal
18 engineer, but I have done such work in the 1980's under
19 another title.

20 Q Are you authorized today to testify on behalf of
21 R. J. Corman Allentown Lines?

22 A Yes.

23 Q And you are you familiar with the Wilhelm
24 underpass which is the subject of this proceeding?

25 A Yes.

1 MS. D'ALFONSO: Your Honor, I'm going to object and
2 at least ask for further clarification as to how Mr.
3 Sawyer, an employee of Conrail is authorized to testify on
4 behalf of another corporation.

5 JUDGE COHEN: Who gave you authorization?

6 THE WITNESS: What was the question?

7 MS. D'ALFONSO: The judge just asked you a question.

8 THE WITNESS: Who gave me -- Conrail gave me
9 authorization.

10 JUDGE COHEN: To testify on behalf of Corman.

11 THE WITNESS: That is correct.

12 JUDGE COHEN: Who in Corman asked you to testify on
13 their behalf? Did this happen --

14 THE WITNESS: That occurred prior to today. Much
15 prior to today. We tried -- the idea started at the last
16 hearing.

17 MR. JOYCE: And it's been something that we have had
18 an understanding with Mr. Sawyer and Conrail that he would
19 testify.

20 MS. D'ALFONSO: But the offer for Mr. Sawyer was to
21 testify about the abutments. So do we have this abutment
22 plan months ago at the last hearing, or is that something
23 new. What is Mr. Sawyer going to testify to?

24 MR. JOYCE: He is going -- he was authorized and
25 over to testify on actually all of the issues that were

1 prior to this morning and this afternoon. He's just like
2 any other engineer, we can certainly call an engineer or
3 any witness just like I said earlier, we can call somebody,
4 -- you know, he's being called as an engineer today to
5 testify and he's authorized by us and he's authorized by
6 his employer. I don't see why he has to -- what his
7 employment has --

8 JUDGE COHEN: The question is, is he qualified to
9 testify that there is a need for abutments in this
10 proceeding.

11 MR. JOYCE: No. Not solely that. I am sorry, Your
12 Honor. Just to correct myself, to testify as to the
13 Wilhelm Avenue Bridge and issues on the abutments and the
14 status of the bridge at this time.

15 MR. HERZOG: What's amazing, Your Honor, is that Mr.
16 Sawyer at the last hearing tried to testify and you
17 precluded his testimony and he admitted he hadn't been to
18 the crossings in 20 years and they resurrect him as
19 Corman's witness. Beautiful.

20 MR. JOYCE: Well, he --

21 MR. HERZOG: I mean, I am not saying it's not legal.
22 It's just kind of playing musical witness to a certain
23 extent. I don't know. Something stinks and I can't quite
24 figure out what it is but here's a witness that was not
25 competent to testify at the last hearing and he's going to

1 testify today to things he wasn't competent to testify to
2 in October.

3 JUDGE COHEN: You know we have to know what the
4 status of this bridge is, so I mean the Commission wants to
5 know and I am going to have to have something to base my
6 decision. So let's get it on the record.

7 BY MR. JOYCE:

8 Q When did you last visit the bridges? I'm sorry,
9 the Wilhelm Avenue Bridge and crossings?

10 A Three days before the last hearing we had. It
11 was four months ago.

12 MR. JOYCE: For the record, your Honor, I think
13 counsel is stating, Mr. Herzog is stating that at the first
14 hearing he hadn't been to the site.

15 JUDGE COHEN: The first hearing was, I think, in
16 August and the last was October.

17 MR. JOYCE: He has been there since then.

18 JUDGE COHEN: When was the last time you were there.

19 THE WITNESS: October, in '97.

20 BY MR. JOYCE:

21 Q And when you were visiting the crossings and
22 Wilhelm Avenue Bridge did you inspect them and review them?

23 A Yes.

24 Q And with respect to the Wilhelm Avenue Bridge,
25 what were your observations with respect to from a safety

1 standpoint?

2 A Let me clarify. I did visit Wilhelm Avenue
3 Bridge. I was part of the initial site, PUC site
4 conference 1991. So I am familiar to speak on behalf of
5 the Wilhelm Avenue Bridge from the evolution of this
6 project since '91. So I noted it's a substandard bridge,
7 geometrically opposing onto the traveling public and
8 warrants safety concerns.

