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BEFORE

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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In re: A-00113589, C-00970106, C-00970107, C-00970126  
Application of County of Lebanon Transit Authority,  
South Lebanon Township Board of Supervisors v.  
Consolidated Rail Corporation., City of Lebanon v.  
Consolidated Rail Corporation, Pennsylvania  
Department of Transportation v. Consolidated Rail  
Corporation. Initial Hearing.

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Tuesday,  
August 5, 1997  
10:00 a.m.

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Pages 1 to 195

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24  
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1 JUDGE COHEN: This the time set for evidentiary  
2 hearing in the matter of the Application of the County of  
3 Lebanon Transit Authority, A-00113589. That docket seeks  
4 approval of the suspension of the series of crossings  
5 involving the Cornwall Industrial Track of Consolidated Rail  
6 Corporation located in the City of Lebanon.

7 C-9907106 South Lebanon Board of Supervisors versus  
8 Conrail, there the complainant states it has received  
9 numerous complaints about the crossing at South Lincoln  
10 Avenue, mainly regarding ruts and deep holes causing damage  
11 to vehicles.

12 C-09970107 City of Lebanon versus Consolidated Rail  
13 Corporation, the complainant is concerned about the  
14 condition of crossings on the Cornwall Industrial Track of  
15 Conrail at the following locations in the City of Lebanon:  
16 Willow Street; Chestnut Street; Walnut Street; 12th Street  
17 10th Street; 9th Street; 8th Street. Complainant states as  
18 it has received complaints from the public that crossings  
19 causing damage to their vehicle.

20 C-00970216 Pennsylvania Department of Transportation  
21 versus Consolidated Rail Corporation, complainant concerned  
22 about the safety of at-grade crossing at State Route 2003.,  
23 L.R. 30816 at State Drive. Complainant says crossing is  
24 sunken with rotting timbers breaking out. Due to the  
25 location on an over vertical curb, a driver is not aware of

1 the crossing's poor condition until it is too late.

2 I'm also in receipt of a petition to reopen Docket  
3 Number A-001099001. That matter is captioned Application  
4 South Lebanon Township for approval 55-R-591537-S Wilhelm  
5 Avenue crossing below grade of the track of Consolidated  
6 Rail in South Lebanon Township, Lebanon County.

7 Just this morning I was handed an answer of Conrail to  
8 that petition opposing the reopening of that matter. I'm  
9 going to consolidate that matter with the instant proceeding  
10 depending on what happened in the other proceeding. It's  
11 going to have an effect on the Wilhelm Avenue matter. So we  
12 don't necessarily have to resolve Wilhelm Avenue. Off the  
13 record.

14 (Off the record.)

15 JUDGE COHEN: Counsel, Mr. Paul Kilgore, has indicated  
16 that he is willing to proceed with the ancillary matter;  
17 namely, the Wilhelm Avenue matter today and has witnesses in  
18 the hearing room who are able to provide testimony in that  
19 regard. Now, Mr. Eaton, your response to that.

20 MR. EATON: Our opposition to the request that that  
21 issue be gone into today is that we think it is premature.  
22 And it is premature for these reasons: The first, the  
23 Wilhelm Avenue crossing is one which involves a railroad  
24 bridge over a highway which is extremely narrow and  
25 constricts traffic to a single lane on a relatively busy

1 roadway.

2 About three years ago, that issue was before the  
3 Commission. And the parties worked out a settlement among  
4 themselves under which bridge bill bonds would be applied  
5 for. Conrail would contribute a fixed amount to the  
6 project, and the Township would pick up the balance of the  
7 cost of the project, which was relatively minimal in  
8 comparison with the whole project.

9 Because that was an active rail line at the time, the  
10 proposed fix involved moving Conrail tracks -- first, there  
11 is a parallel roadbed to the existing Cornwall Industrial  
12 Track, parallel and perhaps a 150 to 200 feet removed to the  
13 west.

14 The concept was that a new bridge could be built on  
15 that old alignment and then the Conrail tracks moved from  
16 the one the existing alignment to that new alignment for a  
17 distance of about a half mile each direction of the  
18 crossing. Following which, then the existing bridge could  
19 be removed.

20 What that would do would be to allow the construction  
21 of a new bridge solving the highway traffic problems and, at  
22 the same time, not interrupt rail traffic, which, at that  
23 time, was one or two trains a week. There has been changed  
24 conditions. There is no question about that.

25 Conrail has moved to abandon the line with federal

1 authority. And that motion has been granted. And now  
2 Conrail is in negotiations with R.J. Corman Pennsylvania  
3 Lines to convey the industrial -- the Cornwall Industrial  
4 Track to Corman.

5 Should that occur, of course, responsibility for the  
6 various crossings are passed to Corman. There is no traffic  
7 on the line currently. And it may be that Corman doesn't  
8 contemplate traffic within the next year. If that were the  
9 case, then it would be possible to construct a new bridge on  
10 the current alignment without interrupting rail traffic.

11 On the other hand, if Corman elects not to operate on  
12 that line, then the structure could be removed without the  
13 necessity of building any new structure with acute  
14 differences in costs on either of those two proposals as  
15 compared with the one which is in existence now, and which,  
16 by the way, has been confirmed by order.

17 For that reason, I think it premature with  
18 negotiations now continuing between Conrail and Corman for  
19 the acquisition of that line by Corman and acquisition of  
20 certain responsibilities on that line by Corman.

21 JUDGE COHEN: Is somebody from Corman here today?

22 MR. EATON: There is.

23 MR. DIETTERICK: I'm Scott Dietterick. And there is  
24 Gary --

25 JUDGE COHEN: I would like to hear something about

1 what Corman is, whether it is a Pennsylvania corporation,  
2 where their office is, and their experience.

3 MR. EATON: My thought is whatever remedies you  
4 determine are appropriate for the issues that has been  
5 raised in these proceedings, which are directly represented,  
6 is going to be premised upon a state of facts which, itself,  
7 then will form a background for the South Lebanon Township  
8 Wilhelm Road project.

9 JUDGE COHEN: What do you suggest?

10 MR. EATON: I would suggest that you take it under  
11 advisement and defer any further action on the Wilhelm Road  
12 crossing. I think it would be appropriate to stay all  
13 proceedings on that crossing pending clarification of where  
14 we are going here.

15 One of the things that I was prepared to do today was  
16 suggest to you that these proceedings also be continued  
17 prior to completion in order that the relationship between  
18 Conrail and Corman and the responsibilities which each will  
19 have into the future can be determined by those parties as a  
20 foundation upon which to enter whatever you conclude is  
21 appropriate.

22 I saw no reason to request a continuance in advance  
23 because the record that you are about to make here will be  
24 necessary in any event.

25 MR. KILGORE: If I may respond to the allegation of

1 premature, and Mr. Eaton quite correctly stated that the  
2 same argument can be made to all these crossings. And our  
3 position is it's not premature. And we are prepared to send  
4 testimony that there is no likelihood of continued rail  
5 traffic on that roadbed. And the issue for Wilhelm is the  
6 same or all the crossings. If they are pulling up stakes,  
7 we want to know about it.

8 JUDGE COHEN: Whenever I may decide on the crossing  
9 issue, somebody might make exceptions and et cetera, et  
10 cetera. It would seem to me that we could defer the Wilhelm  
11 situation because pending the outcome of this one, there  
12 might be some final information of an agreement with Corman.  
13 And we want to hear today about whom, what and why and where  
14 Corman is all about.

15 You might be able to work something out among  
16 yourselves about Wilhelm Street. But it does make sense to  
17 me that we should resolve these matters and then schedule --  
18 there is a certain degree -- you are going to say -- of  
19 urgency about the safety situation at that crossing.

20 MR. KILGORE: Not only that, Your Honor, the Township  
21 is under a deadline to complete that project by order by the  
22 end of this year.

23 JUDGE COHEN: But if I would defer the matter, I don't  
24 think you would get any sanctions. I could take a break and  
25 verify that for you.

1 MR. KILGORE: The final thing is part of Conrail's  
2 application to the ICC for reason to abandon the line was,  
3 in fact, this Wilhelm project which is estimated to cost  
4 \$1.2 million as opposed to tearing out the bridge which is  
5 estimated to be at 200,000.

6 JUDGE COHEN: I'll let you go ahead. I'll have Mr.  
7 Eaton come back in person or telephonically to rebut  
8 whatever testimony you might have and to rebut whatever  
9 testimony he might have.

10 MR. SALAPA: Your Honor, if I may, there are several  
11 issues that I don't think Mr. Eaton addressed. The first  
12 one, I'm in receipt of a letter dated June 27th, 1997. It  
13 was addressed to Mr. McNulty as deputy prothonotary. I  
14 don't know if other parties have a copy of it, but it is  
15 from a John B. Wingert, President of Lebanon Valley Rail to  
16 Trails, Inc. requesting that he be added as a party to the  
17 proceeding on Wilhelm Avenue.

18 To the best of my knowledge, the petition that was  
19 filed by South Lebanon Township was not served on Mr.  
20 Wingert or the Rails to Trails group. So I think there is a  
21 basic issue of notice and opportunity here. Furthermore,  
22 the hearing notice itself does not state that Wilhelm Avenue  
23 is to be considered here.

24 And finally, as a matter of bookkeeping, I'm in  
25 receipt of a memo from the Secretary stating that the

1 petition of South Lebanon Township has been assigned to the  
2 Office of Special Assistance for disposition. And I don't  
3 know how that affects your ability to hear or not hear.

4 JUDGE COHEN: I'm not a turf protector. They are more  
5 than welcome to hear it as far as I'm concerned.

6 MR. SALAPA: Thank you, Your Honor.

7 JUDGE COHEN: Off the record.

8 (Off the record.)

9 MR. EATON: With the contemplated sale of the Cornwall  
10 Industrial to Corman, if, as I understand there is a case,  
11 Corman intends to operate on that line, it makes a huge  
12 difference whether that bridge has been designated for  
13 replacement in such a way as to permit bridge bill funds to  
14 be used for it.

15 If that bridge is simply removed pursuant to order and  
16 Corman then acquires the line and wishes to reopen it, it's  
17 unlikely -- I would think -- that bridge bill funds would  
18 then be available to construct a new bridge.

19 Consequently, it's doubly important from Corman's  
20 point of view and from Conrail's as well, that the Wilhelm  
21 Avenue bridge project be deferred until all the other issues  
22 that are hanging fire on that particular line have been  
23 resolved. They are so dependant upon what the resolution is  
24 of the fundamental problem, which is continued operation of  
25 the line.

1 JUDGE COHEN: Do you have --

2 MS. D'ALFONSO: Just what Mr. Salapa said concerning  
3 all parties being given notice of the hearing.

4 JUDGE COHEN: I know the Commission is generally  
5 concerned that Rails to Trails was not given an opportunity  
6 to be heard. Mr. Kilgore, I'll have to rule. And we will  
7 defer the Wilhelm Street pending resolution of the other  
8 matter. And we will try to do it as expeditiously as  
9 possible. When are you going to have the formal --

10 MR. EATON: I'm prepared to put into evidence today a  
11 letter from Conrail to Corman yesterday in which a proposal  
12 was accepted in principal subject to certain subsidiary  
13 agreements which relate to responsibility for crossings.  
14 And Corman hasn't had a chance to respond to that or  
15 consider what its financial exposure may be.

16 So you've got a problem here with a consideration  
17 which may not have taken into account significant expense in  
18 modifying crossings, another issue that presumably will be  
19 resolved in these proceedings. At least the work that has  
20 to be done will be defined.

21 JUDGE COHEN: All right. Let me read the appearances  
22 that have been entered today. I note the following  
23 appearances: Gina D'Alfonso for the Commonwealth of  
24 Pennsylvania Department of Transportation, David Salapa for  
25 the PUC Bureau of Transportation and Safety. Now, here is

1 one that needs raise his hand, Tim Sheffey, County of  
2 Lebanon.

3 MR. SHEFFEY: Good morning.

4 JUDGE COHEN: Paul Kilgore for South Lebanon Township,  
5 Samuel G. Weiss, Jr.

6 MR. WEISS: Good morning.

7 JUDGE COHEN: Mr. Eaton for Conrail, and Scott  
8 Dietterick, Esquire for R.J Corman. We note that responsive  
9 answers to pertinent complaints have been filed by Conrail.  
10 And following usual Commission practice, we have the series  
11 of questions and answers that I'm sure all the parties have.  
12 The first one is -- do you want to go first Ms. D'Alfonso?

13 MS. D'ALFONSO: Sure, I can go first.

14 JUDGE COHEN: Question Number 1 would be, "Submit  
15 testimony as to what, in PennDOT's opinion, makes the  
16 subject crossings hazardous." Let's start with --

17 MS. D'ALFONSO: Mr. Britcher.

18 JUDGE COHEN: I note for the record I'm in receipt of  
19 publication filed by Mr. Sheffey with respect to the matters  
20 at hand, the matter of A-00113589, C-00970106, C-00970107,  
21 C-00970126.

22 MR. EATON: You are competing with the sound the  
23 airconditioner. Have you identified the proof of  
24 publication?

25 JUDGE COHEN: Yes.

1 MR. EATON: Is that admitted as an exhibit?

2 JUDGE COHEN: Do you move to admit it?

3 MR. SHEFFEY: I would move it.

4 JUDGE COHEN: Transit Authority Number 1.

5 (Whereupon, Transit Authority Number 1 was produced  
6 and marked for identification and admitted.)

7 MS. D'ALFONSO: Preliminarily, Mr. Britcher, who is as  
8 witness for the Department of Transportation, will be  
9 addressing the allegation and the complaint, C-00970126  
10 which is the Department's complaint, generally, with some  
11 references to the others. But our basic premise is to  
12 address the allegations regarding the State Road.

13 JUDGE COHEN: Good morning Mr. Britcher.

14 RAYMOND W. BRITCHER, called as a witness, having been  
15 duly sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. D'ALFONSO:

18 Q By whom are you employed?

19 A Pennsylvania Department of Transportation,  
20 District A.

21 Q And what capacity are you serving in?

22 A I'm the grade crossing engineer.

23 Q And as the grade crossing engineer, what are some  
24 of your responsibilities?

25 A Handling the Department's relationship with the

1 railroads and the municipality's relationship to the  
2 railroads as a public utility.

3 Q Are you a licensed professional engineer in the  
4 Commonwealth of Pennsylvania?

5 A Yes, I am.

6 Q In the course of your responsibility with the  
7 Department of Transportation, are you involved in the  
8 crossings of Conrail with State Road in Lebanon?

9 A We have a long history of complaints with Conrail  
10 in this.

11 Q So you are familiar with the crossing?

12 A Yes, since I started my job.

13 Q And are you familiar with the crossings on -- are  
14 you familiar with the crossings, generally, on the Cornwall  
15 Industrial Track?

16 A Yes.

17 Q Mr. Britcher, can you tell us where State Drive  
18 is?

19 A State Drive is located in South Lebanon Township  
20 right in front of the ALCOA plant.

21 Q Is there a designation for State Drive?

22 A SR-2003.

23 Q Mr. Britcher, are you authorized to testify today  
24 on behalf of the Department of Transportation?

25 A Yes.

1 Q And with that, I would direct your attention to  
2 the questions and procedures promulgated by the Commission.  
3 The Department was asked to submit testimony as to what, in  
4 its opinion, makes the subject crossings hazardous. I would  
5 like you to address your attention to State Drive SR-2003 in  
6 response to the question.

7 A The state Route 2003 crossing was constructed  
8 about 1967 which is the same time that route was totally  
9 reconstructed from to the City down past the ALCOA plant.  
10 And this whole thing happened because of the construction of  
11 the ALCOA plant because it has not seen any major repair  
12 work since then. The guard logs were allowed to rot away  
13 and were replaced with asphalt patches of uneven quality at  
14 various times.

15 Q Can you tell us what guard logs are?

16 A Guard logs are the timbers placed against the rail  
17 on rail crossings.

18 Q And the fact that they were allowed to rot away  
19 and be replaced with asphalt, is that acceptable to the  
20 safety of the crossing?

21 A It is acceptable if a crossing is eventually  
22 replaced. Because we know that everything is wood out  
23 there, exposed to air, will very eventually deteriorate.  
24 There comes a point when you have more asphalt patches than  
25 timber, it's time to go. Also the timers tend to rot in a

1 way that the spikes start to come up. And this has become  
2 hazardous.

3 Q Has this crossing reached that point?

4 A It reached that time a long time ago. I was in  
5 negotiations with Conrail to have that replaced in 1988. We  
6 even had a traffic M and P plan --

7 Q What is an M and P plan?

8 A Maintenance Production Traffic Signing -- for the  
9 crossing for Conrail. And Conrail's person backed out of  
10 that.

11 Q Can you please continue with the crossing. Has  
12 the crossing sunk?

13 A Yes. And this combined with the fact that the  
14 highway is on a vertical curve makes it a dip that makes it  
15 hard to spot in advance because you are going over a crest.  
16 And you don't really see that the surface of the crossing is  
17 rough until you are right on it. And it has sunk to about  
18 two or three inches profile on the highway.

19 Q You reference that this crossing was originally  
20 constructed back in the '60's when the road was relocated?

21 A Yes.

22 Q Was there a PUC proceeding on that particular  
23 grade crossing project?

24 A There was two proceedings. A temporary order was  
25 issued under Application 92682 which was superseded by

1 permanent order under Application 92936.

2 Q I'm going to show you what I asked to be marked  
3 for identification purposes as Department Exhibit Number 1.  
4 Can you identify that, please?

5 A This is the order for the construction maintenance  
6 of the crossing.

7 (Whereupon, Department Exhibit 1 was produced and  
8 marked for identification.)

9 BY MS. D'ALFONSO:

10 Q Do you know if State Drive is indicated or shown  
11 on any of those photos?

12 A Yes, it is. I think.

13 MS. D'ALFONSO: Your Honor, I believe another party  
14 will be offering the photos. But since Mr. Britcher is  
15 referring to State Drive -- it's the one in the lower  
16 right-hand corner.

17 BY MS. D'ALFONSO:

18 Q Mr. Britcher, directing your attention to --  
19 continue with the crossing. Are there any signals, safety  
20 devices at the location?

21 A There are signal plaques that sit there beside the  
22 crossing. I presume they are automatic flashing lights.  
23 But there are signals there. One of the problems with this  
24 crossing is that when the road was reconstructed, it was  
25 constructed to a very high standard. It was a 45 mile an

1 hour speed limit. People come up on the crossing rather  
2 fast.

3 Q Is there any train traffic at this crossing?

4 A We were told by Conrail's ICC filing and by  
5 previous things that the train traffic ended in late 1995.  
6 Without the train traffic there, the crossing still, in the  
7 vehicle code, requires that many vehicles stop there, those  
8 carrying hazardous materials, buses and school buses, which  
9 cannot be exempt.

10 They can even put exempt signs. They cannot be exempt  
11 by the vehicle code. So the crossing is a hazard because  
12 for almost two years a train has not gone cross the  
13 crossing. And yet, every school bus that comes up there has  
14 to stop.

15 Q Mr. Britcher, addressing your attention to  
16 Question Number 2, "Does the Department have a position as  
17 to what can be done to improve the safety of the subject  
18 crossing?" And I believe the Department has an opinion that  
19 addresses all of the crossings and State Drive included. Is  
20 that correct?

21 A That's correct.

22 Q Can you identify for us what the recommendations  
23 would be of the Department for the crossings?

24 A The Department recommends that the following  
25 solution to the problem that is presented by the crossing

1 which are the subject of that hearing: The suspension of  
2 all the crossings except Willow Street. The removal of all  
3 the suspended crossings by June 30th, 1998 by Conrail at its  
4 sole cost, the reconstruction of the Willow Street crossing  
5 by June 30th, 1998 at Conrail's sole cost.

6 All warning devises suspended should be covered or ,  
7 removed by Conrail at its sole cost. Advanced warning signs  
8 would be covered or removed by the highway agency at it's  
9 sole cost. Advanced pavement markings and stop bars would  
10 be removed by highway agency at its sole cost.

11 The period of suspension would be three years and  
12 would start at the date that the order is entered. If  
13 Conrail does not file notice of intent to resume service  
14 prior to the date when the suspension period ends, then  
15 Conrail should file for application for abolition of the  
16 suspended crossings within 30 days of the ending date.

17 If Conrail resumes service, then new crossings will be  
18 installed at Conrail's cost. Then the highway agency will  
19 restore all advanced warning signs, advanced payment  
20 markings and stop bars at sole cost.

21 The Department believes that the only other  
22 alternative solution that is acceptable would be for Conrail  
23 to totally reconstruct all the crossings at its sole cost.  
24 The Department is adamant that if the Cumberland Street US  
25 422 crossing is reconstructed, it be restored to a high-type

1 surface crossing.

2 Q Mr. Britcher, the Cumberland Street US 422, is  
3 that part of the proceeding here today?

4 A Yes. It's part of the City of Lebanon Complaint  
5 C-00970107.

6 Q Please continue.

7 A The roadway at all of these crossings should be  
8 restored to satisfaction and specifications of the highway  
9 agency.

10 Q Is it your understanding, Mr. Britcher, that the  
11 recommendations that you have just gone through are  
12 consistent with the positions of South Lebanon Township and  
13 the City of Lebanon and Colt?

14 MR. EATON: Objection. We will find out.

15 JUDGE COHEN: I'll permit it.

16 MR. EATON: It's argumentative.

17 JUDGE COHEN: It's not argumentative. Answer the  
18 question.

19 THE WITNESS: These positions were presented to the  
20 other parties, complainants, and the applicant. And they  
21 have not offered any objection.

22 BY MS. D'ALFONSO:

23 Q Question Number 3, asks the Department to identify  
24 and describe the highway approaches at the crossings  
25 including the alignment, grade, roadway, sidewalk width and

1 the general physical condition of the roadway. I ask for  
2 you to look initially at what we would ask to be marked for  
3 identification purposes as Department Exhibit Number 2 and  
4 ask you to identify it, please.

5 (Whereupon, Department Exhibit Number 2 was produced  
6 and marked for identification.)

7 THE WITNESS: Department Exhibit Number 2 is part of  
8 the plan for the legislative route which is the predecessor  
9 designation for the state route. The legislative route was  
10 38015 and Section 5. It shows on the first page which, is  
11 three of eight, the typical section showing the shoulder  
12 widths and the roadway at which would go through the  
13 crossing. The other two sheets, six and seven, show the  
14 crossings and plan and profile view.

15 BY MS. D'ALFONSO:

16 Q Could you please describe for us what is included  
17 in that plan since, for some, it may be a little difficult  
18 to read?

19 A In the --

20 Q What is the posted speed?

21 A The posted speed limit is 45 miles an hour for  
22 this area. The typical section shows two 12 foot lanes and  
23 10 foot wide shoulders and 12 foot wide shoulders in filled  
24 conditions. The existing bituminous pavement is now 30  
25 years old but in fairly good shape with no major defects.

1 Sheet Number 6 and Number 7 show the roads horizontal  
2 and vertical alignment. The roadway is on a general one  
3 degree horizontal curve. The vertical alignment is on a  
4 1300 foot vertical curve with a railroad crossing located  
5 about 2300 foot north of the high point.

6 Q Question Number 4 asks the Department to submit  
7 testimony regarding approximate class and volume of the  
8 vehicular traffic and pedestrian traffic at the crossing. I  
9 would ask you to identify, please, if you can, what we ask  
10 to be marked for identification purposes Department Exhibit  
11 Number 3.

12 (Whereupon, Department Exhibit Number 3 as produced  
13 and marked for identification.)

14 THE WITNESS: The Department Exhibit Number 3 shows  
15 the volume and class of the vehicular traffic. It is a  
16 computer printout.

17 BY MS. D'ALFONSO:

18 Q Can you tell us what the current average daily  
19 traffic estimate is for the crossing location?

20 A The current estimate is 2,722 with 9 percent  
21 trucks.

22 Q And that's shown on Exhibit 3?

23 A Yes.

24 Q Does the Department have any pedestrian counts?

25 A PennDOT does not normally take pedestrian counts

1 as is required in the built-up areas. The crossing is in an  
2 extremely rural area. I have never personally seen a  
3 pedestrian on this stretch of highway in my 12 plus years in  
4 my present position.

5 Q Question Number 5 asks the Department to submit  
6 testimony as to whether or not any accidents involving  
7 trains and motor vehicle, trains and pedestrian or motor  
8 vehicles have occurred at the crossing as a result of  
9 crossing or warning facilities and whether or not they have  
10 occurred within five years. Do you have a information  
11 regarding any reportable accidents within that the last five  
12 years?

13 A There is only one reported accident in the  
14 vicinity of the crossing in the last five years. It  
15 involved a vehicle hitting a signal or sign support. The  
16 excessive speed is listed as a contributing factor. That's  
17 it.

18 Q Mr. Britcher, in response to Question Number 6, if  
19 we have any additional relevant information, does the  
20 Department have, as part of its records, any agreements or  
21 other documentation regarding the crossings that are part of  
22 today's hearing?

23 A PennDOT Exhibit Number 4 is Agreement Number 35276  
24 between the Commonwealth of Pennsylvania acting through the  
25 Department of Highways predecessor of the Department of

1 Transportation and Aluminum Company of America dated  
2 September 22nd, 1965.

3 (Whereupon, Department Exhibit Number 4 was produced  
4 and marked for identification.)

5 BY MS. D'ALFONSO:

6 Q And is that an agreement that was necessary for  
7 when the legislative route was relocated during the  
8 construction of the ALCOA business?

