

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**  
**Uniform Cover and Calendar Sheet**

<b>1. REPORT DATE:</b> <p align="center">March 6, 2001</p>	<b>2. BUREAU AGENDA NO.:</b> MAR-2001-OSA-0053* (REV)
<b>3. BUREAU:</b> Office of Special Assistants	<b>DOCKETED</b>  <b>MAR 19 2001</b>
<b>4. SECTION(S):</b>	
<b>6. APPROVED BY:</b> Director: C. W. Davis 7-1827 <i>CWD</i> Supervisor:	
<b>7. PERSONS IN CHARGE:</b> <p align="center">R. H. Albert 7-8108</p>	
<b>8. DOCKET NO.:</b> <p align="center">A-00113589, <i>et al.</i></p>	

9. (a) **CAPTION (abbreviate if more than 4 lines)**  
 (b) **Short summary of history & facts, documents & briefs**  
 (c) **Recommendation**

(a) In re: Application of the County of Lebanon Transit Authority for Approval of the Suspension of a Series of Crossings...located in the City of Lebanon, Lebanon County

(b) The above-captioned Application, in addition to Complaint proceedings at Docket Nos. C-00970107, C-00970126, and C-00970106 (with which the above-captioned proceeding was consolidated) were filed by various Parties including the County of Lebanon Transit Authority, South Lebanon Township, PennDOT, and the City of Lebanon (Lebanon)). The Recommended Decision of ALJ Herbert S. Cohen, in which he recommended that a Stipulation of Settlement which had been submitted by the Parties be adopted, was issued on July 22, 1998. By Order entered on August 27, 1998, the ALJ's Recommended Decision was adopted by the Commission. On October 23, 2000, Lebanon filed the instant *Petition for Rule upon R. J. Corman to File Abandonment Petition* (Petition). On November 8, 2000, R. J. Corman Railroad Company/Allentown Lines (Corman/Allentown) filed an Answer to Lebanon's Petition.

(c) The Office of Special Assistants recommends that the Commission adopt the proposed draft Opinion and Order which grants Lebanon's Petition.

Order Doc. No. 233444v1

Calendar Doc. No. 233814v1

**10. MOTION BY:** Commissioner Chm. Quain

Commissioner Brownell - Yes  
 Commissioner Wilson - Yes  
 Commissioner Fitzpatrick - Yes

**SECONDED:** Commissioner Bloom

**CONTENT OF MOTION:** Staff recommendation adopted.

**DOCUMENT  
 FOLDER**



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

March 12, 2001

A-00113589, C-00970107  
 C-00970126 & C-00970106

JAMES T REILLY &  
 JOHN J FERRY ESQS  
 REILLY WOLFSON SHEFFEY SCHRUM LUNDBERG  
 1601 CORNWALL ROAD  
 LEBANON PA 17042-7460

In Re: Application of the 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.

City of Lebanon v. Consolidated Rail Corporation, et al.

Commonwealth of Pennsylvania, Department of Transportation  
 v.  
 Consolidated Rail Corporation

South Lebanon Township, Board of Supervisors  
 v.

Consolidated Rail Corporation, et al.

DOCUMENT  
 FOLDER

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on  
 March 8, 2001 has adopted an Opinion and Order in the above entitled  
 proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty,  
 Secretary

encls  
 cert. mail  
 law

See attached list  
 for additional parties  
 of record.

DOCKETED

MAR 15 2001

SRB

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

Public Meeting held March 8, 2001

Commissioners Present:

John M. Quain, Chairman  
Robert K. Bloom, Vice Chairman  
Nora Mead Brownell  
Aaron Wilson, Jr.  
Terrance J. Fitzpatrick

DOCUMENT  
FOLDER

In re: Application of the 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

A-00113589

City of Lebanon

C-00970107

v.

Consolidated Rail Corporation, *et al.*

Commonwealth of Pennsylvania,  
Department of Transportation

DOCKETED

C-00970126

v.

Consolidated Rail Corporation

MAR 15 2001

South Lebanon Township,  
Board of Supervisors

C-00970106

v.

Consolidated Rail Corporation, *et al.*

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## OPINION AND ORDER

### BY THE COMMISSION:

Before the Commission for consideration and disposition is a *Petition for Rule upon R. J. Corman Company to File Abandonment Petition* (Petition) which was filed by the City of Lebanon (Lebanon) on October 23, 2000. The Order to which the Petition refers was entered on August 27, 1998, in the above-captioned proceeding at Docket No. C-00970106. On November 8, 2000, R. J. Corman Railroad Company/ Allentown Lines, Inc. (Corman/Allentown) filed an Answer to Lebanon's Petition and also filed a Request for Extension of Time.

### History of the Proceeding

The County of Lebanon Transit Authority (COLT), Lebanon, Commonwealth of Pennsylvania, Department of Transportation (PennDOT), and South Lebanon Township (Township), filed the above-captioned Applications and Complaint regarding the condition of certain railroad crossings on the Cornwall Industrial Track in Lebanon County. The Application and Complaints were filed against Consolidated Rail Corporation (Conrail), which was the owner of the Cornwall Industrial Track at the commencement of the instant proceedings.

