

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of the County of : Docket No. A-00113589  
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 :

City of Lebanon,  
Complainant

v.

Consolidated Rail  
Corporation, et al  
Respondent

Commonwealth of Pennsylvania  
Department of Transportation  
Complainant

v.

Consolidated Rail  
Corporation  
Respondent

South Lebanon Township,  
Board of Supervisors  
Complainant

v.

Consolidated Rail  
Corporation, et al  
Respondent

Application of South  
Lebanon Township for Approval  
of the Alteration of the  
Crossing (AAR 591 537 S)  
Where Township Road 705  
(Wilhelm Avenue) Crosses  
Below Grade of the Tracks  
of the Consolidated  
Rail Corporation in South  
Lebanon Township,  
Lebanon County

Docket No. A-00109901

DOCKETED

FEB 05 1998

DOCUMENT  
FOLDER

PA.P.U.C.  
PROTHONOTARY'S OFFICE

98 FEB -2 AM 9:22

98011420

ORDER

On or about December 5, 1997, Consolidated Rail Corporation ("Conrail") filed a Petition to reopen captioned proceeding for the purpose of taking additional evidence, pursuant to 52 Pa. Code §5.571. Evidentiary hearings in this matter were held in Harrisburg on August 5, 1997 and October 8, 1997.

Conrail seeks to reopen the record to submit evidence of a purported conveyance of portions of the Cornwall Industrial Track to R.J. Corman Railroad Company (Allentown Lines, Inc., ("Corman") as well as evidence of Corman's filing of a verified notice of exemption to acquire and operate the line. An amended petition to reopen was filed on December 18, 1997. At the last hearing I ordered the parties to file main briefs on or before December 29, 1997, with reply briefs due 10 days thereafter. This Order has been complied with by the parties.

Some of the pertinent averments set forth in Conrail's amended petition to reopen are the following:

1. A sale of that portion of the rail line which includes all of the subject crossings to the above proceedings, except the Willow Street crossing in the City of Lebanon, from Conrail to R.J. Corman Railroad Company/Allentown Lines, Inc. ("Corman"), was consummated on October 14, 1997. A true and correct copy of the Indenture evidencing the conveyance is attached hereto as Exhibit "A".
2. In the Indenture, Corman agreed in paragraph 4 on page 3 to "accept all existing

and prospective responsibility for removal and/or restoration costs for any and all railroad bridges and grade crossings and their appurtenances that may be located on, over or under the Premises; and Grantee further covenants and agrees that it will also assume any obligation and/or responsibility as may have been or may hereafter be imposed on Grantor by any Public Utility Commission or any other governmental agency having jurisdiction for any and all bridge structures and grade crossings and their appurtenances, including but not limited to the removal, repairing or restoration of same in accordance with the requirements of said Commission or other governmental agency."

4. The acceptance of the Indenture into the record is important to the resolution of the above matter, as Conrail may not be assigned any future maintenance responsibilities or costs following the completion of any work ordered in connection with the immediate complaints and applications, with the exception of Willow Street, as it no longer owns the tracks at any of the other subject crossings.

7. Conrail further requests that the Commission reopen to accept as Conrail Exhibit No. 4 Corman's Notice of Exception filed with the Surface Transportation Board at STB Finance Docket No. 33302 to acquire and operate the subject rail line, notice of which was published in the Federal Register on October 15, 1997, at 62 F.R. 53686, a true and correct copy of which is attached hereto as Exhibit "B". Corman's exemption became effective seven days after the notice was filed. 49 C.F.R. §1150.42(b).

8. The aforementioned exemption notice is significant evidence of Corman's intentions to operate on the subject line, which is an important factor in the resolution of these proceedings, particularly regarding the Wilhelm Avenue crossing. The aforementioned exemption notice is also significant evidence

of Corman being an operating railroad subject to Commission jurisdiction.

Conrail goes on to state:

9. The reopening of the record for the acceptance of Exhibits "A" and "B" as Conrail Exhibits No. 3 and 4 will serve to aid in the resolution of the matters involved in this proceeding as well as obviate the need for a future hearing regarding a reassignment of future maintenance responsibilities.

The mere acceptance into the record of the referenced Exhibit "A" and "B", in my opinion, will not "obviate the need for a future hearing regarding a reassignment of future maintenance responsibilities." In this regard, in view of the new factual circumstances set forth in the petition, another evidentiary hearing is essential to assure the undersigned and the Commission of an informed and complete record of the circumstances as they now exist on the ground. This notwithstanding my previous ruling not to accept evidence of a conveyance or pending conveyance to Corman at the October, 1997 hearing.

At the August 5, 1997 hearing Scott Dietterick, Esquire, appearing for R.J. Corman offered the testimony of Gary Pettengill, Vice President of Operations for R. J. Corman Pennsylvania Lines, which Mr. Pettengill characterized as "mainly the Clearfield Cluster." (Tr. 165).