9 A The crossing was constructed solely and the road  
10 was constructed solely to the benefit to the ALCOA plant.

11 Q Mr. Britcher, one final thing I would like you to  
12 identify. We would ask to be marked for identification as  
13 Department Exhibit Number 5.

14 (Whereupon, Department Exhibit Number 5 was produced  
15 and marked for identification.)

16 JUDGE COHEN: What was four again?

17 MS. D'ALFONSO: Agreement 32276 between the Department  
18 Commonwealth acting through the Department of Highways.

19 THE WITNESS: It was 35.

20 MS. D'ALFONSO: Thirty-five, excuse me -- and the  
21 Aluminum Company of America dated September 22, 1965.

22 JUDGE COHEN: Thank you.

23 BY MS. D'ALFONSO:

24 Q Mr. Britcher, if you can just identify Exhibit  
25 Number 5.

1           A    Exhibit Number 5 is the recorded deed retained  
2 from the county court house deed book Number 20 starting on  
3 page 101 between the Aluminum Company of America, we call  
4 ALCOA, and the Pennsylvania railroad predecessor to Conrail.  
5 It is a signed, dated and sealed copy with the date of the  
6 21st of October, 1996.

7           Q    Is the State Drive crossing located within the  
8 property description that's in this deed?

9           A    Yes, it is

10          MS. D'ALFONSO: Your Honor, just so I'm clear, we are  
11 not addressing issues regarding Wilhelm Avenue today. Is  
12 that correct?

13          JUDGE COHEN: No.

14          MS. D'ALFONSO: Okay.

15          BY MS. D'ALFONSO:

16          Q    What is the date of this Department Exhibit 5  
17 again, 1966?

18          A    1966.

19          Q    October 21st, 1966?

20          A    Yes.

21          MS. D'ALFONSO: Your Honor, I have no further  
22 questions for Mr. Britcher and ask that the Department's  
23 Exhibits 1 through 6 be made part the record.

24          JUDGE COHEN: Any objections?

25          (Pause.)

1 JUDGE COHEN: Admitted.

2 MS. D'ALFONSO: I'm sorry, 1 through 5.

3 (Whereupon, Department's Exhibits 1 through 5 were  
4 admitted.)

5 JUDGE COHEN: Cross examination, Mr. Kilgore.

6 MR. KILGORE: No questions.

7 JUDGE COHEN: Mr. Sheffey?

8 MR. SHEFFEY: None, Your Honor.

9 CROSS EXAMINATION

10 BY MR. WEISS:

11 Q Mr. Britcher, have you had occasion to actually  
12 visit and inspect the crossings in the City of Lebanon in  
13 addition to the South Lebanon Township crossing on State  
14 Drive?

15 A Yes, I have.

16 Q How recently have you done that?

17 A We were out there in, I think, February. In the  
18 beginning of February, we had a field conference; and we  
19 went across the crossing.

20 Q Did you actually inspect all the crossings?

21 A We went from crossing to crossing.

22 Q Would you describe the crossing in the City  
23 similar -- in similar terms to what you described the  
24 crossing in South Lebanon Township?

25 A The Willow Street crossing is one where it's

1 deteriorated to the point where the rails are kind of  
2 sticking up. And it is definitely not a smooth surface or  
3 in good condition. The Cumberland Street crossing is a  
4 high-type surface which failed.

5 It was a design called Parko that had a tendency to  
6 fail. It was installed by the Consolidated Rail Corporation  
7 using 90 percent federal money and 10 percent City funds as  
8 a local match as a high-type surface. And the surface  
9 failed.

10 Conrail maintenance engineer Steve Barrell,  
11 B-a-r-r-e-l-l, with my concurrence, agreed to remove the  
12 failing sections and then put asphalt in as a temporary  
13 patch. And when he restored the line, in his proposal, he  
14 was going to restore the high-type surface at that location  
15 on Cumberland Street.

16 The rest of the crossings are basically uniformly  
17 timber and asphalt crossings from what looks like the time  
18 of the Reading era. And gradually the timbers were rotting  
19 away and being patched with asphalt.

20 MR. WEISS: That's all the questions I have.

21 JUDGE COHEN: Mr. Salapa.

22 MR. SALAPA: Thank you, Your Honor.

23 BY MR. SALAPA:

24 Q Mr. Britcher, in your various trips to the State  
25 Drive crossing, did you have a chance to observe vehicles

1 going over the crossing?

2 A Yes.

3 Q Were one or both of the rails in the crossing area  
4 loose so that they would move up and down every time cars  
5 passed over them, or don't you recall?

6 Q I cannot recall at this moment, no.

7 MR. EATON: This is on State Road?

8 MR. SALAPA: State Drive, yes.

9 BY MR. SALAPA:

10 Q You also made reference to one reportable accident  
11 at the State Drive crossing. What exactly is a reportable  
12 accident?

13 A A reportable accident is where one of the vehicles  
14 has to be towed away. That's one -- that's usually when  
15 they come up there was an injury accident or a vehicle has  
16 to be towed away.

17 Q So there are possibly unreportable accidents that  
18 could have taken place in the vicinity of the crossing that  
19 you would have no knowledge of?

20 A Correct.

21 Q They would not have been reported to the  
22 Department?

23 A Right.

24 Q You've made reference several times now to what  
25 you call a high-type crossing on Cumberland Street. Is that

1 a crossing that consists of rubber panels as opposed to  
2 timber and asphalt?

3 A High-type surfaces, yes, are usually rubber  
4 crossing or concrete crossing surface as opposed to the old  
5 timber and asphalt or asphalt crossings.

6 Q And what is the advantage to having this rubber  
7 crossing as opposed to a timber and asphalt crossing?

8 A Properly designed rubber crossings will not  
9 deteriorate at the rate that timber and asphalt. If you can  
10 get -- and Conrail has gotten very close to 20 years. And  
11 one of them, I believe, in Lancaster was put in prior to  
12 1970 on Duhl Road, and it's still there. It will not  
13 deteriorate on the surface while timber does tend to  
14 deteriorate, and you have problems with it.

15 Q Do these high tech crossing surfaces tend to be  
16 used more at crossings where there is a high volume of  
17 vehicular traffic?

18 A Yes.

19 Q And you stated that that crossing at Cumberland  
20 Street failed. Exactly how did it fail?

21 A The Parko design, if it could be called a design,  
22 was one that had a lot of things in it which guaranteed that  
23 under heavy traffic, it would fail. It was not lagged to  
24 the shims. It was held in place by a little tabs,  
25 individual panels that held on to the shims on top of ties

1 by little tabs that were nailed in no more than what you  
2 would see on standing seam roofing taps. And that's not  
3 much.

4 The crossing itself, the panels were held in place by  
5 cables that were tightened up at each end that ran the whole  
6 way through. Unfortunately, the tabs did not hold. The  
7 alignment -- panels when they bounced around would move up  
8 and flex on the cables. And after a while, the cables would  
9 become extended and bust. And we have had numerous failures  
10 in the Parko crossings. But it was a design failure.

11 Q When it failed, literally, the panel would come  
12 loose?

13 A The panels, basically, would come loose. Also,  
14 the header board that was boarded into the panels tended to  
15 try to hold down. But the bolts would work their way up  
16 through the header board and either punch their way out or  
17 get the header board loose. And that would start flopping  
18 around too. And that was like -- I can't think -- something  
19 close to a one by four, one by six board that was at the end  
20 of the panel at the crossing along all the panels and then  
21 start flopping up in the air.

22 Q So the Department views the asphalt paving that  
23 has been put in place of high-type crossing as a temporary  
24 solution because you don't -- the Department does not expect  
25 the asphalt to hold up very well?

1           A    When the Department uses 90 percent federal funds  
2 to put in a high-type surface, it is our understanding that  
3 -- it's my understanding that's put in with a PUC's document  
4 UCTA 22. And that document pretty much seals that you have  
5 a high-type surface there and that we would like to see if  
6 they want to change that. But they go before the PUC and  
7 ask for permission to change that.

8           And we would object and ask to go to hearing because  
9 we spent all this money to install this. And the foundation  
10 there at that crossing there is in good shape. The failure  
11 was not related to the foundation. So the cost of  
12 installing a new one is a lot less because we have developed  
13 a very good foundation or base for the crossing.

14          Q    So if rail traffic were to continue over this  
15 line, the Department's position would be that the high-type  
16 surface should be placed back in?

17          A    Yes.

18          MR. SALAPA: Thank you that's all I have.

19          JUDGE COHEN: Mr. Eaton.

20 BY MR. EATON:

21          Q    Mr. Britcher, you said you had conversations with  
22 representatives of the City of Lebanon?

23          A    Yes, sir.

24          Q    And the Lebanon Transit Authority?

25          A    Yes.

1 Q And with somebody else concerning these crossings?

2 A And South Lebanon Township.

3 Q And that concerns what aspect of the crossings?

4 A We feel that the -- I believe that I can state  
5 that the crossings are a mutual concern. Even though some  
6 of the City streets are not on the state system any more,  
7 being turned back to the City, they are prime traffic  
8 routes.

9 We have US 422 on Cumberland Street and 9th and 10th  
10 are Pennsylvania 72. 10th Street is southbound, 9th Street  
11 is north bound, if I'm right. So we have an interest in  
12 those. The situation out on State Drive is very much  
13 connected with Lincoln Avenue. It's on the same side.

14 Q Based on your discussions with these entities,  
15 what conclusion was reached?

16 A That basically what happened is we had a long  
17 series of discussion that started out with Steve Barrell --  
18 who I previously mentioned -- who told us in 1995 at a  
19 meeting, or after a meeting, that the crossings would be  
20 reconstructed as part of his -- when he did his line work  
21 down there to get his line back in shape, they would be  
22 reconstructed in 1996.

23 Q Steve Barrell is an engineer?

24 A Is the maintenance engineer for that territory.  
25 And he told us he was going to reconstruct Cumberland Street

1 and do all the crossings on Cumberland Street down south.

2 Q Was this an active rail line at that time?

3 A At that time, that was prior the ICC abandonment  
4 petition.

5 Q So your discussion with Mr. Barrell was that the  
6 crossings would be replaced in the ordinary course of  
7 maintaining the line itself?

8 A In 1996 he promised us that.

9 Q You said earlier 1995?

10 A We started the conversations in 1995, but he  
11 promised to put the work on the schedule for 1996 when he  
12 said he was going to do a rail rehab and he would try to  
13 schedule the crossings then at the same time because that's  
14 a logical time to do them.

15 Q And in the interim, what occurred with respect to  
16 the traffic on the line?

17 A Conrail ceased serving ALCOA and the petitioned.  
18 But we were not really knowledgable of that until we were  
19 out there on a meeting on Colt's application. We learned  
20 that on Colt's application meeting or an informal one up in  
21 Lehman Street.

22 We were up in Lehman Street discussing the status of  
23 things. And all of the sudden we learned that -- in 1996,  
24 we learned that Conrail had filed to abandon the line and  
25 service has been discontinued. So the whole scenario,

1 everything -- but at that time, we were informed the line  
2 was up for abandonment and the crossings would be removed.  
3 And we were happy at that moment.

4 Q Is it fair to say in 1995, a representative of  
5 Conrail said that crossings would be replaced in the  
6 ordinary course of business and in 1996, traffic has been  
7 discontinued on the line and that was a significant change  
8 in circumstance?

9 A Yes.

10 Q Now, in your discussions earlier with the various  
11 municipalities, I think you indicated in your direct  
12 testimony and perhaps in response to a question a moment ago  
13 that there was a general agreement that the crossing should  
14 be replaced. Is that correct?

15 A Yes.

16 Q Did you make a determination, at that time, as to  
17 what the cost of such replacement would be?

18 A The cost would be fairly significant.

19 Q My question is, Did you make a determination?

20 A No, I didn't make a determination. But the  
21 estimate that was bandied about by both myself and Conrail  
22 was probably -- it held up between 300 and \$500,000.00 which  
23 is not what it says in the ICC petition. It is not in line.

24 But this is based upon a two lane crossing. From my  
25 knowledge in dealing with Conrail production people, a two

1 lane highway, rural highway is done for somewhere between  
2 20, \$30,000.00 on a production gang. That's what I've been  
3 so informed. But these are bigger crossings in the City.

4 Q And that would be routine replacement of crossings  
5 in connection with rail servicing, would it not?

6 A Yes.

7 Q In your discussion with these municipalities, who  
8 did you propose spend these funds to improve these  
9 crossings?

10 MS. D'ALFONSO: That was direct testimony. I object.  
11 Asked and answered, Your Honor, in direct testimony.

12 JUDGE COHEN: Let him answer.

13 THE WITNESS: Because of crossings -- if you look at a  
14 timber and asphalt crossings, I believe that -- I'm told  
15 they give a life of 5 to 10 years for a timber and asphalt  
16 crossing.

17 BY MR. EATON:

18 Q Who is proposed to pay for this?

19 A Consolidated Rail Corporation based on that.

20 Q PennDOT and the municipalities got together and  
21 decided PennDOT should pay to approve crossings on a rail  
22 line on which there was no traffic?

23 MS. D'ALFONSO: Objection.

24 THE WITNESS: That's absolutely wrong.

25 MS. D'ALFONSO: Objection. That was a misstatement of

1 what Mr. Britcher said. Mr. Eaton referenced PennDOT  
2 instead of Consolidated Rail Corporation.

3 BY MR. EATON:

4 Q You, representing PennDOT, was a party to these  
5 conversations?

6 A I did not volunteer to spend one cent of  
7 Department's money to fix Conrail's responsibility which is  
8 it has been renegeing to do all these decades.

9 Q Bottom line, the proposal was among PennDOT and  
10 the municipalities that Conrail was to pay for all these  
11 changes. Is that correct?

12 A We had discussion with Conrail representatives who  
13 was in charge of maintenance out there. And we were trying  
14 to get the thing resolved.

15 Q You talked about discussions with Mr. Barrell in  
16 1995.

17 A And 1996.

18 Q In 1996, what did Mr. Barrell say?

19 A He said the line was -- he informed the line was  
20 up for abandonment. And we were up in Lehman Street. But  
21 what we did -- the Department agreed to take out the one  
22 Lehman Street crossing, which is not part of the decision,  
23 in order to get that out because it hadn't been used for --  
24 since Bethlehem Steel folded down there. That's a long time  
25 ago.

1           And we agreed -- but this goes into a lot of aspects.  
2           We have been dealing with Conrail the and municipalities and  
3           lately, within the last couple years, with Colt on their  
4           crossings. And Colt's concerns came out, I believe, with  
5           relationship to lack of rail track.

6           Q     What is the current status of that line as far as  
7           you know?

8           A     It is ICC or STB abandon. It went through the six  
9           month Rails to Trails process, public use process. And R.J.  
10          Corman came forward in the 30-day period of time after that  
11          ended with an offer to take the railroad over as an  
12          operating railroad.

13          Q     And there is no traffic on the line today, is  
14          there?

15          A     There is absolutely none.

16          Q     I should say south of Cumberland Street.

17          A     South of Cumberland Street, that's correct. There  
18          is a business north of Cumberland Street that's serviced by  
19          a track that goes across Willow Street. The other  
20          businesses there like the Agway that went across at 16th and  
21          Cumberland and came off that line, that docket was closed  
22          out in '94. And the crossing was removed.

23                 And there used to be siding that went over Chestnut  
24          Street that were taken out by real old dockets. And we got  
25          down to ALCOA and ALCOA was -- I'm told recently -- going to

1 sell the ties out from underneath the rail. That's my  
2 knowledge of business on that line. And I've not been able  
3 to see, on my travels, any other business that would have  
4 rail service out there.

5 Q You understand there has been discussions between  
6 Conrail and Corman relative to conveyance of the line. You  
7 understand that?

8 A I've been told that.

9 Q And do you know whether Corman has developed  
10 business that would justify its reactivating the line as an  
11 active rail line? Do you know that?

12 A My last conversation with the gentlemen  
13 representing Corman was the PUC field conference in the  
14 beginning of February where the gentlemen representing  
15 Corman stated that they had not visited they ALCOA plant and  
16 had not seen the rail line prior to that. But they were  
17 going to go down and see the ALCOA plant that day. And I do  
18 not have any knowledge that they ever contacted ALCOA.

19 Q So you don't know whether Corman contemplates  
20 running traffic on that line in the future. Is that  
21 correct, you don't know?

22 A That's correct.

23 Q Now, so far as what's wrong with these crossings,  
24 your counsel produced some photographs. Were these  
25 identified as an exhibit?

1 MR. WEISS: Why don't we mark that.

2 JUDGE COHEN: Who took those?

3 MR. WEISS: The City of Lebanon personnel. And I have  
4 a packet here of the exhibits for the City which include  
5 these. I've given some to all counsel. With Your Honor's  
6 permission, I'll give you some.

7 JUDGE COHEN: We will identify them as City of Lebanon  
8 Exhibit Number 1.

9 MR. WEISS: Yes, sir, that's fine

10 (Whereupon, City of Lebanon Exhibit Number 1 was  
11 produced and marked for identification.)

12 MR. EATON: I'm not quite sure how to handle this so  
13 we don't block out --

14 MS. D'ALFONSO: I can provide copies that Mr. Weiss  
15 gave me if you prefer not to --

16 JUDGE COHEN: We all have the small photographs. We  
17 can refer to the photographs.

18 MR. EATON: I'm going do hold this behind Mr.  
19 Britcher.

20 BY MR. EATON:

21 Q Working from the north south with these crossings  
22 -- I'm going to skip Willow Street. Cumberland Street then  
23 is the first crossing we come to.

24 A Yes.

25 MR. EATON: Let's see, this exhibit was identified as

1 what?

2 JUDGE COHEN: City of Lebanon 1.

3 BY MR. EATON:

4 Q City of Lebanon Number 1, all right. Can you tell  
5 us whether that photograph is a fair representation of the  
6 current condition of the Cornwall Industrial Track over US  
7 Route 422, Cumberland Street?

8 A It is my understanding these photographs are  
9 recent. And this would show --

10 Q You said you've been there. Is this a fair  
11 representation of what you saw when you were there?

12 A Yeah.

13 Q Any severe potholes along the rails there?

14 A No. Mr. Barrell did an excellent job.

15 Q The crossing, at the present time, is satisfactory  
16 from a safety point of view?

17 A From safety?

18 Q Yes.

19 A The fact that it does not yet -- but the asphalt  
20 patches will deteriorate in a high-type. And we had a  
21 promise of a high-type surface to be restored there.

22 Q At the present time, does it present a safety  
23 problem?

24 A I would say, no.

25 Q What's the speed limit on that area in the

1 highway?

2 A I could only guess at that, sir. I'm not prepared  
3 to testify to the speed limit on any of the local roads.

4 Q Can we agree it's less than 50 and either 25 or 35  
5 in that location?

6 A It would be somewhere between 25 and 50, probably  
7 less than 50.

8 Q Probably what?

9 A Less than 50.

10 Q Now, PennDOT doesn't have a direct interest in  
11 some of these other crossings, does it?

12 A No, not a direct --

13 Q Get down to State Road, I agree you do -- or State  
14 Drive.

15 A US 72 which is a turnback whereby we pay the City  
16 to maintain that road and is on all our traffic maps. We  
17 are concerned with the traffic routes that are shown on the  
18 maps and that carry Pennsylvania and US designations.

19 Q You said that you have looked at these crossings  
20 personally. So let's go down here and take a look at Walnut  
21 Street next. I think that would be the next crossing south,  
22 would it not?

23 A How about Chestnut?

24 Q Is Chestnut next? All right. Chestnut Street.  
25 That's a City street with the 25 mile an hour speed limit,

1 is it not?

2 A As I've said previously, I'm not here -- I have no  
3 knowledge of local speed limits.

4 Q You don't recall the speed limit from when you  
5 drove through Lebanon in connection with visiting these  
6 crossing sites?

7 A No, I don't. I was not collecting that  
8 information. That would be presented, if necessary, by a  
9 City --

10 Q I'm just asking what you know. Is this a fair  
11 representation of the condition of the crossing as it exists  
12 today?

13 A I would say, yes.

14 Q To Walnut Street, again, do you know what the  
15 speed limit on the road there is?

16 A No.

17 Q And is that photograph a fair representation of  
18 the condition of that crossing as it exists today?

19 A Yes.

20 JUDGE COHEN: Can I just have a statement from the City  
21 on the record? When were these photographs taken, sir? The  
22 photographs themselves might have a date on.

23 MR. WEISS: It's on the exhibit. July 2, 1997, Your  
24 Honor.

25 JUDGE COHEN: Thank you.

1 MR. WEISS: You are quite welcome.

2 BY MR. EATON:

3 Q With respect to Chestnut Street and Walnut Street,  
4 are you able to say whether either crossing presents a  
5 hazard to traffic traveling within the lawful speed limit?

6 A The rails -- Chestnut Street shows the rails high  
7 and a lot of pothole along the flangeway.

8 Q We can see that from the photograph. Does it  
9 pose, in your opinion, a traffic hazard?

10 A Yes. When you have a continual pothole in the  
11 flangeway of that size, yes, there is. I know that I  
12 personally would find it unsafe.

13 Q In what way?

14 A The fact that you have holes in the roadway. I  
15 mean it's supposed --

16 Q Are they going to make you run off the road?

17 A You could run into the rail. You could drop in a  
18 pothole there.

19 Q All right. We have photographs. We will judge  
20 from what we see. I have a second Chestnut Street, and I  
21 guess that is among the collection on the sill here. Again,  
22 that, you agree, is a fair representation of the condition  
23 of that crossing today?

24 A Yes.

25 Q 12th Street?

1 A You've skipped Walnut.

2 Q We already hit Walnut Street.

3 A Okay. 12th Street, yes, that does.

4 Q 12th Street, is that a state highway?

5 A No, it's not.

6 Q And again, that photograph is a fair  
7 representation of conditions at that crossing?

8 A Yes.

9 Q Do you see any present safety hazard there?

10 A The fact that the timbers and the cartway are  
11 rotted. You can see that from the picture. When you have  
12 rotted timbers, you have spikes. The spikes come loose, and  
13 they project up. This is a common complaint, asphalt  
14 patching that has been done on top of the timbers which is  
15 breaking off. But it is very common that when you patch,  
16 put asphalt on rotted wood, that when it gets wet, it goes.  
17 I mean so this is not a good crossing. It is not a safe  
18 crossing.

19 Q The timbers that we see in the photograph are  
20 those which are out of the travel lanes?

21 A Yes. You also see the timbers underneath the  
22 asphalt patch.

23 Q There is some asphalt patching on the crossing?

24 A Yes.

25 Q And as far as is known to us at this proceeding,

1 there has been no automobile that has any problem with that  
2 crossing, is there? Do you know of any?

3 A When I drove across it, I found it was not in good  
4 condition, no. I found it as unsatisfactory.

5 Q You found it was rough?

6 A Rough. I mean, it's not something you expect on a  
7 City street of that caliber -- you don't -- as that is shown  
8 in this picture is obvious.

9 Q Did you have trouble controlling your vehicle?

10 A Like you do at all at the crossings on this line,  
11 you slow down to a crawl; and you go across them. I'm used  
12 to that.

13 Q 10th Street, again, the photograph is a fair  
14 representative of the present condition?

15 A Yes.

16 Q 9th Street, can you say the same thing?

17 A Yes.

18 JUDGE COHEN: Are you going to ask him if 10th Street  
19 is safe?

20 MR. EATON: Judge, as a comparison between this  
21 photograph and the other photographs, I can anticipate his  
22 answers. And I won't waist the Court's time.

23 JUDGE COHEN: We have lots of time, ask him.

24 BY MR. EATON:

25 Q Do you consider the 10th Street crossing one which

1 is hazardous to the operation of motor vehicles on the  
2 roadway?

3 A The fact that 10th Street is Pennsylvania 72 south  
4 bound, I find that to be highly unsatisfactory, not  
5 something one expects on a state traffic route, on street of  
6 that caliber. And the fact that you are patching asphalt on  
7 top of rotted wood, we know it will come up.

8 Q Is it safe?

9 A Not for that highway, no.

10 Q Why?

11 A Because it is a Pennsylvania traffic route.

12 Q What makes it unsafe?

13 A Unsafe is basically patching asphalt on old rotted  
14 wood timbers. And we have a history of that asphalt popping  
15 out of there. And then you have the hole.

16 Q What consequence do you expect from this lack of  
17 safety? Would it cause an automobile to upset?

18 A No. But it can cause an automobile to  
19 unexpectedly slow down because a lot of people are very  
20 concerned with the condition of their automobile. And they  
21 tend to slow down at these railroad crossings, not like a  
22 state fleet vehicle when you can buzz right across at 35 and  
23 not worry about it because it is a fleet vehicle.

24 People will slow down at these crossings excessively.  
25 And that creates one of the hazards. We all know that. We

1 have all been behind somebody who as soon as they see their  
2 Lincoln Town Car is going to go across a railroad crossing  
3 that's rough, they slow down to a point where you can cause  
4 an accident. And rough crossings like that do induce  
5 actions like that. And on a Pa traffic route, it us  
6 unacceptable.