The Complaints and Application were consolidated, and during the pendency of the proceeding, Conrail transferred the above-referenced line of track, on or about October 14, 1997, to Corman/Allentown. The transfer included all the railroad crossings subject to the instant proceedings, except the Willow Street Crossing in Lebanon. By virtue of the transfer, R. J. Corman Railroad Company was directed, by the presiding Administrative Law Judge (ALJ) Herbert S. Cohen, to appear at an April 16, 1998 hearing, and to

give testimony on, *inter alia*, the following topics: (1) its intent and ability to operate on the relevant Cornwall Industrial Track; (2) its intent to comply with the terms and conditions of the indenture between it and Conrail; and (3) its intent to operate and maintain any and all railroad facilities at each of the relevant crossings.

The Township was also a participant in these proceedings. It filed an Application at Docket No. A-00109901 for approval of the alteration of the crossing (AAR 591 537 S) where Township Road 705 crosses below the grade of the tracks of Conrail in the Township. However, the Stipulation that was before ALJ Cohen at the time he issued his Recommended Decision herein had not resolved that issue. At the conclusion of the April 16, 1998 hearing, the Parties agreed that Briefs on the Township's Application would be submitted to the ALJ on or before June 30, 1998.

Three (3) evidentiary hearings were held during the course of the instant proceedings. PennDOT, the Commission's Bureau of Transportation and Safety (BTS), the Township, COLT, Lebanon, Conrail, and Corman/Allentown, *inter alia*, were represented by counsel.

Twelve (12) witnesses gave testimony over the course of the three (3) hearings and the Parties sponsored many exhibits. On June 2, 1998, the Parties in the matters at Docket Nos. C-00970106, C-00970107, C-00970126, and A-00113589 submitted for the ALJ's consideration the Stipulation of Settlement herein, a copy of which was attached to the ALJ's Recommended Decision identified as Appendix "A."

The Recommended Decision of the ALJ was issued on July 22, 1998. In his Recommended Decision, the ALJ recommended, *inter alia*, that the Stipulation of

Settlement be approved. By Order entered on August 27, 1998, the ALJ's Recommended Decision was adopted by the Commission.

Lebanon's Petition, and the Answer thereto, were filed as above noted.

### Discussion

The Public Utility Code establishes a party's right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g) of the Public Utility Code, 66 Pa. C.S. §703(f) and (g), relating to rehearings, rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572(b) of our Regulations, 52 Pa. Code §5.572(b), relating to petitions for relief following the issuance of a final decision. The standards for a petition for relief following a final decision were addressed in *Duick v. PG&W*, 56 Pa. PUC 553 (1982), (*Duick*).

*Duick* held that a petition for rehearing under Subsection 703(f) of the Public Utility Code must allege newly discovered evidence not discoverable through the exercise of due diligence prior to the close of the record. (*Duick*, p. 558). A petition for reconsideration under Subsection 703(g), however, may properly raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Furthermore, such petitions are likely to succeed only when they raise "new and novel arguments" not previously heard or considerations which appear to have been overlooked or not addressed by us. (*Duick*, p. 559). *AT&T v. Pa. PUC*, 568 A.2d 1362 (Pa. Cmwlth Ct. 1990), further elucidated the standards for rehearing, reconsideration, revision, or rescission.

We note that, pursuant to 66 Pa. C.S. §703(g) and 52 Pa. Code §5.572, our power to modify or rescind final orders is limited to certain circumstances. A petition to modify or rescind a final Commission order may only be granted judiciously and under appropriate circumstances, because such an order will result in the disturbance of final orders. (*City of Philadelphia v. Pa. PUC*, 720 A.2d 845 (Pa. Cmwlth Ct. 1998); *West Penn Power Company v. Pa. PUC*, 659 A.2d 1055 (Pa. Cmwlth Ct. 1995); and *City of Pittsburgh v. Pennsylvania Department of Transportation*, 490 Pa. 264, 416 A.2d 461 (1980)).

As we have noted above, Corman/Allentown is the owner and the operator of the Cornwall Industrial Track. In its Petition, Lebanon references the following paragraph of our Order entered herein on August 27, 1998, which assigned responsibilities for the Cornwall Industrial Track crossings:<sup>1</sup>

- (d) R. J. Corman Railroad Company shall maintain the crossings during the time that they are suspended and by April 16, 2000, R. J. Corman Railroad Company shall either apply for reactivating of the Cornwall Industrial Track and crossings or file the appropriate petitions for abandonment and abolishment of the track and crossings.

(Order entered August 27, 1998, ¶4(d), p. 2).

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<sup>1</sup> These crossings were identified as the crossings located at State Drive (Route 2003), South Eight Street, South Ninth Street, South Tenth Street, South Twelfth Street, Walnut Street, Chestnut Street, Cumberland Street and Lincoln Avenue.