9 Q And specifically, could you, what concerns?

10 A As testified to, the record speaks to itself, but
11 there's close clearance, horizontal, vertical and some
12 drainage concerns regarding ponding of water underneath of
13 the bridge I believe is what it was.

14 Q Did you make any suggestions to R. J. Corman with
15 respect to the construction of a new bridge and what might
16 be accomplished to an attempt at resolution of the matters
17 at issue in this proceeding?

18 A Well, as you all know, today we have been all
19 trying to brainstorm to resolve the concerns of all
20 parties, one Corman Allentown to not remove an opportunity
21 to provide rail service to Alcoa and secondly to the
22 project to replace an antiquated bridge structure with a
23 modern structure, so in that brainstorming several ideas
24 were proposed and discussed.

25 Q And some of those -- and you made some

1 recommendations in that process?

2 A Yes.

3 Q And in your opinion, sir, would the order, 1992
4 order that is currently in place, if that was to be carried
5 out precisely, would the cost be more or less than if the
6 bridge was deconstructed now and abutments put up?

7 MR. KILGORE: I am go to object, Your Honor. Those
8 costs that we talked about as part of that order were 1993
9 costs. Unless he is an actuary to can tell us what that is
10 going to be today I don't think he's competent to testify.

11 JUDGE COHEN: Sustained.

12 BY MR. JOYCE:

13 Q Are you, with respect to the abutments, do you
14 have any opinion as to what the cost would be to construct
15 abutments if the bridge was to be deconstructed?

16 A I don't dispute the figure offered here about
17 \$250,000.00 to construct the abutments. That seems
18 reasonable.

19 Q Would there be any benefit to the abutments if
20 they were constructed if the bridge was never put in
21 place?

22 MR. KILGORE: I am going to object. I don't know if
23 he's qualified to testify as to what benefits there would
24 be.

25 MR. JOYCE: He is an engineer.

1 JUDGE COHEN: From an engineering standpoint he
2 would know.

3 MR. KILGORE: The benefits to what, Your Honor? I
4 mean, that's a very broad question.

5 MR. JOYCE: I am on direct examination. I am not
6 going to lead him.

7 JUDGE COHEN: From an engineering standpoint.

8 THE WITNESS: The idea that was discussed to install
9 abutments is an attempt to address a solution to the
10 dilemma of the safety issues that certain parties here
11 today had regarding highway travel and also the issues that
12 the railroad has to maintain rail service and it was
13 thought that from an engineering point of view, that if you
14 remove the existing obstacles of traveling under the
15 existing bridge, that addresses the safety issue that the
16 project sponsors would have but also allows a better
17 opportunity and flexibility to have a bridge to be
18 constructed in the future if, indeed, the railroad, Corman
19 Allentown wanted to respond quickly to Alcoa to provide
20 rail access and upon which a bridge would need to be
21 established.

22 BY MR. JOYCE:

23 Q Would there be a retaining wall benefit as part
24 of that also?

25 A Well, a retaining wall slash abutment is the same

1 structure member that we are interchanging. A retaining
2 wall would be what it is to hold back the embankment. If
3 it's also to accommodate a bridge it's name would later
4 then change, turn into an abutment. It would be one and
5 the same structure.

6 Q Do you have any opinion as to the cost of the two
7 to one grade as suggested previously?

8 A I have no particular detailed estimate on that.

9 Q Do you have -- did you make any suggestions to
10 Corman with respect to any temporary issues that the
11 communities could -- strike that. Did you make any
12 suggestions to Corman as to any temporary issues the
13 township could take or PennDOT with respect to safety of
14 that bridge till maybe perhaps Corman could maybe find out
15 definitively on the Alcoa matter?

16 A Yes.

17 Q What were those items?

18 A In our brainstorming, noting, again, this dilemma
19 of the concerns of safety under the existing bridge as well
20 as the concerns of the railroad to provide an opportunity
21 to provide rail service to Alcoa, I had thought of a
22 proposal noting that in 24 months, Corman Allentown will
23 have an idea if they are active or not active in the
24 commitment to rail service and upon which what measures
25 that begged the question of what measures could be done for

1 the next 24 months to provide improved safety at the
2 existing crossing.