7 Q This is also a state traffic route?

8 A 10th Street Pennsylvania Traffic Route 72.

9 Q Good. What's the speed limit on it at that point?

10 A It's a local road. I do not know. I'm not  
11 prepared to testify on that.

12 Q You don't recall?

13 MS. D'ALFONSO: Asked and answered, Your Honor. He  
14 says he doesn't know.

15 MR. EATON: What's the difference between I don't know  
16 and don't recall? But I'll pass.

17 BY MR. EATON:

18 Q 9th Street, fair representation of the condition  
19 today?

20 A Yes.

21 Q Crossing looks a little lumpy, yes?

22 A I think so.

23 Q What makes it unsafe?

24 A We have a sunken condition. You have asphalt  
25 patching on old rotted timbers.

1 Q Do you see sunken condition there?

2 A Yes. Because the -- you can see where the asphalt  
3 actually has gone over the rail some places to keep in  
4 profile with the rest of the highway. And the timbers are  
5 down below the asphalt?

6 Q Some places but not others, right.

7 A Pretty much look about the same?

8 Q 8th Street, the picture shows the current  
9 condition?

10 A Yes.

11 Q And in this particular one, maybe you'll say that  
12 track is a little sunken too because asphalt has been placed  
13 which pretty much covers the rails within the crossings,  
14 does it not?

15 A It looks like somebody has been patching all the  
16 potholes. You can see all the different colors of asphalt  
17 from the amount of time it's been patched. It looks like  
18 somebody has filled the flangeways.

19 Q Doesn't look so good, does it? Smooth enough  
20 though, is it not?

21 A That type of patching out in the highway, if you  
22 can get that smooth, you've worked a miracle. You can't put  
23 that many different patches in there and get that smooth.

24 Q Is that crossing safe for the passage of motor  
25 vehicles at normal highway speeds?

1 A At this time, as long as the patching holds. But  
2 patching on rotted timbers, when it gets wet --

3 Q Okay. And finally, the photograph of the State  
4 Drive crossing, again, is that a fair representation of the  
5 condition of that crossing today?

6 A Yes.

7 Q Again, do you know the speed limit there?

8 A 45 miles an hour.

9 Q Did you cross over the crossing at 45 mile an  
10 hour?

11 A Yes. And I didn't like it bit.

12 Q But you did it safely?

13 A Yes. You can. You can go flying across there.  
14 And if you are willing to subject your vehicle to a beating,  
15 you can go. The problem is, that people go across it  
16 suddenly. And they can't see if it's a problem because of  
17 the sunken nature over a crest vertical. People that are  
18 strangers will slow down there. I, myself, in my fleet  
19 vehicle, I go buzzing right through.

20 MR. EATON: That's all.

21 JUDGE COHEN: Mr. Dietterick.

22 BY MR. DIETTERICK:

23 Q You said in February at the PUC field conference

24 --

25 A I said I believe. I would have to pull my file

1 out.

2 Q You said you spoke to a representative of R.J.  
3 Corman?

4 A There was two representatives of Corman there.

5 Q Do you recall who they are?

6 A One gentlemen is in the room here. I can pull my  
7 file out, and we can find out. It seems like the file gets  
8 bigger as time goes by. It was on February 7th at a field  
9 conference held by PUC. And was attended by G.J. Garsig and  
10 Gary Pettengill.

11 Q And you stated that they mentioned to you that  
12 they were maybe speaking to ALCOA?

13 A Yes. They indicated that they -- when they were  
14 out at the State Drive crossing -- they would be going down  
15 to talk to people at the ALCOA plant.

16 Q Have you heard anything further regarding any  
17 negotiations with ALCOA?

18 A No. Our request for information from Conrail on  
19 this was turned down.

20 Q Your statement regarding the safety of the roads,  
21 is it fair to say your major safety concern is that people  
22 will slow down when they see the rails?

23 A There is a lot of potholes out there. It's not  
24 kept up with the patching because of the rotted timbers in  
25 these crossings. It's -- and that creates a safety problem.

1 You can see large number of patches on 8th Street. And that  
2 creates a problem.

3 Q But you said the patches themselves would not  
4 cause a vehicle to overturn?

5 A The fact the patches are on old rotted timbers and  
6 will not be there for any length of time, the experience  
7 with the patching old rotted wood at crossings is such that  
8 they do not last.

9 Q But the major safety concern, according to your  
10 testimony, was that people would slow down, slow their cars  
11 down when they see the crossings?

12 A At certain crossings. At certain crossings that  
13 are now patched to a smooth condition in dry weather, are  
14 not a problem. When we get into wetter weather or winter  
15 and those patches start popping off, then you start having  
16 potholes. And the timbers can get loose, and the spikes can  
17 start coming up. This is the common failure of T and A  
18 crossings, timber and asphalt.

19 Q You mention your concern of US 72?

20 A PA 72, yes.

21 Q Do you know what the speed limit is?

22 A I still don't know that.

23 Q You don't know that. Is it not true that people  
24 tend to slow down at railroad crossings regardless of the  
25 condition?

1           A    Some people do. I can tell you that this much,  
2 when you put a high-type surface in, we see a tremendous  
3 increase in the speed. And this was witnessed when we first  
4 put -- on 9th and 10th -- in the high-type surface in the  
5 Harrisburg line in the City of Lebanon.

6           The speed of the cars going across that went up to  
7 around what you would expect on that street flow. While  
8 previously, due to the condition of the crossing, they had  
9 -- most the traffic had crawled across. There is a certain  
10 small percentage no matter how good the crossing, they slow  
11 down. But that percentage goes up as the condition of the  
12 crossing worsens and deteriorates as some of these.

13          Q    Hasn't PennDOT taught us it's a safe driving  
14 practice to slow down when approaching a railroad crossing?

15          A    The vehicle code states that you are only to pass  
16 a railroad crossing when it is safe. As a common driving  
17 practice, when you have automatic signals at a crossing,  
18 people depend upon those signals working.

19          And it's also the fact that Conrail does an excellent  
20 job of maintaining signals in most places that they have  
21 faith in those signals, and they drive through. The  
22 crossing surface becomes the next obstacle. And you think  
23 that would be full of potholes, and you slow down. But  
24 these crossing, with the exception of Willow Street and  
25 State Drive, are signalized. And people depend upon those

1 to be functional.

2 MR. DIETTERICK: No further questions. Thank you.

3 JUDGE COHEN: Redirect?

4 MS. D'ALFONSO: No, thank you Your Honor. Thank you  
5 Mr. Britcher.

6 MR. EATON: Let me ask one question.

7 BY MR. EATON:

8 Q Mr. Britcher, are you familiar with the statement  
9 or an adage; stop, look and listen in connection with the  
10 approach to a rail crossing?

11 MS. D'ALFONSO: Objection, Your Honor. I think that's  
12 before you cross the street.

13 BY MR. EATON:

14 Q Yes or no?

15 A That used to be a sign that was placed on  
16 railroads in the distant, dark past that I remember.

17 JUDGE COHEN: When you were a patrol boy.

18 THE WITNESS: I was never one of those. I was just  
19 sitting in the car with my one of my relatives driving by  
20 there, and there it is; stop, look and listen. And we fly  
21 through the crossing like everybody else I hate to say.

22 MR. EATON: This question doesn't count. Do you  
23 recommend that?

24 JUDGE COHEN: Thank you. Off the record.

25 (Off the record.)

1 MR. WEISS: If it please the Court, the City of  
2 Lebanon calls Ed Kener.

3 ED KENER, called as a witness, having been duly sworn,  
4 was examined and testified as follows:

5 JUDGE COHEN: Please spell your last name.

6 THE WITNESS: K-e-n-e-r.

7 DIRECT EXAMINATION

8 BY MR. WEISS:

9 Q How are you employed?

10 A Employed by the City of Lebanon.

11 Q In what capacity?

12 A I'm a public works director, City engineer.

13 Q And as City engineer, what is your educational  
14 background?

15 A I have a BS in civil engineering. And I'm a  
16 registered professional engineer in the State of  
17 Pennsylvania and a licensed surveyor in the State of  
18 Pennsylvania.

19 Q And how long have you had those credentials?

20 A My BS was in 1962. The professional engineers  
21 certificate was in 1966, licensed surveyor in 1981.

22 Q And how long have you been the City engineer?

23 A Thirty-one years.

24 Q And how long have you worked for the City in  
25 total?

1           A    It will be 35 years next week.

2           Q    Now, in that capacity, are you generally in charge  
3 of all of the roads and highways in the City of Lebanon?

4           A    The department in the public works is highways and  
5 track.

6           Q    And are you familiar with the crossings that are  
7 the subject of this hearing today?

8           A    I am.

9           Q    Now, referencing what has been identified as City  
10 of Lebanon Exhibit Number 1, which is behind you, I'm going  
11 to give you the same pictures with the Court's permission  
12 that Mr. Britcher testified from which are smaller pictures.  
13 Were those pictures taken at your expressed direction and  
14 under your supervision?

15          A    They were.

16          Q    And did someone in your department actually take  
17 those?

18          A    They did.

19          Q    And the exhibit indicates that those pictures were  
20 taken on July 2nd, 1997. Is that correct?

21          A    That's correct.

22          Q    And at the time, those pictures were taken -- were  
23 you -- did you -- were you familiar with the condition of  
24 these crossings personally?

25          A    I was.

1 Q And all of these pictures accurately depicted the  
2 conditions of the crossings on or about the date those  
3 pictures were taken?

4 A They do.

5 Q And do they, to the best of your knowledge,  
6 continue to this day to accurately and materially reflect  
7 the conditions of those crossings today?

8 A They do.

9 Q Now, starting with the first of those pictures,  
10 Mr. Kener, and directing your attention the questions the  
11 City is required to develop here, let's take -- again,  
12 proceeding from the north to the south on the subject line  
13 --

14 MR. EATON: Your Honor, I think we might save a couple  
15 of minutes of time with respect to Willow Street. Conrail  
16 will agree to repair the Willow Street crossing as necessary  
17 to make the highway condition satisfactory. And I don't  
18 think there has been difficulty in agreeing with the City of  
19 Lebanon as to what that condition is to be.

20 MR. WEISS: If that's the case, we needn't go into  
21 that any further.

22 MR. EATON: I think we can skip Willow Street. My  
23 witness will say that Conrail will agree to repair the  
24 Willow Street crossing to bring it up to an acceptable  
25 standard.

1 JUDGE COHEN: Thank you.

2 BY MR. WEISS:

3 Q Directing your attention to the Cumberland Street  
4 crossing, it's Number 2 on the large exhibit, would you  
5 indicate what that picture depicts?

6 A It's a picture run along the rail line crossing  
7 Cumberland Street. And it shows basically where the  
8 rubberized crossing was removed and an asphalt paving,  
9 temporary construction, was done a year and a half ago.

10 Q Okay. Who did that reconstruction, if you know?

11 A I think it was a private contractor hired by  
12 Conrail.

13 Q And what, in your opinion, makes this crossing  
14 hazardous, if it is hazardous?

15 A It is very high speed. It is a very high volume  
16 route. I think there is 24,000 vehicles a day on that  
17 route. The speed limit, by the way, is 25 miles an hour.  
18 And it is not in the best shape. The rails are high. And  
19 the job that was put in there by the contractor for Conrail  
20 was only a temporary job. So it wasn't something that was  
21 done permanent. The ties were not replaced. And we expect  
22 it to continue to deteriorate.

23 Q These pictures were taken in July. Is that  
24 correct?

25 A July 2nd.

1 Q Was July dry?

2 A I think so.

3 Q Has the City experienced greater difficulties with  
4 these -- all of these crossing in time of bad weather,  
5 especially in the winter?

6 A Wet whether or winter conditions are always worse  
7 for a crossing. That's mainly the time they are going to  
8 deteriorate.

9 Q When you heard Mr. Britcher testify that the  
10 asphalt would not -- the patching would not stay in place  
11 for a long period of time over the wood, when is that most  
12 likely to deteriorate?

13 A Probably worst condition is freezing, thawing, and  
14 freezing in the winter.

15 Q Is that also one of the times of the year when  
16 driving is generally more hazardous?

17 A I would say so,

18 Q Does the condition of these crossings in the  
19 winter time make -- when there is snow, ice and freezing --  
20 make an already hazardous driving circumstance even more so?

21 A I would agree to that.

22 Q Now, as to Cumberland Street, what, in your  
23 opinion, should be done to improve the safety of this  
24 crossing?

25 A If the line is going to be abandoned, not used, my

1 recommendation would be that it would be -- the rails and  
2 the ties would be removed; and it would be reconstructed.

3 Q And, if for some reason it was going to be kept in  
4 service, then what would be necessary?

5 A The crossing would be rehabilitated with new ties  
6 and parallel rails -- I'm not sure what you call those --  
7 and paved.

8 Q Would it need to be rubberized as Mr. Britcher  
9 indicated?

10 A We would expect, since we paid 10 percent of that  
11 cost, that would have a high surface rubberized crossing.

12 Q Turning to Chestnut Street, which is Exhibit 3 on  
13 the City's Exhibit 1 -- on the third page I should say --  
14 there is two Chestnut Street crossings. Is that correct?

15 A One was a siding at one time into ALCOA. I'm  
16 sorry, into Agway. And it's still used by the railroad  
17 company for their troop train or whatever it's called. And  
18 the other one is a main line of the Cornwall track.

19 Q And what are the conditions of both of those  
20 Chestnut Street crossings?

21 A Very deteriorated, timbers are rotting. There is  
22 potholes in them. And what patching you see on any of those  
23 crossings, was not done by Conrail. It was done by the City  
24 of Lebanon.

25 Q Why did the City of Lebanon have to do that?

1           A    After trying on numerous occasions to get Conrail  
2   to maintain their crossing, we decided that the complaints  
3   we were getting, we would go out and do it ourself.

4           Q    Had you not done that would the condition of these  
5   crossing be even more hazardous?

6           A    Much worse.

7           Q    Will these crossings require continued patching by  
8   the City of Lebanon to keep them even in a marginal  
9   condition of safety?

10          A    Our crews are instructed when they go out and find  
11   a pothole that they patch it up.

12          Q    Is that a regular and reoccurring event?

13          A    Continuously. And we are not doing the best job  
14   for that crossing. It's only a patch. It only lasts so  
15   long, and it kicks right out. But it's better than it was.

16          Q    Are these -- in your opinion, are both of these  
17   crossings, Chestnut Street crossings, hazardous?

18          A    At the speed limit, I would not want to go over  
19   them at this speed.

20          Q    Just for the record, are all of these crossings  
21   governed by a 25 mile an hour speed limit?

22          A    Yes.

23          Q    Every one in the City is 25 miles an hour?

24          A    Every one.

25          Q    What needs to be done in order to improve the

1 safety of the Chestnut Street crossing?

2 A To stay in service, rehabilitate it; new ties, new  
3 paving surface. If it's to be abandoned, the rails and ties  
4 removed and reconstructed.

5 Q Turn now to Walnut Street, the Walnut Street  
6 crossing. What is the condition of that crossing?

7 A There is potholes, the rails with down  
8 approximately three inches from the surface on either side.  
9 So it is a dip going over the tracks. And it's probably one  
10 of the worst ones of all that we are talking about.

11 Q Is it hazardous to traffic at 25 mile an hour?

12 A Definitely.

13 Q Has there been any patching done there by the  
14 City?

15 A Yes.

16 Q Is that patching reflected in between the rails?  
17 Is that patching?

18 A Well, on the left-hand side of that left rail and  
19 some on the right-hand side of the westbound, you can see  
20 some patching.

21 Q Okay. And what needs to be done with that  
22 crossing in order to improve its safety?

23 A Same as Chestnut Street.

24 Q Turn now to the South 12th Street crossing. What  
25 is the condition of that crossing?

1           A    There is potholes, guard logs are all rotted out  
2 on a number of these crossings, guard rails were flopping  
3 around and causing damage to vehicles. After trying to have  
4 Conrail do some maintenance on them, we gave up and went out  
5 and removed them or pinned them down the best we could  
6 ourself. And you can see in the roadway, did some paving.

7           Q    Is that a continuing problem, reoccurring problem  
8 that occurs requiring attention?

9           A    On all of them.

10          Q    On all of them?

11          A    Yes.

12          Q    Again, what needs to be done in order to improve  
13 the safety of the 12th Street, South 12th Street?

14          A    Same as Chestnut Street.

15          Q    Turn to South 10th Street.

16          A    Same condition as 12th; rotted timbers, potholes.  
17 You can see where some of the patching was done by the City  
18 and some of the rails that are down the patching was right  
19 over the rails.

20          Q    And is this intersection or this crossing also  
21 hazardous to traffic traveling at 25 miles an hour?

22          A    This crossing has approximately 10,600 vehicles a  
23 day go over it. And 25 miles an hour, in my opinion, is  
24 hazardous.

25          Q    Does this traffic included significant truck

1 traffic as well on 10th Street?

2 A I would say maybe between 10 and 15 percent is  
3 truck traffic.

4 Q Is that because it is a state highway?

5 A Yes.

6 Q And Route 71 South is one way, is it not?

7 A Correct.

8 Q What needs to be done in order to improve the  
9 safety of this crossing?

10 A Same as Chestnut Street.

11 Q Ninth Street, is the 9th Street, South 9th Street  
12 crossing, is that Route 72 North?

13 A That's 72 North, and 10,500 vehicles a day. The  
14 same condition as 10th Street. You can see where patching  
15 was done. And, of course, some of the guard logs are  
16 rotted, deteriorated and causing pot holes. And this is one  
17 where one of the guard logs was bouncing up and down seven,  
18 eight, nine inches every time a car went over it. And we  
19 went out -- after trying to get it repaired, went out and  
20 removed it. And then patched it.

21 Q Actually, the patching here, as Mr. Britcher  
22 pointed out, appears to actually gone over the tracks in  
23 some cases.

24 A The rails --

25 Q Is that because the rails have sunken?

1 A Correct.

2 Q And does this crossing require continued vigilance  
3 and maintenance by the City?

4 A Same as the rest.

5 Q What needs to be done in order to make this one  
6 safe?

7 A Same as Chestnut Street.

8 Q South 8th Street, what is the condition of this  
9 crossing?

10 A Basically, the same as the rest of them. The ties  
11 and the logs are rotting. You can see the patching that we  
12 done, very little of the logs that are left in the roadway.  
13 And they were -- the rails are patched over to meet the  
14 profile of the street.

15 Q And you've been employed by the City for over 30  
16 years. Do you recall when the last time Conrail or any of  
17 its predecessors reconstructed or refurbished any of these  
18 crossings?

19 A There was never -- other than the Cumberland  
20 Street crossing, I don't recall any rehabilitation work or  
21 any work on these crossings while I was employed by the  
22 City.

23 Q Lastly, the State Drive crossing, while it's not  
24 in the City, just since you are here, would you agree with  
25 Mr. Britcher's representation regarding condition of that

1 crossing?

2 A Basically, yes.

3 MR. WEISS: May I approach the witness?

4 JUDGE COHEN: (No audible response.)

5 BY MR. WEISS:

6 Q You indicated for some of the crossings in the  
7 City track counts. Is that correct?

8 A Yes.

9 Q And I want to offer this as an exercise in  
10 acrobatics. I want to mark this City of Lebanon's Exhibit  
11 2. Now this is a combined exhibit which has been reduced in  
12 everyone's packet. But what information does this exhibit,  
13 City of Lebanon Exhibit Number 2, included for each of these  
14 crossings?

15 A Each crossing, it indicates the width of the  
16 street in red, the width of the sidewalks on either side of  
17 the rails, the percent grade approaching from either side of  
18 the railroad, and the angle that is created between the  
19 railroad and the street center line. And each one also has  
20 the average daily traffic count on each street.

21 (Whereupon, City of Lebanon Exhibit 2 of produced and  
22 marked for identification.)

23 BY MR. WEISS:

24 Q Was this prepared by your office?

25 A Under my direction.

1 Q Under your direction and supervision. Is it  
2 accurate and complete to the best of your knowledge,  
3 information and belief?

4 A As far as I know, yes.

5 Q Just generally to add to what you testified to and  
6 also what is contained in the information contained on the  
7 Exhibit Number 2, do you have any knowledge of any  
8 pedestrian traffic on the Cumberland Street crossing?

9 A I don't have any counts of any pedestrian traffic  
10 on any of the crossings. I would say the two crossing that  
11 have most pedestrian traffic is Cumberland Street and  
12 Chestnut Street, particularly Chestnut Street where there is  
13 a high school to the west of the crossing. And all the  
14 students cross that that walk to school. They have no bus  
15 service.

16 Q With respect to the intersections that have the  
17 most volume of truck traffic, the crossing that has the most  
18 truck traffic, what would those included?

19 A It would be Cumberland Street, 9th and 10th.

20 Q Now, with respect to all of these crossings, are  
21 they crossings that are used by school buses?

22 A I would say 9th, 10th and Cumberland are used by  
23 school buses. There may be some handicapped buses that go  
24 to Catholic high school that use Chestnut Street.

25 Q These crossings are utilize by City school

1 children and buses carrying them for the City of Lebanon  
2 High School?

3 A Yes. Some would use possibly 8th Street. The  
4 public transportation buses probably use all of these  
5 crossings.

6 Q Okay. Can you think of any other vehicular  
7 traffic that would be required to stop at these  
8 intersections other than the Colt buses -- and they are here  
9 to testify with respect to their problem in that regard --  
10 and school buses?

11 A Tank trucks, hazardous waist material, oil, fuel  
12 oil trucks.

13 Q All of those are required to stop?

14 A Correct.

15 Q Does that have an adverse impact on the flow of  
16 traffic in the City of Lebanon?

17 MR. EATON: Again, Your Honor, perhaps we can shorten  
18 the proceeding. I cannot speak for Corman, but so far as  
19 Conrail is concerned, these crossings may all be suspended  
20 pending resumption of rail traffic or the determination that  
21 the line is to be retired.

22 JUDGE COHEN: But he can't go on that information.

23 MR. WEISS: Yeah. If we had some bacon, we could have  
24 some bacon and eggs if we had some eggs. But we need to get  
25 the determination that this will be done in the near future.

1 JUDGE COHEN: We have to make a record.

2 MR. EATON: I understand that. If the problem is that  
3 of emergency vehicles or other vehicles having to stop at  
4 these crossings, there is a complaint here seeking that the  
5 crossings be suspended. We don't oppose that.

6 I don't know that there is any record needed beyond  
7 the fact that Conrail's willing that they be suspended. All  
8 it requires is an order of the Commission the crossings  
9 would be suspended and the crossing indicia removed on a  
10 temporary basis subject to reinstatement at such future time  
11 on application.

12 MR. WEISS: That may mitigate the concerns for the  
13 traffic that has to stop. The City is concerned for all  
14 traffic that goes over these. And the City's position is  
15 very simple that Conrail has indicated their intention to  
16 abandon this line.

17 The ICC has granted that request. And we want these  
18 removed and put at grade. That's all we want. So if  
19 Conrail is willing to do that, then we don't need to go much  
20 further.

21 MR. EATON: His understanding doesn't go far enough.  
22 It should include the fact that Conrail has negotiation of  
23 the sale of the line that potentially the line will be  
24 reactivated by another rail company.

25 MR. WEISS: They can put that on their case. For

1 right now, the reality is Conrail owns it. And I even bring  
2 up question of whether Corman really has any standing in  
3 these proceeding.

4 MR. SHEFFEY: It was the County of Lebanon Transit  
5 Authority did asked for the suspension. Our purposes,  
6 primary purposes, while agreeing with the other request of  
7 relief, is to get a situation where our vehicles no longer  
8 have to stop at the crossings.

9 And if Conrail is willing to enter into an agreement  
10 with us for this to be able occur in the very prompt future,  
11 we are, on behalf of Colt, agreeable to have that happen.  
12 Our primary purpose here is to work out a system where we  
13 don't have continue to have hazardous traffic problems by  
14 our buses stopping at these crossings.

15 JUDGE COHEN: Perhaps you gentlemen ought to get  
16 together today and work out some type of stipulation or  
17 settlement.

18 MR. EATON: Well, I mentioned to the one of counsel  
19 earlier that it's quite possible this entire proceeding is  
20 unnecessary if we had a few moments where we could talk  
21 about what needs done here.

22 I don't question -- Conrail doesn't question that the  
23 crossings are in a condition which is less than perfect.  
24 Something ought to be done. Whether the crossings ought to  
25 be removed or the crossings ought to be repaired or restored

1 in some fashion is dependent on whether the rail line is  
2 going to continue to operate. We don't know that yet.

3 And any decision as to whether the line -- the  
4 crossings come out or are repaired, it seems to me, would  
5 reasonably be deferred pending a decision as to what the  
6 future of that line is. If there is any emergency  
7 condition, if there is an emergency safety problem that  
8 needs to be addressed immediately, that is a little  
9 different issue.

10 But so far as eliminating the need for certain  
11 vehicles to stop at these crossings, we are perfectly  
12 willing for that be done. We plan to go ahead and repair  
13 that crossing which continues to be an active crossing for  
14 Conrail at Willow Street.

15 And on the others, it is a question of what the future  
16 holds. There is no agreement with Corman as yet. And we  
17 cannot predict how Corman will treat this line. And they  
18 may not know themselves. But if we --

19 JUDGE COHEN: These people have the same problem.  
20 There is no guarantee of that.

21 MR. EATON: You'll see that much of what needs to be  
22 decided is dependant, very much so, on circumstances that  
23 are presently unknown. And if we could reach some agreement  
24 here as to how this can be handled on an interim basis to  
25 avoid the problems that are troubling others, then, perhaps,

1 we can defer this.

2 We expect some agreement will signed with Corman, if  
3 at all, before the end of September. And at that time,  
4 Corman will have had to decide, I would think, what the  
5 future of the line is. At that time, they will have a fact  
6 which should be determinative as to whether these crossings  
7 come out or whether they are to be restored.