At the time of Mr. Pettengill's testimony, Corman did not own the Cornwall Lebanon Industrial Track. The record then

shows the following dialogue between Messrs. Dietterick and Pettengill:

Q. Mr. Pettengill, if R.J. Corman does become owner of the line, what work is it willing to perform should the Commission sustain these claims or approve the application to suspend or abolish the crossings?

A. Whatever is ordered we would be responsible for. And I can't gather here today what this is. It is unknown to me the cost. All I know it has to be repaired or rehabilitated.

Q. Do you believe you've had sufficient time to analyze the crossings to determine the extent of the work to be done at this point?

A. No.

Q. And is R.J. Corman still in the process of investigating the property for purposes of purchasing it from Conrail?

A. Yes they are.

MR. DIETTERICK: No further questions.  
(Tr. 168).

Cross examination of Mr. Pettengill by the parties elicited the following:

Q. Are you aware of any investigation of line operations for this offer to purchase the line? Are you aware of any line operations on this line?

A. You mean business or--

Q. Yes, business.

A. No, I'm not aware of that, what he has in mind.

MR. KILGORE: I have no other questions.

JUDGE COHEN: You are referring to who again?

THE WITNESS: Mr. Corman, the owner.  
(Tr. 169).

X X X

BY MR. WEISS:

Q. Does R.J. Corman also do salvage of rail lines?

A. Yes, he does.

Q. He basically recycles those materials and sells them to other rail lines?

A. Yes. He may perform the other rail lines.

Q. Have they purchased any rail lines in Pennsylvania that they have salvaged other than operated?

A. When he bought the Clearfield Cluster, there was the Snow Shoe Cluster and the Clearfield Mahoning that were abandoned. And we are taking that up.

Q. Do you know whether R.J. Corman's intentions are to salvage the line in question or operate it?

A. No.

Q. You don't know either way?

A. No, I don't.  
(Tr. 170).

X X X

Q. Do you know whether that offer factored in the cost of removing, repairing or rehabilitating the subject line, the crossings on the subject line?

A. I think that was an unknown at the time that offer was made.

Q. If you know, do you know if R.J. Corman tried to determine what expenses it might incur to remove, repair or rehabilitate the subject crossings?

A. I don't think he is aware that they are as bad as what is being presented here today.

(Tr. 171).

Q. And are you also aware of the case pending or the order issued by the Commission regarding the Wilhelm Avenue railroad bridge.

A. No, I'm not aware of that.

Q. So you are not aware of the Commission's order that directs South Lebanon Township to preplace that bridge and then directs that a further hearing be held to allocate the cost of that construction?

A. No, I'm not aware of that.

Q. So you are not aware--

A. That's the first I've heard of it was in here today.

Q. So you were not aware of that should Corman assume the responsibility of operating railroad, that it could be found responsible for a portion of the cost of replacing the Wilhelm Avenue bridge?

A. Mr. Corman could be aware of it, but I wasn't aware of it.

(Tr. 175).

Clearly, what is now required is further competent testimony from a Corman representative who is aware of and can definitively state the Company's practice vis-a-vis the issues raised above relative to the Cornwall Line.

Accordingly, I will grant Conrail's Petition to reopen but will require the scheduling of another evidentiary hearing to take testimony, inter alia, relative to Corman's intentions and financial or managerial fitness to comply with future Commission Orders concerning subject crossings, the Cornwall track and /or the Wilhelm Avenue Bridge.

ORDER

THEREFORE,

IT IS HEREBY ORDERED:

1. That Consolidated Rail Corporation's Petition to reopen filed on December 5, 1997 and its amended Petition filed on December 18, 1997, concerning its application at Docket No. A-113589 and three consolidated complaints and one other application be and is hereby approved in part and denied in part.

2. That Consolidated Rail Corporation's Exhibit "A" and "B" attached to the Petition be and are hereby admitted as Conrail Exhibits No. 3 and 4 respectively.

3. That a further hearing be scheduled to receive evidence concerning R.J. Corman Railroad Company/Allentown Lines, Inc.'s intent and ability 1) to operate on the involved Cornwall

Industrial Track; 2) to comply with the terms and conditions of the Indenture between it and Consolidated Rail Corporation; and 3) to operate and maintain any and all railroad facilities at each of the crossings involved including but not limited to flashing lights and gates, cross bucks, crossing highway surface between tracks, and any structure supporting its track facilities.

4. That R.J. Corman Railroad Company be and is hereby made a party to this proceeding and a duly authorized representative of same shall appear at the further hearing to present evidence concerning the questions posed in ordering paragraph 3, Supra.

Dated: January 27, 1998

Herbert S. Cohen

HERBERT S. COHEN  
Administrative Law Judge