3 If the crossing is indeed unsafe certainly the
4 record shows all parties there agreeing to it, we all have
5 a responsibility to do something to the traveling public.
6 If we are in for seven years now trying to figure out how
7 to get this new bridge built, what have we done in seven
8 years to address the safety at that crossing.

9 I would suggest maybe this goes on for another
10 couple years and we have an obligation to legitimately
11 assess what safety issues they are and have a
12 responsibility to address them while we debate the matter
13 and I suggested a blinking light. I suggested a speed
14 bump. I suggested perhaps more advance notice to the
15 public, either by newspaper and radio.

16 I then would suggest that maybe the police do more
17 to regulate the existing motor vehicle rules that are in
18 effect regarding speed limit; signing regarding poor
19 weather, certain low cost items that indeed would provide
20 an enhanced safety until this dispute is resolved
21 satisfactorily.

22 MR. JOYCE: No further questions.

23 JUDGE COHEN: Mr. Matthews?

24 MR. MATTHEWS: No, Your Honor. I have no questions
25 of this witness.

1 JUDGE COHEN: Mr. Herzog?

2 MR. HERZOG: I just want to make sure I did
3 understand your testimony.

4 CROSS EXAMINATION

5 BY MR. HERZOG:

6 Q You do recognize that the crossing physically
7 poses a hazard to the public at this point; traveling
8 public. Is that correct?

9 A I wouldn't dispute that. That's correct.

10 Q And the three things that you mentioned are the
11 close clearance issues, the drainage issues and sight
12 distance problems. Is that correct?

13 A I didn't mention sight distance. I think the
14 sight distance, it doesn't come into play. Vertical
15 distance of trucks a matter here, I mean, do they slow down
16 to make sure they can get underneath that little tunnel.
17 That would be what I would be concerned with.

18 Q The drainage issues, would not be addressed by
19 any of the quick fixes, temporary fixes that you suggested,
20 is that correct? That the blinking light, the speed bump,
21 signage and the speeding?

22 A Well, as I understand the conditions there, the
23 drainage issue is an issue when there's a good storm. When
24 it's nice and dry out there is no real drainage problem
25 there. That is not unlike many situations or sites and

1 locations throughout the whole area.

2 You can still address that. You can address that by
3 a speed limit and a warning sign and regulate the speed
4 limit. Most accidents occur at crossings and on the
5 highways due to people not obeying the rules and in effect
6 if you have you had a five mile an hour or ten mile an hour
7 speed limit through the bridge that would help the
8 motorists to negotiate any ponding of water that would
9 occur through a storm.

10 Q To your knowledge, does the drainage issue become
11 an ice issue in the winter?

12 A Yep, sure.

13 Q Does decreasing a motorist's speed give him
14 control on ice?

15 A You are not going to reduce all the risk.
16 There's always --

17 Q There are inherent risks that cannot be addressed
18 by virtue of this bridge being in place. Is that correct?

19 A Right. And I'm offering ideas to minimize that
20 risk while this process of a final resolution is reached.
21 Maybe close the road if there's a true safety issue. If
22 you really think someone's going to hurt maybe the road
23 should be closed.

24 MR. HERZOG: That's all the questions I have.

25 JUDGE COHEN: Ms. D'Alfonso?

1 BY MS. D'ALFONSO:

2 Q Good afternoon, Mr. Sawyer. Are you speaking off
3 the cuff when you are saying closing the road? Do you know
4 if that's even a viable option for South Lebanon Township?

5 A I am speaking from the point of view that if
6 there's a true safety consideration and, it doesn't take
7 long for anybody to walk out and walk a highway, walk an
8 alley, walk a roadway and come up with a whole list of
9 unsafe conditions and it's the management of and reducing
10 the risk is the real key and on the railroad, we have
11 implemented a safety program to be so safety conscious that
12 before, for example, there is a meeting in a room like
13 here, we would have a safety briefing on the fire escapes,
14 who will call 911? Where would you go in the event of a
15 fire?