8 JUDGE COHEN: I certainly want to hear what Corman's  
9 qualifications are. In just an ordinary limousine,  
10 regulatory authority has been cut away from most  
11 constructing. We still have to determine the fitness,  
12 technical and financial ability to operate the proposed  
13 service, the same thing I would want to know in Corman's  
14 situation; are they financially fit to operate the line if  
15 it's going to be operated, technically qualified to do so,  
16 so forth and so forth.

17 MR. DIETTERICK: Corman is an operating railroad in  
18 Pennsylvania. They do have several operating lines in  
19 Pennsylvania at this time.

20 JUDGE COHEN: Where?

21 MR. DIETTERICK: Clearfield is one, Allentown line.

22 MR. EATON: I guess it's called the Snow Shoe Cluster,  
23 but it's up in that area.

24 JUDGE COHEN: I certainly want Corman to answer the  
25 question. I think we should make a record so that if things

1 fall apart, we don't have to come back and do it all over  
2 again. I certainly have no objection to -- I can't stay  
3 because I have to go over and get that key. But you can  
4 certainly stay after today's hearing and --

5 MR. EATON: I interrupted this process at this moment  
6 principally because of the question of the necessity for  
7 buses and flammable vehicles to stop for these crossings.  
8 And we are perfectly willing -- without knowing into much  
9 more factual material on that issue, we are perfectly  
10 willing to agree that those crossings may be suspended.

11 MR. WEISS: Legally that means they don't have to  
12 stop. But as a practical matter, if they don't want to jar  
13 their passengers' teeth out, they are still going to have to  
14 stop if they are not taken out or reconstructed.

15 MR. EATON: We can spend as much time as you want on  
16 that issue.

17 MR. WEISS: With Your Honors's permission, we will go  
18 ahead. We will continue.

19 BY MR. WEISS:

20 Q Mr. Kener, the City was requested in the questions  
21 and procedures from the PUC to indicate whether it had any  
22 knowledge of accidents involving trains or motor vehicles at  
23 any of these crossings within the past five years. To the  
24 best of your knowledge, have there been any?

25 A We don't have any reportable.

1 Q Does the City normally keep records like that?

2 A I think PennDOT does and forwards them to our  
3 police department.

4 Q So if PennDOT didn't have them, you wouldn't  
5 either?

6 A No.

7 Q Do you have any reason to doubt Ray Britcher's  
8 testimony that he was unaware of any in the City?  
9 Apparently, there was in South Lebanon Township.

10 A I'm unaware.

11 Q Has the City, however, received any complaints  
12 from the traveling public with respect to these crossings?

13 A Numerous complaints.

14 Q Over what period of time has that occurred?

15 A Last 25 years.

16 Q And has the volume of complaints increased or  
17 decreased in the last five years?

18 A About the same.

19 MR. EATON: Didn't hear that.

20 THE WITNESS: About the same.

21 JUDGE COHEN: Can you quantified your complaints, more  
22 than 10 a year?

23 BY MR. WEISS:

24 Q Approximately how many do you receive a year?

25 A Me, personally, 10, 15, 20 a year in that area.

1 Q Anybody else in your office?

2 A The Mayor is always continuously asking, can we  
3 get something done. I know she is receiving complaints.  
4 And the other departments are. We do not keep records of  
5 complaints that are not our responsibility. So I can't give  
6 you an exact amount. If it's our responsibility, we keep  
7 records; and we forward them to our departments. And they  
8 respond to that and send a copy back to us.

9 Q Mr. Kener, if these crossings, with the exception  
10 of Willow Street -- there will be seven crossings that are  
11 in the City not including Willow Street -- if they were to  
12 be removed even temporarily removed and paved at grade, what  
13 would be reasonably required to remove them? And if you  
14 know, what would the approximate cost of that be?

15 A I would say that the road surface would be sawed.  
16 All the rails and ties would have to be removed. And street  
17 construction be done between the saw cuts and just seal  
18 them, my estimate for the seven are in the area of between  
19 70 and \$75,000.00.

20 Q Total?

21 A Total.

22 Q So approximately \$10,000.00 a piece?

23 A Average, yeah.

24 Q And how does that compare with the cost of  
25 reconstruction of these crossings?

1           A    I'm not a railroad engineer.  I can't testify to  
2   that.

3           Q    But you are an engineer.  Is that substantially  
4   less?

5           A    This would be a lot less.

6           Q    Would that make these crossings safe to the  
7   motoring public at 25 miles an hour?

8           A    I would think so, yes.

9           Q    How long would it reasonably take to accomplish  
10  the removal and construction if these crossings were  
11  removed, approximately how long would that take?

12          JUDGE COHEN:  For all seven?

13          MR. WEISS:  All seven.

14          THE WITNESS:  I would think that each crossing would  
15  take somewhere between 5 and 10 days.  So it would be a  
16  couple months.

17          BY MR. WEISS:

18                Q    And in order to prepare the plans, the specs and  
19  mobilize, what would a reasonable time frame be to allow  
20  Conrail or a subcontractor of Conrail to do this work from  
21  beginning to end?

22                A    I think it depends on the amount of personnel they  
23  put on the job and the equipment they put on the job.  If  
24  they were going to do each one individually, I think  
25  probably two months.  If they put more than one crew on,

1 that would cut that time too.

2 Q Would it be done before the end of the  
3 construction year?

4 A If they wanted to and they assigned a main party  
5 to do it.

6 Q Is preferable not to do paving at certain times of  
7 the year?

8 A I would say after November 1st you have a paving  
9 problem.

10 Q And then it couldn't be done until --

11 A April.

12 Q From November to April is, generally, not  
13 considered to be in the best paving weather?

14 A Right.

15 MR. WEISS: Those are all the questions I have.

16 CROSS EXAMINATION

17 BY MR. KILGORE:

18 Q Are you familiar with the Lincoln Avenue crossing?

19 A Somewhat, not real familiar.

20 Q Would your cost estimates and time to reconstruct  
21 be similar to those that are in the City?

22 A I think they would be a little bit less than  
23 Lincoln Avenue than the ones in the City. They are not as  
24 wide. So I think the cost would be somewhat less. And the  
25 time to do it would be a little less.

1 MR. KILGORE: Thank you.

2 MR. SHEFFEY: No questions.

3 BY MR. SALAPA:

4 Q Mr. Kener, you indicated in your testimony at  
5 several of these crossings -- I have noted down here in  
6 particular at South 12th Street and South 9th Street -- that  
7 the guard timbers were actually moving up and down?

8 A Yes.

9 Q And you indicated that the City tried to refasten  
10 them. Is that correct?

11 A I think that was unsuccessful. And I think  
12 eventually they broke off or we cut them off and repatched  
13 it. This was after the rail service was discontinued.

14 Q So is one of the reasons why the City paved over  
15 the guard timbers to hold them in place?

16 A They were settling, and there were potholes. So  
17 it was just the condition of them.

18 Q And is it your opinion as a professional engineer  
19 that these, in particular, the timber crossings are not  
20 capable of being repaired any further, they have to be  
21 replaced?

22 A Oh, yeah. I think they have to be replaced with  
23 new. Probably all the ties are rotted out, and they would  
24 have to be replaced if it's to be used.

25 Q And you had also indicated that at some of these

1 crossings, the rails were lower than the profile of the  
2 roadway?

3 A Right.

4 Q In your opinion, would that be caused in part by  
5 the ties holding the rails deteriorating and rotting?

6 A Correct.

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

8 JUDGE COHEN: Ms. D'Alfonso.

9 MS. D'ALFONSO: Thank you, Your Honor.

10 BY MS. D'ALFONSO:

11 Q If the Commission were to order rail facilities to  
12 be removed as you just discussed, is the City of Lebanon --  
13 strike that. Will the City of Lebanon deal with the  
14 advanced warning signs if any?

15 A We don't see any problem in doing that.

16 Q If there are any payment markings --

17 A Again, we have no problem in doing that.

18 Q You had an estimate for the crossings within the  
19 City of Lebanon, would your estimate kind of be on the mark  
20 for State Drive crossing, about \$10,000.00?

21 A I think.

22 Q In the ball park?

23 A Uh-huh.

24 MS. D'ALFONSO: I have no further questions.

25 BY MR. EATON:

1 Q I understand that there has been no reportable  
2 motor vehicle accidents at these various crossing. Is that  
3 your testimony?

4 A To my knowledge, that's correct.

5 Q Have you knowledge of any accidents or property  
6 damage at any of these crossings outside of the reportable  
7 type?

8 A Yes.

9 Q And will you tell us what those incidents were to  
10 the extent that you know them?

11 A One that comes to my mind immediately is on the  
12 9th Street crossing. The guard -- the tie parallel to the  
13 rail was flopping around and bouncing up and knocked a  
14 muffler off of a car. Another incident on the same crossing  
15 is that same tie flopped up and punched a hole through a gas  
16 tank of a vehicle. Those are two calls that I received.

17 Q And both of these are simply incidents that were  
18 reported to you?

19 A Correct.

20 Q And you have no independent means of knowing  
21 whether the incident reported actually occurred?

22 A I do know the report of the muffler, knocking the  
23 muffler off, I have knowledge of that because he called me  
24 immediately when it happened. And I went over and looked at  
25 it. And the muffler was laying on the ground. I could see

1 the tie was bouncing up and down on all the cars that were  
2 going across.

3 Q This was located at the crossing?

4 A At the crossing.

5 Q You testified earlier there has been numerous  
6 complaints from the traveling public. Were those two  
7 complaints among those that you have referenced?

8 A Yes.

9 Q The other complaints that you received were oral  
10 or written?

11 A Oral.

12 Q Have you received written complaints?

13 A The only thing that would resemble a written  
14 complaint, there were a couple articles in the local  
15 newspaper on the condition of the crossings that I recall  
16 reading. I have not received any written complaints into my  
17 office. They were all telephone calls, personal visits by  
18 the public coming in.

19 Q What were the nature of the conditions that they  
20 complaining of?

21 A The condition of the rail, the potholes, the  
22 condition of the flopping.

23 Q Generally, that the crossings are rough?

24 A Correct.

25 Q And is that a fair summary of all the complaints,

1 that the crossings are rough?

2 A Basically, yes.

3 Q With the exception of two that you've been  
4 specific?

5 A I'm sorry, yes.

6 Q Do you have any knowledge as to the intentions of  
7 Conrail or Corman concerning the future use of this rail  
8 line?

9 A None whatsoever.

10 Q Would you agree with me that if the rail line is  
11 to be reactivated then mere removal of the crossing is not a  
12 practical solution?

13 A If there is a guarantee that the rail would be  
14 activated, then the crossings would have be rehabilitated.  
15 And I would assume that they wouldn't be removed at that  
16 point. But I want some assurance that they have customers  
17 on that line and that it's definitely going to be  
18 reactivated.

19 MR. EATON: That's all.

20 JUDGE COHEN: Mr. Dietterick.

21 MR. DIETTERICK: No question.

22 JUDGE COHEN: Any redirect.

23 MR. WEISS: I would offer City Exhibits 1 and 2.

24 JUDGE COHEN: May be admitted.

25 (Whereupon, City of Lebanon Exhibits 1 and 2 were  
admitted.)

1 JUDGE COHEN: Off the record.

2 (Off the record.)

3 JUDGE COHEN: We will stand adjourned until 1:30.

4 (A lunch recess was taken from 12:15 p.m.  
5 to 1:30 p.m.)

6 JUDGE COHEN: Back on the record.

7 MR. WEISS: I don't recall formally closing, Your  
8 Honor, but the City wants to be assured -- I understand --  
9 it's my understanding that Conrail will be incorporating the  
10 proceeding before the Interstate Commerce Commission into  
11 the record.

12 MR. EATON: I'm prepared to produced as exhibits  
13 Conrail's petition to the Commission and the STB order  
14 resulting from that.

15 MR. WEISS: As well as incorporating in the  
16 environmental and historic report.

17 MR. EATON: Whatever is attached to the original  
18 notice.

19 MR. WEISS: As long as that's going to happen, that's  
20 all I care.

21 MR. EATON: I don't propose to incorporate it as part  
22 of this proceeding, but merely to identified as an item of  
23 evidence to be considered by the ALJ in resolving what to do  
24 here.

25 MR. WEISS: I'm not sure what that distinction means.

1 I would like to make sure it's in evidence as an exhibit.

2 JUDGE COHEN: You will produced it as an exhibit?

3 MR. EATON: I'm going to introduce it as an exhibit,  
4 that's correct. But I'm not going to reallege and adopt  
5 anything.

6 JUDGE COHEN: Mr. Kilgore.

7 MR. KILGORE: I call Curt Kulp.

8 JUDGE COHEN: Good afternoon, sir.

9 CURTIS KULP, called as a witness, having been duly  
10 sworn, was examined and testified as follows:

11 JUDGE COHEN: State your full name and spell your  
12 last.

13 THE WITNESS: Curtis Kulp, K-u-l-p.

14 DIRECT EXAMINATION

15 BY MR. KILGORE:

16 Q By whom are you employed?

17 A South Lebanon Township.

18 Q What capacity?

19 A I'm the township manager.

20 Q And as township manager, you oversee the road  
21 supervision?

22 A Yes, I do.

23 Q And how long have you been so employed by the  
24 township as manager?

25 A Going on 13 years.

1 Q With the same township?

2 A Yes.

3 Q And what is your educational background?

4 A I have a BA from the University of West Virginia.

5 Q Mr. Kulp, are you familiar with the spur that we  
6 are concerned about here today that goes over Lincoln Avenue  
7 in South Lebanon Township?

8 A Yes, I am.

9 Q Have you personally inspected that spur line?

10 A Yes, I have.

11 Q Where does the line lead?

12 A Pardon?

13 Q Where does the line terminate?

14 A It terminates at the ALCOA plant.

15 Q Does it pass over State Drive as to what was  
16 testified this morning by Ray Britcher?

17 A Yes, it does.

18 Q And Mr. Kulp, are you familiar with the  
19 photographs that are there in front of you marked South  
20 Lebanon Township 1 through 4?

21 (Whereupon, South Lebanon Township Exhibits 1 through  
22 4 was produced and marked for identification.)

23 THE WITNESS: Okay. I have four here.

24 BY MR. KILGORE:

25 Q They are marked on the back?

1 A Yes.

2 Q And you are looking at the what's been marked as  
3 South Lebanon Township Exhibit 1?

4 A Yes.

5 Q And which direction are you facing?

6 A You are looking east from that location.

7 Q So you are looking towards the ALCOA plant?

8 A That is correct.

9 JUDGE COHEN: I guess like in the other instances,  
10 when were these photographs taken?

11 THE WITNESS: They were taken -- it would have been  
12 not last week, but the week before on a Thursday. So they  
13 are approximately 12 days old.

14 BY MR. KILGORE:

15 Q At the first photograph, you can barely see a  
16 roadway. Is that Lincoln Avenue?

17 A That's correct.

18 Q Is the crossing marker there to the left --

19 A Yes. There is one to the left. The one to the  
20 right is not there. It's probably been stolen.

21 Q The crossing marker is not --

22 A Considering the rural area that's kind of out in  
23 the country, there is a problem with keeping signage there.  
24 Probably the college kids needed decorations.

25 Q And Exhibit Number 2, are you continuing to look

1 east?

2 A That is correct. That is a upshot of the road,  
3 close-up, of the road looking east.

4 Q Exhibit 3 and 4, are you looking west?

5 A That is correct. Three is the close-up of looking  
6 west and four is further back.

7 Q Now, part of your testimony here today is to enter  
8 testimony as to what, in your opinion, makes this subject  
9 crossing a hazard.

10 A In my opinion, unfortunately, the speed limit out  
11 there is not posted. So therefore, they are barreling,  
12 could be 55 miles an hour. As you see, some of the signage  
13 is missing. There is a possibility if you are doing that  
14 speed -- I know I would never try to cross this at that  
15 speed -- it would be very difficult. And if you are not  
16 familiar with this location or if you are a stranger,  
17 anything could happen.

18 Q Looking at the close-ups themselves are there  
19 indications to you that would make this hazardous to  
20 vehicular traffic?

21 A Yeah. In the last six, seven years, we recently  
22 paved Lincoln Avenue. So there is a dip there. The rails  
23 do move. In the spring time or when it's wet, you will see  
24 the mud oozing from underneath the rails. There is some  
25 potholes there as you can see along the tracks. And the

1 longer you wait, the more deterioration there is.

2 Q To your knowledge, when is the last time Conrail  
3 has upgraded this crossing?

4 A I'm not aware. I don't have no idea when they've  
5 been out there recently.

6 Q Are you aware of any accidents that have occurred  
7 as a result of this crossing?

8 A No, I'm not aware of any, any reported anyway.

9 Q Now, the highway approaches, are they in the good  
10 repair?

11 A Yes.

12 Q And you said it was repaved how many years ago?

13 A Somewhere around -- I think it's been about seven  
14 years, somewhere around seven or eight years since we've  
15 been out there.

16 Q It looks to be generally a rural setting, is that  
17 correct?

18 A That's out in the country. There is no homes.  
19 Probably the closest thing there is a couple farms a quarter  
20 to a half mile away.

21 Q What is the zone for this particular area west of  
22 the ALCOA plant?

23 A Agriculture.

24 Q And do you know how far that zoning extends? Does  
25 that extend to the Township boarder?

1           A    Yeah, closest the ALCOA property zoned industrial.  
2           And that's the only property in the industrial park.  
3           Everything else around it is agricultural.

4           Q    Are there any sidewalks or pedestrian traffic over  
5           this crossing?

6           A    No sidewalks. I would say maybe once in a while  
7           you'll have a jogger, someone out that way. But considering  
8           how rural it is, very little traffic considering how rural  
9           it is.

10          MR. KILGORE: I've mistakingly given an Exhibit 5  
11          which is a Wilhelm Avenue Exhibit. So if I could have that  
12          back, please. There will be no South Lebanon Township  
13          Exhibit Number 5.

14          BY MR. KILGORE:

15          Q    What, in your opinion, Mr. Kulp, would it take to  
16          improve this crossing?

17          A    It would just be a matter of removing that area  
18          that's considered Conrail's which I would say is  
19          approximately 12 feet, digging it out, removing the tracks,  
20          putting a base in, and paving over it.

21          Q    Would your approximation of cost be the same as  
22          that of Ray Britcher around \$10,000.00?

23          A    If I was using Township personnel, I could do it a  
24          lot cheaper than that. But somewhere -- I'm not going to  
25          dispute. I'm not an expert.

1 Q The Township does not maintain this crossing, do  
2 they?

3 A No, they do not.

4 Q They haven't patched it like it's been done in the  
5 City?

6 A I don't think so. I see in this Exhibit 3 it  
7 looks like there was some patching done there in the lower  
8 right-hand corner. That might have been done by my highway  
9 crew when we are out doing some patching, but I can't  
10 testify to that.

11 Q Are these loose stones that you see in the  
12 photograph also?

13 A Yes.

14 Q Is that the macadam coming up?

15 A Yes, that is exactly it.

16 Q Mr. Kulp, what is the rail traffic on this  
17 particular siding?

18 A As of now, there is no rail traffic.

19 Q When is the first time the Township learned that  
20 there was stoppage of rail traffic on this line?

21 A I don't know exact date. I would say sometime in  
22 1995, somewhere around there.

23 Q Did you learn of that by reason of Conrail's ICC  
24 petition?

25 A I believe it was that. I'm not quite sure. It

1 might have been through PennDOT. It might have been through  
2 ALCOA. It might have been through a letter from Conrail.  
3 I'm not sure what brought it to my attention at first.

4 Q You are familiar with Conrail's ICC abandonment of  
5 the track?

6 A Yes.

7 Q Prior to 1995, who was the only customer on that  
8 track?

9 A ALCOA.

10 Q And did you have reason to contact ALCOA --  
11 turning to Exhibit 6 -- as to their continued use of the  
12 track?

13 A Yes, I did.

14 (Whereupon, South Lebanon Township Exhibit Number 6  
15 was produced and marked for identification.)

16 BY MR. KILGORE:

17 Q This letter is generated to the Commission as a  
18 result of your conversations with ALCOA?

19 A Yes, it is.

20 Q Did you further cause discussion with ALCOA  
21 regarding their deed requirements pertaining to Conrail's  
22 removal of tracks on their land?

23 A That wasn't initiated by myself.

24 Q Exhibit 7 is a response from ALCOA -- is that  
25 correct -- regarding removal of the track on ALCOA's land?

1           A    Correct.

2                   (Whereupon, South Lebanon Township Exhibit Number 7  
3                   was produced and marked for identification.)

4   BY MR. KILGORE:

5           Q    Now, ALCOA's land starts approximately -- where is  
6           it, east?

7           A    At the spur from the Cornwall -- the Cornwall  
8           line, is that the technical name for it?

9           Q    Right. Does it start at State Drive,  
10          approximately?

11          A    No, further west.

12          Q    And Lincoln Avenue is west of State Drive,  
13          correct?

14          A    Correct.

15          Q    Are you aware of any use of the rail line since  
16          October of 1995 whatsoever?

17          A    I'm not aware of any use.

18          Q    In that, ALCOA has decided to remove tracks from  
19          their property for purposes of this line. Are you aware of  
20          any other land development in the area, being a township  
21          manager, for industrial use of that spur line?

22          A    I know, besides ALCOA, of no other potential use  
23          of rail service in that area, no.

24          Q    Does the Township want the rails either removed at  
25          grade or upgraded?

1 A Yes.

2 Q Is there any other testimony you wish to bring  
3 before the Judge today?

4 A Not really.

5 MR. KILGORE: I have no further questions. Thank you.

6 MR. SHEFFEY: I no questions.

7 MR. WEISS: Neither do I, Your Honor.

8 JUDGE COHEN: Mr. Salapa.

9 MR. SALAPA: Yes, Your Honor.

10 CROSS EXAMINATION

11 BY MR. SALAPA:

12 Q Are you, in deed, the township manager for South  
13 Lebanon Township?

14 A I'm the township manager also the  
15 secretary/treasurer.

16 Q Can you tell me, Exhibits 1 through 4 these  
17 photographs, are they fairly representative of the condition  
18 of the rail line which is located -- part of the rail line  
19 which is located in South Lebanon Township?

20 A You are talking about the complete spur?

21 Q Yes.

22 A Yes.

23 Q So as far as you know, the whole line in South  
24 Lebanon Township has weeds growing through it?

25 A Definitely, yes.

1 MR. SALAPA: That's all I have.

2 JUDGE COHEN: Ms. D'Alfonso.

3 MS. D'ALFONSO: No questions. Thank you.

4 BY MR. EATON:

5 Q Mr. Kulp, I may have missed this. You may have  
6 testified to it before. Do you have a traffic count for the  
7 traffic on this road?

8 A I did one I thought. I submitted something. My  
9 highway crew did one. It is approximately 600 per 24 hours.

10 Q Any records of accidents at this crossing?

11 A No.

12 MR. EATON: That's all.

13 JUDGE COHEN: Mr. Dietterick?

14 MR. DIETTERICK: No cross.

15 JUDGE COHEN: Any redirect?

16 MR. KILGORE: Move for Exhibits 1 through 4 and 6 and  
17 7.

18 JUDGE COHEN: May be admitted.

19 (Whereupon, South Lebanon Township Exhibits 1 through  
20 4 and 6 and 7 were admitted.)

21 MR. SHEFFEY: Your Honor, if you would, we would ask  
22 you take notice of several statutory/regulatory provisions.  
23 What we asked for is simply a suspension of several of the  
24 intersections involved this matter with the result being  
25 that our vehicles would not have to come to a complete stop.



1 Transit Authority.

2 Q And how long have you been involved with Colt as  
3 far as being a member of the board of directors?

4 A Since 1979.

5 Q And you've been in that role continuously from  
6 that time to the present?

7 A I was chairman of the board three years.

8 Q Which three years?

9 A The last three.

10 Q What does Colt do?

11 A Colt is basically a mass transit system that was  
12 established by Lebanon County.

13 Q What are the programs or major programs that Colt  
14 provides transportation services in?

15 A We have two programs. One is called the 1810  
16 which is a mass transit bus system, fixed route system  
17 throughout the County. And we also have a 203 program which  
18 is a system set up for a demand response for senior citizens  
19 and people with disabilities.

20 JUDGE COHEN: Keep your voice up, please.

21 THE WITNESS: Sure.

22 MR. EATON: It would help if you keep your voice up.  
23 I'm having trouble hearing you right here.

24 THE WITNESS: Sure. Go ahead.

25 BY MR. SHEFFEY:

1 Q You heard the testimony earlier of Mr. Kener and  
2 Mr. Britcher. What is it that Colt is asking to come out of  
3 this hearing?

4 A Colt's interest is basically stopping their  
5 vehicles daily, seven days a week at the these  
6 intersections.

7 Q And for that reason, that's the reason Colt  
8 requested merely a suspension in this case. Is that  
9 correct?

10 A That's correct.

11 MR. SHEFFEY: I have no other questions of Mr. Freed.

12 JUDGE COHEN: Mr. Kilgore?

13 MR. KILGORE: No questions

14 MR. WEISS: No questions.

15 JUDGE COHEN: Mr. Salapa?

16 MR. SALAPA: Thank you, Your Honor.

17 CROSS EXAMINATION

18 BY MR. SALAPA:

19 Q Colt's position then would be whatever the  
20 Commission orders done as long as their buses don't have to  
21 stop at the crossings anymore would be acceptable?