Lebanon's Petition also referenced Paragraph No. 7 of the August 27, 1998 Order, which specified that, in the event of a breach of any material terms of the Stipulation, the complaining party must provide written notice of the breach and allow the responding Party thirty (30) days within which to respond or cure the breach before the complaining Party may file a Complaint or Application regarding the breach, or otherwise seek enforcement of the Order. (Order of August 27, 1998, ¶7, p. 3).

Lebanon asserts that it, on May 31, 2000, via counsel, notified Corman/Allentown, in writing, of the breach it had committed by failing to either apply for reactivation of the track, or to file the appropriate petitions for abandonment and abolishment.<sup>2</sup> According to Lebanon, on or about July 31, 2000, counsel for Corman/Allentown indicated that Corman/Allentown is "still attempting to secure rail service business" along the Cornwall Industrial Track.<sup>3</sup> The Letter went on to indicate that "if any business is secured along the line, ...it will take some time to undertake certain repairs to the line." Therefore, Corman/Allentown concluded, it is interested in entering into a stipulation for the continued suspension of the subject crossings along the Cornwall Industrial Track. (Petition, ¶¶8, 9).

Lebanon then noted that, in response to Corman/Allentown's request for a Stipulation continuing the suspension of the subject crossings, Lebanon and PennDOT sent correspondence dated August 1, 2000, and August 8, 2000, respectively, to Corman/Allentown which indicated that neither Party is interested in entering into such a

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<sup>2</sup> Lebanon attached a copy of this May 31, 2000 correspondence to its Petition as "Exhibit B."

<sup>3</sup> Lebanon attached a copy of the July 31, 2000 correspondence from Corman/Allentown to its Petition as "Exhibit C."

Stipulation.<sup>4</sup> Lebanon concludes that, despite the Commission's Order and notice to Corman/Allentown of its breach, Corman/Allentown has still not filed a Petition for Abandonment and Abolishment of the Track and Crossings. (Petition, ¶¶10, 11).

In response, Corman/Allentown denied that a material breach has occurred. Corman/Allentown avers that the *status quo* has been maintained as to the Cornwall Industrial Line, and that it is the belief of Allentown Lines that an extension of time to allow it to develop business on the line does not in any way prejudice any of the Parties. Corman/Allentown further asserts that use of the line promotes business for the Lebanon area and the Commonwealth. Corman/Allentown avers that it is, at this juncture, still attempting to secure rail service business along the Cornwall Industrial Track, which it believes would be beneficial to the local community. Corman/Allentown further avers that there are no safety or transportation issues presented with respect to the line. (Answer, ¶¶4, 6).

Corman/Allentown concludes that it believes that, since there is an opportunity to secure rail service along the relevant line, abandonment of that line would be premature at this time. Corman/Allentown requests an extension of time from the Commission in order to secure rail service business. (Answer, ¶8). Accordingly, Corman/Allentown requests that we deny Lebanon's Petition, and that we grant Corman/Allentown an extension of time in which to secure rail service business along the Cornwall Industrial Track.

On review of Lebanon's Petition and Corman/Allentown's Answer thereto, and the record herein, we note that Corman/Allentown never provided an explanation as to

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<sup>4</sup> Lebanon attached copies of the August 1, 2000, and the August 8, 2000 correspondence to its Petition as Exhibits "D" and "E," respectively.

why it failed to comply with the original deadline of April 16, 2000. That date was the original deadline, as outlined *supra*, mandated in Ordering Paragraph 4(d) of our Order entered August 27, 1998, herein, for Corman/Allentown to either apply for reactivation of the relevant track and crossings or for it to file the appropriate petitions for abandonment and abolishment of the track and crossings.

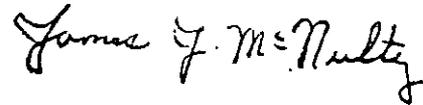
We further note that Lebanon has noted that both it and PennDOT have indicated to Corman/Allentown that they are not interested in entering into a Stipulation whereby the subject crossings would continue in suspension while Corman/Allentown persists in attempting to secure rail service business. (Petition, ¶10). Accordingly, we conclude that Lebanon's Petition is meritorious. We will direct that Corman/Allentown adhere to the terms outlined in our Order entered herein on August 27, 1998, and shall either apply for reactivating of the Cornwall Industrial Track and Crossings or file the appropriate petitions for abandonment and abolishment of the track and crossings;  
**THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Rule upon R. J. Corman Company to File Abandonment Petition which was filed by the City of Lebanon on October 23, 2000, relative to the Order entered on August 27, 1998, is granted.

2. That R. J. Corman Railroad Company shall either apply for reactivating of the Cornwall Industrial Track and Crossings or notify the Commission that the appropriate petitions for abandonment and abolishment of the track and crossings have been filed on or before thirty (30) days from entry of this Order.

**BY THE COMMISSION,**



James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: March 8, 2001

ORDER ENTERED: **MAR 12 2001**