16 So how do you respond if there is somebody's life
17 and limb in jeopardy at Wilhelm Avenue. I will tell you,
18 you do respond and I don't know if that means you do shut
19 the road down and measure what the consequences to the
20 safety of the people that --

21 Q My question is have you done that?

22 A No, ma'am. I don't know the particulars.

23 Q That's a suggestion?

24 A Yes.

25 Q You said you were out at the site when the

1 initial field conference for the Wilhelm Avenue Bridge
2 was --

3 A Yes. I was at a 1991 field conference.

4 Q Was Conrail serving Alcoa at that time?

5 A Yes.

6 Q Are you suggesting --

7 A It was an active, we had rail service.

8 Q It was an active line?

9 A Yeah.

10 Q One of your suggestions was that abutments slash
11 retaining walls be constructed now if the bridge is removed
12 now, that an abutment slash retaining wall be constructed.

13 Is that correct?

14 A Yes.

15 Q Is that not introducing an obstacle to the
16 traveling public which may end up not being necessary if R.
17 J. Corman Allentown Lines is not successful in the bid with
18 Alcoa?

19 A Not if the abutments are built per the plan,
20 which is a widened road with appropriate shoulders.

21 Q Why would you not, the South Lebanon Township,
22 with funding from the state do a to two to one slope if the
23 structure is not necessary and not introduce a concrete
24 obstacle in the roadway?

25 A I don't agree that a concrete obstacle per your

1 bridge plans for this site for the replacement bridges is a
2 safety aspect. You have made a widened the span of the
3 bridge. Therefore, the abutments are safely out of the way
4 of the traveling public.

5 Q But the abutments are necessary for a bridge, not
6 for the roadway. Is that correct?

7 A The abutments are, by definition, an item for a
8 bridge. That's correct.

9 Q Mr. Sawyer, do you have any idea what an
10 estimated cost would be for the current structure to be
11 removed, the roadway work to be done? It sounds like you
12 have seen plans.

13 A Uh-huh.

14 Q You have seen that design. And a two to one
15 slope. Do you have any idea --

16 A A rough idea of the cost for the project as --

17 Q Not for the project as you've seen the plan. The
18 project as I defined, which was the removal right now of
19 two to one slope and the roadway widening?

20 A Yeah. Oh, you want a rough idea of what that
21 would be without replacing the abutments?

22 Q Uh-huh.

23 A Basically, what you are looking at is a bridge
24 demolition, which we do often on abandoned lines and if the
25 two to one slope is a requirement, part of that demolition

1 and removal of the abutments and footing as you have here,
2 there's no utility work involved or you are not going to
3 address drainage.

4 Q Let's address drainage.

5 A Pardon?

6 Q You can include drainage.

7 A I can tell you a demolition project of a bridge
8 often like that would be somewhere between 50 and
9 \$75,000.00. Drainage, then, I don't -- that can vary
10 another 20, whatever. Just to give you a general idea.

11 MS. D'ALFONSO: Okay. I have nothing further.

12 Thank you.

13 JUDGE COHEN: Mr. Kilgore?

14 BY MR. KILGORE:

15 Q Are you familiar with what it would cost to raise
16 the road as per the plan?

17 JUDGE COHEN: To what, sir?

18 MR. KILGORE: To raise the road.

19 THE WITNESS: No.

20 BY MR. KILGORE:

21 Q The highway abutments that are in dispute the 20
22 foot --

23 A Twenty-three, feet I think it's what they are --

24 Q Twenty-three feet of abutment for the bridge that
25 may not occur; correct?

1 A That's correct.

2 Q And the best safety solution is to remove the
3 bridge as to the traveling public. Is that correct?

4 A Best long term solution is to have a modern
5 structure there, correct.

6 Q No, I said is to remove the bridge. That's the
7 best temporary solution, to remove the bridge. Is that
8 correct?

9 A And to establish a standard PennDOT roadway with
10 appropriate shoulders, lane widths and profiles and sight
11 distances.

12 Q And you have said prior here that's the intent of
13 the township?

14 A Yes. That's correct.

15 MR. KILGORE: I have no other questions.

16 MR. DUNLAP: No questions, Your Honor.

17 MR. JOYCE: I don't have any, Your Honor.

18 JUDGE COHEN: Thank you, Mr. Sawyer.

19 MR. JOYCE: We don't have any more witnesses, Your
20 Honor. I simply, just for the record, will move the
21 photographs which we have previously put in the record this
22 morning into evidence.