22 A Yes.

23 MR. SALAPA: Thank you.

24 MR. D'ALFONSO: No questions.

25 BY MR. EATON:

1 Q Mr. Freed, would Colt be willing to undertake some  
2 portion of the cost of suspending the crossings that are  
3 involved here?

4 A Colt is financed 70 percent of state and local  
5 share. We have no funding for that.

6 Q So your answer is no?

7 A No.

8 MR. EATON: That's all.

9 JUDGE COHEN: Mr. Dietterick?

10 MR. DIETTERICK: No.

11 JUDGE COHEN: Any redirect?

12 MR. SHEFFEY: No. We call Ed Martel.

13 ED MARTEL, called as a witness, having been duly  
14 sworn, was examined and testified as follows:

15 JUDGE COHEN: Spell your last name.

16 THE WITNESS: M-a-r-t-e-l.

17 DIRECT EXAMINATION

18 BY MR. SHEFFEY:

19 Q Mr. Martel, by whom are you employed?

20 A County of Lebanon Transit Authority.

21 Q In what capacity?

22 A Maintenance supervisor.

23 Q What are the duties you perform in that role?

24 A Making sure all the vehicles are maintained in a  
25 safe and orderly manner to be on the street.

1 Q You heard Mr. Freed's testimony about certain  
2 transportation programs that Colt has. Is that correct?

3 A That's correct.

4 Q And you heard him testify about the Demand and  
5 Response Program?

6 A Yes.

7 Q Can you describe the types of vehicles that Colt  
8 has that are involved with the Demand and Response Program?

9 A The Demand and Response Program are minivans,  
10 Fords, GMC's, Dodges representative of the size of our RV  
11 vehicles that you see on the street that anybody can drive.

12 Q How many of those vehicles -- what type of vehicle  
13 are they? You say they are all minivans?

14 A They are all minivans, yes.

15 Q How many passengers are they ready to carry?

16 A Depending on the van they rate from 9 to 13  
17 passenger vehicles.

18 Q And in terms of size, what are the empty weights  
19 of those vehicles?

20 A The weight of the vehicles range from 8,000 to  
21 10,500 pounds depending on the manufacturer.

22 Q How many of those vehicles does Colt have that are  
23 used in the Demand and Response Program?

24 A On a daily basis, we run between eight and nine  
25 vans depending on the response needed.

1 Q Okay. In your role, do you actually drive any of  
2 the Colt vehicles?

3 A I do drive the Colt vehicles, yes.

4 Q Do you drive the Demand and Response vehicles?

5 A Yes, sir.

6 Q Could you describe why it is that you drive the  
7 Colt Demand and Response vehicles?

8 A We do a preventative maintenance program and  
9 safety checks in our vehicles. And after they are  
10 performed, I take them on the road for a road test to make  
11 sure that they are safe and ready to be run.

12 Q And how frequently do you take these vehicles out  
13 on the road test?

14 A Our maintenance program is a 4,000 mile  
15 maintenance program which relates to be every month or two  
16 months depending on how many miles and what system it's on  
17 at the time.

18 Q So you would get each of these eight vans out on  
19 the road every month or two months as part of your  
20 preventative maintenance program, and you, yourself, would  
21 be driving them?

22 A That's correct.

23 Q What are the days that the Demand and Response  
24 Program operates?

25 A Seven days a week.

1 Q And what are the hours of the days that it  
2 operates?

3 A Monday through Friday 8 to 8, 8 a.m. to 8 p.m.  
4 program. And Saturday and Sunday it varies according to the  
5 calls for the response for the van.

6 Q Have you had a chance to review records that are  
7 available to you to determine the estimated frequency that  
8 these vans would cross the seven railroad crossings that  
9 Colt has asked about in this proceeding?

10 A Yes, I have.

11 Q And what did you find in terms of on a typical  
12 day, the number of times these vans would cross these  
13 crossings?

14 A On an average day, 71 times.

15 Q That means the van would approach the crossing,  
16 stop and then go through the crossing. Is that correct?

17 A That is correct.

18 Q And that typical day, is that a weekday?

19 A Yes, sir.

20 Q And the 71 would be the typical number for every  
21 Monday through Friday. Is that correct?

22 A Yes, sir.

23 Q Would there be times on Saturday and Sunday's  
24 also?

25 A Yes.

1 Q Do you have a records about the numbers of those?

2 A No, I do not. It varies from day to day on  
3 weekends.

4 Q Since the later part of 1995, have you observed  
5 any railroad use of these crossings?

6 A No, I haven't.

7 Q Have you made any observations in your driving  
8 about in the Colt vehicles about how passenger vehicles  
9 approach or cross at these railroad crossings?

10 A They just drive straight through. There is no --  
11 they just drive straight through.

12 Q What have you observed about the Colt vehicles  
13 approaching these crossings, the Demand Response vehicles?

14 A The Demand Response vehicles have to stop at every  
15 railroad crossing.

16 Q And do they, to your knowledge?

17 A Yes, they do.

18 Q Have you had the opportunity to observe Demand  
19 Response Colt vehicles coming to a stop and observing the  
20 traffic around them?

21 A Yes, I have.

22 Q And what have you observed?

23 A On occasion, people behind our vans, when we are  
24 coming to a stop, are not are ready for our vehicle to come  
25 to a stop because they were not expecting a stop. And they

1 are driving erratically behind them to get stopped. They  
2 are assuming the vehicles are going straight through. And  
3 I've seen vehicles go around our vehicles stopped at the  
4 railroad which is a potential for a bigger problem.

5 Q Have you been involved in an accident because the  
6 Colt vehicle stopped at the crossing?

7 A Our vehicle was stopped at the railroad crossing  
8 with its appropriate lighting lit, and we were rear-ended.

9 Q Were you involved in more than one accident that  
10 that occurred?

11 A That's the only one that I can recall at this  
12 time.

13 Q And that was with a Demand Response vehicle?

14 A Yes, sir.

15 Q Is there any frequency that you are familiar of  
16 with vehicles seeing the Colt vehicle beginning to stop and  
17 cutting around it as you described?

18 A Yes, I have.

19 Q And how frequently does that occur?

20 A I've never taken a survey, but I've seen it happen  
21 a numerous amount of times.

22 Q There is a term that we've seem to come to use  
23 pretty often such as squealing brakes. Are you familiar  
24 with what squealing of brakes might mean?

25 A Yes.

1 Q What's the frequency with which you hear squealing  
2 of brakes when a Colt vehicle, a Demand Response vehicle, at  
3 these crossings?

4 A Again, I don't have any statistic on me. But  
5 again, it's been a numerous number of times.

6 Q From a mechanical standpoint, do you have concerns  
7 about the Colt vehicles and their continuing to be required  
8 to stop at these crossings?

9 A Yes.

10 Q And would you describe those concerns?

11 A The wear and tear on the vehicle, the brake  
12 systems, the electrical systems, fuel economy. And also you  
13 get into the more times you stop the more potential there is  
14 for noise pollution, air pollution, those types of things.

15 Q What, in particular, is involved with a brake  
16 system?

17 A The brake system, premature wear of the brake pads  
18 along with the dust that they create every time you have to  
19 apply the brakes, besides the rest of the system that's  
20 being used.

21 Q And the electrical system, what is your  
22 observation there?

23 A More frequent use of light bulbs, flashers for the  
24 warning system.

25 Q And your objection involving fuel economy?

1           A    Fuel economy, if the vehicle were allowed to roll  
2 over the tracks at normal speed, the fuel economy would  
3 remain as so. But every time you have to stop the vehicle,  
4 it takes a greater amount of energy to get it started again  
5 which comes into play with fuel economy coming down and air  
6 pollution coming into a higher -- how do you say it? There  
7 is more air pollution involved because the engine goes into  
8 a rich condition and pollutes the air.

9           Q    Are there particular environmental matters that  
10 you are familiar with that occur more frequently because the  
11 Colt buses stop at these crossings?

12          A    Yes. As far as the brakes wear, they give off a  
13 dust. I cannot tell what you the compound of the dust is.  
14 But there are warning labels on our boxes of brake pads that  
15 we use on these vehicles that warn not to be breathing the  
16 material.

17          And also, on the fuel side of the issue, there are  
18 three main sources of pollution, hydrocarbons, oxide and  
19 carbon monoxide which are all pollution problems.

20          Q    And are you saying that those releases increase  
21 because of these stops?

22          A    Yes, sir.

23          Q    Now the 1810 has fixed route buses. Is that  
24 correct?

25          A    That's correct.

1 Q Is there any separate concern you have about the  
2 environmental matters that involve the 1810 buses?

3 A The 1810 buses as far as them stopping at the  
4 railroad crossings, the size of the vehicle. If a person  
5 does choose to go around it, they have no way of seeing  
6 oncoming traffic. On the pollution side of it, all our  
7 vehicles are diesel powered. And there is one particular  
8 part of the diesel, that particular matter being the black  
9 spoke you see coming from a diesel. And that is an  
10 ecological hazard also.

11 Q With those vehicles, if they wouldn't have to stop  
12 at that crossing, there would be less of that extra emission  
13 and particulates?

14 A That is correct as being able to go through the  
15 crossing.

16 MR. KILGORE: Nothing further.

17 CROSS EXAMINATION

18 BY MR. WEISS:

19 Q You are familiar, are you not, with the existing  
20 condition of the seven crossings in the City of Lebanon?

21 A Yes, I am.

22 Q If Colt was no longer required to stop at these  
23 crossings, would it be safe for Colt vehicles to drive  
24 across these crossings at the posted speed of 25 miles an  
25 hour given their condition?

1 A Yes.

2 Q It would be?

3 A Yes.

4 MR. WEISS: Thank you. That's all I have.

5 JUDGE COHEN: Mr. Salapa.

6 MR. SALAPA: No questions, Your Honor.

7 MS. D'ALFONSO: No, Your Honor.

8 MR. EATON: No questions.

9 MR. DIETTERICK: No questions.

10 JUDGE COHEN: Off the record.

11 (Off the record.)

12 MR. SHEFFEY: We would like to call William Basselgia.

13 WILLIAM BASSELGIA, called as a witness, having been  
14 duly sworn, was examined and testified as follows:

15 JUDGE COHEN: Please spell your name for the court  
16 reporter.

17 THE WITNESS: B-a-s-s-e-l-g-i-a.

18 DIRECT EXAMINATION

19 BY MR. SHEFFEY:

20 Q Mr. Basselgia, by whom are you employed?

21 A County of Lebanon Transit.

22 Q In what capacity?

23 A Lead driver.

24 Q As a lead driver, would you describe what your  
25 duties are?

1           A    I schedule the drivers.  It's my responsibility to  
2 make sure we have enough drivers to go on the rounds every  
3 day and training new drivers.

4           Q    How frequently do you actually get out and drive  
5 Colt vehicles?

6           A    Probably most the time on a daily frequency, six  
7 days a week.

8           Q    And which of the Colt types of vehicles do you  
9 drive, the 1810 or the Demand and Response?

10          A    The 1810.

11          Q    How long have you been a driver driving Colt  
12 vehicles on 1810 routes?

13          A    I've been working for Colt for 20 years.  I've  
14 been driving Colt vehicles for 14 years.

15          Q    And if you could, in just a quick thumbnail  
16 sketch, describe what the 1810 Program is.

17          A    The 1810 runs fixed routes which are routes that  
18 run on the same route on the same periods of time per day.

19          Q    How many routes are there on the fixed route  
20 program?

21          A    Approximately 15.

22          Q    And which days of the week does Colt operate that  
23 program?

24          A    Monday through Saturday.

25          Q    And on Monday through Friday, what is the number

1 of buses that are typically on the roads in the 1810  
2 Program?

3 A Basically, during the day we have six buses in the  
4 prime time. In the afternoon, Monday through Friday from 3  
5 to 5, we have seven.

6 Q How about on Saturday?

7 A Saturday we have six.

8 Q And if you would, what's the type of vehicle that  
9 Colt uses in its 1810 Program?

10 A It's a 30 foot Blue Bird Coach. It is equiped to  
11 carry 22 passengers with two wheelchairs or with no  
12 wheelchairs, 28 passengers.

13 Q What's the empty weight of one of these vehicles?

14 A I would say 25,000 pounds.

15 Q These vehicles, do they stop at the railroad  
16 crossing?

17 A Yes, sir.

18 Q With what frequently?

19 A The police department in Lebanon is very strict on  
20 that, so they stop. We have had drivers arrested.

21 Q Have you reviewed the individual 1810 Routes that  
22 cross these tracks to try to make a determination on a daily  
23 basis how many times the fixed route buses cross these seven  
24 railroad crossings?

25 A Yes, I have.

1 Q Now, I would like to take you through the  
2 different routes and ask you the number of times that they  
3 cross the tracks, okay?

4 A Yes, sir.

5 Q Does Route 1 cross these crossings?

6 A Yes.

7 Q And if you would, describe which street crossings  
8 and the frequency.

9 A Route 1 crosses South 10th Street 12 times daily,  
10 11 times on Saturday. It returns on Chestnut Street 12  
11 times daily and 11 times on Saturday.

12 Q Does Route 1-A cross at any of these crossings?

13 A Yes. Route 1-A crosses Walnut Street nine times  
14 daily, 11 times on Saturday. And it crosses 9th Street nine  
15 times daily and 11 times on Saturday.

16 Q Does Colt Route 9 cross at these crossings?

17 A Yes. Colt Route 9 crosses South 10th Street four  
18 times daily, four times on a Saturday, South 9th Street four  
19 times daily and four times on Saturday.

20 Q Does the Colt Route 9-A cross any of these  
21 crossings?

22 A Yes. Colt Route 9-A crosses South 10th four times  
23 daily, twice Saturday and South 9th Street four times daily  
24 and twice Saturday.

25 Q Does the Colt Route 14 cross these crossings?

1           A    Yes.  Colt Route 14 crosses South 9th Street four  
2 times daily, three times Saturday.

3           Q    And Route 14-A, does that cross at these crossing?

4           A    It crosses South 10th Street three times daily and  
5 twice on a Saturday.

6           Q    And the final route, Route 15, does that route  
7 cross these crossings?

8           A    Route 15 crosses Cumberland Street twice daily and  
9 Chestnut Street twice daily.  And that route does not  
10 operate on Saturday.

11          Q    Have you been able to make a calculation of the  
12 number of times the Colt 1810 buses will come to a complete  
13 stop at these railroad crossings before they cross them in  
14 the typical week of Monday through Saturday?

15          A    406 times.

16          Q    Now, you indicated that you are typically out in  
17 these buses on a daily occurrence.  Is that correct?

18          A    That's correct.

19          Q    Have you observed any railroad use of these  
20 crossings since the later part of 1995?

21          A    No, sir.

22          Q    Have you been able to observe passenger vehicles  
23 crossing these crossings?

24          A    Yes, sir.

25          Q    And what have you observed?

1           A    With respect to the buses, there is very little  
2   respect for the buses.  When you stop at the railroad  
3   crossings, the main streets are South 9th Street and South  
4   10th Street.  They are both one way streets.  When you put  
5   your four-ways on to stop, the traffic proceeds to pass you.

6           Q    How about -- you heard me ask Mr. Martel about the  
7   squealing of brakes, are you familiar with that occurring?

8           A    Yes.

9           Q    How frequently does that occur?

10          A    Very frequently.  Like I said, they are both one  
11   way streets.  And when you put your four-ways on, if there  
12   is somebody in the left lane and somebody in the right, they  
13   go out to pass you.  It happens quite frequently.

14          Q    How about being cut off, does that happen?

15          A    Very often.

16          Q    Would you describe how that happens?

17          A    On South 9th Street where we have to stop at the  
18   railroad crossing, there is a convenience store.  Their  
19   driveway might be 15th feet north of the crossing.  And we  
20   put on our four-ways and stop.  The traffic actually passes  
21   you and turns right across the front of the bus and goes  
22   into the convenience store.

23          Q    Did you observe tractor trailers operating at  
24   these crossings?

25          A    Yes.

1 Q Let's talk about the ones that are not placard and  
2 not carrying hazardous materials. What have you observed  
3 about them as they approach these crossings?

4 A They do the same thing. They move over to the  
5 left lane and go around buses on South 9th Street and South  
6 10th Street.

7 Q Do they stop for the crossings?

8 A No.

9 Q Do they slow down for the crossing?

10 A In fact, they speed up and try to pass you.

11 Q Have you developed any special habit or skill when  
12 you are driving an 1810 bus and you've got a tractor trailer  
13 behind you when you approach one of these crossings?

14 A I had an incident with a tank truck. I found out  
15 later on it was a gas truck. I heard the squealing of the  
16 brakes. And upon checking my mirrors and the left lane of  
17 traffic was full, and this guy's brakes were smoking. And I  
18 did not stop at the railroad. Rather than being rear-ended  
19 by a tank truck, I chose to go through the intersection.

20 Q So have you made it a practice to do anything with  
21 respect to tractor trailers when they are following you?

22 A I always keep a very close eye on them.

23 Q Have you observed school buses stopping at these  
24 crossings?

25 A Yes. City of Lebanon has school buses that stop,

1 and so do Cornwall Lebanon.

2 Q Have you observed where both the bus and a school  
3 bus have stopped at the same crossing at the same time?

4 A Yes, I have.

5 Q Where have you observed that?

6 A That was also on South 10th Street. In fact,  
7 there were quite a few times when -- the road is very wide  
8 there. There is no parking on either side. And I've  
9 actually experienced traffic that while the transit bus and  
10 the school bus were stopping at the railroad track, the cars  
11 would actually split the buses and go between them and  
12 continue on.

13 Q Have you observed charter buses approaching these  
14 railroad crossings?

15 A Yes.

16 Q And what did you observe as far as whether they  
17 stop or don't stop at these crossings?

18 A Most of the local bus companies we have there,  
19 them drivers normally stop. A lot of your out-of-town  
20 drivers just don't pay no heed to them.

21 Q Are you familiar with Capital Trailway buses that  
22 go through the City and across and these crossings?

23 A Yes.

24 Q What is your observation?

25 A The same with them. There is very few of the

1 drivers that are stopping.

2 Q The fuel trucks and other placard vehicles, have  
3 you made observations about whether they stop at these  
4 crossings?

5 A Your local delivery trucks are stopping. A lot of  
6 your tankers running out of state and stuff, they don't  
7 stop.

8 Q Have you been involved with any accidents?

9 A I, myself, have not been involved. We did have a  
10 bus involved with a pick up truck. The bus stopped at the  
11 railroad, looked, proceeded. And as the pick up truck was  
12 coming up, the light, which would be at the Quality Inn  
13 where 9th Street and 10th Street intersect, that turned red  
14 and the traffic was backing between the back of that line in  
15 front of the bus. And it did catch the front of the bus,  
16 which was also a hit and run accident.

17 Q Are you familiar at all with any instances where  
18 cars tried to go around a bus and got pinned under the bus  
19 or got pinned against the side of the road?

20 A At that same intersection when you are heading  
21 south on South 10th Street, when you get to that traffic  
22 light, the right lane bares off to the right and the Quentin  
23 Road which is Route 72 South. The center lane goes straight  
24 ahead, which is Cornwall Road. The left lane is a level  
25 lane to make a U-Turn at the end the park and head north on

1 9th Street.

2 When you go around the curve to the Quality Inn, you  
3 are going into a one-lane traffic pattern, where heading  
4 north on Cornwall Road it is two lanes traveling north. So  
5 when you start going around that turn and these cars are  
6 still passing you, they are on the outside of your bus.

7 When we get around to the turn to the point where they  
8 can see that now there is two lanes of traffic that are  
9 facing them and there is only one lane and the bus is  
10 already in the lane, I saw some mighty close calls happening  
11 that way at that intersection.

12 MR. SHEFFEY: No other questions.

13 MR. KILGORE: No questions.

14 MR. WEISS: No questions.

15 MR. SALAPA: No questions.

16 MS. D'ALFONSO: No questions.

17 MR. EATON: No questions.

18 MR. DIETTERICK: No questions.

19 JUDGE COHEN: Mr. Eaton

20 MR. EATON: Mark Sawyer.

21 MARK SAWYER, called as a witness, having been duly  
22 sworn, was examined and testified as follows:

23 JUDGE COHEN: Please spell your last name for the  
24 court reporter.

25 THE WITNESS: S-a-w-y-e-r.

## DIRECT EXAMINATION

1  
2 BY MR. EATON:

3 Q Spell your name.

4 A Mark, M-a-r-k, W., middle initial, Sawyer,  
5 S-a-w-y-e-r.

6 Q By whom are you employed?

7 A I'm employed by Consolidated Rail Corporation.

8 Q In what capacity are you employed?

9 A I'm my title is principal engineer for public  
10 improvements.

11 Q And in that position, what are your general  
12 duties?

13 A Basically, I try to facilitate and coordinate  
14 public improvement projects in Pennsylvania.

15 Q Do your duties included representing the railroad  
16 in connection with administrative hearings such as this one?

17 A Yes, sir.

18 Q What is your educational background?

19 A I have a Bachelors in Civil Engineering from  
20 Villanova University. And I'm a licensed professional  
21 engineer in the State of Pennsylvania.

22 Q Mr. Sawyer, have you been asked to review the  
23 status of Cornwall Industrial Track in preparation for  
24 presentation of testimony today?

25 A I've been asked to review the docket numbers and

1 the file and have done so.

2 Q In that case, I want first to address a series of  
3 questions which were addressed to you in formal questions  
4 and procedures in May of 1997 beginning with question Number  
5 6 which requires that you submit testimony as to the exact  
6 corporate name and owner and operator of the subject  
7 crossings.

8 A Consolidated Rail Corporation.

9 Q They are the owner of the rail line?

10 A We are the owner of the rail line.

11 Q Is the rail line, in fact, being operated at the  
12 present time?

13 A The rail line is not being operated.

14 Q When did it last operate?

15 A Late '95, 1995.

16 Q Is there any present negotiation with someone  
17 else?

18 JUDGE COHEN: Mr. Eaton, I don't want to interrupt  
19 you. Can you do the rest of Number 7, Who was service  
20 provided for?

21 MR. EATON: I was still looking at Number 6, but I'll  
22 go to Number 7.

23 BY MR. EATON:

24 Q Who was the last customer on that line?

25 A ALCOA's last date of service is noted in the file

1 as November 29th, 1995.

2 Q Would that then be the last day of operation on  
3 the line?

4 A For the abandoned portion, correct.

5 Q And for clarification, that abandoned portion  
6 extends from what point to what point?

7 A The abandoned portion -- the Cornwall Industrial  
8 Track is between -- the abandonment is between 0.75 and mile  
9 post 4.10 which is the end of track and the associated ALCOA  
10 track which is a spur track off of that.

11 Q And the ALCOA line is the spur line which goes  
12 south out to mile post 4.10?

13 A It goes off, I believe, it's in the south  
14 direction.

15 Q Is it correct that the -- there is no service  
16 on that spur at the present time either?

17 A That's correct.

18 Q Now going back to six, it asked about the owner  
19 and operator of the line. It's presently owned by Conrail.  
20 Are the negotiation under way to convey that line to another  
21 entity?

22 A There are several things to note. There is a  
23 merger agreement with a Norfolk Southern Combination SCX  
24 Railroad who is in the midst procuring many assets of  
25 Conrail. And this one line will eventually -- subject to

1 the STB Regulation in 1998 -- will be operating property  
2 Conrail has in Lebanon County that we will loan at that time  
3 and will be referred to Norfolk Southern Railroad. In a  
4 smaller way, Conrail and Corman are negotiating for a  
5 transfer and sale of the property to Corman.

6 Q And Corman, is that the R.J. Corman Pennsylvania  
7 Lines Incorporated?

8 A Yes, sir.

9 Q I think we have dealt with formal Questions 6 and  
10 7. Looking at Question 8, Conrail submit testimony as to  
11 whether it has file with the Surface Transportation Board to  
12 abandon this line. Has there been a petition for exemption  
13 filed with a federal entity?

14 A Yes, sir.

15 Q And that entity is the Interstate Commerce  
16 Commission, is it not?

17 A Yes, sir.

18 MR. EATON: I have here -- let me have this marked as  
19 an exhibit.

20 JUDGE COHEN: Conrail 1.

21 (Whereupon, Conrail Exhibit 1 was produced and marked  
22 for identification.)

23 MR. EATON: This will be Conrail 1, I guess. I did  
24 not premark these so --

25 BY MR. EATON:

1 Q You have Conrail Exhibit 1 before you?

2 A Yes, sir.

3 Q And just tell us very briefly for the record what  
4 that document is?

5 A This document is the petition made for the  
6 necessary regulatory approvals to abandon track. It follows  
7 the normal format and with the necessary attachments and  
8 documents and as may be related to the STB requirements.

9 MR. EATON: I'm going to have another document. I  
10 think we have three copies here marked as Conrail Exhibit  
11 Number 2.

12 (Whereupon, Conrail Exhibit Number 2 was produced and  
13 marked for identification.)

14 BY MR. EATON:

15 Q We have marked and handed to you Conrail Exhibit  
16 Number 2.

17 A I guess this is the decision here. It's the  
18 document that reflects the decision and the notice --

19 Q In fact --

20 A -- for the abandonment.

21 Q -- it is an order from the Surface Transportation  
22 Board, is it not?

23 A Yes.

24 Q And it's dated July 11th, 1996?

25 A Correct.

1 Q And refer to ordering paragraph Number 1 on page 4  
2 -- the ordering paragraph Number 3, "Subject to the  
3 condition set forth above Conrail may discontinue service,  
4 cancel tariff pertaining to the line not less than 10 days  
5 notice, salvage track and track materials consistent with  
6 the public use after the effective date." I read correctly  
7 what was said?

8 A That is correct.

9 Q Let me go back now to the formal questions that  
10 have been submitted to us. Question Number 1, "Conrail  
11 submit testimony as to its future plans with regard to this  
12 line of railroad."

13 A Basically, Conrail has plan A and a plan B. Plan  
14 A is we are actively pursuing the transfer and sale of this  
15 branch line as a live operating railroad to Corman.

16 Q R.J. Corman Company?

17 A Yes, sir. Plan B would be in the event that that  
18 does not prove successful, we will implement removal and  
19 abandonment. We will proceed on that process.

20 Q Is there a time schedule that has been established  
21 for the conclusion of negotiations with Corman?

22 A There is, I believe, a general defined date of  
23 September 30th, 1996 for us to reach -- 97 -- to reach a  
24 conclusion here with R.J. Corman.

25 Q And by reach a conclusion, do you mean a general

1 understanding; or do you mean a specific detailed contract  
2 relevant to the transfer of ownership?

3 A I would say an understanding that is pretty  
4 specific and ready to be executed, followed up with the  
5 necessity agreements.

6 Q Question Number 10 is really two questions.  
7 "Conrail submit testimony as to what work it's willing to  
8 perform should the Commission sustain these complaints or  
9 approve the application to first suspend these crossings.  
10 If the crossings are to be suspended only pending a  
11 determination as to the future use of the line, what work  
12 will Conrail undertake?"

13 A I think Conrail is not willing to perform work  
14 that doesn't allow us to proceed with either plan A or plan  
15 B. If such work facilitates our plans, either plan A to  
16 sell it or plan B to remove it, we would agree to do that  
17 work.

18 Q Among the statutory requirements for suspension,  
19 is the paving over of tracks, is Conrail willing to  
20 undertake that work?

21 A In consideration that what you're doing by  
22 suspending the track is to remove any evidence of a grade  
23 crossing and make it, de facto, a roadway, we would not  
24 agree to do such work in that the roadway crew for each of  
25 the respective streets and crossings in question should be

1 the one best to know exactly what extent of paving over they  
2 would want and to address any concerns that they may have in  
3 regards to drainage and maintenance. They should be the  
4 party to do the work.

5 Q Now, the other aspect of question Number 10,  
6 Conrail submit testimony as to what work it's willing to  
7 perform should the Commission sustain these complaints and  
8 approve the abolishment of these crossings -- order the  
9 abolishment of these crossings. What work would you be  
10 willing to undertake?

11 A Subject to an application to the PUC to abolish  
12 these crossings, Conrail will immediately proceed to remove  
13 and restore the pavement section accordingly; remove the  
14 track and restore the pavement section.

15 JUDGE COHEN: At your sole cost?

16 THE WITNESS: At our sole cost

17 BY MR. EATON:

18 Q Do you have personal knowledge as to whether  
19 Corman plans to abolish the crossings on this line should it  
20 acquire title to the line?

21 A I have no personal knowledge in regards to that.

22 Q All right. Question 11 relates to an agreement to  
23 sell the line of railroad. And I think we have responded to  
24 that. Question Number -- I guess that's the end of the  
25 questions specifically directed to Conrail.

1 JUDGE COHEN: Is there anything else you want to add,  
2 Mr. Eaton, that's not in the questions?

3 MR. EATON: Yes.

4 BY MR. EATON:

5 Q You've indicated that abandonment proceedings that  
6 are processed apply to mile post 1.1?

7 A I think I said 0.75.

8 Q 0.75 to mile post 1.41 I think it is.

9 A Correct.

10 Q Now, is there any portion -- or let me put it this  
11 way. What crossings lie within the section which has not  
12 been abandon, that is from mile post 0 to mile post .75?

13 A I stand corrected. It's 0.90 and 4.5.

14 Q What crossings exist?

15 A There is one crossing that exist.

16 Q That is in the section 0.0 to 0.9?

17 A Correct, sir. And that is Willow Street.

18 Q With respect to the complaint of the City of  
19 Lebanon relative to the reconstruction of crossings, is  
20 Conrail -- what work is Conrail willing to do with respect  
21 to reconstruction or repair of the crossing at Willow  
22 Street?

23 A Conrail is not agreeable to -- for Willow Street,  
24 sir?

25 Q Yes.

1           A    Conrail is agreeable to do any grade crossing  
2 maintenance work that may be required.

3           Q    In your judgment, can the work required at Willow  
4 Street be accomplished by repair or will reconstruction of  
5 the crossing be necessary?

6           A    Based on the photographs presented previously, it  
7 looks like that repair would be sufficient for this short  
8 duration, for a good time.  And sometime, obviously, in the  
9 future, a rehabilitation will be required.

10          Q    Now, with respect to a decision as to whether  
11 Conrail will convey this line to Corman or will remain  
12 responsible for it, when did you say that decision would be  
13 made?

14          A    September 30th, 1997.

15          Q    If a decision is made to convey the line to  
16 Corman, what is your expectation with respect to the  
17 comparative responsibilities of Conrail and Corman for any  
18 work which is required at these crossings?

19          A    Well, as the new owner, R.J. Corman will be  
20 responsible to comply with any PUC orders for repairs and  
21 also be responsible to manage their property as they see  
22 fit.

23          Q    And, generally, can you say be responsible for all  
24 crossings on the line conveyed?

25          A    That I agree to, yes.

1 Q If the conclusion is that the property is not to  
2 be conveyed to Corman, what then will Conrail undertake to  
3 do?

4 A Conrail then will implement a process for the  
5 official abolition of the crossings and subsequent removal.

6 JUDGE COHEN: Is Corman going to get notice that  
7 allegations of these crossings are in such a state of  
8 disrepair that they are going to be on notice that they have  
9 to make the repairs if the Commission so --

10 MR. EATON: Is Corman on notice?

11 JUDGE COHEN: Are you formally putting Corman on  
12 notice that there has been allegations with respect to the  
13 seven crossings that are in such a state of needing  
14 immediate maintenance?

15 MR. EATON: Corman has been present during the making  
16 of this record.

17 JUDGE COHEN: I know. But put it in writing.

18 MR. EATON: I'm not privy to all the correspondence  
19 which has occurred. But I believe Conrail has kept Corman  
20 notified of the fact of these proceedings and of the issues  
21 which are pending before you.

22 JUDGE COHEN: Certainly, counsel for Corman is here  
23 and knows the concerns.

24 MR. EATON: If there is a lack of knowledge at some  
25 point, we will be happy to supply whatever is missing.

1 JUDGE COHEN: Thank you, Mr. Eaton.

2 MR. DIETTERICK: I don't believe that they are aware  
3 since this complaint had begun. But they were notified  
4 recently, yes.

5 JUDGE COHEN: Thank you.

6 MR. EATON: I believe that's all I have.

7 JUDGE COHEN: Cross gentlemen.

8 CROSS EXAMINATION

9 BY MR. KILGORE:

10 Q Sir, if you would, put before you Conrail Exhibit  
11 2 the forth page. You had testified briefly as to paragraph  
12 three.

13 A You say Conrail Exhibit Number 2, the forth page  
14 paragraph 3?

15 Q Yes. You testified previously to paragraph 3.  
16 Paragraph 2, did Conrail receive any notice of intend to use  
17 the subject line as an interim trail use a rail banking  
18 agreement during the 180 day period of time following the  
19 decision?

20 A There is a matter regarding Rail to Trail issue  
21 that may be peripheral and may be specific. I do not know  
22 the details here other than I heard PennDOT's Ray Britcher  
23 testified that there is a six-month duration from which time  
24 is expired. And there is also reference in the application  
25 itself. That speaks for itself. But I know of no

1 specific --

2 Q The question is specific under paragraph 2 it  
3 says, "for 180 days after the effective date of this  
4 decision," in other words, you must permit any state or  
5 local government or other interested person to negotiate the  
6 acquisition of the right of way for public use.

7 A For trail use?

8 Q For any use.

9 A I think that's where R.J. Corman comes in.

10 Q They came in during that 180 period of time?

11 A They came in -- in general, the way I understand  
12 as far as I know, other than R.J. Corman, there is no other  
13 entity that came forth with any kind of proposal. R.J.  
14 Corman did come with a interest to purchase. Whether that  
15 was within the 180 days or after, I'm not sure.

16 Q Well, maybe paragraph 12 my help you. It talks  
17 about a 30 day period of time after publication that the  
18 railroad and the Board must receive offers to continue rail  
19 service. Is that where R.J. Corman came in, during that  
20 period of time?

21 A The way I understand it, in simple terms -- and  
22 I'm in no way an expert here. Perhaps other people in  
23 Conrail can give more information -- is that the official  
24 date of abandonment was July 25th, 1996. That is, what, 11  
25 days beyond the notice of July 11th which was decided. So

1 that 10 day window which is referenced somewhere in the  
2 document had passed.

3 I don't know the ramifications of the applications and  
4 when and how and who and why. Though I believe if a short  
5 line railroad comes forth with an offer that represents,  
6 essentially, the net liquidation value for the branch line  
7 that we would have to entertain and allow them to negotiate  
8 for purchase.

9 Q And is that what Corman has done?

10 A That is the -- how R.J. Corman became involved.

11 Q You said that if the decision is to abandon or the  
12 decision of this Commission is to abandon and remove the  
13 implements, you would remove all the track and ties of these  
14 crossings?

15 A That is correct.

16 Q Would that also included other implements that are  
17 on that line including bridges?

18 A Any rail facility and the bridge subject to --

19 Q Subject to PUC approval?

20 A -- PUC approval. And the bridge may come up  
21 knowing that's a bridge replacement project. We would have  
22 to treat that separately at this time. But we would look  
23 forward to the official abandonment of that railroad.

24 Q And at that time, a decision would have to be  
25 made. Conrail's position would be to remove the bridge?

1           A    Conrail would negotiate with the appropriate  
2 parties which best serves the overall project, the bridge  
3 replacement and the highway improvements.

4           Q    You say negotiate, but is it not -- that bridge,  
5 is that not an implement of that line like the crossings?

6           A    Yes.

7           Q    It's owned by Conrail?

8           A    Correct.

9           Q    Installed by Conrail or its predecessors?

10          A    Correct.

11          Q    So it's similarly situated as the crossings. Is  
12 that correct?

13          MR. EATON: Excuse me. Did one of those questions  
14 included an assumption that the bridge was owned by Conrail?

15          MR. KILGORE: I asked if the bridge was owned by  
16 Conrail.

17          MR. EATON: I'm going to object to that. I don't  
18 think witness the qualified to answer on the issue of  
19 ownership.

20          THE WITNESS: Whatever the previous PUC orders or the  
21 future PUC orders on the bridge -- I don't have the  
22 knowledge. I guess there is previous PUC orders on the  
23 bridge. And there would be, perhaps, if we abolish the  
24 track, future PUC orders.

25          BY MR. KILGORE:

1 Q You said that the abandonment included for mile  
2 post .90 -- and I want to make sure I'm correct -- to 4.5?

3 A 4.5.

4 Q And does that included the spur that goes over to  
5 ALCOA?

6 A I would say -- I don't know the specifics on that.

7 Q Does it included the part that goes over Lincoln  
8 Avenue and State Drive?

9 A I believe that it does on that. It would include  
10 whatever right-of-way the railroad owns. And ALCOA may own  
11 private property where these tracks that you have in  
12 questions. I don't have the specific details of those  
13 lines.

14 Q The according to the exhibit that was entered  
15 earlier, ALCOA has the right-of-way -- I'm sorry. Conrail  
16 has the right-of-way over ALCOA's property. Is that your  
17 understanding?

18 A I don't have first-hand knowledge of specifics.

19 MR. EATON: For clarification, I think the limit of  
20 abandonment is south of Zinn's Mill Road where the ALCOA  
21 spur cuts off. I don't think that the abandonment that was  
22 passed upon by the STB includes the ALCOA spur.

23 THE WITNESS: And may need not to.

24 BY MR. KILGORE:

25 Q Where does that spur start?

1           A    I don't know.  But, perhaps, this helps you; in  
2   the application to the PUC, the PUC may make that crossing  
3   the responsibility railroad to remove and restore.  And  
4   that's the normal -- even if it's owned by another.  If it's  
5   in a public roadway, the railroad may be --

6           Q    Are you privy to what Corman's intent is with this  
7   line?

8           A    Other than we have offered it as a operating  
9   railroad --

10          Q    But it's not operating.

11          A    I have no further information.

12          Q    It's not operating now, correct?

13          A    That's correct.  But in regards to the specifics  
14   that you are referencing to the sale, we are offering it for  
15   sale as an operating railroad.  And I have no --

16          Q    But that's not correct.  It's not operating.  It's  
17   been abandoned.

18          JUDGE COHEN:  It's not operating.  There is no  
19   customers to operate for.

20          MR. KILGORE:  That's correct.

21   BY MR. KILGORE:

22          Q    There is no customers either.  Is that correct?

23          A    That's correct.  What I'm trying to decipher is  
24   the difference between selling to a salvage contractor  
25   versus selling to someone who has --

1 Q I guess that's the point of my question. You are  
2 offering it to sale as an operating line. But it's not  
3 operating, correct?

4 A It's not operating. I don't dispute that,  
5 correct.

6 MR. EATON: I'm going to object to the question  
7 because there is no suggestion that Conrail is offering it  
8 as an operating line. They are operating as a line --

9 MR. KILGORE: Asked and answer.

10 MR. EATON: -- with expectation that another railroad  
11 will determine to operate on it.

12 MR. KILGORE: The question has been asked and answer.  
13 The question is simple. You are offering it as an operating  
14 railroad, but it's not operating.

15 MR. EATON: I object to the question. You can't  
16 answer it that way.

17 BY MR. KILGORE:

18 Q Is there a period of time to complete the  
19 transaction with Corman?

20 A Again, there is an understood time between --

21 Q I mean if there is an agreement, is there a  
22 period of time within which the transaction would be  
23 completed and Corman would be the actual owner of this,  
24 quote, non-operating operating line?

25 A I know of no time other than we would like to wrap

1 it up as quickly as possible.

2 Q What does that mean?

3 A That means any outstanding issues are basically  
4 understood and agreed to for resolution.

5 JUDGE COHEN: What, the September 30th --

6 THE WITNESS: September 30th would be the day that we  
7 have an offer on the table, we have responded to the offer  
8 based on some exceptions. September 30th would be that both  
9 parties essentially formalized an understanding of all the  
10 conditions that may be a part of the sale, whether a title  
11 search is completed by September 30th or any other  
12 complicated issues be resolved. The actual transfer of  
13 property I'm not saying that would occur but that both  
14 parties are under agreement.

15 BY MR. KILGORE:

16 Q So in answer to Question 11, Conrail does not have  
17 an agreement to sell the line to be operated as a railroad?

18 A We do not have an agreement. We have an offer.

19 Q The question was, you do not have an agreement?

20 A We do not have an agreement.

21 MR. KILGORE: I have no further questions.

22 JUDGE COHEN: Mr. Sheffey.

23 BY MR. SHEFFEY:

24 Q Do you have Exhibit 1 in front of you?

25 A Conrail Exhibit 1, correct.

1 Q Yes.

2 A Yes.

3 Q Could you look at page 2 of that paragraph 5.

4 A Yes, sir.

5 Q The last sentence on that page is, "expected that  
6 Conrail will be ordered to rehabilitate nine crossings at a  
7 total cost of \$90,000.00 over the next five years unless the  
8 lined as abandoned." Have I read that correctly?

9 A You read it correctly.

10 Q The nine crossings, are those the crossings that  
11 are the subject of this proceeding today?

12 A I'm sure they are.

13 Q And I ask you to draw your attention to page 3  
14 paragraph Number 7.

15 A Yes, sir.

16 Q And in the second sentence I'm going to read in  
17 what I think is the pertinent part for my client, Colt. So  
18 if you would bear with me, "Abandonment of the line will  
19 allow Conrail to salvage track and land, will benefit the  
20 community and the public in the removal and closing of  
21 highway grade crossings." Is that accurate?

22 A Yes, sir.

23 Q And that would refer to these highway grade  
24 crossings that for the purpose of these proceedings today.

25 Is that correct?

1 A Yes.

2 JUDGE COHEN: I think Mr. Kilgore may be partially  
3 answered. If Conrail doesn't think there is a any projects  
4 of developing, what makes him think Corman will? That's a  
5 hypothetical question.

6 MR. KILGORE: The last clause of that same paragraph  
7 says, "and will allow local Township to avoid expenditure of  
8 1.2 million to replace and upgrade bridge over Wilhelm  
9 Avenue." Excuse me.

10 BY MR. SHEFFEY:

11 Q And if you would, would you direct your attention  
12 to page 4. And in paragraph 13 on page 4, the first  
13 sentence, "Abandonment will also have other public  
14 benefits." And then there are several described. One of  
15 those, "will allow the closing of highway grade crossings."  
16 Is that correct?

17 A That's what it says, yes, sir.

18 Q And, again, that would refer to the crossings that  
19 are the subject of this proceeding?

20 A Yes.

21 JUDGE COHEN: Again, reference is made to Wilhelm  
22 Avenue.

23 BY MR. SHEFFEY:

24 Q And then paragraph 14, the paragraph that begins  
25 and goes on to the stop of page 5, "No vital interest of

1 shippers or the community will be adversely affected. And  
2 abandonment will have no effect on competition. To the  
3 contrary, the interest of the public will be served by the  
4 abandonment." Is that an accurate reading?

5 A That's an accurate reading.

6 Q Now, I would also ask you to look at one other  
7 page. Following the petition itself, there is an  
8 environmental statement. I think it's Exhibit B to the  
9 petition. It's entitled Environmental and Historic Report.  
10 Do you see that?

11 A Yes, page 2, correct.

12 Q I would like to direct your attention to page 2,  
13 paragraph 1 in the fourth line there is a sentence. "The  
14 line has been embargoed due to unsafe track conditions."  
15 That an accurate reading?

16 A What line is that?

17 Q The fourth line of paragraph 1.

18 A Yes.

19 Q And with respect to that, what did Conrail do as  
20 far as in response to finding unsafe track conditions?

21 A In general, Conrail assesses what a capital work  
22 and repair works should be done to branch lines based on the  
23 business the branch line produces. If a branch line slowly  
24 diminishes in business and revenues and subsequently stops  
25 with revenues and that a customer ceases to acquire rail

1 service, then the justification to do repairs on that branch  
2 line may be deferred.

3 So that statement basically pretty much represents the  
4 normal course that if ALCOA starts business back up, there  
5 may be cost involved because Conrail has basically withheld  
6 routine or program work.

7 Q But that sentence, doesn't it also say that at the  
8 present time the track conditions are not safe?

9 A The track conditions to operate an engine and  
10 cars, correct.

11 Q That's not only the track itself, but the  
12 crossings?

13 A Not necessarily.

14 Q Is there a limitation in here somewhere?

15 A No. It's an all-encompassing statement. You can  
16 have a mile of track with several spots that are unsafe.  
17 And the railroad would say that mile of track is unsafe, not  
18 every foot of it, but certain segments that would be unsafe.  
19 So I wouldn't extrapolate that as a statement to represent  
20 that the crossings were unsafe.

21 Q You don't extrapolate that to be a statement  
22 either that the crossings were safe, would you?

23 A No.

24 MR. SHEFFEY: I have no other questions.

25 MR. WEISS: A few.

1 BY MR. WEISS:

2 Q Who embargoed that line with reference to the line  
3 being embargoed due to unsafe track conditions?

4 A Conrail internally embargoed the line. It's a  
5 notice given out for all parties.

6 Q When was that done?

7 A I don't know.

8 Q Do you even have by a year? Was it done after the  
9 last service to ALCOA?

10 A It would probably be soon after November 29th,  
11 1995.

12 Q So now, directing your attention to Conrail  
13 Exhibit 1, the second page of the Petition for Exemption,  
14 line four.

15 A Okay, Exhibit 1, page 2.

16 Q Page 2, line four.

17 A Section 4, line 4?

18 Q Paragraph 4.

19 A Paragraph 4, okay.

20 Q Paragraph 4. In that it says -- it references  
21 ALCOA. It says, "All of ALCOA's business is moved by truck  
22 under contract which commenced in late October 1995."

23 A Yes.

24 Q As far as you know, was that statement accurate?

25 A For that time it was made, sure.

1 Q Has anything changed since that you are aware of?

2 A I have no knowledge, either way.

3 Q It says, "ALCOA made the decision to convert to  
4 100 percent truck service due to the reduced transit time  
5 offered by truck service, nine days rail versus one day  
6 truck." Is that accurate as far as you know then?

7 A Certainly.

8 Q Is it still as far as you know?

9 A The business connections with them have ceased  
10 since that day. And probably updated information would be  
11 needed.

12 Q And assuming that the correctness of that nine  
13 days service to ALCOA versus one day truck, that would not  
14 change, would it, whether R.J. Corman operated the line or  
15 Conrail?

16 A Oh, yes.

17 Q And how would that change?

18 A The Cornwall Industrial Track is an industrial  
19 track that comes out of the main line track in Lebanon. The  
20 yard crews would come from Harrisburg, Reading or Lebanon.  
21 And they would serve -- the train and the crew that would  
22 serve ALCOA may have 15 other customers to serve on their  
23 route including perhaps Hershey.

24 And therefore, ALCOA may only get allocated so many  
25 days service from Conrail. A new operator in the line may

1 ascertain they have the ability to provide ALCOA with  
2 substantially better service.

3 Q But the cars wouldn't get to that line any sooner  
4 than they would if Conrail were operating it, would they?

5 A The way rail operations work, the actual shifting  
6 of an industrial side and a plant is the time consuming  
7 aspect. Once a shift is made, cars are brought onto what  
8 they call pick-up sidings on the main line. Thereby, they  
9 can be readily moved to a yard that further breaks them down  
10 and takes them to their destination.

11 Q But Corman, if it operates this line, will be at  
12 the mercy of Conrail for all the time and service except for  
13 getting from the Conrail siding to go the ALCOA plant?

14 A I wouldn't say at the mercy. But it would be a  
15 team effort. And we are both realizing revenues out of it.  
16 And we would note that they are doing the hardest part in  
17 doing the shifting. And we do the part we do best, the long  
18 haul.

19 Q You heard the testimony of the township official,  
20 Curt Kulp, with respect to the recent letters by ALCOA  
21 indicating that they have no future interest in rail  
22 service. You heard his testimony?

23 A (No audible response.)

24 Q Do you have any reason to doubt the sincerity of  
25 the those letters from ALCOA?

1 A I have no reason to doubt those letters.

2 Q Paragraph Number 5 on page 2 of the petition, in  
3 that first sentence of that indicates -- excuse me. The  
4 second sentence of paragraph 5 of page 2 indicates the cost  
5 to rehabilitate the track if Conrail were to continue to  
6 provide service is estimated to be \$450,700.00?

7 A \$451,700.00.

8 Q \$451,700.00. Is that correct?

9 A That's what this text reads.

10 Q I'm a little confused because in the final  
11 sentence it says, "It is expected that Conrail will be  
12 ordered to rehabilitate nine crossing at a total cost 90,000  
13 over the next five years unless the line is abandoned."

14 A Yes.

15 Q Why is that rehabilitation less than the other  
16 rehabilitation?

17 A Two figures are referenced. One is the  
18 rehabilitation of the branch line so-to-speak.

19 Q Of the entire line. So the 451,700 includes the  
20 90,000?

21 A It may or may not included the 90,000.

22 Q You heard Mr. Kener's testimony that he estimated  
23 the cost to remove these tracks and repair them at grade was  
24 around \$10,000.00 a piece. Would that be the figure that's  
25 reference here at 90,000?

1           A    His figure was to remove and restore. This figure  
2 is shown to be a repair or rehabilitation, two different --

3           Q    Would it be fair to say that from Conrail's  
4 perspective it will not cost them any more to rehabilitate  
5 them than to remove them?

6           A    We don't know if the \$90,000.00 already took a  
7 credit for the removal. So maybe money has been subtracted  
8 from that figure.

9           Q    Thank you. Referencing page 2 of the  
10 Environmental and Historical Report, which is part of  
11 Conrail's Exhibit Number 1 -- excuse me. I already asked  
12 you that question. Strike that. Directing your attention  
13 page 4 of the Petition for Exemption, paragraph 12 --

14          A    I'm sorry. You want page 4?

15          Q    Page 4 of the Petition for Exemption. Page 4 for  
16 the Petition of the Exemption?

17          A    Okay, page 4 paragraph 12.

18          Q    Yes. Paragraph 12, sub paragraph 2 states, "There  
19 is no potential for additional service over this line." Is  
20 that what it says?

21          A    Twelve, yes. That's what it says.

22          Q    And to the best of your knowledge, was that  
23 allegation accurate when it was made to the ICC in this  
24 petition?

25          A    I would say, yes. I don't know though from what

1 the criteria was. Was it because -- but that is an accurate  
2 statement.

3 Q That representation was part of what was alleged  
4 in order to get the relief requested from the ICC, was it  
5 not?

6 A Yes, that's correct.

7 Q And is that still correct to the best of your  
8 knowledge and belief?

9 A As far as Conrail is the owner and the operator, I  
10 would say, yes.

11 Q There is no -- strike that. Has Conrail filed any  
12 subsequent amendments or motions for reconsideration or  
13 anything further with the Interstate Commerce Commission  
14 incident to this Petition for Exemption?