23 JUDGE COHEN: We'll move into the record RJC
24 Exhibits 1 through 13 and what I have identified as Bell
25 Exhibit Number 1 and I'll hand to the reporter the letter

1 of April 15, 1998 from Janet Miller, counsel for Bell
2 Atlantic, Pennsylvania and we'll move that into the record
3 and ask the reporter -- I'll hand my copy to the reporter
4 ask him to make a copy for his purposes. Any further
5 witnesses, ladies and gentlemen?

6 (RJC Exhibits Nos. 1 through 13 and Bell Atlantic
7 Exhibit No. 1 were admitted in evidence.)

8 MR. KILGORE: I just have one matter, two matters.
9 I supplied two letters to the counsel and one is addressed
10 to Curt Cole from Alcoa, their continuing statement that
11 they do not have rail service or intend to have rail
12 service and that letter is dated April 14, 1998 and, in
13 fact, they have removed the track on their property and
14 requested additional track removed by Conrail which would
15 now be R. J. Corman.

16 The second letter was sent to me of Robert Siegrist,
17 attorney for Robert Siegrist who is on the mailing list
18 that's a neighboring property to Wilhelm Avenue Bridge. He
19 wanted me to introduce a letter stating Mr. Seagrist agrees
20 with the township position to remove the bridge and raise
21 the road.

22 I'd like to enter those into evidence without having
23 Mr. Kulp testify. If you want Mr. Kulp to testify I don't
24 have any objection.

25 MR. JOYCE: Mr. Kulp is with Alcoa.

1 MR. KILGORE: He's with the township.

2 MR. JOYCE: But I don't remember where the.

3 MR. KILGORE: No.

4 MR. JOYCE: Then I would object to the letter as
5 hearsay. He didn't write it. He doesn't -- I would object
6 to it.

7 MR. KILGORE: This LETTER was introduced at the last
8 hearing without objection. This is to get all the
9 information before the PUC, as you have requested.

10 MR. JOYCE: If it was introduced then why
11 re-introduce it, and secondly, I guess then you are
12 overkill on that issue. But simply being that I would just
13 raise that objection. It's hearsay. It's a matter of
14 straightforward law.

15 JUDGE COHEN: We'll have to accept the objection.

16 MR. KILGORE: And the second letter.

17 JUDGE COHEN: The second letter is --

18 MR. JOYCE: The second letter is --

19 JUDGE COHEN: -- from a neighbor.

20 MR. KILGORE: Yes.

21 JUDGE COHEN: I see no harm in this.

22 MR. JOYCE: This is from --

23 JUDGE COHEN: A neighbor who wants the bridge
24 removed, and the road grade raised.

25 MR. JOYCE: I think it's still hearsay, Your Honor.

1 JUDGE COHEN: It is still hearsay. But I'll let it
2 in.

3 MS. D'ALFONSO: Your Honor we've let the letter in
4 from Bell Atlantic. That's the same situation as Mr.
5 Siegrist.

6 JUDGE COHEN: All right.

7 MR. KILGORE: That will be the Township Exhibit --

8 JUDGE COHEN: We'll mark it as South Lebanon
9 Township Exhibit 13 for the record. We'll admit it for
10 whatever weight.

11 (South Lebanon Township Exhibit No. 13 was produced
12 and marked for identification and admitted in
evidence.)

13 MS. D'ALFONSO: May I have a moment?

14 JUDGE COHEN: Off the record.

15 (Discussion off the record.)

16 JUDGE COHEN: Back on the record.

17 MS. D'ALFONSO: While we were off the record Ray
18 Pritchard who has previously testified in this proceeding
19 stated --

20 JUDGE COHEN: For the record again who is he?

21 MS. D'ALFONSO: He's the grade crossing engineer,
22 District 8-0 PennDOT engineer and Lebanon County is one of
23 the counties with responsibilities for that district.

24 As part his responsibilities as the grade crossing
25 engineer, he has been out to the site specifically the

1 Alcoa property and has seen for himself that the track in
2 the Alcoa property has been removed and counsel, based upon
3 hearing Mr. Pritchard say that, would not disagree with
4 counsel making the statement as put on the record now.

5 MR. JOYCE: Right. And for the record also, if in
6 fact, Corman strikes a deal with Alcoa they would work to
7 repair and replace any track with Alcoa. That is up and
8 that is what they have told me and if you want me to put
9 Mr. Corman on --

10 MS. D'ALFONSO: Your Honor, that's already on the
11 record.

12 JUDGE COHEN: There's no need for that. Common
13 sense says if they want the business they have got to have
14 a track.