15 A No, not to my knowledge.

16 Q Okay. You reference in your testimony that the  
17 Willow Street crossing, which will be kept in service, will  
18 be repaired. Repaired or reconstructed by Conrail?

19 A Either or, whatever is required.

20 Q When?

21 A As to the time that it is required to be done.

22 Q In this century?

23 A I would say that I would think that it would be  
24 put on a program for rehabilitation by Conrail. I'm not  
25 sure who it making those programs and what dates they are

1 showing.

2 Q Is there any reason why it couldn't be done by the  
3 end of this year?

4 A Willow Street rehabilitation or repair? They are  
5 two different things.

6 Q One at a time. Is there any reason Willow Street  
7 couldn't be repaired by the end of the year?

8 A I don't know what may be needed for repairs,  
9 what are the problems, the site conditions that need to be  
10 addressed. The assessment of that would be based on what  
11 work has to be done and how soon it has to be done.

12 Q So you are not familiar with the present condition  
13 of the Willow Street crossing?

14 A That's correct.

15 Q So of what use is your representation that you  
16 will, in fact, repair it or reconstruct it?

17 A It's an operating railroad. We run over it. And  
18 it's a necessary facility to be maintained. It's under our  
19 jurisdiction to be maintained. So when the local  
20 maintenance crews and supervisor of maintenance feels that a  
21 repair is to be done, we will arrange it in the priority we  
22 feel, and get it done as needed.

23 JUDGE COHEN: Don't you agree that your counsel has  
24 agreed that the repairs do need to be done and Conrail will  
25 do it? So there is no question whether repairs have to be

1 done. He agreed that they have to be done.

2 MR. EATON: The distinction is whether it would be  
3 repaired or reconstructed.

4 JUDGE COHEN: You are talking about repairs?

5 MR. WEISS: If it needs to be reconstructed, I can see  
6 that would take longer. But in the interim, it can be  
7 repaired because it is in use. And what I have trouble with  
8 is the City's experience has been very poor in the manana  
9 syndrome for Conrail.

10 JUDGE COHEN: I think there should be an agreement  
11 that it be repaired by the end of this year. In the  
12 pictures, you can see that there is not all the much that  
13 has to be done to repair it, I would think.

14 BY MR. WEISS:

15 Q Conrail will, at least, make those repairs by the  
16 end the year?

17 A I don't have a specific list. I don't know what  
18 I'm saying yes to. Are you saying --

19 Q Just make reasonable repairs reasonably necessary  
20 by the end of the year?

21 A Sure.

22 Q Thank you. In your negotiation with R.J. Corman  
23 for the purchase of the subject line, has Conrail imposed a  
24 time deadline for them to rehabilitate this line if, in  
25 fact, they purchase it and operate it?

1 A Not that I know, sir.

2 Q What would be a reasonable time frame for the  
3 rehabilitation of subject line if it were to be sold to R.J.  
4 Corman?

5 A I would allow the new operator to speak on behalf  
6 of their criteria for repairs and programs and their needs.

7 Q If R.J. Corman does not purchase this line, what  
8 would a reasonable time frame be for Conrail to remove all  
9 of those crossings?

10 A I would say --

11 JUDGE COHEN: Excuse me.

12 (Off the record.)

13 THE WITNESS: Your question, What would be a  
14 reasonable time?

15 BY MR. WEISS:

16 Q The question was, If R.J. Corman does not purchase  
17 the line, what would be a reasonable time be for Conrail to  
18 remove the subject crossings?

19 A I would say the time earmarked in the PUC order  
20 that documents that work to be done. We wouldn't -- that  
21 would be subject to another application. And then part of  
22 that --

23 Q That's totally unresponsive. How much time would  
24 be reasonable in order for Conrail to physically do the  
25 work?

1           A    I would say we should be able to accommodate that  
2 within three months. But note that if the winter is  
3 involved, you can't and should not pave in the winter. And  
4 it may project into --

5           Q    Three months not including whatever work can't be  
6 done in the winter time?

7           A    Correct.

8           Q    Okay. And did I understand your testimony to be  
9 that Conrail will not sell this line to R.J. Corman unless  
10 R.J. Corman agrees to operate it?

11          A    Unless what?

12          Q    Unless they agree to operate it?

13          A    That's not a condition, but that's how the offer  
14 went out from Conrail. How they interpret our offer, I  
15 can't speak for it.

16          Q    So you can't rule out Conrail selling this line to  
17 R.J. Corman solely for salvage?

18          A    I couldn't. I know of no intent on their part.  
19 And we will let them speak for themselves.

20          Q    Have you dealt with R.J. Corman in the past?

21          A    In other matters.

22          Q    In other lines?

23          A    Other lines of business. They are also our  
24 material supplier.

25          Q    Have you dealt with them in the purchase of other

1 lines?

2 A Yes.

3 MR. WEISS: That's all the.

4 JUDGE COHEN: Mr. Salapa.

5 MR. SALAPA: Thank you, Your Honor.

6 BY MR. SALAPA:

7 Q Have you visited the sites of the crossings which  
8 are the subjects of this proceeding?

9 A Many years ago, not recently.

10 Q Do you have any idea as to when?

11 A Approximately 22 years ago I took a weed sprayer  
12 down to Cornwall Industrial Track.

13 Q So you haven't visited the crossings since that  
14 time?

15 A Not all of them. I've been to certain trouble  
16 spots. And I've done site meetings I've been at.

17 Q You were here for the testimony of the other  
18 witnesses, in particular, Mr. Britcher and Mr. Kener, were  
19 you not?

20 A Yes.

21 Q And have you had a chance to review the exhibits  
22 that were presented by the City of Lebanon, the pictures of  
23 the various crossings?

24 A Yes.

25 Q Would you accept as accurate the descriptions and

1 the pictures of those crossings as to the physical condition  
2 of them?

3 A Not really without my own inspection report or an  
4 inspection report from Conrail. Although, I would, in  
5 general, say that it is noted that the crossings do warrant  
6 future consideration for some type of repairs.

7 Q With regard to the Willow Street crossing, are you  
8 aware that there are two tracks there?

9 A Two tracks, one not part the Cornwall Industrial  
10 Track.

11 Q If I may draw your attention to City Exhibit 2 --

12 MR. SALAPA: May I approach the witness, Your Honor?

13 JUDGE COHEN: Sure.

14 BY MR. SALAPA:

15 Q The map indicates, at least to my -- two lines  
16 that go across Willow Street.

17 A Yes. It's one crossing, two tracks within; two  
18 tracks within the one crossing, not two crossings.

19 Q Are both of those lines necessary for Conrail's  
20 operation?

21 A I don't know.

22 Q The reason I'm asking is if they are not both  
23 necessary, would it be possible for Conrail to simply remove  
24 the one track altogether? It seems to me according to this  
25 map, it appears that the rail line dead-ends?

1           A    But without reviewing the local transportation  
2 manager, I don't know if he uses that track as a shut off  
3 track, a run-a-around track or staging area. So I don't  
4 know the particulars.

5           Q    Similarly, if you can refer to City Exhibit Number  
6 2 at Chestnut Street, does that not show two tracks crossing  
7 Chestnut Street?

8           A    Yes.

9           Q    And do you know, does Conrail need both of those  
10 tracks for its operations?

11          A    I don't know the specifics of that particular  
12 track. I couldn't comment on that.

13          Q    So you don't know whether the one track would be  
14 removed in its entirety in any event?

15          A    I don't know if they could be remove or if Conrail  
16 would want to have them removed.

17          Q    If you could refer to Conrail Exhibit 1, the  
18 Petition for Exemption, there is a map located on that. I  
19 believe, it is after the body of the petition. I think it's  
20 marked as Exhibit A?

21          A    That would be in the back. Is that the map you  
22 are looking at?

23          Q    Yes. It's marked as Exhibit A on Conrail Exhibit  
24 1. Would you agree with me that mile post .90 starts a  
25 little north of Cumberland street according to this map?

1           A    According to that map, I couldn't really tell.  
2           Graphically, a track is represented by -- I don't know the  
3           scale or anything. So I'm going to refer to our track chart  
4           here and see if I can get identification of that.  
5           Cumberland Street is also earmarked in our records as .90.  
6           And then I'll refer to see if that's part of the abandonment  
7           or not. And I would say, yes, it is because the only one we  
8           are looking to keep is Willow Street.

9           Q    And also referring to Exhibit A, it shows mile  
10          post 3.5 as being -- as terminating somewhere north of what  
11          is designated as Rocherty Road. Is that correct?

12          A    That's what it says, yes.

13          Q    And then it shows a mile post 18.60 as being at  
14          the same location. Is that correct?

15          A    Yes. There is a little bit of distinction to  
16          notes. In history, prior to 1976 before Conrail became  
17          Conrail, there was two predecessor railroads in this area,  
18          the Penn Central and the Reading Railroad. And they both  
19          had a line into Lebanon. They paralleled at this point.

20          We had conveyance. Part of each facility was either  
21          relocated, connected or to streamline it. And even we would  
22          call it Conrail, Curt Kulp referred to it as Cornwall  
23          Industrial Track 0.9 and 4.5, whatever, 4.10.

24          In actuality, if you really want to get technical  
25          about it, the tail end the Cornwall Industrial Track is the

1 Penn Central line that came out of Mechanicsburg,  
2 Pennsylvania.

3 Q So the mile post 18.0 is located just south of  
4 what's designated as Zinn's Mill Road. Is that correct?

5 A 18.0 is located I would say -- yeah, that would be  
6 correct.

7 Q So the Conrail abandonment application does not  
8 included any of the line from mile 18.0 to the ALCOA plant.  
9 Is that correct?

10 A I'm not sure of the accuracies or inaccuracies,  
11 whether our application might have had a shortage or whether  
12 or not Zinn's Mill Road is drawn correctly. I didn't think  
13 the intent was the removal of that branch line, whether it  
14 was the Penn Central predecessor or the Reading predecessor  
15 and any associated rail facilities that are located on  
16 railroad property.

17 Q But according to -- and am I correct that R.J.  
18 Corman is in the process of negotiating with Conrail to  
19 purchase the portion of the line that Conrail has abandoned?

20 A That's correct.

21 Q And at least according to this map, that would not  
22 included anything from Zinn's Mill Road to ALCOA plant,  
23 would it?

24 A It does by mile post. The map shows the mile post  
25 18.0 to be the termination point.

1 Q Of?

2 A Of what is being abandoned, what is being proposed  
3 for sale to R.J. Corman.

4 Q So then Conrail is not contemplating selling the  
5 portion to Corman from mile post 18.0 to the ALCOA plant?

6 A I don't know the relationship of where the mile  
7 post is of an older mile post twenty years ago, Penn  
8 Central, versus the siding into ALCOA.

9 Q I guess my question is: How can R.J. Corman  
10 contemplate serving ALCOA if they aren't going to be able to  
11 acquire the line that goes into ALCOA'S plant?

12 A I have no reason to see why they don't have  
13 access. I see here Zinn's Mill is an overhead bridge.  
14 That's located three one-hundredths of mile below the ALCOA  
15 track.

16 MR. SALAPA: I have no further questions.

17 JUDGE COHEN: Ms. D'Alfonso.

18 BY MS. D'ALFONSO:

19 Q You said earlier on direct examination Conrail  
20 would do the work that would further either of your  
21 alternatives A or B.

22 A Yes.

23 Q Start with alternative A which was the transfer  
24 and sales of operating railway. What work would you  
25 contemplate for alternative A?

1           A    Physical field work, what work would we have? I  
2 would think it would be a awful lot as is there is no  
3 warranties. So we wouldn't anticipate any work.

4           Q    What about your alternative B, the abandonment of  
5 the line which has been already been accomplished and the  
6 abolition?

7           A    We anticipate putting up for bid a competitive bid  
8 process to acquire an outside contractor, salvage contractor  
9 to come in and remove all items of the railroad; tracks,  
10 ties, hot plates, spikes, and then pave the roadway to  
11 comply with the local authority of those roadways to remove  
12 the track and restore the pavement to satisfaction.

13          Q    And Conrail would pay for that?

14          A    And Conrail is willing to pay for that.

15          Q    If the crossings were to be suspended --

16          A    Yes.

17          Q    -- and furtherance of Colt's application, what  
18 work is Conrail willing to pay for to effectuate the  
19 suspension?

20          A    Conrail would pay for that, perhaps would consider  
21 paying for that part of the work that may be necessary if it  
22 facilitates proposal A or B. But I don't think Conrail is  
23 willing to go out and spend money to suspend the tracks and  
24 then later on go out and spend money to remove the tracks.

25          Q    Do any of the Conrail records indicate when the

1 last time was Conrail actually performed maintenance at any  
2 of the crossings that are discussed here today?

3 A I have no specific information. In general, once  
4 it's embargoed, that's also noticed to the local maintenance  
5 department to cease maintenance.

6 Q So from 1995 forward there has been no  
7 maintenance?

8 A No track maintenance. There might have been a  
9 paving to the grade crossing.

10 MS. D'ALFONSO: I have nothing further.

11 JUDGE COHEN: Mr. Dietterick.

12 MR. DIETTERICK: No questions.

13 JUDGE COHEN: Any redirect?

14 REDIRECT EXAMINATION

15 BY MR. EATON:

16 Q Mr. Sawyer, there is some questions about, first,  
17 why it takes Conrail nine days to get a car from ALCOA to  
18 wherever its destination is you should expect that Corman to  
19 do it any quicker. Number one, do you have any control over  
20 how long Corman takes to do something?

21 A I have no control.

22 Q Can you tell me whether or not there is daily  
23 pick-up service to Lebanon to pick up cars assembled for  
24 further transportation?

25 A I do not have any specifics on the operating

1 trains. There are train crews out of Lebanon. So there  
2 should be a local pick-up there. I don't know if they work  
3 three days a week, five days a week.

4 Q So any traffic of Corman would be subject to  
5 whatever delay Corman imposes on the transportation plus any  
6 delay Conrail may be responsible for. Is that correct?

7 A That would be fair.

8 Q Is it not true that Conrail may cause virtually no  
9 delay beyond that time necessary for transportation?

10 A That is true too.

11 Q With respect to timing of repairs on Willow  
12 Street, if the crossing is to be reconstructed, is it not  
13 true that certain equipment would be necessary to accomplish  
14 that?

15 A Reconstruction requires a major undertaking where  
16 the road is shut down for a duration of a week or two.

17 Q And would it be reasonable to bring in raising  
18 equipment to do that?

19 A There has to be substantial specialized equipment  
20 to be scheduled in to do that.

21 Q And ordinarily, during a construction season and  
22 April through November, is that equipment pretty well  
23 scheduled in advance?

24 A That equipment is fully utilized in that time  
25 period by all other interest.

1 Q So that the first step on a reconstruction of that  
2 crossing would require that you schedule in the equipment.  
3 Is that correct?

4 A That's correct.

5 Q What about the crews that are necessary to do the  
6 manual labor or with respect to the reconstruction of  
7 crossings? Is there any scheduling problem with respect to  
8 their services?

9 A There is often scheduling problems in that we have  
10 a limited amount of manpower. And there is a great deal of  
11 work to do. And the work has to be prioritized. And  
12 sometimes the manager who is responsible for programing  
13 repair works my not see the priority and importance of a  
14 grade crossing as opposed to an interlocking that needs  
15 repairs to keep safe for the trains. So there is often  
16 complication with equipment and manpower.

17 Q Now, as we sit here today, are you in a position  
18 to tell us how soon necessary equipment and personnel could  
19 be scheduled in for work on the Willow Street crossing?

20 A Once the defined work has been established, I am  
21 not able to say, at this time, what equipment and what  
22 manpower may be available to do that work.

23 Q When would be a reasonable time to expect such  
24 equipment and manpower could be scheduled?

25 A I would say the 1997 programs are totally

1 allocated subject to some emergency or some pressing need.  
2 I would say that would be in 1998.

3 Q And then if the Willow Street crossing must need  
4 to be reconstructed, is it fair to say that could not, as a  
5 practical matter, be accomplished before the spring  
6 construction season, 1998?

7 A I'll note in our paving schedule, the paving  
8 season is sometime in March. So it may be March if you are  
9 lucky with the weather.

10 Q And schedule?

11 A And schedule, correct.

12 Q Now, the crossing needn't be reconstructed and can  
13 simply be repaired, what sort of equipment and manpower  
14 resources are required for that?

15 A It could be several categories of repairs based on  
16 the assessment of several individuals who may come up with  
17 different scopes of work. So, perhaps, a repair would be  
18 just to remove the macadam. And noting that when you remove  
19 the macadam, you inspect the subgrade and ballast and the  
20 tie conditions. If they weren't to be in good shape, then  
21 you could just do a modest track surfacing profiling  
22 repair-type work and put a new surface on whatever surface.

23 Q Are personnel more readily available for that kind  
24 of work than for reconstruction work?

25 A The competition is keen for all types of work.

1 It's not so specialized. So perhaps you might be able to  
2 get some people to do it.

3 Q Is it in the competence of division forces?

4 A Yes.

5 Q When would be a reasonable period to expect the  
6 work to simply repair the a crossing could be scheduled and  
7 accomplished?

8 A Again, I don't know the nature of the specific  
9 repairs that are asked to be done.

10 Q Let's assume the last description you gave us;  
11 removal of the existing macadam, inspection of the track  
12 structure beneath and replacement of fresh macadam. Over  
13 what period of time of time would you require that for  
14 scheduling and labor to be done?

15 A A six-week notice would be nice.

16 Q So that if that were to start by September 1st, it  
17 might be done by the middle of October?

18 A If the notice -- was your question on the notice?

19 Q If you were to leave here and receive an order as  
20 of September 1st, you could get that accomplished within six  
21 weeks thereafter?

22 A If it was to be an order, I would ask for 60 days.

23 Q Which is eight weeks, nine weeks, two months?

24 A Yes.

25 MR. EATON: That's all.

1 JUDGE COHEN: Recross?

2 MR. KILGORE: No.

3 MR. SHEFFEY: No, Your Honor.

4 MR. WEISS: No, Your Honor.

5 MR. SALAPA: No, Your Honor.

6 JUDGE COHEN: Thank you.

7 MR. EATON: Move for the admission of Conrail Exhibits  
8 1 and 2.

9 JUDGE COHEN: They may be.

10 (Whereupon, Conrail Exhibits 1 and 2 were admitted.)

11 JUDGE COHEN: Why don't you go with me to see if we  
12 can talk to Chief Judge Christianson. I suggest that you  
13 fax me a letter tomorrow outlining the problems and your  
14 concerns and how you would like it handled. Copy all the  
15 parties so there is no ex parte. Is there any problem with  
16 Mr. Kilgore going to talk to Judge Christian?

17 MS. D'ALFONSO: No, Your Honor. Are we prepared to  
18 conclude today.

19 JUDGE COHEN: How many witnesses -- Corman, I assume  
20 is going to be cross examined -- right or wrong -- depending  
21 on what they say.

22 MR. WEISS: Can't agree not to.

23 MR. EATON: I don't want to overlook my earlier  
24 suggestion that I would request that at the conclusion of  
25 today's proceedings, the record not be closed that we

1 continue this proceeding to a date to be determined  
2 following September 30th when we will then have, presumably,  
3 a firm fact in hand; that is, who is going to own the line  
4 into the future.

5 MR. WEISS: The City is opposed that. The City  
6 believes that what we need right now is an order that will  
7 establish a date certain for somebody doing what is  
8 required.

9 JUDGE COHEN: The court reporter is under contract to  
10 deliver the transcript within three weeks. So she won't  
11 even have it done. Even if we get done, she wouldn't have  
12 it done for three weeks. And this is not the only case that  
13 I have or that the other counsel have.

14 MR. EATON: And presume you will allow a briefing  
15 schedule.

16 JUDGE COHEN: Sure.

17 MR. EATON: That takes us into October anyway.

18 JUDGE COHEN: And proposed findings of facts.

19 MR. EATON: And by October 1st, we may be in a  
20 position to say -- enter an agreed order to remove the  
21 crossings, salvage the rail, and be done.

22 JUDGE COHEN: I want you to get started on the Willow  
23 Street matter. Show your good faith.

24 MR. EATON: The ball is in his court.

25 JUDGE COHEN: You said you are going to do Willow

1 Street. We will take 10.

2 (Whereupon, a brief recess was taken.)

3 JUDGE COHEN: Mr. Dietterick, are you ready, sir?

4 MR. DIETTERICK: I call Gary Pettengill.

5 JUDGE COHEN: Good afternoon, sir.

6 GARY PETTENGILL, called as a witness, having been duly  
7 sworn, was examined and testified as follows:

8 JUDGE COHEN: Please spell your last name.

9 THE WITNESS: Gary Pettengill, P-e-t-t-e-n-g-i-l-l.

10 JUDGE COHEN: Thank you, sir.

11 DIRECT EXAMINATION

12 BY MR. DIETTERICK:

13 Q What is your current position?

14 A I'm a vice president of operations of R.J. Corman  
15 Pennsylvania Lines. That's mainly Clearfield Cluster.

16 Q And where is R.J. Corman's corporate headquarters  
17 located?

18 A That's in Nicholasville, Kentucky.

19 Q Does it operate other lines in Pennsylvania other  
20 than the Clearfield line?

21 A One other line in Allentown.

22 Q And what is the nature of R.J. Corman's business  
23 in general?

24 A He owns several railroads; one in Tennessee, three  
25 in Ohio, and two in Pennsylvania. And then in addition, he

1 has material yards which he serves Conrail. He provides  
2 various rail materials to Conrail. He has five or six  
3 derailment divisions which derails cars. He also has a rail  
4 construction gang where he does track construction.

5 Q When you say he, you are referring to --

6 A R.J. Corman Company.

7 Q The Clearfield line is owned by R.J. Corman  
8 Pennsylvania Lines, Inc.?

9 A Yes.

10 Q And the other Pennsylvania line owned by R.J.  
11 Corman is Allentown Lines Inc.

12 A Yes.

13 Q And is it your understanding that R.J. Corman  
14 Allentown Lines, Inc. has made an offer to Cornwall Lebanon  
15 Industrial Track from Conrail?

16 A Yes.

17 Q Has there been a formal written purchase and sale  
18 agreement between R.J. Corman and Conrail?

19 A No.

20 Q Is R.J. Corman and Conrail currently in  
21 negotiations over that agreement?

22 A Yes.

23 Q And if R.J. Corman subsequently purchases the  
24 Lebanon Cornwall line, will it be responsible for reasonable  
25 maintenance of that line?

1 A Yes.

2 MR. DIETTERICK: I have no further questions.

3 JUDGE COHEN: You have to go down the list.

4 MR. DIETTERICK: I think we did answer all the  
5 questions.

6 JUDGE COHEN: What about 14?

7 MR. DIETTERICK: I think it says if they are now owner  
8 of the line. And, I think, he answered they are not owner  
9 of the line.

10 JUDGE COHEN: Let's change it. What if it becomes  
11 owner of the line?

12 BY MR. DIETTERICK:

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

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

21 Q Do you believe you've had sufficient time to  
22 analyse the crossings to determine the extent of the work to  
23 be done at this point?

24 A No.

25 Q And is R.J. Corman still in the process of

1 investigating the property for purposes of purchasing it  
2 from Conrail?

3 A Yes, they are.

4 MR. DIETTERICK: No further questions.

5 JUDGE COHEN: Cross.

6 CROSS EXAMINATION

7 BY MR. KILGORE:

8 Q Sir, what company do you work for?

9 A R.J. Corman Pennsylvania Lines, Inc. That's in  
10 Clearfield area.

11 Q You don't work for R.J. Corman Allentown, Inc.

12 A No.

13 Q And that's the company --

14 A I'm responsible for a train crew in Allentown, the  
15 train service.

16 Q R.J. Corman Allentown, Inc. is the one that made  
17 the offer?

18 A Yes.

19 Q Are there separate companies for the train crew?

20 A Pardon?

21 Q Is there a separate company for the train crew?

22 A No. That's included, but I'm responsible for the  
23 train operations in that area.

24 Q How about the business of providing rail  
25 materials?

1 A I'm not responsible for that.

2 Q Is that a separate company?

3 A Yes. That's construction.

4 Q What is the name?

5 A R.J. Corman Construction.

6 Q And how about the track, is that the truck  
7 construction also?

8 A Yes.

9 Q Track construction and material supplier?

10 A Yes.

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

14 A You mean business or --

15 Q Yes, business.

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

17 MR. KILGORE: I have no other questions.

18 JUDGE COHEN: You are referring to who again?

19 THE WITNESS: Mr. Corman, the owner.

20 JUDGE COHEN: This is not a one-man operation?

21 THE WITNESS: He is a one-man owner, different  
22 companies.

23 JUDGE COHEN: He makes all the important decisions?

24 THE WITNESS: Yes, he does.

25 MR. SHEFFEY: I have no questions, Your Honor.

1 BY MR. WEISS:

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

3 A Yes, he does.

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

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

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

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

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

14 A No.

15 Q You don't know either way?

16 A No, I don't.

17 Q How long have the negotiations between Conrail and  
18 R.J. Corman been pending?

19 A I think it was briefly mentioned last October that  
20 there may be an interest

21 Q October of '96?

22 A Yes.

23 Q And those negotiations have been pending from that  
24 time until this date?

25 A I don't think there was too much negotiations when

1 Conrail started their other discussions with NS or CSX. I  
2 think there was a lot of short lines that were taken --  
3 removed from discussion during that period of time that they  
4 were talking with CSX and NS.

5 Q So the negotiation may have been put on the back  
6 burner during the CSX Conrail negotiations?

7 A Yes.

8 Q And there is a current offer by R.J. Corman that  
9 is outstanding. Is that correct?

10 A Yes.

11 Q Do you know when that offer was made?

12 A No, I don't.

13 Q Was it within the last month?

14 A I think it was in the last month.

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

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

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

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

25 Q Will you make him aware of that?

1           A    I will certainly make him aware of what is being  
2 said here today.

3           MR. WEISS:  No further questions.

4           JUDGE COHEN:  Mr. Salapa.

5 BY MR. SALAPA:

6           Q    Mr. Pettengill, are you part of the team that is  
7 trying to negotiate this purchase of Conrail's Cornwall  
8 branch?

9           A    No, I'm not.

10          JUDGE COHEN:  Do you know who is?

11          THE WITNESS:  I believe Mr. Corman and Patrick Grubb  
12 who is president of the R.J. Corman.

13 BY MR. SALAPA:

14          Q    You were here earlier for the testimony of the  
15 previous witnesses, were you not?

16          A    Yes, I was.

17          Q    And did you hear the testimony regarding the  
18 Interstate Commerce Commission Petition for Exemption?

19          A    Yes.

20          Q    And you heard the cost of rehabilitating this  
21 track as \$451,700.00?

22          A    Yes, I did.

23          Q    And is Corman prepared to expend that amount of  
24 money to rehabilitate this track?

25          A    That is Conrail's estimated cost.  For example,

1 when I worked for a previous railroad, Pittsburgh, they were  
2 selling a low-grade cluster and had a figure of \$25 million  
3 on it for repair. And we did it for four and a half  
4 million.

5 So that is their cost. They are unionized. They put  
6 in all new material. Short lines operate altogether  
7 different. I would say that if that was up and running, you  
8 get used ties, for example, that would last 20 or 30 years  
9 for \$15.00 where Conrail has in their the cost of a new ties  
10 which is \$30.00. And their costs are altogether different.  
11 It would be not comparable to a short line versus a class  
12 line.

13 Q You have no idea what it would cost to  
14 rehabilitate this line?

15 A To a standard of 10 miles an hour, no, I wouldn't.  
16 But it wouldn't be near that. I would say at the most  
17 100,000.

18 Q And Corman is prepared to expend that kind of  
19 money to rehabilitate this line?

20 A If he elects to operate it as an operating  
21 railroad.

22 Q Similarly, you are aware of the figure that  
23 Conrail has in its petition to rehabilitate the nine  
24 crossings for a total cost of \$90,000.00. And Corman is  
25 prepared to rehabilitate those crossings should it operate

1 this as an operating railroad?

2 A If that's all that's necessary is \$90,000.00. I  
3 don't think you can rehabilitate it for \$90,000.00. I think  
4 the cost to remove the nine crossing was \$10,000.00 each.  
5 So you can't rehabilitate them for the \$90,000.00.

6 Q So you think that figure is low?

7 A The state come out with a figure of 300 to  
8 500,000. I don't think anybody has come out and said that  
9 here today what it would cost to rehabilitate those  
10 crossings. At least I haven't heard it.

11 Q Okay. So you think 90,000 is low. But you don't  
12 have any idea as to what --

13 A I have no idea.

14 Q Okay. And I'm also sure you are aware of the  
15 salvage value of the track. Do you know what that is?

16 A Yes, I do.

17 Q And what is that?

18 A I guess -- I don't know if it was all 136 pound  
19 rail, which there is some 136 pound rail. That is a lot of  
20 money. If it's just 100 pound rail, and if it's just scrap,  
21 that could be \$150.00. Miscellaneous strap varies. It's  
22 according to when you sell it and hold it. If there is  
23 resellable ties, those could be \$15.00 each.

24 We are trucking some ties to Lexington, Kentucky and  
25 getting \$10.00 in Lexington, Kentucky where you can't get

1 nothing for them here. It's -- I don't know what the value  
2 is. I haven't been over it that well.

3 Q Would you have any way of disputing Conrail's  
4 figure in its Petition for Exemption of \$168,396.00?

5 A That could be a good figure.

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

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

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

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

15 Q So you are not aware --

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

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

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

24 Q You indicated that R.J. Corman operates lines in  
25 Pennsylvania known as the Clearfield Cluster. Is that

1 correct?

2 A Yes.

3 Q And you also indicated that there were several  
4 lines that Corman abandoned and salvaged. One of them was  
5 Snow Shoe?

6 A Yes. Conrail had already abandoned this when we  
7 purchased the Clearfield Cluster.

8 Q And what was the name of the other one?

9 A Clearfield and Mahoning Railroad.

10 Q Do either of those lines operate through a town  
11 called Ebensburg, Pennsylvania?

12 A No. That's the black leg.

13 Q And that one Corman is operating on?

14 A No. There has been no traffic on that since  
15 Bethlehem 33 shut down. That was deep mining coal. That  
16 was connected -- came here in Indiana Railroad.

17 Q So Corman is in the process of --

18 A Filing or abandonment on that section of track.

19 Q And once that is concluded, Corman will --

20 A Remove it if we have no objections. Bethlehem  
21 Steel may object. That's just starting in the process.

22 Q And are there crossings located on that line?

23 A Yes, there is.

24 Q Are you aware, has Corman already removed track  
25 from those crossings without obtaining Commission authority

1 to do so?

2 A We were asked by the town of Ebensburg to repair  
3 two crossings, Center Street and there was another crossing

4 --

5 Q Locust Street?

6 A Locust Street, yes.

7 Q And you removed track from those crossings,  
8 correct?

9 A We removed -- we left one line in. We have not  
10 closed a line off. You are not allowed to until you file  
11 abandonment. There was two tracks that went through where  
12 the crossing are. We took one track out.

13 Q And that was done without an order of the Public  
14 Utility Commission. Is that correct?

15 A The rail wasn't taken out of the crossing.

16 Q The rail was left in the crossing. Is that what  
17 you are saying?

18 A Yeah. And then at the request of Ebensburg, the  
19 City of Ebensburg, we took --

20 Q The rail --

21 A Yeah -- out of the crossing.

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

23 JUDGE COHEN: Ms. D'Alfonso.

24 MS. D'ALFONSO: I have no questions.

25 JUDGE COHEN: Mr. Eaton.

1 BY MR. EATON:

2 Q Mr. Pettengill, there are ongoing negotiations  
3 between Corman and Conrail for the purchase of this Cornwall  
4 Industrial Track. Am I correct?

5 A Yes.

6 Q Have you any knowledge as to any time constraints  
7 on those discussions?

8 A No, I'm not aware of any.

9 Q You have no period of time within which an  
10 agreement is to be reached?

11 A The only thing I was told is it was to be done by  
12 September 30th.

13 MR. EATON: That's all. Thank you.

14 JUDGE COHEN: Redirect?

15 MR. DIETTERICK: No, Your Honor.

16 JUDGE COHEN: Thank you.

17 JUDGE COHEN: All right. That concludes the hearing  
18 of all the witnesses.

19 MR. SALAPA: I have one witness, Your Honor. I call  
20 Mr. Knerr.

21 WILLIAM J. KNERR, called as a witness, having been  
22 duly sworn, was examined and testified as follows:

23 JUDGE COHEN: Please spell your last name.

24 THE WITNESS: William J. Knerr, K-n-e-r-r.

25 DIRECT EXAMINATION

1 BY MR. SALAPA:

2 Q Mr. Knerr, how are you employed?

3 A I'm employed as a senior civil engineer with the  
4 Pennsylvania Public Commission Transportation and Safety  
5 Section.

6 Q And how long have you been employed by the  
7 Commission?

8 A Approximately 22 years.

9 Q And what are your duties with the Commission?

10 A I schedule and conduct field investigations and  
11 conferences at rail highway crossings. I testify at  
12 proceedings such as this one. I prepare recommendations  
13 regarding rail highway crossings for Commission approval. I  
14 monitor rail highway crossing cases assigned to me to assure  
15 compliance with Commission orders.

16 Q Are you authorized to testify in this proceeding  
17 on behalf of the Bureau of Transportation and Safety?

18 A Yes, I am.

19 Q And you are familiar with this particular case or  
20 cases?

21 A Yes.

22 Q And when was the last time you visited the  
23 crossings which are the subject to these proceeding?

24 A The last time was July 31, 1997.

25 Q Mr. Knerr, you were present earlier and heard the

1 testimony of the various witnesses regarding the description  
2 of the physical condition of the crossings, did you not?

3 A Yes.

4 Q And you've reviewed the exhibits, in particular  
5 the photographs, presented by the City of Lebanon, have you  
6 not?

7 A Yes.

8 Q And do you agree with the description provided by  
9 the witnesses in the photographs regarding the physical  
10 condition of the various crossings?

11 A Yes.

12 Q Are there any additional things you would note  
13 with regard to the physical condition of any of these  
14 crossings?

15 A Just one of two items that I noticed when I was  
16 doing my inspection, they don't necessarily relate to the  
17 crossings surfaces as such but the crossing signals that are  
18 there. In the instance of Cumberland Street, it would be  
19 the north signal that is also Route 422 -- not signal, I'm  
20 sorry, the gate arm, the mechanism that controls the gate.

21 And I should mention that the gates are missing or  
22 have been removed at that particular crossing. But it  
23 appears that that gate arm has been struck. And that's  
24 something that would need to be taken care of prior to  
25 trains again using the line.

1           Also, one of the flashing light signals at Chestnut  
2 Street, it would be the one in the south or -- I'm sorry --  
3 north east quadrant that also has been struck. And the  
4 signal, itself, is just hanging there at this particular  
5 time.

6           And I think it's previously been noted that the  
7 crossbuck sign at the Lincoln Avenue crossing is, in fact,  
8 missing. That sign has been missing since an inspection I  
9 made back in 1995 when we had an informal complaint  
10 regarding all these crossings as well. So that sign, itself  
11 -- the post is there. The sign, itself, is missing.

12           Q    Okay. Based on the physical condition of these  
13 crossings, what, in your opinion, needs to be done at these  
14 crossings at this point?

15           A    If, in fact -- and, I guess, that's not been  
16 determined at this point in time -- if, in fact, there is to  
17 be no rail traffic that's going to travel this line, we  
18 would recommended that the crossings be removed; the track,  
19 the ties, and other rail pertinences including the signals,  
20 battery cases, signal boxes. Those things should all be  
21 removed. The paving should be replaced to the local road  
22 jurisdictions criteria. And I believe that's it.

23           Q    Okay. And what if there is continued rail service  
24 on this line?

25           A    We would then expect to have the crossings either

1 rehabilitated or reconstructed if, in fact, there is going  
2 to be rail traffic on the line.

3 MR. SALAPA: Thank you, that's all I have.

4 MR. KILGORE: No questions.

5 MR. SHEFFEY: None, your Honor.

6 MR. WEISS: None.

7 CROSS EXAMINATION

8 BY MS. D'ALFONSO:

9 Q Mr. Knerr, if there is going to be reconstruction  
10 of crossings because it is going to be operated, does the  
11 Commission have to approve particular work that occurs for  
12 construction, or can the railroad reconstruct as they deem  
13 appropriate?

14 A We would probably want to approve the plans for  
15 the reconstruction. Usually, that's based on a field  
16 agreement between the parties as to what needs to be done.  
17 And, I guess, the Judge, as a result of this complaint  
18 proceeding, could issue an order and direct plans be  
19 prepared, presented to the parties for their review and to  
20 the Commission for approval. And then we would have the  
21 final approval on those plans and then construct it in  
22 accordance with those plans.

23 Q So that gives all the parties including the  
24 Commission, most importantly the Commission, the opportunity  
25 to review the plans and either concur or object to the type

1 of work or type of materials?

2 A Or ask that the plans be redone with certain  
3 recommendations.

4 MS. D'ALFONSO: I have nothing further.

5 JUDGE COHEN: Mr. Eaton.

6 BY MR. EATON:

7 Q What work would you expect to be incorporated  
8 within plans other than that work necessary to duplicate the  
9 crossings as they exist today? Putting the question a  
10 different way, what is the necessity for incurring the  
11 expense of engineering time, draftsman's time to draw up  
12 formal plans if all you are going to do is replace what  
13 exists?

14 MR. SALAPA: I am going to object. I think that  
15 assumes that's all you are going to do --

16 MR. EATON: Sure it does.

17 MR. SALAPA: I think there is a question at least with  
18 regard to Cumberland Street as to whether what should be put  
19 back in there is what exists now or what formally was there  
20 in the form of a high-type surface, Your Honor.

21 MR. EATON: I think the witness can respond. And if  
22 he feels that something than other replacement is necessary,  
23 he can say so. There has been no suggestion of a grade  
24 separated crossing at Cumberland Street.

25 JUDGE COHEN: Why don't he get his opinion.

1 Ultimately, it would be up to the Commission whether they  
2 have to file plans or whether they don't. It would be  
3 posted in the order if there is one forthcoming.

4 THE WITNESS: Normally, if we would be looking at  
5 total reconstruction of crossing or building a new crossing,  
6 the Commission would ask to see the plans with regard to  
7 that. That's normal procedure. If it is just normal  
8 maintenance that the railroad is performing, that's another  
9 matter.

10 BY MR. EATON:

11 Q Well, if we take a look at the Cumberland Street  
12 crossing there for example, if there is to be more than  
13 simply removal of the surface that's there and replace the  
14 surface, if, for example, the ties had to be replaced and so  
15 forth, is it still necessary that there be any plans for the  
16 job?

17 MR. SALAPA: I'm going to object. That's been asked  
18 and answered.

19 JUDGE COHEN: He said the Commission normally requires  
20 it.

21 MR. EATON: He said the Commission normally wants it.  
22 I think he said -- and my question is, What's the necessity  
23 for it? Why do we require work be done to accomplish plans  
24 for something of that sort? There is more reason than  
25 somebody requires it?

1 THE WITNESS: It's been done 22 years. I don't know.

2 BY MR. EATON:

3 Q You know of no good reason to do this other than  
4 it's required or it's the practice?

5 JUDGE COHEN: Mr. Eaton, I'm not an engineer. I can't  
6 drive a nail straight. If the plan said you have three  
7 inches of fill, and we didn't put it in, only put in one and  
8 a half, at least the plan shows what you have to do. You  
9 can refer back to it, I think. You can memorialize what has  
10 to be done.

11 THE WITNESS: We would also want plans to spot any  
12 utilities or facilities that might be in there. It also  
13 gives you a basis for a customer estimate.

14 JUDGE COHEN: You may not want to agree with it, but  
15 you have right to take exceptions.

16 BY MR. EATON:

17 Q Is it true that PennDOT will ordinarily undertake  
18 the preparations of such plans and specifications for  
19 crossing reconstructions?

20 A No.

21 Q No?

22 A No.

23 Q Will PennDOT incur the expense involved?

24 A Not even normally that. Every railroad crossing  
25 -- I wouldn't say -- most railroad crossings I've done the

1 plans for, the railroad crossing has been prepared by the  
2 railroad.

3 Q Willow Street, we see a photograph here of one the  
4 tracks at the Willow Street crossing. We understand that  
5 there is a second track. We can see a suggestion of a  
6 second track. You said you've been out within the past  
7 month. Was it July?

8 A Yes.

9 Q What was the condition of the crossing at the  
10 other track? Is comparable to what we see in the first  
11 photograph of Lebanon Exhibit Number 1, City Exhibit 1?

12 A Actually, the other track is in a little better  
13 condition than this particular track is here. You have  
14 roadway breaking up. And this particular track sits in a  
15 little bit of dip, hence you get a bump as you drive over  
16 it.

17 Q And you are saying conditions of other tracks are  
18 better than that?

19 A Probably a little better. Although, I'm not aware  
20 of that, trains actually cross the other crossing -- or the  
21 other track. I should say the other track crosses Willow  
22 Street, goes down and dead-ends immediately before  
23 Cumberland Street. So I'm not sure that is even a used  
24 track.

25 Q Well, in any event, does the crossing of the other

1 track, in your judgment, does it require repair, replacement  
2 or rehabilitation?

3 MR. SALAPA: Objection. It's already been asked and  
4 answered. It was answered on direct.

5 MR. EATON: It was not.

6 MR. SALAPA: Yes, it was.

7 MR. EATON: The other crossing not shown at -- the  
8 other track not shown on the Willow Street crossing  
9 photograph.

10 MR. SALAPA: And I asked him what he thought needed to  
11 be done if rail service were to continue. And he said,  
12 Rehabilitate the crossings.

13 MR. EATON: It was not clear that he understood at  
14 that time there was two tracks at the Willow Street  
15 crossing. I'm pursuing the second track.

16 JUDGE COHEN: We will give the right to ask him  
17 specifically about Willow Street because it has two  
18 crossings.

19 THE WITNESS: I'm sorry.

20 BY MR. EATON:

21 Q In your judgment, does the crossing of the other  
22 track at the Willow Street crossing need to be replaced or  
23 repaired or rehabilitated in any way?

24 A From what I've gathered --

25 Q From what you seen and what you know.

1           A    I don't know if the train uses the other track.  
2           If it uses the other track, it needs to be rehabilitated.  
3           If there are no trains, it can be removed.

4           Q    Assuming the track was to remain, is the crossing  
5           in such poor condition that it needs to be replaced?

6           MS. D'ALFONSO: Your Honor, I going to object because

7           --

8           MR. SALAPA: Asked and answered.

9           MS. D'ALFONSO: Not only that, Your Honor, if that  
10          second track is part of any of today's proceeding, I'm not  
11          sure where it is. And if that track is part of one of these  
12          complaints or the application, I would ask to be notified  
13          which one it is.

14          JUDGE COHEN: Conrail says it's going to take care of  
15          Willow Street. Do you mean one track or two tracks?

16          MR. EATON: The Lebanon Transit Authority referred to  
17          Cumberland Street AAR59152018 -- I take it all back. The  
18          City of Lebanon complaint refers to Willow Street AAR591527.  
19          There is one crossing. There are two tracks. We have had  
20          testimony with respect to only the one track at that  
21          crossing.

22          There has been no testimony with respect to the second  
23          track or even acknowledgement during the course of  
24          questioning or answers other than those of, I think, it was  
25          Mr. Sawyer, that there is a second track at Willow Street.

1 Willow Street is fairly within these proceedings, and we  
2 don't know anything about it.

3 MR. WEISS: There is a second track at Willow Street  
4 but not on the line that subject to this proceeding. Does  
5 that help?

6 JUDGE COHEN: Yes, it should.

7 MR. WEISS: That's an a separate line, but it is  
8 still, apparently active. But it is not part of this  
9 proceeding. I hope that clarifies it. The City has not  
10 requested any activity on that line -- on that crossing. So  
11 there is really two Willow Street crossings, but only one  
12 that is the subject of this proceeding.

13 MR. EATON: I think the testimony was that there is a  
14 single crossing and two tracks. And that photographs were  
15 shown that they are fairly widely separated, but it is  
16 carried as a single crossing.

17 JUDGE COHEN: Is the track that the City of Lebanon  
18 wants repaired or replaced, whatever, the track that is  
19 shown on the Exhibit 1?

20 MR. WEISS: Yes, sir. That's the only crossing on the  
21 line that is the subject of this proceeding on Cornwall.

22 JUDGE COHEN: What is formal designation of that?

23 MR. WEISS: That is designated AAR591-527L.

24 JUDGE COHEN: Thank you.

25 MR. EATON: That's the crossing I was referring to. I

1 was referring to a different track, however, at the  
2 crossing. Same crossing, same AAR number, different track.  
3 Don't confuse me.

4 BY MR. EATON:

5 Q In any event, you said that the other track at  
6 Willow Street, the crossing, is in better condition than  
7 this one, the one that is shown. Am I correct on that?

8 A That's correct according to my notes.

9 Q Even if it is better, you are still saying it has  
10 to be replaced?

11 A Only if a train uses it. If there is no traffic  
12 on it, why keep the track?

13 Q Let's assume the track is going to remain in  
14 place. And the problem that we face now is roadway traffic.  
15 For the purposes of facilitating roadway traffic, does that  
16 crossing have to be replaced? Does that portion of the  
17 crossing have to be replaced? If you don't know, simply say  
18 so.

19 A I would say if the other track is going to be  
20 reconstructed, then this track should be done likewise.

21 Q Why?

22 A Reconstruct.

23 Q Why, if it doesn't need it?

24 A Why is it in if it doesn't need to be?

25 JUDGE COHEN: Who's on first?

1 MR. EATON: I'm going to quit. No more questions.

2 JUDGE COHEN: Mr. Dietterick?

3 MR. DIETTERICK: I'm discouraged, no.

4 JUDGE COHEN: Any redirect?

5 MR. SALAPA: No thank you, Your Honor.

6 JUDGE COHEN: This concludes all the witnesses here,  
7 and is the matter concluded?

8 MR. EATON: All of those today, but I request that the  
9 record remain open and the proceeding be continued to a  
10 later date, October 1st.

11 JUDGE COHEN: Practically speaking, like I said, three  
12 weeks from the date transcript is received, that would be  
13 September, something like that. And I certainly have -- I'm  
14 ad infinitum I think --

15 MR. SALAPA: Your Honor, if I may suggest, if the  
16 purpose of holding the record open until that time is to  
17 allow Conrail and R.J. Corman to inform His Honor as to the  
18 status of negotiation, that could be done through the form  
19 of a petition to reopen the record on the basis of changes  
20 circumstances.

21 JUDGE COHEN: The record could be open until the  
22 briefs are in. I'm going to ask for briefs. I'm going to  
23 give you at least 30 days to file briefs.

24 MR. EATON: Furthermore, I contemplate that by that  
25 date the factual situation will have clarified to a point

1 where the subject matter for any briefs might change a great  
2 deal from what it may be if we had to do briefs based on the  
3 record as it exists today. I'm requesting that not only the  
4 record remain open, thus we wouldn't have to petition to  
5 have it reopened, but also that briefing be deferred pending  
6 the taking of any further testimony.

7 I'll undertake to notify the ALJ and the parties by  
8 October 1st as to whether we wish to present further  
9 testimony. And if we do, the testimony we will want to  
10 present will be that relating to terms of any agreement  
11 between Conrail and R.J. Corman and any agreements with  
12 respect to crossings.

13 JUDGE COHEN: This is a complicated matter as Mr.  
14 Kilgore can attest to. We had a discussion with the Chief  
15 ALJ on this problem with the bridge. It seems to me that  
16 the Commission is going to have know what is going on. It's  
17 only fair that they know what is going to happen with the  
18 proposed agreement. So I will keep the recorder open until  
19 October the 1st.

20 MR. EATON: I would be perfectly content for the ALJ  
21 to enter an interim order acknowledging the request and the  
22 that the record remain open.

23 JUDGE COHEN: I'll just note on the appearance sheet  
24 that the record is to remain open. I don't create  
25 unnecessary papers.

1 MS. D'ALFONSO: My only concern is that if Conrail  
2 and/or R.J. Corman fill the need for an additional hearing  
3 to provide additional testimony, that we are talking about  
4 another six weeks, two months, three months, whatever your  
5 calendar permits, before we get another hearing date.

6 JUDGE COHEN: You can ask for an expedited hearing.  
7 And I will give you my first available open date.

8 MS. D'ALFONSO: Is it possible to set a date now? And  
9 if it's not necessary, we would be so informed.

10 JUDGE COHEN: I can do that and say that in the event  
11 the matter is not resolved by October the 1st, we will go.  
12 And then the record will be closed, and there will be a  
13 briefing schedule.

14 MS. D'ALFONSO: The Department would prefer that.

15 JUDGE COHEN: I would have to consult my calendar for  
16 that. Off the record.

17 (Off the record.)

18 JUDGE COHEN: The matter, the instant matter, will  
19 remain open until October 1st at which time, counsel for  
20 Conrail will advise the parties and Administrative Law Judge  
21 what the status of the Corman negotiations are at that time.

22 If, in fact, Conrail indicates that there will be no  
23 transfer to Corman, then the record will be closed on  
24 October the 1st. And the parties will file briefs together  
25 with proposed findings of facts and conclusions of law on or

1 about November the 15th.

2 MS. D'ALFONSO: That's a Saturday.

3 MR. KILGORE: And should the Corman matter not go  
4 through and the track is going to be abandoned and if the  
5 Commission refers the Wilhelm Avenue, then there would be  
6 another hearing?

7 JUDGE COHEN: Yes. If the Commission refers to  
8 Wilhelm, the record will be reopened -- if I closed it on  
9 October the 1st -- for the sole purpose of hearing the  
10 Wilhelm bridge problem. Off the record.

11 (Off the record.)

12 JUDGE COHEN: The record will remain open. The record  
13 will remain open until October the 1st. A hearing, a  
14 further hearing, if any, on either the Corman negotiation or  
15 the Wilhelm bridge, if the matters remanded to me, and  
16 evidentiary hearing will be held on October 8th with respect  
17 to those matters. A briefing schedule will be deferred  
18 pending further clarification of those further matters.

19 MR. WEISS: 10:00 in Harrisburg?

20 JUDGE COHEN: Yes, 10:00 in Harrisburg. Thank you  
21 ladies and gentlemen.

22 (Whereupon, at 5:02 p.m., the hearing adjourned.)  
23  
24  
25

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

5  
6  
7   
8 Tierna L. Strayer  
Court Reporter

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