15 MR. JOYCE: He doesn't have an issue for the record
16 other than to say they'd be willing to --

17 JUDGE COHEN: All right. Off the record.

18 (Discussion off the record.)

19 JUDGE COHEN: Back on the record. Mr. Kilgore?

20 MR. KILGORE: For the record, the township sees the
21 issue as that the bridge is unsafe and that that's been
22 basically admitted to by all parties here and that would
23 be, given the lack of traffic on the bridge for more than
24 three years, that the bridge, for that safety reason,
25 should be immediately removed because the whole line is now

1 suspended based upon a stipulation that's going to be sent
2 to Your Honor.

3 And we would ask that an order come down that the
4 bridge be removed; that if in the event the traffic is
5 reestablished within that two-year venue then that the
6 township and PennDOT would proceed to prepare plans, to
7 submit plans for approval, to all parties for
8 reconstruction of the bridge with PennDOT and township
9 moneys.

10 The issue that remains is in that tearing down that
11 bridge is whether Your Honor orders the construction of
12 these, substantial construction of 23 foot high abutments
13 for a bridge that may not ever be used again. That, I
14 think is the whole crux and that's -- we have heard a
15 figure of \$250 million.

16 MS. D'ALFONSO: Thousand.

17 MR. KILGORE: Thousand, excuse me.

18 MR. JOYCE: A bridge of gold.

19 MR. KILGORE: Well, to the public it may look like
20 \$250 million about with a 23 foot embankments with no
21 bridge across it, but you understand the issue. That is
22 the issue, whether the abutments are put up or not put up
23 and that's what it boils down to.

24 MR. DUNLAP: Your Honor, if I may, clarification
25 point Mr. Kilgore made that brings up another potential

1 issue in this case is that it's not the line that's been
2 suspended. It's crossings on the line. The grade
3 crossings that have been suspended by agreement, pursuant
4 to agreement by the parties.

5 And I think there's an outstanding issue, more
6 substantial issue here about, we have to remember this is
7 still an operating rail line under the STB order -- or
8 finance docket, rather and I think there's a potential
9 issue of whether the Commission is preempted from ordering
10 the removal of a bridge on an operating rail line.

11 In other words, that if Corman gets the ability to
12 start up operations again, that there has to be some
13 accommodation made for them to do that and if there's no
14 bridge there, how can that be done?

15 MR. HERZOG: I think that's an issue for briefs. I
16 the CSX case would probably be read to permit the
17 Commission in its exclusive exercise of its jurisdiction at
18 crossings to deal with safety issues at those crossings,
19 notwithstanding the status of the line.

20 JUDGE COHEN: Why is it still an operating line
21 with respect to the Cornwall Line? There's no traffic on
22 the --

23 MR. HERZOG: And all the crossings have been
24 suspended.

25 MR. DUNLAP: But as to the STB it's still an

1 operating line.

2 JUDGE COHEN: Technically, it's an operating line.

3 MR. JOYCE: Yes.

4 JUDGE COHEN: Legally, it might be technically. De
5 facto, it's not.

6 MR. JOYCE: Right. I would concur with Mr. Dunlap
7 from Corman's perspective, in addition to that, the issue
8 is assuming you get over the STB issue of an active line,
9 and if the bridge was somehow able to come down, Mr.
10 Kilgore did accurately state our concern is from an
11 engineering design standpoint when the township, if the
12 township removes the bridge, can we, as in the prior order,
13 well, the Corman's position is they're looking to the prior
14 order of the Court as to what ought to occur at that
15 bridge.

16 If, in fact, though, in trying to reach practical
17 compromise the bridge were to come out they are looking for
18 some definition as to whether they can get a bridge in
19 there within reasonable time if -- the funds are there.
20 There's no doubt that the funds are there. PennDOT has the
21 funds.

22 But the concern for Corman is simply a business
23 one. We do all the work, we have potential benefit for the
24 community. We understand the safety issues, they have told
25 us they'll put a bridge there. When can they get a bridge

1 there. We just -- just when? When, in fact, will that
2 occur? And that's the principal issue for them if, in
3 fact, the bridge is removed. If we can get over the
4 federal hurdle.

5 JUDGE COHEN: As I understand it, we are not going
6 to need the Fed's approval to take the bridge down; right?

7 MR. JOYCE: I think that's an issue of law but even
8 assuming you get over that and Corman's not necessarily, we
9 have a current order in place which, if Alcoa was biting
10 right now we would submit that that's how it ought to go
11 and how things ought to proceed.

12 However, in this, given the circumstances, Corman
13 trying to meet the community on its safety concerns is
14 asking the community to meet it in some way, you know,
15 another alternative here, Your Honor, is if the abutments
16 were not put up, then give us a specific date as to when
17 the abutments, PennDOT and the township can have the
18 abutments up and the bridge up.

19 Give us a definite date. That gives us, you know,
20 the sense from a business world standpoint yeah, we know
21 what we can do, we know what confines we are negotiating
22 about this open ended aspect of it is concerning to them.

23 JUDGE COHEN: That's something that I think the
24 Commission would encourage through its mediation process.
25 If we can have you folks talk amongst yourselves without us

1 going through a meeting here.

2 MR. JOYCE: We worked real hard on that, Your Honor,
3 at lunchtime. We really came up with some creative ideas
4 that just -- that's where we were with the possibility of
5 some bridge funding being available maybe Corman could do
6 in essence, instead of having the township contract that
7 out, and bid it out, which has a length of time, Corman, if
8 they could meet certain criteria with what's currently in
9 place with Pennsylvania as to construction by railroads of
10 bridges which involves an administrative treatment.

11 MS. D'ALFONSO: Your Honor, we're putting settlement
12 discussions on record. I don't think --

13 MR. JOYCE: Oh, I thought we were off the record. I
14 am sorry. Strike all that, Your Honor. I am sorry.

15 JUDGE COHEN: We are at briefing schedule and I'm
16 very flexible as long as you want. I am not pushing you.

17 MR. KILGORE: Thirty days?

18 JUDGE COHEN: Gene has thirty days or three weeks in
19 which to deliver the transcript. Of course you'll all have
20 to pay for it if you want it, unless you want to go to the
21 file room and look at it down there. I'll go with whatever
22 you want.

23 MR. KILGORE: Forty-five days from the transcript?

24 JUDGE COHEN: I don't have a calendar here. Let's
25 say three weeks from today is the 16th. So let's make it

1 the 15th. The 8th of May the transcript would be in.

2 MR. MATTHEWS: Seventh of May is three weeks from
3 today.

4 JUDGE COHEN: Let's say what was the reference?

5 MR. MATTHEWS: Seventh of May is three weeks from
6 today.

7 JUDGE COHEN: Let's say the 10th of May the
8 transcript comes in. A month would be the 10th of June.
9 Let's say by July 15th briefs are due.

10 MR. KILGORE: I would say June 25th.

11 MR. JOYCE: The only objection I have the that time
12 frame is I have a scheduled vacation. I can try to get it
13 done ahead of time. If we can move in into July, I'd
14 prefer July 10.

15 JUDGE COHEN: Talking about briefs now.

16 MR. JOYCE: Yes. I could probably get it, attempt
17 to get it done ahead of time.

18 MS. D'ALFONSO: That's going to affect my vacation.

19 MR. KILGORE: June 30.

20 MR. JOYCE: May the 30th. That's fine.

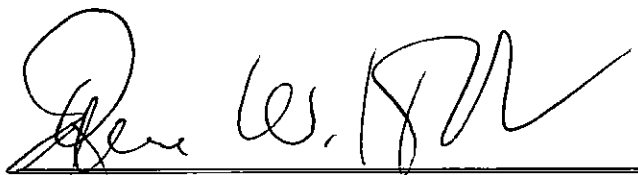
21 JUDGE COHEN: Briefs due on June 30th. Then the
22 record will remain open pending receipt of the briefs.

23 MS. D'ALFONSO: Markup any, Your Honor.

24 JUDGE COHEN: The record is still open for
25 stipulations and briefs.

1 (Whereupon, at 4:30 p.m., the hearing was
2 adjourned.)

3 I hereby certify that the evidence and
4 proceedings are contained fully and accurately in the notes
5 taken by me during the hearing of the within cause, and
6 that this is a true and correct transcript of the same.

7
8
9
10 
11 _____
EUGENE W. HOLBERT
Registered Professional Reporter

12
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